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SENATE—*Thursday, July 25, 2002*

The Senate met at 9:30 a.m. and was called to order by the Honorable JACK REED, Senator from the State of Rhode Island.

PRAYER

The PRESIDING OFFICER. The prayer will be offered today by the guest Chaplain, the Rev. Dr. Frederick W. Pfotenhauer, from Hilltop Lutheran Church of the Ascension, South Bend, IN.

The guest Chaplain, offered the following prayer:

Holy God, Wisdom Eternal, at the time Your Spirit breathed over the Earth and gave life and heart to all that is, You also called all people to be participants in Your holy actions. Enable each of us, especially those elected to this United States Senate and charged with being the voice of the people who inhabit this beloved land, to recognize our responsibility as conduits for these Your holy actions. Our prayer this morning, in voices lifted to You, resonates not only with the men, women, and children of our country but with the voice of humanity throughout the world and across the centuries. And so we, the family of the Senate, desiring to be filled anew this day with Your Spirit, Your wisdom, and Your purpose, plead with You to hear once more the prayer of Francis of Assisi.

Lord, make me an instrument of Your peace; where there is hatred, let me sow love; where there is injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy.

O Divine Master, grant that I may not so much seek to be consoled as to console, to be understood as to understand; to be loved as to love.

For it is in giving that we receive, it is in pardoning that we are pardoned. And it is in dying that we are born to Eternal Life. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 25, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REED thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. REID. The first hour, as the Chair will shortly announce, will be a period of morning business. The Republican leader has control of the first half, and the Democratic leader has control of the second half.

At 10:30, we will begin consideration of the motion to waive the Budget Act with respect to the Rockefeller amendment. There will be 1 hour of debate on that and a vote thereafter.

Last night, a unanimous consent agreement was entered into between the two leaders that allows the majority leader to call up the legislative branch appropriations bill, which probably will be done sometime today. Following that, we may even go to the Defense bill. The order is we go to that before next Wednesday.

In the meantime, there is work being done. People worked in the Capitol until late last night trying to come up with some sort of amendment dealing with prescription drugs. We need a bipartisan agreement on that. It was a bipartisan group meeting last night.

The Senator from Oregon, the junior Senator from Oregon, Senator SMITH, wishes to speak for a few minutes now, and I ask unanimous consent he be allowed up to 3 minutes to speak.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Oregon.

GUEST CHAPLAIN DR. FREDERICK W. PFOTENHAUER

Mr. SMITH of Oregon. Mr. President, it is my privilege today to say a few words about the reverend doctor who offered a word of prayer on behalf of this country and this institution this morning.

The Rev. Dr. Fritz Pfotenhauer has given me permission to refer to him personally as Fritz, but he is a most distinguished pastor and minister of the gospel. He is the pastor of the Hilltop Lutheran Church in South Bend, IN. He is descended from a long line of Lutheran ministers in an unbroken father-son succession dating back to the time of the great reformer, Martin Luther.

Dr. Pfotenhauer completed his Ph.D. in pastoral theology at the University of Notre Dame where he also taught for 20 years until his retirement recently.

He will also retire at the end of this year as the pastor of Hilltop Lutheran after 36 years of service to that community and 46 years as an ordained minister.

I think it is significant that this good brother is not just trained for the ministry and knows the ivory tower and knows the depths of theology, but he knows how it is to minister, how it is to change the human heart and help lift people from the wrong path. This is a man, as you meet with him, who can talk deep in terms of gospel principles but also knows personally what it is like to change the human heart and to set it on the course of righteousness.

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

Pastor Pfotenhauer is the father of Kurt Pfotenhauer, who is my friend and my former chief of staff for nearly 6 years. Dr. Pfotenhauer's wife, Carolyn, is in the audience today. We welcome her. We honor her, as well as her grandsons, Jon and Ben, and her daughter-in-law, the pastor's daughter-in-law, Kurt's wife, Nancy. They are all with him today.

We honor you, sir. We thank you for your service to us today. We thank God for your service to his children.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak therein for up to 10 minutes each. Under the previous order, the first half of the floor time will be under the control of the Republican leader or his designee, and the final half of the time shall be under the control of the Democrat leader or his designee.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

THE STATE OF THE ECONOMY

Mr. DOMENICI. The Republican leader has designated the Senator from New Mexico to control the time. I yield myself 10 minutes.

Mr. President, fellow Senators, a week ago the Federal Reserve Chairman, Alan Greenspan, testified before the Senate Banking Committee. It is important to take note of what he said at that hearing and where he thinks our economy is headed. Despite the obvious bear market which prevailed until yesterday, when we had a rather significant bull market for the day, our economy's fundamentals are strong.

Despite this bear market, our economy is not headed for another recession in the near future. Productivity growth is rapid. Inflation is low. Mortgage rates are also low, as everyone knows. That has kept the housing market very strong.

Families have been taking advantage of these low-income rates by buying homes at a record pace and refinancing old ones, thus yielding either lower payments or cash at hand which they are using to acquire what they believe they need.

Notice that those who claimed that the tax cut would lead to higher interest rates have been very quiet of late, at least on that point. The Federal Reserve sees the economy as growing at about a 3-percent rate in the second half of this year and even faster next year. The unemployment rate will probably end the year at about 5.9 percent. That is about right where it is now.

Next year, the jobless rate could drop to about 5.4 percent. This does not mean the outlook lacks uncertainty. The recent weakness in the stock market is important. The American people are worried, concerned. Lower equity prices create a negative wealth effect that will be a drag on consumer spending, as I have just indicated. Lower stock prices also make it tougher for businesses to acquire the capital they need to invest. Slow business investment continues to be our economy's weakest point. And, of course, we still face the risk of further terrorist attacks or other conflicts that could disrupt the energy market.

Chairman Greenspan also observed:

> To a degree, the return to budget deficits has been the result of temporary factors, especially the falloff of revenue, of tax take, and the increase in outlays associated with the economic downturn.

But the chairman also observed that unfortunately, despite these temporary factors impacting the deficit, he also saw signs that the underlying disciplinary mechanisms that form the framework for Federal budgets over the last 15 years have eroded.

I would say one of the most obvious "disciplinary mechanisms," to borrow his words, is the adoption of a congressional budget. I have spoken in the past here on the floor about the failure to adopt a budget resolution this year. Clearly, this is the one thing we can do in the Congress to send a message to the American public and to the markets that we understand the importance of having a budget in these difficult economic times. So far we have failed as elected officials to do the most essential of our responsibilities—adopt a budget.

Clearly, the other side of the aisle, the Democrats and their leadership, bear that responsibility, the responsibility to have continued on with the budget process and to have produced a budget resolution. We know that even on this most serious of debates, with reference to prescription drugs for our seniors, the absence of a budget resolution has found its way here to the floor.

Because there is not a budget resolution that impacts for the remainder of this year, we then look to the previous year for the impacts, plus or minus impacts, on adopting a prescription drug bill. Lo and behold, we find the previous year's budget, the budget that this Senator, as chairman, helped put together, is now impacting and will through the remainder of this fiscal year be impacting on what we can do in Medicare. Clearly, it is saying we can only spend $300 billion over the next decade. That was the judgment of the Senate when it last voted in a budget resolution.

Things have not gotten better but perhaps have gotten somewhat worse during that intervening year. We are here on the floor discussing a Medicare bill that is much larger than what we talked about the year previous when we had a rather positive economy, not one that was in the red but one that was in the black.

Now the question is, What shall we do for the remainder of this year, up until October 1, when all the appropriations bills are subject to adoption in both Houses, to go to conference, come back, and then go to the President—when all the other measures on which we have been going slow, or are in conference, have to come up? Are we going to have no budget resolution nor budget statement impacts on any of those activities, the sum total of which are the budget, and determine, starting October 1, what we shall do?

It makes it difficult. Even the distinguished chairman of the Appropriations Committee, the President pro tempore, responding to a question about how not having a budget would affect the ability to work on appropriations bills, said—and I quote from The Hill magazine:

> It makes it difficult because we don't have the disciplinary mechanisms at our fingertips that would otherwise be the case if we had a budget.

The Appropriations Committee, under his leadership and that of Senator STEVENS as ranking member, is fully aware their appropriations bills, one by one, when added together are the sum total of the budget for the year starting October 1. They have recommended on one of the bills that there be a sense of the Senate that they will engage in attempting, with the Senate, to bind themselves to the numbers in the appropriations bills, saying we will be bound by those even though we do not have a budget resolution that would normally give the numbers, prescribe them to the committee.

I gather that means the Budget Committee chairman and ranking member—with that language, that sense of the Senate, saying that we will be bound by the sum total of the allocations to the subcommittees—I gather they clearly are concerned that if we do not have something, the bills eventually will be subject to whatever the Senate would vote in and have no overlying power that says you can't go over this or you suffer some kind of penalty.

Senator BYRD and Dr. Greenspan have spoken. I tried on two or three occasions on the floor to remind us, as Senator JUDD GREGG has, and some Democrats have taken to the floor concerned about the fact that we don't have any discipline. It makes it difficult because we don't have the disciplinary mechanisms at our fingertips. That is what the distinguished chairman of the Appropriations Committee said a few days ago.

A couple of weeks ago, absent a real budget resolution, we came close to adopting at least a poor version of a budget by trying to set spending caps for the appropriations process, enforceable only here in the Senate next year, and extending with Senate enforcement tools some expiring Budget Enforcement Act provisions.

But let it be clear, this is not a budget resolution.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. DOMENICI. I ask unanimous consent for 5 additional minutes.

The PRESIDING OFFICER. Without objection, the Senator may continue.

Mr. DOMENICI. Let it be clear this was not a Senate budget resolution on which we voted. It was an attempt to address just a small portion of the Federal spending that indeed will take place between now and the end of next year. Let it be clear that this is not a budget resolution because it only applied to appropriations, and budget resolutions go well beyond the appropriations bills which constitute about one-third of the spending of our Nation. Two-thirds are subject to other approaches to spending, mandatory approaches—they are automatic, like Social Security, like Medicare. And the sum total of all those—Federal pensions, military pensions and on and on—the sum total of all of those mandatory, obligatory ones is two-thirds of the spending. A real budget would address the other two-thirds, that which we call generally entitlement spending.

I think we are now beginning to see firsthand what it means not to have a budget resolution as we are here on the floor debating adding new spending to one of the largest Federal entitlement programs, the Medicare Program. The process does matter. An updated budget resolution would have updated our spending estimates and we would now be debating these prescription drug amendments to the current Medicare Program in a more honest and transparent manner.

I think it is important that we listen up and we pay attention. This is a very serious situation. If in fact spending were to get out of hand, we hear Alan Greenspan warning us that one of the most significant qualities, characteristics of this American economy—one of the most serious ones would be for those who understand budgets to conclude that the fiscal policy is out of hand, that we don't know where it is going, and we don't know how much we are going to spend. I don't think that is the case.

But some who would look at what we have done and not done might conclude that we are not as committed as we were a couple of years ago when we had budgets, reserve funds, and all the kinds of things we have grown to use around here.

It is obvious we just have projections and estimates of costs based on the Congressional Budget Office and their most current projections. But because we don't have a budget resolution that is based on current estimates, the procedural points of order that lie against all of these amendments result from the fact that last year's budget resolution is the only one we have, and it was estimated using an entirely different set of projections.

What this says is we are using enforcement tools that were in last year's budget based upon where we are going to be with reference to expenditures, tax intake, and, thus, deficits, or being in the black and with a surplus.

Regardless of whose amendment one supports, not having a current budget resolution penalizes all proposals. This is not the way to consider one of the most important and probably most expensive legislative proposals to come before the Congress in years; that is, prescription drug provisions that we are debating.

We therefore see the failure to adopt a budget resolution, we see it impacting on the way the Senate can conduct business here on the floor. We are tied up in trying to consider a prescription drug bill while bypassing the Senate Finance Committee. If the majority leader chooses to proceed without waiting for, or without expecting and relying upon a bill that the Finance Committee and committee debate produces and sends to the Senate, that is his prerogative.

I believe in these particular times, with all of the facts I have just described, that it is not the best way to do it. But there are even other reasons beyond budgetary that cry out for it not being the best way to conduct business—be it an energy bill, which we did directly on the floor and didn't have language from a committee as a formal bill with the appropriate documents attendant thereto, to many others that we are taking up out of the majority leader's office and putting up here on the floor without the committee authentication which comes from the committee debate, which is a very heralded and important part of the Senate process.

Chairman Greenspan also spoke specifically about the other rules that were incorporated into the Budget Act and, thus, are in the budget. They came into being when our country had another bad time. We went out and met at Andrews Air Force Base. We came back with a series of proposals, one of which was called a pay-go, and spending caps. These are devices that helped at least provide some tools for statutory and congressional fiscal policy deliberations. These were enforced by points of order. The point of order lied. These provisions were operative—or any one of them. Then we were penalized and had to have 60 votes rather than 51.

That is wherein the drug bill lies in terms of the process. This is something we can do.

I have introduced legislation to extend the budget enforcement provisions, including the spending caps, establishing firewalls that go between the nondefense and defense, pay-go rules impacting the mandatory spending programs and tax revenues, limitations on the advanced appropriations, and other provisions that I believe are the minimum needed to maintain some semblance of statutory and congressional budget authority.

Let it be clear that this legislation is not a budget resolution, it is strictly enforcement provisions. But it is the heart and soul of budget enforcement mechanisms that would be here if we were adopting a budget under the existing budget law. It is essential that we do at least this much, and we ought to give serious consideration to doing it before this year ends.

I once again borrow the language of Dr. Greenspan when he calls all these things disciplinary mechanisms. We need to reassert them—something Chairman Greenspan and Chairman BYRD reminded us that we need. This is important to the way we conduct business and the signal it sends to the markets and the economy.

Also, my colleagues joined in other legislation that I hope we can find some way to have adopted before the new fiscal year begins on October 1. I have heretofore introduced a summary of this proposal. After getting closer and talking to more people, I put some more flesh on it. I don't want to formally introduce it, but I want to send attendant to this speech, following it, a proposal that will be called a bill. It indeed would be the proposal I have summarized that, as a minimal, we would need. I hope Senators will pay attention to it.

Perhaps by the end of the day today we can find out whether there is a genuine interest. If there is not, then obviously I believe I have done my best to call attention to it and to provide how it might be done. I submit that there is indeed a possibility that if this were to pass and the Senate were to adopt it, and since it applies only to us—the House offers it through its Rules Committee—if we were to adopt it, I have every reason to believe it would have a positive impact on those who are wondering what is our fiscal policy after this October and into a year with new so-called disciplinary functions available.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. CLINTON. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

12TH ANNIVERSARY OF ENACTMENT OF THE AMERICANS WITH DISABILITIES ACT

Mrs. CLINTON. Madam President, I rise today to recognize the 12-year anniversary of an incredibly important step in America's continuing effort to expand the circle of opportunity and to realize a more perfect union.

Twelve years ago today, the Americans with Disabilities Act became law. When we think about that remarkable day in history, we remember the relentless efforts of some of our colleagues who took such leadership in this important expansion of civil rights protections. Senators HARKIN and KENNEDY used their positions of power to fight for those with little or no power. Their work opened the doors to people with disabilities in much the same way as the Civil Rights Act had done three decades earlier for other Americans.

We also remember the people who fought behind the scenes, those who tenaciously and selflessly advocated for equal access because they knew that people with disabilities were being excluded from schools, from jobs, from the most fundamental participation in our American way of life.

One such person—someone whom I was very proud to call my friend—was truly the heart and soul of the disabilities civil rights movement. That person was Justin Dart. We lost a great American and a great leader with Justin's death on June 22. But because of his lifelong commitment to ensuring the rights and dignity of every single American, we will never forget him. He was not only a great and tireless leader, he was an extraordinary human being. Anyone who ever saw him, with his cowboy hat and his infectious grin, would never forget him.

Justin Dart's passionate advocacy led many to refer to him as the Martin Luther King of the disabilities movement. So on Martin Luther King's birthday, January 15, 1998, my husband, President Bill Clinton, awarded Justin the Medal of Freedom, our Nation's highest civilian award. We also invited Justin back to the White House when we honored the 10th anniversary of the Americans with Disabilities Act. And throughout my tenure as First Lady, and since becoming a Senator from New York, I often sought his guidance on health and disabilities issues.

Justin Dart's leadership changed the way we, as a society, think about people with disabilities. We all know—those of us who have lived long enough—that at one time we presumed a disability meant a lifetime of dependence. Now we know better. We know that we have countless Americans, of all ages, with disabilities who not only want to but can lead independent lives to contribute to the quality of our lives and our Nation's prosperity. That is why, in 1998, the Clinton-Gore administration formed the Presidential Task Force on Employment of Adults with Disabilities, and then in the year 2000 expanded its mission to include young people.

This task force has been instrumental in helping us understand the challenges that still confront Americans with disabilities and in understanding, despite the extraordinary progress we have made since the ADA was passed, we still have a very long way to go.

According to a recent survey of Americans with disabilities conducted in 2000, 56 percent of 18- to 64-year-olds with disabilities who were able to go to work were employed in 2000. That is up from 47 percent in 1994.

That is progress, but we also have to recognize that 44 percent of Americans with disabilities are still not working. Justin himself eloquently expressed the status of Americans with disabilities on the 7th anniversary of the ADA when he said:

> The job of democracy is far from finished. Millions and millions of people with disabilities, in America and other lands, are still outcast from the good life.

In Justin's honor, we simply have to do better.

One of the ways I will keep honoring Justin Dart's legacy is to continue the fight for equal access and full funding under the extraordinarily important legislation passed 25 years ago to provide education for children with disabilities. The Individuals with Disabilities in Education Act, known as IDEA, has literally transformed the lives of countless American children.

I have a particular connection with that law because, as a young lawyer just out of law school in 1973, I went to work for the Children's Defense Fund. We could not understand why, if you looked at census tracks and saw how many children were living in a particular area between the ages of 5 and 18 and compared that with the number of children enrolled in school, there was a discrepancy. There were children we knew living in an area but they were not in school. Where were they?

We could not understand it by just looking at the statistics so we literally went door to door to door. I was knocking on doors in New Bedford, MA, asking people did they have a child who was not currently enrolled in school. I found blind children, deaf children, children in wheelchairs, children who were kept out of school because there were no accommodations for their education.

I remember going into a small apartment that opened out on to a tiny terrace where the family had constructed a grape arbor, and it was a beautiful apartment with a small garden. A little girl was sitting in a wheelchair out on this little terrace on a summer afternoon. She had never been to school.

We then, working with many other advocates for children and people with disabilities, wrote a report and engaged in the debate which led to the passage of the Individuals with Disabilities in Education Act in 1975.

This year the HELP Committee, on which I serve, is beginning the hard work of reauthorizing this important legislation. When it was passed in the Congress in 1975, we made a promise that the Federal Government would pay 40 percent of the cost of educating children with disabilities. I thought that was a fair bargain because, clearly, educating a child who is blind or deaf or in a wheelchair and needs more help, therefore, requires more resources which is going to raise the costs for local communities. But it was another example of America doing the right thing.

It has made such a difference. Anyone who goes into schools today and sees bright young children raising their hands from their wheelchair or walking down the hallway on braces with their friends or having someone help with the reading because they are blind knows what a difference it has made, not only for the children with disabilities but for all children and for the kind of society we are.

Unfortunately, the Federal Government has never paid its fair share. That is something that has to change. That is something about which I often talked to my friend Justin Dart. He would have wanted us to keep going with the fight to ensure that all Americans are treated with dignity.

He had a very astute way of looking at life and actions in Washington. He once said:

> The legitimate purpose of society and its government is not to govern people and to promote the good life for them, but to empower them to govern themselves and to provide the good life for themselves and their fellow humans.

As usual, Justin Dart summed it up. The Americans with Disabilities Act provided a firm foundation on which to build that empowerment, to ensure that every boy and girl, no matter what their physical or mental status might be, is viewed with the same respect and caring that every other human being deserves as well.

Justin Dart lived it. He advocated. He harassed. He reminded. He prodded and promoted all of us to do better. He himself was confined to a wheelchair. He lived with a great deal of pain, but that smile never left his face. With his beloved wife and family, he showed up whenever the call was sounded for his championship on behalf of people who he never forgot and for whom he never stopped fighting.

We will miss Justin Dart, but it is up to us to continue his legacy and to ensure that the work to which he gave his life continues in his honor and on behalf of the countless young Americans who might never know his name but who are given a chance to chart their own destinies because he came before.

I thank my friend Justin Dart and wish him and his wonderful family Godspeed.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. STABENOW. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

Ms. STABENOW. I thank the Senator from New York for stepping into the Chair for a moment this morning so I might share a few comments. I also congratulate her on a very eloquent statement about an extremely important gentleman, Justin Dart, whom I knew not as well as the Senator from New York but for whom I had tremendous admiration. I align myself with the comments concerning special education and what needs to be done. I thank the Senator for her advocacy this morning on that very important topic.

PRESCRIPTION DRUGS

Ms. STABENOW. Madam President, I rise this morning to comment on another very important topic that is before us and to urge my colleagues to come together to get something done. We have been talking a lot about Medicare and the fact it is outdated, that it needs to be modernized to cover prescription drugs.

We had a very significant vote 2 days ago. It was historic. It was the first time the Senate, since 1965, has come together to vote to modernize Medicare. A majority of us, 52 Members, voted yes. I commend my Republican colleague—which was the one Republican vote joining us—the Senator from Illinois, for joining us in that effort.

A statement was made by a majority of the Senate, and I believe it reflects the will of the majority of Americans. We have a health care system for older Americans, a promise of comprehensive health care for older Americans and the disabled that was put into place in 1965. It has worked. The only problem is that the health care system has changed. We all know that. We have all talked about it many times.

What I find disturbing at this moment, in light of the fact that we need 60 votes—we need 8 more people; we need 8 of our Republican colleagues from the other side of the aisle to join us to actually make this happen—in light of the success of Medicare, too many times I am hearing words such as "big Government program" from my Republican colleagues in the House. They refer to Medicare as a "big Government program," and there are times I have heard that in this debate from the other side of the aisle.

I am here to say I think Medicare is a big American success story. It is a big American success story, just as Social Security is a big American success story and one that we should celebrate.

I worry, as I hear comments from our President about moving in the direction of wanting to privatize Social Security, wanting to move Medicare to the private sector and privatize it, that we are moving away from not only a commitment made but a great American success story. It has worked, and I think often now of those people such as Enron employees or WorldCom employees who have lost their life savings who have said to me: Thank God for Social Security and Medicare or I would have nothing. If Medicare was not there, they would have no health care.

These are great American success stories. At this time in 2002, at this moment in July, we have an opportunity to make history so that when others read the history books and look back, they will find we took the next step to modernize a system that provided health care for older Americans and the disabled for over 35 years.

I want to read a couple of stories from Michigan. I have set up a prescription drug people's lobby in Michigan and asked people to share their stories and to get involved because we know there is such a large lobby on the other side.

As we all know and have said so many times, there are six drug company lobbyists for every one Member of the Senate. Their voice is heard every day. It is also heard on TV. It is heard on the radio. There is a full-page ad in Congress Daily from the drug company lobby that was brought to my attention urging us to oppose the amendment we passed to open the border to Canada.

Heaven forbid that we add more competition. Heaven forbid that American citizens be able to buy American-made drugs that they helped create through taxpayer dollars, but they are sold in Canada for half the price they are sold in the United States. Heaven forbid that American consumers would have the chance to do that. So they have an ad, and I am sure there are many more. I am not sure how much it costs. I prefer the money that is being spent on this ad and other ads on television and the $10 million being spent on ads supporting the drug company version would be put into a Medicare benefit or lowering prices. That would be certainly much more constructive in the long run.

The reality is that something has to be done because the system is just out of control, and it will not change unless we act because there is too much money at stake. Just as we have debated corporate responsibility in other settings—and I applaud colleagues who have come together to agree on a final plan related to legislation for corporate responsibility and accountability—this, too, is an issue of corporate responsibility, corporate ethics, as it relates to pricing lifesaving medicine. And how far is too far?

Let me share stories that have come to me from various individuals in Michigan. This is one from Christopher Hermann in Dearborn Heights, MI. He writes:

> I am a nurse practitioner providing primary care to veterans. I am receiving many new patients seeking prescription assistance after they have been dropped by traditional plans and can no longer afford medications. Many of them have more than $1,000 a month in prescription drug costs.
>
> The vets are lucky. We can provide the needed service. Their spouses and neighbors are not so lucky.
>
> I also have such a neighbor. Al is 72, self-employed all his life with hypertension. When he runs out of his meds due to lack of money, his blood pressure goes so high he has to go to the emergency room and be admitted to prevent a stroke. I provide assistance through pharmaceutical programs, but this is not guaranteed each month. We either pay the $125 per month for his medications, or Medicare pays $5,000-plus each time he is admitted. It is pretty simple math to me. It is pretty simple math.

We can either help people with their blood pressure medicine or medicine for their heart or medicine for sugar and all the other issues that need to be dealt with or we can pick up the pieces with hospitalization or worse that ultimately costs more to the system.

I very much appreciate Christopher Hermann sharing this story. I will not share more this morning. I thank those who have been sharing their stories with me.

I will close with one other story that was shared with me that has stuck with me since I read it a few weeks ago, and that was a little girl from Ypsilanti, MI. I have talked about this before, but I think this is important to remind us of what this legislation is about. She wrote a letter to me telling me that her grandma stopped taking her medicine at Christmas in order to buy Christmas presents for the grandkids. She later had health problems and passed away.

There is something wrong with the United States of America when grandmas are not taking lifesaving medicine to buy Christmas presents for their grandchildren. Ultimately, that is what this debate is about. It is about taking a great American success story, called Medicare, and simply updating it for the times. Let's say no to the drug companies and yes to all the grandmas and the grandpas across the country and to everyone who is counting on us to do the right thing.

I thank the Chair, and I yield the floor.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

Rockefeller amendment No. 4316 (to amendment No. 4299), to provide temporary State fiscal relief.

Gramm point of order that the emergency designation in section C of Rockefeller amendment No. 4316 (to amendment No. 4299), listed above, violates section 205 of H. Con. Res. 290, 2001 Congressional Budget Resolution.

Reid motion to waive section 205 of H. Con. Res. 290, 2001 Congressional Budget Resolution, with respect to the emergency designation in section C of Rockefeller amendment No. 4316 (to amendment No. 4299), listed above.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate on the motion to waive the Budget Act to be equally divided and controlled by the Senator from West Virginia, Mr. ROCKEFELLER, and the Senator from Texas, Mr. GRAMM.

Who yields time?

The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Madam President, this is an extremely important vote. It is very important because in the Congress we worry not only about the Nation as a whole, but as a nation of its individual parts, that is made up of 50 different States, all of whom are getting clobbered by something called a loss of Medicaid money.

We have a chance with the amendment before us to adjust that situation. We felt so strongly about the situation and the loss of Medicaid money for our most vulnerable citizens, and also the damage it does in the aggregate to our hospitals, nursing homes, and every part of our health infrastructure. Whether you are in an urban or rural area—and the Presiding Officer's State includes both urban and rural—you are faced with hospitals and other facilities that depend overwhelmingly on Medicaid.

The States now have an enormous shortfall in their budgets. In fact, there are deficits of $40 billion to $50 billion. No State, with the exception of Vermont, can go into deficit financing like we do in the Federal Government. They have to balance their budgets. So what happens if they get to a situation where they don't have money? I was a Governor for 8 years, and I was in that situation for a full 5 years, where we actually had to lower moneys because the revenue was less than the previous year. We had to lay off people and the other things Governors have to do.

We are in a position to help now. We have done nothing on health care, basically, except the children's health insurance program, which affects 2 million children, but it needs to affect many more. We have done nothing about universal health care, prescription drugs, or this Medicaid problem, and about virtually all of the areas of health care that we talk about all the time and simply do not perform on.

So this is a real test for the 100 people who will come here to vote on whether they want to see their States drown in debt and have to cut Medicaid and hurt not only children but families and hospitals and nursing homes and home health—all the aspects of where Medicaid makes a difference.

We felt so strongly about this after September 11, which was an enormous day in the history of the world, that we included this in the stimulus package. We did that prior to last Christmas, which was a long time ago. We did it and we decided it was so important to do, even at that time, it being a worse situation now, that we would treat it in an emergency fashion and not require it to be offset. Some people say you need to offset that. When you get into economic times like we have now—much worse than they were then—the underpinnings are weaker in general, and now we really do have to act.

So what I am going to do is not use up all of our time, but wait for some colleagues to come down to speak on this amendment and why it is important that we waive the Budget Act and that we do the right thing by States and Medicare. This is an extremely important vote; it is a test vote about whether the Senate is really willing to do anything for the States and for health care. So far, we have failed on all fronts. Now we have a chance to reverse ourselves on a small, but important, aspect of it.

We have, as I say, so many cosponsors that I will not even take the time to read them. But it is very bipartisan, with 35 cosponsors, including 8 Republicans. We should, in fact, prevail on this and get the 60 votes that we want because it is good. This is an emergency, I say to the Presiding Officer. This is important now even more so because Medicaid bears all of the brunt of the rising cost of prescription drugs because it is only Medicaid and the Veterans' Administration that pays for prescription drugs. This is not Medicare, this is Medicaid, and it is suffering terribly. This is an emergency. We deemed it such after 9/11. The situation is worse now. We have a chance to do something about it.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Texas is recognized.

Mr. GRAMM. Madam President, one of the reasons I love this job is that you never reach a situation where you are able to say I have heard it all before. In much of life, as you live longer and longer, you get to the point where there is nothing new under the sun, where any new event had so many precedents for it that you understand it and you know it and you expect it. The wonderful thing about this job is that there is always a new proposal, always a new approach, always a new way of doing things that you would have never, ever thought of, and that you would have never believed that anyone else would have thought of.

I have spent 18 years in the Senate trying to deal with deficit spending. It has been a long, sometimes fruitful, sometimes not so fruitful, battle. I would have to say in the last year and a half, it has been a very unfruitful battle from my point of view because we started out with a surplus which literally burned a great big hole in our pocket. We literally could not spend the money fast enough.

Now, interestingly enough, we have a deficit. The last projection by the Congressional Budget Office is that we are going to spend, this year, $165 billion more than we take in. That deficit seems to grow every time there is a new projection. Yet our behavior is totally unchanged. In fact, I can say that in almost 25 years of service in the House and in the Senate, I have never seen the urge to spend money more unchecked in Congress than it is today. To me, it is a very frightening prospect as to what this is going to mean when all these bills come due.

Let me try to respond to the proposal before us because in so many ways, it is extraordinary. The logic of it is pretty straightforward. The States are in a position that, because of the state of the economy, many States are beginning to have deficits that used to have surpluses. In fact, it is projected now that unless something happens very positive and very dramatic in the next few months, that as many as 40 States will run deficits next year, or at least will face the prospects of deficits because many States, like my own, have to balance their budget. They will have to come into session in January, and they will have to make hard choices.

We don't make hard choices in Congress, but they will have to make hard choices in the legislature. When you add up the cumulative projected deficits for all 40 States that are looking at potentially being in the red, that accumulated aggregate deficit projection is about $40 billion.

Now, the proposal before us extraordinarily says let's declare an emergency so that we can spend another $9 billion that we don't have, every penny of which will come out of the Social Security trust fund; but let's go ahead and borrow that money now. Let's take it out of the Social Security trust fund and spend it so that States will not be required to make tough choices. The only problem is, our projected deficit is four times as great as the aggregate sum of all the deficits of all the States in the Union combined.

In fact, it would have made more sense—I would not have supported it but it would have made more sense had our dear colleagues proposed that we reduce Medicaid reimbursement because the States have a better financial situation than we do and, therefore, they are in a better position to deal with this problem.

I would not have supported that proposal because I do not think we want to beggar our neighbor in terms of imposing our problems on the States, but at least it could have been argued, with a deficit projected to be four times as big as all the State deficits combined, that we cannot be as generous as we wanted to be. That argument would make sense at Dicky Flatt's Print Shop in Mexia, TX. People would understand that argument in Oklahoma. They might not like it. They might oppose it, but they would understand it. They would say it made sense, but I do not believe people at Hesser Drug Coffee Bar in Ennis, TX, or people anywhere in any State in the Union, would find logic in the Federal Government borrowing another $9 billion we do not have, taking the money out of the Social Security trust fund because every penny of this surplus is Social Security surplus. I do not think they would understand us declaring an emergency to spend this $9 billion to give it to States, that if we added up their total deficit is not one-fourth of the deficit that we are running right now.

So we basically are down to a question that we have to ask ourselves: Are we willing to declare an emergency to run a new deficit of $9 billion—spend $9 billion today, and in doing so, take $9 billion out of the Social Security trust fund? Are we willing to do that because States are running a cumulative deficit that is one-fourth as big as the deficit we are running? That basically is the question that is before us. It is easy for one to say this is a compassionate decision because they do not want their State to have to make a tough decision, but compassion is what one does with one's own money, not what one does with somebody else's money. This money is coming out of the Social Security trust fund. This money is coming from, ultimately, the taxpayer who is going to have to pay it back, plus interest.

If the proponents of this amendment were anteing up out of their own pockets, we could say they are compassionate about their States; they are worried about what will happen in States that have deficits. But it is not compassion when it is somebody else's money. The idea that we would run a $9 billion deficit today, that we would take $9 billion out of Social Security today to give to States that are running a deficit, that when added up among all the States in the Union is not one-fourth as big as the deficit we are running, it makes absolutely no sense.

I think, at least where I am from, and maybe where I am from is different than where other people are from, but in my State that would make absolutely no sense.

Finally, every time we talk about letting people keep more of what they earn, every time we have a debate about letting working families keep more of what they earn, many of our colleagues stand up and say we cannot afford it. We would like not to force families to sell their business or sell their farm when pappa dies so the Government can get 55 cents out of every dollar they have accumulated in their whole lifetime, even though they have paid taxes on every penny of it. Our colleagues tell us we do not like doing that but we do not have any choice because we do not have the money; we are running a deficit now.

When we talk about making the repeal of the marriage penalty permanent so we do not penalize people for the simple act of falling in love and getting married, both of them good things it seems to me, we are told that we would like to do that but we do not have enough money because we are now running a deficit.

Why is it we never, ever have enough money to let people keep more of what they earn but we always have enough money to spend? Why is there this huge difference? I would assert basically because deep down many Members of the Senate believe they can spend money better than families can spend money.

I have raised a point of order against this amendment, and I want to be sure my colleagues understand what the point of order is about. This amendment will force the Government to take $9 billion out of the Social Security trust fund and give it to the States at a time when all the States combined have a deficit that is not one-quarter the deficit of the U.S. Government. This is a very bad decision. I can see how it would be popular in the legislatures, but it cannot be good public policy to do this. So I urge my colleagues to sustain this budget point of order.

If our colleagues want to come back and say, look, this is important, we want to do this, and we are willing to take $9 billion away from something else that is not as important, then depending on what they take it away from I might be willing to support it. To simply say we want to give this money away, even though we do not have it, I do not believe that is a responsible position. As a result, I have raised the budget point of order.

I hope my colleagues who constantly talk about protecting the Social Security trust fund, I hope my colleagues who constantly talk about the fiscal irresponsibility of letting working people keep more of what they earn through tax cuts, will apply that standard today when we are gratuitously taking $9 billion out of the Social Security trust fund, borrowing it knowing we are going to have to pay it back plus interest. This is irresponsible policy. It should be stopped, and I urge my colleagues to sustain this budget point of order.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I yield 5 minutes to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. I thank my colleague from West Virginia. He has done such an able job in this challenge of finding a way to make the partnership between the States and the Federal Government on the Medicaid Program work in difficult times.

I respect a great deal my friend and colleague from Texas, who makes a very important point about spending in the Senate. If we were only talking about spending, then I think that argument might stand, but what we are really looking at is a partnership that was created between the Federal Government and the States and it is called the Medicaid Program, a joint partnership. The Federal Government underfunded it because it said we will have a match and our match will vary based on our particular situation as well as the situation of the States.

I remember as Governor of Nebraska when the Federal budget was being balanced and the Federal match was reduced. At the State level, my particular portion had to increase. So the Federal Government balanced its budget on the basis of my budget and at the expense at times of my budget.

Now we are looking at a situation in reverse. We have the States being challenged by growing red ink, and the Senator's comment about a budget of 40 States with deficits of somewhere around $40 billion, in a news article in the Chicago Tribune this morning, it was pointed out that the gap in those States may be about $58 billion rather than $40 billion.

The point is, this is a partnership, a federally mandated program partially funded under the idea that the State would have a responsibility and the Federal Government would have a responsibility. This is not about giving away money, this is about stopping the reduction in the Federal match for a period of 18 months and increasing it for a period of 18 months. It is not giving away money, it is assisting our partners in the process they are going through as they make difficult choices.

It has been suggested that this will keep them from making difficult choices. They have already cut education funding. They have already cut funding in many other programs. The cutting has only begun. We are hopeful that the cutting in the area of Medicaid and/or in social services will not cause the gains that have been made in having people go from welfare reform to work reverse themselves and start a spiral downward where the gains made can be lost.

All we are saying to the Federal Government is, do not reduce our portion right now and require, then, the States to make that choice about increasing theirs, which they cannot do; or cutting eligibility for Medicaid and causing, most likely, a downward spiral as they face the Medicaid uncertainties.

In addition to recognizing this is a responsibility we created—I was not here, but collectively the Federal Government created this under this Federal program—I think we have a responsibility. We are facing that responsibility. Yes, we are having some difficult times, but we need to share the difficult times together rather than stand on the sideline and say it is up to the States to make the difficult choices and see them make choices that will have adverse, and maybe in some cases draconian, results at the State level.

I understand the importance of trying to develop offsets. How can anyone ever be against offsets? Let me state a few things that have flown in the face of asking for offsets—except where maybe you are not interested in seeing the program move forward. We passed yesterday the supplemental at a $28.9 billion total cost, $2 billion offset. A few of the things included $14.4 billion for defense—no one argues with that—or $6.7 billion for homeland security. How can anyone argue with that? Or $5.5 billion for New York, how can anyone argue with that? No request for specific offset for New York, no specific offset for homeland security, for defense. Or $1 billion for Pell grants, $417 million for veterans medical care, and $400 million for improvements to State and local election procedures, we all know how important those are. Or $205 million for Amtrak, we also know how important that is. But $2 billion worth of offset to $28.9 billion worth of budget.

I am not saying these are not important any more than anyone else is. I am suggesting that while they are important, so is this.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, I happily yield 5 minutes to the distinguished Senator from Maine.

Ms. COLLINS. Madam President, let's put the budget point of order of the Senator from Texas against our fiscal relief amendment into some context. The Senator's point of order, in essence, claims that the fiscal relief provided by our bipartisan amendment is somehow not emergency spending.

Let's look at the facts. Let's look at the situation. The Budget Enforcement Act of 1990 established statutory limits on discretionary spending and a pay-as-you-go requirement for new direct spending and tax legislation. But it also exempted from the caps all discretionary spending designated by the President and the Congress as an emergency requirement.

The law does not further define what is an emergency requirement. That is up to us. One place we can look for guidance, however, is to the criteria developed by the Office of Management and Budget for the President to use when determining whether or not a spending provision qualifies for emergency treatment. The Office of Management and Budget determined that an emergency spending provision is "sudden, urgent, necessary, unforeseen, and not permanent." The funds that the amendment allocates to the States is all of those things. They meet the criteria precisely for emergency spending.

First, our amendment addresses a sudden and unforeseen problem. That is the unexpected drop in revenues States have experienced. Indeed, 39 States were forced to reduce their already enacted budgets for fiscal year 2002 by reducing essential programs, tapping rainy day funds, furloughing employees, and cutting important services. In short, the budget crisis was clearly a sudden and unexpected development for our partners as States.

The second relief our amendment provides is needed to address an urgent situation, another criterion. The latest figures show that 46 States are facing an aggregate budget shortfall exceeding $50 billion. Many have already cut or are considering cutting their Medicaid and social service programs.

Finally, the relief provided by our amendment is not permanent, it is short-term relief, narrowly tailored to address a fiscal crisis that the States are experiencing now.

In short, our amendment is a textbook example of the definition of "emergency" spending. It addresses a sudden, unforeseen, urgent crisis, and provides temporary but much needed relief.

Finally, we should not forget as we debate this issue what this is really all about. It is about protecting health care and other essential social services for the neediest and most vulnerable citizens in this country. Medicaid provides health insurance to approximately 40 million low-income Americans, including 21 million children and young adults, 11 million elderly and disabled individuals, and 8.6 million adults in families, most of whom are single women. Without this critical safety net, millions of low-income men and women and their families would be left with no health insurance.

That is the bottom line in this debate. We need to help the States so they can continue to provide essential health care to the most vulnerable citizens in our society. We are not taking the States off the hook. They are still going to have to make many tough choices in order to balance their budgets. But we can provide this meaningful relief. We must do so now in order to preserve that critical safety net for the most vulnerable in our society.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. How much time is remaining to this side?

The PRESIDING OFFICER. There are 14 minutes 20 seconds.

Mr. ROCKEFELLER. I yield to the Senator from Nebraska 4 minutes.

Mr. NELSON of Nebraska. Madam President, how much time was yielded?

The PRESIDING OFFICER. Four minutes was yielded.

Mr. ROCKEFELLER. We have 14 minutes left; is that correct?

The PRESIDING OFFICER. Four minutes was yielded to the Senator from Nebraska.

Mr. NELSON of Nebraska. Thank you, Madam President, and I thank my colleague from West Virginia.

I have never been to Dicky Flatt's and I hope my good friend from Texas will take me to Dicky Flatt's one of these days because it is, obviously, quite a place.

I imagine the folks in Dicky Flatt's, though, will be interested in what came from the supplemental—$22.9 million to upgrade port surveillance and vessel tracking capability in the ports in Port Arthur, TX, Houston, and New York City, NY, and $12.6 million to the Pantex Plant in Texas for increased safeguards and security needs.

The point is, folks in Dicky Flatt's or Elm Creek, NB, or other small communities and/or locations around the country, understand why some spending is necessary. They understand also that when you have a Federal program that is put together, as the Medicaid Program has been, that both parties have some responsibility to make sure it is viable so when times get difficult, one partner doesn't say to the other partner: Good luck, I hope you are able to make it.

Because now we have an opportunity to say this is our program together, at the Federal level and at the State level; we have an interest in seeing that the people who are the most vulnerable in our society are appropriately served; that the nursing homes do not cease to be able to provide services or that childcare provisions are not eliminated, which are transitional benefits to get, in many cases, single parents off welfare and into the workforce.

So as we think about offsets, I think it is important that we recognize that one person's offset is another person's idea of eliminating or destroying or in some way obstructing getting something accomplished.

What we have to do is make sure offsets are, in fact, included wherever we can possibly include them. But one of the reasons emergency spending issues and funding issues have not generally required offsets is because it is very difficult to be able to match it at the time. We cannot wait on this and we cannot fight out every offset people would like to talk about. That is why emergency disaster relief, in this case emergency spending—to go to our States for our share of the program for a period of time—just simply provides the opportunity to continue something and it has to be done immediately and the process then, I take it, is there for them.

We only seem to talk about offsets when it is convenient, or where we do talk about it and they are appropriate, it is when there is enough time to be able to put them together and get them accomplished.

The economic stimulus plan, when this was a part of it last year, did not have an offset. There was not a lot of discussion about offsets at that time. Unfortunately, this particular provision did not get included in the stimulus package that was passed earlier this year, although it should have been. If it had been, it would not have involved an offset.

It seems to me we have the opportunity to move forward as a partner with our States and to be able to assist them in very important policy matters and programs that I think will benefit the people of our country and will benefit our economy. That is why this was included earlier in the economic stimulus package. There was a recognition it was part of the economic stimulus. I hope we will today recognize it, not only as the right thing and fair thing to do with our partners, the States, but also recognize that this has been considered part of the economic stimulus package.

I ask unanimous consent an article by Judith Graham entitled "States' Budgetary Shortfalls Deepen" be printed in the RECORD, and I yield the floor.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, July 25, 2002]

STATES' BUDGETARY SHORTFALLS DEEPEN

(By Judith Graham)

DENVER.—Concerned state legislators gathered here for their yearly meeting received sobering news Wednesday: State budget deficits have widened dramatically over the last several months, and the worst may be yet to come. Budget gaps are projected to reach $57.9 billion for the fiscal year that began July 1, up from the $35.9 billion deficit recorded during the previous 12-month period, according to a report by the National Conference of State Legislatures.

While states have plugged these holes by reducing spending and, in some cases, raising taxes, these solutions may not be enough. With turnoil roiling Wall Street, investors in a state of shock and costs for health-care programs such as Medicaid escalating sharply, "We've anticipating deficits are going to grow even larger in the months ahead," said Corina Eckl, the group's fiscal affairs director. Consumers are feeling the bite of the states' financial woes in the form of higher tuition for public colleges, fewer services for at-risk kids, less help for elderly people trying to live independently in their homes, larger elementary school class sizes, as well as higher taxes.

States including Illinois are being hit particularly hard by the stock market's troubles, which have taken a big bite out of personal incomes and shaken consumer confidence. On average, more than one-third of state tax revenues comes from personal income taxes, with another sizable chunk coming from sales taxes. The falloff has been widespread: 26 states collected less money during their just-ended fiscal years than they did the year before, according to the conference's new study. "For many states, this is the first time this has ever happened," said Arturo Perez, a budget analyst with the legislative group.

Reflecting a sense of pessimism, 46 percent of legislators polled at a Wednesday morning meeting said they thought revenues would remain flat or decline in the year ahead. Virtually all states are legally required to balance budgets. If so, hard choices may become even more difficult.

This past year, 19 states tapped into rainy day funds and 12 turned to tobacco settlement funds to make up for lower-than-expected revenues and keep spending cuts in check. But those reserves are now substantially smaller, leaving states with fewer options and more pressure to cut programs, said William Pound, the executive director of the National Conference of State Legislatures. One state facing acute pressure is Iowa, where revenues slid nearly 9 percent last year and spending was slashed nearly 6 percent below the previous year's levels. "If you're a parent and you walk into the human services department and ask for help, you'll be told no services are available," said state Rep. Dave Heaton, co-chairman of the Iowa House's human services appropriations subcommittee. "The most we can do is try to help existing clients."

Among other budget-saving measures, Iowa has raised tuition at public colleges by nearly 20 percent, and instituted a hiring freeze for child protection services. With the number of workers down because of attrition and retirements, "caseloads continue to rise and, to be honest, the attitude out there in the field is very stressful," said Heaton, a Republican from Mt. Pleaasant. "I can tell you staffing at our boys' school and juvenile home, as well as our mental health facilities, is critical because of the cuts we've had to make," he said. "No matter how small you want government to be, there are still things government has to do. And the problem I see now is we're getting to the point where we can't afford to do them."

Ms. SNOWE. Mr. President, a particular problem facing not only the American people but also the States themselves—and that certainly includes my home State of Maine—is the rising cost of health care.

Today, Medicaid is the fastest growing component of State budgets, accounting for up to 20 percent of the average State budget, as costs increased by 11 percent last year and are expected to increase by another 13.4 percent this year. One of the components of this increase has been a corresponding increase in prescription drug costs as many states have discount prescription drug programs through Medicaid.

In addition, the economic downturn has left many families out of a job and without their health insurance, forcing them to turn to Medicaid. This put an enormous strain on the States, which were already facing tough budget decisions. In an effort to address their budgetary obligations, 22 States have cut Medicaid spending and 16 have cut programs that help low-income people.

The situation strained further by the fact that the Fiscal Year 02 FMAP allocations did not reflect the economic downturn and the resulting upswing in people needing assistance. In fact, due to the formula used to determine the match, 29 States found themselves with a smaller Federal match than in Fiscal Year 01.

As a result, many states have scaled back eligibility, reduced benefits, increased beneficiary cost-sharing, and cut or delayed payments to providers. Additional reductions in health care assistance, as well as cuts in other State-funded programs that serve many of those affected by the economic downturn, are expected. At this point in Maine's financial crisis, savings have been found elsewhere in the budget. However, my Governor has already made a call for a special session of the State legislature, which adjourned back on April 25 of this year, so that they can hammer out a solution to the ballooning deficit.

I am particularly concerned about the impact the State budget crunch will have on the Medicaid Program and the low-income children and families who rely on this program for essential health coverage. Last year, the House passed the Senate Centrists Economic Stimulus bill that I developed along with Senator BREAUX and others, and that proposal contained about $4.5 billion in emergency Medicaid funding to the States. Unfortunately, we could not get a vote on the proposal in the Senate.

In January, I voted to support an amendment by Senator HARKIN to the compromise economic stimulus bill that would have increased the FMAP by 3 percent for all States and 1.5 percent for States with higher than average unemployment rates, but the amendment was defeated.

Passage of this Rockefeller-Collins amendment would mean the infusion of about $54 million into my State of Maine—$36 million under the FMAP provisions alone. Maine is currently staring down the barrel of a $180 million budget shortfall. Many States face similar circumstances and still others face a figure many times that amount.

We do not want, and we certainly do not need, our States to reduce essential health care and social services to people in need in order to balance their budgets. The low-income families and seniors of this Nation should be able to rely on the continuation of these programs on which they have come to depend. The states should receive the help they need to continue their programs offering prescription drugs to seniors and low-income individuals and families. During these difficult fiscal times, our States need more federal assistance in providing health care services through Medicaid, not less.

I want to thank the Senator from West Virginia, Mr. ROCKEFELLER, and my colleague, Ms. COLLINS, for offering this amendment and I urge my colleagues to support our States and this amendment.

The PRESIDING OFFICER. Who yields time? The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, I ask to retain 5 minutes to close debate on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. I yield 2 minutes or so to the distinguished Senator from Maine.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Maine.

Ms. COLLINS. I thank the Senator from West Virginia. It has been a pleasure to work with him and the Senator from Nebraska, as well as the Senator from Oregon, on this important amendment.

The Senator from Nebraska raised a very good point. This amendment has implications for all of our health care providers and that is why it enjoys such strong support of our nursing homes, of our hospitals—our rural hospitals are struggling with inadequate reimbursements—from disability advocates and the Visiting Nurse Associations.

But let's talk about what this means. We have talked about it being necessary to protect the most vulnerable in our society. Let's talk about what it means for some individual States.

I mentioned yesterday that this amendment would provide $54 million in much needed relief to my home State of Maine. That would help avoid the necessity for draconian cuts in essential social service programs such as our Medicaid Program. But let's look at a few other States.

For Alabama, for example, this would mean $92.6 million; for Alaska, it would be $32.2 million; for Arizona, $144 million; for Arkansas, $80 million.

Let me skip down a bit. For Florida, $359 million; for Georgia, $208 million; for Hawaii, $28 million; for Idaho, $28.6 million. Indeed, the Governor of Idaho, our former colleague, Governor Kempthorne, has worked very hard as an advocate for this important legislation.

In other words, every single State in the Nation would be by this amendment provided with much needed relief. That is why we need to act. Otherwise, States are going to have no choice but to slash essential programs.

We have new figures coming out today that show the fiscal crisis affecting our partners, the States, has widened still further. According to the National Conference of State Legislators, States have used up two-thirds of their cash on hand. The gap between revenues and spending has hit $36 billion and is expected to be $58 billion, affecting 46 States. We must act. I urge my colleagues to reject the point of order.

The PRESIDING OFFICER. The Senator has used 2 minutes.

The Senator from West Virginia.

Mr. DASCHLE. Would my colleague from West Virginia withhold for a moment? If the Senator from West Virginia will yield, I appreciate my colleague's courtesy.

Mr. ROCKEFELLER. Mr. President, I yield.

TERRORISM RISK PROTECTION ACT

Mr. DASCHLE. Mr. President, as all of our colleagues know, over the last many weeks we have been attempting to work out an arrangement whereby we can go to conference on terrorism insurance. I am very pleased to be able to report this morning that we are now in a position to be able to do so. I have been in consultation with the Republican leader, and I am prepared now to present a unanimous consent request in that regard.

I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 252, H.R. 3210, the House-passed terrorism insurance bill, that all after the enacting clause be stricken, the text of S. 2600 as passed by the Senate be inserted in lieu thereof, the bill as thus amended be read the third time, passed, the motion to reconsider be laid upon the table; that the Senate insist upon its amendment, request a conference with the House upon the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate with the ratio of 4 to 3, all without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3210), as amended, was read the third time and passed.

The PRESIDING OFFICER appointed Mr. SARBANES, Mr. DODD, Mr. REED, Mr. SCHUMER, Mr. GRAMM, Mr. SHELBY, and Mr. ENZI conferees on the part of the Senate.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. Almost 17 minutes on the Republican side and 7 minutes on the Democrat's side.

Mr. NICKLES. Will the Senator yield me 8 minutes?

Mr. GRAMM. I would yield him 10 minutes. He deserves to be heard.

Mr. NICKLES. Mr. President, I rise in support of the budget point of order that was raised by my colleague from Texas. I am a little disappointed that the chairman of the Budget Committee didn't raise it. It is the responsibility of the Budget Committee. I have had the pleasure of serving with my colleague from Texas on the Budget Committee. That is the reason why we have a Budget Committee and the reason why we tried to pass a budget. We didn't pass a budget this year for the first time since 1974. Shame on this Congress. Shame on this Senate. Shame on, frankly, the leadership in this Senate for not getting it done.

It is maybe the most fiscally irresponsible thing we have not done and, as a result, there is no limit to how much money we can spend.

A budget point of order still lies on an amendment such as this, or any amendment, until the end of September, so we are raising a budget point of order for good reason. My colleague from Texas and the sponsors of the amendment, say this is a $9 billion amendment. This will increase Federal spending. You can come up with a list to show that every State is going to benefit. I know my State is going to benefit $93 million. I am sure my Governor would send me a letter saying please vote for this; we need help. And they do.

I agree with my colleague and very good friend from Maine. A lot of States are in very difficult times.

If you have an amendment on the floor that says here is $9 billion, and cut it up, every State is going to benefit. You could have every State Governor saying pass this amendment. What is wrong with it? Yes, States are having a difficult time. The Federal Government is having a difficult time, too. The Senator from Texas pointed out that the Federal deficit is much larger than the States' deficits. The Federal deficit, if you include Social Security, is $322 billion. Things may have deteriorated for State revenues, but they have deteriorated significantly for Federal revenues.

It is not just borrowing against Social Security. It is borrowing against the American people. The American people are going to have to borrow this $9 billion. They will have to pay interest on it. My biggest concern is that it is not a $9 billion amendment. I know the amendment is temporary. I know it is retroactive.

It is kind of interesting how we are going to spend retroactive money. This goes back and says we are going to increase spending going back to April of this year. And then presumably, we are going to do it through this September, and then next year.

It is an amendment that is for about 1½ years. My concern is it won't be a year and a half. If you increase these formulas, States are going to still be in difficult times next year. They are going to say: Let's make this permanent. These formulas, in many respects, are good. We don't want them to ever go down. We never want the States to get less.

If it is temporary, and here is a 1.35 percent increase in Federal match, what makes anybody think this won't be extended? This amendment is a $100 billion amendment. If it is extended, I can tell you if we pass this—and it may well be that my good friend from West Virginia has the votes. The administration is very opposed to it, illustrated in a letter from them that I have here. But if it becomes law, I have no doubt whatsoever that a year from now colleagues will say: Let's make this permanent. States are still in trouble. Governors will say: Let's make this permanent. Let's just increase the Federal share. It is free. It came from the Federal Government.

I just happen to disagree with that. If this is made permanent, we are talking about spending $100 billion—$9 billion basically for the first year—$100 billion. We are just going to do that? Next year we may not be able to make a budget point of order if we don't figure out some way to get fiscal discipline. We are just going to pass $100 billion, and have colleagues stand up and say: I can't believe these deficits are so high.

This amendment increases the Federal share. It increases FMAP. Times are tough, and we are going to increase the Federal share on Medicare.

Wait a minute. Times were good in the last several years when we had the largest surplus in the country. Did we see an increase in the Federal share when States were doing very well?

We have never said this should be based on the economy or on States' ability to pay. The formula for the FMAP is based on the States' income relative to the Federal income. The States' income was much higher than the norm with Federal income. They paid a greater percentage, or they weren't subsidized to get as much. Another way to say this is that the poorer States were being subsidized more.

This just kind of inverts and says the States that had the significant growth last year are going to get the biggest benefit out of this proposal.

It doesn't do anything to fix some of the biggest fraud that is being perpetrated in this system right now—the upper payment limit. I wish my colleagues knew something about it. Maybe some do. Maybe former Governors do. But there is a fraud, an accounting scheme and scam that is going on today called upper payment limit. It is being done by about 30 States that are ripping off the Medicaid Program and the Federal Government that is having difficulty. They devised a clever little gimmick to have the Federal Government—not pay 50 percent, not pay 60 percent, not pay 70 percent—pay 100 percent of Medicaid costs.

Are we fixing that? No. If we are going to deal with Medicaid, I tell my colleague from West Virginia and others that we are going to deal with the upper payment limit.

It is sickening to me to think we are telling people we are going to hold private America to a strict accountability standard; we are going to have you sign truth-in-accounting statements, fiscal statements and financial statements; and, we have Governors who are ripping off the taxpayers of this country with an upper payment scheme and scam to where they get the Federal Government to pay 100 percent of their Medicaid costs.

It is happening in State, after State, after State, after State.

Have we fixed that? No. Should we fix it? Yes. Let us deal with that.

If we are going to get into Medicaid reimbursements, let us wrestle with that. Have we had a markup in the Finance Committee? No. Have we requested it? Yes. Did we mark up this FMAP proposal? No.

Some said: We will deal with the upper payment limits. This didn't go through the Finance Committee. Maybe it is just a continual stream. Maybe the Finance Committee, which used to be an important committee, doesn't matter whatsoever. Maybe we don't need hearings anymore. Maybe we don't need markups in committee. Maybe we will do everything on the floor of the Senate.

I disagree with that. I disagree with the abuse that is being put on some States by the upper payment limit; and, then to come up with this amendment and say let us increase the Federal share on Medicaid—a Federal-State program—and have the Federal Government take more and more of the program. It used to be a Federal-State combination. Now there is this idea to let us make the Federal Government pay more.

If you are going to do a 1.35 percent increase, why not make it all Federal? Make it 70 percent in every State, or make it 80 percent. There has to be some kind of limit. The Federal Government happens to have deficit problems, too.

Just to increase this entitlement and really kind of turn the formula upside down—this goes all the way back to the creation of Medicaid, a successful program to help low-income States; a program designed to benefit the poorer States, to assist them. Medicaid is a good program, but this amendment says, well, we want the Federal Government to make up more, and when some States are abusing it, we don't stop that abuse. We are just going to have the Federal Government pick up more. We can hand out cards. Your State is going to get so many billion dollars. We'll just borrow some Federal money.

The Senator from Texas said it is Social Security money. It is Social Security, plus we are going into debt $165 billion.

We will borrow every penny that we are talking about. We will pay interest on that debt and write a check for that interest. It is not just an accounting gimmick. It is not just crediting some fictitious trust fund. We will write a check for every dime that is spent in this program.

I question the wisdom of doing that. The administration is opposed.

I will ask unanimous consent to have printed in the RECORD a letter from the Secretary of Health and Human Services, Tommy Thompson, dated July 18 that says:

> The Administration is opposed to this amendment. A temporary change in the FMAP rate would be an unprecedented disruption of the longstanding shared fiscal responsibility for the Medicaid program. FMAP rates are not designed to change according to short-term economic developments. Such cyclical movements are contrary to the intent of the Medicaid statute, and in the long term, would serve the interest of neither the States nor the Federal Government.

I believe that is exactly right.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, July 18, 2002.

Hon. TRENT LOTT,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MINORITY LEADER LOTT: We understand that Senators Jay Rockefeller, Susan Collins, Ben Nelson, and Gordon Smith will offer an amendment to S. 812, the "Greater Access to Affordable Pharmaceuticals Act." The amendment would provide temporary increases in the Federal Medical Assistance

Percentage (FMAP) under the Medicaid program under Title XIX of the Social Security Act. It would also provide grants to States through Title XX to be used for a variety of social services programs.

The Administration is opposed to this amendment. A temporary change in the FMAP rate would be an unprecedented disruption of the longstanding shared fiscal responsibility for the Medicaid program. FMAP rates are not designed to change according to short-term economic developments. Although FMAPs are based on State per capita income levels and other economic indicators, they have not typically risen and fallen with short-term economic trends. If State logic suggests raising FMAPs now, then it would also imply lowering them in times of economic boom. If we had followed such a course, after nine years of economic recovery, current FMAP rates would be much lower than they are today. Such cyclical movements are contrary to the intent of the Medicaid statute, and in the long term, would serve the interest of neither the State nor the Federal government.

An FMAP increase is unlikely to increase health insurance coverage. Instead of using increased funds to provide more health services, States would likely use the increase in Federal dollars to lower their spending on health care. Increasing the FMAP would not lead to more coverage; it simply shifts additional health care costs onto the Federal government.

The President has introduced a nunber of initiatives to help alleviate State fiscal pressures and to increase access to health care coverage for millions of uninsured Americans, including:

$89 billion over 10 years for health credits for the uninsured;

A Medicaid drug rebate proposal that would save States billions of dollars over the next ten years;

A proposal to provide Federal funding for prescription drug coverage to low-income seniors prior to implementation of comprehensive improvements in Medicare. Such a proposal has already passed the House and would provide quick fiscal relief to States, which have had to take responsibility for prescription drug coverage in the absence of Senate action;

Medicaid coverage for families transitioning from welfare to work through FY 2003;

A proposal to make available State Children's Health Insurance Program (SCHIP) funds that under current law would return to the Treasury at the end of FY 2002 and 2003; and

The Health Insurance Flexibility and Accountability Demonstration Initiative that gives States more flexibility using Medicaid and SCHIP funds to expand health insurance coverage to low-income Americans.

All of these proposals would provide both temporary and long-term fiscal relief for States, which is the right policy response given that States' health care obligations are expected to continue to increase rapidly. In addition, these proposals would help provide more secure and affordable health care assistance for low-income Americans right away. These are far more effective approaches than an increase in the FMAP.

The Administration also opposes the temporary increase in funding for the Social Service Block Grant under Title XX of the Social Security Act. We believe that States already have sufficient access to other Federal block grant funds to supplement the Social Services Block Grant and other social services-related programs.

We understand that some States continue to have financial difficulties and that Medicaid constitutes a large share of State spending. However, we do not feel that this temporary increase in FMAP is an effective or proper way to address these final difficulties. We will continue to work with the Senate to implement effective approaches of providing relief to states while improving health care coverage and affordability.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

TOMMY G. THOMPSON.

Mr. NICKLES. Mr. President, I reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Seven minutes remain on both sides. Who yields time?

Mr. NELSON of Nebraska. Mr. President, I ask my colleague from West Virginia if I might have 2 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. ROCKEFELLER. I yield to the Senator from Nebraska 2 minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Thank you, Mr. President. I thank Senator ROCKEFELLER.

Back in the early nineties when I tried to balance our budget as Governor and had a difficult time doing it, the Federal Government reduced its share and increased ours.

Today, the Federal Government is not having the same difficulty the State of Nebraska is having in terms of revenue. For only the second time in history, Nebraska's revenues are less this year than they were last year.

If we are trying to talk about who is going to do what during difficult times and how this partnership is going to work, I think it is a little inconsistent to say the Federal Government doesn't reduce its share. It does. If it reduces it, it can increase it; and it does in the ordinary course of events.

What we are saying is, this is an unusual set of events—not a temporary downturn, although we think it is but it is an unusual set of events where the Federal Government continues to have growing income and the States are having a reduction in their income.

It is a recognition that this partnership, which was created by the Federal Government with the States, is one that needs to work as a partnership where the two partners can work together to make this program work. That is what it is.

Certainly, I am not suggesting the Federal Government take over the entire partnership, take it over as a stand-alone program at the Federal Government level. But I think it is interesting to say that somehow the Federal Government's share should not increase when, in fact, from time to time it has increased, as well as from time to time it has decreased.

I think it is important to recognize that the program is about people. It is not about giving money to the States, it is about recognizing the importance of the program to the people—the faces of people who are elderly, working parents, usually single parents who are struggling to get out of the welfare system, who currently have transitional benefits in Medicaid, who could in fact lose those benefits and lose their capacity to be able to work.

It seems to me we have to be able to look beyond what is being suggested here.

I thank the Chair.

The PRESIDING OFFICER. There are 5 minutes remaining for the Senator from West Virginia.

Mr. ROCKEFELLER. How much time is left?

The PRESIDING OFFICER. The Senator has 5 minutes, and there are 7 minutes for the other side.

Mr. ROCKEFELLER. I failed to hear the Chair.

The PRESIDING OFFICER. There are 5 minutes remaining for the Senator from West Virginia and 7 minutes remaining for the Senator from Texas. And the Chair understands that the final 5 minutes to close belong to the Senator from West Virginia.

Mr. ROCKEFELLER. I say to the Presiding Officer, I am not going to use all my time at the present time. I will just make a couple very quick points.

The Senator from Oklahoma—it is very important my colleagues and their staffs, who may be listening to this debate, understand this—used two arguments, and only two arguments.

One, he said, we may extend this. In other words, that is a classic argument. If you do not want to do something, you say, we may extend this. That is why, just like when the tax cut was written into law, it will not be extended. We have written into law that will not be extended.

The Senator from Oklahoma is saying we do not want it extended because he does not want this to happen. And I understand that. It is a good debating technique. But it isn't going to be extended. It is temporary. It is a year and a half for a very specific reason.

Mr. NICKLES. Will the Senator yield for a question?

Mr. ROCKEFELLER. I will when I am finished.

Mr. NICKLES. It is a very friendly question.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ROCKEFELLER. The other is the upper payment limit, which in fact is understood by some of us. And I do not know whether the Senator is aware that the Bush administration, which writes a letter against this—which maybe is not surprising, I don't know, but it is disappointing—has already promulgated a new regulation, which took effect in April, which solves most of the problem about which the Senator is talking. The problem he is talking about is real, but it has no place in this debate. First, the administration has moved to solve it. Secondly, it has no part in this debate.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 3 minutes 14 seconds remaining.

Mr. NICKLES. Will the Senator yield for a very brief question?

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. On my time.

Is the Senator saying that should his amendment become law, there will not be a request to extend this next year?

Mr. ROCKEFELLER. No, I think there probably will not be, No. 1. And, No. 2, I would probably oppose that because this is an emergency measure. That is what the Senator understood right after September 11. That is why it was in the emergency package. It is an emergency measure, not a permanent measure. It is a way of helping people.

It is interesting, the Senator from Texas talked about the budget deficit. He never talked about people. This is about 40 million people who are suffering.

Mr. NICKLES. Do I have the commitment of my colleague to oppose an extension of this next year?

Mr. ROCKEFELLER. I have no instinct to extend this program because the States——

Mr. NICKLES. I thank my friend.

Mr. ROCKEFELLER. All right.

The PRESIDING OFFICER. Who yields time?

Mr. ROCKEFELLER. I am going to yield time—3 minutes—to the Senator from Massachusetts, if he can arrive at his distinguished point of oratory.

Mr. REID. Will the Senator from West Virginia yield?

Mr. ROCKEFELLER. Of course.

Mr. REID. It is my understanding the Senator from West Virginia needs a little more time.

Mr. ROCKEFELLER. That is correct.

Mr. REID. I ask the Senator, approximately how much time do you need on your side?

Mr. ROCKEFELLER. Four minutes.

Mr. REID. So 5 minutes on each side. Is that OK with the Senator from Oklahoma, an additional 5 minutes on each side?

I ask unanimous consent, Mr. President, that the Senator from West Virginia be given 5 additional minutes and the Senator from Texas 5 additional minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first, I thank our friend from West Virginia for his excellent presentation and strong support.

I welcome the opportunity to be a cosponsor of this legislation. I know there has been a good deal of debate and discussion about the technicalities of this amendment, but what we are really talking about are real people being hurt in the most egregious way if we fail to respond.

We know that our States are facing economic challenges, and those economic exigencies have required cutbacks in some of the very important programs that reach out to the neediest people in these States.

We are talking about real people who are being hurt. Pregnant women in Florida will lose their current Medicaid coverage if their income just happens to fall between 150 and 185 percent of poverty.

A North Carolina family of four, with a child suffering from juvenile diabetes, could see their drug coverage shrink, potentially limiting their access to vital medicines.

Some 45,000 children could be cut from the Medicaid rolls in New Mexico because of the proposed cuts to deal with the $47 million shortfall.

Some 50,000 children, pregnant women, disabled, and elderly could lose their Medicaid coverage in Oklahoma because of the $21 million shortfall.

It may be expressed in dollars, but it is really being expressed in real people's lives: real suffering, real sacrifice, and real pain.

We have a chance to do something about that. This can be an expression of our values as a society and our concern about our fellow human beings. These are the neediest of the needy in our society, and this amendment will help them.

I commend the Senator for bringing this matter to the attention of the Senate. I am very hopeful it will be accepted and that the point of order will be waived.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I yield 2 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized for 2 minutes.

Ms. COLLINS. I thank the Senator from West Virginia.

Mr. President, I just want to make a couple points.

First of all, an increase in the Federal match under Medicaid was part of the Centrist Coalition's economic recovery package we considered. It was part of virtually every version. It had widespread support. It was supported by the administration. It did not make it into the final package. But this is not a new idea. This is an idea with widespread bipartisan support.

The second point I want to make is in response to an argument made by my friend and colleague from Oklahoma. My friend from Oklahoma said Medicaid spending does not get cut in economically good times. In fact, it is countercyclical. In good times, far fewer people qualify for Medicaid. In fact, Federal and State spending on Medicaid declined dramatically during the 1990s, when the economic times were good.

So there is a countercyclical aspect of Medicaid. It does go down when times are good and the program is less needed.

Now times are not good. There are more people in need of assistance from the Medicaid Program. We know 40 million Americans rely on this program.

What we are trying to do is preserve this essential, vital health care program that provides services and care to the most vulnerable and needy in our society. That is the motivation behind our proposal. It is not to bail out the States, it is to help the States, our partners, provide essential services.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, we are coming to the end of this debate. I would like to make note of how deficits occur.

If anybody wants to understand why the Federal Government, which is the summation of all of the taxpayers in the country, owes trillions of dollars, this is a classic example of how that comes about. We are talking about spending $9 billion. There are 140 million taxpayers. That is $64 per taxpayer.

The problem is, taxpayers are at work. It is 11:30 on a Thursday. They don't know this debate is occurring. But all the special interest groups that want this $9 million, members of the State legislatures who ran for office to make decisions in the States, all the people who want this money are looking over their Senator's right shoulder trying to tell them that they ought to care about people on Medicaid or about the State legislature or about the State's deficit.

That would be insignificant if the 140 million taxpayers were looking over the left shoulder. The problem is, it is 11:31 on a Thursday morning and all those 140 million taxpayers are at work. They don't even know this debate is occurring. So as a result, what tends to happen over and over and over again is that spending interests dominate.

Our colleagues tell us: States have difficulty. I remind my colleagues, the Federal Government has difficulty. A year ago we had a $283 billion surplus. We were spending madly. Today we have a $165 billion deficit, and we are still spending like drunken sailors, as Ronald Reagan would say. Only drunken sailors are spending their own money, and in all fairness, we are spending somebody else's money.

We hear that the States in total could run as much as a $40 billion deficit this year. I certainly am unhappy about it. My State faces tough decisions. But we are running a $165 billion deficit. We are running a deficit over four times as big as all the States combined.

Our colleagues say: This fits an emergency. This is unforeseen, unpredicted, unanticipated. Well, it is created by a formula that has only existed for 37 years. So for 37 years we have known what the formula was. What is unanticipated, what is unpredicted about this?

Finally, as if the argument to waive this budget point of order and bar this $9 billion and take it away from Social Security could be any weaker, the argument basically comes down to: There are some States that in the last few years have been doing better than other States, better than the country as a whole, and unless we give them more money now, they may be adversely affected by the formula.

The way the formula works is, the higher the State's income relative to national income, the more of the Medicare share they pay. Should it be the other way around? Should poorer States pay a higher share?

There is not one substantive argument in favor of borrowing this $9 billion. If the American people knew this debate was occurring at 11:35 this morning, if all 120 million taxpayers were following this debate, this amendment would never have been offered and probably would not have gotten 20 votes.

The problem is, those 120 million taxpayers are at work, and all the people who want this money are looking over their Senator's right shoulder, sending letters back home, telling people whether he cares about State finances or she cares about Medicaid beneficiaries.

That is the dilemma we are in. I urge my colleagues to look at the fact that in 12 short months, we have gone from $283 billion in the black to $165 billion in the red. When does it stop? We are broke, and we don't act like it. When do we stop spending this money that we do not have?

I urge my colleagues to sustain this budget point of order. I urge everybody who has ever lamented the spending of the Social Security surplus to put their vote where their mouth is. I urge everyone who has ever lamented the deficit, who has ever gone back to their State and said, I am for fiscal responsibility, to put your vote where your mouth is. I want to urge everybody who has ever said, we can't let working people keep more of what they earn because we have a deficit, we need the money, we can't afford it; I urge them to vote against this spending.

I don't know how you can have any possibility of being consistent in taking the position that we ought to borrow this money. This is totally unjustified. I know some people want it. If you spend $9 billion, you are going to benefit somebody even if by mistake. I am not in any way denigrating that this $9 billion will help people. I am not saying it won't. But the point is, we have a budget process. We have seen the surplus go from $283 billion in the black to $165 billion in the red. Let us stop that process here.

I urge my colleagues to vote to sustain the budget point of order.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. ROCKEFELLER. I yield 30 seconds or such time as he might need to the distinguished Senator from Nevada.

APPOINTMENT OF CONFEREES

Mr. REID. Mr. President, I am sorry I was not here when the unanimous consent agreement was entered assigning conferees to the antiterrorism legislation. It is very important legislation. It is going to help all over the country.

I compliment and applaud Senator LOTT and others who allowed us to go forward. It is an important day. Construction will be able to go forward as soon as we complete this conference in Nevada, Delaware, all over the country. It is important legislation. I compliment and applaud the Republican leader.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, let me make a couple comments.

No. 1, my friend from Texas speaks with enormous passion about the overriding power of the budget, and at the very last moment of his last statement, for the first time he used the word "people." I sat in the same Finance Committee with him for a long time when we were debating tax cuts—and I am not here to argue whether it was a good or bad thing, but there was no question that we went from a $5.6 trillion surplus to a $165 billion annual deficit probably for the next 10 years, if nothing gets worse—and I never heard him make the argument—for some reason, maybe I missed it, maybe I wasn't there at the moment—that we shouldn't do that tax cut which was the largest tax cut that this particular Senator from West Virginia, who does not need it, has ever received from the Federal Government—I never heard him talk about the possibility of budget deficits.

So it does become a matter of priorities. It is fair, as the Senators from Nebraska, Massachusetts, and Maine have mentioned, to talk about 40 million people. And to say we are doing this to bail out the States, good grief, it is quite the opposite. The States are not powerful in the same sense that the Federal Government is. The States cannot go into deficit financing—with the exception of Vermont—as can the Federal Government. They have to balance their budgets.

I was a Governor; I know that. The Senator from Nebraska was a Governor; he knows that. The States are not being bailed out. If the States cut their Medicaid eligibility, they cannot receive any of this money, unless they restore their portion through legislative action to the proper eligibility rate and, only then, on a temporary basis, for 1 and a half years, written into law, do they get this money.

I want to close on the concept of people. Sometimes it appears to me on this floor that helping people is sort of a bad thing to do because if you help people, it implies that it might cost some money. It almost always does. It also costs an awful lot more money if you don't, on some occasions. This is one of those occasions. If we do not support the motion to waive, then health infrastructure all across this country is going to be hurt because of its dependency upon Medicaid. Forty million people are going to be hurt, including disabled people, children, seniors, and others, because of this motion.

I need to tell you that this is not a bailout. This is temporary. This was in the original emergency stimulus package. Nobody argued then. Now, all of a sudden, they argue. It is very important for the States to be healthy and for the States to be able to balance their budgets, and therefore I strongly urge colleagues to support the motion to waive the point of order.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRAMM. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes 51 seconds remaining.

Mr. GRAMM. Mr. President, anybody who has not heard me talk about the deficit has not been listening in the last days, weeks, and years.

Secondly, I ask unanimous consent to have printed in the RECORD the accounting of the Office of Management and Budget on where this deficit has come from. We have gone from $283 billion in the black to $165 billion in the red, and only 9 percent of that change had anything to do with the tax cut.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHANGE IN SURPLUS

	FY2002		FY2003		FY2002–FY2011	
	Billions	Percent	Billions	Percent	Billions	Percent
Total surplus (OMB February 2001)	$283	....	$334	....	$5,637	....
Economic and technical changes	278	64	194	49	1,669	43
Bush tax cut	41	9	94	24	1,491	38

CHANGE IN SURPLUS—Continued

	FY2002		FY2003		FY2002–FY2011	
	Billions	Percent	Billions	Percent	Billions	Percent
Appropriations	45	10	40	10	409	10
Farm bill	2	0	13	3	81	2
Stimulus	59	14	39	10	42	1
Other	9	2	15	4	228	6
Total change in surplus	434	100	395	100	3,920	100
Total deficit/surplus (OMB July 2002)	150	....	(62)	....	1,718	....

Source: CBO; provided by Senator Don Nickles, 7/16/02.

Mr. GRAMM. Mr. President, I will conclude by saying that we have come down to a decision about whether or not we are going to borrow $9 billion, which we don't have. Given the state of the American economy and budget, given that our deficit is four times as big as the cumulative deficit of the States, I urge my colleagues not to bust the budget, not to waive this budget point of order, but instead to be fiscally responsible.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 75, nays 24, as follows:

(Rollcall Vote No. 190 Leg.)

YEAS—75

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Boxer
Breaux
Bunning
Burns
Byrd
Campbell
Cantwell
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Daschle
Dayton
Dodd
Domenici
Dorgan
Durbin
Edwards
Enzi
Feinstein
Fitzgerald
Graham
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Torricelli
Warner
Wellstone
Wyden

NAYS—24

Bond
Brownback
Carnahan
Carper
Craig
Crapo
DeWine
Ensign
Feingold
Frist
Gramm
Grassley
Gregg
Inhofe
Kyl
Lott
Nickles
Roberts
Santorum
Smith (NH)
Thomas
Thompson
Thurmond
Voinovich

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote the yeas are 75, the nays are 24. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DASCHLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2003

Mr. DASCHLE. Madam President, under the authority granted to me and after consulting with the Republican leader, I now call up Calendar No. 504, H.R. 5121, the legislative branch appropriations bill.

The PRESIDING OFFICER. The leader has that right. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5121) making appropriations for the Legislative Branch for the fiscal year ending September 30th, 2003, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the text of S. 2720, the Senate committee-reported bill, is inserted in the appropriate place in the measure.

Who yields time?

The Senator from Illinois.

AMENDMENT NO. 4319

Mr. DURBIN. Madam President, I ask unanimous consent to make a technical correction to the bill relating to a House matter. This amendment simply strikes a requirement that the GAO report to the House Administration Committee regarding its work on the Architect of the Capitol. We have been informed the committee does not have oversight for the Architect and therefore have been requested to delete this reference. I have consulted with my colleague and the ranking member, Senator BENNETT, and I ask unanimous consent this technical correction be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself and Mr. BENNETT, proposes an amendment numbered 4319.

Mr. DURBIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment was (No. 4319) was agreed to, as follows:

On page 33, lines 19 and 20, strike ", the Committee on House Administration of the House of Representatives,".

On page 34, line 24, through page 35, line 1, strike ", the Committee on House Administration of the House of Representatives,".

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank my colleague and chairman of the committee, the Senator from West Virginia, for his help in bringing this matter to the floor.

Mr. President, I am honored to present to the Senate the fiscal year 2003 legislative branch appropriations bill as reported by the Appropriations Committee. I thank the chairman and ranking member of the full committee, Senate BYRD and Senator STEVENS, and of course my ranking member Senator BENNETT who has been a real partner in crafting this legislation.

The bill is within its budget authority and outlay allocation, with total funding of $2.417 billion. This excludes House amounts which is the normal protocol.

This is only $8 million—0.35 percent—over the request level and $164 million or 7 percent over the fiscal year 2002 enacted level. Virtually all significant increases are focused on enhancing security for the Capitol complex.

Highlights of the bill include—$675 million for the Senate, $31 million over the enacted level and $11 million below the request. Significant increases are provided for the Sergeant-at-Arms, directed at increasing the security of the Capitol complex, including new mail handling protocols and a new Office of Emergency Preparedness.

For the Architect of the Capitol, funding would total approximately $396 million compared to the request level of $363 million. The largest project in the Architect's budget that we are recommending is the expansion of the Capitol power plant's west refrigeration plant, which is critically needed due to aging equipment and increased capacity requirements, at a cost of $82 million. In addition, a number of critical security-related projects have been included such as an alternate computing facility for the legislative branch.

The bill includes language aimed at helping the Architect of the Capitol improve his operations by creating a new deputy Architect of the Capitol who will also serve as the chief operating officer.

We have worked closely with the General Accounting Office in these efforts to upgrade AOC operations, including a greater focus on worker safety, and I might add significant progress has been made in the last year due to the efforts of this committee and the cooperation of the Architect's office, project management, accountability for performance, and coordination of roles and responsibilities.

The Architect of the Capitol operation has been making some improvements over the past year and the employees worked very hard to do their part in addressing the anthrax cleanup, an historic challenge to all who worked on Capitol Hill. But there is much more to be done in making AOC a best-practices organization.

They have been given tremendous additional responsibilities for executing a myriad of security projects, particularly the Capitol Visitor Center—which we want to ensure remains on schedule and on budget as it is today. Any visitor to Capitol Hill in the last 6 months or a year has noted the extensive construction underway. The authorities included in this bill should provide new tools with the goal of making the AOC a model for facilities management and construction management.

Funding for the Capitol Police totals roughly $210 million which reflects their latest payroll and expense estimates. Funding has been provided to accommodate at 9.1 percent pay raise—which includes comparability pay—to help the Capitol Police recruit and retain new officers as they attempt to increase significantly the force size over the next few years to about 2,000 officers. Also included is authority for increasing pay for specialty assignments and providing authority and funding for full premium pay earned during the September 11th and October 15th incidents.

I can say that the hundreds of thousands of visitors to Capitol Hill understand the important responsibility of the Capitol Police which was enhanced and challenged by September 11. We want to make certain that we have the very best men and women to protect this great national asset, all the people who work here, and our visitors whom we treasure very much.

This bill will require that within 3 years the Library of Congress, just across the street, and Capitol Police officers be merged in order to improve security. This has been an initiative urged and encouraged by my colleague, Senator BENNETT. The 3-year implementation period will allow time to work out the details, differences in retirement, training and equipment.

The Government Printing Office, $122 million is included with the directive to the administration not to implement the recently announced policy directing agencies to violate our law and bypass the Government Printing Office for their printing needs. If such a directive were implemented, not only would the law be broken, but the process by which 1,300 Federal depository libraries receive Government publications would be decimated.

For the Library of Congress, including the Congressional Research Service, funding would total $497 million, an increase of $15 million over the enacted level, but $15 million below the request, reflecting a more realistic projection of the cost of new positions. New positions are provided for preserving the access of the Library's collections, including digital initiatives.

The General Accounting Office will receive $455 million. This covers all mandatory and price level increases, and includes $1 million to continue their important technology assessment work which was initiated by Congress last year.

The recommendation includes $13 million for the Center for Foreign Leadership Development. We have expanded what was originally the center for Russian Leadership Development to include newly independent states of the former Soviet Union including the Baltics. This program has proven successful in bringing emerging political leaders in Russia to the United States to learn democracy firsthand and to make certain they take those lessons home. Expanding this program to include these additional countries will continue to promote that critical goal.

Before I turn it over to my colleague and friend Senator BENNETT, I want to particularly thank all the staff on the Appropriations Committee for their work, and especially Carrie Apostolou, who has done a tremendous amount of work to make this bill ready for floor consideration, and Pat Souders of my own staff, who has worked closely with her.

I thank Senator BENNETT for his cooperation, and I yield the floor to my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I am grateful for the generous remarks of my friend and chairman, the Senator from Illinois. I am grateful for the cooperative way in which we have been able to work through this bill.

The Senator from Illinois had the challenge of taking over this subcommittee in the middle of the session, and he had just come to the subcommittee by virtue of his assignment to the Appropriations Committee. He has demonstrated that he is a very quick study. He has moved quickly to get on top of these issues.

I do not want to repeat the various elements of the bill he has described, but it is a good bill and it is one that I am happy to join in recommending to the Senate.

As the Senator from Illinois has indicated, I have been advocating for some time a merger of the Capitol Police, at least with the Library of Congress Police, and looking at the other police agencies that are under our jurisdiction. We are now moving ahead with this. I think it only makes sense, in the new security environment in which we find ourselves. To have an area as small as the Capitol campus be divided up into jurisdictions under, not necessarily competing but certainly different police departments, does not make a whole lot of sense.

I have made reference to this before, but I think it is appropriate here. One of the things that was particularly significant for the success of the Olympics in Utah was the coordination that occurred between competing law enforcement agencies. Of course, we were involved in a much bigger venue there, a much larger geographic area, but it was important that everybody got together and was able to communicate.

Given the small nature but highly visible nature of the Capitol campus, it makes sense to have the police come together. I am grateful to my friend from Illinois for his support and leadership on this particular issue.

We all know about the Visitor Center. We can't come into the Capitol without having it in our face every day. But the demands of the Architect of the Capitol to bring that project through are significant. So I think the decision of the committee to fund a Deputy Architect of the Capitol, creating a full-time manager for the day-to-day activities of the Architect of the Capitol, is the right decision.

Senator DURBIN has been particularly aggressive in trying to solve some of the management challenges the Architect of the Capitol has had over the past years. The decision to move toward a Deputy Architect, toward an operating officer to run the office of the Architect of the Capitol, is a good decision, and I think we need to highlight that in this bill.

Finally, I want to make a personal comment about a very small but maybe high-profile aspect of this bill, which is the Russian Leadership Conference that now has been expanded, as Chairman Durbin has indicated, to include other countries.

During the Fourth of July break, I was in Russia. This was the fourth time I had been there. I was very pleasantly surprised at the high degree of pro-American atmosphere we ran into. I was in Russia before when there was, frankly, an underlying current of suspicion—I wouldn't go so far as to say anti-American attitude in Russia, but suspicion of America and America's motives. We got that over the issue of the expansion of NATO, for which I voted and which I supported.

The first time I met with members of the Russian Duma, they were automatically anti-expansion of NATO. And no matter what we tried to talk about, they would always bring it back to NATO and, what are you Americans doing?

On this occasion, we met with officers of the National Council. They told us they were going to rename it the

Senate because they indicated they did not get appropriate respect in their own country, when everybody thought of the parliament being the Duma and they thought of themselves as the upper house. We are very careful in this Congress that we never use that term. And they thought, if they renamed themselves the Russian Senate, they would get appropriate respect.

One of the members of that council told me this story. He said: My grandmother told me that all her life she has been taught to mistrust, indeed fear, NATO. However, she said, in the present atmosphere, if President Putin tells me that NATO is no longer a threat, I guess I am going to have to change my point of view.

He told me that story to illustrate President Putin's popularity in Russia, but I took that story to indicate a significant change in Russian attitudes toward Americans, and it has been the Russian leadership group that has been participating in this function, that we have been funding out of this subcommittee, that has helped plant the seeds of that kind of circumstance.

So even though it is a relatively small amount and has been a controversial program with Members of the House of Representatives, I can give personal testimony, if you will, that it has borne fruit, that the fruit has been significant, and I congratulate Senator DURBIN on his continued support of this program and its expansion into other countries as well.

So, Madam President, I am happy to join with Senator DURBIN in recommending this bill to the other Members of the Senate and urging its passage.

Mr. CONRAD. Mr. President, I rise to offer for the record the Budget Committee's official scoring for S. 2720, the Legislative Branch Appropriations Act for Fiscal Year 2003.

The Senate bill provides $2.417 billion in discretionary budget authority. Per tradition, that amount does not include funding for exclusive House items, which will be added in conference. The discretionary budget authority will result in new outlays in 2003 of $1.935 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the Senate bill total $2.547 billion in 2002.

The Appropriations Committee voted 29-0 on June 27 to adopt a set of nonbinding sub-allocations for its 13 subcommittees totaling $768.1 billion in budget authority and $793.1 billion in outlays. While the committee's subcommittee allocations are consistent with both the amendment supported by 59 Senators last month and with the President's request for total discretionary budget authority for fiscal year 2003, they are not enforceable under either Senate budget rules or the Balanced Budget and Emergency Deficit Control Act. While I applaud the committee for adopting its own set of sub-allocations, I urge the Senate to take up and pass the bipartisan resolution, which would make the committee's sub-allocations enforceable under Senate rules and provide for other important budgetary disciplines.

For the Legislative Branch Subcommittee, the full committee allocated $3.413 billion in budget authority and $3.467 billion in total outlays for 2003. The bill reported by the full committee on July 11 is fully consistent with that allocation. In addition, S. 2720 does not include any emergency designations or advance appropriations.

I ask for unanimous consent that a table displaying the budget committee scoring of this bill be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2720, LEGISLATIVE BRANCH, 2003

[Spending comparisions—Senate-Reported Bill (in million of dollars)]

	General purpose	Mandatory	Total
Senate-reported bill:[1]			
Budget Authority	2,417	102	2,519
Outlays	2,547	101	2,648
Senate committee allocation:[2]			
Budget Authority	3,413	102	3,515
Outlays	3,467	101	3,568
House-reported bill:			
Budget Authority	2,674	102	2,776
Outlays	2,856	101	2,957
President's request:[3]			
Budget Authority	3,404	102	3,506
Outlays	3,451	101	3,552
SENATE—REPORTED BILL COMPARED TO:			
Senate committee allocatin:			
Budget Authority	−996	0	−996
Outlays	−920	0	−920
House-reported bill:			
Budget Authority	−257	0	−257
Outlays	−309	0	−309
President's request:			
Budget Authority	−987	0	−987
Outlays	−904	0	−904

[1] Per tradition, the Senate bill does not include funding for exclusive House items, which will be added in conference.

[2] The Senate has not adopted a 302(a) allocation for the Appropriations Committee. The committee has set non-enforceable sub-allocations to its 13 subcommittees. This table compares the committee-reported bill with the committee's allocation to the Legislative Branch Subcommittee for informational purposes only.

[3] The President requested total discretionary budget authority for 2003 of $768.1 billion, including a proposal to change how the budget records the accrued cost of future pension and health retiree benefits earned by current federal employees. Because the Congress has not acted on that proposal, for comparability, the numbers in this table exclude the effects of the President's accural proposal.

Notes: Details may not add to totals due to rounding.

Prepared by majority staff, 07-25-02.

Mr. MCCAIN. Mr. President, I thank the managers of this bill for their hard work in putting forth this legislation which provides Federal funding for the legislative branch.

In reviewing this bill to determine whether it contains items that are low-priority, unnecessary, wasteful, or have not been appropriately reviewed in the normal, merit-based prioritization process, I applaud the Appropriations Committee for their fiscal restraint in including a minimal number of such items.

For this legislation, only two locality-specific earmarks appear to be included. The bill itself includes $200,000 for Southern Illinois University for the purpose of developing a permanent commemoration of the Lewis and Clark Expedition. And an amendment to this bill that was adopted on the Senate floor provides $500,000 for the Alexandria Museum of Art and the New Orleans Museum of Art for activities relating to the Louisiana Purchase Bicentennial Celebration.

How refreshing it would be if the Appropriations Committee would demonstrate the same fiscal responsibility they showed in preparing this legislation in every one of the remaining appropriations bills. Unfortunately, this bill is the exception to the rule, because, as evidenced by the recently passed supplemental appropriations bill, the runaway pork-barrel gravy train shows no signs of slowing down on Capitol Hill.

We must remember that while the amounts associated with each individual earmark may not seem extravagant, taken together they represent a serious diversion of taxpayers' hard-earned dollars at the expense of numerous programs that have undergone the appropriate merit-based selection process. During this time of mounting deficits, we must be more prudent about where we devote limited fiscal resources. I urge all my colleagues to curb the habit of directing hard-earned taxpayer dollars to locality-specific special interests.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 4320

Mr. DURBIN. Madam President, I send to the desk an amendment on behalf of myself and Senator BENNETT and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. DURBIN), for himself and Mr. BENNETT, proposes an amendment numbered 4320.

Mr. DURBIN. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DURBIN. This amendment relates to the Capitol Police. It will enhance their ability to recruit and retain officers as they struggle to increase their strength while losing officers to other law enforcement agencies. All these changes in the amendment have been requested by the new Chief of Capitol Police, Terry Gainer, and the Capitol Police Board.

Let me say briefly how proud we are that Terry Gainer is the new Chief of Police. Those of us from Illinois and Chicago know Terry Gainer well. He is a former member of the Chicago Police, legal counsel for the Chicago Police Department, and superintendent of the Illinois State Police. He came to

Washington, DC, was second in command in this the Capital City, and was then recruited to undertake this important responsibility. I am certain he is going to do an excellent, professional job considering the new challenges facing this department.

The new authorities in the amendment authorize them to hire new officers without regard to age. There are technical corrections to existing authorities regarding recruitment and relocation bonuses and premium pay for unscheduled overtime. It also includes technical corrections to the committee bill regarding the consolidated disbursing function for the Capitol Police, salaries, appropriations. All of those are technical in nature, and I urge the adoption of the amendment.

Mr. BENNETT. Madam President, as indicated by my cosponsorship of the amendment, I endorse what Chairman DURBIN has said and urge the Senate to adopt the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 4320) was agreed to.

AMENDMENT NO. 4321

Mr. DURBIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Illinois [Mr. DURBIN], for Ms. LANDRIEU, proposes an amendment numbered 4321.

Mr. DURBIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: To set aside funds for activities relating to the Louisiana Purchase Bicentennial Celebration)
>
> On page 44, line 24, before the period, insert the following: ": *Provided further*, That, of the total amount appropriated, $500,000 shall remain available until expended and shall be equally divided and transferred to the Alexandria Museum of Arts and the New Orleans Museum of Art for activities relating to the Louisiana Purchase Bicentennial Celebration".

Mr. DURBIN. Madam President, the amendment would provide $500,000 within the Library of Congress appropriations for activities related to the Louisiana Purchase Bicentennial Celebration. I urge its adoption.

Mr. BENNETT. Madam President, I have no objection to this amendment.

The PRESIDING OFFICER. Is there further debate?

Without objection, the amendment is agreed to.

The amendment (No. 4321) was agreed to.

Mr. DURBIN. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4322

Mr. DURBIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Illinois [Mr. DURBIN], for himself, Mr. COCHRAN, and Mr. BENNETT, proposes an amendment numbered 4322.

Mr. DURBIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: Provide funding for the Congressional Award Act)
>
> On page 28, line 11, strike "$108,743,000" and insert "$108,243,000".
>
> On page 63, insert between lines 10 and 11 the following:
>
> **SEC. 312. TITLE II OF THE CONGRESSIONAL AWARD ACT.**
>
> There are appropriated, out of any funds in the Treasury not otherwise appropriated, $500,000, to remain available until expended, to carry out title II of the Congressional Award Act 92 U.S.C. 811 et seq.).

Mr. DURBIN. Madam President, this amendment which we are currently considering provides $500,000 for the recently reauthorized Congressional Award Act offset by the reduction in the budget of the Architect of the Capitol. I urge its adoption.

Mr. BENNETT. Madam President, I have no objection to this amendment as illustrated by my cosponsorship.

The PRESIDING OFFICER. Is there further debate?

Without objection, the amendment is agreed to.

The amendment (No. 4322) was agreed to.

Mr. DURBIN. Madam President, I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4323

Mr. DURBIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Illinois [Mr. DURBIN], for himself and Mr. SPECTER, proposes an amendment numbered 4323.

Mr. DURBIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: To provide for a pilot program for mailings to town meetings)
>
> On page 5, line 26, insert before the period ", of which up to $500,000 shall be made available for a pilot program for mailings of postal patron postcards by Senators for the purpose of providing notice of a town meeting by a Senator in a county (or equivalent unit of local government) with a population of less than 250,000 and at which the Senator will personally attend: *Provided*, That any amount allocated to a Senator for such mailing shall not exceed 50 percent of the cost of the mailing and the remaining cost shall be paid by the Senator from other funds available to the Senator: *Provided further*, That not later than October 31, 2003, the Sergeant at Arms and Doorkeeper of the Senate shall submit a report to the Committee on Rules and Administration and Committee on Appropriations of the Senate on the results of the program".

Mr. DURBIN. Madam President, this amendment, on behalf of Senator SPECTER, provides up to $500,000 in the miscellaneous items account of the Senate for a pilot program and additional funds for town meeting notices, an issue which Senator SPECTER has pursued for quite some time.

In the fiscal year 2002 appropriations, we provided separate funds for town meeting notices subject to a Rules Committee authorization, which has not yet occurred.

I would like to point out that Senators, on average, spend less than half the amount budgeted for franked mail—less than $3 million out of the $7.6 million budget. In addition, last year only a small number of Senators used town meeting notices. No Member, other than the Senator from Pennsylvania, has indicated the budget is inadequate. It doesn't appear that we have a significant problem, but in order to determine whether or not there is an interest in promoting town meetings with notices attendant thereto, and how widespread that problem might be, we have agreed to this pilot program for 1 year.

We have requested that by the end of the next fiscal year the Sergeant at Arms and the Doorkeeper of the Senate shall submit a report to the Committee on Rules and Administration and the Committee on Appropriations.

Mr. REID. Madam President, if I may take a few minutes, I will be very brief.

I wish to say a few things while the two managers of this bill are here. I had the opportunity in several Congresses to chair the Appropriations Legislative Branch Subcommittee. I can truly say that it was one of the most rewarding experiences I have had as a Member of Congress.

I understand how important the Library of Congress is to our country. We have certainly learned that with this bill. We were going through the years and there were cuts. No one wants to cut the Library of Congress. It is so important to the people of our States and of our Nation. Of the 13 appropriations bills, this one gets a lot of attention. It is as important as any of the appropriations bills.

I want to take a brief period of time to tell the two managers of this bill how impressed I am and how grateful I am for their recognition of the Capitol Police. There has never been a time, in my opinion, where we have recognized the dedication of the Capitol Police as it is recognized in this bill.

We went through a ceremony yesterday where we placed roses on the table in front of the pictures of the two fallen police officers—Gibson and Chestnut. When we walk in this building every day, these dedicated men and women are standing there, a lot of times not doing a lot, but every day they are there waiting to take bullets for us or for anyone who comes into this building which they are protecting. They do such good work.

The Capitol Police Force is well trained. They are as well trained as any police force in the country. As a result of this legislation, they will be better trained, better paid, and better recognized for the work they do.

I want this RECORD spread with the appreciation of the Senate and the people of Nevada and every other State where people come here and feel so safe as a result of the Capitol Police. As I said, I want the RECORD spread with the appreciation of the American people for the work the Senator from Illinois and the Senator from Utah have done on this legislation. It is landmark. It is so appreciated by me and every Capitol policeman. And anyone who knows anything about this legislation—or could learn—would also feel the same as I do.

Mr. DURBIN. Madam President, I thank my colleague from the State of Nevada for those kind words on behalf of myself and Senator BENNETT. I am glad he made reference to the memorial service yesterday for Officers Gibson and Chestnut, because it is a sad reminder of the important responsibility that the Capitol Police have undertaken on behalf not only those of us who are privileged to work in this building but the thousands and thousands of visitors who come here for the thrill of a lifetime to see this seat of democracy. Those two men gave their lives in service to our country. We should be reminded at all times that all the members of the Capitol Police Force are prepared to do the same.

There is no stronger advocate for the Capitol Police than Senator HARRY REID of Nevada. He speaks to me annually when this issue comes up to make certain we have not overlooked any element in terms of modernizing and professionalizing the Capitol Police. He is simply their strongest voice on the Senate floor.

I might also add that a close second is Senator WELLSTONE of Minnesota, who has a close, personal friendship with so many of the members of the Capitol Police. He comes to me regularly with observations that really come from the heart. I thank him for his inspiration as well.

I think this bill meets the needs of the Capitol Police. And as long as I am in this position or in any capacity, I will continue to strive for that goal.

I believe pending before us now is the amendment relative to the account for mailing of town meeting notices, which Senator SPECTER of Pennsylvania has asked us to include.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, at the outset, I thank my distinguished colleagues, the Senators from Illinois and Utah, for holding this matter until my arrival. I came as soon as I finished my round of questioning of the Attorney General, who is currently before the Judiciary Committee.

This amendment provides for $500,000 to be made available for a pilot project for mailings of postal patron postcards by Senators for the purpose of providing notice of town meetings in counties with populations of less than 250,000.

The reason for this amendment is to stimulate town meetings by Senators and to make us more aware as a body, individually and collectively, of what our constituents are thinking.

Until fairly recently, there was no limitation on mail and notices could be sent out to the largest of counties at a very considerable expense as a matter of record, so that the public knew how much a Senator was spending. Those figures were published with some frequency as to the mail expense accounts.

My own thinking is that there is no better use of our expense accounts than to communicate with our citizens about where we go personally to hear what is on their minds. Within the beltway, we are very insulated. In fact, people beyond the beltway do not even know what the "beltway" expression means. However, when we talk to each other, and do not communicate with our constituents, we do not have a feel for what is going on. The basis of representative democracy is that we are reflecting the will of our constituents. In order to do that, we have to know what it is.

When I say reflecting the will of the constituents, I do not mean taking a public opinion poll, or even if there is an enormous preponderance of the constituents, to follow that without question. I think Edmond Burke, centuries ago, laid down the proper standard, that an elected official in a representative democracy owes to his constituents his independent judgment. One of the factors Edmond Burke enumerated was the concerns, sensibilities, and views of the constituent.

These town meetings are very difficult affairs, perhaps even categorized as rough affairs. I have done 19 of them during the month of July, mostly during the Fourth of July recess.

My practice, which I know is standard for many of my colleagues who undertake these meetings, is to make a very short introductory statement, limiting it to five, six, or seven minutes, and then to respond to questions. The questioning segment is the hot spot. I know the Presiding Officer and the other Senators in the Chamber, and any who may be watching on C-SPAN, know that because we have all had the experience.

This is not puff mail which you send out, where the effort has been made to limit what a Senator can do, sending pieces extolling the virtues of the individual Senator. This is an occasion where you are really on the line and have to identify and justify your votes and your positions.

Beyond the votes and existing positions, the town meetings acquaint a Senator with many issues the Senator does not know about, and that is the educational process. So it is not only a matter of responding to constituents, rather it is learning from constituents what the new issues are.

Since I completed the town meetings in July, I can say to my colleagues that there is great interest out there in Pennsylvania—and I believe Pennsylvania is a very representative State with more than 12 million people—about the need for a prescription drug program. The seniors are really hurting. Many instances were called to my attention by individuals who have low income with very high pharmaceutical bills. This is something that is really at the very top of the agenda. Enron and corporate scandals, prescription drugs, and terrorism were the three major subjects I heard about in the town meetings.

I am hopeful—and I have talked to authors of the bills on both sides—we will come to an agreement here and we will legislate on this subject and let it go to conference with the House of Representatives. I believe our job is to reconcile the differences. While we are talking about substantial sums of money, in the overall picture, an accommodation is better than having Senators adhere strictly to some top-dollar figure and not go beyond that. I believe there is a majority in the Senate to reach an accommodation somewhere between what the proposed bills have specified. My soundings are that a prescription drug program is something the American people not only want, but really need.

Along the same line, I sense overwhelming anger about what is happening in corporate America and what is happening with Enron and WorldCom, which were the subjects during the Fourth of July recess. This is not some theoretical matter about fraud and criminal conduct that ought to be prosecuted, this is a matter which is reaching Mr. Average American, Mr. Lower Income American, regarding retirement funds, which have been fractionalized. I am glad to see the conferees agreed on a program yesterday, with the Senate bill taking dominance.

Even with the work I have had as a prosecutor on fraud cases and business fraud, I am surprised at what has happened here. Every day there is a new revelation. For the major banks to be complicit, at least according to public reports on Enron, is beyond shocking.

We really rely, in our society, on the accountants, the attorneys, and the bankers, who are really in a quasi-fiduciary, if not strictly fiduciary capacity, to catch these matters, and especially where it is so lucrative. For them to yield to the pressure to cut corners and to sanction fraud in order to keep a customer or to please a customer is just really beyond the pale.

We have had a lot of problems in the long history of this country, however, I think this is one of the most extraordinary. The day before yesterday, we found out about the bankers being complicit, or allegedly complicit, with Enron. We see the SEC investigation disclosed yesterday, as stated in this morning's press, about AOL having fraudulent transactions and boosting their profits fraudulently. It is a surprise to me that an entity as sophisticated as Time Warner would be taken in by corporate chicanery.

So these are matters which are very much on the minds of the American people. You have to go to a town meeting and take the temperature of the people to really see how very serious it is.

This amendment provides that $500,000 will be used to send out postal patron notices, providing that the Senator pays 50 percent. So we have a good co-pay provision here. Senators are not going to be inclined to send these postal patron notices out without having to pay for one-half of the cost themselves, with the critical requirement that the Senator has to appear. The limitation is put on counties with fewer than 250,000 people because if you send it to a county such as Allegheny County, which has Pittsburgh, or Philadelphia County, it is an enormous expense. We can communicate with our constituents in those major metropolitan areas in ways other than by coming to the county.

However, if you talk about Potter County, in north central Pennsylvania, on the northern tier abutting New York State, or you talk about Fulton County, on the Maryland border, those folks really like to see you. You send out a notice, and you get 35 people, and you sit and talk to them. I was in Forest County, and we did not get 35 people, however, I learned a lot from being in Forest County. I think the people in Forest County learned something, too.

So I thank my colleagues for accepting this amendment. We had it in last year at a higher figure, subject to authorization. We could not get the hearing worked out. However, I know that this is a test case. I am going to be encouraging my colleagues to do these town meetings, so when the audit comes up, my name is not the only name listed as a recipient. We will await the results of the audit on the pilot program to see just how effective and important this program is.

Again, I thank my colleagues and thank the Chair, and I yield the floor.

Mr. DURBIN. Madam President, I thank the Senator from Pennsylvania.

If there is no further debate on this amendment, I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 4323) was agreed to.

Mr. DURBIN. I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4324

Mr. DURBIN. Madam President, I send an amendment to the desk on behalf of Senator DODD and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for Mr. DODD, proposes an amendment numbered 4324.

Mr. DURBIN. Madam President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: Providing public safety, exception to inscriptions requirement on mobile offices)

On page 9, between lines 17 and 18, insert:

SEC. . PUBLIC SAFETY EXCEPTION TO INSCRIPTIONS REQUIREMENT ON MOBILE OFFICES.

(a) IN GENERAL.—Section 3(f)(3) under the heading "ADMINISTRATIVE PROVISIONS" in the appropriation for the Senate in the Legislative Branch Appropriation Act, 1975 (2 U.S.C. 59(f)(3)) is amended by adding at the end the following flush sentence:

"The Committee on Rules and Administration of the Senate may prescribe regulations to waive or modify the requirement under subparagraph (B) if such waiver or modification is necessary to provide for the public safety of a Senator and the Senator's staff and constituents."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act and apply to the fiscal year that includes such date and each fiscal year thereafter.

Mr. DURBIN. Madam President, this amendment amends title II of the U.S. Code to authorize the Rules Committee to establish regulations to waive or modify requirements on mobile offices for public safety reasons.

Mr. BENNETT. Madam President, I am in favor of this amendment.

Mr. DURBIN. Madam President, if there is no further debate on the amendment, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The amendment (No. 4324) was agreed to.

Mr. DURBIN. I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURBIN. Madam President, unless the Senator from Utah has any further amendments or modifications, I do not believe there are any additional actions on the bill.

Mr. BENNETT. Madam President, one of the pleasures of handling this bill is that there are almost always no additional amendments or complications.

Mr. DURBIN. I thank the Senator from Utah and yield back all my time.

The PRESIDING OFFICER. Does the Senator from Utah yield back his time as well?

Mr. BENNETT. The Senator from Utah yields back all his time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. Under the previous order, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the vote on passage of H.R. 5121, the legislative branch appropriations bill, occur at 1:50 p.m. today, with rule XII, paragraph 4 being waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there be a period of morning business with Senators allowed to speak therein for a period not to exceed 10 minutes each up until 1:50 today, the time set for the vote, and the time to be equally divided and controlled in the usual form between the two leaders or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GREATER ACCESS TO PHARMACEUTICALS ACT

Mr. HATCH. Mr. President, I rise to speak on the pending legislation, S. 812, the Greater Access to Pharmaceuticals Act. Even if I had major differences of opinion on the substance of this legislation, I commend Senators MCCAIN and SCHUMER, KENNEDY and EDWARDS for their efforts in this area.

I especially wish to recognize the efforts of Senators KENNEDY, EDWARDS, and COLLINS for their work, which was almost a complete rewriting of the McCain-Schumer bill. Let me also hasten to commend Senators GREGG and FRIST for working to improve the bill that emerged from the HELP Committee and for their leadership during the debate.

Mr. President, last week, I provided a brief summary of the existing statute that S. 812 seeks to amend, the Drug Competition and Patent Term Restoration Act of 1984. I happen to know something about this law, which is commonly referred to as the Waxman-Hatch Act, or alternatively, the Hatch-Waxman Act.

Last week, I gave an overview of my concerns with the HELP Committee legislation. With those comments in mind, today, I want to delve further into the details of the HELP Committee re-write of S. 812 the bill originally introduced by Senators MCCAIN and SCHUMER.

The central components of S. 812 are aimed at rectifying concerns raised in recent years over two features of the 1984 law: first, the statutory 30-month stay granted to a pioneer firm's facing legal challenges to its patents by generic competitors; and, second the 180-day period of marketing exclusivity awarded to generic drug firms that successfully challenge a pioneer firm's patents.

During debate on S. 812, there have been a number of comments indicating that there is a substantial problem with these two provisions. That may or may not be the case. One great disadvantage of holding the floor debate at this time is that we do not have the benefit of an extensive Federal Trade Commission survey of the pharmaceutical industry that focuses on precisely these two issues that go to the heart of S. 812 and the substitute adopted by the HELP Committee. The results of this long-awaited, extensive, industry-wide FTC survey are expected in a few weeks.

I have stated on numerous occasions that before this body undertakes a substantial rewrite of provisions central to the Hatch-Waxman Act, we should have the benefit of the FTC study and its implications.

The Senate could have taken a more prudent course. The Senate could have waited for the FTC report. We—and by we I specifically include the Senate Judiciary Committee—could have held hearings on the FTC study, evaluated the data, and then discussed, debated, and refined the actual, now barely two-week old, legislative language that is pending on the floor today.

But this was not possible due to the tactical decision of the Majority to dispense with the regular order so as to minimize the politically-inconvenient fact that the Senate Finance Committee would have most likely have rejected any Democratic Medicare drug proposal in favor of the Tripartisan approach.

To my great disappointment, although not anyone's great surprise, we failed to arrive at the 60-vote consensus required to enact a Medicare drug bill in the Senate. Make no mistake about it. This is a great failure for the American people because for two years now we have set aside $300 billion in the federal budget to be spent over 10 years to provide prescription drug coverage for Medicare beneficiaries.

We have all heard from elderly constituents many of whom live on limited, fixed-incomes—who have had substantial difficulties in paying for prescription drugs. Rather than rise to the occasion and make good on our promise to rectify that situation, and we are letting this abundant opportunity slip between our fingers.

I am very disappointed with the outcome of the votes Tuesday. It is my hope that we can find a way to come together on the important issue of a Medicare drug benefit for our seniors.

At a minimum, we should use the $300 billion already in the budget to expand drug coverage for those seniors who need the most help. What we should not do is enact an expensive, government-run scheme that could bankrupt our country and plunge our economy further into the abyss when the government usurps what should legitimately be a private-sector-run benefit.

The collapse of any 60-vote consensus on the Medicare drug benefit does not show the public the type of bipartisan spirit that voters across the country say they prefer, in poll after poll after poll.

And so, we move back to the important, if more mundane, matters in S. 812.

One of the real marvels of this debate is that we have finally found out who the bad guys are in this debate.

It is not the government that has failed to make good on the promise to provide needy seniors with pharmaceutical coverage.

No, it's the pharmaceutical industry, an industry that is working day and night to bring us the medicines, the miracle cures that seniors seek.

I just had no idea that is who was going to be blamed.

This game plan comes right out of the Clintoncare play-book. As you hear attack after attack on the drug companies, I just want all of you listening to this debate to know that a similar tactic was employed by the Democrats when they tried to foist Clintoncare on a very unreceptive public back in 1993 and 1994.

Here is how David Broder and Haynes Johnson, two highly respected journalists, described the tactics of the Clinton White House in trying to pass its too grand health care reform plan:

This quote is from "The System," a book by Haynes Johnson and David Broder, two leading political writers in this town, both of whom write for the Washington Post. Neither of them would be considered, by any stretch of the imagination, conservative. This is what they had to say in this book called "The System," talking about the American way of politics and how health care policy is formed:

> In the campaign period, Clinton's political advisors focused mainly on the message that, for "the plain folks, it's greed—greedy hospitals, greedy doctors, greedy insurance companies. It was an us versus them issue, which Clinton was extremely good at exploiting.

This is the second quote:

> Clinton's political consultants—Carville, Begala, Grunwald, Greenberg—all thought "there had to be villains." At that point, the insurance companies and the pharmaceutical companies became the enemy.

As you can see, here are two liberal political writers who summarized the Clinton health plan.

Villains . . . enemies all this sounds familiar in this debate. So, I will stipulate for the purpose of this debate that the pharmaceutical industry is the designated villain.

It strikes me as curious at least that the sector of the economy that plows back the highest portion of its revenues back into research—and research on life-threatening diseases no less—is treated with such disdain, at times even contempt, on the floor of the Senate.

Mr. President, from what has been said on the floor of the Senate you would think that this industry is trying to cause cancer, not trying to find cures.

I note that Senator KENNEDY has suggested our nation's biomedical research establishment has not really made much progress over the past few decades in terms of developing new drugs. I think the facts speak otherwise.

For example, consider the array of medicines that have been developed to treat HIV infection and the complications of AIDS. Through the unique public/private sector partnership that comprises the U.S. biomedical research enterprise, AIDS is being transformed from an invariably fatal disease into a chronic condition that we are so hopeful one day will have a cure.

These advances do not come easily or on the cheap. I would note the exciting reports from the recent International AIDS meeting in Barcelona concerning the new class of AIDS medications represented by the new drug, T-20. Unlike many of the current anti-retroviral medications like AZT that seek to inhibit the replication of the HIV virus, T-20 attempts to block entry of the virus into healthy cells.

Here is what one press account has said about this still unapproved, but highly promising drug:

> But it takes 106 steps more than 10 times the usual number of chemical reactions to make the lengthy peptide, making production a serious factor in its price. Roche refurbished a plant in Boulder, Colorado, just to make T-20. Almost 100,000 pounds of specialized raw materials are needed to make a little more than 2,200 pounds of the drug. In all, Roche has invested $490 million in T-20's development and manufacturing.

Let us not be too quick to characterize as villains and enemies those scientists and companies who are working every day to overcome dread diseases like AIDS. Think of the imagination and expertise required to design all 106 chemical reaction required to make T-20. How many times must they have failed to come up with the correct chemical pathway?

I might add, as Senator FRIST pointed out on the floor last week, that infectious disease experts like Dr. Tony Fauci at NIH have said that despite the substantial promise of T-20, there is still more work to be done on this drug. Specifically, it is imperative to develop a tablet form of this currently intravenous preparation if we will be able to effectively use the product in the Third World.

Some in this debate have minimized the importance of product formulation patents and have suggested that such patents should not be eligible for the 30-month stay. But public health experts such as Dr. Anthony Fauci one of the leading experts in the world, are telling us that the formulation of drugs like T-20 is critical. Who is to say that the steps in addition to the 106 steps already painstakingly identified to make the IV preparation necessary to make a tablet form of the drug are not worthy of the same protection afforded other pharmaceutical patents since 1984?

And if it turns out that such a formulation patent issues more than 30-days after FDA can one-day approve a new drug application for a tablet form of T-20, why should this patent be given less procedural protection than other related patents? But this differential treatment of patents is exactly what could occur if we adopt the pending legislation.

Mr. President, the Hatch-Waxman Act has been called one of the most important consumer bills in history. It has helped save consumers, by the Congressional Budget Office reckoning, $8 billion to $10 billion every year since 1984. It created the modern generic drug industry by creating this delicate balance between the pioneer research companies, and the generic companies that could readily copy drugs under Hatch-Waxman. The scientific work that had taken R & D firms up to 15 years, $800 million and at least 5,000 to 6,000 failed drug companies for each successful new drug could be used by general firms under the 1984 law.

I might add, the Hatch-Waxman Act has brought the generic industry from little over 15 percent of the marketplace to 47 percent as we speak, and it is going up all the time. That is what we thought should happen.

We are at $490 million and still counting for this still unapproved promising new AIDS drug, T-20.

Remarkable progress in the field of drug development has been made over the past 18 years since Waxman-Hatch was adopted. We have seen enormous strides in the treatment of heart disease, diabetes, arthritis, Alzheimer's and many others, including the 200 new drugs that have been approved to treat lower prevalence, so-called orphan diseases another bill that I helped author. I am proud to have been an author of the Orphan Drug Act that has given hope to so many American families.

If our Nation is going to develop diagnostic tests, treatments, and vaccines to prevent and counter attacks of bioterrorism and potential chemical or even nuclear terrorism, just whom do you think is going to develop these products? I will tell you who. It will be those "villains" in the pharmaceutical industry, in partnership with government and academic researchers, unless we hamper their ability to do so, if we do not watch ourselves carefully on this legislation.

At some point we must put aside this one-dimensional, simplistic vilification of the pharmaceutical industry and examine more closely the actual substance of the pending legislation.

Are the PhRMA companies always right? No, they are not, and neither are the generic companies always right. Hatch-Waxman created a delicate balance so they were competitive against each other, and it has worked very well.

It is my strong preference to conduct the debate over amending the Hatch-Waxman Act with our eyes focused on the policies, not the politics.

As I said last week, the pending legislation, S. 812, addresses important and complex issues of patent law, civil justice reform and antitrust policy. A strong case could be made that Senate consideration of this bill would be improved if the Judiciary Committee were given the opportunity to study the legislation, review the Federal Trade Commission report, and make its voice heard in this debate. It seems unlikely that anything resembling this process will unfold given the decision to rush the HELP Committee patent, antitrust, civil justice reform bill to the floor of the Senate.

As a threshold matter, it seems to me that before we adopt S. 812, we should be certain that this bill is consistent with the longstanding goals of the statute S. 812 seeks to amend, the Drug Price Competition and Patent Term Restoration Act.

Let me remind my colleagues, the goals of this law, passed in 1984, are twofold:

First, to create a regulatory pathway that allows the American public to gain access to more affordable generic drugs; and,

Second, to create incentives for manufacturers of pioneer drug products to see that the American public has access to the latest, cutting-edge medicines.

As I described last week, the 1984 law is a carefully balanced statute and contains features designed to accomplish these two somewhat conflicting goals. This tension is inherent because of the competing nature of the desire, on one hand, to develop breakthrough drugs and, on the other hand, to make available generic copies of these pioneer products.

As legislation is crafted to address the problems that have arisen up in recent years with respect to the Waxman-Hatch law, we must be careful not to devise a remedy that upsets the delicate balance of the law.

I am concerned that the manner in which the HELP Committee substitute tries to fix the two most widely cited shortcomings of the 1984 law may, in fact, disturb the balance of the statute by, in some areas, overcorrecting and, in other areas, undercorrecting for the observed problems.

Specifically, while the manner in which the Edwards-Collins HELP Committee substitute addresses the 30-month stay issue represents a major improvement over McCain-Schumer bill, I am afraid though, the 30-month stay language represents a case of overcorrection.

Last Thursday, I gave a short summary of the key provisions of the Hatch-Waxman Act. It only took me 1 hour and 32 minutes. After providing this background and context, I explained why I thought that the provisions of the pending legislation relating to patent rights and the 30-month stay went too far. Let me reiterate my concerns with the 30-month stay.

As has been stated by many during this debate, a pioneer drug patent holder, whose patents are under challenge by a generic drug manufacturer, is accorded an automatic 30-month stay. This was not some giveaway to the innovator pharmaceutical industry. We inserted this mechanism to protect the intellectual property of companies that develop patented medications, companies, I might add, that were going to be afforded less intellectual property protections than any other industry as part of the 1984 law. We knowingly added this provision because we wanted to give them a fair opportunity to defend their patents. We know that patent litigation is itself a risky endeavor with the federal circuit court overturning about 40 percent of the trial court decisions in some areas of patent law.

The public policy purpose for this stay is to allow time for the courts to determine the status of validity of drug patents and/or to decide whether valid patents are, or are not, infringed by a generic drug challenger.

That was the intent of the law. Many believe—and I share that view—that the 30-month stay provision has come to present problems in two areas: First, later issued patents that trigger last minute 30-month stays; and, second, multiple uses of the 30-month stay provision in a consecutive, over-lapping manner that work to bar generic competition for as long as the litigation can be made to drag on by lawyers who are paid by the hour.

Some in this debate have characterized that both of these problems are at epidemic proportions. While I think there is evidence that problems have occurred and it is important that we work to modify the law so that the 30-month stay can not be misused in the next few years when so many blockbuster drugs come off-patent we should all take a close look at the FTC report before we conclude that as a general matter the entire research-based pharmaceutical industry has systematically abused the 30-month stay. That is just a speculation at this point until we see all the data.

I will be very interested in what the FTC reports on a number of issues—the frequency of use of multiple 30-month stays; stays stemming from late issued patents; the outcome of litigation on the merits when such multiple stays have been employed; and 11th-hour stays exercised due to late-issued patents.

It seems to me that we should be highly skeptical whenever a patent is listed in the official FDA records, called the Orange Book, years after the FDA approved the drug. One would have to think that all key patents would have been at least applied for prior to the end of the lengthy FDA review.

We all know of the now infamous case of the drug, Buspar. An attempt was made to take advantage of the 30-month stay by listing in the Orange Book a new patent of the metabolite form of the active ingredient of the drug literally in the last day before the original patents were set to expire. A Federal district court stepped in to limit the stay to four months, not 30-months. The appellate court found, however, that this forced de-listing of the patent was improper.

My opinion is that Congress, after getting the better understanding of the facts that the FTC report can provide, should address the consecutive stay and last-minute stay problems.

From what I know today, I am not prepared to conclude that the Edwards-Collins substitute is a measured solution to the cited problems. The bill that passed the HELP Committee and is pending on the floor would limit the 30-month stay to those patents issued within 30-days of FDA approval of the drug. The pending legislation contains major improvements over substantial elements of the McCain-Schumer bill, such as the language that would have completely eliminated the 30-month stay in favor of a system that required case-by-case application of injunctive relief. It is also better than the language the HELP Committee Chairman KENNEDY circulated briefly before the mark-up that would have limited to 30-month stay to certain types of patents.

As I laid out in detail last Thursday, given the facts available at this time, I think a better policy may be to permit one, and only one, 30-month stay to apply to all patents issued and listed with FDA prior to the time a particular generic drug application is filed with the agency, which cannot occur under the law until at least four years have elapsed in the case of new chemical entities. At a minimum, I do not see what justification exists to differentiate, for the purpose of the 30-month stay, patents issued prior to four years after the FDA first approves a drug.

I would also add that in most European nations and in Japan, it is my understanding that the law provides a 10-year period of data exclusivity—independent of patent term before a generic copy may be approved for marketing. The public policy behind these periods of data exclusivity is to recognize the fact that in approving generic drugs, the government regulatory agency is relying upon the extensive, expensive—and prior to enactment of Hatch-Waxman, generally proprietary, trade secret—safety and efficacy data supplied by the pioneer firm.

At any rate, as I explained last week, current U.S. law does not even allow a generic drug applicant to challenge a pioneer firm's patents until four years have elapsed. Why shouldn't, for example, a formulation patent issued one year after a drug is approved not be protected by the 30-month stay if the challenge cannot be made for 3 more years?

The 30-month stay must be understood in the context of the complexities of the 1984 Waxman-Hatch law that generally provides 5 years of marketing exclusivity to pioneer drug products as part of the recognition for allowing the generic firms to rely on the pioneer's expensive safety and efficacy data. Moreover, I think that any discussion of the 30-month stay is incomplete if it does not include the fact that, under Hatch-Waxman, generic drug firms are given a unique advantage under the patent code that allows them to get a head start toward the market by allowing them to make and use the patented drug product for the commercial and ordinarily patent infringing purpose of securing FDA approval and scaling up production.

Let me quickly review the general rule against patent infringement that is set forth in Title 35 of the United States Code, section 271(a). It says:

> . . . whoever without authority makes, uses, offers to sell, or sells any patented invention . . . during the term of the patent . . . infringes the patent.

This is a clear, unambiguous protection of property rights, as it should be to protect the creative genius of America's inventors.

Section 271(e) of title 35 contains the so-called Bolar amendment that was added to the patent code by the Hatch-Waxman Act to create a special exception for generic drug manufacturers. Section 271(e)(1) states:

> It shall not be an act of infringement to make [or] use . . . a patented invention . . . solely for uses reasonably related to the development and submission of information under a federal law which regulates the manufacture, use, or sale of drugs or veterinary biological products.

Essentially, this particular provision I have just read gives generic drug manufacturers a head start over virtually all other producers of generic products. In other words, it gives the generic industry a tremendous advantage. Normally, making and using a patented product for the purpose of securing regulatory approval would be a clear case of patent infringement under section 271(a), but the Bolar Amendment—which overrode a 1984 Federal Circuit Court of Appeals decision that precluded generic drug firms from using on-patent drugs to secure FDA approval or gear up production, in other words, the case overruled that right—allows the generic firms to violate customary patent rights because we put it in Hatch-Waxman. Section 271(e) is the Hatch-Waxman language.

The public policy purpose of the Bolar Amendment meaning the Bolar amendment provided by the Hatch-Waxman Act is to allow generic drug makers to secure FDA approval and come onto the market the day after the patent on the pioneer drug expires. As I explained last week, there is a balance between the head start that the

Bolar Amendment gives to generic manufacturers and the protection that the 30-month stay gives pioneer firms to litigate the validity of their patents.

Given the unique head start that the Bolar Amendment grants generic drug manufacturers over virtually all other generic product manufacturer and the other factors I have discussed, I question whether restricting the 30-month stay to only those patents issued within 30-days of FDA approval is either necessary, fair, or wise.

Moreover, the HELP Committee bill contains file-it-or-lose-it and sue-on-it-or-lose-it provisions as well as a new private right of action which also act to further diminish the value of pharmaceutical patents, or should say pharmaceutical patents, to be more accurate.

Let me first address my concerns regarding the creation of a private right of action, and then move on to the serious and detrimental effects that the file-it-or-lose-it and sue-on-it-or-lose-it provisions would have on pharmaceutical patent holders.

I have two fundamental concerns with authorizing a private cause of action that would allow applicants to bring declaratory actions to correct or delete patent information contained in the FDA "Orange Book."

First, over the past 30 years, the courts have explicitly held that no private right of action is authorized under the Federal Food, Drug, and Cosmetic Act or "FDCA" e.g., "It is well settled . . . that the FDCA creates no private right of action." In re: Orthopedic Bone Screw Products Liability Litigation, 193 F.3d 781, 788 (3d Cir. 1999).

Moreover, the Court of Appeals for the Federal Circuit specifically addressed whether the Waxman-Hatch amendments to the FDCA did not indicate any congressional intent to create a private right of action, stating that the court could "see nothing in the Hatch-Waxman Amendments to alter" the conclusion that private parties are not authorized to bring suit to enforce the FDCA.

By seeking to create a private right of action, this provision represents a truly unprecedented step that runs contrary to 30 years of judicial interpretation. I believe that this would create an unwise, and potentially dangerous precedent that could be used to justify future legislation authorizing private suits to enforce the numerous and varied provisions of the FDCA. Although I understand—and am sympathetic to—the underlying rationale for this provision, I simply do not think that creating a private right of action is an appropriate answer to the problems cited by the advocates of this provision.

Second, as the Administration has succinctly stated: "this new cause of action is not necessary to address patent abuses," and may "unnecessarily encourage litigation" surrounding the approval of new drugs. I certainly agree. Authorizing this new cause of action will not effectively address the alleged patent abuses.

Now, I want to emphasize here that I strongly support efforts to halt anticompetitive abuses of the patent laws and the laws and regulations involving the listing of patent information in the FDA "Orange Book." I am willing to work with members from either side of the aisle on this issue. However, I am convinced that creating a private right of action will not only fail to stop the patent abuses at issue, but will likely have substantial unintended detrimental effects on the drug approval process.

The file-it-or-lose-it provision that says patent rights are waived if each new patent is not promptly filed with FDA and the sue-on-it-or-lose-it provision that would result in the forfeiture of patent rights if a pioneer drug firm does not sue within 45 days of being notified of a patent challenge should be contrasted with current law for all other types of patents. Section 286 of the federal patent code establishes a six-year statute of limitations on seeking damages for patent infringement. Why should this usual six-year period be decreased to 45-days for pharmaceutical patents?

I should also note the section 284 of the patent code explicitly authorizes the courts to award treble damages in patent infringement actions. This is a strong signal that Congress wants to protect intellectual property. We should think twice when we are considering adopting measures, such as the Edwards-Collins language, that act to undermine longstanding patent rights such as the six-year statute of limitation on patent damage actions.

As I said last week, I am mindful that the treble damage provision places a generic firm patent challenger in a difficult decision if the firm were forced to go to market upon a district court decision in a patent challenge situation. That is why I am generally sympathetic to the argument of generic manufacturers that current law should be overturned and any marketing exclusivity a generic firm might earn by beating a pioneer firm's patents should toll from an appellate court decision. In the case of multiple patents and multiple challengers, the policy might have to be refined if the result is that no generic product can reach the market within a reasonable period of time.

As I pointed out, HELP Committee Edwards-Collins language is barely two weeks old, I am not alone in raising concerns about this new language. The Administration opposes this language. The Statement of Administration Policy states, in part, that:

> S. 812 would unnecessarily encourage litigation around the initial approval of new drugs and would complicate the process of filing and protecting patents on new drugs. The resulting higher costs and delays in making new drugs available will reduce access to new breakthrough drugs.

That is important.

I look forward in the next weeks to hearing the detailed comments from Administration experts on these matters as we get the FTC report.

We are also starting to hear from others on this new, substantially changed, language. Senator FRIST placed in the RECORD last week a letter from the Biotechnology Industry Organization that complains about the manner in which the bill undermines existing patent protection.

I would just note that the organization representing our nation's cutting edge biotechnology companies, BIO, expressed great dissatisfaction with this new bill language. The July 15th BIO letter says in part:

> If enacted, these proposals would significantly erode the measures in Hatch-Waxman to ensure an effective patent incentive for new drug development, and would create undesirable precedents for sound science-based regulations of drug products in the United States.

BIO also has some sharp criticism of the patent forfeiture provisions set forth in the file-it-or-lose-it and sue-on-it-or-lose-it clauses in the bill. BIO says:

> This forfeiture will occur without compensation, without a right of appeal and without any recourse. This provision is probably unconstitutional, and in any event is totally unconscionable.

Also adding its voice to the debate over this new, unvetted language is the American Intellectual Property Law Association. The AIPLA is a national bar association representing a diverse group of more than 14,000 individuals from private, corporate, academic and governmental practice of intellectual property law.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of a July 22, 2002 letter from the AIPLA.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN INTELLECTUAL PROPERTY
LAW ASSOCIATION
Arlington, Virginia

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: I am writing on behalf of the American Intellectual Property Law Association to express our concerns about provisions in S. 812 that would undercut long standing principles of patent law and would set an unfortunate example for other nations to emulate.

The AIPLA is a national bar association of more than 14,000 members engaged in private and corporate practice, in government service, and in the academic community. The AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

While we take no position on the need for revisions in the practice of "patent listings" in applications for drug approvals before the FDA, AIPLA believes that providing a new civil action to delist patents is ill advised. Such actions would involve the issues of (a) whether the innovator's product is actually covered by the patent-at-issue and (b) potentially, the validity of the patent. Irrespective of the merits of allowing challenges to the listing on the basis of its accuracy, vesting courts with jurisdiction over patent issues in this circumstance where there is no case or controversy is inappropriate. Such proposed new civil actions would be invitations to increased litigation and threats of litigation over such issues without corresponding public benefit.

If a generic drug company wished to challenge the validity of a listed patent, we would suggest that a far better alternative would be to require that it be through the normal procedure of a request for patent reexamination. To the extent that the existing proceedings might not be considered adequate for such challenges, not only are there bills to strengthen them (H.R. 1866, H.R. 1886, and S. 1754), but there is currently a proposal being developed by the U.S. Patent and Trademark Office to establish a post-grant opposition proceeding that would provide a more robust challenge procedure. Such proceedings are not only handled by the experts in the U.S. Patent and Trademark Office in the first instance, but all appeals would go to the Court of Appeals for the Federal Circuit which handles almost all patent appeals from normal infringement litigation.

Another aspect of S. 812 which we find troubling is the proposed prohibition against a patentee bringing a patent infringement action against a generic drug company for a patent not listed (and/or not properly listed) in an application for FDA approval. Under current provisions in the law, a patent owner loses the right to file a patent infringement law suit which has the effect of staying the FDA's approval of a generic drug for 30 months to allow resolution of the law suit if (a) the patent is not listed with the FDA or (b) the suit is not brought against the generic drug company within 45 days of receiving an appropriate certification notice that is listed patent is either invalid or not infringed. They do, however, retain the right to bring an infringement suit at a later date. The effect of the present amendments would be to take that right away from the patent holder. This would be an arbitrary denial of a remedy guaranteed to patent holders in all fields of technology.

We also point out that the denials of relief noted in the preceding paragraph would be limitations on pharmaceutical patents which could implicate certain non-discriminatory obligations of the United States under the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs), part of the Uruguay Round Agreements. At a time when the Agreement is under challenge from many quarters following the Doha Ministerial Conference, certainly these provisions of S. 812 should be vetted with the Office of the U.S. Trade Representative for their consistency with TRIPs.

In summary, while we take no position on the need for legislation to change the provisions of the 1984 Hatch-Waxman Act or on the merits of the respective positions of innovator drug companies and generic drug companies, we are concerned that these provisions of S. 812 are contrary to good patent law policy and enforcement. Indeed, they would establish principles that would do great harm to the ability of innovators to realize adequate and effective patent protection and set bad examples by the United States when viewed by other nations that are seeking ways to avoid providing such protection. If reform is needed, it should take other forms and directions.

Sincerely,

MICHAEL K. KIRK,
Executive Director.

Mr. HATCH. While taking no position on the need for changing the patent listing provisions of Hatch-Waxman, the AIPLA said that it believes that:

> Providing a new civil action to delist patents is ill advised . . . Irrespective of the merits of allowing challenges to the listing on the basis of its accuracy, vesting courts with jurisdiction over patent issues in this circumstance where there is no case or controversy is inappropriate.

The AIPLA also red flags the file-it-or-lose-it patent forfeiture provisions of the pending legislation by pointing out that these, and I quote,

> . . . would be limitations on pharmaceutical patents which could implicate certain nondiscriminatory obligations of the United States under the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). At a time when the Agreement is under challenge from many quarters following the Doha Ministerial Conference, certainly these provisions of S. 812 should be vetted with the Office of the U.S. Trade Representative for their consistency with TRIPS.

I agree we should hear from United States Trade Representative on this matter. I also agree with the American Intellectual Property Law Association when it closed its letter with the following statement: "If reform is needed, it should take other forms and directions."

Finally, Mr. President, I would like to make my colleagues aware of, and ask unanimous consent to have printed in the RECORD, a statement from the law offices of David Beier.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INNOVATION IN HEALTH CARE AND THE RESULTING IMPROVEMENTS IN MORTALITY AND HEALTH OUTCOMES WILL SUFFER FROM THE RETROACTIVE TAKING OF PROPERTY RIGHTS POSED BY THE SENATE H.E.L.P. COMMITTEE PASSAGE OF THE EDWARDS SUBSTITUTE TO S. 812

In the last 50 years there have been dramatic improvements in life expectancy and better health care outcomes, in pertinent part, because of new drugs and therapies. These advances have occurred because the United States, unlike some other nations, has used a strong patent system to help create a balanced set of incentives. That system of incentives for innovation is at risk, if as proposed in the pending bill, the investment backed and settled property rights in patents are retroactively taken away.

The substitute amendment to the Schumer-McCain bill adopted July 11 proposes to deprive property owners—in this case patent holders—of the most fundamental of property rights, the right to exclude others from using their property without just compensation. The bill works this result by taking away the right to sue. As explained in greater detail, the bill proposes to prevent holders of valid patents from suing generic drug companies. This proposal is not only bad policy but poses at least three serious legal problems.

First, the proposed bill takes away an essential attribute of a patent—the right to enforce it against copiers. This deprivation is either a per se taking of property under the relevant Supreme Court case law, or works a taking in light of the case by case constitutional test outlined by the same court. The pending bill would work a per se taking if a Court determined that the loss of a fundamental right—like the right to sue—was the equivalent of a total physical occupation of a piece of real property. There is a good case that a court would so find. But regardless of whether this proposal would meet that test, the courts would most surely find that the loss of the right to sue would be a taking of property that required just compensation under the other applicable constitutional test.

Under current Supreme Court precedent, if enacted, these amendments would be evaluated under a taking analysis that would measure the nature of the property involved, the nature of the economic right and the degree of governmental interference. In this case, it is well settled law that a patent is a property right. It would be absurd to uphold that right and then claim that barring access to the courthouse does not violate that right. Because this amendment would work a fundamental and retroactive deprivation of those economic rights courts would likely hold that these changes are a taking. Such a finding triggers a requirement of government compensation of the property owners. At the President's Council of Economic Advisers recognized in their report to the President earlier this year, the kinds of inventions at risk here—both breakthroughs and incremental improvements in existing products—are critical to improved health outcomes. That same report also recognized that these products require the free market possibility of substantial profits to sustain the magnitude of the R+D necessary to overcome the risk of research failures, and competition from others also racing to be first on the market with new medical innovations. This reality would mean that a successful taking suit would implicate many claims of significant economic loss. Thus, it is likely that any finding would have very serious implications for the Federal budget.

Second, there is a strong argument that this amendment interferes with the right of patent holders to petition their government through the judicial system for a redress of their grievances. In this case, much like the efforts of others in an earlier time, seeks to prevent courts from enforcing rights guaranteed by the Constitution. This approach can not be justified in light of the compelling constitutional right to have full and fair access to redress grievances.

Third, and finally, this amendment makes artificial and illegal distinctions between types of patents in violation of the United States' obligations under international law. One of the important advances in law, secured at the request of the United States, in the World Trade Organization's Trade Related Intellectual Property system was a bar on discrimination between different technologies. In this case, the amendment proposes to withdraw significant patent rights

> from the holders of certain innovative drug patents that continue to be guaranteed to all other patent holders. Imagine if another nation proposed to cut off the right to sue for infringement for the violation of an aerospace, computer or computer software patent, we certainly would assert that it violated our Nation's rights under TRIPS. The pending amendment offers the same kind of flawed and illegal approach. In the case of a TRIPS violation the penalty could, after adjudication in the WTO, result in the imposition of retaliatory tariffs on American exports.
>
> In sum, the pending amendment is a bad idea on policy grounds, procedurally suspect and legally subject to challenge. Congress should carefully consider the risks to the Federal Treasury that could result if this bill were enacted and the courts uphold a strong "taking" of property claim. Moreover, legislators should also be cognizant of the bad precedent they would be creating by barring access to judicial remedies. Finally, Congress should recognize that if approaches to international obligations like this are adopted, other countries will be more likely to punish American inventions in other sectors, including information technology and aerospace.

Mr. HATCH. Mr. Beier was a member of the staff of the House Judiciary Committee when Hatch-Waxman was adopted in 1984. After that, for many years he headed the Washington office of the biotechnology company, Genentech. Mr. Beier then spent four years serving as the chief domestic policy advisor for Vice President Gore. He is recognized as an expert in high technology issues and is now a partner in highly respected Washington law firm. David is certainly not a conservative Republican although I still have my hopes for him!

In Mr. Beier's view, "the pending amendment is a bad idea on policy grounds, procedurally suspect and legally subject to challenge." Mr. Beier lays out the Takings Clause problems, the procedural due process concerns, and the TRIPS considerations.

With respect to the potential for negative impact on foreign trade Mr. Beier warns:

> Imagine if another nation proposed to cut off the right to sue for infringement for the violation of an aerospace, computer or computer software patent. We would certainly assert that it violated our Nation's rights under TRIPS. The pending Amendment offers the same kind of flawed and illegal approach. In the case of a TRIPS violation the penalty could, after adjudication in the WHO, result in the imposition of retaliatory tariffs on American exports.

Mr. President, I share these concerns. I urge my colleagues to consider the views of BIO, the AIPLA, and David Beier, as well as the other organizations cited by Senator FRIST last week, before we rush to adopt this virtually unvetted, far-reaching language that has not been the subject of a hearing in any committee of Congress. Not the HELP Committee, not the Judiciary Committee, not the Commerce Committee, and not the Finance Committee which has jurisdiction over matters of international trade.

But more important than any payments that the Treasury might be compelled to pay due to judgments related to the Takings Clause or than any retaliatory trade sanctions that the WHO may impose on the United States down the road, we need to consider what the public health consequences might be if we unjustifiably lower protections on pharmaceutical patents.

Don't get me wrong. I am in favor of fierce price competition in the pharmaceutical marketplace. I favor not just less expensive general drugs today, but also better breakthrough drugs tomorrow. We need to keep in mind the relationship between public health and intellectual property. As David Beier has observed with respect to this linkage and the threat of this bill:

> In the last 50 years there have been dramatic improvements in life expectancy and better health care outcomes, in pertinent part, because of new drugs and therapies. These advances have occurred because the United States, unlike other nations, has used a strong patent system to help create a balanced set of incentives. That system of incentives for innovation is at risk, if as proposed in the pending legislation, the investment backed and settled property rights in patents are retroactively taken away.

In short, while better in some key respects than McCain-Schumer, I am afraid that the HELP Committee-reported bill goes too far with respect to the 30-month stay. As I testified before the HELP Committee in May, if the problems we are trying to solve are the multiple use of 30-month stays and 11th hour-issued patents that unfairly trigger the stay, it seems to me that a more appropriate—and more narrowly-tailored—legislative response might be a rule that allows one stay, and one stay only.

Further, it might be appropriate to restrict the use of the sole stay only with respect to those patents listed in the FDA Orange Book at the time when a particular generic drug application is submitted. I will be interested if such a rule satisfies the problems that the FTC finds with respect to abuses of the 30-month stay and how the FTC, FDA, DOJ and other experts and interested parties think about this perspective.

I am open to other alternatives as more information becomes available and more discussion takes place among interested parties.

For now at least, I am forced to conclude that this new NDA-plus 30-day rule coupled with the file-it-or-lose-it and sue-on-it-or-lose-it provisions and the new private right of action amounts to legislative overkill that creates a host of new problems.

In contrast to this over-correction with regard to the 30-month stay, I am concerned that the Edwards-Collins HELP Committee Substitute under-corrects in fixing the 180-day marketing exclusivity issue.

Perhaps no single provision of the 1984 law has caused so much controversy as the 180-day marketing exclusivity rule.

As I explained last week, the statute contains this incentive to encourage challenges that help test the validity of pioneer drug patents and to encourage the development of non-patent infringing ways to produce generic drugs. The policy motivation behind the 180-day rule is to benefit consumers by earlier entry of cost-saving generic products onto the market in situations where patents were invalid or could be legally circumnavigated.

For many years as we intended and envisioned FDA awarded this 180-day exclusivity only to a generic drug applicant that was successful in patent litigation against the pioneer firm. In 1997, FDA's longstanding successful defense requirement was struck down by the D.C. Circuit Court of Appeals in the case of Mova Pharma v. Shalala.

The next year, the D.C. Circuit issued its opinion in Purepac Pharm v. Shalala which upheld FDA's new system of granting the 180-day exclusivity to the first filer of a generic drug application even if the pioneer firm did not sue for patent infringement. Also in 1998, the Fourth Circuit Court of Appeals held in Granutec v. Shalala that a court decision with respect to a second or third filer could trigger the exclusivity period of a first filer.

Taken together, these decisions, which strictly construed the statutory language, awarded the exclusivity to the first filer of a generic drug application. As a co-author of the legislation, I will be the first to concede that we drafters of the 1984 law came up short in this area because we were attempting to reward the first successful challenger, not the first to file papers with the FDA.

Once the successful defense requirement was struck down, the mismatch between first filers of generic drug applications and the generic drug firms actually litigating the patents resulted in a number of controversial contractual arrangements in which generic firms in the first-to-file blocking position were paid by pioneer firms not to go to market. These agreements prevented the 180-day marketing exclusivity clock from ever starting, and the statute prevented FDA from approving second and subsequent filers from going to market.

Here is how my good friend, Bill Haddad, an astute political analyst, generic drug manufacturer, gifted writer, incorrigible liberal, and participant in the 1984 negotiations recalled the intent of the 180-day marketing exclusivity provision:

> There was never any doubt that the goal . . . was to bring generics to the market earlier using the route of legal challenge with a reward to be paid to the entrepreneur with the courage and facts to successfully challenge.

It was and is very clear that the law was not designed to allow deals between brand and generic companies to delay competition.

Unfortunately, the string of court decisions that interpreted these imprecisely drafted statutory clauses has resulted in a wholly unintended result.

As David Balto, a former senior official at the FTC, has described the problem:

> The 180-day exclusivity provision appears to have led to strategic conduct that has delayed and not fostered the competitive process.

Mr. Balto assessed:

> The competitive concern is that the 180-day exclusivity provision can be used strategically by a patent holder to prolong its market power in ways that go beyond the intent of the patent laws and the Hatch-Waxman Act by delaying generic entry for a substantial period.

He is right. He is absolutely right.

This wholly unintended dynamic has properly brought intense antitrust scrutiny. As a matter of fact, in May of 2001, the Judiciary Committee examined the antitrust implications of pharmaceutical patent settlements inspired by the 180-day rule.

The Federal Trade Commission has been very active in this area. The FTC has brought and settled three of these cases in which brand name companies pay generic firms not to compete. At this point I will not go into the details of the consent decrees in the Abbott-Geneva case, the Hoescht-Andrx agreement, and the FTC's settlement with American Home Products. FTC Chairman Tim Muris provided a great deal of information in his testimony before the Senate Commerce Committee in April.

The FTC is doing the right thing in taking enforcement actions against those who enter into anti-competitive agreements that violate our Nation's antitrust laws. Probably in no small part due to the FTC's vigorous enforcement under the existing antitrust laws and the development of Senator LEAHY's Bill, The Drug Competition Act, S. 754, I understand that no more of these type of anti-competitive agreements have been initiated for over two years. The FTC report will no doubt shed light on this area In a post-Enron, post-WorldCom environment, who would be so reckless as to enter into such an agreement? Nevertheless, I must also point out that the agency recently suffered a set back when the FTC administrative law judge issued a ruling in the on-going K-Dur litigation that reminds us that not all pharmaceutical patent settlements are per se violations of federal antitrust law.

In any event, the McCain-Schumer bill addressed the 180-day collusive reverse payments situation by adopting a so-called rolling exclusivity policy. If the eligible generic drug filer does not go to market within a specified time period, the 180-day exclusivity rolls to the next filer.

As I testified before the HELP Committee, I do not favor rolling exclusivity. Here's what Gary Buehler, then Acting Director of FDA's Office of Generic Drugs, said before the Judiciary Committee last year:

> We believe that rolling exclusivity would actually be an impediment to generic competition in that the exclusivity would continue to bounce from the first to the second to the third if, somehow or other, the first was disqualified.

In 1999, FDA proposed a rule which embraced a use it or lose it policy whereby if the first eligible generic drug applicant did not promptly go to market, all other approved applicants could commence sales. Molly Boast, Director of the FTC Bureau of Competition, testified last May that, at the staff level, FTC supported FDA's use it or lose it proposal. If our goal is to maximize consumer savings after a patent has been defeated, I find it difficult to see how rolling exclusivity achieves this goal. I certainly prefer FDA's use it or lose it policy over the McCain-Schumer brand of rolling exclusivity.

In that regard, I must again commend the sponsors of the Edwards-Collins Substitute for rejecting the McCain-Schumer rolling exclusivity policy in favor of what Senator EDWARDS calls modified use-it-or-lose-it. Having said that, I was alarmed to learn that during mark-up Senator EDWARDS responded to a question by stating it was conceivable that his modified use-it-or-lose-it language might actually roll indefinitely. This disturbs me. Every time the exclusivity would roll to another drug firm, consumers will be further away from the day when multi-firm generic price competition can begin in the marketplace.

Frankly, I am not certain that I completely understand how the forfeiture language in Section 5 of the bill works. I do not think I am alone in this confusion. At some point, I would like to engage in a colloquy with the bill managers to ask some questions designed to clarify precisely how this provision works.

Let me say that if the bill reinstates the successful defense requirement and gives awards to the successful challenger so long as the firm goes to market in a timely fashion, I am supportive of the general concept. But I must say that I think that there are some real advantages to Senator GREGG's simple and straight-forward policy of more closely following FDA's old-fashioned use-it-or-lose-it proposal.

As I stated earlier, I am generally sympathetic to the concerns of generic drug firms that any exclusivity awarded should be measured from the time of an appellate court decision. But this principle may not hold up if any form of rolling exclusivity is adopted or if we have multiple patents and multiple challengers, some of whom are attacking on invalidity and some of whom are attacking on non-infringement.

I must say I am troubled by the provision of the bill that appears to grant each generic firm that qualifies for the benefit of the 18-month marketing exclusivity incentive a 30-month period to secure FDA approval, measured from the from the time of the filing of the generic drug application.

Let's say that the first firm eligible to take advantage of the 180-day benefit drops out for some reason. Assume also that the next firm eligible under the terms of Section 5 is in the midst of, for example, a negative good manufacturing inspection and can't go to market, but has say 14 months remaining on the 30-month clock. It would hardly seem like an appropriate outcome if, for example, the next firm eligible on the list already has satisfied all of the FDA requirements and has received tentative final approval, but must wait until the 30-month clock runs out.

I hope that the proponents of the substitute amendment will help us all understand just how Section 5 is intended to work. It is difficult for me to see why we should adopt a policy whereby the balance of the 30-month period described in Section 5(a)(2)"(D)(i)(III)(dd)" on page 44 of the bill, could conceivably be greater than the 180-days of marketing exclusivity. Upon default of the first qualified applicant, why should we wait for a second eligible drug firm to obtain FDA approval when there may be a third, fourth, or fifth applicant in line with FDA approval ready to go?

I hope the sponsors of the legislation are not locked into their so-called modified use it or lose it policy, because I think it would be wise for Congress to step back and reassess the wisdom of retaining the 180-day marketing exclusivity provision in essentially the same form as enacted in 1984. Why not take this opportunity to re-think the 180-day rule?

At one extreme are those who have suggested that the 180-day marketing exclusivity provision may not even be necessary at all. Liz Dickinson, a top-notch career attorney at FDA, has asked: "I suggest we look at whether 180-day exclusivity is even necessary, and I know that there is this idea that it is an incentive to take the risk. I say the facts speak otherwise. If you have a second, third, fourth, fifth generic in line for the same blockbuster drug . . . undertaking the risk of litigation without the hope of exclusivity, is that exclusivity even necessary?"

Ms. Dickinson went on to make the following observation with respect to the 180-day rule, "We have got a provision that is supposed to encourage competition by delaying competition. It has got a built in contradiction, and that contradiction . . . is bringing down part of the statute."

At the Judiciary Committee hearing on May 24, 2001, Gary Buehler, FDA's top official in the Office of Generic Drugs agreed with his colleague's assessment:

> . . . we often have the second, third, fourth, fifth challengers to the same patent, oftentimes when the challengers actually realize that they are not the first and there is no hope for them to get the 180-day exclusivity. So with that in mind, I would agree with Liz's statement that generic firms will continue to challenge patents. Whether the 180-day exclusivity is a necessary reward for that challenge is unknown, but it does not appear that it is.

Keep in mind that both of these FDA officials are career civil servants with no political axe to grind. I personally favor retaining some financial incentive to encourage patent challenges, but in light of this testimony and other factors, I do not think we need to be wedded to the current form of the 180-day exclusivity benefit.

Frankly, I am surprised that neither the McCain-Schumer bill, nor the Kennedy mark, nor the Edwards-Collins amendment, proposed any changes in the current regime in light of the views of the FDA officials among other considerations. But, of course, neither the FDA nor FTC nor any representatives from the Administration testified at the HELP Committee hearing on May 8th.

Senator SCHUMER argues that the task of this legislation is to curb excesses in order to return to the original balance in the 1984 law. But what if conditions have changed and the original balance of the 1984 need to be reassessed? Or what if there was an area that we didn't get right the first time?

For example, consider how Paragraph IV litigation treats patent invalidity and patent non-infringement challenges identically under the 180-day marketing exclusivity rule. But invalidity and non-infringement are two very different theories of the case. Here is what Al Engelberg, a smart and tenacious attorney who specialized in attacking drug patents on behalf of generic drug firm clients, has said about this difference:

> In cases involving an assertion of non-infringement, an adjudication in favor of one challenger is of no immediate benefit to any other challenger and does not lead to multi-source competition. Each case involving non-infringement is decided on the specific facts related to that challenger's product and provides no direct benefit to any other challenger. In contrast, a judgment of patent invalidity or enforceability creates an estoppel against any subsequent attempt to enforce the patent against any party. The drafters of the 180-day exclusivity provision failed to consider this important distinction.

As one of the drafters, I must accept my share of responsibility for not fully appreciating the implications of this distinction. I think what Mr. ENGELBERG is pointing out that the 180-day rule acts as only a floor in non-infringement cases. As long as any patents stand, a particular non-infringer's marketing exclusivity can extend well beyond 180 days until such time as another non-infringer comes along. Conversely, doesn't the 180-day floor work to the detriment of consumers whenever it acts to block market entry of a second non-infringer during the 180-day period? Why shouldn't a second or third non-infringer be granted immediate access to the market as would occur in any other industry? Consumers would reap immediate benefits for price competition.

I hope that my colleagues working on the bill will consider the distinction between invalidity and non-infringement as this debate continues over the next week. While I am of the mind to retain a strong financial incentive to encourage vigorous patent challenges by generic drug firms, we must ask why identical rewards are granted for successful invalidity and non-infringement claims. I welcome the comments and suggestions of my colleagues and other interested parties on this matter

Frankly, I think we need more public discussion and debate about the wisdom of retaining—lock, stock, and barrel—the old 180-day exclusivity award.

For example, even if we adopt the modified use it or lose it approach of the HELP Committee bill and the first qualified generic manufacturer cannot, or will not, commence marketing and the exclusivity moves to the next qualified applicant, why should the second manufacturer get the full 180-days? Why not 90 days? Why not 60 days?

After all, once the exclusivity begins to roll and roll and we move away from granting the marketing exclusivity to the successful generic litigant and Americans always prefer actual winners—we may end up with a mere second filer—and since when does our society grant such lucrative rewards to someone who merely files some papers?

And what is so sacrosanct about 180-days in the first place? It is my information that in 1984 the number-one selling drug in the United States was Tagamet, with domestic sales of about $500 million. I am told that today the cholesterol-controlling medicine, Lipitor, has domestic U.S. sales of over $5 billion. Lipitor sales are 10-times higher in the U.S. than domestic Tagamet sales were in 1984. I understand that worldwide sales of Lipitor are about $7 billion.

Even adjusting for inflation, it seems clear that 180-days of marketing exclusivity is worth more, and a lot more, today than it was worth in 1984.

What might 180-days of marketing exclusivity for today's blockbuster drugs be worth in profits to the generic firm holding the 180-day marketing exclusivity rights?

Let's be frank about what is going on here: Retention of the 180-day marketing exclusivity provision is one of those areas in which both the generic sector and the R&D sector have something of a mutual interest. And when all is said and done, I think that the joint interest of the generics and the pioneer firms is not in perfect alignment with the interests of consumers.

This is so because during the 180-day time frame, when there is only one generic competitor, the pioneer firm does not take anywhere near the hit on market share and profits that occurs when multiple generic firms enter the market. Similarly, the first generic on the market is under no pressure to cut the price anywhere near as much as when there is competition from multiple generic firms.

The report, Drug Trend: 2001, published by Express Scripts, notes this dynamic:

> The AWP [average wholesale price] for the first generic is usually about 10 percent below the brand. After the six month exclusivity granted to the first generic manufacturer, the price paid . . . for the generic quickly falls, often by 40 percent or more, as multiple manufacturers of the same generic product compete for market share. It seems likely that the value of the 180-day marketing exclusivity award today may be worth much more that it was back in 1984—perhaps several hundred million dollars more per blockbuster drug.

Given the dramatic increase in drug sales for today's blockbuster products, it does not seem far-fetched to project that the 180-marketing exclusivity reward can amount to hundreds of millions of dollars—and perhaps over one billion dollars—in profits to the fortunate generic drug manufacturer. I am all for assuring that there are sufficient incentives to ensure patent challenges, but isn't there a limit beyond which we should direct these excess profits back to consumers?

Would we rather see 25 percent to 40 percent of that money in the hands of the trial attorneys who brought the case? Or, would we rather see at least some of those funds earmarked for attorneys' fees, be channeled to help citizens lacking access to prescription drugs?

Shouldn't we get the facts concerning the change in value of the 180-day marketing exclusivity today compared to 1984 and make any appropriate adjustment to this incentive? We don't want to set the incentive so low as to discourage challenges to non-blockbuster patents.

My purpose in rasing these points is to get an indication from the sponsors of this legislation and other interested parties, such as patient advocacy organizations, state Medicaid agencies, and insurers, whether there is interest in discussing the advisability of passing on more of the value associated with the marketing exclusivity to consumers if it appears it is fair to do so.

If there is interest, I would be willing to help fashion an appropriate amendment. It seems to me that we need to provide enough of an incentive to assure vigorous patent challenges, but we should give away no more exclusivity than is necessary. Every day of marketing exclusivity awarded to a generic firm comes at the expense of consumers.

I think we can and should explore this area further.

Let us not too quickly and too blindly retain the basic structure of reward under the 180-day marketing exclusivity provision. Before we change the law, let us have a serious re-examination of whether to retain the 180-day marketing exclusivity in its current form both in terms of the length of the exclusivity period and whether the rewards for successful invalidity and non-infringement challenges should be treated identically.

I urge my colleagues, as well as consumer organizations and pharmaceutical purchasers such as insurers and self-insured businesses to reflect upon what I have said on this subject today.

This is an area in which I think we would be wise to reject Senator SCHUMER's argument that all we are doing with this legislation is restoring the integrity of the old Hatch-Waxman Act. But why should we be governed by the world of 1984 when, for example, the best selling drugs in this country have increased sales by a factor of 10? Why should the value of the marketing exclusivity reward increase in direct proportion?

On a number of occasions, I have commended Senator SCHUMER and Senator MCCAIN for moving their legislation forward, even if the bill that came out of the HELP Committee does not resemble very closely their bill, and I still have problems with the floor vehicle as I have laid out in some detail. I commend them again today.

I hope to return to the floor before this debate ends to offer a few suggestions for a more comprehensive approach to reforming the Drug Price Competition and Patent Term Restoration Act.

This in no way minimizes the importance of he matters that are the subject of the pending legislation, because they are important areas. I do not believe, however, that these are the most important issues we can address.

Rather than focusing on how best to bring the law back to the old days of 1984, as Senator SCHUMER suggests, I want to discuss ways to modify the law to help usher in a new era of drug discovery while, at the same time, increasing patient access to the latest medicines.

Mr. President, I yield the floor.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that following disposition of H.R. 5121, the legislative branch appropriations bill, Rockefeller amendment No. 4316 be agreed to, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that immediately following action on adoption of the Rockefeller amendment, the Senate proceed to the consideration of the conference report to accompany H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, and that it be considered under the following limitations: That there be a time limitation of 2 hours equally divided and controlled between the chair and ranking member of the committee or their designees; that upon the use or yielding back of time, without further intervening action or debate, the Senate proceed to vote on adoption of the conference report.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2003—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to vote on H.R. 5121, the Legislative Branch Appropriations Act.

Mr. REID. Mr. President, I ask for the yeas and nays on the legislative branch appropriations bill.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mrs. CARNAHAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 191 Leg.]

YEAS — 85

Akaka
Allen
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Feingold
Feinstein
Frist
Graham
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thompson
Thurmond
Torricelli
Warner
Wellstone
Wyden

NAYS — 14

Allard
Bayh
Brownback
Bunning
Conrad
Ensign
Enzi
Fitzgerald
Gramm
Inhofe
Roberts
Smith (NH)
Thomas
Voinovich

NOT VOTING—1

Helms

The bill (H.R. 5121) was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. DURBIN. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments and requests a conference with the House on the disagreeing votes of the two Houses.

The PRESIDING OFFICER appointed Mr. DURBIN, Mr. JOHNSON, Mr. REED of Rhode Island, Mr. BYRD, Mr. BENNETT, Mr. STEVENS, and Mr. COCHRAN conferees on the part of the Senate.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 812. The Rockefeller amendment No. 4316 is agreed to, and the motion to reconsider that vote is laid on the table.

The amendment (No. 4316) was agreed to.

SARBANES-OXLEY ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to acompany H.R. 3763, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of July 24, 2002.)

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I suggest the absence of a quorum and ask that the time not be charged against either manager.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Madam President, parliamentary inquiry of the Chair: What is pending before the Senate?

The PRESIDING OFFICER. The debate on the conference report is limited to 2 hours equally divided.

Mr. SARBANES. So there is 1 hour on each side.

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. Madam President, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Madam President, I am very pleased that we are now considering the conference report on the Public Company Accounting Reform and Investor Protection Act of 2002. The Senate approved this legislation on July 15 on a 97–0 vote. Conferees were named promptly both here and in the House, and the conference committee immediately went to work.

Agreement was reached yesterday in the early evening, about 7 o'clock, by the conference committee, and the House took up the conference report this morning and acted on it earlier in the day. The vote, I believe, was 422–3.

The conference report has now come over to us, and obviously, under our procedures, it is our turn to proceed to consider it.

This legislation establishes a carefully constructed statutory framework to deal with the numerous conflicts of interest that in recent years have undermined the integrity of our capital markets and betrayed the trust of millions of investors.

I say to my colleagues that in every one of its central provisions, the conference report closely tracks or parallels the provisions in the Senate bill for which, as I indicated earlier, all the Members present at the time, 97 of us, voted only a short time ago.

This legislation establishes a strong independent accounting oversight board, thereby bringing to an end the system of self-regulation in the accounting profession which, regrettably, has not only failed to protect investors, as we have seen in recent months, but which has in effect abused the confidence in the markets, whose integrity investors have taken almost as an article of faith.

This legislation reflects the extraordinary efforts of many colleagues on both sides of the Capitol. I want especially to recognize and express my deep gratitude to Senators DODD and CORZINE who early on introduced legislation that in many respects serves as the basis for titles 1 and 2 of this legislation.

On the House side, Congressman LAFALCE introduced comprehensive legislation on which we drew.

I also wish to acknowledge the many important contributions that my Republican colleague, Senator ENZI, made at every step in the process. Senator ENZI had legislation of his own, but in addition we worked very closely in the course of developing this legislation. Again and again I was struck by the thoughtfulness and reasonableness of his proposals for improving in the legislation. While in the end not all of them were included in the legislation, a significant number are, and I thank him very much for all his contributions.

Before addressing the major provisions of the legislation, let me make very clear that it applies exclusively to public companies—that is, to companies registered with the Securities and Exchange Commission. It is not applicable to provide companies, who make up the vast majority of companies across the country.

This legislation prohibits accounting firms from providing certain specified consulting services if they are also the auditors of the company. In our considered judgment, there are certain consulting services which inherently carry with them significant conflicts of interest. Auditors, in effect, find themselves in the position of auditing their own work. They may be acting as management of the company, for instance, on personnel matters when, as the outside auditor, they were supposed to be standing one step removed from the company as the outside auditor. This is the reasoning behind the prohibition.

What has happened in recent years is that the fees earned from the consulting work have dwarfed the fees earned from the auditors, which inevitably leads to concerns that punches may be pulled on the audit to accommodate the significant and remunerative involvement on the consulting side. Certain enumerated consulting practices are therefore not allowed, with the exception that a case-by-case exemption can be obtained from the oversight board that this legislation establishes.

The auditor can engage in the balance of consulting services with the pre-approval of the audit committee of the corporation. And of course an auditor can engage in whatever consulting services the firm and the corporation agree upon so long as the firm is not also acting as the corporation's auditor.

The bill sets significantly higher standards for corporate responsibility governance. It requires public companies to have independent audit committees and also enhances the role of the audit committee, which will have responsibility for hiring and firing the auditors and setting their compensation.

The legislation requires full and prompt disclosure of stock sales by company executives. Senator CARNAHAN added an important provision to the bill, requiring electronic filing with respect to such sales. That requirement would take effect in a year's time, to allow time for the necessary systems to be put in place; once in place it will assure prompt and accurate disclosure of these very significant transactions.

The legislation places limits on loans by corporations to their executive officers. It sets certain requirements for disclosure with respect to special purpose entities, which were used by some corporations that have run into such serious difficulty in recent months. It seeks to address the statement of pro forma earnings, in order to assure a more complete and accurate picture of a public company's financial position.

It also addresses the conflicts of interests that arise for stock analysts to whom investors look for impartial research-based advice about stocks. Unfortunately, many of these analysts are under pressure to promote stocks in which their broker-dealer firms may have an investment banking interest; on the one hand they are supposed to give unbiased advice to potential purchasers of stock, whether to buy or sell, but at the same time the firm of which they are a part is interested in developing a business relationship with the company on which the analyst is passing judgment. It has been sobering to discover that analysts have been formally recommending certain stocks to the investing public, while at the same time discussing them contemptuously among themselves. We have had too many demonstrations of this occurring.

The legislation includes provisions to protect analysts against retaliation, in cases where a negative recommendation may invite retaliation. Furthermore, the bill authorizes significant increases in funding for the Securities and Exchange Commission, which for the first time in many years will give it something close to the funding resources it needs.

There are also extensive criminal penalties contained in this legislation. These were initially included in legislation reported by the Judiciary Committee, which Senator LEAHY offered as an amendment to the bill. The House then passed its own bill with respect to criminal penalties, a separate standing bill, which in many instances doubled or even tripled the penalties in the Leahy proposal as it came to the floor, and the Leahy proposals were further supplemented by an amendment from Senators BIDEN and HATCH and another from Senator LOTT.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. SARBANES. I yield myself 4 additional minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. SARBANES. These provisions, among other things, require the CEOs and CFOs to certify their company's financial statements under penalty of potentially severe punishments.

We provide a $776 million authorization for the SEC. I want to spend a minute on this point, because it is very important. The Senate Appropriations Committee is now working on an appropriation that would contain $750 million for the SEC. It is urgent that we provide adequate funding for the Commission, whose responsibilities have expanded as the volume of market activity has grown, but whose funding has lagged. Clearly, the Commission must have the resources necessary to ensure a decisive and expeditious response to the scandals we have seen in recent months, and to minimize the likelihood that we will see others in the future.

I must underscore this point. The Commission has been underfunded, and the result has been understaffing, high staff turnover and low morale as the Commission seeks to carry out its work. The SEC must be in a position to address immediately the problems of inadequate staff resources and inadequate pay.

At the moment, the SEC cannot offer its attorneys and accountants the same level of salary and benefits that their counterparts receive at the five Federal bank regulatory agencies. Talented and dedicated staff attorneys and accountants can increase their compensation by as much as one-third simply by moving to another agency. This is an intolerable situation. Pay parity has been authorized and now must be funded; this legislation specifically provide the necessary funding.

In addition, the authorization provides funding that will enable the Commission to upgrade its technical capacities, its computer systems, and it provides significant resources so that the Commission can augment its staff of attorneys, accountants and examiners at a time when they are needed to address a very heavy workload burden.

As an aside, I mention that this morning the committee reported to the Senate four nominees to bring the Securities and Exchange Commission to its full complement of five members. I very much hope we will be able to approve them next week so that they will be able to take their positions before the August recess. If we do, the Commission will be at full strength. They will all be in place and ready to do the job, and I think that is highly desirable.

In closing, let me say that I believe this conference report reflects our best efforts to deal with issues which we know to be numerous and complex. Throughout the process, we have worked together carefully on these issues. We have sought advice from the most distinguished and experienced practitioners in the field. We held 10 hearings in March with some of the very best experts in the country as our witnesses. We have consulted extensively, and I hope my colleagues will agree in good faith and across party lines. Our vision has been broad, our purpose steady. I think our approach has been reasonable.

We will send to the President legislation establishing a solid statutory framework for the reforms we know are urgently needed.

Our markets have benefited beyond measure from the statutory framework that created the SEC nearly 70 years ago. Indeed, I think we have had a tendency to take that for granted. Those markets have been a very significant economic asset for the United States, and an integral part of our economic strength. This legislation will serve to complement and reinforce that framework, which has served us well, and I believe it will stand the test of time.

Our markets, which have the reputation of being the fairest, the most efficient, the most transparent in the world, have suffered greatly in recent times, so much so that they seem to have lost the confidence of our investors. It is our purpose, with this legislation and through other actions that will have to be taken by the regulatory agencies and by the private sector, to see that once again our capital markets deserve the enviable reputation for fairness, efficiency, and transparency that they have enjoyed through the years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I yield myself such time as I may consume.

I want to begin with some thank-yous and congratulations. First, I want to congratulate Senator SARBANES on this bill, and I want to make note that in a very difficult period, where so many were trying to point the finger of blame, when it seemed almost every day that people were clamoring to make the strongest statement they could make to get the sound bite on television, Senator SARBANES could have taken that same route in the Banking Committee. We are the committee that has jurisdiction over the issues that had been at the very heart of our recent concerns in the capital markets.

However, Senator SARBANES did not take that route. I congratulate him. He not only brought good reflection on himself, but he helped raise the esteem that the Banking Committee is held in and reflected well on the Senate. We had hearings but we were focusing on what could be done to fix the problem. As a result, those hearings were the most productive that were held. They contributed to bringing us to where we are.

Now let me make it clear, from the very beginning there has been a broad consensus, and a very deep consensus, on 90 percent of the issues in this bill. One of my frustrations in this debate—and when you are debating something as high profile as this is, there are frustrations. I am not complaining—as my wife says whenever I complain about this job, not only did nobody force you to take it, but a lot of good people worked hard to keep you from getting it—I am not complaining, but part of our problem has been that the media has wanted to present this as a debate that had to do with how tough people were being, to the exclusion, often, in my opinion, of how reasonable we need to be.

We have before the Senate a bill that is clearly an improvement over the status quo. I don't care how disappointed you are in any one provision—and on several provisions I am very disappointed. No matter how disappointed a Member is, this is an improvement over the status quo, and for two reasons. One is obvious. That is, we needed stiffer criminal penalties. And, second, we needed to create an independently funded and an independently operating accounting oversight board so that we could deal with ethics questions in a framework that will promote high ethical standards, in the framework of independence. In addition, we desperately needed to have an independently funded FASB.

I would just say as an aside, Madam President, over the years I have agreed with FASB in some of their decisions; I have disagreed with FASB on some of their decisions. However, I am proud to be able to say today I have never taken the position that Congress ought to override FASB. As incomprehensible as some of their rulings have been to my way of thinking, having Congress vote on accounting standards is a very dangerous thing.

Some of our colleagues want to vote on the whole issue of expensing stock options. Wherever you come down on that issue, having Congress vote on accounting standards is very dangerous, very counterproductive. I hope that will not happen. Certainly, I am not going to vote to impose accounting standards on this board. We want FASB to set accounting standards. We want to be sure they have the independence that is necessary to allow them to do it.

In those areas there has never been a disagreement on this bill. The disagreements that have occurred have had to do with the perception of individual Members as to what was practical, what was workable, what was desirable. The one view I have always subscribed to, and I would have to say given my period of service in public life I am more convinced of it than ever, is that Thomas Jefferson was right when he said good men—he would say good people today, of course—good men with the same information are prone to have different opinions.

There is a natural tendency in the human mind to think, if people disagree with you, that either, A, they don't know what they are talking about; or B, they don't have good intentions. I subscribe to the Jefferson thesis.

The areas where I disagree with the bill are pretty straightforward. First of all, I believe there is a very real problem in auditor independence. If I were a member of this new accounting oversight board that we are going to put into place and I had to vote on the nine prohibited areas that are written into law in the bill, I would want to study them in detail. I might very well support all nine of them. I do not believe they should be written into law.

The advantages of letting the board set these standards—it seems to me that there are three:

No. 1, the board is going to have more time and more expertise than we have and is likely to do a better job.

No. 2, if we make a mistake and we write it into law, it is hard to fix things that are written into law. As Alan Greenspan has said, if Glass-Steagall, Depression-era banking legislation, had been a regulation, it clearly would have been changed by the 1950s. We did not change it until 1999. It took a long time to change it.

Finally, and probably of greatest importance, there is a natural tendency when we are talking about the problem in an era where we are all reading about Enron and WorldCom and the huge companies, to forget this law will apply to 16,254 companies. Many of these companies are quite small. One of the advantages of allowing the accounting oversight board to set out prohibitions on auditors performing other services in regulation, instead of prescribing them in law, is that the board can find a system whereby they can recognize what is practical in dealing with smaller companies and how that might differ from what is practical for General Motors.

An example that has come to my mind is one where I am operating a small public company, stock traded on an exchange or on Nasdaq, and I employ an accounting firm that has a CPA who basically does my auditing. He is in Houston. I am trying to hire a new bookkeeper in my company. I have three candidates. When my auditor is in town auditing my books, I say: I have these three candidates. I majored in physics in college, and I don't know anything about accounting. Could you interview these three bookkeepers and tell me who you think would be best?

Under this bill, that would be illegal. That would be providing a personnel service. It is prohibited for my auditor to provide that service for me as well.

For General Motors, should your auditor be providing a personnel service? My guess is they probably should not. But for this small company in College Station, Texas, what this prohibition ultimately will do is force them to do one of three things: In all probability, they will hire the bookkeeper without ever getting the advice of a CPA; No. 2, they can hire another CPA to interview these three candidates for a bookkeeper and pay them; No. 3, they can file for a waiver through the SEC and through the board. Each option is a worse choice from those available to such a small company today, and a worse choice for its shareholders.

The bill allows a waiver on an individual company by company basis. I rejoice that is the case. I personally believe we should have given the board, with the agreement of the SEC, the ability to grant blanket waivers based on the circumstances of classes of individual companies.

For example, if you have already granted 1,000 waivers where companies have applied for a waiver for a certain requirement based on their size, their location, practicality, the cost, whatever, at that point shouldn't the board be able to say: We have established this principle, and if your company meets these conditions, you are granted the waiver? Then, all they have to do is prove they meet the conditions.

My concern—and who knows, maybe this will be true, maybe it will not. The problem is we are legislating. We don't know. We can't look into the future. My concern is that by not granting them the ability to provide blanket waivers we are going to force a lot of smaller companies to hire lawyers and lobbyists to come to Washington to petition the SEC and the board. My concern is that this is going to use up their time and use up the resources of companies.

There is another side of this story and that is the concern that blanket waivers could be used to get around the intent of the law. How do you deal with that? How do you find a happy balance? It is not an easy question. I would have to say I believe we have imposed a one-size-fits-all regimentation that is going to be difficult to deal with—not impossible to deal with, but I think it is going to be difficult.

Another problem I have is that we have in this bill an accounting oversight board. Its members are not elected officials. They are not appointed in the sense that they are not Government officials. They will have the ability to make decisions that will affect the livelihood of Americans who are in the accounting profession. They will literally have the ability to say to a CPA: We are taking your license away and you can never practice again in providing accounting services to a publicly traded company.

Clearly, there are cases where that is justified. Clearly, there are cases where people ought to be fined and, clearly, there are cases where people ought to be put in prison. But I think when you are taking people's livelihoods, they ought to have an opportunity to appeal to the Federal district court where they live.

I think there ought to be a burden on them to make their case, and obviously the court is going to take into account that this board, that was duly constituted, made a decision. But I think that is an opportunity that people ought to have that they do not have under this bill.

I am also concerned about litigation. During the whole Clinton administration, there was only one bill where we overrode the President's veto, and that was a bill having to do with private securities litigation reform. We had a massive number of predatory strike suits where people filed lawsuits against companies. They almost always settled out of court. We had one law firm that filed the lion's share of the lawsuits. And the chief lawyer in that company said, in effect, "It is wonderful to practice law where you don't have clients."

That was a mistake when he said that, but he said it.

We took action to try to eliminate or minimize this abuse. In doing so, we codified a 1991 Supreme Court decision that addressed what happens if you think you have been wronged. We are not talking about criminal activity. We are not talking about SEC enforcement. We are not talking about the Justice Department. We are talking about civil disputes that people have. Under that law, in codifying what the 1991 Supreme Court decision said, we said that within a year after you believe you have been wronged, you have to file your lawsuit, and within 3 years after the event happens, you have to file your lawsuit.

One of the things this bill does, which I oppose, is it raises that to 2 years and 5 years, respectively. I would say that if there were evidence that people were not getting these lawsuits filed because of a lack of time, that under the circumstances I think that increasing the statute of limitations would have been justified. But as we have looked at the data, the mean average lawsuit is filed 11 days after the injury is discovered. Something like 90 percent of the lawsuits are filed in the first 6 months. It seems to me that this provision and other provisions of the bill that expand the ability of people to sue may have a positive effect in making people pay attention to their business, but we all know, based on our legal system, that it is going to be abused and that very heavy costs are going to be imposed on the private sector of the economy as litigation costs ultimately are added to the cost of the product that is produced and reduced from the stock value held by shareholders.

I could go on and on. There are other people who want to speak. We are under a time limit. But let me sum up.

I thought about this long and hard, and as I thought about this bill, I had to weigh, Does it do more good than harm? I have concluded that it does. It does less good than it could have done; it does more harm than it should have done—we could have corrected these things—but, quite frankly, in the environment we were in it was impossible. In the environment we were in, where everything was judged on some concept of being tough rather than on practicality and workability, it was impossible for us to come back and deal with these problems.

Finally, in the timeframe that we all faced in conference, we never really got around to discussing the practical kinds of things that do not seem important when you are writing law but seem very important 2 or 5 years later when you are implementing it.

Having said all that, I cannot stand up here and argue that this bill has worsened the status quo. This bill is better than the status quo for two reasons. No. 1, change needs to be made and criminal penalties need to be raised. These independent boards need to be established, and 90 percent of this bill, in my opinion, clearly represents a step in the right direction.

But, second—and this may sound like strange logic but I think it is important. I think to understand American government you have to understand it. The American people expect Congress to respond to a problem. We may not know the answer. We may not have perfect knowledge. But they expect us to try to do something about it. That in and of itself is an argument to which we should respond.

I would argue—being a conservative, as everyone engaged in this debate knows—I would argue we need to be careful. But in the end this bill is an improvement on the status quo. It could have been better. There are changes that could have been made that were not. But in the end, I cannot argue that this bill should not pass, should not become law. The President is going to sign the bill, and clearly he should.

I do believe we will have to come back after the fact and we will have to correct some of these issues. I think as time goes on we will see we may not have done enough in one area. Maybe we went overboard in another area. But the Congress will meet again, people will be paid to do this work, and I am confident that it will be done.

So let me conclude on this thought. I believe the marketplace has gone a long way toward solving this problem. I think the New York Stock Exchange action was excellent. Once again, they are proving that they are a great institution. As I have often said about the New York Stock Exchange, I feel as if I am standing on holy ground at the New York Stock Exchange.

Every boardroom is different from what it was before this crisis started. No one sitting on a board, corporate board or an audit committee, will ever be the same. No auditors will ever look at their task the way they did before all of this started, at least for a very long time: or at least for a very long time.

One of the advantages of having structure is when they forget, the structure won't forget. I totally agree with that. I think this represents a complement to it.

There is much in here I would have done differently. But in the end, I think this is a response that people can say the Government did hear, the Government did care, and Congress did try to fix it. I don't doubt that there are mistakes in here. I think I could name some, if asked to. But, on the whole, this is a response that was aimed at the problem. People went about it in a reasonable manner.

Certainly, the authors of this bill intended to do as good a job as they could do.

I again want to congratulate Senator SARBANES. I also want to thank him, looking back now at how quickly the conference went. I know people were unhappy when we had this period when the floor was tied up, and there were numerous amendments people wanted to add to the bill. But I think, given how the whole thing played out, it worked out from that point of view pretty much right.

If people on Wall Street are listening to the debate and trying to figure out whether they should be concerned about this bill, I think they can rightly feel that this bill could have been much worse. I think if people had wanted to be irresponsible, this is a bill on which they could have been irresponsible and almost anything would have passed on the floor of the Senate.

I think given where we are on this bill that it is a testament to the fact that our system works pretty well.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). Who yields time?

Mr. GRAMM. Mr. President, I yield 12 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Thank you, Mr. President.

I am here today to speak in support of the conference report to the accounting reform bill. I will be encouraging all Senators to vote for the conference report.

This is earthshaking legislation that has been done with tremendous speed. It had to be earthshaking because we are trying to counteract the tremors from the volcanic action of the mountaintop being blown off such companies as Enron, WorldCom, Global Crossing, and others. Those collapses have set up a series of tremors across this country.

Congress is not the one to solve all the problems. But as Senator GRAMM just mentioned, we are expected to work at solving all of the problems. We have put in a huge effort on this bill, and it will make a difference.

While we have been working, the stock market has been going through some tremendous gyrations. I think some of those reactions in the stock market were to see how carefully we would consider and resolve this issue. I believe, the stock market was worried that we would overreact. The market watched to see if Congress would keep adding and adding things, until we destroyed the whole system. They can now see that did not happen—Congress acted responsibly. We took a long and tough look at the problem and reacted, but we did not overreact. At the same time corporations across the country have been making sure they did not have the kinds of problems brought to light in a few of these companies.

"Corporations" should not be a bad word in this country. This country was built on business.

I always like to mention that it was primarily built on small business—small businesses that grew up, in many cases, but nevertheless ideas that started out as a small business.

We have to keep our focus on those small businesses, and make sure they are able to continue to operate in the climate that we have in the United States and under the laws that we pass.

I am pleased to say that the actions we took in this bill provide some assurance to small businesses and small accounting firms that they can continue to operate the way they have in the past.

We have given encouragement to the States not to run out and apply the same types of laws. I hope the States are paying attention because they will ruin a very good thing if they destroy small business. Keep the eye on small business, and we will continue to have big business.

Corporations have been checking what has been going on in their firms to a greater extent than they have ever before. Boards, CEOs, CFOs, and audit committees have been checking to see if they have the kinds of problems that brought down these other companies.

It is much like when there is a plane crash. Right after a plane crash is probably the safest time in the world to fly because everybody checks their equipment ever so much more carefully to make sure that the kind of defects that may have caused other problems will not happen to them. And the effect lasts for a long time afterwards.

Corporations have been checking their books. They have begun changing procedures. Some of the changes they have made have resulted in restatements. They have paid a price for doing restatements. But they have done the right thing by doing a restatement, and they should be recognized for that. I mentioned speed before. The Senate is not designed for speed. We started out slow. We held 10 hearings. We looked at the issues very carefully, everybody resolved in writing their own ideas.

One of the tough things about legislating is putting it down in writing. The concepts are so easy, but the details are so tough.

There are a number of people who drafted bills on this—both in the House and in the Senate. On this side, Senator GRAMM and I drafted a bill. Senator CORZINE and Senator DODD introduced a bill. Of course, Senator SARBANES had the overreaching bill, and I believe his benefited a little bit from having copies of both the House and Senate bills on which to build his bill. I compliment him for the way he took ideas from all of these different approaches.

Again, it shows the value of legislating by a wide variety of people. You get a wide variety of viewpoints, which actually provides some insights into areas that a person might not have thought about.

But, at any rate, we concluded the hearings, and we merged the bill. This came to committee the week before the Fourth of July. It passed out of committee in one day. It came to the floor of this body just 2 weeks ago. And now, it has already been conferenced, and come back to us for final passage. Part of that is a result of the atmosphere we are in, and the need for action. Timing can be everything on a bill. But part of it is because of the concentration of people who worked on this.

This legislation is a response to problems highlighted by the recent corporation failures of Enron, WorldCom, and others. It does send a clear signal to corporate America that executives can no longer abuse the trust their shareholders place in them without severe consequences.

This legislation builds a strong and independent board to oversee the accounting industry. It will eliminate the climate of self-regulation that has historically guided accounting.

However, I would like to make one point clear. I believe that, overall, accountants take their responsibilities very seriously. They did before, and they do now. We have the best system in the world. What we are doing with this is to maintain that we have the best system in the world. Most accountants are honest and hard working. They work for the benefit of the investors with probably the same percentage of exceptions as other professions.

This legislation will also provide for strong disciplinary action against executives who break the law. No longer will they be disciplined with a slap on the wrist. The bill recognizes that executives who destroy the dreams of investors by irresponsible and unethical behavior will be given the severe punishment they deserve.

I also want to again thank Senator SARBANES and Senator GRAMM for their leadership on this issue. They both have worked tirelessly the past few months to get this bill finished in a timely manner. I particularly appreciate some of the insights Senator GRAMM gave me as he worked on this bill in more detail than most people ever achieve. It is his standard, and he carried that out again this time, which did resolve a number of the problems. I want to congratulate Senator SARBANES, and thank him for the way he conducted the hearings. A lot of people do not realize that the Chairman of a committee usually gets to pick most of the witnesses, and the ranking member gets to pick a few of the witnesses.

As we went through these 10 hearings, I couldn't find any witnesses that I wouldn't have picked were I given the selection. There were some very qualified people who testified. Some of them were even accountants. I did appreciate that. I apologize for asking some questions of them but it was such a great opportunity for me. My staff noticed that when the camera focused in on the person giving the answer, the wedge of people behind them were all asleep.

So what we dealt with is not the kind of thing that Americans get really excited about. It is far too detailed for us to get too excited about it. For accountants, these kinds of discussions are almost like watching ESPN.

Senator SARBANES did continue to meet with me and other Members and continued to make changes that improved the bill. There was a wide variety of Senators who worked on this bill. I have mentioned Senators DODD and CORZINE and GRAMM. Senator EDWARDS worked with me on one provision that is in this bill to make sure that not only accountants, analysts, CEOs, CFOs, Boards and audit committees were addressed under this bill, but lawyers have some responsibility, too.

I find it very exciting we are going to make lawyers have a code of ethics when they are dealing with the Securities and Exchange Commission, and that they are going to have an obligation to report things when they find them. I know that causes some consternation among some attorneys, but I think it will make, overall, the same kind of improvements we are expecting from everybody else.

Senators ALLEN, GREGG, BAUCUS, GRASSLEY, and KENNEDY all worked on some provisions that we don't talk about too much; again, it is in the detail area, but it has to do with the blackout period when you are dealing with pension and other stock sales by executives. I know the intense hours it took to come up with a solution that would work. And if you have that many people agreeing on it, there is probably a good chance it will work.

Again, I congratulate all those people for their constraint in limiting their ideas to what needed to be done for this bill. A lot of ideas were floating around here on lots of things we can with corporations and executives that people want to have fixed, but this bill did maintain some real constraint to stay on topic.

I do believe the conference report is an improved bill from the one that passed the Senate. Again, I appreciate Senator SARBANES working with me to make some of the changes about which I spoke.

One change we made changes the implication that not all nonaudited services should be presumed illegal. The bill has been changed to clearly allow the audit committee to make that determination without the law implying that it is illegal.

In addition, he made some changes dealing with the testing of internal compliance. I believe the new language more clearly represents the true role of auditors. One of the problems we dealt with throughout this process is educating Members on exactly what the role of an auditor is. I believe the new language represents that realization, and I thank the chairman for making the change.

There is another important change in the provision dealing with corporate loans. The provision would still prohibit corporate executives from reaping millions of dollars in loans from their companies, but the new language also realizes that executives need to use things such as credit cards to conduct their business. So this section is a vast improvement.

Another item I would like to comment on is the understanding that insurance companies, many times, have audits they must file with their State regulators. It would be burdensome and expensive to require these companies to hire a separate auditing firm to perform this responsibility. That problem was also recognized, and the needed changes were made.

However, I also understand that due to the time constraints, a report will not be filed with the bill. I think this will pose a series of problems because we will not be defining what the authors actually intended with certain sections of the bill and allowing the same written discourse that there would be on the bill. I think this may especially cause problems with the extraordinary number of regulations that are going to have to be written to implement the bill.

As the ranking member of the subcommittee with jurisdiction over the Securities and Exchange Commission, I do intend to work closely with the Commission to ensure that the new regulations are consistent with what I see as congressional intent. I will work with others to make sure these regulations conform.

I ask the ranking member, could I have an additional 3 minutes?

Mr. GRAMM. Sure.

Mr. President, I yield an additional 3 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank the Senator.

Mr. President, some of the issues that did not come up in this bill dealt with FASB. We did something marvelous for FASB. We made sure of its independence. One way we made sure of its independence, besides citing in the law, was to make sure FASB has independent funding. They will not have to come to Congress with a budget. And they will not have to go to corporate America for funding. They will get independent funding to be able to do the job they need to do. That will inhibit us from trying to change what they are doing in setting accounting standards.

I am pleased to state that we have taken a look at the things they are working on right now. They are working on four issues that are extremely important to make sure what happened with other companies will not happen again.

I have to tell you, in those four things they have listed as a priority, one of them is not stock options and what to do with them. They do need to address that, but I certainly hope that Congress does not decide that what we see as a problem does supersede other problems that may have caused collapses such as Enron's.

So I hope we will not get in a position of dictating now to FASB what they should be working on, and in what order, and to what degree, or, worse yet, just going ahead and passing accounting standards on our own.

With respect to section 302, the conference recognizes that results presented in financial statements often necessarily require accompanying disclosures in order to apprise investors of the company's true financial condition and results of operations. The supplemental information contained in these additional disclosures increases transparency for investors. Accordingly, the relevant officers must certify that the financial statements together with the disclosures contained in the periodic report, taken as a whole, are appropriate and fairly represent, in all material respects, the operations and financial condition of the issuer.

I also believe the conferees contemplate that the Board will have discretion to contract or outsource certain tasks to be undertaken pursuant to this legislation and the regulations promulgated under the Act. The Board may outsource functions which can be done more efficiently by existing and established organization. An exercise of discretion in this manner does not absolve the Board of responsibility for the proper execution of the contracted or outsourced tasks.

I also believe that the Conferees expect that the Board and the standard setting body will deem investment companies registered under Section 8 of the Investment Company Act of 1940 to be a class of issuers for purposes of establishing the fees pursuant to this section, and that investment companies as a class will pay a fee rate that is consistent with the reduced risk they pose to investors when compared to an individual company. Audits of investment companies are substantially less complex than audits of corporate entities. The failure to treat investment companies as a separate class of issuers would result in investment companies paying a disproportionate level of fees.

In addition, I believe we need to be clear with respect to the area of foreign issuers and their coverage under the bill's broad definitions. While foreign issuers can be listed and traded in the U.S. if they agree to conform to GAAP and New York Stock Exchange rules, the SEC historically has permitted the home country of the issuer to implement corporate governance standards. Foreign issuers are not part of the current problems being seen in the U.S. capital markets, and I do not believe it was the intent of the conferees to export U.S. standards disregarding the sovereignty of other countries as well as their regulators.

I also realize inconsistencies appear in sections 302 and 906. The SEC is required to complete rulemaking within 30 days after the date of enactment with regard to CEO certification under section 302. However, section 906 suggests that certification would be required upon enactment, thus the penalties would go into effect before the certification requirement is completed through the rulemaking process. I believe it was the intent of the Conferees that the penalties under section 906 should not become effective until the rulemaking process is finalized.

Under the conference report, section 3(a) gives the SEC wide authority to enact implementing regulations that are "necessary or appropriate in the public interest." I believe it is the intent of the conferees to permit the Commission wide latitude in using their rulemaking authority to deal with technical matters such as the scope of the definitions and their applicability to foreign issuers. I would encourage the SEC to use its authority to make the act as workable as possible consistent with longstanding SEC interpretations.

Finally, I not only thank the Senators I have been able to work with on this, but I also thank the staffs. I thank particularly Katherine McGuire, my legislative director, and Mike Thompson, who handles my banking issues. I also thank Kristi Sansonetti, who works on all of my legal issues, and Ilyse Schuman, who played a very important role in the blackout pension period.

I thank, on Senator SARBANES's staff, Steve Harris, Marty Gruenberg, Steve Kroll, Dean Shahinian, Lynsey Graham, and Vince Meehan.

I thank, on Senator GRAMM's staff, Wayne Abernathy, Linda Lord, who is probably one of the most knowledgeable lawyers in this area I have ever encountered, Michelle Jackson and Stacie Thomas.

And, on Senator DODD's staff, I thank Alex Sternhell.

America will never know all the work these people have done on this bill, the hours they have spent on it, daytime and nighttime. I have seen them working in the early morning hours on this, and that is after spending the previous night working on it. They have just spent incredible time on this.

There is some incredible expertise among these people. Without their help, we would have never gotten to this point. So I thank all of them.

I thank the chairman and Senator GRAMM and all the others who have had a part in this. It is time we adopt this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, let me first say, I think Senator ENZI has been extremely gracious in recognizing the extraordinary contribution that has been made by the staff as we have formulated this legislation. I appreciate him doing that. I certainly associate myself with his remarks about the dedication and the perseverance and the extraordinarily high level of competence that is brought to this matter by staff on both sides of the aisle—committee staff and personal staff.

Mr. President, I yield 10 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I am honored today to stand before the Senate to express my strong support and appreciation for the conference report that I suspect, within an hour or so, we will adopt, and, hopefully, unanimously, as we did the original bill that came out of the Senate.

I think it is historic. I think it is truly critical in bringing about the kind of important reforms that will make a real difference to our financial system, not just today but I think as a standard it will be very much an important part of the structure of our financial system for decades to come.

I have said often, since we have talked about this legislation, that it really does, in my mind, fill a large gap that has been missing in our securities laws that were written 70 years ago. I think it very well may be the most important step we will have taken in that interim period, to make sure we have a measured but strong securities and reporting structure in our Nation that makes for the depth and breadth and beauty and effectiveness of our financial markets.

This legislation, as has been noted, comprehensively deals with reform of our accounting profession, enhances corporate accountability, improves transparency, moderates conflicts in a number of parts of our financial world, deals with the transparency of corporate financial statements, strengthens the SEC, tightens penalties and more securely sets the law, and ultimately, I believe, will restore the trust, the needed trust, and investor confidence in the integrity of America's capital markets.

This was an absolutely necessary step at this time in our Nation's history. There has been an enormous betrayal of trust, demonstrated, certainly, by the headlines and the litany of corporate abuses. Let me say, it goes deeper than just the headlines. There have been 1,100 corporate earnings restatements in the last 4 years. There is a basic loss of more than just the simple sense of trust that people get from the headlines. It is hard for people to make investment decisions when they don't have good facts, good numbers, and the ability to draw good conclusions about where the investor dollar should go.

It has led to a misallocation of capital. And there was a serious need for people to have reform in this area because this betrayal really went at the heart of why people were employees of various firms, why investors put their trust in investing in companies, and why the American system, which so relies on trust, has been called into question with respect to the integrity of our financial markets in recent days.

It is an extraordinary step. I am pleased to have been a part of it.

I see the chairman just left the Chamber. I want to take a few moments to make sure he knows how strongly I feel about the leadership he played. For those who were not a part of this measured process that Chairman SARBANES put forward—I have said this to him personally—the 10 hearings we had were the moral equivalent of a graduate finance program. I suspect that very few times in congressional history have we seen the breakdown in the detail and presentation of sophisticated information, complicated topics, presented with the security and integrity that were presented in our hearings that led to the creation of this legislation. He did an incredible job of putting together a bill.

I get a little nervous when I hear people say this was a rush to justice, a rush to an answer. This was one of the most thoughtful and measured programs of review put in place before the legislation was written that absolutely could ever have been conceived. He deserves enormous credit for making sure we were thoughtful in the process.

Like Senator ENZI, I compliment all the staffs who were involved in this. This was an incredible effort on all of their parts. From the bottom of my heart—and I am sure all those others who were involved in this process—I truly appreciate the thoughtfulness and care they all gave to it.

I also would be remiss if I did not mention Senator DODD for his great help in originally putting together our initiatives with regard to accounting reform, corporate oversight, and resourcing the SEC, which I think are fundamental parts of the legislation. We feel good about that. I think Senator DODD has taken an extraordinary step in leadership.

Once again, I say to the Senator from Wyoming, this is about making America better. It is fundamentally about doing the right thing at the right time. His leadership on that, to make sure we stayed constrained, as he says, thoughtful, and measured about how we addressed the problem, has been most appropriate, and I have appreciated the opportunity to work with him. I compliment him for that effort.

I would say the same about the Presiding Officer. The addition of a number of the amendments that have come, particularly with regard to bringing in the responsibility that is associated with lawyering in America, as important as it is for accountants and CFOs and CEOs, I think was an important step. There has been a lot of really great effort here.

Now that the chairman is back in the Chamber, I want to say again, this is a classic example of quality leadership, of thoughtful leadership, and getting to a result that will make a difference in the lives of Americans in the years ahead.

This is a little more personal for me because for the 5 years before I came here, I was a CEO. Sometimes you want to hide from that moniker these days since it is not so popular. I think these days about the words of Andy Grove, who said that he was ashamed and embarrassed by some of the actions and many of the actions that are associated with the abuse we have seen. I stand with Andy Grove on that.

This is not one of our prouder moments in our financial system. But what does make me proud is that we could work together in a bipartisan way to come to a thoughtful, measured response that will make a difference, that really will move our securities laws in a direction that will give the American people confidence in how they read an income statement, when they look at a balance sheet and when they judge where they want to work, that they will have the necessary information.

I am not going to go into detail on the bill. Senator SARBANES and Senator ENZI did that. It is a great piece of legislation. I don't think it went too far at all. In fact, I think it is about spot on. I am sure there will be things we will need to review in time, tweak with, but this is a good set of initiatives which will make a difference in America's financial system.

When we address these issues, it does beg to recognize that there are additional tasks that need to be addressed. I heard the chairman talk about it is not good enough to authorize; we have to appropriate the funds to go with the necessary obligations we put on the SEC; we need to make sure our new advisory board actually has the resources. I think we do. But their independence, their ability to function, will come because they have the resources. The same as the SEC; we have to do our job in the second part of this to make sure those resources are available.

We do need to make sure the SEC Commissioners are in place so that we can have a credible process of looking at enforcement and review of laws and making sure that as we structure the SEC in the days going forward, we have the best of minds brought to bear there. I hope we can vote on these Commissioners very quickly.

For myself—I know there are differences of views about this—there are other unmet items on the agenda. Not necessarily do they apply to this bill, but in my view we should, as a nation, deal with the stock options issue. I don't think Congress should write the accounting rules, but I believe to recognize that stock options are an expense is relatively self-evident to those who have operated in business. They are used as a substitute for compensation. Compensation is an expense. That is why you see Chairman Greenspan and all of what I think is the critical weight of those who have observed on this issue speaking out that this is an issue that needs to be addressed. The Bermuda registry of companies, derivatives regulation are also issues.

Could I have 1 additional minute?

Mr. SARBANES. I yield an additional minute.

The PRESIDING OFFICER. The Senator may continue.

Mr. CORZINE. We need to address these issues. There are missing gaps in other parts of our oversight of our securities markets and financial markets that need to be addressed.

Finally, I believe there is a gaping hole in our oversight of what our investors and employees and the public need to see addressed, and that is pension reform. I know working their way through Congress right now are a number of initiatives on it. Fewer than 50 percent of Americans have pensions. We have a major need to address this. We should pull it together in as thoughtful a way as Chairman Sarbanes has led our Senate to this conclusion, led this debate to a positive conclusion. I hope we will address that in the future. So, once again, I express my great gratitude to all those involved. I particularly thank Chairman SARBANES for his strong leadership.

Mr. SARBANES. Mr. President, I thank the able Senator from New Jersey for his kind and gracious remarks about my efforts. I underscore the enormously valuable contribution that Senator CORZINE made to the development not only of this legislation but all of the work that has come before the committee. He brought a perspective and perception here that were extremely important, enabling us to work through some difficult issues. I appreciate that.

I yield 7 minutes to the Senator from Vermont, chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the chairman. The Senator from California wishes 1 minute. I yield 1 minute to her.

Mrs. BOXER. Mr. President, I came to the floor to give my deepest thanks to Senator SARBANES and Senator LEAHY for leading us in just the way we needed to be led toward a tough, fair reform that would lead to confidence in our financial system. I also thank Senator ENZI for his work.

I was a stockbroker years ago, decades ago, and in those days the big accounting firms were known for their integrity, and CEOs were highly respected. That check and balance was lost along the way and it must be restored.

I believe this bill will do it and our people will, once again, have trust and confidence in our financial system. They will know when they read an annual report and it is signed off on by an accounting firm that it means what it says and says what it means. That will bring the stock market back into balance. It will not happen tomorrow. This isn't magic legislation. But over time confidence will be restored and our economy will be on solid footing once again. I thank my friends.

Mr. LEAHY. Mr. President, I thank Chairman SARBANES for his leadership on this impressive bill and on the conference agreement. The then-Congressman SARBANES was one of the first people I met when I came to Washington as an elected Member of this body. We have been friends from that time forward. I have been so pleased to work with him.

I am proud that the conference agreement includes and adopts the provisions of the Leahy-McCain amendment, which the Senate adopted by a 97-to-0 vote—again, with the strong help and support of the Senator from Maryland.

These provisions are nearly identical to the Corporate and Criminal Fraud Accountability Act, which I introduced with Majority Leader DASCHLE and others in February. It was reported unanimously by the Senate Judiciary Committee in April.

The Presiding Officer helped get this through the Judiciary Committee. The Leahy-McCain amendment provides new crimes with tough criminal penalties to restore accountability and transparency in our markets. It accomplishes this in three ways: No. 1. It punishes criminals who commit corporate fraud. No. 2. It preserves evidence that can prove corporate fraud. No. 3. It protects victims of corporate fraud.

As a former prosecutor, I know nothing focuses one's attention on the question of morality like seeing steel bars closing on them for a number of years because of what they did.

The conference report includes a tough new crime of securities fraud which will cover any scheme or artifice to defraud investors. We added the longer jail term of the other body.

There are three key provisions of the Senate-passed bill that were not in the recently passed House bill but are now in the conference agreement. I think they are truly an essential part of a comprehensive reform measure. First, we extend the statute of limitations in securities fraud cases. In many of the State pension funds cases, the current short statute has barred fraud victims from seeking recovery for Enron's misdeeds in 1997 and 1998. For example, Washington State's policemen, firefighters, and teachers were blocked from recovery of nearly $50 million in Enron investments by the short statute of limitations. That is why the last two SEC Chairmen—one a Republican and the other a Democrat—endorsed a longer short statute of limitations to provide victims with a fair chance to recoup their losses.

Secondly, we include meaningful protections for corporate whistleblowers, as passed by the Senate. We learned from Sherron Watkins of Enron that these corporate insiders are the key witnesses that need to be encouraged to report fraud and help prove it in court. Enron wanted to silence her as a whistleblower because Texas law would allow them to do it. Look what they were doing on this chart. There is no way we could have known about this without that kind of a whistleblower. Look at this. They had all these hidden corporations—Jedi, Kenobi, Chewco, Big Doe—I guess they must have had "little doe"—Yosemite, Cactus, Ponderosa, Raptor, Braveheart. I think they were probably watching too many old reruns when they put this together. The fact is, they were hiding hundreds of millions of dollars of stockholders' money in their pension funds. The provisions Senator GRASSLEY and I worked out in Judiciary Committee make sure whistleblowers are protected.

Third, we include new anti-shredding crimes and the requirement that corporate audit documents be preserved for 5 years with a 10 year maximum penalty for willful violations. Prosecutors cannot prove their cases without evidence. As the Andersen case showed, instead of just incorporating the loopholes from existing crimes and raising the penalties, we need tough new provisions that will make sure key documents do not get shredded in the first place.

It only takes a minute to warm up the shredder, but it can take years for prosecutors and victims to prove a case.

The conference report also maintains almost identical provisions to those authored by Senator BIDEN and approved unanimously by the Senate. These include enhanced criminal penalties for pension fraud, mail fraud, wire fraud, and a new crime for certifying false financial reports. As chairman of the Judiciary's Subcommittee on Crime and Drugs, Senator BIDEN deserves praise for his leadership of these issues.

It is time for action—decisive and comprehensive reforms that will restore confidence and accountability in our public markets for the millions of Americans whose economic security is threatened by corporate greed.

We cannot stop greed, but we can keep greed from succeeding.

We have seized this moment to make a good beginning to fashion protections for corporate fraud victims, preserve evidence of corporate crimes and hold corporate wrongdoers accountable. We have much to do to help repair the breaches of trust that have so shattered confidence in our markets and market information. We have made a good start today toward restoring that confidence but more will be needed. In addition we will need swift and strong enforcement actions and good faith administration of the reform set forth in our conference report. Our conference is concluding but our work is just beginning.

Again, I thank the Senator from Maryland.

Mr. President, I ask unanimous consent that a section by section analysis and discussion of Title VIII, the Corporate and Criminal Fraud Accountability Act, which I authored, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS AND DISCUSSION OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT (TITLE VIII OF H.R. 2673)

Title VIII has three major components that will enhance corporate accountability.

Its terms track almost exactly the provisions of S. 2010, introduced by Senator Leahy and reported unanimously from the Committee on the Judiciary. Following is a brief section by section and a legal analysis regarding its provisions.

SECTION-BY-SECTION ANALYSIS

Section 801.—Title. “Corporate and Criminal Fraud Accountability Act.”

Section 802. Criminal penalties for altering documents

This section provides two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records.

First, this section would create a new 20-year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the intent to obstruct an investigation or matter that is, as a factual matter, within the jurisdiction of any federal agency or any bankruptcy. It also covers acts either in contemplation of or in relation to such matters.

Second, the section creates a new 10-year felony which applies specifically to the willful failure to preserve audit papers of companies that issue securities. Section (a) of the statute has two sections which apply to accountants who conduct audits under the provisions of the Securities and Exchange Act of 1934. Subsection (a)(1) is an independent criminal prohibition on the destruction of audit or review work papers for five years, as that term is widely understood by regulators and in the accounting industry. Subsection (a)(2) requires the SEC to promulgate reasonable and necessary regulations within 180 days, after the opportunity for public comment, regarding the retention of categories of electronic and non-electronic audit records which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers. Willful violation of such regulations would be a crime. Neither the statute nor any regulations promulgated under it would relieve any person of any independent legal obligation under state or federal law to maintain or refrain from destroying such records. In Conference language was added that further clarified that the rulemaking called for under the (b) provision was mandatory, and gave the SEC authority to amend and supplement such rules in the future, after proper notice and comment.

Section 803.—Debts nondischargeable if incurred in violation of securities fraud laws

This provision would amend the federal bankruptcy code to make judgments and settlements arising from state and federal securities law violations brought by state or federal regulators and private individuals nondischargeable. Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. The section, by its terms, applies to both regulatory and more traditional fraud matters, so long as they arise under the securities laws, whether federal, state, or local.

This provision is meant to prevent wrongdoers from using the bankruptcy laws as a shield and to allow defrauded investors to recover as much as possible. To the maximum extent possible, this provision should be applied to existing bankruptcies. The provision applies to all judgments and settlements arising from state and federal securities laws violations entered in the future regardless of when the case was filed.

Section 804.—Statute of limitations

This section would set the statute of limitations in private securities fraud cases to the earlier of two years after the discovery of the facts constituting the violation or five years after such violation. The current statute of limitations for most private securities fraud cases is the earlier of three years from the date of the fraud or one year from the date of discovery. This provision states that it is not meant to create any new private cause of action, but only to govern all the already existing private causes of action under the various federal securities laws that have been held to support private causes of action. This provision is intended to lengthen any statute of limitations under federal securities law, and to shorten none. The section, by its plain terms, applies to any and all cases filed after the effective date of the Act, regardless of when the underlying conduct occurred.

Section 805.—Review and enhancement of criminal sentences in cases of fraud and evidence destruction

This section would require the United States Sentencing Commission (“Commission”) to review and consider enhancing, as appropriate, criminal penalties in cases involving obstruction of justice and in serious fraud cases. The Commission is also directed to generally review the U.S.S.G. Chapter 8 guidelines relating to sentencing organizations for criminal misconduct, to ensure that such guidelines are sufficient to punish and deter criminal misconduct by corporations. The Commission is asked to perform such reviews and make such enhancements as soon as practicable, but within 180 days at the most.

Subsection 1 requires that the Commission generally review all the base offense level and sentencing enhancements under U.S.S.G. §2J1.2. Subsection 2 specifically directs the Commission to consider including enhancements or specific offense characteristics for cases based on various factors including the destruction, alteration, or fabrication of physical evidence, the amount of evidence destroyed, the number of participants, or otherwise extensive nature of the destruction, the selection of evidence that is particularly probative or essential to the investigation, and whether the offense involved more than minimal planning or the abuse of a special skill or position of trust. Subsection 3 requires the Commission to establish appropriate punishments for the new obstruction of justice offenses created in this Act.

Subsections 4 and former subsection 5 of the Senate passed bill, which was moved to Title 11 in Conference, require the Commission to review guideline offense levels and enhancements under U.S.S.G. §2B1.1, relating to fraud. Specifically, the Commission is requested to review the fraud guidelines and consider enhancements for cases involving significantly greater than 50 victims and cases in which the solvency or financial security of a substantial number of victims is endangered. New Subsection 5 requires a comprehensive review of Chapter 8 guidelines relating to sentencing organizations. It is specifically intended that the Commission's review of Section 8 be comprehensive, and cover areas in addition to monetary penalties, additional punishments such as supervision, compliance programs, probation and administrative action, which are often extremely important in deterring corporate misconduct.

Section 806.—Whistleblower protection for employees of publicly traded companies

This section would provide whistleblower protection to employees of publicly traded companies. It specifically protects them when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping fraud. If the employer does take illegal action in retaliation for lawful and protected conduct, subsection (b) allows the employee to file a complaint with the Department of Labor, to be governed by the same procedures and burdens of proof now applicable in the whistleblower law in the aviation industry. The employee can bring the matter to federal court only if the Department of Labor does not resolve the matter in 180 days (and there is no showing that such delay is due to the bad faith of the claimant) as a normal case in law or equity, with no amount in controversy requirement. Subsection (c) governs remedies and provides for the reinstatement of the whistleblower, backpay, and compensatory damages to make a victim whole, including reasonable attorney fees and costs, as remedies if the claimant prevails. A 90 day statute of limitations for the bringing of the initial administrative action before the Department of Labor is also included.

Section 807.—Criminal penalties for securities fraud

This provision would create a new 10-year felony for defrauding shareholders of publicly traded companies. The provision would supplement the patchwork of existing technical securities law violations with a more general and less technical provision, with elements and intent requirements comparable to current bank fraud and health care fraud statutes. It is meant to cover any scheme or artifice to defraud any person in connection with a publicly traded company. The acts terms are not intended to encompass technical definition in the securities laws, but rather are intended to provide a flexible tool to allow prosecutors to address the wide array of potential fraud and misconduct which can occur in companies that are publicly traded. Attempted frauds are also specifically included.

DISCUSSION

Following is a discussion and analysis of the Act's Title 8 provisions.

Section 802 creates two new felonies to clarify and close loopholes in the existing criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records. First, it creates a new general anti shredding provision, 18 U.S.C. §1519, with a 10-year maximum prison sentence. Currently, provisions governing the destruction or fabrication of evidence are a patchwork that have been interpreted, often very narrowly, by federal courts. For instance, certain current provisions make it a crime to persuade another person to destroy documents, but not a crime to actually destroy the same documents yourself. Other provisions, such as 18 U.S.C. §1503, have been narrowly interpreted by courts, including the Supreme Court in United States v. Aguillar, 115 S. Ct. 593 (1995), to apply only to situations where the obstruction of justice can be closely tied to a pending judicial proceeding. Still other statutes have been interpreted to draw distinctions between what type of government function is obstructed. Still other provisions, such as sections 152(8), 1517 and 1518 apply to obstruction in certain limited types of cases, such as bankruptcy fraud, examinations of financial institutions, and healthcare fraud. In short, the current laws regarding destruction of evidence are full of ambiguities and technical limitations that should be corrected. This provision is meant to accomplish those ends.

Section 1519 is meant to apply broadly to any acts to destroy or fabricate physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States, or such acts done either in relation to or in contemplation of such a matter or investigation. The fact that a matter is within the jurisdiction of a federal agency is intended to be a jurisdictional matter, and not in any way linked to the intent of the defendant. Rather, the intent required is the intent to obstruct, not some level of knowledge about the agency processes of the precise nature of the agency of court's jurisdiction. This statute is specifically meant not to include any technical requirement, which some courts have read into other obstruction of justice statutes, to tie the obstructive conduct to a pending or imminent proceeding or matter by intent or otherwise. It is also sufficient that the act is done "in contemplation" of or in relation to a matter or investigation. It is also meant to do away with the distinctions, which some courts have read into obstruction statutes, between court proceedings, investigations, regulatory or administrative proceedings (whether formal or not), and less formal government inquiries, regardless of their title. Destroying or falsifying documents to obstruct any of these types of matters or investigations, which in fact are proved to be within the jurisdiction of any federal agency are covered by this statute. Questions of criminal intent are, as in all cases, appropriately decided by a jury on a case-by-cases basis. It also extends to acts done in contemplation of such federal matters, so that the timing of the act in relation to the beginning of the matter or investigation is also not a bar to prosecution. The intent of the provision is simple; people should not be destroying, altering, or falsifying documents to obstruct any government function. Finally, this section could also be used to prosecute a person who actually destroys the records himself in addition to one who persuades another to do so, ending yet another technical distinction which burdens successful prosecution of wrongdoers.1 6

Second, Section 802 also creates a 10 year felony, 18 U.S.C. §1520, to punish the willful failure to preserve financial audit papers of companies that issue securities as defined in the Securities Exchange Act of 1934. The new statute, in subsection (a)(1), would independently require that accountants preserve audit work papers for five years from the conclusion of the audit. Subsection (b) would make it a felony to knowingly and willfully violate the five-year audit retention period in (1)(a) or any of the rules that the SEC must issue under (1)(b). The materials covered in subsection (1)(b), which contains a mandatory requirement for the SEC to issues reasonable rules and regulations, are intended to include additional records which contain conclusions, opinions, analysis, and financial data relevant to an audit or review. Specifically included in such materials are electronic communications such as emails and other electronic records. The Conference added the ability of the SEC to update its rules to specifically allow it to capture additional types of records that could become important in the future as technologies and practices of the accounting industry change. The regulations are intended to cover the retention of all such substantive material, whether or not the conclusions, opinions, analyses or data in such records support the final conclusions reached by the auditor or expressed in the final audit or review so that state and federal law enforcement officials and regulators and victims can conduct more effective inquiries into the decisions and determinations made by accountants in auditing public corporations. Non-substantive materials, however, such as administrative records, which are not relevant to the conclusions or opinions expressed (or not expressed), need not be included in such retention regulations. The language of the provision is clear. The SEC "shall" and "is required" to promulgate regulations relating to the retention of the categories of items which are specifically enumerated in the statutory provision. "Reviews," as well as audits are also recovered by both (a) and (b). When a publicly traded company is involved, the precise name which the auditor chooses to give to an engagement is not important. Documents pertinent to the substance of such financial audits or review should be preserved. Willful violation of these regulations will also be a crime under this section.

In light of the apparent massive document destruction by Andersen, and the company's apparently misleading document retention policy, even in light of its prior SEC violations, it is intended that the SEC promulgate rules and regulations that require the retention of such substantive material, including material which casts doubt on the views expressed in the audit of review, for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations. It should also be noted that criminal tax violations, which many of these documents relate to, have a six-year statute of limitations and the regulatory portion of the Act requires a 7 year retention period. By granting the SEC the power to issue such regulations, it is not intended that the SEC be prohibited from consulting with other government agencies, such as the Department of Justice, which has primary authority regarding enforcement of federal criminal law or pertinent state regulatory agencies. Nor is it the intention of this provision that the general public, private or institutional investors, or other investor or consumer protection groups be excluded from the SEC rulemaking process. These views of these groups, who often represent the victims of fraud, should be considered at least on an equal footing with "industry experts" and others who participate in the rulemaking process at the SEC.

This section not only penalizes the willful failure to maintain specified audit records, but also will result in clear and reasonable rules that will require accountants to put strong safeguards in place to ensure that such corporate audit records are retained. Had such clear requirements and policies been established at the time Andersen was considering what to do with its audit documents, countless documents might have been saved from the shredder. The idea behind the statute is not only to provide for prosecution of those who obstruct justice, but to ensure that important financial evidence is retained so that law enforcement officials, regulators, and victims can assess whether the law was broken to begin with and, if so, whether or not such was done intentionally, or with or without the knowledge or assistance of an auditor.

Section 803 amends the Bankruptcy Code to make judgments and settlements based upon securities law violations non-dischargeable, protecting victims' ability to recover their losses. Current bankruptcy law may permit such wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and other securities violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who violate securities laws after a government unit or private suit results in a judgment or settlement against the wrongdoer. This provision is meant to prevent wrongdoers from using the bankruptcy laws as a shield and to allow defrauded investors to recover as much as possible. To the maximum extent possible, this provision should be applied to existing bankruptcies. The provision applies to all judgments and settlements arising from state and federal securities laws violations entered in the future regardless of when the case was filed.

State securities regulators have indicated their strong support for this change in the bankruptcy law. Under current laws, state regulators are often forced to "reprove" their fraud cases in bankruptcy court to prevent discharge because remedial statutes often have different technical elements than the analogous common law causes of action. Moreover, settlements may not have the same collateral estoppel effect as judgments obtained through fully litigated legal proceedings. In short, with their resources already stretched to the breaking point, state regulators must plow the same ground twice in securities fraud cases. By ensuring securities law judgments and settlements in state cases are non-dischargeable, precious state enforcement resources will be preserved and directed at preventing fraud in the first place.

Section 804 protects victims by extending the statute of limitations in private securities fraud cases. It would set the statute of limitations in private securities fraud cases to the earlier of five years after the date of the fraud or two years after the fraud was discovered. The current statute of limitations for most such fraud cases is three years from the date of the fraud or one year after discovery, which can unfairly limit recovery for defrauded investors in some cases. It applies to all private securities fraud actions for which private causes of actions are permitted and applies to any case filed after the date of enactment, no matter when the conduct occurred. As Attorney General Gregoire testified at the Committee hearing, in the Enron state pension fund litigation the current short statute of limitations has forced some states to forgo claims against Enron based on alleged securities fraud in 1997 and 1998. In Washington state alone, the short statute of limitations may cost hard-working state employees, firefighters and police officers nearly $50 million in lost Enron investments which they can never recover.

Especially in complex securities fraud cases, the current short statute of limitations may insulate the worst offenders from accountability. As Justices O'Connor and Kennedy said in their dissent in Lampf, Pleva, Lipkind, Prupis, & Petigrow v. Gilbertson, 111 S. Ct. 2773 (1991), the 5-4 decision upholding this short statute of limitations in most securities fraud cases, the current "one and three" limitations period makes securities fraud actions "all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within three years after the violation occurred." The Consumers Union and Consumer Federation of America, along with the AFL-CIO and other institutional investors, strongly support the bill, and views this section in particular as a needed measure to protect investors.

The experts agree with that view. In fact, the last two SEC Chairmen supported extending the statute of limitations in securities fraud cases. Former Chairman Arthur Levitt testified before a Senate Subcommittee in 1995 that "extending the statute of limitations is warranted because many securities frauds are inherently complex, and the law should not reward the perpetrator of a fraud, who successfully conceals its existence for more than three years." Before Chairman Levitt, in the last Bush administration, then SEC Chairman Richard Breeden also testified before Congress in favor of extending the statute of limitations in securities fraud cases. Reacting to the Lampf opinion, Breeden stated in 1991 that "[e]vents only come to light years after the original distribution of securities, and the Lampf cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse." Both the FDIC and the State securities regulators joined the SEC in calling for a legislative reversal of the Lampf decisions at that time.

In fraud cases the short limitations period under current law is an invitation to take sophisticated steps to conceal the deceit. The experts have long agreed on that point, but unfortunately they have been proven right again. As recent experience shows, it only takes a few seconds to warm up the shredder, but unfortunately it will take years for victims to put this complex case back together again. It is time that the law is changed to give victims the time they need to prove their fraud cases.

Section 805 of the Act ensures that those who destroy evidence or perpetrate fraud are appropriately punished. It would require the Commission to consider enhancing criminal penalties in cases involving obstruction of justice and serious fraud cases where a large number of victims are injured or when the victims face financial ruin.

The Act is not intended as criticism of the current guidelines, which were based on the hard work of the Commission to conform with the goals of prior existing law. Rather, it is intended to join the provisions of the Act which substantially raise current statutory maximums in the law as a policy expression that the former penalties were insufficient to deter financial misconduct and to request the Commission to review and enhance its penalties as appropriate in that light.

Currently, the U.S.S.G. recognize that a wide variety of conduct falls under the offense of "obstruction of justice." For obstruction cases involving the murder of a witness or another crime, the U.S.S.G. allow, by cross reference, significant enhancements based on the underlying crimes, such as murder or attempted murder. For cases when obstruction is the only offense, however, they provide little guidance on differentiating between different types of obstruction. This provision requests that the Commission consider raising the penalties for obstruction where no cross reference is available and defining meaningful specific enhancements and adjustments for cases where evidence and records are actually destroyed or fabricated (and for more serious cases even within that category of case) so as to thwart investigators, a serious form of obstruction.

This provision and Title 11, also require that the Commission consider enhancing the penalties in fraud cases which are particularly extensive or serious, even in addition to the recent amendments to the Chapter 2 guidelines for fraud cases. The current fraud guidelines require that the sentencing judge take the number of victims into account, but only to a very limited degree in small and medium-sized cases. Specifically, once there are more than 50 victims, the guidelines do not require any further enhancement of the sentence. A case with 51 victims, therefore, may be treated the same as a case with 5,000 victims. As the Enron matter demonstrates, serious frauds, especially in cases where publicly traded securities are involved, can affect thousands of victims.

In addition, current guidelines allow only very limited consideration of the extent of devastation that a fraud offense causes its victims. Judges may only consider whether a fraud endangers the "solvency or financial security" of a victim to impose an upward departure from the recommended sentencing range. This is not a factor in establishing the range itself unless the victim is a financial institution. Subsection (5) requires the Commission to consider requiring judges to consider the extent of such devastation in setting the actual recommended sentencing range in cases such as the Enron matter, when many private victims, including individual investors, have lost their life savings. Finally this provision requires a complete review of the Chapter 8 corporate misconduct guidelines, which should include not only monetary penalties but other actions designed to deter organizational crime, such as probation and compliance enforcement schemes.

Section 806 of the Act would provide whistleblower protection to employees of publicly traded companies who report acts of fraud to federal officials with the authority to remedy the wrongdoing or to supervisors or appropriate individuals within their company. Although current law protects many government employees who act in the public interest by reporting wrongdoing, there is no similar protection for employees of publicly traded companies who blow the whistle on fraud and protect investors. With an unprecedented portion of the American public investing in these companies and depending upon their honesty, this distinction does not serve the public good.

In addition, corporate employees who report fraud are subject to the patchwork and vagaries of current state laws, even though most publicly traded companies do business nationwide. Thus, a whistleblowing employee in one state (e.g., Texas, see supra) may be far more vulnerable to retaliation than a fellow employee in another state who takes the same actions. Unfortunately, companies with a corporate culture that punishes whistleblowers for being "disloyal" and "litigation risks" often transcend state lines, and most corporate employers, with help from their lawyers, know exactly what they can do to a whistleblowing employee under the law. U.S. laws need to encourage and protect those who report fraudulent activity that can damage innocent investors in publicly traded companies. The Act is supported by groups such as the National Whistleblower Center, the Government Accountability Project, and Taxpayers Against Fraud, all of whom have written a letter placed in the Committee record calling this bill "the single most effective measure possible to prevent recurrences of the Enron debacle and similar threats to the nation's financial markets."

This provision would create a new provision protecting employees when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, their supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping actions which they reasonably believe to be fraudulent. Since the only acts protected are "lawful" ones, the provision would not protect illegal actions, such as the improper public disclosure of trade secret information. In addition, a reasonableness test is also provided under the subsection (a)(1), which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts (See generally Passaic Valley Sewerage Commissioners v. Department of Labor, 992 F. 2d 474, 478). Certainly, although not exclusively, any type of corporate or agency action taken based on the information, or the information constituting admissible evidence at any later proceeding would be strong indicia that it could support such a reasonable belief. The threshold is intended to include all good faith and reasonable reporting of fraud, and there should be no presumption that reporting is otherwise, absent specific evidence.

Under new protections provided by the Act, if the employer does take illegal action in retaliation for such lawful and protected conduct, subsection (b) allows the employee to elect to file an administrative complaint at the Department of Labor, as is the case for employees who provide assistance in aviation safety. Only if there is not final agency decision within 180 days of the complaint (and such delay is not shown to be due to the bad faith of the claimant) may he or she may bring a de novo case in federal court with a jury trial available (See United States Constitution, Amendment VII; Title 42 United States Code, Section 1983). Should such a case be brought in federal court, it is intended that the same burdens of proof which would have governed in the Department of Labor will continue to govern the action. Subsection (c) of this section requires both reinstatement of the whistleblower, backpay, and all compensatory damages needed to make a victim whole should the claimant prevail. The Act does not supplant or replace state law, but sets a national floor for employee protections in the context of publicly traded companies.

Section 807 creates a new 25 year felony under Title 18 for defrauding shareholders of publicly traded companies. Currently, unlike bank fraud or health care fraud, there is no generally accessible statute that deals with the specific problem of securities fraud. In these cases, federal investigators and prosecutors are forced either to resort to a patchwork of technical Title 15 offenses and regulations, which may criminalize particular violations of securities law, or to treat the cases as generic mail or wire fraud cases and to meet the technical elements of those statutes, with their five year maximum penalties.

This bill, then, would create a new 25 year felony for securities fraud—a more general and less technical provision comparable to the bank fraud and health care fraud statutes in Title 18. It adds a provision to Chapter 63 of Title 18 at section 1348 which would criminalize the execution or attempted execution of any scheme or artifice to defraud persons in connection with securities of publicly traded companies or obtain their money or property. The provision should not be read to require proof of technical elements from the securities laws, and is intended to provide needed enforcement flexibility in the context of publicly traded companies to protect shareholders and prospective shareholders against all the types schemes and frauds which inventive criminals may devise in the future. The intent requirements are to be applied consistently with those found in 18 U.S.C. §§1341, 1343, 1344, 1347.

By covering all "schemes and artifices to defraud" (see 18 U.S.C. §§1344, 1341, 1343, 1347), new §1348 will be more accessible to investigators and prosecutors and will provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

Mr. SARBANES. Mr. President, I thank the Senator from Vermont. I underscore again how important his contributions were. The Senate Judiciary Committee reported out a bill without opposition in the committee. That is something which accompanied this legislation.

I yield 4 minutes to the Senator from South Dakota, and then it is my intention to go to the Senator from North Carolina.

Mr. JOHNSON. Mr. President, most of all I thank him for his extraordinary leadership on the development of this landmark legislation. I think it is fair to say this is the most critically important piece of investor protection legislation since the Securities Act of 1933 or the Securities Exchange Act of 1934.

This comes on the heels of the disclosure of corporate corruption that has been endemic in recent months, where we have witnessed lost jobs, lost savings, lost pensions, and ultimately lost confidence worldwide in America's capital markets.

There is an urgency that strong legislation be passed by this body and the Congress to restore confidence—restore both the perception and the reality of integrity in our capital markets.

This legislation is strong legislation. That is why it has been applauded by editorial writers from the east coast to the west coast. Senator SARBANES has been the subject of much congratulatory observation on the part of so many. This comes on the heels of, frankly, much weaker legislation that had been passed previously in the House of Representatives, the other body.

By passing a strong Senate bill, we were able to go to conference. I am proud to have served on that conference committee and to craft legislation there that goes in the direction of the Senate rather than in the direction of the other body and gives this Nation strong securities legislation. It provides a stiff penalty for corporate wrongdoing, creates a strong oversight board to ensure that corporate audits are done properly, and that the books, in fact, are not cooked. It imposes tough new corporate responsibility standards and implements control over stock analysts' conflicts of interest, so they are not making a fortune while advising their clients to invest. It requires public companies to quickly and accurately disclose financial information. It ensures that the Securities and Exchange Commission has the resources to accomplish its mission of regulating the securities markets.

These important provisions will ensure that America's financial markets remain efficient and transparent and the envy of the world. It will benefit average people who may not have had enough information to make informed decisions in the past and certainly could not have possibly known that the books were cooked, that the audits were incorrect, and that corruption was running rife. They had no way of knowing that.

This will turn that around. This is not the last word, but this is a critically important step in the right direction to returning integrity to our markets. We can observe, having come through this horrible experience in recent months of disclosure after disclosure of corruption having taken place, a recognition that free market economies can only work when there is a cop on the beat. Free market economies can only work when there are fair, well-enforced, and strictly enforced rules. A free market economy without rules, without a cop on the beat, is not an economy that will ever work at all.

This goes a long way, I believe, to reviving confidence in America's economic future. It goes a long way to restoring the fairness and transparency so that people may make their investments—and investments may go up, and they may go down, but they can know when they make those investments, they are making those investments based on true and accurate analysis and not on bogus numbers that some audit firm on the take has been willing to put forward as the truth when, in fact, they are not the truth.

Again, the whole Nation owes a great deal of gratitude to Chairman SARBANES and to the Senate, in this case, for what I am confident is going to be an overwhelming vote in favor of this legislation.

I yield the floor.

Mr. SARBANES. Mr. President, I yield 6 minutes to the Senator from North Carolina.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I thank, along with all my colleagues, Senator SARBANES for the extraordinary work he has done on this bill. We are proud of him. America appreciates very much what he and others who have worked with him have done.

I also thank Senator ENZI, who is in the Chamber, and Senator CORZINE, who is presiding, for the work they have done with me on what I think is an important part of this legislation which, in addition to corporate CEOs and accountants, is holding the lawyers involved in these transactions responsible and accountable; that if they see something wrong occurring, they should do something about it—report it to their client, to the corporation, report it to the CEO, the chief legal officer and, if necessary, report it to the board.

In Congress, we are doing what needs to be done and stepping to the plate with regard to corporate responsibility. That is in striking contrast to what is going on in my home State right now.

At a time when Americans are demanding more corporate responsibility, when Congress is stepping up and doing what needs to be done, the President has gone to North Carolina today to ask for less corporate responsibility, to make it easier on insurance companies and to make it harder on victims.

The President is in North Carolina today proposing some of the smallest limits that have ever been proposed for families who have suffered tragedies, serious problems, as a result of poor medical care at a time when medical malpractice insurance premiums constitute way less than 1 percent, substantially less than 1 percent, of medical care costs in this country.

The President is holding a roundtable, as I speak, on this subject. I would like to see how many victims of medical negligence, of medical malpractice, people who have been devastated and their lives devastated, are participating in this roundtable. I know these people. For many years I have represented them. I have been in their homes. I have been in homes and spent time with families whose child will never walk, who have been blinded for life, who have been crippled for life, who have suffered injuries from which they will never recover.

These children blinded for life, crippled for life, severely injured for life—there is a description in the HHS report on which the President is relying which talks about when juries find they have been hurt and award money to them, they describe it as "winning the lottery ticket." The parents of a child who has been blinded for life, the parents of a child who will never walk, rest assured they do not believe they have the winning lottery ticket.

My question is: How many of those people are the President talking to when he is in North Carolina today? The next time he comes back to North Carolina, we invite him to talk to some of those people because those are the ordinary Americans to whom he should be talking. Those are the people who are going to be impacted. The children who have suffered serious injuries are the ones who are going to have the greatest impact and have their rights taken away by what the President is proposing.

Unfortunately, listening to ordinary people is not what this administration does. They have done it time and time again. It is stunning, but it is sad and consistent. When this administration has a choice between protecting the rights of big companies, big insurance companies versus the rights of ordinary people, they choose the big insurance company, the big companies every single time. They have been dragged kicking and screaming to do something about corporate responsibility, which we are doing in the Congress.

On the Patients' Bill of Rights, on which Senator KENNEDY, Senator MCCAIN, and I have worked so hard, they have consistently sided with the big HMOs, which is why we do not have a Patients' Bill of Rights in this country.

On prescription drugs, when we tried to do something about the cost of prescription drugs on the floor of the Senate, this administration consistently sided with the big drug companies. When it comes to the environment, this administration has weakened clean air laws that protect the air for our children and consistently sided with the big energy companies that are polluting our air.

Today the President adds to that list, in going to the State of North Carolina, the big insurance companies. This President loves to talk about compassion. My question to him is: Where is his compassion for the victims?

Mr. President, I yield the floor.

Mr. BAYH. Mr. President, I rise today in support of the accounting reform and corporate responsibility conference agreement. I do so, because I believe very strongly that it is in the best interests of America at this critical time in our history.

I believe it goes way beyond mere accounting issues. What we are agreeing to today deals with the financial security of millions of individual investors across this country, the security of their pensions, their 401(k) programs, and their other investments for the future of their children and their grandchildren.

What we are talking about today involves the very vitality of our economy, the amount of investment that will take place in the economy, the number of jobs that will be created, and the vitality of farms. It involves the standing of AMERICA in the international economy, whether we will continue to be a safe haven for investments from those abroad, attracting the capital that helps us build a strong foundation for America's economy.

More than anything else, this bill embodies the basic values upon which this has been based. It clearly answers the question: Will we continue to encourage those virtues that have always characterized America and will our Nation continue to be the land of opportunity based upon hard work, honesty, and playing by the rules or, will we be perceived as the land of opportunity based upon deceit. I believe that the right answer, based upon traditional values and virtues, is embodied in the accounting reform and corporate responsibility bill.

I congratulate our colleagues, Senators SARBANES, DODD, CORZINE and ENZI. They demonstrated leadership and foresight in this issue.

Since the tragedies of 9/11, our country has been involved in twin struggles: One, the physical national security of this country; and, second, getting this economy moving again to ensure the economic security of Americans across this country. There are parallels between these two challenges. Both occurred as a result of unexpected tragedies but have presented us with opportunities to make this an even better, stronger, more secure Nation. Both involve breaking the political gridlock and the bureaucratic inertia that all too often make progress in this Capitol difficult. And both involve striking the right balance between individual freedom and liberty on the one hand, that we cherish, and collective security, which makes individual liberty meaningful, on the other.

Let me conclude where I began. This issue goes a long way beyond mere accounting issues. It goes a long way beyond economic policy. It goes to the very heart of who we are, what we stand for as a people, and the kind of values we cherish in the United States of America. This will protect individual investors. It will help to ensure the integrity of our economy. But more than anything else, it will ensure that those Americans who have embraced our tradition with virtues, who have worked hard and saved their money, who have played by the rules, and are honest are able to get ahead in this society.

It will send a loud and clear signal to those who practice corporate fraud that they do not have an avenue to success in this country. That does not embody the best values of America. I strongly support the accounting reform and corporate responsibility conference agreement. I urge my colleagues to enact this important legislation.

Mr. KERRY. Mr. President, I strongly support the Sarbanes-Oxley Act of 2002 because it will help end the corporate abuses that in recent months have plagued our economy and will help restore confidence in our economy. I would like to take this opportunity to express my appreciation for the efforts that Senator PAUL SARBANES, Chairman of the Senate Banking, Housing and Urban Affairs Committee, has made to develop and enact this important legislation. As a former member of the Banking Committee, I know how difficult it is to respond quickly to recent events that affected our capital markets. However, Senator SARBANES has put together a coalition which led to a unanimous vote in support of his bill in the Senate, and the provisions of which is the base text for this conference report.

The United States must stand for the fairest, most transparent and efficient financial markets in the world. However, the trust and confidence of the American people in their financial markets have been dangerously eroded by the emergence of serious accounting irregularities by some companies and possible fraudulent actions by companies like WorldCom, Inc., Enron, Arthur Andersen and others. Some investment banks have been charged with publicly recommending stocks for public purchase that their own analysts regarded as junk.

The shocking malfeasance by these businesses and accounting firms has put a strain on the growth of our economy. The misconduct by a few senior executives has cost the jobs of hard-working Americans, including 17,000 at WorldCom and thousands more at companies accused of similar wrongdoing. The lack of faith in our financial markets contributed to an overall decline in stock values and has caused grave losses to individual investors and pension funds. For example, the losses to the California Public Employees Retirement System from the recent WorldCom disclosures total more than $580 million.

The conference report creates a new Public Company Accounting Oversight Board to oversee the auditing of companies that are subject to the federal securities laws. The Board will establish auditing, quality control, and ethical standards for accounting firms. The conference report restricts accounting firms from providing a number of non-audit services to its audit clients to preserve the firm's independence. It also requires accounting firms to change the lead or coordinating partners for a company every five years.

The conference report requires CEOs to certify their financial statements or face up to 20 years in prison for falsifying information on reports. It keeps executives from obtaining corporate loans that are not available to outsiders. It requires public companies to provide periodic reports to the SEC on off-balance transactions, arrangements, obligations and other relationships that may have a material current or future effect on the company's financial condition. It requires directors, officers and 10 percent equity holders to report their purchases and sales of company securities within two days of the transaction.

I am pleased that the conference report includes the Corporate Fraud and Criminal Fraud Accountability Act which will provide for criminal prosecution and enhanced penalties of persons who defraud investors in publicly traded securities or alter or destroy evidence in Federal investigations. It will also prohibit debts incurred in violation of securities fraud laws from being discharged in bankruptcy and protect whistle blowers who report fraud against retaliation by their employers.

The conference report requires the SEC to adopt rules to foster greater public confidence in securities research including: protecting the objectivity and independence of stock analysts who publish research intended for the public by prohibiting the pre-publication clearance of such research or recommendations by investment banking or other staff not directly responsible for investment research; disclosing whether the public company being analyzed has been a client of the analyst's firm and what services the firm provided; limiting the supervision of research analysts to officials not engaged in investment banking activities; protecting securities analysts from retaliation by investment banking staff.

The provisions included in this legislation will help restore confidence in our capital markets and in turn will help provide for future economic growth. It is an important first step, not a last. Mr. President, I am pleased to support the Conference Report and will continue to look for ways to improve investor confidence in our financial markets.

Mr. SCHUMER. Mr. President, everyone knows that New York City is the financial capital of the world. Yet as we continue to rebuild our city in light of the tragic events of September 11, we are now faced with the devastating effects of depressed markets and unsure investors, who are once again victims. With more than half of American households investing in the markets, we're all affected by a crisis in investor confidence.

I can't think of a more appropriate time than the present for the Senate to debate legislation to restore dwindling investor confidence and bring sound footing back to our financial markets. Isn't it ironic? Just a few weeks ago, the headlines read "Sarbanes bill dead" or "Accounting Reform Fading."

In the wake of recent revelations about WorldCom and just 2 days ago Merck, corporate corruption has reached an all-time high; we are now at a new level of corporate corruption. We've reached a new low and the question every member of the Senate must be asking is: "Where does it end?"

Buzzwords like "accounting fraud," "corporate corruption," "Restatements," "Cooking the books," are being bandied about in the press, in the coffee shops, at the dinner tables across America. Just this weekend at the Taste of Buffalo, people came up to me and said "Throw 'em in jail, Chuck!" They were talking about the Ken Lay's, Bernard Ebers', the Andrew Fasdow's of the corporate world. White collar criminals who ran giant corporations and used tricky gimmicks to rob investors of not only their hard money but also their confidence in the strongest and fairest markets in the world. * * * They are the investment giants: Enron, Arthur Andersen, Adelphia, CMS Energy, Reliant Resources, Dynergy, Tyco International, and now Xerox and WorldCom. A mere handful of our nations top companies who have gone under as a result of misrepresented earnings and poor management. In less than a years time, these so-called investment giants through the great gift of deceit and tricky accounting practices have reduced themselves to mere shells of their former existence.

As a result, their use of tricky gimmicks to hide the real picture and literally milk the system dry have caused investors around the globe to question integrity of our nations markets, which are supposed to be the strongest and most resilient because they are perceived as the most open, most transparent markets in the world. Up until now, the United States had been a magnet for foreign investment. Yet, the selfish, greedy actions of a small few have led to a steady and precipitous drop in foreign investment in our financial markets.

It is no secret that greed played a major role in our markets rapid decline and slow demise. The heads of these entities stole millions, some billions of dollars from investors, and it is now time that we make them pay for their actions.

I commend the NASDAQ and the New York Stock Exchange for their announcements of new, tough corporate governance standards. The New York markets have taken the first steps to correct corporate corruption, and now it is our turn to find the right balance in light of these unsteady markets and times.

So what is the right balance? The right balance is one that will not only offer strict corporate governance laws, protect the average investor from being swindled out of his or her hard earned savings by a fast-talking, wheeling and dealing broker, but will also severely punish those individuals who intentionally mislead investors with faulty practices. That is why I am introducing the following amendments to the Public Company Accounting Reform and Investor Protection Act of 2002 to further limit the ability of company execs from personally manipulating and rigging the system for their personal benefit and interest.

The first amendment prohibits companies from issuing personal loans to company executives as seen with Worldcom, whose CEO received more than $300,000 in loans from the technology giant. Instead, CEOs will have to go to the bank, just like everyone else, to acquire a loan; which, will reduce the risk of CEOs ability to use company funds for personal purposes.

The second amendment requires company execs to forfeit any and all bonuses and additional compensation if their restatements occur along with criminal liability.

It is my hope that by revealing the few bad apples at the bottom of the barrel, and punishing these individuals for their immoral behavior, we can save the rest of the industry and restore confidence in our markets.

The legislation pending before us will make it harder for companies to lie about their assets. Thats the least we can do in re-establishing public confidence in corporate America. Our common purpose today is to ensure that the Enron's, the Tyco's, and the WorldCom's never happen again.

Now is the time for us to act. It is the least we can do to shore up the investing public's confidence in our markets.

Mr. WELLSTONE. Mr. President, 2 years ago it was pretty lonely being in favor of the auditor independence reforms that then-SEC Chairman Arthur Levitt said were necessary to guard against unprecedented accounting scandals. I am proud that I was one of the few who thought Chairman Levitt was going in the right direction. Unfortunately it took the implosion of several multi-billion dollar firms, and a loss of tens of thousands of jobs and hundreds of billions of dollars in investor equity, to prove that he was right. Now America's capital markets have been shaken by a dramatic loss in investor confidence, threatening the economic recovery.

But today, Congress has acted. I rise today in strong support of the Public Company Accounting Reform and Investor Protection Act conference report. I commend the Senator from Maryland, the Chairman of the Banking Committee for putting together significant, structural reform of corporate governance and auditor independence and for defending it in conference.

And I am heartened that the President and the House leadership have finally agreed to comprehensive reform instead of mere half-measures and tough rhetoric.

This bill holds the bad actors accountable for their fraud and deception. But the legislation goes much further, as it should, because the problem goes much deeper. We are faced with more than the wrong doing of individual executives, we are faced with a crisis in confidence in American capital markets and American business.

This conference report retains the strong Senate reforms virtually intact. It bars an auditor from offering audit services and other consulting services to the same client. It says publically traded companies must change the partner in charge of the audit every five years. It strengthens oversight of accountants, by establishing an independent board to set and enforce standards. And it enhances disclosure. This alone is real reform. But the bill does more. It makes corporate executives more accountable to their shareholders. It makes investment analysts more accountable to the public. And it's bill contains strong penalties for corporate wrong-doers.

All and all, this legislation lets the sunshine back into the smoke-filled corporate board rooms so that insiders have harder time cheating the outsiders. It is structural reform that restores checks and balances that will protect against fraud, deception, and reckless carelessness.

We need to restore America's faith in corporate America. It has gone beyond individual wrong doing. The system hides and encourages corruption. Today the Congress passes strong reform. Now I call on the President to make enactment and enforcement of this new law a priority.

Mr. BOND. Mr. President, last night, the conference committee released its final report on comprehensive accounting reform and corporate governance legislation. The reaction of our financial markets confirms that this legislation is absolutely necessary to help restore integrity and confidence to our free market system and our investment community.

However, in our rush to enact broad reforms, we may be damaging the economic framework for small companies to reach our capital markets. In the long term, the reforms will make our economy stronger. In the short term, we will be creating complete chaos for small publicly traded companies and companies trying to gain the capital for growth through stock offerings.

I am extremely disappointed in the conferees' decision not to recognize this fact and provide the Securities and Exchange Commission and the proposed Public Company Accounting Oversight Board with greater flexibility in dealing with small firms. Small business has been the driving force of our economy for well over a decade. The high hurdles in the legislation are necessary for large, conglomerate companies but they may be a trip wire for our small business entrepreneurial community.

Mr. SARBANES. Mr. President, I note that the Congress, in the Enhanced Review of Periodic Disclosures section in the Sarbanes-Oxley Act, provides for regular and systematic reviews by the Securities and Exchange Commission of the periodic reports filed by public companies that are listed on a national securities exchange or on Nasdaq. The section requires that there be some review of issuers' disclosures at least once every three years. The bill identifies factors which the Commission should consider in scheduling reviews, including the issuer's capitalization, stock price volatility and restatements of earnings. We expect the Commission to exercise its discretion to determine the appropriate level and scope of review for each company's reports in the furtherance of the protection of investors and the public interest.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, may I ask what the time situation is?

The PRESIDING OFFICER. The Senator from Maryland has 15 minutes 10 seconds. The Senator from Wyoming has 21 minutes 30 seconds.

Mr. SARBANES. I yield 3 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

Mr. President, this is an extremely important day for our capital markets, for our country, and for the future of our economy. As we all know, capitalism has its ups and downs and works in ups and downs, and there have been periods throughout our history—I can think of the S&L crisis a decade ago—where things get off track, out of control. It is our job as Government not to interfere with entrepreneurial vigor, not to create such regulation that they become a straitjacketed company, but at the time when the markets show that things have gotten off track, it is our job to help put them back on track.

There is a bottom line principle here: If investors, whether throughout the United States or the rest of the world, do not believe companies are on the level, they will not invest. Unfortunately, the revelations of the last year have given people the view that they are not on the level. That it is not the same for them in terms of even information as it is for somebody at the top, that the information they may be getting may be wrong or distorted far beyond what they normally would in the world. So this bill puts that back.

I think it is a carefully balanced bill. There are some changes in it. There are some changes not in it that I would like to have seen, but the perfect should not be the enemy of the good. It is a good bill, a fine bill. In fact, when the agreement was reached, the Dow Jones went up 400 points. I do not think it was coincidental. Whether it be CEOs of large companies or individual investors, the public is saying to us, make it right. Look at the abuses that occurred in the past and make sure they cannot occur again, and do it in a careful way that keeps our markets fluid, liquid, deep, and important. I think this bill does it.

I want to pay a great deal of tribute to our chairman, Senator SARBANES, and to so many others who made this bill a reality. With the passage of this bill, we can tell investors, while we have not cleared up every problem, and perhaps we will come back and address this later—I think we will have to in a couple areas—we have certainly made things better.

A few weeks ago, Washington looked as if it was dithering in the face of crisis, but today we proudly act in a bipartisan way to restore faith in our markets, the deepest, strongest, and best markets in the world.

I dare say, I know there are some who are against any change or any regulation, but our markets will be stronger tomorrow than they were this morning when this bill passes the House, the Senate, and is signed by the President.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, we are down quite far in our time. Senator DODD, who wishes to speak, is at a memorial service. I suggest if the other side could use some of its time, it would be helpful in balancing this out. I ask unanimous consent that while we are trying to work this out the time not be charged to either party, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I yield 8 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, when we opened the conference on this legislation a week or so ago, I said my hope was the passage of this bill would be quick, decisive, and unanimous. Two out of three is not bad. We got quick and decisive and almost unanimous. Our colleague from Texas, and our friend, was unable to support the final product for reasons he has already explained.

I thought we did an excellent job in moving as quickly as we did. I believe passage of the legislation and the quick and decisive manner and nearly unanimous way we achieved the result and overwhelming support of the Senate and the House fulfill a responsibility of Congress to protect investors. There is more work to be done, but we have begun a significant part of the journey. In fact, we traveled a great distance down the road in fulfilling a congressional responsibility in responding to the events that began to unfold, at least to the public's awareness, last October. And the story is not yet complete. We do not know the final results.

I have a few minutes in which to share some thoughts. I am going to move quickly to share comments. I begin by commending my colleague from Maryland, the chairman of the Banking Committee, for the tremendous job he has done. I said yesterday, any students of the Congress of the United States who want to seek out good examples of how a legislative product can be developed, nurtured, analyzed, discussed, debated, and finally passed, this is about as good an example as I have seen in recent years of how one ought to proceed. Certainly the hearings we held in the Banking Committee I don't recall attracting much attention. I don't recall a single one of the 12 hearings we held appearing on the nightly news or being lead stories on some of the 24-hour news stations.

I recall a great many hearings where people sat there, raised their right hand, and took the fifth amendment. That got a lot of attention. The 12 hearings held in the Banking Committee of the Senate, where we went through the deliberate, slow, ponderous process of actually listening to people who had something to say about what ought to be done to clean up this mess, never made it on the nightly news that I am aware of.

I commend again my friend and colleague with whom I have enjoyed my service in the Congress of the United States for more than a quarter of a century. We have sat next to each other for a good part of that time in both the House and in this Chamber. I sit next to him on the Foreign Affairs Committee and on the Banking Committee. If I could make the choice and it would not be determined by seniority, I would make him my choice for seatmate. I have great respect for him and admire him immensely. He has proven the value of having PAUL SARBANES as a Member of this body.

I also point out the Presiding Officer, one of the most junior Members of this Chamber, who provided an incredible, invaluable support and source of ideas, guidance. Rarely does a new Member play such an important role on such an important piece of legislation. Of any Member who was involved in this process, MIKE ENZI of Wyoming and others all would agree, in any history written of the development of the bill, the role of a freshman Senator from the State of New Jersey named JON CORZINE needs to be talked about. He played a very important role. We would not be here without him. I tip my hat to him and to MIKE ENZI, the only Member of this Chamber who actually knew something at a practical level about what it was to be an accountant and what life was like in the trenches.

For the staff and others who worked on this legislation, this was not the most popular idea in the world. Had it not been for unfolding events, I am not sure we would have developed that kind of support. I will love to one day tell my daughter, who is only an infant, that it was the power of our persuasion which convinced a majority here to go along.

Not many understood the value, the substantive value, of this bill. MIKE ENZI did, a number of others did, there were many in the House who did, but an awful lot of people, even as late as a week ago, were suggesting maybe this bill was a bad idea, and that it would not go anywhere, and it shouldn't go anywhere; we ought to spend another couple of months thinking about it.

Those notices were not a month old, or 2 months old; that was 5 or 6 day ago. I understand it was the public's demand that we respond to this that had an awful lot to do with the support we garnered. That is all right. I never argue about how you get support around here as long as you get it in the end. We got it in the end, and that is the important news.

The fact is, we are about to vote overwhelmingly to support a very critical piece of legislation. I am confident, as he has already indicated, that the President will sign this bill into law. We are already seeing markets respond, not entirely because of this, but certainly in no small measure because of the events that have unfolded and the parts Congress played.

The chairman of the committee has talked about part of the bill. There are very important pieces, including the auditor independence. The board will be revolutionary in how it operates. Someone pointed out today, a lot of what the regulators do will determine the value of what we have written legislatively. I am confident that will be the case.

Having FASB now be compensated for and paid for from public money and not relying on the largess and generosity of the accounting industry to receive compensation will make a significant difference in establishing accounting rules and procedures. Certainly having prohibitions against those going from the industry, working for the clients for whom they have done audits, will have a beneficial effect on slowing down this not only appearance of conflict, but certainly the conflicts of interest that have occurred too often.

There are many other parts of the bill, including corporate penalties, that were crafted by our colleague from Vermont and other Members of the Judiciary Committee, that deserve a great deal of credit for their contribution to this process. The leadership, Senator DASCHLE, certainly for insisting we move as rapidly as we did to get the product done in committee and get it on the floor of the Senate, understanding how important this issue would be to the shareholder interests and pensioners and to others who depend upon a solid, strong economy for their well-being—certainly their contribution is extremely important as well.

We have seen the economy begin to do a bit better. I don't think our work is done, despite the accomplishments in this legislation. My hope would be that before this Senate adjourns in a week and a half from now, we might deal with the pension issue. I don't know if that will be possible. I know there are a lot of other issues that need to be considered. My hope is if we are not able to do that in the next week and a half, we will come back soon after we reconvene in September.

I sit on the Health, Education, Labor, and Pensions Committee with the presiding officer who is interested in that committee. My hope is that we can deal with the pension reform matters that are necessary, as well, for adoption by this Congress before the 107th Congress adjourns.

Again, I commend all those involved. I thank Alex Sternhill of my office, Steve Harris, Marty Gruenberg, all the Members who worked with the chairman's committee and the full committee of the Senate Banking Committee, and those on the minority side, as well, who played an extremely important role.

While he disagreed with the final outcome of the bill, the Senator from Texas and I have had a great relationship over these many years we have served together. I have always enjoyed being on his side. He is a tough opponent, but when we worked together we have done some pretty good work around here and passed some pretty good bills.

He is leaving and I believe the Senate will be less vibrant an institution because of his absence. It is important that this place be a place of ideas for debate to occur, and the Senator from Texas has always made that kind of contribution.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DODD. Hang on. I am commending him. He is going to give me more time.

Mr. GRAMM. The Senator can have all the time he wants.

Mr. DODD. Mr. President, I have learned after more than 20 years that if you want the minority to give you a little more time, start complementing them. It is amazing. Egos are alive and well in the Senate.

I am going to miss him. He is not done. We have more work, obviously, in the remaining weeks, but this may be one of the last major bills the Banking Committee considers. I don't know what life holds for him down the road, but the good Lord is not done with him yet.

I look forward to your vibrancy, your ideas, and your passion in whatever role you decide to assume in the next part of your life, and thank you for the tremendous work you have given to the committee and this body through your service.

I thank again the chairman and other members of the committee for contributing to what may be one of the most important pieces of legislation this body will consider in the 107th Congress and one of the most important in the area of financial services in many, many decades.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from Texas has 14 minutes.

Mr. GRAMM. We were going to shoot for about 4:30 so I may yield some of it back, depending on who comes over.

Let me, first, thank my dear colleague, Senator DODD, for his kind comments. I have enjoyed working with him over the years. I very much appreciate the comments he made.

I want to say something about my staff. A famous philosopher once said: In no way can you get a keener insight into the true nature of a leader than by looking at the people by whom he surrounds himself.

I would always be happy to have anybody judge me by Linda Lord and by Wayne Abernathy. It is amazing how much impact staffers have on the Senate. I am blessed in this area to have two of the best staff people who have ever served any Senator in the history of this country. On most issues on which I worked with Linda Lord, she knows more about this subject than anybody, and generally more than everybody else combined. In working with her, I see that the Lord was a great discriminator; he gave some people incredible ability and most of us he gave relatively few, in the way of talents. I thank her for the great job she has done.

I thank Wayne Abernathy. In the years I was chairman of the Banking Committee, Wayne Abernathy was chairman of the Banking Committee. In the day-to-day work, he has made an incredible contribution. If there is an unfairness to it, it is that I have gotten credit for all the good work that they have done, and I am grateful for that.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. SARBANES. I yield 1 minute to the Senator from Minnesota.

Mr. WELLSTONE. I thank the Senator from Maryland. I thank him for his great leadership and the other Senators working on this. I can only say this in 1 minute: I remember when Arthur Levitt came by several years ago to talk with me about the need for audit independence. Senator SARBANES and others have made that possible. Many people took their savings, converted it to stock, and thought it would be there for their children or grandchildren. Many people had 401(k)s they were counting on. All of this has eroded in value. Investors do not have the confidence in the economy. I think the key is to make the structural change and make sure people can count on the independent audits, that no one is cooking their books. This is the best of government oversight. I am very proud to support this legislation.

Once again, I thank the chair of the Banking Committee for exceptional leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, as Senator GRAMM was speaking earlier I was thinking to myself that he really was exemplifying on the floor of the Senate the sort of dialog we went through in the committee. As he was making an argument about auditor independence, I was thinking that is really a very reasonable argument and one to which we really paid attention. I want to give the counterargument, and then make a concluding comment about the terrific work of the staff on this bill.

Senator GRAMM has suggested that the conference report should be changed to give the SEC or the Oversight Board authority to grant broad categorical exemptions from the list of non-audit services that Section 201 of the bill prohibits registered public accounting firms to provide to public company audit clients.

Such a change, in my view, would weaken one of the fundamental objectives of the conference report: to draw a bright line around a limited list of non-audit services that accounting firms may not provide to public company audit clients because their doing so creates a fundamental conflict of interest for the accounting firms.

This limited list is based on a set of simple principles:

A public company auditor, in order to be independent, should not audit its own work (as it would if it provided internal audit outsourcing services, financial information systems design, appraisal or valuation services, actuarial services, or bookkeeping services to an audit client).

A public company auditor should not function as part of management or as an employee of the audit client (as it would if it provided human resources services such as recruiting, hiring, and designing compensation packages for the officers, directors, and managers of an audit client).

A public company auditor, to be independent, should not act as an advocate of its audit client (as it would if it provided legal and expert services to an audit client in judicial or regulatory proceedings.)

A public company auditor should not be a promoter of the company's stock or other financial interests (as it would be if it served as a broker-dealer, investment adviser, or investment banker for the company).

I want to emphasize that Section 201 does not bar accounting firms from offering consulting services. It simply requires that they not offer certain consulting services to public companies for which they wish to serve as "independent auditor." An accounting firm is free to offer any services it wants to any public companies it does not audit (or to any private companies). It also may engage in any non-audit service, including tax services, that is not on the list for an audit client if the activity is approved in advance by the audit committee of the public company.

The conference report does authorize the new Oversight Board, on a case-by-case basis, to exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of non-audit services to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

The exemptive authority provided the Board is intentionally narrow to apply to individual cases where the application of the statutory requirement would impose some extraordinary hardship or circumstance that would merit an exemption consistent with the protection of the public interest and the protection of investors.

But the fundamental presumption of the provision is that these non-audit services, by their very nature, present a conflict of interest for an accounting firm if provided to a public company audit client.

Arthur Andersen was conflicted because it served Enron as both an auditor and a consultant, and for two years it also served as Enron's internal auditor, essentially auditing its own work. Enron was Andersen's largest client, and in 2000 Andersen earned $27 million in consulting fees from the company ($25 million in audit fees).

In its oversight hearing earlier this year on the failure of Superior Bank in Hinsdale, Illinois, the Senate Banking Committee learned first-hand the risks associated with allowing accounting firms to audit their own work. In that case, the accounting firm audited and certified a valuation of risky residual assets calculated according to a methodology it had provided as a consultant. The valuation was excessive and led to the failure of the institution.

The SEC's recent actions against one of the large public accounting firms (KPMG) in an enforcement case illustrates the danger of allowing an accounting firm to serve as a broker dealer, investment advisor, or investment banker for a public company audit client (Porta Systems). In that case, the accounting firm set up an affiliate and the affiliate provided "turn around" services to the issuer, including functioning as the president of the company. There would have been no need for an SEC action if the non-audit service were simply prohibited.

The inherent conflict created by these consulting services has been exacerbated by their rapid growth in the last 15 years. According to the SEC, 55 percent of the average revenue of the big five accounting firms came from accounting and auditing services in 1988. Twenty-two percent of the average revenue came from management consulting services. By 1999, those figures had fallen to 31 percent for accounting and auditing services, and risen to 50 percent for management consulting services. Recent data reported to the SEC showed on average public accounting firms' non-audit fees comprised 73 percent of their total fees, or $2.69 in non-audit fees for every $1.00 in audit fees.

A number of the most knowledgeable and thoughtful witnesses who testified before the Senate Banking Committee in the hearings held in preparation for this legislation argued that the growth in the non-audit consulting business done by the large accounting firms for their audit clients has so compromised the independence of the audits that a complete prohibition on the provision of consulting services by accounting firms to their public audit clients is required. Perhaps the strongest advocates of this view have been the managers of large pension funds who are entrusted with people's retirement savings.

For example, the California Public Employees' Retirement System (CalPERS), manages pension and health benefits for more than 1.3 million members and has aggregate holdings totaling almost $150 billion. According to CalPERS CEO, James E. Burton:

> the inherent conflicts created when an external auditor is simultaneously receiving fees from a company for non-audit work cannot be remedied by anything less than a bright-line ban. An accounting firm should be an auditor or a consultant, but not both to the same client.

John Biggs is CEO of Teachers Insurance and Annuity Association College Retirement Equities Fund (TIAA-CREF), the largest private pension system in the world, which manages approximately $275 billion in pension assets for over 2 million participants in the education and research community. Mr. Biggs was also a member of the last Public Oversight Board. He told the Committee that:

> TIAA-CREF does not allow our public audit firm to provide any consulting services to us, and our policy even bars our auditor from providing tax services.

The conference report chose not to follow the approach of imposing a complete prohibition on the provision of non-audit services to audit clients. Instead it chose the approach of identifying the non-audit services which by their very nature pose a conflict of interest and should be prohibited. Among those supporting this approach are former Comptroller General Charles Bowsher, former SEC Chairman Arthur Levitt, and former Federal Reserve Board Chairman Paul Volcker.

The argument is made that small companies, in particular, may be burdened by this requirement and that the SEC should have broad authority to grant categorical exemptions. It is even argued that so many companies would seek case-by-case exemptions that the SEC would become overwhelmed and would be unable to process the exemptions in a timely manner.

The point is that if the provision of a non-audit service to a public company audit client creates a conflict of interest for the accounting firm that non-audit service should be prohibited, whether the public company is large or small. Investors rely on the audit in making their investment decisions, and the independence of the audit should not be compromised by the provision of the non-audit service. If a legitimate exceptional hardship is imposed, then the Oversight Board would have the authority to grant case-by-case exemptions.

The present Comptroller General, David Walker, issued a particularly strong statement in support of the approach to auditor independence taken in the bill conference report I would like to quote:

> I believe that legislation that will provide a framework and guidance for the SEC to use in setting independence standards for public company audits is needed. History has shown that the AICPA [American Institute of Certified Public Accountants] and the SEC have failed to update their independence standards in a timely fashion and that past updates have not adequately protected the public's interests. In addition, the accounting profession has placed too much emphasis on growing non-audit fees and not enough emphasis on modernizing the auditing profession for the 21st century environment. Congress is the proper body to promulgate a framework for the SEC to use in connection with independence related regulatory and enforcement actions in order to help ensure confidence in financial reporting and safeguard investors and the public's interests. The independence provision [of the bill] . . . strikes a reasoned and reasonable balance that will enable auditors to perform a range of non-audit services for their audit clients and an unlimited range of non-audit services for their non-audit clients. . . . In my opinion, the time to act on independence legislation is now.

This auditor independence provision is at the very center of this legislation. It goes to the public trust granted to public accounting firms by our securities laws which require comprehensive financial statements that must be prepared, in the words of the Securities Act of 1933, by "an independent public or certified accountant."

The statutory independent audit requirement has two sides, a private franchise and a public trust. It grants a franchise to the nation's public accountants—their services, and only their services—must be secured before an issuer of securities can go to market, have the securities listed on the nation's stock exchanges, or comply with the reporting requirements of the securities laws. This is a source of significant private benefit.

But the franchise is conditional. It comes in return for the CPA's assumption of a public duty and obligation. As a unanimous Supreme Court noted nearly 20 years ago:

> In certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility. . . . [That auditor] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

We must cut the chord between the audit and the consulting services which by their very nature undermine the independence of the audit. We must break this culture that exists, and to do that we need a bright line. In my view granting broad exemption authority to the Oversight Board or the SEC to permit these non-audit services would undermine the separation the conference report is intended to establish.

I wanted to underscore the fact that there was a very reasoned, intense discussion of these issues. There is reason on both sides. I thought the Senator made a very strong statement. I wanted to give the counterstatement here.

I share Senator DODD's view about this exchange of ideas and its importance to the functioning of this institution. The Senator from Texas has certainly made an important contribution in that regard.

I wish to take a moment to recognize the terrific work of the staff. Senator GRAMM referred to Wayne Abernathy and Linda Lord, and of course Mike Thompson and Katherine McGuire of Senator ENZI's staff; Laura Ayoud of the legislative counsel who worked day and night to put this thing in legislative language; the staff of the Banking Committee led by Steve Harris, Dean Shahinian, Steve Kroll, Lynsey Graham, Vincent Meehan, Sarah Kline, Judy Keenan, Jesse Jacobs, Craig Davis, Marty Gruenberg, Gary Gensler, and, as I said, all led so ably by Steve Harris.

We had the very able staff of the Senators on the committee: Alex Sternhell, Naomi Camper, Jon Berger, Jimmy Williams, Catherine Cruz Wojtasik, Leslie Wooley, Margaret Simmons, Matt Young, Roger Hollingsworth, and Matt Pippin.

I thank again all my colleagues who participated. I think I recognized most of them in the course of the day, and I want to say just a word about Chairman OXLEY and Congressman LAFALCE on the House side, who made it possible for us to work through this conference and with whom we have worked so cooperatively on so many issues that have come before our committee.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. SARBANES. How much time is remaining?

The PRESIDING OFFICER. The Senator from Maryland is without time. There are 12 minutes for the Senator from Texas.

Mr. GRAMM. Mr. President, we have reached the hour that we set for a vote. I am ready to yield back the 12 minutes and have the vote proceed.

I reiterate that this is a bill that was fraught with danger in the environment that we were in. Literally anything could have passed. I think, by a combination of good work and some good fortune, that has not been the case. We have a vehicle before us that I think will be complicated. It will be difficult to implement.

I think we will probably change it in the future. But I think in terms of our ability to prosper under the bill, and for the economy to survive not only the illness but the prescription of the doctor in this case, I think it is doable.

I yield the remainder of our time.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. SARBANES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—99

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—1

Helms

The conference report was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DAYTON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. REID. Madam President, I ask unanimous consent that immediately after the cloture vote on the nomination of Julia Smith Gibbons, all time postcloture be considered used, and that on Monday, July 29, at 5:30 p.m., the Senate proceed to executive session to vote on the nomination of Julia Smith Gibbons, to be a U.S. circuit judge; that upon confirmation, the President be immediately notified of the Senate's action and that the Senate return to legislative session; further, that on Friday, July 26, immediately following the cloture vote on the nomination, the Senate return to legislative session and resume consideration of S. 812; that Senator GREGG or his designee be recognized to offer a second-degree amendment; that during Friday's session, there be up to 3 hours for debate with respect to the amendment, with the time equally divided and controlled between Senators KENNEDY and GREGG or their designees; and that whenever the Senate resumes consideration of S. 812, the Gregg or designee amendment remain debatable.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, we have spent considerable time this evening in a quorum call, but in spite of that, we have had a very productive legislative day. We have passed the conference report on corporate governance; the Appropriations Committee this afternoon reported the final four bills out of the Appropriations Committee; and we are finished with those and will bring them to the floor. We have gotten permission to go to the conference committee on terrorism, which we have been trying to do for weeks. There was significant progress made today with passage of the bankruptcy conference report, and there were other things.

But finally, what I want to say, we will shortly approve in a matter of a few minutes, four members to the Securities and Exchange Commission. That goes hand and glove with the work we have done on corporate governance. We are going to approve Cynthia Glassman to be a member, Harvey Jerome Goldschmid to be a member, Roel C. Campos to be a member of the Securities and Exchange Commission, and Paul S. Atkins will also be approved. We have had a very successful day.

For those watching, whether it is staff or people around the country, sometimes during the downtimes a lot of progress is made. Even as we speak, there is work being done to see if we can come up with a bipartisan amendment to handle the prescription drug problems that senior citizens have in America today. All in all, it was a good day for the country.

I ask unanimous consent that immediately following the cloture vote tomorrow, Friday, the Senate proceed to executive session to consider Executive Calendar No. 826, Christopher C. Conner to be United States district judge; that the Senate vote immediately on confirmation of the nomination, the motion to reconsider be laid upon the table, and any statements be printed at the appropriate place; that the President be immediately notified of the Senate's action, the Senate return to legislative session, and that the proceeding all occur without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REED. I ask unanimous consent that we now proceed to a period of morning business with Senators allowed to speak for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEDICARE PRESCRIPTION DRUG COVERAGE

Mr. SARBANES. Madam President, I rise to express my disappointment about the outcome of the Senate's recent vote on Medicare prescription drug coverage. The Senate missed an opportunity to provide one of the most important expansions of Medicare benefits since the system was created in 1965. Senator GRAHAM's proposal, of which I was proud to be an original cosponsor with a number of my Democratic colleagues, would have provided comprehensive, voluntary, and affordable prescription drug coverage for all Medicare beneficiaries. Though the majority of the Senate supported this proposal, it lacked the votes necessary to proceed.

We know that more than 1 in 3 Medicare beneficiaries lack prescription drug coverage. We know, too, many seniors struggle to pay for the medicine they need to keep them healthy and treat their diseases and illnesses. We know that doctors are now put in the unthinkable position of considering a patient's financial situation when developing a course of treatment. Doctors are conflicted by this, but know that it does not benefit the patient to prescribe a drug, even though it may be the best method of treating or curing an illness, if the patient cannot afford the medicine.

More importantly, I, like most of my colleagues, continually hear from constituents who face this dilemma directly. They are ill, they are frustrated, and too many times, they are embarrassed to have made it this far in life and have to ask for help after years of independence. I have heard from those who may not have a direct need, but who are desperately seeking assistance for a loved one who needs help. They are frustrated to learn that there is nowhere for them to turn because Medicare provides nothing for outpatient drugs, yet they have too much income or too many assets to qualify for state offered assistance.

The Graham proposal would provide drug coverage for all Medicare beneficiaries for a $25 monthly premium, no deductible, a $10 copayment for generic drugs, and a $40 copayment for preferred brand name drugs. In addition, Medicare beneficiaries would have all of their prescription costs covered after they spend $4,000 in out-of-pocket costs. Assistance would begin with the very first prescription, and there would be no gaps or limits on the coverage provided. Under Senator GRAHAM's proposal, low-income seniors would not be required to pay premiums or copayments for their coverage.

Regrettably, some of my colleagues did not support the Graham amendment. They voted instead for an alternative that required seniors to pay a $250 deductible, while only covering 50 percent of their prescription costs up to $3450. After a Medicare beneficiary's costs exceed $3450, he or she would receive no assistance whatsoever until his or her costs reach $3700. Above $3700, the government would then only pay 90 percent of drug costs. Under this proposal, those who are the sickest, with the highest drug costs, would be forced to pay more when they require assistance the most.

Many of those who opposed the Graham proposal complained about the cost of this proposal. I find it perplexing that we can find money for other things, but not for the mothers, fathers, grandparents and other Americans that need our help in their older years. Opponents of the Graham bill found money to fund a large tax cut costing $1.35 trillion last year a tax cut that primarily benefit the very wealthiest Americans. Many of my fears about the decision to pass such a large and unreasonable tax cut have been realized raids on Social Security and Medicare, a return to budget deficits, instability in the financial markets. It has forced us unnecessarily to limit resources for those things that should be national priorities. I remain astonished that some believe tax cuts should be a priority over providing prescription drug coverage to everyday Americans who have worked hard and paid their taxes all their lives.

Yesterday, we had the chance to mark the 107th Congress with the greatest overhaul of Medicare benefits since its inception 37 years ago. I supported the Graham prescription drug plan along with 51 of my colleagues because I believe it is the only proposal that would provide Medicare beneficiaries with real comprehensive prescription drug coverage. I only hope that we can find a way to enact a meaningful Medicare prescription drug benefit this year. Our older Americans deserve no less.

IMMUNOSUPPRESSIVE DRUG COVERAGE AMENDMENT

Mr. DEWINE. Madam President, I wish to speak to an amendment of mine and my friend and colleague, Senator DURBIN, to help organ transplant patients maintain access to the life-saving drugs necessary to prevent their immune systems from rejecting their new organs.

Every year, nearly 6,000 people die waiting for an organ transplant. Currently, over 67,000 Americans are waiting for a donor organ. Those individuals who are blessed to receive an organ transplant must take immunosuppressive drugs every day for the life of their transplant. Failure to take these drugs significantly increases the risk of the transplanted organ being rejected.

We need this amendment, because Federal law is compromising the success of organ transplants. Let me explain. Right now, current Medicare policy denies certain transplant patients coverage for the drugs needed to prevent rejection.

Medicare does not pay for anti-rejection drugs for Medicare beneficiaries, who received their transplants prior to becoming a Medicare beneficiary. So, for instance, if a person received a transplant at age 64 through his or her health insurance plan, when that person retires and relies on Medicare for health care coverage, he or she would no longer have immunosuppressive drug coverage.

Medicare only pays for anti-rejection drugs for transplants performed in a Medicare-approved transplant facility. However, many beneficiaries are completely unaware of this fact and how it can jeopardize their future coverage of immunosuppressive drugs. To receive an organ transplant, a person must be very ill and many are far too ill at the time of transplantation to be researching the complexities of Medicare coverage policy.

End Stage Renal Disease, ESRD, patients qualify for Medicare on the basis of needing dialysis. If End Stage Renal Disease patients receive a kidney transplant, they qualify for Medicare coverage for three years after the transplant. After the three years are up, they lose not only their general Medicare coverage, but also their coverage for immunosuppressive drugs.

The amendment that Senator Durbin and I are introducing today would remove the Medicare limitations and make clear that all Medicare beneficiaries including End Stage Renal Disease patients who have had a transplant and need immunosuppressive drugs to prevent rejection of their transplant, will be covered as long as such anti-rejection drugs are needed.

In the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act, Congress eliminated the 36-month time limitation for transplant recipients who: 1. received a Medicare eligible transplant and 2. who are eligible for Medicare based on age or disability. Our amendment would provide the same indefinite coverage to kidney transplant recipients who are not Medicare aged or Medicare disabled.

I urge my colleagues to support this amendment and help those who receive Medicare-eligible transplants gain access to the immunosuppressive drugs they need to live healthy productive lives.

U.S. POLICY ON IRAQ

Mr. FEINGOLD. Madam President, I am pleased to cosponsor S.J. Res 41. As the resolution makes clear, the time is ripe for an open debate on our plans for Iraq.

Some are concerned that an open debate on our policy toward Iraq could expose sensitive intelligence information or that such a debate would tip our hand too much. Others fear that a meaningful debate could back the administration into a corner, and in so doing encourage the administration to adopt a tougher military response.

Ultimately, all of these arguments against an open and honest debate on Iraq could be made with respect to nearly any military decision, and if taken to their extreme, these arguments would challenge the balance of powers in the Constitution by excluding Congress from future war-making decisions. Moreover, to answer some of these concerns more directly, I would also note that the almost daily leaks from the administration on our Iraq policy have tipped our hand even more than responsible congressional hearings and debate would. It is hardly a secret that the United States is considering a range of policy options, including military operations, when it comes to Iraq. And the argument that an open discussion of military action could, in effect, become self-fulfilling is too circular to be credible.

I am concerned with the dangers posed by Saddam Hussein, as well as with the humanitarian situation in Iraq. But I am also very concerned about the constitutional issues at stake here. This may well be one of our last opportunities to preserve the constitutionally mandated role of Congress in making decisions about war and peace.

On April 17, 2002, I chaired a hearing before the Constitution Subcommittee on the application of the War Powers Resolution to our current anti-terrorism operations. The focus of that hearing was to explore the limits of the use of force authorization that Congress passed in response to the attacks of September 11. At the hearing, leading constitutional scholars concluded that the use of force resolution for September 11 would not authorize a future military strike against Iraq, unless some additional evidence linking Saddam Hussein directly to the attacks of Sept. 11 came to light. Many of the experts also questioned the dubious assertion that congressional authorization from more than 10 years ago for Desert Storm could somehow lend ongoing authority for a new strike on Iraq.

On June 10, I delivered a speech on the floor of the Senate in which I outlined my findings from the April hearing. As I said then, I have concluded that the Constitution requires the President to seek additional authorization before he can embark on a major new military undertaking in Iraq. I am pleased that S.J. Resolution 41 makes that point in forceful legislative terms.

So this is indeed an appropriate time to consider our policy toward Iraq in more detail. I look forward to hearings that Senator BIDEN will chair before the Foreign Relations Committee. I also look forward to additional debate and discussion on the floor of the Senate, and, when appropriate, in secure settings, where the administration can make its case for a given policy response, and the Congress can ask questions, probe assumptions, and generally exercise the oversight that the American people expect of us.

Through these hearings and debates, it will be important to assess the level of the threat that exists, along with the relative dangers that would be posed by a massive assault on Iraq—dangers that include risks to American soldiers and to our relations with some of our strongest allies in our current anti-terror campaign. And it will be crucially important to think through the aftermath of any military strike.

We don't have to divulge secret information to begin to weigh the risks and opportunities that confront us. But the American people must understand the general nature of the threats, and they must ultimately support any risks that we decide to take to secure a more peaceful future. I don't think the American public has an adequate sense yet of the threats, dangers or options that exist in Iraq. I don't think Congress has an adequate grasp of the issues either. And that is why additional hearings and debates are so necessary.

Finally, I have always said that another military campaign against Iraq may eventually become unavoidable. As a result, I am pleased that S.J. Res 41 is neutral on the need for a military response, while recognizing the intrinsic value of open and honest debate. Following a vigorous debate, if we decide that America's interests require a direct military response to confront Iraqi aggression, such a response would be taken from a constitutionally unified, and inherently stronger, political position. We must also remember that constitutional unity on this question presents a stronger international image of the United States to our friends and foes, and, at the same time, a more comforting image of U.S. power to many of our close allies in the campaign against terrorism.

I am pleased to cosponsor S.J. Res. 41, and I look forward to a vigorous debate on this issue.

PATIENT SAFETY AND QUALITY IMPROVEMENT ACT

Mr. FRIST. Madam President, I rise today to discuss a very critical bill—S. 2590, the "Patient Safety and Quality Improvement Act." This bill, which Senators JEFFORDS, BREAUX, GREGG, and I introduced in May, represents our next step in reducing the number of patients harmed each year by medical errors. Although a variety of patient safety initiatives are underway in the private sector as well as within the Department of Health and Human Services, Congress has an important role to play in reinforcing and assisting these efforts.

Today, the House Ways and Means Committee is expected to report a bipartisan bill—a bill that is almost identical to its Senate counterpart—that will help improve the safety of our health care system. Additionally, President Bush has highlighted the importance of this issue by formally supporting this crucial legislation. Moreover, this bill is supported by over thirty different health care organizations. Mr. President, I will ask that a list of those supporting organizations be included in the RECORD.

As a physician and a scientist, I know the enormous complexities of medicine today and the intricate system in which providers deliver care. I also recognize the need to examine medical errors closely in order to determine where the system has filed the patient. One method used in hospitals is the Mortality and Morbidity Conferences, in which individuals can openly discuss patients' cases and examine problems in detail. Unfortunately, because those conferences represent a single, internal hospital event, we cannot obtain valuable, systematic information about problems or information that could be shared to allow providers to learn from each other's mishaps. Therefore, there is a need to create a broader, more inclusive learning system that encompasses all components of the health care system.

One impediment to that learning system is an inability to more closely examine patient safety events without the threat of increased litigation. The Institute of Medicine's report, To Err is Human, as well as experts who testified for the past few years in a series of Senate and House hearings, strongly recommended that Congress provide legal protections for information gathered to improve health care quality and increase patient safety. Without these protections, patient safety improvements will continue to be hampered by fears of retribution and recrimination. If we are to change the health care culture from "name, shame, and blame" to a culture of safety and continuous quality improvement, we must provide these basic protections.

However, we must be careful not to provide legal immunity for information that would normally be available for litigation, such as medical records. Rather, we should protect information that would be gleaned from providers' investigations of patient safety events. This information is not currently being reported in a way that would allow us to learn from our errors and improve the safety and quality of care for our patients.

Additionally, we must ensure that, in extreme circumstances, such as a criminal or disciplinary proceeding, the patient safety data is not used as a shield. In those circumstances, it is imperative that the information be shared, as disclosing that information is material to the proceeding, within the public interest, and not available for any other source. In this manner, we provide a balancing test—weighing the public good in sharing the information and providing the appropriate legal protections so that the system can be improved with the people good in weeding out the "bad apples."

In crafting this legislation with Senators JEFFORDS, BREAUX, and GREGG, we were careful to concentrate on the learning system and provide appropriate legal protections for that system. We view this as an essential first step in the ongoing, dynamic process of improving patient safety.

I also want to reassure my colleagues that this approach to improving medical care—providing limited confidentiality protections to ensure that we learn from the system—is not new to health care. Currently, there are at least five health care examples which use Federal confidentiality and peer review protections—the Centers for Disease Control and Prevention's National Nosocomial Infections Surveillance System, NNIS, the Food and Drug Administration's MedWatch, Veterans Health Administration, VHA, and the Centers for Medicare & Medicaid Services Quality Improvement Organizations, QIOs. Each of these confidentiality and peer review protections have improved the delivery of health care.

NNIS is a voluntary, hospital-based reporting system established to monitor hospital-acquired infections and guide the prevention efforts through description of the epidemiology of nosocomial infections, antimicrobial resistance trends, and nosocomial infection rates to use for comparison purposes. Since its inception in 1970, there has been a 34 percent reduction in the number of nosocomial infections. This dramatic decrease can be attributed, in part, to the availability of data for analysis and identification of system errors that were contributing to high rates. By law, CDC assures participating hospitals that any information that would permit identification of any individual or institution will be held in strict confidence. This allows hospitals to report accurately without fear of negative repercussions.

MedWatch is a voluntary Medical Products Reporting Program for quickly identifying unsafe medical products on the market. Through MedWatch, the Food and Drug Administration officials work to improve the safety of drugs, biologics, medical devices, dietary supplements, medical foods, infant formulas, and other regulated products by encouraging health professionals to report serious adverse events and product defects. Once an adverse event or product problem is identified, FDA can take any of the following actions: labeling changes, boxed warnings, product recalls and withdrawals, and medical and safety alerts. The aggregation of information through MedWatch has lead to drug recalls, such as Felbatol and Omniflox, and to label changes on approximately 30 percent of the New Molecular Entities each year.

To address the need for a non-punitive confidential reporting system, the VHA developed and continues to implement an innovative systems approach to prevent harm to patients within Veterans Administration's 163 medical centers. VHA has already implemented nationwide internal and external reporting systems that supplement the current accountability systems. Thus far, efforts have led to the implementation of physician ordering systems and safety bulletins, such as the proper handling of MRI equipment.

QIOs monitor and improve the quality of care delivered to Medicare beneficiaries. All information collected by QIOs for quality improvement work is non-discoverable. QIOs work directly and cooperatively with hospitals and medical professionals across the country to implement quality improvement projects that address the root causes of medical errors. QIOs use data to track progress towards eliminating errors and improving treatment processes. For example, the latest available national data, 1996–1998, show QIO projects resulted in 34 percent more patients getting medications to prevent a second heart attack; 23 percent more stroke patients receiving drugs that prevent subsequent strokes; 12 percent more heart failure patients getting treatment needed to extend their active lives; and 20 percent more patients hospitalized with pneumonia receiving rapid antibiotic therapy.

I appreciate the efforts made by Senators JEFFORDS, BREAUX, and GREGG thus far and look forward to working with them and others to pass this bipartisan legislation. I also value the leadership of the Bush Administration and my House colleagues on this critical issue. I hope that the Senate can also consider this important issue and come to a resolution in the near future.

I ask unanimous consent that the list of supporting organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS SUPPORTING THE "PATIENT SAFETY AND QUALITY IMPROVEMENT ACT"

JUNE 6, 2002

Alliance of Community Health Plans, Alliance of Medical Societies, American Academy of Dermatology Association, American Academy of Family Physicians, American Academy of Neurology, American Academy of Pediatrics, American Association of Health Plans, Association of American Medical Colleges, American Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, American Association of Thoracic Surgery, American College of Cardiology, American College of Emergency Physicians, American College of Osteopathic Family Physicians, American College of Osteopathic Surgeons, American College of Physicians-American Society of Internal Medicine.

American College of Radiology, American Gastroenterological Association, American Geriatrics Society, American Hospital Association, American Medical Association, American Medical Group Association, American Osteopathic Association, American Pharmaceutical Association, American Psychiatric Association, American Society for Clinical Pathology, American Society for Quality, American Society of Anesthesiologists, American Society of Cataract and Refractive Surgery, Congress of Neurological Surgeons, eHealth Initiative, Federation of American Hospitals.

General Motors, Healthcare Leadership Council, Institute for Safe Medication Practices, Joint Commission on the Accreditation of Healthcare Organizations, Joseph H. Kanter Family Foundation, Marshfield Clinic, Medical Group Management Association, National Association of Manufacturers, Premier, Society of Critical Care Medicine, Society of Thoracic Surgeons, Tennessee Hospital Association, U.S. Chamber of Commerce, U.S. Pharmacopeia, Vanderbilt University Medical Center, VHA Inc.

WE SHALL NOT FORGET: KOREA

1950–1953

Mr. ROCKEFELLER. Madam President, I rise on this day to commemorate the end of the Korean War, an often overlooked, yet very important event in history. "Forgotten" is a term used too often about the Korean War; for veterans and their families, the war is very real, and something they can never forget.

Officially, the war was the first military effort of the United Nations, but American involvement was dominant throughout the conflict. Thousands of Americans were shipped off to that distant land, joining with other soldiers from other allied nations, to help defend the rights of strangers against a hostile and merciless invasion. Unfortunately, many who fought bravely to aid the Koreans lost their lives while waging the war.

Today, I want to pay homage to all who served in this war. The troops from the United States and the 20 other United Nations countries who provided aid to the South Koreans deserve our great acclaim every day, but even more so on this special anniversary. These great countries united to preserve the rights of South Korea, a small democracy threatened by the overwhelming power of the Communist government. South Korea did not have sufficient military resources to protect its interests. Fortunately, the United Nations member countries were unwilling to sit back and watch North Korea, with the aid of China and the Soviet Union, drive democracy from the continent of Asia.

On June 25, 1950, troops from Communist-ruled North Korea invaded South Korea, meeting little resistance to their attack. A few days later, on the morning of July 5th—still Independence Day in the United States, Private Kenny Shadrick of Skin Fork, WV, became the war's first American casualty. Kenny was the first, but many more West Virginians were destined to die in the conflict, in fact, more West Virginians were killed in combat during the three years of the Korean War than during the 10 years that we fought in Vietnam.

At the end of the Korean War, a U.S. casualty report confirmed 36,940 battle deaths. An additional 103,284 servicemembers were wounded in battle. More than 8,000 Americans are still missing in action and unaccounted. How can we possibly call one of the bloodiest wars in history a "forgotten war?" Are those who served in Korea "forgotten soldiers?"

Make no mistake, those who fought in Korea will never be forgotten. They serve as examples of true Americans, and the debt we owe to our Korean War veterans, like the veterans of all other wars, is immeasurable. Unfortunately, these soldiers, like the Vietnam veterans who followed, received no parade when they returned home. They quietly went back to the lives they left and blended into their communities, unsung heroes of a faraway war.

Six years ago, we dedicated the Korean War Memorial. This stirring tribute to the veterans of this war poignantly bears out the hardships of the conflict.

The Memorial depicts, with stainless steel statues, a squad of 19 soldiers on patrol. The ground on which they advance is reminiscent of the rugged Korean terrain that they encountered, and their wind-blown ponchos depict the treacherous weather that ensued throughout the war. Our soldiers landed in South Korea poorly equipped to face the icy temperatures of 30 degrees below zero, their weaponry outdated and inadequate. As a result of the extreme cold, many veterans still suffer today from cold-related injuries, including frostbite, cold sensitization, numbness, tingling and burning, circulatory problems, skin cancer, fungal infections, and arthritis. Furthermore, the psychological tolls of war have caused great hardship for many veterans.

As a background to the soldiers' statues at the Memorial, the images of 2,400 unnamed men and women stand etched into a granite wall, symbolizing the determination of the United States workforce and the millions of family members and friends who supported the efforts of those at war. Looking at the steadfast, resolute faces of these individuals invokes in the viewer a deep admiration and appreciation for their importance to the war effort.

Author James Brady, a veteran of the Korean War, spoke for all those who served in the war when he wrote, "We were all proudly putting our lives on the line for our country. But I would later come to realize that the Korean War was like the middle child in a family, falling between World War II and Vietnam. It became an overlooked war." Mr. BRADY conveys the sentiments of many of the veterans who served in this war and underscores our need to give these veterans the recognition they are long overdue.

Today, I salute the courage of those who answered the call to defend a country they never knew and a people they never met. Through their selfless determination and valor in the battle, these men and women sent an important message to future generations. I thank our Korean War veterans; their bravery reminds us of the value we put on freedom, while their sacrifices remind us that, as it says at the Korean War Memorial, "Freedom is not free." We shall never forget.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred on October 14, 2000 in Billings, MT. Chris Lehman, 23, shot Roderick Pierson, 44, with a BB gun. Mr. Lehman later admitted to shooting Pierson because he was black. Mr. Pierson was shot while walking with his 6 year-old daughter.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

BURMESE MILITARY RAPES

Mr. McCONNELL. Madam President, the military junta in Burma must be judged not by what it says, but rather by what it does.

The recent editorial in the Washington Post on the rape of ethnic minority women and girls by Burmese military officials is heartbreaking and horrific. It is by no means a stretch to characterize the junta's mismanagement and oppression of the people of Burma as a "reign of terror."

I join my colleagues in both the Senate and House who have called for justice for these heinous crimes, and for continued pressure on the illegitimate regime in Burma to relinquish power to the sole legitimate representative of the people of Burma, the National League for Democracy. As the editorial rightly states "Burma's leaders cannot bring the criminals to justice because they are the criminals."

I ask unanimous consent that a copy of the editorial "The Rape of Burma" be printed in the RECORD following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 23, 2002]

THE RAPE OF BURMA

RECENT EVENTS have led some people to predict that one of the world's most repressive regimes may be growing a bit less so. The generals who rule, or misrule, the Southeast Asian nation of Burma, which they call Myanmar, released from house arrest the woman who should in fact be the nation's prime minister, Aung San Suu Kyi. They have allowed her to travel a bit, and they have released from unspeakable prisons a few of her supporters. Grounds for hope, you might think.

Then came release of a report, documented in horrifying detail, of how Burma's army uses rape as a weapon of war. The rapes take place as part of the junta's perpetual—and, outside Burma, little-noticed—war against ethnic nationalities, in this case in Shan state. The Shan Human Rights Foundation and Shan Women's Action Network documented 173 incidents involving 625 girls and women, some as young as five years old, taking place mostly between 1996 and 2001. Most of the rapes were perpetrated by officers, in front of their men, and with utmost brutality; one-quarter of the victims died.

What is telling is the response of the regime to the report. Rather than seeking to bring the criminals to justice, it has unleashed vitriol against the human rights organizations, accusing them of drug-running and the like. This is the junta's usual pattern, whenever it is found to be scraping the bottom of the morality barrel: child labor, forced labor, torture. It denies all and attacks the truth-tellers. Yet, over the years the evidence of barbarity has been so inescapable that even the junta's would-be friends have found it impossible to overlook it. Burma's leaders cannot bring the criminals to justice because they are the criminals.

Later this month Secretary of State Colin Powell will travel to the region for meetings with senior officials. Earlier this month he instructed his diplomats to express outrage over the reported use of rape as a tactic of war; he should personally express the same outrage. He also should make clear that Aung San Suu Kyi—whose democratic party won an overwhelming victory in 1990 elections that the junta nullified—should be permitted more room to maneuver: permission to publish a newspaper, for starters. The Burmese regime should not receive rewards for cosmetic liberalization.

ADDITIONAL STATEMENTS

TRIBUTE TO MRS. MARIAN C. O'DONNELL

• Mr. SESSIONS. Madam President, I rise today to pay tribute to Mrs. Marian C. O'Donnell, an outstanding Civil Servant who will retire from the Federal Government on August 3, 2002 after distinguishing herself with over 31 years of dedicated service. During her career, Mrs. O'Donnell has served in a succession of key positions where she has established a pattern of clearly exceptional performance and service leading to outstanding results in all her duties for the Department of the Army and the Department of Defense.

Mrs. O'Donnell served in a succession of administrative and secretarial positions of ever increasing responsibility in Germany and the United States culminating in her current assignment for the past 15 years as the personal assistant to the Army's Chief of Legislative Liaison. Marian O'Donnell's efforts and accomplishments are examples of extraordinary dedication and professionalism. Throughout her career, she was honored repeatedly by her superiors because of her efficiency, meticulous attention to detail, and ability to handle a multitude of tasks simultaneously. Marion's understated charm resulted in numerous outstanding performance ratings, quality step increases, and two Commander's Award for Civilian Service which so many of her peers have tried to emulate.

While serving as the personal assistant to the Chief, Legislative Liaison Marian O'Donnell played a key role in the Army's congressional liaison efforts. She is the conduit though which Members of Congress, their staffs, senior Army and Defense officials dealt with the Army's leadership. A competent and unflappable professional, Marion has always placed the Army and our Nation first. Throughout her service, Marian O'Donnell was regarded as the thread resulting in smooth and flawless changes to the Army's congressional liaison leadership.

Despite the demands of her career Marian still found time to do volunteer work with her Church and serve as counselor with its Pregnancy Crisis Center. She is truly a civil servant of the first order and an outstanding citizen. On behalf of the Congress of the United States and the people of this great Nation, I offer my heartfelt thanks for her years of service and best wishes for a well-deserved retirement.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4775. An act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.

At 1:51 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5120. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes.

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 4965. An act to prohibit the procedure commonly known as partial-birth abortion.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 188. Concurrent resolution expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners.

At 4:02 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4946. An act to amend the Internal Revenue Code of 1986 to provide health care incentives.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 448. A concurrent resolution providing for a special meeting of the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

H. Con. Res. 449. A concurrent resolution providing for representation by Congress at a special meeting in New York, New York, on Friday, September 6, 2002.

At 5:06 p.m. a message from the House of Representatives, delivered by Mr. Hayes, one of its reading clerks, announced that the House insists upon its amendment to the amendment of the Senate to the bill (H.R. 4546) to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense for military construction and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, and ask a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House;

From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Mr. STUMP, Mr. HUNTER, Mr. HANSEN, Mr. WELDON of Pennsylvania, Mr. HEFLEY, Mr. SAXTON, Mr. MCHUGH, Mr. EVERETT, Mr. BARTLETT of Maryland, Mr. MCKEON, Mr. WATTS of Oklahoma, Mr. THORNBERRY, Mr. HOSTETTLER, Mr. CHAMBLISS, Mr. JONES of North Carolina, Mr. HILLEARY, Mr. GRAHAM, Mr. SKELTON, Mr. SPRATT, Mr. ORTIZ, Mr. EVANS, Mr. TAYLOR of Mississippi, Mr. ABERCROMBIE, Mr. MEEHAN, Mr. UNDERWOOD, Mr. ALLEN, Mr. SNYDER, Mr. REYES, Mr. TURNER, and Mrs. TAUSCHER.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Mr. GOSS, Mr. BEREUTER, and Ms. PELOSI.

From the Committee on Education and the Workforce, for consideration of sections 341–343, and 366 of the House amendment, and sections 331–333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Mr. ISAKSON, Mr. WILSON of South Carolina, and Mr. GEORGE MILLER of California.

From the Committee on Energy and Commerce, for consideration of sections 601 and 3201 of the House amendment, and sections 311, 312, 601, 3135, 3171–3173, and 3201 of the House amendment, and modifications committed to conference; Mr. TAUZIN, Mr. BARTON, and Mr. DINGELL.

From the Committee on Government Reform, for consideration of sections 323, 804, 805, 1003, 1004, 1101–1106, 2811 and 2813 of the House amendment, and sections 241, 654, 817, 907, 1007–1009, 1061, 1101–1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Mr. BURTON, Mr. WELDON of Florida, and Mr. WAXMAN.

From the Committee on International Relations, for consideration of sections 1201, 1202, 1204, title XIII, and section 3142 of the House amendment, and subtitle A of title XII, sections 1212–1216, 3136, 3151, and 3156–3161 of the Senate amendment, and modifications committed to conference; Mr. HYDE, Mr. GILMAN, and Mr. LANTOS.

From the Committee on the Judiciary, for consideration of sections 811 and 1033 of the House amendment, and sections 1067 and 1070 of the Senate amendment, and modifications committed to conference: Mr. SENSENBRENNER, Mr. SMITH of Texas, and Mr. CONYERS.

From the Committee on Resources, for consideration of sections 311, 312, 601, title XIV, sections 2821, 2832, and 2863 of the House amendment, and sections 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Mr. DUNCAN, Mr. GIBBONS, and Mr. RAHALL.

From the Committee on Science, for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committted to conference: Mr. BOEHLERT, Mr. SMITH of Michigan, and Mr. HALL of Texas.

From the Committee on Science, for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment and modifications committed to conference: Mr. BOEHLERT, Mr. SMITH of Michigan, and Mr. HALL of Texas.

From the Committee on Transportation and Infrastructure, for consideration of section 601 of the House amendment, and section 601 and 1063 of the Senate amendment, and modifications committed to conference; Mr. YOUNG of Alaska, Mr. LOBIONDO, and Ms. BROWN of Florida.

From the Committee on Veterans' Affairs, for the consideration of sections 641, 651, 721, 727, 724, 726, 728 of the House amendment, and sections 541 and 641 of the Senate amendment and modifications committed to conference: Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. JEFF of Florida, Mr. FILNER, and Ms. CARSON of Indiana.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; to the Committee on Intelligence.

H.R. 4946. An act to amend the Internal Revenue Code to provide health care incentives related to long-term care; to the Committee on Finance.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 188. Concurrent resolution expressing the sense of Congress that the government of the People's Republic of China should cease its persecution of Falun Gong practitioners; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5120. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 4965. An act to prohibit the procedure commonly known as partial-birth abortion.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BAUCUS, from the Committee on Finance, with an amendment in the nature of a substitute:

H.R. 4737: A bill to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes. (Rept. No. 107–221).

By Ms. MIKULSKI, from the Committee on Appropriations, without amendment:

S. 2797: An original bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–222).

By Mr. KOHL, from the Committee on Appropriations, without amendment:

S. 2801: An original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–223).

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment and with an amended preamble:

S. Res. 300: A resolution encouraging the peace process in Sri Lanka.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SARBANES for the Committee on Banking, Housing, and Urban Affairs:

*Paul S. Atkins, of Virginia, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 2003.

*Cynthia A. Glassman, of Virginia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2006.

*Harvey Jerome Goldschmid, of New York, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2004.

*Roel C. Campos, of Texas, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2005.

By Mr. JEFFORDS for the Committee on Environment and Public Works:

*John Peter Suarez, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

*Carolyn W. Merritt, of Illinois, to be chairperson of the Chemical Safety and Hazard Investigation Board for a term of five years.

*Carolyn W. Merritt, of Illinois, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

*John S. Bresland, of New Jersey, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

By Mr. BIDEN for the Committee on Foreign Relations.

*James Franklin Jeffrey, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Albania.

Nominee: James Franklin Jeffrey.

Post: Albania.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.
2. Spouse, Gudrun Jeffrey, none.
3. Children and Spouses:
Jahn Jeffrey, none.
Julia Jeffrey, none.
4. Parents:
Herbert F. Jeffrey, (deceased 1973).
Helen Grace Jeffrey, (deceased 1974).
5. Grandparents:
Herbert Jeffrey, (deceased 1969).
Joseph O'Neill, (deceased 1960).
Helen Jeffrey, (deceased 1961).
Margaret O'Neill, (deceased 1977).
6. Brothers and spouses:
Names:
Edward Jeffrey, none.
Linda Jeffrey, none.
7. Sisters and Spouses: Not applicable.

*James Irvin Gadsden, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iceland.

Nominee: James Irvin Gadsden.

Post: Iceland.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self: James Irvin Gadsden, none.
2. Spouse: Sally Freeman Gadsden, none.
3. Children and spouses:
James Jeremy Gadsden, none.
Jonathan Joel Gadsden, none.
4. Parents:
James David Gadsden (deceased).
Hazel Gaines Gadsden (deceased).
5. Grandparents:
Elizabeth Gaines (deceased).
Charlotte Morgan (deceased).
6. Brothers and spouses:
Glenn and Valerie Gadsden, none.
Allen Carl Gadsden, none.
David Bernard Gadsden, none.
7. Sisters and spouses:
Genita Elizabeth Hanna, none.
Benjamin Hanna, none.

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*Michael Klosson, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cyprus.

Nominee: Michael Klosson.

Post: American Embassy Cyprus.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:
1. Self, Michael Klosson, none.
2. Spouse, Bonita Bender-Klosson, none.
3. Children and Spouses:
Emily Klosson, none.
Karen Klosson, none.
4. Parents:
Boris H. Klosson (deceased), none.
Harriet F. C. Klosson, none.
5. Grandparents:
Michael Mathew Klosson (deceased), none.
Keneena Hansen Klosson (deceased), none.
Charles Steele Cheston (deceased), none.
6. Brothers and Spouses:
Charles S.C. Klosson, none.
Christopher Klosson, none.
7. Sisters and Spouse:
Harriet F. C. Klosson DiCicco, none.
Stephen DiCicco, none.

*Randolph Bell, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

*Mark Sullivan, of Maryland, to be United States Director of the European Bank for Reconstruction and Development.

*Paul William Speltz, of Texas, to be United States Director of the Asian Development Bank, with the rank of Ambassador.

*Kenneth Y. Tomlinson, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004.

*Kenneth Y. Tomlinson, of Virginia, to be Chairman of the Broadcasting Board of Governors.

*Norman J. Pattiz, of California, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. CANTWELL (for herself, Mr. WARNER, Mr. CHAFEE, Mr. CLELAND, Mr. ROCKEFELLER, and Mr. BINGAMAN):

S. 2790. A bill to provide lasting protection for inventoried roadless areas within the National Forest System; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself and Mr. FEINGOLD):

S. 2791. A bill to provide budget discipline and enforcement for fiscal year 2003 and beyond; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. LEVIN:

S. 2792. A bill to amend the Solid Waste Disposal Act to authorize the Administrator of the Environmental Protection Agency to carry out certain authorities relating to the importation of municipal solid waste under the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada; to the Committee on Environment and Public Works.

By Mr. ENSIGN:

S. 2793. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; to the Committee on the Judiciary.

By Mr. GRAMM (for himself, Mr. MILLER, and Mr. MCCONNELL):

S. 2794. A bill to establish a Department of Homeland Security, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KERRY:

S. 2795. A bill to amend title XVIII of the Social Security Act to provide for payment under the prospective payment system for hospital outpatient department services under the medicare program for new drugs administered in such departments as soon as the drugs administered in such departments as soon as the drug is approved for marketing by the Commissioner of Food and Drugs; to the Committee on Finance.

By Mr. LUGAR (for himself, Mr. BREAUX, Mr. CHAFEE, Mr. GRASSLEY, Mr. NICKLES, Mr. GRAHAM, Mr. HAGEL, Mr. SPECTER, Mr. HATCH, and Mr. COCHRAN):

S. 2796. A bill to authorize the negotiation of a free trade agreement with Uruguay; to the Committee on Finance.

By Ms. MIKULSKI:

S. 2797. An original bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. DURBIN (for himself and Mr. LEAHY):

S. 2798. A bill to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code; to the Committee on the Judiciary.

By Mr. McCAIN:

S. 2799. A bill to provide for the use of and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes; to the Committee on Indian Affairs.

By Mr. BAUCUS (for himself, Mr. BURNS, Mr. DASCHLE, and Mr. JOHNSON):

S. 2800. A bill to provide emergency disaster assistance to agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL:

S. 2801. An original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. KENNEDY:

S.J. Res. 42. A joint resolution commending Sail Boston for its continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training ;to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THURMOND:

S. Res. 305. A resolution designating the week beginning September 15, 2002, as "National Historically Black Colleges and Universities Week"; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself, Mr. WYDEN, Ms. COLLINS, Mr. DORGAN, Mr. GRASSLEY, Mr. CONRAD, Mr. SMITH of New Hampshire, and Mrs. BOXER):

S. Res. 306. A resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women; to the Committee on Foreign Relations.

By Mr. INOUYE:

S. Con. Res. 131. A concurrent resolution designating the month of November 2002, as "National Military Family Month"; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 683

At the request of Mr. SANTORUM, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 683, a bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance, and to establish State health insurance safety-net programs.

S. 1350

At the request of Mr. DAYTON, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1350, a bill to amend the title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes.

S. 1785

At the request of Mr. CLELAND, the name of the Senator from Oregon (Mr.

SMITH) was added as a cosponsor of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1931

At the request of Mr. LIEBERMAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1931, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 2239

At the request of Mr. SARBANES, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2239, a bill to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S. 2554

At the request of Mr. SMITH of New Hampshire, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Virginia (Mr. WARNER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2572

At the request of Mr. KERRY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2572, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 2637

At the request of Mr. CONRAD, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2637, a bill to amend the Internal Revenue Code of 1986 and the Surface Mining Control and Reclamation Act of 1977 to protect the health benefits of retired miners and to restore stability and equity to the financing of the United Mine Workers of America Combined Benefit Fund and 1992 Benefit Plan by providing additional sources of revenue to the Fund and Plan, and for other purposes.

S. 2674

At the request of Mr. BROWNBACK, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2674, a bill to improve access to health care medically underserved areas.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL (for herself, Mr. WARNER, Mr. CHAFEE, Mr. CLELAND, Mr. ROCKEFELLER, and Mr. BINGAMAN):

S. 2790. A bill to provide lasting protection for inventoried roadless areas within the National Forest System; to the Committee on Energy and Natural Resources.

Mr. WARNER. Madam President, I rise today to join with my colleague from Washington, Senator CANTWELL, to ensure that the remaining, undisturbed areas within our National Forest system are permanently preserved.

Like many of my colleagues, I have worked with the Forest Service and participated in the public comment process on the development of the current Roadless Area Conservation Rule. This administrative procedure was several years in the making with extensive public outreach of public hearings across the country. Thousands of Americans voiced support for protecting these areas from road building and other development.

For my part, this legislation today continues efforts I have undertaken with my colleagues from the Southeast to protect the existing roadless areas in the Southern Appalachia forests. In 1997 I urged the Secretary of Agriculture to impose a moratorium on new road construction in these inventoried roadless areas. Last year, I urged President Bush to embrace and implement this important resource conservation policy. I was very encouraged that the President announced his administration's support for this rule on May 4, 2001.

Today, with this rule under legal challenge, I believe that it is important to take another step forward with ensuring that this rule is codified so that it has the full force of law. While some may advocate changes to the current rule to gain advantages for greater use or greater restrictions on these inventoried roadless areas, I want to assure my colleagues that our legislation today mirrors the current rule. With the extensive efforts of the Forest Service to analyze the impact of the rule and the large number of public comments in support, we must stay true to this effort.

The devastating fires on Forest Service lands in the West this summer have renewed our commitment to programs to reduce the fuel load on forest lands. I support Sen. Domenici's initiatives to redirect Forest Service funding of fuel reduction projects in areas adjoining residential areas, and remain committed to giving the Forest Service all of the tools it needs to reduce the loss of life and property from fires.

An important reason for my support today is because I am convinced that the Roadless Rule does not prevent the Forest Service from undertaking any fire prevention activities in roadless areas. Nor, when a fire exists, does the rule prevent the Forest Service from taking any appropriate action, including building roads in roadless areas, to create fire breaks or other means to control a wildfire.

But, Mr. President, there must be no doubt on this important issue. For that reason, we have provided further clarification that the Forest Service has every authority to prevent fires or to respond to fires, and to use appropriated funds to undertake fire suppression activities in roadless areas.

This rule is a balanced approach to forest service management because it provides for reasonable exceptions for activities in roadless areas. I remain committed to the multiple-use management of our national forests. Timber and mineral resources on these public lands are assets that should be appropriately utilized and available for all Americans. My view of multiple-use management also recognizes and advances the recreational and environmental assets of these roadless areas.

The remaining roadless areas in our national forests are important for providing outstanding recreational opportunities for the public. These lands also provide wildlife habitat and protect the water quality of many watersheds that serve as downstream drinking water sources for our communities.

The Roadless Area Conservation rule is also sound fiscal policy for our national forests. The Forest Service has documented an $8.4 billion backlog in maintaining existing roads within our national forests. Continuing to build new roads in these fragile areas will only further strain the scarce dollars within the Forest Service.

As I have indicated, the legislation we are introducing today does not change the substance or spirit of the Roadless rule in any way. To be clear, this legislation preserves the exemptions in the rule to allow for road construction where needed to protect these lands from floods, fires, and pest infestation. It ensures public access to private lands, and recognizes the existing rights to ongoing oil and gas leases.

For Virginia, this legislation ensures that 394,000 acres of inventoried roadless areas in the George Washington and Jefferson National Forests are permanently protected. During the public comment period on the Draft Environmental Impact Statement, the Forest Service received 68,586 comments from residents of Virginia. The Forest Service advises me that of this amount more than 98 percent of the comments supported full protection of these roadless areas.

I am pleased to support this legislation that is important to all regions of the country. The public has voiced its overwhelming support for this important conservation initiative, and I trust that my colleagues will respond by passing this bill this year.

By Mr. LEVIN:

S. 2792. A bill to amend the Solid Waste Disposal Act to authorize the Administrator of the Environmental Protection Agency to carry out certain authorities relating to the importation of municipal solid waste under the

Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada; to the Committee on Environment and Public Works.

Mr. LEVIN. Madam President, I am introducing legislation today with Congressman DINGELL that will give a voice to the people of Michigan with regard to the importation of Canadian municipal waste.

Over the past two years, imports from Canada have risen 152 percent and now constitute about half of the imported waste received at Michigan landfills. Currently, approximately 110–130 truckloads of waste come in to Michigan each day from Canada. And this problem isn't going to get any better. These shipments of waste are expected to continue as Toronto and other Ontario sources phase out local disposal sites. On December 4, 2001, the Toronto City Council voted 38–2 to approve a new solid waste disposal contract that would ship an additional 700,000 tons of waste per year to the Carleton Farms landfill in Wayne County, MI, in the near future. In addition, two other Ontario communities that generate hundreds of thousands of tons of waste annually have signed contracts to ship their waste to Carleton Farms.

Based on current usage statistics, the Michigan Department of Environmental Quality estimates that Michigan has capacity for 15–17 years of disposal in landfills. However, with the proposed dramatic increase in the importation of waste, this capacity is less than 10 years. The Michigan Department of Environmental Quality estimates that, for every five years of disposal of Canadian waste at the current usage volume, Michigan is losing a full year of landfill capacity.

We have protections contained in an international agreement with Canada. In 1986, the U.S. and Canada entered into an agreement allowing the shipment of hazardous waste across the U.S./Canadian border for treatment, storage or disposal. In 1992, the two countries decided to add municipal solid waste to the agreement. However, although the Agreement requires notification to the importing country and also allows the importing country to reject shipments, its provisions have not been enforced.

Further, the EPA has said that it would not object to municipal waste shipments. We believe that in order to protect the health and welfare of the citizens of Michigan and their environment, the impact of the importation on State and local recycling efforts, landfill capacity, air emissions and road deterioration resulting from increased vehicular traffic and public health and the environment should all be considered. The shipments should be rejected by the EPA.

Canada could not export waste to Michigan without the Agreement, but the U.S. refuses to implement the provisions that would protect the people of Michigan. We believe that the EPA has the authority to enforce this Agreement, but this legislation would put additional pressure on the EPA to enforce it.

By Mr. KERRY:

S. 2795. A bill to amend title XVIII of the Social Security Act to provide for payment under the prospective payment system for hospital outpatient department services under the medicare program for new drugs administered in such departments as soon as the drugs administered in such departments as soon as the drug is approved for marketing by the Commissioner of Food and Drugs; to the Committee on Finance.

Mr. KERRY. Madam President, I am pleased to introduce legislation today that will fix a flaw in Medicare's claims processing system that currently denies thousands of cancer patients timely access to lifesaving treatments. This legislation will ensure that administrative delays do not force Americans with cancer to wait to be treated with existing innovative drug therapies that stand to improve and prolong their lives.

The Food and Drug Administration, FDA, recently granted fast track authority to a new class of cancer therapies. These therapies, which combine immunotherapy and radiological treatments, offer promise and hope for many cancer patients. Under current Medicare policy, however, reimbursement for FDA-approved drugs in an outpatient setting does not begin until Medicare issues a billing code for the drug. Consequently, there is often a delay of several months between FDA approval of and patient access to a drug.

Prior to the designation of a Medicare billing code, doctors will not prescribe innovative treatments for patients in an outpatient setting for fear of their being denied reimbursement by Medicare. However, within the inpatient setting, Medicare will reimburse hospitals immediately after FDA approval. Given this discrepancy in current policy, I am introducing legislation that will allow doctors to submit claims retroactively and require Medicare to pay for innovative drugs administered in hospital outpatient settings immediately after FDA approval.

Cancer patients cannot afford to wait for drugs that have the potential to improve their health and even save their lives. For Americans battling cancer, time is of the essence. This legislation will provide cancer patients with both the hope and the opportunity to live longer and healthier lives. I urge my colleagues to join me in support of this legislation.

By Mr. LUGAR (for himself, Mr. BREAUX, Mr. CHAFEE, Mr. GRASSLEY, Mr. NICKLES, Mr. GRAHAM, Mr. HAGEL, Mr. SPECTER, Mr. HATCH, and Mr. COCHRAN):

S. 2796. A bill to authorize the negotiation of a free trade agreement with Uruguay; to the Committee on Finance.

Mr. LUGAR. Madam President, I rise today to introduce legislation authorizing President Bush and his Administration to negotiate a free trade agreement with Uruguay. I am pleased to be joined by the following co-sponsors: Senators BREAUX, CHAFEE, GRASSLEY, NICKLES, GRAHAM, HAGEL, SPECTER, HATCH, and COCHRAN.

President Bush has instructed U.S. Trade Representative, Robert Zoellick, to pursue a Free Trade Area of the Americas. I support this effort and this bill is not intended to compete with or replace that important undertaking. Instead, this legislation seeks to highlight the important relationship the U.S. enjoys with Uruguay and promote the need for extending free-trade to South America.

Uruguayan economic reforms focused on the attraction of foreign trade and capital have proven successful. The economy of Uruguay grew steadily until low commodity prices and economic difficulties in export markets caused a recession in 1999. President Jorge Batlle has stated his intention to continue the promotion of economic growth, international trade, lower tariffs, and attracting foreign investment. More than one hundred U.S.-owned companies operate in Uruguay, and many more market U.S. goods and services.

Uruguay is a member of the World Trade Organization and a dynamic member of the Southern Cone Common Market, MERCOSUR, with Argentina, Brazil, and Paraguay. Furthermore, it is an active participant and proponent of the Free Trade Area of the Americas process and is coordinator of the e-commerce group and sub-coordinator of the agricultural subsidies group.

If the United States hopes to sustain its economic strength in the 21st Century, we must participate in an expanding global economy. We must aggressively pursue opportunities in new and emerging markets. We must maintain our technological and competitive advantage and sell our products, services and agricultural commodities in these areas. American agriculture, telecommunications, computer services, and other sectors will benefit from the opportunity to compete in Uruguay under a free trade agreement.

As South America continues to recover from the Argentinian economic crisis we must look for opportunities to engage the region in free trade. A free trade agreement with Uruguay would provide American business with unfettered access to another lucrative market and Uruguayan business will have better access to American markets to successfully weather the region's economic fallout. A U.S.-Uruguayan free trade agreement is a win-win for the United States and Uruguay.

I am hopeful the Senate will approve this important legislation in the near future.

By Mr. McCAIN:

S. 2799. A bill to provide for the use of and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes; to the Committee on Indian Affairs.

Mr. McCAIN. Madam President, I rise to introduce legislation to authorize the distribution of judgement funds to eligible tribal members of the Gila River Indian Community in Arizona. Representative HAYWORTH recently introduced companion legislation in the House of Representatives.

The Gila River Indian Community Judgement Fund Distribution Act resolves two half-century old claims by the Gila River tribe against the United States for failure to meet Federal obligations to protect the Community's use of water from the Gila River and Salt River in Arizona. The original complaint was filed before the Indian Claims Commission on August 8, 1951. In 1982, the United States Court of Claims confirmed liability of the United States to the Community, and recently the settlement of these two claims was determined to be seven million dollars.

So much time has passed that the Indian Claims Commission formerly in charge of fund distributions no longer exists. However, a debt does not disappear. The judgement award has since been transferred from the Indian Claims Commission to a trust account on behalf of the Community, managed by the Office of Trust Management at the Department of Interior.

This judgement award was certified by the Treasury Department on October 6, 1999 for the final portion of the litigation to the two remaining dockets of the Gila River Indian Community. Since that time, the Community has been working with the BIA in an attempt to finalize a use and distribution plan to submit to Congress for approval. As outlined in its plan, the Community has decided to distribute the judgement award equally to eligible tribal members.

I ask unanimous consent to print the tribal resolution approved by the Gila River Indian Community in support of this payment plan in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

GILA RIVER INDIAN COMMUNITY, SACATON, AZ

Resolution GR-30-01—a resolution to approve a payment plan for the distribution of funds awarded under dockets 236-C and 236-D

Whereas, the Gila River Indian Community (the "Community") and the United States have been involved in litigation regarding Docket 236 since August 8, 1951 and two of the original fourteen dockets, Docket 236-C and Docket 236-D, remain to be resolved as to distribution;

Whereas, Docket 236-C sought monetary compensation from the United States for its failure to engage in fair and honorable dealings through failure to carry out its obligation to protect the Community's use of water from the Gila River;

Whereas, Docket 236-D sought monetary compensation from the United States for its failure to engage in fair and honorable dealings through failure to carry out its obligations to protect the Community's use of water from the Salt River;

Whereas, in Gila River Pima-Maricopa Indian Community v. U.S. 29 Ind. Cl.Comm. 144. (1972), the Indian Claims Commission held that the United States, as trustee, was liable towards its beneficiary, the Community, as to the Docket 236-C claims:

Whereas, in Gila River Pima-Maricopa Indian Community v. U.S., 684 F.2d 852 (1982), the United States Court of Claims held that the United States, as trustee, was liable toward its beneficiary, the Community, as to the Docket 236-D claims;

Whereas, with approval by the Community under Resolution GR-98-98, the Community entered into a settlement of Docket 236-C and Docket 236-D with the United States on April 27, 1999 regarding the amount of liability for the sum of Seven Million Dollars ($7,000,000.00);

Whereas, on May 5, 1999, the United States certified the judgment for the Community, which allowed payment to be made into the trust account on behalf of the Gila River Indian Community and which such payment was made into the trust account managed by the Office of Trust Funds Management in Albuquerque, New Mexico and is accruing interest;

Whereas, the Indian Judgment Funds Act of October 19, 1973, 87 Stat. 466, as amended and implemented by 25 CFR Part 87, requires the Secretary of the Interior to submit a plan of distribution for docket funds to the United States Congress; and

Whereas, the Community had developed the attached plan of distribution, entitled "Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket 236-C and Docket 236-D before the United States Court of Federal Claims" (the "Plan of Distribution"), to be submitted to the Secretary of the Interior for consideration and approval. Now, therefore be it

Resolved, That the Gila River Indian Community Council adopts and approves the attached Plan of Distribution, be it further

Resolved, That the Governor, or in the Governor's absence the Lieutenant Governor, is authorized and directed to submit the attached Plan of Distribution to the Secretary of the Interior for approval, be it finally

Resolved, That the Governor, or in the Governor's absence the Lieutenant Governor, is authorized and directed to execute and sign necessary documents to fulfill the intent of this Resolution.

The purpose of this legislation is to comply with Federal regulations which requires congressional approval for distribution of judgment funds to tribal members. The terms of the legislation reflect an agreement by all parties for a distribution plan for final approval by the Congress. As part of this legislation, the BIA is also seeking to resolve remaining expert assistance loans by the Gila River Indian Community, the Oglala Sioux Tribe, and the Seminole Tribe of Florida, as originally authorized by the Indian Claims Commission.

Members of the Gila River Indian Community have waited half a century for final resolution of all their legal claims regarding this matter. After considerable delay, it is only fair to resolve this matter and provide compensation as soon as possible. With the short time remaining in this session, I hope that the Senate will act quickly to move this legislation through the process.

I ask unanimous consent to print the text of the bill and a section-by-section summary in the RECORD.

There being no objection, the additional material was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Gila River Indian Community Judgment Fund Distribution Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

Sec. 101. Distribution of judgment funds.
Sec. 102. Responsibility of Secretary; applicable law.

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.
Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236-N.

TITLE III—EXPERT ASSISTANCE LOANS

Sec. 301. Waiver of repayment of expert assistance loans to certain Indian tribes.

SEC. 2. FINDINGS.

Congress finds that—

(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

(2) except for Docket Nos. 236-C and 236-D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-C;

(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-D;

(5) with the approval of the Community under Community Resolution GR-98-98, the Community entered into a settlement with

the United States on April 27, 1999, for claims made under Dockets Nos. 236–C and 236–D for an aggregate total of $7,000,000;

(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236–C and 236–D for $7,000,000 in favor of the Community and against the United States;

(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of $7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

SEC. 3. DEFINITIONS.

In this Act:

(1) Adult.—The term "adult" means an individual who—

(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

(2) Community.—The term "Community" means the Gila River Indian Community.

(3) Community-owned funds.—The term "Community-owned funds" means—

(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

(B) revenues held by the Community that are derived from Community-owned enterprises.

(4) IIM account.—The term "IIM account" means an individual Indian money account.

(5) Judgment funds.—The term "judgment funds" means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236–C and 236–D.

(6) Legally incompetent individual.—The term "legally incompetent individual" means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

(7) Minor.—The term "minor" means an individual who is not an adult.

(8) Payment roll.—The term "payment roll" means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).

(9) Secretary.—The term "Secretary" means the Secretary of the Interior.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.

(a) Per Capita Payments.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236–C and 236–D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

(b) Preparation of Payment Roll.—

(1) In general.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

(2) Criteria.—

(A) Individuals eligible to receive payments.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236–N (including any individual who was inadvertently omitted from that roll).

(ii) All enrolled Community members who are living on the date of enactment of this Act.

(iii) All enrolled Community members who died—

(I) after the effective date of the payment plan for Docket No. 236–N; but

(II) on or before the date of enactment of this Act.

(B) Individuals ineligible to receive payments.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

(c) Notice to Secretary.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

(1) the number of shares that are attributable to eligible living adult Community members; and

(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

(d) Information Provided to Secretary.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

(1) estate accounts for deceased individuals described in subsection (c)(2); and

(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

(e) Disbursement of Funds.—

(1) In general.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

(2) Administration and distribution.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

(f) Shares of Deceased Individuals.—

(1) In general.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

(2) Absence of heirs and legatees.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

(A) revert to the Community; and

(B) be deposited into the general fund of the Community.

(g) Shares of Legally Incompetent Individuals.—

(1) In general.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

(2) Administration.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

(h) Shares of Minors.—

(1) In general.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

(2) Administration.—

(A) In general.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

(B) Nonapplicable law.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

(C) Disbursement.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

(i) Payment of Eligible Individuals Not Listed on Payment Roll.—

(1) In general.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

(A) the Community makes the per capita distribution under subsection (a); and

(B) all appropriate IIM accounts are established under subsections (g) and (h).

(2) Insufficient funds.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

(3) Minors, legally incompetent individuals, and deceased individuals.—In a case

in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

(B) shall invest those funds in accordance with applicable law.

(j) USE OF RESIDUAL FUNDS.—On request by the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (l) shall be disbursed to, and deposited in the general fund of, the Community.

(k) NONAPPLICABILITY OF CERTAIN LAW.—Notwithstanding any other provision of law, the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to Community-owned funds used by the Community to make payments under subsection (l).

SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

(a) RESPONSIBILITY FOR FUNDS—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

(b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f) and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

(c) APPLICABILITY OF OTHER LAW.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

(a) DEFINITION OF PLAN.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99-493 (100 Stat. 1241).

(b) CONDITIONS.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

(1) APPLICABILITY OF OTHER LAW RELATING TO MINORS.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236-N.

(a) DEFINITION OF PLAN.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236-N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) CONDITIONS.—

(1) PER CAPITA ASPECT.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading "Per Capita Aspect" in the plan to read as follows: "Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.".

(2) GENERAL PROVISIONS.—Notwithstanding any other provision of law, the Community shall—

(A) modify the third sentence of the first paragraph under the heading "General Provisions" of the plan to strike the word "minors"; and

(B) insert between the first and second paragraphs under that heading the following: "Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.".

TITLE III—EXPERT ASSISTANCE LOANS

SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO CERTAIN INDIAN TRIBES.

(a) GILA RIVER INDIAN COMMUNITY.—Notwithstanding any other provision of law—

(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88-168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Community from any liability associated with those loans.

(b) OGLALA SIOUX TRIBE.—Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88-168 (77 Stat. 301) and relating to Oglala Sioux Tribe v. United States (United States Court of Federal Claims Docket No. 117 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Oglala Sioux Tribe from any liability associated with those loans.

(c) SEMINOLE NATION OF OKLAHOMA.—Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Seminole Nation of Oklahoma under Public Law 88-168 (77 Stat. 301) and relating to Seminole Nation v. United States (United States Court of Federal Claims Docket No. 247) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Seminole Nation of Oklahoma from any liability associated with those loans.

SECTION-BY-SECTION ANALYSIS—GILA RIVER INDIAN COMMUNITY-JUDGEMENT FUND USE AND DISTRIBUTION LEGISLATION

SECTION 1: SHORT TITLE AND TABLE OF CONTENTS

Short Title: Gila River Indian Community Judgement Fund Distribution Act of 2002; and Table of Contents.

SECTION 2: FINDINGS

Provides factual background regarding the litigation that led to the seven million settlement awarded to Gila River Indian Community for the United States' failure to protect the Community's use of water from the Gila River and Salt River under Dockets 236-C and 236-D of Gila River Pima-Maricopa Indian Community v. United States, filed on August 8, 1951 before the Indian Claims Commission.

SECTION 3: DEFINITIONS

Provides definitions as utilized in the legislation.

TITLE I: GILA RIVER JUDGEMENT FUND DISTRIBUTION

SECTION 101: DISTRIBUTION OF JUDGEMENT FUNDS.

(a) Per Capita Payments. Authorizes distribution of judgement fund amount, less attorneys fees and litigation expenses, including all accrued interest, to all eligible enrolled members of the Community on a per capita basis.

(b) Preparation of Payment Roll. Requires the Community to prepare the payment roll of eligible enrolled members according to specific criteria, and includes description of individuals who shall be deemed ineligible to receive per capita payment.

(c) Notice to Secretary. Requires the Community to notify the Secretary of Interior of the total number of individuals eligible to share in the per capita distribution after the Community's preparation of the payment roll.

(d) Information Provided to Secretary. Requires the Community to provide the Secretary of Interior with information necessary to allow the Secretary to establish estate accounts for deceased individuals and Individual Indian Money accounts for legally incompetent individuals and minors.

(e) Disbursement of Funds. Requires the Secretary to disburse to the Community the funds necessary to make the per capita payment, not later than 30 days after the payment roll has been approved by the Community and the Community has reconciled the number of shares that belong in each payment category. Provides that once the funds are disbursed to the Community, the Community shall be responsible for administering and distributing the funds.

(f) Shares of Deceased Individuals. Requires the Secretary of Interior to distribute per capita shares of deceased individuals to their heirs and legatees in accordance with existing regulations. Where there are no heirs, provides that funds revert to the Community and shall be deposited in the Community's general fund.

(g) Shares of Legally Incompetent Individuals. Requires the Secretary of Interior to deposit shares of legally incompetent individuals into supervised Individual Indian Money accounts to be administered pursuant to existing regulations.

(h) Shares of Minors. Requires the Secretary of Interior to deposit shares of minors into supervised Individual Indian Management accounts and requires the Secretary to hold the funds in trust until the minor is 18 years of age. Provides that section 3(b)(3) of the Indian Tribal Judgement Funds Act does not apply, the effect of which is to prevent parents and guardians of minors from being able to receive shares on behalf of minors before they turn 18.

(i) Payment of Eligible Individuals Not Listed on Payment Roll. Provides that individuals not listed on payment roll, but eligible for payment, can be paid from any residual principal or interest fund remaining after the Community has made its per capita distribution and the Individual Indian Money accounts have been established. Authorizes the Community to pay these individuals from Community-owned funds if the residual funds are insufficient. Authorizes the Secretary to accept and deposit Community-owned funds into an Individual Indian Money or estate account established for a minor, legal incompetent or deceased beneficiary who is eligible to receive payment, but who was not paid from the judgment fund. Provides that the Secretary shall invest such funds pursuant to existing regulation.

(j) Use of Residual Funds. Provides that if the Community requests it, residual principal and interest funds remaining after the Community's per capita distribution is complete shall be disbursed to the Community and deposited into the Community's general fund.

(k) Non-applicability of Certain Law. Provides that the Indian Gaming Regulatory Act shall not apply to Community-owned funds used by the Community to cover shortfalls in funding necessary to make payments to individuals not listed on the payment roll, but determined to be eligible. Added to ensure that the Indian Gaming Regulatory Act's prohibition on distribution of gaming funds as per capita payments would not prevent Community-owned funds, including revenues from gaming, from being used to cover shortfalls.

SECTION 102: RESPONSIBILITY OF SECRETARY; APPLICABLE LAW

(a) Responsibility for Funds. Provides that after disbursement of funds to Community, the Secretary of Interior shall no longer have trust responsibility for the judgment funds.

(b) Deceased and Legally Incompetent Individuals. Provides that Secretary shall continue to have trust responsibility over funds retained in accounts for deceased beneficiaries and legally incompetent individuals.

(c) Applicability of Other Law. Provides that pursuant to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act, per capita payments are not taxable to individuals under state or federal law as income.

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGEMENT FUND PLANS

SECTION 201

Provides definition and conditions of the plan for use and distribution of judgement funds awarded in Docket No. 228. Adds paragraph providing that Indian Tribal Judgement Funds Use and Distribution shall not apply to minors' per capita shares held by the Secretary under the plan (effect is to prevent shares from being distributed to parents and guardians of minors prior to age 18) and that Secretary shall hold the minors' per capita shares in trust until they reach age 18. Also adds paragraph stating that upon Community's request, any residual principal and interest funds remaining after the Community has declared the per capita payment complete shall be distributed to the Community and deposited into the Community's general fund.

SECTION 202

Provides definition and conditions of the plan for use and distribution of judgement funds awarded in Docket No. 236–N. Amends the plan to authorize disbursement of residual principal and interest funds to the Community. Provides that provision of Indian Tribal Judgment Funds Act permitting payment to parents and legal guardians of minors is not applicable, and requires Secretary to hold minors' shares in trust until they turn 18.

TITLE III—EXPERT ASSISTANCE LOANS

SECTION 301

Waiver of repayment of expert assistance loans to certain Indian tribes. Waives repayment of expert assistance loans made by the Department of Interior to Gila River Indian Community, Oglala Sioux Tribe, Pueblo of Santo Domingo, and Seminole Nation of Oklahoma.

By Mr. BAUCUS (for himself, Mr. BURNS, Mr. DASCHLE, and Mr. JOHNSON):

S. 2800. A bill to provide emergency disaster assistance to agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. BAUCUS. Madam President, on March 28, 2002, Secretary Veneman declared Montana a drought disaster. This drought designation came two months earlier than in 2001, and eight months earlier than in 2000.

The unrelenting drought Montana is suffering has brought economic hardship to our agriculture producers and rural communities. In 1996, the year before the drought, Montana received $847 million in cash receipts from wheat sales. In 2001, four years into the drought, Montana received $317 million in cash receipts, a 62 percent decline.

Agriculture is more than 50 percent of my State's economy, and is truly the backbone of my State. The drought not only affects our farmers and ranchers. It is felt throughout our rural communities. Small businesses are being forced to close their doors. Families are moving away to find work. It would be virtually impossible to find a single person who has not been either directly or indirectly affected by the dry conditions that we have.

Without our help, without passing natural disaster assistance, it is estimated that 40 percent of Montana's farmers and ranchers will not qualify for operating loans for the 2002 crop year. A large percentage of these hardworking people will lose their land, their homes, their jobs, and their way of life. They will not be purchasing clothes, seed, feed, fertilizer, or equipment in their local stores. They will have to move, take their kids out of school. Small towns will die.

It is unfortunate that farmers and ranchers from Montana have to suffer the effects of prolonged drought without Federal assistance because disaster was not as wide spread in 2001 as it has been in 2002. The farmers and ranchers who suffered from severe drought in 2001 should not be penalized, rather rewarded for their persistence and dedication to Montana's vital industry. We desperately need cooperation and support from all sides to prove relief to our producers that have struggled through dry conditions for so long. We need disaster assistance immediately and we need to provide extra assistance for those who have endured drought in 2001 and 2002. It is time to take action and to provide for those who have produced so many vital resources for the people of the United States.

I am disappointed that we have not been able to produce legislation that is much needed and long overdue to benefit the hard working farmers and ranchers of the state of Montana and across the country. Many of the agricultural producers in Montana who have worked the same land for generations will no longer be able to survive as farmers or ranchers without disaster relief. Consecutive years of drought have caused economic devastation that soon prevent these agricultural producers from doing their jobs. The effects of this cycle will be devastating to the economy and the people of my state.

Unfortunately natural disaster is no longer an issue for just a few States. As of July 22, forty-nine of 50 States are impacted by drought and 36 percent of our country is currently classified as some level of drought. This is an issue that can no longer be ignored.

I am pleased today to introduce with Senator BURNS a natural disaster package that will provide assistance to producers who have had losses due to natural disasters in 2001 and 2002. It also includes funding for 2001 and 2002 for the Livestock Assistance Program and the American Indian Livestock Feed Program. The package that we introduce today is the same policy that 69 of my Senate Colleagues supported when Senator ENZI and I offered the amendment to the Farm Bill but extended to cover the 2002 crop year as well.

It is true that the U.S. Department of Agriculture has utilized the tools that they have available to them. Access to low interest loans, grazing and haying on CRP acreage are important pieces to ensuring that our producers stay in business. However, there is still one major piece of the puzzle missing and that is natural disaster assistance.

It is also true that crop insurance is a very important risk management tool. I supported the crop insurance reform bill and I support and understand the importance of crop insurance. More than 90 percent of insurable acres in Montana are insured. Unfortunately for the program to be run in an actuarially sound fashion, producers are helped the least when they hurt the most. When a producer is suffering from consecutive years of drought, their premium increases and their coverage decreases.

We have the opportunity to stop that process. To keep our rural communities and economies alive. Rural America is resilient. And like them, I will not give up. Thousands of people are suffering from a relentless drought. They deserve natural disaster assistance and I will continue to fight to ensure they get it.

I am pleased to be working with my fellow Senator from Montana, and I ask each of my Senate colleagues to join us in this effort.

Mr. BURNS. Madam President, I rise today to express my support of the Emergency Disaster Assistance Act of 2002. I am proud to join my colleague from Montana, Senator BAUCUS, in introducing this legislation.

However, more importantly I rise today in support of America's farmers and ranchers. In my home State of Montana, we are looking at our fifth summer of severe drought. Many places in my great State are drying up and blowing away. Dirt fills the ditches alongside the roads and so many tumbleweeds clog the fences. I fear this may be the case for much of the West and Midwest after this summer.

This legislation would provide much needed relief to those farmers and ranchers hit the hardest by the drought. Many have argued the Farm Bill adequately met the needs of those earning their living in agriculture. I disagree. The Farm Bill provides economic assistance, but not weather related disaster assistance.

In fact, it does not help farmers "when times are tough," and the drought conditions of the past several years indicate that these are indeed very difficult times. The very reason I am requesting drought assistance is precisely because this farm bill does not sufficiently meet the needs of those farmers who have suffered loss due to natural conditions during the past 4 years. I believe the farmers in the most extreme situations are the very ones we should be helping.

I am committed to working with my colleagues to get this much-needed assistance out to our rural areas, to the places that need it the most. I am also committed to doing this in the most responsible way possible. I believe we can reach an agreement and find a realistic amount that helps producers, yet is fiscally responsible.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 305—DESIGNATING THE WEEK BEGINNING SEPTEMBER 15, 2002, AS "NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK"

Mr. THURMOND submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 305

Whereas there are 105 historically black colleges and universities in the United States;

Whereas black colleges and universities provide the quality education so essential to full participation in a complex, highly technological society;

Whereas black colleges and universities have a rich heritage and have played a prominent role in American history;

Whereas black colleges and universities have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of historically black colleges and universities are deserving of national recognition: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK.

The Senate—

(1) designates the week beginning September 15, 2002, as "National Historically Black Colleges and Universities Week"; and

(2) requests that the President of the United States issue a proclamation calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs to demonstrate support for historically black colleges and universities in the United States.

Mr. THURMOND. Madam President, I rise to submit a resolution recognizing the week of September 15–21, 2002 as National Historically Black Colleges and Universities Week. This resolution is an appropriate tribute to the countless academic contributions these institutions of higher education have made throughout this fine Nation and the State of South Carolina.

I am proud to have eight of the 105 Historically Black Colleges located in my home State. They have long provided a quality education that has greatly contributed to our economic and social well-being, and I commend them for a job well done. In addition, these colleges and universities will help lead our country into the future, with programs that prepare their students for our increasingly sophisticated economy. The alumni of these institutions have made many contributions to our Nation and I hope this resolution serves to recognize their achievements as well.

The passage of this resolution reaffirms our support for these institutions. The Resolution requests the President of the United States to issue an appropriate proclamation and calls on the people of the United States to observe the week with ceremonies, activities and programs to demonstrate support for Historically Black Colleges and Universities throughout this Nation.

SENATE RESOLUTION 306—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE CONTINUOUS REPRESSION OF FREEDOMS WITHIN IRAN AND OF INDIVIDUAL HUMAN RIGHTS ABUSES, PARTICULARLY WITH REGARD TO WOMEN

Mr. BROWNBACK (for himself, Mr. WYDEN, Ms. COLLINS, Mr. DORGAN, Mr. GRASSLEY, Mr. CONRAD, Mr. SMITH of New Hampshire, and Mrs. BOXER) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 306

Whereas the people of the United States respect the Iranian people and value the contributions that Iran's culture has made to world civilization for over 3 millennia;

Whereas the Iranian people aspire to democracy, civil, political, and religious rights, and the rule of law, as evidenced by increasingly frequent antigovernment and anti-Khatami demonstrations within Iran and by statements of numerous Iranian expatriates and dissidents;

Whereas Iran is an ideological dictatorship presided over by an unelected Supreme Leader with limitless veto power, an unelected Expediency Council and Council of Guardians capable of eviscerating any reforms, and a President elected only after the aforementioned disqualified 234 other candidates for being too liberal, reformist, or secular;

Whereas the United States recognizes the Iranian peoples' concerns that President Muhammad Khatami's rhetoric has not been matched by his actions;

Whereas President Khatami clearly lacks the ability and inclination to change the behavior of the State of Iran either toward the vast majority of Iranians who seek freedom or toward the international community;

Whereas political repression, newspaper censorship, corruption, vigilante intimidation, arbitrary imprisonment of students, and public executions have increased since President Khatami's inauguration in 1997;

Whereas men and women are not equal under the laws of Iran and women are legally deprived of their basic rights;

Whereas the Iranian government shipped 50 tons of sophisticated weaponry to the Palestinian Authority despite Chairman Arafat's cease-fire agreement, consistently seeks to undermine the Middle East peace process, provides safe-haven to al-Qa'ida and Taliban terrorists, allows transit of arms for guerrillas seeking to undermine our ally Turkey, provides transit of terrorists seeking to destabilize the United States-protected safehaven in Iraq, and develops weapons of mass destruction;

Whereas since the terrorist attacks of September 11, 2001, and despite rhetorical protestations to the contrary, the Government of Iran has actively and repeatedly sought to undermine the United States war on terror;

Whereas there is a broad-based movement for change in Iran that represents all sectors of Iranian society, including youth, women, student bodies, military personnel, and even religious figures, that is pro-democratic, believes in secular government, and is yearning to live in freedom;

Whereas following the tragedies of September 11, 2001, tens of thousands of Iranians filled the streets spontaneously and in solidarity with the United States and the victims of the terrorist attacks; and

Whereas the people of Iran deserve the support of the American people: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) legitimizing the regime in Iran stifles the growth of the genuine democratic forces in Iran and does not serve the national security interest of the United States;

(2) positive gestures of the United States toward Iran should be directed toward the people of Iran, and not political figures whose survival depends upon preservation of the current regime; and

(3) it should be the policy of the United States to seek a genuine democratic government in Iran that will restore freedom to the Iranian people, abandon terrorism, and live in peace and security with the international community.

Mr. WYDEN. Madam President, today we are resolved to see a new, rational foreign policy toward Iran, a policy that will engage the proud people of that nation and support their aspirations to be free of the theocratic state that abuses and oppresses them.

It is time that we recognized that the forces of extremist clerics and their allies have so completely dominated the government of Iran that there is no means to achieve political liberalization within the current system. While President Khatami has often spoken of liberalization, the last 5 years show that either he is unwilling or unable to effect any democratic change.

In fact, the record of his administration has been increasing censorship, religious vigilantes and intimidation, and wide-spread political repression. The State Department has identified systematic abuses including summary executions, disappearances, and widespread use of torture and other forms of degradation.

Student dissidents within Iran have become increasingly better organized, and have been faced with greater repression. The frequent demonstrations by these students, women, and even religious dissidents, as well as the growing movements of expatriates show that there is a yearning for democratic change within the Iranian people. It should be a core value of our foreign policy to encourage and support any people who seek only the fundamental human freedoms laid out in our own bill of rights.

There is also self-interest involved in this move. The Iranian regime has been supplying arms and cadre to terrorist movements attacking our allies in Turkey, Armenia, and Israel, and has striven to be a destabilizing force throughout the middle-east and central Asia. This is not the fault of the Iranian people, but of a criminal class that dominates them and strangles their hopes for a peaceful and progressive future. In the days following the tragedy of September 11, it is the people of Iran who spontaneously filled the streets in shared grieving over the loss of American lives.

In dealing with Iran we must focus all of our efforts on the people, and their hopes for a free and democratic nation. The Voice of America, Radio Free Europe, and Radio Liberty must redouble their efforts to provide uncensored truth to the Iranian people. The State Department must cease lending legitimacy to the current regime and pursue a policy of fundamental democratic change; this administration must seek ways to aid and sustain those movements that will effect that change, to the benefit of the Iranian and American people alike.

SENATE CONCURRENT RESOLUTION 131—DESIGNATING THE MONTH OF NOVEMBER 2002, AS "NATIONAL MILITARY FAMILY MONTH"

Mr. INOUYE submitted the following concurrent resolution; which was referred to the Committee on the Judiciary.

S. CON. RES. 131

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) designates the month of November 2002, as "National Military Family Month"; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

Mr. INOUYE. Madam President, today I rise to honor all our military families by submitting a Concurrent Resolution to designate November 2002, as National Military Family Month. As we all know, memories fade and the hardships experienced by our military families are easily forgotten unless they touch our own immediate family.

Today, we have our men and women deployed all over the world, engaged in this war on terrorism. These far-ranging military deployments are extremely difficult on the families who bear this heavy burden.

To honor these families the Armed Services YMCA has sponsored Military Family Week in late November since 1996. However, due to frequent 'short week' conflicts around the Thanksgiving holidays, the designated week has not always afforded enough time to schedule observance on and near our military bases.

I believe a month long observation will allow greater opportunity to plan events. Moreover, it will provide a greater opportunity to stimulate media support.

A Concurrent Resolution will help pave the way for this effort. I ask my colleagues to join me in supporting this tribute to our military families.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4319. Mr. DURBIN (for himself and Mr. BENNETT) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes.

SA 4320. Mr. DURBIN (for himself and Mr. BENNETT) proposed an amendment to the bill H.R. 5121, supra.

SA 4321. Mr. DURBIN (for Ms. LANDRIEU (for herself and Mr. DURBIN)) proposed an amendment to the bill H.R. 5121, supra.

SA 4322. Mr. DURBIN (for Mr. COCHRAN (for himself, Mr. DURBIN, and Mr. BENNETT)) proposed an amendment to the bill H.R. 5121, supra.

SA 4323. Mr. DURBIN (for Mr. SPECTER (for himself and Mr. DURBIN)) proposed an amendment to the bill H.R. 5121, supra.

SA 4324. Mr. DURBIN (for Mr. DODD) proposed an amendment to the bill H.R. 5121, supra.

SA 4325. Mr. DURBIN (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4319. Mr. DURBIN (for himself and Mr. BENNETT) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 33, lines 19 and 20, strike ", the Committee on House Administration of the House of Representatives,".

On page 34, lined 24, through page 35, line 1, strike ", the Committee on House Administration of the House of Representatives,".

SA 4320. Mr. DURBIN (for himself and Mr. BENNETT) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 12, line 4, strike "Board".

On page 12, line 8, insert before the period ", to be disbursed by the Capitol Police".

On page 12, line 10, strike "Board".

On page 12, line 20, strike "Board or their delegee".

On page 16, between lines 19 and 20, insert the following:

"This subsection shall not apply to an individual who is an employee of the Capitol Police immediately before the appointment."

On page 25, add after line 25 the following:

SEC. 109A. PROVISIONS RELATING TO HIRING AND COMPENSATION OF CAPITOL HILL POLICE.

(a) RECRUITMENT OF INDIVIDUALS WITHOUT REGARD TO AGE.—

(1) IN GENERAL.—The Chief of the Capitol Police shall carry out any activities and programs to recruit individuals to serve as members of the Capitol Police without regard to the age of the individuals.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to affect any provision of law of any rule or regulation providing for the mandatory separation of members of the Capitol Police on the basis of age, or any provision of law or any rule or regulation regarding the calculation of retirement or other benefits for members of the Capitol Police.

(b) Recruitment and Relocation Bonuses, Retention Bonuses, and Tuition Allowances.—

(1) Recruitment and relocation bonuses.—Section 909(a) of chapter 9 of the Emergency Supplemental Act, 2002 (40 U.S.C. 207b–2; Public Law 107–117; 115 Stat. 2320) (in this section referred to as the "Act") is amended—

(A) in paragraph (1), by striking "the Board determines that the Capitol Police would be likely, in the absence of such a bonus, to encounter difficulty in filling the position" and inserting "the Chief, in the Chief's sole discretion, determines that such a bonus will assist the Capitol Police in recruitment efforts"; and

(B) by adding at the end the following:

"(6) Determinations not appealable or reviewable.—Any determination of the Chief under this subsection shall not be appealable or reviewable in any manner."

(2) Retention allowances.—Section 909(b) of the Act is amended—

(A) in paragraph (1)—

(i) by striking subparagraphs (A) and (B); and

(ii) by striking "if—" and inserting "if the Chief, in the Chief's sole discretion, determines that such a bonus will assist the Capitol Police in retention efforts."; and

(B) in paragraph (3), by striking "the reduction or the elimination of a retention allowance may not be appealed" and inserting "any determination of the Chief under this subsection, or the reduction or elimination of a retention allowance, shall not be appealable or reviewable in any manner".

(3) Tuition allowances.—Section 909 of the Act is amended—

(A) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(B) by inserting after subsection (e) the following:

"(f) Tuition Allowances.—The Chief of the Capitol Police may pay tuition allowances for payment or reimbursement of education expenses in the same manner and to the same extent as retention allowances under subsection (b)."

(c) Authorizing Premium Pay To Ensure Availability of Personnel.—

(1) In general.—The Chief of the Capitol Police may provide premium pay to officers and members of the Capitol Police to ensure the availability of such officers and members for unscheduled duty in excess of a 40-hour work week, based on the needs of the Capitol Police, in the same manner and subject to the same terms and conditions as premium pay provided to criminal investigators under section 5545a of title 5, United States Code (subject to paragraph (2)).

(2) Cap on total amount paid.—Premium pay for an officer or member under this subsection may not be paid in a calendar year to the extent that, when added to the total basic pay paid or payable to such officer or member for service performed in the year, such pay would cause the total to exceed the annual rate of basic pay payable for level II of the Executive Schedule, as of the end of such year.

(d) Effective Date and Regulations.—

(1) Effective date.—The provisions of, and the amendments made by, this section shall apply to fiscal year 2003 and each fiscal year thereafter.

(2) Regulations.—

(A) In general.—Notwithstanding section 909(g) of chapter 9 of the Emergency Supplemental Act, 2002 (40 U.S.C. 207b–2), the Chief of the Capitol Police shall, not later than 60 days after the date of the enactment of this Act, promulgate any regulations required to carry out the provisions of, and the amendments made by, this section and sections 105, 106, and 107.

(B) Review and approval.—

(i) Review.—The Chief shall submit regulations prescribed under subparagraph (A) to the Capitol Police Board for review.

(ii) Approval.—The regulations prescribed under subparagraph (A) shall be subject to the approval of the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

SEC. 109B. TRANSFER OF DISBURSING FUNCTION.

(a) In General.—

(1) Disbursing officer.—The Chief of the Capitol Police shall be the disbursing officer for the Capitol Police. Any reference in any law or resolution before the date of enactment of this section to funds paid or disbursed by the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate relating to the pay and allowances of Capitol Police officers, members, and employees shall be deemed to refer to the Chief of the Capitol Police.

(2) Transfer.—Any statutory function, duty, or authority of the Chief Administrative Officer of the House of Representatives or the Secretary of the Senate as disbursing officers for the Capitol Police shall transfer to the Chief as the single disbursing officer for the Capitol Police.

(3) Continuity of function.—Until such time as the Chief notifies the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate that systems are in place for discharging the disbursing functions under this subsection, the House of Representatives and the Senate shall continue to serve as the disbursing authority on behalf of the Capitol Police.

(b) Treasury Accounts.—

(1) Salaries.—There is established in the Treasury of the United States a separate account for the Capitol Police, into which shall be deposited appropriations received by the Chief of the Capitol Police and available for the salaries of the Capitol Police.

(2) General expenses.—There is established in the Treasury of the United States a separate account for the Capitol Police, into which shall be deposited appropriations received by the Chief of the Capitol Police and available for the general expenses of the Capitol Police.

(c) Transfer of Funds, Assets, Accounts, Records, and Authority.—

(1) In general.—The Chief Administrative Officer of the House of Representatives and the Secretary of the Senate are authorized and directed to transfer to the Chief of the Capitol Police all funds, assets, accounts, and copies of original records of the Capitol Police that are in the possession or under the control of the Chief Administrative Officer of the House of Representatives or the Secretary of the Senate in order that all such items may be available for the unified operation of the Capitol Police. Any funds so transferred shall be deposited in the Treasury accounts established under subsection (b) and be available to the Chief for the same purposes as, and in like manner and subject to the same conditions as, the funds prior to the transfer.

(2) Existing transfer authority.—Any transfer authority existing before the date of enactment of this Act granted to the Chief Administrative Officer of the House of Representatives or the Secretary of the Senate for salaries, expenses, and operations of the Capitol Police shall be transferred to the Chief.

(d) Unexpended Balances.—Notwithstanding the provisions of any other law, the unexpended balances of appropriations for the fiscal year 2003 and succeeding fiscal years that are subject to disbursement by the Chief of the Capitol Police shall be withdrawn as of September 30 of the second fiscal year following the period or year for which provided. Unpaid obligations chargeable to any of the balances so withdrawn or appropriations for prior years shall be liquidated from any appropriations for the same general purpose, which, at the time of payment, are available for disbursement.

(e) Hiring Authority; Eligibility for Same Benefits as House Employees.—

(1) Authority.—

(A) In general.—Subject to subparagraph (B), the Chief of the Capitol Police, in carrying out the duties of office, is authorized to appoint, hire, discharge, and set the terms, conditions, and privileges of employment of officers, members, and employees of the Capitol Police, subject to and in accordance with applicable laws and regulations.

(B) Review or approval.—In carrying out the authority provided under this paragraph, the Chief of the Capitol Police shall be subject to the same statutory requirements for review or approval by committees of Congress that were applicable to the Capitol Police Board on the day before the date of enactment of this Act.

(2) Benefits.—Officers, members, and employees of the Capitol Police who are appointed by the Chief under the authority of this subsection shall be subject to the same type of benefits (including the payment of death gratuities, the withholding of debt, and health, retirement, Social Security, and other applicable employee benefits) as are provided to employees of the House of Representatives, and any such individuals serving as officers, members, and employees of the Capitol Police as of the date of enactment of this Act shall be subject to the same rules governing rights, protections, pay, and benefits in effect immediately before such date until such rules are changed under applicable laws or regulations.

(f) Worker's Compensation.—

(1) Account.—There shall be established a separate account in the Capitol Police for purposes of making payments for officers, members, and employees of the Capitol Police under section 8147 of title 5, United States Code.

(2) Payments without fiscal year limitation.—Notwithstanding any other provision of law, payments may be made from the account established under paragraph (1) of this subsection without regard to the fiscal year for which the obligation to make such payments is incurred.

(g) Effect on Existing Law.—

(1) In general.—The provisions of this section shall not be construed to reduce the pay or benefits of any officer, member, or employee of the Capitol Police whose pay was disbursed by the Chief Administrative Officer of the House of Representatives or the Secretary of the Senate before the date of enactment of this Act.

(2) Superseding provisions.—All provisions of law inconsistent with this section are hereby superseded to the extent of the inconsistency.

(h) Conforming Amendments.—(1) Section 1821 of the Revised Statutes of the United States (40 U.S.C. 206) is amended by striking the third sentence.

(2) Section 1822 of the Revised Statutes of the United States (40 U.S.C. 207) is repealed.

(3) Section 111 of title I of the Act entitled "Making supplemental appropriations for

the fiscal year ending September 30, 1977, and for other purposes", approved May 4, 1977 (2 U.S.C. 64-3), is amended—

(A) by striking "Secretary of the Senate" and inserting "Chief of the Capitol Police"; and

(B) by striking "United States Senate" and inserting "Capitol Police".

(i) Effective Date.—This section and the amendments made by this section shall take effect October 1, 2002, or the date of enactment of this Act, whichever is later, and shall apply to the fiscal year in which such date occurs and each fiscal year thereafter.

SA 4321. Mr. DURBIN (for Ms. Landrieu (for herself and Mr. Durbin)) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 44, line 24, before the period, insert the following: ": *Provided further*, That, of the total amount appropriated, $500,000 shall remain available until expended and shall be equally divided and transferred to the Alexandria Museum of Art and the New Orleans Museum of Art for activities relating to the Louisiana Purchase Bicentennial Celebration".

SA 4322. Mr. DURBIN (for Mr. Cochran (for himself, Mr. Durbin, and Mr. Bennett)) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 28, line 11, strike "$108,743,000" and insert "$108,243,000".

On page 63, insert between lines 10 and 11 the following:

SEC. 312. TITLE II OF THE CONGRESSIONAL AWARD ACT.

There are appropriated, out of any funds in the Treasury not otherwise appropriated, $500,000, to remain available until expended, to carry out title II of the Congressional Award Act (2 U.S.C. 811 et seq.).

SA 4323. Mr. DURBIN (for Mr. Specter (for himself and Mr. Durbin)) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 5, line 26, insert before the period ", of which up to $500,000 shall be made available for a pilot program for mailings of postal patron postcards by Senators for the purposes of providing notice of a town meeting by a Senator in a county (or equivalent unit of local government) with a population of less than 250,000 and at which the Senator will personally attend: Provided, That any amount allocated to a Senator for such mailing shall not exceed 50 percent of the cost of the mailing and the remaining cost shall be paid by the Senator from other funds available to the Senator: Provided further, That not later than October 31, 2003, the Sergeant at Arms and Doorkeeper of the Senate shall submit a report to the Committee on Rules and Administration and Committee on Appropriations of the Senate on the Senate of the program".

SA 4324. Mr. DURBIN (for Mr. Dodd) proposed an amendment to the bill H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 9, between lines 17 and 18, insert:

SEC. ___. PUBLIC SAFETY EXCEPTION TO INSCRIPTIONS REQUIREMENT ON MOBILE OFFICES.

(a) In General.—Section 3(f)(3) under the heading "Administrative Provisions" in the appropriation for the Senate in the Legislative Branch Appropriation Act, 1975 (2 U.S.C. 59(f)(3)) is amended by adding at the end the following flush sentence:

"The Committee on Rules and Administration of the Senate may prescribe regulations to waive or modify the requirement under subparagraph (B) if such waiver or modification is necessary to provide for the public safety of a Senator and the Senator's staff and constituents.".

(b) Effective Date.—The amendment made by this section shall take effect on the date of enactment of this Act and apply to the fiscal year that includes such date and each fiscal year thereafter.

SA 4325. Mr. DURBIN (for himself and Mr. Voinovich) submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COLLECTION OF PRESCRIPTION DRUG PRICES; CALCULATION OF AVERAGE RETAIL PRICES; CONSUMER GUIDE TO PRESCRIPTION DRUGS.

(a) Purposes.—The purposes of this section are the following:

(1) To provide beneficiaries under the medicare program under title XVIII of the Social Security Act with information on the prices of prescription drugs so that they can decide, in consultation with their health care providers, whether a brand name drug or its therapeutic or generic equivalent would be appropriate.

(2) To provide information to health care providers on the prices of prescription drugs and the generic equivalents of such drugs.

(3) To inform beneficiaries under the medicare program of the role of the Food and Drug Administration in ensuring that generic drugs are as safe as brand name drugs and equivalent to brand name drugs.

(b) Calculation of Average Retail Prices.—

(1) Collection of retail prescription drug prices.—

(A) Retail prices of 200 most commonly used drugs by medicare beneficiaries.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish a process for the collection of sample data nationwide on the retail prices of the 200 most commonly used prescription drugs by beneficiaries under the medicare program.

(B) Retail prices of additional drugs.—The process established under paragraph (1) may provide for the collection of retail prices on prescription drugs not described in such paragraph if the Secretary determines that such collection is feasible and would be beneficial to beneficiaries under the medicare program and their health care providers.

(2) Calculation of average retail prices.—Using the data collected under paragraph (1), the Secretary shall calculate an average retail price for each prescription drug for which data is collected under such subsection.

(3) Authority to contract with a private entity to collect data and calculate prices.—If determined appropriate by the Secretary, the Secretary may contract with a private entity to—

(A) collect the data under paragraph (1); and

(B) make the calculations under paragraph (2).

(c) Consumer Guide to Prescription Drugs.—

(1) In general.—The Secretary shall—

(A) annually publish a Consumer Guide to Prescription Drugs;

(B) annually distribute such Guide to beneficiaries under the medicare program;

(C) make such Guide available to health care providers; and

(D) maintain the information contained in such Guide on the Medicare Internet site of the Department of Health and Human Services.

(2) Requirements.—The Consumer Guide to Prescription Drugs established under paragraph (1) shall, with respect to the drugs for which data is collected under subsection (b)—

(A) provide beneficiaries under the medicare program and health care providers with—

(i) easy-to-understand information about such prescription drugs and information on the requirement under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that a generic drug be bioequivalent to the brand name drug for which it is a substitute; and

(ii) information to assist such beneficiaries and providers in comparing the costs of such prescription drugs by therapeutic category; and

(iii) information regarding the wide variation in drug prices across the country;

(B) group such prescription drugs within their therapeutic classes;

(C) identify generic equivalents where available for brand name drugs in a manner that allows the beneficiary and the health care provider to compare the relative prices of generic and brand name drugs; and

(D) include a list of the average retail price of each such prescription drug (as determined under subsection (b)).

(3) Timeframe.—The Secretary shall publish the Consumer Guide to Prescription Drugs within 24 months of the date of enactment of this Act and shall publish an updated version of the Guide annually thereafter. The Secretary may publish periodic bulletins to such Guide that reflect changes in the prices of prescription drugs in the Guide between the dates of annual publication of the Guide.

(4) Inclusion in medicare handbook.—If the Secretary determines that it is appropriate to do so, the Secretary may publish the Consumer Guide to Prescription Drugs as part of the notice of medicare benefits required by section 1804(a) of the Social Security Act (42 U.S.C. 1395b-2(a)).

(d) Generic Drug Defined.—In this section, the term "generic drug" means—

(1) a drug approved under subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and for which the brand name drug is the listed drug for the drug approved under such a subsection; and

(2) a drug that the Secretary has determined is therapeutically equivalent to a

drug described in paragraph (1) that is not a brand name drug.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the committee on Energy and Natural Resources.

The hearing will take place on Wednesday, August 7, 2002, from 9:00 a.m. until 11:00 a.m. at the Genoveva Chavez Community Center, 3221 Rodeo Road, in Santa Fe, New Mexico.

The purpose of the hearing is to receive testimony on S. 2776, a bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510, or to Senator Bingaman's office in Santa Fe, 119 E. Marcy Street, Suite 101, Santa Fe, NM 87501.

For further information, please contact David Brooks of the Committee staff at (202) 224-4103.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, July 25, 2002, at 9:30 a.m., in open session to receive testimony on the national security implications of the strategic offensive reductions treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 25, 2002, immediately following the first rollcall vote, to conduct a mark up on the nominations of Mr. Paul S. Atkins, of Virginia, to be a member of the Securities and Exchange Commission; Mr. Harvey Jerome Goldschmid, of New York, to be a member of the Securities and Exchange Commission; Ms. Cynthia A. Glassman, of Virginia, to be a member of the Securities and Exchange Commission; and Mr. Roel C. Campos, of Texas, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, July 25, 2002, at 9:30 a.m. on aviation security in transition.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Thursday, July 25, 2002, at 11:00 a.m. to consider pending legislation, nominations, and resolutions. The meeting will be held in SD-406.

Agenda

Legislation:

S. 1602, the Chemical Security Act of 2001

S. 1746, the Nuclear Security Act of 2001

S. 1850, the Underground Storage Tank Compliance Act of 2001

S. 2771, the John F. Kennedy Center Plaza Authorization Act of 2002

Nominations:

Nomination of John S. Bresland to be a Member and Chair of the Chemical Safety and Hazard Investigation Board

Nomination of Carolyn W. Merritt to be a Member and Chair of the Chemical Safety and Hazard Investigation Board

Nomination of John P. Suarez to be Assistant Administrator for Enforcement and Compliance, Environmental Protection Agency

Resolutions:

Study Resolution for Brush Creek Basin, Kansas and Missouri

Study Resolution for Walton County, Florida

Study Resolution for Mercer County, New Jersey

Study Resolution for Camden and Gloucester Counties, New Jersey

Study Resolution for Indian River and Bay, Delaware

Study Resolution for Sand Creek, Oklahoma

Study Resolution for Shellpot Creek, Delaware

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 25, 2002 at 10:30 a.m. to hold a business meeting.

Agenda

The Committee will consider and vote on the following agenda items:

Treaties:

1. Treaty Doc. 96-53, Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the U.N. General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980.
2. Treaty Doc. 105-32, An agreement Establishing the South Pacific Regional Environment Programme, done at Apia on June 16, 1993.
3. Treaty Doc. 105-53, A Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary.

Legislation:

4. S. Res. 300, A resolution encouraging the peace process in Sri Lanka, with amendments.

Nominations:

5. Mr. Randolph Bell, of Virginia, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.
6. Mr. James Gadsden, of Maryland, to be Ambassador to the Republic of Iceland.
7. Mr. James Jeffrey, of Virginia, to be Ambassador to the Republic of Albania.
8. Mr. Michael Klosson, of Maryland, to be Ambassador to the Republic of Cyprus.
9. Mr. Norman J. Pattiz, of California, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004.
10. Mr. Paul Speltz, of Texas, to be United States Executive Director of the Asian Development Bank, with the rank of Ambassador.
11. Mr. Mark Sullivan, III, of Maryland, to be United States Executive Director of the European Bank for Reconstruction and Development.
12. Mr. Kenneth Y. Tomlinson, of Virginia, to be a Member and Chairman of the Broadcasting Board of Governors for a term expiring August 13, 2004.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, July 25, 2002 at 9:30 a.m. for a business meeting to consider pending business.

Agenda

1. To authorize withdrawal of the Committee amendments and offering of a floor amendment in the nature of a substitute to the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452) which the Committee ordered reported on May 22, 2002.

Nominations:

a. James "Jeb" E. Boasberg to be an Associate Judge of the Superior Court of the District of Columbia.

b. Michael D. Brown to be Deputy Director of the Federal Emergency Management Agency.

c. The Honorable Mark W. Everson to be Deputy Director for Management, Office for Management and Budget

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on Violence against Women in the Workplace: The Extent of the Problem and What Government and Businesses Are Doing About It, during the session of the Senate on Thursday, July 25, 2002 at 10:00 a.m. in SD–430.

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, July 25, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on the July 2, 2002 Report of the U.S. Department of the Interior to the Congress on the Historical Accounting of Individual Indian Money Accounts.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Oversight of the Department of Justice," on Thursday, July 25, 2002 in Dirksen Room 226 at 10:00 a.m.

Witness List

The Honorable John D. Ashcroft, Attorney General, Department of Justice, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, July 25, 2002 at 10:00 a.m. to hold a closed hearing on the Joint Inquiry into the events of September 11, 2001.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. REID. Mr. President, I ask unanimous consent that the Public Lands and Forests Subcommittee of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Thursday, July 25, at 2:30 p.m. in SD–366.

The purpose of this hearing is to receive testimony on S. 2672, to provide opportunities for collaborative restoration projects on National Forest System and other public lands.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations en bloc: Calendar Nos. 829, 830, 832, 837, 838, 839, 841, 842, 843, 844, 845, 931, 932, 933, and 934.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I further ask that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table; and any statements be printed in the Record; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed en bloc, as follows:

CONSUMER PRODUCT SAFETY COMMISSION

Harold D. Stratton, of New Mexico, to be Chairman of the Consumer Products Safety Commission.

Harold D. Stratton, of New Mexico, to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term expiring October 26, 2006.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anthony Lowe, of Washington, to be Federal Insurance Administrator, Federal Emergency Management Agency.

THE JUDICIARY

Robert R. Rigsby, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

DISTRICT OF COLUMBIA OFFENDER SUPERVISION, DEFENDER, AND COURTS SERVICES AGENCY

Paul A. Quander, Jr., of the District of Columbia, to be Director of the District of Columbia Offender Supervision, Defender, and Courts Services Agency for a term of six years.

DEPARTMENT OF JUSTICE

Todd Walther Dillard, of Maryland, to be United States Marshal for the Superior Court of the District of Columbia for the term of four years.

DEPARTMENT OF JUSTICE

Roslynn R. Mauskopf, of New York, to be United States Attorney for the Eastern District of New York for the term of four years.

Steven D. Deatherage, of Illinois, to be United States Marshal for the Central District of Illinois for the term of four years.

Thomas M. Fitzgerald, of Pennsylvania, to be United States Marshal for the Western District of Pennsylvania for the term of four years.

G. Wayne Pike, of Virginia, to be United States Marshal for the Western District of Virginia for the term of four years.

David William Thomas, of Delaware, to be United States Marshal for the District of Delaware for the term of four years.

SECURITIES AND EXCHANGE COMMISSION

Paul S. Atkins, of Virginia, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 2003.

Cynthia A. Glassman, of Virginia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2006.

Harvey Jerome Goldschmid, of New York, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2004.

Roel C. Campos, of Texas, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2005.

THE NOMINATION OF DAVID WILLIAM THOMAS TO BE US MARSHAL FOR THE DISTRICT OF DELAWARE.

Mr. CARPER. Madam President, I rise to enthusiastically support the nomination of David William Thomas to be the next United States Marshal for the District of Delaware.

It has been my pleasure to know Sgt. Thomas for many years. He is a good and decent person, a devoted and committed husband and father, a fine police officer, a volunteer fire fighter and an all around "great guy." I believe he will serve both Delaware and the United States very, very well.

"Tito," as many call him, has been a police officer for more than 20 years. He began his career as a patrol officer with the University of Delaware Police where he quickly developed a reputation for firmness in his enforcement of the law and university policy as well as for sensitivity to the particular needs and concerns of the student body. After three years, Sgt. Thomas moved to the Delaware State Police where he served in several different capacities ranging from Patrol Trooper, where the rubber literally hits the road, to public information officer, interacting with the public and the media.

During his tenure with the State Police, "Tito" Thomas worked directly for two governors of Delaware. During the second term of former Governor Mike Castle who is now Delaware's congressman, Sgt. Thomas provided security as a member of the Executive Protection Unit. During my own second term as Governor, "Tito" served as Legislative Liaison for my Department of Public Safety, promoting public safety legislation in our state general assembly.

In addition to his employment as a police officer, Sgt. Thomas has served his community as a volunteer in other capacities. Notably, he is a member of the Aetna Hose Hook and Ladder Volunteer Fire Company in Newark, Delaware and a. volunteer CPR Instructor with the American Heart Association.

David Thomas' extensive and varied background in law enforcement, his demonstrated sense of commitment to his community, his devotion to his growing family and his exemplary moral character all serve to qualify him well to be United States Marshall for the District of Delaware.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will retire to legislative session.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to P.L. 103-227, appoints the following individual to the National Skill Standards Board for a term of four years: Upon the recommendation of the Republican Leader: Betty W. DeVinney of Tennessee, Representative of Business.

The Chair, on behalf of the Republican Leader, pursuant to Public Law 107-171, announces the appointment of Mr. Robert H. Forney, of Indiana, to serve as a member of the Board of Trustees of the Congressional Hunger Fellows Program.

MEASURE READ THE FIRST TIME—H.R. 4965

Mr. REID. It is my understanding H.R. 4965 is now at the desk. I therefore ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion.

Mr. REID. I now ask for the second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

ORDERS FOR FRIDAY, JULY 26, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:55 a.m., Friday, July 26; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to executive session to vote on cloture on Executive Calendar No. 810.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. The next rollcall vote will occur at approximately 10 a.m. on cloture on the nomination of Julia Smith Gibbons to be United States Circuit Judge for the Sixth Circuit and a second rollcall vote on an additional judicial nomination is possible tomorrow.

ADJOURNMENT UNTIL 9:55 A.M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:59 p.m., adjourned until Friday, July 26, 2002, at 9:55 a.m.

NOMINATIONS

Executive nominations received by the Senate July 25, 2002:

THE JUDICIARY

JEFFREY S. WHITE, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, VICE CHARLES A. LEGGE, RETIRED.

KENT A. JORDAN, OF DELAWARE, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE, VICE RODERICK R. MCKELVIE, RETIRED.

SANDRA J. FEUERSTEIN, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, VICE THOMAS C. PLATT, JR., RETIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 8036 AND 601:

To be lieutenant general

MAJ. GEN. GEORGE P. TAYLOR JR., 9111

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RICHARD A. CODY, 6483

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. BANTZ J. CRADDOCK, 7782

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM E. WARD, 9000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. WILLIAM S. CRUPE, 1989

THE FOLLOWING ARMY NATIONAL GUARD OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL HARRY B. BURCHSTEAD JR., 1334
BRIGADIER GENERAL GEORGE A. BUSKIRK JR., 3156
BRIGADIER GENERAL JAMES A. COZINE, 4268
BRIGADIER GENERAL RICKY D. ERLANDSON, 3783
BRIGADIER GENERAL GREGORY J. VADNAIS, 4304

To be brigadier general

COLONEL BRUCE E. BECK, 9604
COLONEL RICHARD M. BLUNT, 2859
COLONEL TOD J. CARMONY, 9396
COLONEL MICHAEL J. CURTIN, 4074
COLONEL HUNTINGTON B. DOWNER JR., 9238
COLONEL MICHAEL P. FLEMING, 3095
COLONEL RALPH R. GRIFFIN, 3888
COLONEL GREGORY A. HOWARD, 9826
COLONEL ARTHUR V. JEWETT, 2184
COLONEL MICHAEL A. KIEFER, 6239
COLONEL THOMAS C. LAWING, 4302
COLONEL JOHN E. LEATHERMAN, 9004
COLONEL HERBERT L. NEWTON, 4019
COLONEL PATRICK M. O'HARA, 3188
COLONEL DARREN G. OWENS, 5600
COLONEL STEWART A. REEVE, 3242
COLONEL LAWRENCE H. ROSS, 5226
COLONEL TERRY W. SALTSMAN, 7338
COLONEL JOHN E. SAYERS JR., 4781
COLONEL THEODORE G. SHUEY JR., 4807
COLONEL ANTHONY M. STANICH JR., 7135
COLONEL ROBIN C. TIMMONS, 7859
COLONEL JODI S. TYMESON, 7585
COLONEL EDWARD L. WRIGHT, 4834
COLONEL MARK E. ZIRKELBACH, 5128

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR A REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U. S. C., SECTION 531:

To be colonel

BUENAVENTURA Q. ALDANA, 4025
EDWARD TAXIN, 5901
ANDREW W. TICE, 9235

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

SUSAN S. BAKER, 1785
CAROLYN M. BELL, 9808
JOSEPH P. BURGER III, 6339
DONALD COLE, 4311
CORI A. CULVER, 4633
KENNETH R. DARLING, 1490
ARTHUR R. DAVENPORT JR., 7759
KATHRYN D. DRAKE, 6944
JOHN L. FLYNN, 2879
DAVID W. GARRISON, 7347
HENRI T. HAMMOND, 0674
RICHARD C. HART, 0051
LORN W. HEYNE, 6670
JOSEPH C. KENNEDY, 7293
KRZYSZTOF KRAS, 7139
JOHN M. LOPARDI, 4501
STEVEN S. LOWRY, 4305
TROY P. MCGILVRA, 5808
RICHARD A. MCMILLAN, 8741
DONALD T. MOLNAR, 2991
CHARLES W. NELSEN, 1459
WILLIAM D. PARKER, 4199
MICHELLE N. PELL, 9951
DAVID W. PFAFFENBICHLER, 9319
ROBERT F. ROCCO, 7751
JAIME L. ROSADO JR., 5458
DAWN E. ROWE, 7401
SCOTT J. SANCHEZ, 5747
MICHELE M. SCHOTT, 0684
JIMMY L. STERLING, 9915
RICHARD N. TERRY, 8310
PORTIA A. THOMAS, 6929
JUDITH E. VALDEZ, 0282
TIMOTHY VALLADARES, 1426
KIRSTEN F. WATKINS, 3035
JON C. WELCH, 4732
GILMER G. WESTON III, 6858

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

ANTONIO CORTESSANCHEZ, 7113
KIMBERLY D. WILSON, 2142

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

HENRY G. BERNREUTER, 4632
LAWRENCE W. BROCK III, 7289
MATTHEW B. CHANDLER, 6256
MARK C. CHUN, 3228
ANTHONY C. CRAWFORD, 4160
EDDIE H. GOFF, 4175
JESUS G. RAMIREZ JR., 5036
MARK D. SCRABA, 1485

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS, UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be major

RALF C BEILHARDT, 5784
ROBERT E BESSEY, 8364
JOHN E BROCK, 9251
EDA P DEMETRIUS, 8971
WILLIAM J GREENWOOD, 9272
THEODORE R GRIGG, 9143
IKE B HARDY, 0232
DOXIADES A HILL, 2723
HERMANN F HINZE, 4064
PHUONG C HUYNH, 6271
CHRISTOPHER S LEA, 5723
WILLIAM K LIN, 8881
TAWANNA MCGHEE, 1518
RICHARD RITTER V, 5018
JEAN C SENECAL, 5204
JAMES M SUTTON, 5263
TIMOTHY J SWANSON, 5506
JOHN T THOMPSON, 5929
EDWARD J VANISKY, 3183
BRUCE M WHEELER, 7711
RICHARD L WILLIAMS, 0609

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be major

MICHAEL P ABEL, 2172
VICTOR A AGNELLO, 5138
ELIZABETH G AKAKA, 2083
MICHAEL C ALBRECHT, 2841
WARREN L ALEXANDER, 2229
HERMINEE ALEXANIAN, 7395
RONALD D ALLEN, 1738

JOHN G ALLRED, 0118
CRAIG J AMNOTT, 5389
JIMIE D ANDERSON, 9599
CHRISTOPHER D APPLETON, 5266
MARIA E ARCILA, 0438
EDWARD H BAILEY, 7156
TIMOTHY J BALLING, 9904
KATHERIN BALTURSHOT, 3681
CHRISTINA M BALUM, 2638
DONALD A BALUN, 3397
BRIAN E BARDEN, 0231
JEFFREY G BARNES, 0894
LEE J BARTON, 1136
STEVEN E BATTLE, 4776
CHRISTOPHER J BENNETT, 1209
JOHN A BENSON, 6226
JEROME V BENZ JR., 1640
KENNETH R BERGMAN, 0447
RICHARD A BICKEL JR., 6256
PHILIP J BILLONI, 1386
RACHEL J BISHOP, 2853
WILLIAM B BIVENS, 1741
ROBERT B BLANKENSHIP, 1036
SCOTT C BLEDSOE, 3685
DENNIS E BLEY, 4794
JASON A BOARDMAN, 9301
JESSE D BOLTON, 2642
GREGORY T BRAMBLETT, 8589
STEPHEN A BRASSELL, 3391
LORANEE E BRAUN, 9037
SCOTT E BRIETZKE, 7204
WILLIAMS Q BRITTON, 3775
STEPHEN J BUETOW, 1796
JOHN M BURBIDGE, 0446
RICHARD O BURNEY, 5873
DAVID M BUSHLEY, 2588
ARTHUR L CAMPBELL III, 9154
ROBERT A CARDONA, 0169
DAVID J CASEY, 1205
JOHN R CHANCE, 6392
DIANE M CHIRICO, 5232
CHARLES J CHITWOOD, 4109
GREGORY T CHOE, 6363
ANNETTE R CLARKBROWN, 8911
DAVID W COLE, 5516
MICHAEL A COLE, 7666
JAMES P COLEMAN III, 0585
GEORGE R COLLINS, 6126
JOHN W COLLINS, 8659
BRENDON R CONNOLLY, 5781
ALAN D CONWAY, 9877
PATRICK R COOK, 2080
CHRISTOPHER R COTE, 0259
RICHARD J CRETTELA, 8321
ROBERT F CROWE, 7292
PAUL J CUNNINGHAM, 4013
GREGORY G DAMMANN, 2175
COLIN Y DANIELS, 5440
JASMINE T DANIELS, 2867
KURT G DAVIS, 0282
RUSSELL O DAVIS, 6014
JEFFREY A DEAN, 8760
CARL W DECKER, 0488
RHONDA DEEN, 7846
SHAD H DEERING, 4338
KENT J DEZEE, 4056
BRIAN P DEZZUTTI, 0883
CHARLES S DIETRICH III, 4772
ANDREW E DOYLE, 3157
GARY P DUPUY, 1862
TRECIA L ELAHEE, 4912
MICHAEL W ELLIS, 7892
BARRY R FLEISCHER, 4807
MICHELLE S FLORES, 4860
JAN H FLOYD, 9843
ANTHONY M FOLEY, 5181
LOUIS F FOLEY, 9189
BRUCE M FOOTIT, 2659
FRANKLIN W FREDERICK, 2744
MARK C FRIBERG, 8788
TODD A FUNKHOUSER, 4151
PAUL D GARRETT, 9598
CASEY J GEANEY, 5104
PHILIP J GENTLESK, 4918
JAMES J GERACCI, 5282
LYNN M GIARRIZZO, 0389
KELLY R GILLESPIE, 9392
MELISSA L GIVENS, 3344
NICHOLE R GLASS, 5489
LISA B GOFF, 6750
RAYMOND G GOOD, 7047
ERIC J GOURLEY, 5931
JOSEPH D GRAMLING, 0073
JENNIFER A GRECO, 6705
BRETT A GUIDRY, 1465
JOHN W HAMMOCK, 1461
JOHN W HARIADI, 9104
KYLE C HARNER, 4370
ADAM W HARRIS, 6093
DARREN L HARRIS, 7889
FREDERICK B HARRIS, 4295
DONALD L HELMAN JR., 7291
MAXWELL P HENDRIX, 5865
JEFFREY V HILL, 1550
CHRIS A HOFLAND, 1495
ROBERT H HOLLAND, 9838
SEAN A HOLLONBECK, 4550
CONCETTA R HOLLOWAY, 2187
LAURENCE C HOOD, 1489
LYNN L HORVATH, 5222
JAMIA E HOWELL, 6520
NABEEN HUSSAIN, 5483
THOMAS R HUSTEAD, 6806
CHRISTOPHER L HUTSON, 1608
CAESAR S INES, 3126
DANIEL J IRIZARRY, 4103
JOHNSON ISAAC, 3383
WILLIAM L JACKSON, 4207
TYLER M JAMES, 1723
CHRISTOPHER G JARVIS, 0805
JEREMY S JOHNSON, 5727
JONI J JOHNSON, 8521
CHRISTOPHER B JONES, 8375
JENNIFER E JORGENSEN, 3348
JAMES W JOSEPH, 9242
VALLIE KAPRELIAN, 7582
SANGEETA KAUSHIK, 3651
DWIGHT C KELLICUT, 9237
DARIN N KENNEDY, 5431
BRADFORD A KILCLINE, 4243
ISAAC K KIM, 6245
JAMES Y KIM, 6125
KURT G KINNEY, 4490
MARY M KLOTE, 7944
JEFFREY K KLOTZ, 1283
JONATHAN M KOFF, 0591
CHRISTIAN L KOOPMAN, 4720
CRAIG T KOPECKY, 2015
KURTIS L KOWALSKI, 2929
JAMES G LAMPHEAR, 8498
GREGORY T LANG, 1239
CHRISTOPHER L LANGE, 1868
JENNIFER T LANGE, 3398
DAVID LAW, 9487
BRENT L LECHNER, 5625
JOSEPH Y LEE, 0785
SOOK L LEE, 8242
RONALD LEHMAN, 2325
ERIC N LEONG, 8993
WILLIAM D LEUSINK, 8021
HWEI T LIN, 9654
BRIAN J LOHNES, 2832
DARA D LOWE, 8340
JAMES B LUCAS II, 4225
TODD J LUCAS, 6440
PEDRO F LUCERO, 5934
KIMBERLY K LUND, 0129
SHAWN A MACLEOD, 6735
ANDREW D MAGNET, 8635
JOHN R MAGPANTAY, 3323
ROBERT F MALSBY III, 3180
GREGORY J MARTIN, 7115
ROBERT T MATHIS, 2853
LARRY J MCCORD, 0351
RAAP J MCELHINNY, 0223
MARK E MCGRANAHAN, 7921
IAN K MCLEOD, 0281
LEAH P MCMANN, 0163
MICHAEL A MCMANN, 1673
SEAN K MCVEIGH, 3260
CHRISTOPHER D MEDELLIN, 1325
GARY W MENEFEE, 8302
JOHN W MERCER JR., 3329
MICHAEL J MINES, 8173
MICHAEL J MOFFATT, 9861
SEAN P MONTGOMERY, 5138
DOROTHY K MORGAN, 4863
JEFFREY S MORGAN, 4255
STEPHEN M MORRIS, 2924
JEANNIE M MUIRPADILLA, 7414
SEAN W MULVANEY, 2298
MICHAEL E MURPHY, 6780
MALCOLM G NAPIER, 6063
RAJEEV NARAYAN, 3199
ROBERT H NELSON, 9271
ROMEO NG, 4549
THERESA M NGUYEN, 1221
TOM L NGUYEN, 4063
NERIS M NIEVESCOLBERG, 5448
ERIK B NUCKOLS, 3963
RONALD P OBERFOELL, 6471
SARAH K OKADA, 6717
SEAN T OMARA, 3750
ROBERT J ORGAN, 2348
SHAWN S OSTERHOLT, 0524
ELIZABETH A OTTNEY, 3967
ROBERT H OVERBAUGH, 2912
KAREN L PALMER, 0548
SOHYUN C PARK, 5228
MICHAEL E PARKER, 7680
TARAK H PATEL, 8974
CHARLES L PEDERSON, 8857
ANA E PERALTA, 3118
JEREMY G PERKINS, 6695
JEROME V PONDER, 0847
JENNIFER POTTER, 3106
DAVID N PRESSMAN, 5374
JOSEPH PUSKAR, 0815
DAVID M QUINN, 5699
GAURI RADKAR V, 8761
BRADEN R RANCE, 5751
MATTHEW S RICE, 5966
THOMAS J RICHARD, 1060
SUSAN M ROBINSON, 9289
STEVEN W ROBISON, 8266
FALCON W RODRIGUEZ, 7919
JORGE L ROMEU, 6546
INGER L ROSNER, 5852
ROBERT RUSSELL, 1617
GAYLE B RYAN, 4301
MEG E RYAN, 1418
DAVID S SACHAR, 7145
SCOTT A SALMON, 8556
CHRISTOPHER K SANBORN, 0477
DON J SARMIENTO, 0066
TIMOTHY M SASALA, 4404
STEVEN A SAWYER, 9136
ANTHONY SCHULTZ, 6677
DEAN A SEEHUSEN, 9265
ERNEST C SEVERN, 6214
RICHARD A SEXTON, 1574
ANDREW J SHAPIRO, 5512
DAVID J SHAW, 1901
ERIK J SHELSTAD, 0083
PAULA J SHEPHERD, 4118
SEAN M SHOCKEY, 0337
RENEE M SIEGMANN, 5033
CASTANEDA A SIEROCKA, 3766
LINDA G SLAYTON, 0553
BRYAN C SLEIGH, 7330
JOHNNY D SMITH, 7255
JONATHAN K SMITH, 6089
KAREN E SMITH, 5303
RICHARD R SMITH, 9364
PATRICK J SNOWMAN, 1927
TAIIL T SONG, 2000
RONALD J STUKEY, 4203
LANCE E SULLENBERGER, 6760
NAOMI R SULLIVAN, 4794
DANIELLE C SUYKERBUYK, 4550
ROBERT A SUYKERBUYK, 3146
COSIMA C SWINTAK, 7817
HUNTER E SWITZER, 9173
TIMOTHY S TALBOT, 6673
OVERPECK T TENEWITZ, 3438
BRIGILDA C TENEZA, 1029
SEAN F THOMAS, 6718
JOHN E THORDSEN JR., 4546
MARIA D THORDSENVELEZ, 9610
LEROY J TROMBETTA, 7605
JOSEPH C TURBYVILLE, 4865
BRADLEY S VANDERVEEN, 9007
RODNEY A VILLANUEVA, 6199
GEORGE VONHILSHEIMER, 2097
JEFFREY A VOS, 9446
PHILIP M WAALKES, 6469
KIRK H WAIBEL, 9435
JACQUELINE A WARDGAINES, 1811
CHRISTOPHER L WATHIER, 6033
EMERY S WEAVER, 2906
KIMBERLY A WENNER, 1723
KENNETH R WEST, 5863
CHRISTOPHER E WHITE, 0222
WENDY J WHITFORD, 8089
KIMBERLY L WHITTINGTON, 9600
DONALD K WILLIAMS, 1581
JOSEPH A WILLIAMS, 6667
JEFFREY L WILSON, 8605
WILLIAM K WONG JR., 3032
BRADLEY K WOODS, 5831
JUSTIN T WOODSON, 2229
PHILIP A WOODWORTH, 7315
JOHNNIE WRIGHT JR., 3143
GERALD E YORK II, 1898
WESLEY G ZEGER, 0258

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

STEVEN D. KORNATZ, 2845

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

MARY B. GERASCH, 1645

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

BARON D. JOLIE, 6888

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

TODD A. MASTERS, 7219

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

PERRY W. SUTER, 2405

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

WILLIAM L ABBOTT, 0499
SCOTT B CURTIS, 4716
TODD A FIGANBAUM, 8080
ANDREW G GRANT, 8928
WILLIAM A HALE, 9941
JOEL HARVEY, 8801
JAMES H HUMPHREY, 1226
MICHAEL E HUTCHENS, 2974

FRANK J KORFIAS, 8360
THOMAS P MONINGER, 4431
MARTIN J MUCKIAN, 7588
CHRISTOPHER A NERAD, 8397
BENJAMIN R NICHOLSON, 5849
ROBERT D SANDERS, 0722
DAVID E SMITH, 8119
RAYMOND C SPEARS, 3026
HENRY P STEWART, 0261
LAUREN L TROYAN, 6893
JOHN M WENKE JR., 9963
DONALD E WYATT, 9836

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

VANESSA P AMBERS, 8837
JOHN D BANDY, 7819
JOSEPH E BRENNAN, 6754
JAMES L CAROLAND, 7760
MICHAEL S COONEY, 4777
SAMMY CUEVAS, 4492
MARIA E DESANDRE, 4417
GREGORY L DIXON, 9122
JOSEPH E DUPRE, 5687
ROB E ENDERLIN, 1757
SHELLY V FRANK, 1727
BRYANT L FRAZIER, 3929
JOHN S GALIPEAU, 6314
PETER GIANGRASSO, 4382
MELVIN P GORDON, 8853
JOSHUA C HANSEN, 0044
LINDA M HATCHER, 8301
STEPHEN M HEINSINGER, 4149
CHRISTOPHER E HOWSE, 1275
SHAWN W MCGINNIS, 2448
STUART R MCKENNA, 1369
CHERYL A MUIRHEAD, 4668
WILLIAM S MYERS, 3077
DAVID I ODOM, 6761
BOSWYCK D OFFORD, 3036
SONJA M PERRY, 2568
MICHAEL RIGGINS, 0450
PAMELA R RUSSELL, 0467
CHRISTOPHER P SLATTERY, 2998
ABRAHAM A THOMPSON, 8242
RICHARD L WATERS, 3654
ROBERT E WHITE II, 7555
CHRISTOPHER J WILLIAMS, 3329
DOUGLAS M ZANDER, 7115

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

AMADO F ABAYA, 2180
JAMES R ACKERMAN II, 5454
CHRISTINE N ACTON, 4721
CHRISTOPHER J ADAMS, 0580
DOUGLAS J ADAMS, 7092
NEAL D AGAMAITE, 2535
GEORGE R AGUILAR, 3062
MARIO A AGUILAR, 4597
ROBERT W AGUILERA, 9317
IVAN L AGUIRRE, 1267
ELLER V AIELLO, 3059
LEOPOLDO S J ALBEA, 6155
KRISTINE E ALEXANDER, 0460
BRENT A ALFONZO, 3010
BENJAMIN J ALLBRITTON, 6103
JASON C ALLEYNE, 3050
QUINO P ALONZO JR., 6422
CHRISTOPHER S AMADOR, 5556
GARY T AMBROSE, 8343
MICHAEL T AMOS, 4340
KEVIN W ANDERSEN, 5860
DAVID R ANDERSON, 9427
EDWARD T ANDERSON, 9824
JAMES A ANDERSON, 2650
MARK E ANDERSON, 4669
ROBERT W ANDERSON, 0279
ERIC J ANDUZE, 5342
DAVID R APPEL, 3515
CHRISTOPHER E ARCHER, 7975
MATTHEW L ARNY, 1700
MARTIN F ARRIOLA, 2861
GARRETT C ARTZ, 7355
ARLEN E ASPENSON, 8386
MARK R ASUNCION, 4640
ROBERTO J ATHA JR., 1620
TINA M ATHANS, 5701
CHRISTOPHER J ATKINSON, 4911
KEVIN L AUSTIN, 7650
ARVIS V I AVERETTE, 5930
ROBERT L BAHR, 0579
EUGENE R BAILEY, 1217
ANTHONY P BAKER, 8168
BOBBY J BAKER, 9884
BRETT T BAKER, 7731
CHAD E BAKER, 2651
JEFFREY W BAKER, 6647
THOMAS R BAKER, 7992
THOMAS A BALCH, 7486
JOHN A BALTES; 4419
ROBERT J BANASIEWICZ, 3836
THOMAS D BARBER, 3342
CHARLES E BARE II, 7446
BUFORD D BARKER, 8031
JOSEPH W BARNES, 3615
TIMOTHY A BARNEY, 3731
JONATHAN B BARON, 7821
WILLIAM A BARTLE, 1704
JAMES L BASFORD, 6823
SHANNON S BASSI, 1925
KENNETH R BATES, 1848
DANIEL V BAXTER, 7611
JOSEPH M BAXTER, 7806
JAMES R BEASLEY, 5183
ANDREW E BECKER, 7757
CURTIS A BECKER JR., 3023
BRIAN R BEHLKE, 5905
RODNEY T BEHREND, 8283
JAMES W BELL, 0955
SCOTT A BELL, 6298
DOUGLAS S BELVIN, 9966
JAMES A BELZ, 5433
JEFFREY A BENSON, 5824
ANDREW R BENZ, 7866
BUDD E BERGLOFF, 5473
PAUL J BERNARD, 1372
JEFFREY A BERNHARD, 5466
PETER R BERNING, 5925
JAMES M BILOTTA, 1253
ANDREW T BISHOP, 9501
TANIA M BISHOP, 4225
KEVIN T BLACK, 9412
MICHAEL F BLACK, 1060
MICHAEL S BOBULINSKI, 0032
JOSEPH W BOCHENEK, 4215
SCOTT A BOEDEKER, 3765
MATTHEW D BOHLIN, 8859
DELONG BONNER, 4535
MATTHEW J BONNER, 9984
SCOTT P BONZ, 4032
JOHN D BOONE, 1784
MICHAEL J BOONE, 5622
NATHAN P BORCHERS, 4609
JAMES P M BORGHARDT, 4369
KELLY K BORING, 4981
JEFFREY S BOROS, 7673
CATHERINE S BOULWARE, 8015
BRIAN J BOUTOT, 8934
MATTHEW R BOWMAN, 7248
COLIN A BOWSER, 6656
DIMITRI C BOYACI, 5311
LESLIE W BOYER III, 6643
KEVIN P BOYKIN, 3215
JAMES G BOYLAND, 0405
JOSEPH P BOZZELLI, 8091
GREGORY M BRADLEY, 2131
ABABETH M BRAMAN, 2326
KEVIN M BRAND, 2737
MICHAEL S BRAUN, 5882
NEIL M BRENNAN, 0867
DAVID A BRETZ, 9285
PETER J BREWSTER, 1097
ANTHONY R BREYER, 2211
GEORGE D BRICKHOUSE III, 6751
BRADEN O BRILLER, 2174
JENKS D BRITT, 7806
JESSE L BRITTAIN, 6346
LARON B BROADNAX, 0291
ROBERT D BRODIE, 1248
AARON G BRODSKY, 0354
BRIAN B BRONK, 7018
DAVID L BROOKS, 8881
CHARLES W BROWN IV, 6578
CHRISTOPHER K BROWN, 2055
COREY L BROWN, 5890
JAMES E BROWN, 7401
CHADWICK B BRYANT, 3595
WILLIAM A BUCKNER, 9070
ROSS S BUDGE, 6899
NICHOLIE T BUFKIN, 7941
DWAYNE E BURBRIDGE, 0328
MARK E BURCHER, 1606
MICHAEL L BURD, 3345
ROBERT C BURDEAUX, 3619
COLVERT P BURGOS, 5549
MICHAEL J BURIANEK, 8914
THEODORE M BURK, 5578
BRIAN J BURKE, 9000
VORRICE J BURKS, 1016
JASON A BURNS, 7299
MATTHEW J BURNS, 2751
GREGORY D BYERS, 1548
JOSEPH M BYRD, 4055
KEVIN P BYRNE, 1283
MARCELLO D CACERES, 4488
JOSEPH F CAHILL III, 5531
MARK A CALDERON, 1886
DANIEL W CALDWELL, 5031
PAUL F CAMPAGNA, 9165
KYLE R CAMPBELL, 8306
RONNIE M CANDILORO, 0059
JOHN E CAPIZZI, 0649
MARC G CARLSON, 0793
ARON S CARMAN, 0080
JOSEPH A CARNELL, 9904
GREGORY P CARO, 9875
JOHN G CARPENTIER, 4362
JOSEPH CARRIGAN, 5180
CHRISTOPHER S CARROLL, 1125
DANIEL G CASE, 8751
ROBERT A CASPER JR., 3309
CHRISTOPHER J CASSIDY, 0212
CLINTON J CATES, 3170
SEAN P CAVAN, 3030
CHRISTOPHER J CAVANAUGH, 6814
THOMAS C CECIL, 2553
PETER J CECILIA JR., 9874
JONATHAN L CHADWICK, 0434
JOHN L CHAPLA, 0536
GREGORY F CHAPMAN, 0632
STEPHEN C CHAPMAN, 2606
STEPHEN P CHEELEY, 7527
CHI K CHEUNG, 3324
JEFFREY A CHILDERS, 8507
JOHN S CHRISTENSEN, 7178
RYAN G CHRISTOPHERSON, 8982
BRYANT T CHURCH, 6780
CARLOS J CINTRON, 8473
CHRISTOPHER J CIZEK, 8118
JEFFREY J CLARKSON, 6427
PHILLIP Z CLAY, 1222
DUNCAN M CLENDENIN, 1336
GWEN D G CLIFFORD, 1356
BRYAN M COCHRAN, 8670
LANCE A COLLIER, 1008
CHRISTOPHER I COLLING, 7265
MATTHEW B COMMERFORD, 2866
CHARLES P CONE, 6068
MICHAEL P CONNOR, 2358
ERIC L CONZEN, 2638
TIMOTHY M COOPER, 3422
PETER A CORRAO JR., 8859
RICKY R COSTNER, 4776
GREGORY B COTTEN, 4549
FREDERICK D COTTS, 3966
ROBERT COUGHLIN, 8218
SHAWN R COWAN, 6420
WILLIAM T COX JR., 6787
RAYMOND T COZINE, 5157
JOHN S CRANSTON, 5901
FREDERICK E CRECELIUS, 4363
RONALD L CREEL, 3593
MICHAEL C CRISP, 7014
ROBERT D CROXSON, 9086
PAUL A CRUMP, 8367
ADAN G CRUZ, 6281
YNIOL A CRUZ, 8035
KRISTEN W CULLER, 8170
CORY L CULVER, 4464
PATRICK J CUMMINGS, 4105
WILSON J CURRENT, 0866
TIMOTHY S CURRY, 9288
SCOTT B CURTIS, 4716
SEAN T CUSHING, 9525
PETER M CUTSUMBIS, 2688
SARAH A DACHOS, 8509
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RODNEY D DANIELS, 1343
ANDREW D DANKO, 7901
JOHN C DANKS, 9220
WILLIAM A DAROSA, 7606
TODD J DARWIN, 3113
JACE F DASENBROCK, 3097
GEORGE A DAVIS, 7252
GREGORY P DAVIS, 3105
STEPHEN C DAVIS, 0508
DAVID C DAYS, 6825
DENNIS A DEBOBES, 0214
ANTONIO DEFRIAS JR., 9127
DANIEL M DEGNER, 7812
STEPHEN J DELANTY, 5718
DINO S DELEO, 8261
STEVEN H DEMOSS, 3442
HOMER R DENIUS III, 1662
ROBERT DENTON III, 8146
TERENCE P DERMODY, 0328
STEVEN F DESANTIS, 2237
STANLEY J DESLICH, 4803
RALPH F DEWALT II, 8951
MICHAEL D DEWULF, 9530
BRIEN W DICKSON, 7843
MICHAEL R DICKSON, 8289
CHRISTOPHER S DIGNAN, 3333
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PHILLIP S DOBBS, 9603
SHAWN C DOMINGUEZ, 6858
PETER J DONAHER III, 2929
MARK M DONAHUE, 5140
ELLIOTT J DONALD, 8944
LEE A DONALDSON, 8353
DENISE M DONNELL, 9745
BRAD P DONNELLY, 6418
JOHN W DOOLITTLE, 3378
THOMAS C DORAN, 9895
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RANDY A DOSSEY, 5149
BRIAN P DOUGLASS, 5321
DAVID M DOWLER, 5093
GEORGE B DOYON JR., 3065
BRIAN C DOZIER, 0174
JEFFREY J DRAEGER, 1534
MARC E DROBNY, 0142
RICHARD F DUBNANSKY JR., 7536
TODD C DUDLEY, 8218
JUSTIN E DUGGER, 3925
CHRISTIAN A DUNBAR, 0963
CURTIS B DUNCAN, 9542
BRYAN W DURKEE, 8978
KEVIN L DUZAN, 1551
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MICHAEL G EARL, 0614
DOUGLAS E EDGE, 0218
JEFFREY W EGGERS, 4198
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NATHAN J ELDER, 1198
JAMES J ELIAS, 0852
MATTHEW S ELLIA, 6270

JENNIFER L ELLINGER, 7903
CARLTON T ELLIOTT, 8271
MICHAEL ELLIOTT, 9186
TONY L ELLIS, 2965
WILLIAM R ELLIS JR., 2487
II T S ELLISON, 8866
PHILIP L ENGLE JR., 6074
JOSHUA G ENGLISH, 5413
BRIAN ERICKSON, 3024
DAVID G ERICKSON, 1467
GREGORY J ERICKSON, 0472
ERIK J ESLICH, 5587
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THOMAS E EWING, 9883
DOUGLAS A FACTOR, 0934
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JACK C FLETCHER II, 6966
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GREGORY J GAHLINGER, 0236
ANDREW D GAINER, 0940
MICHAEL P GALLAGHER, 8891
TIMOTHY J GALLAGHER, 2839
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FERNANDO GARCIA, 8843
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ERIC J GARDNER, 4506
JOSHUA H GATES, 0441
JOHN A GEARHART, 7949
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DANIEL GEIGER, 9801
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BENNETT R GLOVER, 6669
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KYLE P GORDY, 6628
TUAN A GORMICAN, 0251
MICHAEL J GRABOWSKI, 1390
GREGORY L GRADY, 8738
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ANDREW G GRANT, 8928
WAYNE G GRASDOCK, 1034
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DANIEL E GREENE, 2190
JASON P GREENE, 6247
DARRELL S GREGG, 8051
JOHN D GREMILLION, 0232
ERIK W GREVE, 4531
MARK D GROB, 3860
DAVID E GROGAN, 5234
EDWIN J GROHE JR., 0282
TIMOTHY S GUDUKAS, 1448
WAYNE D GUNTHER, 8973
GENE M GUTTROMSON, 0697
THOMAS D HACKER, 5043
FERDINAND G HAFNER, 4914
ORLOFF L R HAGENDORF, 1214
GREGORY C HAIRSTON, 3296
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JASON G HAMMOND, 5159
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PATRICK D HANRAHAN, 5566
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JENNIFER L HARDING, 8122
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GALEN R HARTMAN, 6408
JASPER C HARTSFIELD, 3869
JOEL HARVEY, 8801
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MICHAEL E HAYES, 4097
GREGORY T HAYNES, 3502
ALBON O HEAD III, 4905
KEVIN P HEALY, 3902
BRYN J HENDERSON JR., 0889
SCOTT A HENDRIX, 0392
DARRYL W HENSLEY, 6472
SCOTT M HIELEN, 3288
SEAN P HIGGINS, 3030
ROBIN L HIGGS, 8350
STEPHEN F HIGUERA, 4596
CLAYTON O HILL, 2709
CRAIG A HILL, 1469
JEREMY R HILL, 8548
ROBERT A HILL, 4370
ALLEN L HOBBS, 7844
BERTRAM C HODGE, 8401
TODD A HOFSTEDT, 9724
AARON M HOLDAWAY, 3856
MARK D HOLMES, 9797
MARK F HOLZRICHTER, 5488
PATRICK C HONECK, 2934
DALE C HOOVER, 3953
DAVID HOPPER, 8404
MONROE M HOWELL II, 7788
CORY R HOWES, 8611
JOHN L HOWLAND, 2245
MICHAEL M H HSU, 9988
GREGORY W HUBBARD, 8178
MARC A HUDSON, 6345
ANTONIO D HULL, 6624
JAMES H HUMPHREY, 1226
KELLY S HURST, 5072
MARK C HUSTIS, 1499
CRAIG D HUTCHINSON, 3158
JOSEPH A HUTCHINSON, 2135
MATTHEW P HYDE, 0359
ROBERT H HYDE, 7379
DANIEL D IMBAT, 0830
MARK A IMBLUM, 3721
JOSEPH P IRETON JR., 8177
CHRISTOPHER C ISBELL, 5050
JONATHAN L JACKSON, 7865
STEPHEN J JACKSON, 5746
TIMOTHY C JACKSON, 8791
BRADLEY D JACOBS, 9580
GERALD D JACQUES, 5285
DAVID C JAMES, 0274
OMAR E JANA, 8538
THOMAS J JANKOWSKI, 5407
JOEL W JANOPOULOS, 8215
BYRON W JENKINS, 6300
JOHN D JESSUP II, 9646
WILLIAM H JEWETT III, 5222
DAVID E JOHNSON, 2929
DAVID R JOHNSON, 5397
ERIC R JOHNSON, 7991
HIRAM S JOHNSON, 8207
MARK E JOHNSON, 5714
MICHAEL B JOHNSON, 2423
MICHAEL D JOHNSON, 6433
STEVIN S JOHNSON, 5321
VINCENT R JOHNSON, 0607
WILLIAM D JOHNSTON, 3071
ETTA C JONES, 1105
JEFFREY E JONES, 1278
THOMAS C KAIT JR., 8415
WLANCE KALLEBERG, 8053
SCOTT C KANE, 7596
WILLIAM R KANE, 2001
RONALD J KARUN JR., 6099
TAMARA L KARWOSKI, 2343
KRISTOPHER M KASCHAK, 7789
PHILIP J KASE, 9664
DANIEL J KECK, 0859
MARK W KEKEISEN, 7631
STEPHEN A KELLEY, 2425
RICHARD M KELLY, 5110
GLENN D KELSO, 6456
MARK T KELSO, 8489
MARK P KEMPF, 2446
COREY J KENISTON, 4270
JOHN D KENNARD, 1521
MATTHEW J KENNEDY, 4446
PHILLIP A KENT, 0524
ROBERT R KENYON, 6077
GREGORY R KERCHER, 3629
CALEB A KERR, 1164
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LISA L KETTERMAN, 3925
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MICHAEL M KIBLER, 7160
MARTIN P KIESEL, 5063
JENNIFER A KIGGANS, 1925
STEVEN W KIGGANS, 1082
ANDREW J KIMSEY, 3962
JEFFERY T KING, 1421
KEITH R KINTZLEY, 9636
CHRISTOPHER J KIPP, 3017
BRIAN D KIRK, 9538
ANDREW A KISS, 5853
JEFFREY M KLAMERUS, 3450
DENNIS J KLEIN, 2210
KEVIN J KLEIN, 7414
DAVID W KLIEMANN, 7596
MITCHEL J KLOEWER, 7888
GREGORY D KNEPPER, 9067
CARY M KNOX, 6288
KIRK A KNOX, 6186
ANDREW P KOELSCH, 7019
MICHAEL J KOEN, 4180
RICHARD W KOENIG, 9481
BRYAN W KOON, 7477
ROBERT A KOONCE, 7732
KARL W KOTTKE, 4867
PHILIP J KOTWICK, 5768
SCOTT H KRAFT, 0792
JEFFREY K KRAUSE JR., 2276
JAMES W KUEHL, 1068
PATRICK E KULAKOWSKI, 8110
DOUGLAS W KUNZMAN, 1553
ARMEN H KURDIAN, 7899
MATTHEW A LABONTE, 9485
THOMAS P LABOR, 8056
JON P R LABRUZZO, 3414
KEVIN R LACKIE, 2831
ROBERT T LACY, 6064
ANDREW D LAMORIE, 8171
HANS P LANDEFELD, 3221
GEORGE M LANDIS III, 9122
PATRICK S LANEY, 7784
CHAD M LARGES, 9375
CRAIG R LARSON, 0409
WILLIAM M LAUPER, 5761
WILLIAM T LAYTON, 2478
MARK S LEAVITT, 3885
SCOTT H LEDIG, 5394
FITZHUGH S LEE, 5708
HEATHER B LEE, 5245
STEVEN S LEE, 7448
JERRY W LEGERE, 1782
CHRISTOPHER L LEGRAND, 5255
PATRICK R LEHMAN, 5573
JOHN R LESKOVICH, 6329
CHRIS W LEWIS, 9204
JAMES G LEWIS, 7612
SEAN M LEYDEN, 0840
MICHAEL LIBERATORE, 8850
CARL M LIBERMAN, 0393
DARYL W LIERMAN, 6085
ROBERT W LINDER, 3775
ERIC C LINDFORS, 2921
ROBERT J LINEBARGER, 5900
HOWARD B LINK JR., 2607
JEFFREY G LINVILLE, 2040
STEVEN C LIPPINCOTT, 5714
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DOUGLAS W LITO, 5510
KIRK J LOFTUS, 8012
ROBERT M LOHMAN JR., 1873
CHARLES E LOISELLE, 3511
KEVIN D LONG, 3546
TIFFANY L LORD, 9552
THOMAS D LOUWERS, 5749
ROY LOVE, 2222
JAMES P LOWELL, 9030
RODGER D LOWER, 8449
MICHAEL D LOWRY, 5279
MICHAEL E LOWRY, 5003
JAMES J LUCAS, 3442
JEFFREY R LUCE, 2081
LANCE J LUKSIK, 6478
STEVEN J LUND, 4685
RICHARD P MACCABE, 9755
JONATHAN D MACDONALD, 1538
GERALD J MACENAS II, 3140
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JOSEPH R MACKAY, 1963
IAN A MACKINNON, 0168
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CHRISTOPHER D MAJORS, 5983
RAMON A MALDONADO, 4861
PHILIP E MALONE, 9126
MICHAEL R MANSISIDOR, 4428
NORMAN E MAPLE, 8937
RAYMOND MARCIANO II, 8141
MARK L MARINAC, 1764
JON C MARLAR, 2913
MICHAEL H MARRINAN, 2208
CHRISTOPHER D MARSH, 8109
FRANKLIN K MARSTON, 8919
CHRISTOPER T MARTIN, 3273
VINCENT S MARTIN, 7239
TODD R MARZANO, 1488
MARK A MARZONIE, 8751
MATTHEW J MASON, 3220
RICHARD N MASSIE, 5203
ANTHONY P MASSLOFSKY, 7793
STEVEN J MATHEWS, 6092
STUART M MATTFIELD, 3581
THOMAS L MATTOX, 0869
JAY A MATZKO, 2173
TODD A MAUERHAN, 9571
SHAUN C MCANDREW, 1968
JAMES A MCCALL III, 2350
WILLIAM D MCCARTHY, 8815
ERIC D MCCARTY, 9372
ROBERT A MCCORMICK JR., 0935
ARNOLD S MCCOY, 7720
LARRY G MCCULLEN, 2937
RICHARD C MCDANIEL, 5456
SEAN P MCDERMOTT, 4654
ANDREW J MCFARLAND, 8983
KATHERINE L MCGILL, 4133
CHRISTOPHER F MCHUGH, 0539
JAMES S MCJOYNT, 2076
JOHN M MCKEON JR., 8132
KEVIN M MCLAUGHLIN, 2892
COLIN M MCLEAN, 5304
BOBBY D MCPHERSON II, 0195
GREGORY E MCRAE, 0328
BRYAN S MCROBERTS, 8322

MICHAEL T MCVAY, 8211
JOHN J MEAGHER, 4576
NICHOLAS J MELFI III, 6045
WILLIAM R MELLEN, 1512
MARK A MELSON, 8936
JOHN P MERLI, 8929
CHARLES S MERRILL IV, 2793
ROGER E MEYER, 7468
JAMES E MILLER, 1980
JEFFREY A MILLER, 5752
DENNIS I MILLS, 3995
PETER A MILNES, 7202
KENNETH MILVID JR., 7889
LUIS E MOLINA, 5914
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KURT A MONDLAK, 7312
THOMAS P MONINGER, 4431
CHRISTOPHER T MONROE, 4582
BENNETT N MONTERO, 3893
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JOHN F MONTGOMERY, 2996
RICHARD S MONTGOMERY, 7918
JAMES E MOONIER III, 7927
KENT W MOORE, 2650
MARC H MOORE, 5196
CHRISTOPHER L MOOREHEAD, 1026
BRETT J MORASH, 8121
DENNIS D J MOREK, 1836
EDGARDO A MORENO, 6840
CHARLES D MORGAN JR., 5312
WALTER S MORGAN, 8724
DANIEL MORITSCH, 0027
MATTHEW G MORRIS, 6487
DONALD E MORROW, 9202
BRANDT A MOSLENER, 9135
JOEL E MOSS, 8489
NATHAN J MOYER, 4248
BRETT D MOYES, 3890
TEDD N MUERY, 6418
THOMAS H MULDROW JR., 7568
JEFFREY D MULKEY, 3024
MICHAEL MULLEN, 7035
KURT W MULLER, 0949
MICHAEL D MULLOY, 9207
SCOTT T MULVEHILL, 6356
STEVEN P MURLEY, 2542
CHARLES G MURPHY, 3535
THOMAS P MURPHY, 7728
JAMES M MUSE, 2844
JERRY L MYERS JR., 4243
MICHAEL J NADEAU, 1421
VAL D NAFTALI, 6509
WYATT J NASH, 4547
STEVEN T NASSAU, 1501
ANDREW C NELSON, 7852
JACOB A NELSON, 2222
JOSEPH W NELSON, 1692
MARK B NELSON, 4951
LAWRENCE J NEVEL, 3664
GREGORY D NEWKIRK, 0018
JOSHUA G NEWSTEDER, 7427
BENJAMIN R NICHOLSON, 5849
JEREMY C NIKEL, 9337
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JEFFREY J NOLAN, 7598
FRANCIS P NOTZ, 4672
JAMES P NUNN, 8565
JOSEPH R OBRIEN, 6195
DONALD C ODEN, 9431
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WAYNE D OETINGER, 3206
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JOHN W OLIVER JR., 1500
LAWRENCE D OLLICE JR., 3649
BRIAN J OLSWOLD, 8480
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CHRISTOPHER D ORR, 7713
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ERIK W OSTROM, 0817
GREGORY A OUELLETTE, 9847
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BRAULIO PAIZ, 5985
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CAREY M PANTLING, 2854
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CORINNE R PARKER, 1580
JAMES B PARKERSON, 1491
KEVIN J PARKS, 2706
ERIK R PATTON, 2161
THOMAS C PAUDLER, 9938
RICHARD H PAYNE, 6214
DONALD E PEACOCK II, 8084
GREGORY P PEDERSON, 9948
JIMMY W PELTON, 1615
MARK C PERREAULT, 9512
SIL A PERRELLA, 0561
BRADLEY S PERRIN, 3771
JOHN E PERRONE, 5655
DAVID R PERRY, 4930
GEORGE M PERRY, 1397
VINCENT J PERRY, 8286
KENT E PETERSON, 9805
WILLIAM A PETERSON, 1242
ROBERT A PETRICK, 9439
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JAMES B PFEIFFER, 0819
DOUGLAS M PHELAN, 4701
JOHN B PICCO, 0469
DUSTINE PIERSON, 0480
JASON L PIKE, 0281
JAMES M PIOTROWSKI, 0884
THOMAS E PLOTT II, 8594
MICHAEL J PLOWMAN, 6205
DARREN R POORE, 7464
JOHN R POPE, 4184
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JOB W PRICE, 4908
JOSHUA D PRICE, 7601
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THEODORE A PRINCE, 7633
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MICHAEL G QUAN, 7557
KEVIN M QUARDERER, 6732
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KEVIN S RAFFERTY, 9835
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ROLANDO RAMIREZ, 8364
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WERNER J RAUCHENSTEIN, 7938
JAMES G REA, 8717
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MICHAEL J REAGAN, 1747
TOBY E REAM, 3770
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JEFFREY R REGISTER, 7951
JOHN K REILLEY, 0413
PAUL M REIS, 5754
CRAIG M REMALY, 7597
JEFFREY S REUTER, 3815
MANUEL REYES, 5225
MARK C REYES, 8365
JOSHUA S REYHER, 4517
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LORN D REYNOLDS, 1737
PATRICK L REYNOLDS, 4231
ALBERT E RICE, 4878
THOMAS D RICH, 8617
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DAVID B RICHARDSON, 6775
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MATTHEW P ROBERTS, 2206
DANIEL S ROBERTSON JR., 3230
DENNIS A ROBERTSON, 5045
MICHAEL P ROBERTSON, 8852
MICHAEL P ROBLES, 1496
DAVID G ROCKWELL, 2695
MARC D RODRIGUEZ, 9270
ERICH P ROETZ, 0956
VICTOR M ROMAN JR., 4254
ROBERT J ROSALES, 5130
HOLLY A ROSENBERG, 9155
DAVID R ROSETTER, 3935
REY R ROSS, 0514
RICHARD K ROSSETTI, 9343
KENNETH S ROTHAERMEL, 4780
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MICHAEL R ROYLE, 5836
JONATHAN E RUCKER, 8881
JOHN C RUDELLA, 8132
ANDREW M RUIZ, 9529
ROME RUIZ, 8213
BRET A RUSSELL, 6533
JONATHAN C RUSSELL, 2367
DANIEL K RYAN JR., 6839
DANIELLE A RYAN, 5699
DOUGLAS A SAARELA, 0404
GREGORY A SAKRYD, 4444
MICHAEL S SALING, 8670
WESLEY S SANDERS, 1318
DAVID M SANFIELD, 3702
THOMAS M SANTOMAURO, 9299
DOUGLAS W SASSE III, 9776
DAVID C SASSER, 1512
SAMANTHA J SAXTON, 1870
MICHAEL D SCHAFER, 5583
DAVID J SCHLESINGER, 1789
KEVIN J SCHMIDT, 0850
ROBERT D SCHOEFFLING, 4811
MARK A SCHRAM, 9049
KORY L SCHROEDER, 7562
JOHN P SCHULTZ, 0370
KARL U SCHULTZ, 9249
PATRICK B SCOTT, 4249
RICHARD I SCRITCHFIELD, 8026
FRANK A SCRIVENER III, 5705
JEFFREY L SCUDDER, 2265
DAVID C SEARS, 4161
HIPOLITO D SEBASTIAN, 9992
MATTHEW T SECREST, 1485
ERIC O SEIB, 5887
MARK R SEIGH, 5543
DAVID G SELANDER, 7913
ANTONIN Z SERGELIN, 0328
SHANTI R SETHI, 3705
SCOTT R SEYFARTH, 9485
DAVID K SHAFFER, 3170
ANDREW J SHANK, 8229
ROBERT C SHASSBERGER, 1349
TRACY J SHAY, 6802
FRANK C SHELLY, 5166
JAMES A SHOENBERGER, 4076
JUSTIN L SHOGER, 0760
MAXWELL J SHUMAN, 1008
DEAN W SIBLEY, 3358
LARRY A SIDBURY, 0247
DOUGLAS J SIEMONSMA, 9065
KEITH R SILINSKY, 9356
TIMOTHY L SIMONSON, 2007
TYREL T SIMPSON, 5883
THOMAS W SINGLETON, 3551
LEE P SISCO, 7208
WARREN E SISSON, 8475
CHARLES W SITES, 2406
BRIAN L SITTLOW, 4419
DARREN J SKINNER, 1412
QUINN D SKINNER, 8165
STEVEN J SKRETKOWICZ, 2266
JAMES C SLAIGHT, 3971
STEVEN J SLATER, 3757
JULIA L SLATTERY, 4617
TIMOTHY J SLENTZ, 0521
STEPHEN E SMALL, 1994
CARL C SMART, 7825
BENJAMIN P SMITH, 7400
BRIAN E SMITH, 4437
CHRISTOPHER P SMITH, 1935
GREGORY A SMITH, 6175
QUWAN A SMITH, 8184
ROBERT S SMITH, 9283
THADEOUS C SMITH, 9475
WILLIAM A SMITH IV, 5232
CRAIG M SNYDER, 0628
WILLIAM H SNYDER III, 5853
ERIC A SODERBERG, 7308
TROY A SOLBERG, 6445
DAVID M SOUZA, 6679
JOHN D SOWERS, 9363
JEFFREY R SOWINSKI, 6498
MICHAEL T SPENCER, 8445
STEPHEN O SPRAGUE, 9175
SCOTT S SPRINGER, 4239
WILLIAM B STAFFORD, 9221
BRUCE R STANLEY JR., 8306
JOSEPH M STAUD, 4657
PETER S STAVELEY, 5290
MARK O STEARNS, 1343
JEFFREY C STEVENS, 1047
AMOS STIBOLT, 7821
JONATHAN L STILL, 2530
THOMAS D STOREY, 1298
GREGORY P STPIERRE, 1421
TABB B STRINGER, 6335
KENNETH A STRONG, 7993
JASON J STRUCK, 6151
MICHAEL D STULL, 1761
ALBERT F STUMM III, 4305
NATHAN B SUKOLS, 9486
DANIEL J SULLIVAN IV, 2435
JEFFREY M SULLIVAN, 8326
JOHN D SULLIVAN, 1581
MICHAEL T SULLIVAN, 7917
MICHAEL R SUTTON, 4833
TIMOTHY E SYMONS, 5555
PAUL J TABAKA, 4146
GREGORY J TACZAK, 3528
SCOTT A TAIT, 3780
SHANE P TALLANT, 8482
MARK W TANKERSLEY, 9753
JON M TAYLOR, 6775
BENJAMIN J TEICH, 6320
ANTONIO TELLADO, 4822
JASON A TEMPLE, 0099
CRAIG R TESSIN, 2151
MATTHEW A TESTERMAN, 9307
JOSEPH C THOMAS, 3156
PATRICK W THOMPSON, 3208
ROBERT S THOMPSON, 0031
WILLARD L THOMPSON, 9577
COURTNEY L TIERNEY, 7801
JOHN A TIERNEY, 2442
NICHOLAS R TILBROOK, 8740
KELLY M TIN, 9087
JEFFREY S TODD, 7050
JOHN D TOLG, 6505
JAMES H TOOLE, 0895
RAMBERTO A TORRUELLA, 9903
RICHARD A TREVISAN, 8649
BRENT A TRICKEL, 4488
JEFFREY D TROYANEK, 4185
SCOTT S TROYER, 6701
CARIN C TULLOS, 3920
RODNEY L TURBAK, 5966
KYLE T TURCO, 1334
EDWARD D TURCOTTE, 9309
JOHN N TURNIPSEED, 9809
RONALD W UHLIG, 3040
STEPHEN O ULATE, 8255
DAVID F USON, 6980
RICHARD A VACCARO, 5248
SAM J VALENCIA, 5943
WESLEY W VALUS, 9384
CHRISTOPHER E VANAVERY, 4476
TODD D VANDEGRIFT, 6979
STEPHEN J VANLANDINGHAM, 8755
JONATHON J VANSLYKE, 1361
TIMOTHY T VECCIA, 5467
BILLY J VEGARA, 5819
FRANK M VERDUCCI JR., 2741
GUSTAVO J VERGARA, 9617
JIANCARLO VILLA, 9820
PETER VILLANO, 7426
CHAD P VINCELETTE, 2438
FREDRICK S VINCENZO, 4003
JESSE L VIRANT, 5945
KEVIN S VOAS, 6484

FRANK P VOLPE JR., 6547
CHAD G WAHLIN, 1453
GEORGE A WALBORN II, 0370
PETER J WALCZAK, 9267
PHILIP W WALKER, 1003
RICHARD G WALKER, 9618
JON B WALSH, 2995
ANDREW R WALTON, 2238
DODD D WAMBERG, 7789
KJELL A WANDER, 5568
JOHN M WARD, 7391
JASON D WARTELL, 9479
DEREK L WATSON, 2398
BRUCE J WEBB, 2315
CHAD E WEBSTER, 1571
ROBERT W WEDERTZ, 4454
TODD S WEEKS, 8519
HERSCHEL W WEINSTOCK, 1628
MICHAEL C WELDON, 7853
JOHN M WENKE JR., 9963
STEWART M WENNERSTEN, 1653
MARC A WENTZ, 5809
DEREK S WESSMAN, 5962
MICHAEL T WESTBROOK, 4002
ROBERT D WESTENDORFF, 4453
JOSEPH P WHALEN, 3560
CORY J WHIPPLE, 4048
BENJAMIN W WHITE, 3450
DAVID G WHITEHEAD, 5655
MATTHEW S WHITEHURST, 2132
RICHARD S WHITELEY, 7114
WILLIAM C WHITSITT, 6325
THOMAS D WHYTLAW, 9840
JEFFREY S WILCOX, 5948
STEVEN R WILKINSON, 3442
CLAY G WILLIAMS, 0067
JEROMY B WILLIAMS, 9623
MICHAEL B WILLIAMS, 0369
THOMAS R WILLIAMS II, 3300
TIMOTHY G WILLIAMS, 2892
TROY S WILLIAMS, 7149
IAN O WILLIAMSON, 2723
BRIAN A WILSON, 5503
THOMAS A WINTER, 5780
JONATHAN R WISE, 1012
DONALD WOLFE, 0950
EUGENE M WOODRUFF, 1853
BENJAMIN R WOODS, 0118
ALAN M WORTHY, 4207
MICHAEL S WOSJE, 0034
GEORGE C WRIGHT, 0649
WALTER C WRYE IV, 2175
DONALD E WYATT, 9836
TERRI A YACKLE, 8037
MICHAEL J YAGER, 1626
MELVIN K YOKOYAMA, 7665
LAURENCE M YOUNG, 5777
PAUL D YOUNG, 2373
PHILIP W YU, 4407
MICHAEL S ZANGER, 9073
EDMUND L ZUKOWSKI, 4965
MARK T ZWOLSKI, 4765

CONFIRMATIONS

Executive nominations confirmed by the Senate July 25, 2002:

CONSUMER PRODUCT SAFETY COMMISSION

HAROLD D. STRATTON, OF NEW MEXICO, TO BE CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION.

HAROLD D. STRATTON, OF NEW MEXICO, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 26, 2006.

FEDERAL EMERGENCY MANAGEMENT AGENCY

ANTHONY LOWE, OF WASHINGTON, TO BE FEDERAL INSURANCE ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY.

DISTRICT OF COLUMBIA OFFENDER SUPERVISION, DEFENDER, AND COURTS SERVICES AGENCY

PAUL A. QUANDER, JR., OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE DISTRICT OF COLUMBIA OFFENDER SUPERVISION, DEFENDER, AND COURTS SERVICES AGENCY FOR A TERM OF SIX YEARS.

DEPARTMENT OF JUSTICE

TODD WALTHER DILLARD, OF MARYLAND, TO BE UNITED STATES MARSHAL FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.

SECURITIES AND EXCHANGE COMMISSION

PAUL S. ATKINS, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 5, 2003.

CYNTHIA A. GLASSMAN, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2006.

HARVEY JEROME GOLDSCHMID, OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM EXPIRING JUNE 5, 2004.

ROEL C. CAMPOS, OF TEXAS, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2005.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

ROBERT R. RIGSBY, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS.

DEPARTMENT OF JUSTICE

ROSLYNN R. MAUSKOPF, OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS.

STEVEN D. DEATHERAGE, OF ILLINOIS, TO BE UNITED STATES MARSHAL FOR THE CENTRAL DISTRICT OF ILLINOIS FOR THE TERM OF FOUR YEARS.

THOMAS M. FITZGERALD, OF PENNSYLVANIA, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF FOUR YEARS.

G. WAYNE PIKE, OF VIRGINIA, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF VIRGINIA FOR THE TERM OF FOUR YEARS.

DAVID WILLIAM THOMAS, OF DELAWARE, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF DELAWARE FOR THE TERM OF FOUR YEARS.

HOUSE OF REPRESENTATIVES—*Thursday, July 25, 2002*

The House met at 10 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

All powerful Lord, for all of us some days are better than others, some tasks You ask of Your servants are more difficult than others. But You are always faithful and abide with us.

Strengthen the constitutional commitments of the Members of the House of Representatives in their work today. We seize this moment to pray also for all those who are in a time of transition. Change is sometimes sought for various reasons, but in the end change is never easy for any of us.

Guide and sustain, in Your wisdom, all those leaving in this Chamber to pursue other goals. In those moments when vulnerability is most evident, uphold Your servants in perseverance and peace.

Lord, we pray also for all former Members of Congress. Continue to guide them along the way, reveal to them the truth, and bring them to the fullness of life. We humbly ask this of You who live and reign now and forever. Amen

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. GIBBONS. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. GIBBONS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas (Mr. LAMPSON) come forward and lead the House in the Pledge of Allegiance.

Mr. LAMPSON led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will receive ten 1-minute speeches on each side.

CROOKED EXECUTIVES

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, yesterday we watched on television as several crooked corporate executives were arrested and carted off to jail by Bush administration officials. I have no doubt that there will be more arrests before long.

These are the very worst kind of crooks. They tricked investors, stole from employees, and robbed from retirees. They should go to jail and stay there for a very long time and their ill-gotten gains should be taken back from them. I mean their mansions, their yachts, and their private airplanes, all of which were bought with money that they got through fraud. And I think we all need to take a look at what led to the scandals in the first place. The excesses of the decade of the '90s clearly got out of hand; so much so, in fact, that decade is well known as the decade of irresponsibility. And national leaders like the chairman of the Democratic National Committee, who made $18 million from a $100,000 investment in Global Crossing and then knew to get out just in exactly the same time all the crooked executives got out, should think about the example they set.

But at the end of the day, President Bush and the law enforcement bodies under his command will come down hard on these corporate crooks. And that will be a powerful deterrent.

HARVEY PITT

(Mr. DeFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DeFAZIO. Mr. Speaker, that was an extraordinary twist on what is happening. This is a rare loss for the corporate lobbyist, the White House, the Republican House leadership, all of whom stonewalled meaningful reform until the public outrage had grown to the point where they feared the public more than they feared their corporate contributors and patrons.

This is a good start, this bill. It is not enough. But there are two words, two words, that will block any effective prosecution and enforcement even under this new legislation. What are those two words? Harvey Pitt. The morally, ethically compromised head of the Securities and Exchange Commission, their former lobbyist of the same accounting firms and security firms that have been defrauding the American people, the same lobbyists who fought all these reforms, he is the person chosen by President Bush as the best person to head up this new effort to get tough on corporate crime. Out of 270 million people in the United States of America, there is not one person who is knowledgeable who is not totally compromised like Mr. Pitt? The President must replace Mr. Pitt if we are going to really get tough about corporate scandals and get a real reform.

ENCOURAGE CLEAN, RENEWABLE ALTERNATIVE ENERGIES

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, our Nation needs a comprehensive energy policy, and this Chamber passed H.R. 4, Securing America's Future Energy Act, nearly one year ago. Among its many sensible and necessary energy policy provisions, this bill included incentives for the production of geothermal energy.

Nevada is literally the heart, the center, of the geothermal energy in the western part of our Nation. Unfortunately most of these valuable resources are located far underneath public land, and with over 87 percent of Nevada's land managed by the Federal Government, Nevada's potential to provide clean energy to the West is severely inhibited.

It is time that we unlock these resources and encourage the production of clean and renewable alternative energies. I urge the Conference Committee to report a comprehensive energy bill that meets our Nation's 21st century needs by actively encouraging the production of geothermal and other alternative energies.

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

PREVENTING CHILD ABDUCTIONS

(Mr. LAMPSON asked and was given permission to address the House for 1 minute.)

Mr. LAMPSON. Mr. Speaker, we continue to see a great deal about child abductions in the news. That is good. Not all children have to be abducted, and all of the abductions do not have to end in the difficulties that we have seen in our news recently. So I rise today to urge parents to make sure that they know how to prevent child abductions and what to do when they occur. On May 23, the National Missing Children's Day, the National Center for Missing and Exploited Children and its partner, ADVO, released a survey that showed some parents lack information critical to recovering children who have been abducted. The survey showed results that many parents are missing opportunities to help prevent those abductions.

According to law enforcement officials, information such as height, weight, eye color and a recent photograph are critically important when searching for a missing child.

However, the survey shows that 22 percent of parents do not know the height, weight and eye color for their children. In the event of an emergency, it is critical for parents to have readily available their child's accurate physical description and a recent photograph so law enforcement can act immediately and effectively.

I would like to emphasize that parents should make sure that they have a portrait ID-like photo; and I encourage parents throughout the Nation to take a moment and make sure that they have this vital information readily available, in the unlikely event their child should go missing.

BLOOD DRIVE HONORING THE HON. FLOYD SPENCE

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, this week the American Red Cross will host a blood drive in memory of my friend, mentor, and predecessor, the late Representative Floyd Spence. His historic double lung transplant in 1988 by Dr. Shehadri Raju of Jackson, Mississippi, as well as his kidney transplant he received from his son, David, enabled him to provide consummate leadership to South Carolina and the Nation. His surgeries would not have been possible without volunteer blood donations.

Every second, someone in America depends upon a life-saving volunteer blood donation. In addition to organ transplant recipients, blood is used every day for children with sickle cell anemia, cancer patients, and trauma victims.

I would like to thank the Congressman's beloved widow, Mrs. Debbie Spence, for her generous involvement with this blood drive, and I would also like to recognize Ms. Laura Haas and Mr. Noah Simon for organizing this crucial event.

Mr. Speaker, I encourage my colleagues and staff to visit the Rayburn foyer today and tomorrow between 9 a.m. and 3 p.m. to give the gift of life.

CALIFORNIA SETS THE STANDARD FOR AUTO EMISSIONS

(Ms. SANCHEZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SANCHEZ. Mr. Speaker, on Monday, California set a revolutionary precedent in the effort to curb carbon pollution and greenhouse gases. Governor Gray Davis signed into law legislation that will for the first time reduce the amount of emissions coming from the tailpipes of all passenger vehicles sold in the State of California.

Carbon dioxide is one of the main contributors to global warming, and 59 percent of California's carbon dioxide comes from vehicle pollution. With this law, California joins a longstanding and successful effort by nations throughout the world to combat the gradual and the devastating warming of the earth's atmosphere.

I want to commend the California State legislators, agencies, environmentalists, and organizations from all over the country for coming together in the tireless effort to see that this initiative becomes law in California.

Once again, California is at the forefront of environmental protection, and I hope that the rest of the Nation will look to this new law as the standard when adopting their own air quality priorities.

PASS CORPORATE ACCOUNTABILITY ACT

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, as the markets struggle under the weight of billowing examples of corporate greed and fraud over the past several months, yesterday there were finally signs of hope.

President Bush and law enforcement officials have acted decisively against corporate crooks. It seems as though the markets are responding. A single day rally almost set an all-time record in the Dow Jones industrial average yesterday. Investors are coming back, confidence is rising.

Mr. Speaker, now it is our turn to in this body set aside partisan politics and bickering and pass the bipartisan corporate accountability legislation that will bring to this floor tough new standards, tough new criminal measures against corporate crooks. Righteousness exalts a Nation. Let us bring new standards with old values in this new corporate accountability act, and further strengthen the confidence of the American people in the American economy and in the American dream.

CONGRESS MUST CHECK RAW POWER OF EXECUTIVE

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, when Members of Congress take an oath to defend the Constitution of the United States, that includes defending article I, section 8 which says that only Congress shall have the power to declare war.

The administration is proceeding with plans to invade Iraq, first with an air attack and then with an invasion of 250,000 ground troops. Yet there has been no consultation with this Congress, there has been no debate in this Congress, and there has been no vote in this Congress.

The American constitutional experience relies on a separation of power. It depends upon Congress being willing to check the raw exercise of power by the executive. Wake up, Congress. We are on the verge of a major war in Iraq and the administration is ignoring our Constitution. Wake up, America. Our sons and daughters are about to be called to fight a war in Iraq, without any debate, without any sense of purpose, without any sense of direction, and with grave jeopardy.

□ 1015

NO RUSH ON HOMELAND SECURITY

(Mr. DUNCAN asked and was given permission to address the House for 1 minute.)

Mr. DUNCAN. Mr. Speaker, I know the new Homeland Security Department is going to pass with almost no dissenting votes, but it really is sad that we have to create a new cabinet level department just to get government agencies to cooperate with each other. Really it will just make the government bigger, more bureaucratic, more expensive and no safer.

Many syndicated columnists are now questioning the rush here. Dan Thomasson in the Scripps Howard News Service, in the Scripps Howard papers all over the country, said the last thing the Nation needs now is a half-baked Department of Homeland Security removed from the oven too quickly because of obvious political considerations. He said this is a monumental task that if not carefully and cautiously tended could produce an unwieldy, overblown bureaucracy that would worsen the situation and leave the country even more vulnerable than it is now.

I hope that we will heed these words of Dan Thomasson and not make the problem worse than it is now.

VOTE "NO" ON FAST TRACK

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute.)

Mr. BROWN of Ohio. Mr. Speaker, under enormous pressure from defrauded investors, the Republican leadership has finally and reluctantly agreed to bring a strong accounting bill to the floor today. Passage of this bill will make America's corporations more accountable and will restore confidence and investor faith in our markets. I urge my colleagues to support it.

But, Mr. Speaker, completion of the conference report on Fast Track this week also appears to be a strong possibility. Fast Track—the biggest gift of all to overpaid CEOs in providing more opportunity for corporate abuse. Fast Track has been made even worse since its passage in the other body. The Dayton-Craig amendment will be eliminated, TAA and health care benefits are not nearly enough and less than promised, and there is still no core labor and environmental standards.

Mr. Speaker, it would be highly ironic if on the day this House finally made corporations tow the line that Republicans then turn around and give corporate America the biggest prize of all. Vote "no" on the Fast Track conference report.

INTRODUCTION OF "INSTANT REPLAY" BUDGET LEGISLATION

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, the Congress once again is facing the fiscal train wreck that seems to come about every October 1, the end of the fiscal year, when the Congress has not finished its appropriations cycle and we are left with a device, a tricky device, called the continuing resolution to continue doing business until a budget can be put into place.

Again, we are introducing here today a bill that could end this kind of crisis, this potential shutdown of government, once and for all. We have attempted it for 10, 12 years now. It passed once, but then President Clinton vetoed it. This bill calls for an instant replay that would occur on October 1 on those appropriations bills that have not been completed by the end of the fiscal year, September 30. The reason that it has not passed in my judgment and signed into law is because it makes good, common sense. In other words, after September 30, for the appropriations bills that are yet to be completed, instant replay comes into play. Last year's budget becomes automatic until the appropriators can come up with a new budget. I urge support.

CONFERENCE REPORT ON SARBANES-OXLEY

(Mrs. MALONEY of New York asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Speaker, today we will be enacting the Sarbanes-Oxley Act, a historic overhaul of financial services oversight. But I am saddened by the crisis that brought us here. Today my heart goes out to all the innocent workers who have lost their jobs and the investors whose pensions have been pillaged.

Out of this calamity we have produced the strongest legislative reaction to a business scandal since Franklin Roosevelt was President. It is a triumph over incredibly powerful special interest lobbying and includes world-changing reforms for U.S. companies. I have high confidence in our free market system. We have been through other market declines, insider trading scandals in the eighties, and the S&L crisis. Our system is the best at generating economic growth, jobs, and rewards initiative and innovation.

The Sarbanes-Oxley bill is an important step toward restoring investor confidence and transparency in our system.

CONGRATULATING BARBARA BYRD BENNETT, CEO OF CLEVELAND SCHOOLS

(Mrs. JONES of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I stand this morning to congratulate the CEO of the Cleveland municipal school district. Her name is Barbara Byrd Bennett. Why am I up here? Because they attempted to take her away from the city of Cleveland after all the good work she has done over the past few years. I am proud to stand here on the floor of the House to celebrate the work that she has done, to look at the improved schools that we have, to know that as a result of her work we have got a new issue 14 that was passed, we will be building some 48 new schools in the city of Cleveland and renovating about 50.

We have not built a new school in Cleveland in 20 years. Our school system is doing better. Our students are doing better. I salute Barbara Byrd Bennett, our CEO, and thank her for staying in Cleveland and pledge my support as well.

CORPORATE ACCOUNTABILITY AND HOMELAND SECURITY

(Mr. DOGGETT asked and was given permission to address the House for 1 minute.)

Mr. DOGGETT. Mr. Speaker, the misconduct at Enron was apparent as this House met not this morning, but at the beginning of the year. Yet, as in previous years, the House Republican leadership avoided doing anything meaningful about it. Finally today, we have overcome their continued obstructionism to take up the Sarbanes-LaFalce bill, the first genuine action to stop corporate wrongdoing. How tragic that so many investors and so many hard-working employees had to suffer while this leadership protected Kenny-boy and its other corporate pals.

And even as we gather today to take our first action, this same crowd that would yield on one reform after another is now trying to misuse the Homeland Security bill to offer new ways to protect corporations who wrong people in our communities across the country, and even to go so far as to authorize government contracts to be issued to politically powerful corporations who abandon their American citizenship and leave our country. We must prevent this misconduct from happening.

THE RISING FEDERAL DEBT

(Mr. TAYLOR of Mississippi asked and was given permission to address the House for 1 minute.)

Mr. TAYLOR of Mississippi. Mr. Speaker, I am sorry that you left the floor, because I would like to remind you that on your watch, our Nation has now squandered a trillion dollars on interest on the national debt. That is a thousand times a thousand times a thousand times a thousand. Did not educate a kid, did not build a road, did not help a veteran, did not help defend our Nation. Just squandered on interest on our now $6 trillion debt.

On your watch, we have added $511 billion of new debt. You have been Speaker for 1300 days, yet you will not let us have a vote on one of the most simple laws of all and that will say that my generation will not burden my children's generation and my grandchildren's generation with our debts, that we will spend no more money in this body than we collect in taxes that year, a constitutional amendment that almost every State already has, so that they do not stick their kids and their grandkids with their bills.

Mr. Speaker, you have been Speaker for 1300 days and yet you cannot find time for that law to be voted on. I would ask on behalf of my children and my yet unborn grandchildren that you give this body an opportunity to vote on that.

CORPORATE ACCOUNTABILITY

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, we needed this. Over the months we have suffered, we have watched the marketplace go up and down, but, more importantly, I have watched my constituents living in the city of Houston and those around the Nation see their investments for retirement go down the drain.

And so I am proud to be able to join the gentleman from New York (Mr. LAFALCE) and the other body who presented one of the strongest corporate responsibility and accountability bills that this Nation will ever see. It will tell the poor guy on the street, it will tell the common thief who steals a loaf of bread and goes to jail for 5 or 10 years, that justice in America reigns not only on the streets, but in the corporate boardrooms, because we will have a board to oversee auditors and accounting features as it relates to their work for corporations; we will make sure that there is no grand profit on consulting fees and you are supposed to be telling the corporation what they are doing wrong; and we will give shareholders, the moms and dads and grandparents who have lost their investment, the right to sue so that they can recover dollars that they have lost; and, yes, we will put in jail those who have done wrong.

Mr. Speaker, this is a good bill and I will join my colleagues today, providing leadership to the marketplace of America.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

Mr. OXLEY. Mr. Speaker, pursuant to the previous order of the House of July 24, 2002, I call up the conference report on the bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the order of the House of the legislative day of Wednesday, July 24, 2002, the conference report is considered read.

(For conference report and statement, see proceedings of the House of July 24, 2002 at page H5393.)

The SPEAKER pro tempore. The gentleman from Ohio and the gentleman from New York (Mr. LAFALCE) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I bring to the floor today a tough, sensible conference report that responds in a measured way to the very real crisis of confidence among America's 85 million investors. I am proud of the result we have reached. We act with the assurance that Congress must do something, yet remain acutely aware of the dangers of overreacting to a genuine problem and making matters worse.

Make no mistake, this is a difficult period for those who love and cherish the free enterprise system. Since early 2000, our capital markets, although still the most respected in the world, have unquestionably suffered a series of blows—mostly self-inflicted—which have truly damaged the public's faith in the integrity of corporate America. The Committee on Financial Services, and this body, have not sat idly by, however. Indeed, in response to Enron, Global Crossing and other bankruptcies, my committee was the first out of the gate, holding a series of hearings and passing a good, targeted bill on the House floor in April with the support of 119 of my Democratic colleagues. Nearly 3 months would go by before the Senate passed companion legislation.

The Senate built on the House bill's chief objectives, strong oversight of accountants, increased corporate responsibility, and improved information for investors.

The conference report before us today includes important provisions from both sides of the Capitol, but it also contains the following proposals offered only by the House: Disclosure of important company information to investors in real time, the inclusion of civil fines levied by the SEC in restitution funds for defrauded investors, tougher criminal penalties for a broad array of corporate crimes, and increased SEC supervision of the accounting oversight board. Though by no means a panacea, the conference report will help restore investor confidence in our markets. Investors can be assured that convicted corporate criminals will be sentenced to long jail time. In my view, the prospect of doing time, real time, will serve as an effective deterrent to wrongdoing in the corporate suite.

We saw a little bit of that yesterday with the arrest of the Adelphia executives in New York. Investors will now get better information and will get it faster and they will have more faith in the numbers because the accountants will be more vigilant, as will audit committees.

This legislation, combined with the truly substantive and far-reaching reforms proposed by the industry's self-regulatory organizations and the brutal and unforgiving market forces, will help restore faith in the system. A strong dose of character, honesty and ethics would not hurt, either.

For two decades in Congress, I have advocated a free market approach to regulation, but I also believe that capitalism can only flourish under the rule of law. Those views are not at odds. In fact, they are quite consistent. Government must be careful not to overreach and stifle the entrepreneurial spirit that has made the United States the most successful economy in the history of the world. At the same time, government has a responsibility to punish—and do so swiftly and severely—those who seek to cheat and steal from others.

I believe the conference report crafts a careful and appropriate balance of these two philosophies. I am proud of the bipartisan process that produced this legislation. Corporate accountability is an investor and retiree issue. It is not a partisan issue, and those who would attempt to make it so do a real disservice to all of us.

I urge all of my colleagues on both sides of the aisle to vote for this historic, pro-investor bill.

Mr. Speaker, I reserve the balance of my time.

□ 1030

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is with great pleasure that I rise today in strong support of the conference report on H.R. 3763. Our conferees have taken an already good bill passed by the Senate and have strengthened it further.

The resulting legislation is a major step forward in reforming the operations of our financial markets and rebuilding our system of financial reporting in ways that will restore the confidence of investors at home and abroad.

I am particularly gratified that the final bill includes many of the provisions that I first introduced in the House and called for as early as last year. The centerpiece of this bill is the creation of a strong independent oversight board for the accounting industry. As with the oversight board in my bill, the oversight board included in the final conference report will be independently funded and will have strong disciplinary, investigatory, and, most importantly, standard-setting powers. I thought this was extremely important. No longer will the accounting industry be able to set the rules for itself without regard for the interests of shareholders.

Moreover, as in my original bill, auditors will no longer be permitted to perform consulting services that create conflict between their duties to shareholders and their self-interests. These measures, combined with the very important improvements in corporate governance, will strengthen audit committees and their oversight of both auditors and management. As a result, auditors will once again become the watchdogs for the shareholders, rather than the lap dogs of management.

The requirements in the bill that CEOs and CFOs certify the financial statements of their companies are again drawn from my original legislation and substitutes that I offered on the floor in motions to recommit. These requirements will ensure that executives will no longer be able to evade responsibility for the numbers that their companies put out. This requirement, combined with the tough criminal penalties established by the bill, will help to ensure that executives are held responsible if they seek to mislead and defraud investors.

We should be clear, however, that this should not be the end of Congress' work in restoring the integrity of our financial reporting system and our markets. Auditor conflicts and weak corporate governance were significant contributors to the deterioration of our financial reporting system. But the conflicts created by stock options were another serious issue that we have yet to address. I regret that. So there is more that we can and should do to limit the conflicts faced by securities analysts, to strengthen corporate governance and to protect workers laid off by bankrupt companies along the lines of an amendment that the gentleman from Mississippi (Mr. SHOWS) had hoped to propose.

I have said and believe that this bill is an enormous victory for workers and investors. But let me also say this: It is a victory for the thousands and thousands of honest accountants and honest corporate executives as well, the vast, vast preponderance of all accountants and all corporate executives. With the measures we put in place by this legislation, they now have the opportunity to reclaim their reputations from those few who have brought shame on American business. It is my hope that this legislation will begin to restore the reputation of American business and financial markets as the best in the world.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3763.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 4 minutes to the gentleman from Louisiana (Mr. BAKER), the chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mr. BAKER. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, this is indeed a very important moment in Congressional history, and I wish to express my appreciation to the gentleman from Ohio (Mr. OXLEY), the ranking member, the gentleman from New York (Mr. LAFALCE), and Chairman SARBANES and ranking member GRAMM in the Senate. They have done extraordinary work in bringing us to this point in time.

Much has been said about bringing those to justice who have violated their corporate responsibility. I can think of no more sweeping change in the current body of law than the conference report this House will soon consider. It offers more change, breadth of change and significance of change, than any Congressional action since the 1933 and 1934 Securities Acts themselves.

It is appropriate, I think, to recount how we got to this point. Last year the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, at the direction of the gentleman from Ohio (Chairman OXLEY) began its inquiry into the conduct of analysts and the apparent conflict between their recommendations and what they seemed to know about company performance. From that early beginning until now, there has been revelation after revelation as to corporate wrongdoing.

Nothing perhaps made a more visual impact on American investors, shareholders, pensioners and employees than watching the news yesterday as corporate executives were handcuffed and hauled away. The people of America are not only expecting it, they are demanding it. How is it possible for a person to work all his life for a corporation, be given stock rather than salary increases, and, on the verge of retirement, be told that the stock is worthless, while the CEO of the corporation seeks to retire in a $15 million mansion in Florida where he is above and beyond the reach of the law? That is not acceptable. It is not acceptable to me, I do not believe it is acceptable to this Congress, and I know it is not acceptable to the working people of this country.

This is an outrage. There is no more privileged position in America today than to be the CEO, CFO or leading manager of a Fortune 500 company. Of those people we expect the highest level of ethical and moral conduct because of the extraordinary powers and opportunities which they are granted by this wonderful free enterprise system. Today we bring an end, I believe, to those abuses.

You must sign that statement, and if you sign it and it is not accurate, there are consequences. If you misrepresent the material facts of your corporation, if you lie about what is going on, there are criminal consequences for that misrepresentation. If you choose simply not to tell the truth, there are consequences for that misrepresentation. In fact, the bill before us today doubles the penalties for violations of those responsibilities.

But that is not enough. It is not enough to tell the truth. It is not enough that after we catch you we put you a way for a long time. We want to go after those ill-gotten gains, that profit you made by misrepresenting the material facts of your corporation while manipulating the books and profiting for your own best interests. We want to make sure those mansions, those benefits, those golden parachutes are collapsed, folded up neatly, put into a closet and sold off so that the shareholders back home can get their hands on their money. That is what has been lost in all of this.

A corporate executive takes capital from individual investors, hard-working investors saving for their first home, their child's education or their retirement, and has a fiduciary responsibility to manage that money for their mutual good. What has happened, they have taken that money and put it in their pocket.

I do not know how we are going to ultimately get to all of the State bankruptcy protections that allow these corporate mansions to be built, the extreme levels of financial worth, to allow a CEO to escape all of his liabilities and move into the home, live there 6 months, sell it and take the money and move to the south of France, but we are going to get there. This bill does not go quite that far, but over the next Congresses we are going to continue the work to make sure that no one who is defrauded by an irresponsible act of corporate abuse does not get full recompense for the wrong.

This is a great day, a great conference report. I salute the gentleman from Ohio (Chairman OXLEY) and Chairman SARBANES for their extraordinary work.

Mr. LAFALCE. Mr. Speaker, it is my pleasure to yield 2¼ minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the distinguished ranking member of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, who coauthored the original bill that we introduced early this year that forms the gravamen of this bill.

Mr. KANJORSKI. Mr. Speaker, I thank the gentleman from New York for yielding time.

Mr. Speaker, may I take the opportunity to say how pleased I am to be here in support of this conference report, because I, together with the gentleman from New York (Mr. LAFALCE), opposed the bill originally passed in April by the House of Representatives for the simple reason that it was not sufficiently sound enough to meet the needs that were even evident in April, and have become far more evident now. But I dare say that as a result of the efforts of the gentleman from New York (Mr. LAFALCE) in crafting the alternative Democratic proposal in the House that did not have the opportunity to go forth to the conference, it did strengthen the Senate's hands in the drafting of the Senate proposal, which ultimately is the basis for this conference report.

Mr. Speaker, we have not solved everything, by a long shot. We have much to do. But I believe that we have now put teeth into the accounting process. I, for one, am a person that supports the marketplace and non-government regulation, when possible. But if there is anything we have learned over the last 9 or 10 months, it is the absence of regulation has allowed the fox to take control of the hen house at the corporate level at some of the financial institution levels, at the accounting level, and we have seen grievous harm done not only to these fine corporations, but to the investors in the corporations, to the employees of the corporations, and to all the pension funds and 401(k) fund investors across the country that took on the representation of accounting firms and CEOs and boards and all these people that things were done properly.

We have addressed accounting irregularities, executive abuse and corporate governance malfeasance, but we must come back and do more, and this is only the beginning.

I heard the chairman of my subcommittee, the gentleman from Louisiana (Mr. BAKER), talk about something that I want to respond to. We have seen on television all these mansions in Texas and Florida. I would say to the gentleman from Louisiana (Mr. BAKER), the answer is we do not have to do a special bill. We can take out the exemption in the bankruptcy law so every State in the Union has the same basic principle, a $750 deduction, nothing else. There is no reason in Texas and in Florida you can have a $25 million mansion, go into bankruptcy, and keep your mansion.

Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, 9 days ago on this floor I stated we must crack down on the corporate criminals and rebuild America's confidence in our markets. I said the best way to do that is to punish the corporate wrongdoers and to punish them harshly. I am pleased to say that the conference committee report before us today accomplishes that goal.

The House members of the conference committee insisted on and prevailed on all of the tougher penalties that were contained in H.R. 5118, the Corporate Fraud Accountability Act of 2002, which passed the House overwhelmingly by a vote of 391 to 28.

Under these penalty provisions, corporate criminals are going to do time; real time, real long time. The report increases the penalties for mail and wire fraud from the current 5 years to 20 years and creates a new securities fraud section that carries a maximum penalty of 25 years. It also strengthens laws that criminalize document shredding and other forms of obstruction of justice and provides a maximum penalty of 20 years for such violation. The legislation punishes top corporate executives that certify the financial statements of the company knowing they are false by subjecting them to fines of up to $5 million and 20 years in prison, or both.

The provisions of the conference report also increase the penalty criminal penalties for those who file false statements with the SEC to a maximum penalty of $5 million and 20 years in prison, and, if a corporation files a false statement, then the fines increase up to a maximum of $25 million.

Mr. Speaker, the report also contains House language that makes it a crime for someone to knowingly retaliate against a whistle blower and provides a criminal penalty of up to 10 years for such offense. I would also point out that the restitution laws for all criminal activity are in place for these crimes as well, so the court can order restitution for those shareholders and employees who have been defrauded.

By passing this conference committee report, America will know that those who abuse the law and tarnish corporate America's reputation will go to jail for a very long time. These are tough penalties that will crack down on the corporate crooks and go a long way to protecting the life savings of many Americans by making the price of such theft too high.

I urge my colleagues to support this conference report.

□ 1045

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Speaker, I rise in strong support of this conference report, the strongest reforms since FDR was President in corporate law. Our markets run on trust and this trust has been violated. This bill puts forward new tough standards based on old values to restore investor confidence.

The overwhelming majority of the accountants in the U.S. are hardworking, honest people, but the self-regulation of their industry has failed. This bill responds with the Sarbanes-LaFalce proposal for the strongest possible new independent accounting oversight board. It also adopts the Sarbanes-LaFalce plan to put an end to the inherent conflict of interest of allowing the same firm to provide both audit and consulting services for the same client.

Investors have lost faith in boards of directors and managers to look out for their interest. This legislation empowers independent members of boards to hire and fire auditors, prohibits trades during pension blackouts, requires CEOs and CFOs to certify the accuracy of their company's financial statements, and if there are misrepresentations, they face criminal penalties.

More and more Americans depend on the markets for a secure retirement. Executives who take advantage of investors will now face serious jail time for securities fraud, up to 25 years.

Importantly, the bill also authorizes $776 million for the SEC, including money for pay parity.

Finally, I want to thank the gentleman from Ohio (Mr. OXLEY) for his work on this legislation and the hearings he held. I especially want to thank the gentleman from New York (Mr. LAFALCE) who recognized a crisis in financial reporting years before it became front page news. This legislation may be called the Sarbanes-Oxley Act, but much of it is the hard work and product of the gentleman from New York (Mr. LAFALCE) and leader on the Committee on Financial Services, on the House floor and in the conference.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Speaker, I am pleased that the conference report before us contains two provisions that were in the Pension Reform Act passed here in April. These two provisions were in the Senate bill and were agreed to in the conference, one providing a 30-day notice of any potential blackout period and, secondly, a proposal to make sure that the top floor and the shop floor have the same rights when it comes to selling of stock during blackout periods, and there is a prohibition on 16(b) employees, top-end employees, from selling stock during a blackout period.

I am also pleased that contained in this legislation are new penalties for violations of ERISA. The penalties have not been increased or changed since 1974 when ERISA was first enacted. They are in this bill.

Let me make it clear that the pension provisions that are in here which mirror proposals made by President Bush back in April come nowhere close to the comprehensive Pension Protection Act that the House passed on April 11. We are still waiting for the other body to act, and as the Washington Post noted this morning in their lead editorial, this bill that we are passing today is the first step, but if we are serious about restoring investor confidence, restoring the confidence of American workers in their own retirement plans, it is time for Congress to act on a pension bill.

While there is a lot of rhetoric coming from the other body, there is no legislation and there is no opportunity to go to conference like we did on this bill and to bring about good policy.

Several days ago, I described what was happening on this bill as a stampede, and I want to say that I am very surprised, and I am very surprised because we have two adults in this body, the two people who chaired this conference, my good friend from Ohio (Mr. OXLEY) and the gentleman from Maryland (Mr. SARBANES), who stood up to say, slow down, let us try to make sure that we have sound policy here, and the gentleman from Maryland was under great political pressure to do nothing, but I have got to give him an awful lot of credit for his willingness to sit down and to fix what were glaring problems that many did not want to fix and wanted to pass in a rush to judgment. They both should be congratulated for their excellent work.

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for yielding time.

Let me applaud the chair and ranking member of the House Committee on Financial Services for the job that they did starting the process. We had a bill that was a reasonable start, that has been significantly improved upon during the course of the conference, and one of the things that the bill does is ratchet up criminal penalties, but I want to take some time to say that I am not sure that just ratcheting up criminal penalties will do the job.

But there are some things in the conference report which require us and the SEC and the GAO to do additional studies and report back to the committees of jurisdiction about either regulatory action that is recommended or legislative action that is recommended, and one of those things is an SEC study of violations and violators and whether we have been aggressively going after the violators civilly and whether we have undermined the ability of individuals to bring claims in civil court to enforce their rights and protect their status as investors.

I do not want to overlook some of those studies that will be reporting back to us because I think this bill is really just the first step, and I applaud us for making that step.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SMITH) a conferee and a member of the Committee on the Judiciary.

Mr. SMITH of Texas. Mr. Speaker, I thank my friend from Ohio for yielding me time.

Mr. Speaker, this conference report goes a long way in achieving two necessary goals. First, it helps us determine who those are who have abused the public trust, in general, and employees' trust and stockholders' trust, in particular.

Second, this conference report makes sure that an appropriate level of punishment is available.

In considering this conference report, though, we should remember that the proportion of corporate executives who are culpable is a very, very small fraction of the whole. The vast majority of executives are law-abiding who have contributed much to the prosperity of America.

Finally, Mr. Speaker, I want to single out a business leader, Andy Grove, chairman of the board of Intel, for his constructive suggestions on how to increase corporate responsibility. Mr. Speaker, I have been happy to have been a part of the conference that produced this conference report. Mr. Speaker, I include in the RECORD two articles, one written by Andy Grove and one about him.

[From the Washington Post, July 17, 2002]

STIGMATIZING BUSINESS

(By Andrew S. Grove)

I grew up in Communist Hungary. Even though I graduated from high school with excellent grades, I had no chance of being admitted to college because I was labeled a "class alien." What earned me this classification was the mere fact that my father had been a businessman. It's hard to describe the feelings of an 18-year-old as he grasps the nature of a social stigma directed at him. But never did I think that, nearly 50 years later and in a different country, I would feel some of the same emotions and face a similar stigma.

Over the past few weeks, in reaction to a series of corporate scandals, the pendulum of public feeling has swung from celebrating business executives as the architects of economic growth to condemning them as a group of untrustworthy, venal individuals.

I have been with Intel since its inception 34 years ago. During that time we have become the world's largest chip manufacturer and have grown to employ 50,000 workers in the United States, whose average pay is around $70,000 a year. Thousands of our employees have bought houses and put their children through college using money from stock options. A thousand dollars invested in the company when it went public in 1971 would be worth about $1 million today, so we have made many investors rich as well.

I am proud of what our company has achieved. I should also feel energized to deal with the challenges of today, since we are in one of the deepest technology recessions ever. Instead, I'm having a hard time keeping my mind on our business. I feel hunted, suspect—a "class alien" again.

I know I'm not alone in feeling this way. Other honest, hard-working and capable business leaders feel similarly demoralized by a political climate that has declared open season on corporate executives and has let the faults, however, egregious, of a few, taint the public perception of all. This just at a time when their combined energy and concentration are what's needed to reinvigorate our economy. Moreover, I wonder if the reflexive reaction of focusing all energies on punishing executives will address the problems that have emerged over the past year.

Today's situation reminds me of an equally serious attack on American business, one that required an equally serious response. In the 1980s American manufacturers in industries ranging from automobiles to semiconductors to photocopiers were threatened by a flood of high-quality Japanese goods produced at lower cost. Competing with these products exposed the inherent weakness in the quality of our own products. It was a serious threat. At first, American manufacturers responded by inspecting their products more rigorously, putting ever-increasing pressure on their quality assurance organizations. I know this firsthand because this is what we did at Intel.

Eventually, however, we and other manufacturers realized that if the products were of inherently poor quality, no amount of inspection would turn them into high-quality goods. After much struggle—hand-wringing, finger-pointing, rationalizing and attempts at damage control—we finally concluded that the entire system of designing and manufacturing goods, as well as monitoring the production process, had to be changed. Quality could only be fixed by addressing the entire cycle, from design to shipment to the customer. This rebuilding from top to bottom led the resurgence of U.S. manufacturing.

Corporate misdeeds, like poor quality, are a result of a systemic problem, and a systemic problem requires a systemic solution. I believe the solutions that are needed all fit under the banner of "separation of powers."

Let's start with the position of chairman of the board of directors. I think it is universally agreed that the principal function of the board is to supervise and, if need be, replace the CEO. Yet, in most American corporations, the board chairman is the CEO. This poses a built-in conflict. Reform should start with separating these two functions. (At various times in Intel's history we have combined the functions, but no longer.) Furthermore, stock exchanges should require that boards of directors be predominantly made up of independent members having no financial relationship with the company. Separation of the offices of chairman and CEO, and a board with something like a two-thirds majority of independent directors, should be a condition for listing on stock exchanges.

In addition, auditors should provide only one service: auditing. Many auditing firms rely on auxiliary services to make money, but if the major stock exchanges made auditing by "pure" firms a condition for listing, auditing would go from being a loss leader for these companies to a profitable undertaking. Would this drive the cost of auditing up? Beyond a doubt. That's a cost of reform.

Taking the principle a step further, financial analysts should be independent of the investment banks that do business with corporations, a condition that could and should be required and monitored by the Securities and Exchange Commission.

The point is this: The chairman, board of directors, CEO, CFO, accountants and analysts could each stop a debacle from developing. A systemic approach to ensuring the separation of powers would put them in a position where they would be free and motivated to take action.

I am not against prosecuting individuals responsible for financial chicanery and other bad behavior. In fact, this must be done. But tarring and feathering CEOs and CFOs as a class will not solve the underlying problem. Restructuring and strengthening the entire system of checks and balances of the institutions that make up and monitor the U.S. capital markets would serve us far better.

Reworking design, engineering and manufacturing processes to meet the quality challenge from the Japanese in the 1980s took five to 10 years. It was motivated by tremendous losses in market share and employment. Similarly, the tremendous loss of market value from the recent scandals provides a strong motivation for reform. But let us not kid ourselves. Effective reform will take years of painstaking reconstruction.

Our society faces huge problems. Many of our citizens have no access to health care; some of our essential infrastructure is deteriorating; the war on terror and our domestic security require additional resources. Attacking these problems requires a vital economy. Shouldn't we take time to think through how we can address the very real problems in our corporations without demonizing and demoralizing the managers whose entrepreneurial energy is needed to drive our economy?

The writer is chairman of Intel Corp.

[From the Wall Street Journal, July 22, 2002]

THE BELTWAY BUBBLE

Since President Bush unleashed the political furies on the private sector with his speech on July 9, stocks on the Dow have fallen by about 13.5%, including another 4.6% on Friday. This can only mean that investors are demanding more regulation, more punitive laws and more anti-business rhetoric, right?

Believe it or not, that's what some people with allegedly above-average IQs are writing. The truth is closer to the opposite, with investors now discounting not just for market risk but for a new and dangerous element of political and regulatory risk. With Congress in a stampede, and Mr. Bush abdicating veto oversight, the law of unintended consequences is in the saddle riding events.

Consider the fine print now contained in legislation sponsored by Joe Biden and Orrin Hatch that whooped through the Senate last week. Time magazine made Intel Chairman Andrew Grove its man of the year in 1997. But Senator Bush, with his vast corporate experience, is now insisting on language that would likely drive Mr. Grove and independent chairmen like him out of the business.

Here's the problem: The Biden-Hatch bill would require that CEOs, chief financial officers and board chairmen all certify, under threat of criminal sanction, the accuracy of company financial statements. This makes sense for CEOs and CFOs, who are actively managing the business. And for companies that combine the CEO and chairman positions this is also logical.

But some companies prefer to divide the CEO and chairman posts, with the CEO running the business but the chairman playing the role of counselor or independent intermediary with the board of director. It's one way of helping the board supervise the CEO, which is supposed to be a main goal of the latest corporate "reforms."

Yet the Biden legislation would all but end this often useful division of responsibility. Very few non-CEO chairmen in their right mind are going to risk jail by certifying results they are not actively managing. Mr. Grove, for example, gave up his CEO duties at Intel in 1998 at age 61, but he retains the chairman title that allows him to set the agenda for board meetings and consult with CEO Craig Barrett.

"It's a very healthy thing," Mr. Grove tells us. "The power of setting the agenda is incredible. I basically control what we are going to talk about at board meetings, not Craig." Other companies that have non-CEO chairmen include Cisco and Microsoft, where Bill Gates gave up his chief executive role to Steve Ballmer but is obviously still a valuable contributor to the company. Whatever else investors are clamoring for, we doubt it's a high technology sector without the skills and institutional memory of Andy Grove and Bill Gates.

By the way, the Biden-Hatch bill contains other troubling provisions that someone at the White House should inspect. In its language demanding that CEOs certify their financial results, it uses words like "appropriateness" and "recklessly" that are vague and legally undefined. This will only invite prosecutorial abuse, not to mention a trial-lawyer field day, which may in fact be why those words have quietly made their way into the Senate-passed bill. (Senator Hatch, were you paying attention?) If Congress is going to put CEOs in prison for a decade or more, doesn't it have an obligation to make sure that what they get sent away for is some specific and actual crime?

The Biden language shows how in Washington's current mood the zeal to punish business is trampling common sense. Any House Member who raises any doubt about the wisdom of anything in the Senate bill gets a media pounding as a lackey of business.

Obviously something is going to pass this year. But it would help the economy, as well as corporate governance, if the politicians burst their own bubble of righteousness and first thought carefully about the real-world consequences of what they're doing.

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. WATERS), a distinguished member of the conference committee.

Ms. WATERS. Mr. Speaker, I am very pleased to have been a part of the conference committee, and we are finally legislating a corporate responsibility bill. It is long overdue, and if, in fact, the gentleman from New York (Mr. LAFALCE), our ranking member, had had his way on the House side, we would have had a tougher bill and we would have had it a long time ago.

Unfortunately, even though I am very appreciative for the work that the gentleman from Ohio (Mr. OXLEY) eventually did on this bill, if he had taken the leadership of our ranking member, we would have had this bill passed out a long time ago, and it would have been even tougher.

This bill will make corporate CEOs and others responsible. They will have to sign the financial statements, and they will have to take responsibility. I participated in one aspect of the bill for disgorgement so that these people who are committing fraud will not be able to realize the gains that they would have, to put that money back into a disgorgement account.

We are also, in this bill, curbing the practice of the insider loans. We are protecting whistleblowers. We are eliminating conflict of interest and setting up an independent board to oversee accounting firms.

This is a good start. We are going to see more of the scenes that we are seeing with Adelphia where corporate giants who have committed fraud are going to be taken out in handcuffs.

We are going to have to do more as the days roll along. We are going to find that there are more crimes being committed. I am very appreciative to the Democrats in this House for providing the strong leadership that was necessary to force the adoption of this conference report and this legislation.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from New York (Mrs. KELLY), the chairwoman of the Subcommittee on Oversight and Investigations of the Committee on Financial Services, and a member of the conference committee.

Mrs. KELLY. Mr. Speaker, I thank the gentleman from Ohio for yielding me the time.

Mr. Speaker, today we are here to approve the conference agreement for the corporate accountability legislation. With the Senate adoption of the House's top priorities of tougher penalties, openness, so the investor can evaluate a company before they invest and money back to defrauded investors, this conference agreement stands as a product that both sides can be proud of.

This legislation punishes corporate crooks. It strengthens oversight of the accounting industry and empowers investors with much faster access to critical information about the companies in which they invest. This legislation will shine a bright light into the shadows of America's corporate board rooms so the public is not kept in the dark, and when they make an investment, that investment will be sound and based on truth and openness and honesty.

The corporate executives, the heads of these businesses, need to know they are being watched and they will be put in jail if they use their company to line their own pockets at the expense of our investors.

I applaud the gentleman from Ohio (Mr. OXLEY) and his excellent staff and Senator SARBANES and his fine staff. They need to be recognized for the conception of most of the provisions in this bill and the fortitude and the resolve to bring the legislation forward through this process in a very bipartisan and open manner.

Last week, Chairman Greenspan spoke before the Committee on Financial Services about how strong our economy is and talking about that our economy is strong even though our corporate system is frayed. This legislation contains the tools necessary to mend the bonds which have been abused by the people who have been motivated by greed and strengthen others, which ensure a strong and vibrant economy.

Chairman Greenspan also emphasized that the criminal penalties section in this legislation is the most important part of this legislation. With the Senate acceptance of the House's tougher penalties, we have ensured that the most important part of this legislation is the best possible.

I look forward to our passing this conference report today so it can be sent to the White House so the President can enact this legislation giving employees and investors the needed protections and confidence they require and they deserve.

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. BENTSEN) a distinguished member of the committee.

Mr. BENTSEN. Mr. Speaker, I rise in strong support of this bill. I need to say to my colleagues I am actually surprised. I think this is a very good conference report. The recent declines in the U.S. equity markets are due in large part and have been exacerbated by the breakdown in corporate governance, and a lot of the shenanigans, quite frankly, that has been going on in corporate America, whether it is Enron, WorldCom, Adelphia, Xerox, you name it.

This bill is really quite substantive because of the work of the gentleman from New York whom I think we all owe a great debt of gratitude for on this bill that really starts to address this, and Members have gone through the substantive aspects, the oversight body, the limitations on consulting, the new disgorgement rules, criminal penalties, bans on egregious practices and corporate loans, all of those items, and there are many in this bill, and I am surprised at how well it has been put together.

I think what is also important about this legislation is that it sends a very clear message from the Congress, and I hope we have a strong vote today in the House on this bill, because it is not just the substantive factors or the interpretive factors of this bill.

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For too long Congress has sent a very mixed message to the regulators of what they are supposed to do. All of us know we can pass laws to do lots of things, but unless they are enforced, they will be meaningless. This bill puts us on record of enforcing the laws with respect to public accounting, with respect to corporate governance; changing things that, quite frankly, a few years ago I would have been surprised. A few years ago, people were trying to get outsiders off of corporate boards. Now we are mandating them on corporate boards.

So I want to commend the managers, the chairman and the ranking member, but particularly the gentleman from New York (Mr. LAFALCE) for the work he has done on this bill. He deserves a great deal of credit.

This is a good bill, it ought to get a large degree of support so investors will make decisions on economic issues and not lack confidence.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ROYCE), a member of the conference committee.

Mr. ROYCE. Mr. Speaker, I thank the chairman for yielding me this time; and actually, this measure contains the best of both, some Democrat ideas and some Republican ideas. I think the final language on the independent accounting board was very close to the Sarbanes bill. But the provision put forward by House Republicans that we would now have 25 years hard time for securities fraud is important. It will be a deterrent.

I am delighted to see the concept that we are going to criminalize shredding, the concept that we are going to increase penalties for wire fraud and mail fraud. The Republican idea also that when we get convictions, when this SEC brings back the resources from those who have committed corporate malfeasance, that money will then go back to the shareholders, the Baker's amendment, that is an important gain for this bill.

I think Chairman OXLEY, in including the provision to disclose material changes to financial conditions and in real time so that the public sees that as soon as any insider trader sees that is another important change that we brought in on the Republican side of the House bill.

So this is the best of both Democrat and Republican concepts, and it will protect the shareholders in the future and offer deterrence.

Mr. LAFALCE. Mr. Speaker, how much time do I have left?

The SPEAKER pro tempore (Mr. SWEENEY). The gentleman from New York has 17¾ minutes remaining.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Mr. Speaker, I would like to congratulate Chairman OXLEY and the gentleman from Louisiana (Mr. BAKER) for finding the willingness to simply do what is needed to fix the problem in our accounting system and to restore investor confidence in corporate America.

I also thank the gentleman from New York (Mr. LAFALCE) and the gentleman from Pennsylvania (Mr. KANJORSKI) for their foresight and early leadership. We needed to restore the public confidence in the market. Tens of millions of Americans invest in the market and tens of millions more work in publicly traded companies. It is these individuals and these individuals alone who this Congress must protect. After all, this is the people's body, not the Fortune 500 body.

So I thank my colleagues for sitting down with the gentleman from New York (Mr. LAFALCE) and Senator SARBANES and delivering on a bill that puts the interest of the public first. My colleagues' actions prove that bipartisanship is a tangible commodity. I would hope that the consensus we were able to reach on this bill can be replicated in other badly needed measures.

Before closing, I would like to point out that no one, no one has worked harder on this bill than our ranking member, the gentleman from New York (Mr. LAFALCE). While we have not agreed on everything, the gentleman's efforts to protect consumers and investors has been unfailing and will be sorely missed in the 108th Congress.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

Mrs. ROUKEMA. Mr. Speaker, I rise in strong support of this legislation, and I certainly want to commend the Speaker of the House and the chairman of the committee for bringing it up before the August recess.

Certainly there has been a lot of discussion, and I do not have to go over it again, about the crisis of confidence that there has been. That has been more than adequately stated. But the crisis of confidence in our economic system has been out there, and dealing with this legislation today takes us a giant step in the right direction to restoring that confidence in both our corporate leaders as well as our Congress and the free enterprise system, which we commend.

I want to thank Chairman OXLEY and certainly the gentleman from Louisiana (Mr. BAKER) for making the point in the conference committee. As strongly as I supported the Sarbanes bill, they did add improvements to the bill, which deal with, but it is the FAIR fund to return the ill-gotten gains and the real time corporate disclosure provisions. And I thank the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER) for including them in this conference report.

However, I will say that it is not perfect. It is very good, but not perfect. I am disappointed, more than a little bit, in the fact that we did not deal with the accounting treatment of stock options. I was very disappointed in that, but I accept it as part of this agreement. And I also accept it because I am confident that Senator MCCAIN will be advancing another form of this legislation in the future in the other body, and I believe that we will then be able to have a proper and full discussion.

In conclusion, I would like to say that this is landmark legislation, a key element of Congress' effort to eliminate corruption in corporate America. The bill tells corporate criminals that they are no longer above the law, and it holds those executives who have defrauded the investors and harmed the American economic system, holds them accountable with tough new criminal penalties. It also helps to close the loopholes that have allowed them to continue these offenses in the corporate community.

Mr. Speaker, once again, I certainly thank the chairman and the gentleman from Louisiana (Mr. BAKER), as well as the ranking member, the gentleman from New York (Mr. LAFALCE), and our other Democrat colleagues for their bipartisan cooperative effort.

Mr. Speaker, I rise in strong support of the (H.R. 3763) Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, and I want to commend the Speaker of the House for showing clear vision and strong leadership in bringing this legislation to the Floor. I also want to commend the gentleman from Ohio, the Chairman OXLEY of our Committee on Financial Services, for living up to his commitment to bring this important legislation back to the House before we begin our summer district work period. And I strongly commend Representative JOHN LAFALCE for his leadership and cooperation in structuring the bipartisan support.

Mr. Speaker, over the last few months our economy has been damaged by the drip-drip-drip of newspaper stories, television accounts and press releases recounting the latest corporate accounting scandal, revenue over-projection, financial irregularity or out-and-out "cooking of the books" by our captains of industry.

I agree with the President of the United States and the Chairman of the Federal Reserve, Alan Greenspan, who each said last week that the foundation of our economy is strong. And that we are continuing to recover from the financial downturn precipitated by the terrorist attacks of last September 11.

But still, we face a crisis of confidence. Every public opinion poll shows that the American people have low-expectations when it comes to the economy, and they think that a majority of corporate leaders are crooks and that this is an area where Congress can and must act in a bipartisan manner.

Indeed, irresponsible corporate leaders have forced us to act. The American people expect us to act. The American economy needs us to act. In fact, the mere prospect of our actions today helped produce a steep rise in the stock market yesterday. We must continue to restore confidence in the Congress and in our free enterprise system. And today we are taking a giant step.

Last April, House passage of the Corporate and Auditing Accountability, Responsibility and Transparency Act was a giant step in the right direction. Senate passage of the so-called Sarbanes bill was another critical step forward. And today, we complete the Congressional journey by passing this legislation.

The Chairman of the conference committee has outlined the major provisions of this bill. Suffice it to say that I am pleased that the conference report establishes a new, independent oversight board, funded by publicly traded companies, to monitor the accounting industry. The bill also forbids accounting firms from performing many other services for their public company audit clients, including consulting. It would also establish a host of new important reporting and disclosure requirements for public companies.

I want to commend Chairmen OXLEY and BAKER for their contributions to this strong conference report. As noted by Chairman OXLEY in his debate the House Committee added strong demands: real-time corporate disclosure to protect investors by giving them the information they need to safeguard their financial future; establishment of the FAIR fund to return ill-gotten corporate gains to investors; significantly increased criminal penalties for corporate crooks that defraud the public, shred documents or otherwise obstruct justice. Criminals can steal more money with a briefcase than with a gun. Businessmen who extort the American public should be punished like the common criminals they are. This bill ensures that corporate wrongdoers go to jail for their crimes.

I would also add that the final legislative package includes two important pension-related provisions from our Education and Workforce Committee. One would bar company insiders from selling their own stock during "blackout" periods when workers can't make changes to their 401(k)s; and the other would require pension plan administrators to notify workers 30 days before the start of any "blackout" period affecting their pensions.

However, I have to say that I am disappointed that the conference agreement includes no provision to address the question of the accounting treatment of stock options. I believe this is a mistake. Congress should require the Federal Accounting Standards Board to deal with it. And I am confident that Senator MCCAIN will be advancing legislation on options in the other body.

In the final analysis, this is a landmark legislation—a key element of Congress' effort to eliminate corruption in corporate America. This bill tells corporate criminals that they are no longer 'above the law.' it holds those executives who have defrauded investors and harmed the American economic system accountable with tough new criminal penalties. It helps to close the loopholes that have allowed for continued offenses in America's corporate community.

Mr. Speaker, the American people expect us to act. The economy needs us to act. I urge my colleagues to live up to and now we are acting.

Support the Conference report.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentleman from Vermont (Mr. SANDERS), a member of the committee.

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time. This legislation is an important step forward, and I support it; but it should be clear that if we are serious about tackling corporate greed, much more needs to be done.

We have seen in recent years that the heads of the largest corporations in this country have lied about their financial statements, they have cheated on their taxes, moved their companies abroad, and they have thrown loyal American workers out on the street as they move companies to China. They have cut the pensions and health care benefits of their workers. Now is the time for us to address that overall question of corporate greed.

The most important thing that we can do is to pass real campaign finance reform, public funding of elections. So once and for all we end the scourge of big money dominating the White House and the United States Congress, and once and for all we begin to represent all Americans rather than the rich and the powerful.

Mr. OXLEY. Mr. Speaker, I am pleased now to yield 1 minute to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, let me thank all those involved in putting this together.

For all those individuals out there who shudder when they see the stock market reports, or like me, do not open any envelopes that contain any information about their own assets at this point, but let them pile up in a corner, this bill is for you. It takes a lot of strong and positive steps, as have been outlined here in terms of dealing with the corporate responsibility and the corporate governance issues we needed to address.

I believe we have seen the clouds, I believe we have seen the rain in the form of Enron, WorldCom, and a few others. Now we are seeing the clearing someplace out there, as we search to get brighter. And, hopefully, it will get even brighter yet. This piece of legislation may be a first step, but it is a very large first step we have taken.

Like others who have spoken today, I believe we do have to deal with other issues. I believe we have to look at the question of expensing options. I believe we have to look at separating analysts from the investment banking side of a number of firms in the United States of America. Perhaps we can go to less dependence on quarterly reports, more real-time reporting in terms of financial information coming from the corporations and a variety of other steps.

But I think that Congress has stepped forward in a very responsible fashion, and I congratulate everybody. The gentleman from New York (Mr. LAFALCE), I know, had a lot of ideas in this, as well as the gentleman from Ohio (Mr. OXLEY), and the Senator from Maryland, Mr. SARBANES, on the other side. They have done a wonderful job.

This should start to give reassurance to our markets and to people across America.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. LEE), a member of the committee.

Ms. LEE. Mr. Speaker, I rise today in strong support of this conference agreement to H.R. 3763, which significantly reforms our current system to bring true responsibility and accountability to these major corporations who have used creative accounting and fraud to advance their own greed.

I want to especially thank our ranking member on the Committee on Financial Services for all of his hard work, the gentleman from New York (Mr. LAFALCE), for pushing these very strong reforms, and to Chairman OXLEY for ensuring that this is a bipartisan plan.

While I was extremely disappointed that the Republican leadership brought up such a weak bill earlier this year, one that I voted against, I am delighted that they agreed to a much stronger provision in the LaFalce legislation.

This agreement protects employees and investors, separates auditing and consulting functions, which got Enron and the other corporations into the mess that they are in now, and sets up an independent board.

Now, I hope that soon Congress can take the next step and provide restitution to laid-off workers and investors who lose their life savings. CEOs and high- ranking executives should forego their golden parachutes and multi-million-dollar-year bonuses while their companies are going bankrupt, and instead give workers and investors first rights to these funds.

Once again I want to thank the gentleman from New York (Mr. LAFALCE) for his leadership and Chairman OXLEY for bringing such a responsible bill to the House floor.

Mr. OXLEY. Mr. Speaker, may I inquire as to how much time remains on both sides.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. OXLEY) has 11 minutes remaining, and the gentleman from New York (Mr. LAFALCE) has 14¾ minutes remaining.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COX), a member of the conference committee.

Mr. COX. Mr. Speaker, I thank the chairman for his extraordinary good work.

Fraud and unfair dealing are the enemies of the free enterprise system. And as we can see from the turmoil in our markets, our country is paying a very high price because of the corporate fiduciaries who have broken faith with their employees and their investors.

We have tough laws on the books to deal with all manner of crime, including corporate crime; but just as bacteria mutate to avoid the latest antibiotics, those who cook the books are constantly changing their recipes, and we have to keep our laws and our remedies up to date.

Enron, Global Crossing, WorldCom, and the other cases that we have seen have all centered around accounting frauds. Abuses of accounting rules were central to each of these cases. Using the regulatory thicket of detailed accounting rules, the malefactors in these cases intentionally structured sham transactions to disguise their true financial condition. That is why the central reform in this legislation is the creation of an accounting oversight board to see to it that accounting standards once again make financial reports truthful, honest, and clear.

As we raise the legal standard here today, we should bear in mind our obligations to do still more to raise ethical standards so that the best and the brightest will continue to want to join the accounting profession; so that our most experienced citizens, possessed of good judgment, are willing to undertake the significant oversight responsibilities on corporate boards of directors; and so that entrepreneurs will still take the risks and dream boldly without fear of being second-guessed if the race is not won.

This is an important step we are taking today, Mr. Speaker. I am very happy to join in support of this conference report.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentlewoman from Ohio (Mrs. JONES), a member of the committee.

Mrs. JONES of Ohio. Mr. Speaker, I know that this committee is very short of time, and so I will give my time back to the ranking member; but I want to say it is a shame that we were here in April doing legislation like this and ended up having to come back when we really realized that we needed to hold CEOs accountable.

Mr. Speaker, I rise today in strong support of H.R. 3763, the Conference Report on Corporate Responsibility and I seek permission to revise and extend my remarks.

The events of the past months have underscored the importance of transparency in corporate governance. While many believed that Enron was an isolated occurrence, the failures of Tyco, Global Crossing, and WorldCom have eroded confidence in the markets, both here and overseas.

Investment in the stock market is important to our economy and as a wealth-creating tool for people of all income levels. Although the majority of companies are operated honestly, investors will not trust the market if they believe that their money is not safe. If investors don't invest—the economy will stagnate which hurts people at every level of our society. Recent drops in value of stock markets both here and around the world reflect uncertainty and a current lack of investor confidence.

It is our responsibility to hold accountable those companies and individuals that act dishonestly and erode investor confidence. I support this bill and I commend the conferees because they have crafted a strong piece of legislation. This bill would remove conflicts of interest and strengthen corporate accountability by a number of key reforms such as: creating a strong and independent board to oversee the accounting profession; by requiring separation of the auditing and accounting functions of firms; by reforming the independence of stock analysts and decreasing the influence of investment banking firms over analysts; by authorizing $776 million to the Securities and Exchange Commission to enable them to achieve higher staffing levels to enforce the law.

Although these reforms are needed, there are other, holistic changes that need to take place as well.

Over the past decade, CEO tenure has dropped while salaries have risen dramatically. This has created a climate in which some dishonest CEO's may be tempted to "take the money and run." This casts a pall on the majority of executives who operate honestly.

When CEO's and others are compensated with stock options, the options are not shown as a business expense on a company's balance sheet. This distorts the cost of these options to shareholders, who are not provided a clear picture of a company's financial position. It may also provide an incentive to "cook the books" to achieve quick gains in stock price for an executives' personal benefit. This malfeasance has a clear effect on workers who lose their jobs and investors who lose their money.

I support the Democratic proposal to allow stockholders to determine whether management is compensated with stock options. This change in corporate governance would ultimately reward companies that operate cleanly by restoring investor confidence in companies with transparent operations.

Mr. Speaker, this week Congress has accomplished a great deal to help workers, investors, and the stability of markets the world over. We will continue to build our economy over the weeks and months to come.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. TOOMEY).

Mr. TOOMEY. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, the outright fraud of the recent accounting scandals constitutes theft that is appalling in nature and staggering in size. Millions of honest hardworking Americans who played by the rules, made sacrifices so that they could save and invest, saw those investments devastated when they were lied to by senior executives who cooked the books for their own personal gains.

Fact is, we have been robbed; and the outrage is justified. But, today, Congress will pass tough legislation to begin to restore confidence, to start to provide new protections for small investors, workers and pension holders.

Mr. Speaker, as you know, we passed a strong bill in this House last April. I am very happy that we finally got a product from the other body in July and we were able very quickly to reach a consensus and pass this tough historic legislation that will just take us closer to that vital goal that we are trying to accomplish, which is greater transparency and truthfulness in financial reporting.

I would just want to remind my colleagues that despite the calamities that we have recently seen, our free enterprise system is still the greatest wealth- producing, poverty-destroying, opportunity-creating system in the history of the world. And with these reforms, our system will start to recover the confidence that it deserves from investors in America and all around the world.

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Mr. Speaker, I want to congratulate the gentleman from Ohio (Mr. OXLEY), the gentleman from New York (Mr. LAFALCE), and the other members of the conference committee for getting this job done quickly.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentlewoman from Indiana (Ms. CARSON), a member of the Committee on Financial Services.

Ms. CARSON of Indiana. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to applaud the gentleman from New York (Mr. LAFALCE), the ranking member, for staying the course and insisting that we protect America and American investors, and also to Senator SARBANES.

I rise in support of H.R. 3763 for many reasons. I realize that regardless of what we call it, there was passed by this Congress in 1994 a bill called Private Securities Litigation Reform Act which opened up the floodgates for corporate greed. I appreciate the gentleman from New York (Mr. LAFALCE) staying the course and giving more money to SEC so they have more resources to overseeing all these public companies, over 17,000 plus.

Mr. Speaker, I rise to voice my support for the conference report on H.R. 3763, however today we are being asked to vote on the minimum that Congress should do and not the best.

According to the U.S. Department of Labor, within the past year, from May of 2001 to May of 2002 the unemployment rate in my home district of Indianapolis, IN rose from just under 3% to 4.5%. Now, there are more than 39,000 people unemployed in the city of Indianapolis alone.

This high rate of unemployment is severely straining my state's health care plan. According to the Indianapolis Star, enrollment in Indiana's Medicaid program will reach its highest level ever to cover nearly 800,000 residents, which is 56,000 more than are currently covered now. This increase in program participants has caused a $660 million difference between the budget and actual Medicare costs and is playing a major role Indiana's budget crisis. This is a problem that more than 40 states have to deal with in this current economic crisis.

Mr. Speaker, even though we have all of these impressive statistics, they really have very little meaning to the average American worker. What means something to them is when they see their retirement benefits and life savings going down the drain because some large corporation has misled their investors.

Mr. Speaker, the corporate crisis has hit home in Indiana as well. Indiana has its own Enron in AES Corporation, the global power company and new owner of Indianapolis Power and Light. Like Enron, IPALCO management sold stock while employees were encouraged to keep investing in the company plan. After AES took control the value of employee stock fell from $180,000 to around $18,000.

Now, as the Indianapolis Star reported last week, people like Joe Nelson, a coal-handling supervisor at IPALCO, who had saved almost $400,000 after 31 years of work can no longer retire. Joe has been forced to open up a lawn mowing business just to help pay for the bills.

Joe and his family are not alone, Mr. Speaker, many Americans are being forced to postpone their retirement. In a recent Gallup pole 20% of those surveyed said they expect to delay their retirement by an average of 4.4 years because of the recent economic crisis.

We are constantly told that the stock drops are rollercoasters, binges and economic hangovers that will disappear. However, it is the retirement dreams of hard working hoosiers and the pension fund of state governments that we see vanishing with little chance of reappearance.

The Conference bill before us today provides the absolute minimum protections to protect investors and restore market confidence.

Still, this measure could be stronger and certainly disgorging the ill-gotten gains of these criminals and redistributing profits to the victims must be the next step.

We hear frequently that there is little that Congress should do and limit our interference. However, Congress passage of The Private Securities Litigation Reform Act of 1995 got us to where we are today. It repealed the civil RICO, thereby preventing defrauded investors from obtaining triple damages when they bring securities fraud claims.

Mr. Speaker, if we are to restore market confidence, and investors and workers are to be made whole, Congress must pass a strong bill that sets penalties, protects whistleblowers, sends wrongdoers to jail, and ensures transparency.

Assets required through fraud and betrayal of confidence should not be allowed to stand when countless Americans close to retirement must now rethink how they will downgrade their retired lives.

Mr. Speaker, indeed, if crime does not pay. Congress must reaffirm that truth. We cannot, and must not, remain confused and weak in our response to this crime wave.

We are a free market and American business interests but American business must begin to conduct itself like it is interested in Americans.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. FERGUSON).

Mr. FERGUSON. Mr. Speaker, I rise in strong support of this conference report. We have heard a lot of partisan posturing in the last several weeks about this issue and trying to use this issue for partisan gain. This issue is not about partisan politics, this is about people, hard-working Americans who play by the rules, working toward their own retirement and economic security.

Today we can finally put the partisan bickering aside and pass real reforms that are going to save and protect the retirement security of millions of Americans. This is not a win for either side on the political aisle, this is a win for employees and investors and our free market system that is based on the concept of trust.

Both the bill we passed in April and the bill that the Senate passed more recently had good provisions, and this bill before us today, the conference report, combines the strongest features of both bills. It incorporates strong accounting oversight and bans firms from offering services that create conflicts of interest. It establishes tough criminal penalties because corporate criminals should not be allowed to keep the money at the expense of hard-working Americans who wind up suffering. No more mansions, no more yachts, no more private jets or guaranteed cozy retirement packages for corporate executives who betray the public trust. By passing this legislation, we send a clear message to the corporate CEOs and to the accounting firms who monitor their companies, let me be very clear: If you violate the public trust, if you flush down the retirement security of millions of Americans, you will and you deserve to go to jail.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, I rise in strong support of this conference report as it represents real reforms to protect investors, and will lead to the first steps to restore investor confidence in our markets.

In addition to strengthening the role of the audit committees, prohibiting executives from trading the stocks when employees cannot, and including strong language with respect to disgorgement, this bill also cracks down on the formerly unaccountable accountants. As every American with a 401(k) knows, working Americans saw new examples of accounting abuses almost daily, leading to a complete breakdown in the system of outside auditing of publicly traded firms.

This bill prohibits these practices and I salute the ranking member, the gentleman from New York (Mr. LAFALCE), for championing these types of reforms from day one, even when Democrats were being voted down on party line votes in the committee to pass these types of reforms. This bill strengthens audit committees, punishes criminal acts by greedy CEOs and, most importantly, will ensure the independent auditors of America's publicly traded corporations are actually independent.

I think that this landmark legislation serves as a great tribute to our departing colleague, the gentleman from New York (Mr. LAFALCE). This House and all American investors owe a deep debt of gratitude to the gentleman. This is a good bill, and I salute the gentleman from Ohio (Mr. OXLEY), Senator SARBANES, and especially the gentleman from New York (Mr. LAFALCE) for their hard work.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentlewoman from New Mexico (Mrs. WILSON).

Mrs. WILSON of New Mexico. Mr. Speaker, we have had some greedy people who cooked the books, aided by accountants who dishonored their profession. That is fraud, and they should go to jail for it. Now we are going to tighten down some of the rules of the system to make sure that this cannot happen again, and to restore confidence in the American system of free enterprise.

I support American free enterprise, and because I support free enterprise, we need to crack down on people who would break the law and steal people's retirement security and the amount of money they are saving for their kids' education.

It is a good step forward, and I commend the committee for their hard work and for sending a clear message to the American people. We are a country of free enterprise, and we will not tolerate people who break the law.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. ISRAEL), a member of the Committee on Financial Services.

Mr. ISRAEL. Mr. Speaker, I rise to support this conference report, but with a word of caution. This bill offers new rules and regulations. The fact is that we had rules, and they were ignored. We had laws and they were broken. We had regulations and they were worthless. We had laws on the books, and the books were cooked.

Now we have new laws, and I am sure we have plenty of lawyers already parsing the words and figuring out ways around them.

Mr. Speaker, all of the new rules and regulations will not be effective if the fox continues to guard the henhouse. The words in this bill will be no more than words if regulators continue to look the other way. With this bill has to come true reform in how the White House and the SEC and the Justice Department enforce those laws. The American people played by the rules. They have seen their retirements delayed, their college tuition funds depleted, their downpayments disappear. Now they will be watching how serious Washington is, not on the day that we pass this bill, but in the years going forward when it must be enforced. We will be judged not by what we pass today, but by how it is enforced tomorrow.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Speaker, I rise in strong support of this legislation, and one of the strong elements in it is what attracts me to a positive vote for all of us in this measure. That is the tougher penalties that are built into the new system that we are about to embark upon. The deterrent value of that by itself makes it worthwhile for us to support this legislation.

But as a passing glance on this whole scene, the American public ought to take some satisfaction from the fact that the current law, the law that is now on the books, has brought to justice the Arthur Andersen firm, has brought to justice others in the various schemes that have come to light, indictments are pending, and just recently we had a picture in the Washington Post of the Adelphia CEOs being brought to justice.

Mr. Speaker, as we are about to make the penalties tougher, we should feel a little bit better about the current system because it is bringing some of these people to justice.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, surely it is a true mark of success when the same Republican leadership allows this bill to reach the floor after they refused to respond years ago with genuine change, and, even after the Enron fiasco, they rejected strong new laws, and who only a few hours ago this very week were trying to mangle the determined reform efforts of the gentleman from New York (Mr. LAFALCE) and Mr. SARBANES. "Success," by this measure, yes.

But for those who are about to retire and now see their retirement account vanished, for those who saved to support a young person obtaining a worthwhile college degree and now have only worthless securities, for those who labored in their jobs and find themselves jobless, this success comes a little too late to celebrate. They cannot even afford the champagne cork to pop. For thousands of Americans, an ounce of prevention from Congress that would have truly ensured a vigilant public watchdog instead of a toothless lapdog for corporate wrongdoers would have been worth much more than this belated pound of cure that comes long after so many have suffered so very severely. They can justifiably ask this Congress, "Where were you when we needed you?"

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Pennsylvania (Ms. HART), a valuable member of our committee.

Ms. HART. Mr. Speaker, I thank the gentleman for yielding me this time.

The House's decision to bring this bill to a conference with the Senate was much derided, especially by those on the other side of the aisle. But I am here to support this conference report and bring up a couple of points that are very important in the bill that would not have been included but for the decision of the gentleman from Ohio (Mr. OXLEY) and others to bring this bill to a conference.

The most important is that many people lose money when these corporate criminals steal money. Those people are the investors, the employees of those companies. The Senate bill did not include any provision for those people to recover their money. That was placed into the bill in conference placed in by the Republican House. This is one of the most important issues to those who have invested in 401(k)s for their retirement, and those saving money for their children's education. Those people will be able to recover monies as a result of a decision by the House to go to conference as a result of this fine conference report that we will vote on today.

Mr. Speaker, the adoption of real-time disclosure will help people make better decisions, and as a result of this conference report, we will have much better enforcement.

Mr. LAFALCE. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina (Mr. PRICE), a former member of the Committee on Financial Services.

Mr. PRICE of North Carolina. Mr. Speaker, I rise in strong support of the conference report on the Corporate Accountability and Accounting Reform bill. I particularly want to commend the ranking member, the gentleman from New York (Mr. LAFALCE), for his steadfast leadership. I also want to congratulate our House Republican conferees who, after opposing the House counterpart of the Senate bill, offered by Democrats, have finally read the economic tea leaves and capitulated to the Senate on the bill's major provisions.

We now have a bill that creates a strong accounting oversight board, restricts the nonaudit services that accounting firms can provide to audit clients, implements tough new corporate responsibility standards, requires public companies to disclose financial information quickly and accurately, prohibits stock analysts' conflicts of interest, and authorizes the SEC to enhance its investigative and enforcement capabilities.

At last we have a serious reform bill. I urge my colleagues to support it.

Mr. LAFALCE. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. BONIOR), the distinguished former minority leader.

Mr. BONIOR. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, if Americans work hard, they deserve a good wage. If they get sick, they deserve health care. If they put a lifetime of service into a company or government, they deserve a pension that nobody can take away.

Over the last several months, we have witnessed despicable acts of corporate irresponsibility by some of our Nation's largest corporations. Workers and investors in Enron and DCT and WorldCom and others, they have seen their life investments, their life savings, disappear, their pensions wiped out, their health care benefits stolen, their lives destroyed in many instances.

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Those at the top have refused to take responsibility while everybody else has taken the fall.

We are here today to send a message loud and clear that if somebody breaks the security laws, if they rob hard-working people of their pensions, they will go to jail just like they would if they would rob a bank. We are standing here to today and we are standing for the rights of working people to know that their wages and their pensions and their benefits are secure.

Mr. Speaker, this is a good effort and a good work by the gentleman from New York (Mr. LAFALCE) and Mr. SARBANES and others in this body. I commend it to my colleagues, and I urge them to vote yes on this conference report.

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, beginning in 1995, the leadership of this Congress was successful in the following deregulatory efforts. They shielded accountants and corporations from shareholder lawsuits. They killed new Securities and Exchange Commission proposals to increase standards to ensure that auditors are independent and objective in certifying corporate numbers. They cut the Securities and Exchange Commission budget, essentially limiting their ability to protect investors from security scam artists. They passed deregulation of energy derivatives, which enabled Enron to run wild, and they opposed President Clinton's efforts to participate in international efforts to check offshore tax havens. In other words, they created the climate and increased the incentives to commit the kind of corporate fraud that has robbed millions of Americans of their pensions and financial security.

This bill corrects some of those, let me call them, mistakes. But it does not do all that needs to be done. It does not deal with the issue of corrupt manipulation of stock options. It does not deal with the problem of fraudulent IPOs. Yes, this bill is a good bill as far as it goes. It is certainly better than that cream puff legislation that was out here last April or the fraudulent piece that came out here last week. This is a much better effort and deals to some extent, to a significant extent, with the real problems that were created as a result of the deregulation mania that swept through this House and the other House as well beginning in 1995. So let us pass it but let us not kid ourselves. This was created here. It needs to be corrected here and the job is not yet done.

Mr. LAFALCE. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from New York (Mr. LAFALCE) and the gentleman from Ohio (Mr. OXLEY) as well who, as he will recall in the early days of the Enron debacle, I joined him in his hearings and I thank him for the kindness extended. And for those of us in Houston, we thought that the world had collapsed and it was only us.

I remember a teaming town hall meeting that I held with the interim leadership of Enron, and one of those laid-off employees stood up and said that he budgets his shaving cream and his toothpaste because he was barely left with 75 cents. Those employees were laid off within 24 hours after Enron had filed bankruptcy, within 72 hours of giving retention bonuses of $105 million to corporate execs.

But then we found out there was a roll call of corporate failures in America. We knew it was not us, but we realized that on behalf of America we had to do something. And I am glad that Mr. LAFALCE stayed strong on the strength and the toughness of these legislative initiatives that would bring us now to the point where we do have criminal penalties for securities fraud, and though I have an omnibus bill that includes many of these features, and I am delighted that they are incorporated in this legislation, we needed to speak now and we are speaking now because we have legislation that penalizes those who would alter or destroy documents.

It unfolded again in Houston as the Andersen trial proceeded. We give shareholders the right to sue and most of all we require reports when corporate insiders dump their stock. But, Mr. Speaker, we have yet one more thing to do and I hope we will do it, and that is, to give secured status to those unemployed workers who suffer when a company files bankruptcy, and I hope we will pass that legislation in the near future. I ask my colleagues to vote for this bill that will send a strong message to the corporate markets of America.

This has been a year when the faith of ordinary Americans has been badly shaken. The restatements of corporate earnings have been followed by accusations of corporate wrongdoing at some of the country's largest and most touted corporations, including Global Crossing, Bristol Myers Squibb, Tyco International, and Worldcom Inc. The billions of dollars in losses in shareholder equity are mounting every day.

The string of recent corporate disclosures undermines investor confidence, scares off foreign investment, and slows down an already shaky recovery. To me, it is not enough to talk about accountability, you have to act to ensure it. Innocent investors have been betrayed by the abuses of creative accounting practices and financial disclosure or more appropriately non-disclosure. I am appalled at what has happened to them as a result of this tragic event.

In today's economy, there is an emerging crisis of a lack of universal confidence in our markets. What has failed is nothing more than the system of overseeing our capital markets. We have an opportunity and obligation to repair the trust of investors. It's tempting to brush aside business ethics as a nebulous, well-intentioned subject suitable for business school, with little practical value in the real world. That is a big mistake. A 2000 survey by the Ethics Resource Center found that 43 percent of respondents believed their supervisors don't set good examples of integrity. The same percentage felt pressured to compromise their organization's ethics on the job. That's a startling number, two years before Enron imploded.

A crucial feature of corporate ethics is the understanding of the business organization as a moral actor. Moral actor means that the company can be held responsible and accountable from an ethical perspective.

It is important to recall that the insistence on corporate ethics does not diminish the importance of the ethics of individuals and institutions. Corporate ethics fills a gap and recognizes the crucial roles which business organizations play in modern societies. When moral actors are held responsible for what they can do the usual games of finger-pointing and blaming each other can be reduced. It has become common practice for corporations to prepare an ethics code for the guidance of their officers and employees. However, one corporate C.E.O. has argued that this is simply an empty gesture since, "those corporations with a sound moral base do not need it and for the others it is just a fig leaf." This is supported by the fact that the introduction of corporate codes did not prevent the recent white collar scandals.

There is a tendency in many corporate ethics codes not to make the same clear cut demands of its directors as are made of its employees. Consequently, it is difficult for employees to refrain from full disclosure when managerial pressure is constantly brought upon them to make a sale at any price. Moreover, corporate ethics codes which promote whistle blowing, must in all fairness provide protection (financial, moral and job security) for the whistle blower. No corporate ethical code can operate when management policy seeks to find legal loopholes in the requirements of the fiscal or regulatory authorities. Just as the codes require individual conscience and morality so do they require corporate management understanding that to be law abiding is not enough.

I believe this is the time for immediate action by Congress as thousands of employees and families are counting on congressional leadership to rise up against corporate failures. Congress has a responsibility to working class citizens of this country to provide legislation that (1) ensures plan protection of retirement accounts, by requiring plan diversification; (2) provides employees with investment advice about plan assets; and (3) expands and imposes both civil and criminal liability for pension plan fiduciaries and administrators. I think that Congress has failed to enact the reforms needed to curb these corporate accounting scandals.

The Enron debacle stands as a corporate wrong. The Enron fiasco has established beyond a shadow of a doubt that white collar fraud can be incredibly damaging and costs innocent Americans billions of dollars of their hard earned money. Enron employees worked hard to build Enron into one of America's largest and most profitable corporations, and they should not be punished for what their corporate managers did.

Employees are fearful of losing their jobs. Investors are worried whether they should continue to hold stocks in these failing corporations and the stock market. Retirees are concerned about the safety of their pensions. All these concerns undermine confidence in our financial markets and have the potential to derail our economic recovery. Because of all the corporate scandals that we have seen, thousands of workers have been hurt, and millions of investors and retirees have seen their 401(k)s gutted. I have introduced a bill that protects workers, protects shareholders, and protects pensions, H.R. 5110, the Omnibus Corporate Reform and Restoration Act of 2002.

H.R. 5110 prioritizes employees by allowing them to make claims on their corporation, after the corporation has filed for bankruptcy protection, for wages or severance of up to $15,000. This is important because workers have worked hard to build profitable corporations, and should not be penalized by the fraudulent behavior of their corporate managers.

Moreover, H.R. 5110 provides oversight of Boards of Directors, and prohibits loans to company officers and directors, and creates criminal penalties for destroying or altering documents. In addition, the bill effectively prevents plan administrators from engaging in unlawful and unethical practices, and ensures that plan participants who are allowed to diversify their interest are adequately represented on pension boards and receive adequate independent investment advise. In addition, H.R. 5110 punished those who destroy or manipulate evidence of fraud. H.R. 5110 provides prosecutors with better tools to effectively prosecute and punish those who defraud investors and provides for tough criminal penalties to make them think twice before defrauding the public.

H.R. 5110 toughens criminal penalties for altering or destroying documents. It also prohibits loans to officers and directors, which are authorized by the Board of Directors. It establishes a 20 percent Limitation on Employer Stock and Real Property held by Participant in Certain Individual Account Plans. In addition, H.R. 5110 allows for plan participants to "opt out" of the 20 percent limitation provided that they give signed and written notice of such waiver. H.R. 5110 improves Accounting Standards for Special Purpose Entities [SPE]. It compels the SEC to direct the Financial Accounting Standards Board to revise applicable SPE accounting language, by increasing the 3 percent rule to 10 percent. The 3 percent rule currently calls for an owner independent of the would-be-parent to make a substantive equity investment of at least 3 percent of the SPE's total capital.

The Senate has passed S. 2673, Public Company Accounting Reform and Investor Protection Act of 2002 sponsored by Senator PAUL SARBANES. This makes key improvements over our current system. It creates a strong independent audit oversight board to audit the auditors. It restricts the non-audit services that an accounting firm can provide to public companies it audits. What this means is that auditors will not have conflicts of interest which would interfere with their auditing. In addition, it says that CEOs and CFOs must certify the accuracy of financial statements and disclosures. Also, S. 2673 requires CEOs and CFOs to relinquish bonuses and other incentive-based compensation and profit on stock sales in the event of an accounting restatement resulting from fraud. And most importantly, it authorizes funding for the SEC to $776 million, as compared to the $469 million in President Bush's budget request for the SEC.

It appears that the Republicans are trying to slow down the progress of the Sarbanes bill, by bringing a bill that would impose tougher criminal penalties on fraudulent corporate executives. They have passed H.R. 5118, Corporate Fraud Accountability Act of 2002. Most troubling about H.R. 5118 is the lack of whistleblower protection and the extension of the statute of limitations for investor lawsuits.

S. 2673 extends whistleblower protections to corporate employees, thereby protecting them from retaliation in cases of fraud and other acts of corporate misconduct. Whistleblowers in the private sector, like Sharron Watkins, should be afforded the same protections as government whistleblowers. The Republican bill omits this provision.

Consequenlty, S. 2673 amends the unnecessarily restrictive statute of limitations governing private securities claims. Under current law, defrauded investors have only one year from the date on which the alleged violation was discovered or three years after the date on which the alleged violation occurred. Because these type of violations are often successfully concealed for several years, the Senate increased the time period to 2 years after the date on which the alleged violation was discovered or 5 years after the date on which the alleged violation occurred. This protects investors, but the Republican bill lacks this provision.

Alan Greenspan, the Federal Reserve chairman, pointed out, in his testimony to the Senate Banking Committee on July 17th, that a corporate culture blighted by infectious greed was the cause of the breakdown in confidence among investors. Chairman Greenspan, who has been an advocate of deregulation and reliance on market forces to police good business practices, acknowledged that he had been mistaken in initially opposing government involvement in oversight of auditing. "My view was always that accountants knew or had to know that the market value of their companies rested on the integrity of their operations" and that government regulation of accounting was therefore "unnecessary and indeed most inappropriate, but I was wrong".

If the Chairman of the Federal Reserve says that his opinion was wrong concerning oversight of auditors, then change is needed. We must restore confidence in our financial markets by establishing sound guidelines for corporate governance and auditing that investors can trust and feel confident with their investments. I ask my colleagues to support H.R. 2763, the corporate accountability report which includes many of the provisions of my Omnibus Corporate Responsibility Act, H.R. 5110, and is now much stronger with whistleblower protection and criminal penalties for document destruction and bad decisions by corporate executives.

Mr. LAFALCE. Mr. Speaker, I yield myself the balance of my time.

This has been a long journey. I remember when we assumed jurisdiction for the first time in the House Committee on Financial Services over the field of securities. That was January of 2001. And one of the very first things I did was to begin meeting with representatives from the SEC, the Securities and Exchange Commission; and most especially with the acting chairman at the time, Laura Unger, former staff assistant to Senator D'Amato; and also with the chief accountant at the time, Mr. Lynn Turner.

And from Ms. Unger I learned how grossly understaffed the SEC was. I learned from her how much more money they believed they needed than they were able to get out of OMB. I learned how limited their staff resources were in comparison with the enormous increase in their work load and I brought this to the attention of the House Committee on Financial Services during hearings and during markups. We really should have increased the authorization for the SEC much, much earlier.

From Mr. TURNER I learned about the enormous number of earnings restatements that the SEC was mandating. As a matter of fact, they were tripling in 6 months what they had done the prior entire year. And I learned about the earnings manipulation that was taking place in corporate America, the earnings manipulation that was being done by corporate officers, acquiesced in either knowingly, or unknowingly in a great many instances—probably in most—by corporate directors, and acquiesced in, either knowingly or unknowingly, but complicitly by auditors, oftentimes with a conflict of interest.

I learned, too, about the enormous conflicts of interest that research analysts had. That alarmed me so much so that I sent a newsletter out to each and every one of my constituents in early 2001 called "Protecting Your Investments" where I talked about earnings manipulation, where I talked about the desire of corporate officers, directors, et cetera to increase market capitalization because their compensation was based, in large part, on stock options and how we needed to do something about that.

I talked in that newsletter about the conflicts of interest that research analysts have because they have become hypesters, spinsters in order to obtain investment banking business for their securities firms.

And I was disappointed when the only bill we took up was a bill that would reduce the SEC fees. We did have one good provision in that bill, and that was pay parity, but I thought we needed to give attention in 2001 to all of those issues. I was also disappointed when President Bush, at the end of 2001, did sign that bill and could not bring himself to even mention pay parity and the need for pay parity. All he talked about was how wonderful it is to cut the fees that individuals have to pay before the SEC.

I was disappointed when, even after Enron, which was at the very end of 2001, when this should have been a matter that everybody was concerned about. Wanting to do something, the President barely mentioned the problems in corporate America and could not bring himself to mention the problems of Enron. I was further disappointed because I was writing the President letter after letter that his budget in February of 2002 called for a minuscule increase of 6 percent, which was not enough to do anything. We needed so much more, as Chairman OXLEY knows, because in 2002, we did pass a bill significantly increasing the authorization, although not the appropriations, for the SEC.

It has been a long journey. There have been good and bad ideas from both Democrats and Republicans. I introduced the best bill that my staff and I could think of early in 2002. I wish it had passed earlier. It did not. I think an awful lot of its best ideas are in this conference report, as are an awful lot of the best ideas of the gentleman from Ohio and others, and I think we can stand proud today on this product. I just wish we would have acted upon it earlier. There are lessons to be learned from this for the future. This could fade from memory.

Mr. Speaker, how much time do I have left?

The SPEAKER pro tempore (Mr. SWEENEY). The gentleman's time has expired.

Mr. LAFALCE. Let us vote for the bill. And we know what those lessons are. Let us heed them in the future.

Mr. Speaker, I ask unanimous consent for 1 more minute.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. LAFALCE. We would not be here today without the tremendous work of staff. Staff really does it all. We put our names on legislation, but staff really does the work. I have had a great staff. My staff director, Jeanne Roslanowick, who is also my general counsel, is magnificent. I have had so many individuals I cannot mention them all, but Lawranne Stewart and Michael Paese of my staff have devoted almost all their time from the day they came with me in drafting this legislation. They gave it to the Senate, they worked with the Senate staff basically, and Senator SARBANES and his staff basically took our work product. It is their work product, not mine, and they should be recognized. If there are any names on this bill, it should be the names of the staffers who really drafted it.

Mr. OXLEY. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from Ohio is recognized for 3½ minutes.

Mr. OXLEY. Mr. Speaker, we indeed, I would say to my friend from New York, have come a long way. This has been quite a journey. The gentleman from New York pointed out that we had first gotten that jurisdiction in the new Committee on Financial Services last January, and what a ride it has been on a number of very important issues, but nothing is more important really than restoring investor confidence in our system, and that is really what brings us here today in this legislation.

Our committee was the first to have a hearing when Enron became an issue. That was back last year, in December. We were the first committee to have a hearing on the WorldCom bankruptcy. We then passed meaningful legislation, known as CARTA, back in April when nobody thought we could do it, passed it out of the committee on a bipartisan vote, came to the floor, it passed by a 3-to-1 margin with 119 Democrats voting for that legislation, and the heart and soul of what we have today was embodied in the CARTA legislation.

There is a lot of misinformation out there that that is not the case. Believe me, the idea of having an oversight board, an independent oversight board, tightening the rules through the SEC, providing more penalties and more transparency all were embodied in the CARTA legislation and that is why it enjoyed such wide bipartisan support. And then 3 months later, the Senate acted when the WorldCom situation blew up, and I give them a great deal of credit. That is what brings us here today, to adopt this conference report.

We have made enormous progress. The SEC is strengthened substantially. The gentleman from New York mentioned the analyst issue. Chairman BAKER, at my direction last year, started hearings on analyst conflicts and it brought us to a press conference in February in which we announced that the SEC and the SROs were getting together and drafting regulations. Those regulations have been in effect now for 2 weeks. Nobody knows about it because everybody is paying attention to what is going on here in the Congress, but those are very important rules that are going to be very effective in dealing with analysts and their conflicts. The New York Stock Exchange, the NASDAQ, announced listing requirements, again, virtually ignored in the media but really have teeth in terms of corporate governance. They are saying to these folks, "If you don't get your act together, you're not going to be listed on the NASDAQ or the New York Stock Exchange."

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The Business Roundtable stepped forward with best practices.

So we are here today to celebrate, I think, a very strong bipartisan bill. This is how the process works. We had great consultation and work with the Senate. I want to pay tribute to my good friend from New York, the ranking member of our committee, who I worked with on a number of issues, and also in particular Senator SARBANES, the chairman of the Banking Committee in the Senate. I cannot think of anybody that I have worked with in my 21 years in the Congress who has been more open to ideas and suggestions and has been more professional in the way he has handled himself on this important legislation, and he deserves a great deal of credit for getting us where we are today.

Sometimes in the world of Washington politics it is all about who is up, who is down, who has won, who has lost. The bottom line here is the American people have won. We have restored or are beginning to restore investor confidence with what we have done, as well as what happened in the private sector and among the regulators.

Yes, we strengthened the SEC, and, yes, even with the increased authorization, I would say to my friend from New York, the SEC will still be getting twice the amount of fees that it will take to run the organization.

This has been a wonderful experience I think for all of us, and I would encourage and urge all of the Members to support this very strong conference report. Let us get this bill to the President for his signature, hopefully as early as next week.

I think all of us can take a great deal of pride in what we have been able to accomplish today.

Mrs. MINK of Hawaii. Mr. Speaker, I rise in strong support of H.R. 3763, the Accounting Industry Reform Act. It represents an important step to restoring the integrity of our corporate system. I commend the conferees for producing a strong and effective piece of legislation.

At Enron, Adelphi, and WorldCom, executives and auditors cooked the books in order to fatten their bank accounts while placing the interests of their companies, their employees, and their shareholders at risk. The public has responded to these accounting lapses with understandable outrage. Thousands lost their savings. Even more lost their retirement accounts. Thousands are without work, and companies are facing bankruptcy.

H.R. 3673 imposes tough criminal penalties for corporate wrongdoing. Many will serve time in jail. Among other things, it punishes those who defraud shareholders of publicly traded companies and those who destroy or create evidence with the specific intent of obstructing justice. The bill also gives shareholders adequate time to pursue securities-fraud cases, protects those who disclose information that help detect and stop fraud, and compensates victims of securities fraud.

H.R. 3673 provides that corporate executives must certify their financial reports and forces those found guilty of noncompliance to forfeit profits and bonuses they may receive. It prevents officers and directors who engage in wrongdoing to move from one company to another. And, the bill prohibits corporations from providing "sweetheart" loans—that is, direct or indirect personal loans—to or for any director or executive officer.

I strongly urge my colleagues to support H.R. 3673 and send a strong message to executives, auditors, stock analysts, and directors that we will no longer tolerate a corporate culture of greed that places entire companies, thousands of jobs, and billions of dollars worth of private investments at risk.

Mr. ETHERIDGE. Mr. Speaker, I rise in support of this corporate reform bill to crack down on crooked business executives. This Congress must take action to rein in these crooks and restore confidence in American corporations.

Mr. Speaker, we must all remember that this bill regulates public corporations, not privately-held companies. By accepting money from private citizens, these corporations bear a special responsibility to their investors and need to be held accountable.

The American financial system has been the envy of the world because of its long history of integrity. Both individuals and corporate money managers around the world have long believed that they could invest in American stocks with confidence. They believed that the information they received from public companies was timely and accurate.

Lately that trust has been sorely tested, and the plunging stock market is a clear indicator of investor fears.

H.R. 3763, the Accounting Industry Reform Bill, will help restore investor confidence in America's financial markets by instituting a series of reforms that will increase corporate responsibility standards, improve regulatory oversight and toughen criminal penalties.

With this legislation Congress sends a clear message to the American people that we will not tolerate skirting securities laws in order to obscure or cover-up financial mismanagement and mask corporate greed. This bill will enact common-sense reforms for publicly traded companies to keep investors safe and restore faith in our economic institutions.

The American people put their trust and their money into the stock market as a savings vehicle for their children's education, their retirements and their financial stability. We owe it to them to make sure everyone, not just corporate insiders and rich investors, has access to the same accurate, clear and timely information on which to base their financial decisions. I urge America's business leaders to work with Congress and regulatory authorities to successfully implement these new reforms, punish corporate criminals and restore confidence in our financial markets.

Mr. GEORGE MILLER of California. Mr. Speaker, I rise in support of the conference report on H.R. 3763, the "Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002." The fact that the U.S. Congress is responding so quickly and strongly to the corporate scandals that are unfolding each day demonstrates how serious the problem is and the danger to the entire U.S. economy. Much of the focus has been on the huge salaries, giant golden parachutes, and obscene loans, all for the executives who were mismanaging many of these corporations.

But that relentless greed has led to financial ruin for tens of thousands of employees and shattered the retirement security of hundreds of thousands of others. Throughout the 1990's, Wall Street kept telling everyone that the stock market could be an ever expanding pie and everyone would be a winner. People who had never bought a stock in their lives were convinced to invest, and often, invest with inadequate information about how to do so and protect their economic security at the same time.

But little by little, many companies had to lie and steal to keep the myth going. And now we are all paying the price. I hope the bill before us will stem the tide. I hope Wall Street and Main Street will wake up and learn to play by the rules once again. And let's be clear: this bill establishes much tougher rules. There is no magic way to make money. Companies have to earn it. They have to make products that people want to buy. They have to treat people fairly. You can't cook the books and pretend you have profits. Corporate America has to go back to the basics and earn the trust of the American people again.

I particularly want to comment on the effect the still-unfolding corporate scandals have had on our pension system and the work still before Congress. Part of today's problem has also involved companies using their pension plans like company bank accounts. That behavior must stop, and Government regulators must do a better job to ensure it has stopped. Pension plans are the employees' money. Workers should have involvement and be provided full information on how their pension plan is operated.

The bill before us requires pension plans to provide 30 days advance notice of any restrictions on the sale of employer stock or other plan investments. A proposal first included in the pension reform bill proposed by Democrats on the Committee on Education and the workforce. I am glad that the bill toughens current ERISA criminal penalties for ERISA violations.

I am glad the bill cracks down on insider trading and loans to corporate officers, a provision first proposed in legislation I recently introduced.

But, we need to go even further. It is time for the Congress to pass strong pension reform to protect the retirement security of all employees. We need to give workers a right to control their own pension funds. We need pension funds and mutual funds to demand better corporate governance. We need to look more aggressively at the adequacy of our retirement system. American workers will not be able to retire if their 401(K)s continue to be treated as piggy banks for Wall Street.

We have a lot of work still ahead of us, but today is a great step forward. I urge the Congress to continue to be vigilant and ensure that corporations play by the rules and act fairly.

Mr. OXLEY. Mr. Speaker, it is my understanding that the Board will have discretion to contract or outsource certain tasks to be undertaken pursuant to this legislation and the regulations promulgated under the Act. Examples of tasks suitable for contracting or outsourcing would include maintenance of computer databases and registration records. Of course, an exercise of discretion in this manner does not absolve the Board of responsibility for the proper execution of the contracted or outsourced tasks.

Mr. BEREUTER. Mr. Speaker, this Member rises today to express his strong support for the conference report on H.R. 3763, the Public Company Accounting and Investor Protection Act of 2002. This bill is necessary to protect investors by ensuring auditor independence in the accounting of publicly traded companies.

Recent corporate scandals, such as Enron, Arthur Andersen, WorldCom, Global Crossing, and Tyco, have shaken investor confidence in the U.S. stock market. The "looting" of businesses for unreasonable personal gain and the flagrant deception of stockholders and investors by top executives in some instances has been outrageous. This Member believes that a renewed sense of corporate responsibility in America is needed in order to restore the trust of investors. Guilty corporate leaders should serve prison terms and not in "country club" prisons. As a result of these recent corporate scandals, Congress is voting today on this conference report in order to strengthen the laws which govern publicly held corporations and accounting firms.

This Member would like to first express his appreciation to the distinguished gentleman from Illinois (Mr. HASTERT), the Speaker of the House, and the Distinguished gentleman from Texas (Mr. ARMEY), the Majority Leader of the House, for bringing this conference report to the House Floor before the August recess and thereby sending a strong signal—that corporations, and those individuals who run such corporations, must be responsible, and if they are not responsible, then this legislation will ensure that they pay a stiff price for such arrogance and deception.

This Member would also like to express his appreciation to the distinguished gentleman from Ohio (Mr. OXLEY), the Chairman of the House Financial Services Committee, for his steadfast efforts to bring this conference report to the House Floor. In addition, this Member would like to express his appreciation to the distinguished gentleman from Louisiana (Mr. BAKER), the Chairman of the Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, for his innovative efforts, which are included in this conference report. Lastly, this Member would also like to give recognition to the distinguished gentleman from Maryland (Senator SARBANES), the Chairman of the Senate Banking Committee, for his good faith efforts in negotiating this conference report.

It is very important to note that in April the House acted first in response to this crisis of confidence in corporate responsibility when the House passed its original version of corporate accounting reform (H.R. 3763) on April

24, 2002, by a bipartisan vote of 334–90. The Senate later passed its legislation (S.2673) on July 15, 2002, by a vote of 97–0. However, subsequent to the House and Senate's passage of their respective bills, many more corporate accounting scandals have been brought to the public's attention. Therefore, to address these increasingly serious matters, the House passed the Corporate Fraud Accountability Act of 2002 (H.R. 5118) on July 16, 2002, to further strengthen criminal penalties and provide jail terms for accounting and auditing improprieties at publicly traded companies. As such, this Member is pleased that the conference report for H.R. 3763 properly takes the best provisions from each of the House-passed bills and the Senate-passed bill in order to give maximum future protection to American investors.

Therefore, this Member would like to discuss the following important provisions of the conference report for H.R. 3763, which provide the following: (1) creates a public company accounting oversight board; (2) increases auditor independence; (3) stiffens criminal penalties; (4) holds corporate executives accountable; and (5) provides for enhanced corporate disclosures to investors.

1. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

First, the conference report creates a public company accounting oversight board consisting of five members whom are independent of the accounting industry. Three of the five members must never have been practicing accountants and the other two members may only be accountants who have not practiced activiely for the past five years. This oversight board is authorized to set auditing, quality control and independence standards and it has disciplinary powers to impose sanctions including a finding that a firm is not qualified to audit publicly held companies.

Under current law, accountants for publicly held corporations are subject to partial oversight by both their professional organizations and governmental agencies, including the American Institute of Certified Public Accountants, the Federal Accounting Standards Board, the Securities and Exchange Commission, and the state boards of accountancy which license accountants at the state level.

2. AUDITOR INDEPENDENCE

The H.R. 3763 conference report also addresses the problems of auditor independence which, for example, were evident in Arthur Andersen's disputed accounting of Enron. This Member would like to focus on the following three auditor independence provisions of this legislation which: makes the audit committee of the board of directors of a publicly held corporation responsible for the hiring, compensation, and the oversight of the independent auditor; prohibits accounting companies from providing enumerated consulting and auditing services to publicly held companies (This addresses an obvious conflict of interest. It is important to note that this conference report states that auditors may provide permitted consulting services, such as tax preparation, for their publicly held auditing clients with the approval of the audit committee of the client's board of directors.); and requires the rotation of the chief audit partner after auditing a publicly held company for five consecutive years.

3. STRENGTHENS CRIMINAL PENALTIES

The H.R. 3763 conference report appropriately increases the criminal punishment for those corporate crooks who defraud their investors. For example, the conference report creates a new crime of "securities fraud" whereby whoever knowingly executes a scheme or artifice to defraud any person in connection with any security shall be fined and/or imprisoned for not more than 25 years. In addition, this conference report also increases the criminal maximum prison term for mail fraud and wire fraud violations from 5 to 20 years.

Furthermore, the conference report for H.R. 3763 strengthens the laws that criminalize document shredding and other forms of obstruction of justice. This conference report allows a maximum prison term of 20 years for tampering with evidence and a maximum prison term of up to 10 years for destruction of audit records. It is important to note that the criminal penalties in this conference report are very similar to those found in the Corporate Fraud Accountability Act of 2002 (H.R. 5118) which the House passed on July 16, 2002.

4. HOLDS CORPORATE EXECUTIVES ACCOUNTABLE

As is well documented, recently a number of corporate executives have abused their power to the great detriment of their shareholders. For example, some corporate executives, who defrauded their investors of their savings, are still able to live in their extravagant mansions. The conference report for H.R. ??36763 addresses these abuses, as the agreement requires chief executive officers and chief financial officers of publicly held companies to certify the accuracy of financial reports and holds them liable if they knowingly deceive the public with such reports. Furthermore, the measure also mandates that chief executive officers and chief financial officers of publicly held companies must return bonuses received within one year of any company report that requires a correction because of misconduct.

Additionally, it is important to note that this conference report further addresses corporate executive impropriety by including a provision known as the Federal Account for Investor Restitution (FAIR), which was initiated by the distinguished gentleman from Louisiana (Mr. BAKER). The FAIR provision requires that funds be returned from these fraudulent corporate executives to investors who have lost money in the markets as a result of corporate executive malfeasance.

5. ENHANCED CORPORATE DISCLOSURES FOR INVESTORS

Finally, in order to keep investors fully apprised of the activities of a publicly held corporation, a provision in the conference report requires companies to make real-time disclosures of financial information that is important to investors, such as material changes in a company's financial condition. This provision is an initiative of the House and this Member is pleased that the Senate agreed that this was an important provision to include in this measure.

Mr. Speaker, on a different note, it should be noted that this Member is a cosponsor of H.R. 5147, which was introduced by the distinguished gentlelady from California (Ms. BONO) and the distinguished gentleman from Nebraska's 2nd Congressional District (Mr. TERRY). This legislation would require that the value of stock options granted by a public corporation to an officer or employee must be recorded as an expense in a corporation's financial statement. However, this Member believes that it is very unfortunate that the concept behind H.R. 5147 is not included in the conference report of H.R. 3763.

This Member also believes that it is necessary to count stock options as corporate expenses. Publicly held companies currently are able to hide billions of dollars of costs and thus inflate profits through the loophole of not counting the cost of stock options as an expense. A distinguished Nebraskan, Mr. Warren Buffet, has been a strong advocate of counting stock options as expenses. In fact, he serves on the corporate boards of Coca-Cola and the Washington Post, both of which, on their own initiative, have decided to count their stock options as expenses. This Member would encourage other corporations to follow their example and would also encourage his distinguish colleagues (Mr. TERRY and Ms. BONO) to continue their pursuit of H.R. 5147's passage into law.

Mr. Speaker, in conclusion, this Member would note that the conference report for H.R. 3763 is a giant step forward in providing further protection for investors of publicly held corporations in the future. In addition, this Member firmly hopes that the corporate executives at Enron, Arthur Andersen, and WorldCom are punished in the proper manner for their grossly irresponsible, probably illegal, corporate behavior.

In closing, this Member urges his colleagues to support the conference report for H.R. 3763.

Mr. LUTHER. Mr. Speaker, today represents what this Congress can accomplish when we work together in a bipartisan manner. Today this Congress is poised to pass legislation that will go a long way toward restoring the integrity of the equity markets and, consequently, investor confidence in those markets.

It took us far too long to get here. In late April, this House passed a bill that represented a start, but was still wholly inadequate in addressing the deficiencies that currently plague corporate auditing and securities regulations. Those deficiencies have now largely been addressed in this Conference Report. By creating a truly independent accounting oversight board, mandating true auditor independence, requiring CEO certification of the accuracy of financial statements, imposing stiff criminal penalties for fraud, and initiating a rulemaking procedure for the conflicts of interest of stock analysts, this Conference Report represents a promising legislative response to jittery investors who understandably have lost faith in the financial information on which they rely.

Most importantly, this legislation substantively addresses the type of massive and egregious corporate fraud that has hurt so many ordinary Americans. Thousands of hard working employees have been mercilessly punished for the deeds of rich executives who enriched themselves by pushing the envelope on accounting standards, sometimes to the point of criminal culpability. If there is one outcome to this bill that we can all be particularly proud of, it is the knowledge that we are protecting millions of hard-working Americans—

their jobs, their investments and their pensions—from unethical corporate behavior. This impact on the lives of ordinary citizens cannot be understated, and I am very pleased that we have finally come together as a Congress to address their needs and not the needs of entrenched corporate interest groups that too often dominate the political deliberations of this Congress.

Mr. SHOWS. Mr. Speaker, today I rise in favor of the bipartisan conference report on Corporate Accountability that provides necessary reform and the appropriate reaction to the current business climate of scandal and fraud.

Although many honest corporate officers and executives abide by sound business principles, we now have the framework in place to prevent wrongdoing and punish those who refuse to play by the rules.

Consumers, employees, and investors affected by the recent revelation of widespread financial misrepresentation and fraud deserve both answers and solutions so that confidence in accounting independence, objectivity, and integrity is restored.

In my district, the work of honest, hardworking employees and the reputation of a home grown Mississippi company has been infected by corporate greed, as executives cooked the books, deceiving the investing public and company employees.

In fact, in the few days since this conference began, WorldCom, the second largest long distance provider in the U.S. and the only Fortune 500 company in Mississippi filed for bankruptcy.

I was disappointed that the Shows-Leahy provision, which would have increased the amount of severance pay that WorldCom employees would receive under the bankruptcy filing, was not included in the conference report. Unfortunately, although House Republicans accepted almost all of the tough, Senate Democratic provisions, they refused to accept this important worker protection provision. WorldCom employees faced unexpected job loss through no fault of their own. They deserve fair treatment and due severance. As the Congressman who represents WorldCom's headquarters and the many employees and investors who have suffered from the revelation of accounting improprieties at WorldCom, I will continue to push this issue and to call on my colleagues in Congress to support commonsense worker protection.

Investors and employees charged the conference committee to look at the systemic issues that have encouraged executives in the corporate world to ignore sound business principles.

We have answered this call and delivered a strong bill. This reform package establishes a new independent, regulatory body—the Public Accounting Oversight Board—that will oversee the auditing of publicly-traded companies. Under these reform provisions, CEOs will be required to certify the accuracy of company financial reports. Company loans to corporate officers will be prohibited, and auditors will be required to maintain true independence from the company under review. The bill also requires the forfeiture of bonuses and other incentives in the event of an accounting restatement and serious misconduct by an executive officer.

Victims whose savings and retirement was lost at the hands of greedy corporate executives should be compensated. The Corporate Accountability package requires the Securities and Exchange Commission to establish the "FAIR" fund. This fund would be used to compensate victims who lost money because of corporate wrongdoing. Funds for FAIR would come from civil penalties collected from corporate executives through administrative or judicial fines.

I appreciate the opportunity to serve as a member of the Conference Committee. I am proud of the product reached through bipartisan negotiations. I fully support the strong measures in the Public Company Accounting Reform and Investor Protection Act because, although we cannot legislate corporate morality, provisions in this bill will deter and severely penalize those who lie, cheat, and steal by falsifying a company's financial statements to pad executives' pockets on the backs of its employees and shareholders. U.S. investors and employees deserve no less.

Mr. CHAMBLISS. Mr. Speaker, I rise today in support of H.R. 3763, the Corporate Accountability Act of 2002. I congratulate my good friends Congressman OXLEY and Congressman BAKER not only for their leadership on this legislation but for the leadership they have provided to this body in passing real reforms for corporate accountability.

Whether it is Global Crossing, Arthur Anderson, WorldCom, Enron, Tyco or Adelphia the story is the same. Some executives are cooking the books and employees and public stock holders are left holding the bag. Mr. Speaker, a crook is a crook, and it doesn't matter if you use a .38 special or a golden pen, if you steal you should go to jail.

I urge my colleagues to support this legislation, so when I go home to Georgia next week I will be able to look folks in the eye knowing that we passed legislation today which will provide stiffer penalties and greater oversight, so corporate crooks will no longer be able to prey on hardworking Georgians who play by the rules.

Mr. ROYCE. Mr. Speaker, thank you for this opportunity to voice my support for this important legislation. Last Friday, during the first hearing called for this conference committee, I stated my belief that the similarities between the House and Senate versions of this bill were greater than the differences between them. My belief has been vindicated here today, proven by the speedy conclusion reached between the House and the Senate on this conference report.

Last Friday, I also spoke of my desire to work with my colleagues from the other body, and from the other side of the aisle, to send President Bush the strongest, most sensible bill possible so that we could restore investor trust in the fairness of our capital markets. I believe that this legislation does precisely that, and I would like to compliment Chairman OXLEY and Chairman SARBANES for their hard work, dedication and willingness to compromise to reach a quick conclusion on this bill on behalf of the American people. The American investors who have lost their hard-earned savings, and those hard-working employees who have lost their jobs because of corporate malfeasance deserve quick and decisive action from their elected officials. Today, we have risen above partisanship and helped to restore confidence in the American capitalist system.

Last week I described the bi-partisan, anti-fraud sentiment that I believe is motivating each of us to reform American corporate governance and auditing standards by passing this legislation. Many of us here recognized a shortcoming in our legal system—the reticence to treat corporate criminal behavior as seriously as we treat common criminal behavior—and resolved that this bill should reflect the true seriousness of white-collar crime.

I believe that this legislation accomplishes this task. By including the House-passed language to increase the criminal penalties for securities fraud, document-shredding and mail and wire fraud, I believe that we have acted wisely and swiftly to prevent other Enrons, WorldComs and Global Crossings from happening. By including Chairman BAKER'S FAIR language, we have ensured that wronged shareholders whose hard-earned savings are stolen from them by pinstriped crooks have those funds returned to their retirement accounts, and not used to build a $100 million retirement mansion in Bermuda for an expatriate executive. By ensuring that companies disclose material changes to their financial condition to the public on a rapid and current basis, we have ensured that everyone, not just corporate insiders, has access to it.

I would like to congratulate all of my colleagues here today on their excellent work in producing this legislation, and I look forward to seeing President Bush sign it into law. The American people deserve nothing less.

Ms. ESHOO. Mr. Speaker, I rise in strong support of this Conference Report. Our markets have traditionally been the deepest, broadest and most transparent in the world. This transparency has given Americans confidence in those markets. Today, tragically that confidence has been shaken to the core. Innocent investors and employees have been decimated because of the collapse of once Fortune 500 companies.

This legislation will take a major step toward restoring confidence in corporate America, confidence in our markets, and confidence in our government's ability to protect investors from fraudulent activity. This bill gives the SEC the tools it needs to prevent future Enrons, Worldcoms, and other corporate scandals.

The bill we're voting on today: requires the SEC to appoint a full-time board to oversee and discipline if necessary auditors of publicly traded companies; prevents audit firms from providing consulting services to companies they audit, putting a stop to what was a major conflict of interest; require CEOs and CFOs of public companies to certify the accuracy of financial reports and be held liable for knowingly deceiving the public; and greatly increases the prison sentences for fraudulent activity. We've witnessed daily one corporate scandal after another so we know corporate self-governance has failed.

This bill responds to that failure with tough measures that ensure U.S. corporations, their executives, and the companies that audit them are fully accountable for the financial information they provide to investors.

I salute the work of Senator PAUL SARBANES, who's tireless effort led to this strong and solid bill. No matter what the criticisms have been to roll back or roll over, he stayed the course and now we will finally have the largest reforms to the SEC since the Great Depression.

Decent Americans deserve these protections. I urge my colleagues to support this measure.

Mr. BLUMENAUER. Mr. Speaker, today Congress will approve the Public Company Accounting Reform and Investor Protection Act of 2002 Conference Report, which will likely be signed into law by the end of this week. Like families nationwide who have seen investment savings deteriorate and have lost confidence in our markets and business leaders, I have been concerned with revelations about inaccurate corporate accounting and inappropriate and in some cases illegal corporate practices. Recent events have had tragic consequences in my district where employees of Portland General Electric had little control over the company's association with Enron.

I support this legislation that will provide funding and regulations that will improve the integrity of the corporate world and help alleviate the anxieties of employees and investors. I trust that this is an incremental step in the process to bring about accurate financial statements and independent relationships among corporate management, auditors, and investment analysts. The marketplace or Congress will need to address the issue of stock options to ensure meaningful reporting and eliminate perverse incentives, while not preventing companies from offering this important incentive to compensate employees and give them ownership opportunities.

While reforms are absolutely necessary, witness the 270 public companies that restated their financial statements in 2001, I'm also concerned that Congress does not turn this into a witch hunt or pass ill-conceived legislation. I will continue to work to ensure that we do not overreach our objective of a sound economy, ethical management and arms-length transactions. We will not be helping families and the economy be implementing unnecessarily stringent regulations that are costly and burdensome.

This legislation begins the process of putting in place the reforms needed to prevent future tragedies that are so devastating to the savings and lives of American workers and families. As we move forward, I urge my colleagues to continue to develop fair provisions that will both protect investors and employees while allowing the economy to thrive.

Mr. CONYERS. Mr. Speaker, I am very pleased that the conferees have reached an agreement on accounting reform, and I want to congratulate Chairman SARBANES and Chairman OXLEY for their work on this issue. I also want to thank Chairman LEAHY and Ranking Member LAFALCE for their stellar leadership in the area of corporate fraud.

The proposed agreement includes nearly all of the important safeguards from the legislation Senator LEAHY introduced in the Senate and that I introduced in the House in April. Among other things, the agreement includes language lengthening the statue of limitations for securities fraud, mandating document retention for auditors, civil whistle blower protection, and sentencing enhancements for document shredding. Some made no secret of the fact that they would have preferred to gut these safeguards. But in the end, Senate Democrats stood their ground, and this legislation represents a major win for the American public.

I wish House Republicans would have been able to agree to these critical reforms earlier, but in the end I believe we have strong legislation that will provide defrauded investors with a greater ability to recoup lost assets, afford prosecutors with increased tools to pursue corporate wrongdoers and impose harsher penalties for those accused of committing securities fraud.

As good as this bill is, it's important to note that the agreement is just a first step toward protecting American investors and workers. We still need to fix the many, many giveaways enacted by Congress in the 1995 Securities Litigation bill. For example, we need to restore civil liability against those that aid and abet securities fraud violators, and make sure that civil RICO applies in full to securities fraud. Measures such as this will make it abundantly clear that we will not tolerate future Enron or Worldcom situations.

With nearly 80 million citizens either directly or indirectly invested in the stock market, it's incumbent upon us, as Members of Congress, to provide hardworking Americans with the necessary protections to safeguard the money they'll depend on in their retirement. Hopefully, the actions taken today will be the first step, of many, toward achieving this goal.

Mr. FORD. Mr. Speaker, I rise in strong support of the conference report on H.R. 3763. This agreement is a great victory for investors, and for our economy.

Of course, it will take much more than legislation to restore the confidence in the markets that has been lost. But this bill puts in place a framework to restore confidence and ensure the integrity of the markets.

I salute Chairman OXLEY for his willingness to compromise on such important issues, and Ranking Member LAFALCE for his steady leadership. This legislation will crown his legacy in Congress and on the Financial Services Committee.

I am pleased that the conference report includes every substantive provision of the comprehensive reform bill written by Senator SARBANES. These include: establishing a strong and independent oversight board for the accounting industry to enforce high standards for auditors of public companies; ensuring that the independence of public auditors isn't compromised by consulting fees from their clients; separating Wall Street research form investment banking—so that small investors have access to the same unbiased research as insiders; imposing tougher criminal penalties for corporate fraud—while at the same time establishing a victims' restitution fund to disgorge the ill-gotten gains of corporate executives, white-collar thieves should not be allowed to walk off with the money they have stolen from investors and employees; disclosing insider stock transactions in real-time, not days after the fact; and at long last providing the SEC with the resources it needs to do its job. It may not give Commissioner Pitt the raise or the new limousine he has asked for. But it will allow the SEC to upgrade its computer systems and hire new investigators.

Mr. Speaker, more than half of all Americans invest in the stock market. They have entrusted public companies with their retirement savings and their children's college funds. And too often, they have been betrayed by those in positions of leadership and responsibility.

With this legislation, we cannot ensure the honesty and integrity of every individual, but we go a long way in strengthening the honesty and integrity of our system.

Mr. TIAHRT. Mr. Speaker, I rise in strong support of the accounting reform and corporate accountability conference report before us today. I commend my colleague, Chairman OXLEY, for the outstanding work he has done in crafting a final bill which will fully prosecute those who have violated the law and restore confidence in America's financial markets.

Like all Americans, I have been outraged at the revelations which have come to light in recent months concerning the practices of a number of public companies such as Enron and WorldCom, as well as the auditing practices of companies such as Arthur Andersen. While the list of affected companies pales in comparison to the more than 11,000 publicly traded U.S. companies, even a few transgressions are too many.

The bill before us would increase the maximum jail terms for mail and wire fraud from five years to 20 years, and create a new 25-year maximum jail sentence for securities fraud. Under the bill, securities fraud is defined as intentionally defrauding an individual in connection with a security or obtaining money from the purchase or sale of a security based on false pretenses. Additionally, the Conference Report strengthens laws which criminalize document shredding and other forms of obstruction of justice by providing a maximum penalty of twenty years for such a violation. Criminal penalties for pension law violations would be increased from a fine of $5,000 to $100,000 and from maximum jail time of one year to ten years.

As the recent improprieties have shown, corporate leaders, including CEOs, have been implicated in wrongdoing. Those who have the privilege of leading America's corporations have a responsibility to their investors, employees, and the public, to set ethical standards under which their companies operate. This legislation requires top corporate executives to certify that the financial statements of the company fairly and accurately represent the financial condition of the company and calls for penalties of up to ten years in prison and/or a $1 million fine. In general, willful and criminal violations of securities laws would carry a new maximum fine of $5 million—up from $1 million—and a new maximum prison-term of 20 years, up from ten years. If the violator is not an American citizen, the fine would increase to $25 million. Any attempts to retaliate against informants would carry a maximum ten-year prison term and/or fines under SEC laws.

One important area which this bill does not address is the issue of returning ill-gotten corporate gains to investors. I believe Congress must act to ensure that investors are able to reclaim their losses which are due to corporate fraud. And after the corrupt executives return the hard earned money of employees and investors, they need to get out of their mansions and yachts, and get into a jail cell.

Corporate officers who steal the retirement savings of hard-working Americans are no better than common purse snatchers on the street. In fact, they are worse given the position of trust and responsibility with which they are entrusted. If they "cook the books" in order to show a better bottom line, there will be a heavy price to pay.

I believe this bill sends a strong message to corporations throughout America that those who break the law will be severely punished. By dramatically increasing maximum prison terms and strengthening accountability and oversight, we have begun working toward the goal of reforming corporate America in a way which will enable citizens to have confidence in our financial markets.

I urge my colleagues to pass the Sarbanes-Oxley Conference Report.

Ms. JACKSON-LEE of Texas. Mr. Speaker, this has been a year when the faith of ordinary Americans has been badly shaken. The restatements of corporate earnings have been followed by accusations of corporate wrongdoing at some of the country's largest and most touted corporations, including Enron, Global Crossing, Bristol Myers Squibb, Tyco International, and WorldCom Inc. The billions of dollars in losses in shareholder equity are mounting every day.

The string of recent corporate disclosures undermines investor confidence, scares off foreign investment, and slows down an already shaky recovery. To me, it is not enough to talk about accountability, you have to act to ensure it. Innocent investors have been betrayed by the abuses of creative accounting practices and financial disclosure or more appropriately non-disclosure. I am appalled at what has happened to them as a result of this tragic event.

In today's economy, there is an emerging crisis of a lack of universal confidence in our markets. What has failed is nothing more than the system of overseeing our capital markets. We have an opportunity and obligation to repair the trust of investors. It's tempting to brush aside business ethics as a nebulous, well-intentioned subject suitable for business school, with little practical value in the real world. That is a big mistake. A 2000 survey by the Ethics Resource Center found that 43 percent of respondents believed their supervisors don't set good examples of integrity. The same percentage felt pressured to compromise their organization's ethics on the job. That's a startling number, two years before Enron imploded.

The Enron debacle stands as a corporate wrong. The Enron fiasco has established beyond a shadow of a doubt that white collar fraud can be incredibly damaging and costs innocent Americans billions of dollars of their hard earned money. Enron employees worked hard to build Enron into one of America's largest and most profitable corporations, and they should not be punished for what their corporate managers did.

Employees are fearful of losing their jobs. Investors are worried whether they should continue to hold stocks in these failing corporations and the stock market. Retirees are concerned about the safety of their pensions. All these concerns undermine confidence in our financial markets and have the potential to derail our economic recovery. Because of all the corporate scandals that we have seen, thousands of workers have been hurt, and millions of investors and retirees have seen their 401(k)s gutted. I have introduced a bill that protects workers, protects shareholders, and protects pensions, H.R. 5110, the Omnibus Corporate Reform and Restoration Act of 2002.

H.R. 5510 priorities employees by allowing them to make claims on the corporation, after the corporation has filed for bankruptcy protection, for wages or severance of up to $15,000. This is important because workers have worked hard to build profitable corporations, and should not be penalized by the fraudulent behavior of their corporate managers.

Moreover, H.R. 5510 provides oversight of Boards of Directors, and prohibits loans to company officers and directors, and creates criminal penalties for destroying or altering documents. H.R. 5110 punishes those who destroy or manipulate evidence of fraud. It provides prosecutors with better tools to effectively prosecute and punish those who defraud investors and provides for tough criminal penalties to make them think twice before defrauding the public.

The conference report, H.R. 3763, Corporate Accountability Conference Report, hoping to restore confidence in the scandal-tainted corporate world, has agreed to new regulation of corporation and their auditors. The conference report also establishes stiffer penalties for those corporate managers who commit financial fraud. The report holds corporate executives criminally liable for cooking their books if they knowingly and willfully certify them.

The Conference report establishes a new broad to oversee the auditors of companies traded on the stock markets. The conferees limited accounting firms' ability to profit as both auditors and consultants to the companies they audit. The conferees also gave shareholders more time to sue companies that mislead them. The conference committee also increases the maximum fines and jail sentences for corporate managers who violate new and existing corporate laws.

The report also says that CEOs and CFOs must certify the accuracy of financial statements and disclosures, and it requires those CEOs and CFOs who certify their corporate statements are accurate, they must relinquish bonuses and other incentive-based compensation and profit on stock sales in the event of an accounting restatement resulting from fraud. To ensure that these new laws are effectively regulated, the conference report increases the funding of the SEC to $776 million.

The Federal Reserve Chairman, Alan Greenspan, pointed out, in his testimony to the Senate Banking Committee on July 17th, that a corporate culture blighted by infectious greed was the cause of the breakdown in confidence among investors. Chairman Greenspan, who has been an advocate of deregulation and reliance on market forces to police good business practices, acknowledged that he had been mistaken in initially opposing government involvement in oversight of auditing. "My view was always that accountants knew or had to know that the market value of their companies rested on the integrity of their operations" and that government regulation of accounting was therefore "unnecessary and indeed most inappropriate, but I was wrong".

If the Chairman of the Federal Reserve says that his opinion was wrong concerning oversight of auditors, then change is needed. We must restore confidence in our financial markets by establishing sound guidelines for corporate governance and auditing that investors can trust and feel confident with their investments.

We stand at the brink of the most significant financial regulations in more than 60 years. We must do all that we can to help the thousands of employees and retirees, who have suffered greatly by these events, feel that will not be punished for the fraudulent behavior of their corporate managers. Therefore, I rise to support the conference report on corporate accountability, H.R. 3763.

Mr. MALONEY of Connecticut. Mr. Speaker, I want to thank Senator SARBANES and Chairman OXLEY, and their staffs, for all of their work in bringing this important bill to the floor. I especially want to thank Ranking Member LAFALCE for his work on this important bill, and note that he will be sorely missed.

Over the past few months investors have indicated, as reflected by the events on Wall Street, that they lack the confidence to continue investing in the U.S. capital markets. Corporations such as Enron and WorldCom have submitted fraudulent financial statements to intentionally mislead investors. Other corporations such as Stanley Works are attempting to abuse the tax code to evade their fair share of taxes. This Congress must make a strong statement that corporations and top executives have a responsibility to their communities to behave honestly and in keeping with the public trust. The legislation we pass today will send a strong message that corporations and their leadership have responsibilities to their investors and our nation that they cannot fail to fulfill.

The Congress has a duty to help restore the public's confidence in the marketplace and take steps to eliminate the ability of individuals or corporations to manipulate the information that investors need to make informed decisions. This bill puts corporate executives and auditors on notice. If you commit corporate malfeasance, defraud investors, take advantage of workers, or abuse the public's trust, you will spend time in jail. We also need to take the next step and stop corporate expatriates by shutting down the tax-haven loophole. Today's bill is not the final word, but it does well begin a process of reform that is urgently needed.

The accounting and corporate management issues before us are complicated. They are, however, critical to the proper function of our markets. As we all know, the availability of timely, accurate, and truthful data are the linchpins that allow for the free flow of capital. Unfortunately, events have highlighted that the existing structure of our Nation's accounting regime is vulnerable to manipulation and fraud. This legislation will go a long way to addressing those problems. But now we also need to make sure that this new legislation is properly enforced. Corporate wrongdoers must be held accountable for their actions. If they make money from their malfeasance, that money should be recovered for the investors. If they commit fraud, they should go to prison. Our legislation today makes strong enforcement possible.

Our next step in restoring corporate accountability should be to close the Bermuda loophole in our tax code and stop corporate expatriates. The tax code should be reformed to prohibit this scheme. And we must not allow companies who abandon their corporate responsibilities to our country to continue to be awarded federal contracts. Corporate expatriates benefit from over $2 billion in lucrative government contracts, from large consulting deals with U.S. government agencies, to equipping airport screeners, to providing tools and equipment to the Department of Defense. Corporate expatriates turn their backs on America at the same time that they reach their hands out for the hard-earned money of American taxpayer. Mr. Speaker, this is outrageous, and we must stop it! I introduced legislation, along with Congressman NEAL of Massachusetts, that would do just that.

Today, Mr. Speaker, I urge my colleagues to support this bill, and help restore investor confidence in our nation's capital markets. Later in this session, I will be asking for your support of the Neal-Maloney legislation to take the next step in restoring corporate accountability.

Mr. KIND. Mr. Speaker, I rise in strong support of the conference report on H.R. 3763, the Public Company Accounting Reform and Investor Protection Act. This measure is an important first-step in restoring public trust and consumer confidence in our domestic economy.

The measure's passage comes none too soon; as we all know, as investors have become more and more disenchanted with stock equities and the market continues to suffer vicious sell-offs. The NASDAQ and Standard & Poor's 500-stock index are back to 1997 levels, wiping out $7 trillion in value from the market's peak. The Dow Jones Industrial Average has dropped to the lows reached immediately following the September 11, 2001 terrorist attacks.

The free market system that has made our nation great still works. It is, however, based on trust. That trust is only as reliable as the information that is available to the public. When that information is fraudulent, the trust in our economic system collapses. Until that trust is restored our economy will not grow. Corporate officials have a responsibility to restore that trust but so do Congress and the President.

Therefore, as legislators, we must remember that the mere passage of this one bill will not cure the ills that currently plague our economy. Complete reform will also require the cooperation of the corporate community, working with Congress to reverse the resounding effects of the actions of shady executives and unresponsive auditors.

However, as I mentioned earlier, this bill is a good beginning, and I am pleased that the measure before us establishes a new, five-member independent oversight board with the power to establish and enforce auditing independence and to establish higher corporate ethical responsibilities. The independent board will have subpoena authority as well as disciplinary and standard-setting authority. The measure also places broad statutory restrictions on auditors, including on the nonauditing or consulting services that accounting firms currently provide to publicly traded companies.

Importantly, the bill attempts to improve the ethical standards of top corporate officers. Chief Executive Officers and Chief Financial Officers must certify the accuracy of their corporation's financial reports. If executives do not comply, they face stiff criminal penalties, including as many as 20 years in prison.

Again, let us remember, this bill is just the first step. In order to restore the public's trust, Congress, upon our return from the August recess, must consider and pass legislation that protects workers' retirement savings and strengthens investor rights. Until we do this, the American public will not be adequately protected.

For our capitalist economy to function successfully, corporate responsibility must remain paramount. In its absence, capitalism and the free market system ultimately fail.

The SPEAKER pro tempore (Mr. SWEENEY). All time has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OXLEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 423, nays 3, not voting 8, as follows:

[Roll No. 348]

YEAS—423

Abercrombie
Ackerman
Aderholt
Akin
Allen
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland

Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velázquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—3

Collins
Flake
Paul

NOT VOTING—8

Andrews
Clay
Gordon
Knollenberg
Meehan
Miller, Jeff
Stearns
Watkins (OK)

☐ 1209

Mr. DOOLITTLE changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. JEFF MILLER of Florida. Mr. Speaker, on rollcall No. 348, I was detained from returning for the vote.

Had I been present, would have voted "Yea."

Mr. CLAY. Mr. Speaker, on rollcall No. 348, I was unavoidably detained. Had I been present, I would have voted "Yea."

BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Mr. STUMP. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4546) to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, with a Senate amendment thereto and concur in the Senate amendment with an amendment.

The Clerk read the Senate amendment, and the House amendment to the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2003".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Congressional defense committees defined.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.
Sec. 105. Defense Inspector General.
Sec. 106. Chemical agents and munitions destruction, defense.
Sec. 107. Defense health programs.

Subtitle B—Army Programs

Sec. 111. Pilot program on sales of manufactured articles and services of certain Army industrial facilities without regard to availability from domestic sources.

Subtitle C—Navy Programs

Sec. 121. Integrated bridge system.
Sec. 122. Extension of multiyear procurement authority for DDG–51 class destroyers.
Sec. 123. Maintenance of scope of cruiser conversion of Ticonderoga class AEGIS cruisers.
Sec. 124. Marine Corps live fire range improvements.

Subtitle D—Air Force Programs

Sec. 131. C–130J aircraft program.
Sec. 132. Pathfinder programs.
Sec. 133. Oversight of acquisition for defense space programs.
Sec. 134. Leasing of tanker aircraft.
Sec. 135. Compass Call program.
Sec. 136. Sense of Congress regarding assured access to space.
Sec. 137. Mobile emergency broadband system.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.
Sec. 202. Amount for science and technology.
Sec. 203. Defense health programs.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Basic seismic research program for support of national requirements for monitoring nuclear explosions.
Sec. 212. Advanced SEAL Delivery System.
Sec. 213. Army experimentation program regarding design of the objective force.
Sec. 214. Reallocation of amount available for indirect fire programs.
Sec. 215. Laser welding and cutting demonstration.
Sec. 216. Analysis of emerging threats.
Sec. 217. Prohibition on transfer of Medical Free Electron Laser program.
Sec. 218. Demonstration of renewable energy use.
Sec. 219A. Radar power technology for the Army.
Sec. 219B. Critical infrastructure protection.
Sec. 219C. Theater Aerospace Command and Control Simulation Facility upgrades.
Sec. 219D. DDG optimized manning initiative.
Sec. 219E. Agroterrorist attacks.
Sec. 219F. Very high speed support vessel for the Army.
Sec. 219G. Full-scale high-speed permanent magnet generator.
Sec. 219H. Aviation-shipboard information technology initiative.
Sec. 219I. Aerospace Relay Mirror System (ARMS) Demonstration.
Sec. 219J. Littoral ship program.

Subtitle C—Missile Defense Programs

Sec. 221. Annual operational assessments and reviews of ballistic missile defense program.
Sec. 222. Report on Midcourse Defense program.
Sec. 223. Report on Air-based Boost program.
Sec. 224. Report on Theater High Altitude Area Defense program.
Sec. 225. References to new name for Ballistic Missile Defense Organization.
Sec. 226. Limitation on use of funds for nuclear armed interceptors.
Sec. 227. Reports on flight testing of Ground-based Midcourse national missile defense system.

Subtitle D—Improved Management of Department of Defense Test and Evaluation Facilities

Sec. 231. Department of Defense Test and Evaluation Resource Enterprise.
Sec. 232. Transfer of testing funds from program accounts to infrastructure accounts.
Sec. 233. Increased investment in test and evaluation facilities.
Sec. 234. Uniform financial management system for Department of Defense test and evaluation facilities.
Sec. 235. Test and evaluation workforce improvements.
Sec. 236. Compliance with testing requirements.
Sec. 237. Report on implementation of Defense Science Board recommendations.

Subtitle E—Other Matters

Sec. 241. Pilot programs for revitalizing Department of Defense laboratories.
Sec. 242. Technology transition initiative.
Sec. 243. Encouragement of small businesses and nontraditional defense contractors to submit proposals potentially beneficial for combating terrorism.
Sec. 244. Vehicle fuel cell program.
Sec. 245. Defense nanotechnology research and development program.
Sec. 246. Activities and assessment of the Defense Experimental Program to Stimulate Competitive Research.
Sec. 247. Four-year extension of authority of DARPA to award prizes for advanced technology achievements.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and maintenance funding.
Sec. 302. Working capital funds.
Sec. 303. Armed Forces Retirement Home.
Sec. 304. Range Enhancement Initiative Fund.
Sec. 305. Navy Pilot Human Resources Call Center, Cutler, Maine.
Sec. 306. National Army Museum, Fort Belvoir, Virginia.
Sec. 307. Disposal of obsolete vessels of the National Defense Reserve Fleet.

Subtitle B—Environmental Provisions

Sec. 311. Enhancement of authority on cooperative agreements for environmental purposes.
Sec. 312. Modification of authority to carry out construction projects for environmental responses.
Sec. 313. Increased procurement of environmentally preferable products.
Sec. 314. Cleanup of unexploded ordnance on Kaho'olawe Island, Hawaii.

Subtitle C—Defense Dependents' Education

Sec. 331. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
Sec. 332. Impact aid for children with severe disabilities.
Sec. 333. Options for funding dependent summer school programs.
Sec. 334. Comptroller General study of adequacy of compensation provided for teachers in the Department of Defense Overseas Dependents' Schools.

Subtitle D—Other Matters

Sec. 341. Use of humanitarian and civic assistance funds for reserve component members of Special Operations Command engaged in activities relating to clearance of landmines.
Sec. 342. Calculation of five-year period of limitation for Navy-Marine Corps Intranet contract.
Sec. 343. Reimbursement for reserve component intelligence support.
Sec. 344. Rebate agreements under the special supplemental food program.
Sec. 345. Logistics support and services for weapon systems contractors.
Sec. 346. Continuation of Arsenal support program initiative.
Sec. 347. Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad.
Sec. 348. Installation and connection policy and procedures regarding Defense Switch Network.
Sec. 349. Engineering study and environmental analysis of road modifications in vicinity of Fort Belvoir, Virginia.
Sec. 350. Extension of work safety demonstration program.
Sec. 351. Lift support for mine warfare ships and other vessels.
Sec. 352. Navy data conversion activities.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.
Sec. 402. Authority to increase strength and grade limitations to account for reserve component members on active duty in support of a contingency operation.
Sec. 403. Increased allowance for number of Marine Corps general officers on active duty in grades above major general.
Sec. 404. Increase in authorized strengths for Marine Corps officers on active duty in the grade of colonel.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.
Sec. 412. End strengths for Reserves on active duty in support of the reserves.
Sec. 413. End strengths for military technicians (dual status).
Sec. 414. Fiscal year 2003 limitations on nondual status technicians.

Subtitle C—Authorization of Appropriations

Sec. 421. Authorization of appropriations for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Sec. 501. Extension of certain requirements and exclusions applicable to service of general and flag officers on active duty in certain joint duty assignments.
Sec. 502. Extension of authority to waive requirement for significant joint duty experience for appointment as a chief of a reserve component or a National Guard director.
Sec. 503. Repeal of limitation on authority to grant certain officers a waiver of required sequence for joint professional military education and joint duty assignment.
Sec. 504. Extension of temporary authority for recall of retired aviators.
Sec. 505. Increased grade for heads of nurse corps.
Sec. 506. Reinstatement of authority to reduce service requirement for retirement in grades above O–4.

Subtitle B—Reserve Component Personnel Policy

Sec. 511. Time for commencement of initial period of active duty for training upon enlistment in reserve component.
Sec. 512. Authority for limited extension of medical deferment of mandatory retirement or separation of reserve component officer.
Sec. 513. Repeal of prohibition on use of Air Force Reserve AGR personnel for Air Force base security functions.

Subtitle C—Education and Training

Sec. 521. Increase in authorized strengths for the service academies.

Subtitle D—Decorations, Awards, and Commendations

Sec. 531. Waiver of time limitations for award of certain decorations to certain persons.
Sec. 532. Korea Defense Service Medal.

Subtitle E—National Call to Service

Sec. 541. Enlistment incentives for pursuit of skills to facilitate national service.
Sec. 542. Military recruiter access to institutions of higher education.

Subtitle F—Other Matters

Sec. 551. Biennial surveys on racial, ethnic, and gender issues.
Sec. 552. Leave required to be taken pending review of a recommendation for removal by a board of inquiry.
Sec. 553. Stipend for participation in funeral honors details.
Sec. 554. Wear of abayas by female members of the Armed Forces in Saudi Arabia.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in basic pay for fiscal year 2003.
Sec. 602. Rate of basic allowance for subsistence for enlisted personnel occupying single Government quarters without adequate availability of meals.
Sec. 603. Basic allowance for housing in cases of low-cost or no-cost moves.
Sec. 604. Temporary authority for higher rates of partial basic allowance for housing for certain members assigned to housing under alternative authority for acquisition and improvement of military housing.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.
Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.
Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.
Sec. 614. One-year extension of other bonus and special pay authorities.
Sec. 615. Increased maximum amount payable as multiyear retention bonus for medical officers of the Armed Forces.
Sec. 616. Increased maximum amount payable as incentive special pay for medical officers of the Armed Forces.
Sec. 617. Assignment incentive pay.
Sec. 618. Increased maximum amounts for prior service enlistment bonus.

Subtitle C—Travel and Transportation Allowances

Sec. 631. Deferral of travel in connection with leave between consecutive overseas tours.
Sec. 632. Transportation of motor vehicles for members reported missing.
Sec. 633. Destinations authorized for Government paid transportation of enlisted personnel for rest and recuperation upon extending duty at designated overseas locations.
Sec. 634. Vehicle storage in lieu of transportation to certain areas of the United States outside continental United States.

Subtitle D—Retirement and Survivor Benefit Matters

Sec. 641. Payment of retired pay and compensation to disabled military retirees.
Sec. 642. Increased retired pay for enlisted Reserves credited with extraordinary heroism.
Sec. 643. Expanded scope of authority to waive time limitations on claims for military personnel benefits.

Subtitle E—Other Matters

Sec. 651. Additional authority to provide assistance for families of members of the Armed Forces.
Sec. 652. Time limitation for use of Montgomery GI Bill entitlement by members of the Selected Reserve.
Sec. 653. Status of obligation to refund educational assistance upon failure to participate satisfactorily in Selected Reserve.
Sec. 654. Prohibition on acceptance of honoraria by personnel at certain Department of Defense schools.
Sec. 655. Rate of educational assistance under Montgomery GI Bill of dependents transferred entitlement by members of the Armed Forces with critical skills.
Sec. 656. Payment of interest on student loans.
Sec. 657. Modification of amount of back pay for members of Navy and Marine Corps selected for promotion while interned as prisoners of war during World War II to take into account changes in Consumer Price Index.

TITLE VII—HEALTH CARE

Sec. 701. Eligibility of surviving dependents for TRICARE dental program benefits after discontinuance of former enrollment.
Sec. 702. Advance authorization for inpatient mental health services.
Sec. 703. Continued TRICARE eligibility of dependents residing at remote locations after departure of sponsors for unaccompanied assignments.
Sec. 704. Approval of medicare providers as TRICARE providers.
Sec. 705. Claims information.

Sec. 706. Department of Defense Medicare-Eligible Retiree Health Care Fund.
Sec. 707. Technical corrections relating to transitional health care for members separated from active duty.
Sec. 708. Extension of temporary authority for entering into personal services contracts for the performance of health care responsibilities for the Armed Forces at locations other than military medical treatment facilities.
Sec. 709. Restoration of previous policy regarding restrictions on use of Department of Defense medical facilities.
Sec. 710. Health care under TRICARE for TRICARE beneficiaries receiving medical care as veterans from the Department of Veterans Affairs.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Major Defense Acquisition Programs

Sec. 801. Buy-to-budget acquisition of end items.
Sec. 802. Report to Congress on incremental acquisition of major systems.
Sec. 803. Pilot program for spiral development of major systems.
Sec. 804. Improvement of software acquisition processes.
Sec. 805. Independent technology readiness assessments.
Sec. 806. Timing of certification in connection with waiver of survivability and lethality testing requirements.

Subtitle B—Procurement Policy Improvements

Sec. 811. Performance goals for contracting for services.
Sec. 812. Grants of exceptions to cost or pricing data certification requirements and waivers of cost accounting standards.
Sec. 813. Extension of requirement for annual report on defense commercial pricing management improvement.
Sec. 814. Internal controls on the use of purchase cards.
Sec. 815. Assessment regarding fees paid for acquisitions under other agencies' contracts.
Sec. 816. Pilot program for transition to follow-on contracts for certain prototype projects.
Sec. 817. Waiver authority for domestic source or content requirements.

Subtitle C—Other Matters

Sec. 821. Extension of the applicability of certain personnel demonstration project exceptions to an acquisition workforce demonstration project.
Sec. 822. Moratorium on reduction of the defense acquisition and support workforce.
Sec. 823. Extension of contract goal for small disadvantaged businesses and certain institutions of higher education.
Sec. 824. Mentor-Protege Program eligibility for HUBZone small business concerns and small business concerns owned and controlled by service-disabled veterans.
Sec. 825. Repeal of requirements for certain reviews by the Comptroller General.
Sec. 826. Multiyear procurement authority for purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.
Sec. 827. Multiyear procurement authority for environmental services for military installations.
Sec. 828. Increased maximum amount of assistance for tribal organizations or economic enterprises carrying out procurement technical assistance programs in two or more service areas.
Sec. 829. Authority for nonprofit organizations to self-certify eligibility for treatment as qualified organizations employing severely disabled under Mentor-Protege Program.
Sec. 830. Report on effects of Army Contracting Agency.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Sec. 901. Time for submittal of report on Quadrennial Defense Review.
Sec. 902. Increased number of Deputy Commandants authorized for the Marine Corps.
Sec. 903. Base operating support for Fisher Houses.
Sec. 904. Prevention and mitigation of corrosion.
Sec. 905. Western Hemisphere Institute for Security Cooperation.
Sec. 906. Veterinary Corps of the Army.
Sec. 907. Under Secretary of Defense for Intelligence.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Sec. 1001. Transfer authority.
Sec. 1002. Reallocation of authorizations of appropriations from ballistic missile defense to shipbuilding.
Sec. 1003. Authorization of appropriations for continued operations for the war on terrorism.
Sec. 1004. Authorization of emergency supplemental appropriations for fiscal year 2002.
Sec. 1005. United States contribution to NATO common-funded budgets in fiscal year 2003.
Sec. 1006. Development and implementation of financial management enterprise architecture.
Sec. 1007. Departmental accountable officials in the Department of Defense.
Sec. 1008. Department-wide procedures for establishing and liquidating personal pecuniary liability.
Sec. 1009. Travel card program integrity.
Sec. 1010. Clearance of certain transactions recorded in Treasury suspense accounts and resolution of certain check issuance discrepancies.
Sec. 1011. Additional amount for ballistic missile defense or combating terrorism in accordance with national security priorities of the President.
Sec. 1012. Availability of amounts for Oregon Army National Guard for Search and Rescue and Medical Evacuation missions in adverse weather conditions.

Subtitle B—Naval Vessels and Shipyards

Sec. 1021. Number of Navy surface combatants in active and reserve service.
Sec. 1022. Plan for fielding the 155-millimeter gun on a surface combatant.
Sec. 1023. Report on initiatives to increase operational days of Navy ships.
Sec. 1024. Annual long-range plan for the construction of ships for the Navy.

Subtitle C—Reporting Requirements

Sec. 1031. Repeal and modification of various reporting requirements applicable with respect to the Department of Defense.
Sec. 1032. Annual report on weapons to defeat hardened and deeply buried targets.
Sec. 1033. Revision of date of annual report on counterproliferation activities and programs.
Sec. 1034. Quadrennial quality of life review.
Sec. 1035. Reports on efforts to resolve whereabouts and status of Captain Michael Scott Speicher, United States Navy.
Sec. 1036. Report on efforts to ensure adequacy of fire fighting staffs at military installations.
Sec. 1037. Report on designation of certain Louisiana highway as defense access road.
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Sec. 2302. Family housing.
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TITLE XXIV—DEFENSE AGENCIES

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DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

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Sec. 3136. Limitation on availability of funds for program to eliminate weapons grade plutonium production in Russia.

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Sec. 3151. Administration of program to eliminate weapons grade plutonium production in Russia.
Sec. 3152. Repeal of requirement for reports on obligation of funds for programs on fissile materials in Russia.
Sec. 3153. Expansion of annual reports on status of nuclear materials protection, control, and accounting programs.
Sec. 3154. Testing of preparedness for emergencies involving nuclear, radiological, chemical, or biological weapons.
Sec. 3155. Program on research and technology for protection from nuclear or radiological terrorism.
Sec. 3156. Expansion of international materials protection, control, and accounting program.
Sec. 3157. Accelerated disposition of highly enriched uranium and plutonium.
Sec. 3158. Disposition of plutonium in Russia.
Sec. 3159. Strengthened international security for nuclear materials and safety and security of nuclear operations.
Sec. 3160. Export control programs.
Sec. 3161. Improvements to nuclear materials protection, control, and accounting program of the Russian Federation.
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Subtitle E—Other Matters

Sec. 3171. Indemnification of Department of Energy contractors.
Sec. 3172. Worker health and safety rules for Department of Energy facilities.
Sec. 3173. One-year extension of authority of Department of Energy to pay voluntary separation incentive payments.
Sec. 3174. Support for public education in the vicinity of Los Alamos National Laboratory, New Mexico.

Subtitle F—Disposition of Weapons-Usable Plutonium at Savannah River, South Carolina

Sec. 3181. Findings.
Sec. 3182. Disposition of weapons-usable plutonium at Savannah River Site.
Sec. 3183. Study of facilities for storage of plutonium and plutonium materials at Savannah River Site.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.
Sec. 3202. Authorization of appropriations for the formerly used sites remedial action program of the Corps of Engineers.

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

For purposes of this Act, the term "congressional defense committees" means—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Army as follows:

(1) For aircraft, $2,144,386,000.

(2) For missiles, $1,653,150,000.

(3) For weapons and tracked combat vehicles, $2,242,882,000.

(4) For ammunition, $1,205,499,000.

(5) For other procurement, $5,513,679,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Navy as follows:

(1) For aircraft, $9,037,209,000.

(2) For weapons, including missiles and torpedoes, $2,505,820,000.

(3) For shipbuilding and conversion, $8,624,160,000.

(4) For other procurement, $4,515,500,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Marine Corps in the amount of $1,341,219,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement of ammunition for the Navy and the Marine Corps in the amount of $1,173,157,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Air Force as follows:

(1) For aircraft, $12,613,605,000.

(2) For ammunition, $1,275,864,000.

(3) For missiles, $3,258,162,000.

(4) For other procurement, $10,477,840,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2003 for Defense-wide procurement in the amount of $3,054,943,000.

SEC. 105. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Inspector General of the Department of Defense in the amount of $2,000,000.

SEC. 106. CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE.

There is hereby authorized to be appropriated for the Office of the Secretary of Defense for fiscal year 2003 the amount of $1,490,199,000 for—

(1) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(2) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

SEC. 107. DEFENSE HEALTH PROGRAMS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the Department of Defense for procurement for carrying out health care programs, projects, and activities of the Department of Defense in the total amount of $278,742,000.

Subtitle B—Army Programs

SEC. 111. PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES.

(a) EXTENSION OF PROGRAM.—Subsection (a) of section 141 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 4543 note) is amended by striking "through 2002" in the first sentence and inserting "through 2004".

(b) USE OF OVERHEAD FUNDS MADE SURPLUS BY SALES.—Such section is further amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c) For each Army industrial facility participating in the pilot program that sells manufactured articles and services in a total amount in excess of $20,000,000 in any fiscal year, the amount equal to one-half of one percent of such total amount shall be transferred from the sums in the Army Working Capital Fund for unutilized plant capacity to appropriations available for the following fiscal year for the demilitarization of conventional ammunition by the Army.".

(c) UPDATE OF INSPECTOR GENERAL'S REVIEW.—The Inspector General of the Department of Defense shall review the experience under the pilot program carried out under section 141 of Public Law 105–85 and, not later than July 1, 2003, submit to Congress a report on the results of the review. The report shall contain the views, information, and recommendations called for under subsection (d) of such section (as redesignated by subsection (b)(1)). In carrying out the review and preparing the report, the Inspector General shall take into consideration the report submitted to Congress under such subsection (as so redesignated).

Subtitle C—Navy Programs

SEC. 121. INTEGRATED BRIDGE SYSTEM.

(a) AMOUNT FOR PROGRAM.—Of the amount authorized to be appropriated by section 102(a)(4), $5,000,000 shall be available for the procurement of the integrated bridge system in items less than $5,000,000.

(b) OFFSETTING REDUCTION.—Of the total amount authorized to be appropriated by section 102(a)(4), the amount available for the integrated bridge system in Aegis support equipment is hereby reduced by $5,000,000.

SEC. 122. EXTENSION OF MULTIYEAR PROCUREMENT AUTHORITY FOR DDG–51 CLASS DESTROYERS.

Section 122(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2446), as amended by section 122 of Public Law 106–65 (113 Stat. 534) and section 122(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–24), is further amended by striking "October 1, 2005" in the first sentence and inserting "October 1, 2007".

SEC. 123. MAINTENANCE OF SCOPE OF CRUISER CONVERSION OF TICONDEROGA CLASS AEGIS CRUISERS.

The Secretary of the Navy should maintain the scope of the cruiser conversion program for the Ticonderoga class of AEGIS cruisers such that the program—

(1) covers all 27 Ticonderoga class AEGIS cruisers; and

(2) modernizes the class of cruisers to include an appropriate mix of upgrades to ships' capabilities for theater missile defense, naval fire support, and air dominance.

SEC. 124. MARINE CORPS LIVE FIRE RANGE IMPROVEMENTS.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—The amount authorized to be appropriated by section 102(b) for procurement for the Marine Corps is hereby increased by $1,900,000, with the amount of the increase to be allocated to Training Devices.

(b) AVAILABILITY.—(1) Of the amount authorized to be appropriated by section 102(b) for procurement for the Marine Corps, as increased by subsection (a), $1,900,000 shall be available as follows:

(A) For upgrading live fire range target movers.

(B) To bring live fire range radio controls into compliance with Federal Communications Commission narrow band requirements.

(2) Amounts available under paragraph (1) for the purposes set forth in that paragraph are in addition to any other amounts available in this Act for such purposes.

(c) Offsetting Reduction.—The amount authorized to be appropriated by section 103(1) for the C–17 interim contractor support is reduced by $1,900,000.

Subtitle D—Air Force Programs

SEC. 131. C–130J AIRCRAFT PROGRAM.

(a) Multiyear Procurement Authority.—Beginning with the fiscal year 2003 program year, the Secretary of the Air Force may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for the procurement of C–130J aircraft and variants of the C–130J aircraft, subject to subsection (b), and except that, notwithstanding subsection (k) of such section, such a contract may be for a period of six program years.

(b) Limitation.—The Secretary of the Air Force may not enter into a multiyear contract authorized by subsection (a) until the C–130J aircraft has been cleared for worldwide overwater capability.

SEC. 132. PATHFINDER PROGRAMS.

(a) Spiral Development Plan for Selected Pathfinder Programs.—Not later than February 1, 2003, the Secretary of the Air Force shall—

(1) identify among the pathfinder programs listed in subsection (e) each pathfinder program that the Secretary shall conduct as a spiral development program; and

(2) submit to the Secretary of Defense for each pathfinder program identified under paragraph (1) a spiral development plan that meets the requirements of section 803(c).

(b) Approval or Disapproval of Spiral Development Plans.—Not later than March 15, 2003, the Secretary of Defense shall—

(1) review each spiral development plan submitted under subsection (a)(2);

(2) approve or disapprove the conduct as a spiral development plan of the pathfinder program covered by each such spiral development plan; and

(3) submit to the congressional defense committees a copy of each spiral development plan approved under paragraph (2).

(c) Assessment of Pathfinder Programs Not Selected or Approved for Spiral Development.—Not later than March 15, 2003, each official of the Department of Defense specified in subsection (d) shall submit to the congressional defense committees the assessment required of such official under that subsection for the acquisition plan for each pathfinder program as follows:

(1) Each pathfinder program that is not identified by the Secretary of the Air Force under subsection (a)(1) as a program that the Secretary shall conduct as a spiral development program.

(2) Each pathfinder program that is disapproved by the Secretary of Defense for conduct as a spiral development program under subsection (b)(2).

(d) Officials and Required Assessments for Programs Outside Spiral Development.—The officials specified in this subsection, and the assessment required of such officials, are as follows:

(1) The Director of Operational Test and Evaluation, who shall assess the test contents of the acquisition plan for each pathfinder program covered by subsection (c).

(2) The Chairman of the Joint Requirements Oversight Council, who shall assess the extent to which the acquisition plan for each such pathfinder program addresses validated military requirements.

(3) The Under Secretary of Defense (Comptroller), in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall conduct an independent programmatic evaluation of the acquisition plan for each such pathfinder program, including an analysis of the total cost, schedule, and technical risk associated with development of such program.

(e) Pathfinder Programs.—The pathfinder programs listed in this subsection are the program as follows:

(1) Space Based Radar.
(2) Global Positioning System.
(3) Global Hawk.
(4) Combat Search and Rescue.
(5) B–2 Radar.
(6) Predator B.
(7) B–1 Defensive System Upgrade.
(8) Multi Mission Command and Control Constellation.
(9) Unmanned Combat Air Vehicle.
(10) Global Transportation Network.
(11) C–5 Avionics Modernization Program.
(12) Hunter/Killer.
(13) Tanker/Lease.
(14) Small Diameter Bomb.
(15) KC–767.
(16) AC–130 Gunship.

SEC. 133. OVERSIGHT OF ACQUISITION FOR DEFENSE SPACE PROGRAMS.

(a) In General.—The Office of the Secretary of Defense shall maintain oversight of acquisition for defense space programs.

(b) Report on Oversight.—(1) Not later than March 15, 2003, the Secretary of Defense shall submit to the congressional defense committees a detailed plan on how the Office of the Secretary of Defense shall provide oversight of acquisition for defense space programs.

(2) The plan shall set forth the following:

(A) The organizations in the Office of the Secretary of Defense, and the Joint Staff organizations, to be involved in oversight of acquisition for defense space programs.

(B) The process for the review of defense space programs by the organizations specified under subparagraph (A).

(C) The process for the provision by such organizations of technical, programmatic, scheduling, and budgetary advice on defense space programs to the Deputy Secretary of Defense and the Under Secretary of the Air Force.

(D) The process for the development of independent cost estimates for defense space programs, including the organization responsible for developing such cost estimates and when such cost estimates shall be required.

(E) The process for the development of the budget for acquisition for defense space programs.

(F) The process for the resolution of issues regarding acquisition for defense space programs that are raised by the organizations specified under subparagraph (A).

(c) Defense Space Program Defined.—In this section, the term "defense space program" means any major defense acquisition program (as that term is defined in section 2430 of title 10, United States Code) for the acquisition of—

(1) space-based assets, space launch assets, or user equipment for such assets; or

(2) earth-based or spaced-based assets dedicated primarily to space surveillance or space control.

SEC. 134. LEASING OF TANKER AIRCRAFT.

The Secretary of the Air Force shall not enter into any lease for tanker aircraft until the Secretary submits the report required by section 8159(c)(6) of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284) and obtains authorization and appropriation of funds necessary to enter into a lease for such aircraft consistent with his publicly stated commitments to the Congress to do so.

SEC. 135. COMPASS CALL PROGRAM.

Of the amount authorized to be appropriated by section 103(1), $12,700,000 shall be available for the Compass Call program within classified projects and not within the Defense Airborne Reconnaissance Program.

SEC. 136. SENSE OF CONGRESS REGARDING ASSURED ACCESS TO SPACE.

(a) Findings.—Congress makes the following findings:

(1) Assured access to space is a vital national security interest of the United States.

(2) The Evolved Expendable Launch Vehicle program of the Department of Defense is a critical element of the Department's plans for assuring United States access to space.

(3) Significant contractions in the commercial space launch marketplace have eroded the overall viability of the United States space launch industrial base and could hamper the ability of the Department of Defense to provide assured access to space in the future.

(4) The continuing viability of the United States space launch industrial base is a critical element of any strategy to ensure the long-term ability of the United States to assure access to space.

(5) The Under Secretary of the Air Force, as acquisition executive for space programs in the Department of Defense, has been authorized to develop a strategy to address United States space launch and assured access to space requirements.

(b) Sense of Congress.—It is the sense of Congress that the Under Secretary of the Air Force should—

(1) evaluate all options for sustaining the United States space launch industrial base;

(2) develop an integrated, long-range, and adequately funded plan for assuring United States access to space; and

(3) submit to Congress a report on the plan at the earliest opportunity practicable.

SEC. 137. MOBILE EMERGENCY BROADBAND SYSTEM.

(a) Amount for Program.—Of the total amount authorized to be appropriated by section 103(4), $1,000,000 may be available for the procurement of technical communications-electronics equipment for the Mobile Emergency Broadband System.

(b) Offsetting Reduction.—Of the total amount authorized to be appropriated by section 103(4), the amount available under such section for the Navy for other procurement for gun fire control equipment, SPQ–9B solid state transmitter, is hereby reduced by $1,000,000.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Department of Defense for research, development, test, and evaluation as follows:

(1) For the Army, $7,297,033,000.

(2) For the Navy, $12,927,135,000.

(3) For the Air Force, $18,608,684,000.

(4) For Defense-wide activities, $17,543,927,000, of which $361,554,000 is authorized for the Director of Operational Test and Evaluation.

SEC. 202. AMOUNT FOR SCIENCE AND TECHNOLOGY.

(a) Amount for Projects.—Of the total amount authorized to be appropriated by section 201, $10,164,358,000 shall be available for science and technology projects.

(b) Science and Technology Defined.—In this section, the term "science and technology project" means work funded in program elements for defense research, development, test,

and evaluation under Department of Defense budget activities 1, 2, or 3.

SEC. 203. DEFENSE HEALTH PROGRAMS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the Department of Defense for research, development, test, and evaluation for carrying out health care programs, projects, and activities of the Department of Defense in the total amount of $67,214,000.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. BASIC SEISMIC RESEARCH PROGRAM FOR SUPPORT OF NATIONAL REQUIREMENTS FOR MONITORING NUCLEAR EXPLOSIONS.

(a) MANAGEMENT OF PROGRAM.—(1) The Secretary of the Air Force shall manage the Department of Defense program of basic seismic research in support of national requirements for monitoring nuclear explosions. The Secretary shall manage the program in the manner necessary to support Air Force mission requirements relating to the national requirements.

(2) The Secretary shall act through the Director of the Air Force Research Laboratory in carrying out paragraph (1).

(c) AMOUNT FOR PROGRAM.—Of the amount authorized to be appropriated by section 201(4), $20,000,000 shall be available for the program referred to in subsection (a).

SEC. 212. ADVANCED SEAL DELIVERY SYSTEM.

To the extent provided in appropriations Acts, the Secretary of Defense may use for research, development, test, and evaluation for the Advanced SEAL Delivery System any funds that were authorized to be appropriated to the Department of Defense for fiscal year 2002 for the procurement of that system, were appropriated pursuant to such authorization of appropriations, and are no longer needed for that purpose.

SEC. 213. ARMY EXPERIMENTATION PROGRAM REGARDING DESIGN OF THE OBJECTIVE FORCE.

(a) REQUIREMENT FOR REPORT.—Not later than March 30, 2003, the Secretary of the Army shall submit to Congress a report on the experimentation program regarding design of the objective force that is required by subsection (g) of section 113 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as added by section 113 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1029).

(b) BUDGET DISPLAY.—Amounts provided for the experimentation program in the budget for fiscal year 2004 that is submitted to Congress under section 1105(a) of title 31, United States Code, shall be displayed as a distinct program element in that budget and in the supporting documentation submitted to Congress by the Secretary of Defense.

SEC. 214. REALLOCATION OF AMOUNT AVAILABLE FOR INDIRECT FIRE PROGRAMS.

(a) REDUCTION OF AMOUNT FOR CRUSADER.—Of the amount authorized to be appropriated by section 201(1) for the Army for research, development, test, and evaluation, the amount available for continued research and development of the Crusader artillery system is hereby reduced by $475,600,000.

(b) INCREASE OF AMOUNT FOR FUTURE COMBAT SYSTEMS.—Of the amount authorized to be appropriated by section 201(1) for the Army for research, development, test, and evaluation, the amount available for research and development for the Objective Force indirect fire systems is hereby increased by $475,600,000. The amount of the increase shall be available only for meeting the needs of the Army for indirect fire capabilities, and may not be used under the authority of this section until 30 days after the date on which the Secretary of Defense submits to the congressional defense committees the report required by subsection (d), together with a notification of the Secretary's plan to use such funds to meet the needs of the Army for indirect fire capabilities.

(c) USE OF FUNDS.—Subject to subsection (b), the Secretary of Defense may use the amount available under such subsection for any program for meeting the needs of the Army for indirect fire capabilities.

(d) REPORTING REQUIREMENT.—(1) Not later than 30 days after the date of the enactment of this Act, the Chief of Staff of the Army shall complete a review of the full range of Army programs that could provide improved indirect fire for the Army over the next 20 years and shall submit to the Secretary of Defense a report containing the recommendation of the Chief of Staff on which alternative for improving indirect fire for the Army is the best alternative for that purpose. The report shall also include information on each of the following funding matters:

(A) The manner in which the amount available under subsection (b) should be best invested to support the improvement of indirect fire capabilities for the Army.

(B) The manner in which the amount provided for indirect fire programs of the Army in the future-years defense program submitted to Congress with respect to the budget for fiscal year 2003 under section 221 of title 10, United States Code, should be best invested to support improved indirect fire for the Army.

(C) The manner in which the amounts described in subparagraphs (A) and (B) should be best invested to support the improvement of indirect fire capabilities for the Army in the event of a termination of the Crusader artillery system program.

(D) The portion of the amount available under subsection (b) that should be reserved for paying costs associated with a termination of the Crusader artillery system program in the event of such a termination.

(2) The Secretary of Defense shall submit the report, together with any comments and recommendations that the Secretary considers appropriate, to the congressional defense committees.

(e) ANNUAL UPDATES.—(1) The Secretary shall submit to the congressional defense committees, at the same time that the President submits the budget for a fiscal year referred to in paragraph (4) to Congress under section 1105(a) of title 31, United States Code, a report on the investments proposed to be made in indirect fire programs for the Army.

(2) If the Crusader artillery system program has been terminated by the time the annual report is submitted in conjunction with the budget for a fiscal year, the report shall—

(A) identify the amount proposed for expenditure for the Crusader artillery system program for that fiscal year in the future-years defense program that was submitted to Congress in 2002 under section 221 of title 10, United States Code; and

(B) specify—

(i) the manner in which the amount provided in that budget would be expended for improved indirect fire capabilities for the Army; and

(ii) the extent to which the expenditures in that manner would improve indirect fire capabilities for the Army.

(3) The requirement to submit an annual report under paragraph (1) shall apply with respect to budgets for fiscal years 2004, 2005, 2006, 2007, and 2008.

SEC. 215. LASER WELDING AND CUTTING DEMONSTRATION.

(a) AMOUNT FOR PROGRAM.—Of the total amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, $6,000,000 shall be available for the laser welding and cutting demonstration in force protection applied research (PE 0602123N).

(b) OFFSETTING REDUCTION.—Of the total amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, the amount available for laser welding and cutting demonstration in surface ship and submarine HM&E advanced technology (PE 0603508N) is hereby reduced by $6,000,000.

SEC. 216. ANALYSIS OF EMERGING THREATS.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby increased by $2,000,000 with the amount of the increase to be allocated to Marine Corps Advanced Technology Demonstration (ATD) (PE 0603640M).

(b) AVAILABILITY.—(1) Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, as increased by subsection (a), $2,000,000 may be available for analysis of emerging threats.

(2) The amount available under paragraph (1) for analysis of emerging threats is in addition to any other amounts available under this Act for analysis of emerging threats.

(c) OFFSET.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army is hereby reduced by $2,000,000, with the amount of the reduction allocated as follows:

(1) $1,000,000 may be allocated to Weapons and Munitions Technology (PE 0602624A) and available for countermobility systems.

(2) $1,000,000 may be allocated to Warfighter Advanced Technology (PE 0603001A) and available for Objective Force Warrior technologies.

SEC. 217. PROHIBITION ON TRANSFER OF MEDICAL FREE ELECTRON LASER PROGRAM.

Notwithstanding any other provision of law, the Medical Free Electron Laser Program (PE 0602227D8Z) may not be transferred from the Department of Defense to the National Institutes of Health, or to any other department or agency of the Federal Government.

SEC. 218. DEMONSTRATION OF RENEWABLE ENERGY USE.

Of the amount authorized to be appropriated by section 201(2), $2,500,000 shall be available for the demonstration of renewable energy use program within the program element for the Navy energy program and not within the program element for facilities improvement.

SEC. 219A. RADAR POWER TECHNOLOGY FOR THE ARMY.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—The amount authorized to be appropriated by section 201(1) for the Department of Defense for research, development, test, and evaluation for the Army is hereby increased by $4,500,000, with the amount of the increase to be allocated to Army missile defense systems integration (DEM/VAL) (PE 0603308A).

(b) AVAILABILITY FOR RADAR POWER TECHNOLOGY.—(1) Of the amount authorized to be appropriated by section 201(1) for the Department of Defense for research, development, test, and evaluation for the Army, as increased by subsection (a), $4,500,000 shall be available for radar power technology.

(2) The amount available under paragraph (1) for radar power technology is in addition to any other amounts available under this Act for such technology.

(c) OFFSET.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby reduced by $4,500,000, with the amount of the reduction to be allocated to common picture advanced technology (PE 0603235N).

SEC. 219B. CRITICAL INFRASTRUCTURE PROTECTION.

(a) Amount for Program.—Of the amount authorized to be appropriated in section 201(4), $4,500,000 may be available for critical infrastructure protection (PE 35190D8Z).

(b) Offset.—Of the amount authorized to be appropriated by section 201(2), the amount for power projection advanced technology (PE 63114N) is hereby reduced by $4,500,000.

SEC. 219C. THEATER AEROSPACE COMMAND AND CONTROL SIMULATION FACILITY UPGRADES.

(a) Availability of Funds.—(1) The amount authorized to be appropriated by section 201(3) for the Air Force for wargaming and simulation centers (PE 0207605F) is increased by $2,500,000. The total amount of the increase may be available for Theater Aerospace Command and Control Simulation Facility (TACCSF) upgrades.

(2) The amount available under paragraph (1) for Theater Aerospace Command and Control Simulation Facility upgrades is in addition to any other amounts available under this Act for such upgrades.

(b) Offset.—The amount authorized to be appropriated by section 201(2) for the Navy for Mine and Expeditionary Warfare Applied Research (PE 0602782N) is reduced by $2,500,000.

SEC. 219D. DDG OPTIMIZED MANNING INITIATIVE.

(a) Increase in Authorization of Appropriations.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby increased by $2,500,000, with the amount of the increase to be allocated to surface combatant combat system engineering (PE 0604307N).

(b) Availability.—(1) Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, as increased by subsection (a), $2,500,000 may be available for the DDG optimized manning initiative.

(2) The amount available under paragraph (1) for the initiative referred to in that paragraph is in addition to any other amounts available under this Act for that initiative.

(c) Offset.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for artillery systems DEM/VAL (PE 0603854A), by $2,500,000.

SEC. 219E. AGROTERRORIST ATTACKS.

(a) Availability.—(1) Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, defense-wide, the amount available for basic research for the Chemical and Biological Defense Program (PE 0601384BP) is hereby increased by $1,000,000, with the amount of such increase to be available for research, analysis, and assessment of efforts to counter potential agroterrorist attacks.

(2) The amount available under paragraph (1) for research, analysis, and assessment described in that paragraph is in addition to any other amounts available in this Act for such research, analysis, and assessment.

(b) Offset.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide, the amount available for biological terrorism and agroterrorism risk assessment and prediction in the program element relating to the Chemical and Biological Defense Program (PE 0603384BP) is hereby reduced by $1,000,000.

SEC. 219F. VERY HIGH SPEED SUPPORT VESSEL FOR THE ARMY.

(a) Increase in Authorization of Appropriations.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army is hereby increased by $5,500,000, with the amount of the increase to be allocated to logistics and engineering equipment–advanced development (PE 0603804A).

(b) Availability.—(1) Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, as increased by subsection (a), $5,500,000 may be available for development of a prototype composite hull design to meet the theater support vessel requirement.

(2) The amount available under paragraph (1) for development of the hull design referred to in that paragraph is in addition to any other amounts available under this Act for development of that hull design.

(c) Offset.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby decreased by $5,500,000, with the amount of the decrease to be allocated to submarine tactical warfare system (PE 0604562N) and amounts available under that program element for upgrades of combat control software to commercial architecture.

SEC. 219G. FULL-SCALE HIGH-SPEED PERMANENT MAGNET GENERATOR.

(a) Increase in Authorization of Appropriations.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby increased by $1,000,000, with the amount of the increase to be allocated to Force Protection Advanced Technology (PE 0603123N).

(b) Availability.—(1) Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, as increased by subsection (a), $1,000,000 may be available for development and demonstration of a full-scale high-speed permanent magnet generator.

(2) The amount available under paragraph (1) for development and demonstration of the generator described in that paragraph is in addition to any other amounts available in this Act for development and demonstration of that generator.

(c) Offset.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army is hereby reduced by $1,000,000, with the amount of the reduction to be allocated to Artillery Systems–Dem/Val (PE 0603854A).

SEC. 219H. AVIATION-SHIPBOARD INFORMATION TECHNOLOGY INITIATIVE.

Of the amount authorized to be appropriated by section 201(2) for shipboard aviation systems, up to $8,200,000 may be used for the aviation-shipboard information technology initiative.

SEC. 219I. AEROSPACE RELAY MIRROR SYSTEM (ARMS) DEMONSTRATION.

Of the amount authorized to be appropriated by section 201(3) for the Department of Defense for research, development, test, and evaluation for the Air Force, $6,000,000 may be available for the Aerospace Relay Mirror System (ARMS) Demonstration.

SEC. 219J. LITTORAL SHIP PROGRAM.

(a) Amount for Program.—Of the amount authorized to be appropriated by section 201(2) for research and development, test and evaluation, Navy, $4,000,000 may be available for requirements development of a littoral ship in Ship Concept Advanced Design (PE 0603563N).

(b) Offsetting Reduction.—Of the total amount authorized to be appropriated by section 201(2) for research and development, test and evaluation, Navy, the amount available for FORCENET in Tactical Command System (PE 0604231N), is hereby reduced by an additional $4,000,000.

Subtitle C—Missile Defense Programs

SEC. 221. ANNUAL OPERATIONAL ASSESSMENTS AND REVIEWS OF BALLISTIC MISSILE DEFENSE PROGRAM.

(a) Annual Operational Assessment.—(1)(A) During the first quarter of each fiscal year, the Director of Operational Test and Evaluation shall conduct an operational assessment of the missile defense programs listed in paragraph (3).

(B) The annual assessment shall include—

(i) a detailed, quantitative evaluation of the potential operational effectiveness, reliability, and suitability of the system or systems under each program as the program exists during the fiscal year of the assessment;

(ii) an evaluation of the adequacy of testing through the end of the previous fiscal year to measure and predict the effectiveness of the systems; and

(iii) a determination of the threats, or type of threats, against which the systems would be expected to be effective and those against which the systems would not be expected to be effective.

(C) The first assessment under this paragraph shall be conducted during fiscal year 2003.

(2) Not later than January 15 of each year, the Director of Operational Test and Evaluation shall submit to the Secretary of Defense and the congressional defense committees a report on the assessment conducted during the preceding quarter-year. The report shall include the evaluation of the potential of the system or systems together with a discussion of the basis for the evaluation.

(3) The requirement for an annual operational assessment under paragraph (1) shall apply to programs under the United States Missile Defense Agency as follows:

(A) The Ground-based Midcourse Defense program.

(B) The Sea-based Midcourse Defense program.

(C) The Theater High Altitude Area Defense (THAAD) program.

(D) The Air-based Boost program (formerly known as the Airborne Laser Defense program).

(b) Annual Requirements Reviews.—(1) During the first quarter of each fiscal year, the Joint Requirements Oversight Council established under section 181 of title 10, United States Code, shall review the cost, schedule, and performance criteria for the missile defense programs under the United States Missile Defense Agency and assess the validity of the criteria in relation to military requirements. The first review shall be carried out in fiscal year 2003.

(2) Not later than January 15 of each year, the Chairman of the Joint Requirements Oversight Council shall submit to the Secretary of Defense and the congressional defense committees a report on the results of the review carried out under paragraph (1) during the preceding quarter-year.

SEC. 222. REPORT ON MIDCOURSE DEFENSE PROGRAM.

(a) Requirement for Report.—Not later than January 15, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the Midcourse Defense program of the United States Missile Defense Agency. The report shall include the following information:

(1) The development schedule, together with an estimate of the annual costs through the completion of development.

(2) The planned procurement schedule, together with the Secretary's best estimates of the annual costs of, and number of units to be procured under, the program through the completion of the procurement.

(3) The current program acquisition unit cost and the history of acquisition unit costs from the date the program (including its antecedent program) was first included in a Selected Acquisition Report under section 2432 of title 10, United States Code.

(4) The current procurement unit cost, and the history of procurement unit costs from the

date the program (including any antecedent program) was first included in a Selected Acquisition Report under such section 2432.

(5) The reasons for any changes in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost, and the reasons for any changes in program schedule.

(6) The major contracts under the program and the reasons for any changes in cost or schedule variances under the contracts.

(7) The Test and Evaluation Master Plan developed for the program in accordance with the requirements and guidance of Department of Defense regulation 5000.2–R.

(b) SEGREGATION OF GROUND-BASED AND SEA-BASED EFFORTS.—The report under subsection (a) shall separately display the schedules, cost estimates, cost histories, contracts, and test plans for—

(1) the National Missile Defense/Ground-based Midcourse Defense program; and

(2) the Navy TheaterWide/Sea-based Midcourse Defense program.

SEC. 223. REPORT ON AIR-BASED BOOST PROGRAM.

Not later than January 15, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the Air-based Boost program (formerly known as the Airborne Laser program). The report shall contain the following information:

(1) The development schedule together with the estimated annual costs of the program through the completion of development.

(2) The planned procurement schedule, together with the Secretary's best estimates of the annual costs of, and number of units to be procured under, the program through the completion of the procurement.

(3) The current program acquisition unit cost, and the history of program acquisition unit costs from the date the program (including any antecedent program) was first included in a Selected Acquisition Report under section 2432 of title 10, United States Code.

(4) The current procurement unit cost, and the history of procurement unit costs from the date the program (including any antecedent program) was first included in a Selected Acquisition Report under such section 2432.

(5) The reasons for any changes in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost, and the reasons for any changes in program schedule.

(6) The major contracts under the program and the reasons for any changes in cost or schedule variances under the contracts.

(7) The Test and Evaluation Master Plan developed for the program in accordance with the requirements and guidance of Department of Defense regulation 5000.2–R.

SEC. 224. REPORT ON THEATER HIGH ALTITUDE AREA DEFENSE PROGRAM.

(a) REQUIREMENT FOR REPORT.—Not later than January 15, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the Theater High Altitude Area Defense program. The report shall contain the following information:

(1) The development schedule together with the estimated annual costs of the program through the completion of development.

(2) The planned procurement schedule, together with the Secretary's best estimates of the annual costs of, and number of units to be procured under, the program through the completion of the procurement.

(3) The current program acquisition unit cost and the history of program acquisition unit costs from the date the program (including any antecedent program) was first included in a Selected Acquisition Report under section 2432 of title 10, United States Code.

(4) The current procurement unit cost, and the history of procurement unit costs from the date the program (including any antecedent program) was first included in a Selected Acquisition Report under such section 2432.

(5) The reasons for any changes in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost, and the reasons for any changes in program schedule.

(6) The major contracts under the program and the reasons for any changes in cost or schedule variances under the contracts.

(7) The Test and Evaluation Master Plan developed for the program in accordance with the requirements and guidance of Department of Defense regulation 5000.2–R.

(b) FUNDING LIMITATION.—Not more than 50 percent of the amount authorized to be appropriated by this Act for the United States Missile Defense Agency for the Theater High Altitude Area Defense program may be expended until the submission of the report required under subsection (a).

SEC. 225. REFERENCES TO NEW NAME FOR BALLISTIC MISSILE DEFENSE ORGANIZATION.

(a) CONFORMING AMENDMENTS.—The following provisions of law are amended by striking "Ballistic Missile Defense Organization" each place it appears and inserting "United States Missile Defense Agency":

(1) Sections 223 and 224 of title 10, United States Code.

(2) Sections 232, 233, and 235 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

(b) OTHER REFERENCES.—Any reference to the Ballistic Missile Defense Organization in any other provision of law or in any regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the United States Missile Defense Agency.

SEC. 226. LIMITATION ON USE OF FUNDS FOR NUCLEAR ARMED INTERCEPTORS.

None of the funds authorized to be appropriated by this or any other Act may be used for research, development, test, evaluation, procurement, or deployment of nuclear armed interceptors of a missile defense system.

SEC. 227. REPORTS ON FLIGHT TESTING OF GROUND-BASED MIDCOURSE NATIONAL MISSILE DEFENSE SYSTEM.

(a) REQUIREMENT.—The Director of the United States Missile Defense Agency shall submit to the congressional defense committees a report on each flight test of the Ground-based Midcourse national missile defense system. The report shall be submitted not later than 120 days after the date of the test.

(b) CONTENT.—A report on a flight test under subsection (a) shall include the following matters:

(1) A thorough discussion of the content and objectives of the test.

(2) For each test objective, a statement regarding whether the objective was achieved.

(3) For any test objective not achieved—

(A) a thorough discussion describing the reasons for not achieving the objective; and

(B) a discussion of any plans for future tests to achieve the objective.

(c) FORMAT.—The reports required under subsection (a) shall be submitted in classified and unclassified form.

Subtitle D—Improved Management of Department of Defense Test and Evaluation Facilities

SEC. 231. DEPARTMENT OF DEFENSE TEST AND EVALUATION RESOURCE ENTERPRISE.

(a) ESTABLISHMENT.—Section 139 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(k)(1) There is a Test and Evaluation Resource Enterprise within the Department of Defense. The head of the Test and Evaluation Resource Enterprise shall report to the Director of Operational Test and Evaluation.

"(2)(A) The head of the Test and Evaluation Resource Enterprise shall manage all funds available to the Department of Defense for the support of investment in, operation and maintenance of, development of, and management of the test and evaluation facilities and resources of the Major Range and Test Facility Base. All such funds shall be transferred to and placed under the control of the head of the Department of Defense Test and Evaluation Resource Enterprise.

"(B) Subparagraph (A) shall not be construed to authorize the head of the Test and Evaluation Enterprise, nor to impair the authority of the Secretary of a military department, to manage the funds available to that military department for the support of investment in, operation and maintenance of, development of, and management of the training facilities and resources of the Major Range and Test Facility Base.

"(3) The head of the Test and Evaluation Resource Enterprise shall—

"(A) ensure that the planning for and execution of the testing of a system within the Major Range and Test Facility Base is performed by the activity of a military department that is responsible for the testing;

"(B) ensure that the military department operating a facility or resource within the Major Range and Test Facility Base charges an organization using the facility or resource for testing only the incremental cost of the operation of the facility or resource that is attributable to the testing;

"(C) ensure that the military department operating a facility or resource within the Major Range and Test Facility Base comprehensively and consistently applies sound enterprise management practices in the management of the facility or resource;

"(D) make investments that are prudent for ensuring that Department of Defense test and evaluation facilities and resources are adequate to meet the current and future testing requirements of Department of Defense programs;

"(E) ensure that there is in place a simplified financial management and accounting system for Department of Defense test and evaluation facilities and resources and that the system is uniformly applied to the operation of such facilities and resources throughout the Department; and

"(F) ensure that unnecessary costs of owning and operating Department of Defense test and evaluation resources are not incurred.

"(4) In this section, the term 'Major Range and Test Facility Base' means the test and evaluation facilities and resources that are designated by the Director of Operational Test and Evaluation as facilities and resources comprising the Major Range and Test Facility Base.".

(b) EFFECTIVE DATE AND TRANSITION REQUIREMENTS.—(1) The amendment made by paragraph (1) shall take effect one year after the date of the enactment of this Act.

(2)(A) The Secretary of Defense shall develop a transition plan to ensure that the head of the Test and Evaluation Resource Enterprise is prepared to assume the responsibilities under subsection (k) of section 139 of title 10, United States Code (as added by subsection (a)), on the effective date provided in paragraph (1).

(B) Until the Test and Evaluation Resource Enterprise has been established, all investments of $500,000 or more in the Major Range and Test Facility Base of the Department of Defense shall be subject to the approval of the Director of Operational Test and Evaluation.

(C) In this paragraph, the term "Major Range and Test Facility Base" has the meaning given that term in section 139(k)(4) of title 10, United States Code, as added by subsection (a).

SEC. 232. TRANSFER OF TESTING FUNDS FROM PROGRAM ACCOUNTS TO INFRASTRUCTURE ACCOUNTS.

(a) TRANSFER OF FUNDS.—Notwithstanding any other provision of this Act, amounts authorized to be appropriated by this title for demonstration and validation, engineering and manufacturing development, and operational systems development shall be transferred to the major test and evaluation investment programs of the military departments and to the Central Test and Evaluation Investment Program of the Department of Defense, as follows:

(1) For transfer to the major test and evaluation investment program of the Army, the amount equal to 0.625 percent of the total amount authorized to be appropriated by this title for the Army for demonstration and validation, engineering and manufacturing development, and operational systems development.

(2) For transfer to the major test and evaluation investment program of the Navy, the amount equal to 0.625 percent of the total amount authorized to be appropriated by this title for the Navy for demonstration and validation, engineering and manufacturing development, and operational systems development.

(3) For transfer to the major test and evaluation investment program of the Air Force, the amount equal to 0.625 percent of the total amount authorized to be appropriated by this title for the Air Force for demonstration and validation, engineering and manufacturing development, and operational systems development.

(4) For transfer to the Central Test and Evaluation Investment Program of the Department of Defense, the amount equal to 0.625 percent of the total amount authorized to be appropriated by this title for Defense-wide demonstration and validation, engineering and manufacturing development, and operational systems development.

(b) INSTITUTIONAL FUNDING OF TEST AND EVALUATION FACILITIES.—(1)(A) Chapter 433 of title 10, United States Code, is amended by inserting after the table of sections at the beginning of such chapter the following new section:

"§ 4531. Test and evaluation: use of facilities

"(a) CHARGES FOR USE.—The Secretary of the Army may charge an entity for using a facility or resource of the Army within the Major Range and Test Facility Base for testing. The amount charged may not exceed the incremental cost to the Army of the use of the facility or resource by that user for the testing.

"(b) INSTITUTIONAL AND OVERHEAD COSTS.—The institutional and overhead costs of a facility or resource of the Army that is within the Major Range and Test Facility Base shall be paid out of the major test and evaluation investment accounts of the Army, the Central Test and Evaluation Investment Program of the Department of Defense, and other appropriate appropriations made directly to the Army.

"(c) MAJOR RANGE AND TEST FACILITY BASE DEFINED.—In this section:

"(1) The term 'Major Range and Test Facility Base' has the meaning given the term in section 139(k)(4) of this title.

"(2) The term 'institutional and overhead costs', with respect to a facility or resource within the Major Range Test and Facility Base—

"(A) means the costs of maintaining, operating, upgrading, and modernizing the facility or resource; and

"(B) does not include an incremental cost of operating the facility or resource that is attributable to the use of the facility or resource for testing under a particular program.".

(B) The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 7522 the following new item:

"4531. Test and evaluation: use of facilities.".

(2)(A) Chapter 645 of title 10, United States Code, is amended by inserting after the table of sections at the beginning of such chapter the following new section:

"§ 7521. Test and evaluation: use of facilities

"(a) CHARGES FOR USE.—The Secretary of the Navy may charge an entity for using a facility or resource of the Navy within the Major Range and Test Facility Base for testing. The amount charged may not exceed the incremental cost to the Navy of the use of the facility or resource by that user for the testing.

"(b) INSTITUTIONAL AND OVERHEAD COSTS.—The institutional and overhead costs of a facility or resource of the Navy that is within the Major Range and Test Facility Base shall be paid out of the major test and evaluation investment accounts of the Navy, the Central Test and Evaluation Investment Program of the Department of Defense, and other appropriate appropriations made directly to the Navy.

"(c) MAJOR RANGE AND TEST FACILITY BASE DEFINED.—In this section:

"(1) The term 'Major Range and Test Facility Base' has the meaning given the term in section 139(k)(4) of this title.

"(2) The term 'institutional and overhead costs', with respect to a facility or resource within the Major Range Test and Facility Base—

"(A) means the costs of maintaining, operating, upgrading, and modernizing the facility or resource; and

"(B) does not include an incremental cost of operating the facility or resource that is attributable to the use of the facility or resource for testing under a particular program.".

(B) The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 7522 the following new item:

"7521. Test and evaluation: use of facilities.".

(3)(A) Chapter 933 of title 10, United States Code, is amended by inserting after the table of sections at the beginning of such chapter the following new section:

"§ 9531. Test and evaluation: use of facilities

"(a) CHARGES FOR USE.—The Secretary of the Air Force may charge an entity for using a facility or resource of the Air Force within the Major Range and Test Facility Base for testing. The amount charged may not exceed the incremental cost to the Air Force of the use of the facility or resource by that user for the testing.

"(b) INSTITUTIONAL AND OVERHEAD COSTS.—The institutional and overhead costs of a facility or resource of the Air Force that is within the Major Range and Test Facility Base shall be paid out of the major test and evaluation investment accounts of the Air Force, the Central Test and Evaluation Investment Program of the Department of Defense, and other appropriate appropriations made directly to the Air Force.

"(c) MAJOR RANGE AND TEST FACILITY BASE DEFINED.—In this section:

"(1) The term 'Major Range and Test Facility Base' has the meaning given the term in section 139(k)(4) of this title.

"(2) The term 'institutional and overhead costs', with respect to a facility or resource within the Major Range Test and Facility Base—

"(A) means the costs of maintaining, operating, upgrading, and modernizing the facility or resource; and

"(B) does not include an incremental cost of operating the facility or resource that is attributable to the use of the facility or resource for testing under a particular program.".

(B) The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 9532 the following new item:

"9531. Test and evaluation: use of facilities.".

(4) Not later than 30 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall review the funding policies of each military department to ensure that the Secretary of the military department has in place the policies necessary to comply with the Secretary's responsibilities under section 4531, 7521, or 9531 of title 10, United States Code (as added by this subsection), as the case may be. The Under Secretary shall consult with the Director of Operational Test and Evaluation in carrying out the review.

SEC. 233. INCREASED INVESTMENT IN TEST AND EVALUATION FACILITIES.

(a) AMOUNT.—Of the amount authorized to be appropriated under section 201(4), $251,276,000 shall be available for the Central Test and Evaluation Investment Program of the Department of Defense.

(b) ADDITIONAL AVAILABLE FUNDING.—In addition to the amount made available under subsection (a), amounts transferred pursuant to section 232(a)(4) shall be available for the Central Test and Evaluation Investment Program of the Department of Defense.

SEC. 234. UNIFORM FINANCIAL MANAGEMENT SYSTEM FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION FACILITIES.

(a) REQUIREMENT FOR SYSTEM.—Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall implement a single financial management and accounting system for all test and evaluation facilities of the Department of Defense.

(b) SYSTEM FEATURES.—The financial management and accounting system shall be designed to achieve, at a minimum, the following functional objectives:

(1) Enable managers within the Department of Defense to compare the costs of conducting test and evaluation activities in the various facilities of the military departments.

(2) Enable the Secretary of Defense—

(A) to make prudent investment decisions; and

(B) to reduce the extent to which unnecessary costs of owning and operating Department of Defense test and evaluation facilities are incurred.

(3) Enable the Department of Defense to track the total cost of test and evaluation activities.

(4) Comply with the financial management enterprise architecture developed by the Secretary of Defense under section 1006.

SEC. 235. TEST AND EVALUATION WORKFORCE IMPROVEMENTS.

(a) REPORT ON CAPABILITIES.—Not later than March 15, 2003, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to Congress a report on the capabilities of the test and evaluation workforce of the Department of Defense. The Under Secretary shall consult with the Under Secretary of Defense for Personnel and Readiness and the Director of Operational Test and Evaluation in preparing the report.

(b) REQUIREMENT FOR PLAN.—(1) The report shall contain a plan for taking the actions necessary to ensure that the test and evaluation workforce of the Department of Defense is of sufficient size and has the expertise necessary to timely and accurately identify issues of military suitability and effectiveness of Department of Defense systems through testing of the systems.

(2) The plan shall set forth objectives for the size, composition, and qualifications of the workforce, and shall specify the actions (including recruitment, retention, and training) and milestones for achieving the objectives.

(c) Additional Matters.—The report shall also include the following matters:

(1) An assessment of the changing size and demographics of the test and evaluation workforce, including the impact of anticipated retirements among the most experienced personnel over the five-year period beginning with 2003, together with a discussion of the management actions necessary to address the changes.

(2) An assessment of the anticipated workloads and responsibilities of the test and evaluation workforce over the ten-year period beginning with 2003, together with the number and qualifications of military and civilian personnel necessary to carry out such workloads and responsibilities.

(3) The Secretary's specific plans for using the demonstration authority provided in section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1701 note) and other special personnel management authorities of the Secretary to attract and retain qualified personnel in the test and evaluation workforce.

(4) Any recommended legislation or additional special authority that the Secretary considers appropriate for facilitating the recruitment and retention of qualified personnel for the test and evaluation workforce.

(5) Any other matters that are relevant to the capabilities of the test and evaluation workforce.

SEC. 236. COMPLIANCE WITH TESTING REQUIREMENTS.

(a) Annual OT&E Report.—Subsection (g) of section 139 of title 10, United States Code, is amended by inserting after the fourth sentence the following: "The report for a fiscal year shall also include an assessment of the waivers of and deviations from requirements in test and evaluation master plans and other testing requirements that occurred during the fiscal year, any concerns raised by the waivers or deviations, and the actions that have been taken or are planned to be taken to address the concerns.".

(b) Reorganization of Provision.—Subsection (g) of such section, as amended by subsection (a), is further amended—

(1) by inserting "(1)" after "(g)";

(2) by designating the second sentence as paragraph (2);

(3) by designating the third sentence as paragraph (3);

(4) by designating the matter consisting of the fourth and fifth sentences as paragraph (4);

(5) by designating the sixth sentence as paragraph (5); and

(6) by realigning paragraphs (2), (3), (4), and (5), as so designated, two ems from the left margin.

SEC. 237. REPORT ON IMPLEMENTATION OF DEFENSE SCIENCE BOARD RECOMMENDATIONS.

(a) Requirement.—Not later than March 1, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the extent of the implementation of the recommendations set forth in the December 2000 Report of the Defense Science Board Task Force on Test and Evaluation Capabilities.

(b) Content.—The report shall include the following:

(1) For each recommendation that is being implemented or that the Secretary plans to implement—

(A) a summary of all actions that have been taken to implement the recommendation; and

(B) a schedule, with specific milestones, for completing the implementation of the recommendation.

(2) For each recommendation that the Secretary does not plan to implement—

(A) the reasons for the decision not to implement the recommendation; and

(B) a summary of any alternative actions the Secretary plans to take to address the purposes underlying the recommendation.

(3) A summary of any additional actions the Secretary plans to take to address concerns raised in the December 2000 Report of the Defense Science Board Task Force on Test and Evaluation Capabilities about the state of the test and evaluation infrastructure of the Department of Defense.

Subtitle E—Other Matters

SEC. 241. PILOT PROGRAMS FOR REVITALIZING DEPARTMENT OF DEFENSE LABORATORIES.

(a) Additional Pilot Program.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense.

(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

(A) To use innovative methods of personnel management appropriate for ensuring that the selected laboratories can—

(i) employ and retain a workforce appropriately balanced between permanent and temporary personnel and among workers with appropriate levels of skills and experience; and

(ii) effectively shape workforces to ensure that the workforces have the necessary sets of skills and experience to fulfill their organizational missions.

(B) To develop or expand innovative methods of entering into and expanding cooperative relationships and arrangements with private sector organizations, educational institutions (including primary and secondary schools), and State and local governments to facilitate the training of a future scientific and technical workforce that will contribute significantly to the accomplishment of organizational missions.

(C) To develop or expand innovative methods of establishing cooperative relationships and arrangements with private sector organizations and educational institutions to promote the establishment of the technological industrial base in areas critical for Department of Defense technological requirements.

(D) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A), (B), and (C).

(3) The Secretary may carry out the pilot program under this subsection at each selected laboratory for a period of three years beginning not later than March 1, 2003.

(b) Relationship to Fiscal Years 1999 and 2000 Revitalization Pilot Programs.—The pilot program under this section is in addition to, but may be carried out in conjunction with, the fiscal years 1999 and 2000 revitalization pilot programs.

(c) Reports.—(1) Not later than January 1, 2003, the Secretary shall submit to Congress a report on the experience under the fiscal years 1999 and 2000 revitalization pilot programs in exercising the authorities provided for the administration of those programs. The report shall include a description of—

(A) barriers to the exercise of the authorities that have been encountered;

(B) the proposed solutions for overcoming the barriers; and

(C) the progress made in overcoming the barriers.

(2) Not later than September 1, 2003, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program under subsection (a) and the fiscal years 1999 and 2000 revitalization pilot programs. The report shall include, for each such pilot program, the following:

(A) Each laboratory selected for the pilot program.

(B) To the extent practicable, a description of the innovative methods that are to be tested at each laboratory.

(C) The criteria to be used for measuring the success of each method to be tested.

(3) Not later than 90 days after the expiration of the period for the participation of a laboratory in a pilot program referred to in paragraph (2), the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

(A) A description of the methods tested.

(B) The results of the testing.

(C) The lessons learned.

(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

(d) Extension of Authority for Other Revitalization Pilot Programs.—(1) Section 246(a)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1956; 10 U.S.C. 2358 note) is amended by striking "a period of three years" and inserting "up to six years".

(2) Section 245(a)(4) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 553; 10 U.S.C. 2358 note) is amended by striking "a period of three years" and inserting "up to five years".

(e) Partnerships Under Pilot Program.—(1) The Secretary of Defense may authorize one or more laboratories and test centers participating in the pilot program under subsection (a) or in one of the fiscal years 1999 and 2000 revitalization pilot programs to enter into a cooperative arrangement (in this subsection referred to as a "public-private partnership") with entities in the private sector and institutions of higher education for the performance of work.

(2) A competitive process shall be used for the selection of entities outside the Government to participate in a public-private partnership.

(3)(A) Not more than one public-private partnership may be established as a limited liability corporation.

(B) An entity participating in a limited liability corporation as a party to a public-private partnership under the pilot program may contribute funds to the corporation, accept contribution of funds for the corporation, and provide materials, services, and use of facilities for research, technology, and infrastructure of the corporation, if it is determined under regulations prescribed by the Secretary of Defense that doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

(f) Excepted Service Under Pilot Program.—(1) To facilitate recruitment of experts in science and engineering to improve the performance of research, test, and evaluation functions of the Department of Defense, the Secretary of Defense may—

(A) designate a total of not more than 30 scientific, engineering, and technology positions at the laboratories and test centers participating in the pilot program under subsection (a) or in any of the fiscal years 1999 and 2000 revitalization pilot programs as positions in the excepted service (as defined in section 2103(a) of title 5, United States Code);

(B) appoint individuals to such positions; and

(C) fix the compensation of such individuals.

(2) The maximum rate of basic pay for a position in the excepted service pursuant to a designation made under paragraph (1) may not exceed the maximum rate of basic pay authorized

for senior-level positions under section 5376 of title 5, United States Code, notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch.

(g) FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS DEFINED.—In this section, the term "fiscal years 1999 and 2000 revitalization pilot programs" means the pilot programs authorized by—

(1) section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; 10 U.S.C. 2358 note); and

(2) section 245 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 552; 10 U.S.C. 2358 note).

SEC. 242. TECHNOLOGY TRANSITION INITIATIVE.

(a) ESTABLISHMENT AND CONDUCT.—(1) Chapter 139 of title 10, United States Code, is amended by inserting after section 2359 the following new section:

"§2359a. Technology Transition Initiative

"(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall carry out a Technology Transition Initiative to facilitate the rapid transition of new technologies from science and technology programs of the Department of Defense into acquisition programs for the production of the technologies.

"(b) OBJECTIVES.—The objectives of the Initiative are as follows:

"(1) To accelerate the introduction of new technologies into Department of Defense acquisition programs appropriate for the technologies.

"(2) To successfully demonstrate new technologies in relevant environments.

"(3) To ensure that new technologies are sufficiently mature for production.

"(c) MANAGEMENT.—(1) The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense to manage the Initiative.

"(2) In administering the Initiative, the Initiative Manager shall—

"(A) report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

"(B) obtain advice and other assistance from the Technology Transition Council established under subsection (e).

"(3) The Initiative Manager shall—

"(A) in consultation with the Technology Transition Council established under subsection (e), identify promising technologies that have been demonstrated in science and technology programs of the Department of Defense;

"(B) develop a list of those technologies that have promising potential for transition into acquisition programs of the Department of Defense and transmit the list to the acquisition executive of each military department and to Congress;

"(C) identify potential sponsors in the Department of Defense to undertake the transition of such technologies into production;

"(D) work with the science and technology community and the acquisition community to develop memoranda of agreement, joint funding agreements, and other cooperative arrangements to provide for the transition of the technologies into production; and

"(E) provide funding support for selected projects under subsection (d).

"(d) JOINTLY FUNDED PROJECTS.—(1) The acquisition executive of each military department shall select technology projects of the military department to recommend for funding support under the Initiative and shall submit a list of the recommended projects, ranked in order of priority, to the Initiative Manager. The projects shall be selected, in a competitive process, on the basis of the highest potential benefits in areas of interest identified by the Secretary of that military department.

"(2) The Initiative Manager, in consultation with the Technology Transition Council established under subsection (e), shall select projects for funding support from among the projects on the lists submitted under paragraph (1). The Initiative Manager shall provide funds for each selected project. The total amount provided for a project shall be determined by agreement between the Initiative Manager and the acquisition executive of the military department concerned, but shall not be less than the amount equal to 50 percent of the total cost of the project.

"(3) The Initiative Manager shall not fund any one project under this subsection for more than 3 years.

"(4) The acquisition executive of the military department shall manage each project selected under paragraph (2) that is undertaken by the military department. Memoranda of agreement, joint funding agreements, and other cooperative arrangements between the science and technology community and the acquisition community shall be used in carrying out the project if the acquisition executive determines that it is appropriate to do so to achieve the objectives of the project.

"(e) TECHNOLOGY TRANSITION COUNCIL.—(1) There is a Technology Transition Council in the Department of Defense. The Council is composed of the following members:

"(A) The science and technology executives of the military departments and Defense Agencies.

"(B) The acquisition executives of the military departments.

"(C) The members of the Joint Requirements Oversight Council.

"(2) The Technology Transition Council shall provide advice and assistance to the Initiative Manager under this section.

"(f) DEFINITIONS.—In this section:

"(1) The term 'acquisition executive', with respect to a military department, means the official designated as the senior procurement executive for that military department under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

"(2) The term 'Initiative' means the Technology Transition Initiative carried out under this section.

"(3) The term 'Initiative Manager' means the official designated to manage the Initiative under subsection (c).".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2395 the following new item:

"2359a. Technology Transition Initiative.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized to be appropriated under section 201(4), $50,000,000 shall be available for the Technology Transition Initiative under section 2359a of title 10, United States Code (as added by subsection (a)), and for other technology transition activities of the Department of Defense.

SEC. 243. ENCOURAGEMENT OF SMALL BUSINESSES AND NONTRADITIONAL DEFENSE CONTRACTORS TO SUBMIT PROPOSALS POTENTIALLY BENEFICIAL FOR COMBATING TERRORISM.

(a) ESTABLISHMENT OF OUTREACH PROGRAM.—During the 3-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall carry out a program of outreach to small businesses and nontraditional defense contractors for the purpose set forth in subsection (b).

(b) PURPOSE.—The purpose of the outreach program is to provide a process for reviewing and evaluating research activities of, and new technologies being developed by, small businesses and nontraditional defense contractors that have the potential for meeting a defense requirement or technology development goal of the Department of Defense that relates to the mission of the Department of Defense to combat terrorism.

(c) GOALS.—The goals of the outreach program are as follows:

(1) To increase efforts within the Department of Defense to survey and identify technologies being developed outside the Department that have the potential described in subsection (b).

(2) To provide the Under Secretary of Defense for Acquisition, Technology, and Logistics with a source of expert advice on new technologies for combating terrorism.

(3) To increase efforts to educate nontraditional defense contractors on Department of Defense acquisition processes, including regulations, procedures, funding opportunities, military needs and requirements, and technology transfer so as to encourage such contractors to submit proposals regarding research activities and technologies described in subsection (b).

(4) To increase efforts to provide timely response by the Department of Defense to acquisition proposals (including unsolicited proposals) submitted to the Department by small businesses and by nontraditional defense contractors regarding research activities and technologies described in subsection (b), including through the use of electronic transactions to facilitate the processing of proposals.

(d) REVIEW PANEL.—(1) The Secretary shall appoint, under the outreach program, a panel for the review and evaluation of proposals described in subsection (c)(4).

(2) The panel shall be composed of qualified personnel from the military departments, relevant Defense Agencies, industry, academia, and other private sector organizations.

(3) The panel shall review and evaluate proposals that, as determined by the panel, may present a unique and valuable approach for meeting a defense requirement or technology development goal related to combating terrorism. In carrying out duties under this paragraph, the panel may act through representatives designated by the panel.

(4) The panel shall—

(A) within 60 days after receiving such a proposal, transmit to the source of the proposal a notification regarding whether the proposal has been selected for review by the panel;

(B) to the maximum extent practicable, complete the review of each selected proposal within 120 days after the proposal is selected for review by the panel; and

(C) after completing the review, transmit an evaluation of the proposal to the source of the proposal.

(5) The Secretary shall ensure that the panel, in reviewing and evaluating proposals under this subsection, has the authority to obtain assistance, to a reasonable extent, from the appropriate technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department of Defense.

(6) If, after completing the review of a proposal, the panel determines that the proposal represents a unique and valuable approach to meeting a defense requirement or technology development goal related to combating terrorism, the panel shall submit that determination to the Under Secretary of Defense for Acquisition, Technology, and Logistics together with any recommendations that the panel considers appropriate regarding the proposal.

(7) The Secretary of Defense shall ensure that there is no conflict of interest on the part of a member of the panel with respect to the review and evaluation of a proposal by the panel.

(e) DEFINITIONS.—In this section:

(1) The term "nontraditional defense contractor" means an entity that has not, for at

least one year prior to the date of the enactment of this Act, entered into, or performed with respect to, any contract described in paragraph (1) or (2) of section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note).

(2) The term "small business" means a business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 244. VEHICLE FUEL CELL PROGRAM.

(a) PROGRAM.—The Secretary of Defense shall carry out a vehicle fuel cell technology development program in cooperation with the Secretary of Energy, the heads of other Federal agencies appropriate for participation in the program, and industry.

(b) GOALS AND OBJECTIVES.—The goals and objectives of the program shall be as follows:

(1) To identify and support technological advances that are necessary for the development of fuel cell technology for use in vehicles of types to be used by the Department of Defense.

(2) To ensure that critical technology advances are shared among the various fuel cell technology programs within the Federal Government.

(3) To ensure maximum leverage of Federal Government funding for fuel cell technology development.

(c) CONTENT OF PROGRAM.—The program shall include—

(1) development of vehicle propulsion technologies and fuel cell auxiliary power units, together with pilot demonstrations of such technologies, as appropriate; and

(2) development of technologies necessary to address critical issues such as hydrogen storage and the need for a hydrogen fuel infrastructure.

(d) COOPERATION WITH INDUSTRY.—(1) The Secretary shall include the automobile and truck manufacturing industry and its systems and component suppliers in the cooperative involvement of industry in the program.

(2) The Secretary of Defense shall consider whether, in order to facilitate the cooperation of industry in the program, the Secretary and one or more companies in industry should enter into a cooperative agreement that establishes an entity to carry out activities required under subsection (c). An entity established by any such agreement shall be known as a defense industry fuel cell partnership.

(3) The Secretary of Defense shall provide for industry to bear, in cash or in kind, at least one-half of the total cost of carrying out the program.

(e) AMOUNT FOR PROGRAM.—Of the amount authorized to be appropriated by section 201(4), $10,000,000 shall be available for the program required by this section.

SEC. 245. DEFENSE NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense nanotechnology research and development program.

(b) PURPOSES.—The purposes of the program are as follows:

(1) To ensure United States global superiority in nanotechnology necessary for meeting national security requirements.

(2) To coordinate all nanoscale research and development within the Department of Defense, and to provide for interagency cooperation and collaboration on nanoscale research and development between the Department of Defense and other departments and agencies of the United States that are involved in nanoscale research and development.

(3) To develop and manage a portfolio of fundamental and applied nanoscience and engineering research initiatives that is stable, consistent, and balanced across scientific disciplines.

(4) To accelerate the transition and deployment of technologies and concepts derived from nanoscale research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

(5) To collect, synthesize, and disseminate critical information on nanoscale research and development.

(c) ADMINISTRATION.—In carrying out the program, the Secretary shall act through the Director of Defense Research and Engineering, who shall supervise the planning, management, and coordination of the program. The Director, in consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

(1) prescribe a set of long-term challenges and a set of specific technical goals for the program;

(2) develop a coordinated and integrated research and investment plan for meeting the long-term challenges and achieving the specific technical goals; and

(3) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals.

(d) ANNUAL REPORT.—Not later than March 1 of each of 2004, 2005, 2006, and 2007, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report on the program. The report shall contain the following matters:

(1) A review of—

(A) the long-term challenges and specific goals of the program; and

(B) the progress made toward meeting the challenges and achieving the goals.

(2) An assessment of current and proposed funding levels, including the adequacy of such funding levels to support program activities.

(3) A review of the coordination of activities within the Department of Defense and with other departments and agencies.

(4) An assessment of the extent to which effective technology transition paths have been established as a result of activities under the program.

(5) Recommendations for additional program activities to meet emerging national security requirements.

SEC. 246. ACTIVITIES AND ASSESSMENT OF THE DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.

(a) AUTHORIZED ACTIVITIES.—Subsection (c) of section 257 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note), is amended—

(1) in paragraph (1), by striking "research grants" and inserting "grants for research and instrumentation to support such research"; and

(2) by adding at the end the following new paragraph:

"(3) Any other activities that are determined necessary to further the achievement of the objectives of the program.".

(b) COORDINATION.—Subsection (e) of such section is amended by adding at the end the following:

"(4) The Secretary shall contract with the National Research Council to assess the effectiveness of the Defense Experimental Program to Stimulate Competitive Research in achieving the program objectives set forth in subsection (b). The assessment provided to the Secretary shall include the following:

"(A) An assessment of the eligibility requirements of the program and the relationship of such requirements to the overall research base in the States, the stability of research initiatives in the States, and the achievement of the program objectives, together with any recommendations for modification of the eligibility requirements.

"(B) An assessment of the program structure and the effects of that structure on the development of a variety of research activities in the States and the personnel available to carry out such activities, together with any recommendations for modification of program structure, funding levels, and funding strategy.

"(C) An assessment of the past and ongoing activities of the State planning committees in supporting the achievement of the program objectives.

"(D) An assessment of the effects of the various eligibility requirements of the various Federal programs to stimulate competitive research on the ability of States to develop niche research areas of expertise, exploit opportunities for developing interdisciplinary research initiatives, and achieve program objectives.".

SEC. 247. FOUR-YEAR EXTENSION OF AUTHORITY OF DARPA TO AWARD PRIZES FOR ADVANCED TECHNOLOGY ACHIEVEMENTS.

(a) EXTENSION.—Section 2374a(f) of title 10, United States Code, is amended by striking "September 30, 2003" and inserting "September 30, 2007".

(b) REPORT ON ADMINISTRATION OF PROGRAM.—(1) Not later than December 31, 2002, the Director of the Defense Advanced Research Projects Agency shall submit to the congressional defense committees a report on the proposal of the Director for the administration of the program to award prizes for advanced technology achievements under section 2374a of title 10, United States Code.

(2) The report shall include the following:

(A) A description of the proposed goals of the competition under the program, including the technology areas to be promoted by the competition and the relationship of such area to military missions of the Department of Defense.

(B) The proposed rules of the competition under the program and a description of the proposed management of the competition.

(C) A description of the manner in which funds for cash prizes under the program will be allocated within the accounts of the Agency if a prize is awarded and claimed.

(D) A statement of the reasons why the competition is a preferable means of promoting basic, advanced, and applied research, technology development, or prototype projects than other means of promotion of such activities, including contracts, grants, cooperative agreements, and other transactions.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $24,180,742,000.

(2) For the Navy, $29,368,961,000.

(3) For the Marine Corps, $3,558,732,000.

(4) For the Air Force, $27,445,764,000.

(5) For Defense-wide activities, $14,492,266,000.

(6) For the Army Reserve, $1,962,610,000.

(7) For the Naval Reserve, $1,233,759,000.

(8) For the Marine Corps Reserve, $190,532,000.

(9) For the Air Force Reserve, $2,165,004,000.

(10) For the Army National Guard, $4,506,267,000.

(11) For the Air National Guard, $4,114,910,000.

(12) For the Defense Inspector General, $155,165,000.

(13) For the United States Court of Appeals for the Armed Forces, $9,614,000.

(14) For Environmental Restoration, Army, $395,900,000.

(15) For Environmental Restoration, Navy, $256,948,000.

(16) For Environmental Restoration, Air Force, $389,773,000.

(17) For Environmental Restoration, Defense-wide, $23,498,000.

(18) For Environmental Restoration, Formerly Used Defense Sites, $252,102,000.

(19) For Overseas Humanitarian, Disaster, and Civic Aid programs, $58,400,000.

(20) For Drug Interdiction and Counter-drug Activities, Defense-wide, $873,907,000.

(21) For the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, $25,000,000.

(22) For Defense Health Program, $14,202,441,000.

(23) For Cooperative Threat Reduction programs, $416,700,000.

(24) For Overseas Contingency Operations Transfer Fund, $50,000,000.

(25) For Support for International Sporting Competitions, Defense, $19,000,000.

(b) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to subsection (a) is reduced by—

(1) $159,790,000, which represents savings resulting from reduced travel; and

(2) $615,200,000, which represents savings resulting from foreign currency fluctuations.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $387,156,000.

(2) For the National Defense Sealift Fund, $934,129,000.

(3) For the Defense Commissary Agency Working Capital Fund, $969,200,000.

(4) For the Pentagon Reservation Maintenance Revolving Fund, $328,000,000.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2003 from the Armed Forces Retirement Home Trust Fund the sum of $69,921,000 for the operation of the Armed Forces Retirement Home, including the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport.

SEC. 304. RANGE ENHANCEMENT INITIATIVE FUND.

(a) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated by section 301(a)(5) for operation and maintenance for defense-wide activities, $20,000,000 shall be available for the Range Enhancement Initiative Fund for the purpose specified in subsection (b).

(b) PURPOSE.—Subject to subsection (c), amounts authorized to be appropriated for the Range Enhancement Initiative Fund shall be available to the Secretary of Defense and the Secretaries of the military departments to purchase restrictive easements, including easements that implement agreements entered into under section 2697 of title 10, United States Code, as added by section 2811 of this Act.

(c) TRANSFER OF AMOUNTS.—(1) Amounts in the Range Enhancement Initiative Fund shall, subject to applicable limitations in appropriations Acts, be made available to the Secretary of a military department under subsection (b) by transfer from the Fund to the applicable operation and maintenance account of the military department, including the operation and maintenance account for the active component, or for a reserve component, of the military department.

(2) Authority to transfer amounts under paragraph (1) is in addition to any other authority to transfer funds under this Act.

SEC. 305. NAVY PILOT HUMAN RESOURCES CALL CENTER, CUTLER, MAINE.

Of the amount authorized to be appropriated by section 301(a)(2) for operation and maintenance for the Navy, $1,500,000 may be available for the Navy Pilot Human Resources Call Center, Cutler, Maine.

SEC. 306. NATIONAL ARMY MUSEUM, FORT BELVOIR, VIRGINIA.

(a) ACTIVATION EFFORTS.—The Secretary of the Army may carry out efforts to facilitate the commencement of development for the National Army Museum at Fort Belvoir, Virginia.

(b) FUNDING.—(1) The amount authorized to be appropriated by section 301(a)(1) for operation and maintenance for the Army is hereby increased by $100,000.

(2) Of the amount authorized to be appropriated by section 301(a)(1) for operation and maintenance for the Army, as increased by paragraph (1), $100,000 shall be available to carry out the efforts authorized by subsection (a).

(c) OFFSET.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army is hereby reduced by $100,000.

SEC. 307. DISPOSAL OF OBSOLETE VESSELS OF THE NATIONAL DEFENSE RESERVE FLEET.

Of the amount authorized to be appropriated by section 301(a)(2) for operation and maintenance for the Navy, $20,000,000 may be available, without fiscal year limitation if so provided in appropriations Acts, for expenses related to the disposal of obsolete vessels in the Maritime Administration National Defense Reserve Fleet.

Subtitle B—Environmental Provisions

SEC. 311. ENHANCEMENT OF AUTHORITY ON COOPERATIVE AGREEMENTS FOR ENVIRONMENTAL PURPOSES.

Section 2701(d) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) CROSS-FISCAL YEAR AGREEMENTS.—An agreement with an agency under paragraph (1) may be for a period that begins in one fiscal year and ends in another fiscal year if (without regard to any option to extend the period of the agreement) the period of the agreement does not exceed two years.".

SEC. 312. MODIFICATION OF AUTHORITY TO CARRY OUT CONSTRUCTION PROJECTS FOR ENVIRONMENTAL RESPONSES.

(a) RESTATEMENT AND MODIFICATION OF AUTHORITY.—(1) Chapter 160 of title 10, United States Code, is amended by adding at the end the following new section:

"§2711. Environmental restoration projects for environmental responses

"(a) The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

"(b) Any construction, development, conversion, or extension of a structure or installation of equipment that is included in an environmental restoration project may not be considered military construction (as that term is defined in section 2801(a) of this title).

"(c) Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

"(d) In this section, the term 'environmental restoration project' includes construction, development, conversion, or extension of a structure or installation of equipment in direct support of a response.".

(2) The table of sections at the beginning of that chapter is amended by adding at the end the following new item:

"2711. Environmental restoration projects for environmental responses.".

(b) REPEAL OF SUPERSEDED PROVISION.—(1) Section 2810 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 169 of that title is amended by striking the item relating to section 2810.

SEC. 313. INCREASED PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PRODUCTS.

(a) PROCUREMENT GOALS.—(1) The Secretary of Defense shall establish goals for the increased procurement by the Department of Defense of procurement items that are environmentally preferable or are made with recovered materials.

(2) The goals established under paragraph (1) shall be consistent with the requirements of section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

(3) In establishing goals under paragraph (1), the Secretary shall review the Comprehensive Procurement Guidelines and Guidance on Acquisition of Environmentally Preferable Products and Services developed pursuant to Executive Order 13101 and products identified as environmentally preferable in the Federal Logistics Information System.

(4) In establishing goals under paragraph (1), the Secretary shall establish a procurement goal for each category of procurement items that is environmentally preferable or is made with recovered materials.

(5) The goals established under paragraph (1) shall apply to Department purchases in each category of procurement items designated by the Secretary for purposes of paragraph (4), but shall not apply to—

(A) products or services purchased by Department contractors and subcontractors, even if such products or services are incorporated into procurement items purchased by the Department; or

(B) credit card purchases or other local purchases that are made outside the requisitioning process of the Department.

(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials and contractors to ensure that they are aware of Department requirements, preferences, and goals for the procurement of items that are environmentally preferable or are made with recovered materials.

(c) TRACKING SYSTEM.—The Secretary shall develop a tracking system to identify the extent to which the Department of Defense is procuring items that are environmentally preferable or are made with recovered materials. The tracking system shall separately track procurement of each category of procurement items for which a goal has been established under subsection (a)(4).

(d) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report that sets forth—

(1) the initial goals the Secretary plans to establish under subsection (a); and

(2) the findings of the Secretary as a result of the assessment under subsection (b), together with any recommendations of the Secretary as a result of the assessment.

(e) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall—

(1) establish an initial set of goals in accordance with subsection (a);

(2) begin the implementation of any recommendations of the Secretary under subsection (d)(2) as a result of the assessment under subsection (b); and

(3) implement the tracking system required by subsection (c).

(f) Annual Report.—Not later than March 1 of each year from 2004 through 2007, the Secretary shall submit to Congress a report on the progress made in the implementation of this section. Each report shall—

(1) identify each category of procurement items for which a goal has been established under subsection (a) as of the end of such year; and

(2) provide information from the tracking system required by subsection (b) that indicates the extent to which the Department has met the goal for the category of procurement items as of the end of such year.

(g) Definitions.—In this section:

(1) Environmentally preferable.—The term "environmentally preferable", in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing procurement items that serve the same purpose. The comparison may be based upon consideration of raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the procurement item, or other appropriate matters.

(2) Procurement item.—The term "procurement item" has the meaning given that term in section 1004(16) of the Solid Waste Disposal Act (40 U.S.C. 6903(16)).

(3) Recovered materials.—The term "recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste, but does not include materials and by-products generated from, and commonly used within, an original manufacturing process.

SEC. 314. CLEANUP OF UNEXPLODED ORDNANCE ON KAHO'OLAWE ISLAND, HAWAII.

(a) Level of Cleanup Required.—The Secretary of the Navy shall continue activities for the clearance and removal of unexploded ordnance on the Island of Kaho'olawe, Hawaii, and related remediation activities, until the later of the following dates:

(1) The date on which the Kaho'olawe Island access control period expires.

(2) The date on which the Secretary achieves each of the following objectives:

(A) The inspection and assessment of all of Kaho'olawe Island in accordance with current procedures.

(B) The clearance of 75 percent of Kaho'olawe Island to the degree specified in the Tier One standards in the memorandum of understanding.

(C) The clearance of 25 percent of Kaho'olawe Island to the degree specified in the Tier Two standards in the memorandum of understanding.

(b) Definitions.—In this section:

(1) The term "Kaho'olawe Island access control period" means the period for which the Secretary of the Navy is authorized to retain the control of access to the Island of Kaho'olawe, Hawaii, under title X of the Department of Defense Appropriations Act, 1994 (Public Law 103–139; 107 Stat. 1480).

(2) The term "memorandum of understanding" means the Memorandum of Understanding Between the United States Department of the Navy and the State of Hawaii Concerning the Island of Kaho'olawe, Hawaii.

Subtitle C—Defense Dependents' Education

SEC. 331. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) Continuation of Department of Defense Program for Fiscal Year 2003.—Of the amount authorized to be appropriated pursuant to section 301(a)(5) for operation and maintenance for Defense-wide activities, $30,000,000 shall be available only for the purpose of providing educational agencies assistance to local educational agencies.

(b) Notification.—Not later than June 30, 2003, the Secretary of Defense shall notify each local educational agency that is eligible for assistance or a payment under subsection (a) for fiscal year 2003 of—

(1) that agency's eligibility for the assistance or payment; and

(2) the amount of the assistance or payment for which that agency is eligible.

(c) Disbursement of Funds.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) Definitions.—In this section:

(1) The term "educational agencies assistance" means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

SEC. 332. IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

Of the amount authorized to be appropriated pursuant to section 301(a)(5) for operation and maintenance for Defense-wide activities, $5,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77; 20 U.S.C. 7703a).

SEC. 333. OPTIONS FOR FUNDING DEPENDENT SUMMER SCHOOL PROGRAMS.

Section 1402(d)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(d)(2)) is amended to read as follows:

"(2) The Secretary shall provide any summer school program under this subsection on the same financial basis as programs offered during the regular school year, except that the Secretary may charge reasonable fees for all or portions of such summer school programs to the extent that the Secretary determines appropriate.".

SEC. 334. COMPTROLLER GENERAL STUDY OF ADEQUACY OF COMPENSATION PROVIDED FOR TEACHERS IN THE DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) Additional Consideration for Study.—Subsection (b) of section 354 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1064) is amended by inserting after paragraph (2) the following new paragraph:

"(3) Whether the process for setting teacher compensation is efficient and cost effective.".

(b) Extension of Time for Reporting.—Subsection (c) of such section is amended by striking "May 1, 2002" and inserting "December 12, 2002".

Subtitle D—Other Matters

SEC. 341. USE OF HUMANITARIAN AND CIVIC ASSISTANCE FUNDS FOR RESERVE COMPONENT MEMBERS OF SPECIAL OPERATIONS COMMAND ENGAGED IN ACTIVITIES RELATING TO CLEARANCE OF LANDMINES.

Section 401(c) of title 10, United States Code, is amended by adding at the end the following new paragraph (5):

"(5) Up to 10 percent of the amount available for a fiscal year for activities described in subsection (e)(5) may be expended for the pay and allowances of reserve component members of the Special Operations Command performing duty in connection with training and activities related to the clearing of landmines for humanitarian purposes.".

SEC. 342. CALCULATION OF FIVE-YEAR PERIOD OF LIMITATION FOR NAVY-MARINE CORPS INTRANET CONTRACT.

(a) Commencement of Period.—The five-year period of limitation that is applicable to the multiyear Navy-Marine Corps Intranet contract under section 2306c of title 10, United States Code, shall be deemed to have begun on the date on which the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense approved the ordering of additional workstations under such contract in accordance with subsection (c) of section 814 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as added by section 362(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1065).

(b) Definition.—In this section, the term "Navy-Marine Corps Intranet contract" has the meaning given such term in section 814(i)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as amended by section 362(c) of Public Law 107–107 (115 Stat. 1067)).

SEC. 343. REIMBURSEMENT FOR RESERVE COMPONENT INTELLIGENCE SUPPORT.

(a) Source of Funds.—Chapter 1003 of title 10, United States Code, is amended by adding at the end the following new section:

"§10115. Reimbursement for reserve component intelligence support

"(a) Authority.—Funds appropriated or otherwise made available to a military department, Defense Agency, or combatant command for operation and maintenance shall be available for the pay, allowances, and other costs that would be charged to appropriations for a reserve component for the performance of duties by members of that reserve component in providing intelligence or counterintelligence support to—

"(1) such military department, Defense Agency, or combatant command; or

"(2) a joint intelligence activity, including any such activity for which funds are authorized to be appropriated within the National Foreign Intelligence Program, the Joint Military Intelligence Program, or the Tactical Intelligence and Related Activities aggregate (or any successor to such program or aggregate).

"(b) Construction of Provision.—Nothing in this section shall be construed to authorize deviation from established reserve component personnel or training procedures.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"10115. Reimbursement for reserve component intelligence support.".

SEC. 344. REBATE AGREEMENTS UNDER THE SPECIAL SUPPLEMENTAL FOOD PROGRAM.

(a) Applicability to Navy Exchange Markets.—Paragraph (1)(A) of section 1060a(e) of *title 10, United States Code, is amended by inserting "or Navy Exchange Markets" after "commissary stores".*

(b) INCREASED MAXIMUM PERIOD OF AGREEMENT.—Paragraph (3) of such section 1060a(e) is amended by striking "subsection may not exceed one year" in the first sentence and inserting "subsection, including any period of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years".

SEC. 345. LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS.

(a) AUTHORITY.—The Secretary of Defense may make available, in accordance with this section and the regulations prescribed under subsection (e), logistics support and logistics services to a contractor in support of the performance by the contractor of a contract for the construction, modification, or maintenance of a weapon system that is entered into by an official of the Department of Defense.

(b) SUPPORT CONTRACTS.—Any logistics support and logistics services that is to be provided under this section to a contractor in support of the performance of a contract shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor.

(c) SCOPE OF SUPPORT AND SERVICES.—The logistics support and logistics services that may be provided under this section in support of the performance of a contract described in subsection (a) are the distribution, disposal, and cataloging of materiel and repair parts necessary for the performance of that contract.

(d) LIMITATIONS.—(1) The number of contracts described in subsection (a) for which the Secretary makes logistics support and logistics services available under the authority of this section may not exceed five contracts. The total amount of the estimated costs of all such contracts for which logistics support and logistics services are made available under this section may not exceed $100,000,000.

(2) No contract entered into by the Director of the Defense Logistics Agency under subsection (b) may be for a period in excess of five years, including periods for which the contract is extended under options to extend the contract.

(e) REGULATIONS.—Before exercising the authority under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that logistics support and logistics services are provided under this section only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

(1) A requirement for the authority under this section to be used only for providing logistics support and logistics services in support of the performance of a contract that is entered into using competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)).

(2) A requirement for the solicitation of offers for a contract described in subsection (a), for which logistics support and logistics services are to be made available under this section, to include—

(A) a statement that the logistics support and logistics services are to be made available under the authority of this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

(B) a description of the range of the logistics support and logistics services that are to be made available to the contractor.

(3) A requirement for the rates charged a contractor for logistics support and logistics services provided to a contractor under this section to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

(4) A requirement to credit to the General Fund of the Treasury amounts received by the Department of Defense from a contractor for the cost of logistics support and logistics services provided to the contractor by the Department of Defense under this section but not paid for out of funds available to the Department of Defense.

(5) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

(6) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of logistics support and logistics services provided to the contractor under this section.

(f) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

(g) TERMINATION OF AUTHORITY.—(1) The authority provided in this section shall expire on September 30, 2007, subject to paragraph (2).

(2) The expiration of the authority under this section does not terminate—

(A) any contract that was entered into by the Director of the Defense Logistics Agency under subsection (b) before the expiration of the authority or any obligation to provide logistics support and logistics services under that contract; or

(B) any authority—

(i) to enter into a contract described in subsection (a) for which a solicitation of offers was issued in accordance with the regulations prescribed pursuant to subsection (e)(2) before the date of the expiration of the authority; or

(ii) to provide logistics support and logistics services to the contractor with respect to that contract in accordance with this section.

SEC. 346. CONTINUATION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

(a) EXTENSION THROUGH FISCAL YEAR 2004.—Subsection (a) of section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–65) is amended by striking "and 2002" and inserting "through 2004".

(b) REPORTING REQUIREMENTS.—Subsection (g) of such section is amended—

(1) in paragraph (1), by striking "2002" and inserting "2004"; and

(2) in paragraph (2), by striking the first sentence and inserting the following new sentence: "Not later than July 1, 2003, the Secretary of the Army shall submit to the congressional defense committees a report on the results of the demonstration program since its implementation, including the Secretary's views regarding the benefits of the program for Army manufacturing arsenals and the Department of the Army and the success of the program in achieving the purposes specified in subsection (b).".

SEC. 347. TWO-YEAR EXTENSION OF AUTHORITY OF THE SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES ABROAD.

Section 431(a) of title 10, United States Code, is amended by striking "December 31, 2002" in the second sentence and inserting "December 31, 2004".

SEC. 348. INSTALLATION AND CONNECTION POLICY AND PROCEDURES REGARDING DEFENSE SWITCH NETWORK.

(a) ESTABLISHMENT OF POLICY AND PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish clear and uniform policy and procedures, applicable to the military departments and Defense Agencies, regarding the installation and connection of telecom switches to the Defense Switch Network.

(b) ELEMENTS OF POLICY AND PROCEDURES.—The policy and procedures shall address at a minimum the following:

(1) Clear interoperability and compatibility requirements for procuring, certifying, installing, and connecting telecom switches to the Defense Switch Network.

(2) Current, complete, and enforceable testing, validation, and certification procedures needed to ensure the interoperability and compatibility requirements are satisfied.

(c) EXCEPTIONS.—(1) The Secretary of Defense may specify certain circumstances in which—

(A) the requirements for testing, validation, and certification of telecom switches may be waived; or

(B) interim authority for the installation and connection of telecom switches to the Defense Switch Network may be granted.

(2) Only the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, after consultation with the Chairman of the Joint Chiefs of Staff, may approve a waiver or grant of interim authority under paragraph (1).

(d) INVENTORY OF DEFENSE SWITCH NETWORK.—The Secretary of Defense shall prepare and maintain an inventory of all telecom switches that, as of the date on which the Secretary issues the policy and procedures—

(1) are installed or connected to the Defense Switch Network; but

(2) have not been tested, validated, and certified by the Defense Information Systems Agency (Joint Interoperability Test Center).

(e) INTEROPERABILITY RISKS.—(1) The Secretary of Defense shall, on an ongoing basis—

(A) identify and assess the interoperability risks that are associated with the installation or connection of uncertified switches to the Defense Switch Network and the maintenance of such switches on the Defense Switch Network; and

(B) develop and implement a plan to eliminate or mitigate such risks as identified.

(2) The Secretary shall initiate action under paragraph (1) upon completing the initial inventory of telecom switches required by subsection (d).

(f) TELECOM SWITCH DEFINED.—In this section, the term "telecom switch" means hardware or software designed to send and receive voice, data, or video signals across a network that provides customer voice, data, or video equipment access to the Defense Switch Network or public switched telecommunications networks.

SEC. 349. ENGINEERING STUDY AND ENVIRONMENTAL ANALYSIS OF ROAD MODIFICATIONS IN VICINITY OF FORT BELVOIR, VIRGINIA.

(a) STUDY AND ANALYSIS.—(1) The Secretary of the Army shall conduct a preliminary engineering study and environmental analysis to evaluate the feasibility of establishing a connector road between Richmond Highway (United States Route 1) and Telegraph Road in order to provide an alternative to Beulah Road (State Route 613) and Woodlawn Road (State Route 618) at Fort Belvoir, Virginia, which were closed as a force protection measure.

(2) It is the sense of Congress that the study and analysis should consider as one alternative the extension of Old Mill Road between Richmond Highway and Telegraph Road.

(b) CONSULTATION.—The study required by subsection (a) shall be conducted in consultation with the Department of Transportation of the Commonwealth of Virginia and Fairfax County, Virginia.

(c) REPORT.—The Secretary shall submit to Congress a summary report on the study and analysis required by subsection (a). The summary report shall be submitted together with the budget justification materials in support of the budget of the President for fiscal year 2006 that is submitted to Congress under section 1105(a) of title 31, United States Code.

(d) FUNDING.—Of the amount authorized to be appropriated by section 301(a)(1) for the Army for operation and maintenance, $5,000,000 may be available for the study and analysis required by subsection (a).

SEC. 350. EXTENSION OF WORK SAFETY DEMONSTRATION PROGRAM.

Section 1112 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–313) is amended—

(1) in subsection (d), by striking "September 30, 2002" and inserting "September 30, 2003"; and

(2) in subsection (e)(2), by striking "December 1, 2002" and inserting "December 1, 2003".

SEC. 351. LIFT SUPPORT FOR MINE WARFARE SHIPS AND OTHER VESSELS.

(a) AMOUNT.—Of the amount authorized to be appropriated by section 302(2), $10,000,000 shall be available for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study, which are to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels.

(b) OFFSETTING REDUCTION.—Of the amount authorized to be appropriated by section 302(2), the amount provided for the procurement of mine countermeasures ships cradles is hereby reduced by $10,000,000.

SEC. 352. NAVY DATA CONVERSION ACTIVITIES.

(a) AMOUNT FOR ACTIVITIES.—The amount authorized to be appropriated by section 301(a)(2) is hereby increased by $1,500,000. The total amount of such increase may be available for the Navy Data Conversion and Management Laboratory to support data conversion activities for the Navy.

(b) OFFSET.—The amount authorized to be appropriated by section 301(a)(1) is hereby reduced by $1,500,000 to reflect a reduction in the utilities privatization efforts previously planned by the Army.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2003, as follows:

(1) The Army, 485,000.

(2) The Navy, 379,200.

(3) The Marine Corps, 175,000.

(4) The Air Force, 362,500.

SEC. 402. AUTHORITY TO INCREASE STRENGTH AND GRADE LIMITATIONS TO ACCOUNT FOR RESERVE COMPONENT MEMBERS ON ACTIVE DUTY IN SUPPORT OF A CONTINGENCY OPERATION.

(a) ACTIVE DUTY STRENGTH.—Section 115(c)(1) of title 10, United States Code, is amended to read as follows:

"(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by—

"(A) a number equal to not more than 2 percent of that end strength;

"(B) a number equal to the number of members of the reserve components of that armed force on active duty under section 12301(d) of this title in support of a contingency operation in that fiscal year; or

"(C) a number not greater than the sum of the numbers authorized by subparagraphs (A) and (B).".

(b) AUTHORIZED DAILY AVERAGE FOR MEMBERS IN PAY GRADES E–8 AND E–9 ON ACTIVE DUTY.—Section 517 of such title is amended by adding at the end the following new paragraph:

"(d) The Secretary of Defense may increase the authorized daily average number of enlisted members on active duty in an armed force in pay grades E–8 and E–9 in a fiscal year under subsection (a) by the number of enlisted members of reserve components of that armed force in pay grades E–8 and E–9, respectively, that are on active duty in that fiscal year under section 12301(d) of this title in support of a contingency operation.".

(c) AUTHORIZED STRENGTHS FOR COMMISSIONED OFFICERS IN PAY GRADES O–4, O–5, AND O–6 ON ACTIVE DUTY.—Section 523 of such title is amended—

(1) in subsection (a), by striking "subsection (c)" in paragraphs (1) and (2) and inserting "subsections (c) and (e)"; and

(2) by adding at the end the following new subsection:

"(e) The Secretary of Defense may increase the authorized total number of commissioned officers serving on active duty in the Army, Navy, Air Force, or Marine Corps in a grade referred to in subsection (c) at the end of any fiscal year under that subsection by the number of commissioned officers of reserve components of the Army, Navy, Air Force, or Marine Corps, respectively, that are then serving on active duty in that grade under section 12301(d) of this title in support of a contingency operation.".

(d) AUTHORIZED STRENGTHS FOR GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.—Section 526(a) of such title is amended—

(1) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(2) by striking "LIMITATIONS.—The" and inserting "LIMITATIONS.—(1) Except as provided in paragraph (2), the"; and

(3) by adding at the end the following new paragraph (2):

"(2) The Secretary of Defense may increase the number of general and flag officers authorized to be on active duty in the Army, Navy, Air Force, or Marine Corps under paragraph (1) by the number of reserve general or flag officers of reserve components of the Army, Navy, Air Force, or Marine Corps, respectively, that are on active duty under section 12301(d) of this title in support of a contingency operation.".

SEC. 403. INCREASED ALLOWANCE FOR NUMBER OF MARINE CORPS GENERAL OFFICERS ON ACTIVE DUTY IN GRADES ABOVE MAJOR GENERAL.

Section 525(b)(2)(B) of title 10, United States Code, is amended by striking "16.2 percent" and inserting "17.5 percent".

SEC. 404. INCREASE IN AUTHORIZED STRENGTHS FOR MARINE CORPS OFFICERS ON ACTIVE DUTY IN THE GRADE OF COLONEL.

The table in section 523(a)(1) of title 10, United States Code, is amended by striking the figures under the heading "Colonel" in the portion of the table relating to the Marine Corps and inserting the following:

"571
632
653
673
694
715
735".

Subtitle B—Reserve Forces

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2003, as follows:

(1) The Army National Guard of the United States, 350,000.

(2) The Army Reserve, 205,000.

(3) The Naval Reserve, 87,800.

(4) The Marine Corps Reserve, 39,558.

(5) The Air National Guard of the United States, 106,600.

(6) The Air Force Reserve, 75,600.

(7) The Coast Guard Reserve, 9,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2003, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 24,492.

(2) The Army Reserve, 13,888.

(3) The Naval Reserve, 14,572.

(4) The Marine Corps Reserve, 2,261.

(5) The Air National Guard of the United States, 11,727.

(6) The Air Force Reserve, 1,498.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual status) as of the last day of fiscal year 2003 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

(1) For the Army Reserve, 6,599.

(2) For the Army National Guard of the United States, 24,102.

(3) For the Air Force Reserve, 9,911.

(4) For the Air National Guard of the United States, 22,495.

SEC. 414. FISCAL YEAR 2003 LIMITATIONS ON NON-DUAL STATUS TECHNICIANS.

(a) LIMITATIONS.—(1) Within the limitation provided in section 10217(c)(2) of title 10, United

States Code, the number of non-dual status technicians employed by the National Guard as of September 30, 2003, may not exceed the following:

(A) For the Army National Guard of the United States, 1,600.

(B) For the Air National Guard of the United States, 350.

(2) The number of non-dual status technicians employed by the Army Reserve as of September 30, 2003, may not exceed 995.

(3) The Air Force Reserve may not employ any person as a non-dual status technician during fiscal year 2003.

(b) Non-Dual Status Technicians Defined.—In this section, the term "non-dual status technician" has the meaning given the term in section 10217(a) of title 10, United States Code.

Subtitle C—Authorization of Appropriations

SEC. 421. AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2003 a total of $94,352,208,000. The authorization in the preceding sentence supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2003.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

SEC. 501. EXTENSION OF CERTAIN REQUIREMENTS AND EXCLUSIONS APPLICABLE TO SERVICE OF GENERAL AND FLAG OFFICERS ON ACTIVE DUTY IN CERTAIN JOINT DUTY ASSIGNMENTS.

(a) Recommendations for Assignment to Senior Joint Officer Positions.—Section 604(c) of title 10, United States Code, is amended by striking "September 30, 2003" and inserting "December 31, 2003".

(b) Inapplicability of Grade Distribution Requirements.—Section 525(b)(5)(C) of such title is amended by striking "September 30, 2003" and inserting "December 31, 2003".

(c) Exclusion From Strength Limitation.—Section 526(b)(3) of such title is amended by striking "October 1, 2002" and inserting "December 31, 2003".

SEC. 502. EXTENSION OF AUTHORITY TO WAIVE REQUIREMENT FOR SIGNIFICANT JOINT DUTY EXPERIENCE FOR APPOINTMENT AS A CHIEF OF A RESERVE COMPONENT OR A NATIONAL GUARD DIRECTOR.

(a) Chief of Army Reserve.—Section 3038(b)(4) of title 10, United States Code, is amended by striking "October 1, 2003" and inserting "December 31, 2003".

(b) Chief of Naval Reserve.—Section 5143(b)(4) of such title is amended by striking "October 1, 2003" and inserting "December 31, 2003".

(c) Commander, Marine Forces Reserve.—Section 5144(b)(4) of such title is amended by striking "October 1, 2003" and inserting "December 31, 2003".

(d) Chief of Air Force Reserve.—Section 8038(b)(4) of such title 10, United States Code, is amended by striking "October 1, 2003" and inserting "December 31, 2003".

(e) Directors of the National Guard.—Section 10506(a)(3)(D) of such title is amended by striking "October 1, 2003" and inserting "December 31, 2003".

SEC. 503. REPEAL OF LIMITATION ON AUTHORITY TO GRANT CERTAIN OFFICERS A WAIVER OF REQUIRED SEQUENCE FOR JOINT PROFESSIONAL MILITARY EDUCATION AND JOINT DUTY ASSIGNMENT.

Section 661(c)(3)(D) of title 10, United States Code, is amended by striking "In the case of officers in grades below brigadier general" and all that follows through "selected for the joint specialty during that fiscal year.".

SEC. 504. EXTENSION OF TEMPORARY AUTHORITY FOR RECALL OF RETIRED AVIATORS.

Section 501(e) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) is amended by striking "September 30, 2002" and inserting "September 30, 2008".

SEC. 505. INCREASED GRADE FOR HEADS OF NURSE CORPS.

(a) Army.—Section 3069(b) of title 10, United States Code, is amended by striking "brigadier general" in the second sentence and inserting "major general".

(b) Navy.—The first sentence of section 5150(c) of such title is amended—

(1) by inserting "rear admiral (upper half) in the case of an officer in the Nurse Corps or" after "for promotion to the grade of"; and

(2) by inserting "in the case of an officer in the Medical Service Corps" after "rear admiral (lower half)".

(c) Air Force.—Section 8069(b) of such title is amended by striking "brigadier general" in the second sentence and inserting "major general".

SEC. 506. REINSTATEMENT OF AUTHORITY TO REDUCE SERVICE REQUIREMENT FOR RETIREMENT IN GRADES ABOVE O–4.

(a) Officers on Active Duty.—Subsection (a)(2)(A) of section 1370 of title 10, United States Code, is amended—

(1) by striking "may authorize" and all that follows and inserting "may, in the case of retirements effective during the period beginning on September 1, 2002, and ending on December 31, 2004, authorize—"; and

(2) by adding at the end the following:

"(i) the Deputy Under Secretary of Defense for Personnel and Readiness to reduce such 3-year period of required service to a period not less than two years for retirements in grades above colonel or, in the case of the Navy, captain; and

"(2) the Secretary of a military department or the Assistant Secretary of a military department having responsibility for manpower and reserve affairs to reduce such 3-year period to a period of required service not less than two years for retirements in grades of lieutenant colonel and colonel or, in the case of the Navy, commander and captain.".

(b) Reserve Officers.—Subsection (d)(5) of such section is amended—

(1) in the first sentence—

(A) by striking "may authorize" and all that follows and inserting "may, in the case of retirements effective during the period beginning on September 1, 2002, and ending on December 31, 2004, authorize—"; and

(B) by adding at the end the following:

"(A) the Deputy Under Secretary of Defense for Personnel and Readiness to reduce such 3-year period of required service to a period not less than two years for retirements in grades above colonel or, in the case of the Navy, captain; and

"(B) the Secretary of a military department or the Assistant Secretary of a military department having responsibility for manpower and reserve affairs to reduce such 3-year period of required service to a period not less than two years for retirements in grades of lieutenant colonel and colonel or, in the case of the Navy, commander and captain.";

(2) by designating the second sentence as paragraph (6) and realigning such paragraph, as so redesignated 2 ems from the left margin; and

(3) in paragraph (6), as so redesignated, by striking "this paragraph" and inserting "paragraph (5)".

(c) Advance Notice to the President and Congress.—Such section is further amended by adding at the end the following new subsection:

"(e) Advance Notice to Congress.—(1) The Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives of—

"(A) an exercise of authority under paragraph (2)(A) of subsection (a) to reduce the 3-year minimum period of required service on active duty in a grade in the case of an officer to whom such paragraph applies before the officer is retired in such grade under such subsection without having satisfied that 3-year service requirement; and

"(B) an exercise of authority under paragraph (5) of subsection (d) to reduce the 3-year minimum period of service in grade required under paragraph (3)(A) of such subsection in the case of an officer to whom such paragraph applies before the officer is credited with satisfactory service in such grade under subsection (d) without having satisfied that 3-year service requirement.

"(2) The requirement for a notification under paragraph (1) is satisfied in the case of an officer to whom subsection (c) applies if the notification is included in the certification submitted with respect to such officer under paragraph (1) of such subsection.

"(3) The notification requirement under paragraph (1) does not apply to an officer being retired in the grade of lieutenant colonel or colonel or, in the case of the Navy, commander or captain.".

Subtitle B—Reserve Component Personnel Policy

SEC. 511. TIME FOR COMMENCEMENT OF INITIAL PERIOD OF ACTIVE DUTY FOR TRAINING UPON ENLISTMENT IN RESERVE COMPONENT.

Section 12103(d) of title 10, United States Code, is amended by striking "270 days" in the second sentence and inserting "one year".

SEC. 512. AUTHORITY FOR LIMITED EXTENSION OF MEDICAL DEFERMENT OF MANDATORY RETIREMENT OR SEPARATION OF RESERVE COMPONENT OFFICER.

(a) Authority.—Chapter 1407 of title 10, United States Code, is amended by adding at the end the following new section:

"§14519. Deferment of retirement or separation for medical reasons

"(a) Authority.—If, in the case of an officer required to be retired or separated under this chapter or chapter 1409 of this title, the Secretary concerned determines that the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated, the Secretary may defer the retirement or separation of the officer.

"(b) Period of Deferment.—A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after the completion of the evaluation requiring hospitalization or medical observation.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"14519. Deferment of retirement or separation for medical reasons.".

SEC. 513. REPEAL OF PROHIBITION ON USE OF AIR FORCE RESERVE AGR PERSONNEL FOR AIR FORCE BASE SECURITY FUNCTIONS.

(a) Repeal.—Section 12551 of title 10, United States Code, is repealed.

(b) Clerical Amendment.—The table of sections at the beginning of chapter 1215 of such

title is amended by striking the item relating to section 12551.

Subtitle C—Education and Training

SEC. 521. INCREASE IN AUTHORIZED STRENGTHS FOR THE SERVICE ACADEMIES.

(a) UNITED STATES MILITARY ACADEMY.—Section 4342 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "4,000" in the first sentence and inserting "4,400"; and

(2) in subsection (i), by striking "variance in that limitation" and inserting "variance above that limitation".

(b) UNITED STATES NAVAL ACADEMY.—Section 6954 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "4,000" in the first sentence and inserting "4,400'; and

(2) in subsection (g), by striking "variance in that limitation" and inserting "variance above that limitation".

(c) UNITED STATES AIR FORCE ACADEMY.—Section 9342 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "4,000" in the first sentence and inserting "4,400"; and

(2) in subsection (i), by striking "variance in that limitation" and inserting "variance above that limitation".

Subtitle D—Decorations, Awards, and Commendations

SEC. 531. WAIVER OF TIME LIMITATIONS FOR AWARD OF CERTAIN DECORATIONS TO CERTAIN PERSONS.

(a) WAIVER.—Any limitation established by law or policy for the time within which a recommendation for the award of a military decoration or award must be submitted shall not apply to awards of decorations described in this section, the award of each such decoration having been determined by the Secretary concerned to be warranted in accordance with section 1130 of title 10, United States Code.

(b) DISTINGUISHED-SERVICE CROSS OF THE ARMY.—Subsection (a) applies to the award of the Distinguished-Service Cross of the Army as follows:

(1) To Henry Johnson of Albany, New York, for extraordinary heroism in France during the period of May 13 to 15, 1918, while serving as a member of the Army.

(2) To Hilliard Carter of Jackson, Mississippi, for extraordinary heroism in actions near Troung Loung, Republic of Vietnam, on September 28, 1966, while serving as a member of the Army.

(3) To Albert C. Welch of Highland Ranch, Colorado, for extraordinary heroism in actions in Ong Thanh, Binh Long Province, Republic of Vietnam, on October 17, 1967, while serving as a member of the Army.

(c) DISTINGUISHED FLYING CROSS OF THE NAVY.—Subsection (a) applies to the award of the Distinguished Flying Cross of the Navy as follows:

(1) To Eduguardo Coppola of Falls Church, Virginia, for extraordinary achievement while participating in aerial flight during World War II, while serving as a member of the Navy.

(2) To James Hoisington, Jr., of Stillman Valley, Illinois, for extraordinary achievement while participating in aerial flight during World War II, while serving as a member of the Navy.

(3) To William M. Melvin of Lawrenceburg, Tennessee, for extraordinary achievement while participating in aerial flight during World War II, while serving as a member of the Navy.

(4) To Vincent Urbank of Tom River, New Jersey, for extraordinary achievement while participating in aerial flight during World War II, while serving as a member of the Navy.

SEC. 532. KOREA DEFENSE SERVICE MEDAL.

(a) FINDINGS.—Congress makes the following findings:

(1) More than 40,000 members of the United States Armed Forces have served on the Korean Peninsula each year since the signing of the cease-fire agreement in July 1953 ending the Korean War.

(2) An estimated 1,200 members of the United States Armed Forces died as a direct result of their service in Korea since the cease-fire agreement in July 1953.

(b) ARMY.—(1) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

"§3755. Korea Defense Service Medal

"(a) The Secretary of the Army shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Army served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

"(b) In this section, the term 'KDSM eligibility period' means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

"(c) The Secretary of the Army shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3755. Korea Defense Service Medal.".

(c) NAVY AND MARINE CORPS.—(1) Chapter 567 of title 10, United States Code, is amended by adding at the end the following new section:

"§6257. Korea Defense Service Medal

"(a) The Secretary of the Navy shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Navy or Marine Corps served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

"(b) In this section, the term 'KDSM eligibility period' means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

"(c) The Secretary of the Navy shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"6257. Korea Defense Service Medal.".

(d) AIR FORCE.—(1) Chapter 857 of title 10, United States Code, is amended by adding at the end the following new section:

"§8755. Korea Defense Service Medal

"(a) The Secretary of the Air Force shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Air Force served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

"(b) In this section, the term 'KDSM eligibility period' means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

"(c) The Secretary of the Air Force shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"8755. Korea Defense Service Medal.".

(e) AWARD FOR SERVICE BEFORE DATE OF ENACTMENT.—The Secretary of the military department concerned shall take appropriate steps to provide in a timely manner for the issuance of the Korea Defense Service Medal, upon application therefor, to persons whose eligibility for that medal is by reason of service in the Republic of Korea or the waters adjacent thereto before the date of the enactment of this Act.

Subtitle E—National Call to Service

SEC. 541. ENLISTMENT INCENTIVES FOR PURSUIT OF SKILLS TO FACILITATE NATIONAL SERVICE.

(a) AUTHORITY.—(1) Chapter 5 of title 37, United States Code, is amended by adding at the end the following new section:

"§326. Enlistment incentives for pursuit of skills to facilitate national service

"(a) INCENTIVES AUTHORIZED.—The Secretary of Defense may carry out a program in accordance with the provisions of this section under which program a National Call to Service participant described in subsection (b) shall be entitled to an incentive specified in subsection (d).

"(b) NATIONAL CALL TO SERVICE PARTICIPANT.—In this section, the term 'National Call to Service participant' means a person who first enlists in the armed forces pursuant to a written agreement (prescribed by the Secretary of the military department concerned) under which agreement the person shall—

"(1) upon completion of initial entry training (as prescribed by the Secretary of Defense), serve on active duty in the armed forces in a military occupational specialty designated by the Secretary of Defense under subsection (c) for a period of 15 months; and

"(2) upon completion of such service on active duty, and without a break in service, serve the minimum period of obligated service specified in the agreement under this section—

"(A) on active duty in the armed forces;

"(B) in the Selected Reserve;

"(C) in the Individual Ready Reserve;

"(D) in the Peace Corps, Americorps, or another national service program jointly designated by the Secretary of Defense and the head of such program for purposes of this section; or

"(E) in any combination of service referred to in subparagraphs (A) through (D) that is approved by the Secretary of the military department concerned pursuant to regulations prescribed by the Secretary of Defense.

"(c) DESIGNATED MILITARY OCCUPATIONAL SPECIALTIES.—The Secretary of Defense shall designate military occupational specialties for purposes of subsection (b)(1). Such military occupational specialties shall be military occupational specialties that will facilitate, as determined by the Secretary, pursuit of national service by National Call to Service participants during and after their completion of duty or service under an agreement under subsection (b).

"(d) INCENTIVES.—The incentives specified in this subsection are as follows:

"(1) Payment of a bonus in the amount of $5,000.

"(2) Payment of outstanding principal and interest on qualifying student loans of the National Call to Service participant in an amount not to exceed $18,000.

"(3) Entitlement to an allowance for educational assistance at the monthly rate equal to the monthly rate payable for basic educational assistance allowances under section 3015(a)(1) of title 38 for a total of 12 months.

"(4) Entitlement to an allowance for educational assistance at the monthly rate equal to ⅔ of the monthly rate payable for basic educational assistance allowances under section 3015(b)(1) of title 38 for a total of 36 months.

"(e) ELECTION OF INCENTIVES.—A National Call to Service participant shall elect in the agreement under subsection (b) which incentive under subsection (d) to receive. An election under this subsection is irrevocable.

"(f) PAYMENT OF BONUS AMOUNTS.—(1) Payment to a National Call to Service participant of the bonus elected by the National Call to Service participant under subsection (d)(1) shall be made in such time and manner as the Secretary of Defense shall prescribe.

"(2)(A) Payment of outstanding principal and interest on the qualifying student loans of a National Call to Service participant, as elected under subsection (d)(2), shall be made in such time and manner as the Secretary of Defense shall prescribe.

"(B) Payment under this paragraph of the outstanding principal and interest on the qualifying student loans of a National Call to Service participant shall be made to the holder of such student loans, as identified by the National Call to Service participant to the Secretary of the military department concerned for purposes of such payment.

"(3) Payment of a bonus or incentive in accordance with this subsection shall be made by the Secretary of the military department concerned.

"(g) COORDINATION WITH MONTGOMERY GI BILL BENEFITS.—(1) A National Call to Service participant who elects an incentive under paragraph (3) or (4) of subsection (d) is not entitled to educational assistance under chapter 1606 of title 10 or basic educational assistance under subchapter II of chapter 30 of title 38.

"(2)(A) The Secretary of Defense shall, to the maximum extent practicable, administer the receipt by National Call to Service participants of incentives under paragraph (3) or (4) of subsection (d) as if such National Call to Service participants were, in receiving such incentives, receiving educational assistance for members of the Selected Reserve under chapter 1606 of title 10.

"(B) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, prescribe regulations for purposes of subparagraph (A). Such regulations shall, to the maximum extent practicable, take into account the administrative provisions of chapters 30 and 36 of title 38 that are specified in section 16136 of title 10.

"(3) Except as provided in paragraph (1), nothing in this section shall prohibit a National Call to Service participant who satisfies through service under subsection (b) the eligibility requirements for educational assistance under chapter 1606 of title 10 or basic educational assistance under chapter 30 of title 38 from an entitlement to such educational assistance under chapter 1606 of title 10 or basic educational assistance under chapter 30 of title 38, as the case may be.

"(h) REPAYMENT.—(1) If a National Call to Service participant who has entered into an agreement under subsection (b) and received or benefited from an incentive under subsection (d)(1) or (d)(2) fails to complete the total period of service specified in such agreement, the National Call to Service participant shall refund to the United States the amount that bears the same ratio to the amount of the incentive as the uncompleted part of such service bears to the total period of such service.

"(2) Subject to paragraph (3), an obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

"(3) The Secretary concerned may waive, in whole or in part, a reimbursement required under paragraph (1) if the Secretary concerned determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

"(4) A discharge in bankruptcy under title 11 that is entered into less than 5 years after the termination of an agreement entered into under subsection (b) does not discharge the person signing the agreement from a debt arising under the agreement or under paragraph (1).

"(i) FUNDING.—Amounts for payment of incentives under subsection (d), including payment of allowances for educational assistance under that subsection, shall be derived from amounts available to the Secretary of the military department concerned for payment of pay, allowances, and other expenses of the members of the armed force concerned.

"(j) REGULATIONS.—The Secretary of Defense and the Secretaries of the military departments shall prescribe regulations for purposes of the program under this section.

"(k) DEFINITIONS.—In this section:

"(1) The term 'Americorps' means the Americorps program carried out under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

"(2) The term 'qualifying student loan' means a loan, the proceeds of which were used to pay the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll) at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

"(3) The term 'Secretary of a military department' includes the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy.".

(2) The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 325 the following new item:

"326. Enlistment incentives for pursuit of skills to facilitate national service.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2002. No individual entering into an enlistment before that date may participate in the program under section 326 of title 37, United States Code, as added by that subsection.

SEC. 542. MILITARY RECRUITER ACCESS TO INSTITUTIONS OF HIGHER EDUCATION.

(a) ACCESS TO INSTITUTIONS OF HIGHER EDUCATION.—Section 503 of title 10, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) ACCESS TO INSTITUTIONS OF HIGHER EDUCATION.—(1) Each institution of higher education receiving assistance under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.)—

"(A) shall provide to military recruiters the same access to students at the institution as is provided generally to prospective employers of those students; and

"(B) shall, upon a request made by military recruiters for military recruiting purposes, provide access to the names, addresses, and telephone listings of students at the institution, notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).

"(2) An institution of higher education may not release a student's name, address, and telephone listing under paragraph (1)(B) without the prior written consent of the student or the parent of the student (in the case of a student under the age of 18) if the student, or a parent of the student, as appropriate, has submitted a request to the institution of higher education that the student's information not be released for a purpose covered by that subparagraph without prior written consent. Each institution of higher education shall notify students and parents of the rights provided under the preceding sentence.

"(3) In this subsection, the term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).".

(b) NOTIFICATION.—The Secretary of Education shall provide to institutions of higher education notice of the provisions of subsection (d) of section 503 of title 10, United States Code, as amended by subsection (a) of this section. Such notice shall be provided not later than 120 days after the date of the enactment of this Act, and shall be provided in consultation with the Secretary of Defense.

Subtitle F—Other Matters

SEC. 551. BIENNIAL SURVEYS ON RACIAL, ETHNIC, AND GENDER ISSUES.

(a) DIVISION OF ANNUAL SURVEY INTO TWO BIENNIAL SURVEYS.—Section 481 of title 10, United States Code, is amended to read as follows:

"§481. Racial, ethnic, and gender issues: biennial surveys

"(a) IN GENERAL.—The Secretary of Defense shall carry out two separate biennial surveys in accordance with this section to identify and assess racial, ethnic, and gender issues and discrimination among members of the armed forces serving on active duty and the extent (if any) of activity among such members that may be seen as so-called 'hate group' activity.

"(b) BIENNIAL SURVEY ON RACIAL AND ETHNIC ISSUES.—One of the surveys conducted every two years under this section shall solicit information on racial and ethnic issues and the climate in the armed forces for forming professional relationships among members of the armed forces of the various racial and ethnic groups. The information solicited shall include the following:

"(1) Indicators of positive and negative trends for professional and personal relationships among members of all racial and ethnic groups.

"(2) The effectiveness of Department of Defense policies designed to improve relationships among all racial and ethnic groups.

"(3) The effectiveness of current processes for complaints on and investigations into racial and ethnic discrimination.

"(c) BIENNIAL SURVEY ON GENDER ISSUES.—One of the surveys conducted every two years under this section shall solicit information on gender issues, including issues relating to gender-based harassment and discrimination, and the climate in the armed forces for forming professional relationships between male and female members of the armed forces. The information solicited shall include the following:

"(1) Indicators of positive and negative trends for professional and personal relationships between male and female members of the armed forces.

"(2) The effectiveness of Department of Defense policies designed to improve professional relationships between male and female members of the armed forces.

"(3) The effectiveness of current processes for complaints on and investigations into gender-based discrimination.

"(d) SURVEYS TO ALTERNATE EVERY YEAR.—The biennial survey under subsection (b) shall be conducted in odd-numbered years. The biennial survey under subsection (c) shall be conducted in even-numbered years.

"(e) IMPLEMENTING ENTITY.—The Secretary shall carry out the biennial surveys through entities in the Department of Defense as follows:

"(1) The biennial review under subsection (b), through the Armed Forces Survey on Racial and Ethnic Issues.

"(2) The biennial review under subsection (c), through the Armed Forces Survey on Gender Issues.

"(f) REPORTS TO CONGRESS.—Upon the completion of a biennial survey under this section, the Secretary shall submit to Congress a report containing the results of the survey.

"(g) INAPPLICABILITY TO COAST GUARD.—The requirements for surveys under this section do not apply to the Coast Guard.".

(b) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 23 of such title is amended to read as follows:

"481. Racial, ethnic, and gender issues: biennial surveys.".

SEC. 552. LEAVE REQUIRED TO BE TAKEN PENDING REVIEW OF A RECOMMENDATION FOR REMOVAL BY A BOARD OF INQUIRY.

(a) REQUIREMENT.—Section 1182(c) of title 10, United States Code, is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following new paragraph:

"(2) Under regulations prescribed by the Secretary concerned, an officer referred to in paragraph (1) may be required to take leave pending the completion of the action under this chapter in the case of that officer. The officer may be required to begin such leave at any time following the officer's receipt of the report of the board of inquiry, including the board's recommendation for removal from active duty, and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by the Secretary concerned under this chapter is completed in the case of the officer or may be terminated at any earlier time.".

(b) PAYMENT FOR MANDATORY EXCESS LEAVE UPON DISAPPROVAL OF CERTAIN INVOLUNTARY SEPARATION RECOMMENDATIONS.—Chapter 40 of such title is amended by inserting after section 707 the following new section:

"§ 707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken

"(a) An officer—

"(1) who is required to take leave under section 1182(c)(2) of this title, any period of which is charged as excess leave under section 706(a) of this title, and

"(2) whose recommendation for removal from active duty in a report of a board of inquiry is not approved by the Secretary concerned under section 1184 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave.

"(b)(1) An officer entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 1182(c)(2) of this title that is charged as excess leave (except any day of accrued leave for which the officer has been paid under section 706(b)(1) of this title and which has been charged as excess leave).

"(2) The officer shall be paid the amount of pay and allowances that is deemed to have accrued to the officer under paragraph (1), reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period the officer is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made within 60 days after the date on which the Secretary concerned decides not to remove the officer from active duty.

"(3) If an officer is entitled to be paid under this section, but fails to provide sufficient information in a timely manner regarding the officer's income when such information is requested under regulations prescribed under subsection (c), the period of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

"(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. The regulations may provide for the method of determining an officer's income during any period the officer is deemed to have accrued pay and allowances, including a requirement that the officer provide income tax returns and other documentation to verify the amount of the officer's income.".

(c) CONFORMING AMENDMENTS.—(1) Section 706 of such title is amended by inserting "or 1182(c)(2)" after "section 876a" in subsections (a), (b), and (c).

(2) The heading for such section is amended to read as follows:

"§ 706. Administration of required leave".

(d) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 40 of title 10, United States Code, is amended—

(1) by striking the item relating to section 706 and inserting the following:

"706. Administration of required leave."; and

(2) by inserting after the item relating to section 707 the following new item:

"707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken.".

SEC. 553. STIPEND FOR PARTICIPATION IN FUNERAL HONORS DETAILS.

Section 1491(d) of title 10, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(A) For a participant in the funeral honors detail who is a member or former member of the armed forces in a retired status or is not a member of the armed forces (other than a former member in a retired status) and not an employee of the United States, either—

"(i) transportation; or

"(ii) a daily stipend prescribed annually by the Secretary of Defense at a single rate that is designed to defray the costs for transportation and other expenses incurred by the participant in connection with participation in the funeral honors detail.";

(2) by inserting "(1)" after "(d) SUPPORT.—";

(3) by redesignating paragraph (2) as subparagraph (B);

(4) in subparagraph (B), as so redesignated, by inserting "members of the armed forces in a retired status and" after "training for"; and

(5) by adding at the end the following:

"(2) A stipend paid under paragraph (1)(A) to a member or former member of the armed forces in a retired status shall be in addition to any other compensation to which the retired member may be entitled.".

SEC. 554. WEAR OF ABAYAS BY FEMALE MEMBERS OF THE ARMED FORCES IN SAUDI ARABIA.

(a) PROHIBITIONS RELATING TO WEAR OF ABAYAS.—No member of the Armed Forces having authority over a member of the Armed Forces and no officer or employee of the United States having authority over a member of the Armed Forces may—

(1) require or encourage that member to wear the abaya garment or any part of the abaya garment while the member is in the Kingdom of Saudi Arabia pursuant to a permanent change of station or orders for temporary duty; or

(2) take any adverse action, whether formal or informal, against the member for choosing not to wear the abaya garment or any part of the abaya garment while the member is in the Kingdom of Saudi Arabia pursuant to a permanent change of station or orders for temporary duty.

(b) INSTRUCTION.—(1) The Secretary of Defense shall provide each female member of the Armed Forces ordered to a permanent change of station or temporary duty in the Kingdom of Saudi Arabia with instructions regarding the prohibitions in subsection (a) immediately upon the arrival of the member at a United States military installation within the Kingdom of Saudi Arabia. The instructions shall be presented orally and in writing. The written instruction shall include the full text of this section.

(2) In carrying out paragraph (1), the Secretary shall act through the Commander in Chief, United States Central Command and Joint Task Force Southwest Asia, and the commanders of the Army, Navy, Air Force, and Marine Corps components of the United States Central Command and Joint Task Force Southwest Asia.

(c) PROHIBITION ON USE OF FUNDS FOR PROCUREMENT OF ABAYAS.—Funds appropriated or otherwise made available to the Department of Defense may not be used to procure abayas for regular or routine issuance to members of the Armed Forces serving in the Kingdom of Saudi Arabia or for any personnel of contractors accompanying the Armed Forces in the Kingdom of Saudi Arabia in the performance of contracts entered into with such contractors by the United States.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2003.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2003 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2003, the rates of monthly basic pay for members of the uniformed services within each pay grade are as follows:

COMMISSIONED OFFICERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
O–10[2]	$0.00	$0.00	$0.00	$0.00	$0.00
O–9	0.00	0.00	0.00	0.00	0.00
O–8	7,474.50	7,719.30	7,881.60	7,927.20	8,129.40
O–7	6,210.90	6,499.20	6,633.00	6,739.20	6,930.90
O–6	4,603.20	5,057.10	5,388.90	5,388.90	5,409.60
O–5	3,837.60	4,323.00	4,622.40	4,678.50	4,864.80
O–4	3,311.10	3,832.80	4,088.70	4,145.70	4,383.00
O–3[3]	2,911.20	3,300.30	3,562.20	3,883.50	4,069.50
O–2[3]	2,515.20	2,864.70	3,299.40	3,410.70	3,481.20
O–1[3]	2,183.70	2,272.50	2,746.80	2,746.80	2,746.80
	Over 8	Over 10	Over 12	Over 14	Over 16
O–10[2]	$0.00	$0.00	$0.00	$0.00	$0.00
O–9	0.00	0.00	0.00	0.00	0.00
O–8	8,468.70	8,547.30	8,868.90	8,961.30	9,238.20
O–7	7,120.80	7,340.40	7,559.40	7,779.00	8,468.70
O–6	5,641.20	5,672.10	5,672.10	5,994.60	6,564.30
O–5	4,977.00	5,222.70	5,403.00	5,635.50	5,991.90
O–4	4,637.70	4,954.50	5,201.40	5,372.70	5,471.10
O–3[3]	4,273.50	4,405.80	4,623.30	4,736.10	4,736.10
O–2[3]	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20
O–1[3]	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80
	Over 18	Over 20	Over 22	Over 24	Over 26
O–10[2]	$0.00	$12,077.70	$12,137.10	$12,389.40	$12,829.20
O–9	0.00	10,563.60	10,715.70	10,935.60	11,319.60
O–8	9,639.00	10,008.90	10,255.80	10,255.80	10,255.80
O–7	9,051.30	9,051.30	9,051.30	9,051.30	9,096.90
O–6	6,898.80	7,233.30	7,423.50	7,616.10	7,989.90
O–5	6,161.70	6,329.10	6,519.60	6,519.60	6,519.60
O–4	5,528.40	5,528.40	5,528.40	5,528.40	5,528.40
O–3[3]	4,736.10	4,736.10	4,736.10	4,736.10	4,736.10
O–2[3]	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20
O–1[3]	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80

[1] *Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for commissioned officers in pay grades O–7 through O–10 may not exceed the rate of pay for level III of the Executive Schedule and the actual rate of basic pay for all other officers may not exceed the rate of pay for level V of the Executive Schedule.*

[2] *Subject to the preceding footnote, while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the rate of basic pay for this grade is $14,155.50, regardless of cumulative years of service computed under section 205 of title 37, United States Code.*

[3] *This table does not apply to commissioned officers in pay grade O–1, O–2, or O–3 who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.*

COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
O–3E	$0.00	$0.00	$0.00	$3,883.50	$4,069.50
O–2E	0.00	0.00	0.00	3,410.70	3,481.20
O–1E	0.00	0.00	0.00	2,746.80	2,933.70
	Over 8	Over 10	Over 12	Over 14	Over 16
O–3E	$4,273.50	$4,405.80	$4,623.30	$4,806.30	$4,911.00
O–2E	3,591.90	3,778.80	3,923.40	4,031.10	4,031.10
O–1E	3,042.00	3,152.70	3,261.60	3,410.70	3,410.70
	Over 18	Over 20	Over 22	Over 24	Over 26
O–3E	$5,054.40	$5,054.40	$5,054.40	$5,054.40	$5,054.40
O–2E	4,031.10	4,031.10	4,031.10	4,031.10	4,031.10
O–1E	3,410.70	3,410.70	3,410.70	3,410.70	3,410.70

WARRANT OFFICERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W–5	$0.00	$0.00	$0.00	$0.00	$0.00
W–4	3,008.10	3,236.10	3,329.10	3,420.60	3,578.10
W–3	2,747.10	2,862.00	2,979.30	3,017.70	3,141.00
W–2	2,416.50	2,554.50	2,675.10	2,763.00	2,838.30
W–1	2,133.90	2,308.50	2,425.50	2,501.10	2,662.50
	Over 8	Over 10	Over 12	Over 14	Over 16
W–5	$0.00	$0.00	$0.00	$0.00	$0.00
W–4	3,733.50	3,891.00	4,044.60	4,203.60	4,356.00
W–3	3,281.70	3,467.40	3,580.50	3,771.90	3,915.60
W–2	2,993.10	3,148.50	3,264.00	3,376.50	3,453.90
W–1	2,782.20	2,888.40	3,006.90	3,085.20	3,203.40
	Over 18	Over 20	Over 22	Over 24	Over 26

WARRANT OFFICERS[1]—Continued

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-5	$0.00	$5,169.30	$5,346.60	$5,524.50	$5,703.30
W-4	4,512.00	4,664.40	4,822.50	4,978.20	5,137.50
W-3	4,058.40	4,201.50	4,266.30	4,407.00	4,548.00
W-2	3,579.90	3,705.90	3,831.00	3,957.30	3,957.30
W-1	3,320.70	3,409.50	3,409.50	3,409.50	3,409.50

[1] *Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for warrant officers may not exceed the rate of pay for level V of the Executive Schedule.*

ENLISTED MEMBERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9[2]	$0.00	$0.00	$0.00	$0.00	$0.00
E-8	0.00	0.00	0.00	0.00	0.00
E-7	2,068.50	2,257.80	2,343.90	2,428.20	2,516.40
E-6	1,770.60	1,947.60	2,033.70	2,117.10	2,204.10
E-5	1,625.40	1,733.70	1,817.40	1,903.50	2,037.00
E-4	1,502.70	1,579.80	1,665.30	1,749.30	1,824.00
E-3	1,356.90	1,442.10	1,528.80	1,528.80	1,528.80
E-2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E-1[3]	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80
	Over 8	Over 10	Over 12	Over 14	Over 16
E-9[2]	$0.00	$3,564.30	$3,645.00	$3,747.00	$3,867.00
E-8	2,975.40	3,061.20	3,141.30	3,237.60	3,342.00
E-7	2,667.90	2,753.40	2,838.30	2,990.40	3,066.30
E-6	2,400.90	2,477.40	2,562.30	2,636.70	2,663.10
E-5	2,151.90	2,236.80	2,283.30	2,283.30	2,283.30
E-4	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00
E-3	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80
E-2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E-1[3]	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80
	Over 18	Over 20	Over 22	Over 24	Over 26
E-9[2]	$3,987.30	$4,180.80	$4,344.30	$4,506.30	$4,757.40
E-8	3,530.10	3,625.50	3,787.50	3,877.50	4,099.20
E-7	3,138.60	3,182.70	3,331.50	3,427.80	3,671.40
E-6	2,709.60	2,709.60	2,709.60	2,709.60	2,709.60
E-5	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30
E-4	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00
E-3	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80
E-2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E-1[3]	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80

[1] *Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for enlisted members may not exceed the rate of pay for level V of the Executive Schedule.*

[2] *Subject to the preceding footnote, while serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Master Chief Petty Officer of the Coast Guard, the rate of basic pay for this grade is $5,732.70, regardless of cumulative years of service computed under section 205 of title 37, United States Code.*

[3] *In the case of members in pay grade E-1 who have served less than 4 months on active duty, the rate of basic pay is $1,064.70.*

SEC. 602. RATE OF BASIC ALLOWANCE FOR SUBSISTENCE FOR ENLISTED PERSONNEL OCCUPYING SINGLE GOVERNMENT QUARTERS WITHOUT ADEQUATE AVAILABILITY OF MEALS.

(a) AUTHORITY TO PAY INCREASED RATE.—Section 402(d) of title 37, United States Code, is amended to read as follows:

"(d) SPECIAL RATE FOR ENLISTED MEMBERS OCCUPYING SINGLE QUARTERS WITHOUT ADEQUATE AVAILABILITY OF MEALS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may pay an enlisted member the basic allowance for subsistence under this section at a monthly rate that is twice the amount in effect under subsection (b)(2) while—

"(1) the member is assigned to single Government quarters which have no adequate food storage or preparation facility in the quarters; and

"(2) there is no Government messing facility serving those quarters that is capable of making meals available to the occupants of the quarters.".

(b) EFFECTIVE DATE.—Subsection (a) and the amendment made by such subsection shall take effect on October 1, 2002.

SEC. 603. BASIC ALLOWANCE FOR HOUSING IN CASES OF LOW-COST OR NO-COST MOVES.

Section 403 of title 37, United States Code, is amended—

(1) by transferring paragraph (7) of subsection (b) to the end of the section; and

(2) in such paragraph—

(A) by striking "(7)" and all that follows through "circumstances of which make it necessary that the member be" and inserting "(o) TREATMENT OF LOW-COST AND NO-COST MOVES AS NOT BEING REASSIGNMENTS.—In the case of a member who is assigned to duty at a location or under circumstances that make it necessary for the member to be"; and

(B) by inserting "for the purposes of this section" after "may be treated".

SEC. 604. TEMPORARY AUTHORITY FOR HIGHER RATES OF PARTIAL BASIC ALLOWANCE FOR HOUSING FOR CERTAIN MEMBERS ASSIGNED TO HOUSING UNDER ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) AUTHORITY.—The Secretary of Defense may prescribe and, under section 403(n) of title 37, United States Code, pay for members of the Armed Forces (without dependents) in privatized housing higher rates of partial basic allowance for housing than those that are authorized under paragraph (2) of such section 403(n).

(b) MEMBERS IN PRIVATIZED HOUSING.—For the purposes of this section, a member of the Armed Forces (without dependents) is a member of the Armed Forces (without dependents) in privatized housing while the member is assigned to housing that is acquired or constructed under the authority of subchapter IV of chapter 169 of title 10, United States Code.

(c) TREATMENT OF HOUSING AS GOVERNMENT QUARTERS.—For purposes of section 403 of title 37, United States Code, a member of the Armed Forces (without dependents) in privatized housing shall be treated as residing in quarters of the United States or a housing facility under the jurisdiction of the Secretary of a military department while a higher rate of partial allowance for housing is paid for the member under this section.

(d) PAYMENT TO PRIVATE SOURCE.—The partial basic allowance for housing paid for a member at a higher rate under this section may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(e) TERMINATION OF AUTHORITY.—Rates prescribed under subsection (a) may not be paid under the authority of this section in connection with contracts that are entered into after December 31, 2007, for the construction or acquisition of housing under the authority of subchapter IV of chapter 169 of title 10, United States Code.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

(a) SELECTED RESERVE REENLISTMENT BONUS.—Section 308b(f) of title 37, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(b) SELECTED RESERVE ENLISTMENT BONUS.—Section 308c(e) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(c) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308d(c) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(d) SELECTED RESERVE AFFILIATION BONUS.—Section 308e(e) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(e) READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.—Section 308h(g) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(f) PRIOR SERVICE ENLISTMENT BONUS.—Section 308i(f) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(b) REPAYMENT OF EDUCATION LOANS FOR CERTAIN HEALTH PROFESSIONALS WHO SERVE IN THE SELECTED RESERVE.—Section 16302(d) of such title is amended by striking "January 1, 2003" and inserting "January 1, 2004".

(c) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302d(a)(1) of title 37, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(d) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302e(a)(1) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(e) SPECIAL PAY FOR SELECTED RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARTIME SPECIALTIES.—Section 302g(f) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(f) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302h(a)(1) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312b(c) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312c(d) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

SEC. 614. ONE-YEAR EXTENSION OF OTHER BONUS AND SPECIAL PAY AUTHORITIES.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(b) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(c) ENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 309(e) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(d) RETENTION BONUS FOR MEMBERS WITH CRITICAL MILITARY SKILLS.—Section 323(i) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

(e) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such title is amended by striking "December 31, 2002" and inserting "December 31, 2003".

SEC. 615. INCREASED MAXIMUM AMOUNT PAYABLE AS MULTIYEAR RETENTION BONUS FOR MEDICAL OFFICERS OF THE ARMED FORCES.

Section 301d(a)(2) of title 37, United States Code, is amended by striking "$14,000" and inserting "$25,000".

SEC. 616. INCREASED MAXIMUM AMOUNT PAYABLE AS INCENTIVE SPECIAL PAY FOR MEDICAL OFFICERS OF THE ARMED FORCES.

Section 302(b)(1) of title 37, United States Code, is amended—

(1) by striking "fiscal year 1992, and" in the second sentence and inserting "fiscal year 1992,"; and

(2) by inserting before the period at the end of such sentence the following: "and before fiscal year 2003, and $50,000 for any twelve-month period beginning after fiscal year 2002".

SEC. 617. ASSIGNMENT INCENTIVE PAY.

(a) AUTHORITY.—(1) Chapter 5 of title 37, United States Code, is amended by inserting after section 305a the following new section:

"§305b. Special pay: assignment incentive pay

"(a) AUTHORITY.—The Secretary concerned, with the concurrence of the Secretary of Defense, may pay monthly incentive pay under this section to a member of a uniformed service for a period that the member performs service, while entitled to basic pay, in an assignment that is designated by the Secretary concerned.

"(b) MAXIMUM RATE.—The maximum monthly rate of incentive pay payable to a member under this section is $1,500.

"(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Incentive pay paid to a member under this section is in addition to any other pay and allowances to which the member is entitled.

"(d) STATUS NOT AFFECTED BY TEMPORARY DUTY OR LEAVE.—The service of a member in an assignment referred to in subsection (a) shall not be considered discontinued during any period that the member is not performing service in such assignment by reason of temporary duty performed by the member pursuant to orders or absence of the member for authorized leave.

"(e) TERMINATION OF AUTHORITY.—No assignment incentive pay may be paid under this section for months beginning more than three years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 305a the following new item:

"305b. Special pay: assignment incentive pay.".

(b) ANNUAL REPORT.—Not later than February 28 of each of 2004 and 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the authority under section 305b of title 37, United States Code, as added by subsection (a). The report shall include an assessment of the utility of that authority.

SEC. 618. INCREASED MAXIMUM AMOUNTS FOR PRIOR SERVICE ENLISTMENT BONUS.

Section 308i(b)(1) of title 37, United States Code, is amended—

(1) in subparagraph (A), by striking "$5,000" and inserting "$8,000";

(2) in subparagraph (B), by striking "$2,500" and inserting "$4,000"; and

(3) in subparagraph (C), by striking "$2,000" and inserting "$3,500".

Subtitle C—Travel and Transportation Allowances

SEC. 631. DEFERRAL OF TRAVEL IN CONNECTION WITH LEAVE BETWEEN CONSECUTIVE OVERSEAS TOURS.

(a) DATE TO WHICH TRAVEL MAY BE DEFERRED.—Section 411b(a)(2) of title 37, United States Code, is amended by striking "not more than one year" in the first sentence and all that follows through "operation ends." in the second sentence and inserting the following: "the date on which the member departs the duty station in termination of the consecutive tour of duty at that duty station or reports to another duty station under the order involved, as the case may be.".

(b) EFFECTIVE DATE AND SAVINGS PROVISION.—(1) The amendment made by subsection (a) shall take effect on October 1, 2002.

(2) Section 411b(a) of title 37, United States Code, as in effect on September 30, 2002, shall continue to apply with respect to travel described in subsection (a)(2) of such title (as in effect on such date) that commences before October 1, 2002.

SEC. 632. TRANSPORTATION OF MOTOR VEHICLES FOR MEMBERS REPORTED MISSING.

(a) AUTHORITY TO SHIP TWO MOTOR VEHICLES.—Subsection (a) of section 554 of title 37, United States Code, is amended by striking "one privately owned motor vehicle" both places it appears and inserting "two privately owned motor vehicles".

(b) PAYMENTS FOR LATE DELIVERY.—Subsection (i) of such section is amended by adding at the end the following: "In a case in which two motor vehicles of a member (or the dependent or dependents of a member) are transported at the expense of the United States, no reimbursement is payable under this subsection unless both motor vehicles do not arrive at the authorized destination of the vehicles by the designated delivery date.".

(c) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to members whose eligibility for benefits under section 554 of title 37, United States Code, commences on or after the date of the enactment of this Act.

SEC. 633. DESTINATIONS AUTHORIZED FOR GOVERNMENT PAID TRANSPORTATION OF ENLISTED PERSONNEL FOR REST AND RECUPERATION UPON EXTENDING DUTY AT DESIGNATED OVERSEAS LOCATIONS.

Section 705(b)(2) of title 10, United States Code, is amended by inserting before the period at the end the following: ", or to an alternative destination at a cost not to exceed the cost of the round-trip transportation from the location of the extended tour of duty to such nearest port and return".

SEC. 634. VEHICLE STORAGE IN LIEU OF TRANSPORTATION TO CERTAIN AREAS OF THE UNITED STATES OUTSIDE CONTINENTAL UNITED STATES.

Section 2634(b) of title 10, United States Code, is amended:

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) In lieu of transportation authorized by this section, if a member is ordered to make a change of permanent station to Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, Guam, or any territory or possession of the United States and laws, regulations, or other restrictions preclude transportation of a motor vehicle described in subsection (a) to the new station, the member may elect to have the vehicle stored at the expense of the United States at a location approved by the Secretary concerned.".

Subtitle D—Retirement and Survivor Benefit Matters

SEC. 641. PAYMENT OF RETIRED PAY AND COMPENSATION TO DISABLED MILITARY RETIREES.

(a) In General.—Section 1414 of title 10, United States Code, is amended to read as follows:

"§ 1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation

"(a) Payment of Both Retired Pay and Compensation.—Except as provided in subsection (b), a member or former member of the uniformed services who is entitled to retired pay (other than as specified in subsection (c)) and who is also entitled to veterans' disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38.

"(b) Special Rule for Chapter 61 Career Retirees.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

"(c) Exception.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

"(d) Definitions.—In this section:

"(1) The term 'retired pay' includes retainer pay, emergency officers' retirement pay, and naval pension.

"(2) The term 'veterans' disability compensation' has the meaning given the term 'compensation' in section 101(13) of title 38.".

(b) Repeal of Special Compensation Program.—Section 1413 of such title is repealed.

(c) Conforming Amendment.—Section 641(d) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1150; 10 U.S.C. 1414 note) is repealed.

(d) Clerical Amendments.—The table of sections at the beginning of chapter 71 of title 10, United States Code, is amended by striking the items relating to sections 1413 and 1414 and inserting the following new item:

"1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation.".

(e) Effective Date.—The amendments made by this section shall take effect on—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted, if later than the date specified in paragraph (1).

(f) Prohibition on Retroactive Benefits.—No benefits may be paid to any person by reason of section 1414 of title 10, United States Code, as amended by subsection (a), for any period before the effective date specified in subsection (e).

SEC. 642. INCREASED RETIRED PAY FOR ENLISTED RESERVES CREDITED WITH EXTRAORDINARY HEROISM.

(a) Authority.—Section 12739 of title 10, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting after subsection (a) the following new subsection (b):

"(b) If an enlisted member retired under section 12731 of this title has been credited by the Secretary concerned with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under subsection (a). The Secretary's determination as to extraordinary heroism is conclusive for all purposes."; and

(3) in subsection (c), as redesignated by paragraph (1), by striking "amount computed under subsection (a)," and inserting "total amount of the monthly retired pay computed under subsections (a) and (b)".

(b) Effective Date.—The amendments made by subsection (a) shall take effect on October 1, 2002, and shall apply with respect to retired pay for months beginning on or after that date.

SEC. 643. EXPANDED SCOPE OF AUTHORITY TO WAIVE TIME LIMITATIONS ON CLAIMS FOR MILITARY PERSONNEL BENEFITS.

(a) Authority.—Section 3702(e)(1) of title 31, United States Code, is amended by striking "a claim for pay, allowances, or payment for unused accrued leave under title 37 or a claim for retired pay under title 10" and inserting "a claim referred to in subsection (a)(1)(A)".

(b) Applicability.—The amendment made by subsection (a) shall apply with respect to claims presented to the Secretary of Defense under section 3702 of title 31, United States Code, on or after the date of the enactment of this Act.

Subtitle E—Other Matters

SEC. 651. ADDITIONAL AUTHORITY TO PROVIDE ASSISTANCE FOR FAMILIES OF MEMBERS OF THE ARMED FORCES.

(a) Authority.—(1) Subchapter I of chapter 88 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1788. Additional family assistance

"(a) Authority.—The Secretary of Defense may provide for the families of members of the armed forces serving on active duty, in addition to any other assistance available for such families, any assistance that the Secretary considers appropriate to ensure that the children of such members obtain needed child care, education, and other youth services.

"(b) Primary Purpose of Assistance.—The assistance authorized by this section should be directed primarily toward providing needed family support, including child care, education, and other youth services, for children of members of the Armed Forces who are deployed, assigned to duty, or ordered to active duty in connection with a contingency operation.".

(2) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"1788. Additional family assistance.".

(b) Effective Date.—Section 1788 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002.

SEC. 652. TIME LIMITATION FOR USE OF MONTGOMERY GI BILL ENTITLEMENT BY MEMBERS OF THE SELECTED RESERVE.

(a) Extension of Limitation Period.—Section 16133(a)(1) of title 10, United States Code, is amended by striking "10-year" and inserting "14-year".

(b) Effective Date and Applicability.—The amendment made by subsection (a) shall take effect on October 1, 2002, and shall apply with respect to periods of entitlement to educational assistance under chapter 1606 of title 10, United States Code, that begin on or after October 1, 1992.

SEC. 653. STATUS OF OBLIGATION TO REFUND EDUCATIONAL ASSISTANCE UPON FAILURE TO PARTICIPATE SATISFACTORILY IN SELECTED RESERVE.

Section 16135 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) An obligation to pay a refund to the United States under subsection (a)(1)(B) in an amount determined under subsection (b) is, for all purposes, a debt owed to the United States.

"(2) A discharge in bankruptcy under title 11 that is entered for a person less than five years after the termination of the person's enlistment or other service described in subsection (a) does not discharge the person from a debt arising under this section with respect to that enlistment or other service.".

SEC. 654. PROHIBITION ON ACCEPTANCE OF HONORARIA BY PERSONNEL AT CERTAIN DEPARTMENT OF DEFENSE SCHOOLS.

(a) Repeal of Exemption.—Section 542 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2413; 10 U.S.C. prec. 2161 note) is repealed.

(b) Effective Date and Applicability.—The amendment made by subsection (a) shall take effect on October 1, 2002, and shall apply with respect to appearances made, speeches presented, and articles published on or after that date.

SEC. 655. RATE OF EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL OF DEPENDENTS TRANSFERRED ENTITLEMENT BY MEMBERS OF THE ARMED FORCES WITH CRITICAL SKILLS.

(a) Clarification.—Section 3020(h) of title 38, United States Code, is amended—

(1) in paragraph (2)—

(A) by striking "paragraphs (4) and (5)" and inserting "paragraphs (5) and (6)"; and

(B) by striking "and at the same rate";

(2) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively; and

(3) by inserting after paragraph (2) the following new paragraph (3):

"(3)(A) Subject to subparagraph (B), the monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section shall be the monthly amount payable under sections 3015 and 3022 of this title to the individual making the transfer.

"(B) The monthly rate of assistance payable to a dependent under subparagraph (A) shall be subject to the provisions of section 3032 of this title, except that the provisions of subsection (a)(1) of that section shall not apply even if the individual making the transfer to the dependent under this section is on active duty during all or any part of enrollment period of the dependent in which such entitlement is used.".

(b) Effective Date.—The amendments made by subsection (a) shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), to which such amendments relate.

SEC. 656. PAYMENT OF INTEREST ON STUDENT LOANS.

(a) Authority.—(1) Chapter 109 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2174. Interest payment program: members on active duty

"(a) Authority.—(1) The Secretary concerned may pay in accordance with this section *the interest and any special allowances that accrue on one or more student loans of an eligible member of the armed forces.*

"(2) The Secretary of a military department may exercise the authority under paragraph (1) only if approved by the Secretary of Defense and subject to such requirements, conditions, and restrictions as the Secretary of Defense may prescribe.

"(b) ELIGIBLE PERSONNEL.—A member of the armed forces is eligible for the benefit under subsection (a) while the member—

"(1) is serving on active duty in fulfillment of the member's first enlistment in the armed forces or, in the case of an officer, is serving on active duty and has not completed more than three years of service on active duty;

"(2) is the debtor on one or more unpaid loans described in subsection (c); and

"(3) is not in default on any such loan.

"(c) STUDENT LOANS.—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

"(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

"(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

"(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

"(d) MAXIMUM BENEFIT.—The months for which interest and any special allowance may be paid on behalf of a member of the armed forces under this section are any 36 consecutive months during which the member is eligible under subsection (b).

"(e) FUNDS FOR PAYMENTS.—Appropriations available for the pay and allowances of military personnel shall be available for payments under this section.

"(f) COORDINATION.—(1) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation shall consult with the Secretary of Education regarding the administration of the authority under this section.

"(2) The Secretary concerned shall transfer to the Secretary of Education the funds necessary—

"(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(o) and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(o) and 1087dd(j)); and

"(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965.

"(g) SPECIAL ALLOWANCE DEFINED.—In this section, the term 'special allowance' means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2174. Interest payment program: members on active duty.".

(b) FEDERAL FAMILY EDUCATION LOANS AND DIRECT LOANS.—(1) Subsection (c)(3) of section 428 of the Higher Education Act of 1965 (20 U.S.C. 1078) is amended—

(A) in clause (i) of subparagraph (A)—

(i) by striking "or" at the end of subclause (II);

(ii) by inserting "or" at the end of subclause (III); and

(iii) by adding at the end the following new subclause:

"(IV) is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10, United States Code, and, pursuant to that eligibility, the interest is being paid on such loan under subsection (o);";

(B) in clause (ii)(II) of subparagraph (A); by inserting "or (i)(IV)" after "clause (i)(II)"; and

(C) by striking subparagraph (C) and inserting the following:

"(C) shall contain provisions that specify that—

"(i) the form of forbearance granted by the lender pursuant to this paragraph, other than subparagraph (A)(i)(IV), shall be temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled; and

"(ii) the form of forbearance granted by the lender pursuant to subparagraph (A)(i)(IV) shall be the temporary cessation of all payments on the loan other than payments of interest on the loan, and payments of any special allowance payable with respect to the loan under section 438 of this Act, that are made under subsection (o); and".

(2) Section 428 of such Act is further amended by adding at the end the following new subsection:

"(o) ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—

"(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, for the payment of interest and any special allowance on a loan to a member of the Armed Forces that is made, insured, or guaranteed under this part, the Secretary shall pay the interest and special allowance on such loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest or any special allowance on such a loan out of any funds other than funds that have been so transferred.

"(2) FORBEARANCE.—During the period in which the Secretary is making payments on a loan under paragraph (1), the lender shall grant the borrower forbearance in accordance with the guaranty agreement under subsection (c)(3)(A)(i)(IV).

"(3) SPECIAL ALLOWANCE DEFINED.—For the purposes of this subsection, the term 'special allowance', means a special allowance that is payable with respect to a loan under section 438 of this Act.".

(c) FEDERAL PERKINS LOANS.—Section 464 of the Higher Education Act of 1965 (20 U.S.C. 1087dd) is amended—

(1) in subsection (e)—

(A) by striking "or" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(3) the borrower is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10, United States Code, and, pursuant to that eligibility, the interest on such loan is being paid under subsection (j), except that the form of a forbearance under this paragraph shall be a temporary cessation of all payments on the loan other than payments of interest on the loan that are made under subsection (j)."; and

(2) by adding at the end the following new subsection:

"(j) ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—

"(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, for the payment of interest on a loan made under this part to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

"(2) FORBEARANCE.—During the period in which the Secretary is making payments on a loan under paragraph (1), the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(3).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest, and any special allowance under section 438 of the Higher Education Act of 1965, that accrue for months beginning on or after October 1, 2003, on student loans described in subsection (c) of section 2174 of title 10, United States Code (as added by subsection (a)), that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of title 10, United States Code) on or after that date.

SEC. 657. MODIFICATION OF AMOUNT OF BACK PAY FOR MEMBERS OF NAVY AND MARINE CORPS SELECTED FOR PROMOTION WHILE INTERNED AS PRISONERS OF WAR DURING WORLD WAR II TO TAKE INTO ACCOUNT CHANGES IN CONSUMER PRICE INDEX.

(a) MODIFICATION.—Section 667(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–170) is amended by adding at the end the following new paragraph:

"(3) The amount determined for a person under paragraph (1) shall be increased to reflect increases in cost of living since the basic pay referred to in paragraph (1)(B) was paid to or for that person, calculated on the basis of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.".

(b) RECALCULATION OF PREVIOUS PAYMENTS.—In the case of any payment of back pay made to or for a person under section 667 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 before the date of the enactment of this Act, the Secretary of the Navy shall—

(1) recalculate the amount of back pay to which the person is entitled by reason of the amendment made by subsection (a); and

(2) if the amount of back pay, as so recalculated, exceeds the amount of back pay so paid, pay the person, or the surviving spouse of the person, an amount equal to the excess.

TITLE VII—HEALTH CARE

SEC. 701. ELIGIBILITY OF SURVIVING DEPENDENTS FOR TRICARE DENTAL PROGRAM BENEFITS AFTER DISCONTINUANCE OF FORMER ENROLLMENT.

Section 1076a(k)(2) of title 10, United States Code, is amended by striking "if the dependent is enrolled on the date of the death of the members in a dental benefits plan established under subsection (a)" and inserting "if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f)".

SEC. 702. ADVANCE AUTHORIZATION FOR INPATIENT MENTAL HEALTH SERVICES.

Section 1079(i)(3) of title 10, United States Code, is amended—

(1) by inserting "(A)" after "(3)";

(2) by striking "Except in the case of an emergency," and inserting "Except as provided in subparagraphs (B) and (C),"; and

(3) by adding at the end the following new subparagraph:

"(B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the case of an emergency.

"(C) Preadmission authorization for inpatient mental health services is not required under

subparagraph (A) in a case in which any benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.). The Secretary shall require, however, advance authorization for the continued provision of the inpatient mental health services after benefits cease to be payable for such services under part A of such title in such case.".

SEC. 703. CONTINUED TRICARE ELIGIBILITY OF DEPENDENTS RESIDING AT REMOTE LOCATIONS AFTER DEPARTURE OF SPONSORS FOR UNACCOMPANIED ASSIGNMENTS.

Section 1079(p) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "dependents referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title who are residing with the member" and inserting "dependents described in paragraph (3)";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2), the following new paragraph (3):

"(3) This subsection applies with respect to a dependent referred to in subsection (a) who—

"(A) is a dependent of a member of the uniformed services referred to in section 1074(c)(3) of this title and is residing with the member; or

"(B) is a dependent of a member who, after having served in a duty assignment described in section 1074(c)(3) of this title, has relocated without the dependent pursuant to orders for a permanent change of duty station from a remote location described in subparagraph (B)(ii) of such section where the member and the dependent resided together while the member served in such assignment, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States and the dependent continues to reside at the same remote location.".

SEC. 704. APPROVAL OF MEDICARE PROVIDERS AS TRICARE PROVIDERS.

Section 1079 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(q) A physician or other health care practitioner who is eligible to receive reimbursement for services provided under the Medicare Program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) shall be considered approved to provide medical care under this section and section 1086 of this title.".

SEC. 705. CLAIMS INFORMATION.

(a) CORRESPONDENCE TO MEDICARE CLAIMS INFORMATION REQUIREMENTS.—Section 1095c of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) CORRESPONDENCE TO MEDICARE CLAIMS INFORMATION REQUIREMENTS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall limit the requirements for information in support of claims for payment for health care items and services provided under the TRICARE program so that the information required under the program is substantially the same as the information that would be required for claims for reimbursement for those items and services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).".

(b) APPLICABILITY.—The Secretary of Defense, in consultation with the other administering Secretaries referred to in section 1072(3) of title 10, United States Code, shall apply the limitations required under subsection (d) of section 1095c of such title (as added by subsection (a)) with respect to contracts entered into under the TRICARE program on or after October 1, 2002.

SEC. 706. DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND.

(a) SOURCE OF FUNDS FOR MONTHLY ACCRUAL PAYMENTS INTO THE FUND.—Section 1116(c) of title 10, United States Code, is amended by striking "health care programs" and inserting "pay of members".

(b) MANDATORY PARTICIPATION OF OTHER UNIFORMED SERVICES.—Section 1111(c) of such title is amended—

(1) in the first sentence, by striking "may enter into an agreement with any other administering Secretary" and inserting "shall enter into an agreement with each other administering Secretary"; and

(2) in the second sentence, by striking "Any such" and inserting "The".

SEC. 707. TECHNICAL CORRECTIONS RELATING TO TRANSITIONAL HEALTH CARE FOR MEMBERS SEPARATED FROM ACTIVE DUTY.

(a) CONTINUED APPLICABILITY TO DEPENDENTS.—Subsection (a)(1) of section 736 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1172) is amended to read as follows:

"(1) in paragraph (1), by striking 'paragraph (2), a member' and all that follows through 'of the member),' and inserting 'paragraph (3), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member)';".

(b) CLARIFICATION REGARDING THE COAST GUARD.—Subsection (b)(2) of such section is amended to read as follows:

"(2) in subsection (e)—

"(A) by striking the first sentence; and

"(B) by striking 'the Coast Guard' in the second sentence and inserting 'the members of the Coast Guard and their dependents'.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of December 28, 2001, and as if included in the National Defense Authorization Act for Fiscal Year 2002 as enacted.

SEC. 708. EXTENSION OF TEMPORARY AUTHORITY FOR ENTERING INTO PERSONAL SERVICES CONTRACTS FOR THE PERFORMANCE OF HEALTH CARE RESPONSIBILITIES FOR THE ARMED FORCES AT LOCATIONS OTHER THAN MILITARY MEDICAL TREATMENT FACILITIES.

Section 1091(a)(2) of title 10, United States Code, is amended by striking "December 31, 2002" and inserting "December 31, 2003".

SEC. 709. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES.

Section 1093 of title 10, United States Code, is amended—

(1) by striking subsection (b); and

(2) in subsection (a), by striking "RESTRICTION ON USE OF FUNDS.—".

SEC. 710. HEALTH CARE UNDER TRICARE FOR TRICARE BENEFICIARIES RECEIVING MEDICAL CARE AS VETERANS FROM THE DEPARTMENT OF VETERANS AFFAIRS.

Section 1097 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(f) PERSONS RECEIVING MEDICAL CARE FROM THE DEPARTMENT OF VETERANS AFFAIRS.—A covered beneficiary who is enrolled in and seeks care under the TRICARE program may not be denied such care on the ground that the covered beneficiary is receiving health care from the Department of Veterans Affairs on an ongoing basis if the Department of Veterans Affairs cannot provide the covered beneficiary with the particular care sought by the covered beneficiary within the maximum period provided in the access to care standards that are applicable to that particular care under TRICARE program policy.".

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Major Defense Acquisition Programs

SEC. 801. BUY-TO-BUDGET ACQUISITION OF END ITEMS.

(a) AUTHORITY.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§2228. Buy-to-budget acquisition: end items

"(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

"(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

"(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

"(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

"(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

"(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

"(2) Authority to exceed by up to 10 percent the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title, but only to the extent necessary to acquire a quantity of the end item permitted in the exercise of authority under subsection (a).

"(c) NOTIFICATION OF CONGRESS.—The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

"(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

"(1) specifically refers to this section; and

"(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

"(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

"(2) In this section:

"(A) The term 'congressional defense committees' means—

"(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and *"(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.*

"(B) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2228. Buy-to-budget acquisition: end items.".

(b) TIME FOR ISSUANCE OF FINAL REGULATIONS.—The Secretary of Defense shall issue the final regulations under section 2228(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act.

SEC. 802. REPORT TO CONGRESS ON INCREMENTAL ACQUISITION OF MAJOR SYSTEMS.

(a) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the approach that the Secretary plans to take to applying the requirements of chapter 144 of title 10, United States Code, sections 139, 181, 2366, 2399, and 2400 of such title, Department of Defense Directive 5000.1, Department of Defense Instruction 5000.2, and Chairman of the Joint Chiefs of Staff Instruction 3170.01B, and other provisions of law and regulations applicable to incremental acquisition programs.

(b) CONTENT OF REPORT.—The report shall, at a minimum, address the following matters:

(1) The manner in which the Secretary plans to establish and approve, for each increment of an incremental acquisition program—

(A) operational requirements; and

(B) cost and schedule goals.

(2) The manner in which the Secretary plans, for each increment of an incremental acquisition program—

(A) to meet requirements for operational testing and live fire testing;

(B) to monitor cost and schedule performance; and

(C) to comply with laws requiring reports to Congress on results testing and on cost and schedule performance.

(3) The manner in which the Secretary plans to ensure that each increment of an incremental acquisition program is designed—

(A) to achieve interoperability within and among United States forces and United States coalition partners; and

(B) to optimize total system performance and minimize total ownership costs by giving appropriate consideration to—

(i) logistics planning;

(ii) manpower, personnel, and training;

(iii) human, environmental, safety, occupational health, accessibility, survivability, operational continuity, and security factors;

(iv) protection of critical program information; and

(v) spectrum management.

(c) DEFINITIONS.—In this section:

(1) The term "incremental acquisition program" means an acquisition program that is to be conducted in discrete phases or blocks, with each phase or block consisting of the planned production and acquisition of one or more units of a major system.

(2) The term "increment" refers to one of the discrete phases or blocks of an incremental acquisition program.

(3) The term "major system" has the meaning given such term in section 2302(5) of title 10, United States Code.

SEC. 803. PILOT PROGRAM FOR SPIRAL DEVELOPMENT OF MAJOR SYSTEMS.

(a) AUTHORITY.—The Secretary of Defense is authorized to conduct a pilot program for the spiral development of major systems and to designate research and development programs of the military departments and Defense Agencies to participate in the pilot program.

(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) A research and development program for a major system of a military department or Defense Agency may be conducted as a spiral development program only if the Secretary of Defense approves a spiral development plan submitted by the Secretary of that military department or head of that Defense Agency, as the case may be, and designates the program as a participant in the pilot program under this section.

(2) The Secretary of Defense shall submit a copy of each spiral development plan approved under this section to the congressional defense committees.

(c) SPIRAL DEVELOPMENT PLANS.—A spiral development plan for a participating program shall, at a minimum, include the following matters:

(1) A rationale for dividing the program into separate spirals, together with a preliminary identification of the spirals to be included.

(2) A program strategy, including overall cost, schedule, and performance goals for the total program.

(3) Specific cost, schedule, and performance parameters, including measurable exit criteria, for the first spiral to be conducted.

(4) A testing plan to ensure that performance goals, parameters, and exit criteria are met.

(5) An appropriate limitation on the number of prototype units that may be produced under the program.

(6) Specific performance parameters, including measurable exit criteria, that must be met before the program proceeds into production of units in excess of the limitation on the number of prototype units.

(d) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance for the implementation of the spiral development pilot program authorized by this section. The guidance shall, at a minimum, include the following matters:

(1) A process for the development, review, and approval of each spiral development plan submitted by the Secretary of a military department or head of a Defense Agency.

(2) A process for establishing and approving specific cost, schedule, and performance parameters, including measurable exit criteria, for spirals to be conducted after the first spiral.

(3) Appropriate planning, testing, reporting, oversight, and other requirements to ensure that the spiral development program—

(A) satisfies realistic and clearly-defined performance standards, cost objectives, and schedule parameters (including measurable exit criteria for each spiral);

(B) achieve interoperability within and among United States forces and United States coalition partners; and

(C) optimize total system performance and minimize total ownership costs by giving appropriate consideration to—.

(i) logistics planning;

(ii) manpower, personnel, and training;

(iii) human, environmental, safety, occupational health, accessibility, survivability, operational continuity, and security factors;

(iv) protection of critical program information; and

(v) spectrum management.

(4) A process for independent validation of the satisfaction of exit criteria and other relevant requirements.

(5) A process for operational testing of fieldable prototypes to be conducted before or in conjunction with the fielding of the prototypes.

(e) REPORTING REQUIREMENT.—The Secretary shall submit to Congress at the end of each quarter of a fiscal year a status report on each research and development program that is a participant in the pilot program. The report shall contain information on unit costs that is similar to the information on unit costs under major defense acquisition programs that is required to be provided to Congress under chapter 144 of title 10, United States Code, except that the information on unit costs shall address projected prototype costs instead of production costs.

(f) APPLICABILITY OF EXISTING LAW.—Nothing in this section shall be construed to exempt any program of the Department of Defense from the application of any provision of chapter 144 of title 10, United States Code, section 139, 181, 2366, 2399, or 2400 of such title, or any requirement under Department of Defense Directive 5000.1, Department of Defense Instruction 5000.2, or Chairman of the Joint Chiefs of Staff Instruction 3170.01B in accordance with the terms of such provision or requirement.

(g) TERMINATION OF PROGRAM PARTICIPATION.—The conduct of a participating program as a spiral development program under the pilot program shall terminate when the decision is made for the participating program to proceed into the production of units in excess of the number of prototype units permitted under the limitation provided in spiral development plan for the program pursuant to subsection (c)(5).

(h) TERMINATION OF PILOT PROGRAM.—(1) The authority to conduct a pilot program under this section shall terminate three years after the date of the enactment of this Act.

(2) The termination of the pilot program shall not terminate the authority of the Secretary of a military department or head of a Defense Agency to continue to conduct, as a spiral development program, any research and development program that was designated to participate in the pilot program before the date on which the pilot program terminates. In the continued conduct of such a research and development program as a spiral development program on and after such date, the spiral development plan approved for the program, the guidance issued under subsection (d), and subsections (e), (f), and (g) shall continue to apply.

(i) DEFINITIONS.—In this section:

(1) The term "spiral development program" means a research and development program that—

(A) is conducted in discrete phases or blocks, each of which will result in the development of fieldable prototypes; and

(B) will not proceed into acquisition until specific performance parameters, including measurable exit criteria, have been met.

(2) The term "spiral" means one of the discrete phases or blocks of a spiral development program.

(3) The term "major system" has the meaning given such term in section 2302(5) of title 10, United States Code.

(4) The term "participating program" means a research and development program that is designated to participate in the pilot program under subsection (b).

SEC. 804. IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES.

(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act.

(b) Program Requirements.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

(2) Efforts to develop systems for performance measurement and continual process improvement.

(3) A system for ensuring that each program office with substantial software responsibilities implements and adheres to established processes and requirements.

(c) Department of Defense Guidance.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by identifying, and serving as a clearinghouse for information regarding, best practices in software acquisition processes in both the public and private sectors.

(d) Definitions.—In this section:

(1) The term "Defense Agency" has the meaning given the term in section 101(a)(11) of title 10, United States Code.

(2) The term "major defense acquisition program" has the meaning given the term in section 2430 of title 10, United States Code.

SEC. 805. INDEPENDENT TECHNOLOGY READINESS ASSESSMENTS.

Section 804(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1180) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(3) identify each case in which an authoritative decision has been made within the Department of Defense not to conduct an independent technology readiness assessment for a critical technology on a major defense acquisition program and explain the reasons for the decision.".

SEC. 806. TIMING OF CERTIFICATION IN CONNECTION WITH WAIVER OF SURVIVABILITY AND LETHALITY TESTING REQUIREMENTS.

(a) Certification for Expedited Programs.—Paragraph (1) of subsection (c) of section 2366 of title 10, United States Code, is amended to read as follows:

"(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

"(A) before Milestone B approval for the system or program; or

"(B) in the case of a system or program initiated at—

"(i) Milestone B, as soon as is practicable after the Milestone B approval; or

"(ii) Milestone C, as soon as is practicable after the Milestone C approval.".

(b) Definitions.—Subsection (e) of such section is amended by adding at the end the following new paragraphs:

"(8) The term 'Milestone B approval' means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

"(9) The term 'Milestone C approval' means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.".

Subtitle B—Procurement Policy Improvements

SEC. 811. PERFORMANCE GOALS FOR CONTRACTING FOR SERVICES.

(a) Individual Purchases of Services.—Subsection (a) of section 802 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2330 note) is amended by adding at the end the following new paragraphs:

"(3) To support the attainment of the goals established in paragraph (2), the Department of Defense shall have the following goals:

"(A) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the volume of the individual purchases of services that are made on a competitive basis and involve the receipt of two or more offers from qualified contractors to a percentage as follows:

"(i) For fiscal year 2003, a percentage not less than 50 percent.

"(ii) For fiscal year 2004, a percentage not less than 60 percent.

"(iii) For fiscal year 2011, a percentage not less than 80 percent.

"(B) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the use of performance-based purchasing specifying firm fixed prices for the specific tasks to be performed to a percentage as follows:

"(i) For fiscal year 2003, a percentage not less than 30 percent.

"(ii) For fiscal year 2004, a percentage not less than 40 percent.

"(iii) For fiscal year 2005, a percentage not less than 50 percent.

"(iv) For fiscal year 2011, a percentage not less than 80 percent.".

(b) Extension and Revision of Reporting Requirement.—Subsection (b) of such section is amended—

(1) by striking "March 1, 2006", and inserting "March 1, 2011"; and

(2) by adding at the end the following new paragraphs:

"(6) Regarding the individual purchases of services that were made by or for the Department of Defense under multiple award contracts in the fiscal year preceding the fiscal year in which the report is required to be submitted, information (determined using the data collection system established under section 2330a of title 10, United States Code) as follows:

"(A) The percentage (calculated on the basis of dollar value) of such purchases that are purchases that were made on a competitive basis and involved receipt of two or more offers from qualified contractors.

"(B) The percentage (calculated on the basis of dollar value) of such purchases that are performance-based purchases specifying firm fixed prices for the specific tasks to be performed.".

(c) Definitions.—Such section is further amended by adding at the end the following new subsection:

"(c) Definitions.—In this section:

"(1) The term 'individual purchase' means a task order, delivery order, or other purchase.

"(2) The term 'multiple award contract' means—

"(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10, United States Code;

"(B) a multiple award task order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

"(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with two or more sources pursuant to the same solicitation.".

SEC. 812. GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS.

(a) Guidance for Exceptions in Exceptional Circumstances.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant—

(A) an exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submittal of certified contract cost and pricing data; or

(B) a waiver pursuant to section 26(f)(5)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(5)(B)), relating to the applicability of cost accounting standards to contracts and subcontracts.

(2) The guidance shall, at a minimum, include a limitation that a grant of an exception or waiver referred to in paragraph (1) is appropriate with respect to a contract or subcontract, or (in the case of submittal of certified cost and pricing data) a modification, only upon a determination that the property or services cannot be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver.

(b) Semiannual Report.—(1) The Secretary of Defense shall transmit to the congressional defense committees promptly after the end of each half of a fiscal year a report on the exceptions to cost or pricing data certification requirements and the waivers of applicability of cost accounting standards that, in cases described in paragraph (2), were granted during that half of the fiscal year.

(2) The report for a half of a fiscal year shall include an explanation of—

(A) each decision by the head of a procuring activity within the Department of Defense to exercise the authority under subparagraph (B) or (C) of subsection (b)(1) of section 2306a of title 10, United States Code, to grant an exception to the requirements of such section in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of $15,000,000 or more; and

(B) each decision by the Secretary of Defense or the head of an agency within the Department of Defense to exercise the authority under subsection (f)(5)(B) of section 26 of the Office of Federal Procurement Policy Act to waive the applicability of the cost accounting standards under such section in the case of a contract or subcontract that is expected to have a value of $15,000,000 or more.

(c) Advance Notification of Congress.—(1) The Secretary of Defense shall transmit to the congressional defense committees an advance notification of—

(A) any decision by the head of a procuring activity within the Department of Defense to exercise the authority under subsection (b)(1)(C) of section 2306a of title 10, United States Code,

to grant an exception to the requirements of such section in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of $75,000,000 or more; or

(B) any decision by the Secretary of Defense or the head of an agency within the Department of Defense to exercise the authority under subsection (f)(5)(B) of section 26 of the Office of Federal Procurement Policy Act to waive the applicability of the cost accounting standards under such section to a contract or subcontract that is expected to have a value of $75,000,000 or more.

(2) The notification under paragraph (1) regarding a decision to grant an exception or waiver shall be transmitted not later than 10 days before the exception or waiver is granted.

(d) CONTENTS OF REPORTS AND NOTIFICATIONS.—A report pursuant to subsection (b) and a notification pursuant to subsection (c) shall include, for each grant of an exception or waiver, the following matters:

(1) A discussion of the justification for the grant of the exception or waiver, including at a minimum—

(A) in the case of an exception granted pursuant to section 2306a(b)(1)(B) of title 10, United States Code, an explanation of the basis for the determination that the products or services to be purchased are commercial items; and

(B) in the case of an exception granted pursuant to section 2306a(b)(1)(C) of such title, or a waiver granted pursuant to section 26(f)(5)(B) of the Office of Federal Procurement Policy Act, an explanation of the basis for the determination that it would not have been possible to obtain the products or services from the offeror without the grant of the exception or waiver.

(2) A description of the specific steps taken or to be taken within the Department of Defense to ensure that the price of each contract, subcontract, or modification covered by the report or notification, as the case may be, is fair and reasonable.

(e) EFFECTIVE DATE.—The requirements of this section shall apply to each exception or waiver that is granted under a provision of law referred to in subsection (a) on or after the date on which the guidance required by that subsection (a) is issued.

SEC. 813. EXTENSION OF REQUIREMENT FOR ANNUAL REPORT ON DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVEMENT.

Section 803(c)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2082; 10 U.S.C. 2306a note) is amended by striking "2000, 2001, and 2002," and inserting "2000 through 2006,".

SEC. 814. INTERNAL CONTROLS ON THE USE OF PURCHASE CARDS.

(a) REQUIREMENT FOR ENHANCED INTERNAL CONTROLS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall take action to ensure that appropriate internal controls for the use of purchase cards issued by the Federal Government to Department of Defense personnel are in place throughout the Department of Defense. At a minimum, the internal controls shall include the following:

(1) A requirement that the receipt and acceptance, and the documentation of the receipt and acceptance, of the property or services purchased on a purchase card be verified by a Department of Defense official who is independent of the purchaser.

(2) A requirement that the monthly purchase card statements of purchases on a purchase card be reviewed and certified for accuracy by an official of the Department of Defense who is independent of the purchaser.

(3) Specific policies limiting the number of purchase cards issued, with the objective of significantly reducing the number of cardholders.

(4) Specific policies on credit limits authorized for cardholders, with the objective of minimizing financial risk to the Federal Government.

(5) Specific criteria for identifying employees eligible to be issued purchase cards, with the objective of ensuring the integrity of cardholders.

(6) Accounting procedures that ensure that purchase card transactions are properly recorded in Department of Defense accounting records.

(7) Requirements for regular internal review of purchase card statements to identify—

(A) potentially fraudulent, improper, and abusive purchases;

(B) any patterns of improper cardholder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made through other mechanisms to better aggregate purchases and negotiate lower prices.

(b) TRAINING.—The Secretary of Defense shall ensure that all Department of Defense purchase cardholders are aware of the enhanced internal controls instituted pursuant to subsection (a).

(c) COMPTROLLER GENERAL REVIEW.—Not later than March 1, 2003, the Comptroller General shall—

(1) review the actions that have been taken within the Department of Defense to comply with the requirements of this section; and

(2) submit a report on the actions reviewed to the congressional defense committees.

SEC. 815. ASSESSMENT REGARDING FEES PAID FOR ACQUISITIONS UNDER OTHER AGENCIES' CONTRACTS.

(a) REQUIREMENT FOR ASSESSMENT AND REPORT.—Not later than March 1, 2003, the Secretary of Defense shall carry out an assessment to determine the total amount paid by the Department of Defense as fees for the acquisition of property and services by the Department of Defense under contracts between other departments and agencies of the Federal Government and the sources of the property and services in each of fiscal years 2000, 2001, and 2002, and submit a report on the results of the assessment to Congress.

(b) CONTENT OF REPORT.—The report shall include the Secretary's views on what, if any, actions should be taken within the Department of Defense to reduce the total amount of the annual expenditures on fees described in subsection (a) and to use the amounts saved for other authorized purposes.

SEC. 816. PILOT PROGRAM FOR TRANSITION TO FOLLOW-ON CONTRACTS FOR CERTAIN PROTOTYPE PROJECTS.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note) is amended by—

(1) redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) inserting after subsection (d) the following new subsection (e):

"(e) PILOT PROGRAM FOR TRANSITION TO FOLLOW-ON CONTRACTS.—(1) The Secretary of Defense is authorized to carry out a pilot program for follow-on contracting for the production of items or processes that are developed by nontraditional defense contractors under prototype projects carried out under this section.

"(2) Under the pilot program—

"(A) a qualifying contract for the procurement of such an item or process, or a qualifying subcontract under a contract for the procurement of such an item or process, may be treated as a contract or subcontract, respectively, for the procurement of commercial items, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

"(B) the item or process may be treated as an item or process, respectively, that is developed in part with Federal funds and in part at private expense for the purposes of section 2320 of title 10, United States Code.

"(3) For the purposes of the pilot program, a qualifying contract or subcontract is a contract or subcontract, respectively, with a nontraditional defense contractor that—

"(A) does not exceed $20,000,000; and

"(B) is either—

"(i) a firm, fixed-price contract or subcontract; or

"(ii) a fixed-price contract or subcontract with economic price adjustment.

"(4) The authority to conduct a pilot program under this subsection shall terminate on September 30, 2005. The termination of the authority shall not affect the validity of contracts or subcontracts that are awarded or modified during the period of the pilot program, without regard to whether the contracts or subcontracts are performed during the period.".

SEC. 817. WAIVER AUTHORITY FOR DOMESTIC SOURCE OR CONTENT REQUIREMENTS.

(a) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

"§2539c. Waiver of domestic source or content requirements

"(a) AUTHORITY.—Except as provided in subsection (f), the Secretary of Defense may waive the application of any domestic source requirement or domestic content requirement referred to in subsection (b) and thereby authorize the procurement of items that are grown, reprocessed, reused, produced, or manufactured—

"(1) in a foreign country that has a reciprocal defense procurement memorandum of understanding or agreement with the United States;

"(2) in a foreign country that has a reciprocal defense procurement memorandum of understanding or agreement with the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a reciprocal defense procurement memorandum of understanding or agreement with the United States; or

"(3) in the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a reciprocal defense procurement memorandum of understanding or agreement with the United States.

"(b) COVERED REQUIREMENTS.—For purposes of this section:

"(1) A domestic source requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item that is grown, reprocessed, reused, produced, or manufactured in the United States or by a manufacturer that is a part of the national technology and industrial base (as defined in section 2500(1) of this title).

"(2) A domestic content requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item produced or manufactured partly or wholly from components and materials grown, reprocessed, reused, produced, or manufactured in the United States.

"(c) APPLICABILITY.—The authority of the Secretary to waive the application of a domestic source or content requirements under subsection (a) applies to the procurement of items for which the Secretary of Defense determines that—

"(1) application of the requirement would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items between a foreign country and the United States in accordance with section 2531 of this title; and

"(2) such country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

"(d) Limitation on Delegation.—The authority of the Secretary to waive the application of domestic source or content requirements under subsection (a) may not be delegated to any officer or employee other than the Under Secretary of Defense for Acquisition, Technology and Logistics.

"(e) Consultations.—The Secretary may grant a waiver of the application of a domestic source or content requirement under subsection (a) only after consultation with the United States Trade Representative, the Secretary of Commerce, and the Secretary of State.

"(f) Laws Not Waivable.—The Secretary of Defense may not exercise the authority under subsection (a) to waive any domestic source or content requirement contained in any of the following laws:

"(1) The Small Business Act (15 U.S.C. 631 et seq.).

"(2) The Javits-Wagner-O'Day Act (41 U.S.C. et seq.).

"(3) Sections 7309 and 7310 of this title.

"(4) Section 2533a of this title.

"(g) Relationship to Other Waiver Authority.—The authority under subsection (a) to waive a domestic source requirement or domestic content requirement is in addition to any other authority to waive such requirement.

"(h) Construction With Respect to Later Enacted Laws.—This section may not be construed as being inapplicable to a domestic source requirement or domestic content requirement that is set forth in a law enacted after the enactment of this section solely on the basis of the later enactment.".

(b) Clerical Amendment.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2539b the following new item:

"2539c. Waiver of domestic source or content requirements.".

Subtitle C—Other Matters

SEC. 821. EXTENSION OF THE APPLICABILITY OF CERTAIN PERSONNEL DEMONSTRATION PROJECT EXCEPTIONS TO AN ACQUISITION WORKFORCE DEMONSTRATION PROJECT.

Section 4308(b)(3)(B) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1701 note) is amended to read as follows:

"(B) commences before November 18, 2007.".

SEC. 822. MORATORIUM ON REDUCTION OF THE DEFENSE ACQUISITION AND SUPPORT WORKFORCE.

(a) Prohibition.—Notwithstanding any other provision of law, the defense acquisition and support workforce may not be reduced, during fiscal years 2003, 2004, and 2005, below the level of that workforce as of September 30, 2002, determined on the basis of full-time equivalent positions.

(b) Waiver Authority.—The Secretary of Defense may waive the prohibition in subsection (a) and reduce the level of the defense acquisition and support workforce upon submitting to Congress the Secretary's certification that the defense acquisition and support workforce, at the level to which reduced, will be able efficiently and effectively to perform the workloads that are required of that workforce consistent with the cost-effective management of the defense acquisition system to obtain best value equipment and with ensuring military readiness.

(c) Defense Acquisition and Support Workforce Defined.—In this section, the term "defense acquisition and support workforce" means Armed Forces and civilian personnel who are assigned to, or are employed in, an organization of the Department of Defense that is—

(1) an acquisition organization specified in Department of Defense Instruction 5000.58, dated January 14, 1992; or

(2) an organization not so specified that has acquisition as its predominant mission, as determined by the Secretary of Defense.

SEC. 823. EXTENSION OF CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

Section 2323(k) of title 10, United States Code, is amended by striking "2003" both places it appears and inserting "2006".

SEC. 824. MENTOR-PROTEGE PROGRAM ELIGIBILITY FOR HUBZONE SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

Section 831(m)(2) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note), is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(F) a qualified HUBZone small business concern, within the meaning of section 3(p)(5) of the Small Business Act (15 U.S.C. 632(p)(5)); or

"(G) a small business concern owned and controlled by service-disabled veterans, as defined in section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)).".

SEC. 825. REPEAL OF REQUIREMENTS FOR CERTAIN REVIEWS BY THE COMPTROLLER GENERAL.

The following provisions of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) are repealed:

(1) Section 912(d) (110 Stat. 410; 10 U.S.C. 2216 note), relating to Comptroller General reviews of the administration of the Defense Modernization Account.

(2) Section 5312(e) (110 Stat. 695; 40 U.S.C. 1492), relating to Comptroller General monitoring of a pilot program for solutions-based contracting for acquisition of information technology.

(3) Section 5401(c)(3) (110 Stat. 697; 40 U.S.C. 1501), relating to a Comptroller General review and report regarding a pilot program to test streamlined procedures for the procurement of information technology products and services available for ordering through multiple award schedules.

SEC. 826. MULTIYEAR PROCUREMENT AUTHORITY FOR PURCHASE OF DINITROGEN TETROXIDE, HYDRAZINE, AND HYDRAZINE-RELATED PRODUCTS.

(a) In General.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2410n the following new section:

"§2410o. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

"(a) Ten-Year Contract Period.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

"(b) Extensions.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 141 is amended by adding at the end the following item:

"2410o. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.".

SEC. 827. MULTIYEAR PROCUREMENT AUTHORITY FOR ENVIRONMENTAL SERVICES FOR MILITARY INSTALLATIONS.

(a) Authority.—Subsection (b) of section 2306c of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(5) Environmental remediation services for—

"(A) an active military installation;

"(B) a military installation being closed or realigned under a base closure law; or

"(C) a site formerly used by the Department of Defense.".

(b) Definitions.—Such section is further amended by adding at the end the following new subsection:

"(g) Additional Definitions.—In this section:

"(1) The term 'base closure law' has the meaning given such term in section 2667(h)(2) of this title.

"(2) The term 'military installation' has the meaning given such term in section 2801(c)(2) of this title.".

SEC. 828. INCREASED MAXIMUM AMOUNT OF ASSISTANCE FOR TRIBAL ORGANIZATIONS OR ECONOMIC ENTERPRISES CARRYING OUT PROCUREMENT TECHNICAL ASSISTANCE PROGRAMS IN TWO OR MORE SERVICE AREAS.

Section 2414(a)(4) of title 10, United States Code, is amended by striking "$300,000" and inserting "$600,000".

SEC. 829. AUTHORITY FOR NONPROFIT ORGANIZATIONS TO SELF-CERTIFY ELIGIBILITY FOR TREATMENT AS QUALIFIED ORGANIZATIONS EMPLOYING SEVERELY DISABLED UNDER MENTOR-PROTEGE PROGRAM.

Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note) is amended by adding at the end the following new subsection:

"(n) Self-Certification of Nonprofit Organizations as Qualified Organizations Employing the Severely Disabled.—(1) The Secretary of Defense may, in accordance with such requirements as the Secretary may establish, permit a business entity operating on a nonprofit basis to self-certify its eligibility for treatment as a qualified organization employing the severely disabled under subsection (m)(2)(D).

"(2) The Secretary shall treat any entity described in paragraph (1) that submits a self-certification under that paragraph as a qualified organization employing the severely disabled until the Secretary receives evidence, if any, that such entity is not described by paragraph (1) or does not merit treatment as a qualified organization employing the severely disabled in accordance with applicable provisions of subsection (m).

"(3) Paragraphs (1) and (2) shall cease to be effective on the effective date of regulations prescribed by the Small Business Administration under this section setting forth a process for the certification of business entities as eligible for treatment as a qualified organization employing the severely disabled under subsection (m)(2)(D).".

SEC. 830. REPORT ON EFFECTS OF ARMY CONTRACTING AGENCY.

(a) In general.—The Secretary of the Army shall submit a report on the effects of the establishment of an Army Contracting Agency on small business participation in Army procurements during the first year of operation of such an agency to—

(1) the Committee on Armed Services of the House of Representatives;

(2) the Committee on Armed Services of the Senate;

(3) the Committee on Small Business of the House of Representatives; and

(4) the Committee on Small Business and Entrepreneurship of the Senate.

(b) CONTENT.—The report required under subsection (a) shall include, in detail—

(1) the justification for the establishment of an Army Contracting Agency;

(2) the impact of the creation of an Army Contracting Agency on—

(A) Army compliance with—

(i) Department of Defense Directive 4205.1;

(ii) section 15(g) of the Small Business Act (15 U.S.C. 644(g)); and

(iii) section 15(k) of the Small Business Act (15 U.S.C. 644(k));

(B) small business participation in Army procurement of products and services for affected Army installations, including—

(i) the impact on small businesses located near Army installations, including—

(I) the increase or decrease in the total value of Army prime contracting with local small businesses; and

(II) the opportunities for small business owners to meet and interact with Army procurement personnel; and

(ii) any change or projected change in the use of consolidated contracts and bundled contracts; and

(3) a description of the Army's plan to address any negative impact on small business participation in Army procurement, to the extent such impact is identified in the report.

(c) TIME FOR SUBMISSION.—The report under this section shall be due 15 months after the date of the establishment of the Army Contracting Agency.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

SEC. 901. TIME FOR SUBMITTAL OF REPORT ON QUADRENNIAL DEFENSE REVIEW.

Section 118(d) of title 10, United States Code, is amended by striking "not later than September 30 of the year in which the review is conducted" in the second sentence and inserting "in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105(a) of title 31".

SEC. 902. INCREASED NUMBER OF DEPUTY COMMANDANTS AUTHORIZED FOR THE MARINE CORPS.

Section 5045 of title 10, United States Code, is amended by striking "five" and inserting "six".

SEC. 903. BASE OPERATING SUPPORT FOR FISHER HOUSES.

(a) EXPANSION OF REQUIREMENT TO INCLUDE ARMY AND AIR FORCE.—Section 2493(f) of title 10, United States Code, is amended to read as follows:

"(f) BASE OPERATING SUPPORT.—The Secretary of the military department concerned shall provide base operating support for Fisher Houses associated with health care facilities of that military department.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 904. PREVENTION AND MITIGATION OF CORROSION.

(a) ESTABLISHMENT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall designate an officer or employee of the Department of Defense as the senior official responsible (after the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department. The designated official shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) DUTIES.—The official designated under subsection (a) shall direct and coordinate initiatives throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department, including efforts to facilitate the prevention and mitigation of corrosion through—

(1) development and recommendation of policy guidance on the prevention and mitigation of corrosion which the Secretary of Defense shall issue;

(2) review of the annual budget proposed for the prevention and mitigation of corrosion by the Secretary of each military department and submittal of recommendations regarding the proposed budget to the Secretary of Defense;

(3) direction and coordination of the efforts within the Department of Defense to prevent or mitigate corrosion during—

(A) the design, acquisition, and maintenance of military equipment; and

(B) the design, construction, and maintenance of infrastructure; and

(4) monitoring of acquisition practices—

(A) to ensure that the use of corrosion prevention technologies and the application of corrosion prevention treatments are fully considered during research and development in the acquisition process; and

(B) to ensure that, to the extent determined appropriate in each acquisition program, such technologies and treatments are incorporated into the program, particularly during the engineering and design phases of the acquisition process.

(c) INTERIM REPORT.—When the President submits the budget for fiscal year 2004 to Congress pursuant to section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to Congress a report regarding the actions taken under this section. The report shall include the following matters:

(1) The organizational structure for the personnel carrying out the responsibilities of the official designated under subsection (a) with respect to the prevention and mitigation of corrosion.

(2) An outline and milestones for developing a long-term corrosion prevention and mitigation strategy.

(d) LONG-TERM STRATEGY.—(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a long-term strategy to reduce corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense.

(2) The strategy shall provide for the following actions:

(A) Expanding the emphasis on corrosion prevention and mitigation to include coverage of infrastructure.

(B) Applying uniformly throughout the Department of Defense requirements and criteria for the testing and certification of new technologies for the prevention of corrosion.

(C) Implementing programs, including programs supporting databases, to foster the collection and analysis of—

(i) data useful for determining the extent of the effects of corrosion on the maintenance and readiness of military equipment and infrastructure; and

(ii) data on the costs associated with the prevention and mitigation of corrosion.

(D) Implementing programs, including supporting databases, to ensure that a focused and coordinated approach is taken throughout the Department of Defense to collect, review, validate, and distribute information on proven methods and products that are relevant to the prevention of corrosion of military equipment and infrastructure.

(E) Implementing a program to identify specific funding in future budgets for the total life cycle costs of the prevention and mitigation of corrosion.

(F) Establishing a coordinated research and development program for the prevention and mitigation of corrosion for new and existing military equipment and infrastructure that includes a plan to transition new corrosion prevention technologies into operational systems.

(3) The strategy shall also include, for the actions provided for pursuant to paragraph (2), the following:

(A) Policy guidance.

(B) Performance measures and milestones.

(C) An assessment of the necessary program management resources and necessary financial resources.

(e) GAO REVIEWS.—The Comptroller General shall monitor the implementation of the long-term strategy required under subsection (d) and, not later than 18 months after the date of the enactment of this Act, submit to Congress an assessment of the extent to which the strategy has been implemented.

(f) DEFINITIONS.—In this section:

(1) The term "corrosion" means the deterioration of a substance or its properties due to a reaction with its environment.

(2) The term "military equipment" includes all air, land, and sea weapon systems, weapon platforms, vehicles, and munitions of the Department of Defense, and the components of such items.

(3) The term "infrastructure" includes all buildings, structures, airfields, port facilities, surface and subterranean utility systems, heating and cooling systems, fuel tanks, pavements, and bridges.

(g) TERMINATION.—This section shall cease to be effective on the date that is five years after the date of the enactment of this Act.

SEC. 905. WESTERN HEMISPHERE INSTITUTE FOR SECURITY COOPERATION.

(a) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—Section 2166 of title 10, United States Code, is amended—

(1) by redesignating subsections (f), (g), and (h), as subsections (g), (h), and (i), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

"(f) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) The Secretary of Defense may, on behalf of the Institute, accept foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Institute.

"(2) Funds received by the Secretary under paragraph (1) shall be credited to appropriations available for the Department of Defense for the Institute. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Institute for the same purposes and same period as the appropriations with which merged.

"(3) The Secretary of Defense shall notify Congress if the total amount of money accepted under paragraph (1) exceeds $1,000,000 in any fiscal year. Any such notice shall list each of the contributors of such money and the amount of each contribution in such fiscal year.

"(4) For the purposes of this subsection, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.".

(b) CONTENT OF ANNUAL REPORT TO CONGRESS.—Subsection (i) of such section, as redesignated by subsection (a)(1), is amended by inserting after the first sentence the following: "The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report.".

SEC. 906. VETERINARY CORPS OF THE ARMY.

(a) COMPOSITION AND ADMINISTRATION.—(1) Chapter 307 of title 10, United States Code, is amended by inserting after section 3070 the following new section 3071:

"§3071. Veterinary Corps: composition; Chief and assistant chief; appointment; grade

"(a) COMPOSITION.—The Veterinary Corps consists of the Chief and assistant chief of that corps and other officers in grades prescribed by the Secretary of the Army.

"(b) CHIEF.—The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade may be appointed in the regular grade of brigadier general. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed to the same position.

"(c) ASSISTANT CHIEF.—The Surgeon General shall appoint the assistant chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel. The assistant chief serves during the pleasure of the Surgeon General, but not for more than four years and may not be reappointed to the same position.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3070 the following new item:

"3071. Veterinary Corps: composition; Chief and assistant chief; appointment; grade.".

(b) EFFECTIVE DATE.—Section 3071 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002.

SEC. 907. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE.

(a) ESTABLISHMENT OF POSITION.—Chapter 4 of title 10, United States Code, is amended—

(1) by transferring section 137 within such chapter to appear following section 138;

(2) by redesignating sections 137 and 139 as sections 139 and 139a, respectively; and

(3) by inserting after section 136a the following new section 137:

"§137. Under Secretary of Defense for Intelligence

"(a) There is an Under Secretary of Defense for Intelligence, appointed from civilian life by the President, by and with the advice and consent of the Senate.

"(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.

"(c) The Under Secretary of Defense for Personnel and Readiness takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.".

(b) CONFORMING AMENDMENTS.—(1) Section 131 of such title is amended—

(A) by striking paragraphs (2), (3), (4), and (5), and inserting the following:

"(2) The Under Secretaries of Defense, as follows:

"(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

"(B) The Under Secretary of Defense for Policy.

"(C) The Under Secretary of Defense (Comptroller).

"(D) The Under Secretary of Defense for Personnel and Readiness.

"(E) The Under Secretary of Defense for Intelligence."; and

(B) by redesignating paragraphs (6), (7), (8), (9), (10), and (11) as paragraphs (3), (4), (5), (6), (7), and (8), respectively.

(2) The table of sections at the beginning of chapter 4 of such title is amended—

(A) by striking the item relating to section 137 and inserting the following:

"137. Under Secretary of Defense for Intelligence.";

and

(B) by striking the item relating to section 139 and inserting the following:

"139. Director of Research and Engineering.
"139a. Director of Operational Test and Evaluation.".

(c) EXECUTIVE LEVEL III.—Section 5314 of title 5, United States Code, is amended by inserting after "Under Secretary of Defense for Personnel and Readiness." the following:

"Under Secretary of Defense for Intelligence.".

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

SEC. 1001. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2003 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed $2,500,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. REALLOCATION OF AUTHORIZATIONS OF APPROPRIATIONS FROM BALLISTIC MISSILE DEFENSE TO SHIPBUILDING.

(a) AMOUNT.—Notwithstanding any other provision of this Act, the total amount authorized to be appropriated under section 201(4) is hereby reduced by $690,000,000, and the amount authorized to be appropriated under section 102(a)(3) is hereby increased by $690,000,000.

(b) SOURCE OF REDUCTION.—The total amount of the reduction in the amount authorized to be appropriated under section 201(4) shall be derived from the amount provided under that section for ballistic missile defense for research, development, test, and evaluation.

(c) ALLOCATION OF INCREASE.—Of the additional amount authorized to be appropriated under section 102(a)(3) pursuant to subsection (a)—

(1) $415,000,000 shall be available for advance procurement of a Virginia class submarine;

(2) $125,000,000 shall be available for advance procurement of a DDG–51 class destroyer; and

(3) $150,000,000 shall be available for advance procurement of an LPD–17 class amphibious transport dock.

SEC. 1003. AUTHORIZATION OF APPROPRIATIONS FOR CONTINUED OPERATIONS FOR THE WAR ON TERRORISM.

(a) AMOUNT.—(1) In addition to the amounts authorized to be appropriated under divisions A and B, funds are hereby authorized to be appropriated for fiscal year 2003 (subject to subsection (b)) in the total amount of $10,000,000,000 for the conduct of operations in continuation of the war on terrorism in accordance with the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note).

(2) The amount authorized to be appropriated under paragraph (1) shall be available for increased operating costs, transportation costs, costs of humanitarian efforts, costs of special pays, costs of enhanced intelligence efforts, increased personnel costs for members of the reserve components ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and other costs related to operations referred to in paragraph (1).

(b) AUTHORIZATION CONTINGENT ON BUDGET REQUEST.—The authorization of appropriations in subsection (a) shall be effective only to the extent of the amount provided in a budget request for the appropriation of funds for purposes set forth in subsection (a) that is submitted by the President to Congress after the date of the enactment of this Act and—

(1) includes a designation of the requested amount as being essential to respond to or protect against acts or threatened acts of terrorism; and

(2) specifies a proposed allocation and plan for the use of the appropriation for purposes set forth in subsection (a).

SEC. 1004. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2002.

Amounts authorized to be appropriated to the Department of Defense for fiscal year 2002 in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization were increased (by a supplemental appropriation) or decreased (by a rescission), or both, in any law making supplemental appropriations for fiscal year 2002 that is enacted during the 107th Congress, second session.

SEC. 1005. UNITED STATES CONTRIBUTION TO NATO COMMON-FUNDED BUDGETS IN FISCAL YEAR 2003.

(a) FISCAL YEAR 2003 LIMITATION.—The total amount contributed by the Secretary of Defense in fiscal year 2003 for the common-funded budgets of NATO may be any amount up to, but not in excess of, the amount specified in subsection (b) (rather than the maximum amount that would otherwise be applicable to those contributions under the fiscal year 1998 baseline limitation).

(b) TOTAL AMOUNT.—The amount of the limitation applicable under subsection (a) is the sum of the following:

(1) The amounts of unexpended balances, as of the end of fiscal year 2002, of funds appropriated for fiscal years before fiscal year 2003 for payments for those budgets.

(2) The amount specified in subsection (c)(1).

(3) The amount specified in subsection (c)(2).

(4) The total amount of the contributions authorized to be made under section 2501.

(c) AUTHORIZED AMOUNTS.—Amounts authorized to be appropriated by titles II and III of this Act are available for contributions for the common-funded budgets of NATO as follows:

(1) Of the amount provided in section 201(1), $750,000 for the Civil Budget.

(2) Of the amount provided in section 301(a)(1), $205,623,000 for the Military Budget.

(d) DEFINITIONS.—For purposes of this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term "common-funded budgets of NATO" means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term "fiscal year 1998 baseline limitation" means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

SEC. 1006. DEVELOPMENT AND IMPLEMENTATION OF FINANCIAL MANAGEMENT ENTERPRISE ARCHITECTURE.

(a) REQUIREMENT FOR ENTERPRISE ARCHITECTURE AND TRANSITION PLAN.—Not later than March 15, 2003, the Secretary of Defense shall develop a proposed financial management enterprise architecture for all budgetary, accounting, finance, and data feeder systems of the Department of Defense, together with a transition plan for implementing the proposed enterprise architecture.

(b) COMPOSITION OF ARCHITECTURE.—The proposed financial management enterprise architecture developed under subsection (a) shall describe a system that, at a minimum—

(1) includes data standards and system interface requirements that are to apply uniformly throughout the Department of Defense;

(2) enables the Department of Defense—

(A) to comply with Federal accounting, financial management, and reporting requirements;

(B) to routinely produce timely, accurate, and useful financial information for management purposes;

(C) to integrate budget, accounting, and program information and systems; and

(D) to provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

(c) COMPOSITION OF TRANSITION PLAN.—The transition plan developed under subsection (a) shall contain specific time-phased milestones for modifying or eliminating existing systems and for acquiring new systems necessary to implement the proposed enterprise architecture.

(d) EXPENDITURES FOR IMPLEMENTATION.—The Secretary of Defense may not obligate more than $1,000,000 for a defense financial system improvement on or after the enterprise architecture approval date unless the Financial Management Modernization Executive Committee determines that the defense financial system improvement is consistent with the proposed enterprise architecture and transition plan.

(e) EXPENDITURES PENDING ARCHITECTURE APPROVAL.—The Secretary of Defense may not obligate more than $1,000,000 for a defense financial system improvement during the enterprise architecture pre-approval period unless the Financial Management Modernization Executive Committee determines that the defense financial system improvement is necessary—

(1) to achieve a critical national security capability or address a critical requirement in an area such as safety or security; or

(2) to prevent a significant adverse effect (in terms of a technical matter, cost, or schedule) on a project that is needed to achieve an essential capability, taking into consideration in the determination the alternative solutions for preventing the adverse effect.

(f) COMPTROLLER GENERAL REVIEW.—Not later than March 1 of each of 2003, 2004, and 2005, the Comptroller General shall submit to the congressional defense committees a report on defense financial management system improvements that have been undertaken during the previous year. The report shall include the Comptroller General's assessment of the extent to which the improvements comply with the requirements of this section.

(g) DEFINITIONS.—In this section:

(1) The term "defense financial system improvement"—

(A) means the acquisition of a new budgetary, accounting, finance, or data feeder system for the Department of Defense, or a modification of an existing budgetary, accounting, finance, or data feeder system of the Department of Defense; and

(B) does not include routine maintenance and operation of any such system.

(2) The term "enterprise architecture approval date" means the date on which the Secretary of Defense approves a proposed financial management enterprise architecture and a transition plan that satisfy the requirements of this section.

(3) The term "enterprise architecture pre-approval period" means the period beginning on the date of the enactment of this Act and ending on the day before the enterprise architecture approval date.

(4) The term "feeder system" means a data feeder system within the meaning of section 2222(c)(2) of title 10, United States Code.

(5) The term "Financial Management Modernization Executive Committee" means the Financial Management Modernization Executive Committee established pursuant to section 185 of title 10, United States Code.

SEC. 1007. DEPARTMENTAL ACCOUNTABLE OFFICIALS IN THE DEPARTMENT OF DEFENSE.

(a) DESIGNATION AND ACCOUNTABILITY.—Chapter 165 of title 10, United States Code, is amended by inserting after section 2773 the following new section:

"§2773a. Departmental accountable officials

"(a) DESIGNATION.—The Secretary of Defense may designate, in writing, as a departmental accountable official any employee of the Department of Defense or any member of the armed forces who—

"(1) has a duty to provide a certifying official of the Department of Defense with information, data, or services directly relied upon by the certifying official in the certification of vouchers for payment; and

"(2) is not otherwise accountable under subtitle III of title 31 or any other provision of law for payments made on the basis of the vouchers.

"(b) PECUNIARY LIABILITY.—(1) The Secretary of Defense may, in a designation of a departmental accountable official under subsection (a), subject that official to pecuniary liability, in the same manner and to the same extent as an official accountable under subtitle III of title 31, for an illegal, improper, or incorrect payment made pursuant to a voucher certified by a certifying official of the Department of Defense on the basis of information, data, or services that—

"(A) the departmental accountable official provides to the certifying official in the performance of a duty described in subsection (a)(1); and

"(B) the certifying official directly relies upon in certifying the voucher.

"(2) Any pecuniary liability imposed on a departmental accountable official under this subsection for a loss to the United States resulting from an illegal, improper, or incorrect payment shall be joint and several with that of any other employee or employees of the United States or member or members of the uniformed services who are pecuniarily liable for the loss.

"(c) RELIEF FROM PECUNIARY LIABILITY.—The Secretary of Defense shall relieve a departmental accountable official from pecuniary liability imposed under subsection (b) in the case of a payment if the Secretary determines that the payment was not a result of fault or negligence on the part of the departmental accountable official.

"(d) CERTIFYING OFFICIAL DEFINED.—In this section, the term 'certifying official' means an employee who has the responsibilities specified in section 3528(a) of title 31.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2773 the following new item.

"2773a. Departmental accountable officials.".

SEC. 1008. DEPARTMENT-WIDE PROCEDURES FOR ESTABLISHING AND LIQUIDATING PERSONAL PECUNIARY LIABILITY.

(a) REPORT OF SURVEY PROCEDURES.—(1) Chapter 165 of title 10, United States Code, is amended by inserting after section 2786 the following new section:

"§2787. Reports of survey

"(a) REGULATIONS.—Under regulations prescribed pursuant to subsection (c), any officer of the armed forces or any civilian employee of the Department of Defense designated in accordance with the regulations may act upon reports of survey and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense.

"(b) FINALITY OF ACTION.—(1) Action taken under subsection (a) is final except as provided in paragraph (2).

"(2) An action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by a person designated to do so by the Secretary of a military department, commander of a combatant command, or Director of a Defense Agency, as the case may be, who has jurisdiction of the person held pecuniarily liable. The person designated to provide final approval shall be an officer of an armed force, or a civilian employee, under the jurisdiction of the official making the designation.

"(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.".

(2) The table of sections at the beginning of chapter 165 of such title is amended by inserting after the item relating to section 2786 the following new item:

"2787. Reports of survey.".

(b) DAMAGE OR REPAIR OF ARMS AND EQUIPMENT.—Section 1007(e) of title 37, United States Code, is amended by striking "Army or the Air Force" and inserting "Army, Navy, Air Force, or Marine Corps".

(c) REPEAL OF SUPERSEDED PROVISIONS.—(1) Sections 4835 and 9835 of title 10, United States Code, are repealed.

(2) The tables of sections at the beginning of chapters 453 and 953 of such title are amended by striking the items relating to sections 4835 and 9835, respectively.

SEC. 1009. TRAVEL CARD PROGRAM INTEGRITY.

(a) AUTHORITY.—Section 2784 of title 10, United States Code, is amended by adding at the end the following new subsections:

"(d) DISBURSEMENT OF ALLOWANCES DIRECTLY TO CREDITORS.—(1) The Secretary of Defense may require that any part of the travel or transportation allowances of an employee of the Department of Defense or a member of the armed forces be disbursed directly to the issuer of a Defense travel card if the amount is disbursed to the issuer in payment of amounts of expenses of official travel that are charged by the employee or member on the Defense travel card.

"(2) For the purposes of this subsection, the travel and transportation allowances referred to in paragraph (1) are amounts to which an employee of the Department of Defense is entitled under section 5702 of title 5 and or a member of the armed forces is entitled section 404 of title 37.

"(e) OFFSETS FOR DELINQUENT TRAVEL CARD CHARGES.—(1) The Secretary of Defense may require that there be deducted and withheld from any pay payable to an employee of the Department of Defense or a member of the armed forces any amount that is owed by the employee or member to a creditor by reason of one or more charges of expenses of official travel of the employee or member on a Defense travel card issued by the creditor if the employee or member—

"(A) is delinquent in the payment of such amount under the terms of the contract under which the card is issued; and

"(B) does not dispute the amount of the delinquency.

"(2) The amount deducted and withheld from pay under paragraph (1) with respect to a debt owed a creditor as described in that paragraph shall be disbursed to the creditor to reduce the amount of the debt.

"(3) The amount of pay deducted and withheld from the pay owed to an employee or member with respect to a pay period under paragraph (1) may not exceed 15 percent of the disposable pay of the employee or member for that pay period, except that a higher amount may be deducted and withheld with the written consent of the employee or member.

"(4) The Secretary of Defense shall prescribe procedures for deducting and withholding amounts from pay under this subsection. The procedures shall be substantially equivalent to the procedures under section 3716 of title 31.

"(f) UNDER SECRETARY OF DEFENSE (COMPTROLLER).—The Secretary of Defense shall act through the Under Secretary of Defense (Comptroller) in carrying out this section.

"(g) DEFINITIONS.—In this section:

"(1) The term 'Defense travel card' means a charge or credit card that—

"(A) is issued to an employee of the Department of Defense or a member of the armed forces under a contract entered into by the Department of Defense and the issuer of the card; and

"(B) is to be used for charging expenses incurred by the employee or member in connection with official travel.

"(2) The term 'disposable pay', with respect to a pay period, means the amount equal to the excess of the amount of basic pay payable for the pay period over the total of the amounts deducted and withheld from such pay.".

(b) CONFORMING AMENDMENT.—Subsection (a) of such section is amended by striking ", acting through the Under Secretary of Defense (Comptroller),".

SEC. 1010. CLEARANCE OF CERTAIN TRANSACTIONS RECORDED IN TREASURY SUSPENSE ACCOUNTS AND RESOLUTION OF CERTAIN CHECK ISSUANCE DISCREPANCIES.

(a) CLEARING OF SUSPENSE ACCOUNTS.—(1) In the case of any transaction that was entered into by or on behalf of the Department of Defense before March 1, 2001, that is recorded in the Department of Treasury Budget Clearing Account (Suspense) designated as account F3875, the Unavailable Check Cancellations and Overpayments (Suspense) designated as account F3880, or an Undistributed Intergovernmental Payments account designated as account F3885, and for which no appropriation for the Department of Defense has been identified—

(A) any undistributed collection credited to such account in such case shall be deposited to the miscellaneous receipts of the Treasury; and

(B) subject to paragraph (2), any undistributed disbursement recorded in such account in such case shall be canceled.

(2) An undistributed disbursement may not be canceled under paragraph (1) until the Secretary of Defense has made a written determination that the appropriate official or officials of the Department of Defense have attempted without success to locate the documentation necessary to demonstrate which appropriation should be charged and further efforts are not in the best interests of the United States.

(b) RESOLUTION OF CHECK ISSUANCE DISCREPANCIES.—(1) In the case of any check drawn on the Treasury that was issued by or on behalf of the Department of Defense before October 31, 1998, for which the Secretary of the Treasury has reported to the Department of Defense a discrepancy between the amount paid and the amount of the check as transmitted to the Department of Treasury, and for which no specific appropriation for the Department of Defense can be identified as being associated with the check, the discrepancy shall be canceled, subject to paragraph (2).

(2) A discrepancy may not be canceled under paragraph (1) until the Secretary of Defense has made a written determination that the appropriate official or officials of the Department of Defense have attempted without success to locate the documentation necessary to demonstrate which appropriation should be charged and further efforts are not in the best interests of the United States.

(c) CONSULTATION.—The Secretary of Defense shall consult the Secretary of the Treasury in the exercise of the authority granted by subsections (a) and (b).

(d) DURATION OF AUTHORITY.—(1) A particular undistributed disbursement may not be canceled under subsection (a) more than 30 days after the date of the written determination made by the Secretary of Defense under such subsection regarding that undistributed disbursement.

(2) A particular discrepancy may not be canceled under subsection (b) more than 30 days after the date of the written determination made by the Secretary of Defense under such subsection regarding that discrepancy.

(3) No authority may be exercised under this section after the date that is two years after the date of the enactment of this Act.

SEC. 1011. ADDITIONAL AMOUNT FOR BALLISTIC MISSILE DEFENSE OR COMBATING TERRORISM IN ACCORDANCE WITH NATIONAL SECURITY PRIORITIES OF THE PRESIDENT.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to other amounts authorized to be appropriated by other provisions of this division, there is hereby authorized to be appropriated for the Department of Defense for fiscal year 2003, $814,300,000 for whichever of the following purposes the President determines that the additional amount is necessary in the national security interests of the United States:

(1) Research, development, test, and evaluation for ballistic missile defense programs of the Department of Defense.

(2) Activities of the Department of Defense for combating terrorism at home and abroad.

(b) OFFSET.—The total amount authorized to be appropriated under the other provisions of this division is hereby reduced by $814,300,000 to reflect the amounts that the Secretary determines unnecessary by reason of a revision of assumptions regarding inflation that are applied as a result of the midsession review of the budget conducted by the Office of Management and Budget during the spring and early summer of 2002.

(c) PRIORITY FOR ALLOCATING FUNDS.—In the expenditure of additional funds made available by a lower rate of inflation, the top priority shall be the use of such funds for Department of Defense activities for protecting the American people at home and abroad by combating terrorism at home and abroad.

SEC. 1012. AVAILABILITY OF AMOUNTS FOR OREGON ARMY NATIONAL GUARD FOR SEARCH AND RESCUE AND MEDICAL EVACUATION MISSIONS IN ADVERSE WEATHER CONDITIONS.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR ARMY PROCUREMENT.—The amount authorized to be appropriated by section 101(1) for procurement for the Army for aircraft is hereby increased by $3,000,000.

(b) AVAILABILITY.—Of the amount authorized to be appropriated by section 101(1) for procurement for the Army for aircraft, as increased by subsection (a), $3,000,000 shall be available for the upgrade of three UH–60L Blackhawk helicopters of the Oregon Army National Guard to the capabilities of UH–60Q Search and Rescue model helicopters, including Star Safire FLIR, Breeze-Eastern External Rescue Hoist, and Air Methods COTS Medical Systems upgrades, in order to improve the utility of such UH–60L Blackhawk helicopters in search and rescue and medical evacuation missions in adverse weather conditions.

(c) INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PERSONNEL.—The amount authorized to be appropriated by section 421 for military personnel is hereby increased by $1,800,000.

(d) AVAILABILITY.—Of the amount authorized to be appropriated by section 421 for military personnel, as increased by subsection (d), $1,800,000 shall be available for up to 26 additional personnel for the Oregon Army National Guard.

(e) OFFSET.—The amount authorized to be appropriated by section 301(a)(1) for operation and maintenance for the Army is hereby reduced by $4,800,000, with the amount of the reduction to be allocated to Base Operations Support (Servicewide Support).

Subtitle B—Naval Vessels and Shipyards

SEC. 1021. NUMBER OF NAVY SURFACE COMBATANTS IN ACTIVE AND RESERVE SERVICE.

(a) CONTINGENT REQUIREMENT FOR REPORT.—If, on the date of the enactment of this Act, the total number of Navy ships comprising the force of surface combatants is less than 116, the Secretary of the Navy shall submit a report on the size of that force to the Committees on Armed Services of the Senate and the House of Representatives. The report shall be submitted not later than 90 days after such date and shall include a risk assessment for such force that is based on the same assumptions as those that were applied in the QDR 2001 current force risk assessment.

(b) LIMITATION ON REDUCTION.—The force of surface combatants may not be reduced at any time after the date of the enactment of this Act from a number of ships (whether above, equal to, or below 116) to a number of ships below 116 before the date that is 90 days after the date on which the Secretary of the Navy submits to the committees referred to in subsection (a) a written notification of the reduction. The notification shall include the following information:

(1) The schedule for the reduction.

(2) The number of ships that are to comprise the reduced force of surface combatants.

(3) A risk assessment for the reduced force that is based on the same assumptions as those that were applied in the QDR 2001 current force risk assessment.

(c) PRESERVATION OF SURGE CAPABILITY.—Whenever the total number of Navy ships comprising the force of surface combatants is less than 116, the Secretary of the Navy shall maintain on the Naval Vessel Register a sufficient

number of surface combatant ships to enable the Navy to regain a total force of 116 surface combatant ships in active and reserve service in the Navy within 120 days after the President decides to increase the force of surface combatants.

(d) DEFINITIONS.—In this section:

(1) The term "force of surface combatants" means the surface combatant ships in active and reserve service in the Navy.

(2) The term "QDR 2001 current force risk assessment" means the risk assessment associated with a force of 116 surface combatant ships in active and reserve service in the Navy that is set forth in the report on the quadrennial defense review submitted to Congress on September 30, 2001, under section 118 of title 10, United States Code.

SEC. 1022. PLAN FOR FIELDING THE 155-MILLIMETER GUN ON A SURFACE COMBATANT.

(a) REQUIREMENT FOR PLAN.—The Secretary of the Navy shall submit to Congress a plan for fielding the 155-millimeter gun on one surface combatant ship in active service in the Navy. The Secretary shall submit the plan at the same time that the President submits the budget for fiscal year 2004 to Congress under section 1105(a) of title 31, United States Code.

(b) FIELDING ON EXPEDITED SCHEDULE.—The plan shall provide for fielding the 155-millimeter gun on an expedited schedule that is consistent with the achievement of safety of operation and fire support capabilities meeting the fire support requirements of the Marine Corps, but not later than October 1, 2006.

SEC. 1023. REPORT ON INITIATIVES TO INCREASE OPERATIONAL DAYS OF NAVY SHIPS.

(a) REQUIREMENT FOR REPORT ON INITIATIVES.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense initiatives to increase the number of operational days of Navy ships as described in subsection (b).

(2) The report shall cover the ongoing Department of Defense initiatives as well as potential initiatives that are under consideration within the Department of Defense.

(b) INITIATIVES WITHIN LIMITS OF EXISTING FLEET AND DEPLOYMENT POLICY.—The Under Secretary shall, in the report, assess the feasibility and identify the projected effects of conducting initiatives that have the potential to increase the number of operational days of Navy ships available to the commanders-in-chief of the regional unified combatant commands without increasing the number of Navy ships and without increasing the routine lengths of deployments of Navy ships above six months.

(c) REQUIRED FOCUS AREAS.—The report shall, at a minimum, address the following four focus areas:

(1) Assignment of additional ships, including submarines, to home ports closer to the areas of operation for the ships (known as "forward homeporting").

(2) Assignment of ships to remain in a forward area of operations, together with rotation of crews for each ship so assigned.

(3) Retention of ships for use until the end of the full service life, together with investment of the funds necessary to support retention to that extent.

(4) Prepositioning of additional ships with, under normal circumstances, small crews in a forward area of operations.

(d) TIME FOR SUBMITTAL.—The report shall be submitted at the same time that the President submits the budget for fiscal year 2004 to Congress under section 1105(a) of title 31, United States Code.

SEC. 1024. ANNUAL LONG-RANGE PLAN FOR THE CONSTRUCTION OF SHIPS FOR THE NAVY.

(a) FINDINGS.—Congress makes the following findings:

(1) Navy ships provide a forward presence for the United States that is a key to the national defense of the United States.

(2) The Navy has demonstrated that its ships contribute significantly to homeland defense.

(3) The Navy's ship recapitalization plan is inadequate to maintain the ship force structure that is described as the current force in the 2001 Quadrennial Defense Review.

(4) The Navy is decommissioning ships as much as 10 years earlier than the projected ship life upon which ship replacement rates are based.

(5) The current force was assessed in the 2001 Quadrennial Defense Review as having moderate to high risk, depending on the scenario considered.

(b) ANNUAL SHIP CONSTRUCTION PLAN.—(1) Chapter 9 of title 10, United States Code, is amended by adding at the end the following new section:

"§231. Annual ship construction plan

"(a) ANNUAL SHIP CONSTRUCTION PLAN.—The Secretary of Defense shall include in the defense budget materials for each fiscal year a plan for the construction of combatant and support ships for the Navy that—

"(1) supports the National Security Strategy; or

"(2) if there is no National Security Strategy in effect, supports the ship force structure called for in the report of the latest Quadrennial Defense Review.

"(b) CONTENT.—The ship construction plan included in the defense budget materials for a fiscal year shall provide in detail for the construction of combatant and support ships for the Navy over the 30 consecutive fiscal years beginning with the fiscal year covered by the defense budget materials and shall include the following matters:

"(1) A description of the necessary ship force structure of the Navy.

"(2) The estimated levels of funding necessary to carry out the plan, together with a discussion of the procurement strategies on which such estimated funding levels are based.

"(3) A certification by the Secretary of Defense that both the budget for the fiscal year covered by the defense budget materials and the future-years defense program submitted to Congress in relation to such budget under section 221 of this title provide for funding ship construction for the Navy at a level that is sufficient for the procurement of the ships provided for in the plan on schedule.

"(4) If the budget for the fiscal year provides for funding ship construction at a level that is not sufficient for the recapitalization of the force of Navy ships at the annual rate necessary to sustain the force, an assessment (coordinated with the commanders of the combatant commands in advance) that describes and discusses the risks associated with the reduced force structure that will result from funding ship construction at such insufficient level.

"(c) DEFINITIONS.—In this section:

"(1) The term 'budget', with respect to a fiscal year, means the budget for such fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

"(2) The term 'defense budget materials', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for such fiscal year.

"(3) The term 'Quadrennial Defense Review' means the Quadrennial Defense Review that is carried out under section 118 of this title.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"231. Annual ship construction plan.".

Subtitle C—Reporting Requirements

SEC. 1031. REPEAL AND MODIFICATION OF VARIOUS REPORTING REQUIREMENTS APPLICABLE WITH RESPECT TO THE DEPARTMENT OF DEFENSE.

(a) PROVISIONS OF TITLE 10.—Title 10, United States Code, is amended as follows:

(1)(A) Section 183 is repealed.

(B) The table of sections at the beginning of chapter 7 is amended by striking the item relating to section 183.

(2)(A) Sections 226 and 230 are repealed.

(B) The table of sections at the beginning of chapter 9 is amended by striking the items relating to sections 226 and 230.

(3) Effective two years after the date of the enactment of this Act—

(A) section 483 is repealed; and

(B) the table of sections at the beginning of chapter 23 is amended by striking the item relating to section 483.

(4) Section 526 is amended by striking subsection (c).

(5) Section 721(d) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" before "If an officer".

(6) Section 1095(g) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" after "(g)".

(7) Section 1798 is amended by striking subsection (d).

(8) Section 1799 is amended by striking subsection (d).

(9) Section 2220 is amended—

(A) by striking subsections (b) and (c);

(B) by striking "(1)" after "ESTABLISHMENT OF GOALS.—"; and

(C) by striking "(2) The" and inserting "(b) EVALUATION OF COST GOALS.—The".

(10) Section 2350a(g) is amended by striking paragraph (4).

(11) Section 2350f is amended by striking subsection (c).

(12) Section 2350k is amended by striking subsection (d).

(13) Section 2367(d) is amended by striking "EFFORT.—(1) In the" and all that follows through "(2) After the close of" and inserting "EFFORT.—After the close of".

(14) Section 2391 is amended by striking subsection (c).

(15) Section 2486(b)(12) is amended by striking ", except that" and all that follows and inserting the following: ", except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.".

(16) Section 2492 is amended by striking subsection (c) and inserting the following:

"(c) NOTIFICATION OF CONDITIONS NECESSITATING RESTRICTIONS.—The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.".

(17)(A) Section 2504 is repealed.

(B) The table of sections at the beginning of subchapter II of chapter 148 is amended by striking the item relating to section 2504.

(18) Section 2506—

(A) is amended by striking subsection (b); and

(B) by striking "(a) DEPARTMENTAL GUIDANCE.—".

(19) Section 2537(a) is amended by striking "$100,000" and inserting "$10,000,000".

(20) Section 2611 is amended by striking subsection (e).

(21) Section 2667(d) is amended by striking paragraph (3).

(22) Section 2813 is amended by striking subsection (c).

(23) Section 2827 is amended—

(A) by striking subsection (b); and

(B) by striking "(a) Subject to subsection (b), the Secretary" and inserting "The Secretary".

(24) Section 2867 is amended by striking subsection (c).

(25) Section 4416 is amended by striking subsection (f).

(26) Section 5721(f) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" after the subsection heading.

(b) National Defense Authorization Act for Fiscal Year 1995.—Section 553(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2772; 10 U.S.C. 4331 note) is amended by striking the last sentence.

(c) Ballistic Missile Defense Act of 1995.—Section 234 of the Ballistic Missile Defense Act of 1995 (subtitle C of title II of Public Law 104–106; 10 U.S.C. 2431 note) is amended by striking subsection (f).

SEC. 1032. ANNUAL REPORT ON WEAPONS TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS.

(a) Annual Report.—Not later than April 1, 2003, and each year thereafter, the Secretary of Defense, Secretary of Energy, and Director of Central Intelligence shall jointly submit to the congressional defense committees a report on the research and development activities undertaken by their respective agencies during the preceding fiscal year to develop a weapon to defeat hardened and deeply buried targets.

(b) Report Elements.—The report for a fiscal year under subsection (a) shall—

(1) include a discussion of the integration and interoperability of the various programs to develop a weapon referred to in that subsection that were undertaken during such fiscal year, including a discussion of the relevance of such programs to applicable decisions of the Joint Requirements Oversight Council; and

(2) set forth separately a description of the research and development activities, if any, to develop a weapon referred to in that subsection that were undertaken during such fiscal year by each military department, the Department of Energy, and the Central Intelligence Agency.

SEC. 1033. REVISION OF DATE OF ANNUAL REPORT ON COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS.

Section 1503(a) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2751 note) is amended by striking "February 1 of each year" and inserting "May 1 each year".

SEC. 1034. QUADRENNIAL QUALITY OF LIFE REVIEW.

(a) Requirement for Review.—Chapter 23 of title 10, United States Code, is amended by adding at the end the following new section:

"§488. Quadrennial quality of life review

"(a) Review Required.—(1) The Secretary of Defense shall every four years, two years after the submission of the quadrennial defense review to Congress under section 118 of this title, conduct a comprehensive examination of the quality of life of the members of the armed forces (to be known as the 'quadrennial quality of life review'). The review shall include examination of the programs, projects, and activities of the Department of Defense, including the morale, welfare, and recreation activities.

"(2) The quadrennial review shall be designed to result in determinations, and to foster policies and actions, that reflect the priority given the quality of life of members of the armed forces as a primary concern of the Department of Defense leadership.

"(b) Conduct of Review.—Each quadrennial quality of life review shall be conducted so as—

"(1) to assess quality of life priorities and issues consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

"(2) to identify actions that are needed in order to provide members of the armed forces with the quality of life reasonably necessary to encourage the successful execution of the full range of missions that the members are called on to perform under the national security strategy;

"(3) to provide a full accounting of the backlog of installations in need of maintenance and repair, to determine how the disrepair affects performance and quality of life of members and their families, and to identify the budget plan that would be required to provide the resources necessary to remedy the backlog of maintenance and repair; and

"(4) to identify other actions that have the potential for improving the quality of life of the members of the armed forces.

"(c) Considerations.—Among the matters considered by the Secretary in conducting the quadrennial review, the Secretary shall include the following matters:

"(1) Infrastructure.

"(2) Military construction.

"(3) Physical conditions at military installations and other Department of Defense facilities.

"(4) Budget plans.

"(5) Adequacy of medical care for members of the armed forces and their dependents.

"(6) Adequacy of housing and the basic allowance for housing and basic allowance for subsistence.

"(7) Housing-related utility costs.

"(8) Educational opportunities and costs.

"(9) Length of deployments.

"(10) Rates of pay, and pay differentials between the pay of members and the pay of civilians.

"(11) Retention and recruiting efforts.

"(12) Workplace safety.

"(13) Support services for spouses and children.

"(14) Other elements of Department of Defense programs and Federal Government policies and programs that affect the quality of life of members.

"(d) Submission of QQLR to Congressional Committees.—The Secretary shall submit a report on each quadrennial quality of life review to the Committees on Armed Services of the Senate and the House of Representatives. The report shall be submitted not later than September 30 of the year in which the review is conducted. The report shall include the following:

"(1) The results of the review, including a comprehensive discussion of how the quality of life of members of the armed forces affects the national security strategy of the United States.

"(2) The long-term quality of life problems of the armed forces, together with proposed solutions.

"(3) The short-term quality of life problems of the armed forces, together with proposed solutions.

"(4) The assumptions used in the review.

"(5) The effects of quality of life problems on the morale of the members of the armed forces.

"(6) The quality of life problems that affect the morale of members of the reserve components in particular, together with solutions.

"(7) The effects of quality of life problems on military preparedness and readiness.

"(8) The appropriate ratio of—

"(A) the total amount expended by the Department of Defense in a fiscal year for programs, projects, and activities designed to improve the quality of life of members of the armed forces, to

"(B) the total amount expended by the Department of Defense in the fiscal year.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"488. Quadrennial quality of life review.".

SEC. 1035. REPORTS ON EFFORTS TO RESOLVE WHEREABOUTS AND STATUS OF CAPTAIN MICHAEL SCOTT SPEICHER, UNITED STATES NAVY.

(a) Reports.— Not later than 60 days after the date of the enactment of this Act, and every 90 days thereafter, the Secretary of Defense shall, in consultation with the Secretary of State and the Director of Central Intelligence, submit to Congress a report on the efforts of the United States Government to determine the whereabouts and status of Captain Michael Scott Speicher, United States Navy.

(b) Period Covered by Reports.—The first report under subsection (a) shall cover efforts described in that subsection preceding the date of the report, and each subsequent report shall cover efforts described in that subsection during the 90-day period ending on the date of such report.

(c) Report Elements.—Each report under subsection (a) shall describe, for the period covered by such report—

(1) all direct and indirect contacts with the Government of Iraq, or any successor government, regarding the whereabouts and status of Michael Scott Speicher;

(2) any request made to the government of another country, including the intelligence service of such country, for assistance in resolving the whereabouts and status of Michael Scott Speicher, including the response to such request;

(3) each current lead on the whereabouts and status of Michael Scott Speicher, including an assessment of the utility of such lead in resolving the whereabouts and status of Michael Scott Speicher; and

(4) any cooperation with nongovernmental organizations or international organizations in resolving the whereabouts and status of Michael Scott Speicher, including the results of such cooperation.

(d) Form of Reports.—Each report under subsection (a) shall be submitted in classified form, but may include an unclassified summary.

SEC. 1036. REPORT ON EFFORTS TO ENSURE ADEQUACY OF FIRE FIGHTING STAFFS AT MILITARY INSTALLATIONS.

Not later than Mary 31, 2003, the Secretary of Defense shall submit to Congress a report on the actions being undertaken to ensure that the fire fighting staffs at military installations are adequate under applicable Department of Defense regulations.

SEC. 1037. REPORT ON DESIGNATION OF CERTAIN LOUISIANA HIGHWAY AS DEFENSE ACCESS ROAD.

Not later than March 1, 2003, the Secretary of the Army shall submit to the congressional defense committees a report containing the results of a study on the advisability of designating Louisiana Highway 28 between Alexandria, Louisiana, and Leesville, Louisiana, a road providing access to the Joint Readiness Training Center, Louisiana, and to Fort Polk, Louisiana, as a defense access road for purposes of section 210 of title 23, United States Code.

SEC. 1038. PLAN FOR FIVE-YEAR PROGRAM FOR ENHANCEMENT OF MEASUREMENT AND SIGNATURES INTELLIGENCE CAPABILITIES.

(a) Finding.—Congress finds that the national interest will be served by the rapid exploitation of basic research on sensors for purposes of enhancing the measurement and signatures intelligence (MASINT) capabilities of the Federal Government.

(b) Plan for Program.—(1) Not later than March 30, 2003, the Director of the Central Measurement and Signatures Intelligence Office

shall submit to Congress a plan for a five-year program of research intended to provide for the incorporation of the results of basic research on sensors into the measurement and signatures intelligence systems fielded by the Federal Government, including the review and assessment of basic research on sensors for that purpose.

(2) Activities under the plan shall be carried out by a consortium consisting of such governmental and non-governmental entities as the Director considers appropriate for purposes of incorporating the broadest practicable range of sensor capabilities into the systems referred to in paragraph (1). The consortium may include national laboratories, universities, and private sector entities.

(3) The plan shall include a proposal for the funding of activities under the plan, including cost-sharing by non-governmental participants in the consortium under paragraph (2).

SEC. 1039. REPORT ON VOLUNTEER SERVICES OF MEMBERS OF THE RESERVE COMPONENTS IN EMERGENCY RESPONSE TO THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001.

(a) Requirement for Report.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on volunteer services described in subsection (b) that were provided by members of the National Guard and other reserve components of the Armed Forces, while not in a duty status pursuant to orders, during the period of September 11 through 14, 2001. The report shall include a discussion of any personnel actions that the Secretary considers appropriate for the members regarding the performance of such services.

(b) Covered Services.—The volunteer services referred to in subsection (a) are as follows:

(1) Volunteer services provided in the vicinity of the site of the World Trade Center, New York, New York, in support of emergency response to the terrorist attack on the World Trade Center on September 11, 2001.

(2) Volunteer services provided in the vicinity of the Pentagon in support of emergency response to the terrorist attack on the Pentagon on September 11, 2001.

SEC. 1040. BIANNUAL REPORTS ON CONTRIBUTIONS TO PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND DELIVERY SYSTEMS BY COUNTRIES OF PROLIFERATION CONCERN.

(a) Reports.—Not later than six months after the date of the enactment of this Act, and every six months thereafter, the President shall submit to Congress a report identifying each foreign person that, during the six-month period ending on the date of such report, made a material contribution to the development by a country of proliferation concern of—

(1) nuclear, biological, or chemical weapons; or

(2) ballistic or cruise missile systems.

(b) Form of Submittal.—(1) A report under subsection (a) may be submitted in classified form, whether in whole or in part, if the President determines that submittal in that form is advisable.

(2) Any portion of a report under subsection (a) that is submitted in classified form shall be accompanied by an unclassified summary of such portion.

(c) Definitions.—In this section:

(1) The term "foreign person" means—

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign governmental entity operating as a business enterprise; and

(D) any successor, subunit, or subsidiary of any entity described in subparagraph (B) or (C).

(2) The term "country of proliferation concern" means any country identified by the Director of Central Intelligence as having engaged in the acquisition of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear, chemical, and biological weapons) and advanced conventional munitions in the most current report under section 721 of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104-293; 50 U.S.C. 2366), or any successor report on the acquisition by foreign countries of dual-use and other technology useful for the development or production of weapons of mass destruction.

Subtitle D—Homeland Defense

SEC. 1041. HOMELAND SECURITY ACTIVITIES OF THE NATIONAL GUARD.

(a) Authority.—Chapter 1 of title 32, United States Code, is amended by adding at the end the following new section:

"§116. Homeland security activities

"(a) Use of Personnel Performing Full-Time National Guard Duty.—The Governor of a State may, upon the request by the head of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, order any personnel of the National Guard of the State to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out homeland security activities, as described in subsection (b).

"(b) Purpose and Duration.—(1) The purpose for the use of personnel of the National Guard of a State under this section is to temporarily provide trained and disciplined personnel to a Federal law enforcement agency to assist that agency in carrying out homeland security activities until that agency is able to recruit and train a sufficient force of Federal employees to perform the homeland security activities.

"(2) The duration of the use of the National Guard of a State under this section shall be limited to a period of 179 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

"(c) Relationship to Required Training.—A member of the National Guard serving on full-time National Guard duty under orders authorized under subsection (a) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that subsection. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out homeland security activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

"(d) Readiness.—To ensure that the use of units and personnel of the National Guard of a State for homeland security activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland security activities that units and personnel of the National Guard of a State may perform:

"(1) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

"(2) National Guard personnel will not degrade their military skills as a result of performing the activities.

"(3) The performance of the activities will not result in a significant increase in the cost of training.

"(4) In the case of homeland security performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

"(e) Payment of Costs.—(1) The Secretary of Defense shall provide funds to the Governor of a State to pay costs of the use of personnel of the National Guard of the State for the performance of homeland security activities under this section. Such funds shall be used for the following costs:

"(A) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses (including all associated training expenses, as determined by the Secretary), as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of homeland security activities.

"(B) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of homeland security activities.

"(2) The Secretary of Defense shall require the head of a law enforcement agency receiving support from the National Guard of a State in the performance of homeland security activities under this section to reimburse the Department of Defense for the payments made to the State for such support under paragraph (1).

"(f) Memorandum of Agreement.—The Secretary of Defense and the Governor of a State shall enter into a memorandum of agreement with the head of each Federal law enforcement agency to which the personnel of the National Guard of that State are to provide support in the performance of homeland security activities under this section. The memorandum of agreement shall—

"(1) specify how personnel of the National Guard are to be used in homeland security activities;

"(2) include a certification by the Adjutant General of the State that those activities are to be performed at a time when the personnel are not in Federal service;

"(3) include a certification by the Adjutant General of the State that—

"(A) participation by National Guard personnel in those activities is service in addition to training required under section 502 of this title; and

"(B) the requirements of subsection (d) of this section will be satisfied;

"(4) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general), that the use of the National Guard of the State for the activities provided for under the memorandum of agreement is authorized by, and is consistent with, State law;

"(5) include a certification by the Governor of the State or a civilian law enforcement official of the State designated by the Governor that the activities provided for under the memorandum of agreement serve a State law enforcement purpose; and

"(6) include a certification by the head of the Federal law enforcement agency that the agency will have a plan to ensure that the agency's requirement for National Guard support ends not later than 179 days after the commencement of the support.

"(g) Exclusion From End-Strength Computation.—Notwithstanding any other provision of law, members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 2003 otherwise implementing) this section shall not be counted toward the annual end strength authorized for reserves on active duty in support of the reserve components of the armed forces or toward the strengths authorized in sections 12011 and 12012 of title 10.

"(h) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding any assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

"(1) The number of members of the National Guard excluded under subsection (g) from the computation of end strengths.

"(2) A description of the homeland security activities conducted with funds provided under this section.

"(3) An accounting of the amount of funds provided to each State.

"(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland security activities under this section.

"(i) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

"(j) DEFINITIONS.—For purposes of this section:

"(1) The term 'Governor of a State' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

"(2) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such section is amended by adding at the end the following new item:

"116. Homeland security activities.".

SEC. 1042. CONDITIONS FOR USE OF FULL-TIME RESERVES TO PERFORM DUTIES RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION.

Section 12310(c)(3) of title 10, United States Code, is amended by striking "only—" and all that follows through "(B) while assigned" and inserting "only while assigned".

SEC. 1043. WEAPON OF MASS DESTRUCTION DEFINED FOR PURPOSES OF THE AUTHORITY FOR USE OF RESERVES TO PERFORM DUTIES RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION.

(a) WEAPON OF MASS DESTRUCTION REDEFINED.—Section 12304(i)(2) of title 10, United States Code, is amended to read as follows:

"(2) The term 'weapon of mass destruction' means—

"(A) any weapon that is designed or, through its use, is intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

"(B) any weapon that involves a disease organism;

"(C) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; and

"(D) any large conventional explosive that is designed to produce catastrophic loss of life or property.".

(b) CONFORMING AMENDMENT.—Section 12310(c)(1) of such title is amended by striking "section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))" and inserting "section 12304(i)(2) of this title".

SEC. 1044. REPORT ON DEPARTMENT OF DEFENSE HOMELAND DEFENSE ACTIVITIES.

(a) REPORT REQUIRED.—Not later than February 1, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on what actions of the Department of Defense would be necessary to carry out the Secretary's expressed intent—

(1) to place new emphasis on the unique operational demands associated with the defense of the United States homeland; and

(2) to restore the mission of defense of the United States to the position of being the primary mission of the Department of Defense.

(b) CONTENT OF THE REPORT.—The report shall contain, in accordance with the other provisions of this section, the following matters:

(1) HOMELAND DEFENSE CAMPAIGN PLAN.—A homeland defense campaign plan.

(2) INTELLIGENCE.—A discussion of the relationship between—

(A) the intelligence capabilities of—

(i) the Department of Defense; and

(ii) other departments and agencies of the United States; and

(B) the performance of the homeland defense mission.

(3) THREAT AND VULNERABILITY ASSESSMENT.—A compliance-based national threat and vulnerability assessment.

(4) TRAINING AND EXERCISING.—A discussion of the Department of Defense plans for training and exercising for the performance of the homeland defense mission.

(5) BIOTERRORISM INITIATIVE.—An evaluation of the need for a Department of Defense bioterrorism initiative to improve the ability of the department to counter bioterror threats and to assist other agencies to improve the national ability to counter bioterror threats.

(6) CHEMICAL BIOLOGICAL INCIDENT RESPONSE TEAMS.—An evaluation of the need for and feasibility of developing and fielding Department of Defense regional chemical biological incident response teams.

(7) OTHER MATTERS.—Any other matters that the Secretary of Defense considers relevant regarding the efforts necessary to carry out the intent referred to in subsection (a).

(c) HOMELAND DEFENSE CAMPAIGN PLAN.—

(1) ORGANIZATION, PLANNING, AND INTEROPERABILITY.—

(A) IN GENERAL.—The homeland defense campaign plan under subsection (b)(1) shall contain a discussion of the organization and planning of the Department of Defense for homeland defense, including the expectations for interoperability of the Department of Defense with other departments and agencies of the Federal Government and with State and local governments.

(B) CONTENT.—The plan shall include the following matters:

(i) The duties, definitions, missions, goals, and objectives of organizations in the Department of Defense that apply homeland defense, together with an organizational assessment with respect to the performance of the homeland defense mission and a discussion of any plans for making functional realignments of organizations, authorities, and responsibilities for carrying out that mission.

(ii) The relationships among the leaders of the organizations (including the Secretary of Defense, the Joint Chiefs of Staff, the Commander in Chief of United States Northern Command, the Commanders in Chief of the other regional unified combatant commands, and the reserve components) in the performance of such duties.

(iii) The reviews, evaluations, and standards that are established or are to be established for determining and ensuring the readiness of the organizations to perform such duties.

(2) RESPONSE TO ATTACK ON CRITICAL INFRASTRUCTURE.—

(A) IN GENERAL.—The homeland defense campaign plan shall contain an outline of the duties and capabilities of the Department of Defense for responding to an attack on critical infrastructure of the United States, including responding to an attack on critical infrastructure of the department, by means of a weapon of mass destruction or a CBRNE weapon or by a cyber means.

(B) VARIOUS ATTACK SCENARIOS.—The outline shall specify, for each major category of attack by a means described in subparagraph (A), the variations in the duties, responses, and capabilities of the various Department of Defense organizations that result from the variations in the means of the attack.

(C) DEFICIENCIES.—The outline shall identify any deficiencies in capabilities and set forth a plan for rectifying any such deficiencies.

(D) LEGAL IMPEDIMENTS.—The outline shall identify and discuss each impediment in law to the effective performance of the homeland defense mission.

(3) ROLES AND RESPONSIBILITIES IN INTERAGENCY PROCESS.—

(A) IN GENERAL.—The homeland defense campaign plan shall contain a discussion of the roles and responsibilities of the Department of Defense in the interagency process of policymaking and planning for homeland defense.

(B) INTEGRATION WITH STATE AND LOCAL ACTIVITIES.—The homeland defense campaign plan shall include a discussion of Department of Defense plans to integrate Department of Defense homeland defense activities with the homeland defense activities of other departments and agencies of the United States and the homeland defense activities of State and local governments, particularly with regard to issues relating to CBRNE and cyber attacks.

(d) INTELLIGENCE CAPABILITIES.—The discussion of the relationship between the intelligence capabilities and the performance of the homeland defense mission under subsection (b)(2) shall include the following matters:

(1) ROLES AND MISSIONS.—The roles and missions of the Department of Defense for the employment of the intelligence capabilities of the department in homeland defense.

(2) INTERAGENCY RELATIONSHIPS.—A discussion of the relationship between the Department of Defense and the other departments and agencies of the United States that have duties for collecting or analyzing intelligence in relation to homeland defense, particularly in light of the conflicting demands of duties relating to the collection and analysis of domestic intelligence and duties relating to the collection and analysis of foreign intelligence.

(3) INTELLIGENCE-RELATED CHANGES.—Any changes that are necessary in the Department of Defense in order to provide effective intelligence support for the performance of homeland defense missions, with respect to—

(A) the preparation of threat assessments and other warning products by the Department of Defense;

(B) collection of terrorism-related intelligence through human intelligence sources, signals intelligence sources, and other intelligence sources; and

(C) intelligence policy, capabilities, and practices.

(4) LEGAL IMPEDIMENTS.—Any impediments in law to the effective performance of intelligence missions in support of homeland defense.

(e) THREAT AND VULNERABILITY ASSESSMENT.—

(1) CONTENT.—The compliance-based national threat and vulnerability assessment under subsection (b)(3) shall include a discussion of the following matters:

(A) CRITICAL FACILITIES.—The threat of terrorist attack on critical facilities, programs, and systems of the United States, together with the capabilities of the Department of Defense to deter and respond to any such attack.

(B) DOD VULNERABILITY.—The vulnerability of installations, facilities, and personnel of the Department of Defense to attack by persons using weapons of mass destruction, CBRNE weapons, or cyber means.

(C) BALANCED SURVIVABILITY ASSESSMENT.—Plans to conduct a balanced survivability assessment for use in determining the *vulnerabilities of targets referred to in subparagraphs (A) and (B).*

(D) PROCESS.—Plans, including timelines and milestones, necessary to develop a process for conducting compliance-based vulnerability assessments for critical infrastructure, together with the standards to be used for ensuring that the process is executable.

(2) DEFINITION OF COMPLIANCE-BASED.—In subsection (b)(3) and paragraph (1)(D) of this subsection, the term "compliance-based", with respect to an assessment, means that the assessment is conducted under policies and procedures that require correction of each deficiency identified in the assessment to a standard set forth in Department of Defense Instruction 2000.16 or another applicable Department of Defense instruction, directive, or policy.

(f) TRAINING AND EXERCISING.—The discussion of the Department of Defense plans for training and exercising for the performance of the homeland defense mission under subsection (b)(4) shall contain the following matters:

(1) MILITARY EDUCATION.—The plans for the training and education of members of the Armed Forces specifically for performance of homeland defense missions, including any anticipated changes in the curriculum in—

(A) the National Defense University, the war colleges of the Armed Forces, graduate education programs, and other senior military schools and education programs; and

(B) the Reserve Officers' Training Corps program, officer candidate schools, enlisted and officer basic and advanced individual training programs, and other entry level military education and training programs.

(2) EXERCISES.—The plans for using exercises and simulation in the training of all components of the Armed Forces, including—

(A) plans for integrated training with departments and agencies of the United States outside the Department of Defense and with agencies of State and local governments; and

(B) plans for developing an opposing force that, for the purpose of developing potential scenarios of terrorist attacks on targets inside the United States, simulates a terrorist group having the capability to engage in such attacks.

(g) BIOTERRORISM INITIATIVE.—The evaluation of the need for a Department of Defense bioterrorism initiative under subsection (b)(5) shall include a discussion that identifies and evaluates options for potential action in such an initiative, as follows:

(1) PLANNING, TRAINING, EXERCISE, EVALUATION, AND FUNDING.—Options for—

(A) refining the plans of the Department of Defense for biodefense to include participation of other departments and agencies of the United States and State and local governments;

(B) increasing biodefense training, exercises, and readiness evaluations by the Department of Defense, including training, exercises, and evaluations that include participation of other departments and agencies of the United States and State and local governments;

(C) increasing Department of Defense funding for biodefense; and

(D) integrating other departments and agencies of the United States and State and local governments into the plans, training, exercises, evaluations, and resourcing.

(2) DISEASE SURVEILLANCE.—Options for the Department of Defense to develop an integrated disease surveillance detection system and to improve systems for communicating information and warnings of the incidence of disease to recipients within the Department of Defense and to other departments and agencies of the United States and State and local governments.

(3) EMERGENCY MANAGEMENT STANDARD.—Options for broadening the scope of the Revised Emergency Management Standard of the Joint Commission on Accreditation of Healthcare Organizations by including the broad and active participation of Federal, State, and local governmental agencies that are expected to respond in any event of a CBRNE or cyber attack.

(4) LABORATORY RESPONSE NETWORK.—Options for the Department of Defense—

(A) to participate in the laboratory response network for bioterrorism; and

(B) to increase the capacity of Department of Defense laboratories rated by the Secretary of Defense as level D laboratories to facilitate participation in the network.

(h) CHEMICAL BIOLOGICAL INCIDENT RESPONSE TEAMS.—The evaluation of the need for and feasibility of developing and fielding Department of Defense regional chemical biological incident response teams under subsection (b)(6) shall include a discussion and evaluation of the following options:

(1) REGIONAL TEAMS.—Options for the Department of Defense, using the chemical biological incident response force as a model, to develop, equip, train, and provide transportation for five United States based, strategically located, regional chemical biological incident response teams.

(2) RESOURCING.—Options and preferred methods for providing the resources and personnel necessary for developing and fielding any such teams.

(i) DEFINITIONS.—In this section:

(1) CBRNE.—The term "CBRNE" means chemical, biological, radiological, nuclear, or explosive.

(2) WEAPON OF MASS DESTRUCTION.—The term "weapon of mass destruction" has the meaning given such term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302).

SEC. 1045. STRATEGY FOR IMPROVING PREPAREDNESS OF MILITARY INSTALLATIONS FOR INCIDENTS INVOLVING WEAPONS OF MASS DESTRUCTION.

(a) COMPREHENSIVE PLAN.—The Secretary of Defense shall develop a comprehensive plan for improving the preparedness of military installations for preventing and responding to incidents involving use or threat of use of weapons of mass destruction.

(b) CONTENT.—The comprehensive plan shall set forth the following:

(1) A strategy that—

(A) identifies—

(i) long-term goals and objectives;

(ii) resource requirements; and

(iii) factors beyond the control of the Secretary that could impede the achievement of the goals and objectives; and

(B) includes a discussion of—

(i) the extent to which local, regional, or national military response capabilities are to be developed and used; and

(ii) how the Secretary will coordinate these capabilities with local, regional, or national civilian capabilities.

(2) A performance plan that—

(A) provides a reasonable schedule, with milestones, for achieving the goals and objectives of the strategy;

(B) performance criteria for measuring progress in achieving the goals and objectives;

(C) a description of the process, together with a discussion of the resources, necessary to achieve the goals and objectives;

(D) a description of the process for evaluating results.

(c) SUBMITTAL TO CONGRESS.—The Secretary shall submit the comprehensive plan to the Committees on Armed Services of the Senate and the House of Representatives not later than 180 days after the date of the enactment of this Act.

(d) COMPTROLLER GENERAL REVIEW AND REPORT.—Not later than 60 days after the Secretary submits the comprehensive plan to Congress under subsection (c), the Comptroller General shall review the plan and submit an assessment of the plan to the committees referred to in that subsection.

(e) ANNUAL REPORT.—(1) In each of 2004, 2005, and 2006, the Secretary of Defense shall include a report on the comprehensive plan in the materials that the Secretary submits to Congress in support of the budget submitted by the President such year pursuant to section 1105(a) of title 31, United States Code.

(2) The report shall include—

(A) a discussion of any revision that the Secretary has made in the comprehensive plan since the last report; and

(B) an assessment of the progress made in achieving the goals and objectives of the strategy set forth in the plan.

(3) No report is required under this subsection after the Secretary submits under this subsection a report containing a declaration that the goals and objectives set forth in the strategy have been achieved.

Subtitle E—Other Matters

SEC. 1061. CONTINUED APPLICABILITY OF EXPIRING GOVERNMENTWIDE INFORMATION SECURITY REQUIREMENTS TO THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by inserting after section 2224 the following new section:

"§2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense

"(a) IN GENERAL.—The provisions of subchapter II of chapter 35 of title 44 shall continue to apply with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536 of such title.

"(b) RESPONSIBILITIES.—In administering the provisions of subchapter II of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536 of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2224 the following new item:

"2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense.".

SEC. 1062. ACCEPTANCE OF VOLUNTARY SERVICES OF PROCTORS FOR ADMINISTRATION OF ARMED SERVICES VOCATIONAL APTITUDE BATTERY.

Section 1588(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(6) Voluntary services as a proctor for the administration of the Armed Services Vocational Aptitude Battery.".

SEC. 1063. EXTENSION OF AUTHORITY FOR SECRETARY OF DEFENSE TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS.

(a) FOUR-YEAR EXTENSION.—Subsection (a)(1) of section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181; 114 Stat. 173; 10 U.S.C. 2576 note) is amended by striking "September 30, 2002" and inserting "September 30, 2006".

(b) ADDITIONAL REPORT.—Subsection (f) of such section is amended by striking "March 31, 2002" and inserting "March 31, 2006".

SEC. 1064. AMENDMENTS TO IMPACT AID PROGRAM.

(a) ELIGIBILITY FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES AFFECTED BY PRIVATIZATION OF MILITARY HOUSING.—Section 8003(b)(2) of the Elementary and Secondary

Education Act of 1965 (20 U.S.C. 7703(b)(2)) is amended by adding at the end the following:

“(H) ELIGIBILITY FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES AFFECTED BY PRIVATIZATION OF MILITARY HOUSING.—

“(i) IN GENERAL.—For any fiscal year beginning with fiscal year 2003, a heavily impacted local educational agency that received a basic support payment under subparagraph (A) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) or (C), as the case may be, by reason of the conversion of military housing units to private housing described in clause (ii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion, and shall be paid under the same provisions of subparagraph (D) or (E) as the agency was paid in the prior fiscal year.

“(ii) CONVERSION OF MILITARY HOUSING UNITS TO PRIVATE HOUSING DESCRIBED.—For purposes of clause (i), ‘conversion of military housing units to private housing’ means the conversion of military housing units to private housing units pursuant to subchapter IV of chapter 169 of title 10, United States Code, or pursuant to any other related provision of law.”.

(b) COTERMINOUS MILITARY SCHOOL DISTRICTS.—Section 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)) is amended by adding at the end the following:

“(6) COTERMINOUS MILITARY SCHOOL DISTRICTS.—For purposes of computing the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider such children to be children described in paragraph (1)(B) if the agency is a local educational agency whose boundaries are the same as a Federal military installation.”.

SEC. 1065. DISCLOSURE OF INFORMATION ON SHIPBOARD HAZARD AND DEFENSE PROJECT TO DEPARTMENT OF VETERANS AFFAIRS.

(a) PLAN FOR DISCLOSURE OF INFORMATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a comprehensive plan for the review, declassification, and submittal to the Department of Veterans Affairs of all medical records and information of the Department of Defense on the Shipboard Hazard and Defense (SHAD) project of the Navy that are relevant to the provision of benefits by the Secretary of Veterans Affairs to members of the Armed Forces who participated in that project.

(b) PLAN REQUIREMENTS.—(1) The records and information covered by the plan under subsection (a) shall be the records and information necessary to permit the identification of members of the Armed Forces who were or may have been exposed to chemical or biological agents as a result of the Shipboard Hazard and Defense project.

(2) The plan shall provide for completion of all activities contemplated by the plan not later than one year after the date of the enactment of this Act.

(c) REPORTS ON IMPLEMENTATION.—(1) Not later than 90 days after the date of the enactment of this Act, and every 90 days thereafter until completion of all activities contemplated by the plan under subsection (a), the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a report on progress in the implementation of the plan during the 90-day period ending on the date of such report.

(2) Each report under paragraph (1) shall include, for the period covered by such report—

(A) the number of records reviewed;

(B) each test, if any, under the Shipboard Hazard and Defense project identified during such review;

(C) for each test so identified—

(i) the test name;

(ii) the test objective;

(iii) the chemical or biological agent or agents involved; and

(iv) the number of members of the Armed Forces, and civilian personnel, potentially affected by such test; and

(D) the extent of submittal of records and information to the Secretary of Veterans Affairs under this section.

SEC. 1066. TRANSFER OF HISTORIC DF-9E PANTHER AIRCRAFT TO WOMEN AIRFORCE SERVICE PILOTS MUSEUM.

(a) AUTHORITY TO CONVEY.—The Secretary of the Navy may convey, without consideration, to the Women Airforce Service Pilots Museum in Quartzsite, Arizona (in this section referred to as the “W.A.S.P. museum”), all right, title, and interest of the United States in and to a DF-9E Panther aircraft (Bureau Number 125316). The conveyance shall be made by means of a conditional deed of gift.

(b) CONDITION OF AIRCRAFT.—The aircraft shall be conveyed under subsection (a) in “as is” condition. The Secretary is not required to repair or alter the condition of the aircraft before conveying ownership of the aircraft.

(c) REVERTER UPON BREACH OF CONDITIONS.—The Secretary shall include in the instrument of conveyance of the aircraft under subsection (a)—

(1) a condition that the W.A.S.P. museum not convey any ownership interest in, or transfer possession of, the aircraft to any other party without the prior approval of the Secretary; and

(2) a condition that if the Secretary determines at any time that the W.A.S.P. museum has conveyed an ownership interest in, or transferred possession of, the aircraft to any other party without the prior approval of the Secretary, all right, title, and interest in and to the aircraft, including any repair or alteration of the aircraft, shall revert to the United States, and the United States shall have the right of immediate possession of the aircraft.

(d) CONVEYANCE AT NO COST TO THE UNITED STATES.—The conveyance of the aircraft under subsection (a) shall be made at no cost to the United States. Any costs associated with the conveyance, costs of determining compliance with subsection (b), and costs of operation and maintenance of the aircraft conveyed shall be borne by the W.A.S.P. museum.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 1067. REWARDS FOR ASSISTANCE IN COMBATING TERRORISM.

(a) AUTHORITY.—Chapter 3 of title 10, United States Code, is amended by inserting after section 127a the following new section:

“§127b. Rewards for assistance in combating terrorism

“(a) AUTHORITY.—The Secretary of Defense may pay a monetary reward to a person for providing United States personnel with information or nonlethal assistance that is beneficial to—

“(1) an operation of the armed forces conducted outside the United States against international terrorism; or

“(2) force protection of the armed forces.

“(b) MAXIMUM AMOUNT.—The amount of a reward paid to a recipient under this section may not exceed $200,000.

“(c) DELEGATION TO COMMANDER OF COMBATANT COMMAND.—(1) The Secretary of Defense may delegate to the commander of a combatant command authority to pay a reward under this section in an amount not in excess of $50,000.

“(2) A commander to whom authority to pay rewards is delegated under paragraph (1) may further delegate authority to pay a reward under this section in an amount not in excess of $2,500.

“(c) COORDINATION.—(1) The Secretary of Defense, in consultation with the Secretary of State and the Attorney General, shall prescribe policies and procedures for offering and paying rewards under this section, and otherwise for administering the authority under this section, that ensure that the payment of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

“(2) The Secretary of Defense shall coordinate with the Secretary of State regarding any payment of a reward in excess of $100,000 under this section.

“(d) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive an award under this section:

“(1) A citizen of the United States.

“(2) An employee of the United States.

“(3) An employee of a contractor of the United States.

“(e) ANNUAL REPORT.—(1) Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives a report on the administration of the rewards program during that fiscal year.

“(2) The report for a fiscal year shall include information on the total amount expended during that fiscal year to carry out this section, including—

“(A) a specification of the amount, if any, expended to publicize the availability of rewards; and

“(B) with respect to each award paid during that fiscal year—

“(i) the amount of the reward;

“(ii) the recipient of the reward; and

“(iii) a description of the information or assistance for which the reward was paid, together with an assessment of the significance of the information or assistance.

“(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

“(f) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section shall be final and conclusive and shall not be subject to judicial review.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 127a the following new item:

“127b. Rewards for assistance in combating terrorism.”.

SEC. 1068. PROVISION OF SPACE AND SERVICES TO MILITARY WELFARE SOCIETIES.

(a) AUTHORITY TO PROVIDE SPACE AND SERVICES.—Chapter 152 of title 10, United States Code, is amended by adding at the end the following new section:

“§2566. Space and services: provision to military welfare societies

“(a) AUTHORITY TO PROVIDE SPACE AND SERVICES.—The Secretary of a military department may provide, without charge, space and services under the jurisdiction of that Secretary to a military welfare society.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘military welfare society’ means the following:

“(A) The Army Emergency Relief Society.

“(B) The Navy-Marine Corps Relief Society.

“(C) The Air Force Aid Society, Inc.

“(2) The term ‘services’ includes lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone and

other information technology services (including installation of lines and equipment, connectivity, and other associated services), and security systems (including installation and other associated expenses).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2566. Space and services: provision to military welfare societies.".

SEC. 1069. COMMENDATION OF MILITARY CHAPLAINS.

(a) FINDINGS.—Congress finds the following:

(1) Military chaplains have served with those who fought for the cause of freedom since the founding of the Nation.

(2) Military chaplains and religious support personnel of the Armed Forces have served with distinction as uniformed members of the Armed Forces in support of the Nation's defense missions during every conflict in the history of the United States.

(3) 400 United States military chaplains have died in combat, some as a result of direct fire while ministering to fallen Americans, while others made the ultimate sacrifice as a prisoner of war.

(4) Military chaplains currently serve in humanitarian operations, rotational deployments, and in the war on terrorism.

(5) Religious organizations make up the very fabric of religious diversity and represent unparalleled levels of freedom of conscience, speech, and worship that set the United States apart from any other nation on Earth.

(6) Religious organizations have richly blessed the uniformed services by sending clergy to comfort and encourage all persons of faith in the Armed Forces.

(7) During the sinking of the USS Dorchester in February 1943 during World War II, four chaplains (Reverend Fox, Reverend Poling, Father Washington, and Rabbi Goode) gave their lives so that others might live.

(8) All military chaplains aid and assist members of the Armed Forces and their family members with the challenging issues of today's world.

(9) The current war against terrorism has brought to the shores of the United States new threats and concerns that strike at the beliefs and emotions of Americans.

(10) Military chaplains must, as never before, deal with the spiritual well-being of the members of the Armed Forces and their families.

(b) COMMENDATION.—Congress, on behalf of the Nation, expresses its appreciation for the outstanding contribution that all military chaplains make to the members of the Armed Forces and their families.

(c) PRESIDENTIAL PROCLAMATION.—The President is authorized and requested to issue a proclamation calling on the people of the United States to recognize the distinguished service of the Nation's military chaplains.

SEC. 1070. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

***"CHAPTER 1201—[RESERVED]"**; and*

(2) by inserting the following:

"CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

"Sec.
"120101. Organization.
"120102. Purposes.
"120103. Membership.
"120104. Governing body.
"120105. Powers.
"120106. Restrictions.
"120107. Duty to maintain corporate and tax-exempt status.
"120108. Records and inspection.
"120109. Service of process.
"120110. Liability for acts of officers and agents.
"120111. Annual report.

"§120101. Organization

"(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

"(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

"§120102. Purposes

"The purposes of the corporation are as provided in its articles of incorporation and include—

"(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

"(2) providing a means of contact and communication among members of the corporation;

"(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

"(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

"§120103. Membership

"Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

"§120104. Governing body

"(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

"(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

"§120105. Powers

"The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

"§120106. Restrictions

"(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

"(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

"(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

"(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

"§120107. Duty to maintain corporate and tax-exempt status

"(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

"(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

"§120108. Records and inspection

"(a) RECORDS.—The corporation shall keep—

"(1) correct and complete records of account;

"(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

"(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

"(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

"§120109. Service of process

"The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

"§120110. Liability for acts of officers and agents

"The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

"§120111. Annual report

"The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

"1201. Korean War Veterans Association, Incorporated ....120101".

TITLE XI—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL POLICY

SEC. 1101. EXTENSION OF AUTHORITY TO PAY SEVERANCE PAY IN A LUMP SUM.

Section 5595(i)(4) of title 5, United States Code, is amended by striking "October 1, 2003" and inserting "October 1, 2006".

SEC. 1102. EXTENSION OF VOLUNTARY SEPARATION INCENTIVE PAY AUTHORITY.

Section 5597(e) of title 5, United States Code, is amended by striking "September 30, 2003" and inserting "September 30, 2006".

SEC. 1103. EXTENSION OF COST-SHARING AUTHORITY FOR CONTINUED FEHBP COVERAGE OF CERTAIN PERSONS AFTER SEPARATION FROM EMPLOYMENT.

Section 8905a(d)(4)(B) of title 5, United States Code, is amended—

(1) by striking "October 1, 2003" both places it appears and inserting "October 1, 2006"; and

(2) by striking "February 1, 2004" in clause (ii) and inserting "February 1, 2007".

SEC. 1104. ELIGIBILITY OF NONAPPROPRIATED FUNDS EMPLOYEES TO PARTICIPATE IN THE FEDERAL EMPLOYEES LONG-TERM CARE INSURANCE PROGRAM.

Section 9001(1) of title 5, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the comma at the end of subparagraph (C) and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) an employee paid from nonappropriated funds referred to in section 2105(c) of this title;".

SEC. 1105. INCREASED MAXIMUM PERIOD OF APPOINTMENT UNDER THE EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL.

Section 1101(c)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2140; 5

U.S.C. 3104 note) is amended by striking "4 years" and inserting "5 years".

SEC. 1106. QUALIFICATION REQUIREMENTS FOR EMPLOYMENT IN DEPARTMENT OF DEFENSE PROFESSIONAL ACCOUNTING POSITIONS.

(a) PROFESSIONAL CERTIFICATION.—The Secretary of Defense may prescribe regulations that require a person employed in a professional accounting position within the Department of Defense to be a certified public accountant and that apply the requirement to all such positions or to selected positions, as the Secretary considers appropriate.

(b) WAIVERS AND EXEMPTIONS.—(1) The Secretary may include in the regulations imposing a requirement under subsection (a), as the Secretary considers appropriate—

(A) any exemption from the requirement; and

(B) authority to waive the requirement.

(2) The Secretary shall include in the regulations an exemption for persons employed in positions covered by the requirement before the date of the enactment of this Act.

(c) EXCLUSIVE AUTHORITY.—No requirement imposed under subsection (a), and no waiver or exemption provided in the regulations pursuant to subsection (b), shall be subject to review or approval by the Office of Personnel Management.

(d) DEFINITION.—For the purposes of this section, the term "professional accounting position" means a position in the GS–510, GS–511, or GS–505 series for which professional accounting duties are prescribed.

(e) EFFECTIVE DATE.—This section shall take effect 120 days after the date of the enactment of this Act.

SEC. 1107. HOUSING BENEFITS FOR UNACCOMPANIED TEACHERS REQUIRED TO LIVE AT GUANTANAMO BAY NAVAL STATION, CUBA.

Section 7(b) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 905(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) A teacher assigned to teach at Guantanamo Bay Naval Station, Cuba, who is not accompanied at such station by any dependent—

"(i) shall be offered for lease any available military family housing at such station that is suitable for occupancy by the teacher and is not needed to house members of the armed forces and dependents accompanying them or other civilian personnel and any dependents accompanying them; and

"(ii) for any period for which such housing is leased to the teacher, shall receive a quarters allowance in the amount determined under paragraph (1).

"(B) A teacher is entitled to the quarters allowance in accordance with subparagraph (A)(ii) without regard to whether other Government furnished quarters are available for occupancy by the teacher without charge to the teacher.".

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Cooperative Threat Reduction With States of the Former Soviet Union

SEC. 1201. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2003 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 2003 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1202. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the $416,700,000 authorized to be appropriated to the Department of Defense for fiscal year 2003 in section 301(a)(23) for Cooperative Threat Reduction programs, not more than the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $70,500,000.

(2) For strategic nuclear arms elimination in Ukraine, $6,500,000.

(3) For weapons of mass destruction infrastructure elimination in Ukraine, $8,800,000.

(4) For weapons of mass destruction infrastructure elimination in Kazakhstan, $9,000,000.

(5) For weapons transportation security in Russia, $19,700,000.

(6) For weapons storage security in Russia, $40,000,000.

(7) For weapons of mass destruction proliferation prevention in the former Soviet Union, $40,000,000.

(8) For biological weapons proliferation prevention activities in the former Soviet Union, $55,000,000.

(9) For chemical weapons destruction in Russia, $133,600,000.

(10) For activities designated as Other Assessments/Administrative Support, $14,700,000.

(11) For defense and military contacts, $18,900,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2003 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (11) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2003 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraph (2), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2003 for a purpose listed in any of the paragraphs in subsection (a) in excess of the amount specifically authorized for such purpose.

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

SEC. 1203. AUTHORIZATION OF USE OF COOPERATIVE THREAT REDUCTION FUNDS FOR PROJECTS AND ACTIVITIES OUTSIDE THE FORMER SOVIET UNION.

(a) COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.—For purposes of this section:

(1) Cooperative Threat Reduction programs are—

(A) the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note); and

(B) any other similar programs, as designated by the Secretary of Defense, to address critical emerging proliferation threats in the states of the former Soviet Union that jeopardize United States national security.

(2) Cooperative Threat Reduction funds, for a fiscal year, are the funds authorized to be appropriated for Cooperative Threat Reduction programs for that fiscal year.

(b) AUTHORIZATION OF USE OF CTR FUNDS FOR THREAT REDUCTION ACTIVITIES OUTSIDE THE FORMER SOVIET UNION.—(1) Notwithstanding any other provision of law and subject to the succeeding provisions of this section, the Secretary of Defense may obligate and expend Cooperative Threat Reduction funds for fiscal year 2003, or Cooperative Threat Reduction funds for a fiscal year before fiscal year 2003 that remain available for obligation as of the date of the enactment of this Act, for proliferation threat reduction projects and activities outside the states of the former Soviet Union if the Secretary determines that such projects and activities will—

(A) assist the United States in the resolution of critical emerging proliferation threats; or

(B) permit the United States to take advantage of opportunities to achieve long-standing United States nonproliferation goals.

(2) The amount that may be obligated under paragraph (1) in any fiscal year for projects and activities described in that paragraph may not exceed $50,000,000.

(c) AUTHORIZED USES OF FUNDS.—The authority under subsection (b) to obligate and expend Cooperative Threat Reduction funds for a project or activity includes authority to provide equipment, goods, and services for the project or activity, but does not include authority to provide cash directly to the project or activity.

(d) SOURCE AND REPLACEMENT OF FUNDS USED.—(1) The Secretary shall, to the maximum extent practicable, ensure that funds for projects and activities under subsection (b) are derived from funds that would otherwise be obligated for a range of Cooperative Threat Reduction programs, so that no particular Cooperative Threat Reduction program is the exclusive or predominant source of funds for such projects and activities.

(2) If the Secretary obligates Cooperative Threat Reduction funds under subsection (b) in a fiscal year, the first budget of the President that is submitted under section 1105(a) of title 31, United States Code, after such fiscal year shall set forth, in addition to any other amounts requested for Cooperative Threat Reduction programs in the fiscal year covered by such budget, a request for Cooperative Threat Reduction funds in the fiscal year covered by such budget in an amount equal to the amount so obligated. The request shall also set forth the Cooperative Threat Reduction program or programs for which such funds would otherwise have been obligated, but for obligation under subsection (b).

(3) Amounts authorized to be appropriated pursuant to a request under paragraph (2) shall be available for the Cooperative Threat Reduction program or programs set forth in the request under the second sentence of that paragraph.

(e) LIMITATION ON OBLIGATION OF FUNDS.—Except as provided in subsection (f), the Secretary may not obligate and expend Cooperative Threat Reduction funds for a project or activity under subsection (b) until 30 days after the date on which the Secretary submits to the congressional defense committees a report on the purpose for which the funds will be obligated and expended, and the amount of the funds to be obligated and expended.

(f) EXCEPTION.—(1) The Secretary may obligate and expend Cooperative Threat Reduction funds for a project or activity under subsection (b) without regard to subsection (e) if the Secretary determines that a critical emerging proliferation threat warrants immediate obligation and expenditure of such funds.

(2) Not later than 72 hours after first obligating funds for a project or activity under paragraph (1), the Secretary shall submit to the congressional defense committees a report containing a detailed justification for the obligation of funds. The report on a project or activity shall include the following:

(A) A description of the critical emerging proliferation threat to be addressed, or the longstanding United States nonproliferation goal to be achieved, by the project or activity.

(B) A description of the agreement, if any, under which the funds will be used, including whether or not the agreement provides that the funds will not be used for purposes contrary to the national security interests of the United States.

(C) A description of the contracting process, if any, that will be used in the implementation of the project or activity.

(D) An analysis of the effect of the obligation of funds for the project or activity on ongoing Cooperative Threat Reduction programs.

(E) An analysis of the need for additional or follow-up threat reduction assistance, including whether or not the need for such assistance justifies the establishment of a new cooperative threat reduction program or programs to account for such assistance.

(F) A description of the mechanisms to be used by the Secretary to assure that proper audits and examinations of the project or activity are carried out.

(g) REPORT ON ESTABLISHMENT OF NEW COOPERATIVE THREAT REDUCTION PROGRAMS.—(1) If the Secretary employs the authority in subsection (b) in any two fiscal years, the Secretary shall submit to Congress a report on the advisability of establishing one or more new cooperative threat reduction programs to account for projects and activities funded using such authority.

(2) The report required by paragraph (1) shall be submitted along with the budget justification materials in support of the Department of Defense budget (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) in the first budget submitted after the end of the two consecutive fiscal years referred to in that paragraph.

SEC. 1204. WAIVER OF LIMITATIONS ON ASSISTANCE UNDER PROGRAMS TO FACILITATE COOPERATIVE THREAT REDUCTION AND NONPROLIFERATION.

(a) ASSISTANCE UNDER COOPERATIVE THREAT REDUCTION ACT OF 1993.—Section 1203 of the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160; 107 Stat. 1778; 22 U.S.C. 5952) is amended by adding at the end the following new subsection:

"(e) WAIVER OF RESTRICTIONS.—(1) The restrictions in subsection (d) shall cease to apply to a state for a year if the President submits to the Speaker of the House of Representative and the President pro tempore of the Senate a written certification that the waiver of such restrictions in such year is important to the national security interests of the United States, together with a report containing the following:

"(A) A description of the activity or activities that prevent the President from certifying that the state is committed to the matters set forth in subsection (d) in such year as otherwise provided for in that subsection.

"(B) A description of the strategy, plan, or policy of the President for promoting the commitment of the state to such matters, notwithstanding the waiver.

"(2) The matter included in the report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.".

(b) ADMINISTRATION OF RESTRICTIONS ON ASSISTANCE.—Subsection (d) of that section is amended—

(1) by striking "any year" and inserting "any fiscal year"; and

(2) by striking "that year" and inserting "such fiscal year".

(c) ELIGIBILITY REQUIREMENTS UNDER FREEDOM SUPPORT ACT.—Section 502 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3338; 22 U.S.C. 5852) is amended—

(1) by striking "Funds" and inserting "(a) ELIGIBILITY.—Except as provided in subsection (b), funds"; and

(2) by adding at the end the following new subsection:

"(b) WAIVER OF ELIGIBILITY REQUIREMENTS.—(1) Funds may be obligated for a fiscal year under subsection (a) for assistance or other programs and activities for an independent state of the former Soviet Union that does not meet one or more of the requirements for eligibility under paragraphs (1) through (4) of that subsection if the President certifies in writing to the Congress that the waiver of such requirements in such fiscal year is important to the national security interests of the United States.

"(2) At the time of the exercise of the authority in paragraph (1) with respect to an independent state of the former Soviet Union for a fiscal year, the President shall submit to the congressional defense committees a report on the following:

"(A) A description of the activity or activities that prevent the President from certifying that the state is committed to each matter in subsection (a) in such fiscal year to which the waiver under paragraph (1) applies.

"(B) A description of the strategy, plan, or policy of the President for promoting the commitment of the state to each such matter, notwithstanding the waiver.

"(3) In this subsection, the term 'congressional defense committees' means—

"(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

"(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2002.

SEC. 1205. RUSSIAN TACTICAL NUCLEAR WEAPONS.

(a) FINDINGS.—The Congress makes the following findings:

(1) Al Qaeda and other terrorist organizations, in addition to rogue states, are known to be working to acquire weapons of mass destruction, and particularly nuclear warheads.

(2) The largest and least secure potential source of nuclear warheads for terrorists or rogue states is Russia's arsenal of nonstrategic or "tactical" nuclear warheads, which according to unclassified estimates numbers from 7,000 to 12,000 warheads. Security at Russian nuclear weapon storage sites is insufficient, and tactical nuclear warheads are more vulnerable to terrorist or rogue state acquisition due to their smaller size, greater portability, and greater numbers compared to Russian strategic nuclear weapons.

(3) Russia's tactical nuclear warheads were not covered by the START treaties or the recent Moscow Treaty. Russia is not legally bound to reduce its tactical nuclear stockpile and the United States has no inspection rights regarding Russia's tactical nuclear arsenal.

(b) SENSE OF THE SENATE.—(1) One of the most likely nuclear weapon attack scenarios against the United States would involve detonation of a stolen Russian tactical nuclear warhead smuggled into the country.

(2) It is a top national security priority of the United States to accelerate efforts to account for, secure, and reduce Russia's stockpile of tactical nuclear warheads and associated fissile material.

(3) This imminent threat warrants a special nonproliferation initiative.

(c) REPORT.—Not later than 30 days after enactment of this Act, the President shall report to Congress on efforts to reduce the particular threats associated with Russia's tactical nuclear arsenal and the outlines of a special initiative related to reducing the threat from Russia's tactical nuclear stockpile.

Subtitle B—Other Matters

SEC. 1211. ADMINISTRATIVE SUPPORT AND SERVICES FOR COALITION LIAISON OFFICERS.

(a) AUTHORITY.—Chapter 6 of title 10, United States Code, is amended by adding at the end the following new section:

"§169. Administrative support and services for coalition liaison officers

"(a) AUTHORITY.—The Secretary of Defense may provide administrative services and support for the performance of duties by any liaison officer of another nation involved in a coalition while the liaison officer is assigned temporarily to the headquarters of a combatant command, component command, or subordinate operational command of the United States in connection with the planning for or conduct of a coalition operation.

"(b) TRAVEL, SUBSISTENCE, AND OTHER EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of a liaison officer of a developing country in connection with the assignment of that liaison officer to the headquarters of a combatant command as described in subsection (a) if the assignment is requested by the commander of the combatant command.

"(c) REIMBURSEMENT.—To the extent that the Secretary determines appropriate, the Secretary may provide the services and support authorized under subsections (a) and (b) with or without reimbursement from (or on behalf of) the recipients.

"(d) DEFINITIONS.—In this section:

"(1) The term 'administrative services and support' includes base or installation support services, office space, utilities, copying services, fire and police protection, and computer support.

"(2) The term 'coalition' means an ad hoc arrangement between or among the United States and one or more other nations for common action.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 6 is amended by adding at the end the following new item:

"169. Administrative support and services for coalition liaison officers.".

SEC. 1212. USE OF WARSAW INITIATIVE FUNDS FOR TRAVEL OF OFFICIALS FROM PARTNER COUNTRIES.

Section 1051(b) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "paragraph (2)" and inserting "paragraphs (2) and (3)";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph (3):

"(3) In the case of defense personnel of a country that is participating in the Partnership for Peace program of the North Atlantic Treaty Organization (NATO), expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the territory of any of the countries participating in the Partnership for Peace program or of any of the NATO member countries.".

SEC. 1213. SUPPORT OF UNITED NATIONS-SPONSORED EFFORTS TO INSPECT AND MONITOR IRAQI WEAPONS ACTIVITIES.

(a) LIMITATION ON AMOUNT OF ASSISTANCE IN FISCAL YEAR 2003.—The total amount of the assistance for fiscal year 2003 that is provided by the Secretary of Defense under section 1505 of the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) as activities of the Department of Defense in support of activities under that Act may not exceed $15,000,000.

(b) EXTENSION OF AUTHORITY TO PROVIDE ASSISTANCE.—Subsection (f) of section 1505 of the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) is amended by striking "2002" and inserting "2003".

SEC. 1214. ARCTIC AND WESTERN PACIFIC ENVIRONMENTAL COOPERATION PROGRAM.

(a) IN GENERAL.—(1) Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§2350m. Arctic and Western Pacific Environmental Cooperation Program

"(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary of Defense may, with the concurrence of the Secretary of State, conduct on a cooperative basis with countries located in the Arctic and Western Pacific regions a program of environmental activities provided for in subsection (b) in such regions. The program shall be known as the 'Arctic and Western Pacific Environmental Cooperation Program'.

"(b) PROGRAM ACTIVITIES.—(1) Except as provided in paragraph (2), activities under the program under subsection (a) may include cooperation and assistance on environmental matters in the Arctic and Western Pacific regions among elements of the Department of Defense and the military departments or agencies of countries located in such regions.

"(2) Activities under the program may not include activities relating to the following:

"(A) The conduct of any peacekeeping exercise or other peacekeeping-related activity with the Russian Federation.

"(B) The provision of housing.

"(C) The provision of assistance to promote environmental restoration.

"(D) The provision of assistance to promote job retraining.

"(c) LIMITATION ON FUNDING FOR PROJECTS OTHER THAN RADIOLOGICAL PROJECTS.—Not more than 20 percent of the amount made available for the program under subsection (a) in any fiscal year may be available for projects under the program other than projects on radiological matters.

"(d) ANNUAL REPORT.—(1) Not later than March 1, 2003, and each year thereafter, the Secretary of Defense shall submit to Congress a report on activities under the program under subsection (a) during the preceding fiscal year.

"(2) The report on the program for a fiscal year under paragraph (1) shall include the following:

"(A) A description of the activities carried out under the program during that fiscal year, including a separate description of each project under the program.

"(B) A statement of the amounts obligated and expended for the program during that fiscal year, set forth in aggregate and by project.

"(C) A statement of the life cycle costs of each project, including the life cycle costs of such project as of the end of that fiscal year and an estimate of the total life cycle costs of such project upon completion of such project.

"(D) A statement of the participants in the activities carried out under the program during that fiscal year, including the elements of the Department of Defense and the military departments or agencies of other countries.

"(E) A description of the contributions of the military departments and agencies of other countries to the activities carried out under the program during that fiscal year, including any financial or other contributions to such activities.".

(2) The table of sections at the beginning of that subchapter is amended by adding at the end the following new item:

"2350m. Arctic and Western Pacific Environmental Cooperation Program.".

(b) REPEAL OF SUPERSEDED AUTHORITY ON ARCTIC MILITARY COOPERATION PROGRAM.—Section 327 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1965) is repealed.

SEC. 1215. DEPARTMENT OF DEFENSE HIV/AIDS PREVENTION ASSISTANCE PROGRAM.

(a) EXPANSION OF PROGRAM.—The Secretary of Defense is authorized to expand, in accordance with this section, the Department of Defense program of HIV/AIDS prevention educational activities undertaken in connection with the conduct of United States military training, exercises, and humanitarian assistance in sub-Saharan African countries.

(b) ELIGIBLE COUNTRIES.—The Secretary may carry out the program in all eligible countries. A country shall be eligible for activities under the program if the country—

(1) is a country suffering a public health crisis (as defined in subsection (e)); and

(2) participates in the military-to-military contacts program of the Department of Defense.

(c) PROGRAM ACTIVITIES.—The Secretary shall provide for the activities under the program—

(1) to focus, to the extent possible, on military units that participate in peace keeping operations; and

(2) to include HIV/AIDS-related voluntary counseling and testing and HIV/AIDS-related surveillance.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Of the amount authorized to be appropriated by section 301(a)(22) to the Department of Defense for operation and maintenance of the Defense Health Program, $30,000,000 may be available for carrying out the program described in subsection (a) as expanded pursuant to this section.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(e) COUNTRY SUFFERING A PUBLIC HEALTH CRISIS DEFINED.—In this section, the term "country suffering a public health crisis" means a country that has rapidly rising rates of incidence of HIV/AIDS or in which HIV/AIDS is causing significant family, community, or societal disruption.

SEC. 1216. MONITORING IMPLEMENTATION OF THE 1979 UNITED STATES-CHINA AGREEMENT ON COOPERATION IN SCIENCE AND TECHNOLOGY.

(a) RESPONSIBILITIES OF THE OFFICE OF SCIENCE AND TECHNOLOGY COOPERATION.—The Office of Science and Technology Cooperation of the Department of State shall monitor the implementation of the 1979 United States-China Agreement on Cooperation in Science and Technology and its protocols (in this section referred to as the "Agreement"), and keep a systematic account of the protocols thereto. The Office shall coordinate the activities of all agencies of the United States Government that carry out cooperative activities under the Agreement.

(b) GUIDELINES.—The Secretary of State shall ensure that all activities conducted under the Agreement and its protocols comply with applicable laws and regulations concerning the transfer of militarily sensitive and dual-use technologies.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Not later than April 1, 2004, and every two years thereafter, the Secretary of State, shall submit a report to Congress, in both classified and unclassified form, on the implementation of the Agreement and activities thereunder.

(2) REPORT ELEMENTS.—Each report under this subsection shall provide an evaluation of the benefits of the Agreement to the Chinese economy, military, and defense industrial base and shall include the following:

(A) An accounting of all activities conducted under the Agreement since the previous report, and a projection of activities to be undertaken in the next two years.

(B) An estimate of the costs to the United States to administer the Agreement within the period covered by the report.

(C) An assessment of how the Agreement has influenced the policies of the People's Republic of China toward scientific and technological cooperation with the United States.

(D) An analysis of the involvement of Chinese nuclear weapons and military missile specialists in the activities of the Joint Commission.

(E) A determination of the extent to which the activities conducted under the Agreement have enhanced the military and industrial base of the People's Republic of China, and an assessment of the impact of projected activities for the next two years, including transfers of technology, on China's economic and military capabilities.

(F) Any recommendations on improving the monitoring of the activities of the Commission by the Secretaries of Defense and State.

(3) CONSULTATION PRIOR TO SUBMISSION OF REPORTS.—The Secretary of State shall prepare the report in consultation with the Secretaries of Commerce, Defense, and Energy, the Directors of the National Science Foundation and the Federal Bureau of Investigation, and the intelligence community.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "Military Construction Authorization Act for Fiscal Year 2003".

TITLE XXI—ARMY

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Alabama	Anniston Army Depot	$1,900,000
	Fort Rucker	$6,550,000
Alaska	Fort Richardson	$15,000,000
	Fort Wainwright	$111,010,000
Arkansas	Pine Bluff Arsenal	$18,937,000
Colorado	Fort Carson	$1,100,000
District of Columbia	Walter Reed Army Medical Center	$17,500,000
Georgia	Fort Benning	$74,250,000
	Fort Stewart/Hunter Army Air Field	$26,000,000
Hawaii	Schofield Barracks	$191,000,000
Kansas	Fort Leavenworth	$3,150,000
	Fort Riley	$74,000,000
Kentucky	Blue Grass Army Depot	$5,500,000
	Fort Campbell	$99,000,000
	Fort Knox	$6,800,000
Louisiana	Fort Polk	$31,000,000
Maryland	Fort Detrick	$19,700,000
Missouri	Fort Leonard Wood	$15,500,000
New York	Fort Drum	$1,500,000
North Carolina	Fort Bragg	$85,500,000
Oklahoma	Fort Sill	$35,000,000
Pennsylvania	Letterkenny Army Depot	$1,550,000
Texas	Fort Hood	$69,000,000
Washington	Fort Lewis	$53,000,000
	Total	$964,697,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or location	Amount
Belgium	Chievres Air Base	$13,600,000
Germany	Area Support Group, Bamberg	$17,200,000
	Darmstadt	$3,500,000
	Grafenwoehr	$69,866,000
	Heidelberg	$8,300,000
	Landstuhl	$2,400,000
	Mannheim	$43,350,000
	Schweinfurt	$2,000,000
Italy	Vicenza	$34,700,000
Korea	Camp Carroll	$20,000,000
	Camp Castle	$6,800,000
	Camp Hovey	$25,000,000
	Camp Humphreys	$36,000,000
	Camp Tango	$12,600,000
	Camp Henry	$10,200,000
	K16 Airfield	$40,000,000
Qatar	Qatar	$8.600,000
	Total	$354,116,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(3), the Secretary of the Army may acquire real property and carry out military construction projects for the installation and location, and in the amount, set forth in the following table:

Army: Unspecified Worldwide

Location	Installation	Amount
Unspecified Worldwide	Unspecified Worldwide	$4,000,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(6)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:

Army: Family Housing

State or Country	Installation or location	Purpose	Amount
Alaska	Fort Wainwright	38 Units	$17,752,000
Arizona	Yuma Proving Ground	33 Units	$6,100,000
Germany	Stuttgart	1 Units	$990,000
Korea	Yongsan	10 Units	$3,100,000
	Total:		$27,942,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(6)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed $15,653,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations *in section 2104(a)(6)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed $239,751,000.*

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) In General.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $3,007,345,000 as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $758,497,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $354,116,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2101(c), $4,000,000.

(4) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $20,500,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $148,864,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design and improvement of military family housing and facilities, $283,346,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), $1,122,274,000.

(7) For the construction of phase 4 of an ammunition demilitarization facility at Pueblo Chemical Activity, Colorado, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839) and section 2108 of this Act, $38,000,000.

(8) For the construction of phase 5 of an ammunition demilitarization facility at Newport Army Depot, Indiana, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2193), $61,494,000.

(9) For the construction of phase 5 of an ammunition demilitarization facility at Aberdeen Proving Ground, Maryland, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999, as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1299), $30,600,000.

(10) For the construction of phase 3 of an ammunition demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (115 Stat. 1298) and section 2106 of this Act, $10,300,000.

(11) For the construction of phase 3 of an ammunition demilitarization support facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000, $8,300,000.

(12) For the construction of phase 2 of Saddle Access Road, Pohakoula Training Facility, Hawaii, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Public Law 106–398; 114 Stat. 1654A–389), $13,000,000.

(13) For the construction of phase 3 of a barracks complex, Butner Road, at Fort Bragg, North Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2001, $50,000,000.

(14) For the construction of phase 2 of a barracks complex, D Street, at Fort Richardson, Alaska, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (115 Stat. 1280), $21,000,000.

(15) For the construction of phase 2 of a barracks complex, Nelson Boulevard, at Fort Carson, Colorado, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002, as amended by section 2105 of this Act, $42,000,000.

(16) For the construction of phase 2 of a basic combat trainee complex at Fort Jackson, South Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002, as amended by section 2105 of this Act, $39,000,000.

(17) For the construction of phase 2 of a barracks complex, 17th and B Streets at Fort Lewis, Washington, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002, $50,000,000.

(b) Limitation on Total Cost of Construction Projects.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a);

(2) $18,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Main Post, at Fort Benning, Georgia);

(3) $100,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Capron Avenue, at Schofield Barracks, Hawaii);

(4) $13,200,000 (the balance of the amount authorized under section 2101(a) for construction of a combined arms collective training facility at Fort Riley, Kansas);

(5) $50,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Range Road, at Fort Campbell, Kentucky); and

(6) $25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a consolidated maintenance complex at Fort Sill, Oklahoma).

(c) Adjustment.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (17) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by—

(1) $18,596,000, which represents savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States; and

(2) $29,350,000, which represents adjustments for the accounting of civilian personnel benefits.

SEC. 2105. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) Modification.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1281) is amended—

(1) in the item relating to Fort Carson, Colorado, by striking "$66,000,000" in the amount column and inserting "$67,000,000"; and

(2) in the item relating to Fort Jackson, South Carolina, by striking "$65,650,000" in the amount column and inserting "$68,650,000".

(b) Conforming Amendments.—Section 2104(b) of that Act (115 Stat. 1284) is amended—

(1) in paragraph (3), by striking "$41,000,000" and inserting "$42,000,000"; and

(2) in paragraph (4), by striking "$36,000,000" and inserting "$39,000,000".

SEC. 2106. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2000 PROJECT.

(a) Modification.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1298), is further amended—

(1) under the agency heading relating to Chemical Demilitarization, in the item relating to Blue Grass Army Depot, Kentucky, by striking "$254,030,000" in the amount column and inserting "$290,325,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$748,245,000".

(b) Conforming Amendment.—Section 2405(b)(3) of that Act (113 Stat. 839), as so amended, is further amended by striking "$231,230,000" and inserting "$267,525,000".

SEC. 2107. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 1999 PROJECT.

(a) Modification.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2193) is amended—

(1) under the agency heading relating to Chemical Demilitarization, in the item relating to Newport Army Depot, Indiana, by striking "$191,550,000" in the amount column and inserting "$293,853,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$829,919,000".

(b) Conforming Amendment.—Section 2404(b)(2) of that Act (112 Stat. 2196) is amended by striking "$162,050,000" and inserting "$264,353,000".

SEC. 2108. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 1997 PROJECT.

(a) Modification.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839), is further amended—

(1) under the agency heading relating to Chemical Demilitarization Program, in the item relating to Pueblo Chemical Activity, Colorado, by striking "$203,500,000" in the amount column and inserting "$261,000,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$607,454,000".

(b) Conforming Amendment.—Section 2406(b)(2) of that Act (110 Stat. 2779), as so amended, is further amended by striking "$203,500,000" and inserting "$261,000,000".

SEC. 2109. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2001 PROJECT.

The table in section 2101(b) of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Public Law 106–398; 114 Stat. 1654A–390) is amended by striking "Camp Page" in the installation or location column and inserting "Camp Stanley".

SEC. 2110. PLANNING AND DESIGN FOR ANECHOIC CHAMBER AT WHITE SANDS MISSILE RANGE, NEW MEXICO.

(a) Planning and Design.—The amount authorized to be appropriated by section

2104(a)(5), for planning and design for military construction for the Army is hereby increased by $3,000,000, with the amount of the increase to be available for planning and design for an anechoic chamber at White Sands Missile Range, New Mexico.

(b) OFFSET.—The amount authorized to be appropriated by section 301(a)(1) for the Army for operation and maintenance is hereby reduced by $3,000,000, with the amount of the reduction to be allocated to Base Operations Support (Servicewide Support).

TITLE XXII—NAVY

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or location	Amount
Arizona	Marine Corps Air Station, Yuma	$3,000,000
California	Marine Corps Air Station, Miramar	$8,700,000
	Marine Corps Air Ground Combat Center, Twentynine Palms	$25,770,000
	Marine Corps Base, Camp Pendleton	$104,200,000
	Naval Air Station, Lemoore	$35,855,000
	Naval Air Station, San Diego	$6,150,000
	Naval Air Warfare Center, Point Mugu	$6,760,000
	Naval Construction Battalion Center, Port Hueneme	$6,957,000
	Naval PostGraduate School, Monterey	$2,020,000
	Naval Station, San Diego	$12,210,000
Connecticut	Naval Submarine Base, New London	$7,880,000
District of Columbia	Marine Corps Base, Washington	$3,700,000
	Naval District, Washington	$2,690,000
Florida	Eglin Air Force Base	$6,350,000
	Naval Air Station, Jacksonville	$6,770,000
	Naval Air Station, Mayport	$1,900,000
	Naval Air Station, Pensacola	$990,000
	Panama City	$10,700,000
Georgia	Naval Submarine Base, Kings Bay	$1,580,000
Hawaii	Ford Island	$19,400,000
	Marine Corps Base, Hawaii	$9,500,000
	Naval Station, Pearl Harbor	$14,690,000
Illinois	Naval Training Center, Great Lakes	$93,190,000
Maine	Naval Air Station, Brunswick	$9,830,000
	Naval Shipyard, Portsmouth	$15,200,000
Maryland	Andrews Air Force Base	$9,680,000
	Naval Surface Warfare Center, Carderock Division	$12,900,000
Mississippi	Naval Air Station, Meridian	$2,850,000
	Naval Construction Battalion Center, Gulfport	$5,460,000
	Naval Station, Pascagoula	$25,305,000
New Jersey	Naval Air Warfare Center, Lakehurst	$5,200,000
	Naval Weapons Station, Earle	$5,600,000
North Carolina	Camp LeJeune	$5,370,000
	Marine Corps Air Station, Cherry Point	$6,040,000
	Marine Corps Air Station, New River	$6,920,000
Rhode Island	Naval Station, Newport	$9,030,000
South Carolina	Marine Corps Air Station, Beaufort	$13,700,000
	Marine Corps Recruit Depot, Parris Island	$10,490,000
	Naval Weapons Station, Charleston	$5,740,000
Texas	Naval Air Station, Kingsville	$6,210,000
	Naval Station, Ingleside	$5,480,000
Virginia	Marine Corps Combat Development Command, Quantico	$19,554,000
	Naval Amphibious Base, Little Creek	$9,770,000
	Naval Air Station, Norfolk	$2,260,000
	Naval Air Station, Oceana	$16,490,000
	Naval Ship Yard, Norfolk	$36,470,000
	Naval Station, Norfolk	$168,965,000
	Naval Surface Warfare Center, Dahlgren	$15,830,000
	Naval Weapons Station, Yorktown	$15,020,000
Washington	Naval Air Station, Whidbey Island	$17,580,000
	Naval Magazine, Port Hadlock	$4,030,000
	Naval Shipyard, Puget Sound	$54,132,000
	Naval Station, Bremerton	$45,870,000
	Naval Submarine Base, Bangor	$22,310,000
	Strategic Weapons Facility, Bangor	$7,340,000
Various Locations	Host Nation Infrastructure	$1,000,000
	Total	$988,588,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the locations outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or location	Amount
Bahrain	Naval Support Activity, Bahrain	$25,970,000
Cuba	Naval Station, Guantanamo	$4,280,000
Diego Garcia	Diego Garcia, Naval Support Facility	$11,090,000
Greece	Naval Support Activity, Joint Headquarters Command, Larissa	$14,800,000
Guam	Commander, United States Naval Forces, Guam	$13,400,000
Iceland	Naval Air Station, Keflavik	$14,920,000
Italy	Naval Air Station, Sigonella	$66,960,000
Spain	Joint Headquarters Command, Madrid	$2,890,000
	Naval Station, Rota	$18,700,000
	Total	$173,010,000

SEC. 2202. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(5)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:

Navy: Family Housing

State or Country	Installation or location	Purpose	Amount
California	Naval Air Station, Lemoore	178 Units	$40,981,000
	Twentynine Palms	76 Units	$19,425,000
Connecticut	Naval Submarine Base, New London	100 Units	$24,415,000
Florida	Naval Station, Mayport	1 Unit	$329,000
Hawaii	Marine Corps Base, Kaneohe Bay	65 Units	$24,797,000
Mississippi	Naval Air Station, Meridian	56 Units	$9,755,000
North Carolina	Marine Corps Base, Camp LeJeune	317 Units	$43,650,000
Virginia	Marine Corps Base, Quantico	290 Units	$41,843,000
Greece	Naval Support Activity Joint Headquarters Command, Larissa	2 Units	$1,232,000
United Kingdom	Joint Maritime Facility, St. Mawgan	62 Units	$18,524,000
		Total	$224,951,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriation in section 2204(a)(5)(A), the Secretary of the Navy may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $11,281,000.

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(5)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed $139,468,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $2,478,174,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), $932,123,000.

(2) For military construction projects outside the United States authorized by section 2201(b), $170,440,000.

(3) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $23,262,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $87,803,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $375,700,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $867,788,000.

(6) For replacement of a pier at Naval Station, Norfolk, Virginia, authorized in section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1287), as amended by section 2205 of this Act, $33,520,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a):

(2) $8,345,000 (the balance of the amount authorized under section 2201(a) for a bachelors enlisted quarters shipboard ashore, Naval Station, Pascagoula, Mississippi);

(3) $48,120,000 (the balance of the amount authorized under section 2201(a) for a bachelors enlisted quarters shipboard ashore, Naval Station, Norfolk, Virginia); and

(4) $2,570,000 (the balance of the amount authorized under section 2201(b) for a quality of life support facility, Naval Air Station Sigonella, Italy).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by—

(1) $3,992,000, which represents savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States; and

(2) $10,470,000, which represents adjustments for the accounting of civilian personnel benefits.

SEC. 2205. MODIFICATION TO CARRY OUT CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) MILITARY CONSTRUCTION PROJECT AT NAVAL STATION, NORFOLK, VIRGINIA.—The table in section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1286) is amended—

(1) in the item relating to Naval Station, Norfolk, Virginia, by striking "$139,270,000" in the amount column and inserting "$139,550,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$1,059,030,000".

(b) CONFORMING AMENDMENT.—Section 2204(b)(2) of that Act (115 Stat. 1289) is amended by striking "$33,240,000" and inserting "$33,520,000".

(c) MILITARY FAMILY HOUSING AT QUANTICO, VIRGINIA.—The table in section 2202(a) of that Act (115 Stat. 1287) is amended in the item relating to Marine Corps Combat Development Command, Quantico, Virginia, by striking "60 Units" in the purpose column and inserting "39 Units".

TITLE XXIII—AIR FORCE

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or location	Amount
Alaska	Clear Air Force Station	$14,400,000
	Eielson Air Force Base	$41,100,000
Arizona	Davis-Monthan Air Force Base	$19,270,000
Arkansas	Little Rock Air Force Base	$25,600,000
California	Beale Air Force Base	$11,740,000
	Travis Air Force Base	$23,900,000
	Vandenberg Air Force Base	$10,500,000
Colorado	Buckley Air Force Base	$17,700,000
	Peterson Air Force Base	$5,500,000
	Schriever Air Force Base	$5,700,000
	United States Air Force Academy	$4,200,000
District of Columbia	Bolling Air Force Base	$5,000,000
Florida	Eglin Air Force Base	$4,250,000
	Hurlburt Field	$15,000,000
	MacDill Air Force Base	$7,000,000
Georgia	Robins Air Force Base	$5,400,000
	Warner-Robins Air Force Base	$24,000,000
Hawaii	Hickam Air Force Base	$1,350,000
Louisiana	Barksdale Air Force Base	$22,900,000
Maryland	Andrews Air Force Base	$9,600,000
Massachusetts	Fourth Cliff, Scituate	$9,500,000

Air Force: Inside the United States—Continued

State	Installation or location	Amount
	Hanscom Air Force Base	*$7,700,000*
Mississippi	*Keesler Air Force Base*	*$22,000,000*
Nebraska	*Offutt Air Force Base*	*$11,000,000*
Nevada	*Nellis Air Force Base*	*$56,850,000*
New Jersey	*McGuire Air Force Base*	*$24,631,000*
New Mexico	*Cannon Air Force Base*	*$4,650,000*
	Holloman Air Force Base	*$4,650,000*
	Kirtland Air Force Base	*$21,900,000*
North Carolina	*Pope Air Force Base*	*$9,700,000*
	Seymour Johnson Air Force Base	*$10,600,000*
North Dakota	*Minot Air Force Base*	*$18,000,000*
Ohio	*Wright-Patterson Air Force Base*	*$35,400,000*
Oklahoma	*Altus Air Force Base*	*$14,800,000*
	Vance Air Force Base	*$4,800,000*
South Carolina	*Shaw Air Force Base*	*$6,500,000*
South Dakota	*Ellsworth Air Force Base*	*$13,200,000*
Texas	*Goodfellow Air Force Base*	*$10,600,000*
	Lackland Air Force Base	*$41,500,000*
	Sheppard Air Force Base	*$16,000,000*
Utah	*Hill Air Force Base*	*$16,500,000*
Virginia	*Langley Air Force Base*	*$71,940,000*
Wyoming	*F.E. Warren Air Force Base*	*$15,000,000*
	Total	*$721,531,000*

(b) O*UTSIDE THE* U*NITED* S*TATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:*

Air Force: Outside the United States

Country	Installation or location	Amount
Germany	*Ramstein Air Base*	*$71,783,000*
Guam	*Andersen Air Force Base*	*$31,000,000*
Italy	*Aviano Air Base*	*$6,600,000*
Japan	*Kadena Air Base*	*$6,000,000*
Korea	*Osan Air Base*	*$15,100,000*
Spain	*Naval Station, Rota*	*$31,818,000*
Turkey	*Incirlik Air Base*	*$1,550,000*
United Kingdom	*Diego Garcia*	*$17,100,000*
	Royal Air Force, Fairford	*$19,000,000*
	Royal Air Force, Lakenheath	*$13,400,000*
Wake Island	*Wake Island*	*$24,900,000*
	Total	*$238,251,000*

(c) U*NSPECIFIED* W*ORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(3), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installation and location, and in the amount, set forth in the following table:*

Air Force: Unspecified Worldwide

Location	Installation	Amount
Unspecified Worldwide	*Classified Locations*	*$24,993,000*

SEC. 2302. FAMILY HOUSING.

(a) C*ONSTRUCTION AND* A*CQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:*

Air Force: Family Housing

State or Country	Installation or location	Purpose	Amount
Arizona	*Luke Air Force Base*	*140 Units*	*$18,954,000*
California	*Travis Air Force Base*	*110 Units*	*$24,320,000*
Colorado	*Peterson Air Force Base*	*2 Units*	*$959,000*
	United States Air Force Academy	*71 Units*	*$12,424,000*
Delaware	*Dover Air Force Base*	*112 Units*	*$19,615,000*
Florida	*Eglin Air Force Base*	*Housing Office*	*$597,000*
	Eglin Air Force Base	*134 Units*	*$15,906,000*
	MacDill Air Force Base	*96 Units*	*$18,086,000*
Hawaii	*Hickam Air Force Base*	*96 Units*	*$29,050,000*
Idaho	*Mountain Home Air Force Base*	*95 Units*	*$24,392,000*
Kansas	*McConnell Air Force Base*	*Housing Maintenance Facility.*	*$1,514,000*
Maryland	*Andrews Air Force Base*	*53 Units*	*$9,838,000*
	Andrews Air Force Base	*52 Units*	*$8,807,000*
Mississippi	*Columbus Air Force Base*	*Housing Office*	*$412,000*
	Keesler Air Force Base	*117 Units*	*$16,605,000*
Missouri	*Whiteman Air Force Base*	*22 Units*	*$3,977,000*
Montana	*Malmstrom Air Force Base*	*18 Units*	*$4,717,000*
New Mexico	*Holloman Air Force Base*	*101 Units*	*$20,161,000*
North Carolina	*Pope Air Force Base*	*Housing Maintenance Facility.*	*$991,000*
	Seymour Johnson Air Force Base	*126 Units*	*$18,615,000*

Air Force: Family Housing—Continued

State or Country	Installation or location	Purpose	Amount
North Dakota	Grand Forks Air Force Base	150 Units	$30,140,000
	Minot Air Force Base	112 Units	$21,428,000
	Minot Air Force Base	102 Units	$20,315,000
Oklahoma	Vance Air Force Base	59 Units	$11,423,000
South Dakota	Ellsworth Air Force Base	Housing Maintenance Facility.	$447,000
	Ellsworth Air Force Base	22 Units	$4,794,000
Texas	Dyess Air Force Base	85 Units	$14,824,000
	Randolph Air Force Base	Housing Maintenance Facility.	$447,000
	Randolph Air Force Base	112 Units	$14,311,000
Virginia	Langley Air Force Base	Housing Office	$1,193,000
Germany	Ramstein Air Force Base	19 Units	$8,534,000
Korea	Osan Air Base	113 Units	$35,705,000
	Osan Air Base	Housing Supply Warehouse.	$834,000
United Kingdom	Royal Air Force Lakenheath	Housing Office and Maintenance Facility.	$2,203,000
	Total		$416,438,000

(b) Planning and Design.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $34,188,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, Unites States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed $226,068,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) In General.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,597,272,000, as follows:

(1) For military construction projects inside the United States authorized by section 2301(a), $709,431,000.

(2) For military construction projects outside the United States authorized by section 2301(b), $238,251,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2301(c), $24,993,000.

(4) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $11,500,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $81,416,000.

(6) For military housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $676,694,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $874,050,000.

(b) Limitation on Total Cost of Construction Projects.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1), (2) and (3) of subsection (a);

(2) $7,100,000 (the balance of the amount authorized under section 2301(a) for construction of a consolidated base engineer complex at Altus Air Force Base, Oklahoma); and

(3) $5,000,000 (the balance of the amount authorized under section 2301(a) for construction of a storm drainage system at F.E. Warren Air Force Base, Wyoming).

(c) Adjustment.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $19,063,000, which represents savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States.

SEC. 2305. AUTHORITY FOR USE OF MILITARY CONSTRUCTION FUNDS FOR CONSTRUCTION OF PUBLIC ROAD NEAR AVIANO AIR BASE, ITALY, CLOSED FOR FORCE PROTECTION PURPOSES.

(a) Authority To Use Funds.—The Secretary of the Air Force may, using amounts authorized to be appropriated by section 2301(b), carry out a project to provide a public road, and associated improvements, to replace a public road adjacent to Aviano Air Base, Italy, that has been closed for force protection purposes.

(b) Scope of Authority.—(1) The authority of the Secretary to carry out the project referred to in subsection (a) shall include authority as follows:

(A) To acquire property for the project for transfer to a host nation authority.

(B) To provide funds to a host nation authority to acquire property for the project.

(C) To make a contribution to a host nation authority for purposes of carrying out the project.

(D) To provide vehicle and pedestrian access to landowners effected by the project.

(2) The acquisition of property using authority in subparagraph (A) or (B) of paragraph (1) may be made regardless of whether or not ownership of such property will vest in the United States.

(c) Inapplicability of Certain Real Property Management Requirement.—Section 2672(a)(1)(B) of title 10, United States Code, shall not apply with respect to any acquisition of interests in land for purposes of the project authorized by subsection (a).

SEC. 2306. ADDITIONAL PROJECT AUTHORIZATION FOR AIR TRAFFIC CONTROL FACILITY AT DOVER AIR FORCE BASE, DELAWARE.

(a) Project Authorized.—In addition to the projects authorized by section 2301(a), the Secretary of the Air Force may carry out a military construction project, including land acquisition relating thereto, for construction of a new air traffic control facility at Dover Air Force Base, Delaware, in the amount of $7,500,000.

(b) Authorization of Appropriations.—The amount authorized to be appropriated by section 2304(a), and by paragraph (1) of that section, is hereby increased by $7,500,000.

(c) Offset.—The amount authorized to be appropriated by section 301(a)(10) for operation and maintenance for the Army National Guard is hereby reduced by $7,500,000, with the amount of the reduction to be allocated to the Classified Network Program.

SEC. 2307. AVAILABILITY OF FUNDS FOR CONSOLIDATION OF MATERIALS COMPUTATIONAL RESEARCH FACILITY AT WRIGHT-PATTERSON AIR FORCE BASE, OHIO.

(a) Availability.—Of the amount authorized to be appropriated by section 2304(a), and paragraph (1) of that section, for the Air Force and available for military construction projects at Wright-Patterson Air Force Base, Ohio, $15,200,000 may be available for a military construction project for consolidation of the materials computational research facility at Wright-Patterson Air Force Base (PNZHTV033301A).

(b) Offset.—(1) The amount authorized to be appropriated by section 301(a)(4) for the Air Force for operation and maintenance is hereby reduced by $2,800,000, with the amount of the reduction to be allocated to Recruiting and Advertising.

(2) Of the amount authorized to be appropriated by section 2304(a), and paragraph (1) of that section, for the Air Force and available for military construction projects at Wright-Patterson Air Force Base—

(A) the amount available for a dormitory is hereby reduced by $10,400,000; and

(B) the amount available for construction of a Fully Contained Small Arms Range Complex is hereby reduced by $2,000,000.

TITLE XXIV—DEFENSE AGENCIES

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) Inside the United States.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Inside the United States

Agency	Installation or location	Amount
Missile Defense Agency	Kauai, Hawaii	$23,400,000
Defense Intelligence Agency	Bolling Air Force Base, District of Columbia	$121,958,000
Defense Logistics Agency	Defense Supply Center, Columbus, Ohio	$5,021,000
	Defense Supply Center, Richmond, Virginia	$5,500,000
	Naval Air Station, New Orleans, Louisiana	$9,500,000
	Travis Air Force Base, California	$16,000,000
Defense Threat Reduction Agency	Fort Belvoir, Virginia	$76,388,000
Department of Defense Dependents Schools	Fort Bragg, North Carolina	$2,036,000
	Fort Jackson, South Carolina	$2,506,000
	Marine Corps Base, Camp LeJeune, North Carolina	$12,138,000
	Marine Corps Base, Quantico, Virginia	$1,418,000
	United States Military Academy, West Point, New York	$4,347,000
Joint Chiefs of Staff	Conus Various	$25,000,000
National Security Agency	Fort Meade, Maryland	$4,484,000
Special Operations Command	Fort Bragg, North Carolina	$30,800,000
	Hurlburt Field, Florida	$11,100,000
	Naval Amphibious Base, Little Creek, Virginia	$14,300,000
	Stennis Space Center, Mississippi	$5,000,000
TRICARE Management Activity	Elmendorf Air Force Base, Alaska	$10,400,000
	Hickam Air Force Base, Hawaii	$2,700,000
Washington Headquarters Services	Arlington, Virginia	$18,000,000
	Washington Headquarters Services, District of Columbia	$2,500,000
	Total	$404,496,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Outside the United States

Agency	Installation or location	Amount
Defense Logistics Agency	Andersen Air Force Base, Guam	$17,586,000
	Lajes Field, Azores, Portugal	$19,000,000
	Naval Forces Marianas Islands, Guam	$6,000,000
	Naval Station, Rota, Spain	$23,400,000
	Royal Air Force, Fairford, United Kingdom	$17,000,000
	Yokota Air Base, Japan	$23,000,000
Department of Defense Dependents Schools	Kaiserslautern, Germany	$957,000
	Lajes Field, Azores, Portugal	$1,192,000
	Seoul, Korea	$31,683,000
	Mons, Belgium	$1,573,000
	Spangdahlem Air Base, Germany	$997,000
	Vicenza, Italy	$2,117,000
TRICARE Management Activity	Naval Support Activity, Naples, Italy	$41,449,000
	Spangdahlem Air Base, Germany	$39,629,000
	Total	$225,583,000

SEC. 2402. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(8)(A), the Secretary of Defense may improve existing military family housing units in an amount not to exceed $5,480,000.

SEC. 2403. ENERGY CONSERVATION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(4), the Secretary of Defense may carry out energy conservation projects under section 2865 of title 10, United States Code, in the amount of $50,531,000.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of $1,316,972,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), $367,896,000.

(2) For military construction projects outside the United States authorized by section 2401(b), $225,583,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $16,293,000.

(4) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, $10,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $44,232,000.

(6) For energy conservation projects authorized by section 2403 of this Act, $50,531,000.

(7) For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), $545,138,000.

(8) For military family housing functions:

(A) For improvement of military family housing and facilities, $5,480,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $42,432,000.

(C) For credit to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code, $2,000,000.

(9) For payment of a claim against the Hospital Replacement project at Elmendorf Air Force Base, Alaska, $10,400,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a); and

(2) $26,200,000 (the balance of the amount authorized under section 2401(a) for the construction of the Defense Threat Reduction Center, Fort Belvoir, Virginia).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (9) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by—

(1) $2,976,000, which represents savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States; and

(2) $37,000, which represents adjustments for the accounting of civilian personnel benefits.

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result *of construction previously financed by the United States.*

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment program authorized by section 2501, in the amount of $168,200,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

SEC. 2601. AUTHORIZED GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

There are authorized to be appropriated for fiscal years beginning after September 30, 2002, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions there for, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $186,588,000; and

(B) for the Army Reserve, $62,992,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserve, $58,671,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $212,459,000; and

(B) for the Air Force Reserve, $59,883,000.

SEC. 2602. ARMY NATIONAL GUARD RESERVE CENTER, LANE COUNTY, OREGON.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—The amount authorized to be appropriated by section 2601(1)(A) for the Army National Guard of the United States is hereby increased by $9,000,000.

(b) AVAILABILITY.—(1) Of the amount authorized to be appropriated by section 2601(1)(A) for the Army National Guard of the United States, as increased by subsection (a), $9,000,000 may be available for a military construction project for a Reserve Center in Lane County, Oregon.

(2) The amount available under paragraph (1) for the military construction project referred to in that paragraph is in addition to any other amounts available under this Act for that project.

(c) OFFSET.—(1) The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby reduced by $2,500,000, with the amount of the reduction to be allocated to Warfighter Sustainment Advanced Technology (PE 0603236N).

(2) The amount authorized to be appropriated by section 301(a)(6) for operation and maintenance for the Army Reserve is hereby reduced by $6,000,000, with the amount of the reduction to be allocated to the Enhanced Secure Communications Program.

SEC. 2603. ADDITIONAL PROJECT AUTHORIZATION FOR COMPOSITE SUPPORT FACILITY FOR ILLINOIS AIR NATIONAL GUARD.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—The amount authorized to be appropriated by section 2601(3)(A) for the Air National Guard is hereby increased by $10,000,000.

(b) AVAILABILITY.—Of the amount authorized to be appropriated by section 2601(3)(A) for the Air National Guard, as increased by subsection (a), $10,000,000 may be available for a military construction project for a Composite Support Facility for the 183rd Fighter Wing of the Illinois Air National Guard.

(c) OFFSET.—The amount authorized to be appropriated by section 301(a)(5) for operation and maintenance, defense-wide, is hereby reduced by $10,000,000, with the amount of the reduction to be allocated to amounts available for the Information Operations Program.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

SEC. 2701. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVI for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2005; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects, and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) for which appropriated funds have been obligated before the later of—

(1) October 1, 2005; or

(2) the date of the enactment of an Act authorized funds for fiscal year 2005 for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program.

SEC. 2702. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2000 PROJECTS.

(a) EXTENSION OF CERTAIN PROJECTS.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 841), authorizations set forth in the tables in subsection (b), as provided in section 2302 or 2601 of that Act, shall remain in effect until October 1, 2003, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2004, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Air Force: Extension of 2000 Project Authorization

State	*Installation or location*	*Project*	*Amount*
Oklahoma	*Tinker Air Force Base*	*Replace Family Housing (41 Units).*	*$6,000,000*
Texas	*Lackland Air Force Base*	*Dormitory*	*$5,300,000*

Army National Guard: Extension of 2000 Project Authorization

State	*Installation or location*	*Project*	*Amount*
Virginia	*Fort Pickett*	*Multi-Purpose Range Complex-Heavy.*	*$13,500,000*

SEC. 2703. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 1999 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2199), authorizations set forth in the table in subsection (b), as provided in section 2302 of that Act and extended by section 2702 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1301), shall remain in effect until October 1, 2003, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2004, whichever is later.

(b) TABLE.—The table referred to in subsection (a) is as follows:

Air Force: Extension of 1999 Project Authorizations

State	*Installation or location*	*Project*	*Amount*
Delaware	*Dover Air Force Base*	*Replace Family Housing (55 Units).*	*$8,988,000*
Florida	*Patrick Air Force Base*	*Replace Family Housing (46 Units).*	*$9,692,000*
New Mexico	*Kirtland Air Force Base*	*Replace Family Housing (37 Units).*	*$6,400,000*

Air Force: Extension of 1999 Project Authorizations—Continued

State	Installation or location	Project	Amount
Ohio	Wright-Patterson Air Force Base	Replace Family Housing (40 Units).	$5,600,000

SEC. 2704. EFFECTIVE DATE.

Titles XXI, XXII, XXIII, XXIV, XXV, XXVI, and XXVII of this Act shall take effect on the later of—

(1) October 1, 2002; or

(2) the date of the enactment of this Act.

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. LEASE OF MILITARY FAMILY HOUSING IN KOREA.

(a) INCREASE IN NUMBER OF UNITS AUTHORIZED FOR LEASE AT CURRENT MAXIMUM AMOUNT.—Paragraph (3) of section 2828(e) of title 10, United States Code, is amended by striking "800 units" and inserting "1,175 units".

(b) AUTHORITY TO LEASE ADDITIONAL NUMBER OF UNITS AT INCREASED MAXIMUM AMOUNT.—That section is further amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively;

(2) by inserting after paragraph (3) the following new paragraph (4):

"(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 2,400 units of family housing in Korea subject to a maximum lease amount of $35,000 per unit per year.";

(3) in paragraph (5), as so redesignated, by striking "and (3)" and inserting "(3), and (4)"; and

(4) in paragraph (6), as so redesignated, by striking "53,000" and inserting "55,775".

SEC. 2802. REPEAL OF SOURCE REQUIREMENTS FOR FAMILY HOUSING CONSTRUCTION OVERSEAS.

Section 803 of the Military Construction Authorization Act, 1984 (Public Law 98–115; 10 U.S.C. 2821 note) is repealed.

SEC. 2803. MODIFICATION OF LEASE AUTHORITIES UNDER ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) LEASING OF HOUSING.—Subsection (a) of section 2874 of title 10, United States Code, is amended to read as follows:

"(a) LEASE AUTHORIZED.—(1) The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

"(2) The Secretary concerned shall utilize housing units leased under paragraph (1) as military family housing or military unaccompanied housing, as appropriate.".

(b) REPEAL OF INTERIM LEASE AUTHORITY.—Section 2879 of such title is repealed.

(c) CONFORMING AND CLERICAL AMENDMENTS.—(1) The heading for section 2874 of such title is amended to read as follows:

"§2874. Leasing of housing".

(2) The table of sections at the beginning of subchapter IV of chapter 169 of such title is amended—

(A) by striking the item relating to section 2874 and inserting the following new item:

"2874. Leasing of housing.";

and

(B) by striking the item relating to section 2879.

Subtitle B—Real Property and Facilities Administration

SEC. 2811. AGREEMENTS WITH PRIVATE ENTITIES TO ENHANCE MILITARY TRAINING, TESTING, AND OPERATIONS.

(a) IN GENERAL.—Chapter 159 of title 10, United States Code, is amended by inserting after section 2696 the following new section:

"§2697. Agreements with private entities to enhance military training, testing, and operations

"(a) AGREEMENTS WITH PRIVATE ENTITIES AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may enter into an agreement with a private entity described in subsection (b) to address the use or development of real property in the vicinity of an installation under the jurisdiction of such Secretary for purposes of—

"(1) limiting any development or use of such property that would otherwise be incompatible with the mission of such installation; or

"(2) preserving habitat on such property in a manner that is compatible with both—

"(A) current or anticipated environmental requirements that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on such installation; and

"(B) current or anticipated military training, testing, or operations on such installation.

"(b) COVERED PRIVATE ENTITIES.—A private entity described in this subsection is any private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal.

"(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Chapter 63 of title 31 shall not apply to any agreement entered into under this section.

"(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) Subject to the provisions of this subsection, an agreement with a private entity under this section—

"(A) may provide for the private entity to acquire all right, title, and interest in and to any real property, or any lesser interest therein, as may be appropriate for purposes of this section; and

"(B) shall provide for the private entity to transfer to the United States, upon the request of the United States, any property or interest so acquired.

"(2) Property or interests may not be acquired pursuant to an agreement under this section unless the owner of such property or interests, as the case may be, consents to the acquisition.

"(3) An agreement under this section providing for the acquisition of property or interests under paragraph (1)(A) shall provide for the sharing by the United States and the private entity concerned of the costs of the acquisition of such property or interests.

"(4) The Secretary concerned shall identify any property or interests to be acquired pursuant to an agreement under this section. Such property or interests shall be limited to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

"(5) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under paragraph (1)(B).

"(6) The Secretary concerned may, for purposes of the acceptance of property or interests under this subsection, accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 355 of the Revised Statutes (40 U.S.C. 255) if the Secretary finds that such appraisal or title documents substantially comply with such requirements.

"(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as such Secretary considers appropriate to protect the interests of the United States.

"(f) FUNDING.—(1) Except as provided in paragraph (2), amounts authorized to be appropriated to the Range Enhancement Initiative Fund of the Department of Defense are available for purposes of any agreement under this section.

"(2) In the case of an installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Department of Defense, or the military department concerned, for research, development, test, and evaluation are available for purposes of an agreement under this section with respect to such installation.

"(3) Amounts in the Fund that are made available for an agreement of a military department under this section shall be made available by transfer from the Fund to the applicable operation and maintenance account of the military department, including the operation and maintenance account for the active component, or for a reserve component, of the military department.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2696 the following new item:

"2697. Agreements with private entities to enhance military training, testing, and operations.".

SEC. 2812. CONVEYANCE OF SURPLUS REAL PROPERTY FOR NATURAL RESOURCE CONSERVATION.

(a) IN GENERAL.—(1) Chapter 159 of title 10, United States Code, as amended by section 2811 of this Act, is further amended by inserting after section 2697 the following new section:

"§2698. Conveyance of surplus real property for natural resource conservation

"(a) AUTHORITY TO CONVEY.—Subject to subsection (c), the Secretary of a military department may, in the sole discretion of such Secretary, convey to any State or local government or instrumentality thereof, or private entity that has as its primary purpose or goal the conservation of open space or natural resources on real property, all right, title, and interest of the United States in and to any real property, including any improvements thereon, under the jurisdiction of such Secretary that is described in subsection (b).

"(b) COVERED REAL PROPERTY.—Real property described in this subsection is any property that—

"(1) is suitable, as determined by the Secretary concerned, for use for the conservation of open space or natural resources;

"(2) is surplus property for purposes of title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and

"(3) has been available for public benefit conveyance under that title for a sufficient time, as determined by the Secretary concerned in consultation with the Administrator of General Services, to permit potential claimants to seek public benefit conveyance of such property, but without the submittal during that time of a request for such conveyance.

"(c) CONDITIONS OF CONVEYANCE.—Real property may not be conveyed under this section unless the conveyee of such property agrees that such property—

"(1) shall be used and maintained for the conservation of open space or natural resources in perpetuity, unless otherwise provided for under subsection (e); and

"(2) may be subsequently conveyed only if—

"(A) the Secretary concerned approves in writing such subsequent conveyance;

"(B) the Secretary concerned notifies the appropriate committees of Congress of the subsequent conveyance not later than 21 days before the subsequent conveyance; and

"(C) after such subsequent conveyance, shall be used and maintained for the conservation of open space or natural resources in perpetuity, unless otherwise provided for under subsection (e).

"(d) USE FOR INCIDENTAL PRODUCTION OF REVENUE.—Real property conveyed under this section may be used for the incidental production of revenue, as determined by the Secretary concerned, if such production of revenue is compatible with the use of such property for the conservation of open space or natural resources, as so determined.

"(e) REVERSION.—If the Secretary concerned determines at any time that real property conveyed under this section is not being used and maintained in accordance with the agreement of the conveyee under subsection (c), all right, title, and interest in and to such real property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry thereon.

"(f) PROPERTY UNDER BASE CLOSURE LAWS.—The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of such base closure law.

"(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may establish such additional terms and conditions in connection with a conveyance of real property under this section as such Secretary considers appropriate to protect the interests of the United States.

"(h) DEFINITIONS.—In this section:

"(1) The term 'appropriate committees of Congress' has the meaning given that term in section 2801(c)(4) of this title.

"(2) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

"(3) The term 'base closure law' means the following:

"(A) Section 2687 of this title.

"(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (10 U.S.C. 2687 note).

"(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

"(D) Any other similar authority for the closure or realignment of military installations that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003.".

(2) The table of sections at the beginning of chapter 159 of that title, as amended by section 2811 of this Act, is further amended by inserting after the item relating to section 2687 the following new item:

"2698. Conveyance of surplus real property for natural resource conservation.".

(b) ACCEPTANCE OF FUNDS TO COVER ADMINISTRATIVE EXPENSES.—Section 2695(b) of that title is amended by adding at the end the following new paragraph:

"(5) The conveyance of real property under section 2698 of this title.".

(c) AGREEMENTS WITH PRIVATE ENTITIES.—Section 2701(d) of that title is amended—

(1) in paragraph (1), by striking "with any State or local government agency, or with any Indian tribe," and inserting "any State or local government agency, any Indian tribe, or, for purposes under section 2697 or 2698 of this title, with any private entity"; and

(2) by striking paragraph (4), as redesignated by section 311(1) of this Act, and inserting the following new paragraph (4):

"(4) DEFINITIONS.—In this subsection:

"(A) The term 'Indian tribe' has the meaning given such term in section 101(36) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

"(B) The term 'private entity' means any private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal.".

SEC. 2813. MODIFICATION OF DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS.

(a) ADMINISTRATOR OF PROGRAM.—Subsection (a) of section 2814 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1310; 10 U.S.C. 2809 note) is amended by striking "Secretary of the Army" and inserting "Secretary of Defense or the Secretary of a military department".

(b) CONTRACTS.—Subsection (b) of that section is amended to read as follows:

"(b) CONTRACTS.—(1) Not more than 12 contracts may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

"(2) Except as provided in paragraph (3), the demonstration program may only cover contracts entered into on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003.

"(3) The Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in that subsection during the period beginning on December 28, 2001, and ending on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003 as a contract for the purpose of the demonstration program under that subsection.".

(c) REPORTING REQUIREMENTS.—Subsection (d) of that section is amended by striking "Secretary of the Army" and inserting "Secretary of Defense".

(d) FUNDING.—(1) Subsection (f) of that section is amended by striking "the Army" and inserting "the military departments or defense-wide".

(2) The amendment made by paragraph (1) shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date.

Subtitle C—Land Conveyances

SEC. 2821. CONVEYANCE OF CERTAIN LANDS IN ALASKA NO LONGER REQUIRED FOR NATIONAL GUARD PURPOSES.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the State of Alaska, or any governmental entity, Native Corporation, or Indian tribe within the State of Alaska, all right, title, and interest of the United States in and to any parcel of real property, including any improvements thereon, described in subsection (b) that the Secretary considers appropriate in the public interest.

(b) COVERED PROPERTY.—Real property described in this subsection is any property located in the State of Alaska that, as determined by the Secretary—

(1) is currently under the jurisdiction of the Department of the Army;

(2) before December 2, 1980, was under the jurisdiction of the Department of the Army for use of the Alaska National Guard;

(3) is located in a unit of the National Wildlife Refuge System designated in the Alaska National Interest Lands Conservation Act (94 Stat. 2371; 16 U.S.C. 1301 note);

(4) is excess to the needs of the Alaska National Guard and the Department of Defense; and

(5) is in such condition that—

(A) the anticipated cost to the United States of retaining such property exceeds the value of such property; or

(B) such property is unsuitable for retention by the United States.

(c) CONSIDERATION.—(1) The conveyance of real property under this section shall, at the election of the Secretary, be for no consideration or for consideration in an amount determined by the Secretary to be appropriate under the circumstances.

(2) If consideration is received under paragraph (1) for property conveyed under subsection (a), the Secretary may use the amounts received, to the extent provided in appropriations Acts, to pay for—

(A) the cost of a survey described in subsection (d) with respect to such property;

(B) the cost of carrying out any environmental assessment, study, or analysis, and any remediation, that may be required under Federal law, or is considered appropriate by the Secretary, in connection with such property or the conveyance of such property; and

(C) any other costs incurred by the Secretary in conveying such property.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance of real property under this section as the Secretary considers appropriate to protect the interests of the United States.

(f) DEFINITIONS.—In this section:

(1) The term "Indian tribe" has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454; 108 Stat. 4791; 25 U.S.C. 479a).

(2) The term "Native Corporation" has the meaning given such term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

SEC. 2822. LAND CONVEYANCE, FORT CAMPBELL, KENTUCKY.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the City of Hopkinsville, Kentucky (in this section referred to as the "City"), all right, title, and interest of the United States in and to a parcel of real property at Fort Campbell, Kentucky, consisting of approximately 50 acres and *containing an abandoned railroad spur for the purpose of permitting the City to use the property for storm water management, recreation, transportation, and other public purposes.*

(b) REIMBURSEMENT OF TRANSACTION COSTS.—(1) The City shall reimburse the Secretary for any costs incurred by the Secretary in carrying out the conveyance authorized by subsection (a).

(2) Any reimbursement for costs that is received under paragraph (1) shall be credited to the fund or account providing funds for such costs. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(c) DESCRIPTION OF PROPERTY.—The acreage of the real property to be conveyed under subsection (a) has been determined by the Secretary through a legal description outlining such acreage. No further survey of the property is required before conveyance under that subsection.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2823. MODIFICATION OF AUTHORITY FOR LAND TRANSFER AND CONVEYANCE, NAVAL SECURITY GROUP ACTIVITY, WINTER HARBOR, MAINE.

(a) MODIFICATION OF CONVEYANCE AUTHORITY FOR COREA AND WINTER HARBOR PROPERTIES.—Section 2845 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1319) is amended—

(1) by striking subsection (b) and inserting the following new subsection (b):

"(b) CONVEYANCE AND TRANSFER OF COREA AND WINTER HARBOR PROPERTIES AUTHORIZED.—(1) The Secretary of the Navy may convey, without consideration, to the State of Maine, any political subdivision of the State of Maine, or any tax-supported agency in the State of Maine, all right, title, and interest of the United States in and to parcels of real property, including any improvements thereon and appurtenances thereto, comprising the former facilities of the Naval Security Group Activity, Winter Harbor, Maine, as follows:

"(A) The parcel consisting of approximately 50 acres known as the Corea Operations Site.

"(B) Three parcels consisting of approximately 23 acres and comprising family housing facilities.

"(2) The Secretary of the Navy may transfer to the administrative jurisdiction of the Secretary of the Interior a parcel of real property consisting of approximately 404 acres at the former Naval Security Group Activity, which is the balance of the real property comprising the Corea Operations Site.

"(3) The Secretary of the Interior shall administer the property transferred under paragraph (2) as part of the National Wildlife Refuge System."; and

(2) in subsections (c), (d), (e), (f), (g), and (h), by striking "subsection (b)" each place it appears and inserting "subsection (b)(1)".

(b) EXEMPTION OF MODIFIED CONVEYANCES FROM FEDERAL SCREENING REQUIREMENT.—That section is further amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

"(g) EXEMPTION OF CERTAIN CONVEYANCES FROM FEDERAL SCREENING.—Any conveyance authorized by subsection (b)(1) of this section, as amended by section 2823 of the National Defense Authorization Act for Fiscal Year 2003, is exempt from the requirement to screen the property concerned for further Federal use pursuant to section 2696 of title 10, United States Code.".

SEC. 2824. LAND CONVEYANCE, WESTOVER AIR RESERVE BASE, MASSACHUSETTS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration, to the City of Chicopee, Massachusetts (in this section referred to as the "City"), all right, title, and interest of the United States in and to a parcel of real property, including 133 housing units and other improvements thereon, consisting of approximately 30.38 acres located at Westover Air Reserve Base in Chicopee, Massachusetts, for the purpose of permitting the City to use the property for economic development and other public purposes.

(b) ADMINISTRATIVE EXPENSES.—(1) The Secretary may require the City to reimburse the Secretary for the costs incurred by the Secretary to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation (other than the environmental baseline survey), and other administrative costs related to the conveyance.

(2) Section 2695(c) of title 10, United States Code, shall apply to any amount received under this subsection.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2825. LAND CONVEYANCE, NAVAL STATION NEWPORT, RHODE ISLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Rhode Island, or any political subdivision thereof, any or all right, title, and interest of the United States in and to a parcel of real property, together with improvements thereon, consisting of approximately 34 acres located in Melville, Rhode Island, and known as the Melville Marina site.

(b) CONSIDERATION.—(1) As consideration for the conveyance of real property under subsection (a), the conveyee shall pay the United States an amount equal to the fair market value of the real property, as determined by the Secretary based on an appraisal of the real property acceptable to the Secretary.

(2) Any consideration received under paragraph (1) shall be deposited in the account established under section 204(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(h)), and shall be available as provided for in that section.

(c) REIMBURSEMENT OF TRANSACTION COSTS.—(1) The Secretary may require the conveyee of the real property under subsection (a) to reimburse the Secretary for any costs incurred by the Secretary in carrying out the conveyance.

(2) Any reimbursement for costs that is received under paragraph (1) shall be credited to the fund or account providing funds for such costs. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2826. LAND EXCHANGE, BUCKLEY AIR FORCE BASE, COLORADO.

(a) EXCHANGE AUTHORIZED.—Subject to subsection (b), the Secretary of the Air Force may convey to the State of Colorado (in this section referred to as the "State") all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of all or part of the Watkins Communications Site in Arapahoe County, Colorado.

(b) LIMITATION.—The Secretary of the Air Force may carry out the conveyance authorized by subsection (a) only with the concurrence of the Secretary of Defense.

(c) CONSIDERATION.—(1) As consideration for the conveyance authorized by subsection (a) the State shall convey to the United States of all right, title, and interest of the State in and to a parcel of real property, including improvements thereon, consisting of approximately 41 acres that is owned by the State and is contiguous to Buckley Air Force Base, Colorado.

(2) The Secretary shall have jurisdiction over the real property conveyed under paragraph (1).

(3) Upon conveyance to the United States under paragraph (1), the real property conveyed under that paragraph is withdrawn from all forms of appropriation under the general land laws, including the mining laws and mineral and geothermal leasing laws.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the parcels of real property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2827. LAND ACQUISITION, BOUNDARY CHANNEL DRIVE SITE, ARLINGTON, VIRGINIA.

(a) ACQUISITION AUTHORIZED.—The Secretary of Defense may, using amounts authorized to be appropriated to be appropriated by section 2401, acquire all right, title, and interest in and to a parcel of real property, including any improvements thereon, in Arlington County, Virginia, consisting of approximately 7.2 acres and known as the Boundary Channel Drive Site. The parcel is located southeast of Interstate Route 395 at the end of Boundary Channel Drive and was most recently occupied by the Twin Bridges Marriott.

(b) INCLUSION IN PENTAGON RESERVATION.—Upon its acquisition under subsection (a), the parcel acquired under that subsection shall be included in the Pentagon Reservation, as that term is defined in section 2674(f)(1) of title 10, United States Code.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be acquired under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(d) TERMS AND CONDITIONS.—The Secretary may require such terms and conditions in connection with the acquisition under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2828. LAND CONVEYANCES, WENDOVER AIR FORCE BASE AUXILIARY FIELD, NEVADA.

(a) CONVEYANCES AUTHORIZED TO WEST WENDOVER, NEVADA.—(1) The Secretary of the Interior may convey, without consideration, to the City of West Wendover, Nevada, all right, title, and interest of the United States in and to the following:

(A) The lands at Wendover Air Force Base Auxiliary Field, Nevada, identified in Easement No. AFMC–HL–2–00–334 that are determined by the Secretary of the Air Force to be no longer required.

(B) The lands at Wendover Air Force Base Auxiliary Field identified for disposition on the map entitled "West Wendover, Nevada–Excess", dated January 5, 2001, that are determined by the Secretary of the Air Force to be no longer required.

(2) The purposes of the conveyances under this subsection are—

(A) to permit the establishment and maintenance of runway protection zones; and

(B) to provide for the development of an industrial park and related infrastructure.

(3) The map referred to in paragraph (1)(B) shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management and the Elko District Office of the Bureau of Land Management.

(b) Conveyance Authorized to Tooele County, Utah.—(1) The Secretary of the Interior may convey, without consideration, to Tooele County, Utah, all right, title, and interest of the United States in and to the lands at Wendover Air Force Base Auxiliary Field identified in Easement No. AFMC–HL–2–00–318 that are determined by the Secretary of the Air Force to be no longer required.

(2) The purpose of the conveyance under this subsection is to permit the establishment and maintenance of runway protection zones and an aircraft accident potential protection zone as necessitated by continued military aircraft operations at the Utah Test and Training Range.

(c) Management of Conveyed Lands.—The lands conveyed under subsections (a) and (b) shall be managed by the City of West Wendover, Nevada, City of Wendover, Utah, Tooele County, Utah, and Elko County, Nevada—

(1) in accordance with the provisions of an Interlocal Memorandum of Agreement entered into between the Cities of West Wendover, Nevada, and Wendover, Utah, Tooele County, Utah, and Elko County, Nevada, providing for the coordinated management and development of the lands for the economic benefit of both communities; and

(2) in a manner that is consistent with such provisions of the easements referred to subsections (a) and (b) that, as jointly determined by the Secretary of the Air Force and Secretary of the Interior, remain applicable and relevant to the operation and management of the lands following conveyance and are consistent with the provisions of this section.

(d) Additional Terms and Conditions.—The Secretary of the Air Force and the Secretary of the Interior may jointly require such additional terms and conditions in connection with the conveyances required by subsections (a) and (b) as the Secretaries consider appropriate to protect the interests of the United States.

SEC. 2829. LAND CONVEYANCE, FORT HOOD, TEXAS.

(a) Conveyance Authorized.—The Secretary of the Army may convey, without consideration, to the Veterans Land Board of the State of Texas (in this section referred to as the "Board"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 174 acres at Fort Hood, Texas, for the purpose of permitting the Board to establish a State-run cemetery for veterans.

(b) Reversionary Interest.—(1) If at the end of the five-year period beginning on the date of the conveyance authorized by subsection (a), the Secretary determines that the property conveyed under that subsection is not being used for the purpose specified in that subsection, all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry thereon.

(2) Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) Description of Property.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Board.

(d) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2830. LAND CONVEYANCES, ENGINEER PROVING GROUND, FORT BELVOIR, VIRGINIA.

(a) Conveyance to Fairfax County, Virginia, Authorized.—(1) The Secretary of the Army may convey, without consideration, to Fairfax County, Virginia, all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 135 acres, located in the northwest portion of the Engineer Proving Ground (EPG) at Fort Belvoir, Virginia, in order to permit the County to use such property for park and recreational purposes.

(2) The parcel of real property authorized to be conveyed by paragraph (1) is generally described as that portion of the Engineer Proving Ground located west of Accotink Creek, east of the Fairfax County Parkway, and north of Cissna Road to the northern boundary, but excludes a parcel of land consisting of approximately 15 acres located in the southeast corner of such portion of the Engineer Proving Ground.

(3) The land excluded under paragraph (2) from the parcel of real property authorized to be conveyed by paragraph (1) shall be reserved for an access road to be constructed in the future.

(b) Conveyance of Balance of Property Authorized.—The Secretary may convey to any competitively selected grantee all right, title, and interest of the United States in and to the real property, including any improvements thereon, at the Engineering Proving Ground, not conveyed under the authority in subsection (a).

(c) Consideration.—(1) As consideration for the conveyance authorized by subsection (b), the grantee shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount that is not less than the fair market value, as determined by the Secretary, of the property conveyed under that subsection.

(2) In-kind consideration under paragraph (1) may include the maintenance, improvement, alteration, repair, remodeling, restoration (including environmental restoration), or construction of facilities for the Department of the Army at Fort Belvoir or at any other site or sites designated by the Secretary.

(3) If in-kind consideration under paragraph (1) includes the construction of facilities, the grantee shall also convey to the United States—

(A) title to such facilities, free of all liens and other encumbrances; and

(B) if the United States does not have fee simple title to the land underlying such facilities, convey to the United States all right, title, and interest in and to such lands not held by the United States.

(4) The Secretary shall deposit any cash received as consideration under this subsection in the special account established pursuant to section 204(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(h)).

(d) Repeal of Superseded Authority.—Section 2821 of the Military Construction Authorization Act for Fiscal Years 1990 and 1991 (division B of Public Law 101–189; 103 Stat. 1658), as amended by section 2854 of the Military Construction Authorization Act for Fiscal Year 1996 (division B of Public Law 104–106; 110 Stat. 568), is repealed.

(e) Description of Property.—The exact acreage and legal description of the real property to be conveyed under subsections (a) and (b) shall be determined by surveys satisfactory to the Secretary. The cost of each such survey shall be borne by the grantee.

(f) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsections (a) and (b) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2831. MASTER PLAN FOR USE OF NAVY ANNEX, ARLINGTON, VIRGINIA.

(a) Repeal of Commission on National Military Museum.—Title XXIX of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 880; 10 U.S.C. 111 note) is repealed.

(b) Modification of Authority for Transfer from Navy Annex.—Section 2881 of the Military Construction Authorization Act for Fiscal Year 2000 (113 Stat. 879) is amended—

(1) in subsection (b)(2), as amended by section 2863(f) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1332), by striking "as a site—" and all that follows and inserting "as a site for such other memorials or museums that the Secretary considers compatible with Arlington National Cemetery and the Air Force Memorial."; and

(2) in subsection (d)—

(A) in paragraph (2), by striking "the recommendation (if any) of the Commission on the National Military Museum to use a portion of the Navy Annex property as the site for the National Military Museum", and inserting "the use of the acres reserved under (b)(2) as a memorial or museum"; and

(B) in paragraph (4), by striking "the date on which the Commission on the National Military Museum submits to Congress its report under section 2903" and inserting "the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003".

(c) Construction of Amendments.—The amendments made by subsections (a) and (b) may not be construed to delay the establishment of the United States Air Force Memorial authorized by section 2863 of the Military Construction Authorization Act for Fiscal Year 2002 (115 Stat. 1330).

SEC. 2832. LAND CONVEYANCE, SUNFLOWER ARMY AMMUNITION PLANT, KANSAS.

(a) Conveyance Authorized.—The Secretary of the Army or the Administrator of General Services may convey, without consideration, to the Johnson County Park and Recreation District, Kansas (in this section referred to as the "District"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, in the State of Kansas consisting of approximately 2,000 acres, a portion of the Sunflower Army Ammunition Plant. The purpose of the conveyance is to permit the District to use the parcel for public recreational purposes.

(b) Description of Property.—The exact acreage, location, and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the official making the conveyance. The cost of such legal description, survey, or both shall be borne by the District.

(c) Additional Terms and Conditions.—The official making the conveyance of real property under subsection (a) may require such additional terms and conditions in connection with

the conveyance as that official considers appropriate to protect the interests of the United States.

(d) Effective Date.—This section shall take effect on January 31, 2003.

SEC. 2833. LAND CONVEYANCE, BLUEGRASS ARMY DEPOT, RICHMOND, KENTUCKY.

(a) Conveyance Authorized.—(1) The Secretary of the Army may convey, without consideration, to Madison County, Kentucky (in this section referred to as the "County"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 10 acres at the Bluegrass Army Depot, Richmond, Kentucky, for the purpose of facilitating the construction of a veterans' center on the parcel by the State of Kentucky.

(2) The Secretary may not make the conveyance authorized by this subsection unless the Secretary determines that the State of Kentucky has appropriated adequate funds for the construction of the veterans' center.

(b) Reversionary Interest.—If the Secretary determines that the real property conveyed under subsection (a) ceases to be utilized for the sole purpose of a veterans' center or that reasonable progress is not demonstrated in constructing the center and initiating services to veterans, all right, title, and interest in and to the property shall revert to the United States, and the United States shall have the right of immediate entry onto the property. Any determination under this subsection shall be made on the record after an opportunity for a hearing.

(c) Administrative Expenses.—The Secretary shall apply section 2695 of title 10, United States Code, to the conveyance authorized by subsection (a).

(d) Description of Property.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the County.

(e) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Subtitle D—Other Matters

SEC. 2841. TRANSFER OF FUNDS FOR ACQUISITION OF REPLACEMENT PROPERTY FOR NATIONAL WILDLIFE REFUGE SYSTEM LANDS IN NEVADA.

(a) Transfer of Funds Authorized.—(1) The Secretary of the Air Force may, using amounts authorized to be appropriated by section 2304(a), transfer to the United States Fish and Wildlife Service $15,000,000 to fulfill the obligations of the Air Force under section 3011(b)(5)(F) of the Military Lands Withdrawal Act of 1999 (title XXX of Public Law 106–65; 113 Stat. 889).

(2) Upon receipt by the Service of the funds transferred under paragraph (1), the obligations of the Air Force referred to in that paragraph shall be considered fulfilled.

(b) Contribution to Foundation.—(1) The United States Fish and Wildlife Service may grant funds received by the Service under subsection (a) in a lump sum to the National Fish and Wildlife Foundation for use in accomplishing the purposes of section 3011(b)(5)(F) of the Military Lands Withdrawal Act of 1999.

(2) Funds received by the Foundation under paragraph (1) shall be subject to the provisions of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701 et seq.), other than section 10(a) of that Act (16 U.S.C. 3709(a)).

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for the activities of the National Nuclear Security Administration in carrying out programs necessary for national security in the amount of $8,160,043,000, to be allocated as follows:

(1) Weapons Activities.—For weapons activities, $5,988,188,000, to be allocated as follows:

(A) For directed stockpile work, $1,218,967,000.

(B) For campaigns, $2,090,528,000, to be allocated as follows:

(i) For operation and maintenance, $1,740,983,000.

(ii) For construction, $349,545,000, to be allocated as follows:

Project 01–D–101, distributed information systems laboratory, Sandia National Laboratories, Livermore, California, $13,305,000.

Project 00–D–103, terascale simulation facility, Lawrence Livermore National Laboratory, Livermore, California, $35,030,000.

Project 00–D–107, joint computational engineering laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $7,000,000.

Project 98–D–125, tritium extraction facility, Savannah River Plant, Aiken, South Carolina, $70,165,000.

Project 96–D–111, national ignition facility (NIF), Lawrence Livermore National Laboratory, Livermore, California, $224,045,000.

(C) For readiness in technical base and facilities, $1,735,129,000, to be allocated as follows:

(i) For operation and maintenance, $1,464,783,000.

(ii) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $270,346,000, to be allocated as follows:

Project 03–D–101, Sandia underground reactor facility (SURF), Sandia National Laboratory, Livermore, California, $2,000,000.

Project 03–D–103, project engineering and design (PED), various locations, $17,839,000.

Project 03–D–121, gas transfer capacity expansion, Kansas City Plant, Kansas City, Missouri, $4,000,000.

Project 03–D–122, purification prototype facility, Y–12 Plant, Oak Ridge, Tennessee, $20,800,000.

Project 03–D–123, special nuclear material component requalification facility, Pantex Plant, Amarillo, Texas, $3,000,000

Project 02–D–103, project engineering and design (PED), various locations, $24,945,000.

Project 02–D–105, engineering technology complex upgrade, Lawrence Livermore National Laboratory, Livermore, California, $10,000,000.

Project 02–D–107, electrical power systems safety communications and bus upgrades, Nevada Test Site, Nevada, $7,500,000.

Project 01–D–103, project engineering and design (PED), various locations, $6,164,000.

Project 01–D–107, Atlas relocation, Nevada Test Site, Nevada, $4,123,000.

Project 01–D–108, microsystems and engineering sciences applications (MESA), Sandia National Laboratories, Albuquerque, New Mexico, $75,000,000.

Project 01–D–124, HEU storage facility, Y–12 Plant, Oak Ridge, Tennessee, $25,000,000.

Project 01–D–126, weapons evaluation test laboratory, Pantex Plant, Amarillo, Texas, $8,650,000.

Project 01–D–800, sensitive compartmented information facility, Lawrence Livermore National Laboratory, Livermore, California, $9,611,000.

Project 99–D–103, isotope sciences facilities, Lawrence Livermore National Laboratory, Livermore, California, $4,011,000.

Project 99–D–104, protection of real property (roof reconstruction, phase II), Lawrence Livermore National Laboratory, Livermore, California, $5,915,000.

Project 99–D–127, stockpile management restructuring initiative, Kansas City Plant, Kansas City, Missouri, $29,900,000.

Project 99–D–128, stockpile management restructuring initiative, Pantex Plant, Amarillo, Texas, $407,000.

Project 98–D–123, stockpile management restructuring initiative, tritium facility modernization and consolidation, Savannah River Plant, Aiken, South Carolina, $10,481,000.

Project 96–D–102, stockpile stewardship facilities revitalization, Phase VI, various locations, $1,000,000.

(C) For secure transportation asset, $157,083,000, to be allocated as follows:

(i) For operation and maintenance, $102,578,000.

(ii) For program direction, $54,505,000.

(D) For safeguards and security, $574,954,000, to be allocated as follows:

(i) For operation and maintenance, $566,054,000.

(ii) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $8,900,000, to be allocated as follows:

Project 99–D–132, stockpile management restructuring initiative, nuclear material safeguards and security upgrades project, Los Alamos National Laboratory, Los Alamos, New Mexico, $8,900,000.

(E) For facilities and infrastructure, $242,512,000.

(2) Defense Nuclear Nonproliferation.—For defense nuclear nonproliferation activities, $1,129,130,000, to be allocated as follows:

(A) For operation and maintenance, $1,037,130,000, to be allocated as follows:

(i) For nonproliferation and verification research and development, $298,907,000.

(ii) For nonproliferation programs, $446,223,000.

(iii) For fissile materials, $292,000,000.

(B) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $156,000,000, to be allocated as follows:

Project 01–D–407, highly enriched uranium blend-down, Savannah River Site, Aiken, South Carolina, $30,000,000.

Project 99–D–141, pit disassembly and conversion facility, Savannah River Site, Aiken, South Carolina, $33,000,000.

Project 99–D–143, mixed oxide fuel fabrication facility, Savannah River Site, Aiken, South Carolina, $93,000,000.

(3) Naval Reactors.—For naval reactors, $707,020,000, to be allocated as follows:

(A) For naval reactors development, $682,590,000, to be allocated as follows:

(i) For operation and maintenance, $671,290,000.

(ii) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $11,300,000, to be allocated as follows:

Project 03–D–201, cleanroom technology facility, Bettis Atomic Power Laboratory, West Mifflin, Pennsylvania, $7,200,000.

Project 01–D–200, major office replacement building, Schenectady, New York, $2,100,000.

Project 90–N–102, expended core facility dry cell project, Naval Reactors Facility, Idaho, $2,000,000.

(B) For program direction, $24,430,000.

(4) OFFICE OF ADMINISTRATOR FOR NUCLEAR SECURITY.—For the Office of the Administrator for Nuclear Security, and for program direction for the National Nuclear Security Administration (other than for naval reactors and secure transportation asset), $335,705,000.

SEC. 3102. DEFENSE ENVIRONMENTAL MANAGEMENT.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for environmental management activities in carrying out programs necessary for national security in the amount of $6,710,774,000, to be allocated as follows:

(1) CLOSURE PROJECTS.—For closure projects carried out in accordance with section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2836; 42 U.S.C. 7277n), $1,109,314,000.

(2) SITE/PROJECT COMPLETION.—For site completion and project completion in carrying out environmental management activities necessary for national security programs, $793,950,000, to be allocated as follows:

(A) For operation and maintenance, $779,706,000.

(B) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $14,244,000, to be allocated as follows:

Project 02–D–402, Intec cathodic protection system expansion, Idaho National Engineering and Environmental Laboratory, Idaho Falls, Idaho, $1,119,000.

Project 02–D–420, plutonium stabilization and packaging, Savannah River Site, Aiken, South Carolina, $2,000,000.

Project 01–D–414, project engineering and design (PED), various locations, $5,125,000.

Project 86–D–103, decontamination and waste treatment facility, Lawrence Livermore National Laboratory, Livermore, California, $6,000,000.

(3) POST-2006 COMPLETION.—For post-2006 completion in carrying out environmental restoration and waste management activities necessary for national security programs, $2,617,199,000, to be allocated as follows:

(A) For operation and maintenance, $1,704,341,000.

(B) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $14,870,000, to be allocated as follows:

Project 93–D–187, high-level waste removal from filled waste tanks, Savannah River Site, Aiken, South Carolina, $14,870,000.

(C) For the Office of River Protection in carrying out environmental restoration and waste management activities necessary for national security programs, $897,988,000, to be allocated as follows:

(i) For operation and maintenance, $226,256,000.

(ii) For plant projects (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto), $671,732,000, to be allocated as follows:

Project 03–D–403, immobilized high-level waste interim storage facility, Richland, Washington, $6,363,000.

Project 01–D–416, waste treatment and immobilization plant, Richland, Washington, $619,000,000.

Project 97–D–402, tank farm restoration and safe operations, Richland, Washington, $25,424,000.

Project 94–D–407, initial tank retrieval systems, Richland, Washington, $20,945,000.

(4) SCIENCE AND TECHNOLOGY DEVELOPMENT.—For science and technology development in carrying out environmental management activities necessary for national security programs, $92,000,000.

(5) EXCESS FACILITIES.—For excess facilities in carrying out environmental management activities necessary for national security programs, $1,300,000.

(6) SAFEGUARDS AND SECURITY.—For safeguards and security in carrying out environmental management activities necessary for national security programs, $278,260,000.

(7) URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND.—For contribution to the Uranium Enrichment Decontamination and Decommissioning Fund under chapter 28 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g et seq.), $441,000,000.

(8) ENVIRONMENTAL MANAGEMENT CLEANUP REFORM.—For accelerated environmental restoration and waste management activities, $1,000,000,000.

(9) PROGRAM DIRECTION.—For program direction in carrying out environmental restoration and waste management activities necessary for national security programs, $396,098,000.

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for other defense activities in carrying out programs necessary for national security in the amount of $489,883,000, to be allocated as follows:

(1) INTELLIGENCE.—For intelligence, $43,559,000.

(2) COUNTERINTELLIGENCE.—For counterintelligence, $48,083,000.

(3) OFFICE OF SECURITY.—For the Office of Security for security, $252,218,000, to be allocated as follows:

(A) For nuclear safeguards and security, $156,102,000.

(B) For security investigations, $45,870,000.

(C) For program direction, $50,246,000.

(4) INDEPENDENT OVERSIGHT AND PERFORMANCE ASSURANCE.—For independent oversight and performance assurance, $22,615,000.

(5) OFFICE OF ENVIRONMENT, SAFETY, AND HEALTH.—For the Office of Environment, Safety, and Health, $104,910,000, to be allocated as follows:

(A) For environment, safety, and health (defense), $86,892,000.

(B) For program direction, $18,018,000.

(6) WORKER AND COMMUNITY TRANSITION ASSISTANCE.—For worker and community transition assistance, $25,774,000, to be allocated as follows:

(A) For worker and community transition, $22,965,000.

(B) For program direction, $2,809,000.

(7) OFFICE OF HEARINGS AND APPEALS.—For the Office of Hearings and Appeals, $3,136,000.

SEC. 3104. DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs in the amount of $158,399,000, to be allocated as follows:

Project 98–PVT–2, spent nuclear fuel dry storage, Idaho Falls, Idaho, $53,399,000.

Project 97–PVT–2, advanced mixed waste treatment project, Idaho Falls, Idaho, $105,000,000.

SEC. 3105. DEFENSE NUCLEAR WASTE DISPOSAL.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount of $215,000,000.

Subtitle B—Recurring General Provisions

SEC. 3121. REPROGRAMMING.

(a) IN GENERAL.—Until the Secretary of Energy submits to the congressional defense committees the report referred to in subsection (b) and a period of 30 days has elapsed after the date on which such committees receive the report, the Secretary may not use amounts appropriated pursuant to this title for any program—

(1) in amounts that exceed, in a fiscal year—

(A) 115 percent of the amount authorized for that program by this title; or

(B) $5,000,000 more than the amount authorized for that program by this title; or

(2) which has not been presented to, or requested of, Congress.

(b) REPORT.—(1) The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

(2) In the computation of the 30-day period under subsection (a), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) LIMITATIONS.—(1) In no event may the total amount of funds obligated pursuant to this title exceed the total amount authorized to be appropriated by this title.

(2) Funds appropriated pursuant to this title may not be used for an item for which Congress has specifically denied funds.

SEC. 3122. LIMITS ON MINOR CONSTRUCTION PROJECTS.

(a) AUTHORITY.—The Secretary of Energy may carry out any minor construction project using operation and maintenance funds, or facilities and infrastructure funds, authorized by this title.

(b) ANNUAL REPORT.—The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) COST VARIATION REPORTS TO CONGRESSIONAL COMMITTEES.—If, at any time during the construction of any minor construction project authorized by this title, the estimated cost of the project is revised and the revised cost of the project exceeds $5,000,000, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) MINOR CONSTRUCTION PROJECT DEFINED.—In this section, the term "minor construction project" means any plant project not specifically authorized by law if the approved total estimated cost of the plant project does not exceed $5,000,000.

SEC. 3123. LIMITS ON CONSTRUCTION PROJECTS.

(a) IN GENERAL.—(1) Except as provided in paragraph (2), construction on a construction project may not be started or additional obligations incurred in connection with the project above the total estimated cost, whenever the current estimated cost of the construction project, authorized by section 3101, 3102, or 3103, or which is in support of national security programs of the Department of Energy and was authorized by any previous Act, exceeds by more than 25 percent the higher of—

(A) the amount authorized for the project; or

(B) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(2) An action described in paragraph (1) may be taken if—

(A) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and

(B) a period of 30 days has elapsed after the date on which the report is received by the committees.

(b) EXCEPTION.—Subsection (a) does not apply to a construction project with a current estimated cost of less than $5,000,000.

SEC. 3124. FUND TRANSFER AUTHORITY.

(a) TRANSFER TO OTHER FEDERAL AGENCIES.—The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to this title to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) TRANSFER WITHIN DEPARTMENT OF ENERGY.—(1) Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to this title between any such authorizations. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) Not more than 5 percent of any such authorization may be transferred between authorizations under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) LIMITATIONS.—The authority provided by this subsection to transfer authorizations—

(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and

(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) NOTICE TO CONGRESS.—The Secretary of Energy shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of any transfer of funds to or from authorizations under this title.

SEC. 3125. AUTHORITY FOR CONCEPTUAL AND CONSTRUCTION DESIGN.

(a) REQUIREMENT OF CONCEPTUAL DESIGN.—(1) Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

(2) If the estimated cost of completing a conceptual design for a construction project exceeds $3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) The requirement in paragraph (1) does not apply to a request for funds—

(A) for a minor construction project the total estimated cost of which is less than $5,000,000; or

(B) for emergency planning, design, and construction activities under section 3126.

(b) AUTHORITY FOR CONSTRUCTION DESIGN.—(1) Within the amounts authorized by this title, the Secretary of Energy may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed $600,000.

(2) If the total estimated cost for construction design in connection with any construction project exceeds $600,000, funds for that design must be specifically authorized by law.

SEC. 3126. AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.

(a) AUTHORITY.—The Secretary of Energy may use any funds available to the Department of Energy pursuant to an authorization in this title, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, under sections 3101, 3102, 3103, and 3104 to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) LIMITATION.—The Secretary may not exercise the authority under subsection (a) in the case of any construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) SPECIFIC AUTHORITY.—The requirement of section 3125(b)(2) does not apply to emergency planning, design, and construction activities conducted under this section.

SEC. 3127. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.

Subject to the provisions of appropriation Acts and section 3121, amounts appropriated pursuant to this title for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

SEC. 3128. AVAILABILITY OF FUNDS.

(a) IN GENERAL.—Except as provided in subsection (b), when so specified in an appropriations Act, amounts appropriated for operation and maintenance or for plant projects may remain available until expended.

(b) EXCEPTION FOR PROGRAM DIRECTION FUNDS.—Amounts appropriated for program direction pursuant to an authorization of appropriations in subtitle A shall remain available to be expended only until the end of fiscal year 2004.

SEC. 3129. TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.

(a) TRANSFER AUTHORITY FOR DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—(1) Not more than three transfers may be made to or from any program or project under subsection (a) in a fiscal year.

(2) The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3121 shall not apply to transfers of funds pursuant to subsection (a).

(d) NOTIFICATION.—The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) DEFINITIONS.—In this section:

(1) The term "program or project" means, with respect to a field office of the Department of Energy, any of the following:

(A) A program referred to or a project listed in paragraph (2) or (3) of section 3102.

(B) A program or project not described in subparagraph (A) that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated before the date of the enactment of this Act.

(2) The term "defense environmental management funds" means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.

(f) DURATION OF AUTHORITY.—The managers of the field offices of the Department may exercise the authority provided under subsection (a) during the period beginning on October 1, 2002, and ending on September 30, 2003.

SEC. 3130. TRANSFER OF WEAPONS ACTIVITIES FUNDS.

(a) TRANSFER AUTHORITY FOR WEAPONS ACTIVITIES FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—(1) Not more than three transfers may be made to or from any program or project under subsection (a) in a fiscal year.

(2) The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

(A) is necessary to address a risk to health, safety, or the environment; or

(B) will result in cost savings and efficiencies.

(4) A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3121 shall not apply to transfers of funds pursuant to subsection (a).

(d) NOTIFICATION.—The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) DEFINITIONS.—In this section:

(1) The term "program or project" means, with respect to a field office of the Department of Energy, any of the following:

(A) A program referred to or a project listed in section 3101(1).

(B) A program or project not described in subparagraph (A) that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated before the date of the enactment of this Act.

(2) The term "weapons activities funds" means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

(f) Duration of Authority.—The managers of the field offices of the Department may exercise the authority provided under subsection (a) during the period beginning on October 1, 2002, and ending on September 30, 2003.

Subtitle C—Program Authorizations, Restrictions, and Limitations

SEC. 3131. AVAILABILITY OF FUNDS FOR ENVIRONMENTAL MANAGEMENT CLEANUP REFORM.

(a) Limitation on Availability for Environmental Management Cleanup Reform.—None of the funds authorized to be appropriated by section 3102(8) for the Department of Energy for environmental management cleanup reform may be obligated or expended until the Secretary of Energy—

(1) publishes in the Federal Register, and submits to the congressional defense committees, a report setting forth criteria established by the Secretary—

(A) for selecting the projects that will receive funding using such funds; and

(B) for setting priorities among the projects selected under subparagraph (A); or

(2) notifies the congressional defense committees that the criteria described by paragraph (1) will not be established.

(b) Requirements Regarding Establishment of Criteria.—Before establishing criteria, if any, under subsection (a)(1), the Secretary shall publish a proposal for such criteria in the Federal Register, and shall provide a period of 45 days for public notice and comment on the proposal.

(c) Availability of Funds if Criteria Are Not Established.—(1) If the Secretary exercises the authority under subsection (a)(2), the Secretary shall reallocate the funds referred to in subsection (a) among sites that received funds during fiscal year 2002 for defense environmental restoration and waste management activities under section 3102 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–197; 115 Stat. 1358).

(2) The amount of funds referred to in subsection (a) that are allocated under paragraph (1) to a site described in that paragraph shall bear the same ratio to the amount of funds referred to in subsection (a) as the amount of funds received by such site during fiscal year 2002 under section 3102 of the National Defense Authorization Act for Fiscal Year 2002 bears to the total amount of funds made available to all sites during fiscal year 2002 under that section.

(3) No funds allocated under paragraph (1) may be obligated or expended until 30 days after the Secretary submits to the congressional defense committee a list of the projects at each site allocated funds under that paragraph, and the amount of such funds to be provided to each such project at each such site.

(4) Funds referred to in subsection (a) may not be obligated or expended for any site that was not funded in fiscal year 2002 from amounts available to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 2002.

SEC. 3132. ROBUST NUCLEAR EARTH PENETRATOR.

Not later than February 3, 2003, the Secretary of Defense shall, in consultation with the Secretary of Energy, submit to the congressional defense committees a report on the Robust Nuclear Earth Penetrator (RNEP). The report shall set forth—

(1) the military requirements for the Robust Nuclear Earth Penetrator;

(2) the nuclear weapons employment policy regarding the Robust Nuclear Earth Penetrator;

(3) a detailed description of the categories or types of targets that the Robust Nuclear Earth Penetrator is designed to hold at risk; and

(4) an assessment of the ability of conventional weapons to address the same categories and types of targets described under paragraph (3).

SEC. 3133. DATABASE TO TRACK NOTIFICATION AND RESOLUTION PHASES OF SIGNIFICANT FINDING INVESTIGATIONS.

(a) Availability of Funds for Database.—Amounts authorized to be appropriated by section 3101(1) for the National Nuclear Security Administration for weapons activities shall be available to the Deputy Administrator for Nuclear Security for Defense Programs for the development and implementation of a database for all national security laboratories to track the notification and resolution phases of Significant Finding Investigations (SFIs). The purpose of the database is to facilitate the monitoring of the progress and accountability of the national security laboratories in Significant Finding Investigations.

(b) Implementation Deadline.—The database required by subsection (a) shall be implemented not later than September 30, 2003.

(c) National Security Laboratory Defined.—In this section, the term "national security laboratory" has the meaning given that term in section 3281(1) of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 968; 50 U.S.C. 2471(1)).

SEC. 3134. REQUIREMENTS FOR SPECIFIC REQUEST FOR NEW OR MODIFIED NUCLEAR WEAPONS.

(a) Requirement for Request for Funds for Development.—(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code.

(2) The activities described in this paragraph are as follows:

(A) The conduct, or provision for conduct, of research and development which could lead to the production of a new nuclear weapon by the United States.

(B) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a new nuclear weapon by the United States.

(C) The conduct, or provision for conduct, of research and development which could lead to the production of a modified nuclear weapon by the United States.

(D) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a modified nuclear weapon by the United States.

(b) Budget Request Format.—The Secretary shall include in a request for funds under subsection (a) the following:

(1) In the case of funds for activities described in subparagraph (A) or (C) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapons that is in phase 1 or 2A or phase 6.1 or 6.2A, as the case may be, of the nuclear weapons acquisition process.

(2) In the case of funds for activities described in subparagraph (B) or (D) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapon that is in phase 3 or higher or phase 6.3 or higher, as the case may be, of the nuclear weapons acquisition process.

(c) Exception.—Subsections (a) shall not apply to funds for purposes of conducting, or providing for the conduct of, research and development, or manufacturing and engineering, determined by the Secretary to be necessary—

(1) for the nuclear weapons life extension program;

(2) to modify an existing nuclear weapon solely to address safety or reliability concerns; or

(3) to address proliferation concerns.

(d) Construction With Prohibition on Research and Development on Low-Yield Nuclear Weapons.—Nothing in this section may be construed to modify, repeal, or in any way affect the provisions of section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note), relating to prohibitions on research and development on low-yield nuclear weapons.

(e) Definitions.—In this section:

(1) The term "life extension program" means the program to repair or replace non-nuclear components, or to modify the pit or canned subassembly, of nuclear weapons in the nuclear weapons stockpile on the date of the enactment of this Act in order to assure that such nuclear weapons retain the ability to meet the military requirements applicable to such nuclear weapons when first placed in the nuclear weapons stockpile.

(2) The term "modified nuclear weapon" means a nuclear weapon that contains a pit or canned subassembly, either of which—

(A) is in the nuclear weapons stockpile as of the date of the enactment of this Act; and

(B) is being modified in order to meet a military requirement that is other than the military requirements applicable to such nuclear weapon when first placed in the nuclear weapons stockpile.

(3) The term "new nuclear weapon" means a nuclear weapon that contains a pit or canned subassembly, either of which is neither—

(A) in the nuclear weapons stockpile on the date of the enactment of this Act; nor

(B) in production as of that date.

SEC. 3135. REQUIREMENT FOR AUTHORIZATION BY LAW FOR FUNDS OBLIGATED OR EXPENDED FOR DEPARTMENT OF ENERGY NATIONAL SECURITY ACTIVITIES.

Section 660 of the Department of Energy Organization Act (42 U.S.C. 7270) is amended—

(1) by inserting "(a)" before "Appropriations"; and

(2) by adding at the end the following new subsection:

"(b)(1) No funds for the Department may be obligated or expended for—

"(A) national security programs and activities of the Department; or

"(B) activities under the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.);

unless funds therefor have been specifically authorized by law.

"(2) Nothing in paragraph (1) may be construed to preclude the requirement under subsection (a), or under any other provision of law, for an authorization of appropriations for programs and activities of the Department (other than programs and activities covered by that paragraph) as a condition to the obligation and expenditure of funds for programs and activities of the Department (other than programs and activities covered by that paragraph).".

SEC. 3136. LIMITATION ON AVAILABILITY OF FUNDS FOR PROGRAM TO ELIMINATE WEAPONS GRADE PLUTONIUM PRODUCTION IN RUSSIA.

(a) Limitation.—Of the amounts authorized to be appropriated by this title for the program to eliminate weapons grade plutonium production, the Administrator for Nuclear Security may not obligate or expend more than $100,000,000 for that program until 30 days after the date on which the Administrator submits to

the congressional defense committees a copy of an agreement entered into between the United States Government and the Government of the Russian Federation to shut down the three plutonium-producing reactors in Russia.

(b) AGREEMENT ELEMENTS.—The agreement under subsection (a)—

(1) shall contain—

(A) a commitment to shut down the three plutonium-producing reactors;

(B) the date on which each such reactor will be shut down;

(C) a schedule and milestones for each such reactor to complete the shut down of such reactor by the date specified under subparagraph (B);

(D) an arrangement for access to sites and facilities necessary to meet such schedules and milestones; and

(E) an arrangement for audit and examination procedures in order to evaluate progress in meeting such schedules and milestones; and

(2) may include cost sharing arrangements.

Subtitle D—Proliferation Matters

SEC. 3151. ADMINISTRATION OF PROGRAM TO ELIMINATE WEAPONS GRADE PLUTONIUM PRODUCTION IN RUSSIA.

(a) TRANSFER OF PROGRAM TO DEPARTMENT OF ENERGY.—The program to eliminate weapons grade plutonium production in Russia shall be transferred from the Department of Defense to the Department of Energy.

(b) TRANSFER OF ASSOCIATED FUNDS.—(1) Notwithstanding any restriction or limitation in law on the availability of Cooperative Threat Reduction funds specified in paragraph (2), the Cooperative Threat Reduction funds specified in that paragraph that are available for the program referred to in subsection (a) shall be transferred from the Department of Defense to the Department of Energy.

(2) The Cooperative Threat Reduction funds specified in this paragraph are the following:

(A) Fiscal year 2002 Cooperative Threat Reduction funds, as specified in section 1301(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1254; 22 U.S.C. 5952 note).

(B) Fiscal year 2001 Cooperative Threat Reduction funds, as specified in section 1301(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–339).

(C) Fiscal year 2000 Cooperative Threat Reduction funds, as specified in section 1301(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 792; 22 U.S.C. 5952 note).

(c) AVAILABILITY OF TRANSFERRED FUNDS.—(1) Notwithstanding any restriction or limitation in law on the availability of Cooperative Threat Reduction funds specified in subsection (b)(2), the Cooperative Threat Reduction funds transferred under subsection (b) for the program referred to in subsection (a) shall be available for activities as follows:

(A) To design and construct, refurbish, or both, fossil fuel energy plants in Russia that provide alternative sources of energy to the energy plants in Russia that produce weapons grade plutonium.

(B) To carry out limited safety upgrades of not more than three energy plants in Russia that produce weapons grade plutonium in order to permit the shutdown of such energy plants and eliminate the production of weapons grade plutonium in such energy plants.

(2) Amounts available under paragraph (1) for activities referred to in that paragraph shall remain available for such activities until expended.

SEC. 3152. REPEAL OF REQUIREMENT FOR REPORTS ON OBLIGATION OF FUNDS FOR PROGRAMS ON FISSILE MATERIALS IN RUSSIA.

Section 3131 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 617; 22 U.S.C. 5952 note) is amended—

(1) in subsection (a), by striking "(a) AUTHORITY.—"; and

(2) by striking subsection (b).

SEC. 3153. EXPANSION OF ANNUAL REPORTS ON STATUS OF NUCLEAR MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAMS.

(a) COVERED PROGRAMS.—Subsection (a) of section 3171 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–475) is amended by striking "Russia that" and inserting "countries where such materials".

(b) REPORT CONTENTS.—Subsection (b) of that section is amended—

(1) in paragraph (1) by inserting "in each country covered by subsection (a)" after "locations,";

(2) in paragraph (2), by striking "in Russia" and inserting "in each such country";

(3) in paragraph (3), by inserting "in each such country" after "subsection (a)"; and

(4) in paragraph (5), by striking "by total amount and by amount per fiscal year" and inserting "by total amount per country and by amount per fiscal year per country".

SEC. 3154. TESTING OF PREPAREDNESS FOR EMERGENCIES INVOLVING NUCLEAR, RADIOLOGICAL, CHEMICAL, OR BIOLOGICAL WEAPONS.

(a) EXTENSION OF TESTING.—Section 1415 of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2720; 50 U.S.C. 2315) is amended—

(1) in subsection (a)(2), by striking "of five successive fiscal years beginning with fiscal year 1997" and inserting "of fiscal years 1997 through 2013"; and

(2) in subsection (b)(2), by striking "of five successive fiscal years beginning with fiscal year 1997" and inserting "of fiscal years 1997 through 2013".

(b) CONSTRUCTION OF EXTENSION WITH DESIGNATION OF ATTORNEY GENERAL AS LEAD OFFICIAL.—The amendment made by subsection (a) may not be construed as modifying the designation of the President entitled "Designation of the Attorney General as the Lead Official for the Emergency Response Assistance Program Under Sections 1412 and 1415 of the National Defense Authorization Act for Fiscal Year 1997", dated April 6, 2000, designating the Attorney General to assume programmatic and funding responsibilities for the Emergency Response Assistance Program under sections 1412 and 1415 of the Defense Against Weapons of Mass Destruction Act of 1996.

SEC. 3155. PROGRAM ON RESEARCH AND TECHNOLOGY FOR PROTECTION FROM NUCLEAR OR RADIOLOGICAL TERRORISM.

(a) PROGRAM REQUIRED.—(1) The Administrator for Nuclear Security shall carry out a program on research and technology for protection from nuclear or radiological terrorism, including technology for the detection (particularly as border crossings and ports of entry), identification, assessment, control, disposition, consequence management, and consequence mitigation of the dispersal of radiological materials or of nuclear terrorism.

(2) The Administrator shall carry out the program as part of the support of the Administrator for homeland security and counterterrorism within the National Nuclear Security Administration

(b) PROGRAM ELEMENTS.—In carrying out the program required by subsection (a), the Administrator shall—

(1) provide for the development of technologies to respond to threats or incidents involving nuclear or radiological terrorism in the United States;

(2) demonstrate applications of the technologies developed under paragraph (1), including joint demonstrations with the Office of Homeland Security and other appropriate Federal agencies;

(3) provide, where feasible, for the development in cooperation with the Russian Federation of technologies to respond to nuclear or radiological terrorism in the former states of the Soviet Union, including the demonstration of technologies so developed;

(4) provide, where feasible, assistance to other countries on matters relating to nuclear or radiological terrorism, including—

(A) the provision of technology and assistance on means of addressing nuclear or radiological incidents;

(B) the provision of assistance in developing means for the safe disposal of radioactive materials;

(C) in coordination with the Nuclear Regulatory Commission, the provision of assistance in developing the regulatory framework for licensing and developing programs for the protection and control of radioactive sources; and

(D) the provision of assistance in evaluating the radiological sources identified as not under current accounting programs in the report of the Inspector General of the Department of Energy entitled "Accounting for Sealed Sources of Nuclear Material Provided to Foreign Countries", and in identifying and controlling radiological sources that represent significant risks; and

(5) in coordination with the Office of Environment, Safety, and Health of the Department of Energy, the Department of Commerce, and the International Atomic Energy Agency, develop consistent criteria for screening international transfers of radiological materials.

(c) REQUIREMENTS FOR INTERNATIONAL ELEMENTS OF PROGRAM.—(1) In carrying out activities in accordance with paragraphs (3) and (4) of subsection (b), the Administrator shall consult with—

(A) the Secretary of Defense, Secretary of State, and Secretary of Commerce; and

(B) the International Atomic Energy Agency.

(2) The Administrator shall encourage joint leadership between the United States and the Russian Federation of activities on the development of technologies under subsection (b)(4).

(d) INCORPORATION OF RESULTS IN EMERGENCY RESPONSE ASSISTANCE PROGRAM.—To the maximum extent practicable, the technologies and information developed under the program required by subsection (a) shall be incorporated into the program on responses to emergencies involving nuclear and radiological weapons carried out under section 1415 of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 50 U.S.C. 2315).

(e) AMOUNT FOR ACTIVITIES.—Of the amount authorized to be appropriated by section 3101(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation and available for the development of a new generation of radiation detectors for homeland defense, up to $15,000,000 shall be available for carrying out this section.

SEC. 3156. EXPANSION OF INTERNATIONAL MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM.

(a) EXPANSION OF PROGRAM TO ADDITIONAL COUNTRIES AUTHORIZED.—The Secretary of Energy may expand the International Materials Protection, Control, and Accounting (MPC&A)

program of the Department of Energy to encompass countries outside the Russian Federation and the independent states of the former Soviet Union.

(b) NOTICE TO CONGRESS OF USE OF FUNDS FOR ADDITIONAL COUNTRIES.—Not later than 30 days after the Secretary obligates funds for the International Materials Protection, Control, and Accounting program, as expanded under subsection (a), for activities in or with respect to a country outside the Russian Federation and the independent states of the former Soviet Union, the Secretary shall submit to Congress a notice of the obligation of such funds for such activities.

(c) ASSISTANCE TO DEPARTMENT OF STATE FOR NUCLEAR MATERIALS SECURITY PROGRAMS.—(1) As part of the International Materials Protection, Control, and Accounting program, the Secretary of Energy may provide technical assistance to the Secretary of State in the efforts of the Secretary of State to assist other nuclear weapons states to review and improve their nuclear materials security programs.

(2) The technical assistance provided under paragraph (1) may include the sharing of technology or methodologies to the states referred to in that paragraph. Any such sharing shall—

(A) be consistent with the treaty obligations of the United States; and

(B) take into account the sovereignty of the state concerned and its weapons programs, as well the sensitivity of any information involved regarding United States weapons or weapons systems.

(3) The Secretary of Energy may include the Russian Federation in activities under paragraph (1) if the Secretary determines that the experience of the Russian Federation under the International Materials Protection, Control, and Accounting program with the Russian Federation would make the participation of the Russian Federation in such activities useful in providing technical assistance under that paragraph.

(d) PLAN FOR ACCELERATED CONVERSION OR RETURN OF WEAPONS-USABLE NUCLEAR MATERIALS.—(1) The Secretary shall develop a plan to accelerate the conversion or return to the country of origin of all weapons-usable nuclear materials located in research reactors and other facilities outside the country of origin.

(2) The plan under paragraph (1) for nuclear materials of origin in the Soviet Union shall be developed in consultation with the Russian Federation.

(3) As part of the plan under paragraph (1), the Secretary shall identify the funding and schedules required to assist the research reactors and facilities referred to in that paragraph in upgrading their materials protection, control, and accounting procedures until the weapons-usable nuclear materials in such reactors and facilities are converted or returned in accordance with that paragraph.

(4) The provision of assistance under paragraph (3) shall be closely coordinated with ongoing efforts of the International Atomic Energy Agency for the same purpose.

(e) RADIOLOGICAL DISPERSAL DEVICE MATERIALS PROTECTION, CONTROL, AND ACCOUNTING.—(1) The Secretary shall establish within the International Materials Protection, Control, and Accounting program a program on the protection, control, and accounting of materials usable in radiological dispersal devices.

(2) The program under paragraph (1) shall include—

(A) an identification of vulnerabilities regarding radiological materials worldwide;

(B) the mitigation of vulnerabilities so identified through appropriate security enhancements; and

(C) an acceleration of efforts to recover and control diffused radiation sources and 'orphaned'' radiological sources that are of sufficient strength to represent a significant risk.

(3) The program under paragraph (1) shall be known as the Radiological Dispersal Device Materials Protection, Control, and Accounting program.

(f) STUDY OF PROGRAM TO SECURE CERTAIN RADIOLOGICAL MATERIALS.—(1) The Secretary, acting through the Administrator for Nuclear Security, shall require the Office of International Materials Protection, Control, and Accounting of the Department of Energy to conduct a study to determine the feasibility and advisability of developing a program to secure radiological materials outside the United States that pose a threat to the national security of the United States.

(2) The study under paragraph (1) shall include the following:

(A) An identification of the categories of radiological materials that are covered by that paragraph, including an order of priority for securing each category of such radiological materials.

(B) An estimate of the number of sites at which such radiological materials are present.

(C) An assessment of the effort required to secure such radiological materials at such sites, including—

(i) a description of the security upgrades, if any, that are required at such sites;

(ii) an assessment of the costs of securing such radiological materials at such sites;

(iii) a description of any cost-sharing arrangements to defray such costs;

(iv) a description of any legal impediments to such effort, including a description of means of overcoming such impediments; and

(v) a description of the coordination required for such effort among appropriate United States Government entities (including the Nuclear Regulatory Commission), participating countries, and international bodies (including the International Atomic Energy Agency).

(D) A description of the pilot project undertaken in Russia.

(3) In identifying categories of radiological materials under paragraph (2)(A), the Secretary shall take into account matters relating to specific activity, half-life, radiation type and energy, attainability, difficulty of handling, and toxicity, and such other matters as the Secretary considers appropriate.

(4) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under this subsection. The report shall include the matters specified under paragraph (2) and such other matters, including recommendations, as the Secretary considers appropriate as a result of the study.

(5) In this subsection, the term "radiological material" means any radioactive material, other than plutonium (Pu) or uranium enriched above 20 percent uranium-235.

(g) AMENDMENT OF CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIAL.—(1) It is the sense of Congress that the President should encourage amendment of the Convention on the Physical Protection of Nuclear Materials in order to provide that the Convention shall—

(A) apply to both the domestic and international use and transport of nuclear materials;

(B) incorporate fundamental practices for the physical protection of such materials; and

(C) address protection against sabotage involving nuclear materials.

(2) In this subsection, the term "Convention on the Physical Protection of Nuclear Materials" means the Convention on the Physical Protection of Nuclear Materials, With Annex, done at Vienna on October 26, 1979.

(h) AMOUNT FOR ACTIVITIES.—Of the amount authorized to be appropriated by section 3102(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $5,000,000 shall be available for carrying out this section.

SEC. 3157. ACCELERATED DISPOSITION OF HIGHLY ENRICHED URANIUM AND PLUTONIUM.

(a) SENSE OF CONGRESS ON PROGRAM TO SECURE STOCKPILES OF HIGHLY ENRICHED URANIUM AND PLUTONIUM.—(1) It is the sense of Congress that the Secretary of Energy, in consultation with the Secretary of State and Secretary of Defense, should develop a comprehensive program of activities to encourage all countries with nuclear materials to adhere to, or to adopt standards equivalent to, the International Atomic Energy Agency standard on The Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Rev.4), relating to the security of stockpiles of highly enriched uranium (HEU) and plutonium (Pu).

(2) To the maximum extent practicable, the program should be developed in consultation with the Russian Federation, other Group of 8 countries, and other allies of the United States.

(3) Activities under the program should include specific, targeted incentives intended to encourage countries that cannot undertake the expense of conforming to the standard referred to in paragraph (1) to relinquish their highly enriched uranium (HEU) or plutonium (Pu), including incentives in which a country, group of countries, or international body—

(A) purchase such materials and provide for their security (including by removal to another location);

(B) undertake the costs of decommissioning facilities that house such materials;

(C) in the case of research reactors, convert such reactors to low-enriched uranium reactors; or

(D) upgrade the security of facilities that house such materials in order to meet stringent security standards that are established for purposes of the program based upon agreed best practices.

(b) PROGRAM ON ACCELERATED DISPOSITION OF HEU AUTHORIZED.—(1) The Secretary of Energy may carry out a program to pursue with the Russian Federation, and any other nation that possesses highly enriched uranium, options for blending such uranium so that the concentration of U-235 in such uranium is below 20 percent.

(2) The options pursued under paragraph (1) shall include expansion of the Material Consolidation and Conversion program of the Department of Energy to include—

(A) additional facilities for the blending of highly enriched uranium; and

(B) additional centralized secure storage facilities for highly enriched uranium designated for blending.

(c) INCENTIVES REGARDING HIGHLY ENRICHED URANIUM IN RUSSIA.—As part of the options pursued under subsection (b) with the Russian Federation, the Secretary may provide financial and other incentives for the removal of all highly enriched uranium from any particular facility in the Russian Federation if the Secretary determines that such incentives will facilitate the consolidation of highly enriched uranium in the Russian Federation to the best-secured facilities.

(d) CONSTRUCTION WITH HEU DISPOSITION AGREEMENT.—Nothing in this section may be construed as terminating, modifying, or otherwise effecting requirements for the disposition of highly enriched uranium under the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, signed at Washington on February 18, 1993.

(e) PRIORITY IN BLENDING ACTIVITIES.—In pursuing options under this section, the Secretary shall give priority to the blending of *highly enriched uranium from weapons, though highly enriched uranium from sources other than weapons may also be blended.*

(f) TRANSFER OF HIGHLY ENRICHED URANIUM AND PLUTONIUM TO UNITED STATES.—(1) As part of the program under subsection (b), the Secretary may, upon the request of any nation—

(A) purchase highly enriched uranium or weapons grade plutonium from the nation at a price determined by the Secretary;

(B) transport any uranium or plutonium so purchased to the United States; and

(C) store any uranium or plutonium so transported in the United States.

(2) The Secretary is not required to blend any highly enriched uranium purchased under paragraph (1)(A) in order to reduce the concentration of U–235 in such uranium to below 20 percent. Amounts authorized to be appropriated by subsection (m) may not be used for purposes of blending such uranium.

(g) TRANSFER OF HIGHLY ENRICHED URANIUM TO RUSSIA.—(1) As part of the program under subsection (b), the Secretary may encourage nations with highly enriched uranium to transfer such uranium to the Russian Federation for disposition under this section.

(2) The Secretary may pay any nation that transfers highly enriched uranium to the Russian Federation under this subsection an amount determined appropriate by the Secretary.

(3) The Secretary may bear the cost of any blending and storage of uranium transferred to the Russian Federation under this subsection, including any costs of blending and storage under a contract under subsection (h). Any site selected for such storage shall have undergone complete materials protection, control, and accounting upgrades before the commencement of such storage.

(h) CONTRACTS FOR BLENDING AND STORAGE OF HIGHLY ENRICHED URANIUM IN RUSSIA.—(1) As part of the program under subsection (b), the Secretary may enter into one or more contracts with the Russian Federation—

(A) to blend in the Russian Federation highly enriched uranium of the Russian Federation and highly enriched uranium transferred to the Russian Federation under subsection (g); or

(B) to store in the Russian Federation highly enriched uranium before blending or the blended material.

(2) Any site selected for the storage of uranium or blended material under paragraph (1)(B) shall have undergone complete materials protection, control, and accounting upgrades before the commencement of such storage.

(i) LIMITATION ON RELEASE FOR SALE OF BLENDED URANIUM.—Uranium blended under this section may not be released for sale until the earlier of—

(1) January 1, 2014; or

(2) the date on which the Secretary certifies that such uranium can be absorbed into the global market without undue disruption to the uranium mining industry in the United States.

(j) PROCEEDS OF SALE OF URANIUM BLENDED BY RUSSIA.—Upon the sale by the Russian Federation of uranium blended under this section by the Russian Federation, the Secretary may elect to receive from the proceeds of such sale an amount not to exceed 75 percent of the costs incurred by the Department of Energy under subsections (c), (g), and (h).

(k) REPORT ON STATUS OF PROGRAM.—Not later than July 1, 2003, the Secretary shall submit to Congress a report on the status of the program carried out under the authority in subsection (b). The report shall include—

(1) a description of international interest in the program;

(2) schedules and operational details of the program; and

(3) recommendations for future funding for the program.

(l) HIGHLY ENRICHED URANIUM DEFINED.—In this section, the term "highly enriched uranium" means uranium with a concentration of U–235 of 20 percent or more.

(m) AMOUNT FOR ACTIVITIES.—Of the amount to be appropriated by section 3102(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $40,000,000 shall be available for carrying out this section.

SEC. 3158. DISPOSITION OF PLUTONIUM IN RUSSIA.

(a) NEGOTIATIONS WITH RUSSIAN FEDERATION.—(1) The Secretary of Energy is encouraged to continue to support the Secretary of State in negotiations with the Ministry of Atomic Energy of the Russian Federation to finalize the plutonium disposition program of the Russian Federation (as established under the agreement described in subsection (b)).

(2) As part of the negotiations, the Secretary of Energy may consider providing additional funds to the Ministry of Atomic Energy in order to reach a successful agreement.

(3) If such an agreement, meeting the requirements in subsection (c), is reached with the Ministry of Atomic Energy, which requires additional funds for the Russian work, the Secretary shall either seek authority to use funds available for another purpose, or request supplemental appropriations, for such work.

(b) AGREEMENT.—The agreement referred to in subsection (a) is the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated As No Longer Required For Defense Purposes and Related Cooperation, signed August 29, 2000, and September 1, 2000.

(c) REQUIREMENT FOR DISPOSITION PROGRAM.— The plutonium disposition program under subsection (a)—

(1) shall include transparent verifiable steps;

(2) shall proceed at a rate approximately equivalent to the rate of the United States program for the disposition of plutonium;

(3) shall provide for cost-sharing among a variety of countries;

(4) shall provide for contributions by the Russian Federation;

(5) shall include steps over the near term to provide high confidence that the schedules for the disposition of plutonium of the Russian Federation will be achieved; and

(6) may include research on more speculative long-term options for the future disposition of the plutonium of the Russian Federation in addition to the near-term steps under paragraph (5).

SEC. 3159. STRENGTHENED INTERNATIONAL SECURITY FOR NUCLEAR MATERIALS AND SAFETY AND SECURITY OF NUCLEAR OPERATIONS.

(a) REPORT ON OPTIONS FOR INTERNATIONAL PROGRAM TO STRENGTHEN SECURITY AND SAFETY.—(1) Not later than 270 days after the date of the enactment of this Act, the Secretary of Energy shall submit to Congress a report on options for an international program to develop strengthened security for all nuclear materials and safety and security for current nuclear operations.

(2) The Secretary shall consult with the Office of Nuclear Energy Science and Technology of the Department of Energy in the development of options for purposes of the report.

(3) In evaluating options for purposes of the report, the Secretary shall consult with the Nuclear Regulatory Commission and the International Atomic Energy Agency on the feasibility and advisability of actions to reduce the risks associated with terrorist attacks on nuclear power plants outside the United States.

(4) Each option for an international program under paragraph (1) may provide that the program is jointly led by the United States, the Russian Federation, and the International Atomic Energy Agency.

(5) The Secretary shall include with the report on options for an international program under paragraph (1) a description and assessment of various management alternatives for the international program. If any option requires Federal funding or legislation to implement, the report shall also include recommendations for such funding or legislation, as the case may be.

(b) JOINT PROGRAMS WITH RUSSIA ON PROLIFERATION RESISTANT NUCLEAR ENERGY TECHNOLOGIES.—The Director of the Office of Nuclear Energy Science and Technology Energy shall, in coordination with the Secretary, pursue with the Ministry of Atomic Energy of the Russian Federation joint programs between the United States and the Russian Federation on the development of proliferation resistant nuclear energy technologies, including advanced fuel cycles.

(c) PARTICIPATION OF INTERNATIONAL TECHNICAL EXPERTS.—In developing options under subsection (a), the Secretary shall, in consultation with the Nuclear Regulatory Commission, the Russian Federation, and the International Atomic Energy Agency, convene and consult with an appropriate group of international technical experts on the development of various options for technologies to provide strengthened security for nuclear materials and safety and security for current nuclear operations, including the implementation of such options.

(d) ASSISTANCE REGARDING HOSTILE INSIDERS AND AIRCRAFT IMPACTS.—(1) The Secretary may, utilizing appropriate expertise of the Department of Energy and the Nuclear Regulatory Commission, provide assistance to nuclear facilities abroad on the interdiction of hostile insiders at such facilities in order to prevent incidents arising from the disablement of the vital systems of such facilities.

(2) The Secretary may carry out a joint program with the Russian Federation and other countries to address and mitigate concerns on the impact of aircraft with nuclear facilities in such countries.

(e) ASSISTANCE TO IAEA IN STRENGTHENING INTERNATIONAL NUCLEAR SAFETY AND SECURITY.—The Secretary may expand and accelerate the programs of the Department of Energy to support the International Atomic Energy Agency in strengthening international nuclear safety and security.

(f) AMOUNT FOR ACTIVITIES.—Of the amount authorized to be appropriated by section 3102(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $35,000,000 shall be available for carrying out this section as follows:

(1) For activities under subsections (a) through (d), $20,000,000, of which—

(A) $5,000,000 shall be available for sabotage protection for nuclear power plants and other nuclear facilities abroad; and

(B) $10,000,000 shall be available for development of proliferation resistant nuclear energy technologies under subsection (b).

(2) For activities under subsection (e), $15,000,000.

SEC. 3160. EXPORT CONTROL PROGRAMS.

(a) AUTHORITY TO PURSUE OPTIONS FOR STRENGTHENING EXPORT CONTROL PROGRAMS.— The Secretary of Energy may pursue in the former Soviet Union and other regions of concern, principally in South Asia, the Middle East, and the Far East, options for accelerating programs that assist countries in such regions in improving their domestic export control programs for materials, technologies, and expertise

relevant to the construction or use of a nuclear or radiological dispersal device.

(b) AMOUNT FOR ACTIVITIES.—Of the amount authorized to be appropriated by section 3102(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $5,000,000 shall be available for carrying out this section.

SEC. 3161. IMPROVEMENTS TO NUCLEAR MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM OF THE RUSSIAN FEDERATION.

(a) REVISED FOCUS FOR PROGRAM.—(1) The Secretary of Energy shall work cooperatively with the Russian Federation to update and improve the Joint Action Plan for the Materials Protection, Control, and Accounting programs of the Department and the Russian Federation Ministry of Atomic Energy.

(2) The updated plan shall shift the focus of the upgrades of the nuclear materials protection, control, and accounting program of the Russian Federation in order to assist the Russian Federation in achieving, as soon as practicable but not later than January 1, 2012, a sustainable nuclear materials protection, control, and accounting system for the nuclear materials of the Russian Federation that is supported solely by the Russian Federation.

(b) PACE OF PROGRAM.—The Secretary shall work with the Russian Federation, including applicable institutes in Russia, to pursue acceleration of the nuclear materials protection, control, and accounting programs at nuclear defense facilities in the Russian Federation.

(c) TRANSPARENCY OF PROGRAM.—The Secretary shall work with the Russian Federation to identify various alternatives to provide the United States adequate transparency in the nuclear materials protection, control, and accounting program of the Russian Federation to assure that such program is meeting applicable goals for nuclear materials protection, control, and accounting.

(d) SENSE OF CONGRESS.—In furtherance of the activities required under this section, it is the sense of Congress the Secretary should—

(1) enhance the partnership with the Russian Ministry of Atomic Energy in order to increase the pace and effectiveness of nuclear materials accounting and security activities at facilities in the Russian Federation, including serial production enterprises; and

(2) clearly identify the assistance required by the Russian Federation, the contributions anticipated from the Russian Federation, and the transparency milestones that can be used to assess progress in meeting the requirements of this section.

SEC. 3162. COMPREHENSIVE ANNUAL REPORT TO CONGRESS ON COORDINATION AND INTEGRATION OF ALL UNITED STATES NONPROLIFERATION ACTIVITIES.

Section 1205 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1247) is amended by adding at the end the following new subsection:

"(d) ANNUAL REPORT ON IMPLEMENTATION OF PLAN.—(1) Not later than January 31, 2003, and each year thereafter, the President shall submit to Congress a report on the implementation of the plan required by subsection (a) during the preceding year.

"(2) Each report under paragraph (1) shall include—

"(A) a discussion of progress made during the year covered by such report in the matters of the plan required by subsection (a);

"(B) a discussion of consultations with foreign nations, and in particular the Russian Federation, during such year on joint programs to implement the plan;

"(C) a discussion of cooperation, coordination, and integration during such year in the implementation of the plan among the various departments and agencies of the United States Government, as well as private entities that share objectives similar to the objectives of the plan; and

"(D) any recommendations that the President considers appropriate regarding modifications to law or regulations, or to the administration or organization of any Federal department or agency, in order to improve the effectiveness of any programs carried out during such year in the implementation of the plan.".

SEC. 3163. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF COUNTERTERRORISM AND HOMELAND SECURITY ACTIVITIES.

(a) AGENCIES AS JOINT SPONSORS OF LABORATORIES FOR WORK ON ACTIVITIES.—Each department or agency of the Federal Government, or of a State or local government, that carries out work on counterterrorism and homeland security activities at a Department of Energy national laboratory may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department, of such laboratory in the performance of such work.

(b) AGENCIES AS JOINT SPONSORS OF SITES FOR WORK ON ACTIVITIES.—Each department or agency of the Federal Government, or of a State or local government, that carries out work on counterterrorism and homeland security activities at a Department of Energy site may be a joint sponsor of such site in the performance of such work as if such site were a federally funded research and development center and such work were performed under a multiple agency sponsorship arrangement with the Department.

(c) PRIMARY SPONSORSHIP.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement required under subsection (a) or (b).

(d) WORK.—(1) The Administrator for Nuclear Security shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between a requesting agency and a Department of Energy national laboratory or site for work on counterterrorism and homeland security.

(2) A request for work may not be submitted to a national laboratory or site under this section unless approved in advance by the Administrator.

(3) Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a)(4) of the Federal Acquisition Regulation.

(4) The Administrator shall ensure that the work of a national laboratory or site requested under this section is performed expeditiously and to the satisfaction of the head of the department or agency submitting the request.

(e) FUNDING.—(1) Subject to paragraph (2), a joint sponsor of a Department of Energy national laboratory or site under this section shall provide funds for work of such national laboratory or site, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subsection (b).

(2) The total amount of funds provided a national laboratory or site in a fiscal year under this subsection by joint sponsors other than the Department of Energy shall not exceed an amount equal to 25 percent of the total funds provided such national laboratory or site, as the case may be, in such fiscal year from all sources.

Subtitle E—Other Matters

SEC. 3171. INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.

Section 170d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking "until August 1, 2002," and inserting "until August 1, 2012".

SEC. 3172. WORKER HEALTH AND SAFETY RULES FOR DEPARTMENT OF ENERGY FACILITIES.

The Atomic Energy Act of 1954 is amended by inserting after section 234B (42 U.S.C. 2282b) the following:

"SEC. 234C. WORKER HEALTH AND SAFETY RULES FOR DEPARTMENT OF ENERGY NUCLEAR FACILITIES.

"(a) PERSONS SUBJECT TO PENALTY.—

"(1) CIVIL PENALTY.—

"(A) IN GENERAL.—A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 2210(d) (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) Department of Energy Order No. 440.1A (1998), or any rule or regulation relating to industrial or construction health and safety promulgated by the Secretary of Energy (referred to in this section as the "Secretary") after public notice and opportunity for comment under section 553 of title 5, United States Code (commonly known as the 'Administrative Procedure Act'), shall be subject to a civil penalty of not more than $100,000 for each such violation.

"(B) CONTINUING VIOLATIONS.—If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under subparagraph (A).

"(2) REGULATIONS.—

"(A) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations for industrial and construction health and safety that incorporate the provisions and requirements contained in Department of Energy Order No. 440.1A (1998).

"(B) EFFECTIVE DATE.—The regulations promulgated under subparagraph (A) shall take effect on the date that is 1 year after the promulgation date of the regulations.

"(3) VARIANCES OR EXEMPTIONS.—

"(A) IN GENERAL.—The Secretary may provide in the regulations promulgated under paragraph (2) a procedure for granting variances or exemptions to the extent necessary to avoid serious impairment of the national security of the United States.

"(B) DETERMINATION.—In determining whether to provide a variance or exemption under subparagraph (A), the Secretary of Energy shall assess—

"(i) the impact on national security of not providing a variance or exemption; and

"(ii) the benefits or detriments to worker health and safety of providing a variance or exemption.

"(C) PROCEDURE.—Before granting a variance or exemption, the Secretary of Energy shall—

"(i) notify affected employees;

"(ii) provide an opportunity for a hearing on the record; and

"(iii) notify Congress of any determination to grant a variance at least 60 days before the proposed effective date of the variance or exemption.

"(4) APPLICABILITY.—This subsection does not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program.

"(5) ENFORCEMENT GUIDANCE ON STRUCTURES TO BE DISPOSED OF.—

"(A) IN GENERAL.—In enforcing the regulations under paragraph (2), the Secretary of Energy shall, on a case-by-case basis, evaluate

whether a building, facility, structure, or improvement of the Department of Energy that is permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse, should undergo major retrofitting to comply with specific general industry standards.

“(B) No effect on health and safety enforcement.—This subsection does not diminish or otherwise affect—

“(i) the enforcement of any worker health and safety regulations under this section with respect to the surveillance and maintenance or decontamination, decommissioning, or demolition of buildings, facilities, structures, or improvements; or

“(ii) the application of any other law (including regulations), order, or contractual obligation.

“(b) Contract Penalties.—

“(1) In general.—The Secretary shall include in each contract with a contractor of the Department provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation or order relating to industrial or construction health and safety.

“(2) Contents.—The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

“(c) Powers and Limitations.—The powers and limitations applicable to the assessment of civil penalties under section 234A, except for subsection (d) of that section, shall apply to the assessment of civil penalties under this section.

“(d) Total Amount of Penalties.—In the case of an entity described in subsection (d) of section 234A, the total amount of civil penalties under subsection (a) or under subsection (a) of section 234B in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.”.

SEC. 3173. ONE-YEAR EXTENSION OF AUTHORITY OF DEPARTMENT OF ENERGY TO PAY VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) In General.—Section 3161(a) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 5 U.S.C. 5597 note) is amended by striking “January 1, 2004” and inserting “January 1, 2005”.

(b) Construction.—The amendment made by subsection (a) may be superseded by another provision of law that takes effect after the date of the enactment of this Act, and before January 1, 2004, establishing a uniform system for providing voluntary separation incentives (including a system for requiring approval of plans by the Office of Management and Budget) for employees of the Federal Government.

SEC. 3174. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

(a) Support for Fiscal Year 2003.—From amounts authorized to be appropriated to the Secretary of Energy by this title, $6,900,000 shall be available for payment by the Secretary for fiscal year 2003 to the Los Alamos National Laboratory Foundation, a not-for-profit foundation chartered in accordance with section 3167(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2052).

(b) Use of Funds.—The foundation referred to in subsection (a) shall—

(1) utilize funds provided under this section as a contribution to the endowment fund for the foundation; and

(2) use the income generated from investments in the endowment fund that are attributable to the payment made under this section to fund programs to support the educational needs of children in the public schools in the vicinity of Los Alamos National Laboratory, New Mexico.

(c) Repeal of Superseded Authority and Modification of Authority To Extend Contract.—(1) Subsection (b) of section 3136 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1368) is amended to read as follows:

“(b) Support for Fiscal Years 2003 Through 2013.—Subject to the availability of appropriations, the Secretary may provide for a contract extension through fiscal year 2013 similar to the contract extension referred to in subsection (a)(2).”.

(2) The amendment made by paragraph (1) shall take effect on October 1, 2002.

Subtitle F—Disposition of Weapons-Usable Plutonium at Savannah River, South Carolina

SEC. 3181. FINDINGS.

Congress makes the following findings:

(1) In September 2000, the United States and the Russian Federation signed a Plutonium Management and Disposition Agreement by which each agreed to dispose of 34 metric tons of weapons-grade plutonium.

(2) The agreement with Russia is a significant step toward safeguarding nuclear materials and preventing their diversion to rogue states and terrorists.

(3) The Department of Energy plans to dispose of 34 metric tons of weapons-grade plutonium in the United States before the end of 2019 by converting the plutonium to a mixed-oxide fuel to be used in commercial nuclear power reactors.

(4) The Department has formulated a plan for implementing the agreement with Russia through construction of a mixed-oxide fuel fabrication facility, the so-called MOX facility, and a pit disassembly and conversion facility at the Savannah River Site, Aiken, South Carolina.

(5) The United States and the State of South Carolina have a compelling interest in the safe, proper, and efficient operation of the plutonium disposition facilities at the Savannah River Site. The MOX facility will also be economically beneficial to the State of South Carolina, and that economic benefit will not be fully realized unless the MOX facility is built.

(6) The State of South Carolina desires to ensure that all plutonium transferred to the State of South Carolina is stored safely; that the full benefits of the MOX facility are realized as soon as possible; and, specifically, that all defense plutonium or defense plutonium materials transferred to the Savannah River Site either be processed or be removed expeditiously.

SEC. 3182. DISPOSITION OF WEAPONS-USABLE PLUTONIUM AT SAVANNAH RIVER SITE.

(a) Plan for Construction and Operation of MOX Facility.—(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2009, and thereafter, the MOX production objective, and to produce 1 metric ton of mixed oxide fuel by December 31, 2009; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1).

(B) Each report under subparagraph (A) for years before 2010 shall include—

(i) an assessment of compliance with the schedules included with the plan under paragraph (2); and

(ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2009.

(C) Each report under subparagraph (A) for years after 2009 shall—

(i) address whether the MOX production objective has been met; and

(ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) For years after 2017, each report under subparagraph (A) shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

(i) Compliance with such objective.

(ii) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) Corrective Actions.—(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (a)(2) by 12 months or more, the Secretary shall submit to Congress, not later than August 15 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective by January 1, 2009.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established milestones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2009, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2009 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2009.

(5) If, after January 1, 2009, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met by 2009.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to consideration or selection of such option.

(C) Upon submittal of a report under paragraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) Contingent Requirement for Removal of Plutonium and Materials From Savannah

RIVER SITE.—If the MOX production objective is not achieved as of January 1, 2009, the Secretary shall, consistent with the National Environmental Policy Act of 1969 and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2011, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2017, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2017, but not processed by the MOX facility.

(d) ECONOMIC AND IMPACT ASSISTANCE.—(1) If the MOX production objective is not achieved as of January 1, 2011, the Secretary shall pay to the State of South Carolina each year beginning on or after that date through 2016 for economic and impact assistance an amount equal to $1,000,000 per day until the later of—

(A) the passage of 100 days in such year;

(B) the MOX production objective is achieved in such year; or

(C) the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If the MOX production objective is not achieved as of January 1, 2017, the Secretary shall pay to the State of South Carolina each year beginning on or after that date through 2024 for economic and impact assistance an amount equal to $1,000,000 per day until the later of—

(i) the passage of 100 days in such year;

(ii) the MOX production objective is achieved in such year; or

(iii) the Secretary has removed from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2017, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) The Secretary shall make payments, if any, under this subsection, from amounts authorized to be appropriated to the Department of Energy.

(4) If the State of South Carolina obtains an injunction that prohibits the Department from taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) FAILURE TO COMPLETE PLANNED DISPOSITION PROGRAM.—If on July 1 each year beginning in 2020 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for—

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or

(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) REMOVAL OF MIXED-OXIDE FUEL UPON COMPLETION OF OPERATIONS OF MOX FACILITY.—If, one year after the date on which operation of the MOX facility permanently ceases any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or

(2) a plan for removing such fuel from the State of South Carolina.

(g) DEFINITIONS.—In this section:

(1) MOX PRODUCTION OBJECTIVE.—The term "MOX production objective" means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX FACILITY.—The term "MOX facility" means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) DEFENSE PLUTONIUM; DEFENSE PLUTONIUM MATERIALS.—The terms "defense-plutonium" and "defense plutonium materials" mean weapons-usable plutonium.

SEC. 3183. STUDY OF FACILITIES FOR STORAGE OF PLUTONIUM AND PLUTONIUM MATERIALS AT SAVANNAH RIVER SITE.

(a) STUDY.—The Defense Nuclear Facilities Safety Board shall conduct a study of the adequacy of K-Area Materials Storage facility (KAMS), and related support facilities such as Building 235–F, at the Savannah River Site, Aiken, South Carolina, for the storage of defense plutonium and defense plutonium materials in connection with the disposition program provided in section 3182 and in connection with the amended Record of Decision of the Department of Energy for fissile materials disposition.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Defense Nuclear Facilities Safety Board shall submit to Congress and the Secretary of Energy a report on the study conducted under subsection (a).

(c) REPORT ELEMENTS.—The report under subsection (b) shall—

(1) address—

(A) the suitability of KAMS and related support facilities for monitoring and observing any defense plutonium or defense plutonium materials stored in KAMS;

(B) the adequacy of the provisions made by the Department for remote monitoring of such defense plutonium and defense plutonium materials by way of sensors and for handling of retrieval of such defense plutonium and defense plutonium materials; and

(C) the adequacy of KAMS should such defense plutonium and defense plutonium materials continue to be stored at KAMS after 2019; and

(2) include such recommendations as the Defense Nuclear Facilities Safety Board considers appropriate to enhance the safety, reliability, and functionality of KAMS.

(d) REPORTS ON ACTIONS ON RECOMMENDATIONS.—Not later than 6 months after the date on which the report under subsection (b) is submitted to Congress, and every year thereafter, the Secretary and the Board shall each submit to Congress a report on the actions taken by the Secretary in response to the recommendations, if any, included in the report.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2003, $19,494,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

SEC. 3202. AUTHORIZATION OF APPROPRIATIONS FOR THE FORMERLY USED SITES REMEDIAL ACTION PROGRAM OF THE CORPS OF ENGINEERS.

There is hereby authorized to be appropriated for fiscal year 2003 for the Department of the Army, $140,000,000 for the formerly used sites remedial action program of the Corps of Engineers.

House amendment to Senate amendment:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Bob Stump National Defense Authorization Act for Fiscal Year 2003".

(b) FINDINGS.—Congress makes the following findings:

(1) Representative Bob Stump of Arizona was elected to the House of Representatives in 1976 for service in the 95th Congress, after serving in the Arizona legislature for 18 years and serving as President of the Arizona State Senate from 1975 to 1976, and he has been reelected to each subsequent Congress.

(2) A World War II combat veteran, Representative Stump entered service in the United States Navy in 1943, just after his 16th birthday, and served aboard the USS LUNGA POINT and the USS TULAGI, which participated in the invasions of Luzon, Iwo Jima, and Okinawa.

(3) Representative Stump was elected to the Committee on Armed Services in 1978 and has served on nearly all of its subcommittees and panels during 25 years of distinguished service on the committee. He has served as chairman of the committee during the 107th Congress and has championed United States national security as the paramount function of the Federal Government.

(4) Also serving on the Committee on Veterans' Affairs of the House of Representatives, chairing that committee from 1995 to 2000, and serving on the Permanent Select Committee on Intelligence of the House of Representatives, including service as the ranking minority member in 1985 and 1986, Representative Stump has dedicated his entire congressional career to steadfastly supporting America's courageous men and women in uniform both on and off the battlefield.

(5) Representative Stump's tireless efforts on behalf of those in the military and veterans have been recognized with numerous awards for outstanding service from active duty and reserve military, veterans' service, military retiree, and industry organizations.

(6) During his tenure as chairman of the Committee on Armed Services of the House of Representatives, Representative Stump has—

(A) overseen the largest sustained increase to defense spending since the Reagan administration;

(B) led efforts to improve the quality of military life, including passage of the largest military pay raise since 1982;

(C) supported military retirees, including efforts to reverse concurrent receipt law and to save the Armed Forces Retirement Homes;

(D) championed military readiness by defending military access to critical training facilities such Vieques, Puerto Rico, expanding the National Training Center at Ft. Irwin, California, and working to restore balance between environmental concerns and military readiness requirements;

(E) reinvigorated efforts to defend America against ballistic missiles by supporting an increase in fiscal year 2002 of nearly 50 percent above the fiscal year 2001 level for missile defense programs; and

(F) honored America's war heroes by expanding Arlington National Cemetery, establishing a site for the Air Force Memorial, and assuring construction of the World War II Memorial.

(7) In recognition of his long record of accomplishments in enhancing the national security of the United States and his legislative victories on behalf of active duty service members, reservists, guardsmen, and veterans, it is altogether fitting and proper that this Act be named in honor of Representative Bob Stump of Arizona, as provided in subsection (a).

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; findings.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Congressional defense committees defined.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.
Sec. 105. Defense Inspector General.
Sec. 106. Chemical demilitarization program.
Sec. 107. Defense health programs.

Subtitle B—Navy Programs

Sec. 111. Shipbuilding initiative.
Sec. 112. Prohibition on acquisition of Champion-class, T-5 fuel tankers.

Subtitle C—Air Force Programs

Sec. 121. Multiyear procurement authority for C-130J aircraft program.
Sec. 122. Reallocation of certain funds for Air Force Reserve Command F-16 aircraft procurement.

Subtitle D—Other Programs

Sec. 141. Revisions to multiyear contracting authority.
Sec. 142. Transfer of technology items and equipment in support of homeland security.
Sec. 143. Destruction of existing stockpile of lethal chemical agents and munitions.
Sec. 144. Report on unmanned aerial vehicle systems.
Sec. 145. Report on impact of Army Aviation Modernization Plan on the Army National Guard.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.
Sec. 202. Amount for defense science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. RAH-66 Comanche aircraft program.
Sec. 212. Extension of requirement relating to management responsibility for naval mine countermeasures programs.
Sec. 213. Extension of authority to carry out pilot program for revitalizing the laboratories and test and evaluation centers of the Department of Defense.
Sec. 214. Revised requirements for plan for Manufacturing Technology Program.
Sec. 215. Technology Transition Initiative.
Sec. 216. Defense Acquisition Challenge Program.

Subtitle C—Ballistic Missile Defense

Sec. 231. Limitation on obligation of funds for procurement of Patriot (PAC-3) missiles pending submission of required certification.
Sec. 232. Responsibility of Missile Defense Agency for research, development, test, and evaluation related to system improvements of programs transferred to military departments.
Sec. 233. Amendments to reflect change in name of Ballistic Missile Defense Organization to Missile Defense Agency.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and maintenance funding.
Sec. 302. Working capital funds.
Sec. 303. Armed Forces Retirement Home.

Subtitle B—Environmental Provisions

Sec. 311. Incidental taking of migratory birds during military readiness activity.
Sec. 312. Military readiness and the conservation of protected species.
Sec. 313. Single point of contact for policy and budgeting issues regarding unexploded ordnance, discarded military munitions, and munitions constituents.

Subtitle C—Commissaries and Nonappropriated Fund Instrumentalities

Sec. 321. Authority for each military department to provide base operating support to fisher houses.
Sec. 322. Use of commissary stores and MWR retail facilities by members of National Guard serving in national emergency.
Sec. 323. Uniform funding and management of morale, welfare, and recreation programs.

Subtitle D—Workplace and Depot Issues

Sec. 331. Notification requirements in connection with required studies for conversion of commercial or industrial type functions to contractor performance.
Sec. 332. Waiver authority regarding prohibition on contracts for performance of security-guard functions.
Sec. 333. Exclusion of certain expenditures from percentage limitation on contracting for performance of depot-level maintenance and repair workloads.
Sec. 334. Repeal of obsolete provision regarding depot-level maintenance and repair workloads that were performed at closed or realigned military installations.
Sec. 335. Clarification of required core logistics capabilities.

Subtitle E—Defense Dependents Education

Sec. 341. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
Sec. 342. Availability of quarters allowance for unaccompanied defense department teacher required to reside on overseas military installation.
Sec. 343. Provision of summer school programs for students who attend defense dependents' education system.

Subtitle F—Information Technology

Sec. 351. Authorized duration of base contract for Navy-Marine Corps Intranet.
Sec. 352. Annual submission of information on national security and information technology capital assets.
Sec. 353. Implementation of policy regarding certain commercial off-the-shelf information technology products.
Sec. 354. Installation and connection policy and procedures regarding Defense Switch Network.

Subtitle G—Other Matters

Sec. 361. Distribution of monthly reports on allocation of funds within operation and maintenance budget subactivities.
Sec. 362. Minimum deduction from pay of certain members of the Armed Forces to support Armed Forces Retirement Home.
Sec. 363. Condition on conversion of Defense Security Service to a working capital funded entity.
Sec. 364. Continuation of Arsenal support program initiative.
Sec. 365. Training range sustainment plan, Global Status of Resources and Training System, and training range inventory.
Sec. 366. Amendments to certain education and nutrition laws relating to acquisition and improvement of military housing.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.
Sec. 402. Revision in permanent end strength minimum levels.
Sec. 403. Authority for military department Secretaries to increase active-duty end strengths by up to 1 percent.
Sec. 404. General and flag officer management.
Sec. 405. Extension of certain authorities relating to management of numbers of general and flag officers in certain grades.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.
Sec. 412. End strengths for reserves on active duty in support of the Reserves.
Sec. 413. End strengths for military technicians (dual status).
Sec. 414. Fiscal year 2003 limitation on non-dual status technicians.

Subtitle C—Authorization of Appropriations

Sec. 421. Authorization of appropriations for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—General Personnel Management Authorities

Sec. 501. Increase in number of Deputy Commandants of the Marine Corps.

Sec. 502. Extension of good-of-the-service waiver authority for officers appointed to a Reserve Chief or Guard Director position.

Subtitle B—Reserve Component Management

Sec. 511. Reviews of National Guard strength accounting and management and other issues.

Sec. 512. Courts-martial for the National Guard when not in Federal service.

Sec. 513. Matching funds requirements under National Guard Youth Challenge Program.

Subtitle C—Reserve Component Officer Personnel Policy

Sec. 521. Exemption from active status strength limitation for reserve component general and flag officers serving on active duty in certain joint duty assignments designated by the Chairman of the Joint Chiefs of Staff.

Sec. 522. Eligibility for consideration for promotion to grade of major general for certain reserve component brigadier generals who do not otherwise qualify for consideration for promotion under the one-year rule.

Sec. 523. Retention of promotion eligibility for reserve component general and flag officers transferred to an inactive status.

Sec. 524. Authority for limited extension of medical deferment of mandatory retirement or separation for reserve officers.

Subtitle D—Education and Training

Sec. 531. Authority for phased increase to 4,400 in authorized strengths for the service academies.

Sec. 532. Enhancement of reserve component delayed training program.

Sec. 533. Preparation for, participation in, and conduct of athletic competitions by the National Guard and members of the National Guard.

Subtitle E—Decorations and Awards

Sec. 541. Waiver of time limitations for award of certain decorations to certain persons.

Sec. 542. Option to convert award of Armed Forces Expeditionary Medal awarded for Operation Frequent Wind to Vietnam Service Medal.

Subtitle F—Administrative Matters

Sec. 551. Staffing and funding for Defense Prisoner of War/Missing Personnel Office.

Sec. 552. Three-year freeze on reductions of personnel of agencies responsible for review and correction of military records.

Sec. 553. Department of Defense support for persons participating in military funeral honors details.

Sec. 554. Authority for use of volunteers as proctors for administration of Armed Services Vocational Aptitude Battery test.

Sec. 555. Annual report on status of female members of the Armed Forces.

Subtitle G—Benefits

Sec. 561. Voluntary leave sharing program for members of the Armed Forces.

Sec. 562. Enhanced flexibility in medical loan repayment program.

Sec. 563. Expansion of overseas tour extension benefits.

Sec. 564. Vehicle storage in lieu of transportation when member is ordered to a nonforeign duty station outside continental United States.

Subtitle H—Military Justice Matters

Sec. 571. Right of convicted accused to request sentencing by military judge.

Sec. 572. Report on desirability and feasibility of consolidating separate courses of basic instruction for judge advocates.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in basic pay for fiscal year 2003.

Sec. 602. Expansion of basic allowance for housing low-cost or no-cost moves authority to members assigned to duty outside United States.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.

Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.

Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.

Sec. 614. One-year extension of other bonus and special pay authorities.

Sec. 615. Minimum levels of hardship duty pay for duty on the ground in Antarctica or on Arctic icepack.

Sec. 616. Increase in maximum rates for prior service enlistment bonus.

Sec. 617. Retention incentives for health care providers qualified in a critical military skill.

Subtitle C—Travel and Transportation Allowances

Sec. 631. Extension of leave travel deferral period for members performing consecutive overseas tours of duty.

Subtitle D—Retired Pay and Survivors Benefits

Sec. 641. Phase-in of full concurrent receipt of military retired pay and veterans disability compensation for military retirees with disabilities rated at 60 percent or higher.

Sec. 642. Change in service requirements for eligibility for retired pay for non-regular service.

Sec. 643. Elimination of possible inversion in retired pay cost-of-living adjustment for initial COLA computation.

Sec. 644. Technical revisions to so-called "forgotten widows" annuity program.

Subtitle E—Reserve Component Montgomery GI Bill

Sec. 651. Extension of Montgomery GI Bill-Selected Reserve eligibility period.

Subtitle F—Other Matters

Sec. 661. Addition of definition of continental United States in title 37.

TITLE VII—HEALTH CARE MATTERS

Subtitle A—Health Care Program Improvements

Sec. 701. Elimination of requirement for TRICARE preauthorization of inpatient mental health care for medicare-eligible beneficiaries.

Sec. 702. Expansion of TRICARE Prime Remote for certain dependents.

Sec. 703. Enabling dependents of certain members who died while on active duty to enroll in the TRICARE dental program.

Sec. 704. Improvements regarding the Department of Defense Medicare-Eligible Retiree Health Care Fund.

Sec. 705. Certification of institutional and non-institutional providers under the TRICARE program.

Sec. 706. Technical correction regarding transitional health care.

Subtitle B—Reports

Sec. 711. Comptroller General report on TRICARE claims processing.

Sec. 712. Comptroller General report on provision of care under the TRICARE program.

Sec. 713. Repeal of report requirement.

Subtitle C—Department of Defense-Department of Veterans Affairs Health Resources Sharing

Sec. 721. Short title.

Sec. 722. Findings and sense of Congress concerning status of health resources sharing between the Department of Veterans Affairs and the Department of Defense.

Sec. 723. Revised coordination and sharing guidelines.

Sec. 724. Health care resources sharing and coordination project.

Sec. 725. Joint review of coordination and sharing of health care and related services following domestic acts of terrorism or domestic use of weapons of mass destruction.

Sec. 726. Adoption by Department of Veterans Affairs of Department of Defense Pharmacy Data Transaction System.

Sec. 727. Joint pilot program for providing graduate medical education and training for physicians.

Sec. 728. Repeal of certain limits on Department of Veterans Affairs resources.

Sec. 729. Reports.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Sec. 801. Plan for acquisition management professional exchange pilot program.

Sec. 802. Evaluation of training, knowledge, and resources regarding negotiation of intellectual property arrangements.

Sec. 803. Limitation period for task and delivery order contracts.

Sec. 804. One-year extension of program applying simplified procedures to certain commercial items; report.

Sec. 805. Authority to make inflation adjustments to simplified acquisition threshold.

Sec. 806. Improvement of personnel management policies and procedures applicable to the civilian acquisition workforce.
Sec. 807. Modification of scope of ball and roller bearings covered for purposes of procurement limitation.
Sec. 808. Rapid acquisition and deployment procedures.
Sec. 809. Quick-reaction special projects acquisition team.
Sec. 810. Report on development of anticyberterrorism technology.
Sec. 811. Contracting with Federal Prison Industries.
Sec. 812. Renewal of certain procurement technical assistance cooperative agreements at funding levels at least sufficient to support existing programs.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Sec. 901. Change in title of Secretary of the Navy to Secretary of the Navy and Marine Corps.
Sec. 902. Report on implementation of United States Northern Command.
Sec. 903. National defense mission of Coast Guard to be included in future Quadrennial Defense Reviews.
Sec. 904. Change in year for submission of Quadrennial Defense Review.
Sec. 905. Report on effect of noncombat operations on combat readiness of the Armed Forces.
Sec. 906. Conforming amendment to reflect disestablishment of Department of Defense Consequence Management Program Integration Office.
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TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Sec. 1001. Transfer authority.
Sec. 1002. Authorization of supplemental appropriations for fiscal year 2002.
Sec. 1003. Uniform standards throughout Department of Defense for exposure of personnel to pecuniary liability for loss of Government property.
Sec. 1004. Accountable officials in the Department of Defense.
Sec. 1005. Improvements in purchase card management.
Sec. 1006. Authority to transfer funds within a major acquisition program from procurement to RDT&E.
Sec. 1007. Development and procurement of financial and nonfinancial management systems.

Subtitle B—Reports

Sec. 1011. After-action reports on the conduct of military operations conducted as part of Operation Enduring Freedom.
Sec. 1012. Report on biological weapons defense and counter-proliferation.
Sec. 1013. Requirement that Department of Defense reports to Congress be accompanied by electronic version.
Sec. 1014. Strategic force structure plan for nuclear weapons and delivery systems.
Sec. 1015. Report on establishment of a joint national training complex and joint opposing forces.
Sec. 1016. Repeal of various reports required of the Department of Defense.
Sec. 1017. Report on the role of the Department of Defense in supporting homeland security.
Sec. 1018. Study of short-term and long-term effects of nuclear earth penetrator weapon.
Sec. 1019. Study of short-term and long-term effects of nuclear-tipped ballistic missile interceptor.
Sec. 1021. Sense of Congress on maintenance of a reliable, flexible, and robust strategic deterrent.

Subtitle C—Other Matters

Sec. 1021. Sense of Congress on maintenance of a reliable, flexible, and robust strategic deterrent.
Sec. 1022. Time for transmittal of annual defense authorization legislative proposal.
Sec. 1023. Technical and clerical amendments.
Sec. 1024. War risk insurance for vessels in support of NATO-approved operations.
Sec. 1025. Conveyance, Navy drydock, Portland, Oregon.
Sec. 1026. Additional Weapons of Mass Destruction Civil Support Teams.
Sec. 1027. Use for law enforcement purposes of DNA samples maintained by Department of Defense for identification of human remains.
Sec. 1028. Sense of Congress concerning aircraft carrier force structure.
Sec. 1029. Enhanced authority to obtain foreign language services during periods of emergency.
Sec. 1030. Surface combatant industrial base.
Sec. 1031. Enhanced cooperation between United States and Russian Federation to promote mutual security.
Sec. 1032. Transfer of funds to increase amounts for PAC-3 missile procurement and Israeli Arrow Program.
Sec. 1033. Assignment of members to assist Immigration and Naturalization Service and Customs Service.
Sec. 1034. Sense of Congress on prohibition of use of funds for International Criminal Court.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Sec. 1101. Eligibility of Department of Defense nonappropriated fund employees for long-term care insurance.
Sec. 1102. Extension of Department of Defense authority to make lump-sum severance payments.
Sec. 1103. Common occupational and health standards for differential payments as a consequence of exposure to asbestos.
Sec. 1104. Continuation of Federal Employee Health Benefits program eligibility.
Sec. 1105. Triennial full-scale Federal wage system wage surveys.
Sec. 1106. Certification for Department of Defense professional accounting positions.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Sec. 1201. Support of United Nations-sponsored efforts to inspect and monitor Iraqi weapons activities.
Sec. 1202. Strengthening the defense of Taiwan.
Sec. 1203. Administrative services and support for foreign liaison officers.
Sec. 1204. Additional countries covered by loan guarantee program.
Sec. 1205. Limitation on funding for Joint Data Exchange Center in Moscow.
Sec. 1206. Limitation on number of military personnel in Colombia.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

Sec. 1301. Specification of Cooperative Threat Reduction programs and funds.
Sec. 1302. Funding allocations.
Sec. 1303. Prohibition against use of funds until submission of reports.
Sec. 1304. Report on use of revenue generated by activities carried out under Cooperative Threat Reduction programs.
Sec. 1305. Prohibition against use of funds for second wing of fissile material storage facility.
Sec. 1306. Sense of Congress and report requirement regarding Russian proliferation to Iran.
Sec. 1307. Prohibition against use of Cooperative Threat Reduction funds outside the States of the former Soviet Union.
Sec. 1308. Limited waiver of restriction on use of funds.
Sec. 1309. Limitation on use of funds until submission of report on defense and military contacts activities.

TITLE XIV—UTAH TEST AND TRAINING RANGE

Sec. 1401. Definition of Utah Test and Training Range.
Sec. 1402. Military operations and overflights at Utah Test and Training Range.
Sec. 1403. Designation and management of lands in Utah Test and Training Range.
Sec. 1404. Designation of Pilot Range Wilderness.
Sec. 1405. Designation of Cedar Mountain Wilderness.

TITLE XV—COST OF WAR AGAINST TERRORISM AUTHORIZATION

Sec. 1501. Short title.
Sec. 1502. Amounts authorized for the War on Terrorism.
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Subtitle A—Authorization of Appropriations

PART I—AUTHORIZATIONS TO TRANSFER ACCOUNTS

Sec. 1511. War on Terrorism Operations Fund.
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PART II—AUTHORIZATIONS TO SPECIFIED ACCOUNTS

Sec. 1521. Army procurement.
Sec. 1522. Navy and Marine Corps procurement.
Sec. 1523. Air Force procurement.
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Sec. 1525. Research, development, test, and evaluation, defense-wide.
Sec. 1526. Classified activities.
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Sec. 1531. Authorized military construction and land acquisition projects.

Subtitle B—Wartime Pay and Allowance Increases

Sec. 1541. Increase in rate for family separation allowance.
Sec. 1542. Increase in rates for various hazardous duty incentive pays.
Sec. 1543. Increase in rate for diving duty special pay.
Sec. 1544. Increase in rate for imminent danger pay.
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Sec. 1547. Effective date.

Subtitle C—Additional Provisions

Sec. 1551. Establishment of at least one Weapons of Mass Destruction Civil Support Team in each State.
Sec. 1552. Authority for joint task forces to provide support to law enforcement agencies conducting counter-terrorism activities.
Sec. 1553. Sense of Congress on assistance to first responders.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

Sec. 2001. Short title; definition.

TITLE XXI—ARMY

Sec. 2101. Authorized Army construction and land acquisition projects.
Sec. 2102. Family housing.
Sec. 2103. Improvements to military family housing units.
Sec. 2104. Authorization of appropriations, Army.
Sec. 2105. Modification of authority to carry out certain fiscal year 2002 projects.

TITLE XXII—NAVY

Sec. 2201. Authorized Navy construction and land acquisition projects.
Sec. 2202. Family housing.
Sec. 2203. Improvements to military family housing units.
Sec. 2204. Authorization of appropriations, Navy.
Sec. 2205. Modification of authority to carry out certain fiscal year 2002 project.

TITLE XXIII—AIR FORCE

Sec. 2301. Authorized Air Force construction and land acquisition projects.
Sec. 2302. Family housing.
Sec. 2303. Improvements to military family housing units.
Sec. 2304. Authorization of appropriations, Air Force.

TITLE XXIV—DEFENSE AGENCIES

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.
Sec. 2402. Improvements to military family housing units.
Sec. 2403. Energy conservation projects.
Sec. 2404. Authorization of appropriations, Defense Agencies.
Sec. 2405. Modification of authority to carry out certain fiscal year 2000 project.
Sec. 2406. Modification of authority to carry out certain fiscal year 1999 project.
Sec. 2407. Modification of authority to carry out certain fiscal year 1997 project.

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

Sec. 2501. Authorized NATO construction and land acquisition projects.
Sec. 2502. Authorization of appropriations, NATO.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Sec. 2601. Authorized guard and reserve construction and land acquisition projects.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

Sec. 2701. Expiration of authorizations and amounts required to be specified by law.
Sec. 2702. Extension of authorizations of certain fiscal year 2000 projects.
Sec. 2703. Extension of authorizations of certain fiscal year 1999 projects.
Sec. 2704. Effective date.

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

Sec. 2801. Changes to alternative authority for acquisition and improvement of military housing.
Sec. 2802. Modification of authority to carry out construction projects as part of environmental response action.
Sec. 2803. Leasing of military family housing in Korea.
Sec. 2804. Pilot housing privatization authority for acquisition or construction of military unaccompanied housing.

Subtitle B—Real Property and Facilities Administration

Sec. 2811. Agreements with private entities to limit encroachments and other constraints on military training, testing, and operations.
Sec. 2812. Conveyance of surplus real property for natural resource conservation purposes.
Sec. 2813. National emergency exemption from screening and other requirements of McKinney-Vento Homeless Assistance Act for property used in support of response activities.
Sec. 2814. Demonstration program on reduction in long-term facility maintenance costs.
Sec. 2815. Expanded authority to transfer property at military installations to be closed to persons who construct or provide military family housing.

Subtitle C—Land Conveyances

PART I—ARMY CONVEYANCES

Sec. 2821. Land conveyances, lands in Alaska no longer required for National Guard purposes.
Sec. 2822. Land conveyance, Fort Campbell, Kentucky.
Sec. 2823. Land conveyance, Army Reserve Training Center, Buffalo, Minnesota.
Sec. 2824. Land conveyance, Fort Bliss, Texas
Sec. 2825. Land conveyance, Fort Hood, Texas.
Sec. 2826. Land conveyance, Fort Monmouth, New Jersey.

PART II—NAVY CONVEYANCES

Sec. 2831. Land conveyance, Marine Corps Air Station, Miramar, San Diego, California.
Sec. 2832. Boundary adjustments, Marine Corps Base, Quantico, and Prince William Forest Park, Virginia.

PART III—AIR FORCE CONVEYANCES

Sec. 2841. Land conveyances, Wendover Air Force Base Auxiliary Field, Nevada.

Subtitle D—Other Matters

Sec. 2861. Easement for construction of roads or highways, Marine Corps Base, Camp Pendleton, California.
Sec. 2862. Sale of excess treated water and wastewater treatment capacity, Marine Corps Base, Camp Lejeune, North Carolina.
Sec. 2863. Ratification of agreement regarding Adak Naval Complex, Alaska, and related land conveyances.
Sec. 2864. Special requirements for adding military installation to closure list.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

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Sec. 3101. National Nuclear Security Administration.
Sec. 3102. Environmental and other defense activities.

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Sec. 3120. Short title; definitions.
Sec. 3121. Reprogramming.
Sec. 3122. Minor construction projects.
Sec. 3123. Limits on construction projects.
Sec. 3124. Fund transfer authority.
Sec. 3125. Authority for conceptual and construction design.
Sec. 3126. Authority for emergency planning, design, and construction activities.
Sec. 3127. Funds available for all national security programs of the Department of Energy.
Sec. 3128. Availability of funds.
Sec. 3129. Transfer of defense environmental management funds.
Sec. 3130. Transfer of weapons activities funds.
Sec. 3131. Scope of authority to carry out plant projects.

Subtitle C—Program Authorizations, Restrictions, and Limitations

Sec. 3141. One-year extension of panel to assess the reliability, safety, and security of the United States nuclear stockpile.
Sec. 3142. Transfer to National Nuclear Security Administration of Department of Defense's Cooperative Threat Reduction program relating to elimination of weapons grade plutonium in Russia.
Sec. 3143. Repeal of requirement for reports on obligation of funds for programs on fissile materials in Russia.
Sec. 3144. Annual certification to the President and Congress on the condition of the United States nuclear weapons stockpile.
Sec. 3145. Plan for achieving one-year readiness posture for resumption by the United States of underground nuclear weapons tests.

Sec. 3146. Prohibition on development of low-yield nuclear weapons.

Subtitle D—Matters Relating to Defense Environmental Management

Sec. 3151. Defense environmental management cleanup reform program.
Sec. 3152. Report on status of environmental management initiatives to accelerate the reduction of environmental risks and challenges posed by the legacy of the Cold War.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Sec. 3301. Authorized uses of National Defense Stockpile funds.

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Authorization of appropriations.

TITLE XXXV—MARITIME ADMINISTRATION

Sec. 3501. Authorization of appropriations for fiscal year 2003.
Sec. 3502. Authority to convey vessel USS SPHINX (ARL–24).
Sec. 3503. Financial assistance to States for preparation of transferred obsolete ships for use as artificial reefs.
Sec. 3504. Independent analysis of title XI insurance guarantee applications.

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

For purposes of this Act, the term "congressional defense committees" means—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Army as follows:

(1) For aircraft, $2,300,327,000.

(2) For missiles, $1,693,896,000.

(3) For weapons and tracked combat vehicles, $2,372,958,000.

(4) For ammunition, $1,320,026,000.

(5) For other procurement, $6,119,447,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Navy as follows:

(1) For aircraft, $8,971,555,000.

(2) For weapons, including missiles and torpedoes, $1,916,617,000.

(3) For shipbuilding and conversion, $9,279,494,000.

(4) For other procurement, $4,527,763,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Marine Corps in the amount of $1,351,983,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement of ammunition for the Navy and the Marine Corps in the amount of $1,104,453,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Air Force as follows:

(1) For aircraft, $12,522,755,000.

(2) For missiles, $3,482,639,000.

(3) For ammunition, $1,176,864,000.

(4) For other procurement, $10,907,730,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2003 for Defense-wide procurement in the amount of $2,621,009,000.

SEC. 105. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement for the Inspector General of the Department of Defense in the amount of $2,000,000.

SEC. 106. CHEMICAL DEMILITARIZATION PROGRAM.

There is hereby authorized to be appropriated for fiscal year 2003 the amount of $1,490,199,000 for—

(1) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(2) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

SEC. 107. DEFENSE HEALTH PROGRAMS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the Department of Defense for procurement for carrying out health care programs, projects, and activities of the Department of Defense in the total amount of $278,742,000.

SEC. 111. SHIPBUILDING INITIATIVE.

(a) USE OF SPECIFIED SHIPBUILDING AUTHORIZATION AMOUNT SUBJECT TO CONTRACTOR AGREEMENT.—Of the amounts authorized to be appropriated by section 102(a)(3) for fiscal year 2003, $810,000,000 shall be available for shipbuilding programs of the Navy either in accordance with subsection (b) or in accordance with subsection (c).

(b) DDG–51 AUTHORIZATION IF AGREEMENT REACHED.—If as of the date of the enactment of this Act the Secretary of the Navy has submitted to Congress a certification described in subsection (d), then the amount referred to in subsection (a) shall be available for procurement of one Arleigh Burke class (DDG-51) destroyer.

(c) AUTHORIZATION IF AGREEMENT NOT REACHED.—If as of the date of the enactment of this Act the Secretary of the Navy has not submitted to Congress a certification described in subsection (d), then the amount referred to in subsection (a) shall be available as follows:

(1) $415,000,000 shall be available for advance procurement for Virginia class submarines.

(2) $210,000,000 shall be available for advance procurement for cruiser conversion.

(3) $185,000,000 shall be available for nuclear-powered submarine (SSN) engineered refueling overhaul.

(d) CERTIFICATION.—A certification referred to in subsections (b) and (c) is a certification by the Secretary of the Navy that the prime contractor for the Virginia class submarine program has entered into a binding agreement with the United States to expend from its own funds an amount not less than $385,000,000 for economic order quantity procurement of nuclear and nonnuclear components for Virginia class submarines beginning in fiscal year 2003.

(e) MULTIYEAR PROCUREMENT AUTHORITY.—(1) If the terms of an agreement described in subsection (d) between the United States and the prime contractor for the Virginia class submarine program include a requirement for the Secretary of the Navy to seek to acquire Virginia class submarines through a multiyear procurement contract, the Secretary of the Navy may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for procurement of Virginia class submarines, beginning with the fiscal year 2003 program year.

(2)(A) In the case of a contract authorized by paragraph (1), a certification under subsection (i)(1)(A) of section 2306b of title 10, United States Code, with respect to that contract may only be submitted if the certification includes an additional certification that each of the conditions specified in subsection (a) of that section has been satisfied with respect to that contract.

(B) Upon transmission to Congress of a certification referred to in subparagraph (A) with respect to a contract authorized by paragraph (1), the contract may then be entered into only after a period of 30 days has elapsed after the date of the transmission of such certification.

SEC. 112. PROHIBITION ON ACQUISITION OF CHAMPION-CLASS, T-5 FUEL TANKERS.

(a) PROHIBITION.—Except as provided in subsection (b), a Champion-class fuel tanker, known as a T-5, which features a double hull and reinforcement against ice damage, may not be acquired for the Military Sealift Command or for other Navy purposes.

(b) TERMINATION.—The prohibition in subsection (a) shall not apply if the acquisition of a T-5 tanker is specifically authorized in a defense authorization Act that—

(1) is enacted after the date of the enactment of this Act;

(2) specifically refers to subsection (a); and

(3) specifically states that the prohibition in such subsection does not apply.

Subtitle C—Air Force Programs

SEC. 121. MULTIYEAR PROCUREMENT AUTHORITY FOR C-130J AIRCRAFT PROGRAM.

(a) MULTIYEAR AUTHORITY.—Beginning with the fiscal year 2003 program year, the Secretary of the Air Force may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for procurement of C-130J aircraft.

(b) LIMITATION.—The Secretary of Defense may not enter into a contract authorized by subsection (a) until—

(1) the Secretary submits to the congressional defense committees a certification described in subsection (c); and

(2) a period of 30 days has expired after such certification is submitted.

(c) REQUIRED CERTIFICATION AS TO PROGRESS TOWARD SUCCESSFUL OPERATIONAL TEST AND EVALUATION.—A certification under subsection (b)(1) is a certification by the Secretary of Defense that the C-130J program is making satisfactory progress towards a successful operational test and evaluation.

(d) REQUIRED CERTIFICATION WITH RESPECT TO MULTIYEAR CONTRACTING CONDITIONS.—(1) In the case of a contract authorized by subsection (a) of this section, a certification under subsection (i)(1)(A) of section 2306b of title 10, United States Code, with respect to that contract may only be submitted if the certification includes an additional certification that each of the conditions specified in subsection (a) of that section has been satisfied with respect to that contract.

(2) Upon transmission to Congress of a certification referred to in paragraph (1) with respect to a contract authorized by subsection (a), the contract may then be entered into only after a period of 30 days has elapsed after the date of the transmission of such certification.

SEC. 122. REALLOCATION OF CERTAIN FUNDS FOR AIR FORCE RESERVE COMMAND F-16 AIRCRAFT PROCUREMENT.

Of the funds authorized to be appropriated by section 103(1) that are available for procurement of F-16 aircraft for the Air Force Reserve Command, $14,400,000 shall be available for 36 Litening II modernization upgrade kits for the F-16 block 25 and block 30 aircraft (rather than for Litening AT pods for such aircraft).

Subtitle D—Other Programs

SEC. 141. REVISIONS TO MULTIYEAR CONTRACTING AUTHORITY.

(a) USE OF PROCUREMENT AND ADVANCE PROCUREMENT FUNDS.—Section 2306b(i) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(4)(A) Unless otherwise authorized by law, the Secretary of Defense may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

"(B) Unless otherwise authorized by law, the Secretary of Defense may obligate funds appropriated for any fiscal year for advance procurement under a multiyear contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year.".

(b) EFFECTIVE DATE.—Paragraph (4) of section 2306b(i) of title 10, United States Code, as added by subsection (a), shall not apply with respect to any multiyear contract authorized by law before the date of the enactment of this Act.

SEC. 142. TRANSFER OF TECHNOLOGY ITEMS AND EQUIPMENT IN SUPPORT OF HOMELAND SECURITY.

(a) IN GENERAL.—Subchapter III of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

"§2520. Transfer of technology items and equipment in support of homeland security

"The Secretary of Defense shall enter into an agreement with an independent, nonprofit, technology-oriented entity that has demonstrated the ability to facilitate the transfer of defense technologies, developed by both the private and public sectors, to aid Federal, State, and local first responders. Under the agreement the entity shall develop and deploy technology items and equipment, through coordination between Government agencies and private sector, commercial developers and suppliers of technology, that will enhance public safety and shall—

"(1) work in coordination with the InterAgency Board for Equipment Standardization and Interoperability;

"(2) develop technology items and equipment that meet the standardization requirements established by the Board;

"(3) evaluate technology items and equipment that have been identified using the standards developed by the Board and other state-of-the-art technology items and equipment that may benefit first responders;

"(4) identify and coordinate among the public and private sectors research efforts applicable to national security and homeland security;

"(5) facilitate the timely transfer of technology items and equipment between public and private sources;

"(6) eliminate redundant research efforts with respect to technologies to be deployed to first responders;

"(7) expedite the advancement of high priority projects from research through implementation of initial manufacturing; and

"(8) establish an outreach program, in coordination with the Board, with first responders to facilitate awareness of available technology items and equipment to support crisis response.".

(b) DEADLINE FOR AGREEMENT.—The Secretary of Defense shall enter into the agreement required by section 2520 of title 10, United States Code (as added by subsection (a)) not later than January 15, 2003.

(c) STRATEGIC PLAN.—The entity described in section 2520 of such title shall develop a strategic plan to carry out the goals described in such section, which shall include identification of—

(1) the initial technology items and equipment considered for development; and

(2) the program schedule timelines for such technology items and equipment.

(d) REPORT REQUIRED.—Not later than March 15, 2003, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on—

(1) the actions taken to carry out such section 2520;

(2) the relationship of the entity described in such section to the InterAgency Board for Equipment Standardization and Interoperability; and

(3) the strategic plan of such entity to meet the goals described in such section.

(e) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter III of chapter 148 of title 10, United States Code, is amended by adding at the end the following new item:

"2520. Transfer of technology items and equipment in support of homeland security.".

SEC. 143. DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) PROGRAM MANAGEMENT.—The Secretary of Defense shall ensure that the program for destruction of the United States stockpile of lethal chemical agents and munitions is managed as a major defense acquisition program (as defined in section 2430 of title 10, United States Code) in accordance with the essential elements of such programs as may be determined by the Secretary.

(b) REQUIREMENT FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER) ANNUAL CERTIFICATION.—Beginning with respect to the budget request for fiscal year 2004, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees on an annual basis a certification that the budget request for the chemical agents and munitions destruction program has been submitted in accordance with the requirements of applicable Federal laws.

SEC. 144. REPORT ON UNMANNED AERIAL VEHICLE SYSTEMS.

(a) REPORT.—Not later than January 1, 2003, the Secretary of Defense shall submit to Congress a report on unmanned aerial vehicle systems of the Department of Defense.

(b) MATTERS TO BE INCLUDED CONCERNING UNMANNED AERIAL VEHICLE SYSTEMS.—The Secretary shall include in the report under subsection (a) the following, shown for each system referred to in that subsection:

(1) A description of the infrastructure that the Department of Defense has (or is planning) for the system.

(2) A description of the operational requirements document (ORD) for the system.

(3) A description of the physical infrastructure of the Department for training and basing.

(4) A description of the manner in which the Department is interfacing with the industrial base.

(5) A description of the acquisition plan for the system.

(c) SUGGESTIONS FOR CHANGES IN LAW.—The Secretary shall also include in the report under subsection (a) such suggestions as the Secretary considers appropriate for changes in law that would facilitate the way the Department acquires unmanned aerial vehicle systems.

SEC. 145. REPORT ON IMPACT OF ARMY AVIATION MODERNIZATION PLAN ON THE ARMY NATIONAL GUARD.

(a) REPORT BY CHIEF OF THE NATIONAL GUARD BUREAU.—Not later than February 1, 2003, the Chief of the National Guard Bureau shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the requirements for Army National Guard aviation. The report shall include the following:

(1) An analysis of the impact of the Army Aviation Modernization Plan on the ability of the Army National Guard to conduct its aviation missions.

(2) The plan under that aviation modernization plan for the transfer of aircraft from the active component of the Army to the Army reserve components, including a timeline for those transfers.

(3) The progress, as of January 1, 2003, in carrying out the transfers under the plan referred to in paragraph (2).

(4) An evaluation of the suitability of existing Commercial Off The Shelf (COTS) light-twin engine helicopters for performance of Army National Guard aviation missions.

(b) VIEWS OF THE CHIEF OF STAFF OF THE ARMY.—If, before the report under subsection (a) is submitted, the Chief of the National Guard Bureau receives from the Chief of Staff of the Army the views of the Chief of Staff on the matters to be covered in the report, the Chief of the Bureau shall include those views with the report as submitted under subsection (a).

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Department of Defense for research, development, test, and evaluation as follows:

(1) For the Army, $6,933,319,000.

(2) For the Navy, $13,274,540,000.

(3) For the Air Force, $18,803,184,000.

(4) For Defense-wide activities, $17,413,291,000, of which $222,054,000 is authorized for the Director of Operational Test and Evaluation.

SEC. 202. AMOUNT FOR DEFENSE SCIENCE AND TECHNOLOGY.

(a) FISCAL YEAR 2003.—Of the amounts authorized to be appropriated by section 201, $10,023,658,000 shall be available for the Defense Science and Technology Program, including basic research, applied research, and advanced technology development projects.

(b) BASIC RESEARCH, APPLIED RESEARCH, AND ADVANCED TECHNOLOGY DEVELOPMENT DEFINED.—For purposes of this section, the term "basic research, applied research, and advanced technology development" means work funded in program elements for defense research and development under Department of Defense category 6.1, 6.2, or 6.3.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. RAH-66 COMANCHE AIRCRAFT PROGRAM.

(a) LIMITATION.—None of the funds authorized to be appropriated for fiscal year 2003 for engineering and manufacturing development for the RAH-66 Comanche aircraft program may be obligated until the Secretary of the Army submits to the congressional defense committees a report, prepared in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics, containing an accurate estimate of funds required to complete engineering and manufacturing development for that aircraft and the new time line and plan for bringing that aircraft to initial operational capability, as called for in the joint explanatory statement of the committee of conference on the bill S. 1438 of the One Hundred Seventh Congress (at page 535 of House Report 107-333, submitted December 12, 2001).

(b) LIMITATION ON TOTAL COST OF ENGINEERING AND MANUFACTURING DEVELOPMENT.—The total amount obligated or expended for engineering and manufacturing development under the RAH-66 Comanche aircraft program may not exceed $6,000,000,000.

(c) ADJUSTMENT OF LIMITATION AMOUNTS.—(1) Subject to paragraph (2), the Secretary of the Army shall adjust the amount of the limitation set forth in subsection (b) by the following amounts:

(A) The amounts of increases or decreases in costs attributable to economic inflation after September 30, 2002.

(B) The amounts of increases or decreases in costs attributable to compliance with changes in Federal, State, or local laws enacted after September 30, 2002.

(2) Before making any adjustment under paragraph (1) in an amount greater than $20,000,000, the Secretary of the Army shall submit to the congressional defense committees notice in writing of the proposed increase.

(d) ANNUAL DOD INSPECTOR GENERAL REVIEW.—(1) Not later than March 1 of each year, the Department of Defense Inspector General shall review the RAH-66 Comanche aircraft program and submit to Congress a report on the results of the review.

(2) The report submitted on the program each year shall include the following:

(A) The extent to which engineering and manufacturing development under the program is meeting the goals established for engineering and manufacturing development under the program, including the performance, cost, and schedule goals.

(B) The status of modifications expected to have a significant effect on cost, schedule, or performance of RAH-66 aircraft.

(C) The plan for engineering and manufacturing development (leading to production) under the program for the fiscal year that begins in the following year.

(D) A conclusion regarding whether the plan referred to in subparagraph (C) is consistent with the limitation in subsection (a).

(E) A conclusion regarding whether engineering and manufacturing development (leading to production) under the program is likely to be completed at a total cost not in excess of the amount specified in subsection (a).

(3) No report is required under this subsection after the RAH-66 aircraft has completed engineering and manufacturing development.

(e) LIMITATION ON OBLIGATION OF FUNDS.—Of the total amount authorized to be appropriated for the RAH-66 Comanche aircraft program for research, development, test, and evaluation for a fiscal year, not more than 90 percent of that amount may be obligated until the Department of Defense Inspector General submits to Congress the report required to be submitted in that fiscal year under subsection (d).

SEC. 212. EXTENSION OF REQUIREMENT RELATING TO MANAGEMENT RESPONSIBILITY FOR NAVAL MINE COUNTERMEASURES PROGRAMS.

Section 216(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1317), as most recently amended by section 211 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 1946), is amended by striking "through 2003" and inserting "through 2008".

SEC. 213. EXTENSION OF AUTHORITY TO CARRY OUT PILOT PROGRAM FOR REVITALIZING THE LABORATORIES AND TEST AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE.

Section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 1955; 10 U.S.C. 2358 note) is amended—

(1) in subsection (a)(1), by inserting before the period at the end the following: ", and to demonstrate improved efficiency in the performance of the research, development, test, and evaluation functions of the Department of Defense";

(2) in subsection (a)(4), by striking "for a period" and all that follows through the period at the end and inserting "until March 1, 2008.";

(3) in subsection (b)(2), by striking "Promptly after" and all that follows through "The report shall contain" and inserting "Not later than December 31 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the pilot program during the preceding fiscal year. Each such report shall contain, for each laboratory or center in the pilot program,"; and

(4) by adding at the end of subsection (b) the following new paragraph:

"(3) Not later than March 1, 2007, the Secretary of Defense shall submit to the committees referred to in paragraph (2) the Secretary's recommendation as to whether, and to what extent, the authority to carry out the pilot program should be extended.".

SEC. 214. REVISED REQUIREMENTS FOR PLAN FOR MANUFACTURING TECHNOLOGY PROGRAM.

(a) STREAMLINED CONTENTS OF PLAN.—Subsection (e) of section 2521 of title 10, United States Code, is amended by striking "prepare a five-year plan" in paragraph (1) and all that follows through the end of subparagraph (B) of paragraph (2) and inserting the following: "prepare and maintain a five-year plan for the program.

"(2) The plan shall establish the following:

"(A) The overall manufacturing technology objectives, milestones, priorities, and investment strategy for the program.

"(B) The specific objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.".

(b) BIENNIAL REPORT.—Such subsection is further amended in paragraph (3)—

(1) by striking "annually" and inserting "biennially"; and

(2) by striking "for a fiscal year" and inserting "for each even-numbered fiscal year".

SEC. 215. TECHNOLOGY TRANSITION INITIATIVE.

(a) ESTABLISHMENT AND CONDUCT.—Chapter 139 of title 10, United States Code, is amended by inserting after section 2359 the following new section:

"§ 2359a. Technology Transition Initiative

"(a) INITIATIVE REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out an initiative, to be known as the Technology Transition Initiative (hereinafter in this section referred to as the 'Initiative'), to facilitate the rapid transition of new technologies from science and technology programs of the Department of Defense into acquisition programs of the Department for the production of such technologies.

"(b) OBJECTIVES.—The Initiative shall have the following objectives:

"(1) To accelerate the introduction of new technologies into appropriate acquisition programs.

"(2) To successfully demonstrate new technologies in relevant environments.

"(3) To ensure that new technologies are sufficiently mature for production.

"(c) MANAGEMENT OF INITIATIVE.—(1) The Initiative shall be managed by a senior official in the Office of the Secretary of Defense designated by the Secretary (hereinafter in this section referred to as the 'Manager'). In managing the Initiative, the Manager shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

"(2) The Secretary shall establish a board of directors (hereinafter in this section referred to as the 'Board'), composed of the acquisition executive of each military department, the members of the Joint Requirements Oversight Council, and the commander of the Joint Forces Command. The Board shall assist the Manager in managing the Initiative.

"(3) The Secretary shall establish, under the auspices of the Under Secretary of Defense for Acquisition, Technology, and Logistics, a panel of highly qualified scientists and engineers. The panel shall advise the Under Secretary on matters relating to the Initiative.

"(d) DUTIES OF MANAGER.—The Manager shall have following duties:

"(1) To identify, in consultation with the Board, promising technologies that have been demonstrated in science and technology programs of the Department.

"(2) To identify potential sponsors in the Department to undertake the transition of such technologies into production.

"(3) To work with the science and technology community and the acquisition community to develop memoranda of agreement, joint funding agreements, and other cooperative arrangements to provide for the transition of such technologies into production.

"(4) Provide funding support for projects selected under subsection (e).

"(e) JOINTLY FUNDED PROJECTS.—(1) The acquisition executive of each military department shall identify technology projects of that military department to recommend for funding support under the Initiative and shall submit to the Manager a list of such recommended projects, ranked in order of priority. Such executive shall identify such projects, and establish priorities among such projects, using a competitive process, on the basis of the greatest potential benefits in areas of interest identified by the Secretary of that military department.

"(2) The Manager, in consultation with the Board, shall select projects for funding support from among the projects on the lists submitted under paragraph (1). From the funds made available to the Manager for the Initiative, the Manager shall provide funds for each selected project in an amount determined by mutual agreement between the Manager and the acquisition executive of the military department concerned, but not less than 50 percent of the total cost of the project.

"(3) The acquisition executive of the military department concerned shall manage each project selected under paragraph (2) that is undertaken by the military department. Memoranda of agreement, joint funding agreements, and other cooperative arrangements between the science and technology community and the acquisition community shall be used in carrying out the project if the acquisition executive determines that it is appropriate to do so to achieve the objectives of the project.

"(f) REQUIREMENT FOR PROGRAM ELEMENT.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Initiative shall be set forth in a separate program element within amounts requested for research, development, test, and evaluation for Defense-wide activities.

"(g) DEFINITION OF ACQUISITION EXECUTIVE.—In this section, the term 'acquisition executive', with respect to a military department, means the official designated as the senior procurement executive for that military department under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2359 the following new item:

"2359a. Technology Transition Initiative.".

SEC. 216. DEFENSE ACQUISITION CHALLENGE PROGRAM.

(a) IN GENERAL.—(1) Chapter 139 of title 10, United States Code, is amended by inserting after section 2359a (as added by section 215) the following new section:

"§ 2359b. Defense Acquisition Challenge Program

"(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense. The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the 'Challenge Program'), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

"(b) PANEL.—(1) In carrying out the Challenge Program, the Secretary shall establish a panel of highly qualified scientists and engineers (hereinafter in this section referred to as the 'Panel') under the auspices of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The duty of the Panel shall be to carry out evaluations of challenge proposals under subsection (c).

"(2) A member of the Panel may not participate in any evaluation of a challenge proposal under subsection (c) if at any time within the previous five years that member has, in any capacity, participated in or been affiliated with the acquisition program for which the challenge proposal is submitted.

"(c) EVALUATION BY PANEL.—(1) Under procedures prescribed by the Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to the Panel.

"(2) The Panel shall carry out an evaluation of each challenge proposal submitted under paragraph (1) to determine each of the following criteria:

"(A) Whether the challenge proposal has merit.

"(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, or system level of the applicable acquisition program.

"(C) Whether the challenge proposal could be implemented rapidly in the applicable acquisition program.

"(3) If the Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (2), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

"(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(3), the office carrying out the applicable acquisition program, and the prime system contractor carrying out such program, shall jointly conduct a full review and evaluation of the challenge proposal.

"(2) The full review and evaluation shall, independent of the determination of the Panel under subsection (c)(2), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection.

"(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(2) shall be considered by the prime system contractor for incorporation into the applicable acquisition program as a new technology insertion at the component, subsystem, or system level.

"(2) The Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the applicable acquisition program and the prime system contractor carrying out such program.

"(f) ACCESS TO TECHNICAL RESOURCES.—The Secretary shall ensure that the Panel (in carrying out evaluations of challenge proposals under subsection (c)) and each office and prime system contractor (in conducting a full review and evaluation under subsection (d)) have the authority to call upon the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department.

"(g) ELIMINATION OF CONFLICTS OF INTEREST.—In carrying out each evaluation under subsection (c) and full review under subsection (d), the Secretary shall ensure the elimination of conflicts of interest.

"(h) REPORT.—The Secretary shall submit to Congress, with the submission of the budget request for the Department of Defense for each fiscal year during which the Challenge Program is carried out, a report on the Challenge Program for that fiscal year. The report shall include the number and scope of challenge proposals submitted, evaluated, subjected to full review, and adopted.

"(i) SUNSET.—The authority to carry out this section shall terminate on September 30, 2007.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2359a (as added by section 215) the following new item:

"2359b. Defense Acquisition Challenge Program.".

(b) INITIAL FUNDING.—(1) Of the funds authorized to be appropriated by section 201(4) for Defense-wide research, development, test, and evaluation for fiscal year 2003, $25,000,000 shall be available in program element 0603826D8Z for the Defense Acquisition Challenge Program required by section 2359b of title 10, United States Code, as added by subsection (a).

(2) The funds provided under paragraph (1) may be used only for review and evaluation of challenge proposals, and not for implementation of challenge proposals.

Subtitle C—Ballistic Missile Defense

SEC. 231. LIMITATION ON OBLIGATION OF FUNDS FOR PROCUREMENT OF PATRIOT (PAC-3) MISSILES PENDING SUBMISSION OF REQUIRED CERTIFICATION.

None of the funds appropriated for fiscal year 2003 for procurement of missiles for the Army may be obligated for the Patriot Advanced Capability (PAC-3) missile program until the Secretary of Defense has submitted to the congressional defense committees the following:

(1) The criteria for the transfer of responsibility for a missile defense program from the Director of the Missile Defense Agency to the Secretary of a military department, as required by section 224(b)(2) of title 10, United States Code.

(2) The notice and certification with respect to the transfer of responsibility for the Patriot Advanced Capability (PAC-3) missile program from the Director to the Secretary of the Army required by section 224(c) of such title.

SEC. 232. RESPONSIBILITY OF MISSILE DEFENSE AGENCY FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION RELATED TO SYSTEM IMPROVEMENTS OF PROGRAMS TRANSFERRED TO MILITARY DEPARTMENTS.

Section 224(e) of title 10, United States Code, is amended—

(1) by striking "before a" and inserting "for each";

(2) by striking "is"; and

(3) by striking "roles and responsibilities" and all that follows through the period at the end and inserting "responsibility for research, development, test, and evaluation related to system improvements for that program remains with the Director.".

SEC. 233. AMENDMENTS TO REFLECT CHANGE IN NAME OF BALLISTIC MISSILE DEFENSE ORGANIZATION TO MISSILE DEFENSE AGENCY.

(a) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) Sections 203, 223, and 224 are each amended by striking "Ballistic Missile Defense Organization" each place it appears and inserting "Missile Defense Agency".

(2)(A) The heading of section 203 is amended to read as follows:

"§203. Director of Missile Defense Agency".

(B) The item relating to such section in the table of sections at the beginning of subchapter II of chapter 8 is amended to read as follows:

"203. Director of Missile Defense Agency.".

(b) PUBLIC LAW 107–107.—(1) Section 232 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2431 note) is amended by striking "Ballistic Missile Defense Organization" each place it appears and inserting "Missile Defense Agency".

(2) The heading for such section is amended to read as follows:

"SEC. 232. PROGRAM ELEMENTS FOR MISSILE DEFENSE AGENCY.".

(c) PUBLIC LAW 106–398.—(1) Section 3132 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 10 U.S.C. 2431 note) is amended by striking "Ballistic Missile Defense Organization" each place it appears and inserting "Missile Defense Agency".

(2) Such section is further amended in subsection (c) by striking "BMDO" and inserting "MDA".

(3) The section heading for such section is amended to read as follows:

"SEC. 3132. ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND MISSILE DEFENSE AGENCY.".

(d) OTHER LAWS.—The following provisions are each amended by striking "Ballistic Missile Defense Organization" each place it appears and inserting "Missile Defense Agency":

(1) Section 233 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 223 note).

(2) Section 234 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2431 note).

(3) Sections 235 (10 U.S.C. 2431 note) and 243 (10 U.S.C. 2431 note) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160).

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $24,159,733,000.

(2) For the Navy, $29,428,876,000.

(3) For the Marine Corps, $3,588,512,000.

(4) For the Air Force, $27,299,404,000.

(5) For Defense-wide activities, $14,370,037,000.

(6) For the Army Reserve, $1,918,110,000.

(7) For the Naval Reserve, $1,233,759,000.

(8) For the Marine Corps Reserve, $185,532,000.

(9) For the Air Force Reserve, $2,194,719,000.

(10) For the Army National Guard, $4,300,767,000.

(11) For the Air National Guard, $4,077,845,000.

(12) For the Defense Inspector General, $155,165,000.

(13) For the United States Court of Appeals for the Armed Forces, $9,614,000.

(14) For Environmental Restoration, Army, $395,900,000.

(15) For Environmental Restoration, Navy, $256,948,000.

(16) For Environmental Restoration, Air Force, $389,773,000.

(17) For Environmental Restoration, Defense-wide, $23,498,000.

(18) For Environmental Restoration, Formerly Used Defense Sites, $212,102,000.

(19) For Overseas Humanitarian, Disaster, and Civic Aid programs, $58,400,000.

(20) For Drug Interdiction and Counter-drug Activities, Defense-wide, $848,907,000.

(21) For the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, $25,000,000.

(22) For Defense Health Program, $14,242,541,000.

(23) For Cooperative Threat Reduction programs, $416,700,000.

(24) For Support for International Sporting Competitions, Defense, $19,000,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $1,504,956,000.

(2) For the National Defense Sealift Fund, $934,129,000.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2003 from the Armed Forces Retirement Home Trust Fund the sum of $69,921,000 for the operation of the Armed Forces Retirement Home.

Subtitle B—Environmental Provisions

SEC. 311. INCIDENTAL TAKING OF MIGRATORY BIRDS DURING MILITARY READINESS ACTIVITY.

Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) is amended by adding at the end the following new subsection:

"(c)(1) Section 2 shall not apply to the incidental taking of a migratory bird by a member of the Armed Forces during a military readiness activity authorized by the Secretary of Defense or the Secretary of the military department concerned.

"(2)(A) In this subsection, the term 'military readiness activity' includes—

"(i) all training and operations of the Armed Forces that relate to combat; and

"(ii) the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.

"(B) The term does not include—

"(i) the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare, and recreation activities, shops, and mess halls;

"(ii) the operation of industrial activities; or

"(iii) the construction or demolition of facilities used for a purpose described in clause (i) or (ii).".

SEC. 312. MILITARY READINESS AND THE CONSERVATION OF PROTECTED SPECIES.

(a) LIMITATION ON DESIGNATION OF CRITICAL HABITAT.—Section 4(a)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(3)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(3)"; and

(3) by adding at the end the following:

"(B)(i) The Secretary may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines that such plan addresses special management considerations or protection (as those terms are used in section 3(5)(A)(i)).

"(ii) Nothing in this subparagraph affects the requirement to consult under section 7(a)(2) with respect to an agency action (as that term is defined in that section).

"(iii) Nothing in this subparagraph affects the obligation of the Department of Defense to comply with section 9 of the Endangered Species Act of 1973, including the prohibition preventing extinction and taking of endangered species and threatened species.".

(b) CONSIDERATION OF EFFECTS OF DESIGNATION OF CRITICAL HABITAT.—Section 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(2)) is amended by inserting "the impact on national security," after "the economic impact,".

SEC. 313. SINGLE POINT OF CONTACT FOR POLICY AND BUDGETING ISSUES REGARDING UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS.

Section 2701 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(k) UXO PROGRAM MANAGER.—(1) The Secretary of Defense shall establish a program manager who shall serve as the single point of contact in the Department of Defense for policy and budgeting issues involving the characterization, remediation, and management of explosive and related risks with respect to unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (as such terms are defined in section 2710 of this title) that pose a threat to human health or safety.

"(2) The Secretary of Defense may delegate this authority to the Secretary of a military department, who may delegate the authority to the Under Secretary of that military department. The authority may not be further delegated.

"(3) The program manager may establish an independent advisory and review panel that may include representatives of the National Academy of Sciences, nongovernmental organizations with expertise regarding unexploded ordnance, discarded military munitions, or munitions constituents, the Environmental Protection Agency, States (as defined in section 2710 of this title), and tribal governments. If established, the panel would report annually to Congress on progress made by the Department of Defense to address unexploded ordnance, discarded military munitions, or munitions constituents at defense sites and make such recommendations as the panel considered appropriate.".

Subtitle C—Commissaries and Nonappropriated Fund Instrumentalities

SEC. 321. AUTHORITY FOR EACH MILITARY DEPARTMENT TO PROVIDE BASE OPERATING SUPPORT TO FISHER HOUSES.

Section 2493(f) of title 10, United States Code, is amended to read as follows:

"(f) BASE OPERATING SUPPORT.—The Secretary of a military department may provide base operating support for Fisher Houses associated with health care facilities of that military department.".

SEC. 322. USE OF COMMISSARY STORES AND MWR RETAIL FACILITIES BY MEMBERS OF NATIONAL GUARD SERVING IN NATIONAL EMERGENCY.

(a) ADDITIONAL BASIS FOR AUTHORIZED USE.—Section 1063a of title 10, United States Code, is amended—

(1) in subsection (a), by inserting "or national emergency" after "federally declared disaster"; and

(2) in subsection (c), by adding at the end the following new paragraph:

"(3) NATIONAL EMERGENCY.—The term 'national emergency' means a national emergency declared by the President or Congress.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency".

(2) The table of sections at the beginning of chapter 54 of such title is amended by striking the item relating to section 1063a and inserting the following new item:

"1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.".

SEC. 323. UNIFORM FUNDING AND MANAGEMENT OF MORALE, WELFARE, AND RECREATION PROGRAMS.

(a) IN GENERAL.—Chapter 147 of title 10, United States Code, is amended by adding at the end the following new section:

"§2494. Uniform funding and management of morale, welfare, and recreation programs

"(a) AUTHORITY FOR UNIFORM FUNDING AND MANAGEMENT.—Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available for morale, welfare, and recreation programs under such regulations, appropriated funds shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

"(b) CONDITIONS ON AVAILABILITY.—Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

"(c) CONVERSION OF EMPLOYMENT POSITIONS.—(1) The Secretary of Defense may identify positions of employees in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

"(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

"(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.

"(4) In this subsection, the term 'an employee of a nonappropriated fund instrumentality' means an employee described in section 2105(c) of title 5.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2494. Uniform funding and management of morale, welfare, and recreation programs.".

Subtitle D—Workplace and Depot Issues

SEC. 331. NOTIFICATION REQUIREMENTS IN CONNECTION WITH REQUIRED STUDIES FOR CONVERSION OF COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS TO CONTRACTOR PERFORMANCE.

Subsection (c) of section 2461 of title 10, United States Code, is amended to read as follows:

"(c) SUBMISSION OF ANALYSIS RESULTS.—(1) Upon the completion of an analysis of a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector, the Secretary of Defense shall submit to Congress a report containing the results of the analysis, including the results of the examinations required by subsection (b)(3).

"(2) The report shall also contain the following:

"(A) The date when the analysis of the function was commenced.

"(B) The Secretary's certification that the Government calculation of the cost of performance of the function by Department of Defense civilian employees is based on an estimate of the most cost effective manner for performance of the function by Department of Defense civilian employees.

"(C) The number of Department of Defense civilian employees who were performing the function when the analysis was commenced and the number of such employees whose employment was or will be terminated or otherwise affected by changing to performance of the function by the private sector or by implementation of the most efficient organization of the function.

"(D) The Secretary's certification that the factors considered in the examinations performed under subsection (b)(3), and in the making of the decision regarding changing to performance of the function by the private sector or retaining performance in the most efficient organization of the function, did not include any predetermined personnel constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.

"(E) A statement of the potential economic effect of implementing the decision regarding changing to performance of the function by the private sector or retaining performance in the most efficient organization of the function on each affected local community, as determined in the examination under subsection (b)(3)(B)(ii).

"(F) A schedule for completing the change to performance of the function by the private sector or implementing the most efficient organization of the function.

"(G) In the case of a commercial or industrial type function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, a description of the effect that the manner of performance of the function, and administration of the resulting contract if any, will have on the overhead costs of the center or ammunition plant, as the case may be.

"(H) The Secretary's certification that the entire analysis is available for examination.

"(3)(A) If a decision is made to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, the change of the function to contractor performance may not begin until after the submission of the report required by paragraph (1).

"(B) Notwithstanding subparagraph (A), in the case of a commercial or industrial type function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, the change of the function to contractor performance may not begin until at least 60 days after the submission of the report.".

SEC. 332. WAIVER AUTHORITY REGARDING PROHIBITION ON CONTRACTS FOR PERFORMANCE OF SECURITY-GUARD FUNCTIONS.

Section 2465 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) The Secretary of Defense or the Secretary of a military department may waive the prohibition under subsection (a) regarding contracting for the performance of security-guard functions at a military installation or facility under the jurisdiction of the Secretary if such functions—

"(1) are or will be performed by members of the armed forces in the absence of a waiver; or

"(2) were not performed at the installation or facility before September 11, 2001.".

SEC. 333. EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION ON CONTRACTING FOR PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOADS.

Section 2474(f)(2) of title 10, United States Code, is amended by striking "for fiscal years 2002 through 2005".

SEC. 334. REPEAL OF OBSOLETE PROVISION REGARDING DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOADS THAT WERE PERFORMED AT CLOSED OR REALIGNED MILITARY INSTALLATIONS.

(a) REPEAL.—Section 2469a of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 146 of such title is amended by striking the item relating to section 2469a.

SEC. 335. CLARIFICATION OF REQUIRED CORE LOGISTICS CAPABILITIES.

Section 2464(a)(3) of title 10, United States Code, is amended by striking "those capabilities that are necessary to maintain and repair the weapon systems" and inserting "those logistics capabilities (including acquisition logistics, supply management, system engineering, maintenance, and modification management) that are necessary to sustain the weapon systems".

Subtitle E—Defense Dependents Education

SEC. 341. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL YEAR 2003.—Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, $35,000,000 shall be available only for the purpose of providing educational agencies assistance to local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2003, the Secretary of Defense shall notify each local educational agency that is eligible for educational agencies assistance for fiscal year 2003 of—

(1) that agency's eligibility for the assistance; and

(2) the amount of the assistance for which that agency is eligible.

(c) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term "educational agencies assistance" means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

SEC. 342. AVAILABILITY OF QUARTERS ALLOWANCE FOR UNACCOMPANIED DEFENSE DEPARTMENT TEACHER REQUIRED TO RESIDE ON OVERSEAS MILITARY INSTALLATION.

(a) AUTHORITY TO PROVIDE ALLOWANCE.—Subsection (b) of section 7 of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 905) is amended by adding at the end the following new sentence: "If the teacher is unaccompanied by dependents and is required to reside on a United States military installation in an overseas area, the teacher may receive a quarters allowance to reside in excess family housing at the installation notwithstanding the availability single room housing at the installation.".

(b) TECHNICAL CORRECTION TO REFLECT CODIFICATION.—Such section is further amended by striking "the Act of June 26, 1930 (5 U.S.C. 118a)" both places it appears and inserting "section 5912 of title 5, United States Code".

SEC. 343. PROVISION OF SUMMER SCHOOL PROGRAMS FOR STUDENTS WHO ATTEND DEFENSE DEPENDENTS' EDUCATION SYSTEM.

Section 1402(d) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(d)) is amended by striking paragraph (2) and inserting the following new paragraph (2):

"(2) Individuals eligible to receive a free public education under subsection (a) may enroll without charge in a summer school program offered under this subsection. Students who are required under section 1404 to pay tuition to enroll in a school of the defense dependents' education system shall also be charged a fee, at a rate established by the Secretary, to attend a course offered as part of the summer school program.".

Subtitle F—Information Technology

SEC. 351. AUTHORIZED DURATION OF BASE CONTRACT FOR NAVY-MARINE CORPS INTRANET.

Section 814 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Public Law 106–398 (114 Stat. 1654A–215) and amended by section 362 of Public Law 107–107 (115 Stat. 1065), is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection (i):

"(i) DURATION OF BASE NAVY-MARINE CORPS INTRANET CONTRACT.—Notwithstanding section 2306c of title 10, United States Code, the base contract of the Navy-Marine Corps Intranet contract may have a term in excess of five years, but not more than seven years.".

SEC. 352. ANNUAL SUBMISSION OF INFORMATION ON NATIONAL SECURITY AND INFORMATION TECHNOLOGY CAPITAL ASSETS.

(a) REQUIREMENT TO SUBMIT INFORMATION.—Not later than the date that the President submits the budget of the United States Government to Congress each year, the Secretary of Defense shall submit to Congress a description of, and relevant budget information on, each information technology and national security capital asset of the Department of Defense that—

(1) has an estimated life cycle cost (as computed in fiscal year 2003 constant dollars), in excess of $120,000,000; and

(2) has a cost for the fiscal year in which the description is submitted (as computed in fiscal year 2003 constant dollars) in excess of $30,000,000.

(b) INFORMATION TO BE INCLUDED.—The description submitted under subsection (a) shall include, with respect to each such capital asset and national security system—

(1) the name and identifying acronym;

(2) the date of initiation;

(3) a summary of performance measurements and metrics;

(4) the total amount of funds, by appropriation account, appropriated and obligated for prior fiscal years, with a specific breakout of such information for the two preceding fiscal years;

(5) the funds, by appropriation account, requested for that fiscal year;

(6) each prime contractor and the work to be performed;

(7) a description of program management and management oversight;

(8) the original baseline cost and most current baseline information; and

(9) a description of compliance with the provisions enacted in the Government Performance Results Act of 1993 (Public Law 103–62; 107 Stat. 285) and the Clinger-Cohen Act of 1996 (division D of Public Law 104–106; 110 Stat. 642).

(c) ADDITIONAL INFORMATION TO BE INCLUDED FOR CERTAIN SYSTEMS.—(1) For each information technology and national security system of the Department of Defense that has a cost for the fiscal year in excess of $2,000,000, the Secretary shall identify that system by name, function, and total funds requested for the system.

(2) For each information technology and national security system of the Department of Defense that has a cost for the fiscal year in excess of $10,000,000, the Secretary shall identify that system by name, function, and total funds requested (by appropriation account) for that fiscal year, the funds appropriated for the preceding fiscal year, and the funds estimated to be requested for the next fiscal year.

(d) DEFINITIONS.—In this section:

(1) The term "information technology" has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)).

(2) The term "capital asset" has the meaning given that term in Office of Management and Budget Circular A–11.

(3) The term "national security system" has the meaning given that term in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

SEC. 353. IMPLEMENTATION OF POLICY REGARDING CERTAIN COMMERCIAL OFF-THE-SHELF INFORMATION TECHNOLOGY PRODUCTS.

The Secretary of Defense shall ensure that—

(1) the Department of Defense implements the policy established by the Committee on National Security Systems (formerly the National Security Telecommunications and Information Systems Security Committee) that limits the acquisition by the Federal Government of all commercial off-the-shelf information assurance and information assurance-enabled information technology products to those products that have been evaluated and validated in accordance with appropriate criteria, schemes, or programs; and

(2) implementation of such policy includes uniform enforcement procedures.

SEC. 354. INSTALLATION AND CONNECTION POLICY AND PROCEDURES REGARDING DEFENSE SWITCH NETWORK.

(a) ESTABLISHMENT OF POLICY AND PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish clear and uniform policy and procedures, applicable to the military departments and Defense Agencies, regarding the installation and connection of telecom switches to the Defense Switch Network.

(b) ELEMENTS OF POLICY AND PROCEDURES.—The policy and procedures shall address at a minimum the following:

(1) Clear interoperability and compatibility requirements for certifying, installing, and connecting telecom switches to the Defense Switch Network.

(2) Current, complete, and enforceable testing, validation, and certification procedures needed to ensure the interoperability and compatibility requirements are satisfied.

(c) EXCEPTIONS.—(1) The Secretary of Defense may specify certain circumstances in which—

(A) the requirements for testing, validation, and certification of telecom switches may be waived; or

(B) interim authority for the installation and connection of telecom switches to the Defense Switch Network may be granted.

(2) Only the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, after consultation with the Chairman of the Joint Chiefs of Staff, may approve a waiver or grant of interim authority under paragraph (1).

(d) INVENTORY OF DEFENSE SWITCH NETWORK.—The Secretary of Defense shall prepare and maintain an inventory of all telecom switches that, as of the date on which the Secretary issues the policy and procedures—

(1) are installed or connected to the Defense Switch Network; but

(2) have not been tested, validated, and certified by the Defense Information Systems Agency (Joint Interoperability Test Center).

(e) TELECOM SWITCH DEFINED.—In this section, the term "telecom switch" means hardware or software designed to send and receive voice, data, and video signals across a network.

Subtitle G—Other Matters

SEC. 361. DISTRIBUTION OF MONTHLY REPORTS ON ALLOCATION OF FUNDS WITHIN OPERATION AND MAINTENANCE BUDGET SUBACTIVITIES.

(a) DESIGNATION OF RECIPIENTS.—Subsection (a) of section 228 of title 10, United States Code, is amended by striking "to Congress" and inserting "to the congressional defense committees".

(b) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—Subsection (e) of such section is amended—

(1) by striking "(e) O&M BUDGET ACTIVITY DEFINED.—For purposes of this section, the" and inserting the following:

"(e) Definitions.—In this section:

"(1) The"; and

(2) by adding at the end the following:

"(2) The term 'congressional defense committees' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.".

SEC. 362. MINIMUM DEDUCTION FROM PAY OF CERTAIN MEMBERS OF THE ARMED FORCES TO SUPPORT ARMED FORCES RETIREMENT HOME.

Section 1007(i) of title 37, United States Code, is amended—

(1) in paragraph (1), by striking "an amount (determined under paragraph (3)) not to exceed $1.00." and inserting "an amount equal to $1.00 and such additional amount as may be determined under paragraph (3)."; and

(2) in paragraph (3)—

(A) by striking "the amount" in the first sentence and inserting "the additional amount"; and

(B) by striking "The amount" in the second sentence and inserting "The additional amount".

SEC. 363. CONDITION ON CONVERSION OF DEFENSE SECURITY SERVICE TO A WORKING CAPITAL FUNDED ENTITY.

The Secretary of Defense may not convert the Defense Security Service to a working capital funded entity of the Department of Defense unless the Secretary submits, in advance, to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a certification that the Defense Security Service has the financial systems in place to fully support operation of the Defense Security Service as a working capital funded entity under section 2208 of title 10, United States Code.

SEC. 364. CONTINUATION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

(a) Extension Through Fiscal Year 2004.—Subsection (a) of section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–65) is amended by striking "and 2002" and inserting "through 2004".

(b) Reporting Requirements.—Subsection (g) of such section is amended—

(1) in paragraph (1), by striking "2002" and inserting "2004"; and

(2) in paragraph (2), by striking the first sentence and inserting the following new sentence: "Not later than July 1, 2003, the Secretary of the Army shall submit to the congressional defense committees a report on the results of the demonstration program since its implementation, including the Secretary's views regarding the benefits of the program for Army manufacturing arsenals and the Department of the Army and the success of the program in achieving the purposes specified in subsection (b).".

SEC. 365. TRAINING RANGE SUSTAINMENT PLAN, GLOBAL STATUS OF RESOURCES AND TRAINING SYSTEM, AND TRAINING RANGE INVENTORY.

(a) Plan Required.—(1) The Secretary of Defense shall develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address problems created by limitations on the use of military lands, marine areas, and airspace reserved, withdrawn, or designated for training and testing activities by, for, or on behalf of the Armed Forces.

(2) The plan shall include the following:

(A) Goals and milestones for tracking planned actions and measuring progress.

(B) Projected funding requirements for implementing planned actions.

(C) Designation of an office in the Office of the Secretary of Defense and each of the military departments that will have lead responsibility for overseeing implementation of the plan.

(3) The Secretary of Defense shall submit the plan to Congress at the same time as the President submits the budget for fiscal year 2004 and shall submit an annual report to Congress describing the progress made in implementing the plan and any additional encroachment problems.

(b) Readiness Reporting Improvement.—Not later than June 30, 2003, the Secretary of Defense, using existing measures within the authority of the Secretary, shall submit to Congress a report on the plans of the Department of Defense to improve the Global Status of Resources and Training System—

(1) to better reflect the increasing challenges units of the Armed Forces must overcome to achieve training requirements; and

(2) to quantify the extent to which encroachment and other individual factors are making military lands, marine areas, and airspace less available to support unit accomplishment of training plans and readiness goals.

(c) Training Range Inventory.—The Secretary of Defense shall develop and maintain a training range data bank for each of the Armed Forces—

(1) to identify all available operational training ranges;

(2) to identify all training capacities and capabilities available at each training range;

(3) to identify all current encroachment threats or other potential limitations on training that are, or are likely to, adversely affect training and readiness; and

(4) to provide a point of contact for each training range.

(d) GAO Evaluation.—(1) With respect to each report submitted under this section, the Comptroller General shall submit to Congress, within 60 days after receiving the report, an evaluation of the report.

(e) Armed Forces Defined.—In this section, the term "Armed Forces" means the Army, Navy, Air Force, and Marine Corps.

SEC. 366. AMENDMENTS TO CERTAIN EDUCATION AND NUTRITION LAWS RELATING TO ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) Eligibility for Heavily Impacted Local Educational Agencies Affected by Privatization of Military Housing.—Section 8003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)) is amended by adding at the end the following:

"(H) Eligibility for heavily impacted local educational agencies affected by privatization of military housing.—

"(i) Eligibility.—For any fiscal year beginning with fiscal year 2003, a heavily impacted local educational agency that received a basic support payment under subparagraph (A) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) or (C), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion.

"(ii) Amount of payment.—The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E) (as the case may be), shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year.

"(iii) Conversion of military housing units to private housing described.—For purposes of clause (i), 'conversion of military housing units to private housing' means the conversion of military housing units to private housing units pursuant to subchapter IV of chapter 169 of title 10, United States Code, or pursuant to any other related provision of law.".

(b) Exclusion of Certain Military Basic Allowances for Housing for Determination of Eligibility for Free and Reduced Price Meals.—Section 9(b)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(3)) is amended by adding at the end the following: "For the one-year period beginning on the date of the enactment of this sentence, the amount of a basic allowance provided under section 403 of title 37, United States Code, on behalf of an individual who is a member of the uniformed services for housing that is acquired or constructed under the authority of subchapter IV of chapter 169 of title 10, United States Code, or any other related provision of law, shall not be considered to be income for purposes of determining the eligibility of a child of the individual for free or reduced price lunches under this Act.".

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2003, as follows:

(1) The Army, 484,800.

(2) The Navy, 379,457.

(3) The Marine Corps, 175,000.

(4) The Air Force, 360,795.

SEC. 402. REVISION IN PERMANENT END STRENGTH MINIMUM LEVELS.

(a) Revised End Strength Floors.—Section 691(b) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "480,000" and inserting "484,800";

(2) in paragraph (2), by striking "376,000" and inserting "379,457';

(3) in paragraph (3), by striking "172,600" and inserting "175,000"; and

(4) in paragraph (4), by striking "358,800" and inserting "360,795".

(b) Effective Date.—The amendments made by subsection (a) shall take effect on October 1, 2002, or the date of the enactment of this Act, whichever is later.

SEC. 403. AUTHORITY FOR MILITARY DEPARTMENT SECRETARIES TO INCREASE ACTIVE-DUTY END STRENGTHS BY UP TO 1 PERCENT.

(a) Service Secretary Authority.—Section 115 of title 10, United States Code, is amended by inserting after subsection (e) the following new subsection:

"(f) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary. Any such increase for a fiscal year—

"(1) shall be by a number equal to not more than 1 percent of such authorized end strength; and

"(2) shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (c)(1).".

(b) Effective Date.—Subsection (f) of section 115 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002, or the date of the enactment of this Act, whichever is later.

SEC. 404. GENERAL AND FLAG OFFICER MANAGEMENT.

(a) Exclusion of Senior Military Assistant to the Secretary of Defense From Limitation on Active Duty Officers in Grades Above Major General and Rear Admiral.—Effective on the date specified in subsection (e), section 525(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(8) An officer while serving in a position designated by the Secretary of Defense as Senior Military Assistant to the Secretary of Defense, if serving in the grade of lieutenant general or vice admiral, is in addition to the number that otherwise would be permitted for that officer's armed force for that grade under paragraph (1) or (2). Only one officer may be designated as Senior Military Assistant to the Secretary of Defense for purposes of this paragraph.".

(b) Increase in Number of Lieutenant Generals Authorized for the Marine Corps.—Effective on the date specified in subsection (e), paragraph (2)(B) of such section is amended by striking "16.2 percent" and inserting "17.5 percent".

(c) Grade of Chief of Veterinary Corps of the Army.—(1) Effective on the date specified in subsection (e), chapter 307 of such title is amended by adding at the end the following new section:

"§ 3084. Chief of Veterinary Corps: grade

"The Chief of the Veterinary Corps of the Army serves in the grade of brigadier general. An officer appointed to that position who holds a lower grade shall be appointed in the grade of brigadier general.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3084. Chief of Veterinary Corps: grade.".

(d) Review of Active Duty and Reserve General and Flag Officer Authorizations.—(1) The Secretary of Defense shall submit to Congress a report containing any recommendations of the Secretary (together with the rationale of the Secretary for the recommendations) concerning the following:

(A) Revision of the limitations on general and flag officer grade authorizations and distribution in grade prescribed by sections 525, 526, and 12004 of title 10, United States Code.

(B) Statutory designation of the positions and grades of any additional general and flag officers in the commands specified in chapter 1006 of title 10, United States Code, and the reserve component offices specified in sections 3038, 5143, 5144, and 8038 of such title.

(2) The provisions of subsection (b) through (e) of section 1213 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2694) shall apply to the report under paragraph (1) in the same manner as they applied to the report required by subsection (a) of that section.

(e) Effective Date.—The amendments made by subsections (a), (b), and (c) shall take effect on the date of the receipt by Congress of the report required by subsection (d).

SEC. 405. EXTENSION OF CERTAIN AUTHORITIES RELATING TO MANAGEMENT OF NUMBERS OF GENERAL AND FLAG OFFICERS IN CERTAIN GRADES.

(a) Senior Joint Officer Positions.—Section 604(c) of title 10, United States Code, is amended by striking "September 30, 2003" and inserting "December 31, 2004".

(b) Distribution of Officers on Active Duty in General and Flag Officer Grades.—Section 525(b)(5)(C) of such title is amended by striking "September 30, 2003" and inserting "December 31, 2004".

(c) Authorized Strength for General and Flag Officers on Active Duty.—Section 526(b)(3) of such title is amended by striking "October 1, 2002" and inserting "December 31, 2004".

Subtitle B—Reserve Forces

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) In General.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2003, as follows:

(1) The Army National Guard of the United States, 350,000.

(2) The Army Reserve, 205,000.

(3) The Naval Reserve, 87,800.

(4) The Marine Corps Reserve, 39,558.

(5) The Air National Guard of the United States, 106,600.

(6) The Air Force Reserve, 75,600.

(7) The Coast Guard Reserve, 9,000.

(b) Adjustments.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2003, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 24,562.

(2) The Army Reserve, 14,070.

(3) The Naval Reserve, 14,572.

(4) The Marine Corps Reserve, 2,261.

(5) The Air National Guard of the United States, 11,697.

(6) The Air Force Reserve, 1,498.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual status) as of the last day of fiscal year 2003 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

(1) For the Army National Guard of the United States, 24,102.

(2) For the Army Reserve, 6,599.

(3) For the Air National Guard of the United States, 22,495.

(4) For the Air Force Reserve, 9,911.

SEC. 414. FISCAL YEAR.2003 LIMITATION ON NON-DUAL STATUS TECHNICIANS.

(a) Army.—The number of non-dual status technicians employed by the reserve components of the Army as of September 30, 2003, may not exceed the following:

(1) For the Army Reserve, 995.

(2) For the Army National Guard of the United States, 1,600, to be counted within the limitation specified in section 10217(c)(2) of title 10, United States Code.

(b) Air Force.—The number of non-dual status technicians employed by the reserve components of the Army and the Air Force as of September 30, 2003, may not exceed the following:

(1) For the Air Force Reserve, 90.

(2) For the Air National Guard of the United States, 350, to be counted within the limitation specified in section 10217(c)(2) of title 10, United States Code.

(c) Non-Dual Status Technicians Defined.—In this section, the term "non-dual status technician" has the meaning given that term in section 10217(a) of title 10, United States Code.

(d) Technical Amendments.—Effective October 1, 2002, section 10217(c)(2) of title 10, United States Code, is amended—

(1) in the first sentence, by striking "Effective October 1, 2002, the" and inserting "The"; and

(2) in the second sentence, by striking "after the preceding sentence takes effect".

Subtitle C—Authorization of Appropriations

SEC. 421. AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2003 a total of $93,725,028,000. The authorization in the preceding sentence supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2003.

TITLE V—MILITARY PERSONNEL POLICY

SEC. 501. INCREASE IN NUMBER OF DEPUTY COMMANDANTS OF THE MARINE CORPS.

Section 5045 of title 10, United States Code, is amended by striking "five" and inserting "six".

SEC. 502. EXTENSION OF GOOD-OF-THE-SERVICE WAIVER AUTHORITY FOR OFFICERS APPOINTED TO A RESERVE CHIEF OR GUARD DIRECTOR POSITION.

(a) Waiver of Requirement for Significant Joint Duty Experience.—Sections 3038(b)(4), 5143(b)(4), 5144(b)(4), 8038(b)(4), and 10506(a)(3)(D) of title 10, United States Code, are each amended by striking "October 1, 2003" and inserting "December 31, 2004".

(b) Report on Future Implementation of Requirement.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report setting forth the steps being taken (and proposed to be taken) by the Secretary, the Secretaries of the military departments, and the Chairman of the Joint Chiefs of Staff to ensure that no further extension of the waiver authority under the sections amended by subsection (a) is required and that after December 31, 2004, appointment of officers to serve in the positions covered by those sections shall be made from officers with the requisite joint duty experience.

Subtitle B—Reserve Component Management

SEC. 511. REVIEWS OF NATIONAL GUARD STRENGTH ACCOUNTING AND MANAGEMENT AND OTHER ISSUES.

(a) COMPTROLLER GENERAL ASSESSMENTS.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on management of the National Guard. The report shall include the following:

(1) The Comptroller General's assessment of the effectiveness of the implementation of Department of Defense plans for improving management and accounting for personnel strengths in the National Guard, including an assessment of the process that the Department of Defense, the National Guard Bureau, the Army National Guard and State-level National Guard leadership, and leadership in the other reserve components have for identifying and addressing in a timely manner specific units in which nonparticipation rates are significantly in excess of the established norms.

(2) The Comptroller General's assessment of the effectiveness of the process for Federal recognition of senior National Guard officers and recommendations for improvement to that process.

(3) The Comptroller General's assessment of the process for, and the nature and extent of, the administrative or judicial corrective action taken by the Secretary of Defense, the Secretary of the Army, and the Secretary of the Air Force as a result of Inspector General investigations or other investigations in which allegations against senior National Guard officers are substantiated in whole or in part.

(4) The Comptroller General's determination of the effectiveness of the Federal protections provided for members or employees of the National Guard who report allegations of waste, fraud, abuse, or mismanagement and the nature and extent to which corrective action is taken against those in the National Guard who retaliate against such members or employees.

(b) SECRETARY OF DEFENSE REPORT ON DIFFERENT ARMY AND AIR FORCE PROCEDURES.—Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the differing Army and Air Force policies for taking adverse administrative actions against National Guard officers in a State status. The report shall include the Secretary's determination as to whether changes should be made in those policies, especially through requiring the Air Force to adopt the same policy as the Army for such administrative actions.

SEC. 512. COURTS-MARTIAL FOR THE NATIONAL GUARD WHEN NOT IN FEDERAL SERVICE.

(a) MANNER OF PRESCRIBING PUNISHMENTS.—Section 326 of title 32, United States Code, is amended by adding at the end the following new sentence: "Punishments shall be as provided by the laws of the respective States and Territories, Puerto Rico, and the District of Columbia.".

(b) CONVENING AUTHORITY.—Section 327 of such title is amended to read as follows:

"§327. Courts-martial of National Guard not in Federal service: convening authority

"(a) In the National Guard not in Federal service, general, special, and summary courts-martial may be convened as provided by the laws of the States and Territories, Puerto Rico, and the District of Columbia.

"(b) In addition to convening authorities as provided under subsection (a), in the National Guard not in Federal service—

"(1) general courts-martial may be convened by the President;

"(2) special courts-martial may be convened—

"(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty; or

"(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command; and

"(3) summary courts-martial may be convened—

"(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty; or

"(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.".

(2) The item relating to such section in the table of sections at the beginning of chapter 3 of such title is amended to read as follows:

"327. Courts-martial of National Guard not in Federal service: convening authority.".

(c) REPEAL OF SUPERSEDED AND OBSOLETE PROVISIONS.—

(1) Sections 328, 329, 330, 331, 332, and 333 of title 32, United States Code, are repealed.

(2) The table of sections at the beginning of chapter 3 of such title is amended by striking the items relating to sections 328, 329, 330, 331, 332, and 333.

(d) PREPARATION OF MODEL STATE CODE OF MILITARY JUSTICE AND MODEL STATE MANUAL FOR COURTS-MARTIAL.—(1) The Secretary of Defense shall prepare, for consideration for enactment by the States, a model State code of military justice and a model State manual of courts-martial for use with respect to the National Guard not in Federal service. Both such models shall be consistent with the recommendations contained in the report, issued in 1998, by the panel known as the Department of Defense Panel to Study Military Justice in the National Guard not in Federal Service.

(2) The Secretary shall ensure that adequate support for the preparation of such model State code and model State manual (including the detailing of attorneys and other staff) is provided by the General Counsel of the Department of Defense, the Secretary of the Army, the Secretary of the Air Force, and the Chief of the National Guard Bureau.

(3) If the amounts available to the Chief of the National Guard Bureau are not adequate for the costs required to provide support under paragraph (2) (including costs for increased pay when members of the National Guard are ordered to active duty, cost of detailed attorneys and other staff, allowances, and travel expenses), the Secretary shall, upon request of the Chief of the Bureau, provide such additional amounts as are necessary.

(4) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this subsection. The report shall include proposals in final form of both the model State code and the model State manual required by paragraph (1) and shall set forth the efforts being made to present those proposals to the States for their consideration for enactment.

(5) In this subsection, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

SEC. 513. MATCHING FUNDS REQUIREMENTS UNDER NATIONAL GUARD YOUTH CHALLENGE PROGRAM.

Effective October 1, 2002, subsection (d) of section 509 of title 32, United States Code, is amended to read as follows:

"(d) MATCHING FUNDS REQUIRED.—The amount of assistance provided under this section to a State program of the National Guard Challenge Program for a fiscal year may not exceed 75 percent of the costs of operating the State program during that fiscal year.".

Subtitle C—Reserve Component Officer Personnel Policy

SEC. 521. EXEMPTION FROM ACTIVE STATUS STRENGTH LIMITATION FOR RESERVE COMPONENT GENERAL AND FLAG OFFICERS SERVING ON ACTIVE DUTY IN CERTAIN JOINT DUTY ASSIGNMENTS DESIGNATED BY THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF.

Section 12004 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(f)(1) A general or flag officer who is on active duty but who is not counted under section 526(a) of this title by reason of section 526(b)(2)(B) of this title shall also be excluded from being counted under subsection (a).

"(2) This subsection shall cease to be effective on the date specified in section 526(b)(3) of this title.".

SEC. 522. ELIGIBILITY FOR CONSIDERATION FOR PROMOTION TO GRADE OF MAJOR GENERAL FOR CERTAIN RESERVE COMPONENT BRIGADIER GENERALS WHO DO NOT OTHERWISE QUALIFY FOR CONSIDERATION FOR PROMOTION UNDER THE ONE-YEAR RULE.

Section 14301(g) of title 10, United States Code, is amended to read as follows:

"(g) BRIGADIER GENERALS.—(1) An officer who is a reserve component brigadier general of the Army or the Air Force who is not eligible for consideration for promotion under subsection (a) because the officer is not on the reserve active status list (as required by paragraph (1) of that subsection for such eligibility) is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

"(A) as of the date of the convening of the promotion board, the officer has been in an inactive status for less than one year; and

"(B) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list) for at least one year.

"(2) An officer who is a reserve component brigadier general of the Army or the Air Force who is on the reserve active status list but who is not eligible for consideration for promotion under subsection (a) because the officer's service does not meet the one-year-of-continuous-service requirement under paragraph (2) of that subsection is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

"(A) the officer was transferred from an inactive status to the reserve active status list during the one-year period preceding the date of the convening of the promotion board;

"(B) immediately before the date of the officer's most recent transfer to an active status, the officer had been in an inactive status for less than one year; and

"(C) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served for at least one year on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list).".

SEC. 523. RETENTION OF PROMOTION ELIGIBILITY FOR RESERVE COMPONENT GENERAL AND FLAG OFFICERS TRANSFERRED TO AN INACTIVE STATUS.

Section 14317 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(f) EFFECT OF TRANSFER OF OFFICERS IN PAY GRADE O–7 TO INACTIVE STATUS.—Notwithstanding subsection (a), if a reserve officer on the active-status list in the grade of brigadier general or rear admiral (lower half) is transferred to an inactive status after having been recommended for promotion to the grade of major general or rear admiral under this chapter, or after having been found qualified for Federal recognition in the grade of major general under title 32, but before being promoted, the officer shall retain promotion eligibility and, if otherwise qualified, may be promoted to the higher grade after returning to an active status.".

SEC. 524. AUTHORITY FOR LIMITED EXTENSION OF MEDICAL DEFERMENT OF MANDATORY RETIREMENT OR SEPARATION FOR RESERVE OFFICERS.

(a) DEFERMENT OF RETIREMENT OR SEPARATION FOR MEDICAL REASONS.—Chapter 1407 of title 10, United States Code, is amended by adding at the end the following new section:

"§14519. Deferment of retirement or separation for medical reasons

"(a) If the Secretary of the military department concerned determines that the evaluation of the physical condition of a Reserve officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the officer's well-being before the date on which the officer would otherwise be required to be separated, retired, or transferred to the Retired Reserve under this title, the Secretary may defer the separation, retirement, or transfer of the officer under this title.

"(b) A deferral under subsection (a) of separation, retirement, or transfer to the Retired Reserve may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"14519. Deferment of retirement or separation for medical reasons.".

Subtitle D—Education and Training

SEC. 531. AUTHORITY FOR PHASED INCREASE TO 4,400 IN AUTHORIZED STRENGTHS FOR THE SERVICE ACADEMIES.

(a) MILITARY ACADEMY.—Section 4342 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: "or such higher number as may be prescribed by the Secretary of the Army under subsection (j)"; and

(2) by adding at the end the following new subsection:

"(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Army may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

"(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Army Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

"(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Army Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

"(4) In this subsection, the term 'cadet strength limit' means the authorized maximum strength of the Corps of Cadets of the Academy.".

(b) NAVAL ACADEMY.—Section 6954 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: "or such higher number as may be prescribed by the Secretary of the Navy under subsection (h)"; and

(2) by adding at the end the following new subsection:

"(h)(1) Beginning with the 2003–2004 academic year, the Secretary of the Navy may prescribe annual increases in the midshipmen strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 midshipmen or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the midshipmen strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

"(2) Any increase in the midshipmen strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the midshipmen strength limit and the new midshipmen strength limit, as so increased, and the amount of the increase in Senior Navy Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

"(3) The amount of an increase under paragraph (1) in the midshipmen strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of midshipmen enrolled in the Navy Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

"(4) In this subsection, the term 'midshipmen strength limit' means the authorized maximum strength of the Brigade of Midshipmen.".

(c) AIR FORCE ACADEMY.—Section 9342 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: "or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j)"; and

(2) by adding at the end the following new subsection:

"(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Air Force may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

"(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under sections 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Air Force Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

"(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Air Force Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

"(4) In this subsection, the term 'cadet strength limit' means the authorized maximum strength of Air Force Cadets of the Academy.".

(d) TARGET FOR INCREASES IN NUMBER OF ROTC SCHOLARSHIP PARTICIPANTS.—Section 2107 of such title is amended by adding at the end the following new subsection:

"(i) The Secretary of each military department shall seek to achieve an increase in the number of agreements entered into under this section so as to achieve an increase, by the 2006–2007 academic year, of not less than 400 in the number of cadets or midshipmen, as the case may be, enrolled under this section, compared to such number enrolled for the 2002–2003 academic year. In the case of the Secretary of the Navy, the Secretary shall seek to ensure that not less than one-third of such increase in agreements under this section are with students enrolled (or seeking to enroll) in programs of study leading to a baccalaureate degree in nuclear engineering or another appropriate technical, scientific, or engineering field of study.".

(e) REPEAL OF LIMIT ON NUMBER OF ROTC SCHOLARSHIPS.—Section 2107 of such title is further amended by striking the first sentence of subsection (h)(1).

(f) REPEAL OF OBSOLETE LANGUAGE.—Section 4342(i) of such title is amended by striking "(beginning with the 2001–2002 academic year)".

SEC. 532. ENHANCEMENT OF RESERVE COMPONENT DELAYED TRAINING PROGRAM.

(a) INCREASE IN TIME FOLLOWING ENLISTMENT FOR COMMENCEMENT OF INITIAL PERIOD OF ACTIVE DUTY FOR TRAINING.—Section 12103(d) of title 10, United States Code, is amended by striking "270 days" in the last sentence and inserting "one year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to enlistments under section 12103(d) of title 10, United States Code, after the end of the 90-day period beginning on the date of the enactment of this Act.

(c) TRANSITION.—In the case of a person who enlisted under section 12103(d) of title 10, United States Code, before the date of the enactment of this Act and who as of such date has not commenced the required initial period of active duty for training under that section, the amendment made by subsection (a) may be applied to that person, but only with the agreement of that person and the Secretary concerned.

SEC. 533. PREPARATION FOR, PARTICIPATION IN, AND CONDUCT OF ATHLETIC COMPETITIONS BY THE NATIONAL GUARD AND MEMBERS OF THE NATIONAL GUARD.

(a) ATHLETIC AND SMALL ARMS COMPETITIONS.—Section 504 of title 32, United States Code, is amended by adding at the end the following new subsection:

"(c) CONDUCT OF AND PARTICIPATION IN CERTAIN COMPETITIONS.—(1) Under regulations prescribed by the Secretary of Defense, members and units of the National Guard may conduct and compete in a qualifying athletic competition or a small arms competition so long as—

"(A) the conduct of, or participation in, the competition does not adversely affect the quality of training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit;

"(B) National Guard personnel will enhance their military skills as a result of conducting or participating in the competition; and

"(C) the conduct of or participation in the competition will not result in a significant increase in National Guard costs.

"(2) Facilities and equipment of the National Guard, including military property and vehicles described in section 508(c) of this title, may be used in connection with the conduct of or participation in a qualifying athletic competition or a small arms competition under paragraph (1).".

(b) OTHER MATTERS.—Such section is further amended by adding after subsection (c), as added by subsection (a) of this section, the following new subsections:

"(d) AVAILABILITY OF FUNDS.—(1) Subject to paragraph (2) and such limitations as may be enacted in appropriations Acts and such regulations as the Secretary of Defense may prescribe, amounts appropriated for the National Guard may be used to cover—

"(A) the costs of conducting or participating in a qualifying athletic competition or a small arms competition under subsection (c); and

"(B) the expenses of members of the National Guard under subsection (a)(3), including expenses of attendance and participation fees, travel, per diem, clothing, equipment, and related expenses.

"(2) Not more than $2,500,000 may be obligated or expended in any fiscal year under subsection (c).

"(e) QUALIFYING ATHLETIC COMPETITION DEFINED.—In this section, the term 'qualifying athletic competition' means a competition in athletic events that require skills relevant to military duties or involve aspects of physical fitness that are evaluated by the armed forces in determining whether a member of the National Guard is fit for military duty.".

(c) STYLISTIC AMENDMENTS.—Such section is further amended—

(1) in subsection (a), by inserting "AUTHORIZED ACTIVITIES.—" after "(a)"; and

(2) in subsection (b), by inserting "AUTHORIZED LOCATIONS.—" after "(b)".

(d) CONFORMING AND CLERICAL AMENDMENTS.—(1) Subsection (a) of such section is amended—

(A) in paragraph (1), by inserting "and" after the semicolon;

(B) in paragraph (2), by striking "; or" and inserting a period; and

(C) by striking paragraph (3).

(2) The heading of such section is amended to read as follows:

"§ 504. National Guard schools; small arms competitions; athletic competitions".

(3) The item relating to section 504 in the table of sections at the beginning of chapter 5 of title 32, United States Code, is amended to read as follows:

"504. National Guard schools; small arms competitions; athletic competitions.".

Subtitle E—Decorations and Awards

SEC. 541. WAIVER OF TIME LIMITATIONS FOR AWARD OF CERTAIN DECORATIONS TO CERTAIN PERSONS.

(a) WAIVER.—Any limitation established by law or policy for the time within which a recommendation for the award of a military decoration or award must be submitted shall not apply to awards of decorations described in this section, the award of each such decoration having been determined by the Secretary concerned to be warranted in accordance with section 1130 of title 10, United States Code.

(b) DISTINGUISHED FLYING CROSS.—Subsection (a) applies to the award of the Distinguished Flying Cross (including multiple awards to the same individual) in the case of each individual concerning whom the Secretary of the military department concerned (or a designated official acting on behalf of the Secretary of the military department concerned) submitted to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, during the period beginning on December 28, 2001, and ending on the day before the date of the enactment of this Act, a notice as provided in section 1130(b) of title 10, United States Code, that the award of the Distinguished Flying Cross to that individual is warranted and that a waiver of time restrictions prescribed by law for recommendation for such award is recommended.

SEC. 542. OPTION TO CONVERT AWARD OF ARMED FORCES EXPEDITIONARY MEDAL AWARDED FOR OPERATION FREQUENT WIND TO VIETNAM SERVICE MEDAL.

(a) IN GENERAL.—The Secretary of the military department concerned shall, upon the application of an individual who is an eligible Vietnam evacuation veteran, award that individual the Vietnam Service Medal, notwithstanding any otherwise applicable requirements for the award of that medal. Any such award shall be made in lieu of the Armed Forces Expeditionary Medal awarded the individual for participation in Operation Frequent Wind.

(b) ELIGIBLE VIETNAM EVACUATION VETERAN.—For purposes of this section, the term "eligible Vietnam evacuation veteran" means a member or former member of the Armed Forces who was awarded the Armed Forces Expeditionary Medal for participation in military operations designated as Operation Frequent Wind arising from the evacuation of Vietnam on April 29 and 30, 1975.

Subtitle F—Administrative Matters

SEC. 551. STAFFING AND FUNDING FOR DEFENSE PRISONER OF WAR/MISSING PERSONNEL OFFICE.

(a) REQUIREMENT FOR STAFFING AND FUNDING AT LEVELS REQUIRED FOR PERFORMANCE OF FULL RANGE OF MISSIONS.—Subsection (a) of section 1501 of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) The Secretary of Defense shall ensure that the office is provided sufficient military and civilian personnel levels, and sufficient funding, to enable the office to fully perform its complete range of missions. The Secretary shall ensure that Department of Defense programming, planning, and budgeting procedures are structured so as to ensure compliance with the preceding sentence for each fiscal year.

"(B) For any fiscal year, the number of military and civilian personnel assigned or detailed to the office may not be less than the number requested in the President's budget for fiscal year 2003, unless a level below such number is expressly required by law.

"(C) For any fiscal year, the level of funding allocated to the office within the Department of Defense may not be below the level requested for such purposes in the President's budget for fiscal year 2003, unless such a level of funding is expressly required by law.".

(b) NAME OF OFFICE.—Such subsection is further amended by inserting after the first sentence of paragraph (1) the following new sentence: "Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.".

SEC. 552. THREE-YEAR FREEZE ON REDUCTIONS OF PERSONNEL OF AGENCIES RESPONSIBLE FOR REVIEW AND CORRECTION OF MILITARY RECORDS.

(a) IN GENERAL.—Chapter 79 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1559. Personnel limitation

"(a) LIMITATION.—During fiscal years 2003, 2004, and 2005, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

"(1) the Secretary submits to Congress a report that—

"(A) describes the reduction proposed to be made;

"(B) provides the Secretary's rationale for that reduction; and

"(C) specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

"(2) a period of 90 days has elapsed after the date on which the report is submitted.

“(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

“(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

“(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

“(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term ‘service review agency’ means—

“(1) with respect to the Department of the Army, the Army Review Boards Agency;

“(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

“(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1559. Personnel limitation.”.

SEC. 553. DEPARTMENT OF DEFENSE SUPPORT FOR PERSONS PARTICIPATING IN MILITARY FUNERAL HONORS DETAILS.

Section 1491(d) of title 10, United States Code, is amended—

(1) by striking “To provide a” after “SUPPORT.—” and inserting “(1) To support a”;

(2) by redesignating paragraph (1) as subparagraph (A) and amending such subparagraph, as so redesignated, to read as follows:

“(A) For a person who participates in a funeral honors detail (other than a person who is a member of the armed forces not in a retired status or an employee of the United States), either transportation (or reimbursement for transportation) and expenses or the daily stipend prescribed under paragraph (2).”;

(3) by redesignating paragraph (2) as subparagraph (B) and in that subparagraph—

(A) by striking “Materiel, equipment, and training for” and inserting “For”; and

(B) by inserting before the period at the end “and for members of the armed forces in a retired status, materiel, equipment, and training”;

(4) by redesignating paragraph (3) as subparagraph (C) and in that subparagraph—

(A) by striking “Articles of clothing for” and inserting “For”; and

(B) by inserting “, articles of clothing” after “subsection (b)(2)”; and

(5) by adding at the end the following new paragraphs:

“(2) The Secretary of Defense shall prescribe annually a flat rate daily stipend for purposes of paragraph (1)(A). Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for persons participating in funeral honors details who are members of the armed forces in a retired status and other persons are not members of the armed forces or employees of the United States.

“(3) A stipend paid under this subsection to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under section 435(a)(2) of title 37 and any other compensation to which the member may be entitled.”.

SEC. 554. AUTHORITY FOR USE OF VOLUNTEERS AS PROCTORS FOR ADMINISTRATION OF ARMED SERVICES VOCATIONAL APTITUDE BATTERY TEST.

Section 1588(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6) Voluntary services as a proctor for administration to secondary school students of the test known as the ‘Armed Services Vocational Aptitude Battery’.”.

SEC. 555. ANNUAL REPORT ON STATUS OF FEMALE MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 23 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 488. Status of female members of the armed forces: annual report

“(a) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report on the status of female members of the armed forces. Information in the report shall be shown for the Department of Defense as a whole and separately for each of the Army, Navy, Air Force, and Marine Corps.

“(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall include, at a minimum, the following information with respect to female members:

“(1) Access to health care.

“(2) Positions open.

“(3) Assignment policies.

“(4) Joint spouse assignments.

“(5) Deployment availability rates.

“(6) Promotion and retention rates.

“(7) Assignments in nontraditional fields.

“(8) Assignments to command positions.

“(9) Selection for service schools.

“(10) Sexual harassment.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“488. Status of female members of the armed forces: annual report.”.

Subtitle G—Benefits

SEC. 561. VOLUNTARY LEAVE SHARING PROGRAM FOR MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—(1) Chapter 40 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 709. Voluntary transfers of leave

“(a) PROGRAM.—The Secretary concerned shall, by regulation, establish a program under which leave accrued by a member of an armed force may be transferred to another member of the same armed force who requires additional leave because of a qualifying emergency. Any such transfer of leave may be made only upon the voluntary written application of the member whose leave is to be transferred.

“(b) APPROVAL OF COMMANDING OFFICER REQUIRED.—Any transfer of leave under a program under this section may only be made with the approval of the commanding officer of the leave donor and the leave recipient.

“(c) QUALIFYING EMERGENCY.—In this section, the term ‘qualifying emergency’, with respect to a member of the armed forces, means a circumstance that—

“(1) is likely to require the prolonged absence of the member from duty; and

“(2) is due to—

“(A) a medical condition of a member of the immediate family of the member; or

“(B) any other hardship that the Secretary concerned determines appropriate for purposes of this section.

“(d) MILITARY DEPARTMENT REGULATIONS.—Regulations prescribed under this section by the Secretaries of the military department shall be as uniform as practicable and shall be subject to approval by the Secretary of Defense.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“709. Voluntary transfers of leave.”.

(b) DEADLINE FOR IMPLEMENTING REGULATIONS.—Regulations to implement section 709 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than six months after the date of the enactment of this Act.

SEC. 562. ENHANCED FLEXIBILITY IN MEDICAL LOAN REPAYMENT PROGRAM.

(a) ELIGIBLE PERSONS.—Subsection (d) of section 2173 of title 10, United States Code, is amended by striking “Participants” and all that follows through “and students” and inserting “Students”.

(b) LOAN REPAYMENT AMOUNTS.—Subsection (e)(2) of such section is amended by striking the last sentence.

SEC. 563. EXPANSION OF OVERSEAS TOUR EXTENSION BENEFITS.

Section 705(b)(2) of title 10, United States Code, is amended—

(1) by striking “recuperative” and inserting “recuperation”; and

(2) by inserting before the period at the end the following: “, or to an alternate location at a cost not to exceed the cost of transportation to the nearest port in the 48 contiguous States, and return”.

SEC. 564. VEHICLE STORAGE IN LIEU OF TRANSPORTATION WHEN MEMBER IS ORDERED TO A NONFOREIGN DUTY STATION OUTSIDE CONTINENTAL UNITED STATES.

(a) STORAGE COSTS AUTHORIZED.—Subsection (b) of section 2634 of title 10, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

“(b)(1) When a member receives a vehicle storage qualifying order, the member may elect to have a motor vehicle described in subsection (a) stored at the expense of the United States at a location approved by the Secretary concerned. In the case of a vehicle storage qualifying order that is to make a change of permanent station, such storage is in lieu of transportation authorized by subsection (a).

“(2) In this subsection, the term ‘vehicle storage qualifying order’ means any of the following:

“(A) An order to make a change of permanent station to a foreign country in a case in which the laws, regulations, or other restrictions imposed by the foreign country or by the United States either—

“(i) preclude entry of a motor vehicle described in subsection (a) into that country; or

“(ii) would require extensive modification of the vehicle as a condition to entry.

“(B) An order to make a change of permanent station to a nonforeign area outside the continental United States in a case in which the laws, regulations, or other restrictions imposed by that area or by the United States either—

“(i) preclude entry of a motor vehicle described in subsection (a) into that area; or

“(ii) would require extensive modification of the vehicle as a condition to entry.

“(C) An order under which a member is transferred or assigned in connection with a contingency operation to duty at a location other than the permanent station of the member for a period of more than 30 consecutive days but which is not considered a change of permanent station.”.

(b) NONFOREIGN AREA OUTSIDE THE CONTINENTAL UNITED STATES DEFINED.—Subsection (h) of such section is amended by adding at the end the following new paragraph:

"(3) The term 'nonforeign area outside the continental United States' means any of the following: the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any possession of the United States.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to orders to make a change of permanent station to a nonforeign area outside the continental United States (as such term is defined in subsection (h)(3) of section 2634 of title 10, United States Code, as added by subsection (b)) that are issued on or after the date of the enactment of this Act.

Subtitle H—Military Justice Matters

SEC. 571. RIGHT OF CONVICTED ACCUSED TO REQUEST SENTENCING BY MILITARY JUDGE.

(a) SENTENCING BY JUDGE.—(1) Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 852 (article 52) the following new section:

"§ 852a. Art. 52a. Right of accused to request sentencing by military judge rather than by members

"(a) In the case of an accused convicted of an offense by a court-martial composed of a military judge and members, the sentence shall be tried before and adjudged by the military judge rather than the members if, after the findings are announced and before evidence in the sentencing proceeding is introduced, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing that the sentence be tried before and adjudged by the military judge rather than the members.

"(b) This section shall not apply with respect to an offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.".

(2) The table of sections at the beginning of subchapter VII of such chapter is amended by inserting after the item relating to section 852 (article 52) the following new item:

"852a. 52a. Right of accused to request sentencing by military judge rather than by members.".

(b) EFFECTIVE DATE.—Section 852a of title 10, United States Code (article 52a of the Uniform Code of Military Justice), as added by subsection (a), shall apply with respect to offenses committed on or after January 1, 2003.

SEC. 572. REPORT ON DESIRABILITY AND FEASIBILITY OF CONSOLIDATING SEPARATE COURSES OF BASIC INSTRUCTION FOR JUDGE ADVOCATES.

Not later than February 1, 2003, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the desirability and feasibility of consolidating the separate Army, Navy, and Air Force courses of basic instruction for judge advocates into a single course to be conducted at a single location. The report shall include—

(1) an assessment of the advantages and disadvantages of such a consolidation;

(2) a recommendation as to whether such a consolidation is desirable and feasible; and

(3) any proposal for legislative action that the Secretary considers appropriate for carrying out such a consolidation.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2003.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2003 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2003, the rates of monthly basic pay for members of the uniformed services within each pay grade are as follows:

COMMISSIONED OFFICERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
0–10[2]	$0.00	$0.00	$0.00	$0.00	$0.00
0–9	0.00	0.00	0.00	0.00	0.00
0–8	7,474.50	7,719.30	7,881.60	7,927.20	8,129.40
0–7	6,210.90	6,499.20	6,633.00	6,739.20	6,930.90
0–6	4,603.20	5,057.10	5,388.90	5,388.90	5,409.60
0–5	3,837.60	4,323.00	4,622.40	4,678.50	4,864.80
0–4	3,311.10	3,832.80	4,088.70	4,145.70	4,383.00
0–3[3]	2,911.20	3,300.30	3,562.20	3,883.50	4,069.50
0–2[3]	2,515.20	2,864.70	3,299.40	3,410.70	3,481.20
0–1[3]	2,183.70	2,272.50	2,746.80	2,746.80	2,746.80
	Over 8	**Over 10**	**Over 12**	**Over 14**	**Over 16**
0–10[2]	$0.00	$0.00	$0.00	$0.00	$0.00
0–9	0.00	0.00	0.00	0.00	0.00
0–8	8,468.70	8,547.30	8,868.90	8,961.30	9,238.20
0–7	7,120.80	7,340.40	7,559.40	7,779.00	8,468.70
0–6	5,641.20	5,672.10	5,672.10	5,994.60	6,564.30
0–5	4,977.00	5,222.70	5,403.00	5,635.50	5,991.90
0–4	4,637.70	4,954.50	5,201.40	5,372.70	5,471.10
0–3[3]	4,273.50	4,405.80	4,623.30	4,736.10	4,736.10
0–2[3]	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20
0–1[3]	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80
	Over 18	**Over 20**	**Over 22**	**Over 24**	**Over 26**
0–10[2]	$0.00	$12,077.70	$12,137.10	$12,389.40	$12,829.20
0–9	0.00	10,563.60	10,715.70	10,935.60	11,319.60
0–8	9,639.00	10,008.90	10,255.80	10,255.80	10,255.80
0–7	9,051.30	9,051.30	9,051.30	9,051.30	9,096.90
0–6	6,898.80	7,233.30	7,423.50	7,616.10	7,989.90
0–5	6,161.70	6,329.10	6,519.60	6,519.60	6,519.60
0–4	5,528.40	5,528.40	5,528.40	5,528.40	5,528.40
0–3[3]	4,736.10	4,736.10	4,736.10	4,736.10	4,736.10
0–2[3]	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20
0–1[3]	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80

[1] Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for commissioned officers in pay grades 0–7 through 0–10 may not exceed the rate of pay for level III of the Executive Schedule and the actual rate of basic pay for all other officers may not exceed the rate of pay for level V of the Executive Schedule.

[2] Subject to the preceding footnote, while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the rate of basic pay for this grade is $14,155.50, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[3] This table does not apply to commissioned officers in pay grade 0–1, 0–2, or 0–3 who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
0–3E	$0.00	$0.00	$0.00	$3,883.50	$4,069.50
0–2E	0.00	0.00	0.00	3,410.70	3,481.20
0–1E	0.00	0.00	0.00	2,746.80	2,933.70
	Over 8	Over 10	Over 12	Over 14	Over 16
0–3E	$4,273.50	$4,405.80	$4,623.30	$4,806.30	$4,911.00
0–2E	3,591.90	3,778.80	3,923.40	4,031.10	4,031.10
0–1E	3,042.00	3,152.70	3,261.60	3,410.70	3,410.70
	Over 18	Over 20	Over 22	Over 24	Over 26
0–3E	$5,054.40	$5,054.40	$5,054.40	$5,054.40	$5,054.40
0–2E	4,031.10	4,031.10	4,031.10	4,031.10	4,031.10
0–1E	3,410.70	3,410.70	3,410.70	3,410.70	3,410.70

WARRANT OFFICERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W–5	$0.00	$0.00	$0.00	$0.00	$0.00
W–4	3,008.10	3,236.10	3,329.10	3,420.60	3,578.10
W–3	2,747.10	2,862.00	2,979.30	3,017.70	3,141.00
W–2	2,416.50	2,554.50	2,675.10	2,763.00	2,838.30
W–1	2,133.90	2,308.50	2,425.50	2,501.10	2,662.50
	Over 8	Over 10	Over 12	Over 14	Over 16
W–5	$0.00	$0.00	$0.00	$0.00	$0.00
W–4	3,733.50	3,891.00	4,044.60	4,203.60	4,356.00
W–3	3,281.70	3,467.40	3,580.50	3,771.90	3,915.60
W–2	2,993.10	3,148.50	3,264.00	3,376.50	3,453.90
W–1	2,782.20	2,888.40	3,006.90	3,085.20	3,203.40
	Over 18	Over 20	Over 22	Over 24	Over 26
W–5	$0.00	$5,169.30	$5,346.60	$5,524.50	$5,703.30
W–4	4,512.00	4,664.40	4,822.50	4,978.20	5,137.50
W–3	4,058.40	4,201.50	4,266.30	4,407.00	4,548.00
W–2	3,579.90	3,705.90	3,831.00	3,957.30	3,957.30
W–1	3,320.70	3,409.50	3,409.50	3,409.50	3,409.50

[1] Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for warrant officers may not exceed the rate of pay for level V of the Executive Schedule.

ENLISTED MEMBERS[1]

Years of service computed under section 205 of title 37, United States Code

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E–9[2]	$0.00	$0.00	$0.00	$0.00	$0.00
E–8	0.00	0.00	0.00	0.00	0.00
E–7	2,068.50	2,257.80	2,343.90	2,428.20	2,516.40
E–6	1,770.60	1,947.60	2,033.70	2,117.10	2,204.10
E–5	1,625.40	1,733.70	1,817.40	1,903.50	2,037.00
E–4	1,502.70	1,579.80	1,665.30	1,749.30	1,824.00
E–3	1,356.90	1,442.10	1,528.80	1,528.80	1,528.80
E–2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E–1	[3] 1,150.80	1,150.80	1,150.80	1,150.80	1,150.80
	Over 8	Over 10	Over 12	Over 14	Over 16
E–9[2]	$0.00	$3,564.30	$3,645.00	$3,747.00	$3,867.00
E–8	2,975.40	3,061.20	3,141.30	3,237.60	3,342.00
E–7	2,667.90	2,753.40	2,838.30	2,990.40	3,066.30
E–6	2,400.90	2,477.40	2,562.30	2,636.70	2,663.10
E–5	2,151.90	2,236.80	2,283.30	2,283.30	2,283.30
E–4	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00
E–3	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80
E–2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E–1	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80
	Over 18	Over 20	Over 22	Over 24	Over 26
E–9[2]	$3,987.30	$4,180.80	$4,344.30	$4,506.30	$4,757.40
E–8	3,530.10	3,625.50	3,787.50	3,877.50	4,099.20
E–7	3,138.60	3,182.70	3,331.50	3,427.80	3,671.40
E–6	2,709.60	2,709.60	2,709.60	2,709.60	2,709.60
E–5	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30
E–4	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00
E–3	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80
E–2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E–1	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80

[1] Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for enlisted members may not exceed the rate of pay for level V of the Executive Schedule.

[2] Subject to the preceding footnote, while serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Master Chief Petty Officer of the Coast Guard, basic pay for this grade is $5,732.70, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[3] In the case of members in pay grade E–1 who have served less than 4 months on active duty, the rate of basic pay is $1,064.70.

SEC. 602. EXPANSION OF BASIC ALLOWANCE FOR HOUSING LOW-COST OR NO-COST MOVES AUTHORITY TO MEMBERS ASSIGNED TO DUTY OUTSIDE UNITED STATES.

Section 403(c) of title 37, United States Code, is amended by adding at the end the following new paragraph:

“(4) In the case of a member who is assigned to duty outside of the United States, the location or the circumstances of which make it necessary that the member be reassigned under the conditions of low-cost or no-cost permanent change of station or permanent change of assignment, the member may be treated as if the member were not reassigned if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the cost of housing in the area to which the member is reassigned.”.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

(a) SELECTED RESERVE REENLISTMENT BONUS.—Section 308b(f) of title 37, United States Code, is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(b) SELECTED RESERVE ENLISTMENT BONUS.—Section 308c(e) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(c) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308d(c) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(d) SELECTED RESERVE AFFILIATION BONUS.—Section 308e(e) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(e) READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.—Section 308h(g) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(f) PRIOR SERVICE ENLISTMENT BONUS.—Section 308i(f) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(b) REPAYMENT OF EDUCATION LOANS FOR CERTAIN HEALTH PROFESSIONALS WHO SERVE IN THE SELECTED RESERVE.—Section 16302(d) of such title is amended by striking “January 1, 2003” and inserting “January 1, 2004”.

(c) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302d(a)(1) of title 37, United States Code, is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(d) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302e(a)(1) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(e) SPECIAL PAY FOR SELECTED RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARTIME SPECIALTIES.—Section 302g(f) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(f) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302h(a)(1) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312b(c) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312c(d) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

SEC. 614. ONE-YEAR EXTENSION OF OTHER BONUS AND SPECIAL PAY AUTHORITIES.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States Code, is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(b) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(c) ENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 309(e) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(d) RETENTION BONUS FOR MEMBERS WITH CRITICAL MILITARY SKILLS.—Section 323(i) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

(e) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such title is amended by striking “December 31, 2002” and inserting “December 31, 2003”.

SEC. 615. MINIMUM LEVELS OF HARDSHIP DUTY PAY FOR DUTY ON THE GROUND IN ANTARCTICA OR ON ARCTIC ICEPACK.

Section 305 of title 37, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a), the following new subsection:

“(b) DUTY IN CERTAIN LOCATIONS.—(1) In the case of duty at a location described in paragraph (2) at any time during a month, the member of a uniformed service performing that duty is entitled to special pay under this section at a monthly rate of not less than $240, but not to exceed the monthly rate specified in subsection (a). For each day of that duty during the month, the member shall receive an amount equal to $1/30$ of the monthly rate prescribed under this subsection.

“(2) Paragraph (1) applies with respect to duty performed on the ground in Antarctica or on the Arctic icepack.”.

SEC. 616. INCREASE IN MAXIMUM RATES FOR PRIOR SERVICE ENLISTMENT BONUS.

Section 308i(b)(1) of title 37, United States Code, is amended—

(1) in subparagraph (A), by striking “$5,000” and inserting “$8,000”;

(2) in subparagraph (B), by striking “$2,500” and inserting “$4,000”; and

(3) in subparagraph (C), by striking “$2,000” and inserting “$3,500”.

SEC. 617. RETENTION INCENTIVES FOR HEALTH CARE PROVIDERS QUALIFIED IN A CRITICAL MILITARY SKILL.

(a) EXCEPTION TO LIMITATION ON MAXIMUM BONUS AMOUNT.—Subsection (d) of section 323 of title 37, United States Code, is amended—

(1) by inserting “(1)” before “A member”; and

(2) by adding at the end the following new paragraph:

“(2) The limitation in paragraph (1) on the total bonus payments that a member may receive under this section does not apply with respect to an officer who is assigned duties as a health care provider.”.

(b) EXCEPTION TO YEARS OF SERVICE LIMITATION.—Subsection (e) of such section is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” before “A retention”; and

(3) by adding at the end the following new paragraph:

“(2) The limitations in paragraph (1) do not apply with respect to an officer who is assigned duties as a health care provider during the period of active duty for which the bonus is being offered.”.

Subtitle C—Travel and Transportation Allowances

SEC. 631. EXTENSION OF LEAVE TRAVEL DEFERRAL PERIOD FOR MEMBERS PERFORMING CONSECUTIVE OVERSEAS TOURS OF DUTY.

(a) AUTHORIZED DEFERRAL PERIOD.—Section 411b of title 37, United States Code is amended by inserting after subsection (a) the following new subsection:

“(b) AUTHORITY TO DEFER TRAVEL; LIMITATIONS.—(1) Under the regulations referred to subsection (a), a member may defer the travel for which the member is paid travel and transportation allowances under this section until anytime before the completion of the consecutive tour at the same duty station or the completion of the tour of duty at the new duty station under the order involved, as the case may be.

“(2) If a member is unable to undertake the travel before expiration of the deferral period under paragraph (1) because of duty in connection with a contingency operation, the member may defer the travel until not more than one year after the date on which the member's duty in connection with the contingency operation ends.”.

(b) CONFORMING AND CLERICAL AMENDMENTS.—Such section is further amended—

(1) in subsection (a)—

(A) by striking “(a)(1)” and inserting “(a) ALLOWANCES AUTHORIZED.—”; and

(B) by striking paragraph (2); and

(2) by striking “(b) The allowances” and inserting “(c) LIMITATION ON ALLOWANCE RATE.—”.

(c) APPLICATION OF AMENDMENT.—Subsection (b) of section 411b of title 37, United States Code, as added by subsection (a), shall apply with respect to members of the uniformed services in a deferred leave travel status under such section as of the date of the enactment of this Act or after that date.

Subtitle D—Retired Pay and Survivors Benefits

SEC. 641. PHASE-IN OF FULL CONCURRENT RECEIPT OF MILITARY RETIRED PAY AND VETERANS DISABILITY COMPENSATION FOR MILITARY RETIREES WITH DISABILITIES RATED AT 60 PERCENT OR HIGHER.

(a) CONCURRENT RECEIPT.—Section 1414 of title 10, United States Code, is amended to read as follows:

“§1414. Members eligible for retired pay who have service-connected disabilities rated at 60 percent or higher: concurrent payment of retired pay and veterans' disability compensation

“(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a 'qualified retiree') is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. For fiscal years 2003 through 2006, payment of retired pay to such a member or former member is subject to subsection (c).

"(b) Special Rules for Chapter 61 Disability Retirees.—

"(1) Career retirees.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

"(2) Disability retirees with less than 20 years of service.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

"(c) Phase-in of Full Concurrent Receipt.—For fiscal years 2003 through 2006, retired pay payable to a qualified retiree shall be determined as follows:

"(1) Fiscal year 2003.—For a month during fiscal year 2003, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

"(A) For a month for which the retiree receives veterans' disability compensation for a qualifying service-connected disability rated as total, $750.

"(B) For a month for which the retiree receives veterans' disability compensation for a qualifying service-connected disability rated as 90 percent, $500.

"(C) For a month for which the retiree receives veterans' disability compensation for a qualifying service-connected disability rated as 80 percent, $250.

"(D) For a month for which the retiree receives veterans' disability compensation for a qualifying service-connected disability rated as 70 percent, $250.

"(E) For a month for which the retiree receives veterans' disability compensation for a qualifying service-connected disability rated as 60 percent, $125.

"(2) Fiscal year 2004.—For a month during fiscal year 2004, the amount of retired pay payable to a qualified retiree is the sum of—

"(A) the amount specified in paragraph (1) for that qualified retiree; and

"(B) 23 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member's disability.

"(3) Fiscal year 2005.—For a month during fiscal year 2005, the amount of retired pay payable to a qualified retiree is the sum of—

"(A) the amount determined under paragraph (2) for that qualified retiree; and

"(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.

"(4) Fiscal year 2006.—For a month during fiscal year 2006, the amount of retired pay payable to a qualified retiree is the sum of—

"(A) the amount determined under paragraph (3) for that qualified retiree; and

"(B) 64 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (3) for that qualified retiree.

"(d) Definitions.—In this section:

"(1) Retired pay.—The term 'retired pay' includes retainer pay, emergency officers' retirement pay, and naval pension.

"(2) Veterans' disability compensation.—The term 'veterans' disability compensation' has the meaning given the term 'compensation' in section 101(13) of title 38.

"(3) Service-connected.—The term 'service-connected' has the meaning given that term in section 101(16) of title 38.

"(4) Qualifying service-connected disability.—The term 'qualifying service-connected disability' means a service-connected disability or combination of service-connected disabilities that is rated as not less than 60 percent disabling by the Secretary of Veterans Affairs.

"(5) Disability rated as total.—The term 'disability rated as total' means—

"(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

"(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

"(6) Current baseline offset.—

"(A) In general.—The term 'current baseline offset' for any qualified retiree means the amount for any month that is the lesser of—

"(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

"(ii) the amount of monthly veterans' disability compensation to which the qualified retiree is entitled for that month.

"(B) Applicable retired pay.—In subparagraph (A), the term 'applicable retired pay' for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38), except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.".

(b) Repeal of Special Compensation Authority.—Section 1413 of title 10, United States Code, is repealed.

(c) Payment of Increased Retired Pay Costs Due to Concurrent Receipt.—(1) Section 1465(b) of such title is amended by adding at the end the following new paragraph:

"(3) At the same time that the Secretary of Defense makes the determination required by paragraph (1) for any fiscal year, the Secretary shall determine the amount of the Treasury contribution to be made to the Fund for the next fiscal year under section 1466(b)(2)(D) of this title. That amount shall be determined in the same manner as the determination under paragraph (1) of the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title, except that for purposes of this paragraph the Secretary, in making the calculations required by subparagraphs (A) and (B) of that paragraph, shall use the single level percentages determined under subsection (c)(4), rather than those determined under subsection (c)(1).".

(2) Section 1465(c) of such title is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: ", to be determined without regard to section 1414 of this title";

(ii) in subparagraph (B), by inserting before the period at the end the following: ", to be determined without regard to section 1414 of this title"; and

(iii) in the sentence following subparagraph (B), by striking "subsection (b)" and inserting "subsection (b)(1)";

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following new paragraph (4):

"(4) Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:

"(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but based only upon the provisions of section 1414 of this title.

"(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but based only upon the provisions of section 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(3).".

(3) Section 1466(b) of such title is amended—

(A) in paragraph (1), by striking "sections 1465(a) and 1465(c)" and inserting "sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3)"; and

(B) by adding at the end of paragraph (2) the following new subparagraph:

"(D) The amount for that year determined by the Secretary of Defense under section 1465(b)(3) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of section 1414 of this title.".

(d) Clerical Amendments.—The table of sections at the beginning of chapter 71 of such title is amended—

(1) by striking the item relating to section 1413; and

(2) by striking the item relating to section 1414 and inserting the following:

"1414. Members eligible for retired pay who have service-connected disabilities rated at 60 percent or higher: concurrent payment of retired pay and veterans' disability compensation.".

(e) Effective Date.—The amendments made by this section shall apply with respect to retired pay payable for months after September 2002.

SEC. 642. CHANGE IN SERVICE REQUIREMENTS FOR ELIGIBILITY FOR RETIRED PAY FOR NON-REGULAR SERVICE.

(a) Reduction in Requirement for Years of Reserve Component Service Before Retired Pay Eligibility.—Section 12731(a)(3) of title 10, United States Code, is amended by striking "eight years" and inserting "six years".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 643. ELIMINATION OF POSSIBLE INVERSION IN RETIRED PAY COST-OF-LIVING ADJUSTMENT FOR INITIAL COLA COMPUTATION.

(a) ELIMINATION OF POSSIBLE COLA INVERSION.—Section 1401a of title 10, United States Code, is amended—

(1) in subsections (c)(1), (d), and (e), by inserting "but subject to subsection (f)(2)" after "Notwithstanding subsection (b)";

(2) in subsection (c)(2), by inserting "(subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section)" after "shall be increased"; and

(3) in subsection (f)—

(A) by designating the text after the subsection heading as paragraph (1), indenting that text two ems, and inserting "(1) PREVENTION OF RETIRED PAY INVERSIONS.—" before "Notwithstanding"; and

(2) by adding at the end the following new paragraph:

"(2) PREVENTION OF COLA INVERSIONS.—The percentage of the first adjustment under this section in the retired pay of any person, as determined under subsection (c)(1), (c)(2), (d), or (e), may not exceed the percentage increase in retired pay determined under subsection (b)(2) that is effective on the same date as the effective date of such first adjustment.".

(b) TECHNICAL AMENDMENTS.—Such section is further amended—

(1) in subsection (d), by inserting "or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37" after "August 1, 1986,"; and

(2) in subsection (e), by inserting "and elected to receive a bonus under section 322 of title 37" after "August 1, 1986,".

SEC. 644. TECHNICAL REVISIONS TO SO-CALLED "FORGOTTEN WIDOWS" ANNUITY PROGRAM.

(a) CLARIFICATION OF ELIGIBILITY.—Subsection (a)(1) of section 644 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 10 U.S.C. 1448 note) is amended—

(1) in subparagraph (A), by inserting after "(A)" the following: "became entitled to retired or retainer pay before September 21, 1972,"; and

(2) in subparagraph (B), by striking "was a member of a reserve component of the Armed Forces" and inserting "died".

(b) CLARIFICATION OF INTERACTION WITH OTHER BENEFITS.—(1) Subsection (a)(2) of such section is amended by striking "and who" and all that follows through "note)".

(2) Subsection (b)(2) of such section is amended to read as follows:

"(2) The amount of an annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to that surviving spouse for the same period under any of the following provisions of law:

"(A) Section 1311(a) of title 38, United States Code (relating to dependency and indemnity compensation payable by the Secretary of Veterans Affairs).

"(B) Chapter 73 of title 10, United States Code.

"(C) Section 4 of Public Law 92-425 (10 U.S.C. 1448 note).".

(c) CLARIFICATION OF DEFINITION OF SURVIVING SPOUSE.—Subsection (d)(2) of such section is amended by striking "the terms" and all that follows through "and (8)" and inserting "such term in paragraph (9)".

(d) CLARIFICATION OF EFFECTIVE DATE OF BENEFITS.—Subsection (e) of such section is amended—

(1) in paragraph (1), by striking "the month in which this Act is enacted" and inserting "November 1997";

(2) in paragraph (2), by striking "the first month that begins after the month in which this Act is enacted" and inserting "December 1997"; and

(3) by adding at the end the following new paragraph:

"(3) In the case of a person entitled to an annuity under this section who applies for the annuity after the date of the enactment of this paragraph, such annuity shall be paid only for months beginning after the date on which such application is submitted.".

(e) SPECIFICATION IN LAW OF CURRENT BENEFIT AMOUNT.—Subsection (b) of such section is amended—

(1) in paragraph (1), by striking "$165" and inserting "$185.58"; and

(2) in paragraph (3)—

(A) by striking "the date of the enactment of this Act" and inserting "May 1, 2002,"; and

(B) by striking the last sentence.

Subtitle E—Reserve Component Montgomery GI Bill

SEC. 651. EXTENSION OF MONTGOMERY GI BILL-SELECTED RESERVE ELIGIBILITY PERIOD.

Section 16133(a) of title 10, United States Code, is amended by striking "10-year" and inserting "14-year".

Subtitle F—Other Matters

SEC. 661. ADDITION OF DEFINITION OF CONTINENTAL UNITED STATES IN TITLE 37.

(a) DEFINITION.—Section 101(1) of title 37, United States Code, is amended by adding at the end the following new sentence: "The term 'continental United States' means the 48 contiguous States and the District of Columbia.".

(b) CONFORMING AMENDMENTS.—Title 37, United States Code, is amended as follows:

(1) Section 314(a)(3) is amended by striking "the 48 contiguous States and the District of Columbia" and inserting "the continental United States".

(2) Section 403b(i) is amended by striking paragraph (6).

(3) Section 409 is amended by striking subsection (e).

(4) Section 411b(a) is amended by striking "the 48 contiguous States and the District of Columbia" both places it appears and inserting "the continental United States".

(5) Section 411d is amended by striking subsection (d).

(6) Section 430 is amended by striking subsection (f) and inserting the following new subsection (f):

"(f) DEFINITIONS.—In this section:

"(1) The term 'formal education' means the following:

"(A) A secondary education.

"(B) An undergraduate college education.

"(C) A graduate education pursued on a full-time basis at an institution of higher education.

"(D) Vocational education pursued on a full-time basis at a postsecondary vocational institution.

"(2) The term 'institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

"(3) The term 'postsecondary vocational institution' has the meaning given that term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).".

TITLE VII—HEALTH CARE MATTERS

Subtitle A—Health Care Program Improvements

SEC. 701. ELIMINATION OF REQUIREMENT FOR TRICARE PREAUTHORIZATION OF INPATIENT MENTAL HEALTH CARE FOR MEDICARE-ELIGIBLE BENEFICIARIES.

(a) ELIMINATION OF REQUIREMENT.—Section 1079(i) of title 10, United States Code, is amended in paragraph (3) by inserting "or in the case of a person eligible for health care benefits under section 1086(d)(2) of this title for whom payment for such services is made under subsection 1086(d)(3) of this title" after "an emergency".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2004.

SEC. 702. EXPANSION OF TRICARE PRIME REMOTE FOR CERTAIN DEPENDENTS.

(a) EXPANSION OF ELIGIBILITY.—Section 1079(p) of title 10, United States Code, is amended in paragraph (1)—

(1) by inserting "(A)" after "(1)";

(2) by striking "referred to in subsection (a) of a member of the uniformed services referred to in 1074(c)(3) of this title who are residing with the member" and inserting "described in subparagraph (B)"; and

(3) by adding at the end the following new subparagraph:

"(B) A dependent referred to in subparagraph (A) is—

"(i) a dependent referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title, who is residing with the member; or

"(ii) a dependent referred to in subsection (a) of a member of the uniformed services with a permanent duty assignment for which the dependent is not authorized to accompany the member and one of the following circumstances exists:

"(I) The dependent continues to reside at the location of the former duty assignment of the member (or residence in the case of a member of a reserve component ordered to active duty for a period of more than 30 days), and that location is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility that can adequately provide needed health care.

"(II) There is no reasonable expectation the member will return to the location of the former duty assignment, and the dependent moves to a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility that can adequately provide needed health care.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 2002.

SEC. 703. ENABLING DEPENDENTS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY TO ENROLL IN THE TRICARE DENTAL PROGRAM.

Section 1076a(k)(2) of title 10, United States Code, is amended by inserting "(or, if not enrolled, if the member discontinued participation under subsection (f))" after "subsection (a)".

SEC. 704. IMPROVEMENTS REGARDING THE DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND.

(a) SOURCE OF FUNDS FOR MONTHLY ACCRUAL PAYMENTS INTO THE FUND.—Section 1116(c) of title 10, United States Code, is amended to read as follows:

"(c) Amounts paid into the Fund under subsection (a) shall be paid from funds available for the pay of members of the participating uniformed services under the jurisdiction of the respective administering Secretaries.".

(b) MANDATORY PARTICIPATION OF OTHER UNIFORMED SERVICES.—Section 1111(c) of such title is amended—

(1) in the first sentence, by striking "may enter into an agreement with any other administering Secretary" and inserting "shall enter into an agreement with each other administering Secretary"; and

(2) in the second sentence, by striking "Any" and inserting "Each".

SEC. 705. CERTIFICATION OF INSTITUTIONAL AND NON-INSTITUTIONAL PROVIDERS UNDER THE TRICARE PROGRAM.

(a) IN GENERAL.—Section 1079 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(q) For purposes of designating institutional and non-institutional health care providers authorized to provide care under this section, the Secretary of Defense shall prescribe regulations (in consultation with the other administering Secretaries) that will, to the extent practicable and subject to the limitations of subsection (a), so designate any provider authorized to provide care under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

SEC. 706. TECHNICAL CORRECTION REGARDING TRANSITIONAL HEALTH CARE.

Effective as of December 28, 2001, section 1145(a)(1) of title 10, United States Code, is amended by inserting "(and the dependents of the member)" after "separated from active duty as described in paragraph (2)". The amendment made by the preceding sentence shall be deemed to have been enacted as part of section 736 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107).

Subtitle B—Reports

SEC. 711. COMPTROLLER GENERAL REPORT ON TRICARE CLAIMS PROCESSING.

Not later than March 31, 2003, the Comptroller General shall submit to Congress an evaluation of the continuing impediments to a cost effective and provider- and beneficiary-friendly system for claims processing under the TRICARE program. The evaluation shall include a discussion of the following:

(1) The extent of progress implementing improvements in claims processing, particularly regarding the application of best industry practices.

(2) The extent of progress in simplifying claims processing procedures, including the elimination of, or reduction in, the complexity of the Health Care Service Record requirements.

(3) The suitability of a medicare-compatible claims processing system with the data requirements necessary to administer the TRICARE program and related information systems.

(4) The extent to which the claims processing system for the TRICARE program impedes provider participation and beneficiary access.

(5) Recommendations for improving the claims processing system that will reduce processing and administration costs, create greater competition, and improve fraud-prevention activities.

SEC. 712. COMPTROLLER GENERAL REPORT ON PROVISION OF CARE UNDER THE TRICARE PROGRAM.

Not later than March 31, 2003, the Comptroller General shall submit to Congress an evaluation of the nature of, reasons for, extent of, and trends regarding network provider instability under the TRICARE program, and the effectiveness of efforts by the Department of Defense and managed care support contractors to measure and mitigate such instability. The evaluation shall include a discussion of the following:

(1) The adequacy of measurement tools of TRICARE network instability and their use by the Department of Defense and managed care support contractors to assess network adequacy and stability.

(2) Recommendations for improvements needed in measurement tools or their application.

(3) The relationship of reimbursement rates and administration requirements (including preauthorization requirements) to TRICARE network instability.

(4) The extent of problems under the TRICARE program and likely future trends with and without intervention using existing authority.

(5) Use of existing authority by the Department of Defense and TRICARE managed care support contractors to apply higher reimbursement rates in specific geographic areas.

(6) Recommendations for specific fiscally prudent measures that could mitigate negative trends or improve provider and network stability.

SEC. 713. REPEAL OF REPORT REQUIREMENT.

Notwithstanding subsection (f)(2) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-179), the amendment made by subsection (e) of such section shall not take effect and the paragraph amended by such subsection is repealed.

Subtitle C—Department of Defense-Department of Veterans Affairs Health Resources Sharing

SEC. 721. SHORT TITLE.

This subtitle may be cited as the "Department of Defense-Department of Veterans Affairs Health Resources Sharing and Performance Improvement Act of 2002".

SEC. 722. FINDINGS AND SENSE OF CONGRESS CONCERNING STATUS OF HEALTH RESOURCES SHARING BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Federal health care resources are scarce and thus should be effectively and efficiently used.

(2) In 1982, Congress, in Public Law 97-174, authorized the sharing of health resources between Department of Defense medical treatment facilities and Department of Veterans Affairs health care facilities in order to allow more effective and efficient use of those health resources.

(3) Health care beneficiaries of the Departments of Defense and Veterans Affairs, whether active servicemembers, veterans, retirees, or family members of active or retired servicemembers, should have full access to the health care and services that Congress has authorized for them.

(4) The Secretary of Defense and the Secretary of Veterans Affairs, and the appropriate officials of each of the Departments of Defense and Veterans Affairs with responsibilities related to health care, have not taken full advantage of the opportunities provided by law to make their respective health resources available to health care beneficiaries of the other Department in order to provide improved health care for the whole number of beneficiaries.

(5) After the many years of support and encouragement from Congress, the Departments have made little progress in health resource sharing and the intended results of the sharing authority have not been achieved.

(b) SENSE OF CONGRESS.—Congress urges the Secretary of Defense and the Secretary of Veterans Affairs—

(1) to commit their respective Departments to significantly improve mutually beneficial sharing and coordination of health care resources and services during peace and war;

(2) to build organizational cultures supportive of improved sharing and coordination of health care resources and services; and

(3) to establish and achieve measurable goals to facilitate increased sharing and coordination of health care resources and services.

(c) PURPOSE.—It is the purpose of this Act—

(1) to authorize a program to advance mutually beneficial sharing and coordination of health care resources between the two Departments consistent with the longstanding intent of Congress; and

(2) to establish a basis for improved strategic planning by the Department of Defense and Department of Veterans Affairs health systems to ensure that scarce health care resources are used more effectively and efficiently in order to enhance access to high quality health care for their respective beneficiaries.

SEC. 723. REVISED COORDINATION AND SHARING GUIDELINES.

(a) IN GENERAL.—(1) Section 8111 of title 38, United States Code, is amended to read as follows:

"§8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

"(a) REQUIRED COORDINATION AND SHARING OF HEALTH CARE RESOURCES.—The Secretary of Veterans Affairs and the Secretary of Defense shall enter into agreements and contracts for the mutually beneficial coordination, use, or exchange of use of the health care resources of the Department of Veterans Affairs and the Department of Defense with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

"(b) JOINT REQUIREMENTS FOR SECRETARIES OF VETERANS AFFAIRS AND DEFENSE.—To facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, the two Secretaries shall carry out the following functions:

"(1) Develop and publish a joint strategic vision statement and a joint strategic plan to shape, focus, and prioritize the coordination and sharing efforts among appropriate elements of the two Departments and incorporate the goals and requirements of the joint sharing plan into the strategic and performance plan of each Department under the Government Performance and Results Act.

"(2) Jointly fund the interagency committee provided for under subsection (c).

"(3) Continue to facilitate and improve sharing between individual Department of Veterans Affairs and Department of Defense health care facilities, but giving priority of effort to initiatives (A) that improve sharing and coordination of health resources at the intraregional and nationwide levels, and (B) that improve the ability of both Departments to provide coordinated health care.

"(4) Establish a joint incentive program under subsection (d).

"(c) DOD–VA Health Executive Committee.—(1) There is established an interagency committee to be known as the Department of Veterans Affairs-Department of Defense Health Executive Committee (hereinafter in this section referred to as the 'Committee'). The Committee is composed of—

"(A) the Deputy Secretary of the Department of Veterans Affairs and such other officers and employees of the Department of Veterans Affairs as the Secretary of Veterans Affairs may designate; and

"(B) the Under Secretary of Defense for Personnel and Readiness and such other officers and employees of the Department of Defense as the Secretary of Defense may designate.

"(2)(A) During odd-numbered fiscal years, the Deputy Secretary of Veterans Affairs shall chair the Committee. During even-numbered fiscal years, the Under Secretary of Defense shall chair the Committee.

"(B) The Deputy Secretary and the Under Secretary shall determine the size and structure of the Committee, as well as the administrative and procedural guidelines for the operation of the Committee. The two Departments shall share equally the Committee's cost of personnel and administrative support and services. Support for such purposes shall be provided at a level sufficient for the efficient operation of the Committee, including a permanent staff and, as required, other temporary working groups of appropriate departmental staff and outside experts.

"(3) The Committee shall recommend to the Secretaries strategic direction for the joint coordination and sharing efforts between and within the two Departments under this section and shall oversee implementation of those efforts.

"(4) The Committee shall submit to the two Secretaries and to Congress an annual report containing such recommendations as the Committee considers appropriate. The two Secretaries shall implement the Committee's recommendations unless, with respect to any such recommendation, either Secretary formally determines that the recommendation should not be implemented or should be implemented in a modified form. Upon making such a determination, the Secretary making the determination shall submit to Congress notice of the Secretary's determination and the Secretary's rationale for the determination.

"(5) In order to enable the Committee to make recommendations in its annual report under paragraph (4), the Committee shall do the following:

"(A) Review existing policies, procedures, and practices relating to the coordination and sharing of health care resources between the two Departments.

"(B) Identify changes in policies, procedures, and practices that, in the judgment of the Committee, would promote mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

"(C) Identify and assess further opportunities for the coordination and sharing of health care resources between the Departments that, in the judgment of the Committee, would not adversely affect the range of services, the quality of care, or the established priorities for care provided by either Department.

"(D) Review the plans of both Departments for the acquisition of additional health care resources, especially new facilities and major equipment and technology, in order to assess the potential effect of such plans on further opportunities for the coordination and sharing of health care resources.

"(E) Review the implementation of activities designed to promote the coordination and sharing of health care resources between the Departments. To assist in this effort, the Committee chairman, under procedures jointly developed by the Secretaries of both Departments, may task the Inspectors General of either or both Departments.

"(d) Joint Incentives Program.—(1) Pursuant to subsection (b)(4), the two Secretaries shall carry out a program to identify, provide incentives to, implement, fund, and evaluate creative coordination and sharing initiatives at the facility, intraregional and nationwide levels. The program shall be administered by the Committee established in subsection (c), under procedures jointly prescribed by the two Secretaries.

"(2) To facilitate the incentive program, there is established in the Treasury, effective on October 1, 2003, a DOD–VA Health Care Sharing Incentive Fund. Each Secretary shall annually contribute to the fund a minimum of $15,000,000 from the funds appropriated to that Secretary's Department. Such funds shall remain available until expended.

"(3)(A) The implementation and effectiveness of the program under this subsection shall be reviewed annually by the joint Department of Defense-Department of Veterans Affairs Inspector General review team established in section 724(i) of the Department of Defense-Department of Veterans Affairs Health Resources Sharing and Performance Improvement Act of 2002. On completion of the annual review, the review team shall submit a report to the two Secretaries on the results of the review. Such report shall be submitted through the Committee to the Secretaries not later than December 31 of each calendar year. The Secretaries shall forward each report, without change, to the Committees on Armed Services and Veterans' Affairs of the Senate and House of Representatives not later than February 28 of the following year.

"(B) Each such report shall describe activities carried out under the program under this subsection during the preceding fiscal year. Each report shall include at least the following:

"(i) An analysis of the initiatives funded by the Committee, and the funds so expended by such initiatives, from the Health Care Sharing Incentive Fund, including the purposes and effects of those initiatives on improving access to care by beneficiaries, improvements in the quality of care received by those beneficiaries, and efficiencies gained in delivering services to those beneficiaries.

"(ii) Other matters of interest, including recommendations from the review team to make legislative improvements to the program.

"(4) The program under this subsection shall terminate on September 30, 2007.

"(e) Guidelines and Policies for Implementation of Coordination and Sharing Recommendations, Contracts, and Agreements.—(1) To implement the recommendations made by the Committee under subsection (c)(2), as well as to carry out other health care contracts and agreements for coordination and sharing initiatives as they consider appropriate, the two Secretaries shall jointly issue guidelines and policy directives. Such guidelines and policies shall provide for coordination and sharing that—

"(A) is consistent with the health care responsibilities of the Department of Veterans Affairs under this title and with the health care responsibilities of the Department of Defense under chapter 55 of title 10;

"(B) will not adversely affect the range of services, the quality of care, or the established priorities for care provided by either Department; and

"(C) will not reduce capacities in certain specialized programs of the Department of Veterans Affairs that the Secretary is required to maintain in accordance with section 1706(b) of this title.

"(2) To facilitate the sharing and coordination of health care services between the two Departments, the two Secretaries shall jointly develop and implement guidelines for a standardized, uniform payment and reimbursement schedule for those services. Such schedule shall be implemented no later than the beginning of fiscal year 2004 and shall be revised periodically as necessary.

"(3)(A) The guidelines established under paragraph (1) shall authorize the heads of individual Department of Defense and Department of Veterans Affairs medical facilities and service regions to enter into health care resources coordination and sharing agreements.

"(B) Under any such agreement, an individual who is a primary beneficiary of one Department may be provided health care, as provided in the agreement, at a facility or in the service region of the other Department that is a party to the sharing agreement.

"(C) Each such agreement shall identify the health care resources to be shared.

"(D) Each such agreement shall provide, and shall specify procedures designed to ensure, that the availability of direct health care to individuals who are not primary beneficiaries of the providing Department is (i) on a referral basis from the facility or service region of the other Department, and (ii) does not (as determined by the head of the providing facility or region) adversely affect the range of services, the quality of care, or the established priorities for care provided to the primary beneficiaries of the providing Department.

"(E) Each such agreement shall provide that a providing Department or service region shall be reimbursed for the cost of the health care resources provided under the agreement and that the rate of such reimbursement shall be as determined in accordance with paragraph (2).

"(F) Each proposal for an agreement under this paragraph shall be effective (i) on the 46th day after the receipt of such proposal by the Committee, unless earlier disapproved, or (ii) if earlier approved by the Committee, on the date of such approval.

"(G) Any funds received through such a uniform payment and reimbursement schedule shall be credited to funds that have been allotted to the facility of either Department that provided the care or services, or is due the funds from, any such agreement.

"(f) Annual Joint Report.—(1) At the time the President's budget is transmitted to Congress in any year pursuant to section 1105 of title 31, the two Secretaries shall submit to Congress a joint report on health care coordination and sharing activities under this section during the fiscal year that ended during the previous calendar year.

"(2) Each report under this section shall include the following:

"(A) The guidelines prescribed under subsection (e) of this section (and any revision of such guidelines).

"(B) The assessment of further opportunities identified under subparagraph (C) of subsection (c)(5) for the sharing of health-care resources between the two Departments.

"(C) Any recommendation made under subsection (c)(4) of this section during such fiscal year.

"(D) A review of the sharing agreements entered into under subsection (e) of this section and a summary of activities under such agreements during such fiscal year and a description of the results of such agreements in improving access to, and the quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

"(E) A summary of other planning and activities involving either Department in connection with promoting the coordination and sharing of Federal health-care resources during the preceding fiscal year.

"(F) Such recommendations for legislation as the two Secretaries consider appropriate to facilitate the sharing of health-care resources between the two Departments.

"(3) In addition to the matters specified in paragraph (2), the two Secretaries shall include in the annual report under this subsection an overall status report of the progress of health resources sharing between the two Departments as a consequence of the Department of Defense-Department of Veterans Affairs Health Resources Sharing and Performance Improvement Act of 2002 and of other sharing initiatives taken during the period covered by the report. Such status report shall indicate the status of such sharing and shall include appropriate data as well as analyses of that data. The annual report shall include the following:

"(A) Enumerations and explanations of major policy decisions reached by the two Secretaries during the period covered by the report period with respect to sharing between the two Departments.

"(B) A description of any purposes of Department of Defense-Department of Veterans Affairs Health Resources Sharing and Performance Improvement Act of 2002 that presented barriers that could not be overcome by the two Secretaries and their status at the time of the report.

"(C) A description of progress made in new ventures or particular areas of sharing and coordination that would be of policy interest to Congress consistent with the intent of such Act.

"(D) A description of enhancements of access to care of beneficiaries of both Departments that came about as a result of new sharing approaches brought about by such Act.

"(E) A description of proposals for which funds are provided through the joint incentives program under subsection (d), together with a description of their results or status at the time of the report, including access improvements, savings, and quality-of-care enhancements they brought about, and a description of any additional use of funds made available under subsection (d).

"(g) DEFINITIONS.—For the purposes of this section:

"(1) The term 'beneficiary' means a person who is a primary beneficiary of the Department of Veterans Affairs or of the Department of Defense.

"(2) The term 'direct health care' means health care provided to a beneficiary in a medical facility operated by the Department or the Department of Defense.

"(3) The term 'head of a medical facility' (A) with respect to a medical facility of the Department, means the director of the facility, and (B) with respect to a medical facility of the Department of Defense, means the medical or dental officer in charge or the contract surgeon in charge.

"(4) The term 'health-care resource' includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, services under sections 1782 and 1783 of this title, any other health-care service, and any health-care support or administrative resource.

"(5) The term 'primary beneficiary' (A) with respect to the Department means a person who is eligible under this title (other than under section 1782, 1783, or 1784 or subsection (d) of this section) or any other provision of law for care or services in Department medical facilities, and (B) with respect to the Department of Defense, means a member or former member of the Armed Forces who is eligible for care under section 1074 of title 10.

"(6) The term 'providing Department' means the Department of Veterans Affairs, in the case of care or services furnished by a facility of the Department of Veterans Affairs, and the Department of Defense, in the case of care or services furnished by a facility of the Department of Defense.

"(7) The term 'service region' means a geographic service area of the Veterans Health Administration, in the case of the Department of Veterans Affairs, and a service region, in the case of the Department of Defense.".

(2) The item relating to that section in the table of sections at the beginning of chapter 81 of title 38, United States Code, is amended to read as follows:

"8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources.".

(b) CONFORMING AMENDMENT.—Section 1104 of title 10, United States Code, is amended by striking "may" and inserting "shall".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2003.

SEC. 724. HEALTH CARE RESOURCES SHARING AND COORDINATION PROJECT.

(a) ESTABLISHMENT.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall conduct a health care resources sharing project to serve as a test for evaluating the feasibility, and the advantages and disadvantages, of measures and programs designed to improve the sharing and coordination of health care and health care resources between the Department of Veterans Affairs and the Department of Defense. The project shall be carried out, as a minimum, at the sites identified under subsection (b).

(2) Reimbursement between the two Departments with respect to the project under this section shall be made in accordance with the provisions of section 8111(e)(2) of title 38, United States Code, as amended by section 723(a).

(b) SITE IDENTIFICATION.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly identify no less than five sites for the conduct of the project under this section.

(2) For purposes of this section, a site at which the resource sharing project shall be carried out is an area in the United States in which—

(A) one or more military treatment facilities and one or more VA health care facilities are situated in relative proximity to each other, including facilities engaged in joint ventures as of the date of the enactment of this Act; and

(B) for which an agreement to coordinate care and programs for patients at those facilities could be implemented not later than October 1, 2004.

(c) CONDUCT OF PROJECT.—(1) At sites at which the project is conducted, the Secretaries shall provide a test of a coordinated management system for the military treatment facilities and VA health care facilities participating in the project. Such a coordinated management system for a site shall include at least one of the elements specified in paragraph (2), and each of the elements specified in that paragraph must be included in the coordinated management system for at least two of the participating sites.

(2) Elements of a coordinated management system referred to in paragraph (1) are the following:

(A) A budget and financial management system for those facilities that—

(i) provides managers with information about the costs of providing health care by both Departments at the site;

(ii) allows managers to assess the advantages and disadvantages (in terms of relative costs, benefits, and opportunities) of using resources of either Department to provide or enhance health care to beneficiaries of either Department.

(B) A coordinated staffing and assignment system for the personnel (including contract personnel) employed at or assigned to those facilities, including clinical practitioners of either Department.

(C) Medical information and information technology systems for those facilities that—

(i) are compatible with the purposes of the project;

(ii) communicate with medical information and information technology systems of corresponding elements of those facilities; and

(iii) incorporate minimum standards of information quality that are at least equivalent to those adopted for the Departments at large in their separate health care systems.

(d) PHARMACY BENEFIT.—(1) One of the elements that shall be tested in at least two sites in accordance with subsection (c) is a pharmacy benefit under which beneficiaries of either Department shall have access, as part of the project, to pharmaceutical services of the other Department participating in the project.

(2) The two Secretaries shall enter into a memorandum of agreement to govern the establishment and provision not later than October 1, 2004, of pharmaceutical services authorized by this section. In the case of beneficiaries of the Department of Defense, the authority under the preceding sentence for such access to pharmaceutical services at a VA health care facility includes authority for medications to be dispensed based upon a prescription written by a licensed health care practitioner who, as determined by the Secretary of Defense, is a certified practitioner.

(e) AUTHORITY TO WAIVE CERTAIN ADMINISTRATIVE POLICIES.—(1)(A) In order to carry out subsections (c) and (d), the Secretary of Defense may, in the Secretary's discretion, waive any administrative policy of the Department of Defense otherwise applicable to those subsections (including policies applicable to pharmaceutical benefits) that specifically conflicts with the purposes of the project, in instances in which the Secretary determines that the waiver is necessary for the purposes of the project.

(B) In order to carry out subsections (c) and (d), the Secretary of Veterans Affairs may, in the Secretary's discretion, waive any administrative policy of the Department of Veterans Affairs otherwise applicable to those subsections (including policies applicable to pharmaceutical benefits) that specifically conflicts with the purposes of the project, in instances in which the Secretary determines that the waiver is necessary for the purposes of the project.

(C) The two Secretaries shall establish procedures for resolving disputes that may arise from the effects of policy changes that are not covered by other agreement or existing procedures.

(2) No waiver under paragraph (1) may alter any labor-management agreement in effect as of the date of the enactment of this Act or adopted by either Department during the period of the project.

(f) Use by DOD of Certain Title 38 Personnel Authorities.—(1) In order to carry out subsections (c) and (d), the Secretary of Defense may apply to civilian personnel of the Department of Defense assigned to or employed at a military treatment facility participating in the project any of the provisions of subchapters I, III, and IV of chapter 74 of title 38, United States Code, determined appropriate by the Secretary.

(2) For such purposes, any reference in such chapter—

(A) to the "Secretary" or the "Under Secretary for Health" shall be treated as referring to the Secretary of Defense; and

(B) to the "Veterans Health Administration" shall be treated as referring to the Department of Defense.

(g) Funding.—From amounts available for health care for a fiscal year, each Secretary shall make available to carry out the project not less than—

(1) $5,000,000 for fiscal year 2003;

(2) $10,000,000 for fiscal year 2004; and

(3) $15,000,000 for each succeeding year during which the project is in effect.

(h) Definitions.—For purposes of this section:

(1) The term "military treatment facility" means a medical facility under the jurisdiction of the Secretary of a military department.

(2) The term "VA health care facility" means a facility under the jurisdiction of the Veterans Health Administration of the Department of Veterans Affairs.

(i) Performance Requirements.—(1) The two Secretaries shall provide for a joint review team to conduct an annual on-site review at each of the project locations selected by the Secretaries under this section. The review team shall be comprised of employees of the Offices of the Inspectors General of the two Departments. Leadership of the joint review team shall rotate each fiscal year between an employee of the Office of the Inspector General of the Department of Veterans Affairs, during even-numbered fiscal years, and an employee of the Office of Inspector General of the Department of Defense, during odd-numbered fiscal years.

(2) On completion of their annual joint review under paragraph (1), the review team shall submit a report to the two Secretaries on the results of the review. The Secretaries shall forward the report, without change, to the Committees on Armed Services and Veterans' Affairs of the Senate and House of Representatives.

(3) Each such report shall include the following:

(A) The strategic mission coordination between shared activities.

(B) The accuracy and validity of performance data used to evaluate sharing performance and changes in standards of care or services at the shared facilities.

(C) A statement that all appropriated funds designated for sharing activities are being used for direct support of sharing initiatives.

(D) Recommendations concerning continuance of the project at each site for the succeeding 12-month period.

(4) Whenever there is a recommendation under paragraph (3)(D) to discontinue a resource sharing project under this section, the two Secretaries shall act upon that recommendation as soon as practicable.

(5) In the initial report under this subsection, the joint review team shall validate the baseline information used for comparative analysis.

(j) Termination.—(1) The project, and the authority provided by this section, shall terminate on September 30, 2007.

(2) The Secretaries may terminate the performance of the project at any site when the performance of the project at that site fails to meet performance expectations of the Secretaries, based on recommendations from the review team under subsection (i) or on other information available to the Secretaries to warrant such action.

SEC. 725. REPORT ON IMPROVED COORDINATION AND SHARING OF HEALTH CARE AND HEALTH CARE RESOURCES FOLLOWING DOMESTIC ACTS OF TERRORISM OR DOMESTIC USE OF WEAPONS OF MASS DESTRUCTION.

(a) Joint Review.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly review the adequacy of current processes and existing statutory authorities and policy governing the capability of the Department of Defense and the Department of Veterans Affairs to provide health care to members of the Armed Forces following domestic acts of terrorism or domestic use of weapons of mass destruction, both before and after any declaration of national emergency. Such review shall include a determination of the adequacy of current authorities in providing for the coordination and sharing of health care resources between the two Departments in such cases, particularly before the declaration of a national emergency.

(b) Report to Congress.—A report on the review under subsection (a), including any recommended legislative changes, shall be submitted to Congress as part of the fiscal year 2004 budget submission.

SEC. 726. ADOPTION BY DEPARTMENT OF VETERANS AFFAIRS OF DEPARTMENT OF DEFENSE PHARMACY DATA TRANSACTION SYSTEM.

(a) Adoption of PDTS System.—The Secretary of Veterans Affairs shall adopt for use by the Department of Veterans Affairs health care system the system of the Department of Defense known as the "Pharmacy Data Transaction System". Such system shall be fully operational for the Department of Veterans Affairs not later than October 1, 2004.

(b) Implementation Funding.—The Secretary of Defense shall transfer to the Secretary of Veterans Affairs, or shall otherwise bear the cost of, an amount sufficient to cover three-fourths of the cost to the Department of Veterans Affairs for initial computer programming activities and relevant staff training expenses related to implementation of subsection (a). Such amount shall be determined in such manner as agreed to by the two Secretaries.

(c) Reimbursement Procedures.—Any reimbursement by the Department of Veterans Affairs to the Department of Defense for the use by the Department of Veterans Affairs of the transaction system under subsection (a) shall be determined in accordance with section 8111(e)(2) of title 38, United States Code, as amended by section 723.

SEC. 727. JOINT PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS.

(a) In General.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly carry out a pilot program under which graduate medical education and training is provided to military physicians and physician employees of the Department of Defense and the Department of Veterans Affairs through one or more programs carried out in military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs. The pilot program shall begin not later than January 1, 2003.

(b) Cost-Sharing Agreement.—The Secretaries shall enter into an agreement for carrying out the pilot program. The agreement shall establish means for each Secretary to assist in paying the costs, with respect to individuals under the jurisdiction of that Secretary, incurred by the other Secretary in providing medical education and training under the pilot program.

(c) Use of Existing Authorities.—To carry out the pilot program, the Secretary of Defense and the Secretary of Veterans Affairs may use authorities provided to them under this Act, section 8111 of title 38, United States Code, and other laws relating to the furnishing or support of medical education and the cooperative use of facilities.

(d) Termination of Program.—The pilot program under this section shall terminate on July 31, 2008.

(e) Repeal of Superseded Provision.—Section 738 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 1094 note; 115 Stat.1173) is repealed.

SEC. 728. REPEAL OF CERTAIN LIMITS ON DEPARTMENT OF VETERANS AFFAIRS RESOURCES.

(a) Repeal of VA Bed Limits.—Section 8110(a)(1) of title 38, United States Code, is amended—

(1) in the first sentence, by striking "at not more than 125,000 and not less than 100,000";

(2) in the third sentence, by striking "shall operate and maintain a total of not less than 90,000 hospital beds and nursing home beds and"; and

(3) in the fourth sentence, by striking "to enable the Department to operate and maintain a total of not less than 90,000 hospital and nursing home beds in accordance with this paragraph and".

(b) Effective Date.—The amendments made by subsection (a) shall take effect on October 1, 2003.

SEC. 729. REPORTS.

(a) Interim Report.—Not later than February 1, 2004, the Secretary of Defense and Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs and the Committees on Armed Services of the Senate and House of Representatives a joint report on their conduct of each of the programs under this Act through the end of the preceding fiscal year. The Secretaries shall include in the report a description of the measures taken, or planned to be taken, to implement the health resources sharing project under section 724 and the other provisions of this Act and any cost savings anticipated, or cost sharing achieved, at facilities participating in the project. The report shall also include information on improvements in access to care, quality, and timeliness, as well as impediments encountered and legislative recommendations to ameliorate such impediments.

(b) ANNUAL REPORT ON USE OF WAIVER AUTHORITY.—Not later than one year after the date of the enactment of this Act, and annually thereafter through completion of the project under section 724, the two Secretaries shall submit to the committees of Congress specified in subsection (a) a joint report on the use of the waiver authority provided by section 724(e)(1). The report shall include a statement of the numbers and types of requests for waivers under that section of administrative policies that have been made during the period covered by the report and, for each such request, an explanation of the content of each request, the intended purpose or result of the requested waiver, and the disposition of each request. The report also shall include descriptions of any new administrative policies that enhance the success of the project.

(c) PHARMACY BENEFITS REPORT.—Not later than one year after pharmaceutical services are first provided pursuant to section 724(d)(1), the two Secretaries shall submit to the committees of Congress specified in subsection (a) a joint report on access by beneficiaries of each department to pharmaceutical services of the other department. The report shall describe the advantages and disadvantages to the beneficiaries and the Departments of providing such access and any other matters related to such pharmaceutical services that the Secretaries consider pertinent, together with any legislative recommendations for expanding or canceling such services.

(d) ANNUAL REPORT ON PILOT PROGRAM FOR GRADUATE MEDICAL EDUCATION.—Not later than January 31, 2004, and January 31 of each year thereafter through 2009, the two Secretaries shall submit to Congress a joint report on the pilot program under section 727. The report for any year shall cover activities under the program during the preceding year and shall include each Secretary's assessment of the efficacy of providing education and training under that program.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

SEC. 801. PLAN FOR ACQUISITION MANAGEMENT PROFESSIONAL EXCHANGE PILOT PROGRAM.

(a) PLAN REQUIRED.—(1) The Secretary of Defense shall develop a plan for a pilot program under which—

(A) an individual in the field of acquisition management employed by the Department of Defense may be temporarily assigned to work in a private sector organization; and

(B) an individual in such field employed by a private sector organization may be temporarily assigned to work in the Department of Defense.

(2) In developing the plan under paragraph (1), the Secretary shall address the following:

(A) The benefits of undertaking such a program.

(B) The appropriate length of assignments under the program.

(C) Whether an individual assigned under the program should be compensated by the organization to which the individual is assigned, or the organization from which the individual is assigned.

(D) The ethics guidelines that should be applied to the program and, if necessary, waivers of ethics laws that would be needed in order to make the program effective and attractive to both Government and private sector employees.

(E) An assessment of how compensation of individuals suffering employment-related injuries under the program should be addressed.

(b) SUBMISSION TO CONGRESS.—Not later than February 1, 2003, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the plan required under subsection (a).

SEC. 802. EVALUATION OF TRAINING, KNOWLEDGE, AND RESOURCES REGARDING NEGOTIATION OF INTELLECTUAL PROPERTY ARRANGEMENTS.

(a) AVAILABILITY OF TRAINING, KNOWLEDGE, AND RESOURCES.—The Secretary of Defense shall evaluate the training, knowledge, and resources needed by the Department of Defense in order to effectively negotiate intellectual property rights using the principles of the Defense Federal Acquisition Regulation Supplement and determine whether the Department of Defense currently has in place the training, knowledge, and resources available to meet those Departmental needs.

(b) REPORT.—Not later than February 1, 2003, the Secretary of Defense shall submit to Congress a report describing—

(1) the results of the evaluation performed under subsection (a);

(2) to the extent the Department does not have adequate training, knowledge, and resources available, actions to be taken to improve training and knowledge and to make resources available to meet the Department's needs; and

(3) the number of Department of Defense legal personnel trained in negotiating intellectual property arrangements.

SEC. 803. LIMITATION PERIOD FOR TASK AND DELIVERY ORDER CONTRACTS.

Chapter 137 of title 10, United States Code, is amended—

(1) in section 2304a—

(A) in subsection (e)—

(i) by inserting "(1)" before "A task"; and

(ii) by adding at the end the following new paragraphs:

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e))."; and

(B) by striking subsection (f) and inserting the following:

"(f) LIMITATION ON CONTRACT PERIOD.—The base period of a task order contract or delivery order contract entered into under this section may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract. The contract may be extended for an additional 5 years (for a total contract period of not more than 10 years) through modifications, options, or otherwise."; and

(2) in section 2304b—

(A) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—A task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services shall be subject to the requirements of this section, sections 2304a and 2304c of this title, and other applicable provisions of law.";

(B) by striking subsections (b), (f), and (g) and redesignating subsections (c), (d), (e), (h), and (i) as subsections (b) through (f);

(C) by amending subsection (c) (as redesignated by subparagraph (B)) to read as follows:

"(c) REQUIRED CONTENT OF CONTRACT.—A task order contract described in subsection (a) shall contain the same information that is required by section 2304a(b) to be included in the solicitation of offers for that contract."; and

(D) in subsection (d) (as redesignated by subparagraph (B))—

(i) in paragraph (1), by striking "under this section" and inserting "described in subsection (a)"; and

(ii) in paragraph (2), by striking "under this section".

SEC. 804. ONE-YEAR EXTENSION OF PROGRAM APPLYING SIMPLIFIED PROCEDURES TO CERTAIN COMMERCIAL ITEMS; REPORT.

(a) EXTENSION OF PILOT PROGRAM.—Section 4202 of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) is amended in subsection (e) by striking "January 1, 2003" and inserting "January 1, 2004".

(b) REPORT REQUIRED.—Not later than January 15, 2003, the Secretary of Defense shall submit to Congress a report on whether the authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949, and section 31(a) of the Office of Federal Procurement Policy Act, should be made permanent.

SEC. 805. AUTHORITY TO MAKE INFLATION ADJUSTMENTS TO SIMPLIFIED ACQUISITION THRESHOLD.

Section 4(11) of the Office of Fedefal Procurement Policy Act (41 U.S.C. 403(11)) is amended by inserting ", except that such amount may be adjusted by the Administrator every five years to the amount equal to $100,000 in constant fiscal year 2002 dollars (rounded to the nearest $10,000)" before the period at the end.

SEC. 806. IMPROVEMENT OF PERSONNEL MANAGEMENT POLICIES AND PROCEDURES APPLICABLE TO THE CIVILIAN ACQUISITION WORKFORCE.

(a) PLAN REQUIRED.—The Secretary of Defense shall develop a plan for improving the personnel management policies and procedures applicable to the Department of Defense civilian acquisition workforce based on the results of the demonstration project described in section 4308 of the Clinger-Cohen Act of 1996 (division D of Public Law 104–106; 10 U.S.C. 1701 note).

(b) SUBMISSION TO CONGRESS.—Not later than February 15, 2003, the Secretary shall submit to Congress the plan required under subsection (a) and a report including any recommendations for legislative action necessary to implement the plan.

SEC. 807. MODIFICATION OF SCOPE OF BALL AND ROLLER BEARINGS COVERED FOR PURPOSES OF PROCUREMENT LIMITATION.

Section 2534(a)(5) of title 10, United States Code is amended—

(1) by striking "225.71" and inserting "225.70";

(2) by striking "October 23, 1992" and inserting "April 27, 2002"; and

(3) by adding at the end the following: "In this section the term 'ball bearings and roller bearings' includes unconventional or hybrid ball and roller bearings and cam follower bearings, ball screws, and other derivatives of ball and roller bearings.".

SEC. 808. RAPID ACQUISITION AND DEPLOYMENT PROCEDURES.

(a) Requirement To Establish Procedures.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2396 the following new section:

"§ 2397. Rapid acquisition and deployment procedures

"(a) Establishment.—The Secretary of Defense shall establish tailored rapid acquisition and deployment procedures for items urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

"(b) Procedures.—The procedures established under subsection (a) shall include the following:

"(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the testing community.

"(2) A process for expedited technical, programmatic, and financial decisions.

"(3) An expedited procurement and contracting process.

"(c) Specific Steps To Be Included.—The procedures established under subsection (a) shall provide for the following:

"(1) The commander of a unified combatant command may notify the Chairman of the Joint Chiefs of Staff of the need for an item described in subsection (a) that is currently under development.

"(2) The Chairman may request the Secretary of Defense to use rapid acquisition and deployment procedures with respect to the item.

"(3) The Secretary of Defense shall decide whether to use such procedures with respect to the item and shall notify the Secretary of the appropriate military department of the decision.

"(4) If the Secretary of Defense decides to use such procedures with respect to the item, the Secretary of the military department shall prepare a funding strategy for the rapid acquisition of the item and shall conduct a demonstration of the performance of the item.

"(5) The Director of Operational Test and Evaluation shall immediately evaluate the existing capability of the item (but under such evaluation shall not assess the capability of the item as regards to the function the item was originally intended to perform).

"(6) The Chairman of the Joint Chiefs of Staff shall review the evaluation of the Director of Operational Test and Evaluation and report to the Secretary of Defense regarding whether the capabilities of the tested item are able to meet the urgent need for the item.

"(7) The Secretary of Defense shall evaluate the information regarding funding and rapid acquisition prepared pursuant to paragraph (4) and approve or disapprove of the acquisition of the item using the procedures established pursuant to subsection (a).

"(d) Limitation.—The quantity of items of a system procured using the procedures established under this section may not exceed the number established for low-rate initial production for the system, and any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2396 the following new item:

"2397. Rapid acquisition and deployment procedures.".

SEC. 809. QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM.

(a) Establishment.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2402 the following new section:

"§ 2403. Quick-reaction special projects acquisition team

"The Secretary of Defense shall establish a quick-reaction special projects acquisition team, the purpose of which shall be to advise the Secretary on actions that can be taken to expedite the procurement of urgently needed systems. The team shall address problems with the intention of creating expeditious solutions relating to—

"(1) industrial-base issues such as the limited availability of suppliers;

"(2) compliance with acquisition regulations and lengthy procedures;

"(3) compliance with environmental requirements;

"(4) compliance with requirements regarding small-business concerns; and

"(5) compliance with requirements regarding the purchase of products made in the United States.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2402 the following new item:

"2403. Quick-reaction special projects acquisition team.".

SEC. 810. REPORT ON DEVELOPMENT OF ANTI-CYBERTERRORISM TECHNOLOGY.

Not later than February 1, 2003, the Secretary of Defense shall submit to Congress a report on—

(1) efforts by the Department of Defense to enter into contracts with private entities to develop anticyberterrorism technology; and

(2) whether such efforts should be increased.

SEC. 811. CONTRACTING WITH FEDERAL PRISON INDUSTRIES.

(a) Assuring Best Value for National Defense and Homeland Security.—(1) The Department of Defense or one of the military departments may acquire a product or service from Federal Prison Industries, Inc. only if such acquisition is made through a procurement contract awarded and administered in accordance with chapter 137 of title 10, United States Code, the Federal Acquisition Regulation, and the Department of Defense supplements to such regulation. If a contract is to be awarded to Federal Prison Industries, Inc. by the Department of Defense through other than competitive procedures, authority for such award shall be based upon statutory authority other than chapter 307 of title 18, United States Code.

(2) The Secretary of Defense shall assure that—

(A) no purchase of a product or a service is made by the Department of Defense from Federal Prison Industries, Inc. unless the contracting officer determines that—

(i) the product or service can be timely furnished and will meet the performance needs of the activity that requires the product or service; and

(ii) the price to be paid does not exceed a fair market price determined by competition or a fair and reasonable price determined by price analysis or cost analysis; and

(B) Federal Prison Industries, Inc. performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(b) Performance as a Subcontractor.—(1) The use of Federal Prison Industries, Inc. as a subcontractor or supplier shall be a wholly voluntary business decision by a Department of Defense prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by regulation or by the contract.

(2) A defense contractor (or subcontractor at any tier) using Federal Prison Industries, Inc. as a subcontractor or supplier in furnishing a commercial product pursuant to a contract shall implement appropriate management procedures to prevent introducing an inmate-produced product or inmate-furnished services into the commercial market.

(3) Except as authorized under the Federal Acquisition Regulation, the use of Federal Prison Industries, Inc. as a subcontractor or supplier of products or provider of services shall not be imposed upon prospective or actual defense prime contractors or subcontractors at any tier by means of—

(A) a contract solicitation provision requiring a contractor to offer to make use of Federal Prison Industries, Inc. its products or services;

(B) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries, Inc. in the performance of the contract;

(C) any contract modification directing the use of Federal Prison Industries, Inc. its products or services; or

(D) any other means.

(c) Protection of Classified and Sensitive Information.—The Secretary of Defense shall assure that Federal Prison Industries, Inc. is not permitted to provide services as a contractor or subcontractor at any tier, if an inmate worker has access to—

(1) data that is classified or will become classified after being merged with other data;

(2) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

(3) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable.

(d) Regulatory Implementation.—

(1) Proposed regulations.—Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of enactment of this Act and provide not less than 60 days for public comment.

(2) Final regulations.—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

SEC. 812. RENEWAL OF CERTAIN PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENTS AT FUNDING LEVELS AT LEAST SUFFICIENT TO SUPPORT EXISTING PROGRAMS.

Section 2413 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) With respect to any eligible entity that has successfully performed under a cooperative agreement entered into under subsection (a), the Secretary shall strive, to the greatest extent practicable and subject to appropriations, to renew such agreement with such entity at a level of funding which is at least equal to the level of funding under the cooperative agreement being renewed.".

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

SEC. 901. CHANGE IN TITLE OF SECRETARY OF THE NAVY TO SECRETARY OF THE NAVY AND MARINE CORPS.

(a) CHANGE IN TITLE.—The position of the Secretary of the Navy is hereby redesignated as the Secretary of the Navy and Marine Corps.

(b) REFERENCES.—Any reference to the Secretary of the Navy in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the Secretary of the Navy and Marine Corps.

SEC. 902. REPORT ON IMPLEMENTATION OF UNITED STATES NORTHERN COMMAND.

Not later than September 1, 2002, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report providing an implementation plan for the United States Northern Command. The report shall address the following:

(1) The required budget for standing-up and maintaining that command.

(2) The location of the headquarters of that command and alternatives considered for that location, together with the criteria used in selection of that location.

(3) The required manning levels for the command, the effect that command will have on current Department of Defense personnel resources, and the other commands from which personnel will be transferred to provide personnel for that command.

(4) The chain of command within that command to the component command level and a review of permanently assigned or tasked organizations and units.

(5) The relationship of that command to the Office of Homeland Security and the Homeland Security Council, to other Federal departments and agencies, and to State and local law enforcement agencies.

(6) The relationship of that command with the National Guard Bureau, individual State National Guard Headquarters, and civil first responders to ensure continuity of operational plans.

(7) The legal implications of military forces in their Federal capacity operating on United States territory.

(8) The status of Department of Defense consultations—

(A) with Canada regarding Canada's role in, and any expansion of mission for, the North American Air Defense Command; and

(B) with Mexico regarding Mexico's role in the United States Northern Command.

(9) The status of Department of Defense consultations with NATO member nations on efforts to transfer the Supreme Allied Command for the Atlantic from dual assignment with the position of commander of the United States Joint Forces Command.

(10) The revised mission, budget, and personnel resources required for the United States Joint Forces Command.

SEC. 903. NATIONAL DEFENSE MISSION OF COAST GUARD TO BE INCLUDED IN FUTURE QUADRENNIAL DEFENSE REVIEWS.

Section 118(d) of title 10, United States Code, is amended—

(1) by redesignating paragraph (14) as paragraph (15); and

(2) by inserting after paragraph (13) the following new paragraph:

"(14) The national defense mission of the Coast Guard.".

SEC. 904. CHANGE IN YEAR FOR SUBMISSION OF QUADRENNIAL DEFENSE REVIEW.

Section 118(a) of title 10, United States Code, is amended by striking "during a year" and inserting "during the second year".

SEC. 905. REPORT ON EFFECT OF OPERATIONS OTHER THAN WAR ON COMBAT READINESS OF THE ARMED FORCES.

(a) REPORT REQUIRED.—Not later than February 28, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the effect on the combat readiness of the Armed Forces of operations other than war in which the Armed Forces are participating as of the date of the enactment of this Act (hereinafter in this section referred to as "current operations other than war"). Such report shall address any such effect on combat readiness for the Armed Forces as a whole and separately for the active components and the reserve components.

(b) OPERATIONS OTHER THAN WAR.—For purposes of this section, the term "operations other than war" includes the followng:

(1) Humanitarian operations.

(2) Counter-drug operations.

(3) Peace operations.

(4) Nation assistance.

(c) MATTERS TO BE ADDRESSED.—The report shall, at a minimum, address the following (shown both for the Armed Forces as a whole and separately for the active components and the reserve components):

(1) With respect to each current operation other than war, the number of members of the Armed Forces who are—

(A) directly participating in the operation;

(B) supporting the operation;

(C) preparing to participate or support an upcoming rotation to the operation; or

(D) recovering and retraining following participation in the operation.

(2) The cost to the Department of Defense in time, funds, resources, personnel, and equipment to prepare for, conduct, and recover and retrain from each such operation.

(3) The effect of participating in such operations on performance, retention, and readiness of individual members of the Armed Forces.

(4) The effect of such operations on the readiness of forces and units participating, preparing to participate, and returning from participation in such operations.

(5) The effect that such operations have on forces and units that do not, have not, and will not participate in them.

(6) The contribution to United States national security and to regional stability of participation by the United States in such operations, to be assessed after receiving the views of the commanders of the regional unified combatant commands.

(d) CLASSIFICATION OF REPORT.—The report may be provided in classified or unclassified form as necessary.

SEC. 906. CONFORMING AMENDMENT TO REFLECT DISESTABLISHMENT OF DEPARTMENT OF DEFENSE CONSEQUENCE MANAGEMENT PROGRAM INTEGRATION OFFICE.

Section 12310(c)(3) of title 10, United States Code, is amended by striking "only—" and all that follows through "(B) while assigned" and inserting "only while assigned".

SEC. 907. AUTHORITY TO ACCEPT GIFTS FOR NATIONAL DEFENSE UNIVERSITY.

(a) IN GENERAL.—Section 2605 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "administration of"; and

(B) by inserting before the period at the end of the first sentence ", or (2) the National Defense University";

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)";

(B) by striking "subsection (a)" and inserting "subsection (a)(1)";

(C) by designating the last sentence as paragraph (3) and in that sentence by inserting "or for the benefit or use of the National Defense University, as the case may be," after "schools,"; and

(D) by inserting before paragraph (3), as designated by subparagraph (C), the following:

"(2) There is established in the Treasury a fund to be known as the 'National Defense University Gift Fund'. Gifts of money, and the proceeds of the sale of property, received under subsection (a)(2) shall be deposited in the Fund.";

(3) in subsection (d)(1)(A), by inserting "and the National Defense University Gift Fund" before the semicolon; and

(4) by adding at the end the following new subsection:

"(h) In this section, the term 'National Defense University' includes any school or other component of the National Defense University.".

(b) CLERICAL AMENDMENT.—(1) The heading of such section is amended to read as follows:

"§ 2605. Acceptance of gifts for defense dependents' schools and National Defense University".

(2) The item relating to such section in the table of sections at the beginning of chapter 151 of such title is amended to read as follows:

"2605. Acceptance of gifts for defense dependents' schools and National Defense University.".

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

SEC. 1001. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2003 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed $2,000,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. AUTHORIZATION OF SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2002.

(a) DOD AUTHORIZATIONS.—Amounts authorized to be appropriated to the Department of Defense for fiscal year 2002 in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization are increased (by a supplemental appropriation) or decreased (by a rescission), or both, or are increased by a transfer of funds, pursuant to the following:

(1) Chapter 3 of the Emergency Supplemental Act, 2002 (division B of Public Law 107–117; 115 Stat. 2299).

(2) Any Act enacted after May 1, 2002, making supplemental appropriations for fiscal year 2002 for the military functions of the Department of Defense.

(b) NNSA AUTHORIZATIONS.—Amounts authorized to be appropriated to the Department of Energy for fiscal year 2002 in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) are hereby adjusted, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization are increased (by a supplemental appropriation) or decreased (by a rescission), or both, or are increased by a transfer of funds, pursuant to the following:

(1) Chapter 5 of the Emergency Supplemental Act, 2002 (division B of Public Law 107–117; 115 Stat. 2307).

(2) Any Act enacted after May 1, 2002, making supplemental appropriations for fiscal year 2002 for the atomic energy defense activities of the Department of Energy.

(c) LIMITATION ON TRANSFERS PENDING SUBMISSION OF REPORT.—Any amount provided for the Department of Defense for fiscal year 2002 through a so-called 'transfer account'', including the Defense Emergency Response Fund or any other similar account, may be transferred to another account for obligation only after the Secretary of Defense submits to the congressional defense committees a report stating, for each such transfer, the amount of the transfer, the appropriation account to which the transfer is to be made, and the specific purpose for which the transferred funds will be used.

(d) EMERGENCY DESIGNATION REQUIREMENT.—(1) In the case of a pending contingent emergency supplemental appropriation for the military functions of the Department of Defense or the atomic energy defense activities of the Department of Energy, an adjustment may be made under subsection (a) or (b) in the amount of an authorization of appropriations by reason of that supplemental appropriation only if, and to the extent that, the President transmits to Congress an official budget request for that appropriation that designates the entire amount requested as an emergency requirement.

(2) For purposes of this subsection, the term "contingent emergency supplemental appropriation" means a supplemental appropriation that—

(A) is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985; and

(B) by law is available only to the extent that the President transmits to the Congress an official budget request for that appropriation that includes designation of the entire amount of the request as an emergency requirement.

SEC. 1003. UNIFORM STANDARDS THROUGHOUT DEPARTMENT OF DEFENSE FOR EXPOSURE OF PERSONNEL TO PECUNIARY LIABILITY FOR LOSS OF GOVERNMENT PROPERTY.

(a) EXTENSION OF ARMY AND AIR FORCE REPORT-OF-SURVEY PROCEDURES TO NAVY AND MARINE CORPS AND ALL DOD CIVILIAN EMPLOYEES.—(1) Chapter 165 of title 10, United States Code, is amended by adding at the end the following new section:

"§2787. Reports of survey

"(a) REGULATIONS.—Under such regulations as the Secretary of Defense may prescribe, any officer of the Army, Navy, Air Force, or Marine Corps or any civilian employee of the Department of Defense designated by the Secretary may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense.

"(b) FINALITY OF ACTION.—Action taken under subsection (a) is final, except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2787. Reports of survey.".

(b) EXTENSION TO MEMBERS OF THE NAVY AND MARINE CORPS OF PAY DEDUCTION AUTHORITY PERTAINING TO DAMAGE OR REPAIR OF ARMS AND EQUIPMENT .—Section 1007(e) of title 37, United States Code, is amended by striking "Army or the Air Force" and inserting "Army, Navy, Air Force, or Marine Corps".

(c) REPEAL OF SUPERCEDED PROVISIONS.—(1) Sections 4835 and 9835 of title 10, United States Code, are repealed.

(2)(A) The table of sections at the beginning of chapter 453 of such title is amended by striking the item relating to section 4835.

(B) The table of sections at the beginning of chapter 953 of such title is amended by striking the item relating to section 9835.

SEC. 1004. ACCOUNTABLE OFFICIALS IN THE DEPARTMENT OF DEFENSE.

(a) ACCOUNTABLE OFFICIALS WITHIN THE DEPARTMENT OF DEFENSE.—Chapter 165 of title 10, United States Code, is amended by inserting after section 2773 the following new section:

"§2773a. Departmental accountable officials

"(a) DESIGNATION.—(1) The Secretary of Defense may designate as a 'departmental accountable official' any civilian employee of the Department of Defense or member of the armed forces under the Secretary's jurisdiction who is described in paragraph (2). Any such designation shall be in writing.

"(2) An employee or member of the armed forces described in this paragraph is an employee or member who is responsible in the performance of the employee's or member's duties for providing to a certifying official of the Department of Defense information, data, or services that are directly relied upon by the certifying official in the certification of vouchers for payment.

"(b) PECUNIARY LIABILITY.—(1) The Secretary of Defense may impose pecuniary liability on a departmental accountable official to the extent that an illegal, improper, or incorrect payment results from the information, data, or services that that official provides to a certifying official and upon which the certifying official directly relies in certifying the voucher supporting that payment.

"(2) The pecuniary liability of a departmental accountable official under this subsection for such an illegal, improper, or incorrect payment is joint and several with that of any other officials who are pecuniarily liable for such payment.

"(c) RELIEF FROM LIABILITY.—The Secretary of Defense shall relieve a departmental accountable official from liability under subsection (b) if the Secretary determines that the illegal, improper, or incorrect payment was not the result of fault or negligence by that official.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2773 the following new item:

"2773a. Departmental accountable officials.".

SEC. 1005. IMPROVEMENTS IN PURCHASE CARD MANAGEMENT.

(a) IN GENERAL.—Section 2784 of title 10, United States Code, is amended to read as follows:

"§2784. Management of purchase cards

"(a) MANAGEMENT OF PURCHASE CARDS.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

"(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

"(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

"(2) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

"(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

"(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

"(3) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

"(4) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

"(5) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

"(6) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

"(7) That an annual review is performed of the use of purchase cards issued by the Department of Defense to determine whether each purchase card holder has a need for the purchase card.

"(8) That the Inspectors General of the Department of Defense and the military services perform periodic audits with respect to the use of purchase cards issued by the Department of Defense to ensure that such use is in compliance with regulations.

"(9) That appropriate annual training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

"(c) Penalties for Violations.—The Secretary shall provide in the regulations prescribed under subsection (a)—

"(1) that procedures are implemented providing for appropriate punishment of employees of the Department of Defense for violations of such regulations and for negligence, misuse, abuse, or fraud with respect to a purchase card, including dismissal in appropriate cases; and

"(2) that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(b) Clerical Amendment.—The item relating to section 2784 in the table of sections at the beginning of chapter 165 of such title is amended to read as follows:

"2784. Management of purchase cards.".

SEC. 1006. AUTHORITY TO TRANSFER FUNDS WITHIN A MAJOR ACQUISITION PROGRAM FROM PROCUREMENT TO RDT&E.

(a) Program Flexibility.—(1) Chapter 131 of title 10, United States Code, is amended by inserting after section 2214 the following new section:

"§2214a. Transfer of funds: transfers from procurement accounts to research and development accounts for major acquisition programs

"(a) Transfer Authority Within Major Programs.—Subject to subsection (b), the Secretary of Defense may transfer amounts provided in an appropriation Act for procurement for a covered acquisition program to amounts provided in the same appropriation Act for research, development, test, and evaluation for that program.

"(b) Congressional Notice-and-Wait.—A transfer may be made under this section only after—

"(1) the Secretary submits to the congressional defense committees notice in writing of the Secretary's intent to make such transfer, together with the Secretary's justification for the transfer; and

"(2) a period of 30 days has elapsed following the date of such notification.

"(c) Limitations.—From amounts appropriated for the Department of Defense for any fiscal year for procurement—

"(1) the total amount transferred under this section may not exceed $250,000,000; and

"(2) the total amount so transferred for any acquisition program may not exceed $20,000,000.

"(d) Covered Acquisition Programs.—In this section, the term 'covered acquisition program' means an acquisition program of the Department of Defense that is—

"(A) a major defense acquisition program for purposes of chapter 144 of this title; or

"(B) any other acquisition program of the Department of Defense—

"(i) that is designated by the Secretary of Defense as a covered acquisition program for purposes of this section; or

"(ii) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $140,000,000 (based on fiscal year 2000 constant dollars) or an eventual total expenditure for procurement of more than $660,000,000 (based on fiscal year 2000 constant dollars.)

"(e) Transfer Back of Unused Transferred Funds.—If funds transferred under this section are not used for the purposes for which transferred, such funds shall be transferred back to the account from which transferred and shall be available for their original purpose.

"(f) Additional Authority.—The transfer authority provided in this section is in addition to any other transfer authority available to the Secretary of Defense.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2214 the following new item:

"2214a. Transfer of funds: transfers from procurement accounts to research and development accounts for major acquisition programs.".

(b) Effective Date.—Section 2214a of title 10, United States Code, as added by subsection (a), shall not apply with respect to funds appropriated before the date of the enactment of this Act.

SEC. 1007. DEVELOPMENT AND PROCUREMENT OF FINANCIAL AND NONFINANCIAL MANAGEMENT SYSTEMS.

(a) Report.—Not later than March 1, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the modernization of the Department of Defense's financial management systems and operations. The report shall include the following:

(1) The goals and objectives of the Financial Management Modernization Program.

(2) The acquisition strategy for that Program, including milestones, performance metrics, and financial and nonfinancial resource needs.

(3) A listing of all operational and developmental financial and nonfinancial management systems in use by the Department, the related costs to operate and maintain those systems during fiscal year 2002, and the estimated cost to operate and maintain those systems during fiscal year 2003.

(4) An estimate of the completion date of a transition plan that will identify which of the Department's operational and developmental financial management systems will not be part of the objective financial and nonfinancial management system and that provides the schedule for phase out of those legacy systems.

(b) Limitations.—(1) A contract described in subsection (c) may be entered into using funds made available to the Department of Defense for fiscal year 2003 only with the approval in advance in writing of the Under Secretary of Defense (Comptroller).

(2) Not more than 75 percent of the funds authorized to be appropriated in section 201(4) for research, development, test, and evaluation for the Department of Defense Financial Modernization Program (Program Element 65016D8Z) may be obligated until the report required by subsection (a) is received by the congressional defense committees.

(c) Covered Contracts.—Subsection (b)(1) applies to a contract for the procurement of any of the following:

(1) An enterprise architecture system.

(2) A finance or accounting system.

(3) A nonfinancial business and feeder system.

(4) An upgrade to any system specified in paragraphs (1) through (3).

(d) Definitions.—As used in this section:

(1) Financial management system and operations.—The term "financial management system and operations" means financial, financial related, and non-financial business operations and systems used for acquisition programs, transportation, travel, property, inventory, supply, medical, budget formulation, financial reporting, and accounting. Such term includes the automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operations and maintenance of system functions.

(2) Feeder systems.—The term "feeder systems" means financial portions of mixed systems.

(3) Developmental systems and projects.—The term "developmental systems and projects" means any system that has not reached Milestone C, as defined in the Department of Defense 5000-series regulations.

Subtitle B—Reports

SEC. 1011. AFTER-ACTION REPORTS ON THE CONDUCT OF MILITARY OPERATIONS CONDUCTED AS PART OF OPERATION ENDURING FREEDOM.

(a) Report Required.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (c) two reports on the conduct of military operations conducted as part of Operation Enduring Freedom. The first report (which shall be an interim report) shall be submitted not later than June 15, 2003. The second report shall be submitted not later than 180 days after the date (as determined by the Secretary of Defense) of the cessation of hostilities undertaken as part of Operation Enduring Freedom.

(2) Each report shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the commander-in-chief of the United States Central Command, and the Director of Central Intelligence.

(3) Each report shall be submitted in both a classified form and an unclassified form.

(b) Matters To Be Included.—Each report shall contain a discussion of accomplishments and shortcomings of the overall military operation. The report shall specifically include the following:

(1) A discussion of the command, control, coordination, and support relationship between United States Special Operations Forces and Central Intelligence Agency elements participating in Operation Enduring Freedom and any lessons learned from the joint conduct of operations by those forces and elements.

(2) Recommendations to improve operational readiness and effectiveness.

(c) Congressional Committees.—The committees referred to in subsection (a)(1) are the following:

(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 1012. REPORT ON BIOLOGICAL WEAPONS DEFENSE AND COUNTER-PROLIFERATION.

(a) Report Required.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report—

(1) describing programs and initiatives to halt, counter, and defend against the development, production, and proliferation of biological weapons agents, technology, and expertise to terrorist organizations and other States; and

(2) including a detailed list of the limitations and impediments to the biological weapons defense, nonproliferation, and counterproliferation efforts of the Department of Defense, and recommendations to remove such impediments and to make such efforts more effective.

(b) CLASSIFICATION.—The report may be submitted in unclassified or classified form as necessary.

SEC. 1013. REQUIREMENT THAT DEPARTMENT OF DEFENSE REPORTS TO CONGRESS BE ACCOMPANIED BY ELECTRONIC VERSION.

Section 480(a) of title 10, United States Code, is amended by striking "shall, upon request" and all that follows through "(or each" and inserting "shall provide to Congress (or".

SEC. 1014. STRATEGIC FORCE STRUCTURE PLAN FOR NUCLEAR WEAPONS AND DELIVERY SYSTEMS.

(a) PLAN REQUIRED.—The Secretary of Defense and the Secretary of Energy shall jointly prepare a plan for the United States strategic force structure for nuclear weapons and nuclear weapons delivery systems for the period of fiscal years from 2002 through 2012. The plan shall—

(1) delineate a baseline strategic force structure for such weapons and systems over such period consistent with the Nuclear Posture Review dated January 2002;

(2) define sufficient force structure, force modernization and life extension plans, infrastructure, and other elements of the defense program of the United States associated with such weapons and systems that would be required to execute successfully the full range of missions called for in the national defense strategy delineated in the Quadrennial Defense Review dated September 30, 2001, under section 118 of title 10, United States Code; and

(3) identify the budget plan that would be required to provide sufficient resources to execute successfully the full range of missions using such force structure called for in that national defense strategy.

(b) REPORT.—(1) The Secretary of Defense and the Secretary of Energy shall submit a report on the plan to the congressional defense committees. Except as provided in paragraph (2), the report shall be submitted not later than January 1, 2003.

(2) If before January 1, 2003, the President submits to Congress the President's certification that it is in the national security interest of the United States that such report be submitted on a later date (to be specified by the President in the certification), such report shall be submitted not later than such later date.

(c) REPORT ON OPTIONS FOR ACHIEVING, PRIOR TO FISCAL YEAR 2012, PRESIDENT'S OBJECTIVE FOR OPERATIONALLY DEPLOYED NUCLEAR WARHEADS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Energy shall submit to Congress a report on options for achieving, prior to fiscal year 2012, a posture under which the United States maintains a number of operationally deployed nuclear warheads at a level of from 1,700 to 2,200 such warheads, as outlined in the Nuclear Posture Review. The report shall include the following:

(1) For each of fiscal years 2006, 2008, and 2010, an assessment of the options for achieving such posture as of such fiscal year.

(2) An assessment of the effects of achieving such posture prior to fiscal year 2012 on cost, the dismantlement workforce, and any other affected matter.

SEC. 1015. REPORT ON ESTABLISHMENT OF A JOINT NATIONAL TRAINING COMPLEX AND JOINT OPPOSING FORCES.

(a) REPORT REQUIRED.—Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that outlines a plan to develop and implement a joint national training complex. Such a complex may include multiple joint training sites and mobile training ranges and appropriate joint opposing forces and shall be capable of supporting field exercises and experimentation at the operational level of war across a broad spectrum of adversary capabilities.

(b) MATTERS TO BE INCLUDED.—The report under subsection (a) shall include the following:

(1) An identification and description of the types of joint training and experimentation that would be conducted at such a joint national training complex, together with a description of how such training and experimentation would enhance accomplishment of the six critical operational goals for the Department of Defense specified at page 30 of the Quadrennial Defense Review Report of the Secretary of Defense issued on September 30, 2001.

(2) A discussion of how establishment of such a complex (including joint opposing forces) would promote innovation and transformation throughout the Department of Defense.

(3) A discussion of how results from training and experiments conducted at such a complex would be taken into consideration in the Department of Defense plans, programs, and budgeting process and by appropriate decision making bodies within the Department of Defense.

(4) A methodology, framework, and options for selecting sites for such a complex, including consideration of current training facilities that would accommodate requirements among all the Armed Forces.

(5) Options for development as part of such a complex of a joint urban warfare training center that could also be used for homeland defense and consequence management training for Federal, State, and local training.

(6) Cost estimates and resource requirements to establish and maintain such a complex, including estimates of costs and resource requirements for the use of contract personnel for the performance of management, operational, and logistics activities for such a complex .

(7) An explanation of the relationship between and among such a complex and the Department of Defense Office of Transformation, the Joint Staff, the United States Joint Forces Command, the United States Northern Command, and each element of the major commands within the separate Armed Forces with responsibility for experimentation and training.

(8) A discussion of how implementation of a joint opposing force would be established, including the feasibility of using qualified contractors for the function of establishing and maintaining joint opposing forces and the role of foreign forces.

(9) Submission of a time line to establish such a center and for such a center to achieve initial operational capability and full operational capability.

SEC. 1016. REPEAL OF VARIOUS REPORTS REQUIRED OF THE DEPARTMENT OF DEFENSE.

(a) PROVISIONS OF TITLE 10.—Title 10, United States Code, is amended as follows:

(1)(A) Section 230 is repealed.

(B) The table of sections at the beginning of chapter 9 is amended by striking the item relating to section 230.

(2) Section 526 is amended by striking subsection (c).

(3) Section 721(d) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" before "If an officer".

(4) Section 986 is amended by striking subsection (e).

(5) Section 1095(g) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" after "(g)".

(6) Section 1798 is amended by striking subsection (d).

(7) Section 1799 is amended by striking subsection (d).

(8) Section 2010 is amended by striking subsection (b).

(9) Section 2327(c)(1) is amended—

(A) in subparagraph (A), by striking "after the date on which such head of an agency submits to Congress a report on the contract" and inserting "if in the best interests of the Government"; and

(B) by striking subparagraph (B).

(10) Section 2350f is amended by striking subsection (c).

(11) Section 2350k is amended by striking subsection (d).

(12) Section 2492 is amended by striking subsection (c).

(13) Section 2493 is amended by striking subsection (g).

(14) Section 2563(c)(2) is amended by striking "and notifies Congress regarding the reasons for the waiver".

(15) Section 2611 is amended by striking subsection (e).

(16) Sections 4357, 6975, and 9356 are each amended—

(A) by striking subsection (c); and

(B) in subsection (a), by striking "Subject to subsection (c), the Secretary" and inserting "The Secretary".

(17) Section 4416 is amended by striking subsection (f).

(18) Section 5721(f) is amended—

(A) by striking paragraph (2); and

(B) by striking "(1)" after the subsection heading.

(19) Section 12302 is amended—

(A) in subsection (b), by striking the last sentence; and

(B) by striking subsection (d).

(b) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995.—Section 553(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2772; 10 U.S.C. 4331 note) is amended by striking the last sentence.

SEC. 1017. REPORT ON THE ROLE OF THE DEPARTMENT OF DEFENSE IN SUPPORTING HOMELAND SECURITY.

(a) REPORT REQUIRED.—Not later than December 31, 2002, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense responsibilities, mission, and plans for military support of homeland security.

(b) CONTENT OF REPORT.—The report shall include, but not be limited to, a discussion of the following:

(1) Changes in organization regarding the roles, mission, and responsibilities carried out by the Department of Defense to support its homeland security mission and the reasons for those changes based upon the findings of the study and report required by section 1511 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1271).

(2) Changes in the roles, missions, and responsibilities of the Department of the

Army, the Department of the Navy, and the Department of the Air Force with respect to homeland security and the reasons for such changes.

(3) Changes in the roles, missions, and responsibilities of unified commands with homeland security missions and the reasons for such changes.

(4) Changes in the roles, missions, and responsibilities of the United States Joint Forces Command and the United States Northern Command in expanded homeland security training and experimentation involving the Department of Defense and other Federal, State, and local entities, and the reasons for such changes.

(5) Changes in the roles, missions, and responsibilities of the Army National Guard and the Air National Guard in the homeland security mission of the Department of Defense, and the reasons for such changes.

(6) The status of the unconventional nuclear warfare defense test bed program established in response to title IX of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117; 115 Stat. 2289), including the plan and program for establishing such test beds.

(7) The plans and status of the Department of Defense homeland security biological defense program, including the plans and status of—

(A) the biological counter terrorism research program;

(B) the biological defense homeland security support program;

(C) pilot programs for establishing biological defense test beds on Department of Defense installations and in selected urban areas of the United States;

(D) programs for expanding the capacity of the Department of Defense to meet increased demand for vaccines against biological agents; and

(E) any plans to coordinate Department of Defense work in biological defense programs with other Federal, State, and local programs.

(8) Recommendations for legislative changes that may be required to execute the roles and missions set forth in Department of Defense homeland security plans.

SEC. 1018. REPORT ON EFFECTS OF NUCLEAR EARTH PENETRATOR WEAPONS AND OTHER WEAPONS.

(a) NAS STUDY.—The Secretary of Defense shall request the National Academy of Sciences to conduct a study and prepare a report on the anticipated short-term and long-term effects of the use of a nuclear earth penetrator weapon on the target area, including the effects on civilian populations in proximity to the target area and on United States military personnel performing operations and battle damage assessments in the target area, and the anticipated short-term and long-term effects on the civilian population in proximity to the target area if—

(1) a non-penetrating nuclear weapon is used to destroy hard or deeply-buried targets; or

(2) a conventional high-explosive weapon is used to destroy an adversary's weapons of mass destruction storage or production facilities, and radioactive, nuclear, biological, or chemical weapons materials, agents, or other contaminants are released or spread into populated areas.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress the report under subsection (a), together with any comments the Secretary may consider appropriate on the report. The report shall be submitted in unclassified form to the maximum extent possible, with a classified annex if needed.

SEC. 1019. REPORT ON EFFECTS OF NUCLEAR-TIPPED BALLISTIC MISSILE INTERCEPTORS AND NUCLEAR MISSILES NOT INTERCEPTED.

(a) NAS STUDY.—The Secretary of Defense shall request the National Academy of Sciences to conduct a study and prepare a report on the anticipated short-term and long-term effects of the use of a nuclear-tipped ballistic missile interceptor, including the effects on civilian populations and on United States military personnel in proximity to the target area, and the immediate, short-term, and long-term effects on the civilian population of a major city of the United States, and the Nation as a whole, if a ballistic missile carrying a nuclear weapon is not intercepted and detonates directly above a major city of the United States.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress the report under subsection (a), together with any comments the Secretary may consider appropriate on the report. The report shall be submitted in unclassified form to the maximum extent possible, with a classified annex if needed.

SEC. 1020. LIMITATION ON DURATION OF FUTURE DEPARTMENT OF DEFENSE REPORTING REQUIREMENTS.

(a) IN GENERAL.—Chapter 23 of title 10, United States Code, is amended by inserting after section 480 the following new section:

"§ 480a. Recurring reporting requirements: five-year limitation

"(a) FIVE-YEAR SUNSET.—Any recurring congressional defense reporting requirement that is established by a provision of law enacted on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (including a provision of law enacted as part of that Act) shall cease to be effective, with respect to that requirement, at the end of the five-year period beginning on the date on which such provision is enacted, except as otherwise provided by law.

"(b) RULE OF CONSTRUCTION.—A provision of law enacted after the date of the enactment of this section may not be considered to supersede the provisions of subsection (a) unless that provision specifically refers to subsection (a) and specifically states that it supersedes subsection (a).

"(c) RECURRING CONGRESSIONAL DEFENSE REPORTING REQUIREMENTS.—In this section, the term 'recurring defense congressional reporting requirement' means a requirement by law for the submission of an annual, semiannual, or other regular periodic report to Congress, or one or more committees of Congress, that applies only to the Department of Defense or to one or more officers of the Department of Defense.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 480 the following new item:

"480a. Recurring reporting requirements: five-year limitation.".

Subtitle C—Other Matters

SEC. 1021. SENSE OF CONGRESS ON MAINTENANCE OF A RELIABLE, FLEXIBLE, AND ROBUST STRATEGIC DETERRENT.

It is the sense of Congress that, consistent with the national defense strategy delineated in the Quadrennial Defense Review dated September 30, 2001 (as submitted under section 118 of title 10, United States Code), the Nuclear Posture Review dated January 2002, and the global strategic environment, the President should, to defend the Nation, deter aggressors and potential adversaries, assure friends and allies, defeat enemies, dissuade competitors, advance the foreign policy goals and vital interests of the United States, and generally ensure the national security of the United States, take the following actions:

(1) Maintain an operationally deployed strategic force of not less than 1,700 nuclear weapons for immediate and unexpected contingencies.

(2) Maintain a responsive force of non-deployed nuclear weapons for potential contingencies at readiness and numerical levels determined to be—

(A) essential to the execution of the Single Integrated Operational Plan; or

(B) necessary to maintain strategic flexibility and capability in accordance with the findings and conclusions of such Nuclear Posture Review.

(3) Develop advanced conventional weapons, and nuclear weapons, capable of destroying—

(A) hard and deeply buried targets; and

(B) enemy weapons of mass destruction and the development and production facilities of such enemy weapons.

(4) Develop a plan to achieve and maintain the capability to resume conducting underground tests of nuclear weapons within one year after a decision is made to resume conducting such tests, so as to have the means to maintain robust and adaptive strategic forces through a ready, responsive, and capable nuclear infrastructure, as prescribed in such Nuclear Posture Review.

(5) Develop a plan to revitalize the Nation's nuclear weapons industry and infrastructure so as to facilitate the development and production of safer, more reliable, and more effective nuclear weapons.

SEC. 1022. TIME FOR TRANSMITTAL OF ANNUAL DEFENSE AUTHORIZATION LEGISLATIVE PROPOSAL.

(a) IN GENERAL.—Chapter 2 of title 10, United States Code, is amended by inserting after section 113 the following new section:

"§ 113a. Transmission of annual defense authorization request

"(a) TIME FOR TRANSMITTAL.—The Secretary of Defense shall transmit to Congress the annual defense authorization request for a fiscal year during the first 30 days after the date on which the President transmits to Congress the budget for that fiscal year pursuant to section 1105 of title 31.

"(b) DEFENSE AUTHORIZATION REQUEST DEFINED.—In this section, the term 'defense authorization request', with respect to a fiscal year, means a legislative proposal submitted to Congress for the enactment of the following:

"(1) Authorizations of appropriations for that fiscal year, as required by section 114 of this title.

"(2) Personnel strengths for that fiscal year, as required by section 115 of this title.

"(3) Any other matter that is proposed by the Secretary of Defense to be enacted as part of the annual defense authorization bill for that fiscal year.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 113 the following new item:

"113a. Transmission of annual defense authorization request.".

SEC. 1023. TECHNICAL AND CLERICAL AMENDMENTS.

(a) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) Section 153 is amended by inserting "(a) PLANNING; ADVICE; POLICY FORMULATION.—" at the beginning of the text.

(2) Section 663(e)(2) is amended by striking "Armed Forces Staff College" and inserting "Joint Forces Staff College".

(3) Section 2399(a)(2) is amended—

(A) in the matter preceding subparagraph (A), by striking "means—" and inserting "means a conventional weapons system that—"; and

(B) in subparagraph (A), by striking "a conventional weapons system that".

(4)(A) Section 2410h is transferred to the end of subchapter IV of chapter 87 and is redesignated as section 1747.

(B) The item relating to that section in the table of sections at the beginning of chapter 141 is transferred to the end of the table of sections at the beginning of subchapter IV of chapter 87 and is amended to reflect the redesignation made by subparagraph (A).

(5) Section 2677 is amended by striking subsection (c).

(6) Section 2680(e) is amended by striking "the" after "the Committee on" the first place it appears.

(7) Section 2815(b) is amended by striking "for fiscal year 2003 and each fiscal year thereafter" and inserting "for any fiscal year".

(8) Section 2828(b)(2) is amended by inserting "time" after "from time to".

(b) TITLE 37, UNITED STATES CODE.—Title 37, United States Code, is amended as follows:

(1) Section 302j(a) is amended by striking "subsection (c)" and inserting "subsection (d)".

(2) Section 324(b) is amended by striking "(1)" before "The Secretary".

(c) PUBLIC LAW 107–107.—Effective as of December 28, 2001, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) is amended as follows:

(1) Section 602(a)(2) (115 Stat. 1132) is amended by striking "an" in the first quoted matter.

(2) Section 1410(a)(3)(C) (115 Stat. 1266) by inserting "both places it appears" before "and inserting".

(3) Section 3007(d)(1)(C) (115 Stat. 1352) is amended by striking "2905(b)(7)(B)(iv)" and inserting "2905(b)(7)(C)(iv)".

(d) PUBLIC LAW 106–398.—Effective as of October 30, 2000, and as if included therein as enacted, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) is amended as follows:

(1) Section 577(b)(2) (114 Stat. 1654A–140) is amended by striking "Federal" in the quoted matter and inserting "Department of Defense".

(2) Section 612(c)(4)(B) (114 Stat. 1654A–150) is amended by striking the comma at the end of the first quoted matter.

(e) PUBLIC LAW 106–65.—The National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) is amended as follows:

(1) Section 573(b) (10 U.S.C. 513 note) is amended by inserting a period at the end of paragraph (2).

(2) Section 1305(6) (22 U.S.C. 5952 note) is amended by striking the first period after "facility".

(f) TITLE 14, UNITED STATES CODE.—Section 516(c) of title 14, United States Code, is amended by striking "his section" and inserting "this section".

SEC. 1024. WAR RISK INSURANCE FOR VESSELS IN SUPPORT OF NATO-APPROVED OPERATIONS.

Section 1205 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1285) is amended by adding at the end the following:

"(c) INSURANCE OF VESSELS IN SUPPORT OF NATO-APPROVED OPERATIONS.—(1) Upon request made under subsection (b), the Secretary may provide insurance for a vessel, regardless of the country in which the vessel is registered and the citizenship of its owners, that is supporting a military operation approved by the North Atlantic Council, including a vessel that is not operating under contract with a department or agency of the United States.

"(2) If a vessel is insured under paragraph (1) in response to a request made pursuant to an international agreement providing for the sharing among nations of the risks involved in mutual or joint operations, the Secretary of Transportation, with the concurrence of the Secretary of State, may seek from another nation that is a party to such agreement a commitment to indemnify the United States for any amounts paid by the United States for claims against such insurance.

"(3) Amounts received by the United States as indemnity from a nation pursuant to paragraph (2) shall be deposited into the insurance fund created under section 1208.

"(4) Any obligation of a department or agency of the United States to indemnify the Secretary or the insurance fund for any claim against insurance provided under this subsection is extinguished to the extent of any indemnification received from a nation pursuant to paragraph (2) with respect to the claim.".

SEC. 1025. CONVEYANCE, NAVY DRYDOCK, PORTLAND, OREGON.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may sell Navy Drydock No. YFD-69, located in Portland, Oregon, to Portland Shipyard, LLC, which is the current user of the drydock.

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that the purchaser agree to retain the drydock on Swan Island in Portland, Oregon, until at least September 30, 2007.

(c) CONSIDERATION.—As consideration for the conveyance of the drydock under subsection (a), the purchaser shall pay to the Secretary an amount equal to the fair market value of the drydock at the time of the conveyance, as determined by the Secretary.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 1026. ADDITIONAL WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAMS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should—

(1) establish 23 additional teams designated as Weapons of Mass Destruction Civil Support Teams (for a total of 55 such teams); and

(2) ensure that of such 55 teams there is at least one team established for each State and territory.

(b) STATE AND TERRITORY DEFINED.—In this section, the term "State and territory" means the several States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

SEC. 1027. USE FOR LAW ENFORCEMENT PURPOSES OF DNA SAMPLES MAINTAINED BY DEPARTMENT OF DEFENSE FOR IDENTIFICATION OF HUMAN REMAINS.

(a) IN GENERAL.—Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. DNA samples maintained for identification of human remains: use for law enforcement purposes

"(a) COMPLIANCE WITH COURT ORDER.—(1) Subject to paragraph (2), if a valid order of a Federal court (or military judge) so requires, an element of the Department of Defense that maintains a repository of DNA samples for the purpose of identification of human remains shall make available, for the purpose specified in subsection (b), such DNA samples on such terms and conditions as such court (or military judge) directs.

"(2) A DNA sample with respect to an individual shall be provided under paragraph (1) in a manner that does not compromise the ability of the Department of Defense to maintain a sample with respect to that individual for the purpose of identification of human remains.

"(b) COVERED PURPOSE.—The purpose referred to in subsection (a) is the purpose of an investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is available.

"(c) DEFINITION.—In this section, the term 'DNA sample' has the meaning given such term in section 1565(c) of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. DNA samples maintained for identification of human remains: use for law enforcement purposes.".

SEC. 1028. SENSE OF CONGRESS CONCERNING AIRCRAFT CARRIER FORCE STRUCTURE.

(a) FINDINGS.—Congress makes the following findings:

(1) The aircraft carrier has been an integral component in Operation Enduring Freedom and in the homeland defense mission beginning on September 11, 2001. The aircraft carriers that have participated in Operation Enduring Freedom, as of May 1, 2002, are the USS Enterprise (CVN–65), the USS Carl Vinson (CVN–70), the USS Kitty Hawk (CV–63), the USS Theodore Roosevelt (CVN–71), the USS John C. Stennis (CVN–74), and the USS John F. Kennedy (CV–67). The aircraft carriers that have participated in the homeland defense mission are the USS George Washington (CVN–73), the USS John F. Kennedy (CV–67), and the USS John C. Stennis (CVN–74).

(2) Since 1945, the United States has built 172 bases overseas, of which only 24 are currently in use.

(3) The aircraft carrier provides an independent base of operations should no land base be available for aircraft.

(4) The aircraft carrier is an essential component of the Navy.

(5) Both the F/A–18E/F aircraft program and the Joint Strike Fighter aircraft program are proceeding on schedule for deployment on aircraft carriers.

(6) As established by the Navy, the United States requires the service of 15 aircraft carriers to completely fulfill all the naval commitments assigned to it without gapping carrier presence.

(7) The Navy requires, at a minimum, at least 12 carriers to accomplish its current missions.

(b) Sense of Congress.—It is the sense of Congress that the number of aircraft carriers of the Navy in active service should not be less than 12.

(c) Commendation of Crews.—Congress hereby commends the crews of the aircraft carriers that have participated in Operation Enduring Freedom and the homeland defense mission.

SEC. 1029. ENHANCED AUTHORITY TO OBTAIN FOREIGN LANGUAGE SERVICES DURING PERIODS OF EMERGENCY.

(a) National Foreign Language Skills Registry.—(1) The Secretary of Defense may establish and maintain a secure data registry to be known as the "National Foreign Language Skills Registry". The data registry shall consist of the names of, and other pertinent information on, linguistically qualified United States citizens and permanent resident aliens who state that they are willing to provide linguistic services in times of emergency designated by the Secretary of Defense to assist the Department of Defense and other Departments and agencies of the United States with translation and interpretation in languages designated by the Secretary of Defense as critical languages.

(2) The name of a person may be included in the Registry only if the person expressly agrees for the person's name to be included in the Registry. Any such agreement shall be made in such form and manner as may be specified by the Secretary.

(b) Authority To Accept Voluntary Translation and Interpretation Services.—Section 1588(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(6) Language translation and interpretation services.".

SEC. 1030. SURFACE COMBATANT INDUSTRIAL BASE.

(a) Review.—The Secretary of Defense shall conduct a review of the effect of the contract award announced on April 29, 2002, for the lead design agent for the DD(X) ship program on the industrial base for ship combat system development, including the industrial base for each of the following: ship systems integration, radar, electronic warfare, launch systems, and other components.

(b) Report Required.—Not later than March 31, 2003, the Secretary shall submit to the congressional defense committees a report based on the review under subsection (a). The report shall provide the Secretary's assessment of the effect of that contract award on the ship combat system technology and industrial base and shall describe any actions that the Secretary proposes to ensure future competition across the array of technologies that encompass the combat systems of future surface ships, including the next generation cruiser (CG(X)), the littoral combat ship (LCS), and the joint command ship (JCC(X)).

SEC. 1031. ENHANCED COOPERATION BETWEEN UNITED STATES AND RUSSIAN FEDERATION TO PROMOTE MUTUAL SECURITY.

(a) Statement of Policy.—It is the policy of the United States to pursue greater cooperation, transparency, and confidence with the Russian Federation regarding nuclear weapons policy, force structure, safeguards, testing, and proliferation prevention, as well as nuclear weapons infrastructure, production, and dismantlement, so as to promote mutual security, stability, and trust.

(b) Sense of Congress Regarding Enhanced Cooperation With Russia.—It is the sense of Congress that the President of the United States should continue to engage the President of the Russian Federation to achieve the following objectives, consistent with United States national security, in the interest of promoting mutual trust, security, and stability:

(1) An agreement that would seek to prevent the illicit use, diversion, theft, or proliferation of tactical nuclear weapons, and their key components and materials, by—

(A) withdrawing deployed nonstrategic nuclear weapons;

(B) accounting for, consolidating, and securing the Russian Federation's nonstrategic nuclear weapons; and

(C) dismantling or destroying United States and Russian nonstrategic nuclear weapons in excess of each nation's legitimate defense needs.

(2) A reciprocal program of joint visits by nuclear weapons scientists and experts of the United States and the Russian Federation to the United States nuclear test site in Nevada, and the Russian nuclear test site at Novya Zemlya.

(3) A reciprocal program of joint visits and conferences at each nation's nuclear weapons laboratories and nuclear weapons development and production facilities to discuss how to improve the safety and security of each nation's nuclear stockpile, nuclear materials, and nuclear infrastructure.

(4) A reciprocal program of joint visits and conferences to explore greater cooperation between the United States and the Russian Federation with regard to ballistic missile defenses against intentional, unauthorized, and accidental launches of ballistic missiles.

(5) A joint commission on nonproliferation, composed of senior nonproliferation and intelligence officials from the United States and the Russian Federation, to meet regularly in a closed forum to discuss ways to prevent rogue states and potential adversaries from acquiring—

(A) weapons of mass destruction and ballistic missiles;

(B) the dual-use goods, technologies, and expertise necessary to develop weapons of mass destruction and ballistic missiles; and

(C) advanced conventional weapons.

(6) A joint program to develop advanced methods for disposal of weapons-grade nuclear materials excess to defense needs, including safe, proliferation resistant, advanced nuclear fuel cycles that achieve more complete consumption of weapons materials, and other methods that minimize waste and hazards to health and the environment.

(7) A joint program to develop methods for safeguarding, treating, and disposing of spent reactor fuel and other nuclear waste so as to minimize the risk to public health, property, and the environment, as well as the possibility of diversion to illicit purposes.

(8) A joint program, built upon existing programs, to cooperatively develop advanced methods and techniques for establishing a state-of-the-art inventory control and monitoring system for nuclear weapons and material.

(c) Report.—No later than March 1, 2003, the President shall submit to Congress a report (in unclassified or classified form as necessary) on the status of the objectives under subsection (b). The report shall include the following:

(1) A description of the actions taken by the President to engage the Russian Federation to achieve those objectives.

(2) A description of the progress made to achieve those objectives.

(3) A description of the response of the Russian Federation to the actions referred to in paragraph (1).

(4) The President's assessment of the Russian Federation's commitment to a better, closer relationship with the United States based on the principles of increased cooperation and transparency.

SEC. 1032. TRANSFER OF FUNDS TO INCREASE AMOUNTS FOR PAC-3 MISSILE PROCUREMENT AND ISRAELI ARROW PROGRAM.

(a) Increase for PAC-3 Procurement.—The amount provided in section 101 for Missile Procurement, Army, is hereby increased by $65,000,000, to be available for an additional 24 PAC-3 missiles.

(b) Increase for Israeli Arrow Program.—The amount provided in section 201(4) for the Missile Defense Agency is hereby increased by $70,000,000, to be available within program element 0603881C, Terminal Defense Segment, only for the Israeli Arrow Ballistic Missile Defense System program.

(c) Corresponding Reduction.—The amount provided in section 201(4) for research, development, test, and evaluation, Defense-wide, is hereby reduced by $135,000,000, to be derived from amounts available to the Missile Defense Agency.

SEC. 1033. ASSIGNMENT OF MEMBERS TO ASSIST IMMIGRATION AND NATURALIZATION SERVICE AND CUSTOMS SERVICE.

(a) Assignment Authority of Secretary of Defense.—Chapter 18 of title 10, United States Code, is amended by inserting after section 374 the following new section:

"§ 374a. Assignment of members to assist border patrol and control

"(a) Assignment Authorized.—Upon submission of a request consistent with subsection (b), the Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to assist—

"(1) the Immigration and Naturalization Service in preventing the entry of terrorists, drug traffickers, and illegal aliens into the United States; and

"(2) the United States Customs Service in the inspection of cargo, vehicles, and aircraft at points of entry into the United States to prevent the entry of weapons of mass destruction, components of weapons of mass destruction, prohibited narcotics or drugs, or other terrorist or drug trafficking items.

"(b) Request for Assignment.—The assignment of members under subsection (a) may occur only if—

"(1) the assignment is at the request of the Attorney General, in the case of an assignment to the Immigration and Naturalization Service, or the Secretary of the Treasury, in the case of an assignment to the United States Customs Service; and

"(2) the request of the Attorney General or the Secretary of the Treasury (as the case may be) is accompanied by a certification by the President that the assignment of members pursuant to the request is necessary to respond to a threat to national security posed by the entry into the United States of terrorists or drug traffickers.

"(c) Training Program Required.—The Attorney General or the Secretary of the Treasury (as the case may be), together with the Secretary of Defense, shall establish a training program to ensure that members receive general instruction regarding issues affecting law enforcement in the border areas in which the members may perform duties under an assignment under subsection (a). A member may not be deployed at a border location pursuant to an assignment under subsection (a) until the member has successfully completed the training program.

"(d) Conditions of Use.—(1) Whenever a member who is assigned under subsection (a) to assist the Immigration and Naturalization Service or the United States Customs Service is performing duties at a border location pursuant to the assignment, a civilian law enforcement officer from the agency concerned shall accompany the member.

"(2) Nothing in this section shall be construed to—

"(A) authorize a member assigned under subsection (a) to conduct a search, seizure, or other similar law enforcement activity or to make an arrest; and

"(B) supersede section 1385 of title 18 (popularly known as the 'Posse Comitatus Act').

"(e) ESTABLISHMENT OF ONGOING JOINT TASK FORCES.—(1) The Attorney General or the Secretary of the Treasury may establish ongoing joint task forces when accompanied by a certification by the President that the assignment of members pursuant to the request to establish a joint task force is necessary to respond to a threat to national security posed by the entry into the United States of terrorists or drug traffickers.

"(2) When established, any joint task force shall fully comply with the standards as set forth in this section.

"(f) NOTIFICATION REQUIREMENTS.—The Attorney General or the Secretary of the Treasury (as the case may be) shall notify the Governor of the State in which members are to be deployed pursuant to an assignment under subsection (a), and local governments in the deployment area, of the deployment of the members to assist the Immigration and Naturalization Service or the United States Customs Service (as the case may be) and the types of tasks to be performed by the members.

"(g) REIMBURSEMENT REQUIREMENT.—Section 377 of this title shall apply in the case of members assigned under subsection (a).

"(h) TERMINATION OF AUTHORITY.—No assignment may be made or continued under subsection (a) after September 30, 2005.".

(b) COMMENCEMENT OF TRAINING PROGRAM.—The training program required by subsection (b) of section 374a of title 10, United States Code, shall be established as soon as practicable after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 374 the following new item:

"374a. Assignment of members to assist border patrol and control.".

SEC. 1034. SENSE OF CONGRESS ON PROHIBITION OF USE OF FUNDS FOR INTERNATIONAL CRIMINAL COURT.

It is the sense of Congress that none of the funds appropriated pursuant to authorizations of appropriations in this Act should be used for any assistance to, or to cooperate with or to provide any support for, the International Criminal Court.

TITLE XI—CIVILIAN PERSONNEL MATTERS

SEC. 1101. ELIGIBILITY OF DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND EMPLOYEES FOR LONG-TERM CARE INSURANCE.

(a) IN GENERAL.—Section 9001(1) of title 5, United States Code, is amended—

(1) in subparagraph (B), by striking "and";

(2) in subparagraph (C), by striking the comma at the end and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) an employee of a nonappropriated fund instrumentality of the Department of Defense described in section 2105(c),".

(b) DISCRETIONARY AUTHORITY.—Section 9002 of such title is amended—

(1) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) DISCRETIONARY AUTHORITY REGARDING NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense may determine that a nonappropriated fund instrumentality of the Department of Defense is covered under this chapter or is covered under an alternative long-term care insurance program.".

SEC. 1102. EXTENSION OF DEPARTMENT OF DEFENSE AUTHORITY TO MAKE LUMP-SUM SEVERANCE PAYMENTS.

(a) IN GENERAL.—Section 5595(i)(4) of title 5, United States Code, is amended by striking "2003" and inserting "2006".

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the President shall submit to Congress a report including recommendations whether the authority under section 5595(i) of title 5, United States Code, should be made permanent or expanded to be made Governmentwide.

SEC. 1103. COMMON OCCUPATIONAL AND HEALTH STANDARDS FOR DIFFERENTIAL PAYMENTS AS A CONSEQUENCE OF EXPOSURE TO ASBESTOS.

(a) PREVAILING RATE SYSTEMS.—Section 5343(c)(4) of title 5, United States Code, is amended by inserting before the semicolon at the end the following: ", and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970".

(b) GENERAL SCHEDULE PAY RATES.—Section 5545(d) of such title is amended by inserting before the period at the end of the first sentence the following: ", and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970".

(c) APPLICABILITY.—Subject to any vested constitutional property rights, any administrative or judicial determination after the date of enactment of this Act concerning backpay for a differential established under sections 5343(c)(4) or 5545(d) of such title shall be based on occupational safety and health standards described in the amendments made by subsections (a) and (b).

SEC. 1104. CONTINUATION OF FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM ELIGIBILITY.

Paragraph (4)(B) of section 8905a(d) of title 5, United States Code, is amended—

(1) in clause (i), by striking "2003" and inserting "2006"; and

(2) in clause (ii)—

(A) by striking "2004" and inserting "2007"; and

(B) by striking "2003" and inserting "2006".

SEC. 1105. TRIENNIAL FULL-SCALE FEDERAL WAGE SYSTEM WAGE SURVEYS.

Section 5343(b) of title 5, United States Code, is amended—

(1) in the first sentence, by striking "2 years" and inserting "3 years"; and

(2) in the second sentence, by striking the period at the end and inserting ", based on criteria developed by the Office.".

SEC. 1106. CERTIFICATION FOR DEPARTMENT OF DEFENSE PROFESSIONAL ACCOUNTING POSITIONS.

(a) IN GENERAL.—(1) Chapter 81 of title 10, United States Code, is amended by adding at the end the following new section:

"§1599d. Professional accounting positions: authority to prescribe certification and credential standards

"(a) AUTHORITY TO PRESCRIBE PROFESSIONAL CERTIFICATION STANDARDS.—The Secretary of Defense may prescribe professional certification and credential standards for professional accounting positions within the Department of Defense. Any such standard shall be prescribed as a Department of Defense regulation.

"(b) WAIVER AUTHORITY.—The Secretary may waive any standard prescribed under subsection (a) whenever the Secretary determines such a waiver to be appropriate.

"(c) APPLICABILITY.—A standard prescribed under subsection (a) shall not apply to any person employed by the Department of Defense before the standard is prescribed.

"(d) REPORT.—The Secretary of Defense shall submit to Congress a report on the Secretary's plans to provide training to appropriate Department of Defense personnel to meet any new professional and credential standards prescribed under subsection (a). Such report shall be prepared in conjunction with the Director of the Office of Personnel Management. Such a report shall be submitted not later than one year after the effective date of any regulations, or any revision to regulations, prescribed pursuant to subsection (a).

"(e) DEFINITION.—In this section, the term 'professional accounting position' means a position or group of positions in the GS-510, GS-511, and GS-505 series that involves professional accounting work.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1599d. Professional accounting positions: authority to establish certification and credential standards.".

(b) EFFECTIVE DATE.—Standards established pursuant to section 1599d of title 10, United States Code, as added by subsection (a), may take effect no sooner than 120 days after the date of the enactment of this Act.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

SEC. 1201. SUPPORT OF UNITED NATIONS-SPONSORED EFFORTS TO INSPECT AND MONITOR IRAQI WEAPONS ACTIVITIES.

(a) LIMITATION ON AMOUNT OF ASSISTANCE IN FISCAL YEAR 2003.—The total amount of the assistance for fiscal year 2003 that is provided by the Secretary of Defense under section 1505 of the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) as activities of the Department of Defense in support of activities under that Act may not exceed $15,000,000.

(b) EXTENSION OF AUTHORITY TO PROVIDE ASSISTANCE.—Subsection (f) of section 1505 of the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) is amended by striking "2002" and inserting "2003".

SEC. 1202. STRENGTHENING THE DEFENSE OF TAIWAN.

(a) IMPLEMENTATION OF TRAINING PLAN.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall implement a comprehensive plan to conduct joint operational training for, and exchanges of senior officers between, the Armed Forces of the United States and the military forces of Taiwan. Such plan shall include implementation of a wide range of programs, activities, exercises, and arrangements focused on threat analysis, military doctrine, force planning, logistical support, intelligence collection and analysis, operational tactics, techniques, and procedures, civil-military relations, and other subjects designed to improve the defensive capabilities of Taiwan and to enhance interoperability between the military forces of Taiwan and the Armed Forces of the United States.

(b) SUBMISSION TO CONGRESS.—At least 30 days before commencing implementation of the plan described in subsection (a), the Secretary of Defense shall submit the plan to Congress, in classified and unclassified form as necessary.

SEC. 1203. ADMINISTRATIVE SERVICES AND SUPPORT FOR FOREIGN LIAISON OFFICERS.

(a) AUTHORITY.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2350m. Administrative services and support for foreign liaison officers

"(a) AUTHORITY TO PROVIDE SERVICES AND SUPPORT.—The Secretary of Defense may provide administrative services and support for foreign liaison officers performing duties while such officers temporarily are assigned to components or commands of the armed forces. Such administrative services and support may include base or installation operation support services, office space, utilities, copying services, fire and police protection, and computer support. The Secretary may provide such administrative services and support with or without reimbursement, as the Secretary considers appropriate.

"(b) EXPIRATION OF AUTHORITY.—The authority under this section shall expire on September 30, 2005.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2350m. Administrative services and support for foreign liaison officers.".

(c) REPORT.—Not later than March 1, 2005, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a report describing, as of the date of submission of the report—

(1) the number of foreign liaison officers for which support has been provided under section 2350m of title 10, United States Code (as added by subsection (a));

(2) the countries from which such foreign liaison officers are or were assigned;

(3) the type of support provided, the duration for which the support was provided, and the reasons the support was provided; and

(4) the costs to the Department of Defense and the United States of providing such support.

SEC. 1204. ADDITIONAL COUNTRIES COVERED BY LOAN GUARANTEE PROGRAM.

Section 2540 of title 10, United States Code, is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

"(5) A country that, as determined by the Secretary of Defense in consultation with the Secretary of State, assists in combatting drug trafficking organizations or foreign terrorist organizations."; and

(2) by adding at the end the following new subsection:

"(d) REPORT.—The Secretary of Defense and the Secretary of State, whenever the Secretaries consider such action to be warranted, shall jointly submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and International Relations of the House of Representatives a report enumerating those countries to be added or removed under subsection (b).".

SEC. 1205. LIMITATION ON FUNDING FOR JOINT DATA EXCHANGE CENTER IN MOSCOW.

(a) LIMITATION.—Not more than 50 percent of the funds made available to the Department of Defense for fiscal year 2003 for activities associated with the Joint Data Exchange Center in Moscow, Russia, may be obligated or expended for any such activity until—

(1) the United States and the Russian Federation enter into a cost-sharing agreement as described in subsection (d) of section 1231 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–329);

(2) the United States and the Russian Federation enter into an agreement or agreements exempting the United States and any United States person from Russian taxes, and from liability under Russian laws, with respect to activities associated with the Joint Data Exchange Center;

(3) the Secretary of Defense submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of each agreement referred to in paragraphs (1) and (2); and

(4) a period of 30 days has expired after the date of the final submission under paragraph (3).

(b) JOINT DATA EXCHANGE CENTER.—For purposes of this section, the term "Joint Data Exchange Center" means the United States-Russian Federation joint center for the exchange of data to provide early warning of launches of ballistic missiles and for notification of such launches that is provided for in a joint United States-Russian Federation memorandum of agreement signed in Moscow in June 2000.

SEC. 1206. LIMITATION ON NUMBER OF MILITARY PERSONNEL IN COLOMBIA.

(a) LIMITATION.—None of the funds available to the Department of Defense may be used to support or maintain more than 500 members of the Armed Forces on duty in the Republic of Colombia at any time.

(b) EXCEPTIONS.—There shall be excluded from counting for the purposes of the limitation in subsection (a) the following:

(1) A member of the Armed Forces in the Republic of Colombia for the purpose of rescuing or retrieving United States military or civilian Government personnel, except that the period for which such a member may be so excluded may not exceed 30 days unless expressly authorized by law.

(2) A member of the Armed Forces assigned to the United States Embassy in Colombia as an attaché, as a member of the security assistance office, or as a member of the Marine Corps security contingent.

(3) A member of the Armed Forces in Colombia to participate in relief efforts in responding to a natural disaster.

(4) Nonoperational transient military personnel.

(5) A member of the Armed Forces making a port call from a military vessel in Colombia.

(c) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if he determines that such waiver is in the national security interest.

(d) NOTIFICATION.—The Secretary shall notify the congressional defense committees not later 15 days after the date of the exercise of the waiver authority under subsection (c).

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

SEC. 1301. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2003 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 2003 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the $416,700,000 authorized to be appropriated to the Department of Defense for fiscal year 2003 in section 301(23) for Cooperative Threat Reduction programs, the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $70,500,000.

(2) For strategic nuclear arms elimination in Ukraine, $6,500,000.

(3) For nuclear weapons transportation security in Russia, $19,700,000.

(4) For nuclear weapons storage security in Russia, $39,900,000.

(5) For activities designated as Other Assessments/Administrative Support, $14,700,000.

(6) For defense and military contacts, $18,900,000.

(7) For weapons of mass destruction infrastructure elimination activities in Kazakhstan, $9,000,000.

(8) For weapons of mass destruction infrastructure elimination activities in Ukraine, $8,800,000.

(9) For chemical weapons destruction in Russia, $50,000,000.

(10) For biological weapons facility dismantlement in the States of the former Soviet Union $11,500,000.

(11) For biological weapons facility security and safety in the States of the former Soviet Union, $34,800,000.

(12) For biological weapons collaborative research in the States of the former Soviet Union, $8,700,000.

(13) For personnel reliability programs in Russia, $100,000.

(14) For weapons of mass destruction proliferation prevention in the States of the former Soviet Union, $40,000,000.

(b) ADDITIONAL FUNDS AUTHORIZED FOR CERTAIN PURPOSES.—Of the funds authorized to be appropriated to the Department of Defense for fiscal year 2003 in section 301(23) for Cooperative Threat Reduction programs, $83,600,000 may be obligated for any of the purposes specified in paragraphs (1) through (4) and (9) of subsection (a) in addition to the amounts specifically authorized in such paragraphs.

(c) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2003 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (14) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2003 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(d) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2003 for a purpose listed in any of the paragraphs in subsection (a) in excess of the amount specifically authorized for such purpose (including amounts authorized under subsection (b)).

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts for the purposes stated any of paragraphs (5) through (13) of subsection (a) in excess of 115 percent of the amount specifically authorized for such purposes.

SEC. 1303. PROHIBITION AGAINST USE OF FUNDS UNTIL SUBMISSION OF REPORTS.

No fiscal year 2003 Cooperative Threat Reduction funds may be obligated or expended until 30 days after the date of the submission of—

(1) the report required to be submitted in fiscal year 2002 under section 1308(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–341); and

(2) the update for the multiyear plan required to be submitted for fiscal year 2001 under section 1205 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 22 U.S.C. 5952 note).

SEC. 1304. REPORT ON USE OF REVENUE GENERATED BY ACTIVITIES CARRIED OUT UNDER COOPERATIVE THREAT REDUCTION PROGRAMS.

Section 1308(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–341) is amended by inserting at the end the following new paragraph:

"(6) To the maximum extent practicable, a description of how revenue generated by activities carried out under Cooperative Threat Reduction programs in recipient States is being utilized, monitored, and accounted for.".

SEC. 1305. PROHIBITION AGAINST USE OF FUNDS FOR SECOND WING OF FISSILE MATERIAL STORAGE FACILITY.

No funds authorized to be appropriated for Cooperative Threat Reduction programs for any fiscal year may be used for the design, planning, or construction of a second wing for a storage facility for Russian fissile material.

SEC. 1306. SENSE OF CONGRESS AND REPORT REQUIREMENT REGARDING RUSSIAN PROLIFERATION TO IRAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Russian proliferation to Iran constitutes a clear threat to the national security and vital interests of the United States and undermines the purpose and goals of Cooperative Threat Reduction programs;

(2) such proliferation consists primarily of nuclear and missile technology, goods, and know-how, and dual-use items that could contribute to the development of weapons of mass destruction and ballistic missiles;

(3) because of ongoing Russian assistance, the intelligence community estimates that Iran could attempt to launch an intercontinental ballistic missile by 2005, and could possess a nuclear weapon by 2010;

(4) Russian proliferation is providing Iran with the capability to strike United States military forces, interests, allies, and friends in the region with weapons-of-mass-destruction-tipped ballistic missiles;

(5) the issue of Russian proliferation to Iran has been raised by United States officials at the highest levels of the Russian Government;

(6) Iran has long been identified as a State sponsor of terrorism by the United States because of its support of foreign terrorist organizations, and the combination of terrorist organizations and weapons of mass destruction constitutes a grave threat to the national security of the United States;

(7) Russian proliferation to Iran raises serious questions regarding the intentions of the Russian Government, and its commitment to nonproliferation and improved relations with the United States;

(8) Russian proliferation to Iran could undermine Congressional support for Cooperative Threat Reduction programs; and

(9) the President must safeguard United States national security and demonstrate United States resolve and commitment to stopping the proliferation of weapons of mass destruction and ballistic missiles through clear, firm, and coherent policies and strategies that employ the full range of diplomatic and economic tools at his disposal, both positive and negative, to halt the serious and continuing problem of Russian proliferation.

(b) REPORT.—Not later than March 15 of 2003 through 2009, the President shall submit to Congress a report (in unclassified and classified form as necessary) describing in detail Russian proliferation of weapons of mass destruction and ballistic missile goods, technology, and know-how, and of dual-use items that may contribute to the development of weapons of mass destruction and ballistic missiles, to Iran and to other countries during the year preceding the year in which the report is submitted. The report shall include—

(1) a net assessment prepared by the Office of Net Assessment of the Department of Defense; and

(2) a detailed description of the following:

(A) The number, type, and quality of direct and dual-use weapons of mass destruction and ballistic missile goods, items, and technology being transferred.

(B) The form, location, and manner in which such transfers take place.

(C) The contribution that such transfers could make to the recipient States' weapons of mass destruction and ballistic missile programs, and how soon such States will test, possess, and deploy weapons of mass destruction and ballistic missiles.

(D) The impact that such transfers have, or could have, on United States national security, on regional friends, allies, and interests, and on United States military forces deployed in the region to which such transfers are being made.

(E) The actions being taken by the United States to counter and defend against capabilities developed by the recipient States as a result of such transfers.

(F) The strategy, plan, or policy incorporating the full range of policy tools available that the President intends to employ to halt Russian proliferation, the rationale for employing such tools, and the timeline by which the President expects to see material progress in ending Russian proliferation of direct and dual-use weapons of mass destruction and missile goods, technologies, and know-how.

SEC. 1307. PROHIBITION AGAINST USE OF COOPERATIVE THREAT REDUCTION FUNDS OUTSIDE THE STATES OF THE FORMER SOVIET UNION.

No Cooperative Threat Reduction funds authorized or appropriated for any fiscal year may be used for threat reduction projects, programs, or activities in countries other than the States of the former Soviet Union.

SEC. 1308. LIMITED WAIVER OF RESTRICTION ON USE OF FUNDS.

(a) WAIVER AUTHORITY.—(1) The restriction described in subsection (d)(5) of section 1203 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1779; 22 U.S.C. 5952) shall not apply with respect to United States assistance to Russia if the President submits to Congress a written certification that waiving the restriction is important to the national security interests of the United States.

(2) The authority under paragraph (1) shall expire on December 31, 2005.

(b) REPORT.—Not later than 30 days after the date that the President applies the waiver authority under subsection (a), the President shall submit to Congress a report (in classified and unclassified form as necessary) describing—

(1) the arms control agreements with which Russia is not committed to complying, the form or forms of noncommittal, and detailed evidence of such noncommittal;

(2) why use of the waiver of authority was important to protect national security interests; and

(3) a strategy, plan, or policy incorporating the full range of policy tools available to the President for promoting Russian commitment to, and compliance with, all relevant arms control agreements.

SEC. 1309. LIMITATION ON USE OF FUNDS UNTIL SUBMISSION OF REPORT ON DEFENSE AND MILITARY CONTACTS ACTIVITIES.

Not more than 50 percent of fiscal year 2003 Cooperative Threat Reduction Funds may be obligated or expended for defense and military contacts activities until the Secretary of Defense submits to Congress a report describing in detail the operation and success of such activities carried out under Cooperative Threat Reduction programs during fiscal years 2001 and 2002. Such report shall include a description of—

(1) the amounts obligated or expended for such activities;

(2) the purposes, goals, and objectives for which such amounts were obligated and expended;

(3) a description of the activities carried out, including the forms of assistance provided, and the justification for each form of assistance provided;

(4) the success of each activity, including the goals and objectives achieved for each;

(5) a description of participation by private sector entities in the United States in carrying out such activities, and the participation of any other Federal department or agency in such activities; and

(6) any other information that the Secretary considers relevant to provide a complete description of the operation and success of activities carried out under Cooperative Threat Reduction programs.

TITLE XIV—UTAH TEST AND TRAINING RANGE

SEC. 1401. DEFINITION OF UTAH TEST AND TRAINING RANGE.

In this title, the term "Utah Test and Training Range" means those portions of the military operating area of the Utah Test and Training Area located solely in the State of Utah. The term includes the Dugway Proving Ground.

SEC. 1402. MILITARY OPERATIONS AND OVERFLIGHTS AT UTAH TEST AND TRAINING RANGE.

(a) FINDINGS.—The Congress finds the following:

(1) The testing and development of military weapons systems and the training of military forces are critical to ensuring the national security of the United States.

(2) The Utah Test and Training Range is a unique and irreplaceable national asset at the core of the test and training mission of the Department of Defense.

(3) Areas designated as wilderness study areas are located near lands withdrawn for military use and are beneath special use airspace critical to the support of military test and training missions at the Utah Test and Training Range.

(4) Continued unrestricted access to the special use airspace and lands that comprise the Utah Test and Training Range is a national security priority and is not incompatible with the protection and proper management of the natural, environmental, cultural, and other resources of such lands.

(b) OVERFLIGHTS.—(1) Nothing in this title, the Wilderness Act (16 U.S.C. 1131 et seq.), or other land management laws generally applicable to federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range shall restrict or preclude low-level overflights, low-level military overflights and operations of military aircraft, helicopters, unmanned aerial vehicles, military overflights or military overflights and operations that can be seen or heard within those areas.

(2) Paragraph (1) precludes any restriction regarding altitude or airspeed, noise level, supersonic flight, route of flight, time of flight, seasonal usage, or numbers of flights of any military aircraft, helicopters, unmanned aerial vehicles, missiles, aerospace vehicles, and other military weapons systems over federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range.

(3) In this subsection, the term "low-level" includes any flight down to and including 10 feet above ground level.

(c) SPECIAL USE AIRSPACE AND TRAINING ROUTES.—Nothing in this title, the Wilderness Act, or other land management laws generally applicable to federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range shall restrict or preclude the designation of new units of special use airspace, the expansion of existing units of special use airspace, or the use or establishment of military training routes over federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range.

(d) COMMUNICATIONS AND TRACKING SYSTEMS.—Nothing in this title, the Wilderness Act, or other land management laws generally applicable to federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range shall be construed to require the removal of existing communications, instrumentation, or electronic tracking systems from these areas, to prevent any required maintenance of such systems, or to prevent the installation of new communication, instrumentation, or other equipment necessary for effective testing and training to meet military requirements so long as the installation and maintenance of such systems do not require construction of any permanent roads in any federally designated wilderness area or wilderness study area.

(e) EMERGENCY ACCESS AND RESPONSE.—(1) Nothing in this title, the Wilderness Act, or other land management laws generally applicable to federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range shall restrict or preclude timely access to any area necessary to respond to emergency situations. Immediate access, including access for emergency and rescue vehicles and equipment, shall not be restricted if human life or health may be in jeopardy.

(2) Not later than 120 days after the date of the enactment of this Act, the Secretary of the Air Force and the Secretary of Interior shall enter into a memorandum of understanding providing formal procedures for access to the federally designated wilderness areas or wilderness study areas that are located beneath airspace of the Utah Test and Training Range, which may be necessary to respond to emergency situations, to rescue downed aircrew members, to investigate accident locations, to recover military aircraft or other weapons systems, and to restore accident locations. Military operations in the Utah Test and Training Range shall not be limited or restricted in any way pending completion of the memorandum of understanding.

(f) CONTROL OR RESTRICTION OF PUBLIC ACCESS.—(1) When required by national security or public safety, public access to federally designated wilderness areas or wilderness study areas in the Utah Test and Training Range that are located beneath airspace designated as special use airspace may be controlled, restricted, or prohibited entirely. Such controls, restrictions, or prohibitions shall remain in force for the minimum duration necessary. The Secretary of the Air Force shall provide advance notice of such controls, restrictions, or prohibitions to the Secretary of the Interior.

(2) Not later than 120 days after the date of the enactment of this Act, the Secretary of the Air Force and the Secretary of Interior shall enter into a memorandum of understanding prescribing procedures for implementing access controls, restrictions, or prohibitions. Military operations in the Utah Test and Training Range shall not be limited or restricted in any way pending completion of the memorandum of understanding.

SEC. 1403. DESIGNATION AND MANAGEMENT OF LANDS IN UTAH TEST AND TRAINING RANGE.

(a) DESIGNATION.—The following Federal lands that are in the Utah Test and Training Range are hereby designated as wilderness:

(1) Those lands that were managed pursuant to the nonimpairment standard set forth in section 603(c) of Public Law 94–579 (43 U.S.C. 1782(c)) on or before January 1, 1991.

(2) Those lands that were acquired by the United States through donation, exchange, or other method of acquisition and—

(A) are located entirely within the areas identified in paragraph (1); or

(B) are located within a logical extension of the boundaries of the areas identified in paragraph (1).

(b) PLANNING PROCESS FOR FEDERAL LANDS IN UTAH TEST AND TRAINING RANGE.—(1) The Secretary of the Interior shall not continue the plan amendment process initiated pursuant to section 202 of Public Law 94–579 (43 U.S.C. 1712) and published in the Federal Register on March 18, 1999 (64 Fed. Reg. 13439), for Federal lands located in the Utah Test and Training Range.

(2) The Secretary of the Interior shall not develop, maintain, or revise land use plans pursuant to section 202 of Public Law 94–579 (43 U.S.C. 1712) for Federal lands located in the Utah Test and Training Range without the prior concurrence of the Secretary of the Air Force and the Commander-in-Chief of the military forces of the State of Utah.

(c) WITHDRAWAL.—Subject to valid existing rights, the Federal lands in the areas designated as wilderness by this title are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing, and mineral materials, and all amendments to such laws.

(d) WATER.—Nothing in this title or any action taken pursuant to this title shall constitute an express or implied reservation of surface or groundwater by any person, including the United States. Nothing in this title affects any valid existing water rights in existence before the date of the enactment of this Act, including any water rights held by the United States. If the United States determines that additional water resources are needed for the purposes of this title, the United States shall acquire such rights in accordance with the water laws of the State of Utah.

(e) MAP AND DESCRIPTION.—(1) As soon as practicable after the date of the enactment of this title, the Secretary of Interior shall transmit a map and legal description of the areas designated as wilderness by this title to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) The map and legal description shall have the same force and effect as if included in this title, except that the Secretary of Interior may correct clerical and typographical errors in the map and legal description.

(3) The map and legal description shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management and the office of the State Director of the Bureau of Land Management in the State of Utah.

(f) ADMINISTRATION.—(1) Subject to valid existing rights and this title, the areas designated as wilderness in this title shall be administered by the Secretary of Interior in accordance with the provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of the enactment of this Act.

(2) Any lands or interest in lands within the boundaries of an area designated as wilderness by this title that is acquired by the

United States after the date of the enactment of this Act shall be added to and administered as part of the wilderness area within which the acquired lands or interest in lands are located.

(3) The Secretary of the Interior may offer to acquire lands and interest in lands located within the areas designated as wilderness by this title. Such lands may be acquired at fair market value under this subsection by purchase from willing sellers, by exchange for lands of approximately equal value, or by donation.

(4) In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within the areas designated as wilderness by this title where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(5) Within the areas designated as wilderness by this title, the grazing of livestock, where established before the date of the enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary of the Interior considers necessary, as long as such regulations, policies, and practices fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in the Wilderness Act, section 101(f) of Public Law 101–628, and House Report 101–405, Appendix A.

(6) Congress does not intend for the designation of the wilderness in this title to lead to the creation of protective perimeters or buffer zones around any area designated as wilderness by this title. The fact that nonwilderness activities or uses can be seen or heard within the areas designated as wilderness by this title shall not, of itself, preclude such activities or uses up to the boundary of that wilderness.

(7) Until completion of a full revision of the Pony Express Area Resource Management Plan, dated January 12, 1990, by the Salt Lake Field Office of the Bureau of Land Management, the Secretary of Interior shall not grant or issue any authorizations pursuant to section 501(a)(6) of Public Law 94–579 (43 U.S.C. 1761(a)(6)) upon Federal lands identified as inventory units UTU-020-088, UTU-020-095, UTU-020-096, and UTU-020-100, as generally depicted on the map entitled "Wilderness Inventory, State of Utah", dated August 1979.

SEC. 1404. DESIGNATION OF PILOT RANGE WILDERNESS.

Certain Federal lands in Box Elder County, Utah, as generally depicted on the map entitled "Pilot Range Wilderness", and dated October 1, 2001, are hereby designated as wilderness, and shall be known as the Pilot Range Wilderness Area.

SEC. 1405. DESIGNATION OF CEDAR MOUNTAIN WILDERNESS.

Certain Federal lands in Tooele County, Utah, as generally depicted on the map entitled "Cedar Mountain Wilderness", and dated May 1, 2002, are hereby designated as wilderness, and shall be known as the Cedar Mountain Wilderness Area.

TITLE XV—COST OF WAR AGAINST TERRORISM AUTHORIZATION

SEC. 1501. SHORT TITLE.

This title may be cited as the "Cost of War Against Terrorism Authorization Act of 2002".

SEC. 1502. AMOUNTS AUTHORIZED FOR THE WAR ON TERRORISM.

The amounts authorized to be appropriated in this title, totalling $10,000,000,000, are authorized for the conduct of operations in continuation of the war on terrorism in accordance with the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) and, to the extent appropriations are made pursuant to such authorizations, shall only be expended in a manner consistent with the purposes stated in section 2(a) thereof.

SEC. 1503. ADDITIONAL AUTHORIZATIONS

The amounts authorized to be appropriated by this title are in addition to amounts authorized to be appropriated for military functions of the Department of Defense for fiscal year 2003 in the other provisions of this Act or any other Act.

Subtitle A—Authorization of Appropriations

PART I—AUTHORIZATIONS TO TRANSFER ACCOUNTS

SEC. 1511. WAR ON TERRORISM OPERATIONS FUND.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for fiscal year 2003 the amount of $3,544,682,000, to be available only for operations in accordance with the purposes stated in section 1502 for Operation Noble Eagle and Operation Enduring Freedom. Funds authorized in the preceding sentence may only be used as provided in subsection (b).

(b) TRANSFER AUTHORITY.—Subject to section 1503, the Secretary of Defense may, in the Secretary's discretion, transfer amounts authorized in subsection (a) to any fiscal year 2003 military personnel or operation and maintenance account of the Department of Defense for the purposes stated in that subsection.

SEC. 1512. WAR ON TERRORISM EQUIPMENT REPLACEMENT AND ENHANCEMENT FUND.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for fiscal year 2003 the amount of $1,000,000,000, to be available only in accordance with the purposes stated in section 1502 and to be used only as provided in subsection (b).

(b) TRANSFER AUTHORITY.—Subject to section 1513, the Secretary of Defense may, in the Secretary's discretion, transfer amounts authorized in subsection (a) to any fiscal year 2003 procurement or research, development, test, and evaluation account of the Department of Defense for the purpose of—

(1) emergency replacement of equipment and munitions lost or expended in operations conducted as part of Operation Noble Eagle or Operation Enduring Freedom; or

(2) enhancement of critical military capabilities necessary to carry out operations pursuant to Public Law 107-40.

SEC. 1513. GENERAL PROVISIONS APPLICABLE TO TRANSFERS.

(a) IN GENERAL.—Amounts transferred pursuant to section 1511(b) or 1512(b) shall be merged with, and available for the same purposes and the same time period as, the account to which transferred.

(b) CONGRESSIONAL NOTICE-AND-WAIT REQUIREMENT.—A transfer may not be made under section 1511(b) or 1512(b) until the Secretary of Defense has submitted a notice in writing to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives of the proposed transfer and a period of 15 days has elapsed after the date such notice is received. Any such notice shall include specification of the amount of the proposed transfer, the account to which the transfer is to be made, and the purpose of the transfer.

(c) TRANSFER AUTHORITY CUMULATIVE.—The transfer authority provided by this subtitle is in addition to any other transfer authority available to the Secretary of Defense under this Act or any other Act.

PART II—AUTHORIZATIONS TO SPECIFIED ACCOUNTS

SEC. 1521. ARMY PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement accounts of the Army in amounts as follows:

(1) For ammunition, $94,000,000.

(2) For other procurement, $10,700,000.

SEC. 1522. NAVY AND MARINE CORPS PROCUREMENT.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement accounts for the Navy in amounts as follows:

(1) For aircraft, $106,000,000.

(2) For weapons, including missiles and torpedoes, $633,000,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2003 for the procurement account for the Marine Corps in the amount of $25,200,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2003 for the procurement account for ammunition for the Navy and the Marine Corps in the amount of $120,600,000.

SEC. 1523. AIR FORCE PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2003 for procurement accounts for the Air Force in amounts as follows:

(1) For aircraft, $214,550,000.

(2) For ammunition, $157,900,000.

(3) For other procurement, $10,800,000.

SEC. 1524. DEFENSE-WIDE ACTIVITIES PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the procurement account for Defense-wide procurement in the amount of $620,414,000.

SEC. 1525. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the research, development, test, and evaluation account for Defense-wide activities in the amount of $390,100,000.

SEC. 1526. CLASSIFIED ACTIVITIES.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2003 for unspecified intelligence and classified activities in the amount of $1,980,674,000, of which—

(1) $1,618,874,000 is authorized to be appropriated to procurement accounts;

(2) $301,600,000 is authorized to be appropriated to operation and maintenance accounts; and

(3) $60,200,000 is authorized to be appropriated to research, development, test, and evaluation accounts.

SEC. 1527. GLOBAL INFORMATION GRID SYSTEM.

None of the funds authorized to be appropriated by this Act for the Department of Defense system known as the Global Information Grid may be obligated until the Secretary of Defense submits to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives the Secretary's certification that the end-to-end system is secure and protected from unauthorized access to the information transmitted through the system.

SEC. 1528. OPERATION AND MAINTENANCE.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the use of the Armed Forces for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $14,270,000.

(2) For the Navy, $5,252,500.

(3) For the Marine Corps, $11,396,000.

(4) For the Air Force, $517,285,000.

SEC. 1529. MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel accounts for fiscal year 2003 a total of $503,100,000.

PART III—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 1531. AUTHORIZED MILITARY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) PROJECTS AUTHORIZED.—Using amounts appropriated pursuant to the authorization of appropriations in subsection (b), the Secretary of the military department concerned may acquire real property and carry out military construction projects for the installations and locations, and in the amounts, set forth in the following table:

Projects Authorized

Military Department	Installation or location	Amount
Department of the Army	Qatar	$8,600,000
Department of the Navy	Naval Station, Guantanamo Bay, Cuba	$4,280,000
	Naval Station, Rota, Spain	$18,700,000
Department of the Air Force	Bolling Air Force Base, District of Columbia	$3,500,000
	Total	$35,080,000

(b) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 2003 for the military construction projects authorized by subsection (a) in the total amount of $35,080,000.

Subtitle B—Wartime Pay and Allowance Increases

SEC. 1541. INCREASE IN RATE FOR FAMILY SEPARATION ALLOWANCE.

Section 427(a)(1) of title 37, United States Code, is amended by striking "$100" and inserting "$125".

SEC. 1542. INCREASE IN RATES FOR VARIOUS HAZARDOUS DUTY INCENTIVE PAYS.

(a) FLIGHT PAY FOR CREW MEMBERS.—Subsection (b) of section 301 of title 37, United States Code, is amended by striking the table and inserting the following new table:

"Pay grade:	*Monthly Rate*
O–10	$200
O–9	$200
O–8	$200
O–7	$200
O–6	$300
O–5	$300
O–4	$275
O–3	$225
O–2	$200
O–1	$200
W–5	$300
W–4	$300
W–3	$225
W–2	$200
W–1	$200
E–9	$290
E–8	$290
E–7	$290
E–6	$265
E–5	$240
E–4	$215
E–3	$200
E–2	$200
E–1	$200".

(b) INCENTIVE PAY FOR PARACHUTE JUMPING WITHOUT STATIC LINE.—Subsection (c)(1) of such section is amended by striking "$225" and inserting "$275".

(c) OTHER HAZARDOUS DUTIES.—Subsection (c)(1) of such section is amended by striking "$150" and inserting "$200".

(d) REMOVAL OF AIR WEAPONS CONTROLLER CREW MEMBERS FROM LIST OF HAZARDOUS DUTIES.—Such section is further amended—

(1) in subsection (a)—

(A) by striking paragraph (12);

(B) in paragraph (11), by striking "; or" and inserting a period; and

(C) in paragraph (10), by inserting "or" after the semicolon; and

(2) in subsection (c), as amended by subsections (b) and (c) of this section—

(A) by striking "(1)"; and

(B) by striking paragraph (2).

SEC. 1543. INCREASE IN RATE FOR DIVING DUTY SPECIAL PAY.

Section 304(b) of title 37, United States Code, is amended—

(1) by striking "$240" and inserting "$290"; and

(2) by striking "$340" and inserting "$390".

SEC. 1544. INCREASE IN RATE FOR IMMINENT DANGER PAY.

Section 310(a) of title 37, United States Code, is amended by striking "$150" and inserting "$250".

SEC. 1545. INCREASE IN RATE FOR CAREER ENLISTED FLYER INCENTIVE PAY.

The table in section 320(d) of title 37, United States Code, is amended to read as follows:

"Years of aviation service	Monthly rate
4 or less	$200
Over 4	$275
Over 8	$400
Over 14	$450".

SEC. 1546. INCREASE IN AMOUNT OF DEATH GRATUITY.

Section 1478(a) of title 10, United States Code, is amended by striking "$6,000" and inserting "$12,000".

SEC. 1547. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall take effect on the later of the following:

(1) The first day of the first month beginning on or after the date of the enactment of this Act.

(2) October 1, 2002.

(b) DEATH GRATUITY.—The amendment made by section 1546 shall apply with respect to a person covered by section 1475 or 1476 of title 10, United States Code, whose date of death occurs on or after the later of the following:

(1) The date of the enactment of this Act.

(2) October 1, 2002.

Subtitle C—Additional Provisions

SEC. 1551. ESTABLISHMENT OF AT LEAST ONE WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAM IN EACH STATE.

(a) FINDINGS.—Congress makes the following findings:

(1) Weapons of Mass Destruction Civil Support Teams are strategic assets, stationed at the operational level, as an immediate response capability to assist local responders in the event of an emergency within the United States involving use or potential use of weapons of mass destruction.

(2) Since September 11 2001, Civil Support Teams have responded to more than 200 requests for support from civil authorities for actual or potential weapons of mass destruction incidents and have supported various national events, including the World Series, the Super Bowl, and the 2002 Winter Olympics.

(3) To enhance homeland security as the Nation fights the war against terrorism, each State and territory must have a Weapons of Mass Destruction Civil Support Team to respond to potential weapons of mass destruction incidents.

(4) In section 1026 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 as passed the House of Representatives on May 10, 2002 (H.R. 4546 of the 107th Congress), the House of Representatives has already taken action to that end by expressing the sense of Congress that the Secretary of Defense should establish 23 additional Weapons of Mass Destruction Civil Support Teams in order to provide at least one such team in each State and territory.

(5) According to a September 2001 report of the Comptroller General entitled "Combating Terrorism", the Department of Defense plans that there eventually should be a Weapons of Mass Destruction Civil Support Teams in each State, territory, and the District of Columbia.

(b) REQUIREMENT.—From funds authorized to be appropriated in section 101, the Secretary of Defense shall ensure that there is established at least one Weapons of Mass Destruction Civil Support Team in each State.

(c) DEFINITIONS.—For purposes of this section:

(1) The term "Weapons of Mass Destruction Civil Support Team" means a team of members of the reserve components of the armed forces that is established under section 12310(c) of title 10, United States Code, in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.

(2) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(d) DEADLINE FOR IMPLEMENTATION.—The Secretary of Defense shall ensure that subsection (b) is fully implemented not later than September 30, 2003.

SEC. 1552. AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.

(a) AUTHORITY.—A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, consistent with all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities.

(b) CONDITIONS.—Any support provided under subsection (a) may only be provided in the geographic area of responsibility of the joint task force.

(c) FUNDS.—Funds are hereby authorized to be appropriated for fiscal year 2003 in the amount of $5,000,000 to provide support for counter-terrorism activities in accordance with subsections (a) and (b).

SEC. 1553. SENSE OF CONGRESS ON ASSISTANCE TO FIRST RESPONDERS.

It is the sense of Congress that the Secretary of Defense should, to the extent the Secretary determines appropriate, use funds provided in this Act to assist, train, and equip local fire and police departments that would be a first responder to a domestic terrorist incident that may come about in connection with the continued fight to prosecute the war on terrorism.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "Military Construction Authorization Act for Fiscal Year 2003".

TITLE XXI—ARMY

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Alabama	Anniston Army Depot	$1,900,000
	Fort Rucker	$3,050,000
	Redstone Arsenal	$1,950,000
Alaska	Fort Wainwright	$111,010,000
Arizona	Fort Huachuca	$10,400,000
	Yuma Proving Ground	$4,500,000
Arkansas	Pine Bluff Arsenal	$18,937,000
California	Monterey Defense Language Institute	$1,500,000
Colorado	Fort Carson	$5,350,000
District of Columbia	Walter Reed Army Medical Center	$9,950,000
Georgia	Fort Benning	$74,250,000
	Fort Stewart/Hunter Army Air Field	$26,000,000
Hawaii	Schofield Barracks	$191,000,000
Kansas	Fort Leavenworth	$3,150,000
	Fort Riley	$51,950,000
Kentucky	Blue Grass Army Depot	$5,500,000
	Fort Campbell	$106,300,000
Louisiana	Fort Polk	$31,000,000
Maryland	Fort Detrick	$22,500,000
Massachusetts	Natick Research Development and Engineering Center	$4,100,000
Missouri	Fort Leonard Wood	$15,500,000
New Jersey	Picatinny Arsenal	$7,500,000
New York	Fort Drum	$18,300,000
North Carolina	Fort Bragg	$94,900,000
Pennsylvania	Letterkenny Army Depot	$1,550,000
Texas	Fort Bliss	$10,200,000
	Fort Hood	$85,000,000
Virginia	Fort Lee	$5,200,000
Washington	Fort Lewis	$53,800,000
	Total	$976,247,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or location	Amount
Belgium	Supreme Headquarters, Allied Powers Europe	$13,600,000
Germany	Area Support Group, Bamberg	$17,200,000
	Campbell Barracks	$8,300,000
	Coleman Barracks	$1,350,000
	Darmstadt	$3,500,000
	Grafenwoehr	$69,866,000
	Landstuhl	$2,400,000
	Mannheim	$42,000,000
	Schweinfurt	$2,000,000
Italy	Vicenza	$34,700,000
Korea	Camp Carroll	$20,000,000
	Camp Castle	$6,800,000
	Camp Hovey	$25,000,000
	Camp Humphreys	$36,000,000
	Camp Henry	$10,000,000
	K16 Airfield	$40,000,000
	Yongsan	$12,600,000
	Total	$345,316,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(3), the Secretary of the Army may acquire real property and carry out military construction projects for the installation and location, and in the amount, set forth in the following table:

Army: Unspecified Worldwide

Location	Installation	Amount
Unspecified Worldwide	Unspecified Worldwide	$4,000,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(6)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:

Army: Family Housing

State or Country	Installation or location	Purpose	Amount
Alaska	Fort Wainwright	38 Units	$17,752,000
Arizona	Yuma Proving Ground	33 Units	$6,100,000
Germany	Stuttgart	1 Unit	$990,000
Korea	Yongsan	10 Units	$3,100,000
	Total:		$27,942,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(6)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed $15,653,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(6)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed $234,831,000.

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $2,935,609,000 as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $803,247,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $345,316,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2101(c), $4,000,000.

(4) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $21,550,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $158,796,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design and improvement of military family housing and facilities, $278,426,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), $1,122,274,000.

(7) For the construction of phase 3 of a barracks complex, Butner Road, at Fort Bragg, North Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Public Law 106–398; 114 Stat. 1654A–389), $50,000,000.

(8) For the construction of phase 2 of a barracks complex, D Street, at Fort Richardson, Alaska, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1280), $21,000,000.

(9) For the construction of phase 2 of a barracks complex, Nelson Boulevard, at Fort Carson, Colorado, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1280), as amended by section 2105 of this Act, $42,000,000.

(10) For the construction of phase 2 of a basic combat trainee complex at Fort Jackson, South Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1280), as amended by section 2105 of this Act, $39,000,000.

(11) For the construction of phase 2 of a barracks complex, 17th and B Streets at Fort Lewis, Washington, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1280), $50,000,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a);

(2) $18,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Main Post, at Fort Benning, Georgia);

(3) $100,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Capron Avenue, at Schofield Barracks, Hawaii);

(4) $50,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Range Road, at Fort Campbell, Kentucky); and

(5) $5,000,000 (the balance of the amount authorized under section 2101(a) for a military construction project at Fort Bliss, Texas).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (11) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $13,676,000, which represents the combination of savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States and savings resulting from favorable bids, reduced overhead charges, and cancellations due to force structure changes.

SEC. 2105. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) MODIFICATION.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1281) is amended—

(1) in the item relating to Fort Carson, Colorado, by striking "$66,000,000" in the amount column and inserting "$67,000,000"; and

(2) in the item relating to Fort Jackson, South Carolina, by striking "$65,650,000" in the amount column and inserting "$68,650,000".

(b) CONFORMING AMENDMENTS.—Section 2104(b) of that Act (115 Stat. 1284) is amended—

(1) in paragraph (3), by striking "$41,000,000" and inserting "$42,000,000"; and

(2) in paragraph (4), by striking "$36,000,000" and inserting "$39,000,000".

TITLE XXII—NAVY

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or location	Amount
Arizona	Marine Corps Air Station, Yuma	$3,000,000
California	Auxiliary Landing Field, San Diego (San Clemente Island)	$6,150,000
	Marine Corps Air-Ground Combat Center, Twentynine Palms	$40,870,000
	Marine Corps Air Station, Camp Pendleton	$31,930,000
	Marine Corps Air Station, Miramar	$12,210,000
	Marine Corps Base, Camp Pendleton	$64,040,000
	Marine Corps Logistics Base, Barstow	$4,450,000
	Naval Air Station, Lemoore	$35,855,000
	Naval Air Warfare Center, Point Mugu, San Nicholas Island	$6,760,000
	Naval Air Weapons Station, China Lake	$10,100,000
	Naval Post Graduate School, Monterey	$9,020,000
	Naval Station, San Diego	$12,210,000
Connecticut	Naval Submarine Base, New London	$7,880,000
District of Columbia	Marine Corps Barracks	$3,700,000
	Naval District, Washington	$2,690,000
Florida	Naval Air Base, Jacksonville	$13,342,000
	Naval Air Station, Pensacola	$990,000
	Naval School Explosive Ordinance Detachment, Eglin	$6,350,000
	Naval Station, Mayport	$1,900,000
	Whiting Field	$1,780,000
Georgia	Naval Submarine Base, Kings Bay	$1,580,000
Hawaii	Naval Shipyard, Pearl Harbor	$18,500,000
	Naval Station, Pearl Harbor	$14,690,000
Illinois	Naval Training Center, Great Lakes	$93,190,000
Indiana	Crane Naval Surface Weapons Station	$11,610,000
Maine	Naval Shipyard, Kittery-Portsmouth	$15,200,000
Maryland	Naval Air Facility, Andrews Air Force Base	$9,680,000
	United States Naval Academy	$1,800,000
Mississippi	Naval Air Station, Meridian	$2,850,000
	Naval Construction Battalion Center, Gulfport	$5,460,000
	Naval Station, Pascagoula	$16,160,000
Nevada	Naval Air Station, Fallon	$4,010,000
New Jersey	Naval Weapons Center, Lakehurst	$5,200,000
	Naval Weapons Station Earle, Colts Neck	$5,600,000
North Carolina	Marine Corps Air Station, Cherry Point	$10,470,000
	Marine Corps Air Station, New River	$6,920,000
	Marine Corps Base, Camp Lejeune	$9,570,000
Rhode Island	Naval Station, Newport	$6,870,000
South Carolina	Marine Corps Air Station, Beaufort	$13,700,000
	Marine Corps Recruit Depot, Parris Island	$10,490,000
	Naval Weapons Station, Charlestown	$5,740,000
Texas	Naval Air Station, Corpus Christi	$7,150,000
	Naval Air Station Joint Reserve Base, Fort Worth	$8,850,000
	Naval Air Station, Kingsville	$6,210,000
Virginia	Dam Neck Fleet Combat Training Center, Atlantic	$3,900,000
	Little Creek Naval Amphibious Base	$9,770,000
	Marine Corps Combat Development Command, Quantico	$24,864,000
	Naval Air Station Oceana	$16,490,000
	Naval Shipyard, Norfolk, Portsmouth	$19,660,000
	Naval Station, Norfolk	$171,505,000
	Naval Surface Warfare Center, Dahlgren	$15,830,000
	Naval Weapons Station, Yorktown	$15,020,000
Washington	Naval Air Station, Whidbey Island	$17,580,000
	Keyport Naval Undersea Warfare Command	$10,500,000
	Naval Magazine, Indian Island	$4,030,000
	Naval Station, Bremerton	$45,870,000
	Naval Submarine Base, Bangor	$22,310,000
	Puget Sound Naval Shipyard, Bremerton	$57,132,000
	Strategic Weapons Facility, Bangor	$7,340,000
Various Locations	Host Nation Infrastructure	$1,000,000
	Total	$1,009,528,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the locations outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or location	Amount
Bahrain	Naval Support Activity, Bahrain	$25,970,000
Diego Garcia	Diego Garcia, Naval Support Facility	$11,090,000
Greece	Naval Support Activity, Joint Headquarters Command, Larissa	$14,800,000
Guam	Commander, United States Naval Forces, Guam	$13,400,000
Iceland	Naval Air Station, Keflavik	$14,920,000
Italy	Naval Air Station, Sigonella	$55,660,000

Navy: Outside the United States—Continued

Country	Installation or location	Amount
	Total	$135,840,000

SEC. 2202. FAMILY HOUSING.

(a) Construction and Acquisition.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(5)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:

Navy: Family Housing

State or Country	Installation or location	Purpose	Amount
California	Naval Air Station, Lemoore	178 Units	$40,981,000
	Marine Corps Air-Ground Combat Center, Twentynine Palms	76 Units	$19,425,000
Connecticut	Naval Submarine Base, New London	100 Units	$24,415,000
Florida	Naval Station, Mayport	1 Unit	$329,000
Hawaii	Marine Corps Base, Kaneohe Bay	65 Units	$24,797,000
Maine	Naval Air Station, Brunswick	26 Units	$5,800,000
Mississippi	Naval Air Station, Meridian	56 Units	$9,755,000
North Carolina	Marine Corps Base, Camp LeJeune	317 Units	$43,650,000
Virginia	Marine Corps Base, Quantico	290 Units	$41,843,000
United Kingdom	Joint Maritime Facility, St. Mawgan	62 Units	$18,524,000
		Total	$229,519,000

(b) Planning and Design.—Using amounts appropriated pursuant to the authorization of appropriation in section 2204(a)(5)(A), the Secretary of the Navy may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $11,281,000.

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(5)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed $136,816,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) In General.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $2,308,007,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), $776,806,000.

(2) For military construction projects outside the United States authorized by section 2201(b), $133,270,000.

(3) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $23,262,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $95,745,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $377,616,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $867,788,000.

(6) For replacement of a pier at Naval Station, Norfolk, Virginia, authorized in section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1287), as amended by section 2205 of this Act, $33,520,000.

(b) Limitation on Total Cost of Construction Projects.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a);

(2) $48,120,000 (the balance of the amount authorized under section 2201(a) for a bachelors enlisted quarters shipboard ashore, Naval Station, Norfolk, Virginia); and

(3) $2,570,000 (the balance of the amount authorized under section 2201(b) for a quality of life support facility, Naval Air Station Sigonella, Italy).

(c) Adjustment.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $1,340,000, which represents the combination of savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States and savings resulting from favorable bids, reduced overhead charges, and cancellations due to force structure changes.

SEC. 2205. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2002 PROJECT.

(a) Modification.—The table in section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1286) is amended—

(1) in the item relating to Naval Station, Norfolk, Virginia, by striking "$139,270,000" in the amount column and inserting "$139,550,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$1,059,030,000".

(b) Conforming Amendment.—Section 2204(b)(2) of that Act (115 Stat. 1289) is amended by striking "$33,240,000" and inserting "$33,520,000".

TITLE XXIII—AIR FORCE

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) Inside the United States.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or location	Amount
Alabama	Maxwell Air Force Base	$8,000,000
Alaska	Clear Air Station	$14,400,000
	Eielson Air Force Base	$21,600,000
Arizona	Davis-Monthan Air Force Base	$19,270,000
	Luke Air Force Base	$13,000,000
Arkansas	Little Rock Air Force Base	$25,600,000
California	Beale Air Force Base	$11,740,000
	Travis Air Force Base	$9,600,000
	Vandenberg Air Force Base	$10,500,000

Air Force: Inside the United States—Continued

State	Installation or location	Amount
Colorado	Buckley Air National Guard Base	$17,700,000
	Peterson Air Force Base	$2,000,000
	Schriever Air Force Base	$5,700,000
	United States Air Force Academy	$9,400,000
District of Columbia	Bolling Air Force Base	$1,500,000
Florida	Elgin Air Force Base	$4,250,000
	Hurlburt Field	$15,000,000
	McDill Air Force Base	$21,000,000
	Tyndall Air Force Base	$8,100,000
Georgia	Robins Air Force Base	$5,400,000
Hawaii	Hickam Air Force Base	$1,350,000
Kansas	McConnell Air Force Base	$7,500,000
Louisiana	Barksdale Air Force Base	$10,900,000
Maryland	Andrews Air Force Base	$9,600,000
Massachusetts	Hanscom Air Force Base	$7,700,000
Mississippi	Keesler Air Force Base	$22,000,000
Nevada	Nellis Air Force Base	$37,350,000
New Jersey	McGuire Air Force Base	$24,631,000
New Mexico	Cannon Air Force Base	$4,650,000
	Holloman Air Force Base	$4,650,000
	Kirtland Air Force Base	$21,900,000
North Carolina	Pope Air Force Base	$9,700,000
Ohio	Wright-Patterson Air Force Base	$25,000,000
Oklahoma	Tinker Air Force Base	$7,500,000
South Carolina	Shaw Air Force Base	$6,800,000
Texas	Lackland Air Force Base	$37,300,000
	Laughlin Air Force Base	$8,000,000
	Sheppard Air Force Base	$24,000,000
Utah	Hill Air Force Base	$14,500,000
Virginia	Langley Air Force Base	$71,940,000
	Total	$580,731,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	Installation or location	Amount
Diego Garcia	Diego Garcia	$17,100,000
Germany	Ramstein Air Force Base	$71,783,000
Guam	Andersen Air Force Base	$31,000,000
Italy	Aviano Air Force Base	$6,600,000
Japan	Kadena Air Force Base	$6,000,000
Korea	Osan Air Base	$15,100,000
Spain	Naval Station, Rota	$31,818,000
Turkey	Incirlik Air Force Base	$1,550,000
United Kingdom	Royal Air Force, Fairford	$19,000,000
	Royal Air Force, Lakenheath	$13,400,000
Wake Island	Wake Island	$24,900,000
	Total	$238,251,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(3), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installation and location, and in the amount, set forth in the following table:

Air Force: Unspecified Worldwide

Location	Installation	Amount
Unspecified Worldwide	Classified Location	$32,562,000
	Total	$32,562,000

SEC. 2302. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations, for the purposes, and in the amounts set forth in the following table:

Air Force: Family Housing

State or Country	Installation or location	Purpose	Amount
Arizona	Luke Air Force Base	140 Units	$18,954,000

Air Force: Family Housing—Continued

State or Country	Installation or location	Purpose	Amount
California	Travis Air Force Base	110 Units	$24,320,000
Colorado	Peterson Air Force Base	2 Units	$959,000
	United States Air Force Academy	71 Units	$12,424,000
Delaware	Dover Air Force Base	112 Units	$19,615,000
Florida	Eglin Air Force Base	Housing Office	$597,000
	Eglin Air Force Base	134 Units	$15,906,000
	MacDill Air Force Base	96 Units	$18,086,000
Hawaii	Hickam Air Force Base	96 Units	$29,050,000
Idaho	Mountain Home Air Force Base	95 Units	$24,392,000
Kansas	McConnell Air Force Base	Housing Maintenance Facility	$1,514,000
Maryland	Andrews Air Force Base	53 Units	$9,838,000
	Andrews Air Force Base	52 Units	$8,807,000
Mississippi	Columbus Air Force Base	Housing Office	$412,000
	Keesler Air Force Base	117 Units	$16,505,000
Missouri	Whiteman Air Force Base	97 Units	$17,107,000
Montana	Malmstrom Air Force Base	18 Units	$4,717,000
New Mexico	Holloman Air Force Base	101 Units	$20,161,000
North Carolina	Pope Air Force Base	Housing Maintenance Facility	$991,000
	Seymour Johnson Air Force Base	126 Units	$18,615,000
North Dakota	Grand Forks Air Force Base	150 Units	$30,140,000
	Minot Air Force Base	112 Units	$21,428,000
	Minot Air Force Base	102 Units	$20,315,000
Oklahoma	Vance Air Force Base	59 Units	$11,423,000
South Dakota	Ellsworth Air Force Base	Housing Maintenance Facility	$447,000
	Ellsworth Air Force Base	22 Units	$4,794,000
Texas	Dyess Air Force Base	85 Units	$14,824,000
	Randolph Air Force Base	Housing Maintenance Facility	$447,000
	Randolph Air Force Base	112 Units	$14,311,000
Virginia	Langley Air Force Base	Housing Office	$1,193,000
Germany	Ramstein Air Force Base	19 Units	$8,534,000
Korea	Osan Air Base	113 Units	$35,705,000
	Osan Air Base	Housing Supply Warehouse	$834,000
United Kingdom	Royal Air Force, Lakenheath	Housing Office and Maintenance Facility	$2,203,000
	Total		$429,568,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $34,188,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, Unites States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed $217,286,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,495,094,000, as follows:

(1) For military construction projects inside the United States authorized by section 2301(a), $580,731,000.

(2) For military construction projects outside the United States authorized by section 2301(b), $238,251,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2301(c), $32,562,000.

(4) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $11,500,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $76,958,000.

(6) For military housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $681,042,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $874,050,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 of this Act may not exceed the total amount authorized to be appropriated under paragraphs (1), (2) and (3) of subsection (a).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $10,281,000, which represents the combination of savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States and savings resulting from favorable bids, reduced overhead charges, and cancellations due to force structure changes.

TITLE XXIV—DEFENSE AGENCIES

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Inside the United States

Agency	Installation or location	Amount
Missile Defense Agency	Kauai, Hawaii	$23,400,000
Defense Intelligence Agency	Bolling Air Force Base, District of Columbia	$121,958,000
Defense Logistics Agency	Columbus, Ohio	$5,021,000
	Defense Supply Center, Richmond, Virginia	$5,500,000
	Naval Air Station, New Orleans, Louisiana	$9,500,000
	Travis Air Force Base, California	$16,000,000
Defense Threat Reduction Agency	Fort Belvoir, Virginia	$76,388,000

Defense Agencies: Inside the United States—Continued

Agency	Installation or location	Amount
Department of Defense Dependents Schools	Fort Bragg, North Carolina	$2,036,000
	Fort Jackson, South Carolina	$2,506,000
	Marine Corps Base, Camp Lejeune, North Carolina	$12,138,000
	Marine Corps Base, Quantico, Virginia	$1,418,000
	United States Military Academy, West Point, New York	$4,347,000
	Fort Meade, Maryland	$4,484,000
Joint Chiefs of Staff	Peterson Air Force Base, Colorado	$18,400,000
National Security Agency	Fort Bragg, North Carolina	$30,800,000
Special Operations Command	Hurlburt Field, Florida	$11,100,000
	Naval Amphibious Base, Little Creek, Virginia	$14,300,000
TRICARE Management Activity	Elmendorf Air Force Base, Alaska	$10,400,000
	Hickam Air Force Base, Hawaii	$2,700,000
	Total	$372,396,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Outside the United States

Agency	Installation or location	Amount
Defense Logistics Agency	Andersen Air Force Base, Guam	$17,586,000
	Naval Forces Marianas Islands, Guam	$6,000,000
	Naval Station, Rota, Spain	$23,400,000
	Royal Air Force, Fairford, United Kingdom	$17,000,000
	Yokota Air Base, Japan	$23,000,000
Department of Defense Dependents Schools	Kaiserslautern, Germany	$957,000
	Lajes Field, Azores, Portugal	$1,192,000
	Seoul, Korea	$31,683,000
	Supreme Headquarters, Allied Powers Europe, Belgium	$1,573,000
	Spangdahlem Air Base, Germany	$997,000
	Vicenza, Italy	$2,117,000
TRICARE Management Activity	Naval Support Activity, Naples, Italy	$41,449,000
	Spangdahlem Air Base, Germany	$39,629,000
	Total	$206,583,000

SEC. 2402. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(8)(A), the Secretary of Defense may improve existing military family housing units in an amount not to exceed $5,530,000.

SEC. 2403. ENERGY CONSERVATION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(4), the Secretary of Defense may carry out energy conservation projects under section 2865 of title 10, United States Code, in the amount of $49,531,000.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of $1,417,779,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), $335,796,000.

(2) For military construction projects outside the United States authorized by section 2401(b), $206,583,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $16,293,000.

(4) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, $10,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $45,432,000.

(6) For energy conservation projects authorized by section 2403 of this Act, $49,531,000.

(7) For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), $545,138,000.

(8) For military family housing functions:

(A) For improvement of military family housing and facilities, $5,480,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $42,432,000.

(C) For credit to the Department of Defense Housing Improvement Fund established by section 2883(a) of title 10, United States Code, as amended by section 2801 of this Act, $2,000,000.

(9) For payment of a claim against the Hospital Replacement project at Elmendorf Air Force Base, Alaska, $10,400,000.

(10) For the construction of phase 4 of an ammunition demilitarization facility at Pueblo Chemical Activity, Colorado, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839) and section 2407 of this Act, $38,000,000.

(11) For the construction of phase 5 of an ammunition demilitarization facility at Newport Army Depot, Indiana, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2193), as amended by section 2406 of this Act, $61,494,000.

(12) For the construction of phase 5 of an ammunition demilitarization facility at Aberdeen Proving Ground, Maryland, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2193), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1299), $30,600,000.

(13) For the construction of phase 3 of an ammunition demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1298) and section 2405 of this Act, $10,300,000.

(14) For the construction of phase 3 of an ammunition demilitarization support facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), $8,300,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a); and

(2) $26,200,000 (the balance of the amount authorized under section 2401(a) for the construction of the Defense Threat Reduction Center, Fort Belvoir, Virginia).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (14) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $42,833,000, which represents the combination of savings resulting from adjustments to foreign currency exchange rates for military construction, military family housing construction, and military family housing support outside the United States and savings resulting from favorable bids, reduced overhead charges, and cancellations due to force structure changes.

SEC. 2405. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2000 PROJECT.

(a) MODIFICATION.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1298), is further amended—

(1) under the agency heading relating to Chemical Demilitarization, in the item relating to Blue Grass Army Depot, Kentucky, by striking "$254,030,000" in the amount column and inserting "$290,325,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$748,245,000".

(b) CONFORMING AMENDMENT.—Section 2405(b)(3) of that Act (113 Stat. 839), as so amended, is further amended by striking "$231,230,000" and inserting "$267,525,000".

SEC. 2406. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 1999 PROJECT.

(a) MODIFICATION.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2193), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1299), is amended—

(1) under the agency heading relating to Chemical Demilitarization, in the item relating to Newport Army Depot, Indiana, by striking "$191,550,000" in the amount column and inserting "$293,853,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$829,919,000".

(b) CONFORMING AMENDMENT.—Section 2404(b)(2) of that Act (112 Stat. 2196) is amended by striking "$162,050,000" and inserting "$264,353,000".

SEC. 2407. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 1997 PROJECT.

(a) MODIFICATION.—The table in section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839), is further amended—

(1) under the agency heading relating to Chemical Demilitarization Program, in the item relating to Pueblo Chemical Activity, Colorado, by striking "$203,500,000" in the amount column and inserting "$261,000,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$607,454,000".

(b) CONFORMING AMENDMENT.—Section 2406(b)(2) of that Act (110 Stat. 2779), as so amended, is further amended by striking "$203,500,000" and inserting "$261,000,000".

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2002, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment program authorized by section 2501, in the amount of $168,200,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

SEC. 2601. AUTHORIZED GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal years beginning after September 30, 2002, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions there for, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $170,793,000; and

(B) for the Army Reserve, $86,789,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserve, $66,971,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $119,266,000; and

(B) for the Air Force Reserve, $68,576,000.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

SEC. 2701. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVI for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2005; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects, and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) for which appropriated funds have been obligated before the later of—

(1) October 1, 2005; or

(2) the date of the enactment of an Act authorized funds for fiscal year 2005 for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program.

SEC. 2702. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2000 PROJECTS.

(a) EXTENSION OF CERTAIN PROJECTS.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 841), authorizations set forth in the tables in subsection (b), as provided in section 2302 or 2601 of that Act, shall remain in effect until October 1, 2003, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2004, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Air Force: Extension of 2000 Project Authorization

State	Installation or location	Project	Amount
Oklahoma	Tinker Air Force Base	Replace Family Housing (41 Units)	$6,000,000

Army National Guard: Extension of 2000 Project Authorization

State	Installation or location	Project	Amount
Virginia	Fort Pickett	Multi-Purpose Range Complex–Heavy	$13,500,000

(c) EXTENSION OF ADDITIONAL PROJECT.—Notwithstanding any other provision of law, the authorization set forth in the table in subsection (d), as provided in section 8160 of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 113 Stat. 1274), shall remain in effect until October 1, 2003, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2004, whichever is later.

(d) TABLE FOR EXTENSION OF ADDITIONAL PROJECT.—The table referred to in subsection (c) is as follows:

Army National Guard: Extension of 2000 Project Authorization

State	Installation or location	Project	Amount
Pennsylvania	Connellsville	Readiness Center	$1,700,000

SEC. 2703. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 1999 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105–261; 112 Stat. 2199), authorizations set forth in the table in subsection (b), as provided in section 2302 of that Act and extended by section 2702 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1301), shall remain in effect until October 1, 2003, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2004, whichever is later.

(b) TABLE.—The table referred to in subsection (a) is as follows:

Air Force: Extension of 1999 Project Authorizations

State	Installation or location	Project	Amount
Delaware	Dover Air Force Base	Replace Family Housing (55 Units)	$8,988,000
Florida	Patrick Air Force Base	Replace Family Housing (46 Units)	$9,692,000
New Mexico	Kirtland Air Force Base	Replace Family Housing (37 Units)	$6,400,000
Ohio	Wright-Patterson Air Force Base	Replace Family Housing (40 Units)	$5,600,000

SEC. 2704. EFFECTIVE DATE.

Titles XXI, XXII, XXIII, XXIV, XXV, and XXVI of this Act shall take effect on the later of—

(1) October 1, 2002; or

(2) the date of the enactment of this Act.

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. CHANGES TO ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) AUTHORIZED UTILITIES AND SERVICES.—Section 2872a(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(11) Firefighting and fire protection services.

"(12) Police protection services.".

(b) LEASING OF HOUSING.—Subsection (a) of section 2874 of such title is amended to read as follows:

"(a) LEASE AUTHORIZED.—(1) The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

"(2) The Secretary concerned shall utilize housing units leased under paragraph (1) as military family housing or military unaccompanied housing, as appropriate.".

(c) REPEAL OF INTERIM LEASE AUTHORITY.—Section 2879 of such title is repealed.

(d) SPACE LIMITATIONS BY PAY GRADE.—Section 2880(b)(2) of such title is amended by striking "unless the unit is located on a military installation".

(e) DEPARTMENT OF DEFENSE HOUSING FUND.—(1) Section 2883 of such title is amended by striking subsections (a), (b), and (c) inserting the following new subsections (a) and (b):

"(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the Department of Defense Housing Improvement Fund (in this section referred to as the 'Fund').

"(b) CREDITS TO FUND.—There shall be credited to the Fund the following:

"(1) Amounts authorized for and appropriated to the Fund.

"(2) Subject to subsection (e), any amounts that the Secretary of Defense transfers, in such amounts as are provided for in appropriation Acts, to the Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing or military unaccompanied housing.

"(3) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing or military unaccompanied housing.

"(4) Income derived from any activities under this subchapter with respect to military family housing or military unaccompanied housing, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

"(5) Any amounts that the Secretary of the Navy transfers to the Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.".

(2) Such section is further amended—

(A) by redesignating subsections (d) through (g) as (c) through (f), respectively;

(B) in subsection (c), as so redesignated—

(i) in the subsection heading, by striking "FUNDS" and inserting "FUND";

(ii) in paragraph (1)—

(I) by striking "subsection (e)" and inserting "subsection (d)"; and

(II) by striking "Department of Defense Family Housing Improvement Fund" and inserting "Fund";

(iii) by striking paragraph (2); and

(iv) by redesignating paragraph (3) as paragraph (2);

(C) in subsection (d), as so redesignated, by striking "required to be used to satisfy the obligation";

(D) in subsection (e), as so redesignated, by striking "a Fund under paragraph (1)(B) or (2)(B) of subsection (c)" and inserting "the Fund under subsection (b)(2)"; and

(E) in subsection (f), as so redesignated—

(i) in paragraph (1), by striking "$850,000,000" and inserting "$1,700,000,000"; and

(ii) in paragraph (2), by striking "$150,000,000" and inserting "$300,000,000".

(f) TRANSFER OF UNOBLIGATED AMOUNTS.—(1) The Secretary of Defense shall transfer to the Department of Defense Housing Improvement Fund established under section 2883(a) of title 10, United States Code (as amended by subsection (e)), any amounts in the Department of Defense Family Housing Improvement Fund and the Department of Defense Military Unaccompanied Housing Improvement that remain available for obligation as of the date of the enactment of this Act.

(2) Amounts transferred to the Department of Defense Housing Improvement Fund under paragraph (1) shall be merged with amounts in that Fund, and shall be available for the same purposes, and subject to the same conditions and limitations, as other amounts in that Fund.

(g) CONFORMING AMENDMENTS.—(1) Paragraph (3) of section 2814(i) of such title is amended—

(A) by striking subparagraph (A) and inserting the following new subparagraph (A):

"(A) The Secretary may transfer funds from the Ford Island Improvement Account to the Department of Defense Housing Improvement Fund established by section 2883(a) of this title."; and

(B) in subparagraph (B), by striking "a fund" and inserting "the Fund".

(2) Section 2871(6) of such title is amended by striking "Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund" and inserting "Department of Defense Housing Improvement Fund".

(3) Section 2875(e) of such title is amended by striking "Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund" and inserting "Department of Defense Housing Improvement Fund".

(h) CLERICAL AMENDMENTS.—(1) The section heading for section 2874 of such title is amended to read as follows:

"§ 2874. Leasing of housing".

(2) The section heading for section 2883 of such title is amended to read as follows:

"§ 2883. Department of Defense Housing Improvement Fund".

(3) The table of sections at the beginning subchapter IV of chapter 169 of such title is amended—

(A) by striking the item relating to section 2874 and inserting the following new item:

"2874. Leasing of housing.";

(B) by striking the item relating to section 2879; and

(C) by striking the item relating to section 2883 and inserting the following new item:

"2883. Department of Defense Housing Improvement Fund.".

SEC. 2802. MODIFICATION OF AUTHORITY TO CARRY OUT CONSTRUCTION PROJECTS AS PART OF ENVIRONMENTAL RESPONSE ACTION.

(a) AUTHORITY TO CARRY OUT UNAUTHORIZED PROJECTS.—Subsection (a) of section 2810 of title 10, United States Code, is amended to read as follows:

"(a) AUTHORITY TO CARRY OUT UNAUTHORIZED CONSTRUCTION PROJECTS.—The Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines that the project is necessary to carry out a response under chapter 160 of this title or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).".

(b) CONGRESSIONAL NOTIFICATION.—Subsection (b) of such section is amended by striking "(1)" and the first sentence and inserting "CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a military construction project under this section that exceeds the amount specified in section 2805(b)(1) of this title, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision.".

(c) DEFINITION.—Subsection (c) of such section is amended—

(1) by inserting "RESPONSE DEFINED.—" after "(c)"; and

(2) by striking "action".

SEC. 2803. LEASING OF MILITARY FAMILY HOUSING IN KOREA.

Paragraph (3) of section 2828(e) of title 10, United States Code, is amended to read as follows:

"(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease in Korea—

"(A) not more than 1,175 units of family housing subject to that maximum lease amount; and

"(B) not more than 2,400 units of family housing subject to a maximum lease amount of $35,000 per unit per year.".

SEC. 2804. PILOT HOUSING PRIVATIZATION AUTHORITY FOR ACQUISITION OR CONSTRUCTION OF MILITARY UNACCOMPANIED HOUSING.

(a) IN GENERAL.—(1) Subchapter IV of chapter 169 of title 10, United States Code, is amended by inserting after section 2881 the following new section:

"§2881a. Pilot projects for acquisition or construction of military unaccompanied housing

"(a) PILOT PROJECTS AUTHORIZED.—The Secretary of the Navy may carry out not more than 3 pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

"(b) ASSIGNMENT OF MEMBERS AND BASIC ALLOWANCE FOR HOUSING.—(1) The Secretary of the Navy may assign members of the armed forces to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

"(2) Notwithstanding section 403(n)(2) of title 37, the Secretary of Defense may set specific higher rates of partial basic allowance for housing for a member of the armed forces who is assigned to a housing unit acquired or constructed under the pilot projects. Any increase in the rate of partial basic allowance for housing to accommodate the pilot programs shall be in addition to any partial basic allowance for housing that the member may otherwise be eligible to receive under section 403(n) of title 37. A member may not sustain a reduction in partial basic allowance for housing as a result of assignment to a housing unit acquired or constructed under the pilot projects.

"(c) FUNDING.—(1) The Department of Defense Housing Improvement Fund shall be used to carry out activities under the pilot projects.

"(2) Subject to 90 days prior notification to the appropriate committees of Congress, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing projects in military construction accounts. The amounts so transferred shall be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

"(d) REPORTS.—(1) The Secretary of the Navy shall transmit to the appropriate committees of Congress a report describing—

"(A) each contract for the acquisition of military unaccompanied housing that the Secretary proposes to solicit under the pilot projects;

"(B) each conveyance or lease proposed under section 2878 of this title in furtherance of the pilot projects; and

"(C) the proposed partial basic allowance for housing rates for each contract as they vary by grade of the member and how they compare to basic allowance for housing rates for other contracts written under the authority of the pilot programs.

"(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 90 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

"(e) EXPIRATION.—Notwithstanding section 2885 of this title, the authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2007.".

(2) The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2881 the following new item:

"2881a. Pilot projects for acquisition or construction of military unaccompanied housing.".

(b) CONFORMING AMENDMENT.—Section 2871(7) of title 10, United States Code, is amended by inserting before the period at the end the following: "and transient housing intended to be occupied by members of the armed forces on temporary duty".

Subtitle B—Real Property and Facilities Administration

SEC. 2811. AGREEMENTS WITH PRIVATE ENTITIES TO LIMIT ENCROACHMENTS AND OTHER CONSTRAINTS ON MILITARY TRAINING, TESTING, AND OPERATIONS.

(a) IN GENERAL.—Chapter 159 of title 10, United States Code, is amended by inserting after section 2684 the following new section:

"§2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

"(a) AGREEMENTS AUTHORIZED.—The Secretary of a military department may enter into an agreement with a private entity described in subsection (b) to address the use or development of real property in the vicinity of a military installation for purposes of—

"(1) limiting any development or use of the property that would otherwise be incompatible with the mission of the installation; or

"(2) preserving habitat on the property in a manner that is compatible with both—

"(A) current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation; and

"(B) current or anticipated military training, testing, or operations on the installation.

"(b) COVERED PRIVATE ENTITIES.—A private entity referred to in subsection (a) is any private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

"(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Chapter 63 of title 31 shall not apply to any agreement entered into under this section.

"(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with a private entity under this section—

"(A) may provide for the private entity to acquire all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

"(B) shall provide for the private entity to transfer to the United States, upon the request of the United States, any property or interest so acquired.

"(2) Property or interests may not be acquired pursuant to an agreement under this section unless the owner of the property or interests, as the case may be, consents to the acquisition.

"(3) An agreement under this section providing for the acquisition of property or interests under paragraph (1)(A) shall provide for the sharing by the United States and the private entity concerned of the costs of the acquisition of the property or interests.

"(4) The Secretary concerned shall identify any property or interests to be acquired pursuant to an agreement under this section. The property or interests shall be limited to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

"(5) Notwithstanding any other provision of law, the Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under paragraph (1)(B).

"(6) The Secretary concerned may, for purposes of the acceptance of property or interests under this subsection, accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 355 of the Revised Statutes (40 U.S.C. 255) if the Secretary finds that the appraisal or title documents substantially comply with the requirements.

"(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary of a military department to enter into an agreement under subsection (a) for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

"(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

"(g) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities, including funds authorized to be appropriated for the Legacy Resources Management Program, may be used to enter into agreements under this section.

"(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2684 the following new item:

"2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations.".

SEC. 2812. CONVEYANCE OF SURPLUS REAL PROPERTY FOR NATURAL RESOURCE CONSERVATION PURPOSES.

(a) CONVEYANCE AUTHORITY.—(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2694 the following new section:

"§2694a. Conveyance of surplus real property for natural resource conservation

"(a) AUTHORITY TO CONVEY.—The Secretary of a military department may convey to an eligible recipient described in subsection (b) any surplus real property that—

"(1) is under the administrative control of the Secretary;

"(2) is suitable and desirable for conservation purposes;

"(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

"(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities established pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.).

"(b) ELIGIBLE RECIPIENTS.—The conveyance of surplus real property under subsection (a) may be made to any of the following:

"(1) A State or political subdivision of a State.

"(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

"(c) REVISIONARY INTEREST AND OTHER DEED REQUIREMENTS.—(1) The deed of conveyance of any surplus real property conveyed under subsection (a) disposed of under this subsection shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary of the military department that made the conveyance determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

"(2) The deed of conveyance may permit the recipient of the property—

"(A) to convey the property to another eligible entity described in subsection (b), subject to the approval of the Secretary of the military department that made the conveyance and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

"(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

"(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary of the military department considers appropriate to protect the interests of the United States.

"(d) RELEASE OF COVENANTS.—The Secretary of the military department that conveys real property under subsection (a), with the concurrence of the Secretary of Interior, may grant a release from a covenant included in the deed of conveyance of the property under subsection (c) on the condition that the recipient of the property pay the fair market value, as determined by the Secretary of the military department, of the property at the time of the release of the covenant. The Secretary of the military department may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

"(e) LIMITATIONS.—A conveyance under subsection (a) shall not be used in settlement of any litigation, dispute, or claim against the United States, or as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary of a military department may make a conveyance under subsection (a), with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

"(f) CONSIDERATION.—In fixing the consideration for the conveyance of real property under subsection (a) or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary of the military department concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

"(g) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary of a military department may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

"(2) In the case of real property on Guam, the Secretary of a military department may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106–504 (114 Stat. 2309).

"(h) DEFINITIONS.—In this section:

"(1) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

"(2) The term 'base closure law' means the following:

"(A) Section 2687 of this title.

"(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (10 U.S.C. 2687 note).

"(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

"(D) Any other similar authority for the closure or realignment of military installations that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2003.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2694 the following new item:

"2694a. Conveyance of surplus real property for natural resource conservation.".

(b) ACCEPTANCE OF FUNDS TO COVER ADMINISTRATIVE EXPENSES.—Section 2695(b) of such title is amended by adding at the end the following new paragraph:

"(5) The conveyance of real property under section 2694a of this title.".

(c) AGREEMENTS WITH NONPROFIT NATURAL RESOURCE CONSERVATION ORGANIZATIONS.—Section 2701(d) of such title is amended—

(1) in paragraph (1), by striking "with any State or local government agency, or with any Indian tribe," and inserting "any State or local government agency, any Indian tribe, or any nonprofit conservation organization"; and

(2) by striking paragraph (3) and inserting the following new paragraph:

"(3) DEFINITIONS.—In this subsection:

"(A) The term 'Indian tribe' has the meaning given such term in section 101(36) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

"(B) The term 'nonprofit conservation organization' means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.".

SEC. 2813. NATIONAL EMERGENCY EXEMPTION FROM SCREENING AND OTHER REQUIREMENTS OF MCKINNEY-VENTO HOMELESS ASSISTANCE ACT FOR PROPERTY USED IN SUPPORT OF RESPONSE ACTIVITIES.

Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection (i):

"(i) APPLICABILITY TO CERTAIN PROPERTY DURING EMERGENCIES.—The screening requirements and other provisions of this section shall not apply to any property that is excess property or surplus property or that is described as unutilized or underutilized property if the property is subject to a request for conveyance or use for the purpose of directly supporting activities in response to—

"(1) a war or national emergency declared in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.); or

"(2) an emergency or major disaster declared in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).".

SEC. 2814. DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

(b) CONTRACTS.—Not more than 12 contracts may contain requirements referred to in subsection (a) for the purpose of the demonstration program under this section. The demonstration program may only cover contracts entered into on or after the date of the enactment of this Act.

(c) EFFECTIVE PERIOD OF REQUIREMENTS.—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program under this program may not exceed five years.

(d) REPORTING REQUIREMENTS.—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program authorized by this section and the related Department of the Army demonstration program authorized by section 2814 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1310; 10 U.S.C. 2809 note), including the following:

(1) A description of all contracts entered into under the demonstration programs.

(2) An evaluation of the demonstration programs and a description of the experience of the Secretary of Defense and the Secretary of the Army respect to such contracts.

(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration programs, that the Secretary of Defense or the Secretary of the Army considers appropriate.

(e) EXPIRATION.—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program under this section shall expire on September 30, 2006.

(f) FUNDING.—Amounts authorized to be appropriated for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year.

(g) CONFORMING AMENDMENT.—Section 2814 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1310; 10 U.S.C. 2809 note) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 2815. EXPANDED AUTHORITY TO TRANSFER PROPERTY AT MILITARY INSTALLATIONS TO BE CLOSED TO PERSONS WHO CONSTRUCT OR PROVIDE MILITARY FAMILY HOUSING.

(a) 1988 LAW.—Section 204(e)(1) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note) is amended by striking the last sentence.

(b) 1990 LAW.—Section 2905(f)(1) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking the last sentence.

Subtitle C—Land Conveyances

PART I—ARMY CONVEYANCES

SEC. 2821. LAND CONVEYANCES, LANDS IN ALASKA NO LONGER REQUIRED FOR NATIONAL GUARD PURPOSES.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to an eligible entity described subsection (b) all right, title, and interest of the United States in and to any parcel of real property, including any improvements thereon, in the State of Alaska described in subsection (c) if the Secretary determines the conveyance would be in the public interest.

(b) ELIGIBLE RECIPIENTS.—The following entities shall be eligible to receive real property under subsection (a):

(1) The State of Alaska.

(2) A governmental entity in the State of Alaska.

(3) A Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

(4) The Metlakatla Indian Community.

(c) COVERED PROPERTY.—Subsection (a) applies to real property located in the State of Alaska that—

(1) is under the jurisdiction of the Department of the Army and, before December 2, 1980, was under such jurisdiction for the use of the Alaska National Guard;

(2) is located in a unit of the National Wildlife Refuge System designated in the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 668dd note);

(3) is excess to the needs of the Alaska National Guard and the Department of Defense; and

(4) the Secretary determines that—

(A) the anticipated cost to the United States of retaining the property exceeds the value of such property; or

(B) the condition of the property makes it unsuitable for retention by the United States.

(d) CONSIDERATION.—The conveyance of real property under this section shall, at the election of the Secretary, be for no consideration or for consideration in an amount determined by the Secretary to be appropriate under the circumstances.

(e) USE OF CONSIDERATION.—If consideration is received for the conveyance of real property under subsection (a), the Secretary may use the amounts received, in such amounts as are provided in appropriations Acts, to pay for—

(1) the cost of a survey described in subsection (f) with respect to the property;

(2) the cost of carrying out any environmental assessment, study, or analysis, and any remediation, that may be required under Federal law, or is considered appropriate by the Secretary, in connection with the property or the conveyance of the property; and

(3) any other costs incurred by the Secretary in conveying the property.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance of real property under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2822. LAND CONVEYANCE, FORT CAMPBELL, KENTUCKY.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the City of Hopkinsville, Kentucky, all right, title, and interest of the United States in and to a parcel of real property at Fort Campbell, Kentucky, consisting of approximately 50 acres and containing an abandoned railroad spur for the purpose of permitting the City to use the property for storm water management, recreation, transportation, and other public purposes.

(b) DESCRIPTION OF PROPERTY.—The acreage of the real property to be conveyed under subsection (a) has been determined by the Secretary through a legal description outlining such acreage. No further survey of the property before transfer is necessary.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2823. LAND CONVEYANCE, ARMY RESERVE TRAINING CENTER, BUFFALO, MINNESOTA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the Buffalo Independent School District 877 of Buffalo, Minnesota (in this section referred to as the "School District"), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, that is located at 800 8th Street, N.E., in Buffalo, Minnesota, and contains a former Army Reserve Training Center, which is being used by the School District as the site of the Phoenix Learning Center.

(b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the School District.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2824. LAND CONVEYANCE, FORT BLISS, TEXAS

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the County of El Paso, Texas (in this section referred to as the "County"), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 44 acres at Fort Bliss, Texas, for the purpose of facilitating the construction by the State of Texas of a nursing home for veterans of the Armed Forces.

(b) REVERSIONARY INTEREST.—If, at the end of the five-year period beginning on the date the Secretary makes the conveyance under subsection (a), the Secretary determines that a nursing home for veterans is not in operation on the conveyed real property, all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the County.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2825. LAND CONVEYANCE, FORT HOOD, TEXAS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the Veterans Land Board of the State of Texas (in this section referred to as the "Board"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 174 acres at Fort Hood, Texas, for the purpose of permitting the Board to establish a State-run cemetery for veterans.

(b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Board.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2826. LAND CONVEYANCE, FORT MONMOUTH, NEW JERSEY.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey by sale all right, title, and interest of the United States in and to a parcel of land, consisting of approximately 63.95 acres of military family housing known as Howard Commons, that comprises a portion of Fort Monmouth, New Jersey.

(b) COMPETITIVE BID REQUIREMENT.—The Secretary shall use competitive procedures for the sale authorized by subsection (a).

(c) CONSIDERATION.—As consideration for the conveyance authorized under subsection (a), the recipient of the land shall pay an amount that is no less than fair market value, as determined by the Secretary. Such recipient may, as in-kind consideration, build replacement military family housing or rehabilitate existing military family housing at Fort Monmouth, New Jersey, as agreed upon by the Secretary. Any proceeds received by the Secretary not used to construct or rehabilitate such military family housing shall be deposited in the special account in the Treasury established pursuant to section 204(h) of the Federal property and Administrative Services Act of 1949 (40 U.S.C. 485(h)).

(d) DESCRIPTION OF PARCEL.—The exact acreage and legal description of the parcel to be conveyed under subsection (a) shall be determined by a survey that is satisfactory to the Secretary. The cost of the survey shall be borne by the recipient of the parcel.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

PART II—NAVY CONVEYANCES

SEC. 2831. LAND CONVEYANCE, MARINE CORPS AIR STATION, MIRAMAR, SAN DIEGO, CALIFORNIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the ENPEX Corporation, Incorporated (in this section referred to as the "Corporation"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, at Marine Corps Air Station Miramar, San Diego, California, consisting of approximately 60 acres and appurtenant easements and any other necessary interests in real property for the purpose of permitting the Corporation to use the property for the production of electric power and related ancillary activities.

(b) CONSIDERATION.—(1) As consideration for the conveyance under subsection (a), the Corporation shall—

(A) convey to the United States all right, title, and interest of the Corporation in and to a parcel of real property in the San Diego area that is suitable for military family housing, as determined by the Secretary; and

(B) if the parcel conveyed under subparagraph (A) does not contain housing units suitable for use as military family housing, design and construct such military family housing units and supporting facilities as the Secretary considers appropriate.

(2) The total combined value of the real property and military family housing conveyed by the Corporation under this subsection shall be at least equal to the fair market value of the real property conveyed to the Secretary under subsection (a), including any severance costs arising from any diminution of the value or utility of other property at Marine Corps Air Station Miramar attributable to the prospective future use of the property conveyed under subsection (a).

(3) The Secretary shall determine the fair market value of the real property to be conveyed under subsection (a) and the fair market value of the consideration to be provided under this subsection. Such determinations shall be final.

(c) REVERSIONARY INTEREST.—(1) Subject to paragraph (2), if the Secretary determines at any time that the property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property, including any improvements thereon, shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(2) If Marine Corps Air Station Miramar is no longer used as a Federal aviation facility, paragraph (1) shall no longer apply, and the Secretary shall release, without consideration, the reversionary interest retained by the United States under such paragraph.

(d) ADMINISTRATIVE EXPENSES.—(1) The Corporation shall make funds available to the Secretary to cover costs to be incurred by the Secretary, or reimburse the Secretary for costs incurred, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. This paragraph does not apply to costs associated with the removal of explosive ordnance from the parcel and environmental remediation of the parcel.

(2) Section 2695(c) of title 10 United States Code, shall apply to any amount received under paragraph (1). If the amounts received in advance under such paragraph exceed the costs actually incurred by the Secretary, the Secretary shall refund the excess amount to the Corporation.

(e) DESCRIPTIONS OF PROPERTY.—The exact acreage and legal descriptions of the real property to be conveyed by the Secretary under subsection (a) and the property to be conveyed by the Corporation under subsection (b) shall be determined by a survey satisfactory to the Secretary.

(f) EXEMPTIONS.—Section 2696 of title 10, United States Code, does not apply to the conveyance authorized by subsection (a), and the authority to make the conveyance shall not be considered to render the property excess or underutilized.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2832. BOUNDARY ADJUSTMENTS, MARINE CORPS BASE, QUANTICO, AND PRINCE WILLIAM FOREST PARK, VIRGINIA.

(a) BOUNDARY ADJUSTMENTS AND RELATED TRANSFERS.—(1) The Secretary of the Navy and the Secretary of the Interior shall adjust the boundaries of Marine Corps Base, Quantico, Virginia, and Prince William Forest Park, Virginia, to conform to the boundaries depicted on the map entitled "Map Depicting Boundary Adjustments Proposed With March 10, 1998, MOU Between Prince William Forest Park and Marine Corps Base Quantico".

(2) As part of the boundary adjustment, the Secretary of the Navy shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of the Interior approximately 352 acres of land, as depicted on the map, and the Secretary of the Interior shall retain administrative jurisdiction over approximately 1,034 acres of land, which is a portion of the Department of Interior land commonly known as the Quantico Special Use Permit Land.

(3) As part of the boundary adjustment, the Secretary of the Interior shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of the Navy approximately 3398 acres of land, as depicted on the map.

(b) EFFECT OF SUBSEQUENT DETERMINATION PROPERTY IS EXCESS.—(1) If land transferred or retained under paragraph (2) or (3) of subsection (a) is subsequently determined to be excess to the needs of the Federal agency that received or retained the land, the head of that Federal agency shall offer to return administrative jurisdiction over the land, without reimbursement, to the Federal agency from which the land was received or retained.

(2) If the offer under paragraph (1) is not accepted within 90 days or is otherwise rejected, the head of the Federal agency holding the land may proceed to dispose of the land under then current law and regulations governing the disposal of excess property.

PART III—AIR FORCE CONVEYANCES

SEC. 2841. LAND CONVEYANCES, WENDOVER AIR FORCE BASE AUXILIARY FIELD, NEVADA.

(a) CONVEYANCES AUTHORIZED TO WEST WENDOVER, NEVADA.—(1) The Secretary of the Interior may convey, without consideration, to the City of West Wendover, Nevada, all right, title, and interest of the United States in and to the following:

(A) The lands at Wendover Air Force Base Auxiliary Field, Nevada, identified in Easement No. AFMC–HL–2–00–334 that are determined by the Secretary of the Air Force to be no longer required for Air Force purposes.

(B) The lands at Wendover Air Force Base Auxiliary Field identified for disposition on the map entitled "West Wendover, Nevada-Excess", dated January 5, 2001, that are determined by the Secretary of the Air Force to be no longer required for Air Force purposes.

(2) The purposes of the conveyances under this subsection are—

(A) to permit the establishment and maintenance of runway protection zones; and

(B) to provide for the development of an industrial park and related infrastructure.

(3) The map referred to in paragraph (1)(B) shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management and the Elko District Office of the Bureau of Land Management.

(b) Conveyance Authorized to Tooele County, Utah.—(1) The Secretary of the Interior may convey, without consideration, to Tooele County, Utah, all right, title, and interest of the United States in and to the lands at Wendover Air Force Base Auxiliary Field identified in Easement No. AFMC-HL-2-00-318 that are determined by the Secretary of the Air Force to be no longer required for Air Force purposes.

(2) The purpose of the conveyance under this subsection is to permit the establishment and maintenance of runway protection zones and an aircraft accident potential protection zone as necessitated by continued military aircraft operations at the Utah Test and Training Range.

(c) Phased Conveyances.—The land conveyances authorized by subsections (a) and (b) may be conducted in phases. To the extent practicable, the first phase of the conveyances should involve at least 3,000 acres.

(d) Management of Conveyed Lands.—The lands conveyed under subsections (a) and (b) shall be managed by the City of West Wendover, Nevada, City of Wendover, Utah, Tooele County, Utah, and Elko County, Nevada—

(1) in accordance with the provisions of an Interlocal Memorandum of Agreement entered into between the Cities of West Wendover, Nevada, and Wendover, Utah, Tooele County, Utah, and Elko County, Nevada, providing for the coordinated management and development of the lands for the economic benefit of both communities; and

(2) in a manner that is consistent with such provisions of the easements referred to subsections (a) and (b) that, as jointly determined by the Secretary of the Air Force and Secretary of the Interior, remain applicable and relevant to the operation and management of the lands following conveyance and are consistent with the provisions of this section.

(e) Additional Terms and Conditions.—The Secretary of the Air Force and the Secretary of the Interior may jointly require such additional terms and conditions in connection with the conveyances required by subsections (a) and (b) as the Secretaries consider appropriate to protect the interests of the United States.

Subtitle D—Other Matters

SEC. 2861. EASEMENT FOR CONSTRUCTION OF ROADS OR HIGHWAYS, MARINE CORPS BASE, CAMP PENDLETON, CALIFORNIA.

Section 2851(a) of the Military Construction Authorization Act for Fiscal Year 1999 (division B of Public Law 105-261; 112 Stat. 2219), as amended by section 2867 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1334) is amended in the first sentence by striking "easement to construct" and all that follows through the period at the end and inserting "easement to construct, operate, and maintain a restricted access highway, notwithstanding any provision of State law that would otherwise prevent the Secretary from granting the easement or the Agency from constructing, operating, or maintaining the restricted access highway.".

SEC. 2862. SALE OF EXCESS TREATED WATER AND WASTEWATER TREATMENT CAPACITY, MARINE CORPS BASE, CAMP LEJEUNE, NORTH CAROLINA.

(a) Sale Authorized.—The Secretary of the Navy may provide to Onslow County, North Carolina, or any authority or political subdivision organized under the laws of North Carolina to provide public water or sewage services in Onslow County (in this section referred to as the "County"), treated water and wastewater treatment services from facilities at Marine Corps Base, Camp Lejeune, North Carolina, if the Secretary determines that the provision of these utility services is in the public interest and will not interfere with current or future operations at Camp Lejeune.

(b) Inapplicability of Certain Requirements.—Section 2686 of title 10, United States Code, shall not apply to the provision of public water or sewage services authorized by subsection (a).

(c) Consideration.—As consideration for the receipt of public water or sewage services under subsection (a), the County shall pay to the Secretary an amount (in cash or in kind) equal to the fair market value of the services. Amounts received in cash shall be credited to the base operation and maintenance accounts of Camp Lejeune.

(d) Expansion.—The Secretary may make minor expansions and extensions and permit connections to the public water or sewage systems of the County in order to furnish the services authorized under subsection (a). The Secretary shall restrict the provision of services to the County to those areas in the County where residential development would be compatible with current and future operations at Camp Lejeune.

(e) Administrative Expenses.—The Secretary may require the County to reimburse the Secretary for the costs incurred by the Secretary to provide public water or sewage services to the County under subsection (a).

(2) Section 2695(c) of title 10 United States Code, shall apply to any amount received under this subsection.

(f) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the provision of public water or sewage services under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2863. RATIFICATION OF AGREEMENT REGARDING ADAK NAVAL COMPLEX, ALASKA, AND RELATED LAND CONVEYANCES.

(a) Ratification of Agreement.—The document entitled the "Agreement Concerning the Conveyance of Property at the Adak Naval Complex", and dated September 20, 2000, executed by the Aleut Corporation, the Department of the Interior, and the Department of the Navy, together with any technical amendments or modifications to the boundaries that may be agreed to by the parties, is hereby ratified, confirmed, and approved and the terms, conditions, procedures, covenants, reservations, indemnities and other provisions set forth in the Agreement are declared to be obligations and commitments of the United States as a matter of Federal law. Modifications to the maps and legal descriptions of lands to be removed from the National Wildlife Refuge System within the military withdrawal on Adak Island set forth in Public Land Order 1949 may be made only upon agreement of all Parties to the Agreement and notification given to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The acreage conveyed to the United States by the Aleut Corporation under the Agreement, as modified, shall be at least 36,000 acres.

(b) Removal of Lands From Refuge.—Effective on the date of conveyance to the Aleut Corporation of the Adak Exchange Lands as described in the Agreement, all such lands shall be removed from the National Wildlife Refuge System and shall neither be considered as part of the Alaska Maritime National Wildlife Refuge nor subject to any laws pertaining to lands within the boundaries of the Alaska Maritime National Wildlife Refuge. The conveyance restrictions imposed by section 22(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(g)) for land in the National Wildlife Refuge System shall not apply. The Secretary shall adjust the boundaries of the Refuge so as to exclude all interests in lands and land rights, surface and subsurface, received by the Aleut Corporation in accordance with this section and the Agreement.

(c) Relation to Alaska Native Claims Settlement Act.—Lands and interests therein exchanged and conveyed by the United States pursuant to this section shall be considered and treated as conveyances of lands or interests therein under the Alaska Native Claims Settlement Act, except that receipt of such lands and interests therein shall not constitute a sale or disposition of land or interests received pursuant to such Act. The public easements for access to public lands and waters reserved pursuant to the Agreement are deemed to satisfy the requirements and purposes of section 17(b) of the Alaska Native Claims Settlement Act.

(d) Reacquisition Authority.—The Secretary of the Interior is authorized to acquire by purchase or exchange, on a willing seller basis only, any land conveyed to the Aleut Corporation under the Agreement and this section. In the event any of the lands are subsequently acquired by the United States; they shall be automatically included in the National Wildlife Refuge System. The laws and regulations applicable to refuge lands shall then apply to these lands and the Secretary shall then adjust the boundaries accordingly.

(e) Conveyance of Navy Personal Property.—Notwithstanding any other provision of law, and for the purposes of the transfer of property authorized by this section, Department of Navy personal property that remains on Adak Island is deemed related to the real property and shall be conveyed by the Department of the Navy to the Aleut Corporation, at no additional cost, when the related real property is conveyed by the Department of the Interior.

(f) Additional Conveyance.—The Secretary of the Interior shall convey to the Aleut Corporation those lands identified in the Agreement as the former landfill sites without charge to the Aleut Corporation's entitlement under the Alaska Native Claims Settlement Act.

(g) Valuation.—For purposes of section 21(c) of the Alaska Native Claims Settlement Act, the receipt of all property by the Aleut Corporation shall be entitled to a tax basis equal to fair value on date of transfer. Fair value shall be determined by replacement cost appraisal.

(h) CERTAIN PROPERTY TREATED AS NOT DEVELOPED.—Any property, including, but not limited to, appurtenances and improvements, received pursuant to this section shall, for purposes of section 21(d) of the Alaska Native Claims Settlement Act and section 907(d) of the Alaska National Interest Lands Conservation Act be treated as not developed until such property is actually occupied, leased (other than leases for nominal consideration to public entities) or sold by the Aleut Corporation, or, in the case of a lease or other transfer by the Aleut Corporation to a wholly owned development subsidiary, actually occupied, leased, or sold by the subsidiary.

(i) CERTAIN LANDS UNAVAILABLE FOR SELECTION.—Upon conveyance to the Aleut Corporation of the lands described in Appendix A of the Agreement, the lands described in Appendix C of the Agreement will become unavailable for selection under the Alaska Native Claims Settlement Act.

(j) MAPS.—The maps included as part of Appendix A to the Agreement depict the lands to be conveyed to the Aleut Corporation. The maps are on file at the Region 7 Office of the United States Fish and Wildlife Service and the offices of the Alaska Maritime National Wildlife Refuge in Homer, Alaska. The written legal descriptions of the lands to be conveyed to the Aleut Corporation are also part of Appendix A. In case of discrepancies, the maps shall control.

(k) DEFINITIONS.—In this section:

(1) The term "Agreement" means the agreement ratified, confirmed, and approved under subsection (a).

(2) The term "Aleut Corporation" means the Alaskan Native Regional Corporation known as the Aleut Corporation incorporated in the State of Alaska pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 2864. SPECIAL REQUIREMENTS FOR ADDING MILITARY INSTALLATION TO CLOSURE LIST.

Section 2914(d) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 3003 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 155 Stat. 1346), is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (3) the following new paragraph (4):

"(4) LIMITATION ON AUTHORITY TO RECOMMEND ADDITIONAL INSTALLATION FOR CLOSURE.—Notwithstanding paragraph (3), the decision of the Commission to add a military installation to the Secretary's list of installations recommended for closure must be unanimous, and at least two members of the Commission must have visited the installation during the period of the Commission's review of the list.".

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for the activities of the National Nuclear Security Administration in carrying out programs necessary for national security in the amount of $8,034,349,000, to be allocated as follows:

(1) For weapons activities, $5,937,000,000.

(2) For defense nuclear nonproliferation activities, $1,074,630,000.

(3) For naval reactors, $706,790,000.

(4) For the Office of the Administrator for Nuclear Security, $315,929,000.

(b) AUTHORIZATION OF NEW PLANT PROJECTS.—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary may carry out new plant projects as follows:

(1) For weapons activities, the following new plant projects:

Project 03–D–101, Sandia underground reactor facility (SURF), Sandia National Laboratories, Albuquerque, New Mexico, $2,000,000.

Project 03–D–103, project engineering and design, various locations, $15,539,000.

Project 03–D–121, gas transfer capacity expansion, Kansas City Plant, Kansas City, Missouri, $4,000,000.

Project 03–D–122, prototype purification facility, Y–12 plant, Oak Ridge, Tennessee, $20,800,000.

Project 03–D–123, special nuclear materials requalification, Pantex plant, Amarillo, Texas, $3,000,000.

(2) For naval reactors, the following new plant project:

Project 03–D–201, cleanroom technology facility, Bettis Atomic Power Laboratory, West Mifflin, Pennsylvania, $7,200,000.

SEC. 3102. ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2003 for environmental restoration and waste management activities and other defense activities in carrying out programs necessary for national security in the amount of $7,366,510,000, to be allocated as follows:

(1) For defense environmental restoration and waste management, $4,544,133,000.

(2) For defense environmental management cleanup reform in carrying out environmental restoration and waste management activities necessary for national security programs, $800,000,000.

(3) For defense facilities closure projects, $1,091,314,000.

(4) For defense environmental management privatization, $158,399,000.

(5) For other defense activities in carrying out programs necessary for national security, $457,664,000.

(6) For defense nuclear waste disposal for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)), $315,000,000.

(b) AUTHORIZATION OF NEW PLANT PROJECT.—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary may carry out, for environmental restoration and waste management activities, the following new plant project:

Project 03–D–403, immobilized high-level waste interim storage facility, Richland, Washington, $6,363,000.

Subtitle B—Department of Energy National Security Authorizations General Provisions

SEC. 3120. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This subtitle may be cited as the "Department of Energy National Security Authorizations General Provisions Act".

(b) DEFINITIONS.—In this subtitle:

(1) The term "DOE national security authorization" means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.

(2) The term "congressional defense committees" means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term "minor construction threshold" means $5,000,000.

SEC. 3121. REPROGRAMMING.

(a) IN GENERAL.—Except as provided in sections 3129 and 3130, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

(1) in amounts that exceed, in a fiscal year, the amount authorized for that program by that authorization for that fiscal year; or

(2) which has not been presented to, or requested of, Congress,

until the Secretary submits to the congressional defense committees a report referred to in subsection (b) with respect to that program and a period of 30 days has elapsed after the date on which such committees receive the report.

(b) REPORT.—The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

(c) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (a), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(d) LIMITATIONS.—

(1) TOTAL AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) PROHIBITED ITEMS.—Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

SEC. 3122. MINOR CONSTRUCTION PROJECTS.

(a) AUTHORITY.—Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

(b) ANNUAL REPORT.—The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) COST VARIATION REPORTS TO CONGRESSIONAL COMMITTEES.—If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) MINOR CONSTRUCTION PROJECT DEFINED.—In this section, the term "minor construction project" means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

SEC. 3123. LIMITS ON CONSTRUCTION PROJECTS.

(a) IN GENERAL.—

(1) CONSTRUCTION COST CEILING.—Except as provided in paragraph (2), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

(A) the amount authorized for the project; or

(B) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(2) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in paragraph (1) may be taken if—

(A) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and

(B) a period of 30 days has elapsed after the date on which the report is received by the committees.

(3) COMPUTATION OF DAYS.—In the computation of the 30-day period under paragraph (2), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(b) EXCEPTION FOR MINOR PROJECTS.—Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

SEC. 3124. FUND TRANSFER AUTHORITY.

(a) TRANSFER TO OTHER FEDERAL AGENCIES.—The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) TRANSFER WITHIN DEPARTMENT OF ENERGY.—

(1) TRANSFERS PERMITTED.—Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization between any such authorizations. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) MAXIMUM AMOUNTS.—Not more than 5 percent of any such authorization may be transferred between authorizations under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) LIMITATIONS.—The authority provided by this subsection to transfer authorizations—

(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and

(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) NOTICE TO CONGRESS.—The Secretary of Energy shall promptly notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of any transfer of funds to or from any DOE national security authorization.

SEC. 3125. AUTHORITY FOR CONCEPTUAL AND CONSTRUCTION DESIGN.

(a) REQUIREMENT OF CONCEPTUAL DESIGN.—

(1) IN GENERAL.—Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

(2) REQUESTS FOR CONCEPTUAL DESIGN FUNDS.—If the estimated cost of completing a conceptual design for a construction project exceeds $3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) EXCEPTIONS.—The requirement in paragraph (1) does not apply to a request for funds—

(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

(B) for emergency planning, design, and construction activities under section 3126.

(b) AUTHORITY FOR CONSTRUCTION DESIGN.—

(1) IN GENERAL.—Within the amounts authorized by a DOE national security authorization, the Secretary of Energy may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed $600,000.

(2) SPECIFIC AUTHORITY REQUIRED.—If the total estimated cost for construction design in connection with any construction project exceeds $600,000, funds for that design must be specifically authorized by law.

SEC. 3126. AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.

(a) AUTHORITY.—The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) LIMITATION.—The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) SPECIFIC AUTHORITY.—The requirement of section 3125(b)(2) does not apply to emergency planning, design, and construction activities conducted under this section.

SEC. 3127. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.

Subject to the provisions of appropriation Acts and section 3121, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

SEC. 3128. AVAILABILITY OF FUNDS.

(a) IN GENERAL.—Except as provided in subsection (b), amounts appropriated for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

(b) EXCEPTION FOR NNSA FUNDS.—Amounts appropriated for the National Nuclear Security Administration pursuant to a DOE national security authorization for a fiscal year shall remain available to be expended—

(1) only until the end of that fiscal year, in the case of amounts appropriated for the Office of the Administrator for Nuclear Security; and

(2) only in that fiscal year and the two succeeding fiscal years, in all other cases.

SEC. 3129. TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.

(a) TRANSFER AUTHORITY FOR DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—

(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) IMPERMISSIBLE USES.—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3121 shall not apply to transfers of funds pursuant to subsection (a).

(d) NOTIFICATION.—The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) DEFINITIONS.—In this section—

(1) the term "program or project" means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated; and

(2) the term "defense environmental management funds" means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.

SEC. 3130. TRANSFER OF WEAPONS ACTIVITIES FUNDS.

(a) TRANSFER AUTHORITY FOR WEAPONS ACTIVITIES FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—

(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

(A) is necessary to address a risk to health, safety, or the environment; or

(B) will result in cost savings and efficiencies.

(4) LIMITATION.—A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) IMPERMISSIBLE USES.—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3121 shall not apply to transfers of funds pursuant to subsection (a).

(d) NOTIFICATION.—The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) DEFINITIONS.—In this section—

(1) the term "program or project" means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated; and

(2) the term "weapons activities funds" means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

SEC. 3131. SCOPE OF AUTHORITY TO CARRY OUT PLANT PROJECTS.

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

Subtitle C—Program Authorizations, Restrictions, and Limitations

SEC. 3141. ONE-YEAR EXTENSION OF PANEL TO ASSESS THE RELIABILITY, SAFETY, AND SECURITY OF THE UNITED STATES NUCLEAR STOCKPILE.

Section 3159 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note) is amended—

(1) in subsection (d), by striking "February 1, 2002," and inserting "February 1 of 2002 and 2003,"; and

(2) in subsection (g), by striking "three years" and all that follows through the period at the end and inserting "April 1, 2003.".

SEC. 3142. TRANSFER TO NATIONAL NUCLEAR SECURITY ADMINISTRATION OF DEPARTMENT OF DEFENSE'S COOPERATIVE THREAT REDUCTION PROGRAM RELATING TO ELIMINATION OF WEAPONS GRADE PLUTONIUM IN RUSSIA.

(a) TRANSFER OF PROGRAM.—There are hereby transferred to the Administrator for Nuclear Security the following:

(1) The program, within the Cooperative Threat Reduction program of the Department of Defense, relating to the elimination of weapons grade plutonium in Russia.

(2) All functions, powers, duties, and activities of that program performed before the date of the enactment of this Act by the Department of Defense.

(b) TRANSFER OF ASSETS.—(1) So much of the property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the program transferred by subsection (a) are transferred to the Administrator for use in connection with the program transferred.

(2) Funds so transferred—

(A) shall be credited to the appropriation account of the Department of Energy for the activities of the National Nuclear Security Administration in carrying out defense nuclear nonproliferation activities; and

(B) remain subject to such limitations as applied to such funds before such transfer.

(c) REFERENCES.—Any reference in any other Federal law to the Secretary of Defense (or an officer of the Department of Defense) or the Department of Defense shall, to the extent such reference pertains to a function transferred by this section, be deemed to refer to the Administrator for Nuclear Security or the National Nuclear Security Administration, as applicable.

SEC. 3143. REPEAL OF REQUIREMENT FOR REPORTS ON OBLIGATION OF FUNDS FOR PROGRAMS ON FISSILE MATERIALS IN RUSSIA.

Section 3131 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 617; 22 U.S.C. 5952 note) is amended—

(1) in subsection (a), by striking "(a) AUTHORITY.—"; and

(2) by striking subsection (b).

SEC. 3144. ANNUAL CERTIFICATION TO THE PRESIDENT AND CONGRESS ON THE CONDITION OF THE UNITED STATES NUCLEAR WEAPONS STOCKPILE.

(a) CERTIFICATION REQUIRED.—(1) Not later than January 15 of each year, each official specified in subsection (b)(1) shall submit to the Secretary concerned a certification regarding the safety, reliability, and performance of each nuclear weapon type in the active stockpile of the United States for which such official is responsible.

(2) Not later than February 1 of each year, the Secretary of Defense and the Secretary of Energy shall each submit to the President and the Congress—

(A) each certification, without change, submitted under paragraph (1) to that Secretary;

(B) each report, without change, submitted under subsection (d) to that Secretary;

(C) the comments of that Secretary with respect to each such certification and each such report; and

(D) any other information that the Secretary considers appropriate.

(b) COVERED OFFICIALS AND SECRETARIES.—(1) The officials referred to in subsection (a) are the following:

(A) The head of each national security laboratory, as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471).

(B) The commander of the United States Strategic Command.

(2) In this section, the term "Secretary concerned" means—

(A) the Secretary of Energy, with respect to matters concerning the Department of Energy; and

(B) the Secretary of Defense, with respect to matters concerning the Department of Defense.

(c) USE OF "RED TEAMS" FOR LABORATORY CERTIFICATIONS.—The head of each national security laboratory shall, to assist in the certification process required by subsection (a), establish one or more teams of experts known as "red teams". Each such team shall—

(1) subject to challenge the matters covered by that laboratory's certification, and submit the results of such challenge, together with findings and recommendations, to the head of that laboratory; and

(2) carry out peer review of the certifications carried out by the other laboratories, and submit the results of such peer review to the head of the laboratory concerned.

(d) REPORT ACCOMPANYING CERTIFICATION.—Each official specified in subsection (b)(1) shall submit with each such certification a report on the stockpile stewardship and management program of the Department of Energy. The report shall include the following:

(1) An assessment of the adequacy of the science-based tools and methods being used to determine the matters covered by the certification.

(2) An assessment of the capability of the manufacturing infrastructure required by section 3137 of the National Defense Authorization Act for Fiscal Year 1996 (42 U.S.C. 2121 note) to identify and fix any inadequacy with respect to the matters covered by the certification.

(3) An assessment of the need of the United States to resume testing of nuclear weapons and the readiness of the United States to resume such testing, together with an identification of the specific tests the conduct of which might have value and the anticipated value of conducting such tests.

(4) An identification and discussion of any other matter that adversely affects the ability to accurately determine the matters covered by the certification.

(5) In the case of a report submitted by the head of a national security laboratory, the findings and recommendations submitted by the "red teams" under subsection (c) that relate to such certification, and a discussion of those findings and recommendations.

(6) In the case of a report submitted by the head of a national security laboratory, a discussion of the relative merits of other weapon types that could accomplish the mission of the weapon type covered by such certification.

(e) CLASSIFIED FORM.—Each submission required by this section shall be made only in classified form.

SEC. 3145. PLAN FOR ACHIEVING ONE-YEAR READINESS POSTURE FOR RESUMPTION BY THE UNITED STATES OF UNDERGROUND NUCLEAR WEAPONS TESTS.

(a) PLAN REQUIRED.—The Secretary of Energy, in consultation with the Administrator for Nuclear Security, shall prepare a plan for achieving, not later than one year after the date on which the plan is submitted under subsection (c), a one-year readiness posture for resumption by the United States of underground nuclear weapons tests.

(b) DEFINITION.—For purposes of this section, a one-year readiness posture for resumption by the United States of underground nuclear weapons tests is achieved when the Department of Energy has the capability to resume such tests, if directed by the President to resume such tests, not later than one year after the date on which the President so directs.

(c) REPORT.—The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for fiscal year 2004 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the plan required by subsection (a). The report shall include the plan and a budget for implementing the plan.

SEC. 3146. PROHIBITION ON DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) UNITED STATES POLICY.—It shall be the policy of the United States not to conduct development which could lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead.

(b) LIMITATION.—The Secretary of Energy may not conduct, or provide for the conduct of, development which could lead to the production by the United States of a low-yield nuclear weapon which, as of the date of the enactment of this Act, has not entered production.

(c) EFFECT ON OTHER DEVELOPMENT.—Nothing in this section shall prohibit the Secretary of Energy from conducting, or providing for the conduct of, development necessary—

(1) to design a testing device that has a yield of less than five kilotons;

(2) to modify an existing weapon for the purpose of addressing safety and reliability concerns; or

(3) to address proliferation concerns.

(d) DEFINITIONS.—In this section—

(1) the term "low-yield nuclear weapon" means a nuclear weapon that has a yield of less than five kilotons; and

(2) the term "development" does not include concept definition studies, feasibility studies, or detailed engineering design work.

(e) CONFORMING REPEAL.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 2121 note) is repealed.

Subtitle D—Matters Relating to Defense Environmental Management

SEC. 3151. DEFENSE ENVIRONMENTAL MANAGEMENT CLEANUP REFORM PROGRAM.

(a) PROGRAM REQUIRED.—From funds made available pursuant to section 3102(a)(2) for defense environmental management cleanup reform, the Secretary of Energy shall carry out a program to reform DOE environmental management activities. In carrying out the program, the Secretary shall allocate, to each site for which the Secretary has submitted to the congressional defense committees a site performance management plan, the amount of those funds that such plan requires.

(b) TRANSFER AND MERGER OF FUNDS.—Funds so allocated shall, notwithstanding section 3124, be transferred to the account for DOE environmental management activities and, subject to subsection (c), shall be merged with and be available for the same purposes and for the same period as the funds available in such account. The authority provided by section 3129 shall apply to funds so transferred.

(c) LIMITATION ON USE OF ALL MERGED FUNDS.—Upon a transfer and merger of funds under subsection (b), all funds in the merged account that are available with respect to the site may be used only to carry out the site performance management plan for such site.

(d) SITE PERFORMANCE MANAGEMENT PLAN DEFINED.—For purposes of this section, a site performance management plan for a site is a plan, agreed to by the applicable Federal and State agencies with regulatory jurisdiction with respect to the site, for the performance of activities to accelerate the reduction of environmental risk in connection with, and to accelerate the environmental cleanup of, the site.

(e) DOE ENVIRONMENTAL MANAGEMENT ACTIVITIES DEFINED.—For purposes of this section, the term "DOE environmental management activities" means environmental restoration and waste management activities of the Department of Energy in carrying out programs necessary for national security.

SEC. 3152. REPORT ON STATUS OF ENVIRONMENTAL MANAGEMENT INITIATIVES TO ACCELERATE THE REDUCTION OF ENVIRONMENTAL RISKS AND CHALLENGES POSED BY THE LEGACY OF THE COLD WAR.

(a) REPORT REQUIRED.—The Secretary of Energy shall prepare a report on the status of those environmental management initiatives specified in subsection (b) that are being undertaken to accelerate the reduction of the environmental risks and challenges that, as a result of the legacy of the Cold War, are faced by the Department of Energy, contractors of the Department, and applicable Federal and State agencies with regulatory jurisdiction.

(b) CONTENTS.—The report shall include the following matters:

(1) A discussion of the progress made in reducing such risks and challenges in each of the following areas:

(A) Acquisition strategy and contract management.

(B) Regulatory agreements.

(C) Interim storage and final disposal of high-level waste, spent nuclear fuel, transuranic waste, and low-level waste.

(D) Closure and transfer of environmental remediation sites.

(E) Achievements in innovation by contractors of the Department with respect to accelerated risk reduction and cleanup.

(F) Consolidation of special nuclear materials and improvements in safeguards and security.

(2) An assessment of the progress made in streamlining risk reduction processes of the environmental management program of the Department.

(3) An assessment of the progress made in improving the responsiveness and effectiveness of the environmental management program of the Department.

(4) Any proposals for legislation that the Secretary considers necessary to carry out such initiatives, including the justification for each such proposal.

(c) INITIATIVES COVERED.—The environmental management initiatives referred to in subsection (a) are the initiatives arising out of the report titled "Top-to-Bottom Review of the Environmental Management Program" and dated February 4, 2002, with respect to the environmental restoration and waste management activities of the Department of Energy in carrying out programs necessary for national security.

(d) SUBMISSION OF REPORT.—On the date on which the budget justification materials in support of the Department of Energy budget for fiscal year 2004 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) are submitted to Congress, the Secretary shall submit to the congressional defense committees the report required by subsection (a).

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2003, $19,000,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2003, the National Defense Stockpile Manager may obligate up to $76,400,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

TITLE XXXIV—NAVAL PETROLEUM RESERVES

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT.—There are hereby authorized to be appropriated to the Secretary of Energy $21,069,000 for fiscal year 2003 for the purpose of carrying out activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves.

(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

TITLE XXXV—MARITIME ADMINISTRATION

SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2003.

Funds are hereby authorized to be appropriated for fiscal year 2003, to be available without fiscal year limitation if so provided in appropriations Acts, for the use of the Department of Transportation for the Maritime Administration as follows:

(1) For expenses necessary for operations and training activities, $93,132,000.

(2) For expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), $54,126,000, of which—

(A) $50,000,000 is for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees under the program; and

(B) $4,126,000 is for administrative expenses related to loan guarantee commitments under the program.

(3) For expenses to dispose of obsolete vessels in the National Defense Reserve Fleet, including provision of assistance under section 7 of Public Law 92-402 (as amended by this title), $20,000,000.

SEC. 3502. AUTHORITY TO CONVEY VESSEL USS SPHINX (ARL–24).

(a) IN GENERAL.—Notwithstanding any other law, the Secretary of Transportation may convey the right, title, and interest of the United States Government in and to the vessel USS SPHINX (ARL–24), to the Dunkirk Historical Lighthouse and Veterans Park Museum (a not-for-profit corporation, in this section referred to as the "recipient") for use as a military museum, if—

(1) the recipient agrees to use the vessel as a nonprofit military museum;

(2) the vessel is not used for commercial transportation purposes;

(3) the recipient agrees to make the vessel available to the Government when the Secretary requires use of the vessel by the Government;

(4) the recipient agrees that when the recipient no longer requires the vessel for use as a military museum—

(A) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

(B) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State of New York, then—

(i) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code, or to the Federal Government or a State or local government for a public purpose; and

(ii) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to such organizations as the court shall determine are organized exclusively for public purposes;

(5) the recipient agrees to hold the Government harmless for any claims arising from exposure to asbestos after conveyance of the vessel, except for claims arising from use by the Government under paragraph (3) or (4); and

(6) the recipient has available, for use to restore the vessel, in the form of cash, liquid assets, or a written loan commitment, financial resources of at least $100,000.

(b) DELIVERY OF VESSEL.—If a conveyance is made under this Act, the Secretary shall deliver the vessel at the place where the vessel is located on the date of enactment of this Act, in its present condition, without cost to the Government.

(c) OTHER UNNEEDED EQUIPMENT.—The Secretary may also convey any unneeded equipment from other vessels in the National Defense Reserve Fleet in order to restore the USS SPHINX (ARL–24) to museum quality.

(d) RETENTION OF VESSEL IN NDRF.—The Secretary shall retain in the National Defense Reserve Fleet the vessel authorized to be conveyed under subsection (a), until the earlier of—

(1) 2 years after the date of the enactment of this Act; or

(2) the date of conveyance of the vessel under subsection (a).

SEC. 3503. FINANCIAL ASSISTANCE TO STATES FOR PREPARATION OF TRANSFERRED OBSOLETE SHIPS FOR USE AS ARTIFICIAL REEFS.

(a) IN GENERAL.—Public Law 92–402 (16 U.S.C. 1220 et seq.) is amended by redesignating section 7 as section 8, and by inserting after section 6 the following:

"SEC. 7. FINANCIAL ASSISTANCE TO STATE TO PREPARE TRANSFERRED SHIP.

"(a) ASSISTANCE AUTHORIZED.—The Secretary, subject to the availability of appropriations, may provide, to any State to which an obsolete ship is transferred under this Act, financial assistance to prepare the ship for use as an artificial reef, including for—

"(1) environmental remediation;

"(2) towing; and

"(3) sinking.

"(b) AMOUNT OF ASSISTANCE.—The Secretary shall determine the amount of assistance under this section with respect to an obsolete ship based on—

"(1) the total amount available for providing assistance under this section;

"(2) the benefit achieved by providing assistance for that ship; and

"(3) the cost effectiveness of disposing of the ship by transfer under this Act and provision of assistance under this section, compared to other disposal options for the vessel.

"(c) TERMS AND CONDITIONS.—The Secretary—

"(1) shall require a State seeking assistance under this section to provide cost data and other information determined by the Secretary to be necessary to justify and document the assistance; and

"(2) may require a State receiving such assistance to comply with terms and conditions necessary to protect the environment and the interests of the United States.".

(b) CONFORMING AMENDMENT.—Section 4(4) of such Act (16 U.S.C. 1220a(4)) is amended by inserting "(except for any financial assistance provided under section 7)" after "at no cost to the Government".

SEC. 3504. INDEPENDENT ANALYSIS OF TITLE XI INSURANCE GUARANTEE APPLICATIONS.

Section 1104A of the Merchant Marine Act, 1936 (46 App. U.S.C. 1274) is amended—

(1) by adding at the end of subsection (d) the following:

"(4) The Secretary may obtain independent analysis of an application for a guarantee or commitment to guarantee under this title."; and

(2) in subsection (f) by inserting "(including for obtaining independent analysis under subsection (d)(4))" after "applications for a guarantee".

Mr. STUMP (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment and the proposed House amendment thereto be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. SWEENEY). Is there objection to the request of the gentleman from Arizona?

Mr. SKELTON. Mr. Speaker, reserving the right to object, I yield to the gentleman from Arizona (Mr. STUMP) for the purpose of explaining this request.

Mr. STUMP. Mr. Speaker, I thank the gentleman for yielding.

The motion we are making is required to accomplish a goal of going to conference with the Senate on the defense authorization bill in a manner that reflects the totality of the action taken by the House. The gentleman is aware the House passed one defense authorization bill in early May and we completed another on yesterday, reflecting the $10 billion war contingency cost requested by the President.

These motions would take the two bills passed by the House and join them together as the proper consolidated House position for going to conference with the Senate.

Mr. SKELTON. Mr. Speaker, further reserving the right to object, Mr. Speaker, I yield to the gentleman from Ohio (Mr. KUCINICH).

□ 1215

Mr. KUCINICH. Mr. Speaker, I want to thank the gentleman and the members of the committee for their work on this bill and I wish them well in conference.

I want to take what I think it is going to be particularly important for the conferees to focus on the work of the committee in insisting that the language of the committee's work limits the administration to action relating only to September 11, and that, in fact, there is no authorization for any action against Iraq.

It is important for this Congress to have a debate. It is important for this Congress to insist on its prerogatives under Article 1 Section 8 of the Constitution of the United States, and our conference committee has an opportunity to protect that prerogative.

I am hopeful that the administration will recognize the importance of having a debate over Iraq on the floor of this House.

Mr. Speaker, I want to thank the gentleman for yielding me time, and I want to thank the gentleman and the chair for the fine work they have done on this bill.

Mr. SKELTON. Mr. Speaker, further reserving my right to object, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished ranking member, and I too would like to rise and thank the gentleman from Arizona (Mr. STUMP) and the gentleman from Missouri (Mr. SKELTON) for the fair way in which they have handled one of the most important responsibilities of this Nation, and that is defending this Nation.

I too want to offer additional comments about the young men and women, the military personnel that are serving in Guantanamo Bay. I had the opportunity to visit with the gentleman from Ohio (Mr. HOBSON) to see the condition of the individuals that are held in incarceration after the September 11 terroristic act. There is a great improvement in their living conditions, which I believe are humane. And I hope as we move through this process, working with the gentleman from Ohio (Mr. HOBSON), I know that we will work as well for the military personnel's conditions.

I know that it will be resolved, but I wanted to share that with the committee. But as I share that with the committee, let me also suggest that I want to make sure the language sticks to the September 11 conditions that we are having the opportunity to have congressional oversight as it relates to entering into Iraq. None of our Arab allies support the idea of precipitously attacking Iraq.

I believe it is this Congress's responsibility to have oversight when we make determinations of war. Going into Iraq would be an act of war. I think the American people deserve and are owed a full discussion and debate of such a command by this Congress.

Mr. Speaker, I thank the gentleman for this fine legislation. I hope we can narrow it or keep it focussed on the fight against terrorism which I stand side by side with the leadership of this committee and this House in fighting terrorism against America, but stand absolutely opposed to an attack against Iraq without the full debate of this Congress.

Mr. SKELTON. Mr. Speaker, I thank the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from Ohio (Mr. KUCINICH) for their remarks.

Mr. SKELTON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. BASS). Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

APPOINTMENT OF CONFEREES

Mr. STUMP. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate amendment to H.R. 4546 and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MOTION TO INSTRUCT CONFEREES

Mr. TAYLOR of Mississippi. Mr. Speaker, I offer a motion to instruct conferees on this motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. TAYLOR of Mississippi moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 4546 be instructed to insist upon the provisions of section 1551 of the House amendment (relating to the establishment of at least one Weapons of Mass Destruction Civil Support Team in each State).

The SPEAKER pro tempore. Under rule XX the gentleman from Mississippi (Mr. TAYLOR) and the gentleman from Arizona (Mr. STUMP) each will control 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. TAYLOR).

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we as a Nation have learned a heck of a lot in the months after September. As a member of the Committee on Armed Services, one of the things we have been told for years and that we were asked not to talk about was the very large number of nations that possess weapons of mass destruction. Now it has been published in so many magazines that it is hardly a secret anymore, but I think the people of America are well aware that almost 30 nations have some form of weapons of mass destruction, be it chemical, biological or nuclear.

They are also aware because of published reports that many of the nations that possess these weapons are not in very good control of these weapons. So it is now just considered a matter of time until a terrorist group gets their hands on a chemical weapon, a biological weapon or a nuclear weapon.

Mr. Speaker, I think it is fair to say that as a nation, we are unprepared for that eventuality. One of things this committee has done very wisely in years past is to fund 30 years through the National Guard, 22-member teams that would be in a position to train local first responders; and then with the proper equipment and with the proper training, be in a position to respond to such an attack.

Mr. Speaker, we have offered an amendment in the committee with the help of our chairman that was adopted, I believe, by unanimous votes of the committee to put one of these teams in every State, to come up with the necessary funds, approximately $190 million, so that there is a weapons of mass destruction civil support team in every State.

I see this very much like I see my local fire department. I go out of my way to see to it that there will never be a fire in my house, but the fact of the matter is there well could be and it could be right now. And since it could be, I want my local fire department to have the training and the equipment to respond to that to minimize the damages and the loss of human life. I see a weapons of mass destruction team in every State as just like that. I pray to God that it never happens, but I have to presume it will happen. And when it does happen, I want every State in the Union to have a core of competency within several hours of these people to respond.

Should it be a biological attack with a crop duster over a football stadium, or a chemical attack in a subway of a huge city, or someone stealing the mosquito control truck and driving down the streets in the middle of the night.

Each State has to have the availability to detect whether or not this actually occurred, detect what happened, have the equipment so the first responders do not themselves die from exposure when they go to see what happened; and then be in a position to instruct the local governors, instruct the local guard, instruct the local responders what to do to minimize the damage and the loss of human life.

Again, I want to thank our chairman and we are all going to miss the gentleman from Arizona (Mr. STUMP) a great deal for his cooperation on this, and it could not have passed without his cooperation. I want to thank my colleagues, the gentleman from Connecticut (Mr. MALONEY), the gentleman from North Carolina (Mr. JONES), and the gentleman from New Jersey (Mr. SAXTON) and all the people who contributed to co-sponsoring this amendment. It was a team effort to make it happen, and it will take a team effort between our National Guard, our policemen and our firemen, our governors, our State police to see to it that at least we have an ability to respond to that attack when it happens.

Mr. Speaker, I reserve the balance of my time.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the motion of the gentleman in that it endorses a position taken by the Committee on Armed Services on this matter just a few short days ago. It is also consistent with the provision that passed this House earlier this May.

We had a good debate in considering the provision and it is clear that the proponent made a compelling case in the number of States that presently face deficiencies in receiving proper coverage from existing weapons of mass destruction civil support teams. Whether that means that this precise formulation in this provision is the right solution remains to be seen. But it is clear that the conference must address this issue and bring it back to the House; a formulation that improves the abilities of the State presently without such a team to receive such assistance in the event of a weapons of mass destruction event.

I appreciate my colleague bringing this important matter forward and look forward to working with them in a conference to arrive at the best possible solution.

Mr. Speaker, I reserve the balance of my time.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, again I want to thank a great American, a great patriot, someone who served this country well in World War II and still serves this country well in the year 2002, the gentleman from Arizona (Mr. STUMP) for his help on this and for everything he has done.

Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON), the ranking Democrat on the Committee on Armed Services, the father of two young people in uniform serving their country.

Mr. SKELTON. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, let me take this opportunity to complement the gentleman from Mississippi (Mr. TAYLOR) on this effort and his colleague from Connecticut (Mr. MALONEY) who have worked hard and were successful in offering the amendment that was adopted unanimously in the Committee on Armed Services.

I think this is very important. Although Missouri has a civil support team, and I am so very proud of the Missouri National Guard and the work they are doing, I think it is important that all States have the same type of response and protection. The measure that is represented in this motion by the gentleman from Mississippi is one that was adopted. It was on a bipartisan effort and it is particularly important that we shift our national attention to the task of defending our Nation against terrorism.

This is an excellent motion and I thank the gentleman for allowing me to be part of this today, to endorse the important motion to instruct, and with the hopes that the efforts of the gentleman from Mississippi (Mr. TAYLOR) and the gentleman from Connecticut (Mr. MALONEY) will be elected positively by this Chamber and we thank also the chairman, the gentleman from Arizona (Mr. STUMP) for his cooperation and support in this regard.

Mr. STUMP. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. WELDON).

Mr. WELDON of Pennsylvania. Mr. Speaker, I thank my colleague for yielding me time.

I rise and will not oppose this motion to instruct as I did not in the committees, but I rise to basically let our colleagues understand what is at play here.

Please do not feel assured because Members vote for this motion to instruct. It is not going to do what you are being led to think it will do. Now, I say that because I would not be in this body were it not for the first responders of this country.

I grew up in a fire service family, became chief of my own department, went back and got a degree in fire protection and ran training programs for fire companies. In my home town, where I eventually became mayor and was the fire chief, had two of the largest refineries on the east coast and also had chemical plants and had the largest fire in America in 1975.

I have traveled across the country as the founder and chairman of the Fire Caucus. I have been to the gentleman's State three times. I have been in all 50 States on every disaster and spoken to all major national fire groups. There is no fire department in America that gets its training from the National Guard. National Guardsmen, by their nature, are part-time soldiers. They are there to respond when requested.

Do my colleagues know what the time is for a RAID team to be called to active duty in a disaster? Is it 10 minutes? Is it 1 hour? Twelve hours. You will not have a RAID team on a scene until twelve hours.

Now, the Marine Corps Seabird team which was specifically stood up by the Congress for chemical, biological and nuclear incidents, has a mandate to be on the scene in four hours. We only have one of those, and they are specially trained full-time people. Please do not think that the National Guard is going to be your first responder. It will never be your first responder.

Now, do we need to have the fire service trained by a group of National Guardsmen? No way. In the last 100 years every fire at an oil refinery, at a chemical plant, we do not call the National Guard in. The local fire and emergency responders are there. They understand what it takes to deal with weapons of mass destruction. I do not know one soldier that has ever been in a real life chemical incident. I do not know of any. But I can tell you there are hundreds of fire companies that respond to chemical fires every day in this country.

How do we expect the National Guard to train the firefighters when they have been doing this for 100 years?

Mr. Speaker, I talk to all the fire service groups. There are 32,000 departments in the country. They are America's first responder. When an incident occurs, whether it is a chemical, biological or nuclear incident, the first responder on the scene will be a fire truck, a paramedic, a local police car or it will be some other type of emergency response. It will not be a National Guard team. They need to have the equipment and the preparation to deal with that incident in the first hour. This amendment does not do that.

This amendment does not give them equipment. There is no fire department in America asking for a State RAID team. None. Or a civil response team. None. There is no national fire organization, not the IAFF, not the National Volunteer Council, not the NFPA, not the Arson Investigators, not the Fire Instructors, the seven major groups, none of them are asking for this.

□ 1230

I am not saying it does not serve a purpose. Having a State National Guard civil response team can help. It can provide resources, it can provide access to Federal assets, but it is not going to be the end-all, cure-all; and if we think that, then we are only lying to ourselves, and more importantly, we are frustrating the first responders across the country.

So I say to my colleagues when they vote for this measure, which I will vote for, understand that we are not solving the problem of local emergency responders. What they are asking for is more equipment. They know how to deal with chemical plant fires. They go in there every day. A National Guardsman who is a part-time person or even full-time does not fight chemical plant fires, does not know what it is like to go into an environment involving petro chemical situations. Firefighters do.

Our focus in this country in the debate on homeland security needs to be reinforced by the domestic defender of this country, the first responder, and that is not the National Guard. It is the 1 million men and women in 32,000 organizations who every day respond to our disasters. The National Guard can back them up and support them. That is an important role, and I supported that role; but these teams are not going to be able to instantly respond to a terrorist incident. Twelve hours minimum for them to get activated.

The first responder is the group that our focus should be on when we get to conference, just like this Congress allocated $100 million and then $400 million for the first responder; that is where the focus should be.

So I say to my colleagues I will support this resolution. I applaud my colleague for his leadership. He is a great American and a great member of the committee; but I want my colleagues to understand, please do not think that this amendment and this motion to instruct is going to solve the problem of homeland security. Go talk to the local fire companies when we are done with this vote, go call them on the vote and say is it really a priority in southern Mississippi that they want a civil response team, and they will say what in the heck is a civil response team. I cannot even have a fire truck response because they do not have enough money; we do not have enough volunteers. That is where their focus needs to be, and they are the kind of things we should be doing to support them.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my colleague and former firefighter from Pennsylvania makes an excellent point. There are 32,000 fire departments in this Nation. Do my colleagues not think we ought to have at least one of them in every State that has got the capability to respond to a nuclear or biological or chemical attack? I have no clear conscience that we have even one in the State of Mississippi.

Again, it is sort of the difference between the Pennsylvanias of the world and the Mississippis of the world. Over half the cities in Mississippi are 10,000 people or less. They are by design low-tax and, therefore, low-service. There is an incredible turnover, I am sorry to say, because they do not pay as well as they should. So we do need a core competency in every State. No one is going to say that this makes the world safer from a chem biological attack.

I can tell my colleagues right now, if a crop duster were to fly over a football field at Old Miss or Mississippi State and release a substance, I really do not think there is anyone in the State of Mississippi right now who can run the test to determine whether or not it was just diesel fuel, whether it was water, or whether it was a chemical or biological agent. There is no one that I know of that can show up in the protective gear to take those tests that I know I will not be endangering their lives just to ask them to go take the test.

These are core competencies that every State needs, not just the 30 States that presently have them.

Mr. Chairman, I am honored again that so many people from both sides of the aisle have chosen to sign on to this and help us with it. One of those people is helping even though his State already has a weapons of mass destruction civil support team; that has been a big help on this. It is the gentleman from Texas (Mr. ORTIZ).

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. ORTIZ).

Mr. ORTIZ. Mr. Speaker, I thank my good friend for yielding me the time.

The gentleman from Pennsylvania (Mr. WELDON) made a great point when he said that the response team would take about 12 hours to respond. Can my colleagues imagine how long it will take in Texas? Texas is a big, big State. Those of us who reside close to a military base, we have peace of mind that the people who reside around that military base, they know that they can respond when needed.

But if my colleagues take my State, where we have four military bases, south of Corpus Christi, Texas, we have 7 million people. We do not have a military base. What we do have is a border between the United States and Mexico where it is supposed to be the front door to trade. We have thousands of vehicles that cross the border. We have a deep water seaport, people that go back and forth. However, we do not have a military base of active military duty people that can respond to an emergency like this.

Texas has one in the great city of Austin, Texas; but for my district way down south, it is 950 miles to El Paso. It is 850 miles to Amarillo. We just happen to have a big State, and I am encouraging that we provide another team in south Texas, and I think that this motion to instruct makes a lot of sense. I think that this will give people in every State peace of mind that we have people who are prepared and ready to respond to any type of emergency.

Mr. STUMP. Mr. Speaker, I yield 8 minutes to the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Speaker, I thank the gentleman for yielding the time, and I would like to yield to my good colleague from Pennsylvania to make another remark about this issue.

Mr. WELDON of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Speaker, I thank my colleague for yielding to me.

I just want to clarify the point that somehow we do not care about the small rural towns in America. I was the fire chief of a town of 5,000 people, then the mayor, all volunteer, no pay; and in the gentleman's State of Mississippi, the bulk of his firefighters are volunteer, not paid anything. Eighty-five percent of the 32,000 departments in America are volunteer.

The fact is they have been trained. We trained 125 of the largest cities, and we now have an active program to train as many departments as possible.

In 1975, I had a chemical-carrying tanker make a U-turn at the Delaware River and ram an oil tanker at the dock in my town of 5,000 people. It burned out of control for 3 days and killed 29 people. It was the largest fire in America that year. The entire incident was handled with volunteers. It was not handled by the National Guard. That was a chemical incident.

My colleague might call it not a weapon of mass destruction. Well, when we have a chemical-carrying tanker filled with vinyl acetate and polymers and it explodes with an oil tanker, that is a chemical incident. It may not be a terrorist incident, but we handled it.

The point that I am trying to make is we should not be looking to the military to do, what has been done every day by our fire service. They are the first responders. Give them the equipment. So that in Texas, where my good friend, the gentleman from Texas (Mr. ORTIZ), is, we do not just have one team, we have teams all over the State who are properly prepared and equipped.

Every department needs to have a capability. That is what they are asking for. They are asking for the tools and the resources in all 32,000 departments. That is what we should be advocating, not some artificial response, one in a State that can come in 12 hours later. We need to have this capability in every department, and this is why the program that we have established for grants with bipartisan support is the right way to go.

Mr. HUNTER. Mr. Speaker, reclaiming my time, I thank my colleague for his remarks; and, Mr. Speaker, I would just like to talk briefly about the bills that we are sending to conference here because I think there has been a little confusion because of the time deadlines and the exigency and having to move these bills, particularly this second piece of the defense bill, which is kind of unprecedented, this second $10 billion segment and adding that to the $383 billion base bill.

I just want to say at this time, this has been an exercise in which we have had to move expeditiously; but the gentleman from Arizona (Mr. STUMP), our chairman, and the gentleman from Missouri (Mr. SKELTON), our ranking member, have really worked together and brought out the best in terms of our bipartisan concern and our bipartisan caring about how we shape the U.S. military.

We have got some major challenges right now. We have to try to modernize, and we are way behind the modernization curve. We are probably $30 billion per year short in terms of replacing all the tanks, trucks, ships, and planes that have to be replaced so our guys are driving equipment that is halfway modern.

At the same time, we have got to keep the wheels turning in this war against terror, and we have a major operation going in Afghanistan that is costing us a couple of billion dollars a month. Beyond that, we have got our air operations in the Iraq theater and in other parts of the world that are taking a lot of operational dollars.

In this last piece, this $10 billion piece that we moved that is going into conference today, we have got a lot of things that we have to have for the next couple of months in this next fiscal year. We have got things like military pays, combat-related pays going to the war fighters and to their families. That is an important piece of this. We also have intelligence money because we are going to need some new intelligence assets, as this is going to be a fairly large burden now for us to carry, but we have to have it because we are now entering the phase in this war against terror where the people who wanted to come to the war, basically come to the sound of the American guns and meet us on the battlefield, are no longer with us; and the people who remain now and the al Qaeda and the other organizations that support them now have to basically be hunted down.

That is very difficult. It requires a large and effective intelligence capability, and this is why we are having to build a significant amount of the budget into that area.

We also have operational requirements. We have got all the spare parts, and if my colleagues were over there recently, and I had the good fortune to be there with a CODEL a week or so ago, and if my colleagues were over there watching the operators in the theater with C–17s, the C–130s, all of the carrier aircraft and the supporting aircraft, we have got a lot of steel we have to keep in the air and spare parts are critical, and a lot of this money goes to the spare parts sector in the first couple of months of the next fiscal year.

So I think we have got a good package, and I hope everybody would vote to move this to conference quickly.

I just wanted to finish up by saying that our folks, staff folks and our leadership, the gentleman from Arizona (Mr. STUMP) and the gentleman from Missouri (Mr. SKELTON), have really put, as well as all the members of the committee have, put a lot of hard work in trying to get these disjointed pieces that now are kind of mismatched with the Senate's pieces of the defense bill into play and into conference; and it is going to be a difficult process to make this thing work. I think we are going to be able to get it because we have got a lot of great people working it.

I thank the gentleman from Arizona (Mr. STUMP) for his work and the gentleman from Missouri (Mr. SKELTON) for his, and I hope the House moves expeditiously to take us to conference.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

There is something I do think needs to be addressed, and the folks who work with me have been good enough to point this out, and I think the public needs to know this. The original time of 12 hours that my friend from Pennsylvania makes reference to was when there were only 10 of these teams to cover the entire continental United States. We are now in the process of going to 30 teams which shortens the distance from the responders to those that need to be helped.

What this will do is get us up to 54 teams, which the goal is to have a team within 4 hours; and again, without getting into a spitting contest, the fact of the matter is that the vast majority of the States that were left out are rural States, low-tax States, where we do not have the money to equip 32,000 teams or at least trying to get one in each of these States; but I would also point out that some of those States are very large States, including Connecticut, which has almost 6 million people, and the gentleman from Connecticut (Mr. MALONEY) will be speaking to that in a minute.

Mr. Speaker, I yield 1½ minutes to the gentleman from Michigan (Mr. BONIOR) to speak out of order.

(Mr. BONIOR asked and was given permission to speak out of order.)

MICHIGAN OFFICE VANDALIZED

Mr. BONIOR. Mr. Speaker, last night my office in Michigan was vandalized under the cover of darkness with despicable words of hatred. My family and I and my staff are saddened and angered by this deplorable act, but we will not let it defeat us or deter us from fighting for what we believe in.

Hate crimes are cowardly acts that cannot and will not be tolerated under any circumstances. They hurt us not just as individuals but as a community. People in every city, county, village in Michigan deplore these acts in the strongest possible way.

We must confront acts of hatred and refuse to let them intimidate us. We have to reach out to each other when these attacks occur and not let hate crimes fuel more hatred in ourselves.

□ 1245

My family and I are, and always have been, committed to ending these acts of violence. Whether there is an attack on Jewish Americans, Arab Americans, African Americans, Hispanic Americans, Sikhs, or Muslims, the message must be very clear, an attack upon one is an attack upon all. Hatred has no place, no place, in our country.

Mr. TAYLOR of Mississippi. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. BASS). The gentleman from Mississippi (Mr. TAYLOR) has 17½ minutes remaining, and the gentleman from Arizona (Mr. STUMP) has 18 minutes remaining.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

A lot of people are making this happen, and again this could not happen without the great cooperation of the gentleman from Arizona, so I want to thank him again.

The gentleman from North Carolina (Mr. JONES) and the 8 million people in that State will benefit from this. The gentleman from New Jersey (Mr. SAXTON) and the 8 million people from New Jersey will benefit from this. And, Mr. Speaker, I want to correct myself. The gentleman from Connecticut (Mr. MALONEY) and the 3½ million people from Connecticut will benefit from this.

Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut (Mr. MALONEY).

Mr. MALONEY of Connecticut. Mr. Speaker, I thank the gentleman from Mississippi for yielding me this time, and I rise in support of this motion.

The first comment I want to make is that it is absolutely correct that what we are doing here today will not solve all the problems. It will not solve all the problems in regard to emergency response and it will not solve all the problems in regard to the war on terrorism. It is not intended to. What it is intended to do is to solve a part of the problem.

We are doing many, many other things, both in terms of the Defense Department, the individual services, the reorganization of our national government in regard to homeland defense, making resources available to local fire departments, and making resources available to local police departments. We are doing many, many things. The goal here today is to do one other very, very important thing, which is to make sure that each State in this country has a civil support team in regard to weapons of mass destruction.

This year's defense bill supports legislation which I introduced, H.R. 3154, that currently has nearly 50 cosponsors. That legislation requires the Secretary of Defense to establish at least one weapons of mass destruction civil support team in each State and territory. The defense authorization bill that we did earlier this year includes sense of Congress language which establishes that as national policy for our country, one weapons of mass destruction civil support team in each State and in each territory.

The bill before us today provides the funding that is necessary to make that a reality for each of our States and each of our territories. Each CST is a federally funded asset under State control. To date, Congress has authorized 32 teams. I believe that each State and territory should have a team capable of responding to the threat of a weapon of mass destruction in their State as a matter of priority, as a matter of our doing one of the many things we are doing to improve the security of this country.

In the terrorist attack on the World Trade Center, New York, which has a team, their highly trained civil support team swung into action as part of the first response to the attack. The special unit of 22 full-time National Guard members, they are National Guard members but they are full-time on call within 4 hours, have two major pieces of equipment, a mobile analytical lab, and a mobile communications facility. The first allowed the team to identify any chemical or biological agents at the World Trade Center. Fortunately, that was not the case. The second allowed the team to coordinate communication among the first responders.

My colleagues, the gentleman from Pennsylvania (Mr. WELDON) is correct that the fire department is going to be there first, the police department is going to be there first, the EMS is going to be there first, but the civil support team is going to be there within, we hope, 4 hours, as the goal, not the 12 but 4 hours, and will be providing that analytical capability and will be providing that communications capability. In the case of New York, they did exactly that, assisting with coordination of communications with the first responders, the incident commander, and the Department of Defense.

As we are all too well aware, the war on terrorism is not being just waged in Afghanistan but also here at home. Since September 11, the civil support teams that exist already have responded to more than 200 requests for support from civil authorities for actual or potential weapons of mass destruction incidents, including the anthrax attacks. Support teams have also supported national events, including the 2001 World Series, the 2002 Super Bowl, and the 2002 Winter Olympics.

The anthrax attacks and the more recent threat of a radiological dirty bomb clearly highlight the increased need for National Guard counterterrorism capabilities to be stationed across our country. It is important, as the gentleman from Mississippi has said, that each State have its own team, not just in time of crisis but also during training. It is in that training with the local first responders that the National Guard teams develop the effective coordination they need in emergency situations.

It has been said here earlier today that that training has not previously existed. That is correct, and that is the point. We need to make sure that that training is available, that that training occurs, that that coordination between the local first responders and the State first responders is done in line with the National Guard, the civil support teams, which gives us access to the national assets.

Some argue that the issue is simply a matter of geographic coverage. The New York team, for example, is located just outside of Albany. That is 2, 3, maybe 4 hours from most places in the State of Connecticut. Maybe that should suffice. The reason it does not suffice is for two reasons:

One, it does not provide that integrated training with the local and State officials. The National Guard civil support team in New York, guess what, they train with the State of New York emergency responders, not the State of Connecticut emergency responders. We need to make sure that our State and every other State has that integrated training that exists.

Secondly, in terms of response time, what happens when, as in the case of New York, that team was called upon? Then where is Connecticut? We were lucky that there were only three attacks. There was New York, Washington, and the air over Pennsylvania, but there could have been five attacks. There could have been an attack in Boston at the same time there was an attack in New York. Where would Connecticut have been? New York's team had already deployed.

We supposedly have backup by a team outside of Boston. What if Boston had been attacked? And, indeed, the Boston team cannot get effectively to Connecticut in the 4 hours. Stamford, Connecticut, is a long way from the Greater Boston area. Waterbury or Danbury, Connecticut, is a long time from the Greater Boston area. So we need to make sure that Connecticut in fact has its own team, as should every other State and territory that has the potential for these kinds of attacks. And I do not stand here alone in making that argument. The Secretary of the Army in the February issue of the National Guard Association magazine said, "Yes, I do. I think the weapons of mass destruction civil support teams are a tremendous initiative. Right now the Congress has funded 32. And I would be surprised if we did not end up with at least one in each State and territory. So I would see us going beyond the 32 teams in the future, and I think we will have a lot of congressional support for that because it is a tremendous capability," said the Secretary of the Army.

The September 2001 GAO report entitled Combating Terrorism makes a similar point which is this is not the only thing we should be doing, but this is one of the things we should be doing. "The Department of Defense plans, and officials suggested, that there eventually should be a team in each State, territory, and the District of Columbia, for a total of 54 teams."

Let us do everything we can to secure our country. Let us make sure that our first responders locally have the resources they need. Let us make sure that our armed services have every resource they need. Let us make sure that our men and women in the armed services have the pay that they need, as we have done over the past several years under the leadership of the gentleman from Missouri (Mr. SKELTON), ranking member, and the gentleman from Arizona (Mr. STUMP), chairman, and other members of the committee. We have made great progress. Let us do all these good things. But as we do all these good things, let us make sure we do something else that is very important, which is make sure that each of our States and territories has a civil support team to train and be prepared and be ready and be available should the emergency arise.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

In closing, I do want to thank all the members of the Committee on Armed Services. Again, this passed our committee unanimously. I want to particularly commend the gentleman from North Carolina (Mr. JONES); the gentleman from New Jersey (Mr. SAXTON); the gentleman from Arizona (Mr. STUMP), our good chairman; the gentleman from Connecticut (Mr. MALONEY); and the gentleman from Missouri (Mr. SKELTON), our ranking member, for helping to line up those people to cooperate on this.

Mr. Speaker, it is a sad fact, but a fact, that in the past year a biological attack on the United States has gone from "what if" to "what is next." The person who perpetrated the anthrax attacks that have killed about five people in our country has not been apprehended. The question is, was that a one-time event or was it a practice run for something bigger? I hope it was a one-time event, but in the event that that person or those persons who did that were planning something bigger, I think it is imperative that we have some group in each State that is prepared to respond to that attack. I would ask my colleagues to support this unanimously.

Mr. Speaker, I yield back the balance of my time.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume. I take this opportunity to thank the gentleman from Missouri (Mr. SKELTON) for all the hard work that he has put into this project, and also the gentleman from Mississippi (Mr. TAYLOR).

Mr. STUMP. Mr. Speaker, I have no further requests for time, and I yield back balance of my time.

The SPEAKER pro tempore (Mr. BASS). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Mississippi (Mr. TAYLOR).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. TAYLOR of Mississippi. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 419, nays 2, not voting 12, as follows:

[Roll No. 349]

YEAS—419

Abercrombie
Ackerman
Aderholt
Akin
Allen
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez

Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velázquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NAYS—2

Coble
Royce

NOT VOTING—12

Andrews
Davis (FL)
John
Kennedy (MN)
Knollenberg
Meehan
Ortiz
Ose
Quinn
Stearns
Wexler
Young (AK)

☐ 1316

Mr. ROYCE changed his vote from "yea" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. OSE. Mr. Speaker, on rollcall vote No. 349, I was unavoidably detained. Had I been present, I would have voted "yea."

Mr. JOHN. Mr. Speaker, on rollcall vote No. 349 I was unavoidably detained. Had I been present, I would have voted "yea."

The SPEAKER pro tempore (Mr. LAHOOD). Without objection, the Chair appoints the following conferees:

From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Messrs. STUMP, HUNTER, HANSEN, WELDON of Pennsylvania, HEFLEY, SAXTON, MCHUGH, EVERETT, BARTLETT of Maryland, MCKEON, WATTS of Oklahoma, THORNBERRY, HOSTETTLER, CHAMBLISS, JONES of North Carolina, HILLEARY, GRAHAM, SKELTON, SPRATT, ORTIZ, EVANS, TAYLOR of Mississippi, ABERCROMBIE, MEEHAN, UNDERWOOD, ALLEN, SNYDER, REYES, TURNER, and Mrs. TAUSCHER.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Mr. GOSS, Mr. BEREUTER, and Ms. PELOSI.

From the Committee on Education and the Workforce, for consideration of sections 341–343, and 366 of the House amendment, and sections 331–333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Messrs. ISAKSON, WILSON of South Carolina, and GEORGE MILLER of California.

From the Committee on Energy and Commerce, for consideration of sections 601 and 3201 of the House amendment, and sections 311, 312, 601, 3135, 3155, 3171–3173, and 3201 of the House amendment, and modifications committed to conference: Messrs. TAUZIN, BARTON of Texas, and DINGELL.

From the Committee on Government Reform, for consideration of sections 323, 804, 805, 1003, 1004, 1101–1106, 2811, and 2813 of the House amendment, and sections 241, 654, 817, 907, 1007–1009, 1061, 1101–1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Messrs. BURTON of Indiana, WELDON of Florida, and WAXMAN.

From the Committee on International Relations, for consideration of sections 1201, 1202, 1204, title XIII, and section 3142 of the House amendment, and subtitle A of title XII, sections 1212–1216, 3136, 3151, and 3156–3161 of the Senate amendment, and modifications committed to conference: Messrs. HYDE, GILMAN, and LANTOS.

From the Committee on the Judiciary, for consideration of sections 811 and 1033 of the House amendment, and sections 1067 and 1070 of the Senate amendment, and modifications committed to conference: Messrs. SENSENBRENNER, SMITH of Texas, and CONYERS.

From the Committee on Resources, for consideration of sections 311, 312, 601, title XIV, sections 2821, 2832, 2841, and 2863 of the House amendment, and sections 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Messrs. DUNCAN, GIBBONS, and RAHALL.

From the Committee on Science, for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committed to conference: Messrs. BOEHLERT, SMITH of Michigan, and HALL of Texas.

From the Committee on Transportation and Infrastructure, for consideration of section 601 of the House amendment, and sections 601 and 1063 of the Senate amendment, and modifications committed to conference: Mr. YOUNG of Alaska, Mr. LOBIONDO, and Ms. BROWN of Florida.

From the Committee on Veterans' Affairs, for consideration of sections 641, 651, 721, 723, 724, 726, 727, and 728 of the House amendment, and sections 541 and 641 of the Senate amendment, and modifications committed to conference: Messrs. SMITH of New Jersey, BILIRAKIS, JEFF MILLER of Florida, FILNER, and Ms. CARSON of Indiana.

There was no objection.

MOTION TO CLOSE CONFERENCE COMMITTEE MEETINGS ON H.R. 4546, BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003, WHEN CLASSIFIED NATIONAL SECURITY INFORMATION IS UNDER CONSIDERATION

Mr. STUMP. Mr. Speaker, pursuant to clause 12 of rule XXII, I move that meetings of the conference between the House and the Senate on H.R. 4546 may be closed to the public at such times as classified national security information may be broached, providing that any sitting Member of Congress shall be entitled to attend any meeting of the conference.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. STUMP).

Pursuant to clause 12 of rule XXII, the vote must be taken by the yeas and nays.

Pursuant to clause 8 of rule XX, the Chair announces that this vote will be followed by a 5-minute vote on a motion to suspend the rules on H.R. 4946 on which further proceedings were postponed.

The vote was taken by electronic device, and there were—yeas 420, nays 3, not voting 10, as follows:

[Roll No. 350]

AYES—420

Abercrombie
Ackerman
Aderholt
Akin
Allen
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blunt
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velázquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOES—3

Blumenauer
DeFazio
McKinney

NOT VOTING—10

Andrews
Boehlert
Hansen
Herger
Knollenberg
Meehan
Quinn
Stearns
Wexler
Young (AK)

☐ 1339

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

IMPROVING ACCESS TO LONG-TERM CARE ACT OF 2002

The SPEAKER pro tempore (Mr. LAHOOD). The unfinished business is the question of suspending the rules and passing the bill, H.R. 4946, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. HAYWORTH) that the House suspend the rules and pass the bill, H.R. 4946, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 362, nays 61, not voting 10, as follows:

[Roll No. 351]

YEAS—362

Ackerman
Aderholt
Akin
Allen
Armey
Baca
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Bentsen
Bereuter
Berkley
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Brady (PA)
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burr
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clyburn
Coble
Collins
Combest
Condit
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
DeLauro
DeLay
DeMint
Diaz-Balart
Dicks
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
LaHood
Lampson
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Mascara
Matheson
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mink
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pastor
Paul
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy

Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Royce
Rush
Ryan (WI)
Ryun (KS)
Sawyer
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Strickland
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Towns
Udall (CO)
Udall (NM)
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—61

Abercrombie
Baldwin
Becerra
Berman
Berry
Boucher
Boyd
Brown (OH)
Conyers
Coyne
Delahunt
Deutsch
Dingell
Doggett
Eshoo
Filner
Frank
Gephardt
Gonzalez
Hinchey
Honda
Jackson (IL)
Johnson, E. B.
Kennedy (RI)
Kucinich
LaFalce
Langevin
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
Miller, George
Mollohan
Napolitano
Neal
Olver
Pallone
Pascrell
Payne
Rahall
Rodriguez
Roybal-Allard
Sabo
Sánchez
Sanders
Sandlin
Schakowsky
Scott
Solis
Stark
Stenholm
Stupak
Taylor (MS)
Tierney
Turner
Velázquez
Waters
Waxman
Woolsey

NOT VOTING—10

Andrews
Burton
Clement
DeFazio
Hansen
Knollenberg
Meehan
Nadler
Stearns
Wexler

□ 1348

Messrs. CONYERS, DELAHUNT, SANDLIN, MARKEY, and McGOVERN, and Ms. WOOLSEY changed their vote from "yea" to "nay."

Mr. SAWYER changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to amend the Internal Revenue Code of 1986 to provide health care incentives.".

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. ANDREWS. Mr. Speaker, due to family obligation I was unable to cast a vote on the first four votes of July 25, 2002. Had I been present. I would have cast the following votes:

On H.R. 3763, The Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, I would have voted "yes".

On the motion to instruct conferees to H.R. 4546, I would have voted "yes".

On motion to close portions of the conference to H.R. 4546, I would have voted "yes."

On motion to suspend the rules and pass H.R. 4946 as amended, to amend the Internal Revenue Code to provide health care incentives related to long-term care, I would have voted "yea."

THE JOURNAL

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the pending business is the question of the Speaker's approval of the Journal of the last day's proceedings.

Pursuant to clause 1, rule I, the Journal stands approved.

PROVIDING FOR A SPECIAL MEETING OF THE CONGRESS IN NEW YORK, NEW YORK ON FRIDAY, SEPTEMBER 6, 2002 IN REMEMBRANCE OF SEPTEMBER 11, 2001

Mr. ARMEY. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 448) providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes, and I ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The Speaker pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. RANGEL. Mr. Speaker, reserving the right to object, I will not object, but on behalf of the New York delegation and the people of New York, I would like to thank the leadership of the House of Representatives and that of the other body for supporting this resolution that would allow a joint session of the House and Senate to take place in the City of New York.

Being born and raised in New York, it just surprised me how many things that we take for granted, how many problems that we thought were so horrendous, how many differences we had as black and white and Jews and gentiles and Republicans and Democrats and, yet, on September 11, none of these things seemed important. It really did not make any difference what borough we were from, whether we were from the inner cities or the suburbs; as a matter of fact, whether it was upstate or downstate; we all recognized how privileged and fortunate we are just to be Americans.

This feeling was felt not only throughout my city, but throughout the State. When our delegation came to the floor of this august body and felt the love and affection but, most importantly, the support in recognizing it was not just the lives of the people that were in the Twin Towers, but it was the lives of Americans that were there. And the heroes were not people that were in planes or ships or on the battlefields, but they were ordinary people that fought and worked every day for a better America.

To think that this Congress would take time out, and especially our majority leader, who was misquoted and, as a result, felt sometimes an emotional response for those who thought that he did not want this to happen, and for a man as big as him in size as well as big as him in spirit, to say that he wanted this to happen, and it was just a question of how it would take place, I think that I personally would want to thank him, as well as the entire leadership, for making us in New York feel that not only are we appreciated, but the President, the national government, the Congress has responded, and we are so thankful that we will be coming to New York as a body in order to show how much we feel for those people who lost their lives for the United States of America.

So I yield to the majority leader for an explanation of the bill, and again thank him personally for the leadership that he provided to make this bipartisan, indeed, this American dream become a historic reality.

Mr. ARMEY. Mr. Speaker, I thank the gentleman from New York for yielding.

It is a particular pleasure for me to now be finally able to bring this resolution to the floor. The resolution, Mr. Speaker, calls on the United States Congress to convene a ceremonial joint meeting in New York City on Friday, September 6, 2002. The joint commemorative meeting will be in remembrance of the thousands of people killed and injured as well as the thousands more grieving friends and families left after the terrorist attacks upon the World Trade Center.

At a later point we will also consider separate resolutions honoring the victims of the attacks upon the Pentagon and those who perished in Flight 93.

The joint meeting will be held at Federal Hall in New York City, a mere five blocks away from the site of the horrific damage left at Ground Zero. The historic location of Federal Hall served as the first meeting place of the United States Congress and where George Washington was sworn in as the first President of the United States. Fittingly, the protections of the Bill of Rights, which were assaulted on September 11, were written within the walls of Federal Hall.

Congress last gathered in a ceremonial session outside the Nation's capital in Philadelphia in 1987 in celebration of the Bicentennial of the United

States Constitution. It was a very significant event that called us from these walls then as it is today.

Our show of unity and resolve will continue with this historic meeting in New York. Appropriately, we have chosen the site of the most terrible destruction as the location of the joint session. It is only befitting of the fallen heroes and victims of September 11 that Congress meet to honor their memory.

Mr. Speaker, a second resolution will follow to address matters of housekeeping for the event, but first I would like to touch upon the logistics for the historic date.

The train to New York will leave Union Station in the early morning of September 6 and arrive in New York around 9:30 a.m. The joint session will be held at 11 o'clock a.m., followed by a lunch hosted by Mayor Bloomberg at the Regent Wall Street Hotel. The assembled Members will then travel to Ground Zero to lay a wreath in honor and remembrance to those who perished in the attacks of September 11, 2001. In the midafternoon, a train will leave from Penn Station for Washington. There will be separate transportation available to LaGuardia, JFK, and Newark Airports for Members wishing to return to their districts who may use their MRA for travel. We will also provide earlier transportation for Members wishing to return in time for the Jewish holiday.

The City of New York has advised that it will be paying expenses for the Commemorative Joint Meeting and the related events of September 11, as well as the travel expenses of the participating Members, with the support of the Annenberg Foundation. Normally, Members' acceptance of such an offer would be subjected to the provision of the House gift rule on officially conducted travel paid by a private source and the "unofficial office accounts" rule. However, Mr. Speaker, this resolution expressly authorizes acceptance by the Congress of the City's offer and, as a result, acceptance of the travel and related benefits is not subject to the provisions of those House rules, including the requirement of privately funded travel in connection with official duties.

Mr. Speaker, I strongly encourage all Members of the United States House of Representatives to attend this historic Commemorative Joint Meeting of the Congress of the United States in New York City in honor of the dead, the fallen, the heroes, the sacrifice of that great city.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, and before I yield to my dear friend, the gentleman from New York (Mr. GILMAN), I would like to add on to what the majority leader has said in terms of the schedule as relates to the visit to New York for this historic occasion.

The mayor has authorized me to share with the House that soon the Visitors and Tourists Bureau of the City of New York will soon be sending an invitation to those Members that would want to stay over for the weekend after the historic ceremony, and those expenses will be paid, and a list of the activities that would be made available should be received before this week is out. I will be glad, along with the gentleman from New York (Mr. FOSSELLA), to share with the Members what information there is before we leave this week.

Mr. Speaker, I now yield to my friend, the gentleman from upstate New York, (Mr. GILMAN), a friend who is the senior Republican for the New York State delegation, a person that I have enjoyed his friendship and worked with over the years. We have fought against drug trafficking and addiction in this country and all over the world but, more importantly than that, we have shared our personal as well as political experiences together. It has made both of our political lives a lot easier to enjoy the type of friendship that we have.

I can say publicly what I have said privately, that this House is going to miss the gentleman from New York (Mr. GILMAN) tremendously. We thank him so much for the unselfish contributions that the gentleman has made, not only for the people in his congressional district and the great State of New York, but for the people in this country and throughout the world. This may be the last official thing that we may be doing together, but whatever the gentleman decides to do with the rest of his life, I do hope that I will be included in the future as much as we have enjoyed working together presently and in the past.

Mr. Speaker, I yield to the gentleman from New York (Mr. GILMAN).

□ 1400

Mr. GILMAN. Mr. Speaker, I thank the gentleman for his kind words and for the pleasure of working with him on this particular project. I thank our New York colleague (Mr. RANGEL), the chairman of our New York delegation, for yielding to me. And I want to commend the gentleman from New York (Mr. RANGEL) for his steadfast, tireless efforts to make the special New York session a reality. As the dean of Republican Members of New York, I have been pleased to work with the gentleman in introducing and promoting this resolution on behalf of our New York State delegation.

I am particularly grateful to our distinguished majority leader, the gentleman from Texas (Mr. ARMEY) and the House leadership for their kind considerations and agreement to hold this historic session in New York City. And the itinerary that the majority leader has recited, I hope our colleagues will take a good look at that and be ready to join us on September 6.

Mr. Speaker, I am pleased to rise in strong support of this resolution to convene this historic joint session of Congress in New York City on September 6. This meeting is being held in New York City to recognize the spirit, the courage, the unity and cooperation of all those heroes who were involved, those who were deceased, the victims of 9–11, and all the people of New York City who have given of their utmost to dedicate their energies and their desire to restore New York City to where it was before the barbaric terrorist attacks of last September.

This historic New York City session is going to be held in Federal Hall in downtown Manhattan, which was the site of the very first meeting of the United States Congress and the site of the inauguration of President Washington. It is, therefore, befitting and appropriate that Congress will be returning to the birthplace of this post-constitutional democracy in America as we approach the first anniversary of September 11.

This resolution offers a fitting and a meaningful way for the Congress to demonstrate its support for the people of New York State and, particularly, New York City and its appreciation of their historic efforts to overcome the tragic events of the past year.

Accordingly, I urge my colleagues and invite them to give this proposal their wholehearted support. And the gentleman from New York (Mr. RANGEL) and I look forward to joining with our New York delegation in welcoming Members to New York State to New York City on September 6.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I thank the gentleman from New York (Mr. GILMAN).

Mr. Speaker, I yield to the gentleman from the City of New York, the County of Richmond, the borough of Staton Island, the 13th Congressional District (Mr. FOSSELLA).

Mr. FOSSELLA. Mr. Speaker, I thank the gentleman from New York (Mr. RANGEL) for yielding and on the outset commend him strongly for his leadership in really bringing this to fruition and being a vanguard in this House and Congress to ensure that we have this session. So I thank him and on behalf of the people of the City and State of New York and, indeed, the country. We are appreciative of your efforts, as well as the gentleman from New York (Mr. GILMAN). In particular, let me echo those who thank the leadership, the gentleman from Texas (Mr. ARMEY), and, of course, the gentleman from Illinois (Speaker HASTERT) and those in the other body who really want to do the right thing here.

It is fitting, I think, that what we are talking about is honoring the victims and the heroes, and, in a way, celebrating what they gave to this country, how they sacrificed last year on September 11, whether it be the Pentagon or Flight 93, and, of course, the World Trade Center; and we must never ever forget those sacrifices. We are now a stronger country as a result of what happened on that day.

While we have our differences of opinion here in this body and I guess outside, we belong to different parties, and we have a lot of different views on a lot of different things, but is it not wonderful in this country that we can come together to unify, to stand together in the face of that evil that attacked freedom on September 11? That we, as a Congress, the elected representatives from across this country, can go to New York and stand shoulder to shoulder with all of those New Yorkers who showed the world why we believe we are the capital of the world. We showed the world what a great place this is.

Mr. Speaker, this is a day on September 6 that is going to indicate to the rest of the world that the United States of America did not shudder. We may have been hit hard and a lot of us lost a lot of close friends and a lot of close family members and relatives or just neighbors, good honest people lost their lives for the sake of freedom. So how appropriate that we meet in Federal Hall, Federal Hall that over 200 years ago when we established the Bill of Rights, the freedoms that we should enjoy, when those freedoms were attacked, how appropriate that we go back as a reaffirmation that this country is the greatest institution in the history of the world, and that those victims who lost their lives and the heroes we praise, shall never be forgotten.

And it is not just going to be September 6, it will be 50 years from now, it will be 200 years from now; but this, I believe, is fitting.

So let me thank again the gentleman from New York (Mr. GILMAN), the gentleman from Texas (Mr. ARMEY), the leadership of this House, the New York delegation, Mayor Bloomberg who has been very helpful and the gentleman from New York (Mr. RANGEL) for really leading this effort.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York (Mr. CROWLEY). All Americans felt the pain of the lives that were lost, but the gentleman from New York and the County of Queens has felt it personally.

Mr. CROWLEY. Mr. Speaker, I thank my colleague and dear friend, the gentleman from New York (Mr. RANGEL) for yielding to me at this time. I want to thank the majority leader, the leadership of House, my good friend from Staton Island, New York (Mr. FOSSELLA), my very dear friend and colleague, the gentleman from New York (Mr. GILMAN) for all the work that was put into making sure that this eventually takes place, that this meeting on September 6 becomes a reality.

The attack on the World Trade Center in September of last year was the attack heard around the world. And much the same way that Lexington, Concord and other events around the world and the shots that were fired, left impressions forever in the minds of people, the attack on the World Trade Center last year will never be forgotten.

There is probably not a place on this Earth that people do not know about the horrific events of September 11 of last year. The 3,000 individuals who lost their lives, many of them giving their lives trying to save human life, including my first cousin, John Moran, 42 years old, a battalion chief in the New York City Fire Department, a father of two boys, a musician, an attorney, a historian, a patriot, someone who loved this country so much.

We lost John Moran. We lost thousands of people like him that day. And on September 6, the eyes of the world will be on New York City once again at Federal Hall, appropriately so, one of the places in which this great Nation was founded, that we should meet as a body for a meeting to commemorate the attack upon our great Nation, upon our fair city.

There is no doubt that New York City is still reeling from that attack. We are in pain. We are suffering. We may not wear it on our sleeves. We are not talking about it every day. We appreciate the outpouring of support that we have received from all parts of this country and from all corners of the world. We are deeply, deeply appreciative of the membership of this House and of the other body uniting as a country and coming to the aid and assistance of our great city in our time of great need.

But a great deal more will have to be done before New York City is fully back on its feet. But when you come to New York City on September 6, do not be surprised because we are a resilient city, we are a resilient people, and we are fighting back and we are coming back strong. And we will show you a city that has been reborn since the attack of September 11 in large part because of the work of this body, in large part because of the work of my colleagues, the gentlemen from New York (Mr. RANGEL) and (Mr. NADLER), and all the New York delegation in uniting to see to it that New York City, New York State is not forgotten during these very, very difficult times.

Mr. Speaker, I will be at Federal Hall on the morning of September 6. I hope that each and every Member of this great body find themselves at what I think will be one of the most memorable occasions in the history of the House of Representatives. Help make that an even more memorable occasion by your presence there. I thank you. My constituents will thank you. Over 105 families who have lost loved ones in my constituency will thank you. Our city will thank you. Our State will thank you, and our country will thank you.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, we thank the gentleman from New York (Mr. CROWLEY).

Mr. Speaker, I yield to the gentleman from the great borough, the Bronx, New York (Mr. SERRANO), an outstanding Member of the Congress and a great New Yorker who is always there when we need him, and we need him now, and he has been just one of our strongest supporters.

Mr. SERRANO. Mr. Speaker, first of all, I would like to thank our majority leader and all of our leadership, the gentleman from New York (Mr. GILMAN), and the gentleman from New York (Mr. RANGEL), for making this happen. As New Yorkers, we are grateful and we shall never forget that they have stood by us.

Mr. Speaker, I do not know how many of the Members remember, and perhaps they did not notice, but I was not here September 11. I was in New York City. I was in New York because after making a difficult decision as to where I should be on that day, I decided that when my oldest son, Jose, Jr., was running for the New York City Council in a primary that, I should be there to try to help him get elected on that day. And, as you know, in New York there are a lot of activities on election day inside the polls.

I was in front of a polling site trying to spread the good Serrano name, and around a certain time we began to see the police come out of the polling sites, we began to see the sirens going down the Bruckner Expressway, and we knew something was going on. We just did not know what. And then it happened. Folks started coming from the buildings, from inside the school in tears, screaming in loud voices, letting us know that the TV report indicated that two planes had hit the World Trade Center and that, in fact, another plane had hit the Pentagon.

At that point there was total shock because as New Yorkers and as Americans, we never believed that this could happen to us.

That same day outside another polling site were two ladies, Consuelo Maldonado and her daughter, Miriam Juarbe, who have been with us in our political struggles for the last 30 years and were there that day. What they did not know is that in downtown New York, Consuelo's grandson and Miriam's son, a New York Fire officer was involved in that tragic incident, that attack on our country. And he, like so many others, had finished his tour, if you will, and decided to stay around and go inside again to get some people out and he never came out. He died on that day.

So you see, when we New Yorkers talk about the tragedy, it is both collectively as a community and it is personal through a relative like the gentleman from New York (Mr. CROWLEY) or some of our associates or a friend. And so we cannot begin to tell everyone how important it is for what this House has done to select September 6 as a day that all Members go to New York to Federal Hall.

Our city is known to be a city of pretty tough people. In fact, let us be honest. We have a reputation at times of not having much feelings about a lot of things. We can turn our back on a lot of things and look like nothing bothers us. But we are hurting as the gentleman said. We do not mention it every day. Maybe we do not wear it on our sleeves, but we are hurting.

□ 1415

The pain started that day when we lost people. The next day when I left New York to come back here, the only way a person could get out of New York was by car, the only way. There was no other mode of transportation; and as we got on the turnpike, and we did what all New Yorkers do which is for the first time look somewhere and realize that we had taken something for granted and we realize those two towers were not standing, we realized that it was much more than two buildings that had gone down and were missing.

I will be there on September 6. I will be there in memory of Angel Juarbe and in memory of all my constituents, in memory of all those who died that day. I will be there in tribute to the fact that we will not give up this fight, and I will be there as a New Yorker both proud of our ability to withstand pain and thankful to this Nation for the fact that it has stood with New York.

A lady, and I will close with this, in Oklahoma did something that people did during World War II in identifying with the Jewish cause. She put on her window in the countryside of Oklahoma, "I am a New Yorker," and perhaps that is what we all are, New Yorkers; and this is what we will be on September 6.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from the 9th Congressional District (Mr. WEINER), a newer member of the delegation, but an energetic and productive member.

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding to me, and I want to thank him for being such a driving force behind this effort to pay tribute to New York and our country on the 6th.

I also want to take this opportunity to thank the gentleman from New York (Mr. GILMAN) for all he has done, not just to make this event a reality, but frankly to make our world a safer place. In his years here in the House of Representatives, no Member has devoted more energy to spreading American values and to finding out ways to make our world safer, and I want to thank the gentleman from New York (Mr. GILMAN) and the gentleman from Texas (Mr. ARMEY) and all of the Republican leadership who have been so responsive to our community at this time. Sometimes there are not a lot of Republicans in some corners of New York City, but I think we have been bipartisan in our effort to recover.

Many people, many Members of Congress visited New York City in the days right after September 11; and I want to tell my colleagues the New York they are going to visit on September 6 could not be more different than what they saw. If my colleagues saw destruction on that day, well, when they return on the 6th they are going to see determination. They are going to see massive rebuilding going on.

They are going to see a debate that might make a person scratch his head, where New Yorkers are complaining that the buildings that are going to rise on that site and the tribute to be paid on that site are not grand enough; that when people thought perhaps the terrorists would force us to cower and be afraid to be in tall buildings, now proposal after proposal that comes out of the Lower Manhattan Redevelopment Corp., everyone seems to be saying the same thing: we want to build grander and grander than we even had it before.

My colleagues might have found on September 11 and the days right after people were a little fearful about what would happen next. My colleagues will find nothing but heroism today. We see young people from all around New York City signing up to volunteer to be firefighters, to pay tribute to those heroes from September 11. We see a renewed sense of commitment to public service in New York City that defies any sense of fear that might have come from the days immediately following.

My colleagues may expect that that sense or kind of pessimism that had emerged right after September 11 and many of us visited, many of my colleagues were there to see, does not exist today. Today it is nothing but optimism. Shops are reopening. Performances are booming on Broadway. We have homes being rebuilt. We have the, as much as it pains to say this, the Yankees are playing good baseball and even the Mets are showing signs of life at this point in the season.

As my colleagues were there on September 11 and frankly those of us who are still in a period where there was great deal of mourning, there is also celebration today. We are celebrating all kinds of things. We are celebrating, as I said, more development than we have seen. People are investing in New York City, and we are seeing, as my colleagues might have expected or perhaps not, in the period about 9 months after September 11 we have an explosion of children being born in New York City. Can there be any tribute to our optimism greater than that?

So when we return to New York City, we return not as an act of mere commemoration. It is indeed a celebration. We are celebrating our democracy. We are celebrating our resilience; and above and beyond that, we are celebrating our national victory over fear and over the terrorists. Here we will stand 1 year after an attack that seemed to be almost debilitating, and we will find that it takes more than just a body shot to our national psyche to keep us down. We have returned better than ever, and I want to thank all of my colleagues for joining us in New York City to celebrate that fact.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from the 17th Congressional District, the County of the Bronx, the borough de Bronx, the city and State of New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank my colleague for yielding to me, and I want to also pay tribute to the gentleman from New York (Mr. GILMAN) and to the gentleman from Texas (Mr. ARMEY), the majority leader, and of course, the gentleman from New York (Mr. RANGEL), who is the dean of the New York delegation who has led us so well for so many years.

This was not only a strike on September 11 at New York City. It was not, of course, only a strike in downstate New York or in the suburbs of New York City. It was a strike at our great Nation, at our country. The terrorists thought that they could make us cower and that we never again could perhaps regain the greatness that we always have known. New York City has been the symbol of this country for so many years, but they were wrong.

They were wrong because in the aftermath of September 11 all our colleagues rallied around New York and asked how they could help. All of us that represent downstate New York and the cities and the suburbs, we were all, as all New Yorkers were, touched by the tragedy. All of us had friends and constituents and people who lost their lives on September 11. All of us attended funerals of people who lost their lives on September 11, and the pain is still there. As my colleagues have said, the wound is still there.

The wound does not allow us to just throw up our hands and walk away. The wound makes us even more determined to rebuild and to show the world what New York really means; and so shortly thereafter, the United States Congress, the House of Representatives, the Senate, the President, and everyone rallied around New York; and massive dollars were put into New York to help us rebuild, and that process is continuing and will have to continue and we will be coming back to Congress for more because we need to keep the rebuilding process going.

The spirit of New York, if anyone had any doubt about how New Yorkers would react, they need not have any doubt anymore, because what we saw in the next days, and I was in New York City as well on September 11, and the day right after, as my colleague from the Bronx also said. The only way a person could get back to Washington was driving, and I remember having a staffer driving me because my car was here, parked at the airport; and as we went over the George Washington Bridge and looked to see where the towers used to be, instead of the towers we saw smoke rising because, if my colleagues remember, there was smoke coming out for a long, long time, for weeks and weeks and months after the tragedy. When I looked at that, I just broke down because it was just too much to fathom.

In the time since, every time I go back and forth every week, I always look at the skyline and something, of course, is missing and it really is an open wound. But we will rebuild, and of course, the towers, terrible tragedy, but not as tragic as the human life that was lost on September 11, not only in New York City but in Pennsylvania and at the Pentagon as well.

So the Congress coming to New York on September 6 is a very, very fitting tribute and one that we are very, very grateful for because it shows that a year later, the country, the Congress has not forgotten and what more fitting tribute than to bring the people's House to the people of New York City.

I hope that this will be the start of many, many events coming to New York City to show solidarity with the people of New York. I hope both the Democratic and Republican national conventions come to New York City. I hope the Olympics come to New York City, and I hope that people from all over the country continue to flock to New York City and tourism and other things because the city has so much to offer.

Mr. Speaker, I said in the aftermath of September 11 on the floor of this House that I was never prouder to be an American and never prouder to be a New Yorker; and just the way the events of September 11, I said at the time, have awakened a sleeping giant, the United States, and we will win the war on terrorism, make no mistake about it. It will take many years. It will take a lot of money, but we will win that war. We saw something with New Yorkers, not only the heroism on September 11 and afterwards where everybody just pitched in, firefighters, policemen, iron workers, average citizens coming in; but the fact that the camaraderie that we saw, the true caring of human beings, the banding together to show what New Yorkers are made of, that made me very, very proud.

I will be there on September 6 with my colleagues, and I hope that a majority of colleagues from both sides of the aisle, from all parts of the country come to New York on September 6; and I hope people do not only just come and leave. I hope people stay because the symbol of New York is a symbol of this country.

The terrorists, again, did not hit New York because it was New York. They hit the World Trade Center because of the symbolism of what that center meant in the United States. So I am pleased to join with my colleagues to thank my colleagues and to say I will be seeing them all on September 6 in New York, New York, the greatest city in the world.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York (Mr. NADLER). This tragedy had to occur in somebody's congressional district, and it was the 9th Congressional District; and those people are so fortunate that he is leading the way not only for the economic recovery but for the compassionate recovery of what occurred in that area.

Mr. NADLER. Mr. Speaker, I thank the distinguished gentleman for yielding to me.

Mr. Speaker, on September 11, in the morning, I was down here in Washington, and I was preparing to come to the office 10 to 9:00 in the morning; and I put on the television to see the weather, and I saw the picture of the World Trade Center burning, and then as I watched, the second plane flew in, and I knew immediately it was a terrorist attack. I knew I had to get home because it was the middle of my district.

I went immediately to the train station because I assumed they would ground the airplanes and probably the cars would not get across the bridges and tunnels. It took me most of the day to get home, and as the gentleman from New York (Mr. ENGEL) mentioned, I often take the train to go home to New York, and it was always my habit, as we approached the city, to look out the right side window to see how far away I could see the first buildings, the World Trade Center usually, about 20 miles away, even before I got to Newark.

When I looked out the window and saw a huge plume of smoke where the towers ought to be reaching up, I do not know, 10, 20,000 feet and then spread half across New Jersey, it was the most heartrending sight one could ever see. Then when I got out of the train finally, took from 10 a.m. to 6 p.m., normally a 3-hour trip, at Penn Station, 33rd Street and 8th Avenue, not a car in sight. Nothing moving. Not a person in sight on the middle of a weekday. It was an incredible sight to see like a scene from some surrealistic movie.

Mr. Speaker, this attack on New York was an attack on our country, not just on New York.

□ 1430

It is altogether fitting that Congress should meet again in New York as it did in 1790, I think it was, 1789, for two purposes. One, to show solidarity with the people of New York and certainly the voting of $21.4 billion in funds to help the City and State rebuild, to help heal the wounds, is a great show of solidarity by the Congress of the United States and the President on behalf of the people of the United States. It is a great show of solidarity with the people of New York. But meeting in New York is a very symbolic act of solidarity which is very, very fitting on the first anniversary of this great tragedy.

The second purpose, I think, in meeting in New York is frankly to say to the terrorists you have not accomplished anything. You may have wounded us, you may have hurt us, you may have cost 3,000 lives for whom we grieve, but you have not seriously hurt the United States, you have not defeated the United States, and you will not.

It is said, Mr. Speaker, that after the attack on Pearl Harbor when his officers came to congratulate Admiral Yamamoto of the Imperial Japanese Navy for the successful attack, it is said that he replied to them "Gentlemen, I fear that all we have done is to awaken a sleeping giant and fill it with a terrible resolve," and so it proved to be.

Mr. Speaker, the attack on our country, the attack on New York, I think, has awakened a country that may have been sleeping or partially sleeping to the threat posed to all of us by Islamic terrorism.

John F. Kennedy in 1960, referring to the struggle with Communism at that time said, we were in the middle of a long twilight struggle. I very much believe and fear that we are, again, in for a long twilight struggle until we defeat the scourge of terrorism in this new century. But it is a battle we must wage, a battle we must win if civilization is not to descend into anarchy and if our freedoms are to be preserved.

I know we will win this. We will fight this war resolutely. We will win it, and we will make the people who started it rue the day that they awakened a sleeping giant and filled it with a terrible resolve. So I very much support this resolution.

Mr. RANGEL. Mr. Speaker, further reserving the right to object, I yield to our final speaker, the gentleman from New York (Mr. MEEKS), the 6th Congressional District in the Borough of

Queens, and to thank him for the great contribution that he has made to the City and our country.

Mr. MEEKS of New York. Mr. Speaker, I would like to thank the gentleman from New York (Mr. RANGEL) for yielding, who is the head of our delegation and who thought of this idea and who germinated and understood how important it would be to New York. He is a great leader, a great New Yorker, a great American who served his country in war and serves his country now in the House of Representatives. And I want to thank him for his vision to make sure that we revisit New York and understand what took place on September 11.

Likewise, I want to thank my colleagues, the gentleman from New York (Mr. GILMAN) and the gentleman from Texas (Mr. ARMEY) for also coming and working together, for surely it is with their help and with their guidance that we are able to do this, and it reminds me of why I am so proud to be an American.

It is September 11. No one can ever forget where he or she was on that day. It was an election day in New York City, a beautiful day in New York City, and I was late getting ready because I was in the gymnasium working out on a bicycle. And someone ran over to me and said a plane had just hit one of the towers. At that time, not thinking that it was any other attack but an accident, I got off the treadmill and began to look at the television set. And as I watched, another plane hit the next tower. Then everyone knew what was going on.

But the first thing that I saw in that time of crisis, which renews one's spirit in its darkest hours, was that everybody in that gymnasium, every soul in that gymnasium, rallied around that television set, holding hands and coming together because we knew that we were in a dark hour. And as the World Trade Center towers fell, we saw everyone, and this is why this symbolic move on September 6 is important, Democrat, Republican, black, white, Asian, Puerto Rican, all coming together to feel the same, rich or poor, feeling and coming together to say we are going to stick together.

And then as I heard days after, the families of the victims who lost their lives in the World Trade Center and how proud and erect they stood in the most darkest of their hours, and what it told me was that still in all in the darkest of hours they realized and understood that the morning would come. So when faith would be questioned above and beyond anything they could imagine, and I went into my district that following Sunday, church after church, synagogue after synagogue was packed with people going in to pray to try to renew their faith as to making sure that there would be a better tomorrow and that there would be a tomorrow.

And I saw people, and I talked to young people who lived on the Rockaway peninsula who at Beach Channel High School could look over the bay and see the World Trade Center, some of these kids who are poor and had never had the opportunity to visit Manhattan themselves come together and cling together as Americans. And it said to me that this great country in time of its darkest hours will renew its faith and stand together in time of crisis. And on September 6, by the people's House coming to New York City, what it is saying to the people of New York is yes, have faith, have confidence, keep the faith. We see what you are doing in New York.

We know what you have had to overcome, and we are with you. We will stand with you. We are a great City, we are a great people, we are a great Nation. And I thank the Members of this House in its infinite wisdom to make sure that the New Yorkers who have fought so hard to keep their faith, who fought so hard to make sure that they are indeed a resilient city will see their representatives from all across this Nation come in a symbolic mood where the first Federal Congress met and share in what I see as the beginning again and the continuation of our great Nation.

Mr. RANGEL. Reclaiming my time once again, under my reservation of objection, Mr. Speaker, I want to thank the gentleman from New York for his comments.

Mr. Speaker, I want to once again thank the majority leader, the gentleman from Texas, especially for introducing this resolution, but to also point out that, as he leaves the Congress, I, for one, want to say that I have enjoyed the exchanges that we have had. I think that he and I, to a lesser degree, prove the greatness of the country, as we come from different parties, we have different political views, but we have never allowed that to interfere with our friendship.

The gentleman from Texas has always maintained his sense of humor, especially at times when this House has needed it during times of tension. And so while we will not miss the negative vote that he has always given for good legislation, we certainly will miss the positive contributions that he has made to make this a better House to work in for the great people of our great Nation.

Mr. RANGEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 448

Whereas on September 11, 2001, thousands of innocent people were killed and injured in combined terrorist attacks involving four hijacked airliners, the World Trade Center, and the Pentagon;

Whereas in the aftermath of the attacks, thousands more were left grieving for beloved family and friends, livelihoods were compromised, and businesses and property were damaged and lost;

Whereas the greatest loss of life, personal injury, and physical destruction occurred in and was sustained by the City of New York;

Whereas government and the American people responded decisively, through the bravery, sacrifice and toil of the fire and rescue workers, law enforcement, building trades, caregivers, armed forces, and millions more who through their many expressions of care and compassion brought forth comfort, hope, and the promise of recovery;

Whereas the City of New York attended to the aftermath of the destruction of the World Trade Center with profound respect for the victims and compassion to the survivors;

Whereas the City of New York has invited the Congress to meet at the site of the original Federal Hall, where the First Congress of the United States convened on March 4, 1789: Now, therefore be it

Resolved by the House of Representatives (the Senate concurring), That, in remembrance of the victims and the heroes of September 11, 2001, and in recognition of the courage and spirit of the City of New York, the Congress shall conduct a special meeting in Federal Hall in New York, New York, on September 6, 2002.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 439. Concurrent Resolution honoring Corinne "Lindy" Claiborne Boggs on the occasion of the 25th anniversary of the founding of the Congressional Women's Caucus.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3210. An act to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 3210) "An Act to ensure continued financial capacity of insurers to provide coverage for risks from terrorism," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SARBANES, Mr. DODD, Mr. REED, Mr. SCHUMER, Mr. GRAMM, Mr. SHELBY, and Mr. ENZI to be the conferees on the part of the Senate.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 434. An act to provide equitable compensation to the Yankton Sioux Tribe of

South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands.

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

The message also announced that the Senate agrees to the amendments of the House of Representatives to the joint resolution (S.J. Res. 13) "Joint resolution conferring honorary citizenship of the United States on Paul Yves Roch Gilbert du Motier, also know as the Marquis de Lafayette.".

The message also announced that pursuant to Public Law 107-171, the Chair, on Behalf of the Majority Leader, announces the appointment of the following individuals to serve as members of the Board of Trustees of the Congressional Hunger Fellows Program:

The Senator from Iowa (Mr. HARKIN).

The Representative from North Carolina (Mrs. CLAYTON).

PROVIDING FOR REPRESENTATION BY CONGRESS AT A SPECIAL MEETING IN NEW YORK, NEW YORK ON FRIDAY, SEPTEMBER 6, 2002

Mr. ARMEY. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 449) providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 449

Resolved by the House of Representatives (the Senate concurring), That (a) The Speaker of the House of Representatives (in consultation with the minority leader of the House of Representatives), with respect to the House of Representatives, and the President pro tempore of the Senate (in consultation with the majority leader and the minority leader of the Senate), with respect to the Senate, may send such Representatives, Senators and other appropriate persons, to a special meeting of Congress and related events to be held on Friday, September 6, 2002 in New York, New York, in remembrance of the terrorist attacks of September 11, 2001, and in recognition of the City of New York for the harm it sustained and its recovery.

(b) Attendees under subsection (a) shall be led by the Speaker and the minority leader of the House of Representatives, and by the President pro tempore (or his designee), majority leader, and the minority leader of the Senate.

SEC. 2. The Congress may accept the offer of the City of New York and entities controlled by the City of New York to host and pay the expenses of the Congress to prepare, attend, and participate in the special meeting of September 6, 2002, and related events of that day, referred to in Section 1.

SEC. 3. On behalf of the Congress, the officers of the House of Representatives and the officers of the Senate may make arrangements with the City of New York and other required entities and agencies for participation by the Congress for the purposes designated under this resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the

TRIBUTE TO THE HONORABLE TONY HALL, MEMBER OF CONGRESS

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, I rise today to honor my friend and colleague, the gentleman from Ohio (Mr. HALL), as he prepares to accept the nomination to be the ambassador to the Food and Agriculture Agencies of the United Nations. However, I also rise with great sadness with the realization that this Congress will soon be losing one of its finest Members.

TONY HALL is a man who shows courage in the face of adversity, integrity when there is little to be found, and compassion when the prevailing winds blow with malice. Throughout his career, TONY HALL has served as the moral conscience of Congress on issues of hunger and poverty. Where there is hardship and injustice, TONY HALL is the first to enter the fray and the last to leave.

During his career in Congress, TONY HALL has often traveled into the heart of distress. When Ethiopia was in the grips of a massive famine in the years 1984 and 1985, TONY was there experiencing firsthand the grim reality that most of us viewed at a distance on our televisions. When reports started trickling out about the growing deprivation in North Korea, it was TONY who was first there; TONY who traveled there five more times, who kept his colleagues and this Nation apprised of the situation. When no one else had the courage to do it, it was TONY who traveled to Iraq, against the advice of many, to assist the suffering of the innocent.

The proverb that says "Ease and honor are seldom bedfellows," applies to no one more than TONY HALL. It should come as a surprise to no one that TONY HALL has been nominated for the Nobel Peace Prize, and I imagine as TONY embarks upon his journey as ambassador to the United Nations Food and Agricultural Program, we shall hear his name again mentioned in connection with the Nobel Peace Prize.

The departure of TONY HALL from this Congress will leave a void of leadership on the issue of hunger. There are many here who have worked with TONY and supported his efforts in world hunger, but there is none who have so relentlessly and singlemindedly reminded this Congress and this country of our moral obligation to honor the least among us.

As we honor TONY's effort on the eve of his departure, I want to urge my colleagues to step into the space that will be left by TONY's departure and make sure to take up the reins of leadership in combating world hunger.

Not only is TONY HALL a man of conviction and passion, but he is also a man of deep and abiding faith. All of us know that TONY knows that his convictions are grounded, first and foremost, in his faith in a God who has charged us to feed the hungry and to shelter the naked. It is this faith that gives TONY such grace in the face of adversity and his firm kindness when he stands alone.

Mr. Speaker, there is a passage in the book of Isaiah that I love that I think bespeaks of TONY. It is Isaiah 58:10–12, and it says: "And if you give yourself to the hungry and satisfy the desire of the afflicted, then your light will rise in darkness and your gloom will become like midday. And the Lord will continually guide you, and satisfy your desire in scorched places, and give strength to your bones; and you will be like a watered garden, and like a spring water whose waters do not fail. Those from among you will rebuild the ancient ruins; you will raise up the age-old foundations; and you will be called the repairer of the breach, the restorer of the streets in which to dwell."

Mr. Speaker, TONY HALL has given himself to the hungry, and his light has risen in the darkness. In so doing, he has spread the light to his colleagues, to this Nation, and has shed light on the actions that must be taken to satisfy the desire of the afflicted.

□ 1445

Because of his effort, the gentleman from Ohio (Mr. HALL) is what the Book of Isaiah calls the repairer of the breach, the restorer of the streets in which to dwell; and for this, Mr. Speaker, I rise to thank and honor our friend collectively, the gentleman from Ohio (Mr. HALL), and to wish him God's blessing and Godspeed as he departs for Rome to continue his lifelong dream and work to ease the blight of world hunger.

Mr. GILMAN. Mr. Speaker, will the gentlewoman yield?

Mrs. CLAYTON. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I thank the gentlewoman for bringing this to the floor. I have considered it an honor to serve with the gentleman from Ohio (Mr. HALL) on the Select Committee on Hunger for many years, and I know of the gentleman's dedication to try to rid the world of hunger. I know of no better man to take on the ambassadorship to the U.N. for world hunger. I commend the gentleman from Ohio

(Mr. HALL), and wish him well in his new endeavors.

TRIBUTE TO THE HON. TONY HALL

(Mr. HOBSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOBSON. Mr. Speaker, I came here about 12 years ago, and I know the gentleman from Ohio (Mr. HALL) a little differently because you all know him from here. I know him from back home. We share a region called the Miami Valley.

I must tell Members from the day I was elected until this day, I believe that the gentleman and I have worked toward for the betterment of that area. We have not competed against each other, we have competed together for that region.

The gentleman has another goal that we have heard about with hunger, world hunger, local hunger. He has always worked within the district for the good of the people, the district, the State of Ohio, and the world as a whole. We are all better people because TONY HALL has served here. The world is going to be better because of the service he goes on to now.

I think there has been no one in this House that we can say any better is a true gentleman than the gentleman from Ohio (Mr. HALL) and I wish him well in his new endeavor, and I thank him for working with me together over the years in our districts. Certainly he and Janet are on to a wonderful new experience.

Mr. Speaker, just a last comment. He is in great shape; I am not. To show you how far our friendship goes, he did 100 push-ups the other night on behalf of AT, and I did not do 100, but I counted for him.

TRIBUTE TO THE HON. TONY HALL

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, I rise along with my dear colleagues, the gentleman from Virginia (Mr. WOLF), the gentlewoman from North Carolina (Mrs. CLAYTON), the gentleman from Ohio (Mr. HOBSON), the gentlewoman from Ohio (Mrs. JONES), to pay lasting and precious tribute to our colleague and dear friend, the gentleman from Ohio (Mr. HALL).

Without question, this is a gentleman of the House. I think his appointment to the Committee on Rules and to that particular position which governs our deliberations as a body is a testament to the talent that he brought to our institution and the manner in which he has executed it and risen in the esteem and effectiveness as a Member of Congress.

He has served honorably through the quarter century that he has given to the Congress and the people from his home district in the Greater Dayton, Ohio area.

At every fork in the road, he has elevated this institution as a person and also as a political figure. So rarely do those that really do good get their day in the sun. The newspapers tend to cover those who may have strayed from the straight and narrow, and it is particularly a pleasure today as an Ohioan to say that this man deserves our attention and appreciation.

I have watched the gentleman change over the years. Not that the goodness and the caring was not always there, but I have watched a depth of concern grow for the suffering of the world, in forgotten places, whether it is in our country or on another continent far from places where most Americans will ever travel. He has confronted the face of suffering. He has held dying children in his arms, and he has not walked away from that horrible, horrible thought of the fragility of life and what he as a person can actually do about it.

I have seen other concerns become less important. Some, in fact, of the unimportant moments that consume so many of the hours here sometimes in a day, the procedural motions and all of the paraphernalia that goes with holding together a large country like ours and its governing institutions, but for TONY, the depth, the passion that has grown because of what he has seen globally has transformed him and helped transform us through association with him to a greater understanding of our needs as a people; and, indeed, the people of the world.

As I watched TONY with some of his friends, Mickey Leland and Bill Emerson, also distinguished Members for so many years, I watched them travel together and bring back to us knowledge that we did not have. Through those efforts to change the way in which America feeds the world, to change the way in which we look at hunger, to create the Congressional Hunger Center here, to bring the young people of America to the Nation's capital and to get them engaged in one of the most perplexing and searing experiences one can have, and that is to meet people who do not even have enough food to survive for one day.

We see in Afghanistan and other places people eating dirt to stay alive, and it is difficult to imagine that any one of us in our own lives would ever confront that and actually take on a position where that becomes the norm. Yet to fly in the face of that and to keep walking is what the gentleman from Ohio (Mr. HALL) means to me.

I have seen the photos of his trips to Africa and North Korea; and I have also been with him in Dayton, Ohio, going through empty food pantries, trying to work with farmers that he tried to get to donate apples, and to bring those into these feeding centers, to try to find excess food that would be available in that metropolitan area and to make it available to the poor in his region and our State. He has been unrelenting in his commitment.

I think that the President has made an extraordinary appointment in nominating the gentleman from Ohio (Mr. HALL) as our ambassador to the Food and Agricultural Organization of the United Nations. He will do a stellar job.

I know that every single person whose life he touches and what he brings back to us and what he can tell us about how to be better citizens of our country and the world is something that he alone can do and will do for us. We will again be the better for that service.

I will say to the gentleman from Ohio (Mr. HALL) that I will miss him very much. As an Ohio Member, I have truly enjoyed serving with him, getting to know him and Janet, his family, the kindness and the gentlemanly behavior you have always demonstrated toward me, and I know is the same with every other Member in this Chamber. God bless you and keep you safe and healthy in your travels. It has been my honor to serve with you, TONY. Come back often. You are a great American. Some day that Nobel Prize, I hope, will find its way into your home.

TRIBUTE TO THE HON. TONY HALL

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, we come to the House floor today to pay tribute to our colleague, and Members will have an opportunity to put extensions in remarks, and we are doing this because obviously Congress is coming to a quick end tomorrow.

TONY was nominated by President Bush, and it is a credit to President Bush, too, nominated as the United States Ambassador to the United Nations Food and Agricultural Agencies located in Rome, Italy. He is awaiting final Senate confirmation which could come in a matter of days. Once confirmed, he will resign as a representative of the Third Congressional District of Ohio and take his post in Rome where he will be able to continue his passionate work as a leading advocate for ending hunger and promoting food security around the world. He will be greatly missed in the House, but I know he is absolutely the right person to serve as the United States representative for the World Food Program, the Food and Agricultural Organization, and the International Fund for Agricultural Development, all of the agencies of the United Nations, which assist in international hunger relief.

This is a bittersweet time for me. I have had the privilege and honor to call TONY my colleague for two decades. He is my best friend in Congress. We have been part of a small group that has met for 20 years. Bill Emerson was in that group. Bill and TONY went to Ethiopia in 1994. A lot of what the gentleman from Ohio (Mr. HALL) did, he got me interested in a lot of issues that I would not have been interested in. That group meeting every Tuesday for 20 years, almost like a band of brothers, has made a big difference in certainly my life.

TONY is one of the most decent, sincere, dedicated people that I know. And he finds his strength from his deeply held faith in God and by following the teachings of Jesus. In the Bible, in James, it says be not only hearers of the word, but also doers.

Micah 6:8 said, "He has shown you, O man, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God." TONY HALL is a man of great faith, and he not only hears the word, but he does the word. He takes his faith into his every-day life, whether it be hunger in Sudan or Ethiopia, whether it is conflict diamonds in Sierra Leone or Liberia, whether it be human rights in Kosovo or Bosnia or anywhere else in Eastern Europe. I would say, and the record should show, the gentleman from Ohio (Mr. HALL) is the best example that I know of what Jesus was talking about in Matthew 25 when he talks about feeding the hungry, visiting the sick, serving the poor. So as I said, it will be bittersweet to see my good friend leaving this body; but clearly I think everyone can say on both sides of the aisle, Republican and Democrat, well done. You have been faithful to all those principles.

TRIBUTE TO THE HON. TONY HALL

(Mrs. ROUKEMA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, I would like to associate myself with the remarks of the gentleman from Virginia (Mr. WOLF), and as the Republican on the Select Committee on Hunger, I learned to know and love and work with TONY HALL.

Mr. Speaker, I do not know if it was mental telepathy, but just about an hour ago I found TONY on the floor of the House to tell him how regretful we were that he was leaving us. I had no idea, however, until I watched television in my office that this was coming up today.

TONY, you are God's blessing for the world and we wish you well, and we know you are going to help all of the hungry children of the world.

□ 1500

TRIBUTE TO HON. TONY HALL

(Mrs. JONES of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I rise today to celebrate the opportunity and the blessing that has been given to my colleague and the dean of the Ohio Democratic delegation, TONY HALL. Unlike some of the speakers who came before me, I have not known him 20 years. I have only known him the past 4 years when I came to the U.S. Congress as the Representative for the 11th Congressional District of Ohio.

I found him to be all of the things that the colleagues, my colleagues, have previously said, kind, gentle, hard-working, with a deep concern for people all across this world. Very recently I had an opportunity to travel to Egypt, and I traveled with the AED as well as USAID to look at educational opportunities in these communities for women and girls. It was an eye-opening experience for me to have that opportunity because I realized and saw for myself the poverty and the lack of living standards that these poor young men and women were living in, and children. The educational programs provided an opportunity for young girls to get educated, because in Egypt, that is not a place where education is something that is done for young women out in the rural areas.

I also had an opportunity to understand what we can do through education and education in providing food and shelter to people to deal with some of the hate that exists in this world. I am so pleased to have had an opportunity in my 4 years to have TONY HALL as my counsel, to have him as a guide, to have him as a model, to have him show the type of leadership, because we are going to come to learn in this Nation that we cannot just fight terrorism in this country by dealing with it by war. We have to fight terrorism by dealing with it with younger people and teaching them the importance of feeding the hungry, of giving water to the thirsty or giving clothing to those who do not have any clothing.

I just want to take my hat off to you, TONY HALL, and say it has been a privilege to serve with you in the House of Representatives. And since you are going to Rome, Italy, save me a bed. I am coming to see you.

TRIBUTE TO HON. TONY HALL

(Mr. SAWYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAWYER. Mr. Speaker, this is a happy-sad day that TONY brings to us. For the last 33 years, the genuine gentleman from Ohio has been serving the people of his community and our State and our Nation in remarkable ways, first in the Ohio House and then in the Senate, then it was as a Member of the United States Congress.

I first met TONY, although he probably will not remember it, in 1974 when I was working on behalf of a gubernatorial candidate all over the State and he was all running all over the State seeking to become Secretary of State. Fortunately he did not succeed in that because he may never have gotten to the United States Congress and to the threshold of the enormous opportunity and responsibility that lies before him today. I am confident that he will continue to be a tireless voice for alleviating global hunger.

TONY has been nominated for the Nobel Prize three times. One of these days the recognition that that will bring, people will understand the value of what he has done and can do with that recognition, and we will not be talking about nominations anymore. I have got much more written here, but I know you are trying to get as many people onto the floor as you can, Mr. Speaker. I will put much of this in the RECORD.

I just want to say that his service to his constituents has been remarkable as well and his work on behalf of Wright-Patterson Air Force Base and the whole history of aviation in Ohio has been a signal to the rest of the Nation of what the Miami Valley has meant in the course of this past century in going from the dune to the moon. It has been an amazing contribution.

But above all and more important than anything else, TONY HALL sets the standard for decency and integrity among us in the House. He models the behavior he expects of ally and adversary alike, and of each, he seeks to make a friend by being one.

Thank you, TONY. It has been an honor for all of us to serve with you as a Member of this House and for us from Ohio, in particular, as a member of your delegation. I hope we all will join in wishing TONY HALL the very best in his future endeavors because it will make our lives and our world a better place.

Mr. Speaker, for the last 33 years, TONY HALL, the Gentleman from Ohio, has been a true public servant for the people of Ohio, first, as a member of the Ohio House of Representatives, then as an Ohio State Senator, and for the last 24 years, as a member of the United States Congress. Through his dedication to improving human rights and ending hunger, he has served this institution, the Nation, and the world in exemplary fashion. I am confident that in his new position as the U.S. ambassador to the food and agriculture organizations in Rome, the Gentleman from Ohio will continue to be a tireless voice for alleviating global hunger. He will also bring honor and dignity to his new position, just as he has done in the House.

With the TONY HALL leading our government's effort to promote food security across the globe, the United States will be well represented in the international community. Most important, those who face each day with hunger will have his talents and energy focused on addressing their burden. He has always had passion for ending hunger. Now, as the ambassador, he can be single-minded in his efforts and fight for this cause with the full support and authority of the United States government.

Nominated for the Nobel Peace Price three times, Mr. Hall's humanitarian efforts abroad are well known. However, I believe it is important to highlight the important work he has done on behalf of his constituents throughout his tenure in Congress. He has been a staunch supporter of Wright-Patterson Air Force Base, his district's largest employer, and has been a leader in the House in support of the Air Force Science and Technology program, which is headquartered at Wright-Patterson.

He also drafted legislation that was enacted in 1992 which created the Dayton Aviation Heritage National Historical Park and established the Park as a unit of the National Park System. The law also established the Dayton Aviation Heritage Commission to assist federal, state, and local authorities in preserving and managing the historic resources in the Miami Valley that are associated with the Wright brothers and aviation. This park will serve as a reminder for generations of Dayton residents and visitors from around the world about the importance of Dayton as the birthplace of aviation.

More important and above all else, he sets the standard for decency and integrity among us in the House. He models the behavior he expects of ally and adversary alike. And of each he seeks to make a friend by being one.

Thank you. TONY.

It has been an honor to serve with you as member of the Ohio delegation and as colleagues in this House for the past 16 years. I hope we will all join in wishing him the very best in his future endeavors.

TRIBUTE TO HON. TONY HALL

(Mr. MCGOVERN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCGOVERN. Mr. Speaker, I am very honored to join with my colleagues here this afternoon as we pay tribute to TONY HALL.

Mr. Speaker, in my opinion TONY HALL is not only a great Congressman, he is a great man. As all of my colleagues in this Chamber know, he has long been a leader on human rights issues, on hunger issues in this Congress.

I first got to know TONY HALL when I was a staffer for the late Congressman Joe Moakley, and I recall when I worked for Congressman Moakley receiving Dear Colleagues from Congressman HALL on the issue of East Timor. TONY HALL was the first voice to speak out on behalf of the people of East Timor. He was a courageous voice in condemning the atrocities that were inflicted on the people of East Timor by the Indonesian military. He organized letters, he organized protests, he organized press conferences, and he fought very hard to help those people secure independence in East Timor. I believe very strongly that the independence that East Timor has ultimately achieved in large part and the support that the United States provided that independence movement in large part is due to the efforts of TONY HALL.

He also, and I have been very proud to work with him on this issue, has been a great leader in helping us with the global food for education initiative, the so-called George McGovern-Bob Dole Global Food for Education Initiative. TONY HALL knows that hunger in this world is essentially a political condition and hunger amongst children is immoral. We need to do something about it.

We have the ability to do something about it. He has steadfastly challenged this Congress and this country to do more to alleviate hunger around the world. I am particularly proud to have him as an ally on this effort because this whole effort is about making sure that every child in the world gets at least one nutritious meal a day in a school setting.

He knows that children who are hungry cannot learn. He also knows that when you introduce a meal in a school setting, more children actually go to school. And so he is committed not only to eliminating hunger amongst children, but to universal education, for all children. He knows that that is how we create a more tolerant, a less violent, a better world for all of us.

While he is well known for a lot of his international efforts, he has also been a champion to fight hunger and homelessness right here in the United States. We all recall his vigils and his walks with homeless people throughout this city. I remember one evening when he launched a hunger fast to try to get us to do more in this Congress to help the homeless and to help those who were hungry. He has been the conscience of this Congress.

I want to just say that I cannot think of anybody more qualified to go on to become the United States Ambassador to the U.N. Food and Agriculture Organization in Rome than TONY HALL. It is a job that my friend and my teacher, my mentor, George McGovern, had for many years. I think TONY HALL will be excellent in that position and will use that international forum to not only compel the United States, but to compel the rest of the world to do more on these issues. I am honored to follow him on the Rules Committee where he served with such distinction for many years.

We will miss TONY'S passion and resolute commitment. I hope that Congress does not forget the hungry of the world when he is no longer here to speak out on their behalf. He has done incredible things here in the United States Congress, and I expect that he will do incredible things in his new position. I thank him very much for his service and his friendship.

TRIBUTE TO HON. TONY HALL

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, TONY HALL has taught us well, and I want to be a good student. Though he is going to Rome, let me tell you that Afghanistan, Mr. HALL, cannot wait until you get to Rome. Sub-Saharan Africa cannot wait until you get to Rome. Parts of Texas cannot wait until you get to Rome. Because there is hunger in these places, in fact, famine, and we are delighted that Congressman HALL will be able to be not a soldier but a general in the war against hunger.

I guess I have had the privilege of knowing you longer than my tenure in this House, because in the 18th Congressional District, TONY HALL was like the other Member that represented us. Your good friend, Congressman Mickey Leland, made sure that we understood the issues of hunger and that we are, in fact, our brothers' and sisters' keeper.

I remember hearing about Bill Emerson. I remember hearing about the Select Committee on Hunger and now knowing the story of, before I got here, your hunger strike when efforts were made to dismantle that committee. What we learned is that hunger grows. It will not end on its own. And TONY you did not mind whether it was in style or was out of style, or that the issue was a popular issue today. He consistently stayed the course. The congressional hunger fellows that many of you may have had experiences with or may not, today are a steady force of trained, young, bright professionals, committed, passionate souls who today fight hunger because of their spiritual guru in TONY HALL.

He certainly spoke out and still speaks out against homelessness, but he finds causes and he never lets up. The blood diamonds that many of us may not have been exposed to, I remember traveling to Botswana and the issue was made known, "We are doing good things with our diamonds. What is that TONY HALL doing?" I am glad I joined his cause, because when you see the dismemberment of children or the amputation, the severe violence against children over these diamonds in countries in West Africa, you know that his heart and his mind and his message and his actions were in the right place.

So for me it has been, I guess, sort of a continuing of the spirit that we knew in Texas. Mickey Leland would not have wanted this day to pass without his words being offered: Thank you, friend. Thank you, friend.

And so as a student of yours, though my efforts may not have been as they should have been, let me recommit myself, and when I say that, I suggest that all of us are filled with the responsibilities of this body, but let me recommit myself to the teacher's teachings and that we will fight against hunger. We wish you well and we know that you, in your role in Rome, will fight hunger around the world. We thank you. A heavenly and sincere farewell to you and your wife. We thank you for all of your service.

TRIBUTE TO HON. TONY HALL

(Mr. McNULTY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McNULTY. Mr. Speaker, TONY HALL has been a friend of mine for 14 years. When you have seen firsthand the enormity of the hunger problem on the face of this earth, you can understand the commitment of TONY HALL. My first appointment by a Speaker of this body was to the Select Committee on Hunger. And 3 months after that appointment, I was in Sudan with the late Mickey Leland, with GARY ACKERMAN, with my late friend Bill Emerson. And the year before, 1988, 280,000 people starved to death, in that one country. I often use these numbers to illustrate that we do not have our priorities straight.

□ 1515

If a few thousand people die in Europe, we get involved in the conflict, as well we should. In the homeland of my ancestors, in Ireland, over the past 30 years in what we call "The Troubles," between 3,000 and 4,000 people have died, and I think that is a lot of people; and I am glad we are getting involved in trying to bring peace in that conflict. But in that one year, in one country on the continent of Africa, 280,000 people starved to death, and somehow we do not as a Nation have the same commitment to doing something about that.

In that one nation over the period of the last 20 years, more than 2 million people have starved to death on what I call the forgotten continent.

I can tell you, if any one person in this body has worked consistently to make sure that is not the forgotten continent, and that men, women, and children do not starve to death on this Earth of such great bounty, it is TONY HALL.

I can remember when I was in one of those camps down in southern Sudan, it was either Muglad or Wau, and I looked out and I could see huge numbers of people, as far as the eye could see. They didn't know where their next meal was coming from. It was very moving to me.

I remember turning to TONY's friend, Mickey Leland, who was chairman of the Select Committee on Hunger at the time, and saying to him, "Mickey, how are we going to solve all of this?" And he quoted the Talmud. He was giving me a lesson. He said, "Mike, if you save one life, you save the world." That was his message to me, that each one of us has to do our own small part in trying to correct horrendous situations like that.

No, none of us can solve all of the problems of the world. But if each of us helped in our own small way with whatever talents or resources we have, we could solve these problems. That is something that TONY HALL has reinforced with me, and I thank him for it.

I know there are many others who want to speak, Mr. Speaker; so I will abbreviate my remarks. I will just conclude by saying that TONY HALL is one of the people who lives the prayer of St. Francis and especially understands and demonstrates that it is in giving that we receive. He understands the fundamental principle, that life is to give, not to take.

I salute you, my friend; and thank you for your commitment to all the needy men, women, and children of this world.

TRIBUTE TO THE HONORABLE TONY HALL, A TRUE SERVANT-LEADER IN THE FIGHT AGAINST POVERTY AND HUNGER

(Mr. RAMSTAD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RAMSTAD. Mr. Speaker, I rise today to pay tribute to one of the greatest humanitarians to ever serve in the United States Congress. Congressman TONY HALL has inspired not only the Members of this body, but people throughout the entire world, with his untiring and selfless dedication to helping people in need.

Congressman TONY HALL is a true servant-leader. The minute you meet TONY and talk to him about what drives him, you can easily understand why he has been nominated three times for the Nobel Peace Prize, in 1998, 1999 and 2001. Tony Hall's pioneering leadership for hunger relief programs and international human rights is legendary.

After 24 years as a Member of Congress and all TONY HALL has accomplished around the world, it is easy to understand why President Bush has nominated him for the rank of ambassador as the United States representative to the United Nations Agencies for Food and Agriculture, the organizations that deal with international hunger relief.

TONY has served the people of his district in Ohio and the people of this great country with great distinction for 24 years, and we are all going to miss TONY as he leaves the House for his new position. But TONY will remain uppermost in our hearts and minds as he continues the important work which has defined his legacy here in Congress.

TONY HALL has left his mark, Mr. Speaker, in so many ways. I have worked closely with TONY on many legislative initiatives, including hunger, housing, and welfare issues. It has been a real privilege to serve with TONY as a member of the Congressional Hunger Center, of which TONY HALL is the founder and chairman.

But, Mr. Speaker, I am even more privileged to have come to know TONY and his wonderful wife, Janet, on a personal level and to witness firsthand their important ministry to people in need.

Although examples are endless, one example leaps to mind. TONY and I have shared many fond memories of the 20th anniversary dinner of our Greater Lake Country Food Bank in Minneapolis, which I helped found. My good friend, our good friend, Hy Rosen, who is the director of this important food bank in Minnesota, asked me to find a keynote speaker for the 20th anniversary celebration in April of 2000. Of course, I thought immediately of my friend TONY HALL.

I will never forget TONY's stirring, inspiring message to the overflow crowd of volunteers, staff, and community leaders that night at the Greater Lake Country Food Bank. TONY's message inspired all of us to work even harder to help fight hunger, inspired all of us to move to greater heights in the war against hunger, inspired all of us to greater accomplishments on behalf of people in need.

TONY HALL has that effect on people. TONY can motivate like few others because of the way TONY HALL speaks right from the heart. TONY HALL walks the walk.

Mr. Speaker, TONY HALL calls it his "personal passion" to fight hunger and improve conditions for the neediest people, both here at home and abroad.

TONY and I have been active with an organization in Washington called the People's House. I keep a card in my wallet which talks about the People's House as a place where any person in our Nation's Capital can call and talk to a friend, anytime, night or day. The friends who made this possible know that TONY is a true friend to so many people, a person who every day sees his calling as helping the less fortunate and bringing the light of the Lord into all areas of this life.

Those of us who know TONY are very pleased to see him continuing the important work he began here in Congress 24 years ago in his new position as ambassador to the U.N. organizations that deal with international hunger relief. I might add, this is a great appointment by President Bush. He could not have chosen a more qualified, a more compassionate or a better individual to serve in this important position.

I am truly privileged by TONY's friendship the past 12 years; and I wish, on behalf of all of the people of Minnesota, TONY and Janet all the best in their new challenges. May God bless you both, TONY.

TRIBUTE TO THE HONORABLE TONY HALL

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, as a member of the Ohio delegation, I have been proud to call TONY HALL "leader." He has led our delegation with dignity and honor, and he has brought to this House a grace, a wisdom, and a compassion which has filled up this House.

It is a work of mercy to feed the hungry, and TONY's life has been about showing mercy and about bringing together resources to make sure that hungry people would be fed in this country and around the world. When TONY saw a challenge, where hungry people did not have their needs met, TONY put himself on the line physically to challenge the sensibilities of our Nation and the world. So it is no surprise that President Bush would tap him to be our ambassador to the world on issues of food and issues of hunger.

In his new capacity, Ambassador TONY HALL will be the one who people will look to from all over the world to deal with the challenges of world hunger. He will be the one who will make sure that the World Food Program is effective and that food gets to people who need it. He will be the one to make sure that the Food and Agricultural Organization coordinates its efforts to those most in need. He will be the one to make sure that the International Fund for Agricultural Development uses its resources to grow new opportunities for people around the world.

Many of us in life are challenged to step up to our responsibilities to help others; and when we are, we sometimes hear the echo of words that come from Scriptures; and the echo that TONY HALL heard years ago was of a question that asked, "When I was hungry, did you feed me?" TONY HALL has been able to stand before this Congress and say, yes, and next he will stand in Rome in front of the world and answer again, yes.

What a blessing it has been to work with you, TONY. God bless you. We all in this Congress look forward to working with you to continue to address the challenges of hunger, which are so serious all over this world and which your large heart encompasses, all the people of the world, so that they can share in the abundance which we know this world has.

Thank you, TONY HALL.

TRIBUTE TO THE HONORABLE TONY HALL

(Ms. CARSON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CARSON of Indiana. Mr. Speaker, I wanted to run to the floor when I saw that this was under way to give my own personal and special tribute to the Honorable TONY HALL, who has had now a higher calling, one of ambassador to the United Nations for Food and Agricultural Agencies, all the way in Rome. What a beautiful place to be, in Rome.

I have not known the Honorable TONY HALL for as long as many of you have, and certainly do not hail from the same State from which he is elected; but TONY HALL has the kind of spirit that radiates across boundary lines, geographical lines, State lines.

When you understand TONY HALL, the genuine spirit that he emits, knowing that he has reverence for the world's hungry and for food safety around the world, you cannot help but consider him a comrade, a colleague, regardless of the State from which he hails.

TONY HALL is willing to make this sacrifice, to give up a very safe seat in the United States House of Representatives, to go on to what I consider, TONY, to be a higher calling, but a much more important calling. As the speaker before me recalled from Scripture, "When I was hungry, did you feed me?"

I do not want to get emotional about this, but when you think of all of the children around the world who need a TONY HALL there to advocate there for them, kids who go to bed hungry, kids who wake up hungry, kids who are dying from malnutrition, kids who are orphans, perpetuated by the unabated rise of AIDS and HIV and tuberculosis and lack of immunization, when their lives could be spared and their bellies could be fed, to think that you and your lovely wife are going to go out along the highways and the byways and truly be a Good Samaritan along life's highway, you remind me often of what I describe for people like you: you live not just because, but you live for a cause, living for God's people.

You are reminiscent of the poet that said, "If I can just help somebody as I am walking through, then my living will not be in vain."

The nice thing about this, TONY, is for you to be able to sit here and hear this, because oftentimes when we lose a Member, we are memorializing the Member.

□ 1530

But you have an opportunity to sit here and know that people love you and that people are going to miss you. I know one thing, after a speech like this in tears on national television, you better give me your address so I can come to Rome and tell the security there, I know TONY HALL, I am one of his former colleagues, and to be one of your colleagues.

But to make this kind of commitment to good work, you are what I call an unsung hero, one that does not seek the spotlight. But you certainly will eternally have the high light, and that is far more important than prizes and accolades and all of those kinds of things. You have a high light that radiates eternally.

TRIBUTE TO THE HONORABLE TONY HALL

(Mrs. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. EMERSON. Mr. Speaker, I rise to join with my colleagues in paying special tribute to an extraordinary individual and one who has touched the lives of the entire Emerson family over many, many years.

Mr. Speaker, I recall the friendship, the very close and deep friendship that TONY had with my late husband, Bill; the faith that they shared together, the friendship they shared together, and the compassion that TONY showed, and the deep faith and love TONY showed for Bill as he held our hands and Bill's hand through a very fatal illness and his subsequent death. All of this in spite of the fact that his own son was very seriously ill.

But I guess that should not come as a surprise to anyone who knows TONY, because I can think of no person who is more of a hero and more of an inspiration than TONY HALL, not only in the work that he has done throughout his years in Congress, but truly, there is no one who has put a more human face on the issue of hunger, both here and abroad.

Mr. Speaker, I remember so very well the time that TONY went on the hunger strike so that he would finally make all of us, or all of our colleagues; I was not in Congress back then, but Bill Emerson and everyone understood that there was a very serious problem in the United States and in the world, and that Congress needed to get serious about this issue. He made his mark. He made it not only here in the Congress, but throughout the United States and throughout the world.

As TONY leaves his position here in Congress and he leaves his position as the chairman of the Congressional Hunger Center, he has left me in a bit of a precarious position, because TONY had recommended that I become the new chairman of the Congressional Hunger Center, and I do not think I have ever been so scared of anything in my life, nor so intimidated, because no one, no one could possibly fill the shoes that you, TONY, have. You are a remarkable person, and I am so pleased that the President understood the gift that you have for people, the gift you have for life, the faith, the leadership, the inspiration that you give to all of us.

As you move to this very, very important job in Rome, all of us will be with you in spirit, be praying for you, and know that there is no better person to help the world understand the investment we must make to rid the world of hunger.

Thank you, TONY, so much for being our friend, for being our colleague, and for being a real and genuine person who always cares more about others than yourself.

RECESS

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 34 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1900

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SWEENEY) at 7 p.m.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 25, 2002.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am transmitting herewith a letter received on July 25, 2002, from the Honorable Virgil H. Goode, Jr., requesting that, effective August 1, 2002, his party designation be changed to Republican on all publications and databases of the House of Representatives.

With best wishes, I am.

Sincerely,

JEFF TRANDAHL,
Clerk of the House.

COMMUNICATION FROM THE HON. DAVID E. BONIOR, MEMBER OF CONGRESS

The Speaker pro tempore laid before the House the following communication from the Honorable DAVID E. BONIOR, Member of Congress:

WASHINGTON, DC,
July 25, 2002.

Hon. DENNIS J. HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a civil subpoena for documents and testimony issued by the United States District Court for the District of Columbia.

After consulting with the Office of General Counsel, I will make the determinations required by Rule VIII.

Sincerely,

DAVID E. BONIOR,
Member of Congress.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Ms. PRYCE of Ohio, from the Committee on Rules, submitted a privileged report (Rept. No. 107–615) on the resolution (H. Res. 502) providing for consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 502 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 502

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed 90 minutes equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security. After general debate the bill shall be considered for amendment under the five-minute rule.

SEC. 2. (a) It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Select Committee on Homeland Security now printed in this bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived.

(b) No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in section 3 of this resolution.

(c) Except as specified in section 4 of this resolution, each amendment printed in the report of the Committee on Rules may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

(d) All points of order against amendments printed in the report of the Committee on Rules or amendments en bloc described in section 3 of this resolution are waived.

SEC. 3. It shall be in order at any time for the chairman of the Select Committee on Homeland Security or his designee to offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules not earlier disposed of or germane modifications of any such amendment. Amendments en bloc offered pursuant to this section shall be considered as read (except that modifications shall be reported), shall be debatable for 20 minutes equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. For the purpose of inclusion in such amendments en bloc, an amendment printed in the form of a motion to strike may be modified to the form of a germane perfecting amendment to the text originally proposed to be stricken. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

SEC. 4. The Chairman of the Committee of the Whole may recognize for consideration of any amendment printed in the report of the Committee on Rules out of the order printed, but not sooner than one hour after the chairman of the Select Committee on Homeland Security or his designee announces from the floor a request to that effect.

SEC. 5. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The question is, Will the House now consider House Resolution 502.

The question was taken; and (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 502.

The SPEAKER pro tempore. The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), the ranking member of the Committee on

Rules and a member of the Select Committee on Homeland Security, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, H. Res. 502 is a structured rule providing for the consideration of H.R. 5005, the Homeland Security Act. The rule provides 90 minutes of general debate, equally divided and controlled between the chairman and ranking minority member of the Select Committee on Homeland Security. It provides an amendment in the nature of a substitute recommended by the Select Committee on Homeland Security now printed in the bill be considered as an original bill for the purpose of amendment.

The rule also makes in order only those amendments printed in the Committee on Rules report accompanying the resolution. Each amendment may be offered only in the order printed, may be offered only by a Member designated in the report, shall be debatable only for the time specified, equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or demand for division of the question, except as specified in section 4.

The rule waives all points of order against consideration of the bill and waives all points of order against such amendments. The rule provides the select committee chairman or his designee en bloc authority. Finally, the rule provides one motion to recommit, with or without instructions.

Mr. Speaker, America has awakened to a new era in global affairs. As President Bush has noted, we are today a nation at risk to a new and changing threat. We can no longer hold on to the belief that between our shores we are free from the violence of the world. On September 11, we learned all too well and at all too high a price that a stark new reality confronts us as a Nation. We should not doubt that our freedom, our liberty, our very way of life are under attack.

Today we take bold and necessary steps to reshape our Government to reflect the sad new reality. The process we will use to take these steps is a fair and equitable one, and I would like to take a moment to clarify for my colleagues that while this is a structured rule, this rule reflects the negotiated recommendations of the House leadership, both Republican and Democrat, and will allow for a spirited debate on issues focused on homeland security and creation of the Department of Homeland Security.

It is jointly recommended by the Speaker of the House and the minority leader and their wisdom ensures that all opinions will be considered and all issues pertaining to homeland security are aired because, Mr. Speaker, the victims of terror do not care about political differences. This nonpartisan process for consideration of H.R. 5005 illustrates that the security of our homeland simply cannot and must not be a partisan issue. Of course, this does not mean that difficult decisions have not been made during the process of crafting legislation, and it does not mean that more difficult decisions have yet to be made here tonight and tomorrow. I had the great honor to serve on the House Select Committee on Homeland Security, which just last week considered and marked up the underlying legislation. Under the fair and steady leadership of the gentleman from Texas (Mr. ARMEY), Chairman and leader, the Select Committee heard from some of the Nation's most selfless, accomplished, and dedicated public servants. We also considered the expert recommendations made by the 12 committees of jurisdiction in the House and incorporated the vast majority of their recommendations. The Select Committee process was fair, open, and inclusive. We continue that practice today with this rule, which was crafted through joint effort by the majority and the minority.

The world we live in today is a very different place than it was in 1947 when the last major reorganization of our Government took place. At that time, as noted by President Truman, the world was a place "in which strength on the part of peace-loving nations was still the greatest deterrent to aggression." Today our military might, while still vital to our national defense, is no longer sufficient in and of itself to deter aggression and to ensure our national security.

The perpetrators of terrorism have recognized that our greatest strength, the open society in which we live, also makes us vulnerable to their attacks. They are shadowy and agile, and they target us like predators without distinction between military target and ordinary citizen. The war against terror is fought not just on battlefields abroad but in our very own cities and towns. We must be able to respond at home in a strong, informed, coordinated and agile way.

The creation of a new Cabinet-level Department is only one part of our national response, but it is a very essential part. The new Department will consolidate vital preparedness, intelligence analysis, law enforcement, and emergency response functions that are currently dangerously dispersed among numerous Federal departments and agencies.

And while no price is too high to ensure the long-term security of our Nation, this Department will be created in a way that eliminates redundancies and inefficiencies so that costs are minimized.

Specifically, this bill takes steps to protect our borders through inclusion of the Coast Guard, the Customs Service, and several important functions of the Immigration and Naturalization Service and the Animal Plant Health Inspection Service. The bill ensures that the new Department will engage and coordinate with State and local first responders by including FEMA and the Secret Service. The bill promotes world-class research and development in the public and private sectors. And importantly, the bill preserves our essential freedoms and liberties while ensuring that the Department is open and accountable to Congress and the American people.

This legislation ensures that the new Department will have all the tools it needs to successfully protect and defend America in the near future and as the threat continues to evolve. An essential tool in the new Department's arsenal will be its flexible and motivated work force that can respond swiftly to this shifting threat.

The legislation maintains all the basic Federal employment protections, including protections for whistleblowers and the right to collectively bargain, while allowing additional agility in key selected areas so that the new Department can attract and retain the best and brightest and move personnel when national security requires. The success of the new Department will be inexorably linked to the abilities, motivation and hard work of its employees, and this bill respects and protects their rights.

President Truman described the period following World War II as "an age when unforeseen attack could come with unprecedented speed." Fifty-five years later that description applies equally well. Once again, Congress must heed the call of our President and take up an historic task.

Thus far the Government has shown immense resolve and dedication, going to extraordinary lengths to respond to the terrorist threat. We are safer than we were on September 10, but as the Government's efforts reach the limits of their own bureaucracies, we have to rethink that structure so that our Nation can be even stronger, smarter, and better prepared.

I urge all my colleagues to take the measure of the task very seriously. In no uncertain terms, our work will protect the American people. I hope that we will have an open, honest, and productive discussion. While we may disagree on the minutia, at the end of the day, Mr. Speaker, we must not let the safety and security of the American people be a casualty of this debate.

☐ 1915

I urge all my colleagues to support this fair rule and the underlying bill, and I will now I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, creating the Department of Homeland Security is a bipartisan idea and it remains a bipartisan priority, but building a big new 170,000 person Federal bureaucracy is a difficult project. After all, our goal is not just moving boxes around inside the government. It is to increase the security of the American people in the real world. To succeed, Democrats have reached out to work with the administration. Indeed, the entire House of Representatives has worked overtime to make sure we could get this bill to the President's desk by September 11.

On a bipartisan basis, Members have recommended a number of important, good faith changes to the administration's original proposal. Republican leaders on the Select Committee on Homeland Security unfortunately rejected many of these bipartisan improvements, and they snuck in several ideological and partisan side issues, controversial riders that, in some cases, actually threaten the effectiveness of the Department of Homeland Security.

That is why I, along with so many others, have argued from the beginning that the entire House needed the opportunity to vote on these controversies on the floor. While this rule is not as open as I would have liked, it does allow Members to address the most critical issues. Several Democratic amendments would add to the underlying bill to increase the effectiveness of new departments.

The Waxman amendment, for instance, would strengthen the White House Office of Homeland Security. According to the General Accounting Office, creating the new department will take five to 10 years, and even after it is completed, much of the work to prevent terrorist attacks would be done in other agencies like the CIA and the FBI. The Waxman amendment would ensure that the White House Homeland Security advisor has the authority and the clout to coordinate all of these different governmental agencies to increase the security of the American people.

Additionally, the gentleman from New Jersey (Mr. MENENDEZ) has an important amendment to ensure the new department shares information with State and local first responders, the people on the front lines of homeland defense, our local police and fire.

Other amendments address the controversial provisions in the underlying bill. For instance, this bill would undercut the Freedom of Information Act. And it would harm whistleblower protections. That means that if an employee wanted to alert the public to wrongdoing in the Department, the way Coleen Rowley blew the whistle on failures in the FBI investigation on Zacarias Moussaoui, he or she might be subject to retaliation from supervisors. That is not just wrong, it is bad for effectiveness of the Department of Homeland Security.

Fortunately, the gentlewoman from Illinois (Ms. SCHAKOWSKY), the gentleman from Ohio (Mr. KUCINICH) and the gentlewoman from Hawaii (Mrs. MINK) have an amendment to fix this problem and I urge its support.

Additionally, this bill contains language that actually turns back the clock on important civil service protections that may be crucial to the ideology of some on the other side of the aisle. But it will harm the effectiveness of the new department.

Mr. Speaker, the civil service system protects Americans against a spoils system that would allow politicians to reward their friends and supporters with important government jobs. It is crucial that the Department of Homeland Security be staffed by professionals, not by cronies of whichever party happens to hold the White House.

The gentleman from California (Mr. WAXMAN) and I have an amendment to restore the Committee on Government Reform's bipartisan agreement to preserve current civil service protections for the new department. And the gentlewoman from Maryland (Mrs. MORELLA) has an amendment to ensure employees retain their collective bargaining rights unless their responsibilities change. Both of these amendments will protect existing workplace rights while preserving the national security flexibility the President needs.

So unless you want to unnecessarily weaken the current civil service system, I urge you to support them and to oppose the two amendments that the gentleman from Ohio (Mr. PORTMAN) has offered on the other side of this issue. Additionally, Republican leaders have, hidden in this bill, a provision that protects companies that sell harmful products to the public. This language, which was not requested by the President, goes well beyond current law and gives companies a get-out-of-jail free card, no matter how malicious, wanton or reckless their conduct may have been. Fortunately, the gentleman from Texas (Mr. TURNER) has an amendment to ensure companies have legal protection to invest in security technology, but without leaving the public helpless against every scam artist who claims to have a security-related product. It deserves our support.

Also, the rule make in order an amendment by the gentleman from Minnesota (Mr. OBERSTAR) that would maintain the December 31, 2002 deadline for airline baggage screening. This is a controversial issue that was added to the underlying bill by the Select Committee and was not requested by the President and it deserves full consideration on the House floor.

Mr. Speaker, I must note with disappointment, however, that Republican leaders are blocking a common sense corporate responsibility amendment by the gentlewoman from Connecticut (Ms. DELAURO), the gentleman from Texas (Mr. DOGGETT), the gentleman from Massachusetts (Mr. NEAL), the gentlewoman from New York (Mrs. MALONEY) and the gentleman from Texas (Mr. TURNER). Their amendment would make corporate tax dodgers ineligible for government contracts at the new department because if a corporation will not pay its own taxes, then it does not deserve to be paid with other people's taxes, but Republican leaders insist on protecting this loophole.

In the interest of time, I will leave it to others to discuss the other important amendments. I do want to mention a couple of additional ongoing issues surrounding the bill, however. First, we must ensure that America's immigration adjudication functions, like family reunification and adoption, operate effective, efficiently and fairly regardless of which Homeland Security Department structure becomes law, we must continue to welcome these law abiding immigrants who helped build America even as we focus on protecting ourselves here at home.

Second, Congress must honestly address the question of how much it will cost taxpayers to create this new department. The nonpartisan Congressional Budget Office put the price tag at $4.5 billion and the bipartisan leaders of Senate Budget Committee have warned that it could add significantly to future spending. Nevertheless, Republican leaders in the House cling to the fiction that they can create a 170,000 person Federal bureaucracy without spending any additional money. It is no small irony that the same Republicans who often campaign against the government now want to create a bigger Federal bureaucracy but refuse to pay for it.

Mr. Speaker, let us be honest with the American people. Our national security is not cheap and neither is homeland security. Cooking the books will only drag us deeper into debt and hurt the credibility of the new department we are creating. Make no mistake, Mr. Speaker, creating the Department of Homeland Security is a bipartisan priority, so I urge my Republican colleagues to join us in cleaning up this bill so that we can pass it with the overwhelming bipartisan majority of needs.

Mr. Speaker, I would like to take a moment to repeat something I have said on several occasions in another context. The creation of this new department is something that I personally feel very strongly about. On September 11 the plane that crashed into the Pentagon struck the office of my wife's boss. My wife is an Army officer. Fortunately, she was not in his office on that day. Her office is several miles from the Pentagon. But two people who work for my wife and her boss were killed on September 11; and I want to make sure that nothing like that can ever happen again in this country.

This country deserves the strongest possible protection against terrorist attacks. And I hope that on a bipartisan basis we will rise to the occasion and create a strong, effective new department in the next two days.

Mr. Speaker, I reserve the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from the great State of Florida (Mr. DIAZ-BALART) and fellow member of the Committee on Rules.

Mr. DIAZ-BALART. Mr. Speaker, I rise today to speak on this fair and balanced rule that has been crafted to facilitate that historic act.

For weeks now the House has been working its will through committee after committee markup. The House further worked its will by agreeing to the creation of a Select Committee on Homeland Security to review the recommendations of all the committees of jurisdiction. And now the Committee on Rules has been given the task to preserve the efforts that have been made to keep this a fair and open process, and that is exactly what we have done.

The terrorists and dictators of the world who seek the demise of the United States thought that September 11 would change America, but Americans have not changed. This Nation is full of true heros. Brave men and women who love freedom and will not tolerate those who wish to destroy the freedoms we hold dear. But there has been a change the terrorists did not expect. We are reorganizing. Just as this country has done after previous disasters, we are meeting the challenges before us.

This Act reforms our response to threats at home just as we reformed the military following World War II to meet threats abroad. I am very pleased to see that a strong intelligence analysis component is included in the underlying bill so that the information generated by the intelligence community will best serve our national security. Additionally, given the enormous flow of goods and services that we see coming through our community in South Florida, I have long been a proponent of strengthening the resources of Customs agents to support the enormous task they are entrusted with. I am pleased to see the steps taken to strengthen this role, and I will continue to work to ensure that all of our Nation's airports and ports of entry have the resources to keep America safe.

Mr. Speaker, we are meeting the challenge. I urge strong support for the rule and the underlying bill.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Mr. Speaker, I rise in opposition to the rule and in opposition to the underlying bill.

We do not need another Federal department. Real homeland security means economic security for our workers and our families here at home. It means good jobs. It means pensions they can depend on and it means health benefits that are there for all.

It is really interesting that the administration has put this glossy report together on this new department, which would be the third largest bureaucracy in the government of the United States, over 170,000 people, and how do we know how many billions of dollars and still counting.

Basically, this is political cover over an operational problem. We know that the CIA and the FBI did not do their job completely. We knew Osama bin Laden was the number one enemy. We did not know where he was.

Right after 9–11, what did the FBI and the CIA do? They start advertising in The Washington Post for people who could speak Arabic and Pashtun because we were not properly staffed inside the departments and agencies that should have been functioning. So now we will create another department. Does that mean they will have people who can translate? Will we have people who can do the job? Will they get the computers so they can communicate?

The FBI and CIA are not in the Homeland Security Agency where we have the problem. They are not even part of the solution. What we will get from a new department, when we most need coordination in this country at every level, we will get chaos.

I bet the people here on the floor of today have never been about setting up a new Federal department. We set up the Department of Energy. Are we energy self-sufficient today? No, we are not. We set up the Department of Education. Are our kids reading scores going up? No, they are not.

So now at a time when we need really refined targeted efforts across this world to deal with the problem that we have not faced before, we are setting up the Department, and will it have the staffing that is necessary. Just on one agency that they will try to roll in here APHIS, the Animal, Plant Health Inspection Service from the U.S. Department of Agriculture. The problem is we do not have enough inspectors at the border. Are you going to give us more money for inspectors or are you just going to ship the box over to another department?

The problem is not a new department. The problem is making the agencies that exist function. I am proud of the people in New York City.

□ 1930

We could have had 50,000 die. We had 3,000 dead. They did their job. We saved 47,000 lives in this country. Our local law enforcement people, they need training at the local level. They do not need a new Federal Department to do that. They need training moneys to go down to the locality. We do not need to cut the law enforcement budget, what this administration is doing in terms of cops on the beat.

In terms of FEMA, I do not want to put FEMA in this Department. FEMA works. It took us 10 years to fix FEMA up. So why do we want to stick it in this big agency of 170,000 people and we cannot even get direct communication to the top? We fought World War II, we did not need this Department. We defeated the Communists and the Soviet Union. We did not need this Department to do it. We fought the Persian Gulf War. Why do we need this now?

This is political cover for operational problems the administration does not want to solve. Vote against the rule and the bill.

Ms. PRYCE of Ohio. Mr. Speaker, I am very pleased to yield 3 minutes to the distinguished gentleman from Texas (Mr. THORNBERRY), who has worked so hard on this issue over the years before it became something that the Nation was riveted upon.

Mr. THORNBERRY. Mr. Speaker, I thank the gentlewoman for yielding me the time and for her considerable contributions as a member of the select committee, as a member of leadership and as a member of the Committee on Rules.

Mr. Speaker, I rise in support of this rule. We will have a number of issues to go through, a number of amendments. I hope my colleagues can remember that what we are trying to do is create an integrated Department of Homeland Security to make us safer. This is no place for political agendas. This is no place for conspiracy theories. This is no place to be pointing fingers of blame. This is a place to work on a bipartisan basis to make this country safer. That is the only reason to create this Department and that must be its goal.

Mr. Speaker, this is an unusual procedure. It seems to be coming rapidly; but in fact, a lot of work has gone into getting this proposal together, and I want to take just a second to acknowledge some of the people who have made this possible, starting with the bipartisan Hart-Rudman Commission, cochaired by Senators Hart and Rudman, including our former colleagues Speaker Gingrich and Lee Hamilton, who took 3 years to look over the next 25 years at the security threats we face and said number one is homeland security and what we ought to do is create a new Department of Homeland Security. We are doing that.

Secondly, I want to thank my staff who has spent many, many hours on this, particularly Kim Kotlar, who has spent probably more hours working on this issue than any other person inside or outside Congress.

I also want to thank the sponsors of the proposal, the gentlewoman from California (Ms. HARMAN), the gentlewoman from California (Mrs.

TAUSCHER), and the gentleman from Nevada (Mr. GIBBONS), who worked on a nonpartisan basis and a bicameral basis, along with Senator LIEBERMAN and his colleagues, to get this proposal here; and it is an example of where we have come together, many of us in the Congress, to make us safer.

Other colleagues have worked on this: the gentleman from Connecticut (Mr. SHAYS), the gentleman from Ohio (Mr. PORTMAN), the gentleman from Georgia (Mr. CHAMBLISS), and of course, the gentleman from Ohio (Mr. PORTMAN) in a variety of capacities has been invaluable.

I think we all ought to thank the Select Committee on Homeland Security under the gentleman from Texas' (Mr. ARMEY) leadership for the work that they have done; but, Mr. Speaker, I also want to thank the President of the United States because he could have tinkered around the edges and just offered a few token changes, but he took on a tough job. He said we want to do this right and that is leadership. That is the kind of leadership we expect from a President, and it is the kind of leadership we are going to have from this House over the next 2 days if we are going to develop this Department with the tools it needs to keep us safer.

I think we can do it, but I think it is going to be a challenge, and I hope that as a body we are up to it.

Mr. Speaker, I rise in support of the rule. A number of amendments will be made in order as the Speaker promised. As we go through them one-by-one, it will be important for us to remember that we must have a coherent, integrated department that works. I urge our colleagues to keep the bigger objectives foremost in our minds and considerations.

At the beginning of the debate on this bill, however, I think that it is important for me to acknowledge some of the people who brought us to this day—who, in addition to the Rules Committee, have helped prepare this proposal before us.

My colleagues have been very generous about me introducing a bill to create a Department of Homeland Security in March 2001. But, of course, I simply borrowed the idea from the Commission on National Security/21st Century, more commonly known as the Hart-Rudman Commission. Under the leadership of its chairmen, Senators Hart and Rudman, and with the diligent work of an outstanding group of preeminent Americans as commissioners, including our former colleagues Lee Hamilton and Speaker Gingrich, who initially created the Commission, this Commission took three years to study American's national security challenges of the next 25 years. Aided by a first-rate staff that was directed by General Chuck Boyd, they concluded that our most important challenge has homeland security and unanimously recommended that Congress create a new department out of the dozens of existing agencies with some homeland security mission. It was their vision, courage, and persistence in pushing the idea which earns them the first accolades.

Going somewhat in chronological order, I want to thank my staff and especially Kim Kotlar. I suspect they thought that I was "tilting at windmills" when I told them a year and a half ago that I wanted to introduce a bill to create a new Department of Homeland Security. But, they swallowed their doubts and in the subsequent months have put many hours into brining that idea to reality. Ms. Kotlar, a retired Naval intelligence officer, has probably done more work on this proposal than any other person. This Congress and our entire Nation join me in owing her an enormous debt of gratitude.

Next, I want to thank the primary sponsors of the proposal in the House, Ms. HARMAN, Ms. TAUSCHER and Mr. GIBBONS. My already considerable respect for each of them has only grown during the past several months that we have worked together on this measure. I am especially grateful to my two colleagues from California that during all of the hours they refused to succumb to the temptations of partisanship. This has truly been a non-partisan cause. They have kept true to that higher calling of serving our Nation. And to them and to all of the cosponsors of H.R. 1185 and H.R. 4660, I am grateful.

I must point out that a number of our other colleagues have worked on organizational reform to fight the war on terror and have made invaluable contributions to this effort, among them are Mr. SHAYS, Mr. WATTS, and Mr. CHAMBLISS. And, of course, this effort has not only been non-partisan, it has been bicameral. I want to acknowledge and thank Senator LIEBERMAN, who has also worked on this idea for months, and his colleagues, Senators SPECTER and GRAHAM.

We should all thank and commend the Speaker for recognizing the daunting challenge before us and establishing the unique procedures to consider this bill. We should also thank Leader GEPHARDT for helping give us the sense of urgency with which we must act.

The Select Committee, under Leader ARMEY'S direction, has done an outstanding job, improving the President's proposal and my original proposal in a number of important ways. I want to especially thank Mr. ARMEY and Mr. PORTMAN for their outstanding efforts to do this right and to do it fairly with a chance for all to have input.

Finally, Mr. Speaker, I want to thank and commend the President of the United States and Governor Tom Ridge. They recognized the problems we face with dozens of different agencies having homeland security responsibility. They did not try to tinker around the edges or take a poll to see what was politically possible to do. Their approach was to try to do it right—that's leadership.

And now it is up to the House to follow the President's example of leadership. I trust that we will not be found wanting.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, I thank the gentleman for yielding me the time.

Never again. Never again will the United States be caught unawares and lay herself open to terrorist attack. That is certainly a principle that every Member of this House and Senate should take to mind as we move to plug the holes in our security.

Since last fall, I have supported the concept of a Cabinet-level status for the Director of Homeland Security so that he or she can get the funds, can compel the cooperation and coordination necessary among the Federal agencies, but now we are rushing through a bill to create the largest Federal bureaucracy in 50 years. Is that the proper response and answer, 170,000 employees who will ultimately some day be merged together into one joint building that will be built somewhere in the Washington, D.C., area? How will it work in the interim? Big question.

It does not deal with the two agencies most culpable and most problematic in the attacks, the FBI and the CIA, the failures of intelligence, the failures that were so much in the headlines before this Department was proposed by the White House that they changed their position.

Now it will plug the leaks that made us aware of the failings of the CIA and FBI by repealing whistleblower protections and FOIA efforts for this agency. It is going to take other effective agencies like the Coast Guard, who are doing a tremendous job with not enough resources, protecting this country and our coastline and also providing life saving and other services and merge them in. Will the Coast Guard still be able to function in that place?

This last week we heard of the failings of the Transportation Security Administration created by Congress to defend our traveling public and all modes of transportation last fall. The President fired his appointee, John Magaw, belatedly; but he did recognize his failings and fired him. They are behind schedule, over budget, and they are failing to put in place many critical aviation security measures and have even failed to begin to deal with other issues, port security and the like. They have a new head who I think is tremendous, the former commandant of the Coast Guard. He may do well, but let us give him some time there to bring it together and bring proposals to Congress.

The reaction in this bill to the failings of the Transportation Security Administration under Mr. Magaw is to waive the deadlines to provide critical explosives detection technology. Most Americans are amazed today that their baggage is not screened and the things that go in the hold of the planes are not screened. We set a deadline of the first of next year. Under this bill, there will not be a hard deadline. It will be delayed a minimum of 1 year. That means we can expect it will be 2 or more years before we can be sure there is not a bomb on the plane we are on board of. I think explosives are a bigger threat than a takeover of an airliner.

It will also waive contractor liability. Those people who failed to screen passengers adequately will be waived of liability.

If we want to commemorate the tragedy of September 11, we can do it better. We can do it by creating something that will work and defend America against real threats.

Ms. PRYCE of Ohio. Mr. Speaker, I am very pleased to yield 3 minutes to the distinguished gentleman from the great State of Ohio (Mr. PORTMAN), a member of the Select Committee on Homeland Security and someone who has devoted countless hours to this cause.

Mr. PORTMAN. Mr. Speaker, I thank the gentlewoman from Ohio (Ms. PRYCE) for not just her work on the rule, which I think is a good and fair and open rule, but also her work on the Select Committee on Homeland Security and adding so much to the effort to put together a Department that really will work.

Today, we are working on a rule that will consider what I think will be one of the most important pieces of legislation this House will consider in this generation. Our votes on the floor over the next day or day and a half will determine the performance of the largest single reorganization of government in our history. That is a daunting enough task and a huge consolidation challenge; but even more important is what this is all about, the mission of this reorganization, and that is to protect our families from the shadowy threat of terror.

We have all talked about some of our personal reflections on this. All of us as Members of Congress have had our constituents affected by the terrorist attack of September 11. In my hometown of Cincinnati, we had the misfortune of having a number of people who were in New York City on that fateful day. One was a young man who grew up down the street from me, and his funeral took place at a church a few houses down from my own home. There I met his young wife and his young kids; and as I have gone through this process, I keep thinking back on them. Never, never can we let our defenses down and let this happen again.

We cannot make ourselves immune from terrorism; but we can make our country safer, and we as Members of Congress have as our most fundamental responsibility to protect our shores and to protect the citizens of the United States; and this is what this effort is all about. This is to take this Federal effort to protect this country and streamline it and consolidate it and make sense so that indeed we can do our best as Members of Congress to respond to this threat.

It is not a partisan issue. It is not an issue that should divide us as Democrats or Republicans. It should bring us together as Americans to do our best.

I am encouraged by this rule. I want to commend the gentleman from Illinois (Mr. HASTERT), and I want to commend the gentleman from Missouri (Mr. GEPHARDT) for putting together a fair rule, 12 amendments on each side. I also want to commend the gentleman from Texas (Mr. ARMEY) because in the process of getting this bill to the floor he has led the Select Committee on Homeland Security with great distinction. It has been an open and fair process.

I also want to thank the standing committees because they all gave input to the Select Committee on Homeland Security. They did it in an expeditious way but also a thoughtful way.

What we ended up with, the underlying bill on the floor before us today that this rule will govern, is a good piece of legislation because it does create the kind of Department we need, and what kind of Department is that? One that has the flexibility and the agility to respond to this enormous consolidation challenge, 22 different agencies and personnel systems, but also the enormously difficult challenge of responding to the actual and deadly threat of terrorism.

I would urge, Mr. Speaker, as we go through this process that we retain those flexibilities, the flexibility to manage, the flexibility to budget, the flexibility on personnel, so that indeed we can as Members of Congress say that we have done our best, our very best to be sure that the Federal Government in every way possible is responding to the threat of terrorism and that we have the most efficient and effective way to do so.

The rule that creates this Department deserves our strong support, and I urge it on both sides of the aisle.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I think the record shows that I have tried to be extremely cooperative with the White House and everyone else involved in dealing with the aftermath of September 11. Within a week after we were hit, I helped, along with the gentleman from Florida (Mr. YOUNG), push a $40 billion supplemental through this place to give the President virtually all the money he needed to deal with the problem.

I appreciate the fact that the committee has corrected a number of problems with the original draft. I think that was very useful, but I am afraid that what we are about to do will actually in the end weaken our ability to respond to terrorist attacks.

This bill will still do nothing about the central problem of the FBI and its relationship with other intelligence agencies. This bill will create an additional lack of focus by the new Department that we are about to create; and I would point out that it is, in fact, parading around under false pretenses. It is called a new Department of Homeland Security, but in fact, at this point, there are 133 agencies and offices that have some responsibilities with respect to homeland security. This bill takes 22 of them, containing 170,000 employees, lumps them into one Department and says it is a Department of Homeland Security.

My question is, Who is going to coordinate the 111 offices and agencies left out? In my view, that is the central question which is not being answered by the legislation; and until it is, we are likely to, what the GAO told the committee, we are likely to have 3 to 5 years of absolute chaos.

It also does not do something about the principal problem that we still face. After September 11, I talked to every intelligence agency in this town. We discovered literally thousands of pages of documents lying on floors, sitting on file cabinets, sitting on people's desks of raw data, raw intercepts, not looked at by anybody. We need new translators. We need a reshaping of the FBI. That is not happening in this bill; and until it does, we are going to be making a significant mistake.

Ms. PRYCE of Ohio. Mr. Speaker, I am pleased to yield 3 minutes to my distinguished colleague, the gentleman from Georgia (Mr. LINDER), a valued member of the Committee on Rules.

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Mr. LINDER. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I rise in support of both the rule and the underlying legislation, H.R. 5005. This is a fair rule that will allow the House to work its will on the Homeland Security bill.

First and foremost, Mr. Speaker, I think we should all say thank you to our distinguished majority leader, the gentleman from Texas (Mr. ARMEY), and the Select Committee he headed. They have done a first-rate job under very difficult circumstances, and for that the people of this Nation owe them a debt of gratitude.

For 200 years, we have been the most open, casual, and free Nation in the history of the world. We had the most powerful military in the world and our economic strength was challenged by no other. Our people enjoyed civil freedoms and liberties of which other citizens could only dream. I daresay we took it for granted that we are Americans. September 11 changed that forever. Because of that day we feel and are vulnerable. Because of that day, we feel helpless.

In 1777, John Jay, America's first Chief Justice of the Supreme Court, and a vigorous defender of the Constitution, wrote, "Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be the first." Today, we have the opportunity to make things right. The Homeland Security Act of 2002 provides us with a chance to uphold what the Founders considered to be the Federal Government's highest responsibility, to protect the people of this country.

We will have a whole new list of heroes to look forward to. They will be first responders, firefighters, police officers, State troopers, and EMTs. They will be on the front lines here. All of us have in our memories seared images of heroism. Whether it was the doughboys at Vimy Ridge, or the Marines putting up the flag over Iwo Jima, or the boys at Pointe du Hoc climbing that treacherous cliff at Normandy under withering machine gun fire, only to take Europe and free it in 11 months.

I have a new image of that heroism. It is the image of 50,000 people scrambling in utter fear out of burning buildings for their safety, and another group of Americans in firefighter uniforms running into those buildings to save them. Those are the ones that this homeland security bill will start to look toward to get support for.

We must remember that no one department has been clearly entrusted with the security of this country. All will be involved. As such, I stand with the President and his efforts to create a new Department of Homeland Security. I support this bipartisan measure. I urge my colleagues to do the same to ensure that our Nation is prepared, and that the freedoms and liberties we hold dear are never threatened again.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. HASTINGS), a member of the Committee on Rules.

Mr. HASTINGS of Florida. Mr. Speaker, I thank the ranking member, the gentleman from Texas (Mr. FROST), for yielding me this time.

Mr. Speaker, I rise in lukewarm support of this rule. Even though over 100 amendments were submitted to the Committee on Rules, only 26, barely one-fourth of them, will be considered under this rule. I find this disturbing in light of the fact that a great many of the recommendations submitted by our subject matter experts were not included in the chairman's substitute.

I am speaking about the subject matter experts on the Committees on Government Reform, International Relations, Appropriations, Armed Services, Energy and Commerce, Financial Services, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means.

Now, I am proud of the fact that there was an opportunity to come together on this matter and to make it bipartisan. But an open rule would have ensured that the knowledge of these persons and their expertise were given due consideration by this body.

Some of the topics we will not be debating because of this rule include an amendment prohibiting the Department from entering into contracts with companies who incorporate outside the United States to avoid paying taxes; an amendment urging States to cooperatively develop uniform standards for State driver's licenses; and, finally, one of my amendments, which would have stricken language that grants the Secretary the unprecedented authority to prohibit the Inspector General from investigating fraud and abuse within the Department.

The rationale for this authority is that such investigations might compromise our national security. The Inspector General Act of 1978 applies to every major department in the executive branch, including the CIA and the military departments. To date, no one from these departments and agencies has come forward saying that the autonomy of the Inspector General constitutes a threat to national security. It is ludicrous to me that the Secretary of the new Department would be exempt from laws that all other Secretaries and directors must comply with.

Regrettably, under this rule, we will not have the opportunity to debate these matters. It should be obvious, when looking at the number and diversity of the amendments submitted, that this bill, as written, quite frankly, is not ready for prime time. If ever there was legislation that demanded an open rule, this is it. There is no stronger evidence of that than the fact that the chairman of the Select Committee himself has submitted three en bloc amendments to his own amendment.

Mr. Speaker, in closing, let me say that this is the most important legislation of the 107th Congress to date. We are reorganizing the Federal Government and creating a new Department. We have never, to my recollection, undertaken such a daunting piece of legislation hampered by the restrictions this rule places on us.

The American people are counting on us to create a Department that will do three things: Prevent terrorist attacks, reduce our vulnerability, and minimize the damage from attacks that do occur. It is not good for our constituents or our colleagues on the committees of jurisdiction to limit the number of amendments made in order.

Ms. PRYCE of Ohio. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. GEKAS), the chairman of the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary to testify on the Hastert-Gephardt rule.

Mr. GEKAS. Mr. Speaker, I thank the gentlewoman for yielding me this time.

As everyone knows, the Judiciary has, for almost 2 years now, been working on the expected division of labor in the Immigration and Naturalization Service. On the one hand, we want to streamline the enforcement part of Immigration and Naturalization Service while, at the same time, giving due attention to the process, naturalization and immigrant services, on the other side.

I am happy to report that the rule that we are considering now would allow debate, eventually, on the plan of the Select Committee on Homeland Security to take the enforcement border security portions of the Immigration and Naturalization Service and make it a part of the new Cabinet level of Homeland Security, while leaving in the Justice Department those functions to which we have alluded as being immigrant services, naturalization, process, et cetera.

This, in one fell swoop, accomplishes the bifurcation purpose with which we started this term's deliberations on the structure of Immigration and Naturalization Service. So we are in a position, even though the Attorney General and the director of the INS have on their own shifted the boxes around in the Justice Department between enforcement and process, and even though the Committee on the Judiciary has moved on its own to bifurcate the two segments of INS, we now are in a position to sanctify the whole process by incorporating that same bifurcation in the Department of Homeland Security.

I am pleased, then, Mr. Speaker, to support the rule and the underlying bill.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, I thank the gentleman for yielding me this time, and I commend him for his excellent service on the Select Committee.

Mr. Speaker, today we address a critical piece of the strategy to protect our homeland. Paraphrasing Dwight Eisenhower, "The right organization does not guarantee success, but the wrong organization guarantees failure." I would add that no organization, no organizing principle, guarantees chaos, a waste of scarce resources, and, ultimately, continued vulnerability.

The strategy is to prevent another 9–11, to shore up vulnerable infrastructure, and make certain we can respond, if necessary, with maximum effectiveness. We do this by giving the dedicated, capable people in the field the tools and structure to do the job.

A note on the history of this proposal. Last October, shortly after 9–11, the gentleman from Nevada (Mr. GIBBONS) and I, with numerous bipartisan cosponsors, introduced legislation to create a statutory office in the White House to coordinate and oversee homeland security. We felt the executive order establishing Governor Ridge's office was inadequate to coordinate more than 120 agencies and departments with some jurisdiction over homeland security.

Events have proved us right. Our colleagues, the gentleman from Texas (Mr. THORNBERRY) and the gentlewoman from California (Mrs. TAUSCHER) took a different approach, recommending the creation of a homeland security department of the sort recommended by the Hart-Rudman Commission in March 2001.

This May, the four of us and a bipartisan group from the other body melded our approaches. We proposed a Department of Homeland Security smaller than the one envisioned in H.R. 5005, and a strong White House counterterrorism coordinating office. Then, in June, the President unveiled his approach, that, in the version reported by the Select Committee, places all or part of 22 Federal agencies in a new Department of Homeland Security.

The bill also creates a Homeland Security Council in the White House, modeled after the National Security Council, to coordinate homeland security efforts across the Federal Government. The administration's proposal is a variation of our earlier bill, and I am pleased to be an original cosponsor.

Looking forward, rather than just describing more of what is in the bill, I would note several improvements in the base bill and in the manager's amendment and several amendments to be adopted and supported by the manager.

First, the establishment of a statutory Homeland Security Council in the White House. Second, the creation of a point of entry for thousands of companies with cutting-edge homeland security technologies, which must be deployed if our homeland is to be safe. Third, an amendment that passed the House 422 to 2 that requires the sharing of critical and reliable threat information across the Federal Government and down to State and local first responders. And, fourth, a sense of Congress underscoring the priority to fund trauma care and burn care with already appropriated bioterrorism money.

Mr. Speaker, as a mother of four, I know that perfection is not an option. The bill is not perfect. But it is very good, and I urge support of this fair rule and adoption of H.R. 5005.

Ms. PRYCE of Ohio. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. WELDON), a member of the Committee on Armed Services.

Mr. WELDON of Pennsylvania. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I thank our colleagues on both sides of the aisle for putting together this piece of legislation. I fully support it and support the rule which is before us.

I will have some comments about some of the amendments, but I wanted to stand up and set the stage as far as I am concerned for the legislation.

I have been in this body for eight terms, Mr. Speaker, and during those eight terms, my number one priority has been to focus on emergency response locally. I have been to every disaster the country has had in the last 16 years: Loma Prieta, Northridge, Hurricane Andrew, Hugo, the Murrah Building bombing in Oklahoma City, the World Trade Center in 1993, and I was at Ground Zero on September 13. I went there to try to get lessons that we could learn from the needs that we have to respond to both natural and manmade incidents of disaster. Those needs are, in fact, addressed by this bill, except perhaps in one case.

The number one overriding need is coordination of intelligence. Five years ago we proposed in our defense bill the creation of a national data fusion center. Unfortunately, while this agency calls for one focus on coordinated intelligence, it does not give the teeth necessary to force the FBI and the CIA to become totally involved, and it is going to require additional work. But intelligence is in fact an overriding priority for us to detect emerging threats.

The second, and perhaps most important, priority for our first responders is communication. We have no integrated system of communication for our first responders nationwide. Local fire and police cannot talk to each other. That is unacceptable. This legislation deals with that issue in a real way.

The third major priority is support for the first responder. Mr. Speaker, the first responder on every disaster in this country, be it natural or manmade, will not be the National Guard, will not be the FEMA bureaucrat, will not be the Marine Corps Seabird team. The first responder in every case will be someone from the 32,000 fire, EMS, and law enforcement departments who will be there when that terrorism act occurs or when that disaster occurs.

And as we develop this legislation, I would ask our colleagues to keep in mind that that should be our underlying principle; that we empower the first responder. They know what to do. They have been handling chemical plant fires and other disasters for years. Our job must be to empower them with the support they need.

I thank our colleagues and urge support for this rule and for this legislation.

□ 2000

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, we all want America to be more secure. The American people are entitled to it. We need to eliminate fear and insecurity in our post-September 11 Nation, but this bill will not accomplish a more effective defense of our Nation because there has been no analysis, no risk assessment, no sense of the actual causes of insecurity, no justification for sweeping changes in 153 different agencies.

Nothing in this bill will accomplish security superior to what those 153 agencies can now accomplish through strong leadership. Furthermore, it has been 16 hours since this House passed an amendment to the intelligence authorization bill which will establish a national independent commission to investigate September 11. We will have a new Department with 170,000 employees to respond to 9–11, and yet the commission that will analyze 9–11 has not even begun its work. That is quite a feat.

Meanwhile, 170,000 new people in this Department, no idea of how the organization will integrate, 10 years for the Department to be up and running, in the meantime, I predict the reorganization itself will represent a threat to the security of our Nation because it will induce paralysis and administrative breakdown.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. BLUNT), the deputy whip.

Mr. BLUNT. Mr. Speaker, I thank the gentlewoman for yielding me this time, and for her work on the Select Committee, along with all other Members who served on the committee, and certainly the majority leader who led the committee, which allowed all of the other committees to make recommendations.

This rule, a rule brought to the Committee on Rules by the Democratic leader, the gentleman from Missouri (Mr. GEPHARDT), the gentleman from Illinois (Speaker HASTERT), let all of those issues be discussed again on the floor. This has been a speedy but thorough process led by our Speaker, high cooperation from the minority leader, and certainly the committee itself led by the majority leader to get this bill to the floor.

I just heard a suggestion that somehow this would confuse administrative lines of control and decisionmaking. I think just the opposite. The whole idea of a homeland security agency is to do away with that confusion. At a time when people need to respond, they need to know who makes the decision to respond. When there are people on the ground, they need to know the exact chain of command.

We do not need people from six agencies all trying to respond in the same time in the least effective way. We need the Federal Government responding at the same time in the most effective way. This agency ensures that. We will have debate on the future of FEMA. FEMA should be part of a homeland security agency. Whether it is a natural disaster or a terrorist-created disaster, much of the response would be the same. We would hope that

FEMA would get its practice responding to natural disasters, but it will get that experience and that ability to respond so if we do have a terrorist disaster, we have an agency that is well prepared to respond to disasters. FEMA needs to be in this agency. The rule allows a vote on that very question.

We need to have great flexibility with personnel so that Federal personnel is used where, when and how it is needed, and those decisions can be made in the way that least impacts the disaster, and best responds to solving that disaster. The deadlines that have been created for airports, we get a chance in this rule to discuss that, but deadlines that cannot possibly be met need to be viewed in a way that allows us to responsibly do our job.

Many Members after September 11 thought that we needed to think long and hard before we decided to create a new agency like this. Well, we have thought long. We have thought hard. The President has set the mark by saying we need this agency so we can respond in an appropriate way, we can plan in an appropriate way, and the decisions are made in a way that people know who makes that decision.

Mr. Speaker, that is why I urge the support of this rule, support of the bill, and we need to get on with this business and get this job done so we can begin to organize the Federal Government in a way that best meets the challenges we face.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, a few days after the tragedy of September 11, a day that none of us will ever forget where we were, and those of us in the United States Congress had a firsthand view of the billowing smoke from the Pentagon, we knew that we had to turn a page in America's history and begin to look at life differently.

In the course of doing that, I drafted legislation that my colleagues joined me in to help prioritize the Federal relief and support for those children who had lost one parent or two parents in that tragedy on September 11. I remember meeting the Calderon family, two babies who had lost their mother.

And so I come to the floor today to discuss this rule in the context that there cannot be or should not be a place for conspiracy theories or politics, as was said by one of the Members on this floor, but I truly believe that we can and should have been able to do better.

This bill was marked up. The framework came to us from the White House very expeditiously by the committees of jurisdiction, but in the mark of the Select Committee, and I thank the chairman, the gentleman from Texas (Mr. ARMEY), the ranking member, the gentlewoman from California (Ms. PELOSI), and the members of the Select Committee, in addition to the gentleman from Texas (Mr. FROST), came a bill of 200-plus pages. I believe it warrants the deliberate study that would make this a better bill.

This bill does not have whistleblower protection. I believe it could have better communications. Even though it deals with first responders, I believe it could do better.

From the expertise of the Subcommittee on Immigration, I am disappointed that this body saw fit not to allow at least minimally a debate on how the immigration department should be structured. Interestingly enough, the amendment that I offered to establish a division 5 is the exact same format that the other body passed today out of the Committee on Government Reform. It includes a division of immigration affairs, and it includes enforcement and immigration services as one, not to put the immigration services in the Department of Justice, making it a stepchild with no funding because the other body recognizes that the two are intertwined, and they must be able to speak together.

Mr. Speaker, suppose a person is applying for asylum and goes to the Department of Justice and Immigration Services, but his brother is caught by the Border Patrol in the Department of Homeland Security and they give that person another decision, this is not the way to run a government or to secure America.

Interestingly enough, a division that would have comported with the format that the President presented the divisions and the way that they structured the immigration services is not done by this bill.

My amendment would have had the children being addressed by the Department of Justice.

Finally, here we are dealing with homeland security, and we have NASA, an amendment that was passed by the Committee on Science to help NASA collaborate with technologies and research with this new Department, an amendment that was rejected by this Committee on Rules and this rule.

I do not know how we can consider this a bipartisan process if we leave a whole body of research that NASA has out of the ability to help us secure our homeland. I am very glad to see that some component of an amendment I had dealing with minorities and small businesses has been included, but still we have a problem with the kinds of benefits for civil service employees and an amendment dealing with avoiding kickbacks, whistleblower protection, protection of minorities and small businesses, and the prohibition of contracting with individuals who have been convicted of contract-related felonies has not been included.

Mr. Speaker, we could and can do better. I ask Members to vote against this rule because we can do better for the American people.

I am disturbed at the lack of deliberation and due process characterized by the rule put forth by the Rules Committee. I prepared six amendments to be considered for H.R. 5005 only that would have added to solving some of the difficulties of this large department. This process should not be a narrow process but rather an inclusive process to strike at the heart of terrorism.

AMENDMENT TO H.R. 5005, THE DEPARTMENT OF HOMELAND SECURITY CREATING A FIFTH DIVISION OF IMMIGRATION AFFAIRS

This amendment creates a fifth division to the Department of Homeland (DHS) consistent with the President's Proposal and the bill reported by the Senate Governmental Affairs Committee to the full Senate, and has the best chance of becoming law. It is imperative, as this House confirmed in H.R. 3231, that immigration services and enforcement stay in tact. Services and enforcement are clearly intertwined because it is vital that they talk with each other. It is important for there to be consistent decisions made on immigration issues. For example, the asylum seeker may present his case to the immigration service division in DOJ and get a different ruling by his brother who may have been picked up by Border Patrol and received a decision for DHS.

This is bad policy and does not help those aliens seeking to follow the law. We can balance the services and the security needs and provide an effective revenue stream to fund these divisions. If DOJ services are separated from enforcement they will be treated like a stepchild without any support.

The Jackson-Lee Proposal would create a fifth division within the Department of Homeland Security titled the Division of Immigration Affairs. This division could house three subdivisions titled; (1) Border Security; (2) Immigration Services and (3) Visa processing. My amendment envisions having the entire INS (a) pulled from the Administration's Border and Transportation Security division; (b) placed in its own division headed by an Undersecretary for Immigration Affairs; and (c) restructured as envisioned by H.R. 3231, the House INS restructuring bill.

My amendment is consistent with the Hyde-Berman amendment, which passed during Judiciary committee markup and is endorsed by the Select Committee, is the preferred alternative and consistent with the Administration's proposal. This proposal allows the administration of visa issuance function to be carried out by State Department employees with the oversight and regulatory guidance of the DHS.

My amendment also includes the Lofgren-Jackson-Lee amendment language, which will allow the Administration for Children and Families (ACF) within the Department of Health and Human Services to be the lead agency with responsibility for unaccompanied alien children.

AMENDMENT TO H.R. 5005, THE DEPARTMENT OF HOMELAND SECURITY TREATMENT OF MINORS DETAINED BY THE DEPARTMENT OF HOMELAND SECURITY

Another amendment I wanted to offer concerned the treatment of Minors by DHS. Minors may, for myriad reasons, come within the custody of the DHS. This Amendment would simply ensure that minors in custody of the

DHS, whether they be aliens or minors from the United States, are provided access to independent counsel within 24 hours and the DHS endeavors to make contact with a parent or guardian within 48 hours. The amendment further requires that the DHS take affirmative action towards assisting the minor in contacting the minor's parent or guardian.

Legal permanent resident and U.S. minors may come into the custody of the Department of Homeland Security for many reasons. For example, if the Coast Guard takes a vessel into custody with children on it, these minors may end up in the custody of the DHS. These minors should guaranteed minimal procedural protections. My amendment simply made this explicit.

CONGRESSWOMAN SHEILA JACKSON-LEE NASA AMENDMENT TO H.R. 5005

I also wanted to offer a NASA Amendment. The Secretary of Homeland Security should not re-invent the wheel. If expertise and resources have already been developed at taxpayer expense, and exist in federal agencies, they should be put at the disposal of the Secretary.

NASA is a leader in satellite and information security. NASA has developed hardware and software that would help make us less vulnerable to cyber-attacks, that could cost billions of dollars and risk many lives by compromising our infrastructure.

My amendment would simply have NASA create an office which would catalog resources available at NASA that might be used in the fight against terrorism, and make them available to the Secretary of Homeland Security through reimbursable consultation or contracts.

This common sense amendment could save millions of dollars by reducing redundancy, and could expedite the process of getting our nation prepared for the challenges ahead.

It would be tragic if an attack occurred, while the technology to prevent that attack were readily available at NASA.

OTHER TRANSACTION AUTHORITY LIMITATION AMENDMENT TO H.R. 5005 OFFERED BY SHEILA JACKSON-LEE

The bill as it stands gives "other transaction authority" to the Secretary. This authority allows the Secretary to bypass many good government provisions that regulate the use of independent contractors.

This authority may be necessary in order to streamline research and development, and pilot projects deemed essential for homeland security. However, some of the regulations on federal contracting, reflect decades of accumulated wisdom, and would be absurd to discard.

My amendment would NOT block the Secretary's use of "other transaction authority." It would simply preserve a few common sense aspects of federal procurement law.

It would stop people who were convicted of contract-related felonies from getting more contracts.

It would protect the abilities of small and minority-owned businesses to get contracts.

It would block the kickbacks that plague the contracting industry.

It would block the use of taxpayer dollars going to contractors from being used to lobby the federal government for more contracts.

And it protects workers who blow the whistle on fraud and abuse at contracting companies.

If while consolidating different agencies into the Department of Homeland Security, we start removing the good government provisions that have made those agencies work well in the past—we run the very real risk of making the Department much less than the sum of its parts. The American people deserve better.

AMENDMENT PROVIDING SPECIAL ASSISTANT TO THE SECRETARY OF HOMELAND SECURITY TO PROMOTE THE USE OF SMALL AND DISADVANTAGED BUSINESS

My next amendment provides for a Special Assistant to the Secretary of Homeland Security to promote the use of women and small business concerns owned and controlled by socially and economically disadvantaged individuals. The present legislation does not address the issue of small business.

My goal is to provide a holistic approach to small businesses. Not just covering the employees but encouraging the creation of small business. Small businesses are losing an increasing number of federal contracts to bigger business, according to recent data compiled by the Small Business Administration. Overall federal contracting dollars fell from $202 billion in 1995 to about $190 billion in 1997, a 5.9 percent decrease. But small businesses saw a 6.8 percent decline in federal contracts.

Business in cities all over the nation are suffering cuts in 8(a) contracts. In the Phoenix area, $30 million in contracts were awarded to minority and women-owned firms through the SBA's 8(a) program in 1995. That number dropped to $19 million in 1997. Similar firms in the Baltimore area saw contracting dollars plummet from $250 million in 1995 to $172 million in 1997.

More than one-half of minority women-owned firms (59%) are in the service sector, which also had the greatest growth (33 percent between 1997 and 2002). Other industries with the greatest growth were transportation/communications/public utilities (21%) and agriculture (7%).

The 10 states with the greatest number of minority women-owned firms in 2002 are 1) California; 2) New York; 3) Texas; 4) Florida; 5) Illinois; 6) Georgia; 7) Maryland; 8) New Jersey; 9) Virginia; and 10) North Carolina.

Despite growth, the impact of the economy on minority-business development resulted in difficulty for entrepreneurs hoping to raise capital, something the MBDA is contending with, says Langston. According to a 1999 report by the BLACK ENTERPRISE Board of Economists, of the $4.2 billion invested through Small Business Investment Companies (SBICs), $4.09 billion went to majority firms and other $128 million went to minority firms. By appointing a Special Assistant small business will have a voice in the Department.

CIVIL SERVICE PROTECTIONS

I would also like to express my strong objection to the denial of basic civil service protections for the thousands of federal workers who would be transferred to the proposed department for homeland security.

Quite frankly, I believe that the current proposal would allow for arbitrary and unfair treatment of federal employees under the guise of increasing "flexibility." I find it hard to understand why federal employees whose responsibilities are the same today as they were on September 11th, when they responded with courage and dedication, could lose civil service protections just because the government's organization chart may change. How can the American public feel that their homeland is secure if the federal employees of the new department do not even feel that their jobs are secure? Moreover, I would argue that civil service protections are an invaluable resource that allow federal employees, like the FBI's Coleen Rowley, to bring bureaucratic failures to light. Stripping workers of their collective bargaining rights and whistleblower protections would compromise the very structures that help to ensure we meet the desired goal of reducing our vulnerability to terrorism.

I cannot overstate my adamant support for maintaining civil service protections in the new department. These protections should not be altered or revoked merely because federal employees suddenly find themselves working under the umbrella of a different department. I urge you to guarantee that, as this important piece of legislation makes its way through this committee, current civil service protections are not limited in any way. This issue is fundamental to my support for the creation of a new department.

CONCLUSION

The final outrage of this process rests in the fact that this bill gives unbridled attention to the needs of special interest concerns over the needs of the people. This bill give corporations that contract with the DHS undue protection from lawsuits for faulty and dangerous products. In this time of corporate irresponsibility, Congress should be doing everything to encourage the best behavior of corporate contractors, not giving them product liability protection.

The creation of the DHS is a chief priority of the Administration and Congress has been asked to act in a very short time. The integration of functions across many different agencies is a difficult task and the time we have spent on this important task is insufficient. I fear that we will revisit this matter many times in the future.

In closing, I would add that the Judiciary Committee has unique expertise in the oversight of Justice Department functions that will be integrated into the DHS. This expertise should be preserved in order to assure that those functions integrated from the DOJ remain effective within the DHS.

Mr. FROST. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this has been a very long process. We had a lengthy markup in the committee lasting approximately 10 hours. We have had a lengthy hearing before the Committee on Rules. We have had negotiations on a bipartisan basis over the rule. This is not a perfect rule, but it does preserve the minority's right to offer most of the amendments that we sought. We would have preferred that we would have been given the opportunity to offer the DeLauro amendment.

This is a very serious matter. It is in the interest of our country that our citizens be safe, and it is in the interest of the country that this House operate on a bipartisan basis. I believe we have been given that opportunity by the majority tonight. And while this is not a perfect rule, I urge the adoption of the rule so we can proceed to the consideration of the bill on the floor this evening and tomorrow, and so we can complete this very important piece of legislation before we adjourn for our August recess.

Mr. Speaker, I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard the beginning of what I believe will be a very broad and worthwhile debate on how best to secure our beloved country. There is universal recognition among my colleagues that our Nation is a different place than it was just 10 months ago, and our government must reflect that new reality.

While the steps that we take today are a simple reorganization of existing governmental functions, we should not doubt that our work will directly serve the freedom, the liberty and the way of life of all American people.

I urge Members to take measure of the task that we have before us, support this fair and open rule and the underlying bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. ARMEY), the chairman of the Select Committee on Homeland Security, who led us through this process with great decorum and statesmanship.

Mr. ARMEY. Mr. Speaker, I thank the gentlewoman for yielding me this time. I thank the gentleman from Texas for his participation in this debate, and thank the Committee on Rules for bringing this rule to the floor.

Mr. Speaker, when the President of the United States called us, the bicameral, bipartisan leadership of the Congress of the United States, to the White House on June 6 of this year and laid before us a plan to create a department of homeland defense for the American people, we all instantaneously recognized this as a large and daunting task.

When the House minority leader, the gentleman from Missouri (Mr. GEPHARDT), publicly suggested that we should not only undertake this daunting task but should complete it by September 11, we all realized that, too, would be even more daunting, but the President of the United States jumped right up and saluted that date. So we developed among ourselves in this body and the other body a resolve to do everything we could to make that date. I do not know whether we will make it or not, but I know we will make a good effort.

The President of the United States sent to us a good proposal, a proposal that has served as a useful template for the legislative processes of this Congress, of this House. But with respect to that template, that proposition, the Speaker of the House made, I thought, the most generous and inclusive decisions regarding how we should proceed.

The Speaker of the House recognized that there were 12 standing committees of this body that would have appropriate and necessary jurisdiction with respect to this legislation, should it be developed, and he saw to it that each of these 12 standing committees worked their will on the legislation.

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If we take the membership of the Committee on Ways and Means, the Committee on Appropriations, Committee on the Judiciary, Committee on Agriculture, the Committee on International Relations, the Committee on Government Reform, the Committee on Transportation and Infrastructure, Committee on Financial Services, Permanent Select Committee on Intelligence, House Committee on Armed Services, and Committee on Commerce, and Committee on Energy and Science, we would probably have at least two thirds of the Members of this body having served on a committee that exercised jurisdiction over this bill. I cannot imagine any piece of legislation produced in this body in my 18 years that had so large a percentage of the body's hands on the legislative process. What could be more inclusive than that?

But that inclusivity was not, in itself, enough to satisfy the Speaker's desire that this be an open, inviting, and inclusive process. He then arranged that these 12 different select committees would report their work to a select committee comprised of Members of the leadership of both the Republican and Democrat party. And we digested the work of these 12 different committees after we had had hearings that included virtually every member of the cabinet that had anything to do with this, each of the chairmen and ranking members of each of these committees, and we had a very special hearing that included a group that I like to call the bipartisan innovators in the body that had presented themselves to this task long before it was conceived by the President, the gentleman from Texas (Mr. THORNBERRY), the gentlewoman from California (Ms. HARMAN), and the gentlewoman from California (Mrs. TAUSCHER) and of course the gentleman from Nevada (Mr. GIBBONS) whose work was invaluable to us as we proceeded.

The Speaker, when he set up this process and invited us to go to work, agreed that there would be a rule that would govern our proceedings, that would be a product of the joint recommendation of himself and the minority leader. And at the conclusion of our event, 102 amendments were offered for consideration to the Committee on Rules. The Speaker and the minority leader have spent the last 48 hours digesting these, structuring these, negotiating, and have given us this rule that defines the content of 27 opportunities to amend this legislation and the structure of the rule.

Mr. Speaker, I can think of no time ever in my time as a Member of this body when we considered anything whatsoever under procedures, jurisdictions, participations that were broader and more bipartisan and more inviting and more inclusive than this. In the close of business this day and the next, we will produce a bill for the Department of Homeland Defense, and it will be a bill that will have had, in terms of participation in the writing of chapter and verse, the participation of virtually every Member of this Congress.

May I say on behalf of the body, Mr. Speaker, thank you, thank you for understanding, Mr. Speaker, how serious this business is, how important it is to the Nation, and thank you for making it possible for each and every one of us on both sides of the aisle to know that we were respected, included, and participated in this process. No Speaker ever in the history of the House showed a greater respect for the House Members than our Speaker, Mr. HASTERT, and if I may again say on behalf of all of us, Mr. Speaker, thank you for being the fine man you are.

You are, Mr. Speaker, a fine servant to freedom, and that is the kind of governance we should have in this House. I ask that we vote this amendment out of respect to the generosity and inclusiveness of the Speaker who made it possible.

Mrs. MALONEY of New York. Mr. Speaker, I rise today disappointed that the Rules Committee would not allow an amendment that would have provided the new Department of Homeland Security with the tools that are necessary to appropriately respond to a terrorist attack or another Homeland Security Emergency.

The amendment that I speak of is one that I offered in the Committee on Government Reform, where it passed by a unanimous vote.

Government Reform is the Committee that had primary jurisdiction in the creation of this new department, yet much of its wonderful bipartisan work was unexplainably rejected by the Majority, was not allowed in today's Bill and is not even being allowed a chance to be debated on the floor today.

Obviously, prevention needs to be our and the Department of Homeland Security's number-one priority, and we must do everything possible to prevent all future attacks.

However, there are two major priorities for homeland security—not only preventing terrorism, but also responding to the impacts of terrorism should it occur again.

With this reorganization, we seem to have only focused on the first.

If a fail-safe system cannot be created, then why are we being blocked today from taking the lessons learned from the worst terrorist attack in American history and using the research of GAO, CRS and the NY Federal Reserve to create an improved system of response?

Experience is often the best teacher and very regrettably, New York learned much on 9/11.

The bipartisan amendment that I introduced recognized the need to improve the nation's response should we have another attack.

My amendment does exactly that.

It gives the Secretary the authority to respond quickly following a homeland security event and eliminates much of the redtape New York experienced after 9/11.

These are things that when they need to be done, they need to be done quickly. If they are not done quickly then the challenges to the affected areas significantly increase.

I must stress that all of these options are at the discretion of the Secretary.

I cannot imagine why the Majority would not allow the opportunity to give the Department of Homeland Security the ability to respond and provide aid to schools, hospitals and local governments that may need it.

We know from September 11th that there's a great deal of room for improvement in response and recovery operations.

While the hearts of Washington were 100% behind New York's recovery, the system was not adequately prepared to get the job done.

The series of complications and delays in federal relief efforts for New York City show a real need for expanded authority and flexibility in disaster recovery operations.

I think we can all agree that delivering immediate aid, to the right people, at the right time, is and will always be our top priority.

It's painful to think that thousands of people, in any of our districts, could once again be left without assistance because of outdated rules and inconsistent procedures.

Sadly, America experienced a major disaster we can learn from, showing in some cases what works, and in many cases, how not to respond.

My amendment learns from the past and prepares for the future.

Enclosed are materials on my amendment. Although my amendment was not included, I do support the rule and underlying bill.

Ms. PRYCE of Ohio. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763) "An Act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.".

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5121. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5121) "An Act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DURBIN, Mr. JOHNSON, Mr. REED, Mr. BYRD, Mr. BENNETT, Mr. STEVENS, and Mr. COCHRAN, to be the conferees on the part of the Senate.

LEGISLATIVE PROGRAM

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, it is my intention, my hope, that we can make progress on this legislation this evening such that would enable us to complete this work this week. It would turn out, I would think at this point, that it would be very difficult for us to anticipate completing our week's work in time to make planes to return to our districts tomorrow or tomorrow evening, but we could, I think, if we are prepared to work late tomorrow, complete all the work we need to do in order to make our early planes on Saturday morning to begin our district work period and have time with our families. But in order to do that, we must move forward tonight on this.

What I would propose to the body is that we follow this procedure in the interest of giving Members at large the maximum opportunity to make progress on the bill and still indeed make rest for themselves for the long and arduous day we are certain to have tomorrow:

That we proceed now with the general debate and that we begin to work on amendments. It is my recommendation that, as we work through amendments, we roll votes through the Shays/Watson amendment No. 23. That would enable us to come in in the morning, pick up those votes that have been rolled from tonight's work, and complete the work on this bill tomorrow.

I should also mention to the body, we should expect to work late tomorrow night to complete consideration of this bill, but we will also have at least one other, perhaps two other important legislative opportunities that this body will want to consider because the opportunity is here to do indeed additional good things, for example, quite possibly, complete consideration of the bankruptcy conference report.

So we will be here, we will work hard tomorrow, and we will get a lot done. But we will only be able to do that and make our early morning planes on Saturday if we are willing to find a way to work our way through tonight. If we can proceed through the Shays/Watson amendment, that would leave us a few votes to begin the morning with and the chance to get right into the completion of the work.

That is my proposal, Mr. Speaker, and, without objection, I would move forward on that.

Ms. PELOSI. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentlewoman from California.

Ms. PELOSI. I thank the gentleman for yielding.

Mr. Chairman, now in your capacity as leader, I was seeking a clarification. Certainly we want to move this bill expeditiously, knowing its importance to the American people, even at the expense of starting the district break a few hours later, and I know you share that concern. But what I heard you say, I had a concern about, and I am seeking clarification.

I was hoping that we could take up the Oberstar and Young amendments tonight, roll the votes for them to tomorrow, take up the Waxman amendment tomorrow and vote on it tomorrow, and then proceed tonight with 52 down to Shays/Watson, rolling the votes until tomorrow.

Mr. ARMEY. The gentlewoman is exactly correct, in that if you took the beginning of the amendments in the rule, we would agree to move the Waxman amendment to tomorrow, but roll the votes on Oberstar, Young and all others up through Shays/Watson, which would be amendment No. 23. That would give us a great deal of progress tonight, and obviously we would also have the general debate out of the way.

Ms. PELOSI. That is agreeable to the minority, Mr. Leader.

So that would mean that there would be no more votes tonight and we would take up the Waxman amendment tomorrow and vote on it tomorrow?

Mr. ARMEY. The gentlewoman is absolutely correct. The gentleman from California (Mr. WAXMAN), I might add, is going to want to thank the gentlewoman for working very hard to make sure that this is a clear understanding that we are proceeding in that way.

Ms. PELOSI. I thank the distinguished leader.

PERMISSION TO OFFER AMENDMENT NO. 3 OUT OF ORDER AND LIMITING DEBATE ON AMENDMENT NO. 3 DURING CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that during consideration in the Committee of the Whole of H.R. 5005 pursuant to House Resolution 502, the gentleman from California (Mr. WAXMAN), or his designee, be permitted to offer amendment numbered 3 in House Report 107–615 out of the specified order, to be offered at a time designated by the chairman of the Select

Committee on Homeland Security pursuant to section 4 of House Resolution 502 and that debate on such amendment be limited to 20 minutes.

The SPEAKER pro tempore (Mr. SWEENEY). Is there objection to the request of the gentleman from Texas?

Ms. PELOSI. Mr. Speaker, reserving the right to object, I have a question for the leader. Mr. Leader, is it my understanding that the Waxman amendment, No. 94, which you just sought unanimous consent to roll until tomorrow with the debate and the vote, would be taken up as the first amendment tomorrow when we come into the House?

Mr. ARMEY. That would be fine with this gentleman. I would think if the gentleman from California (Mr. WAXMAN) is ready, of course, to begin, we would naturally want to take our votes, I think, to kind of get everybody in the body get things going and then move forward with the Waxman amendment.

Ms. PELOSI. I thank the distinguished leader.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT REGARDING CONFERENCE REPORT ON BANKRUPTCY BILL

Mr. ARMEY. Mr. Speaker, members of the bankruptcy conference should proceed to H-219 to sign the signature sheets before they retire for the evening. And may I reiterate to our Members, there will be no more recorded votes tonight. Those Members who wish to participate in the general debate and in the amendments through amendment No. 23 will want to stay here for that participation and that debate.

GENERAL LEAVE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5005, the Homeland Security Act of 2002.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

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HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore (Mr. SWEENEY). Pursuant to House Resolution 502 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5005.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas (Mr. ARMEY) and the gentlewoman from California (Ms. PELOSI) each will control 45 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, as Ronald Reagan once said, "History teaches that wars begin when governments believe the price of aggression is cheap."

President George W. Bush has heeded this call. He has asked us to undertake the most significant transformation of our government in half a century. If we are to do this, it is essential that we understand why it is necessary to do so. We must start with a precise understanding of why an enormous transformation of our government is required.

Mr. Chairman, the world has changed. It is a much different world than it was in 1947 when the last transformation of our government took place. It is a far different place than it was a mere 10 months ago. Our place in the world stage will never be as we have known it.

Mr. Chairman, what will it take to defend freedom under such circumstances? As the greatest, most free Nation the world has ever known, how do we protect our citizens and our culture from the forces who hate us? Do we lock up our doors and bar the windows? Are we perhaps in danger of sacrificing our liberty in the name of security?

The answer is that we are here today to act to defend individual liberty as much as we are here to defend personal safety. The enemies we now face take advantage of our free society to destroy us. They do so precisely because they hate the idea that we have the ability to choose for ourselves. We cannot grant them the victory they seek by relinquishing our freedoms or closing our society.

This is an enemy not constrained by traditional borders. It is not constrained by any moral compass that distinguishes between the lives of civilians, women and children. To fight such an enemy, new solutions are required.

Here at home, the need for new solutions is great. Our ability to deal with foreign terrorists remains limited. Many of our security resources are scattered, our technology is outdated on too many occasions, and the missions of our agencies on the front lines of terrorism are unfocused. This, Mr. Chairman, makes us vulnerable. As long as we are vulnerable, our enemies will believe the price of aggression is one they can afford.

We cannot allow ourselves to forget just how real the threat has become. Although we may find ourselves safe while terrorist cells are confused and on the run, our short-term success should not inspire complacency. In this battle, time is of the essence. We must not take any more time than is absolutely necessary to do this job and to do it right.

The enemies of freedom present a great challenge to our society. Our response must be even greater. They must not win.

Let me close by recalling the words of our Founders. They remind us that the government was established, Mr. Chairman, if I may quote from what I consider the single greatest sentence ever written about America, the first sentence in the preamble to the Constitution, we are told by our Founding Fathers that our purpose is "to provide for the common defense, promote the general welfare and," Mr. Chairman, "to secure the blessings of liberty to ourselves and our posterity."

We are here tonight to heed these words. We all share an important mission, a common mission. Let us work together to make freedom secure as we cast our vote today.

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume, not to exceed 6 minutes.

Mr. Chairman, the preamble to the Constitution that the distinguished majority leader just quoted tells us that providing for the common defense is a primary role of our government, and every elected official takes an oath to protect and defend the Constitution. Clearly our Founding Fathers knew that we could do both, defend our country and protect our liberties.

I want to say at the outset, I want to commend the distinguished majority leader for his vigilance, indeed, his leadership, in protecting our civil liberties in this bill.

For example, I am pleased that he rejected the so-called TIPS program, which would have Americans reporting on Americans. Throughout the debate, throughout the hearings, throughout the markup, he was, as I say, ever-vigilant and a leader in protecting civil liberties. I want to make that point of commendation and congratulations to the leader at the outset.

We agreed on many things in the bill, but not everything; and I wanted to commend the gentleman for a very important value that all of us in this body share, and many Americans are concerned about at this time.

Thank you, Mr. Leader.

Mr. Chairman, on September 11, the American people suffered a serious blow, the intensity of which we will never forget. Out of respect for those who died and their loved ones, we have a solemn obligation to work together to make our country safer. For some of the families of victims, the sound of a plane flying overhead fills them with terror. Indeed, any warning of a possible terrorist act intensifies their grief.

As the senior Democrat on the Permanent Select Committee on Intelligence, and as the distinguished chairman presiding, where he also serves, we know full well the dangers our country faces from the terrorists. We have before us today a historic opportunity to shape a Department of Homeland Security that will make the American people safer, while also honoring the principles and freedoms of our great Nation.

Unfortunately, we do not have a bill before us today that measures up to the challenge of protecting the American people in the best possible way. There are serious problems with the bill in its current form.

For example, out of the blue, the Republicans attempted to remove altogether the deadline for installation of devices to screen baggage for explosives. When that failed, they needlessly extended the deadline.

Then, ignoring the bipartisan recommendations of the Committee on Government Reform, the Republican bill weakens good government laws and civil service protections. By doing so, it invites problems of corruption, favoritism, and low morale that were the reasons that the civil service was established in the first place. Civil service is a backbone of a democratic government. We must preserve it.

The bill before us also ignores the bipartisan agreement on liability and instead inserts a provision so unprecedented in its sweep that it prompted the Reserve Officers Association of the United States to write yesterday to the gentleman from Texas (Mr. ARMEY), "This is not the time to immunize those who risk the lives of innocent American troops through willful misconduct."

As for the Department itself, it is a 1950s version of the bureaucracy. I had hoped that we could set up a Department that would be lean and agile and of the future, that would maximize the use of technology, that would capitalize on the spirit of innovation and new technologies. But, sadly, it does not.

Instead, we have, as I say, this bloated 1950s bureaucratic Department which the General Accounting Office says will take between 5 and 10 years for the Department to be up and running, and, in its current form, will cost $4.5 billion, says the Congressional Budget Office, to set up.

Certainly we will pay any price to protect the American people, but there appears to be an opportunity to cost $4.5 billion just on management and rearranging Departments, money better spent on truly protecting the American people.

Mr. Chairman, tonight we will have bipartisan amendments to correct the problems in this bill. Unfortunately, though, the rule did not allow us to bring the DeLauro amendment to the floor. That amendment would have prevented those irresponsible businesses that choose profit over patriotism by fleeing into the Bermuda Triangle, going offshore to avoid taxes needed to pay for the war on terrorism. Instead, they are trying to cash in on that war. We had hoped we could have an amendment that would prevent that from happening.

I look forward to the debate and hope that bipartisanship will prevail so that we can vote with pride in the new Department. That bipartisanship will be, as I say, in the form of amendments which have come from the standing committees, in most cases by unanimous vote, certainly bipartisan; and hopefully the House will work its will in support of bipartisanship.

Mr. Chairman, as we debate the bill tonight, we are on hallowed ground, ground broken on September 11. We must do our very best in memory of those who died and as a comfort to their loved ones. In that spirit, I thank the chairman.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Texas (Mr. THORNBERRY), one of the true entrepreneurs and innovators in homeland defense in this body.

Mr. THORNBERRY. Mr. Chairman, I thank the majority leader for yielding me time.

Mr. Chairman, since the end of the Cold War, there have been some disturbing trends. One is that chemical, biological, nuclear and radiological weapons are spreading to more and more nations and more and more groups. In addition to that, more and more nations and more and more groups are hostile to the United States and will seem to stop at nothing to attack us. Study after study recognized our vulnerability and urged us to act, and yet it has taken September 11 to give that impetus, to force us to act, and tonight we are acting in important ways.

It is true that organizational reform does not solve all of our problems. We still have to have the best people, we still have to have resources, we have to give the right authorities. But as the Deutsch Commission found, a cardinal truth of government is that policy without proper organization is effectively no policy at all. That is why this organization is important. It does not guarantee success; but without it, we can guarantee failure.

What we found when we tried to protect our people is dozens of different agencies scattered across Departments all around the government. So the idea was if we can bring some of those key Departments and agencies together under one umbrella, with one chain of command, they will work better together and we will be safer.

Under this legislation, one piece relates to information, so all the cyberterrorism offices scattered around the government will be brought together and will work together. There is a science and technology section where several of the offices around the government will be brought together to identify, develop, and then field technologies that will keep us safer.

The third element is transportation and infrastructure. Ninety percent of the people in the new Department will be devoted to border and transportation security. If somebody thinks that this new Department is bloated, they are going to have to get rid of some of the people on our borders; and I do not think many of us will want to do that.

This brings together Border Patrol, Customs, Coast Guard and Agriculture inspectors, so they actually have the same chain of command. They can actually use the same equipment under the same regulations and working together have better border security.

A fourth element is emergency preparedness and response. Building upon the strengths of FEMA with its regional offices all around the country, this will be the key conduit of communication and training and planning and grants for local responders, and they all support this reorganization.

Mr. Chairman, the world has changed a lot in the last 10 years, and our government institutions must evolve and change in order to meet this new challenge. But this new Department also has to have the tools to meet that challenge, and that is why some of the amendments that we are going to consider, giving them the tools, the management flexibility, for example, to hire computer experts away from Silicon Valley, are so important.

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This bill is not perfect, but it makes us safer and it should be supported.

Mr. Chairman, over the past several days, I have distributed to our colleagues a series of questions and answers about creating a Department of Homeland Security. I am including copies of them in the RECORD at this point because they reflect a number of the issues which have been raised about this proposal and some of the reasons we should support it.

ESTABLISHING A DEPARTMENT OF HOMELAND SECURITY

QUESTION 1: WHERE DID THIS IDEA COME FROM?

It has been said that the idea of consolidating a number of government agencies into a new Department of Homeland Security was hatched in secret in the middle of the night—and now we're being asked to vote on it less than 2 months after it was first proposed.

Not true. Here are the facts.

As far as I know, the idea to create a new Department of Homeland Security from some of the dozens of different offices and agencies scattered around the Government springs from the U.S. Commission on National Security/21st century, popularly known as the Hart-Rudman Commission. This bipartisan Commission was established by Congress in 1997 and was charged with undertaking a broad, in-depth study of America's national security challenges over the next 25 years.

The quality and experience of those serving on the Commission was extraordinary. The Commission also had a top rate staff.

The Commission issued three reports—one on the threats we face, one on an overall strategy, and finally one with specific recommendations about what should be done. Overall, they spent 3 years carefully looking at the world and our role in it and concluded that "security of the American homeland from the threats of the new century should be the primary national security mission of the U.S. Government." (Just to show you the breadth of the study, their second recommendation dealt with the adequacy of our math and science education.)

The Commission unanimously recommended the creation of a new Department of Homeland Security to consolidate border security agencies, cyber terrorism offices, and emergency response organizations, such as FEMA. Their final report was issued publicly on February 15, 2001.

(In fairness, a number of other commissions in recent years, such as the Marsh Commission (1997), the Deutsch Commission (1999), the Bremer Commission (2000), and the Gilmore Commission (2001), reached similar conclusions about the importance of reorganizing the Government for homeland security. Many of the principles and suggestions from them were also in the Hart-Rudman report or have been incorporated into the various proposals.)

On March 21, 2001, I introduced H.R. 1158, to implement the Hart-Rudman recommendation and create the new Department. The Government Reform Committee, as well as other committees, held hearings on this issue.

After September 11, a number of other proposals were introduced in Congress, and, of course, President Bush appointed Governor Ridge to head a Homeland Security Office in the White House.

Earlier this year, a bipartisan group of House and Senate Members introduced a revised proposal, H.R. 4660, to create a Department of Homeland Security. This bill was introduced by Ms. Harman, Ms. Tauscher, Mr. Gibbons, and me, and was cosponsored by 40 Members. In the Senate, it was S. 2452 by Senators Lieberman, Specter, and Graham. A number of additional hearings were held on these and other proposals. The Senate bill was reported out of the Government Reform Committee on May 22, 2002. The President announced his proposal on June 6, 2002.

In sum, several years of study and work—inside the Congress and out—have gone into this idea. I recommend that you or your staff take a look at the Hart-Rudman report, which set forth the problems and some solutions well before September 11. A complete copy of the report can be found at http://www.nssg.gov.

QUESTION 2: HOW DOES CREATING A NEW DEPARTMENT MAKE US SAFER? [PART 1]

Now that you know where the idea came from (see Question 1), let's get right to the heart of the matter: How does this proposal help make us safer? After all, that is what really matters.

One way a Department of Homeland Security can make us safer is by bringing together under one umbrella and one chain of command many of the government agencies responsible for homeland security. The Hart-Rudman Commission found more than 40 government entities with some responsibility for homeland security. After September 11, the Administration said that it is more like 100. There is no way that many organizations spread all around the Federal Government can effectively work together. Their efforts are, at best, fragmented and duplicative, or, at worst, they are at cross-purposes.

The new Department of Homeland Security would bring together those various entities that deal with border security, cyber terrorism, emergency response, and countermeasures for chemical, biological, nuclear, and radiological weapons. Only by bringing them together under one chain of command can they be as effective as we need them to be.

Let's take border security as one example. Currently, at our borders we have the Border Patrol, part of the Immigration and Naturalization Service, which is in the Department of Justice. We also have the Customs Service, which is a part of the Department of the Treasury. We also have the Coast Guard, an entity within the Department of Transportation, along with the new Transportation Security Administration (international airports are like borders). We also have inspectors from the Department of Agriculture's Animal and Plant Health Inspection Service stationed at the border to keep out plant and livestock diseases. All of those entities have different bosses, different equipment, and even different regulations that govern them. No one person or entity, is in charge,

As a side note, over 90 percent of the personnel who will be in the new Department of Homeland Security will be from existing agencies charged with border and transportation security.

As Leon Panetta has said, without "direct line authority over the policies and funding of the agencies involved, it will be very difficult to control and coordinate their efforts." One chain of command, with direct control over budgets, is required to make sure that all of the communications equipment is compatible; to make sure that the dozen or so databases these agencies have can be shared; to have clear, consistent regulations and procedures for border inspections, and to have clear, reliable communications with other government agencies.

Control over our borders is essential to protecting our homeland. We must have those organizations and individuals responsible for border security be as effective as possible. That means they must operate as one integrated, seamless unit. They must have one coach, one playbook, and one quarterback. No team can be effective without a clear chain of command and clear direction.

Another important consideration is that first responders need one federal contact rather than five or 40. Local officials have repeatedly expressed frustration at not knowing which federal agency has the lead and at not knowing who to call in an emergency. This plan would give them one phone number, rather than a phone book.

Now, of course, organizational reform is no silver bullet. We still need more top quality people to manage our borders. We still need the best technology we can field quickly. We still need to review our immigration and other laws. But all of those resources and efforts will not be as effective as they could be without the right organizational structure to get the most out of them.

The Deutsch Commission report said that "a cardinal truth of government is that policy without proper organization is effectively no policy at all." President Eisenhower believed that "the right system does not guarantee success, but the wrong system guarantees failure. A defective system will suck the leadership into its cracks and fissures, wasting their time as they seek to manage dysfunction rather than making critical decisions."

Homeland Security is too important to have anyone "manage dysfunction." We need the best odds we can get in order to protect our people.

QUESTION 3: HOW DOES CREATING A NEW DEPARTMENT MAKE US SAFER [PART 2]

Consolidating existing agencies into a new Department of Homeland Security can help make us safer by integrating the work of those agencies into one seamless unit. But it can help make us safer in other ways, too.

One way is by making homeland security a higher priority in the day-to-day operations of the federal government. Today, no federal department has homeland security as its primary mission. Rather than dozens of different agencies with some homeland security duties, we should have:

One department whose primary mission is to protect the homeland;

One department to secure borders, ports, modes of transportation and critical infrastructure;

One department to coordinate communications with state and local governments, private industry, and the American people;

One department to help train and equip first responders; One department to focus research and development and swift fielding of technology;

One department with a seat at the Cabinet table and considerable bureaucratic weight in the inevitable battles over turf and money.

Many of the agencies with responsibility for homeland security are in departments that have other, very different missions. To continue with the example of border security, the Customs Service is in the Department of the Treasury, whose primary mission is managing the financial affairs of the country. Indeed, the primary mission of the Customs Service for much of our history was to enforce trade laws and collect tax revenue to help run the government. And it still needs to do that. But even more important to the country today is the Custom Service's responsibility to keep chemical, biological, nuclear, and radiological weapons out of the country. In light of this new, higher priority which we must all give to homeland security, the Customs Service should be moved into a Department whose primary mission is consistent with that responsibility.

We could go through similar reasoning with the other agencies charged with border and transportation security. Some of them have other important missions besides homeland security which they must perform—the

Coast Guard, for example—but if we look at the overall needs and priorities of the country, homeland security must have a greater emphasis. The consequences of not putting homeland security at the top of the list of priorities could certainly be catastrophic.

Another way that the new Department can make us safer is by helping set priorities within the homeland security mission. We could spend the whole federal budget on homeland security and still not be 100 percent safe. We have to look at our vulnerabilities and set priorities, placing more resources and attention in one area and less in another. That becomes very hard to do when the agencies charged with setting priorities and taking steps to reduce them are scattered around the government.

For border security, what is more important: more people or more technology? What if the Border Patrol decides to emphasize one but Customs decides to emphasize the other? Naturally, Congress plays a key role in sorting out what is more important and what is less, but the Executive Branch must have one coherent, integrated decision process in order to be effective.

In sum, creating a Department of Homeland Security makes us safer by helping make homeland security a higher national priority and by making our homeland security efforts more effective. It is no magic answer, but given all that is at stake, every added measure of security counts.

QUESTION 4: HOW GOES THIS REORGANIZATION AFFECT EMERGENCY RESPONDERS?

If anyone needed a reminder that local emergency responders are at the forefront of our homeland security efforts, September 11 taught us that lesson in ways we will never forget. Local police, firefighters, and emergency medical personnel were first on the scene, and they will always be the first to respond to any terrorist attack.

Local law enforcement are also essential to preventing terrorist attacks. When intelligence information is received about a threat to shopping malls, for instance, it is the local police that will be on higher alert and try to stop an attack.

However we reorganize federal agencies, empowering first responders is tremendously important to making the country safer. Organizations representing them, such as the International Association of Chiefs of Police and the International Association of Fire Chiefs, support creation of a new Department of Homeland Security for very good reasons.

It will provide a "one-stop shop" for state and local officials. I suspect we have all heard from frustrated local officials who need help in finding the appropriate federal office to deal with some problem. Rather than have a whole directory of phone numbers of federal agencies, local officials will have one number to call.

In addition, the Department will build upon the strengths of FEMA, including its existing structure with ten regional offices across the country and its close working relationships with state and local officials.

Building upon that foundation, the new Department will administer grants to help cities and counties acquire needed equipment. It will help provide and set the standards for needed training, consolidating several programs with similar missions. It will assist communities in planning for emergencies. Perhaps most importantly, it will provide the primary channel of communication between the federal government and state and local governments on homeland security—communication that will go both ways.

For instance, if the Department receives information that shopping malls may be a target of attack, it will communicate with the appropriate state and local officials. On the other hand, if several local police departments notice a suspicious pattern of behavior, they could communicate their concerns to the Department, and the Department may take some action. Providing a regular channel of communication between state and local officials and the federal government will be one of the most important functions of the Department of Homeland Security.

Helping coordinate and provide standards among local responders is another. We have learned that communication difficulties were a key problem on September 11. Helping to ensure that all of the emergency responders in a metropolitan area have compatible communication equipment, for example, will be an important benefit, not just for terrorist attacks, but for emergency response and law enforcement activities of all kinds.

The Department of Homeland Security will empower these local heroes by helping them do their jobs and by being their champion in the federal government. All of our communities will be safer as a result.

QUESTION 5: HOW DO WE KNOW IF THE AGENCIES BEING MOVED WILL STILL PERFORM THEIR OTHER MISSIONS?

Our federal government is big and complex, and a number of government agencies have multiple missions. We expect FEMA to respond to a disaster, whether it is caused by a hurricane or a terrorist. We expect the Coast Guard to perform search and rescue, protect our maritime resources, and guard our coastline. No cabinet department has perfectly clean lines.

Yet, the way we organize ourselves does say something about what we think is important. And given the changes in the world and in technology, we have to put greater focus on protecting Americans here at home. But what about all of those other jobs?

Sometimes it is relatively easy to split an organization. For example, the Animal and Plant Health Inspection Service (APHIS) has a section which helps provide border security. Other sections are devoted to tasks inside the United States. It is possible, and preferable, to move that portion of APHIS which helps protect our border to the new Department of Homeland Security while leaving the rest of it at the Department of Agriculture.

Other agencies are not so easily split. In fact, the commandant of the Coast Guard has said that dividing it would threaten its ability to do any job properly.

The Hart-Rudman Commission called the Coast Guard a "model homeland security agency given its unique blend of law enforcement, regulatory, and military authorities that allow it to operate within, across, and beyond the U.S. border." In fact, if you think about it, the Coast Guard already has a number of varied missions that have little to do with the primary focus of the Department of Transportation. There is no reason it will not continue to perform its many jobs, but its critical role in protecting the United States and its citizens will be enhanced. (Note that the Coast Guard would be moved in the new Department as a separate entity; it would not be merged with other border security organizations.)

A number of the agencies moving into the Department of Homeland Security will be in an even better position to perform their other duties. In order to fulfill its responsibilities for homeland security, the Coast Guard will need new ships and equipment. Those same ships and aircraft are involved in all of the Coast Guard's tasks and will make the entire organization stronger. It is also more likely to get the additional resources it needs as a part of the Department of Homeland Security.

As part of the Department of Homeland Security, FEMA will be the critical link between the federal government and state and local governments. It will provide grants, conduct training, and be the pipeline for communications up and down the line. Those capabilities and those relationships, which will develop as a part of its homeland security mission, will also enable FEMA to deal even more effectively with natural disasters.

Another reason I feel confident that the various components of the Department of Homeland Security will perform their other important missions is us—the Congress. We provide their funds, and through oversight and direction we can ensure that the important needs of the country are met.

QUESTION 6: HOW MUCH WILL THIS NEW DEPARTMENT COST?

With any significant proposal before Congress, we face the issue of cost. In this case, the Congressional Budget Office has estimated that the President's plan for a Department of Homeland Security will cost about $3 billion over five years. Some have misinterpreted this amount as the cost of the reorganization. It is not.

In fact, the CBO report states that two-thirds of their $3 billion estimate is for new programs suggested by the President, such as the National Bio-Weapons Defense Analysis Center, the new intelligence analysis function, and other newly authorized activities. We may agree with the President's recommendation to create these new programs, but they are for new capabilities, not reorganizing existing ones.

According to the CBO estimate, the cost of consolidating agencies and providing centralized leadership, coordination, and support services in the new department is approximately $1 billion over five years. That figure is an estimate based on the cost of administering other, existing departments, such as the Department of Justice. It does not consider any cost savings from things like consolidating overhead and support services.

The President proposed a dramatic increase in homeland security spending in his budget for fiscal year 2003. He believes that whatever start-up or transition costs there may be can be accommodated within these new, higher levels of spending.

We also have to look at the bigger picture, however. Homeland security should not be used as an excuse to justify new, unnecessary spending. There is no doubt we will be spending significantly more money on real homeland security, as we should. But, we should also do everything we can to make sure that the money is spent wisely and efficiently. That is a primary purpose of the new Department of Homeland Security and should please even the most rigid budget hawk.

QUESTION 7: HOW BIG SHOULD THE NEW DEPARTMENT BE?

When the President first submitted his proposal for a Department of Homeland Security, some complained that it was not big enough because some essential agencies were not included. Others have argued that it has too many people and too many agencies, that it needs to be "leaner and meaner."

What size is just right?

The short answer is that the new Department should be whatever size it takes to do the job. Obviously, we cannot put every function related to homeland security in one cabinet department. We have to choose what job we need the Department to do and then give the Department the agencies and tools it needs to do it.

If we want the Department to be responsible for border security, as most everyone does, then it must have all of the border security agencies. Border and transportation security will, in fact, be the largest component of the new Department. About 90 percent of the employees of the Department of Homeland Security will be in that section. To significantly reduce the size of the Department, you have to either leave one of the border agencies out or you have to have fewer people on the border. Neither of those options makes us safer.

Most agree that the new Department should take the lead on cyber security. If so, it needs to have the entities in the federal government which deal with that issue.

We all know that state and local emergency responders are on the front lines of homeland security and that we need to assist them in doing their jobs. The new Department not only can provide grants and training; it can also help ensure good communication among different levels of government and even among various emergency responders. But, it needs to build upon the existing FEMA structure and relationships to "hit the ground running."

It is important to remember that this reorganization does not make government bigger. All of the people working for the Border Patrol, Coast Guard, etc., will be federal employees—with or without this new Department. The issue is not the size of the federal workforce; it is how we can best organize that workforce to protect our Nation.

Congressional oversight will be needed to make sure that the bureaucracy inside the new Department is truly "lean and mean" and that resources go where they count the most—on the ground at the front lines.

It boils down to this: we should look at those areas important to homeland security where the federal effort is fragmented, bring them together under one chain of command, and give them the tools they need to protect the country—whatever size it takes to do the job.

QUESTION 8: WHY HAS THE PRESIDENT ASKED FOR MANAGEMENT FLEXIBILITY IN THE NEW DEPARTMENT?

The President's request for "management flexibility" has been interpreted to mean a number of things and raised many fears, some unnecessarily. Here is where we find ourselves:

Terrorists are always probing for weakness. They are seeking out our vulnerabilities. They are watching what we do and adjusting their plans accordingly. We have to be flexible and adaptable in order to be successful. Unfortunately, those characteristics are generally not found in government organizations.

If we receive information that leads us to believe that we should acquire a particular vaccine in a hurry, we need to have a Department that can do that, within limits, without waiting on a bill from Congress or on approval of a reprogramming request. Some funding flexibility will be especially important during the transition phase of the new Department.

We face even bigger challenges with people. It takes far too long to hire qualified personnel. It is very difficult today to reward a federal employee who does an outstanding job and wants to continue in the same position. It is very difficult today to dismiss a federal employee who does not do a satisfactory job. Most managers simply try to shove them out of the way.

To hire people with the background and experience we need to fight cyber attacks, the federal government must compete with industry. The traditional civil service system hinders our ability to do so. New incentives, flexibility in hiring and firing, and greater flexibility in hours and benefits will all help us get and keep the top quality people we need.

The new Department needs other kinds of flexibility as well. Creating a new Department in a time of war, merging various cultures and organizations, and significantly increasing the people and resources involved will be a tremendous management challenge. The new Secretary should have some ability to reorganize inside the new Department as developments warrant. He or she should also have greater procurement and contracting authority to help identify, develop, and then field technology as rapidly as possible.

The President has been clear that he is not trying to overturn federal employee protections in this bill. He is simply trying to give the new Department every chance to work—and so should we.

QUESTION 9: IF NOT THIS, WHAT?

Creating a new cabinet department, realigning existing agencies, creating new capabilities to fight terrorism—it seems like a lot in one bill. Understandably, some Members are concerned that it is too much too fast.

Well, what are our alternatives?

Of course, the easiest option is to leave things as they are. We could reject the President's proposal and assume that the best we can do to keep our Nation secure is keep the current system with dozens of different agencies—each having some homeland security responsibility.

Another option is to leave the various agencies in their current departments but look to a White House office to coordinate their activities, using the Drug Czar as a model. There is certainly a place for a White House coordinator to help set government-wide policies, in part because a number of agencies involved with homeland security will not be in the new Department. But, as Tom Ridge has learned, a White House coordinator is no substitute for a direct chain of command with day-to-day operational control over—and responsibility for—key functions. A coordinator and 100 people in the White House cannot ensure that communications equipment is compatible, that data bases are interoperable, or that every guard at each border crossing follows the proper procedures.

A third option is to move incrementally—combine just two or three agencies, see how that works, and leave the door open to adding a few more down the road. Unfortunately, we do not have the luxury of time before we act. We need safer borders today, and the governmental entity charged with responsibility for our borders must have all of the pieces of border security under one chain of command. We need to strengthen federal support for emergency responders today, and we need better cyber security today. We cannot wait.

We must avoid setting up the new Department to fail. If we assign it the job of border security but do not give it direct control over all of the people and resources at the border, it simply cannot be effective. Going half-way is not fair to the employees in the new agency or to the American people.

Just as when we looked at our welfare system a few years ago, no one can credibly argue that the present system is as good as we can do. We must also resist the temptation to tamper around the edges in ways that may score political points but not count for much in dealing with future attacks. We must do what is right.

QUESTION 10: HOW SHOULD I VOTE ON CREATING THE NEW DEPARTMENT OF HOMELAND SECURITY?

Over the past few days, I have tried to answer some of the key questions and concerns about the new Department of Homeland Security. If there is any additional information I can provide, please let me or my office know.

As we discuss and debate all of the details involved in realigning so many government agencies, we should also remember the bigger picture and what is at stake.

Our country was suddenly and savagely attacked on September 11. Yet, we all recognize that the horrible tragedy of that day may be only a taste of much greater tragedy to come. I hope not. But I also know that chemical, biological, nuclear, and radiological weapons are spreading to more and more nations and groups. I also know that many of those nations and groups are hostile to the United States and have little regard for innocent human life.

As the Gilmore Commission has said: "The tragic attacks of September 11, 2001, the subsequent anthrax attacks, and persistent threats clearly demonstrate the importance of continuing to prepare our nation to counter more effectively the threats of terrorism. These attacks underscore the urgency by which we must act to implement fully a comprehensive national approach to preparedness."

September 11 must serve as our wake-up call. We must act, and we should not be timid about it. We will all be judged by the adequacy of our response.

Unfortunately, it is always easier to attack and criticize than it is to formulate specific proposals and take responsible action. Some of the criticisms of creating the new Department are genuine; others may be excuses to prevent reform. We cannot let turf protection trump real security.

Of course, there are uncertainties with any new endeavor. Even with perfect legislation, the management of this new Department will be an enormous challenge. And even if it is managed perfectly, there are no guarantees that future attacks will not be successful. But, we must do everything we can to be ready.

This reorganization will help us to be ready and to be safer. But our work will not end there. Everyone of us will have a continuing duty, through our committees and individually, to pursue a host of issues related to homeland security.

We are at war. Many lives and our vital freedoms are at stake. Those trying to hurt us are always probing for vulnerabilities and will stop at nothing, using any method of attack they can get their hands on. We have no silver bullets in this war. But it seems to me that we owe the people we represent, those who came before, and those who will come after us our very best efforts to preserve and secure this great country and its people.

Creating a Department of Homeland Security will make us safer—not perfectly safe, but safer. Please vote "yes" on H.R. 5005.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from New Jersey (Mr. MENENDEZ), the vice chair of our Democratic

Caucus and a valued member of the Select Committee on Homeland Security.

Mr. MENENDEZ. Mr. Chairman, I thank the gentlewoman for her leadership on the Select Committee on Homeland Security on our side of the aisle in leading us on some of the key issues that we wanted to pursue.

Mr. Chairman, in the work of securing the homeland, there are no Democrats or Republicans, there are only patriots. America has never been so powerful. Our culture, our government, our commerce, our ideals, our humanity, virtually everything we do and all that we stand for has a global reach that is unprecedented in the history of civilization. Yet, America has never been so vulnerable as it was on September 11. I will never forget that day; it will be seared in my memory forever, that I visited Ground Zero at the World Trade Center with the President and my colleagues from the tri-State area.

Winston Churchill once said, "You can always rely on America to do the right thing, once it has exhausted the alternatives."

Let me suggest that the gravity of the challenges we face in the wake of September 11 impels us to prove Churchill wrong on his latter sentiment. As we seek to protect the American people, as we work to establish the new Department of Homeland Security, we must get this right the first time.

Let us get this right for Kelly Colasanti of Hoboken, New Jersey, whose husband was killed in the attack on the World Trade Center. Let us not forget Kelly and the more than 100 constituents from my congressional district in northern New Jersey who were killed, and all of the other victims of the horrific attacks of September 11.

How we project American power abroad determines our success as a global power. It defines us in the eyes of others. America now faces the awesome responsibility to protect her people from terrorism.

How we project American power domestically is an entirely different matter. The establishment of this new Department will have profound implications. Let us keep that in mind as we proceed to establish a very powerful domestic security agency. Let us also refrain from questioning or impugning the motives of those who have a different view as to how we protect the American people and, yes, American workers.

Let me underscore a few items.

A Nation that can put a man on the moon and lead the information age can surely figure out a way to get the bomb detection technology we need in just 400 airports. Secretary Mineta testified before the Committee on Transportation and Infrastructure 2 days ago that the TSA would meet the deadlines. He said the same before the Select Committee on Homeland Security. The Department's Inspector General testified that it was premature to say TSA would not be able to meet the deadlines. As a Congress, we need to speak with one voice that excuses and delays will not be tolerated, and that is why I will offer an amendment with the gentleman from Minnesota (Mr. OBERSTAR) to make sure the traveling public keeps safe and we keep the TSA's feet to the fire.

Secondly, the most glaring problem, even crisis, I would say, with government performance leading up to September 11 was an unacceptable lack of coordination and information-sharing among Federal intelligence and law enforcement agencies and between the agencies and State and local authorities, first responders, and the private sector. This bill must include mechanisms that guarantee that such coordination and information-sharing indeed will occur. The minute that this Department goes on line, the new Secretary should have, in real-time, all of the intelligence and law enforcement information that he or she needs. The Chambliss-Shays-Harman-Menendez amendment should be adopted.

Finally, Governor Ridge has repeatedly said that if the hometown is secure, the homeland is secure. He is right. After September 11, we are in a new national security paradigm where Main Street is the frontline. We must fortify that frontline. We must provide our first responders the resources, training, and guidance they need to protect America's communities.

Now, we were asked repeatedly to provide flexibility for the Secretary in setting up this Department. As we provide some flexibility for the 107,000 employees about to be transferred by an act of Congress to a new department, homeland security should not mean the insecurity of those employees.

Yes, life in America has forever changed since September 11. Main Street is now the frontline of a new war. But American values have not changed and must not change. We continue to value liberty and freedom and justice and fairness. It is in that spirit of providing for security and preserving liberty that we will debate and offer amendments towards this goal. Together, together, I hope, if there are open minds and open hearts, we can provide for an even safer America, and we can do it in a bipartisan way.

Mr. ARMEY. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. TAUZIN), the distinguished chairman of the Committee on Energy and Commerce.

Mr. TAUZIN. Mr. Chairman, I rise in support of H.R. 5005 which represents the President's ambitious and historic proposal to create the new Department of Homeland Security. I believe the President's proposal represented a great framework for congressional consideration, but I think the majority leader and the Select Committee on Homeland Security chairman, the gentleman from Texas (Mr. ARMEY), deserve so much better. He has really done a yeoman's job in not only building this program as the President requested, but creating a much stronger bill as a result of the way he has gone about his work. His leadership and his consultation with the committees of jurisdiction has been tremendous, and I know he has consulted so well with those on the other side as we process this bill.

I want to praise Governor Ridge and the administration for their flexibility and consideration of our concerns, and I think we all owe him and his department a debt of gratitude for the protection that he has given our country since 9–11 and the work he is doing to ensure homeland security as we go forward.

Ever since the anthrax attacks in this country, the threat of bioterrorism has become much more of a reality to our people, and the importance of biomedical research activities at the Department of Health and Human Services and NIH and the CDC has never been greater than today. This bill literally builds upon those great research agencies, and rather than destroying their work and taking it over and redoing it, the bill makes it clear that NIH and CDC will remain with primary responsibility over human health-related research, and that the new Department itself will not engage in R&D efforts, but rather will collaborate and coordinate with these two agencies.

More importantly, the bill retains all of the legal and budgetary authority for these research programs within HHS. The Committee on Energy and Commerce recommended this approach because of the terrorism-related research currently being performed at NIH and at the CDC, which is really dual-purpose in nature. It serves the priority and needs of both counterterrorism, but also, traditionally, the needs of public health. So I want to thank the gentleman from Texas (Mr. ARMEY) and the administration for working with us on this important change.

We also want to make clear that the bill adopts recommendations that our committee made with respect to not only bioterrorism and public health operations at NIH and HHS, but also the public health emergency grant programs run by those agencies. I am pleased that the committee adopted our committee's recommendations in this area as well.

The bill also will improve the efforts by our country's top scientists at national laboratories to develop new methods of detecting and preventing terrorist attacks, such as improved sensors to detect radiological devices and new scanners to screen luggage and cargo, a critical need as we move forward. Our Nation's ability today to screen for radiological and nuclear materials entering our ports is woefully inadequate. We are going to do something about it with this bill.

To address those needs, our committee recommended the bill adopt a provision that will establish at the new Department a central technology clearinghouse that will assist Federal agencies, State and local governments and, even more importantly, the private sector in evaluating, implementing, and sending out information about key homeland security technologies such as radiation and bio-weapon detectors.

I particularly want to thank the gentleman from North Carolina (Mr. BURR) of our committee, the gentlewoman from New Mexico (Mrs. WILSON), and the gentlewoman from California (Ms. HARMAN) for their help in this regard during the committee's deliberations.

I also want to point out that, indeed, we also recommended, and the committee adopted in the print, within the Department a Federal cybersecurity program that will begin to provide computer security expertise to other Federal and civilian agencies to help improve protection of their critical information systems.

Our committee did work in this area, and what we learned about the vulnerability of Federal agencies to cyberattack was astounding. Today, the business software lines told us the private sector is in similar shape. This bill will turn it around. The cybersecurity section is a critical component.

Mr. Chairman, I want to commend this bill to all of my colleagues and recommend its passage.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from California (Mr. WAXMAN), the ranking member of the Committee on Government Reform.

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, while I agree that we need homeland security legislation, it is clear that the Federal departments are not working together as they should to protect our Nation. The recent revelations of missed signals and failure to communicate at the FBI and the CIA illustrate how serious this problem is.

Unfortunately, the bill we are considering today has serious flaws. In fact, I think it may well cause more problems than it solves.

I want to show a chart to the right. Here is how our homeland security agencies are organized today, and I have a second chart. This is how they will be organized after the new Department is created. We are getting more bureaucracy and we are doing so at a tremendous cost to the taxpayers.

According to the Congressional Budget Office, just creating and managing a new department will cost $4.5 billion, and this does not include additional spending that may be necessary to prevent terrorist attacks, reduce the Nation's vulnerability to attacks, and recover from any attacks.

Now, if this money were used at the front lines of fighting terrorism instead of paying for a new bureaucracy, think how much better off we might be. There is an old adage that those who do not remember the past are condemned to repeat it, but we may do exactly this in our headlong rush to create this new department.

The history of past reorganizations is not reassuring. Here is what Petronius the arbiter, an advisor to the Roman Emperor Nero, said nearly 2000 years ago, and I quote: "We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any situation by reorganizing, and a wonderful method it can be for creating the illusion of progress, while producing confusion, inefficiency, and demoralization."

The committees were able to work in a bipartisan way to achieve some substantial improvements to the President's bill. Unfortunately, the Select Committee on Homeland Security chose to simply reverse many of these gains. Even worse, the Select Committee on Homeland Security added entirely new provisions that weaken our national security. One provision delays deadlines for improving airline safety. Another exempts defense contractors and other large campaign contributors from liability, even for intentional wrongdoing. This is the ultimate anti-corporate responsibility provision imaginable.

One major defect in this bill is that it would transfer a vast array of responsibilities that have nothing to do with homeland security such as administrating the national flood insurance program and cleaning up oil spills at sea.

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This bloats the size of the bureaucracy and dilutes the new department's counterterrorism mission.

Another major defect is the bill lacks a strong mechanism to coordinate the activities of the many Federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective, but this bill does not give the White House Office of Homeland Security the budgetary powers it needs to do its job. I will be offering an amendment later to address this deficiency.

Another problem is the President's proposal include broad exemptions from our Nation's most basic good government laws, such as civil services laws and the Freedom of Information Act.

We fixed many of these loopholes in our committee, but the Select Committee ignored our work. As a result, I will be offering an amendment with the gentleman from Texas (Mr. FROST) to restore to the employees of the new department basic civil service rights.

There are many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and, for the sake of our national security, finally address them as we move forward with this legislation.

I agree we need homeland security legislation. It is clear that federal departments are not working together as they should to protect our nation. Revelations of missed signals and failures to communicate at the Federal Bureau of Investigation and the Central Intelligence Agency illustrate how serious the problem is.

Unfortunately, the bill we are considering today has serious flaws. In fact, I think it may well cause more problems than it solves.

Fundamentally, reorganization is a bureaucratic exercise. The bill before us addresses organizational flow charts, the creation of five new undersecretaries, and the appointment of 12 new assistant secretaries. But as a professor of management at Columbia University recently remarked, "To think that a structural solution can bring about a major improvement in performance is a major mistake."

According to the Administration, "responsibilities for homeland security are dispersed among more than 100 different government organizations." Indeed, this organizational chart from the White House lists 153 different agencies, departments, and offices with a role in homeland security.

The President's proposal will not simplify this patchwork and may even make it worse. Even after all of the proposed changes, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to this chart, prepared by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President's proposal, from 153 to 160.

We are getting more bureaucracy, not less. And we are doing so at a tremendous cost to the taxpayer.

The Administration has asserted that this new Department "would not 'grow' government," and that any costs would be paid for by "eliminating redundancies." According to the Congressional Budget Office (CBO), however, just creating and managing the new Department will cost $4.5 billion. And this does not include "additional spending that may be necessary to prevent terrorist attacks, reduce the nation's vulnerability to attacks, and recover from any attacks," CBO says.

If this money were used at the front lines of fighting terrorism—instead of paying for a new bureaucracy—think how much better off we might be.

The committees of jurisdiction were able to work in a bipartisan way to achieve some substantial improvements to the President's bill. Unfortunately, the Select Committee chose to simply reverse many of these gains. Even worse, the Select Committee added entirely new provisions that weaken our national security.

One provision added by the Select Committee delays deadlines for improving airline safety. Under current law, the Transportation Security Administration is required to take all necessary action to ensure that all United States airports have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002. But under the Select Committee bill, air passengers must wait another full year before all bags are checked for bombs.

Another new Select Committee provision exempts defense contractors and other large campaign contributors from liability—even for intentional wrongdoing. The Select Committee added a provision to exempt corporations from liability when they make products the Secretary deems "qualified anti-terrorism technologies." For these products, which could include pharmaceutical products such as the anthrax vaccine, the Select Committee limited corporate liability, exempted companies from punitive damages even when the companies are fraudulent or negligent, and gave them complete immunity in state courts. This is the ultimate anti-corporate responsibility provision imaginable.

Yesterday, we received a letter from the Reserve Officers of the United States opposing this provision. In their letter, the reserve officers stated that this section "is inconsistent with pursuing the highest quality product for use by our armed forces as they fight terrorism." Yet today, we will hear additional proposals to expand this broad corporate exemption even further. Mr. ARMEY will introduce an amendment to extend these liability exemptions to an even wider range of potentially defective products and services.

On July 9, 2002, I joined with Representative DAVID OBEY, the Ranking Member of the Appropriations Committee, in sending a letter to Governor Ridge outlining a number of serious problems with the bill (attached). This letter raised concerns with ten different areas related to the establishment of the new Department. I ask unanimous consent that this letter be inserted in the RECORD.

As the letter explains, one major defect in this bill is that it would transfer to the new Department a vast array of responsibilities that have nothing to do with homeland security, such as administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new Department's counterterrorism mission.

Another major defect is that the bill lacks a strong mechanism to coordinate the activities of the many federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective, but this bill does not give the White House Office of Homeland Security the budgetary powers it needs to do its job. I will offer an amendment later today that addresses this deficiency.

A third problem is that the President's proposal included broad exemptions from our nation's most basic "good government" laws. The bill allowed the new Secretary to waive civil service laws that prohibit patronage, protect whistleblowers, provide for collective bargaining rights, and ensure health and retirement benefits. Under the President's proposal, the Secretary could also ignore cornerstone procurement principles, such as open and competitive bidding, and basic government in sunshine laws, such as the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act (FACA).

We fixed many of these loopholes in the Committee on Government Reform; but the Select Committee ignored our work. As a result, I will be offering an amendment with Mr. FROST later today to restore to the employees of the new Department basic civil service rights. I will also be strongly supporting the amendment by Representative MORELLA to protect collective bargaining rights, and I will be supporting an amendment to fully restore FOIA and FACA protections.

Let me make that I am not opposed to reorganization. I am convinced there are steps we can take that will make sense and improve the functioning of our government. But it has to be done in a way that minimizes disruption and bureaucracy and maximizes our ability to confront the terrorism threats that we face. Simply rushing to reorganize is not the solution.

A better approach would be to create a leaner, more focused Department of Homeland Security and to strengthen the authority of the existing White House Office of Homeland Security. The new Department should be limited to the Immigration and Naturalization Service, the Customs Service, and the Transportation Security Administration. Such a new Department would have less than half of the employees of the proposal before us. Even more important, it would have a narrow, focused mission of protecting our borders and transportation systems.

At the same time, we need to develop a detailed homeland security strategy and to ensure that all federal agencies coordinate in implementing the strategy. This needs to be done at the White House level. Currently, there is an office in the White House that is supposed to be providing this coordinating function, but it does not have enough power to be effective. As part of a streamlined, less bureaucratic approach to homeland security, Congress should be codifying the White House Office of Homeland Security in statute and giving the director of the office budgetary authority sufficient to make agencies pay attention to the office.

There is an old adage that those who do not remember the past are condemned to repeat it. But we may do exactly this in our headlong rush to create the new Department. The history of past reorganizations is not reassuring. Here is what Petronius Arbiter, an advisor to Roman Emperor Nero, said nearly 2,000 years ago: We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

The Department of Energy was created 25 years ago and it is still dysfunctional. The Department of Transportation was created 35 years ago, yet as the National Journal reported, it "still struggles to make its components cooperate, share information, and generally play nice."

The model we are supposed to be emulating is the creation of the Department of Defense 50 years ago. But for over 35 years, the Defense Department was riven with strife. In 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they couldn't figure out how to cooperate. It was not until the Goldwater-Nichols Act of 1986 that the problems created in the 1947 reorganization were finally addressed.

To avoid the mistakes of the past, we have to do a careful job. But the process we are following is not encouraging. The reorganization plan was released before the Administration completed its work on the national strategy for homeland security. Moreover, the White House proposal we are considering today was put together by a handful of political appointees working in secret. The agencies with expertise were excluded from the process. In fact, there was so little communication between the White House and the agencies that one important agency had to call my staff to find out how it fared under the plan.

These days there seems to be a lot of self-congratulation going on, which makes us all feel good. But the time for congratulations and elaborate ceremonies comes when we have captured Osama bin Laden and the other al Qaeda leaders, when we have arrested the criminal who launched the anthrax attacks, and when Americans from California to New York go to bed at night knowing that our intelligence agencies are in the best position possible to thwart terrorism.

Our job today is not to congratulate ourselves for creating another bureaucracy, but to address the many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and—for the sake of our national security—produce legislation that actually makes sense.

HOUSE OF REPRESENTATIVES,
Washington, DC, July 9, 2002.

Hon. TOM RIDGE,
Director, Office of Homeland Security, The White House, Washington, DC.

DEAR GOVERNOR RIDGE: Congress is considering the President's proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has received the legislative language that would implement the President's plan, many issues have arisen about the details of the proposal. We are writing in the hope that you will be able to provide expeditious responses to these concerns.

The issues fall into ten main areas. First, the new Department will inherit a vast array of responsibilities that have nothing to do with homeland security. These include administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new Department's counterterrorism mission.

Second, the legislation lacks an effective mechanism to coordinate the activities of the many federal agencies that have major homeland security functions. The President's submission to Congress listed 153 different agencies, departments, and offices involved with homeland security. After the creation of the proposed new Department, this number actually will increase to 160 agencies, departments, or offices with security roles. But the draft bill does not include a mechanism for developing and implementing a unified homeland security strategy across the entire government.

Third, there are inefficiencies and coordination problems that will arise when parts of agencies are removed from their existing departments and moved to the new Department. The goal of the legislation is to make government more efficient, but some of the proposed changes could have exactly the opposite effect. For example, GAO has testified that programs transferred from the Department of Health and Human Services include "essential public health functions that, while important for Homeland Security, are critical to basic public health core capacities.

Fourth, despite prior assurances that the Administration supported reforms of the Immigration and Naturalization Service (INS) that were passed by the House, the President's proposal would import the INS into the new Department of Homeland Security wholly intact and without these needed internal reforms.

Fifth, the legislation includes broad exemptions from our nation's most basic "good government" laws. The legislative language would allow the new Secretary, in conjunction with the Office of Personnel Management, to waive all provisions of our civil service laws. These laws have evolved over many decades to ensure that our government has a professional civil service hired on the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these protections, including those that prohibit patronage, protect whistle-blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach has been taken with procurement and the management of real property. Under the proposal, the Secretary does not have to comply with cornerstone procurement principles, such as open and competitive bidding. Moreover, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, have been limited in their application to the new Department.

Sixth, the President's proposal would give the new Department extraordinary powers to avoid meaningful congressional oversight. Not only would the new Department be able to exempt itself from civil service, procurement, and property laws, it would also be able to rearrange functions, eliminate offices, and transfer large amounts of appropriated funds without having to seek prior congressional approval.

Seventh, the proposal does not address the potential for disruption in the nation's war against terrorism. According to David Walker, the Comptroller General of GAO: "[R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism." Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, that reorganization was not attempted until after the war was over, and even then it caused confusion and inefficiencies for decades.

Eighth, there is no comprehensive national strategy for combating terrorism to guide the new Department. Logically, a major bureaucratic reorganization like this should be proposed as part of a comprehensive national strategy for providing homeland security. But in this case, the reorganization is occurring in a vacuum. There is no national strategy that identifies the major threats the nation, faces and explains how the new Department will meet them. Nor is there a comprehensive threat and risk assessment that identifies and prioritizes threats in a coherent manner.

Ninth, the costs of this proposal have not been identified. Although the Administration has stated that the creation of this new Department "would not 'grow' government," this is not credible. According to the nonpartisan Congressional Budget Office, even the less ambitious reorganization proposed by Senator Lieberman will cost taxpayers over $1 billion over the next five years. Costs for the Administration's plan inevitably will be higher.

Finally, the Administration's proposal was developed in secret by a small group of White House advisors, without substantive input from the agencies that handle homeland security. It is being rushed through Congress on an accelerated schedule. This is not normally an approach that produces sound policy. The potential for making grave mistakes as a result of this truncated process should be a serious concern for all Americans.

We need to work together to address the concerns raised in this letter and to make improvements in the legislation. Your response to the issues and questions raised in the body of this letter will be an important step in this process. For this reason—and given the short time frame Congress has for consideration of the legislation—we urge you to respond by July 15, 2002.

I. TRANSFER OF FUNCTIONS NOT RELATED TO HOMELAND SECURITY

According to the White House briefing document issued on June 7, 2002, the Department of Homeland Security "must be an agile, fast-paced, and responsive organization." Transferring functions that do not involve homeland security to the new Department, however, interferes with this goal. Giving the new Department unnecessary responsibilities inevitably will expand the size of its bureaucracy and dilute its counterterrorism mission.

At the same time, giving vital but unrelated government responsibilities to the Department creates the risk that these responsibilities will be neglected and performed poorly. As GAO has concluded, many of the unrelated functions being given to the new Department "represent extremely important functions executed by the federal government that, absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs and other significant government functions."

Despite these risks, many important government functions that are not related to homeland security are being transferred to the new Department. In fact, the new Department will have to carry out over three dozen completely unrelated missions under the President's proposal.

Section 402(3) of the President's proposal would transfer the Animal Plant Health Inspection Service (APHIS), which is now currently part of the Department of Agriculture, into the new Department. APHIS has nearly 8,000 full-time employees (FTEs), but few have responsibility for inspecting plants and animal products at the border. The other APHIS employees perform functions that are critical to various sectors of the economy, but are not related to homeland security. For example, APHIS is responsible for:

Eradicating pests, such as the boll weevil, the citrus canker, the gypsy moth, and various noxious weeds through detection and control strategies throughout the United States;

Approving animal drugs that are made from biological materials, such as animal vaccines;

Approving field trials of genetically modified crops; and

Maintaining the missing pet network at www.missingpet.net.

Section 502(1) of the President's proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. To date, however, FEMA has had a limited role in counterterrorism. According to former FEMA director James Lee Witt, "[o]ver the last decade FEMA has responded to more than 500 emergency and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City)." In Mr. Witt's view, "[f]olding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards." Major FEMA responsibilities that are unrelated to homeland security include:

Providing flood insurance and mitigation services (including pre-disaster mitigation, the Hazard Mitigation Grant Program, and flood mapping);

Conducting various programs to mitigate the effects of natural disasters, such as programs to assist states in preparing for hurricanes and the National Earthquake Hazards Reduction Program;

Providing temporary housing and food for homeless people; and

Operating the National Fire Data Center and the National Fire Incident Reporting System to reduce the loss of life from fire-related incidents.

Section 402(4) of the President's proposal would transfer the United States Coast Guard out of the Department of Transportation and into the new Department. The Coast Guard describes itself as a "multi-mission, military, maritime" agency. Although it performs some security-related functions, it also conducts many others unrelated to homeland security. For example, Coast Guard responsibilities include:

Providing navigational tools to ensure that vessels can navigate the nation's waterways;

Promulgating and enforcing boating regulations to ensure that oceangoing vessels are safe;

Protecting the nation's fishery resources, as well as its endangered species, by enforcing prohibitions against illegal and excess fishing;

Protecting the maritime environment by preventing oil spills in the nation's waters and ensuring that spills are cleaned up expeditiously if they happen; and

Maintaining a fleet of ships that is capable of breaking ice in order to maintain maritime mobility and monitors the movement of glaciers.

These Coast Guard functions are essential, but they could be jeopardized by the transfer to a new Department focused on homeland security. Indeed, the effects of the shift in the Administration's priorities are already being felt. According to the Administration's homeland security budget justification for fiscal year 2003, "[a]fter September 11, the Coast Guard's port secunty mission grew from approximately 1–2 percent of daily operations to between 50–60 percent today." Without a sustained commitment to its core marine and fishery functions, the Coast Guard's ability to protect boaters and the marine environment will be jeopardized.

There are many other examples of unrelated functions being transferred to the new Department. The transfer of the Environmental Measurements Laboratory from the Department of Energy (DOE), for example, will make the new Department responsible for maintaining the Human Subjects' Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, as well as the program that assesses the quality of 149 private laboratories that measure radiation levels. Radiation measurement quality control undoubtedly will seem like a small item to the new Department of Homeland Security, but assuring that the laboratories make accurate measurements is important, as mistakes potentially could affect public health and cause large unnecessary public expenditures at DOE facilities.

Appendix A contains a list of 40 unrelated functions that would be transferred to the new Department by the President's proposal. While it may be impossible to create a new Department without transferring some unrelated functions, there would seem to be serious dangers inherent in the wholesale transfer of unrelated functions as contemplated in the Administration's proposal.

II. LACK OF EFFECTIVE COORDINATING MECHANISMS

At the same time that the Administration's proposal transfers numerous unrelated functions to the new Department, the proposal also falls to include provisions that would ensure the coordination of the more than 100 federal entities that will continue to have significant homeland secunty functions.

According to the Administration, "responsibilities for homeland security are dispersed among more than 100 different government organizations." Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security. The While House argues that the President's proposal would solve this problem by "transforming and realigning the current confusing patchwork of government activities into a single department.

In fact, however, the President's proposal will not simpllfv this patchwork and may even make it worse. Even after all of the changes proposed in the President's legislative language, the federal govemnient would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President's proposal, from 153 to 160.

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration: "Currently, if a chemical or biological attack were to occur, Americans could receive warnings and health care information from a long list of govenrment organizations, including HHS, FEMA, EPA, GSA, DOJ, OSHA, OPM, USPS, DOD, USAMRIID, and the Surgeon General—not to mention a cacophony of local agencies."

But under the President's proposal, all but one of these 11 federal agencies (FEMA) would continue to exist, and this one agency would be replaced by the new Department. The potential for confusion—and the need for effective coordination—remains as great after the creation of the new Department as before.

In fact, in some cases, the reorganization will actually create confusion. Currently, three separate federal agencies are in charge of protecting the food supply: the Food and Drug Administration (FDA), which prevents adulteration of fruits, vegetables, processed foods, and seafood; the Environmental Protection Agency (EPA), which regulates environmental contaminants, such as pesticides; and the Department of Agriculture, which regulates the safety of meat and poultry for human consumption, as well as the spread of plant and animal pests through food products. Leading experts, such as the National Academy of Sciences, have called for consolidating these diffuse authorities into a single agency."

The Administration's proposal, however, would further fragment regulation of the food supply by transferring some of Agriculture's responsibilities to the new Department, creating a fourth food safety agency. APHIS, which is charged with inspecting imports to ensure that pests and bugs that could harm crops or livestock do not enter the United States, would become part of the new Department. But the Food Safety Inspection Service of the Department of Agriculture, which inspects domestic and imported meat and poultry for threats to human health, would remain at Agriculture. The nonsensical result, as GAO has observed, is that "the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole."

One area In which coordination is urgently needed is among law enforcement and intelligence agencies, in particular the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). How the new Department would relate to these agencies is not clear, however. One of the primary missions of the new Department is to "[p]revent terrorist attacks within the United States." The Administration says that a new department with this mission is needed because "[t]oday no one single government agency has homeland and security as its primary mission." But the FBI has also just undergone a major reorganization. Now, its primary mission is also "[p]rotecting the United States from terrorist attack"—identical to that of the new Department of Homeland Security. As a result, rather than having no single federal agency with homeland security as its mission, the Administration seems to be proposing two.

Under the Administration's proposal for a new Department of Homeland Security, there will be a new office for intelligence and threat analysis. This office will assist in "pulling together information and intelligence from a variety of sources." Similarly, under FBI Director Mueller's reorganization proposal, there will be a new office in the FBI called the Office of Intelligence that will also assist in "pulling together bits and pieces of information that often comes from separate sources." The Department of Homeland Security's intelligence office would "have the ability to view the dangers facing the homeland comprehensively, ensure that the President is briefed on relevant information, and take necessary protective action." Similarly, the FBI's intelligence office will be charged with "providing analytic products to policy makers and investigators that will allow us to prevent terrorist acts." This does not appear to be a recipe for a unified approach.

The investigation of the September 11 attacks has already revealed serious lapse in the analysis and sharing of intelligence information. In July 2001, as FBI special agent in Phoenix reported to this supervisors that followers of Osama bin Laden might be training at U.S. aviation schools and suggested a nationwide canvass of the schools. But this warning was apparently ignored. As early as January 2001, the CIA obtained information that two of the September 11 assailants—Nawaz al-Hazmi and Khalid al-Midhar—met with al-Qaeda agents in Malasya. But this information was not provided to the INS until August 2001, by which time al-Hamzi and al-Midhar had already entered the United States.

The Administration's proposed bill, however, does not adequately address these problems. Although the bill gives the Secretary of Homeland Security rights of access to reports, assessments, and analytical information from other agencies that relate to threats and vulnerabilities, the Department remains primarily a "consumer" of intelligence information collected by agencies outside its control after that information is already processed by those agencies. This passive role will not ensure that the new Department obtains access to information that the collecting agencies deem insignificant, such as the warning from the FBI agent about flight schools. Although the Administration's bill allows for the transmittal of "raw" intelligence from outside agencies to the Department of Homeland Security, the Department is not given the resources to cope with the volume and complexity of this information. Moreover, the new Department has no "tasking" authority to direct what intelligence is collected, making it difficult for the new Department to ensure that possible threats it identifies are properly pursued.

Another concern is the potential for confusion and interference in the actual response to bioterrorist incidents. The FBI will bring a law enforcement focus to the scene of a bioterrorist event, while the new Department will be concerned with the emergency response. Under the President's proposal, it is unclear which will prevail. Under Presidential Decision Directive 62, which was signed during the previous Administration, the FBI was designated as the lead agency for "crisis management," which included efforts to anticipate, prevent, and resolve terrorist attacks. FEMA was designated the lead agency for "consequence management." which included broader measures to protect public health and safety. The President's proposal seeks to "clarify" these responsibilities by "eliminating the artificial distinction between 'crisis management' and 'consequence management.'" But it does not describe how the new Department and the FBI will handle the scene of a bioterrorist attack if they both arrive at the same time with fundamentally conflicting interests and goals.

There are many other instances of coordination problems that the President's proposal does not address. It is unclear in the President's proposal, for instance, how the Department of Homeland Security would organize and coordinate the various different police forces that exist among federal agencies. The Administration's proposal would transfer some of those forces (the Federal Protective Service, which protects buildings belonging to the General Services Administration (GSA)), but not others (the security forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, removing the Federal Protective Service from GSA creates its own problems because, as GAO has observed, "security needs to be integrated into the decisions about location, design and operation of federal facilities."

What is urgently needed is an effective entity at the While House level that can unify the disparate federal agencies with homeland security functions behind a comprehensive national strategy. This is supposed to be the mission of the White House Office of Homeland Security, which President Bush created in October 2001, and which you head. But the proposal does nothing to give the head of the office the kinds of authority needed to succeed.

III. PROBLEMS WITH EXTRACTING CERTAIN AGENCIES

The sections above have raised concerns with transferring functions unrelated to homeland security and the lack of coordinating mechanisms regardless of whether agencies are inside or outside the structure of the new Department. Also of concern are the potential effects of removing certain functions from their home agencies.

This is a particular problem for the functions being transferred from the Department of Health and Human Services (HHS). Section 502(5) of the President's proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and "the functions of the Secretary of Health and Human Services related thereto" to the new Department of Homeland Security. This provision makes little sense. In the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Congress created the Office of the Assistant Secretary for Public Health Emergency Preparedness in recognition of the need to have a central office in HHS to coordinate how the various agencies within the Department respond to public health emergencies. Moving this office to another department will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HBS that Congress was attempting to fix.

Richard Falkenrath, director of policy at the White House Office of Homeland Security, was asked about this problem during a briefing for staff on July 1, 2002. He answered that the challenge of coordinating emergency preparedness and response activities within HHS could be handled by "a couple of people" in the Secretary's office. Obviously, this cavalier attitude is seriously misinformed.

Section 505 is also problematic. It transfers control over HHS programs to provide assistance for state and local preparedness from HBS to the new Department. These funds, which total over $1 billion, allow states and localities to enhance their surveillance, communication, and laboratory abilities all of which are essential for responding to numerous public health threats, including threats that are not related to terrorism. As GAO has stated, these programs "include essential public health functions that, while important for homeland security, are critical to basic public health core capacities." As a result, GAO made the following conclusions: "We are concerned that this approach may disrupt the synergy that exists in these dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to difficulty in balancing priorities. Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met.

Section 403 also creates uncertainties by transferring to the new Department vague authorities over visa processing. Currently, approving and denying visas is an important activity of the State Department, which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. To perform this function, the State Department employs thousands of foreign service officers skilled in hundreds of languages. Section 403(1) transfers to the Secretary of Homeland Security "exclusive authority" over this function, but this authority would be exercised "through" the Secretary of State. As a result, it is unclear whether the State Department must concur in policy decisions, or whether this is merely an administrative function. Additional statements by the Administration have not clarified this provision. The Administration has stated that consular officers will remain employed by the State Department, but that the new Secretary of Homeland Security will delegate back to the Secretary of State some visa functions unrelated to security.

Similar problems affect the provisions transferring portions of the Department of Energy. The provisions in the bill are ambiguous and potentially very broad. For example, section 302(2)(G) of the President's proposal would transfer "the advanced scientific computing research program and activities" at Lawrence Livermore Laboratory to the new Department. Although the exact scope of this provision is unclear, it appears to encompass parts of the Lawrence Livermore Laboratory's Computation Directorate, which supports other programs at the laboratory by providing computing capacity and capability, as well as research, advanced development, and operations and support related to computing, computer science, and information technologies. Such a transfer could harm the laboratory's ability to support its key mission—safeguarding this stockpile of nuclear weapons—as well as other core laboratory activities.

Section 302(2)(E) gives, the President authority to transfer from DOE to the new Department any life science activity within the biological and environmental research program that is related to microbial pathogens. The result would be that ongoing DNA sequencing of harmful microbes could be transferred to the new Department, while virtually identical work on microbes with beneficial uses (such as microbes that break down pollution) would stay at DOE. Splitting this highly specialized work risks weakening the effectiveness of both.

IV. LACK OF RECOGNITION OF DISPARATE IMMIGRATION FUNCTIONS

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration services function and an enforcement function. As part of this reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice. The legislation aimed to correct longstanding and widely-recognized systemic problems within the INS by separating out its distinct and often conflicting service and enforcement functions.

When the House immigration bill was being considered, the Administration expressed its support. In addition, when the White House issued its briefing document regarding the new Department of Homeland Security, that support was reiterated. The briefing document stated the following: "The new Department of Homeland Security would include the INS and would, consistent with the President's long-standing position, separate immigration services from immigration law 32 enforcement."

Despite these assurances, however, the legislative language proposed by the President would import the INS into the new Department of Homeland Security intact and unreformed. There are no details whatsoever regarding the structure of the INS after it is transferred to the new Department. As a result, the Administration's proposal fails to address internal structural and coordination problems that hamper the effectiveness of the INS.

V. EXEMPTIONS FROM "GOOD GOVERNMENT" LAWS

The Administration's proposal would create broad exemptions to the nation's "good government" laws. It would make the civil service, procurement, and property acquisition and disposal laws essentially optional for the new Department. In addition, the President's proposal would weaken valuable sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act. The bill would also create a weak management and oversight structure by not fully applying the Chief Financial Officers Act, the law governing Chief Information Officers, and the Inspector General Act.

A. Exemption From Civil Service Protections

The nation's civil service laws have evolved over many decades to ensure that the government has a professional civil service hired on the basis of merit rather than political favoritism. Section 730 of the President's proposal, however, would give the Secretary the authority to create an alternative personnel system. The only limitation in the statute is that the system should be "flexible, contemporary and grounded in the public employment principles of merit and fitness."

Under the President's proposal, employees of the new Department could be exempted from essential provisions of title 5 of the United States Code. No rationale has been offered to explain why affording these basic protections for federal workers and their families would undermine the mission of the new Department. The civil service provisions that become optional include the following:

The prohibition on discrimination against employees on the basis of political affiliation and on coercing political activity (anti-patronage protection);

The prohibition on hiring or promoting a relative (anti-nepotism protection);

The prohibition on reprisal against employees for the lawful disclosure of information about illegal and wasteful government activity (whistleblower protection);

The preferences for veterans in hiring and in reductions-in-force;

The protection from arbitrary dismissal or demotion through due process appeal rights to the Merit Systems Protection Board;

The right to organize, join unions, and bargain collectively with management over working conditions;

Sick and annual leave for federal employees and family and medical leave;

Retirement benefits, such as the Civil Service Retirement System and the Federal Employees' Retirement System; and

Health insurance through the Federal Employees' Health Benefits Program.

Moreover, important programs for ensuring diversity in the federal workforce, such as the requirement to recruit minorities, would also become optional under the proposed legislation.

Another potential threat to the civil service laws is section 732(b), which allows the Secretary to hire an unlimited number of employees through "personal service" contracts rather than through the civil service system. Although the rationale for this provision seems to be to allow the new Department to obtain certain specialized services in an emergency, there do not appear to be any limits on its use. For example, current law requires these types of contracts to be temporary (no longer than one year) and subject to salary caps (no higher than the GS-15 level). The President's proposal would allow these contracts to go on indefinitely and at any rate. In effect, the section provides an alternative vehicle for bypassing the protections and requirements of the civil service system.

B. Exemption From Procurement Rules

Under section 732(c) of the President's proposal, the new Secretary could waive any and all procurement statutes and regulations, and the Secretary would not be required to comply with the cornerstone procurement principles of open and competitive bidding. In a section-by-section analysis provided by the While House, the Administration asserts that "normal procurement operations would be subject to current government-wide procurement statutes and regulations." To the contrary, however, the legislative language would add the new Department to the list of entities listed in 40 U.S.C. 474, such as the Postal Service, which would exempt entirely the Department from the federal government's normal acquisition laws.

As a result, there is no guarantee that the new Department would be getting the lowest prices, the best quality, or the best deals. Fundamental principles of federal procurement such as the following would not apply:

The requirement that acquisitions be publicly advertised;

The requirement that sufficient notice be given to allow companies to respond;

The requirement that all responsible bidders be given the chance to compete for a given acquisition; and

The requirement that all contractors be rated on the same criteria when competing for a given contract.

These bedrock principles have helped to maintain competition in federal contracting, which history has proven to be the best way to ensure the best quality at the lowest prices while maintaining a system free of favoritism or abuse. In addition, long-standing preferences for small- and minority-owned businesses designed to encourage their development and access to federal contracts would no longer be guaranteed.

Section 732(a) of the President's proposal would explicitly grant the new Department so-called "other transactions authority" for research and development contracts. This authority was given to the Defense Department to eliminate the open and competitive bidding process in order to attract nontraditional contractors. In fact, however, it has been used mainly by traditional contractors to negotiate contracts that waive the federal government's rights to review financial management and cost information, as well as its rights to use new inventions discovered through research funded by the federal taxpayer. In reviewing the use of this authority by the Defense Department, the Inspector General found that these types of contracts "do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud."

C. Exemption From Property Rules

The new Department will acquire a considerable inventory of federal property, particularly through the Coast Guard, which owns valuable real estate across the country. Sections 732(d) and (f) of the President's proposal, however, would give the new Department broad authority to acquire and dispose of both real and personal property. Specifically, the Department could acquire replacement real property through exchange or transfer with other agencies or through the sale or long-term lease to the private sector. In addition, the Department would be authorized to retain the proceeds of such transactions.

Currently, under the 1949 Property Act, federal agencies must determine whether they own "excess" property they no longer need. GSA then screens this excess property for other federal uses. If there are no federal uses for the property, GSA declares the property "surplus" and screens it for "homeless" or "public benefit" uses, such as for schools, correctional institutions, airports, and other entitles. If no beneficial public use is found for the property, GSA may sell the property through negotiated sales at fair market value without restrictions on use. The property may also be sold to the public through a bidding process if a negotiated sale does not occur. Under the Administration's proposal, however, none of these procedures will apply.

The Government Reform Committee reported a comprehensive reform of federal property laws earlier this year (H.R. 3947). This reform gave agencies more flexibility to manage their property, but it also included safeguards to ensure that agencies respond to community input, consider local zoning laws, and receive fair market value. None of these safeguards are incorporated into the Administration's proposal.

D. Exemption From Freedom of Information Act

Section 204 of the President's proposal would exempt the new Department from complying fully with the Freedom of Information Act (FOIA). If nonfederal entities or individuals provide information voluntarily to the new Department that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism, that information would not be subject to FOIA. This exemption would apply to information that "is or has been in the possession of the Department."

FOIA was designed to preserve openness and accountability in government. In order to protect sensitive information, FOIA already contains sufficient exemptions from disclosure. These exemptions cover critical infrastructure information. FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). Therefore, new exemptions to its provisions do not appear necessary.

The danger in creating new exemptions to FOIA is that important information about health and safety issues could be withheld from the public. In fact, the provision is drafted so broadly that it could be used to "launder" embarrassing information through the new Department and thereby prevent public disclosure.

One particular target of the new FOIA exemption appears to be the "Risk Management Plans" that chemical plants are required to file under the Clean Air Act. These plans inform communities about the dangers they would face in the event of an explosion or chemical accident in a nearby plant. Chemical industry officials argued that Congress should restrict public access to this information because the information could be used by terrorists to target facilities.

Congress addressed this issue by carefully balancing the goal of informing emergency responders and the public about potential risks of chemical accidents with the goal of keeping sensitive information away from terrorists. In the Chemical Safety Information Site Security Act of 1999, Congress concluded that information about potential "worst case" scenarios should remain available to the public, but with certain restrictions to prevent a searchable database from being readily posted on the Internet. Congress ensured public access to basic information about the risk management plans, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President's proposal, however, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

E. Exemption From Federal Advisory Committee Act

Section 731 of the President's proposal would exempt advisory committees established by the Secretary of the new Department from the Federal Advisory Committee Act (FACA). FACA requires that any committee formed to provide advice to the federal government, and which consists of members who are not federal employees, must follow certain rules in order to promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes of the meetings, and provide the opportunity for divergent viewpoints to be represented.

To protect sensitive information, FACA includes exemptions for information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense, currently operate under FACA without difficulty. The President's proposal contains no explanation why the new Department could not also comply with FACA. In fact, the only two agencies that are exempt from FACA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department under the President's proposal. These existing advisory committees, which are currently subject to FACA, include the Navigational Safety Advisory Committee at the Coast Guard, the Advisory Committee of the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Customs Service, and the Advisory Committee on Foreign Animal and Poultry Diseases at APHIS. When rechartered under the

Homeland Security Department, none of these advisory committees will be subject to the FACA requirement on balance and openness.

In addition, the President's proposal waives important conflict of interest laws that apply to individuals serving on advisory committees. Under section 731, if an individual serves on an advisory committee, the individual will be exempt from the provisions of sections 203, 205, or 207 of Title 18, United States Code. These sections contain important protections. Section 207, for example, provides that a person who serves on a committee that is advising an agency on a specific matter cannot lobby the agency about the same matter after leaving the advisory committee. No rationale is provided for exempting members of advisory committees from these protections against conflicts of interest.

F. Exemption From Chief Financial Officer Act

Section 103(d)(4) of the President's proposal would authorize the President to appoint the Department's Chief Financial Officer (CFO) without Senate confirmation. Current law requires that a CFO of a cabinet department either be: (1) appointed by the President with Senate confirmation; or (2) designated by the President from among agency officials who are Senate-confirmed. In either case, current law requires that CFOs be Senate-confirmed.

In addition, the President's proposal contains no language making the CFO Act applicable to the new Department. The CFO Act contains core financial management, accountability, and reporting requirements that are at least as important for the new Department as they are for other covered agencies, which include all existing cabinet departments. Moreover, section 602 of the President's proposal provides that the CFO shall report to the Secretary or to another official of the Department as the Secretary may direct. This section is inconsistent with the CFO Act, which requires that the CFO report directly to the agency head regarding financial management matters.

These exemptions from financial management requirements make little sense. According to GAO, "[i]t is important to re-emphasize that the department should be brought under the Chief Financial Officers (CFO) Act and related financial management statutes."

G. Exemption From Chief Information Officer Legislation

The proposal does not appear to give the Chief Information Officer (CIO) of the new Department the same status and responsibilities as CIOs at other agencies. Section 603 of the President's proposal provides that the CIO shall report to the Secretary or to another official of the Department as the Secretary may direct. The Clinger-Cohen Act, however, requires that the CIO report directly to the agency head.

In addition, the Clinger-Cohen Act specifies numerous responsibilities for CIOs. These include developing an accounting, financial, and asset management system that is reliable, consistent, and timely; developing and maintaining information systems; and assessing and reporting on progress made in developing information technology systems. The President's legislative language, however, does not specify any responsibilities for the CIO. In fact, the bill would assign responsibility for information technology systems to an Under Secretary for Management at the new Department, a responsibility assigned to the CIO under the Clinger-Cohen Act.

H. Limits on Access to Information by Inspector General

Section 710 of the President's proposal would subject the Inspector General (IG) of the new Department to the Secretary's control and would authorize the Secretary to prevent the IG from doing work in areas involving certain information. These areas are quite broad and extend to information concerning any "matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security." Under the President's proposal, the Secretary could prohibit the IG from doing work "if the Secretary determines that such prohibition is necessary . . . to preserve the national security or to prevent a significant impairment to the interests of the United States."

IGs at certain other agencies (such as the Defense Department and the Justice Department) have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. In the case of the IG for the new Department, this important check on Secretarial interference has been eliminated. Instead, the proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest in full reporting.

VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT

In addition to creating exemptions to many of the nation's good government laws, the President's proposal would substantially undercut Congress' ability to conduct oversight of the new Department. Through several broad and sweeping provisions in the President's proposal, the Secretary of the new Department would have new powers to rewrite enacted legislation and override budgetary decisions made by Congress.

The President's proposal would give the Secretary of the new Department the equivalent of a lump-sum appropriation of more than $30 billion. In transferring the various existing agencies to the new Department, several provisions of the President's proposal allow the Secretary to transfer agency balances to the new Department. Section 803(e) of the President's proposal allows the new Secretary to allocate those funds as the Secretary sees fit, and it expressly overides the provision of permanent law that requires funds transferred to be used only for the purposes for which they were originally appropriated. Taken together, these provisions allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

Section 733(b) creates for the new Secretary a permanent blanket grant of authority to transfer between appropriations accounts up to 5 percent of the appropriations made each year for agencies within the new Department, so long as the Appropriations Committees are given 15 days notice. This provision could allow the Secretary to transfer $2 billion or more per year rather than addressing potential funding misallocations through the annual congressional appropriations process.

In addition, section 733(a) allows the Secretary to "establish, consolidate, alter, or discontinue" any organizational unit in the new Department, including those established by statute, upon 90 days notice to Congress. Although the Coast Guard and the Secret Service are exempt from this provision, all other agencies transferred to the new Department could be abolished entirely with no input from Congress.

VII. POTENTIAL FOR SERIOUS DISRUPTION IN THE WAR ON TERROR

The Administration asserts that the "current components of our homeland security structure will continue to function as normal and there will be no gaps in protection as planning for the new Department moves forward." Unfortunately, this is a difficult goal to achieve, and the proposal submitted to Congress contains no implementation plan that shows how disruptions will be avoided.

In fact, the history of corporate and government reorganizations is not encouraging. As a management professor from Columbia University recently remarked, "[t]o think that a structural solution can bring about a major improvement in performance is a major mistake." In the corporate world, more mergers fail than succeed." According to one expert, "[p]rivate-sector data show that productivity usually drops by 50 percent in the first four to eight months following the initial announcement of a merger, largely because employees are preoccupied with their now uncertain future.

The model most often cited by the Administration is the creation of the Department of Defense in 1947. But that reorganization was not undertaken until after World War II was over. Moreover, the newly created Defense Department was riven with strife for decades after its creation. As recently as 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they could not figure out how to cooperate. The original 1947 reorganization required four different amendments, the last being the Goldwater-Nichols Act of 1986, before the problems created by the 1947 reorganization were finally addressed.

GAO has closely tracked the history of government reorganizations. According to David Walker, the Comptroller General of GAO: "Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades. . . . [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism."

Given this history, the burden should be on the Administration to show how this bureaucratic reorganization can be accomplished successfully. But virtually no detail has been provided to Congress that addresses these serious implementation issues.

VIII. LACK OF NATIONAL STRATEGY

Most experts recommend three concrete steps for developing an approach to homeland security: First, evaluate the threats posed to the country; second, develop a plan for dealing with those threats; and third, implement that plan through whatever reorganization and realignment of resources is necessary. It appears, however, that the Administration has taken exactly the opposite approach: White House officials proposed the reorganization first; they will come out with a strategy second; and they may eventually do a comprehensive assessment of the threats facing the country.

Experts have consistently criticized the United States for failing to have a comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly." The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that "no overarching strategic framework guides U.S. national security policymaking or resource allocations." Likewise, the independent panel headed by Governor James Gilmore concluded that "the United States has no coherent, functional national strategy for combating terrorism."

Nine months ago, in October 2001, the White House agreed with this assessment. In the executive order creating the White House Office of Homeland Security, President Bush recognized that developing a national strategy was essential in the fight against terrorism. The executive order establishing the Office provided that: "The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to secure The United States from terrorist threats or attacks."

When you assumed your position, you also recognized that developing this strategy was your top assignment, calling it your "main mission" and your "very first mission." In a speech in April, you said, "I take every word of that executive order seriously," and you promised that the strategy would be "guided by an overarching philosophy: risk management—focusing our resources where they will do the most good, and achieve the maximum protection of lives and property."

Since that time, the national strategy has been promised repeatedly. In the budget justification for fiscal year 2003, the Administration made this statement: "The United States has never had a national blueprint for securing itself from the threat of terrorism. This year, with the publication of the National Strategy for Homeland Security, it will."

Unfortunately, this strategy has not been developed. As a result, Congress still does not have a list of priorities set forth in a clear way and cannot gauge whether your reorganization proposal best serves the nation's security goals. Moreover, the new Department will have no clear strategy to implement after it is created. As John R. Brinkerhoff, civil defense director at FEMA under President Reagan, has stated: "The Bush Administration is doing the wrong thing for the wrong reasons. . . . What worries me the most is that we've put the cart before the horse: We're organizing, and then we're going to figure out what to do."

IX. COST

The Administration has stated that the creation of this new Department "would not 'grow' government." According to the Administration: "The cost of the new elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as the department-wide management and Administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure."

This is not a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2452). According to CBO, the Lieberman bill "would cost about $1.1 billion over the 2003–2007 period." CBO writes: "[A] new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, and Congressional affairs for the new department." In addition, CBO states that the new Department would require additional funding for "centralized leadership, coordination, and support services," and that "new departmental staff would be hired over the first two years following enactment of the legislation."

The Administration's proposal is significantly more ambitious and costly than Senator Lieberman's. It includes more agencies, such as the Transportation Security Administration with over 40,000 employees. Moreover, it requires the new Department to take on a host of new functions, including:

A new office for "Intelligence and Threat Analysis" to "fuse and analyze intelligence and other information pertaining to threats to the homeland from multiple sources," including a new "system for conveying actionable intelligence and other information" and a new system to "consolidate the federal government's lines of communication with state and local public safety agencies and with the private sector";

A new "state-of-the-art visa system, one in which visitors are identified by biometric information";

A new "automated entry-exit system that would verify compliance with entry conditions, student status such as work limitations and duration of stay, for all categories of visas";

New "interoperable communicattions," including "equipment and systems" for the "hundreds of offices from across the government and the country" that make up the "emergency response community" (this would be a "top priority" of the new Department); and

A new "national system for detecting the use of biological agents within the United States," including a new "national public health data surveillance system," and a new "sensor network to detect and report the release of bioterrorist pathogens in densely populated areas."

In addition to these new functions, the President's proposal would establish an entirely new bureaucracy, complete with a management hierarchy and accompanying staff. According to the President's legislative language, the new Department would have up to 22 Deputy, Under, and Assistant Secretaries. This is more than the number of Deputy, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the proposed budget of the new Department of Homeland Security.

Like CBO, GAO has also concluded that the new Department will impose costs on the taxpayer. According to GAO, "[n]umerous complicated issues will need to be resolved in the short term, including a harmonization of information technology systems, human capital systems, the physical location of people and other assets, and many other factors." As a result, GAO concludes that the President's reorganization proposal "will take additional resources to make it fully effective."

Mark Everson, Controller at the Office of Federal Financial Management within the White House Office of Management and Budget, was asked about these costs at a staff briefing on July 1, 2002. He said that the Administration bad no estimate of the transition costs of creating the new Department and no estimate of the level of savings to be achieved by combining agencies. The only thing he said he knew was that these unknown costs would exactly equal these unknown savings.

Obviously, Congress needs more concrete information about budget costs before it can legislate intelligently.

X. PROCESS

When the President made his nationally televised address on June 6, 2002, announcing his proposal for a new Department of Homeland Security, it came as a surprise not only to Congress and the American people, but also to the agencies, departments, and offices affected by the proposal. The plan was put together with so much secrecy that "[n]o Cabinet secretary was directly consulted about a plan that would strip 170,000 employees and $37 billion in funding from existing departments. In fact, there was so little communication between the White House and the agencies that at least one major agency had to call the minority staff of the Committee on Government Reform to learn whether it was affected by the reorganization plan.

This closed process utilized by the Administration is ill-suited to ensuring that all potential problems are identified and addressed beforehand. Moreover, the risk of making policy mistakes is compounded by the rushed process being used in Congress to consider the legislation. It is not clear how in this process the time and opportunity will be found to make sure the legislation is done correctly

XI. CONCLUSION

The issues raised in this letter exemplify the serious questions that should be resolved before Congress completes work on this legislation. For this reason, we urge you to respond in detail and in writing to the concerns raised in this letter by July 15, before the House select committee starts its consideration of this bill.

Sincerely,

Henry A. Waxman,
Ranking Minority Member, Committee on Government Reform.
David R. Obey,
Ranking Minority Member, Committee on Appropriations.

APPENDIX A—TRANSFERRED FUNCTIONS NOT RELATED TO HOMELAND SECURITY

ANIMAL PLANT HEALTH INSPECTION SERVICE

Animal Welfare Act: APHIS enforces the Animal Welfare Act, the act that regulates the exhibition of animals in zoos and circuses and the transportation of animals on commercial airlines.

Biotechnology Regulatory Policy: APHIS regulates the movement, importation, and field testing of genetically engineered plants and microorganisms.

Canadian Geese: APHIS works with state wildlife agencies and local governments to address problems with non-migratory, resident Canadian geese.

Disease and Pest Detection and Eradication: APHIS is responsible for the detection and eradication of pests and diseases that affect crops and livestock. For example, on September 20, 2001, APHIS implemented the accelerated National Scrapie Eradication Program. A few of the other pests and diseases APHIS monitors for and eradicates include: the boll weevil; the fruit fly; rabies; the Asian Longhorned Beetle; the citrus canker program; and the plum pox virus.

Horse Protection Act: APHIS enforces the Horse Protection Act, the act which prohibits horses subjected to a process called soring from participating in exhibitions, sales, shows, or auctions.

Missing Pet: APHIS maintains the missing pets network at *www.missingpet.net.*

National Poultry Improvement Plan: This is an industry/state/federal program that establishes standards for evaluating poultry breeding stock and hatchery products to ensure they are free from hatchery-disseminated and egg-transmitted diseases.

Noxious weeds: APHIS cooperates with federal, state, and private organizations to detect and respond to infestations of invasive plants, such as branched broomrape and small broomrape.

Screwworm: APHIS is working to ensure that screwworm is not reintroduced into the United States. This eradication program is close to its goal of establishing a permanent sterile screwworm barrier in the eastern third of Panama.

Trade Issue Resolution and Management: APHIS monitors emerging foreign pest and disease threats at their origin before they have an opportunity to reach U.S. ports. APHIS also participates in trade agreements.

Veterinary Biologics: APHIS regulates veterinary biologics including vaccines and diagnostic kits.

COAST GUARD

International Ice Patrol: The Coast Guard has a fleet of ships designed to break ice in cold regions to ensure that boats are able to navigate the waterways.

Marine Safety: The Coast Guard enforces regulations to ensure that boats and other marine equipment meet safety standards.

Maritime Drug Interdiction: The Coast Guard interdicts drugs illegally brought into this country on the waterways.

Maritime Law Enforcement: The Coast Guard enforces the laws of the waterways.

Maritime Mobility Missions: The Coast Guard provides aids to navigation and bridge administration to ensure that vessels are able to navigate our waterways.

Oil Spill Cleanup: The Coast Guard helps to prevent oil spills in the nation's waters and assists in their cleanup when they occur.

Protection of Natural Resources: The Coast Guard protects our domestic fishery resources and marine environment.

Search and Rescue: The Coast Guard, as one of its primary missions, rescues troubled vessels and people on the nation's waterways.

CUSTOMS

Border Drug Interdiction: The Customs Service fights against drug smuggling at the United States border.

Copyright Protection: The Customs Service helps to enforce the Copyright Acts.

Enforcement of Health and Safety Laws: The Customs Service checks imports to ensure that they comply with health and safety laws.

Fostering of Trade: The Customs Service works with the trade community and identifies and confronts trade issues facing the country.

Child Pornography Prevention: The Customs Service enforces laws protecting against child pornography.

Fair Trade Protection: The Customs Service enforces a variety of fair trade laws such as the Lanham Trade-Mark Act and the Trade Act of 1974.

Protection of Species at Risk: The Customs Service enforces laws protecting threatened species such as the Bald Eagle Protection Act and the African Elephant Conservation Act as well as the Endangered Species Act of 1973.

Revenue Collection: The Customs Service provides the nation with its second largest source of revenue.

Stolen Antiquities and Art: The Art Recovery Team works to recover stolen pieces of art and antiquities.

Tariff Enforcement: The Customs Service ensures that U.S. tariff laws are enforced.

DEPARTMENT OF ENERGY

Energy Emergency Support: The DOE Office of Energy Assurance assesses the potential effects of natural disasters such as earthquakes, hurricanes, tornadoes, and floods on energy infrastructure and provides energy emergency support in the case of such disasters.

Human Subjects Research Database: The DOE Environmental Measurements Laboratory (EML) maintains the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, performed by DOE staff, or conducted at DOE facilities. EML also provides direct assistance to the manager of the DOE Protecting Human Subjects Program, such as assisting with production of educational and guidance materials.

Quality Assessment Program for Contractor Labs: EML also runs a quality program for DOE contractor laboratories that measure radiation. The program tests the quality of 149 private laboratories' environmental radiological measurements.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter: FEMA gives grants to providers of emergency food and shelter for hungry and homeless people.

Hazards Mitigation Program: FEMA provides grants to states and local governments to implement hazard mitigation measures to reduce the loss of life and property resulting from major natural disasters, such as hurricanes.

National Earthquake Hazards Reduction Program: FEMA is the lead agency on programs to improve the understanding, characterization and predictions of earthquake hazards; to improve model building codes and land use practices; to reduce risk through post-earthquake investigations and education; to develop and improve design and construction techniques; to improve mitigation capacity; and to accelerate the application of research results.

National Flood Insurance Program: FEMA administers the National Flood Insurance Program, which provides insurance coverage for events that are not covered by traditional homeowners' policies.

Reduce Loss from Fire: FEMA runs a number of programs to reduce the loss of life from fire-related incidents, including the National Fire Data Center and the National Fire Incident Reporting Systems.

SECRET SERVICE

Prevention of Counterfeiting: The Counterfeit Division of the Secret Service has exclusive jurisdiction to investigate counterfeiting of United States securities and obligations including items such as food stamps and postage stamps.

Safe School Initiative: The Secret Service has partnered with the Department of Education to help prevent violence in schools.

Telecommunications Fraud: The Secret Service has become a recognized expert in helping to prevent telecommunications fraud such as the cloning of cellular telephones.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATTS), the conference chairman and member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I too want to commend the chairman, the gentleman from Texas (Chairman ARMEY) for I think using exceptional grace and exceptional composure and I think real balance in giving all the Members of the Select Committee a say, and I think as well giving all of the committees of jurisdiction a real voice in this process. Again, I think the gentleman did an exceptional job and he is to be commended for his work on this legislation.

Mr. Chairman, I believe the best way to secure our homeland is to involve all sectors of society. By creating a working relationship between the public and private sectors, the best available technologies and the greatest amount of knowledge can be brought to the table to achieve a common goal of protecting our Nation from those who seek to inflict terror within our borders. We have discussed at length in this process the role of the government in homeland defense and that is good. At the same time, we need to integrate the private sector into an overall agenda of homeland defense.

During the Select Committee hearings last week, my colleagues accepted an amendment I offered to create a position of special assistance for the private sector to be a liaison within the Office of the Secretary of Homeland Security.

The special assistant would be the primary contact for private sector activities and coordination with the Department of Homeland Security. The private sector will help combat terrorism by ensuring that America's protectors have the best available technology to secure and defend our homeland, from the superaccurate sensors that can detect biologic warfare agents, to integrated computer systems that allow government agencies to effectively communicate with State and local officials and each other.

In addition, the special assistant will ensure that federally-funded research and development projects that have homeland security application are not just sitting in the lab, somewhere but are in the lands of our Nation's defenders.

The special assistant for the private sector will play a crucial role in coordinating the security of our nation's critical infrastructure, an important job considering, Mr. Chairman, that 85 percent of our critical infrastructure is owned by the private sector.

By fostering relationships between Federally funded programs and the private sector, new and innovative technologies will help the government and local communities with deterrence, prevention, recovery and response.

The ultimate goal of these efforts is to ensure that our police, firefighters, baggage screeners, cargo inspectors and other front-line defenders have the best anti-terrorism technology America has to offer. The private sector can play a critical role to protect and defend our homeland.

Mr. Chairman, we must do everything possible to promote its work, so together with the government we can better secure our great Nation. I am delighted that we have done this that we are moving forward in this legislation. I encourage all of my colleagues to support it.

Mr. Chairman, I rise today in strong support of H.R. 5005, the Homeland Security Act of 2002. This bill represents a monumental step toward addressing the serious homeland security concerns we currently face in America by creating a new Department of Homeland Security. I also rise to ask the new Secretary of Homeland Security to study the steps currently being taken by the Oklahoma Municipal League to put into place a statewide emergency response network which utilizes the most up-to-date wireless last-mile technology to link federal, state and local officials in the event of a natural disaster or criminal or terrorist activity.

The Oklahoma Municipal League has begun a successful initiative to create a statewide broadband network for municipalities, schools, businesses and residences through a public/private partnership. Utilizing grants and low cost loans from industry, state and federal sources, the League and member municipalities are creating the base network for public services that will be self-sustaining through commercial subscription services to businesses and residences. Telecommunications fiber links are leased from carriers for backbone links and wireless last-mile technology is used to provide local high-speed access. The network links local governments to each other and to state and federal offices. This network can be utilized to efficiently coordinate the activities of first responders in the event of an emergency.

The officials in Oklahoma have begun discussions with the Federal Emergency Management Agency for implementing this program on a national scale and I urge the Secretary to work with FEMA and other relevant federal agencies to expedite this process and provide any resources available to assist the Oklahoma Municipal League in further developing this network. Recognizing that Homeland Security begins at the local level, I also urge the Secretary to make other states aware of the Oklahoma program and encourage them to use it as a model for implementing similar networks in their own states.

I would also ask the Secretary to study the impacts of terrorism on rural America and develop guidelines for minimizing the effects of these incidents. This study should focus on the difficulties of communication among state and local officials in rural areas, particularly with respect to the ability of municipal government officials and first responders to have real-time transmission of voice, data and video in order to effectively response to emergency situations. The findings of this study should provide examples of communities that are preparing disaster response plans and educating the public on the steps to take in the event of an emergency.

Mr. Chairman, these two studies should be conducted immediately upon creation of the new Department of Homeland Security. The Secretary should report back to Congress the findings of these studies within 120 days of the creation of the new Department.

Ms. PELOSI. Mr. Chairman, I yield 4 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member Committee on Transportation and Infrastructure.

Mr. OBERSTAR. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, here we are crafting the first new department of government in many years and I am a little surprised. It is Alice in Wonderland. It is verdict first, evidence later.

A provision in this legislation would extend a deadline for screening of checked luggage aboard aircraft by explosive detection systems out off into the future after last year, just eight months ago in this very Chamber, we voted 410 to 9 to set a deadline of December 31, 2002 to do that very job. Where is the evidence that we need to do that? Where is the evidence that should precede the verdict that this great Nation cannot accomplish that task that we have set forth by an overwhelming vote in this body?

I frankly am offended that we would hardly, as the ink dries on the Transportation Security Administration law, hardly is the President's pronouncement of a need for a Department of Homeland Security than this body will become and begin to undermine that very security.

I am not a newcomer at this business of aviation security. I have spent about 20 years at it in the Committee on Public Works, and then the Committee on Transportation and Infrastructure. I am proud to say that I held the very first hearings on aviation security as Chair of the Subcommittee on Oversight and Investigations. And in the aftermath of Pan Am 103, as Chair of the Aviation Authorizing Committee with my then-ranking member, the gentleman from Georgia (Mr. Gingrich), fashioned the legislation requested by President Bush to create a Presidential Commission on Aviation Security and Terrorism and served on that commission with our distinguished colleague from Arkansas, Mr. Hammerschmidt.

We wrote a report that made 64 recommendations to improve aviation security, drafted those recommendations into legislative language, to them enacted through this body and the other body and to the president and signed them into law. And I said then, oh, there is such a willingness in the body politic and in the Nation as a whole to strengthen security that never will we have to worry. These provisions will be implemented, and yet we saw the airlines lobby against 10-year criminal background checks for screeners. It took 10 years to get that provision of law implemented by rule. And positive passenger bag match and deployment of explosive detection systems.

That then came September 11 and the new Transportation Security Act, and I said then, This time we will not make a mistake. We will write provisions in law and make them applicable by action of law, not by bureaucratic rule making so that the will of the people and of the Congress cannot be frustrated. And here we are 9 months later, frustrating that will of the Congress and of the people of this country to raise the bar of security. We raised it in law and in this bill it is being lowered again. And lowered to create a one year, at least, window of vulnerability for aviation security. We ought to remove that provision and I will propose the amendment tomorrow to do so.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. LOBIONDO).

Mr. LOBIONDO. Mr. Chairman, I rise in support of H.R. 5005 and I thank the majority leader for yielding me this time.

Since becoming chairman of the Subcommittee on Coast Guard Maritime Transportation 18 months ago, I focussed my efforts on making sure that Congress provides the Coast Guard substantial increased monies, additional manpower and more modern assets necessary to carry out their multi-mission charge.

I have worked with many Members of this House from my first days as chairman to pursue these goals, and during my tenure, I have developed a set of guiding principles designed to make sure that the Congress is serving the Coast Guard in the same fine way that the Coast Guard is serving America.

As we have considered this bill and examined its effect on our Nation's security, I have, again, had these principles frame my views. First, we must ensure that anything we do in Washington will not negatively effect the Coast Guard's ability to effectively carry out all of its missions, including conducting search and rescue, stopping drug smuggling, interdicting illegal immigration, and all the other maritime safety commissions, as well as the critical homeland security mission.

Congress must also ensure that the Coast Guard stays intact and remains a ready force to meet and handle a wide range of duties, including homeland security.

Fortunately, the Select Committee and the White House have agreed that an intact Coast Guard doing all of its multi mission tasks is the right way to go. I worked hard on this issue and am very pleased it is part of this bill.

Secondly, we must ensure that the Coast Guard continues to receive the resources it needs to keep doing the great job they have done both before and after September 11. The Coast Guard needs substantially more money and more modern assets to meet the challenges of the future and to operate safely, efficiently and effectively to protect America.

The passage earlier this week of over half a billion dollars in a supplemental appropriations bill for the Coast Guard is indeed good news to allow the Coast Guard to continue to meet the increased cost of defending America.

Lastly, the Coast Guard must continue to report directly to the Secretary of Homeland Security, keeping its access at the highest levels of administration. This point was a top priority for me from the very first days the President's proposal was made. I was adamant that the Coast Guard would not be lost in a bureaucratic jungle, and I want to thank the majority leader, the gentleman from Texas (Mr. ARMEY), the gentleman from Alaska (Mr. YOUNG), the gentleman from New Jersey (Mr. MENENDEZ) and the gentleman from Ohio (Mr. PORTMAN) for their efforts in joining me to ensure that the Coast Guard continues to enjoy its open access door to the Secretary.

It is critical that the Coast Guard can report directly to the top decision makers, and this is exactly what this bill specifies that they do.

Mr. Chairman, I believe this legislative proposal is good for the Coast Guard and the right direction for America at this difficult time in our Nation's history, and I urge a strong support of this legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan, (Ms. KILPATRICK), an important member of the Committee on Appropriations.

Ms. KILPATRICK. Mr. Chairman, I rise and I support the concept of a Department of Homeland Security, but I do not support this concept and let me tell you why.

This concept allows 170,000 Federal employees to be transferred to an agency where they have no rights, a brand new personnel system where they do not have rights. They are not able to bargain collectively. They are not able to have certain rights and are subjugated to the whim of the Secretary.

I rise in opposition because this bill defies the appropriations process set up in our Constitution of checks and balances. I oppose this bill because it eliminates the process, the Congress, the constitutional Congress, that allows our country to exist and to have checks and balances and appropriations process and employee rights that this legislation will take away in the name of terrorism. Yes, we need to do something but this is not the vehicle and I hope it will not pass.

The Secretary can waive various paycheck schedules for these employees. He can move the employees at their whim, 170,000 employees who have dedicated much of their lives to this government.

□ 2115

We need more time; there is no rest for this. Yes, the terrorism is bad. Yes, I believe the terrorists have won. Because what they have done is frighten Americans. We are a better Nation than that. We have an Army. We have people who are committed to this country. I believe it is our responsibility to reject this legislation and then come back and put the practical amendments, the practical balance that we need to make sure that citizens are safe and make sure that our employees have the rights that they deserve.

Mr. Chairman, I rise in opposition to H.R. 5005 because it eliminates the protections and rights of many Federal employees, violates fundamental rights under the Constitution, and defines a well-established appropriations process. These reasons make this a bad bill for the citizens of this nation. It takes away the fundamental rights that we hold dear.

Black American has not enjoyed the fullness of America's Constitutional freedoms, as have most Americans. Black Americans have been explicitly and implicitly limited to many of our basic civil liberties and this bill will potentially further restrict. The limitations that we experience are even greater than most recent immigrants. Perhaps, that is why we tend to be more liberal in defense of them.

Most American generations have enjoyed the freedoms inherent in the Constitution for nearly three hundred years. In the history of nations, that is a very long time. Since 9–11, Terrorists have frightened our nation, and now, we are afraid. For all of our braggadocio stands and speeches, we are afraid. Our fear is making us overwhelmingly passive to government propaganda and carelessly willing to sacrifice our liberties to those among us who are more than glad to take them. If we pass the Homeland Defense Act, as presently proposed, the terrorists will have won.

The terrorists will have won because we would have destroyed our Constitutional democracy of checks and balances. This Constitutional innovation has stood us in good stead through our own Civil War, through two world wars, numerous undeclared wars, racial hostilities and a number of other internal and external conflicts.

This massive war-like structure we are calling The Department of Homeland Defense will make the country vulnerable by weakening the very regulatory agencies that the last two hundred and fifty years has taught us that we need.

By making the massive shifts of personnel and responsibilities of existing agencies to one Homeland Defense Department, focused exclusively on terrorism, we won't be able to tell whether 19 million pounds of tainted meat is the act of bio-terrorism or the result of corporate misfeasance.

In 1930, France had the largest army in Europe. Watching the rise of fascism in neighboring Germany, they decided to construct an impenetrable defensive wall the entire 300 miles along the Franco-German border. Originally priced at 300 million francs, with only 82 miles completed, the cost had ballooned to 23 times the original budget. Ultimately, the cost of the Maginot Line consumed all of France's defensive budget leaving them with a military unprepared for the German blitzkrieg that ultimately defeated them six years later.

This so-called, Homeland Defense Act, creates for us a bureaucratic Maginot Line, which can be circumvented by anyone who disrespects the rules of warfare which clearly is what terrorist do. The Germans defeated the inflexible Maginot Line by outflanking it. Using a concept of "unrestricted warfare," the Germans, disregarded the neutrality and vulnerability of Switzerland and Belgium, went around the Maginot Line invaded and defeated France in six weeks.

What makes the Department of Homeland Defense as vulnerable as the French of 1940 is the obviousness of it. The ideal target of unconscionable fanatics is anything that resembles static vulnerability. The best offense against terrorism is the stealth of intelligence.

What we need to defend ourselves against terrorism is not another massive, inflexible department but exactly what this country does best. America has the ability to invent, innovate and diffuse its technological creations; and to build networks that multiply human intelligence.

We can leave the departments exactly where they are and doing what they know how to do best. What we ought to do is build inside of all government departments, a responsive and flexible network of units, which can respond to any sort of threat—whether it is an act of terrorism, an accident, negligence or misfeasance. We need this flexibility so that the country does not exist in a permanent "yellow" state. We do need to multiply our intelligence capability one hundred—fold to coordinate our flex-defense network.

I suspect that most Members of Congress are students of history or at least "buffs." as I am. One of my greatest sources of current history is my eighty-three year old father—a Navy veteran of the Second World War. He often takes the time to give me an historical spin on what looks like something new.

If the history of the Maginot Line is too distant and the analogy too abstract to be instructive, then we should look at a more recent event—The Gulf of Tonkin Resolution. That Resolution appealed to patriotism to respond to an "unprovoked" attack on American Naval forces off the coast of North Vietnam. The resolution gave the President the authority to escalate the war in Vietnam without further authority from Congress. The resolution passed unanimously in the House and with only Senators Morse (D–OR) and Gruening (D–AK) opposing.

With the publication of the Pentagon Papers in the New York Times, in June and July of 1972, the American people learned that the CIA with the full knowledge of the President had contrived the incident at Tonkin.

Only Congress can declare war. With the passage of the Gulf of Tonkin Resolution, Congress relinquished its Constitutional authority to declare war to the President. Fifty thousand American lives were lost in an undeclared war driven by an irrational rush to judgment motivated by anger and fear.

In The Imperial President, Pulitzer Prize-winning historian, Arthur Schlesinger, traced the shifting of congressional powers to the President. Most often, these shifts occurred as the result of a belief that the country was in danger by either internal or external threats. Once the shift was made, Congress never retrieved its relinquished powers.

The values and constitutional liberties of this nation are not only threatened by terrorists, but also, threatened by the possibilities of a federal government without proper checks and balances. For Black Americans, the latter threat is much more conceivable than the former. I want to see the nation combat these despicable terrorists acts, but not by completely centralizing the power of federal government, or trampling on our civil liberties, or not protecting federal employees rights.

My conscious will not permit me to agree with this bill's construction of The Department of Homeland Defense. I will not agree with legislation to strip civil liberties. I will not agree with a contract that will deny workers of their rights and proper recourse for wrong done towards them. I will not be silent to the ills of this bill, even in the midst of a daunting and scary future, which has bred fear through us all.

This bill would give a two-year authority to unilaterally transfer up to two percent of appropriations between department functions. This can be done with only 15 days of prior notice to Congress. There is an effective process to transfer funds with Congressional approval that works well. I will not support this bill, and hope that my colleagues too will understand what is at stake with the passage of this bill. I believe that we can construct a bill that will protect our employees' rights and will not violate proper appropriation procedure or our fundamental rights under the Constitution. For these reasons, Mr. Speaker, I am opposed to H.R. 5005.

Mr. ARMEY. Mr. Chairman, I ask unanimous consent that the gentleman from Ohio (Mr. PORTMAN) be permitted to control the remainder of my time for consideration of this debate.

The CHAIRMAN. Is there objection to the gentleman from Texas?

There was no objection.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

I thank the majority leader, and I want to commend him for the work he has done to put together the bill we have before us today. His leadership on the Select Committee was fair, open, honest. We had some good debates, and it was done in a not just bipartisan but a nonpartisan way and I know that will continue tonight as we get through some of these statements and then later tonight and tomorrow into the amendment process.

Briefly responding to the gentlewoman from Michigan (Ms. KILPATRICK), she will be happy to know that workers' rights are indeed preserved in the underlying legislation. All of title V is included in the legislation. I hope she will read it.

I would also like to say that collective bargaining is explicitly not just permitted but guaranteed. So we are hearing a lot of statements tonight that may be based on some information that is being passed around that is not accurate. I hope people will read the legislation so that we can keep to the facts.

Shaping of this legislation, Mr. Chairman, has been and will continue to be a daunting task. All of America is looking at us to help protect the homeland and produce a Department of Homeland Security that is worthy of the name. It is a challenge, and we had better get it right. This Department will be the keystone of our national strategy to confront a menacing threat and to shut it down.

Its mission as proposed by the President is critical. First, to prevent terrorist attacks; second, to reduce our vulnerabilities to attack, hardening our infrastructure; third, to minimize damage should we be attacked; and, finally, and this is very important in this new agency, to be sure that those functions that are being transferred to this new Department that are not related to homeland security are also not neglected. And we will hear something about that tonight and into the amendments.

This is all a big job, and it results in a very big agency, 170,000 employees. We know it will be a big agency. The question is, and the gentlewoman from California raised it earlier, will it also be a lean and agile agency to be able to respond to the threat that we find ourselves confronting in this new century? Will this thing work? I think we are going to determine that in our votes tonight and tomorrow. We are going to determine whether this new agency is going to have the ability to rationalize and bring together 22 different agencies of Government. It is a difficult task, admittedly. It is necessary to do it. As we have heard so many people speak so well about tonight the necessity of consolidating and streamlining, being sure that we have real accountability in a system that does not exist now; and I do not think anybody would say it does when there are so many different agencies and Departments of government responsible, nobody is responsible.

We have got to be sure that we take these 22 different agencies and we bring them together as a single team focused on a single mission. This will require managerial, budget, and, yes, personnel flexibility. Without it, the needed consolidation and streamlining just will not happen; it will not work.

Second, beyond this huge organizational challenge, the new Department must be able to meet an agile, deadly, and unpredictable threat, the threat of terrorism. It must be able to do so with cleverness, with speed and with flexibility of its own.

I believe the Select Committee bill we have before us meets these tests. It does provide us with a 21st century agile Department, and it must not be weakened through the amendment process if we are to properly protect our homeland. The most fundamental responsibility we have as Members of Congress, of course, is to protect our country and to protect our citizens. I strongly believe the bill that we have before us puts the pieces in place to see that with good congressional oversight we can indeed meet that responsibility. As we work through these amendments, I hope my colleagues on both sides of the aisle will continue to focus on the necessity of rising to this daunting challenge without partisanship, without rancor, but with one goal in mind, and that is how best to protect our families.

Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY), the very distinguished ranking member of the Committee on Appropriations.

Mr. OBEY. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I want to express my appreciation for the fact that the committee did correct what I thought to be the most fundamental problem associated with the original draft just sent down by the White House. That draft gave unprecedented authority to bureaucrats to spend money without congressional supervision, and I think it would have been a threat to the Constitution itself, and I appreciate the fact that that disastrous proposal has now been removed.

That leaves us with the question of what we think of the organizational structure which is left, and we can have honest differences about that. I happen to think and I happen to fear that the remainder of this product will in fact make it more difficult rather than less difficult for us to respond to terrorist attacks and to prevent them, for two reasons.

First of all, this agency that is created is going to be composed of 170,000 people. That is not going to be a lean, mean, agile agency. It is going to be a slow, cumbersome agency which I think will slow down our ability to react. Secondly, even though some 22 offices and agencies are being pulled into that Department, there are 111 agencies that have something to do with homeland security that will not be tied into that Department, and my question is who is going to coordinate them? In my view what we need is to have a substantially upgraded and strengthened Office of Homeland Security within the White House, and that is the reason I personally favor Senate confirmation. Not because it in any way weakens the occupant of that office, but because it would put them on an equal footing in terms of prestige and clout with the Office of Management and Budget, with the President's science advisor and the like; and I think that is what is needed if we are going to coordinate those 111 agencies outside the tent effectively.

I also believe the FBI needs to be substantially reshaped because right now they simply do not have the analytical capacity that is needed to engage in this kind of analysis as opposed to looking at what is happening with 25,000 separate crimes around the country. It is a very different mindset that is required, and I think the FBI director recognizes that fact.

And, lastly, we have to look at resources. We have to commit substantially more resources to enhancing our translation capacity because right now the hard fact is there are thousands of pages of raw data, raw intercepts lying on floors and sitting on shelves all over the security agencies in this town. No one has ever looked at them because we have not had the personnel and they have not had the focus. That needs to be fixed if we are going to truly improve the security posture of the country.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. CHAMBLISS), a member of the Permanent Select Committee on Intelligence, one of the House's experts on homeland security.

Mr. CHAMBLISS. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise tonight to support this very important bill to establish a Department of Homeland Security. I applaud the work of the gentleman from Texas (Mr. ARMEY), the majority leader, and the gentlewoman from California (Ms. PELOSI), the minority whip, who I work with on the Permanent Select Committee on Intelligence, and the members of the Select Committee on Homeland Security who have worked tirelessly over the past few weeks to ensure the successful implementation of the President's plan to improve the security of our Nation, and to our President. What a great job he has done and what great vision he has for where this country ought to be from a homeland security standpoint, and he is providing strong leadership in moving us in the direction of that vision.

The world has changed dramatically since September 11 of last year. Winning the war on terror means changing the mindset of our entire government top to bottom and drastically changing the way we do business. The new Department of Homeland Security will centralize and coordinate our efforts to better protect our citizens.

Let me point out that one of the most important aspects of this plan is the effort to improve the sharing of information among our Federal agencies, as well as between Federal, State and local officials.

Last week, the gentlewoman from California (Ms. HARMAN) and I released a summary of our classified report on why our intelligence agencies failed to prevent the terrorist attacks of September 11, Not only did we find that the information technology and agencies such as the FBI could not communicate with itself because they have a completely outdated information infrastructure, but the right people were not getting the right information at the right time.

We must streamline and better coordinate the sharing of information so that our local officials like Wayne Bennett, the sheriff of Glynn County, Georgia, or Bud Watson of the Atlanta Police Department, the people who are on the front lines protecting our communities every day, have the most accurate information so that they can do the best job they can to disrupt terrorist activity and better protect our citizens.

Mr. Chairman, I urge my colleagues to support this landmark legislation.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the very distinguished gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I have been watching this debate with some interest for the last couple of hours, and I am one of those that is standing forward tonight to say I am a vote in play on this, and I came over here because I find my questions are not being answered by this debate. I am hearing a lot of superlatives about streamlining and coordination and consolidation, how we are not going to let September 11 occur again. We have got to talk about some details about what good specifically is going to occur by making what is going to be a tremendous change that the GAO says is going to take a decade probably to really work out.

I am a little bit torn because some of my favorite folks and the folks I respect the most in this body are divided on this, the gentleman from Texas (Mr. THORNBERRY), the gentleman from Wisconsin (Mr. OBEY), the gentleman from Ohio (Mr. PORTMAN), some others. But let me just touch on a few points.

First of all, Moses did not come down from the mountaintop with gold tablets that said this bill is the answer. There are other potential answers out there. I think we ought to try to make our case why in some detail this is the particular answer, what other option to me would have been to do, what we all thought that was going to happen with Governor Ridge from the get-go, which was he was going to be a close confidant, adviser to the President that could have authority and accountability and with laser-like effort could go into agencies and correct where we saw the problems. We have rejected that, and now we are going with the whole hog kind of thing that I am not sure we need to go that far.

The second point I want to make is a funding issue. We had the intelligence bill on the floor yesterday, and several speakers talked about how we are finally going to give additional funding to intelligence, implying that perhaps the problem all along, a lot of it, is we have underfunded intelligence.

Part of the concern in this bill is about visas and how they have been given out; and yet the New York Times had an article, front page story on Monday, how we have terrible personnel policies and problems in the State Department. No wonder we are having problems, and yet we have not addressed the personnel issues nor have we addressed the great infrastructure needs, security infrastructure needs of the State Department.

Another point, as has been said, we have got to be careful about this bigger-is-better argument. When we look at the challenges back home in Arkansas, I do not find anyone saying let us take all the volunteer fire departments and consolidate them into one big fire department, let us take all the sheriff and police agencies and consolidate them into one that that will help our coordination. We need to be, perhaps, more focused.

My final concern is I fear that this could be a distraction. I am just asking these as questions tonight, that in the course of doing this huge consolidation we will forget that we need to focus on the gaps in intelligence and the gaps in specific funding and the gaps in specific coordination personnel needs that may be lost in the massive consolidation that is occurring.

Mr. PORTMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. TOM DAVIS), a member of the Committee on Government Reform and leader on civil service and technology issues.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I rise in support of the cybersecurity information security language included in the Chairman's en bloc amendment. The events of September 11 and ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security.

From my work on the Committee on Government Reform, it is clear that the state of Federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malignant and benign interruptions.

□ 2130

Title XI in the manager's amendment incorporates the major provisions of the Federal Information Security Management Act of 2002, FISMA, which will strengthen the information security management infrastructure within the Federal Government.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will remove GISRA's sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations on agency information security practices.

Second, it will require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems.

Third, it will streamline and make technical corrections to GISRA to clarify and simplify its requirements.

Fourth, it strengthens the role of the National Institute of Standards and Technology in the standard-setting process; and, finally, it requires OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

The critical infrastructure information provisions included in H.R. 5005 will promote voluntary information-sharing among our Nation's critical infrastructure and assets. The provisions are supported by every critical infrastructure sector.

Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally these sectors operated in the private sector, largely independently of one another, and coordinated with government to protect themselves against threats posed by traditional warfare. Today the public and private sectors must learn how to protect themselves against unconventional threats, such as terrorist attacks and cyber-intrusions.

In Presidential Decision Directive 63, issued by the previous administration, concerns about the Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information-sharing with the private sector. The provisions in the amendment address these concerns by providing a limited FOIA exemption, civil litigation protection for sharing information, and a new process for resolving potential antitrust concerns for information shared among private sector companies for the purpose of correcting, avoiding, communicating, or disclosing information about a critical infrastructure threat or vulnerability.

These provisions will enable the private sector, including information-sharing organizations, to move forward without fear from government reprisals, and allow us to have a timely and accurate assessment of the vulnerabilities of each sector to physical and cyberattacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded Federal mandates on the private sector, and I urge its adoption.

We all know that the Federal, State and local governments will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn't simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unevaluated, perhaps denying the Government breakthrough technology.

In February, I held a hearing in my Subcommittee on Technology and Procurement Policy on homeland security challenges facing the Government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process within the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today. Chairman ARMEY at my request included language in a new section 309 which his based on H.R. 4629, legislation I introduced in May. This language will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Chairman ARMEY's Managers' amendment included a new section 309 in the Homeland Security Act to the establish within the Department a program to meet the current challenge faced by the Federal Government, as well as by State and local entities, in leveraging private sector innovation in the fight against terror. The amendment would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to terror-fighting technologies for dissemination to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions;

Establishing a technical assistance team to assist in screening proposals for terror-fighting technology to assess their feasibility, scientific and technical merit and cost; and

Providing for the new Department to offer guidance, recommendation and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 309 in this landmark legislation will give the new Department the framework it needs to examine and act on the best innovations the private sector has to offer.

I would also like to offer my thanks to the staff of the Science and Energy and Commerce Committees who collaborated with my staff in crafting this consensus amendment.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the distinguished gentleman from Indiana (Mr. ROEMER), a member of the Permanent Select Committee on Intelligence.

Mr. ROEMER. Mr. Chairman, I think that this country is in dire need of a homeland security department, and I hope and pray that the President's proposal will work. But I think that it will not.

While I do not know what I am going to do yet on final passage, I have very grave concerns about this being too bureaucratic, too big, too cumbersome, and not quick enough and agile enough to deal with the threat of al Qaeda that can move from Yemen to Hamburg to the United States in a matter of 12 hours.

Now, when President Clinton proposed his massive health care proposal in 1993, I thought it was too bureaucratic. I opposed it. I thought it was too slow. When we look at this proposal, to get a decision made from the CIA to homeland security, assess the threat, get it back up to the Secretary, determine the reliability, go back down and then say, yes, we have a real threat, then say should we call Indianapolis, warn them, prevent it, harden the target, we are going from the President to the Secretary to the infrastructure protection to the threat analysis and back. I do not know that this is going to work. I hope it does.

The current system, Mr. Chairman, is the President and then here is Tom Ridge. Here is the President and here is Tom Ridge in the Office of Homeland Security. Right there and right back. Very quick. I think we need quick.

I hope that we will take our time on this. Twenty-two departments, $38 billion, 180,000 people versus, I think, going more toward what we have, making Tom Ridge a Cabinet secretary, making it lean, agile, technologically connected with e-mail and databases, and able to knock al Qaeda out quickly before they can attack the United States again. Not with a big bureaucracy. I urge my colleagues to go forward with caution.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from New York (Mr. BOEHLERT), the distinguished chairman of the Committee on Science.

Mr. BOEHLERT. Mr. Chairman, I rise in strong support of H.R. 5005, and I want to draw particular attention to the bill's appropriate focus on science and technology.

Advancement in science and technology will be critical to the success of every mission of the Department of Homeland Security: Improving intelligence analysis, cybersecurity, border security, and emergency response all will require the invention and deployment of new technologies, ranging from new software to make computer networks more secure, to new standards to make emergency response communications equipment interoperable.

Like the Cold War, the war on terrorism will be won as much in the laboratory as on the battlefield. With that in mind, the Select Committee has followed the recommendation of the Committee on Science and has created an Under Secretary for Science and Technology. With this under secretary, the bill ensures that one senior official in the new Department will be responsible and accountable for the science and technology activities of the entire Department. This approach will ensure that the science and technology activities of the Department have the critical mass and the skilled leadership they need to succeed.

The language of title III gives the Under Secretary for Science and Technology the tools needed to build the scattering of relatively small programs being transferred into the agency into a dynamic science and technology capability.

I want to thank the members and staff of the Select Committee for working with us so cooperatively to ensure that the new departments will have a strong, vigorous, and innovative science and technology capability as called for by the National Research Council and other expert groups. I also want to point out the Committee on Science provisions were approved in our committee on a bipartisan, unanimous vote.

Mr. Chairman, I also want to draw attention briefly to the cybersecurity provisions of the bill which have been strengthened as H.R. 5005 moved through the congressional process. The bill now explicitly focuses on cybersecurity, one of our Nation's most serious vulnerabilities. The manager's amendment will strengthen those provisions even further by providing more tools and direction to ensure the security of Federal, State, local and private sector computer systems, and to help speed recovery if security is ever breached, nonetheless.

I want to thank my colleagues, and I urge full support of H.R. 5005.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 3 minutes to the gentleman from Texas (Mr. HALL), the ranking member on the Committee on Science, a committee which has three amendments here tonight, and which passed unanimously and, of course, in bipartisan fashion from that committee.

Mr. HALL of Texas. Mr. Chairman, I rise, of course, in support of this bill. This is not to say that I agree with every part of it, but, in balance, I think passage of this legislation will help us better protect our country.

I thank the gentlewoman from California (Ms. PELOSI), our illustrious minority whip, for working me in at this stage of the proceeding, and I thank the chairman of the Committee on Science, the gentleman from New York (Mr. BOEHLERT), who ushered this bill to the present status.

Mr. Chairman, I am pleased to be present and just to be a Member of this body in a day and time at the creation of a Department of Homeland Security. The President of our country deserves a lot of credit for stepping up and accepting the idea that a new department is called for at this time.

The Congress is a deliberative body, and normally we spend years considering an idea before coming to any type of a conclusion. In this instance, though, the threat is great and imminent, making quick action very necessary. I always heard "haste makes waste," but quick action means we will not get everything we want in this bill, exactly like we want it. I know that, and the chairman of the Select Committee, the gentleman from Texas (Mr. ARMEY), knows that. Nevertheless, this good start can be fixed as we go along.

I want to spend a few minutes talking about the ways in which the Committee on Science strengthened the President's initial proposal. I am particularly pleased that the bill before us places a clear focus on the new Department on science and technology, two of our most potent tools in fighting terrorism.

The single most important recommendation that the Committee on Science made was the creation of an Under Secretary for Science and Technology, a provision that was supported bipartisanly and unanimously in the Committee on Science and in the Select Committee. Chairman BOEHLERT is to be commended for his strong leadership on this issue.

I would also note that the President's counterterrorism strategy, published last week, cites science and technology as one of the heralded and one of the homeland security strategy's four foundations, unique American strengths that cut across all mission areas, across all levels of government, and across all sectors of society. Science and technology are too important to be left to chance in this new department. They need to be planned, coordinated, and directed under a strong Under Secretariat.

Our committee made over a dozen constructive changes to the President's proposal and our markup. The Select Committee did not incorporate a few that I want to highlight.

One, the gentleman from Texas (Mr. BARTON) recommended language to ensure that the Department has access to universities through centers of excellence. This is a useful component of the research and development enterprise for the Department. However, the current structure of this provision, with numerous criteria that the applicants must meet and its exclusion of private research institutions, can still be perfected in conference, and I hope that it is.

Also, Mr. Chairman, the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. EHLERS) led the charge in blocking the transfer of NIST's Computer Security Division to the new Department.

Ms. LOFGREN and Mr. EHLERS led the charge in blocking the transfer of NIST's Computer Security Division to the new Department. Many high-tech organizations have warned that this transfer would actually hurt national security by choking off productive interactions between the government and the private sector on computer security issues.

An amendment in the bill authored by the gentleman from Washington (Mr. BAIRD) explicitly directs the Under Secretary for Emergency Preparedness and Response to treat the psychological consequences of major disasters and to provide appropriate training for mental health workers who must deal with the aftermath of these events.

There were also a number of good ideas accepted by the Science Committee that are not in the base bill but which will be offered later as Floor amendments. I urge the Members to accept our Committee's unanimous judgment on these amendments, which include:

The amendment of the gentlewoman from California (Ms. WOOLSEY) creates a Homeland Security Institute. The Institute would be a non-profit organization assisting the Secretary in much the same way that the RAND Corporation and the MITRE Corporation assist the Secretary of Defense in analyzing proposals, establishing test-beds, assessing defense vulnerabilities and strengths, and so forth. The creation of this Institute was the major recommendation of last month's National Research Council report on terrorism R&D.

The amendment of the gentleman from New York (Mr ISRAEL) creates an advisory committee for the Under Secretary for Science and Technology. The committee would review and make recommendations on general policy issues for the Under Secretary. Most importantly, the Committee will include representatives of the users of the Department's research activities—emergency responders—and of citizen groups.

It includes proposed language by the gentlewoman from Michigan (Ms. RIVERS) that strengthens the channels through which creative American inventors can propose their ideas and technologies to the appropriate government officials. Many of us have heard from constituents who fit that description and who have asked for our help. This amendment provides those inventors with a place to take their ideas.

Two other amendments were adopted by the Science Committee but failed to make the list of amendments under consideration on the House Floor. I would hope that these items may be accommodated in the conference.

First the amendment of the gentlewoman from Texas. (Ms. EDDIE BERNICE JOHNSON) to clarify how the Department should classify information. The amendment adds language requiring the Under Secretary, before issuing R&D awards, to state definitively and in a timely manner whether the research results will be controlled by standard classification procedures. This policy was part of President Ronald Reagan's National Security Decision Directive 189, promulgated in 1985.

And there is the amendment of the gentleman from Utah (Mr. MATHESON) regarding standard setting by the Department. This amendment tasked the National Institute of Standards and Technology to work with the new Department in standard setting for chemical, biological, nuclear and radiological detection, and transportation standards.

Mr. Chairman, I urge the adoption of these. We need to move this bill through the conference as quickly as possible. Homeland security is too important a task to let politics, turf, jurisdictional concerns, or struggles over credit get in our way.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. WELDON), the founder and chair of the Congressional Fire Caucus.

Mr. WELDON of Pennsylvania. Mr. Chairman, I wore this bracelet for 9 months, since September 11. This bracelet was given me by the widow of Ray Downing, one of my best friends.

Ray Downing took me through the World Trade Center in 1991 to give me lessons that I should learn to take back to this body regarding our ability to respond to terrorist incidents. Ray Downing was the Chief Rescue Officer for New York City on September 11. All of those 343 firefighters that were killed worked for Ray Downing. As people were rushing out of the building, Ray was going in with his friends. In fact, two of his sons are firefighters today with the New York City Fire Department.

Ray Downing became a good friend of mine after 1991. And, in fact, he encourage me to introduce legislation in our defense bill, which I did in 1999, creating the Gilmore Commission. The Gilmore Commission published three documents long before 9–11 occurred. And so when my colleagues today talk about a rush to do something, I do not know where they have been. The Gilmore Commission, the Hart-Rudman Commission, the Deutsch Commission, the Bremer Commission, all of this work was done over the past 8 years. Where have my colleagues been? When were they engaged with us?

Ray Downing was engaged. Ray Downing made recommendations for one single Federal agency, and he made it over and over again in the Gilmore Commission document. It was Ray Downing who led us to understand that FEMA had to play a lead role and be a part of that agency, not some outside entity. It was Ray Downing who told us that communication was terrible in 1991, and we did not listen. We did not do anything up until now. It was Ray Downing who told us in these reports that our intelligence system was inadequate and it was Ray Downing who told us that cybersecurity and asymmetric sets required a new impetus, a new direction. Not once, not twice, but three times in three separate volumes that each of us in this body should have read.

Mr. Chairman, I am here today because of Ray Downing. Ray Downing is an American hero. I wore his bracelet until we found his remains 40 days ago, through DNA evidence, because we could not find his body. When I went to the Ground Zero on September 13, his two sons were on their knees looking for their dad.

Ray Downing told us what we should have done and we did not pay attention. This is no rush. I say it is about time we pay attention to the real heroes of this country, the domestic defenders who are in our 32,000 departments who have been telling us for 10 years what recommendations we should enact.

□ 2145

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Chairman, I thank the gentlewoman for yielding me this time, and extend my compliments to my colleagues on both sides of the aisle that have brought this bill forward. I think it is a good piece of work, although I have some questions.

Our most important resource in homeland security is human capital. I represent 72,000 Federal employees, and I rise to take exception to the so-called flexibility provisions. I fear they will result in lower morale and, thus, less effectiveness. This bill undermines the rights and protections currently afforded to Federal employees and in certain cases creates unfairness. The bill allows the new Department after 1 year to reduce the pay of employees transferred from other agencies. The bill would allow the Department to establish a new human resource management system, one that is different from other Federal employees, and leaves to the discretion of the Secretary whether the new system would apply to all or just some organizational units.

In addition, the bill undercuts the ability of unions to represent employees. The bill would allow the Secretary the authority to exempt some employees from organizing unions. Currently only the President has that authority.

Second, those allowed to organize would not necessarily be afforded current features such as agency recommendation of unions as the exclusive representatives of employees, a right to have union representation at grievances, and the requirement to mediate disputes with unions in the case of an impasse.

The bill allows the Department to establish its own appeal system rather than taking appeals to the Merit System Protection Board or Equal Employment Opportunity Commission.

I understand that some flexibility is necessary. However, in this respect the bill uses a meat-ax approach more akin to union busting. Many of these proposed personnel changes are not rationally linked to security functions. The tragedy of September 11 was linked to a lack of coordination, information-sharing, and intelligence failures, not unionization and not the existing grievance procedures. We are asking our Federal employees for more to help us with homeland security while we undermine their employment security. This is a wrong-headed approach which I hope we will correct as we move forward in this process.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. GRANGER), a member of the Subcommittee on Transportation of the Committee on Appropriations.

Ms. GRANGER. Mr. Chairman, I want to express my admiration and appreciation for the gentleman from Texas (Mr. ARMEY) for his leadership in fashioning this legislation which provides the reorganization needed to protect America by establishing the Department of Homeland Security.

I have been working especially hard on transportation issues in homeland security, and tomorrow I will be speaking on those issues, but I wanted to respond tonight to the suggestion that there is no case for providing flexibility in this arbitrary deadline for checking baggage for explosives.

Airport security is important to our homeland security, and we all know that and we all want it, but we want real, not pretend, security at our airports. To make the deadlines as we have it today, the TSA would have to install screening machines at our airports at the rate of one every 35 minutes for the next 5 months. To make the deadline as we have it, screeners would have to be recruited, hired, and trained at the rate of 4.5 seconds for the next 5 months. I can go on and on.

The American people know that cannot happen and we know it cannot happen. That is the case for changing this deadline. Let us make this right. Let us have real, not pretend, security at our airports. The American people deserve and demand real security, not political posturing from us. Let us do it right, and let us pass real legislation, the legislation that is before us here today.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE) who has been a very active participant in making suggestions for this legislation.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I am reminded of the debate we had just a few days ago giving honorary citizenship to Marquis de Lafayette. His words rendered during his lifetime ring very loud today. He fought for America's freedom in the Revolution when patriots stood side by side.

His words were, "Humanity has won its battle. Liberty now has a country."

I think even today as we debate this homeland security department, and even as the winds of action whirl around us, I hope that words of caution are relevant as we move this legislation forward to be instructive to do what is best for the American people.

My visit to Ground Zero was as any other American because the grief was so overwhelming I wanted to be in the process of the lost souls and heroes that gave their lives on September 11. In tribute to them, I think it is important to address some of the concerns with this legislation.

I want a Department of Homeland Security. I have worked and reviewed and looked at options and opportunities to improve the legislation.

I am disappointed that even in the rush that we would not take the time for a full debate in the open daylight for the American people to be engaged. We are making a historic change in the way we do business in America. I think it is important for the RECORD to reflect, Mr. Chairman, that we are concerned about due process and civil liberties; that even though we stand together as Americans, we are concerned that we should ensure that there is no racial profiling in this particular legislation.

I think that we should be concerned that we have an FBI and a CIA that works, and whether or not we have whistleblower protection. I believe that we should reflect on these issues, and I hope as we do so, we will find the kind of department that will work well for all Americans.

Mr. PORTMAN. Mr. Chairman, I yield myself 10 seconds simply to make the point and give the gentlewoman some comfort that section 2301, whistleblower protection, is very much a part of this legislation. If the gentlewoman looks at the language, it is explicitly referenced.

Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. WILSON), the only Member of Congress who is in the National Guard.

Mr. WILSON of South Carolina. Mr. Chairman, it is a great honor to rise in support of H.R. 5005, the Homeland Security Act of 2002. I commend the majority leader, the gentleman from Texas (Mr. ARMEY), for his excellent service and the members of the Select Committee for the bipartisan nature in which this bill was put together. I also commend the President for his leadership in working for the establishment of the new Department.

My perspective, indeed, is as the only member of the Army National Guard serving in Congress at this time, and I have had the privilege as a member of the South Carolina National Guard to work with the community agencies and with the different first responders for other natural disasters that have occurred in our country. In particular, I have worked with the situation of recovery from Hurricane Hugo which struck our State. It was an extraordinary experience, but working together we were able to recover in our State and ensure domestic tranquility.

H.R. 5005 will ensure that our communities and first responders are prepared to address all threats. I believe that it is an orderly streamlining of agencies to focus on homeland security. In particular, I want to commend that the Secret Service will be moved to the Department. One of the main missions of the Secret Service is protecting individuals and securing key events such as the Olympics and Super Bowl. The Department will depend on this agency's protective functions and expertise. H.R. 5005 essentially accepts the Committee on Government Reform's recommendation.

Another point that I see in this bill is recognition that active private sector participation in homeland security is essential. The Select Committee authorized the Secretary of Homeland Security to have a special liaison with the private sector to promote public-private partnerships and promote technology integration for homeland security. A national council for first responders is also established.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BARR), a member of both the Committee on the Judiciary and the Committee on Government Reform.

Mr. BARR of Georgia. Mr. Chairman, when American leaders convened on Monday, December 8, 1941, they knew three things: They knew America was at war; they knew that the mechanism that had been designed to alert America to impending danger had failed; and they knew that the mechanisms that we had in place at the time to respond to emergencies had failed.

They indeed faced a crisis, much as the crisis that we faced the day after the terrorist attacks on this Nation on September 11. We knew that the existing mechanism designed to alert America to danger and to impending attacks had failed, we knew we were at war, and we knew that the mechanisms designed to respond quickly to emergencies in this Nation were not adequate to meet the challenge.

We owe it to this President the same as our forefathers owed and gave to Franklin Delano Roosevelt in December of 1941 the power and the flexibility to respond to a threat that our Nation had never faced before. Is the mechanism that this President is proposing and that we have before us in the Department of Homeland Security perfect? No, it is not. But it does grant the President the flexibility that he needs to respond to an ever-changing threat and to make those responsible for meeting that threat within our shores accountable.

Without flexibility and the mechanisms that we provide this President, there can be no accountability, and without accountability, whatever mechanisms we put in place, no matter how much money we put behind them, they will fail. Therefore, I urge Members to adopt this proposal to give the President the flexibility that he needs, and also to maintain the balance included in this important proposal to ensure that the privacy rights of American citizens are not infringed by the exercise of these necessary powers.

Mr. Chairman, I am pleased to rise in support of this historic piece of legislation.

On June 6, 2002, President Bush proposed creating a permanent Cabinet-level Department of Homeland Security, to unite essential agencies to work closely together and provide seamless coordination and execution of homeland security functions.

The Select Committee, under the leadership of Chairman Armey, took President Bush's proposal and made it better. The measures added by the Select Committee clarify roles and responsibilities of the Department, help create a world-class workforce within the civil service framework, enhance research and development opportunities, and protect civil liberties.

This bill goes beyond moving boxes on an organization chart. It represents a thoughtful approach to securing our borders and protecting our nation. It follows a rational strategy to bring together the current disjointed hodgepodge of government activities into a single department whose primary mission is to protect our homeland.

I'd also like to commend the work of Chairman Dan Burton. The Committee on Government Reform, on which I serve as Vice Chair, worked long and hard to perfect this bill. We crafted a document which served as the base text for the Select Committee bill. We worked into the early morning hours, marking up this legislation. We voted on nearly 40 amendments. At the end of that process, thanks to the leadership of Chairman Burton, we approved the bill, 30 to 1.

Government Reform paid particular attention to important management issues. Not only is creating the right organization for Homeland Security important, so is having the management tools and flexibility to create an agile 21st century workforce capable of responding to emerging new threats, and protect and defend the American people. This is, for example, the reason Committee on Government Reform recommended to the Select Committee, granting the Secretary of Homeland Security needed flexibility in the area of personnel management.

I recently chaired Government Reform hearing in Atlanta to examine post 9/11 security at federal buildings outside the nation's capital. Undercover GAO investigators attempted to infiltrate federal facilities in Atlanta, which has the largest federal government presence outside of Washington, D.C. We learned a very important lessons as a result of this investigation: Organizing the proper structure and implementing proper procedures is futile if there is no accountability, and there can be no accountability without flexibility.

If the Secretary cannot move quickly to rectify personnel problems in the interests of security, we will have no accountability, and we will have failed in our most critical task—to create an effective organization capable of responding quickly and decisively to security threats. The Secretary must have the authority and the flexibility to remove employees from sensitive positions should these employees pose a threat to national security.

We do not aim to take away any employee right. We are merely providing the Secretary the needed management flexibility to strike a sensible balance between national security, employee rights, and the overall needs of the government to protect its citizens.

While we have heard the hue and cry about protecting the rights of the bureaucrats, we need to remember why we are creating this Department in the first place: to protect our communities from the terrorist threats that are unlike any other in the history of our nation. I submit the safety of our communities outweights the importance of certain civil service administrative procedures. When are we talking about so-called "dirty bombs" being detonated here in the nation's capital, and aircraft being employed as missiles to take out our treasured institutions, I believe the proper perspective comes back into focus.

The existing personnel system locks federal organizations into making obsolete decisions—decisions that do not reflect the mission of the Department or needs of American public. This bill brings accountability and common sense to a cumbersome process, while retaining fundamental rights for all transferred employees.

I would also like to take a few moments and discuss the issue of privacy; specifically the privacy protections we've incorporated into the final bill.

The Department of Homeland Security will be assembling millions of pieces of personal information about American citizens. The though of the federal government collecting such private details still gives me pause. However, after spending eight years of my life at the CIA, I understand how important collecting and analyzing foreign intelligence information is to stopping terrorism. However, in order to protect this information and ensure it is not improperly retained, used, or disseminated, I fought for the inclusion of the Privacy Officer provision, which I first proposed in the Judiciary Committee's Commercial and Administrative Law Subcommittee.

This provision mandates the Privacy Officer track public complaints regarding privacy violations, then explain to Congress how the Department has addressed them, and what internal controls have been established to improve privacy protection. It is vital we protect America from those who would cause us harm, but that must not mean that Americans sacrifice their privacy arbitrarily or any more than absolutely necessary, and always with regard to the Bill of Rights. The inclusion of a Privacy Officer will help to prevent that from happening. The privacy officer is specifically charged with examining legislative proposals that would minimize privacy intrusions, and also be required to assess the privacy implications of rules proposed by the Department. This privacy officer will ensure that private information obtained by the new Department be kept private, absent a sound, compelling and Constitutional reason otherwise. These provisions will safeguard Americans' right to privacy and preserve the freedoms and liberties central to the American identity.

Mr. Chairman, President Bush—and Governor Ridge—are to be commended for the job they have done over the past nine months. Since the September 11th attacks, their swift and decisive efforts to strengthen homeland defense have restored confidence in the American people. I also commend all the Committees for their hard work on this bill, and urge all Members to support this important piece of legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. BROWN) who is a member of the Committee on Transportation and Infrastructure and the Committee on Veterans' Affairs.

Ms. BROWN of Florida. Mr. Chairman, the first agency to respond to the terrorist act on September 11 was the United States Coast Guard. Within minutes, they were guarding our ports, bridges and waterways. It was so reassuring to know that they were out there protecting us while other agencies were still in shock, and I want to point out, all while under the supervision of the Department of Transportation.

I strongly oppose the transferring of the Coast Guard to the Department of Homeland Security. Moving the Coast Guard to the new Department is not in the best interest of the Coast Guard, the Department of Homeland Security, or the American people. Each year the Coast Guard conducts over 40,000 search-and-rescue cases. They inspect U.S. and foreign flag ships, and protect many of U.S. citizens who travel on cruise ships and ferries. Most important to my home State of Florida, they stop drugs from entering our country. Over 80 percent of the Coast Guard's operating budget is spent on missions that have nothing to do with border protection or homeland security.

□ 2200

The Republican Party is supposed to be the party of smaller government, but today they are creating a huge monster. I do support the creation of a Department of Homeland Security, but this Congress cannot just rubber-stamp this legislation. It is not unpatriotic to ask serious questions about this agency, and we should not base the process on a symbolic date. Our constituents deserve better than that. We do not need to create another monster. We need to create a homeland security agency that really will protect this Nation and its citizens from harm.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER) chairman of the Government Reform Criminal Justice and Drug Policy Subcommittee.

Mr. SOUDER. Mr. Chairman, I rise in support of this important legislation. I particularly would like to discuss a provision of the bill that arises from an amendment that I successfully offered in the committee with bipartisan support from the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from Illinois (Mr. DAVIS) to provide for a senior-level official within the new Department to coordinate counternarcotics matters.

I raised this issue as chairman of the Criminal Justice and Drug Policy Subcommittee and as one of the cochairs of the Speaker's Task Force on a Drug Free America. I believe it is extremely important, and I would also like to thank the leadership, including Chairman ARMEY, Speaker HASTERT and the gentleman from Ohio (Mr. PORTMAN) for working with us on this provision.

The scope of the legislation we are considering today is much larger than just catastrophic terrorism. One of the issues the proposed reorganization will have an impact upon is drug interdiction.

Let me remind the House of two critical facts. First, approximately 19,000 Americans will die this year of drug-induced causes. These tragedies happen every day in every congressional district across the country. Thousands more Americans have to seek emergency treatment and thousands more families are disrupted by the effects of illegal drugs. The second is that three of the most prominent agencies involved in this legislation, the Customs Service, the Coast Guard and the Border Patrol, are among the preeminent agencies in the Federal Government with respect to drug interdiction. This bill will move these agencies into a new Cabinet Department whose stated mission and focus relate primarily to catastrophic terrorism.

While I strongly support the overall intention of the bill, I also believe with equal strength that our efforts to respond to potential future acts of terrorism cannot come at the price of relaxing our efforts against drugs. Section 768 of the bill, which is derived from my amendment, will require the appointment of a counternarcotics officer who will be a senior official in the Department to assure this coordination.

The new counternarcotics officer must be a senior officer capable of ensuring proper attention and resources to this critical mission. He or she must also be dedicated solely and exclusively to this task. In my view, it will not be acceptable for the new Secretary of Homeland Security simply to add this job on top of others tasked to another senior official.

The purpose of the provision is to ensure that there will be a responsible official whose energies and attention are devoted to managing the significant responsibilities of the new department in this area. This mission is unique among all of the nonterrorism functions and it is important that we have this senior level coordinator.

Our Subcommittee's oversight findings have long suggested the need for such a single operational coordinator even prior to the current reorganization.

This new Department will become the preeminent drug interdiction agency for the federal government, and we cannot allow that mission to continue to be run with such a lack of integration and coordination. We must have an official in charge of this vital task, and I again very much appreciate its inclusion in the bill. Drug control is an integral part of Homeland Security, and I look forward to working closely with the new Department in pursuit of this goal.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 1½ minutes to the gentleman from Ohio (Mr. KUCINICH), the ranking member on the Committee on Government Reform Subcommittee on National Security and a member of the Committee on Education and the Workforce.

Mr. KUCINICH. Mr. Chairman, after an attack on our Nation, Franklin D. Roosevelt told our Nation, "We have nothing to fear but fear itself." Over 61 years later, we are told we have everything to fear. We now measure our fears by the size of the bureaucracy we could create to deal with those fears. But I submit that we will not have responded to the underlying conditions which have created those fears in the first place.

This bill will not accomplish a more effective defense of our Nation because there has been no analysis of the threat. There has been no risk assessment. There is no sense of the actual causes of insecurity and there is no strategy which would provide justification for sweeping changes in 153 different agencies. Little in this bill demonstrates how this bill will accomplish security superior to what these 153 different agencies can now accomplish with strong leadership. $4.5 billion more will be spent, but how do we know it will work in a new department when there has not been any agency-by-agency analysis that justifies the creation of a new Department?

Mr. Chairman, this House just passed a national independent commission to investigate 9/11. We will have a new department with 170,000 employees to respond to 9/11, yet the commission which will analyze 9/11 has not even begun its work. That is quite a feat, especially with our President saying tonight, "I didn't run for office promising to make government bigger." 170,000 employees in this new Department, no idea how they will integrate, 10 years for the Department to be up and running.

In the meantime this reorganization itself will represent a threat to the security of our Nation because it will induce paralysis and administrative breakdown.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), a member of the Committee on Transportation and Infrastructure and also someone who has taken a special interest in homeland security issues.

Mrs. CAPITO. Mr. Chairman, I rise in support of H.R. 5005, the Homeland Security Act and I commend the committee for their fine work.

Mr. Chairman, the way our country prepares for and responds to emergencies since the events of September 11 must be a key component of our homeland security strategy. To that end, I think the President should be commended for putting nearly all of the Federal emergency management and response responsibilities under the Department of Homeland Security. By making emergency management and response a priority under the new Department, we will change the mindset of merely reacting to disasters to include a comprehensive plan of helping communities better prepare for emergency situations. A broader perspective on emergency preparedness will help our cities and towns across the country be ready to respond to terrorist attacks, major disasters and other emergency situations that could paralyze a community that is ill-prepared for a surprise scenario. Initiatives such as State-to-State pacts for emergency response situations must be promoted in order to better use our resources that can be shared across the country.

I think it is important to highlight a few national "firsts" included in this bill. Building a national incident management system to respond to attacks, consolidating existing Federal emergency response plans into a single national plan, and developing comprehensive programs for interoperative communications technology.

The emergency preparedness and response portion of the Department of Homeland Security will continue current Federal support for local government efforts to promote structures that have a lesser chance of being impacted by disasters. It will bring together private industry and citizens to create model communities in high-risk areas.

Like the Boy Scouts and Girl Scouts, every community in America, no matter how large or how small, needs to always be prepared. A firm structure demonstrated by the Federal Government will provide the help and guidance that towns, cities and counties need as they continue to ensure the safety of citizens across the country.

I support this bill wholeheartedly.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 1½ minutes to the very distinguished gentleman from Texas (Mr. TURNER), a respected member of the Committee on Armed Services and the Committee on Government Reform.

Mr. TURNER. I thank the gentlewoman for yielding me this time.

Mr. Chairman, I want to address an amendment that I will offer on this floor tomorrow relating to indemnity of Federal contractors who will provide to the government sophisticated antiterrorism equipment. The language that I will offer on the floor tomorrow was passed unanimously by the Committee on Government Reform, but unfortunately taken out of the bill by the Republican majority on a special panel. I was very amused when I looked at some talking points about the amendment I will offer tomorrow that was put out by the Republican leadership tonight. It says, and I quote, The trial lawyers, through an amendment expected to be offered by Representative TURNER, and I might say I find that very amusing because the amendment I am offering tomorrow was prepared by Representative TOM DAVIS, and I as the chairman and ranking member of the Technology and Procurement Subcommittee of Government Reform, and the amendment was brought to me by Lockheed Martin, Northrop Grumman and the Information Technology Association of America.

What it simply asked was that we extend to the Department of Homeland Security the authority that current law already gives to the Department of Defense to indemnify against claims of damage over certain limits. It has been suggested that this approach, which as I say is already in existing law for the Department of Defense, will open the Treasury of the United States to unlimited claims.

But I would like to point out that the amendment I offer makes it very clear that the director of OMB and the director of Homeland Security can limit the indemnity in any amount they see fit.

I would urge Members to join us in restoring this language tomorrow.

Mr. PORTMAN. Mr. Chairman, could the Chair tell us what the division of time is? We have the right to close, I believe.

The CHAIRMAN. The gentleman from Ohio (Mr. PORTMAN) has 4½ minutes and the gentlewoman from California (Ms. PELOSI) has 3 minutes.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield the balance of my time to the gentlewoman from Connecticut (Ms. DELAURO), a very important member of our Select Committee on Homeland Security, the assistant to the minority leader, and a respected member of the Committee on Appropriations.

Ms. DELAURO. Mr. Chairman, I have been proud to work with Chairman ARMEY, Ranking Member PELOSI and all the members of the Select Committee to craft this legislation. Every Member of the House came to this effort with one goal, to create a department that will help us win the war on terrorism and protect our citizens from future attacks. We have no greater obligation under this Constitution. We share the goal, but we differ on the details.

And while we have made great strides toward the goal, we cannot afford to ignore the details. We face an enemy who leaves us no room for error and we owe the American people nothing less than getting this right the first time.

There are several areas where I believe we have made real progress, due in large part to the hard work of our committees. I am very pleased that the chairman heeded the bipartisan recommendation of the Committee on Energy and Commerce and declined the administration's request to transfer health functions from the National Institutes of Health and the Centers for Disease Control to the new Department.

On a bipartisan recommendation of the Committee on Appropriations, we removed provisions that would have given the administration unprecedented power to transfer funds without congressional oversight. And the gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. LANTOS) worked together to find a bipartisan compromise on the visa issue that was accepted by the White House and three committees. No easy task.

However, very legitimate concerns still exist. I disagree with the committee's decision to extend the deadline for the Transportation Security Agency to check baggage on airlines. The American public and their children should feel safe on those airlines that the airplane is not going to explode. The Secretary of Transportation told us he could meet the deadlines over and over again. I am also concerned about provisions that broaden the FOIA exemption which undermine the civil service protections for 170,000 Federal workers, both union and nonunion. That particular provision goes against the unanimous bipartisan vote of the Committee on Government Reform.

I am disappointed that the Committee on Rules did not make in order my amendment which would have banned the Homeland Security Department from contracting with corporations that are owned and operated in the United States who incorporate themselves on paper overseas for the sole reason of avoiding U.S. taxes. These corporations have abandoned our country at a critical time in our history, leaving senior citizens, soldiers who are fighting overseas, and companies who are doing the right thing, to pay the costs of the war on terrorism. They should not be rewarded for putting profits over patriotism with the contracts from the very department that is charged with screening our homeland and securing our homeland.

I am optimistic that we can address these problems. And with regard to my amendment, all we are asking these corporations to do is to pay American taxes on American profits. These companies should not abandon the United States of America at a time in its greatest need. The President has told us that we are on a wartime footing. And when these companies take their revenue overseas, they put that burden of taxation on working men and women and those who are fighting overseas.

Details do matter. As I said before, we owe the American people nothing less than getting this right the first time. We all want to make America safe.

Mr. PORTMAN. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader. He led the Select Committee panel, he listened to all the standing committees, and he did a good job in presenting a fair and open process with the gentlewoman from California (Ms. PELOSI).

The CHAIRMAN. The gentleman from Texas is recognized for 4½ minutes.

□ 2215

Mr. ARMEY. Mr. Chairman, let me say on a personal note, it is a privilege for me to follow the gentlewoman from Connecticut. What a privilege it was to serve together on this select committee. The gentlewoman made it select indeed, and I want to thank her for that.

Mr. Chairman, on September 11 of last year, early in the morning, the unthinkable happened in America. We should remind ourselves. It was the unthinkable; so horrible, so awful, so sneaky, so vicious.

We should not fault ourselves because we had not thought about it. Americans would not think of such an atrocity. We did not anticipate it. We were not expecting it. We were not ready. It was a classic sneak attack.

Four airplanes, carefully selected, loaded heavily with fuel for a cross-coast trip, took off that morning. Nobody could have imagined even as the hijacking went on, as vicious as it must have been at the time it happened, nobody could have imagined what those hijackers must have had for their destination plan.

Can you imagine the fear, the terror, of those travelers in those first three planes, when at some point in each of those three planes, at some point those passengers must have realized the awful thing these hijackers had in mind?

I think often about the terror they must have felt in their hearts, the helplessness, the hopelessness, the despair that they must have felt. It was particularly bad, I believe, in the case of those first three planes because they were so helpless. By the time they realized what their destiny was, it was too late. Nothing could be done but to realize this awful thing visited upon our land and their place in it.

But there was a fourth plane, a fourth plane, where the passengers of the plane, by virtue of American technology, became aware of exactly what was in the evil minds of those hijackers en route, before it was too late, while they could act. We know from the conversations they had over their cell phones that they huddled in the back of the plane and they laid the best plans they could, grasped for those resources available to them, checked their courage and their resourcefulness, and came up with what plan was available.

We do not know the destination of that plane. Was it the White House? Was it our own Capitol? Was it the CIA headquarters? But whatever those evil doers in that cockpit had in mind, it was clear it was to take the lives of far more people than were in that plane.

And this is the important thing we must remember: when America knew the evil that it was against, America acted. With whatever they had, they acted. And we know with those resounding words that we keep hearing over and over and over in this great land from Todd Beamer, "Let's roll," America acted with what it had.

Our victims became our heroes. When they knew what they must do, they did it. Now the President of the United States has called upon us to respect that, gather our resources around us, focus what we have, and try to recognize the danger. It may come by sea, it may come by air, it may come by land, it may come insidious ways not yet imagined. We know it will come. But what the President of the United States called upon us to do was to get ready, prepare ourselves, imitate as we can, the best we can, the actions of those heroes in Flight 93.

He has given us an outline. Our 12 standing committees have acted, each of them in accordance with their better understanding, their knowledge, their awareness and their experience on how to best hone these tools and bring them together, weld them and unite them in a common course of defense and safety and security. They have trusted their work to our select committee, and I believe we have honored it, and honored it well. We have now brought it to the floor for a final chance to make whatever corrections we can.

I am reminded when I think of the greatness of this institution of Sam

Rayburn from Texas, our great Speaker. We honored him from both sides of the aisle. Sam was a man with a sense of humor. He reminded us often, "Don't sweat the small things."

There are no complaints with this bill that are borne out of the big things. We are all in agreement that we have got the right model, that we put the right pieces together. By and large, we have honed the right tools.

Our concerns here are about the smaller things. Look at the amendments. They are not about big things; they are about smaller things, the fine points, as it were. Let us have a fair contest. Let us have the votes.

But I must tell you, we have got the right package of defense, safety and security, honor and respect of those great heroes to carry on what they started in Flight 93. We know the danger. We have the resources, and we can act.

When the voting is done on these amendments and when we rise from this committee, let us put all of our small disappointments aside and let us try to rise with our voting card to take that tool, as Todd Beamer would have us do, and let's roll, and defend America as they did.

Ms. MILLENDER-McDONALD. Mr. Chairman, I am united with the President and with my colleagues in our determination to win the war against terrorism. We have a responsibility to all Americans to reduce the risk of further attacks. There is not one person in this Congress who does not agree that we need better coordination between Federal agencies in order to fight the very real threat of terrorism.

This is the most important piece of legislation that we will consider in the 107th Congress and, we all need to make certain that this new Department of Homeland Security will make the country and our citizens safer. This new department will be charged with assessing our vulnerabilities, gathering and disseminating our intelligence information, and preparing and working with our local responders. We should all be cognizant that it was the local first responders who answered the challenges of September 11 and if we are to ever be truly prepared then we must properly train and equip our local police and fire departments.

I recognize that this legislation will pass the House today and I support its passage. However, I urge caution as we agree to the proposed transfer of several federal agencies to the new Department of Homeland Security, particularly the Coast Guard, and the Federal Emergency Management Agency. As we move the Coast Guard and these other agencies into the new Department of Homeland Security, we will need to exercise close congressional oversight to ensure that we do not overlook the significant other functions that these agencies already make on a daily basis and how these contributions will be maintained.

I would like to thank the Select Committee for adopting the Transportation and Infrastructure Committee's recommendation for an annual assessment of terrorist related threats to public transportation. This language which I authored, directs the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, to conduct an assessment of potential terrorist related threats to all forms of public transportation and public gatherings.

The horrific events of September 11, 2001 showed that terrorists were able to hijack our national transportation system and use it against us as a weapon. The terrorists used America's accessibility and our freedom of mobility to perpetrate these unspeakable evil acts. If we are to restore America's confidence and adequately protect our transportation infrastructure—the foundation of our economy—then we must conduct a complete assessment of our public transportation system's vulnerabilities. The events at LAX over the July 4 weekend this year, once again showed how vulnerable our citizens can be while exercising their freedom of mobility. Public transportation clearly remains a target and we should access that threat and make the necessary changes that can measurably improve the ability of our transportation systems to ensure enhanced security.

I am committed to a strong, effective Homeland Security and hope that as we move forward with this legislation, we will revisit and review and in some instances restructure areas of the Department to ultimately create an efficient and effective homeland that is secure. We must continue to assess the Department's performance as the protector of the homeland.

Mr. CHAMBLISS. Mr. Chairman, I have heard some concerns about the Strategic National Stockpile. One of today's most serious potential threats to our national security is bioterrorism. The CDC is an integral part of the homeland defense, because of its ability to identify, classify, and recommend courses of action in dealing with biological and chemical threats.

The Strategic National Stockpile Program demonstrated its excellence and reliability through its on time delivery of the Stockpile's 50 ton "push packs" on September 11, 2001 and in the numerous smaller deployments after that date. The push packs are delivered through the nation's public health system and deployment requires continuous medical supervision in order to assure that the medical supplies and pharmaceuticals are provided to the right people and used correctly as medically recommended by Centers for Disease Control and Prevention in Atlanta, Georgia.

Being on the front lines of the war on bioterrorism, the CDC is prepared to respond to emergencies such as a terrorist attack using smallpox virus, anthrax, a worldwide flu pandemic, or a large-scale exposure to deadly toxic chemicals.

It is my hope that the transfer of the stockpile to the Department of Homeland Security will occur with minimum disturbance to the current program. The stockpile should remain an integral part of responding to disease outbreaks and other public health emergencies. CDC has been very successful in their response to all types of public health emergencies and we need to ensure the proposed changes do not negatively impact our ability to make our country safer.

Mr. WU. Mr. Chairman, I rise tonight in support of the Davis amendment to H.R. 5005, the Homeland Security Act. I believe this amendment is crucial to making sure that the Homeland Defense Department and other agencies in charge of Americans' safety are adequately equipped to combat terrorism and other major disasters.

Initially after the September 11 terrorist attacks, I met with a group of Oregonians working in high technology. They were not only eager to offer their services in defense of our country, they also offered many sound ideas on how best to improve our national security. I came away from these meetings convinced that it is critical for us to recruit the best ideas, whether from public, private, or nonprofit sectors, in our fight against terrorism.

In the House Science Committee, I joined Representatives LYNN RIVERS and MIKE HONDA in offering the amendment to H.R. 5005. Today, I remain strongly supportive of creating a technology portal within the Homeland Security Department to reach out to the private sector. The Rivers/Wu amendment would do just that by establishing a technology clearinghouse to recruit innovative solutions from the private sector to enhance homelands security.

I would also like to commend the gentleman from Virginia, Mr. DAVIS, for offering a similar amendment, which is included in the manager's amendment. Good ideas, no matter where the proposal came from, should be implemented.

I believe the Rivers/Wu amendment will keep an open door for talents outside of the government to contribute to our efforts to fight terrorism. I urge my colleagues to adopt the amendment.

Mr. THOMAS. Mr. chairman, I rise in support of House Resolution 5005 enacting the Homeland Security Act of 2002.

The protection of the United States from threat and terror is, and should be, the first priority of this government. The protection that we seek today with the creation of the new Department is for our people, our property, and our economy. For more than 200 years, the U.S. Customs Service has been on the frontline supporting and defending our nation. The requirement for a strong Customs was so important that is was the fifth Act of Congress and was the first Federal agency of the new Republic. The many functions of Customs are as important today as they were at the start of our nation.

Passage of the Homeland Security Act of 2002 is the right decision for the country. This country is only as safe and secure as the economy that supports it. Last year over $1 trillion in merchandise was imported into the country. Customs collected over $20 billions of revenue. The bill before us today helps to protect the trade functions of the Customs Service that are so vital to the strength of this land. It helps to protect the investment that America has made in the new computer system that will be the cornerstone of the new Department. The bill keeps Customs core revenue functions whole, which ensures that the many trade and enforcement functions will be carried out.

Our bipartisan agreement in this bill:

Transfers the Customs Service in its entirety to the Department of Homeland Security Division for Border and Transportation Security.

Identifies revenue-related offices and functions within Customs—about 25 percent of the agency—and prohibits reorganization or decrease in their funding or staff or reductions to Title V pay and benefits levels.

Requries that adequate staffing of customs revenue services be maintained, and requires notice to Congress of actions that would reduce such service.

Maintains the Commissioner of Customs as Senate-confirmed.

Transfers all authority exercised by Customs to Homeland security with the exception of revenue collecting authority, which would remain at the Treasury Department. Treasury may delegate this authority to Homeland Security.

Specifies that a portion of the Customs Merchandise Processing Fee must go to build the new Customs computer, which Governor Ridge has told us will likely be the cornerstone of the new Department's architecture.

For these reasons I urge a "yes" vote on House Resolution 5005.

Mr. GOSS. Mr. Chairman, I rise this evening to briefly summarize the bipartisan recommendations of the Intelligence Committee on title 2 of H.R. 5005.

Before I offer the committee's recommendation, let me give you an idea of why the committee took its action. If you look at the overall structure of the new department, you will notice that the vast majority of the organization has to do with planning, implementation, protection and response to terrorist threats and actions. What we also know is that combating terrorism relies very much on timely, well-coordinated access to intelligence and other sensitive information. I would submit that if the analytical portion of the Department doesn't work, the rest of the Department's operations and functions are somewhat academic.

The committee's strategic vision was that the new department needs an analytical focal point where foreign intelligence, Federal law enforcement, and state and local information will all be analyzed collectively in order to best understand threats, specifically to our homeland, and to properly evaluate the weaknesses in our defenses. Without an all-source analytic capability to validate and make sense of threat information, the Secretary for Homeland Security will have to rely only on Intelligence Community analysis that may be fractious, contradictory, parochial, and incomplete, and will have to make critical analytical judgments in a vacuum.

The HPSCI recommendations to the Select Committee, which have been largely adopted in the Manager's amendment, provide for the establishment of an all-source, collaborative Intelligence Analysis Center that will fuse intelligence and other information from the Intelligence Community, as well as Federal, State and local law enforcement agencies and the private sector, with respect to terrorist threats and actions against the United States. Our proposal integrates the traditional mission of intelligence analysis with new sources of information and sophisticated information tools.

An equally important duty of the Intelligence Analysis Center will be to integrate intelligence and other information to produce and disseminate strategic and tactical vulnerability assessments with respect to terrorist threats. The Intelligence Analysis Center would be charged with developing a comprehensive national plan to provide for the security of key national resources and critical infrastructures. The Intelligence Analysis Center would also review and recommend improvements in law, policy and procedure for sharing intelligence and other information within the Federal Government and between the Federal, State, and local governments.

The committee believes that the proposed Intelligence Analysis Center should be made an element of the Intelligence Community and be a funded program within the National Foreign Intelligence Program in accordance with the National Security Act of 1947. Making the Intelligence Analysis Center an NFIP element will ensure that the Secretary has full and timely access to all relevant intelligence pertaining to terrorist threats against the United States, as well as to ensure proper coordination between the Department and Federal intelligence and law enforcement agencies.

The Intelligence Committee's recommendation envisions an Intelligence Analysis Center that is agile in terms of personnel and infrastructure, appropriately flexible in terms of its authorities and its capacity to address rapidly changing threats to the United States, and unique to our government in that it incorporates the best analytical practices and capabilities found in both the government and the private sector to defend our country and our people.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 5005

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. National Council of First Responders.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Procedures for sharing information.
Sec. 205. Privacy officer.
Sec. 206. Federal cybersecurity program.

Subtitle B—Intelligence Analysis Center

Sec. 211. Intelligence Analysis Center
Sec. 212. Mission of the Intelligence Analysis Center.

TITLE III—SCIENCE AND TECHNOLOGY

Sec. 301. Under Secretary for Science and Technology.
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SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms "American homeland" and "homeland" means the United States.

(2) The term "appropriate congressional committee" means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term "critical infrastructure" has the meaning given that term in section 1016(e) of Public Law 107-56 (42 U.S.C. 5195c(e)).

(5) The term "Department" means the Department of Homeland Security.

(6) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term "executive agency" means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term "key resources" means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term "local government" means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term "major disaster" has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term "personnel" means officers and employees.

(13) The term "Secretary" means the Secretary of Homeland Security.

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term "terrorism" means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16) The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—The Secretary shall coordinate (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.

(a) FINDINGS.—The Congress finds the following:

(1) First responders are key to protecting the health and safety of our citizens against disasters.

(2) First responders are the Nation's ready reaction force of dedicated and brave people who save lives and property when catastrophe strikes.

(3) First responders have the knowledge, training, and experience to save lives, often under the most difficult conditions imaginable.

(4) First responders play an important role in helping to develop and implement advances in life saving technology.

(5) First responders are uniquely qualified to advise the Department of Homeland Security on the role of first responders in defending our Nation against terrorism.

(b) ESTABLISHMENT AND ADMINISTRATION.—

(1) There is established within the Department of Homeland Security a National Council of First Responders (in this section referred to as the "Council").

(2) The President shall appoint the members of the Council. The Council shall consist of not less than 100 members, no more than 10 of whom may be residents of the same State. Members of the Council shall be selected from among the ranks of police, firefighters, emergency medical technicians, rescue workers, and hospital personnel who are employed in communities, tribal governments, and political subdivisions of various regions and population sizes.

(3) The Director of Homeland Security shall appoint a Chairman of the Council.

(4) Members shall be appointed to the Council for a term of 3 years.

(5) Membership shall be staggered to provide continuity.

(6) The Council shall meet no fewer than 2 times each year.

(7) Members of the Council shall receive no compensation for service on the Council.

(8) The Secretary shall detail a single employee from the Department of Homeland Security to the Council for the purposes of:

(A) Choosing meeting dates and locations.

(B) Coordinating travel.

(C) Other administrative functions as needed.

(c) DUTIES.—The Council shall have the following duties:

(1) Develop a plan to disseminate information on first response best practices.

(2) Identify and educate the Secretary on the latest technological advances in the field of first response.

(3) Identify probable emerging threats to first responders.

(4) Identify needed improvements to first response techniques and training.

(5) Identify efficient means of communication and coordination between first responders and local, State, and Federal officials.

(6) Identify areas in which the Department can assist first responders.

(7) Evaluate the adequacy and timeliness of resources being made available to local first responders.

(d) REPORTING REQUIREMENT.—The Council shall report to the Congress by October 1 of each year on how first responders can continue to be most effectively used to meet the ever-changing challenges of providing homeland security for the United States.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall be responsible for the following:

(1) Conducting analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States.

(2) Integrating information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats.

(3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.

(4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.

(5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.

(6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.

(7) Supporting the intelligence and information requirements of the Department.

(8) Administering the Homeland Security Advisory System, exercising primary responsibility for public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

SEC. 202. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

SEC. 203. ACCESS TO INFORMATION.

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide;

(3) the Secretary shall have full access and input with respect to information from any national collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

SEC. 204. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 205. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of information technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 206. FEDERAL CYBERSECURITY PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information systems, including carrying out responsibilities under paragraphs (1) and (2) of section 201 that relate to such systems.

(b) DUTIES.—The duties of the Secretary under subsection (a) are—

(1) to evaluate the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and

(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) FEDERAL INFORMATION SYSTEM SECURITY TEAM.—

(1) IN GENERAL.—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerability assessment techniques.

(2) TEAM MEMBERS.—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.

(3) AGENCY AGREEMENTS REGARDING AUDITS.—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) REPORTS.—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph

shall prepare a report summarizing the findings of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) DEFINITION.—For purposes of this section, the term "Federal critical information system" means an "information system" as defined in section 3502 of title 44, United States Code, that—

(1) is, or is a component of, a key resource or critical infrastructure;

(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and

(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

Subtitle B—Intelligence Analysis Center

SEC. 211. INTELLIGENCE ANALYSIS CENTER.

(a) ESTABLISHMENT; NFIP AGENCY.—(1) There is established within the Department the Intelligence Analysis Center. The Under Secretary for Information Analysis and Infrastructure Protection shall be the head of the Intelligence Analysis Center.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) FUNCTIONS.—The Under Secretary for Information Analysis and Infrastructure Protection, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (6), and (7) of section 201(b).

(c) DETAIL OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

(A) The Central Intelligence Agency.

(B) The Federal Bureau of Investigation.

(C) The National Security Agency.

(D) The National Imagery and Mapping Agency.

(E) The Department of State.

(F) The Defense Intelligence Agency.

(G) Any other agency or department that the President determines appropriate.

(2) TERMS OF DETAIL.—Any officer or employee of the United States or a member of the Armed Forces who is detailed to the Under Secretary under paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years for the performance of temporary functions as required by the Under Secretary.

(d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) by striking "and" at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) the Intelligence Analysis Center of the Department of Homeland Security; and".

SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.

(a) IN GENERAL.—The mission of the Intelligence Analysis Center is as follows:

(1) ANALYSIS AND PRODUCTION.—

(A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.

(B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.

(C) Providing appropriate dissemination of such assessments.

(D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

(2) COORDINATION OF INFORMATION.—Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) ADDITIONAL DUTIES.—Performing such other functions as the Secretary may direct.

(b) STRATEGIC AND TACTICAL MISSIONS OF THE INTELLIGENCE ANALYSIS CENTER.—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

(1) Domestic terrorism.

(2) International terrorism.

(3) Counterintelligence.

(4) Transnational crime.

(5) Proliferation of weapons of mass destruction.

(6) Illicit financing of terrorist activities.

(7) Cybersecurity and cybercrime.

(8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

(1) FUNCTIONS TRANSFERRED.—In accordance with title VIII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Federal Computer Incident Response Center of the General Services Administration.

(D) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(E) The National Communications System of the Department of Defense.

(F) The intelligence element of the Coast Guard.

(G) The intelligence element of the United States Customs Service.

(H) The intelligence element of the Immigration and Naturalization Service.

(I) The intelligence element of the Transportation Security Administration.

(J) The intelligence element of the Federal Protective Service.

(2) STRUCTURE.—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the Department of the Army to the maximum extent feasible and appropriate.

TITLE III—SCIENCE AND TECHNOLOGY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have responsibility for—

(1) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological radiological, nuclear and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(2) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(3) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs; provided that such responsibility does not extend to human health-related research and development activities;

(4) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(5) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;

(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, and nuclear weapons and related materials;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related materials; and

(C) for interoperability of communications systems for emergency response providers;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of the Department are aligned with the Department's procurement needs;

(8) facilitating the deployment of technology that will serve to enhance homeland security, including through the establishment of a centralized Federal repository for information relating to technologies described in subparagraphs (A), (B), and (C) of paragraph (6) for dissemination to Federal, State, and local government and private sector entities, and for information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would contribute to homeland security;

(9) providing guidance, recommendations, and technical assistance as appropriate to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in subparagraphs (A), (B), and (C) of paragraph (6); and

(10) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 302. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section 906(a)(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107–188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, is transferred to the Department.

(2) Programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) The programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-proliferation and verification research and development program.

(B) The programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program.

(C) Those aspects of the nuclear assessment program of the international materials protection and cooperation program that are directly related to homeland security.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(3) The homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program.

SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 301(1).

SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

SEC. 305. MISCELLANEOUS PROVISIONS.

(a) Classification.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) Construction.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) Regulations.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) Notification of Presidential Life Sciences Designations.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(2)(D) of this Act, the President shall notify the Congress of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 306. HOMELAND SECURITY SCIENCE AND TECHNOLOGY COORDINATION COUNCIL.

(a) Establishment and Composition.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the "Coordination Council"). The Coordination Council shall be composed of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Under Secretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) Responsibilities.—The Coordination Council shall—

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(4).

SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) In General.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 301(3) through both extramural and intramural programs.

(b) Extramural Programs.—(1) The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate; and

(B) distribute funds through grants, cooperative agreements, and contracts through competitions that are as open as possible.

(2)(A) The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) Intramural Programs.—(1) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any national laboratory and may establish additional laboratory units at other national laboratories.

(3) If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate national laboratories against the criteria.

(D) Select a national laboratory on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) Transfer Required.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) Continued Department of Agriculture Access.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

(c) Notification.—At least 180 days before any change in the biosafety level at the facility described in subsection (a), the President shall notify the Congress of the change and describe the reasons therefor. No such change may be made until at least 180 days after the completion of the transition period defined in section 801(2).

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 411 takes effect.

(4) Establishing and administering rules, in accordance with section 403, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Except as provided in subtitle C, administering the customs laws of the United States.

(6) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

(7) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 402. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The United States Customs Service, except as provided in subtitle C.

(2) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(3) The Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto.

(4) The Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(5) The Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(6) The Office for Domestic Preparedness of the Office of Justice Programs of the Department of Justice, including the functions of the Attorney General relating thereto.

(7) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(8) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

SEC. 403. VISA ISSUANCE.

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(C) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act.

(D) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(E) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(F) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(G) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(H) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(K) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(3) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to individual visa applications or classes of applications.

(B) Review any or all such applications prior to their adjudication, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) The Secretary shall promulgate regulations within 60 days of the enactment of this Act establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(f) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to the Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of

law, after the date of the enactment of this Act all third party screening, interview waiver, or other non-interview visa issuance programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication. All visa applicants in Saudi Arabia shall be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing and pursuant to written guidelines issued by the Secretary of Homeland Security, that the alien is unlikely to present a risk to homeland security. The Secretary of Homeland Security shall promulgate such guidelines not later than 30 days after the date of the enactment of this Act.

SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) Transfer of Agricultural Import and Entry Inspection Functions.—There shall be transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) Covered Animal and Plant Protection Laws.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) Exclusion of Quarantine Activities.—For purposes of this section, the term "functions" does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) Effect of Transfer.—

(1) Compliance with department of agriculture regulations.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) Rulemaking coordination.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) Effective administration.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) Transfer Agreement.—

(1) Agreement required; revision.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) Required Terms.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) Cooperation and reciprocity.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) Periodic Transfer of Funds to Department of Homeland Security.—

(1) Transfer of funds.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) Limitation.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) Transfer of Department of Agriculture Employees.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Protection of Inspection Animals.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting "or the Department of Homeland Security" after "Department of Agriculture"; and

(B) by inserting "or the Secretary of Homeland Security" after "Secretary of Agriculture";

(2) by striking "Secretary" each place it appears (other than in sections 501(a) and 501(e)) and inserting "Secretary concerned"; and

(3) by adding at the end of section 501 the following new subsection:

"(e) Secretary Concerned Defined.—In this title, the term 'Secretary concerned' means—

"(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

"(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.".

SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) Operation, Maintenance, and Protection of Federal Buildings and Grounds.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) Collection of Rents and Fees; Federal Buildings Fund.—

(1) Statutory construction.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(2) Use of transferred amounts.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) Consultation With Federal Aviation Administration.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) Report to Congress.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(c) Limitations on Statutory Construction.—

(1) Grant of authority.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) Obligation of AIP funds.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) In General.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) Sunset.—Subsection (a) shall cease to apply two years after the date of enactment of this Act.

SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.

On an annual basis, the Secretary, in consultation with the heads of other appropriate

Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

SEC. 409. EXPLOSIVE DETECTION SYSTEMS.

(a) Installation of Systems.—Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

"(2) Modification of airport terminal buildings to accommodate explosive detection systems.—

"(A) Notification of airports.—Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44903(c) of the number and type of explosive detection systems that will be required to be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.

"(B) Assessments of airport terminal buildings.—If the owner or operator of a United States airport described in section 44903(c) determines that the airport will not be able to make the modifications to the airport's terminal buildings that are necessary to accommodate the explosive detection systems required under subparagraph (A) in a cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.

"(C) Plans for making modifications to airport terminal buildings.—

"(i) In general.—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary, in consultation with the owner or operator, shall develop, not later than December 1, 2002, a plan for making necessary modifications to the airport's terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.

"(ii) Deadline.—A plan developed under this subparagraph shall include a date for executing the plan. All such plans shall be executed as expeditiously as practicable but not later than December 31, 2003.

"(iii) Transmission of plans to Congress.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.

"(D) Requirements for plans.—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—

"(i) the deployment of explosive detection systems in the baggage sorting area or other nonpublic area rather than the lobby of an airport terminal building; and

"(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.

"(E) Use of screening methods other than EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44903(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.

"(3) Purchase of explosive detection systems.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

"(4) Explosive detection system defined.—In this subsection, the term 'explosive detection system' means a device, or combination of devices, that can detect different types of explosives.".

(b) Correction of Reference.—Section 44901(e) of title 49, United States Code, is amended by striking "(b)(1)(A)" and inserting "(d)(1)(A)".

SEC. 410. TRANSPORTATION SECURITY.

(a) Transportation Security Oversight Board.—

(1) Establishment.—Section 115(a) of title 49, United States Code, is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(2) Membership.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

"(A) The Secretary of Homeland Security, or the Secretary's designee.".

(3) Chairperson.—Section 115(b)(2) of title 49, United States Code, is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) Approval of AIP Grant Applications for Security Activities.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

"(g) Consultation With Secretary of Homeland Security.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).".

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) Establishment of Bureau.—

(1) In general.—There is established in the Department of Homeland Security a bureau to be known as the "Bureau of Border Security".

(2) Assistant secretary.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) Functions.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 411 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services of the Department of Justice established under chapter 2, including potentially conflicting policies or operations.

(4) Program to collect information relating to foreign students.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) Managerial rotation program.—

(A) In general.—Not later than 1 year after the date on which the transfer of functions specified under section 411 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) Report.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) Chief of Policy and Strategy.—

(1) In general.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) Functions.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration enforcement policies and priorities;

(B) performing policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) Citizenship and Immigration Services Liaison.—

(1) In general.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Border Security.

(2) Functions.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Border Security, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 414. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

Subchapter A—Transfers of Functions

SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) ASSISTANT ATTORNEY GENERAL.—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Attorney General; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Assistant Attorney General by this section or this Act or otherwise vested in the Assistant Attorney General by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration services policies and priorities;

(B) performing policy research and analysis on immigration services issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department of Homeland Security.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and

(C) responding to inquiries from the media and the general public on immigration services issues.

(g) BORDER SECURITY LIAISON.—

(1) IN GENERAL.—There shall be a position of Border Security Liaison for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Border Security Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

(h) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the "Ombudsman"). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 424. EMPLOYEE DISCIPLINE.

The Assistant Attorney General for Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

"OFFICE OF IMMIGRATION STATISTICS

"SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

"(b) The Director of the Office shall be responsible for the following:

"(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

"(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968,

as added by subsection (a), the functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service.

(c) CONFORMING AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking "and" at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following:

"(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.".

SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

SEC. 427. EFFECTIVE DATE.

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

SEC. 428. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

(4) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

Subchapter B—Other Provisions

SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

SEC. 432. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking "not later than one year after the date of enactment of this Act;" and inserting "1 year after the date of the enactment of the Homeland Security Act of 2002;".

SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 421(b) and related processes.

SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Attorney General in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b). The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 436. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term "placement" means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term "unaccompanied alien child" means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CHAPTER 3—GENERAL PROVISIONS

SEC. 441. ABOLISHMENT OF INS.

The Immigration and Naturalization Service of the Department of Justice is abolished.

SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term "covered entity" means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and

(3) the term "transfer date" means the date on which the transfer of functions specified under section 411 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the "appropriate committees of Congress" are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, *Governmental Affairs, and the Judiciary of the Senate.*

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term "final basic pay" means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code. Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term "covered entity" has the meaning given such term in section 442(a)(2).

SEC. 444. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the missions of the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 445. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 446. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Attorney General shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department of Justice (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF THE CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of the Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Attorney General should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

Subtitle C—United States Customs Service

SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 457(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

"Commissioner of Customs, Department of the Treasury"

and inserting

"Commissioner of Customs, Department of Homeland Security.".

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(5), 402(1), and 808(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 451) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in the operation of the Customs Service.

(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(3) USE OF MERCHANDISE PROCESSING FEES.—The cost accounting system described in paragraph (1) shall provide for an identification of all amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b) REPORTS.—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in

subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

SEC. 454. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to the Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 456. PAYMENT OF DUTIES AND FEES.

Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended—

(1) in the first sentence—

(A) by striking "Unless merchandise" and inserting "Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise"; and

(B) by inserting after "by regulation" the following: "(but not to exceed 10 working days after entry or release, whichever occurs first)"; and

(2) by striking the second and third sentences and inserting the following: "If an import activity summary statement is filed, the importer of record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever occurs first.".

SEC. 457. DEFINITION.

In this subtitle, the term "customs revenue function" means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 458. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to the Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term "customs revenue services" means those customs revenue functions described in paragraphs (1) through (6) and (8) of section 457.

SEC. 460. REPORTS TO CONGRESS.

The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

SEC. 461. CUSTOMS USER FEES.

Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

"(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).";

(2) in paragraph (4), by striking "(other than the excess fees determined by the Secretary under paragraph (5))"; and

(3) by striking paragraph (5) and inserting the following:

"(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

"(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

"(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.".

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall be responsible for the following:

(1) Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.

(2) With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

(3) Providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.

(4) Aiding the recovery from terrorist attacks and major disasters, interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters.

(5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

(6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.

(7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 502. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) Except as provided in section 402, the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, and the Integrated Hazard Information System of the Department of Defense.

(2) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(3) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 503. NUCLEAR INCIDENT RESPONSE.

(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency within the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) CONSTRUCTION.—Nothing in this title shall be understood to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(c) INDEMNIFICATION OF CONTRACTORS DURING TRANSITION PERIOD.—(1) To the extent the Department of Energy has a duty under a covered contract to indemnify an element of the Nuclear Incident Response Team, the Department and the Department of Energy shall each have that duty, whether or not the Nuclear Incident Response Team is operating as an organizational element of the Department.

(2) Paragraph (1) applies only to a contract in effect on the date of the enactment of this Act, and not to any extension or renewal of such contract carried out after the date of the enactment of this Act.

SEC. 504. DEFINITION.

For purposes of this title, the term "Nuclear Incident Response Team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform radiological emergency response and support functions.

SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary of Homeland Security in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Border Security.

(2) TRANSFER OF FUNCTIONS.—In accordance with title VIII, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

SEC. 602. CHIEF FINANCIAL OFFICER.

Notwithstanding section 902(a)(1) of title 31, United States Code, the Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 603. CHIEF INFORMATION OFFICER.

Notwithstanding section 3506(a)(2) of title 44, United States Code, the Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

The Secretary shall establish in the Department an Office for Civil Rights and Civil Liberties, the head of which shall be the Director for Civil Rights and Civil Liberties. The Director shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Office; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described in paragraph (1) and any actions taken by the Department in response to such allegations.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

SEC. 701. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes (1) a statement as to whether the Inspector General agrees or disagrees with such exercise and (2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of the Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

"SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.".

Subtitle B—United States Secret Service

SEC. 711. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle C—Critical Infrastructure Information

SEC. 721. SHORT TITLE.

This subtitle may be cited as the ''Critical Infrastructure Information Act of 2002''.

SEC. 722. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term ''covered Federal agency'' means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more that one year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 725. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle D—Acquisitions

SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the five-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1)(A) In carrying out basic, applied, and advanced research and development projects for response to existing or emerging terrorist threats, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f) of such section), after making a determination that—

(i) the use of a contract, grant, or cooperative agreement for such projects is not feasible or appropriate; and

(ii) use of other authority to waive Federal procurement laws or regulations would not be feasible or appropriate to accomplish such projects.

(B) The annual report required under subsection (h) of such section 2371, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) In applying the authorities of such section 845—

(i) subsection (c) thereof shall apply with respect to prototype projects under this paragraph, except that in applying such subsection any reference in such subsection to the Comptroller General shall be deemed to refer to the Comptroller General and the Inspector General of the Department; and

(ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than one year after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term "nontraditional Government contractor" has the same meaning as the term "nontraditional defense contractor" as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 732. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—(1) The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $5,000.

(2) The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be $175,000.

(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by adding at the end the following new subparagraph:

"(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.".

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.

There is established in the Department an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of such office shall be vested in the manner described in section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and shall carry out the functions described in such section.

Subtitle E—Property

SEC. 741. DEPARTMENT HEADQUARTERS.

(a) In General.—Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the Administrator of General Services shall construct a public building to serve as the headquarters for the Department.

(b) Location and Construction Standards.—The headquarters facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.

(c) Use of Headquarters Facility.—The Administrator of General Services shall make the headquarters facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator's authorities under section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 et seq.) and there is authorized to be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

Subtitle F—Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

SEC. 751. SHORT TITLE.

This subtitle may be cited as the "Support Anti-terrorism by Fostering Effective Technologies Act of 2002" or the "SAFETY Act".

SEC. 752. ADMINISTRATION.

(a) In General.—The Secretary shall be responsible for the administration of this subtitle.

(b) Designation of Qualified Anti-Terrorism Technologies.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior and extensive United States government use and demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(c) Regulations.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 753. LITIGATION MANAGEMENT.

(a) Federal Cause of Action.—(1) There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(2) Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller.

(b) Special Rules.—In an action brought under this section for damages the following provisions apply:

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2)(A) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) For purposes of subparagraph (A), the term "noneconomic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) Collateral Sources.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) Government Contractor Defense.—(1) Should a product liability lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) For those products reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the product on an Approved Product List for Homeland Security.

(e) Exclusion.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 754. RISK MANAGEMENT.

(a) In General.—(1) Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to non-federal government customers ("Seller") shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(2) For the total claims related to one such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) Reciprocal Waiver of Claims.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(c) Extent of Liability.—Notwithstanding any other provision of law, liability for all *claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.*

SEC. 755. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term "qualified anti-terrorism technology" means any product, device, or technology designed; developed, or modified for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism and limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term "act of terrorism" means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term "insurance carrier" means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term "liability insurance" means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term "loss" means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term "non-Federal Government customers" means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle G—Other Provisions

SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

"Sec.

"9701. Establishment of human resources management system.

"§9701. Establishment of human resources management system

"(a) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

"(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

"(1) be flexible;

"(2) be contemporary;

"(3) not waive, modify, or otherwise affect—

"(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

"(B) any provision of section 2302, relating to prohibited personnel practices;

"(C)(i) any provision of law referred to in section 2302(b)(1); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

"(I) providing for equal employment opportunity through affirmative action; or

"(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

"(D) any other provision of this title (as described in subsection (c)); or

"(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

"(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and

"(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

"(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

"(1) subparts A, B, E, G, and H of this part; and

"(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

"(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

"(1) to modify the pay of any employee who serves in—

"(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

"(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

"(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

"(3) to exempt any employee from the application of such section 5307.

"(e) SUNSET PROVISION.—Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.".

(2) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

"97. Department of Homeland Security 9701".

(b) EFFECT ON PERSONNEL.—

(1) NON-SEPARATION OR NON-REDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 762. ADVISORY COMMITTEES.

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIATIONS.

(a) REORGANIZATION.—

(1) IN GENERAL.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(A) pursuant to section 802; or

(B) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(2) LIMITATIONS.—(A) Authority under paragraph (1)(A) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(B) Authority under paragraph (1)(B) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

(b) TRANSFER OF APPROPRIATIONS.—

(1) IN GENERAL.—Except as otherwise specifically provided by law, not to exceed two percent of any appropriation available to the Secretary

in any fiscal year may be transferred between such appropriations, except that not less than 15 days' notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such transfer is made.

(2) EXPIRATION OF AUTHORITY.—The authority under paragraph (1) shall expire two years after the date of enactment of this Act.

SEC. 764. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) GIFTS, DEVISES, AND BEQUESTS.—With respect to the Department, the Secretary shall have the same authorities that the Attorney General has with respect to the Department of Justice under section 524(d) of title 28, United States Code.

(c) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 765. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 766. REGULATORY AUTHORITY.

Except as otherwise provided in this Act, this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.

(a) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through contracts with the operator of a national laboratory of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the contracts of the Department of Energy with such operator.

(b) HOMELAND SECURITY CENTER.—(1) Notwithstanding section 307, the Secretary, acting through the Under Secretary for Science and Technology, shall establish at a national security laboratory of the National Nuclear Security Administration, a center to serve as the primary location for carrying out research, development, test, and evaluation activities of the Department related to the goals described in section 301(6)(A) and (B). The Secretary shall establish, in concurrence with the Secretary of Energy, such additional centers at one or more national laboratories of the Department of Energy as the Secretary considers appropriate to serve as secondary locations for carrying out such activities.

(2) Each center established under paragraph (1) shall be composed of such facilities and assets as are required for the performance of such activities. The particular facilities and assets shall be designated and transferred by the Secretary of Energy with the concurrence of the Secretary.

(c) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a national laboratory of the Department of Energy but under contract with the Department of Homeland Security, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(d) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.

(e) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 768. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include the following:

(A) Joint research and development on countermeasures.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of the Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.

The Secretary (or the Secretary's designee) shall work in cooperation with the Mayor of the District of Columbia (or the Mayor's designee) for the purpose of integrating the District of Columbia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.

There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center, including any functions of the Secretary of the Treasury relating thereto.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

SEC. 801. DEFINITIONS.

For purposes of this title:

(1) The term "agency" includes any entity, organizational unit, program, or function.

(2) The term "transition period" means the 12-month period beginning on the effective date of this Act.

SEC. 802. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

Subtitle B—Transitional Provisions

SEC. 811. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) TRANSFER OF FUNDS.—Until the transfer of an agency to the Department, the President is authorized to transfer to the Secretary to fund the purposes authorized in this Act—

(1) for administrative expenses related to the establishment of the Department of Homeland Security, not to exceed two percent of the unobligated balance of any appropriation enacted prior to October 1, 2002, available to such agency; and

(2) for purposes for which the funds were appropriated, not to exceed three percent of the unobligated balance of any appropriation available to such agency;

except that not less than 15 days' notice shall be given to the Committees on Appropriations of the House of Representatives and the Senate before any such funds transfer is made.

(d) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(e) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

Paragraph (1) shall not apply to appropriations transferred pursuant to section 763(b).

(f) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 812. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term "completed administrative action" includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

SEC. 813. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 814. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and obligations held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b) of this Act.

SEC. 817. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section

802) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 901. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting "Homeland Security," after "Transportation," each place it appears; and

(2) by striking "; and" each place it appears in paragraph (1) and inserting ";";

SEC. 902. EXECUTIVE SCHEDULE.

(a) In General.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting "Secretary of Homeland Security." as a new item after "Affairs.";

(2) in section 5313, by inserting "Deputy Secretary of Homeland Security." as a new item after "Affairs.";

(3) in section 5314, by inserting "Under Secretaries, Department of Homeland Security." as a new item after "Affairs." the third place it appears;

(4) in section 5315, by inserting "Assistant Secretaries, Department of Homeland Security.", "General Counsel, Department of Homeland Security.", "Chief Financial Officer, Department of Homeland Security.", "Chief Information Officer, Department of Homeland Security.", and "Inspector General, Department of Homeland Security." as new items after "Affairs." the first place it appears; and

(5) in section 5315, by striking "Commissioner of Immigration and Naturalization, Department of Justice.".

(b) Special Effective Date.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) In General.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking "of the Treasury", each place it appears and inserting "of Homeland Security".

(2) Section 208 of title 3, United States Code, is amended by striking "of Treasury" each place it appears and inserting "of Homeland Security".

(b) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 904. COAST GUARD.

(a) Title 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(b) Title 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(2) Section 801(1) of such title is amended by striking "the General Counsel of the Department of Transportation" and inserting "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(3) Section 983(d)(2)(B) of such title is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(4) Section 2665(b) of such title is amended by striking "Department of Transportation" and inserting "Department in which the Coast Guard is operating".

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking "Secretaries of the Army, Air Force, and Transportation" both places it appears and inserting "Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security"; and

(B) in subsection (b), by striking "Department of Transportation" and inserting "Department of Homeland Security".

(6) Section 7361(b) of such title is amended in the subsection heading by striking "TRANSPORTATION" and inserting "HOMELAND SECURITY".

(7) Section 12522(c) of such title is amended in the subsection heading by striking "TRANSPORTATION" and inserting "HOMELAND SECURITY".

(c) Title 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(d) Other Defense-Related Laws.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking "of Transportation" and inserting "of Homeland Security"; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking "of Transportation" and inserting "of Homeland Security".

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking "after consultation with the Secretary of Transportation".

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(9) Section 2307(a) of of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking "of Transportation" in the fourth paragraph and inserting "of Homeland Security";

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking "Secretaries of Army, Navy, Air Force, or Transportation" and inserting "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,"; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(e) Technical Correction.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(f) Effective Date.—The amendments made by this section (other than subsection (e)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) In General.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections (a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC HEALTH SERVICE ACT.

(a) Public Health Service Act.—Section 351A of the Public Health Service Act (42 U.S.C. 262a) is amended—

(1) in subsection (a)(1)(A), by inserting "(as defined in subsection (l)(9))" after "Secretary";

(2) in subsection (h)(2)(A), by inserting "Department of Homeland Security, the" before "Department of Health and Human Services"; and

(3) in subsection (l), by inserting after paragraph (8) a new paragraph as follows:

"(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.".

(b) Public Health Security and Bioterrorism Preparedness and Response Act of 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 262a note) is amended by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security".

(c) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) Amendment to Property Act.—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

(b) Law Enforcement Authority.—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Protection of Public Property Act'.

"SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.

"(a) In General.—The Secretary of Homeland Security (in this Act referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

"(b) Officers and Agents.—

"(1) Designation.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

"(2) Powers.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

"(A) enforce Federal laws and regulations for the protection of persons and property;

"(B) carry firearms;

"(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(D) serve warrants and subpoenas issued under the authority of the United States; and

"(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

"(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

"(c) Regulations.—

"(1) In General.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

"(2) Penalties.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

"(d) Details.—

"(1) Requests of Agencies.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

"(2) Applicability of Regulations.—The Secretary may—

"(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

"(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

"(3) Facilities and Services of Other Agencies.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

"(e) Authority Outside Federal Property.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

"(f) Secretary and Attorney General Approval.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

"(g) Limitation on Statutory Construction.—Nothing in this section shall be construed to—

"(1) preclude or limit the authority of any Federal law enforcement agency; or

"(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.".

SEC. 908. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting "for a period not to exceed 30 days" after "effective"; and

(2) in section 114(l)(2)(B), by inserting "ratified or" after "unless".

SEC. 909. RAILROAD SECURITY LAWS.

Title 49, United States Code, is amended—

(1) in section 20106 by inserting in the second sentence, ", including security," after "railroad safety" and "or the Secretary of Homeland Security" after "Secretary of Transportation"; and

(2) in section 20105—

(A) by inserting "or the Secretary of Homeland Security" after "Secretary of Transportation" in subsection (a);

(B) by inserting "of Transportation or the Secretary of Homeland Security" after "issued by the Secretary" in subsection (a);

(C) by inserting "of Transportation or the Secretary of Homeland Security, as appropriate," after "to the Secretary" in subsection (a), and after "Secretary" in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears in subsections (b)(1)(B) and (B)(iii) and (d), each place it appears in subsections (c)(1), (c)(2), (e), and (f), and the first four times it appears in subsection (b)(3);

(D) by inserting "of Transportation or the Secretary of Homeland Security, as appropriate" after "Secretary" in subsection (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it appears in subsection (b)(1)(B)(iii), and the last place it appears in subsection (b)(3);

(E) in subsection (d), by replacing "Secretary's" with "Secretary of Transportation's" and adding before the period at the end "or the Secretary of Homeland Security's duties under section 114"; and

(F) in subsection (f), by adding before the period at the end "or section 114".

SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting "homeland security," after "national security,"; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting "the Office of Homeland Security," after "National Security Council,".

SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

"(14) Other Federal officials the Council considers appropriate.".

SEC. 912. CHIEF FINANCIAL OFFICER.

Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting the following new subparagraph after subparagraph (F):

"(G) The Department of Homeland Security.".

SEC. 913. CHIEF INFORMATION OFFICER.

(a) Clinger–Cohen Act.—(1) The provisions enacted in section 5125 of the Clinger–Cohen Act of 1996 (division E of Public Law 104–106; 110 Stat. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting "or appointed" after "a Chief Information Officer designated".

(b) Title 44.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—

(A) in subparagraph (A) by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)"; and

(B) by adding at the end the following:

"(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.";

(2) in each of subsections (a)(4) and (c)(1) of section 3506, by inserting "or appointed" after "the Chief Information Officer designated"; and

(3) in subsection (a)(3) of section 3506, by inserting "or appointed" after "The Chief Information Officer designated".

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the "Homeland Security Council" (in this title referred to as the "Council").

SEC. 1002. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 1003. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Health and Human Services.

(6) The Director of Central Intelligence.

(7) The Secretary of Defense.

(8) The Secretary of the Treasury.

(9) The Secretary of State.

(10) The Secretary of Energy.

(11) The Secretary of Agriculture.

(12) Such other individuals as may be designated by the President.

SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 1005. HOMELAND SECURITY BUDGET.

The Director of the Office of Management and Budget shall prepare for the President a Federal homeland security budget to be delivered to the Congress as part of the President's annual budget request.

SEC. 1006. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 1007. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute is in order except those printed in House Report 107-615 and amendments en bloc described in section 3 of House Resolution 502.

Except as specified in section 4 of the resolution or the order of the House of today, each amendment printed in the report shall be offered only in the order printed, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

It shall be in order at any time for the chairman of the Select Committee on Homeland Security or his designee to offer amendments en bloc consisting of amendments printed in the report not earlier disposed of or germane modifications of any such amendment.

Amendments en bloc shall be considered read, except that modification shall be reported, shall be debatable for 20 minutes, equally divided and controlled by the chairman and ranking minority member or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The original proponent of an amendment included in the amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before disposition of the amendment en bloc.

The chairman of the Committee of the Whole may recognize for consideration of any amendment out of the order printed, but not sooner than 1 hour after the chairman of the Select Committee on Homeland Security or his designee announces from the floor a request to that effect.

It is now in order to consider amendment No. 1 printed in House Report 107-615.

AMENDMENT NO. 1 OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. OBERSTAR:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 501(1) of the bill, strike ", major disasters, and other emergencies".

In the matter preceding subparagraph (A) of section 501(3) of the bill, strike "and major disasters".

In section 501(3)(D) of the bill, strike "or major disaster".

In section 501(4) of the bill—

(1) strike "and major disasters";

(2) strike "or major disasters"; and

(3) strike "or disasters".

In section 501(5) of the bill, strike and "disasters".

Strike section 501(6) of the bill and insert the following:

(6) in consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b).

In section 502(1) of the bill, strike the text after "(1)" and preceding "Integrated" and insert "The".

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan establish under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Minnesota (Mr. OBERSTAR) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, over the past decade, the Federal Emergency Management Administration has come to be recognized as one of our most effective and widely respected Federal Government agencies. It has helped tens of thousands of our fellow citizens devastated by natural disasters, such as floods, fires, earthquakes, hurricanes, tornadoes and blizzards. But if we transfer FEMA to the Department of Homeland Security, we run the risk of undermining the mission and the effectiveness of the one agency, I should not say the one, but one of the few agencies of this government that touches the lives of Americans daily, that works effectively and smoothly and responds to the needs of American citizens where they are when disaster strikes.

Over the past several years, FEMA has responded to four federally declared disasters emerging from terrorism: the World Trade Center, the Pentagon, the bombing of the Murrah Federal Building, and the attack on the World Trade Center in 1993, effectively, efficiently. Its response was never diminished by its independent status and was, in fact, enhanced by that status.

Since 1976, FEMA has responded to 927 federally declared disasters and 77 emergency declarations resulting from natural hazards, floods, fire, hurricane, earthquake and tornado, responding effectively, helping Americans devastated, and, in the process, earning the respect and admiration of the Congress, of State and local officials, and other nations who have come to study our system to see how it works and try to emulate it.

The former director of FEMA, James Lee Witt, who elevated the effectiveness of FEMA to this highly respected, efficient status that we all admire today, said that its effectiveness was directly dependent upon its ability to stay out of the large bureaucratic morass of Washington agencies and allowed it "to effectively coordinate the resources of 26 Federal agencies following disaster events." James Lee Witt said the plan to move FEMA to the new Department "would be a mistake."

I concur.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is the gentleman from Texas (Mr. ARMEY) opposed to the amendment?

Mr. ARMEY. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman is recognized for 10 minutes in opposition to the amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. WELDON).

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment, in spite of my high respect for the author of the amendment. I agree with the gentleman on the support for FEMA and on his support for James Lee Witt, who is a good friend of mine. In fact, I talk to James Lee on a regular basis. I was with James on a number of those disasters, at the Murrah Building bombing, Hurricane Andrew, Hurricane Hugo, the Wildlands fires in California and Colorado, Loma Prieta, Northridge, and I was with Joe Allbaugh up at the World Trade Center in 1993.

Let me tell you, Mr. Chairman, and I want all of my colleagues to listen, because 360 have joined with me and with my colleague, the gentleman from Maryland (Mr. HOYER), in joining the Fire Caucus; and when you signed up to join the Fire Caucus, you made a commitment to your firefighters that you would work with them, that you would listen to them, because each of you in your districts have hundreds of firefighters, both paid and volunteer, who are the backbone of FEMA. Eighty-five percent of them are volunteer.

Mr. Chairman, what did those firefighters say about this amendment? What are the fire fighting organizations saying? Let me read it into the RECORD, Mr. Chairman. Your constituents, when you belong to the Fire Caucus, and all of my colleagues on both sides of the aisle who belong better listen, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, the International Fire Service Training Association, the National Fire Protection Association, the National Volunteer Fire Council, the North American Fire Training Directors, are all unanimous. 1.2 million men and women in this country from 32,000 departments have said on the record, their first recommendation on their position paper for the Office of Homeland Security is the Federal Emergency Management Agency must be at the core of the Department of Homeland Security.

So if you are a Member of the Fire Caucus and you support this amendment, you are slapping your firefighters across the face like they do not matter. I am going to remind them. So I encourage my colleagues to vote against this amendment and support the firefighters, including the memory of my good friend Ray Downing.

Mr. OBERSTAR. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, notwithstanding the gentleman's enthusiasm, I do not think that that is a fair characterization of our amendment. It is not a slap in the face to firefighters. Our amendment is not a slap in the face to firefighters, with all due respect to the gentleman.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Every fire organization opposes this amendment. Every one.

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Mr. OBERSTAR. Mr. Chairman, it is an overcharacterization, to use the gentleman's language.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. COSTELLO).

Mr. COSTELLO. Mr. Chairman, I rise in support of the amendment offered by myself, the gentleman from Minnesota (Mr. OBERSTAR), and the gentleman from Indiana (Mr. ROEMER). This amendment will retain the independence of the Federal Emergency Management Agency rather than incorporate it within the Department of Homeland Security.

In the past 20-plus years, FEMA has become one of the best government agencies with responsibility for responding to, planning for, recovering from, and mitigating against disasters. FEMA currently coordinates the response activities of more than 25 Federal agencies and numerous nongovernmental groups with more than 2,500 full-time employees and over 5,000 standby disaster reservists.

The traditional role of FEMA includes advising on building codes and floodplain management; teaching people how to get through a disaster, helping equip local and State emergency preparedness; coordinating the Federal response to a disaster; and the list goes on and on, Mr. Chairman. These core responsibilities are unrelated to homeland security, but are of the utmost importance to our Nation.

Our amendment today will guarantee that FEMA will continue to focus on these tasks to prepare our Nation for disasters. Under our amendment, FEMA will remain independent and will not be absorbed into a large bureaucracy, a bureaucracy with no experience addressing these issues. Without the continuation of FEMA's independent coordinating role, we cannot ensure that the government will be able to effectively respond to and recover from disasters.

Mr. Chairman, FEMA has responded, as the ranking member, the gentleman from Minnesota (Mr. OBERSTAR), has indicated, to over 1,000 federally declared disasters and emergency declarations. They have done the job very well. I believe that they need to maintain their independence in order for us to continue with this agency that has been very effective. The agency will be more effective, both in its homeland security role and its national preparedness role, as an independent agency.

Mr. Chairman, I urge my colleagues to join me in support of this amendment.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I oppose this amendment for two reasons. Number one, FEMA is central to the success of a Department of Homeland Security because it is the critical link to emergency responders.

Secondly, I oppose this amendment because FEMA will be stronger and in a better position to help natural disasters as a part of the Department of Homeland Security rather than out on its own as some independent agency.

Now, emergency responders are the central element of homeland security, not just in responding after something happens, but in preventing things from happening. Through this FEMA structure and its 10 regional offices already established across the country, with its relationships it already has with State and local folks, information that comes into the Federal Government can be disseminated quickly to the folks on the ground who need to know it and, therefore, they can help, better help prevent terrorism. And, at the same time, if they have information that they think we need to know in Washington, they have that channel of communication that they can use to come back up the other way.

FEMA is going to be the way we provide grants and training and information and planning to emergency responders. That is why it must be in this Department and it is central to our efforts to be successful.

But as we prepare to be better equipped to deal with terrorism, we are also better equipped to deal with tornadoes and hurricanes and floods and the things that FEMA has grown to do very well. If we go to the site of a disaster after it happens, it is pretty hard to tell the difference between whether it is a terrorist event or a flood. FEMA can do both well, as it is strengthened with the resources and with the relationships and as that critical channel of communication in the Department of Homeland Security.

Mr. Chairman, I urge my colleagues to oppose this amendment. This amendment will weaken the Department and weaken our security.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentleman for yielding me this time. I had an amendment which I submitted which is just about identical to this amendment, so I rise tonight in very strong support for the Oberstar-Costello-Roemer amendment to maintain the independence of the Federal Emergency Management Agency.

FEMA's primary mission is to provide assistance after natural disasters. It is recognized throughout the country as the premium agency that people can depend upon. It has helped all sorts of disaster victims. It has helped certainly an entire island in my State when a hurricane hit there about 10 years ago. It not only responds to the disaster, but it helps people replace their home, repair damaged conditions, and it brings comfort and solace to the individuals who are devastated. FEMA is an entirely unique agency and to put it into this very large homeland security agency which has an entirely different mission would completely subsume the efficiency, purpose, and mission of FEMA.

So I hope that this House will support this amendment to keep FEMA and the integrity of this operation outside the Department. It can coordinate activities with the new Department, but leave FEMA as an independent agency.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding me this time.

This is a critical issue that we are debating tonight, this very amendment. I chair the Subcommittee on National Security that has oversight of FEMA, and we have oversight of terrorism at home and abroad. This is the central proposal of the Hart-Rudman, to keep FEMA as part of the homeland security. Preparedness, risk management, consequence management, emergency responders, it is the critical link to State and local responders.

I never figured out why a natural disaster, be it fire, chemical, biological, is any different than a man-made disaster, be it chemical, biological, or nuclear. The bottom line to me is we need to keep this as the central core of homeland security.

We have an amendment that I think will take some of the concerns of the author of this amendment, the Young amendment that should follow, and I think that is a happy compromise and will deal with the concerns of the ongoing FEMA responsibilities to continue. But the bottom line is this is the critical link to the responders, the State, and local responders. We need to keep FEMA part of the homeland security office.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

In response to the gentleman from Pennsylvania who spoke a moment ago and talked about the support of local fire departments, they all ought to be reminded of the headline in the Washington Post saying, "FEMA's Influence May Be Cut Under New Department. The influence of the Federal Emergency Management Agency may become severely diminished as Congress crafts legislation to create the new department."

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 1 minute to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, just a comment. I chair the Subcommittee on Science which has oversight of the U.S. Fire Administration and the first responders.

The fact is that we need the experience of FEMA in this new Department of Homeland Security. I understand the arguments that it would be nice to keep them separate, but the fact is they are the most experienced body. They have the tools, they have the equipment, they have the experience. I think we are not going to diminish what they are doing now, but we are probably going to expand the capabilities of what they do in responding to natural disasters.

The next amendment, I think, makes it clear that we have to keep FEMA together in this new Department of national security, and I trust that the gentleman making this first amendment is going to support that amendment, but I would say to my colleagues, vote against this amendment.

The fact is, the Fire Administration, the fire responders, the first responders believe that it is important that they stay in FEMA and that FEMA be part of this new homeland security.

Mr. OBERSTAR. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the Brookings Institution studied this proposal for a Department of Homeland Security and reached the same conclusion as former FEMA Director James Lee Witt with this observation:

"There is very little day-to-day synergy between the preventive and protective functions of the border and transportation security entities in the Department and the emergency preparedness and response functions a consolidated FEMA contributes. There is, therefore, little to be gained in bringing these very different entities under the same organizational roof. And the costs are not insignificant.

"FEMA," the report says, "would likely become less effective in performing its current mission in case of natural disasters, as time, effort, and attention are inevitably diverted to other tasks within the larger organization."

Prior to the time when we enacted the Stafford Act which statutorily established FEMA in 1979, after we had shed its disaster, civil defense role, the Federal Government had had no coordinated or effective response to natural disasters, but FEMA became that response agency.

Now, if we move this really effective agency into a big bureaucracy, we know what happens. We all know in this Chamber what happens when a small agency gets into a big department and the big appetite for more money to be shuffled around with fungible dollars that can go from one agency to the next and suddenly, FEMA's will just dissipate and fritter away.

Mr. Chairman, I am in the enviable position of rising in support of the unanimous position of the Committee on Transportation and Infrastructure in reporting out our responsibilities toward homeland security, and that is the committee reported out recommendation to keep FEMA as an independent agency.

All right. This is July 2002. Let us fast forward to July 2003. The majority has prevailed. FEMA is a box in the mammoth bureaucracy of the Department of Homeland Security. Flood waters are swirling around your city. You call for help. You get the Department of Homeland Security. The switchboard sends your call to the Under Secretary's office which looks up "disaster" on their organizational chart and sends you to the Congressional Liaison Office, which then promises to get a message back to you in 24 hours. Eventually, they find FEMA, by which time you are stranded on the roof of your house waving a white handkerchief and screaming for help. FEMA, the word comes back, sorry, is looking for suspected terrorists some place in the hinterland of America and will get back to you as soon as we can.

This Department of Homeland Security is a bureaucracy in search of a mission. Do not give them FEMA's mission. It is too important to waste on this misguided department. There is that old barnyard saying, "if it ain't broke, don't fix it." FEMA ain't broke. Don't fix it by ruining it and sending it into the Department of Homeland Security. It is nimble, quick, lean, effective as an independent agency today. Keep it that way. Help your city, help your State, help yourself, help your firefighter by keeping FEMA as an independent agency where it belongs and has been effective.

Mr. ARMEY. Mr. Chairman, I yield myself the remaining time.

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Mr. Chairman, there must be a reason why every firefighter organization in America has asked that FEMA be included in the Department of Homeland Defense, not only all the firefighters in this great land and all their organizations, but a dozen other professional emergency service organizations. Why is that? I think the gentlewoman from California (Ms. PELOSI) gives us some insight into why that would be the case. Throughout all of the hearings we held, throughout that long day of the markup, the gentlewoman from California said repeatedly locality, locality, locality.

When America is safe in our communities, America is safe. We know, we understand, we all intuitively grasp at some level and it is grasped at the most pain any acute level of understanding by the firefighters of America that this new threat we face, this insidious infliction that could be visited, yes, on my community or your community.

Mr. Chairman, our firefighters know that this requires us to have a relationship with the Federal Government unlike we have had before, and when someone is in the local community and they think of the catastrophe that might come, be it a flood, a vicious storm or a vicious attack from somebody who hates our way of life, the local community is most comfortable with the agency they know, FEMA; FEMA with whom they share training, FEMA whom they know by name, FEMA whom they have seen in action before. When the crisis strikes, they want that familiar face.

Members might say if their singular concern is the well-being of FEMA as an institution and organization in Federal Government, it is better to keep it out here alone on its pedestal. One might say that if one was willing to betray FEMA because FEMA sees itself as the Federal force for comfort repair in every community in America and FEMA wants to be there. And this Congress should honor FEMA by putting them where they are needed most.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. OBERSTAR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) will be postponed.

It is now in order to consider amendment No. 2 printed in House Report 107–615.

AMENDMENT NO. 2 OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. YOUNG of Alaska:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 502(1) of the bill, strike "Except as provided in section 402, the" and insert "The".

At the end of title 5 of the bill, add the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical case to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Alaska (Mr. YOUNG) and a Member opposed each will control 10 minutes.

Mr. YOUNG of Alaska. Mr. Chairman, who is going to have the time in opposition?

The CHAIRMAN. Who takes the time in opposition to the amendment?

Mr. OBERSTAR. Mr. Chairman, I seek the time in opposition.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) will be recognized for 10 minutes.

The Chair recognizes the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself such time as I may consume.

I can only agree with what has been said about FEMA. And if I thought for a moment that homeland security would not become a reality, I would be supporting the gentleman from Minnesota's (Mr. OBERSTAR) amendment. But I am also a very practical individual who believes that if we are going to have homeland security and FEMA is in it, it ought to be an entity as one unit. I frankly do not know how this got into the committee's markup because what it does is weaken FEMA.

It actually, I believe, is a turf war, and I think that is very unfortunate because at the very beginning when President Bush asked for Homeland Security, I told him personally that my opposition to the proposal was not a turf war, it was how it was going to be constructed. I will give the gentleman from Texas (Mr. ARMEY) credit and the gentlewoman from California (Ms. PELOSI) credit for, in fact, answering most of my questions on the Coast Guard, and I thank them for that because it is the right thing to do.

I do think it was the wrong thing to do to divide FEMA. I believe FEMA should stay intact as an entity so it can do the job people expect it to do, so it can do the job it has done and will continue to do the job under the Homeland Security bill. A lot has been said here about the importance of FEMA responding, and as all of my colleagues know it, in the New York tragedy that happened with the terrorists, FEMA was on the frontlines and did an outstanding job. So I compliment FEMA for that.

Much has been said about who supports and who does not support. I can say that I have found no one that opposes my amendment other than the Committee on the Judiciary. The firefighters support my amendment, as they should. The FEMA people themselves support my amendment as an entity. This was not the President's suggestion. This, in fact, was the ad hoc committee's suggestion.

I think in retrospect, as they look at it, maybe there was a slight mistake made, not intentionally, but because someone else asked for it and did not understand the ratification of it. So I am asking my colleagues tonight and hopefully in the vote tomorrow that if the gentleman from Minnesota's (Mr. OBERSTAR) amendment fails to at least accept the idea of keeping FEMA as an entity, because if that was not to happen, I think we would lose the total effectiveness of FEMA as a respondent, as we mentioned, to earthquakes and terrorists attacks, et cetera.

So I again ask my colleagues to support this amendment and make sure that we have an agency that can do the job correctly under the Secretary of Homeland Security.

Mr. Chairman, I reserve the balance of my time.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds. And I do so again in support of the unanimous position of the Committee on Transportation and Infrastructure, a wisely reported measure that would keep FEMA as an independent agency.

The plan of the Select Committee would chop off one entity of FEMA and send it to another sector, another box within the Department of Homeland Security, and keep the body of FEMA intact in another box. That does not make any sense at all.

That does not make any sense at all. That is why we wanted to keep the agency together.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I oppose this amendment. I support the separation of the Office of National Preparedness from the Federal Emergency Management Agency, FEMA. This was recommended by the Committee on the Judiciary in its views on H.R. 5005.

Mr. Chairman, FEMA has an important role to play when a natural disaster occurs. Its core mission is to provide assistance to States and local officials. In sharp contrast to FEMA's natural disaster mission, the stated function of the Offices of National Preparedness, ONP, currently within FEMA, is to respond to terrorist attacks. This office is similar to the Department of Justice's Offices of Domestic Preparedness, and yet both programs train State and local first responders for such events.

Merging the Office of National Preparedness with the Office of Domestic Preparedness will ensure the Federal coordination of State and local first responders. It ensures that they both receive law enforcement crisis management training and consequence management training.

As James Witt, the former director of FEMA stated, "FEMA has become a model agency by focusing on its prime mission: Responding to disasters and trying to reduce their impact in the future."

Mr. Chairman, this mission is inconsistent with the purpose of ONP, which is described by Bruce Baughman, director of ONP at FEMA, in a January 30, 2002 letter, is to oversee "consequence management and the impacts as a result of a Weapons of Mass Destruction—terrorist incident."

Thus, ONP should be kept with the other training programs under the Under Secretary of the Border and Transportation Security and outside of FEMA.

Mr. Chairman, I have a dear colleague letter which I will include in the RECORD.

WASHINGTON, DC, *July 25, 2002.*

OPPOSE THE YOUNG (AK) AMENDMENT TO MOVE THE OFFICE OF NATIONAL PREPAREDNESS BACK TO FEMA

DEAR COLLEAGUE: In the event of a terrorist attack, it is essential that there be a single office within the federal government to coordinate state and local first responders. This office must assure coordination in training, equipment selection, acquisition, and use by first responders in both crisis management and consequence management. Crisis management is a primarily law-enforcement function, it involves intelligence, surveillance, tactical operations, negotiations, forensics, and criminal investigations, arrest, evidence collection and prosecutions. First responders include law enforcement, fire fighters and other emergency responders, who must be trained together to assure a coordinated response.

FEMA, however, has stated that it will NOT provide training and equipment needs to first responders for law enforcement's crisis management functions. But a terrorist attack is a Federal crime and a crisis event. Such an event requires a law enforcement response different from a response to a natural disaster.

In sharp contrast to FEMA's natural disaster mission, the reason for the creation of FEMA's Office of National Preparedness (ONP) was to coordinate consequence management and limit the impact as a result of a weapons of mass destruction (WMD) incident. ONP's mission fits more appropriately with the other first responder programs.

The Select Committee's bill merging the Office of National Preparedness with the Office of Domestic Preparedness reporting to the Under Secretary of Border and Transportation Security in essential to assuring the required federal coordination of state and local first responders, and assuring that they receive both law enforcement/crisis management training and consequence management training.

Mr. Young will offer an amendment to return the Office of National Preparedness to FEMA. Such a move would effectively gut any hope for a coordinated federal effort in this vital mission. Lack of coordination will cost lives. The attached article from last week's New York Times vividly highlights this point and points out that the lack of a coordinated response by state and local law enforcement and firefighters likely caused additional avoidable casualties on September 11. We must make sure that any future terrorist threats are addressed with a coordinated response, managed by a single office in the new Department of Homeland Security.

Moreover, such an office must be housed within the Under Secretary line of authority which has the needed law enforcement components, expertise and resources to assure that the crisis management component is given its proper emphasis. That is accomplished by the Select Committee's bill.

As former FEMA Director James Lee Witt stated "A Department of Homeland Security that has a focused mission and does not include a patchwork of unrelated programs will have a much greater chance at success. A successful Department of Homeland Security will ensure that horrible events, such as the WTC attacks, continue to be extremely rare occurrences and much less common than the hundreds of floods, tornados, and hurricanes that affect our nation each year."

Many believe that the Office of National Preparedness has already distracted FEMA from its primary mission and created a imbalanced focus for an agency which generally responds to natural disasters. For a future terrorist attack we need a single office for a coordinated response. ONP should not go back to FEMA. Oppose the Young amendment.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary.
JOHN CONYERS, Jr.,
Ranking Member, Committee on the Judiciary.
LAMAR SMITH,
Chairman, Subcommittee on Crime Terrorism and Homeland Security.
HENRY J. HYDE,
Chairman, Committee on International Relations.
SAXBY CHAMBLISS,
Chairman, Subcommittee on Terrorism and Homeland Security of the House Intelligence Committee.
ROBERT C. SCOTT,
Ranking Member, Subcommittee on Crime Terrorism and Homeland Security.

Mr. Chairman, this dear colleague letter was sent out a few days ago in opposition to the Young amendment to move the Office of National Preparedness back to FEMA. I would like to read the signatures on this letter, Mr. JAMES SENSENBRENNER, Chairman, Committee on the Judiciary; JOHN CONYERS, Ranking Member, Committee on the Judiciary; it is signed by me, Chairman, Subcommittee on Crime, Terrorism and Homeland Security; HENRY HYDE, Chairman, Committee on International Relations; SAXBY CHAMBLISS, Chairman, Subcommittee on Terrorism and Homeland Security of the House Intelligence Committee; and ROBERT C. SCOTT, Ranking Member, Subcommittee on Crime, Terrorism and Homeland Security.

H.R. 5005, the Homeland Security Act as reported by the Select Committee, has put FEMA in the Emergency Response division under the Department of Homeland Security (DHS) and placed FEMA's Office of National

Prepareness (ONP) in the Border Security division with the other offices that train first responders. This structure is essential to ensure that the Department maintains its focus on prevention of terrorist acts.

Critically, the Border Security Division will assume responsibility over several different offices that administer training to all state and local responders, including offices, fire fighters, and other emergency responders. These offices were previously housed at the Department of Justice and FEMA.

Their new location in DHS will provide an integrated program, with the requisite expertise, to lead a comprehensive and coordinated effort to train our first responders, including law enforcement and consequence management training for a terrorist threat or attack.

Federal law enforcement authorities notify first responders of threats and the first responders must have crisis management training and equipment to respond appropriately. For instance, they must be trained in detection and disruption skills, which are law enforcement skills. They will need fundamental law enforcement training to detect or collect evidence that will help prevent a future or halt an ongoing attack.

All first responders need these skills—including fire fighters and other emergency providers. Such skills will save lives. Such skills will help first responders prevent secondary attacks.

This is why the Office of National Preparedness (ONP) must be placed in the Border Security Division with the Office of Domestic Prepareness, and the National Domestic Prepareness Office training programs. Together, these programs will ensure a coodinated effort to provide first responders with the necessary law enforcement training as well as consequence management training.

This structure will create "one-stop shopping" that provides all the necessary training and assistance to state and local responders. "One-stop shopping" will *not exist* if ONP is placed back into FEMA because as Director Allbaugh stated in a March 13, 2002 letter to the Judiciary Committee, FEMA will not provide law enforcement training.

Separating ONP from FEMA will *not* create duplication and fragmentation of federal assistance programs. In fact, it will eliminate such redundancy. Placing ONP back into FEMA will guarantee an inconsistent uncoordinated program where some first responders receive only consequence or clean up training and other responders will receive both crisis and consequence training.

Furthermore, placing ONP with the other training programs outside of FEMA will in no way harm its relationship with the U.S. Fire Administration (USFA). USFA assists ONP to organize training, planning and exercises for emergency responders. It will continue to do so regardless of ONP's location. Currently, the USFA assists the Department of Justice in their training, planning and exercises for emergency responders and no one has suggested that the USFA should be moved over to Justice.

ONP does not belong in FEMA. I urge my colleagues to oppose the Young Amendment.

Mr. YOUNG of Alaska. Mr. Chairman, if I can remind my good friend from Texas, they all came from the Committee on the Judiciary that signed that letter.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE), chairman of a very, very important subcommittee under the Committee on Transportation and Infrastructure that handles FEMA.

Mr. LATOURETTE. Mr. Chairman, I thank the chairman for yielding me time.

Mr. Chairman, I want to preface my statement by making clear that I support our first responders and the vital worth they do in protecting our citizens.

I also want to indicate my tremendous respect for the gentleman from Texas (Mr. SMITH) and the fine work he does for Congress and in the Committee on the Judiciary. But I am sad. I am sad because when we were dealing with the supplementary appropriations bill in this Congress, there is a turf battle that has developed. A turf battle that the President of the United States said we should not be having as we establish a Department of Homeland Security.

And the Committee on Judiciary sadly continues to come before the Members of our body and say they want to keep a program that the President of the United States says he wants to abolish, has defunded in the budget he sent here in February, and we have a fight over $175 million. And who is better to distribute that money to the first responders across America?

Is it a department within the Department of Justice or is it FEMA? The Department of Justice's Office of Justice Programs is continuing to fund duplicative and overlapping programs. Our subcommittee has held numerous hearings on preparedness and response. The GAO has issued several reports on the issue. The subcommittee's findings and independent studies are consistent in their message to the Congress, we must stop spending money on duplicative and overlapping programs.

Mr. Chairman, I respectfully respect every member of the Committee on the Judiciary, but they are wrong. The gentleman from Alaska (Chairman YOUNG) is right and we need to support his amendment.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

The amendment offered by the chairman of the Committee on Transportation and Infrastructure is well-intentioned. In true sea captain fashion, he is trying to repair the ship that has got a leak in the hull, and the leak in the hull is this scheme of taking an effective, functioning, useful agency that delivers goods, puncturing a hole in it and sending it over to the Department of Homeland Security where it serves no useful purpose to that department.

Mr. Chairman, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON), an outstanding supporter of the firefighters of America to speak on my amendment.

Mr. WELDON of Pennsylvania. Mr. Chairman, we are here tonight, I hope, to help the people who are our first responders. We were not here to help Brookings Institution. We are not here to help The Washington Post. We are not here to help the members of the Committee on the Judiciary. They are not out fighting fires. They are not out there dealing with disasters. They were not at the World Trade Center.

The first responders of this country have spoken. All of their national associations met, and the date of this document, which I will insert in the record, this document is their combined position paper on the creation of the Office of Homeland Security. It is not me. It is every firearm service organization. Do we not respect them? Do you belong to the fire caucus? Are you listening to your firefighters? Your paid firefighters, your volunteers, your chiefs, because they thought this through. And what is their first recommendation?

The Federal Emergency Management Agency which is tasked with emergency preparedness and response missions must be at the core of the Department of Homeland Security.

Now, I do not care what the Committee on the Judiciary says. My friend from Texas (Mr. SMITH) the Committee on the Judiciary, says this should be separate. Well, he ought to go back and talk to the firefighters in Texas because they do not want that. The fire service of this country, including all of those firefighters from Texas want the Office of Homeland Security to control FEMA and as a part of FEMA they want the U.S. fire administration.

Mr. Chairman, I cannot believe we are having this debate because this is not about a bunch of bureaucrats or politicians in Washington who are going to leave here and go respond to disasters. This is about the people who we are going to call upon and they have told us what they want in black and white.

□ 2300

I will say it again, if we ignore what they want, I do not know what else we call it if it is not a slap across the face. It is a punch in the mouth because it is clearly stated what they want, and what we are saying is we do not care what you want: We do not care what you say. We do not care what you ask for. We do not care that you are the fire chief. We do not care that you are the firefighters. We are going to tell you from Washington inside the Beltway that we know better than you do because Brookings Institution told us how to organize this Department.

Vote for the firefighters. Vote for this amendment, and vote down the Oberstar amendment.

FIRE SERVICE POSITION PAPER ON THE PROPOSED DEPARTMENT OF HOMELAND SECURITY

Overview

The American fire and emergency service was very encouraged when the President proposed the creation of the Department of Homeland Security, especially since it has long advocated the need for a central point-of-contact for terrorism preparedness. Much has changed in the post-September 11th world, but one thing has remained constant: America's fire service must have the adequate personnel, training, and equipment to respond to future emergency incidents, including terrorist attacks, hazardous materials and emergency medical services incidents, technical rescues and fires. These, plus many other challenges, are what makes the fire service America's all-hazards first responders.

In developing a new department, Congress and the administration must consider a number of crucial issues or the department will fall short of meeting its desired intent:

1. The Federal Emergency Management Agency, which is tasked with emergency preparedness and response missions, must be at the core of the Department of Homeland Security. This guiding principle must manifest itself during the planning and development of a new department. To achieve this end, it is imperative that the fire and emergency service has significant representation at the table throughout the entire planning process.

2. The definition of a "first responder" must be clearly articulated from the onset, placing heavy emphasis on response times and exposure to risks. First responders are fire and rescue, emergency medical services and law enforcement personnel. This definition will determine to a large extent the distribution of federal funds to local, state and federal response agencies. To this end, it is imperative that funding for training and equipment reach the local level where it is needed most. Moreover, existing federal programs benefiting local first responders must be preserved. Of particular importance to the fire service is the Assistance to Firefighters grant program, authorized at $900 million for fiscal year 2003. Congress needs to fully fund this program to bring all fire departments up to a baseline level of readiness and keep them there. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters. Any new grant programs addressing terrorism must be inclusive of all first responders and authorized to deliver at least 90 percent of all funds to local public safety agencies.

3. Local first responders are this nation's primary defense against terrorism. Without sufficient staffing and training, the risk of injury or death increases dramatically. This is why fire departments—both volunteer and career—must have adequate staffing levels and continuous training. Training must consist of existing national programs that utilize first responders to train first responders, and take full advantage of state and regional training centers. Moreover, training and equipment must conform to nationally-recognized voluntary consensus standards where such standards exist.

4. The tragic events of September 11th have again demonstrated the importance of communications to public safety. This issue, itself, is not limited to on-scene communications, but encompasses a wide variety of needs including: access to intelligence data on possible terrorist threats/attacks, additional spectrum for interoperability of radio systems, and new technologies that can track the positions of firefighters inside buildings.

These are some important components of the blueprint for a Department of Homeland Security. We ask for both Congress and the administration to give these concerns their every consideration as they lay the groundwork for a new federal agency. Firefighters have long recognized their role in protecting our nation against threats of all magnitude and will continue to serve on the front lines against future attacks. No matter what the final configuration of the complete national response plan to terrorism, the fire service and other first responders will always be first to arrive at the scene. They must be properly staffed, trained, and equipped in order to make a positive difference at the "moment of truth." It is imperative that they be given the recognition and support needed to enhance their level of readiness and decrease their exposure to risks.

Priorities

ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

The Assistance to Firefighters grant program, commonly referred to as the FIRE Act program, is a model of efficiency. This can be attributed to the fact that it is a competitive grant program that provides direct support to local fire departments for basic fire fighting needs. Another important element of this grant program is that applications are peer-reviewed by fire service experts and grants are made on the basis of needs. Full community participation is assured by the matching grant requirement.

It is crucial that the Assistance to Firefighters grant program remains separate and distinct from any new funding programs for first responders and that it be fully funded to the amounts authorized by law. This is because local fire and emergency services departments are the only organizations deployed for the purpose of saving lives and mitigating property and environmental damage caused by natural or manmade disasters. They are strategically located throughout America and staffed, trained and equipped to arrive on the scene within 4 to 6 minutes of notification of an incident. It is only the local government level that Federal funds intended for first responders can be assured of being utilized for the purposes intended. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters.

Providing support for the basics of fire fighting enhances all fire department responsibilities, including terrorism response. The history of the program to date: Authorized at $900 million through fiscal year 2004, Funded at $100 million for fiscal year 2001 and $360 million for fiscal year 2002, Almost 20,000 departments (of a total of 26,350) sought funding in each of the first 2 years in amounts approaching $3 billion each year.

FIRST RESPONDER GRANT PROGRAM

America's fire and emergency service stands strongly in support of the proposed $3.5 billion first responder grant program. The program is uniquely positioned to promote desperately needed coordination between neighboring jurisdictions and various first response agencies. To ensure that the money is wisely spent, several principles should be included in the program.

First, at least 90 percent of the money must reach the local level. The funding should go through the States, but it should not stop there. While terrorism is an attack upon our Nation, every terrorist attack is first an attack upon a local community. The ability of our Nation to effectively combat terrorism is therefore inextricably intertwined with the ability of our local communities to respond to such attacks. Thus, a paramount job of the Federal Government is to provide adequate resources to local emergency response operations.

Secondly, the State agencies that distribute this funding must include all first responder interests in the decision making process. Too often the fire service is left out of discussions at the State level. This oversight must be corrected.

Thirdly, the States must expedite the funding to local governments. States are already undertaking needs assessments for terrorism preparedness, so within a limited amount of time the funding should be distributed to local governments.

Finally, if a match from State and local governments is part of the requirement for receiving Federal funds, then State and local in-kind contributions should meet, in full, that requirement.

WEAPONS OF MASS DESTRUCTION (WMD) TRAINING

The current WMD fire fighter training program operated by the Office of Domestic Preparedness in the U.S. Department of Justice must be retained and strengthened. The organizations that currently provide specialized WMD training under this program posses invaluable expertise and experience, which should be preserved under any plan to reorganize federal training programs. It is important to utilize existing and established programs to ensure the right training reaches the right people.

STANDARDIZATION OF EQUIPMENT

The InterAgency Board for Equipment Standardization and InterOperability (IAB) is designed to establish and coordinate local, state, and federal standardization, interoperability, and responder safety to prepare for, respond to, mitigate, and recover from any incident by identifying requirements for chemical, biological, radiological, nuclear or explosives incident response equipment. In addition to radio communication systems, interoperability applies to a firefighter's protective gear and rescue equipment. For instance, air cylinders of one manufacturer of self contained breathing apparatus cannot be interchanged with those from another. The purpose of the IAB is to ensure standardized and compatible equipment for use by emergency response personnel. The First Responder grant program should require that the Standardized Equipment List (SEL) prepared by the IAB be utilized for the purchase of equipment made possible by the federal grant.

SAFECOM

SAFECOM was formed as an e-government initiative with its purpose to improve wireless radio communications among and between federal agencies. Recently, the scope of SAFECOM was expanded to include state and local government and the lead agency was changed to FEMA. Since this is the primary federal initiative to improve wireless radio communications and interoperability for local fire and emergency medical services departments it is essential for the fire service to have representation on advisory committees to SAFECOM. Local public safety first responders must have appropriate input to federal SAFECOM decision makers.

Conclusion

Future events will require continuous review and evaluation of all federal programs designed to mitigate the potential impact of terrorist attacks and other major disasters. In highlighting the primary theme of this report, it is imperative that those agencies at the local level—specifically the fire and emergency services, emergency medical services and law enforcement—serve a primary role in the development of all federal initiatives dealing with national homeland security initiatives.

Mr. OBERSTAR. Mr. Chairman, I yield myself 1½ minutes.

I love the enthusiasm of the gentleman from Pennsylvania, Mr. Chairman. He can get fired up and enthusiastic, but let me make it clear to this body that the gentleman from Pennsylvania does not speak alone for firefighters across America. They have been misguided. I do not know who wrote their position paper for them, but it is clear that the firefighters that I have talked to in my district have said we did not think this is a particularly good idea.

FEMA works well now. What is going to happen to the Office of Fire Training and the small grants for small communities when this effective agency is swallowed up into the guts of a huge bureaucracy of 170,000 people? And for all the enthusiasm of my good friend, and I admire this gentleman and we have worked together on a number of matters, for all his enthusiasm, Mr. Chairman, I warrant we will be back here a year from now when the gentleman from Pennsylvania and others who might be so misguided as to vote for keeping the position of the Select Committee on Homeland Security, be back here saying, what has happened to the money? We need more funds for FEMA; we need more funds for firefighting. It is being swallowed up by the Department; these dollars have been shifted around.

Does the gentleman from Pennsylvania have a firewall to protect the funds for FEMA from being swallowed up into some other part of the Department of Homeland Security? Not on my colleague's life. It is not part of this bill. There is no way to protect FEMA from the overarching, swarming arms of the Department of Homeland Security.

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, the gentleman from Minnesota (Mr. OBERSTAR) is still arguing his first amendment maybe. If we break off part of FEMA and that part of FEMA gets the $3.5 billion that we are talking about for additional training, then we move the whole U.S. fire administration away and we move the rest of FEMA away from that kind of decision.

I support the Young amendment, which would ensure that the Federal Emergency Management Agency's Office of National Preparedness is not broken off from the rest of FEMA and does not become part of the Under Secretary for Border Transportation and Security, but that it remains with FEMA, with the rest of FEMA as part of the Under Secretary for Emergency Preparedness and Response.

I think we all agree that emergency preparedness response activities will provide a critical role in the new Department of Homeland Security and has properly been selected as one of the four primary functions of the Department. I am chairman of the Committee on Science, Subcommittee on Research, and a Member that is actively involved in the first responder activities overseeing the U.S. fire administration.

All of the fire organization first responders think that FEMA should not be broken up, that the Young amendment should be passed; and I can tell my colleagues that there is no better agency to lead in this effort than FEMA. FEMA has the right personnel, the right resources and considerable experience demonstrating their ability to lead.

For these reasons, I believe that it is extremely important that we should protect and even expand FEMA's leadership role in this area. Most important, in protecting this role is keeping FEMA responsible for the $3.5 billion first responder grant initiative that the President proposed in his budget this year.

This is what the Young amendment does; and Mr. Chairman, let me emphasize that in the administrative policy that the President sent over today, they support the Young amendment. Unfortunately, with some political maneuvering from the Judiciary, it was mixed up in this, and I think the whole body should support the Young amendment, keeping FEMA together and keeping it active and keeping it organized and helping our first responders.

Mr. OBERSTAR. Mr. Chairman, could the Chair advise the time remaining.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) has 5 minutes remaining. The gentleman from Alaska (Mr. YOUNG) has 1½ minutes remaining. The gentleman from Alaska (Mr. YOUNG) has the right to close.

Mr. OBERSTAR. Mr. Chairman, I yield myself such time as I may consume.

For the purpose of propounding a question to the chairman of our distinguished committee, Mr. Chairman, I would ask the gentleman from Alaska if he has any information about plans of the administration, any assurances in writing about the status of the first responder program and the status of the firefighter grant program in the new Department of Homeland Security?

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, the information I have, and again, I do not have anything in writing, they have testified in favor of my amendment, have written in favor of the amendment; and I think it is up to the Congress and I talked to the gentleman from Pennsylvania (Mr. WELDON) about it to make sure, as this new agency is created, we fund FEMA in toto as it should be to carry forth its duties.

If the gentleman would further yield to me, what I am trying to do here is, I told the gentleman, if I had my way, I would be supporting the gentleman's amendment, as the committee did, but realistically, I do not think that is possible. So I have to do what is best for FEMA and that is keep it as an entity and not have it split up because that would be a disaster, as the gentleman and I know. So that is really what I am trying to do is put everything back together again. I think it was inadvertently split apart.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, I just want to return to a letter of the International Association of Firefighters that was referenced in a previous debate on the floor to point out that the association says the Fire Act, meaning the small community grant program and the first responder proposal, serve different purposes and one should not subsume the other. That is what is going to happen if we swallow this agency, FEMA, up into this huge bureaucracy.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, we have a bill in the Committee on Science, the Subcommittee on Research. This bill that I introduced makes it very clear that the fire grant program is separate and distinct and the U.S. Fire Administration is still going to continue to administer that program separate from what might be broken off from FEMA.

Mr. OBERSTAR. Mr. Chairman, I appreciate the gentleman's bill, but it is not part of the Homeland Security Department. It is not part of the manager's amendment. It is not part of the legislation pending before us, and it is sort of kind of a pig in a poke, is a promise in waiting, is not a good service to the firefighters of this country.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I would just remind my good friend that it was not his committee that created the fire grant program. It was this gentleman who brokered the fire grant program as an addition to the defense authorization bill.

It was not the gentleman, it was not James Lee White who requested money for the firefighters which the gentleman is now so desperately saying is going to be taken away.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman's enthusiasm is wonderful. No speaker, Mr. Chairman, has impugned the gentleman's standing. In fact, I have praised the gentleman's enthusiasm for the firefighters. In fact, I have been a most enthusiastic supporter of FEMA, and then the gentleman's colleague, now Secretary in waiting for the Department of Homeland Security, was a member of this body when I held hearings on the proposal of the Reagan administration to, in effect, dismantle FEMA, and we reestablished FEMA. I asked the gentleman from Pennsylvania, Mr. Ridge, to be the sponsor of the legislation so that we would have bipartisan support for it.

I have worked diligently to establish FEMA, and I admire the work that the gentleman from Pennsylvania in the well has done on the fire grant program; and I do not want it to be swallowed up in some huge bureaucracy and crossbred with some other program.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I am grateful for the outstanding work the gentleman's done, and I would remind him, when I first came to Congress, and the gentleman was in the majority, he had dismantled the U.S. Fire Administration. He had put the fire academy under the National Emergency Management Training Center so the firefighters in this country were totally at a loss because he had taken away everything that had stood for them.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman impugns to me an action that I did not take. The gentleman impugns to me an action that I did not take that was initiated by an administration and an action that I was not in support of.

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself the remaining time.

I would like to just say a couple of small things about this. I hope the gentleman from Minnesota understands what I am trying to do; I am confident he does. I hope the rest of the committee understands that FEMA separated, as proposed by the ad hoc committee, would be a disaster. The President supports my position. I believe every member of the committee other than the Committee on the Judiciary supports my position, and I ask for a "yes" vote on this very important document.

Much has been said tonight about who supports the firefighters the most. I will say the gentleman from Pennsylvania (Mr. WELDON) is outstanding in that arena, but I also say that the gentleman from Minnesota (Mr. OBERSTAR) is also outstanding in that arena; and the gentleman from Minnesota's (Mr. OBERSTAR) intent to keep FEMA outside of the separate agency should be admired.

I do not think it is a reality, but in saying that, if it is not outside, let us make it whole. Let us make it as one. Let us make it an entity where we know where the money is going. Let us not make it an entity that goes into another agency that has frankly misused their dollars, has not used them correctly. In fact, the GAO says that, and I think it has been raised up before that let us keep this agency intact, let us make sure it works, let us make sure our constituents can be responded to if there is a national disaster, manmade disasters, so we have somebody to turn to and they have somebody to listen to and our constituents are served.

That is all I am asking in this amendment. I urge a quick passage of this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska (Mr. YOUNG).

The amendment was agreed to.

Mr. ARMEY. Mr. Chairman, pursuant to section 4 of House Resolution 502 and the order of the House of earlier today, I announce that the amendment by the gentleman from California (Mr. WAXMAN), No. 3 in the House Report 107–615, may be offered after consideration of the amendment numbered 16. Because the committee will rise this evening immediately after consideration of amendment No. 16, the gentleman from California's (Mr. WAXMAN) amendment will be the first amendment in order tomorrow morning.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 107–615.

AMENDMENT NO. 4 OFFERED BY MR. COX

Mr. COX. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. COX:

In section 201(5), insert the following before the period at the end: "including, but not limited to, power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems".

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. COX) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

This amendment will specifically include cybersecurity as a function of the Department of Homeland Security. The amendment is supported by the Bush administration, and it was crafted with the assistance of the Committee on Energy and Commerce; and, Mr. Chairman, I would like to commend the distinguished gentleman from Louisiana (Mr. TAUZIN), the chairman of the Committee on Energy and Commerce, and the distinguished gentleman from Michigan (Mr. DINGELL), the ranking member, for their work in putting together this provision.

□ 2315

Just this week, the Committee on Government Reform received testimony warning of the significant threat of attacks on our Nation's information infrastructure. We learned how terrorists or hostile foreign states are building the capability to launch computer attacks on critical systems with the aim of severely damaging or disrupting national defense and other critical operations.

While much of this information is necessarily secret, there is ample open source information we can discuss on the floor this evening.

The Washington Post, in a recent page one story on cyberattacks stated, "Terrorists are at the threshold of using the Internet as a direct instrument of bloodshed. The new threat bears little resemblance to familiar financial disruptions by hackers responsible for viruses and worms. It comes, instead, at the meeting points of computers and the physical structures that they control. By disabling or taking command of the floodgates in a dam, for example, or of substations handling 300 volts of electric power, an intruder could use virtual tools to destroy real world lives and property."

The amendment that I am offering will make it clear that responsibility for mounting a coordinated national effort at cybersecurity rests with the Department of Homeland Security. Specifically, it will designate the position of Under Secretary for Informational Analysis and Infrastructure Protection as the individual in the United States government who is specifically charged with cybersecurity. It provides that the Under Secretary is responsible for preventing and defeating computer attacks aimed at America's electric power production, our electric power distribution, including power grids, our information technology systems, both commercial and public telecommunication systems, satellites, the banking system, electronic commerce, and emergency preparedness systems, including our civil defense network.

This amendment is needed for two reasons: First, while the base bill gives the new Department of Homeland Security the responsibility of protecting our Nation's critical infrastructure, this term is left largely undefined. When it comes to our Nation's information technology and communications infrastructure, we want there to be no mistake, no ambiguity. This amendment clarifies that when we use the term "infrastructure" in this Act, we are talking about more than roads and sewers.

By naming the specific threats we know that we face today, and by carefully enumerating the major critical information systems we intend to protect, we will be certain of consolidating both responsibility and authority for this function in one person in the Department of Homeland Security.

The second reason this amendment is needed is to ensure that the Department of Homeland Security will work to protect not just the government's, but the entire Nation's critical communications, power, and information technology assets. As much as 90 percent of our Nation's critical information technology infrastructure, such as financial records, energy distribution, and communication systems are privately owned and managed. Cybersecurity is, thus, an issue that goes far beyond the Federal Government's own assets.

Last November, in testimony before the House Committee on Energy and Commerce, former Representative Dave McCurdy, now the head of the Internet Security Alliance, reported that the private sector is under constant widespread and destructive cyberattack. He noted that over 80 percent of the Internet is owned and operated by the private sector.

Two years ago, the Carnegie Mellon Software Engineering Institute documented more than 20,000 incidents of cyberattacks against private U.S. firms. Last year, the following year, in 2001, that number of cyberattacks nearly doubled.

The CHAIRMAN. Does any Member claim time in opposition to the amendment?

If not, the question is on the amendment offered by the gentleman from California (Mr. COX).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 107-615.

AMENDMENT NO. 5 OFFERED BY MR. ISRAEL

Mr. ISRAEL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. ISRAEL:

At the end of title III, insert the following new section:

SEC. 309. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department of a Homeland Security Science and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENT.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of one year, one a term of two years, and the other a term of three years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when one of its members has a conflict of interest in a matter being considered by the Advisory Committee

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary of Science and Technology for transmittal to the Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to the Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from New York (Mr. ISRAEL) and a Member opposed each will control 5 minutes.

The gentleman from New York (Mr. ISRAEL) is recognized for 5 minutes.

Mr. ISRAEL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we also share the desire to see that something like September 11 never happens again. As a Member would whose district lies about 40 miles from what we now call "Ground Zero," the consideration of the Homeland Security Act holds a very special importance for me. My district lost over 100 people on that tragic day.

One of the great pleasures of serving on the Committee on Science with the gentleman from New York (Mr. BOEHLERT), the chairman of that committee, is the bipartisan manner in which he has guided the committee. I take pride, as I am sure he does, that legislation produced in the Committee on Science bears the input and the collaboration of all of its members. This was true when we debated those areas of the Homeland Security Act that fell in the purview of the committee and passed an amendment to create an advisory committee of the first responders, specifically in the Office of Science and Technology.

Let me explain why this is so necessary. As I said before, my Congressional District is about 40 miles from Ground Zero. Lots of first responders live there. Lots of first responders lived there, until September 11.

Our first responders have something unique and something special to offer the new Homeland Security Department, particularly in the areas of researching and developing new sciences and new technologies to save and protect lives, including their own, in engineering issues, in identifying research and budget priorities for new emergency equipment, even the apparel that protects them.

The compromise that was developed in the committee creates an advisory committee of 20 first responders. They would be selected by the Under Secretary of Science and Technology. They would be eminent in emergency response, research, engineering, and new product development. Mr. Chairman, the fact is that first responders will be the end users. They are the customers of the new technologies and sciences that are developed in the Office of Science and Technology, and they deserve a place at the drawing board.

I offer this amendment in the belief that we should value our first responders, but also accept their invaluable advice.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. ISRAEL. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I want to commend the gentleman for his leadership. This combines two very important issues having to do with the Department of Homeland Security, one of which is the use of science and technology. To the extent that this new Department can maximize the technological capabilities, I believe it will be more successful.

And as the distinguished majority leader quoted me as saying earlier in the debate, localities, localities, localities, that is the most important consideration that we should have when we talk about where the threat exists, where the ideas are, and where the need for resources are. Communication with those localities is where we should begin and end the development of protecting the American people.

So I commend the gentleman for his leadership, for the entrepreneurial spirit of his suggestion, and I hope the body will accept it. I urge my colleagues to support it.

Mr. ISRAEL. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. ISRAEL).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 6 printed in House Report 107–615.

AMENDMENT NO. 6 OFFERED BY MS. RIVERS

Ms. RIVERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. RIVERS:

At the end of title III, insert the following new section:

SEC. 309. INQUIRIES.

(a) OFFICE.—The Secretary, acting through the Under Secretary of Science and Technology, shall establish an office to serve as a point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such office shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) FUNCTIONS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate;

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government; and

(4) develop and oversee the implementation of homeland security technology demonstration events, held at least annually, for the purpose of improving contact among technology developers, vendors, and acquisition personnel.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentlewoman from Michigan (Ms. RIVERS) and a Member opposed each will control 5 minutes.

The gentlewoman from Michigan (Ms. RIVERS) is recognized.

Ms. RIVERS. Mr. Chairman, I yield myself such time as I may consume.

This past fall, when the anthrax outbreak hit Capitol Hill, a company in my district approached me with a product they had developed they felt could be of significant use in the decontamination efforts here in Washington. For weeks, my staff and I tried to get this company in touch with the correct agency or find someone willing to learn about their product and determine if it could be of use.

Whether or not this company did indeed have the miracle cure is not the point, rather there should be an easier way to facilitate contact between scientists and developers at the local level and decision-makers within the Federal Government. This amendment speaks to that very need.

Now, it is my understanding that the elements of my amendment, which was added in the Committee on Science, have actually been folded into this bill, and I am very pleased to hear that. I want to thank the chairman of the Committee on Science, the gentleman from New York (Mr. BOEHLERT), who supported the amendment in committee, for his leadership in this matter. I would also like to thank the gentlewoman from California (Ms. HARMAN), the gentleman from Virginia (Mr. DAVIS), the gentleman from Connecticut (Mr. SHAYS), the gentleman from Georgia (Mr. CHAMBLISS) for the bipartisan cooperation that occurred in getting effective practical language into the manager's amendment. And, Mr. Chairman, the gentleman from Texas (Mr. HALL) was helpful as well.

This amendment specifically tasks the Under Secretary for Science and Technology to work with the Technical Support Working Group, TSWG, a Defense Department group that has the infrastructure in place to help mobilize existing technologies for our national security needs.

Homeland Security and TSWG will work together to review proposals, assess their feasibility, and identify areas where current technology could be adapted and deployed immediately. This would be tremendous progress from the status quo.

Although there are a couple of issues, like a point of entry for individuals or companies seeking guidance in interaction with the government, in other words, we must have an open door for people with unsolicited ideas who do not know how to work their way around the Federal Government, these are not a part of the language currently in the bill. I believe that we can work together to develop in conference information to clarify and improve this, and I believe the language can be achieved relatively easily.

Ms. PELOSI. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I commend the gentlewoman for her leadership on this important issue.

As the chairman knows, on the Permanent Select Committee on Intelligence, where we both serve, we have a great need for "needs and leads." Certainly, the Federal Government and the intelligence community and the Department of Homeland Security benefits from leads that it receives from businesses coming forward with new entrepreneurial ideas that we have not even thought of.

We also have many needs that we are reaching out to businesses to fill. The Office of Inquiries within the Department of Science and Technology would act as a point of entry, as the gentlewoman suggested. It is an excellent idea to accommodate the system of "needs and leads," and also contributes to maximizing the technological capabilities that exist in our country to make the Department of Homeland Security even more successful in protecting the American people.

The gentlewoman from Michigan has done a great service in successfully presenting this amendment. I commend her for it, and I urge my colleagues to support it.

Ms. RIVERS. Mr. Chairman, I ask unanimous consent that my amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

It is now in order to consider amendment No. 7 printed in House Report 107–615.

AMENDMENT NO. 7 OFFERED BY MS. WOOLSEY

Ms. WOOLSEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Ms. WOOLSEY:

At the end of title III, insert the following new section:

SEC. 309. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION OF INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions.

(e) ANNUAL REPORTS.—The Institute shall transmit to the Security and the Congress an annual report on the activities of the Institute under this section.

Amend the table of contents accordingly.

Ms. WOOLSEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment requires the Secretary to create a Homeland Security Institute. It will be an independent, federally-funded research and development center: A think tank. That same style organization that will contract with the Department to provide objective analysis and to advise on science and technology issues.

□ 2330

In the Committee on Science, we voice-voted with no opposition the creation of this institute. I was pleased that the gentleman from New York (Mr. BOEHLERT) supported it in committee, and hope that he will also support it this evening. Since it was dropped in the version by the gentleman from Texas (Mr. ARMEY), I commend the Committee on Rules for bringing it before the House for consideration.

The concept for a homeland security institute is based on the key recommendation from the National Academy of Sciences' June 2002 report entitled Making the Nation Safer: The Role of Science and Technology in Countering Terrorism. Government agencies, including the Departments of Defense, DOE, HHS and the National Science Foundation, currently sponsor more than 35 institutes like this amendment proposes.

Let me give an example of how the institute could work. First responders and emergency personnel from different jurisdictions and departments often have difficult times communicating during a crisis. An appropriate role for the institute would be to work with Federal, State and local agencies to develop the technology and implement the standards necessary to communicate effectively in a crisis.

The fact is that existing Federal agencies may not be able to supply the depth and breadth of technical expertise needed. Many of those with the necessary analytical and technical skills necessary do not work for the government. Instead, it is more likely that they could be working at one of the current institutes, like the Rand Corporation or the Institute for Defense Analysis, or in academia.

Considering the technical nature of the threats before us, the brightest minds of our time must be at the table. Just because these individuals do not draw their paycheck from the Treasury Department does not mean that we should not tap their expertise.

Mr. Chairman, this amendment will ensure that the Department of Homeland Security has outside objective expertise available at all times. I hope that the committee will support my amendment.

The CHAIRMAN. Does any Member claim the time in opposition to the amendment?

Ms. WOOLSEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California (Ms. WOOLSEY).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 107-615.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

Mr. CARDIN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARDIN:

In section 401(1), add the following at the end: "The functions, personnel, assets, and obligations of the Customs Service so transferred shall be maintained as a distinct entity within the Department.".

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Maryland (Mr. CARDIN) and the gentleman from Texas (Mr. ARMEY) each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is consistent with the underlying legislation. It would treat the U.S. Customs Service in a similar way that the Secret Service and the Coast Guard are treated under the bill. All three of these agencies have critical homeland security functions as well as non-homeland security functions.

It does not affect the provisions in the bill that deal with the trade and revenue functions of the Customs Service that was included in the bill. That actually has a greater protection than would be for the nontrade and revenue services within the Customs Agency. This affects about 75 percent of the agency, and 25 percent is already covered under the trade and revenue functions.

Basically this provides for congressional oversight on reorganizations that may occur in the Customs Service. This is particularly important because it deals with such a large part of the agency involved.

The Secretary, the administration, would have the ability to reorganize the Customs Service upon giving notice to Congress, and we would be preserving congressional oversight in regards to the functions of the Customs Service.

I think this is an amendment that is totally consistent with the way that we have treated other agencies that are going into this new Department. I would encourage Members to accept this amendment.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Maryland (Mr. CARDIN) is a very well respected member of the committee of jurisdiction, and it is quite appropriate for the gentleman to raise this subject.

Mr. Chairman, this is a subject that was considered, as many subjects were, with respect to, I think, a very fundamental question, to what extent do we want to maintain a synthesis of activities that complement one another and be able to coordinate these activities in such a way as to create some sort of symbiosis that would give us better efficiencies in the use of resources, complements in the process information-sharing between them, and coordinated efforts with respect to either discovery or interdiction.

It has been the position of the committee as negotiated with the White House, and one of the things that we on our Select Committee were quite pleased about was the manner in which the Committee on Ways and Means worked out details with the White House.

My position on this matter would be that it risks upsetting this very carefully agreed-upon provision from this committee, and I believe it runs counter to the overall larger plan which we see in so many agencies to keep resources together, keep people working with one another, and complement them with respect to their resources capabilities.

In all due respect, I must resist the gentleman's amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me assure the gentleman from Texas (Mr. ARMEY) that this amendment does not affect at all the underlying provisions concerning trade and revenue functions within the Customs Service. They actually have much greater protection than is provided in this amendment for the rest of the agency.

I would just encourage the majority leader to please look at page 50 of the underlying bill where the language is identical to where it says the Coast Guard in the Department of Transportation, which shall be maintained as a distinct entity within the department. I believe this is using the identical language for the remainder of the Customs Service. It is the remainder, not that which is included with the arrangements worked out between the gentleman from California (Mr. THOMAS) and the White House on the revenue functions and on the trade functions.

We are dealing here with the other functions of the agency. It provides for appropriate congressional oversight without interfering with the trade and revenue functions of the Customs Service. The Customs Service is one of the oldest agencies in the Federal Government. It has a tremendously important function to perform, and it preserves the appropriate congressional oversight. I would urge the majority leader to take a look at it. Without this, the drafting is somewhat suspect.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, the gentleman from Ohio (Mr. PORTMAN) asked me to convey that the Committee on Ways and Means carefully considered the Customs Service transfer, and came up with what he felt was an elegant recommendation which the Select Committee adopted. The Committee on Ways and Means decided that the Customs Service is vital to homeland security and central to an effective department; splitting the agency made no sense; and trade and tariff collection policy must remain at Treasury.

The solution is to place the whole Customs Service in homeland security, but the trade and tariff collection policy will continue to be managed by the Treasury Department.

The gentleman from Ohio (Mr. PORTMAN) feels this is a good solution. The President urged the committees of Congress to overcome their jurisdictional concerns to come together for the good of the entire country. The gentleman from Ohio (Mr. PORTMAN) feels that the Committee on Ways and Means are champions, and has had jurisdiction over the Customs Service since 1789. It knows the Customs Service. The gentleman from Ohio (Mr. PORTMAN) urges Members to follow the wisdom of the Committee on Ways and Means.

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there is nothing in this amendment that alters that at all. I really did listen very carefully to the majority leader and the gentleman from Connecticut (Mr. SHAYS) because I want to make sure what we do for the Customs Service is consistent with what is in the Customs Service's best interest, and in the best interest of homeland security.

Let me explain the dilemma we have because I think there is a drafting problem without this amendment. We have cut out 25 percent of the Customs Service, calling it the U.S. Customs Service, but it only performs the revenue and trade functions. There is now the other 75 percent which is sort of in no man's land because the U.S. Customs Service is now only revenue and trade.

This amendment says that there will be an entity that deals with the other aspects of the U.S. Customs Service that is not trade and revenue-related. It is totally consistent with how other agencies that are being transferred into homeland security are handled as far as flexibility within the executive branch and oversight within the congressional branch. It does not provide the same protections as we provide for the revenue and trade functions, so it is not at all inconsistent with what was worked out as far as the trade and revenue functions of the Customs Service.

Without this amendment, we have, I think, a void in the legislation. I do not think that it is, quite frankly, properly drafted without this. I really look at this almost as a technical amendment in order to say to the 75 percent of the agency that is being transferred over that they do exist. Otherwise, we have the United States Customs Service, which is really only 25 percent of the whole. This makes it clear that 100 percent is being transferred over to the new agency, and 25 percent is protected as far as the revenue and the trade function. The other 75 percent is treated as we have treated other agencies which are being transferred over, which is not as great. I urge Members to accept my amendment.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY) to close on our side.

Mr. THORNBERRY. Mr. Chairman, I oppose this amendment for two reasons. The first reason is the comments that we have already heard: That there were extensive negotiations with the White House and others about how to best deal with the Customs Service. I understand the gentleman's point that this does not reverse those negotiations, but yet part of those negotiations were that the nontrade part of the Customs Service would be merged into one border security entity. This amendment would change that, so it does upset the negotiations which have gone on.

Secondly, part of the key purpose of the border and transportation security of this entity would be to have one seamless team at the border. Now since the Coast Guard is on the water, they are easier to differentiate, and we can have them as a distinct entity, as one of the compromises in this bill does, but it is much more difficult to have a separate entity, different uniforms, for the people who are watching the people come over the border versus the employees who are watching the goods or the objects to make sure that bombs are not coming over the border.

In other words, that is a much harder thing to separate. So that 75 percent that used to be the Customs Service is going to be weaved into this one team with the border patrol and with the APHIS inspectors and one border security entity, not separate entities that are on their station at the border, but one entity with the same bosses, the same regulations, the same uniforms, the same databases and the same radios. To the extent that this amendment keeps the Customs Service out separate, it makes it harder to have one team at the border so we can be secure.

Mr. Chairman, I think this amendment should be rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. CARDIN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. CARDIN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Maryland (Mr. CARDIN) will be postponed.

□ 2345

It is now in order to consider amendment No. 9 printed in House Report 107–615.

AMENDMENT NO. 9 OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. HUNTER:

At the end of chapter 1 of subtitle B of title IV, add the following:

SEC. 416. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried our under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. HUNTER) and the gentlewoman from California (Ms. PELOSI) each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is an amendment that would offer a sense of Congress stating that the border fence which lies in the 14-mile border sector between San Diego and Tijuana be completed. We have now completed some 12 miles of that 14-mile border fence.

When we started that fence, that corridor was considered to be the most prolific smugglers' corridor in North America. Through that corridor came most of the cocaine that was smuggled into the country as well as most of the illegal aliens and was an area which was very dangerous, in which massive violence took place and an average of 10 people a year were murdered on the border. It is also an area that is just a couple of miles south of the west coast's biggest naval base at San Diego. It is an area of extremely difficult terrain, rugged terrain. It includes Smugglers Canyon and a number of other canyon areas feeding out into the Pacific Ocean.

Since we have built the 12 miles of fence that we have built so far and it is a double fence that is very, very difficult to pass through, but since we have built the 12 miles that is completed, we have cut down the average of 10 murders a year, murders which took place by armed gangs, some of which had automatic weapons, we have cut that down to almost zero, to where we have almost no murders on the border. It is also an area of vulnerability, once again because it is an area where terrorists could move fairly quickly and upon crossing the international border be within only a couple of miles of the San Diego naval base.

This resolution just very simply states that it is a sense of Congress that we should complete the fence. It has been several years since we have attempted to get that last 2 miles of fence completed, and because of environmental work which has taken a long time, that vulnerability still exists.

I would ask that we pass this. It is consistent with present law that says that the entire 14 miles should be completed. In fact, there is a mandate in the law passed in, I believe, 1996, signed by the President, stating that the entire 14 miles in that smugglers' corridor should be completed. Right now only 12 miles are completed, we have 2 to go, and if we do not do that, we are going to continue to have a stretch of vulnerability there which at some point could accrue to our detriment.

I would ask that we pass this.

Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, the gentleman from California knows the very high regard in which I hold him and it is with great reluctance that I oppose his amendment.

Mr. Chairman, I am pleased to yield 4½ minutes to the gentlewoman from California (Mrs. DAVIS) who has earned a great reputation for working closely with her community on this very issue.

Mrs. DAVIS of California. Mr. Chairman, I have great respect for my San Diego colleague. I know how hard he has worked for years on national security supporting our military and is in line to take the reins as the chair of the Committee on Armed Services. We traveled recently together to Afghanistan and visited with our troops fighting the war on terrorism. It is with this great respect for my colleague who has the best of intentions that I rise in opposition to his amendment because the San Diego border fence project creates a false sense of security, endangers border patrol agents and diverts needed resources. The project's goal is to create a 14-mile long layer of three separate fences intended to prevent anyone from crossing the border from Mexico into the United States.

Securing our borders, as you all know, has long been a challenge, particularly because doing so must be balanced among our chief goal of protecting security and yet enabling legitimate cross-border travel, promoting commerce and protecting civil liberties. Clearly, we need a sustainable border infrastructure plan that can accommodate the projected growth in legal border crossings. However, instead of viewing the border landscape as one filled with obstacles that cripple us, we should use this as an opportunity to bring about long-needed change.

Border security is critically important to protect the country from terrorists and to stem the flow of undocumented immigrants. However, the border fence represents a false sense of security. Those who wish to bypass the fence can transit either through a long gap in the fence or in the water beyond the fence's end. Further, completion of the triple fence requires expending huge sums of money while destroying the landfill areas and negating the millions of dollars already expended in the area to preserve the estuary that exists there.

Finally, I have heard from several border patrol agents, agents who spend very lonely hours patrolling the border, who are concerned that the construction of the fence could trap them and leave them without an escape route should they come under attack. If we are serious about border security, we should enhance the quality of the existing fence and not create a lane between fences that endangers the lives of both U.S. agents and would-be border crossers.

Technology to improve border security exists in San Diego and around the Nation and is available off-the-shelf. Rather than relying on a Maginot Line along the border, we should rely upon our expertise and employ sophisticated technology to buttress protection through improved monitoring, surveillance and dispatch.

As well as its obvious security benefits, this use of technology will ease personnel requirements. In addition, a technology-based infrastructure system clearly meets the stated goals of the INS in creating a permanent deterrence through certainty of detection and apprehension and to reduce the current enforcement footprint. The term infrastructure does not immediately equate to fence and the mere construction of a fence does not meet the "certainty of detection" criterion.

Transforming our technology along the border has further benefits. At present, the dedicated men and women who work at the ports of entry are becoming increasingly taxed by the new requirements for tighter security. It is time to provide them with the tools and the technology they need and to send them a clear message that we value the work that they do.

In addition, I believe that we can integrate existing technologies to increase interagency cooperation and data flow, thereby eliminating overlap and waste and streamlining processes, all while being mindful of civil rights. Moreover, leveraging technology will also serve to increase binational cooperation.

Rather than constructing an old fashioned triple layered wall along the border, a wall that creates a false sense of security, endangers border patrol agents and diverts our needed resources, we should shelve old methods and embrace the new methods that this Department of Homeland Security will undoubtedly employ.

I urge my colleagues to allow this new department the flexibility to develop its own priorities without burdening them with antiquated projects and defeat this amendment.

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have respect for my colleague, but let me just say that the opposition which has been stated to the border fence is, at best, bizarre. When we started this fence, Mr. Chairman, there were 300 drug trucks a month full of cocaine and marijuana which were hurtling across the border in these uncontrolled areas, in this mountainous region, the region extending from Otay Mesa to the Pacific coast. We had scores of border patrolmen who were hurt and injured because they were pelted with rocks from the other side of the border and we had an average again of about 10 people a year murdered by the armed gangs, many with automatic weapons, which moved back and forth across what was known as a no-man's land. In fact, it was so bad that Joseph Wampaugh wrote the book "Lines and Shadows" about this no-man's land that existed on the U.S.-Mexican border. Since we have built that fence, the first 12 miles of fence, we have totally eliminated the 300 drug trucks a month that were coming across, we have knocked down the 12 murders to almost zero, and people that live on both sides of the border have expressed, and the border patrol reports are very clear, that this fence has been a center of stability, it is a modern fence, it is a double fence, it has a large overhang, it has not hurt anybody. In fact, it has prevented 10 murders a year.

The idea that you do not complete the last 2 miles of that fence once again, Mr. Chairman, is, at best, a bizarre notion. I would hope that we would be rational and simply build the last 2 miles of what the border patrol has said is one of the greatest deterrents to illegal crossing and could be a deterrent to the crossing of a terrorist organization into that area just a few miles south of the biggest naval base on the west coast.

Ms. PELOSI. Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Mr. Chairman, I think the area we are talking about is one that we believe now with our new technologies and with some greater priorities that are set as well with the community, that we can provide the protection that we need, that we can provide the protection for the agents, but we can also do what is best for this last 2 miles, especially in an area that has a lot of binational crossings.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. HUNTER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 107-615.

AMENDMENT NO. 10 OFFERED BY MR. OSE

Mr. OSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. OSE:

At the end of title VI add the following:

SEC. . CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to the Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such offices are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. OSE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. OSE).

Mr. OSE. Mr. Chairman, I yield myself such time as I may consume.

As a subcommittee chairman over on Government Reform, I would like to offer this good-government amendment which relates to the regional and field offices in the proposed department. Before I do that, I want to make sure that I compliment my good friend the gentleman from Massachusetts (Mr. TIERNEY) who is the subcommittee ranking member with whom I have worked very closely in analyzing the President's bill and drafting bipartisan amendments to perfect it. The President's proposal includes moving agencies which currently have 10 different regional and field office structures into the new department. Neither the President's bill nor the special committee's substitute mentions any changes in these regional and field offices, although changes could be made under the select committee's section 763(a) reorganization authority, to consolidate, alter or discontinue organizational units.

My amendment would require the new department's under secretary for management to develop a consolidation/collocation plan within 1 year. The plan would examine consolidating and collocating regional and field offices in each of the cities with any existing regional or field office in the transferred agencies. My amendment would retain at least one Department of Homeland Security office in each of these cities.

Staff in these consolidated/collocated offices could be cross-trained to respond to the full range of functions which may need to be performed locally. Besides improving Federal preparedness and response, consolidation and collocation should result in overhead and other efficiency savings.

Five examples of existing and different regional or field office networks are in the Agriculture Department's Animal and Plant Health Inspection Service, known as APHIS; the Justice Department's Immigration and Naturalization Service; the Department of Transportation's Coast Guard; the Department of Treasury's Customs Bureau; and the Department of Treasury's Secret Service.

I urge my colleagues to support this government efficiency amendment. I want to reiterate my appreciation for the time and effort and participation of my good friend from Massachusetts whom I would now like to recognize to elaborate on how helpful collocation could be for local first responders.

Mr. Chairman, I yield to the gentleman from Massachusetts (Mr. TIERNEY).

□ 2400

Mr. TIERNEY. Mr. Chairman, I thank the gentleman for yielding.

I rise in support of this amendment that was, as was said, to make a plan regarding the consolidation of officers and the crosstraining of Federal employees that ought to be consolidated into the new Department of Homeland Security. I want to thank and commend the gentleman from California (Mr. OSE) with whom I serve in the Committee of Government Rèform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. As he stated, we have had the opportunity to work together in a bipartisan way to suggest improvements to the bill, and I thank him for his leadership.

In the course of this debate we must keep the focus where it truly belongs: on marshaling our country's best ideas and resources and skills to coordinate our fight against terrorism, streamline government, and make Americans safer. We need to do this for the families who lost loved ones on September 11 and in the October anthrax attacks, for the American people who expect us to protect them, and for our children so that future generations may grow up in a free and open society.

Nowhere is it felt more keenly than our local communities. All acts of terrorism are, as we know, local; and each community has to be prepared for crisis response and catastrophe management. Since September 11, we have heard from our local first responders from across the country who have risen to the occasion, protecting communities as the first line of defense against terrorism. In my own district, as across America, they have marshaled their resources to track down leads of potential terrorist threats and buy more equipment, from upgraded weapons to technology to biohazard masks and suits. They have increased hazmat training for handling suspicious packages and stepped up patrols around potential terrorist targets like water and gas supplies, nuclear power plants, harbors and airports. They want the government to work with them, to train with them, to communicate with them, and to respond with them to any potential attack. And now it is time for us to step up and help them. We must respond with cooperation, with communication, and with coordination at all levels of government.

But before we can work with the local first responders, we have to be confident that the Federal agencies can work with one another. Coleen Rowley's bureaucratic nightmare was a cautionary tale. We simply must train personnel within different agencies that have different cultures and different skills to talk to one another, to share information before disaster strikes.

That is why I join Mr. OSE in introducing this "good government" amendment, to ensure that local first responders have a primary point of contact and coordination within the Federal Government and to ensure that these field officers work together.

No matter how Congress resolves the issue of who is in and who is out of this agency, and I frankly hope that we will end up with a leaner 21st century response rather than a bloated 19th century structure, we are not going to effectively fight terrorism from Washington, D.C. Any respected Department should consist of agencies that can work together, Mr. Chairman. And, again, I thank the gentleman from California (Mr. OSE) for helping to work with this problem.

Mr. OSE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. OSE).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 107-615.

AMENDMENT NO. 11 OFFERED BY MS. VELÁZQUEZ

Ms. VELÁZQUEZ. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Ms. VELÁZQUEZ:

In section 734 of the bill, insert before the first sentence the following:

(a) OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.—

At the end of section 734 of the bill add the following new subsection:

(b) SMALL BUSINESS PROCUREMENT GOALS.—

(1) IN GENERAL.—The Secretary shall annually establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women (as such terms are defined pursuant to the Small Business Act (15 U.S.C. 631 et seq.) and relevant regulations promulgated thereunder) in procurement contracts of the Department.

(2) DEPARTMENT GOALS NOT LESS THAN GOVERNMENT-WIDE GOALS.— Notwithstanding section 15(g) of the Small Business Act (15 U.S.C. 644(g)), each goal established under paragraph (1) shall be equal to or greater than the corresponding Government-wide goal established by the President under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(3) INCENTIVE FOR GOAL ACHIEVEMENT.— Achivement of the goals established under paragraph (1) shall be an element in the performance standards for employees of the Department who have the authority and responsibility for achieving such goals.

The CHAIRMAN. Pursuant to House Resolution 502, the gentlewoman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York (Ms. VELÁZQUEZ).

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself as much time as I may consume.

I rise today to ensure that the new Department has access to the innovative resources this Nation's small businesses can offer in the defense for our country.

The amendment offered with my colleagues from California and New Mexico makes sure that the American taxpayer gets the best value for the dollar and that the new Department of Homeland Security has access to the best work and highest technology by requiring the new agency to open up its estimated $37 billion market to our Nation's small businesses.

America's small businesses are the top innovators in the global economy. In an age when high technology will help keep us one step ahead of those who will do us harm, we cannot afford to ignore the contributions our small companies can make. When the private sector corporations need a job done quickly, they look to nimble, fast-working small businesses.

Unfortunately, small businesses face many obstacles when trying to win contracts from Federal agencies. The Velázquez-Issa-Wilson amendment will tear down barriers to part of that market by requiring the new Department of Homeland Security to have a small-business goal that is at least the statutory minimum of 23 percent.

The amendment also adds accountability to the process by including goal achievement in Federal contracting officers' performance evaluations.

I close by asking my colleagues to get this new agency off to a good start. In a new era where we must be smarter and faster than our foe, we cannot afford to ignore the smartest and fastest of them all, America's innovative small businesses.

I urge support of the bipartisan Velázquez-Issa-Wilson amendment.

Ms. VELÁZQUEZ. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 12 printed in House Report 107-615.

AMENDMENT NO. 12 OFFERED BY MR. HASTINGS OF FLORIDA

Mr. HASTINGS of Florida. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. HASTINGS of Florida:

At the end of title VII, insert the following new section:

SEC. 7 . REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107-174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) of such titie and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Florida (Mr. HASTINGS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. HASTINGS).

Mr. HASTINGS of Florida. Mr. Chairman, I yield myself such time as I may consume.

I would like to preface my remarks by thanking the majority leader and the minority whip and all of our colleagues who serve on the Select Committee on Homeland Security. In my judgment, they have done an outstanding job, notwithstanding the time constraints and other obstacles, that they have been confronted with. I guess there is some comfort as a Member of this body in knowing that future legislation obviously will assist in refining the product that we will conclude with on tomorrow, and I also know that it is comforting to send a message around the world that this body is capable of responding to all challenges.

Mr. Chairman, I rise to introduce an amendment which adds a new section to title VII to H.R. 5005. The additional language in title VII directs the Secretary to comply with the laws protecting equal employment opportunity and providing whistleblower protections. It further states that nothing in the act shall be construed as exempting the Department from the requirements that are applicable to all other executive agencies.

Mr. Chairman, we have heard Governor Ridge and the gentleman from Texas (Mr. ARMEY), our majority leader, along with various members of the administration assure us that all equal employment opportunity laws and whistleblower protections will be applicable to the new Secretary. This amendment simply puts those assurances, curiously absent from the bill at this point, in writing. I will point out that every agency in the Federal Government must comply with equal employment opportunity and whistleblower protection laws. This includes the Departments of Army, Navy and Air Force and CIA and NSA, just to name a few.

Not one Secretary or director from these Departments and agencies, all actively engaged in national security, has ever come to Congress seeking exemption from these laws.

I am puzzled by the exemptions the administration is seeking for the new Department. On May 15, 2002, the President signed PL 107–174, the No Fear Act, into law. It prohibits Federal agencies from retaliating against a claimant who has won a judgment relating to discrimination or whistleblower laws.

That law, which the House passed, and I might add the vote was 412 to 0, further strengthened the EEO and whistleblower protections. On the other hand, this latest legislation sets even higher standards of ethics and accountability for the Federal Government, while, on the other hand, the administration is seeking exemption from these standards for the new Secretary and the new Department of Homeland Security.

There is much to be lost and little to be gained by creating laws and then granting exceptions so that those laws do not apply equally to all.

Mr. Chairman, there is nothing partisan or even controversial about this amendment. It ensures that the protections guaranteed to all Federal employees apply to employees of the new Department as well.

I urge my colleagues on both sides of the aisle to support this amendment.

Once again, I thank the gentleman from Texas (Mr. ARMEY) and the gentlewoman from California (Ms. PELOSI) for the fine work that they have done on behalf of all of us, as well as the colleagues who have joined with them.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does any Member rise in opposition?

Mr. SHAYS. Mr. Chairman, I rise in mild opposition.

The CHAIRMAN. The gentleman from Connecticut is recognized for 5 minutes in opposition.

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would say my opposition is mild. I am using this opportunity to point out what we believe is a fact, and I would say that the gentleman from Ohio (Mr. PORTMAN) particularly wanted this to be pointed out. We would note that the Select Committee bill provides on page 185, section 761, that any human resources management system established under the committee bill must not waive, modify or otherwise affect among the public employment principles of merit and fitness, including protection of employees against reprisal for whistleblowing, that is line 15, and any provisions of law provided for equal employment opportunity through affirmative action, and that is line 23.

Our opposition is just merely to point out that we think it is covered. We think it is there already. But we certainly know the intent of the gentleman from Florida (Mr. HASTINGS).

Mr. Chairman, I yield back the balance of my time.

Mr. HASTINGS of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank my good friend from Connecticut. I would urge to him that what he says is no doubt correct; but I know that if we pass this amendment, we will know.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. HASTINGS).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 13 printed in House Report 107–615.

AMENDMENT NO. 13 OFFERED BY MR. KINGSTON

Mr. KINGSTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Mr. KINGSTON:

Add at the end of subtitle G of title VII the following:

SEC. . FEDERAL LAW ENFORCMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Justice under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Georgia (Mr. KINGSTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is rather straightforward. It has to do with a move to move the Federal Law Enforcement Training Center from the Department of Treasury into the Department of Justice. This move, which was not requested by the White House and not requested by the Select Committee on Homeland Security, but apparently suggested by the Committee on the Judiciary, caught me off guard as the representative who represents the headquarters of FLETC at Glynco, Brunswick, Georgia.

This is the law enforcement training center which trains the Capitol Hill Police, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms and many others, in fact, 74 total government agencies. One of the things I have found during my 10 years I have had the honor of representing it is, because there are 74 agencies, lots of people have ideas about just peeling off one of those agencies and putting their training in their own district or one particular area.

What I have been concerned about is the Treasury has been a great balancing ground for the smaller agencies to train in, and if we move it to the Department of Justice and they are competing with the FBI, they become somewhat of a second-tier emphasis for the Department of Justice. So I am concerned about that move.

What my amendment does, Mr. Chairman, is it simply says if you do that move that the ongoing training will continue, and it will continue in the facilities which are in Maryland and in New Mexico and in Georgia. So it is very straightforward.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does anyone rise in opposition to the amendment?

The gentleman from Georgia may conclude his remarks.

Mr. KINGSTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I submit for the RECORD some comments on the question of moving FLETC out of Treasury into the Department of Justice.

BACKGROUND

FLETC was established as a Treasury bureau in 1970 through a Memorandum of Understanding signed by the heads of eight Federal agencies, including the Secretary of the Treasury and the Attorney General. This decision was made based upon years of thorough research that established the need to consolidate our federal law enforcement training, counteracting the trend towards proliferating and redundant law enforcement training throughout the government. Congress supported this decision by funding the construction of facilities for FLETC in Glynco, Georgia.

Since its inception in 1970, FLETC has almost tripled its original 30,000 trainees and now houses around 80 agencies. The efficiency of a consolidated training site has benefited both the American taxpayer as well as every agency involved, a fact which goes unquestioned. The centralized site at Glynco has ensured that our federal law enforcement agents continued to get the best training available from the best teachers while eliminating the red undancy in infrastructure that multiple sites would provide.

WHY FLETC SHOULD STAY IN TREASURY

The President's Homeland Security Department proposal consists of nine agencies with law enforcement/security functions. All nine (Immigration and Naturalization Service, United States Border Patrol, Federal

Aviation Administration, Transportation Security Administration, United States Coast Guard, United States Customs Service, United States Secret Service, and GSA Federal Protection Services) are participants in FLETC and will account for sixty-nine of the students and 55 percent of the student weeks projections identified for FY 2003. Although many associate our federal law enforcement with the DOJ, DOJ will merely make up 7 percent of FLETC students.

Transferring FLETC to the Department of Justice (DOJ) will not serve to streamline any operations within our government. FLETC should remain within the Department of Treasury with a guarantee that the agencies that are transferring continue their training agreements with the Treasury Department.

HISTORICAL DETAILS ABOUT WHY FLETC HAS REMAINED IN TREASURY

In the past, there have been many attempts by the Justice Department to absorb FLETC, usually in conjunction with a new administration coming to power. Each time, a proper study was conducted and the findings concluded that such a move was not in the best interests of our Federal law enforcement. When FLETC was established, there was a discussion over who should be in charge of the new Center. Treasury seemed logical, because they were the only agency with experience with consolidated law enforcement training, they would be the largest customer of the CFLETC (providing about 40 percent of the students). No other agency seemed interested, or ready to assume the task. The CFLETC would be overseen by a multi-agency Board of Directors, they believed that each agency would have appropriate input as to its operation.

In fact, Ramsey Clark, the Attorney General at the time concluded that, "The Attorney General basically objects to the center being located in a line agency because the agency will begin to dominate the training staff and curriculum and secondarily a better law enforcement image can emerge if training is centered in a non-enforcement agency."

Phillip Hughes, then Director on the Bureau of the Budget (which would eventually become OPM) worried that "Concentration of additional control over Federal law enforcement programs in the Department of Justice may raise opposition from Congress and the public through fear of the eventual emergence of a national police force."

Others concurred and expressed their belief that widening the law enforcement footprint of a Justice Department that was already under criticism from some circles for having both enforcement and prosecution authority vested in the same agency.

The issue of Justice Department control did not resurface until 1976, when the FLETC had a new name and a new headquarters in Glynco, Georgia. Many of the existing participant agencies expressed concerns about the increasingly active and aggressive Justice Department róle on the Board of Directors and the growing numbers of Justice students.

Again, concerns relating to the establishment of a national police force were expressed. Large numbers of additional agencies were applying for entry as consolidated training participants. No single watershed event defused the tension. Instead, the FLETC simply redoubled its efforts to meet the needs of each customer, distributed scarce resources in an equitable and rational manner, and above all, dedicated itself to training excellence. The concerns gradually subsided.

Halfway through President Carter's administration, the President's reorganization project for federal law enforcement reached a tentative conclusion that the FLETC should be transferred to the Justice Department. Unwilling to lose one of Treasury's most successful bureaus, Treasury officials lobbied hard against any such transfer. And once again, other participating agencies expressed concern over the notion of Justice's stewardship of the FLETC. This time, the issue was resolved by strengthening the role of the Board of Directors, establishing three standing management committees (for budget and personnel, policy and program development, and longrange planning), and including the Justice's Criminal Division on the board in an observer and advisory role. The new board structure confirmed what the board members had campaigned for all along. Treasury might have organizational stewardship over the Center, but FLETC belonged to all the agencies, large and small. The board members would not be ignored nor would they allow either Treasury or Justice to overlook their interests—and their interest in the Center. Consolidated training meant not just common training, but joint management, too.

Early in President Reagan's tenure, Justice officials seriously considered an effort to gain management control of the Center. Attorney General William French Smith agreed to support the concept if Secretary of the Treasury Donald Regan would not oppose it. When Regan resisted the idea, it was dropped. Throughout the 1980's, Justice periodically sent out feelers to gauge the reaction to bringing the FLETC into the Justice fold. Frank Keating, a former FBI agent, assistant secretary of Treasury and then as associate attorney general, saw the relationship between the two departments from both perspectives. Convinced that the Center properly belonged under Treasury, partly because it thrived there and partly because he philosophically supported the diffusion of federal law enforcement, Keating resisted the idea of Justice making a steal. ". . . I know that on a number of occasions [as associate attorney general] the senior levels of the Justice Department and the FBI talked to me . . . of the need to merge FLETC into Justice." . . .

In his view, FLETC belonged in Treasury. "It makes far more sense to have a viable law enforcement training center than has no connection with the FBI." Keating strongly believed, "because the missions of the smaller agencies, even though they are distinct, would be clouded, and their self-respect and their confidence and their ability to run themselves would be jeopardized by this nine-thousand pound gorilla coming down there to take over."

The sporadic, almost half-hearted suggestions that Justice take over the training were tributes to the Center's success, the result of envy more than anything else. They sprang, too, from a superficial analysis that Justice's primary in federal law enforcement led logically to management of law enforcement training. Such a conclusion, however persuasive on its face, essentially ignored the historical forces that planted the Center squarely—and firmly—under Treasury.

Again, earlier this year, the administration looked into moving FLETC to Justice. After extensive studies, the bush administration decided that it would not be in their best interests.

WHERE DID THIS REQUEST COME FROM?

The Justice Department has made repeated attempts to take FLETC from Treasury, but each and every time, and after extensive reviews those attempts were thwarted. The decision to more FLETC from the Department of Treasury to the Department of Justice has been made without the benefit of hearings, studies or analysis. In fact, all past studies have concluded that FLETC should remain with the Treasury Department.

A recent Bush Administration study concurred that FLETC should remain in Treasury. The Bush Administration did not request this in their Department of Homeland Security proposal. Treasury did not propose FLETC's transfer. FLETC did not request this transfer. Homeland Security did not offer this proposal. Department of Justice did not request this either.

Mr. Chairman, I do want to make this last comment.

Mr. Chairman, I want to do what is best for homeland security; I want to do what is best for the training center and best for the law enforcement personnel. I just have not been convinced that the case has been made to move it out of Treasury into Justice, when most of the training is actually going to be done in homeland security. So I hope that the conferees work on that.

If the gentleman from Texas can give me some assurance, some comfort level in conference, I would love to hear it.

Mr. ARMEY. Mr. Chairman, will the gentleman yield?

Mr. KINGSTON. I yield to the gentleman from Texas.

Mr. ARMEY. I want to begin, Mr. Chairman, by thanking the gentleman from South Carolina for his interest in this matter. It is a matter of grave concern to all of us. This is an important agency that performs an important function, and we would want this agency to be complete and continuing.

I also appreciate the gentleman's enormous interest in keeping this agency located in his great State, where in fact it has been a great service to the Nation.

□ 0015

I want to say to the gentleman from South Carolina that I appreciate his efforts.

The CHAIRMAN. The gentleman is from Georgia, Mr. Leader.

Mr. KINGSTON. Mr. Chairman, I was going to let the gentleman from Arkansas continue.

Mr. ARMEY. Mr. Chairman, I want to thank the gentleman from Minnesota for that reminder, and now that we have gotten our geography lesson straight, let me thank the gentleman.

The gentleman from Georgia is absolutely right. This agency is so much more a service to this Nation in Georgia where it belongs than it ever could be in South Carolina. And, please, I want to encourage the gentleman to continue his work, and we will accept the amendment.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of this amendment.

The Federal Law Enforcement Training Center-FLETC, which was established in 1970, is an interagency law enforcement training program that trains Federal, State, local, private entities and foreign law enforcement. In Fiscal Year 2003, FLETC trained over 54,000 law enforcement students. Those students were from law enforcement offices within the Department of Agriculture, Commerce, HHS, Interior, Justice, Treasury, Defense, the Capitol Police, and others.

The Judiciary Committee and the Select Committee, in their wisdom, decided that the Department of the Treasury, which will lose both the Customs Service and the Secret Service, should no longer be responsible for FLETC.

This means the Department of Treasury will only have two remaining law enforcement offices—BATF and IRS Investigators. Treasury will lose the bulk of their law enforcement and will have one of the smallest law enforcement contingents of any Department.

It was decided that FLETC go to the Department of Justice because its mission is consistent with the mission of the Department of Justice. The primary mission of the Department of Justice is law enforcement; specifically it is directed "to enforce the nation's laws, combat terrorism, protect public safety, help prevent and control crime, provide just punishment for criminals, and ensure the fair and impartial administration of justice."

FLETC's mission is "to serve as the Federal government's leader for and provider of world-class law enforcement training." It makes sense that a bureau with such a mission be included as part of a Department with the same mission and that is the flagship law enforcement in the Federal Government.

The primary mission of the Treasury Department is to support the American economy and manage the finances of the United States Government. It does not make sense, in light of the transfer of almost all of the law enforcement bureaus out of the Department of Treasury in this Homeland Security legislation, that we would continue to require that the centralized training for Federal law enforcement be located at the Department of Treasury.

The Department of Justice is not a stranger to the operations of FLETC. In fact, DOJ is one of five voting members of the FLETC Board of Directors that establishes training policy, programs and standards. Additionally, the administration has been aware of this proposal for weeks and has not objected. They understand that this is not intended to diminish FLETC's role, but rather enhance it and expand it in a Department that will pay attention to it, provide for it, and nurture it.

I can assure the gentleman from Georgia that our intention in transferring the Federal Law Enforcement Training Center to the Department of Justice is to ensure that law enforcement is coordinated and centralized in the part of the government responsible for law enforcement. I can also assure the gentleman from Georgia that it is our intention to see that FLETC continue its current operations at its current location and continue to carryout their current training agreements. We expect that this transfer would have a minimal impact on the day-to-day operations and training activities of FLETC and, at the same time, maximize the effectiveness of our training system for federal law enforcement personnel.

I thank the gentleman for bringing this matter to our attention with this amendment and look forward to working with him to ensure that the high quality of training of federal law enforcement agents continues at FLETC.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. KINGSTON).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 14 printed in House report 107-615.

AMENDMENT NO. 14 OFFERED BY MR. ROGERS OF KENTUCKY

Mr. ROGERS of Kentucky. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. ROGERS of Kentucky:

At the appropriate place in the bill, add the following new section:

SEC. . JOINT ENTERAGENCY TASK FORCE.

(a) ESTABLISHMENT—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Kentucky (Mr. ROGERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. ROGERS).

Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

First I want to thank the majority leader for working with us and our staff on this amendment. He worked well into the night with us yesterday, last night, getting this together, and I believe it has been thoroughly vetted by both sides of the aisle by the appropriate authorizing committees.

This is a simple amendment. It grants permissive authority to the new Homeland Security Secretary for the creation of a Joint Interagency Homeland Security Task Force completely at the discretion of the new Secretary, in no way impeding his flexibility or authority in running the new Department. It does not grant any new authorities or powers to the cooperating components of the task force not already authorized by the Congress, and the task force, if created, is suggested to be modeled in the language of the amendment, Mr. Chairman, after the existing joint interagency task forces for drug interdiction currently operating as we speak in two places, Key West, Florida, for the East, and Alameda, California for the West.

Mr. Chairman, the reason I suggest this type of a boiler room operation in the war on terrorism is the fact that these existing task forces for drug interdiction are efficient, they are lean, they are highly successful operations on the war on drugs, and while the task of protecting the homeland is vastly more complicated and different than any single drug mission, these centers are appropriate templates for how the various elements of our government should and can work together in a lean, mean machine war room.

These centers coordinate every aspect of the counterdrug operation, from intelligence-gathering, detection and monitoring, to the actual seizure and apprehension of those involved. These existing JIATF centers promote security cooperation and interagency efficiency. That is the exact kind of a concept we should be implementing in our defense of the homeland, a combination of military, civilian, and intelligence agencies, working together in the same place. Given the inextricable link between terrorist activity and illegal drugs, these existing centers already have firsthand knowledge and expertise in homeland defense and could prove to be a very valuable tool to the new Secretary as a template for the war on terrorism.

We have taken great care, Mr. Chairman, to craft the language in such a way that it will not be perceived as expanding the powers of the Secretary beyond what is already envisioned in the bill. Both the Committee on Armed Services and the Committee on the Judiciary have made helpful comments on our original draft. We have incorporated their changes in this language, and I appreciate their help as well.

Mr. Chairman, in closing, this amendment is simple. It seeks to establish a functioning interagency task force within the new Department, where coordination among the various agencies of the government, the various components who remain under their own control, and we simply draw as we need something for the particular task at hand from all agencies of the government.

The amendment in no way impedes the authority of the new Secretary from carrying out his or her core mission. It is merely a suggestion for another important, I think, and useful tool in the Department's arsenal.

Mr. Chairman, I reserve the balance of my time.

Mr. SANDLIN. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

I am afraid with this amendment we are headed down a dangerous slippery slope and setting a dangerous precedent. My good friend and colleague mentioned that he wants to build an efficient, lean, mean machine, and therein lies the very danger.

In protecting our citizens and our civil liberties, we do not need a lean, mean machine. That is not what is anticipated by our Constitution; that is not what law enforcement in this country is about. Soldiers do not need to be reading Miranda rights with automatic rifles in hand; that is not their purpose. That is not what they are trained for. That is not what they do.

In this country we have posse comitatus, we have had that since 1878, and it makes it a crime to deploy Federal troops as enforcers of civilian law. That has worked in this country for 124 years. The United States has always recognized a great importance in the separation between the duties of the military and the duties of our domestic law enforcement. There is a good reason why it has stood that test of time. The military has a role in protecting our country. Domestic enforcement has a role in protecting our country, but they are separate roles.

I noticed this morning that The New York Times had this to say, and I quote: "The idea of military forces roaming the Nation, enforcing the laws sounds like a bad Hollywood script or life in a totalitarian society." Further, I notice that Tom Ridge, the homeland security chief, said in a radio interview that this expansion, this abandoning of posse comitatus would "go against our instincts as a country."

There are good, practical reasons for keeping the military out of our domestic law enforcement. The mindset is completely different. In our country we have professional, well-trained law enforcement officers, police that are taught to observe constitutional protections for our citizens. They know about the procedure of criminal law. Soldiers, on the other hand, are trained in the use of force, not the niceties of procedure. Both of those roles are necessary in our country; both are important. Neither role should be mixed.

The Christian Science Monitor said that the military exists to protect our country, not to run it. Clearly, the military and civilian forces should cooperate, they should work together in anticipating threats and responding to threats, but they must be separated. The Armed Forces should not be involved in domestic police tasks that are best left to the law enforcement professionals of this country.

Mr. Chairman, posse comitatus has stood the test of time. This is not a totalitarian State; this is not a police State. We have domestic laws that protect our citizens; we have military to protect our shores. That has worked, it has stood the test of time. Our country is strong and secure because of the hard work of our military in protecting our borders. We have freedom fighters all across the world right now protecting freedoms guaranteed by our Constitution. We have police that are keeping our homeland safe here in America. They are working well together, but they are recognizing the fact they have separate roles.

Mr. Chairman, I feel like that the amendment we are considering today would blur that line, would mix that line, and we would have the military roaming the country, as The New York Times says, trying to enforce the laws of our Nation.

Mr. Chairman, while this is a permissive amendment, as was mentioned by my friend and colleague, permissive is too much. It is never okay to violate the Constitution. It is never okay to send the military roaming across the land enforcing domestic laws and arresting our citizens. It is never okay to have a soldier without training in procedure attempting to protect the constitutional rights of our citizens who are innocent until proven guilty. We have rights under our Constitution. Permissive is way too broad.

Let us respect posse comitatus. Let us make sure our military does its job and observes its role. Let us make sure that our domestic police know their role and are able to stand up for the Constitution. We can protect our Constitution, stand up for our citizens, and still fight terrorism all across the country.

Mr. Chairman, I yield back the balance of my time.

Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

This provision has been vetted by the Committee on the Judiciary of the House, the Committee on Armed Services of the House, the Select Committee on Homeland Security under the leadership of the majority leader, and we have changed it accordingly at their suggestions.

Number two, the majority leader's amendment tomorrow, his manager's amendment, will reaffirm the posse comitatus belief that we have in this country, the law, in fact.

But most importantly, the joint task forces in Alameda and Key West only use Defense Department assets outside of the U.S. border. There are not going to be any soldiers roaming the streets of this country, for gosh sakes. We do it just exactly like the task forces now do on the drug war using the DOD assets outside of the U.S. border in keeping with title X posse comitatus restrictions. If they have an internal problem, they turn to the National Guard under State control if there is a need for it, but relying upon domestic law enforcement forces that we have in place now.

Mr. ROGERS of Kentucky. Mr. Chairman, I urge the adoption of this amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky (Mr. ROGERS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. SANDLIN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kentucky (Mr. ROGERS) will be postponed.

It is now in order to consider Amendment No. 15 printed in House report 107–615.

AMENDMENT NO. 15 OFFERED BY MR. RUSH

Mr. RUSH. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. RUSH:

At the end of subtitle G of title VII add the following:

SEC. 7 . OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the home.

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Illinois (Mr. RUSH) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. RUSH).

Mr. RUSH. Mr. Chairman, I yield myself such time as I may consume.

A recent poll revealed that a vast majority of local governments, 95 percent, to be exact, have plans for dealing with natural disasters. However, only 49 percent of this Nation's local governments are equipped to protect and prepare its residents against acts of terror.

But, Mr. Chairman, the good news outweighs the bad. The good news is that local governments which have not developed plans to deal with terrorism now have an opportunity to build and coordinate an effective response plan from the ground up. The good news is that local governments, which already have response plans, are in a perfect position to improve upon current programs, and the good news is that the Federal Government now has the unique opportunity to coordinate with local governments so that access to Federal information and expertise become an integral part of the local response picture in this country.

My amendment will work to make that good news even better by bridging the gaps between local first responders and the Federal Government. And it would do so specifically, Mr. Chairman, by creating an office for State and local government coordination, which will assist us in streamlining relations between the new Department and State and local governments. Most importantly, perhaps, the office will be responsible for developing a process for receiving meaningful input from local and State governments on how this most important partnership, this vital partnership, should be strengthened.

This amendment has the support of the administration, as well as the National Conference of State Legislators, the National Governors Association, the Council of State Governments, the U.S. Council of Mayors, the International City and County Management Association, the National League of Cities and, last but not least, the National Association of Counties.

☐ 0030

Mr. Chairman, the first step in preparing for acts of terror comes through communications and cooperation on all levels of government. The administration understands this principle. The American people understand this principle. And I am confident that those of us who are in the people's House will understand this important principle as well by adopting this amendment. I urge a yes vote on this amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does any Member rise in opposition?

Mr. ARMEY. Mr. Chairman, I will claim the time in opposition.

The CHAIRMAN. The gentleman from Texas (Mr. ARMEY) is recognized for 5 minutes.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me say to the gentleman from Illinois (Mr. RUSH) I do not intend to oppose his amendment, but I did want to point out that we have addressed this very same question in page 13 of the bill. The difference between the gentleman's position offered in his amendment and our bill is we take it as a function of the Secretary. You want to elevate it to the position of an Office of the Secretary. Assuming that we would be effective in achieving the desired objectives in either case, the difference would be a modest difference, from my point of view, of our desire to minimize the amount of employee agency adds, bureaucrats, in this city, let us say, as opposed to the field.

I would suggest that perhaps as we move forward, the gentleman from Illinois (Mr. RUSH) and I might get together, take a look at that, and see if we could reconcile our modest differences and prepare ourselves to work with the other body towards the maximum effective fulfillment of the objectives we both outlined.

Mr. RUSH. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Illinois.

Mr. RUSH. Mr. Chairman, I want to thank my friend and I certainly do not have any objections to us working this out. I just want to make sure that we understand that there is a point in my amendment which calls for a specific location for this information to rest with a vehicle for this information to be transmitted, whereas I think the original language just said that it is going to happen, but nothing was in place for it to really rest in and a location was not there and a central place was not there. And with my amendment, I tried to create a vehicle and a specific location for this information to be gathered and transmitted both up and downstream.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for his observations. That is the singular difference, what we are trying to do and how we are trying to do it. Mr. Chairman, I will yield back my time with the understanding that I will have the added pleasure of working with the gentleman between now and our work with the other body.

Mr. ARMEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. RUSH).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 16 printed in House report 107–615.

AMENDMENT NO. 16 OFFERED BY MR. SHAYS

Mr. SHAYS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SHAYS:

At the end of subtitle G of title VII insert the following:

SEC. 7__. REPORTING REQUIREMENTS.

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues;

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; and

(3) a report assessing the emergency preparedness of each State, including an assessment of each State's to the responsibilities specified in section 501.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in—

(A) implementing this Act; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Connecticut (Mr. SHAYS) and a Member opposed will each control 5 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would add a section to the bill to require biannual reports to Congress on three matters: The status of efforts to improve border security and emergency preparedness; the status of our overall preparedness to prevent, mitigate and, if necessary, respond to large-scale emergencies; the status of each State preparedness.

These biannual reports are needed to make sure the new Department is achieving the results Congress intends, while not micromanaging so large a reorganization effort.

Additionally, the amendment would require a one-time report to Congress no later than a year after enactment of this act, ensuring the maintenance of core functions transferred to the new Department and recommending statutory changes to facilitate the new changes of this substantial reorganization effort. These reports would provide a needed measure of transparency to the new Department's operations and allow Congress to measure results and meet our oversight responsibilities.

I applaud the work of my Committee on Government Reform and Subcommittee on National Security colleague, the gentlewoman from California (Ms. WATSON) who joins me in offering this amendment. Her approach to oversight is thoughtful, thorough and bipartisan. I do urge support for this amendment.

Mr. Chairman, I yield to the gentlewoman from California (Ms. WATSON).

Ms. WATSON of California. Mr. Chairman, I would like to thank the distinguished gentleman from Connecticut (Mr. SHAYS) for putting forward this needed amendment to the Homeland Security Act of 2002.

This amendment would create a mechanism for the Secretary of Homeland Security to report to Congress on the status of America's emergency preparedness. This type of information is crucial for Congress to make informed decisions about funding and oversight of our Nation's homeland security.

The bill that we are considering sets out an institutional structure for homeland security. Yet this structure is only one of three elements necessary to effectively secure our homeland. Number two is a comprehensive homeland security strategy with the administration produced and delivered to Congress earlier this month. The third element is having a method to assess the progress of our efforts to secure our homeland from attack. This is where our amendment comes in.

By creating a mechanism for the Secretary of Homeland Security to report on the progress of the Federal Government and the various State governments in preparing for emergencies, Congress can better supply the resources necessary to defend our country. In particular, it is important to have a sense of what the various States are doing to prepare themselves.

By requiring the Secretary of Homeland Security to evaluate the preparedness of State governments, we do not seek to impose a particular mandate on the State or demand that their planning conforms to a federally dictated one-size-fits-all approach. Instead, we seek a candid assessment of how well prepared each State government is for emergencies so that we might identify breakdowns in our homeland security infrastructure.

In any emergency, State governments will be tested. The Federal government can supply additional resources and expertise, but often State officials will be the first on the scene in case of a disaster. We will continue to rely on State governments to play a crucial role in emergency preparedness.

I urge Members to permit the Shays-Watson amendment to be introduced during the floor consideration of H.R. 5005.

Mr. SHAYS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. SHAYS).

The amendment was agreed to.

Mr. ARMEY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. THORNBERRY) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 8:30 a.m. today.

Accordingly (at 12 o'clock and 40 minutes a.m.), the House stood in recess until approximately 8:30 a.m. today.

☐ 0800

AFTER RECESS

The recess having been declared as an approximate time of reconvening and having expired, the House was called to order by the Speaker pro tempore (Mr. HASTINGS of Washington) at 8 a.m.

CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SENSENBRENNER submitted the following conference report and statement on the bill (H.R. 333) to amend title 11, United States Code, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–617)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 333), to amend title 11, United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective House as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation practices.
Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
Sec. 205. GAO study and report on reaffirmation process.

Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.
Sec. 231. Protection of personally identifiable information.
Sec. 232. Consumer privacy ombudsman.
Sec. 233. Prohibition on disclosure of name of minor children.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemption for fraud.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitations on homestead exemption.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.
Sec. 329. Clarification of postpetition wages and benefits.
Sec. 330. Nondischargeability of debts incurred through violations of laws relating to the provision of lawful goods and services.

Sec. 331 Delay of discharge during pendency of certain proceedings.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committees.
Sec. 406. Amendment to section 546 of title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
Sec. 408. Postpetition disclosure and solicitation.
Sec. 409. Preferences.
Sec. 410. Venue of certain proceedings.
Sec. 411. Period for filing plan under chapter 11.
Sec. 412. Fees arising from certain ownership interests.
Sec. 413. Creditor representation at first meeting of creditors.
Sec. 414. Definition of disinterested person.
Sec. 415. Factors for compensation of professional persons.
Sec. 416. Appointment of elected trustee.
Sec. 417. Utility service.
Sec. 418. Bankruptcy fees.
Sec. 419. More complete information regarding assets of the estate.

Subtitle B—Small Business Bankruptcy Provisions

Sec. 431. Flexible rules for disclosure statement and plan.
Sec. 432. Definitions.
Sec. 433. Standard form disclosure statement and plan.
Sec. 434. Uniform national reporting requirements.
Sec. 435. Uniform reporting rules and forms for small business cases.
Sec. 436. Duties in small business cases.
Sec. 437. Plan filing and confirmation deadlines.
Sec. 438. Plan confirmation deadline.
Sec. 439. Duties of the United States trustee.
Sec. 440. Scheduling conferences.
Sec. 441. Serial filer provisions.
Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 444. Payment of interest.
Sec. 445. Priority for administrative expenses.
Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
Sec. 447. Appointment of committee of retired employees.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—BANKRUPTCY DATA

Sec. 601. Improved bankruptcy statistics.
Sec. 602. Uniform rules for the collection of bankruptcy data.
Sec. 603. Audit procedures.
Sec. 604. Sense of Congress regarding availability of bankruptcy data.

TITLE VII—BANKRUPTCY TAX PROVISIONS

Sec. 701. Treatment of certain liens.
Sec. 702. Treatment of fuel tax claims.
Sec. 703. Notice of request for a determination of taxes.
Sec. 704. Rate of interest on tax claims.
Sec. 705. Priority of tax claims.
Sec. 706. Priority property taxes incurred.
Sec. 707. No discharge of fraudulent taxes in chapter 13.
Sec. 708. No discharge of fraudulent taxes in chapter 11.
Sec. 709. Stay of tax proceedings limited to prepetition taxes.
Sec. 710. Periodic payment of taxes in chapter 11 cases.
Sec. 711. Avoidance of statutory tax liens prohibited.
Sec. 712. Payment of taxes in the conduct of business.
Sec. 713. Tardily filed priority tax claims.
Sec. 714. Income tax returns prepared by tax authorities.
Sec. 715. Discharge of the estate's liability for unpaid taxes.
Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
Sec. 717. Standards for tax disclosure.
Sec. 718. Setoff of tax refunds.
Sec. 719. Special provisions related to the treatment of State and local taxes.
Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
Sec. 802. Other amendments to titles 11 and 28, United States Code.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 902. Authority of the corporation with respect to failed and failing institutions.
Sec. 903. Amendments relating to transfers of qualified financial contracts.
Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 905. Clarifying amendment relating to master agreements.
Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
Sec. 907. Bankruptcy law amendments.
Sec. 908. Recordkeeping requirements.
Sec. 909. Exemptions from contemporaneous execution requirement.
Sec. 910. Damage measure.
Sec. 911. SIPC stay.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
Sec. 1003. Certain claims owed to governmental units.
Sec. 1004. Definition of family farmer.
Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
Sec. 1006. Prohibition of retroactive assessment of disposable income.
Sec. 1007. Family fishermen.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions.
Sec. 1102. Disposal of patient records.
Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
Sec. 1104. Appointment of ombudsman to act as patient advocate.
Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
Sec. 1106. Exclusion from program participation not subject to automatic stay.

TITLE XII—TECHNICAL AMENDMENTS

Sec. 1201. Definitions.
Sec. 1202. Adjustment of dollar amounts.
Sec. 1203. Extension of time.
Sec. 1204. Technical amendments.
Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1206. Limitation on compensation of professional persons.
Sec. 1207. Effect of conversion.
Sec. 1208. Allowance of administrative expenses.
Sec. 1209. Exceptions to discharge.
Sec. 1210. Effect of discharge.
Sec. 1211. Protection against discriminatory treatment.
Sec. 1212. Property of the estate.
Sec. 1213. Preferences.
Sec. 1214. Postpetition transactions.
Sec. 1215. Disposition of property of the estate.
Sec. 1216. General provisions.
Sec. 1217. Abandonment of railroad line.
Sec. 1218. Contents of plan.
Sec. 1219. Bankruptcy cases and proceedings.
Sec. 1220. Knowing disregard of bankruptcy law or rule.
Sec. 1221. Transfers made by nonprofit charitable corporations.
Sec. 1222. Protection of valid purchase money security interests.
Sec. 1223. Bankruptcy judgeships.
Sec. 1224. Compensating trustees.
Sec. 1225. Amendment to section 362 of title 11, United States Code.
Sec. 1226. Judicial education.
Sec. 1227. Reclamation.
Sec. 1228. Providing requested tax documents to the court.
Sec. 1229. Encouraging creditworthiness.
Sec. 1230. Property no longer subject to redemption.
Sec. 1231. Trustees.
Sec. 1232. Bankruptcy forms.
Sec. 1233. Direct appeals of bankruptcy matters to courts of appeals.
Sec. 1234. Involuntary cases.
Sec. 1235. Federal election law fines and penalties as nondischargeable debt.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan.
Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 1303. Disclosures related to "introductory rates".
Sec. 1304. Internet-based credit card solicitations.
Sec. 1305. Disclosures related to late payment deadlines and penalties.
Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
Sec. 1307. Dual use debit card.
Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
Sec. 1309. Clarification of clear and conspicuous.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective date; application of amendments.

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting "or consents to" after "requests".

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13";

and

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)";

(B) in paragraph (1), as so redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking "but not at the request or suggestion of" and inserting "trustee, bankruptcy administrator, or";

(II) by inserting ", or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title," after "consumer debts"; and

(III) by striking "a substantial abuse" and inserting "an abuse"; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

"(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

"(II) $10,000.

"(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

"(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

"(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

"(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I)

"(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

"(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

"(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

"(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

"(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

"(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

"(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

"(I) documentation for such expense or adjustment to income; and

"(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

"(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

"(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

"(II) $10,000.

"(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

"(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider—

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

"(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

"(i) a trustee files a motion for dismissal or conversion under this subsection; and

"(ii) the court—

"(I) grants such motion; and

"(II) finds that the action of the attorney for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

"(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

"(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

"(ii) the payment of such civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

"(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has—

"(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

"(ii) determined that the petition, pleading, or written motion—

"(I) is well grounded in fact; and

"(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

"(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

"(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if—

"(i) the court does not grant the motion; and

"(ii) the court finds that—

"(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

"(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

"(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

"(C) For purposes of this paragraph—

"(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

"(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

"(II) is engaged in commercial or business activity; and

"(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

"(I) a parent corporation; and

"(II) any other subsidiary corporation of the parent corporation.

"(6) Only the judge, United States trustee, or bankruptcy administrator may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

"(7)(A) No judge, United States trustee, trustee, bankruptcy administrator, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

"(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

"(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

"(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

"(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

"(ii) the debtor files a statement under penalty of perjury—

"(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

"(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.".

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

"(10A) 'current monthly income'—

"(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

"(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

"(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

"(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism;".

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The trustee shall—"; and

(2) by adding at the end the following:

"(b)(1) With respect to a debtor who is an individual in a case under this chapter—

"(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

"(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

"(2) The United States trustee or bankruptcy administrator shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee or bankruptcy administrator does not believe that such a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

"(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals .".

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

"(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.".

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

"(c)(1) In this subsection—

"(A) the term 'crime of violence' has the meaning given such term in section 16 of title 18; and

"(B) the term 'drug trafficking crime' has the meaning given such term in section 924(c)(2) of title 18.

"(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

"(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.".

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (6) the following:

"(7) the action of the debtor in filing the petition was in good faith;".

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting "to unsecured creditors" after "to make payments"; and

(2) by striking paragraph (2) and inserting the following:

"(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

"(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.".

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking "or" at the end;

(2) in paragraph (3) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

"(A) such expenses are reasonable and necessary;

"(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

"(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

"(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.".

(j) Adjustment of Dollar Amounts.—Section 104(b) of title 11, United States Code, is amended by striking "and 523(a)(2)(C)" each place it appears and inserting "523(a)(2)(C), 707(b), and 1325(b)(3)".

(k) Definition of 'Median Family Income'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

"(39A) 'median family income' means for any year—

"(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

"(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year;".

(k) Clerical Amendment.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

"707. Dismissal of a case or conversion to a case under chapter 11 or 13.".

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) Sense of Congress.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) Study.—

(1) In general.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) Recommendation.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

"(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

"(1) a brief description of—

"(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

"(B) the types of services available from credit counseling agencies; and

"(2) statements specifying that—

"(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and

"(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General.".

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) Development of Financial Management and Training Curriculum and Materials.—The Director of the Executive Office for United States Trustees (in this section referred to as the "Director") shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

(b) Test.—

(1) Selection of districts.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) Use.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) Evaluation.—

(1) In general.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) Report.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.

(a) Who May Be a Debtor.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

"(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

"(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

"(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee or bankruptcy administrator at any time.

"(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

"(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

"(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

"(iii) is satisfactory to the court.

"(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.".

(b) Chapter 7 Discharge.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking "or" at the end;

(2) in paragraph (10), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of such district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section (Each United States trustee or bankruptcy administrator who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).".

(c) Chapter 13 Discharge.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

"(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing

a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

"(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of such district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

"(3) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.".

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

"(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

"(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

"(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.".

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The debtor shall—"; and

(2) by adding at the end the following:

"(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court—

"(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

"(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).".

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"§111. Credit counseling agencies; financial management instructional courses

"(a) The clerk shall maintain a publicly available list of—

"(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

"(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

"(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

"(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

"(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or instructional course fully satisfies the applicable standards set forth in this section.

"(3) When an agency or instructional course is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or instructional course is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

"(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or instructional course which has demonstrated during the probationary or subsequent period that such agency or instructional course—

"(A) has met the standards set forth under this section during such period; and

"(B) can satisfy such standards in the future.

"(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate district court of the United States.

"(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

"(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

"(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

"(i) are not employed by the agency; and

"(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

"(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

"(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

"(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

"(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

"(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

"(G) demonstrate adequate experience and background in providing credit counseling; and

"(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

"(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

"(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

"(A) trained personnel with adequate experience and training in providing effective instruction and services;

"(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

"(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course or program by telephone or through the Internet, if such instructional course or program is effective; and

"(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course or program, including any evaluation of satisfaction of instructional course or program requirements for each debtor attending such instructional course or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such instructional course or program is offered; and

"(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

"(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

"(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

"(e) The district court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The district court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

"(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

"(g)(1) No credit counseling agency may provide to a credit reporting agency information concerning whether a debtor who has received or sought instruction concerning personal financial management from the credit counseling agency.

"(2) A credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

"(A) any actual damages sustained by the debtor as a result of the violation; and

"(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"111. Credit counseling agencies; financial management instructional courses.".

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

"(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

"(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.".

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

"(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

"(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor;

"(B) the offer of the debtor under subparagraph (A)—

"(i) was made at least 60 days before the filing of the petition; and

"(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

"(C) no part of the debt under the alternative repayment schedule is nondischargeable.

"(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

"(A) the creditor unreasonably refused to consider the debtor's proposal; and

"(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).".

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

"(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.".

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

"(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

"(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

"(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

"(2) such act is in the ordinary course of business between the creditor and the debtor; and

"(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.".

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

"(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;"; and

(2) by adding at the end the following:

"(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

"(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

"(3) The disclosure statement required under this paragraph shall consist of the following:

"(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

"(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

"(C) The 'Amount Reaffirmed', using that term, which shall be—

"(i) the total amount which the debtor agrees to reaffirm, and

"(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

"(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

"(i) 'The amount of debt you have agreed to reaffirm'; and

"(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

"(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

"(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

"(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

"(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

"(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the reaffirmation agreement with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

"(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

"(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

"(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

"(i) by making the statement: 'Your first payment in the amount of $ ______ is due on ______ but the future payment amount may be different. Consult your reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

"(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

"(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

"(I) The following statement: 'Note: When this disclosure refers to what a creditor "may" do, it does not use the word "may" to give the creditor specific permission. The word "may" is *used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you don't have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.'.*

"(J)(i) The following additional statements:

" 'Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

" '1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

" '2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

" '3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

" '4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

" '5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

" '6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

" '7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent with your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or other lien on your real property, like your home.

" 'Your right to rescind a reaffirmation. You may rescind (cancel) your reaffirmation at any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever is longer. To rescind or cancel, you must notify the creditor that the agreement is canceled.

" 'What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

" 'Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

" 'What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

"(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

" '6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

"(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

" 'Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

" 'Brief description of credit agreement:

" 'Description of any changes to the credit agreement made as part of this reaffirmation agreement:

" 'Signature: Date:

" 'Borrower:

" 'Co-borrower, if also reaffirming:

" 'Accepted by creditor:

" 'Date of creditor acceptance:'.

"(5)(A) The declaration shall consist of the following:

" 'Part C: Certification by Debtor's Attorney (If Any).

" 'I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

" 'Signature of Debtor's Attorney: Date:'.

"(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

"(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

"(6)(A) The statement in support of reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

" 'Part D: Debtor's Statement in Support of Reaffirmation Agreement.

" '1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $ _____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $ _____, leaving $ _____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

" '2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

"(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

" 'I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

"(7) The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

" 'Part E: Motion for Court Approval (To be completed only where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

" 'I am not represented by an attorney in connection with this reaffirmation agreement.

" 'I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

" 'Therefore, I ask the court for an order approving this reaffirmation agreement.'.

"(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

" 'Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

"(l) Notwithstanding any other provision of this title the following shall apply:

"(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

"(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

"(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

"(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

"(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.".

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"§158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

"(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

"(b) UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

"(1) a United States attorney for each judicial district of the United States; and

"(2) an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.

"(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

"(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.".

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.".

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following:

"(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2001), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.".

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

"(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

"(A) owed to or recoverable by—

"(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

"(ii) a governmental unit;

"(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

"(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

"(i) a separation agreement, divorce decree, or property settlement agreement;

"(ii) an order of a court of record; or

"(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

"(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt;".

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking "First" and inserting "Second";

(4) in paragraph (3), as so redesignated, by striking "Second" and inserting "Third";

(5) in paragraph (4), as so redesignated—

(A) by striking "Third" and inserting "Fourth"; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as so redesignated, by striking "Fourth" and inserting "Fifth";

(7) in paragraph (6), as so redesignated, by striking "Fifth" and inserting "Sixth";

(8) in paragraph (7), as so redesignated, by striking "Sixth" and inserting "Seventh"; and

(9) by inserting before paragraph (2), as so redesignated, the following:

"(1) First:

"(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

"(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

"(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.".

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

"(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first become payable after the date on which the petition is filed.";

(2) in section 1208(c)—

(A) in paragraph (8), by striking "or" at the end;

(B) in paragraph (9), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.";

(3) in section 1222(a)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.";

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

"(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor *has disposable income available to pay such interest after making provision for full payment of all allowed claims;";*

(5) in section 1225(a)—

(A) in paragraph (5), by striking "and" at the end;

(B) in paragraph (6), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that first become payable after the date on which the petition is filed.";

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid" after "completion by the debtor of all payments under the plan";

(7) in section 1307(c)—

(A) in paragraph (9), by striking "or" at the end;

(B) in paragraph (10), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.";

(8) in section 1322(a)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.";

(9) in section 1322(b)—

(A) in paragraph (9), by striking "; and" and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

"(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and";

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:

"(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and";

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid" after "completion by the debtor of all payments under the plan".

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

"(2) under subsection (a)—

"(A) of the commencement or continuation of a civil action or proceeding—

"(i) for the establishment of paternity;

"(ii) for the establishment or modification of an order for domestic support obligations;

"(iii) concerning child custody or visitation;

"(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

"(v) regarding domestic violence;

"(B) of the collection of a domestic support obligation from property that is not property of the estate;

"(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;

"(D) of the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act;

"(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

"(F) of the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

"(G) of the enforcement of medical obligations as specified under title IV of the Social Security Act;".

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

"(5) for a domestic support obligation;"; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking "(6), or (15)" each place it appears and inserting "or (6)"; and

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting "to a spouse, former spouse, or child of the debtor and" before "not of the kind";

(B) by inserting "or" after "court of record,"; and

(C) by striking "unless—" and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));";

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting "of a kind that is specified in section 523(a)(5); or"; and

(3) in subsection (g)(2), by striking "subsection (f)(2)" and inserting "subsection (f)(1)(B)".

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

"(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;".

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting "or for a domestic support obligation that first becomes payable after the date on which the petition is filed" after "dependent of the debtor".

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) Duties of Trustee Under Chapter 7.—Section 704 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking "and" at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

"(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and"; and

(2) by adding at the end the following:

"(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

"(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

"(ii) the last recent known address of the debtor;

"(iii) the last recent known name and address of the debtor's employer; and

"(iv) the name of each creditor that holds a claim that—

"(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

"(II) was reaffirmed by the debtor under section 524 (c).

"(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.".

(b) Duties of Trustee Under Chapter 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking "and" at the end;

(B) in paragraph (7), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice required by clasue (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder of such claim and to such State child support enforcement agency of—

"(i) the granting of the discharge;

"(ii) the last recent known address of the debtor;

"(iii) the last recent known name and address of the debtor's employer; and

"(iv) the name of each creditor that holds a claim that—

"(I) is not discharged under paragraph (2), (3), or (14A) of section 523(a); or

"(II) was reaffirmed by the debtor under section 524(c).

"(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.".

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "and" at the end;

(B) in paragraph (5), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

"(ii) the last recent known address of the debtor;

"(iii) the last recent known name and address of the debtor's employer; and

"(iv) the name of each creditor that holds a claim that—

"(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

"(II) was reaffirmed by the debtor under section 524(c).

"(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.".

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "and" at the end;

(B) in paragraph (5), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d)."; and

(2) by adding at the end the following:

"(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

"(ii) the last recent known address of the debtor;

"(iii) the last recent known name and address of the debtor's employer; and

"(iv) the name of each creditor that holds a claim that—

"(I) is not discharged under paragraph (2) or (4) of section 523(a); or

"(II) was reaffirmed by the debtor under section 524(c).

"(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.".

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

"(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

"(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

"(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

"(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;".

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking "or an employee of an attorney" and inserting "for the debtor or an employee of such attorney under the direct supervision of such attorney";

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: "If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

"(A) sign the document for filing; and

"(B) print on the document the name and address of that officer, principal, responsible person or partner."; and

(B) by striking paragraph (2) and inserting the following:

"(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

"(B) The notice under subparagraph (A)—

"(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

"(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

"(iii) shall—

"(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

"(II) be filed with any document for filing.";

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking "(2) For purposes" and inserting "(2)(A) Subject to subparagraph (B), for purposes"; and

(ii) by adding at the end the following:

"(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer."; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking "(d)(1)" and inserting "(d)"; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

"(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

"(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

"(i) whether—

"(I) to file a petition under this title; or

"(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

"(ii) whether the debtor's debts will be eliminated or discharged in a case under this title;

"(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

"(iv) concerning—

"(I) the tax consequences of a case brought under this title; or

"(II) the dischargeability of tax claims;

"(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

"(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

"(vii) concerning bankruptcy procedures and rights.";

(6) in subsection (f)—

(A) by striking "(f)(1)" and inserting "(f)"; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking "(g)(1)" and inserting "(g)"; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as so redesignated, the following:

"(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.";

(C) in paragraph (2), as so redesignated—

(i) by striking "Within 10 days after the date of filing a petition, a bankruptcy petition preparer shall file a" and inserting "A";

(ii) by inserting "by the bankruptcy petition preparer shall be filed together with the petition," after "perjury"; and

(iii) by adding at the end the following: "If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).";

(D) by striking paragraph (3), as so redesignated, and inserting the following:

"(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

"(i) rendered by the preparer during the 12-month period immediately preceding the date of filing of the petition; or

"(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

"(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

"(C) An individual may exempt any funds recovered under this paragraph under section 522(b)."; and

(E) in paragraph (4), as so redesignated, by striking "or the United States trustee" and inserting "the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,";

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

"(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—";

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking "a violation of which subjects a person to criminal penalty";

(ii) in subparagraph (B)—

(I) by striking "or has not paid a penalty" and inserting "has not paid a penalty"; and

(II) by inserting "or failed to disgorge all fees ordered by the court" after "a penalty imposed under this section,";

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

"(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, the United States trustee, or the bankruptcy administrator."; and

(11) by adding at the end the following:

"(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

"(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

"(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

"(B) advised the debtor to use a false Social Security account number;

"(C) failed to inform the debtor that the debtor was filing for relief under this title; or

"(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

"(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

"(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

"(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.".

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

"(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.".

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) In General.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking "and" at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting "; and";

(iii) by adding at the end the following:

"(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986."; and

(iv) by striking "(2)(A) any property" and inserting:

"(3) Property listed in this paragraph is—

"(A) any property";

(B) by striking paragraph (1) and inserting:

"(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.";

(C) by striking "(b) Notwithstanding" and inserting "(b)(1) Notwithstanding";

(D) by striking "paragraph (2)" each place it appears and inserting "paragraph (3)";

(E) by striking "paragraph (1)" each place it appears and inserting "paragraph (2)";

(F) by striking "Such property is—"; and

(G) by adding at the end the following:

"(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

"(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.

"(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

"(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

"(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

"(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to

qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer.

"(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that distribution.

"(ii) A distribution described in this clause is an amount that—

"(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

"(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount."; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "subsection (b)(1)" and inserting "subsection (b)(2)"; and

(B) by adding at the end the following:

"(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

"(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

"(B) in the case of a loan from a thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but this paragraph may not be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;".

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by adding at the end the following:

"(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

"(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

"(B) a loan from the thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

"(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.".

(e) ASSET LIMITATION.—

(1) LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

"(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.".

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting "522(n)," after "522(d),".

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "or" at the end;

(B) by redesignating paragraph (5) as paragraph (9); and

(C) by inserting after paragraph (4) the following:

"(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

"(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

"(B) only to the extent that such funds—

"(i) are not pledged or promised to any entity in connection with any extension of credit; and

"(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

"(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

"(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

"(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

"(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

"(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;"; and

(2) by adding at the end the following:

"(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

"(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).".

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

"(3) 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000;";

(2) by inserting after paragraph (4) the following:

"(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;"; and

(3) by inserting after paragraph (12) the following:

"(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

"(A) any person that is an officer, director, employee, or agent of a person who provides such assistance or of such preparer;

"(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

"(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

"(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

"(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.".

(b) CONFORMING AMENDMENT.—*Section 104(b) of title 11, United States Code, is amended by inserting "101(3)," after "sections" each place it appears.*

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—*Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:*

"§526. Restrictions on debt relief agencies

"(a) A debt relief agency shall not—

"(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

"(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

"(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

"(i) the services that such agency will provide to such person; or

"(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

"(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

"(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

"(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

"(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

"(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

"(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

"(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

"(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

"(A) may bring an action to enjoin such violation;

"(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

"(4) The district court of the United States for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

"(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

"(A) enjoin the violation of such section; or

"(B) impose an appropriate civil penalty against such person.

"(d) No provision of this section, section 527, or section 528 shall—

"(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

"(2) be deemed to limit or curtail the authority or ability—

"(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

"(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.".

(b) CONFORMING AMENDMENT.—*The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:*

"526. Restrictions on debt relief agencies.".

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—*Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:*

"§527. Disclosures

"(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

"(1) the written notice required under section 342(b)(1) of this title; and

"(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

"(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

"(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

"(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2), are required to be stated after reasonable inquiry; and

"(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction including, in some instances, criminal sanctions.

"(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

" 'IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

" 'If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

" 'The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

" 'Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

" 'If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

" 'If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

" 'If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

" 'Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

"(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

"(1) how to value assets at replacement value, determine current monthly income, the amounts

specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

“(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

“(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

“(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

“527. Disclosures.”.

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 227 and 228, is amended by adding at the end the following:

“§ 528. Requirements for debt relief agencies

“(a) A debt relief agency shall—

“(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

“(A) the services such agency will provide to such assisted person; and

“(B) the fees or charges for such services, and the terms of payment;

“(2) provide the assisted person with a copy of the fully executed and completed contract;

“(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

“(4) clearly and conspicuously use the following statement in such advertisement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.’ or a substantially similar statement.

“(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

“(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

“(B) statements such as ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

“(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

“(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

“(B) include the following statement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.’ or a substantially similar statement.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by debtors who are individuals under such title, the names and social security numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following: “, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

“(A) such sale or such lease is consistent with such policy; or

“(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

“(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

“(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.”.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

“(41A) ‘personally identifiable information’ means—

“(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

“(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

“(ii) the geographical address of a physical place of residence of such individual;

“(iii) an electronic address (including an e-mail address) of such individual;

“(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

“(v) a social security account number issued to such individual; or

“(vi) the account number of a credit card issued to such individual; or

“(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

“(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

“(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically;”.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

“§ 332. Consumer privacy ombudsman

“(a) If a hearing is required under section 363(b)(1)(B) of this title, the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

“(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

“(1) the debtor's privacy policy;

“(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

“(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

“(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

“(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.”.

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting “a consumer privacy ombudsman appointed under section 332,” before “an examiner”.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

“332. Consumer privacy ombudsman.”.

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11 of the United States Code, as amended by section 106, is amended by inserting after section 111 the following:

“§ 112. Prohibition on disclosure of name of minor children

“The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) appointed under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

“112. Prohibition on disclosure of name of minor children.”.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting “and subject to section 112 of this title” after “section”.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking "by a court" and inserting "on a prisoner by any court";

(2) by striking "section 1915(b) or (f)" and inserting "subsection (b) or (f)(2) of section 1915"; and

(3) by inserting "(or a similar non-Federal law)" after "title 28" each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

"(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

"(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

"(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(i) as to all creditors, if—

"(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

"(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

"(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

"(bb) provide adequate protection as ordered by the court; or

"(cc) perform the terms of a plan confirmed by the court; or

"(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

"(aa) if a case under chapter 7, with a discharge; or

"(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

"(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

"(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

"(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

"(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

"(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect; and

"(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(i) as to all creditors if—

"(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

"(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

"(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

"(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.".

SEC. 303. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

"(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after the date of entry of such order by the court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (19), the following:

"(20) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

"(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

"(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

"(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;".

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(A) in paragraph (4), by striking ", and" at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

"(A) enters into an agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

"(B) redeems such property from the security interest pursuant to section 722 of this title.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filedbefore the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee."; and

(2) in section 722, by inserting "in full at the time of redemption" before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking "(e), and (f)" and inserting "(e), (f), and (h)";

(B) by redesignating subsection (h) as subsection (k) and transferring such subsection so

as to insert it after subjection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

"(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

"(A) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate in that statement that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; and

"(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

"(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion."; and

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking "consumer";

(B) in subsection (a)(2)(B)—

(i) by striking "forty-five days after the filing of a notice of intent under this section" and inserting "30 days after the first date set for the meeting of creditors under section 341(a) of this title"; and

(ii) by striking "forty-five day" and inserting "30-day";

(C) in subsection (a)(2)(C) by inserting ", except as provided in section 362(h) of this title" before the semicolon; and

(D) by adding at the end the following:

"(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.".

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) In General.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

"(i) the plan provides that—

"(I) the holder of such claim retain the lien securing such claim until the earlier of—

"(aa) the payment of the underlying debt determined under nonbankruptcy law; or

"(bb) discharge under section 1328; and

"(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and".

(b) Restoring the Foundation for Secured Credit.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following:

"For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.".

(c) Definitions.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13) the following:

"(13A) 'debtor's principal residence'—

"(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

"(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;"; and

(2) by inserting after paragraph (27), the following:

"(27A) 'incidental property' means, with respect to a debtor's principal residence—

"(A) property commonly conveyed with a principal residence in the area where the real estate is located;

"(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

"(C) all replacements or additions;".

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

(A) by striking "180 days" and inserting "730 days"; and

(B) by striking ", or for a longer portion of such 180-day period than in any other place" and inserting "or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place"; and

(2) by adding at the end the following:

"If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).".

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 of title 11, United States Code, as amended by section 224, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting "subject to subsections (o) and (p)," before "any property"; and

(2) by adding at the end the following:

"(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

"(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

"(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

"(3) a burial plot for the debtor or a dependent of the debtor; or

"(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.".

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) Stopping Abusive Conversions From Chapter 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B)—

(A) by striking "in the converted case, with allowed secured claims" and inserting "only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12"; and

(B) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(C) with respect to cases converted from chapter 13—

"(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

"(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.".

(b) Giving Debtors the Ability To Keep Leased Personal Property by Assumption.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

"(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

"(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

"(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

"(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay

under section 1301 is automatically terminated with respect to the property subject to the lease.".

(c) Adequate Protection of Lessors and Purchase Money Secured Creditors.—

(1) Confirmation of plan.—Section 1325(a)(5)(B) of title 11, United States Code, as amended by section 306, is amended—

(A) in clause (i), by striking "and" at the end;

(B) in clause (ii), by striking "or" at the end and inserting "and"; and

(C) by adding at the end the following:

"(iii) if—

"(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

"(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or".

(2) Payments.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

"(A) proposed by the plan to the trustee;

"(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

"(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

"(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

"(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

"(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.".

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

"(C)(i) for purposes of subparagraph (A)—

"(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

"(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

"(ii) for purposes of this subparagraph—

"(I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

"(II) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.".

SEC. 311. AUTOMATIC STAY.

(a) In general.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

"(22) subject to subsection (n), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

"(23) subject to subsection (o), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

"(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;".

(b) Limitations.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

"(n)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

"(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

"(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

"(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

"(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

"(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

"(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

"(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

"(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

"(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

"(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

"(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the filing of the petition; and

"(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

"(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

"(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

"(o)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

"(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

"(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

"(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving

rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

"(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

"(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

"(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

"(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

"(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.".

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking "six" and inserting "8"; and

(2) in section 1328, by inserting after subsection (e) the following:

"(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

"(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

"(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.".

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

"(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

"(i) clothing;

"(ii) furniture;

"(iii) appliances;

"(iv) 1 radio;

"(v) 1 television;

"(vi) 1 VCR;

"(vii) linens;

"(viii) china;

"(ix) crockery;

"(x) kitchenware;

"(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

"(xii) medical equipment and supplies;

"(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

"(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

"(xv) 1 personal computer and related equipment.

"(B) The term 'household goods' does not include—

"(i) works of art (unless by or of the debtor, or any relative of the debtor);

"(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

"(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

"(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

"(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.".

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);".

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

"(1) provided for under section 1322(b)(5);

"(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

"(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

"(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.".

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) by striking ", but the failure of such notice to contain such information shall not invalidate the legal effect of such notice"; and

(C) by adding at the end the following:

"(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number; and

(2) by adding at the end the following:

"(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

"(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

"(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

"(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

"(3) A notice filed under paragraph (1) may be withdrawn by such entity.

"(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

"(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) of this title (including a monetary penalty imposed under section 362(k) of this title) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

"(1) file—

"(A) a list of creditors; and

"(B) unless the court orders otherwise—

"(i) a schedule of assets and liabilities;

"(ii) a schedule of current income and current expenditures;

"(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

"(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or any bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or such bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

"(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

"(iv) copies of all payment advices or other evidence of payment received within 60 days before the filing of the petition, by the debtor from any employer of the debtor;

"(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

"(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;"; and

(2) by adding at the end the following:

"(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

"(2)(A) The debtor shall provide—

"(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

"(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

"(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

"(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

"(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of such plan—

"(A) at a reasonable cost; and

"(B) not later than 5 days after such request is filed.

"(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

"(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

"(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

"(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

"(4) in a case under chapter 13—

"(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

"(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of such plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

"(g)(1) A statement referred to in subsection (f)(4) shall disclose—

"(A) the amount and sources of the income of the debtor;

"(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

"(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

"(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

"(h)(1) Not later than 180 days after the date of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

"(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

"(3) Not later than 540 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, the Director of the Administrative Office of the United States Courts shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

"(A) assesses the effectiveness of the procedures established under paragraph (1); and

"(B) if appropriate, includes proposed legislation to—

"(i) further protect the confidentiality of tax information; and

"(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

"(i) If requested by the United States trustee or by the trustee, the debtor shall provide—

"(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

"(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

"(j)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

"(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

"(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

"(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.".

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking "After" and inserting the following:

"(a) Except as provided in subsection (b) and after"; and

(2) by adding at the end the following:

"(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.".

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

"(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

"(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals , plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.";

(2) in section 1325(b)(1)(B), by striking "three-year period" and inserting "applicable commitment period"; and

(3) in section 1325(b), as amended by section 102, by adding at the end the following:

"(4) For purposes of this subsection, the 'applicable commitment period'—

"(A) subject to subparagraph (B), shall be—

"(i) 3 years; or

"(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

"(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals , plus $525 per month for each individual in excess of 4; and

"(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period."; and

(4) in section 1329(c), by striking "three years" and inserting "the applicable commitment period under section 1325(b)(1)(B)".

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

"(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

"(B) that 60-day period is extended—

"(i) by agreement of all parties in interest; or

"(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.".

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"§1115. Property of the estate

"(a) In a case concerning a debtor who is an individual, property of the estate includes, in addition to the property specified in section 541—

"(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

"(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.".

"(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"1115. Property of the estate.".

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.".

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:

"(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

"(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.".

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: ", except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.".

(d) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "The confirmation of a plan does not discharge an individual debtor" and inserting "A discharge under this chapter does not discharge a debtor who is an individual"; and

(2) by adding at the end the following:

"(5) In a case in which the debtor is an individual—

"(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

"(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may not grant a discharge to the debtor who has not completed payments under the plan unless—

"(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

"(ii) modification of the plan under section 1127 of this title is not practicable; and".

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

"(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

"(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

"(2) extend or reduce the time period for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

"(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

"(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.".

SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, is amended by adding at the end the following:

"(p)(1)Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the filing of the petition which exceeds in the aggregate $125,000 in value in—

"(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

"(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

"(C) a burial plot for the debtor or a dependent of the debtor; or

"(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

"(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

"(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

"(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), and (C) of subsection (p) which exceeds in the aggregate $125,000 if—

"(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18),

which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

"(B) the debtor owes a debt arising from—

"(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

"(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

"(iii) any civil remedy under section 1964 of title 18, United States Code; or

"(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

"(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), and (C) of subsection (p) is reasonably necessary for the support of the debtor and any dependent of the debtor.".

(b) Adjustment of Dollar Amounts.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting "522(p), 522(q)," after "522(n),".

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

"(7) any amount—

"(A) withheld by an employer from the wages of employees for payment as contributions to—

"(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that such amount under this clause shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

"(ii) a health insurance plan regulated by State law whether or not subject to such title; or

"(B) received by the employer from employees for payment as contributions to—

"(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that such amount under this clause shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

"(ii) a health insurance plan regulated by State law whether or not subject to such title;".

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) In General.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking "Notwithstanding" and inserting "Except as provided in subsection (e)(2), and notwithstanding"; and

(2) by striking subsection (e) and inserting the following:

"(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

"(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

"(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.".

(b) Applicability.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) Actions Under Chapter 7 or 13 of Title 11, United States Code.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) United States Trustee System Fund.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2), by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4), by striking "one-half" and inserting "100 percent".

(c) Collection and Deposit of Miscellaneous Bankruptcy Fees.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking "pursuant to 28 U.S.C. section 1930(b) and 33.87 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931" and inserting "under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title".

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

"(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.".

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.".

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) Executory Contracts and Unexpired Leases.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: "other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;"; and

(B) in paragraph (2)(D), by striking "penalty rate or provision" and inserting "penalty rate or penalty provision";

(2) in subsection (c)—

(A) in paragraph (2), by inserting "or" at the end;

(B) in paragraph (3), by striking "; or" at the end and inserting a period; and

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking "; except that" and all that follows through the end of the paragraph and inserting a period.

(b) Impairment of Claims or Interests.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting "or of a kind that section 365(b)(2) of this title expressly does not require to be cured" before the semicolon at the end;

(2) in subparagraph (C), by striking "and" at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

"(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and".

SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

"(A) the actual, necessary costs and expenses of preserving the estate including—

"(i) wages, salaries, or commissions for services rendered after the commencement of the case; and

"(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;".

SEC. 330. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.

(a) DEBTS INCURRED THROUGH VIOLATIONS OF LAW RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.—Section 523(a) of title 11, United States Code, as amended by section 224, is amended—

(1) in paragraph (18) by striking "or" at the end;

(2) in paragraph (19) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee or cost owed by the debtor), that arises from—

"(A) the violation by the debtor of any Federal or State statutory law, including but not limited to violations of title 18, that results from intentional actions of the debtor that—

"(i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing lawful goods or services;

"(ii) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

"(iii) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

"(B) a violation of a court order or injunction that protects access to a facility that or a person who provides lawful goods or services or the provision of lawful goods or services if—

"(i) such violation is intentional or knowing; or

"(ii) such violation occurs after a court has found that the debtor previously violated—

"(I) such court order or such injunction; or

"(II) any other court order or injunction that protects access to the same facility or the same person;

except that nothing in this paragraph shall be construed to affect any expressive conduct (including peaceful picketing, peaceful prayer, or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.".

(b) RESTITUTION.—Section 523(a)(13) of title 11, United States Code, is amended by inserting "or under the criminal law of a State" after "title 18".

SEC. 331. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking "or" at the end;

(2) in paragraph (11) by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (11) the following:

"(12) the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is reasonable cause to believe that—

"(A) section 522(q)(1) may be applicable to the debtor; and

"(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); or.".

(b) CHAPTER 11.—Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

"(C) unless after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

"(i) section 522(q)(1) may be applicable to the debtor; and

"(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).".

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as",

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at", and

(3) by adding at the end the following:

"(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).".

(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as",

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at", and

(3) by adding at the end the following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).".

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

"(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934;".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

"(25) under subsection (a), of—

"(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

"(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

"(C) any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;".

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.".

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking "10" each place it appears and inserting "30".

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

"(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

"(i) the date that is 120 days after the date of the order for relief; or

"(ii) the date of the entry of an order confirming a plan.

"(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

"(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.".

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking "subsection" the first place it appears and inserting "subsections (b) and".

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

"(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act , if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.".

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

"(3) A committee appointed under subsection (a) shall—

"(A) provide access to information for creditors who—

"(i) hold claims of the kind represented by that committee; and

"(ii) are not appointed to the committee;

"(B) solicit and receive comments from the creditors described in subparagraph (A); and

"(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).".

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection (g) (as added by section 222(a) of Public Law 103-394) as subsection (i);

(2) in subsection (i), as so redesignated, by inserting "and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods" after "consent of a creditor"; and

(3) by adding at the end the following:

"(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

"(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, or any successor to such section 7-209.".

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking "(A) In" and inserting "In"; and

(B) by inserting "to an examiner, trustee under chapter 11, or professional person" after "awarded"; and

(2) by adding at the end the following:

"(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 of this title.".

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.".

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

"(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

"(B) made according to ordinary business terms;";

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.".

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting ", or a nonconsumer debt against a noninsider of less than $10,000," after "$5,000".

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on"; and

(2) by adding at the end the following:

"(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

"(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.".

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking "dwelling" the first place it appears;

(2) by striking "ownership or" and inserting "ownership,";

(3) by striking "housing" the first place it appears; and

(4) by striking "but only" and all that follows through "such period," and inserting "or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,".

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: "Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.".

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

"(14) 'disinterested person' means a person that—

"(A) is not a creditor, an equity security holder, or an insider;

"(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

"(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;".

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

"(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and".

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following:

"(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

"(B) Upon the filing of a report under subparagraph (A)—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

"(ii) the service of any trustee appointed under subsection (d) shall terminate.

"(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).".

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)"; and

(2) by adding at the end the following:

"(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

"(i) a cash deposit;

"(ii) a letter of credit;

"(iii) a certificate of deposit;

"(iv) a surety bond;

"(v) a prepayment of utility consumption; or

"(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

"(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

"(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

"(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

"(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

"(i) the absence of security before the date of filing of the petition;

"(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

"(iii) the availability of an administrative expense priority.

"(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition without notice or order of the court.".

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking "Notwithstanding section 1915 of this title, the" and inserting "The"; and

(2) by adding at the end the following:

"(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the

size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

"(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

"(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.".

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon "and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information"; and

(2) by striking subsection (f), and inserting the following:

"(f) Notwithstanding subsection (b), in a small business case—

"(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

"(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

"(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.".

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

"(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

"(51D) 'small business debtor'—

"(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

"(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders);".

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting "debtor" after "small business".

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting "101(51D)," after "101(3)," each place it appears.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

"§ 308. Debtor reporting requirements

"(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

"(b) A small business debtor shall file periodic financial and other reports containing information including—

"(1) the debtor's profitability;

"(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

"(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

"(4)(A) whether the debtor is—

"(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

"(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

"(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

"(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

"308. Debtor reporting requirements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

"§ 1116. Duties of trustee or debtor in possession in small business cases

"In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

"(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

"(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

"(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

"(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and a hearing, upon a finding of extraordinary and compelling circumstances;

"(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

"(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

"(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

"(6)(A) timely file tax returns and other required government filings; and

"(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

"(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:

"1116. Duties of trustee or debtor in possession in small business cases.".

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

"(e) In a small business case—

"(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

"(A) extended as provided by this subsection, after notice and a hearing; or

"(B) the court, for cause, orders otherwise;

"(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

"(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

"(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

"(B) a new deadline is imposed at the time the extension is granted; and

"(C) the order extending time is signed before the existing deadline has expired.".

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after such plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).".

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking "and" at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and";

(2) in paragraph (5), by striking "and" at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(7) in each of such small business cases—

"(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

"(i) begin to investigate the debtor's viability;

"(ii) inquire about the debtor's business plan;

"(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

"(iv) attempt to develop an agreed scheduling order; and

"(v) inform the debtor of other obligations;

"(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

"(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

"(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.".

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ", may"; and

(2) by striking paragraph (1) and inserting the following:

"(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and".

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking "An" and inserting "(1) Except as provided in paragraph (2), an"; and

(B) by adding at the end the following:

"(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages."; and

(2) by adding at the end the following:

"(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

"(A) is a debtor in a small business case pending at the time the petition is filed;

"(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

"(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

"(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

"(2) Paragraph (1) does not apply—

"(A) to an involuntary case involving no collusion by the debtor with creditors; or

"(B) to the filing of a petition if—

"(i) the debtor proves by a preponderance of the evidence that the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

"(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.".

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

"(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

"(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

"(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

"(i) for which there exists a reasonable justification for the act or omission; and

"(ii) that will be cured within a reasonable period of time fixed by the court.

"(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

"(4) For purposes of this subsection, the term 'cause' includes—

"(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

"(B) gross mismanagement of the estate;

"(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

"(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

"(E) failure to comply with an order of the court;

"(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

"(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

"(H) failure timely to provide information or attend meetings reasonably requested by the

United States trustee or the bankruptcy administrator;

"(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the order for relief;

"(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

"(K) failure to pay any fees or charges required under chapter 123 of title 28;

"(L) revocation of an order of confirmation under section 1144;

"(M) inability to effectuate substantial consummation of a confirmed plan;

"(N) material default by the debtor with respect to a confirmed plan;

"(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

"(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

"(5) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.".

(b) Additional Grounds for Appointment of Trustee.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.".

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting "or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later" after "90-day period)"; and

(2) by striking subparagraph (B) and inserting the following:

"(B) the debtor has commenced monthly payments that—

"(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

"(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or".

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);".

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) In General.—Section 521(a) of title 11, United States Code, as amended by section 106, is amended-

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(6) unless a trustee is serving in the case, if at the time of filing the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 of an employee benefit plan, continue to perform the obligations required of the administrator.".

(b) Duties of Trustees.—Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (9), by striking "and" at the end;

(2) in paragraph (10), by striking the period at the end; and

(3) by adding at the end the following:

"(11) if, at the time of the commencement of the case, the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and".

(c) Conforming Amendment.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

"(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;".

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended—

(1) by striking "appoint" and inserting "order the appointment of", and

(2) by adding at the end the following: "The United States trustee shall appoint any such committee.".

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) Technical Amendment Relating to Municipalities.—Section 921(d) of title 11, United States Code, is amended by inserting "notwithstanding section 301(b)" before the period at the end.

(b) Conforming Amendment.—Section 301 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "A voluntary"; and

(2) by striking the last sentence and inserting the following:

"(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.".

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting "555, 556," after "553,"; and

(2) by inserting "559, 560, 561, 562" after "557,".

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) In General.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"§ 159. Bankruptcy statistics

"(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

"(b) The Director shall—

"(1) compile the statistics referred to in subsection (a);

"(2) make the statistics available to the public; and

"(3) not later than June 1, 2005, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

"(c) The compilation required under subsection (b) shall—

"(1) be itemized, by chapter, with respect to title 11;

"(2) be presented in the aggregate and for each district; and

"(3) include information concerning—

"(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

"(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

"(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

"(D) the average period of time between the filing of the petition and the closing of the case for cases closed during the reporting period;

"(E) for cases closed during the reporting period—

"(i) the number of cases in which a reaffirmation was filed; and

"(ii)(I) the total number of reaffirmations filed;

"(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

"(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

"(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

"(i)(I) the number of cases in which a final order was entered determining the value of *property securing a claim in an amount less than the amount of the claim; and*

''(II) the number of final orders entered determining the value of property securing a claim;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.

''(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002;''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002.

''(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor appointed under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting "(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)" after "under this title";

(2) in subsection (b)(2), by inserting "(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)" after "507(a)(1)"; and

(3) by adding at the end the following:

"(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

"(1) exhaust the unencumbered assets of the estate; and

"(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

"(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

"(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

"(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).".

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.".

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

"(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.".

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting "at the address and in the manner designated in paragraph (1)" after "determination of such tax";

(2) by striking "(1) upon payment" and inserting "(A) upon payment";

(3) by striking "(A) such governmental unit" and inserting "(i) such governmental unit";

(4) by striking "(B) such governmental unit" and inserting "(ii) such governmental unit";

(5) by striking "(2) upon payment" and inserting "(B) upon payment";

(6) by striking "(3) upon payment" and inserting "(C) upon payment";

(7) by striking "(b)" and inserting "(2)"; and

(8) by inserting before paragraph (2), as so designated, the following:

"(b)(1)(A) The clerk shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

"(i) designate an address for service of requests under this subsection; and

"(ii) describe where further information concerning additional requirements for filing such requests may be found.

"(B) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of that governmental unit.".

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§511. Rate of interest on tax claims

"(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

"(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter 1 of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"511. Rate of interest on tax claims.".

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting "for a taxable year ending on or before the date of the filing of the petition" after "gross receipts";

(B) in clause (i), by striking "for a taxable year ending on or before the date of the filing of the petition"; and

(C) by striking clause (ii) and inserting the following:

"(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

"(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

"(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days."; and

(2) by adding at the end the following:

"An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.".

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking "assessed" and inserting "incurred".

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314, is amended by striking "paragraph" and inserting "section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),".

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

"(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

"(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

"(B) for a tax or customs duty with respect to which the debtor—

"(i) made a fraudulent return; or

"(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.".

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking "the debtor" and inserting "a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the order for relief under this title".

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking "deferred cash payments," and all that follows through the end of the subparagraph, and inserting "regular installment payments in cash—

"(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

"(ii) over a period ending not later than 5 years after the date of the entry of the order for relief under section 301, 302, or 303; and

"(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and"; and

(3) by adding at the end the following:

"(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).".

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at *the end the following: ", except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law".*

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Any"; and

(2) by adding at the end the following:

"(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

"(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches by the trustee of a bankruptcy estate under section 554 of title 11; or

"(2) payment of the tax is excused under a specific provision of title 11.

"(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

"(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

"(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.".

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting "whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both," before "except".

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by adding "and" at the end; and

(3) by adding at the end the following:

"(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;".

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting "or State statute" after "agreement"; and

(2) in subsection (c), by inserting ", including the payment of all ad valorem property taxes with respect to the property" before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking "before the date on which the trustee commences distribution under this section;" and inserting the following: "on or before the earlier of—

"(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

"(B) the date on which the trustee commences final distribution under this section;".

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,";

(B) in clause (i), by inserting "or given" after "filed"; and

(C) in clause (ii)—

(i) by inserting "or given" after "filed"; and

(ii) by inserting ", report, or notice" after "return"; and

(2) by adding at the end the following:

"For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.".

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting "the estate," after "misrepresentation,".

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

"(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.".

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"§1308. Filing of prepetition tax returns

"(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

"(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

"(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

"(B) for any return that is not past due as of the date of the filing of the petition, the later of—

"(i) the date that is 120 days after the date of that meeting; or

"(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

"(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

"(A) a period of not more than 30 days for returns described in paragraph (1); and

"(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

"(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.".

(2) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"1308. Filing of prepetition tax returns.".

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

"(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.".

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: ", and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required".

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case," after "records"; and

(2) by striking "a hypothetical reasonable investor typical of holders of claims or interests" and inserting "such a hypothetical investor".

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

"(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax

refund, by a governmental unit, with respect to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 346 of title 11, United States Code, is amended to read as follows:

"§346. Special provisions related to the treatment of State and local taxes

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

''346. Special provisions related to the treatment of State and local taxes.''.

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

''(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''1501. Purpose and scope of application.

''SUBCHAPTER I—GENERAL PROVISIONS

''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''1515. Application for recognition.
''1516. Presumptions concerning recognition.
''1517. Order granting recognition.
''1518. Subsequent information.
''1519. Relief that may be granted upon filing petition for recognition.
''1520. Effects of recognition of a foreign main proceeding.
''1521. Relief that may be granted upon recognition.
''1522. Protection of creditors and other interested persons.
''1523. Actions to avoid acts detrimental to creditors.
''1524. Intervention by a foreign representative.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.

"1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.

"1527. Forms of cooperation.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"1528. Commencement of a case under this title after recognition of a foreign main proceeding.

"1529. Coordination of a case under this title and a foreign proceeding.

"1530. Coordination of more than 1 foreign proceeding.

"1531. Presumption of insolvency based on recognition of a foreign main proceeding.

"1532. Rule of payment in concurrent proceedings.

"§ 1501. Purpose and scope of application

"(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

"(1) cooperation between—

"(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

"(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

"(2) greater legal certainty for trade and investment;

"(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

"(4) protection and maximization of the value of the debtor's assets; and

"(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

"(b) This chapter applies where—

"(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

"(2) assistance is sought in a foreign country in connection with a case under this title;

"(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

"(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

"(c) This chapter does not apply to—

"(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

"(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

"(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

"(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 1502. Definitions

"For the purposes of this chapter, the term—

"(1) 'debtor' means an entity that is the subject of a foreign proceeding;

"(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

"(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

"(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

"(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

"(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

"(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

"§ 1503. International obligations of the United States

"To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

"§ 1504. Commencement of ancillary case

"A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

"§ 1505. Authorization to act in a foreign country

"A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

"§ 1506. Public policy exception

"Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

"§ 1507. Additional assistance

"(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

"(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

"(1) just treatment of all holders of claims against or interests in the debtor's property;

"(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

"(3) prevention of preferential or fraudulent dispositions of property of the debtor;

"(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

"(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

"In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"§ 1509. Right of direct access

"(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

"(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

"(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

"(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

"(3) a court in the United States shall grant comity or cooperation to the foreign representative.

"(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

"(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

"(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

"(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

"§ 1510. Limited jurisdiction

"The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

"§ 1511. Commencement of case under section 301 or 303

"(a) Upon recognition, a foreign representative may commence—

"(1) an involuntary case under section 303; or

"(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

"(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

"§ 1512. Participation of a foreign representative in a case under this title

"Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

"(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

"(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

"(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

"(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§1514. Notification to foreign creditors concerning a case under this title

"(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

"(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

"(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

"(1) indicate the time period for filing proofs of claim and specify the place for their filing;

"(2) indicate whether secured creditors need to file their proofs of claim; and

"(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

"(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§1515. Application for recognition

"(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

"(b) A petition for recognition shall be accompanied by—

"(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

"(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

"(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

"(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

"(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

"§1516. Presumptions concerning recognition

"(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

"(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

"(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

"§1517. Order granting recognition

"(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

"(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

"(2) the foreign representative applying for recognition is a person or body; and

"(3) the petition meets the requirements of section 1515.

"(b) The foreign proceeding shall be recognized—

"(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

"(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

"(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

"(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

"§1518. Subsequent information

"From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

"(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

"(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

"§1519. Relief that may be granted upon filing petition for recognition

"(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

"(1) staying execution against the debtor's assets;

"(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

"(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

"(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

"(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§1520. Effects of recognition of a foreign main proceeding

"(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

"(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

"(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

"(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

"(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

"(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

"(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

"§1521. Relief that may be granted upon recognition

"(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

"(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

"(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

"(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

"(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

"(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

"(6) extending relief granted under section 1519(a); and

"(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

“(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

“(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

“(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

“§1522. Protection of creditors and other interested persons

“(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

“(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor’s business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

“(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

“(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

“§1523. Actions to avoid acts detrimental to creditors

“(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

“(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

“§1524. Intervention by a foreign representative

“Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

“§1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

“(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

“(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

“§1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

“(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

“(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

“§1527. Forms of cooperation

“Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

“(1) appointment of a person or body, including an examiner, to act at the direction of the court;

“(2) communication of information by any means considered appropriate by the court;

“(3) coordination of the administration and supervision of the debtor’s assets and affairs;

“(4) approval or implementation of agreements concerning the coordination of proceedings; and

“(5) coordination of concurrent proceedings regarding the same debtor.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“§1528. Commencement of a case under this title after recognition of a foreign main proceeding

“After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

“§1529. Coordination of a case under this title and a foreign proceeding

“If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

“(1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

“(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

“(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

“(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

“(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

“(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

“(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

“§1530. Coordination of more than 1 foreign proceeding

“In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

“(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

“(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

“(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

“§1531. Presumption of insolvency based on recognition of a foreign main proceeding

“In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

“§1532. Rule of payment in concurrent proceedings

“Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.”.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

“15. Ancillary and Other Cross-Border Cases .... 1501”.

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: “, and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15”; and

(2) by adding at the end the following:

“(k) Chapter 15 applies only in a case under such chapter, except that—

“(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

“(2) section 1509 applies whether or not a case under this title is pending.”.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

“(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding,

under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

"(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;".

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking "and' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.".

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking "Nothing in" and inserting "Except with respect to a case under chapter 15 of title 11, nothing in".

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking "or 13" and inserting "13, or 15".

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

"§1410. Venue of cases ancillary to foreign proceedings

"A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

"(1) in which the debtor has its principal place of business or principal assets in the United States;

"(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

"(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.".

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

"(3)(A) a foreign insurance company, engaged in such business in the United States; or

"(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.";

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking ", 304," each place it appears;

(6) in section 305(a) by striking paragraph (2) and inserting the following:

"(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

"(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension."; and

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking "(b)".

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(1) by striking "subsection—" and inserting "subsection, the following definitions shall apply:"; and

(2) in clause (i), by inserting ", resolution, or order" after "any similar agreement that the Corporation determines by regulation".

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only

with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(III) any combination of agreements or transactions referred to in this clause;

"(IV) any option to enter into any agreement or transaction referred to in this clause;

"(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.".

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking "paragraph (10)" and inserting "paragraphs (9) and (10)";

(B) in clause (i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration"; and

(C) by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);"; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(2) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting "or the exercise of rights or powers by" after "the appointment of".

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial

contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

"(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

"(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.".

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking "the conservator" and all that follows through the period and inserting the following: "the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.".

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.".

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the depository institution in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person)."; and

(3) by adding at the end the following new paragraph:

"(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.".

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon ", or is exempt from such registration by order of the Securities and Exchange Commission"; and

(B) in subparagraph (B), by inserting before the period ", that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)";

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;"; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

"(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;";

(3) in paragraph (11), by inserting before the period "and any other clearing organization with which such clearing organization has a netting contract";

(4) by amending paragraph (14)(A)(i) to read as follows:

"(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and"; and

(5) by adding at the end the following new paragraph:

"(15) Payment.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.".

(b) Enforceability of Bilateral Netting Contracts.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) General Rule.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(f) Enforceability of Security Agreements.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(c) Enforceability of Clearing Organization Netting Contracts.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

"(a). General Rule.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(h) Enforceability of Security Agreements.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(d) Enforceability of Contracts With Uninsured National Banks, Uninsured Federal Branches and Agencies, Certain Uninsured State Member Banks, and Edge Act Corporations.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new section:

"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

"(a) In General.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

"(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

"(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

"(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

"(b) Liability.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

"(c) Regulatory Authority.—

"(1) In general.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

"(2) Specific requirement.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) Definitions.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.".

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(a) Definitions of Forward Contract, Repurchase Agreement, Securities Clearing Agency, Swap Agreement, Commodity Contract, and Securities Contract.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking "means a contract" and inserting "means—

"(A) a contract";

(ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and

(iii) by adding at the end the following:

"(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

"(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

"(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

"(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title;";

(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(A) means—

"(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the

United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

"(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

"(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

"(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

"(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;";

(D) in paragraph (48), by inserting ", or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission," after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

"(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

"(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

"(III) a currency swap, option, future, or forward agreement;

"(IV) an equity index or equity swap, option, future, or forward agreement;

"(V) a debt index or debt swap, option, future, or forward agreement;

"(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

"(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

"(VIII) a weather swap, weather derivative, or weather option;

"(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

"(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

"(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(iii) any combination of agreements or transactions referred to in this subparagraph;

"(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;";

(2) in section 741(7), by striking paragraph (7) and inserting the following:

"(7) 'securities contract'—

"(A) means—

"(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(ii) any option entered into on a national securities exchange relating to foreign currencies;

"(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(iv) any margin loan;

"(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

"(vi) any combination of the agreements or transactions referred to in this subparagraph;

"(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

"(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

"(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;"; and

(3) in section 761(4)—

(A) by striking "or" at the end of subparagraph (D); and

(B) by adding at the end the following:

"(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(G) any combination of the agreements or transactions referred to in this paragraph;

"(H) any option to enter into an agreement or transaction referred to in this paragraph;

"(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title;".

(b) Definitions of Financial Institution, Financial Participant, and Forward Contract Merchant.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

"(22) 'financial institution' means—

"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

"(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;";

(2) by inserting after paragraph (22) the following:

"(22A) 'financial participant' means—

"(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

"(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);"; and

(3) by striking paragraph (26) and inserting the following:

"(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;".

(c) Definition of Master Netting Agreement and Master Netting Agreement Participant.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

"(38A) 'master netting agreement'—

"(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

"(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;".

(d) Swap Agreements, Securities Contracts, Commodity Contracts, Forward Contracts, Repurchase Agreements, and Master Netting Agreements Under the Automatic-Stay.—

(1) In general.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting ", pledged to, under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, under the control of," after "held by";

(C) by striking paragraph (17) and inserting the following:

"(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;"; and

(D) by inserting after paragraph (26) the following:

"(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.".

(2) Limitation.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

"(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.".

(e) Limitation of Avoidance Powers Under Master Netting Agreement.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking "under a swap agreement";

(B) by striking "in connection with a swap agreement" and inserting "under or in connection with any swap agreement"; and

(C) by inserting "or financial participant" after "swap participant" each place such term appears; and

(2) by adding at the end the following:

"(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.".

(f) Fraudulent Transfers of Master Netting Agreements.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.".

(g) Termination or Acceleration of Securities Contracts.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§555. Contractual right to liquidate, terminate, or accelerate a securities contract";

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) Termination or Acceleration of Commodities or Forward Contracts.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(i) Termination or Acceleration of Repurchase Agreements.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the third sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(j) Liquidation, Termination, or Acceleration of Swap Agreements.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§560. Contractual right to liquidate, terminate, or accelerate a swap agreement";

(2) in the first sentence, by striking "termination of a swap agreement" and inserting "liquidation, termination, or acceleration of one or more swap agreements";

(3) by striking "in connection with any swap agreement" and inserting "in connection with

the termination, liquidation, or acceleration of one or more swap agreements"; and

(4) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

"§561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

"(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

"(1) securities contracts, as defined in section 741(7);

"(2) commodity contracts, as defined in section 761(4);

"(3) forward contracts;

"(4) repurchase agreements;

"(5) swap agreements; or

"(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

"(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

"(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

"(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

"(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

"(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

"(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

"(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.".

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

"§767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)";

(2) in subsection (a)(3)(C), by inserting before the period the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561 of this title)"; and

(3) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,".

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant,";

(2) in sections 362(b)(7) and 546(f), by inserting "or financial participant" after "repo participant" each place such term appears;

(3) in section 546(e), by inserting "financial participant," after "financial institution,";

(4) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(5) in section 548(d)(2)(C), by inserting "or financial participant" after "repo participant";

(6) in section 548(d)(2)(D), by inserting "or financial participant" after "swap participant";

(7) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by striking the second sentence and inserting the following: "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice";

(8) in section 556, by inserting ", financial participant," after "commodity broker";

(9) in section 559, by inserting "or financial participant" after "repo participant" each place such term appears; and

(10) in section 560, by inserting "or financial participant" after "swap participant".

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"555. Contractual right to liquidate, terminate, or accelerate a securities contract.

"556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.";

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

"559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

and

(B) by inserting after the item relating to section 752 the following:

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).".

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section.907, the following:

"§562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

"(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

"(1) the date of such rejection; or

"(2) the date or dates of such liquidation, termination, or acceleration.

"(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

"(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

"(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates."; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

"562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.".

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FROM STAY.—

"(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

"(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

"(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.".

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting "101(18)," after "101(3)," each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

"(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

"(B) the holder of a particular claim agrees to a different treatment of that claim;".

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking "a State or local governmental unit" and inserting "any governmental unit".

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "$1,500,000" and inserting "$3,237,000"; and

(B) by striking "80" and inserting "50"; and

(2) in subparagraph (B)(ii)—

(A) by striking "$1,500,000" and inserting "$3,237,000"; and

(B) by striking "80" and inserting "50".

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking "for the taxable year preceding the taxable year" and inserting the following:

"for—

"(i) the taxable year preceding; or

"(ii) each of the 2d and 3d taxable years preceding;

the taxable year".

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking "or" at the end;

(2) in subparagraph (B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.".

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

"(d) A plan may not be modified under this section—

"(1) to increase the amount of any payment due before the plan as modified becomes the plan;

"(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

"(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.".

SEC. 1007. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

"(7A) 'commercial fishing operation' means—

"(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

"(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

"(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;"; and

(2) by inserting after paragraph (19) the following:

"(19A) 'family fisherman' means—

"(A) an individual or individual and spouse engaged in a commercial fishing operation—

"(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

"(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

"(B) a corporation or partnership—

"(i) in which more than 50 percent of the outstanding stock or equity is held by—

"(I) 1 family that conducts the commercial fishing operation; or

"(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

"(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

"(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

"(III) if such corporation issues stock, such stock is not publicly traded;

"(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;".

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting "or family fisherman" after "family farmer".

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

*(1) in the chapter heading, by inserting "**OR FISHERMAN**" after "**FAMILY FARMER**";*

(2) in section 1203, by inserting "or commercial fishing operation" after "farm"; and

(3) in section 1206, by striking "if the property is farmland or farm equipment" and inserting "if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)".

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

"12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income .... 1201".

(e) Applicability.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

"(27A) 'health care business'—

"(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

"(i) the diagnosis or treatment of injury, deformity, or disease; and

"(ii) surgical, drug treatment, psychiatric, or obstetric care; and

"(B) includes—

"(i) any—

"(I) general or specialized hospital;

"(II) ancillary ambulatory, emergency, or surgical treatment facility;

"(III) hospice;

"(IV) home health agency; and

"(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

"(ii) any long-term care facility, including any—

"(I) skilled nursing facility;

"(II) intermediate care facility;

"(III) assisted living facility;

"(IV) home for the aged;

"(V) domiciliary care facility; and

"(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;".

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

"(40A) 'patient' means any person who obtains or receives services from a health care business;

"(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;".

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"§351. Disposal of patient records

"If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

"(1) The trustee shall—

"(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

"(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

"(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit

the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

"(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

"(A) if the records are written, shredding or burning the records; or

"(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.".

(b) Clerical Amendment.—The table of sections for subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"351. Disposal of patient records.".

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by section 445, is amended by adding at the end the following:

"(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

"(A) in disposing of patient records in accordance with section 351; or

"(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and".

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) Ombudsman To Act as Patient Advocate.—

(1) Appointment of ombudsman.—Title 11, United States Code, as amended by section 232, is amended by inserting after section 332 the following:

"§333. Appointment of patient care ombudsman

"(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

"(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

"(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

"(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

"(b) An ombudsman appointed under subsection (a) shall—

"(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

"(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

"(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

"(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

"(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.".

(2) Clerical amendment.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding at the end the following:

"333. Appointment of ombudsman.".

(b) Compensation of Ombudsman.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting "an ombudsman appointed under section 333, or" before "a professional person"; and

(2) in subparagraph (A), by inserting "ombudsman," before "professional person".

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) In General.—Section 704(a) of title 11, United States Code, as amended by sections 102, 219, and 446, is amended by adding at the end the following:

"(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

"(A) is in the vicinity of the health care business that is closing;

"(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

"(C) maintains a reasonable quality of care.".

(b) Conforming Amendment.—Section 1106(a)(1) of title 11, United States Code, as amended by section 446, is amended by striking "and (11)" and inserting "(11), and (12)".

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

"(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI of such Act or title XVIII of such Act.".

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as hereinbefore amended by this Act, is amended—

(1) by striking "In this title—" and inserting "In this title the following definitions shall apply:";

(2) in each paragraph, by inserting "The term" after the paragraph designation;

(3) in paragraph (35)(B), by striking "paragraphs (21B) and (33)(A)" and inserting "paragraphs (23) and (35)";

(4) in each of paragraphs (35A), (38), and (54A), by striking "; and" at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting "who is not a family farmer" after "debtor" the first place it appears; and

(B) by striking "thereto having aggregate" and all that follows through the end of the paragraph and inserting a semicolon;

(6) by striking paragraph (54) and inserting the following:

"(54) The term 'transfer' means—

"(A) the creation of a lien;

"(B) the retention of title as a security interest;

"(C) the foreclosure of a debtor's equity of redemption; or

"(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

"(i) property; or

"(ii) an interest in property;";

(7) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting "522(f)(3)," after "522(d)," each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking "922" and all that follows through "or", and inserting "922, 1201, or".

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "subsection (c) or (d) of"; and

(2) in section 552(b)(1), by striking "product" each place it appears and inserting "products".

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking "attorney's" and inserting "attorneys'".

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting "on a fixed or percentage fee basis," after "hourly basis,".

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting "of the estate" after "property" the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting "subparagraph (A), (B), (C), (D), or (E) of" before "paragraph (3)".

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523, and of title 11, United States Code, as amended by sections 215 and 314, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);

(2) in subsection (a)(9), by striking "motor vehicle" and inserting "motor vehicle, vessel, or aircraft"; and

(3) in subsection (e), by striking "a insured" and inserting "an insured".

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking "section 523" and all that follows through "or that" and inserting "section 523, 1228(a)(1), or 1328(a)(1), or that".

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting "student" before "grant" the second place it appears; and

(2) in paragraph (2), by striking "the program operated under part B, D, or E of" and inserting "any program operated under".

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting "365 or" before "542".

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking "subsection (c)" and inserting "subsections (c) and (i)"; and

(2) by adding at the end the following:

"(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.".

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting "an interest in" after "transfer of" each place it appears;

(2) by striking "such property" and inserting "such real property"; and

(3) by striking "the interest" and inserting "such interest".

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking "1009,".

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting "1123(d)," after "1123(b),".

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking "made under this subsection" and inserting "made under subsection (c)"; and

(2) by striking "This subsection" and inserting "Subsection (c) and this subsection".

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting "(1) the term" before "'bankruptcy"; and

(B) by striking the period at the end and inserting "; and"; and

(2) in the second undesignated paragraph—

(A) by inserting "(2) the term" before "'document"; and

(B) by striking "this title" and inserting "title 11".

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking "only" and all that follows through the end of the subsection and inserting "only—

"(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

"(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.".

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 321, and 331, is amended by adding at the end the following:

"(17) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

"(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.".

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "20" and inserting "30".

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the "Bankruptcy Judgeship Act of 2002".

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the southern district of Georgia.

(F) Three additional bankruptcy judges for the district of Maryland.

(G) One additional bankruptcy judge for the eastern district of Michigan.

(H) One additional bankruptcy judge for the southern district of Mississippi.

(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the northern district of New York.

(L) One additional bankruptcy judge for the southern district of New York.

(M) One additional bankruptcy judge for the eastern district of North Carolina.

(N) One additional bankruptcy judge for the eastern district of Pennsylvania.

(O) One additional bankruptcy judge for the middle district of Pennsylvania.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the western district of Tennessee.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—

(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and *(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;*

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankrupcy judges referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located."; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking "2" and inserting "3"; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . . 1".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

"(A) by prorating such amount over the remaining duration of the plan; and

"(B) by monthly payments not to exceed the greater of—

"(i) $25; or

"(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan."; and

(2) by adding at the end the following:

"(d) Notwithstanding any other provision of this title—

"(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

"(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).".

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;".

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

"(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

"(A) not later than 45 days after the date of receipt of such goods by the debtor; or

"(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

"(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).".

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

"(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.".

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding at the end the following:

"(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

"(A) the tangible personal property is in the possession of the pledgee or transferee;

"(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

"(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or".

SEC. 1231. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following:

"(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.".

(b) Expenses of Standing Trustees.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

"(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

"(4) The Attorney General shall prescribe procedures to implement this subsection.".

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

"The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.".

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) Appeals.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking "Subject to subsection (b)," and inserting "Subject to subsections (b) and (d)(2),"; and

(2) in subsection (d)—

(A) by inserting "(1)" after "(d)"; and

(B) by adding at the end the following:

"(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

"(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

"(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

"(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

"(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

"(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

"(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

"(C) The parties may supplement the certification with a short statement of the basis for the certification.

"(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

"(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.".

(b) Procedural Rules.—

(1) Temporary Application.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) Certification.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) Procedure.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate;

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) Filing of Petition With Attachment.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) References in Rule 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) Application of Rules.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) Amendments.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting "as to liability or amount" after "bona fide dispute"; and

(B) striking "if such claims" and inserting "if such noncontingent, undisputed claims"; and

(2) in subsection (h)(1), by inserting "as to liability or amount" before the semicolon at the end.

(b) Effective Date; Application of Amendments.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

"(14B) incurred to pay fines or penalties imposed under Federal election law;".

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) Minimum Payment Disclosures.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(11)(A) In the case of an open end credit plan that requires a minimun monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2 % minimum monthly payment on a balance of $1,000 at an interest rate of 17 % would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: .' (the blank space to be filled in by the creditor).

"(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: .' (the blank space to be filled in by the creditor).

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: .' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

"(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

"(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

"(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

"(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act, with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

"(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

"(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

"(H) The Board shall—

"(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

"(ii) establish the table required under clause (i) by assuming—

"(I) a significant number of different annual percentage rates;

"(II) a significant number of different account balances;

"(III) a significant number of different minimum payment amounts; and

"(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

"(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

"(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

"(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

"(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you .pay and the time it takes to repay your balance. For more information, call this toll-free number: ________.' (the blank space to be filled in by the creditor).".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the "Board") shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking "CONSULTATION OF TAX ADVISER.—A statement that the" and inserting the following: "TAX DEDUCTIBILITY.—A statement that—

"(A) the"; and

(B) by striking the period at the end and inserting the following: "; and

"(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.".

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking "If any" and inserting the following:

"(1) IN GENERAL.—If any"; and

(B) by adding at the end the following:

"(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

"(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges."; and

(B) in subsection (b), by adding at the end the following:

"(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.".

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

"(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling

of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

"(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

"(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

"(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

"(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

"(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

"(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

"(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

"(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

"(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(D) DEFINITIONS.—In this paragraph—

"(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

"(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

"(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. :304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(7) INTERNET-BASED SOLICITATIONS.—

"(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

"(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

"(ii) the information described in paragraph (6).

"(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

"(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

"(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

"(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

"(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as

in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term "clear and conspicuous", as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) LIMITATIONS ON HOMESTEAD EXEMPTION.—The amendments made by sections 308 and 322 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY J. HYDE,
GEORGE W. GEKAS,
LAMAR SMITH,
STEVE CHABOT,
BOB BARR,
RICK BOUCHER,

From the Committee on Financial Services, for consideration of secs. 901–906, 907A–909, 911, and 1301–1309 of the House bill, and secs. 901–906, 907A–909, 911, 913–4, and title XIII of the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
SPENCER BACHUS,

From the Committee on Energy and Commerce, for consideration of title XIV of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JOE BARTON,

From the Committee on Education and the Workforce, for consideration of sec. 1403 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
Managers on the Part of the House.

PATRICK LEAHY,
JOE BIDEN,
CHARLES SCHUMER,
ORRIN HATCH,
CHUCK GRASSLEY,
JON KYL,
MIKE DEWINE,
JEFF SESSIONS,
MITCH MCCONNELL,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

Sec. 1. Short Title; References; Table of Contents

The short title of this measure is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002.

TITLE 1-NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion

Section 101 is identical to section 101 of the House bill and the Senate amendment. Under current law, section 706(c) of the Bankruptcy Code provides that a court may not convert a chapter 7 case unless the debtor requests such conversion. Section 101 of the conference report amends this provision to allow a chapter 7 case to be converted to a case under chapter 12 or chapter 13 on request or consent of the debtor.

Sec. 102. Dismissal or Conversion

Section 102 of the conference report reflects a compromise between section 102 of the House bill and the Senate amendment, although many of the components of this provision are derived from identical counterparts in the House bill and the Senate amendment.

This provision implements the conference report's principal consumer bankruptcy reforms: needs-based debt relief. Under section 707(b) of the Bankruptcy Code, a chapter 7 case filed by a debtor who is an individual may be dismissed for substantial abuse only on motion of the court or the United States Trustee. It specifically prohibits such dismissal at the suggestion of any party in interest.

Section 102 of the conference report revises current law in several significant respects. First, it amends section 707(b) of the Bankruptcy Code to permit—in addition to the court and the United States trustee—a trustee, bankruptcy administrator, or a party in interest to seek dismissal or conversion of a chapter 7 case to one under chapter 11 or 13 on consent of the debtor, under certain circumstances. In addition, section 102 of the conference report changes the current standard for dismissal from "substantial abuse" to "abuse". Section 102 of the conference report further amends Bankruptcy Code section 707(b) to mandate a presumption of abuse if the debtor's current monthly income (reduced by certain specified amounts) when multiplied by 60 is not less than the lesser of 25 percent of the debtor's nonpriority unsecured claims or $6,000 (whichever is greater), or $10,000.

To determine whether the presumption of abuse applies under section 707(b) of the Bankruptcy Code, section 102(a) of the conference report specifies certain monthly expense amounts that are to be deducted from the debtor's "current monthly income" (a defined term). The House bill and the Senate amendment contain similar, but not identical provisions with respect to these expenses. Section 102(a) incorporates those provisions that are identical in both bills. These include the following expense items:

the applicable monthly expenses for the debtor as well as for the debtor's dependents and spouse in a joint case (if the spouse is not otherwise a dependent) specified under the Internal Revenue Service's National Standards (with provision for an additional 5 percent for food and clothing if the debtor can demonstrate that such additional amount is reasonable and necessary) and the IRS Local Standards;

the actual monthly expenses for the debtor, the debtor's dependents, and the debtor's spouse in a joint case (if the spouse is not otherwise a dependent) for the categories specified by the Internal Revenue Service as Other Necessary Expenses;

reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as specified in section 309 of the Family Violence Prevention and Services Act or other applicable federal law, with provision for the confidentiality of these expenses;

the debtor's average monthly payments on account of secured debts and priority claims as explained below; and if the debtor is eligible to be a debtor under chapter 13, the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

With respect to secured debts, Section 102(a)(2)(C) of the conference report specifies that the debtor's average monthly payments on account of secured debts is calculated as the sum of the following divided by 60: (1) all amounts scheduled as contractually due to secured creditors for each month of the 60-month period following filing of the case; and (2) any additional payments necessary, in filing a plan under chapter 13, to maintain possession of the debtor's primary residence, motor vehicle or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

With respect to priority claims, section 102(a)(2)(C) of the conference report specifies that the debtor's expenses for payment of such claims (including child support and alimony claims) is calculated as the total of such debts divided by 60. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

Although the House bill and the Senate amendment contain identical provisions permitting a debtor, if applicable, to deduct from current monthly income the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (providing such individual is unable to pay for these expenses), the bills differ with respect to their respective definitions of "immediate family". The conference report adopts the Senate amendment's position that the term includes, in addition to other specified entities, the debtor's children and grandchildren.

Likewise, both the House bill and the Senate amendment permit the debtor to deduct the actual expenses for each dependent child of a debtor to attend a private or public elementary or secondary school of up to $1,500 per child if the debtor: (1) documents such expenses, and (2) provides a detailed explanation of why such expenses are reasonable and necessary. The conference report adopts the Senate amendment's additional requirement that the debtor explain why such expenses are not already accounted for under any of the Internal Revenue Service National and Local Standards, and Other Expenses categories as identified in section 707(b)(2)(I), as amended.

In addition, the conference report adopts the Senate amendment provision permitting a debtor to claim additional housing and utilities allowances based on the debtor's actual home energy expenses if the debtor documents such expenses and demonstrates that they are reasonable and necessary. The House bill has no comparable provision.

While the conference report replaces the current law's presumption in favor of granting relief requested by a chapter 7 debtor with a presumption of abuse (if applicable under the income and expense analysis previously described), this presumption may be rebutted only under certain circumstances. Section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to provide that the presumption of abuse may be rebutted only if: (1) the debtor demonstrates special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative; and (2) the additional expenses or adjustments cause the product of the debtor's current monthly income (reduced by the specified expenses) when multiplied by 60 to be less than the lesser of 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater); or $10,000. In addition, the debtor must itemize and document each additional expense or income adjustment as well as provide a detailed explanation of the special circumstances that make such expense or adjustment necessary and reasonable. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expense or adjustment is required. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

To implement these needs-based reforms, the conference report, in section 102(a)(2)(C), requires the debtor to file, as part of the schedules of current income and current expenditures, a statement of current monthly income. This statement must show: (1) the calculations that determine whether a presumption of abuse arises under section 707(b) (as amended), and (2) how each amount is calculated. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

In a case where the presumption of abuse does not apply or has been rebutted, section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to require a court to consider whether: (1) the debtor filed the chapter 7 case in bad faith; or (2) the totality of the circumstances of the debtor's financial situation demonstrates abuse, including whether the debtor wants to reject a personal services contract and the debtor's financial need for such rejection. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

Under section 102(a)(2)(C) of the conference report, a court may on its own initiative or on motion of a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure, order a debtor's attorney to reimburse the trustee for all reasonable costs incurred in prosecuting a section 707(b) motion if: (1) a trustee files such motion; (2) the motion is granted; and (3) the court finds that the action of the debtor's attorney in filing the case under chapter 7 violated rule 9011. If the court determines that the debtor's attorney violated rule 9011, it may on its own initiative or on motion of a party in interest in accordance with such rule, order the assessment of an appropriate civil penalty against debtor's counsel and the payment of such penalty to the trustee, United States trustee, or bankruptcy administrator. This provision represents a compromise among House and Senate conferees. It differs from its antecedents in section 102(a)(2)(C) of the House bill and the Senate amendment in that it changes the mandatory standard to a discretionary standard and clarifies that a motion for costs or the imposition of a civil penalty must be made by a party in interest or by the court itself in accordance with rule 9011.

Section 102(a)(2)(C) of the conference report provides that the signature of an attorney on a petition, pleading or written motion shall constitute a certification that the attorney has: (1) performed a reasonable investigation into the circumstances that gave rise to such document; and (2) determined that such document is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under section 707(b)(1). In addition, such attorney's signature on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

Section 102(a)(2)(C) of the conference report amends section 707(b) of the Bankruptcy Code to permit a court on its own initiative or a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure to award reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee, United States trustee or bankruptcy administrator) if the court: (i) does not grant the section 707(b) motion; and (ii) finds that either the movant violated rule 9011, or the attorney (if any) who filed the motion did not comply with subparagraph (4)(C) and the section 707(b) motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed under the Bankruptcy Code to such debtor. An exception applies with respect to a movant that is a "small business" with a claim in an aggregate amount of less than $1,000. A small business, for purposes of this provision, is defined as an unincorporated business, partnership, corporation, association or organization with less than 25 full-time employees that is engaged in commercial or business activity. The number of employees of a wholly owned subsidiary includes the employees of the parent and any other subsidiary corporation of the parent. Section 102(a)(2)(C) represents a compromise among House and Senate conferees. It differs from its antecedents in section 102(a)(2)(C) of the House bill and the Senate amendment in that it changes the mandatory standard to a discretionary standard and clarifies that the motion for costs must be made by a party in interest or by the court. The use of the phraseology in this provision, "in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure", is intended to indicate that the procedures for the motion of a party in interest or a court acting on its own initiative are the procedures outlined in rule 9011(c).

The conference report includes two "safe harbors" with respect to its needs-based reforms. Section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to allow only a judge, United States trustee, or bankruptcy administrator to file a section 707(b) motion (based on the debtor's ability to repay, bad faith, or the totality of the circumstances) if the chapter 7 debtor's current monthly income (or in a joint case, the income of the debtor and the debtor's spouse) falls below the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. This provision is substantively identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

The conference report's second safe harbor only pertains to a motion under section 707(b)(2), that is, a motion to dismiss based on a debtor's ability to repay. Section 102(a)(2)(C) represents a compromise between the House and the Senate positions. The House provision prohibits a judge, United States trustee, trustee, bankruptcy administrator or other party in interest from filing such motion if the debtor's income falls below the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. The Senate amendment takes into consideration the spouse's income only in a joint case.

Section 102(a)(2)(C) of the conference report does not consider the nonfiling spouse's income if the debtor and the debtor's spouse are separated under applicable nonbankruptcy law, or the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading section 707(b)(2). The debtor must file a statement under penalty of perjury specifying that he or she meets one of these criteria. In addition, the statement must disclose the aggregate (or best estimate) of the amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

Section 102(b) of the conference report amends section 101 of the Bankruptcy Code to define "current monthly income" as the average monthly income that the debtor receives (or in a joint case, the debtor and debtor's spouse receive) from all sources, without regard to whether it is taxable income, in a specified six-month period preceding the filing of the bankruptcy case. The conference report adopts the Senate amendment's provision specifying that the six-month period is determined as ending on the last day of the calendar month immediately preceding the filing of the bankruptcy case, if the debtor files the statement of current income required by Bankruptcy Code section 521. If the debtor does not file such schedule, the court determines the date on which current income is calculated.

The term, "current monthly income", pursuant to section 102(b) of the conference report, includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse if not otherwise a dependent) on a regular basis for the household expenses of the debtor or the debtor's dependents (and, the debtor's spouse in a joint case, if not otherwise a dependent). It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes. In addition, the conference report provides that current monthly income does not include payments to victims of international or domestic terrorism as defined in section 2331 of title 18 of the United States Code on account of their status as victims of such terrorism. This provision with respect to victims of terrorism reflects a compromise among the conferees. It has no counterpart in either the House bill or the Senate amendment.

Section 102(c) of the conference report is substantively similar in part to its House and the Senate counterparts. The provision amends section 704 of the Bankruptcy Code to require the United States trustee or bankruptcy administrator in a chapter 7 case where the debtor is an individual to: (1) review all materials filed by the debtor; and (2) file a statement with the court (within 10 days following the meeting of creditors held pursuant to section 341 of the Bankruptcy Code) as to whether or not the debtor's case should be presumed to be an abuse under section 707(b). The court must provide a copy of such statement to all creditors within 5 days after its filing. Within 30 days of the filing of such statement, the United States trustee or bankruptcy administrator must file either: (1) a motion under section 707(b); or (2) a statement setting forth the reasons why such motion is not appropriate in any case where the debtor's filing should be presumed to be an abuse and the debtor's current monthly income exceeds certain thresholds. Section 102(c) of the conference report does not include a provision contained in the House bill and Senate amendment that permits a United States trustee or bankruptcy administrator to decline to file a section 707(b)(2) motion (pertaining to the debtor's ability to repay) under certain circumstances.

In a chapter 7 case where the presumption of abuse applies under section 707(b), section 102(d) of the conference report amends Bankruptcy Code section 342 to require the clerk to provide written notice to all creditors within ten days after commencement of the case stating that the presumption of abuse applies in such case. This provision is substantively identical to section 102(d) of the House bill and the Senate amendment.

Section 102(e) of the conference report provides that nothing in the Bankruptcy Code limits the ability of a creditor to give information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator, or trustee. This provision is substantively identical to section 102(e) of the House bill and the Senate amendment.

Section 102(f) of the conference report adds a provision to Bankruptcy Code section 707 to permit the court to dismiss a chapter 7 case filed by a debtor who is an individual on motion by a victim of a crime of violence (as defined in section 16 of title 18 of the United States Code) or a drug trafficking crime (as defined in section 924(c)(2) of title 18 of the United States Code). The case may be dismissed if the debtor was convicted of such crime and dismissal is in the best interest of the victims, unless the debtor establishes by a preponderance of the evidence that the filing of the case is necessary to satisfy a claim for a domestic support obligation. This provision is substantively identical to section 102(f) of the House bill and the Senate amendment.

Section 102(g) of the conference report amends section 1325(a) of the Bankruptcy Code to require the court, as a condition of confirming a chapter 13 plan, to find that the debtor's action in filing the case was in good faith. This provision is substantively identical to section 102(g) of the House bill and the Senate amendment.

Section 102(h) of the conference report amends section 1325(b)(1) of the Bankruptcy Code to specify that the court must find, in confirming a chapter 13 plan to which there has been an objection, that the debtor's disposable income will be paid to unsecured creditors. It also amends section 1325(b)(2)'s definition of disposable income. As defined under this provision, the term means income received by the debtor (other than child support payments, foster care payments, or certain disability payments for a dependent child) less amounts reasonably necessary to be expended for: (1) the maintenance or support of the debtor or the debtor's dependent; (2) a domestic support obligation that first becomes due after the case is filed; (3) charitable contributions (as defined in section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount that does not exceed 15 percent of the debtor's gross income for the year in which the contributions are made; and (4) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of the business. As amended, section 1325(b)(3) provides that the amounts reasonably necessary to be expended under section 1325(b)(2) are determined in accordance with section 707(b)(2)(A) and (B) if the debtor's income exceeds certain monetary thresholds. This provision is substantively identical to section 102(h) of the House bill and the Senate amendment.

Section 102(i) of the conference report adopts the Senate's position in section 102(i) of the Senate amendment, which has no counterpart in the House bill. Section 102(i) amends Bankruptcy Code section 1329(a) to require the amounts paid under a confirmed chapter 13 plan to be reduced by the actual amount expended by the debtor to purchase health insurance for the debtor and the debtor's dependents (if those dependents do not otherwise have such insurance) if the debtor documents the cost of such insurance and demonstrates such expense is reasonable and necessary, and the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b). If the debtor previously paid for health insurance, the debtor must demonstrate that the amount is not materially greater than the amount the debtor previously paid. If the debtor did not previously have such insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor having similar characteristics. Upon request of any party in interest, the debtor must file proof that a health insurance policy was purchased.

Section 102(j) of the conference report represents a compromise between the House and Senate conferees and has no antecedent in either the House bill or Senate amendment. The provision amends section 104 of the Bankruptcy Code to provide for the periodic adjustment of monetary amounts specified in sections 707(b) and 1325(b)(3) of the Bankruptcy Code, as amended by this Act.

Section 102(k) adds to section 101 of the Bankruptcy Code a definition of "median family income." This provision represents a compromise between the House and Senate conferees and has no antecedent in either the House bill or Senate amendment.

Sec. 103. Sense of Congress and study

Section 103(a) of the conference report expresses the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service expense standards to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of the Bankruptcy Code, as amended. Section 103(b) requires the Executive Office for United States Trustees to submit a report within 2 years from the date of the Act's enactment regarding the utilization of the Internal Revenue Service guidelines for determining the current monthly expenses of a debtor under section 707(b) and the impact that the application of these standards has had on debtors and the bankruptcy courts. The report may include recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantially identical to section 103 of the House bill and the Senate amendment.

Sec. 104. Notice of alternatives

Section 104 of the conference report amends section 342(b) of the Bankruptcy Code to require the clerk, before the commencement of a bankruptcy case by an individual whose debts are primarily consumer debts, to supply such individual with a written notice containing: (1) a brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of these chapters; (2) the types of services available from credit counseling agencies; (3) a statement advising that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and (4) a statement warning that all information supplied by a debtor in connection with the case is subject to examination by the Attorney General. This provision is substantially identical to section 104 of the House bill and the Senate amendment.

Sec. 105. Debtor financial management training test program

Section 105 of the conference report requires the Director of the Executive Office for United States Trustees to: (1) consult with a wide range of debtor education experts who operate financial management education programs; and (2) develop a financial management training curriculum and materials that can be used to teach individual debtors how to manage their finances better. The Director must select six judicial districts to test the effectiveness of the financial management training curriculum and materials for an 18-month period beginning not later than 270 days after the Act's enactment date. For these six districts, the curricula and materials must be used as the instructional personal financial management course required under Bankruptcy Code section 111. Over the period of the study, the Director must evaluate the effectiveness of: (1) the curriculum and materials; and (2) a sample of existing consumer education programs (such as those described in the Report of the National Bankruptcy Review Commission) that are representative of consumer education programs sponsored by the credit industry, chapter 13 trustees, and consumer counseling groups. Not later than three months after concluding such evaluation, the Director must submit to Congress a report with findings regarding the effectiveness and cost of the curricula, materials, and programs. This provision is substantially identical to section 105 of the House bill and the Senate amendment.

Sec. 106. Credit counseling

Section 106(a) of the conference report amends section 109 of the Bankruptcy Code to require an individual—as a condition of eligibility for bankruptcy relief—to receive credit counseling within the 180-day period preceding the filing of a bankruptcy case by such individual. The credit counseling must be provided by an approved nonprofit budget and credit counseling agency consisting of either an individual or group briefing (which may be conducted telephonically or via the Internet) that outlined opportunities for available credit counseling and assisted the individual in performing a budget analysis. This requirement does not apply to a debtor who resides in a district where the United States trustee or bankruptcy administrator has determined that approved nonprofit budget and credit counseling agencies in that district are not reasonably able to provide adequate services to such individuals. Although such determination must be reviewed annually, the United States trustee or bankruptcy administrator may disapprove a nonprofit budget and credit counseling agency at any time.

A debtor may be temporarily exempted from this requirement if he or she submits to the court a certification that: (1) describes exigent circumstances meriting a waiver of this requirement; (2) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain such services within the five-day period beginning on the date the debtor made the request; and (3) is satisfactory to the court. This exemption terminates when the debtor meets the requirements for credit counseling participation, but not longer than 30 days after the case is filed, unless the court, for cause, extends this period up to an additional 15 days. This provision is substantively identical to section 106(a) of the House bill and the Senate amendment.

Section 106(b) of the conference report amends section 727(a) of the Bankruptcy Code to deny a discharge to a chapter 7 debtor who fails to complete a personal financial management instructional course. This provision, however, does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator. This provision is substantively identical to section 106(b) of the House bill and the Senate amendment.

Section 106(c) of the conference report amends section 1328 of the Bankruptcy Code to deny a discharge to a chapter 13 debtor who fails to complete a personal financial management instructional course. This requirement does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator. This provision is substantively identical to section 106(c) of the House bill and the Senate amendment.

Section 106(d) of the conference report amends section 521 of the Bankruptcy Code to require a debtor who is an individual to file with the court: (1) a certificate from an approved nonprofit budget and credit counseling agency describing the services it provided the debtor pursuant to section 109(h); and (2) a copy of the repayment plan, if any, that was developed by the agency pursuant to section 109(h). This provision is substantively identical to section 106(d) of the House bill and the Senate amendment.

Section 106(e) of the conference report is substantively identical to section 106(e) of the House bill and the Senate amendment. It adds section 111 to the Bankruptcy Code requiring the clerk to maintain a publicly available list of approved: (1) credit counseling agencies that provide the services described in section 109(h) of the Bankruptcy Code; and (2) personal financial management instructional courses. Section 106(e) further provides that the United States trustee or bankruptcy administrator may only approve an agency or course provider under this provision pursuant to certain specified criteria. If such agency or provider course is approved, the approval may only be for a probationary period of up to six months. At the conclusion of the probationary period, the United States trustee or bankruptcy administrator may only approve such agency or instructional course for an additional one-year period and, thereafter for successive one-year periods, which has demonstrated during such period that it met the standards set forth in this provision and can satisfy such standards in the future.

Within 30 days after any final decision occurring after the expiration of the initial probationary period or after any subsequent two-year period, an interested person may seek judicial review of such decision in the appropriate United States district court. In addition, the district court, at any time, may investigate the qualifications of a credit counseling agency and request the production of documents to ensure the agency's integrity and effectiveness. The district court may remove a credit counseling agency that does not meet the specified qualifications from the approved list. The United States trustee or bankruptcy administrator must notify the clerk that a credit counseling agency or instructional course is no longer approved and the clerk must remove such entity from the approved list.

Section 106(e) prohibits a credit counseling agency from providing information to a credit reporting agency as to whether an individual debtor has received or sought personal financial management instruction. A credit counseling agency that willfully or negligently fails to comply with any requirement under the Bankruptcy Code with respect to a debtor shall be liable to the debtor for damages in an amount equal to: (1) actual damages sustained by the debtor as a result of the violation; and (2) any court costs or reasonable attorneys' fees incurred in an action to recover such damages.

Section 106(f) of the conference report amends section 362 of the Bankruptcy Code to provide that if a chapter 7, 11, or 13 case is dismissed due to the creation of a debt repayment plan, the presumption that a case was not filed in good faith under section 362(c)(3) shall not apply to any subsequent bankruptcy case commenced by the debtor. It also provides that the court, on request of a party in interest, must issue an order under section 362(c) confirming that the automatic stay has terminated. This provision is substantively identical to section 106(f) of the House bill and the Senate amendment.

Sec. 107. Schedules of reasonable and necessary expenses

For purposes of section 707(b) of the Bankruptcy Code, section 107 of the conference report requires the Director of the Executive Office for United States Trustees to issue schedules of reasonable and necessary administrative expenses (including reasonable attorneys' fees) relating to the administration of a chapter 13 plan for each judicial district not later than 180 days after the date of enactment of the Act. This provision is substantively identical to section 107 of the House bill and the Senate amendment.

TITLE II—ENHANCED CONSUMER PROTECTION

SUBTITLE A—PENALTIES FOR ABUSIVE CREDITOR PRACTICES

Sec. 201. Promotion of alternative dispute resolution

Section 201 of the conference report is substantively identical to section 201 of the House bill and the Senate amendment. Subsection (a) amends section 502 of the Bankruptcy Code to permit the court, after a hearing on motion of the debtor, to reduce a claim based in whole on an unsecured consumer debt by up to 20 percent if: (1) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency on behalf of the debtor; (2) the debtor's offer was made at least 60 days before the filing of the case; (3) the offer provided for payment of at least 60 percent of the debt over a period not exceeding the loan's repayment period or a reasonable extension thereof; and (4) no part of the debt is nondischargeable. The debtor has the burden of proving by clear and convincing evidence that: (1) the creditor unreasonably refused to consider the debtor's proposal; and (2) the proposed alternative repayment schedule was made prior to the expiration of the 60-day period. Section 201(b) amends section 547 of the Bankruptcy Code to prohibit the avoidance as a preferential transfer a payment by a debtor to a creditor pursuant to an alternative repayment plan created by an approved credit counseling agency.

Sec. 202. Effect of discharge

Section 202 of the conference report amends section 524 of the Bankruptcy Code in two respects. First, it provides that the willful failure of a creditor to credit payments received under a confirmed chapter 11, 12, or 13 plan constitutes a violation of the discharge injunction if the creditor's action to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor. This provision does not apply if the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner prescribed by the plan. Second, section 202 amends section 524 of the Bankruptcy Code to provide that the discharge injunction does not apply to a creditor having a claim secured by an interest in real property that is the debtor's principal residence if the creditor communicates with the debtor in the ordinary course of business between the creditor and the debtor and such communication is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of the pursuit of in rem relief to enforce the lien. Section 202 is substantively identical to section 202 of the House bill and the Senate amendment.

Sec. 203. Discouraging abuse of reaffirmation practices

Section 203 of the conference report effectuates a comprehensive overhaul of the law applicable to reaffirmation agreements. It is substantively identical to section 203 of the House bill and the Senate amendment.

Section 203(a) amends section 524 of the Bankruptcy Code to mandate that certain specified disclosures be provided to a debtor at or before the time he or she signs a reaffirmation agreement. These specified disclosures, which are the only disclosures required in connection with a reaffirmation agreement, must be in writing and be made clearly and conspicuously. In addition, the disclosure must include certain advisories and explanations. At the election of the creditor, the disclosure statement may include a repayment schedule. If the debtor is represented by counsel, section 203(a) mandates that the attorney file a certification stating that the agreement represents a fully informed and voluntary agreement by the debtor, that the agreement does not impose an undue hardship on the debtor or any dependent of the debtor, and that the attorney fully advised the debtor of the legal effect and consequences of such agreement as well as of any default thereunder. In those instances where the presumption of undue hardship applies, the attorney must also certify that the debtor is able to make the payments required under the reaffirmation agreement. Further, the debtor must submit a statement setting forth the debtor's monthly income and actual current monthly expenditures. If the debtor is represented by counsel and the debt being reaffirmed is owed to a credit union, a modified version of this statement may be used.

Notwithstanding any other provision of the Bankruptcy Code, section 203(a) permits a creditor to accept payments from a debtor: (1) before and after the filing of a reaffirmation agreement with the court; or (2) pursuant to a reaffirmation agreement that the creditor believes in good faith to be effective. It further provides that the requirements specified in subsections (c)(2) and (k) of section 524 are satisfied if the disclosures required by these provisions are given in good faith.

Where the amount of the scheduled payments due on the reaffirmed debt (as disclosed in the debtor's statement) exceeds the debtor's available income, it is presumed for 60 days from the date on which the reaffirmation agreement is filed with the court that the agreement presents an undue hardship. The court must review such presumption, which can be rebutted by the debtor by a written statement explaining the additional sources of funds that would enable the debtor to make the required payments on the reaffirmed debt. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the reaffirmation agreement. No reaffirmation agreement may be disapproved without notice and hearing to the debtor and creditor. The hearing must be concluded before the entry of the debtor's discharge. The requirements set forth in this paragraph do not apply to reaffirmation agreements if the creditor is a credit union, as defined.

Section 203(b) amends title 18 of the United States Code to require the Attorney General to designate a United States Attorney for each judicial district and to appoint a Federal Bureau of Investigation agent for each field office to have primary law enforcement responsibilities for violations of sections 152 and 157 of title 18 with respect to abusive reaffirmation agreements and materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. In addition, section 203(b) provides that the designated United States Attorney has primary responsibility with respect to bankruptcy investigations under section 3057 of title 18. Section 203(b) further provides that the bankruptcy courts must establish procedures for referring any case in which a materially fraudulent bankruptcy schedule has been filed.

Sec. 204. Preservation of claims and defenses upon sale of predatory loans

Section 204 of the conference report adds a provision to section 363 of the Bankruptcy Code with respect to sales of any interest in a consumer transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations). It provides that the purchaser of such interest through a bankruptcy sale under section 363 remains subject to all claims and defenses that are related to such assets to the same extent as that person would be subject to if the sale was not conducted under section 363. Section 204 of the conference report is derived from section 204 of the Senate amendment. There is no counterpart to this provision in the House bill.

Sec. 205. GAO Study on reaffirmation process

Section 205 of the conference report directs the Comptroller General of the United States to report to Congress on how consumers are treated in connection with the reaffirmation agreement process. This report must include: (1) the policies and activities of creditors with respect to reaffirmation agreements; and (2) whether such consumers are fully, fairly, and consistently informed of their rights under the Bankruptcy Code. The report, which must be completed not later than 18 months after the date of enactment of this Act, may include recommendations for legislation to address any abusive or coercive tactics found in connection with the reaffirmation process. Section 205 is derived from section 205 of the Senate amendment. There is no counterpart to this provision in the House bill.

SUBTITLE B—PRIORITY CHILD SUPPORT

Sec. 211. Definition of domestic support obligation

Section 211 of the conference report amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues pre- or postpetition (including interest that accrues pursuant to applicable nonbankruptcy law) and is owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt must be in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit), without regard to whether such debt is expressly so designated. It must be established or subject to establishment either pre- or postpetition pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt. Section 211 is identical to section 211 of the House bill and the Senate amendment.

Sec. 212. Priorities for claims for domestic support obligations

Section 212 of the conference report amends section 507(a) of the Bankruptcy Code to accord first priority in payment to allowed unsecured claims for domestic support obligations that, as of the petition date, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether such claim is filed by the claimant or by a governmental unit on behalf of such claimant, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Subject to these claims, section 212 accords the same payment priority to allowed unsecured claims for domestic support obligations that, as of the petition date, were assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless the claimant assigned the claim voluntarily for the purpose of collecting the debt), or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Where a trustee administers assets that may be available for payment of domestic support obligations under section 507(a)(1) (as amended), administrative expenses of the trustee allowed under section 503(b)(1)(A), (2) and (6) of the Bankruptcy Code must be paid before such claims to the extent the trustee administers assets that are otherwise available for the payment of these claims. Section 212 is similar to section 212 of the House bill and the Senate amendment. The principal difference is the conference report's provision for the payment of trustee administrative expenses.

Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations

Section 213 is substantively identical to section 213 of the House bill and the Senate amendment. With respect to chapter 11 cases, section 213(1) adds a condition for confirmation of a plan. It amends section 1129(a) of the Bankruptcy Code to provide that if a chapter 11 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all amounts payable under such order or statute that became payable postpetition as a prerequisite for confirmation.

With respect to chapter 12 cases, section 213(2) of the conference report amends section 1208(c) of the Bankruptcy Code to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case. Section 213(3) amends Bankruptcy Code section 1222(a) to permit a chapter 12 debtor to propose a plan that provides for less than full payment of all amounts owed for a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if all of the debtor's projected disposable income for a five-year period is applied to make payments under the plan. Section 213(4) of the conference report amends Bankruptcy Code section 1222(b) to permit a chapter 12 debtor to propose a plan that pays postpetition interest on claims that are nondischargeable under Section 1228(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims in full. Section 213(5) amends Bankruptcy Code section 1225(a) to provide that if a chapter 12 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(6) amends section Bankruptcy Code section 1228(a) to condition the granting of a chapter 12 discharge upon the debtor's payment of certain postpetition domestic support obligations.

With respect to chapter 13 cases, section 213(7) of the conference report amends Bankruptcy Code section 1307(c) to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the debtor's case. Section 213(8) amends Bankruptcy Code section 1322(a) to permit a chapter 13 debtor to propose a plan that pays less than the full amount of a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a five-year period will be applied to make payments under the plan. Section 213(9) amends Bankruptcy Code section 1322(b) to permit a chapter 13 debtor to propose a plan that pays postpetition interest on nondischargeable debts under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment in full of all allowed claims. Section 213(10) amends Bankruptcy Code section 1325(a) to provide that if a chapter 13 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(11) amends Bankruptcy Code section 1328(a) to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Sec. 214. Exceptions to automatic stay in domestic support proceedings

Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to "alimony, maintenance or support" with "domestic support obligations". Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent such proceeding seeks division of property that is property of the estate); and (3) domestic violence. Third, it permits the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order as well as the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be enforced notwithstanding the automatic stay. Section 214 is substantively identical to section 214 of the House bill and the Senate amendment.

Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support

Section 215 of the conference report amends Bankruptcy Code section 523(a)(5) to provide that a "domestic support obligation" (as defined in section 211 of the conference report) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts. Section 215 is substantively identical to section 215 of the House bill and the Senate amendment.

Sec. 216. Continued liability of property

Section 216(1) of the conference report amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and 522(g)(2) of the Bankruptcy Code. Section 216 is substantively identical to section 216 of the House bill and the Senate amendment.

Sec. 217. Protection of domestic support claims against preferential transfer motions

Section 217 of the conference report makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer. This provision is substantively identical to section 217 of the House bill and the Senate amendment.

Sec. 218. Disposable income defined

Section 218 of the conference report amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations. This provision is substantively identical to section 218 of the House bill. Its Senate counterpart included a duplicative amendment to section 1325(b)(2)(A) of the Bankruptcy Code that therefore was deleted from section 218 of the conference report.

Sec. 219. Collection of child support

Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain types of notices to child support claimants and governmental enforcement agencies. This provision is substantively derived from section 219 of the House bill and the Senate amendment. In addition to including a provision from the Senate amendment requiring chapter 12 trustees to give notice of the claim to the claimant, section 219 extends this requirement to chapter 7, 11 and 13 trustees as well. In addition, the conference report conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.

Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency's address and telephone number as well as explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor's last known address from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d) of section 219 of the conference report impose comparable requirements for chapter 11, 12, and 13 trustees.

Sec. 220. Nondischargeability of certain educational benefits and loans

Section 220 of the conference report amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code) is nondischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents. This provision is substantively identical to section 220 of the House bill and the Senate amendment.

SUBTITLE C—OTHER CONSUMER PROTECTIONS

Sec. 221. Amendments to discourage abusive bankruptcy filings

Section 221 of the conference report is substantively identical to section 221 of the House bill and the Senate amendment. It makes a series of amendments to section 110 of the Bankruptcy Code. First, section 221 clarifies that the definition of a bankruptcy petition preparer does not include an attorney for a debtor or an employee of an attorney under the direct supervision of such attorney. Second, it amends subsections (b) and (c) of section 110 to provide that if a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer must sign certain documents filed in connection with the bankruptcy case as well as state the person's name and address on such documents. Third, it requires a bankruptcy petition preparer to give the debtor written notice (as prescribed by the Judicial Conference of the United States) explaining that the preparer is not an attorney and may not practice law or give legal advice. The notice may include examples of legal advice that a preparer may not provide. Such notice must be signed by the preparer under penalty of perjury and the debtor and be filed with any document for filing. Fourth, the petition preparer is prohibited from giving legal advice, including with respect to certain specified items. Fifth, it permits the Supreme Court to promulgate rules or the Judicial Conference of the United States to issue guidelines for setting the maximum fees that a bankruptcy petition preparer may charge for services. Sixth, section 221 requires the preparer to notify the debtor of such maximum fees. Seventh, it specifies that the bankruptcy petition preparer must certify that it complied with this notification requirement. Eighth, it requires the court to order the turnover of any fees in excess of the value of the services rendered by the preparer within the 12-month period preceding the bankruptcy filing. Ninth, section 221 provides that all fees charged by a preparer may be forfeited if the preparer fails to comply with certain requirements specified in Bankruptcy Code section 110, as amended by this provision. Tenth, it allows a debtor to exempt fees recovered under this provision pursuant to Bankruptcy Code section 522(b). Eleventh, it specifically authorizes the court to enjoin a bankruptcy petition preparer who has violated a court order issued under section 110. Twelfth, it generally revises section 110's penalty provisions and specifies that such penalties are to be paid to a special fund of the United States trustee for the purpose of funding the enforcement of section 110 on a national basis. With respect to Bankruptcy Administrator districts, the funds are to be deposited as offsetting receipts pursuant to section 1931 of title 28 of the United States Code.

Sec. 222. Sense of Congress

Section 222 of the conference report expresses the sense of Congress that the states should develop personal finance curricula for use in elementary and secondary schools. This provision is substantively identical to section 222 of the House bill and the Senate amendment.

Sec. 223. Additional amendments to title 11, United States Code

Section 223 of the conference report amends section 507(a) of the Bankruptcy Code to accord a tenth-level priority to claims for death or personal injuries resulting from the debtor's operation of a motor vehicle or vessel while intoxicated. This provision is substantively identical to section 223 of the House bill and the Senate amendment.

Sec. 224. Protection of retirement savings in bankruptcy

Section 224 of the conference report is substantively identical to section 224 of the House bill and the Senate amendment. Subsection (a) amends section 522 of the Bankruptcy Code to permit a debtor to exempt certain retirement funds to the extent those monies are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code and that have received a favorable determination pursuant to Internal Revenue Code section 7805 that is in effect as of the date of the commencement of the case. If the retirement monies are in a retirement fund that has not received a favorable determination, those monies are exempt if the debtor demonstrates that no prior unfavorable determination has been made by a court or the Internal Revenue Service, and the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code. If the retirement fund fails to be in substantial compliance with applicable requirements of the Internal Revenue Code, the debtor may claim the retirement funds as exempt if he or she is not materially responsible for such failure. This section also applies to certain direct transfers and rollover distributions. In addition, this provision ensures that the specified retirement funds are exempt under state as well as federal law.

Section 224(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(b) further provides that this exception may not be used to cause any loan made under a governmental plan under section 414(d) or a contract or account under section 403(b) of the Internal Revenue Code to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(c) amends Bankruptcy Code section 523(a) to except from discharge any amount owed by the debtor to a pension, profit-sharing, stock bonus, or other plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) under a loan authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(c) further provides that this exception to discharge may not be used to cause any loan made under a governmental plan under section 414(d) or a contract or account under section 403(b) of the Internal Revenue Code to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(d) amends Bankruptcy Code section 1322 to provide that a chapter 13 plan may not materially alter the terms of a loan described in section 362(b)(19) and that any amounts required to repay such loan shall not constitute "disposable income" under section 1325 of the Bankruptcy Code.

Section 224(e) amends section 522 of the Bankruptcy Code to impose a $1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor's interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interest of justice.

Sec. 225. Protection of education savings in Bankruptcy

Section 225 of the conference report is substantively identical to section 225 of the House bill and the Senate amendment. Subsection (a) amends section 541 of the Bankruptcy Code to provide that funds placed not later than 365 days before the filing of the bankruptcy case in a education individual retirement account are not property of the estate if certain criteria are met. First, the designated beneficiary of such account must be a child, stepchild, grandchild or stepgrandchild of the debtor for the taxable year during which funds were placed in the account. A legally adopted child or a foster child, under certain circumstances, may also qualify as a designated beneficiary. Second, such funds may not be pledged or promised to an entity in connection with any extension of credit and they may not be excess contributions (as described in section 4973(e) of the Internal Revenue Code). Funds deposited between 720 days and 365 days before the filing date are protected to the extent they do not exceed $5,000. Similar criteria apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed to a qualified state tuition plan under section 529(b)(1)(A) of the Internal Revenue Code. Section 225(b) amends Bankruptcy Code section 521 to require a debtor to file with the court a record of any interest that the debtor has in an education individual retirement account or qualified state tuition program.

Sec. 226. Definitions

Section 226 of the conference report is substantively identical to section 226 of the House bill and the Senate amendment. Subsection (a) amends section 101 of the Bankruptcy Code to add certain definitions with respect to debt relief agencies. Section 226(a)(1) defines an "assisted person" as a person whose debts consist primarily of consumer debts and whose nonexempt assets are less than $150,000. Section 226(a)(2) defines "bankruptcy assistance" as any goods or services sold or otherwise provided with the express or implied purpose of giving information, advice, or counsel; preparing documents for filing; or attending a meeting of creditors pursuant to section 341; appearing in a proceeding on behalf of a person; or providing legal representation in a case or proceeding under the Bankruptcy Code. Section 226(a)(3) defines a "debt relief agency" as any person (including a bankruptcy petition preparer) who provides bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration. The definition specifically excludes certain entities. First, it does not apply to a nonprofit organization exemption from taxation under section 501(c)(3) of the Internal Revenue Code. Second, it is inapplicable to a creditor who assisted such person to the extent the assistance pertained to the restructuring of any debt owed by the person to the creditor. Third, the definition does not apply to a depository institution (as defined in section 3 of the Federal Deposit Insurance Act), or any federal or state credit union (as defined in section 101 of the Federal Credit Union Act), as well as any affiliate or subsidiary of such depository institution or credit union. Fourth, an author, publisher, distributor, or seller of works subject to copyright protection under title 17 of the United States Code when acting in such capacity are not within the ambit of this definition. Section 226(b) amends section 104(B)(1) of the Bankruptcy Code to permit the monetary amount set forth in the definition of an "assisted person" to be automatically adjusted to reflect the change in the Consumer Price Index.

Sec. 227. Restrictions on debt relief agencies

Section 227 of the conference report is substantively identical to section 227 of the House bill and the Senate amendment. This provision creates a new provision in the Bankruptcy Code intended to proscribe certain activities of a debt relief agency. It prohibits such agency from: (1) failing to perform any service that it informed an assisted person it would provide; (2) advising an assisted person to make an untrue and misleading statement (or that upon the exercise of reasonable case, should have been known to be untrue or misleading) in a document filed in a bankruptcy case; (3) misrepresenting the services it provides and the benefits that an assisted person may receive as a result of bankruptcy; and (4) advising an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the bankruptcy case. Any waiver by an assisted person of the protections under this provision are unenforceable, except against a debt relief agency.

In addition, section 227 imposes penalties for the violation of section 526, 527 or 528 of the Bankruptcy Code. First, any contract between a debt relief agency and an assisted person that does not comply with these provisions is void and may not be enforced by any state or federal court or by any person, except an assisted person. Second, a debt relief agency is liable to an assisted person, under certain circumstances, for any fees or charges paid by such person to the agency, actual damages, and reasonable attorneys' fees and costs. The chief law enforcement officer of a state who has reason to believe that a person has violated or is violating section 526 may seek to have such violation enjoined and recover actual damages. Third, section 227 provides that the United States district court has concurrent jurisdiction of certain actions under section 526. Fourth, section 227 provides that sections 526, 527 and 528 preempt inconsistent state law. In addition, it provides that these provisions do not limit or curtail the authority of a federal court, a state, or a subdivision or instrumentality of a state, to determine and enforce qualifications for the practice of law before the federal court or under the laws of that state.

Sec. 228. Disclosures

Section 228 of the conference report requires a debt relief agency to provide certain specified written notices to an assisted person. These include the notice required under section 342(b)(1) (as amended by this Act) as well as a notice advising that: (1) all information the assisted person provides in connection with the case must be complete, accurate and truthful; (2) all assets and liabilities must be completely and accurately disclosed in the documents filed to commence the case, including the replacement value of each asset (if required) after reasonable inquiry to establish such value; (3) current monthly income, monthly expenses and, in a chapter 13 case, disposable income, must be stated after reasonable inquiry; and (4) the information an assisted person provides may be audited and that the failure to provide such information may result in dismissal of the case or other sanction including, in some instances, criminal sanctions. In addition, the agency must supply certain specified advisories and explanations regarding the bankruptcy process. Further, this provision requires the agency to advise an assisted person (to the extent permitted under nonbankruptcy law) concerning asset valuation, the calculation of disposable income, and the determination of exempt property. Section 228 of the conference report is substantively identical to section 228 of the House bill and the Senate amendment.

Sec. 229. Requirements for debt relief agencies

Section 229 adds a new provision to the Bankruptcy Code requiring a debt relief agency—not later than five business days after the first date on which it provides any bankruptcy assistance services to an assisted person (but prior to such assisted person's bankruptcy petition being filed)—to execute a written contract with the assisted person. The contract must specify clearly and conspicuously the services the agency will provide, the basis on which fees will be charged for such services, and the terms of payment. The assisted person must be given a copy of the fully executed and completed contract in a form the person can retain. The debt relief agency must include certain specified mandatory statements in any advertisement of bankruptcy assistance services or regarding the benefits of bankruptcy that is directed to the general public whether through the general media, seminars, specific mailings, telephonic or electronic messages, or otherwise. Section 229 of the conference report is substantively identical to section 229 of the House bill and the Senate amendment.

Sec. 230. GAO study

Section 230 of the conference report directs the Comptroller General of the United States to study and prepare a report on the feasibility, efficacy and cost of requiring trustees to supply certain specified information about a debtor's bankruptcy case to the Office of Child Support Enforcement for the purpose of determining whether a debtor has outstanding child support obligations. This provision is substantively identical to section 230 of the House bill and the Senate amendment.

Sec. 231. Protection of personally identifiable information

Section 231 of the conference report largely reflects section 231 of the Senate amendment. It differs from its Senate antecedent in that it clarifies that it applies to personally identifiable information and does not preempt applicable nonbankruptcy law. In addition, the provision specifies that court approval must be preceded by the appointment of a privacy ombudsman to effectuate the intent of this provision. There is no counterpart to Section 231 in the House bill.

Subsection (a) amends Bankruptcy Code section 363(b)(1) to provide that if a debtor, in connection with offering a product or service, discloses to an individual a policy prohibiting the transfer of personally identifiable information to persons unaffiliated with the debtor, and the policy is in effect at the time of the bankruptcy filing, then the trustee may not sell or lease such information unless either of the following conditions is satisfied: (1) the sale is consistent with such policy; or (2) the court, after appointment of a consumer privacy ombudsman (pursuant to section 332 of the Bankruptcy Code, as amended) and notice and hearing, the court approves the sale or lease upon due consideration of the facts, circumstances, and conditions of the sale or lease.

Section 231(b) amends Bankruptcy Code section 101 to add a definition of "personally identifiable information." The term applies to information provided by an individual to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. It includes the individual's: (1) first name or initial and last name (whether given at birth or adoption or legally changed); (2) physical home address; (3) electronic address, including an e-mail address; (4) home telephone number; (5) Social Security number; or (vi) credit card account number. The term also includes information if it is identified in connection with the above items: (1) an individual's birth date, birth or adoption certificate number, or place of birth; or (2) any other information concerning an identified individual that, if disclosed, will result in the physical or electronic contacting or identification of that person.

Sec. 232. Consumer privacy ombudsman

Section 232 implements the preceding provision of the conference report with respect to the appointment and responsibilities of a consumer privacy ombudsman. It provides that if a hearing is required under section 363(b)(1)(B) (as amended), the court must order the United States trustee to appoint a disinterested person to serve as the consumer privacy ombudsman and to provide timely notice of the hearing to such person. It permits the ombudsman to appear and be heard at such hearing. The ombudsman must provide the court with information to assist its consideration of the facts, circumstances and conditions of the proposed sale or lease of personally identifiable information. The information may include a presentation of the debtor's privacy policy, potential losses or gains of privacy to consumers if the sale or lease is approved, potential costs or benefits to consumers if the sale or lease is approved, and possible alternatives that would mitigate potential privacy losses or costs to consumers. Section 232 prohibits the ombudsman from disclosing any personally identifiable information obtained in the case by such individual. In addition, the provision amends Bankruptcy Code section 330(a)(1) to permit an ombudsman to be compensated.

This provision largely reflects section 232 of the Senate amendment. There is no counterpart to section 232 in the House bill. The conference report redrafts the Senate provision to be an amendment to the Bankruptcy

Code rather than freestanding text, deletes the 30-day provision as being deemed to be unnecessary; restructures the provision to better integrate its components; and clarifies that the court must direct the United States trustee to appoint the ombudsman, rather than the court making such appointment itself.

Sec. 233. Prohibition on disclosure of name of minor children

Section 233 of the conference report adds a new provision to the Bankruptcy Code (section 112) specifying that a debtor may be required to provide information regarding his or her minor child in connection with the bankruptcy case, but such debtor may not be required to disclose in the public records the child's name. It provides, however, that the debtor may be required to disclose this information in a nonpublic record maintained by the court, which must be available for inspection by the United States trustee, trustee or an auditor, if any. Section 233 prohibits the court, United States trustee, trustee, or auditor from disclosing such minor child's name. Section 233 of the conference report generally reflects section 233 of the Senate amendment. The conference report clarifies that the prohibition against disclosure pertains to the minor child's name. Section 231 of the House bill is similar, but does not include the provision giving the court, United States trustee, trustee or audit access to the proscribed information.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start

Section 301 of the conference report makes a clarifying amendment to section 523(a)(17) of the Bankruptcy Code concerning the dischargeability of court fees incurred by prisoners. Section 523(a)(17) was added to the Bankruptcy Code by the Omnibus Consolidated Rescissions and Appropriations Act of 1996[1] to except from discharge the filing fees and related costs and expenses assessed by a court in a civil case or appeal. As the result of a drafting error, however, this provision might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely by those who are prisoners. The amendment eliminates this ambiguity and makes other conforming changes to narrow its application in accordance with its original intent. This provision is substantively identical to section 301 of the House bill and the Senate amendment.

Sec. 302. Discouraging bad faith repeat filings

Section 302 of the conference report amends section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period. The provision does not apply to a case refiled under a chapter other than chapter 7 after dismissal of the prior chapter 7 case pursuant to section 707(b) of the Bankruptcy Code. Upon motion of a party in interest, the court may continue the automatic stay after notice and a hearing completed prior to the expiration of the 30-day period if such party demonstrates that the latter case was filed in good faith as to the creditors who are stayed by the filing. For purposes of this provision, a case is presumptively not filed in good faith as to all creditors (but such presumption may be rebutted by clear and convincing evidence) if: (1) more than one bankruptcy case under chapter 7, 11 or 13 was previously filed by the debtor within the preceding one-year period; (2) the prior chapter 7, 11, or 13 case was dismissed within the preceding year for the debtor's failure to (a) file or amend without substantial excuse a document required under the Bankruptcy Code or the court, (b) provide adequate protection ordered by the court, or (c) perform the terms of a confirmed plan; or (3) there has been no substantial change in the debtor's financial or personal affairs since the dismissal of the prior case, or there is no reason to conclude that the pending case will conclude either with a discharge (if a chapter 7 case) or confirmation (if a chapter 11 or 13 case). In addition, section 302 provides that a case is presumptively deemed not to be filed in good faith as to any creditor who obtained relief from the automatic stay in the prior case or sought such relief in the prior case and such action was pending at the time of the prior case's dismissal. The presumption may be rebutted by clear and convincing evidence. A similar presumption applies if two or more bankruptcy cases were pending in the one-year preceding the filing of the pending case. Section 302 is substantively identical to section 302 of the House bill and the Senate amendment.

Sec. 303. Curbing abusive filings

Section 303 of the conference report is intended to reduce abusive filings. This provision is substantively identical to section 303 of the House bill and the Senate amendment. Subsection (a) amends Bankruptcy Code section 362(d) to add a new ground for relief from the automatic stay. Under this provision, cause for relief from the automatic stay may be established for a creditor whose claim is secured by an interest in real property, if the court finds that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors that involved either: (i) a transfer of all or part of an ownership interest in real property without such creditor's consent or without court approval; or (ii) multiple bankruptcy filings affecting the real property. If recorded in compliance with applicable state law governing notice of an interest in or a lien on real property, an order entered under this provision is binding in any other bankruptcy case for two years from the date of entry of such order. A debtor in a subsequent case may move for relief based upon changed circumstances or for good cause shown after notice and a hearing. Section 303(a) further provides that any federal, state or local governmental unit that accepts a notice of interest or a lien in real property, must accept a certified copy of an order entered under this provision.

Section 303(b) amends Bankruptcy Code section 362(b) to except from the automatic stay an act to enforce any lien against or security interest in real property within two years following the entry of an order entered under section 362(d)(4). A debtor, in a subsequent case, may move for relief from such order based upon changed circumstances or for other good cause shown after notice and a hearing. Section 303(b) also provides that the automatic stay does not apply in a case where the debtor: (1) is ineligible to be a debtor in a bankruptcy case pursuant to section 109(g) of the Bankruptcy Code; or (2) filed the bankruptcy case in violation of an order issued in a prior bankruptcy case prohibiting the debtor from being a debtor in a subsequent bankruptcy case.

Sec. 304. Debtor retention of personal property security

Section 304 is substantively identical to section 304 of the House bill and Senate amendment. Section 304(1) of the conference report amends section 521(a) of the Bankruptcy Code to provide that an individual who is a chapter 7 debtor may not retain possession of personal property securing, in whole or in part, a purchase money security interest unless the debtor, within 45 days after the first meeting of creditors, enters into a reaffirmation agreement with the creditor, or redeems the property. If the debtor fails to so act within the prescribed period, the property is not subject to the automatic stay and is no longer property of the estate. An exception applies if the court: (1) determines on motion of the trustee filed before the expiration of the 45-day period that the property has consequential value or would benefit the bankruptcy estate; (2) orders adequate protection of the creditor's interest; and (iii) directs the debtor to deliver any collateral in the debtor's possession. Section 304(2) amends section 722 to clarify that a chapter 7 debtor must pay the redemption value in full at the time of redemption.

Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral

Section 305 of the conference report is substantively identical to section 305 of the House bill and the Senate amendment. Subsection (1) amends Bankruptcy Code section 362 to terminate the automatic stay with respect to personal property of the estate or of the debtor in a chapter 7, 11, or 13 case (where the debtor is an individual) that secures a claim (in whole or in part) or is subject to an unexpired lease if the debtor fails to: (1) file timely a statement of intention as required by section 521(a)(2) of the Bankruptcy Code with respect to such property; or (2) indicate in such statement whether the property will be surrendered or retained, and if retained, whether the debtor will redeem the property or reaffirm the debt, or assume an unexpired lease, if the trustee does not. Likewise, the automatic stay is terminated if the debtor fails to take the action specified in the statement of intention in a timely manner, unless the statement specifies reaffirmation and the creditor refuses to enter into the reaffirmation agreement on the original contract terms. In addition to terminating the automatic stay, this provision renders such property no longer property of the estate. An exception pertains where the court determines, on the motion of the trustee made prior to the expiration of the applicable time period under section 521(a)(2), and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders adequate protection of the creditor's interest, and directs the debtor to deliver any collateral in the debtor's possession.

Section 305(2) amends section 521 of the Bankruptcy Code to make the requirement to file a statement of intention applicable to all secured debts, not just secured consumer debts. In addition, it requires the debtor to effectuate his or her stated intention within 30 days from the first date set for the meeting of creditors. If the debtor fails to timely undertake certain specified actions with respect to property that a lessor or bailor owns and has leased, rented or bailed to the debtor or in which a creditor has a security interest (not otherwise avoidable under section 522(f), 544, 545, 547, 548 or 549 of the Bankruptcy Code), then nothing in the Bankruptcy Code shall prevent or limit the operation of a provision in a lease or agreement that places the debtor in default by reason of the debtor's bankruptcy or insolvency.

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[1] Pub. L. No. 104-134, Section 804(b)(1996).

Sec. 306. Giving secured creditors fair treatment in chapter 13

Section 306 of the conference report is substantively identical to section 306 of the House bill and Senate amendment, except as noted below. Subsection (a) amends Bankruptcy Code section 1325(a)(5)(B)(i) to require—as a condition of confirmation—that a chapter 13 plan provide that a secured creditor retain its lien until the earlier of when the underlying debt is paid or the debtor receives a discharge. If the case is dismissed or converted prior to completion of the plan, the secured creditor is entitled to retain its lien to the extent recognized under applicable nonbankruptcy law.

Section 306(b) adds a new paragraph to section 1325(a) of the Bankruptcy Code specifying that Bankruptcy Code section 506 does not apply to a debt incurred within the two and one-half year period preceding the filing of the bankruptcy case if the debt is secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor. Where the collateral consists of any other type of property having value, section 306(b) provides that section 506 of the Bankruptcy Code does not apply if the debt was incurred during the one-year period preceding the filing of the bankruptcy case. The 910-day period set forth in Section 306(b) of the conference report represents a compromise between the House bill and Senate amendment. Section 306(b) of the House bill provided for a five-year period, while its Senate counterpart specified a three-year period.

Section 306(c)(1) amends section 101 of the Bankruptcy Code to define the term "debtor's principal residence" as a residential structure (including incidental property) without regard to whether or not such structure is attached to real property. The term includes an individual condominium or cooperative unit as well as a mobile or manufactured home, and a trailer.

Section 306(c)(2) amends section 101 of the Bankruptcy Code to define the term "incidental property" as property commonly conveyed with a principal residence in the area where the real property is located. The term includes all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, and insurance proceeds. Further, the term encompasses all replacements and additions.

Sec. 307. Domiciliary requirements for exemptions

Section 307 of the conference report is substantively identical to section 307 of the House bill and the Senate amendment. This provision amends section 522(b)(2)(A) of the Bankruptcy Code to extend the time that a debtor must be domiciled in a state from 180 days to 730 days before he or she may claim that state's exemptions. If the debtor's domicile has not been located in a single state for the 730-day period, then the state where the debtor was domiciled in the 180-day period preceding the 730-day period (or the longer portion of such 180-day period) controls. If the effect of this provision is to render the debtor ineligible for any exemption, the debtor may elect to exempt property of the kind described in the federal exemption notwithstanding state opt out.

Sec. 308. Reduction of homestead exemption for fraud

Section 308 amends section 522 of the Bankruptcy Code to reduce the value of a debtor's interest in the following property that may be claimed as exempt under certain circumstances: (i) real or personal property that the debtor or a dependent of the debtor uses as a residence, (ii) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, (iii) a burial plot, or (iv) real or personal property that the debtor or dependent of the debtor claims as a homestead. Where nonexempt property is converted to the above-specified exempt property within the ten-year period preceding the filing of the bankruptcy case, the exemption must be reduced to the extent such value was acquired with the intent to hinder, delay or defraud a creditor. Section 308 represents a compromise between the House and Senate positions on the issue of homestead exemptions. In section 308 of the House bill, the reachback period is seven years. Section 308 of the Senate amendment imposes a flat $125,000 homestead cap, which does not apply to an exemption claimed by a family farmer for the farmer's principal residence.

Sec. 309. Protecting secured creditors in chapter 13 cases

Section 309 of the conference report is substantively identical to section 309 of the House bill and the Senate amendment. Section 309(a) amends Bankruptcy Code section 348(f)(1)(B) to provide that valuations of property and allowed secured claims in a chapter 13 case only apply if the case is subsequently converted to one under chapter 11 or 12. If the chapter 13 case is converted to one under chapter 7, then the creditor holding security as of the petition date shall continue to be secured unless its claim was paid in full as of the conversion date. In addition, unless a prebankruptcy default has been fully cured at the time of conversion, then the default in any bankruptcy proceeding shall have the effect given under applicable nonbankruptcy law.

Section 309(b) amends section 365 of the Bankruptcy Code to provide that if a lease of personal property is rejected or not assumed by the trustee in a timely manner, such property is no longer property of the estate and the automatic stay under section 362 with respect to such property is terminated. With regard to a chapter 7 case in which the debtor is an individual, the debtor may notify the creditor in writing of his or her desire to assume the lease. Upon being so notified, the creditor may, at its option, inform the debtor that it is willing to have the lease assumed and condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days after such notice the debtor gives written notice to the lessor that the lease is assumed, the debtor (not the bankruptcy estate) assumes the liability under the lease. Section 309(b) provides that the automatic stay of section 362 and the discharge injunction of section 524 are not violated if the creditor notifies the debtor and negotiates a cure under section 365(p)(2) (as amended). In a chapter 11 or 13 case where the debtor is an individual lessee with respect to a personal property lease and the lease is not assumed in the confirmed plan, the lease is deemed rejected as of the conclusion of the confirmation hearing. If the lease is rejected, the automatic stay under section 362 as well as the chapter 13 codebtor stay under section 1301 are automatically terminated with respect to such property.

Section 309(c)(1) amends Bankruptcy Code section 1325(a)(5)(B) to require that periodic payments pursuant to a chapter 13 plan with respect to a secured claim be made in equal monthly installments. Where the claim is secured by personal property, the amount of such payments shall not be less than the amount sufficient to provide adequate protection to the holder of such claim. Section 309(c)(2) amends section 1326(a) of the Bankruptcy Code to require a chapter 13 debtor to commence making payments within 30 days after the filing of the plan or the order for relief, whichever is earlier. The amount of such payment must be the amount which is proposed in the plan, scheduled in a personal property lease for that portion of the obligation that becomes due postpetition (which amount shall reduce the payment required to be made to such lessor pursuant to the plan), and which provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property (which amount shall reduce the payment required to be made to such secured creditor pursuant to the plan). Payments made pursuant to a plan must be retained by the chapter 13 trustee until confirmation or denial of confirmation. Section 309(c)(2) provides that if the plan is confirmed, the trustee must distribute payments received from the debtor as soon as practicable in accordance with the plan. If the plan is not confirmed, the trustee must return to the debtor payments not yet due and owing to creditors. Pending confirmation and subject to section 363, the court, after notice and a hearing, may modify the payments required under this provision. Section 309(c)(2) requires the debtor, within 60 days following the filing of the bankruptcy case, to provide reasonable evidence of any required insurance coverage with respect to the use or ownership of leased personal property or property securing, in whole or in part, a purchase money security interest.

Sec. 310. Limitation on luxury goods

Section 310 amends section 523(a)(2)(C) of the Bankruptcy Code. Under current law, consumer debts owed to a single creditor that, in the aggregate, exceed $1,075 for luxury goods or services incurred within 60 days before the commencement of the case are presumed to be nondischargeable. As amended, the presumption applies if the aggregate amount of consumer debts for luxury goods or services is more than $500 for luxury goods or services incurred by an individual debtor within 90 days before the order for relief. With respect to cash advances, current law provides that cash advances aggregating more than $1,075 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 60 days before the case is filed are presumed to be nondischargeable. As amended, section 523(a)(2)(C) presumes that cash advances aggregating more than $750 and that are incurred within 70 days are nondischargeable. The term, "luxury goods or services," does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. In addition, "an extension of consumer credit under an open-end credit plan" has the same meaning as this term has under the Consumer Credit Protection Act. With respect to the aggregate amount fixed for luxury goods and services under this provision, section 310 of the conference report reflects a compromise between the House bill, which has a $250 threshold, and the Senate amendment, which has a $750 threshold.

Sec. 311. Automatic stay

Section 311 of the conference report amends section 362(b) of the Bankruptcy Code to except from the automatic stay a judgment of eviction with respect to a residential leasehold. It represents a compromise between House and Senate conferees.

The House bill excepts the following proceedings from the automatic stay: (1) the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant under a rental agreement; (2) the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law; and (3) an eviction action based on endangerment to property or person, or the use of illegal drugs. With respect to granting relief from the automatic stay to residential leaseholds, the Senate provision permits an eviction proceeding to continue or to be commenced if: (1) the debtor failed to make a rental payment that first becomes due under the unexpired term of a rental agreement or lease or a tenancy under applicable state or local rent control law, after the bankruptcy case was filed or during the ten-day period preceding the date of the filing of the petition, providing the lessor files with the court a certification that the debtor has not made the rent payment; or (2) the debtor has a month-to-month tenancy (or a shorter term) other than under applicable state or local rent control law where timely payments are made pursuant to clause (1) if the lessor files with the court a certification that the requirements of this clause have been met. In addition, the Senate provision permits the commencement or continuation of any eviction, unlawful detainer action or similar proceeding by a lessor if during the two-year period preceding the date of the filing of the petition, the lessee-debtor or another occupant of the premises: (1) filed a bankruptcy case during this period; and (2) failed to make any rental payment that first became due under applicable nonbankruptcy law after the filing of the prior case. Further, the Senate amendment permits an eviction action to proceed to the extent the proceeding seeks possession based on endangerment of property or the illegal use of controlled substances on that property, if the lessor files with the court a certification that such an eviction has been filed or the debtor has endangered the property or illegally used or allowed to be used a controlled substance on such property during the 30-day period preceding the date of the filing of the certification. The Senate amendment specifies certain procedural requirements with respect to certain of these proceedings.

It is the intent of section 311 of the conference report to create an exception to the automatic stay of section 362(a)(3) to permit the recovery of possession by rental housing providers of their property in certain circumstances where a judgment for possession has been obtained against a debtor/resident before the filing of the petition for bankruptcy. At the same time, the section provides tenants a reasonable amount of time after filing the petition to cure the default giving rise to the judgment for possession as long as there are circumstances in which applicable non-bankruptcy law allows a default to be cured after a judgment has been obtained. It is also the intent of this section to permit eviction actions based on illegal use of controlled substances or endangering property to continue or to be commenced after the filing of the petition, in certain circumstances.

Where non-bankruptcy law applicable in the jurisdiction does not permit a tenant to cure a monetary default after the judgment for possession has been obtained, the automatic stay of section 362(a)(3) does not operate to limit action by a rental housing provider to proceed with, or a marshal, sheriff, or similar local officer to execute, the judgment for possession. Where the debtor claims that applicable law permits a tenant to cure after the judgment for possession has been obtained, the automatic stay operates only where the debtor files a certification with the bankruptcy petition asserting that applicable law permits such action and that the debtor or an adult dependent of the debtor has paid to the court all rent that will come due during the 30 days following the filing of the petition. If, within thirty days following the filing of the petition, the debtor or an adult dependent of the debtor certifies that the entire monetary default that gave rise to the judgment for possession has been cured, the automatic stay remains in effect.

If a lessor has filed or wishes to file an eviction action based on the use of illegal controlled substances or property endangerment, the section allows the lessor in certain cases to file a certification of such circumstance with the court and obtain an exception to the stay.

For both the judgment based on monetary default and the controlled substance or endangerment exceptions, the section provides an opportunity for challenge by either the lessor or the tenant to certifications filed by the other party and a timely hearing for the court to resolve any disputed facts and rule on the factual or legal sufficiency of the certifications. Where the court finds for the lessor, the clerk shall immediately serve upon the parties a copy of the court's order confirming that an exception to the automatic stay is applicable. Where the court finds for the tenant, the stay shall remain in effect. It is the intent of this section that the clerk's certified copy of the docket or order shall be sufficient evidence that the exception under paragraph 22 or paragraph 23 is applicable for a marshal, sheriff, or similar local officer to proceed immediately to execute the judgment for possession if applicable law otherwise permits such action, or for an eviction action for use of illegal controlled substances or property endangerment to proceed. This section does not provide any new right to either landlords or tenants relating to evictions or defenses to eviction under otherwise applicable law.

Sec. 312. Extension of period between bankruptcy discharges

Section 312 of the conference report amends section 727(a)(8) of the Bankruptcy Code to extend the period before which a chapter 7 debtor may receive a subsequent chapter 7 discharge from six to 8 years. It also amends section 1328 to prohibit the issuance of a discharge in a subsequent chapter 13 case if the debtor received a discharge in a prior chapter 7, 11, or 12 case within four years preceding the filing of the subsequent chapter 13 case. This represents a compromise between the House bill, which sets forth a five-year period with respect to any case, and the Senate amendment, which sets forth a three-year period with respect to a prior chapter 7, 11, or 12 case. With respect to the extension of the time period between subsequent chapter 13 discharges, the conference report adopts the two-year period set forth in section 312 of the Senate amendment, but excludes the provision permitting the court to shorten this period if the debtor demonstrates extreme hardship.

Sec. 313. Definition of household goods and antiques

Section 313 represents a compromise among the House and Senate conferees. This provision is substantively similar to section 313 of the House bill and the Senate amendment. Subsection (a) amends section 522(f) of the Bankruptcy Code to codify a modified version of the Federal Trade Commission's definition of "household goods" for purposes of the avoidance of a nonpossessory, nonpurchase money lien in such property. It also specifies various items that are expressly not household goods. Section 313(b) requires the Director of the Executive Office for United States Trustees to prepare a report containing findings with respect to the use of this definition. The report may include recommendations for amendments to the definition of "household goods" as codified in section 522(f)(4). Section 313 of the conference report differs from its counterparts in the House bill and Senate amendment in three respects: (1) it specifies a monetary threshold for the exclusions pertaining to electronic entertainment equipment, antiques, and jewelry; (2) it eliminates the restriction in the House bill and Senate amendment pertaining to a personal computer; and (3) and specifies that works of art are not household goods, unless by or of the debtor or by any relative of the debtor.

Sec. 314. Debt incurred to pay nondischargeable debts

Section 314 is substantively identical to section 314 of the House bill and Senate amendment. Subsection (a) amends section 523(a) of the Bankruptcy Code to make a debt incurred to pay a nondischargeable tax owed to a governmental unit (other than a tax owed to the United States) nondischargeable. Section 314(b) amends section 1328(a) of the Bankruptcy Code to make the following additional debts nondischargeable in a chapter 13 case: (1) debts for money, property, services, or extensions of credit obtained through fraud or by a false statement in writing under section 523(a)(2)(A) and (B) of the Bankruptcy Code; (2) consumer debts owed to a single creditor that aggregate to more than $500 for luxury goods or services incurred by an individual debtor within 90 days before the filing of the bankruptcy case, and cash advances aggregating more than $750 that are extensions of consumer credit obtained by a debtor under an open-end credit plan within 70 days before the order for relief under section 523(a)(2)(C) (as amended); (3) pursuant to section 523(a)(3) of the Bankruptcy Code, debts that require timely request for a dischargeability determination, if the creditor lacks notice or does not have actual knowledge of the case in time to make such request; (4) debts resulting from fraud or defalcation by the debtor acting as a fiduciary under section 523(a)(4) of the Bankruptcy Code; and (5) debts for restitution or damages, awarded in a civil action against the debtor as a result of willful or malicious conduct by the debtor that caused personal injury to an individual or the death of an individual.

Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases

Section 315 of the conference report amends several provisions of the Bankruptcy Code. Subsection (a) amends Bankruptcy Code section 342(c) to delete the provision specifying that the failure of a notice to include certain information required to be given by a debtor to a creditor does not invalidate the notice's legal effect. It adds a provision requiring a debtor to send any notice he or she must provide under the Bankruptcy Code to the address stated by the creditor and to include in such notice the current account number, if within 90 days prior to the date that the debtor filed for bankruptcy relief the creditor in at least two communications sent to the debtor set forth such address and account number. If the creditor would be in violation of applicable nonbankruptcy law by sending any such communication during this time period, then the debtor must send the notice to the address provided by the creditor stated in the last two communications containing the creditor's address and such notice shall include the current account number. Section 315(a) also permits a creditor in a chapter 7 or 13 case (where the debtor is an individual) to file with the court and serve on the debtor the address to be used to notify such creditor in that case. Five days after receipt of such notice, the court and the debtor, respectively, must use the address so specified to provide notice to such creditor. In addition, section 315(a) specifies that if an entity files a notice with the court stating an address to be used generally by all bankruptcy courts for chapter 7 and 13 cases, or by particular bankruptcy courts, as specified by such entity. This address must be used by the court to supply notice in such cases within 30 days following the filing of such notice where the entity is a creditor. Notice given other than as provided in section 342 is not effective until it has been brought to the creditor's attention. If the creditor has designated a person or organizational subdivision to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that these notices will be delivered to such person or subdivision, a notice will not be deemed to have been received by the creditor until it has been received by such person or subdivision. This provision also prohibits the imposition of any monetary penalty for violation of the automatic stay or for the failure to comply with the Bankruptcy Code sections 542 and 543 unless the creditor has received effective notice under section 342. Section 315(a) of the conference report is substantively identical to section 315(a) of the House bill and Senate amendment.

Section 315(b) amends section 521 to specify additional duties of a debtor. This provision requires the debtor to file a certificate executed by the debtor's attorney or bankruptcy petition preparer stating that the attorney or preparer supplied the debtor with the notice required under Bankruptcy Code section 342(b). If the debtor is not represented by counsel and did not use the services of a bankruptcy petition preparer, then the debtor must sign a certificate stating that he or she obtained and read such notice. In addition, the debtor must file: (1) copies of all payment advices or other evidence of payment, if any, from any employer within 60 days preceding the bankruptcy filing; (2) a statement of the amount of monthly net income, itemized to show how such amount is calculated; and (3) a statement disclosing any reasonably anticipated increase in income or expenditures in the 12-month period following the date of filing. Upon request of a creditor, section 315(b) of the conference report requires the court to make the petition, schedules, and statement of financial affairs of an individual who is a chapter 7 or 13 debtor available to such creditor.

In addition, section 315(b) requires such debtor to provide the trustee not later than seven days before the date first set for the meeting of creditors a copy of his or her Federal income tax return or transcript (at the election of the debtor) for the latest taxable period ending prior to the filing of the bankruptcy case for which a tax return was filed. Should the debtor fail to comply with this requirement, the case must be dismissed unless the debtor demonstrates that such failure was due to circumstances beyond the debtor's control. In addition, the debtor must file copies of any amendments to such tax returns. Upon request, the debtor must provide a copy of the tax return or transcript to the requesting creditor at the time the debtor supplies the return or transcript to the trustee. Should the debtor fail to comply with this requirement, the case must be dismissed unless the debtor demonstrates that such failure is due to circumstances beyond the debtor's control. A creditor in a chapter 13 case may, at any time, file a notice with the court requesting a copy of the plan. The court must supply a copy of the chapter 13 plan at a reasonable cost not later than 5 days after such request. This provision represents a compromise between section 315(b) of the House bill and the Senate amendment. The House bill was not limited to Federal tax returns and did not consistently include transcripts as an alternative. In addition, the conference report clarifies that this provision applies to Federal income tax returns.

During the pendency of a chapter 7, 11 or 13 case, the debtor must file with the court, at the request of the judge, United States trustee, or any party in interest, at the time filed with the taxing authority, copies of any Federal income tax returns (or transcripts thereof) that were not filed for the three-year period preceding the date on which the order for relief was entered. In addition, the debtor must file copies of any amendments to such tax returns.

In a chapter 13 case, the debtor must file a statement, under penalty of perjury, of income and expenditures in the preceding tax year and monthly income showing how the amounts were calculated. The statement must be filed on the date that is the later of 90 days after the close of the debtor's tax year or one year after the order for relief, unless a plan has been confirmed. Thereafter, the statement must be filed on or before the date that is 45 days before the anniversary date of the plan's confirmation, until the case is closed. The statement must disclose the amount and sources of the debtor's income, the identity of any persons responsible with the debtor for the support of the debtor's dependents, the identity of any persons who contributed to the debtor's household expenses, and the amount of any such contributions.

Section 315(b)(2) mandates that the tax returns, amendments thereto, and the statement of income and expenditures of an individual who is a chapter 7 or chapter 13 debtor be made available to the United States trustee or bankruptcy administrator, the trustee, and any party in interest for inspection and copying, subject to procedures established by the Director of the Administrative Office for United States Courts within 180 days from the date of enactment of this Act. The procedures must safeguard the confidentiality of any tax information required under this provision and include restrictions on creditor access to such information. In addition, the Director must, within 540 days from the Act's enactment date, prepare and submit to Congress a report that assesses the effectiveness of such procedures and, if appropriate, includes recommendations for legislation to further protect the confidentiality of such tax information and to impose penalties for its improper use. If requested by the United States trustee or trustee, the debtor must provide a document establishing the debtor's identity, which may include a driver's license, passport, or other document containing a photograph of the debtor, and such other personal identifying information relating to the debtor. Section 315(b) is substantively similar to section 315(b) of the House bill and the Senate amendment. The conference report makes technical and clarifying revisions.

Sec. 316. Dismissal for failure to timely file schedules or provide required information

Section 316 of the conference report is similar to section 316 of the House bill and the Senate amendment. This provision amends section 521 of the Bankruptcy Code to provide that if an individual debtor in a voluntary chapter 7 or chapter 13 case fails to file all of the information required under section 521(a)(1) within 45 days of the date on which the case is filed, the case must be automatically dismissed, effective on the 46th day. The 45-day period may be extended for an additional 45-day period providing the debtor requests such extension prior to the expiration of the original 45-day period and the court finds justification for such extension. Upon request of a party in interest, the court must enter an order of dismissal within 5 days of such request. Section 316 of the conference report, unlike its House and Senate antecedents, provides that a court may decline to dismiss the case if: (1) the trustee files a motion before the stated time periods; (2) the court finds, after notice and a hearing, that the debtor in good faith attempted to file all the information required under section 521(a)(1)(B)(iv); and (3) the court finds that the best interests of creditors would be served by continued administration of the case.

Sec. 317. Adequate time to prepare for hearing on confirmation of the plan

Section 317 of the conference report is similar to section 317 of the House bill and the Senate amendment. This provision amends section 1324 of the Bankruptcy Code to require the chapter 13 confirmation hearing to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date, unless the court determines that it would be in the best interests of creditor and the estate to hold such hearing at an earlier date and there is no objection to such earlier date. The House and Senate antecedents to section 317 of the conference report do not include this exception.

Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases

Section 318 of the conference report is substantially identical to section 318 of the House bill and the Senate amendment. Subsection (1) amends Bankruptcy Code sections 1322(d) and 1325(b) to specify that a chapter 13 plan may not provide for payments over a period that is not less than five years if the current monthly income of the debtor and the debtor's spouse combined exceeds certain monetary thresholds.

If the current monthly income of the debtor and the debtor's spouse fall below these thresholds, then the duration of the plan may not be longer than three years, unless the court, for cause, approves a longer period up to five years. The applicable commitment period may be less if the plan provides for payment in full of all allowed unsecured claims over a shorter period. Section 318(2), (3), and (4) make conforming amendments to sections 1325(b) and 1329(c) of the Bankruptcy Code.

Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure

Section 319 of the conference report expresses a sense of the Congress that Federal Rule of Bankruptcy Procedure 9011 be modified to require that any document, whether signed or unsigned, including schedules, supplied to the court or the trustee by a debtor may be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Section 319 of the conference report is substantially identical to section 319 of the House bill and the Senate amendment.

Sec. 320. Prompt relief from stay in individual cases

Section 320 of the conference report is substantively identical to section 320 of the House bill and the Senate amendment. This provision amends section 362(e) of the Bankruptcy Code to terminate the automatic stay in a chapter 7, 11, or 13 case of an individual debtor within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of the 60-day time period, such period is extended pursuant to agreement of all parties in interest, or a specific extension of time is required for good cause as described in findings made by the court.

Sec. 321. Chapter 11 cases filed by individuals

Section 321(a) of the conference report creates a new provision under chapter 11 of the Bankruptcy Code specifying that property of the estate of an individual debtor includes, in addition to that identified in section 541 of the Bankruptcy Code, all property of the kind described in section 541 that the debtor acquires after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13 (whichever occurs first). In addition, it includes earnings from services performed by the debtor after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13. Except as provided in section 1104 of the Bankruptcy Code or the order confirming a chapter 11 plan, section 321(a) provides that the debtor remains in possession of all property of the estate. Section 321(a) is substantively identical to section 321(a) of the House bill and the Senate amendment.

Section 321(b) amends Bankruptcy Code section 1123 to require the chapter 11 plan of an individual debtor to provide for the payment to creditors of all or such portion of the debtor's earnings from personal services performed after commencement of the case or other future income that is necessary for the plan's execution. This provision is substantively identical to section 321(b) of the House bill and the Senate amendment.

Section 321(c) amends Bankruptcy Code section 1129(a) to include an additional requirement for confirmation in a chapter 11 case of an individual debtor upon objection to confirmation by a holder of an allowed unsecured claim. In such instance, the value of property to be distributed under the plan (1) on account of such claim, as of the plan's effective date, must not be less than the amount of such claim; or (2) is not less than the debtor's projected disposable income (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan or during the plan's term, whichever is longer. Section 321(c) also amends section 1129(b)(2)(B)(ii) of the Bankruptcy Code to provide that an individual chapter 11 debtor may retain property included in the estate under section 1115 (as added by the Act), subject to section 1129(a)(14). This provision is substantively identical to section 321(c) of the House bill and the Senate amendment.

Section 321(d)(1) of the conference report reflects the Senate position represented in section 321(d) of the Senate amendment, which amends Bankruptcy Code section 1141(d) to provide that a discharge under chapter 11 does not discharge a debtor who is an individual from any debt excepted from discharge under Bankruptcy Code section 523. The House bill provides that a chapter 11 debtor, including a corporation, is not discharged from any debt excepted from discharge under section 523.

Section 321(d)(2) of the conference report provides that in a chapter 11 individual debtor is not discharged until all plan payments have been made. The court may grant a hardship discharge if the value of property actually distributed under the plan—as of the plan's effective date—is not less than the amount that would have been available for distribution if the case was liquidated under chapter 7 on such date, and modification of the plan is not practicable. This provision is substantively identical to its counterparts in the House bill and Senate amendment.

Section 321(e) of the conference report amends section 1127 to permit a plan in a chapter 11 case of an individual debtor to be modified postconfirmation for the purpose of increasing or reducing the amount of payments, extending or reducing the time period for such payments, or altering the amount of distribution to a creditor whose claim is provided for by the plan. Such modification may be made at any time on request of the debtor, trustee, United States trustee, or holder of an allowed unsecured claim, if the plan has not been substantially consummated.

Section 321(f) specifies that sections 1121 through 1129 apply to such modification. In addition, it provides that the modified plan shall become the confirmed plan only if: (a) there has been disclosure pursuant to section 1125 (as the court directs); (b) notice and a hearing; and (c) such modification is approved. Subsections (e) and (f) of section 321 of the conference report are substantively identical to their counterparts in the House bill and the Senate amendment.

Sec. 322. Limitations on homestead exemption

Section 322(a) amends section 522 of the Bankruptcy Code to impose an aggregate monetary limitation of $125,000, subject to Bankruptcy Code sections 544 and 548, on the value of property that the debtor may claim as exempt under State or local law pursuant to section 522(b)(3)(A) under certain circumstances. The monetary cap applies if the debtor acquired such property within the 1215-day period preceding the filing of the petition and the property consists of any of the following: (a) real or personal property of the debtor or that a dependent of the debtor uses as a residence; (b) an interest in a cooperative that owns property, which the debtor or the debtor's dependent uses as a residence; (c) a burial plot for the debtor or the debtor's dependent; or (d) real or personal property that the debtor or dependent of the debtor claims as a homestead. This limitation does not apply to a principal residence claimed as exempt by a family farmer. In addition, the limitation does not apply to any interest transferred from a debtor's principal residence (which was acquired prior to the beginning of the specified time period) to the debtor's current principal residence, if both the previous and current residences are located in the same State.

Section 322(a) further amends section 522 to add a provision that does not allow a debtor to exempt any amount of an interest in property described in the preceding paragraph in excess of $125,000 if any of the following applies:

(a) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of the Bankruptcy Code; or

(b) the debtor owes a debt arising from:

(A) any violation of the federal securities laws defined in section 3(a)(47) of the Securities and Exchange Act of 1934, any state securities laws, or any regulation or order issued under Federal securities laws or state securities laws;

(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934, or under section 6 of the Securities Act of 1933;

(C) any civil remedy under section 1964 of title 18 of the United States Code; or

(D) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding five years.

The conferees intend that the language in section 522(q)(1) be liberally construed to encompass misconduct that rises above mere negligence under applicable state law. An exception to the monetary limit applies to the extent the value of the homestead property is reasonably necessary for the support of the debtor and any dependent of the debtor.

Section 322(b) makes the monetary limitation set forth in section 322(a) subject to automatic adjustment pursuant to section 104 of the Bankruptcy Code.

This provision is substantively different from its House and Senate counterparts. Section 322 of the House bill imposes an aggregate $100,000 homestead cap, which applies if the debtor acquired such property within the two-year period preceding the filing of the petition and the property consists. As with section 322 of the conference report, the House provision includes the exception for a family farmer and the transfer of an interest in a principal residence of the debtor from a prior principal residence of the debtor acquired prior to the beginning of the two-year period. Section 308 of the Senate amendment, on the other hand, imposes a flat $125,000 cap on a homestead exemption.

Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate

Section 323 of the conference report is substantively identical to section 323 of the House bill and section 322 of the Senate amendment. It amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code. Section 323 also excludes as property of the estate funds withheld by an employer from the wages of its employees for payment as contributions to health insurance plans regulated by State law.

Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals

Section 324 of the conference report amends section 1334 of title 28 of the United State Code to give a district court exclusive jurisdiction of all claims or causes of action involving the construction of section 327 of the Bankruptcy Code or rules relating to disclosure requirements under such provision. This provision is substantively identical to section 324 of the House bill and section 323 of the Senate amendment.

Sec. 325. United States trustee program filing fee increase

Section 325 of the conference report is substantively identical to section 325 of the House bill and section 324 of the Senate amendment. Section 325(a) amends section 1930(a) of title 28 of the United States Code to increase the filing fees for chapter 7 and chapter 13 cases respectively to $160 and $150. Subsections 325(b) and (c) amend section 589a of title 28 of the United States Code and section 406(b) of the Judiciary Appropriations Act of 1990 to increase the percentage of the fees collected under section 1930 of title 28 of the United States Code that are paid to the United States Trustee System Fund.

Sec. 326. Sharing of compensation

Section 326 amends Bankruptcy Code section 504 to create a limited exception to the prohibition against fee sharing. The provision allows the sharing of compensation with bona fide public service attorney referral programs that operate in accordance with non-federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals. This provision is substantively identical to section 326 of the House bill and section 325 of the Senate amendment.

Sec. 327. Fair valuation of collateral

Section 327 of the conference report amends section 506(a) of the Bankruptcy Code to provide that the value of an allowed claim secured by personal property that is an asset in an individual debtor's chapter 7 or 13 case is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs. With respect to property acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time its value is determined. This provision is identical to section 327 of the House bill and section 326 of the Senate amendment.

Sec. 328. Defaults based on nonmonetary obligations

Section 328 is substantively identical to section 328 of the House bill and section 327 of the Senate amendment. Subsection (a)(1) amends section 365(b) to provide that a trustee does not have to cure a default that is a breach of a provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform a nonmonetary obligation under an unexpired lease of real property, if it is impossible for the trustee to cure the default by performing such nonmonetary act at and after the time of assumption. If the default arises from a failure to operate in accordance with a nonresidential real property lease, the default must be cured by performance at and after the time of assumption in accordance with the lease. Pecuniary losses resulting from such default must be compensated pursuant to section 365(b)(1). In addition, section 328(a)(1) amends section 365(b)(2)(D) to clarify that it applies to penalty provisions. Section 328(a)(2) through (4) make technical revisions to section 365(c), (d) and (f) by deleting language that is no longer effective pursuant to the Rail Safety Enforcement and Review Act.[2]

Section 328(b) amends section 1124(2)(A) of the Bankruptcy Code to clarify that a claim is not impaired if section 365(b)(2) (as amended by this Act) expressly does not require a default with respect to such claim to be cured. In addition, it provides that any claim or interest that arises from the failure to perform a nonmonetary obligation (other than a default arising from the failure to operate a nonresidential real property lease subject to section 365(b)(1)(A)), is impaired unless the holder of such claim or interest (other than the debtor or an insider) is compensated for any actual pecuniary loss incurred by the holder as a result of such failure.

Sec. 329. Clarification of postpetition wages and benefits

Section 329 amends Bankruptcy Code section 503(b)(1)(A) to accord administrative expense status to certain back pay awards. This provision applies to a back pay award attributable to any period of time occurring postpetition as a result of a violation of Federal or state law by the debtor pursuant to an action brought in a court or before the National Labor Relations Board, providing the bankruptcy court determines that the award will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations. Section 329 of the conference report substantively reflects the Senate position as represented in section 329 of the Senate amendment. The conference report clarifies the provision with respect to the timing of the unlawful conduct. There is no counterpart to this provision in the House bill.

Sec. 330. Nondischargeability of debts incurred through violations of laws relating to the provision of lawful goods and services

Section 330(a) amends Bankruptcy Code section 523(a) to prohibit the discharge of a debt that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee or cost owed by the debtor), that arises from:

(a) the violation by the debtor of any Federal or State statutory law, including but not limited to violations of title 18 of the United States Code, that results from intentional actions of the debtor that—

(i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or class of persons from obtaining or providing lawful goods or services;

(ii) by force of threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(iii) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

(b) a violation of a court order or injunction that protects access to a facility that or a person who provides lawful goods or services or the provision of lawful goods or services if such violation—

(i) is intentional or knowing; or

(ii) occurs after a court has found that the debtor previously violated such court order or injunction, or any other court order or injunction that protects access to the same facility or the same person.

The provision specifies that it shall not be construed to affect any expressive conduct, including peaceful picketing, peaceful prayer, or other peaceful demonstration, protected from legal prohibition by the First Amendment to the Constitution of the United States.

Section 330(b) amends section 523(a)(13) of the Bankruptcy Code to make a debt for a criminal restitution order entered pursuant to state criminal law nondischargeable.

Sec. 331. Delay of discharge during pendency of certain proceedings

Section 330 amends section 727(a) of the Bankruptcy Code to require the court to withhold the entry of a debtor's discharge order if the court, after notice and a hearing, finds that there is reasonable cause to believe that there is pending a proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1) or liable for a debt of the kind described in section 522(q)(2). There is no counterpart to this provision in either the House bill or Senate amendment.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

SUBTITLE A—GENERAL BUSINESS BANKRUPTCY PROVISIONS

Sec. 401. Adequate protection for investors

Section 401 is substantively identical to Section 401 of the House bill and Senate amendment. SubSection (a) amends section 101 of the Bankruptcy Code to define "securities self regulatory organization" as a Securities association or national securities exchange registered with the Securities and Exchange Commission. Section 401(b) amends section 362 of the Bankruptcy Code to except from the automatic stay certain enforcement actions by a Securities self regulatory organization.

Sec. 402. Meetings of creditors and equity security holders

Section 402 amends Section 341 of the Bankruptcy Code to permit a court, on request of a party in interest and after notice and a hearing, to order the United States trustee not to convene a meeting of creditors or equity Security holders if a debtor has filed a plan for which the debtor solicited acceptances prior to the commencement of the case. This provision is substantively identical to Section 402 of the House bill and the Senate amendment.

Sec. 403. Protection of refinance of security interest

Section 403 amends Section 547(e)(2) of the Bankruptcy Code to increase the perfection period from ten to 30 days for the purpose of determining whether a transfer is an avoidable preference. This provision is substantively identical to Section 403 of the House bill and the Senate amendment.

Sec. 404. Executory contracts and unexpired leases

Section 404 is identical to Section 404 of the House bill and the Senate amendment.

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[2] Pub. L. No. 102-365, 106 Stat. 972 (1992).

SubSection (a) amends Section 365(d)(4) of the Bankruptcy Code to establish a firm, bright line deadline by which an unexpired lease of nonresidential real property must be assumed or rejected. If such lease is not assumed or rejected by such deadline, then such lease shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor. Section 404(a) permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120 day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge upon the prior written consent of the lessor: either by the lessor's motion for an extension, or by a motion of the trustee, provided that the trustee has the prior written approval of the lessor. This provision is designed to remove the bankruptcy judge's discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the time of entry of the order of relief. Beyond that maximum period, there is no authority in the judge to grant further time unless the lessor has agreed in writing to the extension.

Section 404(b) amends Section 365(f)(1) to assure that Section 365(f) does not override any part of Section 365(b). Thus, Section 404(b) makes a trustee's authority to assign an executory contract or unexpired lease subject not only to Section 365(c), but also to Section 365(b), which is given full effect. Therefore, for example, assumption or assignment of a lease of real property in a shopping center must be subject to the provisions of the lease, such as use clauses.

Sec. 405. Creditors and equity security holders committees

Section 405 is substantively identical to Section 405 of the House bill and the Senate amendment. SubSection (a) amends Section 1102(a)(2) of the Bankruptcy Code to permit, after notice and a hearing, a court, on its own motion or on motion of a party in interest, to order a change in a committee's membership to ensure adequate representation of creditors or equity Security holders in a chapter 11 case. It specifies that the court may direct the United States trustee to increase the membership of a committee for the purpose of including a small business concern if the court determines that such creditor's claim is of the kind represented by the committee and that, in the aggregate, is disproportionately large when compared to the creditor's annual gross revenue. Section 405(b) requires the committee to give creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments from these creditors and, pursuant to court order, make additional reports or disclosures available to them.

Sec. 406. Amendment to section 546 of title 11, United States Code

Section 406 reflects the Senate position as represented in Section 406 of the Senate amendment. The provision corrects an erroneous subsection designation in section 546 of the Bankruptcy Code. It redesignates the second subsection (g) as subsection (i). In addition, section 406 amends section 546(i) (as redesignated) to subject that provision to the prior rights of security interest holders. The House bill did not include this provision. Further, section 406 adds a new provision to section 546 that prohibits a trustee from avoiding a warehouse lien for storage, transportation, or other costs incidental to the storage and handling of goods. It specifies that this prohibition must be applied in a manner consistent with any applicable state statute that is similar to Section 7–209 of the Uniform Commercial Code.

Sec. 407. Amendments to section 330(a) of title 11, United States Code

Section 407 amends Section 330(a)(3) of the Bankruptcy Code to clarify that this provision applies to examiners, chapter 11 trustees, and professional persons. This section also amends section 330(a) to add a provision that requires a court, in determining the amount of reasonable compensation to award to a trustee, to treat such compensation as a commission pursuant to section 326 of the Bankruptcy Code. Section 407 is substantively identical to section 407 of the House bill and the Senate amendment.

Sec. 408. Postpetition disclosure and solicitation

Section 408 amends section 1125 of the Bankruptcy Code to permit an acceptance or rejection of a chapter 11 plan to be solicited from the holder of a claim or interest if the holder was solicited before the commencement of the case in a manner that complied with applicable nonbankruptcy law. Section 408 is substantively identical to section 408 of the House bill and the Senate amendment.

Sec. 409. Preferences

Section 409 amends section 547(c)(2) of the Bankruptcy Code to provide that a trustee may not avoid a transfer to the extent such transfer was in payment of a debt incurred by the debtor in the ordinary course of the business or financial affairs of the debtor and the transferee and such transfer was made either: (1) in the ordinary course of the debtor's and the transferee's financial affairs or business; or (2) in accordance with ordinary business terms. Present law requires the recipient of a preferential transfer to establish both of these grounds in order to sustain a defense to a preferential transfer proceeding. In a case in which the debts are not primarily consumer debts, Section 409 provides that a transfer may not be avoided if the aggregate amount of all property constituting or affected by the transfer is less than $5,000. This provision is substantively identical to Section 409 of the House bill and the Senate amendment.

Sec. 410. Venue of certain proceedings

Section 410 amends Section 1409(b) of title 28 of the United States Code to provide that a preferential transfer action in the amount of $10,000 or less pertaining to a nonconsumer debt against a noninsider defendant must be filed in the district where such defendant resides. This amount is presently fixed at $1,000. This provision is substantively identical to Section 410 of the House bill and the Senate amendment.

Sec. 411. Period for filing plan under chapter 11

Section 411 amends Section 1121(d) of the Bankruptcy Code to mandate that a chapter 11 debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief. In addition, it provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief. This provision is substantively identical to Section 411 of the House bill and the Senate amendment.

Sec. 412. Fees arising from certain ownership interests

Section 412 amends Section 523(a)(16) of the Bankruptcy Code to broaden the protections accorded to community associations with respect to fees or assessments arising from the debtor's interest in a condominium, cooperative, or homeowners' association. Irrespective of whether or not the debtor physically occupies such property, fees or assessments that accrue during the period the debtor or the trustee has a legal, equitable, or possessory ownership interest in such property are nondischargeable. This provision is substantively identical to Section 412 of the House bill and the Senate amendment.

Sec. 413. Creditor representation at first meeting of creditors

Section 413 amends Section 341(c) of the Bankruptcy Code to permit a creditor holding a consumer debt or any representative of such creditor, notwithstanding any local court rule, provision of a State constitution, or any other Federal or state nonbankruptcy law, to appear and participate at the meeting of creditors in chapter 7 and chapter 13 cases either alone or in conjunction with an attorney. In addition, the provision clarifies that it cannot be construed to require a creditor to be represented by counsel at any meeting of creditors. This provision is substantively identical to Section 413 of the House bill and the Senate amendment.

Sec. 414. Definition of disinterested person

Section 414 amends Section 101(14) of the Bankruptcy Code to eliminate the requirement that an investment banker be a disinterested person. This provision is substantively identical to Section 414 of the House bill and the Senate amendment.

Sec. 415. Factors for compensation of professional persons

Section 415 amends Section 330(a)(3) of the Bankruptcy Code to permit the court to consider, in awarding compensation to a professional person, whether such person is board certified or otherwise has demonstrated skill and experience in the practice of bankruptcy law. This provision is substantively identical to Section 415 of the House bill and the Senate amendment.

Sec. 416. Appointment of elected trustee

Section 416 of the conference report is substantively identical to Section 416 of the House bill and the Senate amendment. This provision amends Section 1104(b) of the Bankruptcy Code to clarify the procedure for the election of a trustee in a chapter 11 case. Section 1104(b) permits creditors to elect an eligible, disinterested person to serve as the trustee in the case, provided certain conditions are met. Section 416 amends this provision to require the United States trustee to file a report certifying the election of a chapter 11 trustee. Upon the filing of the report, the elected trustee is deemed to be selected and appointed for purposes of Section 1104 and the service of any prior trustee appointed in the case is terminated. Section 416 also clarifies that the court shall resolve any dispute arising out of a chapter 11 trustee election.

Sec. 417. Utility service

Section 417 amends Section 366 of the Bankruptcy Code to provide that assurance of payment, for purposes of this provision, includes a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other form of Security that is mutually agreed upon by the debtor or trustee and the utility. It also specifies that an administrative expense priority does not constitute an assurance of payment. With respect to chapter 11 cases, Section 417 permits a utility to alter, refuse or discontinue service if it does not receive adequate assurance of payment that is satisfactory to the utility within 30 days of the filing of the petition. The court, upon request of a party in interest, may modify the amount of this payment after notice and a hearing. In determining the adequacy of such payment, a court may not consider: (i) the absence of Security before the case was filed; (ii) the debtor's timely payment of utility service charges before the case was filed; or (iii) the availability of an administrative expense priority. Notwithstanding any other provision of law, Section 417 permits a utility to recover or set off against a Security deposit provided prepetition by the debtor to the utility without notice or court order. This provision is substantively identical to Section 417 of the House bill and the Senate amendment.

Sec. 418. Bankruptcy fees

Section 418 of the conference report amends Section 1930 of title 28 of the United States Code to permit a district court or a bankruptcy court, pursuant to procedures prescribed by the Judicial Conference of the United States, to waive the chapter 7 filing fee for an individual and certain other fees under subSections (b) and (c) of Section 1930 if such individual's income is less than 150 percent of the official poverty level (as defined by the Office of Management and Budget) and the individual is unable to pay such fee in installments. Section 418 also clarifies that Section 1930, as amended, does not prevent a district or bankruptcy court from waiving other fees for creditors and debtors, if in accordance with Judicial Conference policy. This provision is substantively identical to Section 418 of the House bill and the Senate amendment.

Sec. 419. More complete information regarding assets of the estate

Section 419 of the conference report is substantively identical to Section 419 of the House bill and the Senate amendment. This provision requires the Advisory Committee on Bankruptcy Rules, after consideration of the views of the Director of the Executive Office for United States Trustees, to propose official rules and forms directing chapter 11 debtors to disclose information concerning the value, operations, and profitability of any closely held corporation, partnership, or other entity in which the debtor holds a substantial or controlling interest. Section 419 is intended to ensure that the debtor's interest in any of these entities is used for the payment of allowed claims against debtor.

SUBTITLE B—SMALL BUSINESS BANKRUPTCY PROVISIONS.

Sec. 431. Flexible rules for disclosure statement and plan

Section 431 of the conference report amends Section 1125 of the Bankruptcy Code to streamline the disclosure statement process and to provide for more flexibility. This provision is substantively identical to Section 431 of the House bill and the Senate amendment. Section 431(1) amends Section 1125(a)(1) of the Bankruptcy Code to require a bankruptcy court, in determining whether a disclosure statement supplies adequate information, to consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such additional information. With regard to a small business case, section 431(2) amends Section 1125(f) to permit the court to dispense with a disclosure statement if the plan itself supplies adequate information. In addition, it provides that the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under Section 2075 of title 28 of the United States Code. Further, Section 431(2) provides that the court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing, and allow the debtor to solicit acceptances of the plan based on such disclosure statement. The hearing on the disclosure statement may be combined with the confirmation hearing.

Sec. 432. Definitions

Section 432 of the conference report is substantively similar to section 431 of the House bill and the Senate amendment. This provision amends Section 101 of the Bankruptcy Code to define a "small business case" as a chapter 11 case in which the debtor is a small business debtor. Section 432, in turn, defines a "small business debtor" as a person engaged in commercial or business activities (including an affiliate of such person that is also a debtor, but excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) having aggregate noncontingent, liquidated secured and unsecured debts of not more than $2 million (excluding debts owed to affiliates or insiders of the debtor) as of the date of the petition or the order for relief. This monetary definition is a compromise. The House and Senate antecedents specified a $3 million definitional limit. This definition applies only in a case where the United States trustee has not appointed a creditors' committee or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor. It does not apply to any member of a group of affiliated debtors that has aggregate noncontingent, liquidated secured and unsecured debts in excess of $2 million (excluding debts owed to one or more affiliates or insiders). The conference report also requires this monetary figure to be periodically adjusted for inflation pursuant to section 104 of the Bankruptcy Code.

Sec. 433. Standard form disclosure statement and plan

Section 433 of the conference report directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to propose for adoption standard form disclosure statements and reorganization plans for small business debtors. The provision directs that the forms be designed to achieve a practical balance between the needs of the court, case administrators, and other parties in interest to have reasonably complete information as well as the debtor's need for economy and simplicity. This provision is substantively identical to section 433 of the House bill and the Senate amendment.

Sec. 434. Uniform national reporting requirements

Section 434 of the conference report is substantively identical to section 434 of the House bill and the Senate amendment. SubSection (a) adds a new provision to the Bankruptcy Code mandating additional reporting requirements for small business debtors. It requires a small business debtor to file periodic financial reports and other documents containing the following information with respect to the debtor's business operations: (i) profitability; (ii) reasonable approximations of projected cash receipts and disbursements; (iii) comparisons of actual cash receipts and disbursements with projections in prior reports; (iv) whether the debtor is complying with postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure; (v) whether the debtor is timely filing tax returns and other government filings; and (vi) whether the debtor is paying taxes and other administrative expenses when due. In addition, the debtor must report on such other matters that are in the best interests of the debtor and the creditors and in the public interest. If the debtor is not in compliance with any postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, or is not filing tax returns or other required governmental filings, paying taxes and other administrative expenses when due, the debtor must report: (a) what the failures are, (b) how they will be cured; (c) the cost of their cure; and (d) when they will be cured. Section 434(b) specifies that the effective date of this provision is 60 days after the date on which the rules required under this provision are promulgated.

Sec. 435. Uniform reporting rules and forms for small business cases

Section 435 of the conference report is substantively identical to Section 435 of the House bill and the Senate amendment. Subsection (a) mandates that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States propose official rules and forms with respect to the periodic financial reports and other information that a small business debtor must file concerning its profitability, cash receipts and disbursements, filing of its tax returns, and payment of its taxes and other administrative expenses.

Section 435(b) requires the rules and forms to achieve a practical balance between the need for reasonably complete information by the bankruptcy court, United States trustee, creditors and other parties in interest, and the small business debtor's interest in having such forms be easy and inexpensive to complete. The forms should also be designed to help the small business debtor better understand its financial condition and plan its future.

Sec. 436. Duties in small business cases

Section 436 of the conference report is substantively identical to section 436 of the House bill and the Senate amendment. Intended to implement greater administrative oversight and controls over small business chapter 11 cases, the provision requires a chapter 11 trustee or debtor to:

(1) file with a voluntary petition (or in an involuntary case, within seven days from the date of the order for relief) the debtor's most recent financial statements (including a balance sheet, statement of operations, cash flow statement, and Federal income tax return) or a statement explaining why such information is not available;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the bankruptcy court or the United States trustee (including the initial debtor interview and meeting of creditors pursuant to section 341 of the Bankruptcy Code), unless the court waives this requirement after notice and a hearing upon a finding of extraordinary and compelling circumstances;

(3) timely file all requisite schedules and the statement of financial affairs, unless the court, after notice and a hearing, grants an extension of up to 30 days from the order of relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) maintain insurance that is customary and appropriate for the industry, subject to section 363(c)(2);

(6) timely file tax returns and other required government filings;

(7) timely pay all administrative expense taxes (except for certain contested claims), subject to section 363(c)(2); and

(8) permit the United States trustee to inspect the debtor's business premises, books, and records at reasonable hours after appropriate prior written notice, unless notice is waived by the debtor.

Sec. 437. Plan filing and confirmation deadlines

Section 437 of the conference report amends section 1121(e) of the Bankruptcy Code with respect to the period of time within which a small business debtor must file and confirm a plan of reorganization. This provision is substantively identical to section 437 of the House bill and the Senate amendment. It provides that a small business debtor's exclusive period to file a plan is 180 days from the date of the order for relief, unless the period is extended after notice and a hearing, or the court, for cause, orders otherwise. It further provides that a small business debtor must file a plan and any disclosure statement not later than 300 days after the order for relief. These time periods and the time fixed in section 1129(e) may be extended only if (a) the debtor, after providing notice to parties in interest, demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time; (b) a new deadline is imposed at the time the extension is granted; and (c) the order granting such extension is signed before the expiration of the existing deadline.

Sec. 438. Plan confirmation deadline

Section 438 of the conference report amends Bankruptcy Code section 1129 to require the court to confirm a plan not later than 45 days after it is filed if the plan complies with the applicable provisions of the Bankruptcy Code, unless this period is extended pursuant to section 1121(e)(3). This provision is a compromise between section 438 of the House bill and the Senate amendment. The conference report clarifies that the plan must otherwise comply with applicable provisions of the Bankruptcy Code and includes a cross-reference to section 1121(e)(3), as added by section 437 of this Act. The House provision specifies that a plan in a small business case must be confirmed not later than 175 days from the date of the order for relief, unless this period is extended pursuant to section 1121(e)(3). The Senate amendment requires the plan to be confirmed within 45 days from the date on which a plan is filed, subject to extension pursuant to certain specified criteria.

Sec. 439. Duties of the United States trustee

Section 439 of the conference report is substantively identical to section 439 of the House bill and the Senate amendment. This provision amends section 586(a) of title 28 of the United States Code to require the United States trustee to perform the following additional duties with respect to small business debtors:

(1) conduct an initial debtor interview before the meeting of creditors for the purpose of (a) investigating the debtor's viability, (b) inquiring about the debtor's business plan, (c) explaining the debtor's obligation to file monthly operating reports, (d) attempting to obtain an agreed scheduling order setting various time frames (such as the date for filing a plan and effecting confirmation), and (e) informing the debtor of other obligations;

(2) if determined to be appropriate and advisable, inspect the debtor's business premises for the purpose of reviewing the debtor's books and records and verifying that the debtor has filed its tax returns;

(3) review and monitor diligently the debtor's activities to determine as promptly as possible whether the debtor will be unable to confirm a plan; and

(4) promptly apply to the court for relief in any case in which the United States trustee finds material grounds for dismissal or conversion of the case.

Sec. 440. Scheduling conferences

Section 440 amends section 105(d) of the Bankruptcy Code to mandate that a bankruptcy court hold status conferences as are necessary to further the expeditious and economical resolution of a bankruptcy case. This provision is identical to section 440 of the House bill and the Senate amendment.

Sec. 441. Serial filer provisions

Section 441 of the conference report is substantively similar to section 441 of the House bill and the Senate amendment. Subsection (1) amends section 362 of the Bankruptcy Code to provide that a court may award only actual damages for a violation of the automatic stay committed by an entity in the good faith belief that subsection (h) of section 362 (as added by this Act) applies to the debtor. Section 441(2) adds a new subsection to section 362 of the Bankruptcy Code specifying that the automatic stay does not apply where the chapter 11 debtor: (1) is a debtor in a small business case pending at the time the subsequent case is filed; (2) was a debtor in a small business case dismissed for any reason pursuant to an order that became final in the two-year period ending on the date of the order for relief entered in the pending case; (3) was a debtor in small business case in which a plan was confirmed in the two-year period ending on the date of the order for relief entered in the pending case; or (4) is an entity that has acquired substantially all of the assets or business of a small business debtor described in the preceding paragraphs, unless such entity establishes by a preponderance of the evidence that it acquired the assets or business in good faith and not for the purpose of evading this provision. This exception was added to the conference report as a compromise.

An exception to this provision applies to a chapter 11 case that is commenced involuntarily and involves no collusion between the debtor and the petitioning creditors. Also, it does not apply if the debtor proves by a preponderance of the evidence that: (1) the filing of the subsequent case resulted from circumstances beyond the debtor's control and which were not foreseeable at the time the prior case was filed; and (2) it is more likely than not that the court will confirm a feasible plan of reorganization (but not a liquidating plan) within a reasonable time.

Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee

Section 442 largely reflects the Senate position as represented in section 442 of the Senate amendment. Subsection (a) amends section 1112(b) of the Bankruptcy Code to mandate that the court convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, if the movant establishes cause, absent unusual circumstances. In this regard, the court must specify the circumstances that support the court's finding that conversion or dismissal is not in the best interests of creditors and the estate. This exception was added to the conference report as a compromise.

In addition, the provision specifies an exception to the provision's mandatory requirement applies if: (1) the debtor or a party in interest objects and establishes that there is a reasonable likelihood that a plan will be confirmed within the time period set forth in section 1121(e) and 1129(e), or if these provisions are inapplicable, within a reasonable period of time; (2) the grounds for granting such relief include an act or omission of the debtor for which there exists a reasonable justification for such act or omission; and (3) such act or omission will be cured within a reasonable period of time.

The court must commence the hearing on a section 1112(b) motion within 30 days of its filing and decide the motion not later than 15 days after commencement of the hearing unless the movant expressly consents to a continuance for a specified period of time or compelling circumstances prevent the court from meeting these time limits. Section 442 provides that the term "cause" under section 1112(b), as amended by this provision, includes the following:

(1) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(2) gross mismanagement of the estate;

(3) failure to maintain appropriate insurance that poses a material risk to the estate or the public;

(4) unauthorized use of cash collateral that is harmful to one or more creditors;

(5) failure to comply with a court order;

(6) unexcused failure to timely satisfy any filing or reporting requirement under the Bankruptcy Code or applicable rule;

(7) failure to attend the section 341 meeting of creditors or an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, without good cause shown by the debtor;

(8) failure to timely provide information or to attend meetings reasonably requested by the United States trustee or bankruptcy administrator;

(9) failure to timely pay taxes owed after the order for relief or to file tax returns due postpetition;

(10) failure to file a disclosure statement or to confirm a plan within the time fixed by the Bankruptcy Code or pursuant to court order;

(11) failure to pay any requisite fees or charges under chapter 123 of title 28 of the United States Code;

(12) revocation of a confirmation order;

(13) inability to effectuate substantial consummation of a confirmed plan;

(14) material default by the debtor with respect to a confirmed plan;

(15) termination of a plan by reason of the occurrence of a condition specified in the plan; and

(16) the debtor's failure to pay any domestic support obligation that first becomes payable postpetition

This definition of the term "cause" represents a compromise between the House and Senate conferees.

Section 442(b) creates additional grounds for the appointment of a chapter 11 trustee under section 1104(a). It provides that should the bankruptcy court determine cause exists to convert or dismiss a chapter 11 case, it may appoint a trustee or examiner if in the best interests of creditors and the bankruptcy estate. Section 442 of the conference report represents a compromise between the House and Senate conferees. Under the House version of this provision, the standard for the exception is a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time. The standard under the Senate amendment is reasonable likelihood that a plan will be confirmed within specified time frames established in sections 1121(e) and 1129(e), or within a reasonable period of time in those cases where sections 1121(e) or 1129(e) do not apply.

Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses

Section 443 of the conference report is substantively identical to section 443 of the House bill and the Senate amendment. This provision directs the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, to conduct a study to determine: (i) the internal and external factors that cause small businesses (particularly sole proprietorships) to seek bankruptcy relief and the factors that cause small businesses to successfully complete their chapter 11 cases; and (ii) how the bankruptcy laws may be made more effective and efficient in assisting small business to remain viable.

Sec. 444. Payment of interest

Section 444 of the conference report is substantively identical to section 444 of the House bill and the Senate amendment. Subsection (1) amends section 362(d)(3) of the Bankruptcy Code to require a court to grant relief from the automatic stay within 30 days after it determines that a single asset real estate debtor is subject to this provision. Section 444(2) amends section 362(d)(3)(B) to specify that relief from the automatic stay shall be granted unless the single asset real estate debtor has commenced making monthly payments to each creditor secured by the debtor's real property (other than a claim secured by a judgment lien or unmatured statutory lien) in an amount equal to the interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate. It allows a debtor in its sole discretion to make the requisite interest payments out of rents or other proceeds generated by the real property, notwithstanding section 363(c)(2).

Sec. 445. Priority for administrative expenses

Section 445 of the conference report is substantively identical to section 445 of the House bill and the Senate amendment. The provision amends section 503(b) of the Bankruptcy Code to add a new administrative expense priority for a nonresidential real property lease that is assumed under section 365 and then subsequently rejected. The amount of the priority is the sum of all monetary obligations due under the lease (excluding penalties and obligations arising from or relating to a failure to operate) for the two-year period following the rejection date or actual turnover of the premises (whichever is later), without reduction or setoff for any reason, except for sums actually received or to be received from a nondebtor. Any remaining sums due for the balance of the term of the lease are treated as a claim under section 502(b)(6) of the Bankruptcy Code.

Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan

Section 446 of the conference report reflects the Senate position as represented in section 420 of the Senate amendment. There is no counterpart to this provision in the House bill. Subsection (a) amends Bankruptcy Code section 521(a) to require a debtor, unless a trustee is serving in the case, to serve as the administrator (as defined in the Employee Retirement Income Security Act) of an employee benefit plan if the debtor served in such capacity at the time the case was filed. Section 446(b) amends Bankruptcy Code section 704 to require the chapter 7 trustee to perform the obligations of such administrator in a case where the debtor was required to perform such obligations. Section 446(c) amends Bankruptcy Code section 1106(a) to require a chapter 11 trustee to perform these obligations.

Sec. 447. Appointment of committee of retired employees

This provision amends section 1114(d) of the Bankruptcy Code to clarify that it is the responsibility of the United States trustee to appoint members to a committee of retired employees. There is no antecedent to this provision in either the House bill or the Senate amendment.

Title V—Municipal Bankruptcy Provisions

Sec. 501. Petition and proceedings related to petition

Section 501 amends sections 921(d) and 301 of the Bankruptcy Code to clarify that the court must enter the order for relief in a chapter 9 case. This provision is substantively identical to section 501 of the House bill and the Senate amendment.

Sec. 502. Applicability of other sections to chapter 9

Section 502 of the conference report is substantively identical to section 502 of the House bill and the Senate amendment. This provision amends section 901 of the Bankruptcy Code to make the following sections applicable to chapter 9 cases:

(1) section 555 (contractual right to liquidate, terminate or accelerate a securities contract);

(2) section 556 (contractual right to liquidate, terminate or accelerate a commodities or forward contract);

(3) section 559 (contractual right to liquidate, terminate or accelerate a repurchase agreement);

(4) section 560 (contractual right to liquidate, terminate or accelerate a swap agreement);

(5) section 561 (contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts); and

(6) section 562 (damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreement).

Title VI—Bankruptcy Data

Sec. 601. Improved bankruptcy statistics

Section 601 of the conference report is substantively similar to section 601 of the House bill and the Senate amendment. In recognition of the delayed effective date of this Act, section 601 extends the date by which the report described herein must be submitted.

This provision amends chapter 6 of title 28 of the United States Code to require the clerk for each district (or the bankruptcy court clerk if one has been certified pursuant to section 156(b) of title 28 of the United States Code) to collect certain statistics for chapter 7, 11, and 13 cases in a standardized format prescribed by the Director of the Administrative Office of the United States Courts and to make this information available to the public. Not later than June 1, 2005, the Director must submit a report to Congress concerning the statistical information collected and then must report annually thereafter. The statistics must be itemized by chapter of the Bankruptcy Code and be presented in the aggregate for each district. The specific categories of information that must be gathered include the following:

(1) scheduled total assets and liabilities of debtors who are individuals with primarily consumer debts under chapters 7, 11 and 13 by category;

(2) such debtors' current monthly income, average income, and average expenses;

(3) the aggregate amount of debts discharged during the reporting period based on the difference between the total amount of scheduled debts and by categories that are predominantly nondischargeable;

(4) the average time between the filing of the bankruptcy case and the closing of the case;

(5) the number of cases in which reaffirmation agreements were filed, the total number of reaffirmation agreements filed, the number of cases in which the debtor was pro se and a reaffirmation agreement was filed, and the number of cases in which the reaffirmation agreement was approved by the court;

(6) for chapter 13 cases, information on the number of (a) orders determining the value of secured property in an amount less than the amount of the secured claim, (b) final orders that determined the value of property securing a claim, (c) cases dismissed, (d) cases dismissed for failure to make payments under the plan, (e) cases refiled after dismissal, (f) cases in which the plan was completed (separately itemized with respect to the number of modifications made before completion of the plan, and (g) cases in which the debtor had previously sought bankruptcy relief within the six years preceding the filing of the present case;

(7) the number of cases in which creditors were fined for misconduct and the amount of any punitive damages awarded for creditor misconduct; and

(8) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against a debtor's counsel and the damages awarded under this rule.

Section 601 provides that the amendments in this provision take effect 18 months after the date of enactment of this Act.

Sec. 602. Uniform rules for the collection of bankruptcy data

Section 602 of the conference report is substantively identical to section 602 of the House bill and the Senate amendment. It amends chapter 39 of title 28 of the United States Code to add a provision requiring the Attorney General to promulgate rules mandating the establishment of uniform forms for final reports in chapter 7, 12 and 13 cases and periodic reports in chapter 11 cases. This provision also specifies that these reports be designed to facilitate compilation of data and to provide maximum public access by physical inspection at one or more central filing locations and by electronic access through the Internet or other appropriate media. The information should enable an evaluation of the efficiency and practicality of the Federal bankruptcy system. In issuing rules, the Attorney General must consider: (1) the reasonable needs of the public for information about the Federal bankruptcy system; (2) the economy, simplicity, and lack of undue burden on persons obligated to file the reports; and (3) appropriate privacy concerns and safeguards. Section 602 provides that final reports by trustees in chapter 7, 12, and 13 cases include the following information: (1) the length of time the case was pending; (2) assets abandoned; (3) assets exempted; (4) receipts and disbursements of the estate; (5)

administrative expenses, including those associated with section 707(b) of the Bankruptcy Code, and the actual costs of administering chapter 13 cases; (6) claims asserted; (7) claims allowed; and (8) distributions to claimants and claims discharged without payment. With regard to chapter 11 cases, section 602 provides that periodic reports include the following information regarding:

(1) the standard industry classification for businesses conducted by the debtor, as published by the Department of Commerce;

(2) the length of time that the case was pending;

(3) the number of full-time employees as of the date of the order for relief and at the end of each reporting period;

(4) cash receipts, cash disbursements, and profitability of the debtor for the most recent period and cumulatively from the date of the order for relief;

(5) the debtor's compliance with the Bankruptcy Code, including whether tax returns have been filed and taxes have been paid;

(6) professional fees approved by the court for the most recent period and cumulatively from the date of the order for relief; and

(7) plans filed and confirmed, including the aggregate recoveries of holders by class and as a percentage of total claims of an allowed class.

Sec. 603. Audit procedures

Section 603 is substantively identical to section 603 of the House bill and the Senate amendment. Subsection (a)(1) requires the Attorney General (for judicial districts served by United States trustees) and the Judicial Conference of the United States (for judicial districts served by bankruptcy administrators) to establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules and other information filed by debtors pursuant to sections 111, 521 and 1322 of the Bankruptcy Code. Section 603(a)(1) requires the audits to be conducted in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. It permits the Attorney General and the Judicial Conference to develop alternative auditing standards not later than two years after the date of enactment of this Act. Section 603(a)(2) requires these procedures to: (1) establish a method of selecting appropriate qualified contractors to perform these audits; (2) establish a method of randomly selecting cases for audit, and that a minimum of at least one case out of every 250 cases be selected for audit; (3) require audits in cases where the schedules of income and expenses reflect greater than average variances from the statistical norm for the district if they occur by reason of higher income or higher expenses than the statistical norm in which the schedules were filed; and (4) require the aggregate results of such audits, including the percentage of cases by district in which a material misstatement of income or expenditures is reported, to be made available to the public on an annual basis.

Section 603(b) amends section 586 of title 28 of the United States Code to require the United States trustee to submit reports as directed by the Attorney General, including the results of audits performed under section 603(a). In addition, it authorizes the United States trustee to contract with auditors to perform the audits specified in this provision. Further, it requires the report of each audit to be filed with the court and transmitted to the United States trustee. The report must specify material misstatements of income, expenditures or assets. In a case where a material misstatement has been reported, the clerk must provide notice of such misstatement to creditors and the United States trustee must report it to the United States Attorney, if appropriate, for possible criminal prosecution. If advisable, the United States trustee must also take appropriate action, such as revoking the debtor's discharge.

Section 603(c) amends section 521 of the Bankruptcy Code to make it a duty of the debtor to cooperate with an auditor. Section 603(d) amends section 727 of the Bankruptcy Code to add, as a ground for revocation of a chapter 7 discharge the debtor's failure to: (a) satisfactorily explain a material misstatement discovered as the result of an audit pursuant to this provision; or (b) make available for inspection all necessary documents or property belonging to the debtor that are requested in connection with such audit. Section 603(e) provides that the amendments made by this provision take effect 18 months after the Act's date of enactment.

Sec. 604. Sense of Congress regarding availability of bankruptcy data

Section 604 expresses a sense of the Congress that it is a national policy of the United States that all data collected by bankruptcy clerks in electronic form (to the extent such data relates to public records pursuant to section 107 of the Bankruptcy Code) should be made available to the public in a useable electronic form in bulk, subject to appropriate privacy concerns and safeguards as determined by the Judicial Conference of the United States. It also states that a uniform bankruptcy data system should be established that uses a single set of data definitions and forms to collect such data and that data for any particular bankruptcy case should be aggregated in electronic format. This provision is substantively identical to section 604 of the House bill and the Senate amendment.

TITLE VII—BANKRUPTCY TAX PROVISIONS

Sec. 701. Treatment of certain tax liens

Section 701 of the conference report is substantively identical to section 701 of the House bill and the Senate amendment. Subsection (a) makes several amendments to section 724 of the Bankruptcy Code to provide greater protection for holders of ad valorem tax liens on real or personal property of the estate. Many school boards obtain liens on real property to ensure collection of unpaid ad valorem taxes. Under current law, local governments are sometimes unable to collect these taxes despite the presence of a lien because they may be subordinated to certain claims and expenses as a result of section 724. Section 701(a) is intended to protect the holders of these tax liens from, among other things, erosion of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code. Pursuant to section 701(a), subordination of ad valorem tax liens is still possible under section 724(b), but limited to the payment of: (1) claims incurred under chapter 7 for wages, salaries, or commissions (but not expenses incurred under chapter 11); (2) claims for wages, salaries, and commissions entitled to priority under section 507(a)(4); and (3) claims for contributions to employee benefit plans entitled to priority under section 507(a)(5). Before a tax lien on real or personal property may be subordinated pursuant to section 724, the chapter 7 trustee must exhaust all other unencumbered estate assets and, consistent with section 506, recover reasonably necessary costs and expenses of preserving or disposing of such property. Section 701(b) amends section 505(a)(2) of the Bankruptcy Code to prevent a bankruptcy court from determining the amount or legality of an ad valorem tax on real or personal property if the applicable period for contesting or redetermining the amount of the claim under nonbankruptcy law has expired.

Sec. 702. Treatment of fuel tax claims

Section 702 is substantively identical to section 702 of the House bill and the Senate amendment. The provision amends section 501 of the Bankruptcy Code to simplify the process for filing of claims by states for certain fuel taxes. Rather than requiring each state to file a claim for these taxes (as is the case under current law), section 702 permits the designated "base jurisdiction" under the International Fuel Tax Agreement to file a claim on behalf of all states, which would then be allowed as a single claim.

Sec. 703. Notice of request for a determination of taxes

Under current law, a trustee or debtor in possession may request a governmental unit to determine administrative tax liabilities in order to receive a discharge of those liabilities. There are no requirements as to the content or form of such notice to the government. Section 703 of the conference report amends section 505(b) of the Bankruptcy Code to require the clerk of each district to maintain a list of addresses designated by governmental units for service of section 505 requests. In addition, the list may also include information concerning filing requirements specified by such governmental units. If a governmental entity does not designate an address and provide that address to the bankruptcy court clerk, any request made under section 505(b) of the Bankruptcy Code may be served at the address of the appropriate taxing authority of that governmental unit. This provision is substantively identical to section 703 of the House bill and the Senate amendment.

Sec. 704. Rate of interest on tax claims

Under current law, there is no uniform rate of interest applicable to tax claims. As a result, varying standards have been used to determine the applicable rate. Section 704 of the conference report amends the Bankruptcy Code to add section 511 for the purpose of simplifying the interest rate calculation. It provides that for all tax claims (federal, state, and local), including administrative expense taxes, the interest rate shall be determined in accordance with applicable nonbankruptcy law. With respect to taxes paid under a confirmed plan, the rate of interest is determined as of the calendar month in which the plan is confirmed. This provision is substantively identical to section 704 of the House bill and the Senate amendment.

Sec. 705. Priority of tax claims

Under current law, a tax claim is entitled to be treated as a priority claim if it arises within certain specified time periods. In the case of income taxes, a priority arises, among other time periods, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. The 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that the 3-year and 240-day time periods are tolled during the pendency of a previous bankruptcy case. Section 705 amends section 507(a)(8) of the Bankruptcy Code to codify the rule tolling priority periods during the pendency of a previous bankruptcy case during that 240-day period together with an additional 90 days. It also includes tolling provisions to adjust for the collection due process rights provided by the Internal Revenue Service Restructuring and Reform Act of 1998. During any period in which the government is prohibited from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, the priority is tolled, plus 90 days. Also, during any time in which there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days. This provision is substantively identical to section 705 of the House bill and the Senate amendment.

Sec. 706. Priority property taxes incurred

Under current law, many provisions of the Bankruptcy Code are keyed to the word "assessed." While this term has an accepted meaning in the federal system, it is not used in many state and local statutes and has created some confusion. To eliminate this problem with respect to real property taxes, section 706 amends section 507(a)(8)(B) of the Bankruptcy Code by replacing the word "assessed" with "incurred". This provision is substantively identical to section 706 of the House bill and the Senate amendment.

Sec. 707. No discharge of fraudulent taxes in chapter 13

Under current law, a debtor's ability to discharge tax debts varies depending on whether the debtor is in chapter 7 or chapter 13. In a chapter 7 case, taxes from a return due within 3 years of the petition date, taxes assessed within 240 days, or taxes related to an unfiled return or false return are not dischargeable. Chapter 13, on the other hand, allows these obligations to be discharged. Section 707 of the conference report amends Bankruptcy Code section 1328(a)(2) to prohibit the discharge of tax claims described in section 523(a)(1)(B) and (C) as well as claims for a tax required to be collected or withheld and for which the debtor is liable in whatever capacity pursuant to section 507(a)(8)(C). This provision is substantively identical to section 707 of the House bill and the Senate amendment.

Sec. 708. No discharge of fraudulent taxes in chapter 11

Section 708 of the conference report largely reflects the Senate position as represented in section 708 of the Senate amendment. Under current law, the confirmation of a chapter 11 plan discharges a corporate debtor from most debts. Section 708 amends section 1141(d) of the Bankruptcy Code to except from discharge in corporate chapter 11 case a debt specified in subsections 523(a)(2)(A) and (B) of the Bankruptcy Code owed to a domestic governmental unit. In addition, it excepts from discharge a debt owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 of the United States Code or any similar state statute. In contrast, the House renders any debt under section 523(a)(2), nondischargeable in a corporate chapter 11 case. Like the House provision and its Senate counterpart, however, section 708 excepts from discharge a debt for a tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or defeat such tax.

Sec. 709. Stay of tax proceedings limited to prepetition taxes

Under current law, the filing of a petition for relief under the Bankruptcy Code activates an automatic stay that enjoins the commencement or continuation of a case in the federal tax court. This rule was arguably extended in *Halpern* v. *Commissioner*,[3] which held that the tax court did not have jurisdiction to hear a case involving a postpetition year. To address this issue, section 709 of the conference report amends section 362(a)(8) of the Bankruptcy Code to specify that the automatic stay is limited to an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). The amendment clarifies that the automatic stay does not apply to an individual debtor's postpetition taxes. In addition, section 709 allows the bankruptcy court to determine whether the automatic stay applies to the postpetition tax liabilities of a corporate debtor. This provision is substantively identical to section 709 of the House bill and the Senate amendment.

Sec. 710. Periodic payment of taxes in chapter 11 cases

Section 710 of the conference report amends section 1129(a)(9) of the Bankruptcy Code to provide that the allowed amount of priority tax claims (as of the plan's effective date) must be paid in regular cash installments within five years from the entry of the order for relief. The manner of payment may not be less favorable than that accorded the most favored nonpriority unsecured class of claims under section 1122(b). In addition, it requires the same payment treatment to be accorded to secured section 507(a)(8) claims of a governmental unit. This provision is substantively identical to section 710 of the House bill and the Senate amendment.

Sec. 711. Avoidance of statutory liens prohibited

The Internal Revenue Code gives special protections to certain purchasers of securities and motor vehicles notwithstanding the existence of a filed tax lien. Section 711 of the conference report amends section 545(2) of the Bankruptcy Code to prevent that provision's special protections from being used to avoid an otherwise valid lien. Specifically, it prevents the avoidance of unperfected liens against a bona fide purchaser, if the purchaser qualifies as such under section 6323 of the Internal Revenue Code or a similar provision under state or local law. Section 711 is substantively identical to section 711 of the House bill and the Senate amendment.

Sec. 712. Payment of taxes in the conduct of business

Although current law generally requires trustees and receivers to pay taxes in the ordinary course of the debtor's business, the payment of administrative expenses must first be authorized by the court. Section 712(a) of the conference report amends section 960 of title 28 of the United States Code to clarify that postpetition taxes in the ordinary course of business must be paid on or before when such tax is due under applicable nonbankruptcy law, with certain exceptions. This requirement does not apply if the obligation is a property tax secured by a lien against property that is abandoned under section 554 within a reasonable time after the lien attaches. In addition, the requirement does not pertain where the payment is excused under the Bankruptcy Code. With respect to chapter 7 cases, section 712(a) provides that the payment of a tax claim may be deferred until final distribution pursuant to section 726 if the tax was not incurred by a chapter 7 trustee or if the court, prior to the due date of the tax, finds that the estate has insufficient funds to pay all administrative expenses in full. Section 712(b) amends section 503(b)(1)(B)(i) of the Bankruptcy Code to clarify that this provision applies to secured as well as unsecured tax claims, including property taxes based on liability that is in rem, in personam or both. Section 712(c) amends section 503(b)(1) to exempt a governmental unit from the requirement to file a request for payment of an administrative expense. Section 712(d)(1) amends section 506(b) to provide that to the extent that an allowed claim is oversecured, the holder is entitled to interest and any reasonable fees, costs, or charges provided for under state law. Section 712(d)(2), in turn, amends section 506(c) to permit a trustee to recover from a secured creditor the payment of all ad valorem property taxes. Section 712 of the conference report is substantively identical to section 712 of the House bill and the Senate amendment.

Sec. 713. Tardily filed priority tax claims

Section 713 of the conference report is substantively identical to section 713 of the House bill and the Senate amendment. This provision amends section 726(a)(1) of the Bankruptcy Code to require a claim under section 507 that is not timely filed pursuant to section 501 to be entitled to a distribution if such claim is filed the earlier of the date that is ten days following the mailing to creditors of the summary of the trustee's final report or before the trustee commences final distribution.

Sec. 714. Income tax returns prepared by tax authorities

Section 714 of the conference report is substantively identical to section 714 of the House bill and the Senate amendment. This provision amends section 523(a) of the Bankruptcy Code to provide that a return filed on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (and the debt can be discharged), but that a return filed on behalf of a taxpayer based on information the Secretary obtains through testimony or otherwise does not constitute filing a return (and the debt cannot be discharged).

Sec. 715. Discharge of the estate's liability for unpaid taxes

Under the Bankruptcy Code, a trustee or debtor in possession may request a prompt audit to determine postpetition tax liabilities. If the government does not make a determination or request an extension of time to audit, then the trustee or debtor in possession's determination of taxes will be final. Several court cases have held that while this protects the debtor and the trustee, it does not necessarily protect the estate. Section 715 of the conference report amends section 505(b) of the Bankruptcy Code to clarify that the estate is also protected if the government does not request an audit of the debtor's tax returns. Therefore, if the government does not make a determination of postpetition tax liabilities or request extension of time to audit, then the estate's liability for unpaid taxes is discharged. This provision is substantively identical to section 715 of the House bill and the Senate amendment.

Sec. 716. Requirement to file tax returns to confirm chapter 13 plans

Under current law, a debtor may enjoy the benefits of chapter 13 even if delinquent in the filing of tax returns. Section 716 of the conference report responds to this problem. This provision is substantively identical to section 716 of the House bill and the Senate amendment. Subsection (a) amends section 1325(a) of the Bankruptcy Code to require a chapter 13 debtor file all applicable Federal, state, and local tax returns as a condition of confirmation as required by section 1308 (as added by section 716(b)). Section 716(b) adds section 1308 to chapter 13. This provision requires a chapter 13 debtor to be current on the filing of tax returns for the four-year period preceding the filing of the case. If the returns are not filed by the date on which the meeting of creditors is first scheduled, the trustee may hold open that meeting for a reasonable period of time to allow the debtor to file any unfiled returns. The additional period of time may not extend beyond 120 days after the date of the meeting of the creditors or beyond the date on which the return is due under the last automatic extension of time for filing. The debtor, however, may obtain an extension of time from the court if the debtor demonstrates by a preponderance of the evidence that the failure to file was attributable to circumstances beyond the debtor's control.

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[3] 96 T.C. 895 (1991).

Section 716(c) amends section 1307 of the Bankruptcy Code to provide that if a chapter 13 debtor fails to file a tax return as required by section 1308, the court must dismiss the case or convert it to one under chapter 7 (whichever is in the best interests of creditors and the estate) on request of a party in interest or the United States trustee after notice and a hearing.

Section 716(d) amends section 502(b)(9) of the Bankruptcy Code to provide that in a chapter 13 case, a governmental unit's tax claim based on a return filed under section 1308 shall be deemed to be timely filed if the claim is filed within 60 days from the date on which such return is filed. Section 716(e) states the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should propose for adoption official rules with respect an objection by a governmental unit to confirmation of a chapter 13 plan when such claim pertains to a tax return filed pursuant to section 1308.

Sec. 717. Standards for tax disclosure

Before creditors and stockholders may be solicited to vote on a chapter 11 plan, the plan proponent must file a disclosure statement that provides adequate information to holders of claims and interests so they can make a decision as to whether or not to vote in favor of the plan. As the tax consequences of a plan can have a significant impact on the debtor's reorganization prospects, section 717 amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 disclosure statement discuss the plan's potential material Federal tax consequences to the debtor, any successor to the debtor, and to a hypothetical investor that is representative of the claimants and interest holders in the case. This provision is substantively identical to section 717 of the House bill and the Senate amendment.

Sec. 718. Setoff of tax refunds

Under current law, the filing of a bankruptcy petition automatically stays the setoff of a prepetition tax refund against a prepetition tax obligation unless the bankruptcy court approves the setoff. Interest and penalties that may continue to accrue may also be nondischargeable pursuant to section 523(a)(1) of the Bankruptcy Code and cause individual debtors undue hardship. Section 718 of the conference report amends section 362(b) of the Bankruptcy Code to create an exception to the automatic stay whereby such setoff could occur without court order unless it would not be permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax liability. In that circumstance, the governmental authority may hold the refund pending resolution of the action, unless the court, on motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection pursuant to section 361. Section 718 is substantively identical to section 718 of the House bill and the Senate amendment.

Sec. 719. Special provisions related to the treatment of state and local taxes

Section 719 of the conference report is substantively identical to section 719 of the House bill and the Senate amendment. This provision conforms state and local income tax administrative issues to the Internal Revenue Code. For example, under federal law, a bankruptcy petitioner filing on March 5 has two tax years—January 1 to March 4, and March 5 to December 31. Under the Bankruptcy Code, however, state and local tax years are divided differently—January 1 to March 5, and March 6 to December 31. Section 719 requires the states to follow the federal convention. It conforms state and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor, tax consequences with respect to partnerships and transfers of property, and the taxable period of a debtor. Section 719 does not conform state and local tax rates to federal tax rates.

Sec. 720. Dismissal for failure to timely file tax returns

Under existing law, there is no definitive rule with respect to whether a bankruptcy court may dismiss a bankruptcy case if the debtor fails to file returns for taxes incurred postpetition. Section 720 of the conference report amends section 521 of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bankruptcy case if the debtor fails to file a postpetition tax return or obtain an extension. If the debtor does not file the required return or obtain the extension within 90 days from the time of the request by the taxing authority to file the return, the court must convert or dismiss the case, whichever is in the best interest of creditors and the estate. Section 720 is substantively identical to section 720 of the House bill and the Senate amendment.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

Title VIII of the conference report adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. It incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases. Title VIII is intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border insolvencies, which protects the interests of creditors and other interested parties, including the debtor. In addition, it serves to protect and maximize the value of the debtor's assets. Title VIII is substantially identical to title VIII of the House bill and the Senate amendment.

Sec. 801. Amendment to add chapter 15 to title 11, United States Code

Section 801 introduces chapter 15 to the Bankruptcy Code, which is the Model Law on Cross-Border Insolvency ("Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") at its Thirtieth Session on May 12-30, 1997.[4] Cases brought under chapter 15 are intended to be ancillary to cases brought in a debtor's home country, unless a full United States bankruptcy case is brought under another chapter. Even if a full case is brought, the court may decide under section 305 to stay or dismiss the United States case under the other chapter and limit the United States' role to an ancillary case under this chapter.[5] If the full case is not dismissed, it will be subject to the provisions of this chapter governing cooperation, communication and coordination with the foreign courts and representatives. In any case, an order granting recognition is required as a prerequisite to the use of sections 301 and 303 by a foreign representative.

Sec. 1501. Purpose and scope of application

Section 1501 combines the Preamble to the Model Law (subsection (1)) with its article 1 (subsections (2) and (3)).[6] It largely tracks the language of the Model Law with appropriate United States references. However, it adds in subsection (3) an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.[7]

The reference to section 109(e) essentially defines "consumer debtors" for purposes of the exclusion by incorporating the debt limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States. This ensures that residents of other countries will not be able to manipulate this exclusion to avoid recognition of foreign proceedings in their home countries or elsewhere.

The first exclusion in subsection (c) constitutes, for the United States, the exclusion provided in article 1, subsection (2), of the Model Law.[8] Foreign representatives of foreign proceedings which are excluded from the scope of chapter 15 may seek comity from courts other than the bankruptcy court since the limitations of section 1509(b)(2) and (3) would not apply to them.

The reference to section 109(b) interpolates into chapter 15 the entities governed by specialized insolvency regimes under United States law which are currently excluded from liquidation proceedings under title 11. Section 1501 contains an exception to the section 109(b) exclusions so that foreign proceedings of foreign insurance companies are eligible for recognition and relief under chapter 15 as they had been under section 304. However, section 1501(d) has the effect of leaving to State regulation any deposit, escrow, trust fund or the like posted by a foreign insurer under State law.

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[4] The text of the Model Law and the Report of UNCITRAL on its adoption are found at U.N. G.A., 52d Sess., Supp. No. 17 (A/52/17) ("Report"). That Report and the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) ("Guide"), which was discussed in the negotiations leading to the Model Law and published by UNCITRAL as an aid to enacting countries, should be consulted for guidance as to the meaning and purpose of its provisions. The development of the provisions in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the interim reports of the Working Group that are cited in the Report.

[5] See section 1529 and commentary.

[6] Guide at 16-19.

[7] See id. at 18, ¶60; 19 ¶66.

[8] Id. at 17.

Sec. 1502. Definitions

"Debtor" is given a special definition for this chapter. This definition does not come from the Model Law, but is necessary to eliminate the need to refer repeatedly to "the same debtor as in the foreign proceeding." With certain exceptions, the term "person" used in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and various legal entities, thus matching the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of "trustee" for this chapter ensures that debtors in possession and debtors, as well as trustees, are included in the term.[9]

The definition of "within the territorial jurisdiction of the United States" in subsection (7) is not taken from the Model Law. It has been added because the United States, like some other countries, asserts insolvency jurisdiction over property outside its territorial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of the enacting state. In addition, a definition of "recognition" supplements the Model Law definitions and merely simplifies drafting of various other sections of chapter 15.

Two key definitions of "foreign proceeding" and "foreign representative," are found in sections 101(23) and (24), which have been amended consistent with Model Law article 2.[10] The definitions of "establishment," "foreign court," "foreign main proceeding," and "foreign non-main proceeding" have been taken from Model Law article 2, with only minor language variations necessary to comport with United States terminology. Additionally, defined terms have been placed in alphabetical order.[11] In order to be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.[12]

Sec. 1503. International obligations of the United States

This section is taken exactly from the Model Law with only minor adaptations of terminology.[13] Although this section makes an international obligation prevail over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

Sec. 1504. Commencement of ancillary case

Article 4 of the Model Law is designed for designation of the competent court which will exercise jurisdiction under the Model Law. In United States law, section 1334(a) of title 28 gives exclusive jurisdiction to the district courts in a "case" under this title.[14] Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition commences a "case," an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) to section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts if referred by the district courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to a revised section 1410 of title 28 governing venue and transfer.[15]

The title "ancillary" in this section and in the title of this chapter emphasizes the United States policy in favor of a general rule that countries other than the home country of the debtor, where a main proceeding would be brought, should usually act through ancillary proceedings in aid of the main proceedings, in preference to a system of full bankruptcies (often called "secondary" proceedings) in each state where assets are found. Under the Model Law, notwithstanding the recognition of a foreign main proceeding, full bankruptcy cases are permitted in each country (see sections 1528 and 1529). In the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

Sec. 1505. Authorization to act in a foreign country

The language in this section varies from the wording of article 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the language in the last sentence is meant to emphasize that the identification of the trustee or other entity entitled to act is under United States law, while the scope of actions that may be taken by the trustee or other entity under foreign law is limited by the foreign law.[16]

The related amendment to section 586(a)(3) of title 28 makes acting pursuant to authorization under this section an additional power of a trustee or debtor in possession. While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law.[17] Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision. This requirement means that the first-day orders in reorganization cases should include authorization to act under this section where appropriate.

This section also contemplates the designation of an examiner or other natural person to act for the estate in one or more foreign countries where appropriate. One instance might be a case in which the designated person had a special expertise relevant to that assignment. Another might be where the foreign court would be more comfortable with a designated person than with an entity like a debtor in possession. Either are to be recognized under the Model Law.[18]

Sec. 1506. Public policy exception

This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word "manifestly" in international usage restricts the public policy exception to the most fundamental policies of the United States.[19]

Sec. 1507. Additional assistance

Subsection (1) follows the language of Model Law article 7.[20] Subsection (2) makes the authority for additional relief (beyond that permitted under sections 1519–1521, below) subject to the conditions for relief heretofore specified in United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying or limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court's consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to "estate" in section 304 have been changed to refer to the debtor's property, because many foreign systems do not create an estate in insolvency proceedings of the sort recognized under this chapter. Although the case law construing section 304 makes it clear that comity is the central consideration, its physical placement as one of six factors in subsection (c) of section 304 is misleading, since those factors are essentially elements of the grounds for granting comity. Therefore, in subsection (2) of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.[21]

Sec. 1508. Interpretation

This provision follows conceptually Model Law article 8 and is a standard one in recent UNCITRAL treaties and model laws. Changes to the language were made to express the concepts more clearly in United States vernacular.[22] Interpretation of this chapter on a uniform basis will be aided by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well. Uniform interpretation will also be aided by reference to CLOUT, the UNCITRAL Case Law On Uniform Texts, which is a service of UNCITRAL. CLOUT receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they advance the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions will more likely be regarded as persuasive elsewhere.

Sec. 1509. Right of direct access

This section implements the purpose of article 9 of the Model Law, enabling a foreign representative to commence a case under this chapter by filing a petition directly with the court without preliminary formalities that may delay or prevent relief. It varies the language to fit United States procedural requirements and it imposes recognition of the foreign proceeding as a condition to further rights and duties of the foreign representative. If recognition is granted, the foreign representative will have full capacity under United States law (subsection (b)(1)), may request such relief in a state or federal court other than the bankruptcy court (subsection (b)(2)), and may be granted comity or cooperation by such non-bankruptcy court (subsection (b)(3) and (c)). Subsections (b)(2), (b)(3), and (c) make it clear that chapter 15 is intended to be the exclusive door to ancillary assistance to foreign proceedings. The goal is to concentrate control of these questions in one court. That goal is important in a federal system like that of the United States with many different courts, state and federal, that may have pending actions involving the debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law ("competent court") as well as article 9.[23]

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[9] See section 1505.

[10] Guide at 19–21, ¶¶67–68.

[11] See Guide at 19, (Model Law) 21 ¶75 (concerning establishment); 21 ¶74 (concerning foreign court); 21 ¶¶72, 73 and 75 (concerning foreign main and non-main proceedings).

[12] See id. at 21, ¶75.

[13] See id. at 22, Art. 3.

[14] See id. at 23, Art. 4.

[15] New section 1410 of title 28 provides as follows:

A case under chapter 15 of title 11 may be commenced in the district court for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding or enforcement of judgment in a Federal or State court; or

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties having regard to the relief sought by the foreign representative.

[16] See Guide at 24.

[17] See id. at 24, Art. 5.

[18] See id. at 23–24, ¶82.

[19] See id. at 25.

[20] Id. at 26.

[21] Id.

[22] Id. at 26, ¶91.

Although a petition under current section 304 is the proper method for achieving deference by a United States court to a foreign insolvency under present law, some cases in state and federal courts under current law have granted comity suspension or dismissal of cases involving foreign proceedings without requiring a section 304 petition or even referring to the requirements of that section. Even if the result is correct in a particular case, the procedure is undesirable, because there is room for abuse of comity. Parties would be free to avoid the requirements of this chapter and the expert scrutiny of the bankruptcy court by applying directly to a state or federal court unfamiliar with the statutory requirements. Such an application could be made after denial of a petition under this chapter. This section concentrates the recognition and deference process in one United States court, ensures against abuse, and empowers a court that will be fully informed of the current status of all foreign proceedings involving the debtor.[24]

Subsection (d) has been added to ensure that a foreign representative cannot seek relief in courts in the United States after being denied recognition by the court under this chapter. Subsection (e) makes activities in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. section 959 does for a domestic trustee in bankruptcy.[25] Subsection (f) provides a limited exception to the prior recognition requirement so that collection of a claim which is property of the debtor, for example an account receivable, by a foreign representative may proceed without commencement of a case or recognition under this chapter.

Sec. 1510. Limited jurisdiction

Section 1510, article 10 of the Model Law, is modeled on section 306 of the Bankruptcy Code. Although the language referring to conditional relief in section 306 is not included, the court has the power under section 1522 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 1522 is not intended to permit the imposition of jurisdiction over the foreign representative beyond the boundaries of the case under this chapter and any related actions the foreign representative may take, such as commencing a case under another chapter of this title.

Sec. 1511. Commencement of Case Under Section 301 or 303

This section reflects the intent of article 11 of the Model Law, but adds language that conforms to United States law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information and coordination among them.[26] Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.[27] Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding that has been recognized is a main proceeding.

Sec. 1512. Participation of a foreign representative in a case under this title

This section tracks article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.[28] The effect of this section is to make the recognized foreign representative a party in interest in any pending or later commenced United States bankruptcy case.[29] Throughout this chapter, the word "case" has been substituted for the word "proceeding" in the Model Law when referring to cases under the United States Bankruptcy Code, to conform to United States usage.

Sec. 1513. Access of foreign creditors to a case under this title

This section mandates nondiscriminatory or "national" treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law article 13, but the language required alteration to fit into the Bankruptcy Code.[30] The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees or spouses) is unsettled. This section permits the continued development of case law on that subject and its general principle of national treatment should be an important factor to be considered. At a minimum, under this section, foreign claims must receive the treatment given to general unsecured claims without priority, unless they are in a class of claims in which domestic creditors would also be subordinated.[31] The Model Law allows for an exception to the policy of nondiscrimination as to foreign revenue and other public law claims.[32] Such claims (such as tax and Social Security claims) have been traditionally denied enforcement in the United States, inside and outside of bankruptcy. The Bankruptcy Code is silent on this point, so the rule is purely a matter of traditional case law. It is not clear if this policy should be maintained or modified, so this section leaves this question to developing case law. It also allows the Department of the Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

Sec. 1514. Notification of foreign creditors concerning a case under title 11

This section ensures that foreign creditors receive proper notice of cases in the United States.[33] As a "foreign creditor" is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure ("Rules") should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims must be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed.[34] If a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the reference to "a reasonable time period" in Model Law article 14(3)(a).[35] It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

Sec. 1515. Application for recognition of a foreign proceeding

This section follows article 15 of the Model Law with minor changes.[36] The Rules will require amendment to provide forms for some or all of the documents mentioned in this section, to make necessary additions to Rules 1000 and 2002 to facilitate appropriate notices of the hearing on the petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting state.[37]

Sec. 1516. Presumptions concerning recognition

This section follows article 16 of the Model Law with minor changes.[38] Although sections 1515 and 1516 are designed to make recognition as simple and expedient as possible, the court may hear proof on any element stated. The ultimate burden as to each element is on the foreign representative, although the court is entitled to shift the burden to the extent indicated in section 1516. The word "proof" in subsection (3) has been changed to "evidence" to make it clearer using United States terminology that the ultimate burden is on the foreign representative.[39] "Registered office" is the term used in the Model Law to refer to the place of incorporation or the equivalent for an entity that is not a natural person.[40] The presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy.

Sec. 1517. Order granting recognition

This section closely tracks article 17 of the Model Law, with a few exceptions.[41] The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition. Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law. It was rejected by overwhelming consensus each time. The United States was one of the leading countries opposing the inclusion of a reciprocity requirement.[42] In this regard, the Model Law conforms to section 304, which has no such requirement.

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[23] See id. at 23, Art. 4, ¶¶79–83; 27 Art. 9, ¶93.

[24] See id. at 27, Art. 9; 34–35, Art. 15 and ¶¶116–119; 39–40, Art. 18, ¶¶133–134; see also sections 1515(3), 1518.

[25] Id. at 27; ¶93.

[26] See id. at 28, Art. 11.

[27] Id. at 38, ¶¶97–99.

[28] Id. at 29, Art. 12.

[29] Id. at 29, ¶¶10–102.

[30] Id. at 30, ¶103.

[31] See id. at 30, ¶104.

[32] See id. at 31, ¶105.

[33] See Model Law, Art. 14; Guide at 31–32, ¶¶106–109.

[34] Guide at 33, ¶111.

[35] Id. at 31, Art. 14(3)(a).

[36] Id. at 33.

[37] See id. at 36, ¶121.

[38] Id. at 36

[39] Id. at 36, Art. 16(3).

[40] Id.

[41] Id. at 37.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 1502 (that is, one brought where the debtor has an establishment) were entitled to recognition under this section. The Model Law has been slightly modified to make this point clear by referring to the section 1502 definition of main and non-main proceedings, as well as to the general definition of a foreign proceeding in section 101(23). A petition under section 1515 must show that proceeding is a main or a qualifying non-main proceeding in order to obtain recognition under this section.

Consistent with the position of various civil law representatives in the drafting of the Model Law, recognition creates a status with the effects set forth in section 1520, so those effects are not viewed as orders to be modified, as are orders granting relief under sections 1519 and 1521. Subsection (4) states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition (found in section 1520 and including an automatic stay) are subject to modification under section 362(d), made applicable by section 1520(2), which permits relief from the automatic stay of section 1520 for cause.

Paragraph 1(d) of section 17 of the Model Law has been omitted as an unnecessary requirement for United States purposes, because a petition submitted to the wrong court will be dismissed or transferred under other provisions of United States law.[43] The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the Rules may provide or a court may order.[44]

Sec. 1518. Subsequent information

This section follows the Model Law, except to eliminate the word "same", which is rendered unnecessary by the definition of "debtor" in section 1502, and to provide for a formal document to be filed with the court.[45] Judges in several jurisdictions, including the United States, have reported a need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This section will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the Rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

Sec. 1519. Relief may be granted upon petition for recognition of a foreign proceeding

This section generally follows article 19 of the Model Law.[46] The bankruptcy court will have jurisdiction to grant emergency relief under Rule 7065 pending a hearing on the petition for recognition. This section does not expand or reduce the scope of section 105 as determined by cases under section 105 nor does it modify the sweep of sections 555 to 560. Subsection (d) precludes injunctive relief against police and regulatory action under section 1519, leaving section 105 as the only avenue for such relief. Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence. Subsection (f) was added to complement amendments to the Bankruptcy Code provisions dealing with financial contracts.

Sec. 1520. Effects of recognition of a foreign main proceeding

In general, this chapter sets forth all the relief that is available as a matter of right based upon recognition hereunder, although additional assistance may be provided under section 1507 and this chapter have no effect on any relief currently available under section 105. The stay created by article 20 of the Model Law is imported to chapter 15 from existing provisions of the Code. Subsection (a)(1) combines subsections 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections as well as additional restrictions.[47]

Subsections (a)(2) and (4) apply the Bankruptcy Code sections that impose the restrictions called for by subsection 1(c) of the Model Law. In both cases, the provisions are broader and more complete than those contemplated by the Model Law, but include all the restraints the Model Law provisions would impose.[48] As the foreign proceeding may or may not create an "estate" similar to that created in cases under this title, the restraints are applicable to actions against the debtor under section 362(a) and with respect to the property of the debtor under the remaining sections. The only property covered by this section is property within the territorial jurisdiction of the United States as defined in section 1502. To achieve effects on property of the debtor which is not within the territorial jurisdiction of the United States, the foreign representative would have to commence a case under another chapter of this title.

By applying sections 361 and 362, subsection (a) makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law.[49] It also introduces the concept of adequate protection provided in sections 362 and 363. These exceptions and limitations include those set forth in sections 362(b), (c) and (d). As a result, the court has the power to terminate the stay pursuant to section 362(d), for cause, including a failure of adequate protection.[50]

Subsection (a)(2), by its reference to sections 363 and 552 adds to the powers of a foreign representative of a foreign main proceeding an automatic right to operate the debtor's business and exercise the power of a trustee under sections 363 and 542, unless the court orders otherwise. A foreign representative of a foreign main proceeding may need to continue a business operation to maintain value and granting that authority automatically will eliminate the risk of delay. If the court is uncomfortable about this authority in a particular situation, it can "order otherwise" as part of the order granting recognition.

Two special exceptions to the automatic stay are embodied in subsections (b) and (c). To preserve a claim in certain foreign countries, it may be necessary to commence an action. Subsection (b) permits the commencement of such an action, but would not allow for its further prosecution. Subsection (c) provides that there is no stay of the commencement of a full United States bankruptcy case. This essentially provides an escape hatch through which any entity, including the foreign representative, can flee into a full case. The full case, however, will remain subject to subchapters IV and V on cooperation and coordination of proceedings and to section 305 providing for stay or dismissal. Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 20(3), so no exception is necessary for claims that might be extinguished under United States law.[51]

Sec. 1521. Relief that may be granted upon recognition of a foreign proceeding

This section follows article 21 of the Model Law, with detailed changes to conform to United States law.[52] The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative's status as to such powers is governed by section 1523 below. The avoiding power in section 549 and the exceptions to that power are covered by section 1520(a)(2). The word "adequately" in the Model Law, articles 21(2) and 22(1), has been changed to "sufficiently" in sections 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy, "adequate protection."[53] Subsection (c) is designed to limit relief to assets having some direct connection with a non-main proceeding, for example where they were part of an operating division in the jurisdiction of the non-main proceeding when they were fraudulently conveyed and then brought to the United States.[54] Subsections (d), (e) and (f) are identical to those same subsections of section 1519. This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 nor does it modify the sweep of sections 555 through 560.

Sec. 1522. Protection of creditors and other interested persons.

This section follows article 22 of the Model Law with changes for United States usage and references to relevant Bankruptcy Code sections.[55] It gives the bankruptcy court broad latitude to mold relief to meet specific circumstances, including appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. For a response to a showing that the conditions necessary to recognition did not actually exist or have ceased to exist, see section 1517. Concerning the change of "adequately" in the Model Law to "sufficiently" in this section, see section 1521. Subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

Sec. 1523. Actions to avoid acts detrimental to creditors

This section follows article 23 of the Model Law, with wording to fit it within procedure under this title.[56] It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under another chapter of this title. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that a simple grant of standing to bring avoidance actions neglects to address very difficult choice of law and forum issues. This limited grant of standing in section 1523 does not create or establish any legal right of avoidance nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer of obligation.[57] The courts will determine the nature and extent of any such action and what national law may be applicable to such action.

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[42] Report of the working group on Insolvency Law on the work of its Twentieth Session (Vienna, 7–18 October 1996), at 6, ¶¶16–20.

[43] Guide at 37, Art. 17(1)(d).

[44] Id.

[45] Id. at 39–40, ¶¶133, 134.

[46] Id. at 40.

[47] Id. at 42, Art. 20 1(a), (b).

[48] Id. at 42, 45.

[49] Id. at 42, Art. 20(2); 44, ¶¶ 148, 150.

[50] Id. at 42, Art. 20(3); 44–45, ¶¶ 151 152.

[51] Id.

[52] Id. at 45-46, Art. 21.

[53] Id. at 46, Art. 21(2); 47, Art. 22(1).

[54] See id. at 46-47, ¶¶ 158, 160.

[55] Id. at 47.

Sec. 1524. Intervention by a foreign representative

The wording is the same as the Model Law, except for a few clarifying words.[58] This section gives the foreign representative whose foreign proceeding has been recognized the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition being an act under federal bankruptcy law, it must take effect in state as well as federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

Sec. 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

The wording of this provision is nearly identical to that of the Model Law.[59] The right of courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for such communications are left to the federal rules of bankruptcy procedure.

Sec. 1526 Cooperation and direct communication between the trustee and foreign courts or foreign representatives

This section closely tracks the Model Law.[60] The language in Model Law article 26 concerning the trustee's function was eliminated as unnecessary because it is always implied under United States law. The section authorizes the trustee, including a debtor in possession, to cooperate with other proceedings. Subsection (3) is not taken from the Model Law but is added so that any examiner appointed under this chapter will be designated by the United States Trustee and will be bonded.

Sec. 1527. Forms of cooperation

This section is identical to the Model Law.[61] United States bankruptcy courts already engage in most of the forms of cooperation described here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.[62]

Sec. 1528. Commencement of a case under title 11 after recognition of a foreign main proceeding

This section follows the Model Law, with specifics of United States law replacing the general clause at the end of the section to cover assets normally included within the jurisdiction of the United States courts in bankruptcy cases, except where assets are subject to the jurisdiction of another recognized proceeding.[63] In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding, if it is a main proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only to United States bankruptcy cases commenced after recognition of a foreign proceeding, the court has ample authority under the next section and section 305 to exercise its discretion to dismiss, stay, or limit a United States case filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

Sec. 1529. Coordination of a case under title 11 and a foreign proceeding

This section follows the Model Law almost exactly, but subsection (4) adds a reference to section 305 to make it clear the bankruptcy court may continue to use that section, as under present law, to dismiss or suspend a United States case as part of coordination and cooperation with foreign proceedings.[64] This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

Sec. 1530. Coordination of more than one foreign proceeding

This section follows exactly article 30 of the Model Law.[65] It ensures that a foreign main proceeding will be given primacy in the United States, consistent with the overall approach of the United States favoring assistance to foreign main proceedings.

Sec. 1531. Presumption of insolvency based on recognition of a foreign main proceeding

This section follows the Model Law exactly, inserting a reference to the standard for an involuntary case under this title.[66] Where an insolvency proceeding has begun in the home country of the debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word "proof" in this provision here means "presumption." The presumption does not arise for any purpose outside this section.

Sec. 1532. Rule of payment in concurrent proceeding

This section follows the Model Law exactly and is very similar to prior section 508(a), which is repealed. The Model Law language is somewhat clearer and broader than the equivalent language of prior section 508(a).[67]

Sec. 802. Other amendments to titles 11 and 28, United States Code

Section 802(a) amends section 103 of the Bankruptcy Code to clarify the provisions of the Code that apply to chapter 15 and to specify which portions of chapter 15 apply in cases under other chapters of title 11. Section 802(b) amends the Bankruptcy Code's definitions of foreign proceeding and foreign representative in section 101. The new definitions are nearly identical to those contained in the Model Law but add to the phrase "under a law relating to insolvency" the words "or debt adjustment." This addition emphasizes that the scope of the Model Law and chapter 15 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings involving debtors in severe financial distress, so long as those proceedings also meet the other criteria of section 101(24).[68]

Section 802(c) amends section 157(b)(2) of title 28 to provide that proceedings under chapter 15 will be core proceedings while other amendments to title 28 provide that the United States trustee's standing extends to cases under chapter 15 and that the United States trustee's duties include acting in chapter 15 cases. Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

Section 802(d) amends section 109 of the Bankruptcy Code to permit recognition of foreign proceedings involving foreign insurance companies and involving foreign banks which do not have a branch or agency in the United States (as defined in 12 U.S.C. 3101). While a foreign bank not subject to United States regulation will be eligible for chapter 15 as a consequence of the amendment to section 109, section 303 prohibits the commencement of a full involuntary case against such a foreign bank unless the bank is a debtor in a foreign proceeding.

While section 304 is repealed and replaced by chapter 15, access to the jurisprudence which developed under section 304 is preserved in the context of new section 1507. On deciding whether to grant the additional assistance contemplated by section 1507, the court must consider the same factors specified in former section 304. The venue provisions for cases ancillary to foreign proceedings have been amended to provide a hierarchy of choices beginning with principal place of business in the United States, if any. If there is no principal place of business in the United States, but there is litigation against a debtor, then the district in which the litigation is pending would be the appropriate venue. In any other case, venue must be determined with reference to the interests of justice and the convenience of the parties.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions

Subsections (a) through (f) of section 901 of the conference report amend the Federal Deposit Insurance Act's (FDIA) definitions of "qualified financial contract," "securities contract," "commodity contract," "forward contract," "repurchase agreement" and "swap agreement" to make them consistent with the definitions in the Bankruptcy Code and to reflect the enactment of the Commodity Futures Modernization Act of 2000

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[56] Id. at 48–49

[57] See id. at 49, ¶166.

[58] Id. at 49.

[59] Id. at 50.

[60] Id. at 51.

[61] Guide at 51, 53.

[62] See e.g., In re Maxwell Communication Corp., 93 F.2d 1036 (2d Cir. 1996).

[63] Guide at 54–55.

[64] Id. at 55-56.

[65] Id. at 57.

[66] Id. at 58.

[67] Id. at 59.

[68] Id. at 51–52, 71.

(CFMA). It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA.

Subsection (b) amends the definition of "securities contract" expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The reference in subsection (b) to a "guarantee by or to any securities clearing agency" is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a "loan" of a security in the definition is intended to apply to loans of securities, whether or not for a "permitted purpose" under margin regulations. The reference to "repurchase and reverse repurchase transactions" is intended to eliminate any inquiry under the qualified financial contract provisions of the FDIA as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of "repurchase agreement" in the FDIA (and a regulation of the Federal Deposit Insurance Corporation (FDIC)). Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of "securities contract".

Subsection (b) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase, sale or repurchase of a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

A number of terms used in the qualified financial contract provisions, but not defined therein, are intended to have the meanings set forth in the analogous provisions of the Bankruptcy Code or Federal Deposit Insurance Corporation Improvement Act ("FDICIA"), such as, for example, "securities clearing agency". The term "person," however, is not intended to be so interpreted. Instead, "person" is intended to have the meaning set forth in section 1 of title 1 of the United States Code.

Section 901(b) reflects the Senate position as represented in section 901(b) of the Senate amendment. The House version of this provision did not include the clarification that the definition applies to mortgage loans. The conference report also includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation.

Section 901(c) amends the definition of "commodity contract" in section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act. It reflects the Senate position as represented in section 901(c) of the Senate amendment, which includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation. Section 901(d) amends section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act with respect to its definition of a "forward contract". It reflects the Senate position as represented in section 901(d) of the Senate amendment, which includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation.

Subsection (e) amends the definition of "repurchase agreement" to codify the substance of the FDIC's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities.[69] The term "qualified foreign government securities" is defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). Subsection (e) reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow.

Subsection (e) also amends the definition of "repurchase agreement" to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a "repurchase agreement." The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act. This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under the qualified financial contract provisions. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the FDIA, even if not a "repurchase agreement" as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a "repurchase agreement" as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Subsection (e), like subsection (b) for "securities contracts," specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." A repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer, however, would constitute a "repurchase agreement" as well as a "securities contract". Section 901(e) reflects the Senate position as represented in section 901(e) of the Senate amendment. The House version of this provision did not include the clarification that the definition applies to mortgage loans. The conference report also includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation.

Section 901(f) of the conference report amends the definition of "swap agreement" to include an "interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option." As amended, the definition of "swap agreement" will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase "or any other similar agreement" was included in the definition. (The phrase "or any similar agreement" has been added to the definitions of "forward contract," "commodity contract," "repurchase agreement" and "securities contract" for the same reason.) To clarify this, subsection (f) expands the definition of "swap agreement" to include "any agreement or transaction that is similar to any other agreement or transaction referred to in [section 11(e)(8)(D)(vi) of the FDIA] and is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets . . . and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value."

The definition of "swap agreement," however, should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code simply because the parties purport to document or label the transactions as "'swap agreements." In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a "swap agreement," are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f). Similarly, Section 17 and a new paragraph of Section 11(e) of the FDIA provide that the definitions of "securities contract," "repurchase agreement," "forward contract," and "commodity contract," and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the FDIA and the Bankruptcy Code. Similar changes are made in the definitions of "forward contract," "commodity contract," "repurchase agreement" and "securities contract."

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[69] See 12 C.F.R. §360.5.

The use of the term "forward" in the definition of "swap agreement" is not intended to refer only to transactions that fall within the definition of "forward contract." Instead, a "forward" transaction could be a "swap agreement" even if not a "forward contract."

Section 901(f) reflects the Senate position as reflected in section 901(f) of the Senate amendment. The Senate amendment clarifies that the definition pertains to an agreement or transaction is "of a type that" has been, presently, or in the future becomes, the subject of recurrent dealings in the swap markets. The House version did not include this clarification. Section 901(f) also eliminates the reference in the House provision to regulations promulgated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC).

Section 901(g) of the conference report is substantively identical to section 901(g) of the House bill and the Senate amendment. It amends the FDIA by adding a definition for "transfer," which is a key term used in the FDIA, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Section 901(h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. It also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancements related to one or more qualified financial contracts (QFCs). An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements. Section 901(h) is substantively identical to section 901(h) of the House bill and Senate amendment.

Section 901(i) of the conference report clarifies that no provision of Federal or state law relating to the avoidance of preferential or fraudulent transfers (including the anti-preference provision of the National Bank Act) can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservatorship or receivership, absent actual fraudulent intent on the part of the transferee. Section 901(i) is substantively identical to section 901(i) of the House bill and Senate amendment.

Sec. 902. Authority of the corporation with respect to failed and failing institutions

Section 902 of the conference report provides that no provision of law, including FDICIA, shall be construed to limit the power of the FDIC to transfer or to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902, as well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs. Section 902 denies enforcement to "walkaway" clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party. Section 902 is substantively identical to section 902 of the House bill and Senate amendment.

Sec. 903. Amendments relating to transfers of qualified financial contracts

Section 903 of the conference report amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to "financial institutions" as defined in FDICIA or in regulations. This provision is substantively identical to section 903(a) of the House bill and the Senate amendment. It will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDIC transfers QFCs that are cleared on or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements. The amendment does not require the clearing organization to accept for clearing any QFCs from the transferee, except on the terms and conditions applicable to other parties permitted to clear through that clearing organization. "Clearing organization" is defined to mean a "clearing organization" within the meaning of FDICIA (as amended both by the CFMA and by Section 906 of the Act).

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. person or a U.S. financial institution that is not an FDIC-insured institution if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if there were an impending change of law that would impair the enforceability of the parties' contractual rights.

Section 903(b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party to a transferred QFC of such transfer by 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer by the FDIC acting as a conservator. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989. Section 903(b) is substantively identical to section 903(b) of the House bill and the Senate amendment.

Section 903(c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. It is substantively identical to section 903(c) of the House bill and the Senate amendment. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution.

Section 903(c) also prohibits the enforcement of rights of termination or liquidation that arise solely because of the insolvency of the institution or are based on the "financial condition" of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be rendered ineffective if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver, or from taking actions based upon a receivership or other financial condition-triggered default in the absence of a transfer (as contemplated in Section 11(e)(10) of the FDIA). The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts

Section 904 of the conference report limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to "cherry-pick" or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk. Section 904 reflects the Senate position as represented in section 904 of the Senate amendment. The House version of section 904 did not include the savings clause provision.

Sec. 905. Clarifying amendment relating to master agreements

Section 905 of the conference report specifies that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA (but only to the extent the underlying agreements are themselves QFCs). This provision ensures that cross-product netting pursuant to a master agreement, or pursuant to an umbrella agreement for separate master agreements between the same parties, each of which is used to document one or more qualified financial contracts, will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant. Section 905 is substantively identical to section 905 of the House bill and the Senate amendment.

Sec. 906. federal deposit insurance corporation improvement act of 1991

Section 906(a) of the conference report is substantively identical to section 906(a) of the House bill and the Senate amendment. Subsection (a)(1) amends the definition of "clearing organization" to include clearinghouses that are subject to exemptions pursuant to orders of the Securities and Exchange Commission or the Commodity Futures Trading Commission and to include multilateral clearing organizations (the definition of which was added to FDICIA by the CFMA).

FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. The current netting provisions of FDICIA, however, limit this protection to "financial institutions," which include depository institutions. Section 906(a)(2) amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency). The latter change will extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements. It is intended that a non-defaulting foreign bank and its branches and agencies be considered to be a single financial institution for purposes of the bilateral netting provisions of FDICIA (except to the extent that the non-defaulting foreign bank and its branches and agencies on the one hand, and the defaulting financial institution, on the other, have entered into agreements that clearly evidence an intention that the non-defaulting foreign bank and its branches and agencies be treated as separate financial institutions for purposes of the bilateral netting provisions of FDICIA).

Subsection (a)(3) amends the FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered "members" of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Section 906(a)(4) of the conference report amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. Many of these agreements, however, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign country. This subsection broadens the definition of "netting contract" to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract not be invalid under, or precluded by, Federal law.

Section 906(b) and (c) of the conference report are substantively identical to their counterparts in section 906 of the House bill and the Senate amendment. These provisions establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members. First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities (but not cash) collateral of a debtor (section 911 of the conference report makes a conforming change to SIPA). There is also an exception relating to insolvent commodity brokers. Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

Section 906(d) of the conference report adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks, uninsured Federal branches or agencies, or Edge Act corporations, or uninsured State member banks that operate, or operate as, a multilateral clearing organization and that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with these institutions will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for such an institution to those contained in 12 U.S.C. §§1821(e)(8), (9), (10), and (11), which address QFCs.

While the amendment would apply the same rules to such institutions that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

Section 906(d) reflects the Senate position in Section 906(d) of the Senate amendment. It does not include the reference in the House provision concerning a receiver of an uninsured national bank, or Federal branch or agency. The conference report also eliminates the reference to the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act.

Sec. 907. Bankruptcy law amendments

Section 907 of the conference report makes a series of amendments to the Bankruptcy Code. Subsection (a)(1) amends the Bankruptcy Code definitions of "repurchase agreement" and "swap agreement" to conform with the amendments to the FDIA contained in sections 2(e) and 2(f) of the Act.

In connection with the definition of "repurchase agreement," the term "qualified foreign government securities" is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow. The term "stockbroker," as defined in Bankruptcy Code section 101(53A), is intended to include within its scope an "OTC derivatives dealer", as that term is defined in Rule 3b–12 of the Securities Exchange Act of 1934, as amended, which is the new class of broker-dealer created by the Securities and Exchange Commission in 1999 to engage in over-the-counter derivatives transactions that are securities.

Subsection (a)(1) also amends the definition of "repurchase agreement" to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a "repurchase agreement." The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under other provisions of the Bankruptcy Code. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the Bankruptcy Code and thus also would be subject to the Bankruptcy Code provisions pertaining to securities contracts, even if not a "repurchase agreement" as defined in the Bankruptcy Code. Similarly, an agreement for the sale and repurchase of a commodity, even though not a "repurchase agreement" as defined in the Bankruptcy Code, would continue to be a forward contract for purposes of the Bankruptcy Code and would be subject to the Bankruptcy Code provisions pertaining to forward contracts.

Subsection (a)(1) specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer would constitute a "repurchase agreement" (as well as a "securities contract").

The definition of "swap agreement" is amended to include an "interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option." As amended, the definition of "swap agreement" will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase "or any other similar agreement" was included in the definition. (The phrase "or any similar agreement" has been added to the definitions of "forward contract," "commodity contract," "repurchase agreement," and "securities contract" for the same reason.) To clarify this, subsection (a)(1) expands the definition of "swap agreement" to include "any agreement or transaction that is similar to any other agreement or transaction referred to in [Section 101(53B) of the Bankruptcy Code] and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets? and [that] is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value."

The definition of "swap agreement" in this subsection should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as "swap agreements." These definitions, and the characterization of a certain transaction as a "swap agreement," are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (a)(1)(C). The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of "forward contract," "commodity contract," "repurchase agreement," and "securities contract." An example of a security arrangement is a right of setoff; examples of other credit enhancements are letters of credit and other similar agreements. A security agreement or arrangement or guarantee or reimbursement obligation related to a "swap agreement," "forward contract," "commodity contract," "repurchase agreement" or "securities contract" will be such an agreement or contract only to the extent of the damages in connection with such agreement measured in accordance with Section 562 of the Bankruptcy Code (added by the Act). This limitation does not affect, however, the other provisions of the Bankruptcy Code (including Section 362(b)) relating to security arrangements in connection with agreements or contracts that otherwise qualify as "swap agreements," "forward contracts," "commodity contracts," "repurchase agreements" or "securities contracts."

The use of the term "forward" in the definition of "swap agreement" is not intended to refer only to transactions that fall within the definition of "forward contract." Instead, a "forward" transaction could be a "swap agreement" even if not a "forward contract."

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of "securities contract" and "commodity contract," respectively, to conform them to the definitions in the FDIA.

Subsection (a)(2), like the amendments to the FDIA, amends the definition of "securities contract" expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The reference in subsection (b) to a "guarantee" by or to a "securities clearing agency" is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a "loan" of a security in the definition is intended to apply to loans of securities, whether or not for a "permitted purpose" under margin regulations. The reference to "repurchase and reverse repurchase transactions" is intended to eliminate any inquiry under section 555 and related provisions as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of "repurchase agreement" in the Bankruptcy Code. Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of "securities contract". A repurchase or reverse repurchase transaction which is a "securities contract" but not a "repurchase agreement" would thus be subject to the "counterparty limitations" contained in section 555 of the Bankruptcy Code (i.e., only stockbrokers, financial institutions, securities clearing agencies and financial participants can avail themselves of section 555 and related provisions).

Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase, sale or repurchase of a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

Section 907(a) reflects the Senate position as represented in section 907(a) of the Senate amendment. The House version of this provision did not include the clarification that the definition applies to mortgage loans. The conference report also includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation.

Section 907(b) amends the Bankruptcy Code definitions of "financial institution" and "forward contract merchant." It is substantively identical to section 907(b) of the House bill and the Senate amendment. The definition for "financial institution" includes Federal Reserve Banks and the receivers or conservators of insolvent depository institutions. With respect to securities contracts, the definition of "financial institution" expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of "financial participant" to limit the potential impact of insolvencies upon other major market participants. This definition will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. Sections 362(b)(6), 555 and 556 preserve the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code's counterparty limitations. However, where the counterparty has transactions with a total gross dollar value of at least $1 billion in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100 million (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15-month period, sections 362(b)(6), 555 and 556 and corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change will help prevent systemic impact upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve Board in implementing the netting provisions of the Federal Deposit Insurance Corporation Improvement Act. It is intended that the 15-month period be measured with reference to the 15 months preceding the filing of a petition by or against the debtor.

"Financial participant" is also defined to include "clearing organizations" within the meaning of FDICIA (as amended by the CFMA and Section 906 of the Act). This amendment, together with the inclusion of "financial participants" as eligible counterparties in connection with "commodity contracts," "forward contracts" and "securities contracts" and the amendments made in other Sections of the Act to include "financial participants" as counterparties eligible for the protections in respect of "swap agreements" and "repurchase agreements", take into account the CFMA and will allow clearing organizations to benefit from the protections of all of the provisions of the Bankruptcy Code relating to these contracts and agreements. This will further the goal of promoting the clearing of derivatives and other transactions as a way to reduce systemic risk. The definition of "financial participant" (as with the other provisions of the Bankruptcy Code relating to "securities contracts," "forward contracts," "commodity contracts," "repurchase agreements" and "swap agreements") is not mutually exclusive, i.e., an entity that qualifies as a "financial participant" could also be a "swap participant," "repo participant," "forward contract merchant," "commodity broker," "stockbroker," "securities clearing agency" and/or "financial institution."

Section 907(c) of the conference report adds to the Bankruptcy Code new definitions for the terms "master netting agreement" and "master netting agreement participant." The definition of "master netting agreement" is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements or (ii) as an umbrella agreement for separate master agreements between the same parties, each of which is used to document a discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated categories of qualifying transactions (but the provisions of the Bankruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions). A "master netting agreement participant" is any entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition. Section 907(c) is substantively identical to section 907(c) of the House bill and the Senate amendment.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the references to "setoff" in these provisions, as well as in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against obligations to return, collateral securing swap agreements, master netting agreements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out of such termination. Enforcement of these agreements and arrangements free from the automatic stay is consistent with the policy goal of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor but that cannot technically be "held by" the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor and securities re-sold pursuant to repurchase agreements. Section 907(d) is substantively identical to section 907(d) of the House bill and the Senate amendment.

Subsections (e) and (f) of section 907 of the conference report amend sections 546 and 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud and not taken in good faith. This amendment provides the same protections for a transfer made under, or in connection with, a master netting agreement as currently is provided for margin payments, settlement payments and other transfers received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under sections 546 and 548(d), except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement. Subsections (e) and (f) are substantively identical to section 907(f) of the House bill and the Senate amendment.

Subsections (g), (h), (i), and (j) of section 907 clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration. These provisions are substantively similar to their counterparts in section 907 of the House bill and Senate amendment.

Section 907(k) of the conference report represents the Senate position as reflected in section 907(k) of the Senate amendment. It adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a derivatives clearing organization, multilateral clearing organization, securities clearing agency, securities exchange, securities association, contract market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant or (iii) by reason of normal business practice. This reflects the enactment of the CFMA and the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code. Similar changes to reflect the enactment of the CFMA have been made to the definition of "contractual right" for purposes of Sections 555, 556, 559 and 560 of the Bankruptcy Code.

Subsections (b)(2)(A) and (b)(2)(B) of new Section 561 limit the exercise of contractual rights to net or to offset obligations where the debtor is a commodity broker and one leg of the obligations sought to be netted relates to commodity contracts traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act. Under subsection (b)(2)(A) netting or offsetting is not permitted in these circumstances if the party seeking to net or to offset has no positive net equity in the commodity accounts at the debtor. Subsection (b)(2)(B) applies only if the debtor is a commodity broker, acting on behalf of its own customer, and is in turn a customer of another commodity broker. In that case, the latter commodity broker may not net or offset obligations under such commodity contracts with other claims against its customer, the debtor. Subsections (b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers. Subsection (b)(2)(C) provides an exception to subsections (b)(2)(A) and (b)(2)(B) for cross-margining and other similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other netting arrangements.

For the purposes of Bankruptcy Code sections 555, 556, 559, 560 and 561, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party. The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in sections 362(b)(6), (b)(7), (b)(17) and (b)(28) of the Bankruptcy Code.

Under the Act, the termination, liquidation or acceleration rights of a master netting agreement participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase agreement is documented under a master netting agreement, a party's termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the SEC. In addition, the netting rights of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counterparty of netting or set off rights in connection with QFCs would be enforceable under the FDIA.

New Section 561 of the Bankruptcy Code clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements apply in a proceeding ancillary to a foreign insolvency proceeding under new section 304 of the Bankruptcy Code.

Subsections (l) and (m) of section 907 of the conference report clarify that the exercise of termination and netting rights will not otherwise affect the priority of the creditor's claim after the exercise of netting, foreclosure and related rights. These provisions are substantively identical to there counterparts in the House bill and the Senate amendment.

Subsection (n) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference. This subsection also adds setoff of the kinds described in sections 555, 556, 559, 560, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(b). This provision generally represents the Senate's position as represented in Section 907(n) of the Senate amendment.

Section 907(o), as well as other subsections of the Act, adds references to "financial participant" in all the provisions of the Bankruptcy Code relating to securities, forward and commodity contracts and repurchase and swap agreements. This provision generally represents the Senate's position as represented in Section 907(o) of the Senate amendment.

Sec. 908. Recordkeeping requirements

Section 908 of the conference report amends section 11(e)(8) of the Federal Deposit Insurance Act to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping by any insured depository institution with respect to QFCs only if the insured financial institution is in a troubled condition (as such term is defined in the FDIA). Section 908 reflects the Senate position in section 908 of the Senate amendment, which includes clarifying references to insured depository institution and institutions in troubled condition.

Sec. 909. Exemptions from contemporaneous execution requirement

Section 909 of the conference report amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or Federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because of pledges, delivery or substitution of the collateral made in accordance with such agreement.

The amendment codifies portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the "D'Oench Duhme" doctrine. With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity of these policy statements. Section 909 is substantively identical to section 909 of the House bill and the Senate amendment.

Sec. 910. Damage measure

Section 910 of the conference report adds a new section 562 to the Bankruptcy Code providing that damages under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement will be calculated as of the earlier of (i) the date of rejection of such agreement by a trustee or (ii) the date or dates of liquidation, termination or acceleration of such contract or agreement. Section 910 reflects the Senate's position as represented in section 910 of the Senate amendment.

Section 562 provides an exception to the rules in (i) and (ii) if there are no commercially reasonable determinants of value as of such date or dates, in which case damages are to be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value. Although it is expected that in most circumstances damages would be measured as of the date or dates of either rejection or liquidation, termination or acceleration, in certain unusual circumstances, such as dysfunctional markets or liquidation of very large portfolios, there may be no commercially reasonable determinants of value for liquidating any such agreements or contracts or for liquidating all such agreements and contracts in a large portfolio on a single day.

The party determining damages is given limited discretion to determine the dates as of which damages are to be measured. Its actions are circumscribed unless there are no "commercially reasonable" determinants of value for it to measure damages on the date or dates of either rejection or liquidation, termination or acceleration. The references to "commercially reasonable" are intended to reflect existing state law standards relating to a creditor's actions in determining damages. New section 562 provides that if damages are not measured as of either the date of rejection or the date or dates of liquidation, termination or acceleration and the other party challenges the timing of the measurement of damages by the party determining the damages, that party has the burden of proving the absence of any commercially reasonable determinants of value.

New section 562 is not intended to have any impact on the determination under the Bankruptcy Code of the timing of damages for contracts and agreements other than those specified in section 562. Also, section 562 does not apply to proceedings under the FDIA, and it is not intended that Section 562 have any impact on the interpretation of the provisions of the FDIA relating to timing of damages in respect of QFCs or other contracts.

Sec. 911. SIPC stay

Section 911 of the conference report amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquidation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on or dispose of securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement or lent by the debtor under a securities lending agreement. A corresponding amendment to FDICIA is made by section 906. A creditor that was stayed in exercising rights against such securities would be entitled to post-insolvency interest to the extent of the value of such securities. Section 911 is substantively identical to section 911 of the House bill and the Senate amendment.

TITLE X—PROTECTION OF FAMILY FARMERS

Sec. 1001. Permanent reenactment of chapter 12

Chapter 12 is a specialized form of bankruptcy relief available only to a "family farmer with regular annual income,"[70] a defined term.[71] This form of bankruptcy relief permits eligible family farmers, under the supervision of a bankruptcy trustee,[72] to reorganize their debts pursuant to a repayment plan.[73] The special attributes of chapter 12 make it better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief, such as chapter 11[74] and chapter 13.[75]

Chapter 12 was enacted on a temporary seven-year basis as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986[76] in response to the farm financial crisis of the early- to mid-1980's.[77] It was subsequently reenacted and extended on several occasions. The most recent extension, authorized as part of the Farm Security and Rural Investment Act of 2002, provides that chapter remains in effect until December 31, 2002.[78]

Section 1001(a) of the conference report reenacts chapter 12 of the Bankruptcy Code and provides that such reenactment takes effect as of the date of enactment. Section 1001(b) makes a conforming amendment to section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. As a result of this provision, chapter 12 becomes a permanent form of relief under the Bankruptcy Code. Section 1001 is substantively identical to section 1001 of the House bill and the Senate amendment.

Sec. 1002. Debt limit increase

Section 1002 of the conference report amends section 104(b) of the Bankruptcy Code to provide for periodic adjustments for inflation of the debt eligibility limit for family farmers. This provision represents a compromise between section 1002 of the House bill and the Senate amendment. The Senate version required the adjustment to become effective as of April 1, 2001 or 60 days after the date of enactment of this Act. The House provision allows for a prospective effective date of April 1, 2004.

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[70] 11 U.S.C. §109(f).

[71] 11 U.S.C. §101(19).

[72] 11 U.S.C. §1202.

[73] 11 U.S.C. §1222.

[74] For example, chapter 12 is typically less complex and expensive than chapter 11, a form of bankruptcy relief generally utilized to effectuate large corporate reorganizations.

[75] Chapter 13, a form of bankruptcy relief for individuals seeking to reorganize their debts, limits its eligibility to debtors with debts in lower amounts than permitted for eligibility purposes under chapter 12. Cf. 11 U.S.C. §§109(e), 101(18).

[76] Pub. L. No. 99-554, §255, 100 Stat. 3088, 3105 (1986).

[77] See U.S. Dept. of Agriculture, Info. Bull. No. 724-09, Issues in Agricultural and Rural Finance: Do Farmers Need a Separate Chapter in the Bankruptcy Code? (Oct. 1997). As one of the principal proponents of this legislation explained:

"I doubt there will be anything that we do that will have such an immediate impact in the grassroots of our country with respect to the situation that exists in most of the heartland, and that is in the agricultural sector * * *

"You know, William Jennings Bryan in his famous speech, the Cross of Gold, almost 60 years ago [sic], stated these words: "Destroy our cities and they will spring up again as if by magic; but destroy our farms, and the grass will grow in every city in our country."

"This legislation will hopefully stem the tide that we have seen so recently in the massive bankruptcies in the family farm area."

132 Cong. Rec. 28,147 (1986) (statement of Rep. Mike Synar (D-Okla.)).

[78] Pub. L. No. 107–171, §10814 (2002).

Sec. 1003. Certain claims owed to governmental units

Section 1003 of the conference report is substantively identical to section 1003 of the House bill and the Senate amendment. Subsection (a) amends section 1222(a) of the Bankruptcy Code to add an exception with respect to payments to a governmental unit for a debt entitled to priority under section 507 if such debt arises from the sale, transfer, exchange, or other disposition of an asset used in the debtor's farming operation, but only if the debtor receives a discharge. Section 1003(b) amends section 1231(b) of the Bankruptcy Code to have it apply to any governmental unit. Subsection (c) provides that section 1003 becomes effective on the date of enactment of this Act and applies to cases commenced after such effective date.

Sec. 1004. Definition of family farmer

Section 1004 of the conference report amends the definition of "family farmer" in section 101(18) of the Bankruptcy Code to increase the debt eligibility limit from $1,500,000 to $3,237,000. It also reduces the percentage of the farmer's liabilities that must arise out of the debtor's farming operation for eligibility purposes from 80 percent to 50 percent. Section 1004 represents a compromise. It takes into consideration the adjustment that went into effect on April 1, 2001 pursuant to Bankruptcy Code section 104. There is no counterpart to this provision in the House bill.

Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy

Section 1005 of the conference report amends the Bankruptcy Code's definition of "family farmer" with respect to the determination of the farmer's income. Current law provides that a debtor, in order to be eligible to be a family farmer, must derive a specified percentage of his or her income from farming activities for the taxable year preceding the commencement of the bankruptcy case. Section 1005 adjusts the threshold percentage to be met during either: (1) the taxable year preceding the filing of the bankruptcy case; or (2) the taxable year in the second and third taxable years preceding the filing of the bankruptcy case. Section 1005 represents a compromise between the House bill and Senate amendment. The Senate provision sets the determination period as at least one of the three years preceding the filing of the bankruptcy case. There is no counterpart to this provision in the House bill.

Sec. 1006. Prohibition of retroactive assessment of disposable income

Section 1006 of the conference report amends the Bankruptcy Code in two respects concerning chapter 12 plans. Section 1006(a) amends Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan equals or exceeds the debtor's projected disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1229 to restrict the bases for modifying a confirmed chapter 12 plan. Specifically, Section 1006(b) to provide that a confirmed chapter 12 plan may not be modified to increase the amount of payments due prior to the date of the order modifying the confirmation of the plan. Where the modification is based on an increase in the debtor's disposable income, the plan may not be modified to require payments to unsecured creditors in any particular month in an amount greater than the debtor's disposable income for that month, unless the debtor proposes such a modification. Section 1006(b) further provides that a modification of a plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed, unless the debtor proposes such a modification. Section 1006 of the conference report reflects the Senate position as represented in section 1006 of the Senate amendment. There is no counterpart to this provision in the House bill.

Sec. 1007. Family fishermen

Section 1007 of the conference report is a compromise between the House and Senate. Subsection (a) of the conference report amends Bankruptcy Code section 101 to add definitions of "commercial fishing operation," "commercial fishing vessel," "family fisherman" and "family fisherman with regular annual income". The definition of "commercial fishing operation" includes the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products. The term "commercial fishing vessel" is defined as a vessel used by a fisher to "carry out a commercial fishing operation". The term "family fisherman" is defined as an individual engaged in a commercial fishing operation, with an aggregate debt limit of $1.5 million. The definition specifies that at least 80 percent of those debts must be derived from a commercial fishing operation. The percentage of income that must be derived from such operation is specified to be more than 50 percent of the individual's gross income for the taxable year preceding the taxable year in which the case was filed. Similar provisions are included for corporations and partnerships. The term "family fisherman with regular annual income" is defined as a family fisherman whose annual income is sufficiently stable and regular to enable such person to make payments under a chapter 12 plan. Section 1007(b) amends Bankruptcy Code section 109 to provide that a family fisherman is eligible to be a debtor under chapter 12.

Section 1007(c) amends the heading of chapter 12 to include a reference to family fisherman and makes conforming revisions to Sections 1203 and 1206. The conference report does not include a provision in the Senate amendment, which requires certain maritime liens to be treated as unsecured claims. It also does not include provisions in the Senate amendment concerning the codebtor stay.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions

Section 1101 of the conference report is substantively identical to section 1101 of the House bill and the Senate amendment. Subsection (a) amends section 101 of the Bankruptcy Code to add a definition of "health care business". The definition includes any public or private entity (without regard to whether that entity is for or not for profit) that is primarily engaged in offering to the general public facilities and services for diagnosis or treatment of injury, deformity or disease; and surgical, drug treatment, psychiatric or obstetric care. It also includes the following entities: (1) a general or specialized hospital; (2) an ancillary ambulatory, emergency, or surgical treatment facility; (3) a hospice; (d) a home health agency; (e) other health care institution that is similar to an entity referred to in (a) through (d); and other long-term care facility. These include a skilled nursing facility, intermediate care facility; assisted living facility, home for the aged, domiciliary care facility, and health care institution that is related to an aforementioned facility. Section 1101(b) amends Bankruptcy Code section 101 to add a definition of "patient". The term means any person who obtains or receives services from a health care business. Section 1101(c) amends section 101 of the Bankruptcy Code to add a definition of "patient records". The term means any written document relating to a patient or record recorded in a magnetic, optical, or other form of electronic medium. Section 1101(d) specifies that the amendments effected by new section 101(27A) do not affect the interpretation of section 109(b).

Sec. 1102. Disposal of patient records

Section 1102 of the conference report is substantively identical to section 1102 of the House bill and the Senate amendment. It adds a provision to the Bankruptcy Code specifying requirements for the disposal of patient records in a chapter 7, 9, or 11 case of a health care business where the trustee lacks sufficient funds to pay for the storage of such records in accordance with applicable Federal or state law. The requirements chiefly consist of providing notice to the affected patients and specifying the method of disposal for unclaimed records. They are intended to protect the privacy and confidentiality of a patient's medical records when they are in the custody of a health care business in bankruptcy. The provision specifies the following requirements:

(1) The trustee shall: (a) publish notice in one or more appropriate newspapers stating that if the records are not claimed by the patient or an insurance provider (if permitted under applicable law) within 90 days of the date of such notice, then the trustee will destroy such records; and (b) during such 90-day period, attempt to directly notify by mail each patient and appropriate insurance carrier of the claiming or disposing of such records.

(2) If after providing such notice patient records are not claimed within the specified period, the trustee shall, upon the expiration of such period, send a request by certified mail to each appropriate federal agency to request permission from such agency to deposit the records with the agency.

(3) If after providing the notice under 1 and 2 above, patient records are not claimed, the trustee shall destroy such records as follows: (a) by shredding or burning, if the records are written; or (b) by destroying the records so that their information cannot be retrieved, if the records are magnetic, optical or electronic.

It is anticipated that if the estate of the debtor lacks the funds to pay for the costs and expenses related to the above, the trustee may recover such costs and expenses under section 506(c) of the Bankruptcy Code.

Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses

Section 1103 of the conference report is substantively identical to section 1103 of the House bill and the Senate amendment. It amends section 503(b) of the Bankruptcy Code to provide that the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or transferral of patients) incurred by a trustee, Federal agency, or a department or agency of a State are allowed administrative expenses. The conference report does not include a duplicative and unrelated provision in the House bill and Senate amendment pertaining to nonresidential real property leases.

Sec. 1104. Appointment of ombudsman to act as patient advocate

Section 1104 of the conference report adds a provision to the Bankruptcy Code requiring the court to order the appointment of an ombudsman to monitor the quality of patient care within 30 days after commencement of a chapter 7, 9, or 11 health care business bankruptcy case, unless the court finds that such appointment is not necessary for the protection of patients under the specific facts of the case. The ombudsman must be a disinterested person. If the health care business is a long-term care facility, a person who is serving as a State Long-Term Care Ombudsman of the Older Americans Act of 1965 may be appointed as the ombudsman in such case. The ombudsman must: (1) monitor the quality of patient care to the extent necessary under the circumstances, including interviewing patients and physicians; (2) report to the court, not less than 60 days from the date of appointment and then every 60 days thereafter, at a hearing or in writing regarding the quality of patient care at the health care business involved; and (3) notify the court by motion or written report (with notice to appropriate parties in interest) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised. The provision requires the ombudsman to maintain any information obtained that relates to patients (including patient records) as confidential. Section 1104(b) amends section 330(a)(1) of the Bankruptcy Code to authorize the payment of reasonable compensation to an ombudsman. Section 1104 reflects the Senate position as represented in section 1104 of the Senate amendment. The conference report includes the Senate's provision with respect to a case where the United States trustee does not appoint a State Long-Term Care Ombudsman. The House bill did not include this provision.

Sec. 1105. Debtor in possession; duty of trustee to transfer patients

Section 1105 of the conference report is identical to section 1105 of the House bill and the Senate amendment. This provision amends section 704(a) of the Bankruptcy Code to require a chapter 7 trustee, chapter 11 trustee, and chapter 11 debtor in possession to use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business. The transferee health care business should be in the vicinity of the transferor health care business, provide the patient with services that are substantially similar to those provided by the transferor health care business, and maintain a reasonable quality of care.

Sec. 1106. Exclusion from program participation not subject to automatic stay

Section 1106 amends section 362(b) of the Bankruptcy Code to except from the automatic stay the exclusion by the Secretary of Health and Human Services of a debtor from participation in the medicare program or other specified Federal health care programs. This provision is substantively identical to section 1106 of the House bill and the Senate amendment.

TITLE XII—TECHNICAL AMENDMENTS

Sec. 1201. Definitions

Section 1201 of the conference report is substantively identical to section 1201 of the House bill and the Senate amendment. This provision amends the definitions contained in section 101 of the Bankruptcy Code. Paragraphs (1), (2), (4), and (7) of section 1201 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (3) of section 1101 makes necessary and conforming amendments to cross references to the newly redesignated definitions.

Paragraph (5) of section 1201 concerns single asset real estate debtors. A single asset real estate chapter 11 case presents special concerns. As the name implies, the principal asset in this type of case consists of some form of real estate, such as undeveloped land. Typically, the form of ownership of a single asset real estate debtor is a corporation or limited partnership. The largest creditor in a single asset real estate case is typically the secured lender who advanced the funds to the debtor to acquire the real property. Often, a single asset real estate debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured lender. Foreclosure actions are filed when the debtor lacks sufficient cash flow to service the debt and maintain the property. Taxing authorities may also have liens against the property. Based on the nature of its principal asset, a single asset real estate debtor often has few, if any, unsecured creditors. If unsecured creditors exist, they may have only nominal claims against the single asset real estate debtor. Depending on the nature and ownership of any business operating on the debtor's real property, the debtor may have few, if any, employees. Accordingly, there may be little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors' committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for single asset real estate debtors. It defined this type of debtor as a bankruptcy estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units. The property or project must generate substantially all of the debtor's gross income. A debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not have noncontingent, liquidated secured debts in excess of $4 million. Subparagraph (5)(A) amends the definition of "single asset real estate" to exclude family farmers from this definition. Paragraph (5)(B) amends section 101(51B) of the Bankruptcy Code to eliminate the $4 million debt limitation on single asset real estate. The present $4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. As a result of this amendment, creditors in more cases will be able to obtain the expedited relief from the automatic stay which is made available under section 362(d)(3) of the Bankruptcy Code.

Paragraph (6) of section 1201, together with section 1214, respond to a 1997 Ninth Circuit case, in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was subsequently converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. Specifically, it amends the definition of "transfer" in section 101(54) of the Bankruptcy Code to include the "creation of a lien." This amendment gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978, that is, a transfer includes the creation of a lien.

Sec. 1202. Adjustment of dollar amounts

Section 1202 of the conference report is substantively identical to section 1202 of the House bill and the Senate amendment. This provision corrects an omission in section 104(b) of the Bankruptcy Code to include a reference to section 522(f)(3).

Sec. 1203. Extension of time

Section 1203 of the conference report makes a technical amendment to correct a reference error described in amendment notes contained in the United States Code. As specified in the amendment note relating to subsection (c)(2) of section 108 of the Bankruptcy Code, the amendment made by section 257(b)(2)(B) of Public Law 99-554 could not be executed as stated. This provision is substantively identical to section 1203 of the House bill and the Senate amendment.

Sec. 1204. Technical amendments

Section 1204 of the conference report is identical to section 1204 of the House bill and the Senate amendment. This provision makes technical amendments to Bankruptcy Code sections 109(b)(2) (to strike a statutory cross reference), 541(b)(2) (to add "or" to the end of this provision), and 522(b)(1) (to replace "product" with "products"). Section 1204 is substantively identical to section 1204 of the House bill and the Senate amendment.

Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

Section 1205 of the conference report amends section 110(j)(4) of the Bankruptcy Code to change the reference to attorneys from the singular possessive to the plural possessive. This provision is substantively identical to section 1205 of the House bill and the Senate amendment.

Sec. 1206. Limitation on compensation of professional persons

Section 328(a) of the Bankruptcy Code provides that a trustee or a creditors' and equity security holders' committee may, with court approval, obtain the services of a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Section 1206 of the conference report amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement. This provision is substantively identical to section 1206 of the House bill and the Senate amendment.

Sec. 1207. Effect of conversion

Section 1207 of the conference report makes a technical correction in section 348(f)(2) of the Bankruptcy Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate. This provision is substantively identical to section 1207 of the House bill and the Senate amendment.

Sec. 1208. Allowance of administrative expenses

Section 1208 of the conference report amends section 503(b)(4) of the Bankruptcy Code to limit the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors' or equity security holders' committees are not recoverable, but expenses incurred for such professional services incurred by such committees themselves would be. This provision is substantively identical to section 1208 of the House bill and the Senate amendment.

Sec. 1209. Exceptions to discharge

Section 1209 of the conference report is substantively identical to section 1209 of the House bill and the Senate amendment. This provision amends section 523(a) of the Bankruptcy Code to correct a technical error in the placement of paragraph (15), which was added to section 523 by section 304(e)(1) of the Bankruptcy Reform Act of 1994. Section 1209 also amends section 523(a)(9), which makes nondischargeable any debt resulting from death or personal injury arising from the debtor's unlawful operation of a motor vehicle while intoxicated, to add "watercraft, or aircraft" after "motor vehicle." Neither additional term should be defined or included as a "motor vehicle" in section 523(a)(9) and each is intended to comprise unpowered as well as motor-powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law. Finally, this section corrects a grammatical error in section 523(e).

Sec. 1210. Effect of discharge

Section 1210 of the conference report makes technical amendments to correct errors in section 524(a)(3) of the Bankruptcy Code caused by section 257(o)(2) of Public Law 99-554 and section 501(d)(14)(A) of Public Law 103-394.[79] This provision is substantively identical to section 1210 of the House bill and the Senate amendment.

Sec. 1211. Protection against discriminatory treatment

Section 1211 of the conference report is substantively identical to section 1211 of the House bill and the Senate amendment. This provision conforms a reference to its antecedent reference in section 525(c) of the Bankruptcy Code. The omission of "student" before "grant" in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. Section 1211 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant's bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Sec. 1212. Property of the estate

Production payments are royalties tied to the production of a certain volume or value of oil or gas, determined without regard to production costs. They typically would be paid by an oil or gas operator to the owner of the underlying property on which the oil or gas is found. Under section 541(b)(4)(B)(ii) of the Bankruptcy Code, added by the Bankruptcy Reform Act of provided they could be included only by virtue of section 542 of the Bankruptcy Code, which relates generally to the obligation of those holding property which belongs in the estate to turn it over to the trustee. Section 1212 of the conference report adds to this proviso a reference to section 365 of the Bankruptcy Code, which authorizes the trustee to assume or reject an executory contract or unexpired lease. It thereby clarifies the original Congressional intent to generally exclude production payments from the debtor's estate. This provision is substantively identical to section 1212 of the House bill and the Senate amendment.

Sec. 1213. Preferences

Section 547 of the Bankruptcy Code authorizes a trustee to avoid a preferential payment made to a creditor by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. To address the concern that a corporate insider (such as an officer or director who is a creditor of his or her own corporation has an unfair advantage over outside creditors, section 547 also authorizes a trustee to avoid a preferential payment made to an insider creditor between 90 days and one year before filing. Several recent cases, including *DePrizio*,[80] allowed the trustee to "reach-back" and avoid a transfer to a noninsider creditor which fell within the 90-day to one-year time frame if an insider benefitted from the transfer in some way. This had the effect of discouraging lenders from obtaining loan guarantees, lest transfers to the lender be vulnerable to recapture by reason of the debtor's insider relationship with the loan guarantor. Section 202 of the Bankruptcy Reform Act of 1994 addressed the *DePrizio* problem by inserting a new section 550(c) into the Bankruptcy Code to prevent avoidance or recovery from a noninsider creditor during the 90-day to one-year period even though the transfer to the noninsider benefitted an insider creditor. The 1994 amendments, however, failed to make a corresponding amendment to section 547, which deals with the avoidance of preferential transfers. As a result, a trustee could still utilize section 547 to avoid a preferential lien given to a noninsider bank, more than 90 days but less than one year before bankruptcy, if the transfer benefitted an insider guarantor of the debtor's debt. Accordingly, section 1213 of the conference report makes a perfecting amendment to section 547 to provide that if the trustee avoids a transfer given by the debtor to a noninsider for the benefit of an insider creditor between 90 days and one year before filing, that avoidance is valid only with respect to the insider creditor. Thus both the previous amendment to section 550 and the perfecting amendment to section 547 protect the noninsider from the avoiding powers of the trustee exercised with respect to transfers made during the 90-day to one year pre-filing period. This provision is intended to apply to any case, including any adversary proceeding, that is pending or commenced on or after the date of enactment of this Act. Section 1213 is substantively identical to section 1213 of the House bill and the Senate amendment.

Sec. 1214. Postpetition transactions

Section 1214 of the conference report amends section 549(c) of the Bankruptcy Code to clarify its application to an interest in real property. This amendment should be construed in conjunction with section 1201 of the Act. This provision is substantively identical to section 1214 of the House bill and the Senate amendment.

Sec. 1215. Disposition of property of the estate

Section 1215 of the conference report amends section 726(b) of the Bankruptcy Code to strike an erroneous reference. This provision is substantively identical to section 1215 of the House bill and the Senate amendment.

Sec. 1216. General provisions

Section 1216 of the conference report amends section 901(a) of the Bankruptcy Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11 of the United States Code. This provision is substantively identical to section 1216 of the House bill and the Senate amendment.

Sec. 1217. Abandonment of railroad line

Section 1217 of the conference report amends section 1170(e)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104-88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code. This provision is substantively identical to section 1217 of the House bill and the Senate amendment.

Sec. 1218. Contents of plan

Section 1218 of the conference report amends section 1172(c)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104-88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code. This provision is substantively identical to section 1218 of the House bill and the Senate amendment.

Sec. 1219. Bankruptcy cases and proceedings

Section 1219 of the conference report amends section 1334(d) of title 28 of the United States Code to make clarifying references.[81] This provision is substantively identical to section 1220 of the House bill and section 1219 of the Senate amendment.

Sec. 1220. Knowing disregard of bankruptcy law or rule

Section 1220 of the conference report amends section 156(a) of title 18 of the United States Code to make stylistic changes and correct a reference to the Bankruptcy Code. This provision is substantively identical to section 1221 of the House bill and section 1220 of the Senate amendment.

Sec. 1221. Transfers made by nonprofit charitable corporations

Section 1221 of the conference report amends section 363(d) of the Bankruptcy

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[79] For a description of these errors, see the appropriate footnote and amendment notes in the United States Code.

[80] Levit v. Ingersoll Rand Fin. Corp., 874 F.2d 1186 (7th Cir. 1989); see, e.g., Ray v. City Bank and Trust Co. (In re C–L Cartage Co.), 899 F.2d 1490 (6th Cir. 1990); Manufacturers Hanover Leasing Corp. v. Lowrey (In re Robinson Bros. Drilling, Inc.), 892 F.2d 850 (10th Cir. 1989).

[81] For a description of the errors, see the appropriate footnote and amendment notes in the United States Code.

Code to restrict the authority of a trustee to use, sale, or lease property by a nonprofit corporation or trust. First, the use, sell or lease must be in accordance with applicable nonbankruptcy law and to the extent it is not inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, section 1221 imposes similar restrictions with regard to plan confirmation requirements for chapter 11 cases. Third, it amends section 541 of the Bankruptcy Code to provide that any property of a bankruptcy estate in which the debtor is a nonprofit corporation (as described in certain provisions of the Internal Revenue Code) may not be transferred to an entity that is not a corporation, but only under the same conditions that would apply if the debtor was not in bankruptcy. The amendments made by this section apply to cases pending on the date of enactment or to cases filed after such date. Section 1221 provides that a court may not confirm a plan without considering whether this provision would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor postpetition. Nothing in this provision may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property. This provision is substantively identical to section 1222 of the House bill and section 1221 of the Senate amendment.

Sec. 1222. Protection of valid purchase money security interests

Section 1222 of the conference report extends the applicable perfection period for a Security interest in property of the debtor in section 547(c)(3)(B) of the Bankruptcy Code from 20 to 30 days. This provision is substantively identical to section 1223 of the House bill and section 1222 of the Senate amendment.

Sec. 1223. Bankruptcy judgeships

The substantial increase in bankruptcy case filings clearly creates a need for additional bankruptcy judgeships. In the 105th Congress, the House responded to this need by passing H.R. 1596, which would have created additional permanent and temporary bankruptcy judgeships and extended an existing temporary position. Section 1223 generally incorporates H.R. 1596 as it passed the House with provisions extending four existing temporary judgeships. Moreover, it includes the Senate amendment's provision for additional bankruptcy judgeships for the districts of South Carolina, Nevada, and Delaware. In addition, section 1223 of the conference report provides that the extension periods for the temporary judgeships in the Northern District of Alabama, the Western District of Tennessee, and the Districts of Delaware and Puerto Rico begin from the date of enactment of this Act. The conference report authorizes two judgeships for the District of Delaware in addition to the two provided for in the House bill and the Senate amendment for a total of four judgeships for that District.

Sec. 1224. Compensating trustees

Section 1224 of the conference report amends section 1326 of the Bankruptcy Code to provide that if a chapter 7 trustee has been allowed compensation as a result of the conversion or dismissal of the debtor's prior case pursuant to section 707(b) and some portion of that compensation remains unpaid, the amount of any such unpaid compensation must be repaid in the debtor's subsequent chapter 13 case. This payment must be prorated over the term of the plan and paid on a monthly basis. The amount of the monthly payment may not exceed the greater of $25 or the amount payable to unsecured nonpriority creditors as provided by the plan, multiplied by five percent and the result divided by the number of months of the plan. This provision is substantively identical to section 1225 of the House bill and section 1224 of the Senate amendment.

Sec. 1225. Amendment to section 362 of title 11, United States Code

Section 1225 of the conference report amends section 362(b) of the Bankruptcy Code to except from the automatic stay the creation or perfection of a statutory lien for an ad valorem property tax or for a special tax or special assessment on real property (whether or not ad valorem) that is imposed by a governmental unit, if such tax or assessment becomes due after the filing of the petition. This provision is substantively identical to section 1226 of the House bill and section 1225 of the Senate amendment.

Sec. 1226. Judicial education

Section 1226 of the conference report requires the Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, to develop materials and conduct training as may be useful to the courts in implementing this Act, including the needs-based reforms under section 707(b) (as amended by this Act) and amendments pertaining to reaffirmation agreements. This provision is substantively identical to section 1227 of the House bill and section 1226 of the Senate amendment.

Sec. 1227. Reclamation

Section 1227 of the conference report amends section 546(c) of the Bankruptcy Code to provide that the rights of a trustee under sections 544(a), 545, 547, and 549 are subject to the rights of a seller of goods to reclaim goods sold in the ordinary course of business to the debtor if: (1) the debtor received these goods while insolvent not later than 45 days prior to the commencement of the case, and (2) written demand for reclamation of the goods is made not later than 45 days after receipt of such goods by the debtor or not later than 20 days after the commencement of the case, if the 45-day period expires after the commencement of the case. If the seller fails to provide notice in the manner provided in this provision, the seller may still assert the rights set forth in section 503(b)(7) of the Bankruptcy Code. Section 1227(b) amends Bankruptcy Code section 503(b) to provide that the value of any goods received by a debtor not later than within 20 days prior to the commencement of a bankruptcy case in which the goods have been sold to the debtor in the ordinary course of the debtor's business is an allowed administrative expense.

Section 1227 of the conference report reflects section 1227 of the Senate amendment, which clarifies when certain specified time frames begin. Section 1228 of the House bill did not include this clarification.

Sec. 1228. Providing requested tax documents to the court

Section 1228 of the conference report is substantively identical to section 1229 of the House bill and section 1228 of the Senate amendment. Subsection (a) provides that the court may not grant a discharge to an individual in a case under chapter 7 unless requested tax documents have been provided to the court. Section 1228(b) similarly provides that the court may not confirm a chapter 11 or 13 plan unless requested tax documents have been filed with the court. Section 1228(c) directs the court to destroy documents submitted in support of a bankruptcy claim not sooner than three years after the date of the conclusion of a bankruptcy case filed by an individual debtor under chapter 7, 11, or 13. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

Sec. 1229. Encouraging creditworthiness

Section 1229 of the conference report is substantively identical to section 1230 of the House bill and section 1229 of the Senate amendment. Subsection (a) expresses the sense of the Congress that lenders may sometimes offer credit to consumers indiscriminately and that resulting consumer debt may be a major contributing factor leading to consumer insolvency. Section 1229(b) directs the Board of Governors of the Federal Reserve to study certain consumer credit industry solicitation and credit granting practices as well as the effect of such practices on consumer debt and insolvency. The specified practices involve the solicitation and extension of credit on an indiscriminate basis that encourages consumers to accumulate additional debt and where the lender fails to ensure that the consumer borrower is capable of repaying the debt. Section 1229(c) requires the study described in subsection (b) to be prepared within 12 months from the date of the Act's enactment. This provision authorizes the Board to issue regulations requiring additional disclosures to consumers and permits it to undertake any other actions consistent with its statutory authority, which are necessary to ensure responsible industry practices and to prevent resulting consumer debt and insolvency.

Sec. 1230. Property no longer subject to redemption

Section 1230 of the conference report is substantively identical to section 1231 of the House bill and section 1230 of the Senate amendment. This provision amends section 541(b) of the Bankruptcy Code to provide that, under certain circumstances, an interest of the debtor in tangible personal property (other than securities, or written or printed evidences of indebtedness or title) that the debtor pledged or sold as collateral for a loan or advance of money given by a person licensed under law to make such loan or advance is not property of the estate. Subject to subchapter III of chapter 5 of the Bankruptcy Code, the provision applies where (a) the property is in the possession of the pledgee or transferee; (b) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and (c) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law in a timely manner as provided under State law and section 108(b) of the Bankruptcy Code.

Sec. 1231. Trustees

Section 1231 of the conference report is substantively identical to section 1232 of the House bill and section 1231 of the Senate amendment. The provision establishes a series of procedural protections for chapter 7 and chapter 13 trustees concerning final agency decisions relating to trustee appointments and future case assignments. Section 1231(a) amends section 586(d) of title 28 of the United States Code to allow a chapter 7 or chapter 13 trustee to obtain judicial review of such decisions by commencing an action in the United States district court after the trustee exhausts all available administrative remedies. Unless the trustee elects an administrative hearing on the record, the trustee is deemed to have exhausted all administrative remedies under this provision if the agency fails to make a final agency decision within 90 days after the trustee requests an administrative remedy. The provision requires the Attorney General to promulgate procedures to implement this provision. It further provides that the agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

Section 1231(b) amends section 586(e) of title 28 of the United States Code to permit a chapter 13 trustee to obtain judicial review of certain final agency actions relating to claims for actual, necessary expenses under section 586(e). The trustee may commence an action in the United States district court where the trustee resides. The agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency. It directs the Attorney General to prescribe procedures to implement this provision.

Sec. 1232. Bankruptcy forms

Section 1232 of the conference report is substantively identical to section 1233 of the House bill and section 1232 of the Senate amendment. This provision amends section 2075 of title 28 of the United States Code to require the bankruptcy rules promulgated under this provision to prescribe a form for the statement specified under section 707(b)(2)(C) of the Bankruptcy Code and to provide general rules on the content of such statement.

Sec. 1233. Direct appeals of bankruptcy matters to courts of appeals

Under current law, appeals from decisions rendered by the bankruptcy court are either heard by the district court or a bankruptcy appellate panel. In addition to the time and cost factors attendant to the present appellate system, decisions rendered by a district court as well as a bankruptcy appellate panel are generally not binding and lack stare decisis value.

To address these problems, section 1233 of the conference report amends section 158(d) of title 28 to establish a procedure to facilitate appeals of certain decisions, judgments, orders and decrees of the bankruptcy courts to the circuit courts of appeals by means of a two-step certification process. The first step is a certification by the bankruptcy court, district court, or bankruptcy appellate panel (acting on its own motion or on the request of a party, or the appellants and appellees acting jointly). Such certification must be issued by the lower court if: (1) the bankruptcy court, district court, or bankruptcy appellate panel determines that one or more of certain specified standards are met; or (2) a majority in number of the appellants and a majority in number of the appellees request certification and represent that one or more of the standards are met. The second step is authorization by the circuit court of appeals. Jurisdiction for the direct appeal would exist in the circuit court of appeals only if the court of appeals authorizes the direct appeal.

This procedure is intended to be used to settle unresolved questions of law where there is a need to establish clear binding precedent at the court of appeals level, where the matter is one of public importance, where there is a need to resolve conflicting decisions on a question of law, or where an immediate appeal may materially advance the progress of the case or proceeding. The courts of appeals are encouraged to authorize direct appeals in these circumstances. While fact-intensive issues may occasionally offer grounds for certification even when binding precedent already exists on the general legal issue in question, it is anticipated that this procedure will rarely be used in that circumstance or in an attempt to bring to the circuit courts of appeals matters that can appropriately be resolved initially by district court judges or bankruptcy appellate panels.

Section 1233 reflects a compromise between the House and Senate conferees. The House provision amends section 158(d) of title 28 of the United States Code to deem a judgment, decision, order, or decree of a bankruptcy judge to be a judgment, decision, order, or decree of the district court entered 31 days after an appeal of such judgment, decision, order or decree is filed with the district court, unless: (1) the district court issues a decision on the appeal within 30 days after such appeal is filed or enters an order extending the 30-day period for cause upon motion of a party or by the court sua sponte; or (2) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision. Section 1233 of the Senate amendment, on the other hand, allows a court of appeals to hear an appeal of a bankruptcy court order only if the bankruptcy court, district court, bankruptcy appellate panel, or the parties jointly certify: (1) the appeal concerns a substantial question of law, question of law requiring resolution of conflicting decisions, or a matter of public importance; and (2) an immediate appeal may materially advance the progress of the case or proceeding. It further provides that an appeal under this provision does not stay proceedings in the court from which the order or decree originated, unless the originating court or the court of appeals orders such a stay.

Sec. 1234. Involuntary cases

Section 1234 of the conference report amends the Bankruptcy Code's criteria for commencing an involuntary bankruptcy case. Current law renders a creditor ineligible if its claim is contingent as to liability or the subject of a bona fide dispute. This provision amends section 303(b)(1) to specify that a creditor would be ineligible to file an involuntary petition if the creditor's claim was the subject of a bona fide dispute as to liability or amount. It further provides that the claims needed to meet the monetary threshold must be undisputed. The provision makes a conforming revision to section 303(h)(1). Section 1234 becomes effective on the date of enactment of this Act and applies to cases commenced after such date. This provision represents the Senate position as reflected in section 1235 of the Senate amendment. There is no counterpart to section 1234 of the conference report in the House bill.

Sec. 1235. Federal election law fines and penalties as nondischargeable debt

Section 1235 of the conference report amends section 523(a) of the Bankruptcy Code to make debts incurred to pay fines or penalties imposed under Federal election law nondischargeable. This provision represents the Senate's position as reflected in section 1236 of the Senate amendment. There is no counterpart to this provision in the House bill.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan

Section 1301 of the conference report is substantively identical to section 1301 of the House bill and Senate amendment. Subsection (a) amends section 127(b) of the Truth in Lending Act to mandate the inclusion of certain specified disclosures in billing statements with respect to various open end credit plans. In general, these statements must contain an example of the time it would take to repay a stated balance at a specified interest rate. In addition, they must warn the borrower that making only the minimum payment will increase the amount of interest that must be paid and the time it takes to repay the balance. Further, a toll-free telephone number must be provided where the borrower can obtain an estimate of the time it would take to repay the balance if only minimum payments are made. With respect to a creditor whose compliance with title 15 of the United States Code is enforced by the Federal Trade Commission (FTC), the billing statement must advise the borrower to contact the FTC at a toll-free telephone number to obtain an estimate of the time it would take to repay the borrower's balance. Section 1301(a) permits the creditor to substitute an example based on a higher interest rate. As necessary, the provision requires the Board of Governors of the Federal Reserve System ("Board"), to periodically recalculate by rule the interest rate and repayment periods specified in Section 1301(a). With respect to the toll-free telephone number, section 1301(a) permits a third party to establish and maintain it. Under certain circumstances, the toll-free number may connect callers to an automated device.

For a period not to exceed 24 months from the effective date of the Act, the Board is required to establish and maintain a toll-free telephone number (or provide a toll-free telephone number established and maintained by a third party) for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. Not later than six months prior to the expiration of the 24-month period, the Board must submit a report on this program to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking and Financial Services of the House of Representatives. In addition, section 1301(a) requires the Board to establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made. The table should reflect a significant number of different annual percentage rates, and account balances, minimum payment amounts. The Board must also promulgate regulations providing instructional guidance regarding the manner in which the information contained in the tables should be used to respond to a request by an obligor under this provision. Section 1301(a) provides that the disclosure requirements of this provision are inapplicable to any charge card account where the primary purpose of which is to require payment of charges in full each month.

Section 1301(b)(1) requires the Federal Reserve Board to promulgate regulations implementing section 1301(a)'s amendments to section 127. Section 1301(b)(2) specifies that the effective date of the amendments under subsection (a) and the regulations required under this provision shall not take effect until the later of 18 months after the date of enactment of this Act or 12 months after the publication of final regulations by the Board.

Section 1301(c) authorizes the Federal Reserve Board to conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default. The provision specifies the factors that should be considered. The study's findings must be submitted to Congress and include recommendations for legislative initiatives, based on the Board's findings.

Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling

Section 1302 of the conference report is identical to section 1302 of the House bill and the Senate amendment. Subsection (a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds the fair market value of a dwelling specifying that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes. Section 1302(a)(2) amends section 147(b) of the Truth in Lending Act to require an advertisement relating to an extension of credit that may exceed the fair market value of a dwelling and such advertisement is disseminated in paper form to the public or through the Internet (as opposed to dissemination by radio or television) to include a specified statement. The statement must disclose that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

With respect to non-open end credit extensions, section 1302(b)(1) amends section 128 of the Truth in Lending Act to require that a consumer receive a specified statement at the time he or she applies for credit with respect to a consumer credit transaction secured by the consumer's principal dwelling and where the credit extension may exceed the fair market value of the dwelling must contain a specified statement. The statement must disclose that the interest on the portion of the credit extension that exceeds the dwelling's fair market value is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges. Section 1302(b)(2) requires certain advertisements disseminated in paper form to the public or through the Internet that relate to a consumer credit transaction secured by a consumer's principal dwelling where the extension of credit may exceed the dwelling's fair market value to contain specified statements. These statements advise that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

Section 1302(c)(1) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by this provision. Section 1302(c)(2) provides that these regulations shall not take effect until the later of 12 months following the Act's enactment date or 12 months after the date of publication of such final regulations by the Board.

Sec. 1303. Disclosures related to "introductory rates"

Section 1303 of the conference report is substantively identical to section 1303 of the House bill and the Senate amendment. Subsection (a) amends section 127(c) of the Truth in Lending Act by adding a provision to add further requirements for applications, solicitations and related materials that are subject to section 127(c)(1). With respect to an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation involving an "introductory rate" offer, such materials must do the following if they offer a temporary annual percentage rate of interest:

(16) the term "introductory" in immediate proximity to each listing of the temporary annual percentage interest rate applicable to such account;

(17) if the annual percentage interest rate that will apply after the end of the temporary rate period will be a fixed rate, the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate;

(18) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect 60 days before the date of mailing of the application or solicitation must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate.

The second and third provisions described above do not apply to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed. With respect to an application or solicitation to open a credit card account for which disclosure is required pursuant to section 127(c)(1) of the Truth in Lending Act, section 1303(a) specifies that certain statements be made if the rate of interest is revocable under any circumstance or upon any event. The statements must clearly and conspicuously appear in a prominent manner on or with the application or solicitation. The disclosures include a general description of the circumstances that may result in the revocation of the temporary annual percentage rate and an explanation of the type of interest rate that will apply upon revocation of the temporary rate.

To implement this provision, section 1303(b) amends section 127(c) of the Truth in Lending Act to define various relevant terms and requires the Board to promulgate regulations. The provision does not become effective until the earlier of 12 months after the Act's enactment date or 12 months after the date of publication of such final regulations.

Sec. 1304. Internet-based credit card solicitations

Section 1304 of the conference report is substantively identical to section 1304 of the House bill and the Senate amendment. Subsection (a) amends section 127(c) of the Truth in Lending Act to require any solicitation to open a credit card account for an open end consumer credit plan through the Internet or other interactive computer service to clearly and conspicuously include the disclosures required under section 127(c)(1)(A) and (B). It also specifies that the disclosure required pursuant to section 127(c)(1)(A) be readily accessible to consumers in close proximity to the solicitation and be updated regularly to reflect current policies, terms, and fee amounts applicable to the credit card account. Section 1304(a) defines terms relevant to the Internet.

Section 1304(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. It also provides that the amendments effectuated by section 1304 do not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such regulations.

Sec. 1305. Disclosures related to late payment deadlines and penalties

Section 1305 of the conference report is substantively identical to section 1305 of the House bill and the Senate amendment. Subsection (a) amends section 127(b) of the Truth in Lending Act to provide that if a late payment fee is to be imposed due to the obligor's failure to make payment on or before a required payment due date, the billing statement must specify the date on which that payment is due (or if different the earliest date on which a late payment fee may be charged) and the amount of the late payment fee to be imposed if payment is made after such date.

Section 1305(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. The amendments effectuated by this provision and the regulations promulgated thereunder shall not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of the regulations.

Sec. 1306. Prohibition on certain actions for failure to incur finance charges

Section 1306 of the conference report is substantively identical to section 1306 of the House bill and the Senate amendment. Subsection (a) amends section 127 of the Truth in Lending Act to add a provision prohibiting a creditor of an open end consumer credit plan from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. The provision does not prevent the creditor from terminating such account for inactivity for three or more consecutive months.

Section 1306(b) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by section 1306(a) and provides that they do not become effective until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such final regulations.

Sec. 1307. Dual use debit card

Section 1307 of the conference report is substantively identical to section 1307 of the House bill and the Senate amendment. Subsection (a) provides that the Federal Reserve Board may conduct a study and submit a report to Congress containing its analysis of consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. The report must include recommendations for legislative initiatives, if any, based on its findings.

Section 1307(b) provides that the Federal Reserve Board, in preparing its report, may include analysis of section 909 of the Electronic Fund Transfer Act to the extent this provision is in effect at the time of the report and the implementing regulations. In addition, the analysis may pertain to whether any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability and whether amendments to the Electronic Fund Transfer Act or implementing regulations are necessary to further address adequate protection for consumers concerning unauthorized use liability.

Sec. 1308. Study of bankruptcy impact of credit extended to dependent students

Section 1308 of the conference report is substantively identical to section 1308 of the House bill and the Senate amendment. This provision directs the Board of Governors of the Federal Reserve to study the impact that the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions has on the rate of bankruptcy cases filed. The report must be submitted to the Senate and House of Representatives no later than one year from the Act's enactment date.

Sec. 1309. Clarification of clear and conspicuous

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. Subsection (a) requires the Board (in consultation with other Federal banking agencies, the National Credit Union Administration Board, and the Federal Trade Commission) to promulgate regulations not later than six months after the Act's enactment date to provide guidance on the meaning of the term "clear and conspicuous" as it is used in section 127(b)(11)(A), (B) and (C) and section 127(c)(6)(A)(ii) and (iii) of the Truth in Lending Act.

Section 1309(b) provides that regulations promulgated under section 1309(a) shall include examples of clear and conspicuous model disclosures for the purpose of disclosures required under the Truth in Lending Act provisions set forth therein.

Section 1309(c) requires the Federal Reserve Board, in promulgating regulations under this provision, to ensure that the clear and conspicuous standard required for disclosures made under the Truth in Lending Act provisions set forth in section 1309(a) can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective date; application of amendments

Section 1401 of the conference report is identical to section 1401 of the House bill and section 1501 of the Senate amendment. Subsection (a) states that the Act shall take effect 180 days after the date of enactment, unless otherwise specified in this Act. Section 1401(b) provides that the amendments made by this Act shall not apply to cases commenced under the Bankruptcy Code before the Act's effective date, unless otherwise specified in this Act. The provision specifies that the amendments made by sections 308 and 322 shall apply to cases commenced on or after the date of enactment of this Act.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY J. HYDE,
GEORGE W. GEKAS,
LAMAR SMITH,
STEVE CHABOT,
BOB BARR,
RICK BOUCHER,

From the Committee on Financial Services, for consideration of secs. 901-906, 907A-909, 911, and 1301-1309 of the House bill, and secs. 901-906, 907A-909, 911, 913-4, and title XIII of the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
SPENCER BACHUS,

From the Committee on Energy and Commerce, for consideration of title XIV of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JOE BARTON,

From the Committee on Education and the Workforce, for consideration of sec. 1403 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
Managers on the Part of the House.

PATRICK LEAHY,
JOE BIDEN,
CHARLES SCHUMER,
ORRIN HATCH,
CHUCK GRASSLEY,
JON KYL,
MIKE DEWINE,
JEFF SESSIONS,
MITCH MCCONNELL,
Managers on the Part of the Senate.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o'clock and 1 minute a.m.), the House stood in recess subject to the call of the Chair.

☐ 0821

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore at 8 o'clock and 21 minutes a.m.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 107-618) on the resolution (H. Res. 506) waiving points of order against the conference report to accompany the bill (H.R. 333) to amend Title 11, United States Code, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 107-619) on the resolution (H. Res. 507) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES ON WEDNESDAY, SEPTEMBER 4, 2002

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 107-620) on the resolution (H. Res. 508) providing for consideration of motions to suspend the rules on Wednesday, September 4, 2002, which was referred to the House Calendar and ordered to be printed.

GENERAL LEAVE

Mr. HORN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter for the celebration of the life of Dr. James David Ford, our Chaplain emeritus.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Ms. WATSON of California and to include extraneous material, notwithstanding the fact that it exceeds two pages of the record and is estimated by the Public Printer to cost $1,560.

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. HORN, and to include therein extraneous material, notwithstanding the fact that it exceeds 2 pages and is estimated by the Public Printer to cost $910.

SENATE BILLS REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 434. An act to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of vale of certain lands; to the Committee on Resources.

ENROLLED BILL SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly an enrolled bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3763. An act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to enrolled bill of the Senate of the following title:

S.J. Res. 13. Joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

ADJOURNMENT

Mr. SESSIONS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 24 minutes a.m.), the House adjourned until today, Friday, July 26, 2002, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

8230. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Aspergillus flavus AF36; Amendment, Temporary Exemption From the Requirement of a Tolerance [OPP-2002-0093; FRL-7185-4] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8231. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Atrazine, Bensulide, Diphenamid, Imazalil, 6-Methyl-1, 3-dithiolo [4,5-b] quinoxalin-2-one, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations [OPP-2002-0085; FRL-7182-5] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8232. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Benomyl; Tolerance Revocations [OPP-2002-0068; FRL-7177-7] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8233. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Clethodim; Pesticide Tolerance [OPP-2002-0129; FRL-7185-7] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8234. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Indoxacarb; Pesticide Tolerance [OPP-2002-0105; FRL-7186-2] received July 15; 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8235. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Methoxychlor; Tolerance Revocations [OPP-2002-0118; FRL-7184-4] (RIN: 2070-AB78) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8236. A letter from the Assistant Secretary of Defense, Department of Defense, transmitting notification that M. L. "Buzz" Hefti, who is now serving as Principal Deputy Assistant Secretary of Defense for Legislative Affairs will be leaving on July 1, 2002; to the Committee on Armed Services.

8237. A letter from the Under Secretary, Department of Defense, transmitting a report on Funds for Information Technology and Software Used to Support Department of Defense Weapons Systems, May 2002; to the Committee on Armed Services.

8238. A letter from the General Counsel, Department of the Treasury, transmitting the Department's draft bill entitled, "To authorize the United States participation in and appropriations for the United States contribution to the ninth replenishment of the resources of the African Development Fund"; to the Committee on Financial Services.

8239. A letter from the General Counsel, Department of the Treasury, transmitting the Department's draft bill entitled, "To authorize the United States participation in and appropriations for the United States contribution to the thirteenth replenishment of the resources of the International Development Association; to the Committee on Financial Services.

8240. A letter from the Chairman, Federal Trade Commission, transmitting the Twenty-Fourth Annual Report to Congress on the Fair Debt Collection Practices Act, pursuant to 15 U.S.C. 1692m; to the Committee on Financial Services.

8241. A letter from the Director, Office of Management and Budget, transmitting a draft bill to authorize the President to agree to amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; to the Committee on Financial Services.

8242. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District [CA 264-0350a; FRL-7231-8] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8243. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District [CA 247-0347a; FRL-7220-6] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8244. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Air Force's Proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services (Transmittal No. 02-35), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

8245. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Lithuania for defense articles and services (Transmittal No. 02-33), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

8246. A letter from the Administrator, Department of Energy, transmitting a report required by Section 3157 of the National Defense Authorization Act for Fiscal Year 1998 entitled, "Accelerated Strategic Computer Initiative Participant Computer Sales to Tier III Countries in Calendar Year 2001"; to the Committee on International Relations.

8247. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-429, "Free Clinic Assistance Program Extension Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8248. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-428, "Government Reports Electronic Publication Requirement Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8249. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-431, "Business Improvement Districts Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8250. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-432, "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8251. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-434, "Contract No. DCFRA 00-C-030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Temporary Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8252. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-435, "Square 456 Payment in Lieu of Taxes Extension Temporary Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8253. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-436, "Disability Compensation Program Transfer Temporary Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8254. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-439, "Department of Human Services Mental Retardation and Developmental Disabilities Administration Funding Authorization Temporary Act of 2002" received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8255. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-438, "Lead-Based Paint Abatement and Control Temporary Amendment Act of 2002" received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8256. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-437, "Abandoned and Vacant Properties Community Development Disposition, and Disapproval of Disposition of Certain Scattered Vacant and Abandoned Properties Temporary Act of 2002" received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8257. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-430, "Education and Examination Exemption for Respiratory Care Practitioners Amendment Act of 2002" received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8258. A letter from the Commissioner, Department of the Treasury, transmitting notification on the Department's progress in eliminating "the appearance of Social Security account numbers on or through unopened mailings of checks or other drafts issued on public money in the Treasury"; to the Committee on Government Reform.

8259. A letter from the Solicitor, Federal Labor Relations Authority, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8260. A letter from the Chairman, Postal Rate Commission, transmitting the FY 2001 annual report on International Mail Volumes, Costs, and Revenues; to the Committee on Government Reform.

8261. A letter from the Secretary, Department of Defense, transmitting the Sixteenth Report of the Federal Voting Assistance Program; to the Committee on House Administration.

8262. A letter from the Assistant Administrator for Fisheries, NOAA and Director of U.S. Fish and Wildlife Service, Departments of Commerce and the Interior, transmitting a report entitled, "Atlantic Striped Bass Studies 2001 Biennial Report to Congress," pursuant to 16 U.S.C. 1851 nt.; to the Committee on Resources.

8263. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operating Regulation; Three Mile Creek, Alabama [CGD08-02-014] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8264. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations: Passaic River, NJ [CGD01-02-060](RIN: 2115-AE47) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8265. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations: Eastchester Creek, NY [CGD01-02-076] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8266. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, mile 1074.0 at Hallandale Beach, Broward County, FL [CGD07-02-070] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8267. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations: Hampton River, NH [CGD01-02-071] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8268. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Right to Appeal; Director, Great Lakes Pilotage [USCG 2001-8894] (RIN: 2115-AG11) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8269. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Temporary Requirements for Notification of Arrival in U.S. Ports [USCG-2001-10689] (RIN: 2115-AG24) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8270. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX [COTP Corpus Christi-02-001] (RIN: 2115-AA97) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8271. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Security Zone; Lake Erie, Perry, Ohio [CGD09-01-130] (RIN: 2115-AA97) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8272. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Navigation and Navigable Waters — Technical Amendments, Organizational Changes Miscellaneous Editorial Changes and Conforming Amendments [USCG-2002-12471] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8273. A letter from the Chairman, U.S. International Trade Commission, transmitting the Commission's report entitled, "The Year in Trade 2001: Operation of the Trade Agreements Program"; to the Committee on Ways and Means.

8274. A letter from the Under Secretary, Department of Defense, transmitting notification regarding a report required by Title IX of Public Law 107-117, specifying the projects and accounts to which funds provided in the "Counter-Terrorism and Defense Against Weapons of Mass Destruction" account to be transferred, a supplemental report will be submitted when a decision is made regarding the remaining funds; jointly to the Committees on Armed Services and Appropriations.

8275. A letter from the Chief of Staff, Trade and Development Agency, transmitting notification of prospective funding obligations requiring special notification under Section 520 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002; jointly to the Committees on International Relations and Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HANSEN: Committee on Resources. H.R. 4620. A bill to accelerate the wilderness designation process by establishing a timetable for the completion of wilderness studies on Federal lands, and for other purposes (Rept. 107–613). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 1057. A act to authorize the addition of lands to Pu'uhonua o Honaunau National Historical Park in the State of Hawaii, and for other purposes (Rept. 107–614). Referred to the Committee of the Whole House on the State of the Union.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 502. Resolution providing for consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes (Rept. 107–615). Referred to the House Calendar.

Mr. TAUZIN: Committee on Energy and Commerce. H.R. 1784. A bill to establish an Office on Women's Health within the Department of Health and Human Services, and for other purposes; with an amendment (Rept. 107–616). Referred to the Committee of the Whole House on the State of the Union.

[Filed on July 26 (legislative day of July 25), 2002]

Mr. SENSENBRENNER: Committee of Conference. Conference report on H.R. 333. A bill to amend title 11, United States Code, and for other purposes (Rept. 107–617). Ordered to be printed.

Mr. SESSIONS: Committee on Rules. House Resolution 506. Resolution waiving points of order against the conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes (Rept. 107–618). Referred to the House Calendar.

Mr. REYNOLDS: Committee on Rules. House Resolution 507. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–619). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 508. Resolution providing for consideration of motions to suspend the rules (Rept. 107–620). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BERMAN (for himself, Mr. Coble, Mr. Smith of Texas, and Mr. Wexler):

H.R. 5211. A bill to amend title 17, United States Code, to limit the liability of copyright owners for protecting their works on peer-to-peer networks; to the Committee on the Judiciary.

By Mr. ISTOOK:

H.R. 5212. A bill to amend the Internal Revenue Code of 1986 to increase the limitation on capital losses an individual may deduct against ordinary income, and to adjust such amount for inflation; to the Committee on Ways and Means.

By Mr. BURTON of Indiana (for himself, Mr. LaTourette, Mr. Shays, Mr. DELAHUNT, Mr. LEWIS of Georgia, and Mr. TIERNEY):

H.R. 5213. A bill to redesignate the Federal building located at 935 Pennsylvania Avenue Northwest in the District of Columbia as the "Federal Bureau of Investigation Building"; to the Committee on Transportation and Infrastructure.

By Mr. REHBERG (for himself, Mr. PETERSON of Pennsylvania, Mr. YOUNG of Alaska, Mr. GOODLATTE, Mr. HERGER, Mr. SIMPSON, Mr. OTTER, Mr. CANNON, Mr. JONES of North Carolina, Mr. DOOLITTLE, Mr. DUNCAN, Mr. GIBBONS, Mr. RADANOVICH, Mr. TANCREDO, Mr. TAUZIN, Mr. GUTKNECHT, Mr. GOODE, Mrs. EMERSON, Mr. SCHAFFER, Mr. SESSIONS, Mrs. CUBIN, Mr. FLAKE, Mr. GALLEGLY, Mr. HAYWORTH, and Mr. HASTINGS of Washington):

H.R. 5214. A bill to authorize and direct the Secretary of Agriculture to take actions to promptly address the risk of fire and insect infestation in National Forest System lands; to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HORN (for himself, Mr. SAWYER, and Mrs. MALONEY of New York):

H.R. 5215. A bill to protect the confidentiality of information acquired from the public for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only; to the Committee on Government Reform.

By Ms. CARSON of Indiana (for herself, Mr. MCNULTY, Mr. LUCAS of Kentucky, Mr. MORAN of Virginia, Mr. FROST, Mr. SANDERS, Mr. LYNCH, Mr. PAYNE, Mrs. CHRISTENSEN, Ms. JACKSON-LEE of Texas, Mr. CUMMINGS, Mrs. JONES of Ohio, Ms. WATSON, Mr. DAVIS of Illinois, Mr. POMEROY, Mr. WATT of North Carolina, Mr. EVANS, Mr. SERRANO, Mr. MCINTYRE, Mr. BOSWELL, Ms. LEE, Mr. DINGELL, and Mr. BACA):

H.R. 5216. A bill to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. BROWN of Ohio (for himself, Mr. ALLEN, Mr. BERRY, Mr. PALLONE, and Mr. STRICKLAND):

H.R. 5217. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the Secretary of Health and Human Services to grant waivers permitting individuals to import prescription drugs from Canada, to amend such Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. CAPUANO:

H.R. 5218. A bill to amend title XVIII of the Social Security Act to provide for payment under the prospective payment system for hospital outpatient department services under the Medicare Program for new drugs administered in such departments as soon as the drug is approved for marketing by the Commissioner of Food and Drugs; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CARDIN (for himself, Mrs. MORELLA, and Ms. HOOLEY of Oregon):

H.R. 5219. A bill to amend part B of title XVIII of the Social Security Act to provide for a chronic disease prescription drug benefit and for coverage of disease management services under the Medicare Program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COLLINS (for himself and Mr. DELAY):

H.R. 5220. A bill to amend the Internal Revenue Code of 1986 to allow a minimum deduction for business use of a home, and for other purposes; to the Committee on Ways and Means.

By Mr. DELAHUNT:

H.R. 5221. A bill to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code; to the Committee on the Judiciary.

By Mr. DOOLITTLE (for himself and Mr. MCKEON):

H.R. 5222. A bill to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; to the Committee on Resources.

By Mr. GEKAS:

H.R. 5223. A bill to amend title 31, United States Code, to provide for continuing appropriations in the absence of regular appropriations; to the Committee on Appropriations.

By Mr. GREENWOOD (for himself, Mr. FROST, Mr. MCGOVERN, Mrs. CHRISTENSEN, and Mr. DAN MILLER of Florida):

H.R. 5224. A bill to authorize the Secretary of Health and Human Services to carry out demonstration projects to increase the supply of organs donated for human transplantation; to the Committee on Energy and Commerce.

By Mr. GUTIERREZ:

H.R. 5225. A bill to amend title XIX of the Social Security Act to provide for coverage under the Medicaid Program of organ transplant procedures as an emergency medical procedure for certain alien children; to the Committee on Energy and Commerce.

By Mr. GEORGE MILLER of California:

H.R. 5226. A bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species; to the Committee on Resources.

By Mr. MORAN of Kansas (for himself, Mr. THUNE, Mr. OSBORNE, and Mrs. CUBIN):

H.R. 5227. A bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes; to the Committee on Ways and Means.

By Mr. PLATTS (for himself and Mr. MCHUGH):

H.R. 5228. A bill to amend the Internal Revenue Code of 1986 to allow a full deduction for meals and lodging in connection with medical care; to the Committee on Ways and Means.

By Mr. PLATTS (for himself and Mr. MCHUGH):

H.R. 5229. A bill to amend the Internal Revenue Code of 1986 to increase the standard mileage rate for charitable purposes to the standard mileage rate established by the Secretary of the Treasury for business purposes; to the Committee on Ways and Means.

By Ms. RIVERS (for herself and Ms. DEGETTE):

H.R. 5230. A bill to amend the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Federal Food, Drug, and Cosmetic Act to provide for improved public health and food safety through enhanced enforcement, and for other purposes; to the Committee on Agriculture, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SANDERS:

H.R. 5231. A bill to amend title 10, United States Code, to repeal the required offset of certain military separation benefits by the amount of disability benefits paid by the Department of Veterans Affairs; to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCHAFFER:

H.R. 5232. A bill to provide a cost-sharing requirement for the construction of the Arkansas Valley Conduit in the State of Colorado; to the Committee on Resources.

By Mr. SCHIFF (for himself, Mr. HORN, Ms. ESHOO, Ms. HARMAN, Mr. GEORGE MILLER of California, Mr. BERMAN, Mr. SANDLIN, Mr. MATSUI, Mrs. TAUSCHER, Mr. THOMPSON of California, Mr. MCDERMOTT, Ms. WOOLSEY, Ms. LEE, Mr. SHERMAN, Mr. HONDA, Mrs. NAPOLITANO, Mr. BECERRA, Mr. DOGGETT, Ms. ROYBAL-ALLARD, Mr. FARR of California, Mr. SANDERS, and Mr. GREEN of Texas):

H.R. 5233. A bill to amend title XXI of the Social Security Act to encourage the use of web-based enrollment systems in the State children's health insurance program (SCHIP); to the Committee on Energy and Commerce.

By Mr. SESSIONS (for himself, Mr. DINGELL, Mr. BROWN of Ohio, and Mr. BURR of North Carolina):

H.R. 5234. A bill to amend title XVIII of the Social Security Act to provide for fair payments under the Medicare hospital outpatient department prospective payment system; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SIMPSON (for himself, Mr. COX, and Mr. SENSENBRENNER):

H.R. 5235. A bill to amend title 38, United States Code, to provide special compensation for former prisoners of war, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. STUPAK:

H.R. 5236. A bill to assure that enrollment in any Medicare prescription drug program is voluntary; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UDALL of New Mexico:

H.R. 5237. A bill to declare that the United States holds certain public domain lands in trust for the Pueblos of San Ildefonso and Santa Clara; to the Committee on Resources.

By Mr. UDALL of New Mexico:

H.R. 5238. A bill to provide for the protection of archeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Resources.

By Mr. UDALL of New Mexico:

H.R. 5239. A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes; to the Committee on Resources.

By Mr. PICKERING (for himself, Mr. PITTS, Mrs. CAPITO, Mr. HAYES, Mr. WATTS of Oklahoma, Mr. NORWOOD, Mr. WAMP, Mr. BROWN of South Carolina, Mr. THUNE, Mr. BRADY of Texas, and Mr. OXLEY):

H.J. Res. 108. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto; to the Committee on the Judiciary.

By Mr. ARMEY (for himself and Mr. GEPHARDT):

H. Con. Res. 448. Concurrent resolution providing for a special meeting of the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes; considered and agreed to.

By Mr. ARMEY (for himself, Mr. GEPHARDT, Mr. RANGEL, Mr. GILMAN, Mr. FOSSELLA, and Mr. NADLER):

H. Con. Res. 449. Concurrent resolution providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002; considered and agreed to.

By Mr. SKELTON (for himself, Mr. STUMP, Mr. LARSON of Connecticut, and Mr. HUNTER):

H. Con. Res. 450. Concurrent resolution encouraging the people of the United States to honor Patriot Day, September 11, by writing to the men and women serving in the Armed Forces; to the Committee on Government Reform.

By Mr. KIND (for himself and Mr. OSBORNE):

H. Con. Res. 451. Concurrent resolution recognizing the importance of teaching United States history in elementary and secondary schools, and for other purposes; to the Committee on Education and the Workforce.

By Mr. HASTINGS of Florida:

H. Res. 503. A resolution expressing the sense of the House of Representatives in support of Federal and State funded in-home care for the elderly; to the Committee on Energy and Commerce.

By Mr. LANTOS:

H. Res. 504. A resolution expressing the sense of the House of Representatives concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women; to the Committee on International Relations.

By Mr. NEY (for himself and Mr. GUTKNECHT):

H. Res. 505. A resolution expressing the sense of the House of Representatives concerning the desire for freedom and human rights within Iran; to the Committee on International Relations.

MEMORIALS

Under clause 3 of rule XII

351. The SPEAKER presented a memorial of the General Assembly of the State of Iowa, relative to House Resolution No. 49 memorializing the United States Congress, the President of the United States and other federal officials to deal swiftly with those who threaten our freedom; jointly to the Committees on the Judiciary, International Relations, and Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 134: Mr. SHAW.

H.R. 168: Mr. BACHUS.

H.R. 189: Mr. MANZULLO.

H.R. 267: Mr. HASTINGS of Florida, and Mr. Coyne.

H.R. 292: Mr. SHERMAN.

H.R. 632: Mr. HOLDEN, Mr. DOYLE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. Menendez, Mrs. JOHNSON of Connecticut, and Mr. Isakson.

H.R. 912: Mr. CANNON and Mr. FROST.

H.R. 1035: Ms. KILPATRICK.

H.R. 1090: Mr. KANJORSKI, Mr. TOWNS, and Ms. KAPTUR.

H.R. 1202: Mr. LEVIN.

H.R. 1256: Mr. LARSEN of Washington.

H.R. 1322: Mr. DOYLE.

H.R. 1331: Mrs. CAPITO.

H.R. 1433: Mr. LANGEVIN.

H.R. 1517: Mr. LATHAM.

H.R. 1624: Mr. SKEEN, Ms. LOFGREN, Mr. CONYERS, Mr. WAXMAN, Ms. BERKLEY, Mr. UDALL of Colorado, Mr. SHUSTER, Mr. TURNER, and Mr. BOYD.

H.R. 1839: Mr. TOM DAVIS of Virginia.

H.R. 1935: Mr. HALL of Ohio and Mr. LAMPSON.

H.R. 2012: Mr. COOKSEY.

H.R. 2014: Mr. HOEKSTRA and Mrs. MYRICK.

H.R. 2035: Mr. HOEFFEL, Mr. BORSKI, and Mrs. NAPOLITANO.

H.R. 2117: Ms. HOOLEY of Oregon.

H.R. 2219: Ms. KILPATRICK.

H.R. 2220: Mr. HOEFFEL.

H.R. 2316: Mr. HOEKSTRA.

H.R. 2476: Mr. UDALL of New Mexico.

H.R. 2570: Ms. KAPTUR.

H.R. 3183: Mr. FRANK.

H.R. 3238: Mr. DAVIS of Illinois and Mr. BERMAN.

H.R. 3273: Mr. CAMP.

H.R. 3287: Mr. KOLBE.

H.R. 3464: Ms. BALDWIN.

H.R. 3498: Mr. YOUNG of Florida.

H.R. 3552: Mr. NADLER, Ms. SOLIS, Mr. LEACH, Ms. BERKLEY, and Mr. BERMAN.

H.R. 3686: Mr. LUCAS of Oklahoma.

H.R. 3710: Mrs. THURMAN and Mr. DIAZ-BALART.

H.R. 3726: Mr. SOUDER.

H.R. 3782: Mr. FOLEY, Mr. THOMPSON of Mississippi, Mr. PHELPS, Mr. SHIMKUS, Mr. CHAMBLISS, and Mr. MATHESON.

H.R. 3794: Mr. BOOZMAN.

H.R. 3834: Mr. RILEY.

H.R. 3884: Mr. KENNEDY of Rhode Island, Mr. ROSS, Mrs. CLAYTON, and Mrs. JONES of Ohio.

H.R. 3895: Mr. GOODLATTE and Mr. SULLIVAN.

H.R. 3956: Mr. UDALL of Colorado.

H.R. 3974: Mr. BLUMENAUER and Ms. JACKSON-LEE of Texas.

H.R. 3992: Mrs. WILSON of New Mexico.

H.R. 4030: Mr. UPTON.

H.R. 4089: Mr. MENENDEZ, Mr. CROWLEY, Mrs. CHRISTENSEN, and Mr. OWENS.

H.R. 4091: Mr. MENENDEZ, Mr. CROWLEY, Mrs. CHRISTENSEN, and Mr. OWENS.

H.R. 4483: Mr. COSTELLO, Mr. BLAGOJEVICH, Mr. INSLEE, Mr. PICKERING, Mr. BRADY of Pennsylvania, and Mr. MOORE.

H.R. 4515: Mr. MEEHAN.

H.R. 4548: Ms. HART, Mr. ANDREWS, Ms. BALDWIN, Mr. HOLT, Mr. HAYES, Ms. BROWN of Florida, Ms. BERKLEY, Mr. MCHUGH, Mrs. EMERSON, Mr. MCNULTY, and Mr. FRANK.

H.R. 4582: Mr. BLUMENAUER.

H.R. 4614: Mr. CLEMENT.

H.R. 4643: Mr. SANDERS.

H.R. 4668: Mr. HERGER and Mr. GEORGE MILLER of California.

H.R. 4669: Mr. BLUMENAUER.,

H.R. 4724: Mr. ABERCROMBIE.

H.R. 4738: Mr. WALDEN of Oregon.

H.R. 4785: Mr. COOKSEY and Mr. CLAY.

H.R. 4798: Mr. BOSWELL.

H.R. 4804: Mr. CANNON and Mr. UPTON.

H.R. 4811: Mr. HOEKSTRA.

H.R. 4837: Mr. GREEN of Texas.

H.R. 4843: Mr. KERNS, Mr. CLYBURN, Mr. COSTELLO, Mr. HOSTETTLER, Mr. OSBORNE, Mr. CLAY, Mr. LUTHER, Mr. WATKINS, and Mr. RUSH.

H.R. 5013: Mr. RILEY.

H.R. 5033: Mrs. MYRICK.

H.R. 5047: Mr. TURNER, Mr. MCGOVERN, Mr. LARSON of Connecticut, and Ms. KAPTUR.

H.R. 5056: Mr. HOYER, Mr. HOEFFEL, Mr. DEUTSCH, Mr. CROWLEY, and Mr. SCHAFFER.

H.R. 5085: Mr. SIMPSON, Mr. PHELPS, Mr. MCHUGH, Mr. BALDACCI, Mr. CARSON of Oklahoma, and Mr. CALVERT.

H.R. 5098: Mr. TOWNS and Mr. ANDREWS.

H.R. 5107: Mr. BOYD, Mr. CAPUANO, Ms. CARSON of Indiana, Mrs. CLAYTON, Mr. CONYERS, Mr. DOGGETT, Mr. GONZALEZ, Ms. HARMAN, Ms. HOOLEY of Oregon, Mr. LANTOS, Mr. LARSEN of Washington, Ms. MCKINNEY, Mrs. MEEK of Florida, Mr. MOORE, Mr. MORAN of Virginia, Mr. PASCRELL, Mr. PASTOR, Mr. POMEROY, Mr. RANGEL, Mr. SAWYER, Mr. SCHIFF, Mr. SCOTT, Mr. SNYDER, Mr. TIERNEY, and Mr. WEXLER.

H.R. 5155: Mr. BLUMENAUER.

H.R. 5157: Mr. BOEHNER.

H.R. 5158: Mr. GILCHREST.

H.R. 5164: Ms. NORTON, Mr. UNDERWOOD, Mr. MCGOVERN, Mr. ISRAEL, and Mr. TOWNS.

H.R. 5166: Mr. SULLIVAN and Mr. GREEN of Wisconsin.

H.R. 5175: Mr. BORSKI, Mr. HOEFFEL, Mr. WELDON of Pennsylvania, Mr. MURTHA, Mr. MASCARA, Mr. HOLDEN, and Mr. GREENWOOD.

H.R. 5185: Mr. HUNTER.

H.R. 5189: Mr. SCHAFFER.

H.R. 5190: Mr. ANDREWS.

H.R. 5191: Mrs. JONES of Ohio, Ms. WOOLSEY, Ms. BALDWIN, and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 5193: Mr. WELDON of Florida, Mr. CANTOR, and Mr. PETRI.

H. Con. Res. 164: Mr. SKEEN.

H. Con. Res. 351: Ms. DELAURO.

H. Con. Res. 409: Mr. CAMP.

H. Res. 115: Mr. SANDLIN and Mr. LEACH.

H. Res. 295: Mr. CLAY.

H. Res. 454: Mr. KUCINICH.

H. Res. 467: Mr. JOHNSON of Illinois and Mr. NADLER.

H. Res. 484: Mr. FRANK.

H. Res. 487: Ms. EDDIE BERNICE JOHNSON of Texas.

EXTENSIONS OF REMARKS

PAYING TRIBUTE TO RICHARD GONZALEZ

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Richard Gonzalez, who has served as the Denver Regional Commissioner of the Social Security Administration since June 1998. Richard Gonzalez's innovative thinking and leadership was pivotal in guiding the Denver Region in improving Social Security services for the American Indians and Alaskan Natives. His retirement marks over thirty-seven years of Federal service and it is my honor to bring forth his accomplishments before this body of Congress and this nation.

Richard Gonzalez began his career with the Social Security Administration as a Computer Programmer in the Bureau of Data Processing in headquarters after serving in the United States Air Force. Prior to coming to Denver, he served as Associate Commissioner for Systems Requirements at SSA headquarters in Baltimore, MD. Richard also held a number of senior level information systems positions with the Social Security Administration and was appointed to the Senior Executive Service in 1994. Under Richard's leadership, Denver led national efforts to improve service delivery to rural communities by piloting outreach efforts in Northern New Mexico and Browning, Montana and partnering with the Chicago Region on a major outreach effort for three reservations in Minnesota.

Richard Gonzalez was recognized for his outstanding service to the public and the Denver Region when he was awarded a prestigious Presidential Rank of Distinguished Executive Award. He serves as the Vice Chairperson on the Denver Federal Executive Board Committee. Richard received his Bachelor of Science Degree from Towson State University and Master of Science Degree from John Hopkins University. He has received numerous citations and awards for his outstanding efforts as Commissioner. His many contributions are appreciated, and his countless hours of devotion have greatly improved the community of Denver and its surrounding areas. Richard is a devoted father and husband, and he cherishes the support and encouragement his family has provided throughout his career. He is married to Dr. Sylvia Simpson, and has two sons, Dan and Mathew.

Mr. Speaker, it is a great privilege that I recognize Richard Gonzalez and his contributions to the City of Denver and this nation. His efforts have greatly helped many people throughout our country and I am proud to recognize him before this body of Congress today. Congratulations on your retirement, Richard, and good luck in your future endeavors.

HONORING RETIRING MADERA POLICE OFFICERS

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Madera Police Chief Jerry Noblett, Commander Michael L. Jeffries, Sergeant Leon C. George, Detective Walter Dale Padgett, and Crime Prevention Officer Joe R. Garza on the occasion of their retirement from the Madera Police Department. A retirement celebration will be held for these dedicated individuals on July 20, 2002.

Chief Jerry Noblett's efforts have made a tremendous impact on the Madera Police Department. He began his law enforcement career as a reserve deputy in 1972, and in 1973 he was appointed as a police officer. Jerry obtained a bachelors degree in Criminology from California State University, Fresno. He swiftly moved up the ranks and, in 1977, was promoted to the rank of sergeant in the patrol division. When Chief Colston retired, in July 1997, Jerry was promoted to Chief of Police. Chief Noblett's contributions have been expansive through his career in law enforcement, but Jerry has also served the community by participating on many boards, including the Madera Chamber of Commerce and the Madera Kiwanis.

Commander Michael L. Jeffries began his law enforcement career with Madera in August of 1972. He earned the department's Medal of Valor in 1996 for his bravery in the handling of a barricaded suspect. Sergeant Leon C. George also joined law enforcement in 1972, but began his career in Los Angeles. He joined the Madera Police Department in December of 1984 and has received many commendations for his performance. Police Officer Walter Dale Padgett began his career in October of 1970 with the Madera Police Department. He was chosen as the Police Officer of the Year for the department in 1997. Crime Prevention Officer Joe R. Garza's law enforcement career originated in Fresno in June of 1977. Two years later he joined the Madera team, and has worked on a range of cases, including being the first Crime Prevention Officer in Madera.

Mr. Speaker, I rise today to congratulate these men on the occasion of their retirement. I invite my colleagues to join me in thanking them for their service to the community and for their valor.

SENSE OF CONGRESS THAT FEDERAL LAND MANAGEMENT AGENCIES IMPLEMENT WESTERN GOVERNORS ASSOCIATION "COLLABORATIVE 10-YEAR STRATEGY FOR REDUCING WILDLAND FIRE RISKS TO COMMUNITIES AND THE ENVIRONMENT"

SPEECH OF

HON. JOHN R. THUNE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. THUNE. Mr. Speaker, I rise today in support of H. Con. Res 352, a resolution expressing the Sense of Congress to fully implement the Western Governors Association "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment" and to prepare a National Prescribed Fire Strategy that minimizes risks of escape.

More than 7.4 million acres burned during the 2000 wildfire season—equivalent to a three-mile-wide swath from Washington, D.C. to Los Angeles, California and back—destroying 861 structures, killing 16 firefighters and costing the federal government $1.3 billion in suppression costs. Upon completion of the 2001 wildfire season, 81,681 fires burned 3,555,138 acres, which threatened rural communities nationwide and killed 15 firefighters. To date, the 2002 fire season has consisted of 50,168 fires burning 3,632,508 acres.

In South Dakota the Black Hills National Forest has had several small fires this fire season. We have been fortunate that firefighters have been able to contain the fires quickly and that very few structures have been burned. However, I am concerned about the future of the Black Hills and the other public lands in the West.

According to the General Accounting Office, "the most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation, which has caused an increasing number of large, intense, uncontrollable and catastrophically destructive wildfires. According to the U.S. Forest Service, 39 million acres on national forests in the interior West are at high risk of catastrophic wildfire."

It is clear that this is a result of poor forest management decisions. Because of years of litigation in the Black Hills, the Beaver Park Area of the forest is under high risk of wildfire. The mountain pine beetle epidemic has killed thousands of trees in this area which is fuel for a large crown fire waiting to happen. The Forest Service has had their hands tied by litigation and have not been able to control this problem.

Also, in the Black Hills, the Norbeck Wildlife Preserve is also at risk because of considerable over-growth of ponderosa pine. The dry

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● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

weather conditions in conjunction with the over-growth is a concern to all that live and work in the Black Hills. This area is only a few miles from Mt. Rushmore, where summer attendance averages 25,000 daily.

Thank you for the opportunity to speak to this issue. The time is now for Congress to express its concern for the future of our public lands and the risk of wildfire in the West.

DISAPPROVAL OF NORMAL TRADE RELATIONS TREATMENT TO PRODUCTS OF VIETNAM

SPEECH OF

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 2002

Mr. BEREUTER. Mr. Speaker, this Member would like to express his opposition to H.J. Res. 101, which would provide for the disapproval of the Bush Administration's extension of the waiver of Jackson-Vanik trade restrictions on Vietnam. In considering the disapproval resolution, it is important, of course, for us to recognize what the Jackson-Vanik waiver actually does and does not do.

By law, the underlying issue here is about emigration—the freedom for their citizens to leave Vietnam in order to live in another country. Based on Vietnam's record of progress on emigration and its continued cooperation on U.S. refugee programs over the past year, renewal of the Jackson-Vanik waiver will continue to promote greater freedom of emigration. Disapproval would, undoubtedly, result in the opposite.

Actually continuing the Jackson-Vanik waiver for Vietnam is really also reflective of an American interest in further developing a positive relationship with that country and its people. Having lifted the trade embargo and established diplomatic relations five years ago, the United States has tried to work with Vietnam to normalize, incrementally, our bilateral political, economic and consular relationships. Such an effort, if it brings positive results, is in America's own short-term and long-term national interest. It complements and tests Vietnam's own policy for political and economic re-integration into the world. No doubt such a re-integration will be a difficult and perhaps lengthy process. However, there is certainly no compelling rationale for reversing course on gradually normalizing our relations with Vietnam.

Now, for example, Vietnam reportedly continues to cooperate fully with our priority efforts to achieve the fullest possible accounting of American POW–MIAs. The granting of a Jackson-Vanik waiver has contributed to this cooperative process.

Mr. Speaker, the Jackson-Vanik waiver certainly does not constitute an endorsement of the Communist regime in Hanoi. Of course, we have made it abundantly clear that we do not approve of a regime that places severe restrictions on basic freedoms, including the right to organize political parties, freedom of speech, and freedom of religion. We condemn such restrictions. On many occasions, with this Member's support, this body passed resolutions condemning just such violations of civil and human rights.

The Jackson-Vanik waiver does not provide Vietnam with any new trade benefits, including Normal Trade Relations (NTR) status. However, with the Jackson-Vanik waiver, the United States has been able to successfully negotiate and sign a new bilateral commercial trade agreement with Vietnam. Congress will have an opportunity to decide in the future whether to again grant a waiver and decide, eventually, whether Vietnam deserved to be considered for NTR. But, that is a separate process—for the future. The renewal of the Jackson-Vanik waiver only keeps this process of improved cooperation and progress going forward.

Finally, it also is important to note that the renewal of the Jackson-Vanik waiver does not automatically make American exports to Vietnam eligible for possible coverage by U.S. trade financing programs. The waiver only allows American exports to Vietnam to be eligible for such coverage.

Mr. Speaker, the Vietnam War is over and we have embarked cautiously on a new and expanding set of relationships with Vietnam. Now is not the time to reverse course. Accordingly, this Member supports the Administration's request by voting "no" on the resolution of disapproval.

PAYING TRIBUTE TO STEPHANIE HERRERA

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to congratulate an outstanding individual from Colorado whose hard work and commendable deeds have recently earned her the Minority Small Business Advocate of the Year award. Stephanie Herrera of Denver, Colorado is described as a small business owner, insurance professional, professor, dancer, mentor, community activist, and caring friend. Stephanie believes that "when you want to get something done, find a busy person" which is precisely how she has been described, and I am honored to bring forth her accomplishments before this body of Congress and nation.

Stephanie's efforts are currently focused on children, helping other small businesses, continued active involvement in the Denver Community, her own business, and her husband of eight years, Dan Herrera. She is also currently pursuing a Doctorate degree in Business Administration with an emphasis in International Marketing, while finding time to teach management and marketing classes at the Community College of Denver. A long believer in community service, she is the founder of and director of Dancers of Americas, a multi-cultural dance program that focuses on providing young girls, predominantly from low-income families, the opportunity to dance.

The Colorado Enterprise Fund has recently recognized Stephanie for her work at North High School in northwest Denver called Bizworks. Bizworks is a youth entrepreneurial program designed to build the skills and capacity of next generation entrepreneurs promoting self-employment and business ownership as a career choice among high school aged youth.

Mr. Speaker, it is clear that Stephanie Herrera is a woman of great dedication and commitment to her professions and to the children of Denver. Her success is well earned and I am honored to bring forth her accomplishments before this body of Congress and this nation. Stephanie is a remarkable woman and it is my privilege to extend to her my congratulations on her selection for the Minority Small Business Advocate of the Year award. Stephanie, congratulations, and all the best to you in your future endeavors.

ARIZONA'S VOICE OF DEMOCRACY SCHOLARSHIP RECIPIENT

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. STUMP. Mr. Speaker, the Veterans of Foreign Wars and its Ladies Auxiliary have a long history of promoting patriotism and values through its Voice of Democracy audio and essay competition. The program, now in its 55th year, requires high school student entrants to write and record a three to five minute essay on a theme. This year, the theme, "Reaching Out to America's Future," attracted more than 85,000 student entrants nationwide.

Mr. Speaker, it is my pleasure to announce that Alison Boess, who resides in the Third Congressional District of Arizona, is a national winner of the Veterans of Foreign Wars Voice of Democracy Scholarship. Alison, a senior at Ironwood High School, was among 58 national scholarship recipients in the 2002 Voice of Democracy Program and the recipient of the Department of Pennsylvania Joseph L. Vicites Memorial Award. VFW Post 1433 and its Ladies Auxiliary in Glendale, Arizona sponsored Alison. I am pleased that Alison was among the 58 national scholarship recipients. I commend Alison's efforts and call to the attention of my colleagues Alison's award winning script on "Reaching Out to America's Future."

2001–2002 VFW VOICE OF DEMOCRACY SCHOLARSHIP CONTEST—REACHING OUT TO AMERICA'S FUTURE

(By Alison Boess)

Imagine yourself in a life where freedom, dignity and the acquisition of knowledge have been stripped from you. The walls surrounding you are dark with grim mortality and incarceration, imposed by a government that views you as a threat to its authority. Your beaten body rests heavily in the prison cell, immersed with thoughts of your family's safety and the terror they are to suffer through. Perpetual gunshots keep your heart darting wildly in your chest. Outside the walls that have become your asylum, your wife and children attempt to flee from their fate, but are shot dead by their assailants. Your people have been overcome by a government that withholds basic God-given rights and affords you no control over your conditions.

This is not a dramatization of what could be. It is an image of what already is, right now, in countries currently run by powers over which citizens have no influence—an image far outside the experience, understanding, and appreciation of most American youth.

The idea that the future of America depends upon its youth is a widely received and valid notion. French statesman Alexis de Tocqueville observed that "Among democratic nations, each new generation is a new people." Bearing that in mind, the responsibility that our new generation understands and values the principles of democracy falls squarely on the shoulders of our parents, leaders, and educators.

Parents face the task of bringing up their children to be moral and upstanding members of the community. To be a good citizen, one needs to embrace not only the rights, but also the responsibilities of living in a democracy. Voting for officials is one of the key components. Voters must be well-informed so they can choose the candidate who will truly represent their beliefs and concerns. John F. Kennedy commented that "The ignorance of one voter in a democracy impairs the security of all." If parents demonstrate a desire within themselves to be knowledgeable about those who they vote for, then their children will see this as the proper example of responsible voting. Citizenship and morality are also important attributes that parents should teach to children. While democracy promotes freedom of speech, it also calls for citizens to respect the ideas and opinions of others. Accordingly, children should be taught to listen to what others have to say with the same enthusiasm with which they speak their mind. In addition, if youths are clearly taught the difference between right and wrong, then they can adhere more effectively to laws. Parents serve a vital role by reaching out to their sons and daughters to teach them lessons in civility that result in an understanding and appreciation for democracy.

Leaders and politicians need to exemplify the ideals of democracy in our world. It is their duty to honor the wishes of those they represent in order to show the effectiveness of voting. Leaders also should embrace and fill the role of a diplomatic and law-abiding citizen so that future generations of politicians may look to them for good example. Politicians would be well suited to speak to classes or youth groups about what being a leader in a democracy means. If our nation's leaders reach out to our young generation, they will help to ensure the comprehension of our government and safeguard its liberties with the abilities of tomorrow's leaders.

It is hard for students to imagine what life would be like without the presence of a democratic government system. Young Americans have taken democracy for granted because it is the only form of government they have truly understood. It is far easier to appreciate the impact of restrictions imposed on foreign populations when the events occur during the student's lifetime. Educators can play a crucial rate not only by teaching the history of oppressive governments, but by describing and detailing situations in the present where the people's lack of power has resulted in an unjust and often corrupt system. Recently, for instance, our attention has turned to impoverished countries in the Middle East such as Iraq and Afghanistan, and many are beginning to see for the first time the demoralizing conditions under which many of the world's people live. As important as our history is, current events are more persuasive and influential learning resources because they help students directly empathize with those suffering under tyranny. Educators will instill in students an earnest appreciation for the democracy they live in if they can open the eyes of students by revealing the circumstances of those for whom democracy is not a reality.

Many of the youth in this nation have not had the opportunity to truly appreciate America's democracy. The harrowing account of the reality of others must not go unacknowledged and our own reality must not go unappreciated. If the parents, leaders, and educators reach out to America's youth and reveal to them why this system is looked to as an example by all the world, then interest and the desire of youths to participate will be exponential. We must instill in youth the values of democracy and the importance of its endurance within our nation in order to ensure the strength of the American democracy for generations to come.

DONNA EULER: ANGELS IN ADOPTION AWARD

HON. C.L. "BUTCH" OTTER

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. OTTER. Mr. Speaker, today I rise to recognize the achievements and service of Donna Euler of Coeur d'Alene, Idaho.

Donna has served as the Adoption Coordinator with Lutheran Community Services Northwest, located in Coeur d'Alene, Idaho for 16 years. Prior to her work at Lutheran Community Services she served the State of Idaho by providing adoption services for families and children. For years Donna has been instrumental in placing numerous children in good homes with good parents.

Donna has continually utilized her expertise in adoptions to enhance adoption services in the State of Idaho. In 1992–93 she served on Idaho's Adoption Task Force to improve adoption practice within the State.

In 1996, she participated in the Idaho Focus group that implemented the President's Adoption 2002 Initiative in Idaho.

In 1999, Donna served on the Idaho Children's Treatment Rulemaking Project to assess and gather public input on the revised rules and regulations for licensure of children's agencies and foster homes.

Her knowledge, passion, and commitment are unmatched. I am pleased I am able to nominate her for the Congressional Coalition on Adoption's Angels in Adoption Award.

HONORING RICHARD DARMANIAN

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Richard Darmanian. Mr. Darmanian is being honored for "50 years of service to his community" at the annual banquet of the Armenian National Committee of Central California.

Mr. Darmanian has lived in California's Central Valley since he was a young man. He graduated from Caruthers High School and received his B.A. in History and his Masters Degree in Guidance & Counseling from California State University, Fresno. Richard began teaching at Roosevelt High School in Fresno; where he also served as counselor and Dean of Boys. In 1969 he moved to Edison High School where he became principal in 1972. Shortly thereafter, he moved to Hoover High School as Principal.

Richard served his community through his active involvement within the school system, but at the same time he contributed greatly through other organizations. He became a member of the Armenian Cultural Foundation in 1950, and served as a member of the Regional Executive Committee and the Central Executive Committee. Mr. Darmanian's educational expertise was well utilized when he became a founding member of the Armenian Community School of Fresno. He is also a very spiritual man who has been highly involved in the Holy Trinity Apostolic Armenian Church, where he was a member of the Board of Trustees and a member of the Executive Council of the Western Prelacy of the Armenian Apostolic Church of North America.

Mr. Speaker, I rise today to honor Richard Darmanian for his recognition by the Armenian National Committee of Central California for his years of service. I invite my colleagues to Join me in thanking him for his tremendous service to the community and for his dedication to excellence.

PAYING TRIBUTE TO JENNIE ADRIAN

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to the Southeast Colorado Cattlewoman of the Year, Jennie Adrian of La Junta, Colorado. Jennie was chosen for Cattlewoman of the Year because she possesses all the specific traits of a great Cattlewoman. She is dependable, caring, smart, trustful, creative, and a hard-working partner in a ranching family. She is a generous soul whose good deeds and generous acts certainly deserve the recognition of this body of Congress, and this nation.

Jennie was born in La Junta, Colorado and lived on a ranch near Kim until her family moved to Prescott, Arizona, where she finished school and later met her husband. Together they moved to Aspen, Colorado where they bought a ranch near Salida and raised their two children, Rusty and Audra. Jennie first became involved in Cowbelles in Chaffee County in 1967 where she served as Chairman for several committees and held several offices including President in 1981. She currently holds the office of Cowbelle Vice President in Otero County.

Mr. Speaker, Jennie Adrian has proven herself to be a committed mother and wife as well as an extraordinary Cattlewoman and it is my honor to congratulate Jennie on her most recent and well-deserved award before this body of Congress and this nation. Congratulations, Jennie, and good luck to you and your family in all your future community endeavors.

A SPECIAL TRIBUTE TO SISTER MARY MICHEL ON HER RETIREMENT FROM THE TEACHING PROFESSION

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. GILLMOR. Mr. Speaker, I rise today to pay tribute to a very special teacher who has touched many lives. Seldom do we acknowledge the importance of the job or the depth of a teacher's commitment to our children. While many people spend their lives building careers, teachers spend their careers building lives. For this they deserve our support, praise and gratitude.

One teacher in particular deserves special recognition, Sister Mary Michel. After 58 years of touching the lives of countless children she has entered into retirement. Sister Michel has truly been a valued asset to those students, both in my district and the entire State of Ohio, in which she has been in contact. The children she has taught will become our future leaders, scientists, and teachers.

Sister Michel's long and distinguished career began in the same area where she grew up, as a native of Sandusky, Ohio. After receiving her degree from Mary Manse College in Toledo, Ohio, and completing graduate work at St. Louis (Missouri) University, Sister Michel returned to the area to begin teaching elementary school at St. Mary Catholic School in Toledo. From that monumental day in 1944, Sister Michel has since served as an administrator and an intermediate schoolteacher. Until her recent retirement, Sister Michel spent the last 18 years educating the children of St. John Elementary in Delphos, Ohio. Not only is Sister Michel a remarkable teacher, but she also is a woman of deep faith who has been greatly involved in the parish communities of which she has served.

Year after year professionals dedicate their lives to the future of America. There is no more important, or challenging, job than that of our nation's teachers. The job of a teacher is to open a child's mind to the magic of ideas, knowledge, and dreams. Also, teachers are the true guardians of American democracy by instilling a sense of citizenship in the children they teach. Teachers not only educate but also act as listeners, facilitators, role models, and mentors, encouraging our children to reach further than they would have thought possible. Teachers continue to influence us long after our school days are only memories.

Mr. Speaker, I would ask my colleagues to join me in paying special tribute to Sister Mary Michel. Numerous school children have been served well through the diligence and determination of dedicated teachers, like Sister Michel, who dedicate their lives to educating our youth. I am confident that Sister Michel will continue to serve her community and positively influence others around her, We wish her the very best on this special occasion.

TRIBUTE TO FRED SHONEMAN

HON. NORMAN D. DICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. DICKS. Mr. Speaker, earlier this month one of the most visionary builders of my home community of Bremerton died, leaving a legacy of public works improvements that made the City a better place in which to live and work. Fred S. Shoneman spent the early part of his career working for the City of Bremerton, serving for a long tenure as the Public Works Commissioner. Later he served for many years as a Commissioner of the Port of Bremerton. During this time, I enjoyed working with him and I was always impressed by his vision and his desire to solve problems that confront cities in transition such as Bremerton. Fred loved Bremerton for what it was, and even more importantly for what it could be—and that was the secret of his vision. As Public Works Commissioner, he oversaw the locations of bridges that were essential for the growth of the city and its major public employer, Puget Sound Naval Shipyard. He took care of the public works needs of our neighborhoods and small business districts, and he made sure the city's infrastructure was kept up to date. His later contributions as Port Commissioner represented an era of growth for Bremerton National Airport as well as a time of substantial new construction at the marinas. In all of these works he was serving the public: he was a man who was constantly available and seeking input from citizens in order to do his job better. What was most remarkable about Fred, and what was certainly evident at the Memorial Service held at the Manette Community Church, was his positive attitude that was almost contagious. Everyone who worked with him and around him appreciated the way he was always more focused on how we CAN get things done, rather thinking up reasons why we should not. So in addition to his legacy of public works, Mr. Speaker, I wanted to note today in the House of Representatives that Fred Shoneman has also left a great legacy of friendship in Bremerton. I am proud to say that I was among those who knew him, who worked with him, and who are greatly saddened by his passing. I would like to enter into the Record the full text of the news story in The Sun, Bremerton's daily newspaper, noting how much Fred left an indelible mark on our city.

CIVIC ICON LEFT MARK ON CITY

(By Elena Castañieda)

Long-time Bremerton public servant Fred Schoneman died Saturday.

The 88-year-old succumbed to complications from asbestosis, a lung disease, son Noel Schoneman said.

As word spread Monday of Schoneman's death, his friends and family recalled his sense of humor, love of music and persistent work ethic.

"He was a great friend and a great friend to the city of Bremerton," said local attorney Gordon Walgren.

A city of Bremerton employee for 31 years and Port of Bremerton commissioner for 12 years, Schoneman left his mark all over the city, most notably with the Fred S. Schoneman Overpass that connects 11th Street to Kitsap Way in Bremerton.

Schoneman worked for the city as a field engineer, then a street superintendent and finally served as Bremerton's public works commissioner from 1960 to 1978. His projects included the original layout of the Warren Avenue Bridge and the city's first two sewer treatment plants in 1948.

He oversaw creation of Gold Mountain Golf Course, widely known as one of the best public golf courses in the state.

Schoneman also served as a Port of Bremerton commissioner in two eras, first in the late 1970s and again from 1986 to 1997. During his tenure, the port made more than $4 million in improvements to Bremerton National Airport and constructed the Bremerton and Port Orchard marinas.

Sometimes, his plans didn't work out. There was a proposal to build a bridge to Seattle and develop a downtown shopping mall.

"He was a very long-range thinker, a visionary," said Ken Attebery, chief executive officer of the Port of Bremerton. "He was a kind and supportive person to the staff he worked with here."

Schoneman stood more than 6-feet tall, bringing a commanding presence into the many board, foundation and club meetings he attended.

"He walked into a room and people knew he was there," Walgren said.

Port Commissioner Mary Ann Huntington said Schoneman "loved Bremerton more than anything else."

Huntington served with Schoneman, giving him his first experience at working with a woman who was his equal, she said.

"He wasn't excited to serve with a woman," Huntington said. "He didn't like women in politics. But we grew very fond of each other."

Music was a passion for Schoneman, from his carillon bells that chime in downtown Bremerton, to his talents playing the accordion, harmonica, piano, organ and mandolin.

"He would take his accordion to conferences and entertain us with it in the evenings," Huntington said.

Schoneman collected life-affirming expressions.

One written on the board room wall where he held public works meetings read, "Be not concerned, nor be surprised, if what you do is criticized."

Son Noel said his father prepared family members for his death in recent weeks by bringing them to his apartment at Canterbury Manor for one-on-one talks.

He remembered life growing up in the Schoneman house as "busy," but his father "always found time for family. It was at least a weekly event going to the local parks."

Schoneman knew sadness in his life, too. His first wife, Margaret, passed away in 1972.

Schoneman is survived by his second wife, Katherine Lee Schoneman of Bremerton. Other survivors include one sister, Alice Myhre of Bremerton; one son, Noel, of Sammamish; three daughters, Mary Whittaker of Seabeck, and Sue Brannon and Ellen Coombe of Bremerton; three step-children, Casimir Farley of France, Sandy Schumacher of Bremerton and Don Smith of Seattle; and six grandchildren and two great-grandchildren.

A memorial service is planned for 1 p.m. July 11 at Manette Community Church, in the same neighborhood where he raised his family.

ALLAN P. KIRBY, JR. RECEIVES "OTHERS" AWARD FROM SALVATION ARMY

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. KANJORSKI. Mr. Speaker, I rise today to call the attention of the House of Representatives to the well deserved recognition that my good friend Mr. Allan P. Kirby, Jr. recently received from the Salvation Army of the Greater Wyoming Valley Area.

Allan received the Salvation Army's "OTHERS" Award, which was presented in the area for the first time and is given to an individual or entity that has contributed substantially to the benefit of others.

He was presented with the award at the local Salvation Army's First Annual Community Recognition Dinner. The dinner's purpose is to raise money for the Kirby Family House, which is a transitional housing program for homeless people looking to make a better life for themselves through a series of classes, self-help groups, literacy programs and job training, as well as to establish a camp scholarship fund for underprivileged children in the Greater Wyoming Valley area to attend the Salvation Army's Camp Ladore.

Allan is an entrepreneur known nationwide and a well-respected philanthropist from the Wilkes-Barre area. He was born in Wilkes-Barre and moved at an early age to Morristown, N.J. He graduated from Lafayette College, where he was a member of the Delta Kappa Epsilon fraternity. After completing officer's school, he served on active duty with the Naval Reserve. He now lives in Mendham, N.J., where he also maintains an office.

Mr. Speaker, Allan's professional and philanthropic endeavors are far too numerous to list them all here, but I would like to provide the House with an overview.

He serves as a trustee and treasurer of the Angeline Elizabeth Kirby Memorial Health Center in Wilkes-Barre, which has as its mission the preservation and promotion of the public health, particularly in Wilkes-Barre and neighboring communities, and the control and elimination of disease.

He chairs the A.P. Kirby, Jr. Foundation and the Allan P. Kirby Center for Free Enterprise and Entrepreneurship at Wilkes University. For many years, Allan has been a dedicated trustee for Wilkes University, where I served with him. He also chairs Wilkes' endowment committee. He is also president of Liberty Square, Inc., and a director and chairman of the executive committee of the Alleghany Corporation, one of the largest holding companies in the United States. Alleghany is the largest single stockholder in American Express and owns Chicago Title Insurance Company and other title and casualty insurers including a large stake in St. Paul Companies.

He is also the owner of River Ridge Farms in Sussex County, N.J. He is the father of five children and 15 grandchildren.

Allan comes from a long line of Kirbys with impressive accomplishments in both their professional and philanthropic endeavors. For example, in the 19th century, at age 23, Fred Morgan Kirby committed his entire savings of $500 in partnership with Charles Sumner Woolworth to purchase a variety store in Wilkes-Barre. Over the years the two men developed that modest investment into the enormous F.W. Woolworth Company.

Similarly, the family's commitment to helping others is also long-standing, as shown by the many organizations and community buildings built with Kirby family donations, including those I have already mentioned, as well as the F.M. Kirby Center for the Performing Arts in Wilkes Barre and the Kirby Hall of Civil Rights at Lafayette College in Easton, among many others.

Mr. Speaker, I am pleased to call to the attention of the House of Representatives the service to the community of Allan P. Kirby, Jr. and this well-deserved award, and I wish him all the best.

PAYING TRIBUTE TO WILLIAM LORENZEN

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay respect to the passing of William H. Lorenzen, who recently passed away at the age of 82. William, known as Bill, was the former owner and co-publisher of the Palisades Tribune. Bill died on May 6th in Denver, Colorado. As his friends and family mourn the loss of an outstanding patriot, father, and husband, I would like to take this moment to highlight his achievements before this body of Congress and this nation.

Bill served in the Army Air Corps as a radio operator during WWII where he successfully flew 35 combat missions in B–24's and for his valiant valor and courage, he was awarded five bronze stars, a silver star, and two Distinguished Flying Crosses. Bill's service on behalf of freedom should help serve to reinvigorate our nation's consciousness of the sacrifices made to defend this country. He met and married his wife of 56 years, Margaret Sullivan, in July 1943 while both were in the Army, beginning a family future and legacy passed down through generations. After the war, Bill was active in his civic and public communities, providing Colorado's youth an upstanding foundation. Bill established himself as a longtime businessman and leader in the Palisade community where he owned and operated the Palisade Tribune for 26 years. He served six years as Town Trustee, eight years as Mayor and five-and-one-half as Municipal Judge. Bill also played an active role in the Colorado Municipal League and was a director of the League for two terms before serving as president of the Western District of the Colorado Press Association and as a chairman on the legal committee for the Press Association.

After retiring from the Palisades Tribune, Bill joined the Palisades National Bank as director in 1982 and served on the board until his death. Bill received many distinguished accolades throughout his career including the Distinguished Service Award and was named Citizen of the Year for Palisade. Bill is survived by his three children and eight grandchildren.

Mr. Speaker, it is with great sadness that we celebrate the life of William H. "Bill" Lorenzen. He was a remarkable man and his impressive accomplishments certainly deserve the recognition of this body of Congress and this nation. I, along with his grateful community and loving family, will miss you, Bill.

COMMENDING PARTICIPANTS IN DEFOREST RELAY FOR LIFE

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Ms. BALDWIN. Mr. Speaker, whereas, cancer tragically touches the lives of thousands of our family members, friends, and neighbors, and

Whereas, it is expected that there will be 25,300 newly diagnosed cases of cancer and 11,000 deaths related to cancer in Wisconsin this year, and

Whereas, evidence suggests that one-third of cancer deaths are related to nutrition, physical activity, and tobacco use, and could be prevented, and

Whereas, through education, prevention, early detection, and medical treatment the lives of many have been, and can be saved, and

Whereas, the people of DeForest have come together for the sixth time to participate in the American Cancer Society Relay For Life to raise money to be used in the battle against cancer, and

Whereas, in 2001 the DeForest Relay For Life raised over $131,000 that combined with the efforts of 132 other Wisconsin cities funded over $8.8 million for cancer prevention, treatment, education, advocacy, and service; and

Whereas, the 2002 DeForest Relay For Life brings us one step closer to reaching the American Cancer Society's goals of a 50-percent reduction in cancer mortality rates and a 25-percent reduction in the incidence of cancer by the year 2015, then,

Therefore, I, Representative TAMMY BALDWIN, as a member of the United States Congress and strong supporter of increased access to cancer prevention, diagnostic, and treatment therapies, commend the strides of each relay team participant, event volunteer, and the spirit of our community in this fight against cancer.

HONORING OLIVER ESPINOLA

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Oliver Espinola, a Madera County farmer, on the occasion of being selected to receive the Madera District Chamber of Commerce Salute to Agriculture's 21st Annual Senior Farmer of the Year Award.

Oliver has been involved in farming for 55 years and has lived in Madera County for 52 years. In 1951, Oliver and his family moved from Caruthers, California, to Chowchilla, California, and has been involved in farming corn, silage, hay, oats, trees, beef cattle, and dairy cattle. Mr. Espinola has served the farm industry and the community in many aspects including serving as Director and Chairman of the Danish Creamery Board and the Challenge Dairy Products Board, serving on the Board of Merced Milling Company, and on the Dairy Heifer Replacement Committee. Oliver also contributes to the FFA, 4–H, and Madera Ag Boosters. He directs and has served as president of the Chowchilla Portuguese Association, is an active member of the Elks Lodge, is active in the Catholic church, and is a member of the Young Men's Institute of the Catholic Church. For the past 30 years, Mr. Espinola and his wife, Virgie, have donated, organized and served the ice cream at the Chowchilla Fair Dairy Days. Oliver is also a contributor to the Chowchilla Historical Society and the Lions Club Eye Foundation.

Mr. Speaker, I rise today to honor Oliver Espinola for his admirable service and contributions to the farming industry. I invite my colleagues to join me in congratulating him on his outstanding achievement and wishing him many more years of success.

INTRODUCTION OF THE PREMIER CERTIFIED LENDERS PROGRAM IMPROVEMENT ACT OF 2002

HON. JOHN T. DOOLITTLE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. DOOLITTLE. Mr. Speaker, I rise today to introduce the Premier Certified Lenders Program Improvement Act of 2002. This legislation makes a small but very significant change in the PCL program that will benefit hundreds of small businesses around the country without imposing any new burden on the Federal Government or U.S. Treasury.

As my colleagues no doubt recognize, small businesses are the backbone of our nation. Indeed, Dr. Lloyd Blanchard of the Small Business Administration (SBA) testified recently before Congress, "Today, almost a quarter of American households are either starting a business, own a business, or investing in someone else's business." The United States economy depends on entrepreneurs whose spirit results in the creation of both new businesses and new jobs.

To continue the economic growth we are experiencing today, the Government should encourage small business development both by providing incentives for entrepreneurs and by removing regulatory hurdles. One successful example of Government encouragement of small business is the Premier Certified Lenders Program (PCLP). The PCLP, established in 1997, allows a participating Certified Development Company (CDC) the expanded authority to review and approve SBA 504 Loan requests and to foreclose, litigate, and liquidate SBA 504 Loans made under the Program. By taking on this authority, the private sector is able to stretch limited federal resources in order to help more small businesses.

To participate in the PCLP, however, a CDC is required to deposit one percent of each SBA 504 Debenture issued under the PCLP into a loss reserve account. This deposit remains in the loss reserve account until the PCLP Debenture is fully paid or until the SBA suffers a loss. The loss reserve account is designed to cover ten percent of any loss incurred by SBA as a result of a default.

The loss reserve account was made a part of the PCLP legislation to address the concern that a participating CDC would not have any perceived "risk" associated with its expanded authority under the Program. However, the percentages used in figuring the loss reserve accounts—the ten percent to cover any loss and the one percent of every Debenture as contribution—were determined arbitrarily and are not based on any historical loss record or risk analysis. The one percent contribution is the most egregious; the full deposit must remain in the loss reserve account even as the loan is paid down over its twenty year term and there is no accounting for the historical reduction of risk as a loan matures.

As a result of these arbitrary requirements of the PCLP, many CDCs have decided not to participate in the PCL Program. As for those who are participating, some companies have accumulated large loss reserve accounts which are far in excess of any amounts that would ever be realistically used to insure payment of their loss obligation to SBA. The long term retention of these excess reserve funds hinders participating CDCs from reaching their full potential to foster economic development, create job opportunities, and stimulate growth, expansion, and modernization of small businesses.

The legislation I am introducing today will improve the Premier Certified Lenders Program by giving participating CDCs greater flexibility. Specifically, my legislation amends the Premier Certified Lenders Program to allow willing CDCs to establish "risk-based" loss reserve accounts that are sufficient to protect the Government and taxpayers from default, but that do not contain excessive amounts of capital that would be better dedicated to helping additional small businesses.

Mr. Speaker, maintaining a risk-based reserve is just common sense. Other industries, such as the banking industry, have already moved from a "loan-by-loan" reserve to a "pool" reserve to cover their exposure.

Under my legislation, a participating CDC will be able to establish a risk-based reserve only if it: (1) proves itself to be an established PCL (minimum of $25,000 in its loss reserve account); (2) freely elects to develop such a reserve; (3) obtains quarterly approval from a third-party auditor that its loss reserve is sufficient to cover its risk of default; and (4) receives annual approval from the SBA. These requirements will ensure that participating CDCs are accountable and that U.S. taxpayers are protected.

I hope my colleagues will take an opportunity to review this legislation to improve the Premier Certified Lenders Program. I look forward to working with them and the Small Business Committee, chaired by my friend, DON MANZULLO, to encourage the creation and expansion of more small businesses across our nation.

PAYING TRIBUTE TO JUANITA JENNY MARTINEZ

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, tonight I pay tribute to the passing of Juanita Martinez, who was selflessly committed to the betterment of Pueblo. After a long battle, Juanita succumbed to the effects of cancer on June 30, 2002. As her family mourns the loss, I would like to highlight her life before this body of Congress and this nation.

Juanita Martinez was an avid dancer who provided lessons free of charge, and even bought costumes for her students! She was the first Chicana dance instructor to teach Mexican folk dancing at the University of Southern Colorado, and choreographed the dance for the Colorado State Fair's First Annual Fiesta Day celebration. She also frequently performed at Memorial Hall in Pueblo as a young Zaragoza Hall dancer, whose styles mirrored Mexican folk dances to reflect her beloved heritage. Her most famous dance escapade resulted when she performed with then-presidential candidate Ronald Reagan during a campaign stop at the Colorado Republican State Assembly. She was extremely patriotic, and always wore red-white-and-blue in her daily attire to show her devotion to her country.

Mr. Speaker, Juanita Martinez encompassed the qualities of a true community volunteer, and she and her efforts will be dearly missed. I, along with her loving family and grateful community, will mourn her loss.

JA NATIONAL VOLUNTEER AWARD OF EXCELLENCE · BARBARA LYON, HUNTINGTON BEACH, CALIFORNIA

HON. DANA ROHRABACHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. ROHRABACHER. Mr. Speaker, I rise to speak today about a resident of my district who is being honored by an organization which has had an immeasurable impact on America. Barbara Lyon of Bank of America is Junior Achievement's National Volunteer Award of Excellence Winner. Her efforts in Southern California have impacted nearly 40,000 students in that area over the years. Her tireless work to promote JA and support the organization in its effort to educate young people about business, economics and the free enterprise system is worthy of this recognition.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after school business clubs for students in Springfield, Massachusetts.

As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught how to think and plan for a business, acquire supplies and talent, build their own products, advertise, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boy Scouts, Girl Scouts, Boys & Girls Clubs, the YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional expositions and trade fairs and rubbing elbows with top business leaders. In 1925, President Calvin Coolidge hosted a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement's expansion. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA students won a contract to manufacture 10,000 pants hangers for the U.S. Army. In Pittsburgh, JA students developed and made a specially lined box to carry off incendiary devices, which was approved by the Civil Defense and sold locally. Elsewhere, JA students made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement's accomplishments and of its students soon appeared in national magazines of the day such as Time, Young America, Colliers, Life, the Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth increased five-fold. In 1955, President Eisenhower declared the week of January 30 to February 5 as "National Junior Achievement Week." At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of backgrounds.

By 1982, Junior Achievement's formal curricula offering had expanded to Applied Economics, now called JA Economics, Project Business, and Business Basics. In 1988, more than one million students per year were estimated to take part in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K–6 was launched, catapulting the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to nearly two million students in 113 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and business leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. Speaker, I wish to extend my heartfelt congratulations to Barbara Lyon of Huntington Beach for her outstanding service to Junior Achievement and the students of California. I am proud to have her as a constituent and congratulate her on her accomplishment.

IN RECOGNITION OF HEIDELBERG COLLEGE AND ITS NATIONALLY RENOWNED WATER QUALITY LABORATORY

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. GILLMOR. Mr. Speaker, to encourage stewardship of our nation's water resources, and in honor of the 30th Anniversary of the Clean Water Act, Congress, along with a number of the country's governors and national organizations, has proclaimed 2002 as the Year of Clean Water. This October 18 marks National Water Monitoring Day, the day the Clean Water Act of 1972 was signed into law.

In anticipation of this date, it is with great pride that I rise today to recognize Heidelberg College and its nationally renowned Water Quality Laboratory. This outstanding institution of higher education, located in Ohio's Fifth Congressional District, has been working over the past 33 years to provide invaluable water quality research data, further protecting and restoring our rivers, streams, wetlands, lakes, and groundwater.

Heidelberg's Water Quality Laboratory is a unique monitoring, research, and educational organization with a mission to conduct research supporting state and federal water quality management programs. At the state level, in recognition of the lab's many years of service to Ohio and Lake Erie, the Water Quality Laboratory received a special Ohio Lake Erie Commission Award in 1999.

The Water Quality Laboratory is nationally and internationally recognized in scientific circles for the quality of its research and the great detail of its databases on water quality. Among U.S. studies on water quality in agricultural watersheds, Heidelberg's is the most detailed and longest in duration. The Water Quality Laboratory's well water program is unique in focusing on private rural well conditions. Scientists and government agencies frequently request data from these programs. On several occasions, the lab has provided the majority of the data available to examine regional or national water quality issues and implications for our environment and human health. Staff members are frequently consulted by both government and industry for their expertise in the interpretation of water quality data.

The college has currently undertaken an expansion of its Water Quality Laboratory facilities and is poised to make even greater contributions to the state of our nation's water quality in years to come.

Mr. Speaker, in this Year of Clean Water, Heidelberg's continued efforts to protect our nation's water resources should not go unnoticed. For that, we owe Heidelberg College our recognition, gratitude, and congratulations. I would urge my colleagues to stand and join me in paying special tribute to Heidelberg College and its nationally renowned Water Quality Laboratory, by designating the Water Quality Laboratory the National Center for Water Quality Research.

HONORING HIS EMINENCE THE MOST REVEREND JOHN T. STEINBOCK

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to honor His Eminence The Most Reverend John T. Steinbock for his 10th Anniversary as the Fourth Bishop of the Diocese of Fresno. The Bishop has dedicated much of his life to service within the church and Fresno is grateful to have him as a part of their community.

Bishop Steinbock was born in Los Angeles on July 16, 1937. He was ordained May 1, 1963, at the Cathedral of St. Vibiana in Los Angeles where he served as Associate Pastor and ascended to Parochial Vicar. The Most Reverend also served as President of the Los Angeles Priests Council and on the Board of Consultors to the Los Angeles Archdiocese. Reverend Steinbock was appointed Titular Bishop of Midila and Auxiliary Bishop of the Diocese of Orange, California, by Pope John Paul II, on May 29, 1984. Two years later, the Board of Consultors of the Diocese of Orange appointed him diocesan administrator. On January 27, 1987, the Reverend had the honor of being appointed 3rd Diocesan Bishop of the Diocese of Santa Rosa by Pope John Paul II. After five years of diligent service with the Diocese of Santa Rosa, Pope John Paul II appointed Bishop Steinbock as the Diocesan Bishop of the Diocese of Fresno.

The Bishop is revered for his positive attitude and as one of the few bishops who has made a hole in one! Bishop Steinbock has been instrumental in efficiently overseeing eight counties in the San Joaquin Valley. The Fresno Diocese is extremely pleased to have such a spiritual and accomplished Bishop working with them.

Mr. Speaker, I rise today to congratulate His Eminence Bishop John T. Steinbock of Fresno on his 10 years of service with the Diocese of Fresno. I invite my colleagues to join me in thanking him for his community service and wishing him many more years of continued success.

PAYING TRIBUTE TO STEVE ARVESCHOUG

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, today I stand before you and this nation to applaud the accomplishments of Mr. Steve Arveschoug. Mr. Arveschoug's hard work and dedication to his field, the facilitation of Colorado's water system, has truly been an inspiration to all. His practical rationalization of increasing problems proved his ability to account not only for immediate reactions to decisions, but long-term repercussions as well. He has selflessly dedicated himself to the well being of others, and he is certainly deserving of our recognition today.

Steve Arveschoug began his career managing KCSJ and KID'N radio stations, later switching to working in state and federal politics. He ran for the position of state representative in the northwest Pueblo County area and stayed in the legislature until 1992 when he retired to spend more time with his family. He later took interest in local water rights issues and began to research water policies for the State of Colorado. He worked for me as District Director and will soon be going to Cortez, where I look forward to continuing our relationship.

In 1995, Mr. Arveschoug took over the job of general manager of the Southeastern Colorado Water Conservancy District and immediately began investigating a number of perspectives in current water issues to allow him to adequately represent all the members of his district. He applied himself to his job with the utmost dedication and stood by the position that a compromise could always be reached when available water resources could be managed to serve the people, the environment, and recreational activities. He created water replacement programs for large-scale wells and supported the Preferred Storage Options Plan, designed to enlarge sections of the Pueblo and Turquoise Reservoirs.

Mr. Speaker, it gives me immense pleasure to stand before you today and show my appreciation to Steve Arveschoug for his commitment towards the betterment of his community. I congratulate him on his new job and wish him all the best in his dedication and commitment to excellence and service and wish him luck with all of his future endeavors.

RECOGNIZING GUS PARKER AS THE NATIONAL PRESIDENT OF THE EXCHANGE CLUB

HON. SAXBY CHAMBLISS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. CHAMBLISS. Mr. Speaker, I would like to recognize and congratulate Augustus 'Gus' Parker for his recent election as president of the National Exchange Club. Gus' outstanding contribution and leadership in the Exchange Club over the years has been an extraordinary service to his community and the nation.

Gus has been a member of the Exchange Club for over thirty years. Throughout those years, he has served as president of the Macon Exchange Club, treasurer of the National Exchange, and on the national board of directors as a regional vice president.

Gus' services to the community go well beyond his work with the Exchange Club. Gus is a former math teacher in Macon, Georgia at Lanier High School. Because of his time and dedication to his students, Gus was unable to attend Exchange Club meetings while he taught school. It was only after Gus started work with the finance department at the Bibb County Board of Education that he was able to attend weekly Exchange Club meetings. Gus soon became a regular at the meetings and became involved weekly.

After being sworn in on August 3, Gus will be the head of 30,000 members in more than 900 clubs. He will be the oldest national Exchange Club president in the history of the organization and the national president from Macon. His theme, "Believing and Achieving: It Can Be Done," reflects his positive attitude and dedication to the Exchange Club.

Community involvement is the key to a strong society. The Exchange Club's national project, Prevention of Child Abuse, is one endeavor that has made an incredible impact on the children of our nation. President Bush has stated that Americans should volunteer and help those in need. Gus is a man who has risen to the call of the President and volunteered for America. America needs more hard working volunteers like Gus to promote united communities.

I am extremely pleased to represent Gus in the 8th District of Georgia. Mr. Speaker, I hope you will join me in recognizing and congratulating Gus Parker on his outstanding achievements and service to our nation.

SENSE OF THE HOUSE REGARDING IMPLEMENTATION OF MANDATORY STEROID TESTING PROGRAM FOR MAJOR LEAGUE BASEBALL

SPEECH OF

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. TAUZIN. Mr. Speaker, no one know precisely when it was, though most historians agree that in the 1840's, on the Elysian Fields in New Jersey, a group of men led by Alexander Joy Cartwright began to play what would later develop into baseball. In the ensuing century and a half, much has changed in America, but this magical game endures.

From Cap Anson and Cy Young to Sammy Sosa and Randy Johnson, the men who have played professional baseball have served as an inspiration to America's children, both boys and girls. As far back as the turn of the century, the great stars recognized their impact on the children of the nation. Perhaps the greatest shortstop of all-time, Honus Wagner, demanded that his name not be associated with certain products so as not to encourage children to take up vices.

The men who have played this game, our national past-time, have inspired us both with their athletic accomplishments as well as their human achievements. The list of memorable events and remarkable feats of athleticism are long: Cy Young with his 511 wins; Babe Ruth's mammoth home runs; Walter Johnson's side-arm fastball; Lou Gehrig's 2,130 consecutive game streak; Ted Williams hitting .406 in 1941, the same year Joe DiMaggio had a 56 game hit streak; the great Jackie Robinson integrating the pasttime; Bobby Thomson taking Ralph Branca deep in the "shot heard 'round the world"; Willie Mays' unbelievable over the shoulder catch; Don Larson's perfect game in the 1956 World Series; Bill Mazeroski's home run to win the 1960 World Series; Sandy Koufax's curveball; Bob Gibson's intimidation; The Amazin' Mets incredible run in 1969; Carlton Fisk waving the home run fair in game six; Reggie Jackson's three home runs in 1977; Nolan Ryan's seven no-hitters and 5000+ strikeouts; Kirk Gibson hobbling out of the dugout to hit the game-winning home run in the 1988 World Series; Joe Carter ending the 1993 World Series with a home run in the bottom of the ninth; Edgar Renteria winning an improbable World Series for the Marlins with an extra-inning single; Cal Ripken breaking Gehrig's streak; the Mark McGwire/Sammy Sosa home run duel; and just last year, the heroics of Derek Jeter and Scott Brosius eclipsed by the timely hitting of Luis Gonzalez in one of the best World Series of all-time, the very same year that Barry Bonds hit 73 home runs. These are just a few of the moments which have defined our game for more than 150 years and have inspired countless Americans. Baseball is truly the all-American game—one that carries special meaning for rich and poor and people from all walks of life.

But there is a dark cloud gathering over the game. People have quietly spoken about steroid abuse in baseball for the past decade or so, but since there was no steroid testing, it was only talk. Now, however, we're told by former National League MVP Ken Caminiti that up to half of all baseball players are using steroids.

Who knows what the exact number is? However, it should be noted that baseball is one of the few professional sports that does not test for performance enhancing drugs. Football, basketball and the Olympics all ban and test for the use of steroids, but regrettably, baseball does not enforce its ban.

Unfortunately, the specter of steroids over our national pastime threatens the credibility of the game. Numerous studies have shown the deleterious health effects steroids have on users. Steroids have been linked to liver damage, kidney-failure, heart disease and brain tumors. And now tens of millions of children are receiving mixed messages about these dangerous drugs. Boys and girls see their idols admit to steroid usage and become desensitized to the drugs' dangers.

It's long past time when Major League Baseball put an end to the mixed messages children are receiving about steroid usage. Mandatory testing of players for performance enhancing drugs is simple common sense. It should not require negotiations between the Owners and the Players Association.

Walt Whitman once said that he saw great things in baseball. This is a game that transcends time, inspires hope in the downtrodden and-due to the incredible achievements, personalities and graciousness of such players as Babe Ruth, Jackie Robinson and Cal Ripken—unites the social fabric of our country. Its place in the pantheon of American culture should be protected from all who seek to tarnish its image.

My friends, now is not the time for America's pastime to disappoint its fans or set a bad example for our youth. Professional baseball players have an opportunity to lift a dark cloud from this most cherished game. They can move immediately to a new era of mandatory drug testing for performance enhancing drugs. This should not be the subject of a great national debate. Rather, players should recognize a simple fact: America's children are watching you. You are their role models. Children will learn from your actions.

Mr. Speaker, I thank you for moving this resolution to the floor. I commend Mrs. Johnson for focusing on this important issue and allowing me to reminisce on the importance of our national pastime. There can be nothing more important than setting a good example for the youth of our country. This resolution reflects that fact and tries to restore some of the pride our nation feels for this timeless sport.

RECOGNIZING TWENTY YEARS OF SERVICE OF THE LINKS INC.—SOUTHERN MARYLAND CHAIN CHAPTER

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. HOYER. Mr. Speaker, I rise today to recognize the 20'h Anniversary of the Links, Inc.—Southern Maryland Chain Chapter. The Links, Inc., is an organization of nearly 10,000 women with 270 chapters located in 40 States, the District of Columbia, Nassau, Bahamas and Frankfort, Germany. Members are individual achievers who are making a difference in the communities and lives of African Americans and persons of African decent across the globe.

The Links, Inc.—Southern Maryland Chain Chapter began in 1980 as an interest group led by the visionary Albertine T. Lancaster. After two years of community projects within Calvert, Charles and St. Mary's counties, the 26 dynamic women were installed into the Links, Inc.

Today, President Sandra Billups and the Southern Maryland Chain Chapter have 30 members who continue to build links of service to those in need. The Chapter is strongly rooted in building friendships and volunteering their services to fill needs locally and globally. The work of these dedicated women has created financial opportunities and support to so many.

Today, I ask my colleagues to join me in congratulating the dedicated, distinctive and diligent women of the Links, Inc.—Southern Maryland Chain Chapter for 20 years of outstanding service to Southern Maryland communities. The Links, Inc. continue to sponsor such projects as the Annual College Scholarship, African American Family Fun Fest, Annual Civic Luncheon, Project Lead: High Expectations and Tri-County shelters.

Mr. Speaker, I am proud of the Links, Inc.—Southern Maryland Chain Chapter and the virtuous women that serve daily for their commitment to excellence and am honored to recognize their many contributions to making Southern Maryland a stronger, more responsive community.

PAYING TRIBUTE TO FRED STAHL

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, today I have the honor of recognizing the accomplishments and life of Fred Stahl, of the Western Slope of Colorado. For the past twenty-five years, Mr. Stahl has greatly contributed to the preservation of Colorado's resources in his duties at the Plant Insectary Division of the Colorado State Department of Agriculture. His selfless contributions to his community are quite deserving of our recognition and I am honored to bring forth his accomplishments before you today.

Fred Stahl began his environmental preservation career after he graduated from Colorado State University in 1977 with a Masters of Botany and Plant Pathology. When he joined the Plant Insectary Division on April 22, 1977, he immediately began working to reverse the adverse impact of immigration to the ecosystem in Colorado, which were caused by the transportation of unnatural organisms from other countries. He is credited with reducing the amount of pesticide use in Colorado by providing farmers with alternative, environmentally safe methods of pest control. These new methods of pest control have lowered agricultural production costs, decreased the amounts of toxins deposited into the environment, and offered various pest-control options to the farming community.

Mr. Speaker, I stand before you to show my appreciation to Mr. Stahl for his efforts to preserve the environment and natural beauty of Colorado. He has truly set an example for not only his community, but also the entire state. I am honored to praise his accomplishment before this Body of Congress and this nation today. Good luck to you, Fred, in your retirement and all your future endeavors.

RECOGNIZING MATTHEW J. HOGAN FOR HIS APPOINTMENT AS DEPUTY DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE

HON. MIKE THOMPSON

OF CALIFORNIA

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. THOMPSON of California. Mr. Speaker, we rise today to congratulate Matthew J. Hogan on his appointment by Department of Interior Secretary Gale Norton to be the Deputy Director of the U.S. Fish and Wildlife Service.

Since 1998 Matt has served as the Director of Conservation Policy for the Congressional Sportsmen's Foundation and will be leaving on July 26th to assume his new position with the U.S. Fish and Wildlife Service.

During his four years at the Congressional Sportsmen's Foundation Matt was the liaison between the hunting, fishing and conservation community and the Congressional Sportsmen's Caucus, on which we serve as co-chairs. Matt has played an important role in increasing the value of the Caucus to the hunting and fishing community and furthering the Foundation's role as a conduit between the two.

Before his tenure at the Congressional Sportsmen's Foundation Matt served as the Government Affairs Manager for Safari Club International where he was the liaison to Congress on hunting and conservation issues. Prior to that, Matt was a Legislative Assistant, and later Legislative Director for the Honorable Pete Geren (D–TX).

Mr. Speaker, it is appropriate that at this time to recognize Matthew J. Hogan for his outstanding service to the sportsmen, wildlife conservation organizations and the Congressional Sportsmen's Caucus. We believe his dedicated service will continue with his appointment as Deputy Director of the U.S. Fish and Wildlife Service. Please join us in congratulating him and wishing him the best of luck.

EXPRESSING CONCERNS ABOUT THE FEDERAL BUDGET

HON. NORMAN D. DICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. DICKS. Speaker, since the passage of the President's tax cut bill last year, I have been very concerned about the effects such a massive decrease in federal revenues could have on our ability to meet the other critical needs of the United States—Social Security, Medicare, education and national security among them. In Monday's New York Times, Janet Yellen, a professor of economics and business at the University of California at Berkeley, wrote this interesting analysis of the tax cut and its long term effects on the national economy. I would like to submit this article for the RECORD for consideration by my colleagues.

[From the New York Times, July 22, 2002]

THE BINGE MENTALITY IN THE FEDERAL BUDGET

(By Janet Yellen)

BERKELEY, CALIF.—We read in the news of the plight of older Americans as their nest eggs, invested in the stock market, have dwindled. Some can no longer afford to retire as planned; others are going back to work.

The stock market binge of the late 1990's, with its dreams of double-digit gains as far as the eye could see, was based on illusion, not reality. Now we know it. Irrational exuberance fed the bubble. Accounting tricks that inflated reported corporate earnings reinforced investor optimism. Insiders reaped huge gains; investors and employees saw their savings tank.

Another equally pernicious set of illusions—created by the same binge mentality—surrounds the federal budget, but has so far received less public notice because the negative effects have not yet surfaced. The budget binge is supported by the same kinds of unrealistic projections of future revenues, low-balling of spending and obfuscatory accounting that are now the focus of the Wall Street scandals. But the impact in this arena could prove even more enduring than the current problems on Wall Street. Those counting on Social Security for their retirement, along with future taxpayers, in due course will be left high and dry.

The perpetrators of the budget binge—President Bush and Congress—are sacrificing the public's long-term welfare for their own short-term political gains. In the case of Enron, the company's long-run stability was sacrificed for inflated stock prices in the short run. In the case of the federal budget, the health of Social Security and other programs is being sacrificed for unaffordable tax cuts. The motivation is the same: the decision makers don't believe they should be accountable for the long-run problems. Kenneth Lay walked away from Enron with millions. And the president and most lawmakers in Congress will be gone from office before the effects of the budget policies are fully felt.

Americans are told that we can have it all: more defense and more education; more homeland security and more agricultural subsidies; and a Medicare prescription drug benefit, in addition to last year's multi-trillion dollar tax cut. On top of all this, we're told that it's possible to fix Social Security—which is expected to exhaust its trust fund in 2041 if no action is taken.

These promises, of course, did not add up even in official budget projections, which unrealistically assumed no growth at all in inflation-adjusted discretionary spending, no relief for the 33 million taxpayers who, in the absence of a remedy, will unexpectedly face an alternative minimum tax, and the expiration without renewal of popular business tax incentives like the research tax credit. None of this could be sustained in reality. But the problem is even worse than merely having too little in federal revenues to do what politicians promised voters. The deeper problem is that the wayward budget takes off the table the resources that are needed to reform Social Security if we are to avoid politically unacceptable benefit cuts.

In his campaign, George W. Bush promised that Social Security could be repaired painlessly, by allowing younger workers to divert a portion of their Social Security payroll tax into individual accounts. Since the stock market has historically offered higher returns than government bonds and substantially higher returns than Social Security, he suggested that such new-found investment freedom would repair the finances of the retirement system. With the fall in the stock market we now see that a secure, defined-benefit pension has its merits after all. Imagine the political pressures for bailouts in the face of the current stock market decline if Social Security included individual accounts!

Even absent the failing stock market, privatization of Social Security has a fatal flaw: it can only be achieved at huge budgetary cost. Under the current system, the younger generation's payroll taxes pay the older generation's benefits. If Social Security is privatized, so that the younger generation diverts part of its taxes into individual accounts, then the government must finance, at enormous cost, the retirement of the older generation. It's like a family that hands down its clothes from one brother to the next: if somewhere along the way a brother gets to keep his clothes, the family has to head to the mall.

The price tag for the missing generation of clothes was disclosed in December, but without the emphasis it deserved, in the report of the President's Commission to Strengthen Social Security. This commission was supposed to devise a scheme of individual accounts without jeopardizing the benefits of current or near-term retirees. Two plans proposed by the commission would eliminate the long-term deficit in Social Security. Both plans entail large benefit reductions for future retirees while still requiring substantial infusions of cash into the Social Security system.

This is the bottom line: there is no silver bullet to fix Social Security. Any realistic plan is likely to require a lot of cash to make it politically viable. Yet Mr. Bush allocates trillions of dollars to permanent tax cuts, mainly for the rich, and not a single additional dime to Social Security. Forgoing parts of the president's tax cut that will take effect over the next decade could provide the funds necessary to address the Social Security gap.

We can't afford this budget binge of irresponsible tax policies based on unrealistic accounting. Earnings projections that sounded far too good to be true on Wall Street have turned out to be illusions, even though the public desperately wanted to believe in those numbers. The same is true with bad numbers in the federal budget—the principles of arithmetic can't be denied. If the tax cuts are left in place, high-income individuals, including billionaires exempted from estate taxes, stand to gain while future retirees and taxpayers will lose.

President Bush has called for honest accounting in corporate America. The administration could set an example with an honest budget that ensures that retirees will have the nest egg they depend on most, their Social Security benefits. And to make that a reality, Congress should repeal the tax cuts that have not yet been phased in.

HONORING DR. JAMES POWERS FOR HIS SERVICE TO MIDDLE TENNESSEE

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. TANNER. Mr. Speaker, I rise today in recognition of my long-time personal friend, Dr. James M. Powers, for his invaluable dedication and leadership to our community. Dr. Powers is a past mayor of Waverly, Tennessee, and has run one of middle Tennessee's largest private dental practices. He has proven time and time again that he is a leader among his peers, and now all our best wishes go with him and his family as he settles into retirement.

Dr. Powers contributed to the community through his political leadership. He was elected mayor of Waverly and served in that position for 19 years. During his tenure as mayor, he assisted in the development of a new city hall, opened a police department, upgraded the water system and helped attract several companies to Waverly. He served at the state level on the Tennessee Water Quality Control Board and the Tennessee Arts Commission, and was chairman of the Tennessee Higher Education Commission.

An alumnus of Austin Peay State University, Southwestern at Memphis, and the University of Tennessee, Dr. Powers moved back to our area and with his brother helped build a highly successful dental practice that will continue to help people in our community. He also served two years in the United States Army Dental Corps.

He has proven his dedication and leadership in dentistry through his membership in several associations, including the American Dental Association, Nashville Dental Society, Tennessee Dental Association, Academy of General Dentistry, Fellow of the American College of Dentists, and Fellow of the International College of Dentists. He was also named outstanding alumnus of the University of Tennessee's College of Dentistry.

Dr. James Powers and his wife Helen have four children and three grandchildren and have established themselves as true leaders in Middle Tennessee. While Dr. Powers begins this new chapter in his life, I am hopeful that they will continue to be leaders in our community.

Mr. Speaker, I ask that you and our colleagues join me in thanking Dr. James M. Powers for his years of selfless service and leadership in our community.

HONORING NATIONAL 4–H PROGRAM'S 100TH ANNIVERSARY

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. FRELINGHUYSEN. Mr. Speaker, Mr. Speaker, as the National 4–H Progam celebrates its 100th Anniversary, I rise in honor of this, great milestone.

Under the U.S. Department of Agriculture, today's 4–H program began as a series of clubs for boys and girls in rural America, originally aimed at teaching youngsters skills related to agriculture with a learning-by-doing approach. While the program has grown in scope to encompass a wide array of subject matter, hands-on learning remains a core curriculum of the 4–H.

In New Jersey, 4–H clubs are administered on a county government level through the Rutgers Cooperative Extension Office. Each club has a particular project area that they concentrate on.

Operating on the same four principals the 4-H was founded on: head, heart, hands and health, the organization has provided opportunities for thousands of young people in my district, and millions across the country, to gain knowledge, skills, and compassion as they grow into the men and women that will be our future.

On the 4-H's centennial birthday I would like to take the opportunity to acknowledge three outstanding programs in my district: Morris County, Somerset County, and Sussex County programs.

In Morris County over 400 youth are involved in over 30 clubs which focus on over 25 project areas. With a very active alumni base, the Morris County 4-H has over 100 volunteers that help to reach the young people in the community through club leadership, and event staffing. The Morris County 4-H will celebrate the centennial anniversary at the 32nd Annual Morris County 4-H Fair, which will take place July 26 to 28, with activities for children and adults alike.

The Somerset County 4-H is home to over 1,200 children with over 600 volunteers leading clubs and planning the annual 4-H fair. Focused on reaching as many youths as possible, the Somerset 4-H offers a variety of school enrichment programs based on science and the environment as well as a summer adventure day camp that runs two weeks each summer. This year's fair celebrates the centennial of 4-H in America with the theme "One Hundred Years of 4-H—A Thousand Reasons to Celebrate" and will take place August 14 to 16.

Over 750 youths in 67 clubs make up the Sussex County 4-H Program, not to mention the 5,000 youngsters that the organization reaches through school enrichment programs and camping trips.

Every year the program participates in the Sussex County Farm and Horse Show, where this year they will celebrate this anniversary on August 2 to 4.

Mr. Speaker, as the 4-H celebrates its 100th birtbday I ask my colleagues to join me in honoring this program which continues to exemplify the best of our youth and our nation.

PAYING TRIBUTE TO ALAN WAYNE WYATT

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay tribute to the untimely death of a fallen firefighter who gave his life in defense of this nation's forests and the people of Colorado. Alan Wayne Wyatt, 51, of Moore's Hollow in eastern Oregon, was killed by a flame-weakened tree or what firefighters sometimes call a "widowmaker"; while fighting the Missionary Ridge Fire, which has been burning since June 11th.

Alan worked as a firefighter, cattle rancher, and rodeo saddle bronc rider, and was considered by many to be a "modern cowboy". Alan was a loving husband and father of two and was known to his family as a man who took his job seriously and never undertook a job without the utmost caution to threats of danger. He died fighting a fire, which he understood was out of control, and needed containment. Allen is a hero in the true sense of the word and is survived by his wife, Vicky Wyatt; Evans; and Wells Wyatt, all of Oregon. Alan was a knowledgeable and skilled firefighter who will always be remembered as a man of character and a love of nature, his family, and God.

Mr. Speaker, it is with profound sadness that we remember the life of firefighter Alan Wayne Wyatt. His death highlights the great risks that firefighters encounter day in and day out while on the job and we will truly remember Alan as a brave man who died in defense of life. His sacrifice most certainly deserves the recognition of this body of Congress and this nation. I along with a grateful nation and a loving family will miss you, Alan.

TRIBUTE TO THE BUSINESS OWNERS, CITIZENS AND VOLUNTEERS OF CHARLES COUNTY, MARYLAND

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. HOYER. Mr. Speaker, I rise today to recognize the tremendous community spirit shown by the people of Charles County, Maryland. As my colleagues may know, a devastating tornado ripped through Southern Maryland on April 29, 2002 destroying the town of La Plata and creating a 24 mile path of destruction. Not only were homes and businesses leveled, but farms and government buildings were heavily damaged. Under the circumstances, you would think that a tornado of this magnitude would cripple an area. Not in Southern Maryland and particularly not in La Plata.

Immediately following the tornado, the residents took to the streets to check on friends and neighbors. Once everyone was accounted for, the clean-up efforts began. Under the leadership of the Mayor of La Plata, William Eckman, and the Charles County Commissioners, directed by Board President Murray Levy, an immediate plan of action was put into place and countless hours were spent with residents and business owners, surveying each situation and assisting wherever possible. A "People's Place" was set up to offer a myriad of services ranging from food, water and shelter, to helping people find lost pets. Clothing and money poured into the area, but most of all people reached out to help their neighbors rebuild their lives.

Volunteers came from across the States of Maryland, Virginia and Pennsylvania, as well as the District of Columbia to assist in removing debris left behind by this vicious storm. SMECO, Verizon and Maryland Department of Transportation had staff working round the clock to restore electrical power, establish valuable communication systems and clear the roadways. The Amish communities of Maryland and Pennsylvania donated much-needed manpower to get the Town of La Plata up on its feet again.

The Charles County Chapter of the American Red Cross went into immediate action, once the tornado passed, even though their own building was destroyed. Mr. Paul Facchina had a "mini business district" set up for the business owners to get back up and running. The Charles County Chamber of Commerce offered office space and business services to companies in need and for days following the disaster local churches and other civic organizations offered food to the hundreds of volunteers.

Mr. Speaker, it has often been said that the "worst of times, bring out the best in people" and on behalf of the many, many grateful residents and business owners in La Plata, I want to say Thank You to all the volunteers who gave of themselves so unselfishly. A disaster occurred, and people came from all walks of life to help in any way they could. It did not matter how big, or how small a job, volunteers were available to lend a helping hand. This is the true spirit of America and it was shining bright and continues to beam forward in Charles County, Maryland.

PERSONAL EXPLANATION

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. CLEMENT. Mr. Speaker, I missed the votes on rollcall Nos. 324 and 325. Had I been present, I would have voted "yea."

RECOGNIZING THE OUTSTANDING SERVICE OF MR. GORDON VEAZEY

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. TANNER. Mr. Speaker, I rise today in recognition of my friend Gordon Veazey for his 14 years of dedicated service to our nation's veterans. Now, Mr. Veazey begins a new chapter in his life as he retires from his position as Henry County veteran service officer. I ask that the United States House of Representatives thank him for his selfless service.

Mr. Veazey's father, the late Bailey Veazey, was gassed by German soldiers during World War I, causing him serious health problems the rest of his life. Witnessing his father's disability led Mr. Veazey to devote his entire life to veteran causes.

After serving in the Army during the Korean War, Mr. Veazey understands the struggles many of our veterans face. He says one of his greatest satisfactions has been in assisting aging veterans whose ability to earn were limited by disability.

Mr. Veazey was appointed to the office in 1987 after working at Paris Manufacturing Company. During his tenure, he has assisted more than 2,000 veterans in our community in receiving the veterans claim benefits they deserve and depend upon.

We care deeply about our veterans and their courageous service to this great nation. Through Mr. Veazey's leadership he has set an example for future veteran officers who will serve our friends, neighbors, and children whom are fighting in the war today. We should be proud and honored to have had such a dedicated man working for our nation's veterans.

Mr. Speaker, I rise to ask that you and our colleagues join me in applauding the selfless service and dedication Mr. Veazey has contributed to our nations veterans.

PAYING TRIBUTE TO JEFF HAMMOND

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Jeff Hammond, an individual who has selflessly devoted countless hours towards the betterment of his community. In June of this year, Jeff was named "Volunteer of the Year," by the United Way Organization. Jeff is a hard working, determined, attentive individual whose selfless dedication certainly deserves the admiration of this body of Congress and this nation.

Jeff is an active participant in the Craig Youth Soccer program and in addition, he is an active community volunteer who donates his time to helping the community. This entirely volunteer league could not have made critical strides in the development of its youth, without Jeff's contributions. Jeff donates his time equally to supporting religious functions, fundraisers, car pools, and the Northwest Colorado All-Star Wildkat cheerleading squad.

Although Jeff's busy schedule envelopes most of his time, Jeff places first and foremost his devotion and loyalty to his family duties, as a father and husband do not interfere. He and his wife have been married for 12 years and are the proud parents of two children.

Mr. Speaker it is with great pleasure that I honor Jeff's accomplishments and achievements before this body of Congress and this nation. Jeff Hammond's service to our community has helped strengthen the foundation upon which our great nation was founded and it is with great anticipation I await further successes and achievements in all your endeavors.

HONORING CORINNE "LINDY" CLAIBORNE BOGGS ON OCCASION OF 25TH ANNIVERSARY OF FOUNDING OF CONGRESSIONAL WOMEN'S CAUCUS

SPEECH OF

HON. WILLIAM J. JEFFERSON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. JEFFERSON. Mr. Speaker, it is my great pleasure to join the House in honoring Congresswoman Corrine "Lindy" Boggs. From her work here, in the halls of Congress, to her days as ambassador to the Vatican, Congresswoman Boggs has served our country and served as an inspiration to all of us who followed in her footsteps. As one who was privileged to succeed her in Congress in representing Louisiana's Second Congressional District, I have been particularly inspired by her work.

Congresswoman Boggs has enjoyed a well-deserved outpouring of love and gratitude in this, the 25th anniversary of the founding of the Congressional Women's Caucus. With a collective voice, we say thanks to a woman who helped shape the voice of women in Congress.

Since its founding, the Congressional Women's Caucus has championed issues that affect the lives of women and families. The women's caucus has fought for gender equality in the workplace and in schools. It has worked to promote women's health issues and protect victims of domestic and violent crimes. From Congresswoman Boggs' vision to today, the Congressional Women's Caucus has become the primary voice of women in Congress.

Thank you, Congresswoman Boggs for your work and dedication to the people of Louisiana and of this country. Thank you for your dedication to the women of this country. And, thank you for your leadership and inspiration. I am honored to represent you in the Congress and to serve the people of the 2nd District of Louisiana as you did so honorably for so many years.

CONTINUING AZERI WAR RHETORIC THREATENS PEACE

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. KNOLLENBERG. Mr. Speaker, I rise to call my colleagues' attention to the continuing war rhetoric coming from Azerbaijan regarding Nagorno Karabagh.

Following the fall of the Soviet Union, Azerbaijan launched a military offensive against Nagorno Karabagh in a failed attempt to impose its rule.

In 1994, a cease-fire was negotiated which is still in effect.

However, that fragile cease-fire is presently being undermined by calls for a military solution from senior Azeri officials.

A recent example was in a July 2, 2002 speech by Azeri President Heydar Aliyev where he said, "we will return our land by any means."

This type of irresponsible war rhetoric makes the OSCE peace mission co-chaired by the United States incalculably more difficult and serves to mislead the citizens of Azerbaijan into thinking a second military offensive is preferable to negotiations.

The United States must stand strongly against Azerbaijan's threats to insure a peaceful resolution to this dispute.

NATHAN WEINBERG

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. CARDIN. Mr. Speaker, I rise today to ask my colleagues to recognize the accomplishments of Nathan Weinberg and thank him for his service to his country and his community as he retires as a trustee of the Harry and Jeannette Weinberg Foundation and his appointment as Civilian Aide to the Secretary of the Army.

After his family emigrated from Eastern Europe, Nathan Weinberg, the sixth of seven children, was born in America in 1917. In 1941, he was inducted into the U.S. Army and on December 25, 1945, Mr. Weinberg was discharged as a 2nd Lieutenant after service in Texas, Australia, New Guinea and the Philippines.

After returning home to Baltimore, Mr. Weinberg worked in real estate and lived briefly in Texas and Pennsylvania working on business interests of his brother, Harry Weinberg. He remained a member of the standby reserve until October 1995 when he was honorably discharged.

In 1960, Mr. Weinberg became an active officer and trustee of the Harry and Jeannette Weinberg Foundation. Since his brother Harry's death in 1990, Mr. Weinberg has remained one of five trustees to the Foundation, which is one of the largest private foundations in the United States. His leadership on the board has included projects supported by his brother, particularly housing and amenities for the elderly from Coney Island to Tel Aviv to Hawaii.

Mr. Weinberg was appointed Civilian Aide to the Secretary of the Army in 2000. His military experience and his dedication to the Maryland Army National Guard has provided leadership, friendship and financial support for community outreach.

Mr. Weinberg has a strong sense of family and a firmly held belief in equality and equitable treatment for all people. At ground breakings and ribbon cuttings, he is not shy about expressing his concern for the welfare of the audience, unhappy that the dignitaries receive special treatment while the audience is left to stand, swelter in the heat or freeze in the cold. His sense of justice guides his dealings with others and he expects others to pass along that philosophy as well. He is a leader by example and deeds.

I would ask my colleagues to please join me in congratulating Mr. Weinberg on a life well lived and in thanking him for his service to his country. Our appreciation extends to his family, his wife Lillian and his three sons, Donn, Glenn and Joseph their wives and children.

EXCELLENCE IN MILITARY SERVICE ACT

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. COBLE. Mr. Speaker, I rise today to introduce the "Excellence in Military Service Act."

This legislation would increase the active duty service obligation (ADSO) of Military Service Academy graduates from five to eight years. Many Americans do not realize that this free and highly competitive college education costs the average taxpayer approximately $300,000 per cadet/midshipman.

While I believe that investing in our military is critical to the future stability of our nation, I do not think it is fair to burden the taxpayer with this expense without requiring academy graduates to exhibit a similar commitment in their ADSO. I maintain it is not unreasonable that in return for a free education, with a monetary allowance, that a graduating cadet/midshipman be required to commit to a longer period of obligated service upon commissioning.

As college tuitions continue to skyrocket, I believe our U.S. military academies will become even more attractive to prospective college students. In light of this fact, we need to ensure that a free education does not become a primary motivation for future applicants. I maintain that increasing the ADSO is an effective way to accomplish this without jeopardizing the viability of these historic institutions. I hope my colleagues will join with me in cosponsoring this legislation, and I look forward to working with them to protect the U.S. taxpayers' investment in our nation's future and ensure the integrity of one of our nation's most precious resources.

HUNGER RELIEF

HON. MARTIN OLAV SABO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. SABO. Mr. Speaker, today I join my colleagues in honoring my friend, Congressman TONY P. HALL, a tireless advocate for hunger relief programs and improving international human rights conditions.

Congressman HALL's 30 plus years of service to the people of Ohio is indicative of the dedication he holds for improving the lives of all Americans. No one compares to TONY when it comes to his experience and knowledge on human rights, child welfare and survival, and global development. It has been a distinct privilege to serve in the House with him for the past 23 years.

Mr. HALL and I hold a special bond, not only did we both begin our service in the House in January 1979, but we also have experience serving in our state's legislatures. In the beginning, we were able to draw on these similarities the trappings and pitfalls facing new members of Congress, and then use this knowledge to grow as public servants and legislators.

TONY will soon be embarking on a new adventure. He'll bring his lifelong devotion to easing hunger across the globe and improving food security to Rome, Italy as he assumes the position of United States ambassador to the United Nations food and agriculture organizations. I think it is safe to say that we can send no one who would better represent the United States in these important institutions.

So, Mr. Speaker, it is with great honor that I extend my sincerest thanks to my friend, Congressman TONY HALL, and wish he and Mrs. Hall all the best as they embark on this new journey.

100TH ANNIVERSARY OF CHURCH OF THE EPIPHANY

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. COYNE. Mr. Speaker, I rise today to observe the 100th Anniversary of Epiphany Catholic Church in Pittsburgh, Pennsylvania.

The Church of the Epiphany was established when the St. Paul Cathedral was moved from downtown to Oakland more than 100 years ago. The cornerstone for the new church was blessed on August 10, 1902. The boundaries of the old Cathedral parish became the boundaries for the Church of the Epiphany's parish. From 1903 until 1906, when the new Cathedral was finished, Epiphany served as the interim Cathedral.

The Church is a beautiful red brick structure built in the Romanesque style. It was designed by Edward Stotz at the turn of the last century with a pair of twin towers, slate roofs, and terra cotta trim. The church design also features several statues from the old Cathedral. The interior decoration was designed by John Comes, who designed a number of Catholic churches in the Pittsburgh area. Most of the original artwork has been preserved and restored.

Father Lawrence O'Connell founded Church of the Epiphany and was its pastor for its first 54 years. He is credited with developing and operating parish programs that ably served downtown residents, workers, and the many Immigrants who were streaming into Pittsburgh at that time. Under his leadership, the parish created and ran a residence for working women, a nursery, a home for infants, a home for older children, an elementary school, summer camp for under privileged children, an athletic association for young men, a prison ministry, and other religious, cultural, and education programs. In the first half of the 20th century, the Church served a parish of roughly 2,000 families.

Over time, however, the neighborhood changed. Grand plans for the first Pittsburgh renaissance dictated that much of the land covered by the parish be converted to new uses. In 1957, much of the Lower Hill neighborhood around Epiphany, including church property, was razed as part of an urban redevelopment project. Eighteen hundred families were relocated, and only 350 parishioner families remained.

The urban renewal efforts of the late 1950s and early 1960s marked the beginning of a difficult time for the Church of the Epiphany. Due to declining enrollment, for example, Epiphany School was closed in 1973—after 70 years of educating children from the community. Against all odds, the parish has struggled valiantly to survive under the leadership of a series of worthy successors to Father O'Connell. The 1960s and 1970s were a challenging time, but the congregation of the Church of the Epiphany preserved, and the Church carved out a new mission for itself in the dramatically different Lower Hill area of Pittsburgh.

Mr. Speaker, I want to congratulate Father Jim Garvey, the current pastor of Epiphany Catholic Church, and his congregation on the momentous occasion of the Church's 100th anniversry—and I want to share with them my best wishes for the future.

SAVE HISTORIC VETERANS BUILDINGS

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. HALL of Ohio. Mr. Speaker, for more than 40 years, since the enactment by Congress of the landmark National Historic Preservation Act, preservation of our historic landmarks has been a mission of the Federal government and its agencies. That is no less true of the Department of Veterans Affairs (VA), which owns 1,860 nationally significant buildings—more than any department except the Departments of the Interior and Defense. However, no department faces more challenges than the Department of Veterans Affairs in preserving its historic buildings. That is why today I am introducing the Veterans Heritage Preservation Act of 2002, a bill establishing a comprehensive approach to assisting the department in fulfilling its historic preservation mission while honoring Americans veterans.

The sheer scope of the task is daunting. The VA's historic buildings go back to a 1735 mill on the bank of the Susquehanna River in Perry Point, Maryland, and include a series of residential communities built for Civil War veterans. The VA also owns historic hospital buildings and living quarters constructed by the Veterans Bureau following World War I. Many of these buildings have outstanding architecture and some are sites of important events. They are located in almost every state. All represent the commitment made by the Federal government to look after our war veterans.

As the cost of health care has risen in recent years, the Department has focused on providing veterans with cost effective health care. This has made obsolete many of the Department's historic buildings which have been chosen to conserve funds. Some of these treasures have been allowed to deteriorate and ultimately face demolition. Because the Department's historic preservation requirements are funded from the same allocation for patient care, the Department has consistently chosen to underfund its historic preservation mission.

The legislation I offer today eliminates this difficult choice by establishing a Veterans Heritage Preservation Fund dedicated to the Department's preservation needs and authorized at an annual level of $20 million, subject to appropriations. The fund would be used to evaluate, stabilize, preserve, renovate, and restore the Department's historic buildings. The fund could also be used for grants to State and local governments and non-profit organizations in connection with the adaptive reuse of historic buildings. The bill also establishes within the Department a high level Office of Historic Preservation to monitor the Department's historic preservation program.

The bill also encourages leasing historic VA properties to groups that will preserve and restore them and promotes the VA to enter into public-private partnerships for historic preservation. The goal is to keep the VA's historic buildings alive by finding new uses for them. Even if they are used for community purposes that aren't directly related to veterans' care, they will honor our veterans by preserving these important cultural legacies.

The VA's historic buildings represent an important national treasure that can never be replaced. They serve as a link between all Americans and past generations of veterans. Writing in the July 1, 2001, issue of the Paralyzed Veterans of America Paralegia News, Thomas D. Davies, Jr., AIA, former director of architecture for Paralyzed Veterans of America, said, 'The VA's historic structures provide direct evidence of America's proud heritage of veterans' care and can enhance our understanding of the lives of soldiers and sailors who fashioned our country."

The need quickly to preserve historic VA buildings increased in June when the VA announced an initiative to identify and close more buildings that are considered outdated. The initiative, Phase II of the ongoing planning process called the Capital Asset Realignment for Enhanced Services (CARES), is expected to be completed in two years. It is critical for the VA to prepare to handle the large number of its historic buildings which could join the endangered list.

The legislation follows a joint recommendation earlier this year by AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and Veterans of Foreign Wars, which called on Congress to enact legislation to systematically preserve the most important historic buildings owned by the VA and to promote the reuse of historic properties by local communities.

Most of the threatened buildings were part of the National Home for Disabled Volunteer Soldiers, created by one of the last acts signed by President Lincoln before his assassination, and constructed between 1866 and 1930. The buildings are now owned by the VA. The National Home evolved into complete planned communities with barracks, mess halls, chapels, schools, hotels, libraries, band stands, amusements halls, theaters, and shops, many of which still stand, and include outstanding examples of 19th and early 20th century architecture.

The National Home had facilities in eleven cities. The cities, and dates the branches were founded are: Togus, Maine (1866); Milwaukee, Wisconsin (1867); Dayton, Ohio (1867); Hampton, Virginia (1870); Leavenworth, Kansas (1885); Santa Monica, California (1888); Marion, Indiana (1888); Danville, Illinois (1898); Johnson City, Tennessee (1901); Hot Springs, South Dakota (1902); and Bath, New York (1929).

The National Home represents many historical developments, including the Nation's first the first large-scale attempt by the Federal government to care for veterans. The buildings included the first non-religious planned communities, the first Federal effort to establish large-scale rehabilitation programs, a significant expansion of Federal benefits to citizen-veterans, a landmark in the development of Federal responsibility for the social safety net, and the first permanent churches constructed by the Federal government.

Before it was merged with the VA in 1930, the National Home cared for more than 100,000 Civil War and other veterans, many of whom were shattered physically and spiritually from the carnage of war. These buildings are an important part of our national heritage as well as significant contributors to the history and culture of the communities where they are located.

According to Professor Patrick J. Kelly, author of Creating a National Home (Harvard University Press), "The National Home for Disabled Volunteer Soldiers is an institution that all Americans can treasure. This institution was an early and strikingly generous example of the federal government's commitment the care of the nation's veterans."

Kelly wrote, "The surviving buildings of the National Home offer contemporary Americans a cultural treasure that serves to remind us of the profound sacrifices made by soldiers during the Civil War, and of the resolve of post Civil-War America the sacrifices of its veterans would not be ignored. That buildings of the National Home have much to teach us about the past, but perhaps even more importantly, offer Americans valuable lessons for veterans care that apply to today and to the future."

More than 100 historic VA buildings from all eras are underutilized or vacant and are threatened with deterioration and ultimate destruction. Those buildings include an impressive row of Victorian lodging quarters from Ford Howard in Baltimore County, Maryland, and an elaborate Victorian theater in Milwaukee which hosted all the big stars of the day, including a child pianist who lived across the street, Liberace. An entire series of 39 Georgian and Romanesque Revival style structures by master builder James McGonigle in Leavenworth, Kansas, was so close to demolition that in 2000 the National Trust for Historic Preservation included the buildings on its list of America's 11 most endangered historic places. Those buildings are still threatened.

I represent Dayton, Ohio, which was the headquarters of the National Home and its largest branch. A number of buildings in my district are in danger of deterioration and ultimate demolition, including the building that housed the national administrative offices for the National Home and the first permanent church constructed by the Federal government—a building which was constructed by the veterans themselves. My constituents—veteran and non-veteran—are concerned about this potential loss to their historical heritage.

Mr. Speaker, providing for the Department of Veteran Affairs' historic preservation requirements in no way need to diminish funding for the Department's other missions and is fully consistent with the Department's broader goal of honoring and caring for the Nation's veterans. It will require some money and it will require a lot of will. With this legislation, I hope to provide a framework for the VA to better carry out its responsibility to preserve the historic legacy under its control that belongs to veterans and to all Americans.

HONORING PASTOR DOUGLAS P. JONES

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. KILDEE. Mr. Speaker, I am honored to rise before you today on behalf of the congregation of Welcome Missionary Baptist Church in Pontiac, Michigan, to recognize and congratulate Reverend Douglas P. Jones, who celebrated his 13th anniversary as the pastor of the church on June, 18, 2002.

Upon graduation from University of Cincinnati, Pastor Jones continued his studies in pastoral care administration at Cincinnati Bible College. On April 8, 1989, the Church voted to call Reverend Jones as their pastor. Pastor Jones accepted and was installed on June 18, 1989. During his years of service, he has earned certificates in various workshops and counseling sessions, as well as special training in administration, management, and planning.

Pastor Jones' time and dedication with the ministry has allowed him to develop strong support that extends throughout the city of Pontiac, including serving as the Chaplain of the Oakland County Sheriff Department, and acting as a board member for the United Way Oakland County. Additionally, the diligence he has shown over the years has led to the expansion of the church and its congregation. Pastor Jones is more than deserving of the numerous honors and awards that he has received over the past 13 years, including commendations from the City of Pontiac and the State of Michigan, among many others.

The work that Pastor Jones has accomplished on behalf of the community is tremendous. Through his creation of the Greater Pontiac Community Coalition, he has helped generate programs that have guided our youth to a brighter future. Programs such as Youth in Government and Invent America, as well as scholarship programs through the Church and the Coalition, have helped open doors of success for hundreds of young men and women.

Mr. Speaker, Pastor Douglas P. Jones' devotion to spreading God's Word is an inspiration to us all. As a former seminarian, I understand the important role the Church plays in our lives, and I am proud to call him my colleague and my friend. Self-evident is his lifelong commitment to enhancing the dignity and nurturing the spirits of all people, and our community is a much better place because of him. I ask my colleagues in the 107th Congress to join me in congratulating Pastor Jones.

ON THE 100TH ANNIVERSARY OF THE NEW GLARUS FIRE DEPARTMENT

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Ms. BALDWIN. Mr. Speaker, I rise today to extend my congratulations to the New Glarus Volunteer Fire Department of Wisconsin, which is celebrating 100 years of excellence. This outstanding achievement is marked by the New Glarus Volunteer Fire Department's commitment to providing safe, efficient, and effective emergency services.

New Glarus Volunteer Fire Department's standards of excellence were first instituted in 1902 with the formation of Company No. 1. From the incorporation of the village in 1845 until 1902, fires were fought by means of a bucket brigade. Company No. 1 replaced the old fashioned bucket brigade with the latest technology, circa 1902, a hose cart and hand-drawn ladder rig. Staffed by 24 dedicated firefighters, the equipment was housed in the New Glarus Town Hall, in which the first arriving firefighter rang a bell, alerting the remainder of the company to call.

Today, the New Glarus Volunteer Fire Department is fully modernized, serving a 71-square-mile fire protection district that covers the village of New Glarus as well as the towns of York, Perry and Primrose in the rolling hills of Green and Dane Counties. In 1981, the current fire station was erected just west of the village hall, and has the capacity to hold up to ten pieces of apparatus. In addition to responding to fires, the totally volunteer department of 36 members, now reacts to motor vehicle, hazardous materials incidents and assists the New Glarus EMS.

Although the bell has been replaced by a modern siren system, the call to tirelessly safeguard the lives and property of area citizens remains the same for the New Glarus Volunteer Firefighters. These courageous volunteers join the prestigious though often under-appreciated ranks of the "everyday hero." Now, more than every, our nation is comforted by the knowledge that such citizens are prepared to protect our communities. So, when the siren sounds, those citizens served by the New Glarus Volunteer Fire Department are assured that they will receive the best possible assistance.

I wholeheartedly congratulate the New Glarus Fire Department for 100 years of protecting their community and recognize their continuing commitment to excellence.

PERSONAL EXPLANATION

HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. DEFAZIO. Mr. Speaker, on July 23, 2002, I was granted a Leave of Absence due to a family emergency. I was not present for rollcall votes Nos. 330, 331, 332, 333, and 334.

If I had been present, I would have voted "no" on rollcall No. 330 an amendment by Representative GOSS to limit the use of funds to enforce the ban on travel to Cuba; "yes" on No. 331 an amendment by Representative FLAKE to prohibit the use of funds to enforce the ban on travel to Cuba by U.S. citizens; "yes" on No. 332 by Representative FLAKE to prohibit the use of funds to enforce restrictions on remittances to nationals of Cuba; "yes" on No. 333 by Representative RANGEL an amendment to prohibit the use of funds to implement, administer or enforce the economic embargo against Cuba; and "yes" on No. 334 passage of H.R. 3609, the Pipeline Safety Act.

HAPPY 80TH BIRTHDAY TO JULIUS WADE KING

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. PICKERING. Mr. Speaker, eighty years ago on August 2, 1922, Julius Wade King was born in Lockhart, MS, to James and Clara King. Julius, better known as Judy, has led a life devoted to business, education, service, church, and family.

A product of public schools, Judy graduated Heidelberg High School in 1940 and entered Jones County Junior College (JCJC); Judy then received his B.S. degree from the University of Mississippi in 1943. Upon leaving Ole Miss, Judy attended U.S. Naval Midshipman's School at Notre Dame and was commissioned as an officer. But graduating from JCJC, Ole Miss, and Notre Dame would not end Judy's association with education, for he has devoted more than 6 decades to the field.

Active in the South Pacific until 1946, Judy was discharged from the Navy and moved to where he still calls home—Laurel, Mississippi. In Laurel, Judy began work in the automotive business and later, in 1951, Judy launched a career in the oil and gas industry as well as in real estate. Throughout his career at Julius W. King Oil Properties, Judy has been a long-time member of the Board of Directors of Independent Petroleum Association of America and Mid Continent Oil and Gas Association.

Judy was married on April 10, 1955 to Marion Louise King; they are the parents of two daughters—Mary Gwendolyn and Kendall Lea and the grandparents of five.

Judy has given many years of his life to the service of the community. A member of First Baptist Church of Laurel, Judy has helped the church with continuous growth and expansion by serving as Property Acquisition Chairman.

Many of Judy's service hours have also been committed to education. As past chairman of the University of Mississippi Foundation, board member, and endower of the King Lectureship in Ethics, Judy has played an active role in serving the University of Mississippi. Along with his brother, James E. King, Jr., Judy donated the necessary money to initiate the building of the JCJC King Chemistry Center. Still serving JCJC today, Judy is the chairman of the JCJC Foundation.

Judy is an outstanding leader. He has served as president and board member of United Way of Jones County; president of Laurel Jaycees; twice president of the Laurel Country Club; president of Jones County Chapter of the American Red Cross and Lung Association; and board member of the Jones County Economic Development Authority. Judy has also recently completed 14 years on the board of the Lauren Rogers Museum of Art.

In addition to serving his community, Judy has made contributions to the Republican Party on both the local and national level. Judy has served as the Finance Chairman of the Mississippi Republican Party and assisted in building the United Republican Fund of Mississippi. He has been recognized as a Pioneer Republican and ran for State Senate in 1963. Judy has also served on the state and county GOP executive committees.

On the national level, Judy has had the honor of being a presidential elector three times and serving three years on the White House Selection Committee for Fellowships. He also has the distinction of being a member of the Transition team for the Reagan White House.

Judy has been a role model for me as a Christian husband, father, businessman, and leader. I thank him for his example and for his friendship to me and my family.

It is an honor and privilege for me to extend birthday wishes to a man who knows the true meaning of faith, service, community, and family. Happy 80th Birthday Judy King!

RECOGNIZING PORTLAND STATE UNIVERSITY'S GEORGE PERNSTEINER FOR HIS COMMITMENT TO HIGHER EDUCATION

HON. DAVID WU

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. WU. Mr. Speaker, today I recognize George Pernsteiner, Vice President of Finance and Administration at Portland State University. Mr. Pernsteiner is leaving Oregon to become the Vice Chancellor of Administrative Services at the University of California, Santa Barbara. I join with Mr. Pernsteiner's colleagues at Portland State University, in the Oregon University System, and in the City of Portland in recognizing him for his leadership, his commitment to providing educational opportunities to students and his work with PSU President Dan Bernstine to make this institution a national model of an urban university.

George Pernsteiner has served at Portland State University since 1995. During that time, enrollment has grown from about 14,000 students to the nearly 23,000 who will enroll this September. Mr. Pernsteiner has overseen the implementation of the unique University District plan, which links PSU's campus development to the planning goals of Portland—one of the nation's most livable cities. George was instrumental in building the University's new urban center, home of the nationally recognized College of Urban and Public Affairs. He was involved in the city's efforts to have a new urban streetcar, and brought it to the campus. George has also been involved in the building of a new Native American Student and Community Center that will open next year, the creation of the Peter Stott Community Recreation field, and the establishment of a new technology center in the PSU Millar Library.

George Pernsteiner is not only actively involved in Portland State University and the City of Portland, he has been a statewide leader in the Oregon University System. Before coming to Portland State University, he was Vice Provost and Chief Financial Officer at the University of Oregon, and also served as the Associate Vice Chancellor for Administration at the Oregon University System. George was key to developing State legislation that gave greater operating flexibility to the institutions in Oregon, as well as a new funding model for the entire Oregon University System, which was adopted by the state legislature in 1999.

George Pernsteiner is viewed in Oregon as an innovative higher education leader who puts students first. He leaves Oregon and PSU a better place because of his visionary commitment to providing educational opportunities. George is a devoted public administrator who values public service.

Mr. Speaker, I am honored that I have had the opportunity to work with and know George Pernsteiner. I hope you and my colleagues will join me in wishing him and his family the best as they leave Oregon for Santa Barbara and go from being Vikings to Gauchos!

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

SPEECH OF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 2002

Mr. PAUL. Mr. Chairman, I rise in strong support of the Flake and Rangel amendments to the Treasury-Postal Service Appropriations Act. The argument that allowing Americans to travel to Cuba props up Fidel Castro's regime is just not supported by fact. History has shown that allowing—even encouraging—American citizens to travel to and engage commercially in less-than-free societies ignites the spark of freedom and hastens democratic transformations. Unfortunately, special interests have driven some to argue even against demonstrated fact in pursuit of their political agenda.

It is time to face reality on the policies of isolation and embargo: they have not worked in the past, they are not working in the present, and they will not work in the future. Can anyone claim that our policies of isolation and embargo have made life for the average Cuban citizen the slightest bit better? Conversely, is there any evidence that our policies of isolation and embargo have made life for Castro and his ruling clique one bit worse? The answer to both questions, of course, is no. So why continue to pursue a foreign policy that is producing the opposite effect of what is intended?

While there is no evidence that sanctions and isolation work, there is plenty of evidence—real concrete evidence—that engagement and trade actually bring about democratic change. In the former Soviet-dominated world—particularly in Central Europe—it was American commercial and individual engagement that proved key to the demise of the dictatorships. It was Americans traveling to these lands with new ideas and a different attitude toward government that helped nurture the seeds of discontent among a population living under the yoke of tyranny. It was American commercial activity that brought in products that the closed and controlled economic systems would or could not produce, thus underscoring to the population the failure of planned economies.

With the system of one-party rule so obviously and undeniably proven unworkable and unsatisfactory in Central Europe, even those who had served the one-party state began to shift their views and work in opposition to that rule. Thus began the fall of the Soviet empire. Yet those who support sanctions and isolation still seek to deny history in their drive to pursue a policy that has not worked for forty years.

Mr. Chairman, finally and importantly, I strongly oppose sanctions for the simple reason that they hurt American industries, particularly agriculture. Every time we shut our own farmers out of foreign markets, they are exploited by foreign farmers. China, Russia, the Middle East, North Korea, and Cuba all represent huge potential for our farm products, yet many in Congress favor trade restrictions that prevent our farmers from selling to the billions of people in these areas. We are one of the world's largest agricultural producers—why would we ever choose to restrict our exports? Why would we want to do harm to our domestic producers by pursuing a policy that does not work? The only beneficiaries of our sanctions policies are our foreign competitors; the ones punished are our own producers. It is time to end restrictions on Cuba travel and trade.

RICK SWARTZ DEFENDS THE RIGHTS OF IMMIGRANTS

HON. JAMES P. McGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. McGOVERN. Mr. Speaker, I would like to bring to my colleagues' attention an interview with Mr. Rich Swartz in the Summer 2002 edition of Intelligence Report, the quarterly publication of the Southern Poverty Law Project.

For nearly two decades, I have had the privilege of knowing and working with Rick Swartz in defense of the rights of immigrants. In 1982, he founded the National Immigration Forum, which is the leading immigration rights advocacy group in the nation. We first met when we were both working to secure a safe haven for Salvadoran and other Central American refugees here in the United States.

The interview explores the lengthy battles with anti-immigration forces in the United States and the prospects for securing immigrant rights in today's national environment. Rick Swartz is someone who feels strongly about America's roots as a nation of immigrants and who believes that current immigration is an important contributor to a strong future for our country. I join him in those beliefs, and I commend this article to my colleagues.

[From the Intelligence Report, Summer 2002]

DEFENDING IMMIGRANTS

A KEY ACTIVIST IN THE STRUGGLE FOR IMMIGRANT RIGHTS DISCUSSES THE EVOLUTION AND NATURE OF THE ANTI-IMMIGRATION MOVEMENT

Over the last quarter of a century, Rick Swartz may have done more than any other activist to encourage a healthy level of immigration to America and to protect the rights of immigrants once they are here. After graduating from the University of Chicago Law School, Swartz directed an immigrant rights project at the Lawyers Committee for Civil Rights before going on to found, in 1982, what has become the nation's leading immigration rights advocacy group, the National Immigration Forum. Swartz was president of the Forum, a coalition of more than 250 national organizations and several thousand local groups, until 1990. In that post, he worked to secure have for Haitian and Central American war refugees, to legalize the status of millions of other immigrants and to battle the anti-immigrant and English Only movements. Since leaving the Forum, Swartz, now 52, has run a small public policy firm representing a range of corporate and nonprofit clients, at the same time continuing his immigration advocacy work. The Intelligence Report asked Swartz about his lengthy battles with America's leading anti-immigration activists, his view of the movement today, and his analysis of the movement's prospects.

Intelligence Report: In looking at the contemporary anti-immigrant movement [see story, p. 44], we've found that even though there are a large number of organizations involved, they almost always seem to go back to one man—John Tanton, the Michigan ophthalmologist who founded the Federation for American Immigration Reform [FAIR] in 1979. Has that always been the case?

Swartz: Tanton is the puppeteer behind this entire movement. He is the organizer of a significant amount of its financing, and is both the major recruiter of key personnel and the intellectual leader of the whole network of groups. I don't know if he's personally wealthy—it could well be that people give him big donations just because he is so mesmerizing. He does have a charismatic feel about him.

It's been clear since 1988, when a series of embarrassing internal memos by Tanton and Roger Conner [who was then executive director of FAIR] were leaked to the press, what the overall strategy is. Those memos are a blueprint for what Tanton and his friends have been doing ever since.

IR: Can you describe that blueprint?

Swartz: The blueprint envisaged creating a whole array of organizations that serve the overall ideological and political battle plan to halt immigration—even if some of these groups have somewhat differing politics. They camouflage the links between these organizations, their true origins, so that they appear to have arisen spontaneously. But in fact they have the same creator, Tanton.

IR: So the idea was to create the illusion of a grassroots movement that was supported by a significant number of Americans?

Swartz: Yes indeed, to confuse the press. The leaked memos did bring some public attention to the Tanton network, and some of these linkages were further exposed in the early 1990s. More recently, FAIR's tax records established that the center for Immigration Studies, which has become an influential Washington institution, was spun off from FAIR as a separate organization. But these facts aren't widely known by the public today.

For years and years, Fair and these other spinoffs have been part of a strategy of, "Well, it can't just be Fair and other major Tanton creations like U.S. English and the Center for Immigration studies, because then it's too easy to pin us down. So therefore how about creating Numbers USA, English First, the American Immigration Control Foundation and all these smaller local groups?" all of this was anticipated by the memos, which were written in 1986, two years before the leak.

IR: has even the limited exposure of these kinds of linkages damaged the ability of Tanton's anti-immigrant groups to affect public policy in Congress?

Swartz: They are well know to everybody deeply involved in the immigration debate. But when it comes to Congress, very few members—maybe two—can come close to understanding the situation or the history of the immigration reform efforts of the last 25 years. They may have voted on immigration-related items, but immigration is not a way of life for them.

IR: Let's go back a little. How did Tanton get started?

Swartz: When Tanton started Fair in 1979, he was already president of a liberal organization, Zero Population Growth (ZPG). He wanted ZPG to be the vehicle for a significant advocacy effort to reduce immigration, but the senior staff and at least some members of the ZPG board resisted. As a result, Fair was created. Conner ran Fair as executive director through most of the '80's before leaving to become executive director or yet another Tanton creation, the American Alliance for Rights and Responsibilities, which was intended to be an antidote to the ACLU (American Civil Liberties Union). At the time, Fair was promoting employer sanctions (laws to punish those who hire illegal aliens) and dramatic increases in border enforcement, sweeps, arrests and deportations. It was opposing guest worker programs and asylum for refugees from Haiti or the Central American wars.

It was also Fair that first had the idea of barring social services and other public benefits for immigrants (an enterprise that came to fruition with California's Proposition 187, which was passed in 1994 with the support of Fair and other Tanton creations, but ultimately found to be unconstitutional). Fair also tried to build linkages to mainstream environmental groups, but without much success.

IR: When did Tanton get into the English Only movement?

Swartz: Tanton established an organization called U.S. English in the early 1980s, and this became his second major national organization after Fair. The organization was dedicated to "English Only" [the idea that all official government business should be conducted in English alone], and it attracted into its ranks a number of well-known celebrities—Walter Cronkite and Arnold Schwarzenegger, for example. U.S. English funded a range of "official English" state and local referenda [through early 2002, 27 states had passed English-only legislation]. The most recent example of this kind of activity is in Iowa, where the governor earlier this year declared English the state's official language.

By the way, there is a lot happening in Iowa right now. Why Iowa? Well, you've got meatpacking plants and the immigrants employed in them, leading to demographic change. And you have Iowa's governor making pro-immigration statements over the last couple of years, saying we're losing people and we need new people, therefore we should be trying to attract immigrants. And, of course, Iowa is the first presidential primary. So add it all up, and you can see why they're spending a ton of advertising money in Iowa. It's perfect for Tanton's message.

IR: Although he has always denied it, Tanton and his progeny have frequently been accused of being racist, not to mention anti-Catholic and, in particular, anti-Hispanic. In fact, Tanton helped to arrange for the English-language publication of The Camp of the Saints, a grotesquely racist French novel that tells of European civilization being overrun by bestial Third World immigrants. And he continues to promulgate that book in his role as publisher of The Social Contract Press, a hate group. What do you make of the role of this remarkable book?

SWARTZ: A movement of the kind that Tanton envisions needs a bible. It needs a bible for conversion. It needs a bible as an ideological road map. It needs a bible to stimulate zeal and a sense of belief among its followers. The Camp of the Saints is that book for Tanton. It puts out a vision of immigrants rampaging and destroying the West, and that is the vision that Tanton believes in and wants his followers to believe in. James Crawford, who wrote a book on the English Only movement, calls The Camp of the Saints "a cult book"—and that is what I think it is.

IR: A similar vision of white people being overwhelmed by dusky, Third World hordes is suggested in the Tanton-Conner memos. Did the leak of those memos to The Arizona Republic hurt Tanton and Fair significantly?

SWARTZ: It hurt him a lot at the time. The revelations led to the resignation of Linda Chavez, who had become executive director of U.S. English in the mid-1980s [and is a conservative Republican columnist today]. A whole group of celebrities resigned from the board or advisory board of U.S. English because of the memos, which were complicated by The Camp of the Saints being sort of a Holy Bible for the movement. All this revealed the underlying ideology of Tanton.

It also made it that much more difficult for people like [former Sen.] Alan Simpson [R-Wyo.] and others who shared Fair's point of view from holding Fair up as this great organization that other members worked with all the time. And the political character of the Tanton-Conner memos—the strategies of infiltration and so on that they discussed—also contributed to the rash of resignations.

IR: Are there good examples of that infiltration strategy at work?

Swartz: In the 1980s, while Conner was executive director of Fair, a woman named Cordia Strom became the legal director. The memos had specifically discussed infiltrating the Congressional staff, and Cordia was their big success story. She became part of the staff of Rep. LAMAR SMITH [R-Texas] and then she went to work for the House Immigration Subcommittee. She was in that job through 1996 and was the subcommittee's chief counsel during the big 1996 immigration debate [which resulted in harsh legislation, introduced by subcommittee chairman LAMAR SMITH, that sharply reduced the rights of legal immigrants]. At some point after that, she went over to the Executive Office for Immigration Review [the administrative appeals arm of the Immigration and Naturalization Service, or INS, that is responsible for making final decisions on such matters as deportations], where she is still employed [as counsel to the director and coordinator for congressional affairs]. After the 2000 election, there was even an [unsuccessful] effort to get Cordia appointed deputy director of the INS.

IR: Then the infiltration strategy was really quite effective?

Swartz: Well, these groups had their own person running the House Immigration Subcommittee at a critical moment. Being the staff director of that subcommittee brings tremendous daily influence on LAMAR SMITH [chairman of the subcommittee from 1994 to 2000] and other Republican members. The staff director has lots of access to inside information, including confidential and classified information regarding immigration. You have constant dealings with the INS, with the Justice Department and the State Department. So someone like Cordia, with her ideological bent, has an opportunity to have tremendous influence throughout the Congress and the government, as well as the media.

IR: Yes, similarly, we've found that a woman named Rosemary Jenks, a lobbyist for Numbers USA, is now working part-time out of the office of Rep. Tom Tancredo. [Editor's note: Tancredo is a Colorado Republican, chairman of the Congressional Immigration Reform Caucus, and a harsh immigration critic whose Web site carries data from one of Tanton's creations, the Center for Immigration Studies. Tancredo's Congressional Immigration Reform Caucus Web site links directly to a hard-edged hate group, the Voice of Citizens Together, also known as American Patrol.]

Swartz: That's another example of infiltration at work. Fair and the others have successfully placed their people around folks like Tancredo in Congress.

IR: Are there other important methods that Tanton has employed.

Swartz: Another tactic of Tanton's is to turn ethnic groups on each other, to create conflict between difference ethnic and racial groups. One of his big arguments has always been that immigration hurts blacks. Fair has bought radio advertising on black radio stations to push that vision. A prime example was Chicago 10 or 12 years ago, when an ad ran basically saying, "You know why you don't have a job? Because some undocumented Mexican came in and stole yours from you."

Fair also has hired black professionals and has put a lot of effort into building alliances with African-American intellectuals, because the unfortunate reality is that there is a lot of anti-immigrant sentiment in the black community. When you have dramatic demographic change going on in places like South Central Los Angeles—well, it's the oldest trick in the book. It's called making those who don't have a lot but are making progress feel threatened by those coming after them. There is some conflict among Latinos, Asian and African Americans competing politically and economically, and this provides fertile ground for the kind of poison that the Tanton crowd has been trying to plant in the African-American community for years—the idea that Latinos in particular, and immigrants in general, are a threat.

Once again, all this is prefigured in the Tanton-Conner memos.

IR: That kind of conflict permeates our history, doesn't it?

Swartz: America's history is in part a story of ethnic succession. At times, we've had major ethnic violence surrounding this dynamic of ethnic succession. Benjamin Franklin was afraid Germans were going to come in and take over Pennsylvania and overwhelm the English language. We had the Know-Nothing Party that came up in response to the beginnings of Irish and Catholic migrations in the early and middle 19th century. There were similar responses to Jewish and Italian immigrants in the late 19th century. The KKK of the 1920s was rooted in anti-Catholicism. Today, Tanton works to create similar kinds of conflict amongst ethnic groups.

IR: During the 2000 Michigan senatorial race, Fair ran ads that essentially suggested that Spencer Abraham [R-Mich.] was allowing terrorists into the country by backing higher numbers of visas for immigrants with high-tech skills. The ads also implied, but didn't say directly, that that was because Abraham was an Arab American. Did the brouhaha over those ads hurt Fair? Didn't Alan Simpson, one of Fair's biggest supporters in the Senate, resign their board as a result?

Swartz: He did! Simpson condemned the ads. I think the attacks on Abraham really hurt Fair among certain Republicans. Something like 20 to 25 Senate Republicans put their names on a letter denouncing Fair for the Abraham attacks. Some of these senators today probably have no idea that so-called "respectable" organizations, like the Center for Immigration Studies, are linked to Fair. But to go back to the theme of infiltration, if you look at the record of witnesses before the House and Senate immigration subcommittees, you will see that Fair or some other Fair-connected group is a witness at the vast majority of the hearings. Thank you, Lamar Smith and Alan Simpson! Those kinds of relationships are legitimizing. Fair can say, "How can you say we're an extremist group when we're being invited to testify to Congress at the time?" It creates great camouflage.

IR: We're noticed some connections between the Tanton network and European anti-immigrant parties. For instance, Glenn Spencer, leader of the hate group Voice of Citizens Together and a Tanton grant recipient, recently shared the podium with Nick Griffin, leader of the neofascist British National Party. Both men spoke at an event put on by another racist outfit, American Renaissance magazine.

Swartz: There is a transatlantic character to the ideological underpinnings of the Tanton movement. I believe that there has been for years substantial financial and political and personnel interaction between the Tanton movement here and the anti-immigration movements in Europe. I remember in the '80s, when I was always debating Conner in a variety of public forums, that he made a lot of references to France, how he had just come back from France and so on.

In fact, I believe that Fair and Tanton have an agenda of seeking a Front National [a virulently anti-immigrant French party] type of political party in the United States, in significant part through their strong involvement in the Reform Party. Their takeover attempt was personified by the former governor of Colorado, Dick Lamm, who is a Fair adviser and director and who tried to run for president in 1996 on the Reform Party ticket. In 2000, Pat Buchanan, whose views are quite similar to those of Fair, also tried to take over the Reform Party. [Editor's note: Glenn Spencer was scheduled to speak to the Iowa Reform Party this April.] So while I can't name names, I would guess a significant number of Reform activists are connected to the Tanton network.

But then again, both Lamm and Buchanan failed pathetically. This gives hope that their ideology is seen as bankrupt by most Americans.

IR: Since California's Proposition 187 was thrown out by the courts in 1998, a number of anti-immigration groups like the Voice of Citizens Together/American Patrol and the California Coalition for Immigration Reform [CCIR] seem to have gotten significantly harder-line, and also far more conspiracy-oriented. At the same time, Tanton creations like Center for Immigration Studies very assiduously court mainstream respectability. Are these contradictory strategies?

Swartz: My guess is that every move is strategic and deliberate. The anti-immigration movement is both radicalizing on the fringes of the Tanton network and at the same time mainstreaming at the core of the network. In some ways, Fair is more moderate than it once was. NumbersUSA is also more sedate. Simultaneously, the harder edge is carried by people like [CCIR leader] Barbara Coe. She acts on the extremes, while Fair appears more "sophisticated."

My point is that Tanton is a brilliant tactician. He has created a system where he can have his cake and eat it, too. He has a political movement on the extremist, racial fringe that is stirring up popular discontent and hatred with its harsh rhetoric. There is a lot of fertile ground out there, and the fringe is increasingly significant in areas like what is going on in Iowa right now. At the same time, other Tanton groups are getting invited to testify before Congress on a regular basis.

IR: So what is your prognosis for the future?

Swartz: The challenge is to ensure that our political culture is not poisoned by Tanton and his crowd, and that leaders and citizens alike repudiate racial and ethnic fearmongering. Know-Nothing ideologies—and multimillion-dollar media buys—cannot be allowed to spawn racial and ethnic violence against immigrants.

In Europe over the last 20 years, Tanton-like leaders have resurrected far-right and sometimes violent movements—and political parties—rooted in the fear of the stranger. The Tanton vision laid out in the 1986 memos is of an apartheid United States beset by racial violence, and whites not going quietly into the night as their numbers are overwhelmed by the demographics of immigration.

It would be very unwise to underestimate the danger in the Camp of the Saints ideology that Tanton embodies and in the work that they have been doing for 25 years to turn immigrant against native, black against brown, and so on. But in the end, I am confident that the vast majority of Americans will, as they have in the past, reject the fearmonger and, through the toil of people from all over the world, build the freest and most prosperous nation yet known. America is hugely resilient and immigration is one of our priceless resources, especially in the coming global age. I take nothing for granted when it comes to threats to America's future, but I am totally confident about the goodwill and common sense of America's people.

EGLI HILA

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to congratulate Egli Hila, seventh grader at South Middle School in Hartford, Connecticut, for being named a finalist in the national Do the Write Thing Challenge, and to submit the praiseworthy essay into the CONGRESSIONAL RECORD. I applaud Egli's efforts to tackle the growing problem of youth violence.

The Do the Write Thing Challenge is an initiative of the National Campaign to Stop Violence designed to give middle school students the opportunity to examine the impact of youth violence on their lives and to communicate in writing what they think should be done to change our culture and violence. The program encourages students to make personal commitments to do something about the problem with the ultimate goal of helping them break the cycles of violence in their homes, school, and neighborhoods.

In the world, people are faced with different issues as well as different emotions. There are people out there who are suffering from poverty, from lack of security in their lives but most of all people are constantly suffering from violence whether it's at home or in the streets. This eventually leads to physical and mental stress, anguish, pain, fear (and) hurt. No one wants it or even asks for it, but it still comes knocking at your door. What can one do when there is so much pain? Many questions come to mind but so little answers. How has violence affected my life? What do I think the major causes of youth violence are? What can do about youth violence? How can I stop it? I wish it didn't exist but it does and we have to deal with it the best way possible. These questions that have been raised are very hard to answer but I'll try to answer them to the best of my abilities and knowledge.

I keep repeating the questions in my head over and over again. How has violence affected my life? I can tell you that violence has affected my life but the most common one would be that it makes me angry at times and at other times I'm scared. One word "violence" makes me have so many mixed emotions running through me. Imagine what the actions of violence can do to a person. In schools I see fights and I try to understand why it is happening, but I can't. The people fighting are my fellow classmates. I feel bad for them not only because they will get physically hurt in the process but also they will get suspended. What good came out of it? I don't seem to grasp this concept. When the question of how violence has affected my life is addressed to me, I guess I have to say that in a weird way it has worked to benefit because I know what it is and what it leads to, so I try my best to stay away from it. As mentioned earlier, I also get scared because I see all this hate that people have for one another and it's just not right. I get scared because I don't want to see a world full of hate and full of violence. I am striving for a better world than the one we live in now. In the future, I want to see happiness in people's faces and not sadness.

There are many causes of youth violence. Unfortunately, too many. The major causes would be domestic violence, meaning violence at home. When the parents for whatever (the) reason may be start hitting one another and they constantly scream and can't keep themselves under control, then it's obvious that a child at home who sees these unpleasant actions will eventually do the same thing in a different environment. Peer pressure is also a very big factor of youth violence. Kids by nature want to fit in especially by being in the "cool group." What better way to fit in than do what the group says? If the group says you have to hurt that person whether it's physically or mentally, you want to do it because then you'll be considered "cool" and finally be accepted. That's how most kids fall into the trap and afterwards have a tough time getting out of it. Another cause of violence would be when kids put one another down and they get emotionally hurt. Also, gossip leads to violence because when kids hear these hurtful things being said about them, they want to fight back with the same weapon or go a step further and actually hurt someone physically. Call it revenge but whatever you call it, it will not make a difference because it's violence in the worst way.

Youth violence is simply very sad to think about. In my opinion, kids should think about doing good in schoolwork, making friends (not enemies) having fun, think about college, careers and have the power to dream for a better life for themselves and the people around them. I have been seriously thinking about this issue and what I can do about youth violence. The only answer I come up with is that I could try and stop it when I see it or if I can't stop the fight then I'll let an adult know what's going on so these kids could get help. These kids then might be able to talk about what's troubling them. I guess this could be a step toward recovery. Don't you agree?

Youth violence is everywhere but if we can limit is even just a little bit, then I think we have succeeded.

The courage and dedication that Egli has demonstrated in trying to stop youth violence is admirable. Few students would be able to verbalize their frustrations, let alone identify causes and solutions for youth violence in their schools. Egli Hila is a remarkable student and inspiration for other young Americans, and I would urge other students to follow Egli's example.

TRIBUTE TO MR. ISAAC WASHINGTON

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to Mr. Isaac Washington, who on June 15, 2002 was bestowed the National Newspaper Association's Publisher of the Year Award on behalf of the award winning Black Media Group. Mr. Washington was born in Columbia, S.C. and grew up in public housing, Allen-Benedict Court. But his experiences were not without love. Surrounded by the love of his parents and four siblings, brothers Eddie, Jeremiah and Oliver, Jr. and a sister, Ethel, young Isaac learned the value of reaching out to others.

A graduate of C.A. Johnson High School, he earned a bachelor's degree from Benedict College. His career began in the media business at Columbia's WIS–TV, where he served as Assistant Program Director and Director of Sales Traffic and Operations. He pioneered the Awareness program, WIS–TV's foray into minority affairs reporting and programming.

After his stint at WIS, Washington entered a partnership to publish Black News. His diverse media experience prepared him for his leadership role as President/Publisher of the South Carolina Black Media Group, SCBMG. Within a few years, SCBMG began marketing its product statewide, and eventually evolved into eight newspapers published in virtually every major market of the Palmetto State and in Fayetteville, N.C. In 1997, SCBMG consolidated its newspapers into one statewide publication, The Black News. Within the last three years, Black News has twice been a finalist for the coveted A. Philip Randolph Messenger Award, which honors Black newspapers for journalistic excellence in the field of civil rights.

Washington's community outreach also extends far beyond the walls of the newspaper office. He is a member of Zion Baptist Church in Columbia, where he serves as an ordained deacon and member of the Men's Committee. He also serves on the boards of the American Red Cross, the Will Lou Gray Foundation, and is a commissioner with the S.C. State Housing Authority. He is a lifelong member of Alpha Phi Alpha Fraternity, Inc. and the NAACP. He has been bestowed many honors, including an honorary doctorate of Religious Education from the C.E. Graham Bible College, and has been honored with a mural on the Columbia Housing Authority's Wall of Fame.

Washington established the S.C. Black Media Foundation, a nonprofit organization that provides opportunities for youth in the community through tutorial and job training programs, and provides public housing and other services for the elderly. Mr. Washington, a longtime personal friend, was presented his award during the Merit Awards Dinner, at NNPA's 62nd Annual convention, held in Jacksonville, FL.

He is married to the former Clannie Hart, and has one son, Isaac, Jr., who is a student at Benedict College.

Mr. Speaker, I ask that you and my colleagues join me in honoring an outstanding South Carolinian whose dedication to his profession and family is unparalleled. I wish him good luck and Godspeed.

INTRODUCING FOREIGN LANGUAGE TRAINING LEGISLATION

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. ROEMER. Mr. Speaker, I rise today to introduce, along with my distinguished colleagues, Representatives JIM GIBBONS, MIKE CASTLE, and SILVESTRE REYES, important legislation that strengthens our commitment to train students in foreign language proficiency, particularly languages that are of high national security interest to the United States such as Arabic, Farsi, and Hindi.

Since the tragic events of September 11, 2001, the federal government's deficiency with regard to the availability of experts proficient in foreign languages and knowledgeable of cultures of national security interest has been exposed. This shortage of federal employees fluent in foreign languages is a major obstacle towards our objective of winning the war against terrorism. FBI Director Robert Mueller has underscored this concern through a public plea for Americans who are proficient in Arabic and Farsi to offer their services to the federal government.

This legislation takes great strides toward addressing the federal government's foreign language deficiency concerns by expanding and strengthening the National Security Education Program (NSEP) at the Pentagon. A stronger commitment to the NSEP by Congress will serve to increase the quantity and proficiency level of federal employees with expertise in the languages and cultures of countries critical to U.S. national security.

Nearly 80 federal agencies require professionals proficient in 100 foreign languages to deal with a wide range of threats, as well as to advance our diplomatic, commercial and economic interests worldwide. As a recent GAO study reported, technology advances that result in the collection of growing amounts of information and greater U.S. involvement in global activities have made it difficult for government agencies to meet their language requirements. This failure has been damaging to our nation's security. In hearings before the Senate Government Affairs Subcommittee on International Security, Proliferation and Federal Services one year prior to the terrorist attacks on the World Trade Center and Pentagon, government officials testified that language deficiencies had compromised U.S. military, law enforcement, intelligence, counter-terrorism, and diplomatic efforts. Yet, despite this demand for language expertise, only eight percent of American college students study a foreign language—a statistic that has not changed in 25 years.

The funding increase incorporated in this proposed legislation for NSEP will be used to increase the number of scholarships and fellowships for language and area studies that the program makes available to U.S. college and university students who commit to federal employment in a national security position as a condition of their award. The funds will also allow NSEP to quickly establish programs at major U.S. universities designed to produce professionals proficient at the advanced level in languages, such as Arabic, Farsi, Hindi, Turkish, Russian, Japanese, Chinese and Korean—all critical to U.S. national security. These programs will not only be available to NSEP award recipients but to other students and government employees who want to enhance their language proficiency. The $10 million increase in FY 2003 will supplement $8 million in annual trust fund expenditures currently incurred by the program.

NSEP has been highly successful in encouraging American students to pursue language and cultural studies in world regions critical to U.S. interests and helping those students find national security positions in the federal government. Since its creation in 1991, NSEP has awarded nearly 2,300 scholarships and fellowships for study of more than 35 languages in nearly 100 countries. About one in three to four awards are made to students in the applied sciences, and nearly three-quarters of NSEP award recipients fulfill their service requirement by working in positions at the Departments of Commerce, Defense, Justice, State, and Treasury, in the intelligence community, at NASA or USAID; and in the Congress. Given this impressive performance and the federal government's growing demand for language expertise and cultural knowledge, an expansion of the NSEP program is an essential, creative and cost-effective investment in our nation's future security.

Mr. Speaker, in conclusion, Congress must be proactive in this war on terrorism by resolutely addressing the federal government's foreign language deficiencies. Strengthening our commitment to proven foreign language education programs like the National Security Education program is an excellent start. I strongly urge my colleagues to review and cosponsor this important foreign language training legislation.

PERSONAL EXPLANATION

HON. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. COX. Mr. Speaker, on rollcall No. 331, the first of two amendments offered by Mr. Flake, I was recorded as "aye" but intended to vote "No." For the record, I oppose the amendment.

STOP THE VIOLENCE

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to congratulate Olesya Koretska, a seventh grader at South Middle School in Hartford, Connecticut, for being named a finalist in the national Do the Write Thing Challenge, and to share her impressive essay with my colleagues. I commend Olesya for standing up to the constant pressures that she faces in her school, and for her courage in trying to combat the ever-growing problem of youth violence.

The Do the Write Thing Challenge is an initiative of the National Campaign to Stop Violence designed to give middle school students the opportunity to examine the impact of youth violence on their lives and to communicate in writing what they think should be done to change our culture and violence. The program encourages students to make personal commitments to do something about the problem with the ultimate goal of helping them break the cycles of violence in their homes, school, and neighborhoods.

I had the opportunity to meet with Olesya, and was amazed that she so ably articulated here concerns only after being in the Untied States for a few years. Not only has she overcome language and social barriers, Olesya has taken the initiative to remedy the problems that she and her classmates face everyday. In the short amount of time she has been in the Untied States, Olesya has immersed herself in her new environment and recognized what must be done to improve that environment for herself and her classmates.

Violence is one of the most important issues of our society because of its tremendous impact on the health and well being of our youth. Violence results in physical and mental injury of a person and sometimes even in death. It affects children, youth, and adults. It has affected (the) life of almost every person in the U.S.A. including me. There are the ways to get involved into violence, but there are the ways to avoid it too.

Having a good friend is one way to stay out of violence, but are you sure that you have a good friend? I was sure I did. However that "good" friend almost involved me in stealing. We were best friends and once she told me that she was a member of a gang I really wanted to join. I asked if I could be in the gang. She said yes, but I had to steal something for it. I was thinking about that all night long but I couldn't think of anything, so I asked my parents for advice. My parents explained to me that no friend would ask me to steal and if she did she was not worth to be my friend. So I left the gang and my friend. Now I'm glad that I took my parents' advice. It stopped me from doing something very bad.

The ideas about violence don't usually come to the youth by themselves. there are a lot of sources where teens can see or hear about it. For example, violent media. Sometimes the young fans of the famous actors can become thieves or even murderers after they've seen the movie with actor doing the same.

The other cause of the youth violence is the peer pressure. Often the youth is violent because of the bad friends. Once a girl I knew began to steal different things because she wanted her new friends to see how "cool" she was. And she did until she got caught. Then her friends who made her steal left her out. She was also punished at home and suspended from school. I think that choosing friends carefully is a better idea then this.

Another reason of the youth violence is domestic violence. On one hand, if a child grows up without parents, and nobody takes care of him he is not going to care about anybody else. He can take somebody's property or hurt somebody. On the other hand, if the parents love their child so much and give their child too much, give him and do for him whatever he wants then a child will get used to it. After that, he'll demand something from other people too. And that's what will later push him to violence. So it's very important that parents raise their children properly.

There are a lot of ways that we all can do to avoid violence. First, we can talk to our parents or teachers. Talking to somebody close to you helps a lot. For example, teachers can give you advice. Your parents can talk to you about their experience when they were young. They can also explain why violence is bad and unnecessary. All those may change our minds about violence.

Second, we should choose our friends carefully. For instance, if my new friend has violence problems then how do I know that she do something violent again? That's why we should avoid friends like that. Some teens can push you to violence, too.

Third, avoiding media makes your mind clear from violent thoughts. For example, my neighbor who watched too many violent movies hurt his sister while playing "Spy" games. After that his parents made him do something more interesting like reading, watching adventure movies and funny shows. After that the boy had changed. He stopped playing "Spy" games and he became a better student. Now he is very thankful to his parents.

We have to stop the violence! Then our future will be safe and peaceful.

I admire Olesya for her bravery in speaking out about youth violence and her commitment to stop it. Few students would be able to verbalize their frustrations, let alone identify causes and solutions for youth violence in their schools. Olesya Koretska is an extraordinary student and inspiration for other young Americans, and I would urge other students to follow in her remarkable footsteps.

RECOGNITION OF MR. JOE ORSCHELN

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Joe Orscheln, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Joe is a senior at Southern Methodist University and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Joe joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, D.C, a program designed to involve students in the legislative process through active participation. Through this program, Joe has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Joe has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Joe has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Joe Orscheln for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

TRIBUTE TO DR. JANE GATES

HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a great American, a dear friend and a distinguished citizen of the First Congressional District of Arkansas, Dr. Jane Gates.

During my tenure in office, it has been my privilege to know and work with Dr. Jane Gates. As Chair of the Political Science Department and former Associate Dean of the College of Arts and Sciences at Arkansas State University, Dr. Gates has mentored numerous students as they have prepared for their future endeavors. Countless individuals from across our state and nation, regularly seek the wise counsel of Dr. Gates who has authored many scholarly publications, presented at many academic forums, and participated in numerous professional and community activities.

Despite the overwhelming pace she sets for herself, one priority always remains—her students. Perhaps the most impressive of her legacies are the many former students that now serve our state and this nation as public servants.

In August, Dr. Gates will leave Arkansas State University after a distinguished 27-year career to assume her new responsibilities as Dean of the College of Arts and Social Sciences at Savannah State University.

It has been a profound honor and privilege to know Dr. Gates and to be her friend for many years. I have been the recipient of her wisdom and the witness to her fairness and compassion toward all those she encounters.

The state of Arkansas is a better place because of Dr. Jane Gates, and I am proud to call her my friend. On behalf of the United States Congress, I extend congratulations and best wishes to this faithful public servant and wish her the best in her future endeavors.

TRIBUTE TO JILL HAZELBAKER

HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WALDEN of Oregon. Mr. Speaker, I rise today to convey my deepest appreciation to a member of my Washington, D.C. staff for her tireless efforts on behalf of the good people of Oregon's 2nd Congressional District. Jill Hazelbaker will soon conclude her internship and return to the University of Oregon to finish her dual degree in Political Science and History.

Jill came to my office fresh from a semester abroad in London. She had only a few days to relax at home in Salem, Oregon, before picking up and moving to Washington, D.C. for her summer internship. Many students would balk at such a quick turnaround, but not Jill. Her travels have taken her from Africa to Europe, and she has participated not only in a semester abroad in London, but a summer studying in Beijing, China. She has no qualms about traveling to distant lands and learning about other people and cultures, an attribute that has served her well in the unique political environment of Capitol Hill and helped ease her transition into this international city.

Though Jill has made a habit of traveling the globe, she is an Oregonian through and through. She cares deeply about the people of Oregon and the issues that matter to them, and plans on making her home there. She is committed to her community and volunteers her time reading to elementary school children and registering voters at her university. Jill takes pride in her work and is one of only eight student advertising executives at the Oregon Daily Emerald, a paper serving the UO campus community.

Mr. Speaker, Jill has been a terrific addition to my office. She tackles every project she is given with enthusiasm and dedication. Her background in history has made her a natural at giving tours of the Capitol, and she greets constituents with a warm smile and makes them feel at home. Jill has also attended committee mark-up meetings and made a considerable effort to learn as much as she can about the legislative process.

Mr. Speaker, my office has been lucky to have an intern like Jill. Her strong work ethic and upbeat attitude will truly be missed around the office, but will no doubt serve her well in any field of work that she chooses to pursue. Best of luck in the future Jill, and keep up the good work.

Thank you, Mr. Speaker. I yield back the balance of my time.

INTRODUCING A RESOLUTION TO EXPRESS THE SENSE OF THE HOUSE OF REPRESENTATIVES IN SUPPORT OF FEDERAL AND STATE FUNDED IN-HOME CARE FOR THE ELDERLY

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to express my support of Federal and State funded in-home care for the elderly. This legislation essentially highlights the inadequacies seniors face when electing in-home care. By increasing financial assistance for in-home care, establishing fee payment guidelines, implementing better schooling for in-home aides, and assembling a supervisory board of care givers, we can help to ensure that the quality of care elderlies receive in home is as adequate as hospitalized attention.

Mr. Speaker, this is an important resolution for two crucial reasons. First, it allows the elderly to remain independent and sustain viability during the last years of their life. Supporting studies show that seniors who receive in-home care have greater life expectancies than seniors who are moved from everything that is familiar to them and placed in nursing homes. Second, this resolution would encourage increased employment opportunities in the nursing and in-home care industries. By implementing government funded in-home care to equal that of nursing home care, more seniors will elect being nursed at home, which in turn increases job opportunities. All of which we can acheive through raising the quality of in-home care.

Mr. Speaker, I urge my colleagues to support this legislation. As Members of Congress we have a great opportunity to make a positive impact on this issue, an issue that is of concern to many of our grandparents, parents, and will be of concern to us. I look forward to working with my colleagues and moving this resolution foward.

PARTIAL-BIRTH ABORTION BAN ACT OF 2002

SPEECH OF

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mrs. MINK of Hawaii. Mr. Speaker, I rise today to state my opposition to the unconstitutional H.R. 4965, the Late Term Abortion Act of 2002.

At a time when there are many other issues facing our nation, from the economy to the war on terrorism, the Republican leadership has instead decided to interfere with a woman's right to choose.

Since the last House vote on a bill banning so-called "partial-birth abortion," the Supreme Court has spoken unequivocally on these bans. The decision in *Roe* v. *Wade* struck a careful balance between the right of a woman to choose and the states' interest in protecting potential life after viability. Most recently, in June 2000, the Court handed down *Stenberg* v. *Carhart,* striking down a Nebraska law banning "partial-birth abortions." The Nebraska law is nearly identical to H.R. 4965. The court gave the following reasons for striking the Nebraska ban.

First, the Nebraska ban was unconstitutionally vague because it did not rely on a medical definition of what is prohibited. H.R. 4965 suffers from this same flaw. The bill does not identify any specific procedure it seeks to ban. Nor does it contain language stating that it applies only post-viability. Nor does it exclude common procedures from its prohibitions. As a result, contrary to rhetoric that focuses on a full-term fetus, the bill applies well before viability, and could ban other safe procedures.

Second, the Nebraska law did not provide an exception to protect women's health. Instead of including health exceptions, the sponsors of H.R. 4965 have provided fifteen pages of "findings" which assert that Congressional findings of fact are superior to judicial findings of fact. In short, these sponsors are essentially admitting that their bill is unconstitutional under *Stenberg* v. *Carhart,* and that Congress should simply ignore this Supreme Court ruling.

As I value women's health and a woman's right to choose, I voted against H.R. 4965.

RECOGNIZING MR. FLETCHER COX

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Fletcher Cox, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Fletcher is a senior communications major at William Jewell College and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Fletcher joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, DC, a program designed to involve students in the legislative process through active participation. Through this program, Fletcher has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Fletcher has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Fletcher has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Fletcher Cox for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT

SPEECH OF

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 2002

Ms. SCHAKOWSKY. Mr. Speaker, I rise today to draw to the attention of my colleagues Section 642 of the Treasury-Postal Appropriations bill, which prohibits the Bureau of Alcohol, Tobacco, and Firearms from using appropriated funds to release information from its Trace and Multiple Sale Database. Effectively, this provision would prevent state and local governments from accessing information about multiple gun buyers who may be selling guns to criminals in their communities and data on guns traced to crimes on their streets.

These restrictions on access to public information would compromise the safety of many of our communities across the country, including Chicago. In fact, one of the stated purposes of the ATF's crime gun tracing program is to enable participating local governments to obtain information regarding the sources and movement of guns used in crimes, so that local law enforcement agencies may develop successful strategies to reduce gun violence. In the past, information from ATF's Trace and Multiple Sale Database has been invaluable in helping cities and states determine who is illegally selling guns in their communities. The City of Chicago, which has a ban on most types of guns, is trying to use this information to determine who is marketing guns to its residents. Yet, Section 642 would require that ATF withhold multiple sales and crime gun trace data from disclosure under FOIA, regardless of how essential that data may be to local law enforcement agencies. Withholding information from ATF's database would prevent City officials and others from doing all they can to secure the safety of their streets and the safety of their residents.

Furthermore, this provision attempts to override existing laws regarding the Freedom of Information Act by forbidding the ATF to use Federal funds to release information that, by law, it is required to make available. This defies common sense—that a government agency would be forbidden by law to use appropriated funds to carry out and obey existing law.

If proponents have a problem with allowing this information to be released and believe it should be exempted under the FOIA, then they should address the FOIA issue head-on, not try to endrun it by placing a provision in an appropriations bill. But they know that they probably couldn't win that fight. In a case involving the City of Chicago's FOIA request for ATF information, a Federal court has ruled that the release of this information is not protected by current FOIA exemptions. In fact, the 7th U.S. Circuit Court of Appeals went so far as to say that, "When one balances the public interest in evaluating ATF's effectiveness in controlling gun trafficking and aiding the City in enforcing its gun laws against the nonexistent or minimal privacy interest in having one's name and address associated with a gun trace or purchase, the scale tips in favor of disclosure."

Finally, Section 642 goes beyond the scope and jurisdiction of this bill by applying this prohibition not just to the bill before us but to "any other Act with respect to any fiscal year." This attempts to place mandates on any other legislation this body has considered in the past or may consider in the future. Without the waiver granted in the rule, this provision would certainly be subject to a point of order.

At this time when we are demanding that corporations and CEOs be held accountable for their actions, we must also make sure that our government agencies are accountable. That is what FOIA is intended to do. We must preserve its integrity and importance in our government. Section 642 is dangerous and unnecessary, and I will work hard to have it removed from the bill in Conference.

FALUN GONG

SPEECH OF

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. GEPHARDT. Mr. Speaker, earlier this evening I was unavoidably detained during the vote on House Concurrent Resolution 188, expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners. Had i been present for this vote, I would have voted "aye."

As enumerated repeatedly in U.S. Government and independent human rights reports, practitioners of Falun Gong have been subjected to numerous human rights abuses by the Chinese Government. These abuses have extended from intimidation and surveillance to torture and other cruel, inhumane, and degrading treatment against them and other prisoners of conscience.

These practices must end. This resolution calls on the Chinese Government to release from detention all Falun Gong practitioners and put an end to the practices of torture and other cruel, inhumane, and degrading treatment against them. It also calls on the Chinese Government to abide by the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights by allowing Falun Gong practitioners to pursue their personal beliefs.

Mr. Speaker, we must continue to remind the international community of the Chinese Government's systematic abuse of the human rights of Falun Gong practitioners and others, and to demand—in every possible forum—that the Chinese Government cease such activities. I therefore strongly support this resolution.

TRIBUTE TO GEORGE FISHER

HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a talented artist, a shrewd political observer and great American, George Fisher.

Since the 1950s, George has been dispensing his incisive form of commentary in the form of political cartoons. He has trained his artistic "guns" on everything from satirizing Arkansas politicians to commenting on international affairs. Nothing seems to escape his notice, and his ability to expose and explain complex social and political issues truly puts him in a league of his own.

George began drawing political cartoons for the West Memphis News soon after returning from Europe where he bravely served his country as an infantry soldier in World War II. He honed his talent and predilection for exposing corruption in local politics during this time as he worked to undermine the influence of the local political machine through his political cartoons. After the West Memphis News was driven out of business by the political machine that he fought, he moved to Little Rock and opened a commercial art service. On the advice of friends and admirers, George picked up his pen and began drawing cartoons again a decade later for the North Little Rock Times.

In 1972, he signed a contract with the Arkansas Gazette to draw two cartoons a week for publication. To the surprise of no one who knew him at the time, he was appointed the Gazette's chief editorial cartoonist just four years later. George's career also outlived the life of the Arkansas Gazette, and he continues to periodically have cartoons published in the Arkansas Democrat-Gazette and the weekly Arkansas Times.

I have been a big fan of George's throughout his career not just for his great talent, but also because of his professionalism and honesty. When you see a George Fisher cartoon, you know that George is just "calling them like he sees them." After reading one of his cartoons, I may not always agree with George, but I always respect him.

I think that Ernest Dumas summed up George Fisher's genius best when he wrote in the introduction to a volume of George's political cartoons called "The Best of Fisher":

> What has robbed Fisher of greater national celebration is the perception of him as a provincial cartoonist. It is not without premise. He has continued to draw as much about local and state subjects as national and international ones. And alongside his arsenal of classical metaphors from Shakespeare to Norse mythology, are all those bucolic images, so familiar to Arkansawyers, so foreign to those outside the Rural South. . . . Nothing is provincial, however, about the lessons or the humor of the art. They are universal.

On behalf of the United States Congress, I express my gratitude and best wishes to a faithful public servant, an Arkansas icon and a man I am proud to call my good friend, George Fisher.

RECOGNIZING MR. JAMES MACKLE

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. James Mackle, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

James is a senior political science major at Furman University and has distinguished himself as an intern in my Washington Office by serving the great people of the 6th District of Missouri. James joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, DC., A program designed to involve students in the legislative process through active participation. Through this program, James has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, James has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. James has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. James Mackle for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

HONORING BROWARD COUNTY SCHOOLS FOR THEIR CONTINUED IMPROVEMENT

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to honor Broward County schools on being just one of five large urban school systems nationwide whose standardized test scores equaled or exceeded their state averages according to a new study by the Council of the Great City Schools.

For the state of Florida this is no small feat, for improving education of our young people is our highest priority. The study focused on 57 school districts around the country examining test results from the 2000–2001 academic year.

When the Florida Comprehensive Assessment Test (FCAT) testing began five years ago, those in grades three through ten in Broward County schools placed below the state averages, but ever since they have moved well past, making exceptional gains especially amongst the youngest of the students.

For a long time, other districts were being used as the examples and models for elite schools. Now Broward County can be the exemplar for a better education. Broward County has the fifth largest school system in the country, and has raised their scores at a greater rate than any other Florida school district.

For example, Broward's black fourth-graders improved their score ftom the previous year by 12 percentage points on the reading part of the FCAT test.

I would also like to commend Miami-Dade County schools for closing the test score gap between minority and white students more than any other district. Black and Hispanic students made the greatest gain in FCAT math scores.

The overall gap between white students and black and Hispanic students is dwindling and with renewed effort and determination, it is only a matter of time when all of our kids will be enhancing their scores equally.

Mr. Speaker, I must say I am extremely pleased with the academic achievements Broward County and Miami-Dade counties have made. Their students are receiving better educations and a renewed sense of committment for a higher education. For that, we shall all be better off. Again, I congratulate the students and educators of Broward and Miami-Dade county.

IN TRIBUTE TO SPECIAL AGENT JOHN MICHAEL GIBSON AND OFFICER JACOB JOSEPH CHESTNUT

HON. ALBERT RUSSELL WYNN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WYNN. Mr. Speaker, I join my colleagues in remembering and paying tribute to Special Agent John Michael Gibson and Officer Jacob Joseph Chestnut. Two valiant federal employees who, in a selfless act of heroism, made the ultimate sacrifice in service to their country on July 24, 1998.

Special Agent John Michael Gibson was a religious man, a family man. He always made time for his wife and their three children. He is remembered as a kind, honest, devout, caring and giving human being who was loved and respected by his friends, colleagues, and his community.

As are many employees on Capitol Hill, Officer Jacob Joseph Chestnut was a resident of the 4th Congressional District of Maryland. Not only is he missed by the Department, but also the Maryland community suffers without the benefit of his kind and gentle spirit.

A retired Air Force Master Sergeant and a 18 year veteran of the United States Capitol Police, Officer J.J. Chestnut was a model federal employee and a gentle human being. A husband and father of five, he was an individual who, by his deeds, made an indelible mark on the lives of all those he came in contact with as he performed his duties protecting the Members, staff and visitors to the United States Capitol, and in his service to his community.

It is only fitting that we honor this individual, who has brought honor to his family; his community; his organizations, the United States Capitol Police and the United States Air Force; and his country with his dedicated service and human kindness.

As a result of a bill that I introduced, and as a token of appreciation from a grateful nation, the United States Postal Service building at 11550 Livingston Road, Fort Washington, Maryland was designated the "Jacob Joseph Chestnut Post Office Building," on April 8, 2000.

Mr. Speaker, it is only fitting that we honor and cherish the memories of these brave men. I hope their families can continue to take comfort in knowing that many throughout the nation, including myself, remain in prayer for them and the U.S. Capitol Police Department.

TRIBUTE TO THE COMMITTEE FOR GREEN FOOTHILLS ON THE OCCASION OF THEIR 40TH ANNIVERSARY

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. ESHOO. Mr. Speaker, I rise today in recognition of the 40th Anniversary of the Committee for Green Foothills, based in Palo Alto, California and dedicated to preserving open space on the San Francisco Peninsula.

In 1962, a group of more than 25 concerned citizens gathered in Ruth Spangenberg's living room for a meeting organized by Lois Crozier-Hogle and they created a brand new grassroots organization committed to the protection of the Peninsula foothills from development. At that first meeting, Gary Gerard suggested the name Committee for Green Foothills and Wallace Stegner was elected the first president of the group.

Since that first meeting, the group has remained at the forefront of the establishment and maintenance of policies that protect the environment and open space throughout San Mateo and Santa Clara Counties of California. They've done this by encouraging long-range planning and sensible growth by local governments, businesses and developers. The manifestation of these enlightened policies can be seen in the Stanford University 1971 Land Use/Policy Plan, the 1994 Santa Clara County General Plan, and San Jose's first Urban Growth Boundary in 1995. The Committee has also led the way in ensuring the protection of a number of critical habitats and key open space lands including Edgewood Park, the Palo Alto Baylands, Mirada Surf, Bair Island, Montara State Beach, and Pigeon Point among many others.

Today, the goals of its founders carry on through the Committee's growing membership which not only advocates for the preservation of land and open space, but also educates residents of the San Francisco Peninsula about the land and the critical need for sustainable development. With the support of its membership and its partnerships with many public and private environmental organizations, the Committee has made a profound difference in San Mateo and Santa Clara Counties and we are a better place because of their extraordinary accomplishments.

Because of the forty years of dedicated advocacy and education, the Committee for Green Foothills has brought about the protection and preservation of some of our nation's most prized lands. These lands not only enhance our quality of life . . . they have attracted people from around the country and the world to see, to hike, and to walk . . . all in awe of what the jewels in the crown of California's 14th Congressional District are.

Mr. Speaker, I ask the entire House of Representatives to join me in saluting the Committee for Green Foothills on their 40th Anniversary and thanking them for their incomparable contributions to our community and our country.

RECOGNIZING MR. BROCK BANKS

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Brock Banks, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Brock, the son of Paul and Jane Banks of Weston, Missouri, is a student at Maur Hill Prep High School and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Brock joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, DC, a program designed to involve students in the legislative process through active participation. Through this program, Brock has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Brock has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Brock has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Brock Banks for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

IN RECOGNITION OF MACHINE EMBROIDERY

HON. BOB RILEY

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. RILEY. Mr. Speaker, I rise today to give recognition to Machine Embroidery.

We are all familiar with hand embroidery pieces done by our grandmothers or on display in historic houses and antique shops. But today, there are machines that can embroider on any fabric from the most delicate material used in heirloom sewing to the heaviest material from which luggage is made.

It is in the past few years that home embroidery machines have become more popular. And with modern technology, computers and the internet, there are unlimited designs and a worldwide network of fellow machine embroiderer's who share ideas and their designs.

After September 11, 2001, there were over 600 memorial designs shared by designers all over the world. These patriotic designs were embroidered on many wearable and usable items reflecting our love of our country.

The home embroidery machines have given a boost to our country's economy through cottage industries that have sprung up, and this is true of other countries as well.

But, most important, thousands of individuals all over the world using embroidery machines are each doing a small part in their own way to make our lives more beautiful with their handiwork.

IN HONOR OF MR. LEWIS EISENBERG

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mrs. ROUKEMA. Mr. Speaker, I rise today in recognition of a good friend of the State of New Jersey, Mr. Lewis Eisenberg. On October 12th, Lew will celebrate his 60th birthday with family and friends in Rumson, New Jersey. And I am honored to take this opportunity to recognize the career, the leadership and the friendship of Lew Eisenberg.

Over the years, I have spent much time with Lew in the same political circles, and even New Jersey circles. Yet both of us share more than just the same group of friends. We share a strong belief in the ideals of our Party—and the people who work to achieve those ideals. Lew has turned this passion into a career of significant public service.

Lew has held many titles, and done much with those titles. Indeed, positions of leadership and power can be overwhelming, yet Lew has demonstrated outstanding guidance and has consistently been recognized and awarded for the contributions he has made to society.

Lew has been in positions of authority at times when very few people would ever want to be in those positions. And he handled them with skill and compassion. I cannot speak justly of Lew's career without mentioning his tremendous and difficult service as Chairman of the Port Authority of New York and New Jersey from 1995 through December of 2001. After his term ended, Governor Pataki appointed him to the position of Director of the Lower Manhattan Development Corporation. New York and New Jersey have been lucky to have such a man serve them, especially during their time of need.

Lew now serves in a senior capacity with our Party. As a nation that has as its foundation a strong two-party system, I have faith that this service will benefit the entire nation. I am eager to observe his success. He continues to truly work for the people, and I am grateful to call this good man a friend.

Mr. Speaker, I ask my colleagues to join me this evening in honoring Mr. Lewis Eisenberg.

HONORING BROWARD COUNTY GOVERNMENT FOR WINNING 11 NACo AWARDS

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to offer my heartfelt congratulations to my home of Broward County for winning a total of 11 awards in the National Association of Counties 2002 Achievement Awards Program. The awards represent the very best in innovative county government programs that improve the implementation and enhancement of efficient service to promote responsible and reliable county government. For Broward County and the state of Florida this is an incredible accomplishment, for it shows that local government can make significant strides to improve its effectiveness.

I am proud to recognize the many hard working county employees for providing individuals the programs and services they need to be active and productive members of our community.

Mr. Speaker, I want to briefly highlight 3 of the 11 award winning programs.

First, let me identify the Environmental Benchmarks Program which was set up to evaluate the state of natural resources in Broward County. The Departments of Planning and Environmental Protection, have created a system of performance measures to gauge the pressures facing natural resources in the county. The program is part of the Broward County Commission's New Visions goal to develop a comprehensive policy to help protect the local environment.

Another noteworthy NACo award winning program was the Integrated Services for Older Adults with Substance Abuse Issues program. For elderly patients with substance abuse problems, the county provides an array of services including prevention, treatment and outpatient services.

And finally, let me cite the Employee Computer Literacy Access Program, which has helped employees purchase computers for home use through County surplus sales. The County also provides computer training to help employees gain more skills for job enhancement.

Broward County has also created programs that deal with the stimulation of tourism. The county has also provided a Cultural Information Center, so visitors can get quick and easy information about events in the community.

The Broward County Government has been a beacon to the rest of the country that government truly is most effective at the local level. I once again proudly offer my congratulations to Broward County for their 11 NACo awards. They indeed deserve them.

DISAPPEARANCE OF RAOUL WALLENBERG

HON. MICHAEL FERGUSON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. FERGUSON. Mr. Speaker, I rise today on behalf of Raoul Wallenberg, a Swedish diplomat during World War II. He is attributed with saving the lives of up to 100,000 Hungarian Jews from death camps in 1944 and 1945.

Raul Wallenberg was born on August 4, 1912. To this day, we do not officially have a date of when he died. In January of 1945, Wallenberg was taken into the custody of then Soviet Russia. The Swedish government has lobbied on a number of occasions for answers regarding his captivity—to little or no avail. On January 12, 2001, a joint Russian-Swedish panel released a report that did not reach any conclusion regarding Wallenberg's fate.

If Adolph Hitler represents the worst of mankind, then Raoul Wallenberg represents the best. As a constituent of mine, Hyman Kuperstein of Springfield, New Jersey, said: "There was no Wallenberg in France or Romania," and too many Jewish lives were lost there. Thank God for Raoul Wallenberg.

This August 4 would be Raoul Wallenberg's 90th birthday. The world has a right to know when and how he died.

TRIBUTE TO ANTHONY AZADEH

HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WALDEN of Oregon. Mr. Speaker, I rise today to pay tribute to a member of my Washington, DC staff for his tireless efforts on behalf of the good people of Oregon's 2nd Congressional District. Anthony Azadeh will conclude his internship this week to pursue a law degree at the Northwestern School of Law at Lewis and Clark College. Anthony has done a great job and will be missed.

Following his graduation from Aloha High School, Anthony chose to further his education by attending Lewis & Clark College, where he stood out both academically and athletically. He achieved Dean's List honors and a Phi Beta Kappa key while pursuing his bachelor's degree in Political Science, and was still able to play four years of football for the Pioneers as a running back. Anthony led the team in rushing yards for the 2000 season. Not many students are able to balance their studies with outside activities, but Anthony was able to excel at both.

While still in school, Anthony made a run for Oregon State Representative in the 38th District, an attempt that was surely difficult during his last semester in college. Facing a tough primary, Anthony worked hard soliciting votes by going door-to-door and convincing students on campus to switch their party affiliations to vote for him. Although he was defeated in the primary, Anthony showed great promise as a future candidate.

Anthony has been an asset to my office during his tenure. He brought with him a strong interest in politics and a true desire to serve the people of Oregon. He worked tirelessly at any task he was given, from simple data entry to drafting letters. Anthony also used his time in Washington to learn about many different aspects of government, taking time to attend committee hearings and lectures.

Mr. Speaker, Anthony has the right combination of talent, determination, and idealism to make it far in this world, and I have every confidence that he will continue to do well in law school and in whatever else he decides to pursue. Oregon is lucky to have such an outstanding citizen, and I wish Anthony the best of luck in his future endeavors.

RECOGNIZING MR. JOSH WOOLSEY

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Josh Woolsey, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Josh is a senior at the University of Central Florida and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Josh joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Josh has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Josh has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Josh has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Josh Woolsey for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

RECOGNIZING THE ARIZONA COALITION FOR NEW ENERGY TECHNOLOGIES

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PASTOR. Mr. Speaker, I rise today to recognize the work of the Arizona Coalition for New Energy Technologies. This coalition brings together over three dozen business and non-profit organizations from around Arizona to educate opinion leaders and other key stakeholders about the many benefits of renewable energy and energy efficient technologies.

Since its formation in January of this year, the Arizona Coalition for New Energy Technologies has achieved some important accomplishments. It helped four Arizona state legislators launch a bipartisan Renewables and Energy Efficiency Caucus in the state legislature, modeled on the U.S. House Renewable Energy and Energy Efficiency Caucus of which I am a member. The mission of this state caucus, which has grown to 14 members of both parties, is to educate lawmakers about cutting-edge advances in new energy technologies to market in Arizona, the United States and the world. Under the auspices of this caucus, three member companies of the Arizona Coalition for New Energy Technologies presented a well-received informational briefing in February to state legislators and other interested parties at the state capitol in Phoenix.

Arizona is a national leader in promoting clean new energy technologies through state laws and policies, which is appropriate, given our state's wealth of solar and other renewable resources. I salute the Arizona Coalition for New Energy Technologies and congratulate the Coalition for its leadership in educating key stakeholders on the growing importance of new energy technologies to the energy security of our state and nation.

CONGRATULATING SARA McKIERNAN

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. KIRK. Mr. Speaker, on January 29, 2002, President Bush called upon every American to volunteer two years to the service of our country. President Bush also called for the United States to renew our commitment to the Peace Corps by doubling the number of volunteers in five years.

This August, Sara McKiernan from Winnetka, Illinois, will return from her two year Peace Corps term in Mongolia. Sara's commitment to her country and compassion to the world is an example for us all. While in Mongolia, Sara taught both young children and adults the English language. But, more importantly, Sara's work was a vehicle in spreading the principles of democracy throughout the world.

As several members of this body know, the job of a Peace Corps volunteer is one of the most challenging in the world. I commend Sara and all the Peace Corps volunteers deployed throughout the world. These past two years have been an even greater challenge being separated from family and loved ones, particularly during these traumatic times. But her work could not be more important. We appreciate Sara's work and dedication, welcome home.

INTRODUCTION OF CONSTITUTIONAL AMENDMENT TO PROTECT THE PLEDGE OF ALLEGIANCE AND THE NATIONAL MOTTO

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PICKERING. Mr. Speaker, today I am introducing legislation that would create a constitutional amendment to protect the Pledge of Allegiance and the National motto. Recently, a federal court in San Francisco ruled that the Pledge of Allegiance was unconstitutional and cannot be recited in schools.

This is the latest in a rash of stunning decisions that have come from our federal courts. It is an unfortunate assault on America's tradition of recognizing the role of God in our country's life and as the foundation of our liberties.

The order and decision by this court has been suspended, but it is a chilling fact that this decision was ever issued in a U.S. Federal court. An overwhelming majority of Americans were outraged with this decision and are hopeful that it will be overturned—but there is no guarantee. In fact, there have been reports of those wishing to challenge the use of "In God We Trust," the National motto, on our currency.

Unfortunately, there has been a trend in our courts that have sought to remove every vestige of God from our country, while child pornography is protected. The time for action has come. Today, I am introducing legislation that would provide for a constitutional amendment to protect the "Pledge of Allegiance" and the national motto "In God We Trust."

Amending the Constitution is never taken lightly, nor should it be. Yet Congress can no longer sit idly while the courts rewrite our nation's history and traditions. This amendment is very clean, clear, concise, and as unobtrusive as possible. However, it is very effective and the only way to ensure that the Pledge of Allegiance and the national motto are protected and preserved.

I urge my colleagues to cosponsor this bill and hope that we can begin the process to move it forward.

RECOGNIZING MS. MEGHAN FOSTER

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Ms. Meghan Foster, a very special young woman who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Meghan is a senior psychology major at Texas Christian University and has distinguished herself as an intern in my Washington Office by serving the great people of the 6th District of Missouri. Meghan joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Meghan has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During her time as an intern in my office, Meghan has successfully demonstrated her abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Meghan has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of her knowledge and skills acquired prior to her tenure as an intern and through a variety of new skills she has acquired while serving the people of Missouri and our nation.

Mr. Speaker, I proudly ask you to join me in commending Ms. Meghan Foster for her many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to her our very best wishes for continued success and happiness in all her future endeavors.

OPERATION ADOPTED HEROES: THE STRENGTH OF A COMMUNITY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. RANGEL. Mr. Speaker, I rise today to pay tribute to Operation Adopted Heroes. This project was started by members of the small community of DuBois, Pennsylvania with the objective of providing relief to the grieving New York firefighters of Engine Company 84 and Ladder Company 34 following the September 11th attack on the World Trade Center. The fire station, located in the Washington Heights section of my congressional district, lost seven current and former members in responding to the attack.

Firefighter Gregg Atlas, Captain Frank Callahan, Firefighter Dana Hannon, Lieutenant Tony Jovic, Firefighter Gerry Nevins, Lieutenant Glenn Perry, and Battalion Chief John Williamson died in the line of duty on September 11th.

Delores "Dee" Matthews, a caring and compassionate neighbor who has served as moderator of the New York Presbyterian Church and lives in the neighborhood of the fire station, wanted to do something to allay the grief of the firefighters. She reached out to her closest friends in her hometown of DuBois, Pennsylvania, Judy Hand and Pat Stewart with the idea of adopting these firefighters. Dozens of community members formed what is now known as Operation Adopted Heroes to organize appreciatory events and raise money for the victims' families. With the help of the neighboring townships of Rockton, Union and Sandy Township represented by my colleague JOHN PETERSON, Operation Adopted Heroes collected over $10,000 for the widows and children of the fallen firefighters as well as donated 14 wooden chairs and knitted quilts for each bed in the firehouse.

On November 17, 2001, representatives of all four townships drove to New York City to present their gifts to the fire station and the families of the fallen firefighters. This generosity continued through the holiday season with presents for the fallen firefighters' children and on June 14, 2002, twenty firemen with their families traveled to DuBois to participate in the local Community Days weekend extravaganza.

Mr. Speaker, I ask you and my colleagues to join me in saluting the members of Operation Adopted Heroes for their civic altruism to the 161st Street Fire Station and its fallen heroes of September 11. I introduce into the RECORD news articles on the relationships developed though Operation Adopted Heroes.

PARTIAL-BIRTH ABORTION BAN ACT OF 2002

SPEECH OF

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. MOORE. Mr. Speaker, two years ago, I voted against a so-called "partial birth abortion" ban because I believed it to be unconstitutional. The Supreme Court's 2000 decision in Stenberg v. Carhart proved me to be correct. Despite this ruling, the bill before us today corrects none of the flaws that were clearly outlined by the Court. Today's vote is a purely political exercise.

H.R. 4965 does not include an exception to protect the health of the woman, despite clear instructions from the Court, in more than one decision since 1972, that any law restricting abortion must include such an exception. This bill, despite cosmetic changes to the language, is still unconstitutional.

I believe in a woman's right make important decisions regarding her body and health. I also believe that the state can and should regulate abortion after the point of fetal viability. These two principles were codified in the 1973 Roe v. Wade Supreme Court decision.

Mr. Speaker, if Congress truly wishes to ban abortion after the point of fetal viability, we should consider and pass H.R. 2702, the Late Term Abortion Restriction Act. This legislation, which I have cosponsored, would prohibit all late-term abortions, regardless of procedure, with exceptions only to protect the life of the mother and to avert serious adverse health consequences.

The House was not allowed to vote on this bill today, which is a great shame, since it goes to the heart of this issue rather than using it as a campaign message. H.R. 2702 addresses what the American people truly want to stop: the termination of a viable fetus during late stages of a pregnancy.

Today, I will vote against H.R. 4965. 1 urge my colleagues who truly wish to ban post-viability abortions to consider H.R. 2702 as a real solution to this personal and political issue.

REPUBLIC OF SINGAPORE'S THIRTY-SEVENTH NATIONAL DAY

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to congratulate the Republic of Singapore on its Thirty-seventh National Day, which will occur on August 9, 2002.

As many Americans know, Singapore's National Day commemorates the date when Singapore became a separate, independent nation in 1965. In its short history as an independent nation, Singapore has achieved phenomena] economic growth. Bilateral trade between Singapore and the U.S. amounted to more than $42 billion in 2000, making Singapore the United States' tenth largest trading partner. Singapore is home to more than 1,400 U.S. corporations and 50% of all Singapore exports to the United States originate from U.S. companies. At end 2000, the cumulative stock of U.S. Direct Investment in Singapore stood at more than $23.2 billion.

Since its founding as a free port in 1819 by a British East India Company official named Sir Thomas Stamford Raffles, Singapore's free trade status has been a major factor in its success. It has been a firm backer of U.S. international trade policy and, since December 2000, Singapore and the United States have been negotiating a U.S.-Singapore Free Trade Agreement (USSFTA). Nine rounds of negotiations have been concluded. The USSFTA will be the first free trade agreement (FTA) that the United States will sign with an Asian country. Not only will it cement the excellent state of economic relations between our two countries, the USSFTA will also send a strong signal of the strong strategic and defense relations that already exist. When concluded, the FTA will act as an anchor for continued U.S. economic presence in the Asia Pacific region.

In addition to the vitally important trade relationship between the U.S. and Singapore, both nations have increasingly close security ties. Since 1992, U.S. military aircraft and naval vessels have, under the auspices of a 1990 Memorandum of Understanding, been given access to Singapore military facilities. Each year, Singapore plays hosts to numerous routine port calls by U.S. naval vessels and landings by U.S. military aircraft. Since 2001, Singapore's Changi Naval Base has been host to U.S. aircraft carriers, for maintenance and re-supply. The Singapore Navy made provisions to allow the berthing of U.S. aircraft carriers at their own expense, and to U.S. specifications. Over 100 naval vessels use the facilities each year. Singapore has been unfailing in its support for the U.S. presence in the region—even at times when it has been unpopular to do so. With its strategic location in the Strait of Malacca and the South China Sea, it is hard to understand the significance of this security relationship with a nation in the center of these critically important shipping lanes.

Even in the war on terrorism, Singapore has been steadfast. In December 2001, Singapore arrested 13 terrorists who were targeting various U.S. military, diplomatic and commercial assets. The government of Singapore has also been unwavering in its moral, logistical and financial support for the global war on terrorism.

On a more personal note, I have had the chance to meet with the current Ambassador from Singapore, Ms. Chan Heng Chee. She has ably represented Singapore in Washington since 1996, years in which our trade and security ties with Singapore have grown extensively. The highlight of her service will be the signing of the FTA, which will hopefully be completed soon. I look forward to working with her on this and other issues between our two countries.

Mr. Speaker, given the importance of our relationship with Singapore, I rise today to congratulate the Republic of Singapore on its Thirty-seventh National Day and to urge my colleagues in joining me in my salute to one of our important allies and trading partners.

RECOGNITION OF MR. NILES JAGER

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Niles Jager, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Niles is a senior economics major at Depauw University and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Niles joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Niles has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Niles has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Niles has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Niles Jager for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

CONGRATULATING RICHARD CHING ON BEING NAMED JA ELEMENTARY SCHOOL VOLUNTEER OF THE YEAR

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. ABERCROMBIE. Mr. Speaker, I rise today to speak about a distinguished member of my district who is being honored by an organization which has had an immeasurable impact on America. Richard Ching of Hawaii Appraisal Services is Junior Achievement's National Elementary School Volunteer of the Year. He has volunteered for nine years and taught 40 JA classes in that time impacting more than 1,000 students on the island of Oahu. Mr. Ching always goes above and beyond his classroom duties, ensuring that his students have a fundamental understanding of business, economics and the free enterprise system.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, afterschool business clubs for students in Springfield, Massachusetts.

As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught bow to think and plan for a business, acquire supplies and talent, build their own products, advertise, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boy Scouts, Girl Scouts, Boys & Girls Clubs the YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional expositions and trade fairs and rubbing elbows with top business leaders. In 1925, President Calvin Coolidge hosted a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement's expansion. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA students won a contract to manufacture 10,000 pants hangers for the U.S. Army. In Pittsburgh, JA students developed and made a specially lined box to carry off incendiary devices, which was approved by the Civil Defense and sold locally. Elsewhere, JA students made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement's accomplishments and of its students soon appeared in national magazines of the day such as TIME, Young America, Colliers, LIFE, the Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth increase five-fold. In 1955, President Eisenhower declared the week of January 30 to February 5 as "National Junior Achievement Week." At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of backgrounds.

By 1982, Junior Achievement's formal curricula offering had expanded to Applied Economics (now called JA Economics), Project Business, and Business Basics. In 1988, more than one million students per year were estimated to take part in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K–6 was launched, catapulting the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to nearly two million students in 113 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and business leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. Speaker, I wish to extend my heartfelt congratulations to Richard Ching of Honolulu for his outstanding service to Junior Achievement and the students of Hawaii. I am proud to have him as a constituent and congratulate him on his accomplishment.

TRIBUTE TO BARRY BERKOFF

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BORSKI. Mr. Speaker, I rise to pay tribute to my friend Barry Berkoff, a senior policy advisor for Thelen Reid and Priest. Through many years of both public and private service, Barry has been an invaluable asset to Congress and the Executive Branch. He is a true role model for those who wish to dedicate their lives to improving government, society and our nation's public policy.

Barry started his career as a young legislative assistant for Senator Frank Church in 1968. He spent twelve years in public service, rising to become the Senator's senior legislative and government affairs assistant. Barry has always been very proud of his service in government, and Congress was fortunate to have the benefit of his skills and dedication.

I first got to know Barry in my early years in Congress, when I joined with several members of my delegation in the fight to preserve the Philadelphia Naval Shipyard and the Philadelphia Naval Station. Barry was part of the team representing the City of Philadelphia during the base closure process. Since the closure of the yard, Barry has championed the difficult task of converting the yard to civilian, commercial use. Now known as the Philadelphia Business Center, the yard is a vibrant commercial complex that is attracting new jobs every day. A great deal of this success can be attributed to Barry Berkoff's efforts.

Barry has also worked on a number of economic development projects that have improved the standard of living of my constituents in Philadelphia. He has helped small businesses in Philadelphia that have sought to convert their defense technologies to commercial applications. He has also provided invaluable advice on government contracting and appropriations to Philadelphia-area companies.

Mr. Speaker, I know of few other individuals in this city who possess Barry's knowledge of the legislative process and history.

I regret to inform my colleagues who know Barry that he is currently very ill. I join the House today in paying special tribute to this remarkable individual. He is in our thoughts and prayers.

HONORING THE LIFE OF TIMOTHY WHITE

HON. JOHN CONYERS, JR.

OF MICHIGAN

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CONYERS. Mr. Speaker, we rise to honor Timothy White, a man of integrity, passion, and music. Tim, the late editor of Billboard Magazine, died on June 27, 2002, at the age of 50.

Many of you may not have known Tim White, but his influence was felt not just in the music industry, but here in Washington. While Tim's passion for music and artists made him a champion and a challenger of the music industry, he played an important role in the fight for reform here. From his office in New York, he increased Billboard's coverage of Capitol Hill and shared with Bill Holland, the Washington correspondent, the prestigious ASCAP-Deems Taylor Award for investigative stories on musical copyright and the ownership of sound recordings.

Tim also was a writer, and a superb one. He wrote about what he loved most, music. He saw in our culture an emptiness, with little to replace it. Entertainment, he wrote, "is heartening because it celebrates the human scale . . .; there is extra-industry fascination with the record charts because they are the one mirror in which we can still glimpse our collective will, lending an air of control and logic to a landscape that sometimes appears on the brink of chaos. At its high end, rock'n'roll can periodically fill in the hollows of this faithless era—especially when the music espouses values that carry a ring of emotional candor." Being a writer, Tim was an outspoken defender of free speech and spurred others to new levels of creativity, both in word and in song.

Tim didn't just write about music, though; he lived it. His life is an example of how one man can and did make a difference. He had a passion for what's right and was not afraid to pursue that goal, whether it was to force a change in the music business or through the hearing rooms in Congress. He also never missed an opportunity to champion a forgotten or still undiscovered artist.

As Don Henley, a close friend of Tim, said, "What comes mostly to mind when I think of him is integrity. In an age when looking the other way and moral compromise have become our common cultural traits, Timothy White would have no part of it. He was not for sale."

It is Tim's emotional candor that will be missed and we mourn his loss. As we honor Tim's memory, we should aspire to hold to the same ideals that Tim exhibited throughout his life: integrity, commitment and compassion.

IN MEMORY OF CHARLES "RUDY" LONGO

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GALLEGLY. Mr. Speaker, I rise to pay tribute to a good friend, Charles "Rudy" Longo, who died Sunday after a lifetime of devotion to his family, friends, the Navy and his community.

Rudy retired from the United States Navy in 1975 after a 31-year career, including eight years in my district at the Pacific Missile Test Center in Point Mugu. Thereafter, he made his home in Ventura.

He enlisted in 1944, was commissioned an ensign in 1946 and retired as a captain. To say Rudy was a photo specialist would be to gloss over his wide range of talents and accomplishments. He served as administrative officer for the Sixth Inter-American Naval Conference, director of the command staff and comptroller for the Naval Missile Center and public relations director of the Pacific Missile Test Center.

Aside from photography, he loved golf, table tennis, billiards, magic and cooking. Rudy was a longtime member of the Ventura Rotary Club, serving as its president and official photographer. He was also a member of the Retired Officers Association, the American Legion Post No. 339, and was a member and usher at Ventura Missionary Church.

Rudy met his wife of 50 years, Pati, while stationed at the Naval Photography School in Pensacola, Florida, where she also was stationed with the Navy. Together they raised three sons, who are now married and who have blessed them with four grandchildren.

Mr. Speaker, Rudy believed in the American ideals of family and community and dedicated his life to promoting those ideals. I know my colleagues will join me in celebrating Rudy's life and in sending our condolences to Pati and their family.

RECOGNITION OF MS. EMILY GORE

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Ms. Emily Gore, a very special young woman who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Emily is a junior political science major at the University of Missouri-Columbia and has distinguished herself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Emily joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Emily has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During her time as an intern in my office, Emily has successfully demonstrated her abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Emily has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of her knowledge and skills acquired prior to her tenure as an intern and through a variety of new skills she has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Ms. Emily Gore for her many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to her our very best wishes for continued success and happiness in all her future endeavors.

HONORING THE SERVICE OF TONY HALL

HON. WES WATKINS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WATKINS of Oklahoma. Mr. Speaker, I rise this evening to pay tribute to TONY HALL—a good and selfless man who has devoted his career to helping the world's poor and forgotten people. I also want to wish God's speed to TONY as leaves us to take up his new post as U.S. Ambassador to the United Nations food and agricultural agencies in Rome.

It has been my privilege to know TONY for almost 25 years. We both came to Congress in the late 1970s. Since that time, TONY has worked tirelessly on behalf of his constituents in Dayton—helping to bring good jobs to the community, working to provide health insurance to the poor, and strengthening scientific research at Wright-Patterson Air Force Base. In these and many other ways, TONY HALL has been a forceful and successful champion for the people of Dayton.

But that is not why the history books will remember TONY HALL. His service has been about much more than the normal duties of an active and successful Member of Congress. TONY has been one of the most visible and tireless spokesmen for the poor, the disadvantaged, the hungry—not just here at home, but all around the world. He has lived the social gospel. He has helped his brothers and sisters in need. He has not sought personal gain or recognition for his actions. He has striven to make us all aware of the almost unimaginable poverty that lingers in the Third World. He has sought to use our astounding abundance to relieve the suffering of others. This is why TONY HALL will be remembered. This is what I will remember most of all about my friend.

Mr. Speaker, others will list the list of honors and accomplishments that TONY has compiled. Three nominations for the Nobel Peace Prize, a co-founder of the House Select Committee on Hunger, service in the Peace Corps—the list is long and impressive.

But to me, Mr. Speaker, the most impressive testaments to TONY HALL are his family, his love and respect for this institution, his respect for his colleagues, his passion for advancing the ideas he believes in, his love for his fellow man.

I want to thank TONY HALL for the pleasure of his company and his friendship during our service together. I know that he will do much to make us proud in his new position as an ambassador to the United Nations. I am already proud of him.

HONORING MAJOR GENERAL JACKIE D. WOOD ON THE OCCASION OF HIS RETIREMENT AS TENNESSEE'S ADJUTANT GENERAL

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CLEMENT. Mr. Speaker, I rise today to honor Tennessee's top National Guard official, Major General Jackie D. Wood, on the occasion of his retirement from the adjutant general post, after seven years of outstanding leadership to our state and years of brave service to our nation's military.

Major General Wood became the state's 73rd adjutant general in 1995, taking on the responsibility of supervising the Military Department including the Army National Guard, the Air National Guard, the Tennessee Emergency Management Agency, and the Tennessee State Guard.

General Wood began his work in the United States Army in 1961 when he enlisted for the first time. He later served one tour of duty as a Sergeant (E–5) in Vietnam. After completing his active duty tour and a short tour of duty in the United States Army Reserve, he enlisted in the Tennessee Army National Guard in 1965, rising through the ranks before being named its top officer in 1995. He maintained a strong role in the military reserves while working in the private sector, retiring from South Central Bell with 31 years of service.

He completed Officer Candidate School at Tennessee Military Academy. General Wood served in a variety of staff and leadership assignments in the Tennessee Army National Guard including Executive Officer, 473rd Support Battalion; Commander, 4/117th Infantry, and was serving as Deputy Director, Plans, Operations and Training, State Area Command before his appointment as Adjutant General.

He was further educated at Cumberland University in Lebanon, Tennessee, earning a Bachelor of Arts Degree in Social Science in 1986, and completing Air University in 1992.

His military assignments include: Aug 66–Mar 70, Platoon Leader, Company A, 4th Battalion, 117th Infantry, Apr 70–Jan 92, Liaison Officer, Headquarters and Headquarters (—), 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Feb 72–Oct 73, Executive Officer, Det 1, Co A, 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Nov 73–Aug 75, Aide-de-Camp, Headquarters and Headquarters, 30th Separate Armored Brigade; Aug 75–Apr 81, Assistant S–1, Headquarters and Headquarters, 30th Separate Armored Brigade; Apr 81–Mar 82, Brigade Maintenance Officer, Headquarters and Headquarters Detachment, 473rd Support Battalion, 30th Separate Armored Brigade; Mar 82–Jan 84, Executive Officer, HHD, 473rd Support Bn, 30th Separate Armored Bde; Feb 84–Feb 85, Automatic Data Processing Systems Officer, HHD, 473rd Support Bn, 30th Sep Armored Bde; Mar 85–Apr 85, Transportation Staff Officer, HQ, State Area Command, Tennessee Army National Guard; May 85–Oct 86, Supply Staff Officer, Headquarters, State Area Command, Tennessee Army National Guard; Oct 86–Mar 90, Battalion Commander, 4th Battalion, 117th Infantry, 30th Separate Armored Brigade; Mar 90–Jul 93, Intelligence Officer, Headquarters, State Area Command, Tennessee Army National Guard; Aug 93–Apr 95, Deputy Director, Plans, Operations and Training Division, Headquarters, State Area Command, Tennessee Army National Guard; 26 Apr 95–Present, The Adjutant General, Tennessee National Guard.

Major General Wood has been honored numerous times by his peers and by the United States Government for outstanding service. These awards and decorations include: the Meritorious Service Medal; the Army Commendation Medal; the Army Reserve Component Achievement Medal with 1 Silver Oak Leaf Cluster; the National Defense Service Medal with 1 Silver Star; the Armed Forces Expeditionary Medal; the Armed Forces Reserve Medal with gold hour glass devices; the Army Service Ribbon; and the Republic of Vietnam Campaign Ribbon with "60" device.

May General Wood continue to prosper in all of his future endeavors and may he be richly blessed for his courage, dedication, patriotism, and service to Tennessee and to the United States of America.

PERSONAL EXPLANATION

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WELDON of Pennsylvania. Mr. Speaker, on rollcall Nos. 342, 343 and 344, I was inadvertently detained. I would have voted "nay" on No. 342, and "yea" on Nos. 343 and 344.

FRED WORTH

HON. JOHN A. BOEHNER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BOEHNER. Mr. Speaker, I rise today to recognize my constituent and friend, Fred Worth of Troy, Ohio, on the occasion of his 50th birthday on July 26, 2002.

Fred began his life of public service as a high school government and history teacher, and baseball coach. His enthusiasm for these subjects along with his dedication to his students have combined to make Fred Worth's 26 years as a public school teacher a success.

Fred's teaching methods have never been confined to the classroom. Fred and his students organize fundraising drives to provide Thanksgiving meals to families that are less fortunate, and to purchase Christmas gifts for the children of these families. When the Ohio River flooded in 1997, Fred and his students traveled down to Hamilton County and assisted the local residents in the clean up of their flooded homes and businesses. Every election year, Fred makes sure that all of his eligible students are registered to vote, and also have the opportunity to volunteer for the campaigns of local candidates. And, twice a year, Fred arranges a trip to Washington, D.C., so that his students can meet their Congressman and see firsthand how their Federal Government works. Fred's commitment to providing his students with the opportunity and knowledge necessary for success has endeared him to two generations of young men and women who call Miami East High School their alma mater.

Also, Fred leads his students by example, and has been an active participant in all levels of government in Miami County. Every Republican candidate who has run in Miami County in the last 20 years has benefited from Fred's hard work. Whether distributing campaign literature, putting up yard signs, or serving as Chairman of the County Board of Elections, Fred has always dedicated his time and resources to local candidates and the Miami County G.O.P. owes him a great debt of gratitude. Mr. Speaker, I am pleased to recognize Fred Worth's career of public service, and to wish him a happy 50th birthday.

NURSE REINVESTMENT ACT

SPEECH OF

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. BILIRAKIS. Mr. Speaker, as the sponsor or H.R. 3487, I would like to revise and extend my remarks in support of passage of H.R. 3487, and I would like to note that this intent language is supported by all the members involved in reaching agreement on the final bill which passed the House and Senate on July 22, 2002. These members include myself, Senator BARBARA A. MIKULSKI, Congresswoman LOIS CAPPS, Senator TIM HUTCHINSON, Congressman W.J. "BILLY" TAUZIN, Senator JOHN F. KERRY, Congressman JOHN D. DINGELL, Senator JAMES M. JEFFORDS, Congressman RICHARD BURR, Senator JUDD GREGG, Congressman SHERROD BROWN, Senator BILL FRIST, M.D., Congressman ED WHITFIELD, Senator EDWARD M. KENNEDY, Congressman ELIOT ENGEL, Senator SUSAN COLLINS, Congressman ROBERT L. EHRLICH, Senator HILLARY RODHAM CLINTON, and Congressman HENRY WAXMAN.

I. FUNDING METHODOLOGY

During the last reauthorization of Title VIII in 1998, Congress required the Secretary of Health and Human Services to determine a funding methodology to be used for fiscal year 2003 and thereafter to determine the appropriate amounts to be allocated to three important programs within the Nursing Workforce Development activities—advanced nursing education, workforce diversity, and nurse education and practice. In developing this methodology, Congress outlined a series of factors that should be considered and required a report describing the new methodology as well as the effects of the new methodology on the current allocations between those three important programs.

Given that the new funding methodology was to take effect in fiscal year 2003, Congress requested that the contract for the funding methodology be completed by February 1, 2002, and that the report to Congress regarding that methodology arrive no later than 30 days after the completion of the development of the methodology. Although Congress has not yet received the report, George Mason University has been working on this contract, and they have described the appropriate funding methodology on their website. This methodology states that advanced nursing education should receive 31.5% of the funds (a 46% decrease from fiscal year 2001 allocations), workforce diversity should receive 31.5% of the funds (a 25% increase over fiscal year 2001 allocations), and nurse education and practice should receive 37% of the funds (a 20% increase over fiscal year 2001 allocations).

Because Congress expected the funding methodology to be completed by the beginning of fiscal year 2003, current law does not state how the funds should be allocated if no funding methodology was available. Therefore, the discretion is left to the Secretary. Due to that discretion, it is the Congress' intent that the Secretary allocate funds in a manner that would most appropriately address any current or impending nursing shortage while minimizing disruption and report such allocations to the appropriate committees of Congress, along with a justification for those allocations. Further, given that Congress has requested a new funding methodology for fiscal year 2003, the Secretary is now requested to provide an update on the development of that methodology and the expected timeline for implementation.

II. AUTHORIZATIONS UNDER THE NURSE REINVESTMENT ACT

Throughout the bill, the legislation authorizes the appropriation of such sums as may be necessary to accomplish the objectives of the legislation. It is the Congress' belief that the current nursing shortage is a significant national problem that has a major negative impact on the delivery of high-quality health care in the United States. It is the Congress' belief that funds should be appropriated for the initiatives authorized by this legislation at a level that is commensurate with the significance of this problem.

The legislation authorizes the appropriations of such sums as may be necessary in order to accomplish the objectives of the legislation to allow flexibility in providing funding to respond to the ongoing needs of the programs authorized by the legislation. Although the legislation does not authorize the appropriation of specific dollar amounts, it is the Congress' belief that the investment of significant new resources, beyond those already provided under Title VIII of the Public Health Service Act, will be required in order to alleviate the current nursing shortage.

III. LOAN REPAYMENT AND SCHOLARSHIPS

The Congress intends that nurses fulfilling their service requirement under the Loan Repayment Program or the Scholarship Program under Section 846 be able to fulfill their service requirement in a nurse-managed health center with a critical shortage of nurses.

The Congress further intends that, in determining the placement of nurses under section 103 of the bill, the Health Resources and Services Administration is not expected to follow the placement requirements outlined under the National Health Service Corps.

IV. BASIC NURSE EDUCATION

A. INTENT OF LEGISLATION

The legislation adds a number of new programs to section 831, and it is Congress' intent to ensure that these programs are actually funded and implemented. Therefore, Congress expects that the Secretary will seek to fund worthy applications received under the Section 831 authorities that have been added, while assuring that existing priorities indicated under section 831 also continue.

Congress anticipates that the use of funds under 831(c)(2) will directly affect nurses in their workplaces and will be monitored for demonstrable improvement in the areas of nurse retention and patient care.

B. BACKGROUND

In authorizing section 831(c)(2), Congress did so with the evidence of the efficacy of magnet hospitals in mind. The concept of magnet hospitals dates back to the country's last nursing shortage in the 1980's. At the time, nursing professional organizations and other experts noticed that despite the nationwide nurse shortage, certain hospitals were able to successfully attract and retain professional nurses, behaving as nursing "magnets." A study of these hospitals showed that they shared a number of characteristics, each of which contributed to making these "magnet hospitals" attractive workplaces for nurses. Many of these attributes have been mentioned in section 831(c)(2). Currently hospitals can receive a magnet designation from the American Nurse Credentialing Center, and extensive research on magnet-designated facilities shows that nurses in these hospitals show an average length of employment twice that of nurses in non-magnet hospitals, and magnet hospital nurses consistently report greater job satisfaction. Research has demonstrated that magnet hospitals also show lower mortality rates, shorter lengths of stay, and higher patient satisfaction.

V. NURSE FACULTY DEVELOPMENT

The purpose of the nurse faculty loan program is to encourage individuals to pursue a master's or doctoral degree to teach at a school of nursing in exchange for cancellation of educational loans to these individuals.

ARLINGTON NATIONAL CEMETERY BURIAL ELIGIBILITY ACT

SPEECH OF

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. STUMP. Mr. Speaker, I have reintroduced the Arlington National Cemetery Burial Eligibility Act to ensure that Arlington remain a cemetery dedicated to honoring our true military heroes. As you are aware, I introduced similar legislation in both the 105th and 106th Congresses, and both bills had overwhelming support from the full House.

H.R. 4940 codifies almost all of the current regulations governing eligibility for burial in the cemetery and placement in the columbarium with the following exceptions:

First, reservists who retire before age 60, the age at which they become eligible for retired pay, would be eligible for in-ground burial. A 20-year career in the military reserves should be recognized by eligibility for this burial honor.

Second, reservists who die in the performance of duty while on active duty or inactive duty training would now be eligible for burial at Arlington. In today's military, we depend heavily on reservists, and unfortunately we have lost too many in the last few years to mission-related accidents.

As in the previous legislation I mentioned earlier, the bill eliminates automatic eligibility for Members of Congress and other Federal officials who do not meet all the military criteria required of other veterans. However, this bill does provide the President the authority to grant a burial waiver to an individual, who otherwise does not meet the eligibility criteria, whose acts, services, or contributions to the Armed Forces are so extraordinary as to justify burial at Arlington National Cemetery.

Mr. Speaker, it is my intention that H.R. 4940, which is widely supported by the military and veterans service organizations, will enable Arlington National Cemetery to remain the premier military cemetery of our country. I look forward to working with the other body to ensure that H.R. 4940 becomes law this year.

TRIBUTE TO ARNOLD R. DICKSON, REGIONAL PUBLIC AFFAIRS MANAGER, THE GAS COMPANY-SEMPRA ENERGY COMPANY

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CALVERT. Mr. Speaker, I rise today to honor and pay tribute to an individual whose dedication to his country and community is exceptional. The Inland Empire has been fortunate to have dynamic and dedicated business and community leaders who willingly and unselfishly give time and talent to making their communities a better place to live and work. Mr. Arnold R. Dickson is one these individuals.

Arnold R. Dickson was bom in Auburn, California and moved to Riverside, located in my congressional district, in 1958. He graduated from Ramona High School in 1962 and joined the U.S. Air Force in 1965 in which he honorably served for four years. Upon his return from the military, he attended Riverside Community College where he earned his AA Certificates in the Supervision and Middle Management Program. He obtained his Bachelor's of Science from the University of Maryland and recently completed the Executive Management Program at the University of California, Riverside.

Arnold's exemplary career with The Gas Company began in 1970 as a serviceman in The Gas Company's old Eastern Division, which serviced most of Riverside County. Arnold was promoted into management in 1978 and held positions in critical areas of the company such as Pipeline Operations, Customer Service, Public Affairs and Staff Management. On July 1, 1994 Arnold was selected to be the Regional Public Affairs Manager in The Gas Company's Inland Empire Region.

Arnold has also been actively involved in the community as the Vice-Chairman of the Inland Empire Economic Partnership, a board member for the Riverside County Regional Medical Center Foundation, a board member for the Loma Linda University Children's Hospital Foundation and numerous other organizations that benefit the overall well-being of the businesses and residents of the Inland Empire.

Arnold has been married to his wife Priscilla for 34 years and has three wonderful children, the youngest of which resides with them in Redlands.

Arnold's tireless work as a community leader has contributed unmeasurably to the betterment of the County of Riverside. His involvement in community organizations in the Inland Empire make me proud to call him a fellow community member, American and friend. I am grateful for his efforts and service and salute him as he departs. I look forward to continuing to work with him for the good of our community in the future.

PAYING TRIBUTE TO MARK OGLESBY

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to congratulate Mark Oglesby on earning a James Madison Memorial Fellowship.

Mark Oglesby is an American History teacher at Howell High School in Howell, Michigan, and is receiving this fellowship to continue in graduate studies with a concentration on the history and principles of the United States Constitution. This award is intended to recognize promising and distinguished teachers, to strengthen their knowledge of the American constitutional government, and expose the nation's secondary school students to accurate knowledge of our constitutional heritage.

I am confident that Mark Oglesby's hard work and dedication to educating America's young people will continue well into the future. Mr. Speaker, I ask my colleagues to join me in congratulating Mark Oglesby on earning the James Madison Memorial Fellowship, and wish him success in his future endeavors.

MEDICARE OUTPATIENT DEPARTMENT FAIR PAYMENT ACT OF 2002

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. DINGELL. Mr. Speaker, I am pleased to join with my colleagues Mr. SESSIONS, Mr. BROWN, and Mr. BURR to introduce this important legislation, the Medicare Outpatient Department Fair Payment Act of 2002. This legislation was introduced in the Senate earlier this year by Senators BINGAMAN and SNOWE.

Medicare provides health insurance coverage to more than 40 million seniors and individuals with disabilities; it has provided high-quality care to these individuals for more than 35 years. But, in order to ensure that beneficiaries continue to have access to high quality health care, we must ensure that providers are being adequately reimbursed. We have only to look to the Medicaid program, which has a long standing history of inadequate payment rates, to see how dramatically payment rates can affect beneficiaries access to care. You can't expect to get the quality of a Cadillac if you only have enough money to cover the cost of a Yugo.

This legislation that we are introducing today will make sure that hospital outpatient departments are being adequately reimbursed under Medicare. First, it will ensure adequate payments for clinic and emergency room visits. Rural and inner city hospitals provide a high volume of these services and are especially vulnerable to low payments. This bill will address that problem. Second, the bill will extend the payment protections for certain hospitals, such as cancer hospitals and extends these protections to eye and ear hospitals as well to ensure adequate rates for these special facilities. Third, the bill would restore the authority of the Secretary of Health and Human Services with respect to outlier payments for outpatient departments and would ensure the outlier pool is adequate to provide insurance against losses in high-cost cases. Fourth, the bill gives the Secretary additional authority and direction with respect to increasing certain relative payment rates and preventing reductions from pass-through payments and budget neutrality adjustments.

These four points are only some of the key provisions in the bill, All told, this legislation will increase funding for hospital outpatient departments by $380 to $480 million over the next five years. This funding will certainly be beneficial to Medicare beneficiaries and others who receive care in these facilities.

Hospitals and their related facilities are important to our Michigan communities. They not only provide excellent health care, but serve as an important part of the local economy by providing quality jobs. Payments to many facilities have suffered in recent years as due to state and federal budget cuts. The direct result has been hospital closures and staff layoffs. The legislation we are introducing today will have a double benefit for Michigan—access to quality health care and access to quality jobs.

I look forward to working with my colleagues in the House and Senate to pass this legislation and to improve reimbursement rates for hospital outpatient departments under Medicare.

PERSONAL EXPLANATION

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. STEARNS. Mr. Speaker, on July 23, 24, and 25, I was unavoidably absent due to family medical reasons and missed roll call votes numbered 327 through 351. For the record, had I been present, I would have voted as follows:

Roll call 327—Passage of National Aviation Capacity Expansion Act—NAY

Roll call 328—On Agreeing to the Conference Report—2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States—YEA

Roll call 329—On Passage—Disapproving the Extension of the Waiver Authority Contained in Section 402(c) of the Trade Act of 1974 with Respect to Vietnam—NAY

Roll call 330—HR 5120 On Agreeing to Goss Amendment—YEA

Roll call 331—HR 5120 On Agreeing to the Flake Amendment—NAY

Roll call 332—HR 5120 On Agreeing to the Flake Amendment—NAY

Roll call 333—HR 5120 On Agreeing to the Rangel Amendment—NAY

Roll call 334—HR 3609 On Motion to Suspend the Rules and Pass, as Amended the Pipeline Infrastructure Protection to Enhance Security and Safety Act—YEA

Roll call 335—HR 4547 On Motion to Suspend the Rules and Pass, as Amended—Cost of War Against Terrorism Authorization Act of 2002—YEA

Roll call 336—HR 5120 On Agreeing to the Moran Amendment—YEA

Roll call 337—HR 5120 On Agreeing to the Hefley Amendment—YEA

Roll call 338—HR 5120 On Agreeing to the Hefley Amendment—YEA

Roll call 339—HR 5120 On Agreeing to the Sanders Amendment—YEA

Roll call 340—H RES 498 On Agreeing to the Resolution Providing for consideration of the bill H.R. 4965; Partial-Birth Abortion Ban Act—YEA

Roll call 341—HR 5120 On Passage Treasury and General Government Appropriations Act, 2003—NAY

Roll call 342—HR 4965 On Motion to Recommit with Instructions Partial-Birth Abortion Ban Act—NAY

Roll call 343—HR 4965 On Passage Partial-Birth Abortion Ban Act—YEA

Roll call 344—H CON RES 188 On Motion to Suspend the Rules and Agree, As Amended—Expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners—YEA

Roll call 345—H RES 495 On motion to postpone consideration In the matter of James A. Traficant, Jr.—NAY

Roll call 346—H RES 495 On Agreeing to the Resolution In the matter of James A. Traficant, Jr.—YEA

Roll call 347—HR 4628 On Agreeing to the Roemer Amendment as Amended—NAY

Roll call 348—HR 3763 On Agreeing to the Conference Report Corporate and Auditing Accountability and Responsibility Act—YEA

Roll Call 349—HR 4546—FY03 Defense Authorization On motion that the House instruct conferees—YEA

Roll call 350—HR 4546 FY03 Defense Authorization On motion to close portions of the conference—YEA

Roll call 351—HR 4946 to amend the Internal Revenue Code to provide health care incentives related to long-term care On motion to suspend the rules and pass the bill, as amended—YEA

RECOGNIZING THE UNITED STATES CAPITOL POLICE

HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. REYES. Mr. Speaker, I rise today to recognize the men and women of the United States Capitol Police. Since the terrorist attacks of September 11, America as a nation has grown to appreciate the work that the Capitol Police has done to protect its citizens. The FY 2003 Legislative Branch Appropriations bill before us, allows officers to receive most of the back pay that they earned while working overtime since September 11. As you know, House employees, which include U.S. Capitol Police, are prohibited from earning more than Members of Congress. Because Capitol Police pay is calculated quarterly, officers who worked an enormous amount of overtime in one quarter, if annualized, can exceed the existing annual limit on pay. This bill's provisions change this method of calculating pay to permit officers to receive their overtime pay.

This bill appropriates a total of $219 million for the Capitol Police, $61 million more than the current level. This total includes $176 million for salaries and $43 million for general expenses. This level of funding will support 1,454 officers and 326 civilian positions. The bill also includes an additional $37.5 million for Capitol Police buildings. This bill provides a 5% merit pay raise for Capitol Police, which would be in addition to the 4.1% cost of living adjustment provided to congressional staff.

This bill provides for a tuition payment program for police recruits and officers, as well as a measure to provide extra pay for officers with special duties, such as members of the bomb squad or those who provide protection to Members or visiting dignitaries.

As a former federal law enforcement officer of twenty-six and a half years, I understand first-hand the importance of the duties performed by the Capitol Police. Our officers have been spending numerous days and nights, working long hours, to ensure that Members of Congress, their staffs, and the general public are safe and protected. We certainly owe these officers a debt of gratitude. More than ever, I admire and respect our United States Capitol Police and am glad to see that their hard work has not gone unnoticed.

Thank you Mr. Speaker, I yield back the balance of my time.

TRIBUTE TO LARRY D. SMITH RIVERSIDE COUNTY SHERIFF

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CALVERT. Mr. Speaker, I rise today to honor and pay tribute to an individual whose dedication to the community and to the overall well-being and safety of the County of Riverside, CA, is exceptional. The County of Riverside has been fortunate to have dynamic and dedicated community leaders who willingly and unselfishly give time and talent to making their communities a better place to live and work. Larry Smith is one of these individuals. On August 1, 2002, Larry will be retiring after thirty-six years of dedicated service to the community as a law enforcement officer. His outstanding work as a police officer and sheriff, in addition to his personal involvement in the community, will be celebrated on August 1st dedicated as "Larry D. Smith Day".

Larry Smith obtained his bachelor's degree in Public Management from Pepperdine University and his first assignment in law enforcement was as deputy sheriff in the Blythe Jail and Patrol. His tenure included a variety of command assignments, including narcotics enforcement, information services, jails and patrol. He served as the County's Search and Rescue coordinator and commanded the department's Emergency Services Team (SWAT).

In 1987 Smith was promoted to chief deputy sheriff. Under his superb leadership as chief of the Corrections Division, two modern jails were financed and built. He guided the division through its largest growth in the history of the Department.

Larry was elected as Riverside County's eleventh sheriff, winning the office in the June 1994 primary and assuming the office of sheriff on December 14, 1994. He was reelected to his second term in December 1998 and he served as the first sheriff, coroner, public administrator and marshal in the history of Riverside County. As sheriff, he procured 365 acres at March Air Reserve Base for a public safety training center, which provides training for law enforcement, fire and paramedics. This paved the way for future centers throughout the United States by enabling the transfer of surplus land from the U.S. Military to the private sector through the legislative process.

Larry has also been actively involved in the community, serving as a member of the board for the American Heart Association and the United Way of the Inland Empire. He presently serves on the Advisory Committee for the Debbie Chisholm Memorial Foundation, a charitable group dedicated to granting the wishes of terminally ill children. In recognition of his outstanding service, Larry has been a recipient of numerous awards such as special recognition in 1996 from the California Narcotics Officers' Association; he was named the outstanding law enforcement officer in 1996 from Veterans of Foreign Wars; the 1997 director's award for partnership from the California Department of Forestry and Fire Protection; and, the 1998 professional of the year from the California Peace Officers Association.

Larry's tireless work as the Riverside County Sheriff has contributed unmeasurably to the safety and betterment of Riverside County. His involvement in community organizations makes me proud to call him a fellow community member, American and friend. I know that all of the residents of Riverside County are grateful for his service and salute him as he departs and I look forward to continuing to work with him for the good of our community in the future.

TRIBUTE TO CARMEN IRIS GONZALEZ

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. SERRANO. Mr. Speaker, I rise today to pay tribute to a great community activist and humanitarian. Ms. Carmen Iris Gonzalez, an exceptional counselor with the South Bronx Mental Health Council, is retiring after over 30 years of community service.

Ms. Gonzalez was born in Manati, Puerto Rico and began her career as an administrative aide to the local police department in Manati when she was a young lady. She also assisted people with securing affordable housing and obtaining Section 8 vouchers. Ms. Gonzalez later came to New York in search of opportunity. She encountered and even created numerous opportunities to improve her community and the lives of her neighbors.

In the 1970's, Ms. Gonzalez worked as a community worker with the Puerto Rican Community Development Project, which is no longer in existence. This work intensified her commitment to community development and made her a familiar face in local affairs. Politically empowering the Latino community became one of her main priorities and as a result she became a pivotal agent in the Voters Cruzade Registration Project. She was also very active in the Voter Registration Campaign sponsored by the Commonwealth of Puerto Rico. She was awarded the top prize for registering more than 10,000 new voters citywide.

Mr. Speaker, Ms. Gonzalez has dedicated the majority of her adult life to serving her community. For six years, she headed the kitchen at the Gilberto Ramirez Senior Citizen Center, supervising the preparation of wholesome, nutritious meals for its elderly residents. For nearly twenty years, she has lent her time, energy and caring spirit to mentally ill residents in the South Bronx who benefit from the services of the South Bronx Mental Health Council, where she serves as a counselor.

When she bought a home on Melrose Avenue in my district in 1995, Ms. Gonzalez promptly established the Melrose Block Association of Homeowners, empowering her neighbors and vastly improving the neighborhood.

After years of hard work and dedication, Ms. Carmen Iris Gonzalez is going to retire and enjoy the sunshine of Orlando, Florida. I ask my colleagues to join me in recognizing a model citizen and in wishing her rest and relaxation.

ROYAL BOLLING SR.

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. FRANK. Mr. Speaker, earlier this week I shared with my colleagues an editorial from the Boston Globe about the death of an outstanding former Massachusetts State Legislator, Jack Backman. Today I am saddened by the fact hat I feel called upon to memorialize here another former legislative colleague who performed extraordinarily important service for his own constituents and the people of Massachusetts in general.

When I arrived at the Massachusetts House in 1972, one of the leaders was Royal Bolling Sr. Then Representative Bolling was one of the early political leaders of the African American community in Massachusetts, and I—along with my current Massachusetts Congressional colleague (Mr. MARKEY), who was then a Massachusetts House colleague—had the great honor of working closely with him in an effort to establish for the first time in Massachusetts history fair legislative districting that established a state Senate seat that pulled together the various efforts of the African American community.

No one was surprised when Royal Bolling was the first winner of that seat. He was for years a leader in the fight against racial discrimination in our state, as well as a strong advocate for social fairness in general. As the following article from the Boston Herald shows, Royal Bolling was a pioneer. He launched a career in elected office at a time when racism was a serious obstacle, and through his personality, intelligence and energy, he was one of the most successful in confronting those prejudices.

Royal Bolling Sr. was also a patriarch of an important political family—two of his sons followed him into elected office, inspired by the model he provided of how one effectively fought against prejudice and for basic values for which America ought to stand.

Mr. Speaker, Royal Bolling's family is entitled to be enormously proud of the great contribution he made to Massachusetts and I ask that the Boston Herald article about him be printed here.

[From the Boston Herald, June 25, 2002]

FRIENDS BID FAREWELL TO COMMUNITY LEADER

(By Jules Crittenden)

Neighbors, fellow veterans and politicians came out to pay their respects yesterday to a man they say served as an inspiration and a role model to his community.

Royal Bolling Sr.'s body lay in state yesterday at the Reggie Lewis Center at Roxbury Community College, the school he helped found as a state senator.

Bolling died last week at the age of 82, retired from a long career as a neighborhood Realtor, legislator and decorated war hero.

Emmanuel Horne, a fellow member of the William E. Carter American Legion Post 16, was taking turns with other members standing in a guard of honor by his friend's casket.

"His impact as a role model was immeasurable," said Horne. He cited Bolling's example as an active father of 12 in a community where many families had one parent; his success in business; and his legislative career. "When we had so few leaders, it was important for young people to see someone who had attained a position, so they could realize that they might someday achieve that."

John Canty, owner of Walnut Cleaners, said, "He was a standard for this community, for the morals of this community. He was firm in his beliefs. When Royal believed in something, he stood up for it."

House Speaker Thomas Finneran and Senate President, Thomas Birmingham paid their respects yesterday. Sen. John Kerry, former Gov. Michael Dukakis and former speaker and attorney general Robert Quinn were expected to attend a memorial service last night.

"He was relentless in trying to create a level playing field," said his son Bruce Bolling, a former City Council president. "He refused to accept anyone having to be a second-class citizen."

As a Realtor, Bolling said, his father experienced "red-lining," when some sellers, banks and insurance agencies refused to deal with blacks or black neighborhoods. In the Legislature, he helped pass laws that made the practice illegal.

"There was an expectation that these are things you have to do," Bolling said. "He didn't look at it as being a pioneer, but as trying to correct a wrong."

FAREWELL TO CONGRESSMAN TONY HALL

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. FROST. Mr. Speaker, it gives me great pleasure to congratulate Congressman TONY HALL on becoming the United States Ambassador to the United Nations food and agriculture agencies in Rome. I cannot think of anyone that I would rather have represent the United States on a global stage than my friend, TONY HALL.

Congressman HALL and I have served together in the House for 23 years, and serving most of that time together on the Rules Committee. During this time, I have come to admire his strong will and dedication. We all recognize TONY HALL as a tireless advocate of ending world hunger and ensuring global food security. His record on this issue speaks to his passion, his many accomplishments include: working actively to improve human rights conditions around the world, and the enactment of a law he authored to fight hunger-related diseases in developing nations. These and other works on behalf of the needy earned Congressman HALL a nomination for the Nobel Peace Prize in 1998, 1999, and 2001.

Although we will miss him in the House, I know that the United States will be well served by Congressman HALL. We as Americans should feel privileged that we have such a compassionate and dedicated individual looking after our interests in the United Nations. I know my colleagues will join me in wishing him the best of luck.

TRIBUTE TO DR. AND MRS. HENRY ANDERSEN

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to recognize Dr. and Mrs. Henry "Hank" Andersen of Lamar, CO as they celebrate their 60th wedding anniversary. Hank and Marjorie Anderson grew up in the small town of Cozad, Nebraska. They were high school sweethearts who married on July 31, 1942. For their lifetime commitment to each other and their strong example to their family and community, Mr. Speaker, the United States Congress commends Hank and Marjorie and wishes them many more wonderful years together.

After graduating from Stephens College in Columbia, Missouri, with a major in speech, Miss Marjorie Evelyn Ford married Naval Ensign Henry Stanley Andersen. In 1942, the couple moved to New York City, where Hank, a Naval officer who loved to fly, was stationed as a pilot. There, their small family grew to include a daughter, Sue Ford Andersen. After Hank's tour of duty ended in 1945, the Andersen's moved back to Nebraska. In 1947, they welcomed the birth of their second child, Stanley Ford.

After graduating from the University of Nebraska Dental School in 1949, Hank moved his family to Lamar, Colorado. There, he opened a successful dental practice, which he maintained for almost 35 years.

As their children grew, Hank and Marjorie became very involved in the life of their community. Marjorie joined two women's service organizations, Sorosis and P.E.O., while Hank became an active member of the Southeastern Colorado Dental Association. Both Hank and Marjorie have been active members of Lamar's First Presbyterian Church. Family has always been very important to Hank and Marjorie. Throughout their married life, the Andersens made numerous trips back to Cozad, Nebraska to visit their parents, Ralph and Pearl Ford (Pa Ralph and Sweetiepie to their grandchildren) and Henry and Ella Andersen, (affectionately referred to as Pa Henry and Squeezetight). Even after their parents passed away, the Andersens continued to make the trip to visit their aunt and uncle, Floyd and Kate Mundell.

Hank and Marjorie take great pride in their children, and were very excited when Sue married James Ocken in 1966 and when they became the grandparents of Cassandra "Cassie" Ocken and Staci Ocken Helseth. They have also greatly enjoyed their great-grandchildren, Chase Henry Helseth and Courtney Laura Helseth. The Andersens are always prepared to show off their most recent family photos.

Always avid sports fans, Hank and Marjorie held season tickets to the Air Force Academy football games during the 1950s, and never missed an opportunity to attend Lamar High School football and basketball games. The Andersens have also continually encouraged the young people of their community, faithfully attending the school events of neighborhood children, long after their son and daughter left home.

After Dr. Andersen retired in 1983, the couple enjoyed traveling to Kennebunkport, Maine, the home of their favorite president, George Bush, and to the countryside of Wisconsin to see the fall colors.

After 60 years of marriage, Hank and Marjorie Andersen are still a beautiful picture of what it means to be in love. Everyone who knows them can see how much they enjoy being in each other's company. They take care of one another, laugh together and set a meaningful example of commitment in marriage.

Citizens of Colorado, Hank and Marjorie are a truly remarkable couple. I am proud of their momentous accomplishment, and I ask the House of Representatives to join me in extending our warmest congratulations to Dr. and Mrs. Henry Andersen.

HAPPY BIRTHDAY SNOOTY

HON. DAN MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. DAN MILLER of Florida. Thank you, Mr. Speaker, today I rise to honor one of my district's finest and longest residing citizens. On July 21st this constituent turned 54 years of age and has been loyally serving Manatee

County since 1949. Appropriately this guy has become the mascot for the county that bears the name of his kind. Of course I am referring to the legendary Snooty, the manatee of the South Florida Museum in Bradenton, FL. Snooty is the longest living manatee in captivity and has been the main attraction of the museum for over fifty years.

Snooty was born "Baby Snoots" at the old Miami Aquarium in 1948, and a year later was transferred to Bradenton as part of our annual Florida Heritage Festival. It didn't take long for Snooty to become one of Bradenton's most adorable and popular residents, as he soon became a regular part of curriculum for local elementary school students. Although Snooty sometimes spends up to 18 hours of his day eating and sleeping, you could hardly label him lazy, as he has entertained over one million visitors. Snooty has also welcomed many notable guests such as former Vice President Dan Quayle, General Norman Schwarzkopf, and Captain Kangaroo.

Thanks to the grand status of Snooty and support from the community, a beautiful new facility was erected for him in 1993. The Parker Manatee Aquarium holds approximately 60,000 gallons of water and provides Snooty with both deep and shallow regions to replicate his natural habitat. The new complex also includes many educational exhibits to inform the public about this rare sea mammal and its struggle to regenerate its population.

I would like to extend an invitation to my colleagues and their families to visit Snooty and experience why Manatee County is so proud of their mascot. On behalf of everyone of the 13th District of Florida, it is with great pleasure that I wish Mr. Snooty a happy 54th birthday.

PERSONAL EXPLANATION

HON. ROBERT L. EHRLICH, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. EHRLICH. Mr. Speaker, on Wednesday, July 24th, I was unavoidably detained on my way to vote on House business. Had I been present, I would have voted in the following way:

Aye on Rollcall 335 on passage of H.R. 4547, the Cost of War Against Terrorism Authorization Act of 2002.

A SPECIAL TRIBUTE IN HONOR OF TEN YEARS OF INCORPORATION FOR THE TOWN OF AWENDAW, SOUTH CAROLINA

HON. HENRY E. BROWN, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BROWN of South Carolina. Mr. Speaker, small towns are God's little wonders and today I would like to recognize the small town of Awendaw in my district. Awendaw is known as the "land of the Seewee Indians." It has a rich history that included a visit from the 1st President of the United States, George Washington while on a southern tour in 1791. During the 16th century, records show four Indian tribes that inhabited the land—the Samp, Santee, Seewee and the Wando. Agriculture was their way of life. In 1670, English colonists came to South Carolina at Port Royal in Beaufort. They traveled down the coast until they sighted what is now called Bull's Bay. They were captivated by the beauty of the unspoiled beaches, tall trees and dense forest. As the colonists approached the shore, Indians were waiting with bows and arrows. But the crew yelled out an Indian calling "Appada" meaning peace and the Indians withdrew their bows and welcomed them to shore. The Indians shared their food and the English colonists gave them goods such as knives, beads and tobacco. Auendaugh-bough was the name of the settlement when the English colonists arrived but the name was later shortened to Awendaw.

Awendaw is a special place. The arms of nature surrounds it and radiates its beauty. The Cape Romain Wildlife Refuge, the Francis Marion Forest and the Santee Coastal reserve create a natural wall of protection around the area. Hunting and fishing are still a means of getting food just as it was for the Seewee Indians.

The Churches of the Awendaw community are a "testimony of their faith." The Ocean Grove (formerly Pine Grove), Mt. Nebo A.M.E, Ocean Grove United Methodists and First Seewee Missionary Baptist are all historical churches that play a significant role in the lives of the people who live there.

In November 1988, the people of Awendaw began its fight to become a town. For four years, the people gathered once a month at the Old Porcher Elementary School to plan, organize and share information with the people. There were many hurdles set before the people of Awendaw by the Justice Department. In 1989, Hurricane Hugo interrupted the process, but it was resumed in 1990. The Awendaw community made two unsuccessful attempts to incorporate. Finally, after the third try, the Secretary of State granted a certificate of Incorporation on May 15, 1992. On August 18, 1992, the town of Awendaw elected its first mayor the Rev. William H. Alston. The first town council were Mrs. Jewel Cohen, Mrs. Miriam Green, the Rev. Bryant McNeal and Mr. Lewis Porcher (deceased).

This year the town of Awendaw will celebrate ten years of incorporation. The town has grown from 175 to over 1,000 in population. Over the last seven years, the town of Awendaw has become famous for its annual Blue Crab Festival. This grand celebration brings thousands of people from neighboring communities to share in the festivities.

Mr. Speaker, I ask that my colleagues would join me in a salute to one of God's little wonders, the Town of Awendaw, South Carolina. "Thank God for small towns and the people who live in them."

TRIBUTE TO MISSOURI STATE REPRESENTATIVES DAN HEGEMAN AND CHARLIE SHIELDS

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I rise today to recognize the outstanding work of Missouri State Representatives Dan Hegeman and Charlie Shields, whose legislative achievements will be honored by the Northwest Missouri Republican Club on July 26, 2002.

As a member of the Missouri State Legislature since 1991, Mr. Hegeman represents Missouri's 5th District. A dairy farmer by trade, Mr. Hegeman is involved with a number of community organizations including: the Andrew Buchanan Community Council of American Cancer Society; Northwest Missouri Area Health Education Center Board; and, the Savannah, Maysville, and Albany Chambers of Commerce.

Mr. Shields, also a State Representative, is from Missouri's 28th District. In 1992, Representative Shields was named "Outstanding Freshman Legislator" by House Republicans and in February of 2002 was named Legislator of the Year during the Republican State Lincoln Days in Springfield. As a project coordinator for Heartland Health System in St. Joseph, Missouri, Mr. Shields has done important work in the areas of elementary, secondary, as well as, higher education, mental health advocacy, and community development.

Please join me in honoring Missouri State Representatives Dan Hegeman and Charlie Shields for their tireless work in representing their communities and their outstanding dedication to the great State of Missouri.

PAYING TRIBUTE TO PETE SEIBERT

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, today I stand before this body of Congress and this nation to honor a western visionary and World War II veteran who recently passed away. Pete Seibert contributed selflessly to our nation in its time of need and I thank him for his unrelenting passion and valor. Pete was a remarkable man and his actions during and after World War II are the essence of everything that makes this country great.

Pete Seibert is a veteran of the 10th Mountain Division of the Army, which studied and trained in Colorado. His platoon fought German forces in Italy's Po Valley, using their exceptional mountaineering skills to enable them to overcome the Germans. Regardless of his bravery, Sergeant Seiber was wounded on Mount Terminale in Italy and utterly destroyed his kneecap and femur. Yet, his injuries led to an honorable discharge at the young age of twenty-two, which enabled him to pursue his dreams.

After World War II, Pete returned to Colorado, the state that provoked his passion for the mountains during his training in the 10th Mountain Division to turn his visions into a reality. He arrived in Aspen in 1946 and despite hampering injuries from war began working as Ski Patroller. His determination to reclaim his expert skiing skills prevailed, and in 1947 he won the downhill, slalom, and combined competitions in the Rocky Mountain Championships. Moreover, he became a member of the 1950 U.S. Alpine Ski Team, a great honor. However, he is now more famously known in Colorado as the co-founder of Vail Ski Resort in 1959, he became a familiar image that represents Vail to many. Despite local skepticism from existing ski resorts, Pete traveled around the country to raise revenue to build the mountain, and refused to give up. In 1970 his perseverance paid off when Ski Magazine ranked Vail first rate and claimed it to be an amazing resort for all ages. Needless to say, Vail's business boomed, and its legacy is now world-renowned. In fact, in 2000 Ski Magazine listed him as the 3rd most influential skier of all time and in 2001, Vail named its most recent addition after Mr. Seibert; respectfully calling it "Pete's Bowl".

Mr. Speaker, I ask you to join me today in celebrating the life of Pete Seibert who recently lost his battle with cancer. He overcame enemies of freedom, crippling war injuries, and literally ascended to the mountaintop in pursuit of his dreams. Pete had a remarkable spirit that empowered all who knew him. I would like to express my deepest condolences to his friends and family.

FREEDOM OF PRESS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, While citizens in this country take for granted the freedom of the press, there are nations in this hemisphere where journalists are still victimized by their governments for exposing injustices in their societies. In Panama, despite the apparent triumph of democracy following the arrest of Manuel Noriega and the U.S. intervention in that country, inquisitive journalists such as Miguel Antonio Bernal are treated as criminals because they dare to speak out on otherwise taboo subjects.

The following documents were prepared by Sarah Watson, Laura McGinnis and Karen Smith, Research Associates at the Washington-based Council on Hemispheric Affairs (COHA). Watson's article, entitled Press Freedom in Panama: Going, Going, Gone, was distributed as a memorandum to the press on May 30 and appeared in the June 1 issue of the organization's highly estimable biweekly publication, the Washington Report on the Hemisphere. It examines the ongoing plight of Miguel Antonio Bernal—a plucky professor-journalist—who was acquitted on trumped-up charges brought by former police chief Jose Luis Sosa, but now faces Panama's attorney general appealing his legal setback to a higher court and his intention to silence the voice of a man who cried out against government abuse in his country. The interview of the highly regarded Bernal was conducted by COHA researchers McGinns and Smith, and reveals the journalist's personal perspective on the state of free speech in his country. It appeared in the July 11 issue of the Washington Report on the Hemisphere.

These documents should be of great relevance to my colleagues as they demonstrate the severity of the situation in Panama, and the need for continued international scrutiny of cases that threaten the freedom of speech and the right to dissent.

PRESS FREEDOM IN PANAMA: GOING, GOING, GONE

On May 29th, Judge Lorena Hernandez announced her decision on a criminal slander case that made headlines in Panama and throughout Latin America. In a victory for the forces defending freedom of speech and of the press, she acquitted one of Panama's leading intellectuals and activists, Miguel Antonio Bernal, of flagrantly trumped-up charges brought against him by former police chief José Luis Sosa. But Bernal is not out of the woods yet—the country's attorney general has announced his intention to appeal the decision. The Council on Hemispheric Affairs is now embarking on a major campaign to bring the deplorable situation of Panama's media in general, as well as Bernal's current plight, to the attention of the international community.

One of Panama's most respected public figures, Bernal has been a thorn in the side of every repressive dictatorship from Colonel Torrijos on, all of which have targeted him for harassment with grim regularity. Professor Bernal's sufferings at the hands of previous governments included being exiled from Panama by General Manual Noriega, causing his flight to the U.S., where he later taught at Davidson College and Lehigh University.

Given this background, one might expect that the democratically-elected government of President Mireya Moscoso—who herself had been mistreated by previous repressive regimes—would have offered him a safe haven from where he could have played his important, if often unacknowledged, muckraker role in one of the Americas' most corrupt societies. Unfortunately, at least for the time being, Moscoso has chosen to assume the role of an apologist for Bernal's perverse persecutors.

ACCUSATIONS OF SLANDER

In a 1998 radio interview, Bernal stated that he held the Panamanian police responsible for the death by decapitation that year of four inmates at the infamous Isla de Coiba prison. Earlier, the police department had illegally seized control of the facility, which had achieved well-deserved notoriety for its inhumane conditions. In response to Bernal's accusation, Sosa, the then-chief-of-police, sued him for slander—specifically for besmirching the institutional "honor" of the Panamanian police.

In contrast to U.S. slander law, which provides for a civil trial with, at worst, a possible monetary penalty, Bernal could have faced up to two years in prison if convicted, since the charges against him for "slander and disrespect" were, under Panamanian law, criminal in nature. He also could have been denied the right to work in Panama for an additional two years.

Bernal's case went to trial on May 14th, and despite his recent exoneration by a Panama City judge, it is likely to take months, or even years, before the appellate process runs its course and any final verdict is handed down. On May 29th, Judge Lorena Hernandez took the startling step of declaring Bernal not guilty. Although this was the decision hoped for by all his supporters, the rapidity with which it was handed down came as a surprise given the usual viscous operating speed of Panama's judiciary. It is likely that the wide attention given to the case in the international press affected the pace of the judge's decision.

A LEGACY OF CORRUPTION

Sosa, Bernal's accuser, was police chief during the administration of Moscoso's predecessor, Ernesto Peréz Balladares, of the compromised PRD, General Noriega's old, tainted party. Thus, it is not surprising that Peréz Balladares and his corrupt cronies had something to hide from a free press, since many of them were acolytes from the Noriega era who were continuing the venal practices inherited from the master.

But the prevailing atmosphere didn't change noticeably under the leadership of Moscoso, who was elected in 1999. In May of last year, she tentatively proposed an amnesty for the large number of journalists accused of defamation, only to backtrack and withdraw her support a month later. Moscoso later instructed her attorney general to demand that journalists must have proof of their allegations when they levy charges of corruption. "We cannot allow it to be said that we in the government are corrupt," she said.

CENSORSHIP ABOUNDS IN CORRUPT PANAMA; WITH SITUATION LIKELY TO WORSEN

Bernal is not the only Panamanian journalist facing such charges. Some of the others include a cartoonist, Julio Enrique Bricẽno, who was forced to meet with a judge every fortnight after the former vice president of the country (who also had been president of the Christian Democratic Party), Ricardo Arias Calderón, sued him for "insulting behavior." Journalists Rainer Tuñon and Juan Diaz were sentenced to either 18 months in prison or a 400 euro fine, as well as being banned from working in Panama for 6 months, for reporting on a judge's investigation of doctors alleged to possess forged licenses. One of those under ,investigation, whose license later provided to be genuine, sued—and won—for damages to his reputation.

According to the Inter-American Commission on Human Rights (CIDH), more than 90—one out of every three—Panamanian journalists have cases pending against them for libel or slander. Furthermore, in 70 percent of such cases, the suit was brought by a public official. The Panamanian government, however, claims that only 28 journalists currently have cases to be heard on the docket.

A bill drafted last year in the corruption-plagued county by interior minister Winston Spadafora is ostensibly designed to regulate Panama's journalistic practices, but critics maintain that it will also serve to expedite press manipulation by the authorities. Among its provisions, carefully knitted to net all of the government's perceived foes, is the requirement that all active journalists in the country must possess a license as well as a journalism diploma; foreign journalists who wish to work in Panama will only be able to do so if no national is available to do the job, and even if they obtain permission to work, such outsiders will be limited to a one-year tenure. Critics insist that these rules constitute a violation of free trade and the right to practice a journalism career unencumbered by bureaucracy.

The OAS Human Rights Commission, CIDH found in 1985 that such "gag rules" as those listed above violate the Inter-American Convention on Human Rights. International pressure was placed on Moscoso to lighten such restrictions when she came into office, but she now appears to be trying to reintroduce some of the most draconian controls that the country has witnessed while the world's attention is currently directed elsewhere.

The international media community, as well as Panama's embattled press, has risen to Bernal's defense. His case was included as an example of government repression in the annual report of the watchdog group, "Reporters without Borders," and he has been defended in editorials by some of Panama's best-known human-rights advocates. Also, in 2001, Bernal received international recognition for his work when he received one of France's most prestigious awards, the "Academic Laurels," with a rank of Commander. His supporters are not hesitant to observe that apparently only Bernal's own government fears his pen and his tongue.

INTERVIEW WITH MIGUEL ANTONIO BERNAL

Conducted by Laura and Karen Smith of the Council on Hemispheric Affairs

WHAT IS YOUR OPINION ON DECREE 189, WHICH REQUIRES PANAMANIAN NEWSCASTERS TO HAVE A LICENSE?

Panama is still under the very authoritarian and anti-democratic conceptions that were established by the Noriega military dictatorship. This decree was announced by the government and is part of the different regulations they have established against freedom of speech. On June 18, the National Assembly approved a law that allows only those with a degree in journalism from the University of Panama, or a university recognized by the University of Panama, to be journalists in my country. I have a political science Ph.D. and a law degree, but I cannot act as a journalist in my country because I don't have a journalist degree. I have been on the radio without the license, but they have not fined me yet.

HOW DO YOU FEEL ABOUT PRESIDENT MOSCOSO'S NEW REQUIREMENT THAT JOURNALISTS MUST HAVE PROOF BEFORE THEY ALLEGE GOVERNMENT CORRUPTION?

If you denounce some corruption or government activity they will say that you do not have evidence, even if it is a public act. For example, they recently exonorated a foreign company from paying more than one billion U.S. dollars in taxes; when this was denounced they merely said, "Show the proof." This is a very anti-democratic conception to prevent people from critiquing the government.

HAS FREEDOM OF THE PRESS BECOME AN ISSUE IN THE PANAMANIAN POLITICAL PROCESS?

Freedom of speech is one of the things that we struggled to obtain during the military years. After the overflow of the military, no one political party really championed freedom of speech. Since then, many things have happened to journalists, yet the political parties remain silent. In my opinion they are not real democratic political parties because no one in the former or present government has made a clear and unambiguous statement advocating the protection of freedom of speech.

WHAT NEEDS TO HAPPEN IN PANAMA AND THE WORLD TO ALLEVIATE THE SITUATION?

Panama's political process only reacts to external pressures. The authorities do not heed the cries of domestic critics. The judiciary, legislative and executive branches of government are all hostile to the concept for free speech.

YOU RECENTLY CAME UNDER FIRE FOR ACCUSING THE POLICE OF DECAPITATING FOUR PRISONERS, BUT YOU WERE ACQUITTED. DID THIS SURPRISE YOU?

Yes. I think I was acquitted because of the overwhelming international support my case has attracted. Immediately after the judge announced the acquittal, the Attorney General's office announced an appeal which they are already preparing.

WHAT DO YOU THINK YOUR CASE PORTENDS FOR THE FUTURE OF JOURNALISTIC FREEDOM IN PANAMA?

I do not think it looks optimistic for my country. There are some rightist people who want to use Panama as an experiment to see if they can do the same things in other places. It is important to support free speech in Panama not only for its own sake, but for the sake of other countries whose leaders might be tempted to do the same things.

PARTIAL-BIRTH ABORTION BAN ACT OF 2002

SPEECH OF

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

Mr. BENTSEN. Mr. Speaker, I rise in strong opposition to the rule on H.R. 4965, the so-called "Partial Birth Abortion Ban Act of 2002," a measure that is probably unconstitutional, an end-run on established laws protecting a woman's right to choose, and will do little to end late term abortions.

Mr. Speaker, the House has addressed this matter four separate times in the last seven years, only to return back to square one. What makes this latest attempt even more puzzling is that the Supreme Court, in the Carhart v. Stenberg case in 2000, held that Nebraska's own late term abortion ban was unconstitutional. The Supreme Court explained that such bans unconstitutionally burden a woman's protected right to choose her own health-related decisions, and lack the necessary exception to protect a woman's health.

Even with these standards in place, today's measure proceeds defiantly into certain legal peril, as it refuses to make the health-related exception. The measure's proponents instead argue that it is sufficient to include congressional findings in the bill stating that no such health exception is necessary. Such so-called "findings," however, no matter how extensive they may be, cannot magically turn an unconstitutional piece of legislation into one that passes legal muster, as any first-year law student can tell you. Indeed, a number of prominent health groups, including the American College of Obstetricians and Gynecologists, with more than 40,000 members representing approximately 90 percent of all board-certified obstetricians and gynecologists in the U.S., has consistently opposed efforts to ban such practices. The Congress must understand that such medical and health decisions are best left to women and their doctors, not to legislators intent on promulgating their divisive and narrow agenda.

Despite all these difficulties, the leadership, as anticipated, has refused to allow for amendments, cutting, off debate on what is an extraordinarily important issue area. If the leadership were truly interested in examining all viable alternatives, they would have allowed for amendments, including H.R. 2702, the Hoyer-Greenwood "Late Term Abortion Restriction Act," of which I am a cosponsor. This amendment would present a sound alternative to H.R. 4965, as it bans all late-term abortions, makes the necessary health-related exception, and is consistent with the Supreme Court's dictates. Because I believe that abortion should be safe, legal, and rare, I would have supported this amendment had it been allowed in this debate.

Mr. Speaker, this bill ignores potential adverse complications in pregnancies, and thus effectively bans any semblance of compromise or informed discussion on this issue. This measure tells American women that it is more important for the leadership to score political points than it is to show concern for their health. As the measure is unwise, unyielding, and for all practical purposes unconstitutional, I must vote against both the rule for H.R. 4965 and the underlying legislation.

IN RECOGNITION OF CHIEF COMMANDER ARTHUR FARR AND THE CITY OF MANITOWOC

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, today before this House I recognize and honor Past Chief Commander Arthur Farr of the United States Power Squadrons, as well as the city of Manitowoc, a Wisconsin community that has fought to preserve the causes of freedom and democracy through its superior ship building enterprise.

When the drums of war sound, and our Nation is obliged to heed the calls of the oppressed and threatened, the citizens of the United States dutifully step up—as exemplified by the people of Manitowoc and Past Chief Commander Farr.

Commander Farr served as a naval submarine officer aboard the distinguished USS Guitarro throughout World War II. During his service, Commander Farr helped see the Guitarro safely through five treacherous war patrols in the Pacific, a tenure that yielded four battle stars and the Navy Unit Commendation. The achievements of Commander Farr and the Guitarro are truly deserving of our highest recognition and most earnest thanks.

To equip our forces with the vessels essential for victory during World War II, the citizens of Manitowoc and its neighboring communities rallied to fill posts in the shipyard, often at incredible sacrifice. Farmers milked their cows by day and welded submarines by night. It was the tireless efforts of these citizens that fueled the production of superior vessels, like the Guitarro, and ensured naval success and eventual victory for the allies.

The dedication and often unrecognized contributions of Americans like Past Chief Commander Farr and the citizens of Manitowoc are a true testament to the strength and excellence of this great Nation.

PAYING TRIBUTE TO JONI FAIR

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I stand before you to salute an incredible individual of the Colorado Health Community who is one of the six recipients of the 2002 YWCA Anna Taussig Tribute to Women Award. Joni has committed herself to the study and evaluation of hospices around the world to increase the ability of others to care for the terminally ill. She has an unrelenting passion for her work, which has been illustrated countless times through her dedication to improve hospice conditions. It is my pleasure to honor her today before this body of Congress and this nation.

Joni Fair is the President and Chief Executive Officer of the Sangre de Cristo Hospice in Colorado, and has traveled across the world to educate caretakers about the terminally ill; her latest trip to Japan led to the establishment of the first hospice ever in Japan. Joni refuses to allow financial status to defer a patient from staying in a hospice and leaves her doors open to all who qualify for hospice care. For her passion, devotion and spirit, Joni has earned the El Pomar Foundation Award for Excellence, Colorado Hospice Program of the Year Award, National Hospice Award of Excellence, and the President's Award. Her diligence and integrity, established a precedent in the medical community worldwide.

Mr. Speaker, I ask you to join me in thanking Joni for her contributions and dedication to the comfort of her patients. I ask that this body recognize her efforts to make patient hospice life less distressful. She is a beacon of care in her community whose passion will shine beyond her legacy. Joni, congratulations on your latest achievements and good luck in your future endeavors.

INDIA: NOT ACTING DEMOCRATIC

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, apparently the efforts of some of us in this House to set the record straight about India's repression of its minorities in making an impression. Recently, Indian Ambassador Lalit Mansingh felt compelled to lash out at me and a couple of my colleagues for our statements in this House about the violations of human rights in India. I am tempted to say that I am honored that Mr. Mansingh noticed, but his response is full of misleading and hurtful statements. Everything that we have stated about India is based on the documented record, as Mr. Mansingh well knows.

Let me review the recent information about Indian activities. Recently, India has been cited as a violator of religious freedom by the U.S. Government. While no action has followed this designation so far, it clearly exposes the true nature of Indian democracy.

How can India be called democratic when last year a Cabinet member said that everyone who lives in India must either be a Hindu or be subservient to Hindus? The pro-Fascist RSS, the parent organization of the ruling BJP, published a booklet on how to implicate religious minorities in fake criminal cases. Prime Minister Vajpayee implicitly endorsed these extremist views when he told a audience in New York, "I will always be a Swayamsewak."

The recent massacres in Gujarat are another example of how India treats its minorities. Recently, the New York Times reported that the police stood aside while Hindu militants murdered Muslims, which, as I pointed out previously, is similar to the modus operandi they used in the 1984 massacre of Sikhs. The Hindu newspaper quotes a Gujarati police officer as saying that the police were ordered not to intervene to stop the violence, which is also reminiscent of the Delhi massacres. According to Human Rights Watch, the entire incident was pre-planned with government involvement. Does Ambassador Mansingh dispute the credibility of these sources?

Mr. Mansingh attacks my colleague, the gentlewoman from Georgia, for saying that in India a Hindu life is worth twice as much as a Muslim life. Yet News India-Times, a New York-based Indian-American newspaper, reported that the government is paying 200,000 rupees to the families of Hindu victims of the Gujarat violence and just 100,000 rupees—half as much—to the families of Muslim victims.

In addition, Mr. Mansingh flatly rejected holding the referendum on the independence of Kashmir that India promised the United Nations it would hold in 1948 and also rejected a free and fair plebiscite on independence in Punjab, Khalistan. He simply ignored the other countries like predominantly Christian Nagaland which also seek their independence. If India is the democracy it claims to be, then why are there 17 freedom movements within its borders? If there is no support for independence in Punjab, Khalistan, as India claims, then why not just hold a free and fair vote and prove it? If that claim is true, then it should be massively rejected, shouldn't it? What is India afraid of?

Instead, India has killed over 250,000 Sikhs since 1984, according to The Politics of Genocide by Inderjit Singh Jaijee, who gathered these figures from figures put out by the Punjab State Magistracy, which represents the judiciary of Punjab. It has also killed over 75,000 Kashmiri Muslims, more than 200,000 Christians in Nagaland and tens of thousands of other minorities. According to the Movement Against State Repression, 52,268 Sikh political prisoners are still being detained in Indian jails.

Mr. Speaker, America is founded on the idea of freedom. We believe in freedom for ourselves and all the people of the world. We should work to bring real freedom to all the peoples and nations of South Asia. To do so, we should stop American aid to India until it respects basic human rights and we should continue to call for a free and fair vote on independence for the people of Kashmir, of Punjab, Khalistan, of Nagaland, and all the other peoples seeking their freedom.

Mr. Speaker, Gurmit Singh Aulakh, the President of the Council of Khalistan, wrote an excellent letter to the Washington Times refuting the false statements of Mr. Mansingh. I would like to place it in the RECORD at this time to help set the RECORD straight about what is really going on in India.

[From the Washington Times, May 19, 2002]

INDIA DOESN'T ACT LIKE A DEMOCRACY

In his May 14 Embassy Row column, James Morrison reports that Indian Ambassador Lalit Mansingh is accusing Reps. Dan Burton, Edolphus Towns and Cynthia A. McKinney of spreading "false, hurtful" information about India. This is ludicrous. Mr. Morrison has been sent the proof of the statements that Mr. Mansingh questions, yet he made no apparent effort to get the other side. He should stop repeating Mr. Mansingh's disinformation.

We understand that tyrants are hurt when their crimes are exposed. Yet they do not show any concern for the rights of minorities. Last year, a member of the Indian Cabinet said everyone who lives in India must either be Hindu or be subservient to Hindus. The Rashtriya Swayamsevak Sangh (RSS), which was formed in 1925 in support of the fascist and is the parent organization of the ruling Bharatiya Janata Party, published a booklet on how to implicate Christians and other minorities in fake criminal cases. Yet Prime Minister Atal Bihari Vajpayee told an audience in New York City, "I will always be a Swayamsevak." This belies Mr. Mansingh's claim that "[a[all citizens of India . . . enjoy equal rights and equal protection of law."

Mr. Mansingh might want to explain that to the 250,000 Sikhs who have been murdered by his government. This figure is documented. It was published in "The Politics of Genocide" by Inderjit Singh Jaijee and derived from figures first used by the Punjab State Magistracy, which represents the judiciary of Punjab.

Further, a study by the Movement Against State Repression showed that the Indian government admitted to holding 52,268 Sikh political prisoners under the very repressive so-called Terrorist and Disruptive Activities Act (TADA), which expired in 1995. Amnesty International reported that tens of thousands of other minorities also are being held as political prisoners. Mr. Mansingh undoubtedly is aware of these facts.

Mr. Mansingh is not telling the truth about the massacres in Gujarat. A recent report from Human Rights Watch showed that the massacres were planned in advance. The New York Times reported that the police stood aside while militant Hindu nationalists attacked and murdered Muslims in Gujarat, an act reminiscent of the Delhi massacres of Sikhs in 1984, in which Sikh police were confined to their barracks while the state-run radio and television called for more Sikh blood. According to published reports in India, a police officer in Gujarat said the police were ordered to stand aside.

Mr. Mansingh disputes Miss McKinney's statement that in India, a Hindu life is worth twice as much as a Muslim life. He claims Hindu and Muslim families who were victimized by the Gujarat massacre are receiving equal compensation. Yet according to News India-Times, the Indian government is paying out 200,000 rupees each to the families of Hindus who were killed but just

100,000 rupees to the family of each Muslim killed. Mr. Mansingh knows this, yet he uses his two high-powered lobbying firms to spin dis-information at gullible reporters such as Mr. Morrison.

Despite India's claim to be democratic, Mr. Mansingh rejected the referendum on the status of Kashmir that India promised in 1948, which still has not been held. Despite India's boast that it is democratic and its claim that there is no support for independence in Punjab, Khalistan, he also rejects a free and fair vote on the issue there. He does not even mention the 15 other nations, such as Christian Naga-land, which are seeking their freedom from India. How can a democratic country reject settling issues by a free and fair vote?

Also, Mr. Mansingh does not even address the fact that the U.S. State Department recently put India on its watch list of countries that violate religious freedom.

India is not a democracy; it is a Hindu fundamentalist theocracy. The United States should work for the release of all political prisoners and halt its aid to this repressive, tyrannical state until all people enjoy their God-given human rights. We also should support freedom for all the nations of South Asia through a free and fair vote. That is the only way to bring democracy, peace, freedom and stability to the region.

GURMIT SINGH AULAKH,
President, Council of
Khalistan, Washington.

TRIBUTE TO DUANE SCOTT SPENCER

HON. ROBERT L. EHRLICH, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. EHRLICH. Mr. Speaker, I rise to bring to the attention of this body the passing of Mr. Duane Scott Spencer. Mr. Spencer is an unsung American hero.

Duane Spencer's life was cut short on July 9, 2002, at the age of 36, when he died in an automobile accident while driving home from volunteering at a homeless veterans' shelter, "The Home of the Brave." Mr. Spencer dedicated his life to the empowerment and progress of others through his commitment to the Paralyzed Veterans of America (PVA) and educational efforts on behalf of people with disabilities.

Born on July 12, 1965, in Havre de Grace, Maryland, Duane Spencer was the son of Earl "Dean" Spencer and Elsie "Bobbie" Stephens Spencer. Upon his graduation from high school, Mr. Spencer served his country as a member of the 82nd Airborne Division U.S. Paratroopers in Fort Bragg, North Carolina until an accident that left him paralyzed.

Duane overcame this hardship, becoming a tireless disability advocate, teacher, and role model.

Duane Spencer did not know the meaning of the word "handicapped." As sports director for the Delaware/Maryland PVA he organized and participated in wheel chair basketball and softball, received countless gold and silver medals in the PVA games, and enjoyed trapshooting and fishing. Duane served on the Delaware/Maryland PVA board of directors for several years and later became the Volunteer Liaison Officer for the PVA National Office here in Washington, DC. In this role, he was a frequent visitor to Capitol Hill, advocating for veterans, paralyzed veterans, and the disabled.

Duane will be missed. In addition to his parents, he is survived by his wife of 13 years, Nancy J. Spencer, his step-daughter, Adena J. Hash, two grandsons, Ryan A. and Trent B. Johnson, and sisters Robin and Sherrie Spencer.

The state of Maryland and our great Nation are proud to recognize individuals, such as Mr. Spencer, who overcome and rise above hardship, challenge the concept of personal limitations, and demonstrate true courage. Duane Spencer broke barriers in his life while volunteering to help others. In death, as in life, Duane is an American hero.

ESSENTIAL MEDICINES FOR MEDICARE ACT OF 2002

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CARDIN. Mr. Speaker, it has been three years since Congress began in earnest to address the issue of prescription drug coverage in the Medicare program. The problems we have faced in creating a drug benefit demonstrate that the solution will be both complex and expensive. America's seniors will be closely watching the House of Representatives between now and the end of this Congress. They will be looking for bipartisanship, for cooperation, for a good faith effort to provide them with the lifesaving medicines they need. The lack of prescription drug coverage is one of the most pressing problems facing America's older and disabled citizens today. Because Medicare does not include a drug benefit, its promise—access to comprehensive medical care for the elderly and disabled—is unfulfilled. I rise today to introduce the Essential Medicines for Medicare Act, legislation that will move us one step closer toward keeping that promise of comprehensive coverage.

Medicare, the federal health insurance program for the elderly and disabled, covers a large number of medical services—inpatient hospitalization care, physician services, physical and occupational therapy, and skilled nursing facility, home health and hospice care are all covered by the Medicare program. Despite Medicare's success in eliminating illness as a potential cause of financial ruin for elderly Americans, the burden of high prescription drug costs remains a source of hardship for many beneficiaries.

When Congress created Medicare in 1965, prescription drugs were not a standard feature of most private insurance policies. But health care in the United States has evolved considerably in the last 34 years. Now most private health plans cover drugs because they are an essential component of modern health care. They are viewed as integral in the treatment and prevention of diseases. But Medicare, for all its achievements, has not kept pace with America's health care system. It is time for Medicare to modernize.

Because Medicare does not pay for prescription drugs, its beneficiaries, 80 percent of whom use a prescription drug each and every day, must either rely on Medicaid if they qualify, purchase private supplemental coverage, join a Medicare HMO that offers drug benefits, or pay for them from their fixed incomes. These costs can be extraordinarily burdensome for the elderly, who already have the highest out-of-pocket costs of any age group and who take, on average, eighteen prescriptions each year.

There is no question that Congress should enact a comprehensive Medicare prescription drug benefit without further delay. I support a benefit package that covers all necessary drugs for seniors as a part of basic Medicare. However, I am concerned that the 107th Congress appears to be headed down a previously traveled road.

Two years ago, this House debated legislation that would require seniors to contract with private insurance companies for prescription drug coverage. It passed narrowly along party lines. As predicted, the Senate never considered that legislation, and no drug bill was signed into law. At the time, most seniors deemed the House Republican plan unworkable; another program based on the same premise—relying on the participation of private insurance plans—had failed to provide for Medicare beneficiaries. Since the June 2000 vote, that concept, the Medicare+Choice program, has abandoned a million more seniors.

Other once reliable sources of coverage have dissipated. Nearly 60 percent of Medicare beneficiaries with incomes below the federal poverty level were not enrolled in Medicaid as recently as 1997. And even Medicaid enrollees with drug benefits must forgo some of their medications. With the recent economic downturns, more and more state Medicaid programs are reducing their benefits. The high cost of these Medigap policies puts them out of reach for most low-to-moderate income Medicare enrollees. Finally, employer-sponsored plans no longer offer reliable prescription drug coverage. Although between 60 and 70 percent of large employers offered retiree health benefits in the 1980s, fewer than 40 percent do so today. Of these, nearly one-third offer no drug benefits.

Finally, as members across the country can attest to, the benefits offered by Medicare+Choice plans are neither guaranteed nor permanent. Because they are not part of the basic Medicare benefit package, which by law must be included in all Medicare+Choice plans, drug benefits are considered "extra" and as such can change from year to year. This means that even in those counties where plans remain in the Medicare market, there is no certainty that they will continue to offer drug benefits or that they will not severely reduce the benefits.

These statistics combine to make us painfully aware of the gaping hole in Medicare's safety net, This Congress can move this session to provide a benefit before more elderly and disabled citizens fall through. My bill, the Essential Medicines for Medicare Act, recognizes the importance of preventive care and provides coverage for drugs that have been determined to show progress in treating chronic diseases. Why chronic diseases? Because the average drug expenditures for elderly persons with just one chronic disease are more than twice as high than for those without any. And because we know from years of advanced medical research that treating these conditions will reduce costly inpatient hospitalizations and expensive follow-up care. Furthermore, this bill addresses those beneficiaries who have the greatest need for assistance with purchasing their medications: a review of the Medicare+Choice program reveals that seniors who join HMOs are younger and healthier than those in fee-for-service Medicare. This tells us that it is the older, sicker seniors, precisely the ones who need prescriptions the most, who have reduced access to drug benefits.

Our bill addresses their needs. It begins with five chronic diseases—diabetes, hypertension, congestive heart disease, major depression, and rheumatoid arthritis—that have high prevalence among seniors and whose treatment will show improvement in beneficiaries' quality of life and reduce Medicare's overall expenditures.

The Medicare costs associated with inpatient treatment of these diseases are exorbitant. I have attached for the record fact sheets that illustrate the enormous price tags that borne by the Medicare Part A Trust Fund when these chronic conditions remain untreated.

The bill I have introduced provides coverage for certain medications after an annual $250 deductible is met, with no copayment for generics and a 20 percent copayment for brand-name drugs. Lower-income beneficiaries will be exempt from deductibles and copays. The Agency for Healthcare Research and Quality will review available data on the effectiveness of drugs in treating these conditions, and based on AHRQ's review, the Department of Health and Human Services will determine the drugs to be covered. Pharmacy Benefit Managers, PBM, under contract with the Centers for Medicare and Medicaid Services will negotiate with pharmaceutical manufacturers to purchase these drugs and will administer the benefit.

This bill covers five major chronic conditions, but I recognize that there are others that should be covered as well. The legislation provides a process for the Institute of Medicine to determine the effectiveness of this benefit and the Medicare savings it produces, and to recommend additional diagnoses and medications that should be considered for coverage.

Mr. Speaker, modern medicine has the capability of doing extraordinary things. But no medical breakthrough, no matter how remarkable, can benefit patients if they can't get access to it. This cost-effective, economically sound approach to prescription drug coverage is a matter of common sense: if Medicare beneficiaries can secure the medications they need, they will be able to manage their conditions, and will be much less likely to require extended and costly inpatient care. This legislation is a first step, a major step, toward making this happen. I urge the House to consider this approach to providing a solid package of prescription drug benefits, an approach that will modernize Medicare for the 21st century for the millions of elderly and disabled Americans who depend on it.

PAYING TRIBUTE TO CHARLES "GEORGE" SIMMS JR.

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Mr. Charles "George" Simms of Pueblo, Colorado and recognize his contributions and service to his community. George recently passed away at the age of 73. He was a longtime teacher and coach at Centennial High School and is remembered today as a hero and role model for many of his students and players.

George was born in Walsenburg, Colorado and attended Centennial High School in Pueblo, where he excelled in basketball and baseball. As a student at Pueblo Junior College, veteran coach Harry Simmons referred to him as "the best second baseman I ever coached." George continued his education and athletic career at Wyoming and after graduation in 1950; he signed a contract with the St. Louis Cardinals. George's baseball career was interrupted when he joined the Air Force to fight courageously during the Korean War. During the war, he met his wife, Anne playing service basketball. George brought her back to Pueblo and began his teaching career in 1954.

In 1982, George was inducted into the Greater Pueblo Sports Association Hall of Fame. He taught and coached baseball for twelve years. He and his wife celebrated their 50th anniversary last fall. George is survived by his wife, five children and eight grandchildren.

Mr. Speaker, it is a great privilege that I recognize Charles Simms and his selfless contributions to the City of Pueblo and this nation. His friends remember him as "George" a man who didn't know that he was the hero. It is an honor for me to pay tribute to this veteran before this body of Congress and this nation. I express my condolences towards family and friends during this difficult time, but I would also like to remember the joy he provided to us all, his legacy and contributions will be greatly missed.

HONORING OFFICERS ROBERT ETTER AND STEPHANIE MARKINS

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, I am profoundly dismayed today to share a piece of dreadful news from my district with this House and with our entire nation.

On Monday, in an act of terrifying evil, a man deliberately crashed his truck into a police squad car in the Town of Hobart, Wisconsin. The two police officers in the car, Robert Etter and Stephanie Markins, were killed.

Officer Etter, who was known by some in the community as "Officer Bob," served in law enforcement for three decades. He retired a few years ago but soon realized how hard it was to leave behind 30 years of serving and protecting his neighbors—so he returned, bringing his immense experience and skills back to the local law enforcement community. In fact, he was sharing some of that experience with a new officer when their car was hit on July 22. He leaves behind a wife, four daughters, two grandchildren and a community grateful for having had the opportunity to share life with him.

Officer Markins was that new officer learning from Officer Etter. She had served on the force for just a short time. Described by one of her trainers as "very much a gogetter" who wanted to "get out and deal with people," Officer Markins' promise as a law enforcement officer was tragically cut short Monday. She was a fiancé, a daughter, a sister, a friend, a neighbor and a protector who was willing to give everything for the security of others. She will be missed.

Mr. Speaker, this heartbreaking and senseless case tragically demonstrates that law enforcement is a dangerous job whether it's done in New York City or Hobart, Wisconsin. And it shows that the people who choose it as their profession are truly extraordinary in their character, their courage, and their dedication to their fellow citizens.

I offer today these few brief remarks to honor the memories of Officers Etter and Markins, to ensure that they are remembered in the annals of our nation's history, to recognize these families' incredible loss, and to remind all of us of the sacrifices made every day by law enforcement officers and their loved ones.

ELI HOME CARIÑO WALK-IN CENTER

HON. LORETTA SANCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. SANCHEZ. Mr. Speaker, I rise today to congratulate the Eli Home Cariño Walk-In Center in Anaheim which opened its doors on July 13 to families throughout my district.

Many families in my district do not have a place to go to get support, find information, or just ask questions. The Center will help these families, many of whom are dealing with economic crises and other stress creating situations.

The Eli Home is dedicated to providing free, bilingual services to Spanish-speaking families. The center offers parenting classes, weekly forums, case management, counseling, and child-abuse prevention.

The City of Anaheim has recognized this organization and has welcomed it into the community. I would like to do the same.

I would like to personally thank The Eli Home Cariño Walk-In Center staff for their hard work and dedication to the community and for creating a positive environment for my district.

ANNIE SNYDER: "SHE HELD HER GROUND"

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WOLF. Mr. Speaker, a legend in the 10th District of Virginia died on Friday, July 19. The headline on Monday, July 22, from The Washington Post may have said it best in describing the life of a stalwart defender of preserving the rural and historic lands in northern Virginia. It was, "Annie Snyder: She Held Her Ground."

Annie Snyder, a 53-year resident of Prince William County, passed away at age 80. She was one of my constituents from northern Virginia and many believe she single handedly in the late 1980's stopped the development of a shopping mall which threatened the Manassas National Battlefield Park. As the Post reported, she "led battles against great odds and powerful foes" in her quest to protect the hallowed grounds of the Manassas Battlefield and other threatened historic lands.

Affectionately known as "Annie," she led me into what became known as "The Third Battle of Bull Run," as I introduced legislation to take the land which threatened the battlefield, make it federal land and incorporate it into the park. But it was her fighting spirit, perhaps from her days of serving in the Marine Corps, that won the day.

She had a motto, "Never, never, never give up." And she never did, in fighting for the causes in which she believed. The Post said it well: "She maintained a 'Semper Fi' attitude toward civic involvement until the end."

On my office wall is a photo she sent me after the legislation was signed into law. The statue of General Stonewall Jackson standing tall on the Manassas Battlefield ground is in the lower left corner and a bolt of lightning in the center of the picture draws from the sky into the ground. She wrote on the photo: "When lightning struck Manassas, you were there. Thank you. Annie Snyder."

Mr. Speaker, on behalf of northern Virginians, we remember the life of and say "thank you" to Annie Snyder for going into battle to preserve the lands she held so dear. We also express our sympathy to her husband of 57 years, Pete, of Gainesville; her six children, six grandchildren and a great-grandchild.

INDIA'S HEGEMONIC AMBITIONS LEAD TO CRISIS IN SOUTH ASIA

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, we are all hoping that war can be avoided in South Asia. A war there would take an enormous toll in human lives and in damage to land and the fragile economies of India and Pakistan. The biggest losers, clearly, would be the Islamic people of Kashmir and the Sikhs of Punjab, Khalistan.

Unfortunately, some of the media accounts of this conflict have been very one-sided. You would think after reading a lot of the papers and watching a lot of TV news that India is absolutely blameless in this conflict. That is not true. As the Wall Street Journal pointed out on June 4, it is India's hegemonic ambitions, as much as anything, that have brought this crisis to a head.

Mr. Speaker, at the time that India was partitioned, the Hindu maharajah of Kashmir, despite a majority Muslim population, acceded to India. That accession has always been disputed and India promised the United Nations in 1948 that it would settle the issue with a free and fair plebiscite on Kashmir's status. As we all know, the plebiscite as never been held. Instead, India has tried to reinforce its rule there with over 700,000 troops. According to columnist Tony Blankley in the January 2 Washington Times, meanwhile, India supports cross-border terrorism in the Pakistani province of Sindh. Indian officials have said that everyone who lives in India must either be Hindu or subservient to Hindus, and they have called for the incorporation of Pakistan into "Akand Bharat"—Greater India.

In January, Home Minister L.K. Advani admitted that once Kashmir is free from Indian rule, it will bring about the breakup of India. India is a multinational state and history shows that such states always unravel eventually. We all hope that it won't take a war to do it. No one wants another Yugoslavia in South Asia, but there are 17 freedom movements within India. Unless India takes steps to resolve these issues peacefully and democratically, a violent solution becomes much more likely. As the former Majority Leader of the other chamber, Senator George Mitchell, said, "The essence of democracy is self-determination." It is true in the Middle East and it is true in South Asia.

The Sikh Nation in Punjab, Khalistan also seeks its freedom by peaceful, democratic, nonviolent means, as does predominantly Christian Nagaland, to name just a couple of examples. The Sikhs declared the independence of Khalistan on October 7, 1987. They ruled Punjab prior to the British conquest of the subcontinent and no Sikh representative has signed the Indian constitution.

India claims that these freedom movements have little or no support. Well, if that is true, and if India is "the world's largest democracy," as it claims, then why would it not hold a plebiscite on the status of Kashmir, of Nagaland, of Khalistan? Wouldn't that be the democratic way to resolve these issues without a violent solution?

Until that day comes, Mr. Speaker, we should support self-determination. We should declare our support for a plebiscite in Khalistan, in Kashmir, in Nagaland, and wherever they are seeking freedom. We should stop aid to India until all people in the subcontinent live in freedom and peace. These measures will help bring the glow of freedom to everyone in that troubled, dangerous region.

Mr. Speaker, I would like to place the Wall Street Journal article into the RECORD at this time.

[From the Wall Street Journal, June 4, 2002]

INDIA'S KASHMIR AMBITIONS

Western worry over Kashmir has focused on Pakistan's willingness to control terrorists slipping over the border with India, and rightly so. But that shouldn't allow U.S. policy to overlook India's equal obligation to prevent a full-scale wear from breaking out in Southwest Asia.

That obligation has come into focus with today's Asian security conference in Kazakstan. Indian Prime Minister Atal Bihari Vajpayee and President Pervez Musharraf of Pakistan will both be on hand, and everyone has been urging a bilateral meeting on the sidelines. But so far Mr. Vajpayee has ruled out any dialogue until Pakistan presents evidence that it is acting against the Kashmiri terrorist groups crossing the U.N. line of control to attack Indian targets.

This is shortsighted, not least for India, because it allows Mr. Musharraf to take the moral high ground by offering to talk "anywhere and at any level." On Saturday the Pakistani leader also went on CNN to offer an implied assurance that he wouldn't resort to nuclear weapons, as something no sane individual would do. This went some way toward matching India's no-first-use policy and could be considered a confidence-building measure, however hard it would be for any leader to stick to such a pledge were national survival at stake.

India's refusal even to talk also raises questions about just what that regional powerhouse hopes to achieve out of this Kashmir crisis. If it really wants terrorists to be stopped, some cooperation with Pakistan would seem to be in order. We hope India isn't looking for a pretext to intervene militarily, on grounds that it knows that it would win (as it surely would) and that this would prevent the emergence of a moderate and modernizing Pakistan.

This question is on the mind of U.S. leaders who ask Indian officials what they think a war would accomplish, only to get no clear answer. India is by far the dominant power in Southwest Asia, and it likes it that way. Some in India may fear Mr. Musharraf less because he has tolerated terrorists than because he has made a strategic choice to ally his country with the U.S. If he succeeds, Pakistan could become stronger as a regional competitor and a model for India's own Muslim population of 150 million.

The danger here is that if India uses Kashmir to humiliate Pakistan, Mr. Musharraf probably wouldn't survive, whether or not fighting escalates into full-scale war. That wouldn't do much to control terrorism, either in India or anywhere else. It would also send a terrible signal to Middle eastern leaders about what happens when you join up with America. All of this is above and beyond the immediate damage to the cause of rounding up Al Qaeda on the Afghan-Pak border, or of restoring security inside Afghanistan.

No one doubts that Mr. Musharraf has to be pressed to control Kashmiri militants, as President Bush has done with increasing vigor. The Pakistani ruler was the architect of an incursion into Indian-controlled Kashmir at Kargil two years ago, and his military has sometimes provided mortar fire to cover people crossing the line of control.

But at least in the past couple of weeks that seems to have changed, as Pakistani security forces have begun restraining militants and breaking their communications links with terrorists already behind Indian lines. In any case, the line of control is so long and wild that no government can stop all incursions. More broadly, Mr. Musharraf has already taken more steps to reform Pakistani society than any recent government.

U.S. officials say he has taken notable steps to clean up his intelligence service and that he has even begun to reform the madrassa schools that are the source of so much Islamic radicalism. (The problem is that Saudi Arabia hasn't stopped funding them.)

The Pakistani leader has done all this at considerable personal and strategic risk, and it is in the U.S. and (we would argue) Indian interests that the process continue and succeed. He deserves time to show he is not another Yasser Arafat, who has a 30-year record of duplicity.

As it works to defuse the Kashmir crisis, the U.S. has to press Mr. Musharraf to stop as many terror incursions into India as possible. But it also must work to dissuade Indian from using Kashmir as an excuse to humiliate Pakistan, a vital U.S. ally. The U.S. has a long-term interest in good relations with India, a sister democracy and Asian counterweight to China. But self-restraint over Kashmir is a test of how much India really wants that kind of U.S. relationship.

A SIXTH DISTRICT BOY SCOUT TEACHES NEW RESPECT FOR THE U.S. FLAG

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. COBLE. Mr. Speaker, with the recent court decision concerning the Pledge of Allegiance, more attention than ever has been brought to the American flag. I want my colleagues to be aware of a recent action by a Boy Scout in my congressional district who took it upon himself to come up with a new way to honor our beloved symbol of freedom. He is to be commended for his thoughtful patriotism.

Ryan White, a member of Boy Scout Troop 20 in High Point, North Carolina, was looking for an appropriate project to achieve the rank of Eagle Scout. After doing some research, Ryan discovered that the federal flag code does not detail any particular way to dispose of a flag that is no longer fit to display. (Our office had sent Ryan a Congressional Research Service report on flag law.) So, Ryan decided to organize a large, public flag disposal ceremony. His idea was so well designed and thoughtful, I want everyone in Washington and around the nation to be aware of his concept.

This past May, the city of Thomasville conducted a Memorial Day Freedom Celebration at Cushwa Stadium. Ryan White was invited to be a part of this patriotic program. His ceremony was so well received that day, the hope is that Ryan's idea will spread throughout the country. His program was formulated to show proper respect for our flag and to stir the patriotic spirit of everyone who witnessed the ceremony.

I will paraphrase the words of Ryan White's program to explain the ceremony he developed to retire a worn-out flag. First, the audience will stand and sing God Bless America as the flag is being lowered. Next, a designated Color Guard properly folds the flag to be retired and it is carried to a special kettle for burning. The song Taps is played as the flag is burned. Finally, as the new flag is raised, the participants remove their hats, or salute if in uniform, and join in the signing of the Star Spangled Banner.

Ryan discovered in his research that the flag code is somewhat vague about how a worn-out flag should be retired. It states: "The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning." Ryan took this information and developed a ceremony that is dignified and patriotic. He has set a standard that can be used for years to come.

On behalf of the citizens of the Sixth District of North Carolina, we congratulate Ryan White of Boy Scout Troop 20 in High Point, North Carolina, for his outstanding Eagle Scout project. No matter what any court may rule, Ryan White has demonstrated that we can honor the flag in a patriotic and dignified way.

PAYING TRIBUTE TO LORI A. NIMMERFROH

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I stand before this body of Congress today to honor a dedicated nurse and mother of two from Denver, Colorado. Lori A. Nimmerfroh was an exceptional woman who exhibited unrelenting passion and spirit throughout her life. She passed away only in March, far too early, at the age of 38. She will be remembered as a remarkable woman whose memory will be celebrated forever by her family, friends, and patients.

Lori Nimmerfroh graduated from Grand Junction High School and continued her higher education at Pacific Lutheran University in Tacoma, Washington. She later received her nursing degree from the University of Northern Colorado and began working for Mercy Medical Center in Denver. In 1997, she attained the position of clinical nurse coordinator for Rose Medical Center, and was promoted to nurse manager of the medical intensive care units in the surgical ward in 1999. Her colleagues honored her in 2000 when she was awarded the Rose Leader of the Year Award and was nominated for the Nightingale Award in 2002. Lori also had as enormous impact on her family, her parents Diane and Dick Reineer, brother and sister Steve and Jodi, her husband Paul, and two sons Nick and Hunter.

Mr. Speaker, I am here today to join the loved ones of Lori A. Nimmerfroh in the mourning of her loss. She positively contributed to the betterment of her community, state, and nation. I would like to express my deepest condolences to her friends and family, and offer the recognition of this Body of Congress to the many impacts, both small and large that Lori made. While we will all miss her tremendously, all who knew her will be incalculably better off because she played a role in their lives.

INTRODUCTION OF THE CAPTIVE WILDLIFE SAFETY ACT

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GEORGE MILLER of California. Mr. Speaker, I rise today to introduce legislation that represents a firm commitment to protect the safety of the American public and to protect the welfare of wild animals that are increasingly being maintained as pets. This legislation identifies and provides a solution to a growing national problem that must be addressed.

The bill, the Captive Wildlife Safety Act, would amend the Lacey Act and bar the interstate and foreign commerce of dangerous exotics, including lions, tigers, leopards, cheetahs, cougars, and bears, for use as pets. The legislation would not ban all private ownership of these prohibited species; rather, it would outlaw the commerce of these animals for use as pets.

The legislation specifically exempts zoos, circuses, and others that are currently regulated by the U.S. Department of Agriculture under the provisions of the Animal Welfare Act. Instead, the bill is specifically aimed at the unregulated and untrained individuals who are maintaining these wild animals as exotic pets.

According to best estimates, there are more than 5,000 tigers in captivity in the United States. There are perhaps more tigers in captivity than there are tigers in their native habitats throughout the range in Asia. While some tigers are held in zoological institutions, most of the animals are pets, kept in cages behind someone's home in a state that does not restrict private ownership of dangerous animals. And it's not just tigers: there is widespread private ownership of other dangerous animals, including lions, cougars, and bears. At a time when almost anything can be bought on the Internet, it is unsurprising that the animals can all be purchased through the more than 1,000 web sites that promote private ownership of wild animals.

Problems arise because most owners are ignorant of a wild animal's needs, and local veterinarians, sanctuaries, animal shelters, and local governments are ill-equipped to meet the challenge of providing proper care. Wild animals, especially such large and uniquely powerful animals as lions and tigers, should be kept in captivity by professional zoological facilities. Only curators of these facilities have the knowledge and know-how to meet the animals behavioral, physical, and nutritional needs.

People living near these animals are also in real danger. There is a laundry list of incidents of dangerous exotics seriously injuring and killing people. In Loxahatchee, Florida, in February, a 58-year-old woman was bitten in the head by a 750-pound pet Siberian-Bengal tiger mix. In Lexington, Texas, in October last year, a three-year-old boy was killed by his stepfather's pet tiger. Earlier that year in August, a pet lion bit a woman trying to feed peaches to some captive bears.

The Captive Wildlife Safety Act represents an emerging consensus on the need for comprehensive federal legislation to regulate what animals can be kept as pets.

A wide range of groups and institutions, for example, oppose the private ownership of carnivores. The U.S. Department of Agriculture states, "Large wild and exotic cats such as lions, tigers, cougars and leopards are dangerous animals . . . Because of these animals' potential to kill or severely injure both people and other animals, an untrained person should not keep them as pets. Doing so poses serious risks to family, friends, neighbors, and the general public. Even an animal that can be friendly and love can be very dangerous."

The American Veterinary Medical Association also "strongly opposes the keeping of wild carnivore species of animals as pets and believes that all commercial traffic of these animals for such purpose should be prohibited."

This bill is just one part of the solution to help protect people and exotic animals. States will continue to play a major role. I hope to see the grassroots effort directed at the state and local government level, to increase the number of states and counties that ban private ownership of dangerous exotic animals. Already, 12 states ban private possession of large exotic animals, while 7 states have partial bans.

The Captive Wildlife Safety Act is supported by the Association of Zoos and Aquariums, The Humane Society of the United States, The Fund for Animals, and the International Fund for Animal Welfare. I also want to thank the actress Tippi Hedren for raising awareness of this issue on Capitol Hill. Tippi operates an animal sanctuary, and often has the sad and expensive task of rescuing these animals after their owners realize the lion or tiger is a safety risk and cannot be properly cared for.

I ask my colleagues to cosponsor this legislation, and I hope that the Resources Committee, on which I serve, will take up the legislation in an expeditious manner.

ALIEN CHILD ORGAN TRANSPLANT ACT OF 2002

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GUTIERREZ. Mr. Speaker, I rise today to announce the introduction of the "Alien Child Organ Transplant Act of 2002", a bill that would provide coverage under the Medicaid program for organ transplant procedures. Under my bill, children under 18 years of age who are currently residing in this country and develop a medical condition that requires an organ transplant would be able to receive Medicaid coverage for the procedure.

Many of my colleagues may not be aware of this, but current law does not allow legal permanent residents to receive Medicare coverage for a live-saving measure such as an organ transplant. And I am referring to legal permanent residents, that is, immigrants who are here legally.

Melannie Veliz is such an immigrant. Melannie has cystic fibrosis and the disease has left her with only marginal lung function. She is very ill and her lung capacity is about one-third of what it should be. In her delicate state, she is susceptible to bronchitis and infections. This means she has trouble, sometimes, playing. Sometimes, she can't go to school or be with her friends. She can rarely do the things that every child deserves. No matter where he or she was born.

Melannie, is an 11-year old student at Smith School in Aurora, Illinois. She lives with her parents, Christian and Johanna, and her younger brother. Melannie, who was born in Chile, traveled here with her family on visas, as required by the law. Unlike most immigrants who come to America seeking a better life, the Veliz family came to America not simply seeking a better life— but life. Life for Melannie.

The Veliz family came here looking for lifesaving procedures that were not available in Chile. Unfortunately, although their entry into this country was completely within the law— the laws of this nation have kept Melannie from becoming healthy. I am referring to the current punitive laws and harsh rules which prohibit people, including children, from accessing key public services, including Medicaid, due simply to their immigration status.

Melannie's health can be improved and her life could be saved through a double lung transplant. The procedure is risky but can be done. Her dream of a better life is not being blocked by medical technology. No. Melannie's immediate dream was denied because she is not able to participate in the Medicaid program.

However, thanks to the initial enterprising spirit of Melannie's teacher, Maria López, her supporters were able to obtain significant donations to secure the operation. The goal at the time was $309,000. This was before the hospital decided that the original estimates were inaccurate and that at least $450,000 would be needed to ensure that Melannie would receive the necessary aftercare. But the human spirit never gives up. And nobody gave up in the quest to secure the needed funds. Fundraising efforts were so successful, thanks in no small measure to the direct involvement of the Cacique Foundation, that Melannie and her supporters have now secured more than the $450,000 needed for the operation.

As a Member of Congress, I pledge to continue my fight in defense of the rights of immigrants specially those who, like Melannie, are very young and most vulnerable. I will continue to compel my colleagues to recognize that the harsh penalties that they impose on people because of their immigrant status can—and must—be overturned.

Not simply for the health of those kids who are affected by these laws, but for the health of our nation, so that we can truly live up to the standard of decency that we so often attribute to America.

Melannie has been fortunate enough to benefit from generous donors, but she has been a victim of the not-so-generous laws. She has lost precious months having to raise this money and her health has deteriorated. But even with all the uncertainties of the delicate transplant operation that awaits her, Melannie is one of the lucky ones. She can now pay for her operation. Other immigrant children are not this lucky. And those who are not fortunate enough to have a teacher like Ms. López, a community like our Latino community and the support of a nation-wide network, may never have a chance to live.

The goal of this bill is quite simple: to save children's lives.

My bill seeks to give all children a chance, regardless of their country of origin. A fighting chance to live. Please join me in support of the "Alien Child Organ Transplant Act of 2002."

SIKHS OBSERVE ANNIVERSARY OF GOLDEN TEMPLE ATTACK

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, I would like to take this opportunity to note a historic occasion that is being observed this week. In addition to our observance of D–Day, the day that Allied troops landed in Europe to begin the attack on Nazi Germany, this week marks the anniversary of India's military attack on the Golden Temple in Amritsar and the brutal massacre of 20,000 Sikhs in June 1984. Recently, Sikhs from the East Coast gathered to commemorate this event in front of the Indian Embassy here in Washington. Similar events have been held or will be held in New York, London, and many other cities.

The Golden Temple attack was an attack on the seat of the Sikh religion. It forever put the lie to India's claim that it is secular and democratic. How can a democratic state launch a military attack on religious pilgrims gathered at the most sacred site of their religion? The Indian troops shot bullet holes through the Sikh holy scriptures, the Guru Granth Sahib, and took boys as young as eight years old out in the courtyard and shot them in cold blood. This set off a wave of repression against Sikhs that continues to this day.

Mr. Speaker, I would like to put the flyer from that event into the RECORD now. It contains a lot of important information about the Golden Temple attack that shows the tyranny just under the facade of Indian democracy.

INDIAN GOVERNMENT GENOCIDE AGAINST THE SIKH NATION CONTINUES TO THIS DAY

From June 3 to 6, 1984 the Indian Government launched a military attack on the Golden Temple in Amritsar, the holiest of Sikh shrines and seat of the Sikh religion. This is the equivalent of attacking the Vatican or Mecca. 38 other Gurdwaras throughout Punjab Khalistan were simultaneously attacked. More than 20,000 Sikhs were killed in these attacks.

Desecration of the temple included shooting bullets into the Guru Granth Sahib, the Sikh holy scripture, and destroying original Hukam Namas written by hand by the ten Sikh Gurus. Young Sikh boys ages 8 to 12 were taken outside and asked if they supported Khalistan, the independent Sikh homeland. When they responded "Bole So Nihal," a religious statement, they were shot to death in cold blood by the brutal Indian troops.

The Golden Temple attack launched an ongoing campaign of genocide against Sikhs by the Indian government that continues to this day. Punjab, Khalistan, the Sikh homeland, has been turned into a killing field.

The Golden Temple attack made it clear that there is no place for Sikhs in India.

The Movement Against State Repression issued a report showing that India is holding at least 52,268 Sikh political prisoners, by their own admission, in illegal detention without charge or trial. Some of them have been held since 1984. Many prisoners continue to be held under the repressive, so-called "Terrorist and Disruptive Activities Act (TADA)," even though it expired in 1995. According to the report, in many cases, the police would file TADA cases against the same individual in different states "to make it impossible for them to muster evidence in their favor." It was also common practice for police to re-arrest TADA prisoners who had been released, often without filing new charges.

"In November 1994," the report states, "42 employees of the Pilibhit district jail and PAC were found guilty of clubbing to death 6 Sikh prisoners and seriously wounding 22 others. They were TADA prisoners. Uttar Pradesh later admitted the presence of around 5000 Sikh TADA prisoners." Over 50,000 Sikhs have been made to disappear since 1984.

Sikhs in Punjab, Khalistan formally declared independence on October 7, 1987, to be achieved through the Sikh tradition of Shantmai Morcha, or peaceful resistance. Sikhs ruled Punjab from 1765 to 1849 and were to receive sovereignty at the time that the British quit India.

While India seeks hegemony in South Asia, the atrocities continue.

India has openly tested nuclear weapons and deployed them in Punjab, weapons that can be used in case of nuclear war with Pakistan. These warheads put the lives of Sikhs at risk for Hindu Nationalist hegemony over South Asia. The Indian government is run by the BJP, the militant Hindu nationalist party in India, and is unfriendly to the United States. In May 1999, the Indian Express reported that Indian Defense Minister George Fernandes led a meeting with representatives from Cuba, Russia, China, Libya, Iraq, and other countries to build a security alliance "to stop the U.S."

In March 42 Members of the U.S. Congress from both parties wrote to President Bush asking him to help free tens of thousands of political prisoners.

India voted with Cuba, China, and other repressive states to kill a U.S. resolution against human-rights violations in China.

India is a terrorist state. According to published reports in India, the government planned the massacre in Gujarat (which killed over 5,000 people) in advance and they ordered the police to stand by and not to interfere to stop the massacre. Last year, a group of Indian soldiers was caught red-handed trying to set fire to a Gurdwara and some Sikh homes in a village in Kashmir.

According to the Hitavada newspaper, India paid the late Governor of Punjab, Surendra Nath, $1.5 billion to organize and support covert state terrorism in Punjab and Kashmir.

CONTINUING REPRESSION AGAINST SIKHS

Since 1984, India has engaged in a campaign of ethnic cleansing and murdered tens of thousands of Sikhs and secretly cremated them. The Indian Supreme Court described this campaign as "worse than a genocide."

The book Soft Target, written by two Canadian journalists, proves that India blew up its own airliner in 1985 to blame the Sikhs and justify more genocide. The Indian government paid over 41,000 cash bounties to police officers for killing Sikhs, according to the U.S. State Department.

Indian police tortured and murdered the religious leader of the Sikhs, Gurdev Singh Kaunke, Jathedar of the Akal Takht. No one has been punished for this atrocity and the Punjab government refused to release its own commission's report on the Kaunke murder.

Human-rights activist Jaswant Singh Khalra was kidnapped by the police on September 6, 1995, and murdered in police custody. His body was not given to his family. Rajiv Singh Randhawa, the only eyewitness to the police kidnapping of Jaswant Singh Khalra, was arrested in front of the Golden Temple in Amritsar, Sikhism's holiest shrine, while delivering a petition to the British Home Minister asking Britain to intervene for human rights in Punjab.

In March 2000, 35 Sikhs were massacred in Chithisinghpora in Kashmir by the Indian government.

Since Christmas 1998, India has carried out a campaign of repression against Christians in which churches have been burned, priests have been murdered, nuns have been raped, and schools and prayer halls have been attacked. On January 17, 2001, Christian leaders in India thanked Sikhs for saving them from Indian government persecution. Members of the Bajrang Dal, part of the pro-Fascist Rashtriya Swayamsewak Sangh (RSS), the parent organization of the ruling BJP, burned missionary Graham Staines and his two young sons, ages 8 and 10, to death while they slept in their jeep. The RSS published a booklet last year on how to implicate Christians and other minorities in false criminal cases.

PAYING TRIBUTE TO PAULINE GARCIA

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I stand before you today with both sorrow and pride in the recognition of the extraordinary contributions of a compassionate woman. Pauline C. Garcia was a hard working woman who contributed selflessly to the moral and ethical improvement of Pueblo, Colorado. She was a beacon of inspiration for many in her workplace and spiritual community. In recognition of Pauline Garcia's efforts, it gives me great pleasure to honor the life and memory of one of the six recipients of the 2002 YWCA Anna Taussig Tribute To Women Award, rewarded to professional women who show outstanding levels of accomplishment and service to the community.

Pauline Garcia was a dedicated mother of eight, all of whom she inspired to recognize their goals and strive to achieve their dreams. After her children were grown, she received a degree in Early Childhood Education and worked for countless day care centers like Pueblo Head Start and The East Side ChildCare Center. She spent much of her free time volunteering for El Mesias Methodist Church as well as Bethel Methodist Church. Her work at El Mesias was so impressive that she was asked to come on board as Office Manager and helped coordinate daily operations for the Church.

Mr. Speaker, it gives me great pleasure to highlight the honesty, integrity, and valor of Pauline C. Garcia. Pauline illustrated the spirit of kindness to her community, and prepared young children to be the future leaders of their communities. Her compassion will live on in the hearts of those lives she touched and I extend my deepest sympathy and I have no doubt that her memory will continue to be a source of inspiration and comfort for her family.

12TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. SLAUGHTER. Mr. Speaker, I rise today to commemorate the 12th anniversary of the Americans with Disabilities Act (ADA).

Twelve years ago, people from across the country gathered to celebrate the signing of the Americans with Disabilities Act of 1990, one of the Nation's landmark civil rights laws since the Civil Rights Act of 1964. The ADA opened up the true promise of America to people with disabilities who, for decades have been held back—not by a wheelchair and a flight of insurmountable stairs—but by simple public ignorance.

Because of the Americans with Disabilities Act, people with disabilities are gaining equal access to public sector services. The public sector has rallied to the ADA's goals and states and local govenunents have developed some of the most innovative and meaningful responses to the ADA.

As a result of this important civil rights law, employers now provide a range of adjustment measures to ensure that employees with disabilities can keep their place in the job market, resulting in unprecedented economic opportunities for our disabled population.

ADA has torn down barriers that prevented people with disabilities from getting access to education, the job market, and simply living their daily lives.

As I reflect on our accomplishments here in Congress since I started to serve my constituents as a member in 1986, this is one of the pieces of legislation, I am most proud of. The Americans with Disabilities Act is a historic example of Congress being true to our centuries-old heritage of freedom and equal opportunity.

This landmark legislation took more than 2 years to pass because even in the halls of Congress, there were hurdles of ignorance to overcome. The ADA itself was born of one man's determination to break down the barriers which had diverted his career plans and caused him to reevaluate his dreams throughout his life. My former colleague in the House of Representatives and original author of the Americans with Disabilities Act, Tony Coelho, didn't grow up wanting to be a Member of Congress. But he did grow up with epilepsy. As a youth Tony wanted to be a clergyman, but he was kept back because of public ignorance about his disability.

They say that God works in strange and mysterious ways. Tony Coelho's first dreams were shattered by discrimination, but this was, in fact, a blessing for the entire nation. Tony would go on to write the most comprehensive anti-discrimination bill for persons with disabilities in United States history. What more proof do we need that someone with a disability can be one of the most able people our nation has ever seen?

When Congress passed and the President signed the Americans with Disabilities Act, we implemented what is, in effect, a 20th century Emancipation Proclamation for the estimated 43 million Americans who have some type of physical or mental disability. For the first time in history, these individuals were guaranteed their rights to explore the full range of their talents, ability, and creativity.

By outlawing discrimination against disabled persons in employment, transportation, public accommodations and telecommunications, the ADA guarantees to persons with disabilities the same rights which most of us in this chamber take for granted—the right to go to their neighborhood grocery store, attend a movie, eat in the local diner, hold a job, ride a city bus, or simply talk on the telephone.

Pre-existing laws and federal regulations under the Rehabilitation Act of 1973 have been effective, but only so far as the policies of the government, its contractors, and recipients of federal funds have been concerned. These laws left all other areas of American life untouched.

Many young Americans who have benefitted from the equal educational opportunity guaranteed under the 1973 law and the Education of the Handicapped Act, have found themselves on graduation day facing a closed door to the mainstream of American life. For years, generations of disabled Americans have been turned away at movie theatres, refused tables at restaurants, left stranded in wheelchairs at bus stops and denied meaningful employment opportunities.

As a cosponsor of the landmark ADA bill and as a legislator who has worked closely with the disabled since the mid-1970s, I am proud of the fact that the ADA broke down barriers and helped to correct these demeaning disadvantages.

I am also proud of my community's early acceptance of individuals with disabilities, especially the deaf. Rochester is home to the National Technical Institute for the Deaf and the first city in the city to broadcast News for the Deaf each weekday.

The Declaration of Independence gave voice to the fundamental principles upon which this nation would grow to greatness—life, liberty, and the pursuit of happiness. Twelve years ago the Americans with Disabilities Act reaffirmed these sacred principles for millions and millions of United States citizens who have had to suffer unjustified segregation and exclusion.

LOWER RIO GRANDE VALLEY WATER RESOURCES CONSERVATION AND IMPROVEMENT OF 2001

SPEECH OF

HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. REYES. Mr. Speaker, I rise today is strong support of H.R. 2990, the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2001, which was introduced by my good friend Congressman RUBÉN HINOJOSA.

Among other things, this legislation amends the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize the construction of 20 additional specified projects in Texas and increases the authorization of appropriations for carrying out the these projects.

As you know Mr. Speaker, the Rio Grande and the areas along both sides of the border have been severely impacted by drought conditions during the last decade. In fact, given the recent problems with the Mexican water debt, we are hearing more about the dire conditions of farmers in the area than in years past. There are more than seven million people residing in the Lower Valley of the Rio Grande river with approximately one million of those living in the United States. The area is one of the fastest growing areas of our country with projected populations more than doubling by the year 2050.

This area encompasses 29 water districts located in the United States below the International Falcon-Amistad Reservoir System, which supplies nearly 95 percent of the water needs of this area. Mr. Speaker, we need to make significant improvements to irrigation canal delivery systems. We need to develop aggressive strategies to conserve water and we need to improve the overall management of the most precious resource in the area—water.

On December 28, 2000, the President signed into law the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 (Public Law 106-576). The legislation authorized the Bureau of Reclamation (BOR) to develop a program to investigate and identify opportunities to improve the water supply for selected counties along the Texas-Mexico border. The bill on the floor today amends this law by adding 14 new water conservation projects; modifying the criteria for water supply studies; and increasing the authorization for carrying out the studies. In addition, this bill increases the authorization for construction of facilities from $10 million to $47 million. Mr. Speaker, we need to do everything in our power to facilitate good water management and conservation strategies along the U.S.—Mexico border. I applaud the efforts of my colleague for introducing this important legislation and I ask my colleagues to support its passage.

MUWEKMA OHLONE INDIAN TRIBE

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. LOFGREN. Mr. Speaker, The Muwekma Ohlone Indian Tribe is a sovereign Indian Nation located within several counties in the San Francisco Bay Area since time immemorial.

In 1906, the Tribe was formally identified by the Special Indian Census conducted by Indian Agent C.E. Kelsey, as a result of the Congressional Appropriation Act mandate to identify and to purchase land for the landless and homeless California Indian tribes.

At this time, the Department of Interior and the Bureau of Indian Affairs federally acknowledged the Verona Band as coming under the jurisdiction of the Reno and Sacramento Agencies between 1906 and 1927.

The Congress of the United States also recognized the Verona Band pursuant to Chapter 14 of Title 25 of the United States Code, which was affirmed by the United States Court of Claims in the Case of Indians of California v. United States (1942) 98 Ct. Cl. 583.

The Court of Claims case judgment instructed the identification of the Indians of California with the creation of Indian rolls. The direct ancestors of the present-day Muwekma Ohlone Tribe participated in and enrolled under the 1928 California Indian Jurisdictional Act and the ensuing Claims Settlement of 1944 with the Secretary of the Interior approving all of their enrollment applications.

Meanwhile, as a result of inconsistent federal policies of neglect toward the California Indians, the government breached the trust responsibility relationship with the Muwekma tribe and left the Tribe landless and without either services or benefits. As a result, the Tribe has suffered losses and displacement. Despite these hardships the Tribe has never relinquished their Indian tribal status and their status was never terminated.

In 1984, in an attempt to have the federal government acknowledge the status of the Tribe, the Muwekma Ohlone people formally organized a tribal council in conformance with the guidelines under the Indian Reorganization Act of 1934.

In 1989, the Muwekma Ohlone Tribal leadership submitted a resolution to the Bureau of Indian Affairs Branch of Acknowledgement and Research with the intent to petition for Federal acknowledgement. This application is known as Petition #111. This federal process is known to take many years to complete.

Simultaneously, in the 1980's and 1990's, the United States Congress recognized the federal governments neglect of the California Indians and directed a Commission to study the history and current status of the California Indians and to deliver a report with recommendations. In the late 1990's the Congressional mandated report—the California Advisory Report, recommended that the Muwekma Ohlone Tribe be reaffirmed to its status as a federally recognized tribe along with five other Tribes, the Dunlap Band of Mono Indians, the Lower Lake Koi Tribe, the Tsnungwe Council, the Southern Sierra Miwuk Nation, and the Tolowa Nation.

On May 24, 1996, the Bureau of Indian Affairs pursuant to the regulatory process then issued a letter to the Muwekma Ohlone Tribe concluding that the Tribe was indeed a Federally Recognized Tribe.

In an effort to reaffirm their status and compel a timely decision by the Department of the interior, the Muwekma Ohlone Tribe sued the Bureau of Indian Affairs. The Court has mandated that the Department issue a decision this year. That decision is expected in early August.

Specifically, on July 28, 2000, and again on June 11, 2002, Judge Ricardo Urbina wrote in his Introduction of his Memorandum Opinion Granting the Plaintiff's Motion to Amend the Court's Order (July 28, 2002) and Memorandum Order Denying the Defendant's to Alter or Amend the Court's Orders (June 11, 2002) affirmatively stating that:

"The Muwekma Tribe is a tribe of Ohlone Indians indigenous to the present-day San Francisco Bay area. In the early part of the Twentieth Century, the Department of the Interior ("DOI") recognized the Muwekma tribe as an Indian tribe under the jurisdiction of the United States." (Civil Case No. 99-32671 RMU D.D.C.)

I proudly support the long struggle of the Muwekma Ohlone Tribe as they continue to seek justice and to finally, and without further delay, achieve their goal of their reaffirmation of their tribal status by the federal government. This process has dragged on long enough. I hope that the Bureau of Indian Affairs and the Department of Interior will do the right thing and act positively to grant the Muwekma Ohlone Tribe their rights as a Federally Recognized Indian Tribe. The Muwekma Ohlone Tribe has waited long enough; let them get on with their lives as they seek to improve the lives of the members of this proud tribe. To do anything else is to deny this Tribe Justice. They have waited patiently and should not have to wait any longer.

PAYING TRIBUTE TO LUCILLE GUTIERREZ

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Lucille Gutierrez of Alamosa, Colorado, for her guidance and counseling of the youth of her community. It is a great pleasure to praise such an individual whose talents and gifts have enriched countless individuals. I applaud your efforts and congratulate you on a job very well done.

Lucille began her career as a teacher's aide in February of 1996. She excelled as a teacher and later became the educational site coordinator for the "Head Start" program, a program that offers early educational opportunities to preschoolers. Her volunteer work soon transformed into a full time position demanding long hours. Lucille's career began with 45 eager students, and she instilled in them crucial life skills and values.

This year, Lucille retires as a leader for our youth. Although she will remain active in the lives of many students, her schedule will not be as demanding as it once was. The program since her arrival has grown substantially and now 103 children at Adams State College, participating in the program, will benefit from the legacy of Lucille. Many students who will be saddened to see her retire speak her nickname 'grandma' with great affection. Lucille's colleagues in the profession are also saddened to see her go, but all understand and admire her decision to retire.

Mr. Speaker, it is an honor to commend Lucille Gutierrez before this body of Congress and this Nation. Her efforts and accomplishments are well respected and will be remembered by each individual she encountered. Thank you again, Lucille, for your contributions to future generations, and good luck in all your future endeavors.

FOOD CRISIS IN SOUTHERN AFRICA

HON. BOBBY L. RUSH

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. RUSH. Mr. Speaker, thank you for allowing me to speak on this very important global issue. My thanks, too, to the gentlelady from California, Representative WATERS, for bringing this critical issue to the Floor.

There are almost 13 million people in the southern part of Africa who are in danger of dying from starvation: a great number of these people are women and children. The severity of the food shortages in the region is due large in part by the severe drought affecting the area for the past decade.

Worldwide humanitarian aid directed to the country has helped to increase the life expectancy of Africa's citizens by nearly 20 years since 1960. Each year, humanitarian aid programs help save the lives of an estimated seven million African children, delivering essential food and medicine to disaster victims and assisting regional refugees fleeing their native countries because of political or economic unrest.

However, Mr. Chairman, to my chagrin, and to what should be an embarrassment to this country, less than half of 1 percent of all of the United States' foreign aid funding is directed to food relief and hunger abatement in nations around the world.

The United States now ranks fourth—behind Japan, behind France, and behind Germany—in the level of aid that we contributed to the world's poorest countries. The United States ranks LAST among the 21 richest nations in the percentage of our Gross National Product (GNP) used to fight world hunger and poverty.

Mr. Speaker, we need to increase the level of our humanitarian aid to Africa because it is the right thing to do; it is the moral thing to do. We are morally obligated, as citizens of a country where food is plentiful, to help people who are dying because of a lack of food.

Mr. Speaker, I would be happy if this House of Representatives appropriated $1 billion toward hunger abatement efforts in southern Africa but I know there is a slim possibility of this happening.

However, I believe that this body can appropriate $200 million to provide emergency supplemental relief to respond to the food crisis in Southern Africa, and I hope that we do.

JOHN E. MOSS FOUNDATION

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. MATSUI. Mr. Speaker, the John E. Moss Foundation recently awarded its annual Public Service Award to our colleague, the Honorable DAVID OBEY of Wisconsin. The award, which is given each year to a member of the House or Senate who most exemplifies the qualities of integrity, courage and dedication to the public interest, is richly deserved by Congressman OBEY who has always fought hard for legislation benefiting the small investor, the working man, and the consumer. At the award ceremony on July 9th, Paul McMasters of the Freedom Forum delivered keynote remarks on current threats to the public's right to information, which are of importance to all Americans. Mr. McMasters' remarks are as follows:

> On Independence Day, 1966, President Johnson took time out from holiday festivities at his ranch on the Perdernales to sign the Freedom of Information Act into law. If he had waited only a few hours more, a pocket veto of the legislation automatically would have gone into effect.
>
> There was no press release, no ceremony, no special pens struck for the occasion. The chief sponsors were not invited.
>
> It had taken 11 arduous years for Congressman John Moss of California to coax into existence a law that few in government liked or wanted. But the legislation finally made it through. This law providing meaningful access to government information embraced three democratic ideals:
>
> The First Amendment guarantees of freedom of speech and the press.
>
> Creation of a proper environment for the people to function as full partners in their own governance.
>
> The checks-and-balances role of Congress.
>
> That was 36 years ago. But we never quite escape the clutches of history. It has a way of landing on us suddenly and hard when we forget it. And when it comes to the conditions that created the great need for the FOIA back then, the past has caught up with us.
>
> The reason that Congressman Moss and his colleagues worked so hard and endured so much getting FOIA passed was that it had become next to impossible for members of Congress and their staffs to obtain access to even the most routine of information in the custody of federal agencies or the White House.
>
> Today, the federal government, while attending to the formidable responsibility of waging a war on terrorism, has allowed itself to slide backward into history with an ever-widening array of restrictions on access. These new restrictions in effect have demoted both the public and the Congress as partners in the democratic process.
>
> Once more, Congress is summoned to the crucial task of championing access to government information—a role mandated by tradition, by law, and by the Constitution.

There is no question that in the world we live in today, there is some information that must remain secret to protect our national security. Beyond that narrow but important spectrum, however, the Congress, the public and the press should have maximum access to government information.

It is essential to the public so that we have true democratic decision-making.

It is essential to the press so that it can facilitate the flow of information among the three branches of government and the public.

It is essential to Congress so that it can provide proper oversight and accountability.

There always has been what some describe as a "culture of secrecy" in government. It is a natural thing because information is power; in some instances it is dangerous; in other instances, it may violate personal privacy or compromise an ongoing law-enforcement investigation. Responding to FOIA requests also is a drain on scarce resources.

But many restrictions on the flow of information in recent months have gone well beyond those considerations.

In addition, there is a theory afoot these days that to share information is to weaken the executive. That theory, in practice, may well be responsible for many of the current restrictions on access.

Finally, there is another reason for some restrictions: The horrors of September 11. That tragedy provoked a serious re-examination of our information policies—a reexamination that was legitimate and necessary. There are some secrets that must be kept.

But many of the changes in access policies that have come out in the wake of September 11 are not truly related to the war on terrorism; in many cases, they seem designed more to increase the comfort level of government leaders than the security level of the nation.

What has emerged is an environment where government is providing increasingly less information to U.S. citizens while demanding increasingly more information about them.

Many of these new restrictions impact directly on public access and in many instances the ability of members of Congress to participate in the making of policy and to represent their constituencies properly. To list a few:

Just as it was to go into effect, the law providing access to presidential records was severely compromised by an executive order, Many in Congress had to learn about the formation of an emergency government by reading about it in the newspapers, The White House dramatically reduced the number of intelligence briefings for Congress and the number of members who could attend, The executive branch has resisted congressional attempts to obtain information on a variety of vital topics, including the energy task force hearings, the FBI's relations with mob informants, and the decision to relax restrictions on emissions from older coal-fired power plants and refineries, The attorney general's memo on implementation of the FOIA turned a presumption of openness on its head, The Justice Department has stonewalled attempts to get information about the detainees rounded up in the aftermath of the September 11 attacks.

In addition, Congress increasingly is pressured to "incentivize" compliance with old laws and to spice up news laws by granting exemptions to the FOI and whistleblower laws. Examples include legislative proposals concerning critical infrastructure, the Transportation Security Administration and the proposed Homeland Security Department.

These developments raise several important questions: Do new laws, policies and executive actions live up to democratic principles, constitutional requirements and the true needs of national security? Are members of Congress providing insight as well as oversight in the formulation and implementation of access policies? How do we best affirm and ensure checks and balances among the executive, the legislative and the judicial branches and include the public and the press in the equation?

There are a number of ways Congress can address such questions: By commissioning a definitive study and public report calling for specific action, by creating a bipartisan caucus on access and accountability, by conducting hearings, or by establishing a joint select committee with FOIA oversight.

There are other things Congress can and should do to make access to information a priority in governmental life: Demand information from federal agencies and officials. Make information-sharing a priority. Conduct real oversight of FOIA compliance. Make federal agencies' FOIA performance a part of the budget process. Provide incentives for disclosure and penalties for noncompliance. Insist on discipline and rationality in classification authority. Harness technology to make government more transparent.

The key to bringing about change, however, is that the members of Congress themselves must care; if it's not important to them, it's not important at other levels and in other branches. Government information must be branded as crucial to democracy, to responsible governance and to freedom.

It really is up to Congress to create ways to protect access and to raise its value as a democratic principle.

It must embrace the idea that, except for very specific areas, information, not secrecy, is the best guarantor of the nation's security. There is danger in the dark.

And it must recognize that there always will be loud and persuasive voices raised on behalf of security, privacy and the protection of commercial interests—especially during times of national crisis—but there are no natural constituencies with the resources and organization to make the case for access and accountability.

That role falls rightly to Congress.

Democracy depends above all on public trust. Public trust depends on the sharing of power. And the sharing of power depends on the sharing of information.

That time-honored principle assuring the success of this ongoing adventure in democratic governance suffers mightily when the system of checks and balances becomes unbalanced and the role of Congress as guardians of access and accountability is compromised.

HONORING DR. GEORGE RABB ON HIS RETIREMENT

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. LIPINSKI. Mr. Speaker, I rise today in recognition of a remarkable man, the longtime director of Brookfield Zoo, Dr. George B. Rabb.

Dr. Rabb joined Brookfield Zoo in 1956 as curator of research, and in 1976 he became the Director of the Zoo and President of the Chicago Zoological Society. Soon Dr. Rabb will pass the title he has held with distinction for 26 years on to a successor.

If proof is ever needed to verify the fact that one individual can make a difference, it can be found in the work of George Rabb. He has dedicated his life to conservation research and education, and his legacy reflects his love of nurturing harmony between people and nature. Dr. Rabb created Brookfield's Education Department and was instrumental in expanding the use of naturalistic exhibits to provide visitors with environmental immersion experiences throughout the zoo. Under his leadership, nine exhibits—including Tropic World, Seven Seas Panorama, and the Living Coast—have been built in this manner. The Zoo's most recent undertaking, the Hamill Family Play Zoo is an expression of Dr. Rabb's vision of the zoo as a conservation center and encourages children to develop a caring relationship with the natural world. Dr. Rabb is also responsible for the creation of the Department of Conservation Biology that supports many of the Zoo's world-renowned conservation-related research and field projects.

One measure of this remarkable conservationist can be found in the boards and commissions on which he serves and the awards he has received.

He has served as the Chairman of the Species Survival Commission (SSC), the largest species conservation network in the world and is one of six commissions of IUCN, the World Conservation Union. In recognition of his continuing role as mentor for young scientists and other colleagues, IUCN established a graduate student internship program named in his honor. Dr. Rabb also serves as Vice-Chair of the Chicago Council on Biodiversity, President of Chicago Wilderness Magazine Board, and Board Chair of the Illinois State Museum.

Among the many awards given to Dr. Rabb are the Peter Scott Award from the Species Survival Commission, the R. Marlin Perkins Award from the American Zoo and Aquarium Association, the Silver Medal of the Royal Zoological Society of London, the Conservation Medal from the Zoological Society of San Diego, and the Distinguished Achievement Award from the Society for Conservation Biology.

My wife and I have spent many a weekend at the Zoo with our grandchildren, and I can tell you that I am proud to have Brookfield Zoo located in my district and to have had the honor of working with George Rabb over the years. I invite my colleagues to join me in sending best wishes to the good doctor as he ventures forward on his exciting new journey.

INTRODUCTION OF THE P2P PIRACY PREVENTION ACT

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BERMAN. Mr. Speaker, I rise today to introduce the P2P Piracy Prevention Act—legislation that will help stop peer-to-peer piracy.

The growth of peer-to-peer (P2P) networks has been staggering, even by Internet standards. From non-existence a few years ago, today nearly a dozen P2P networks have been deployed, a half-dozen have gained widespread acceptance, and one P2P network alone is responsible for 1.8 billion downloads each month. The steady growth in broadband access, which exponentially increases the speed, breadth, and usage of these P2P networks, indicates that P2P penetration and related downloading will continue to increase at a breakneck pace.

Unfortunately, the primary current application of P2P networks is unbridled copyright piracy. P2P downloads today consist largely of copyrighted music, and as download speeds improve, there has been a marked increase in P2P downloads of copyrighted software, games, photographs, karaoke tapes, and movies. Books, graphic designs, newspaper articles, needlepoint designs, and architectural drawings cannot be far behind. The owners and creators of these copyrighted works have not authorized their distribution through these P2P networks, and P2P distribution of this scale does not fit into any conception of fair use. Thus, there is no question that the vast majority of P2P downloads constitute copyright infringements for which the works' creators and owners receive no compensation.

The massive scale of P2P piracy and its growing breadth represents a direct threat to the livelihoods of U.S. copyright creators, including songwriters, recording artists, musicians, directors, photographers, graphic artists, journalists, novelists, and software programmers. It also threatens the survival of the industries in which these creators work, and the seamstresses, actors, Foley artists, carpenters, cameramen, administrative assistants, and sound engineers these industries employ. As these creators and their industries contribute greatly both to the cultural and economic vitality of the U.S., their livelihoods and survival must be protected.

Simply put, P2P piracy must be cleaned up. The question is how.

The answer appears to be a holistic approach involving a variety of components, none of which constitutes a silver bullet. Wider deployment of online services offering copyrighted works in legal, consumer-friendly ways, digital rights management technologies, lawsuits against infringers, prosecutions of egregious infringers, and technological self-help measures are all part of the solution to P2P piracy.

While Pursuit of many of these components to the P2P piracy solution requires no new legislation, I believe legislation is necessary to promote the usefulness of at least one such component. Specifically, enactment of the legislation I introduce today is necessary to enable responsible usage of technological self-help measures to stop copyright infringements on P2P networks.

Technology companies, copyright owners, and Congress are all working to develop security standards, loosely termed digital rights management (DRM) solutions, to protect copyrighted works from unauthorized reproduction, performance, and distribution. While the development and deployment of DRM solutions should be encouraged, they do not represent a complete solution to piracy. DFM solutions will not address the copyrighted works already "in the clear" on P2P networks. Additionally, DRM solutions will never be foolproof, and as each new generation of DRM solutions is cracked, the newly-unprotected copyrighted works will leak onto P2P networks. Similarly, copyrighted works cannot always be protected by DRM solutions, as they may be stolen prior to protection or when performed in the clear—for instance, when a movie is copied from the projection booth.

Shutting down all P2P systems is not a viable or desirable option for dealing with the massive copyright infringement they facilitate. While the 9th Circuit could shut Napster down because it utilized a central directory and centralized servers, the new P2P networks have increasingly engineered around that decision by incorporating varying levels of decentralization. It may be that truly decentralized P2P systems cannot be shut down, either by a court or technologically, unless the client P2P software is removed from each and every file trader's computer.

As important, P2P represents an efficient method of information transfer and supports a variety of legitimate business models. Removal of all P2P networks would stifle innovation. P2P networks must be cleaned up, not cleared out.

Copyright infringement lawsuits against infringing P2P users have a role to play, but are not viable or socially desirable options for addressing all P2P piracy. The costs of an all out litigation approach would be staggering for all parties. Copyright owners would incur overwhelming litigation expenses, other-wise-innocent P2P users would undoubtedly experience privacy violations, internet service providers and other intermediaries would experience high compliance costs, and an already overcrowded federal court system would face further strain. Further, the astounding speed with which copyrighted works are spread over P2P networks, and thus their immediate ubiquity on millions of computers, renders almost totally ineffective litigation against individual P2P users. Certainly, a suit against an individual P2P user will almost never result in recovery of sufficient damages to compensate for the damage caused.

In short, the costs of a litigation approach are likely to far outweigh the potential benefits. While litigation against the more egregious P2P pirates surely has a role, litigation alone should not be relied on to clean up P2P piracy.

One approach that has not been adequately explored is to allow technological solutions to address technological problems. Technological innovation, as represented by the creation of P2P networks and their subsequent decentralization, has been harnessed to facilitate massive P2P piracy. It is worth exploring, therefore, whether other technological innovations could be harnessed to combat this massive P2P piracy problem. Copyright owners could, at least conceptually, employ a variety of technological tools to prevent the illegal distribution of copyrighted works over a P2P network. Using interdiction, decoys, redirection, file-blocking, spoofs, or other technological tools, technology can help prevent P2P piracy.

There is nothing revolutionary about property owners using self-help—technological or otherwise—to secure or repossess their property. Satellite companies periodically use electronic countermeasures to stop the theft of their signals and programming. Car dealers repossess cars when the payments go unpaid. Software companies employ a variety of technologies to make software non-functional if license terms are violated.

However, in the context of P2P networks, technological self-help measures may not be legal due to a variety of state and federal statutes, including the Computer Fraud and Abuse Act of 1986. In other words, while P2P technology is free to innovate new, more efficient methods of P2P distribution that further exacerbate the piracy problem, copyright owners are not equally free to craft technological responses to P2P piracy.

Through the legislation I introduce today, Congress can free copyright creators and owners to develop technological tools to protect themselves against P2P piracy. The proposed legislation creates a safe harbor from liability so that copyright owners may use technological means to prevent the unauthorized distribution of that owner's copyrighted works via a P2P network.

This legislation is narrowly crafted, with strict bounds on acceptable behavior by the copyright owner. For instance, the legislation would not allow a copyright owner to plant a virus on a P2P user's computer, or otherwise remove, corrupt, or alter any files or data on the P2P user's computer.

The legislation provides a variety of remedies if the self-help measures taken by a copyright owner exceed the limits of the safe harbor. If such actions would have been illegal in the absence of the safe harbor, the copyright owner remains subject to the full range of liability that existed under prior law. If a copyright owner has engaged in abusive interdiction activities, an affected P2P user can file suit for economic costs and attorney's fees under a new cause of action. Finally, the U.S. Attorney General can seek an injunction prohibiting a copyright owner from utilizing the safe harbor if there is a pattern of abusive interdiction activities.

This legislation does not impact in any way a person who is making a fair use of a copyrighted work, or who is otherwise using, storing, and copying copyrighted works in a lawful fashion. Because its scope is limited to unauthorized distribution, display, performance or reproduction of copyrighted works on publicly accessible P2P systems, the legislation only authorizes self-help measures taken to deal with clear copyright infringements. Thus, the legislation does not authorize any interdiction actions to stop fair or authorized uses of copyrighted works on decentralized, peer-to-peer systems, or any interdiction of public domain works. Further, the legislation doesn't even authorize self-help measures taken to address copyright infringements outside of the decentralized, P2P environment.

This proposed legislation has a neutral, if not positive, net effect on privacy rights. First, a P2P user does not have an expectation of privacy in computer files that she makes publicly accessible through a P2P file-sharing network—just as a person who places an advertisement in a newspaper cannot expect to keep that information confidential. It is important to emphasize that a P2P user must first actively decide to make a copyrighted work available to the world, or to send a worldwide request for a file, before any P2P interdiction would be countenanced by the legislation. Most importantly, unlike in a copyright infringement lawsuit, interdiction technologies do not require the copyright owner to know who is infringing the copyright. Interdiction technologies only require that the copyright owner know where the file is located or between which computers a transmission is occurring.

No legislation can eradicate the problem of peer-to-peer piracy. However, enabling copyright creators to take action to prevent an infringing file from being shared via P2P is an important first step toward a solution. Through this legislation, Congress can help the marketplace more effectively manage the problems associated with P2P file trading without interfering with the system itself.

PAYING TRIBUTE TO RACHEL HENNING

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to an individual whose pioneering efforts in the business market have led to numerous innovations. Rachel Henning is a trailblazer in technology that contributed to bolster the Denver economy. It is with much admiration that I pay tribute to an exemplary citizen of the State of Colorado.

Rachel Henning is the founder and creator of Catalyst Search. Her cost effective staffing resource, provides businesses with the tools they need to survive in today's business market. Her initial idea to create a successful recruiting and consulting firm has become a reality and expanded to Denver, Colorado and the surrounding area. Anchored in Colorado, Catalyst Search acts as a pioneer of this 21st century providing clients the convenience and expertise necessary to compete.

Rachel's hard work and determination, has built a great company worthy of admiration. As an active member of the Internet, Colorado, and Women's Chamber of Commerce, Rachel provides each organization with leadership and stability. She has contributed much time and effort to the civic and business communities in which she spends her time.

Mr. Speaker, it is an honor and a pleasure to applaud the diligent efforts of Rachel Henning and I am honored to congratulate her before this body of Congress and this Nation. I believe her aspirations will grow into a very prosperous career as a business leader, and her diligence and commitment deserve our praise and I am honored to pay tribute to her today. Good luck to you, Rachel, in all your future endeavors.

COMMEMORATE A UNIQUE AND MAGNIFICENT GROUP OF AVIATORS

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PAUL. Mr. Speaker, today I am pleased to commemorate a unique and magnificent group of old aviators who have received very little publicity in the civilian sector. They will celebrate their 90th and 60th anniversaries in conjunction with the Commemorative Air Force (CAF) "Wings Over Houston" Air Show from October 23–26, 2002, in Houston, Texas.

The first Enlisted Pilot, Vernon L. Burge, earned his wings in the old Signal Corps in 1912. Prior to World War II, 282 enlisted pilots served in the Signal Corps, then in the Army Air Service and later in the Army Air Corps as rated pilots. Many flew the Air Mail during the early 1930s of the Roosevelt Administration.

With the approach of WWII, aircraft manufacturers were producing aircraft faster than the Air Corps could fill with pilots. To qualify for Flight Training, a cadet was required to have two years of college. To fill this shortage of pilots, Congress enacted legislation in 1941 authorizing enlisted men to participate in aerial flight.

To qualify for Pilot Training, the enlisted men had to meet several stringent requirements. They had to be enlisted in the regular Army, not drafted, possess a high-school diploma, pass a rigid physical exam, and sign a contract with the Army avowing that upon completion of Flight Training, they would continue serving in the Army Air Corps as Staff Sergeant Pilots for three years, as Technical Sergeant Pilots for three years, as Master Sergeants for three years, and end the contract as Warrant Officer Pilots.

The Enlisted Pilots (aviation students) attended the same ground schools, same flying schools, had the same flight instructors, same training airplanes, and successfully completed the same curriculum as the Aviation Cadets.

Almost 2,500 enlisted men graduated as Enlisted Pilots from Ellington, Kelly, Luke, Mather, Columbus, Dothan, Lubbock, Moody, Roswell, Spencer, Turner, Victorville, Williams, Craig and Stockton Air Bases in Classes 42–C through 42–J, the last class of Enlisted Pilots.

Upon graduation, and ordered to participate in Aerial Flight by General "Hap" Arnold, Chief of the Army Air Corps, these pilots flew Douglas A–20s, Curtis P–36s and P–40s, Lockheed P–38s, North American P–64s, Douglas C–47s, C–48s, C–49s, C–53s. They flew many of these aircraft in combat as Staff Sergeant Pilots. Later, as officers, they flew all of the aircraft in the Air Force inventory during and after WWII.

The Flight Training of Aviation Students Program was discontinued in November 1942, with enlisted men graduating as Flight Officers in following classes.

Charles "Chuck" Yeager, the first pilot to exceed the speed of sound, completed his flight training as an enlisted man but graduated as a Flight Officer in December 1942. Bob Hoover, the world renowned military and civilian acrobatic pilot was an Enlisted Pilot. Walter H. Beech served as an Enlisted Pilot in 1919 and later founded the Beech Aircraft Company in Wichita, Kansas.

The Air Force honors the third Enlisted Pilot, William C. Ocker, for pioneering instrument flying by naming the Instrument Flight Center at Randolph AFB in his memory.

Captain Claire Chennault organized a flight demonstration team at Maxwell Air Field in 1932, called the "Men on the Flying Trapeze" (the forerunner of the Thunderbirds), which at one time included two Enlisted Pilots, Sergeant William C. McDonald and Sergeant John H. Williamson. Staff Sergeant Ray Clinton flew solo stunt and backup for the team.

The Enlisted Pilots' accomplishments are many and their legend is a long one of dedication and patriotism. Seventeen became Fighter Pilot Aces and thirteen became General Officers. They pioneered many air routes throughout the world. After release from active duty, they became airline pilots, airline union heads, corporate executives, bank presidents, teachers, doctors, manufacturers of racing cars, corporate aviation department heads, and much, much more.

Of the almost 3,000 American Enlisted Pilots from 1912 through 1942, approximately 600 remain. They are a terminal organization—most of them are in their early eighties.

According to retired USAF General Edwin F. Wenglar, chairman of the Grand Muster Reunion, 75 to 100 of these grand Airmen will be able to attend their reunion, which could very well be the last gathering of the finest and most magnificent aviators in the annals of aviation history.

RECOGNIZING ARMOND MORRIS AS THE LANCASTER SUNBELT EXPO SOUTHEASTERN FARMER OF THE YEAR FOR GEORGIA

HON. SAXBY CHAMBLISS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CHAMBLISS. Mr. Speaker, I would like to recognize and congratulate Armond Morris, of Ocilla, for his recent selection as Georgia's Lancaster Sunbelt Expo Southeastern Farmer of the Year. Armond has farmed in South Georgia for the past 38 years. Throughout those years, his operation has grown to over 2,000 acres and includes several different crops, such as cotton, peanuts, corn, watermelons, and cantaloupes.

Armond's service and contribution to the agriculture community go well beyond the fields and dirt roads of South Georgia. Armond is the current chairman of the Georgia Peanut Commission, which represents over 7,000 peanut farmers in Georgia. Conducting programs that deal with the research and promotion of Georgia peanuts. Armond is also a board member of the American Peanut Council, which is responsible for peanut farmers across the country. Armond is not alone with his service to the agriculture community. He and his wife, Brenda, manage Morris Agricultural Services. Morris Agricultural Services is a USDA-approved peanut buying point and it also provides South Georgia farmers with chemicals and fertilizer.

Armond will join seven other state winners at the Sunbelt Agricultural Expo, which is held in my hometown of Moultrie, Georgia, in October. Armond and the other state winners will be recognized at the Expo, and one of them will be named the Lancaster Sunbelt Expo Southeastern Farmer of the Year.

Agriculture is very important to South Georgia and Armond represents the type of farmer the agriculture community needs in the future. He has helped out his fellow farmers and his community throughout his 38 years of farming, and I know that this help will continue.

Mr. Speaker, I hope you will join me in recognizing and congratulating Armond Morris on his outstanding achievements and service to our nation.

INTRODUCTION OF H.R. 5215, THE "CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY ACT OF 2002"

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HORN. Mr. Speaker, I am pleased to introduce on behalf of myself, Mr. SAWYER and Mrs. MALONEY, the proposed "Confidential Information Protection and Statistical Efficiency Act of 2002."

This bill would implement a pledge made by the President in his Management Agenda to improve Federal statistical programs. The bill, which the Administration drafted and supports, builds upon legislation that I introduced in the 106th Congress. That bill, H.R. 2885, the "Statistical Efficiency Act of 1999," received strong bipartisan support and was approved by the full House. Similar to that bill, H.R. 5215, it has two primary objectives. One is to enable the Federal Government's three principal statistical agencies—the Bureau of the Census, the Bureau of Labor Statistics, and the Bureau of Economic Analysis—to share the business data they collect. This shared information would substantially enhance the accuracy of economic statistics by resolving serious data inconsistencies that now exist. It would also reduce reporting burdens on the businesses that supply those data.

The second and equally important objective of this bill is to ensure that the confidential data that citizens and businesses provide to Federal agencies for statistical purposes are subject to uniform and rigorous protections against unauthorized use. Accurate statistical data are essential to informed public and private decision-making in a host of important areas. This data make vital contributions to understanding the Nation's economy and its many facets, such as the impact of technology on productivity growth. The Nation's core economic indicators—the Gross Domestic Product and other key statistical aggregates—form the cornerstone of Federal budgetary and monetary policy.

Yet, growing data anomalies and inconsistencies raise questions about the accuracy of our economic statistics. For example, the Gross Domestic Product has recently experienced a historically high measurement error by about $200 billion. Such serious data inconsistencies affect the Census Bureau and the Bureau of Labor Statistics, and call into question the accuracy with which these agencies track industry output, employment and productivity trends. For example, during the last economic census in 1997, the Bureau of Labor Statistics reported payroll data in the information technology sector that were 13 percent higher than the data reported by the Census Bureau. There was a 14 percent disparity in the payroll data reported by these two agencies for the motor freight, transportation and warehousing industries.

This bill would remove the statutory barriers that now prevent the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis from sharing and comparing statistical data. According to the Administration, this would largely eliminate the anomalies that now exist in Federal statistics data and thereby greatly enhance their quality.

The bill would also eliminate much of the duplicative data collection that now occurs. Multiple agencies have a critical need for the same information but are prohibited from sharing it. Allowing these agencies to share this information will ease reporting burdens on businesses.

Let me emphasize several important features of the data-sharing provisions of the bill. First, the data-sharing provisions apply only to the three agencies I have mentioned—the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis. The data-sharing provisions would not extend to other Federal agencies. Second, the bill's provisions apply only to the sharing of business data. They do not extend to household and demographic data that individual citizens provide to the Federal Government.

Third, the enhanced data-sharing can be used only for statistical purposes. Fourth, the data-sharing will be closely controlled under written agreements that specify: which data is to be shared; the statistical purposes for which the data can be used; the individuals who are authorized to receive the data; and appropriate security safeguards.

As I mentioned earlier, the other part of the bill would enhance the protection of data that businesses and citizens provide to the Federal Government on a confidential basis. In contrast to the bill's narrow data-sharing authorities, its confidentiality protections are very broad. They apply to all Federal agencies that collect data for statistical purposes from businesses or individuals under a pledge of confidentiality.

The bill provides a clear and consistent standard for the use of confidential statistical information. Specifically, it prohibits the Federal Government from using such information for any non-statistical purpose. The bill defines a prohibited non-statistical purpose as including the use of data in individually identifiable form for any administrative, regulatory, law enforcement, adjudicative or other purpose that affects the rights, privileges or benefits of the person or organization supplying the information.

The bill would also prohibit the disclosure of such information under the Freedom of Information Act. This bill would provide appropriate safeguards to ensure that data supplied under a pledge of confidentiality are used only for statistical purposes. It imposes criminal penalties on Federal employees or agents who willfully disclose information In violation of the bill's requirements.

The bill, thus, provides one uniform set of confidentiality protections to supplant the ad hoc statutory protections that now exist. It also establishes statutory protections in some areas where no such protections currently exist.

The bill's enhanced confidentiality protections will improve the quality of Federal statistics by encouraging greater cooperation on the part of respondents. Even more important, these protections ensure that the Federal Government does not abuse the trust of those who provide data to it under a pledge of confidentiality.

Mr. Speaker, the Confidential Information Protection and Statistical Efficiency Act of 2002 makes important, common sense and long overdue improvements in our Nation's statistical programs. It is a bipartisan, good Government measure that has the Administration's strong support. I urge my colleagues to join with us to achieve prompt enactment of the bill.

IN TRIBUTE TO THOMAS J. REARDON

HON. ROGER F. WICKER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WICKER. Mr. Speaker, I rise today to pay tribute to a dedicated public servant and a leader in the field of higher education in the state of Mississippi. On August 15, 2002, University of Mississippi Dean of Students Dr. Thomas J. (Sparky) Reardon will celebrate 25 years of faithful service to the state of Mississippi and to his alma mater.

Dr. Reardon began his career in university administration as coordinator of pre-admissions and was later promoted to the post of associate director of student services. He assumed the job of dean of students in 2001. Dr. Reardon has been a tremendous influence on the lives of two generations of students during his distinguished career at Ole Miss. His leadership and experience have been assets during the tenure of three chancellors and countless faculty and staff members over the past quarter century.

He is a well-established professional in the field of Greek life on campus. He was recognized nationally in 1987 with the Association of Fraternity Advisors' Distinguished Service Award and received that organization's prestigious Robert H. Schaffer Award in 1998. Dr. Reardon has been honored with citations from individual international fraternities such as Kappa Alpha Order, Sigma Alpha Epsilon, and Phi Gamma Delta, as well as from other colleges and universities throughout the country.

Dr. Reardon has also continued to be actively involved in the affairs of his own fraternity, Phi Delta Theta. His contributions and wise counsel as a devoted alumnus have earned the respect and admiration of these young men over the years.

A native of Clarksdale, Mississippi, Dr. Reardon is also a devoted member and leader at St. John's Catholic Church in Oxford.

I have known Sparky Reardon for more than 33 years. He is the personification of the excellence, achievements, and traditions that are the University of Mississippi. He has been a friend and mentor to thousands of students and colleagues during his remarkable career. I am proud to call him my friend and honored to join this tribute to his 25 years of service to Ole Miss and the state of Mississippi.

SIMPLIFY THE HOME OFFICE DEDUCTION HOME OFFICE TAX SIMPLIFICATION ACT

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. COLLINS. Mr. Speaker, I rise today, Joined by my colleague the Majority Whip of the House, to introduce the Home Office Simplification Act. This legislation will provide much-need simplification for home-based small business owners which will total 11 million this year.

Today's tax code allows an individual who operates a small business in their home to deduct certain expenses associated with running that home-based business. But not surprisingly, this provision of the tax code is incredibly complex. Since the vast majority of home business operators cannot afford an accountant or tax attorney to decipher all the requirements and avoid potential tax traps, they simply decline to file for the deductions that they are actually eligible for.

STANDARD DEDUCTION

First, the legislation creates a standard deduction of $2500. Taxpayers who meet eligibility requirements could avoid the administrative and calculations nightmare required by itemizing by simply claiming a standard deduction. The $2500 benefit is the equivalent of the average tax home office benefits claimed by those who filed in recent tax years. This amount would be indexed to annual inflation.

REPEAL OF DEPRECIATION RECAPTURE PROVISIONS

This legislation also addresses one of the key deterrents that prevent small business owners from claiming the tax benefits for a home-based business—depreciation recapture provisions. Under changes to the law made in 1997, a home-based business owner, like any other business, can depreciate or "write off" over time, capital asset investments they make in their business. However, if at some point they sell the home, then that depreciation must be "recaptured." The effect of that requirement is that homeowners do not get the full benefit of the capital gains tax exclusion which exempts $250,000 ($500,000 for married) on the gain on the sale of a primary residence. The recapture provision put in place in 1997, should be repealed.

This legislation is an important step in the right direction—addressing the need to simplify the tax code for a growing sector of small businesses, the leading Job creators in our economy. The Home Office Simplification Act is a beginning effort to make the tax code more user-friendly for those entrepreneurs creating opportunities for themselves and then-families at home.

ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to celebrate the 12th anniversary of the Americans with Disabilities Act (ADA). As a cosponsor of this monumental legislation in 1990, I know how significant this legislation is to people with disabilities in my district and throughout the United States.

Before the ADA was enacted in 1990, most people with disabilities were shut out of mainstream American life because of the arbitrary, unjust, and outmoded societal attitudes and practices. When President Bush signed the ADA, the world's first comprehensive civil rights law for people with disabilities, into law in front of 3000 people on the White House lawn on July 26, 1990, the event represented an historical benchmark and a milestone in America's commitment to full and equal opportunity for all of its citizens. The emphatic directive presented in the legislation is that 43 million Americans with disabilities are full-fledged citizens and as such are entitled to legal protections that ensure them equal opportunity and access to the mainstream of American life.

The ADA recognizes that the surest way to America's continued vitality and strength is through the contributions of all its citizens. The achievements and accomplishments of individuals with disabilities are a milestone for this country as a whole and it is important to support the goals and ideas of the ADA. Mr. Speaker, I know my colleagues join me in honoring the 12th anniversary of the ADA and in strong support for strong protections of the rights of those with disabilities.

CONDEMNING ANTI-SEMITISM

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. LEE. Mr. Speaker, I rise today to condemn the terrible acts of anti-Semitism that have taken place in the last year in the United States and abroad. We cannot stand by in silence and fail to speak out against violence and intimidation.

Recently, Congress passed H. Res. 393, a measure I was proud to cosponsor and support. H. Res. 393 decries the rising tide of anti-Semitism in Europe and cites an alarming list of examples that stretch across the continent. Synagogues have been attacked; Jewish cemeteries have been defaced; Jewish students have been assaulted.

This resolution condemns anti-Semitism in Europe, as we should. We must also condemn it closer to home.

In my own district, in Oakland, California, federal agents are investigating suspicious fires at Beth Jacob Congregation. These acts of arson scarred a century-old building, but did not dim the spirit of this synagogue. Nor did they diminish the bonds of community: instead these acts of violence inspired gestures of friendship and support. Students at the Zion Lutheran School donated toys to replace playthings lost in the fires. These children have a lot to teach us about the power of friendship.

Sadly, we have much to learn. In addition to the fires at Beth Jacob, there have been other disturbing cases of intimidation and hatred against Jews.

In the Bay Area, on college campuses where traditions of tolerance and freedom of expression run deep, Jewish student centers have been vandalized. In the birthplace of the Free Speech movement, people have been harassed on the basis of their beliefs.

Diversity is one of our great strengths. Tolerance is one of our finest virtues. Hatred must not cloud these fundamental principles. We must strive to plant the seeds of peace and renew our commitment to these basic freedoms.

Burning a house of worship, a synagogue, is an act of terror. It is designed to instill fear and inspire hatred. And, yes, we must condemn such acts in Europe. And in California.

Violence and intimidation are utterly wrong. We must all condemn anti-Semitism, in all its forms.

Such acts are hate crimes. Just as I supported H. Res. 393, I strongly support other legislation to recognize hate crimes and to express the sense of Congress condemning violence and prejudice.

STATEMENT UPON INTRODUCTION OF THE WEB—BASED ENROLLMENT ACT OF 2002

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to announce the introduction of a piece of legislation that will provide an e-government solution to the complicated process of signing kids up for health insurance, the SCHIP Web-Based Enrollment Act of 2002. This bill provides a simple, targeted method for expanding access to children's health care by giving states the flexibility they need to implement web-based enrollment programs for SCHIP.

The Balanced Budget Act of 1997 established the State Children's Health Insurance Program (SCHIP), a program that allows states to cover uninsured children in families with incomes that are above Medicaid eligibility levels. Like Medicaid, SCHIP is a federal-state matching program, but spending has fallen well below allotment levels for a variety of reasons. One of the most striking reasons is that states have had difficulty enrolling enough children to meet the allotment standards. Enrollment in SCHIP has involved lots of redtape, and the complexity of the application has discouraged families from signing up.

To address this problem, states are beginning to utilize new technology and the Internet to streamline enrollment in SCHIP and Medicaid. This new technology has enabled states to reduce program enrollment time, improve accuracy, increase access for applicants, and centralize social service applications in state government. States that have launched or are planning to launch web-based enrollment in SCHIP include: California, Arizona, Florida, Michigan, Georgia, Pennsylvania, Texas, and Washington.

While web-based enrollment is promising, many states are challenged by high start-up costs. This bill would provide states with more flexibility to use their federal SCHIP funds for this kind of activity, and would create a grant program to help States promote web-based enrollment.

The SCHIP Web-Based Enrollment Act of 2002 meets these objectives in the following ways: First, it would allow states to use unused, "retained" (redistributed from the federal government back to the state) SCHIP money for this effort. Under current law, a state may use up to 10 percent of retained 1998 allotments for outreach activities approved by the Secretary. The bill adds an additional provision under that section that allows states to use ANY AMOUNT of their retained funds for web-based enrollment outreach.

Second, the bill establishes a separate grant program, allowing states to apply for additional funds (separate from SCHIP money) for this purpose. The grant program would make $50 million available over 5 years, and grants would be subject to a match rate. The match rate would be tied to their SCHIP match rate, but states would be eligible for up to 20 percent more than their rate, not to exceed 90 percent.

Finally, this legislation provides assistance to states from HHS for development and implementation of the web-based enrollment system by providing information and technical assistance.

There are nine million uninsured children in the United States. In fact, a child is born without health insurance every minute in this country. We must do everything we can to make it easier for families to enroll children in the health insurance programs available to them. I believe that this bill will provide the necessary means to help states expand enrollment in SCHIP. I urge my Colleagues to support this important legislation. Thank you.

MONETARY PRACTICES

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PAUL. Mr. Speaker, as the attached article ("A Classic Hayekian Hangover") by economists Roger Garrison and Gene Callahan makes clear, much of the cause for our current economic uneasiness is to be found in the monetary expansion over most of the past decade. In short, expansion of the money supply as made possible by the policy of fiat currency, leads directly and inexorably to the kind of problems we have seen in the financial markets of late. Moreover, if we do not make the necessary policy changes, we will eventually see similar problems throughout the entire economy.

As the authors point out, our ability to understand the linkage between inflated money supplies and subsequent economic downturns is owing to the ground breaking work of the legendary economists of the Austrian school. This Austrian Business Cycle (or "ABC") theory has long explained the inevitable downside that attends to a busting of the artificial bubble created by inflationary fiat monetary practices.

In the current instance, the fact that there has been nearly a decade of significant increases in the seasonally adjusted money supply, as measured by MZM (as shown by the chart included with the article), serves as a direct explanation for the over capitalization and excess confidence which we have seen recently leaving financial markets. In short, as this article shows, the Austrian theory alone understands the causes for what has been termed "irrational exuberance" in the financial markets.

Mr. Speaker, I wish to commend the authors of this fine article as well as to call it to the attention of my colleagues in hopes that we will not merely understand its implications but also that we find the courage to change monetary policy so that we will not see a repeat performance of this year's market volatility.

A CLASSIC HAYEKIAN HANGOVER

(By Roger Garrison and Gene Callahan)

Are investment booms followed by busts like drinking binges are followed by hangovers? Dubbing the idea "The Hangover Theory" (Slate, 12/3/98), Paul Krugman has attempted to denigrate the business-cycle theory introduced early last century by Austrian economist Ludwig von Mises and developed most notably by Nobelist F. A. Hayek.

Yet, proponents of the Austrian theory have themselves embraced this apt metaphor. And if investment is the intoxicant, then the interest rate is the minimum drinking age. Set the interest rate too low, and there is bound to be trouble ahead.

The metaphorical drinking age is set by—and periodically changed by—the Federal Reserve. In our Fed-centric mixed economy, the understanding that "the Fed sets interest rates" has become widely accepted as a simple institutional fact. But unlike an actual drinking age, which has an inherent degree of arbitrariness about it, the interest rate cannot simply be "set" by some extra-market authority. With market forces in play, it has a life of its own.

The interest rate is a price. It's the price that brings into balance our eagerness to consume now and our willingness to save and invest for the future. The more we save, the lower the market rate. Our increased saving makes more investment possible; the lower rate makes investments more future-oriented. In this way, the market balances current consumption and economic growth.

Price fixing foils the market. Government mandated ceilings on apartment rental rates, for instance, create housing shortages, as is well known by anyone who has gone apartment hunting in New York City. Similarly, a legislated interest-rate ceiling would cause a credit shortage: The volume of investment funds demanded would exceed people's actual willingness to save.

But the Fed can do more than simply impose a ceiling on credit markets. Setting the interest rate below where the market would have it is accomplished not by decree but by increasing the money supply, temporarily masking the discrepancy between supply and demand. This papering over of the credit shortage hides a problem that would otherwise be obvious, allowing it to fester beneath a binge of investment spending.

An artificially low rate of interest, then, sets the economy off on an unsustainable growth path. During the boom, investment spending is excessively long-term and overly optimistic. Further, high levels of consumer spending draw real resources away from the investment sector, increasing the gap between the resources actually available and the resources needed to see the long-term and speculative investments through to completion.

Save more, and we get a market process that plays itself out as economic growth. Pump new money through credit markets, and we get a market process of a very different kind: It doesn't play itself out; it does itself in. The investment binge is followed by a hangover. This is the Austrian theory in a nutshell. (Ironically, it is the theory that Alan Greenspan presented forty years ago when he lectured for the Nathaniel Branden Institute.) We believe that there is strong evidence that the United States is now in the hangover phase of a classic Mises-Hayek business cycle.

In recent years money-supply figures have become clouded by institutional and technological change. But in our view, a tale-telling pattern is traced out by the MZM data reported by the Federal Reserve Bank of St. Louis. ZM standing for "zero maturity," this monetary aggregate is a better indicator of credit conditions than are the more narrowly defined M's.

After increasing at a rate of less than 2.5% during the first three years of the Clinton administration, MZM increased over the next three years of the Clinton administration, MZM increased over the next three years (1996–1998) at an annualized rate of over 10%, rising during the last half of 1998 at a binge rate of almost 15%.

Sean Corrigan, a principal in Capital Insight, a UK-based financial consultancy, has recently detailed the consequences of the expansion that came in ". . . autumn 1998, when the world economy, still racked by the problems of the Asian credit bust over the preceding year, then had to cope with the Russian default and the implosion of the mighty Long-Term Capital Management." Corrigan goes on: "Over the next eighteen months, the Fed added $55 billion to its portfolio of Treasuries and swelled repos held from $6.5 billion to $22 billion . . . [T]his translated into a combined money market mutual fund and commercial bank asset increase of $870 billion to the market peak, of $1.2 trillion to the industrial production peak, and of $1.8 trillion to date—twice the level of real GDP added in the same interval" (http://www.mises.org/fullarticle.asp?control=754).

The party was in full swing, and the Fed kept the good times rolling by cutting the fed funds rate a whole basis point between June 1998 and January 1999. The rate on 30-year Treasuries dropped from a high of over 7% to a low of 5%. Stock markets soared. The NASDAQ composite went from just over 1000 to over 5000 during the period, rising over 80% in 1999 alone. With abundant credit being freely served to Internet start-ups, hordes of corporate managers, who had seemed married to their stodgy blue-chip companies, suddenly were romancing some sexy dot-com that had just joined the party.

Meanwhile consumer spending stayed strong—with very low (sometimes negative) savings rates. Growth was not being fueled by real investment, which would require forgoing current consumption to save for the future, but by the monetary printing press.

As so often happens at bacchanalia, when the party entered the wee hours, it became apparent that too many guys had planned on taking the same girl home. There were too few resources available for all of their plans to succeed. The most crucial—and most general—unavailable factor was a continuing flow of investment funds. There also turned out to be shortages of programmers, network engineers, technical managers, and other factors of production. The rising prices of these factors exacerbated the ill effects of the shortage of funds.

The business plans for many of the startups involved negative cash flows for the first 10 or 15 years, while they "built market share." To keep the atmosphere festive, they needed the host to keep filling the punch bowl. But fears of inflation led to Federal Reserve tightening in late 1999, which helped bring MZM growth back into the single digits (8.5% for the 1999-2000 period). As the punch bowl emptied, the hangover—and the dot-com bloodbath—began. According to research from Webmergers.com, at least 582 Internet companies closed their doors between May 2000 and July of this year. The plunge in share price of many of those still alive has been gut wrenching. The NASDAQ retraced two years of gains in a little over a year.

During the first half of 2001, the Fed demonstrated—with its half-dozen interest-rate cuts and a near-desperate MZM growth of over 23%—that you can't recreate euphoria in the midst of a hangover.

It all adds up to the Austrian theory. As a final twist to our story, we note that Krugman, who before could only mock the Austrians, has recently given us an Austrian account of our macroeconomic ills. In his "Delusions of Prosperity" (New York Times, 8/14/01), Krugman explains how our current difficulties go beyond those of a simple financial panic:

"We are not in the midst of a financial panic, and recovery isn't simply a matter of restoring confidence. Indeed, excessive confidence [fostered by unduly low interest rates maintained by rapid monetary growth?—RG & GC] may be part of the problem. Instead of being the victims of self-fulfilling pessimism, we may be suffering from self-defeating optimism. The driving force behind the current slowdown is a plunge in business investment. It now seems clear that over the last few years businesses spent too much on equipment and software and that they will be cautious about further spending until their excess capacity has been worked off. And the Fed cannot do much to change their minds, since equipment spending [at least when such spending has already proved to be excessive—RG & GC] is not particularly sensitive to interest rates."

With Krugman on the verge of rediscovering the policy-induced self-reversing process that we call the Austrian theory of the business cycle, we confidently claim that current macroeconomic conditions are best described as a classic Hayekian hangover. The Austrian theory, of course, gives us no policy prescription for converting this ongoing hangover into renewed euphoria. But it does provide us with the best guide for avoiding future ones.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

SPEECH OF

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes:

Mr. ROGERS of Michigan. Mr. Chairman, I want to thank my colleagues, and I will ask for their help today because Michigan is in need.

In the Civil War, Michigan mustered 90,000 troops to defend the Union. During that tumultuous time in our history, Abraham Lincoln was quoted as saying: "Thank God for Michigan." We have the second most diverse agricultural crop in the United States. We offer all the flavors of this great country to our fellow States.

Michigan is responsible for creating the permanent middle class in America when Henry Ford decided to pay the workers on the line $5 a day. During World War II, Michigan converted all of its automobile production plants into plants that produced military arsenal, making Michigan the arsenal of democracy for the world. We did that for the United States of America. Michigan is home of the Great Lakes, which account for 20 percent of the world's fresh water, all of it worth defending. And I am here to tell you today that Michigan right now is under attack. I need every colleague in this House from Maine to California to Florida and in between to step up to the plate and say, "We will stand beside you, those who have stood by America before."

In the year 2000, Canadians sent 4.2 million cubic yards of waste to Michigan, nearly double from the year before. Canada is the second largest land mass country in the world, and yet they are unable to handle their own trash. This situation gets worse.

Toronto is scheduled to close its last landfill at the end of the year. Recently, city workers in Toronto went on strike. I want to point this out to you. This is the scene in Toronto just a few weeks ago: trash blocking roadways. This is a park area filled with trash from Toronto. As you can see, the residents were throwing bags of garbage over the fence, piling up everywhere all across their city.

Here is the bad news. All of that trash that my colleagues see right here is coming to the great State of Michigan and we are absolutely uncertain as to its contents. Let me just quote for my colleagues a woman from Toronto as quoted in the Toronto Star, when city workers settled a strike that allowed garbage to pile up in the streets. She was quoted as saying "I'm relieved that it's on its way. It was polluted, smelly and germy."

160 semi-trucks each day are delivering polluted, smelly and germy Toronto trash to the great State of Michigan. At the end of this year, when Toronto's last remaining landfill closes, that number is expected to exceed 250 trucks every day of this trash in our landfills. Michigan has had a long-term plan to deal with its own garbage. Just with Canadian trash alone, Michigan's landfill capacity has been reduced from 20 years to 10 years, and getting smaller every day.

In one landfill that accepts Canadian trash, PCBs and soiled coffin waste were discovered. The needle program in Toronto is coming to a landfill near you great citizens of Michigan.

This amendment is important today. There is a lot of work we need to do on this issue to stop Canadian trash. However, we ought to have the courage today to stand with our fellow Michiganders to give them at least the hope of protecting their environment in the great State of Michigan.

The purpose of my amendment is to hire six U.S. Customs agents to be stationed 24 hours a day on the Ambassador Bridge and the Blue Water Bridge, three at each bridge for every shift. The sole responsibility of these agents will be to inspect Canadian trash coming into Michigan. The money provided includes dollars for equipment, training and benefits.

Now, the only way to know what's in this trash is to get our hands dirty and inspect it. Let's find out where the PCBs are coming from, where the soiled coffin waste is coming from and where the bottles are coming, since Canada does not have a bottle deposit program like Michigan.

This is the right and decent thing to do, to let us in Michigan defend our borders as we have stood with the rest of this country to defend theirs.

I am going to ask my colleagues again today, please strongly support this amendment. We want to make sure that every trash container coming into Michigan meets existing environmental and health regulations. Today, we have no assurance that is happening. Today, we cannot be certain that there is no leeching from this material, ruining our lakes, our streams and ruining the great land of Michigan.

Instead of spending a little more money going after grandma who owes the IRS $12, we are going to spend just a little bit less from the $4 billion account that we are reducing to protect the health and environment of my home State, the great State of Michigan. I challenge all of my colleagues to please support this issue. Stand loudly with us as we tell the Canadians to please handle their own trash and leave the littering to those who get a ticket.

IN HONOR OF DORIS THOMAS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. PELOSI. Mr. Speaker, I rise to pay final tribute to my friend Doris Thomas, who died peacefully on July 8 in San Francisco. Doris was a long-time community organizer and political activist who worked tirelessly to empower local communities through political involvement. Doris was a leader in our City, and

I join so many other San Franciscans in mourning her passing.

Born in Laurel, Mississippi, to the Reverend Simon S. Thomas and Rosa Henry, Doris was one of five children. After earning a B.A. from Hampton University and a law degree from Howard University in Washington D.C., Doris moved to San Francisco. From 1963 until 1983 she served as District Director for the great Congressman Philip Burton. She was a patient, savvy problem solver who specialized in immigration issues. After Congressman Burton's death she worked for his wife, Congresswoman Sala Burton. Doris also worked for Mayors Frank Jordan and Willie Brown as a program manager for the Mayor's Office of Community Development.

Doris was a tireless champion of the African-American Community and a member of the Black Leadership Forum. Her public service transcended any particular organization, however, and she was active in the Chinese-American Democratic Club, the Democratic Women's Political Forum, and other groups. She contributed her political expertise to many campaigns, including those of Philip Burton, Sala Burton, Frank Jordan, Jesse Jackson, and my own.

After retiring from Congressional work in 1987, Doris turned her focus to government and political consulting, specializing in immigration law. In addition to helping countless individuals earn citizenship, she dedicated herself to voter education. Among her influential efforts for political mobilization was her role as founder of the Bayview-Hunters Point Democratic Club.

Doris Thomas was a devoted mother, sister and friend. To her daughter, Tandi, and her sisters, Naomi Gray and Ruth Long, I extend my deepest sympathies. To all those who loved Doris, thank you for sharing her with us.

DISAPPROVAL OF NORMAL TRADE RELATIONS TREATMENT TO PRODUCTS OF VIETNAM

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 2002

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H.J. Res. 101, Disapproval of Trade Waiver Authority With Respect To Vietnam. This resolution puts the principles of the United States first, and is required of this House in light of both the Jackson-Vanik amendment to the 1974 Trade Act and recent events affecting our diplomatic relationship with this developing nation.

United States' law requires that permanent normal trade relations be granted to non-market economies that the president can certify have free emigration. Absent this showing, the President can waive the provisions of the amendment if doing so will promote emigration in the future.

Last year, Vietnam purchased Boeing aircrafts to initiate the Vietnam-U.S. trade pact. Trade is vital to the development of Vietnam. Vietnam has greatly reduced the incidence of poverty. The World Bank reports that there is a rise in per capita expenditure and also there are widespread reports of improvements in broad well-being. While the progress achieved over the past decade has been impressive by almost any standards, Vietnam still remains a very poor country.

The State Department in its 2001 Country Reports on Human Rights Practices noted that Vietnam has a poor human rights record. This record has worsened. Vietnam continues to commit numerous and serious abuses to its people. Vietnam continues to repress basic political and some religious freedoms. Vietnam continues to restrict significantly civil liberties on grounds of national security and societal stability.

Vietnam, a formerly hostile nation, has a large trade surplus with the United States and a questionable human rights record, and they ask for trade waiver authority review. I do not seek to disparage the gains Vietnam has made in re-engaging the world. I do seek to create a consistent balance between our trade priorities and the principles we use to steer this nation. We cannot continue to hold ourselves out as a nation of laws and turn our back on our convictions at every economic opportunity.

Therefore, I rise in support of this resolution because our trade policy must be balanced with a sense of moral leadership. We should not hold our trade relationship over Vietnam, nor should we allow globalization to commit us to policies against our best sense as a nation. Vietnam has done much, but it can do more. Other countries may turn a blind eye to issues such as the rights of workers and the environment, but we are not other nations.

I urge my colleagues to vote in favor of H.J. Res. 101, disapproving trade waiver authority with respect to Vietnam. It is time to begin thinking about what trade should mean; huge deficits for the U.S. for the sake of a few reforms is not the answer.

IN HONOR OF PASTOR JOHN PARISH

HON. J.C. WATTS, JR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WATTS of Oklahoma. Mr. Speaker, In my home town of Eufaula, Oklahoma, we are blessed by a wonderful sense of community, where neighbors help neighbors, and no one is a stranger. One important reason for this great blessing is the inspired guidance of our religious leaders.

One of those leaders has been bringing God's word to not only Eufaula but also, through his daily radio program, to folks throughout Oklahoma, for 27 years. Pastor John Parish of the Lighthouse Christian Center has been a beacon of faith and prayer, of hope and love, and of charity and outreach to the less fortunate.

Though John is not a physically large man, he has a large voice and a large presence that is respected by his congregation and the entire community. He is a caring man and he leads a loving and caring church. During last year's ice storm, you didn't have to be a member of his church to receive an outstretched hand of help from Pastor Parish. He went wherever he was needed.

John is supported in his ministry by his remarkable wife Rhea, and the church's youth ministry is led by his son Jonathan and his wife Kelly. Thanks to the contributions of this wonderful family, Eufaula is a better place to live and raise a family.

This Sunday the community and John's congregation are gathering to celebrate his 50th birthday. I would like to congratulate John on this milestone and thank him for his lifetime of dedication and service to our wonderful Savior, to family and to our community.

STATEMENT IN HONOR OF PHYLLIS WATTIS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. PELOSI. Mr. Speaker, I rise to pay final tribute to one of San Francisco's most generous patrons of the arts, Phyllis Wattis, who died June 5th at age 97. Phyllis's extraordinary generosity and commitment to artistic, educational, and scientific organizations continues to enrich the lives of all of us who live in the San Francisco Bay Area. Through her philanthropy and her personal warmth, she left an indelible mark on our City and the lives of those who loved and admired her.

Phyllis and her husband Paul moved to San Francisco in 1937. With her pioneering spirit and contagious enthusiasm, Phyllis adopted the arts as her philanthropic cause. In 1958, Mr. and Mrs. Wattis established the Paul L. and Phyllis Wattis Foundation. When her husband died in 1971, she assumed the presidency of the Foundation. After 1988, Phyllis dissolved the foundation and began making individual contributions to a variety of educational and cultural institutions. Her consummate modesty in giving makes it impossible to know the total amount of her contributions, but it has been estimated at $200 million.

She gave to the Fine Arts Museums of San Francisco, the San Francisco Symphony, the San Francisco Opera and the San Francisco Art Institute. She donated significantly to the San Francisco Museum of Modem Art, first to construct its stunning new home and then to build a world-renowned collection equal to its new building. She funded a new building at the California Academy of Sciences, and gave major grants to the Smith Kettlewell Eye Research Institute, Children's Hospital of San Francisco, UC Irvine, and Bellarmine College Preparatory.

Nearly every major cultural, educational, and scientific organization in San Francisco has benefited from her generosity. For her long service to the community, she received an honorary Doctor of Fine Arts degree from the San Francisco Art Institute and commendations from several San Francisco Mayors. I was proud to nominate her for a National Medal of Arts.

Phyllis's contribution to the arts was not only financial. Her leadership, creativity, and intelligence were immense gifts in their own right.

She was never afraid to take risks on new and innovative art, and her vision enabled arts organizations to push forward into new ground. Her sharp eye and captivating personality helped to nurture some of the city's most important cultural institutions.

San Francisco is forever indebted to Phyllis. Her contributions to our cultural resources are immeasurable; her friendship and energy will be sorely missed. It is with great sadness and recognition of their loss that I offer my deepest sympathies to her son Paul, her daughter Carol, her five grandsons, three granddaughters, and eight great grandchildren. Like the art she left behind, our memories of Phyllis are permanent and beautiful.

TRIBUTE TO HON. TONY HALL

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. SLAUGHTER. Mr. Speaker, I rise in tribute to a dear colleague and friend, the Honorable TONY HALL of Ohio.

We are nearing the time to say good-bye to TONY who has honorably served his constituents of Montgomery County, Ohio for 23 years. We have spent many late nights serving on the Rules Committee together.

TONY has been offered the opportunity to represent the United States as a leading advocate to promote global food security and reduce hunger throughout the world. He will serve as the U.S. ambassador to the United Nations Agencies for Food and Agriculture based in Rome. His efforts on behalf of the hungry will be greatly missed in the House of Representatives—his work remains a beacon for other members to follow.

Alleviating hunger and improving conditions for the neediest people, both here at home and abroad, has been his personal passion throughout all the years I have worked with him. His new position will enable him to focus on this mission with the full support and authority of the entire United States government.

Representative HALL embodied all the best traditions of this institution. He is known for a commitment to the best interests of his district and the nation as a whole.

With his work and passion he has shown during his years in Congress, he has made this world a better place, and I am very confident he will continue to do so in this new position.

Among his many legislative accomplishments, TONY wrote the bill enacted in 1992 that created the Dayton Aviation Heritage National Historical Park. He recently wrote legislation to stop importing "conflict diamonds" that are mined in war-torn Africa and which fund Al-Queda's international terrorism, and he also spearheaded international efforts to draw consumers' attention to the importance to this "blood trade."

In his new position, TONY HALL will assist international hunger relief. He will help to draw attention to international food, hunger, and agriculture issues before they reach the crisis stage and to promote innovative hunger-related practices by private groups and governments. This position will give him the opportunity to continue to be a leading advocate for ending hunger and promoting food security around the world.

Best Wishes, TONY. And thank you.

CONGRATULATIONS TO CONGRESSMAN TONY HALL

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WALSH. Mr. Speaker, I rise today to congratulate my colleague, and friend, Congressman TONY HALL, as he becomes the United States Ambassador to the United Nations food and agriculture agencies in Rome, Italy.

First elected to the House of Representatives in 1978, TONY has served the good people of Montgomery County, Ohio with distinction and honor. He has been a driving force and advocate for issues like ending world hunger, promoting food security, stopping the importation of "conflict diamonds" in Africa, and an infinite number of legislative accomplishments here in Congress.

He has embraced his role as Congressman in an honorable fashion, and with his experiences as a public servant, I have no doubt that he will step into his new position with the same grace and fervor that he has demonstrated over the past three decades. Based on his experiences with our own government, there is no better person to lead the fight for human rights.

We will miss his strength and wisdom, but his experiences and passion for the oppressed make him the ideal person to lead the Food and Agriculture arm of the UN. It is hard to see him go, but it would be selfish for us not to let this fine leader use his strengths to help overcome the hunger problems facing our world.

I want to wish TONY all the best as he embarks on this new journey. If his future accomplishments are any reflection of his past contributions, the world will be a better place.

TRIBUTE TO REP. TONY HALL OF OHIO

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WOLF. Mr. Speaker, we come to the House floor today to pay tribute to our colleague from Ohio, the Honorable TONY P. HALL.

As you know, Mr. Speaker, TONY was nominated by President Bush to be the United States ambassador to the United Nations food and agricultural agencies located in Rome, Italy. He is awaiting final Senate confirmation, which could come in a matter of days. Once confirmed, he will resign as the representative of the 3rd District of Ohio and take his post in Rome where he will be able to continue his passionate work as a leading advocate for ending hunger and promoting food security around the world.

TONY will be greatly missed in the House of Representatives, but I know that he is absolutely the right person to serve as the United States representative to the World Food Program, the Food and Agricultural Organization, and International Fund for Agricultural Development, all agencies of the United Nations which assist international hunger-relief efforts.

This is a bittersweet time for me. I have had the privilege and honor to call TONY HALL my colleague for two decades, but more importantly, I have come to call TONY HALL my best friend in Congress. Many people don't understand how a Democrat from Ohio and a Republican from Virginia, who more often than not are on the opposite sides of votes in the House, can share a friendship.

But it's been easy to be TONY's friend because he is one of the most decent, sincere, loving, dedicated people that I know. He finds his strength through his deeply held faith in God. I have come to know him well through our weekly Bible study together, where we have shared personal moments about our families, our lives, our work in Congress. We've had weighty and serious discussions, we've laughed together and we've shared tears.

As a public servant, TONY embodies Christ's teachings in Matthew 25: "For I was hungry and you gave Me food; I was thirsty and you gave Me drink . . . inasmuch as you did it to the least of these My brethren, you did it to Me." His life's work is consumed with spiritual purpose.

TONY HALL's name is synonymous with the cause of alleviating hunger both domestically and worldwide. He believes that food is the most basic of human needs, the most basic of human rights, and he has passionately worked to convince others that the cause of hunger, which often gets lost in the legislative shuffle and pushed aside by more visible issues, deserves a prominent share of attention and resources to assist people who are the most at risk and too often the least defended.

But TONY hasn't limited his humanitarian work to hunger issues. He is a tireless advocate for the cause of human rights around the world and most recently has focused his attention on the illicit diamond trade in Sierra Leone. He convinced me to travel with him to Sierra Leone in late 1990 to see how the machete-wielding rebels there have intimidated men, women and children by hacking off arms, legs, and ears. He has led the effort in bringing to the attention of Congress the conflict diamond trade and authoring legislation to certify that the diamonds Americans buy are not tainted with the blood of the people of Sierra Leone and other African nations.

We also traveled together in January to Afganistan with Congressman JOE PITTS as the first congressional delegation to that country since the war on terrorism. We visited hospitals, an orphanage, schools, and refugee camps. We met with U.S. diplomats and soldiers; with local leaders and officials with direct responsibility for humanitarian problems and refugees; with representatives of United Nations and private relief organizations; and in Pakistan with refugees and members of religious minority groups.

TONY is never deterred in his effort to help make a positive difference in the lives of suffering people. He has traveled to wherever the need arises and met with whomever he can to effect change, taking risks few would take, with his own comfort and safety never entering his mind.

I believe TONY's life destiny is to be a servant, though in his college days, if he'd had a little larger frame, he may have had a career in football. An Ohio native, in 1964 he received his A.B. degree from Denison University in Granville, Ohio, and while at Denison, he was a Little All-American tailback and was named the Ohio Conference's Most Valuable Player in 1963.

But his inner voice and his servant's heart directed him to what would become a career of service. During 1966 and 1967, he taught English in Thailand as a Peace Corps volunteer. He returned to Dayton to work as a realtor and small businessman for several years, but before long, he was elected to the Ohio House of Representatives where he served from 1969 to 1972, and then to the Ohio Senate, serving from 1973 to 1978. On November 7, 1978, TONY was elected to the House of Representatives from the 3rd District of Ohio and has served with distinction since.

TONY HALL's worldwide hunger relief quest began in earnest in 1984 when he first visited Ethiopia during that nation's Great Famine. What he saw then, especially the faces of emaciated children, was indelibly etched in his mind, forever transforming him and instilling a passion that drives him in his quest to help feed the starving people of the world.

In 1993 this House, in what has been described in Politics in America as "a wave of frugality," abolished the Select Committee on Hunger, as well as three other select committees. Having served as chairman of the Select Committee on Hunger and having worked in 1984 as the principal supporter of the legislation which created the Select Committee on Hunger, TONY HALL fought to keep the committee alive because of its importance as a forum to raise the cause of hunger and the very survival of vulnerable populations.

In an effort to use this disappointing event as a means to elevate the problem of hunger, TONY embarked on a 22-day water-only fast. He was also dismayed that congressional leaders would not even let the House vote on the matter. But through his perseverance, the momentum of this fast led to the creation of two new hunger entities: the Congressional Hunger Caucus and the Congressional Hunger Center, which I was honored to co-chair with TONY here in the nation's capital. Those forums allowed TONY to continue the fight against hunger, to ensure that issues of both domestic and world hunger remain at the forefront of national debate, and to accomplish what always was the goal of the Select Committee on Hunger: to push responsible policies and to generate a national sense of urgency to solve hunger once and for all.

His humanitarian work also has focused on efforts to improve human rights conditions around the world—in the Philippines, East Timor, Paraguay, Romania, and the former Soviet Union. In 1983 he founded the Congressional Friends of Human Rights Monitors. He was the principal U.S. nominator of East Timor Bishop Carlos Belo, winner of the 1996 Nobel Peace Prize.

TONY himself was nominated three times for the Nobel Peace Prize for his advocacy for hunger relief programs and improving international human rights conditions. He is the author of legislation supporting child survival, basic education, primary health care, microenterprise, and development assistance programs in the world's poorest countries.

But while TONY's name is known far and wide for his hunger and human rights work, he also has been a stalwart representative for the people of the 3rd District, vigorously defending his district and its largest employer, Wright-Patterson Air Force Base in Dayton.

He was the principal author of legislation enacted in 1992 to establish the Dayton Aviation Heritage National Historical Park. Also in 1992, TONY introduced successful legislation extending the life of the Dayton Area Health Plan which provides health care services to more than 42,000 low-income residents of Montgomery County, costing taxpayers $1 million less than a traditional health care program.

He was a leader in Congress in support of the Air Force Science and Technology program, which is headquartered at Wright-Patterson. He wrote legislation passed in 1993 which laid the foundation for the privatization of the Energy Department's Miamisburg Mound Plant, a former defense nuclear facility. He has supported legislation to create high tech jobs in the Dayton area that combine the region's strengths in aerospace and automobile manufacturing. He is the author of legislation to improve safety for police and emergency workers assisting stopped vehicles on highways.

The people of his district also know well his work on hunger issues because it was there in 1984 that he founded Saturday Meals for Seniors, a weekend hot lunch program for seniors in need in Dayton which has fed over 10,000 meals at group sites and to shut-ins every year since.

In 1985 TONY introduced legislation incorporated in the 1985 Food Security Act to promote gleaning programs, which gather the produce left behind after commercial harvests, to feed hungry people. He also organized annual gleaning projects in Dayton, beginning in 1986 which salvaged 77 tons over a three-year period, and helped organize gleaning projects throughout Ohio.

Also in 1985, TONY organized STOP HUNGER . . . FAST!, a broad-based, community-wide effort in Dayton, which raised $330,000 that year for hunger relief efforts in the U.S. and Africa.

There are so many examples of how TONY HALL's passion and principles and Christian values have made a positive difference in the lives of those suffering from hunger around the world for over two decades. His efforts have included work to convince the community of nations that food must never be used as a weapon against hungry people. TONY HALL's legacy of fighting hunger spans from Dayton, Ohio, through Washington, D.C., on to the Horn of Africa and around to North Korea.

In 1982, two years before his work to create the House Select Committee on Hunger, to call attention to wasted food that could be used for hunger relief, TONY organized a media event and luncheon serving only food salvaged from trash cans and then worked for passage of legislation which outlined steps to make food available to hungry people that would otherwise be wasted.

In 1984, following reports of massive famine and starvation, TONY visited relief camps in Ethiopia and revisited the country again in 1987, after working tirelessly during that time to investigate efforts to head off a repeat of Ethiopian famine and encourage early action to prevent loss of life in not only Ethiopia but other drought-stricken nations in sub-Saharan Africa, and urge Ethiopian leaders to allow famine relief to reach all the people of Ethiopia, including regions affected by civil war.

Legislation TONY authored passed the House in 1985 calling on the U.S. to support measures aimed at immunizing the world's children against six major childhood diseases.

TONY successfully led efforts in Congress to earmark $38 million in FYs 1986–1990 to fund vitamin A programs in developing nations, in light of significant evidence linking vitamin A to improvements in children's health.

TONY visited Haiti with the Select Committee on Hunger in 1987 and again with the Congressional Hunger Caucus in 1993 to investigate humanitarian assistance projects. Following the 1993 visit he helped to secure U.S. Agency for International Development support to assist a leading non-governmental organization to begin feeding over a half million more malnourished Haitians.

In 1988 TONY visited Bangladesh during the devastating flood and upon his return, worked for passage of legislation to aid Bangladesh's recovery from the flood.

In 1989 TONY visited Sierra Leone and convinced Executive Branch officials to change food assistance programs to better serve humanitarian needs.

TONY contacted leaders in Ethiopia calling for a summit to address the issues of providing humanitarian assistance to conflict situations and the issue of children as victims of war in the Horn of Africa. The summit was held in April 1992. For his hunger legislation and his proposal for a Humanitarian Summit in the Horn of Africa, TONY HALL and the Hunger Committee received the 1992 Silver World Food Day Medal from the Food and Agriculture Organization of the United Nations.

He also is the recipient of the United States Committee for UNICEF 1995 Children's Legislative Advocate Award, U.S. AID Presidential End Hunger Award, and 1992 Oxfam America Partners Award. In 1984, he received the Distinguished Service Against Hunger Award from Bread for the World, the highest award given by the organization to recognize efforts to fight world hunger. In 1988, the U.S. Agency for International Development awarded TONY HALL its Presidential End Hunger Award "for continued demonstrated vision, initiative and leadership in the effort to achieve a world without hunger." He is also a recipient of the NCAA Silver Anniversary Award and received honorary Doctor of Laws degrees from Asbury College and Eastern College and a Doctor of Humane Letters degree from Loyola College. In 1994, President Clinton nominated TONY HALL for the position of UNICEF Executive Director.

In May 1994, TONY led a Presidential Delegation to the Horn of Africa and was the first U.S. legislator to visit Rwanda. He focused efforts with the Congressional Hunger Caucus to convince the administration to formally recognize that genocide was occurring there and take the lead in the United Nations to establish an international tribunal to bring those responsible for the murder of thousands of Rwandans to trial. After visiting what at the time was the largest refugee camp in history on the east side of Rwanda, he strongly advocated immediate and improved cooperation by all international donors for the relief of Rwandan refugees and convinced administration officials to visit sites of humanitarian disaster in Rwanda leading to the assistance being provided today.

TONY's concern for those suffering in famine-stricken areas took him to North Korea where he first visited in August 1996, just weeks after North Korea's "breadbasket" region was hit by a flood which reduced the country's harvest by half and left the people there vulnerable to a massive food shortage. He returned to North Korea in April 1997 on a humanitarian mission to focus attention on the 5 million people at risk of death from starvation from an imminent famine. To help spur an international response to help the starving North Korean people, TONY traveled to South Korea and Japan in August 1997 to promote additional humanitarian aid. He spoke to the largest church in South Korea and encouraged private efforts to the North. He also urged Japanese officials to consider a larger role in aiding people suffering from severe food shortages and suggested that Japan's surplus rice could leverage price donations to aid people facing starvation in North Korea.

Troubled by continuing reports of worsening conditions for the Korean people and not satisfied that the necessary reforms were in place to avert the crisis the Koreans were facing that was unlike any since the famine that claimed 30 million people in China nearly four decades ago, he made his third visit to North Korea in October 1997 to again call on the world to focus its attention on the disaster unfolding there.

Perhaps what TONY so effectively conveys when he works to help end the suffering of the world's hungry people is his personal conviction that lending humanitarian aid is above politics. In his discussions with North Korean leaders about their country's acceptance of peace talks, they expressed concern about the agenda for the talks and that food aid would be used as a political weapon during the talks. He assured them that the United States had a long tradition of providing food aid solely on a humanitarian basis, which he personally considers a point of pride, and that this policy will continue, and he urged them to begin formal negotiations on the peace talks with that assurance.

He made his fourth trip to famine-stricken North Korea in November 1998, traveling to cities in the far northeastern part of the country and a town south of the Pyongyang capital, visiting orphanages, schools, hospitals, and an "alternative food" factory, before returning to Pyongyang for meetings with senior North Korean government officials and aid workers. He reported that grave-covered hillsides and overflowing orphanages were the most visible changes there since he visited a year earlier.

He observed that the food donated by the United States and others is helping to save the lives of children in North Korea, but that food alone won't cure the ills there. Stopping the dying will take a new focus on health—one sufficient to combat the debilitating effects of contaminated water and an almost complete lack of medicine and one he found missing in the current approach of the government of North Korea. He also reported that private and United Nations health initiatives are impossibly underfunded.

Yet in his visits throughout the countryside, where no one can escape the ravages of famine, TONY HALL found something in this fourth visit with the North Koreans that made him realize that his efforts to help turn the tide toward a brighter future for these suffering people were bearing fruit. He found—hope. He called "heroic" the efforts of ordinary North Koreans to overcome their difficulties, as he saw an "alternative food factory" which turns leaves and twigs into the noodles that are becoming a staple in the diets of too many people. He saw people working at all hours of the day and night, moving the cabbage harvest, gathering twigs for kitchen fires, and gleaning already cleanly picked fields. Denuded hills and rows of crops planted three-quarters up the hills were clear evidence of their desperate efforts.

And when he had the chance to speak with ordinary citizens through his own interpreter and out of the presence of his government "minders," the shyness he had seen in earlier visits was replaced with absolute determination in their voices to overcome their troubles. Even faced with slow starvation, the telltale signs of which show on skin darkened by malnutrition, these brave people have hope, a hope that TONY HALL in his work as a humanitarian ambassador has helped instill by showing the people of North Korea that the community of nations cares and is there to help them in their time of need—"When I was hungry, you gave Me food."

TONY's passion took him to southern Sudan in Africa in May 1998 where famine was threatening 700,000 Sudanese people in a nation torn by a 15-year civil war and where 2 million lives had already been lost. His own eloquent words in June 1998 from his trip observations may best reflect why TONY HALL is the right person to now be the U.S. ambassador to the U.N. world food programs:

"What I witnessed in Ethiopia convinced me that there was no greater service, besides to the people who elect me to Congress, than to those people who are so desperately poor that they can't even feed themselves. I have been to dozens of countries since then, to some of the regions hit hard by both natural disasters and man-made ones. But it was not until I visited the forgotten nation of Sudan two weeks ago that I saw conditions as terrible as those in Ethiopia. The humanitarian aid reaching those people is a drop in the bucket of what is needed. If we are sincere about stopping the death toll from climbing from two million—to three million people—we have to do more. The people of southern Sudan need food and medicine. But they also need peace, and we should not squander the narrow window that may now exist to bring an end to this hideous war . . . Anyone who has seen the terrible condition of the people in southern Sudan feels the same determination I do to find a way to bring peace—and relief—to them."

TONY'S call for an immediate cease-fire and heightened diplomatic attention to Sudan's peace process, and his urging of the United States and other friends of the peace process to step in and enhance and support invigorated negotiations, struck a chord. It's taken some time, but fueled by one of the largest humanitarian relief efforts in history, with the United States providing the greatest share of aid, today's headlines report that breakthroughs in peace talks in Sudan could very well pave the way to end the 19-year civil war in which more than 2 million people have died.

TONY HALL speaks for those in so many desolate places in the world who can't speak for themselves. Playwright George Bernard Shaw once said, "You see things; and you say, 'Why?' But I dream things that never were; and I say, 'Why not?'"

TONY HALL says "Why not?" and follows those words with action. Why not work to stop the suffering of the poorest of the poor? Why not help to feed the starving people? Why not help the desperate people of Sierra Leone or the Sudan?

George Bernard Shaw also said, "The worst sin towards our fellow creatures is not to hate them, but to be indifferent to them: that's the essence of inhumanity." There is no fiber in TONY HALL'S body that knows indifference. He is the essence of humanitarianism, the embodiment of service to mankind, a follower who daily lives Christ's teachings as he seeks ways to feed the hungry and give drink to the thirsty.

His leadership and his vision embrace and offer succor to those in need, even in the most remote corners of the world. His concept to end hunger serves as a beacon to light the way. His achievements in providing lifesaving food to so many is the road map to ending starvation. His efforts to end human misery the world over inspire others to take up that cause.

TONY HALL is an inspiration to everyone fortunate enough to know him. He has a wonderful combination of compassion and passion filled with spiritual purpose-compassion to see the suffering in the less fortunate in the world and the passion to work to do something about it.

Today is a bittersweet time for me, to be sure. My best friend in Congress is leaving, but he will now have the world's stage to continue his life's work of helping to make a difference in the lives of those less fortunate in our world.

Godspeed, my dear friend.

THE HONORABLE TONY HALL

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. SENSENBRENNER. Mr. Speaker, it is with mixed emotion that I say goodbye to my dear friend and colleague, TONY HALL.

Anyone who knows TONY, knows him to be one of the most considerate, and kindest gentlemen ever to grace this House with his presence. There is a reason why he has been nominated three times for the Nobel Peace Prize, where most of us would be honored just to be considered once.

TONY's commitment to the survival of children, particularly in poor countries, along with his support of development assistance programs in the world's neediest countries, makes him eminently qualified to represent the United States to the United Nations food and agriculture agencies in Rome. TONY's work and dedication in promoting hunger relief programs and improving international human rights conditions is legendary. I still remember when, nine years ago, in an effort to draw attention to the plight of hungry people in the US and around the world, he fasted for three weeks in response to the abolishment of the Hunger Committee.

Mr. Speaker, it's this dedication and compassion that will make TONY an excellent Ambassador. While the House will lose a dear and respected friend once he is confirmed by the Senate, the United Nations will gain a fair and principled man who, I am certain, will do wonders for the poor and needy of the world. Though I am sad to see TONY leave, I am happy for him, and for all the good work that lies ahead of him.

TRIBUTE TO REP. TONY HALL

HON. DAVID L. HOBSON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HOBSON. Mr. Speaker, I rise today to pay tribute to my fellow Ohioan and good friend, TONY HALL.

For years, TONY and I have worked together for the benefit of the citizens of the Miami Valley on numerous projects and initiatives. I am very happy that he has this new opportunity to work directly on hunger issues as the United Nations, but it is still very sad to see him leave the House of Representatives.

TONY is now at the end of a nearly 24-year career representing the people of Montgomery County on Capitol Hill and is taking his crusade against hunger to a global stage.

The youngest son of one of Dayton's most beloved mayors, TONY has been a football star, a Peace Corps volunteer, a noted world traveler, a devoted husband and father, and a dedicated public servant. TONY has become the area's longest-serving Congressman and a three-time Nobel nominee known worldwide of his work against hunger.

In Congress, HALL has been guided by faith and family and never chosen Capitol Hill events over the importance of being home with his wife and children. He has spent 21 years on the House Rules Committee, and I have been pleased to work with TONY on numerous local projects for the Miami Valley: from supporting the National Composites Center, to saving the Air Force Institute of Technology.

Ten years ago, TONY and I worked to establish the Dayton Aviation Heritage National Historical Park and we just recently embarked upon a new effort to create the National Aviation Heritage area to preserve Ohio's aviation heritage for the future.

When I first came to Congress, TONY was one of the first Members of Congress to reach out to me, and show me the ropes. He didn't have to do that, and I have always appreciated his willingness to make me feel comfortable in this new environment.

Nobody goes around Capitol Hill grumbling about TONY HALL. He is the genuine article, he works hard for the constituents and he is a man of principle, and of his word.

TONY has managed to be a positive force, despite the difficult challenges he has faced in his personal life. We are all better people because TONY HALL has been here.

As Ohio's Seventh District Representative to the Congress of the United States, I take this opportunity to join with members of the Ohio delegation to honor the efforts and the many outstanding achievements of Rep. TONY HALL. His many contributions as a member of the House of Representatives and leadership will be remembered.

RECOGNIZING THE HONORABLE TONY HALL

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. REGULA. Mr. Speaker, I would like to join my colleagues in bidding farewell to TONY HALL. As Dean of the Ohio Democrats, TONY has provided leadership within the delegation. I have enjoyed serving as co-dean with TONY in working on issues that affect our state. From aerospace to defense to technology to education issues, TONY has been at the forefront of developing sound public policy for the benefit of all Ohioans.

TONY has never shied away from the tough issues. His dedication to hunger issues and human rights was born long ago and derives from his spiritual commitment. His life embodies the second great commandment to "Love your neighbor."

That steadfastness has motivated others to get involved and to make a difference. His advocacy of these issues has taken him to numerous hotspots around the globe. Each time he returned home he brought new insights into the problems facing mankind and oppressed communities around the world. He will leave a legacy of better health and quality of life for thousands of less fortunate individuals.

TONY's life will be an inspiration for many others. Like the ripple of a pebble in a pool of water, his life will ripple on in the lives and good works of many others. This is a remarkable achievement over a distinguished career in the House.

TONY now brings these gifts to a new assignment at the United Nations. I can think of no other who will be as dedicated to improving the lives of others around the world as him.

He is an inspiration to each of us and we are the richer for having been his colleague.

SENATE—*Friday, July 26, 2002*

The Senate met at 9:55 a.m. and was called to order by the Honorable BILL NELSON, a Senator from the State of Florida.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, You have promised leaders who trust You the gift of discernment. We claim that gift today. Give the Senators x-ray penetration into the deeper issues in each decision they must make. Remind them that You are ready to give them the discernment for what is not only good, but Your best, not only expedient, but excellent. Help them to know that the need before them will bring forth the gift of discernment You have inspired within them. You have done this for the great leaders of our history and we claim nothing less today. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BILL NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 26, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BILL NELSON, a Senator from the State of Florida, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Florida thereupon assumed the Chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, we are going to vote in just a minute on the nomination of Julia S. Gibbons to be U.S. Circuit Judge for the Sixth Circuit. There was some question as to whether there would be a vote following that. There will not be. That will be done by voice vote. This will be the first and last vote of today.

Following this vote, we will resume consideration of the prescription drug bill. The minority has an amendment that they are going to offer.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JULIA SMITH GIBBONS, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT—Resumed

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the cloture vote on Executive Calendar No. 810.

Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit.

Harry Reid, Tom Daschle, Charles Schumer, Mitch McConnell, Fred Thompson, Bill Frist, Phil Gramm, Jon Kyl, Charles Grassley, Wayne Allard, Trent Lott, Don Nickles, Larry E. Craig, Craig Thomas, Mike Capo, Jeff Sessions, Pat Roberts, Jim Bunning, John Ensign, Orrin G. Hatch.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call under the rule has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUYE,) the Senator from Georgia (Mr. MILLER), and the Senator from Washington, (Mrs. MURRAY), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mrs. HUTCHISON) the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 89, nays 0, as follows:

[Rollcall Vote No. 193 Exe.]

YEAS—89

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Bingaman
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Inhofe
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—11

Biden
Bond
Boxer
Gramm
Helms
Hutchinson
Hutchison
Inouye
Miller
Murray
Thomas

The PRESIDING OFFICER. On this vote, the yeas are 89, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, this morning we moved closer to the confirmation of Judge Julia Smith Gibbons of Tennessee to the 6th Circuit Court of Appeals. In so doing, we will bring relief to a Circuit with a 50 percent vacancy rate, with 9 empty seats out of 18, despite the fact that the President nominated 6 fine public servants to fill those seats on May 9, 2001, well over 400 days ago. I look forward to confirming her finally.

I rise this morning to express my most profound concern for the course of judicial confirmations in general and my support for the confirmation of Justice Priscilla Owen of Texas. The Judiciary Committee gave Justice Owen a 5-hour hearing earlier this week, which I am afraid did not do credit to the Committee.

I will comment on Justice Owens' qualifications, and to address some of the deceptions, distortions and demagoguery orchestrated against her nomination, that we have all read in the national and local papers.

I would like first to comment on the two jingos that are being used about her record as if they had substance: namely, that Justice Owen is "conservative" and that she is "out of the mainstream." Of course, this comes from the Washington interest groups, in many cases, who think that mainstream thought is more likely found in Paris, France, than Paris, Texas.

I must admit that it's curious to hear it argued that a nominee twice elected by the people of the most populous State in the Circuit for which she is now nominated is "out of the mainstream." Texans are no doubt entertained to hear that.

Listening to some of my colleagues' commentary on judges, I sometimes think that main-stream for them is a northeastern river of thought that travels through New Hampshire early and often, widens in Massachusetts, swells in Vermont, and deposits at New York City. Well, the mainstream that I know, and that most Americans can relate to, runs much broader and further than that.

The other mantra repeated by Justice Owen's detractors is that she is "conservative." I believe that the use of political or ideological labels to distinguish judicial philosophies has become highly misleading and does a disservice to the public's confidence in the independent judiciary, of which the Senate is the steward.

I endorse the words of my friend, and former Chairman of the Judiciary Committee, Senator **BIDEN**, when he said some years ago that:

"[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third co-equal branch of the Government."

I believe it is our duty to confirm judges who stand by the Constitution and the law as written, not as they would want to rewrite them. That was George Washington's first criterion for the Federal bench, and it is mine. I also want common sense judges who respect American culture. I believe that is what the American people want.

I believe we do a disservice to the independence of the Federal judiciary by using partisan or ideological terms in referring to judges.

My reason was well stated by Senator **BIDEN** when he said that: "it is imperative [not to] compromise the public perception that judges and courts are a forum for the fair, unbiased, and impartial adjudication of disputes."

We compromise that perception, I believe, when we play partisan or ideological tricks with the judiciary. Surely, we can find other ways to raise money for campaigns and otherwise play at politics, without dragging this nation's trust in the judiciary through the mud, as some of the outside groups continue to do.

All you have to do to see my point is read two or three of the fund-raising letters that have become public over the past couple of weeks that spread mistruths and drag the judiciary branch into the mud, as many recent political campaigns increasingly find themselves.

On a lighter note, while on ideology, let me pause to point out that one of the groups deployed against Justice Owen is the Communist Party of America, but then I don't know that they have come out in favor of any of President Bush's nominees. I suspect after the fall of the Berlin Wall, they must have a lot of time on their hands.

Today I wish to address just why a nominee with such a stellar record, a respected judicial temperament, and as fine an intellect as Justice Owen has, who graduated third in her class from Baylor's law school, a great Baptist institution, when few women attended law school, let alone in the South, who obtained the highest score in the Texas Bar examination, and who has twice been elected by the people of Texas to serve on their Supreme Court, the last time with 83 percent of the votes and the support of every major newspaper of every political stripe, I would like to address just why such a nominee could get as much organized and untruthful opposition from the usual leftist, Washington special interest groups that we see. I will peel through what is at play for those groups. We need to expose and repel what is at play for the benefit and independence of this Senate.

And I would like to address also the reasons why I am confident that she will be confirmed notwithstanding. Not least of which is that, far from being the "judicial activist" some would have us believe her to be, she garnered the American Bar Association's unanimous rating of "well qualified." The Judiciary Committee has never voted against a nominee with this highest of ratings.

The first reason for the organized opposition, of course, is plain. Justice Owen is from Texas, and Washington's well paid reputation destroyers could not help but attempt to attack the widely popular President of the United States, at this particular time in an election year, by attacking the judicial nominee most familiar to him. Justice Owen, welcome to Washington.

But as I prepared more deeply for the Hearing earlier this week, the second reason became apparent to me. In my 26 years on the Judiciary Committee I have seen no group of judicial nominees as superb as those that President Bush has sent to us, and he has sent both Democrats and Republicans.

In reading Justice Owen's decisions, one sees a judge working hard to get it right, to get at the legislature's intent and to apply binding authority and rules of judicial construction. It is apparent to me that of all the sitting judges the President has nominated, Justice Owen is the most outstanding nominee. She is, in my estimation, the best, and despite what her detractors say, she is the best judge that any American, any consumer and any parent could hope for.

Her opinions, whether majority, concurrences or dissents, could be used as a law school text book that illustrates exactly how, and not what, an appellate judge should think, how she should write, and just how she should do the people justice by effecting their will through the laws adopted by their elected legislatures. Justice Owen clearly approaches these tasks with both scholarship and mainstream American common sense. She does not substitute her views for the legislature's, which is precisely the type of judge that the Washington groups who oppose her do not want.

She is precisely the kind of judge that our first two Presidents, George Washington and John Adams, had in mind when they agreed that the justices of the State supreme courts would provide the most learned candidates for the Federal bench.

So in studying her record, the second reason for the militant and deceptive opposition to Justice Owen became quite plain to me. In this world turned upside down, simply put, she is that good.

Another reason for the opposition against Justice Owen is the most demagogic, the issue of campaign contributions and campaign finance reform. Some of her critics are even eager to tie her to the current trouble with Enron.

Well, she clearly has nothing to do with that. Neither Enron nor any other corporation has donated to her campaigns, in fact, they are forbidden by Texas law to make campaign contributions in judicial elections. It was embarrassing to me, as it would be to any American who watched the hearing earlier this week, to see Justice Owen defeat these demagogic allegations, but being a Texas woman, she did so with style, elegance, and grace—and without embarrassing her questioners.

Not that there was even a need for more questions. The Enron and campaign contributions questions were amply clarified in a letter to Chairman **LEAHY** and the Committee dated April

5 by Alberto Gonzales. I will ask unanimous consent, to place this and other related letters into the RECORD. And I would place into the RECORD a retraction from The New York Times saying that they got their facts wrong on this Enron story. Such retractions don't come often, not as often as the invention of facts by the smear groups. And despite the retraction, CNN was repeating the same wrong facts just this week!

Notably, at the hearing Justice Owen received no questions from my Democrat colleagues on her views on election reform and judicial reform, of which she is a leading advocate in Texas. She is also a leader in Gender Bias Reform in the courts and a reformer on divorce and child support proceedings. But my colleagues seemed to take little interest in this, nor in her acclaimed advocacy to improve legal services and funding for the poor.

All of these are aspects of her record her detractors would have us ignore, I certainly did not read these positive attributes in those fancy documents, or should I say booklets, released prior to the hearing by the Washington radical special interests lobby.

I will also ask unanimous consent, to place into the RECORD letters from leaders of the Legal Society and 14 past presidents of the Texas Bar Association, many of whom are leading Texas Democrats.

The fourth reason for the opposition to Justice Owen is the most disturbing to me. For some months now, a few of my Democrat colleagues have strained to point out when they believe they are voting for judicial nominees that they believe to be pro-life. I have disputed this when they have said it because the record contains no such information of personal views from the judges we have reported favorably out of the Judiciary Committee.

Each time they assert it, my staff has scoured the transcripts of hearings and turned up nothing. What does turn up is that each time my colleagues have asserted this, they have done so only for nominees who are men.

I am afraid that the main reason Justice Owen is being opposed, is not that personal views, namely on the issue of abortion, are being falsely ascribed to her, they are, but rather because she is a woman in public life who is believed to have personal views that some maintain should be unacceptable for a woman in public life to have.

Such penalization is a matter of the greatest concern to me because it represents a new glass ceiling for women jurists. And they have come too far to suffer now having their feet bound up just as they approach the tables of our high courts after long-struggling careers.

I am deeply concerned that such treatment will have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation and their perspectives as women.

The truth is that Justice Owen has never written or said anything critical of abortion rights. In fact, the cases she is challenged on have everything to do with the rights of parents to be involved in their children's lives, and nothing to do with the right to an abortion.

Ironically, the truth is that the cases that her detractors point to as proof of apparently unacceptable personal views are a series of fictions. This is what I mean about exposing the misstatements of the left-wing activist groups in Washington. I will illustrate just three of these fictions.

The first sample fiction is the now often-cited comment attributed to then Texas Supreme Court Justice Alberto Gonzales, written in a case opinion, that Justice Owen's dissent signified "an unconscionable act of judicial activism." Someone should do a story about how often this little shibboleth has been repeated in the press and in several websites of the professional smear groups. The problem with it is that it isn't true. Justice Gonzales was not referring to Justice Owen's dissent, but rather to the dissent of another colleague in the same case.

The second sample fiction is the smear group's misrepresented portrayal of a case involving buffer zones and abortion clinics. In that case, the majority of the Texas Supreme Court ruled for Planned Parenthood and affirmed a lower court's injunction that protected abortion clinics and doctor's homes and imposed 1.2 million dollars in damages against pro-life protestors. In only a few instances, the court tightened the buffer zones against protestors. Justice Owen joined the majority opinion and was excoriated by dissenting colleagues, who were, by that way, admittedly pro-life.

When describing that decision then, abortion rights leaders hailed the result as a victory for abortion rights in Texas. Planned Parenthood's lawyer said the decision "isn't a home run, it's a grand slam."

Of course, that result hasn't changed, but the characterization of it has. This is how Planned Parenthood describes this same case in their fact sheet on Justice Owen: "[Owen] supports eliminating buffer zones around reproductive health care clinics . . ."

In fact, her decision did exactly the opposite.

The third and most pervasive sample fiction concerns Justice Owen's rulings in a series of Jane Doe cases which first interpreted Texas' then-new parental involvement law. The law, which I think is important to emphasize was passed by the Texas legislature, not by Justice Owen, with bipartisan support, requires that an abortion clinic give notice to just one parent 48 hours prior to a minor's abortion. Unlike States with more restrictive laws such as Massachusetts, Wisconsin, and North Carolina, consent of the parent is not required in Texas. A minor may be exempted from giving such notice if they get court permission.

Since the law went into effect, over 650 notice bypasses have been requested from the courts. Of these 650 cases, only 10 have had facts so difficult that two lower courts denied a notice bypass, only 10 have risen to the Texas Supreme Court.

Justice Owen's detractors would have us believe that in these cases, she would have applied standards of her own choosing. Ironically, in each and every example they cite, whether concurring with the majority or dissenting, Justice Owen was applying not her own standards but the standards enuniciated in the Roe v. Wade line of decisions of the United States Supreme Court, which she followed and recognized as authority.

For example, detractors take pains to tell us that Justice Owen would require that to be sufficiently informed to get an abortion without a parent's knowledge, that the minor show that they are being counseled on religious considerations. They appear to think this is nothing more than opposition to abortion rights. They are so bothered with this religious language that various documents produced by the abortion industry lobby italicize the word religious. But this standard is not Justice Owen's invention, but rather the words of the Supreme Court's pro-choice decision in Casey.

Should she not follow one Supreme Court decision, but be required to follow another? Is that what we want our judges to do, pick and choose which decisions to follow? That appears to be the type of activist judge these groups want, and this Senate should resist all such attempts.

The truth is that rather than altering the Texas law, Justice Owen was trying to effect the legislator's intent. No better evidence of this is the letter of the pro-choice woman Texas Senator stating her "unequivocal" support of Justice Owen.

Senator Shapiro says of Justice Owen: "Her opinions interpreting the Texas [parental involvement law] serve as prime example of her judicial restraint." I understand why the Washington left-wing groups don't like that in a judge, but the Senate and the Judiciary Committee should applaud and commend such restraint and temperament.

The truth is that, rather than being an activist foe of Roe, Justice Owen repeatedly cites and follows Roe and its progeny as authority. She has to, it's what the Court has said is the law. Compare this to Justice Ruth Bader Ginsburg who wrote in 1985 that the

Roe v. Wade decision represented "heavy handed judicial intervention" that was "difficult to justify."

In relation to this, I would like briefly to comment on the mounting offensive of some to change the rules of judicial confirmation by asking nominees to share personal views or to ensure that nominees share the personal views of the Senator on certain cases.

To illustrate my view, I'll tell you that many people have recently called on the Judiciary Committee to question nominees as to their views on the pledge of allegiance case. My full-throated answer to this is no, as much as I think that that case was wrongly decided. I also happen to think that the recent School Voucher case is the most important civil rights decision since Brown but I am not going to ask people what they think about that case either.

Such questions threaten the heart of the independent judiciary and attempt to accomplish by hidden indirection what Senators cannot do openly by constitutional amendment. It is an attempt to make the courts a mere extension of the Congress.

I speak against this practice in the strongest terms, and, in my view, any nominee who answers such questions would not be fit for judicial office and would not have my vote.

The truth is that there are many who, like Justice Ginsburg, think that cases like Griswold or Roe were wrongly decided as a constitutional matter even if they agree with the policy result, just as the great liberal Justice Hugo Black did in his dissent in Griswold.

A few weeks ago we heard testimony from Boyden Gray, a former White Counsel and a former Supreme Court clerk, that Chief Justice Warren though that Brown v. Board of Education was his worst ruling as matter of constitutional law, but not his least necessary to end desegregation.

Some of Justice Owen's detractors have made much about the fact that she is not afraid to dissent. Of course, they fail to mention dissents like her opinion in Hyundai Motor v. Alvarado, in which Justice Owens' reasoning was later adopted by the United States Supreme Court on the same difficult issue of law.

They also overlooked here dissent in a repressed memory/sexual abuse case where she took the majority to task with these words: "This is reminiscent of the days when the crime of rape went unpunished unless corroborating evidence was available. The Court's opinion reflects the attitudes reflected in that era."

Perhaps, they thought that this dissent showed her too representative of American women. Despite deceptive opposition I think that Justice Owen should be confirmed.

I will ask unanimous consent to place into the RECORD an editorial of earlier this week from The Washington Post, a liberal publication, calling on us to be fair and calling on this Senate to confirm Justice Owen.

I have hope that my Democrat colleagues on the Judiciary Committee will be led by the time-tested standards well-stated by Senator BIDEN, and look again to qualifications and judicial temperament, not base politics. Whether the Biden standard will survive past our time, will be tested now.

If we fail the test we will breach our responsibility as auditors of the Washington special interest groups and the Judiciary's stewards on behalf of all the people, and not just some.

Mr. President, I ask unanimous consent that the documents to which I have referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, April 5, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: In our recent conversations, you suggested that the White House should examine whether contributions Justice Owen received for her campaigns for the Texas Supreme Court raise any legitimate issue with respect to her fitness to serve on the Fifth Circuit. We have done as you have suggested, and I see no basis to question Justice Owen's fitness to serve on the Fifth Circuit. The record reflects that she has at all times acted properly and in complete compliance with both the letter and the spirit of the rules relating to judicial campaign finance.

I am certain you will agree that it was entirely proper for Justice Owen's campaign to receive contributions. Article 5 of the Texas Constitution provides that candidates for the state judiciary run in contested elections, which are partisan under Texas election law, and Canon 45(1) of the Texas Code of Judicial Conduct provides that the candidates may solicit and accept campaign funds. Like Senators, therefore, candidates for the state judiciary in Texas may receive contributions to finance their campaigns.

To be sure, Justice Owen and many others would prefer a system of appointed rather than elected state judges. In fact, Justice Owen has long advocated appointment of judges (coupled with retention elections). She has written to fellow Texas attorneys on the issue, committed to a new system in League of Women Voters publications, and appeared as a pro-reform witness before the Texas Legislature. She has explained even to partisan groups why judges should be selected on merit. But the people in some states, including Texas, have chosen a system of contested elections for judges. Elected state judges certainly are not barred from future appointment to the federal judiciary; on the contrary, some notable federal appellate judges whom President Clinton nominated and you supported were state judges who had run and been elected in contested elections—Fortunato Benevides and James Dennis, for example, from the Fifth Circuit.

I am also certain you would find nothing inappropriate about the sources from which Justice Owen's campaign received contributions. In her 1994 and 2000 elections, Justice Owen's campaign quite properly received contributions from a large number of entities and individuals, with no single contributor predominating. In the 1994 election cycle, her campaign received approximately $1.2 million in contributions from 3,084 different contributors. Included in that total was $8,800 from employees of Enron and its employee-funded political action committee. Employees of Enron thus contributed less than 1% of the total contributions to her campaign. And Justice Owen's campaign, of course, received no corporate contributions from Enron or any Enron-affiliated corporation, as such corporate contributions are not permissible under Texas law. Notably, in the 1994 election, not only did Justice Owen comply with all campaign laws, she went beyond what the law required and voluntarily limited contributions when many other judicial candidates did not do so.

In the 2000 election cycle, Justice Owen's campaign received approximately $300,000 in contributions from 273 different contributors. In that cycle, her campaign received no contributions from Enron or its affiliates, from employees of Enron, or from Enron's political action committee. In addition, Justice Owen ultimately had no Democratic or Republican opponent in the 2000 election cycle, and she closed her campaign office and returned most of her unspent contributions, an act that I believe is unusual in Texas judicial history.

It was entirely proper for Justice Owen's campaign to receive campaign contributions, including the contributions from Enron employees. Indeed, seven of the nine current Texas Supreme Court Justices received Enron contributions, and several of them received more than Justice Owen's campaign received. As this record demonstrates, elected judges certainly did not act improperly in the past, before anyone knew about Enron's financial situation, by receiving contributions from employees of Enron—any more than it could be said that Members of Congress acted improperly in the past by receiving contributions from Enron.

If, as is evident from the foregoing discussion, there was nothing amiss with the fact that Justice Owen received donations or with the sources from which she received them, the only other possible area of concern with her conduct relating to campaign contributors would be her decisions from the bench. Texas Code of Judicial Conduct Cannon 3(B)(1) provides that a judge "shall hear and decide matters assigned to the judges except those in which disqualification is required or recusal is appropriate." And it is well-established that judicial recusal is neither necessary nor appropriate in cases involving parties or counsel who contributed to that judge's campaign. See Public Citizen, Inc. v. Bomer, 274 F.3d 212, 215 (5th Cir. 2001); Apex Towing Co., v. Tolin, 997 S.W.2d 903, 907 (Tex. App. 1999), rev'd on other grounds, 41 S.W.3d 118 (Tex. 2001); Aguilar v. Anderson, 855 S.W.2d 799, 802 (Tex. App. 1993); J–IV Invs. v. David Lynn Mach., Inc., 784 S.W.2d 106, 107 (Tex. App. 1990). Indeed, in any state with elected judges, any other rule would be unworkable. The primary protections against inappropriate influence on judges from campaign contributions are disclosure of contributions and adherence to the tradition by which judges explain the reasons for their decisions. If the people of a state deem those protections insufficient, the people may choose a system of appointed judges rather than elected judges, as Justice Owen has advocated for Texas.

Surmising that the concerns you raised would likely focus on her sitting in cases in which Enron had an interest, we have undertaken a review of her decisions in such cases.

We have reviewed Texas Supreme Court docket records and Enron's 1994–2000 SEC Form 10Ks to determine the cases in which Enron or affiliates of Enron were parties to proceedings before the Court since January 1995 (when Justice Owen took her seat). The decisions of the Texas Supreme Court since January 1995 in proceedings involving Enron have been ordinary and raise no questions whatsoever.

A judge's decisions are properly assessed by examining their legal reasoning, not by conducting any kind of numerical or statistical calculations. But even those who would attempt to draw conclusions based on such calculations would find nothing in connection with these Enron cases. To begin with, we are aware of no proceeding involving Enron in which Justice Owen cast the deciding vote. In six proceedings in which we know that Enron was a party, Justice Owen's vote can be characterized as favorable to Enron in two cases and adverse in two cases. With respect to the remaining two, one cannot be characterized either way, and she did not participate in the other case because it had been a matter at her law firm when she was a partner. Eight other matters came before the Court in which we know that Enron or an affiliate was a party, but the court declined to hear them. In those matters, the Court's actions could be characterized as favorable to Enron in four cases, adverse in three cases, and one was dismissed by agreement of the parties. We will supply the Judiciary Committee copies of the cases on request.

There has been some media attention on one case involving Enron in which Justice Owen wrote the opinion for the Court. See Enron Corp. v. Spring Creek Independent School District, 922 S.W.2d 931 (Tex. 1996). The issue in that case concerned the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on one of two different dates. The Court held that the statute did not violate the state constitution—and the decision was unanimous. I understand that two Democratic Justices who sat on the Court at that time (Justice Raul Gonzalez and Rose Spector) have written to you to explain the case, indicating that Justice Owen's participation in the case was entirely proper. Moreover, the lawyer who represented a part opposing Enron in this case (Robert Mott) recently was quoted as saying that criticism of Justice Owen for her role in this case is "nonsense" Texas Lawyer (April 1, 2002). In my judgment, this case raises no legitimate issue with respect to Justice Owen's confirmation.

Finally, I am informed that, if confirmed, Justice Owen will donate all of her unspent campaign contributions to qualify tax-exempt charitable and educational institutions, as is contemplated under section 254.205(a)(5) of the Texas Election Code.

I trust that the foregoing will resolve all questions concerning the propriety of Justice Owen's activities in relation to financing her campaigns. As you know, I served with Justice Owen, and I am convinced from my work with her that she is a person of exceptional integrity, character, and intellect. Both Senators from Texas strongly support her nomination. The American Bar Association has unanimously rated Justice Owen "well qualified," and one factor in that rating process is the nominee's integrity.

Despite her superb qualifications and the "Judicial emergency" in the Fifth Circuit declared by the Judicial Conference of the United States, Justice Owen has not received a hearing for nearly 11 months since her May 9, 2001, nomination. We respectfully request that the Committee afford this exceptional nominee a prompt hearing and vote.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

APRIL 1, 2002.

Re Justice Priscilla Owen.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: We served on the Texas Supreme Court with Justice Priscilla Owen when the case of Enron Corporation et al. v. Spring Creek Independent School District, 922 S.W.2d 931 (Tex. 1996) was decided. The issue in this case was the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on two different dates. In a unanimous opinion, all justices, Democrats and Republican alike, agreed with the opinion authored by Justice Owen that the choice of the valuation date in ad valorem tax statute did not violate a provision of the State Constitution requiring uniformity and equality in ad valorem taxation. We found the decision of the United States Supreme Court and other states instructive on this issue.

In our ruling, we agreed with the rulings of the Harris County Appraisal District and the trial court.

Cordially,

RAUL A. GONZALEZ,
Justice, Texas Supreme Court, 1984–1998.
ROSE SPECTOR,
Justice, Texas Supreme Court, 1992–1998.

PERDUE, BRANDON,
FIELDER, COLLINS & MOTT, L.L.P.,
Houston, TX, July 1, 2002.

Re Justice Priscilla Owen.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC

DEAR CHAIRMAN LEAHY: My name is Robert Mott. I was the legal counsel for the Spring Independent School District in the case of Enron Corporation et al. v. Spring Independent School District, 922 S.W.2d 931 (Tex. 1996). We were the losing party in this case.

I have been disturbed by the suggestions that Justice Priscilla Owen's decision in this case was influenced by the campaign contributions she received from Enron employees. I personally believe that such suggestions are nonsense. Justice Owen authored the opinion of a unanimous court consisting of both Democrats and Republican. While my clients and I disagreed with the decision, we were not surprised. The decision of the Court was to uphold an act of the Legislature regarding property valuation. It was based upon United States Supreme Court precedent, of which we were fully aware when we argued the case.

I firmly believe that there is absolutely no reason to question Justice Owen's integrity based upon the decision in this case.

Sincerely,

ROBERT MOTT.

DE LEON, BOGGINS & ICENOGLE,
Austin, TX, June 26, 2002.

Re nomination of the Honorable Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: This correspondence is sent to you in support of the nomination by President Bush of Texas Supreme Court Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

As the immediate past President of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

Additionally, Justice Owen played a major role in organizing a group known as Family Law 2000 which seeks to educate parents about the effect the dissolution of a marriage can have on their children. Family Law 2000 seeks to lessen the adversarial nature of legal proceedings surrounding marriage dissolution. The Fifth Circuit would be well served by having someone with a background in family law serving on the bench.

Justice Owen has also found time to involve herself in community service. Currently Justice Owen serves on the Board of Texas Hearing and Service Dogs. Justice Owen also teaches Sunday School at her Church, St. Barnabas Episcopal Mission in Austin, Texas. In addition to teaching Sunday School Justice Owen serves as head of the altar guild.

Justice Owen is recognized as a well rounded legal scholar. She is a member of the American Law Institute, the American Judicature Society, The American Bar Association, and a Fellow of the American and Houston Bar Foundations. Her stature as a member of the Texas Supreme Court was recognized in 2000 when every major newspaper in Texas endorsed Justice Owen in her bid for re-election to the Texas Supreme Court.

It has been my privilege to have been personally acquainted with various members of the U.S. Court of Appeals for the Fifth Circuit. The late Justice Jerry Williams was my administrative law professor in law school and later became a personal friend. Justice Reavley has been a friend over the years. Justice Johnson is also a friend. In my opinion, Justice Owen will bring to the Fifth Circuit the same intellectual ability and integrity that those gentlemen brought to the Court.

I earnestly solicit your favorable vote on the nomination of Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

Thank you for your attention to this correspondence.

Very truly yours,

HECTOR DE LEON.

TEXAS ASSOCIATION
OF DEFENSE COUNSEL, INC.,
Austin, TX, June 19, 2001.

Re nomination of Justice Patricia Owen for the United States Fifth Circuit of Appeals.

Senator PATRICK LEAHY,
Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: I have had the privilege of knowing Justice Patricia Owen of the Texas Supreme Court, both personally and professionally, for many years. I cannot imagine a more qualified, ethical, and knowledgeable person to sit on the United States Fifth Circuit Court of Appeals.

I accept the reality that politics is a part of our culture, but I know that when it comes to appointing federal judges, we must transcend politics and look to character and ability. Patricia Owen has the character and ability to make all of us, Democrat and Republican, proud.

I ask that your Committee act swiftly to confirm her nomination to the United States Fifth Circuit Court of Appeals.

Thank you.

Sincerely,

E. THOMAS BISHOP.

HUGHES/LUCE, LLP.,
Dallas, TX, July 15, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As past presidents of the State Bar of Texas, we join in this letter to strongly recommend an affirmative vote by the Judiciary Committee and confirmation by the full Senate for Justice Priscilla Owen, nominee to the United States Court of Appeals for the Fifth Circuit.

Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit. Based on her superb integrity, competence and judicial temperament, Justice Owen earned her *Well Qualified* rating unanimously from the American Bar Association Standing Committee on the Federal Judiciary—the highest rating possible. A fair and bipartisan review of Justice Owen's qualifications by the Judiciary Committee certainly would reach the same conclusion.

Justice Owen's stellar academic achievements include graduating cum laude from both Baylor University and Baylor Law School, thereafter earning the highest score in the Texas Bar Exam in November 1977. Her career accomplishments are also remarkable. Prior to her election to the Supreme Court of Texas in 1994, for 17 years she practiced law specializing in commercial litigation in both the federal and state courts. Since January 1995, Justice Owen has delivered exemplary service on the Texas Supreme Court, as reflected by her receiving endorsements from every major newspaper in Texas during her successful re-election bid in 2000.

The status of our profession in Texas has been significantly enhanced by Justice Owen's advocacy of pro bono service and leadership for the membership of the State Bar of Texas. Justice Owen has served on committees regarding legal services to the poor and diligently worked with others to obtain legislation that provides substantial resources for those delivering legal services to the poor.

Justice Owen also has been a long-time advocate for an updated and reformed system of judicial selection in Texas. Seeking to remove any perception of a threat to judicial impartiality, Justice Owen has encouraged the reform debate and suggested positive changes that would enhance and improve our state judicial branch of government.

While the Fifth Circuit has one of the highest per judge caseloads of any circuit in the country, there are presently two vacancies on the Fifth Circuit bench. Both vacancies have been declared "judicial emergencies" by the Administrative Office of the U.S. Courts. Justice Owen's service on the Fifth Circuit is critically important to the administration of justice.

Given her extraordinary legal skills and record of service in Texas, Justice Owen deserves prompt and favorable consideration by the Judiciary Committee. We thank you and look forward to Justice Owen's swift approval.

DARRELL E. JORDAN.

On behalf of former Presidents of the State Bar of Texas: Blake Tartt; James B. Sales; Hon. Tom B. Ramey, Jr.; Lonny D. Morrison; Charles R. Dunn; Richard Pena; Charles L. Smith; Jim D. Bowmer; Travis D. Shelton; M. Colleen McHugh; Lynne Liberato; Gibson Gayle, Jr.; David J. Beck; and Cullen Smith.

[From the Washington Post, July 24, 2002]

THE OWEN NOMINATION

The nomination of Priscilla Owen to the 5th Circuit Court of Appeals creates understandable anxiety among many liberal activists and senators. The Texas Supreme Court justice, who had a hearing yesterday before the Senate Judiciary Committee, is part of the right flank of the conservative court on which she serves. Her opinions have a certain ideological consistency that might cause some senators to vote against her on those grounds. But our own sense is that the case against her is not strong enough to warrant her rejection by the Senate. Justice Owen's nomination may be a close call, but she should be confirmed.

Justice Owen is indisputably well qualified, having served on a state supreme court for seven years and, prior to her election, having had a well-regarded law practice. So rather than attacking her qualifications, opponents have sought to portray her as a conservative judicial activist—that is, to accuse her of substituting her own views for those of policymakers and legislators. In support of this charge, they cite cases in which other Texas justices, including then-Justice Alberto Gonzales—now President Bush's White House Counsel—appear to suggest as much. But the cases they cite, by and large, posed legitimately difficult questions. While some of Justice Owen's opinions—particularly on matters related to abortion—seem rather aggressive, none seems to us beyond the range of reasonable judicial disagreement. And Mr. Gonzales, whatever disagreements they might have had, supports her nomination enthusiastically. Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president's lower-court nominees should be judged.

Nor is it reasonable to reject her because of campaign contributions she accepted, including those from people associated with Enron Corp. Texas has a particularly ugly system of judicial elections that taints all who participate in it. State rules permit judges to sit on cases in which parties or lawyers have also been donors—as Justice Owen did with Enron. Judicial elections are a bad idea, and letting judges hear cases from people who have given them money is wrong. But Justice Owen didn't write the rules and has supported a more reasonable system.

Justice Owen was one of President Bush's initial crop of 11 appeals court nominees, sent to the Senate in May of last year. Of these, only three have been confirmed so far, and six have not even had the courtesy of a hearing. The fact that President Clinton's nominees were subjected to similar mistreatment does not excuse it. In Justice Owen's case, the long wait has produced no great surprise. She is still a conservative. And that is still not a good reason to vote her down.

[From the New York Times, January 25, 2002]

CORRECTIONS

An article in Business Day on Tuesday about criticism of Justice Priscilla Owen of the Texas Supreme Court, a nominee for a federal judgeship who accepted campaign donations from Enron, misstated the amount of money saved by the company because of a decision she wrote, dealing with taxes owed to a local school district. It was $224,988.65, not $15 million. The larger sum, cited in her opinion as the district's revenue loss, was the amount by which the value of a piece of the company's land was lowered.

NOMINATION OF CHRISTOPHER C. CONNER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE

Mr. REID. Mr. President, under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 826.

The PRESIDING OFFICER. The clerk will state the nomination.

The legislative clerk read the nomination of Christopher C. Conner, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Pennsylvania be recognized for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania is recognized for 3 minutes.

Mr. SANTORUM. Mr. President, I thank the Senator from Nevada for agreeing to recognize me.

Now that the nomination has been confirmed by the Senate, I congratulate Kit Conner from outside of Harrisburg, PA, for filling the vacancy in the Middle District. Judge Conner is one of six members from Pennsylvania who are on the Executive Calendar in the Senate. Including him, there are five district judges and one Third Circuit nominee, and I am very gratified we have been able to unlock the logjam on judges and begin the process of moving forward.

Kit Conner is a very distinguished member of the bar in the Middle District in Pennsylvania. He is a tremendous lawyer and advocate, someone who has made substantial contributions to his community and is going to be an excellent Middle District judge. I look forward to his swearing in ceremony very soon.

If we go down the listing of judges in the order in which they appear on the calendar, the next judges to be confirmed are also Pennsylvania judges, at least nominees for judicial vacancies, and they would be Joy Flowers Conti from the Western District of Pennsylvania, John Jones from the Middle District, and then D. Brooks Smith, who is a judge from the Western District who has been nominated for the Third Circuit. Hopefully next week, maybe as early as Monday or Tuesday, we can get to these nominations in the order in which they appear on the calendar. That seems to be the way the Senate is proceeding, and so we can begin to fill some of these vacancies we have in Pennsylvania, and in particular the Judge Brooks Smith vacancy to the Third Circuit, so we can begin to get the expeditious justice that people in Pennsylvania and the Third Circuit deserve.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Christopher C. Conner, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President will be notified of the Senate's action.

Mr. LEAHY. Mr. President, with today's confirmation of Mr. Christopher Conner to the District Court for the Middle District of Pennsylvania, the Democratic-led Senate will have confirmed a total of 60 judicial nominees since the change in Senate majority a little over one year ago and 49 district court nominees.

Today's nominee has not proven to be very controversial and the Senate has acted quickly on this nomination.

Mr. Conner was nominated in March of this year to a relatively recent vacancy and received a hearing in May, shortly after his paperwork was completed.

With today's confirmation, the Judiciary Committee will have held hearings for a total of 10 District Court nominees from Pennsylvania, including Judge Davis, Judge Baylson and Judge Rufe, who were confirmed in April. Those confirmations illustrate the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

With today's confirmation, we will have confirmed four nominees to the District Courts in Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania, despite some of the obstructionist practices during Republican control of the Senate, particularly regarding nominees in the Western half of the State.

Nominees from Philadelphia were not immune from Republican obstructionist tactics, despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from all parts of his home State, without regard to which party controlled the White House.

For example, Judge Legrome Davis was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998. The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after two more years.

Under Republican leadership, Judge Davis' nomination languished before the Committee for 868 days without a hearing.

Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania and to the Third Circuit during the Republican control of the Senate. I want to note emphatically, however, that I know personally that the senior Senator from Pennsylvania, strongly supported Judge Davis's nomination and worked hard to get him a hearing and a vote.

The lack of Senate action on Judge Davis's initial nominations are in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it.

In fact, I give Senator SPECTER full credit for getting President Bush to renominate Judge Davis earlier this year and commended him publicly for all he has done to support this nomination from the outset.

This year we moved expeditiously to consider Judge Davis, and he was confirmed within a few months of his renomination by President Bush. The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

At Judge Davis' recent confirmation hearing Senator SANTORUM testified that Judge Davis did not get a hearing because local Democrats objected. I was the ranking Democrat on the Judiciary Committee during those years and never heard that before. My understanding at the time, from July 1998 until the end of 2000, was that Judge Legrome Davis would have had the support of Senator SPECTER as well as every Democrat on the Judiciary Committee and in the Senate. Despite that bipartisan support, he was not included by the then-Chairman of the Committee in the May 2000 hearing for a few other Pennsylvania nominees.

In contrast, the hearing we had earlier this year for Ms. Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994, in almost a decade, despite qualified nominees of President Clinton. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton Administration. One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench.

Large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years and never received a vote on their nomination. It is the Democrats, not the Republicans, who have broken with that history of inaction from the Republican era of control, delay and obstruction.

With today's confirmations of Mr. Conner to the Federal district courts in Pennsylvania, the Senate will have confirmed 49 district court nominees, meaning that more than 8 percent of the district court nominees confirmed so far are from Pennsylvania.

Mr. HATCH. Mr. President, I rise to support the nomination of Christopher Conner to be U.S. District Judge for the Middle District of Pennsylvania.

I have enjoyed looking over the record of Mr. Conner's broad litigation background, and I have concluded that he will bring to the bench the necessary legal experience and temperament for an effective Federal judge.

Christopher Conner is a native of Harrisburg, PA, and a highly respected civil litigator. Upon graduation from Dickinson School of Law in 1982, Mr. Conner joined the Harrisburg firm today known as Mette, Evans and Woodside. He was named a shareholder in 1988.

He currently serves as chair of his firm's Corporate & Commercial Litigation Practice Group. His practice has focused on civil litigation, primarily business litigation, employment law, mediation, and Federal civil rights litigation. He has handled contract disputes, employment discrimination suits, Lanham Act claims, large-scale class-action cases, sexual harassment cases, and insurance coverage matters.

Mr. Conner is certified as a mediator in Federal and State courts, and he has experience in providing human resources training for businesses and associations, including diversity training.

The ABA has awarded him a unanimous Well Qualified rating, and I rate him highly as well. I strongly believe

Mr. Conner will make an excellent Federal judge in Pennsylvania.

The PRESIDING OFFICER. The Senator from Nevada.

NATIONAL DEFENSE AUTHORIZATION ACT, 2003

Mr. REID. Mr. President, as in legislative session, I ask that the Chair lay before the Senate a message from the House with respect to H.R. 4546.

There being no objection, the Presiding Officer (Mr. CARPER) laid before the Senate the following message from the House of Representatives:

JULY 25, 2002.

Resolved, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 4546) entitled "An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Mr. Stump, Mr. Hunter, Mr. Hansen, Mr. Weldon of Pennsylvania, Mr. Hefley, Mr. Saxton, Mr. McHugh, Mr. Everett, Mr. Bartlett of Maryland, Mr. McKeon, Mr. Watts of Oklahoma, Mr. Thornberry, Mr. Hostettler, Mr. Chambliss, Mr. Jones of North Carolina, Mr. Hilleary, Mr. Graham, Mr. Skelton, Mr. Spratt, Mr. Ortiz, Mr. Evans, Mr. Taylor of Mississippi, Mr. Abercrombie, Mr. Meehan, Mr. Underwood, Mr. Allen, Mr. Snyder, Mr. Reyes, Mr. Turner, and Mrs. Tauscher.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Mr. Goss, Mr. Bereuter, and Ms. Pelosi.

From the Committee on Education and the Workforce, for consideration of sections 341–343, and 366 of the House amendment, and sections 331–333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Mr. Isakson, Mr. Wilson of South Carolina, and Mr. George Miller of California.

From the Committee on Energy and Commerce, for consideration of sections 601 and 3201 of the House amendment, and sections 311, 312, 601, 3135, 3155, 3171–3173, and 3201 of the House amendment, and modifications committed to conference: Mr. Tauzin, Mr. Barton, and Mr. Dingell.

From the Committee on Government Reform, for consideration of sections 323, 804, 805, 1003, 1004, 1101–1106, 2811, and 2813 of the House amendment, and sections 241, 654, 817, 907, 1007–1009, 1061, 1101–1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Mr. Burton, Mr. Weldon of Florida, and Mr. Waxman.

From the Committee on International Relations, for consideration of sections 1201, 1202, 1204, title XIII, and section 3142 of the House amendment, and subtitle A of title XII, sections 1212–1216, 3136, 3151, and 3156–3161 of the Senate amendment, and modifications committed to conference: Mr. Hyde, Mr. Gilman, and Mr. Lantos.

From the Committee on the Judiciary, for consideration of sections 811 and 1033 of the House amendment, and sections 1067 and 1070 of the Senate amendment, and modifications committed to conference: Mr. Sensenbrenner, Mr. Smith of Texas, and Mr. Conyers.

From the Committee on Resources, for consideration of sections 311, 312, 601, title XIV, sections 2821, 2832, 2841, and 2863 of the House amendment, and sections 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Mr. Duncan, Mr. Gibbons, and Mr. Rahall.

From the Committee on Science; for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committed to conference: Mr. Boehlert, Mr. Smith of Michigan, and Mr. Hall of Texas.

From the Committee on Transportation and Infrastructure, for consideration of section 601 of the House amendment, and sections 601 and 1063 of the Senate amendment, and modifications committed to conference: Mr. Young of Alaska, Mr. LoBiondo, and Ms. Brown of Florida.

From the Committee on Veterans' Affairs, for consideration of sections 641, 651, 721, 723, 724, 726, 727, and 728 of the House amendment, and sections 541 and 641 of the Senate amendment, and modifications committed to conference: Mr. Smith of New Jersey, Mr. Bilirakis, Mr. Jeff Miller of Florida, Mr. Filner, and Ms. Carson of Indiana.

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment to the Senate amendment, agree to the request for a conference, and that the Chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Presiding Officer (Mr. CARPER) appointed Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Mr. COLLINS, and Mr. BUNNING conferees on the part of the Senate.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

AMENDMENT NO. 4326 TO AMENDMENT NO. 4299

(Purpose: To provide for health care liability reform)

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I am about to send to the desk an amendment. I understand from discussions with the other side, we will be allowed to vote on or in relation to this amendment sometime Tuesday morning, with the time prior to that equally divided. I say to my friend from Nevada, what was he thinking of, a couple of hours equally divided on Tuesday morning before the vote or in relation thereto?

Mr. REID. I say to my friend, we will probably come in at about 9:30, have an hour of morning business, with the vote to occur around noon, which would allow us to do our party conferences. So I suggest 90 minutes equally divided.

Mr. MCCONNELL. That would certainly be agreeable to me. I thank the assistant majority leader.

Mr. REID. Staff is putting that in writing. Before the day is out, we will try to iron out something like that. We will get it worked out between the two leaders.

Mr. MCCONNELL. I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] proposes an amendment numbered 4326 to amendment No. 4299.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. DURBIN. Reserving the right to object, and I will not object, if the Senator could give me a copy of his amendment.

Mr. MCCONNELL. I say to my friend from Illinois, I will be happy to do that. Of course, it will be out there from now until Tuesday morning so people will have ample opportunity to take a look at it. As soon as the clerk can Xerox a copy, I am sure he will be glad to give it to the Senator from Illinois.

Mr. DURBIN. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. The Senate last voted on the issue of medical malpractice back in 1995. It was an amendment I offered at that particular time.

There were 53 votes in support of the amendment, including Senators FEINSTEIN and LIEBERMAN on the Democratic side who are still Members of the Senate. In addition, Senator Nunn, Senator Exon, and Senator JEFFORDS also supported that medical malpractice amendment back in 1995, which was, as I said, the last time we had a vote on this issue.

I will briefly describe what the amendment at the desk would do, and then I want to talk for a few minutes about the growing crisis. I know Senator HATCH is anxious to speak on judges, but I do want to at least describe what the amendment does and make a few observations about the growing crisis in the country.

First, let me make it clear that the amendment at the desk is pro-victim and pro-consumer. This amendment does not cap noneconomic—that is, pain and suffering—damages at all, not one penny. So compensatory damages—economic as well as pain and suffering—those kinds of damages are not in any way adversely impacted by a cap under the McConnell amendment.

We do place reasonable caps on lawyers' fees. By doing so, it ensures that the injured victim, not the victim's lawyer, gets the majority of the award. After all, that is only fair. It is the victim who has suffered the injury and not the lawyer.

This amendment also allows punitive damages, even though we know, all of us who understand punitive damages, that they are not designed to enrich the plaintiff but, rather, to punish the defendant. We allow punitive damages under a cap, a reasonable limit of twice compensatory damages. So no limits on compensation for pain and suffering, but a limit on punitive damages of twice compensatory damages, twice the economic and noneconomic damages.

Essentially, what we are doing is guaranteeing the injured victim full compensation. In addition to guaranteeing the injured victim full compensation, we are also ensuring that they get more of the money to which they are entitled by providing a reasonable cap on the fee for the lawyer. In order to bring some certainty to the system and drive the costs of insurance down, the amendment caps punitive damages at twice the sum of the compensatory damages awarded. It provides some certainty. This is a very pro-victim, pro-consumer amendment.

When we voted on this back in 1995, one of the arguments made, I recall, was that there was no crisis, what is the problem? Frankly, we thought it was a growing crisis at that point. Today, it is a perfectly apparent crisis. The Nevada Governor has called a special session-beginning Monday on this very issue. This crisis is sweeping the country.

We have a map that I think is useful. The red States are States that are currently experiencing a medical liability crisis; States such as Nevada that I mentioned, the State of Washington, the States of Oregon, Texas, Mississippi, Georgia, Florida, and the cluster in the Northeast—New York, Pennsylvania, West Virginia, and Ohio. My own State of Kentucky is a State with problem signs.

To give an example, we have doctors moving to Indiana, across the Ohio River, because Indiana has reasonable caps on recovery, and therefore they do not have a medical malpractice crisis and the doctors are not bailing out. In States that have enacted a reasonable approach, the crisis does not exist.

Another interesting chart gives a sense of what has happened since we last voted on this issue in 1995. The median jury award then was around $500,000; today it has gone up to $1 million. I don't think anybody believes that doctors and nurses and health care professionals are any more negligent today than they were then. I don't suppose anyone would suggest there has been some kind of dramatic deterioration in their behavior over the last 7 years, but in fact the awards have gone up dramatically, and of course, as we know, the insurance rates along with it, leading to an exodus from this field across America. The crisis has arrived. It is here.

To give an example from my own State, a few weeks ago in Corbin, KY, the Corbin Family Health Center was forced to shut the doors because the doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues deliver about 250 babies a year and have never lost a malpractice claim. Yet when their insurance company, the St. Paul Companies, decided to leave the medical malpractice business, the Corbin Family Health Doctors lost their coverage—a group that had never lost a claim. The remaining few insurance companies that were willing to provide coverage were only willing to do so for $800,000 to $1 million, a whooping 465 percent increase.

This is going on all across America. Tuesday we will have an opportunity to elaborate. There are a number of Senators on my side of the aisle who want to speak to this national crisis.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this amendment has nothing to do with the price of prescription drugs, the cost of health care, or even the insurance premiums of doctors. It has everything to do with the profits of the insurance industry. At a time when Americans want greater corporate accountability, in this time of Enron, WorldCom, and other corporate scandals, it is unbelievable that our Republican friends cozy up to big insurance corporations to give them a break.

Let me remind my colleagues that the legislation before the Senate is about the high price of prescription drugs and providing a Medicare prescription drug benefit. Now the Republican side is trying to divert attention from this important debate by offering this amendment. It is an attack on the very people the underlying legislation was designed to help, those in need of quality medical care.

The McConnell amendment is designed to shield health care providers from the basic accountability for the care they provide. While those across the aisle like to talk about doctors, the real beneficiaries will be the insurance companies. This amendment enriches the insurance industry at the expense of the most seriously injured patients—men and women and children whose entire lives have been devastated by medical negligence and corporate abuse. This proposal also shields HMOs that fail to provide needed care, drug companies with medicine that has toxic side effects, and manufacturers of defective medical equipment.

In recent months, the entire Nation has been focused on the need for greater corporate accountability. The McConnell amendment does the reverse. It dramatically limits the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican Party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing? Less accountability will never lead to better health care.

This amendment places major new restrictions on the right of seriously injured patients to recover fair compensation for their injuries. These restrictions only serve to hurt those patients who have suffered the most severe, life-altering injuries, and to have their cases proven in court. If we were to arbitrarily restrict the compensation which seriously injured patients can receive, as the sponsor proposes, what benefits would result? Certainly, less accountability for health care providers will never improve the quality of health care. It will never even result in less costly care.

The cost of medical malpractice premiums constitutes less than two-thirds of 1 percent. Do we understand that? The cost of medical malpractice premiums constitutes two-thirds of 1 percent of the Nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation.

Over the decade from 1988 to 1998, the cost of medical care rose 13 times faster than the cost of malpractice insurance. This chart reflects that: The growth of health care costs plus 74 percent; and the medical malpractice costs, 5.7 percent.

These restrictions are not only unfair to patients but an effective way to control medical malpractice claims. There is scant evidence to support the claim that enacting limits will lower insurance rates. There is substantial evidence to the contrary. There are other much more direct, effective ways to address the costs of medical malpractice insurance that do not hurt patients.

The supporters of the McConnell amendment have argued that restricting an injured patient's right to recover fair compensation will reduce malpractice premiums. They cite a report released just yesterday by the Department of Health and Human Services. However, that data is neither comprehensive or persuasive. It looks at only 10 of the 27 States that do not currently have a cap on malpractice damages, and it looks at the rate of increase in those States for only 1 year. In essence, that report cherry-picks the data to support a politically preordained conclusion.

Let's look at the facts: 23 States currently have a cap on medical malpractice damages. Most have had those statutes for a substantial number of years. And 27 States do not have a cap on malpractice damages. The best evidence of whether such caps affect the cost of malpractice insurance is to compare the rates in those two groups of States. Based on the data of medical liability monitored on all 50 States, the average liability premium in 2001 for doctors practicing internal medicine was slightly less, 2.2 percent for doctors in States without caps on malpractice, $7,715; and in States with caps on damages, $7,887. Internists actually pay more for malpractice insurance in the States that have the caps.

The average liability premium in 2001 for general surgeons was also slightly less. For doctors in States without caps, $26,144; in States with caps, it was $26,746. Surgeons are also paying more in States that have caps.

The average liability premium on OB/GYN physicians in 2001 was only 3.3 percent more for doctors in States without caps, $44,485; and States with caps, $43,000—a very small difference.

This evidence clearly demonstrates that capping malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn bigger profits.

This chart over here indicates the States without the cap on damages, States with a cap on damages. I think the proof is in the pudding.

Since malpractice premiums are not affected by the imposition of caps on recovery, it stands to reason that the availability of physicians does not differ between States that have caps and the States that do not. Do we understand that? We are talking about comparing the number of available physicians between the States that do have caps and the States that do not. AMA data show that there are 233 physicians per 100,000 residents in States that do not have medical malpractice caps and 223 physicians per 100,000 residents in States with caps.

Looking at the particularly high cost of obstetrics and gynecology, States without caps have 29 OB/GYNs per 100,000 while States with caps have 27.4 per 100,000. Clearly, there is no correlation.

California, the State that has the lowest caps the longest, set a $250,000 cap on noneconomic damages in the mid-1970s, which has not been adjusted for inflation since. If the tort reformers are correct, you would expect California to have had a smaller percent of growth in premiums since those caps were enacted. Between 1991 and 2000, premiums in California actually grew more quickly, 3.5 percent, than did the premiums nationwide.

The State with the caps shows the malpractice insurance actually went up.

If this amendment were to pass, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors would not get the relief they are seeking. Only the insurance companies, which created recent market's instability, would benefit.

Even supporters of the industry acknowledge that enacting tort reform will not produce lower insurance premiums.

Sherman Joyce, the president of the American Tort Reform Association, told the Liability Week publication:

> We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

This is the president of the American Tort Reform Association, telling Liability Week:

> We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

Victor Schwartz, the association's general counsel, told Business Insurance:

> . . . many tort reform advocates do not contend that restricting litigation will lower insurance rates and "I've never said that in 30 years."

The American Insurance Association even released a statement earlier this year, March 13, 2002, acknowledging:

> [T]he insurance industry never promised that tort reform would achieve specific premium savings.

Listen to that. The American Insurance Association even released the statement on March 13:

> [T]he insurance industry never promised that tort reform would achieve specific premium savings.

A National Association of Insurance Commissioners study shows that in 2000, the latest year for which data is available, total insurance industry profits as a percentage of premiums for medical malpractice insurance was nearly twice as high—13.6 percent—as overall casualty and property insurance profits—7.9 percent.

Do we understand that now? The insurance industry commissioners are now saying that the insurance industry profits, as a percentage of premiums for medical malpractice, are twice as high as overall casualty and property insurance profits.

In fact, malpractice was a very lucrative line of insurance for the industry throughout the 1990s. Recent premium increases have been an attempt to maintain high profit margins despite sharply declining investment earnings.

Insurance industry practices are responsible for the sudden, dramatic premium increases which have occurred in some States in recent months. The explanation for these premium spikes can be found, not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves. There have been substantial increases in recent months in a number of insurance lines, not just medical malpractice. In 2001, rates for small commercial accounts have gone up 21 percent, rates for midsize commercial accounts have gone up 32 percent, and rates for large commercial accounts have gone up 36 percent. These increases were attributable to general economic factors and industry practices, not medical liability tort law.

Insurers make much of their money from investment income. During the time when investments offer a high profit, companies compete fiercely with one another for market share. They often do so by underpricing their plans and insuring poor risks. When investment income dries up because interest rates fall, the stock market declines, or cumulative price cuts lower profit, the insurance industry then attempts to increase its premiums and reduce its coverage. This is a familiar cycle which produces a manufactured crisis each time their investments turn downward.

For example, St. Paul, one of the largest medical malpractice insurers, which has been experiencing serious financial difficulties lately, actually released $1.1 billion in reserves between 1992 and 1997 to enhance its bottom line and make those dollars available for investment. Some of the company's investments did not go well. It lost $108 million in the collapse of Enron alone. When claims became due, those reserves were not available to pay them.

A recent study of the Consumer Federation of America, presented at a hearing of the Health Subcommittee of the House Committee on Energy and Commerce last week, documented this industry's trend:

> It is the hard insurance market and the insurance industry's own business practices that are largely to blame for the rate shock that physicians have experienced in recent months.

The Consumer Federation's findings are highly enlightening:

> Medical malpractice rates are not rising in a vacuum. Commercial insurance rates are rising overall. The rate problem is caused by the classic turn in the economic cycle of the industry, sped up—but not caused—by terrorist attacks. Insurers have underpriced malpractice premiums over the last decade. It would take a 50 percent hike to increase inflation-adjusted rates to the same level as 10 years ago. Further limiting patients' right to sue for medical injuries would have virtually no impact on lowering overall health care costs. Medical malpractice insurance costs as a proportion of the national health spending are minuscule, amounting to less than 60 cents per hundred dollars spent. Insurer losses for medical malpractice have risen slowly in the last decade by just over the rate of inflation. Malpractice claims have not exploded in the last decade. Closed claims, which include claims where no payout was made, have remained constant, while paid claims have averaged just over $110,000. Medical malpractice profitability over the last decade has been excellent, at just over 12 percent per year despite a decline in profits in the last 2 years.

That is the profit they have been making over the last decade.

This analysis of why we are seeing a sudden spike in premiums was basically confirmed by a June 24, 2002, Wall Street Journal article describing what happened to the malpractice insurance industry during the 1990s:

> Some of these carriers rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was.

Does that have a ring to it, Mr. President? Carriers rushing in because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was? And now we are going to take it out on the individuals who are most vulnerable and most severely hurt in our society?

> A decade of shortsighted price slashing led to industry losses of nearly $3 billion last year.

I continue the quote from the Wall Street Journal:

> I don't like to hear insurance company executives say it's the tort system—it's self-inflicted—says Donald Zuk, chief executive of SCPIE Holdings, Inc., a leading malpractice insurer in California.

This is what he said:

> I don't like to hear insurance companies say it's the tort system—it's self-inflicted. . . .

Zuk then continues:

Then it continues:

> The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Let's look back at the type of severely injured patients who would be denied fair compensation under the McConnell amendment. These are the people who are being asked by those across the aisle to pay for the mismanagement of the insurance industry and the wrongdoing of health care providers:

Leyda Uuam—from Massachusetts—underwent surgery to correct a protruding belly button when she was 5 weeks old. Leyda will never walk, talk, move, or have any normal function after she suffered brain injury due to a series of errors by anesthesiologists, nurses, and a transport team.

When Mrs. Oliveira's unborn baby showed fetal distress her doctor failed to perform a timely caesarean birth as common sense would indicate. Instead, he attempted a forceps delivery. When this didn't work, he made three attempts at vacuum extraction, which were also unsuccessful. A different physician then attempted a second forceps delivery, which also failed. Finally, Olivera underwent a caesarean section, yet her son died within an hour of his birth. An autopsy report identified the cause of death asphyxia. The hospital, in an attempt to cover its negligence, amended the report falsely, listing the cause of death as probably fetal sepsis.

Twelve year-old Steven Olsen is blind and brain damaged today because of medical negligence. When he was hiking, he fell on a stick in the woods. The hospital refused his parents' request for a CAT scan, and instead pumped Steven full of steroids and sent him home with a growing brain abscess. The next day, Steven Olson became comatose and wound up back in the hospital. Had he received the $800 CAT scan, which would have detected the brain mass growing in his skull, Steven would be perfectly healthy today. The jury awarded Steven $7.1 million in non-economic damages for his life-sentencing of serious illness and disability.

Harry Jordan, as man from Long Beach, underwent surgery to remove a cancerous kidney. The surgeon took out his healthy kidney instead. Jordan had been living for years on 10 percent kidney function, and he is now no longer able to work.

Elizabeth, a former fashion model, went to the emergency room complaining of nausea, vomiting, and "the worse headache of her life." The doctor misdiagnosed her as having an acute neck sprain and sent her home. Unfortunately, he failed to diagnose her symptoms as the warning leak of a brain aneurysm even though he had written a textbook which included an entire chapter on warning leaks. Ten days after her hospital visit, Elizabeth's aneurysm ruptured and she had a stroke. The bleeding destroyed brain tissue, requiring the removal of ⅓ of the frontal lobe of her brain. Elizabeth was left paralyzed as a result of her misdagnosed aneurysm.

Philip Lucy's nasal cancer was misdiagnosed by doctors as high blood pressure and nerve damage for 2 years, although he continued to complain of pain. It was finally discovered that his left sinus was completely filled with a cancerous mass. This necessitated the removal of his left palate, left cheek, left orbit and his left eye.

LeVern Dostal, a recent retiree, died a slow and painful death after her surgeon failed to give her antibiotics before her gallbladder surgery. She developed sepsis and was hospitalized for a lengthy period of time, during which she underwent 3 more surgeries, as her condition slowly deteriorated.

Ms. Keck, 63, was admitted to the hospital for pneumonia. She sustained brain injuries because a nurse failed to monitor her oxygen level as instructed, and failed to notify the doctors of her worsening condition. She now suffers from paralysis and cannot speak. The hospital was purposefully understaffed to increase profits.

As we debate this amendment, let us all remember that we are dealing with people's lives—many of them have suffered life-altering injuries as a result of substandard medical care. The law is there to protect them, not to shield those who caused their injuries.

I hope the Senate will not accept the McConnell amendment for the reasons I have outlined. As we have seen on so many different occasions, the neediest, the youngest, and the most vulnerable individuals in our society are often those who suffer the greatest kinds of neglect and negligence.

If we are going to have accountability in our society, we ought to have accountability.

One of the extraordinary things I heard was yesterday during the President's statement in North Carolina when he talked about accountability by victims, but not accountability by the insurance companies and not accountability by the others—not accountability by others even in the corporate world but accountability by schoolchildren. If they are not able to learn and be successful, then they are not included in terms of the completion of their studies. And now they are being held accountable. We are not getting the resources for them in order to give them the fair chance.

It seems to me we are being asked to protect the strongest elements in terms of our society. We have seen that during the course of this whole debate. Now we see it with regard to an amendment to protect the insurance companies. When we look at any piece of legislation, we should ask: Who is going to benefit, and who is going to lose? The answer is very simple with this amendment. The people who are going to benefit are going to be the insurance companies themselves, and the people who are going to pay the price are going to be our most vulnerable in our society who need our protection.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I listened with interest to the speech of my good friend from Massachusetts, although I must say that it must have been drafted to address a different amendment other than the one the Senator from Kentucky sent to the desk. None of the victims that Senator KENNEDY recounted would have lost a penny of economic or noneconomic damages under the amendment that is at the desk—not a penny. We don't cap either pain and suffering, or economic damages. There is no cap at all.

I did not hear my friend from Massachusetts talk about the legal fees.

Let us go back and take a look at what this amendment does before yielding to my friend, the only doctor in the Senate, to address this issue.

This is a pro-victim amendment. There are no caps on economic and noneconomic damages in this amendment. Two things are capped: Punitive damages, which are designed to punish the defendant and not enrich the plaintiff, are capped at twice the rest of the damages. There is a very reasonable cap on attorney's fees. And the reason for that is the plaintiffs—the victims—the senior Senator from Massachusetts is talking about are only getting about 52 percent of the money. Those grievously injured parties are not getting enough of the awards.

Let us in this debate talk about the amendment that is before us—not the amendment that might have been before us.

The AMA supports the amendment—frankly, somewhat tepidly. They would like to go further. But the AMA does support my amendment. Obviously, they think it would make a difference in being able to continue to provide health care for our American citizens.

Mr. President, the amendment I offer would make needed reforms to medical malpractice litigation.

There are few challenges facing this body that are more complex than improving the quality and affordability of health care in America. This week, we will have debated competing proposals to expand Medicare and create a prescription drug benefit. Over the past year, the Senate has passed legislation to strengthen our Nation's defenses against the threat of bioterrorism and provide new resources to the researchers at the National Institutes of Health, NIH. While all of these proposals are worthy of this body's consideration, the Senate has not yet addressed one of the fundamental problems limiting the accessability and affordability of quality care: reforming our Nation's flawed medical malpractice system.

These reforms are essential to ensuring that quality health care is available and affordable to all Americans. After all, what good is a Medicare drug benefit if you can't find a doctor to write a prescription or a pharmacist to fill it? Our current medical malpractice system encourages excessive litigation, drives up costs, and literally scares care-givers out of the medical profession. All too often, these lawsuits result in exorbitant judgements that benefit personal injury lawyers more than they compensate injured patients.

Enacting reasonable medical malpractice reforms will reduce health care costs and improve access to care, while allowing legitimate victims full access to the courts. My amendment would take a modest, but important, first step at reforming this flawed medical malpractice system in a manner which I believe will attract significant bipartisan support.

I have long championed strong, medical malpractice reform legislation. I believe debate on the Greater Access to Affordable Pharmaceuticals Act, provides us not only the opportunity, but the obligation, to enact meaningful malpractice reforms.

Much like the issue of a Medicare drug benefit, medical malpractice reform is not a new topic for the Senate. During debate on the Product Liability Fairness Act of 1995, I offered an amendment to enact reasonable reforms to our Nation's medical malpractice laws. After debating the amendment for several days, I was proud to have the support of 53 Senators and my amendment was agreed to by the Senate. Among those 53 supporters were some prominent Democrats and Independents: Senators LIEBERMAN, FEINSTEIN, JEFFORDS, NUNN and Exon.

Today I offer the same amendment the Senate agreed to in 1995. For the benefit of my colleagues who have joined the Senate since we last debated this issue, my amendment would do the following: The McConnell amendment would limit punitive damages to two times the sum of compensatory damages, economic and non-economic. This provision would help end the litigation lottery, where punitive damages are awarded out of all proportion to the underlying conduct. The threat of being unreasonably held responsible for millions and millions of dollars in damages hangs like the sword of Damocles over the heads of our medical professionals.

My amendment would eliminate joint liability for non-economic and punitive damages. As a result, defendants would only be liable for their own proportionate share for the harm that occurred. It is unfair for an injured person to be found 99 percent liable for his injury, and his doctor to responsible for only 1 percent, yet the doctor has to pay for all of the damages.

The amendment places modest limits on attorneys' contingency fees in medical malpractice cases. Specifically, the amendment would only allow personal injury lawyers to collect 33 percent of the first $150,000 of an award and 25 percent of the award on all amounts above $150,000.

My amendment encourages States to develop alternative dispute resolutions mechanisms to help resolve disputes before they go to court.

As I noted earlier, the amendment I offer today is the same one that the Senate agreed to in 1995. Unfortunately, as we all know, it is impossible to pass contentious legislation in this body without the 60 votes necessary to invoke cloture. Therefore, in the interests of preventing a filibuster against the larger product liability bill, I withdrew my medical malpractice amendment, and it has never been signed into law.

In 1995, the Senate considered our medical malpractice system to be so flawed that it required the Federal Government to enact these exact reforms. In the period since then, the system has gotten dramatically worse, not better.

I might not be so passionate about enacting medical malpractice reforms if these lawsuits were an accurate mechanism for compensating patients who had been truly harmed by negligent doctors. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases which was published in the New England Journal of Medicine. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance. In the report's conclusion, the researchers found that, "there was no association between the occurrence of an adverse event due to negligence or an adverse event of any type and payment." In everyday terms, this means that the patient's injury had no relation to whether or not they received payment in their malpractice case.

While the research showing that litigation's effectiveness at compensating the injured hasn't stopped the personal injury lawyers from rushing to the courthouse to file more lawsuits, the jackpots in the personal injury lawyers' litigation lottery have increased dramatically since we considered this issue in 1995. As my first chart shows, the Jury Verdict Research Service reports that the median award made by a jury has more than doubled since 1996, from $474,000 to $1,000,000 in 2000. Not surprisingly, the increase in jury awards has led to a similar increase in the dollar value of settlements reached out of court. Since 1995, the median settlement has increased from $350,000 to $500,000 in 2000.

These escalating settlements might make one wonder, "Are our doctors, nurses and hospitals twice as negligent as they were just 6 years ago?" The answer is, of course, no: the doctors haven't gotten worse, but the system has. In fact, plaintiffs only won 38 percent of the medical malpractice claims that went to trial, essentially the same as it was in 1995, 35 percent.

I think this bears repeating. In 1995, the Senate considered our medical malpractice system to be so flawed that it required the federal government to enact limits on the contingency fees charged by personal injury lawyers and punitive damages. In the period since then, the system has gotten worse, not better.

This litigation explosion is manifested in the premiums which doctors pay for their malpractice insurance. In the 7 years since we last debated medical malpractice reform on the Senate floor, doctors on Main Street USA have seen dramatic increases in their insurance premiums. Since 1995, obstetricans, OB-GYN's, have seen their premiums increase an average of almost 12 percent a year, each and every year. The same is true for the general surgeons who have seen their malpractice premiums increase 13 percent each year. Let me be perfectly clear, I am not talking about a thirteen percent increase over seven years, these premiums are increasing 13 percent every year.

This may make people wonder, "Why should I care about how much doctors pay for malpractice insurance premiums?" The answer is access. Doctors are less likely to provide those services for which they are likely to be sued.

This is particularly true in rural areas of this Nation. While many doctors are willing to set up practices in rural areas, they cannot forgo malpractice insurance. Therefore, many doctors are forced to establish practices in more urban and suburban areas where they can earn the fees necessary to cover their malpractice premiums.

This has certainly been the case in Kentucky this year. Just a few weeks ago, the Corbin Family Health Center in Corbin, KY was forced to shut its doors because its doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues at Corbin Family Health deliver about 250 babies a year and have never lost a malpractice claim. Yet when their insurance company, The St. Paul Cos., decided to leave the medical malpractice business, Corbin Family Health's doctors lost their coverage. The remaining few insurance companies that were willing to provide coverage will only do so for $800,000 to $1 million a whopping 465 percent increase.

This is a tragedy. Fifty of the clinic's patients are due to give birth in the next 2 months, and 130 more are due by the end of this year.

Fortunately for the families of Corbin, KY, the clinic's doctors were able to secure coverage last week, and the clinic reopened. However, their premium is twice what they paid previously. In addressing his clinic's predicament, the clinic's director, Steven Sartori, noted, "Even though you're relieved, it's not over because this malpractice problem is not going to go away . . . There's more doctors who are going to be in the same predicament I was in."

This problem is not limited to Kentucky. On July 1 of this year, Atmore Community Hospital in Atmore, AL, was forced to close its obstetrics program because it could not afford the 282 percent increase in malpractice insurance from $23,000 to $88,000. Now, expecting mothers must travel either to the hospital in Brewton, AL, 30 miles away, or to the big city hospitals in Mobile or Pensacola. That's more than an hour and a half drive.

Nor is the problem limited to the South. The administrators at Copper Queen Community Hospital in Brisbee, AZ were recently forced to close their maternity ward because their family practitioners were looking at a 500 percent premium increase. Expectant mothers must now travel more than 60 miles to the closest hospital in Sierra Vista or Tucson. According to a recent article in Forbes magazine, four women have since delivered babies en route.

In New Jersey, the director of Obstetrics and Gynecology at Holy Name Hospital was forced to lay off six employees from his practice when his malpractice premiums doubled. He told the New York Times "The issue is, we can't stay open. It's going to restrict access to care. It's going to change the way OB is delivered to the population, and they're not going to like it."

While our flawed medical malpractice system may be hitting obstetricians particularly hard, it is negatively impacting nearly every aspect of the medical profession. Many radiologists in Georgia are no longer reading mammograms, Atlanta Business Chronicle, 6/21/2002, because of the liability associated with the service. These lifesaving mammograms may only make up 5 percent of a radiologist's practice, but are responsible for a whopping 75 percent of their insurance liability. Officials at Memorial Hospital and Manor in Bainbridge, GA faced a staggering 600 percent increase in premiums despite a "nearly spotless claims history," Modern Healthcare, 4/1/2002.

However, no one should be fooled into thinking that this medical malpractice crisis is limited to the small hospitals of rural America. Perhaps the most publicized case involves the closure of the trauma unit at the University of Nevada Medical Center, UMC. Trauma centers are frequently referred to as "super emergency rooms" because they are staffed with highly trained surgeons and specialists who are qualified to treat the highest risk cases. Nearly all of the highly skilled surgeons and orthopedists who worked in the UMC unit decided they could no longer risk the liability exposure and resigned. UMC's director Dr. John Fildes explained that, "We want to be here, that's the sad thing. These physicians want to take care of patients, but they are withdrawing from high-risk activities to protect their families and livelihoods", Washington Post 7/4/2002.

What does the closing of UMC's Trauma Center mean to the people of southern Nevada? It means that those patients who are most seriously injured in car accidents must either be treated at less prepared emergency rooms or transferred out of state to the nearest trauma center. Fortunately, UMC has reached a temporary arrangement that will allow the unit to re-open by classifying its physicians as State employees for the next 45 days.

Pennsylvania has faced a similar crisis. I would like to read from a recent article that appeared in the Allentown Morning Call:

Thomas DiBenedetto is a marked man.

He feels the bull's-eye on his back every time someone is wheeled into Lehigh Valley Hospital's emergency room with broken, mangled bones.

It's his job to put people back together. DiBenedetto is an orthopedic surgeon in the Level One trauma center, and he loves what he does. Or, at least, he did.

Large medical malpractice awards and increasingly litigious patients have made it difficult for him to enjoy the job he's been doing for 13 years. He has been sued four times.

He won all four cases. Yet, his malpractice insurance costs this year went up nearly a third, to $44,000. Even though his record is clean, he expects the bill to continue to climb.

Now, I am tempted to take issue with the AMA's finding in that I think some of these States have crossed the line from having serious problems to being in a crisis. I know how bad the situation is in Kentucky, and I think Kentucky ought to be listed as a crisis State. I noted the closure of the Corbin Family Health Center earlier, and we see daily reports of how Kentucky physicians are packing their medical bags and heading to Indiana, which has more reasonable tort laws.

For those doctors who choose to stick with the profession they love, they will inevitably be forced to pass these higher malpractice costs along to consumers in the form of higher fees. Several years ago the Hudson Institute conducted a study in which it estimated that liability costs added $450 to the cost of each patient admission to a hospital and accounted for 5.3 percent of their medical expenditures. In 1994, the Towers-Perrin Research firm estimated that malpractice expenses added $12.7 billion to the cost of health care in America. To put that into terms many Senators can understand, that is more money that Medicare spent on nursing home care in 1994 and almost as much as was spent on the Medicare Home Health benefit. I don't think anyone would argue that these dollars would be better spent improving patient care rather than lining the pockets of the personal injury lawyers.

I will be the first person to admit that the reforms I propose today are modest. As many of my colleagues know, I have authored even stronger reforms contained in free-standing legislation, the Common Sense Medical Malpractice Reform Act of 2001. Our Nation's health care is staring down the barrel of a medical malpractice crisis, and it must be addressed soon. Therefore, I have chosen to offer this amendment which the Senate already agreed to in 1995. At its heart, this amendment merely assures that patients, not personal injury lawyers, receive the vast majority of any jury award or settlement. By establishing proportional liability, the amendment ensures that damages are paid by those parties who actually inflict the harm. I believe these are common sense steps the Senate can take to address, and I urge my colleagues to support it.

I yield 20 minutes to the distinguished Senator from Tennessee, the only physician in the Senate who is well versed on this issue.

Mr. DURBIN. Mr. President, parliamentary inquiry: As I understand it, we have a time agreement in terms of the allocation of time.

The PRESIDING OFFICER. We are under a time agreement. The time is limited and under the control of the Senator from Kentucky and the Senator from Massachusetts.

The Senator from Tennessee.

Mr. KENNEDY. Mr. President, I think we were trying to go back and forth. I know the Senator has to leave. I don't know what the Senator's time limitation is. Could he take 7 minutes?

Mr. FRIST. Mr. President, I have a time constraint. I have been on the floor since last night waiting to make my opening statement.

I would be happy to yield 3 minutes, if the Senator has to make an airplane or something.

Mr. KENNEDY. Mr. President, I want the record very clear—then we are not going from side to side? I thought we were going from side to side. I withdraw that.

(Laughter)

Senator MCCONNELL had two speeches.

We have followed the side-to-side rule. Now we are making it clear that on this legislation we no longer have to follow it. If that is the way it is going to be—we have respected that since the start of this debate. This is the first time I have been on the floor for 7 days that we have not done that.

I am prepared to yield to the Senator.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. FRIST. How much time has been used by each side?

The PRESIDING OFFICER. The Senator from Massachusetts has used 23 minutes. The Senator from Kentucky has used 11 minutes.

The Senator from Tennessee.

Mr. FRIST. Mr. President, I want to change the topic and focus where I believe the impact is most being felt today. It really has not been discussed on the floor thus far; and that is, at the level of the doctor-patient relationship, at the level where care is actually delivered. We heard a lot about the budget numbers and the insurance companies and the like, but what I would like to do is focus on where the impact actually is.

Yesterday, I was at a hospital, not as a physician, but I was there with someone in my family. I was in an emergency room 2 nights ago and then yesterday. Again, I was not there as a doctor or as a U.S. Senator. It was a local hospital, George Washington University Hospital.

On a side table, I picked up a newsletter. Again, it was not intended for me. The newsletter is called the "GW Medicine Notes." I have it in my hand. It is written by their medical staff for their medical staff and, I guess, for people in the hospital. The letter is from the chairman, Dr. Alan G. Wasserman. The whole front page really tells the story that much of the debate will be about today and on Tuesday.

I will open with just one sentence or two sentences from this letter, again not intended for me, but to really express the sentiment, the impact of what is happening all across America because what we are seeing today is, indeed, a crisis.

The words, again, from Dr. Wasserman, in what is called the "GW Medicine Notes," a monthly publication of GW, the George Washington Department of Medicine:

What we have is a runaway train that isn't stopping. The malpractice problem is not just a physician problem. It is beginning to affect the ability of patients to get proper care in a timely manner.

I may refer back to this letter because I found it fascinating, sitting there yesterday waiting for an MRI scan, just to see the sentiment that patients are actually being hurt. When I saw the words: "What we have is a runaway train that isn't stopping," the imagery, I think, is very appropriate.

We cannot do little things. This train is barreling through, and patients are being hurt. Forget all the rhetoric, the dollars and cents, the bad insurance companies and the profits. Patients are being hurt by the current tort system that we have in effect today. The good news is, there is something we can do about it, and it starts right here with the McConnell amendment that is on the floor today.

I want my colleagues to listen very carefully. I hope, in the expanded reach, people are listening, because we have an opportunity, in this amendment, to improve patient care, and to reverse this runaway train, which is hurting patients today.

How can I say so definitively that patients are being hurt? You can look in the media. You can go into hospitals. I encourage everybody to ask their doctor. The next time you see your doctor or see a nurse or go into a hospital or interact with your health care system, just ask: What are these malpractice premiums doing?

We will talk a little bit about why premiums are going up.

What is being said around the country? Pick up the newspaper any day all across the country. Allentown, PA; Beckley, WV; New York, NY; Kansas City, KS; Jackson, MS.

Jackson, MS, November 23, 2001:

> Costs Lead Rural Doctors to Drop Obstetrics.

That is because of the cost of the malpractice insurance. OB/GYNs are refusing to deliver babies and are dropping obstetrics.

Allentown, PA:

> CARE CRISIS: Malpractice premiums crippling doctors. The emergency has stricken physicians in southeastern Pennsylvania, forcing some to leave their practices and patients behind.

Beckley, WV:

> The situation may be more acute in West Virginia than anyplace else, but doctors across the board and around the country are facing double-digit hikes in malpractice premiums, something many hadn't seen since the 1980s.

Kansas City, KA:

> Insurance rates reach crisis level for doctors. Some physicians have been forced to leave practices.

Again, we are talking about access to health care and costs of health care.

Dayton, OH:

> WOMEN'S HEALTH CARE CRISIS LOOMS. . . . Rising malpractice premiums may force some doctors to stop delivering babies.

Buffalo, NY:

> Soaring costs of medical malpractice insurance have caused fears among doctors that they will be forced to either quit their profession or practice in another state.

We all recognize this problem. I think both sides are going to state, again and again, that medical liability insurance premiums are skyrocketing. Why? The facts are there. We know it. We see it. Our physicians tell us why. We can look at what our insurance companies are having to charge today. The question is, why?

Medical liability claims and damage awards are exploding, and when they explode, that ends up being translated into increased premiums. People think those increased premiums are paid for by the doctor. When the doctor pays $50,000 or $100,000 in malpractice insurance, it is not really paid by the doctor, because the doctor is going to pass that straight back to the patients.

When you go to a doctor for a particular procedure part of that procedure is going just to buy the insurance. These costs ultimately increase premiums. First of all, increased jury awards increase premiums. They are eventually passed back to the patient.

We saw a chart earlier today. Let me just show it again. It is not just in George Washington Hospital, where I happened to find this newsletter and talked to the doctors and nurses there, and not just at Vanderbilt but all throughout the local and national medical community. The problem is all over the United States of America.

This is from the AMA. Basically, it outlines, in red, those States that are in crisis. You can see, it is not just on the east coast, and it is not just in the South, and it is not just in the Northwest. Shown in red are States in crisis: New York, Pennsylvania, Texas, Nevada, and Washington. Shown in yellow, including my home State, are States with problem signs. As these rates increase 15, 16, 17 percent, sometimes 20 percent, sometimes 30 percent, they will force more states into the red, unless we act.

The end product of all this, all those articles, the end product of the newsletter—this is what is circulating in hospitals and clinics all over the United States of America—is that patients are suffering.

Why do I say that? No. 1, access to care. It is not just a matter of the costs, but it is access to care. If you are in a motor vehicle accident and you need a trauma center, we have seen trauma centers close because of these escalating, out-of-sight, skyrocketing premiums, which no longer can be tolerated. If you are one of those individuals who needs that care, the access is not there, and you are going to be hurt.

If you need an obstetrician—in many ways, it is a woman's issue—and your former gynecologist-obstetrician is one who gave up that interest in delivering babies because the malpractice insurance was so high, your access to obstetrics care, the delivery of babies, and the prenatal and perinatal care all of a sudden disappears.

Why? Ask your obstetrician. It is because the malpractice insurance has gone sky-high, from $10,000, $20,000, $30,000, $50,000, $100,000 up to $150,000, and it can no longer be sustained over time.

So physicians are dropping services. They have no choice. They are moving away from procedures that have a higher challenge rate because of the risk of the procedures. But if you are one who needs that procedure, you suffer from a lack of access to care. Those procedures that are a little bit higher risk, physicians are beginning to leave and not do them.

We have had letters read about malpractice insurance. All of us understand that malpractice insurance needs to be addressed. It is the only way to improve the system itself. Malpractice does occur. There is nothing in the McConnell amendment that in any way lowers the standards on malpractice. You will have the other side reading a whole series of letters from people who have been injured. And as the Senator from Kentucky pointed out, there is nothing in his amendment that lowers the standards in any way in addressing true malpractice.

My colleagues who are physicians are now demanding action by Congress. Why? Because they took that Hippocratic oath to take care of patients, to do no harm. To illustrate this runaway train concept that Dr. Wasserman mentioned in his newsletter, things are at a crisis, we have level 1 trauma centers closing. Thank goodness they are not closing permanently but closing for this very reason—not for a whole broad range of reasons of cost increases but for this very reason—the high costs of liability insurance.

A level 1 trauma center is a big deal. It is not just an emergency room, and emergency rooms are terribly important, but it is not just an emergency room that sutures cuts or takes care of serious headaches. This is where you go if you are in a severe motor vehicle accident, have severe head trauma, multiple injuries, bleeding in the abdomen. This is where you go where you have trained specialists 24 hours a day to save your life. That is what a level 1 trauma center is.

The only level 1 trauma center facility at the University of Nevada Medical Center closed on July 3 after 57 orthopedic surgeons basically resigned because medical malpractice insurance rates made it too costly for them to treat high-risk patients.

Luckily, fortunately, the trauma center reopened when the surgeons agreed to return for at least 45 days. People can look at that case and say it was for this reason or that. The bottom line is, we have a group of people in a community who took an oath to take care of patients, but basically said this is such a severe, fast-moving, heavy, runaway train that we can't sustain what we do professionally because of this crisis.

This particular trauma center is one of the 10 busiest in the country and is the only one in Las Vegas. When it closed, the nearest trauma center was roughly an hour and 20 minutes away.

Therefore, when we talk dollars and cents and insurance companies making money, we need to address all of that. But let's recognize that we have to fix the system which has now gotten so bad, so severe that premiums are skyrocketing. That increase is passed on to patients. Patients cannot afford increases in health care costs. We have known that for a long time.

Now what is happening, the actual care expected by the American people and that the American people deserve is less available. We call it less access. But whether it is a trauma center closing, whether it is a woman who wants to keep her obstetrician, but the obstetrician says he can't afford to keep delivering babies because of these premiums, because of these excessive lawsuits, these frivolous lawsuits today, he can't afford his old specialty that he was trained to do. Then there is the third component of access. You have physicians leaving parts of the country. Basically, some parts of the country, these red areas where you have this crisis level, malpractice insurance has gotten so high that a physician can either quit—and they are doing that; they have no choice. Ask your physicians.

Mr. McCONNELL. Will the Senator yield?

Mr. FRIST. I am happy to yield.

Mr. McCONNELL. In response to his observation, what is happening in my State is they are going across the river to Indiana which, as you will note, is a State which has modest caps on recovery; therefore, affordable rates.

Mr. FRIST. I thank the Senator from Kentucky. He is exactly right. We have people moving from a yellow State, such as Kentucky, to a white State. The white means States that are currently OK. You see California. I will come back to California and comment on that. We have people from Mississippi, that already has fewer physicians, moving up to Tennessee. And who knows, they may end up moving to Wisconsin or Indiana or out to California for the same reason.

What is important, in response to the Senator from Kentucky's question, is that physicians are making decisions not on places they either like to practice to deliver the care they are trained to do, but now they are making decisions because of this exorbitant, runaway train. It is almost like a litigation lottery, malpractice lawsuit premiums that they are having to pay. They tell you that. That is the reason they are moving.

So we have the cost issue. We have the specialty issue. We have physicians changing specialties, not because of their individual practice, what kind of care they are giving, but because the premiums are that higher for obstetricians versus gynecologists. Obstetricians deliver the baby; the gynecologists takes care of many other women's issues. Then you have the geographic movement to other States.

There is a reason for all of this. It is a litigation problem. We need to fix the problem, and it can be fixed. The numbers are staggering. Between 1995 and the year 2000, the average injury award jumped over a 5-year period more than 70 percent to $3.5 million. That is the average. More than half of all injury awards today top $1 million of all the awards. The payouts aren't the only problem.

Simply defending a malpractice claim, whatever the claim is, is more than $20,000, whether or not the doctor is at fault or the hospital is at fault. So there is an incentive through these exorbitant contingency fees where the trial lawyers, the personal injury lawyers, may make 40 percent. If there is a jury award, the trial lawyer, the personal injury lawyer gets 40 percent of the cut. Thus the personal injury lawyer has the incentive, the economic incentive to go out and engage in lawsuits, in frivolous lawsuits.

Each one of those which comes forward, no matter what, just to defend costs at least $20,000. In 2001, physicians in many States saw their liability premiums for these frivolous lawsuits, excessive lawsuits that go to the millions and millions of dollars, with the trial lawyers taking off 40 percent—and Senator MCCONNELL's amendment addresses this contingency fee very directly to put some sort of control on the incentive that trial lawyers have to dig up these cases, then the physicians, because of the tremendous cost, whether the case is frivolous or not, they tell their insurance company to settle the case. They don't want to be tied up in a court. They want to deliver care. That is what physicians are trained to do. That is what they are obligated to do.

The solution: Intelligent, reasonable tort reform, sensible reform with fair and equitable compensation for those negligently injured. California has addressed this. Hopefully, over the next several days or hours we will address their experience. We have seen California put very reasonable controls and caps and incentives addressing things broadly, and they have been able to control their costs. So we know it can be done.

I see my time is about over. I look forward to coming back Monday to talk a little bit more about this issue. The bottom line is, the McConnell amendment will help patients. That is what it is about. Patients are suffering today. We know sensible tort reform works. We have seen it in California, in those States that have been progressive enough to do that. Now we have a duty to make sure these red States become yellow States and eventually become white States where we don't have this crisis today.

Sensible tort reform works. Let's act now to protect patients, their accessibility to quality care, the premiums that physicians have to pay which are ultimately translated down to cost to that individual patient.

I urge support of the underlying amendment.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the Senator from Tennessee. He has a unique perspective as the only physician in the Senate for lending his voice to this most important cause. I might say to my friend, to those on the other side of the aisle, we may or may not win Tuesday morning, but this is not going away. We will be back, and we will some day address this problem because it is a national problem. Some on the other side will argue for States rights, which I always find interesting coming from very liberal Members of the Senate, that somehow this is not a Federal problem. I intend to outline in my full remarks exactly why it is a national problem and can only be corrected at the national level. I thank my friend for his outstanding comments this morning and look forward to continued discussion next week.

Mr. FRIST. Mr. President, I ask the Senator from Kentucky to allow me to enter three sentences in the RECORD, and then I will close.

First, I thank the Senator for his comments. This does give us an opportunity to point to the fact that this is a national crisis that has to be addressed. We have an obligation to address this crisis.

Dr. Frank Boehm, who is a good friend of mine, writes a newspaper article in the Nashville Tennessean. Though I do not have one of his articles, he keeps a really good feel of what is going on around the State of Tennessee and around the country and is also one of the preeminent high-risk obstetrical doctors in the United States of America. I communicated with him the other day.

I close with two or three sentences of what he said. He sees a lot of these high-risk cases coming through and reviews a lot of cases. He says:

> What this has taught me is that doctors, hospitals and nurses are being sued in large numbers, in large part because of the possibility of a settlement or trial judgment of a large amount of money.

Then he talks about some of the things we can do, many of which are in the underlying McConnell amendment.

He closes with this:

> Doctors need tort reform and so do our patients. With many physicians leaving States to practice elsewhere, or just closing up shop, patients are suffering from a lack of access to medical care in many parts of our country.

That was in an e-mail in response to my question of what is the lay of the land.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Tennessee particularly for his fine observation. There has been an effort on the part of some—and I am sure we will hear it again Tuesday—to say this is about insurance companies. This is not about insurance companies. It is about doctors, and it is about patients.

The AMA does support the McConnell amendment. I ask unanimous consent that a letter indicating their support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
Chicago, Illinois, July 25, 2002.

Re Medical Liability Reform Amendment.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: The American Medical Association (AMA) commends you for your leadership and initiative in offering an amendment to S. 812 ("Greater Access to Affordable Pharmaceuticals Act of 2001") that would bring several common-sense reforms to our nation's broken medical liability litigation system.

Many states in our nation are experiencing an emerging medical liability insurance crisis. Due to large jury awards and the burgeoning costs of defending against lawsuits (including frivolous claims), medical liability insurance premiums are skyrocketing. In many cases, physicians are finding that liability insurance is no longer available or affordable. The media now reports on almost a daily basis that the situation has become so critical in some states that physicians are forced to limit services, retire early, or move to another state where the medical liability system is more stable.

The most troubling aspect of our unrestrained medical liability system is the effect on patients. Access to care is seriously threatened in states such as Florida, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia. In other states, including Kentucky, a crisis is looming. Emergency departments are losing staff and scaling back certain services such as trauma care. Many OB/GYN's have stopped delivering babies, and some advanced and high-risk procedures are being postponed because surgeons cannot find or afford insurance.

Your amendment includes key building blocks to effective reforms, such as allowing injured patients unlimited economic damages (e.g., past and future medical expenses, loss of past and future earnings, cost of domestic services, etc.), establishing a "fair share" rule that allocates damage awards fairly and in proportion to a party's degree of fault, preventing double recovery of damages, allowing periodic payment of future damages, and preventing excessive attorney contingent fees (thereby maximizing the recovery of patients).

In addition to these necessary reforms, we urge you to include a reasonable limit of $250,000 for non-economic (e.g., pain and suffering) damage awards, while allowing states the flexibility to establish or maintain their own laws limiting damage awards that have proven effective as stabilizing the medical liability insurance market. Multiple studies have shown that a limit on non-economic damages is the most effective reform to contain run-away medical liability costs. Such reform has also been proven effective at the state level. We also urge you to include a reasonable cap on punitive damages, such as the greater of 2 times economic damages or $250,000.

By enacting meaningful medical liability reforms, Congress has the opportunity to increase access to medical services, eliminate

> much of the need for medical treatment motivated primarily as a precaution against lawsuits, improve the patient-physician relationship, help prevent avoidable patient injury, improve patient safety, and curb the single most wasteful use of precious health care dollars—the costs, both financial and emotional, of health care liability litigation.
>
> The proposals in your amendment are an important step in the right direction to strengthen our health care system. The AMA looks forward to working with you regarding a reasonable reform on non-economic damages.
>
> Sincerely,
>
> MICHAEL D. MAVES, MD, MBA.

Mr. MCCONNELL. Mr. President, I see the Senator from Ohio in the Chamber. I will be happy to yield him such time as he may need.

Mr. VOINOVICH. Mr. President, about 10 minutes will do it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today as a Senator from a State that is on the edge of becoming one of those red areas on that national map. This Senator does not want his State to become one of those red States. I rise in strong support of Senator MCCONNELL's medical liability amendment.

The litigation tornado that continues to sweep the Nation does not seem to be losing strength. In fact, at the rate lawsuits continue to be filed, the only entity that stands to lose strength is our economy.

The cost of malpractice insurance has had an enormous impact on the rising costs of health care and the cost of health care insurance to the extent that more and more of my constituents are complaining that the cost of insurance is so high that they can no longer afford to buy it.

In particular, the effect of rampant litigation has really had a disastrous impact on the health care industry. When a pharmaceutical company decides not to develop and produce a new drug because the cost of possible litigation could erase any profit, who really loses?

When physicians choose not to perform certain procedures, such as delivering babies, because malpractice insurance rates are too high, who loses?

Even worse, when a physician stops practicing medicine because he or she no longer can afford the insurance premiums or is so fearful of malpractice being filed against them, who loses?

Recently, the American Medical Association released an analysis which found that medical liability has reached crisis proportion—I underscore "crisis proportion"—in 12 States. One of those 12 States is Ohio.

In addition, the American College of Obstetrics and Gynecology, the ACOG, issued a red alert and warned that without State and Federal reforms, chronic problems in the Nation's medical liability system could severely jeopardize the availability of physicians to deliver babies in the United States of America.

The good news for Ohioans is that Ohio did not make the ACOG's list of nine hot States, those in which a liability insurance crisis currently threatens the number of physicians available to deliver babies.

The bad news is that Ohio is only one step short of that mark. It is one of three States where a crisis is brewing. In fact, signs of the crisis are already beginning to show.

Currently, in Hancock County in northwest Ohio, they have only one physician to deliver babies. Think about it, a county with a population of over 70,000 people has 1 physician to deliver babies. He has indicated that if his insurance premiums continue to climb at the current rate, he will have to close up shop.

That sounds like a crisis to me, and I am sure it sounds like a crisis to the women in Hancock County who need someone there to deliver their babies.

I believe this amendment that Senator MCCONNELL has before us gets us on our way to enacting meaningful medical liability reform. It limits attorney's fees so that the money awarded in court goes to the injured parties, who are the people who really need the money. It also allows physicians to pay any large judgments against them over a period of time to avoid bankruptcy and requires all parties to participate in alternative dispute resolution proceedings, such as mediation or arbitration, before going to court. It limits punitive damages to twice the sum of compensatory damages. These are all reasonable limitations.

One of the growing areas in the legal profession is mediation and arbitration. In fact, the Michael Moritz School of Law at Ohio State University, of which I am a graduate, is one of the leaders of that initiative in the legal profession.

When I was Governor of Ohio, I joined the chief justice of the supreme court and wrote to all the businesses in our State encouraging them to agree to a mediation and arbitration in order to reduce litigation costs and, frankly, improve the economic environment in our State.

Why shouldn't we do this in medical malpractice cases? Doesn't it make sense? Providing a commonsense approach to our medical liability problems is certainly a win-win situation. Patients would not have to give away large portions of their judgments to their attorneys and physicians could focus on doing what they do best: practicing medicine and providing health care.

I know there are differences of opinion about how to approach this, but we do have a crisis in this country. If those who are opposed to Senator MCCONNELL's amendment are concerned about this problem, then it would serve us well to sit down and figure out some way we can address this problem. We need to do it now, not tomorrow, not next month. I can tell you, if we do not do something about this problem, we are going to see more and more people in this country do without medical care. We are going to see a lot more of our physicians dropping out of the practice of medicine. And we truly will have something we never experienced in this great country, and that is a health care crisis.

I thank the Chair. I yield back any time to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Ohio, who represents one of those red States in crisis, for his important contribution to this debate. I thank him so much.

Mr. President, I ask unanimous consent that Senator FRIST be allowed to control the remainder of the time we have for the morning on this issue.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee.

Mr. FRIST. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 50 minutes under his control.

Mr. FRIST. And the other side?

The PRESIDING OFFICER. Sixty-seven minutes.

Mr. FRIST. Mr. President, I mentioned in comments a few minutes ago the fact that I was in the hospital yesterday and two nights ago with a family member and I will go there in a few minutes. Being there as a patient's family is a different perspective than being there as a physician or Senator.

As one walks those halls and sees people working hard, day in and day out, 24 hours a day, as one watches the shift change at 7 or 8 at night, fresh people coming in and starting, and see physicians coming in at 9, 10 at night, starting early in the morning, seeing the emergency room and trauma centers going on around-the-clock, when one sees that and recognizes that we can do something that will make that better when the trends, especially in the last 3 to 4 years, are getting worse, it makes one feel very passionately about that.

When I see doctors leaving the practice of medicine for this reason, these exorbitant, skyrocketing, out of control—this runaway train which I mentioned earlier, such good imagery—it makes me want to passionately come to this body and make sure that people understand, make sure that my colleagues understand, that physicians are leaving the practice of medicine because of these exorbitant malpractice suits.

A physician who gets up every morning to take care of patients who come through that door is being charged $100,000 not for what they do but to cover the legal system and these out-of-control malpractice suits, which I will say are in many cases driven by the trial lawyers, there is no question in my mind, and if you talk to people broadly they will say lawyers have the incentive.

When one sees that happening and sees that patients are going to suffer, they want to act. That is what this McConnell amendment allows us to do, to do something that does not solve the problem; it does not go as far as I want to go. As the Senator from Kentucky said, does not go so far as the American Medical Association, which represents so many tens of thousands of doctors, would go, but it is a first step. It puts the issue back on the table, and we ought to talk about this issue in this body.

It has been 7 years since we have actually addressed this issue, an issue that patients are being hurt by, that is driving physicians out of the practice of medicine, that is driving physicians from Kentucky to Indiana, from Mississippi to Tennessee, out of New York City, out of New York, out of Texas, out of Florida, that is driving the price of health care up unnecessarily. It is unnecessary. In fact, it is hurting patients unnecessarily; it is not helping patients.

If there is malpractice, there needs to be appropriate punishment. There needs to be appropriate economic compensation. It needs to be fair. It needs to be equitable. But these skyrocketing lawsuits, many of them frivolous, need to be brought under some sort of moderation and some sort of control.

I mentioned that Dr. Wasserman, who is chairman of the Department of Medicine at George Washington University, who is in the hospital working right now—we did not even really talk about this specifically in any detail, but in the newsletter that I quoted earlier, which is pretty good reflection of what is going on in every hospital around the country, it is important for my colleagues to know that sentiment.

In that same newsletter, I read one sentence earlier saying that what we are facing, in terms of this lack of tort reform, a medical liability crisis being a runaway train, a beautiful analogy. He said, and I quote from the second paragraph of the letter:

> Malpractice rates are increasing at a rapid rate across this nation. Insurance companies are going out of business, refusing to write new policies, or raising rates 50 to 200 percent.

People say, why? Some say it is the bad insurance companies that are making profits and taking advantage of people broadly, and that is where the problem is. Well, I disagree. It may be part of the problem that may need to be addressed, but the fundamental problem is the frivolous lawsuits, with no sort of restraint, with out-of-control incentives for the personal injury lawyers to take a 40 percent cut, to increase the number of cases, to bring these suits, again with no limits, no caps, not a $100,000 cap, a $500,000 cap, a $1 million cap, $5 million cap or $10 million—it does not matter what it is, they take away 40 percent of whatever it is so they are going to drive it high.

The McConnell amendment stops short of what I would really like to do, and it does not have any sort of limitation of payments. It looks at limits on attorney's fees, establishes proportional liability, looks at both scopes, such as collateral service reform, which we will be able to talk about, but it is a good first step.

Dr. Wasserman, in his newsletter—and this will be the last time I will quote from it, but it captures it—says: Be patient. There is a coming crisis. Already, there is a shortage of physicians in certain medical specialties in certain areas. Do not try to have a baby in Las Vegas. There are no obstetricians. Try to find a rheumatologist in Florida in the winter with less than a 3-month wait.

At some point, this will be politically important when more people are denied immediate access to health care, and then maybe change will come.

That hurts me in many ways, because it basically says we do not have the guts to face an issue that is not just dollars and cents and profits and all of this class warfare that we hear about, but an issue that is hurting patients, where the patients suffer.

The example is right before our eyes, and I do not see how we cannot address it. The example I mentioned earlier in the great State of Nevada, where physicians actually had to close down a trauma center, a level-1 trauma center, which is sophisticated care that can be delivered adequately in no other way, and if you are in that automobile accident, your care is in jeopardy. It does not have to be this way if we can pass this amendment, continue the discussion, again, hopefully improve and strengthen this amendment in the future.

This is not going to go away. It is getting worse. It is getting worse before our eyes. We last talked about it on this floor 7 years ago. This is the first time since then. That is inexcusable. I mentioned the level 1 trauma center having to close, leaving patients for that period of time if they were in an accident having to go an additional hour and a half for proper care.

Let's look at the obstetricians and gynecologists. Again, as I mentioned earlier, an obstetrician/gynecologist is trained to do gynecology, women's health issues. An obstetrician's practice is to deliver babies. It is a good example because as these doctors' insurance premiums go sky high, and when they go sky high, the obstetricians are saying: I cannot deliver babies anymore. I am going to change to the field of gynecology.

Then the mom, who has been going to that obstetrician for 5 years, 10 years or 15 years, goes to see their physician who says: I am not delivering babies anymore, and the reason I am not is because I cannot afford that malpractice insurance. So then all of a sudden there is this problem with access to care affecting the individual. We talked a little bit about costs; we talked about physicians moving.

I again ask women all over this country to ask their obstetrician what is happening to obstetrics care today because of malpractice insurance.

Nationwide, 1 out of 10 OB/GYNs no longer deliver babies because of this high cost of liability insurance. Obstetricians are not just geographically moving but are leaving the practice altogether. Again, I can say that. I can go to a hospital and say that. I can say that as a Senator and as a physician. The best thing is for people to talk to their obstetricians and ask how this malpractice insurance impacts on them.

Earlier today we heard some comments about insurance companies, and I think on Tuesday we will have the opportunity to come back to that as well. Much of my focus is on the individual patient and on the impact on the practice of medicine, which is very real. I do want to at least introduce the fact that these insurance companies, many of which are not-for-profit in the sense that they are mutual funds—and I will use the example of the State Volunteer Mutual Insurance Company in Tennessee. It is owned by the physicians in Tennessee.

Again, it is not a red State yet. It is on the verge of being a crisis State. Eighty percent of the physicians in Tennessee come together and have a mutual insurance company because they can have the input and they can try to keep the rates down in the very best way possible.

I will read from a letter, and I ask unanimous consent to have this printed in the Record, dated July 25, from the State Volunteer Mutual Insurance Company.

There being no objection, the letter was ordered to be printed in the Record, as follows:

State Volunteer Mutual
Insurance Company,
Brentwood, Tennessee, July 25, 2002.

Hon. William H. Frist, MD,
U.S. Senate,
Washington, DC.

Dear Senator Frist: I am writing to urge you to support tort reform legislation currently being considered by the Congress.

According to recent news reports, doctors and hospitals in a number of states are currently facing a true crisis in the cost and availability of professional liability insurance. These states include West Virginia, Pennsylvania, New Jersey, Florida, Nevada and Mississippi and several other states. Access to patient care in those states is being adversely impacted, especially in the area of pre-natal and obstetrical care.

> While our situation in Tennessee has not yet reached the crisis experienced in those states, there are many indications that our state could well face the same sort of problems in coming years if we do not act now to make some changes in our civil justice system.
>
> St. Paul Insurance Company, the nation's largest writer of health care professional liability insurance, experienced such losses that it announced last December that it was completely withdrawing from the market, adversely affecting tens of thousands of physicians who carried coverage with that company, some of whom were in Tennessee.
>
> Professional liability premiums for doctors in Tennessee have been steadily rising in recent years. According to State Volunteer Mutual Insurance Company, which covers most practitioners in Tennessee, premiums have increased by 45 percent over the past three years, in order to keep up with rapidly escalating losses in medical malpractice lawsuits. Only approximately 4 percent of this 45 percent increase was related to lower investment yield, with the remainder being due to increasing medical malpractice losses. State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.
>
> In recent years both juries and judges in Tennessee have made multi-million dollar awards for non-economic type damages, over and above a plaintiff's actual economic losses. (According to State Volunteer, in one recent case a jury awarded only $25,000 in economic damages but awarded non-economic damages of $1,600,000. Another case resulted in a jury award of $100,000 economic loss and $1,900,000 non-economic damages. A judge in another case awarded $1,062,080 in economic loss and gave $4,500,000 non-economic damages. Another judge awarded $687,691 economic loss and gave $3,000,000 in non-economic damages. One jury awarded $7,811 in economic loss but gave $2,650,000 non-economic damages.)
>
> Awards in personal injury and wrongful death cases in Tennessee are dramatically increasing, according to the latest statistical report of the state's Administrative Office of the Courts. In fiscal year 2001, even though fewer cases were disposed of in our courts than in the previous year, damages awarded statewide were more than $94 million. This represented an increase of more than $51 million over the previous year. The total was the largest since the courts began reporting these statistics. According to the same report, the average award for fiscal year 2001 was $209,284, up $95,064 from the previous year, the largest average since awards have been reported.
>
> Senator Frist, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population but at a time when health care reimbursements are shrinking, and professional inability costs are dramatically increasing, doctors in Tennessee believe that the Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actural economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face. Reforms modeled after California's "MICRA" law make sense to me. California passed legislation in 1975 that helped solve a crisis in that state. It is my understanding that key provisions in California's civil justice reform included the following:
>
> $250,000 cap on non-economic damages;
> reasonable sliding scale for lawyers' contingency fees;
> collateral source payment offsets;
> periodic payment of future damages.
>
> I believe similar reforms on a national basis will go far toward alleviating the health care crisis now facing much of the country and will help avoid such a crisis from coming to pass in Tennessee.
>
> Thank you for your attention and concern regarding this important issue.
>
> Sincerely,
>
> STEVEN C. WILLIAMS,
> *President and Chief Executive Officer.*

Mr. FRIST. The State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.

So I think they don't have a huge incentive to go out and gouge the communities or patients. It is mutually owned by physicians throughout the State.

In the letter to me, I read further:

> Senator Frist, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population. But at a time when health care reimbursements are shrinking, and professional liability costs are dramatically increasing, doctors in Tennessee believe that Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actual economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face.

This letter was written by Steven C. Williams, president and CEO of the insurance company, but also representing 80 percent of the physicians in Tennessee, calling for sensible reform, for moderate reform, reform that does not go overboard. That is what the McConnell medical malpractice amendment indeed does.

What is most important is what is happening to patients. Patients are suffering under the current system. It is a runaway train. We all know it is a problem. We have seen it in Las Vegas at the trauma center. We see it in various States. We go in our physician's offices and hear it. The problem is getting worse. It is increasing in its impact and not getting better. That is why we call for action now.

The Tennessee Medical Association, in a letter dated July 24, 2002, to me:

> We have a storm brewing here in Tennessee. While the waves are not yet crashing in on us, as in many states, including our next-door-neighbor, Mississippi, it most certainly is coming. Over the last two years, medical malpractice insurance rates have gone up 32 percent.

Of additional concern is that in Tennessee there is a very clear trend of increasing awards in medical malpractice cases. This, we believe, is fueled in large part by a growing public perception and environment that likens the courtroom to a casino where there appears to be no limit.

That was Michael A. McAdoo, president, Tennessee Medical Association.

The medical liability premiums are skyrocketing. It is because the medical liability claims are exploding. It is because the awards are exploding. The problem is not limited to just the Northeast or the Southeast. But as you can see from this map, the medical liability crisis is all over the United States of America. It has to do with cost and access to care and physicians leaving their profession.

The response to what we do means we have to identify the underlying problem and not just worry around the edges or tinker around the edges. I mentioned earlier, an average jury award over a 5-year period jumped more than 70 percent on average. When more than half of all jury awards top $1 million, we have this field of defensive medicine. That means physicians in the emergency room that I was in two nights ago, attending to a patient, are going to err in going a little bit too far in terms of tests. Why? Because if that headache, which to your exam is just a routine frontal headache treatable by a doctor, if you do not get the CAT scan or MRI scan, the risk, although it is beyond the normal bounds of routine accepted medical practice, a physician, a nurse, or a hospital is going to err on getting the expensive tests, although in your clinical judgment and using the practiced guidelines out there today, you do not need the tests. But you will get that series of more expensive tests that unnecessary testing.

Again, the American people pay for it. Those costs are unnecessary. They are there because of the fear of skyrocketing lawsuits, numbers of lawsuits, awards themselves. No one wants to be in that category. The best protection is to get the range of tests, although you may think they are unnecessary.

What is the effect on the doctor? In 2001, physicians in many States saw their rates rise by 30 percent, and even more. That is just physicians, generally. If you look at the specialists, such as obstetricians or possibly neurosurgeons or neonatal specialists, malpractice insurance is rising by as much as 200 percent, and in some cases 300 percent.

In New York and in Florida, obstetricians—the ones who deliver babies—gynecologists, and surgeons pay more than $100,000 for $1 million in coverage. That $100,000 they pay comes out of their pocket initially, but for them to stay in business and continue what they do, they take that $100,000 and pass it on to the people who are listening to me, the people all across America. That is why this issue is so powerful today.

People for the first time realize one doctor out there, who took an oath to do no harm, to help patients, who trained 4 years in medical school, a year in internship, 5 years in surgical residency, 2 years in specialty training, and a year of fellowship, just to be able to help people, are having to pay

$100,000, not to help people, but to protect themselves. That is absurd.

Ultimately, for them to stay in business it gets passed all the way back through the system to that individual patient. It may come in taxes. It may come for those who do not have insurance, and pay retail, who do not have any insurance when the overall prices in health care go up. If you do not have insurance, you are in trouble today because the overall price of health care has skyrocketed. This is an area where through commonsense tort reform we can lower this escalating cost of health care across the board.

For annual premiums, some doctors in Florida and New York pay, again, above $100,000. That is one individual doctor. This is not a big corporation that pays this. It is not a big hospital paying it. These are individual doctors paying this money so they can fulfill that Hippocratic oath of doing no harm.

In Tennessee, which is not yet in the crisis mode, and is not considered to be in crisis, but it has problem signs today, the premiums rose 17.3 percent last year in 1 year. They will rise anywhere from 15 percent to 17 percent this year. What we need to do is ask why. Is there more malpractice today? Are physicians not as well trained today as they were a year ago, or 5 years ago, or 10 years ago? Are they not using the tests appropriately today in order to take care of patients?

If so, we need to debate that issue and look at it and look at the data that is out there.

No, I think the dynamics are because of frivolous lawsuits, because the personal injury trial lawyers have a huge incentive, a huge financial incentive for themselves in order to bring cases forward, which puts physicians in a position where it is easier to settle these cases rather than to spend a year or 2 years, if you have the insurance. So there is this huge settlement, even if you don't have malpractice, even if you know that you are absolutely innocent. It is easier to settle for $1 million or $2 million so you can go back to the practice of medicine.

The system is broken, and it is getting worse.

Can it be fixed? Yes. The McConnell amendment makes a first step there—intelligent, reasonable, balanced tort reform. It will help address it, but it will not solve the entire problem. It is not going to make it go away, but I can tell you, it will help patients because they will not have to be driven to the ranks of the uninsured; because that obstetrician, with whom they have the first baby and second baby, will not have left practice because of that malpractice insurance; because they will be able to see the neurosurgeon for their brain tumor in their region because he or she did not move from Texas to Wisconsin because of these exorbitant malpractice rates.

I mentioned earlier that today is different than 6 years ago when we last addressed it. It is in a lot of different ways because the problem is getting worse. Ask the physicians, ask the people in the hospitals who are working there every day. Read the newspaper, and you will see that every newspaper is going to address this in a direct way. I think we need to go back and look at hard data that is out there today, in terms of what certain States have done and been able to accomplish and what other States have tried, and learn from that.

In California there is what is called MICRA, which is the Medical Injury and Compensation Reform Act. It became law in the mid-1970s. It is a good example of what works. When you look at States, other big States, you see a lot of them are in trouble. You see New York City is in trouble. If you are in New York City, talk to the physicians, talk to the medical community, ask them what has happened in terms of these tort issues recently.

Look at Pennsylvania; it is in trouble. Look at Florida, look at Texas, where there is trouble. This is California in white, meaning they do not have a huge problem there. You do not hear it. I was in California this past weekend and probably talked to six or seven people in the medical profession at academic health care centers, and it is not No. 1 on their list for reform because they say it is not a big issue there.

Why? In the 1970s, California passed MICRA—Medical Injury and Compensation Reform Act. California doctors and patients have been spared much of the medical liability crisis that we see across the country today. I think it is a good surrogate measure, that California's premium, the premiums they are paying today, are among the lowest medical malpractice insurance premiums in the country. MICRA is the reason.

I have used this example of obstetricians and gynecologists, so I will keep going back to that. It is the reason that the obstetrician, the one who delivers babies in California, may pay about $40,000 for medical liability insurance where, if you took that same obstetrician—same training, same medical school, had done the same number of procedures, delivered the same number of babies—and you put them in, let's say Florida or let's say New Jersey, or you put them in New York, the premiums—here, say, $40,000 for that insurance—it will be above $100,000, maybe up as high as $150,000. The same person, same training, same number of babies, same Hippocratic Oath—"Do no harm"—here paying around $40,000; in these red States, paying upwards to $150,000.

My colleagues have to ask why, but more important, the American people have to ask why. Is there less malpractice in California? I don't think so. Better trained doctors in California? I don't think so. The reason goes back to the tort system, the liability system.

In other States it has been allowed to run out of control, and that is why this McConnell amendment comes in. Again, we have not really talked about all the things that are in the amendment. We will have the opportunity to do that. But that is why it is important to go back and look at what is in the amendment. It doesn't go very far. It doesn't go far enough for me or, I think, for most of my colleagues in the medical profession.

But why does MICRA work? Why does this doctor with the same training pay so much less than these other States?

Let's look at MICRA. What does MICRA do? This is not the McConnell amendment. I don't want to confuse the two, but it shows what commonsense reform in a State that was way ahead of the curve can accomplish. MICRA does limit attorney's contingency fees to a sliding fee scale. This allows the patient, when there is an award, to keep the money.

If it is malpractice and you are trying to compensate the patient, to have the lawyer walk away with 40 percent of the money doesn't make sense to me. I don't think it makes sense to the American people once they really understand that. With this limiting of how much the attorney can take out of what is sent home by the jury to the patient, by limiting that in some way, you have some element of control of this runaway train which is hurting patients.

It is pretty simple. In my mind it is simple. If you look at how much a lot of these personal injury trial lawyers make today, especially in the environment where we are looking a lot more at the corporate world, the numbers are incredible. Ask, if you take the top 50 personal injury trial lawyers in America, what is their take? What do they make? The incentive is there.

If you are in the field of law, you would like to say, I am out just to save the world and do good. But when you take 40 percent of the take after a multimillion malpractice injury—first of all, the patient doesn't get it. That is who it is really about—or that is who it is about in the medical profession. It needs to be about the patient. That is whom you take the oath to serve.

It is hard for me to understand how you could have the huge contingency fees today when you hear physicians are leaving, they are not taking care of patients, they are being forced to close down trauma centers.

MICRA places a statute of limitations on bringing a suit 1 year from discovery or 3 years. This is the California law. This ensures that a suit would be brought in a reasonable amount of time. It protects evidence, and it also keeps people from sort of searching in the bowels of a hospital or advertising for cases 5 years ago, or 20 years ago, or 30 years ago. Again, malpractice occurs at a certain point in time, and we need to punish it, and punish it hard. But to go out and stir up these cases so you can be paid for it, I think is inappropriate.

What MICRA does—and again this is not in the McConnell legislation, and this I hope will come back to the floor again and again and again until we fix it—MICRA, California law, caps future noneconomic damages at $250,000. These are not the economic damages. There is full compensation there. So, under MICRA, patients are fully compensated for their economic loss due to medical malpractice, and they are compensated for lost wages, and they are compensated for the medical care and the future costs of medical care.

I use California as an example because we have not talked about it on the floor of the Senate. We haven't talked about it in committee, because this whole issue has not been addressed. The bottom line is you can have reforms—which the majority of States do not have today, and that is the reason there is a role for this body to act—because the problem is well identified, and the problem is getting worse. The problem has not been adequately addressed by States—California and a handful of others have addressed it—so that we have an obligation to the patients.

The reforms in California have helped the patients. Injured patients receive a larger share of whatever award. If there is malpractice and there is an award, the patient can walk—hopefully, can walk—home with more of that award. In addition, these reforms have helped slow down the overall rising cost of medicine.

There is no question in my mind that physicians are practicing defensive medicine, which the physicians have to practice, and this drives up the overall cost of health care today.

We talk a lot about prescription drugs, about the importance of generics, about the importance of coverage within Medicare, and about having a competitive system—all of which we hope will actually slow down the skyrocketing costs of medical care today. Indeed, the cost of health care in California has been slowed by the slowing and the restraining of these out-of-control, skyrocketing, runaway train costs in liability that other States have.

Mr. EDWARDS. Mr. President, will the Senator yield for a time question?

Mr. FRIST. I would be happy to yield.

Mr. EDWARDS. Does the Senator have an idea how much more time he will take?

Mr. FRIST. Probably 5 minutes, and then I would be happy to yield the floor.

Madam President, how much time do we have on either side?

The PRESIDING OFFICER (Ms. STABENOW). Eighteen and one-half minutes.

Mr. FRIST. Madam President, let me take a couple of minutes, and then I would be happy to sit down and look forward to the opportunity to talk about all of this on Tuesday, which I believe is when we will come back to this.

The McConnell medical malpractice amendment does the following:

It limits punitive damages. It limits punitive damages to two times the sum of what are called compensatory damages. Again, this gets sort of technical. We talk about economic damages and noneconomic damages. It allows punitive damages in those cases where the award has been proven by clear evidence and by convincing evidence.

I mentioned attorney fees. I am critical of that because I don't understand in this day and time why personal injury trial lawyers walk away with so much money that has been awarded to the person who has been injured. But it does limit attorney fees.

The McConnell amendment places very modest limits on attorney's contingency fees and medical malpractice cases. Specifically, the amendment allows personal injury lawyers to collect 33 percent, or a third, of a $150,000 award, and about $25 percent of the award on all amounts above $150,000.

Again, that is pretty modest from my standpoint. The fact that an award to somebody who has been injured is $150,000, it was malpractice, and the fact that a trial lawyer will take away a third of that for their pocket, again, to me—that is what is in the amendment—that is an improvement over today. But, again, in the future I hope we come back and address that.

The statute of limitations—I mentioned California's law—the amendment requires that a medical malpractice complaint must be filed within 2 years of discovering the injury and the cause. Again, that is when it should be filed.

The McConnell amendment is modest. It identifies the problem. It gives us the opportunity to talk about the problem on both sides of the aisle. It does not include all of the measures I think are necessary to address this problem eventually. But it is a good first step in the right direction.

We have evidence that reasonable tort reform—and we can debate what reasonable tort reform is. I think, again, the McConnell amendment is the first step. It doesn't go quite far enough, but it is a good first step.

We know that by addressing this we are going to hold down health care costs which are skyrocketing. The premiums are going up 15 percent, 17 percent, and 20 percent—last year, this year and next year. That translates down to the patient. Those premiums are eventually going to be passed down to the patient. To my mind, there is no question but that we will put them in the ranks of the uninsured.

On the access issue, the McConnell amendment is a simple amendment. I am convinced. Ask your physician, if you have the opportunity over the weekend. I am absolutely convinced it will improve access when we know that access overall is deteriorating.

We need to look at Las Vegas, and we need to look at the many examples which are in newspapers all across the country of physicians leaving a specialty practice because of malpractice insurance, or leaving a State.

We have an opportunity to do something which protects patients and which improves their access and clearly stops the deteriorating access to quality care before this problem gets worse.

I urge support of this amendment and look forward to coming back to it over the next several days.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield myself such time as I may use.

Let me say, first, from the discussion that we have been having all over America, and on the floor of the Senate for the last few weeks about trying to reinsert some responsibility and accountability because of the fundamental notion we believe in this country that everybody—every person, every company, big business, small business, and everybody in America—should be responsible and accountable for what they do, one of the reasons we have had such a downslide in Wall Street lately is people have lost confidence in the responsibility of people who run some—I emphasize "some"—of the companies that have been on the front pages of the newspapers for the last several months. What they want us to do is reimpose some of that corporate responsibility. So we work very hard on that.

At a time when the focus is on trying to make sure we have real responsibility and real accountability in this country, the President yesterday went to my home State to do exactly the opposite. The President went to North Carolina to say: I am going to side with big insurance companies and against victims. I am going to say if a child who has been severely hurt as a result of bad care is trying to get some help for him and his family over a long period of time, I am going to put a limit on that. I am going to put a limit for a very simple reason: The big insurance companies of America will have to pay.

Unfortunately, there is a pattern with this administration. Every time they have a choice between the interests of average Americans, kids, families, and people who do not have lobbyists in Washington, DC, representing them, on the one hand, and on the other hand, the interests of big HMOs, big oil companies, big energy companies, the drug industry, the pharmaceutical drug industry, and big insurance industry in this case—whenever those interests come into conflict with the interests of ordinary Americans, this administration consistently sides with the big interests. They have done it on the Patients' Bill of Rights.

They have prevented us from having a real and meaningful Patients' Bill of Rights. While we try to protect families and patients, they side with the big HMOs. I think we are going to overcome it.

On preventing us from having a meaningful prescription drug benefit for senior citizens and doing something about the costs of prescription drugs in this country, on which the Presiding Officer has worked so hard, we know that is a fight between ordinary Americans and ordinary families who need these prescription drugs and the pharmaceutical industry. The President has stood with the big pharmaceutical industry.

On trying to do something about clean air in this country, the President and his administration have proposed weakening our clean air law—all in the interest of protecting his friends in the oil industry, in the energy industry, and against the interests of ordinary Americans.

So now he adds to that list, going to my home State of North Carolina, to say to the victims: I am going to make sure the big insurance companies of America are protected. At the end of the day, that is all this is about.

The proposal the President made is different from this amendment—which I will talk about in a minute—which is to impose a limit of $250,000 on some of the damages for children can be recovered against these big insurance companies.

For example, in the case of a child who may be born blind or crippled for life or a child who has to be taken care of by his or her parents every single day, 7 days a week, every day of the year for the rest of their lives, the President says: I am going to make sure the insurance companies don't have to pay what they are obligated to pay to that family, to that child.

It is wrong. It is no more complicated than that. And the children and the families, who have been the victims, know it is wrong.

The President held a roundtable yesterday in North Carolina on this subject. How many victims participated in that roundtable? How many people whose lives have been destroyed and who need the help that the insurance company is obligated to provide for them participated? Everybody else was well represented. What about the people who don't have lobbyists? What about the people who aren't represented here in Washington by lobbyists? The families, the kids who are hurt by all this, were they at the roundtable? Were their voices heard?

I invite the President to come back to North Carolina, and this time, instead of talking to these powerful interests, I hope he will sit down with regular folks who have been the victims and listen to what they have to say, listen to what their lives are like.

One of the phrases that was used in the administration proposal was: You have these families who have won the lottery.

Well, I can tell you what the parents of a child who was a victim said yesterday from North Carolina. I know these people because I represent them. The parents said: Our little girl was born, and because of the type of care she got, she couldn't see, she couldn't hear, she couldn't walk. Every day of her life—7 days a week, 24 hours a day—we took care of her. And we loved her so much. There is nothing we wouldn't have done for her. And then she died. And when we go to visit her at her grave, we don't feel much like we won the lottery.

These are the people whom these kinds of proposals affect. These are real people with real lives. We have to look at the consequences, even though they are not up here with powerful, fancy lobbyists representing them. They are the people we have to look out for. And they are the people who expect their President to look out for them. Unfortunately, he continues to stand with big insurance companies, with big pharmaceutical companies, with big HMOs. These people need his help. It is no more complicated than that.

Now, as to this amendment and the purpose of it, first, medical malpractice premiums constitute less than 1 percent of health care costs in this country. So think about the logic. The argument is, we are going to do something about health care costs in this country, and the way we are going to do it is to try to do something misguided—we are going to try to do something about medical malpractice premiums, which constitute about two-thirds of 1 percent of health care costs in this country.

First of all, it is the wrong place to start if you are going to do something about health care costs in this country. If you want to do something about health care costs, you ought to do what the Presiding Officer and I and so many of us have tried to do—bring the cost of prescription drugs under control in this country, because that will have a real effect on health care costs. They are a driving force in rising health care costs in this country.

This is minuscule by comparison. So, No. 1, it is a misguided effort in terms of what it is focused on. No. 2, it will not work because these kinds of proposals—the President's proposal yesterday in North Carolina, and this amendment, which is different—are proposals that impose limitations on recoveries for victims, for families, to try to get rid of some concepts in the law. They have been used in many places around the country. They do not work. They do not, in fact, have the kind of impact on insurance premiums that these people who are proposing them say they have.

If you look at medical malpractice premiums in this country, and you look at the States that have these provisions that impose limits on the families, and then you look at the States that do not have them, the costs of medical malpractice insurance—I am looking for the year 2001 for internal medicine, for general surgery, for obstetrics and gynecology—are virtually identical.

This all sounds logical. If you impose limits on what the victims and the families can recover, why does that not help bring the cost of the insurance down? Why does it not have an effect on premiums? Because logic would tell you it would because insurance companies have to pay less, theoretically. So as a result, why don't they lower the premiums? Because the insurance company premiums have nothing to do with this. That is the reason.

The insurance company takes the money that they receive in premiums, and they invest it. Where do they invest it? They invest it in that same stock market in which most of the people in America are invested.

You can look at every time they start raising premiums. They come to Washington and say: There is a crisis; we have to do something about this; this is a serious problem; we have these outrageous awards for children and families; we have to stop it. And the way to stop it is to cut off the rights of the victims. That is the way to stop it.

So why? Because they are not doing well in their investments. Every single time, when the stock market falls, and the insurance companies' money that is invested is not bringing back a good return—in fact, they are losing money—they raise premiums.

Who has to pay those higher premiums? The health care providers. They are just as much a victim of this as the kids and the families who are victims of the bad medical care. The insurance companies are the ones that are responsible. You can look at it. It is as sure as the Sun is going to come up tomorrow, if they are doing well on their investments, the premiums stay relatively stable. When they are not doing well on their investments, the premiums go up. That is what this is all about.

While these kinds of proposals are aimed at reducing the rights of victims—which is what they are—instead, what we ought to be doing is looking at what the big insurance companies are doing when they get unhappy with the results of their own investments. That is what drives this.

If you look at what has happened in these States—the Senator from Tennessee talked about California at great length. California has some of the most severe limitations in the country on what victims can recover—severe limitations. They have been in place a long time.

So let's look at what has happened in California.

Between 1991 and 2000, over that about 10 years—a little less than 10 years—the premiums in California went up more than the national premiums. Why? Why in the world, if they have got these serious limitations on recoveries—and they have been in place for years in California—why would their premiums go up? And why would they go up faster than in the rest of the country, many places which do not have these kinds of limitations? Because the rise in premiums, and what is happening in what insurance companies charge people around the country, is in direct relation to how they are doing in their own investments.

In some cases, it is an insurance company or the insurance industry that exists in a region, in some cases it is national, and in many cases, of course, it is connected to the international and the reinsurance markets, but it is clear as day that it is directly related to how they are doing in their investments in the stock market.

So this effort is misguided. Besides that, I do want to point out, though, that the Senators who are proposing this amendment to put limits on what victims can receive, even they are not willing to go as far as the administration is. The administration proposes a $250,000 limit on some damages for children, among others, who have a lifelong disability as a result of bad medical care.

This amendment does not make that proposal. They are not willing to go that far. They know that when you put a limit on those kinds of recoveries, on those kinds of damages, it is like a laser directed at the most severely injured, and usually the youngest, because young children who have severe injuries for life, which they and their parents are going to have to carry for the rest of their lives—and you are limiting them to $250,000 in those kinds of damages—$250,000—nobody in America thinks that makes sense. That is why that is not part, I suspect, of this proposal.

Instead, this proposal goes about it in a different kind of way. What this proposal suggests is a couple things: One, that we get rid of something called joint and several liability. Without going into too much detail about this, we believe in this country—and it has been the law of the land for many years—that if you have a victim, whether it is a victim of criminal conduct or bad medical care, or somebody who has behaved wrongly, and you have a victim, the victim should not be the one held responsible. If you have several people who caused it, they share the responsibility.

What this proposal says is, all right, somebody got hurt as a result of the bad behavior of a group of people. Always remember, you have an amount that has been lost by the victim. Let's say it is $100,000 that has been lost by the victim. If that money has been lost, it is shared among the defendants. What we have always said in America is, as part of our law, the victim should never be the one held responsible for that loss. The loss doesn't go away. The loss is always there; the damages are always there.

This proposal says, if you have five people who are responsible, then among those five people, none of them can be required to pay more than whatever a jury determines is their percentage responsibility. But remember, these are all wrongdoers. So on one side of the equation you have a child who is innocent. On the other side of the equation you have the group of wrongdoers. The amount that has been lost does not change. Somebody has to be responsible for that. So are we going to say that the wrongdoers are responsible or are we going to shift some of that responsibility to the innocent victim?

That is what this proposal does. It says we are going to get rid of what is called joint and several liability, which means you can collect against any one or all of the wrongdoers, and says instead, if there is a wrongdoer you can't get to, for whatever reason, that part of the responsibility goes back to the victim. It violates what we believe in this country. It violates our fundamental notion of responsibility and accountability that the people who ought to be held accountable for they are the people who did wrong, not the innocent victim. That is what is wrong with this specific proposal.

There are other proposals. The next proposal says if there is an award of something called punitive damages, then half of that money will go to the Government. Now, let's talk about that in a real case. Let's explain what the effect of that is.

To get punitive damages, the conduct has to be either criminal or very close to criminal. That is what is required in order for punitive damages to be awarded. So let's say you have a teenage girl who is the victim of this kind of criminal conduct. The jury awards these damages to that young girl. This is what this amendment says to that victim of essentially criminal conduct: We are going to impose a 50 percent tax on you. That is what we are going to do. We are going to say to the victim of this conduct: There is a 50 percent tax on the damages that a jury, after hearing the whole case, has decided you are entitled to, 50 percent. That is going to go to the Government.

Is that the signal we want to send as a Congress, as the U.S. Senate? Do we want to say to the American people that we as a body want to impose a 50 percent tax on a child who has been the victim of what is essentially criminal conduct? This is crazy. It doesn't make any sense. It also violates our basic notions of fairness and responsibility and accountability.

We have talked a great deal on the floor about doing things about the victims of criminal conduct. This essentially falls in the same category. It makes no sense for the government to impose a 50 percent tax on a child who has been the victim of what amounts to criminal conduct.

These provisions—and there are others—are wrong: getting rid of what is called joint and several liability, which means the wrongdoers don't necessarily have to pay for all of what has happened, while some of it gets shifted to the victim. That is wrong.

Second, to say we are going to impose a 50 percent tax on a victim, a child who has been essentially the victim of criminal conduct, that is wrong.

More important than all of that, this whole effort is misguided. If what we want to do is do something about health care costs, we should not focus on what is well less than 1 percent of health care costs. We ought to focus on the things that really make a difference, such as the rising cost of prescription drugs.

More importantly, the people who need us to look out for them are the very people that this amendment is aimed at—the kids, the families, the victims. We need to stand up for them. They need us to be willing to stand up for them no matter who is outside the floor of the Senate representing the most powerful interests in America.

No matter how many lobbyists the insurance industry has, no matter how many lobbyists the HMOs have, the big energy companies, the big oil companies, who is going to stand up for these kids and these families? If they don't have us to stand up for them, they have nobody.

On all of these fronts, whether we are talking about doing something about the high cost of prescription drugs for people, whether we are talking about kids and families who are the victims of bad medical care, whether we are talking about trying to protect our air for our children and for our families, on all these fronts, we have to stand up for them. The people who voted for us and sent us to the Congress are counting on us because they don't have lobbyists up there. They have nobody here outside the halls of Congress representing them. They count on us to stand up for them.

As we go through these fights, we will stand up for them. This is one of them.

How much time do we have remaining?

The PRESIDING OFFICER. Forty-five and a half minutes.

Mr. EDWARDS. Madam President, I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the Senator from North Carolina leaves, I would like to ask him a question or two. I am sorry I was not able to hear all of his remarks. Having tried a few cases in my day, one of the concerns I have about this tort debate is the fact that the insurance industry is the only one that I know of, other than baseball, that can sit down in a restaurant in sight of everybody or in some dark room, wherever they want, and knowingly and openly conspire to set prices. There is nothing wrong with that. That is because of the McCarran-Ferguson law passed during the depths of the Depression. They can do this.

Let me say to my friend, to show how unnecessary the debate is here in the Senate, first of all, this is something the States should be doing, as is happening in Nevada.

This coming Monday, the Nevada State legislature is convening in a special session to deal with medical malpractice. I may not agree with what the State legislature does or doesn't do, but that is where this should be settled.

The State of Nevada is different than the State of North Carolina. We have all kinds of different problems with our torts than the Senator does.

I have two questions for my friend. First of all, do you think it would be a good idea for the Congress, after some 70 years, to take a look at McCarran-Ferguson to find out if insurance companies should be exempt from fixing prices, be exempt from the Sherman Antitrust Act? That is my first question.

The second question is, don't you think that tort liability, whether it is medical devices, medical malpractice, or products liability, should be settled by State legislatures?

Mr. EDWARDS. The Senator asked two very good questions. First, I think it is a terrific idea for us to look at the insurance industry, its practices in general, and what effect McCarran-Ferguson has on those practices. The Senator describes a large part of the problem.

The Senator knows as well as I do, you can't move in Washington without bumping into some lobbyist representing the insurance industry. They are so well heard and so well represented. I think it is a very good idea.

As to the second question, we have differences between North Carolina, my State, and the State of Nevada, and differences between us and California. These are the kinds of issues that ought to be resolved at the State level. We have always believed that. There is a little bit of an inconsistency for the administration that normally says these are matters that ought to be left to the States, we trust the States to make these decisions; but in the case where they want to do something on behalf of the insurance industry, which is what this is, they want to take it away from the States; they want to do it at the national level.

What has historically been done in this area is the way it should be done, which is these are matters about State courts, how State courts handle these kinds of cases. They are in touch with it. They know what is happening in their individual States, what the problems are, and they can address them in a responsible and equitable way.

I thank the Senator for his questions.

We reserve the remainder of our time, Madam President.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. REID). In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the quorum call that will shortly be called for be charged equally against both sides for the time remaining.

Without objection, it is so ordered.

I suggest the absence of a quorum, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

The PRESIDING OFFICER. The Chair would inform the Senator that it is the Chair's understanding there is running time off of the allocated time on this amendment. I suggest to the Senator that he may want to use the time that has been allocated to his side on the amendment.

Mr. BENNETT. Mr. President, I ask unanimous consent that that be the case, that I be allowed to speak with the time being charged.

The PRESIDING OFFICER. The Senator will be recognized and the time remaining on the amendment will be charged to his side of the aisle, which is 6½ minutes.

Mr. BENNETT. May I inquire, Mr. President, if the time would be running even if we were in a quorum call?

Mr. SARBANES. Yes, it would.

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed for the next 6½ minutes, with the time charged, as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

STOCK MARKET VOLATILITY

Mr. BENNETT. Mr. President, I have been reading the popular press, as have most of us. As we watched the gyrations that occur in the stock market at the moment, I have been interested at the way people in the press have been portraying what has been happening.

We have been told in the last few weeks that the market went down because President Bush's speech was not tough enough when he spoke to Wall Street. We have been told that the market went up because Chairman Greenspan's presentation to the Banking Committee was encouraging. We have been told that the market went down because the Banking Committee's bill on corporate governance was too tough and was frightening people. Then we were told that the market went up dramatically because the same bill was passed and people were reassured.

The consequence of all of this is to demonstrate to me that the popular press does not have a clue as to why the market does what it does. They do not understand market forces, and they are looking for reasons with little or nothing to do with what happens in the market.

I will make a few comments about the market and what it is we might really do in Congress if we want to have an impact on the market and the economy.

In the short-term, there are two factors that we know about investors in the stock market. No. 1, they hate uncertainty. They hate a situation where they do not know what is going on. This is one of the reasons why they reacted to the recent scandals with respect to accounting: They did not have the certainty that they could depend on the numbers.

Now, as they are beginning to sort through some of the information we have, they are beginning to feel a slight increase in certainty in their reaction to the numbers. That is showing up in some of the stabilization in the market. It has nothing to do with what kind of a speech the President gives or how eloquent we are in the Senate.

No. 2, the market has a herd mentality in the short-term. If everyone is selling, we ought to sell. That is the reaction in many brokerage houses. There are those who say: We are contrarians; if everyone is selling, we are going to buy; we are out of the herd mentality. But they are in a herd mentality among the contrarians.

So there is no careful analysis of what is going on but a flight from uncertainty and a herd mentality, both of which rule the market in the short-term.

In the long term, however, which is what really matters, there are also two factors in the market we must pay attention to. No. 1, in the long term, the market is self-correcting. Errors of judgment that are made on one side of a trade are compensated for by intelligent decisions on the other side of the trade. One brokerage house or one fund manager who overreacts and makes a serious mistake is offset by another fund manager who serendipitously makes the right decision. Over time, the markets are self-corrected so that the frantic headlines we see in Time Magazine or on the front pages of the New York Times, the market this or the market that, on the basis of the President's speech or the Congress's actions, over time they have no relevance to reality whatever. The market over time is self-correcting, goes in the right direction, and rewards people who do the right thing and punishes people who do the wrong thing.

Second, over time, the market depends on fundamentals. There are periods of time when we have froth. There are periods that I call "tulip time"—remembering the tulip mania of the Netherlands. Over time, these periods of froth are squeezed out, and the market makes its decision on fundamentals.

I say to my friends in the popular press who are trying to sell air time or newspapers: Stop trying to frighten the American people one way or the other. Come back to an understanding that fundamentals in the economy are the things that really matter—not speeches by the President, not actions necessarily by the Congress.

I think we had to act on the corporate governance area, but we didn't drive the market up or down by the action that we took. We added to the question of fundamentals.

How well the Sarbanes-Oxley bill works will play itself out in the fundamentals. If it works in a solidly fundamental way, it will benefit the markets. If it turns out it has flaws, it will hurt the market. But the speeches we imagine as we pass the bill have little or no impact.

One final comment. If we were serious about doing something to change the culture in corporate America, we ought to consider removing taxation on dividends. We have had a lot of conversation about options and managing earnings. If dividends become a reason why people buy stocks, as they once were, that would change the nature of corporate governance fairly fundamentally.

If a CEO knew his stock price would go up if his dividend were increased and if his investors knew if they get an increase in dividends it would not be eaten up in taxes, there would be a change in the corporate boardrooms of this country that would be salutary.

I don't have the time to go into this, but at some future time I will explore it. I raised this with Chairman Greenspan when he testified before the Banking Committee and asked him about the propriety of removing taxation from dividends. That was the beginning of a conversation that I want to have over time.

As we go through the experience of the present economic difficulties and the gyrations of the market, it is time to reflect on fundamental things we can do that will change the nature of the corporate culture. Addressing stock options and expensing stock options is something we can talk about. Dealing with corporate compensation is something we can talk about,

Back to my earlier point. Over time, the market responds to fundamentals, and, over time, we ought to look at some fundamental changes. That means we have to look at the tax laws. There is nothing that government does that affects corporate activity more than the Tax Code. That is where we ought to look for serious cultural changes.

I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I ask to speak on another subject.

The PRESIDING OFFICER. The time would be charged against the time remaining on this side for debate on the amendment. There are 32 minutes remaining. I suggest the Senator speak as in morning business but we continue to charge the time against the time remaining on the pending amendment.

Mr. CORZINE. I ask unanimous consent to speak in morning business and that the time I use be charged against the time allocated for debate on the amendment. I expect to use up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SOCIAL SECURITY

Mr. CORZINE. Mr. President, I bring up a subject that I have been speaking about frequently. That is our Social Security system, one that I believe the American people deserve to have a debate about before the election in November.

There have been many attempts to put off this debate until after the election so we can decide policy that will truly impact the American people for many, many years and decades to come. It is extremely disappointing we have had a hard time engaging in that debate. This week we actually made some progress, at least with regard to debate, not necessarily with regard to the content of the debate.

I express my great disappointment and, frankly, my utter amazement about comments made this past week by the President's press secretary, Mr. Ari Fleischer, with respect to the privatization of Social Security. I will read the beginning of an article from the Washington Post on Thursday on the press secretary's remarks, and I will ask unanimous consent to have this article printed in the RECORD.

The article is titled: "Bush Continues to Back Privatized Social Security."

It reads:

> The White House yesterday stood firmly behind President Bush's plan for workers to divert some of their social security payroll taxes into the stock market, despite the dramatic drops suffered in recent months.

Basically, for the past 2½ years.

> White House Press Secretary Ari Fleischer took a swing at the existing Social Security Program, calling it "dangerous" to let the people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

Let me repeat:

> . . . calling it "dangerous" to let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

Often we hear people talking about trying to scare seniors and all kinds of hyperbolic commentary about Social Security, but this tops it.

Yesterday, the Congress, under your leadership, took the leadership with regard to corporate reform to help make sure corporate America, the Nation's accounting profession, those who are responsible for managing corporate America, are more responsible. But after reading Mr. Fleischer's remarks, I think we should consider a similar initiative to make the administration's statements on Social Security equally responsible.

It is inconceivable that we would be talking to the American people in terms that, under current projections, they will never receive their benefits.

Let me take a moment to review where things stand on this issue of Social Security, which I do believe truly needs a full debate—maybe not in context that Mr. Fleischer is talking about, but we do need a debate in front of the election.

Last December, President Bush's Social Security Commission proposed plans to privatize Social Security that would require deep cuts in guaranteed benefits—not eliminate, deep cuts. For workers now in their twenties, those cuts would exceed 25 percent. From younger workers and future generations, those cuts could be much deeper, up to and beyond 45 percent.

Unfairly, and in my view inappropriately, these cuts would apply to everyone, even those who choose not to risk their Social Security benefits in privatized accounts. For those who do participate in privatized accounts, the cuts in their guaranteed benefits would even be larger than those I just mentioned.

Incredibly, for the disabled and for surviving children and family members, the cuts in their benefits would be especially disastrous, more extreme than the numbers that are cited for retirees.

These deep cuts would undermine the fundamental purpose of Social Security, which is about providing a basic level of security to those who have worked hard, contributed to our Nation, paid into the Social Security system, and they did it in good faith that the system would be available, and those resources would be available for their retirement. Social Security promises Americans a basic level of security on which they can count. It is the bedrock of a social insurance program that our Nation overwhelmingly supports, has for generations—70 years—and that retirees can depend on for a rock solid guarantee regardless of what the stock market does or what asset markets of all kinds do, regardless of inflation and regardless of one's lifespan. Social Security will be there and that fundamental guarantee is what the program is all about.

By contrast, privatizing Social Security would shred, would break that guarantee, and in my view we must not let that happen. It is one of the most important issues our Nation should be debating as we face this election this fall. The lines are very clearly drawn. Mr. Fleischer suggested they stand firm in their belief that the privatization of Social Security is the direction we should take.

The huge volatility in the stock market over the past several months should make clear to all Americans that equity investments by their nature cannot offer the same security that Social Security provides. Being an old market hand, markets go up, they go down, they go sideways. They are volatile through time. Sometimes they have serious erosions in value.

In the past 2½ years, stocks have lost nearly $8 trillion in value. The S&P index has declined by about 45 percent. This year alone, stocks have lost close to $3 trillion. That translates to real undermining of retirement security for those who were dependent on it, primarily focused on a 401(k) in the stock market. Many of those losses have been suffered in our pension systems. They have been suffered in IRAs, 401(k)s, personal savings accounts. Those have truly undermined the security that one might draw from them.

But through all of that, Social Security stands firm. The guaranteed benefits are in place. One doesn't have to wonder whether those resources for one's retirement security are going to be available. Basic, critical benefits will be there for the beneficiaries, regardless of the state of the stock market.

In light of that dramatic volatility, I had hoped that President Bush would reconsider his support for privatizing Social Security. As I said, Mr. Fleischer was crystal clear. The President's position had not changed.

For me, this is extremely disappointing, and I certainly call on the President to rethink his position. On these matters of great national import—whether it was the corporate reform activity that we had a debate about for 3 or 4 months, leading up to yesterday's successful passage of corporate reform; whether it is with regard to the fiscal policy that has seen us move from substantial surpluses, 3 years of surpluses into substantial deficit; and now, on Social Security—we see this continual sense of inflexibility.

Leadership is about thoughtful respect for the facts, changing realities that might require a change in one's position. I hope the President will consider that in the context of Social Security, taking into account the kind of market volatility we have seen, taking into consideration the kind of risk that might be brought to bear on those who have had their investments in the stock market over long periods of time.

Having said that, my concern about Mr. Fleischer's statement Wednesday goes beyond his reaffirmation of this administration's continuing support for privatizing Social Security. He went much further. Let me just read again from the story I cited from the Washington Post. Mr. Fleischer claimed that Social Security was "going bankrupt," and that it was dangerous to:

> . . . let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

"Going bankrupt," if that is not scare language, I can't imagine how one could otherwise categorize it.

This statement is simply outrageous. It is simply outrageous to suggest that people now paying into the system will never receive a Social Security benefit. It is not just misleading, it is absolutely factually wrong. I am afraid it is part of a concerted effort by those advocates of privatization to scare Americans, especially younger Americans, into believing that the only way they are ever going to get a retirement benefit out of Social Security is to invest it in personal accounts, to invest it in privatized accounts, to invest it in the stock market.

I am not against investing private funds beyond Social Security in all kinds of assets. But we are talking about a guaranteed benefit for all of Americans. In the 1930s, before we had Social Security, or before 1930, almost 50 percent of senior Americans lived in poverty. Because of the benefit of Social Security, now we are down to about 10 percent. It is a fundamental, solid program. People know that our Government has created a situation where they can have security in their retirement. It is a sacred trust with the American people. It is based on a promise that if you work hard and contribute to your country, you will enjoy a very basic level of security in retirement.

By the way, this is not exactly a princely sum that people get out of Social Security. I wish we could make it better.

Last year, the average retiree benefit was about $10,000—not exactly what some of the salaries of big corporate executives are about—and about $9,000 for women. That is not exactly a princely sum, as I suggested, in my part of the country. In New Jersey, the average rental payment for an individual is about $1,200 a month. I don't think $10,000 matches up with what you even have to pay for rent in many parts of the country. It is not exactly as if our Social Security system is providing excessive amounts of resources for individuals in their retirement. But it does provide that bedrock safety.

Unfortunately, I guess there are those who seem to think $10,000 is too much. They want to break Social Security's promise to seniors in the future by cutting those benefits by 25 percent, or 45 percent. Those are big numbers. That is hard to put together against the cost of retirement for most Americans.

One way they justify such claims is by arguing that the current system will leave today's workers high and dry. We heard Mr. Fleischer's remarks. They seem to be hoping that will be a self-fulfilling prophecy, that somehow or another they can scare people into believing we ought to undermine Social Security. I stand here today quite confident that folks on this side of the aisle, if we have anything to say on the matter, are not going to let that happen.

That is why we need to have this debate about Social Security privatization before people go to the polls this November. It is one of those defining issues for the American people to express themselves about. It is very clear: Do you want privatization of Social Security that puts the responsibility and the risk on the shoulders of Americans or do you want a guaranteed system that provides benefits if you have paid into that system when you retire? It is very clear, it is not a complicated concept—guaranteed benefits versus risk.

For those concerned about the future of Social Security, let me remind my colleagues that Social Security benefits are established in the United

States Code and represent a legal commitment—I think we call it an entitlement—by the Federal Government and with the full faith and credit of the United States.

Unlike many other programs, Social Security is not subject to a yearly appropriations process. The entitlement and benefit is not dependent on future congressional action. Mr. Fleischer is just flat out wrong.

As a purely legal matter, this entitlement would remain a binding obligation of the Government even if Congress were to allow the Social Security trust fund to become insolvent. However, as a practical matter, the point is moot. First, the nonpartisan actuaries at the Social Security Administration project that the trust fund will be fully solvent for 40 years; that is, 2041. After that, there still would be enough funding for three-quarters of the benefits to the actuarial life on which they are making the calculations.

But there is nothing in the law to prohibit Congress from replenishing the funds or changing some of the terms and conditions. We can do a number of things to establish the security of that trust fund.

We ought to start by balancing our budget so we are not spending the Social Security trust fund on everything under the Sun other than for what it is intended. But we could take actions here on the floor of the Senate with the Congress and the President working together to flush that up. As a matter of fact, we have a legal obligation to do that.

I think it is absolutely essential that Mr. Fleischer review the context in which he says we are going to have a bankruptcy because we have written into law that that is not going to happen. I am confident that long before 2041, the Congress and the White House will come together in a bipartisan way, as they have in history in different periods of time, move beyond privatization proposals which would actually worsen the Social Security financial system, and work together to solve the program's long-term funding needs. It can be done. It is not beyond the realm of a lot of reasonable people. We ought to talk to the American public about that.

But the reality is that privatization is not the direction that is going to provide the kind of security that I think most Americans are looking for in their retirement.

I think we ought to get away from giving blatantly false and misleading arguments and scaring people about the solvency of Social Security, as Mr. Fleischer did on Wednesday. I think we need to stop the scare tactics for young people and talk about real solutions for a real problem, that I think can be addressed if we are thoughtful, in the way we have addressed a number of issues in the Senate.

I conclude by again urging the Bush administration to reconsider their position on privatization, particularly in light of the dramatic events of recent weeks. Just as September 11 led to fundamental changes in Americans' perceptions about the risks of terrorism, I think the recent volatility of this market has captured the reality of what markets can provide as far as undermining security is concerned, and we have developed a much greater appreciation as a nation about the uncertainties of the market. I hope the Bush administration will face up to that reality and readjust its attitude and its views on its policies accordingly.

Mr. President, I ask unanimous consent the article to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 25, 2002]

BUSH CONTINUES TO BACK PRIVATIZED SOCIAL SECURITY

(By Amy Goldstein)

The White House yesterday stood firmly behind President Bush's plan for workers to divert some of their Social Security payroll taxes into the stock market, despite the dramatic drops Wall Street has suffered in recent months.

White House press secretary Ari Fleischer took a swing at the existing Social Security program, calling it "dangerous" to "let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive."

Fleischer made clear that Bush continues to favor permitting Americans to take a portion of the taxes they ordinarily contribute to Social Security trust fund and invest it on their own. "That would include markets," Fleischer said. "Nothing has changed his views about allowing younger workers to have those options."

However, Fleischer recalibrated his sales pitch for private retirement accounts, deemphasizing earlier arguments that such investments would generate more retirement savings through higher rates of return. Instead, he said that the current system is "going bankrupt" and that the government should grant people more control over their money. He used the word "options" a dozen times.

The White House's reminder that Bush wants to overhaul Social Security comes as the administration is redoubling its efforts to draw attention to strong points in the economy. The remarks about the retirement system, on a day when the stock market rose after nine weeks of historic declines, typify an administration that has prized consistency in its policy positions, rather than shifting with changed circumstances.

Bush's position on Social Security was a major tenet of his 2000 campaign. Last year, he assigned a commission to recommend such a system, and the panel responded in December with three proposals. Each would require at least $2 trillion to convert to the new approach, the commission found. It also concluded that the program, destined to face enormous economic strains by the middle of the next decade as the baby boom generation retires, will require reductions in benefits, money from elsewhere in the federal budget—or both.

For now, the White House essentially is speaking into a legislative vacuum. Republicans, fearing that the volatile issue could prove damaging in the elections this fall, persuaded Bush last winter that Congress should not consider any Social Security reforms until 2003. Now some in the party are suggesting that debate should be deferred until after the 2004 presidential election.

House Republicans have distanced themselves from Bush's ideas—at least rhetorically—by passing a bill that promised not to "privatize" the retirement system, although many in the party still favor what they now call "individual investments." House Democrats are trying to force a vote on the president's proposal, believing that a debate may prove politically advantageous during a season of investment losses and corporate scandals.

In the absence of legislation, the most ardent proponents of individual accounts continue to press their cause. This week, the Cato Institute, a libertarian think tank, issued a poll it sponsored suggesting that two-thirds of voters support that arrangement. Andrew Biggs, who works on Social Security at Cato and was a staff member of the White House commission, said the findings are striking because the survey was conducted during an interval earlier this month when the stock market fell 700 points. "Nobody can claim we had the environment stacked in our favor,' he said.

A Washington Post-ABC News poll this month found that about half the public supports investing some of their Social Security contributions in the stock market, significantly less than two years ago, but about the same proportion as last year.

Democrats and other opponents of the change have been raising the issue particularly in congressional campaigns. "There is a link between the rising crisis of confidence in corporate America and the scheme to privatize Social Security and cut Social Security benefits as Republicans are still seeking to do," House Minority Leader Richard A. Gephardt (D-Mo.) said this month.

Mr. CORZINE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORZINE). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. SARBANES. Mr. President, I ask unanimous consent to be able to proceed as if in morning business, with the time to be charged against the time that was allocated for debate on the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

SOCIAL SECURITY

Mr. SARBANES. Mr. President, I want to take the floor for a moment or two to commend the able Senator from New Jersey for the statement that was just made about Social Security privatization, and for focusing on this absolutely outrageous statement made by the White House Press Secretary earlier this week. To terrify people with that kind of statement is absolutely irresponsible. I think it is very important that be put in the RECORD.

I thank the Senator from New Jersey for the analysis and focus he is bringing to this issue of privatizing Social Security. It is an extraordinarily important issue. I agree with the Senator that it ought to be fully debated.

The President and his advisers apparently have not abandoned their bad idea of privatizing Social Security. If that is the case, then we need to lay out in front of the country exactly what is involved. The biggest thing involved, in my judgment, is the very point which the able Senator from New Jersey was making just a few moments ago; that is, the question of the guaranteed benefit.

Under the existing Social Security system, we seek to provide an assured benefit level in Social Security. So when someone stops working, and they start drawing their Social Security, they are told, you will get X amount of dollars per month in your Social Security check. In addition, of course, we also provide for a cost-of-living adjustment in that check.

So the beneficiary, in planning their retirement, and their standard of living under retirement, knows that each month the Social Security check will come, and it will be in this amount—a guaranteed benefit—and that they can count on that.

The privatization, first of all, undercuts the guaranteed benefit concept, and carries with it the risk that your monthly benefit check may be far less. It also carries the risk it may be far more. But who knows? Who knows?

Can you imagine the trauma of senior citizens all across the country if the amount of their Social Security check had been linked to the movement of the stock market in recent months? You would have some elderly person, for whom Social Security is their only source of income, reading stories about the drop in the Dow Jones and the Nasdaq and all the rest of it, thinking to themselves: How much is going to be in my next monthly check? How am I just going to get through the necessities of life if the amount of my Social Security check is going to drop, because of it now being tied to the movements in the market?

Any responsible discussion about this has been that you would have an add-on over and above Social Security that might then be placed in the market, so at least you would guarantee to the person sort of the minimum retirement upon which they could absolutely plan and absolutely count. And that is what needs to be laid out and debated.

The Senator from New Jersey has pinpointed that concern. I commend him for doing it. It is very important. People need to focus on this issue. We need to have this debate. We ought not to be in a situation where the White House Press Secretary can make the kind of statements he is making, seek to undercut confidence in the system, and then use that as an argument for some fundamental change which would jeopardize the guaranteed benefit aspect of the Social Security system which is an extremely important part of it.

I thank the Senator for the excellent job he is doing in bringing this issue to the attention of the Nation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

REVISED ALLOCATION TO SUBCOMMITTEES FOR FISCAL YEAR 2003

Mr. BYRD. Mr. President, on Thursday, June 27, the Senate Committee on Appropriations, by a unanimous rollcall vote of 29 to 0, approved the allocation to subcommittees for fiscal year 2003.

On Wednesday, July 24—just this past Wednesday—Congress adopted the conference report to accompany H.R. 4775, the fiscal year 2002 supplemental appropriations bill.

Today, I submit a revised allocation which has been modified, primarily, to conform outlays for each subcommittee with the outcome on the supplemental.

These revised allocations were prepared in consultation with my colleague, Senator STEVENS, the distinguished ranking member of the committee, who stands with me committed to presenting bills to the Senate consistent with the allocations.

Furthermore, we stand committed to oppose any amendments that would breach the allocations.

I ask unanimous consent that a table setting forth the revised allocation to subcommittees be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON APPROPRIATIONS—REVISED FY 2003 SUBCOMMITTEE ALLOCATIONS DISCRETIONARY SPENDING

[In millions of dollars]

Subcommittee	Budget authority	Outlays
Agriculture	17,980	18,273
Commerce	43,475	43,174
Defense	355,139	350,549
District of Columbia	517	586
Energy & Water	26,300	26,060
Foreign Operations	16,350	16,657
Interior	18,926	18,610
Labor-HHS-Education	134,132	126,373
Legislative Branch	3,413	3,467
Military Construction	10,622	10,127
Transportation	21,300	62,101
Treasury, General Gov't	18,501	18,231
VA. HUD	91,434	97,314
Deficiencies	10,000	12,369
Total	768,089	803,891

Revised on July 25, 2002.

Mr. BYRD. Mr. President, I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WYDEN). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. President, I ask unanimous consent that a section by section analysis and discussion of Title VIII, the Corporate and Criminal Fraud Accountability Act, which I authored, be printed in the RECORD.

VOTE EXPLANATION

Mr. BIDEN. Mr. President, I arrived in Washington this morning after the vote to invoke cloture on the nomination of Julia Smith Gibbons, to be United States Circuit Judge for the Sixth Circuit.

It was my intention to be here in time to vote in favor of this cloture motion.

Unfortunately, the catenary wire providing power for Amtrak was knocked down in Elkton, MD. This delayed the train on which I was traveling and regrettably prevented me from being present to vote.

THE FEDERALIST SOCIETY: SETTING THE RECORD STRAIGHT

Mr. HATCH. Mr. President, I also take this opportunity today to right a wrong. Over the past 2 years, members of The Federalist Society have been much maligned by some of my Democrat colleagues, no doubt because they see political advantage in doing so. The Federalist Society has even been presented as an "evil cabal" of conservative lawyers. Its members have been subjected to questions which remind one of the McCarthy hearings of the early 1950's. Detractors have painted a picture which is surreal, twisted and untrue.

The truth is that liberal orthodoxies reign rampant and often unchecked in a majority of this country's law schools and in the legal profession, and that the left is shocked that an association of constitutionalist lawyers would exist, much less include the notable legal minds it does.

During the mid-1990's, Professor James Lindgren of Northwestern University Law School conducted a survey of law school professors and came to the following conclusion. At the faculties of the top 100 law schools 80 percent of law professors were Democrats, or leaned left, and only 13 percent were Republicans, or leaned right. These liberal professors promulgate their ideology in and outside the classroom.

Anyone associated with America's campuses or law schools knows that nonliberal views are regularly stifled and those espousing those views are often publicly shunned and ridiculed. It was this environment of hostility to freedom of expression and the exchange of ideas in universities that set the stage for the formation of the Federalist Society. And given my Democrat colleagues' reaction to the Society, it appears to be fighting against liberal narrow-mindedness still.

In 1982, the Federalist Society was organized, not to foster any political agenda, but to encourage debate and public discourse on social and legal issues. Over the past 20 years the Federalist Society has accomplished just that. It has served to open the channels of discourse and debate in many of America's law schools.

The Federalist Society espouses no official dogma. Its members share acceptance of three universal ideas: 1. that government's essential purpose is the preservation of freedom; 2. that our Constitution embraces and requires separation of governmental powers; and 3. that judges should interpret the law, not write it.

For the vast majority of Americans, these are not controversial issues. Rather, they are basic Constitutional assertions that are essential to the survival of our republic. They are truths that have united Americans for more than two centuries. Recently we have seen the emergence of some groups that seek to undermine the third of these ideas—that judges should not write laws. These groups have attempted to use the judiciary to circumvent the democratic process and impose their minority views on the American people.

This judicial activism is a nefarious practice that seeks to undermine the principle of democratic rule. It results in an unelected oligarchy, government by a small elite. Judicial activism imposes the will of a small group of politicized lawyers upon the American people and undermines the work of the people's representatives.

Indeed, if the radical left is successful, if we continue to appoint judges that are committed to writing law and not interpreting it, than all of us can just go home. We can resign ourselves to live under the oligarchical rule of lawyers. I happen to know a few lawyers, and please trust me when I say, this is not a good idea.

Beyond acceptance to its three key ideas, freedom, separation of powers, and that judges should not write laws, it is challenging, if not impossible, to find consensus among Federalist Society members. Its members hold a wide array of differing views. They are so diverse that it is impossible to describe a Federalist Society philosophy.

The assertion that members are ideological carbon copies of each other is ludicrous. The Society revels in open, thoughtful, and rigorous debate on all issues. It rests on the premise that public policy and social issues should not be accepted as part of a party-line but rather warrant much thought and dialogue. Any organization that sponsors debate on issues of public importance, as opposed to self-serving indoctrination, is healthy for us all.

Now, how does the Federalist Society accomplish its goal? Not by lobbying Congress, writing amicus briefs, or issuing press releases. The Federalist Society seeks only to sponsor fair, serious, and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what it should be. The Society believes that debate is the best way to ensure that legal principles that have not been the subject of sufficient attention for the past several decades receive a fair hearing.

The Federalist Society's commitment to fair and open debate can be seen by a small sampling of some participants in its meetings and symposiums. They have included scores of liberals like Justices Ruth Bader Ginsburg and Stephen Bryer, Michael Dukakis, Barney Frank, Abner Mikva, Alan Dershowitz, Laurence Tribe, Steve Shapiro, Christopher Hitchins and Ralph Nader, just to name a few.

I would like to include for the RECORD a list of 60 participants in Federalist Society events that demonstrates the remarkable diversity of thought of Federalist Society events. One of them is Nadine Strossen, President of the ACLU, who has participated in Federalist Society functions regularly and constantly since its founding. She has praised its fundamental principle of individual liberty, its high-profile on law school campuses, and its intellectual diversity, noting that there is frequently strenuous disagreement among members about the role of the courts. Strossen has even said that she cannot draw any firm conclusion about a potential judicial nominee's views based on the fact that he is a Federalist Society member.

It seems to me that an organization that includes such a wide array of opinion serves this nation well and does not deserve the vilification it gets from the usual suspects.

There are many notable conservatives that also affiliate with the Federalist Society. But as the members of the Senate demonstrate, even amongst those that are often labeled "conservatives" there is a much disagreement on most social and political issues. Some often portray the Federalist Society as a tightly-knit, well-organized coalition of conservative lawyers who are united by their right-wing ideology. This is far from true. Allow me to illustrate further.

Two years ago the Washington Monthly published an article entitled "The Conservative Cabal That's Transforming American Law," which cited a 1999 decision by a panel of the D.C. Circuit's Court of Appeals as the "network's most far-reaching victory in recent years". The decision overturned some of the EPA's clean-air standards on the grounds that it was unconstitutional for Congress to delegate legislative authority to the executive branch. C. Boyden Gray, a former White House Counsel for the first President Bush and a member of the Federalist Society's Board of Visitors, filed an amicus brief making the winning argument.

However, this is not the smoking gun case that opponents of the Federalist Society would have us believe it to be to prove that it is part of the vast right wing conservative conspiracy. First, the case was overturned on appeal by the Supreme Court, in a decision written by Justice Antonin Scalia, a frequent participant in Federalist Society activities who was the faculty advisor to the organization when he taught at the University of Chicago.

Second, the Washington Monthly piece also attacked Boyden Gray as a water carrier for the Federalist Society for advancing Microsoft's effort against antitrust enforcement. Of course, Mr. Gray serves on the Society's Board of Visitors with Robert Bork, who has been Microsoft's chief intellectual adversary.

Not quite the vast right wing conspiracy hobgoblin some of my colleagues would have the American people believe in.

A close examination of the Federalist Society reveals not a tight-knit organization that demands ideological unity, but an association of lawyers, much like the early bar associations that first appeared in this country in the late 19th century, made up of individuals from across the political spectrum who are committed to the principles of freedom and the rule of law according to the Constitution. As a former co-chairman myself, I applaud that the President has sought out its members to fill the federal bench.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

60 DIVERSE PARTICIPANTS IN FEDERALIST SOCIETY EVENTS

SUPREME COURT JUSTICES

1. Justice Stephen Breyer
2. Justice Ruth Bader Ginsburg
3. Justice Anthony Kennedy
4. Justice Antonin Scalia
5. Justice Clarence Thomas

CABINET MEMBERS

6. Griffin Bell
7. Abner Mikva
8. Bernard Nussbaum
9. Zbigniew Brezinski
10. Alan Keyes

ELECTED

11. Barney Frank
12. Michael Dukakis
13. George Pataki
14. Eugene McCarthy
15. Charles Robb
16. Jim Wright
17. Mayor Willie Brown

JUDGES

18. Robert Bork
19. Guido Calabrasi
20. Richard Posner
21. Alex Kozinski
22. Pat Wald
23. Stephen Williams

LAW SCHOOL DEANS

24. Robert Clark—Harvard
25. Anthony Kronman—Yale
26. Paul Brest—Stanford
27. John Sexton—NYU
28. Geoffrey Stone—Chicago

LAW SCHOOL PROFESSORS

29. Alan Dershowitz—Harvard
30. Laurence Tribe—Harvard
31. Cass Sunstein—Chicago

INTEREST GROUPS

32. Nadine Strossen—President, ACLU
33. Steve Shapiro—General Counsel, ACLU
34. Ralph Nader—Public Citizen Litigation Group
35. Patricia Ireland—Fmr. President, NOW
36. Anthony Podesta—People for the American Way
37. Martha Barnett—Fmr. President, ABA
38. George Bushnell—Fmr. President, ABA
39. Robert Raven—Fmr. President, ABA
40. Talbot "Sandy" D'Alemberte—Fmr. President, ABA
41. Larry Gold—Assc. General Counsel, AFL–CIO
42. Damon Silvers—Assc. General Counsel, AFL–CIO
43. Nan Aron—Exec. Dir., Alliance for Justice
44. Richard Sincere—Pres., Gays and Lesbians for Individual Liberty
45. Michael Myers—NY Civil Rights Commission
46. Samuel Jordan—Fmr. Dir., Program to Abolish the Death Penalty—Amnesty Int'l
47. Marcia Greenburger—Co. Pres., National Women's Law Center
48. Victor Schwartz—Gen. Cnsl., American Tort Reform Assoc.
49. Linda Chavez—Pres., Center for Equal Opportunity
50. Ward Connerly—Founder/Chairman, American Civil Rights Initiative
51. Thomas Sowell—Hoover Institute
52. Michael Horowitz—Hudson Institute
53. Clint Bolick—VP, Institute for Justice

COLUMNISTS

54. Christopher Hitchins—The Nation
55. Michael Kinsley—Slate/The New Republic
56. Juan Williams—NPR/The Washington Post
57. George Will—ABC News
58. Bill Kristol—The Weekly Standard
59. Nat Hentoff—The Village Voice
60. Richard Cohen—The Washington Post

FURTHER EVIDENCE THAT ONE DAY IS NOT ENOUGH TIME

Mr. LEVIN. Mr. President, yesterday a report was released by the General Accounting Office, Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records. The report provides evidence that one day is simply not enough time for law enforcement agencies to complete thorough and accurate analysis of purchase records. Under current National Instant Criminal Background Check System regulations, records of allowed firearms sales can be retained for up to 90 days, after which the records must be destroyed. On July 6, 2001, the Department of Justice published proposed changes to the NICS regulations that would reduce the maximum retention period from 90 days to only one day.

Yesterday's GAO report found that during the first 6 months in which the 90-day retention policy was in effect, the Federal Bureau of Investigation used the records to launch 235 firearm-retrieval actions, an investigation and coordinated attempt to retrieve a firearm with state or local law enforcement assistance. Of the 235 firearm-retrieval actions, 228 or 97 percent could have not been initiated under the one-day record destruction policy. An additional 179 firearm-retrieval actions could have been initiated under the 90-day record retention policy, according to records, but the firearm had not yet been transferred to the buyer. The one-day destruction policy, according to the report, would make it difficult for the FBI to assist law enforcement agencies in gun-related investigations, and ultimately, compromise public safety. Internal Department of Justice memos further indicate that the FBI's 90-day retention policy is within the scope of the Brady Law.

The retention of NICS Background Check Records for a 90-day period of time is critical, and I am greatly concerned by the Attorney General's action. I support the "Use NICS in Terrorist Investigations Act" introduced by Senators KENNEDY and SCHUMER. This legislation would simply codify the 90-day period for law enforcement to retain and review NICS data. The GAO report provides further evidence that the Schumer-Kennedy bill is good policy. I urge my colleagues to support this common sense piece of gun-safety legislation.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred May 14, 1994 in National City, CA. A gay man was beaten by four men who yelled anti-gay slurs. The assailants, Juan Gonzales and Maico Amon, both 20, were charged in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CORRECTION OF THE RECORD REGARDING RESOURCES FOR MEDICARE PRESCRIPTION DRUGS AND TAX RELIEF

Mr. GRASSLEY. Mr. President, yesterday some on the other side attacked last year's bipartisan tax relief legislation. They were led by the distinguished Majority Leader, Senator TOM DASCHLE. As an example of these claims, I ask unanimous consent to place in the RECORD an article from yesterday's edition of Roll Call Daily.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Roll Call Daily, July 25, 2002]

DASCHLE BLAMES BUSH TAX CUT FOR FAILURE ON PRESCRIPTION DRUG REFORM

(By Polly Forster)

Senate Majority Leader Thomas Daschle (D-S.D.) expressed frustration with the chamber's failure to enact a sweeping Medicare prescription drug benefit and blamed President Bush's $1.35 trillion tax cut for "starving" the opportunity to pass substantial reform.

Daschle also expressed doubt that a conference committee will be able to work out the differences in the House and Senate versions of trade legislation before the House recesses this week.

Daschle charged that House Ways and Means Chairman Bill Thomas (R-Calif.) was possibly undermining a key component of the Senate trade bill by revisiting the details of the Trade Adjustment Assistance bill and thereby delaying a final result.

"It sounds like he's trying to undermine the TAA package," Daschle said. "If that's the case, we'll wait until September."

Legislation on prescription drug benefits appeared similarly in flux. Daschle said Democrats were forced to revise their priorities because last year's tax cut shrunk the possibilities available to them.

"We don't have the resources because, in large measure, the tax cut precludes it," Daschle said." Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost."

But a Senate GOP leadership aide dismissed the validity of that argument, saying that Democrats now find themselves in a corner and are "grasping at straws" to avoid the blame.

"Because Democrats stopped the bipartisan Finance Committee from doing its work, they've caused every possible drug proposal to fail in the Senate," said the GOP aid.

Since none of the proposals for drug benefit reform passed through the Finance Committee, all measures are subject to a 60-vote threshold.

Senate Finance Chairman Max Baucus (D-Mont.) has spent the last several days in meetings with key lawmakers from both sides in an effort to craft something most Senators could agree to.

Daschle said the goal of the talks is to find a proposal broad enough to win over at least 10 Republicans. "We only got 52" for a Democratic bill, he said, "and we need the other eight. That means we've got to scale back and to broaden our level of support."

Daschle said Democrats will not be offering any more proposals but instead will be looking to craft a bipartisan measure.

Baucus spokesman Michael Siegel said the Senator was looking at two approaches to the issue: using Medicare as the channel to deliver drug benefits and where unavailable using private companies, and also to extending a "catastrophic" coverage bill that was short of nine votes Wednesday.

Daschle said the Senate will stay on the issue as long as it takes, including the early part of September after the recess, until there is a result—possibly forestalling consideration of a bill to create the federal department of Homeland Security.

"It means our highest priority is to get the bill done and we don't do other things until we get it done," he said.

Daschle vowed an equal commitment to retaining the worker protection element in the trade package now in conference.

"We're in no hurry," he said. "It's more important to me to have a good package even if that means we have to wait until October."

A top Senate Democratic aide said negotiations broke down Thursday morning over the TAA element, which would provide health coverage for workers displaced by international trade.

Senate Democrats expected Thomas to concede ground on that part as the House was only just able to pass their bill on the floor.

The breakdown left at least one Senate Democratic leadership aide frustrated. "It's ridiculous for Thomas to be stuck on this because it's his chamber that needs to attract the votes to pass the bill, not the Senate," said the aide.

Mr. GRASSLEY. There is a very sophisticated, well-coordinated campaign on the part of the Democratic Leadership to derail last year's bipartisan tax relief. It seems that everything that ails us as a nation is laid at the feet of the tax cut. I'm sure that the next attack will be that tax relief causes the Decline of Western Civilization. Or, perhaps, the Democratic Leadership would twist a phrase from Justice Oliver Wendell Holmes and claim that "record high taxes are the price we must pay for a civilized society."

Many in the media agree with this concept and rarely, if ever, challenge the factual basis for these attacks on last year's tax cut bill. Well, let me tell my friends in the Democratic Leadership, I'm going to correct the record every time. It's fine to attack tax relief, if you must, on ideological grounds. If the Democratic Leadership thinks we need to maintain record levels of taxation and keep growing government. That's something on which we can disagree.

On facts, however. I'm going to correct the use of incorrect data. I'm also going to compare the record of the Democratic Leadership against the specific attack on the tax cut.

A couple days ago, I corrected the record on incorrect data used with respect to the scoring of permanent death tax relief. Today, I'm going to take the latest attack and compare it with the record of the Democratic Leadership.

The Roll Call Daily article is entitled "Daschle blames Bush Tax Cut for Failure on Prescription Drug Reform." According to the article, the Distinguished Majority Leader said and I quote:

> We don't have the resources, because, in large measure, the tax cut precludes it. Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost.

Now, I noticed this same point being made by others in the Democratic Leadership. I must say the Democratic Leadership spends a lot of time coordinating messages. They are very good at it. Perhaps, though, if less time were spent on perfecting partisan attacks on the President and Congressional Republicans, we might resolve more problems. After all, isn't that what we're paid to do? That is, do the People's business.

So, the charge is the tax cut ate the surplus and there's not enough money left for a Medicare prescription drug benefit. It's all the President's fault. It's the fault of the bipartisan budget resolution. Boy, do I get tired of hearing this stuff. It gets very old.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPARISON OF BUSH, DEMOCRATIC, AND SENATE PASSED BUDGETS

[Fiscal year 2002 through 2011]

	Bush budget	Democratic alternative	Senate passed
Project Surplus	5.6 T	5.6 T	5.6 T
• Social Security Trust Fund (for debt paydown)*	2.0 T	2.5 T	2.5 T
• Medicare Trust Fund (for debt paydown)*		0.4 T	**0.4 T
Projected Available Surplus	3.6 T	2.7 T	2.7 T
Tax Cuts	1.6 T	745 B	1.2 T
High Priority Needs	212 B	744 B	849 B
• Education	13 B	139 B	308 B
• Prescription Drugs	153 B	311 B	300 B
• Defense	62 B	100 B	69 B
• Agriculture	−1 B	88 B	58 B
• Health Coverage		80 B	36 B
• Enforcement	−48 B	18 B	−41 B
• Other	33 B	8 B	119 B
Strengthen Social Security:			
• Using Social Security Trust Fund Surplus	600 B		
• Using non-Social Security, Non-Medicare Surplus		750 B	
Interest	461 B	490 B	572 B
Unallocated	***845B		129 B

*Because these trust funds are not needed in short term to pay benefits, these amounts are used to pay down publicly-held debt.

**Senate passed GOP resolution raids Medicare Trust Fund in 2002, 2005, 2006, 2007.

***Includes $526 B from Medicare Trust Fund (OMB scoring).

Mr. GRASSLEY. Under that Democratic Alternative, "resources," that's the term Senator DASCHLE used, set aside for a Medicare prescription drug benefit were $311 billion. Under the bipartisan budget resolution, guess what, it's about the same number, $300 billion. That's right, both sides allocated basically the same resources, $311 billion versus $300 billion for Medicare improvements and a prescription drug benefit. So, the Democratic budget had prevailed, we'd basically be where we are today.

There's another part of the record we have to examine. It's last year's Democratic Alternative tax relief package. The Democratic alternative was supported by all members of the Democratic Leadership and all but three members of the Democratic Caucus. Well, guess what. All of those Senators voted for a $1.260 trillion tax cut. That's 93 percent of the cost of the bipartisan tax relief. So, apparently 7 percent is a big difference. It's a big enough difference for the Democratic Leadership to blame President Bush and the bipartisan group of Senators that supported the tax relief package.

I make this statement for one basic reason. The issues of budgeting, prescription drugs, and tax relief are important matters. Certainly everyone of us hears about these issues when we are back home. They are issues that our constituents expect us to resolve. Folks back home expect us to be intellectually honest in debating these important matters. When we debate these issues, we ought to be consistent in what we're saying.

TAKING OUR STAND AGAINST HIV/AIDS

Mr. FRIST. Mr. President, I spent the first 20 years of my career studying and working in medicine. I graduated from medical school in 1978. After that, I trained as a surgical resident for eight years. I then worked as a heart and lung transplant surgeon until I was elected to the United States Senate in 1994. During that time, HIV/AIDS went from a disease without a name to a global pandemic claiming nearly 20 million people infected.

It's hard to imagine an organism that cannot survive outside the human body can take such an immense toll on human life. But HIV/AIDS has done just that—already killing thirteen million people. Today more than 40 million people—including three million children—are infected with HIV/AIDS. HIV/AIDS is a plague of biblical proportions.

And it has only begun to wreak its destruction upon humanity. Though one person dies from AIDS every ten seconds, two people are infected with HIV in that same period of time. If we continue to fight HIV/AIDS in the future as we have in the past, it will kill 68 million people in the 45 most affected countries between 2000 and 2020. We are losing the battle against this disease

There is neither a cure nor a vaccine for HIV/AIDS. But we do have reliable and inexpensive means to test for it. Also, because we know how the disease is spread, we know how to prevent it from being spread. We even have treatments that can suppress the virus to almost undetectable levels and significantly reduce the risk of mothers infected with HIV/AIDS from passing the disease to their children.

We have many tools at our disposal to fight the spread of HIV/AIDS. But are we using those tools as effectively as possible? The gloomy statistics prove overwhelming that we are not. What we must do is focus on what is truly needed and what is proven to work and marshal resources towards those solutions. We have beaten deadly diseases on a global scale before; we can win the battle against HIV/AIDS too.

More than 70 percent of people infected with HIV/AIDS worldwide live in Sub-Saharan Africa. But the devastation of the disease—and its potential to devastate in the future—is by no means limited to Africa. HIV/AIDS is global and lapping against the shores of even the most advanced and developed nations in the world.

Asia and the Pacific are home to 6.6 million people infected with HIV/AIDS—including 1 million of the 5 million people infected last year. Infections are rising sharply—especially among the young and injecting drug users—in Russia and other Eastern European countries. And the Americas are not immune. Six percent of adults in Haiti and four percent of adults in the Bahamas are infected with HIV/AIDS.

I believe the United States must lead the global community in the battle against HIV/AIDS. As Sir Elton John said in testimony before a committee on which I serve in the United States Senate, "What America has done for its people has made America strong. What America has done for others has made America great." Perhaps in no better way can the United States show its greatness in the 21st century—and show its true selflessness to other nations—than leading a victorious effort to halt the spread of HIV/AIDS.

But solving a global problem requires global leadership. International organizations, national governments, faith-based organizations and the private sector must coordinate with each other and work together toward common goals. And, most importantly, we must make communities the focus of our efforts. Though global leadership must come from places like Washington, New York and Brussels, resources must be directed to where they are needed the most—to the men and women in the villages and clinics and schools fighting HIV/AIDS on the front lines.

Adequate funding is and will remain crucial to winning the battle against HIV/AIDS. But just as crucial as the amount of funding is how it is spent. Should we spend on programs that prevent or lower the rate of infection? Should we spend on treatments that may prolong the life of those who are already infected? Should we spend on the research and development of a vaccine? The answer is yes to all three questions.

We can only win the battle against HIV/AIDS with a balanced approach of prevention, care and treatment, and the research and development of an effective vaccine. HIV/AIDS has already infected tens of millions of people and will infect tens of millions more. We need to support proven strategies that will slow the spread of the virus and offer those already infected with the opportunity to live as normal lives as possible. And if our goal is to eradicate HIV/AIDS—and I believe that is an eminently achievable goal—then we must develop a highly effective vaccine.

But even with proven education programs or free access to anti-retroviral drugs or a vaccine that is 80 to 90 percent effective, our ability to slow the spread of HIV/AIDS and treat those already infected would be hampered. The infrastructure to battle HIV/AIDS in the most affected areas is limited at best. We need to train healthcare workers, help build adequate health facilities, and distribute basic lab and computer equipment to make significant and sustainable progress over the long-term.

To win the battle against HIV/AIDS, we must not only fight the disease itself, but also underlying conditions that contribute to its spread—poverty, starvation, civil unrest, limited access to healthcare, meager education systems and reemerging infectious diseases. Stronger societies, stronger economies and stronger democracies will facilitate a stronger response to HIV/AIDS and ensure a higher quality of life in the nations most affected by and most vulnerable to the disease and its continued spread.

And we can make significant progress without vast sums of money and burgeoning new programs. Take, for example, providing something as basic and essential as access to clean water. 300 million or 45 percent of people in Sub-Saharan Africa don't have access to clean water. And those who are fortunate enough to have access sometimes spend hours walking to and from a well or spring.

It costs only $1,000 to build a "spring box" that provides access to natural springs and protects against animal waste run-off and other elements that may cause or spread disease. 85 percent of the 10 million people who live in Uganda don't have access to a nearby supply of clean water. It would cost only $25 million to build enough "spring boxes" to provide most of the people living in rural Uganda with nearby access to clean water.

Providing access to clean water is just one of the many ways in which the global community can empower the people most affected by and most vulnerable to HIV/AIDS. In some cases, such efforts—like supporting democracy and encouraging free markets—may cost little or take a long time, but they will make a significant difference in the battle against HIV/AIDS and the quality of life of billions of people throughout the world.

We have defeated infectious diseases before—sometimes on an even larger scale. Smallpox, for example, killed 300 million people in the 20th century. And as late as the 1950's, it afflicted up to 50 million people per year. But by 1979 smallpox was officially eradicated thanks to an aggressive and concerted global effort.

What if we had not launched that effort in 1967? What if we had waited another 35 years? Smallpox likely would have infected 350 million and killed 40 million more people. That is a hefty price for inaction—a price that we should be grateful we did not pay then, and we should not want to pay now.

Right now we are losing the battle against HIV/AIDS. But that doesn't mean we can't win it in the end. Indeed, I believe we will ultimately eradicate HIV/AIDS. We have the tools to slow the spread of the disease and provide treatment to those already infected. And we have the scientific knowledge to develop an effective vaccine. But we need to focus our resources on what is truly needed and what is proven to work. And we need global leadership to meet a global challenge.

In 2020, when it is estimated that more than 85 million people will have died from HIV/AIDS, how will we look back upon this day? Will we have proven the experts right with inaction? Or will we have proven them wrong with initiative? I hope that we will be able to say that in the year 2002 we took our stand against HIV/AIDS and began to turn back what could have been, but never became the most deadly disease in the history of the world.

CBO ESTIMATE OF THE TAX SHELTER TRANSPARENCY ACT

Mr. BAUCUS. Mr. President, the Committee on Finance filed a legislative report on S. 2498, the Tax Shelter Transparency Act of June 28, 2002. At the time the report was filed, the Congressional Budget Office cost estimate was not available. The cost estimate has been finalized by the CBO and is attached for public review.

I ask unanimous consent that the enclosed cost estimate for S. 2498 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 2002.

Hon. MAX BAUCUS,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2498, the Tax Shelter Transparency Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Erin Whitaker and Annie Bartsch.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE–S. 2498

SUMMARY

S. 2498 would create new penalties and expand existing penalties that may be applied to taxpayers who fail to disclose certain types of information on their tax returns. In particular, the bill would allow the Department of the Treasury to impose penalties, on taxpayers who failed to report certain information for reportable transactions, modify the penalties for inaccurate returns if the inaccuracies had a significant tax avoidance purpose, and modify the definition of "substantial understatement" of tax for corporate taxpayers for purposes of imposing a penalty. It also would repeal the current rules regarding registration of tax shelters and instead require persons who assist with transactions in such shelters ("material advisors") to report certain information to the Secretary of the Treasury. The bill would impose a penalty on those material advisors who fail to file the information completely and accurately.

The Congressional Budge Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase governmental receipts by $17 million in 2002, by $601 million over the 2002–2007 period, and by about $1.5 billion over the 2002–2012 period. Since S. 2498 would affect receipts, pay-as-you-go procedures would apply.

JCT has determined that the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. JCT has determined that the provision of the bill relating to reportable transactions and tax shelters contain private-sector mandates, and that the cost of complying with these mandates would exceed the threshold established by UNRA ($115 million in 2002 adjusted annually for inflation) in 2005 and 2006.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table.

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
Changes in Revenues						
Estimated revenues	17	59	102	134	140	147

BASIS OF ESTIMATE

All estimates were provided by JCT. The provisions relating to reportable transactions and tax shelters would compose a significant portion of the effect on revenues if enacted. These provisions would increase revenues by $17 million in 2002, $547 million over the 2002–2007 period, and about $1.3 billion over the 2002–2012 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By fiscal year, in millions of dollars—										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in receipts	17	59	102	134	140	147	155	163	174	187	203
Changes in outlays	Not applicable										

IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

JCT has determined that the bill contains no intergovernmetnal mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

IMPACT ON THE PRIVATE SECTOR

JCT has determined that sections 101, 102, 104, 201–203, and 215 of the bill contain private-sector mandates. JCT has determined that the cost of complying with these mandates would exceed the threshold established by UMRA ($115 million in 2002, adjusted annually for inflation) in 2005 and 2006.

ESTIMATE PREPARED BY

Erin Whitaker and Annie Bartsch (226–2720).

ESTIMATE APPROVED BY

G. Thomas Woodward, Assistant Director for Tax Analysis.

ACCOUNTING REFORM

Mr. BIDEN. Mr. President, I rise today to voice my support for H.R. 3764, the Sarbanes-Oxley bill. While not perfect, this is important legislation. I commend my friend and colleague, Senator SARBANES, the distinguished chairman of the Senate Banking Committee, for his relentless effort to usher this landmark legislation through the Senate. I am proud to have worked with him on such an important cause.

To restore some level of confidence, the accounting reform legislation we have passed is critical to stem the corporate greed threatening our economy. Over the last several months the market has lost considerable value. The dollar is at a 2-year low. Investors are questioning the strength of our financial markets. Each day seems to bring new revelation of corporate excess—some horrific story about unabashed corporate greed and malfeasance. It is a seemingly endless onslaught. We don't know where it will end. And, frankly, we fear how deep it might go.

There is a crisis of confidence in American business. It runs deep, with revelations about cooked books, fraudulent numbers, inflated values, and stock options that make the average working American—who earns about $31,000 a year and fears for his or her pension and health care benefits—sick. In fact, a Pew Forum survey conducted in March, long before the recent revelations, said the esteem in which business executives are held is falling by the day. I shudder to think what those numbers would be now.

Something is clearly wrong with the way corporate America is doing business. Everyone here knows that—and—if you follow the money—you will see that investors also know it. They are registering their concern by pulling out of the market. Some have lost their retirement savings. Others have to postpone their retirement. They are unable to pay college tuition. Surely they have a right to expect a little truth in accounting.

The accounting reform legislation we approve today goes a long way to restore their confidence and stem the tide of market uncertainty. It will bring accountability and transparency to corporations, their officials, and their accountants. We should insist on nothing less.

In addition, the Sarbanes-Oxley bill includes significant new criminal laws for white collar offenses, and raises penalties for a number of existing ones.

I am proud to have sponsored, along with my good friend from Utah, Senator HATCH, S. 2717, the White-Collar Penalty Enhancement Act of 2002. It grew out of a series of hearings I held this year in the Judiciary Subcommittee on Crime and Drugs in which we heard about the "penalty gap" between white collar offenses and other serious Federal criminal offenses. The Senate unanimously adopted our bill as an amendment to the Sarbanes bill several weeks ago, and we are pleased that its key provisions are in the legislation approved by the House-Senate conference. Let me briefly summarize those provisions which will become law once the President signs this legislation.

Our bill significantly raised penalties for wire and mail fraud, two common offenses committed by white collar crooks in defrauding financial victims. It also created a new 10-year felony for criminal violations under the Employee Retirement Security Act of 1974 (ERISA). Under current law, a car thief who committed interstate auto theft was subject to 10 years in prison, while a pension thief who committed a criminal violation of ERISA was subject to up to 1 year in prison. Our bill now treats pension theft under ERISA like other serious financial frauds by raising the penalties to 10 years.

Our bill also amended the Federal conspiracy statute which currently carries a maximum penalty of 5 years in prison. In contrast, in our Federal drug statutes, a drug kingpin convicted of conspiracy is subject to the maximum penalty contained in the predicate offense which is the subject of the conspiracy—a penalty which can be much higher than 5 years. I say what is good for the drug kingpin is good for the white collar crook. Thus, our bill harmonized conspiracy for white collar fraud offenses with our drug statutes. Now, executives who conspire to defraud investors will be subject to the same tough penalties—up to 20 years—as codefendants who actually carry out the fraud.

Our bill also directed the U.S. Sentencing Commission to review our existing Federal sentencing guidelines. As you know, the sentencing guidelines carefully track the statutory maximum penalties that Congress sets for specific criminal offenses. Our bill requires the sentencing commission to go back and recalibrate the sentencing guidelines to raise penalties for the white collar offenses affected by this legislation.

Finally, and most significantly, our bill required top corporate officials to certify the accuracy of their companies' financial reports filed with the Securities and Exchange Commission.

Incredibly, under current law, there is no requirement that corporate officials certify the accuracy of these reports. As we have seen in the cases of WorldCom and others, this is no small matter. Willful misstatements about the financial health of a company—once uncovered—can lead, almost overnight, to a company's bankruptcy, wholesale loss of jobs for its employees, and a total collapse in the value of the company's pension funds.

That is why Federal Reserve Board Chairman Alan Greenspan last week testified before the Senate Banking Committee that imposing criminal sanctions on CEOs who knowingly misrepresent the financial health of their company is the key to real reform of corporate wrongdoing.

I am pleased that this centerpiece of the Senate-passed accounting bill is retained in the final legislation. Our provision is simple: corporate officials who cook the books and then lie about their companies' financial health will go to jail. Our bill says that all CEOs and CFOs of publicly traded companies must certify that their financial reports filed with the SEC are accurate. If they "knowingly" certify a false report, they are subject to a 10-year felony; if they "willfully" certify a false report, they are subject to a 20-year felony.

But we may have left one stone unturned. I regret that this final bill makes a small but significant change from the original Biden-Hatch amendment put the chairman of the board on the hook, along with the CEO and CFO. This final bill removed the board chairman from the group of corporate officials who are required to certify the accuracy of the reports. I think that is a mistake. Contrary to what some in the business community argued, requiring the board chairman to certify the accuracy of these financial reports would not have threatened the management of a corporation or the integrity of its executives.

Rather, our bill merely would have formalized what should be normal procedure—and what every American thinks is plain old common sense—namely that corporate executives certify that their books are not cooked and their numbers are truthful. I do not see—and I am sure the American people fail to see—what is wrong with demanding truthfulness in the valuation of a publicly traded company. It would seem to me that those in positions of responsibility in the business community, at every level—from the chairman of the board on down—should embrace the notion of truth in accounting.

Why would they demand anything less after what we have seen in the last few weeks with a $4 billion discrepancy in WorldCom's books? After all, "the buck stops" with the chairman of the board—to whom the CEO and CFO report. It strikes me as crazy that we will now hold the CEO and CFO responsible, but not their boss. Indeed, as many have recently pointed out, in most American corporations, the CEO is the chairman of the board. To let board chairs off the hook could create a loophole where crooked CEO's simply change their title to escape accountability for their corporate filings.

Some naysayers have suggested that the certification requirement would undermine the ability of the chair to oversee and act independently of the chief executive officer. It is absurd that a requirement that merely prohibits top corporate officers from lying about the company's financial health would sacrifice board independence. If anything, it ensures proper oversight by fostering a healthy division of responsibility between management and the board of directors, by encouraging the board chair to be actively engaged in the periodic process of checking the accuracy of financial statements; and by recognizing that the board chair has a vital role in "stopping corporate debacles" by not knowingly or willfully contributing to the filing of false financial reports.

Other opponents suggested that the certification requirement would likely drive independent chairmen out of business and discourage otherwise good business leaders from serving on boards of directors. This is the same old "sky is falling" claim that Wall Street uttered during consideration of the original securities legislation in the 1930s, and it has repeated this mantra with virtually every congressional reform offered ever since.

Truth be told, the certification requirement only imposes criminal sanctions for top corporate officials who lie about their financial records. Specifically, it only applies to "knowing" and "willful failures to certify financial statements—a very high standard. It would be one thing if the requirement applied criminal sanctions on a "strict liability" or "neglience" standard to board chairs who certify false reports. I could even understand their concern under the original "reckless" standard—that is, that the board chair "should have known" that the statements were false. But our requirement is only triggered where top corporate officials knowingly or willfully certify financial statements that they know to be false. So, only top corporate officers who are consciously aware of a false statement—and not those who act out of ignorance, mistake, accident or even sloppiness—would conceivably be subject to criminal sanctions. It is troubling, but quite revealing, that even this relatively meek certification would alarm some in the business community.

Regrettably, that is the stone that was left unturned. I wish we had turned it. I wish we had, in our infinite wisdom, included board chairmen in our legislation.

Nevertheless, this bill represents a huge step forward. It will strengthen accountability. It will tell CEOs and CFOs—we expect you to watch your books, and not bury your heads in the sand!" It will given prosecutors important new tools to fight white collar crime. It will give judges the ability to impose meaningful sentences for white collar crooks.

In closing, a common theme I have heard at our Crime Subcommittee hearings is that white collar crimes are not "crimes of passion," as a general rule. Rather, they are the result of a careful, "cost-benefit" analysis in which the crook considers his chance of being caught; and his chances of actually going to prison. To date, it was a pretty safe bet for the white collar crook to assume he would avoid detection, and, even if he was detected, he would not go to jail.

I have a message today for white collar crooks: "We are deadly serious. We will prosecute you to fullest extent of the law. And we will put you in jail for your crimes."

ADDITIONAL STATEMENTS

INFESTED PIÑONS

• Mr. DOMENICI. Mr. President, I rise today to continue my efforts to raise awareness of the dire situation we are facing in the western United States due to the ongoing drought.

I have been speaking on the Senate floor repeatedly emphasizing the impact the drought is having on the west, and especially its impact on New Mexico. The water situation has affected businesses and the livestock industry, and it has turned forests into tinderboxes.

Now, it appears that there is another problem arising from the lack of water. A recent article by the Albuquerque Journal highlights the fact that "hundreds of thousands of bark beetles [are] killing Piñon pines all over New Mexico." These are "trees that have survived New Mexico's arid climate for 75 or 100 years [and] are [now] succumbing to the beetles."

Under normal conditions, stressed trees would use internal sap pressure to fend off an infestation. However, under current conditions, the trees do not have enough moisture to adequately fight back, and they are overwhelmed by the beetles and devastated. They have to be cut down, stacked, and covered with plastic to prevent the escape of the beetles.

If New Mexico's Piñon trees suffer, so too will some area economies. New Mexico is known for its unique food flavors and its native art. Piñon nuts are a true New Mexico treat which can be harvested and eaten as a snack. Roasted nuts can sell for around $9 a pound and bring much needed tourism dollars to our state. In addition, Piñon pitch can be used as a glaze for Navajo pottery providing the finishing touches to their beautiful designs. Prolonged damage to the Piñon trees will create further hardships for New Mexico's economy.

With each passing day, the conditions in New Mexico will continue to become worse. At some point or another, every individual in New Mexico will feel the impact of this drought and continue to face hardships until we take proper action to alleviate the situation.

I ask that the July 24, 2002, Albuquerque Journal article entitled, "Parched Piñon Under Deadly Attack" be printed in the RECORD.

The article follows.

[From the Albuquerque Journal, July 24, 2002]

PARCHED PIÑONS UNDER DEADLY ATTACK

(By Tania Soussan)

First came the fires. Then withered crops. Now the drought's latest plague: hundreds of thousands of bark beetles killing piñon pines all over New Mexico.

"In many areas, they're taking out all of the trees," said Bob Cain, a New Mexico State University forest entomologist." . . . It's going to be a long time before there's many piñon in there again."

Even before the drought of 2002, the trees faced still competition for water because forests have grown overly dense during decades of human fire suppression.

The drought has made the situation even worse. Without adequate water, the piñons can't repel the bark beetles that burrow into vital tissues, lay eggs and munch away.

"It's been something that's been building the last several years, especially since 2000," Cain said, adding that the bark beetles are one of nature's ways of thinning a forest.

Carol Sutherland, the New Mexico Department of Agriculture's top bug expert, agreed.

"Trees that are under stress are getting hammered badly by all manner of bark beetles," she said recently.

The worst infestations are in the area between Magdalena and Quemado in the western part of the state, around Ojo Caliente in northern New Mexico, in the Sacramento Mountains and Ruidoso.

Near Silver City, ponderosa pines also are being hit hard.

Even trees that have survived New Mexico's arid climate for 75 or 100 years are succumbing to the beetles this year, said Terry Rogers, forest entomologist for the U.S. Forest Service in New Mexico.

On a hillside outside of Santa Fe, Cain recently examined a pocket of piñons fighting a hopeless battle for life. The pine needles on one tree were turning a pale, whitish green. Another tree already had gone reddish brown.

"There's nothing you can do to save this tree," Cain said. "This drought has been so severe that even trees that should have enough resources around them are getting hit."

Pencil lead-sized holes in the trunk marked where the beetles entered, and small piles of fine sawdust on the branches and the ground were signs of their success.

In addition, there were several "pitch tubes" on the broad trunk. The tree had spurted out resin, or sap, in an attempt to eject the beetles. A healthy tree can fight off beetles that way, but drought means the trees don't have enough moisture to produce the needed sap.

Bark beetles are efficient killers.

Once a few successfully bore into a piñon or ponderosa pine, they send out a chemical signal that attracts thousands of other beetles.

They invade the phloem tissue right under the bark, the tissue that carries sugars from the pine needles to the tree's roots. The beetles also carry pockets of fungus on their bodies. The fungus attacks the water-conducting tissues of the tree.

Once the signs of beetle infestation are clear, it's too late to save the tree.

"You really have no good evidence of beetles in the tree until the tree is fading," Cain said. "Insecticides are not efficient at that point."

The only solution is to cut down the tree and get rid of it—and the beetles inside—to stop the beetle invasion from spreading to other trees. To use it for firewood, first stack the logs in the sun and cover them with plastic for several days to kill the beetles.

The insecticide Sevin can be used to protect high-value trees that are at risk, but Cain does not recommend it for general use. Watering trees so they are able to fight off an attack also can help.

"The good news is if we get these monsoons, the trees will become more resistant," he said.

Drought also has increased populations of spider mites in corn crops in eastern New Mexico.

"It can be quite severe," said Mike English, head of the NMSU Extension Service's Agricultural Science Center in Los Lunas. "It can lose half your crop."

The drought could be making blood-sucking kissing bugs a problem in the southern part of the state, Sutherland said.

The bugs' usual prey, small rodents and birds, probably are in shorter supply so they are biting people and leaving behind big, itchy welts, she said.

"You've seen mosquito bites but you ain't seen nothing yet,"she said. "These are a lot worse."

Still, the situation in New Mexico could be worse.

Grasshoppers and Mormon crickets are ravaging crops and pastures in Nebraska and other Western states in what could be the biggest such infestation since World War II, according to agricultural officials.

There were early reports of a few pockets of grasshopper problems in New Mexico, in Lea and Eddy counties and near Silver City, English said. But Sutherland said there were no reports of major problems in the state as of mid-July.●

THE OREGON RED CROSS

● Mr. SMITH of Oregon. Mr. President, as I am sure many of my colleagues are aware, as I speak here today on the floor, fire continues to rage across the state of Oregon. At last count, there were no fewer than fifteen fires burning throughout the state, leaving behind hundreds of thousands of charred acres and a sobering path of destruction. As such, I stand here to salute and pay tribute to the benevolent Oregonians of the Red Cross who, throughout this tragedy, have responded with remarkable compassion and service to their communities.

When fire first broke out near my own home in Pendleton, OR, the Umatilla Chapter of the Red Cross was there and opened an emergency shelter for residents of fire threatened homes. More than twenty paid and volunteer staff enlisted for what fortunately became a substantial "cold start" exercise.

In Lake County, Oregon, where the Winter, Toolbox Complex, and Grizzly Complex fires have combined to form a 115,000 acre inferno, the Red Cross has been on the ground, organizing local residents and setting up a shelter to disseminate information and to provide aid to affected families. That shelter remains on standby status today, pending containment of the fire, which is not expected for another week.

There are similar examples throughout the state and throughout the country of local Red Cross chapters responding to help friends and neighbors in need. For as tragic as this fire season has been to date, the staff and volunteers of the Red Cross have responded with an equal level of kindness and selflessness.

This has been a very emotionally charged past few months. As a U.S. Senator and as an Oregonian, I am deeply proud of how the people in my state have responded to life-threatening crises. The generosity shown by so many truly reaffirms one's faith in the goodness of people. Today, I salute the workers and the volunteers who gave and continue to give of themselves to help our communities in need.●

TRIBUTE TO ROSELLA FRENCH PORTERFIELD

● Mr. BUNNING. Mr. President, I rise today to honor a truly amazing and admirable individual, Mrs. Rosella French Porterfield. This Saturday, the Elsmere Park Board will be rededicating the Rosella French Porterfield Park to honor the retired educator, who played such a vital part in the successful integration of the Erlanger-Elsmere Independent School System.

A bronze plaque depicting Mrs. Porterfield holding the hands of a young Debbie Onkst of Erlanger, a white student who later followed in Mrs. Porterfield's footsteps as a librarian for the school system, and Elsmere Mayor Bill Bradford, northern Kentucky's first African-American Mayor, will be unveiled.

Looking back on Rosella Porterfields' life and her many accomplishments, I am impressed the positive strides one African-American woman was able to make in a nearly all-white community during the 1950s. But once you hear people talk of Rosella, you understand the simple fact that amazing people can do amazing things.

A Daviess County native, Rosella received a graduate degree during a time when African-American women did not accomplish such things due to institutional and personal biases. Her first job as an educator was at Barnes Temple Church on Elsmere's Fox Street. After 7 years at Barnes Temple, Rosella moved to Wilkins Heights School in Elsmere, where she successfully transformed the one depleted school library into a place that fostered and encouraged educational excellence. But even as hard as Rosella worked, the segregated school system constantly worked to her disadvantage.

In 1955, 1 year after the U.S. Supreme Court abolished segregated schools, Rosella Porterfield approached Superintendent Edgar Arnett. She told him the time was right to bring white and black together in an educational atmosphere. She firmly believed that if the kids could be brought together in an effort to achieve common goals, they could learn to live together in peace and harmony. Mr. Arnett listened to Rosella and promptly took her proposal to the school board. In turn, the school board unanimously approved a phased-in integration starting in the lower grades.

Erlanger-Elsmere schools integrated in what Time magazine recognized as a very smooth and peaceful manner, a very uncommon phenomenon at the time. The schools were not forced to action by any outside factors such as government officials or military personnel. It was a voluntary and rational approach to a community's educational needs. This happened largely because of the efforts of individuals like Rosella Porterfield.

I kindly ask that my fellow colleagues join me in paying tribute to Mrs. Porterfield for her vision, persistence, and patience. When I think of Rosella's actions and the effect she had on her community, I recall the words of Winston Churchill, who said, in reference to the heroic efforts of Great Britain's RAF, "Never have so many owed so much to so few."●

TRIBUTE TO TONY TURNER

● Mr. McCONNELL. Mr. President, I rise today to pay tribute to my dear friend, the late Tony Turner. On June 30, 2002, Tony passed away after succumbing to injuries suffered in a tragic car accident. He was only 40 years old.

I want to take this opportunity to extend my heartfelt condolences to his wife Geraldine, his two children, Courtney and Cameron, and the rest of his family and friends. Tony made it easy for people to remember him, leaving behind a legacy as a loving husband and father, loyal friend, successful broadcaster, and community leader. He was a spirited individual who cherished life and enjoyed helping others. He was famous for his self-deprecating sense of humor and brightened the lives of many people with his light-hearted jokes. Tony will be remembered for many reasons, not the least of which is his dedication to his family and friends.

Born and raised in eastern Kentucky, Tony was a widely respected broadcaster. Over the course of his 26-year career, he worked his way from the position of radio disc jockey to television news anchor and station manager. Tony's passion for broadcasting developed at an early age. He landed his first job at WFSR radio in Harlan, and was general manager of that station from 1976 to 1986. After 10 years in radio, Tony moved to television and worked as a reporter and general assignment editor at WYMT-TV in Hazard. Tony was an outstanding journalist and had the ability to connect with just about everyone. His unique skills were quickly realized and he went on to become the station's news director and 6 p.m. news anchor. In 2001, he was named general manager and vice president of WYMT-TV.

Anyone who knows Tony can attest to the fact that he absolutely loved politics. His fair and balanced approach to the subject was widely respected in eastern Kentucky and he often was asked to moderate political debates. During his 16 years at WYMT-TV, he anchored a number of highly acclaimed political talk shows, including "Issues and Answers . . . The Mountain Edition" and "Point Counterpoint." I had the pleasure of appearing on Tony's shows a number of times, and I always enjoyed talking politics with him. Tony was an engaging interviewer and never shied away from asking tough questions. At the same time, he was always honest and fair. Tony Turner was a one-of-a-kind journalist and he will be sorely missed.

As much as he is recognized for his professional life, Tony is also well known for his kind heart and commitment to public service. He was involved in a variety of good causes and actively used his high profile to better the lives of others. Tony was a longtime supporter and cohost of the annual Children's Miracle Network Telethon, which helped raise money for the University of Kentucky's Children's Hospital. He also was chairman of the board of directors of the Pride Program, and served on the boards of the Center for Rural Development and the Eastern Kentucky Leadership Foundation. Additionally, he was an active member of the Loyall First Baptist Church.

At times like these, I am reminded of the frailty of life and the importance of friends and family. Tony understood and valued these things and has left a legacy of excellence for all to remember. Although his passing leaves a great void in the hearts of many, I hope it will be a comfort to his family and friends to know that he was loved and admired by countless people in his community and throughout the State of Kentucky. On behalf of myself and my colleagues, we offer our deepest condolences to his loved ones and express our gratitude for his many contributions.●

HONORING GUNNERY SERGEANT STEPHANIE K. MURPHY, UNITED STATES MARINE CORPS, ON BECOMING THE FIRST FEMALE DRILL INSTRUCTOR AT NAVAL OFFICER CANDIDATE SCHOOL

● Mrs. LINCOLN. Mr. President, at this time of great challenge to our Nation, it is with immense pride that we take a moment to recognize the efforts of the men and women in our armed forces. I rise today to honor one woman in particular who will be making history next week. On Friday, August 2, 2002, the United States Navy's Officer Candidate School will graduate its first class trained by a female drill instructor. Although women have played a vital role in our armed forces, and specifically in the Navy and Marine Corps, for many years, Gunnery Sergeant Stephanie K. Murphy is the first Class Drill Instructor to train future Naval officers.

A native of Pine Bluff, AR, Gunnery Sergeant Murphy has served in the Marine Corps since 1988. In 1996, Murphy graduated from Drill Instructor School in Parris Island, SC where she completed six cycles training Marine enlisted recruits. After receiving an accelerated promotion to Gunnery Sergeant, Murphy requested to go to Pensacola, FL in September 2001 to train Naval Officer Candidates.

Gunnery Sergeant Murphy follows in the proud tradition of trail-blazing women in the military, women such as Opha Mae Johnson, who became one of the first 305 women accepted for duty in the Marine Corps Reserve on August 12, 1918. During World War II, women returned to the Corps to "free a man to fight." By the end of World War II, a total of 23,145 officer and enlisted women reservists served in the Marine Corps. Unlike their predecessors, women Marines in World War II performed over 200 military assignments. In addition to clerical work, their numbers included parachute riggers, mechanics, radio operators, map makers, motor transport support, and welders. Women Marines became a permanent part of the regular Marine Corps on June 12, 1948 when Congress passed the Women's Armed Services Integration Act.

Today, women account for over four percent of all Marine officers and over five percent of the active duty enlisted force. Like their distinguished predecessors, women in the Marine Corps today continue to serve proudly and capably in whatever capacity their country and Corps require.

Marine Corps drill instructors have helped train Naval Officer Candidates since the days of the Navy's World War II Pre-Flight Training Schools. This link was reaffirmed following World War II to strengthen the bond that connects the Navy/Marine Corps Team.

In an uncertain world, Americans know that we can count on our men and women in uniform. It is with overwhelming pride that we recognize their tremendous sacrifice and determination. We ask that you join us today in honoring Gunnery Sergeant Stephanie Murphy and all the courageous individuals serving in the military.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 10:14 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

H.R. 3763. An act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calender:

H.R. 4965. An act to prohibit the procedure commonly known as partial-birth abortion.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 26, 2002, she had presented to the President of the United States the following enrolled bill:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. MURRAY, from the Committee on Appropriations, without amendment:

S. 2808: An original bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–224).

By Ms. LANDRIEU, from the Committee on Appropriations, without amendment:

S. 2809: An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107-225).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1992: A bill to amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes. (Rept. No. 107-226).

S. 1115: A bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes. (Rept. No. 107-227).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

S. 2771: A bill to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CLELAND:

S. 2802. A bill to amend the Internal Revenue Code of 1986 to provide tax fairness for military families; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. CONRAD):

S. 2803. A bill to amend the Federal Meat Inspection Act, the Poultry Producers Inspection Act, and the Federal Food, Drug, and Cosmetic Act to provide for improved public health and food safety through enhanced enforcement, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. COLLINS (for herself, Mr. SANTORUM, Mr. SARBANES, Mr. EDWARDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. SCHUMER, Mr. SMITH of Oregon, and Mrs. CLINTON):

S. 2804. A bill to amend the National Maritime Heritage Act of 1994 to reaffirm and revise the designation of America's National Maritime Museum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2805. A bill to amend title 23, United States Code, to provide for criminal and civil liability for permitting an intoxicated arrestee to operate a motor vehicle; to the Committee on Environment and Public Works.

By Ms. LANDRIEU:

S. 2806. A bill to provide that members of the Armed Forces performing services on the Island of Diego Garcia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2807. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States; to the Committee on Finance.

By Mrs. MURRAY:

S. 2808. An original bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Ms. LANDRIEU:

S. 2809. An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. BURNS, and Mr. ENSIGN):

S. 2810. A bill to amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering; considered and passed.

By Mr. ENZI:

S. 2811. A bill to direct the Secretary of Agriculture and the Secretary of the Interior to designate certain Federal forest lands at risk for catastrophic wildfires as emergency mitigation areas, to authorize the use of alternative arrangements in those areas, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. TORRICELLI:

S. Res. 307. A resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; to the Committee on the Judiciary.

By Mrs. CLINTON:

S. Res. 308. A resolution expressing the sense of the Senate regarding the "Once-a-Day" program to promote local farm products; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BIDEN (for himself, Mr. MCCAIN, and Mrs. FEINSTEIN):

S. Res. 309. A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States; to the Committee on Foreign Relations.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. HATCH, and Mr. GREGG):

S. Res. 310. A resolution honoring Justin W. Dart, Jr. as a champion of the rights of individuals with disabilities; considered and agreed to.

By Mr. DASCHLE:

S. Con. Res. 132. A concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives; considered and agreed to.

ADDITIONAL COSPONSORS

S. 321

At the request of Mr. GRASSLEY, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 321, a bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes.

S. 1456

At the request of Mr. BENNETT, the name of the Senator from New York (Mr. SCHUMER) was withdrawn as a cosponsor of S. 1456, a bill to facilitate the security of the critical infrastructure of the United States, to encourage the secure disclosure and protected exchange of critical infrastructure information, to enhance the analysis, prevention, and detection of attacks on critical infrastructure, to enhance the recovery from such attacks, and for other purposes.

S. 2013

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2013, a bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

S. 2035

At the request of Mr. JEFFORDS, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 2035, a bill to provide for the establishment of health plan purchasing alliances.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2184

At the request of Mr. BREAUX, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2184, a bill to provide for the reissuance of a rule relating to ergonomics.

S. 2210

At the request of Mr. BIDEN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2210, a bill to amend the International Financial Institutions Act to provide for modification of the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

S. 2246

At the request of Mr. DODD, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2246, a bill to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools, and for other purposes.

S. 2268

At the request of Mr. MILLER, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2489

At the request of Mrs. CLINTON, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2489, a bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

S. 2512

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 2528

At the request of Mr. DOMENICI, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 2528, a bill to establish a National Drought Council within the Federal Emergency Management Agency, to improve national drought preparedness, mitigation, and response efforts, and for other purposes.

S. 2570

At the request of Ms. COLLINS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2570, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program, and for other purposes.

S. 2602

At the request of Mrs. CLINTON, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2602, a bill to amend title 38, United States Code, to provide that remarriage of the surviving spouse of a veteran after age 55 shall not result in termination of dependency and indemnity compensation.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2674

At the request of Mr. BROWNBACK, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2674, a bill to improve access to health care medically underserved areas.

S. 2800

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

At the request of Mr. BAUCUS, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from Minnesota (Mr. DAYTON), the Senator from Michigan (Mr. LEVIN), the Senator from Michigan (Ms. STABENOW) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2800, supra.

S.J. RES. 40

At the request of Mrs. LINCOLN, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from North Carolina (Mr. EDWARDS), the Senator from Oregon (Mr. WYDEN), the Senator from North Dakota (Mr. DORGAN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S.J. Res. 40, a joint resolution designating August as "National Missing Adult Awareness Month".

S.J. RES. 41

At the request of Mr. SPECTER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S.J. Res. 41, a joint resolution calling for Congress to consider and vote on a resolution for the use of force by the United States Armed Forces against Iraq before such force is deployed.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. Res. 239, a resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the *S.S. Henry Bacon*, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 306

At the request of Mr. BROWNBACK, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Res. 306, a resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. SANTORUM, Mr. SARBANESS, Mr. EDWARDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. SCHUMER, Mr. SMITH of Oregon, and Mrs. CLINTON):

S. 2804. A bill to amend the National Maritime Heritage Act of 1994 to reaffirm and revise the designation of America's National Maritime Museum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. COLLINS. Mr. President, I am pleased to be introducing America's National Maritime Museums Act of 2002. This legislation would designate an additional 19 maritime museums as "American National Maritime Museums" nationwide. Maritime Museums are dedicated to advancing maritime and nautical science by fostering the exchange of maritime information and experience and by promoting advances in nautical education.

The America National Maritime Museum designation would include a commitment on the part of each institution toward accomplishing a coordinated education initiative, resources management program, awareness campaign, and heritage grants program. Maritime museums in America will be dedicated to illuminating humankind's experience with the sea and the events that shaped the course and progress of civilization.

Museum collections are composed of hundreds of thousands of maritime items, including ship models, scrimshaw, maritime paintings, decorative arts, intricately carved figureheads, working steam engines, and much more. Maritime museums offer a variety of learning experiences for children and adults through hands-on workshops and programs that focus on maritime history.

Maritime lecture series presentations offer an opportunity to learn about the history and lore of the sea from some of the nation's leading maritime experts. Visitors learn the broad concept of sea power, the historic and modern importance of the sea in matters commercial, military, economic, political, artistic, and social.

The legislation that I am proposing would help museums better interpret maritime and social history to the public using their extensive collections of artifacts, exhibits and expertise. These programs and facilities are used by schools, civic organizations, genealogists, maritime scholars, and the visiting public, thus, serving students of all ages.

I urge all members of the Senate to join me in support of the America's National Maritime Museums Act of 2002.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2805. A bill to amend title 23, United States Code, to provide for criminal and civil liability for permitting an intoxicated arrestee to operate a motor vehicle; to the Committee on Environment and Public Works.

Mr. CORZINE. Mr. President, today I am introducing legislation to address the serious national problem of drunk driving. The bill, entitled "John's Law of 2002," would help ensure that when drunken drivers are arrested, they cannot simply get back into the car and put the lives of others in jeopardy.

On July 22, 2000, Navy Ensign John Elliott was driving home from the United States Naval Academy in Annapolis for his mother's birthday when his car was struck by another car. Both Ensign Elliott and the driver of that car were killed. The driver of the car that caused the collision had a blood alcohol level that exceeded twice the legal limit.

What makes this tragedy especially distressing is that this same driver had been arrested and charged with driving under the influence of alcohol, DUI, just three hours before the crash. After being processed for that offense, he had been released into the custody of a friend who drove him back to his car and allowed him to get behind the wheel, with tragic results.

We need to ensure that drunken drivers do not get back behind the wheel before they sober up. New Jersey took steps to do this when they enacted John's Law at the State level. I am pleased to offer a Federal version of this legislation today.

This bill would require States to impound the vehicle of an offender for a period of at least 12 hours after the offense. This would ensure that the arrestee cannot get back behind the wheel of his car until he is sober.

Further, the bill would require States to ensure that if a DUI offender arrestee is released into the custody of another, that person must be provided with notice of his or her potential civil or criminal liability for permitting the arrestee's operation of a motor vehicle while intoxicated. While this bill does not create new liability under Federal law, notifying such individuals of their prospective liability under State law should encourage them to act responsibly.

John's Law of 2002 is structured in a manner similar to other Federal laws designed to promote highway safety, such as laws that encourage states to enact tough drunk driving standards. Under the legislation, a portion of Federal highway funds would be withheld from States that do not comply. Initially, this funding could be restored if States move into compliance. Later, the highway funding forfeited by one State would be distributed to other States that are in compliance. Experience has shown that the threat of losing highway funding is very effective in ensuring that States comply.

I believe that this legislation would help make our roads safer and save many lives. I hope my colleagues will support it, and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2805

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "John's Law of 2002".

SEC. 2. LIABILITY FOR PERMITTING AN INTOXICATED ARRESTEE TO OPERATE A MOTOR VEHICLE.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"§165. Liability for permitting an intoxicated arrestee to operate a motor vehicle

"(a) DEFINITION OF MOTOR VEHICLE.—In this section, the term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

"(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

"(1) FISCAL YEAR 2005.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, if the State does not meet the requirements of paragraph (3) on that date.

"(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2005, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

"(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that is substantially as follows:

"(A) WRITTEN STATEMENT.—If a person is summoned by or on behalf of a person who has been arrested for public intoxication in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment. The State shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies throughout the State and may issue directives to ensure the uniform implementation of this subparagraph. Nothing in this subparagraph shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

"(B) IMPOUNDMENT OF VEHICLE OPERATED BY ARRESTEE; CONDITIONS OF RELEASE; FEE FOR TOWING, STORAGE.—

"(i) If a person has been arrested for public intoxication, the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

"(ii) A vehicle impounded pursuant to this subparagraph shall be impounded for a period of at least 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in clause (iv).

"(iii) A vehicle impounded pursuant to this subparagraph may be released to a person other than the arrestee prior to the end of the impoundment period only if—

"(I) the vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in clause (iv); or

"(II) the vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement to operate the vehicle and the conditions for release in clause (iv).

"(iv) A vehicle impounded pursuant to this subparagraph shall not be released unless the person claiming the vehicle—

"(I) presents a valid operator's license, proof of ownership or lawful authority to operate the vehicle, and proof of valid motor vehicle insurance for that vehicle;

"(II) is able to operate the vehicle in a safe manner and would not be in violation of driving while intoxicated laws; and

"(III) meets any other conditions for release established by the law enforcement agency.

"(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

"(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

"(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

"(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

"(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

"(B) TREATMENT OF CERTAIN FUNDS.—Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

"(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3).".

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"165. Liability for permitting an intoxicated arrestee to operate a motor vehicle.".

By Ms. LANDRIEU:

S. 2806. A bill to provide that members of the Armed Forces performing services on the Island of Diego Gracia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2807. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, I rise today to introduce two bills. One will give tax relief to a small group of men and women in our armed services stationed on the island of Diego Garcia in the Indian Ocean, supporting the war on terrorism in Afghanistan. The second bill will exclude from gross income childcare benefits paid to members of our armed forces. These are small measures,but both will be of great benefit to the men and women serving our country.

Diego Garcia is a British Territory lying seven degrees South Latitude off the coast of India, in the middle of the Indian Ocean. The island is 40 miles around and encompasses an area of 6,720 acres, most of it dominated by a large lagoon. The land mass is actually very small. It is home to a joint British-United States Naval Support Facility, and while there are only a small handful of British Royal Navy personnel on the island, there is a larger, tight-knit team of American Air Force, Navy, and Army personnel on the island. These men and women serving on Diego Garcia are supporting B-52 bombing missions and other operations over Afghanistan. Many of them are from the 2nd Bomb Wing and the 917th Wing. Both units call Barksdale Air Force Base in Louisiana their home.

As a Nation, we provide members of our armed forces with a variety of benefits, all of them deserve. They receive hardship duty pay of $150 per monthly for serving in austere regions of the World. They get imminent danger pay of $150 per month as compensation for being in physical danger. One of the most generous benefits for those serving in the war on terrorism is the combat zone tax exclusion. Members of the armed services do not pay Federal tax on compensation they for any month of service inside a combat one. They only have to serve on day in the combat zone to get this benefit. The exclusion only applies to personnel who receive imminent danger pay.

On Diego Garcia, the pilots and flight crews who fly the missions over Afghanistan are eligible for the income tax exclusion because they receive imminent danger pay. But the men and women who load the bombers, fuel them, and maintain them are not eligible because they do not enter the combat zone. My office was contacted by the officers who fly the bombing missions about this discrepancy. They asked. me to help out their support crews, a gesture of selflessness that I want to honor.

I recognize that the support crews may not receive imminent danger pay, but their situation is not too different from Naval personnel performing the same tasks on ships in the Arabian Sea. Naval support crews receive imminent danger pay and are eligible for the tax exclusion, but they do not enter Afghanistan.

Diego Garcia is a beautiful place, but it is a long way from home. The least we could do is treat everyone who has served on the island the same. That is what my bill will do.

My second bill will correct an omission in the Tax Reform Act of 1986. That Act contained a provision consolidating the laws regarding the tax treatment of certain military benefits. The Conference Report to that Act contains a long list of benefits to be excluded from gross income of military personnel. According to the report, this list was to be exhaustive. The problem is that child car benefits are not on that list.

I do not know if this omission was intentional. Perhaps at that time, child care benefits were relatively unknown in the military. The Conference Report gives the Treasury Secretary the authority to expand the list of eligible benefits, but so far the Secretary has not provided any guidance to the Department of Defense as to how these benefits should be treated for tax purposes. While military families are not currently being taxed for child care benefits, the Department of Defense has indicated that it would like Congress to clarify that child care benefits are not subject to tax. My bill will give our military families and the Department of Defense a greater degree of certainty.

Throughout our history, in time of war we have worked to make sure that our armed forces have everything they need and we have spared no expense in meeting that need. But the men and women on the ground often have families back at home. We should make sure that we support them as well. I urge my colleagues to support this legislation.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 307—REAFFIRMING SUPPORT OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE AND ANTICIPATING THE COMMEMORATION OF THE 15TH ANNIVERSARY OF THE ENACTMENT OF THE GENOCIDE CONVENTION IMPLEMENTATION ACT OF 1987 (THE PROXMIRE ACT) ON NOVEMBER 4, 2003

Mr. TORRICELLI submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 307

Whereas, in 1948, in the shadow of the Holocaust, the international community responded to Nazi Germany's methodically orchestrated acts of genocide by approving the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide is a crime under international law, defines genocide as certain acts committed with intent to destroy a national, ethnical, racial or religious group, and provides that parties to the Convention undertake to enact domestic legislation to provide effective penalties for persons who are guilty of genocide;

Whereas the United States, under President Harry Truman, stood as the first nation to sign the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the United States Senate ratified the Convention on the Prevention and Punishment of the Crime of Genocide on February 19, 1986;

Whereas the Genocide Convention Implementation Act of 1987 (the Proxmire Act) (Public Law 100-606), signed into law by President Ronald Reagan on November 4, 1988, amended the United States Code (18 U.S.C. 1091) to criminalize genocide under the United States law;

Whereas the enactment of the Genocide Convention Implementation Act marked a principled stand by the United States against the crime of genocide and an important step toward ensuring that the lessons of the Holocaust, the Armenian Genocide, the genocides in Cambodia and Rwanda, among others, will be used to help prevent future genocides;

Whereas, despite the international community's consensus against genocide, as demonstrated by the fact that 133 nations are party to the Convention on the Prevention and Punishment of the Crime of Genocide and through other instruments and actions, denial of past instances of genocide continues and many thousands of innocent people continue to be victims of genocide; and

Whereas November 4, 2003 is the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act): Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms its support of the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) anticipates the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; and

(3) encourages the people and Government of the United States to rededicate themselves to the cause of bringing an end to the crime of genocide.

SENATE RESOLUTION 308—EXPRESSING THE SENSE OF THE SENATE REGARDING THE "ONCE-A-DAY" PROGRAM TO PROMOTE LOCAL FARM PRODUCTS

Mrs. CLINTON submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 308

Whereas agriculture is a major industry in the United States, contributing $82,000,000,000 to the gross domestic product of the United States in 2000;

Whereas the farmers in every State produce a wide variety of local foods;

Whereas locally-grown, seasonal foods are fresh and wholesome, with superior taste and nutrition;

Whereas eating fresh foods in season is vital to a healthy diet, promotes health, and supports an active lifestyle;

Whereas reduced time from field to table allows farmers to harvest fully-ripened produce;

Whereas this flavorful produce can be prepared with less fat, sugar, and salt;

Whereas during the months of August, September, and October there is a tremendous selection of fresh, locally-grown produce;

Whereas local farms provide jobs, attract tourists, and recirculate dollars into the local economy of our Nation;

Whereas local produce can be found at many locations such as farmers' markets, community-supported agriculture farms, farm stands, local stores, and restaurants;

Whereas if citizens of the United States would eat 1 item of local produce each day, every dollar spent on the produce would support independent family farms that contribute to the economic health of the United States; and

Whereas Dutchess County, New York, has already begun a "Once-a-Day" program to encourage local residents to buy local produce in support of their local farmers and their own health: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) all Americans are encouraged to buy local farm products; and

(2) anyone selling local agricultural products is encouraged to promote the products as "Once-a-Day" to support the local economy and the health of our Nation.

SENATE RESOLUTION 309—EXPRESSING THE SENSE OF THE SENATE THAT BOSNIA AND HERZEGOVINA SHOULD BE CONGRATULATED ON THE 10TH ANNIVERSARY OF ITS RECOGNITION BY THE UNITED STATES

Mr. BIDEN (for himself, Mr. MCCAIN, and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 309

Whereas the United States reaffirms its support for the sovereignty, legal continuity, and territorial integrity of Bosnia and Herzegovina within its internationally recognized borders and also reaffirms its support for the equality of the three constituent peoples and others in Bosnia and Herzegovina in a united multiethnic country, according to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Whereas, during the 10 years since its recognition, Bosnia and Herzegovina has made significant progress in overcoming the legacy of the internecine conflict of 1992–1995 instigated by ultranationalist forces hostile to a multiethnic society, and has persevered in building a multiethnic democracy based on the rule of law, respect for human rights, and a free market economy, as shown by the results of the elections held in November 2000;

Whereas most citizens and the national authorities of Bosnia and Herzegovina share the democratic values of the international community and feel the responsibility to uphold them;

Whereas the Government of Bosnia and Herzegovina is committed to international security and democratic stability and in that spirit has begun the process of qualifying for membership in the Partnership for Peace; and

Whereas, after the attacks of September 11, 2001 on the United States, Bosnia and Herzegovina, as a reliable friend of the United States, immediately positioned itself within the anti-terrorism coalition of nations, sharing the common interests and values of the free and democratic world: Now, therefore, be it

Resolved, That the Senate—

(1) commends Bosnia and Herzegovina for the significant progress it has made during the past decade on the implementation of the Dayton Peace Agreement and on the implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina;

(2) applauds the democratic orientation of Bosnia and Herzegovina and urges the further strengthening by its government and people of respect for human rights, of the rule of law, and of its free market economy;

(3) urges Bosnia and Herzegovina as rapidly as possible to make fully operational all national institutions and state-level governmental bodies mandated by the Dayton Peace Agreement;

(4) welcomes and supports the aspiration of Bosnia and Herzegovina to become a member of the Partnership for Peace and, pursuant thereto, underscores the importance of creating a joint military command as soon as possible;

(5) urges the Government of Bosnia and Herzegovina to accelerate the return of refugees and displaced persons and to intensify its cooperation with the International Criminal Tribunal for the former Yugoslavia at The Hague, in particular with regard to surrendering to the Court individuals indicted for war crimes;

(6) reaffirms the importance for the future of Bosnia and Herzegovina of that country's participation in the European integration process and, in that context, welcomes the notable improvement in mutual cooperation among the successor states of the former Yugoslavia and the strengthening of cooperation within the region as a whole, developments which are essential for long-lasting peace and stability in Southeastern Europe; and

(7) recognizes the important role of the Bosnian-Herzegovinian-American community in the further improving of bilateral relations between the United States and Bosnia and Herzegovina.

Mr. BIDEN. Mr. President, I rise today to submit a Resolution congratulating Bosnia and Herzegovina on the tenth anniversary of its recognition by the United States.

During the decade since its recognition, Bosnia and Herzegovina has made significant progress in overcoming the legacy of the bloody conflict of 1992–95, which was instigated by ultra-nationalist forces and claimed more than two hundred thousand lives and made millions more homeless.

The NATO-led peacekeeping force, known originally as IFOR, now as SFOR, has provided the security umbrella that has allowed the slow, difficult process of reconciliation and democracy-building to take place.

The international community under the direction of a resident High Representative, the United Nations, the Organization for Security and Cooperation in Europe, the European Union, and many individual countries have joined the United States in providing and delivering economic and technical assistance to the citizens of Bosnia and Herzegovina.

Last year for the first time democratic, non-nationalist parties gained control of the national and Federation governments, and the government of the Republika Srpska is considerably more democratic than it was under the infamous Radovan Karadzic.

Elections will be held this coming October, which will determine whether the country will continue on a democratic, multi-ethnic, and free market path. Obviously, it is in the interest of the people of Bosnia and Herzegovina, Bosniaks, Serbs, Croats, and others, that it do so. Equally obviously, it is in the interest of the United States that Bosnia and Herzegovina become a normal, peaceful, democratic country.

My Resolution commends Bosnia and Herzegovina for the progress it has made and urges it to take several steps to continue the process. They include: further strengthening of respect for human rights, of the rule of law, and of its free market economy; as rapidly as possible making fully operational all national institutions and state-level governmental bodies mandated by the Dayton Peace Agreement; creating a joint military command as soon as possible; accelerating the return of refugees and displaced persons; and intensifying its cooperation with the International Criminal Tribunal for the former Yugoslavia at The Hague, in particular surrendering to the Court individuals indicted for war crimes.

The stability of the Balkans is essential for European stability. And stability in Europe is of fundamental importance to the United States of America. A peaceful, democratic, multi-ethnic Bosnia and Herzegovina can be an important element in the new Balkans.

I urge my colleagues to vote for this Resolution, which makes clear our support for just such a Bosnia and Herzegovina.

SENATE RESOLUTION 310—HONORING JUSTIN W. DART, JR., AS A CHAMPION OF THE RIGHTS OF INDIVIDUALS WITH DISABILITIES

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. HATCH, and Mr. GREGG) submitted the following resolution; which was considered and agreed to:

S. RES. 310

Whereas Justin W. Dart, Jr. was born in Chicago, Illinois in 1930;

Whereas Justin Dart, Jr. has been recognized as a pioneer and leader in the disability rights movement;

Whereas Justin Dart, Jr. operated successful businesses in the United States and Japan;

Whereas 5 Presidents, 5 Governors, and Congress have seen fit to appoint Justin Dart, Jr. to leadership positions within the area of disability policy, including Vice Chairman of the National Council on Disability, Commissioner of the Rehabilitation Services Administration, Chairperson of the President's Committee on Employment of People with Disabilities, and Chairperson of the Congressional Task Force on the Rights and Empowerment of Americans with Disabilities;

Whereas Justin Dart, Jr. was a civil rights activist for individuals with disabilities since he was stricken with polio in 1948 and played a leadership role in numerous civil rights marches across the country;

Whereas Justin Dart, Jr. worked tirelessly to secure passage of the Americans with Disabilities Act of 1990, which was signed into law by President Bush, and is often recognized as a major driving force behind the disability rights movement and that landmark legislation;

Whereas on January 15, 1998, President Clinton awarded the Presidential Medal of Freedom, our Nation's highest civilian award, to Justin Dart, Jr.

Whereas Justin Dart, Jr. has left a powerful legacy as a civil rights advocate and his actions have benefited the people of the United States;

Whereas Justin Dart, Jr. is not only remembered for his advocacy efforts on behalf of individuals with disabilities, but also for his energetic spirit and for the formal and informal independent living skills programs for individuals with disabilities that he supported; and

Whereas Justin Dart, Jr. passed away at his home on June 22, 2002, and is survived by his wife, Yoshiko Dart, 5 daughters, 11 grandchildren, and 2 great-grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Justin W. Dart, Jr. as one of the true champions of the rights of individuals with disabilities and for his many contributions to the Nation throughout his lifetime;

(2) honors Justin W. Dart, Jr. for his tireless efforts to improve the lives of individuals with disabilities; and

(3) recognizes that the achievements of Justin W. Dart, Jr. have inspired and encouraged millions of individuals with disabilities in the United States to overcome obstacles and barriers so that the individuals can lead more independent and successful lives.

SENATE CONCURRENT RESOLUTION 132—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. DASCHLE submitted the following concurrent resolution; which was considered and agreed to.

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, August 1, 2002, Friday, August 2, 2002, or Saturday, August 3, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Tuesday, September 3, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, July 26, 2002, on a motion offered by its Majority Leader or his designee pursuant to this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, September 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4326. Mr. MCCONNELL (for himself and Mr. FRIST) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

TEXT OF AMENDMENTS

SA 4326. Mr. MCCONNELL (for himself and Mr. FRIST) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN. Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN), to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

Strike the first word and insert the following:

TITLE ___—HEALTH CARE LIABILITY REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the "Health Care Liability Reform and Quality Assurance Act of 2002".

Subtitle A—Health Care Liability Reform

SEC. ___11. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—The civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients and the problems associated with the current system are having an adverse impact on the availability of, and access to, health care services and the cost of health care in the United States.

(2) EFFECT ON INTERSTATE COMMERCE.—The health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for health care liability insurance purchased by participants in the health care system.

(3) EFFECT ON FEDERAL SPENDING.—The health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide such individuals with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reform that is designed to—

(1) ensure that individuals with meritorious health care injury claims receive fair and adequate compensation;

(2) improve the availability of health care service in cases in which health care liability actions have been shown to be a factor in the decreased availability of services; and

(3) improve the fairness and cost-effectiveness of the current health care liability system of the United States to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

SEC. ___12. DEFINITIONS.

In this subtitle:

(1) CLAIMANT.—The term "claimant" means any person who commences a health care liability action, and any person on whose behalf such an action is commenced, including the decedent in the case of an action brought through or on behalf of an estate.

(2) CLEAR AND CONVINCING EVIDENCE.—The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, except that such measure or degree of proof is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) COLLATERAL SOURCE RULE.—The term "collateral source rule" means a rule, either statutorily established or established at common law, that prevents the introduction of evidence regarding collateral source benefits or that prohibits the deduction of collateral source benefits from an award of damages in a health care liability action.

(4) ECONOMIC LOSSES.—The term "economic losses" means objectively verifiable monetary losses incurred as a result of the provision of (or failure to provide or pay for) health care services or the use of a medical product, including past and future medical expenses, loss of past and future earnings, cost of obtaining replacement services in the home (including child care, transportation, food preparation, and household care), cost of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities. Economic losses are neither noneconomic losses nor punitive damages.

(5) HEALTH CARE LIABILITY ACTION.—The term "health care liability action" means a civil action against a health care provider, health care professional, health plan, or other defendant, including a right to legal or equitable contribution, indemnity, subrogation, third-party claims, cross claims, or counter-claims, in which the claimant alleges injury related to the provision of, payment for, or the failure to provide or pay for, health care services or medical products, regardless of the theory of liability on which the action is based. Such term does not include a product liability action, except where such an action is brought as part of a broader health care liability action.

(6) HEALTH PLAN.—The term "health plan" means any person or entity which is obligated to provide or pay for health benefits under any health insurance arrangement, including any person or entity acting under a contract or arrangement to provide, arrange for, or administer any health benefit.

(7) HEALTH CARE PROFESSIONAL.—The term "health care professional" means any individual who provides health care services in a State and who is required by Federal or State laws or regulations to be licensed, registered or certified to provide such services or who is certified to provide health care services pursuant to a program of education, training and examination by an accredited institution, professional board, or professional organization.

(8) HEALTH CARE PROVIDER.—The term "health care provider" means any organization or institution that is engaged in the delivery of health care items or services in a State and that is required by Federal or State laws or regulations to be licensed, registered or certified to engage in the delivery of such items or services.

(9) HEALTH CARE SERVICES.—The term "health care services" means any services provided by a health care professional, health care provider, or health plan or any individual working under the supervision of a health care professional, that relate to the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

(10) INJURY.—The term "injury" means any illness, disease, or other harm that is the subject of a health care liability action.

(11) MEDICAL PRODUCT.—The term "medical product" means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or a medical device as defined in section 201(h) of such Act (21 U.S.C. 321(h)), including any component or raw material used therein, but excluding health care services, as defined in paragraph (9).

(12) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, loss of society or companionship (other than loss of domestic services), and other nonpecuniary losses incurred by an individual with respect to which a health care liability action is brought. Noneconomic losses are neither economic losses nor punitive damages.

(13) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded, for the purpose of punishment or deterrence, and not for compensatory purposes, against a health care professional, health care provider, or other defendant in a health care liability action. Punitive damages are neither economic nor noneconomic damages.

(14) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(15) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 13. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (c), this subtitle shall apply with respect to any health care liability action brought in any Federal or State court, except that this subtitle shall not apply to an action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action.

(b) PREEMPTION.—

(1) IN GENERAL.—The provisions of this subtitle shall preempt State law only to the extent that such law is inconsistent with the limitations contained in such provisions and shall not preempt State law to the extent that such law—

(A) places greater restrictions on the amount of or standards for awarding noneconomic or punitive damages;

(B) places greater limitations on the awarding of attorneys fees for awards in excess of $150,000;

(C) permits a lower threshold for the periodic payment of future damages;

(D) establishes a shorter period during which a health care liability action may be initiated or a more restrictive rule with respect to the time at which the period of limitations begins to run; or

(E) implements collateral source rule reform that either permits the introduction of evidence of collateral source benefits or provides for the mandatory offset of collateral source benefits from damage awards.

(2) RULES OF CONSTRUCTION.—The provisions of this subtitle shall not be construed to preempt any State law that—

(A) permits State officials to commence health care liability actions as a representative of an individual;

(B) permits provider-based dispute resolution;

(C) places a maximum limit on the total damages in a health care liability action;

(D) places a maximum limit on the time in which a health care liability action may be initiated; or

(E) provides for defenses in addition to those contained in this title.

(c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this subtitle shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to actions brought by a foreign nation or a citizen of a foreign nation;

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss an action of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(6) supersede any provision of Federal law.

(d) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this subtitle shall be construed to establish any jurisdiction in the district courts of the United States over health care liability actions on the basis of section 1331 or 1337 of title 28, United States Code.

SEC. 14. STATUTE OF LIMITATIONS.

A health care liability action that is subject to this title may not be initiated unless a complaint with respect to such action is filed within the 2-year period beginning on the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered the injury and its cause, except that such an action relating to a claimant under legal disability may be filed within 2 years after the date on which the disability ceases. If the commencement of a health care liability action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

SEC. 15. REFORM OF PUNITIVE DAMAGES.

(a) LIMITATION.—With respect to a health care liability action, an award for punitive damages may only be made, if otherwise permitted by applicable law, if it is proven by clear and convincing evidence that the defendant—

(1) intended to injure the claimant for a reason unrelated to the provision of health care services;

(2) understood the claimant was substantially certain to suffer unnecessary injury, and in providing or failing to provide health care services, the defendant deliberately failed to avoid such injury; or

(3) acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury which the defendant failed to avoid in a manner which constitutes a gross deviation from the normal standard of conduct in such circumstances.

(b) PUNITIVE DAMAGES NOT PERMITTED.—Notwithstanding the provisions of subsection (a), punitive damages may not be awarded against a defendant with respect to any health care liability action if no judgment for compensatory damages, including nominal damages (under $500), is rendered against the defendant.

(c) SEPARATE PROCEEDING.—

(1) IN GENERAL.—At the request of any defendant in a health care liability action, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; or

(B) the amount of punitive damages following a determination of punitive liability.

(2) ONLY RELEVANT EVIDENCE ADMISSIBLE.—If a defendant requests a separate proceeding under paragraph (1), evidence relevant only to the claim of punitive damages in a health care liability action, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(d) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—In determining the amount of punitive damages in a health care liability action, the trier of fact shall consider only the following:

(1) The severity of the harm caused by the conduct of the defendant.

(2) The duration of the conduct or any concealment of such conduct by the defendant.

(3) The profitability of the conduct of the defendant.

(4) The number of products sold or medical procedures rendered for compensation, as the case may be, by the defendant of the kind causing the harm complained of by the claimant.

(5) Evidence with respect to awards of punitive or exemplary damages to persons similarly situated to the claimant, when offered by the defendant.

(6) Prospective awards of compensatory damages to persons similarly situated to the claimant.

(7) Evidence with respect to any criminal or administrative penalties imposed on the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(8) Evidence with respect to the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(e) LIMITATION AMOUNT.—

(1) IN GENERAL.—The amount of damages that may be awarded as punitive damages in any health care liability action shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for the economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(f) RESTRICTIONS PERMITTED.—Nothing in this title shall be construed to imply a right to seek punitive damages where none exists under Federal or State law.

SEC. ___ 16. PERIODIC PAYMENTS.

With respect to a health care liability action, if the award of future damages exceeds $100,000, the adjudicating body shall, at the request of either party, enter a judgment ordering that future damages be paid on a periodic basis in accordance with the guidelines contained in the Uniform Periodic Payments of Judgments Act, as promulgated by the National Conference of Commissioners on Uniform State Laws in July of 1990. The adjudicating body may waive the requirements of this section if such body determines that such a waiver is in the interests of justice.

SEC. ___ 17. SCOPE OF LIABILITY.

(a) IN GENERAL.—With respect to punitive and noneconomic damages, the liability of each defendant in a health care liability action shall be several only and may not be joint. Such a defendant shall be liable only for the amount of punitive or noneconomic damages allocated to the defendant in direct proportion to such defendant's percentage of fault or responsibility for the injury suffered by the claimant.

(b) DETERMINATION OF PERCENTAGE OF LIABILITY.—With respect to punitive or noneconomic damages, the trier of fact in a health care liability action shall determine the extent of each party's fault or responsibility for injury suffered by the claimant, and shall assign a percentage of responsibility for such injury to each such party.

SEC. ___ 18. MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.

(a) IN GENERAL.—With respect to a health care liability action, the total amount of damages received by an individual under such action shall be reduced, in accordance with subsection (b), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action.

(b) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) that have been made or that will be made to such individual to pay costs of or compensate such individual for the injury that was the subject of the action; minus

(2) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in paragraph (1).

(c) DETERMINATION OF AMOUNTS FROM COLLATERAL SERVICES.—The reductions required under subsection (b) shall be determined by the court in a pretrial proceeding. At the subsequent trial—

(1) no evidence shall be admitted as to the amount of any charge, payments, or damage for which a claimant—

(A) has received payment from a collateral source or the obligation for which has been assured by a third party; or

(B) is, or with reasonable certainty, will be eligible to receive payment from a collateral source of the obligation which will, with reasonable certainty be assumed by a third party; and

(2) the jury, if any, shall be advised that—

(A) except for damages as to which the court permits the introduction of evidence, the claimant's medical expenses and lost income have been or will be paid by a collateral source or third party; and

(B) the claimant shall receive no award for any damages that have been or will be paid by a collateral source or third party.

SEC. ___ 19. TREATMENT OF ATTORNEYS' FEES AND OTHER COSTS.

(a) LIMITATION ON AMOUNT OF CONTINGENCY FEES.—

(1) IN GENERAL.—An attorney who represents, on a contingency fee basis, a claimant in a health care liability action may not charge, demand, receive, or collect for services rendered in connection with such action in excess of the following amount recovered by judgment or settlement under such action:

(A) 33⅓ percent of the first $150,000 (or portion thereof) recovered, based on after-tax recovery, plus

(B) 25 percent of any amount in excess of $150,000 recovered, based on after-tax recovery.

(2) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under paragraph (1) shall be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(b) CONTINGENCY FEE DEFINED.—As used in this section, the term "contingency fee" means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. ___ 20. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) ESTABLISHMENT BY STATES.—Each State is encouraged to establish or maintain alternative dispute resolution mechanisms that promote the resolution of health care liability claims in a manner that—

(1) is affordable for the parties involved in the claims;

(2) provides for the timely resolution of claims; and

(3) provides the parties with convenient access to the dispute resolution process.

(b) GUIDELINES.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall develop guidelines with respect to alternative dispute resolution mechanisms that may be established by States for the resolution of health care liability claims. Such guidelines shall include procedures with respect to the following methods of alternative dispute resolution:

(1) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (c), result in a final decision as to facts, law, liability or damages. The parties may elect binding arbitration.

(2) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(3) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(4) EARLY OFFER AND RECOVERY MECHANISM.—The use of early offer and recovery mechanisms under which a health care provider, health care organization, or any other alleged responsible defendant may offer to compensate a claimant for his or her reasonable economic damages, including future economic damages, less amounts available from collateral sources.

(5) CERTIFICATE OF MERIT.—The requirement that a claimant in a health care liability action submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(6) NO FAULT.—The use of a no-fault statute under which certain health care liability actions are barred and claimants are compensated for injuries through their health plans or through other appropriate mechanisms.

(c) FURTHER REDRESS.—The extent to which any party may seek further redress (subsequent to a decision of an alternative dispute resolution method) concerning a health care liability claim in a Federal or State court shall be dependent upon the methods of alternative dispute resolution adopted by the State.

(d) TECHNICAL ASSISTANCE AND EVALUATIONS.—

(1) TECHNICAL ASSISTANCE.—The Attorney General may provide States with technical assistance in establishing or maintaining alternative dispute resolution mechanisms under this section.

(2) EVALUATIONS.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United

States, shall monitor and evaluate the effectiveness of State alternative dispute resolution mechanisms established or maintained under this section.

SEC. ___21. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the injury occurred before the date of enactment of this title.

Subtitle B—Protection of the Health and Safety of Patients

SEC. ___31. ADDITIONAL RESOURCES FOR STATE HEALTH CARE QUALITY ASSURANCE AND ACCESS ACTIVITIES.

Each State shall require that not less than 50 percent of all awards of punitive damages resulting from all health care liability actions in that State, if punitive damages are otherwise permitted by applicable law, be used for activities relating to—

(1) the licensing, investigating, disciplining, and certification of health care professionals in the State; and

(2) the reduction of malpractice-related costs for health care providers volunteering to provide health care services in medically underserved areas.

Subtitle C—Obstetric Services

SEC. ___41. SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IN GENERAL.—In the case of a health care liability action relating to services provided during labor or the delivery of a baby, if the health care professional or health care provider against whom the action is brought did not previously treat the claimant for the pregnancy, the trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.

(b) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of subsection (a), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice in which any of whose members previously treated the individual for the pregnancy or is providing services to the individual during labor or the delivery of a baby pursuant to an agreement with another professional.

Subtitle D—Severability

SEC. ___51. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a field hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, August 8, from 9:00 a.m. until 11:00 a.m. It will be held at the Albuquerque City Council Chambers, Albuquerque, NM.

The purpose of the hearing is to receive testimony on recent developments in advanced fuel cell and lighting technology, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510, or to Senator BINGAMAN's office in Albuquerque, Suite 130, 625 Silver, SW, Albuquerque, NM 87102.

For further information please contact John Kotek at 202–224–6385, Jonathan Epstein at 202–224–3357, or Amanda Goldman at 202–224–6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED FORCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 26, 2002, at 9:30 a.m., in both open and executive sessions to consider the nominations of Lieutenant General James T. Hill, USA for appointment to the grade of General and assignment as Commander in Chief, United States Southern Command; and Vice Admiral Edmund P. Giambastiani, Jr., USN for appointment to the grade of Admiral and assignment as Commander in Chief, United States Joint Forces Command.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on Birth Defects: Strategies for Prevention and Ensuring Quality of Life during the session of the Senate on Friday, July 26, 2002, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE PLACED ON THE CALENDAR—H.R. 4965

Mr. REID. Mr. President, it is my understanding that H.R. 4965 is at the desk and due for its second reading.

The PRESIDING OFFICER. As in legislative session, the clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion.

Mr. REID. I object to any further proceedings at this time.

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

MEETING OF CONGRESS IN NEW YORK, NEW YORK, ON FRIDAY, SEPTEMBER 6, 2002

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of H. Con. Res. 448, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 448) providing for a special meeting for the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. I ask unanimous consent the resolution and preamble be agreed to en bloc and the motion to reconsider be laid upon the table without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 448) was agreed to.

The preamble was agreed to.

PROVIDING REPRESENTATION BY CONGRESS AT MEETING IN NEW YORK, NEW YORK

Mr. REID. I ask unanimous consent the Senate now proceed to the consideration of H. Con. Res. 449, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A bill (H. Con. Res. 449) providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent the resolution be agreed to and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 449) was agreed to.

HONORING JUSTIN W. DART, JR.

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 310, submitted earlier today by Senators HARKIN, HATCH, KENNEDY, and GREGG.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A bill (S. Res. 310) honoring Justin W. Dart, as a champion of the rights of individuals with disabilities.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Mr. President, on Saturday, June 22, our Nation lost one of its great heroes: My good friend, Justin Dart, Jr. Today, my colleagues Senator KENNEDY, Senator HATCH, and Senator GREGG, and I are introducing a bipartisan resolution to honor Justin Dart. His memorial service will occur tomorrow, July 26, the 12th anniversary of the Americans with Disabilities Act.

Justin Dart was the godfather of the disability rights movement. For 30 years he fought to end prejudice against people with disabilities, to strengthen the disabilities right movement, to protect the rights of people with disabilities. Millions of Americans with disabilities never knew his name but they owe him so much.

Justin was instrumental to the passage of the ADA and many other policies of interest to individuals with disabilities. When President Bush signed the Americans With Disabilities Act, he gave the first pen to Justin Dart. He truly was the one who brought us together and give the inspiration and guidance to get this wonderful, magnificent bill through. I was proud to be at his side when he received the Medal of Freedom from President Clinton. Today we are proud to introduce this resolution to honor him and commemorate his tremendous contribution to the lives of Americans with disabilities across this country.

Mr. REID. Mr. President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements related thereto be printed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 310) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 310

Whereas Justin W. Dart, Jr. was born in Chicago, Illinois in 1930;

Whereas Justin Dart, Jr. has been recognized as a pioneer and leader in the disability rights movement;

Whereas Justin Dart, Jr. operated successful businesses in the United States and Japan;

Whereas 5 Presidents, 5 Governors, and Congress have seen fit to appoint Justin Dart, Jr. to leadership positions within the area of disability policy, including Vice Chairman of the National Council on Disability, Commissioner of the Rehabilitation Services Administration, Chairperson of the President's Committee on Employment of People with Disabilities, and Chairperson of the Congressional Task Force on the Rights and Empowerment of Americans with Disabilities;

Whereas Justin Dart, Jr. was a civil rights activist for individuals with disabilities since he was stricken with polio in 1948 and played a leadership role in numerous civil rights marches across the country;

Whereas Justin Dart, Jr. worked tirelessly to secure passage of the Americans with Disabilities Act of 1990, which was signed into law by President Bush, and is often recognized as a major driving force behind the disability rights movement and that landmark legislation;

Whereas on January 15, 1998, President Clinton awarded the Presidential Medal of Freedom, our Nation's highest civilian award, to Justin Dart, Jr.

Whereas Justin Dart, Jr. has left a powerful legacy as a civil rights advocate and his actions have benefited the people of the United States;

Whereas Justin Dart, Jr. is not only remembered for his advocacy efforts on the behalf of individuals with disabilities, but also for his energetic spirit and for the formal and informal independent living skills programs for individuals with disabilities that he supported; and

Whereas Justin Dart, Jr. passed away at his home on June 22, 2002, and is survived by his wife, Yoshiko Dart, 5 daughters, 11 grandchildren, and 2 great-grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Justin W. Dart, Jr. as 1 of the true champions of the rights of individuals with disabilities and for his many contributions to the Nation throughout his lifetime;

(2) honors Justin W. Dart, Jr. for his tireless efforts to improve the lives of individuals with disabilities; and

(3) recognizes that the achievements of Justin W. Dart, Jr. have inspired and encouraged millions of individuals with disabilities in the United States to overcome obstacles and barriers so that the individuals can lead more independent and successful lives.

TO AMEND THE COMMUNICATIONS SATELLITE ACT OF 1962

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. 2810 submitted earlier by Senators HOLLINGS, MCCAIN, BURNS, and ENSIGN.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2810) to amend the Communications Satellite Act of 1962 to extend the deadline for INTELSAT initial public offering.

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, I rise today, along with my Commerce Committee colleagues to speak to legislation that would extend the deadline for Intelsat to conduct the initial public offering required of it by the ORBIT satellite privatization law.

Under ORBIT, Intelsat must conduct an IPO by December 31, 2002. Intelsat has made substantial preparations to do just that. Recent disastrous events in the telecommunications market, however, now make this statutory deadline unrealistic and potentially contrary to the policy objectives of ORBIT. This bill would therefore give Intelsat another year in which to conduct its IPO and also provides the FCC authority to allow an additional extension of time if warranted by market conditions.

The goal of ORBIT's IPO requirement was to substantially dilute the ownership of the privatized Intelsat by its former owners, many of which are foreign government entities. I continue to support this goal. The Commerce Committee has been provided with significant evidence that this goal is already in the process of being achieved. For example:

July 18, 2001: Intelsat privatized in a transaction that resulted in 14 percent of the new entity being held by non-signatory investing entities;

April 26, 2002; Intelsat filed its IPO registration statement with the SEC;

May 2002: Natural dilution of Intelsat signatories continued as foreign governments privatized their telecom operations: Intelsat non-signatory ownership increased to 22 percent;

June 14, 2002: The FCC issued its ORBIT Act report, finding that, "On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Act."

June 21, 2002: Intelsat received clearance from the New York Stock Exchange to file a listing application to trade its ordinary shares on that exchange.

This is a good start. More remains to be done, but it appears that Intelsat has been proceeding in a manner consistent with launching its IPO prior to the December 31, 2002 ORBIT deadline. Recently, however, uncontrollable external events overtook all of us. WorldCom's bankruptcy is but the latest financial debate in the telecommunications industry, which has been unstable. Capital markets are extremely unsupportive of additional investment at this time. There arguably could not be a worse time for a satellite communications company to consider an IPO.

If forced to move ahead with an IPO before the end of 2002, Intelsat will probably receive a reduced price for its shares offered. Foreign entities that still own significant portions of Intelsat are aware of this likelihood and would therefore be discouraged from offering their ownership interests for sale. Instead of the substantial dilution of prior owners contemplated by the ORBIT Act, a year—2002 IPO might not achieve much dilution whatsoever. In that instance, Intelsat would have complied with the procedural requirement of ORBIT without the substantive result that we in Congress sought: dilution of previous owners. Given the current adverse conditions in the stock market in general and the telecommunications sector in particular, the only way to ensure the dilution results sought by ORBIT may be to allow Intelsat to further delay its IPO. That result is good public policy that is also good for the long-term health of the satellite communications industry.

Mr. President, this bill needs to be enacted this year. I thank my colleagues for their support and I urge the prompt passage of this legislation.

Mr. REID. Mr. President, I ask unanimous consent the bill be read three times and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD at the appropriate place with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2810) was read the third time and passed, as follows:

S. 2810

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF IPO DEADLINE.

Section 621(5)(A)(i) of the Communications Satellite Act of 1962 (47 U.S.C. 763(5)(A)(i)) is amended—

(1) by striking "October 1, 2001," and inserting "December 31, 2003,"; and

(2) by striking "December 31, 2002;" and inserting "June 30, 2004;".

PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the adjournment resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 132) providing for a conditional adjournment or recess of the Senate and conditional adjournment of the House of Representatives.

There being no objection, the Senate proceeded to the consideration of the concurrent resolution.

Mr. REID. I ask unanimous consent the concurrent resolution be agreed to and the motion to reconsider be laid on the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 132) was agreed to, as follows:

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring), That, no consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, August 1, 2002, Friday, August 2, 2002, or Saturday, August 3, 2002, on a motion offered pursuant to this concurrent resolution by its Minority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Tuesday, September 3, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, July 26, 2002, on a motion offered by its Majority Leader or his designee pursuant to this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, September 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WORK OF THE SENATE

Mr. DASCHLE. Mr. President, in just a few minutes, the Republican leader will be joining me on the Senate floor.

Before he gets here, I rise to thank my colleagues for the good work we have been able to complete this week. It has been a very productive week. We were able to pass unanimously the new Corporate Accountability Act after a great deal of effort on all sides. I complimented the distinguished Senator from Maryland, the chairman of the Banking Committee, Mr. SARBANES, on a number of occasions, but I want to complete our week this week by recognizing again his contribution.

The Appropriations Committee deserves commendation. They have reported out all the appropriations bills now.

In many ways, they are actually ahead of schedule, even though we have had somewhat of a late start.

We finished the military construction appropriations bill this week. We also finished the legislative branch appropriations bill and set up an opportunity to complete our work on the DOD appropriations bill next week. There may be other appropriations bills that may be ready for consideration next week as well. On the appropriations front, secondly, I thought we had quite a good week.

At long last we were able to move to conference on terrorism insurance. I am hopeful in the not too distant future we will complete our work on that measure, as we did the Corporate Accountability Act. We have done a number of nominations. We are now on track with regard to nominations. We confirmed a circuit court judge today, filed cloture Wednesday and got cloture today on second one. That vote will occur on Monday night. It is currently my plan to move forward additional judicial nominees on Monday night as well.

In addition to the judicial nominees, we were able to complete our work on nominations on some very important commissions. The SEC, for example, had four outstanding vacancies. As a result of our work this week, we were able to complete work on the SEC nominations. There is now a full complement of SEC Commissioners. That, too, was an important aspect of the work of the Senate.

Off the floor, there were a couple of other important matters that we addressed. The bankruptcy reform conference report is soon to be filed. It was completed, the work was completed, as was the trade promotion authority—not only trade promotion authority but the Andean Trade Promotion Act, as well as the Trade Adjustment Assistance Act, the package of bills, late last night. The conference report to that package of bills was agreed to.

We are in a very good position now to move into the final week of this work period. Senator LOTT and I have had a number of constructive discussions about next week. Our purpose in coming to the floor is to outline for our colleagues what our expectations are, and I will do that when he arrives.

I will also say, the confirmation of the district judge this morning brings to a total of 61 the number of confirmations since we took the majority a little over a year ago. That includes 49 district judges and 12 circuit judges.

On Monday, as I noted, we intend to take up at least 1 more, if not additional judges, and that would then bring to a total anywhere from 62 to 64 judges in the time that we have had the majority.

We are making progress on judicial nominations. We are determined to attempt to clear the calendar with regard to those judicial nominations over the course of the next few days, if it is at all possible.

Whether we clear the calendar, I must say, depends on whether we get all the other work done as well. There has to be an understanding that we do not have the luxury of focusing solely on nominations, as much as that would be a good thing to do. We have to complete our work on the prescription drug benefit and generic drug benefit legislation. We want to call up the fast-track conference report and file cloture. We want to complete our work on the Defense appropriations bill, if that is possible. We want to work to proceed to the homeland security legislation and file cloture on the motion to proceed to that bill.

We have a lot of work we need to complete before the end of next week. Given the fact we will get a late start on Monday afternoon, Senators should be aware that we could be involved in late nights, and we will certainly be here a week from this coming Friday.

I wanted to be sure my colleagues were made aware of our expectations for the schedule for that period of time.

I yield the floor and suggest the absence of a quorum until the arrival of the distinguished Republican leader.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. I ask unanimous consent that the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 3:23 p.m., recessed subject to the call of the Chair and reassembled at 3:36 p.m. when called to order by the Presiding Officer (Mr. REID.)

NEXT WEEK'S SCHEDULE

Mr. DASCHLE. Mr. President, the distinguished Republican leader and I have been discussing the schedule for next week, as I noted a few moments ago. We know there are many obstacles and many challenges we will have to face next week. I believe it is important we come to the floor to share with our colleagues at least what our intentions are and indicate that, on a bileadership basis, it is our desire to work through each of these priorities in an effort to get as much done as we can and complete this work period as successfully as possible.

In keeping with that spirit, let me say it was our intention to attempt to complete our work on the prescription drug benefit by Tuesday night. We, of course, will take up additional nominations on Monday, three judges, and additional Executive Calendar nominees. We will chip away at that each day. We will be doing another block of nominations today. As we noted earlier this week, we are working under a unanimous consent agreement to take up the DOD appropriations bill no later than Wednesday. Now, it does not, of course, stipulate when on Wednesday, so in keeping with that request and that consent, we are obligated to bring it up.

It is my expectation that certainly if the prescription drug benefit bill has been completed, we will be able to come to the DOD bill and stay on it until it has been finished. We recognize there are those who are in opposition to both the trade promotion authority as well as to Homeland Security. Yet it is our desire to complete work on the trade promotion authority bill, the conference report, next week. So we will file cloture on the motion to proceed to the conference report in an effort to complete our work.

We also have a need to begin work on the homeland security legislation. It was reported out of committee on a bipartisan basis, out of the Governmental Affairs Committee this week, so we will file cloture, recognizing that there will be a need to do so. We will file cloture on the homeland defense bill and have a vote on the motion to proceed to that bill prior to the end of the week.

So that clearly will require cooperation and a good deal of effort on everyone's part. I think there is a mutual interest in getting this work done. Many of the issues that we will be taking up next week are high priorities for the administration, as they are for us. So I appreciate very much the distinguished Republican leader's interest in working together to accommodate that schedule. I thank him for coming to the floor.

I yield the floor at this time for whatever remarks he may want to make.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. LOTT. Mr. President, I thank the distinguished majority leader for his comments and for the effort that he has put into a number of these issues this week. For every small agreement that is entered into on the floor it quite often represents hours of effort on our part, many times having had to go to Members repeatedly and work through concerns and legitimate disagreements. Then we finally get an agreement on the floor, and it moves quickly and it looks like it was a piece of cake, but it was not that way at all, as the distinguished Senator in the chair knows because he is here on the floor working these issues day in and day out.

As is always the case, this next week has the potential to be a very productive week. One of the two busiest weeks and most productive weeks each year is the one right before the August recess and the one right before we go out at the end of the year. I remember one day, the last day of a session, we moved over 50 bills at the last half of the day when most Members had gone. But we had worked through a number of agreements.

Next week we have a chance to do a lot. I want to look back, though, just a moment, to this week because there were some significant achievements this week. It looked as if at times we were not reaching agreement—we weren't. But sometimes before you reach an agreement you have to be clearly in disagreement. Maybe that is where we were this week.

But we did finally start to break the deadlock and had a thaw on nominations. We had reached almost a record high of 90-something nominations pending on the calendar. But efforts were made to work through that. Senator DASCHLE and I had worked through it twice, only to be met with a different hold. But the White House worked out concerns with Senator MCCAIN and we started moving nominations, including, I think, some 15 last night. We are beginning to make a little progress on the judges.

We have some 204 nominations still pending in committees, but if everything goes according to normal practice around here, a lot of those nominations will be coming out next week and we will be moving them, hopefully, as fast as we can once we get them cleared.

We are doing some judges. It is difficult, but we are going to get action on one more circuit judge completed on Monday. We moved one other district judge last night and voted on that, I believe—this morning, actually. We are going to do two more, I believe Senator DASCHLE said. So we are beginning to thaw that issue, and that is good.

On the accounting reform, I want to emphasize once again we not only got an agreement on the conference, we got the conference done and sent to the President, and I believe that was a positive factor in beginning to restore confidence in our corporate world and accounting procedures.

The House is in the process, or has by now completed homeland security legislation. The Senate committee completed markup and we are ready to go forward. That was a very big achievement by the committee. Even though you disagree with some of what was done, they did get their work completed and they reported it to the Senate, and we did the legislative appropriations bill and we got an agreement to do the Department of Defense appropriations bill.

For our colleagues on my side of the aisle, they have been calling for this. In fact, we are going to get it done, we are going to call it up next Wednesday, and we will complete it if it takes 2 hours a day or 2 days, as Senator DASCHLE said. So those things we did, after a lot of work, seeing some agreement reached.

On prescription drugs, we don't have agreement. It is obvious we had concerns about the way it was brought to the floor and about some of the legislation that was offered. But efforts are still underway to see if we can find common ground. We will continue to try to do that.

There is pending an amendment on medical malpractice. That is an issue that is very important to a lot of people of my State. There has developed a real problem with tort reform and with doctors losing their insurance coverage or leaving the State because there is no limit on punitive damages. No matter how this turns out in this debate, this is a debate that we and the States of America are going to have to deal with in some way.

We will have an opportunity late Monday afternoon and Tuesday to see what can be done on prescription drugs. I know there are conversations going on today between Members of the Senate and House, Republican and Democrat, and also with the administration to see maybe what can be done there. Senator DASCHLE has indicated that he would begin action to get a vote on at least cloture on a motion to proceed on homeland security. I had hoped and he had hoped, and had stated, that we would do our best to get homeland security completed before the August recess. But there is a physical limit to what we can do in a limited period of time, especially if we have Senators who are going to exercise to their fullest their rights to have debate.

The trade conference report, I think the whole city was shocked this morning when they got up and found out that there had basically been an agreement on the trade conference report. As I look at it, it sounds as if they have done a good job. I would probably change parts of it, and so would Senator DASCHLE, but I do think they probably have made a very wise move. Instead of subjecting themselves to 6 weeks of pressures and counterpressures, they went ahead and addressed the issue and had the bill ready.

We are going to work together next week to take the early action necessary to get cloture on fast track and complete action on that bill. This is a very important bill for the economy of our country and for our ability to be involved in trade promotion and trade, fair trade and open trade, all over the world. We have kind of fallen behind in that area with some other countries.

The bankruptcy conference report finally worked out, too. I would like to see us even try to deal with that. If we cannot get that done next week, we will be ready to go to it shortly after we return.

I do want to say to Senator DASCHLE and to others, I am working to try—I discussed concerns about getting agreement to go ahead with the energy and water appropriations bill. If we could add that to our list next week, that would be very big. I don't find a lot of resistance to it, but we have had to clear it with some people who did have some potential amendments. There is one other concern related to that bill that I am trying to work through.

We have just given a litany of bills. It will not be easy to get all that done. We may not get it all done next week. But by working together and by asking our colleagues to cooperate with us, I think we can produce an awful lot of good legislation next week. I would like to be able to have a press conference next week as we go home and say: The Senate has done well. I haven't said that a lot lately, but I am prepared to do so when it is merited. I think there is a chance for that to occur next week. We could have a really important legislative achievement next week with a little extra work and a little extra input from all of our colleagues.

I thank Senator DASCHLE for working with us to move these nominations. There are a lot of people who try to view every bill, every nomination, as leverage on some other issue. At some point we have to stop that and move them forward in order to do what the American people expect us to do. I am going to be involved next week to try to help in every way I can.

Quite often, Senator DASCHLE and I get accused of being on both sides of the same issue, by many different forces. It amazes me sometimes what I am supposed to have done. In fact, I saw yesterday where somebody had put out that there was a Daschle-Lott agreement on prescription drugs. It came as a shock to Senator DASCHLE and me, but it was actually something in writing. Somebody downtown had a brilliant idea. Maybe we ought to look at it.

I am thankful for the comments of Senator DASCHLE, and I will work with him next week to do everything we can to produce a good result. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I compliment the distinguished Republican leader for the spirit of his comments, and indicate that he is so correct. There are so many times when there are rumors and there are allegations of all kinds, sometimes positive and sometimes negative, about things that he and I are doing, which is why I thought having a colloquy at the end of the week might be helpful.

With regard to the schedule, with regard to our intentions, let me be clear. It is my hope, based on the cooperative spirit that we both have attempted to articulate this afternoon, that we can get a lot done.

I have indicated to the President this week that it is my hope we can clear the calendar of all of the noncontroversial nominations, both judicial as well as executive appointments. That is what we will continue to try to chip away at. I don't see any reason why, at the end of the week, all noncontroversial nominations could not have been successfully addressed. We will do that.

I appreciate very much Senator LOTT's willingness to come to the floor to restate our intentions to try to achieve this ambitious agenda.

THE CALENDAR

Mr. DASCHLE. Mr. President, I have a number of matters to address prior to the time we adjourn for the day.

All of these matters have been reviewed by the distinguished Republican leader. He is here, and he is now in a position to express himself if he has any additional comments. But I will begin.

UNANIMOUS CONSENT AGREEMENT—THE EXECUTIVE CALENDAR

Mr. REID. Mr. President, as if in executive session, I ask unanimous consent that on Monday, July 29, immediately following the disposition of the nomination of Executive Calendar No. 810, the nomination of Julia Smith Gibbons, the Senate remain in executive session to consider the following nominations; that there be 2 minutes of debate equally divided and controlled in the usual form between the votes; that the votes following the first be 10 minutes in duration; that the Senate proceed to vote on confirmation of the nominations; that the President be immediately notified of the Senate's action; and that the Senate resume legislative session without further intervening action or debate: Executive Calendar No. 827, the nomination of Joy Flowers Conti, of Pennsylvania, to be U.S. District Judge for the Western District of Pennsylvania; Executive Calendar No. 828, John E. Jones, III, of Pennsylvania to be U.S. District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

JOHN F. KENNEDY CENTER PLAZA AUTHORIZATION ACT OF 2002

Mr. DASCHLE. Mr. President, I now ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 524, S. 2771.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2771) to amend the John F. Kennedy Center Plaza Authorization Act of 2002 to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2771) was read the third time and passed, as follows:

S. 2771

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "John F. Kennedy Center Plaza Authorization Act of 2002".

SEC. 2. JOHN F. KENNEDY CENTER PLAZA.

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) is amended—

(1) by redesignating sections 12 and 13 as sections 13 and 14, respectively; and

(2) by inserting after section 11 the following:

"SEC. 12. JOHN F. KENNEDY CENTER PLAZA.

"(a) DEFINITIONS.—In this section:

"(1) AIR RIGHT.—The term 'air right' means a real property interest conveyed by deed, lease, or permit for the use of space between streets and alleys within the boundaries of the Project.

"(2) CENTER.—The term 'Center' means the John F. Kennedy Center for the Performing Arts.

"(3) GREEN SPACE.—The term 'green space' means an area within the boundaries of the Project or affected by the Project that is covered by grass, trees, or other vegetation.

"(4) PLAZA.—The term 'Plaza' means improvements to the area surrounding the John F. Kennedy Center building that are—

"(A) carried out under the Project; and

"(B) comprised of—

"(i) transportation elements (including roadways, sidewalks, and bicycle lanes); and

"(ii) nontransportation elements (including landscaping, green space, open public space, and water, sewer, and utility connections).

"(5) PROJECT.—

"(A) IN GENERAL.—The term 'Project' means the Plaza project, as described in the TEA–21 report, providing for—

"(i) construction of the Plaza; and

"(ii) improved bicycle, pedestrian, and vehicular access to and around the Center.

"(B) INCLUSIONS.—The term 'Project'—

"(i) includes—

"(I) planning, design, engineering, and construction of the Plaza;

"(II) buildings to be constructed on the Plaza; and

"(III) related transportation improvements; and

"(ii) may include any other element of the Project identified in the TEA–21 report.

"(6) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

"(7) TEA–21 REPORT.—The term 'TEA–21 report' means the report of the Secretary submitted to Congress under section 1214 of the Transportation Equity Act for the 21st Century (20 U.S.C. 76j note; 112 Stat. 204).

"(b) RESPONSIBILITIES OF THE SECRETARY.—

"(1) IN GENERAL.—The Secretary shall be responsible for the Project and may carry out such activities as are necessary to construct the Project, other than buildings to be constructed on the Plaza, substantially as described in the TEA–21 report.

"(2) PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION.—The Secretary shall be responsible for the planning, design, engineering, and construction of the Project, other than buildings to be constructed on the Plaza.

"(3) AGREEMENTS WITH THE BOARD AND OTHER AGENCIES.—The Secretary shall enter into memoranda of agreement with the Board and any appropriate Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

"(4) CONSULTATION WITH THE BOARD.—The Secretary shall consult with the Board to maximize efficiencies in planning and executing the Project, including the construction of any buildings on the Plaza.

"(5) CONTRACTS.—Subject to the approval of the Board, the Secretary may enter into contracts on behalf of the Center relating to the planning, design, engineering, and construction of the Project.

"(c) RESPONSIBILITIES OF THE BOARD.—

"(1) IN GENERAL.—The Board may carry out such activities as are necessary to construct buildings on the Plaza for the Project.

"(2) RECEIPT OF TRANSFERS OF AIR RIGHTS.—The Board may receive from the District of Columbia such transfers of air rights as are necessary for the planning, design, engineering, and construction of the Project.

"(3) CONSTRUCTION OF BUILDINGS.—The Board—

"(A) may construct, with nonappropriated funds, buildings on the Plaza for the Project; and

"(B) shall be responsible for the planning, design, engineering, and construction of the buildings.

"(4) ACKNOWLEDGMENT OF CONTRIBUTIONS.—

"(A) IN GENERAL.—The Board may acknowledge private contributions used in the construction of buildings on the Plaza for the Project in the interior of the buildings, but may not acknowledge private contributions on the exterior of the buildings.

"(B) APPLICABILITY OF OTHER REQUIREMENTS.—Any acknowledgement of private contributions under this paragraph shall be consistent with the requirements of section 4(b).

"(d) RESPONSIBILITIES OF THE DISTRICT OF COLUMBIA.—

"(1) MODIFICATION OF HIGHWAY SYSTEM.—Notwithstanding any State or local law, the Mayor of the District of Columbia, in consultation with the National Capital Planning Commission and the Secretary, shall have exclusive authority, as necessary to meet the requirements and needs of the Project, to amend or modify the permanent system of highways of the District of Columbia.

"(2) CONVEYANCES.—

"(A) AUTHORITY.—Notwithstanding any State or local law, the Mayor of the District of Columbia shall have exclusive authority, as necessary to meet the requirements and needs of the Project, to convey or dispose of any interests in real estate (including air rights and air space (as that term is defined by District of Columbia law)) owned or controlled by the District of Columbia.

"(B) CONVEYANCE TO THE BOARD.—Not later than 90 days after the date of receipt of notification from the Secretary of the requirements and needs of the Project, the Mayor of the District of Columbia shall convey or dispose of to the Board, without compensation, interests in real estate described in subparagraph (A).

"(3) AGREEMENTS WITH THE BOARD.—The Mayor of the District of Columbia shall have the authority to enter into memoranda of agreement with the Board and any Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

"(e) OWNERSHIP.—

"(1) ROADWAYS AND SIDEWALKS.—Upon completion of the Project, responsibility for maintenance and oversight of roadways and sidewalks modified or improved for the Project shall remain with the owner of the affected roadways and sidewalks.

"(2) MAINTENANCE OF GREEN SPACES.—Subject to paragraph (3), upon completion of the Project, responsibility for maintenance and oversight of any green spaces modified or improved for the Project shall remain with the owner of the affected green spaces.

"(3) BUILDINGS AND GREEN SPACES ON THE PLAZA.—Upon completion of the Project, the Board shall own, operate, and maintain the buildings and green spaces established on the Plaza for the Project.

"(f) NATIONAL HIGHWAY BOUNDARIES.—

"(1) REALIGNMENT OF BOUNDARIES.—The Secretary may realign national highways related to proposed changes to the North and South Interchanges and the E Street approach recommended in the TEA–21 report in order to facilitate the flow of traffic in the vicinity of the Center.

"(2) ACCESS TO CENTER FROM I–66.—The Secretary may improve direct access and egress between Interstate Route 66 and the Center, including the garages of the Center.".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 13 of the John F. Kennedy Center Act (as redesignated by section 2) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) JOHN F. KENNEDY CENTER PLAZA.—There is authorized to be appropriated to the Secretary of Transportation for capital costs incurred in the planning, design, engineering, and construction of the project authorized by section 12 (including roadway improvements related to the North and South Interchanges and construction of the John F. Kennedy Center Plaza, but not including construction of any buildings on the plaza) $400,000,000 for the period of fiscal years 2003 through 2010, to remain available until expended.".

SEC. 4. CONFORMING AMENDMENTS.

(a) SELECTION OF CONTRACTORS.—Section 4(a)(2) of the John F. Kennedy Center Act (20 U.S.C 76j(a)(2)) is amended by striking subparagraph (D) and inserting the following:

"(D) SELECTION OF CONTRACTORS.—In carrying out the duties of the Board under this Act, the Board may—

"(i) negotiate, with selected contractors, any contract—

"(I) for planning, design, engineering, or construction of buildings to be erected on the John F. Kennedy Center Plaza under section 12 and for landscaping and other improvements to the Plaza; or

"(II) for an environmental system for, a protection system for, or a repair to, maintenance of, or restoration of the John F. Kennedy Center for the Performing Arts; and

"(ii) award the contract on the basis of contractor qualifications as well as price.".

(b) ADMINISTRATION.—Section 6(d) of the John F. Kennedy Center Act (20 U.S.C. 76*l*(d)) is amended in the first sentence by striking "section 12" and inserting "section 14".

(c) DEFINITIONS.—Section 14 of the John F. Kennedy Center Act (as redesignated by section 2) is amended by adding at the end the following: "Upon completion of the project for establishment of the John F. Kennedy Center Plaza authorized by section 12, the Board, in consultation with the Secretary of Transportation, shall amend the map that is on file and available for public inspection under the preceding sentence.".

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 852, 868, 869, 870, 871, 872, 873, 874, 875, 877, 878, 879, 880, 881, 882, and 883; that the nominations be confirmed, the motions to reconsider be laid upon the table; that any statements relating thereto be printed in the Record; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF ENERGY

Guy F. Caruso, of Virginia, to be Administrator of the Energy Information Administration.

DEPARTMENT OF JUSTICE

Gregory Robert Miller, of Florida, to be United States Attorney for the Northern District of Florida for the term of four years.

Kevin Vincent Ryan, of California, to be United States Attorney for the Northern District of California, for the term of four years.

Randall Dean Anderson, of Utah, to be United States Marshall for the District of Utah for the term of four years. (Reappointment)

Ray Elmer Carnahan, of Arkansas, to be United States Marshall for the Eastern District of Arkansas for the term of four years.

David Scott Carpenter, of North Dakota, to be United States Marshall for the District of North Dakota for the term of four years.

Theresa A. Merrow, of Georgia, to be United States Marshall for the Middle District of Georgia for the term of four years.

Ruben Monzon, of Texas, to be United States Marshall for the Southern District of Texas for the term of four years.

James Michael Wahlrab, of Ohio, to be United States Marshall for the Southern District of Ohio for the term of four years.

DEPARTMENT OF LABOR

Kathleen P. Utgoff, of Virginia, to be Commissioner of Labor Statistics, United States Department of Labor for a term of four years.

W. Roy Grizzard, of Virginia, to be an Assistant Secretary of Labor.

NATIONAL COUNCIL ON DISABILITY

Lex Frieden, of Texas, to be a Member of the National Council On Disability for a term expiring September 17, 2004.

Young Woo Kang, of Indiana, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

Kathleen Martinez, of California, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

Carol Hughes Novak, of Georgia, to be a Member of the National Council On Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council On Disability for a term expiring September 17, 2002.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR MONDAY, JULY 29, 2002

Mr. DASCHLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 4 p.m. on Monday, July 29; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 5:30 p.m., with Senators permitted to speak for up to 10 minutes each, with the time equally divided between the two leaders or their designees; and that at 5:30 p.m. the Senate proceed to executive session under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DASCHLE. Mr. President, the next rollcall vote will occur at approximately 5:30 p.m. on Monday, July 29, on the confirmation of Julia S. Gibbons to be U.S. Circuit Judge for the Sixth Circuit.

ADJOURNMENT UNTIL 4 P.M. MONDAY, JULY 29, 2002

Mr. DASCHLE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 3:54 p.m., adjourned until Monday, July 29, 2002, at 4 p.m.

NOMINATIONS

Executive Nominations Received by the Senate July 26, 2002:

DEPARTMENT OF DEFENSE

OTIS WEBB BRAWLEY, JR., OF GEORGIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2003, VICE WILLIAM D. SKELTON, TERM EXPIRED.

DEPARTMENT OF TRANSPORTATION

MARION C. BLAKEY, OF MISSISSIPPI, TO BE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION FOR THE TERM OF FIVE YEARS, VICE JANE GARVEY, TERM EXPIRING.

UNITED STATES POSTAL SERVICE

JAMES C. MILLER III, OF VIRGINIA, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR THE TERM EXPIRING DECEMBER 8, 2010, VICE EINAR V. DYHRKOPP, TERM EXPIRED.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate July 26, 2002: .

DEPARTMENT OF ENERGY

GUY F. CARUSO, OF VIRGINIA, TO BE ADMINISTRATOR OF THE ENERGY INFORMATION ADMINISTRATION.

DEPARTMENT OF LABOR

KATHLEEN P. UTGOFF, OF VIRGINIA, TO BE COMMISSIONER OF LABOR STATISTICS, UNITED STATES DEPARTMENT OF LABOR FOR A TERM OF FOUR YEARS.

W. ROY GRIZZARD, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR.

NATIONAL COUNCIL ON DISABILITY

LEX FRIEDEN, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

YOUNG WOO KANG, OF INDIANA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

KATHLEEN MARTINEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

CAROL HUGHES NOVAK, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

PATRICIA POUND, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

CHRISTOPHER C. CONNER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

DEPARTMENT OF JUSTICE

GREGORY ROBERT MILLER, OF FLORIDA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

KEVIN VINCENT RYAN, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA, FOR THE TERM OF FOUR YEARS.

RANDALL DEAN ANDERSON, OF UTAH, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF UTAH FOR THE TERM OF FOUR YEARS.

RAY ELMER CARNAHAN, OF ARKANSAS, TO BE UNITED STATES MARSHALL FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

DAVID SCOTT CARPENTER, OF NORTH DAKOTA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF NORTH DAKOTA FOR THE TERM OF FOUR YEARS.

THERESA A. MERROW, OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

RUBEN MONZON, OF TEXAS, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS.

JAMES MICHAEL WAHLRAB, OF OHIO, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO FOR THE TERM OF FOUR YEARS.

HOUSE OF REPRESENTATIVES—*Friday, July 26, 2002*

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. SIMPSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 26, 2002.

I hereby appoint the Honorable MICHAEL K. SIMPSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Created in Your image and likeness, Lord God, we are endowed with noble rights and held to certain responsibilities. As this 107th Congress engages in decision-making, which will affect this Nation and the world internationally, help all Members reflect Your image and respect Your likeness in others.

Today we pray for all Americans with disabilities. Bless them with peace and strength. May their efforts to create independent lives for themselves be rewarded as they find their rightful place in the mainstream of American life.

As their brothers and sisters, may all Americans prove to be helpful citizens to those with disabilities and seize every opportunity to protect their rights to access and enjoy their fullest potential in places of worship, of work and learning, as well as on the streets and the public places of this Nation.

We are Yours, one people. We are Your people now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Georgia (Mr. NORWOOD) come forward and lead the House in the Pledge of Allegiance.

Mr. NORWOOD led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore. Pursuant to House Resolution 502 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5005.

☐ 0905

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, with Mr. LINDER (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on the legislative day of Thursday, July 25, 2002, amendment No. 16 printed in House Report 107-615 offered by the gentleman from Connecticut (Mr. SHAYS) had been disposed of.

Pursuant to section 4 of House Resolution 502 and the order of the House of that date, it is now in order to consider amendment No. 3 printed in House Report 107-615.

AMENDMENT NO. 3 OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. WAXMAN:

At the end of the bill add the following new title:

TITLE XI—OFFICE OF HOMELAND SECURITY

SEC. 1101. ESTABLISHMENT.

(a) IN GENERAL.—There is established in the Executive Office of the President an Office of Homeland Security

(b) DIRECTOR.—The head of the Office shall be the Director of Homeland Security, who shall be appointed by the President and advice and consent of the Senate.

SEC. 1102. MISSION.

As provided in Executive Order 13228, the mission of the Office of Homeland Security is to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.

SEC. 1103. FUNCTIONS.

As provided in Executive Order 13228, the functions of the Office of Homeland Security shall be to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States. Such functions shall include—

(1) working with executive departments and agencies, State and local governments, and private entities to ensure the adequacy of the national strategy for detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist threats or attacks within the United States and periodically reviewing and coordinating revisions to that strategy as necessary;

(2) identifying priorities and coordinating efforts for collection and analysis of information regarding threats of terrorism against the United States, including ensuring that all executive departments and agencies that have intelligence collection responsibilities have sufficient technological capabilities and resources and that, to the extent permitted by law, all appropriate and necessary intelligence and law enforcement information relating to homeland security is disseminated to and exchanged among appropriate executive departments and agencies;

(3) coordinating national efforts to prepare for and mitigate the consequences of terrorist threats or attacks within the United States, including coordinating Federal assistance to State and local authorities and nongovernmental organizations to prepare for and respond to terrorist threats or attacks and ensuring the readiness and coordinated deployment of Federal response teams to respond to terrorist threats or attacks;

(4) coordinating efforts to prevent terrorist attacks within the United States;

(5) coordinating efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks;

(6) coordinating efforts to respond to and promote recovery from terrorist threats or attacks within the United States;

(7) coordinating the domestic response efforts of all departments and agencies in the event of an imminent terrorist threat and during and in the immediate aftermath of a terrorist attacks within the United States and acting as the principal point of contact for and to the President with respect to coordination of such efforts;

(8) in coordination with the Assistant to the President for National Security Affairs, reviewing plans and preparations for ensuring the continuity of the Federal Government in the event of a terrorist attacks that threatens the safety and security of the United States Government or its leadership;

(9) coordinating the strategy of the executive branch for communicating with the public in the event of a terrorist threats or attacks within the United States and coordinating the development of programs for educating the public about the nature of terrorist threats and appropriate precautions and responses; and

(10) encouraging and inviting the participation of State and local governments and private entities, as appropriate, in carrying out the Offices's functions.

SEC. 1104. ACCESS TO INFORMATION.

As provided in Executive Order 13228, executive agencies, shall, to the extent permitted by law, make available to the Office of Homeland Security all information relating

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

to terrorist threats and activities within the United States.

SEC. 1105. BUDGET APPROVAL.

(a) AUTHORITY.—The Director of the Office of Homeland Security shall—

(1) review the budget requests submitted to the President by all executive agencies with homeland security responsibilities; and

(2) if a budget request fails to conform to the objectives set forth in the national strategy described in section 1102, may disapprove such budget request.

(b) EFFECT OF DISAPPROVAL.—In any case in which a budget request is disapproved under subsection (a)—

(1) the Director shall notify the appropriate Committees of Congress; and

(2) the President may not include such budget request in the annual budget submission to Congress unless the President makes an express determination that including such request is in the national interest.

SEC. 1106. ADMINISTRATION.

As provided in Executive Order 13228, the Office of Administration within the Executive Office of the President shall provide the Office of Homeland Security with such personnel, funding, and administrative support, to the extent permitted by law and subject to the availability of appropriations, as necessary to carry out the provisions of this title.

SEC. 1107. DETAIL AND ASSIGNMENT.

As provided in Executive Order 13228, the heads of executive agencies are authorized, to the extent permitted by law, to detail or assign personnel of such agencies to the Office of Homeland Security upon request of the Director of Homeland Security.

SEC. 1108. OVERSIGHT BY CONGRESS.

The establishment of the Office of Homeland Security within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, or study in the possession of, or conducted by or at the direction of, the Director; or

(2) personnel of the Office.

The CHAIRMAN pro tempore. Pursuant to the previous order of the House, the gentleman from California (Mr. WAXMAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would do three things. First, it would codify the Office of Homeland Security in statute and subject it to congressional oversight.

Second, it would require that the director of this office be confirmed by the Senate.

Third, it would provide the director of the office with authority to review the budgets of all agencies involved in homeland security to ensure that they conform to the objectives of the national strategy. If they don't, the director could decertify these budgets. This would prohibit the OMB director from submitting them to Congress unless the President made an express finding that they served the national interest. Decertification would also trigger a requirement to report the deficiencies to relevant committees in the House and Senate.

Mr. Chairman, creating a new department is fine, but the most critical challenge is and will continue to be coordinating the efforts of the entire Federal Government as part of a comprehensive national strategy.

This chart to my right shows the current situation. There are 153 different agencies involved in homeland security.

The chart next to it, to my right, shows what this bill will do. There will be even more agencies involved. In fact, according to the Congressional Budget Office, this new department is so complex it will cost over $4 billion just to organize and manage the department.

As the chart shows, and I am talking about the chart to the far right, the chart shows that many agencies integral to homeland security will remain outside the new department, including the FBI, the CIA, the Defense Department, the National Guard, and many others.

What is urgently needed is an office at the White House level with the mandate and authority to develop a national strategy and unite the government behind it. That is what my amendment would do.

The starting point for this coordination should be the executive order that established the Office of Homeland Security within the White House, which President Bush issued last October. This order appropriately created a White House-level office charged with coordinating intelligence-gathering, preparedness, prevention, protection of critical infrastructure, and response and recovery across the entire country.

The main shortcoming of the executive order, however, is that it did not give the director of the office sufficient authority to implement these functions.

This amendment tracks the executive order, but it also provides additional authority to give the Nation what it needs most: a single office in the White House with the mission and authority needed to develop and implement a comprehensive national strategy for homeland security.

This amendment would do more to protect our national security, I believe, than the rest of the bill combined, and it is a whole lot simpler and less expensive.

I urge Members to vote yes on this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. ARMEY) is recognized for 10 minutes.

Mr. ARMEY. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Chairman, I thank the gentleman for yielding time to me, and I thank him for his leadership on this bill.

Mr. Chairman, I say to my colleagues that I thank them for their leadership and their participation in this important effort to secure the homeland.

Mr. Chairman, I rise to address the context in which we consider this amendment. Coming late to this debate, my colleague, the gentleman from California, may not know the issue's history.

His amendment is similar to a bill that I and a bipartisan group introduced last October at a time when we believed the administration would not support a large Department of Homeland Security. We felt, and still do, that there needs to be one integrating strategy across the Federal Government. One person needs to be accountable for budget and coordination. One person needs to be a Cabinet-level official confirmed by the Senate.

The difference between now and last October is that, under H.R. 5005, that person is the Secretary of Homeland Security, who presides over the critical homeland security functions and a large workforce.

Under H.R. 5005, a statutory Homeland Security Council in the White House will coordinate government functions not contained in the new department, just as the National Security Council coordinates defense, foreign policy, and other national security functions.

If the sponsor of this amendment believes that the National Security Advisor lacks the authority to coordinate national security, I am unaware of it.

Mr. Chairman, a long history got us to this concept. As I mentioned, last October I introduced the Office of Homeland Security Act with the gentleman from Nevada (Mr. GIBBONS) and 34 bipartisan cosponsors. The sponsor of this pending amendment was not one of them.

The organizing principle of that bill was included in legislation introduced by the gentleman from New Jersey (Mr. MENENDEZ) and 117 members of the Democratic Caucus. The language was modified to accommodate concerns of our colleagues on the Committee on the Budget and the Committee on Armed Services.

The sponsor of this pending amendment did not participate in these negotiations and did not cosponsor the task force bill. Further, his amendment, the one we are considering today, disregards the careful budget process that our colleagues, the gentleman from South Carolina (Mr. SPRATT), the gentleman from Missouri (Mr. SKELTON), and the gentleman from Texas (Mr. TURNER) helped construct.

When a bipartisan, bicameral group developed and introduced H.R. 4660, which combined the White House coordination and Department of Homeland Security functions, and which is the precursor of the bill we are considering today, the principal sponsor of this amendment did not participate.

On May 21, the minority leader supported this bill, our bill, H.R. 4660, at a press conference, where we were joined by the ranking member of the Committee on Appropriations, the gentleman from Wisconsin (Mr. OBEY).

This issue has been my principal focus for this term in Congress. My position has adapted as the context has changed, and I believe that careful consideration will show that the gentleman's amendment would hurt rather than help coordination.

Finally, I urge our colleagues to note that this amendment would cut OMB completely out of the budget process for homeland security. The Director of Homeland Security in this amendment is given the power to reject unilaterally homeland security budgets from any department, tying even the hands of the President.

Mr. Chairman, there is a better concept than this amendment, and it is in the base bill. The bipartisan process that developed that language should be respected.

I urge our colleagues to consider the context in which this amendment arises and to reject it.

Mr. WAXMAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me; and I thank him for his leadership as a ranking member on the Committee on Government Reform and for his thorough understanding of the challenge that we have before us today.

I also want to commend the gentlewoman from California (Ms. HARMAN) for her leadership over the past year on this issue of homeland security. I want to take my lead from her when she said we must consider the context within which this amendment will be judged, because I believe the context within which this amendment will be judged is the context of a very big bill to establish a department, which we all agree we need, but the size of which and the approach to which harkens back to the 1950s, rather than into the future.

It is not a department for this new century. It is old and fashioned in a very old-fashioned way. It does not utilize to the maximum extent the technologies, and instead depends on locating 170,000 people. That is the low estimate. GAO says it could be as many as 200,000 people.

Mr. Chairman, there are 85,000 jurisdictions in our country, cities, towns, governments, of one kind or another, that this homeland security initiative must communicate with. Of that 85,000, only about 120 are larger than this proposed department. Cities like Salt Lake City; Providence, Rhode Island; Portsmouth, Maine; Reno, Nevada; and the list goes on and on, have fewer people than this Department of Homeland Security will have. The CBO says it will cost $4.5 billion to set this up, it is so large.

We will pay any price to protect our people, but that money might be better spent protecting our people than to go down this path of big government, a bureaucratic approach. We want that secretary of a lean department to be able to use his or her thinking about how to protect the American people, rather than spend time managing a department larger than most cities and towns in our country.

But the main point that I want to make is that the GAO, the Government Accounting Office, has said that it will take 5 to 10 years to have a Department of this size up and running. We simply cannot wait that long. Nothing less than the safety and security of the American people depend on us being, from day one, ready to protect them in the strongest possible way.

I have supported the amendment of the gentlewoman from California (Ms. HARMAN) to codify the Office of Homeland Security in the White House. I think that is a good idea. I think it is a better idea to make that department stronger, at least for the time that it takes to set up this department.

That is why I support the gentleman's amendment. I commend him for tracking the President's executive order, and I hope that he will be open to some compromise so that we can get this part of the bill moving and to have it signed.

I urge our colleagues to support the Waxman amendment. I support him, and I commend the gentlewoman from California (Ms. HARMAN) for her leadership.

Mr. ARMEY. Mr. Chairman, I yield 4½ minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Chairman, I thank the Chair of the Select Committee on Homeland Security for yielding time to me.

Mr. Chairman, I am very eager to talk on this proposal this morning.

First of all, I would like to say to the gentleman from California (Mr. WAXMAN) that I know he is well-intended, I know that his proposal is sincere, and I know we share the same goal, but I strongly believe that the structure he has laid out will fail.

I also strongly believe that he does not understand the design and the purpose of this new department. I want to start by talking a bit about that.

The chart we had up here earlier looked a little like the health care plan we saw a few years ago, and it does look very complicated. It is very bureaucratic, when we look at all the different agencies and departments now involved in combatting terrorism.

That is the point. We do have over 100 different agencies. We have everyone in charge and no one in charge. We need to bring accountability to this. We need to align authority with responsibility, with very aggressive congressional oversight.

The gentleman has been very good at that over the years, and I would hope that, through Democrat and Republican administrations alike, this Congress and this gentleman, as long as he is here, will provide that oversight so we have real accountability. That is what this is about. It is not about creating a 1950s-size organization. It is about streamlining and consolidation.

The chart the gentleman held up showed a lot of different boxes and agencies and departments. This is the new Department of Homeland Security. This is the proposal the President sent us. This is the proposal that got through the various select committees. This is the proposal of the standing committees and now the select committee.

It has only four areas. One, the vast majority, almost all of the employees, will be in border and transportation security. The whole notion here is to streamline and consolidate; and to get the synergies out of that consolidation and streamlining in one new department, where we have real accountability, where somebody is in charge, that is the only way we are going to protect the homeland.

He has talked a lot about the CBO study, as has my friend, the gentlewoman from California (Ms. PELOSI). I hope they read it. I hope all my colleagues will read this CBO study. At least look at the summary of it.

They say this will cost $4.5 billion, and $2.2 billion is in existing departments in the Department of Defense. I don't know where they come up with that $2.2 billion. The remaining part of this for administrative costs for start-up is less than 1 percent of the budget of this department.

Finally, they take absolutely no account of any savings. They have no offsets at all for the consolidation and streamlining.

Again, with all due respect, the Congressional Budget Office is a 20th century budget-scoring organization trying to score a 21st century idea. This merger will create synergies and will create, over time, I am convinced, cost savings if we do it right and if the Congress provides the needed oversight.

I think there will be some start-up costs, but they will be minor. The more important thing is in the mid-term and long term there will be substantial efficiencies, and we will now have accountability and be able to protect our kids and grandkids from the threat of terrorism that faces us in this new century, the most important thing.

One of the ironies in this debate to me is that the very people who are saying, gee, this is going to be a big, new, 20th-century bureaucracy, 1950s bureaucracy, are the same people who say we cannot give the President and this new department the kind of flexibilities they need to manage this new agency.

Managerial, budget, and personnel flexibilities are absolutely critical to make this work. I agree that we need to provide those.

Today we will have an opportunity to discuss that further as a number of amendments will be offered to try to take the select committee product, which is a streamlined, consolidated, 21st century agency, and try to take it back to the 1950s. We need to reject that.

Finally, the President's proposal does include a coordinating council. He has already done that. He has set up a Homeland Security Council by executive order.

In the select committee, on a bipartisan basis, in fact, all four Democrats and three of us Republicans decided to support the gentlewoman from California (Ms. HARMAN) and her proposal she has worked on, not just for weeks or months but for years, to establish a coordinating council in the White House by statute.

Why is that important? Because this administration has shown that it is going to prioritize fighting terrorism by executive order. We want to ensure in Congress that future administrations will do the same. We do need to have this coordinating council.

Mr. Chairman, this is the right way to go for 3 quick reasons.

One, this allows the President to have an actual advisor. Otherwise, if you have Mr. WAXMAN's proposal, this advisor has to come up and testify before Congress, has to be confirmed by the Senate, the President will not rely on that person for candid advice, period.

Number two, it has no teeth. Look at the Council on Environmental Quality, if you are interested in the environment as the gentleman from California (Mr. WAXMAN) is, and tell me whether the CEQ has been effective in telling agencies how to prioritize budgets. Tell me if the drug czar has been effective. That is the other model. These are not the right models.

Third, the right model is there. It is the National Security Council. That is the one the gentlewoman from California (Ms. HARMAN) proposes. It has teeth. Let us reject the toothless alternative. Let us go with the real thing.

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we might have some difference about how this office ought to function in the White House. The proposal that I am offering is not something that I alone am supporting. It is, by the way, the proposal that has reached bipartisan support in the Senate. Senator LIEBERMAN's committee has supported this concept. The Brookings Institution, this is the core idea of their recommendation.

The General Accounting Office said that we need a stronger director in the White House with the tools to be able to do the job of coordinating these activities.

Evidently, none of the three of them talked to my colleague, the gentlewoman from California (Ms. HARMAN), but they came to a different conclusion, as have I, than her recommendation.

I must say that I do not think that what we are proposing is inconsistent with what the gentleman from Ohio (Mr. PORTMAN) offered to create this Homeland Security Council to advise the President of homeland security matters and work in consultation with OMB on a homeland security budget.

The difference we have is the Council would have much weaker powers than the Director of Homeland Security under the current amendment. For example, the Council would not be permitted to decertify an agency's budget submission. It would not prohibit the Office of Management and Budget Director from submitting the decertified budgets to the Congress without the President's review and approval, and it would not be required to report deficiencies to the Congress.

In other words, the Director of Homeland Security would have far fewer tools to coordinate the dozens and dozens of agencies that remain outside the new department. Passing this amendment in addition to the Portman language would not be inconsistent. Both could be included in the final bill.

Mr. Chairman, we are all trying to make this whole business work of trying to protect our country, and we are talking on a bipartisan basis about a department and strengthening the coordination at the White House.

I would submit that my amendment, which is the amendment that has been recommended by think tanks that have been involved in these organizational questions for many years, is a sound way for us to proceed. It gives the President the flexibility and the tools to have someone in the White House be able to do the job. I fear that with all the rearranging of the bureaucracy, if that is all we do, we will not have done enough.

We may have differences on this matter, and I respect the fact that people can have differences, but let us recognize that all of us are trying to do what we can in the national interest.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Nevada (Mr. GIBBONS).

Mr. GIBBONS. Mr. Chairman, I rise in opposition to the Waxman amendment.

Mr. Chairman, I have been privileged to work closely with the White House, the House Select Committee on Homeland Security and several of my colleagues on both sides of the aisle on this legislation.

This amendment gives the head of the Office of Homeland Security too much power. It creates the possibility of a turf war between the Director of the Office of Homeland Security and the new Secretary of Homeland Security. I believe it is more appropriate at this time to create in statue the Homeland Security Council that is in the legislation that the Select Committee on Homeland Security reported out.

This council will coordinate with the over 80 government agencies that play a role in Homeland Security that will not be part of the new Department. The council enables key organizations outside the new Department to meet and talk about Homeland Security with the President.

At the center of this council is an advisor, whose role will be similar to that of National Security Advisor Condoleezza Rice. The advisor will coordinate homeland security efforts among federal departments and agencies, update national strategy, and be available to advise and perform other duties that the President may direct.

The establishment of this council is vital to ensure all information is shared with all agencies and not just kept within the new Department. While not a Senate confirmable position, it establishes the position that Governor Ridge currently holds in statue.

Mr. Chairman, as you know, the White House is against this amendment, the House Select Committee on Homeland Security is against this amendment, even the gentleman's own party leadership is against this amendment.

I urge my colleagues to vote against this amendment.

Mr. WAXMAN. Mr. Chairman, I yield my remaining 30 seconds to my colleague, the gentlewoman from California (Ms. PELOSI), the ranking member on the Select Committee on Homeland Security.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me.

Again, I acknowledge the fine work of the gentlewoman from California (Ms. HARMAN) and the fine work of our ranking member on the Committee on Government Reform, the gentleman from California (Mr. WAXMAN).

I just want to make this final point: I talked earlier about the size of this department and the number of localities in this country that are larger. There are not that many that have more people than this department will have.

The main point about what we do here is about localities, localities, localities, is it not, I ask the leader, and how we communicate with them; how we do it immediately to protect from day one the American people? Those localities need a place to coordinate with that is strong and effective from day one, and not wait 5 to 10 years for the department to be established.

I urge my colleagues to support the amendment.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, absent this legislation that we are considering today, the proposition proposed by the gentleman from California (Mr. WAXMAN) might have been a good idea. I think there was a time it was.

But as soon as we turned ourselves in the direction of establishing a Department of Homeland Security with a Secretary of Homeland Security, this proposition was just simply out of place.

What we are doing with this legislation before us is establishing a Department of Homeland Security with a Secretary of Homeland Security. The Secretary will himself be confirmed by advice and consent in the other body, as will several other deputy under secretaries that relate to that department.

Mr. Chairman, I would submit that the other body will have all the opportunity to advise and consent on the question of homeland security that they can handle, perhaps even more.

The other thing about this that bothers me is it is an imposition against the separation of powers. We in the Congress jealously guard our powers. We would not accept the idea that anyone from the executive branch should tell us how to staff the United States Congress, nor should we try to impose on the White House how it should staff itself.

The President of the United States is perfectly capable, as we have seen in the case of Governor Ridge, to make a decision about what is needed in his White House staff, select the person that can perform the duties that would be assigned to that person, and carry out those, or watch oversight of those duties being carried out.

This amendment is out of step, out of place, and I believe out of line. We ought to vote it down.

Mrs. CHRISTENSEN. Mr. Chairman, I rise in support of the Waxman Amendment to codify and strengthen the White House Office of Homeland Security.

This is the right approach. It is supported by independent research and expert opinion. This amendment is the only way to create the kind of Office of Homeland Defense that can be effective and provide the protection we need, and the people of the United States deserve.

We should not be creating a large unwieldy bureaucracy that undermines the mission of many important agencies as H.R. 5005 would do. The base bill and the agency it creates, passed, will undermine our health, our safety and response to natural disasters, our safety on the seas, and countless other protections that Americans have always counted on to be there.

The approach contained in this amendment is the correct approach, and the only one that would provide homeland security.

The CHAIRMAN pro tempore. All time for debate has expired.

The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Following this 15-minute vote on the Waxman amendment, pursuant to clause 6 of rule XVIII, proceedings will resume on those amendments on which further proceedings were postponed last night in the following order: Amendment No. 1 offered by the gentleman from Minnesota (Mr. OBERSTAR), amendment No. 8 offered by the gentleman from Maryland (Mr. CARDIN), and amendment No. 14 offered by the gentleman from Kentucky (Mr. ROGERS).

This is a 15-minute vote, and the following three votes will be 5-minute vote.

The vote was taken by electronic device, and there were—ayes 175, noes 248, not voting 11, as follows:

[Roll No. 352]

AYES—175

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clayton
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Solis
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—248

Aderholt
Akin
Armey
Bachus
Baird
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
Delahunt
DeLay
DeMint
Diaz-Balart
Dooley
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Paul
Pence
Peterson (PA)
Petri
Phelps
Pitts
Platts
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—11

Blunt
Clay
Condit
Doolittle
Meehan
Pickering
Pombo
Smith (TX)
Stark
Waters
Young (AK)

☐ 0955

Mrs. TAUSCHER, Mrs. NORTHUP, and Messrs. BARTON of Texas, HASTINGS of Florida, BAIRD, CROWLEY, HEFLEY, BARR of Georgia, MANZULLO, PAUL, and BERRY changed their vote from "aye" to "no."

Messrs. CUMMINGS, WATT of North Carolina, and SKELTON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. PICKERING. Mr. Chairman, on rollcall No. 352, I was detained due to traffic. Had I been present, I would have voted "no."

(Ms. PELOSI asked and was given permission to speak out of order.)

CONGRATULATIONS TO CONGRESSMAN MEEHAN AND HIS WIFE, ELLEN, ON THE BIRTH OF DANIEL MARTIN MEEHAN

Ms. PELOSI. Mr. Chairman, as we debate matters of great seriousness today, there is some good news to report, and I think a good omen, and that is that last night MARTY MEEHAN and his wife, Ellen, received God's blessing of Daniel Martin Meehan, 9 pounds, 10 ounces, 22 inches long, in Lawrence, Massachusetts.

I know we all want to congratulate MARTY and Ellen Meehan.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Pursuant to clause 6, rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time during which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 1 OFFERED BY MR. OBERSTAR

The CHAIRMAN pro tempore. The unfinished business is the demand for a recorded vote on amendment No. 1 offered by the gentleman from Minnesota (Mr. OBERSTAR) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. OBERSTAR:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 501(1) of the bill, strike ", major disasters, and other emergencies".

In the matter preceding subparagraph (A) of section 501(3) of the bill, strike "and major disasters".

In section 501(3)(D) of the bill, strike "or major disaster".

In section 501(4) of the bill—

(1) strike "and major disasters";

(2) strike "or major disasters"; and

(3) strike "or disasters".

In section 501(5) of the bill, strike "and disasters".

Strike section 501(6) of the bill and insert the following:

(6) In consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b).

In section 502(1) of the bill, strike the text after "(1)" and preceding "Integrated" and insert "The".

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 165, noes 261, not voting 8, as follows:

[Roll No. 353]

AYES—165

Ackerman
Allen
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Boozman
Borski
Boswell
Boucher
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
DeFazio
DeLauro
Dicks
Dingell
Doyle
Duncan
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Gordon
Gutierrez
Hall (OH)
Hilliard
Hinchey
Hinojosa
Honda
Hooley
Hostettler
Inslee
Isakson
Istook
Jackson (IL)
Jefferson
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Lantos
Larsen (WA)
LaTourette
Lee
Lewis (GA)
Lipinski
Lowey
Lynch
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Mica
Miller, George
Mink
Moore
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Petri
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Snyder
Solis
Spratt
Strickland
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—261

Abercrombie
Aderholt
Akin
Andrews
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bonior
Bono
Boyd
Brady (PA)
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Tom
Deal
DeGette
Delahunt
DeLay
DeMint
Deutsch
Diaz-Balart
Doggett
Dooley
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoeffel
Hoekstra
Holden
Holt
Horn
Houghton
Hoyer
Hulshof
Hunter
Hyde
Israel
Issa
Jackson-Lee (TX)
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Langevin
Larson (CT)

Latham
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
McCrery
McGovern
McHugh
McInnis
McKeon
Menendez
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Pence
Peterson (PA)
Phelps
Pickering
Pitts
Platts
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (WA)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—8

Blunt
Condit
Doolittle
Meehan
Pombo
Smith (TX)
Stark
Young (AK)

□ 1006

Mr. FORD and Mr. DEUTSCH changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

The CHAIRMAN pro tempore. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Maryland (Mr. CARDIN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARDIN:

In section 401(1), add the following at the end: "The functions, personnel, assets, and obligations of the Customs Service so transferred shall be maintained as a distinct entity within the Department.".

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 177, noes 245, not voting 11, as follows:

[Roll No. 354]

AYES—177

Abercrombie
Ackerman
Allen
Baca
Baird
Baldacci
Baldwin
Barcia
Becerra
Bentsen
Berkley
Berman
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Houghton
Hoyer
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McHugh
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Paul
Payne
Pelosi
Petri
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Woolsey
Wu
Wynn

NOES—245

Aderholt
Akin
Andrews
Armey
Bachus
Baker
Ballenger
Barr
Barrett
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Blagojevich
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Clay
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dooley
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaFalce
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Manzullo
McCarthy (NY)
McCrery
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Pence
Peterson (MN)
Peterson (PA)
Phelps
Pickering
Pitts
Platts
Portman
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sánchez
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Udall (NM)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—11

Blunt
Condit
Doolittle
Fletcher
Meehan
Morella
Pombo
Pryce (OH)
Smith (TX)
Weldon (FL)
Young (AK)

□ 1014

Mr. BLAGOJEVICH changed his vote from "aye" to "no."

Mr. FRANK changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. PRYCE of Ohio. Mr. Chairman, on rollcall No. 354, I was inadvertently detained. Had I been present, I would have voted "no."

□ 1015

AMENDMENT NO. 14 OFFERED BY MR. ROGERS OF KENTUCKY

The CHAIRMAN pro tempore (Mr. LATHAM). The unfinished business is the demand for a recorded vote on amendment No. 14 offered by the gentleman from Kentucky (Mr. ROGERS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

At the appropriate place in the bill, add the following new section:

SEC. . JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 240, noes 188, not voting 5, as follows:

[Roll No. 355]

AYES—240

Aderholt
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Honda
Horn
Houghton
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Maloney (NY)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (WA)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Terry
Thomas
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (FL)

NOES—188

Abercrombie
Ackerman
Akin
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clyburn
Condit
Conyers
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Dooley
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frank
Frost
Gonzalez
Granger
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley
Hostettler
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
Lampson
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (CT)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Ryan (WI)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shows
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Taylor (NC)
Thompson (CA)
Thompson (MS)
Thornberry
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wynn

NOT VOTING—5

Blunt
Doolittle
Meehan
Smith (TX)
Young (AK)

☐ 1024

Mr. WATT of North Carolina and Mr. LUTHER changed their vote from "aye" to "no".

Mr. McINTYRE changed his vote from "no" to "aye".

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. BONIOR. Mr. Chairman, on rollcall No. 355, the Rogers amendment to H.R. 5005, I mistakenly cast an "aye" vote. I intended to vote no.

(By unanimous consent, Mr. SHAYS was allowed to speak out of order.)

MOMENT OF SILENCE FOR MINERS TRAPPED IN SOMERSET, PENNSYLVANIA

Mr. SHAYS. Mr. Chairman, in consultation with the gentleman from Pennsylvania (Mr. MURTHA) and the gentleman from Pennsylvania (Mr. GEKAS), I ask for a moment of silence for the 9 miners in Somerset, Pennsylvania, trapped 240 feet underground. They have been trapped there for over 48 hours under very extreme conditions.

Mr. Chairman, this is in the district of the gentleman from Pennsylvania (Mr. MURTHA), and he and others in this Chamber request the prayers of the Members of this Chamber for those miners, for their families, and for the heroic work of our rescue workers.

I ask for a moment of silence.

The CHAIRMAN pro tempore. Would all Members please stand.

It is now in order to consider amendment No 17 printed in House Report 107-615.

AMENDMENT NO. 17 OFFERED BY MR. SHAYS

Mr. SHAYS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. SHAYS:

Page 189, after line 7, insert the following (and redesignate succeeding sections and references thereto accordingly):

SEC. 762. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an

appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsections (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Connecticut (Mr. SHAYS) and the gentleman from California (Mr. WAXMAN) each will control 10 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is a matter of absolute national security. In creating the Department of Homeland Security, it would be dangerous to leave the President with less authority to act in the interest of national security than he has under current law.

Management powers afforded every President since Jimmy Carter must be available to this President and to future Presidents to preserve the safety and defend the security of this great Nation.

Mr. Chairman, this amendment addresses the heartfelt concerns of the gentlewoman from Maryland (Mrs. MORELLA), our colleague, and others who feel current authority to exclude Federal employees from coverage under the labor laws could be used overbroadly in a department with so broad a security mission.

So we have included the Morella amendment adopted by the Committee on Government Reform, but with a safety valve. The Morella amendment would limit use of current exclusions that might otherwise apply to some Homeland Security Department employees. Existing exclusions could not be used unless the mission and the responsibilities of the affected agency or unit have changed materially and a majority of employees have as their primary duty intelligence, counterintelligence or investigative work directly related to terrorism investigation.

But our amendment also provides an essential safety valve. And safety is the reason we are creating the new Department. Subsection C would allow the President to apply existing exclusion authority in those special circumstances where he determines in writing that labor law coverage of the agency in question would have, quote, "a substantial adverse impact," end of quote, on homeland security.

This puts a new tough new standard on the top of already rigorous tests the President must meet under title 5, chapter 71. To exercise his national security authority under this provision, the President must pass through three gates. First, he must determine that the Department's ability to protect homeland security will be significantly and adversely affected. Then, the current law tests must be met: Employee's primary function is in intelligence, counterintelligence, investigative or national security work; and, there is an incompatibility between labor law coverage and national security in the particular agency.

We believe this approach represents a sensible and workable compromise between permanently diminishing Presidential national security authority, as the Morella amendment alone would do, and providing no new standards for exercise of that authority in the new Department.

This amendment preserves the President's ability to act in the interest of national security while acknowledging the unique circumstance of employees being transferred into this new Department.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, at the outset, I want to comment on the process under which we are considering this and the Morella amendment. The Republican leadership has rigged the process regarding the Shays and the Morella amendments by denying the gentlewoman from Maryland (Mrs. MORELLA) a clean vote on her amendment.

The Shays and Morella amendments are identical to each other, except that the Shays amendment includes a final paragraph that undoes the rest of the amendment. As a result, if both pass, the Morella amendment will be meaningless. It will do nothing.

The gentlewoman asked for a chance to modify her amendment so that it could strike the offending provision in the Shays amendment, but she was denied the opportunity to do that by her own leadership.

The result is a rigged process. So even if the Morella amendment prevails, she loses if the Shays amendment is also adopted.

Mr. Chairman, I would urge my colleagues who want to support the Morella amendment to vote for the Morella amendment and vote against the Shays amendment. This issue deals with labor management relations. The amendment takes the Morella amendment, which passed out of the Committee on Government Reform on a bipartisan basis, and renders it useless.

Let me explain the situation. Under existing law, the President can strip an agency's employees of collective bargaining rights if he determines that the agency or subdivision's primary function is counterintelligence, investigative or national security work. The amendment offered by the gentlewoman from Maryland provides a very limited exception to this authority. It says that the collective bargaining rights of employees who are currently in unions cannot be eliminated unless their functions change after they are transferred to the new Department.

The Shays amendment states that the Morella amendment would apply, except if the President does not want it to apply. Well, that means the Morella amendment has no meaning to it. Basically, it allows the President to do exactly what the gentlewoman's amendment was seeking to prohibit.

Mr. Chairman, the Morella amendment is carefully crafted. It gives the President broad flexibility to restrict collective bargaining rights when the duties of employees change. Moreover, it does not apply to over two-thirds of the employees in the Department because these employees are not currently in collective bargaining units. And it will not apply to the new units with sensitive responsibilities such as the new intelligence analysis office.

The Morella amendment would not be needed if the President and the administration had a track record of respecting employees' legitimate rights to organize and bargain collectively. Unfortunately, the administration has not respected these rights. Earlier this year, the President striped union rights away from clerical workers in the offices of U.S. Attorneys. Many of these employees had been in unions and they were union members for over 20 years.

So if we do not pass the Morella amendment, the same thing that happened at the offices of the U.S. Attorneys will happen in the new Department. That is why she offered the amendment in committee and why it was adopted.

So I would urge my colleagues to vote against the Shays amendment and then, when the Morella amendment is offered, to support it.

Mr. Chairman, I reserve the balance of my time.

Mr. SHAYS. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in a difficult position, but very supportive of the Shays amendment, and let me explain why.

First of all, as most of my colleagues certainly on this side know, I am a strong supporter of the labor movement in this country and I make no bones about it. I coauthored family medical leave with the gentleman from Tennessee (Mr. GORDON) as a compromise many sessions ago and still support that legislation. I opposed NAFTA. I was one of the few Republicans that opposed my President on trade promotion authority. I supported Davis-Bacon so that our building trades have the kind of support that they need. Pension reform, minimum wage, I have been there and that is because I come from a blue collar background.

Mr. Chairman, I am the youngest of nine kids. My father worked in a factory and was a member of the Textile Workers Union. My job is to try to strike a balance between what is best for business and what is best for the worker.

In this case I have to come down not just on the side of the worker and the right to organize, but in support of our President to deal with the difficult issue of homeland security.

I have looked at this amendment. I have the highest regard for the gentlewoman from Maryland (Mrs. MORELLA), I might add, and she is an absolutely tireless worker for the rights of workers and I have the highest respect for her. But in this case the Shays amendment changes the Morella amendment by one particular issue. It calls for three levels of the process of a President before he can take adverse action, but he must certify that the effect on homeland security must be substantial and adverse. This just cannot be by whim that is put forth by someone in the White House or agency who was opposed to labor rights or the union representation of the workers. It must require our President to take decisive action, go beyond the fact that it is merely incompatible with national security, and must actually determine that the effect is substantial and adverse.

So for these reasons, Mr. Chairman, I think the Shays amendment is a good amendment because it does in fact continue to protect workers, but it also gives the President that important capability that I think he deserves in the new Office of Homeland Security.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Maryland (Mrs. MORELLA), the author of the amendment on this whole subject.

Mrs. MORELLA. Mr. Chairman, I thank the gentleman from California (Mr. WAXMAN) for yielding me this time. I want to recognize the fact that the gentleman from Connecticut (Mr. SHAYS) is my friend. And while I appreciate the fact that the gentleman's amendment mirrors mine almost exactly, unfortunately he has chosen to include one extra sentence which I see as the escape clause which negates the point of my amendment.

In the amendment that I will offer, I allow the union rights of existing employees transferred to the new Department of Homeland Security who have the same duties to remain in place. It kind of grandfathers them in. The Shays amendment has a loophole in that it would allow the union rights to be stripped for ambiguous reasons.

Presently, two sections of title 5 provide for administrative actions to disallow union membership for certain classes of Federal employees. Section 7103 allows the President to issue an executive order taking away title 5 labor management rights, including the right to be in a union for agency or subdivisions for national security reasons.

Section 7112 of title 5 makes the bargaining unit inappropriate for numerous reasons, including the performance of national security duties. Now, because the new homeland security agency's mission could easily all be defined automatically as national security, I am concerned that potentially tens of thousands of employees could be prevented from being members of a union, even though their work and responsibilities have not changed.

This concern is really not groundless because in January, 500 Department of Justice employees had their union rights stripped for national security work even though their responsibilities had not changed. Many of them had belonged to the union for 20 years and many of them had clerical responsibilities.

So my amendment seeks to set a slightly higher standard for the President so that the transferred employees who have the same responsibilities who already are in the union, not new ones, do not see their union rights stripped for the same capricious reasons as those DOJ employees.

Unfortunately, as I reiterate, the amendment offered by the gentleman from Connecticut, though well intentioned, has that escape clause and that renders it unacceptably weak and I urge defeat of the Shays amendment.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds, to just point out that what we want is for the President to have the same powers and collective bargaining issues when national security is involved that past presidents from President Carter have had, and yet we are taking the gentlewoman's amendment and adding an additional test so we are making it a little more difficult for this President.

Mr. Chairman, I yield 2½ minutes to the gentleman from New York (Mr. MCHUGH).

Mr. MCHUGH. Mr. Chairman, I would like to engage the distinguished Speaker of the House in a colloquy regarding subsection (c).

Mr. Speaker, clearly this subsection of Mr. SHAYS' amendment adds an additional requirement on the President over and above what currently appears in section 7103 of title 5 before this or any other President would be enabled to exempt an agency or subdivision from the provisions of the Federal Labor Management Relations Act, a very important right, very important protection.

However, and added to the original Morella amendment as the Shays amendment proposed, this could create a methodology by which a President might circumvent the limitations on that section 7103 authority that the original Morella amendment, and I commend the gentlewoman, that would have put in place under the Department.

Accordingly, I believe that subsection (c) authority should, if it ever becomes law, be limited. I believe that it should be crafted in a fashion that each time that the President should invoke authority under subsection (c) of the pending amendment, that the exclusion would only be effective for a period of no more than 24 months. Further, I believe that written notification of substantial adverse impact must be conveyed to both Houses of Congress no less than 30 days prior to the invoking of that subsection (c).

Thereafter, upon any subsequent finding of substantial adverse impact on homeland security, the President could only again, upon written determination, convey to both Houses of Congress no less than 30 days prior to the expiration of that original term of exclusion, extend such a waiver for additional periods not to exceed 24 months each, with written determination and congressional notification for each exclusion as previously described.

And lastly, Mr. Speaker, upon such time as the war is won, conditions even out and waivers are no longer extended, each bargain unit previously recognized should be reinstated with all of its rights as they existed the day before the original waiver. And I would ask would the distinguished Speaker agree with me that we should provide for congressional notification allowing us to consider those issues, make those determinations, not as under current law, but for a determined period, and when the war on terrorism is leveled out or is over and won, the workers and their union organizations should fully return to their previous status and relationship?

Mr. HASTERT. Mr. Chairman, will the gentleman yield?

Mr. McHUGH. I yield to the gentleman from Illinois.

Mr. HASTERT. Mr. Chairman, I think the gentleman makes a good point. This proposal is certainly reasonable. He has my assurance that the bill works its way through the conference with the other body, that I will do my best to make sure that the gentleman's proposal is not only considered carefully by the Congress and both sides but we will take very, very extraordinary methods and work to make sure that this type of concept is incorporated in the bill.

It could form the basis, I think, for an excellent conference agreement.

Mr. McHUGH. Mr. Chairman, I thank the Speaker for his assurance and I commend him, the gentlewoman from Maryland (Mrs. MORELLA), and the gentleman from Connecticut (Mr. SHAYS), and all the people who have worked so hard on this for their leadership.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. REYES), who has personal experience on this subject that I think Members ought to know about.

Mr. REYES. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I want to offer my personal experience. Back in 1969 when I first joined the Border Patrol as a young officer freshly out of the military after spending 13 months in Vietnam, I went to a station where I was only one of three Latinos. And had it not been for the fact that I was able to join the Border Patrol Union, I would have not had a career in the Border Patrol for 26½ years.

Union protection is vital and important, specifically for minorities, but for all employees. To somehow draw the conclusion that to be able to have bargaining rights would be contrary to this Nation's national security is wrong.

Mr. Chairman, I intend to oppose the Shays amendment and I intend to oppose anything that would put in jeopardy the kinds of rights that gave me the opportunity to serve this country proudly in the United States Border Patrol, both as an agent ultimately retiring as the Chief. So I have been on both sides.

I would rather have our employees have the protection and have to deal with a problem employee as a responsibility of a chief than to subject employees to no protections.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds to just respond to the gentleman. We are not trying to do anything with collective bargaining that does not exist in present law. In fact, we are even restricting in some ways the power of the President. Collective bargaining still exists. But like with Jimmy Carter all the way down, if there is a national security issue, the President has the right to take action.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, may I inquire how much time there is on each side?

The CHAIRMAN pro tempore. The gentleman from California (Mr. WAXMAN) has 4 minutes remaining, and the gentleman from Connecticut (Mr. SHAYS) has 2½ minutes remaining.

Mr. WAXMAN. Mr. Chairman, I inquire through the Chair of the gentleman from Connecticut whether he has another speaker other than himself.

Mr. SHAYS. Mr. Chairman, I will have the gentleman from Ohio (Mr. PORTMAN) to close, and I might make a comment after the next speaker. But between me and the gentleman from Ohio, that is it.

Mr. WAXMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, if this were campaign finance reform, the gentleman from Connecticut would have a sheet in our hands saying this amendment is a poison pill designed to undermine the Morella amendment.

Mr. Chairman, this amendment is a wolf in sheep's clothing. It tries to send a reassuring message to Federal employees that their rights will be protected and their collective bargaining rights retained. I want to tell our Federal employees: Do not believe it. This language provides the President with a trap door to deny union representation to anyone in this Department if he determines that it would have a substantial adverse effect on the Department's ability to protect homeland security.

In general, that is the law. Why add this? To provide the trap door to the Morella amendment. When the President removed collective bargaining rights of some 500 Department of Justice employees earlier this year, he said it was in the interest of national security. Yet most of those employees work in clerical jobs and have been union members for over 20 years.

Last month I had the opportunity to question the deputy director of the Office of Personnel Management and I asked him in the last 20 years, in the last 50 years, could he cite me one or two or three instances where union membership ever in any instance at any time adversely affected national security? I got back a two-page letter with 11 pages of attachments. It does not cite one single incident where union membership had any adverse effect on collective bargaining.

Mr. Chairman, this is a windmill that the Republicans are tilting at because they do not believe in collective bargaining. That is their right, but do not be fooled. This amendment undermines and is designed to undermine, I tell my friend from Connecticut, like a poison pill, the effect of the Morella amendment. Do not tell my Federal employees, do not tell the gentlewoman from Maryland (Mrs. MORELLA) that this is some benign offering simply to make it a little better and to give the President a little more flexibility.

Mr. Chairman, I say to my colleagues, read the law. The President has that ability now, and the OPM sent me 11 pages of attachments citing instances where every President, admittedly in small instances, because this is not a problem, made such exemption.

Mr. Chairman, I say to my friends and my friends on the Republican side of the aisle, give the gentlewoman a fair shot. Do not play legislative games with her. Vote the Shays amendment down and then vote for the Morella amendment.

Mr. SHAYS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, this is not campaign finance reform, it is national security. And we want the President of the United States to have the same power previous Presidents have had for national security. This is national security. What the Morella amendment, in my judgment, is is a poison pill to his ability to govern this country under national security, unless we have the safety valve that we have put in there.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, as I told my colleagues, I have an 11-page attachment here from the Office of Personnel Management where Presidents under existing authority, that is not adversely affected, have that ability. No one in this House wants to adversely affect national security.

The point that I am making is that the Office of Personnel Management in direct response to my question cannot cite a single incident. Not one in the history of this country, or at least since we have had collective bargaining for Federal employees where national security was adversely affected.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds to point out that before 9/11, we could not cite certain instance of terrorist activity. The bottom line is the Morella amendment restricts the President's ability under national security to take action. We are qualifying her restriction.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, if Mr. SHAYS and some Republicans do not like the Morella amendment, they should just vote against it. They should not engage in this kind of trick to put in what appears to be the Morella amendment, but then to negate it. If they were being honest about the matter, they would simply oppose the Morella amendment as the gentleman from Connecticut (Mr. SHAYS) did in the Committee on Government Reform.

Mr. Chairman, a majority in that committee supported the Morella amendment. I would urge the House to adopt the Morella amendment and to defeat the Shays amendment, because what it does is negate the Morella amendment.

Mr. SHAYS. Mr. Chairman, I yield the balance of our time to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Chairman, I thank the gentleman from Connecticut, my friend, for yielding me this time.

Mr. Chairman, the gentlewoman from Maryland (Mrs. MORELLA) cares as deeply about national security as any Member of this Chamber, and it has been a pleasure to work with her on this. We were not able to come together, but we tried.

The Shays amendment is identical to the Morella amendment. And by the way, the gentlewoman from Maryland will have an opportunity to offer her amendment. It is specified under the rule. It is a special rule offered in the rule and I am glad she has that right. But the Shays amendment has one additional feature, an extremely important and limited safety valve which would allow the President to use the provisions of existing law to exempt an agency or subdivision from collective bargaining when he determines in writing that it has an adverse and significant impact on homeland security.

Mr. Chairman, it is a tougher standard on top of the already existing standard than any other agency of government. The employees of this Department will have more protections than the employees of any other department of the Federal government. Here at a time when we are trying to address this threat of terrorism, would it not be ironic if we took away existing national security protection that the President can employ through his waiver for the new Department of Homeland Security?

In this amendment, I believe that we have struck a sensible compromise between doing nothing and adopting the amendment of the gentlewoman from Maryland. It makes it harder for the President to exempt anything that existing law would permit. But it has an important safety valve. To make sure that it can deal with homeland security emergencies and critical situations if necessary and that protection of bargaining rights for workers will not imperil the protection of the physical safety and security of all of us as Americans.

Mr. Chairman, I urge a "yes" vote on the Shays amendment. I think it is a responsible and a correct compromise. I urge a "no" vote on the Morella amendment.

The CHAIRMAN pro tempore. All time has expired. The question is on the amendment offered by the gentleman from Connecticut (Mr. SHAYS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 201, not voting 3, as follows:

[Roll No. 356]

AYES—229

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—201

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—3

Blunt
Meehan
Stump

☐ 1118

Messrs. PALLONE, HUNTER, and PETERSON of Minnesota changed their vote from "aye" to "no."

Messrs. BONILLA, ADERHOLT, BACHUS, and HALL of Texas changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. LATHAM). It is now in order to consider amendment No. 18 printed in House Report 107–615.

AMENDMENT NO. 18 OFFERED BY MRS. MORELLA

Mrs. MORELLA. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 18 offered by Mrs. MORELLA:

In subtitle G of title VII of the bill, insert after section 761 the following (and redesignate succeeding sections and references thereto accordingly):

SEC. 762. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentlewoman from Maryland (Mrs. MORELLA) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I yield myself such time as I may consume.

I am going to offer this amendment despite the fact that the Shays amendment did pass because I believe the integrity of the Committee on Government Reform is important enough so that what they voted on in the full committee should be what is sent over to the conferees and what ultimately will become law.

The amendment that I am offering today is with the gentleman from Illinois (Mr. DAVIS), who is the ranking member of the Subcommittee on Civil Service, Census and Agency Organization, and very much a supporter of Federal employees. What the amendment does is it simply aims to protect the union rights of existing employees transferred to the new Department of Homeland Security who have the same duties.

I want to point out at the onset that the language of my amendment is similar to language that was included in the gentleman from Texas's (Mr. THORNBERRY) original Homeland Security bill and the language that was agreed to on a bipartisan basis by the Senate Committee on Governmental Affairs.

Let me just say one big agency, 22 other agencies become part of Homeland Security; therefore, everything under it is called security. Therefore, it offers an opportunity for arbitrarily saying that some union rights will be taken away from some people. One hundred seventy thousand employees would be part of it. Only 50,000 employees who already belong to unions whose duties have not changed would be able to continue with the functions of their unions and collective bargaining rights. That is all. It is grandfathering those people in.

Why do we need it? Already it has been mentioned, as we discussed the Shays amendment, the fact that in January, 500 employees of the Department of Justice lost their collective bargaining rights. They lost their rights even though many of them were clerical and that even had been part of a union for over 20 years. I do want to say that this House really should reflect, at a time when we have Local Commission No. 2, when we have Partnership for Public Service, when 51 percent of our work force are eligible to retire in 5 years, when 71 percent of the Executive Service are eligible to retire in 5 years and we are trying to recruit and retain, the fact that trust is so very important.

So I ask this body, despite the fact that the Shays amendment passed, that they pass the Morella amendment so we can also send on the intent of the Committee on Government Reform as well as this Congress.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Chairman, I am pleased to join with the gentlewoman from Maryland (Mrs. MORELLA) in cosponsoring this amendment and rise in strong support.

The Morella amendment provides that employees who have elected unions to represent them in collective bargaining, before being transferred into the Department of Homeland Security, should not lose their representation rights. Essentially the Morella amendment is a grandfather clause. All it really does is protect those individuals who have collective bargaining rights and are currently union members.

There are some people who suggest that this is going to undercut the President's authority. Absolutely not. It only deals with those individuals who are currently union members, and it also provides enough flexibility that if individuals' work assignments change significantly, then the President could, in fact, move them around.

We also know that the President issued an executive order barring union representation in U.S. Attorney's offices. Individuals who were doing clerical work were denied the opportunity to be unionized and to have the representation. As a matter of fact, we believe in a strong Presidency. We believe that the flexibility ought to be there. But we also believe that these are hard-won rights that people have struggled to achieve for years and years and years. They should not be diminished. They should not be taken away.

And so I simply urge my colleagues to stand with the American people who believe in Civil Service protection, who believe in the rights of the individuals that work. Stand and support the Morella amendment.

Mr. WAXMAN. Mr. Chairman, I ask unanimous consent as the ranking Democrat on the Committee on Government Reform to manage the time on this Morella amendment.

Mr. PORTMAN. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Is the gentleman from Ohio seeking time in opposition?

Mr. PORTMAN. Exactly, Mr. Chairman. I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Ohio is recognized to control the time in opposition as a member of the select committee.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

First of all, we have already had a good debate on this issue in the context of the Shays amendment, and I appreciate the fact that the gentlewoman from Maryland comes at this in good faith. As I said earlier, nobody in this Chamber cares more about national security. We do differ on this issue. The gentlewoman from Maryland talked a lot about the Committee on Government Reform and what the Committee on Government Reform thinks about this.

I think it is only appropriate, Mr. Chairman, to yield 2½ minutes to the gentleman from Indiana (Mr. BURTON), chairman of the Committee on Government Reform.

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding time.

First of all, let me just say that I have very high regard for the gentlewoman from Maryland. She is a very fine member of our committee. As a matter of fact, I admire her so much, we made her a subcommittee chairman. But we have a strong disagreement on this issue. We are at war, and we are talking about national security, and there is really no evidence that we have a problem. In fact, this very issue has been used very sparingly by past Presidents, both Republican and Democrat, and they have never abused the privilege.

Second, as I said, we are in a war, and the Homeland Security Department is a very, very important part of the President's strategy of dealing with that war. This amendment would give the President less authority over the defense of America, the new Homeland Security Department, less authority than he has over any other department of government. Why would we do that? Why would we give the President less authority over the security of America, the Homeland Security Department, than he has over any other department? It makes no sense.

Regarding this vote, this was one of the most controversial votes we had before our committee. It came right down to the last vote. It passed by one vote. When it went to the select committee, the leadership committee, that issue was reversed by one vote. So this is a very, very difficult issue for us to deal with. That is why we supported the Shays amendment, because the Shays amendment is an amendment we think that deals with the subject very well.

Finally, let me just say, President Bush is not an antiunion President. He cares about organized labor, and he will work with organized labor. So let us not give the President less authority than he already has over every other agency in dealing with the security of this Nation. It makes absolutely no sense.

I hope Members will all vote against the Morella amendment, not because she is not a lovely lady, but because it is the wrong thing to do.

Mrs. MORELLA. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. WAXMAN), who is the ranking member of the full Committee on Government Reform.

□ 1130

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding me time.

At the close of the last amendment by Mr. SHAYS, the gentleman from Ohio (Mr. PORTMAN) said that the gentlewoman from Maryland (Mrs. MORELLA) was being treated fairly because she could offer her amendment.

Now, that is absolutely wrong. She is a senior Member of Congress. She is the author of an amendment that passed in the committee on a bipartisan basis, and she is being demeaned by that previous amendment that makes the vote on this amendment completely meaningless.

I support the Morella amendment. You can vote for it, you can vote against it, but it does not make any difference, because even if it passed, the previous amendment negates it. I just think that is an incredible way to treat somebody in your own party. After all, she gave the Republicans the votes to organize the House. What do they do? They turn around and deny her a fair opportunity to offer her amendment and to try to convince Members to support it and to make it the House position.

Now, if we adopt the Morella amendment it will be the House position, but we have already adopted another amendment that says the Morella amendment is not going to be the House position.

I think that this is a wrong way on the process to treat this matter, and I think it is an unfair way to treat the gentlewoman from Maryland (Mrs. MORELLA). I am going to support the Morella amendment. I asked for the time so we could control it, but we were not even given that courtesy.

This is partisanship in the sneakiest, meanest, narrowest way; and not to me, but to one of their own Members. I commend the gentlewoman from Maryland (Mrs. MORELLA). She offered the amendment in committee, she argued for it, her arguments prevailed and she won on a bipartisan basis. I am going to vote for her amendment. I urge other Members to vote for it. But we all know it is meaningless.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wholeheartedly agree with the endorsement of the gentlewoman from Maryland (Mrs. MORELLA) by my friend from California and appreciate it. She is a fine Member, and, as I said earlier, no one cares more about national security than her.

I would just make the point very clearly that notwithstanding the fact she would not be able to offer the same amendment to the same section of the bill, this rule was drafted in a way to permit that. I think it is appropriate, and she does have the right to offer her amendment today, and I am glad she does.

Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. TOM DAVIS), a member of the Committee on Government Reform.

Mr. TOM DAVIS of Virginia. Mr. Chairman, let me just add, this is not the end of the legislation. This bill goes to conference. The House vote on this is important in terms of the message it says to conferees, and I think to dispel it is not appropriate.

I also commend my colleague for her work and her courage in standing up to leadership on this particular issue, as she has done so many times during her career. Like her, I have a number of Federal employees and union members in my Congressional district, and I believe strongly that the traditional Federal workforce protections need to be applied and extended to Federal employees as they are transitioned into the new Department of Homeland Security.

But I differ with her on this amendment for this reason: The underlying legislation gives the employees the traditional rights they would enjoy in being able to transfer from one agency to this new agency. The amendment offered by the gentlewoman from Maryland (Mrs. MORELLA) gives them additional rights that they currently do not enjoy under Federal law, and it gives them additional rights at a time when we are at war with global terrorists, where the President has come to us saying this is the organization he needs to be able to win the war on global terrorism, and we are taking away the President's flexibility to deploy people that he enjoys in the Department of Defense, in the FBI, in the CIA and every other Federal agency.

So they are treated under this the same way as they are in those other agencies that help us fight wars, and if this amendment passes, it basically creates a two-tier system and a lot of potential for inequities. For example, at a time of crisis, the President would not be able to treat Department of Justice, CIA, in the same manner as he treats employees at the Department of Homeland Security. That does not make any sense.

Mr. Chairman, section 7103(b) of title IV represents a finely crafted balance between the rights of employees and the duty of the President to act in exceptional times, in exceptional times. Rarely used, in exceptional times with exceptional action. We are at war now, and certainly these are exceptional times.

In my view, we should enact the legislation and give our Commmander-in-

Chief the tools he needs to enact the war on terrorism.

Mrs. MORELLA. Mr. Chairman, I yield myself such time as I may consume.

I just want to make a brief statement. I want to thank the gentleman from California (Mr. WAXMAN) for what he had said, but I want to disagree with him on one issue, because this is not meaningless. If we pass this amendment, this also indicates the intent of the House, the intent of the committee. And the battle has just begun. I will not relent until we do what is best for our Federal employees.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, Congress enacted civil service protections and collective bargaining rights so the U.S. Government could attract the very best to government service. As we stand together to fight terrorism, we should also stand together for the rights and well-being of those people who are on the front lines of that fight.

It is no secret that one of the Federal Government's biggest challenges is recruiting and retaining highly qualified workers. Within 3 short years, the Federal Government will face a mass retirement of Federal employees. Given the composition of the workforce, this is a given.

I support the Morella amendment because it will ensure that Federal employees at the new Department of Homeland Security will retain their rights to belong to unions. This provision would guarantee that the 50,000 employees, only about 25 percent of those expected to be transferred to the new department, who are currently under collective bargaining agreements, retain their union representation.

Let us be clear this amendment would apply only to those who currently have collective bargaining rights and would in no way affect those employees who are not currently members of unions. The need to establish this new department should not be used as a veiled attempt to strip Federal servants of the fundamental protections and collective bargaining rights they enjoy today.

Mr. PORTMAN. Mr. Chairman, I yield 1¼ minutes to the gentleman from Florida (Mr. WELDON), the distinguished chairman of the Subcommittee on Civil Service of the Committee on Government Reform.

Mr. WELDON of Pennsylvania. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in opposition to the gentlewoman's amendment. I think it is going to be very, very important as we move through the process of consolidating all these agencies together into one unified Homeland Security Department that the President of the United States has the ability to deal with the conflicting union agreements that he is going to have to try to bring together.

I know the President of the United States is going to do everything he can to protect the rights of the workers.

This amendment I think is extremely strange, because it basically is saying that we are going to take the right that the President of the United States has to suspend collective bargaining agreements for national security purposes and deny it to the President of the United States within the Department of Homeland Security.

If this amendment passes, the President of the United States for national security reasons, and this is an authority that Democratic and Republican presidents have exercised authority rarely, and, when they have, they have done it appropriately. To deny it within the Department of Homeland Security to me does not make any sense.

Mr. PORTMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Texas (Mr. THORNBERRY), another distinguished colleague who has been at the forefront of this issue over the last several years, not just weeks or months.

Mr. THORNBERRY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, earlier this year a bipartisan group of House and Senate Members, a bipartisan group of Members from both bodies, introduced identical bills, and basically we said that this issue of collective bargaining ought to be the same.

That, in my view, is the same as it is now. That, in my view, is what the Shays amendment was. It was unimaginable to us then and it is unimaginable to me now that we would reduce the ability of the President to act in a national security situation. That is why I believe this amendment should be rejected.

Mr. PORTMAN. Mr. Chairman, I yield 30 seconds to my friend, the gentlewoman from Maryland (Mrs. MORELLA). We have more time than she does, and she would like some additional time.

The CHAIRMAN pro tempore (Mr. LATHAM). Without objection, 30 seconds will be yielded to the gentlewoman from Maryland (Mrs. MORELLA).

There was no objection.

The CHAIRMAN pro tempore. The gentlewoman from Maryland (Mrs. MORELLA) has 2 minutes remaining.

Mrs. MORELLA. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I rise in strong support of the Morella amendment. We do not make our homeland more secure by undermining job security.

Mr. Chairman, I rise in support of the Morella-Danny Davis amendment to protect federal workers.

As a New Yorker, I care deeply about homeland security.

Even since, Sept. 11th, we have had several security alerts issued by the government.

Everyone wants a strong homeland, but it shouldn't be achieved on the backs of the dedicated and talented men and women of the federal workforce. We should not erode the rights of federal workers.

In the event of a homeland security crisis, do you really believe that anyone would abandon their posts when the clock strikes five?

The Morella amendment is a fair amendment.

It is clear that the government employees who transfer into the new department can keep the rights they already have.

It applies only to those who currently have collective bargaining rights and would in NO WAY affect those employees who do not currently have these rights.

Some of the papers are using the example of a "drunken Border Patrol agent" as a reason of why they want to take away workers' rights. This is a silly anecdote. I can tell you in New York right now, if this were to happen with one of our officers in the City, such a person would be removed immediately from their post, but due process would still be protected.

We don't make our homeland secure by undermining job security.

Mrs. MORELLA. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, the Japanese attacked us at Pearl Harbor and we fought World War II. We went into Korea, we went into Vietnam, we went into Bosnia, we went into the Persian Gulf. We did not do this. We saw no need to do it, because we saw no threat from collective bargaining.

My colleagues, support the Morella amendment. I agree with her, it does mean something. It says to our employees, we understand that your collective bargaining rights do not in any way, at any time, undermine our national security, for which we all will fight and for which we will all support legislation to protect it.

I rise in favor of the Morella amendment.

Mr. Chairman, we must ensure that "flexibility" does not become a code word for favoritism.

Furthermore, we must ensure that "flexibility" does not become a euphemism for gutting federal civil servants' rights.

The federal civil service was created for a reason: to prevent arbitrary and capricious employment decisions based on politics and patronage rather than competence and professionalism.

All this amendment does is tell the employees who will be working in the new department, "If you will be performing the same job as you do now, you will be able to retain the right to collective bargaining rights."

There is no doubt that certain reforms to our civil service are necessary, but stripping the rights of federal employees behind the curtain of homeland security is not the right approach.

We have an opportunity to turn national tragedy into national triumph by demonstrating to the American people, particularly the generation just entering the workforce, that employment in the Federal Government is not only honorable and patriotic, but also rewarding.

There is absolutely no doubt in my mind that employees currently covered by the full force and affect of title 5 will have no adverse affect on our homeland security as it pertains to employment in this department. I support this amendment and urge my colleagues to vote in favor of it.

Mrs. MORELLA. Mr. Chairman, I yield 30 seconds to my colleague, the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, I rise in strong support of the Morella amendment. I represent 72,000 Federal employees. I think this so-called "flexibility" is a great mistake. It abrogates employee rights and ultimately it undermines their moral.

Our greatest asset is our human capital. We cannot expect our fellow employees to protect homeland security if we undermine their employment security. The Morella amendment provides a compromise. It allows the President to say if they are engaged in investigative work relating to counterterrorism, relating to the war on terrorism, they can abrogate those rights. If they do not, if they are performing administrative or clerical functions not relating to investigations, they retain their bargaining rights.

Support the Morella amendment.

Mr. PORTMAN. Mr. Chairman, it is my understanding we have the right to close, is that correct?

The CHAIRMAN pro tempore. The gentleman from Ohio has the right to close.

Mr. PORTMAN. Mr. Chairman, I would like to give the gentlewoman from Maryland (Mrs. MORELLA) the right to close.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, again, we have had a good debate here today in the context of the Shays amendment and now the Morella amendment. The bottom line is we have a good compromise. It is the Shays amendment. It gives workers in this new department more protection than any workers in any department in government, and yet it retains in the president this extremely important national security authority. It would be ironic if during this time of addressing this new threat of terrorism we were to take away that authority altogether.

I think the compromise makes sense. I strongly urge a no vote on the Morella amendment, which would, according to the President, be the basis for a veto of this legislation.

Mr. Chairman, I yield the balance of my time to the gentleman from Connecticut (Mr. SHAYS).

The CHAIRMAN pro tempore. The gentleman from Connecticut is recognized for 2 minutes.

Mr. SHAYS. Mr. Chairman, in the 3½ years my Subcommittee on National Security has been looking at homeland security, one thing is very clear: We need to know what the threat is, we need to develop a strategy, and we need to do what we are doing today, which is to reorganize our government to meet the terrorist threat.

When the President implements the reorganization of our Federal Government under this law that we will provide him, he needs the same flexibility President Carter had, the same flexibility President Reagan had, the same flexibility President Bush had, the same flexibility President Clinton had. He needs that same flexibility.

It is interesting to note that my colleagues have not sought to limit past presidents in their ability to have this flexibility to deal with national security. You must vote no on the Morella amendment. It is in conflict with the amendment that has passed before. We included all aspects of the Morella amendment, but we had a safety valve.

When you hear of the 500 clerical employees that were impacted, they were under the National Drug Intelligence Center, the U.S. National Central Bureau of Interpol, the Office of Intelligence, Policy and Review, the Criminal Justice Division of DOJ. They were clericals under the professionals. But the law does not give the President the ability to leave the clericals in place, and that is what the Morella amendment should have done. We need to give the President the ability to utilize his power in a way that enables him to impact only the employees we need to.

□ 1145

Our primary concern must be national security; it would be absolutely unbelievable if we would give the President less power to fight terrorism when terrorism is a greater threat. It is not a question of if, but when, where, and what magnitude we will face the potential of chemical, biological, or nuclear attack.

We had people testify before our committee that pointed out a small group of scientists could alter a biological agent and wipe out humanity as we know it. We are talking about a threat to our national security. How can we think that Federal employees are not willing to step up to the plate and live under the same law that has existed under previous presidents? I believe they want this law and the President to have the power that previous presidents have had.

Mrs. MORELLA. Mr. Chairman, I yield myself the remaining time.

I do not see how being in a union would disallow any of those employees from performing their responsibilities.

I think, Mr. Chairman, the crux of this debate comes down to trust. It is for this reason that I simply refuse to buy the argument that we have to matter-of-factly give the administration or any administration as much flexibility as possible. I am a friend of the President, I think he has done a wonderful job guiding the country through this crisis, but on the Federal employee issues, his record is not as laudable as I would like it to be.

So my amendment speaks to those concerns. It speaks to the lack of trust that has been engendered if we have policies that are anti-Federal employee rights, and that is why I feel it is necessary to create a slightly higher standard for this department.

The fact is, I simply cannot take the chance on being wrong on this issue. The President's executive order authority under chapter 7103 has never been overturned, and there are simply too many Federal employees who could lose their rights for the same questionable reason that those 500 DOJ employees did.

I have 78,000 Federal employees living in my district. This issue is important to them, and it is important to the country. I ask my colleagues to vote for the amendment.

Mr. DAVIS of Illinois. Mr. Chairman, as a member of the House Committee on Government Reform, and as the Ranking Member of its Subcommittee on Civil Service, Census, and Agency Organization, I am proud to join my colleague, the gentlewoman from Maryland, Representative MORELLA, in co-sponsoring this amendment to H.R. 5005.

We certainly have come a long way from the days, back in the 1800's, when it would not have been uncommon to find an ad in a Washington newspaper saying: "WANTED—A GOVERNMENT CLERKSHIP at a salary of not less than $1,000 per annum. Will give $100 to any one securing me such a position."

We now have a merit-based Federal civilian workforce that is unsurpassed by none. Our civil servants have responded with professionalism to the threats against our borders and assaults against our values. Those 170,000 employees who are identified to become the first employees of our new Department of Homeland Security will coalesce together to "prevent terrorist attacks within the United States, reduce the vulnerability of the United States to terrorism; and minimize the damage, and assist in the recovery, from terrorist attacks that do occur." We are charging much to them—and they are up to the task.

However, just as we are expecting much from these Federal civil servants, they should expect much from a grateful nation. We should safeguard their employment rights to the extent that doing so does not interfere with national security. This amendment that Mrs. MORELLA and I have introduced strikes this delicate balance.

The President and the Federal Labor Relations Authority can presently exempt employees from union membership for "national security work." The President used this authority last year to take away the collective bargaining rights for approximately 500 Justice Department workers, most of whom were clerical employees who had been unionized for twenty years. Their duties had not changed—what had changed was their rights to union membership.

Simply stated, our amendment protects the rights of Federal employees. Those who currently have the right of union membership will retain this right in the new Department of Homeland Security—so long as they are doing the same work. This is no more than what is commonly referred to as a "grandfather" clause. Of the approximately 170,000 employees that will be transferred to the new Department, only 50,000 are represented by unions—less than one-third. These are the employees who would be protected under our amendment. We cannot take the risk that thousands of employees could lose their labor rights for ambiguous reasons. If they are doing the same work, they should have the same protections.

This amendment would not change the standard for new employees hired to the Department of Homeland Security or those employees transferred who were not previously allowed union membership. Also, any employee transferred to the new Department, who was previously allowed union membership, but whose responsibilities change significantly, would no longer retain this right.

We have a big challenge ahead of us in shoring up this new Department. Let's protect those who will be protecting us. I urge my colleagues to support Federal employee rights and to pass this amendment.

Mrs. MALONEY of New York. Mr. Chairman, I rise in support of the Morella-Danny Davis amendment to protect federal workers.

As a New Yorker, I care deeply about homeland security.

On September 11th, we should remember that the first responders who rushed to the World Trade Center were civil servants—wonderful, selfless civil servants.

More than 10 months after September 11, the pain from that day has not begun to fade for my constituents in New York. While we have cleaned up the site and begun to focus on rebuilding, no New Yorker can walk past a firehouse or see a police car race across the city without being reminded of the incredible herorism displayed by the 343 firefighters, 37 Port Authority Police and 23 New York City Police who gave their lives to save others that day.

In my own district 25 different fire stations lost people in the terror attacks. One firehouse in my district—the Roosevelt Island based Special—Operations unit lost 10 men. The loss was so great from this facility because a duty change was in progress. Men who were finishing their shift grabbed their equipment and headed to the scene. As a result, twice as many perished as would have otherwise.

These men and women didn't hesitate to respond.

So I ask you, in the event of a future homeland security crisis, do we really believe that any federal worker at the new Department of Homeland Security would abandon their posts when the clock strikes five?

Everyone wants a strong homeland, but it shouldn't be achieved on the backs of the dedicated and talented men and women of the federal workforce.

We should not *erode* the rights of federal workers.

The Morella amendment is a fair amendment.

It is clear that the government employees who transfer into the new department can keep the rights they already have.

The amendment applies only to those who currently have collective bargaining rights and would in NO WAY affect those employees who do not currently have these rights.

Some of the papers are using the example of a "drunken Border Patrol agent" as a reason of why they want to take away workers' rights. This is a silly anecdote. I can tell you in New York right now, if this were to happen with one of our officers in the City, such a person would be removed immediately from their post, but due process would still be protected.

We don't make our homeland secure by undermining job security.

Vote for the Morella amendment.

The CHAIRMAN pro tempore (Mr. SUNUNU). The question is on the amendment offered by the gentlewoman from Maryland (Mrs. MORELLA).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mrs. MORELLA. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 208, noes 222, not voting 3, as follows:

[Roll No. 357]

AYES—208

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Petri
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Simmons
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—222

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Castle
Chabot
Chambliss
Coble
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—3

Blunt Collins Meehan

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Mr. CONDIT changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. SUNUNU). It is now in order to consider amendment No. 19 printed in House Report 107-615.

AMENDMENT NO. 19 OFFERED BY MR. QUINN

Mr. QUINN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. QUINN:

In section 761(a) of the bill, redesignate paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and insert after the heading for subsection (a) the following:

(1) SENSE OF CONGRESS.—It is the sense of the Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

In paragraph (4) of section 9701(b) of title 5, United States Code (as proposed to be added by section 761(a) of the bill), strike all that follows "by law" and insert "; and".

In section 9701 of title 5, United States Code (as proposed to be added by section 761(a) of the bill), redesignate subsection (e) as subsection (g) and insert after subsection (d) the following:

"(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

"(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

"(A) NOTICE OF PROPOSAL, ETC.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

"(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

"(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

"(iii) give any recommendations received from any such representative under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

"(B) PRE-IMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

"(i) give each employee representative details of the decision to implement the proposal, together with the information upon which the decision was based;

"(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

"(iii) give such recommendations full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

"(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

"(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

"(ii) give each employee representative adequate access to information to make that participation productive.

"(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

"(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

"(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of this subsection; and

"(C) the selection of representatives in a manner consistent with the relative numbers of employees represented by the organizations or other representatives involved.

"(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

"(1) SENSE OF CONGRESS.—It is the sense of the Congress that—

"(A) employees of the Department of Homeland Security are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary of Homeland Security and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

"(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

"(A) shall be issued only after consultation with the Merit Systems Protection Board; and

"(B) shall ensure the availability of procedures which shall—

"(i) be consistent with requirements of due process; and

"(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Homeland Security.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from New York (Mr. QUINN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from New York (Mr. QUINN).

Mr. QUINN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the President called on the Congress to create the Department of Homeland Security in an effort to condense the numerous government agencies performing these functions into a single more manageable unit and department.

This massive realignment of people and resources is developed to enhance the protections of our Nation, without eliminating the basic rights of our employees that comprise the Department.

The President needs the flexibility we talked about earlier today to have the right people in the right place at the right time to address rapidly evolving terrorist threats.

His vision is of a performance-based system that rewards employees who provide exemplary service and removes those who are not performing their duties adequately. With the security of our Nation at stake, it is our duty to provide this and future Presidents with that ability.

Mr. Chairman, it is an opportunity for me to also congratulate and thank the gentlewoman from Maryland (Mrs. MORELLA) for her work on this issue, to thank the administration and the President's personal involvement these pass few weeks to get us to this point this morning, to thank my good friend from New York (Mr. MCHUGH), the Speaker, and the gentleman from Ohio (Mr. PORTMAN).

Once we have this system in place, however, it is important we do not compromise the basic employee protections of the workers who perform these functions. Therefore, Mr. Chairman, it is imperative that the House approve the amendment that I offer.

The Quinn amendment as it is outlined is a part of the overall picture that puts this Department in place. We improve the personnel flexibility provisions in the underlying text by expanding and broadening worker protections in the following three ways:

First of all, it ensures the direct participation of employee representatives in the planning, the development, and the implementation of any human resources management system. It accomplishes this goal by requiring that the Secretary of this new Homeland Security and the Director of Personnel Management provide each and every employee, number one, with a written description of the proposed amendments; secondly, 60 days to review the proposal; and, thirdly, a full and fair consideration of those employees' recommendations.

In other words, Mr. Chairman, what this does is it gives the labor unions, the employees a seat at the table from the beginning to the end of the process.

Secondly, with this amendment this morning, it preserves the current appeals rights of employees, emphasizes due process, expedites resolutions, and requires consultation with the merit systems protection board which is already in place.

And, thirdly, it places a sense of Congress language directly into the underlying statute that clearly protects the employee's right to appeal and that due process.

Mr. Chairman, this amendment allows the President to use provisions in current law to exempt an agency from collective bargaining only when he determines in writing that a substantial, adverse impact on the homeland security exists.

This standard is actually more restrictive now than current law. I believe that these protections are absolutely critical to the employees of the new Department. Mr. Chairman, it is an opportunity to point out that these employees of our Federal Government, particularly the example of 9–11, none of them asked when their shift change occurred. None of them asked if they were going to be paid overtime. Nobody said it is my time to return in a time of war, in a time when the President has to have all the tools necessary to fight terrorism and this war.

We know that these employees will respond the way they have always responded. We are proud of their work. We are proud of them as employees. We want to make certain now that the Morella-Shays issue has been settled, that we are able to talk about making certain that this President or any President does not take advantage of these workers, these Federal workers that we are so proud of.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from California (Mr. WAXMAN) for 10 minutes.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Chairman, I rise in opposition to this amendment, and I do so because it is actually a step backwards. This is a step backwards by taking away worker rights and protections that Americans have come to cherish.

When you take away chapter 5, you talk about fighting terror, you create terror and strike terror and fear in the hearts of workers because now you are saying to them that they may not be able to get annual cost-of-living increases in their wages. That is no longer automatic. You say to those individuals who work in high-market areas that they may not get adequate compensation if they have to work in places like New York, Chicago, Washington, D.C., places where the cost of living is much greater and much higher than in other places.

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It means that we do not have to give employees the right to grieve and to have the protections that every American in the workplace so rightly deserves. So I cannot imagine why it would be necessary to take these protections away under the guise of fighting terror because I can guarantee my colleagues that the people I have been speaking with are terrorized with fear that the rights they have earned will be taken away.

Mr. QUINN. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. SWEENEY), a fellow New Yorker who worked on this package these last couple of weeks, a leader in labor issues, not only in our State of New York but the country.

Mr. SWEENEY. Mr. Chairman, I thank the gentleman for yielding me time, and, Mr. Chairman, I rise in strong support of the gentleman from New York's (Mr. QUINN) amendment that I believe will provide personnel flexibility broadening worker protections.

Mr. Chairman, we have had great discussions this morning and for the last several weeks about the challenges that we face in forming a new Homeland Security Department and providing for the protection of the American people. It seems in the course of those discussions we have needed to find a balance between the needs to provide those protections against terrorist attacks and worker rights, and I submit to my colleagues as the former State labor commissioner of New York State, probably the largest unionized State in the Nation, that that conflict ought not to occur, and I am very proud today that we seem to be moving in a very positive direction, a very positive direction in passing the Shays amendment.

I will note the colloquy that my colleague, the gentleman from New York (Mr. MCHUGH), had with the Speaker of the House and the conversations that we had with the President of the United States in which they made commitments to the basic precepts of collective bargaining and the rights of workers and ensuring that workers' rights would not be abrogated in this process, and, indeed, with this amendment from the gentleman from New York (Mr. QUINN), Mr. Chairman, it is important that we reaffirm those commitments and those rights.

As the gentleman from New York (Mr. QUINN) pointed out on September 11, a shift change had occurred at 8:45 a.m. and two planes flew into the World Trade Center. Unionized firefighters and unionized police officers did not ask whether their shift was beginning or ending, simply charged into those buildings to do their jobs as they have always done their jobs and save American lives.

That is why it is important that this amendment pass. That is why it is important that we keep those commitments first and foremost and forward as we decide and deliberate how to best secure America's borders.

On a personal note, I would like to speak in terms of my commitments to collective bargaining, workers' rights, because my dad, Mr. Chairman, was a labor leader. He fought all his life for collective bargaining issues. I sat at the kitchen table discussing those issues and know, indeed, I would not have been here today representing the people of the 22nd Congressional District in New York had he not won those fights.

This is not about an abrogation of those rights. This is about ensuring that the President of the United States has the flexibility to protect American lives and American people. He has given his commitment that he will do that job and as well will ensure that the workers who fulfill those duties, who we know will fulfill those duties will as well be protected.

I fully, strongly support this amendment and all of the efforts on the part of my colleagues to ensure those rights are protected and that the American public is protected from the terrorist attacks that we face.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. CUMMINGS).

Mr. CUMMINGS. Mr. Chairman, I want to thank the gentleman for yielding me the time.

Mr. Chairman, I rise today to ask my colleagues to vote against the Quinn amendment. This amendment does not fix the problems in the civil service provisions of the bill. In fact, the Quinn amendment is actually a step backward from the current law.

In the underlying bill, the new Department does not have to comply with essential parts of title V. In fact, the reported bill does not guarantee the Federal employees will receive protections against unfair labor practices, get cost-of-living increases or even locality pay.

Mr. Chairman, as former ranking member of the Committee on Government Reform, Subcommittee on Civil Service, Census and Agency Organization, I firmly believe that it is critical that Federal employees transferred to this new Department retain their civil service protections. Federal employees whose responsibilities are the same today as they were a week ago or even a year ago could lose civil service protections just because the government's organizational chart will change. This is an unfair result that I know my colleagues want to avoid.

Again, I ask my colleagues to vote against the Quinn amendment and support the Waxman-Frost amendment.

Civil service protections should not be altered merely because employees are moved to the new Department. The Federal employees in the new mega agency should have the same rights as employees in other agencies.

Mr. QUINN. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN). This discussion these last few weeks has been including a lot of people. The gentleman from Ohio (Mr. PORTMAN), of course, with his expertise and involvement in the House was very, very helpful.

Mr. PORTMAN. Mr. Chairman, I want to say to my friend from Maryland, and he is my friend, that this is a good amendment because it does actually enhance the worker protections in the underlying bill. I understand his concerns with the underlying bill, but this amendment expands them. It does it in a few very specific ways.

I want to commend the gentleman from New York (Mr. QUINN) because he listened. He listened to the 25 percent of the employees who are coming into this new Department who are currently represented by unions, and he listened to the 75 percent of employees coming into this new Department who are not members of the union.

What he did is very simple. He got the unions a place at the table so that when we go through these new flexibilities we are going to talk about in the next amendment, the unions have a voice, and they wanted that.

He makes sure that the Secretary of this new Department could not use a waiver authority to pull union members out of collective bargaining for national security purposes, which is in the underlying bill. He removes that authority, again listening to the concerns of union members and their representatives.

He also preserves the appeal rights for all workers in this new Department to make sure that due process is followed to clarify the underlying language and be sure that the Merit Systems Protection Board is used in the case of appeal, should there be a firing.

He also puts very important language in the amendment to clarify the intent of this entire bill which is exactly what I have heard on the other side of the aisle today by the gentleman from Maryland (Mr. WYNN) and others, to be sure that we prioritize human capital. It is the key. Good morale, working as a team, is the only way this is going to work, and the Federal workers are going be the heroes in this case. They are going to be the ones responding as the first responders. They are going to be the ones protecting our kids and grandkids over time. We need to be sure that this morale and this team effort is taken.

I have heard a lot of comments here today about the underlying draft in the McHugh amendment and that somehow it does not protect worker protections under title V. That is wrong. It does. We have heard, for instance, that the merit system principles are optional. They are not. They are guaranteed in this bill and in the amendment.

The whistleblower protections are guaranteed. Political cronyism is not allowed. In fact, all the language prohibiting political coercion is absolutely in this legislation, explicitly. Veterans' preferences are not eliminated. They are guaranteed. Annual leave, sick leave is totally guaranteed and protected. Diversity hiring is guaranteed. Nepotism prohibition, I have heard that is not in the bill. It is. It is in the bill. It is guaranteed. Arbitrary dismissals are not permitted. It is guaranteed that there is protection against arbitrary dismissals, and finally, health insurance and other retirement benefits are absolutely guaranteed in this legislation.

Mr. Chairman, the Quinn amendment improves, perfects an underlying piece of legislation which gives the President the flexibility he will need to adequately protect our homeland. I strongly support the underlying bill. I support the gentleman from New York's (Mr. QUINN) amendment, and I hope my colleagues will support it as well on a bipartisan basis.

Mr. WAXMAN. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, let me tell my colleagues what this does not do. The gentleman from Ohio (Mr. PORTMAN) tried to make us think that civil servants were going to be protected. Well, if an annual cost-of-living is going to other employees, there is no guarantee that employees working in this Department will get it. Nor would they be guaranteed the locality pay increases to offset the higher cost of living. The employee is also not protected against the Department if it engaged in unfair labor practices, such as coercing employees or discriminating against employees who assert their collective bargaining right. Rights are not restored. They are not protected anymore.

The employees are at the mercy of the Department, and, in fact, if an agency wanted to take an adverse action against an employee, it does not even have to give them, as existing law, 30 days notice and 7 days to respond, and then if there is an adverse action taken against the employees, there is no provision to give them the right to appeal.

These are current rights that are being taken away, and the gentleman from Ohio (Mr. PORTMAN) does not restore those rights.

Mr. QUINN. Mr. Chairman, could I inquire as to the amount of time remaining.

The CHAIRMAN pro tempore (Mr. SUNUNU). The gentleman from New York (Mr. QUINN) has 30 seconds remaining and the right to close. The gentleman from California (Mr. WAXMAN) has 5½ minutes remaining.

Mr. QUINN. Mr. Chairman, I reserve my time.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in strong opposition to the Quinn amendment which weakens the already weak civil service provisions of the underlying bill. Federal employees want more than the right to consult with their employers. They want to be partners with the government in the effort to defend our Nation. Workplace rights for employees will not undermine homeland security. After all, if the first responders, the heroes of September 11, can belong to unions and enjoy workplace protections, surely the staff of the Department of Homeland Security can do the same.

Flexibility and consultation rights, with these words, the Republican majority puts lipstick on their attack on existing civil service and collective bargaining rights of Federal employees. If this new Department is to succeed, Federal employees will make it work. We should treat these professionals with the respect they deserve. Defeat the Quinn amendment and support the Waxman-Frost amendment.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman for yielding me the time.

Let me offer to say to the gentleman from New York (Mr. QUINN), a good friend, I appreciate the good faith and the good intentions that may be behind the offering of this amendment, but let me, Mr. Chairman, suggest what we are actually seeing here in contrast to what we are supposed to be doing in a bipartisan effort to pass homeland security, and that is, that on this floor today over the last hour, we have seen a change in the method or either the focus of this legislation.

We are supposed to be fighting terrorism, Mr. Chairman. We are now fighting workers, and the reason why I say that is because we are offering legislation contrary to the Frost-Waxman amendment that really implodes longstanding commitments and obligations and responsibilities to the working people of America.

This bill impacts negatively our Federal firefighters, our Federal law enforcement, our military personnel. Is that what we want to say to those first responders, that we do not care about their working rights? That is what this consultation amendment does because it does not allow negotiation.

The reason why I know this House bill poses difficulty for me is because in the morning's presentation that the administration had that many of us did not secure an invitation to—even though we have responsibilities dealing with homeland security, the administration said pointedly that they did not like the other body's bill, why—because the other body had a bill that was fair, that recognized that the thrust of homeland security should be fighting terrorism and not American workers.

I do not believe that disallowing the rights that workers have makes us more secure. I am insulted for this bill to suggest that Americans, when challenged by foreign terroristic acts or domestic terroristic acts, will not come together, will not give up rights and stand united with this administration.

Why are we destroying workers' rights, Mr. Chairman? This is what this amendment does. I would ask my colleagues to defeat it and vote for Frost-Waxman.

Mr. WAXMAN. Mr. Chairman, we have no other requests for time, and we will yield back the balance of our time.

Mr. QUINN. Mr. Chairman, I yield myself the remaining time.

Simply in closing, I would say this. I have spent a career here in the Congress, 10 years now fighting for workers' rights, fighting for labor unions and working families across the country, and I would not be here this morning offering the amendment if I did not think it helped the working families of this country and it helps our President protecting the country, those same workers, not exclusive of each other, but the same people all at the same time, and I would urge, on those merits and the help of a lot of friends in the House, passage.

Mr. QUINN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. QUINN).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. QUINN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 202, not voting 4, as follows:

[Roll No. 358]

AYES—227

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—202

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—4

Blunt
Kaptur
Meehan
Radanovich

□ 1250

Messrs. CUMMINGS, BLAGOJEVICH, JOHN, and JEFFERSON and Ms. ROYBAL-ALLARD changed their vote from "aye" to "no."

Mr. TOM DAVIS of Virginia changed his vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. SUNUNU). It is now in order to consider amendment No. 20 printed in House Report 107–615.

AMENDMENT NO. 20 OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 20 offered by Mr. WAXMAN:

Strike section 761 and insert the following:

SEC. 761. HUMAN RESOURCES MANAGEMENT.

(a) AUTHORITY TO ADJUST PAY SCHEDULES.—

(1) IN GENERAL.—Notwithstanding any provision of title 5, United States Code, the Secretary may, under regulations prescribed jointly with the Director of the Office of Personnel Management, provide for such adjustments in rates of basic pay as may be necessary to address inequitable pay disparities among employees within the Department performing similar work in similar circumstances.

(2) APPLICABILITY.—No authority under paragraph (1) may be exercised with respect to any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5.

(3) LIMITATIONS.—Nothing in this subsection shall constitute authority—

(A) to fix pay at a rate greater than the maximum amount of cash compensation allowable under section 5307 of title 5, United States Code, in a year; or

(B) to exempt any employee from the application of such section 5307.

(4) SUNSET PROVISION.—Effective 5 years after the effective date of this Act, all authority to issue regulations under this subsection (including regulations which would modify, supersede, or terminate any regulations previously issued under this subsection) shall cease to be available.

(b) SUSPENSION AND REMOVAL OF EMPLOYEES IN THE INTERESTS OF NATIONAL SECURITY.—The Secretary shall establish procedures consistent with section 7532 of title 5, United States Code, to provide for the suspension and removal of employees of the Department when necessary in the interests of national security or homeland security. Such regulations shall provide for written notice, hearings, and review similar to that provided by such section 7532.

(c) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Not later than 5 years after the effective date of this Act, the Secretary shall submit to Congress a proposal for a demonstration project, the purpose of which shall be to help attain a human resources management system which in the judgment of the Secretary is necessary in order to enable the Department best to carry out its mission.

(2) REQUIREMENTS.—The proposal shall—

(A) ensure that veterans' preference and whistleblower protection rights are retained;

(B) ensure that existing collective bargaining agreements and rights under chapter 71 of title 5, United States Code, remain unaffected;

(C) ensure the availability of such measures as may be necessary in order to allow the Department to recruit and retain the best persons possible to carry out its mission;

(D) include one or more performance appraisal systems which shall—

(i) provide for periodic appraisals of the performance of covered employees;

(ii) provide for meaningful participation of covered employees in the establishment of employee performance plans; and

(iii) use the results of performance appraisals as a basis for rewarding, reducing in grade, retaining, and removing covered employees; and

(E) contain recommendations for such legislation or other actions by Congress as the Secretary considers necessary.

(3) DEFINITION OF A COVERED EMPLOYEE.—For purposes of paragraph (2)(D), the term "covered employee" means a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code, respectively) who occupies a position within the Department which is in the General Schedule.

(d) MERIT SYSTEM PRINCIPLES.—All authorities under subsections (a) and (b) shall be exercised in a manner, and all personnel management flexibilities or authorities proposed under subsection (c) shall be, consistent with merit system principles under section 2301 of title 5, United States Code.

(e) REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS.—

Section 7211 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The right"; and

(2) by adding at the end the following:

"(b) Any employee aggrieved by a violation of subsection (a) may bring a civil action in the appropriate United States district court, within 3 years after the date on which such violation occurs, against any agency, organization, or other person responsible for the violation, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages, and equitable, injunctive, or any other relief that the court considers appropriate. Any such action shall, upon request of the party bringing the action, be tried by the court with a jury.

"(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(e) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

"(d) For purposes of this section, the term 'employee' means an employee (as defined by section 2105) and any individual performing services under a personal services contract with the Government (including as an employee of an organization).".

(f) NONREDUCTION IN PAY.—Nothing in this section shall, with respect to any employee who is transferred to the Department pursuant to this Act, constitute authority to reduce the rate of basic pay (including any comparability pay) payable to such employee below the rate last payable to such employee before the date on which such employee is so transferred.

In section 812(e)(1), strike "Act; and" and insert the following: "Act, except that the rules, procedures, terms, and conditions relating to employment in the Transportation Security Administration before the effective date of this Act may be applied only to the personnel employed by or carrying out the functions of the Transportation Security Administration.".

In section 812(e)(2), strike "except" and insert "Except".

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from California (Mr. WAXMAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself 3 minutes and 30 seconds.

I rise in support of the Waxman-Frost amendment on Civil Service. This amendment strikes the flawed section 761 which was reported out of the Select Committee regarding civil service and replaces it with the civil service language reported by the Committee on Government Reform with unanimous bipartisan support.

Our Nation has the most honest, most professional civil service in the world, and the reason is our civil service laws. These civil service laws prevent abuses such as patronage, they guarantee important rights such as appeals to the Merit Systems Protection Board, and they provide for collective bargaining rights.

The President's proposal eliminated these essential protections, but the Committee on Government Reform and the gentleman from Indiana (Chairman BURTON) crafted an amendment that restored the protections of title V to employees of this new Department. His amendment received unanimous bipartisan support from the Members of the committee, and we had other civil service amendments offered by the gentlewoman from the District of Columbia (Ms. NORTON) on preserving pay, the gentleman from Massachusetts (Mr. TIERNEY) for ensuring that TSA procedures do not apply agency-wide, the gentleman from Ohio (Mr. KUCINICH) offered an amendment to protect whistleblowers, and these were all adopted by unanimous bipartisan support.

The amendment I am offering right now is simply the amendment of the gentleman from Indiana (Mr. BURTON) as amplified by the other amendments, adopted without dissent in our committee.

As currently drafted in the bill before us, section 761 does not guarantee Federal employees basic civil service protections. The section preserves some rights. It is an improvement over the President's proposal, but it specifically allows the secretary to waive any of the provisions of chapters 43, 51, 53, 71, 75 and 77 of title V. This is wrong. Civil servants whose responsibilities will be the same today if they are transferred into this new department as they were before the transfer should not lose their civil service protections just because that organizational chart may change.

In essence, the bill before us makes the employees of the new department second-class employees. Degrading the rights of Federal workers in the new Department makes no sense. We want the new department to succeed, but this will not happen if the employees of the new department are stripped of their basic rights.

The Waxman-Frost amendment corrects these problems. It ensures that the basic title V protections apply to the new department, and it does so in exactly the same way that the Committee on Government Reform recommended unanimously. The Committee on Government Reform is the committee of jurisdiction on civil service and public employees' issues.

Mr. Chairman, I am asking, and it is quite rare that I would do this, for the Members of this House to support the amendment of the gentleman from Indiana (Mr. BURTON) that we all supported in committee.

Mr. Chairman, I reserve the balance of my time.

Mr. PORTMAN. Mr. Chairman, I rise in opposition to the Waxman amendment.

The CHAIRMAN. The gentleman from Ohio (Mr. PORTMAN) is recognized for 10 minutes.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from California (Mr. WAXMAN) called this the amendment of the gentleman from Indiana (Mr. BURTON), and I think it is only appropriate that the gentleman from Indiana (Mr. BURTON) can explain his position on this amendment and the underlying bill.

Just to make one point, though, what we are talking about here is an underlying draft that does protect title V. It does provide all of the protections that the gentleman referenced, including patronage protections, whistleblower protections, and the other collective bargaining rights that are guaranteed in the underlying bill.

Mr. Chairman, I yield 2½ minutes to the gentleman from Indiana (Mr. BURTON), the chairman of the Committee on Government Reform.

Mr. BURTON of Indiana. Mr. Chairman, first let me say that my good friend, the gentleman from California (Mr. WAXMAN), and I did work very closely along with the Democrats on the committee to come up with a product that we can all be proud of, and it did pass by a vote of 30–1.

While I do have some pride of authorship, I believe that the Portman amendment goes a little further and does a little better job than I did in the manager's amendment.

First, in the committee bill we maintained whistleblower protections, veterans' preferences, and we retained collective bargaining rights, not that we thought the administration would in some way violate those things, but we thought they should be in the bill. We wanted to reassure the Federal workforce.

But the Portman language goes even further. It provides against political retaliation regarding the Hatch Act. It retains protections against racial discrimination and gender discrimination. It protects health care benefits, retirement benefits, and it protects workers compensation. Those are things that ought to be in the bill that are not.

Now, putting this department together is a monumental undertaking. We are talking about taking parts of 22 different departments and bringing them together to protect this Nation. It is not an easy job, and the administration is going to have a difficult time getting all of this accomplished, and they have to have flexibility wherever possible in order to make this whole thing work.

One of the things that concerned me was protections against those who may be set aside because there is a possibility there is a national security concern about these people and their jobs and what they may or may not be doing. For that reason, I supported the Quinn amendment that provides due process for those individuals. That was not in the manager's mark or the original bill, but it is now.

I know that Federal employees are very nervous and I know that change is hard and it causes anxiety. But I believe the administration is going to be fair. I believe we are putting as many protections as possible in this legislation, and we are still providing the flexibility that the President needs.

□ 1300

We are talking about protecting every single American, and the President is going to have to have flexibility. I believe that the bill that we passed in the committee, much of which has been talked about here on the floor, does that; and I believe the Portman amendment even improves upon that. I would just like to say that I support the Portman amendment. I did before the Committee on Rules, and for that reason I hope we will defeat this amendment that would take that out.

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

The improvements in the bill are improvements not from the language of the Committee on Government Reform but from the original bill introduced by the President. What we need to do is restore all of the provisions that were adopted by the Committee on Government Reform.

Mr. Chairman, I yield 3½ minutes to the gentleman from Texas (Mr. FROST), the cosponsor of this amendment.

Mr. FROST. I thank the gentleman for yielding me this time.

Mr. Chairman, the Waxman-Frost amendment preserves the national security flexibility the President needs without sacrificing the current civil service protections for the new Department. It strikes from the bill a needlessly partisan attack on the civil service system and replaces it with the bipartisan compromise adopted unanimously by the House Committee on Government Reform, the committee with original jurisdiction and expertise on civil service.

The Waxman-Frost amendment is essential because the underlying bill and the Quinn amendment just agreed to contain language that actually turns back the clock on important civil service protections. That may be crucial to the ideology of some on the other side of the aisle, but it will harm the effectiveness of the new Department.

Throughout this process, Mr. Chairman, some Republican leaders have thrown around attacks on worker protections in current law. The truth is the civil service system protects Americans against a "spoils" system that would allow politicians to reward their friends and supporters with important government jobs. And it is crucial that the Department of Homeland Security be staffed by professionals, not by the cronies of whichever party happens to hold the White House.

Mr. Chairman, Democrats and Republicans on the Committee on Government Reform recognized this fact, so they voted unanimously to protect the fundamental title V protections of employees in the new Department.

Mr. Chairman, much has been said about flexibility. I want to assure the House that the Waxman-Frost amendment ensures that the Department of Homeland Security has the flexibility to effectively and efficiently carry out its mission to protect the American people.

Mr. Chairman, our Federal employees are our most valuable asset in the Department of Homeland Security. They are our first line of defense. We are entrusting our safety to them because we know they will rise to the challenge and serve the Nation well. So it is critical that the new Department hires and retains the best and the brightest employees to protect our Nation from terrorism. The question is, do we treat these people with the respect and professionalism they deserve? Or do we undermine the morale of these employees, and risk compromising the mission of the new Department, by gutting their most fundamental workplace rights?

I urge Republicans to join Democrats in supporting worker protections and the professionalism of the Department of Homeland Security. Support the Waxman-Frost amendment.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma (Mr. WATTS), a member of the Select Committee on Homeland Security who has been a leader on protecting the homeland actually long before September 11 and has added considerable value to the work of the select committee and to the debate today.

Mr. WATTS of Oklahoma. I thank my friend from Ohio for yielding me this time.

Mr. Chairman, it is interesting that a terrorist can attack us in a matter of 5 minutes, and then we have got these antiquated systems that it could take us 5 months in order to respond. What the President is asking is for Congress in this new agency to give him the latitude and flexibility to defend our homeland and to do the necessary things in order to respond to these terrorist attacks.

Friends, we are in a new day. I have heard all these things, and I know the gentleman from Ohio (Mr. PORTMAN) talked about this a little earlier, but I think this is worth repeating to just kind of denounce some of the myths and some of the accusations that have been thrown around.

They say the merit system principles, in the new bill that they are optional. The merit system principles are guaranteed.

Whistleblower protections. They say they are eliminated. They are guaranteed in the new bill.

Political cronyism is allowed, they say. There is a prohibition on political coercion and favoritism in our bill. We have got guarantees there.

Veterans preference, they say it is eliminated. They are guaranteed in the legislation.

Sick and annual leave. Unprotected, they say. Sick and annual leave, guaranteed.

Diversity hiring, they say it is optional in this bill. Not true. Minority recruitment and reporting under title V is guaranteed.

Nepotism prohibition is guaranteed. Protection against arbitrary dismissal, guaranteed in this legislation. Health insurance, FEHBP, guaranteed in this legislation.

The President is saying, give me the flexibility and latitude to defend our homeland, and we can still guarantee all these things. Employees will not lose any of these benefits. They are still in place. But give the President the latitude and the flexibility to defend our kids and our grandkids, our families.

Friends, we are in a new world. We need to think outside of the box without thinking outside of the Constitution. This is the right thing to do. Vote down the Waxman-Frost amendment and support the legislation.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Chairman, I believe that preserving democracy is as important as fighting terrorism. In a democracy, one set of rights ends where the next set begins. We are hearing this business that there is not enough flexibility, that the Secretary cannot deal with individuals who are not prepared to do their job. Absolutely false. Section 7532 of title V provides: "Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security." You cannot be much clearer than that in terms of the ability of the Secretary to function.

The real deal is that we are suspending individual rights and protections. The Waxman-Frost amendment restores those protections. And if we want the agency to function, vote for the amendment.

Mr. PORTMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Kansas (Mr. RYUN), who has been at the forefront of these issues.

Mr. RYUN of Kansas. Mr. Chairman, the new Department of Homeland Security will be on the front lines in the war on terrorism. The people who will fulfill the Department's mission must be highly qualified, motivated, and effective. In attracting and keeping this team, we will be competing against the private sector. Recognizing these challenges, the President asked the Congress to give him the maximum flexibility in putting together and managing the Department's workforce.

The legislation crafted by the select committee gives the President the flexibility he requested while at the same time preserving a number of important employment protections. This approach represents what is best for both the Nation's security and those who will serve in this new Department.

First of all, the bill allows the Secretary to develop a performance management program that effectively links employee performance with the Department's objectives and mission. Secondly, the Secretary will have the freedom to use a broad approach in making job classifications and will not be bound by our current system that confines Federal workers to 15 artificial grades. Additionally, the Secretary will not be restricted by the current rigid pay system. Rather, the Secretary will be able to meaningfully reward performance.

We are engaged in a different kind of war. We face a new enemy. We must adapt to meet this new threat. This bill ensures that we will adapt to overcome these new threats. I urge my colleagues to support the select committee's bill and vote against Frost-Waxman.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. KUCINICH), a very important member of our committee.

Mr. KUCINICH. Mr. Chairman, whistleblower rights are workers' rights. No worker should lose his or her job for exposing waste, cover-up or lies of their supervisors. It is ironic that in a bill designed to fight terrorism, we have a provision designed to terrorize workers. Congress must be able to receive the insights of security guards, border patrol agents, policemen, military and others who may need to expose security weaknesses to Congress. Therefore, the Waxman-Frost amendment improves the law, protecting whistleblowers to ensure the security of our Nation.

It would apply remedies, the right to a civil action in U.S. district court. Remedies available would include lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages and equitable, injunctive or any other relief that the court considers appropriate.

If we really want our Nation to be secure, then let us make sure that the workers who are a part of homeland security are going to be protected when they do the right thing.

Mr. PORTMAN. Mr. Chairman, we have one more speaker to close. Who has the right to close?

The CHAIRMAN pro tempore (Mr. BONILLA). The gentleman from Ohio (Mr. PORTMAN) has the right to close.

PARLIAMENTARY INQUIRY

Mr. WAXMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. WAXMAN. How is it that whenever the amendment is offered on the other side, they get the right to close, and when an amendment is offered on our side, they still get the right to close? When they propose it they close, and when they oppose it they close. Is it a rule or does it just simply go to the majority party?

The CHAIRMAN pro tempore. The manager of the bill in opposition to the amendment has the right to close.

Mr. WAXMAN. Mr. Chairman, that has not been the way that the House has proceeded up to now, because I have been managing opposition to a number of amendments, and I have been told the other side has the right to close on those amendments because they are offering the amendment.

The CHAIRMAN pro tempore. The Member of the committee, the select committee in this case as the only reporting committee opposing ane amendment always has the right to close.

Mr. WAXMAN. I see. I thank the Chair for the clarification.

The CHAIRMAN pro tempore. It is consistent.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Massachusetts (Mr. TIERNEY), who played a very important role in the development of this bill in our committee.

Mr. TIERNEY. I thank the gentleman for yielding me this time.

Mr. Chairman, our colleague from Oklahoma spoke a few moments ago about civil service laws meaning it would take 5 months for a response. It did not take the first responders in New York and Pennsylvania and Virginia 5 months to respond on September 11. It took minutes to respond. It has taken this administration 5 months, or more than 5 months to fulfill its promises to close up the cockpits of airplanes securely and to screen luggage and baggage for passengers.

Civil service protections are not the issue in this homeland security bill. We need to encourage good employees, not treat them as second-class employees. We need to give people an understanding that they are important. This administration and the majority, we should have great concern that they choose a homeland security bill to take on an ideological effort against employees.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I rise today in strong support of the Waxman-Frost amendment. It is the exact language that the Committee on Government Reform unanimously adopted. It makes crystal clear that all Federal employees transferred to the new Department will continue to have full title V civil service rights and protections.

While I appreciate that the gentleman from Ohio (Mr. PORTMAN) offered better language in the select committee than what the administration had previously proposed, his language would still allow the new Secretary and the Director of OPM to waive numerous sections of title V. We need to create a new Department that demonstrates the value we place in civil servants and not one that insinuates our distrust of them.

□ 1315

Mr. WAXMAN. Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), the very distinguished whip.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding me time and for his outstanding leadership on protecting the civil service. We have a civil service for a reason. It has served our country, indeed, it serves democracy well. We are an example to the world. As we go forward to reduce risk and to protect the American people, we should not do so at the expense of a democratic institution like civil service.

One of the previous speakers said that we are competing with the private sector so we need this flexibility. We are competing with the private sector, and that is precisely why we need to respect our workers and give them the civil service protection that President Bush did in the mark that the President sent to this body.

Support the President's bill. Support the Waxman amendment.

The CHAIRMAN pro tempore (Mr. BONILLA). All time has expired for the gentleman from California (Mr. WAXMAN).

Mr. PORTMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we face an unpredictable and unprecedented agile and deadly threat. It is not the Cold War any more, it is not about which side has the most muscle mass, it is not about what the biggest department might be. It is about agility. It is about being able to meet the enemy's agility with our own agility.

As any athlete will tell you, including the gentleman from Kansas (Mr. RYUN) who just spoke, you cannot be agile without being flexible first. The President, and Presidents after him, need this flexibility to be sure that this Department works. We simply cannot work with the 1950s era bureaucratic personnel practices that would otherwise be available to him, and, again, to future Presidents and future Secretaries.

The Waxman-Frost amendment protects the antiquated civil service system in a way that blunts this Department's ability to modernize, to consolidate, to streamline, to bring together 22 different personnel systems into one team.

For instance, the amendment prohibits the Secretary from using innovative compensation plans like incentive pay. There is nothing more important than having a work force with high morale that is focused on a team effort to combat terrorism. This is all about human capital and the workforce. If you cannot provide the kind of incentive pay that the President and the Secretary want to provide to people who are performing, you are not going to have that kind of morale.

It keeps the new agency stuck in the mud of over 100 pay grades, arcane job classifications that make no sense whatsoever, and performance appraisals that are indifferent to the mission of this agency. You want to align the performance with the mission.

On hiring, let me raise a specific example, because it was mentioned earlier that it took 5 seconds for a terrorist to commit an act, or 5 minutes, and 5 months to respond. Here is a specific example of that.

It takes 5 months, conceivably, to hire a bioterrorism expert under current civil service rules, whereas it only takes 5 minutes or 5 seconds to commit that bioterrorist act. Why? Developing the written job description, personnel office, classification, conducting job analysis, developing recruiting strategy, announcing the position, rate application, rank-qualified applications, refer the top three qualified to the interviews, conduct interviews, and so on. Five months. That is a specific example of where this Department otherwise would not have the agility to respond.

Also the Secretary could have a bureaucratic nightmare trying to decide who is a security risk and who is not. If you want to fire somebody under the current rules, it can take, yes, weeks and months. Red tape comes first; homeland security comes second.

The Quinn amendment guaranteed that in the appeals process, that due process will be protected and the Merit System Protection Board would be used. The Quinn amendment made sure people would have that appeal. But matters of national security concern, where there needs to be a severance, must be disposed of immediately when national security is at risk.

It also does not allow the Secretary to rationalize all these different departments coming. Again, 22 different personnel systems. There needs to be one unified, flexible system. Not only does the Waxman-Frost language not provide any needed flexibility, it actually does not provide the ability of the Secretary to develop a human resources system at all. All it says is, unbelievably, that the new Department has to propose to Congress a new personnel system and then Congress has to work its will on it. How long would that take? I do not know. It would go through the committees, it would go through the House, it would go through the Senate. Other agencies and departments do not even have to go through that process. All it does, this amendment, is allow the Department to propose a system, not even to develop a system.

We want this Department set up and ready to go immediately, and not when we finally get around to it here in Congress.

Finally, while the Waxman-Frost amendment does not offer the flexibility that is absolutely needed, it also does not provide the same civil service protections that the underlying bill provides. Yes, it mentions whistleblowers and veterans, but others it does not mention, including racial discrimination, thrift savings, and so on.

Mr. Chairman, I ask my colleagues to give the President the flexibility he needs to protect the workers' rights at the same time. Support the underlying bill and vote no on the Waxman-Frost amendment.

Mr. RODRIGUEZ. Mr. Chairman, I rise today in strong support of workers' rights. As we meet today to engage in the important work of enacting legislation which would guide the creation of the new Department of Homeland Security (DHS), H.R. 5005, it is disconcerting that we are also put in a position to introduce an amendment to protect the rights of workers who will engage in the important work of protecting our country from terrorists attacks. The Waxman-Frost amendment will ensure that workers are provided full civil service protections as they engage in the important work of securing our homeland.

As we move to reorganize and consolidate our efforts to ensure a strong and efficient DHS it is imperative that we not place in jeopardy the rights of its workers. H.R. 5005, as amended within the Select Committee on Homeland Security, would allow the DHS Secretary to have complete control over pay and classification systems, including whether or not to provide DHS workers with an annual Congressionally-passed pay raise, whether to remove workers from the locality pay system established in 1990, and how to establish the initial pay rate for a particular occupation.

Essentially, we would be asking federal workers, already involuntarily transferred to a new agency, to be completely left at the mercy of an agency head who would not be bound by the pay system under which the employees had previously worked. This places in danger DHS's ability to retain its workforce and to provide for the adequate worker protections available to all civil service employees. This is wrong and dangerous especially given the great need for DHS to be successful. If in the purpose of DHS is to ensure the physical security of America, then included in its charge should also be the economic security of its workforce. Stripping the workforce of their civil service protections, would put in danger the success of this department and ultimately the security of our country.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. WAXMAN) will be postponed.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 21 printed in House Report 107-615.

AMENDMENT NO. 21 EN BLOC OFFERED BY MR. ARMEY

Mr. ARMEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 21 offered by Mr. ARMEY:

Page 13, line 20, strike "The Secretary" and insert "With respect to homeland security, the Secretary".

Page 22, line 13, strike "Under the direction of the Secretary, developing" and insert "Developing".

Page 24, lines 10 to 11, strike "and to other areas of responsibility described in section 101(b)".

Page 25, lines 9 to 10, strike "and to other areas of responsibility described in section 101(b)".

Page 24, line 12, strike "concerning infrastructure or other vulnerabilities" and insert "concerning infrastructure vulnerabilities or other vulnerabilities".

Page 25, lines 11 to 12, strike "concerning infrastructure or other vulnerabilities" and insert "concerning infrastructure vulnerabilities or other vulnerabilities".

Page 28, line 14, strike "(1) and (2)" and insert "(2) and (3)".

Page 19, line 16, strike "Director of Homeland Security" and insert "President".

Page 43, line 11, strike "the Congress" and insert "the appropriate congressional committees".

Page 142, line 2, insert "including" before "interventions".

Page 142, line 4, insert a comma after "asters".

In section 811(f)(1)—

(1) insert "or" before "Harbor"; and

(2) strike "or Oil Spill Liability Trust Fund".

In section 205(1), strike "information" the first place it appears.

In section 205(3) insert "and regulatory" after "legislative".

In section 302, strike paragraph (1) and redesignate the subsequent paragraphs in order as paragraphs (1) and (2).

In section 305(d), strike "section 302(2)(D)" and insert "302(1)(D)".

Strike section 906, and redesignate sections 907 through 913 as sections 906 through 912, respectively.

In section 301—

(1) in paragraph (8), strike "homeland security, including" and all that follows and insert "homeland security; and";

(2) strike paragraph (9); and

(3) redesignate paragraph (10) as paragraph (9).

In title III, add at the end the following section:

SEC. 309. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

In title II, at the end of subtitle A add the following:

SEC. . ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entitites that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

At the end of title II add the following:

SEC. . NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as "NET Guard", comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

Strike section 814.

In section 761—

(1) in the proposed section 9701(b)(3)(D) strike "title" and insert "part"; and

(2) in the proposed section 9701(c), strike "title" and insert "part".

At the end of title VII, insert the following new section:

SEC. 774. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—The Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the "Posse Comitatus Act"), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the "Insurrection Act"), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—The Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of the Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

Amend the heading for section 766 to read as follows:

SEC. 766. REGULATORY AUTHORITY AND PREEMPTION.

In section 766—

(1) before the first sentence insert the following: "(a) "REGULATORY AUTHORITY.—"; and

(2) at the end of the section add the following:

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the

Department effective on the date of the transfer to the Department of that Federal agency or official.

Page 31, after line 5, insert the following:

SEC. 207. INFORMATION SECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and, upon request, to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and with other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

At the end of the bill add the following new title:

TITLE XI—INFORMATION SECURITY

SEC. 1101. INFORMATION SECURITY.

(a) SHORT TITLE.—The amendments made by this title may be cited as the "Federal Information Security Management Act of 2002".

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

"SUBCHAPTER II—INFORMATION SECURITY

"§3531. Purposes

"The purposes of this subchapter are to—

"(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

"(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

"(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

"(4) provide a mechanism for improved oversight of Federal agency information security programs;

"(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

"(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.".

"§3532. Definitions

"(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

"(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

"(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

"(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

"(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

"(C) availability, which means ensuring timely and reliable access to and use of information; and

"(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

"(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

"(A) involves intelligence activities;

"(B) involves cryptologic activities related to national security;

"(C) involves command and control of military forces;

"(D) involves equipment that is an integral part of a weapon or weapons system; or

"(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

"(3) the term 'information technology' has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

"(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

"(A) computers and computer networks;

"(B) ancillary equipment;

"(C) software, firmware, and related procedures;

"(D) services, including support services; and

"(E) related resources.".

"§3533. Authority and functions of the Director

"(a) The Director shall oversee agency information security policies and practices, by—

"(1) promulgating information security standards under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

"(3) requiring agencies, consistent with the standards promulgated under such section 5131 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(A) information collected or maintained by or on behalf of an agency; or

"(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

"(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 5113(b)(5) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1413(b)(5)) to enforce accountability for compliance with such requirements;

"(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

"(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

"(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

"(A) a summary of the findings of evaluations required by section 3535;

"(B) significant deficiencies in agency information security practices;

"(C) planned remedial action to address such deficiencies; and

"(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3).".

"(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

"§3534. Federal agency responsibilities

"(a) The head of each agency shall—

"(1) be responsible for—

"(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(i) information collected or maintained by or on behalf of the agency; and

"(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

"(i) information security standards promulgated by the Director under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441); and

"(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

"(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

"(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

"(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

"(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) for information security classifications and related requirements;

"(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

"(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

"(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

"(A) designating a senior agency information security officer who shall—

"(i) carry out the Chief Information Officer's responsibilities under this section;

"(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

"(iii) have information security duties as that official's primary duty; and

"(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

"(B) developing and maintaining an agencywide information security program as required by subsection (b);

"(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

"(E) assisting senior agency officials concerning their responsibilities under subparagraph (2);

"(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

"(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

"(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

"(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

"(2) policies and procedures that—

"(A) are based on the risk assessments required by subparagraph (1);

"(B) cost-effectively reduce information security risks to an acceptable level;

"(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

"(D) ensure compliance with—

"(i) the requirements of this subchapter;

"(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(iii) minimally acceptable system configuration requirements, as determined by the agency; and

"(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

"(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

"(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

"(A) information security risks associated with their activities; and

"(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

"(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

"(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

"(B) may include testing relied on in a evaluation under section 3535;

"(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

"(7) procedures for detecting, reporting, and responding to security incidents, including—

"(A) mitigating risks associated with such incidents before substantial damage is done; and

"(B) notifying and consulting with, as appropriate—

"(i) law enforcement agencies and relevant Offices of Inspector General;

"(ii) an office designated by the President for any incident involving a national security system; and

"(iii) any other agency or office, in accordance with law or as directed by the President; and

"(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

"(c) Each agency shall—

"(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

"(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

"(A) annual agency budgets;

"(B) information resources management under subchapter 1 of this chapter;

"(C) information technology management under the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.);

"(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

"(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101-576) (and the amendments made by that Act);

"(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

"(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

"(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

"(A) as a material weakness in reporting under section 3512 of title 31, United States Code; and

"(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

"(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

"(A) the time periods, and

"(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

"(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

"(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

"§ 3535. Annual independent evaluation

"(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

"(2) Each evaluation by an agency under this section shall include—

"(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

"(B) an assessment (made on the basis of the results of the testing) of compliance with—

"(i) the requirements of this subchapter; and

"(ii) related information security policies, procedures, standards, and guidelines; and

"(C) separate presentations, as appropriate, regarding information security relating to national security systems.

"(b) Subject to subsection (c)—

"(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

"(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

"(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

"(1) only by an entity designated by the agency head; and

"(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(d) The evaluation required by this section—

"(1) shall be performed in accordance with generally accepted government auditing standards; and

"(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

"(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

"(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

"(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

"(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

"(h) The Comptroller General shall periodically evaluate and report to Congress on—

"(1) the adequacy and effectiveness of agency information security policies and practices; and

"(2) implementation of the requirements of this subchapter.

"§ 3536. National security systems

"The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

"(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

"(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

"(3) complies with the requirements of this subchapter.

"§ 3537. Authorization of appropriations

"There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

"§ 3538. Effect on existing law

"Nothing in this subchapter, section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), or section 20 of the National Standards and Technology Act (15 U.S.C. 278g-3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States.".

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading "SUBCHAPTER II" are amended to read as follows:

"3531. Purposes.
"3532. Definitions.
"3533. Authority and functions of the Director.
"3534. Federal agency responsibilities.
"3535. Annual independent evaluation.
"3536. National security systems.
"3537. Authorization of appropriations.
"3538. Effect on existing law.".

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking "(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)" and inserting "(b) OBJECTIVES OF THE PROGRAM.—";

(ii) in subsection 2224(b), by striking "(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code."; and

(iii) in subsection 2224(c), by inserting ", including through compliance with subtitle II of chapter 35 of title 44" after "infrastructure".

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1102. MANAGEMENT OF INFORMATION TECHNOLOGY.

Section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) is amended to read as follows:

"SEC. 5131. RESPONSIBILITIES FOR FEDERAL INFORMATION SYSTEMS STANDARDS.

"(a)(1)(A) Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

"(B) Standards promulgated under subparagraph (A) shall include—

"(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(b)); and

"(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

"(C) Information security standards described under subparagraph (B) shall be compulsory and binding.

"(2) Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, United States Code, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

"(b) The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

"(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

"(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44, United States Code.

"(c)(1) The decision regarding the promulgation of any standard by the Director under subsection (a) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3).

"(2) A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.".

"(d) In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44, United States Code.".

SEC. 1103. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3), is amended by striking the text and inserting the following:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

"(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

"(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

"(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Director of the Office of Management and Budget for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441)—

"(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

"(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

"(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

"(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products."

"(d) The Institute shall—

"(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(2) provide assistance to agencies regarding—

"(A) compliance with the standards and guidelines developed under subsection (a);

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

"(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

"(e) As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

"(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

"(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.".

SEC. 1104. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-4), is amended—

(1) in subsection (a), by striking "Computer System Security and Privacy Advisory Board" and inserting "Information Security and Privacy Advisory Board";

(2) in subsection (a)(1), by striking "computer or telecommunications" and inserting "information technology";

(3) in subsection (a)(2)—

(A) by striking "computer or telecommunications technology" and inserting "information technology"; and

(B) by striking "computer or telecommunications equipment" and inserting "information technology";

(4) in subsection (a)(3)—

(A) by striking "computer systems" and inserting "information system"; and

(B) by striking "computer systems security" and inserting "information security";

(5) in subsection (b)(1) by striking "computer systems security" and inserting "information security";

(6) in subsection (b) by striking paragraph (2) and inserting the following:

"(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and";

(7) in subsection (b)(3) by inserting "annually" after "report";

(8) by inserting after subsection (e) the following new subsection:

"(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

"(h) As used in this section, the terms "information system" and "information technology" have the meanings given in section 20.".

SEC. 1105. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMPUTER SECURITY ACT.—Sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 1441 note) are repealed.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) is amended by striking subtitle G of title X.

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting "subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end—

"(c)(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

"(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

"(3) Such inventory shall be—

"(A) updated at least annually;

"(B) made available to the Comptroller General; and

"(C) used to support information resources management, including—

"(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

"(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), the Clinger-Cohen Act of 1996, and related laws and guidance;

"(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

"(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

"(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

"(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.".

(3) Section 3506(g) of such title is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting "subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

SEC. 1106. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

In section 752(b)(1), strike "and extensive".

In section 752(b)(1), strike "and" and insert "or".

In section 752(b)(6), strike "evaluation" and insert "Evaluation".

At the end of section 752(b), insert:

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism.

In section 753(d)(1), insert "or other" after "liability".

In section 753(d)(3), strike "those products" and insert "anti-terrorism technology".

In section 753(d)(3), strike "product" and insert "anti-terrorism technology".

In section 754(a)(1), strike, "to non-federal" and insert "to Federal and non-Federal".

In section 754(a)(1), insert "and certified by the Secretary" after "section".

In section 755(1), strike "device, or technology designed, developed, or modified" and insert "equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured".

Page 182, line 2, strike "and" and insert "or".

At the end of subtitle G of title VII of the bill, add the following (and conform the table of contents of the bill accordingly):

SEC. 774. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT AMENDMENTS.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

"(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after February 17, 2002, to provide such security, or are not debarred.".

Page 12, line 5, strike "and".

Page 12, line 9, strike the period and insert "; and".

Page 12, after line 9, insert the following:

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

Page 195, line 16, after "terrorism." insert: "Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.".

In section 307(b)(1)—

(1) strike "and" at the end of subparagraph (A);

(2) redesignate subparagraph (B) as subparagraph (C); and

(3) after subparagraph (A), insert the following new subparagraph:

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 301(10); and

In section 766 of the bill, insert "sections 305(c) and 752(c) of" after "provided in".

Add at the end of title V of the bill the following section:

SEC. 506. SENSE OF CONGRESS REGARDING FUNDING OF TRAUMA SYSTEMS.

It is the sense of the Congress that States should give particular emphasis to developing and implementing the trauma care and burn center care components of the State plans for the provision of emergency medical services using funds authorized through Public Law 107–188 for grants to improve State, local, and hospital preparedness for and response to bioterrorism and other public health emergencies.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Texas (Mr. ARMEY), and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, this is the manager's amendment for the bill. The amendment includes the following: Technical amendments requested by the Committee on Energy and Commerce;

Technical amendments requested by the Committee on Science;

Technical correction regarding Oil Spill Liability Trust Fund requested by Committee on Transportation and Infrastructure;

Technical amendments related to DHS privacy officer;

Technical correction related to the biological agent registration function requested by Committee on Agriculture;

Amendment to create a program to encourage and support innovative solutions to enhance homeland security requested by the gentleman from Virginia (Mr. TOM DAVIS) and the gentlewoman from California (Ms. HARMAN);

Amendment to enforce non-Federal cybersecurity activities of Under Secretary for Information Analysis and Infrastructure Protection requested by the Committee on Science;

An amendment to establish the NET Guard program to promote voluntary activities in support of information technology protection activities requested by the Committee on Science;

An amendment striking Section 814 related to incidental transfers by Director of OMB requested by Committee on Appropriations;

Technical correction to section 761 to insert proper cross references;

Amendment inserting a sense of Congress provision reaffirming our support for the Posse Comitatus Act;

An amendment clarifying that this act preempts no State or local law except that any preemption authority vested in the agencies or officials transferred to DHS shall be transferred to DHS;

Amendment inserting the text of Federal Information Security Management Act of 2002 recommended by Committee on Government Reform at the request of the gentleman from Virginia (Mr. TOM DAVIS). The amendment will achieve several objectives vital to Federal information security. Specifically it will, one, remove the Government Information Security Reform Act's GISRA sunset clause and permanently require a Federal agency-wide, risk-based approach to information security management, with annual independent evaluations of agency and information security practices; two, require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems; three, streamline and make technical corrections to GISRA to clarify and simplify its requirements; four, strengthen the role of NIST in the standards-setting process; and, five, require OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

The amendment to subtitle F of title VII relating to liability management intended to clarify ability of liability protections afforded by this title;

An amendment asserting a new section to reinstate liability cap for aviation screening companies that are under contract with the Transportation Security Administration are not debarred.

Mr. Chairman, let me be very clear about this amendment. It does not reinstate a cap for any company that has been debarred; that is, Argenbright.

Mr. Chairman, I must suggest that we will all be labored to death with fulminations against Argenbright. So let me relate again that this amendment does not reinstate a cap for any company that has been debarred. That is, in particular, Argenbright. We would like that to be considered a fact.

Mr. Chairman, amendments clarifying responsibilities of DHS and the DHS counternarcotics officer with regard to narcotics interdiction requested by the gentleman from Illinois (Mr. HASTERT);

Amendments clarifying eligibility criteria for participation in certain extramural research programs of the Department requested by the gentleman from California (Mr. DREIER);

Technical amendment to section 766 regarding regulatory authority requested by the Committee on Energy and Commerce;

Amendment adding a new section expressing the sense of Congress regarding funding of trauma systems consisting of language originally offered by the gentlewoman from California (Ms. HARMAN).

Mr. Chairman, you can see that the manager's amendment is a final, full, comprehensive and respectful regard to our colleagues in their standing committees of jurisdiction and as Members of this body who wish consideration in this bill.

Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I rise in opposition to the en bloc amendment and request the time in opposition.

The CHAIRMAN pro tempore. The gentlewoman from California is recognized for 20 minutes.

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, throughout the course of all of this we have striven to find our areas of agreement, and we have made some successes in that regard. Every now and then something will come along that just really takes your breath away. That happened last week when we had the markup of the bill when the majority tried to give an indefinite extension for the installation of detection devices for explosives in baggage and when the distinguished leader put into his mark a total immunity, a total immunity, for those who were guilty of wrongdoing and jeopardizing the safety of the American people.

So here we now have today an en bloc amendment, the en bloc amendment of the chairman, which we would all love to support. The chairman has worked hard on this bill and he has some technicalities he would like to correct, and we would like to support him. Except, once again, out of the blue, comes an amendment that fatally flaws this en bloc amendment. Let us dissect that.

This amendment is fatally flawed. That means it has a flaw that kills it. It is fundamentally flawed. It is flawed in a way that undermines any reason why anyone should vote for it.

The Armey amendment takes a bad provision, which gives immunity to corporate wrongdoers, and makes it even worse. I am going to have more to say on this subject as we go along.

Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member on the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, we have got a bit of a dilemma here. According to the General Services Administration, excluded parties listing system, page 5, Argenbright Security, Incorporated. They will be excluded. Term date, 14 October 2002.

So I say to the distinguished majority leader, if that is what you call debarment, that is what I call somebody getting rolled in the House this afternoon. They are debarred for exactly 2 months, and they are back in business.

□ 1330

So I rise in support of the gentlewoman's objection to this en bloc manager's amendment, because notwithstanding all of the concern about corporate accountability that has been raised to the roof here on both sides of the Capitol, the last thing we need to do is to pass a special interest law which protects negligent airport screening companies at the expense of victims of the September 11 tragedy.

Do we know what we are doing here? Two of these screening companies have been criminally convicted for falsely certifying that they made criminal background checks of their employees when they did not. Two of these companies have been convicted for knowingly hiring convicted felons, and last November when we passed the Aviation Security Act, we expressly decided that private screening companies should not be relieved of liability.

That is because we evaluated airline security in the wake of September 11, and it was obvious on both sides of the aisle that the private companies conducting airline screening, in general, had done a woefully inadequate job.

So now, I should be shocked that the Republican leadership would use an en bloc manager's amendment to the homeland security bill as a vehicle to further harm the victims of the September 11 terrorist attack. Yet, that is precisely what this amendment does.

It not only protects Argenbright, but it protects their parent company as well, totally shielding them from liability for letting terrorist and terrorist weapons through checkpoints on September 11. So those responsible for providing staff at, for example, Logan Airport in Boston, would receive liability protection. Even the notorious screening company that I have already named, which provided security at Dulles and Newark Airports and has been cited for more security violations than any other company, would benefit from the Army language.

Mr. Chairman, I urge my colleagues to reject this en bloc manager's amendment that is before us now.

EXCLUDED PARTIES LISTING SYSTEM

NO. OF DEBAR TRANSACTIONS: 3

Name: Argenbright Holdings, Limited
Class: Firm
Record Type: Primary
Exclusion Type: Reciprocal
DUNS:
Address: 3465 North Desert, Atlanta, GA, 30344
Description:
CT Actions—
1. Action Date: 20–MAR–2001
Term Date: Indef.
CT Code: A1
Agency: GSA
2. Action Data: 20–MAR–2001
Term Date: Indef.
CT Code: J1
Agency: GSA
Cr. Ref. Names:
1: AHL Services, Inc.
2: Fields, Helen
3: Lawrence, Sandra H.
4: Suller, Steven E.

Name: Argenbright, Security, Inc.
Class: Firm
Record Type: Primary
Exclusion Type: Reciprocial
DUNS:
Address: 3465 North Desert Dr., Atlanta, GA 30344
Description:
CT Action—
Action Date: 18–MAR–2002
Term Date: 14–OCT–2002
CT Code: A
Agency: STATE
Cr. Ref. Name: Argenbright, Frank A., Jr.

Name: Argenbright, Frank Jr..
Class: Individual
Record Type: Cross-Reference
Exclusion Type: Reciprocial
DUNS:
Address: 3553 Peachtree Rd., NE, Suite 1120, Atlanta, GA 30326
Description:
CT Action—
Action Date: 18–MAR–2002
Term Date: 14–OCT–2002
CT Code: A
Agency: STATE
Primary Name: Argenbright Security, Inc.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Let me first observe that the officials at Argenbright would be much comforted by the gentleman's speech since they called my office viciously angry and upset, disappointed that they are not included in this amendment. So obviously, they clearly understand themselves to be not included in this coverage, and whether or not they take comfort from the remarks we just heard I do not know.

Mr. Chairman, that being as it is, I yield 3 minutes to the distinguished gentleman from North Carolina (Mr. COBLE), my classmate and a subcommittee chairman of the Committee on the Judiciary.

Mr. COBLE. Mr. Chairman, I thank the leader for yielding me this time.

The manager's amendment as just presented by the gentleman from Texas (Mr. ARMEY) is technical for the most part, so I am going to direct my attention generally to the bill before us.

Mr. Chairman, I traditionally oppose the capping or prohibition of damages. It is my belief that generally speaking, the matter of awarding damages should be an exclusive assignment to be discharged by the jury. When first the State legislature, then the Congress, then this third party or that third party began inserting their oars into the jury's waters regarding damages, potential problems rear their respective, troublesome heads. Invasions of the jury's province should be pursued very delicately, very deliberately, and very infrequently.

The homeland security legislation directs our attention to plaguing, unrelenting threats imposed by terrorism, and that is the hook on which I hang my departure from long-held views in opposing capping or restricting damages.

This bill proposes the elimination of damages in certain instances, and given the 9-11 attack by those wicked messengers of evil, I believe this justifies capping or prohibiting damages. Terrorism, my friends, is not our traditional adversary. Terrorists punish the innocent. Terrorists recklessly and needlessly destroy property. Terrorists are wicked and evil people and, given this set of circumstances, I believe our addressing damages is, therefore, justified.

I do not believe I am compromising my beliefs. I hold to my strongly-held belief that the province of the jury is close to sacred ground but, in this instance, I believe the proposals presented in the homeland security legislation justify my support of this bill, including the matter of damages.

Mr. Chairman, there will be a subsequent amendment that will involve near universal indemnification. We can ill-afford to authorize the negotiation of blank checks. After 9-11, I believe, Mr. Chairman, that this House proved that we will not leave helpless victims behind, but we must generously lace our proposals with prudence in lieu of fiscal recklessness.

Finally, I say to the distinguished gentleman from Texas, our majority leader, I think he has done a good job in crafting a responsible piece of legislation, and I urge its support.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from California (Mr. WAXMAN), ranking member of the Committee on Government Reform.

Mr. WAXMAN. Mr. Chairman, I really cannot believe this. Yesterday, the Republicans were forced, kicking and screaming, to vote for legislation on corporate responsibility and today, they are proposing legislation that would give a green light to corporate irresponsibility.

Now, do you remember when they passed under the Contract for America the Private Securities Litigation Reform Act? It said to accountants, they did not have to be responsible anymore, they could not be sued. So what happened? We got Enron. We got all of these scandals.

This bill exempts from liability a company that would make a defective smallpox vaccine. It would exempt from liability a seller of what was supposed to be antiterrorism technology that did not work. They would allow people who are supposed to be doing the work of protecting the people and who are negligent in doing it not to even be held responsible. Even worse, if somebody was grossly negligent and acted intentionally, they would still not be held liable.

Let me give another example. A company that is supposed to screen for our protection at an airport can hire a known felon and maybe someone that if they had checked and used reasonable due care could have found out that person was a terrorist, and they would hire them and a terrible tragedy could occur, but the company would not be responsible. They are not held to legal liability because they are given this exemption from any legal liability under the Armey proposal.

This is a green light to corporations to cut corners, to not have the incentive to do the job right because they are going to be second-guessed and held accountable in the courts if they do it wrong. The biggest problem they might have is they might not have their contract renewed. But do you know what? If they violate their contract, they cannot even be sued to do their part of the agreement because they are exempt from liability even under contract law.

Mr. Chairman, this is the most irresponsible provision I can imagine, and if anything, we have to wonder, how could they do this? It must be a payoff to corporations to get a lot of campaign money. How else could anybody come up with something so irresponsible in light of what this country has gone through in the last few years and all that our economy is suffering from.

Mr. ARMEY. Mr. Chairman, I would like to believe the gentleman from California could rise above the kind of sophomorish allegation that there are payoffs in the legislative process. I have been many times disappointed by the gentleman from California, but this is the first time I have been embarrassed for him.

Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio (Ms. PRYCE), a jurist and member of the committee.

Ms. PRYCE of Ohio. Mr. Chairman, I thank the gentleman for yielding, and I compliment him once again on the job he has done with putting this together.

Mr. Chairman, the claims arising out of the deployment of qualified antiterrorism technologies would be covered by litigation management provisions that simply provide for this; once again, very simply. A consolidation of claims in Federal court. That makes perfect sense.

The requirement that any noneconomic damages be awarded only in the proportion to a party's percentage of fault. That makes perfect sense.

A ban on punitive damages. A ban on punitive damages that so often are disproportionate to any real claim or harm done. A ban on punitive damages. Once again, perfect sense.

Offsets of awards based on receipt of collateral source benefits. We can only get paid once, not twice or 3 times.

A reasonable, very reasonable limit on attorneys' fees, once again, perfect sense.

Mr. Chairman, the Safety Act provisions of this en bloc manager's amendment are vital to ensuring that the American people are protected by the most reliable and up-to-date antiterrorism technology available. Unfortunately, the flaws in our current tort system keep that from happening right now. We need the life-saving and life-protecting technologies that are out there close to being developed.

But one company, for instance, based in my home State of Ohio, produces a state of the art technology that is vital to decontamination following an anthrax attack. Yet, they are prevented from using this technology to assist in the cleanup of any infected areas or buildings by the daunting and limitless liability that they could face if their patriotic efforts failed for some reason.

The Safety Act provisions certainly do not provide immunity in any way from any lawsuit; they simply place reasonable and sensible limits on lawsuits so that America's leading technology innovators will be able to deploy solutions to thwart terrorist attacks.

The alternative solution of indemnification is no solution at all. It is fiscally irresponsible; it will attempt to put the Treasury and, through it, the U.S. taxpayers and their deep pockets at risk by those, the very people that exploit the technology producers who join in the fight against terrorism.

Mr. Chairman, this is common sense. The time is right for it to happen. The threat of liability has a chilling effect, both on technological advances and the implementation of any new technology. I think it is a perfect place for it in the en bloc amendment; it is reasonable, it makes sense. The time is right for it. We need it now.

Ms. PELOSI. Mr. Chairman, it is my privilege to yield 4 minutes to the distinguished gentleman from Minnesota (Mr. OBERSTAR), the ranking member of the Committee on Transportation and Infrastructure.

Mr. OBERSTAR. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I compliment her on her management of the time on our side and on this whole process, and for her splendid work on the Select Committee on Homeland Security.

For whatever valid reasons there may be to extend liability to other functions, as have already been discussed and debated and without entering into those merits, I cannot, for the life of me, imagine a reason, a valid reason for extending liability to the screener companies.

□ 1345

We debated this issue at length last October and November in consideration of the Aviation and Transportation Security Act that is now law. We discussed it in the Committee on Transportation and Infrastructure. We debated it in the House Senate Conference Committee. We discussed it at great length and rejected any suggestion, and there were suggestions, any proposals for extension of liability limitation and immunization for the airport screening companies. It is their possible negligence that may have contributed to the September 11 attack. Why would you want to excuse them?

In the amendment offered by the gentleman, buried in this amendment is what I might call mirage language. Whether by design or by inadvertence, Mr. Chairman, I do know and I do not want to ascribe motives, it is just that here it is. The language intends to on its face exclude any screening company that is debarred under Federal contracts. However, the infamous Argenbright Company's debarment is over in October, 2002. It then becomes eligible for liability protection under the gentleman's en bloc amendment. Furthermore, the parent company of Argenbright, Securicor, is not debarred from any Federal contracts. So they are now covered by this immunization protection. And look at Argenbright. Someone last fall in the debate, and I think it was a Member on the Republican side, said Argenbright is the poster child for why we need to have a Federalized screener program.

They were in October of 2000 put on a 36-month probation, ordered to pay $1,600,000 fine for failure to conduct background checks on their employees and hiring convicted felons to staff security screening checkpoints at the Philadelphia Airport between 1995 and 1999. A month after September 11, Argenbright's probation was extended by 2 years because they continued to hire convicted felons and improperly train workers in violation of their probation terms. In the 5 years before September 11, FAA prosecuted 1,776 cases for screening violations with $8.1 million in civil penalties.

The en bloc vote furthermore extends liability protections, put Argenbright aside, to other airport security firms. Globe Aviation Services and Huntleigh USA Corporation, the security companies responsible for checkpoint security at Logan Airport on September 11 and which continue to hold a contract with the Transportation Security Administration, why would you want to exclude them? These are the same groups whose lobbyists argued last October against the Federal screener program. It does not make sense to now exempt them.

In May of this year, Huntleigh Security Screeners were fired for allowing a man to go through a security checkpoint with two loaded semiautomatic pistols. In February of this year, a Globe security screener fell asleep at a checkpoint. The whole terminal had to be evacuated at Louisville because of that failure. Why in heaven's name do you want to exclude them? This defies imagination. It is the wrong policy. If we could move to strike this provision, I would; but in lieu of that, we ought to defeat the entire en bloc amendment.

Mr. ARMEY. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, the confusion about Argenbright has nothing to do with my amendment. Argenbright is today debarred. My amendment does not provide coverage to firms that are debarred. If GSA sometime in the future should remove that debarment, the gentleman from Minnesota (Mr. OBERSTAR) would have an argument with GSA, but he has no argument in respect to Argenbright with my amendment. If I were the gentleman from Minnesota, I would take up his case with GSA and plead with them to not lift the debarment on Argenbright, and this gentleman would join the gentleman from Minnesota (Mr. OBERSTAR).

Ms. PELOSI. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I just want to reaffirm for the distinguished gentleman from Texas (Mr. ARMEY), majority leader, that Argenbright's debarment expires in October of this year. Why would you not extend a prohibition on coverage?

Mr. ARMEY. Mr. Chairman, I yield myself 30 seconds to respond to the proposition that the gentleman from Minnesota (Mr. OBERSTAR) and I differ in our understanding of the facts.

Ms. PELOSI. Mr. Chairman, I yield 2½ minutes to the gentleman from Oregon (Mr. BLUMENAUER), a distinguished member of the Committee on Transportation and Infrastructure.

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentlewoman's courtesy in permitting me to speak and for her hard work on this issue. It is a tough one, but the manager's amendment that is brought before us this afternoon captures my concerns about the legislation, why I am against the amendment and frankly I do not think I will be able to vote for it in its final form.

This is legislation that has been candidly rushed forward. We have an artificial deadline, perhaps to beat the anniversary of September 11, but it is not because this is the best time frame to protect the security of America.

It includes elements that are not necessary and some which may actually hinder both the discharge of the overall concept of the legislation and have critical functions for the American public that suffer. And we have had lots of discussions on this floor about the potential problems for FEMA, for the Coast Guard; indeed, almost all our colleagues on all of the substantive committees of jurisdiction reject the all-encompassing approach that has been suggested here, the people who know something about these functions. And this, frankly, Mr. Chairman, is an area that is where the approach that is being taken is contrary to my experience.

Now, I have not had the range of experience in Congress that some of these people have who have been here for not just years, but decades; and I defer to them. But I have actually done work in government reorganization on the State level and on the local level, city and county. And without exception, reorganization costs money. It is not cost-neutral, let alone with something with tens of thousands of employees. It takes time and there can be short-term dislocations as a result of these functions.

And finally, it is critical when you are dealing with people who are going to be moving in to new structures to be able to have a certainty of working conditions. And some of the proposals that we have had advanced as a part of this are going to produce uncertainty of working conditions, apprehension for tens of thousands of dedicated public employees; and that is going to hurt. It is not going to help.

Finally, the manager's amendment is an example of my underlying concern. Adding the exemption that has been argued by my good friend from Minnesota (Mr. OBERSTAR), not asked for by the President, not asked for by any committees where there are legitimate questions about the logic behind it, it all sums up giving me a bad feeling. I am afraid that serious problems are going to result from the manager's amendment from the underlying bill. I hope I am wrong, but I fear I am right.

Mr. ARMEY. Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Chairman, this presents us with a very interesting situation. First, we are told that the employees of the Homeland Security Department cannot have civil service protection. They cannot be unionized. We want to be flexible with them. If they make any mistakes, we want to throw them out. Yet, at the same time, what do we do with regard to corporate entities that work for the Homeland Security Department? If the Secretary approves any design for any material or product that they sell to homeland security, so long as the Secretary approves it, that corporation is exempt from any product-liability suits.

The manager's amendment, however, goes even further. It protects corporate wrongdoers from any kind of action whatsoever. If the product does not work, if the product does not work because the corporation was fraudulent in its submission, if the product does not work because they willfully or maliciously made it so that it would not work effectively, nevertheless, they are exempt from any kind of lawsuits.

This situation that we are presented with and asked to vote for is totally absurd. You want to have a circumstance whereby people are going to feel protected and will be protected. And if they are going to be protected, you have to have the ability to have confidence in the corporate entities, the private sector people who are supplying the new homeland security office. Under the provision of this bill and particularly under the amendment, all of that confidence goes out the window.

Why should we have an ounce of confidence if people can produce a bad product and not have to be responsible for the product they produce? This is a bad piece of legislation.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I rise to thank the Members on both sides of the aisle for the basic decorum that has existed during the past 2 days. I am beginning to feel that tempers are getting a little short, but we do not have much further to go.

I, for one, have been the focus of the majority leader's disappointment sometimes, but I have never ever questioned his sincerity, his fairness, or his motives. They are beyond reproach. And I just would say to the Members there is a danger, obviously, when you have a manager's amendment that has 19 parts. There is going to be something that somebody does not like. That is the risk. Everyone can find some part of a comprehensive amendment they do not like. They can find a reason to vote against it.

There are just too many important parts of this amendment to cause its defeat. We need this manager's amendment.

Having said this I now would like to take the time to express my disappointment that I did not make the manager's amendment, that I did not have an amendment I want called to order. I would like Members to listen to what this was.

My amendment said the "Director of Central Intelligence shall, to the maximum extent practical, in accordance with the law, render full assistance and support to the Department and the Secretary."

I am told this was not included because the Permanent Select Committee on Intelligence had a problem with this. That, to me, is the very reason why it should have been included. What is amazing to me is that this very language is the identical language that can be found in the establishment of the Office on the National Drug Control Policy. Implicit in our bill is, obviously, support by the head of the CIA; but nowhere does it state it. I am very, very concerned this is lacking in our legislation.

I am trying to get it in the Senate bill, and I am using this opportunity to lobby the most distinguished gentlewoman from California (Ms. PELOSI) and the most distinguished gentleman from Texas (Mr. ARMEY). I am lobbying them up front and in this Chamber to please include this language when we have the Conference Report and final passage. It is needed. It is the very problem I encountered in my committee on national security. When we wanted the CIA to come and testify about the relationship they had with the FBI, they got a permission slip from the Permanent Select Committee on Intelligence saying they did not have to attend. Months later we had 9–11.

I believe we need to have very explicit language stating that the Director of the Central Intelligence Agency will cooperate with the Department of Homeland Security. I thank the leader for what he and the gentlewoman from California (Ms. PELOSI) have done to shepherd this bill through Congress. I think we are close to passage. It is an extraordinarily fine piece of legislation. I think it will be made better by the manager's amendment.

□ 1400

The CHAIRMAN pro tempore (Mr. BONILLA). At this time, the Chair would inform the managers on both sides that the gentleman from Texas (Mr. ARMEY) has 4 minutes remaining and the gentlewoman from California (Ms. PELOSI) has 4 minutes remaining, and the gentlewoman from California (Ms. PELOSI) does have the right to close.

Mr. ARMEY. Mr. Chairman, I might ask the gentlewoman then how many more speakers she has?

Ms. PELOSI. Mr. Chairman, we will be looking forward to the distinguished leader's remarks, and then I will close.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia (Mr. TOM DAVIS), one of the hardest working and quite frankly most able legislators we have in this body, a good friend and Member that has important provisions in this manager's amendment.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I thank the gentleman for yielding me the time.

First of all, just to correct a couple of things I keep hearing from the other side about a government contractor not being able to be sued if something goes wrong, nothing could be further from the truth. We do change traditional tort law in that punitive damages are capped and that we have comparative negligence and these kind of items. The reason we do this, of course, in the amendment is to try to hold down the liability and get contractors to be able to share some of their innovations with the government.

Also, on the Argenbright debarment issue, debarment is traditionally done by professionals in the procurement offices in Federal agencies, not by the Congress. Whether it extends or not, I am certain that that will be extended at that level.

I rise today in strong support of this language and the technical innovations language that is included in the gentleman from Texas' (Mr. ARMEY) en bloc amendment. This title is going to strengthen information security management for the Federal Government, and this is critical in the war against terrorism because if we are vulnerable anywhere it is in our critical infrastructures. This language goes a long way towards strengthening that, which seems to me would be a prime target for terrorists.

Poor information security management has persisted in both the public and private sectors long before information technology became ubiquitous engine driving governmental, business and even home activities. As our reliance on technology and our desire for interconnectivity have grown over the past decade, intensifying with the advent of the Internet, our vulnerabilities to attack on Federal information systems has grown exponentially. The high degree of dependence between information systems, both internally and externally, exposes the Federal Government's computer networks to benign and destructive disruptions.

Therefore, the Federal Information Security Management Act of 2002, which I introduced with the gentleman from California (Mr. HORN) is included in this manager's amendment. This requires the agencies utilize information security best practices that could help ensure the integrity, confidentiality and availability of Federal information services and doing a lot of other things as well.

I also want to thank the gentleman from New York (Mr. BOEHLERT), the Committee on Science chairman and the gentleman from Louisiana (Mr. TAUZIN), the Committee on Energy and Commerce chairman, for working on this language. In addition to this, we have technical innovation language in this legislation that will allow the most up-to-date innovations in technology to come forward quickly and be processed by the homeland security agency where they can start looking as they set their requirements and find out what are the latest innovations that we have in technology in this country that we can use to help fight terrorism.

In February, we held a hearing on this, the challenges facing us, and one theme that was expressed unanimously by industry was the need for an organized, cohesive and comprehensive process within the government so we could evaluate private sector solutions to homeland security problems. We have a lot of contractors with great ideas running around, but there is no place to really take them at this point.

This manager's amendment now has a central clearinghouse for these. They are part of the solution. With the creation of the homeland security in the bill before us today the gentleman from Texas (Mr. ARMEY) has included language in this legislation that closes the loop and provides a vehicle to get these solutions into the government and to the front lines in the war against terrorism as soon as possible.

I urge adoption of the manager's amendment.

In ordinary times, primarily because of recent acquisition reforms, the current acquisition system will enable the new Department of Homeland Security to buy what it needs with reasonable efficiency. While we all hope that it will never be needed, we also know that in an emergency the new Department may have to quickly and efficiently acquire the high tech and sophisticated products and services needed for its critical mission. The carefully limited authorities contained in the Homeland Security Act on the floor today are based on the Davis/Turner amendment, which was accepted and incorporated into the Government Reform Committee's version of the Homeland Security bill. The bi-partisan provisions would permit the Department to quickly acquire the emergency goods and services it needs while maintaining safeguards against wasteful spending.

The amendment builds on contracting authorities currently in place, in fact, the procedures appear in Part 13 of the Federal Acquisition Regulation—and provides for an extension of these authorities only upon a determination of the Secretary of Homeland Security or one of his Senatorially confirmed officials that the terror fighting mission of the new Department would be seriously impaired without their use. The new authorities would sunset at the end of fiscal year 2007. The GAO would be required to report to the Committee on Government Reform assessing the extend to which the authorities contributed to the mission of the Department, the extent to which the prices paid reflect best value, and the effectiveness of the safeguards put in place to monitor the use of the new authorities. The current government-wide procurement laws will govern the Department's "normal" purchases.

Specifically, the provisions would raise the current micro-purchase threshold from $2,500 to $5,000. It would raise the current $100,000 threshold to $175,000, and permit the application of the current streamlined commercial acquisition procedures and statutory waivers to non-commercial goods and services and increase the current $5,000,000 ceiling on the use of streamlined commercial procedures to $7,500,000 for these goods and services.

How could these new authorities be used?

Well, for example, the increase in the micro-purchase threshold could be used in the event of a terror attack, to permit a Department of Homeland Security official at the scene to rent several floors of a nearby hotel to house rescue workers by simply presenting his Government credit card.

The increase in the simplified acquisition threshold would permit a Department official to quickly enter into a $175,000 contract for specialized medical services for rescue workers responding to a terror attack.

The application of streamlined commercial acquisition procedures would permit the Department to conduct a limited competition among high technology firms for a specialized advisory and assistance services contract valued at $7,500,000 to fight a cyber-attack.

Mr. Chairman, I also rise in strong support of Title XI information security language and the technical innovations language included in Chairman ARMEY'S en bloc amendment. This Title will strengthen the information security management infrastructure of the Federal Government.

The events of September 11th and the ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security. From my work in the Government Reform Committee, it is clear that the state of federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malevolent attacks and benign interruptions.

Poor information security management has persisted in both the public and private sectors long before IT became the ubiquitous engine driving governmental, business, and even home activities. As our reliance on technology and our desire for interconnectivity have grown over the past decade, intensifying with the advent of the Internet, our vulnerability to attacks on Federal information systems has grown exponentially. The high degree of interdependence between information systems, both internally and externally, exposes the Federal government's computer networks to benign and destructive disruptions.

Therefore, I introduced the Federal Information Security Management Act of 2002 (FISMA) with Congressman STEPHEN HORN, Chairman of the Government Efficiency, Financial Management and Intergovernmental Relations Subcommittee. FISMA is the basis for Title XI in the Homeland Security bill we are considering today.

FISMA will require that agencies utilize information security best practices that will ensure the integrity, confidentiality, and availability of Federal information systems. It builds on the foundation laid by the Government Information Security Reform Act (GISRA), which requires every Federal agency to develop and implement security policies that include risk assessment, risk-based policies, security awareness training, and periodic reviews. Our Subcommittees held joint legislative hearings on FISMA, and I worked closely with Chairman Horn, industry, and agencies to develop a bill that is satisfactory to all parties.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will:

1. Remove GISRA's sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations of agency information security practices;

2. Require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems;

3. Streamline and make technical corrections to GISRA to clarify and simplify its requirements;

4. Strengthen the role of NIST in the standards-setting process; and

5. Require OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

At a time when uncertainty threatens confidence in our nation's preparedness, the Federal government must make information security a priority. We demand that in our networked era, where technology is the driver, every Federal information system must be managed in a way that minimizes both the risk that a breach or disruption will occur and the harm that would result should such a disruption take place. Title XI is vitally important to accomplishing our objective. Chairman ARMEY understands this and has shown tremendous leadership by this including this critical language in his en bloc amendment.

I would like to take a moment to thank Science Committee Chairman SHERWOOD BOEHLERT and Energy and Commerce Chairman BILLY TAUZIN for working with the Committee on Government Reform to reach a substantive agreement on Title XI. And I would also like to thank Congresswoman CONNIE MORELLA, Congressman LAMAR SMITH, and Congressman ADAM SMITH for their strong support and invaluable efforts to promote Title XI.

Also, the En Bloc amendment includes language that I developed to allow for reaching out to new technology companies that may not being doing business with the government. We all know that the Federal, State and local governments will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn't simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unevaluated, perhaps denying the government breakthrough technology.

In February, I held a hearing in my Subcommittee on Technology and Procurement Policy on homeland security challenges facing the government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process within the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today. Chairman ARMEY at my request included language in a new Section 309 which is based on H.R. 4629, legislation I introduced in May. This language will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Chairman Armey's Manager's amendment included a new section 309 in the Homeland Security Act to the establishment within the Department a program to meet the current challenge faced by the Federal government, as well as by state and local entities, in leveraging private sector innovation in the fight against terror. The amendment would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to terror-fighting technologies for dissemination to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions.

Establishing a technical assistance team to assist in screening proposals for terror-fighting technology to assess their feasibility, scientific and technical merit and cost.

Providing for the new Department to offer guidance, recommendations and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 309 in this landmark legislation will give the new Department the framework it needs to examine and act on the best innovations the private sector has to offer.

I would also like to offer my thanks to the staff of the Science and Energy and Commerce Committees who collaborated with my staff in crafting this consensus amendment.

And finally, Mr. Chairman, I would also like to thank the Chairman for including my bipartisan legislation that I developed with Congressman JIM MORAN that will promote voluntary information sharing about our nation's critical infrastructure assets. As many of you know, over ninety percent of our nation's critical infrastructure as owned and operated. In Presidential Decision Directive 63 issued by the previous Administration, concerns about the Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information sharing with the private sector.

The critical infrastructure of the United States is largely owned and operated by the private sector. Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally, these sectors operated largely independently of one another and coordinated with government to protect themselves against threats posed by traditional warfare. Today, these sectors must learn how to protect themselves against unconventional threats such as terrorist attacks, and cyber intrusions.

We must, as a nation, prepare both our public and private sectors to protect ourselves against such efforts. As we discovered when we went to the caves in Afghanistan, the Al Qaeda groups had copies of GAO reports and other government information obtained through FOIA. While we work to protect our nation's assets in this war against terrorism, we also need to ensure that we are not arming terrorists.

Today, the private sector has established many information sharing organizations (ISOs) for the different sectors of our nation's critical infrastructure. Information regarding potential physical or cyber vulnerabilities is now shared within some industries but it is not shared with the government and it is not shared across industries. The private sector stands ready to expand this model but have also expressed concerns about voluntarily sharing information with the government and the unintended consequences they could face for acting in good faith.

Specifically, there has been concern that industry could potentially face antitrust violations for sharing information with other industry partners, have their shared information be subject to the Freedom of Information Act, or face potential liability concerns for information shared in good faith. My language included in H.R. 5005 will address all three of these concerns. Additionally, consumers and operators will have the confidence they need to know that information will be handled accurately, confidentially, and reliably.

The Critical Infrastructure Information Act procedures are closely modeled after the successful Year 2000 Information and Readiness Disclosure Act by providing a limited FOIA exemption, civil litigation protection for shared information, and a new process for resolving potential antitrust concerns for information shared among private sector companies for the purpose of correcting, avoiding, communicating or disclosing information about a critical infrastructure threat or vulnerability.

This legislation will enable the private sector, including ISOs, to move forward without fear from government so that government and industry may enjoy a mutually cooperative partnership. This will also allow us to get a timely and accurate assessment of the vulnerabilities of each sector to physical and cyber attacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded federal mandates on the private sector.

I am disappointed that the final language contained in the bill is different than the Government Reform Committee mark that passed the Committee 30 to 1. My FOIA language passed the Committee by voice vote. However, the language included in the Manager's Amendment only extends the protections to the Department of Homeland Security. My original language gave the Secretary the authority to designate other covered federal agencies to receive and share the information. While the Department would have remained the central repository for this information, it allowed other Departments and agencies involved in fighting the war on terrorism to also receive this voluntarily provided information. I will be offering an amendment later today that will make a technical correction to H.R. 5005 and allow the Secretary to again designate covered federal agencies.

The amendment that I am offering today is supported by every critical infrastructure sector. It is also supported by the Business Roundtable, the U.S. Chamber of Commerce, the Information Technology Association of America, the Financial Services Roundtale, the National Association of Manufacturers, the Edison Electric Institute, and the American Chemical Council. Industry wants to fulfill its' responsibility to the American people, we need to give them the necessary tools to do so.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this manager's amendment exists in 19 parts. Eight of the 19 parts are included in the amendment at the request of the various committees of the House. The remainder are included at the request of different Members of the body from both sides of the aisle.

We have had the opposition to the manager's amendment focused on one of the 19 provisions, a provision that provides liability coverage to providers of services to homeland defense and a provision that has been passed by this House before. It is not something new. The only thing that is different about this provision now, as opposed to the time in which it was passed earlier in this session, is that we now have an identifiable pair of providers within that population who are debarred from providing and would not benefit. They have been identified under it.

The overall manager's amendment conformed to the practices of a select committee and to the commitment of this chairman in that it gave first priority, first preference, first respect to the standing committees and to the Members of this body and their shared commitment to making this Nation safe from terrorism, and I urge its passage.

Mr. Chairman, I yield back the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield myself the remainder of my time.

Mr. Chairman, in his closing remarks, our distinguished leader explained how many elements there were to this en bloc amendment and said that we were finding fault with a small part of it. The fact is that we would like to find no fault with an en bloc amendment. There are many provisions in it. I dare say most of us have not the faintest idea what they are, but we trust the Chairman on those technicalities and recommendations from the committee.

This is usually a noncontroversial measure that most Members would expect tc support. That is why it is so disappointing that this en bloc amendment is being used to put a very controversial amendment in. To use the engine of an en bloc on technicalities for a substantive change in the bill that is controversial is unusual, and that is why we oppose it, because of the substance of the provisions.

It has been said that this is about protecting the American people. Let us keep our standard before us. How do we protect the American people best? In the bill, and another amendment will come up later, the Turner amendment to strike it, but in the bill, under section 753 of the bill, corporations can submit designs for antiterrorism products to the Homeland Security Department if those designs are approved by the Secretary. Those corporations get total immunity from product liability lawsuits under the government contractor defense of any kind, even if there is wrongdoing, including willful and malicious corporate misconduct.

Imagine that this bill to protect the American people has that provision in it the day after we pass the corporate accountability bill, but this amendment, this en bloc amendment, even does that one worse. This amendment goes further to protect corporate wrongdoers. It extends total immunity to all kinds of lawsuits. Even if a product does not work, they cannot sue for breach of contract, et cetera, but this would give it immunity for willful wrongdoing to corporations that provide services and software.

I have heard people say that this is important so that we can get people to bid. The Turner amendment addresses that next with a wise amendment that addresses the concerns of the private sector in a responsible way.

In this bill, the Armey amendment immunizes airport screening companies whose negligence may have contributed to the September 11 attacks, and I have heard people say here, of course, a person can sue under this bill. Let me just read from the en bloc amendment.

It talks about the presumption and it says, The presumption shall only be overcome, in other words the presumption of innocence, that this presumption shall only be overcome by evidence showing that the seller acted fraudulently or with willful misconduct in submitting information to the Secretary. Only in submitting information to the Secretary. Not in how the person manufactured the product or spelled out how it should be used.

So this, the standard that is set in this bill, is how a person makes their case to the Secretary. Not about how they deliver on the promise to protect the American people.

We all know that in a time leading up to September 11, there were many causes for the tragedy coming our way, and one of them was the fact that the airport screening companies played Russian Roulette with the safety of the American people. Sooner or later there was going to be a tragedy because of their lax approach to safety in the security and the screening process.

This bill that we have before us, on a day when we are discussing how to make the country safer in the best possible way, says that we will make matters worse by passing this en bloc amendment.

I would urge my colleagues to do the responsible thing and reject this en bloc amendment.

Mr. RODRIGUEZ. Mr. Chairman: the debate today should be on improving our homeland defense. We should be focused on finding ways to encourage the responsible development, testing and deployment of new technologies and products that will enhance the protection of the American people.

Mr. Chairman, we hear so much about responsibility in this House. Yet when it comes to corporate responsibility, the Majority seems to run and hide.

The bill crafted by the House majority, and the amendment offered by the Majority Leader, represent a wholesale attack on our longstanding system of justice. They rob the American people of their ability to receive compensation for irresponsible or even grossly negligent conduct. In the name of homeland defense, they conduct a brash assault on our ability to hold corporate wrongdoers accountable for their misconduct or simply their failure to make a product that works.

That's right. The product could fail completely, but the manufacturer would have no liability. The product could backfire, misfire, or not fire at all, yet the company that made it could simply walk away with not even a slap on the wrist.

It is an outrage.

It undermines our security.

One of the foundations of our democracy is the system of checks and balances. Within the world of product development and the provision of services, our legal system is the check on substandard conduct.

Without that check, without the threat of being held accountable, we will seen an increase in poor product design and faulty service delivery. It is simply human nature.

Corporations won't need to worry about making sure their products are safe and effective. They won't have to worry about the potential harm they cause. They won't have incentives to improve their safety. They will simply have blanket immunity. Forever.

Those injured in the process—whether it's our soldiers, police officers, firefighters, homeland defense volunteers, or victims of product failure—will be left out in the cold. With no legal recourse, they and their families will suffer, they will not receive the care they need, they will receive no compensation for the harm caused to them.

This is nothing short of the legalization of corporate irresponsibility.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. ARMEY).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Ms. PELOSI. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. ARMEY) will be postponed.

It is now in order to consider Amendment No. 22 printed in House Report 107-615.

AMENDMENT NO. 22 OFFERED BY MR. TURNER

Mr. TURNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 22 offered by Mr. TURNER:

Strike subtitle F of title VII and insert the following:

Subtitle F—Risk Sharing and Indemnification

SEC. 751. RISK SHARING AND INDEMNIFICATION.

(a) DEFINITIONS.—Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended by adding at the end the following new paragraphs:

"(16) The term 'anti-terrorism technology and services' means any product, equipment, service or device, including information technology, system integration and any other kind of services (including support services) related to technology, designed, developed, modified or procured for the purpose of preventing, detecting, identifying, or otherwise deterring acts of terrorism.

"(17) The term 'act of terrorism,' means the calculated attack or threat of attack against persons, property or infrastructure to inculcate fear, intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious or ideological grounds.

"(18) The term 'insurance carrier' means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

"(19) The term 'liability insurance' means insurance for legal liabilities incurred by the insured resulting from—

"(A) loss of or damage to property of others;

"(B) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

"(C) bodily injury (including death) to persons other than the insured or its employees; or

"(D) loss resulting from debt or default of another.

"(20) The term 'homeland security procurement' means any procurement of anti-terrorism technology and services, as determined by the head of the agency, procured for the purpose of preventing, detecting, or otherwise deterring acts of terrorism.

"(21) The term 'information technology'—

"(A) means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information;

"(B) includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources; and

"(C) does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.".

(b) FEDERAL RISK SHARING AND INDEMNIFICATION.—The Office of Federal Procurement Policy Act is further amended by adding at the end the following new sections:

"SEC. 40. FEDERAL RISK SHARING AND INDEMNIFICATION.

"(a) When conducting a homeland security procurement the head of an agency may include in a contract an indemnification provision specified in subsection (e) if the head of the agency determines in writing that it is in the best interest of the Government to do so and determines that—

"(1) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities;

"(2) the anti-terrorism technology and services would be effective in facilitating the defense against acts of terrorism; and

"(3) the supplier of the anti-terrorism technology is unable to secure insurance coverage adequate to make the anti-terrorism technology and services available to the Government.

"(b) The head of the agency may exercise the authority in this section only if authorized by the Director of the Office of Management and Budget to do so.

"(c) In order to be eligible for an indemnification provision specified in this section, any entity that provides anti-terrorism technology and services to an agency identified in this Act shall obtain liability insurance of such types and in such amounts, to the maximum extent practicable as determined by the agency, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

"(d) An indemnification provision included in a contract under the authority of this section shall be without regard to other provisions of law relating to the making, performance, amendment or modification of contracts.

"(e)(1) The indemnification provision to be included in a contract under the authority of this section shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under subsection (c), for:

"(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;

"(B) Loss of, damage to, or loss of use of property of the Government; and

"(C) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this section.

"(2) Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this section.

"(f) An indemnification provision included in a contract under the authority of this section shall be negotiated and signed by the agency contracting officer and an authorized representative of the contractor and approved by the head of the agency prior to the commencement of performance of the contract.

"(g) The authority conferred by this section shall be limited to the following agencies:

"(1) The Department of Homeland Security;

"(2) The Department of Agriculture;

"(3) The Department of Commerce;

"(4) The Department of Defense;

"(5) The Department of Energy;

"(6) The Department of Health and Human Services;

"(7) The Department of the Interior;

"(8) The Department of Justice;

"(9) The Department of State;

"(10) The Department of the Treasury;

"(11) The Department of Transportation;

"(12) The Federal Emergency Management Agency;

"(13) The Federal Reserve System;

"(14) The General Services Administration;

"(15) The National Aeronautics and Space Administration;

"(16) The Tennessee Valley Authority;

"(17) The U.S. Postal Service;

"(18) The Central Intelligence Agency;

"(19) The Architect of the Capitol; and

"(20) Any other agency designated by the Secretary of Homeland Security that engages in homeland security contracting activities.

"(h) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this section, the contractor shall—

"(1) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;

"(2) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and

"(3) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured.

The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.".

(c) STATE AND LOCAL RISK SHARING AND INDEMNIFICATION.—(1) The Secretary may, upon the application of a State or local government, provide for indemnification of contractors who provide anti-terrorism technologies and services to State or local governments if the Secretary determines in writing that—

(A) it is in the best interest of the Government to do so;

(B) the State or local government is unable to provide the required indemnification; and

(C) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities, would be effective in facilitating the defense against acts of terrorism, and would not be reasonably available absent indemnification.

(2) The Secretary may exercise the authority in this subsection only if authorized by the Director of the Office of Management and Budget to do so.

(3) In order to be eligible for indemnification, any entity that provides anti-terrorism technology and services to a State or local government shall obtain liability insurance of such types and in such amounts to the maximum extent practicable, as determined by the Secretary, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

(4) The indemnification provided under the authority of this subsection shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under paragraph (3) for—

(A) claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;

(B) loss of, damage to, or loss of use of property of the Government; and

(C) claims arising—

(i) from indemnification agreements between the contractor and a subcontractor or subcontractors; or

(ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this subsection.

Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this subsection.

(5) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this subsection, the contractor shall—

(A) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;

(B) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and

(C) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured.

The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.

(6) In this subsection, the definitions in paragraphs (16) through (21) of section 4 of the Office of Federal Procurement Policy Act shall apply.

(c) IMPLEMENTING REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended to ensure consistency between the Federal Acquisition Regulation and this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Texas (Mr. TURNER) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. TURNER).

Mr. TURNER. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the amendment that we are offering here on the floor today is the language that was approved by the Committee on Government Reform that was sent to the special panel. In the Committee on Government Reform it was adopted without opposition, with bipartisan support.

The amendment is very important because it allows the timely deployment of advanced technology in the fight against terrorism, while at the same time preserving the legal rights and remedies that are available to the victims of any terrorist incident.

The amendment extends to the Department of Homeland Security and other agencies that purchase anti-terrorism technologies a common practice of indemnity that has been around for a long, long time at the Department of Defense. In fact, this authority has existed since 1958 when President Eisenhower issued an executive order under law which allowed indemnity to be granted by the Secretary of Defense to certain of our defense contractors.

The concept of indemnity is not only one that has been with us for a while, but has been used most recently by President Bush when he granted the Secretary of Health and Human Services the authority to give indemnity to the manufacturers of Cipro after the anthrax scare.

The language that we offer today came to the attention of the gentleman from Virginia (Mr. TOM DAVIS) as the Chairman of the Subcommittee on Technology and Procurement Policy of the Committee on Government Reform and to me as the ranking member. It was brought to our attention by Federal contractors, a coalition including Lockheed Martin, Northrop Grumman and the Information Technology Association of America.

Our language, which was adopted by the committee, allows discretion in the Secretary of Homeland Security to grant in whole or in part indemnity against potential liabilities.

☐ 1415

It requires that the companies carry insurance up to the amount that they reasonably can.

This legislation is modeled, as I said, after existing law and practice; and as they say, "If it ain't broke, don't fix it." So we are again offering today our language, which we believe is fiscally responsible, which is understandable, and which is supported in a bipartisan way. The language that we have in our amendment protects the Federal Treasury.

It has been suggested by those who support the alternative language that is in the bill that somehow we open the doors of the Treasury if we grant indemnity. Our language makes it very clear that the indemnity offered by the Secretary can be limited, limited in amount, limited in scope. And once the Secretary makes the decision to grant indemnity, it must be approved by the Office of Management and Budget.

We believe this is a much superior way to get technology deployed in a rapid manner, which is what this amendment is all about. The alternative language in the bill is going to slow down the process. It requires an FDA-type approval procedure that would allow the director of Homeland Security to examine the equipment and then certify it. We think that is the wrong approach, and we will urge adoption of our amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore (Mr. BONILLA). The gentleman from Texas (Mr. ARMEY) is recognized for 20 minutes.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. NUSSLE), the distinguished chairman of the Committee on the Budget.

Mr. NUSSLE. Mr. Chairman, I want to thank the distinguished majority leader for his fine work on this piece of legislation and congratulate him on it.

We have a good bill here, my colleagues; and we are about to just blow a hole so wide in the budget we have not seen nothing. In fact, we asked CBO, the Congressional Budget Office, to score this amendment because we wanted to at least be able to nail down a ballpark figure of what this would cost. And even CBO, who has been known from time to time to guess and predict, and sometimes guess incorrectly even, will not even hazard a guess of what this bill costs. In fact, what they tell us in the letter is that they know it is going to cost something, but they have no idea how much.

And why is that? Because none of us can predict the future. But we can predict one thing, and that is that Congress will respond. To just fully indemnify and throw in this blanket blank check into this bill, without recognizing the perspective and the understanding of where we have been this year, would be, I believe, irresponsible.

Let us just review this year. Even before passing the supplemental, we increased homeland security funding this year, already almost by 45 percent in 2001 and 65 percent in 2002. Forty billion dollars, my colleagues, we, in a bipartisan way, spent in response in two supplementals for reconstruction and for the war; $8.4 billion in economic assistance to the aviation industry; almost $200 million in immediate assistance to victims of terrorism; and our 2003 budget included a $35 billion increase for defense to fully fund the President's request.

Just this week, we passed an additional bill for $10 billion in addition to that $35 billion. Just yesterday, we sent to the President a second supplemental where we provided $28.9 billion in emergency funding, $13 billion of which went to defense and $11 billion went to the other agencies. In addition, we provided roughly $75 billion of economic stimulus to help recover from the shock.

Indemnification? I do not know what my colleagues are worried about here. We will respond. But to give a blank check and to put the taxpayers on the hook with absolutely no check from the House of Representatives, with no oversight, with no accountability, and with no understanding of what this will do to the budget, is the wrong thing to do to this very responsible bill.

This bill fits within our budget. Do not pass this amendment or it busts every budget anyone has ever contemplated.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON), a distinguished member of the Committee on Armed Services.

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in support of this amendment. Why do I rise in support of the amendment? Well, first of all, before coming to Congress, I worked for the insurance industry at the home office of the INA Cigna Corporation. I spent 18 years working on issues involving reinsurance and liability concerns for the American people.

I understand where we do not have enough market capability where the government has to come in, and we in fact are doing that. This legislation that the gentleman from Texas (Mr. TURNER) offers is modeled after indemnification laws for the nuclear power industry and the commercial space launch industry, and they have operated successfully for decades. This is modeled after that.

The second reason I come to the floor on this issue, and by the way the letter we sent out was signed by 23 Republican colleagues on this very issue not more than several weeks ago, was I worked very closely with this group. This is the NBC Working Group. This group is made up of all the companies in America that produce cutting-edge chemical, nuclear and biological technologies. In fact, I have hosted them twice on Capitol Hill in the Rayburn Building, where Members have had a chance to see technology associated with detection systems, with systems that are being designed on the cutting edge to assist us in the war on terrorism.

They have a major concern, Mr. Chairman. They have a major concern relative to the ability of these kinds of companies to still continue to do the cutting-edge research necessary to give us the products that we need to have. This legislation that the gentleman from Texas (Mr. TURNER) offers, I think, is a fair compromise. It gives us an ability to protect them while still protecting the taxpayer. In fact, I think there is in fact a cap in here that can be set by the administration. So the administration has the final determination.

As the chairman of the Subcommittee on Military Procurement for defense, my job is to work with our defense industrial base to make sure we are being given the cutting-edge technology to fight the war on terrorism. Working closely with these industry groups, working closely with the NBC Working Group, I am convinced that we need to have this kind of a modern approach. And so I rise in support of this legislation and encourage my colleagues to vote "yes" on the Turner amendment.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 3 minutes to the gentleman from Texas (Mr. DELAY), the distinguished majority whip.

Mr. DELAY. Let me first, Mr. Chairman, say that those that are on the cutting edge of technology and wanting to provide it are protected in the base text of the bill by limiting their liability and banning punitive damages, just like we have done in the Transportation Safety Administration and other instances.

But, Mr. Chairman, there is an unacceptable demand that America needs to know about right now. Some of the largest and most profitable corporations in the country are attempting to pass off legal liability for their products onto average Americans. These defense contractors are trying to feed the taxpaying public to the crocodiles of the plaintiff's bar.

American taxpayers should not be asked to absorb the devastating financial consequences that would flow from creating an enormous new unfunded liability. Taxpayers should not be footing the bill for a gigantic new windfall for trial lawyers. Even now, the plaintiff's bar is eagerly anticipating new ways to exploit the new terrorist attack through litigation against the companies that are developing terror-fighting tools.

What is even more outrageous is that multibillion dollar defense contractors have the nerve to come to Congress, hat in hand, to demand that taxpayers foot this bill. If these defense contractors bear the responsibility for the failure of their technology, then they should be held responsible. And if these contractors are being unfairly sued and being penalized only because they contributed to the anti-terrorism effort in this country, then these lawsuits need to be stopped. And that is exactly what our base text ensures. We defang frivolous lawsuits that do nothing but line the pockets of trial lawyers.

What we need is broad-base litigation reform. What we do not need are multibillion dollar defense contractors making American taxpayers responsible for the quality of their technology. This would truly be a case of corporate welfare. It is ironic that Members of the minority, who routinely malign Republicans as the party of corporate America, are so willing to subject taxpayers to a bottomless pit of unfunded liability to protect these corporations.

Clearly, supporters of this amendment place a far greater weight on the wishes of their trial lawyer friends than they do to the dangers created for fiscal discipline and the American taxpayers. I ask that my colleagues vote "no" on the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield 2½ minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I thank the gentleman from Texas for yielding me this time, and I rise in support of the Turner amendment.

This amendment provides a reasonable balance between the protections needed by the liability insurance market and the access to compensation needed by the public and certain industries, such as the airlines. The Turner amendment uses language which has received strong support from both sides of the aisle, language that was contained in the bill reported by the Committee on Government Reform. It provides a sensible alternative to the bill, and particularly to the Armey amendment we just debated.

H.R. 5005, the Homeland Security Act, only requires sellers to carry liability insurance to the extent that it is reasonably available from private sources at prices and terms that will not unreasonably distort the sales prices of sellers' antiterrorism technologies. That simply means that if a company cannot obtain insurance that is reasonably priced, it does not need to have any insurance whatsoever and victims cannot recover one penny for their injuries.

Amazingly, the Armey amendment is even worse. It would give total immunity from lawsuits for any kind of wrongdoing, including willful and malicious corporate misconduct. This is true so long as the designs for the antiterrorism products and services have been approved by the Homeland Security Department. The only exception is if the seller acted fraudulently or with willful misconduct prior to that approval. The seller is free to deceive the public or continue to market a product subsequently determined to be dangerous or defective.

Even worse, the Armey amendment protects corporate wrongdoers against all other kinds of lawsuits, so a buyer cannot sue the corporation for breach of warranty, breach of contract, public nuisance, or anything else. In other words, the corporation's protection allows it to make products that do not even work. The Armey amendment protects the corporation against lawsuits by the injured victims and against lawsuits by the airlines or other groups who purchase the product.

We do not need to be giving blanket immunity to all corporations. Too many companies are acting in ways that are contrary to the public interest, and too many of our constituents are suffering as a result. We should not pass such a Draconian amendment. What we should do is support the Turner amendment. This amendment maintains a cap on the liability of corporations, recognizing the importance of doing so in order to stabilize the liability insurance market. That stability makes it easier for corporations to obtain capital to develop technologies.

The Turner amendment also includes an indemnity clause, such as the one used by the Department of Defense. This will enable victims to receive compensation from the Government for costs that exceed the corporate liability cap. This is a good, balanced approach to the real problems we are facing as a Nation. Let us protect companies and compensate victims. Support the Turner amendment.

Mr. ARMEY. Mr. Chairman, I am proud to yield 3 minutes to the gentleman from Oklahoma (Mr. WATTS), the distinguished conference chairman and a member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I thank the chairman for yielding me this time.

Mr. Chairman, the Turner amendment is fiscally irresponsible because it hands over the keys of the United States Treasury to trial lawyers. It would have the American taxpayer, not corporations, but American taxpayers pay nearly infinite damages caused by terrorists. We need the safety act provisions to ensure that Americans get the protections they deserve against future terrorists.

□ 1430

The fatally flawed tort system in America and the unbounded threat of liability are blocking the deployment of anti-terrorism technologies that can protect the American people. I want to give one illustration of where this really comes into play and give Members some idea of the lack of common sense that the Turner amendment would tear down.

The insidious dynamic that prevails under current law works as follows: A company might produce a smallpox detection device and deploy 100 of them. Terrorists strike, and 99 of the devices might work saving millions of lives. One device may not work and several thousand people might die. Lawsuits will follow. The potentially infinite liability to which the lawsuits currently expose the company will prevent the company from being able to deploy any of the 100 smallpox detection devices in the first place. The 99 that worked will be pulled off the market which, if that happens, would put millions of Americans at risk. It would expose them. That is the tragic consequence the SAFETY Act is designed to protect.

The SAFETY Act provisions place reasonable and sensible limits on lawsuits so America's leading technology companies will be able to deploy solutions to defeat terrorists.

What the Turner amendment does, it actually takes the liability away or takes the safety features away from the people that go to the malls, that go to the stadiums, the water treatment facilities, they will not be able to have access to these technologies that protect us, that protect our families, that protects this Nation. It just makes no sense.

It is time for Congress to stand up to the trial lawyers yet again and say no, especially now that we are at war against terrorists who will stop at nothing to harm innocent Americans. We saw it on September 11. We saw it on April 19, 1995, in Oklahoma City. This is about protecting American life, it is not about limitless lawsuits. Vote "no" on the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield 1½ minutes to the gentleman from South Carolina (Mr. SPRATT), a distinguished member of the Committee on Armed Services.

Mr. SPRATT. Mr. Chairman, this amendment is very basic. What it does is it takes blanket immunity which is added to this bill and replaces it with selective indemnity. The bill as it stands would exonerate contractors who provide all kinds of equipment, gear and protective devices, undertaking the most serious sort of responsibility from any liability whatsoever for the products they provide. Any. Just across the board, blanket immunity.

Instead it would say let us go back to the model of an old law called Public Law 85–804 and allow on a case-by-case basis, not a priori, but case-by-case indemnification to be provided to these contractors so they would have protection if they were sued in certain cases under certain circumstances. It makes far more sense than to try and sit here in judgment on all kinds of liability situations which we cannot even begin to foresee, much less render final judgment on.

85–804 has been on the books for as long as anyone around here can remember. Lockheed Aircraft Corporation almost went bankrupt in 1971. It was the authority of 85–804, the extraordinary authority of that law that had been carried forward for at least 60 years that allowed us to put Lockheed back on its feet. It is the largest contractor today.

That is basically what we are saying here today. Let us use the extraordinary authority given agency heads which has been used sparingly, to negotiate these agreements selectively case by case as opposed to doing this across the board. What we are doing here with this amendment is replacing something that is novel and new, untried and vast, with something that has proven to work. It is that basic, that simple, and that is why we should adopt this amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio (Ms. PRYCE), a member of the Committee on Rules.

Ms. PRYCE of Ohio. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, we keep hearing reference to the word responsibility. We must have responsibility, and the SAFETY Act, the provision included in the en bloc amendment, the manager's amendment, makes the wrong-doers responsible. This indemnification amendment makes the taxpayers responsible. Responsibility is very important, but we cannot make the taxpayers of this country responsible for everything that goes wrong. We do not even know how much this will cost. Proponents did not even ask for a cost estimate. All we know is that the Congressional Budget Office tells us that it will cost a lot over a period of 5 years. We should find out how much this will cost before we proceed by adopting this amendment.

Mr. Chairman, the SAFETY Act does not provide immunity from lawsuits, it simply provides that products approved by the Federal Government for use in homeland security, and deployed in cooperation with customers other than the Federal Government in order to save lives, should be allowed the benefit of the existing government contractor defense. We already know that this works. It is already in law.

Under these provisions, any person or entity who engages in criminal or terrorist acts, including corporate crimes such as consumer fraud and government contract fraud, they are denied the protections. They do not get them.

The Democrats cannot have it both ways. The SAFETY Act that is in the manager's amendment is the fastest and the most efficient way to deploy anti-terrorism technologies, much-needed technologies that will save lives, and it does it without extending any immunity and it does it without leaving the American taxpayers holding the bag.

The Turner provision will do just that. It will leave the American taxpayers holding the bag. We get that assignment all too often, Mr. Chairman. Allow the reasonable insurance coverage to kick in, provide for very limited tort reform, and we have the answer. We can go forward.

Mr. TURNER. Mr. Chairman, I yield 1¾ minutes to the gentleman from Georgia (Mr. BISHOP).

Mr. BISHOP. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of the Turner amendment, which is a reasoned, bipartisan alternative to an irresponsible liability provision in the bill. There currently exists a myriad of new and undeployed technologies which are needed now to protect America from the threat of nuclear, biological, chemical and other terrorist threats.

However, under current law, many of the technologies may never be deployed because they cannot be insured under our current legal liability structure. Section 753 of the bill addresses this problem, but it is extremely misguided and irresponsible. Under the bill, victims who are injured cannot sue for personal injuries because the corporate wrong-doer enjoys total immunity from lawsuits by any kind of wrongdoing, including willful and malicious corporate misconduct under the so-called government contractor defense.

Mr. Chairman, this is wrong. It is un-American. It is overkill. It is throwing the baby out with the bath water. The Turner amendment is narrowly tailored to address this issue. It allows the new Department of Homeland Security and other agencies that are responsible for homeland security the discretion to indemnify providers of anti-terrorist technology from liability above and beyond the coverage that they are able to obtain in the private marketplace. This approach is modeled after successful indemnification laws which are targeted and fiscally responsible.

Mr. Chairman, the Turner amendment gives America the technologies that we need to remain secure while guaranteeing the victims' rights that they deserve and are entitled to under the law. It is the right thing to do, and I strongly urge Members to support it.

Mr. ARMEY. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Chairman, the concept of contractor indemnification, which is core to the term, is not a new plan. It has been around since the 1950s under Public Law 85–804. And so Members understand, less than $100 million has been paid out over the course of 45 years because the discretion that the agencies have in exercising that, and also because under this, it would also be subject to OMB approval.

In order to get protection under either the Turner plan or the Armey plan, the contractor has to acquire insurance to fully protect to the extent the risk is not covered by insurance. And if supplier technology engages in willful misconduct or displays a lack of good faith, neither plan saves it. The solutions proposed differ, but I think each represents a viable solution to the dilemma faced by the Nation.

Our committee liked the indemnification plan because it was written into current law. The Armey plan, though, has been the policy of the House as we have moved legislation forward. I thank the gentleman from Texas (Mr. TURNER) for working with us on this language in the committee. I appreciate what the gentleman has done on this.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I just wanted to express my sympathies for my distinguished friend, the gentleman from Virginia (Mr. TOM DAVIS), whose amendment this was when we were in committee and in rules. Now all of a sudden, something happened on the way to the floor. I just express to the gentleman, maybe I can find out in the cloakroom what happened that caused this sudden change of heart and the support of the Turner amendment.

Here we go again. We have unprecedented corporate immunity in subtitle F of the homeland security bill. I am going to tell the other side of the aisle they were going to lose votes on final passage by continuing to immunize these corporations against liability.

First it was the airport security group, and some of the lousiest contractors in the business are now going to get immunized. Here we are going to give companies corporate immunity that will not be able to be penalized by injuries.

Mr. Chairman, what is this? This is not a tort liability bill. This is a homeland security department that we are trying to create. All of this foolishness is not doing the other side of the aisle any good. Extending this product liability immunity to anti-terrorist products is a bad idea, and I hope that we will reject this amendment; and, if necessary, reject the whole bill.

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Mr. ARMEY. Mr. Chairman, I reserve the balance of my time.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I rise in support of the Turner amendment.

The Turner amendment is narrowly targeted and fiscally responsible. The Republican majority's immunity provisions in the bill are the ultimate anticorporate responsibility provisions and living proof that the leadership is not serious about increasing corporate accountability.

The Turner amendment addresses one of the challenges that we have experienced in New York after September 11 where one of the biggest problems we have is the lack of available insurance. It is stifling our economy. Commerce cannot go forward without insurance, and I hope Congress will act quickly on antiterrorism insurance.

Similarly, we have very talented private sector industries developing cutting-edge technologies to make our homeland secure. But without sufficient insurance coverage and liability, these technologies simply will not be offered. And without a safety net for catastrophe, businesses simply will not do antiterrorism business.

What this amendment does is that it indemnifies providers of antiterrorism technology, which we desperately need, only after they have obtained all the insurance that they can from the private market and above that insurance they are indemnified for additional liability.

I might say that they must also get the approval of the Secretary of Homeland Security and of OMB. So I urge my colleagues to support the Turner amendment. It merely gives companies that will do business with the new Department of Homeland Security the same protections, the same indemnity protections to companies that work with other agencies like the Department of Defense.

I urge my colleagues to vote in favor of the Turner amendment.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 3 minutes to the distinguished attorney and Member of this body, the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I thank the leader for yielding me this time, and I commend him for his very strong work in creating the legislation that will allow homeland security to be consolidated in one department of our government and also on his work to make sure that we can effectively make sure that our country is indeed secure.

Mr. Chairman, I strongly oppose the amendment offered by the gentleman from Texas. Advanced technology companies are developing technologies that can help detect and prevent acts of terrorism. However, these companies are effectively prohibited from making these technologies widely available because they would be subjected to unlimited liability and uninsurable risks.

As we sadly learned from the tragic events of September 11, our terrorist enemies will not limit their attacks to government targets. In choosing their targets, terrorists make no distinction between military personnel and civilian men, women and children. Therefore, it is imperative that our local shopping malls, ball fields, schools and office buildings be protected from terrorist attack. One way to do that is to untie the hands of technology companies and allow them to provide the best technologies available to the private sector without fear that they will be put out of business for doing so.

The provisions in the bill help ensure that effective antiterrorism technologies that meet very stringent safety and effectiveness requirements are deployed and requires that companies selling such devices obtain the maximum amount of liability insurance possible. It also ensures that victims are compensated for demonstrable injuries as equitably as possible.

Opponents argue that the bill provisions provide for immunity to corporations who willfully sell defective products. But they are simply wrong. Nothing in these provisions provide immunity from lawsuits. Further, any person or company who engages in criminal or terrorist acts, including corporate crime such as consumer fraud and government contract fraud, is denied the protections of the act. In addition, under the act, if a company engages in any fraud or willful misconduct in submitting information on product safety to the Secretary of Homeland Security, it will be denied the opportunity to even assert the government contractor defense.

I urge my colleagues to join me in supporting the current provisions of the bill so that Americans may be protected by the best technologies available without sticking American taxpayers with the bill in the case of catastrophe caused by terrorists.

Oppose this amendment and support the legislation.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas (Mr. DOGGETT), a distinguished member of the Committee on Ways and Means.

Mr. DOGGETT. How very disappointing this afternoon that the leadership has chosen to reject a successful bipartisan initiative by the gentleman from Texas (Mr. TURNER) and the gentleman from Pennsylvania (Mr. WELDON) that has already been endorsed by a number of major corporations. It seems to me that public safety should be the first, the last, and the only goal of this Homeland Security bill. Yet with this last-minute legal loophole that has been tacked onto the bill, the goal is clearly to rid corporations of responsibility for the harm their products cause.

If the wrongdoer does not bear the responsibility, then who will bear the responsibility? Well, the decision the gentleman from Texas (Mr. ARMEY) has made is to place all of the responsibility for wrongdoing on the victim. This is basically a "blame the victim," "let-the-victim-bear-the-full-cost-of-the-wrongdoer" approach. And the timing is so strange, not only the last-minute way in which it was slipped in after the Committee on Government Reform approved the bipartisan, moderate approach, but strange timing that in a year when so many retirees, so many workers, so many investors are paying the very painful cost of corporate irresponsibility, that this Congress would say, "let us have a little more unaccountability."

The Reserve Officers Association, certainly no group that has been involved in any of these high-profile debates over tort issues, has stated its unqualified opposition to the special exemption that this legislation provides, noting that even unscrupulous government contractors guilty of willful misconduct will be let off the hook when they provide anti-terrorism technology to our American troops.

This is not a debate about liability limits. It is a debate about corporate accountability limits, a debate about corporate responsibility limits. And I do not think we ought to limit that responsibility, particularly at this time in American history. Clearly, there are no limits to the willingness of this leadership to provide backdoor favors to their friends. Protecting Americans working at home and fighting abroad means holding corporations responsible for their misdeeds. That is what we need to do, instead of blaming the victim, instead of saying that it will be the soldiers, the fathers, the mothers, the children and other innocents, all the victims, that must pay the price for corporate misconduct. We need to make a firm statement in favor of a reasonable, bipartisan approach that the gentleman from Texas (Mr. TURNER) advances.

Mr. TURNER. Mr. Chairman, I yield 1¼ minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I rise in support of this amendment. Today, our Nation faces a new threat and a new enemy. And while the terrorists we fight have new ways of attack, we have much greater new abilities to defend this great Nation.

America has always been the arsenal of democracy, and we remain so. And the new tools we possess are the technologies that spring from the ingenuity of the American mind. We have seen those technologies deployed in the Gulf War, in Afghanistan, and now those new technologies help protect us here at home.

In order to encourage the private sector to use its ingenuity to develop these defensive capabilities, they must have the ability to protect themselves from excessive exposure and liability. There is a mechanism in existing law that provides indemnity on a case-by-case basis for those under contract with the Department of Defense. And as demonstrated by the extraordinary work of the Department of Defense, this targeted immunity works.

The Turner amendment, based on a bipartisan agreement attested to by those who have contracted with the Department of Defense, restores this targeted indemnity. The opposition says that what has worked for the Department of Defense is not enough. They want blanket indemnity. They want an indemnity so broad it threatens to remove some of the vital and powerful incentives for technology makers to make sure they get it right. This goes too far.

We want to incentivize the development of new technologies that work, that meet their promise, that live up to their expectation, that protect this country and all who serve it. The Turner amendment will do this. Nothing more and nothing less.

Mr. TURNER. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to support the Turner amendment, and I ask a question today on this very important debate: Are we fighting terrorism, or are we fighting the American people? Nothing in the Turner amendment will thwart the intent of the Department of Homeland Security to save lives and to prevent terrorism.

The Turner amendment will, in effect, encourage innovative devices and technology to be presented to the government. It will not, on the other hand, provide the corporate escape that the manager's amendment gives to this particular bill by inserting immunity provisions in the bill for Corporations that have technology that might harm us if it fails. What the Turner amendment does is say use your innovative devices, use your innovative technology and we will indentify you, with restrictions. Those restrictions will be the Secretary of the Department of Homeland Security and the OMB Director. What more can you ask for? Are we here to save lives? Are we here to help the American people? Are we here to fight terrorism? Or are we here to stuff money into corporate America's pocketbook?

Support the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield myself the balance of my time.

I want to thank, first, the gentleman from Virginia (Mr. TOM DAVIS) for his efforts with me in crafting this language. We both worked with Lockheed Martin, Northrop Grumman, and the Information Technology Association to come forward with this language that we reported out of the Committee on Government Reform unanimously without opposition. The gentleman from Virginia and I brought the amendment to the attention of the Committee on Rules. And I am very grateful we had the opportunity, Mr. Leader, to offer the amendment.

I must say that it is somewhat surprising to hear the criticism from the other side today of what is existing law. The Department of Defense grants indemnity to companies that launch missiles because of the concern of those corporations about business risk. I was quite surprised to hear the provision criticized, because it has been in the law since 1958 and was first implemented by President Eisenhower and most recently used by President Bush when he authorized the Department of Health and Human Services to indemnify the manufacturers of Cipro who would not provide that to our government unless we did so.

Our amendment follows existing law, existing practice and, most importantly, does not take anyone's legal rights away from them. I would urge the House to join with us in supporting this bipartisan amendment. Twenty Democrats and 21 Republicans wrote a letter to the special panel asking them to include our language in the bill. We enjoy bipartisan support. We believe it is the right way to deal with a very serious problem. And we will be able, under our amendment, to get the technology out there and in place much quicker than the approach that is in the bill which requires an FDA-type review process for every piece of equipment and will take years to implement the technology we need to fight terrorism.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have heard a great deal about the bipartisan support of this amendment. Irony of ironies, where there is bipartisan support there can be bipartisan rejection.

Let me say, Mr. Chairman, this amendment had an interesting experience in the committee of jurisdiction, one of the 12 standing committees that worked on this bill. When it was proposed on the eve of the night markup of this bill in that committee, it was opposed by the ranking Democrat on the committee, the gentleman from California (Mr. WAXMAN), who said, and I quote, "It really is opening up the Treasury of the United States to a lot of companies that might have exercised due care. And, more importantly, when companies are indemnified, even if they are negligent, there is not the incentive to avoid being negligent."

□ 1500

This approach to the problem was contemplated in the other body and, indeed, in this case the ranking minority member, a Republican member in the other body, intended to offer this amendment in the other body's markup just yesterday and was dissuaded from doing so by the majority members, the Democrats of the committee, who thought it imposed too big a burden on the Treasury of the United States.

Mr. Chairman, I am not a lawyer, so I have to rely on other legal experts like, for example, the Supreme Court. In this debate it has been argued that when a government contractor has a defense, it is an immunity. I only point out to the minority that the Supreme Court has said a defense is not an immunity. Always going back to the legal questions that baffle us so such as what the meaning of the word "is" is, but in this case the meaning of the word "defense" is not immunity.

Let me say, Mr. Chairman, that what we are trying to do was well described by several people. We are trying to encourage that practical American genius to bring its product to the defense of America. What this base language that would be set aside by this amendment does do is provide a consolidation of claims in Federal court to stop venue-shopping. It has a requirement that noneconomic damages be awarded only in proportion to a party's percentage of fault. It has a ban on punitive damage. It takes a sort of simple practical American notion that if someone is a victim, they should not be treated as if they were a perpetrator. A rather novel idea, I am sure, in some circles but quite well understood by most Americans.

The underlying language says offsets are awarded based on receipt of collateral source benefits providing compensation for the same injuries; no double-dipping. This is something that I have in other contexts referred to as the Daschle provision, having been enacted in law pursuant to the innovation of the distinguished Democrat majority leader in the other body. The underlying language has a defense modeled on government's contractor defense that applies following sales of qualified antiterrorism technologies in the private sector, and it caps liability and insurance.

This has been enacted in this body before. This is not some Johnny-come-lately notion new to this body. It was part of the Aviation Security Act. It was part of the Air Stabilization Act. It was part of the Terrorism Risk Insurance bill, and it part of the Class Action Reform bill passed in this body in this year.

What we do not do in the underlying language that would be set aside by this amendment is put a cap on attorneys' fees, provide any immunity for anybody anywhere at any time, or exempt criminals from coverage.

Mr. Chairman, I do not ask much, but I do ask for accuracy in debate. There has been far too little of it. I ask the body to reject this amendment and uphold the underlying language.

Mr. RODRIGUEZ. Mr. Chairman, I fully support the amendment offered by the Gentleman from Texas [Mr. TURNER]. This amendment balances the need to encourage responsible development of new homeland defense technologies and products with the need to maintain a system that holds wrongdoers responsible for their misconduct.

His amendment would allow under appropriate circumstances the Secretary of Homeland Security to provide indemnification to the manufacturers of anti-terrorism products, much like the Secretary of Defense today can provide indemnification to companies making products critical to our national defense.

Under this approach, any victims of product failure would still be able to receive full compensation. They would not be left to suffer alone.

Companies do not get a free ride: they must take out the maximum level of insurance possible, and they can get the indemnity coverage only after they convince the Department of Homeland Security and the White House's Office of Management and Budget that they qualify for indemnification.

At the same time, the many companies which make the products and develop the technologies we need also won't be asked to take inordinate risks. The Turner Amendment would provide them the incentives to invest aggressively in homeland defense technologies without upsetting the entire system of checks and balances within our civil justice system.

Just earlier this week, we celebrated the passage of legislation to hold corporate executives accountable for misconduct. Shockingly, the majority now tries to exempt those same companies from any responsibility for the products they make.

Mrs. MEEK of Florida. Mr. Chairman, I rise in strong support of the Turner Amendment that seeks to add back the indemnification provisions that the Government Reform Committee had recommended for inclusion in the bill. The Turner Amendment does not require any indemnification by the Federal government. It simply permits such indemnification when the head of a Federal agency and the head of the new Office of Homeland Security deem it in the public interest to do so.

The blanket corporate immunity in Subtitle F of the bill is not in the public interest. Our goal is to achieve homeland security, not reflexively broaden corporate protection from negligence.

The Turner Amendment is a very responsible, narrow and targeted means to deal with this problem. It would allow Federal agencies to indemnity contractors for anti-terrorist technology after they've purchased as much private insurance as they can get. The Secretary of Homeland Security could also indemnify contractors on behalf of state and local governments on the same terms.

There are high-tech companies across the country that are developing cutting-edge technology to help prevent terrorist attacks. But in some cases, they can't sell them because they can't get enough insurance. The risks of liability from a major terrorist attack are so great that insurance companies can't afford to insure these products. So let's help high-tech companies by offering them indemnification where the private insurance market is unable or unwilling to insure them in those limited, special circumstances where the head of a federal agency deems it in the best interests of the government to provide such indemnification.

Support the Turner Amendment.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Texas (Mr. TURNER).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. TURNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, following this 15-minute vote, the Chair will reduce to 5 minutes the time for the vote, if ordered, on: Amendment No. 20 by the gentleman from California (Mr. WAXMAN), and amendment No. 21 by the gentleman from Texas (Mr. ARMEY).

This will be a 15-minute vote followed by two 5-minute votes.

The vote was taken by electronic device, and there were—ayes 214, noes 215, not voting 5, as follows:

[Roll No. 359]

AYES—214

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Woolsey
Wu
Wynn

NOES—215

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton

Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Cunningham
Gilchrest
Meehan

□ 1537

Messrs. GALLEGLY, HERGER, TOOMEY, HEFLEY, PETERSON of Pennsylvania, GUTKNECHT, HUNTER, ROHRABACHER, EHRLICH, and GRAHAM, Mrs. BONO, and Mrs. JO ANN DAVIS of Virginia changed their vote from "aye" to "no."

Messrs. BERRY, DINGELL, and DELAHUNT changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

SEQUENTIAL VOTES POSTPONED IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 20 offered by the gentleman from California (Mr. WAXMAN); amendment No. 21 offered by the gentleman from Texas (Mr. ARMEY).

The Chair will reduce to 5 minutes the time for any remaining vote in this series.

AMENDMENT NO. 20 OFFERED BY MR. WAXMAN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. WAXMAN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 208, noes 220, not voting 5, as follows:

[Roll No. 360]

AYES—208

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—220

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)

Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Cunningham
Gilchrest
Meehan

☐ 1549

Mr. CANNON changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 21 OFFERED BY MR. ARMEY

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. ARMEY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 222, noes 204, not voting 7, as follows:

[Roll No. 361]

AYES—222

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Honda
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
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Miller, Gary
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Moran (KS)
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NOES—204

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NOT VOTING—7

Blunt
Combest
Frelinghuysen
Gilchrest
Istook
Meehan
Wicker

☐ 1558

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 23 printed in House Report 107-615.

AMENDMENT NO. 23 OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 23 offered by Mr. OBERSTAR:

Strike section 409 of the bill.

Redesignate section 410 of the bill as section 409.

Conform the table of contents of the bill accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Minnesota (Mr. OBERSTAR) and a Member opposed each will control 22½ minutes.

The Chair recognizes the gentleman from Minnesota (Mr. OBERSTAR).

☐ 1600

Mr. OBERSTAR. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, all of the amendments we debated last night and so far today have had important consequences for the future of the country, for the operation of the Department of Homeland Security, for various aspects of our domestic life.

The one I propose at this point is quite possibly the only life or death vote we will consider in this legislation. Because whether or not explosive detection systems are installed at airports and whether or not complete screening of checked luggage is accomplished at the Nation's domestic airports will determine whether a terrorist can get a bomb aboard an aircraft and blow it out of the sky, as happened with Pan Am 103 over Lockerbee, Scotland. Make no mistake about it, there are serious consequences, life or death consequences for what we do in this piece of the legislation.

Previously, on the en bloc amendment of the majority leader, I said I cannot understand why anyone would want to protect the security company providers from liability. In this amendment, in this the provision of the committee bill, I can understand why Members are confused and why there was an attempt to extend the deadline for compliance with the law that we enacted a year ago, 8 months ago in this body, 410 to 9.

I understand that airport authorities have badgered Members of this body. Airlines have lobbied many Members of this body to extend the time for compliance with that law. They are wrong.

The law provides alternative means if we cannot get explosive detection systems in place by December 31. The law specifically provides for alternative means of screening checked luggage. There is no excuse for removing the pressure upon the Transportation Security Administration to comply with that law that virtually everyone in this body, everyone seated on this floor voted for. Why would we vote for airline security, tough airline stick measures and then turn around and undo it? Do not do it.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). For what purpose does the gentleman from Ohio (Mr. PORTMAN) rise?

Mr. PORTMAN. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Ohio (Mr. PORTMAN) is recognized for 22½ minutes.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Texas (Mr. BARTON).

Mr. BARTON of Texas. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, let us set one thing straight. Nobody that opposes the amendment to strike the language that is before us at this point in time is trying to take the pressure off of any airport to not implement tough baggage screening processes. The point of the fact is the major hub airports simply cannot meet it.

I have Dallas/Ft. Worth Airport in my congressional district. Over 100,000 people go through that airport every day. Fifty-five thousand bags are checked every day. DFW and their management team have been working with TSA since the law was passed. TSA has yet to give them a definite answer on their solution. There is a backlog of equipment that cannot be put in place. If we have to meet the deadline, do my colleagues know what DFW is going to do, they are going to have to hire 1,500 temporary employees. They are going to have to put up folding tables. They are going to have check by hand almost every bag that comes in to be checked.

That is going to be long lines. It is going to cost $142 million just at DFW, and they are still going to have to come in with a permanent solution within the next year that is going to cost another $150- to $170 million.

Why not give them a little extra time? They still have to be working on the solution. They still have to try to get it done, but if they do not, there are not going to be any penalties imposed. There are not enough equipment manufacturers to meet the sophisticated equipment for the larger hub airports that have to be in place if we literally tried to get it all done by December 31.

Let me give my colleagues an example. As of today, of the 429 airports that are subject to the existing law, only 24, one out of five, 5 percent have had a complete TSA inspection and had the sign-off on the plan. There are another 129 airports that have had some negotiations, some contacts with TSA. That means that 64 percent of the Nation's airports that TSA has not even come to the airport yet, and we want them to meet this arbitrary deadline by December 31? It is physically impossible and philosophically unnecessary.

Vote against the Oberstar amendment.

Mr. OBERSTAR. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New Jersey (Mr. MENENDEZ), a member of our committee.

Mr. MENENDEZ. Mr. Chairman, I represent Newark International Airport where United Airlines Flight 93 departed before crashing in Pennsylvania on September 11. I also represent the families of over a hundred victims who lost their lives in the attack on the World Trade Center. I have consoled enough families who were the victims of terrorist attacks, and I do not want there to be a reason to console anymore.

I ask my colleagues, if God forbid, a plane is blown up by a device that could have been prevented by the deployment of these bomb detection devices, explosive detection devices, had TSA met its requirements or had we kept TSA's feet to the fire, who among us wants to go and console those families? Who among us wants to go and tell them that we delayed? Who among us wants to say that in expectation of some new technology that has not been approved yet, that we waited? I do not and I do not know anybody here who does, and that is why in the first round in our Select Committee on Homeland Security, my amendment was approved striking this language.

The Congress charged the Transportation Security Administration with the responsibility, not the airports, TSA, to determine whether or not an extension is needed. It is the responsibility of TSA, and neither the TSA nor the administration nor the Secretary of Transportation nor the Committee on Transportation and Infrastructure has asked for such an extension. As a matter of fact, the Committee on Transportation and Infrastructure in a unanimous, bipartisan vote said this should not be in the bill.

The December 31 deadline that we imposed was in the Act that passed this House 410 to 9, and the deadline was necessary to ensure the security of our aviation system. As a matter of fact, Members on both sides of the aisle got up on this floor and criticized the other body's bill because it did not have the deadlines, and now, there are those who would seek to erase that.

Look, if an airport like mine, one of the largest in the Nation, cannot meet the deadline, there are alternatives under the existing law, and for those airlines who say that those alternatives will cause delay, I will have them know that the Republican bill, the text bill, still insists on those alternatives even if they get the year extension. So they get the year extension for the explosive detection devices, they still have to implement alternatives, the alternatives that the airline and the industry are saying are going to cause them delays. Nothing changes. Nothing changes.

What do we say to the traveling public and to those who would wish us ill? We are going to give them another year, and I would venture to say that it is not only another year. If we look at what section 409 says, it extends in my mind the deadline indefinitely because it says they must develop a plan for the modifications, and the deadline for executing the plan for that modification is a year from this December, but nowhere in the bill, nowhere in the bill does it set a deadline for deployment of the explosive detection systems. That is a travesty, and it does not ensure the traveling public, and it certainly does not belong in this bill.

That is why my colleagues should vote for the Oberstar amendment.

Mr. PORTMAN. Mr. Chairman, I yield 2¼ minutes to the distinguished gentleman from Arizona (Mr. PASTOR).

Mr. PASTOR. Mr. Chairman, I find myself in a very awkward situation, because I think this is the only time that I have been in opposition to my two friends from the Democratic Caucus. The gentleman from New Jersey (Mr. MENENDEZ) and I are good friends, and I have always followed the lead of the gentleman from Minnesota (Mr. OBERSTAR), but do I want people to be less secure as they get on a plane? The answer is no. I fly twice a week so obviously there is a self-interest to make sure that the baggage is examined and it is safe.

Did I vote for this bill? Yes, I did. At the time I thought it was needed and the deadline was there. I am a member of the Committee on Appropriations Subcommittee on Transportation, and since I voted for this bill and to date, I have been involved in a number of briefings, and also three hearings that involve the TSA, and I have to tell my colleagues that after listening to the testimony and reading the evidence presented to me, that I have come to the conclusion that the airports need an extension, not because they have pressured me, but because I think it is the right thing to do.

If we talk about the equipment, and there is a various mix of equipment, but if we talk about the detector, it is about as big as an SUV, and it costs about $1 million, and I have been told at least in the evidence I have seen that probably it works for one out of three baggage. So at 30 percent, it is effective. I feel that if there is the case, then possibly this technology may not be the proper one, but then if my colleagues persuade me, say ED, you know we need it and we cannot delay, let us order more of these machines, well, then, I would tell my colleagues that at least the evidence I have seen and testimony I have heard, the machines are going to take a long time to put in operation. In fact, the operator is not going to have enough equipment to install, and so in installing this equipment, it is going to take hundreds of millions of dollars for the airports to install them.

I would say let us take three deep breaths and let us make a decision that would allow the airports to take reasonable time to make sure that they are safe and secure with our luggage.

Mr. OBERSTAR. Mr. Chairman, I yield myself 5 seconds to point out to the gentleman from Arizona, whom I have great respect and affection, that the explosive detection system is certified to detect explosives in all checked luggage. The question is the throughput rate. If we have a high throughput rate, we may have a higher number of false positives but it works. It is certified by the FAA and the TSA.

Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL), a distinguished member of our committee.

Mr. PASCRELL. Mr. Chairman, I rise in strong support of the Oberstar-Menendez amendment to strike the extension for airline baggage screening.

□ 1615

It is no secret that there have been serious problems at the Transportation Security Administration with fund shortfalls and organizational issues causing troubles. However, extending the deadlines in this manner is not the way to go about securing our homeland. No Federal agency has asked for delay. The administration has not asked for delay. Do not allow the hope of newer yet nonexistent technologies into the work of the TSA. We cannot and we should not allow the TSA to slow their efforts toward implementing a program of 100 percent explosive screening at all commercial airports by year's end.

The DOT Inspector General, who is always brutally honest when reporting to Congress, told the Subcommittee on Aviation just this past Tuesday that "we will be in a much better position in a month to judge what is or is not feasible to accomplish by the deadlines." One month to 45 days to be exact, according to the IG. Now is not the appropriate time to delay. The Congress should not be undermining a law that the House passed 410 to 9.

This is important for the security of everybody in this room here on the floor and up in the gallery. Tell them, tell America what is going on here. The airlines are suffering economic damage, and yet we do not want to help people get back on the airlines so that they feel more secure. It does not make sense. There is not one Federal agency that supports a delay. All we are doing is bailing out an organization and organizations that for 20 years have been told they had better secure the baggage.

Until I came to the Congress, Mr. Chairman, I thought every piece of baggage was checked. Boy, was I sadly wrong. We should not go backwards. We need to go forwards so we put our actions where our mouth is.

Mr. PORTMAN. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas (Ms. GRANGER), a member of the Committee on Appropriations, Subcommittee on Transportation.

Ms. GRANGER. Mr. Chairman, this Congress set December 31 as the deadline for screening checked baggage for explosives, and 75 percent of our airports will make that deadline, but for the other 25 percent, we have a train wreck coming. It is a crisis and it is a crisis of our own making because the deadline cannot be met. And let us understand why.

First of all, let us talk about equipment, the baggage screening systems that will be used. As of this month, only 488 machines are being used at 59 airports nationwide. That leaves 6,600 machines that have to be bought, installed, and tested for accuracy by December 31.

Can that be done? How well have we done so far? The Transportation Security Administration has been buying, installing, and testing one machine every 48 hours, and perhaps that is okay except TSA will have to go from one every 48 hours to one every 35 minutes to meet the December 31 deadline. That is assuming the machines can even be manufactured and ready, 6,600 in the next 5 months.

And let us now go to personnel. We had a big debate over Federal baggage screeners, and upon our instructions TSA began hiring. Thus far, TSA has hired 166 Federal baggage screeners at the rate of one every other day. To meet the requirement and demand for a December deadline, TSA has to recruit, hire, and train another 21,434 baggage screeners in the next 159 days. That means not one every other day but one every 11 minutes.

But it gets worse because if you add the 30,525 passenger screeners still needed to be hired, TSA will have to speed up to one new screener every 4½ seconds.

Equipment, personnel, but I think you are seeing the problem. Let us talk about one other problem that would be out there if we could recruit and train those people and hire them every 4½ seconds and install the equipment every 35 minutes. All airports are not alike and you know it and I know it. In fact, they are greatly different in design and configuration. But we set very specific instructions as to how each airport would accommodate those SUV-sized machines if they were alike. So if it were possible to get them and man them in the next 5 months, we would have to reconfigure one out of every four of our major airports in the country. I am talking about moving walls, reconfiguring floors, major renovations. In one airport alone we are talking $200 million in construction in 5 months, construction completed. It just cannot be done.

And last but not least, there is the work of the Transportation Security Administration that has to approve every plan, visit every airport, and report to Congress on what we have demanded. How is this working? I will tell my colleagues, the airport I fly in and out of, they submitted their plan in March telling TSA exactly what they had to do to meet the December deadline, March, and it has not been approved to this day. Others have not even started because TSA has not told them what kind or how many machines are even needed.

Is there a solution? Yes, there is a solution, a solution that gives TSA a deadline, gives a deadline to airports, demands reporting to Congress, and also it is, by the way, our original date. What if we do not do this? What if we do not fix it today? We will spend millions of dollars unnecessarily, we will allow airlines to use a less than ideal solution, we will hire thousands of people who will be dismissed when their interim machines are scrapped, and we will force 3 and 4-hour waits at every major airport in this Nation at one of the most heavily-used times in the year, December. And that is a security problem that I do not want to face. That is not what I want to be a part of.

So let us do the right thing today. Let us quit posturing. Let us do something that is reasonable and responsible.

And, by the way, in the time we have debated this, we have missed by four people and one machine.

Mr. OBERSTAR. Mr. Chairman, I yield myself 10 seconds.

If this is war, as the President has repeatedly said, then I am astonished by the repetition of the cannot-do attitude that I have been hearing so far. At the outset of World War II, we took on a million men in one year.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Oregon (Mr. DEFAZIO), fearless champion of aviation security.

Mr. DEFAZIO. Mr. Chairman, I thank the gentleman for yielding me this time.

Fourteen years ago, Pan Am 103 was blown from the ski over Scotland. In response the British Government screened every piece of baggage. And we are told we cannot do it here. Guess where they bought the technology? Right here in the United States of America. Every machine that I observed over there was manufactured in this country, but we cannot do it in the United States. Why not? Because special interests are holding us back and because of the incompetence of this administration.

Ten years ago, Ramsi Youssef developed a plan to blow 12 747s simultaneously from the sky, U.S. planes, over the Pacific. He was only discovered and thwarted by accident. They will return to these patterns. This is a known threat.

How quickly we have forgotten September 11 in this body. How quickly we bow to the powerful special interests and campaign contributors. We can meet this deadline.

Now, last week the Bush administration fired the head of the Transportation Security Administration for incompetence. Thank God he is gone. He was doing a horrible job. Now we have a man in charge who knows how to get things done, Admiral Loy. Let him come to us with a plan in September. I know he can get this job done. We have someone in charge.

Then they say, well, there is not enough money. Guess what? The night before the money was voted on, the Office of Management and Budget, the head of whom is appointed by the President of the United States, and works, I think, pretty closely with the President and the White House, recommended cutting $219 million from this program to detect explosives to make Americans safe, and now the Republicans say there is not enough money.

Does the right hand of the administration know what the left hand is doing? Until a week ago, there was not one person in the administration that said they could not meet these deadlines. Then they fired the incompetent head of the agency, and we have a competent head now. What changed in a week? Politics changed. Special interests changed.

Shame on you. If you do not support this amendment when a plane goes down, I will expect you to talk to the grieving families.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as a member of the Select Committee, I heard a lot of this discussion, and I just wanted to make a comment on some of the comments we have had on the floor. Not referring to the gentleman from Minnesota (Mr. OBERSTAR), but a lot of raising of voices and yelling is not going to get the job done.

We all share the same goal, and that is that the flying public be safer. My own airport, the Greater Cincinnati Airport, says they cannot meet the deadline, even though they are pushing hard.

Mr. DEFAZIO. Will the gentleman yield?

Mr. PORTMAN. No, I will not.

Mr. DEFAZIO. Well, since the gentleman referred to me, will the gentleman yield?

Mr. PORTMAN. Mr. Chairman?

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. DEFAZIO. The gentleman will not yield, clearly.

Mr. PORTMAN. Mr. Chairman, more raising of voices and more yelling is not going to solve this problem. What is going to solve the problem is putting together a plan to get it done.

Mr. DEFAZIO. Will the gentleman yield on that?

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. DEFAZIO. So he does not want to discuss the issue, he just wants to cast aspersions.

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. PORTMAN. As has been stated earlier in the debate, three-quarters of our airports can probably meet the deadline. They will push hard and they will make it. For those who cannot make it, the question is will the flying public be safer if we force this deadline or will the flying public be safer if we give them a plan where they have to meet the deadline over a specified period, which is 1 year.

Incidentally, it is the same date that passed this House by an overwhelming bipartisan vote, December 31, 2002. I do not know how the gentleman voted who is now walking off the floor, but that was the vote in this House.

The DOT Inspector General Ken Mead has recently told us, and this is a quote from him, and this is the Department of Transportation Inspector General, "The challenge facing TSA in meeting the December 31 deadline of this year is unprecedented. An effort of this magnitude has never been executed in any single country or group of countries."

That is what we have heard from the gentlewoman from Texas (Ms. GRANGER) and others. Most of the airports are going to meet it, but those who cannot, we need to be sure they have a plan to meet it so that the flying public is safer.

Now, if we force machines into these airports that do not work as well as machines that would be able to be in place within this plan, within the 1-year extension, is the flying public safer? I do not think so. More important is that we get it right than do it in haste.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON), who has spent a lot of time on this issue.

Mr. ISAKSON. Mr. Chairman, I thank the gentleman for yielding me this time, and I certainly thank the gentlewoman from Texas (Ms. GRANGER) for her leadership.

I have great respect for the gentleman from Minnesota (Mr. OBERSTAR), and I accept the fact that he is confused. We do confusing things sometimes. But facts are stubborn things. Two hundred eighty-six of us voted in favor when TSA left this House of a 2003 deadline. Because at that time, as it came out of our committee, we made the judgment that we thought that was the right date. Now, 139 did not vote for it, but the fact is that was originally the House position.

Fact number two. We created TSA and the deadline on the same day when we finally finished the conference report. We created an agency with a deadline before the due diligence had been done to see what we could do. It is only reasonable to assume that once the due diligence is done, and facts are learned, then maybe some adjustments are made.

Now, the third fact, and this refers to a statement made by the gentleman from Oregon, I take every vote I take very seriously. It did not miss me, the inference the gentleman made with regard to the responsibilities of this vote. If I thought our vote would cost a single American their life, of course, I would never vote that way, and neither would anybody else in this House.

This is about us doing the right thing. This is not about us being irresponsible. This is about the most important thing the U.S. economy could have: Our aviation industry. I visited my airport. I serve on the Subcommittee on Aviation. I have done my due diligence. If TSA needs the opportunity to adjust that timetable to allow the right installation to be done on a timely basis, they should have that authority.

Facts are stubborn things. We are all responsible for our votes. We are all responsible for what we do. On November 1 we responsibly thought 2003 was the right date. Due diligence has told us that probably is correct. But we do not just accept it, we say if it cannot be met, then we will use reasonable judgment to give the time for the right installation to be implemented. I think that is fair and I think that is right.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Chairman, I would like to ask my friends on this side of the aisle: If you knew for sure that an airplane was going to be blown out of the sky on March 15 of next year, would you dare, would you dare not support this amendment?

How ironic, how ironic that in a bill that is supposed to create a new Department of Homeland Security we are taking an action that will make the traveling American public less secure.

□ 1630

Mr. Chairman, I am raising my voice because I think this is a serious matter. How would Members feel if they vote against this amendment and in February, March, April, or May of next year, an American passenger plane is blown out of the sky? How will Members feel?

The American people are watching us today, but the terrorists are also watching us today. We must not give them an easy way to kill additional Americans. Do not push the wishes of the special interests above the safety of the American people.

Mr. PORTMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation.

Mr. MICA. Mr. Chairman, this is not a time to come before the House of Representatives or the American people and make charges that are not correct. Every Member in this body wants to make certain that their family is secure, that every American is secure as they travel our airways.

I have had the great honor and privilege of working with the ranking member of the full committee, the gentleman from Minnesota (Mr. OBERSTAR), and the ranking member of the subcommittee, the gentleman from Illinois (Mr. LIPINSKI). We set goals that are very difficult to meet, and I do not think that we should back off from those obligations, but we know that the math does not add up. To accomplish the task that we set forth in the law November 19, the math does not add up. Here is the appropriations that we passed and voted for, and we approved 45,000 employees.

Here is a report by the inspector general, the facts. We need 67,000 employees to complete the task. The gentleman from Minnesota (Mr. OBERSTAR) and I heard testimony that in fact they can only produce 800 machines because we have missed the deadline by the delay in the appropriations measure, in passing the supplemental appropriations measure.

What we have is the potential, if we pass this, of leaving a state of chaos and disorder for the December deadline. We do not need chaos and disorder; we need the plan that has been put together first by the gentlewoman from Texas (Ms. GRANGER), and then modified so it requires that when we do not meet the technical or personnel requirements that we put in place a plan. Do we want chaos or order? This requires order. The amendment does not.

Are we to build bureaucracy in the name of security? I say no. But we have a responsibility. I just met with the President of the United States downstairs, and he talked about homeland security. That is what this bill and this measure is about, acting responsibly, putting the facts together and doing the best job we can as representatives of the people to secure for us the best security possible.

Mr. MENENDEZ. Mr. Chairman, will the gentleman yield?

Mr. MICA. I yield to the gentleman from New Jersey.

Mr. MENENDEZ. Did the President ask this House for an extension?

Mr. MICA. No; but we need to act responsibly.

Mr. OBERSTAR. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota (Mr. SABO).

Mr. SABO. Mr. Chairman, I thank the gentleman for yielding me this time.

Let us be clear. We have appropriated every dollar asked for for equipment. We have appropriated more dollars than asked for for installation. We have approved thousands of employees for this agency, very few who have been hired. They clearly have the ability to manage the personnel to put them where they are needed. There may or may not be a reason for this amendment, but the reason there is delay does not relate to money. It relates to management.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise to support the Oberstar-Menendez amendment that deletes the deadline extension for airports to install explosive detection equipment.

Since September 11, Congress and the administration have been consumed with fighting the war on terrorism. Congress has responded to all of the administration's requests, developed its own initiatives, and bent over backwards to protect the American people from further terrorist attacks.

Today we are completely considering of H.R. 5005, the Homeland Security Act, a massive and complex piece of legislation, to create a new Department of Homeland Security. Members of Congress have been working hard on this legislation. Eleven standing committees of the House of Representatives have made individual recommendations on various aspects of the legislation in order to improve our Nation's ability to anticipate and prevent every conceivable type of potential terrorist attack.

Now at the 11th hour, we are being asked to undo a critical provision of anti-terrorism legislation that we passed last year. We are being asked to extend for a whole year the December 31, 2002, deadline for airports to install explosive detection equipment. This equipment would allow commercial airlines to screen the baggage that is checked at the gate and loaded into the bellies of the airplanes.

The deadline extension was not recommended by the committee of jurisdiction or the administration. Even if some airports are unable to meet the deadline, last year's law gives the Department of Transportation Administration the flexibility to have baggage screened by other means while the installation is being completed. These alternatives include positive bag matches, manual searches, and bomb-sniffing dogs. We must maintain the deadline in last year's law. We want every airport to make every effort to install explosive detection equipment as quickly as possible.

Mr. PORTMAN. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Chairman, I rise in opposition to this amendment. I think all of us in this Chamber understand that our objective is to enhance the safety of passengers on the airlines. There is nothing in this legislation that is circumventing that objective.

When we recognized after the events of September 11 that we had to do more to enhance safety, we set some arbitrary deadlines to establish goals when we could have equipment in place that could make a difference, that could ensure greater safety. But with a lot of goals and objectives that are established, it sometimes becomes apparent that we do not have the resources nor the time in order to achieve them. What we are doing today is not saying that we are backing away from our commitment to provide safety, it is a recognition that we need to set up a process that recognizes that there are some airports in this country that unfortunately cannot meet this deadline.

In order to meet the needs of those airports as well as the passengers they serve, we need to have some prescriptions and some guidelines that are going to ensure that they are on a track towards the earliest possible moment to implement those systems that can make a difference in ensuring that our air travel is safe.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I rise in support of the Oberstar amendment. We must not delay. We must accept no excuse for any delay in the immediate improvement of the security at our airports. Congress should speak unambiguously, find a way to get the job done now. Can it be done by the end of the year? Yes. The Secretary, the administration and the agency charged with this responsibility all say it can be done. Will it be difficult? Yes.

Is the challenge any greater than the technological challenges we faced immediately after Pearl Harbor in gearing up our industrial capacity, of course not. This task is infinitely simpler. Will it cause some delays in some airports in flights, yes, in all likelihood. Will it cause the adoption and deployment of technologies that will need to be replaced in the future, it just might. After all, technologies, all technologies, eventually become obsolete.

But what is the cost of delaying our efforts to secure our airports and our airplanes, the cost is potentially catastrophic. Imagine the devastation to the families if a plane is blown out of the air, imagine the devastation to our economy and the loss of confidence in our Nation's ability to defend itself in the very department that we establish today.

On September 11, terrorists turned our planes into jet-fuel-powered bombs. That was the last attack. Some would argue since we are now better prepared against that eventuality, we can delay our preparedness against other attacks.

Mr. Chairman, we must be prepared to fight terrorists in whatever form. Terrorists do not need to hijack planes to devastate this country. Placing a bomb in the cargo hold of a plane is all that it would take. We must defend against this massive vulnerability, and we must do it now. We cannot delay. I urge support of this amendment to make this country safe today.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma (Mr. WATTS), one of the House leaders on this issue.

Mr. WATTS of Oklahoma. Mr. Chairman, as I have served the last 8 years in the United States House of Representatives, I have often said we made a real mistake 40 years ago by not creating a Federal Department of unintended consequences, because we often do things and after we have done it, we look back and say oops, we made a mistake.

Let me tell Members, there are 25 percent of the Nation's airports that cannot comply with this deadline on December 31, 2002. It is unrealistic. The Transportation Safety Administration, these airports, many of these airports, they have submitted plans to comply that they need to have certified by TSA. They have not gotten the certification.

In order for all airports to meet the deadline, TSA must purchase and install an EDS or EDT machine every 35 minutes between now and December 31. In order for all airports to have the security staff needed to operate the new machinery, TSA will need to hire and train and make operational a new screener every 4.5 minutes between today and December 31, 2002.

We are saying that these people will be able to comply? If Members vote to strip the December 31, 2002 deadline, they are voting for 3- or 4-hour airport lines that are inviting targets for terrorists. I think we are making a huge mistake by not extending the deadlines. Get the bureaucracy off their duff, and have them certify the airport plans and then move forward.

In the end, I think it is a shame that we would come and talk about these things and all the rhetoric that I have heard, we are literally telling the terrorists what is going on. We need to extend this deadline, get those plans certified by TSA, get the people hired, get a director that was fired over a week ago. Vote "no" on this amendment.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, in 1961, President Kennedy sat right there and said America is a country that can do the moon. Now we have people around here saying America is a country that cannot even check baggage.

Why would Members want to take a bill called the homeland security bill and change it into the home air insecurity bill. Members are darn right that there are some challenges in getting this done, but it does not help that this administration has demonstrated rank incompetence for months and months doing nothing on this issue.

□ 1645

It took them 7 months to order the first machine after September 11. I will not allow or vote for this administration's rank ineptness to endanger my flying public for the next year.

If you cannot get this job done, turn the administration over to us and we will do it because we know if you want some horses to go, you put the spurs to them and this administration needs it.

Mr. PORTMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Chairman, let us set the record straight. The Secretary, based on current facts, says that they are unable to make these deadlines without us giving them a billion dollars more. I know the contract is with Boeing-Siemens. I have talked to those people. They can do it by the end of the year, but only to have the machines by the end of the year. That does not mean they are in the airports.

I am concerned that, worst-case scenario, the Transportation Security Agency is going to be unable to train personnel and install necessary equipment to meet this deadline. Under the best-case scenario, I am concerned that TSA will meet the deadline but only by implementing an ineffective and outrageously expensive temporary solution. Either way, the safety of our air travelers and the security of our system will benefit from giving TSA flexibility to focus on a long-term, permanent solution and not a quick fix.

Unfortunately, only 75 percent of our airports are going to be able to make that December 31 deadline. These are the smaller airports that are going to rely on the ETD for their long-term solution. They are going to be using primarily small machines. It is no longer feasible to meet the December 31 deadline for larger airports, especially like my hometown DFW. Since they submitted their plan in March, they still have yet to hear back from the TSA to find out if they have been approved and are on the right track. For larger airports like DFW, it is impossible for them to be ready by the end of the year.

Have we not provided enough bureaucracy? It is ridiculous that opponents to this commonsense measure would rather have airports miss the deadline altogether. This is not a one-size-fits-all solution.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Jersey (Mr. MENENDEZ), a member of the select committee.

Mr. MENENDEZ. Mr. Chairman, we heard about facts.

Fact: the House voted 410–9 for these deadlines.

Fact: neither the President, the Secretary of Transportation, TSA nor the Committee on Transportation and Infrastructure has asked for an extension.

Fact: the bill extends the execution of a plan for another year, but it has no deadline for deployment of explosive detection devices.

Fact: technology to detect bombs exists now and is certified. No other technology is certified.

Fact: alternatives exist under the law if the deadlines cannot be met, and they are the same as the bill before us.

Fact: Congress delayed in a similar case in the '80s on technology to avoid collisions midair, and we had three midair collisions. Who went to those families and said, We're sorry we delayed; we waited for better technology"?

Ask your constituents if after the events of September 11, would they rather save a few minutes or save lives? The answer would be, save lives. That is what this Oberstar-Menendez amendment does, and that is why you should be voting for it.

Mr. OBERSTAR. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington.) The gentleman from Minnesota is recognized for 3½ minutes.

Mr. OBERSTAR. Mr. Chairman, we have all come to this issue with good will and those who advocate the extension of the deadline have come genuinely inspired by their airports or airlines out of a concern, as repeated speakers have said, We can't meet the deadline. I have always thought of America as a can-do Nation, not a can't-do Nation.

In World War II, we put a million men under arms in 1 year. In World War II, we produced an average of 60,000 war planes a year, starting from zero. Why can we not do this now? We can do it, is the point.

I have heard the argument about long lines. The question you have to ask yourself is which do you fear more, long lines or a bomb aboard an airplane?

I also read the language proposed very carefully. Many are not aware that the language of the amendment proposes to give the airport the decision on whether to demand a delay, not the Transportation Security Administration who is paying the cost, and also vests with airports the authority to develop a plan to the maximum extent practicable to do certain things. This is a change in the fundamental way the program is operating. I was not aware of that until late last night, early this morning, reading this language more carefully. That should not be done.

We have provided authority in the basic law that was enacted 410–9 for alternative means to check luggage, to screen luggage checked aboard aircraft if you cannot meet the December 31 deadline for explosive detection systems. It includes authority for the TSA to certify, or to verify the use of explosive trace detection systems if they cannot deploy the explosive detection systems. There is ample authority to use other means. We are all human beings. That is why the leadership here keeps us till late at night, because we work against deadlines. The distinguished whip knows that.

But I come for another purpose. Twelve years ago, as a member of the Pan Am 103 commission, I stood at Lockerbie, Scotland, at the abyss of Pan Am 103 where a trench 14 feet deep, 40 feet wide, and 120 feet long was dug by that airplane, and 259 lives aboard that plane and 11 on the ground were incinerated because a bomb was aboard that airplane in a piece of luggage that did not have a passenger accompanying it. And we members of that commission, two of us from the House, John Paul Hammerschmidt, a distinguished Member from Arkansas, and I, looked in the abyss and said, "Never again will we allow this to happen. We are going to pass tough legislation to make aviation security the best in the world." And we passed it.

Now we stand on the abyss again. Never again do I want to confront families and say, We didn't do enough. Please, do not let that happen. Do not extend that deadline.

Mr. PORTMAN. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. DELAY), the distinguished majority whip and a member of the Select Committee on Homeland Security.

The CHAIRMAN pro tempore. The gentleman from Texas is recognized for 2½ minutes.

Mr. DELAY. Mr. Chairman, that almost brought a tear to my eye; but I have got to tell you, after Lockerbie, England went for this technology that the gentleman wants to install. It took them 8 years to install it. Eight years. That was 12 years ago. That same technology is what he wants to buy, 20-year-old technology that does not work, or is not as good as other technology that is being suggested.

Let me just clear the air here a little bit. First of all, I think it is irresponsible to try to scare the American people away from flying. The rhetoric on this floor is irresponsible in doing that. Let me just say that 100 percent, 100 percent of your bags today are being checked before they go on the plane. What this argument is about is buying a machine, a bomb detection machine to try to make it more efficient to check your bags. They want you to buy a 20-year-old technology that is wrong 30 percent of the time.

Let us get how this works. Thirty percent of the time it is wrong; so when it is wrong, you have to take it off the machine and check it by hand, adding to the time of that plane taking off. What we want is technology that is ready, it just needs to be certified, that has less than a 5 percent error rate. Technology is coming on line. And besides, these deadlines that they are so interested in, this House voted 286–139 for the deadline that is in this bill. The deadlines that were put in there, and I will not argue the deadlines, but what is really interesting about this is that the deadlines that they are so adamant to have and have all this wonderful rhetoric, and a little demagoguery added to it, is that the deadlines have no penalties. Their deadlines have no sanctions. So it does not matter. If they cannot meet the deadlines, they cannot meet the deadlines. You are stringent, we are going to meet these deadlines, and you cannot make them do anything.

So what we have done is realized that there is a problem here, that we can put good technology in as quickly as possible; but we need a good, solid process by which to implement this and we are suggesting that process. There is a process that we go through.

This makes sense. It makes common sense. It faces reality. Vote down the Oberstar amendment.

PARLIAMENTARY INQUIRY

Mr. DEFAZIO. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. DEFAZIO. Mr. Chairman, is it required that one use accurate facts during debate on the floor of the House?

The CHAIRMAN pro tempore. The purpose of debate is to discuss issues as Members see them.

Mr. DEFAZIO. Does it require the use of accurate facts or is fabrication allowed?

The CHAIRMAN pro tempore. Accuracy in debate is for each Member to ascertain in his own mind.

Mr. DEFAZIO. I thank the gentleman. We just heard fabrication.

Mrs. LOWEY. Mr. Chairman, I rise in strong support of the Oberstar Amendment.

My colleagues, the first obligation of our government is to protect our citizens.

While I strongly believe we are united in our determination to win the war on terrorism and committed to reorganizing the federal government to better serve our country during these times, I continue to be puzzled by the actions of some of my colleagues.

In the fall, the Leadership took only three days to start bailing out the airline industry, but dodged the issue of aviation security for months.

Democrats fought hard, constantly reminding our colleagues that in order to assure the public that our skies are safe we had to require that the federal government to assume passenger screening responsibilities, expand its air marshal program, and screen all checked baggage for explosives.

Although our efforts were successful, some of my colleagues have been working bit by bit to unravel the commitment we made to Americans.

When the TSA asked for $4.4 billion, Republicans shortchanged them by $1 billion.

Now, they are using the bill designed to set up a department to ensure homeland security to postpone the deadline for installing bomb-detecting equipment at our airports. The Administration says it cannot meet the deadline of December 2002 due to the delay in passing the emergency supplemental and the lack of necessary funding—the fault of the House Republicans.

To that I say, I am truly disappointed that any of us would backtrack in the face of a self-imposed deadline. We should hunker down and work together to tackle this deadline because compromised security in our skies and airports is a clear and present danger.

My colleagues, we cannot break our promise. When we passed the transportation security act last year, we acknowledged the immediate need to make aviation security a matter of national security. We must vote to reinstate the baggage screening deadline, and stand by our promise to have every bag screened, on every flight, every day by the new year.

Our homeland won't be secure until our skies are secure. I urge you to carefully consider the risks we would take by postponing this deadline.

Vote for the Oberstar amendment.

EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, with some reluctance, I rise in opposition to the Oberstar-Menendez amendment regarding the deadline for installation of explosive detection systems at the nation's airports.

Let me first say that I would have much preferred that this issue not have been highlighted so prominently. If airports continue to be vulnerable, we do not need to be announcing that for all the world to see.

I understand the concerns of airports and their desire to extend the deadline. Many of them, particularly large airports like DFW in my district, have made a compelling case that the existing deadlines cannot be met.

The Transportation and Infrastructure Committee, on which I serve, has been looking at this issue carefully. Earlier this week, it held a hearing on TSA's implementation of the Aviation and Transportation Security Act, featuring Secretary Mineta and the DOT Inspector General's office.

Secretary Mineta indicated concern that the TSA might not be able to meet the deadline for EDS deployment because of insufficient funding in the FY2002 supplemental for TSA. In part because of his testimony, I voted against the supplemental.

The IG's office testified that it would be premature to extend the deadlines at this time because they were still conducting their airport-by-airport assessments.

I will quote from the IG's written testimony: "Because airport assessment for the deployment of explosives detection equipment are scheduled to be completed at the largest airports by the end of August, and because of the current ramp-up in hiring passenger screeners, we will be in a much better position in a month to judge what is or is not feasible to accomplish by the deadlines."

Mr. Chairman, the language to extend the deadline by one year is far from perfect. Most likely, the deadlines cannot be met, but would it not be prudent to wait until the IG's office completes their assessment and issues a recommendation for a new deadline?

However, I also recognize the anxiety that airports are experiencing and their desire to move this language on "must-pass" legislation.

I will therefore support the one-year extension at this time and vote against the Oberstar-Menendez amendment so that we can move forward on this issue and ensure that this gets resolved in conference.

However, I will also be monitoring the IG's recommendations and insist that the conference adjust the language if it conflicts with the IG's findings. Explosive detection systems must be deployed as quickly as possible, and if the IG indicates that compliance before December 31, 2003 is feasible, the conferees must adjust the language accordingly.

Mr. BEREUTER. Mr. Chairman, this Member rises in opposition to the amendment offered by the distinguished gentleman from Minnesota (Mr. OBERSTAR) which would strike the bill's deadline extension for airports to screen all checked baggage.

This Member would like to begin by stating his view that the safety and security of the traveling public must remain the primary objective when addressing aviation matters. However, it appears that the current arbitrary deadline for screening all checked baggage actually is unlikely to enhance security. Instead, it surely will result in larger expenditures, longer lines and greater frustration.

It is now clear that airports in Nebraska and throughout the nation will have difficulty meeting the logistical requirements of the current deadline of December 31, 2002. Instead of emphasizing safety and efficiency, airports would be forced simply to put something in place.

Nebraska airport managers are very concerned that they will not be able to meet the current deadline due to two major issues: checked bag screening and the Federalization of security for passenger and baggage screening. For example, there is concern regarding the effectiveness and expense of the new required baggage screening equipment, with the possibility that the equipment required for installation may be less effective in reaching desirable screening than other smaller and less expensive alternative equipment now in production and with the likelihood that some of the new equipment now to be required would need to be replaced within a few years.

The deadline extension included in H.R. 5005 offers realistic, cost-effective and efficient flexibility. The provision makes it clear that airports will still be required to install equipment to detect weapons and bombs. However, the installation will be done in a manner that takes into account not only safety, but also cost, efficiency, and reliability.

Mr. Chairman, rather than taking ineffective interim steps, every effort must be made to get it right the first time. Therefore, this Member urges his colleagues to oppose the Oberstar Amendment.

Ms. DELAURO. Mr. Chairman, I rise in strong support of this amendment. We may have disagreements regarding some of the specifics of this legislation, but its goal—ensuring Americans' safety—is something we all support.

So why then was a provision slipped into this legislation to extend the deadline by which the Transportation Security Administration must screen all baggage for explosives? Why are we risking the safety of the American people when we already have the certified technology necessary to ensure that every bag can be screened?

Some suggest that we must extend the deadline because we are awaiting the development of better technology down the road, as there always is, Mr. Chairman. I am not willing to risk another year of randomly screening a few bags when we have the technology to screen all of them now while we wait for a superior technology a year from now. By then, it might very well be too late.

If we must revisit this issue in a year and begin upgrading the equipment, so be it. No price is too high when it comes to ensuring the safety of the American people. But without this amendment, we put American lives needlessly at risk.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in support of the Oberstar/Menendez Amendment, to strike the provision extending the date for screening airline baggage for explosives.

Mr. Chairman, I am bewildered that we are even arguing about this. We are here to find ways to increase the Security of our Homeland. Last year, in an intelligent step in the right direction, we passed the Aviation and Transportation Security Act, in overwhelmingly bipartisan fashion by a vote of 410 to 9. That Act gave the Transportation Security Administration and our nation's airports over a year to get into place systems that would prevent terrorists from stowing bombs in baggage being loaded onto airplanes. That seems to make good sense.

We have equipment that has already been certified to be able to detect explosives that could destroy an airplane in flight. Just last week, Transportation Secretary Norm Mineta came before the Select Committee, and gave testimony that yes indeed, the TSA would meet the December 31, 2002 deadline to get that equipment installed. Again, everything seemed to be on track.

But now, all of a sudden, because the job is hard and it may be challenging to get the job done exactly on time, we are going to double the amount of time given to get the job done. We are going from one year to two years. At a time when we have been warned that terrorists may still be walking our land, and on a day that we are trying to make history by securing our nation, we are going to say, "Don't worry about the deadline. Let's leave the window open to terrorists for another year." As a former lawyer in the Pan Am 103 air crash case, where I represented the family of a deceased flight attendant, I cannot take the chance that a suitcase bomb could explode on a passenger-full airplane. To change the deadline is a profoundly bad idea.

The argument for leaving the window open is that if we wait, we can maybe use better technology, or install the equipment more efficiently. The problem with that argument is that we are vulnerable now. The American people deserve protection now. It is like if you had cancer. There are always better drugs coming out each year. So if you get cancer, do you wait a year until the next generation of drugs comes out, or do you work with what you've got? Of course you work with what you've got. And that is the position we are in today. Terrorism is like a cancer that has the potential to destroy us. We have to take the medicine now.

But we don't even need to look beyond the aviation industry for such analogies. We have paid the price of "waiting for the next best thing" before. In the 1980s we had an opportunity to have collision avoidance equipment, called TCAS II, installed in all of our airplanes. TCAS II worked pretty well, but it only gave vertical directions for evasive actions to the plane. So, the FAA waited. While they waited for TCAS III, three tragic midair collisions occurred—three deadly crashes that could have been avoided if the FAA had moved when it had the chance. After the third crash, legislation was finally passed that required the installation of TCAS II even though it was not perfect and would eventually be replaced.

Let us not waste hundreds of lives again.

Keeping the TSA and our nation's airports on track to get a baggage screening system into place by the end of this year is not a rash action. If extenuating circumstances present at a few airports, the Aviation and Transportation Security Act already authorizes alternatives to keep those airports up to code. They can employ positive bag match, manual search, search by dogs, or any other technology approved by the TSA. Even if they do not, there are no established penalties or punishments for non-compliance. There is no reason to risk taking an extra year to complete this critical task.

Since September 11th we have been marching forward on the path toward homeland security. Let us not take a step backward today.

I encourage my colleagues to support the Oberstar/Menendez Amendment, and keep our nation in the spirit of progress, and our airports moving in the right direction.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. OBERSTAR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) will be postponed.

The Committee will rise informally.

The Speaker pro tempore (Mr. SIMPSON) assumed the chair.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment concurrent resolutions of the House of the following titles:

H. Con. Res. 448. Concurrent resolution providing for a special meeting of the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

H. Con. Res. 449. Concurrent resolution providing for representation by Congress at a special meeting in New York, New York, on Friday, September 6, 2002.

The message also announced that the Senate has passed a bill and a concurrent resolution of the following titles in which the concurrence of the House is requested:

S. 2771. An act to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

S. Con. Res. 132. Concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives.

The message also announced that the Senate disagreed to the House amendment to the Senate amendment to the bill (H.R. 4546) "An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes," agreed to a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Ms. COLLINS, and Mr. BUNNING, to be the conferees on the part of the Senate.

The message also announced that pursuant to Public Law 103–227, the Chair, on behalf of the President pro tempore, appoints the following individual to the National Skill Standards Board for a term of four years:

Upon the recommendation of the Republican Leader:

Betty W. DeVinney of Tennessee, Representative of Business.

The message also announced that pursuant to Public Law 107–171, the Chair, on behalf of the Republican Leader, announces the appointment of Mr. Robert H. Forney, of Indiana, to serve as a member of the Board of Trustees of the Congressional Hunger Fellows Program.

The SPEAKER pro tempore. The Committee will resume its sitting.

HOMELAND SECURITY ACT OF 2002

The Committee resumed its sitting.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 24 printed in House Report 107–615.

□ 1700

AMENDMENT NO. 24 OFFERED BY MS. SCHAKOWSKY

Ms. SCHAKOWSKY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 24 offered by Ms. SCHAKOWSKY

Strike subtitle C of title VII.

Strike section 762 and insert the following:

SEC. 762. REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS.

Section 7211 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The right"; and

(2) by adding at the end the following:

"(b) Any employee aggrieved by a violation of subsection (a) may bring a civil action in the appropriate United States district court, within 3 years after the date on which such violation occurs, against any agency, organization, or other person responsible for the violation, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages, and equitable, injunctive, or any other relief that the court considers appropriate. Any such action shall, upon request of the party bringing the action, be tried by the court with a jury.

"(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(e) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

"(d) For purposes of this section, the term 'employee' means an employee (as defined by section 2105) and any individual performing services under a personal services contract with the Government (including as an employee of an organization).".

The CHAIRMAN pro tempore (Mr. SWEENEY). Pursuant to House Resolution 502, the gentlewoman from Illinois (Ms. SCHAKOWSKY) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentlewoman from Illinois.

Ms. SCHAKOWSKY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on behalf of the gentlewoman from Hawaii (Mrs. MINK) and the gentleman from Ohio (Mr. KUCINICH) I rise to offer an amendment that will prevent the Department of Homeland Security from becoming the "department of homeland secrecy." I want to commend the gentleman from California (Mr. WAXMAN) and his staff, as well as the Select Committee, particularly its ranking member, the gentlewoman from California (Ms. PELOSI).

First, this amendment strikes subtitle C of section VII of the underlying bill, language that excludes from the Freedom of Information Act information submitted voluntarily from corporations regarding critical infrastructure information. It strikes language that preempts all State and local open records laws.

Second, this amendment strikes section 762, language that allows the Secretary to circumvent the Federal Advisory Committee Act, FACA, by putting all the deliberations of those advisory committees beyond public reach.

Third, this amendment provides real teeth to protections against retaliation for whistleblowers, the kind of individuals who have been the lifeblood of exposing failures at the FBI to heed warnings of terrorists within the country, and exposing corporate misconduct.

The Freedom of Information Act is a law carefully crafted to balance the ability of our citizens to access information and the interests of those who want to protect such information from public scrutiny. There are nine exemptions to FOIA, including national security information and business information. FOIA currently protects information that is a trade secret or information that is commercial and privileged or confidential. In addition, President Reagan issued Executive Order 12600 that gives businesses even more opportunities to oppose disclosure of information.

In fact, I and other Members of the Committee on Government Reform repeatedly have asked proponents of this exclusion, including the FBI and Department of Commerce, for even one single example of when a Federal agency has disclosed voluntarily submitted data against the express wishes of the industry that submitted that information. They could not name one case.

Instead, we are told that FOIA rules just are not conducive to disclosure, that corporations are not comfortable releasing data needed to protect our country, even if we are at war.

Is our new standard for deciding such fundamental questions of openness and accountability in our democracy how comfortable industry will be? Environmental groups, open government groups and press organizations support my amendment because the broad secrecy provisions of the new Department would hide information critical to protecting public safety, such as chemical spills, results of testing to determine levels of water and air pollution, compliance records, and maintenance and repair records. Corporations could dump information they want to hide into this department under the cover critical infrastructure information. Corporate lobbyists can meet with government officials in the name of critical infrastructure protection and hide their collusion behind this exclusion.

If we create the Department without my amendment, corporations will no longer need to bury their secrets in the footnotes, or even shred their documents. They can hide them in the FOIA exclusion at the Department of Homeland Security. No longer will industry officials have to hide their meetings with government officials. The exemption from FACA will offer them a safe haven within which to have those secret meetings. State and local authorities would also be barred from and subject to jail sentences for disclosing information that they require to make public, even if it is because it is withheld at the Federal level.

This amendment also protects the rights of whistleblowers. My colleagues will go into more detail. But most whistleblowers are not as high profile as Sharon Watkins of Enron or Coleen Rowley of the FBI, to whom we owe a great debt, and many of them suffer retaliation. They often lose their jobs or are demoted as punishment for speaking out.

It is clear that the protections currently available simply are not working. Since the Whistleblower Protection Act was amended in 1994, 74 of the 75 court decisions have gone against whistleblowers. So my amendment gives whistleblowers the right to go to court instead of going through the administrative process and requires the same burden of proof to be used in whistleblower cases as in all other cases involving personnel actions.

Mr. Chairman, I believe that we are in great danger today of tipping the delicate balance between security and basic, precious freedoms, those rights that uniquely define our American democracy. We can have both, and I urge my colleagues to restore the balance and support my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Texas is recognized for 15 minutes.

Mr. ARMEY. Mr. Chairman, I am happy to yield 2 minutes to the distinguished gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I oppose this amendment because I believe that this amendment will significantly damage the ability of the Department of Homeland Security to be effective.

Now, let me make a couple of points clear from the beginning. Whistleblowers are protected in the legislation now. That is one of the specific protections we were talking about earlier in the various management flexibility amendments which were offered. Whistleblowers are protected now.

Now, under current law, various companies and industries have to disclose certain information. Nothing changes under this bill. They still have to disclose that information, and we add no loopholes. There are no new requirements, and they cannot hide. They still have to meet the current requirements. But our hope is that under the new law, the Department of Homeland Security will receive additional information voluntarily from industries. They will tell us their vulnerabilities. They will tell us what they are worried about in their computer networks. They will tell us what they are worried about in their infrastructure.

We want them to tell the Federal Government that information voluntarily, so that we can help protect that infrastructure. They will not disclose that information if you just turn right around and make it public. It could be trade secrets, it could be information that you are giving to the terrorists. You certainly do not want to help them.

So, to go as far as the amendment does in requiring this additional information, which is voluntarily disclosed to the government, to turn around and make all that public means that companies simply will not disclose it, we will not know their vulnerabilities, and this Department will not be able to do its job to protect infrastructure.

Mr. Chairman, I would suggest the better course would be to reject this amendment. There are essential protections already in the bill. We do not need more.

Ms. SCHAKOWSKY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Hawaii (Mrs. MINK), a cosponsor of the amendment.

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, I would like to directly respond to the prior speaker, who made a case for further extension of the exemptions for the Freedom of Information Act by arguing that it was necessary in order to protect private sources of information that might be necessary for this new Department.

I want to call the attention of the House to the current Freedom of Information Act, which already includes nine exemptions for all Federal agencies, including the Defense Department and all the other security-type organizations that now exist that fall under the Freedom of Information Act and have done so for the last 30 years, because they are protected under the exemptions that exist under current law.

The exemptions are all classified documents. The government has the power to classify documents. So if there is something in their possession that is essential to the national security or homeland security, they could classify those documents. They have that power inherent in the FOIA legislation.

As far as private confidential trade secrets, there is an exemption specifically for business information. So there exists already the power of the government to classify as nonapproachable by a Freedom of Information request information which is private, trade secrets, or something which is essential to the protection of business.

All of these rules exist. The exemptions exist. They were part of legislation which I helped to work out in the early 1970s, and they have stood the test of time.

It has created a broad range of protections for the people of the United States. The most important liberty, freedom, that we have is that we as individual citizens of this country have the right to information that the government possesses, and we do so by making a FOIA request.

I cannot conceive of enlarging the nine exemptions that already exist. What kind of a Department of Homeland Security are we creating? Why does it have to have all of the super protections of private information, when we already have nine exemptions that exist that can protect every single suggested item that has been discussed here on the floor?

So I hope that people will realize that under this climate, being concerned about terrorism and the protection of property and the protection of life and so forth, we cannot jeopardize those things that we have fought for so hard, so diligently, and which have, to a large measure, enabled the public of the United States to know what is going on. The nuclear tests out in the Midwest and the terrible things that happened from them would have continued to be the secrets of the government if we did not have FOIA. But because we had the Freedom of Information Act, we enabled the public to be better informed and we enabled the Congress to do a better job in legislating.

Mr. Chairman, I urge adoption of this amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. TOM DAVIS), the author of the original FOIA language, who has done such an excellent job.

Mr. TOM DAVIS of Virginia. Mr. Chairman, let me first of all say I think the problem with this amendment is it goes in the wrong direction. We are all strong supporters of FOIA legislation. I served in local government for 15 years, and the Freedom of Information Act applies to local government. Strangely enough, Congress is exempt from any of these exemptions.

This is a very narrowly tailored FOIA exemption that will allow companies out there that have innovative ideas in terms of how to protect our critical infrastructure, it will allow them to disclose it to the government without fear of it being discovered by competitors or terrorists.

We have to remind ourselves that we discovered when we went into the caves in Afghanistan that al Qaeda groups had copies of GAO reports and other government information obtained through the Freedom of Information Act. While we work to protect our Nation's assets in this war against terrorism, we also need to make sure we are not arming terrorists.

The previous speaker spoke about how they worked on this in the early 1970s. I would submit the world has changed. There was a challenge from the other side saying there were no instances where information was not shared. Just last year it was discovered that the widely used implementations of the simple network management protocol, a fundamental element of the Internet, contained vulnerabilities that could expose the Internet's infrastructure to attack. Many companies were reluctant to give the government information about these vulnerabilities, which were not yet mentioned in the general press, for fear that the vulnerability information would be forced to be disclosed once it was in the government's hands and this could create substantial risk to their customers and to the Internet and the U.S. economy.

I might also add the Department of Energy for years has asked that electric utility industries provide it with a list of critical facilities. They have consistently refused because they do not want to create a target list that could be released under the Freedom of Information Act. I suspect there are many, many others.

We need to remember that the critical infrastructure of the United States is largely owned and operated by the private sector, 90 percent operated by the private sector. Understanding the vulnerabilities, experiencing the vulnerabilities, finding, if you will, antidotes to these vulnerabilities, is something that the private sector has much more experience in than the public sector. We need that information at the Federal level if we are to protect our critical infrastructure.

This very narrowly tailored amendment, I might add, went through the Senate committee on a bipartisan unanimous vote. There were no concerns over there, because it is narrowly tailored. This is essential if we are going to get companies to be able to volunteer to the government solutions that can help us protect our critical infrastructure.

There is precedent for this. I heard arguments that this is unprecedented. If you take a look at the successful Y2K Act, Information Readiness Disclosure Act, it provided a limited FOIA exemption and civil litigation protection for shared information.

We narrowly tailor these so we do not take away what FOIA offers the general public, very important protections. But if we do not allow it in these narrow instances, I am afraid we are not going to have the tools to fight terrorism. This legislation, I think, helps the private sector, including the ISOs, to move forward without fear from the government. It is essential.

Mr. Chairman, I oppose this amendment.

Ms. SCHAKOWSKY. Mr. Chairman, I am proud to yield 2 minutes to the gentleman from California (Mr. WAXMAN), the ranking Democrat on the Committee on Government Reform and a leader in this House on both homeland security and good government.

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, it is remarkable, the position of the Republican Party today. It really shows the bankruptcy of that party. The Republican party used to stand for the idea that there should be some distrust of government. The theory was it can get too big, too bureaucratic; the federal government could interfere in the lives of individuals and start dictating policies from Washington. So what does this bill do? It grows the bureaucracy. It wastes money. With these Freedom of Information and FACA changes, it allows the government to keep things secret.

You know who wrote the Freedom of Information Act? Barry Goldwater wrote it. Barry Goldwater wrote FOIA, because he said a government that has so much power can intrude in the lives of individuals, and he wanted the public to know what was going on.

This bill and the way it is drafted without the Schakowsky amendment would allow this administration to meet in secret with business executives and lobbyists, just like it did in the Energy Task Force Vice President Cheney chaired. The administration could keep it all quiet. It could, in the name of national security, reward all these big industry groups that it is now so beholden to, by meeting with executives from the airline industry when they come in for special favors. But the public will never know, because the Freedom of Information Act, which protected all of us, will now be wiped out.

Remember the days when the Republicans said Washington is not the place where all the wisdom is located? Well, what do they do? They preempt the States from having Freedom of Information laws that are more open to the public than what we are going to get in the bill passed today.

It is a very sad day to see this in the Republican Party. I did not used to agree with them, but I used to respect them, when they worried about a big intrusive government that wasted money, that grew bureaucracy and became inefficient. Now it is responsive just to special interest big money.

Mr. ARMEY. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Indiana (Mr. BURTON), the distinguished chairman of the Committee on Government Reform, the committee of jurisdiction.

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I would just like to say to my good friends, the gentleman from California (Mr. WAXMAN) and the gentlewoman from Illinois (Ms. SCHAKOWSKY), I have high regard for both of them. We have tried to work on this in a bipartisan manner, and I really hope this whole issue does not degenerate into a political name-calling session, because we all want the same thing. We want to make sure Americans are secure and free from the threat of terrorism.

Now, the President wants to encourage the private sector to give information to the Department of Homeland Security to enhance the safety of the American people. He is concerned that the people we are talking about will not volunteer information if they think whatever they turn over will be released to the public under the Freedom of Information Act. I think he is right. You would not want some terrorist getting some of this information that would be voluntarily given to Homeland Security.

Let me give you an example. If a business owner recognizes that some part of his business infrastructure might be vulnerable to a terrorist attack, we want him to be able to come to the government and tell us about what he thinks might be done and how to deal with it. We want him to go to the Department of Homeland Security and be very candid. We wanted to be proactive, not reactive.

This is the sort of information we must have to prevent tragedy to the

American people. But if the businessman is worried and if his lawyers are worried that whatever he voluntarily discloses will go straight into the public domain and hence maybe to the terrorists, as we said earlier today, then he probably will not do it.

We are in a war. I hope my colleagues all remember that. We are in a war. We need to take steps to guarantee that those people will come to us with that information to protect the safety of the American people, and that is why I oppose this amendment.

I think the concerns raised by the sponsors of the bill, and I have high regard for all of them, are misplaced. The Freedom of Information Act will not be harmed. The legislation we will vote on today will not allow people to dodge the Freedom of Information Act. This bill does not change FOIA or the rules of FOIA for any other forms that businesses have to produce to any agency of the Federal Government. The only thing that will not be subject to FOIA information are the vulnerabilities to terrorist attacks.

The government needs the kind of information we are talking about, and we will not get it unless there is a voluntary decision by the business people and the private sector to disclose it to government. They are not going to do it if they feel like they are going to be threatened or they will expose something that might lead to a terrorist attack.

This is a commonsense, real world proposal, and we should not tie our hands behind our backs when it comes to fighting terrorism and protecting the American people.

I hate to say this, but I have high regard for the gentlewoman from Illinois (Ms. SCHAKOWSKY) and the gentleman from California (Mr. WAXMAN), but this amendment would do more harm than good.

□ 1715

We need to make sure we take every step possible to get the private sector working with the government to make sure we are free from terrorist attacks.

The CHAIRMAN pro tempore (Mr. SWEENEY). The Chair wishes to inform Members that the gentleman from Texas (Mr. ARMEY) has 7 minutes remaining and the gentlewoman from Illinois (Ms. SCHAKOWSKY) has 5½ minutes remaining.

Ms. SCHAKOWSKY. Mr. Chairman, I yield 3½ minutes to the gentleman from Ohio (Mr. KUCINICH) whose whistleblower amendment passed in the Committee on Government Reform, the language included in this bill.

Mr. KUCINICH. Mr. Chairman, it would be unfortunate, in our efforts to improve homeland security, if suddenly our government became less open, less transparent. It would appear if we do that, then the terrorists win, because their attack is on our basic premise of democracy, of a free and open society.

The current language in the bill fails to protect transferred homeland security, civil servants from whistleblower reprisals. Under the current Whistleblower Protection Act, the standard bureaucratic response has been to silence messengers blowing the whistle on national security breakdowns.

Now, the Schakowsky-Kucinich-Mink amendment is designed, and it is needed, to protect national security whistleblowers by allowing them to petition Congress directly and providing an effective remedy for any reprisal taken by the new agency.

Whistleblower rights are workers' rights and no worker should lose his or her job for exposing waste, cover-up, and lies of his or her superiors. It is ironic that in a bill which is designed to fight terrorism we have a provision designed to terrorize workers.

The passage of this amendment is vital to protect the security of the American people. The September 11 terrorist attacks highlight a longstanding necessity to strengthen free speech protections for national security whistleblowers, a number of whom have already made significant contributions to reducing U.S. terrorist vulnerability.

Now, Mr. Chairman, I just want to offer one example of a case that this House ought to be aware of, the case of Mark Graf.

Mark Graf was an alarm station supervisor and Authorized Derivative Classifier. He worked 17 years at the Department of Energy's Rocky Flats Environmental Technology Site. After the Wackenhut Services, a private security agency, took over this site with more than 21 tons of uranium and plutonium, Mark Graf witnessed the elimination of their bomb detecting unit, sloppy emergency drills, and negligence at taking inventory of the plutonium for months at a time. He and several other high-level officials raised serious concerns about a terrorist risk to the security of plutonium, as more than a ton of the material is unaccounted for at Rocky Flats. He took his concerns to management, which took no action.

In 1995, after blowing the whistle to a Member of Congress, Mr. Graf was immediately reassigned from the areas that raised concerns in the first place. In a classified memo to the site supervisors and later to the Defense Nuclear Facilities Safety Board, he outlined specific vulnerabilities which, if exploited, could result in catastrophic consequences.

With no corrective action being taken, he did an interview with CBS News. After the interview, he was subjected to a psychological evaluation and placed on administrative leave. As a condition of returning to work, he was gagged from speaking to Congress, the media, the agency, and also under the threat of job termination.

In 1998, he filed and later won a whistleblower reprisal complaint currently being appealed by his employers. His disclosures contributed to legislation in the 1998 Defense Authorization Bill requiring an annual review of the safety and security program.

We have a nuclear industry in this country with over 100 nuclear reactors, many of which have been relicensed and have reactor vessels that have been embrittled. We have a hole in a reactor that is trying to be repaired in Toledo, Ohio. Nuclear reactors are part of the critical infrastructure. This bill would let a cover-up be, in effect, okay in the name of national security so that the public would never know about a hole in a nuclear reactor or anything that was done that compromises the security of people who lived in the area.

This amendment is necessary. This amendment is in the interests of our national security and our public health.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 2 minutes to the distinguished gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Chairman, I think the FOIA concerns over parts of this amendment have already been made by others, but I will say just to my friend from Ohio, that is clearly not the intent of the underlying bill nor is it the impact of the underlying bill. All of the FOIA requirements that we would have, including right to know, would continue to be operative. This is a very narrow stipulation that, with regard to infrastructure information provided by the private sector, that we would get limited FOIA protection, which is absolutely necessary for national security, and that has been discussed.

This amendment would also create a plaintiff lawyers' dream as I see it, and that is the civil actions open to punitive damages for whistleblowers claiming to have suffered from reprisal. The mere threat of these punitive damages can cause defendants, including the government, to settle cases; and it does, to settle cases that have questionable merit just to reduce that risk of an extreme verdict.

The opportunity of punitive damages for a plaintiff, can make an otherwise meritless case look awfully tempting to pursue, just in case the jury does come in with a big verdict. It is excessive. Let us be clear. The committee bill does have traditional whistleblower protections in it. I am kind of tired of hearing it does not. Please turn to page 185 of the bill, because it is right there. These are the whistleblower protections that we have currently and they should be continued. They are important.

We should be promoting team spirit at this new Department, collaboration. The bill gives the Department the chance to give merit pay, performance bonuses in order to make this department work better as a team. That is the right incentive.

Let us not give incentives to start disputes in the off chance that a clever plaintiffs' lawyer might find something to win in a settlement. Let us stick with the strong whistleblower protections we have in the underlying legislation. Let us stick with the FOIA provisions which are appropriate to provide this narrow limitation with regard to infrastructure information that is important to protecting the national security of this country. Let us vote down this amendment and support the underlying bill.

Ms. SCHAKOWSKY. Mr. Chairman, could I inquire as to how much time we have remaining.

The CHAIRMAN pro tempore. The gentlewoman from Illinois (Ms. SCHAKOWSKY) has 2 minutes remaining.

Ms. SCHAKOWSKY. Mr. Chairman, I yield the balance of the time to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, how many times will this Congress need to relearn the very basic lesson that an unaccountable government is an irresponsible government? When we confront difficult problems, we can either work to try to solve them, or we can seek to hide them. Without the amendment that is being advanced at the moment, it is the latter choice that is being made.

Exempting so much of this new bureaucracy from the Freedom of Information Act and denying basic protections to whistleblowers is a true ticket to trouble for America. It is a "kill-the-messenger" and "hide-the-body" approach that tries to sweep all problems, including ones that endanger basic public health and safety, under the carpet by increasing the power of self-appointed censors and denying whistleblowers protection from retaliation.

The only lesson that some people have learned from Enron is the value of secrecy. After all, who exposed Enron's misconduct? A whistleblower named Sheeron Watkins. Certainly no one in this Congress exposed it. Indeed, some are still trying to ignore the causes of what happened at Enron.

Meanwhile, with this Administration, this is not the only place where secrecy is beloved. Just ask Vice President CHENEY about his "Energy Policy Development Group". We can ask, but he will not tell until a court makes him do it.

Congress should not shield unscrupulous employers who wield the powerful weapon of the pink slip to intimidate their workers into silence in order to conceal and perpetuate activities that endanger America.

□ 1730

These are citizen crime-fighters, who deserve the protection that we provide crime-fighters, not our scorn.

I have confidence in the power of courageous individuals to make lasting contributions to our Nation—to improve our private and public institutions. Congress should advance that interest by building in government accountability and by ensuring that our government is as open as possible, where employees are encouraged to fix security problems, not to hide them.

Vote in favor of the Schakowsky amendment.

Mr. ARMEY. Mr. Chairman, I am proud to yield 1 minute to the distinguished gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I was intrigued by the comments of the gentlewoman from Hawaii (Mrs. MINK) and also the gentleman from California. My first job as a lawyer was to work with Stuart Udall in the late 1970s when he was suing the Federal Government on the facts that came out about the fallout, which came out, in fact, in the context of FOIA requests.

Let me say that the information that came out was remarkable. I read every page of that information of the discussions that were held at very high levels in the military about how they should control the information about fallout and subject citizens of the United States knowingly to the unknown effects, known to be bad; but the scope of those effects were unknown at the time.

I agree that it was appropriate to have that information come out and be the subject of a lawsuit. The fact, though, is that that was government activity that was made available through the Freedom of Information Act.

The gentleman from California (Mr. WAXMAN) talked about the Republican Party. These are governmental activities. What we are dealing with in this exception is information that comes from private parties who own 90 percent of the infrastructure.

This amendment is ill advised, inappropriate; and I suggest that my colleagues vote against it.

Mr. ARMEY. Mr. Chairman, I am proud to yield 2 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I really like and respect its author, but I have to urge my colleagues to vote against the Schakowsky amendment on the Freedom of Information Act.

This is a very narrow restriction on public disclosure of information about the private industry's critical infrastructure. We all rely on that privately owned infrastructure of this Nation: computer networks, phone and power lines, airplanes, et cetera. As the gentleman from Virginia (Mr. TOM DAVIS) said, 90 percent of our critical infrastructure is owned by the private sector.

In President Clinton's Directive 63, an effort was put into play to enable the owners of this infrastructure to communicate with each other and formulate effective response plans to terrorism, extortion, and hacking. However, PD–63, that Presidential directive, found that companies would not share information about threats to their infrastructure because of their lawyers' concerns about FOIA and antitrust. Sharing such information would put them in an even more vulnerable position with respect to their customers, their shareholders, and their competitors.

I have to say, some of the objections that this amendment addresses are misleading. It is not unprecedented. Congress passed Y2K legislation to exempt information-sharing about critical infrastructure vulnerabilities from use in lawsuits and disclosure to third parties. It is narrower than that Y2K legislation. It contains numerous definitions. It provides no immunity from liability, no limit on discovery or lawsuits, no free pass on criminal activity. All required disclosures under the Clean Air and Clean Water Act must continue.

If we do not include this limited FOIA restriction, we will not be able to say we did everything we could to prepare and defend our homeland. It is a narrowly crafted restriction on FOIA, and it can help win the war on terrorism; so I urge my colleagues to join me in voting against the Schakowsky amendment and for the Davis-Moran amendment, which comes up next.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the amendment of the gentlewoman from Illinois (Ms. SCHAKOWSKY) would do two things. It would set aside some very carefully crafted language that modifies FOIA out of consideration for private sector firms who are asked to share crucial information with the government. That would be a mistake to set that aside. We need these firms that own so much of our infrastructure to cooperate.

Let me just say, FOIA was designed for the American people to understand what is going on in this government; not designed, nor would I think many Americans would think it appropriate, to use FOIA to force private citizens or corporations to give their information up to people like trial lawyers, newspaper editors, or college professors, the three practical categories of people who access FOIA information.

The second part of the gentlewoman's amendment is predicated on the misrepresentation that we do not protect whistleblowers in this legislation. This myth has been running amok in public discourse since the President proposed this. It was always the President's intention, and I believe discerning people would have recognized the President's intention in everything he said and submitted. It certainly is our intention on page 185 of this bill to protect whistleblowers.

So, one, Mr. Chairman, the argument that this bill contains no protection for whistleblowers is just plain flat wrong. The perceptiveness of any eighth-grader who can read would reveal that to anyone.

Now, what the gentlewoman does, building on the myth that there is no protection, is to provide extra special protections in the form of compensatory damages. Also, and I like this one, lawyers across America must be licking their chops over this one: "any other relief that the court considers appropriate not currently available to whistleblowers."

Mr. Chairman, if Members want to win the lottery, they should buy a ticket. In the meantime, vote down this amendment and defend the rights of the American people that are legitimate and just.

The CHAIRMAN pro tempore (Mr. SWEENEY). All time has expired.

The question is on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Ms. SCHAKOWSKY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY) will be postponed.

It is now in order to consider amendment No. 25 printed in House Report 107–615.

AMENDMENT NO. 25 OFFERED BY MR. TOM DAVIS OF VIRGINIA

Mr. TOM DAVIS of Virginia. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 25 offered by Mr. TOM DAVIS of Virginia:

Strike paragraph (2) of section 722, and insert the following:

(2) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means the Department of Homeland Security and any agency designated by the Department or with which the Department shares critical infrastructure information.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Virginia (Mr. TOM DAVIS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Chairman, I ask unanimous consent that my time be equally divided between myself and the gentleman from Virginia (Mr. MORAN).

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I want to express my support for the amendment offered by my good friend, the gentleman from Virginia (Mr. TOM DAVIS), the chairman of the Subcommittee on Technology and Procurement Policy. He has worked thoughtfully on this issue for many years now.

Although the underlying bill contains some of the necessary protections for private organizations to coordinate with each other and share information with the government, it does not go far enough. This amendment is a critical element to facilitate the type of public-private cooperation we want to see developed in protecting vital elements of our infrastructure.

That cooperation should not be artificially limited to the Department of Homeland Security exclusively when the President may want other existing Departments to be recipients of infrastructure vulnerability information.

A fact of life is that 90 percent of our critical infrastructure in this country, whether it is telecommunications facilities, pipelines, or electricity, the electricity grid, is held not by the government but by private companies and individuals. In order to induce these private entities to voluntarily share information about their vulnerabilities and security protections with each other and with the government, they need to be granted clear advance assurances that such collaboration and information-sharing will not hurt them.

Even more importantly, we need to ensure that such information is not used to our collective detriment. Openness is a great asset of our society, but there needs to be a balance. Already there is a great deal of publicly available information that can be used by those who wish us harm. But we should not release sensitive information not normally available in the public domain because a private entity has voluntarily cooperated with the Federal Government, or local government.

We have a successful model for this type of limited exemption from FOIA in the public and private efforts that were undertaken to prepare for the Y2K computer programming glitch, and that effort was an astounding success. I urge Members to support the Davis amendment.

The CHAIRMAN pro tempore. Does any Member rise in opposition?

Ms. DELAURO. Yes, Mr. Chairman, I do. I seek the time to control in opposition to this amendment.

The CHAIRMAN pro tempore. The gentlewoman from Connecticut is recognized for 10 minutes in opposition.

Ms. DELAURO. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I rise in strong opposition to this amendment which would take a bad idea and make it worse. We all understand the need to safeguard sensitive information relating to national security. The FOIA statute already contains exemptions for critical infrastructure information, confidential business information, for national security information. In effect, the tools are in place to protect this kind of information without curtailing the public's right to know.

This provision defines infrastructure information so broadly that it covers all kinds of lobbying requests, even lobbyists asking for liability protection. In essence and in effect, this provision is a lobbyists' protection act. An energy company could shield itself from liability from radioactive materials that leaked from its nuclear power plant, and lobbyists and industry officials would be allowed to communicate with Department staff charged with critical decisions without any public disclosure. We saw that already with the protracted fight with the administration, with the Energy Department, where they were forced to turn over documents that showed much of the White House energy plan was written by the energy lobbyists.

We have another example of the kind of information that could be kept from the public if this amendment passes. After a fatal Amtrak derailment in southern Iowa, investigation showed that a stretch of privately owned railroad track which suffered from over 1,500 defects was partly to blame. The FOIA exemptions in this bill would have kept this information, which is essential to prevent another disaster, from the public; and expanding those exemptions to other agencies would only keep more health and safety information from the public.

We should not be using this bill to curtail the public's right to know about critical health information, safety information. We should not use it, if you will, as a way to give corporations a way to avoid accountability for their actions.

Mr. Chairman, I reserve the balance of my time.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in support of the amendment offered by the gentleman from Virginia (Mr. TOM DAVIS). In fact, this amendment is actually an abbreviated version of a bill that he and I sponsored, H.R. 2435, the Cyber Security Information Act.

Some people thought our bill was too broad, so we worked together in a bipartisan manner with the administration and all the committees of jurisdiction, the interest groups, and the public to craft a very narrow restriction on public disclosure of information about the private industry's critical infrastructure.

The FOIA exemption at issue here is deliberately narrow, but it has addressed concerns that are legitimate. We all rely on the critical infrastructure of this Nation, and over 90 percent of that critical infrastructure is private. This is where our principal vulnerability lies. In Presidential Directive 63, which was issued by President Clinton, it enabled the owners of this private infrastructure to communicate with each other and formulate effective response plans to any acts of terrorism, extortion, or hacking; but that Presidential Directive 63 found that companies would not share information about threats to their infrastructure because of their concerns about FOIA antitrust and liability.

So today, as we continue to fight our war on terrorism, many companies want to help us by sharing what they have discovered; but they will not because they are legitimately concerned that in revealing actual or potential network risks and vulnerabilities, they may inadvertently heighten their own risks if all the information they provide the government has to be published under the Freedom of Information Act.

Without exemption from FOIA, businesses are likely to spend a lot of valuable time and resources scrubbing virtually all information supplied to the new Department of Homeland Security so that they do not inadvertently disclose market-sensitive information to their commercial rivals.

This narrowly crafted freedom of information exemption in this bill will alleviate this widespread industry concern and accomplish a fundamental goal of this legislation: collaborative and constructive business-government cooperation in the cause of homeland security.

We faced and solved a potential crisis like this before with our Y2K act. Everybody remembers when we woke up the morning of January 1, 2000, we wondered if the Y2K preparations were enough, or if we would face shutdowns of our critical infrastructure, banks, and other computer systems. But everything worked, and there were no Y2K disasters because of that legislation, which did very much the same thing that this legislation does.

The success of our approach to Y2K should be followed now. As with Y2K, we have to create an environment where private industry can discuss and share with the government information about threats, best practices, and defenses against terrorism.

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And I have to say, I do not think the objections raised are based on an accurate description of the language in this bill. Contrary to what it's opponents are saying, our FOIA provisions are not a mechanism to hide corporate wrongdoing or environmental disasters. The FOIA provisions in this bill provide no immunity from liability. There is no limit on discovery of lawsuits, and no free pass on criminal activity. Moreover, all required disclosures under the environmental statutes such as the Clean Air Act or the Clean Water Act must continue.

Without this legislation, we will not be able to say that we did everything we could to prepare our people and prevent disasters and defend our homeland. This very limited restriction on FOIA can contribute to winning the war on terrorism. That is why we need to support it.

Mr. Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I reserve the balance of my time.

Ms. DELAURO. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman very much for yielding me time.

The Freedom of Information Act provisions in this bill are a continuation of the current administration's onslaught on the public's right to know and they should be struck from the bill. Now we have the Davis amendment which dramatically expand them.

We know what this administration has done so far. It would not disclose what lobbyists and energy companies met with the Chaney energy task force. It issued an executive order limiting the release of presidential records. It repeatedly refused to release information requested by Congress, including even basic census information. Now it wants a huge statutory loophole inserted in the Freedom of Information Act. The majority says this is to protect information that may be necessary to protect homeland security.

Let me submit to the Members that what they really want to do is to protect lobbying groups, special interest groups, from having the fact that they have gone in and asked for special favors to be disclosed.

Under this amendment, a chemical company can go to the EPA and ask to relax the requirement that it report chemicals stored at its facility; it would make this request on the grounds that this information could be useful to terrorists. It could also be useful for the public to know. Under this amendment, they would say that has to be exempt from disclosure. A drug company could lobby the Department of Health and Human Services to relax human testing requirements for drugs that might have homeland security uses. And under this amendment, this information would be exempt from disclosure. A manufacturer can lobby the Department of Labor to relax worker safety regulations on the grounds that the regulations add unnecessary costs that limit its ability to implement securities measures, and under this amendment, this information would be exempt from disclosure.

Now in our committee I raised this point and the gentleman from Virginia (Mr. DAVIS) said absolutely not true. He said, this is not to protect lobbying and to assure the Members who were raising this point, he agreed, and everybody supported, an amendment I offered to the bill that said nothing in this subtitle shall apply to any information submitted in the course of lobbying any covered Federal agency.

So what happened? The bill went to the Select Committee on Homeland Security and it struck it out. What does that tell you? Why would the members of the Select Committee strike that out? Because they want to protect the lobbyists that come ask for special favors. This is just like they want to protect the groups that might be negligent in giving services or devices that they are going to sell to the government.

It is a giveaway. It is a giveaway to special interest groups that I am sure are major contributors to the Republican campaign committee. I believe it and I see evidence of it over and over again. There is no attempt to make this a bipartisan bill. They want it to be partisan and they want it for their special contributors.

The CHAIRMAN pro tempore (Mr. SWEENEY). The Chair wishes to advise Members that the gentlewoman from Connecticut (Ms. DELAURO) has 5 minutes remaining. The gentleman from Virginia (Mr. MORAN) has 1½ minutes remaining. The gentleman from Virginia (Mr. TOM DAVIS) has 3 minutes remaining.

Ms. DELAURO. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Chairman, we are told over and over again as we create this Department of Homeland Security that we are at war, that these are very special times. And clearly we need to know about infrastructure vulnerabilities. There is no question about it. Such information is essential.

Well, I wonder if it occurred to the majority that one way to get that information might be to require it. For an issue as critical as national security, it is striking that the administration is apparently unwilling to require companies to submit information on vulnerabilities, but instead willing only to rely on coaxing it from them voluntarily by relaxing the disclosure law that is a cornerstone of open government.

Now, the gentleman from Virginia (Mr. DAVIS) purported to give an example how information regarded as confidential by a company was released as an example of why we have to have this. But, instead, actually what he told us was how a company refused to give the information because they did not trust the government.

Again, over and over what we are told here is not that the Freedom of Information Act as currently written really does not have enough exemptions but that the lawyers for private corporations do not trust it. Do we not trust the new Secretary, whoever that may be, of the Department to say we will exempt those things that are a threat to national security, that are a threat to the confidential proprietary information of a company? We have put all kind of power in his hands. Certainly we can trust him to do that.

I think it was the gentleman from Virginia (Mr. DAVIS) also said that the Senate passed this language or the earlier language, the FOIA language, in their version of the bill, but that is not true. One important exception is the Senate bill does not preempt State and local Freedom of Information and other kinds of public information disclosure laws. It is important we should vote down this amendment. It is dangerous to our democracy.

The CHAIRMAN pro tempore. The Chair wishes to further inform Members that the order of closure will be the gentleman from Virginia (Mr. MORAN), who has 1½ minutes remaining, then the gentleman from Virginia (Mr. TOM DAVIS), who has 3 minutes remaining, and then the gentlewoman from Connecticut (Ms. DELAURO), who has 3 minutes remaining.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me put a couple of things to rest.

First of all, we are simply taking the base text of the bill as it is currently drafted as this House has approved, and we are extending the information that could be obtained by the Secretary of Homeland Security and are allowing in his discretion to share information that would not otherwise be attainable by the government, to share this information with other Federal agencies if it will help protect our critical infrastructure so that we can obtain the information that will keep our security systems, our cybersystems in the Department of Defense or in the FBI or the CIA, and the information that we receive through Homeland Security will protect those systems. We can share that information.

This is a very narrowly tailored amendment. This amendment, in fact, is more narrowly tailored than an exemption that was passed by this House and signed by the President on the Y2K Readiness Act. So we have done our best to make sure the Freedom of Information Act is protected.

This does not apply to lobbyists. I do not know why the language was taken out by the other committee. I certainly accepted antilobbying language at the committee level where we were before, but perhaps they took it out because such language is redundant.

The language here is very clear that only information that would otherwise not be attainable by government would now be able to be shared to protect our critical infrastructure and that it has to pertain to critical infrastructure information. If it pertains to anything else, it does not fit the exemption and it would be as it currently is, available under the current statute.

Now, this legislation has nothing to do with campaign contributions, and I think those kinds of statements belong in the political waste basket. I think we are people of good will here who are doing our best to make sure that in developing a Department of Homeland Security we are getting the best information available to combat terrorism.

We have to remember that in the caves of al Qaeda we found government documents obtained through the Freedom of Information Act that lay in terrorists' hands that they were using to destroy us. And just as the Romans built a system and a network that took them to all corners of the Earth, it was the same barbarians that used those roads to come in to destroy Rome.

What we want to do is as we build this infrastructure, we want to protect it from those barbarians, in this case, the terrorists.

Since the infrastructure is 90 percent owned by the private sector, we are soliciting comments, we are soliciting the experience from the private sector to share with the government in a way that will not be used to the private sector's detriment, so that the private sector's competitors, so that terrorists, so that lawyers cannot come in and get this information that would otherwise be attainable and use it against them. And without that protection, what we are finding out is companies, innovators, small innovators are reluctant to share that information with the government because it could bankrupt those companies.

This is narrowly crafted. The Senate agrees, at least, on the Federal portion of this. I concur with the previous speaker, it does not apply to State and local on the Senate side. We do because critical infrastructure also applies to State and local. I urge adoption of the amendment.

Ms. DELAURO. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, this amendment is the logical extension of a very bad idea of spreading secrecy throughout our government. It would enlarge a giant black hole. You pour taxpayer money in one side and out the other side, the only thing that comes out are the government-approved leaks.

For over 2 decades while the Soviet Union existed and the Berlin Wall divided Europe, the Freedom of Information Act maintained a careful balance between the public's right to know and our national security. Why today then have some leaders lost confidence in this landmark law?

Well, apparently, the answer is found in the language deleted from the bill that we are now told amazingly is "redundant". Language that clearly assumed that lobbying contacts would be revealed has been removed. And so the clear legislative history of this bill is that when lobbyists are seeking special treatment from this new bureaucracy, no one but them and their benefactors will know it occurred. Where our public safety is at stake, when we begin by burying secrets, we will end with burying bodies. This amendment ought to be rejected.

The CHAIRMAN pro tempore. Does the gentlewoman from Connecticut (Ms. DELAURO) wish to close?

Ms. DELAURO. Mr. Chairman, yes, I do. How much time do I have remaining?

The CHAIRMAN pro tempore. The gentlewoman from Connecticut (Ms. DELAURO) has 2 minutes remaining.

Ms. DELAURO. Mr. Chairman, I yield 1 minute to the gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

We all want to make sure the government has tools with which to operate efficiently, effectively, to safeguard the people and property of this country. The government is out there collecting information with its own resources, with tax dollars. All of that information is now available, accessible to the public under FOIA. Why is it we have to generate an exemption to the private sector for voluntary information?

If this information is necessary for homeland security, the government ought to be required to get that information; and then, if necessary, that information coming from a private source can be classified. It can be deemed to be business-related information that should be exempt.

I submit that all of the powers of the government that now allow these exemptions already exist in the nine categories that are in current law, that have been effective for the last 30 years to protect private interests, private business, trade secrets, everything else in the private sector; but we have not touched in any way the right of the public to know what it is that the government is doing, and there should be no secrets. Let the public have the absolute right to know.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume to close.

Mr. Chairman, the distinguished gentleman from California (Mr. WAXMAN) threw me for a loop a bit there when he said the language restricting lobbying had been taken out. But in looking through this, it is moot because this has nothing to do with lobbying.

The Congress just passed legislation to address corporate accountability. The President is going to sign it. There are a total of 11 sections in title 18 of the Civil Service Code. These are criminal law provisions. They govern the behavior of Federal employees and they restrict and prohibit acting as a lobbyist, being lobbied, revolving-door activities, financial conflicts of interest, making political contributions, lobbying with appropriated monies.

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The information that we are talking about here has nothing to do with lobbying. It is critical infrastructure vulnerabilities to terrorism. Electric dam supervisors are not going to be having anything to do with lobbying. It has to be in good faith and no evasion of law is allowed. These are telecommunications managers, they are financial service people, they are people that have identified vulnerabilities, vulnerabilities that we need to be protected by. We have been told by the FBI, by the Office of Critical Infrastructure Protection.

They desperately need this kind of language. The Department of Homeland Security needs it. Otherwise we cannot act effectively. We are not going to be able to protect the people of this country if our private sector that runs 90 percent of critical infrastructure is not able to disclose all of the information that might be relevant to protecting the American people. That is the reason for this amendment. It has nothing to do with lobbying. And it has everything to do with protecting the security of the American people.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentlewoman from Connecticut is recognized for 1 minute.

Ms. DELAURO. Mr. Chairman, this is really rather incredulous. We have through the Freedom of Information Act been protecting national security, trade secrets, other provisions of business information for the last 36 years. What have we been doing since we initiated this piece of legislation? Why if already the exemptions are built in here that they have worked for our Defense Department, they work for the FBI, they work for the CIA, do all of a sudden we put together a new Department here and those safeguards of the public's right to know are inoperable, they are abrogated? What is the reason?

And the very reason is what my colleagues, some on this side of the aisle and my colleagues on the other side of the aisle, say is that this provision is about protecting lobbyists. That is what it is all about, and we ought to vote it down. We ought to do what is the right thing to do, protect the public's right to know. The exemptions are built unto the law. They have been working. Let us continue to let them work.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. TOM DAVIS).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Ms. DELAURO. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Virginia (Mr. TOM DAVIS) will be postponed.

Mr. ARMEY. Mr. Chairman, I ask unanimous consent that after debate concludes on all amendments made in order under the rule, it be in order to recognize both the gentlewoman from California (Ms. PELOSI) and myself for the purpose of offering a pro forma amendment to conclude debate.

The CHAIRMAN pro tempore. Is there objection to the request from the gentleman from Texas?

There was no objection.

Ms. PELOSI. Mr. Chairman, I ask unanimous consent to strike the last word.

The CHAIRMAN pro tempore. Is there objection to the request from the gentlewoman from California?

There was no objection.

Ms. PELOSI. Mr. Chairman, I sought that time in order to engage the majority leader in colloquy about section 770 of H.R. 5005.

Mr. ARMEY. Mr. Chairman, if the gentlewoman will yield, I would be happy to engage in colloquy with the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I thank the gentleman from Texas (Mr. ARMEY).

This section would prohibit the Government from putting in place the Bush administration's TIPS program, the Terrorist Information and Prevention System. Is it the majority leader's intent that section 770 ban both the program called "TIPS" and any other successor program that might be considered that would have the same or similar characteristics as TIPS? In other words, would section 770 bar the Government both from putting in place the same program under a different name or a program under a different name with similar characteristics to the proposed TIPS program?

Mr. ARMEY. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the leader.

Mr. ARMEY. Mr. Chairman, I thank the gentlewoman for yielding.

Yes. Section 770 is intended not only to prohibit the TIPS program, but also any and all activities to implement the proposed plan. This means that section 770 prohibits the TIPS program no matter what name it is given and any program with the same or similar characteristics. This is not to say that the Government would be barred from receiving information about potential terrorism from any member of the public. Of course, it could and it does under current law.

Rather, what is prohibited is the creation of a Government program that would have the effect or purpose of encouraging workers and others who have access to our homes and our neighborhoods to report to the Government information that they think is suspicious. This work is best left to State and local law enforcement officials. There are much better ways to involve our communities in securing our homeland. After all, we are here today to defend our freedoms.

Ms. PELOSI. Mr. Chairman, I thank the majority leader.

Further, I would like to engage the majority leader in a colloquy about Section 815 of H.R. 5005. This section makes it crystal clear that nothing in this legislation authorizes the development of a national identification system or card. Since September 11 there have been several proposals to institute a national identification system or national I.D., and all have been met with a great deal of controversy. Direct passage of a national I.D. card, however, is only one possible path to such a system. There have also been proposals to establish a national I.D. through the back door of the State driver's license.

For example, in a recent report, the nonpartisan National Research Council called the American Association of Motor Vehicle Administrators' standardization proposal a "nationwide identity system." Does the majority leader agree that recent proposals to standardize State driver's licenses would be a back door route to a national I.D. and therefore prohibited under this provision?

Mr. ARMEY. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the leader.

Mr. ARMEY. Mr. Chairman, the answer is yes on both counts. The Federal government does not have the authority to nationalize driver's licenses and other identification cards. And this legislation would not give them that authority. The authority to design and issue these cards shall remain with the States.

The use of uniform unique identifiers or Social Security numbers with driver's license or proposed "smart cards" is not consistent with a free society. This legislation rejects a national identification card in any form.

Ms. PELOSI. Mr. Chairman, I yield back the balance of my time.

Mr. HOLT. Mr. Chairman, I ask unanimous consent to strike the last word.

The CHAIRMAN pro tempore. Without objection, the gentleman from New Jersey is recognized for 5 minutes.

There was no objection.

Mr. HOLT. Mr. Chairman, I wish to engage in a colloquy with the gentleman from Texas, who is the majority leader, the gentleman from New York and the gentleman from Delaware.

Mr. Chairman, I am troubled by reports indicating that due to financial pressures, Amtrak has been forced to make drastic reductions in the security personnel that patrol the Trenton Train Station, Penn Station in New York City, 30th Street Station in Philadelphia and others.

According to recent media accounts in Trenton, New Jersey, the staff reductions are so severe that they are now time when no officers are on patrol. This lack of security personnel not only compromises security but the safety of passengers. A strong railroad security is an essential part of a strong homeland security, and I hope that the gentleman from Texas will make certain that the commitment to rail security, particularly Amtrak police officers, is not reduced.

I am currently working with the gentleman from New York (Mr. CROWLEY) on a letter to the Committee on Appropriations to ask that they address this important issue in their transportation appropriations bill, and I hope that we can address it in this legislation as well.

Mr. CASTLE. Mr. Chairman, will the gentleman yield?

Mr. HOLT. I yield to the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I thank the gentleman from New Jersey for yielding to me, and Mr. Chairman, I want to associate myself with the gentleman from New Jersey's comments because what he is talking about is indicative of a larger problem.

Unfortunately, last year Congress and the administration provided Amtrak only $5 million for rail security in comparison to $3.8 billion for the Transportation Security Agency to improve aviation security. In my opinion, this imbalance must be addressed.

I do not know how many Members are aware of this, but I would like to point out that Amtrak's tunnels run underneath the House and Senate office buildings and the Supreme Court. We literally cannot afford to ignore rail security any longer.

I would say to the gentleman from Texas (Mr. ARMEY) that I respectfully request that when the House and Senate meet to negotiate the final details of this bill, that adequate security funding will be provided for Amtrak.

Mr. HOLT. Mr. Chairman, I thank the gentleman for his comments.

Mr. QUINN. Mr. Chairman, will the gentleman yield?

Mr. HOLT. I yield to the gentleman from New York.

Mr. QUINN. Mr. Chairman, I share the sentiments expressed here by my two colleagues, and I thank the distinguished majority leader for engaging in this discussion this afternoon.

As the chairman of the Subcommittee on Railroads in our full Committee on Transportation and Infrastructure, I think it is important for us to remember that regardless of any Member's position on the future of Amtrak and passenger rail service here in our country, I think all of us can agree that security on that rail system is essential. Reducing rail security personnel while we continue to wage a war on terrorism is misguided and unacceptable.

I join my colleagues in asking the gentleman from Texas for his assurance, even during a period of uncertainty surrounding Amtrak, to reaffirm our commitment to the security of our national rail infrastructure, including police personnel.

Mr. HOLT. Mr. Chairman, I thank the gentleman for his remarks.

Mr. ARMEY. Mr. Chairman, will the gentleman yield?

Mr. HOLT. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding, and let me say to all three of my colleagues, I thank them for their interest in the issue, and let me assure my colleagues that I share their concern about the security of our Nation's rail system.

I would also like to assure them that we will work in conference committee to make certain that the commitment to rail security, particularly Amtrak and Amtrak police officers, is not reduced so that rail stations such as the Trenton Train Station may remain secure.

Mr. HOLT. Mr. Chairman, I thank the gentleman from Texas for his comments and my colleagues.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. It is now in order to consider Amendment No. 26 printed in House Report 107–615.

AMENDMENT NO. 26 OFFERED BY MR. CHAMBLISS

Mr. CHAMBLISS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 26 offered by Mr. CHAMBLISS:

At the end of title VII add the following new subtitle:

Subtitle H—Information Sharing

SEC. 780. SHORT TITLE.

This subtitle may be cited as the "Homeland Security Information Sharing Act".

SEC. 781. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 782. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) Procedures for Sharing of Homeland Security Information.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) Sharing of Classified Information and Sensitive but Unclassified Information With State and Local Personnel.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) Responsible Officials.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) Federal Control of Information.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) Definitions.—As used in this section:

(1) The term "homeland security information" means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term "intelligence community" has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "State and local personnel" means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) Construction.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 783. REPORT.

(a) Report Required.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 782. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 782, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) Specified Congressional Committees.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 784. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 782.

SEC. 785. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting "or of a foreign government" after "(including personnel of a state or subdivision of a state";

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: "or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation";

(ii) in subclause (IV)—

(I) by inserting "or foreign" after "may disclose a violation of State";

(II) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State"; and

(III) by striking "or" at the end;

(iii) by striking the period at the end of subclause (V) and inserting "; or"; and

(iv) by adding at the end the following:

"(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat."; and

(C) in subparagraph (C)(iii)—

(i) by striking "Federal";

(ii) by inserting "or clause (i)(VI)" after "clause (i)(V)"; and

(iii) by adding at the end the following: "Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 786. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

"(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

"(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the At-

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Georgia (Mr. CHAMBLISS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Georgia (Mr. CHAMBLISS).

MODIFICATION TO AMENDMENT NO. 26 OFFERED BY MR. CHAMBLISS

Mr. CHAMBLISS. Mr. Chairman, I ask unanimous consent to modify the amendment with the modification that I have placed at the desk.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to Amendment No. 26 offered by Mr. CHAMBLISS:

In lieu of amendment #26 printed in House Report 107–615,

At the end of title VII add the following new subtitle:

Subtitle H—Information Sharing

SEC. 780. SHORT TITLE.

This subtitle may be cited as the "Homeland Security Information Sharing Act".

SEC. 781. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 782. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the

Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term "homeland security information" means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term "intelligence community" has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "State and local personnel" means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 783. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 782. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 782, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 784. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 782.

SEC. 785. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting "or of a foreign government" after "(including personnel of a state or subdivision of a state";

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: "or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation";

(ii) in subclause (IV)—

(I) by inserting "or foreign" after "may disclose a violation of State";

(II) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State"; and

(III) by striking "or" at the end;

(iii) by striking the period at the end of subclause (V) and inserting "; or"; and

(iv) by adding at the end the following:

"(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat."; and

(C) in subparagraph (C)(iii)—

(i) by striking "Federal";

(ii) by inserting "or clause (i)(VI)" after "clause (i)(V)"; and

(iii) by adding at the end the following: "Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 786. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

"(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

"(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 787. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Public Law 107-56; 50 U.S.C. 403-5d) is amended by adding at the end the following: "Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking "section 2517(6)" and inserting "paragraphs (6) and (8) of section 2517 of title 18, United States Code,"; and

(2) by inserting "and (VI)" after "Rule 6(e)(3)(C)(i)(V)".

SEC. 788. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

SEC. 789. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

Mr. CHAMBLISS (during the reading). Mr. Chairman, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The CHAIRMAN pro tempore. Is there objection to the modification offered by the gentleman from Georgia?

There was no objection.

Mr. CHAMBLISS. Mr. Chairman, I ask unanimous consent, that unless we have someone rising in opposition, that the gentlewoman from California (Ms. HARMAN) be entitled to the 10 minutes that normally would be claimed by the opposition.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. CHAMBLISS. Mr. Chairman, I yield myself such time as I might consume.

Mr. Chairman, information sharing is the key to cooperation and coordination in homeland security, and better information sharing among government agencies and with State and local agencies needs to be a higher priority.

The idea for this amendment was developed during a series of public hearings which my Subcommittee on Terrorism and Homeland Security held last fall. Witnesses ranging from former New York City Mayor Rudy Guiliani to Oklahoma Governor Frank Keating stressed the importance of increasing the level of information sharing between Federal intelligence and law enforcement agencies and local and State law enforcement personnel.

□ 1815

We must make certain that relevant intelligence and sensitive information relating to our national security be in the hands of the right person at the right time to prevent future terrorist attacks.

The gentlewoman from California (Ms. HARMAN) and I introduced the Homeland Security Information Sharing Act, which overwhelmingly passed this House in June. Our bill has strong support from groups such as the National Association of Police Organizations as well as the American Ambulance Association and the National Sheriffs Association.

Our amendment is virtually the same as H.R. 4598. We believe that it is critical that we increase the level of cooperation between State, local, and Federal law enforcement officials. Only by communicating on a more regular basis and sharing more information can we effectively prepare for and defend against future attacks.

In talking to community leaders and emergency responders all across Georgia, I am convinced that we must get this legislation signed into law. We know that gaps in information-sharing opened the door to the tragic events of September 11. Our amendment will go a long way toward filling those gaps and helping our law enforcement officials protect us by giving them the tools they need to do their jobs better.

I appreciate the improvements to the amendment that were made by the gentleman from Connecticut (Mr. SHAYS), the gentleman from New Jersey (Mr. MENENDEZ), and others. I urge my colleagues to join me in supporting this very important amendment.

Mr. Chairman, I submit for the RECORD letters of support from the groups I previously mentioned:

AMERICAN AMBULANCE ASSOCIATION,
McLean, VA, June 26, 2002.

Hon. SAXBY CHAMBLISS,
House of Representatives,
Washington, DC.

DEAR SAXBY: It is with great honor that I send this letter of support to you for your introduction of the Homeland Security Information Sharing Act (H.R. 4598).

As you and I have discussed, the American Ambulance Association (AAA) represents ambulance services across the United States that participate in serving more than 95% of the urban U.S. population with emergency and non-emergency care and medical transportation services. The AAA is composed of individual ambulance operations which serve patients in every state. Our membership is comprised of all types of ambulance service providers including for and not for profit, municipal and fire department and hospital based.

Our members greatly appreciate the commonsense approach that you and the Subcommittee you chair used in drafting this legislation. Visiting with local ambulance providers about their real needs, and then formulating federal law that is consistent with these needs, is indeed refreshing to us out there on the frontline of providing health care to our communities. As you have identified in your bill, first responders at the state and local level need access to specific, credible threats in order to help prevent and better respond to a terrorist incident. H.R. 4598 would greatly improve the flow of this information and enhance the emergency response system. The focus on local providers and their needs will give first responders and medics the tools and capabilities to better ensure the safety of the American public.

Again, thank you for your tireless efforts and tremendous work in drafting this piece of legislation. You are truly a representative of the people of this great nation. The AAA stands ready to help assist you in anyway to ensure passage of H.R. 4598.

Sincerely,

BEN HINSON,
President.

NATIONAL ASSOCIATION OF
POLICE ORGANIZATIONS, INC.,
Washington, DC, July 3, 2002.

Hon. SAXBY CHAMBLISS,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE CHAMBLISS: On behalf of the National Association of Police Organizations (NAPO) representing 220,000 rank-and-file police officers from across the United States, I would like to bring to your attention our wholehearted support for H.R. 4598, the "Homeland Security Information Sharing Act of 2002."

If enacted, this bill will significantly improve the ability of state and local law enforcement to access important information regarding federal investigations and possible terrorist threats. As the 2001 Anti-Terror legislation expanded information sharing between government agencies, H.R. 4598 will improve on this by setting up positive guidelines and facilitating successful information dissemination.

In the past, legal hurdles, coupled with an overarching federal culture that limited federal external communication, have blocked potentially useful information from being fully utilized. As our nation combats the threat of terrorism, state and local law enforcement will be on the front lines protecting the public and keeping the peace. In this role, necessary information about terrorist threats or investigation leads should not be kept out of reach due to procedural concerns.

As H.R. 4598 now moves to the Senate for consideration, NAPO looks forward to working with you and your staff to insure the bill's passage.

Sincerely,

WILLIAM J. JOHNSON,
Executive Director.

Mr. Chairman, I reserve the balance of my time.

Ms. HARMAN. Mr. Chairman, I yield myself such time as I may consume.

Sadly, Mr. Chairman, today we have had a few votes that were more partisan than I believe they needed to be. This amendment is not one of those, and I would hope that the managers of this bill might accept it. I certainly would hope that the House, if we vote on it, would vote on it by the margin it received last time, the small margin of 422 to 2.

As I stand here today, I know that the gentleman from Connecticut (Mr. SHAYS), the gentleman from New Jersey (Mr. MENENDEZ), and others, on a bipartisan basis, also plan to speak for this amendment. We have all worked together on this amendment. It is improved because of some language that they suggested, and I would like to thank the gentleman from Connecticut (Mr. SHAYS) for his action in his committee to include it in the draft of this bill as it was reported by his committee.

As my partner, the gentleman from Georgia (Mr. CHAMBLISS), has said, this amendment is nearly identical to H.R. 4598, which, as I said, passed overwhelmingly. The reason for offering this amendment today as part of this bill is to get in place as soon as possible procedures to share terrorist threat information across the Federal Government, which certainly includes the CIA, the FBI, and other intelligence agencies, and on down to first responders.

As our Subcommittee on Terrorism and Homeland Security Report found last week, information-sharing is the most critical need in our intelligence community and the best way to arm our first responders and average Americans to stop terrorist attacks. What we hear in the field, and all of us go home each weekend, from police, fire, emergency responders, and average people is they are receiving all this general information, but they do not know what to do about it.

The sooner we can get more specific threat warning information, stripped of sources and methods so that those without security clearances can get it, the sooner we can reduce panic, empower Americans, and make certain that, to the maximum extent, we prevent attacks, shore up our infrastructure, and respond effectively should they come our way.

So this amendment, I think, is our first tool in the homeland security arsenal we are considering today. It received the overwhelming support of this body, and it is supported by the White House and by the office of Governor Ridge. It is vital for our hometowns. And as Governor Ridge often says, we cannot have homeland security without hometown security. I urge support of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CHAMBLISS. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Connecticut (Mr. SHAYS), the chairman of the Subcommittee on National Security, Veterans' Affairs and International Relations of the Committee on Government Reform, a gentleman who has been very actively involved in the issue of terrorism for a number of months, even before September 11.

Mr. SHAYS. Mr. Chairman, I am very pleased to join the gentleman from Georgia (Mr. CHAMBLISS), the gentlewoman from California (Ms. HARMAN), and the gentleman from New Jersey (Mr. MENENDEZ) in offering this amendment.

Protecting the safety and security of the Nation against terrorist attacks requires absolute unprecedented cooperation between Federal, State, and local agencies. Timely information-sharing is an indispensable element of the Nation's ability to detect, preempt, disrupt or respond to any terrorist threat.

The Committee on Government Reform's Subcommittee on National Security, Veterans' Affairs and International Relations has heard repeatedly from State and local officials about the stubborn procedural and cultural barriers blocking access to sensitive information. In particular, elected officials and law enforcement officers have said they need the ability to obtain security clearances in order to get meaningful access to data on terrorist threats.

Whether it is intelligence about terrorist activity at the international level, or criminal history information shared between local jurisdictions, the electronic exchange of information is one of the most powerful tools available to protect our communities. This amendment calls for new procedures to maximize the potential of modern technologies, reduce bureaucratic barriers to information-sharing, and make sure essential homeland security data flows where it is needed most.

Mr. Chairman, the day is late; we started last evening, and so I would like to just use this time to thank my colleagues, the gentleman from Georgia (Mr. CHAMBLISS) and the gentlewoman from California (Ms. HARMAN) for the incredible job they have done. I also wish to thank the gentlewoman from California (Ms. PELOSI) and the majority leader for the work they have done. I also would like to thank the gentlewoman from California (Ms. HARMAN) and the gentleman from Texas (Mr. THORNBERRY) for the work they did with the gentleman from Florida (Mr. GIBBONS) and the gentlewoman from California (Mrs. TAUSCHER) on homeland security legislation before it was in vogue.

I am in awe to have had the opportunity to work with these colleagues. I believe that they have answered the call of the Nation in responding to the terrorist threat. I know we have a lot of work ahead of us. I am a little troubled by some of the partisan debate that has happened in the past few hours. I was hoping there might be an amendment or two our side of the aisle could have accepted during the debates today. But that notwithstanding, this is excellent legislation drafted by people of good will on both sides of the aisle.

I think the President can be proud of what the House will do today. I am certainly proud to have worked with such wonderful men and women on both sides of the aisle.

Ms. HARMAN. Mr. Chairman, I thank my colleague for his lovely and generous comments, and would inquire of the Chair as to how much time remains.

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentlewoman from California (Ms. HARMAN) has 7½ minutes remaining, and the gentleman from Georgia (Mr. CHAMBLISS) has 4½ minutes remaining.

Ms. HARMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. REYES), a member of the Permanent Select Committee on Intelligence.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I rise in strong support of this amendment, because since September 11 we have been in the process of learning several important lessons. One of the most crucial was the lack of effective intelligence dissemination and analysis.

For a while the buzzword was that we did not have the ability to connect all the dots. Machiavelli once said, "There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things." This amendment directs the administration to develop procedures for Federal agencies to share homeland security information with appropriate State and local authorities, both classified and declassified information.

After spending some 26½ years in Federal law enforcement, I know how important it is for the first responder to have access to tactical intelligence. Between 600,000 and 800,000 police officers protect our homeland every day, and have been on the job since the inception and the birth of this country. This amendment will build those bridges, those interagency bridges, that will get the information to the folks that need it. Those brave law enforcement men and women, who are literally our boots on the ground with respect to fighting domestic terrorism, need and deserve this capability.

So, Mr. Chairman, I rise in strong support of this amendment, and, in closing, I want to note the great job that both my colleagues, the gentleman from Georgia (Mr. CHAMBLISS) and the gentlewoman from California (Ms. HARMAN) have done, both on this amendment and also on the great work in working with the antiterrorism task force.

Mr. CHAMBLISS. Mr. Chairman, I thank the gentleman for his kind comments.

Mr. Chairman, I yield 3 minutes to the gentleman from Nevada (Mr. GIBBONS), the vice chairman of my Subcommittee on Terrorism and Homeland Security, and also the chairman of the Subcommittee on Human Intelligence, Analysis and Counterintelligence within the House Permanent Select Committee on Intelligence.

Mr. GIBBONS. Mr. Chairman, I thank the gentleman from Georgia for yielding me this time, and I do support this amendment.

Mr. Chairman, over the last several years, many of our government organizations, both State and Federal, have handled information-sharing and analysis in vastly different ways, much like various people would do in trying to put a puzzle together. For many of these organizations, when they get information, it is like reaching into a bag or box full of mixed-up puzzle parts, grabbing a handful of it, and running into their office to try to put the puzzle together without ever sharing the information about what they have with anyone else in another room. Just trying to put it all together all alone. And this has led to information gaps and analytical failures. The so-called Phoenix memo is a perfect example of this type of information hoarding.

I am pleased to support this bipartisan legislation which I believe helps our government organizations connect the dots much more effectively than it had before September 11. Over the past 10 months, it has become frighteningly clear that the terrorists targeting our Nation are far more advanced than previously thought. The new Department of Homeland Security must have complete and unobstructed access to every piece of information, whether Federal or State, and this information regarding cyberterrorism, weapons proliferation, terrorist financial activities and narcotics trafficking, to name a few, are critical for every organization to have at hand.

H.R. 5005 establishes a key counterintelligence division within the Department of Homeland Security that will keep vital information out of the hands of our enemy, tighten the noose around the neck of terrorist organizations, such as al Qaeda, Hamas, Islamic Jihad, and others, while being able to share that information with our first responders down at the local level.

The Information Analysis Center is another integral part of this overall legislation, and this Center will have several key missions, including correlating and evaluating information and intelligence; producing all-source collaborative intelligence analysis, warnings, and assessments of the terrorist threat and disseminating these assessments.

Improving the lines of communication between the States and the Federal Government, local public safety agencies, and the private sector through the timely dissemination of information pertaining to threats of terrorism is critical and a key part of this amendment.

Coordinating elements of the intelligence community with Federal, State and local law enforcement agencies is also a critical part of this. If the new Department is to make credible threat warnings, it must be able to obtain and analyze information from all possible sources. It is not enough to rely on whatever the CIA and FBI themselves choose to tell them.

To put it simply, Mr. Chairman, knowledge is good, all-source analysis is even better, an all-source, collaborative analytical center within the Department that shares information is best. This legislation gives the Department of Homeland Security the information and resources necessary to make its own conclusions.

Mr. Chairman, I have had the privilege to work closely with both my colleagues, the gentleman from Georgia (Mr. CHAMBLISS) and the gentlewoman from California (Ms. HARMAN) on this legislation, and they are great leaders. I applaud their work, and this is a strongly supported amendment to this overall legislation. It is important for our country today, and I urge my colleagues to vote "yes" on it.

Ms. HARMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. PELOSI), the ranking member on the House Permanent Select Committee on Intelligence, on which I serve, and the Democratic whip.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding me this time, for her kind words, but most of all for her leadership.

□ 1830

Mr. Chairman, I am very pleased that this amendment is being considered on the floor today. I commend the gentleman from Georgia (Mr. CHAMBLISS) and the gentlewoman from California (Ms. HARMAN) for their work on this over the long term.

This bill passed the floor 412–2. It had been our hope to include it in the base bill that would come to the floor, but it was rejected by a 5-4 vote in the Select Committee. I am pleased that we have another chance for Congress to work its will on this important issue on the floor this evening.

As I have quoted previously real estate, the three most important words are location, location, location. When it comes to homeland security, the three most important words are localities, localities, localities. Our work on homeland security should begin and end in the localities. That is largely where the threat is. That is where the ideas are, and that is where the needs are. The gentleman from Georgia (Mr. CHAMBLISS) and the gentlewoman from California (Ms. HARMAN) have traveled the country having hearings on this subject.

We hear from our experts that information sharing is absolutely essential. They have pled with us to make this part of any homeland security. I want to praise them for the response they have received thus far from Congress, and hope that result will even be better today.

In any event, the need for information is essential for us to reduce risk to protect the American people better, and that is why this is so essential. I hope that we can do it in a department of homeland defense that is technologically maximizing the capabilities of the new technologies, and it will further enable information to be shared to protect the American people.

Ms. HARMAN. Mr. Chairman, I yield myself such time as I may consume.

This is the kind of bipartisan debate that this bill, H.R. 5005, deserves. I am pleased that on a bipartisan basis, every single speaker has been for this good idea. I hope our first responders are listening because they are about to get some very important new tools, the critical one of which is the ability to get accurate, credible threat information in time to know what to do.

Mr. Chairman, I yield the balance of my time to the gentleman from New Jersey (Mr. MENENDEZ), who has shown extraordinary leadership on this issue and the related issues in this bill we are considering today as head of the House Democratic Caucus on Homeland Security.

Mr. MENENDEZ. Mr. Chairman, I commend the gentlewoman from California (Ms. HARMAN) and the gentleman from Georgia (Mr. CHAMBLISS) and the gentleman from Connecticut (Mr. SHAYS) for the work that they have been producing for quite some time, for the vote that was taken overwhelmingly in the House, and I am glad to have not only offered it in the Select Committee to lay the foundation, but to offer some additional language that was accepted.

This amendment is about the key problem with the Federal Government's performance leading up to September 11. Most important, it is about Congress acting to correct in part what went wrong. The crux of the issue of September 11, it seems to me, is the need for information sharing, both within the Federal Government and between the Federal Government and State and local authorities.

The crux of this amendment is to guarantee that critical threat information will be shared. We have to get this right from the start, and I believe this certainly is. Simply moving agencies as proposed into a new Department without requiring agencies to share information is simply insufficient. We would be remiss not to guarantee, as this amendment would, that critical homeland security information sharing will occur.

We learned that from Coleen Rowley, the courageous FBI whistleblower, among others, about the unacceptable failure to share information critical to the events surrounding September 11 within the Federal Government. This amendment would make sure that those failures are not repeated.

Lastly, the amendment directs the President to prescribe and implement new procedures to share information on terrorist threats. Adding implement to the equation is necessary to ensure that these procedures do not end up collecting dust on the shelves of Washington's bureaucracies.

This amendment requires that through those procedures, the information will be shared, and the information must be shared both across the Federal Government and down to the State and local governments and first responders. Local responders have told all of us in meetings throughout the country that they need threat information on terrorist activities along with clear guidance on what to do with it.

Only with the guarantees in this amendment can we be secure in knowing that a process is in place to make sure that the secretary, police, firefighters, all first responders, get all of the critical information that they need and that they know what to do with it.

Governor Ridge often says if the hometown is secure, the homeland is secure. Shared information will empower the local communities to protect themselves. And shared information will also supplement the administration's homeland security advisory system by giving those responders useful and actionable information.

Lastly, this amendment recognizes that the sharing of information is more effective when it is unclassified, but it protects all of the sources and methods and the work that my colleagues have done in this regard, which is I think exceptionable and is to be commended to the House in that regard.

I think that by having this amendment adopted, we can guarantee that information sharing takes place across the Federal Government and then across the landscape of our country from States, counties, and municipalities. With that when we know that information is being shared, we are secure. I urge adoption of the amendment.

Mr. CHAMBLISS. Mr. Chairman, I yield myself such time as I may consume.

We are coming to a close of two long days of debate on what is the most major restructuring of the Federal Government that we have seen in 60 years. This is probably the most important piece of legislation that in, my 8 years, that I have served in this great institution that we will take up and pass. I am very pleased that this particular amendment is going to be included in the bill that is going to be finally passed in this House, because I am totally confident that because of this particular amendment, because we are going to be able to now get information in the hands of local and State officials, law enforcement officials, the folks who are on the front line, the folks like Sheriff Richie Chaifin, Sheriff Bunch Conway, those folks on the front lines are going to have information now to be able to disrupt and stop terrorist activities.

I want to conclude by just commending our President under his leadership, his particular step to take this bold action of restructuring our Federal Government to ensure that our children and our grandchildren are able to live in the same safe and secure society that all of us have enjoyed is a major, major step in the right direction.

This Department of Homeland Security is going to allow us to give our children and grandchildren that safe and secure America. I again thank the gentlewoman from California (Ms. HARMAN) for the gentlewoman's hard work on this. We have traveled a long trail with this, and it is good that we are coming to a conclusion with it.

Mr. BALDACCI. Mr. Chairman, I rise in support of this amendment, which will improve the sharing of relevant terrorist threat information between federal agencies and local governments and our first responders.

To me, this is the very foundation of our efforts, and the fundamental basis of a sound homeland security and an effective Department of Homeland Security. Since September 11th, I have worked closely with my colleagues to secure funding to equip our first responders, as they are our first line of defense in the fight against terrorism. However, to successfully win this fight against terrorism, we must provide our first responders with more than equipment and money. In order to safely and effectively perform their jobs and prevent or respond to a terrorist attack we must share critical homeland security threat information with our first responders and local officials.

I am sure that we have all heard from first responders and local officials in our districts about the need to strengthen lines of communication between federal and local governments regarding Homeland Security information. This amendment directly addresses the concerns that I have heard from Maine officials. The more information provided to them, the better they are able to perform their duties and protect our citizens.

Finally, I would like to thank my colleagues for their work on this important amendment.

The CHAIRMAN pro tempore (Mr. SWEENEY). The question is on the amendment, as modified, offered by the gentleman from Georgia (Mr. CHAMBLISS).

The amendment, as modified, was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 27 printed in House Report 107-615.

AMENDMENT NO. 27 OFFERED BY MR. WELDON OF FLORIDA

Mr. WELDON of Florida. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 27 offered by Mr. WELDON of Florida:

At the end of section 402 (relating to functions transferred) insert the following:

(9) The Visa Office of the Bureau of Consular Affairs of the Department of State, including the functions of the Secretary of State, relating thereto.

In section 403 (relating to visa issuance) strike subsections (a) through (f) and insert the following (and redesignate subsection (g) as subsection (i)):

(a) AUTHORITY.—Notwithstanding the provisions of section 104 of the Immigration and Nationality Act (8 U.S.C. 1104) or any other law, the Secretary shall have exclusive authority to issue regulations with respect to, administer, and enforce the provisions of that Act and all other immigration and nationality laws relating to the granting or refusal of visas.

(b) TRANSITION.—

(1) IN GENERAL; DETAILS.—During the 2-year period beginning on the effective date of this Act, there shall be a transition period. During this period consular officers (as defined in section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9))) of the Department of State and other foreign service officers in the Visa Office, to the extent they are involved in the granting or refusal of visas or any other documents required for entry into the United States, shall be detailed to the Department of Homeland Security. A detail under this subsection may be terminated at any time by the Secretary.

(2) MAINTENANCE OF ROTATION PROGRAM.—During the transition period described in paragraph (1), the Secretary of State shall maintain and administer the current rotation program (at least at the employment level in existence on the date of enactment of this Act) under which foreign service officers are assigned functions involved in the adjudication, review, or processing of visa applications.

(3) TERMINATION OF TRANSITION PERIOD.—The transition period may be terminated within the 2-year period described in paragraph (1) by the Secretary after consultation with the Secretary of State.

(4) EXISTING EMPLOYEES OF VISA OFFICE.—Employees of the Visa Office who are not foreign service officers shall become employees of the Department of Homeland Security immediately upon the effective date of the transfer of the Visa Office to the Department under this title.

(c) TRAINING.—

(1) TRAINING PROGRAM.—The Secretary shall provide for the training of Department personnel involved in the adjudication, review, or processing of visa applications, specifically addressing the language skills, interview techniques, fraud detection techniques, and other skills to be used by such personnel.

(2) Study Regarding Use of Foreign Nationals.—During the transition period, the Secretary shall study the role of foreign nationals in the review and processing of visa applications, specifically addressing the following:

(A) The proper role, if any, of foreign nationals in such processing.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the employment of foreign nationals.

(3) Report.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the findings of the study under paragraph (2) to the Committee on Government Reform, Committee on the Judiciary, and Committee on International Relations of the House of Representatives and the Committee on Governmental Affairs, Committee on the Judiciary, and Committee on Foreign Relations of the Senate.

(d) Legal Effect.—

(1) In general.—The transfer of authority to the Secretary in section 403(a) shall not be construed to modify—

(A) any ground for such refusal authorized by law (including grounds under sections 212 and 221(g) of such Act (8 U.S.C. 1182 and 1201(g)));

(B) the presumption of immigrant status established under section 214(b) of such Act (8 U.S.C. 1184(b)) or the effect of failure to establish eligibility for nonimmigrant status described in such section; or

(C) the burden of proof placed upon persons making application for a visa or any other document required for entry under section 291 of such Act (8 U.S.C. 1361) or the effect of failure to establish eligibility for such visa or other document described in such section.

(2) Nonreviewability.—No court shall have jurisdiction to review the granting or refusal of a visa by the Secretary or a designee of the Secretary.

(e) Refusal of Visas at Request of Secretary of State.—Upon request by the Secretary of State, the Secretary of Homeland Security shall refuse to issue a visa to an alien if the Secretary of State determines that such refusal is necessary or advisable in the interests of the United States.

(f) Review of Passports Issued to Americans Overseas.—The Secretary shall have the authority to review requests for passports by citizens of the United States living or traveling overseas.

(g) Conforming Amendments.—Section 104 of the Immigration and Nationality Act (8 U.S.C. 1104) is amended as follows:

(1) In subsection (a), by striking "conferred upon consular officers" and inserting "conferred upon the Secretary of Homeland Security".

(2) In subsection (c)—

(A) in the first sentence, by striking ", a Visa Office,"; and

(B) in the second sentence, by striking "Directors of the Passport Office and the Visa Office" and inserting "Director of the Passport Office, and the head of the office of the Department of Homeland Security that administers the provisions of this Act and other immigration and nationality laws relating to the granting or refusal of visas,".

(3) By striking subsection (e).

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Florida (Mr. WELDON) and the gentleman from California (Mr. LANTOS) each will control 10 minutes.

The Chair recognizes the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, why are we passing this bill? Why are we creating this Department of Homeland Security? As I see it, we are doing it because if we are ever attacked again, we want to be able to respond better; but more importantly, we never want to be attacked again. We also believe that this is going to be a very long fight. Why else would we be rearranging all of these agencies like this. We certainly would not be doing this if we thought that this was just going to last for a few short years.

It is important to note that this is not primarily an issue of protecting real estate, although the damage to the Pentagon and the loss of the Twin Towers hurt us, and hurt us badly. What hurt us much, much more is the loss of lives. I knew someone who was killed September 11. Many Members knew people as well. Thousands of innocents are dead. We all agree, never again do we want to see Americans killed like we did on 9/11. I ask Members, what is the single most effective thing that we can do to prevent another terrorist attack on American soil. I think the answer is obvious, never let another terrorist into our Nation, a difficult task, granted, but nothing less than that should be our goal. It should be our mandate.

I ask Members, what are we doing in this bill to respond to this mandate? Well, we are moving border patrol and INS into homeland security. We are moving the Customs Service, the Coast Guard, even APHIS. Why are we leaving the State Department's visa office, the very agency responsible for issuing all 19 of the September 11 terrorist visas, why are we leaving them out of the new department?

Members will hear some of the reasons from some of the opponents to my amendment. I want to make two important points. We may hear that Colin Powell will be able to reform State's troubled visa office and give homeland security the priority it needs. Colin Powell is not going to be there forever. Deciding who we let into this country is arguably the most important homeland security function of all. Why leave this in the hands of diplomats? We may be fighting this battle for decades.

The structural changes made in our government by Harry Truman provided the tools that were used throughout the Cold War by all Presidents who followed, Democrat and Republican alike. Should we leave the visa office out of the Department of Homeland Security simply because today we have a very capable person who understands security at the Department of State?

I say that is not a valid reason. I will tell Members another reason why many people are fighting to move the Office of Visa Issuance into the Department of Homeland Security. The office next year will generate $630 million for the State Department. They do not spend that much money on visa services.

Concerns about jurisdiction and money must not prevent us from doing what is best for our Nation. This amendment transfers the visa function to the Department of Homeland Security where it belongs, and provides singular management of the visa process. It allows for a 2-year transition period during which those foreign service officers currently on the visa line will remain there, and the State Department's current rotation system remains in place. It preserves the Secretary of State's authority to deny a visa for reasons of national interest, and it preserves the nonreviewability of visa refusals in the courts. It also provides for comprehensive training for visa officers.

Mr. Chairman, I reserve the balance of my time.

Mr. LANTOS. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE).

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Mr. HYDE. Mr. Chairman, this is a simple issue. There are 12 million, give or take, applications for visas every year submitted around the world. There are about 200 stations around the world where American foreign service officers process those applications for visas. What the gentleman from Florida wishes to do is to take the issuing of the visas, the administrative function, 12 million of them every year, and put them in the Homeland Security Agency. I am suggesting that that is impractical, that it is not going to work.

You are not doing the Homeland Security Agency any favor by dumping an administrative task in their lap. The present foreign service officers have done, for the most part, a very good job, although I will agree with the gentleman from Florida, we do need some changes. This is not status quo. The gentleman from California (Mr. LANTOS) and the gentleman from California (Mr. BERMAN) are cosponsors of this bipartisan bill which has been approved by the Committee on the Judiciary, the Committee on International Relations, the Committee on Government Reform, and the Select Committee on Homeland Security.

What we do is we do turn over the administration of the office to the Homeland Security. The training, the review, the regulatory power, the authority, the running of the whole operation is turned over to Homeland Security. But the ministerial work out in the field, in the 200 offices around the globe, is left with the Foreign Service Department of State because they have the experience, they know what they are doing, and they are in place. It would take 2 years to replace them all. I do not know where you would get the people to replace them all.

This is not going to work. You are not helping Homeland Security by giving them this monumental task which has little to do with homeland security.

I do not ask that the gentleman reconsider, I know that is not going to happen; but I hope that his amendment is defeated and this compromise that has been worked out with the administration and with four standing committees is not upset.

Mr. WELDON of Florida. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida (Mr. KELLER).

Mr. KELLER. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise tonight in support of the Weldon amendment to move the visa office from the State Department to the new Department of Homeland Security. I have the happy privilege of representing Orlando, Florida, which is the world's number one tourist destination. Orlando was devastated by the events of September 11. Nothing would be more harmful to Orlando's tourism-based economy than another terrorist attack. So I care deeply about this issue.

Some of you may initially be reluctant to support the Weldon amendment because you have heard that Colin Powell and Henry Hyde oppose any attempt to strip the State Department of its power to issue visas to foreigners. I certainly do not blame you for deferring to these individuals, and I do not pretend to have the same level of expertise in foreign relations as these two esteemed gentlemen. But I am reminded of the words of President Ronald Reagan: facts are stubborn things. So let me give you the facts with respect to one country, Saudi Arabia:

Fifteen of the 19 airplane hijackers on September 11 were from Saudi Arabia and were issued visas by the State Department. Ten of those visas were issued by a single foreign service officer, yet we know from a recent GAO investigation that the State Department did not interview that officer after 9–11 to learn what might have gone wrong. Three of the other Saudi terrorists obtained their visas through the State Department's "visa express" travel agency program and were never even interviewed by the State Department prior to obtaining their visas. In fact, in the 3 months prior to 9–11, the State Department failed to do a personal interview on 97 percent of the 22,360 Saudis they issued visas to.

Shockingly, despite September 11, the State Department continued the visa express program until just this week. Let me ask my colleagues a simple question: As a Member of Congress, how will you feel if there is another airplane hijacked in the United States because a poorly trained, entry-level State Department diplomat-wannabe issued a visa to yet another terrorist from Saudi Arabia?

Vote "yes" on the Weldon amendment.

Mr. LANTOS. Mr. Chairman, I yield myself such time as I may consume.

Mr. LANTOS. Mr. Chairman, I find myself in the unusual position of representing the position of the President of the United States, George W. Bush; the Secretary of State, Colin Powell; the President's adviser on homeland security, Governor Ridge; and, of course, the unanimous voice of the House Committee on International Relations which voted without a single dissenting vote for the Hyde-Lantos-Berman proposal.

Our distinguished chairman, Chairman HYDE, outlined the main reasons for our position. Four House committees approved our position. It is a position which is a rational, sensible compromise. It leaves the issuance of over 11 million visas to competent foreign service officers all over the country, but it gives the Homeland Security Department the authority to place as many of their people into every single one of these offices that issues visas and they will have the sole and exclusive jurisdiction of final decision.

It is inconceivable to me why the gentleman from Florida does not find this arrangement a perfectly safe, rational, and foolproof arrangement. Not a single visa will be issued under our plan if Homeland Security objects. Every single approval must come from Homeland Security.

I think it is important to realize that the thousands of foreign service officers who perform the ministerial function do not choose to join the foreign service because they want to spend a lifetime issuing visas. That is their initial step. Their hope is to be an ambassador to a country 25 or 30 years into their career. The notion that we will set up a duplicate foreign service which has no other function but to issue visas simply boggles the mind. What quality individuals will we be able to find who will be dedicating their entire lives to issuing visas? Not the kinds of people we now find for our foreign service.

I would like to suggest, Mr. Chairman, that our compromise, which has the support of four of our committees with jurisdiction in this matter, the President of the United States, the Secretary of State and Governor Ridge is the only rational formula. I urge all of my colleagues to reject the Weldon amendment.

Mr. Chairman, I rise to claim the time in opposition to the Weldon amendment.

Mr. Chairman, I rise in strong opposition to the Weldon amendment and I ask unanimous consent to revise and extend my remarks.

Mr. Chairman, Chairman HYDE and I worked together on a bipartisan basis on H.R. 5005 with other members of the International Relations Committee to craft a sensible proposal relating to visas. This provision is now in section 403 as reported by the Select Committee.

Under our proposal, the Secretary of Homeland Security would have exclusive authority to set visa policy, while State Department consular officers will continue to process the visas. The Secretary of Homeland Security can overturn decisions of consular officers to grant a visa, alter visa procedures now in place, and can develop programs of training for consular officers. In addition, our proposal would allow Homeland Security employees to be assigned abroad to review cases that present homeland security issues and deal with homeland security issues that arise abroad.

I am very pleased that the White House has announced its support for this proposal, and that in addition to the Select Committee, all three other House committees that considered it adopted virtually the same amendment. Moreover, I understand that Governor Ridge confirmed the Administration's support for the amendment in testimony before the Select Committee last week. I am simply asking that the House endorse what all four Committees considering this matter have done and what the Administration has supported.

Mr. Chairman, I want to take a brief moment to tell you why I feel so strongly about maintaining the provision as it exists in the Select Committee.

The talented young people who join the Foreign Service, at the average age of 32 for the last entering class, have the ambition to become an ambassador to an important country or some other high level position in the Department of State. It is on this basis that they are willing to dedicate years of their lives to focus their talents on questions related to visas. It is inconceivable that we can attract quality people to jobs that have no such promise of advancement, with employees facing an entire career of visa interviews.

Even more important, any proposal transferring the entire visa function to Homeland Security would risk overwhelming Homeland Security personnel with non-homeland security functions and thereby make it difficult or impossible for them to perform their central mission. The last thing this Department should be focused on is creating a whole new system for adjudicating over 11 million visas per year, at a huge and unknown cost.

Mr. Chairman, I know people are concerned about the visas that were issued to the terrorists who attacked New York, and the amount of training that consular officers have on conducting interviews of visa applicants.

Under our amendment, the Secretary of Homeland Security will be able to order exactly what kind of training consular officers should receive, specifically direct that certain persons will not be issued visas (irrespective of the Department of State's views), and will ensure that security concerns are properly considered both in Washington and abroad. If he believes that "Visa Express" or other similar programs should be closed, he can close it.

Moreover, Mr. Chairman, the Weldon Amendment undercuts the very structure of this legislation. The Select Committee mark keeps the visa processing element of INS in the Department of Justice. The Gentleman's amendment would have the bizarre effect of keeping domestic visa issues out of Homeland Security, but overseas visa processing in Homeland Security. This is an absurd outcome.

Finally, Mr. Chairman, the version in the Select Committee also includes a provision that Mr. WELDON already added in the Government Reform Committee, requiring assignment of Homeland Security personnel to Saudi Arabia and review of all Saudi visa applications by such personnel. But this does not seem to be enough for Gentleman—he wants another bite at the apple.

In conclusion, Mr. Chairman, I think that the Hyde-Lantos-Ros-Lehtinen-Berman Amendment adopted by four committees on a bipartisan basis, addresses all the Gentleman's concerns. I urge my colleagues to support section 403, which has been endorsed by the President, Governor Ridge, the President's adviser on Homeland Security, and Secretary of State.

By retaining a role for consular officers in adjudicating the millions of applications presenting no security-related issues, the President's plan will allow Homeland Security officers to perform their homeland security mission. By authorizing the presence of Homeland Security officers in our overseas posts to identify and deal with homeland security issues, Section 403 as written offers the best protection for our homeland security.

Do not upset this balance. Oppose the Weldon Amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. WELDON of Florida. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Colorado (Mr. TANCREDO).

Mr. TANCREDO. Mr. Chairman, many of our colleagues have come to the floor today to express their deep commitment to doing everything that can be done to ensure the protection of the American people. It is a laudable sentiment, but one that rings hollow when juxtaposed against the fact that today our borders are just as porous and just as undefended as they were on September 11, 2001.

We may indeed wish to go home to our constituents and tell them that we have done everything we can do, but that would be far from the truth. Just last week a television program documented the ease with which human smugglers illegally bring people into the United States, including potential terrorists. This is 10 months after September 11. This situation will improve only marginally by the creation of this new agency, and that is because of only one thing. It is the consolidation of the various border enforcement activities that now reside in a myriad of Federal agencies, each one operating within a vacuum, with little if any communication between and among them. But even this effort is being crippled because perhaps the most moribund of all of these agencies, namely, the Department of State does not want to give up a responsibility that they have so dismally failed to uphold.

We have heard the horror stories, but it is not all due to just incompetence. Much of the slipshod process is a result of a culture within the Department of State. Consular officials are told that their primary responsibility is to treat every applicant for a visa as if they were a "customer" and to expedite the process as quickly as possible with as little inconvenience to the "customer" as possible. Hence, most interviews are completed literally in seconds. Of course, some of those "customers" showed their appreciation for this consideration by crashing airplanes into our buildings.

Even today, attempts to enforce security standards are resisted by the State Department. In Mexico, consular officials today have been told to ignore FBI requests to fingerprint and record all applicants on particular watch lists. They are told that it would take; quote, "too much time."

I ask you, if you were leaving home at night, would the State Department be the type of neighbor with whom you would leave the keys to your house? Vote for the Weldon amendment.

Mr. LANTOS. Mr. Chairman, I am delighted to yield 2 minutes to the distinguished gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding me this time.

Three points: first, the logic of the amendment from the gentleman from Florida is simple. Consular employees, State Department consular employees have granted visas to bad people. They have made mistakes. Therefore, eliminate them. Eliminate the State Department role. Under that logic, the CIA should be taken out of intelligence-gathering because they did not know that Iraq was developing nuclear weapons during the 1980s. The central office of the FBI should be collapsed because they did not act on messages from the Phoenix and Minneapolis offices regarding suspicious activities by people in the United States. And the National Security Agency should be folded up because it did not translate intercepted communications fast enough to warn us about September 11.

I would suggest that for 2 days we have been debating amendments with arguments tossed back and forth. "Listen to the committees of jurisdiction, they have expertise."

"Defer to the administration, they know what is best."

"Take the approach of the Special Committee on Homeland Security because they have the right synthesis."

Well, in this case the administration, the three committees of jurisdiction, and the Special Committee on Homeland Security have considered the gentleman's amendment and have rejected it. Moreover, had the other gentleman from Florida (Mr. KELLER) talked to the gentleman from Florida (Mr. WELDON), I am sure he would have learned that in the case of Saudi Arabia, the Weldon amendment, the other Weldon amendment, exists in this bill that says as to Saudi Arabia visas, someone from Homeland Security has to make every single interview in this context.

In this bill, policies, training and ultimate final decisions are made by the Department of Homeland Security but do not try to re-create, because you will not be able to, an incredible bureaucracy of language-trained people in many countries to do this process. It will not work. It will fall on its face. This compromise is the sensible compromise. I urge the amendment be rejected.

Mr. WELDON of Florida. Mr. Chairman, may I inquire who has the right to close?

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentleman from Florida, the proponent of the amendment, has the right to close.

Mr. WELDON of Florida. Mr. Chairman, I reserve the balance of my time.

Mr. LANTOS. Mr. Chairman, I am delighted to yield 1 minute to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. President, I want a Homeland Security Department, but I want a deliberative and thoughtful process. I thank the ranking member, I thank the gentleman from California (Mr. BERMAN), and the gentleman from Illinois (Mr. HYDE) for a thoughtful process. This is the way to have this work effectively.

How does it work? First, it gives the Homeland Security officers authority to oversee the visa process. Those officers can actually refuse visas and develop programs for training the consular offices. But at the same time, we do not throw away the expertise of the State Department and all the expertise of our outstanding foreign service staff persons who deal with diplomacy every day, who understand the language and the culture. We keep the employees in the State Department, but the hardline rules and the instructions and the way to protect us and the security direction is with the Department of Homeland Security. I believe the Weldon amendment will undermine this expertise and will take us further away from being secure; and it should be defeated and we should keep the language and the format as it is in the bill.

Mr. President, I want a bill, but I want it to be deliberative and effective on behalf of the security of the American people.

As the ranking member of the Judiciary Subcommittee on Immigration, Border Security and Claims, I, like many others in this body, have sat through many a hearing and markup about the creation of the Department of Homeland Security (DHS). At every hearing and every markup that I have attended regarding the DHS, visa processing has been a contentious and difficult issue. There are the State Department for its role in the events of September 11.

Yes, we all know that the nineteen terrorist who attacked the U.S. on this infamous date, traveled to the United States on legally issued visas. What they fail to realize, however, is that the consular agents who man the front lines of the war on terror and interview and carry out the rules which govern visa processing, have no way of knowing that a visa applicant is a terrorist, but for the information they are provided about the applicant through the FBI, CIA or other organizations and institutions that make up the Intelligence Community in the United States. I distinctly recall the testimony of the Under Secretary for Management at the State Department before my Subcommittee. He unflinchingly stated that "There is no way, without prior identification of these [applicants] as terrorists through either law enforcement or intelligence channels and the conveyance of that knowledge to consular officers abroad, that we could have known [the terrorists] intention." I would underscore this point by adding that the largest of these intelligence organizations, we all know who they are, are not even a part of the newly created DHS.

I, for one, find the prospect of placing the entire visa issuance function, currently the responsibility of the State Department, within the exclusive authority of the Secretary of Homeland Security troubling. Everyday, in consular posts around the world, issues arise as to how a policy or regulation should apply in a specific case. Cases often turn on questions that have a significant impact on U.S. foreign policy interests, U.S. business interests, or the American values of family unity and humanitarian protection. These issues all properly reside within the expertise of the State Department and should be resolved in consultation with it.

During, the Judiciary Committee's markup of its recommendations for the Department of Homeland Security, my colleagues Mr. HYDE and Mr. BERMAN, offered an amendment that addresses these important issues. I spoke in favor of the provisions of the Hyde-Berman amendment and I do the same today as it is currently the prevailing language of H.R. 5005. This bill provides that the administration of visa issuance function be carried out by State Department employees under the policy and regulatory guidance of the DHS. I had planned to offer an amendment creating a fifth division of the DHS. My amendment includes the Hyde-Berman Amendment language.

The Weldon amendment is opposed by the White House and Secretary of State Powell and is contrary to the bipartisan decision of the four House Committees that considered this issue, including the Select Committee. If adopted, the amendment will distract the Secretary of Homeland Security from the task of securing the United States by forcing the new Department not only to absorb all the agencies described in H.R. 5005, but also to create a whole new bureaucracy and career track for processing between 10 and 12 million visa applications a year—of which the overwhelming majority are from bona fide tourists, business people, and relatives of U.S. citizens who pose no danger to homeland security.

The House International Relations, Judiciary and Government Reform Committees considered this issue and determined that the visa function should remain with the State Department, which will act under the guidance of the policies and regulations developed by the new Department of Homeland Security. Transferring exclusive policy and regulatory authority over visa issuance to the Secretary of Homelands Security will put security concerns at the forefront of visa decisions without losing the talent, training and experience of consular officials currently serving at the State Department.

Mr. Chairman, I urge my colleagues to oppose the Weldon amendment.

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Mr. LANTOS. Mr. Chairman, I yield myself my remaining time.

Mr. Chairman, my colleagues have made all the arguments but one: Buying into the Weldon amendment would incur a vast and indeterminable cost in building a gigantic overseas bureaucracy to perform administerial functions. Homeland Security has full authority to reject any visa application they choose. The State Department officers must continue to issue visas. I ask all of my colleagues to reject this ill-advised amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. WELDON of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this body passed a bill creating a large bureaucracy to protect our airline security, so the argument that was just made, as far as I am concerned, is not really valid, particularly when you look at the fact that I do not create a new bureaucracy. I transfer the visa office to the Department of Homeland Security.

What will happen if we do that? Well, some of the Department of State personnel will stay on in the new Department of Homeland Security, because they have been doing visa issues for years, and then the Department of Homeland Security will have to hire new people.

The important thing they will do is they will hire people who are trained more like police officers, that have more security in mind. The people who are currently occupying these positions essentially are people who are interested in becoming diplomats. Is that the right thing? Do we want the people who screen who comes in to be people who really want to do diplomatic and economic policy?

Finally, I want to say one important thing about the current supposed compromise. Under current law, the Justice Department under the Attorney General defines policy for visa issuance and the State Department carries it out. Under this supposed compromise, the Department of Homeland Security will define those policies and the State Department will carry it out.

I do not really see the current language as going obviously far enough. In committee I managed to get an amendment through that at least gave the Department of Homeland Security Secretary the authority to deny a visa, which I would have to say is somewhat of an improvement. But it simply does not go far enough.

The most effective thing we can do is transfer the visa office. I ask my colleagues again, why are we moving all of these other functions into the Department of Homeland Security and leaving this vital function out?

I was in the Army. When you deploy to the field, protecting your perimeter was the most important thing. If you could not do that, you were not going to be able to be a fighting force.

Protecting our borders is the most important thing. Vote yes on the Weldon amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, as the ranking member of the Judiciary Subcommittee on Immigration, Border Security and Claims, I, like many others in this body, have sat through many a hearing and markup about the creation of the Department of Homeland Security (DHS). At every hearing and every markup that I have attended regarding the DHS, visa processing has been a contentious and difficult issue. There are the State Department for its role in the events of September 11.

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American values of family unity and humanitarian protection. These issues all properly reside within the expertise of the State Department and should be resolved in consultation with it.

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Mr. Chairman, I urge my colleagues to oppose the Weldon Amendment.

The CHAIRMAN pro tempore (Mr. SWEENEY). All time for debate on this amendment has been exhausted.

The question is on the amendment offered by the gentleman from Florida (Mr. WELDON).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. WELDON of Florida. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Florida (Mr. WELDON) will be postponed.

Ms. PELOSI. Mr. Chairman, I ask unanimous consent to speak for 1 minute.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. PELOSI. Mr. Chairman, I rise to speak to inquire of the distinguished majority leader how he would like to proceed.

Mr. ARMEY. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Chairman, we have come to the conclusion now of the consideration of all our amendments. We will soon move on to votes. The gentlewoman from California may note that under a previous unanimous consent request, both she and I will be recognized for 5 minutes to speak out of order for the purpose of appreciating the process and our colleagues.

Mr. Chairman, it would be my suggestion the gentlewoman take her 5 minutes and then, as has been my custom, I will cling to the last word.

Ms. PELOSI. Mr. Chairman, reclaiming my time, if I may further inquire of the distinguished majority leader, would it then be the intention that we would move to the votes and any other business before we move to final passage?

Mr. ARMEY. The gentlewoman is right.

Ms. PELOSI. Mr. Chairman, would the gentleman like to shed any light on the schedule for the remainder of the evening?

Mr. ARMEY. Mr. Chairman, if the gentlewoman will continue to yield, we will soon be completing this bill. I would guess we would probably go to the bankruptcy conference report that so many of us have waited upon with such great expectations. Then, should other business make itself available after that, we would be prepared.

I would advise Members to be prepared to work until sometime later in the evening, but that we should conclude our work before we adjourn tonight's session and be available, I think, for first flights in the morning.

Ms. PELOSI. Mr. Chairman, I thank the distinguished gentleman for the information, and look forward to making further inquiries into the night as may be required.

The CHAIRMAN pro tempore. Pursuant to the prior unanimous consent request, the gentlewoman from California (Ms. PELOSI) is recognized for 5 minutes.

Ms. PELOSI. Mr. Chairman, I thank you and all of those who have presided over this debate in the last 2 days on an issue of very, very immediate importance to the American people, the safety of our country and their personal safety. I wish to commend all of the Members of Congress, of this House, on both sides of the aisle for their enthusiastic embrace of the issues involved in this legislation.

I particularly want to commend the staff, the bipartisan staff of the standing committee, as well as of the committees of jurisdiction, who worked very, very hard over the past few weeks. Personally I want to commend on my own staff Carolyn Bartholomew, George Crawford and Nathan Barr for their good work; Kristi Walseth of the staff of the gentleman from Texas (Mr. FROST); Pedro Pablo Permuy of the staff of the gentleman from New Jersey (Mr. MENENDEZ); and Becky Salay of the staff of the gentlewoman from Connecticut (Ms. DELAURO), and as I say, all of the staff of the standing committee.

Mr. Chairman, we are gathered here today to honor a compact that our government has with the American people, and that compact is to provide for the common defense. It is embodied in our preamble to the Constitution, wherein our civil liberties are enshrined. Our Founding Fathers knew that we could do both, protect and defend our country and protect and defend our Constitution and our civil liberties, and that is what we set upon to do in this legislation.

On September 11, our country was attacked in a way that was unimaginable up until that time, and is unforgettable from then on. Anyone who has visited Ground Zero in New York, the Pentagon or the crash site in Pennsylvania knows that they have walked on hallowed ground. Indeed, in our work here today and in the past few weeks, we, too, are on hallowed ground. We have a solemn obligation to those heroes who died as martyrs to freedom and to their families to respond in a way that reflects the greatness of our country. That greatness, again, calls for protecting our country and our civil liberties in the best possible way, to reduce risk, to protect the American people in the best possible way.

Mr. Chairman, I am sad to report that I do not think that the legislation before us meets that standard. We have tried to find our common ground, and where we found agreement, we resolved differences. But on some issues that are fundamental to us on both sides, we could not find agreement.

We are in a stage of the legislative process, and it is my hope that, as we go forward, we will be able to resolve some of these differences further, so that at the end of the day we will have bipartisan agreement on the Department of Homeland Security, which we all agree we need, but have some disagreement over what form it should take.

I myself had hoped that we could present to the American people a Department of Homeland Security that was lean and of the future, not a monstrous bureaucracy of the '50s that would have been obsolete even then. I had hoped that this new lean department would, instead of bulk, capitalize on the technological revolution in order to increase communication and coordination.

I had hoped that the Secretary of Homeland Security would be able to coordinate functions, rather than have to manage and administer staff. Indeed, the very size of this Department is alarming. It will have, by low estimate, 170,000 employees, and the Government Accounting Office says it may even have 200,000 employees.

Mr. Chairman, there are 85,000 jurisdictions in the United States, cities, towns, municipalities, governments, and only 120 of them, of the cities in our country, have a larger population than the Department of Homeland Security. Salt Lake City, Utah, Providence, Rhode Island, Portsmouth, Maine, Reno, Nevada, to name a few, are all smaller in their population than the Department of Homeland Security will be.

I am sad that in the bloated bureaucratic approach we are taking that we are looking backward rather than forward in protecting the American people. But hopefully we can resolve some of that as we go forward. That speaks to the need for a strong Office of Homeland Security in the White House.

The CHAIRMAN pro tempore. The time of the gentlewoman from California has expired.

Ms. PELOSI. Mr. Chairman, I would ask the distinguished chairman, the gentleman from Texas (Mr. ARMEY), if he would agree to an additional 5 minutes on both sides. I will ask unanimous consent to have an additional 5 minutes on each side. I understand that the gentleman from Texas (Mr. DELAY) wishes to speak. I will use our time.

Mr. ARMEY. Mr. Chairman, if the gentlewoman makes that request, I can say to the gentlewoman that I certainly would not object, and I would encourage my colleagues to not do so, if the gentlewoman would direct the request to the Chair.

Ms. PELOSI. Mr. Chairman, I ask unanimous consent for an additional 5 minutes on both sides.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. PELOSI. Mr. Chairman, I am afraid that we do not see the respect for the civil service that I think that this Homeland Security Department legislation should contain. There is a serious reason why we have a civil service. It came into existence to eliminate corruption and favoritism, and, here, we have here a diminishing of the rights of our workforce, rather than enhancement of our civil service.

We sing the praises of our first responders, of our public employees who stand as the first line of defense, physically and intellectually, in protecting America, and yet in this new Department we want to diminish their rights.

I am also concerned about the safety issues. It took my breath away in committee when the chairman's remark had in it the elimination of a deadline for putting detection devices in place to detect explosives in baggage. We end up in this bill with an extension. But I hope that that will not be an endless extension, but I fear that it may be. I do not think that is the way to protect the American people best.

I am very concerned about the liability provisions, the total immunity given to businesses, even those guilty of fraud and wrongdoing. Unlimited immunity. We had a nice alternative, a good alternative that the business community agreed to offered by the gentleman from Texas (Mr. TURNER) which lost by one vote on the floor. I hope that we can revisit that issue.

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So I put it to my colleagues. Is it your judgment that a bloated bureaucracy that undermines the civil service, that gives unlimited immunity even to wrongdoers is the best way to protect the American people?

As my colleagues know, our tragedy started at the airports, Mr. Chairman, and in this legislation, there is protection for the very kinds of security companies that were a part of the problem to begin with. Not only are we not trying to improve the situation, we are protecting the wrongdoers very specifically.

So as my colleagues can see, I have some concerns about the bill. It does not mean I have some concerns about the idea; we all know that we want a Department of Homeland Security. We all hope that in working together through the rest of the legislative process, we can come closer to a department that will do the job. What we have now is the department that the Government Accounting Office says will take 5 to 10 years to be up and running, and that will cost $4.5 billion to set up. We will spend any amount of money to protect the American people, but is that $4.5 billion spent in the best way to protect the American people?

After all is said and done, Mr. Chairman, it comes back to the families. I have had them say to me that a plane flying overhead is a source of terror to them. We owe it to them to reduce risk, to bring life as close to normal as possible for them.

The goal of terrorists is to instill fear. We cannot let them have that victory. We must work together to again, protect the American people best, and to do so in a way that is not only a comfort to the families, but removes sources of terror for them.

Again, though, I want to commend all of my colleagues on both sides of the aisle for the respect and dignity for those families they have brought to this debate. I know we all have a common goal; we have different ways of reaching it. But those of us who have certain beliefs about how government should look in the future, and have experience that speaks to the possibilities of technology being the source of coordination and communication, rather than having cohabitation in a building for 170,000 people, believe that we can reach that goal.

In closing, I want to compliment the majority leader. He is never listening, so my colleagues will have to tell him what I say, and that is that he, throughout the process, has been a champion for protecting our civil liberties every step of the way.

Not only has he been vigilant, he has taken leadership, and for that I want to commend him. We did not have many other areas of agreement, but I hope the American people know that we are all of good intent when it comes to their welfare.

Mr. Chairman, I yield back the balance of my time.

Mr. ARMEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, at this time I yield to the gentleman from Texas (Mr. DELAY), the distinguished whip, and a member of the Select Committee on Homeland Security.

Mr. DELAY. Mr. Chairman, I thank the majority leader for yielding me time.

Mr. Chairman, we need to move forward, and we need to move forward to provide the President with the tools that he needs to secure our homeland. Our current structure simply cannot meet the demands of an age in which the primary threats to the United States have shifted. New threats have surfaced. We face asymmetrical warfare from rogue regimes. We face grave danger from terrorist organizations plotting to use weapons of mass destruction.

America needs an overhauled, comprehensive agency that is engineered to combat the dangers that are unique to our time. We need to move beyond our current dysfunctional organization of domestic security responsibility. We need to apply ingenuity and experience to craft a combined agency whose employees will arrive at work each morning with a single defining mission: protecting the people, resources, and institutions of the United States.

To be organized effectively and function efficiently, the Homeland Security Department must be consolidated. It has to be flexible, and its employees must be readily accountable to its Secretary.

The President's focus is a department that is lean, focused, and operating under the highest standards of accountability. Unfortunately, many of the amendments that we saw through this process had little or nothing to do with protecting our homeland.

We saw attempts to freeze out private enterprise. We saw efforts to water down the Homeland Security Secretary's power to hold the Department's employees to the highest standards of performance and conduct. We saw initiatives to deny flexibility. We saw proposals that would have opened a whole banquet for trial lawyers and dissuaded companies offering high-tech, terror-fighting tools; amendments that would serve a divergent agenda; amendments that would weaken the Department to placate entrenched interests; amendments designed by the bureaucracy to preserve bureaucratic unaccountability.

We should be pursuing a common goal. We should only consider change that would increase the effectiveness of the new Department to catch and preempt terrorists. Changes that do not should be rejected out of hand. We do not have the luxury of weakening our last line of defense.

Let me just close with a word about the extraordinary job that the gentleman from Texas (Mr. ARMEY) performed in stewarding the President's plan through the Select Committee on Homeland Security process.

Mr. Chairman, the majority leader was fair, he was open to constructive ideas, even-tempered, and generous to the minority. He was a true leader in the best sense of the term. Unfortunately, his generosity was not met in kind. He was rewarded with a raw dividend of stale partisanship.

I take my hat off to the majority leader. I take my hat off to the majority leader for accomplishing his mission and producing a plan that upheld the President's vision and brought us closer to a safer, stronger America. Members were right to keep a sharp eye against any measure that would cripple our effort. We simply could not afford to invest this new Department with the ponderous inefficiency that hobbles much of the Federal bureaucracy. This is a reorganization that we can be proud of, a reorganization that will ensure our security at home.

Mr. ARMEY. Mr. Chairman, as we said earlier, on June 18, the President of the United States sent up here a request for legislation to create a Department of Homeland Security which we all recognize to be a daunting task. On the very next day, on June 19, this body enacted resolution 449, which established the Select Committee on Homeland Security and the procedure by which we would act upon the President's request. In just these few short weeks, all 12 of our standing committees have acted and have acted judiciously and comprehensively, with a sense of focus on this Nation's security that demands and commanded our respect.

The Select Committee on Homeland Security was privileged to have the work of these 12 different committees and to work with that work, and I hope with all of my heart that that which we brought before this body tonight justifies the quality of commitment that we saw in our colleagues on those 12 committees. We will vote on that in a minute, but one thing is for certain. By the time we take a final vote tonight, every Member of this body will know: I had my say, I had my influence, I had my input, and I have a part of what we produced here.

Let me, if I may, talk about a few people in addition to, of course, our standing committees, those members of the President's administration and cabinet, Governor Ridge, I suppose, in particular, but virtually every member of the cabinet came before us and shared their insight, their advice, their understanding. We had what I like to call our congressional entrepreneurs who worked with us so much of the time, shared their insight, their understanding. We had so many people, but we also had some remarkable staff work, and I would like to talk about those people we call staff that make it possible for us to take bows.

Let me mention a few. Brian Gunderson, my chief of staff. Brian and I had the extraordinary opportunity in the years 1987, 1988 as a couple of green horns to earn some spurs around here over this thing called base closing. We have been working together on so many products since, and now we come to a parting for us. Brian is moving on, I am sure to better things. I will miss him, my friend, my advisor, my partner.

Brian served as the Select Committee on Homeland Security staff director, and Paul Morrell as the deputy staff director. Paul covered everything, and I think you all will agree, with consideration and charm.

Margaret Peterlin served as the Select Committee on Homeland Security's general counsel, and she has been my right-hand man. Margaret worked day and night, and we may have, I say to my colleagues, we may have owned the days around here, but Margaret Peterlin owned the nights and she kept everything on hand, and everybody enjoyed working through her good cheer and her kindness.

Stephen Rademaker, you even worked through your birthday, Stephen, bless your heart, as the Select Committee on Homeland Security's chief counsel. He came to us from the House Committee on International Relations and his expertise was outstanding, and we now know your secret, Mr. Chairman, why your committee produces such quality work.

Hugh Halpern served as the Select Committee on Homeland Security's Parliamentarian. Hugh took a temporary leave of duty from the House Committee on Financial Services to serve with the Select Committee on Homeland Security, and he sat at my side through some of the difficult things. I always wondered why the gentleman from Ohio (Chairman OXLEY) looks so good in committee. I hope I look nearly as good. But for the extent to which I may or may not have, it was Hugh that made it possible for me to not look as bad as I could have.

Kim Kotlar served as the senior professional staff member. Kim came to the Select Committee on Homeland Security from the office of one of our brightest stars in this Chamber, my good friend, the gentleman from Texas (Mr. THORNBERRY), long before September 11. The gentleman from Texas (Mr. THORNBERRY) was on the job on this deal, and Kim obviously is the brains of that, and she has been so sharing with us.

Richard Diamond served as the Select Committee on Homeland Security's Press Secretary. Richard first started in my Texas office, he has done so many things, but he is, I say to my colleagues, the conscience of the conservative when it comes to basic foundation human rights. In my office, Richard is my guy. He is the one that spots the transgressions and calls them to my attention.

Joanna Yu overcame an educational handicap as a Princeton graduate. Joanna has worked so hard as the select staff member providing support to all of our general efforts.

Michael Twinchek from the House Committee on Resources served as clerk for the Select Committee on Homeland Security. Mike kept our hearings and markup running smoothly, and proved that it was not just the chairman that knew how to mispronounce a name.

Will Moschella, as counsel from the Committee on the Judiciary to the Select Committee on Homeland Security, was a vast resource for us.

I would also like to thank members of the majority leader staff who pitched in to help. Liz Tobias and Tiffany Carper who helped to plan, organize, and implement our grueling days of hearings and markup. Terry Holt, who served double duty on the press front, and I do believe helped the Nation to see and appreciate what it is we were trying to accomplish. Those are just a few of the people I might mention.

Let me say what it is I think we tried to do, all of us working together. The need for a Select Committee on Homeland Security to work with the President's proposal and the 12 committees of jurisdiction and the Members of this body to create a Department of homeland defense was born out of one of the most horrible moments of terror in the history of this Nation.

□ 1930

It was certainly the most in any of our lifetimes. But we believed that we could rise beyond that. America is a great Nation that refuses to have its future and its expectations about its future defined by its fears.

We believe that we have helped to craft a department of this government that will focus the resources of this government on our safety and on our security, on the defeat of villainy, so thoroughly well that this great Nation can get back to its business of living by its greatest expectations, its hopes, and dreams.

Should we have done that right, Mr. Chairman, we will look back some day and we will say, we had a hand in that, and are we not proud?

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore (Mr. SWEENEY). Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment 23 offered by the gentleman from Minnesota (Mr. OBERSTAR); amendment No. 24 offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY); amendment No. 25 offered by the gentleman from Virginia (Mr. TOM DAVIS); amendment No. 27 offered by the gentleman from Florida (Mr. WELDON).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 23 OFFERED BY MR. OBERSTAR

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 211, noes 217, not voting 5, as follows:

[Roll No. 362]

AYES—211

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Berman
Berry
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (IL)
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Ford
Fossella
Frank
Frelinghuysen
Ganske
Gephardt
Gonzalez
Gordon
Graves
Green (WI)
Grucci
Gutierrez
Hall (OH)
Harman
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kolbe
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (KS)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Ramstad
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Shimkus
Shows
Simmons
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tierney
Towns
Turner
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOES—217

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Berkley
Biggert
Bilirakis
Bishop
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Flake
Fletcher
Foley
Forbes
Frost
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Green (TX)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
Kerns
Kingston
Kirk
Kleczka
Knollenberg
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCrery
McHugh
McInnis
McKeon
Meek (FL)
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Otter
Oxley
Pastor
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Udall (CO)
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Cox
Meehan
Roukema

☐ 1958

Messrs. HEFLEY, HUNTER, HOBSON, REGULA, KENNEDY of Minnesota, and SCHAFFER changed their vote from "aye" to "no."

Messrs. ROEMER, HILL, and WYNN, and Ms. MILLENDER-McDONALD changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 24 OFFERED BY MS. SCHAKOWSKY

The CHAIRMAN pro tempore (Mr. SWEENEY). The pending business is the demand for a recorded vote on the amendment No. 24 offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 188, noes 240, not voting 5, as follows:

[Roll No. 363]

AYES—188

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)

Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Hostettler
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Morella
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Petri
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Skelton
Slaughter
Solis
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—240

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Bishop
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Lampson
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
McCrery
McHugh
McInnis
McIntyre
McKeon
Menendez
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Moran (VA)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Meehan
Roukema
Terry

□ 2007

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 25 OFFERED BY MR. TOM DAVIS OF VIRGINIA

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. TOM DAVIS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 195, noes 233, not voting 5, as follows:

[Roll No. 364]

AYES—195

Aderholt
Akin
Armey
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Brady (TX)
Brown (SC)
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Castle
Chambliss
Coble
Collins
Condit
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Foley
Forbes
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Graves
Greenwood
Grucci
Hall (TX)
Hansen
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hobson
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kind (WI)
King (NY)
Kingston
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Moran (VA)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Pombo
Portman
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—233

Abercrombie
Ackerman
Allen
Andrews
Baca
Bachus
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Bryant
Burr
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Chabot
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Ford
Fossella
Frank
Frost
Ganske
Gephardt
Gonzalez
Gordon
Granger
Green (TX)
Green (WI)
Gutierrez
Gutknecht
Hall (OH)
Harman
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kirk
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Linder
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Morella
Murtha

Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Petri
Phelps
Platts
Pomeroy
Price (NC)
Pryce (OH)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schaffer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tierney
Toomey
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Woolsey
Wu
Wynn

NOT VOTING—5

Blunt
Combest
Meehan
Rangel
Roukema

☐ 2015

Mr. TURNER, Mr. FOSSELLA, and Mr. ADERHOLT changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT 27 BY MR. WELDON OF FLORIDA

The CHAIRMAN pro tempore (Mr. SWEENEY). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida (Mr. WELDON) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 118, noes 309, not voting 6, as follows:

[Roll No. 365]

AYES—118

Aderholt
Baker
Barr
Bartlett
Barton
Bilirakis
Bonilla
Brady (TX)
Brown (SC)
Bryant
Burton
Buyer
Calvert
Camp
Castle
Coble
Cooksey
Crane
Cubin
Culberson
Cunningham
Deal
DeFazio
DeLay
DeMint
Doolittle
Duncan
Ehlers
Ehrlich
Emerson
Everett
Fletcher
Forbes
Fossella
Gallegly
Gilchrest
Gillmor
Goode
Goodlatte
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hayworth
Hefley
Hilleary
Hobson
Hostettler
Hulshof
Hunter
Isakson
Israel
Istook
Jenkins
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Lewis (KY)
Lofgren
Lucas (OK)
Maloney (CT)
Manzullo
McInnis
Miller, Jeff
Moran (KS)
Myrick
Northup
Norwood
Ose
Paul
Pence
Pickering
Pitts
Platts
Pombo
Putnam
Ramstad
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ryun (KS)
Schaffer
Sensenbrenner
Sessions
Shadegg
Shimkus
Shows
Shuster
Smith (TX)
Stearns
Sullivan
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Tancredo
Tauzin
Taylor (MS)
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Tiahrt
Upton
Vitter
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Watkins (OK)
Weiner
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Weller
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Wilson (SC)

NOES—309

Abercrombie
Ackerman
Akin
Allen
Andrews
Armey
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Baird
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Brady (PA)
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Crenshaw
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doyle
Dreier
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Evans
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Gordon
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Green (TX)
Greenwood
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Hall (OH)
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Hayes
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Hill
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Hooley
Horn
Houghton
Hoyer
Hyde
Inslee
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kirk
Kleczka
Knollenberg
Kolbe
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Larsen (WA)
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Lewis (CA)
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Lowey
Lucas (KY)
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Markey
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Matsui
McCarthy (MO)
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McCollum
McCrery
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McGovern
McHugh
McIntyre
McKeon
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
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Nussle
Oberstar
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Olver
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Osborne
Otter
Owens
Oxley
Pallone
Pascrell
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Payne
Pelosi
Peterson (MN)
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Petri
Phelps
Pomeroy
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
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Regula
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
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Ryan (WI)
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Sánchez
Sanders
Sandlin
Sawyer
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Schakowsky
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Serrano
Shaw
Shays
Sherman
Sherwood
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sununu
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thurman
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Walden
Walsh
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Wexler
Whitfield
Wilson (NM)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—6

Blunt
Combest
Lipinski
Meehan
Roukema
Waters

☐ 2023

Mrs. KELLY changed her vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PREFERENTIAL MOTION OFFERED BY MR. MURTHA

Mr. MURTHA. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

> Mr. MURTHA moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania (Mr. MURTHA) is recognized for 5 minutes in support of his motion.

Mr. MURTHA. Mr. Chairman, let me explain the problem. Last night, as my colleagues are aware, in my district we had a mine incident where we have nine miners trapped. The gentleman from Kentucky (Mr. ROGERS) offered an amendment which I was interested in and was concerned about and was not able to talk about because of the work we were doing with the mine rescue effort.

Just to report to the Members, the drill bit broke, as many saw on TV, and we are trying to drill another hole. The shafts are big and it is very, very difficult. We have not heard anything for over a day and a half. We have gone as far as 5 days, but the water, we are pumping the water out and hot air in and doing everything we can.

There has been marvelous cooperation with the Federal Government, the State government, the local commissioners, and my guy has been out there for 2 straight days. So we are hopeful.

But the reason I rise is that the gentleman from Kentucky offered an amendment last night which I am concerned about. I am concerned that it involves posse comitatus. We are allowing the military to get involved in civilian affairs. I worry that even the Germans had the Gestapo picking people up; I worry that the Russians had their special agency picking people up; and I am worried that this amendment would delegate to an unelected official the ability to have police authority.

Now, after talking to the gentleman from Kentucky (Mr. ROGERS), he and I talked about it, and I want him to put on the RECORD, so that we understand, the concerns that he has, but I first have a couple of people who want to speak.

Mr. KUCINICH. Mr. Chairman, will the gentleman yield?

Mr. MURTHA. I yield to the gentleman from Ohio.

Mr. KUCINICH. Mr. Chairman, the concerns that some of us have had is that the amendment that was passed by the House would open up the possibility for the military to be empowered to act as a domestic police force and would be a clear invitation to put the Posse Comitatus Act at risk.

The American constitutional experience has required the separation of the military from domestic police authority. Countries where the military has the power to act as a domestic police force include dictatorships and totalitarian regimes. I think many of us believe the Federal military is no substitute for civilian police authority.

Now, notwithstanding that the underlying bill contains language reaffirming the posse comitatus, I think many of us in this Chamber are familiar with statements by some high-ranking administration officials indicating a strong interest in employing the military in a domestic police force setting. So that is what causes our concern to arise here and why we bring this matter to the House.

Mr. Chairman, I want to thank the gentleman from Pennsylvania for allowing this opportunity for this discussion.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman yield?

Mr. MURTHA. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Chairman, no one doubts for a moment the motivation of the gentleman from Kentucky (Mr. ROGERS). No one doubts the desire of the body to move forward in this area, not just with dispatch but with a focus that will accomplish the task.

The problem I think that we have is that some of this has been debated, including this amendment, in a late hour, without much opportunity for exchange between the Members. The plain fact is that those of us on the Committee on Armed Services know there are some folks, perhaps in the Pentagon and elsewhere, who have a separate political agenda on this which may be in contrast to what the intentions are here, and that is why I think the question is being raised at this point.

□ 2030

Mr. MURTHA. Mr. Chairman, I yield myself the balance of my time.

I am willing to withdraw or not ask for a revote after we hear the explanation from the gentleman from Kentucky (Mr. ROGERS).

Mr. ROGERS of Kentucky. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentleman from Kentucky (Mr. ROGERS) is recognized for 5 minutes.

Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment simply tries to use the template, the model, of the Nation's drug interdiction program which is coordinated in two different places, in Key West, Florida, for the east side, South America, and the Caribbean, and Alameda, California, for the West Coast, Mexico and South America.

These centers are under no one's command. These are voluntary, governmental agencies that cooperate together in those centers under a memorandum of understanding. It is not controlled by anyone. Yet in those centers, and I recommend that Members visit them, we see the Nation's military, our civilian agencies, our intelligence agencies, in a boiler-room operation, all working 24 hours a day, 7 seven days a week, receiving intelligence from all sorts of places, and then acting on it with whatever resource may be available from whatever agency of the government that may be on the scene.

Now, they recognize posse comitatus; military is only used offshore. If there is a domestic or civilian aspect of what they do, they turn to the proper domestic civilian authorities, the sheriffs, the police departments, and so on. So there is a high recognition of posse comitatus there. This amendment requires if the secretary sets up such an operation, that he must model it after those models that I mentioned, which recognize posse comitatus.

Number two, the underlying bill in the manager's amendment reaffirmed that we are operating under posse comitatus. That we cannot violate in the bill posse comitatus. All civil liberties are completely protected under this amendment. The amendment grants no new authorities or powers to the components of the proposed task force, recognizing the existing Posse Comitatus Act.

Number two, we wrote this amendment so it is even permissive. We do not direct the Secretary to do this. He may if he chooses; but if he does, he must recognize posse comitatus. If Members believe that the war against foreign terrorism must be coordinated, then Members should be for this. There is no better model that we have than what exists in Key West and Alameda, which can easily be transferred if the secretary deems necessary to the fight against foreign terrorism.

Mr. Chairman, I appreciate the concerns of the gentlemen who have expressed interest. It is too bad we had to debate this last night at 12:30 or 1 in the morning. We had 5 minutes, and it was too bad that the gentleman was busy in his home district in Pennsylvania. If the gentleman has questions about it, I will be happy to answer by whatever means the gentleman deems necessary.

The CHAIRMAN pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MURTHA).

The motion was rejected.

Mr. OXLEY. Mr. Chairman, I rise today in strong support of H.R. 5005 and the hard work of the Select Committee on Homeland Security. By creating the Department of Homeland Security we will send a clear message to the world that the United States will not sit idly by while our enemies plot against us. It is critical that we quickly approve this measure in order to ensure that the President has the tools necessary to protect our citizens from evil acts perpetrated by those who hate our free and open society.

The creation of a Department of Homeland Security is a logical and necessary step. There are over 100 different federal agencies which are charged with protection of our borders. By consolidating this collection of bureaucracies into one agency, we will eliminate duplication of effort and conserve resources.

As Chairman of the Financial Services Committee, I have reviewed the Committee's jurisdiction over three programs within the Federal Emergency Management Agency that would become the responsibility of the new department. These programs are: the National Flood Insurance Programs, the Defense Production Act, and the Emergency Food and Shelter Program. FEMA's mission is to prevent, prepare for, respond to and recover from disasters of all types. The Financial Services Committee believes that FEMA's expertise in consequence management is critical to the function of the proposed Office of Homeland Security and that all of these programs should remain within FEMA at this time.

I commend the Committee's proposal to move the United States Secret Service to the new Department and maintain it as a "distinct entity" outside the four major jurisdictional cylinders established under the new Secretary. The long dual-role history of the Service—investigation and protective—combined with its more recently developed expertise in preventing and investigating cyber crimes, and its core mission of protecting the financial system of the United States make the Secret Service uniquely suited to draw from and augment the work of the other component agencies of the new Department.

Mr. Chairman, I would like to thank the Majority Leader and the other Members of the Select Committee for all their efforts in crafting this bill. The creation of this new department will be reflected in the history of our Nation as occurring at a time when Americans joined together in a unified fight against terrorism and against those who seek to suppress freedom. I strongly urge my colleagues to cast aside partisan differences and vote in favor of this legislation.

Mr. KOLBE. Mr. Chairman, I rise in strong support of the Homeland Security Act.

The Select Committee on Homeland Security and the other Committees, recognizing the gravity of this matter, have moved swiftly to bring this legislation to the Floor. But they have given adequate consideration for the many different points of view about the legislation. One of the guiding principles of the Select Committee is that there should be no greater priority than defending the promise of America and that individual liberty and personal safety come before bureaucratic regulations, rules and red tape. I could not agree more.

I represent the people of southeastern Arizona, an area of the country that borders Mexico and has considerable experience with border security needs. We have been struggling for years to reform and improve the coordination and effectiveness of federal law enforcement efforts along the southwest border.

During the debate on reorganizing the INS earlier this year, I hoped to offer my legislation implementing the Jordan Commission's recommendation to separate the two divergent functions within the INS—immigration services and benefits, but I was not provided the opportunity to offer this substitute. The bill before us today does include this fundamental restructuring the INS by placing enforcement functions within the new Department of Homeland Security and leaving the immigration services functions in a different Cabinet-level department—the Department of Justice. Although I would go further by consolidating all the immigration services that are shared by the Department of Justice and the Department of State, this bill does most of what I proposed and is needed to make our immigration system work.

Some have argued in the past that the two functions—enforcement and services—are complementary and must be coordinated by a single government official. But this concept was tried for decades through a failed experiment known as the INS, and has caused great harm to America. We cannot make the same mistake again. The price is too high as we wage our war on terrorism.

As we create this new Cabinet department, we must give the highest priority to ensuring that the responsibilities given to the Undersecretary for Border and Transportation are not assigned based simply on the current structure of the affected bureaucracies. The various agents and inspectors at a port-of-entry today, such as Customs officials, INS officials, Transportation officials, and Agriculture officials, should all be "Homeland Security officials" with the same management, same uniform, same communication and information networks, and the same policies and guidelines. We should not maintain the current bureaucracies separately within the new Bureau for Border and Transportation Security. It is essential that all these border functions be fully consolidated under the same, seamless management structure. Of course, the consolidation of the many agencies along the border will take time, but the bill before us today moves us significantly towards this vision.

Finally, I am pleased that the Select Committee on Homeland Security's recommendation would keep the statutory authority for revenue collecting with the Department of Treasury, while transferring law enforcement and trade responsibilities exercised by the existing Customs Service to the Department of Homeland Security. However, we must not diminish the capability of the Customs Service to carry out its diverse missions. Trade responsibilities of Customs should be separated from the enforcement activities. Activities that should remain at the Department of Treasury or be shifted to the U.S. Trade Representative's office include: rulings; legal determinations and guidelines relating to classification and value of merchandise; and the responsibility for identifying and planning for major trade issues.

Trade is a critical component of the U.S. economy. The flow of imports and exports contribute enormously to our economic growth as well as that of the global economy. We should not assign purely commercial decision making responsibilities to the new Homeland Security Department. It will have neither the mission nor the core competency to perform that role adequately. Nonetheless, it should be obvious that the Department of Homeland Security will perform a host of front line enforcement responsibilities that in fact will intersect with commercial or trade related spheres. This is a delicate balancing act, and we're not quite there with this bill.

This legislation to create a new Homeland Security Department comes as close to solving our illegal immigration border woes as could be done without a comprehensive overhaul of our immigration policies. I enthusiastically support this bill. I believe it will have a positive impact on southern Arizona and the entire nation in the years to come.

I urge my colleagues to support this legislation.

Mr. DREIER. Mr. Chairman, in creating a new Department of Homeland Security, the House of Representatives is considering legislation which realigns the federal government in order to properly address a new threat. This bill promotes security, integrates new solutions to address new threats, recognizes the value and service of first responders, and defines clear lines of government authority.

The primary mission of this new department will be the prevention of terrorist attacks within the United States, to reduce America's vulnerability to terrorism, and to minimize the damage and recover from attacks that may occur. In carrying out this mission, the Department of Homeland Security must be equipped with the proper expertise available in the various government agencies which currently perform the functions of border security, emergency preparedness and response, information analysis, and infrastructure protection.

In all of this, the focus must remain the basic protection of our neighborhoods and communities from the threat of terrorism. On the front lines of that effort are first responders—local law enforcement, firefighters, rescue workers, and emergency response teams. This bill establishes a National Council of First Responders charged with the responsibility to provide first responder best practices, latest technological advances, identify emerging threats to first responders, and identify needed improvements for first response techniques, training, communication, and coordination.

With this emphasis on improving first responder capabilities, we must not ignore the integral role of our local governments in the ability of first responders to succeed in their mission. Local governments have already dedicated millions of dollars on increased security, preparedness, and emergency response costs since September 11. Cities and counties have upgraded security at key public facilities, enhanced information technology and communications systems, and improved local bioterrorism response capabilities.

Congress approved the Fiscal Year 2002 Emergency Supplemental Appropriations bill this week, which includes $151 million in grants to first responders. In providing this federal assistance, I requested consideration of local input regarding the application of federal first responder grants. In response, the bill requires state strategic plans for terrorism response to fully consult local governments. While this provides a good first step in integrating our local governments, we must keep the application of resources for first responders a top legislative priority.

In order to successfully secure our communities and provide effective emergency response, it is critical that local governments are integrally involved in the National Council of First Responders, and in any regional strategic planning for terrorism response. Most importantly, local governments must be given the opportunity to directly access available resources. The task at hand is too critical to allow funding and other assistance to be swallowed up by bureaucracy, or hijacked to mask deficits. Local governments are in the best position to understand what the first responders in their community need and must remain integrally involved in determining the allocation of resources.

I strongly support H.R. 5005 and commend the various committees of jurisdiction that deliberatively and expediously contributed to the creation of the new Department of Homeland Security. I also applaud the leadership of the Select Committee on Homeland Security, without which we may not have had the opportunity to enact this historic legislation.

Mrs. CHRISTENSEN. Mr. Chairman, I rise as a staunch supporter of homeland defense, but in strong opposition to H.R. 5005, the Homeland Defense Bill.

This bill is seriously flawed in many areas, and several of its measures would undermine civil liberties and deny work protections, while protecting contractors who could supply flawed, even deadly products.

Overall, the bill as currently constructed, would in my opinion put us more at risk than we are now, or was in September 10, 2001.

While the leadership sought input from the relevant committees in writing the bill, in the end that process turned out to be no more than a sham. As they have done time and time again, the regular order, processes that have served this body and our country well for over 200 years have been cast aside. That sets a dangerous precedent, and does nothing to ensure expert input into a very complex bill and agency.

I am particularly concerned about the rush to create headlines by having the bill ready on September 11th of this year. There can be no other reason.

This is a massive undertaking, and reorganization. It needs to be well thought out, and planned. Personally, I do not feel that the merging of the different agencies is at all necessary, and jeopardizes the other important functions of many of them.

We should look at the difficulties encountered with a much smaller project—the creation of the Transporting Security Agency, and take counsel on what happens when we rush headlong into something, without proper forethought and expert input.

Our homeland Defense is too important to give it such short shrift in our deliberations. As we have done time and time again since September 11th, we are throwing everything at the problem, hoping that something will stick and be effective. That is no way to lead.

Because caution, due diligence, and respect for process has already been called for by many on my side of the aisle, I know that this plea will also fall on deaf ears, but nevertheless, I am asking the leadership of this body, to stop this rush to meet an unnecessary and unwise deadline. The people of this country don't want a sound bite or photo-op, they want real leadership from us, and they want real homeland security.

Mr. BORSKI. Mr. Chairman, I would like to take this opportunity during debate on H.R. 5005 to apprise my colleagues of a Coast Guard issue that, if not properly addressed, will have serious consequences on our ability to defend our homeland. As the Coast Guard is to be transferred to the Department of Homeland Defense under this Act, the subject is most relevant to today's debate.

The Coast Guard recently launched a new mission known as HITRON. A combination of ships, boats and helicopters pursue drug runners in fast boats. Following a competition in 2000, the Coast Guard leased 8 MH–68A helicopters as a part of a new mission to dramatically improve the nation's ability to interdict drug traffickers. The helicopters fleet became fully operational this winter and has had a 100 percent interdiction success rate with 13 chases, 13 busts and a seizure of cocaine and marijuana valued at nearly $2.4 billion. Thus the mission is proven, the effectiveness of the helicopter is proven and HITRON has been made permanent by the Commandant.

On April 26, Congressman Howard Coble and I led 39 Members of Congress in a request to the Appropriations Committee to provide the Coast Guard with plus-up funding of $60 million the purpose of purchasing 8 MH–68A helicopters currently under short-term lease to the Coast Guard, plus 4 additional helicopters. We believe buying the helicopters would be a better investment than a continuation of leasing arrangements. Leasing is an expensive alternative to purchase.

Mr. Coble and I kept the Coast Guard Commandant and staff informed of our every step while we worked with the appropriations and authorization processes. On May 7, I met with representatives of the Commandant led by Admiral Harvey Johnson. Admiral Johnson informed me that while the helicopter was performing well; the Coast Guard did not want to make a purchase at this time. The reason is the Coast Guard was evaluating the option of deploying a "multi-mission" aircraft which would have drug interdiction capability as a part of the Deep Water modernization program. The USCG was awaiting a recommendation from the newly selected Integrated Coast Guard Systems group (ICGS), which is led by Lockheed and Northrop Grumman.

Congressman Coble and I responded to the Coast Guard that we understood the interest in a multi capability aircraft, and did not want to foreclose the Coast Guard option through a congressional mandate to purchase the existing MH–68A fleet. However, a very serious problem remains. The lease on the existing HITRON fleet expires this January 2003. It will be five years before new multipurpose helicopters are introduced. I am extremely worried that there could be an interruption in this program. Mr. Coble and I called on the Coast Guard to extend the lease of eight or more MH–68A helicopters for five years or until a permanent Deepwater multipurpose helicopter is fully operational and in the Coast Guard DeepWater inventory. An independent, but identical request for a five year lease extension was made by Congressman Bob Filner on June 28.

Last week, on July 17, the ICGS group presented its findings to the Coast Guard. It recommended a USCG-Industry team evaluate the trade offs between a single mission and multi-mission helicopter for drug interdiction. ICGS selected the Bell/Agusta Aerospace Company's AB–139 as the multi-mission aircraft. Consistent with the request made by Mr. Coble, Mr. Filner and myself, ICGS recommended an extension of the MH–68A lease for up to five years.

Mr. Chairman, I urge the Coast Guard to adopt the recommendation of the ICGS to extend the MH–68A lease up to 5-years to get us from here to there. I also support specific funding to provide more protection for the crews of these helicopters. I hope my colleagues will join my efforts to ensure that there is no interruption in this vital homeland security program, and to secure the resources necessary to add further protection for our brave pilots and crew who have already done so much.

Mr. PAUL. Mr. Chairman, the move to create a federal Department of Homeland Security was initiated in response to the terrorist attacks of September 11 and subsequent revelations regarding bureaucratic bungling and ineptness related to those attacks. Leaving aside other policy initiatives that may be more successful in reducing the threat of future terror attacks, I believe the President was well-intentioned in suggesting that a streamlining of functions might be helpful.

Mr. Chairman, as many commentators have pointed out, the creation of this new department represents the largest reorganization of federal agencies since the creation of the Department of Defense in 1947. Unfortunately, the process by which we are creating this new department bears little resemblance to the process by which the Defense Department was created. Congress began hearings on the proposed department of defense in 1945—two years before President Truman signed legislation creating the new Department into law! Despite the lengthy deliberative process through which Congress created the new department, turf battles and logistical problems continued to bedeviled the military establishment, requiring several corrective pieces of legislation. In fact, Mr. Chairman, the Goldwater-Nicholas Department of Defense Reorganization Act of 1986 (PL 99–433) was passed to deal with problems stemming from the 1947 law! The experience with the Department of Defense certainly suggests the importance of a more deliberative process in the creation of this new agency.

This current proposed legislation suggest that merging 22 government agencies and departments—compromising nearly 200,000 federal employees—into one department will address our current vulnerabilities. I do not see how this can be the case. If we are presently under terrorist threat, it seems to me that turning 22 agencies upside down, sparking scores of turf wars and creating massive logistical and technological headaches—does anyone really believe that even simple things like computer and telephone networks will be up and running in the short term?—is hardly the way to maintain the readiness and focus necessary to defend the United States. What about vulnerabilities while Americans wait for this massive new bureaucracy to begin functioning as a whole even to the levels at which its component parts were functioning before this legislation was taken up? Is this a risk we can afford to take? Also, isn't it a bit ironic that in the name of "homeland security" we seem to be consolidating everything except the government agencies most critical to the defense of the United States: the multitude of intelligence agencies that make up the Intelligence Community?

Mr. Chairman, I come from a Coastal District in Texas. The Coast Guard and its mission are important to us. The chairman of the committee of jurisdiction over the Coast Guard has expressed strong reservations about the plan to move the Coast Guard into the new department. Recently my district was hit by the flooding in Texas, and we relied upon the Federal Emergency Management Agency (FEMA) to again provide certain services. Additionally, as a district close to our border, much of the casework performed in my district offices relates to requests made to the Immigration and Naturalization Service.

There has beem a difference of opinion between committees of jurisdiction and the administration in regard to all these functions. In fact, the President's proposal was amended in no fewer than a half dozen of the dozen committees to which it was originally referred.

My coastal district also relies heavily on shipping. Our ports are essential for international trade and commerce. Last year, over one million tons of goods was moved through just one of the Ports in my district! However, questions remain about how the mission of the Customs Service will be changed by this new department. These are significant issues to my constituents, and may well affect their very livelihoods. For me to vote for this bill would amount to giving my personal assurance that the creation of this new department will not adversely impact the fashion in which the Coast Guard and Customs Service provide the services which my constituents have come to rely upon. Based on the expedited process we have followed with this legislation, I do not believe I can give such as assurance.

We have also received a Congressional Budget Office (CBO) cost estimate suggesting that it will cost no less than $3 billion just to implement this new department. That is $3 billion dollars that could be spent to capture those responsible for the attacks of September 11 or to provide tax-relief to the families of the victims of that attack. It is three billion dollars that could perhaps be better spent protecting against future attacks, or even simply to meet the fiscal needs of our government. Since those attacks this Congress has gone on a massive spending spree. Spending three billion additional dollars now, simply to rearrange offices and command structures, is not a wise move. In fact, Congress is actually jeopardizing the security of millions of Americans by raiding the social security trust fund to rearrange deck chairs and give big spenders yet another department on which to lavish pork-barrel spending. The way the costs of this department have skyrocketed before the Department is even open for business leads me to fear that this will become yet another justification for Congress to raid the social security trust fund in order to finance pork-barrel spending. This is especially true in light of the fact that so many questions remain regarding the ultimate effect of these structural changes. Moreover, this legislation will give the Executive Branch the authority to spend money appropriated by Congress in ways Congress has not authorized. This clearly erodes Constitutionally-mandated Congressional prerogatives relative to control of federal spending.

Recently the House passed a bill allowing for the arming of pilots. This was necessary because the Transportation Security Administration (TSA) simply ignored legislation we had passed previously. TSA is, of course, a key component of this new department. Do we really want to grant authority over appropriations to a Department containing an agency that has so brazenly ignored the will of Congress as recently as has the TSA?

In fact, there has been a constant refusal of the bureaucracy to recognize that one of the best ways to enhance security is to legalize the second amendment and allow private property owners to defend their property. Instead, the security services are federalized.

The airlines are bailed out and given guaranteed insurance against all threats. We have made the airline industry a public utility that get to keep its profits and pass on its losses to the taxpayers, like Amtrak and the post office. Instead of more ownership responsibility, we get more government controls. I am reluctant, to say the least, to give any new powers to bureaucrats who refuse to recognize the vital role free citizens exercising their second amendment rights play in homeland security.

Mr. Speaker, government reorganizations, though generally seen as benign, can have a deleterious affect not just on the functioning of government but on our safety and liberty as well. The concentration and centralization of authority that may result from today's efforts should give us all reason for pause. But the current process does not allow for pause. Indeed, it militates toward rushing decisions without regard to consequence. Furthermore, this particular reorganization, in an attempt to provide broad leeway for the new department, undermines our Congressional oversight function. Abrogating our Constitutionally-mandated responsibilities so hastily now also means that future administrations will find it much easier to abuse the powers of this new department to violate constitutional liberties.

Perhaps a streamlined, reconfigured federal government with a more clearly defined and limited mission focused on protecting citizens and their freedoms could result from this reorganization, but right now it seems far more likely that the opposite will occur. That is why I must oppose creation of this new department.

Until we deal with the substance of the problem—serious issues of American foreign policy about which I have spoken out for years, and important concerns with our immigration policy in light of the current environment—attempts such as we undertake today at improved homeland security will amount to, more or less, rearranging deck chairs—or perhaps more accurately office chairs in various bureaucracies. Until we are prepared to have serious and frank discussions of policy this body will not improve the security of American citizens and their property. I stand ready to have that debate, but unfortunately this bill does nothing to begin the debate and nothing substantive to protect us. At best it will provide an illusion of security, and at worst these unanswered questions will be resolved by the realization that entities such as the Customs Service, Coast Guard and INS will be less effective, less efficient, more intrusive and mired in more bureaucratic red tape. Therefore, we should not pass this bill today.

Mr. EVANS. Mr. Chairman, I rise in support of legislation creating the Department of Homeland Security.

We will never forget the tragic events of September 11th. That day truly ushered in a new era when we, as a nation, can never take for granted the security of our borders or terrorist threats.

If anything, the tragedies that unfolded on that day demonstrated that we have much work to do to guarantee the safety of average Americans. There were too many warning signs that should have been acted on by our government. It is clear that there are many gaping holes between numerous agencies in responding to terrorist threats and that those same agencies have not cooperated properly in analyzing and working to eliminate these threats.

The legislation before us today addressed areas such as border security, immigration enforcement, and infrastructure preparedness, that must be immediately reorganized to better deal with these threats. This reorganization will better facilitate communication and intelligence sharing between many of these agencies that are on the front line of fighting and preventing terrorist acts. The reorganization will also prepare our communities to address weaknesses in physical cyber-security.

Despite the strengths of the legislation, I do have serious reservations about some provisions that needlessly restrict the rights of Americans and would not contribute to the goals of a more secure homeland. For example, provisions in this legislation unnecessarily abridge civil service protections for the 170,000 federal employees being transferred to the Department of Homeland Security. We should not view civil service protections as a hindrance to fighting terrorism, nor should the cover of anti-terrorism be used to roll back these protections.

This legislation would allow employees transferred to the new department to have their salaries arbitrarily reduced, as well as deny thousands of federal servants due process in merit board proceedings. Many Americans are making sacrifices to fight terrorism, but to ask federal employees to forfeit these basic job protections is callous and unnecessary. There are some in this body that would like to eliminate all civil service protections, but using the cover of terrorism is offensive.

The bill also has a blanket waiver for contractors who produce anti-terrorist devices and products from civil product liability. Contractors who even exhibit fraud or willful misconduct in manufacturing could not be brought to justice under the act. This would even apply to the very servicemen and women who would use this equipment. I believe this is unconscionable and should not be allowed to stand.

I am also very disappointed that the committee did not include an amendment by Representative DELAURO to deny government contracts to American firms that skirt their tax liability by using offshore havens. The DeLauro amendment would have restored a similar bipartisan provision that passed unanimously in the Ways and Means but was deleted by the Republican leadership when they drew up their version of the legislation to be offered on the floor of the House. I believe that Companies that avoid their tax liability should not be eligible for contracting and procurement for a department with a budget the size of Puerto Rico's entire economy.

I encourage my colleagues to support this legislation and support the Morella and DeLauro amendments when they come up for a vote. Their addition would help improve what is largely a worthwhile and effective piece of legislation that will greatly aid our nation in its war on terrorism.

Ms. DEGETTE. Mr. Chairman, although I believe it is imperative to install explosion detection devices at our airports as soon as possible, we must also understand what is reasonable and not lull the public into false hopes by setting arbitrary and unattainable deadlines. We need to listen to the experts and agree to an extended deadline for implementing explosion detection systems to improve baggage screening at our nation's airports. That is why I am voting against the amendment to strike the language form the homeland security bill to extend the Transportation Safety Administration (TSA) deadline. I remain deeply concerned about passenger safety and I believe we ought to continue to take aggressive steps to ensure it. Nevertheless, December 31, 2002 is an arbitrary deadline. Worse than that, it is an arbitrary deadline that our nation's largest airports cannot meet.

For example, in my district, Denver International Airport (DIA) has already implemented many safeguards that exceed TSA standards. However, TSA has failed to fund the equipment that needs to be installed. As a result, if we push forward with a band-aid solution, the large machines that are currently TSA-certified would force passengers to stand outside waiting for their bags to be checked. We are talking about Denver, Colorado. We have cold winters. And having crowds of people waiting outside where cars drive up to let out passengers would create a new safety hazard. An interim solution that provides a less-than-optimal level of security and that will result in unacceptable delays to the traveling public is unacceptable.

Increasing passenger safety is our mutual goal and there is technology that will better achieve that awaiting certification this November. It has been shown to have a greater rate of positive detection, a decreased rate of false positives, and it is a more reasonable size. Denver is planning on implementing this technology and DIA will serve as a test site for the rest of the nation. TSA needs to certify this superior technology and make the financial commitment to allow airports like DIA to begin working on these vital projects. Thus far, the TSA's funding delays have hindered DIA's ability to commence building the necessary infrastructure. DIA and other airports should not be punished for the lack of coordination and support from the TSA.

Let's get it right the first time and implement the technology that will best achieve greater safety and reassure the flying public. We need to recognize the very real, very serious and very costly obstacles the TSA and airports face and allow the airports to continue to utilize one or more of the current screening methods required by the TSA beyond the December 31, 2002, deadline.

Let's not insist on an arbitrary deadline that will not and cannot be met. This should not be construed as a weakening of Congress' resolve. Our nation's airports and airlines have a responsibility to ensure the safety of the flying public. However they determine to achieve this, it needs to happen with all due speed.

Mr. CRANE. Mr. Chairman, today I rise in support of House Resolution 5005 creating a new Department of Homeland Security.

Like the rest of Congress, I applaud the President for his bold decision to reorganize the government and make homeland security the highest priority. Like others, however, I also have had questions about the details of this transition and how it would affect the many responsibilities of those agencies transferred to the new department. The bill before us has answered my questions and provides real protection for our Nation.

Let me focus on one of the important sections dealing with the security of collecting revenue and the economically critical mission of trade facilitation.

Mr. Chairman, the requirement to generate revenue for this country through Customs duties, which was the very first Act of Congress, was the primary reason Customs was established in the fifth Act of Congress as the first Federal agency of the new Republic. This function is still important today as demonstrated by the fact that Customs collects over $20 billion of revenue.

Today, under the authority of the Department of the Treasury, Customs enforces well over 400 provisions of law for at least 40 agencies. In addition to collecting revenue, Customs safeguards American agriculture, business, public health, and consumer safety and ensures that all imports and exports comply with U.S. laws and regulations.

Through the work of this Congress, the new Department now has the tools it needs to protect our borders while at the same time ensuring that revenue continues to be collected and that goods keep moving across the border with little delay.

For these reasons I urge a YES vote on H.R. 5005.

Mr. CAMP. Mr. Chairman, today I rise in support of H.R. 5005, the Homeland Security Act of 2002. I would like to thank the distinguished Majority Leader for his hard work and leadership on the Select Committee to bring this legislation to the Floor.

The U.S. government has no higher purpose than to ensure security of American citizens and to preserve our democratic way of life. The proposal before us creates the Department of Homeland Security, a Cabinet-level agency that will unite essential agencies for better coordination, greater preparedness and quicker response time. Currently, there is no one department that has homeland security as its primary mission. In fact, responsibilities for homeland security are dispersed among more than 100 different government organizations. We need to strengthen our efforts to protect America, and the current governmental structure limits our ability to do so.

As a northern border state, Michigan is on the frontline in border security. We enjoy the longest unmilitarized border in the world with our friend and ally, Canada. With over $1.9 billion in goods and over 300,000 people crossing the border every single day, the connection between our societies is critical to maintain the economic stability of both nations. However, this openness can become a vulnerability when exploited by the mobility and destructive potential of terrorists.

Currently, border security involves multiple agencies—including INS, which is under the Department of Justice; Customs, which is part of the Department of Treasury; and plant and livestock inspectors from the Department of Agriculture. All of these entities have different bosses, different equipment, and even different regulations that govern them. This legislation moves these principal border and transportation security agencies into the Department of Homeland Security. This will provide a direct line of authority and clear chain of command administered by the Secretary of Homeland Security, who is answerable to Congress and the President.

Homeland security should not be a partisan issue. We must rise above politics and jurisdictional disputes to send to the President a strong bipartisan bill that will be effective in improving America's security. I urge my colleagues to vote in favor of H.R. 5005 because it is the right thing to do.

Mr. UNDERWOOD. Mr. Chairman, H.R. 5005, a bill to establish the Department of Homeland Security to safeguard our homeland, to secure our nation for the protection of citizens and property, to defend and preserve our democracy for posterity, to reorganize our government to strengthen emergency preparedness throughout the country, and to reduce the vulnerability of the United States to terrorism, is a bold undertaking that deserves our most serious consideration and attention. As we take up the task of establishing this new department, I want to reiterate and emphasize several important points that concern my constituency, the people of Guam.

In this debate, it is important to recognize that the American homeland extends far beyond the 50 states, and includes the U.S. territories, including my home island of Guam, some 9,500 miles away from Washington, D.C. I have long maintained that in concept, the American homeland should consist of all U.S. jurisdictions which Americans reside and call home. I was pleased to learn that the President's "National Strategy for Homeland Security," unveiled last week, takes into account the U.S. territories. I feel it is equally important for the House to ensure that the bill before us today properly takes into account the U.S. territories. The domestic defense and emergency response capability needs of Americans residing in the U.S. territories are just as critical as the needs of Americans residing in the 50 states.

The territories present unique challenges in planning for homeland security and defense. These unique needs and challenges should be addressed and assessed by the new Department of Homeland Security. Critical resources need to be harnessed and clear lines of communication must be established for the local law enforcement officials in the territories, just as they should be for the 50 states, to combat terrorism at the front lines. In this regard, I am pleased that this bill defines the U.S. territories as part of the geographic homeland. I am equally pleased that this bill ensures coordination on the part of the Department of Homeland Security with the territorial and local governments of Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

I want to thank the Select Committee on Homeland Security, in particular the Majority Leader, Mr. ARMEY, and the Democratic Whip, Ms. PELOSI, for their acceptance of my request to add a specific definition of "State" to the bill that includes Guam and the U.S. territories. This specific definition is needed in order to ensure that the other provisions of the bill adequately take into account how guidelines will be carried out and implemented in and for the U.S. territories. The Select Committee's inclusion of my proposal as well as the House Armed Services Committee's recognition of this matter is important to guarantee that information, intelligence, and analysis produced and gathered by the Department is shared with the territories. This action also makes certain that public advisory notices issued and infrastructure vulnerability assessments conducted by the Department include the territories. Furthermore, border control measures implemented, regulations promulgated, policy formulated, communication facilitated, and comprehensive planning will be for the benefit of the territories as well as the states.

The people of Guam proudly continue to stand united with our country in the war against terrorism, but we want to ensure that we stand together when it comes to the planning and preparation to safeguard our homeland, even in distant shores. Let us pass a bill that will help protect all Americans, both in the states and the territories.

Mr. CHAMBLISS. Mr. Chairman, the events of September 11 changed the way Americans view the safety of air travel by exposing loopholes in security procedures at our nation's airports. Aviation security is now more than ever a top priority for all Americans, and it is the responsibility of the federal government to provide for the security and safety of every passenger on a commercial flight originating in this country. In my home state of Georgia is Hartsfield Atlanta International Airport the world's busiest airport.

Hartsfield's Aviation General Manager, Ben DeCosta, has implored Secretary Norman Mineta to assist in moving the arbitrary December 31, 2002 deadline to screen 100% of checked baggage. I agree with Mr. DeCosta, if this artificial deadline is maintained and we do not allow for a more measured approach, we will compromise the very security that we are trying to restore. Waiting until later in the year to extend the deadline is a tragic public policy failure. I have submitted for the record Mr. DeCosta's letter urging support for legislative relief from this deadline for my colleagues to view.

HARTSFIELD ATLANTA INTERNATIONAL AIRPORT,
Atlanta, GA, June 12, 2002.

Rep. SAXBY CHAMBLISS,
U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR REPRESENTATIVE CHAMBLISS: I thought you would be interested in hearing from me directly regarding a letter that I, along with 38 other airport directors, wrote to Transportation Secretary Norman Mineta to stress our concerns about the December 31, 2002 congressional deadline to screen 100% of checked baggage. I also have enclosed a copy of the letter for your review.

We fully support the Transportation Security Administration's efforts to fulfill the nation's goal of strengthening the security of aviation in this nation. Tight deadlines have focused the attention of everyone to get things done expeditiously. But, in the case of the 100% baggage screening deadline, it will drive the TSA to implement a program at Hartsfield that will not give us the best security or an acceptable level of customer service.

We believe that an integrated and automated Explosive Detection System is a must for many airports. But, the TSA will not implement such a system because it cannot be completed by December 31, 2002. We fear that harried efforts to meet an artificial deadline will compromise efforts to enhance security, frustrate our aims to increase capacity and slow the return of the industry to financial health. We should do the bag screening right the first time. We may not be able to afford to do it over again.

We urge you to support our request for legislative relief from the December 31, 2002 deadline. A more measured approach can lead to successful results in both enhanced security and good customer service. I will provide you with additional information and analysis when TSA finalizes its approach for Hartsfield.

Sincerely,
BENJAMIN R. DECOSTA,
Aviation General Manager.

Mr. BLUMENAUER. Mr. Chairman, strengthening the capacity of our government agencies to defend our nation from terrorist attacks is necessary and vital to our security. Our Nation will benefit from better communication among federal agencies and from improved safety of air travel, our borders, our ports, and our water supplies. However, we must develop a focused strategy to protect our Nation rather than taking cosmetic actions. The proposed Homeland Security Department, as proposed in this bill, does not achieve this end.

We need to address the intelligence failures that led up to the events of September 11th. We need to work with local governments to coordinate responses to future attacks. The proposed Department does not address either. Instead we will create a new bureaucracy that, I fear, gives more the illusion of safety. By concentrating on a massive restructuring of the federal government, we will not be able to focus on actually improving the security of our Nation. Under this proposal, those working at all levels will have to divert their attention from national security to bureaucratic reorganization.

As has been documented time and again in jarring detail by the news media, the FBI and CIA were not properly coordinated before September 11. This massive reorganization, rather than dealing with fundamental problems between these two agencies, adds a third governmental department to the uncoordinated mix.

There are real questions about whether we are spending the necessary amount of time to ensure the success of this new Department or are setting it up for failure. We need only look to the Department of Energy reorganization, which occurred over 25 years ago, and today still has failed to become a streamlined, effective department with an efficient process. Past successful reorganizations required more time and enjoyed fuller cooperation and interaction between the administration and Congress.

The proposed Homeland Security Department would include agencies like the Coast Guard and FEMA, whose primary responsibilities are not related to the terrorist threat. Focusing the resources of these agencies instead on homeland security could well detract from the majority of their other vital services that affect the health and safety of millions of Americans every day.

The cost of this new department is another factor that needs more attention. The President has suggested that the most massive reorganization in 50 years will not require any new spending. History and my own experience in governmental reform and reorganization suggest the contrary.

This proposal was developed in private by the Administration with very little Congressional deliberation and input. For such a significant reorganization we should include all segments of our community: local government officials, first responders, and private entities. Homeland security should not be a Washington-driven agenda and we must ensure that local consultation is part of the process.

Finally, the timing is problematic. There appears to be an imperative to rush this into law before the anniversary of September 11th. A more fitting tribute than marking the anniversary with questionable legislation would be to honor those who lost their lives with our best efforts, even if it takes a few more weeks. It would be a shame if this critical legislation left America in greater jeopardy after its passage than it is today.

Mr. TIAHRT. Mr. Chairman, I rise today in support of HR 5005, the Homeland Security Act of 2002. This important legislation will bring more than 100 different security and safety units from around the nation together into a newly created Cabinet department. This new department will work to control movement at the borders, emphasize coordination with state and local emergency responders, merge intelligence units to identify, map threats, and address vulnerabilities, and develop technologies to protect the homeland.

The attacks on September 11th changed the everyday lives of Americans. As a result of these attacks, our country is now at war with an invisible enemy that lurks in the shadows. We face the real possibility of additional attacks of a similar or even greater magnitude. Terrorists around the world are conspiring to obtain chemical, biological and nuclear weapons with the express intent of killing large numbers of Americans. We saw on September 11th that terrorist will use unconventional means to deliver their terror.

These new times require new thinking. Creating a Department of Homeland Security will give the Government the flexibility necessary to make the right decision that are needed to protect the American people. Consolidating these agencies into one Cabinet-level Department will support the President's National Strategy for Homeland Security, it will facilitate the ability of the private sector to more effectively communicate and coordinate threat and vulnerability management, and it will centralize response and recovery management with the federal government. The Department of Homeland Security will have three mission function. They are (1) to prevent terrorist attacks within the United States, (2) to reduce America's vulnerability to terrorism and, (3) to minimize the damage and recover from attacks that do occur.

H.R. 5005 transforms many government functions into a 21st century Department. In order to protect the freedom of our citizens, we must protect America's borders from those who seek to cause us harm. Under this legislation, protection of our borders is a primary function. This legislation will encompass INS enforcement functions, the Customs service, the border functions of the Animal Plant Health Inspections Service and the Coast Guard all together in the new Department of Homeland Security. H.R. 5005 will also ensure that our neighborhoods and communities are prepared to address any threat or attack we may face. The Federal Emergency Management Agency (FEMA) will also be included in the Department of Homeland Security.

Thus, if an attack should occur, it will be clear who is responsible for consequence management and whom our first responders can quickly communicate with. Additionally, HR 5005 places a high priority on transportation safety. The Transportation Security Agency is transferred entirely to the Department of Homeland Security. TSA has the statutory responsibility for security of all modes of transportation and it directly employs transportation security personnel.

These are just a few of the agencies that will encompass the Department of Homeland

Security. Only those agencies whose principal missions align with the Department's mission of protecting the homeland are included in this proposal. The current unfocused confederation of government agencies is not the best way to organize if we are to effectively protect our homeland, as responsibility is too scattered across the federal government. This has led to confusion, redundancy and ineffective communication.

Even though this legislation addresses issues concerning personal privacy, government disclosure, and individual rights, lawmakers and citizens alike must be vigilant against government encroachment of traditional liberties. Specifically, this bill prohibits the implementation of the Terrorism Information and Prevention System (TIPS), a national ID card system, guarantees whistle-blower protections, details Freedom of Information provisions, and establishes a Privacy Officer responsible for ensuring privacy rights of citizens. I believe an unaccountable government is an irresponsible government and in addition to a vigilant watch against abuses of individual rights, we must be accountable to taxpayers and not allow the Department to expand beyond its fiscal and bureaucratic parameters.

Mr. Chairman, the new Department of Homeland Security will be the one department whose primary mission is to protect the American Homeland. It will be the one department to secure our borders, transportation sector, ports, and critical infrastructure. One department to synthesize and analyze homeland security intelligence. One department to coordinate communications with state and local governments, private industry and first responders, and one department to manage our federal emergency response activities.

We owe the American people nothing less than the absolute best to protect its citizens. Reorganization of America's homeland security functions is critical to defeating the threat of terrorism and is vital to the nation's long-term security.

Mr. NETHERCUTT. Mr. Chairman, I rise today in support of H.R. 5005, a bill to create a much-needed Department of Homeland Security in the Presidential Cabinet.

For the first time, America will have all its border protection services under one authority. The Immigration and Naturalization Service (INS) enforcement, the Customs Services, the border activities of Animal and Plant Health Inspection Service (APHIS) and the Coast Guard will be able to work more closely than ever to ensure that our borders—especially our northern border, the longest undisputed border in the world—are protected from threats. Whether those threats are from terrorists, illegal immigrants, drug smugglers or smugglers of other contraband, the Department of Homeland Security will be in a position to protect against those threats, while utilizing technology to aid the free flow of legal commerce.

The legislation before us today varies from the President's initial proposal in a very meaningful and positive way. It incorporates language I supported with the Science Committee to include an Undersecretary for Science and Technology who will be given the task of coordinating homeland security-related scientific research government-wide. One aspect I fought to keep in this bill is the flexibility for federal partnerships with small businesses that have innovative technologies to offer. Other Transaction Authority, as it is called, has been used successfully by the Defense Advanced Research Projects Agency (DARPA), and I believe it has equal merit to advance time-critical and life-saving technologies in this new Department. I am pleased that the President has embraced these changes.

Mr. Chairman, I am also pleased that this Department will be organized almost entirely out of existing government agencies. Congress could have easily taken this opportunity to create more government bureaucracy. The terrorist threat that faces our great Nation could have easily been used as an excuse to broaden the size and scope of the federal government. The bill before us today does not take that approach, but rather reorganizes, consolidates, streamlines and focuses those federal agencies responsible for homeland security. With those agencies under one Secretary of Homeland Security, I am confident that our nation is in a better position to prepare for and responds to any threat to our domestic security.

This legislation will provide the flexibility the President needs in order to make staffing changes and provide for the national security, and to reorganize activities within the Department so that agencies work with one another to make our country safe. At the same time, this bill provides the Constitutionally mandated Congressional oversight necessary to maintain separation of powers and prevent excessive and abusive government. For example, this bill preserves the authority of Congress and the Appropriations Committee to prescribe levels of funding for Executive Branch functions. Furthermore, H.R. 5005 will prohibit the unwise Terrorism Information and Prevention System (TIPS) program, which would have encouraged neighbors to spy on neighbors. I am pleased with the privacy protections built into this act, which will prevent an intrusive 'Big Brother' government which violates our Constitution.

I thank the members of the Select Committee on Homeland Security, and the distinguished Majority Leader and Chairman of the Committee, Mr. ARMEY, for their hard work crafting this bill.

Mr. ETHERIDGE. Mr. Chairman, I rise in support of H.R. 5005, a bill that establishes the new U.S. Department of Homeland Security.

Since September 11th, the United States has made protecting the American homeland from terrorism and fighting terrorism abroad our top priority. I support the reform and reorganization of the departments and agencies with responsibilities for homeland defense, as well as a thorough review of events and factors that led to the tragic events of September 11.

Such reform and reorganization, coupled with a comprehensive threat assessment and strategy to address threats to the American homeland, are the best way to improve the safety and security of the American people. I call on the Secretary to operate the new Department in an open and fiscally responsible manner. Through this legislation we have given the Department Secretary the requisite statutory and budget authority to effectively and efficiently protect America from terrorism.

Make no mistake: this bill is far from perfect. The House Republican leadership in too many instances misused H.R. 5005 to score political points instead of legislating responsibly. I am hopeful the conference with the Senate will overcome these deficiencies and Congress can pass a final Homeland Security bill that produces real security for the American homeland.

As we protect and defend our country, we must also protect and defend the Constitution, the Bill of Rights, our civil liberties, and the protection of civil service employees. Futhermore, the development and operation of the Department of Homeland Security must involve a bottom-up process, with the input and recommendations of local first responders and local officials from America's cities, small towns and rural communities. They are our first line of defense against terrorism, and also the first to answer a call in case of attack.

The security of our country, our people and our freedoms are paramount. The new Department of Homeland Security will allow us to devote time, people and resources in a coordinated and effective manner to deter any more tragedies like September 11.

Mr. STENHOLM. Mr. Chairman, I rise today in support of the bill H.R. 5005, the "Homeland Security Act of 2002."

At the very outset, I want to express my thanks to the Members of the Select Committee on Homeland Security, from both sides of the isle, all of whom were very gracious in considering and ultimately accepting the recommendations from the House Agriculture Committee. I am convinced that through this cooperation we were able to make significant improvements to the sections involving the transfer of the Plum Island Animal Disease Laboratory and the border inspection functions of the USDA Animal and Plant Health Inspection Service (APHIS). In addition, I want to acknowledge the support and cooperation of the Administration in our efforts to improve these specific provisions as well.

Despite my support for moving the process forward today, however, I would not be fully honest if I didn't express serious concern about the accelerated pace at which we have developed this legislative package and about some of the uncertainties associated with it. Many in Congress are concerned that, in our haste, we may not have given adequate consideration to unintended consequences that could result from the current effort.

Little that I have heard during this abbreviated process has reassured me that the American people will be significantly safer from terrorist threats as a result of the passage of this bill and its enactment into law. Of course, the vast majority of this bill is really not about creating new protections for the American Homeland. Rather, much of this bill relates to a gigantic reshuffling and potential expansion of the federal bureaucracy—the largest new federal bureaucracy created since World War II. This too is a source of serious concern to me.

While I realize that efforts have been made to ensure that no important functions are lost or degraded by this reorganization, I would feel much more comfortable if we had been able to question the Administration about these matters during the hearings held by the House Agriculture Committee. Unfortunately, representatives for the Administration did not choose to accept our invitation to appear, and we consequently had to do our work with less information and assistance from them than I would have liked.

Nonetheless, I do remain hopeful, that through our actions today, some improvements in inter-governmental communication and coordination may take place. I am also pleased that we were able to address the issues related to the USDA Animal and Plant Health Inspection Service in a way that will preserve important agricultural functions, while assisting the effort to consolidate homeland security protections.

Given these positive steps, I will be voting for the legislation before us today. I am hopeful that, as a result of this legislation, at least one American family will be spared additional loss and suffering at the hands of those who hate us and our way of life.

Mr. SERRANO. Mr. Chairman, I rise in reluctant but strong opposition to the Homeland Security Act before us today.

It has been clear since September 11th—indeed it was clear well before that date—that the Federal government needs to change to better face the threats posed by terrorists, to better coordinate and focus prevention, preparation, and response efforts. The bill before us attempts to do that. But I have several serious concerns with the approach the President and the majority are taking.

First, let me praise the Select Committee for including in the new department an Office for Civil Rights and Civil Liberties. This represents an acknowledgement that our fundamental values must be preserved as we fight against forces that seek to destroy those values.

However, on a number of other issues, equally important values, such as fairness and openness, are undercut.

I am deeply concerned that what is proposed in this bill goes too far too fast and actually risks disrupting our efforts to detect and prevent future terrorist acts against America and Americans. Changed priorities and restructuring are very disruptive to any organization, and it will be extremely difficult to maintain a new department's focus on its primary missions when so many different entities with so many different cultures are being merged. The Comptroller General has testified that, based on review of organizations undertaking similar "transformational change efforts", it could take between five and ten years for the department to become fully effective.

I am also deeply concerned that the non-homeland security activities of many of the agencies proposed to move to the new department will suffer within an organization focused on homeland security. While the new department's primary mission is critical to the well-being of our people, so are the Coast Guard's search and rescue function and FEMA's response to natural disasters. They must not lose attention or resources because the main focus of the department and its top managers is on homeland security.

Another problem I see with the bill is that it rewrites or even abandons an array of good government protections in the name of "flexibility". As several of my colleagues have noted, we got through World War II, the Cold War, Korea, and Vietnam without needing to exempt the federal workforce from civil service protections, ranging from collective bargaining to whistleblower protection. It is simply wrong to turn hardworking, loyal civil servants into second-class employees because their box is moved to a new place on an organizational chart.

It is also wrong and unnecessary to fiddle with the Freedom of Information Act and the Federal Advisory Commission Act. Both have sufficient protections against disclosure of sensitive information and should be retained.

Mr. Chairman, others have identified other serious problems with this bill, but I believe the fundamental problem is that it tries to do too much all at the same time. The real problems were not the structure of the government; they involved priorities that did not include counter-terrorism, as well as failures of coordination and information-sharing among existing agencies.

As an example of a more focused, less disruptive approach, a team from the Brookings Institution suggested concentrating initially on agencies involved in border and transportation security and infrastructure protection and creating a new intelligence analysis unit, and stressed strong management in the department and central White House coordination of government-wide strategy and budgets as crucial to the success of the reorganization. Other activities and agencies could be considered for inclusion later, as the department finds its footing. This is not the only approach, but shows it is possible to address the real need for restructuring on a smaller, less disruptive scale.

Mr. Chairman, I continue to believe that we must reorganize our government—and Congress—to meet the terrorist threats against us. But this is not the right way to do it and I urge my colleagues to vote against it and start over.

Mrs. TAUSCHER. Mr. Chairman, I reluctantly must rise in opposition to the Oberstar-Menendez amendment.

As a Member of the Transportation Committee, I have a great deal of respect for my Ranking Member and Mr. Menendez, but I must oppose their amendment.

As a Member of the Aviation Subcommittee, making air travel safer is my highest priority.

But I do not believe that forcing arbitrary deadlines on our local airports will actually make air travel any safer.

On the contrary, if airports are forced to set up temporary solutions to meet these deadlines, the result will be wasted tax dollars and huge crowds of passengers standing in lines inside and outside airport lobbies, which will create an entirely new security risk.

Congress has taken many bold, new steps to respond to the terrorist attacks since September 11th.

One of these is the sweeping aviation security reforms we passed last year.

As a member of the committee that drafted last year's bill, I can tell you that the deadlines established in the legislation were arbitrary and are unenforceable.

The United States had never experienced such an attack.

And because Congress' response was swift, the details on how to achieve such sweeping reforms were untested.

Our airports, which are responsible for implementing these mandates on the ground, have told us for months that these deadlines are unworkable.

I have been contacted by all of the Bay Area airports: SFO, Oakland, San Jose and Sacramento International airports urging me to allow the TSA to have the flexibility it needs to deploy the most reliable explosive detection equipment as soon as possible.

Secretary Mineta testified before our subcommittee three days ago that due to the funding cuts and new mandates in the supplemental appropriations bill, the TSA could not meet these deadlines.

I think the Secretary knew before two days ago that these deadlines were unachievable.

And I find it too convenient that the administration is now trying to blame Congress for this.

But the underlying fact still remains: These deadlines are not realistic.

We should not be playing political chicken with common-sense aviation security.

Instead, we should be working together to find real solutions at each of our airports.

The Granger language included in the underlying bill requires the TSA to work with every airport to customize its unique security needs and establish a plan to achieve 100 percent baggage screening.

The Frost language sets an outer limit of one year to achieve this goal at every airport.

My understanding is that most airports will be able to comply with this well before the year deadline.

I, like all of you, want to keep the pressure on to ensure that all baggage is screened as soon as possible.

I believe the underlying bill will do that while still addressing the reality of implementing this at all our nation's airports in a cost effective and responsible way.

I urge my colleagues to oppose the amendment and support the common-sense language in the underlying bill.

Mr. SCHROCK. Mr. Chairman, first I would like to thank the members of the Select Committee for all of their hard work to craft this legislation. I also want to thank the President for moving forward to establish a Department of Homeland Security. The Government Reform Committee and many other House Committees gave the Select Committee many amendments to work with, and they skillfully sifted through these amendments to come up with what I think is a bill that sets up the best framework to protect our nation.

The creation of this department is of particular interest to the people I represent as they live every day with the threat of terrorism. The greatest security threat that we in the Second Congressional District of Virginia face is an attack on our seaport.

The characteristics that make Hampton Roads an ideal seaport—a great location and an efficient intermodal transportation system—also makes it a prime target.

A ship sailing through Hampton Roads steams within a few hundred yards of the Norfolk Naval Base, home to the Atlantic Fleet, and Fort Monroe, home of the US Army Training and Doctrine Command. The detonation of a ship-based weapon of mass destruction would have disastrous effects on our military and our economy.

Under the current framework, the Coast Guard, the Customs Service, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service all have some jurisdiction over ships coming into the Port of Hampton Roads.

These agencies have different, often limited, powers to search and inspect ships and cargo and lack a formal process for sharing information with each other. In some cases, federal laws even prevent the sharing of information between these federal agencies.

These problems became clear at a workshop I recently held on port security. Putting these agencies under one umbrella will enable them to communicate more effectively and work together, filling the security gaps that exist today.

Also, this homeland security plan will help goods get to market more efficiently. Under the current system, a ship and its containers are stopped and searched several times by different agencies. This system unnecessarily impedes the flow of commerce.

I am confident the President's proposal will ensure security remains our top priority during the inspection of ships, while also providing for a more efficient flow of goods to their ultimate destination through the reduction of duplication.

Many government agencies want to work together to ensure homeland security, but in the past, either the framework did not exist or legal barriers prohibited their cooperation. This legislation will create the necessary framework for the collaboration needed to keep our ports, our airports and our entire homeland safe from terror.

This legislation will establish the structure necessary to address today's new problems. But as we develop this legislation it is imperative that we not amend the legislation such that this new department is a static one, difficult to change and unable to address the unforeseen problems of tomorrow. We must not unnecessarily tie the hands of this and future Presidents, robbing them of their ability to best address the threats of the future.

I am proud to support this legislation, and I urge my colleagues to do the same.

Ms. HOOLEY of Oregon. Mr. Chairman, the Rules Committee Wednesday was presented with a tremendous number of amendments to the Homeland Security Legislation. Their task was certainly a monumental one. However, the Committee did not allow my amendment to be considered on the floor or be included in the Manager's amendment, which I believe to be an erroneous decision.

As such, I have converted that amendment into a bill, the "Secure Identity Protection Act of 2002." This bill would effectively prevent the theft of Social Security numbers of the deceased by requiring the White House to issue a report on the advisability of requiring State DMVs to subscribe to the Social Security Administration's Death Master File. The report, in turn, must be submitted to Congress.

This bill is not a mandate. It is not a proposal to create a national ID card, nor is it an effort to ban Social Security Numbers from general usage. Rather, it is a common sense proposal that would greatly benefit our national security, as well as prevent billions of dollars in fraudulent charges by identity thieves.

Identity theft is not just a financial crime, it is a threat to our national security. An individual suspected of training four of the September 11 terrorists used the Social Security number of a New Jersey woman who died in 1991 to establish his identity in the U.S. Untold numbers of other terrorists may have done the same.

The financial services industry, the medical community, the insurance industry, educational institutions and state and local governments rely upon our Social Security Numbers as a means to uniquely identify us. Each of these entities reproduces our Social Security number within their own files and generates documents that make this information available to others in some form. That's why the vast majority of us have our Social Security numbers emblazoned upon our medical insurance cards in our policy numbers or on our driver's licenses as our license numbers.

Even more alarming is that by using the Internet, the ability to gain access to personal identifying information such as Social Security numbers is growing at a tremendous and frightening pace. The ability to exploit that information has empowered a new generation of identify thieves who have in turn made identity theft the fastest growing crime in the world.

Unfortunately, only 18 state DMVs currently subscribe to the Death Master File. So, if a terrorist provides a Social Security number of a deceased individual to a state DMV, it is highly likely that terrorist will be successful in his or her endeavor to obtain a driver's license or identification card. We should all shudder to think of the consequences.

Compounding the problem, Congress has already recognized the need to improve the current system in ensuring states certify the identities of commercial truck drivers, and included $5.1 million in federal funds for states to access the Death Master File in the FY '02 Supplemental appropriations bill. Unfortunately, not every terrorist is going to apply for a CDL.

We have failed for too long to address the problem of identity theft. We have failed to help protect the citizens of the United States from additional terrorists illegally gaining identification and access to numerous resources to plot their attacks.

My bill is a step in the right direction, and I urge all my colleagues to assist me in ensuring our government takes common sense steps to safeguard our national security.

Mr. CARDIN. Mr. Chairman, I support the creation of a new Federal Cabinet Department of Homeland Security. Therefore, I shall vote for H.R. 5005, but I have major reservations about many of its provisions that I hope will be corrected in conference. It is important to let the process move forward.

I agree that we need to consolidate our existing agencies that have homeland security and counter-terrorism functions by creating a new Department with the primary mission to prevent, disrupt, and respond to terrorist attacks. I believe that Congress will enhance the national security interest of the United states by creating this new Department of Homeland Security. The security and safety of the homeland and its citizens is perhaps our greatest responsibility.

I am very disappointed that the House rejected several amendments that could have strengthened this legislation—amendments that would have subjected this new agency to the Freedom of information Act (FOIA), civil service rules, whistleblower protections. The House also rejected amendments that would have stricken the delay in implementing explosives screening for baggage at our airports, as well as an amendment that would have clarified the liability immunity for homeland security contracts.

In each of these areas, I am hopeful that the conference committee will modify these provisions.

We also have to ensure that many of the agencies that would be included in this new department not lose sight of their original missions. An example of that is the U.S. Coast Guard, which boaters rely on in emergency situations. I support strengthening the Coast Guard to deal with border security issues, but I do not want the result to be that Maryland boaters in the Chesapeake Bay are at greater risk because the Coast Guard focus has changed. The new Department of Homeland Security should not jeopardize those functions of different departments and agencies that are not specifically related to security.

In order for me to support this legislation on final passage, it is important that we not only establish the consolidated agency for homeland security, but that it is constituted in a manner that protects the civil liberties of its workforce and the people of this country. I am hopeful that when the legislation returns from conference the legislation will accomplish these goals.

Mr. ROEMER. Mr. Chairman, I rise to express my serious reservations about H.R. 5005, creating the new Department of Homeland Security. On the occasion of this historic vote, I wish to expres my concerns about the Administration's proposal and implementing legislation considered by the House of Representatives today.

The September 11 tragedy confirmed a problem that exists in our domestic security and exposed on vulnerability to outside attacks. The existing bureaucracy and the intelligence community made some mistakes and errors. In addition, there are existing problems with management, organization, "stove piped" agencies, outdated technology, and not enough effective communication between key people and departments. I fear that some of these problems and organizations are replicated here in H.R. 5005.

The President proposed to create a new Department constituting the largest federal reorganization in half a century. I hope and pray it works, but I don't think it will. Understanding the urgency of possible future terrorist threats, Congress pledged to enact a bill quickly so that the President can sign it as the Nation approaches the one-year anniversary of September 11th. We should take more time and get this bill right. This organization will last for decades to come.

Homeland security has now become one of the most important challenges facing the Nation, and the vote we cast today to address terrorist threats will have profound and lasting consequences for national security, the economy, the future of our children, and our way of life for the next several generations. It is therefore critically important that we make our decisions based on careful and thoughtful analysis before voting to institute far-reaching changes altering the face of government and the way we prepare for and respond to terrorist threats. It is vitally important to combine the newest and most effective organizational ideas and theories.

There is considerable agreement in America, including Congress, that some kind of organizational reform is necessary. I applaud President Bush for proposing a plan. The question now is not whether to reorganize but how and to what extent. In Congress, twelve committees considered the President's proposal and offered some thoughtful improvements, although most of them were rejected by the Select Committee.

While I have strongly supported the President's creation of the White House Office of Homeland Security, I maintain serious reservations about this approach to establishing a new Department. My objections are not solely based on the Department's personnel policies or even the absence of Posse Comitatus protections to safeguard individual liberties. Rather, my reservations are based on this "1960's" type of approach to reorganizing existing agencies and my belief that this form of restructuring will not be able to respond to terrorist threats with improved agility, flexibility and dispatch. As the management theory of the day promotes synergy and symmetry, this proposal reflects big bureaucracy, big budgets, and big problems.

The legislation considered today is the only solution we are being offered. The bill will shuffle tens of thousands of government employees and billions of dollars in new federal spending without achieving what should be the core mission: to provide sufficiently flexible and responsive intelligence resources and information gathering; reliable analysis and effective sharing to executive agencies; and field agents, intelligence personnel and first responders who are thoroughly trained and prepared. Indeed, the last thing our nation needs now is a hastily conceived Department of Homeland Security. This monumental undertaking, if not carefully and cautiously thought through, could produce an unwieldy and overblown bureaucracy that would exacerbate the current situation and render the country more vulnerable to certain weaknesses.

I have been proud to serve on the Select Committee on Intelligence and on the Congressional Joint Inquiry, which has for the last two months been intensely focused on the role of the core components of the intelligence community, particularly the CIA, FBI and NSA. This inquiry has also heavily scrutinized information management particularly with regard to intelligence collection, analysis and information sharing. Following dozens of special briefings and lengthy hearings, I have concluded that increasing resources and technology for intelligence and improving information management are some of the keys to reform. We must improve the ability of our services to turn lots of information into knowledge and therefore actionable intelligence.

Rather than folding dozens of executive agencies under one tent and moving desks from one department to another, the bill should increase efficiencies for computers, equipment, and technology in order to assure that we communicate more quickly between federal offices with e-mail and databases to the field where terrorists might be located. The intelligence community is challenged by the use of increasingly sophisticated technology, such as encryption systems, that require a far different effort than we have employed over the last few decades to combat technology used by terrorists.

One of the amendments I proposed, which was not accepted by the Committee on Rules, would have bolstered the intelligence functions of the Department by creating stronger directorates for intelligence and critical infrastructure protection. These directorate's missions would have fused and analyzed intelligence from all sources in a more integrated approach than that proposed by the Administration's proposal.

Another amendment I proposed would have prohibited the transfer of the Federal Emergency Management Agency into the new Department. FEMA's mission is reactive, responsive, and rehabilitative. Folding them into the Department would threaten to disrupt one of our most respected and effective independent federal agencies from delivering premier first-responder relief that has added tens of thousands of Americans devastated by natural disasters, such as fires, floods, earthquakes and hurricanes. Focus for FEMA would then be split between a proactive and preventive priority and secondly, the traditional rehabilitative mission. My amendment would have retained FEMA's independent status and ensured that our nation's increased focus on terrorism preparedness will be in addition to, and not at the expense of, FEMA's natural disaster response capabilities.

Mr. Speaker, H.R. 5005 focuses on reorganization and insists on the misguided notion that if law enforcement and related agencies are swept under one roof, they will be able to communicate and respond to threats more quickly and efficiently. Our agents should be able to communicate via email and hand-held technology with tremendous speed and efficiency. It is not always necessary for them to be located under the same roof to achieve their mission. Information management is another key to securing homeland security, preventing future attacks, and protecting valuable assets. Effectively using intelligence is one of the most useful and powerful instruments we have to prevent, or at least mitigate, the likelihood and consequences of a possible future attack. However, the bill's approach toward information management and accountability seems limited and flawed. If the new Department is to function effectively, its access to information relating to terrorist threats must not be restricted as it is under this bill.

For example, the Secretary of Homeland Security is granted only limited access to "raw data" on information collected by the intelligence community and law enforcement agencies. The bill specifically provides that the Secretary can obtain unanalyzed information "only if the President has provided that the Secretary shall have access to such information." This approach seems designed to keep the new department dependent on the good will of the intelligence community and law enforcement agencies and hostage to their partial clues on insufficient information. This would be a grave mistake.

I believe we should modestly increase the size and scope of the current White House Office of Homeland Security, headed now by Director Ridge. That position should have Cabinet level status, a larger budget, and analytical intelligence function, and jurisdiction over the Coast Guard, among some other agencies and responsibilities. But it should not be combined with 22 federal departments and 180,000 workers costing taxpayers $38 billion.

Mr. Speaker, for many of these reasons, I have serious reservations about the bill. I do not cast this vote lightly. I believe that we should provide accountability and maximum efficiency in our effort to provide homeland security. Congress should rework this bill and try again. We should break the mold, think "outside the box," and create the agency of the new century, not the bureaucracy of the 1960's. After all, we are not targeting the former USSR and missile silos in Siberia, but targeting against terrorists that can swiftly move from Hamburg, Germany to New York and kill thousands of Americans.

Mr. UDALL of Colorado. Mr. Chairman, I rise in support of this bill. I do have some concerns about it, but I think it deserves to be passed.

I am united with my colleagues and with the President in a shared determination to win the war against terrorism. We must do everything we can to reduce the risks of further attacks. I believe we must reorganize our government to meet that goal.

What we have chosen to take on in the aftermath of September 11th is an enormous task, the largest reorganization of the government in half a century, a total rethinking of how we approach security. We need to plan for the protection of all domestic people, places, and things. We need to fundamentally restructure our government to be more responsive to terrorism.

This is a tall order. Homeland security has always been an important responsibility of federal, state and local governments. But in the aftermath of the terrorist attacks, the scope of this responsibility has broadened.

The bill before us has much in common with a report that we received just last year from a commission headed by former Senators Gary Hart of Colorado and Warren Rudman of New Hampshire. The report recommended sweeping changes, including the establishment of a Department of Homeland Security.

I have reviewed the commission's report carefully and discussed it with Senator Hart, and I have been impressed with the soundness of the report's recommendations. I have also cosponsored two bills dealing with this subject.

So I am glad that the President has come to agree that a new Department of Homeland Security is necessary.

The question we face today is whether the bill before us is up to the challenge. Will this bill actually make the American people safer? I'm not entirely certain. I believe this bill generally heads in the right direction, but it still contains a number of troubling provisions.

One concern I have is that in our rush to create this new department, we may be assembling an unwieldy bureaucracy instead of a nimble department that can be quick to respond to the challenges at hand. The proposed department's size, cost and speed may well hamper its ability to fight terrorism. We need to recognize that no department can do everything. Homeland security will be the primary responsibility of the new department, but it will also continue to be the responsibility of other departments, of states and local governments, and of all Americans.

It's also true that many of the agencies that will be subsumed by this new department have multiple functions, some of them having nothing to do with security. That's why I think it's right that the bill abolishes the INS and includes its enforcement bureau in the new DHS, while leaving a bureau of immigration services in the Department of Justice. I also think it's right that the bill moves only the agricultural import and entry inspection functions of the Animal and Plant Health Inspection Service into the new department, while leaving the rest of the service—including the unit that investigates chronic wasting disease and other possibly contagious diseases—intact. I believe this same model should apply to the Federal Emergency Management Administration, or FEMA, which this bill would move as a whole into the new department. While it may seem that FEMA—as the central agency in charge of disaster response and emergency management—should constitute the heart of the new DHS, FEMA is primarily engaged in and especially effective at responding to natural hazards. This bill should leave FEMA outside the new department, or at a minimum transfer its Office of National Preparedness to the new department, while leaving FEMA's Disaster Response and Recovery and Mitigation Directorates intact. I voted today to leave FEMA outside the new department because I fear FEMA's current mission and focus will be lost in the new bureaucracy we are creating.

I am hopeful that the President will continue to work with the Congress to make sure the agencies moved to the new Department will be supported in their many other important duties even as they focus anew on their security roles.

I have other concerns aside from the organization of the agency.

The bill includes language that denies basic civil service protections for the federal workers who would be transferred to the new department. While I am encouraged by the passage of two amendments that slightly improve the bill's language in these areas, I remain fearful for the 170,000-plus employees of the new DHS whose jobs this bill would put at risk in an attempt to give the President "flexibility" to manage in a "war-time" situation. That's why I voted for amendments to preserve collective bargaining rights, whistleblower protections, and civil service rules that have protected career employees for over 75 years. I don't believe we should use the creation of a new department as an excuse to take away these protections—protections that Congress enacted so that we could attract the very best to government service. Taking away these protections now signals that we don't value our federal workers, their hard-won rights, or the integral role these workers will continue to play as part of the new department in the fight against terrorism.

I also supported an amendment striking the overly broad exemptions in the bill to the Freedom of Information Act, or FOIA, which was designed to preserve openness and accountability in government. The bill includes a provision excluding information voluntarily submitted to the new department from the requests for disclosure, it would also preempt state disclosure laws. FOIA does not require the disclosures of national security information, sensitive law enforcement information, or confidential business information, which makes the exemptions to FOIA in this bill unnecessary in my view.

I think that these parts of the bill will need to be revised, and I will do all I can to improve them.

There is one provision we debated today that I do think should remain in the bill. Last year, I strongly supported the airport security bill because I believed then—as I do now—that we must protect the public from a repetition of terrorist hijackings. One key part of that is to have baggage screened to safeguard against explosives being smuggled aboard airplanes in checked luggage.

But today I voted to extend the baggage screening deadline established in the airport security bill because it doesn't make sense to me to mandate a deadline that clearly is impossible for a quarter of airports in this country to meet. It has been clear for some time that although 75% of airports would be able to meet the December 31st deadline, 25% of this country's largest airports would not. Denver International Airport (DIA) is among those airports still waiting for the Transportation Security Administration (TSA) to approve its security plan.

DIA has developed its own plan that would employ a baggage-screening system that costs approximately $85 million to implement, versus $130 million for the system currently approved for use in the U.S. The bill before us today allows TSA to incrementally address individual airport requirements like DIA and accommodate new technology improvements.

I am a cosponsor of legislation that would extend the deadline because I believe DIA will be able to provide a better, more cost-effective baggage screening system than the current TSA-approved model given a bit more time. So I am pleased that this bill includes an extension on the baggage screening system.

In summary, I am pleased that this bill echoes the overall approach of the Hart-Rudman report recommendations. I am also pleased that the bill includes important Science Committee contributions, such as the one establishing an Under Secretary for Science and Technology in the new department, as well as provisions I offered in the Science Committee markup requiring the new department and NIST to engage in a systematic review and upgrading of voluntary consensus standards. I believe it is important that the bill includes a provision reaffirming the Posse Comitatus Act, which prohibits the use of the armed forces for civil law enforcement. And it is important that the bill prohibits the government from implementing the proposed "Operation TIPS," an Orwellian program under which designated citizens would be trained to look for and report suspicious behavior on the part of their fellow citizens.

Despite the problems in the bill, I am voting for it today because I remain committed to a strong, effective Department of Homeland Security. I am hopeful that the problematic issues I highlighted and other concerns will be successfully addressed in the conference committee.

Mr. BEREUTER. Mr. Chairman, this Member rises to express his reluctant support for H.R. 5005, legislation to establish a Department of Homeland Security (DHS). There are several improvements to the bill included as a result of the work of the House Permanent Select Committee on Intelligence (HPSCI).

When the Intelligence Committee, of which this Member is Vice-Chairman, reviewed President Bush's initial proposal, it considered a number of issues:

What will be the relationship between the Department of Homeland Security and the intelligence community?

Will the Department have the access it needs to intelligence information?

Will the Department have the trained personnel to analyze threat information and other critical intelligence data?

Will the new Department be asked to defend the homeland against threats in addition to terrorism—for example, threats from the proliferation of weapons of mass destruction?

As offered by the Administration, the Homeland Security Department proposal would not provide for the capability to analyze the range of threat information that is gathered by the U.S. intelligence community. Without such an analytical capability, the Homeland Security Department will have to rely on whatever finished intelligence the Director of the Central Intelligence Agency (CIA) and the Director of the Federal Bureau of Investigation (FBI) chooses to supply. The Intelligence Committee overwhelmingly agreed that the new Homeland Security Department could not simply rely on final reports and analysis generated by the myriad of intelligence agencies—its mission is just too important. We agreed that the Department must have timely access to raw data from all intelligence sources, information systems to integrate these diverse data, and the trained people to analyze the information.

Mr. Chairman, this Member generally appreciates the improvements the Select Homeland Security Committee made to the bill regarding the tasking for the collection of intelligence gathering by the Intelligence Community under existing law and this Member is particularly appreciative of the Select Committee on Homeland Security's willingness to accept these recommendations and incorporate them into H.R. 5005 by establishing the meaningful analytical organization we recommended. However, during the Select Homeland Security Committee's markup, an unfortunate decision was made to delete the new Department's seat at the table when it comes to intelligence-gathering instructions. The members of the Select Committee expressed the concern that the new Homeland Security Department should not ask intelligence services to gather information on American citizens.

Mr. Chairman, the protection in individual liberties of American citizens is an understandable and appropriate priority. This Member fully concurs that the Homeland Security Department should not be allowed to issue instructions that the CIA gather information on Americans.

However, to ensure that the Department's analytic capability is robust, it must have a role in tasking our intelligence services to gather information on foreign individuals, entities, and threats. Without a seat at the mission formulation table, the policy decisions of the Homeland Security Department will rely on whatever foreign threat information our Intelligence Community happens to collect under the tasking decisions they have made according to their respective agency and collective priorities.

This Member must express deep regret that the amendment to H.R. 5005 he had hoped to offer was not made in order by the Rules Committee. This is an unfortunate error in judgment, apparently reflecting the advice of various persons in the Executive Branch. The amendment was a simple and straightforward one that would have offered a slightly modified version of language that received bipartisan support in the Intelligence Committee. It should be emphasized that this Member's amendment was narrowly constructed and would have specifically authorized such tasking only on foreign adversaries, not U.S. citizens or other persons legally resident within the United States.

The tasking for information on foreign adversaries is not a trivial concern, Mr. Chairman. Without the proper information, the Homeland Security analysts will not be able to devise appropriate defenses. The other departments of government have different missions (for example, the State Department is to advance diplomacy, the Department of Defense is to win wars, and the FBI is to prosecute criminals) and their analytic needs are quite different.

It is unfortunate that this Member's amendment was not made in order as it would have made a critical improvement to the final bill. Without this authority for the Department of participate in the tasking for the collection of foreign intelligence, we will have a major and continuing gap in information which the DHS will need to do its job well in protecting our citizens and homeland. It is this Member's hope that the other body may include this authority.

Mr. Chairman, this Member has grave concerns about the overall approach to the creation of the Department of Homeland Security as proposed by the Administration. Its drafting may well have been a defensive reaction to a proposal by the junior Senator from Connecticut (Mr. LIEBERMAN) and by other Members of Congress from both houses. The proposal presented to the Congress has all the indicators of a proposal too hastily prepared and of one that was drafted in too much isolation. It was understandable in that its preparation was a process so heavily guarded—restricted to relatively very few people—in order to avoid the otherwise inevitable massive internal campaign of bureaucratic turf-protection, pre-emptive opposition campaigns from a wide variety of interests, and the immediate opposition of competing congressional authorizing and appropriations committees while the consideration and drafting was underway.

The proposal had whole agencies, bureaus, or divisions shifted to the DHS when very major parts of such units clearly don't belong in the DHS. Fortunately, the House has corrected a few of the most egregious misplacements.

A lean, well-organized DHS would have been the way to proceed. This is an absolutely huge bureaucracy being created with very disparate parts. Merging the employees and their agencies' cultures into an efficient and effective DHS will be an incredibly difficult feat. It will result in an unnecessarily long number of years to put in place when the security of our country demands an expeditious reorganization of our government. Undoubtedly too, the prospects for increased costs to attain these undesirable results are certain and highly under-estimated.

This Member's only hope is that the Senate version and results of a House-Senate conference will give us a much smaller, refined and properly focuses DHS, but from all accounts of expected action in the other body, that appears to be unlikely. Practically no Member of Congress wants to oppose the creation of a DHS, especially during the war on terror when our President is requesting congressional action. Ultimately this Member will have to make the judgment whether the legislative product from the House-Senate conference is better than the status quo and if the costs of further delay in starting over to create a much different and much smaller DHS is achievable and worth the delay at a time when the United States and its facilities and personnel abroad remain very vulnerable. Will the enactment of the legislation creating a DHS that now seems in prospect be worth the delay and dissension caused by starting over and doing it right? That is the question and the answer is not clear, Mr. Chairman, count this Member's vote as a vote to move the legislative process forward.

Mr. LEVIN. Mr. Chairman, twenty-six hours ago, when the House began this historic debate to create a new Homeland Security Department, it was my hope and expectation that I would be able to support this legislation on final passage. In light of the terrorist strikes of September 11, and the continued threat, I strongly believe we need to reorganize the federal government to better address the dangers facing our nation.

The bill as reported to the House by the Select Committee on Homeland Security fell short in a number of key areas. During the long amendment process of the last two days, I regret that the House voted down amendments that would have improved this bill. As a result, I cannot support this legislation at this time.

I am particularly disappointed that the amendment offered by Representative Oberstar was rejected. This is not the time to extend the deadline for airports to install the explosive detection equipment that is critically needed to check airline passenger luggage for bombs. Last fall, this House voted overwhelmingly to have this equipment in place by the end of this year. There is no good reason to extend that deadline for another twelve months as this bill does.

I hope that this and other flaws in the House bill be addressed in conference with the Senate. This is the largest reorganization of the Federal Government ever attempted. It concerns the security of our nation and the safety of every American. With so much at stake, we should get it right. I believe we can and must do better. I will continue my efforts to strengthen and improve this bill as we go to conference with the Senate.

Mr. PASTOR. Mr. Chairman, it is with great reluctance that I must oppose H.R. 5005, the Homeland Security Act.

The tragic events of September 11 thrust this nation across the threshold into an entirely new world where terrorism is a real and viable threat to the well-being of all Americans. For that reason, I supported the President when he recommended that we create a new department to address the prevention and impacts of terrorists. However, our experience with forming new cabinet posts in the past has taught us that this is an undertaking that should be done in a careful and deliberate manner, not one that is rushed to meet an arbitrary deadline.

The reorganization as proposed by the President would create the third-largest Cabinet department, in terms of personnel, by combining 22 federal agencies with 170,000 to 225,000 employees and a total budget of $37.5 billion. However, that budget estimate was simply the compilation of those agencies' current budgets with no regard to the costs associated with creating an entirely new infrastructure and giving those agencies expanded areas of responsibility. Clearly, this rearranging of agencies is going to cost many billions of dollars above that budget estimate.

It has been exactly 48 days since the President made his proposal, but in that time, Congress has had less than 29 working days to hold hearings, consult with experts, receive input from interested parties, and evaluate all this information. That is simply not enough time to form a sound structure that addresses Congressional oversight, elimination of redundancy, budget and labor issues, in addition to the critical delineation of areas of responsibility. Furthermore, consideration must be given to the impact that such a change will have on agency core activities which do not have a direct interface with the war on terrorism, such as Customs collecting duties and the Coast Guard rescuing people at sea. Many are concerned that these non-security missions may be diluted under the new department's mission to fight terrorism.

In the few days available, an attempt was made by ten authorizing committees to hold hearings and formulate recommendations on how they thought the plan should be implemented. But after all was said and done, the 9-member Select Committee on Homeland Security dismissed many of those recommendations and gave the Administration most of its wants, irrespective of the wishes of many lawmakers.

In particular, I am concerned over the White House's desire to deviate from established federal labor practices and protections such as collective bargaining rights, the potential for the Administration to assume too much fiscal power by shifting funds among agencies without Congressional oversight or approval, and the diminishment of non-security roles. With such a short time to stimulate national debate and to review the above issues, I can not support this measure.

Mr. LEWIS of Georgia. Mr. Chairman, it is impossible for me to support this legislation. It is not constitutional, it is not just, and it is not fair.

This bill would strip hundreds and thousands of Federal employees of their labor protections. It would deprive hundreds of millions of American citizens of their civil liberties and fundamental rights.

This bill is nothing less than a power grab by our President and this administration. It would be the largest consolidation of power in recent American history.

By denying our citizens their basic rights, but giving this administration overwhelming power, this bill would effectively declare Marshall law. It would violate the Constitution and the Bill of Rights.

Even the name—"Homeland Security" conjures images of Banana Republics where individuals rights are a mere afterthought. This is America. Our government does not deny our citizens fundamental rights in the name of homeland security. We are greater than that. We are better than that.

As Thomas Jefferson said, "the price of freedom is eternal vigilance." My Colleagues, let us heed the warning of the author of our Bill of Rights. It is time to be vigilant. Now is the time to stand up for all of our citizens. Now is the time to do what is right.

Do not deny our people their fundamental rights. Vote "no" on this ill-conceived bill.

Mr. BENTSEN. Mr. Chairman, I regrettably rise in opposition to H.R. 5005, the Homeland Security Act of 2002, which establishes a Department of Homeland Security, as an executive department of the United States, headed by a Secretary of Homeland Security.

Mr. Chairman, while I support the core concept of H.R. 5005, as I believe that our government is sorely in need of reorganization to anticipate, prevent and react to potential future terrorist attacks on our soil, I have strong concerns with several aspects of this measure, especially those that should never have become political issues. Certainly, when it comes to defending our nation and prosecuting our war on terrorism, we must spare no expense. Those entities who attacked us on that unfortunate day on September 11, 2001 cruelly exploited our weaknesses, and it is our responsibility to make sure that we close all the gaps in our national safety infrastructure.

Neither should we spare the principles of democracy we seek to defend in this very bill. And our desire to move quickly to arrest the threat should not be done with such haste as to not fully comprehend the model, structure and mission we wish of this new mega-Department. But in fact, Mr. Speaker, after two days of debate, I am afraid that is exactly what we are doing, and thus I am voting tonight not against the concept of a Department which better coordinates our efforts, but against the plan as it has been laid before us in the hope that deliberation in the other body and in conference will yield a better, more efficient product.

H.R. 5005, as it stands, is not the ideal solution to this problem. The defeat of Representative MORELLA's amendment will subject employees to less protection from political interference than is now the standard. The bill goes too far in exempting this new, powerful department from contractor liability and the Freedom of Information Act, exceeding that which is already afforded to other national security entities such as the Department of Defense. The bill would gut "whistle blower" protections, further subjecting employees to the potential of political interference and intimidation. Surely we have learned from our recent experiences with the Federal Bureau of Investigation that rank-and-file employees need to be allowed to speak up. And, Mr. Speaker, the adoption of Representative ROGER's amendment seeks to undermine the longstanding concept of "posse comitatus" by opening the door for domestic police action by our armed forces, something which goes against the very essence of our system of government.

Indeed, should H.R. 5005 become law, we will see the largest reorganization and outward growth of the federal government in decades, all done without sufficient, thoughtful consideration on how this will affect the responsibilities and organization of numerous Cabinet Departments and agencies. All of us want to do what we can to protect the nation, but we should do it right.

As this measure takes further steps in the Congress toward final passage, I am hopeful that these key issues are resolved in a manner that is in the best interests of all parties affected, and that we will one day have a Department of Homeland Security that offers unrivaled protection. Therefore, Mr. Speaker, as the measure stands, I oppose H.R. 5005. I implore my colleagues to consider that this measure is in need of refinement, and that if we do not resolve these outstanding issues, all this debate and consideration will be counterproductive and harmful to our nation.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise to express my deep skepticism the Homeland Security Act of 2002. We are rushing to undertake the most dramatic reorganization of the federal government in decades, and I am uncertain whether the particulars of this plan are well thought out.

As a member of the Transportation and Infrastructure Committee I have heard my friend Mr. OBERSTAR speak about the deliberative process that went into the creation of the Department of Transportation in 1966. That effort took over 9 months, and the final product has produced lasting benefits for Americans.

In comparison, we are rushing this bill in less than 9 weeks. We are pulling together disparate elements from all over the federal government. I am uncertain whether these pieces really do fit together, and even if they do, it will take years for them to come together as a coherent department that protects the homeland.

I strongly object to partisan manner in which the bill's authors are, under the guise of homeland security, assaulting the civil service protections of our nation's federal workers.

There is no justification for this proposal. If we are to maintain the morale and professionalism of employees of the new department, they will need the basic protections that we afford all other federal workers.

Finally, I wish to reiterate that the provisions to push back by one year the deadline for deployment of EDS equipment at the nation's airports do not belong in this bill. As I indicated earlier, the prudent course of action is to wait for the DOT IG's recommendation forthcoming in late August. We will have plenty of time to address this issue when we come back from the recess.

Because of the aforementioned reasons, I intend to vote against final passage today. I do so with great misgiving because it would be ideal for members to stand together in a united front in our war against terrorism.

It is my sincere hope that the Senate will fix the defects in the bill we pass today and that conferees will produce a final product I can support.

Mr. MOORE. Mr. Chairman, in October, I co-sponsored H.R. 3026, the Office of Homeland Security Act of 2001, to establish an Office of Homeland Security within the Executive Office of the President. Eight months later, President George W. Bush gave impetus to the creation of a Department of Homeland Security, and Congress has been given a week to give it our stamp of approval. The primary issue for Congress and the President is what the program composition and administrative organization of the new department should be, unfortunately with only a few weeks, we had to craft the best legislation possible.

As proposed, the administration bill would permit the Secretary of Homeland Security to choose how or whether their employees would be covered by current legal protections against reprisal when they call attention to instances of agency misfeasance. The bill also would exempt from the Freedom Of Information Act (FOIA) any information about infrastructure vulnerabilities given to the Homeland Security Department by any private or non-federal entity.

In congressional hearings, members of both parties have made it clear that the administration is overreaching, especially with regard to whistle-blowers and exemptions to the Freedom of Information Act. The need for whistle-blowers and for their protection was evidenced by the recent cases of Special Agent Coleen Rowley and of two Immigration and Naturalization Service agents disciplined for revealing how thin security is along the U.S.-Canadian border. These examples argue for extending whistle-blower protection to the FBI, not withdrawing it from the INS, which could be part of the Homeland Security Department.

In June, I sponsored H. Res. 436, commending Special Agent Coleen Rowley for outstanding performance of her duties. As a former district attorney, I know any law enforcement organization is only as good as its people and their ability to gather and analyze information. FBI agent Rowley courageously came forward to reveal critical breakdowns in the FBI's information gathering processes before September 11. She did this without any regard for her own career or prospects for advancement. Agent Rowley personifies the American tradition of demonstrating integrity and selflessness in the service of our nation.

Experts have been saying for years that the U.S. needed a Department of Homeland Security. A Department of Homeland Security is essential to coordinating the U.S. war on terrorism. Arguably our tactical and strategic missions and goals have been forever changed since the events of September 11th. H.R. 5005 is a bipartisan piece of legislation with input from all House standing committees with jurisdiction. H.R. 5005 also shows what Congress can actually achieve when given a deadline and an issue above the fray of partisan politics.

Mr. COSTELLO, Mr. Chairman, I rise today to oppose H.R. 5005, legislation to create a cabinet-level Department of Homeland Security, and I urge my colleagues to do the same. This experience reminds me of the efforts of President Clinton to overhaul our nation's healthcare system. As with that plan, President Bush's homeland security proposal, while well intended, goes too far, too fast in creating a massive new Federal agency that may well add to the current problems in the system—not solve them.

Creating a new federal agency and 170,000 employees with a budget of $38 billion is not something that the Congress should rush into without proper planning or without understanding the ramifications of this action. In announcing his plans to create a Department of Homeland Security just a few weeks ago, the President said that the new agency could be created at no cost to the taxpayers. The Congressional Budget Office now estimates that it will cost about $3 billion to create and implement this new department.

Mr. Chairman, I urge the President to withdraw his plan and attempt to address the issue of homeland security in a thoughtful and deliberative manner, and I urge my colleagues to vote against it.

Ms. SCHAKOWSKY. Mr. Chairman, I rise in opposition to the measure we are considering today, the Homeland Security Act of 2002. Since September 11, it has become abundantly clear that we must change the way we conduct national security in this country and we must address our security shortfalls with aggressive, decisive actions. We all agree we must do more to protect our country from threats posed by those who wish us harm and those who wish to alter the way we live our lives. There is no question that all members want to protect the American public. Unfortunately, the bill we are considering today does not take the right approach to accomplishing that goal.

At the outset of this process, I said that any new proposal to address our national security shortfalls must pass three basic tests. First, the plan must actually make us safer. Second, the plan must not compromise our precious civil liberties or rights. Finally, the critical non-security functions of government entities must not be compromised. This legislation fails to adequately address those critical tests.

The bill before us today creates a new Department of Homeland Security. As we debated the bill originally proposed by the Administration, we were able to make several significant improvements to it. I am pleased that the legislation includes a provision establishing an Office of Civil Rights and Civil Liberties within the new department. I offered an amendment to accomplish that goal during the Government Reform Committee's consideration of this bill and was glad to see that provision maintained.

I would also like to draw my colleagues' attention to the issue of immigration and the organization of immigration services. I come from an immigrant-rich district. Their contributions to our community demonstrate how important it is to ensure that newcomers to this country are received in a fair and considerate manner. It is critical that, however immigration and naturalization services are structured, the quality and efficiency of the services offered to immigrants are not compromised, and are in fact improved.

For that reason, I have worked hard to help secure various provisions in this bill that will provide immigrants with a place to turn if they have complaints and will hold immigration officials accountable for doing their job with diligence and fairness. First, this bill establishes an Ombudsman's office to assist individuals and employers in resolving problems with citizenship and immigration services.

Second, this bill would require the new Bureau of Citizenship and Immigration Services to report on how it is handling its immigration caseload. This provision includes reporting requirements on how many applications the Bureau receives and how many it is able to process; how it is addressing the enormous backlog that exists; and whether people requiring immigration and naturalization services have adequate access to the Bureau and the services it offers. These are critical data that will allow us to hold this new Bureau accountable for addressing the concerns that have been raised over the years about how the INS has performed its duties.

While the improvements made to the bill are important, there are a number of serious problems with this legislation that force me to vote against it.

This bill gives broad new authority to the President to reorganize the massive federal workforce created by this legislation. The bill gives the President an excuse to disregard and to take away hard-won civil service protections and collective bargaining rights for employees of the new Department.

At a time when agencies throughout the federal government—in Washington, D.C. and in cities across the country—are having difficulty attracting and retaining qualified employees, this bill could turn employees of the new department into second class workers. What kind of a signal will we send to those federal workers if we ask them to move and tell them that they will lose many of the guaranteed rights that they now enjoy? How many of those workers will decide to leave federal service and move to the private sector? For those workers who do stay, how can we expect them to demonstrate high morale and commitment when they know that they lack the same rights as their federal colleagues in other agencies?

Congress enacted civil service protections and collective bargaining rights so that we could attract the very best to government service. We should not give this or any other Administration the right to take them away. As we stand together to fight terrorism, we should also stand together for the rights and well being of federal workers.

The House also missed an opportunity today to provide real protections for whistle-blowers. I offered an amendment that would guarantee American patriots who come forward to expose improprieties and threats to our security a guarantee that, if they are retaliated against for their actions, they will have a right to legal recourse. Sadly, under the current inadequate whistle-blower provisions in the bill, those who risk their future to shed light on issues of concern to the public will have no guarantees and no real protection. By withholding very basic rights and protections for whistle-blowers, we are actually subjecting the American public to greater risk because those with information that should be shared with Congress or the public will be reluctant to do so—leaving us in the dark about threats we might otherwise be able to eliminate.

This bill creates an exclusion from the Freedom of Information Act to all information dealing with infrastructure vulnerabilities and is voluntarily submitted to the new department. This is an unnecessary provision because, under current law, the government already has the authority to exempt from FOIA information that meets one of several standards, including that which is related to national security and trade secrets. While the current law simply requires the Administration to review information voluntarily submitted for possible exemptions from FOIA, this bill provides a blanket exclusion, thereby removing the discretion of the Administration completely. Even worse, the same section of the bill preempts state and local good government and openness laws.

This bill also exempts committees created by the Secretary of Homeland security from the Federal Advisory Committee Act. This would allow the Secretary to create secret forums where lobbyists for all sorts of special interests could push their agendas with the Administration without concern that the public would find out and regardless of whether their discussions are about security or business goals.

The legislation before us today negates the Congressionally-mandated requirement that all airports have the ability to screen checked baggage for explosives. One of our most frightful and realistic vulnerabilities is the status of our air travel system in this country. It is a sad message to send to our constituents and the flying public that we are not willing to do what it takes to ensure the skies are truly safe. Many on the Republican side have argued that the task of providing equipment to secure our planes and prevent terrorist devices from making their way on board is too costly. I would submit that we cannot afford to do otherwise.

Finally, this bill is flawed because it provides an exemption from liability for manufacturers of equipment used for national security purposes. This broad protection for industry would apply even if company officials willfully neglect the welfare of the public in order to make profits. If a new bomb-detection machine company knows that its product is not reliable but does not inform the government, we will not be able to seek legal recourse if that company's product, as anticipated by company officials, fails to work and leads to loss of life.

September 11 made us all painfully aware of the limitations of our current national security and anti-terrorism apparatus. We have become painfully aware of the shortcomings of the FBI and CIA. And we have become painfully aware of the need to act decisively to correct our flawed system.

If we want to be able to prepare our nation and to guarantee America's security, we must improve communications, invest in language translation capabilities, invest in our public health infrastructure, provide necessary training and resources to emergency first responders and focus on improving the capabilities and the capacity of state and local authorities, and more. Moving the boxes from one agency to another will not accomplish these important tasks.

Unfortunately, this bill fails to address even the most obvious and immediate concerns. Instead, what the President and the Republicans in the House put forth is a massive reorganization of the federal government, nothing more than a reshuffling of the deck, with a few added tools for the Administration. Simply shifting people and agencies will not make America safer and that is all we will accomplish if we pass this bill. I urge all members to reject this flawed legislation and to focus on efforts that will actually enhance our security and maintain our American way of life.

Mr. BUYER. Mr. Chairman, I rise in strong support of H.R. 5005, the Homeland Security Act, and am pleased to be an original cosponsor of the legislation.

With this legislation, we will organize and focus on the resources of the executive branch of the federal government on the task of ensuring the security and safety of our citizens inside our borders. While many of the functions of the new Department have been performed by dedicated federal employees for many years, such as insuring the quality of imported food and public health needs, a new dimension will be added to the tasks of the new Department: that of preventing terrorist attacks within the United States and reducing the vulnerability of the United States to further terrorist attacks. This is a high calling.

I am pleased that the Select Committee maintained the transfer of the Coast Guard and the Federal Emergency Management Agency to the new Department of Homeland Security. The Coast Guard will play a significant role in maintaining the security of our borders, the longest of which is our coastlines. It is also crucial that FEMA's expertise be tapped by the Department when plans are developed to respond quickly to the damage and recover of local communities.

Let me also express my support for provisions in the legislation that give the new Department the authority to assist with the cybersecurity of information systems of federal agencies. The Secretary will have the duty to evaluate the security of federal systems; assist federal agencies with the identification of risks; and conduct research and development on security techniques.

I commend the Majority Leader for working through the difficult issues in the creation of the new Department and I believe he has brought to the floor a product worthy of our consideration and passage.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. SWEENEY, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, pursuant to House Resolution 502, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. DELAURO

Ms. DELAURO. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. DELAURO. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. DeLauro moves to recommit the bill, H.R. 5005, to the Select Committee on Homeland Security with instructions to report the same back forthwith with the following amendment:

Page 173, after line 12, insert the following:

SEC. 735. PROHIBITION ON CONTRACTING WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a subsidiary of a publicly traded corporation if the corporation is incorporated in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) TAX HAVEN COUNTRY DEFINED.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Monaco, and the Republic of the Seychelles.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Congress that the waiver is required in the interest of national security.

Ms. DELAURO (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Connecticut (Ms. DELAURO) is recognized for 5 minutes in support of her motion to recommit.

Ms. DELAURO. Mr. Speaker, I yield myself 1 minute.

Every Member of the House should support this motion to recommit which bans the Department of Homeland Security from contracting with corporations which operate in America but incorporate overseas to avoid paying U.S. taxes. Corporate expatriates should not continue to benefit from government largess, but they do, billing $2 billion a year in government contracts.

Not only have these companies abandoned their responsibilities to our country, they put responsible corporate citizens at a disadvantage. We benefit from private sector expertise, and we want to reward their creativity and their entrepreneurial spirit, but we should not reward them for refusing to pay their taxes and their responsibility as U.S. citizens.

The truth is the war on terrorism costs money. $500 million of the revenue lost by those corporations could buy 500 explosive detection systems, which are badly needed at airports across this country. These companies have abandoned our country at a critical time in our history. They leave seniors, our soldiers fighting overseas, and our good corporate citizens with the cost of war on terrorism. They should not be rewarded with contracts from the very department charged with securing our safety. They should pay American taxes on American profits.

Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. TURNER).

Mr. TURNER. Mr. Speaker, the overwhelming majority of the American people play by the rules every day, and they pay their taxes. I cannot explain to those folks why in the world an American corporation can relocate in a tax haven overseas with just a Post Office box and a corporate certificate, and avoid paying any taxes. I cannot explain to hard-working Americans how their tax dollars can go to buy goods and services from those companies that do not even contribute to the cost of our government. I cannot explain to the American people how we allow companies to do business with our government and bid on our government contracts when they have an advantage over their competitors because these companies are not paying any taxes.

We have got to change the tax law. We have got to make sure that companies do not profit by doing business with the government and are not willing to support this government. We are in time of war, and I think it is essential that tonight we send a strong message of corporate responsibility to America's corporations and say it is time to stop this practice. Vote for this motion to recommit.

Ms. DELAURO. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut (Mr. MALONEY).

Mr. MALONEY of Connecticut. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, corporate expatriates benefit from over $2 billion in lucrative government contracts from large consulting deals with the United States Government agencies, to equipping airport screeners, to providing tools and equipment to the Department of Defense.

Stanley Works of Connecticut, which is attempting to expatriate, received $5.6 million in government contracts in fiscal year 2001, and 92 percent of those government contracts were for defense and homeland security-related items. Our national security should not depend on companies that are overseas or that are American companies that have moved overseas.

Stanley Works and other expatriate corporations do not want to pay for our defense and national security, but they want to reap the fruits of it. They turn their backs on America at the same time they reach out their hands for the money of American taxpayers. This is wrong and this must stop, and this motion will help to stop this abusive practice of some of the leading corporations that have expatriated or plan to do so.

Mr. Speaker, I urge Members to support this very important motion.

Ms. DELAURO. Mr. Speaker, I yield the balance of my time to the gentleman from Texas (Mr. DOGGETT), a member of the Committee on Ways and Means where a similar amendment was passed.

Mr. DOGGETT. Mr. Speaker, motions like this are routinely condemned with the throw-away claim that they are "partisan." Well, tonight, let us be American partisans. Let us be partisan to the loyal businesses that stay and pay their fair share to keep America strong at her time of need.

Corporations that have renounced America have been lobbying overtime all over this Capitol complex this week to stop this motion. They will not pay their fair share, but they are sure ready to take their fair take of government business. American companies that stay and contribute to building this country, to keeping her secure at home and abroad, they deserve a level playing field on which to compete.

If a Bermuda-bound company does not have to pay taxes on some of its income, of course it can underbid those who stay loyal to America, pay their taxes, and work here at home. We should send those who come here packing when they seek Federal contract dollars, and yet will not contribute to the security of our country.

I recall a communication from a company in Houston that had this very type of situation where a competitor exited, while it remained based in Texas loyal to all of us here at home.

Tonight, let us together send a bipartisan message that if companies want a slice of the American pie, they had better help bake it.

Mr. ARMEY. Mr. Speaker, I claim the time in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. ARMEY) is recognized for 5 minutes.

Mr. ARMEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me appreciate the concern that the gentlewoman expresses over the burden of our taxes that make American corporations undertake regrettable action.

Mr. Speaker, that is just one of the burdens of our current Tax Code that would be corrected by the flat tax. But, Mr. Speaker, I think everybody in the body would agree that tonight on this subject on this bill, is not the time to be talking about tax reform.

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We ought to be talking, ladies and gentlemen, about the security of our Nation, homeland security. And that, Mr. Speaker, is my point.

This issue has nothing to do with homeland security. Mr. Speaker, I am disappointed that after 2 days of constructive discussion on how best to protect our homeland, we are dealing with a motion to recommit that relates to politics.

Mr. Speaker, the gentlewoman has a right to offer this motion, and I would like to address its shortcomings:

First, the issue is being dealt with, and being dealt with in a much more serious and substantive way, in the Committee on Ways and Means, the committee of jurisdiction. Hearings have been held and legislation has been introduced that actually addresses the underlying problems that lead to the most regrettable and deplorable process of corporate inversions.

Second, Mr. Speaker, even if this were the right place to deal with this issue, this motion to recommit creates more questions than answers. Clearly, this was not written by one of our standing committees. For example, Mr. Speaker, what does it mean when it says that a corporation has the United States as, and I quote, "the principal market for public trading of the corporation's stock"? Does that mean 10 percent of trading, if trading in all other foreign countries is less than 10 percent? Do we want to, in fact, encourage further with this kind of legislation American firms to trade in European or Japanese exchanges? Why stock? How about debt? Or employees? Or other corporate connections? Why are some tax havens defined and not others? Does the gentlewoman like some countries with lower tax rates better than she likes other countries with lower tax rates?

Mr. Speaker, one of the concerns that is often times expressed about corporate inversions is the suggestion that jobs are lost by American employees. If indeed you deny to American firms producing product in this country the ability to sell to the Federal Government, will that not result in real job losses before their employees? Under this motion to recommit, you could have a longstanding United States or Swiss company that incorporated long ago in Monaco and that happens to have the best new technology for fighting terrorists, but this entity would be prohibited from helping us fight the scourge of terrorism. Is this what we want?

Unbelievably, the result of this motion to recommit could be that we would be hampered in our mission to secure the homeland for reasons that have nothing to do with so-called corporate inversions. Perhaps an inadvertent result, but a result nonetheless.

Mr. Speaker, in summary, this poorly drafted motion to recommit is not about homeland security but about homeland politics. After a serious, thoughtful and bipartisan 7-week process by this Congress to respond to the President's challenge, I am disappointed that this would be the final issue before we vote on this historic legislation to protect our families from the very real threat of terrorism.

I would urge the Members of this body to vote "no" on this motion to recommit, and I strongly urge a resounding "yes" vote on final passage of this historic bill.

Mr. ARMEY. Mr. Speaker, I yield back the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The Chair would advise Members that it is in violation of the House rules to have cellular phones on the floor and the Chair would ask Members to turn off their phones.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. DELAURO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 318, noes 110, not voting 5, as follows:

[Roll No. 366]

AYES—318

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Baca

Bachus
Baird
Baldacci
Baldwin
Ballenger
Barcia
Barrett
Bartlett
Bass
Becerra
Bentsen
Berkley
Berman
Berry
Bilirakis
Bishop
Blagojevich
Boehlert
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burton
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Cooksey
Costello
Coyne
Cramer
Crowley
Cubin
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Deal
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Duncan
Edwards
Ehrlich
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Fletcher
Forbes
Ford
Fossella
Frank
Frost
Gallegly
Ganske
Gekas
Gephardt
Gilchrest
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hayes
Hefley
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Isakson
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
Leach
Lee
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McInnis
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Petri
Phelps
Pickering
Platts
Pomeroy
Price (NC)
Quinn
Rahall
Ramstad
Rangel
Reyes
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Saxton
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Shimkus
Shows
Shuster
Simmons
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Walsh
Wamp
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (NM)
Woolsey
Wu
Wynn
Young (FL)

NOES—110

Akin
Armey
Baker
Barr
Barton
Bereuter
Biggert
Blumenauer
Boehner
Brady (TX)
Burr
Buyer
Callahan
Calvert
Camp
Cannon
Coble
Collins
Cox
Crane
Crenshaw
Culberson
Davis, Tom
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Dunn
Ehlers
English
Flake
Foley
Frelinghuysen
Gibbons
Gillmor
Goss
Hansen
Hart
Hastings (WA)
Hayworth
Herger
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Istook
Johnson, Sam
Knollenberg
Kolbe
LaHood
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lucas (OK)
McCrery
McKeon
Miller, Dan
Miller, Gary
Nethercutt
Ney
Osborne
Otter
Oxley
Paul
Peterson (PA)
Pitts
Pombo
Portman
Pryce (OH)
Putnam
Radanovich
Regula
Rehberg
Reynolds
Rohrabacher
Ros-Lehtinen
Ryun (KS)
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Simpson
Smith (MI)
Smith (TX)
Souder
Stump
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiberi
Vitter
Walden
Watkins (OK)
Watts (OK)
Weller
Wilson (SC)
Wolf
Young (AK)

NOT VOTING—5

Blunt
Combest
Lipinski
Meehan
Roukema

☐ 2124

Mr. BLUMENAUER changed his vote from "aye" to "no."

Messrs. THUNE, SWEENEY, CASTLE, KERNS, PENCE, SIMMONS, KELLER, RYAN of Wisconsin, GREEN of Wisconsin, UPTON, ROGERS of Michigan, LoBIONDO, QUINN, McHUGH, FERGUSON, BILIRAKIS, GRAHAM, GEKAS, EHRLICH, SHAYS, BRYANT, OSE; HAYES, GREENWOOD, BARTLETT of Maryland, MANZULLO, BOEHLERT, FOSSELLA, KINGSTON, CHAMBLISS, GOODE, WALSH, RILEY, BACHUS, FORBES, GRAVES, MORAN of Kansas, GOODLATTE, JEFF MILLER of Florida, HALL of Texas, COOKSEY, PLATTS, SHIMKUS, YOUNG of Florida, ADERHOLT, TOOMEY, JOHNSON of Illinois, WELDON of Pennsylvania, SHUSTER, KING, BASS, BALLENGER, GRUCCI, SAXTON, SULLIVAN, GILMAN, DEAL, ISAKSON, JENKINS, RAMSTAD, KENNEDY of Minnesota, WICKER, SMITH of New Jersey, FLETCHER, BOOZMAN, KIRK, MICA, GILCHREST, McINNIS, GALLEGLY, PETRI, ISSA, EVERETT, ROYCE, CUNNINGHAM, SKEEN, WELDON of Florida, CANTOR, ROGERS of Kentucky, BONILLA, BROWN of South Carolina, CHABOT and NORWOOD and Mrs. EMERSON, Mrs. CUBIN, Mrs. CAPITO, Mrs. WILSON of New Mexico, Mrs. JoANN DAVIS of Virginia, Mrs. KELLY, Mrs. BONO, Mrs. MYRICK, Ms. GRANGER and Messrs. BURTON of Indiana, DUNCAN, HEFLEY, HILLEARY, LEACH, PICKERING, STEARNS, STENHOLM, WAMP and WHITFIELD changed their vote from "no" to "aye."

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

☐ 2126

Mr. ARMEY. Mr. Speaker, with compliments to the gentlewoman from Connecticut (Ms. DELAURO), pursuant to the instructions of the House on the motion to recommit, I report the bill, H.R. 5005, back to the House with an amendment.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The Clerk will report the amendment.

The Clerk read as follows:

Amendment:

Page 173, after line 12, insert the following:

SEC. 735. PROHIBITION ON CONTRACTING WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a subsidiary of a publicly traded corporation if the corporation is incorporated in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) TAX HAVEN COUNTRY DEFINED.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Monaco, and the Republic of the Seychelles.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Congress that the waiver is required in the interest of national security.

Mr. ARMEY (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. DOGGETT. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard. The Clerk will continue to read.

The Clerk concluded the reading of the amendment.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. PORTMAN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 295, noes 132, not voting 6, as follows:

[Roll No. 367]

AYES—295

Aderholt
Akin
Allen
Andrews
Armey
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cantor
Capito
Capps
Cardin
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clement
Coble
Collins
Condit
Cooksey
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
Delahunt
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Dunn
Edwards
Ehlers
Emerson
Engel
English
Etheridge
Everett
Ferguson
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Hooley
Horn
Houghton
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Mascara
Matheson
McCarthy (MO)
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Pascrell
Pence
Peterson (MN)
Peterson (PA)
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Rush
Ryan (WI)
Ryun (KS)
Sánchez
Sandlin
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Strickland
Stump
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Tauzin
Taylor (MS)
Terry
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Turner
Udall (CO)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NOES—132

Abercrombie
Ackerman
Baca
Baldwin
Becerra
Bentsen
Berman
Blumenauer
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Cannon
Capuano
Carson (IN)
Clayton
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
DeLauro
Dingell
Doggett
Doyle
Duncan
Eshoo
Evans
Farr
Fattah
Filner
Flake
Frank
Gephardt
Gonzalez
Goode
Gutierrez
Hastings (FL)
Hilliard
Hinchey
Holt
Honda
Hostettler
Hoyer
Inslee
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kilpatrick
Kleczka
Kucinich
LaFalce
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Markey
Matsui
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Miller, George
Mink
Mollohan
Moran (KS)
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Paul
Payne
Pelosi
Petri
Rahall
Rangel
Rivers
Rodriguez
Roemer
Roybal-Allard
Sabo
Sanders
Sawyer
Schakowsky
Scott
Serrano
Sherman
Slaughter
Snyder
Solis
Stark
Stupak
Tancredo
Taylor (NC)
Thomas
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Woolsey
Wynn

NOT VOTING—6

Blunt
Combest
Ehrlich
Lipinski
Meehan
Roukema

□ 2141

Messrs. MOLLOHAN, CUMMINGS, LAMPSON, LEVIN, and LARSEN of Washington changed their vote from "aye" to "no."

Mr. SAXTON changed his vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. THOMAS. Mr. Speaker, on rollcall 367, although I would love to blame a machine error, apparently it was a human error. The gentleman from California recorded a "no" when he intended to record an "aye".

Mr. EHRLICH. Mr. Speaker, on rollcall No. 367, I was inadvertently detained. I would have voted "aye" on this important legislation.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 5005, the Clerk be authorized to correct section numbers, punctuation, spelling, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is there any objection to the request by the gentleman?

There was no objection.

PERSONAL EXPLANATION

Mr. WATKINS of Oklahoma. Mr. Speaker, I ask that the RECORD show that I was present and thought I voted "aye" on rollcall votes 293 and 348. I was having trouble with my voting card, and it was inaccurately recorded.

REPORT ON H.R. 5263, AGRICULTURE APPROPRIATIONS FOR FISCAL YEAR 2003

Mr. BONILLA, from the Committee on Appropriations, submitted a privileged report (Rept. No. 107-623) on the bill (H.R. 5263) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore. Pursuant to clause 1, rule XXI, all points of order are reserved on the bill.

□ 2145

RECESS

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 9 o'clock and 56 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 2315

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SIMPSON) at 11 o'clock and 15 minutes p.m.

CONFERENCE REPORT ON H.R. 3009, TRADE ACT OF 2002

Mr. THOMAS (during consideration of H. Res 507) submitted the following conference report and statement on the bill (H.R. 3009) to extend the Andean

Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–624)

The Committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3009), to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Act of 2002".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 5 divisions as follows:

(1) DIVISION A.—Trade Adjustment Assistance.

(2) DIVISION B.—Bipartisan Trade Promotion Authority.

(3) DIVISION C.—Andean Trade Preference Act.

(4) DIVISION D.—Extension of Certain Preferential Trade Treatment and Other Provisions.

(5) DIVISION E.—Miscellaneous Provisions.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—TRADE ADJUSTMENT ASSISTANCE

Sec. 101. Short title.

TITLE I—TRADE ADJUSTMENT ASSISTANCE PROGRAM

Subtitle A—Trade Adjustment Assistance For Workers

Sec. 111. Reauthorization of trade adjustment assistance program.
Sec. 112. Filing of petitions and provision of rapid response assistance; expedited review of petitions by secretary of labor.
Sec. 113. Group eligibility requirements.
Sec. 114. Qualifying requirements for trade readjustment allowances.
Sec. 115. Waivers of training requirements.
Sec. 116. Amendments to limitations on trade readjustment allowances.
Sec. 117. Annual total amount of payments for training.
Sec. 118. Provision of employer-based training.
Sec. 119. Coordination with title I of the Workforce Investment Act of 1998.
Sec. 120. Expenditure period.
Sec. 121. Job search allowances.
Sec. 122. Relocation allowances.
Sec. 123. Repeal of NAFTA transitional adjustment assistance program.
Sec. 124. Demonstration project for alternative trade adjustment assistance for older workers.
Sec. 125. Declaration of policy; sense of Congress.

Subtitle B—Trade Adjustment Assistance For Firms

Sec. 131. Reauthorization of program.

Subtitle C—Trade Adjustment Assistance For Farmers

Sec. 141. Trade adjustment assistance for farmers.
Sec. 142. Conforming amendments.
Sec. 143. Study on TAA for fishermen.

Subtitle D—Effective Date

Sec. 151. Effective date.

TITLE II—CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

Sec. 201. Credit for health insurance costs of individuals receiving a trade readjustment allowance or a benefit from the Pension Benefit Guaranty Corporation.
Sec. 202. Advance payment of credit for health insurance costs of eligible individuals.
Sec. 203. Health insurance assistance for eligible individuals.

TITLE III—CUSTOMS REAUTHORIZATION

Sec. 301. Short title.

Subtitle A—United States Customs Service

CHAPTER 1—DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

Sec. 311. Authorization of appropriations for noncommercial operations, commercial operations, and air and marine interdiction.
Sec. 312. Antiterrorist and illicit narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf Coast seaports.
Sec. 313. Compliance with performance plan requirements.

CHAPTER 2—CHILD CYBER-SMUGGLING CENTER OF THE CUSTOMS SERVICE

Sec. 321. Authorization of appropriations for program to prevent child pornography/child sexual exploitation.

CHAPTER 3—MISCELLANEOUS PROVISIONS

Sec. 331. Additional Customs Service officers for United States-Canada Border.
Sec. 332. Study and report relating to personnel practices of the Customs Service.
Sec. 333. Study and report relating to accounting and auditing procedures of the Customs Service.
Sec. 334. Establishment and implementation of cost accounting system; reports.
Sec. 335. Study and report relating to timeliness of prospective rulings.
Sec. 336. Study and report relating to customs user fees.
Sec. 337. Fees for customs inspections at express courier facilities.
Sec. 338. National Customs Automation Program.
Sec. 339. Authorization of appropriations for customs staffing.

CHAPTER 4—ANTITERRORISM PROVISIONS

Sec. 341. Immunity for United States officials that act in good faith.
Sec. 342. Emergency adjustments to offices, ports of entry, or staffing of the customs service.
Sec. 343. Mandatory advanced electronic information for cargo and other improved Customs reporting procedures.
Sec. 343A. Secure systems of transportation.
Sec. 344. Border search authority for certain contraband in outbound mail.
Sec. 345. Authorization of appropriations for reestablishment of customs operations in New York City.

CHAPTER 5—TEXTILE TRANSSHIPMENT PROVISIONS

Sec. 351. GAO audit of textile transshipment monitoring by Customs Service.
Sec. 352. Authorization of appropriations for textile transshipment enforcement operations.
Sec. 353. Implementation of the African Growth and Opportunity Act.

Subtitle B—Office of the United States Trade Representative

Sec. 361. Authorization of appropriations.

Subtitle C—United States International Trade Commission

Sec. 371. Authorization of appropriations.

Subtitle D—Other trade provisions

Sec. 381. Increase in aggregate value of articles exempt from duty acquired abroad by United States residents.
Sec. 382. Regulatory audit procedures.
Sec. 383. Payment of duties and fees.

DIVISION B—BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI—TRADE PROMOTION AUTHORITY

Sec. 2101. Short title and findings.
Sec. 2102. Trade negotiating objectives.
Sec. 2103. Trade agreements authority.
Sec. 2104. Consultations and assessment.
Sec. 2105. Implementation of trade agreements.
Sec. 2106. Treatment of certain trade agreements for which negotiations have already begun.
Sec. 2107. Congressional Oversight Group.
Sec. 2108. Additional implementation and enforcement requirements.
Sec. 2109. Committee staff.
Sec. 2110. Conforming amendments.
Sec. 2111. Report on impact of trade promotion authority.
Sec. 2112. Interests of small business.
Sec. 2113. Definitions.

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

Sec. 3101. Short title.
Sec. 3102. Findings.
Sec. 3103. Articles eligible for preferential treatment.
Sec. 3104. Termination.
Sec. 3105. Report on Free Trade Agreement with Israel.
Sec. 3106. Modification of duty treatment for tuna.
Sec. 3107. Trade benefits under the caribbean basin economic recovery act.
Sec. 3108. Trade benefits under the African Growth and Opportunity Act.

DIVISION D—EXTENSION OF CERTAIN PREFERENTIAL TRADE TREATMENT

TITLE XLI—EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

Sec. 4101. Extension of generalized system of preferences.
Sec. 4102. Amendments to generalized system of preferences.

DIVISION E—MISCELLANEOUS PROVISIONS

TITLE L—MISCELLANEOUS TRADE BENEFITS

Subtitle A—Wool Provisions

Sec. 5101. Wool provisions.
Sec. 5102. Duty suspension on wool.

Subtitle B—Other Provisions

Sec. 5201. Fund for WTO dispute settlements.
Sec. 5202. Certain steam or other vapor generating boilers used in nuclear facilities.
Sec. 5203. Sugar tariff-rate quota circumvention.

DIVISION A—TRADE ADJUSTMENT ASSISTANCE

SEC. 101. SHORT TITLE.

This division may be cited as the "Trade Adjustment Assistance Reform Act of 2002".

TITLE I—TRADE ADJUSTMENT ASSISTANCE PROGRAM

Subtitle A—Trade Adjustment Assistance For Workers

SEC. 111. REAUTHORIZATION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) ASSISTANCE FOR WORKERS.—Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking "October 1, 1998, and ending September 30, 2001," each place it appears and inserting "October 1, 2001, and ending September 30, 2007,".

(b) ASSISTANCE FOR FIRMS.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking "October 1, 1998, and ending September 30, 2001" and inserting "October 1, 2001, and ending September 30, 2007,".

(c) TERMINATION.—Section 285 of the Trade Act of 1974 is amended to read as follows:

"SEC. 285. TERMINATION.

"(a) ASSISTANCE FOR WORKERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 after September 30, 2007.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before September 30, 2007, the worker is—

"(A) certified as eligible for trade adjustment assistance benefits under chapter 2 of this title; and

"(B) otherwise eligible to receive trade adjustment assistance benefits under chapter 2.

"(b) OTHER ASSISTANCE.—

"(1) ASSISTANCE FOR FIRMS.—Technical assistance may not be provided under chapter 3 after September 30, 2007.

"(2) ASSISTANCE FOR FARMERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 6 after September 30, 2007.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), an agricultural commodity producer (as defined in section 291(2)) shall continue to receive adjustment assistance benefits and other benefits under chapter 6, for any week for which the agricultural commodity producer meets the eligibility requirements of chapter 6, if on or before September 30, 2007, the agricultural commodity producer is—

"(i) certified as eligible for adjustment assistance benefits under chapter 6; and

"(ii) is otherwise eligible to receive adjustment assistance benefits under such chapter 6.".

SEC. 112. FILING OF PETITIONS AND PROVISION OF RAPID RESPONSE ASSISTANCE; EXPEDITED REVIEW OF PETITIONS BY SECRETARY OF LABOR.

(a) FILING OF PETITIONS AND PROVISION OF RAPID RESPONSE ASSISTANCE.—Section 221(a) of the Trade Act of 1974 (19 U.S.C. 2271(a)) is amended to read as follows:

"(a)(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this chapter may be filed simultaneously with the Secretary and with the Governor of the State in which such workers' firm or subdivision is located by any of the following:

"(A) The group of workers (including workers in an agricultural firm or subdivision of any agricultural firm).

"(B) The certified or recognized union or other duly authorized representative of such workers.

"(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

"(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

"(A) ensure that rapid response assistance, and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

"(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

"(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.".

(b) EXPEDITED REVIEW OF PETITIONS BY SECRETARY OF LABOR.—Section 223(a) of such Act (19 U.S.C. 2273(a)) is amended in the first sentence by striking "60 days" and inserting "40 days".

SEC. 113. GROUP ELIGIBILITY REQUIREMENTS.

(a) TRADE ADJUSTMENT ASSISTANCE PROGRAM.—

(1) IN GENERAL.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(A) by amending subsection (a) to read as follows:

"(a) IN GENERAL.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

"(1) a significant number or proportion of the workers in such. workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

"(2)(A)(i) the sales or production, or both, of such firm or subdivision have decreased absolutely;

"(ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

"(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

"(B)(i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

"(ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

"(II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

"(III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.";

(B) by redesignating subsection (b) as subsection (c); and

(C) by inserting after subsection (a) the following:

"(b) ADVERSELY AFFECTED SECONDARY WORKERS.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this chapter if the Secretary determines that—

"(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

"(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c) (3) and (4)); and

"(3) either—

"(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

"(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).".

(b) DEFINITIONS.—Section 222(c) of such Act, as redesignated by paragraph (1)(A), is amended—

(1) in the matter preceding paragraph (1), by striking "subsection (a)(3)" and inserting "this section"; and

(2) by adding at the end the following:

"(3) DOWNSTREAM PRODUCER.—The term 'downstream producer' means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) is based on an increase in imports from, or a shift in production to, Canada or Mexico.

"(4) SUPPLIER.—The term 'supplier' means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.".

SEC. 114. QUALIFYING REQUIREMENTS FOR TRADE READJUSTMENT ALLOWANCES.

(a) CLARIFICATION OF CERTAIN REDUCTIONS.—Section 231(a)(3)(B) of the Trade Act of 1974 (19 U.S.C. 2291(a)(3)(B)) is amended by inserting after "any unemployment insurance" the following: ", except additional compensation that is funded by a State and is not reimbursed from any Federal funds,".

(b) ENROLLMENT IN TRAINING REQUIREMENT.—Section 231(a)(5)(A) of such Act (19 U.S.C. 2291(a)(5)(A)) is amended—

(1) by inserting "(i)" after "(A)";

(2) by adding "and" after the comma at the end; and

(3) by adding at the end the following:

"(ii) the enrollment required under clause (i) occurs no later than the latest of—

"(I) the last day of the 16th week after the worker's most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),

"(II) the last day of the 8th week after the week in which the Secretary issues a certification covering the worker,

"(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period, or

"(IV) the last day of a period determined by the Secretary to be approved for enrollment

after the termination of a waiver issued pursuant to subsection (c),''.

SEC. 115. WAIVERS OF TRAINING REQUIREMENTS.

(a) In General.—Section 231(c) of the Trade Act of 1974 (19 U.S.C. 2291(c)) is amended to read as follows:

''(c) Waivers of Training Requirements.—

''(1) Issuance of waivers.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

''(A) Recall.—The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

''(B) Marketable skills.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

''(C) Retirement.—The worker is within 2 years of meeting all requirements for entitlement to either—

''(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

''(ii) a private pension sponsored by an employer or labor organization.

''(D) Health.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

''(E) Enrollment unavailable.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

''(F) Training not available.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

''(2) Duration of waivers.—

''(A) In general.—A waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

''(B) Revocation.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

''(3) Agreements under section 239.—

''(A) Issuance by cooperating states.—Pursuant to an agreement under section 239, the Secretary may authorize a cooperating State to issue waivers as described in paragraph (1).

''(B) Submission of statements.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.''.

(b) Conforming Amendment.—Section 231(a)(5)(C) of such Act (19 U.S.C. 2291(a)(5)(C)) is amended by striking ''certified''.

SEC. 116. AMENDMENTS TO LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a) Increase in Maximum Number of Weeks.—Section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)) is amended—

(1) in paragraph (2), by inserting after ''104-week period'' the following: ''(or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 236(a)(5)(D)) in order to complete training approved for the worker under section 236, the 130-week period)''; and

(2) in paragraph (3), by striking ''26'' each place it appears and inserting ''52''.

(b) Special Rule Relating to Break in Training.—Section 233(f) of the Trade Act of 1974 (19 U.S.C. 2293(f)) is amended in the matter preceding paragraph (1) by striking ''14 days'' and inserting ''30 days''.

(c) Additional Weeks for Individuals in Need of Remedial Education.—Section 233 of the Trade Act of 1974 (19 U.S.C. 2293) is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 which includes a program of remedial education (as described in section 236(a)(5)(D)), and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter.''.

SEC. 117. ANNUAL TOTAL AMOUNT OF PAYMENTS FOR TRAINING.

Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by striking ''$80,000,000'' and all that follows through ''$70,000,000'' and inserting ''$220,000,000''.

SEC. 118. PROVISION OF EMPLOYER-BASED TRAINING.

(a) In General.—Section 236(a)(5)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(5)(A)) is amended to read as follows:

''(A) employer-based training, including—

''(i) on-the-job training, and

''(ii) customized training,''.

(b) Reimbursement.—Section 236(c)(8) of such Act (19 U.S.C. 2296(c)(8)) is amended to read as follows:

''(8) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training,''.

(c) Definition.—Section 236 of such Act (19 U.S.C. 2296) is amended by adding at the end the following new subsection:

''(f) For purposes of this section, the term 'customized training' means training that is—

''(1) designed to meet the special requirements of an employer or group of employers;

''(2) conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

''(3) for which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.''.

SEC. 119. COORDINATION WITH TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998.

Section 235 of the Trade Act of 1974 (19 U.S.C. 2295) is amended by inserting before the period at the end of the first sentence the following: '', including the services provided through one-stop delivery systems described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c))''.

SEC. 120. EXPENDITURE PERIOD.

Section 245 of the Trade Act of 1974 (19 U.S.C. 2317), as amended by section 111(a) of this Act, is further amended by amending subsection (b) to read as follows:

''(b) Period of Expenditure.—Funds obligated for any fiscal year to carry out activities under sections 235 through 238 may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.''.

SEC. 121. JOB SEARCH ALLOWANCES.

Section 237 of the Trade Act of 1974 (19 U.S.C. 2297) is amended to read as follows:

''SEC. 237. JOB SEARCH ALLOWANCES.

''(a) Job Search Allowance Authorized.—

''(1) In general.—An adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application with the Secretary for payment of a job search allowance.

''(2) Approval of applications.—The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

''(A) Assist adversely affected worker.—The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

''(B) Local employment not available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

''(C) Application.—The worker has filed an application for the allowance with the Secretary before—

''(i) the later of—

''(I) the 365th day after the date of the certification under which the worker is certified as eligible; or

''(II) the 365th day after the date of the worker's last total separation; or

''(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

''(b) Amount of Allowance.—

''(1) In general.—An allowance granted under subsection (a) shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by the Secretary in regulations.

''(2) Maximum allowance.—Reimbursement under this subsection may not exceed $1,250 for any worker.

''(3) Allowance for subsistence and transportation.—Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b) (1) and (2).

''(c) Exception.—Notwithstanding subsection (b), the Secretary shall reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.''.

SEC. 122. RELOCATION ALLOWANCES.

Section 238 of the Trade Act of 1974 (19 U.S.C. 2298) is amended to read as follows:

''SEC. 238. RELOCATION ALLOWANCES.

''(a) Relocation Allowance Authorized.—

''(1) In general.—Any adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

''(2) Conditions for granting allowance.—A relocation allowance may be granted if all of the following terms and conditions are met:

''(A) Assist an adversely affected worker.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

''(B) Local employment not available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable

employment in the commuting area in which the worker resides.

"(C) TOTAL SEPARATION.—The worker is totally separated from employment at the time relocation commences.

"(D) SUITABLE EMPLOYMENT OBTAINED.—The worker—

"(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

"(ii) has obtained a bona fide offer of such employment.

"(E) APPLICATION.—The worker filed an application with the Secretary before—

"(i) the later of—

"(I) the 425th day after the date of the certification under subchapter A of this chapter; or

"(II) the 425th day after the date of the worker's last total separation; or

"(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

"(b) AMOUNT OF ALLOWANCE.—The relocation allowance granted to a worker under subsection (a) includes—

"(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2) specified in regulations prescribed by the Secretary, incurred in transporting the worker, the worker's family, and household effects; and

"(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

"(c) LIMITATIONS.—A relocation allowance may not be granted to a worker unless—

"(1) the relocation occurs within 182 days after the filing of the application for relocation assistance; or

"(2) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 236(b) (1) and (2).".

SEC. 123. REPEAL OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM.

(a) IN GENERAL.—Subchapter D of chapter 2 of title II of such Act (19 U.S.C. 2331) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 225(b) (1) and (2) of the Trade Act of 1974 (19 U.S.C. 2275(b) (1) and (2)) is amended by striking "or subchapter D" each place it appears.

(2) Section 249A of such Act (19 U.S.C. 2322) is repealed.

(3) The table of contents of such Act is amended—

(A) by striking the item relating to section 249A; and

(B) by striking the items relating to subchapter D of chapter 2 of title II.

(4) Section 284(a) of such Act is amended by striking "or section 250(c)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to petitions filed under chapter 2 of title II of the Trade Act of 1974, on or after the date that is 90 days after the date of enactment of this Act.

(2) WORKERS CERTIFIED AS ELIGIBLE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a), a worker receiving benefits under chapter 2 of title II of the Trade Act of 1974 shall continue to receive (or be eligible to receive) benefits and services under chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the amendments made by this section take effect under subsection (a), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date.

SEC. 124. DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS.

(a) DEMONSTRATION PROGRAM.—Chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) is amended by striking section 246 and inserting the following new section:

"SEC. 246. DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Trade Adjustment Assistance Reform Act of 2002, the Secretary shall establish an alternative trade adjustment assistance program for older workers that provides the benefits described in paragraph (2).

"(2) BENEFITS.—

"(A) PAYMENTS.—A State shall use the funds provided to the State under section 241 to pay, for a period not to exceed 2 years, to a worker described in paragraph (3)(B), 50 percent of the difference between—

"(i) the wages received by the worker from reemployment; and

"(ii) the wages received by the worker at the time of separation.

"(B) HEALTH INSURANCE.—A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive, for a period not to exceed 2 years, a credit for health insurance costs under section 35 of the Internal Revenue Code of 1986, as added by section 201 of the Trade Act of 2002.

"(3) ELIGIBILITY.—

"(A) FIRM ELIGIBILITY.—

"(i) IN GENERAL.—The Secretary shall provide the opportunity for a group of workers on whose behalf a petition is filed under section 221 to request that the group of workers be certified for the alternative trade adjustment assistance program under this section at the time the petition is filed.

"(ii) CRITERIA.—In determining whether to certify a group of workers as eligible for the alternative trade adjustment assistance program, the Secretary shall consider the following criteria:

"(I) Whether a significant number of workers in the workers' firm are 50 years of age or older.

"(II) Whether the workers in the workers' firm possess skills that are not easily transferable.

"(III) The competitive conditions within the workers' industry.

"(iii) DEADLINE.—The Secretary shall determine whether the workers in the group are eligible for the alternative trade adjustment assistance program by the date specified in section 223(a).

"(B) INDIVIDUAL ELIGIBILITY.—A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

"(i) is covered by a certification under subchapter A of this chapter;

"(ii) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

"(iii) is at least 50 years of age; and

"(iv) earns not more than $50,000 a year in wages from reemployment;

"(v) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

"(vi) does not return to the employment from which the worker was separated.

"(4) TOTAL AMOUNT OF PAYMENTS.—The payments described in paragraph (2)(A) made to a worker may not exceed $10,000 per worker during the 2-year eligibility period.

"(5) LIMITATION ON OTHER BENEFITS.—Except as provided in section 238(a)(2)(B), if a worker is receiving payments pursuant to the program established under paragraph (1), the worker shall not be eligible to receive any other benefits under this title.

"(b) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no payments may be made by a State under the program established under subsection (a)(1) after the date that is 5 years after the date on which such program is implemented by the State.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a worker receiving payments under the program established under subsection (a)(1) on the termination date described in paragraph (1) shall continue to receive such payments provided that the worker meets the criteria described in subsection (a)(3)(B).".

(b) TABLE OF CONTENTS.—The Trade Act of 1974 (U.S.C. et seq.) is amended in the table of contents by inserting after the item relating to section 245 the following new item:

"Sec. 246. Demonstration project for alternative trade adjustment assistance for older workers.".

SEC. 125. DECLARATION OF POLICY; SENSE OF CONGRESS.

(a) DECLARATION OF POLICY.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974, workers are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Labor, working independently and in conjunction with the States, should, in accordance with section 225 of the Trade Act of 1974, provide more specific information about benefit allowances, training, and other employment services, and the petition and application procedures (including appropriate filing dates) for such allowances, training, and services, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 to workers who are applying for, or are certified to receive, assistance under that program, including information on all other Federal assistance available to such workers.

Subtitle B—Trade Adjustment Assistance For Firms

SEC. 131. REAUTHORIZATION OF PROGRAM.

Section 256(b) of chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to the Secretary $16,000,000 for each of fiscal years 2003 through 2007, to carry out the Secretary's functions under this chapter in connection with furnishing adjustment assistance to firms. Amounts appropriated under this subsection shall remain available until expended.".

Subtitle C—Trade Adjustment Assistance For Farmers

SEC. 141. TRADE ADJUSTMENT ASSISTANCE FOR FARMERS.

(a) IN GENERAL.—Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by adding at the end the following new chapter:

"CHAPTER 6—ADJUSTMENT ASSISTANCE FOR FARMERS

"SEC. 291. DEFINITIONS.

"In this chapter:

"(1) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' means any agricultural commodity (including livestock) in its raw or natural state.

"(2) AGRICULTURAL COMMODITY PRODUCER.—The term 'agricultural commodity producer' has the same meaning as the term 'person' as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)).

"(3) CONTRIBUTED IMPORTANTLY.—

"(A) IN GENERAL.—The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

"(B) DETERMINATION OF CONTRIBUTED IMPORTANTLY.—The determination of whether imports of articles like or directly competitive with an agricultural commodity with respect to which a petition under this chapter was filed contributed importantly to a decline in the price of the agricultural commodity shall be made by the Secretary.

"(4) DULY AUTHORIZED REPRESENTATIVE.—The term 'duly authorized representative' means an association of agricultural commodity producers.

"(5) NATIONAL AVERAGE PRICE.—The term 'national average price' means the national average price paid to an agricultural commodity producer for an agricultural commodity in a marketing year as determined by the Secretary.

"(6) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

"SEC. 292. PETITIONS; GROUP ELIGIBILITY.

"(a) IN GENERAL.—A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

"(b) HEARINGS.—If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

"(c) GROUP ELIGIBILITY REQUIREMENTS.—The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(1) that the national average price for the agricultural commodity, or a class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity, or such class of goods, for the 5 marketing years preceding the most recent marketing year; and

"(2) that increases in imports of articles like or directly competitive with the agricultural commodity, or class of goods within the agricultural commodity, produced by the group contributed importantly to the decline in price described in paragraph (1).

"(d) SPECIAL RULE FOR QUALIFIED SUBSEQUENT YEARS.—A group of agricultural commodity producers certified as eligible under section 293 shall be eligible to apply for assistance under this chapter in any qualified year after the year the group is first certified, if the Secretary determines that—

"(1) the national average price for the agricultural commodity, or class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is equal to or less than the price determined under subsection (c)(1); and

"(2) the requirements of subsection (c)(2) are met.

"(e) DETERMINATION OF QUALIFIED YEAR AND COMMODITY.—In this chapter:

"(1) QUALIFIED YEAR.—The term 'qualified year', with respect to a group of agricultural commodity producers certified as eligible under section 293, means each consecutive year after the year in which the group is certified and in which the Secretary makes the determination under subsection (c) or (d), as the case may be.

"(2) CLASSES OF GOODS WITHIN A COMMODITY.—In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining group eligibility, the national average price, and level of imports under this section and section 296.

"SEC. 293. DETERMINATIONS BY SECRETARY OF AGRICULTURE.

"(a) IN GENERAL.—As soon as practicable after the date on which a petition is filed under section 292, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 292 (c) or (d), as the case may be, and shall, if the group meets the requirements, issue a certification of eligibility to apply for assistance under this chapter covering agricultural commodity producers in any group that meets the requirements. Each certification shall specify the date on which eligibility under this chapter begins.

"(b) NOTICE.—Upon making a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register, together with the Secretary's reasons for making the determination.

"(c) TERMINATION OF CERTIFICATION.—Whenever the Secretary determines, with respect to any certification of eligibility under this chapter, that the decline in price for the agricultural commodity covered by the certification is no longer attributable to the conditions described in section 292, the Secretary shall terminate such certification and promptly cause notice of such termination to be published in the Federal Register, together with the Secretary's reasons for making such determination.

"SEC. 294. STUDY BY SECRETARY OF AGRICULTURE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.

"(a) IN GENERAL.—Whenever the International Trade Commission (in this chapter referred to as the 'Commission') begins an investigation under section 202 with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation. Upon receipt of the notification, the Secretary shall immediately conduct a study of—

"(1) the number of agricultural commodity producers producing a like or directly competitive agricultural commodity who have been or are likely to be certified as eligible for adjustment assistance under this chapter, and

"(2) the extent to which the adjustment of such producers to the import competition may be facilitated through the use of existing programs.

"(b) REPORT.—Not later than 15 days after the day on which the Commission makes its report under section 202(f), the Secretary shall submit a report to the President setting forth the findings of the study described in subsection (a). Upon making the report to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of the report published in the Federal Register.

"SEC. 295. BENEFIT INFORMATION TO AGRICULTURAL COMMODITY PRODUCERS.

"(a) IN GENERAL.—The Secretary shall provide full information to agricultural commodity producers about the benefit allowances, training, and other employment services available under this title and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups to prepare petitions or applications for program benefits under this title.

"(b) NOTICE OF BENEFITS.—

"(1) IN GENERAL.—The Secretary shall mail written notice of the benefits available under this chapter to each agricultural commodity producer that the Secretary has reason to believe is covered by a certification made under this chapter.

"(2) OTHER NOTICE.—The Secretary shall publish notice of the benefits available under this chapter to agricultural commodity producers that are covered by each certification made under this chapter in newspapers of general circulation in the areas in which such producers reside.

"(3) OTHER FEDERAL ASSISTANCE.—The Secretary shall also provide information concerning procedures for applying for and receiving all other Federal assistance and services available to workers facing economic distress.

"SEC. 296. QUALIFYING REQUIREMENTS FOR AGRICULTURAL COMMODITY PRODUCERS.

"(a) IN GENERAL.—

"(1) REQUIREMENTS.—Payment of a trade adjustment allowance shall be made to an adversely affected agricultural commodity producer covered by a certification under this chapter who files an application for such allowance within 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 293, if the following conditions are met:

"(A) The producer submits to the Secretary sufficient information to establish the amount of agricultural commodity covered by the application filed under subsection (a) that was produced by the producer in the most recent year.

"(B) The producer certifies that the producer has not received cash benefits under any provision of this title other than this chapter.

"(C) The producer's net farm income (as determined by the Secretary) for the most recent year is less than the producer's net farm income for the latest year in which no adjustment assistance was received by the producer under this chapter.

"(D) The producer certifies that the producer has met with an Extension Service employee or agent to obtain, at no cost to the producer, information and technical assistance that will assist the producer in adjusting to import competition with respect to the adversely affected agricultural commodity, including—

"(i) information regarding the feasibility and desirability of substituting 1 or more alternative commodities for the adversely affected agricultural commodity; and

"(ii) technical assistance that will improve the competitiveness of the production and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing improvements.

"(2) LIMITATIONS.—

"(A) ADJUSTED GROSS INCOME.—

"(i) IN GENERAL.—Notwithstanding any other provision of this chapter, an agricultural commodity producer shall not be eligible for assistance under this chapter in any year in which the average adjusted gross income of the producer exceeds the level set forth in section 1001D of the Food Security Act of 1985.

"(ii) CERTIFICATION.—To comply with the limitation under subparagraph (A), an individual or entity shall provide to the Secretary—

"(I) a certification by a certified public accountant or another third party that is acceptable to the Secretary that the average adjusted gross income of the producer does not exceed the level set forth in section 1001D of the Food Security Act of 1985; or

"(II) information and documentation regarding the adjusted gross income of the producer through other procedures established by the Secretary.

"(B) COUNTER-CYCLICAL PAYMENTS.—The total amount of payments made to an agricultural producer under this chapter during any crop year may not exceed the limitation on counter-cyclical payments set forth in section 1001(c) of the Food Security Act of 1985.

"(C) DEFINITIONS.—In this subsection:

"(i) ADJUSTED GROSS INCOME.—The term 'adjusted gross income' means adjusted gross income of an agricultural commodity producer—

"(I) as defined in section 62 of the Internal Revenue Code of 1986 and implemented in accordance with procedures established by the Secretary; and

"(II) that is earned directly or indirectly from all agricultural and nonagricultural sources of an individual or entity for a fiscal or corresponding crop year.

"(ii) AVERAGE ADJUSTED GROSS INCOME.—

"(I) IN GENERAL.—The term 'average adjusted gross income' means the average adjusted gross income of a producer for each of the 3 preceding taxable years.

"(II) EFFECTIVE ADJUSTED GROSS INCOME.—In the case of a producer that does not have an adjusted gross income for each of the 3 preceding taxable years, the Secretary shall establish rules that provide the producer with an effective adjusted gross income for the applicable year.

"(b) AMOUNT OF CASH BENEFITS.—

"(1) IN GENERAL.—Subject to the provisions of section 298, an adversely affected agricultural commodity producer described in subsection (a) shall be entitled to adjustment assistance under this chapter in an amount equal to the product of—

"(A) one-half of the difference between—

"(i) an amount equal to 80 percent of the average of the national average price of the agricultural commodity covered by the application described in subsection (a) for the 5 marketing years preceding the most recent marketing year, and

"(ii) the national average price of the agricultural commodity for the most recent marketing year, and

"(B) the amount of the agricultural commodity produced by the agricultural commodity producer in the most recent marketing year.

"(2) SPECIAL RULE FOR SUBSEQUENT QUALIFIED YEARS.—The amount of cash benefits for a qualified year shall be determined in the same manner as cash benefits are determined under paragraph (1) except that the average national price of the agricultural commodity shall be determined under paragraph (1)(A)(i) by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

"(c) MAXIMUM AMOUNT OF CASH ASSISTANCE.—The maximum amount of cash benefits an agricultural commodity producer may receive in any 12-month period shall not exceed $10,000.

"(d) LIMITATIONS ON OTHER ASSISTANCE.—An agricultural commodity producer entitled to receive a cash benefit under this chapter—

"(1) shall not be eligible for any other cash benefit under this title, and

"(2) shall be entitled to employment services and training benefits under part II of subchapter B of chapter 2.

"SEC. 297. FRAUD AND RECOVERY OF OVERPAYMENTS.

"(a) IN GENERAL.—

"(1) REPAYMENT.—If the Secretary, or a court of competent jurisdiction, determines that any person has received any payment under this chapter to which the person was not entitled, such person shall be liable to repay such amount to the Secretary, except that the Secretary may waive such repayment if the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

"(A) the payment was made without fault on the part of such person; and

"(B) requiring such repayment would be contrary to equity and good conscience.

"(2) RECOVERY OF OVERPAYMENT.—Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter.

"(b) FALSE STATEMENT.—A person shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter—

"(1) if the Secretary, or a court of competent jurisdiction, determines that the person—

"(A) knowingly has made, or caused another to make, a false statement or representation of a material fact; or

"(B) knowingly has failed, or caused another to fail, to disclose a material fact; and

"(2) as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this chapter to which the person was not entitled.

"(c) NOTICE AND DETERMINATION.—Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the Secretary has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

"(d) PAYMENT TO TREASURY.—Any amount recovered under this section shall be returned to the Treasury of the United States.

"(e) PENALTIES.—Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

"SEC. 298. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated and there are appropriated to the Department of Agriculture not to exceed $90,000,000 for each of the fiscal years 2003 through 2007 to carry out the purposes of this chapter.

"(b) PROPORTIONATE REDUCTION.—If in any year the amount appropriated under this chapter is insufficient to meet the requirements for adjustment assistance payable under this chapter, the amount of assistance payable under this chapter shall be reduced proportionately.".

(b) EFFECTIVE DATE.—The amendments made by this title shall take effect on the date that is 180 days after the date of enactment of this Act.

SEC. 142. CONFORMING AMENDMENTS.

(a) JUDICIAL REVIEW.—

(1) Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended—

(A) by inserting "an agricultural commodity producer (as defined in section 291(2)) aggrieved by a determination of the Secretary of Agriculture under section 293, " after "section 251 of this title,"; and

(B) in the second sentence of subsection (a) and in subsections (b) and (c), by striking "or the Secretary of Commerce" each place it appears and inserting ", the Secretary of Commerce, or the Secretary of Agriculture".

(b) CHAPTERS 6.—The table of contents for title II of the Trade Act of 1974, as amended by subparagraph (A), is amended by inserting after the items relating to chapter 5 the following:

"CHAPTER 6—ADJUSTMENT ASSISTANCE FOR FARMERS

"Sec. 291. Definitions.
"Sec. 292. Petitions; group eligibility.
"Sec. 293. Determinations by Secretary of Agriculture.
"Sec. 294. Study by Secretary of Agriculture when International Trade Commission begins investigation.
"Sec. 295. Benefit information to agricultural commodity producers.
"Sec. 296. Qualifying requirements for agricultural commodity producers.
"Sec. 297. Fraud and recovery of overpayments.
"Sec. 298. Authorization of appropriations.".

SEC. 143. STUDY ON TAA FOR FISHERMEN.

Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall conduct a study and report to Congress regarding whether a trade adjustment assistance program is appropriate and feasible for fishermen. For purposes of the preceding sentence, the term "fishermen" means any person who is engaged in commercial fishing or is a United States fish processor.

Subtitle D—Effective Date

SEC. 151. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in sections 123(c) and 141(b), and subsections (b), (c), and (d) of this section, the amendments made by this division shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this Act.

(b) WORKERS CERTIFIED AS ELIGIBLE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a), a worker shall continue to receive (or be eligible to receive) trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date, if on or before such date, the worker—

(1) was certified as eligible for trade adjustment assistance benefits under such chapter as in effect on such date; and

(2) would otherwise be eligible to receive trade adjustment assistance benefits under such chapter as in effect on such date.

(c) WORKERS WHO BECAME ELIGIBLE DURING QUALIFIED PERIOD.—

(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974, any worker who would have been eligible to receive trade adjustment assistance or other benefits under chapter 2 of title II of the Trade Act of 1974 during the qualified period if such chapter 2 had been in effect during such period, shall be eligible to receive trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the worker meets the eligibility requirements of such chapter 2 as in effect on September 30, 2001.

(2) QUALIFIED PERIOD.—For purposes of this subsection, the term "qualified period" means the period beginning on January 11, 2002, and ending on the date that is 90 days after the date of enactment of this Act.

(d) ADJUSTMENT ASSISTANCE FOR FIRMS.—

(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974, and except as provided in paragraph (2), any firm that would have been eligible to receive adjustment assistance under chapter 3 of title II of the Trade Act if 1974 during the qualified period if such chapter 3 had been in effect during such period, shall be eligible to receive adjustment assistance under chapter 3 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the firm meets the eligibility requirements of such chapter 3 as in effect on September 30, 2001.

(2) QUALIFIED PERIOD.—For purposes of this subsection, the term "qualified period" means the period beginning on October 1, 2001, and ending on the date that is 90 days after the date of enactment of this Act.

TITLE II—CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 201. CREDIT FOR HEALTH INSURANCE COSTS OF INDIVIDUALS RECEIVING A TRADE READJUSTMENT ALLOWANCE OR A BENEFIT FROM THE PENSION BENEFIT GUARANTY CORPORATION.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and inserting after section 34 the following new section:

"SEC. 35. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 65 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

"(b) ELIGIBLE COVERAGE MONTH.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible coverage month' means any month if—

"(A) as of the first day of such month, the taxpayer—

"(i) is an eligible individual,

"(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

"(iii) does not have other specified coverage, and

"(iv) is not imprisoned under Federal, State, or local authority, and

"(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002.

"(2) JOINT RETURNS.—In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

"(c) ELIGIBLE INDIVIDUAL.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible individual' means—

"(A) an eligible TAA recipient,

"(B) an eligible alternative TAA recipient, and

"(C) an eligible PBGC pension recipient.

"(2) ELIGIBLE TAA RECIPIENT.—The term 'eligible TAA recipient' means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

"(3) ELIGIBLE ALTERNATIVE TAA RECIPIENT.—The term 'eligible alternative TAA recipient' means, with respect to any month, any individual who—

"(A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and

"(B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

"(4) ELIGIBLE PBGC PENSION RECIPIENT.—The term 'eligible PBGC pension recipient' means, with respect to any month, any individual who—

"(A) has attained age 55 as of the first day of such month, and

"(B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

"(d) QUALIFYING FAMILY MEMBER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying family member' means—

"(A) the taxpayer's spouse, and

"(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

"(2) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (within the meaning of section 152(e)(1)) and not with respect to the noncustodial parent.

"(e) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified health insurance' means any of the following:

"(A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).

"(B) State-based continuation coverage provided by the State under a State law that requires such coverage.

"(C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).

"(D) Coverage under a health insurance program offered for State employees.

"(E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

"(F) Coverage through an arrangement entered into by a State and—

"(i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

"(ii) an issuer of health insurance coverage,

"(iii) an administrator, or

"(iv) an employer.

"(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

"(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

"(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

"(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

"(i) in the case of an eligible TAA recipient, the allowance described in subsection (c)(2),

"(ii) in the case of an eligible alternative TAA recipient, the benefit described in subsection (c)(3)(B); or

"(iii) in the case of any eligible PBGC pension recipient, the benefit described in subsection (c)(4)(B).

For purposes of this subparagraph, the term 'individual health insurance' means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

"(2) REQUIREMENTS FOR STATE-BASED COVERAGE.—

"(A) IN GENERAL.—The term 'qualified health insurance' does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

"(i) GUARANTEED ISSUE.—Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

"(ii) NO IMPOSITION OF PREEXISTING CONDITION EXCLUSION.—No pre-existing condition limitations are imposed with respect to any qualifying individual.

"(iii) NONDISCRIMINATORY PREMIUM.—The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

"(iv) SAME BENEFITS.—Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

"(B) QUALIFYING INDIVIDUAL.—For purposes of this paragraph, the term 'qualifying individual' means—

"(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

"(ii) the qualifying family members of such eligible individual.

"(3) EXCEPTION.—The term 'qualified health insurance' shall not include—

"(A) a flexible spending or similar arrangement, and

"(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

"(f) OTHER SPECIFIED COVERAGE.—For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

"(1) SUBSIDIZED COVERAGE.—

"(A) IN GENERAL.—Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

"(B) ELIGIBLE ALTERNATIVE TAA RECIPIENTS.—In the case of an eligible alternative TAA recipient, such individual is either—

"(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

"(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

"(C) TREATMENT OF CAFETERIA PLANS.—For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

"(2) COVERAGE UNDER MEDICARE, MEDICAID, OR SCHIP.—Such individual—

"(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

"(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

"(3) CERTAIN OTHER COVERAGE.—Such individual—

"(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

"(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

"(g) SPECIAL RULES.—

"(1) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

"(2) COORDINATION WITH OTHER DEDUCTIONS.—Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(l) or 213.

"(3) MSA DISTRIBUTIONS.—Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).

"(4) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(5) BOTH SPOUSES ELIGIBLE INDIVIDUALS.—The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

"(A) the taxpayer is married at the close of the taxable year,

"(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

"(C) the taxpayer files a separate return for the taxable year.

"(6) MARITAL STATUS; CERTAIN MARRIED INDIVIDUALS LIVING APART.—Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

"(7) INSURANCE WHICH COVERS OTHER INDIVIDUALS.—For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

"(8) TREATMENT OF PAYMENTS.—For purposes of this section—

"(A) PAYMENTS BY SECRETARY.—Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

"(B) PAYMENTS BY TAXPAYER.—Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

"(9) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.".

(b) PROMOTION OF STATE HIGH RISK POOLS.—Title XXVII of the Public Health Service Act is amended by inserting after section 2744 the following new section:

"SEC. 2745. PROMOTION OF QUALIFIED HIGH RISK POOLS.

"(a) SEED GRANTS TO STATES.—The Secretary shall provide from the funds appropriated under subsection (c)(1) a grant of up to $1,000,000 to each State that has not created a qualified high risk pool as of the date of the enactment of this section for the State's costs of creation and initial operation of such a pool.

"(b) MATCHING FUNDS FOR OPERATION OF POOLS.—

"(1) IN GENERAL.—In the case of a State that has established a qualified high risk pool that—

"(A) restricts premiums charged under the pool to no more than 150 percent of the premium for applicable standard risk rates;

"(B) offers a choice of two or more coverage options through the pool; and

"(C) has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004 in connection with operation of the pool;

the Secretary shall provide, from the funds appropriated under subsection (c)(2) and allotted to the State under paragraph (2), a grant of up to 50 percent of the losses incurred by the State in connection with the operation of the pool.

"(2) ALLOTMENT.—The amounts appropriated under subsection (c)(2) for a fiscal year shall be made available to the States in accordance with a formula that is based upon the number of uninsured individuals in the States.

"(c) FUNDING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are authorized and appropriated—

"(1) $20,000,000 for fiscal year 2003 to carry out subsection (a); and

"(2) $40,000,000 for each of fiscal years 2003 and 2004 to carry out subsection (b).

Funds appropriated under this subsection for a fiscal year shall remain available for obligation through the end of the following fiscal year. Nothing in this section shall be construed as providing a State with an entitlement to a grant under this section.

"(d) QUALIFIED HIGH RISK POOL AND STATE DEFINED.—For purposes of this section, the term 'qualified high risk pool' has the meaning given such term in section 2744(c)(2) and the term 'State' means any of the 50 States and the District of Columbia.".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ", or from section 35 of such Code".

(2) The table of sections for subpart C of part IV of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

"Sec. 35. Health insurance costs of eligible individuals.

"Sec. 36. Overpayments of tax.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2001.

(2) STATE HIGH RISK POOLS.—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 202. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7527. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

"(a) GENERAL RULE.—Not later than August 1, 2003, the Secretary shall establish a program for making payments on behalf of certified individuals to providers of qualified health insurance (as defined in section 35(e)) for such individuals.

"(b) LIMITATION ON ADVANCE PAYMENTS DURING ANY TAXABLE YEAR.—The Secretary may make payments under subsection (a) only to the extent that the total amount of such payments made on behalf of any individual during the taxable year does not exceed 65 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

"(c) CERTIFIED INDIVIDUAL.—For purposes of this section, the term 'certified individual' means any individual for whom a qualified health insurance costs credit eligibility certificate is in effect.

"(d) QUALIFIED HEALTH INSURANCE COSTS CREDIT ELIGIBILITY CERTIFICATE.—For purposes of this section, the term 'qualified health insurance costs credit eligibility certificate' means any written statement that an individual is an eligible individual (as defined in section 35(c)) if such statement provides such information as the Secretary may require for purposes of this section and—

"(1) in the case of an eligible TAA recipient (as defined in section 35(c)(2)) or an eligible alternative TAA recipient (as defined in section 35(c)(3)), is certified by the Secretary of Labor (or by any other person or entity designated by the Secretary), or

"(2) in the case of an eligible PBGC pension recipient (as defined in section 35(c)(4)), is certified by the Pension Benefit Guaranty Corporation (or by any other person or entity designated by the Secretary).".

(b) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subsection (l) of section 6103 of such Code (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(18) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.—The Secretary may disclose to providers of health insurance for any certified individual (as defined in section 7527(c)) return information with respect to such certified individual only to the extent necessary to carry out the program established by section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals).".

(2) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Subsection (p) of such section is amended—

(A) in paragraph (3)(A) by striking "or (17)" and inserting "(17), or (18)", and

(B) in paragraph (4) by inserting "or (17)" after "any other person described in subsection (l)(16)" each place it appears.

(3) UNAUTHORIZED INSPECTION OF RETURNS OR RETURN INFORMATION.—Section 7213A(a)(1)(B) of such Code is amended by striking "section 6103(n)" and inserting "subsection (l)(18) or (n) of section 6103".

(c) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning

transactions with other persons) is amended by inserting after section 6050S the following new section:

"SEC. 6050T. RETURNS RELATING TO CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

"(a) Requirement of Reporting.—Every person who is entitled to receive payments for any month of any calendar year under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) with respect to any certified individual (as defined in section 7527(c)) shall, at such time as the Secretary may prescribe, make the return described in subsection (b) with respect to each such individual.

"(b) Form and Manner of Returns.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe, and

"(2) contains—

"(A) the name, address, and TIN of each individual referred to in subsection (a),

"(B) the number of months for which amounts were entitled to be received with respect to such individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals),

"(C) the amount entitled to be received for each such month, and

"(D) such other information as the Secretary may prescribe.

"(c) Statements To Be Furnished to Individuals With Respect to Whom Information Is Required.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

"(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.".

(2) Assessable penalties.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xi) through (xvii) as clauses (xii) through (xviii), respectively, and by inserting after clause (x) the following new clause:

"(xi) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),".

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking "or" at the end of subparagraph (Z), by striking the period at the end of subparagraph (AA) and inserting ", or", and by adding after subparagraph (AA) the following new subparagraph:

"(BB) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals).".

(d) Clerical Amendments.—

(1) Advance payment.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 7527. Advance payment of credit for health insurance costs of eligible individuals.".

(2) Information reporting.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050S the following new item:

"Sec. 6050T. Returns relating to credit for health insurance costs of eligible individuals.".

(e) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. HEALTH INSURANCE ASSISTANCE FOR ELIGIBLE INDIVIDUALS.

(a) Eligibility for Grants.—Section 173(a) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(a)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(4) from funds appropriated under section 174(c)—

"(A) to a State or entity (as defined in section 173(c)(1)(B)) to carry out subsection (f), including providing assistance to eligible individuals; and

"(B) to a State or entity (as so defined) to carry out subsection (g), including providing assistance to eligible individuals.".

(b) Use of Funds for Health Insurance Coverage.—Section 173 of the Workforce Investment Act of 1998 (29 U.S.C. 2918) is amended by adding at the end the following:

"(f) Health Insurance Coverage Assistance for Eligible Individuals.—

"(1) In general.—Funds made available to a State or entity under paragraph (4)(A) of subsection (a) may be used by the State or entity for the following:

"(A) Health insurance coverage.—To assist an eligible individual and such individual's qualifying family members in enrolling in qualified health insurance.

"(B) Administrative and start-up expenses.—To pay the administrative expenses related to the enrollment of eligible individuals and such individuals' qualifying family members in qualified health insurance, including—

"(i) eligibility verification activities;

"(ii) the notification of eligible individuals of available qualified health insurance options;

"(iii) processing qualified health insurance costs credit eligibility certificates provided for under section 7527 of the Internal Revenue Code of 1986;

"(iv) providing assistance to eligible individuals in enrolling in qualified health insurance;

"(v) the development or installation of necessary data management systems; and

"(vi) any other expenses determined appropriate by the Secretary, including start-up costs and on going administrative expenses to carry out clauses (iv) through (ix) of paragraph (2)(A).

"(2) Qualified health insurance.—For purposes of this subsection and subsection (g)—

"(A) In general.—The term 'qualified health insurance' means any of the following:

"(i) Coverage under a COBRA continuation provision (as defined in section 733(d)(1) of the Employee Retirement Income Security Act of 1974).

"(ii) State-based continuation coverage provided by the State under a State law that requires such coverage.

"(iii) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).

"(iv) Coverage under a health insurance program offered for State employees.

"(v) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

"(vi) Coverage through an arrangement entered into by a State and—

"(I) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

"(II) an issuer of health insurance coverage,

"(III) an administrator, or

"(IV) an employer.

"(vii) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

"(viii) Coverage under a State-operated health plan that does not receive any Federal financial participation.

"(ix) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

"(x) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

"(I) in the case of an eligible TAA recipient, the allowance described in section 35(c)(2) of the Internal Revenue Code of 1986,

"(II) in the case of an eligible alternative TAA recipient, the benefit described in section 35(c)(3)(E) of such Code, or

"(III) in the case of any eligible PBGC pension recipient, the benefit described in section 35(c)(4)(B) of such Code.

For purposes of this clause, the term 'individual health insurance' means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

"(B) Requirements for state-based coverage.—

"(i) In general.—The term 'qualified health insurance' does not include any coverage described in clauses (ii) through (viii) of subparagraph (A) unless the State involved has elected to have such coverage treated as qualified health insurance under this paragraph and such coverage meets the following requirements:

"(I) Guaranteed issue.—Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 of the Internal Revenue Code of 1986 and pays the remainder of such premium.

"(II) No imposition of preexisting condition exclusion.—No pre-existing condition limitations are imposed with respect to any qualifying individual.

"(III) Nondiscriminatory premium.—The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

"(IV) Same benefits.—Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

"(ii) Qualifying individual.—For purposes of this subparagraph, the term 'qualifying individual' means—

"(I) an eligible individual for whom, as of the date on which the individual seeks to enroll in clauses (ii) through (viii) of subparagraph (A), the aggregate of the periods of creditable coverage (as defined in section 9801(c) of the Internal Revenue Code of 1986) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of section 35(b)(1)(A) of such Code; and

"(II) the qualifying family members of such eligible individual.

"(C) Exception.—The term 'qualified health insurance' shall not include—

"(i) a flexible spending or similar arrangement, and *"(ii) any insurance if substantially all of its coverage is of excepted benefits described in section 733(c) of the Employee Retirement Income Security Act of 1974.*

"(3) AVAILABILITY OF FUNDS.—

"(A) EXPEDITED PROCEDURES.—With respect to applications submitted by States or entities for grants under this subsection, the Secretary shall—

"(i) not later than 15 days after the date on which the Secretary receives a completed application from a State or entity, notify the State or entity of the determination of the Secretary with respect to the approval or disapproval of such application;

"(ii) in the case of an application of a State or other entity that is disapproved by the Secretary, provide technical assistance, at the request of the State or entity, in a timely manner to enable the State or entity to submit an approved application; and

"(iii) develop procedures to expedite the provision of funds to States and entities with approved applications.

"(B) AVAILABILITY AND DISTRIBUTION OF FUNDS.—The Secretary shall ensure that funds made available under section 174(c)(1)(A) to carry out subsection (a)(4)(A) are available to States and entities throughout the period described in section 174(c)(2)(A).

"(4) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this subsection and subsection (g), the term 'eligible individual' means—

"(A) an eligible TAA recipient (as defined in section 35(c)(2) of the Internal Revenue Code of 1986),

"(B) an eligible alternative TAA recipient (as defined in section 35(c)(3) of the Internal Revenue Code of 1986), and

"(C) an eligible PBGC pension recipient (as defined in section 35(c)(4) of the Internal Revenue Code of 1986),

who, as of the first day of the month, does not have other specified coverage and is not imprisoned under Federal, State, or local authority.

"(5) QUALIFYING FAMILY MEMBER DEFINED.—For purposes of this subsection and subsection (g)—

"(A) IN GENERAL.—The term 'qualifying family member' means—

"(i) the eligible individual's spouse, and

"(ii) any dependent of the eligible individual with respect to whom the individual is entitled to a deduction under section 151(c) of the Internal Revenue Code of 1986.

Such term does not include any individual who has other specified coverage.

"(B) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If paragraph (2) or (4) of section 152(e) of such Code applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in subparagraph (A)(ii) with respect to the custodial parent (within the meaning of section 152(e)(1) of such Code) and not with respect to the noncustodial parent.

"(6) STATE.—For purposes of this subsection and subsection (g), the term 'State' includes an entity as defined in subsection (c)(1)(B).

"(7) OTHER SPECIFIED COVERAGE.—For purposes of this subsection, an individual has other specified coverage for any month if, as of the first day of such month—

"(A) SUBSIDIZED COVERAGE.—

"(i) IN GENERAL.—Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c) of the Internal Revenue Code of 1986) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B of such Code) is paid or incurred by the employer.

"(ii) ELIGIBLE ALTERNATIVE TAA RECIPIENTS.—In the case of an eligible alternative TAA recipient (as defined in section 35(c)(3) of the Internal Revenue Code of 1986), such individual is either—

"(I) eligible for coverage under any qualified health insurance (other than insurance described in clause (i), (ii), or (vi) of paragraph (2)(A)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4) of such Code) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

"(II) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

"(iii) TREATMENT OF CAFETERIA PLANS.—For purposes of clauses (i) and (ii), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d) of the Internal Revenue Code of 1986).

"(B) COVERAGE UNDER MEDICARE, MEDICAID, OR SCHIP.—Such individual—

"(i) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

"(ii) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

"(C) CERTAIN OTHER COVERAGE.—Such individual—

"(i) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

"(ii) is entitled to receive benefits under chapter 55 of title 10, United States Code.

"(g) INTERIM HEALTH INSURANCE COVERAGE AND OTHER ASSISTANCE.—

"(1) IN GENERAL.—Funds made available to a State or entity under paragraph (4)(B) of subsection (a) may be used by the State or entity to provide assistance and support services to eligible individuals, including health care coverage to the extent provided under subsection (f)(1)(A), transportation, child care, dependent care, and income assistance.

"(2) INCOME SUPPORT.—With respect to any income assistance provided to an eligible individual with such funds, such assistance shall supplement and not supplant other income support or assistance provided under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) (as in effect on the day before the effective date of the Trade Act of 2002) or the unemployment compensation laws of the State where the eligible individual resides.

"(3) HEALTH INSURANCE COVERAGE.—With respect to any assistance provided to an eligible individual with such funds in enrolling in qualified health insurance, the following rules shall apply:

"(A) The State or entity may provide assistance in obtaining such coverage to the eligible individual and to such individual's qualifying family members.

"(B) Such assistance shall supplement and may not supplant any other State or local funds used to provide health care coverage and may not be included in determining the amount of non-Federal contributions required under any program.

"(4) AVAILABILITY OF FUNDS.—

"(A) EXPEDITED PROCEDURES.—With respect to applications submitted by States or entities for grants under this subsection, the Secretary shall—

"(i) not later than 15 days after the date on which the Secretary receives a completed application from a State or entity, notify the State or entity of the determination of the Secretary with respect to the approval or disapproval of such application;

"(ii) in the case of an application of a State or entity that is disapproved by the Secretary, provide technical assistance, at the request of the State or entity, in a timely manner to enable the State or entity to submit an approved application; and

"(iii) develop procedures to expedite the provision of funds to States and entities with approved applications.

"(B) AVAILABILITY AND DISTRIBUTION OF FUNDS.—The Secretary shall ensure that funds made available under section 174(c)(1)(B) to carry out subsection (a)(4)(B) are available to States and entities throughout the period described in section 174(c)(2)(B).

"(5) INCLUSION OF CERTAIN INDIVIDUALS AS ELIGIBLE INDIVIDUALS.—For purposes of this subsection, the term 'eligible individual' includes an individual who is a member of a group of workers certified after April 1, 2002, under chapter 2 of title II of the Trade Act of 1974 (as in effect on the day before the effective date of the Trade Act of 2002) and is participating in the trade readjustment allowance program under such chapter (as so in effect) or who would be determined to be participating in such program under such chapter (as so in effect) if such chapter were applied without regard to section 231(a)(3)(B) of the Trade Act of 1974 (as so in effect).".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 174 of the Workforce Investment Act of 1998 (29 U.S.C. 2919) is amended by adding at the end the following:

"(c) ASSISTANCE FOR ELIGIBLE WORKERS.—

"(1) AUTHORIZATION AND APPROPRIATION FOR FISCAL YEAR 2002.—There are authorized to be appropriated and appropriated—

"(A) to carry out subsection (a)(4)(A) of section 173, $10,000,000 for fiscal year 2002; and

"(B) to carry out subsection (a)(4)(B) of section 173, $50,000,000 for fiscal year 2002.

"(2) AUTHORIZATION OF APPROPRIATIONS FOR SUBSEQUENT FISCAL YEARS.—There are authorized to be appropriated—

"(A) to carry out subsection (a)(4)(A) of section 173, $60,000,000 for each of fiscal years 2003 through 2007; and

"(B) to carry out subsection (a)(4)(B) of section 173—

"(i) $100,000,000 for fiscal year 2003; and

"(ii) $50,000,000 for fiscal year 2004.

"(3) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to—

"(A) paragraphs (1)(A) and (2)(A) for each fiscal year shall, notwithstanding section 189(g), remain available for obligation during the pendency of any outstanding claim under the Trade Act of 1974, as amended by the Trade Act of 2002; and

"(B) paragraph (1)(B) and (2)(B), for each fiscal year shall, notwithstanding section 189(g), remain available during the period that begins on the date of enactment of the Trade Act of 2002 and ends on September 30, 2004.".

(d) CONFORMING AMENDMENT.—Section 132(a)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2862(a)(2)(A)) is amended by inserting ", other than under subsection (a)(4), (f), and (g)" after "grants".

(e) TEMPORARY EXTENSION OF COBRA ELECTION PERIOD FOR CERTAIN INDIVIDUALS.—

(1) ERISA AMENDMENTS.—Section 605 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165) is amended—

(A) by inserting "(a) IN GENERAL.—" before "For purposes of this part"; and

(B) by adding at the end the following:

"(b) TEMPORARY EXTENSION OF COBRA ELECTION PERIOD FOR CERTAIN INDIVIDUALS.—

"(1) IN GENERAL.—In the case of a nonelecting TAA-eligible individual and notwithstanding

subsection (a), such individual may elect continuation coverage under this part during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

"(2) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

"(3) PREEXISTING CONDITIONS.—With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

"(A) beginning on the date of the TAA-related loss of coverage, and

"(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 701(c)(2), section 2701(c)(2) of the Public Health Service Act, and section 9801(c)(2) of the Internal Revenue Code of 1986.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) NONELECTING TAA-ELIGIBLE INDIVIDUAL.—The term 'nonelecting TAA-eligible individual' means a TAA-eligible individual who—

"(i) has a TAA-related loss of coverage; and

"(ii) did not elect continuation coverage under this part during the TAA-related election period.

"(B) TAA-ELIGIBLE INDIVIDUAL.—The term 'TAA-eligible individual' means—

"(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of the Internal Revenue Code of 1986), and

"(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

"(C) TAA-RELATED ELECTION PERIOD.—The term 'TAA-related election period' means, with respect to a TAA-related loss of coverage, the 60-day election period under this part which is a direct consequence of such loss.

"(D) TAA-RELATED LOSS OF COVERAGE.—The term 'TAA-related loss of coverage' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.".

(2) PHSA AMENDMENTS.—Section 2205 of the Public Health Service Act (42 U.S.C. 300bb–5) is amended—

(A) by inserting "(a) IN GENERAL.—" before "For purposes of this title"; and

(B) by adding at the end the following:

"(b) TEMPORARY EXTENSION OF COBRA ELECTION PERIOD FOR CERTAIN INDIVIDUALS.—

"(1) IN GENERAL.—In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a), such individual may elect continuation coverage under this title during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

"(2) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

"(3) PREEXISTING CONDITIONS.—With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

"(A) beginning on the date of the TAA-related loss of coverage, and

"(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 2701(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 9801(c)(2) of the Internal Revenue Code of 1986.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) NONELECTING TAA-ELIGIBLE INDIVIDUAL.—The term 'nonelecting TAA-eligible individual' means a TAA-eligible individual who—

"(i) has a TAA-related loss of coverage; and

"(ii) did not elect continuation coverage under this part during the TAA-related election period.

"(B) TAA-ELIGIBLE INDIVIDUAL.—The term 'TAA-eligible individual' means—

"(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of the Internal Revenue Code of 1986), and

"(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

"(C) TAA-RELATED ELECTION PERIOD.—The term 'TAA-related election period' means, with respect to a TAA-related loss of coverage, the 60-day election period under this part which is a direct consequence of such loss.

"(D) TAA-RELATED LOSS OF COVERAGE.—The term 'TAA-related loss of coverage' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.".

(3) IRC AMENDMENTS.—Paragraph (5) of section 4980B(f) of the Internal Revenue Code of 1986 (relating to election) is amended by adding at the end the following:

"(C) TEMPORARY EXTENSION OF COBRA ELECTION PERIOD FOR CERTAIN INDIVIDUALS.—

"(i) IN GENERAL.—In the case of a nonelecting TAA-eligible individual and notwithstanding subparagraph (A), such individual may elect continuation coverage under this subsection during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

"(ii) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any continuation coverage elected by a TAA-eligible individual under clause (i) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

"(iii) PREEXISTING CONDITIONS.—With respect to an individual who elects continuation coverage pursuant to clause (i), the period—

"(I) beginning on the date of the TAA-related loss of coverage, and

"(II) ending on the first day of the 60-day election period described in clause (i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 9801(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 2701(c)(2) of the Public Health Service Act.

"(iv) DEFINITIONS.—For purposes of this subsection:

"(I) NONELECTING TAA-ELIGIBLE INDIVIDUAL.—The term 'nonelecting TAA-eligible individual' means a TAA-eligible individual who has a TAA-related loss of coverage and did not elect continuation coverage under this subsection during the TAA-related election period.

"(II) TAA-ELIGIBLE INDIVIDUAL.—The term 'TAA-eligible individual' means an eligible TAA recipient (as defined in paragraph (2) of section 35(c)) and an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

"(III) TAA-RELATED ELECTION PERIOD.—The term 'TAA-related election period' means, with respect to a TAA-related loss of coverage, the 60-day election period under this subsection which is a direct consequence of such loss.

"(IV) TAA-RELATED LOSS OF COVERAGE.—The term 'TAA-related loss of coverage' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.".

(f) RULE OF CONSTRUCTION.—Nothing in this title (or the amendments made by this title), other than provisions relating to COBRA continuation coverage and reporting requirements, shall be construed as creating any new mandate on any party regarding health insurance coverage.

TITLE III—CUSTOMS REAUTHORIZATION

SEC. 301. SHORT TITLE.

This Act may be cited as the "Customs Border Security Act of 2002".

Subtitle A—United States Customs Service

CHAPTER 1—DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

SEC. 311. AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION.

(a) NONCOMMERCIAL OPERATIONS.—Section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)) is amended—

(1) by striking subparagraph (A), and inserting the following:

"(A) $1,365,456,000 for fiscal year 2003."; and

(2) by striking subparagraph (B), and inserting the following:

"(B) $1,399,592,400 for fiscal year 2004.".

(b) COMMERCIAL OPERATIONS.—

(1) IN GENERAL.—Section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)) is amended—

(A) by striking clause (i), and inserting the following:

"(i) $1,642,602,000 for fiscal year 2003."; and

(B) by striking clause (ii), and inserting the following:

"(ii) $1,683,667,050 for fiscal year 2004.".

(2) AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM.—Of the amount made available for each of fiscal years 2003 and 2004 under section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)), as amended by paragraph (1), $308,000,000 shall be available until expended for each such fiscal year for the development, establishment, and implementation of the Automated Commercial Environment computer system.

(3) REPORTS.—Not later than 90 days after the date of the enactment of this Act, and not later than the end of each subsequent 90-day period, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report demonstrating that the development and establishment of the Automated Commercial Environment computer system is being carried out in a cost-effective manner and meets the modernization requirements of title VI of the North American Free Trade Agreement Implementation Act.

(c) AIR AND MARINE INTERDICTION.—Section 301(b)(3) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(3)) is amended—

(1) by striking subparagraph (A), and inserting the following:

"(A) $170,829,000 for fiscal year 2003."; and

(2) by striking subparagraph (B), and inserting the following:

"(B) $175,099,725 for fiscal year 2004.".

(d) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 301(a) of the Customs Procedural Reform and Simplification Act of 1978 (19

U.S.C. 2075(a)) is amended by adding at the end the following:

"(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).".

SEC. 312. ANTITERRORIST AND ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.

(a) FISCAL YEAR 2003.—Of the amounts made available for fiscal year 2003 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 311(a) of this Act, $90,244,000 shall be available until expended for acquisition and other expenses associated with implementation and deployment of antiterrorist and illicit narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf Coast seaports, as follows:

(1) UNITED STATES-MEXICO BORDER.—For the United States-Mexico border, the following:

(A) $6,000,000 for 8 Vehicle and Container Inspection Systems (VACIS).

(B) $11,200,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $13,000,000 for the upgrade of 8 fixed-site truck x-rays from the present energy level of 450,000 electron volts to 1,000,000 electron volts (1-MeV).

(D) $7,200,000 for 8 1-MeV pallet x-rays.

(E) $1,000,000 for 200 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(F) $600,000 for 50 contraband detection kits to be distributed among all southwest border ports based on traffic volume.

(G) $500,000 for 25 ultrasonic container inspection units to be distributed among all ports receiving liquid-filled cargo and to ports with a hazardous material inspection facility.

(H) $2,450,000 for 7 automated targeting systems.

(I) $360,000 for 30 rapid tire deflator systems to be distributed to those ports where port runners are a threat.

(J) $480,000 for 20 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(K) $1,000,000 for 20 remote watch surveillance camera systems at ports where there are suspicious activities at loading docks, vehicle queues, secondary inspection lanes, or areas where visual surveillance or observation is obscured.

(L) $1,254,000 for 57 weigh-in-motion sensors to be distributed among the ports with the greatest volume of outbound traffic.

(M) $180,000 for 36 AM traffic information radio stations, with 1 station to be located at each border crossing.

(N) $1,040,000 for 260 inbound vehicle counters to be installed at every inbound vehicle lane.

(O) $950,000 for 38 spotter camera systems to counter the surveillance of customs inspection activities by persons outside the boundaries of ports where such surveillance activities are occurring.

(P) $390,000 for 60 inbound commercial truck transponders to be distributed to all ports of entry.

(Q) $1,600,000 for 40 narcotics vapor and particle detectors to be distributed to each border crossing.

(R) $400,000 for license plate reader automatic targeting software to be installed at each port to target inbound vehicles.

(2) UNITED STATES-CANADA BORDER.—For the United States-Canada border, the following:

(A) $3,000,000 for 4 Vehicle and Container Inspection Systems (VACIS).

(B) $8,800,000 for 4 mobile truck x-rays with transmission and backscatter imaging.

(C) $3,600,000 for 4 1-MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(F) $240,000 for 10 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(G) $400,000 for 10 narcotics vapor and particle detectors to be distributed to each border crossing based on traffic volume.

(3) FLORIDA AND GULF COAST SEAPORTS.—For Florida and the Gulf Coast seaports, the following:

(A) $4,500,000 for 6 Vehicle and Container Inspection Systems (VACIS).

(B) $11,800,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $7,200,000 for 8 1-MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(b) FISCAL YEAR 2004.—Of the amounts made available for fiscal year 2004 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), as amended by section 311(a) of this Act, $9,000,000 shall be available until expended for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (a).

(c) ACQUISITION OF TECHNOLOGICALLY SUPERIOR EQUIPMENT; TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Commissioner of Customs may use amounts made available for fiscal year 2003 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 311(a) of this Act, for the acquisition of equipment other than the equipment described in subsection (a) if such other equipment—

(A)(i) is technologically superior to the equipment described in subsection (a); and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment described in subsection (a); or

(B) can be obtained at a lower cost than the equipment described in subsection (a).

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Commissioner of Customs may reallocate an amount not to exceed 10 percent of—

(A) the amount specified in any of subparagraphs (A) through (R) of subsection (a)(1) for equipment specified in any other of such subparagraphs (A) through (R);

(B) the amount specified in any of subparagraphs (A) through (G) of subsection (a)(2) for equipment specified in any other of such subparagraphs (A) through (G); and

(C) the amount specified in any of subparagraphs (A) through (E) of subsection (a)(3) for equipment specified in any other of such subparagraphs (A) through (E).

SEC. 313. COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.

As part of the annual performance plan for each of the fiscal years 2003 and 2004 covering each program activity set forth in the budget of the United States Customs Service, as required under section 1115 of title 31, United States Code, the Commissioner of Customs shall establish performance goals and performance indicators, and shall comply with all other requirements contained in paragraphs (1) through (6) of subsection (a) of such section with respect to each of the activities to be carried out pursuant to section 312.

CHAPTER 2—CHILD CYBER-SMUGGLING CENTER OF THE CUSTOMS SERVICE

SEC. 321. AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Customs Service $10,000,000 for fiscal year 2003 to carry out the program to prevent child pornography/child sexual exploitation established by the Child Cyber-Smuggling Center of the Customs Service.

(b) USE OF AMOUNTS FOR CHILD PORNOGRAPHY CYBER TIPLINE.—Of the amount appropriated under subsection (a), the Customs Service shall provide 3.75 percent of such amount to the National Center for Missing and Exploited Children for the operation of the child pornography cyber tipline of the Center and for increased public awareness of the tipline.

CHAPTER 3—MISCELLANEOUS PROVISIONS

SEC. 331. ADDITIONAL CUSTOMS SERVICE OFFICERS FOR UNITED STATES-CANADA BORDER.

Of the amount made available for fiscal year 2003 under paragraphs (1) and (2)(A) of section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)), as amended by section 311 of this Act, $28,300,000 shall be available until expended for the Customs Service to hire approximately 285 additional Customs Service officers to address the needs of the offices and ports along the United States-Canada border.

SEC. 332. STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE.

(a) STUDY.—The Commissioner of Customs shall conduct a study of current personnel practices of the Customs Service, including an overview of performance standards and the effect and impact of the collective bargaining process on drug interdiction efforts of the Customs Service and a comparison of duty rotation policies of the Customs Service and other Federal agencies that employ similarly situated personnel.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

SEC. 333. STUDY AND REPORT RELATING TO ACCOUNTING AND AUDITING PROCEDURES OF THE CUSTOMS SERVICE.

(a) STUDY.—(1) The Commissioner of Customs shall conduct a study of actions by the Customs Service to ensure that appropriate training is being provided to Customs Service personnel who are responsible for financial auditing of importers.

(2) In conducting the study, the Commissioner—

(A) shall specifically identify those actions taken to comply with provisions of law that protect the privacy and trade secrets of importers, such as section 552(b) of title 5, United States Code, and section 1905 of title 18, United States Code; and

(B) shall provide for public notice and comment relating to verification of the actions described in subparagraph (A).

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

SEC. 334. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in both commercial and noncommercial operations of the Customs Service.

(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(b) REPORTS.—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to Congress on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

SEC. 335. STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS.

(a) STUDY.—The Comptroller General shall conduct a study on the extent to which the Office of Regulations and Rulings of the Customs Service has made improvements to decrease the amount of time to issue prospective rulings from the date on which a request for the ruling is received by the Customs Service.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

(c) DEFINITION.—In this section, the term "prospective ruling" means a ruling that is requested by an importer on goods that are proposed to be imported into the United States and that relates to the proper classification, valuation, or marking of such goods.

SEC. 336. STUDY AND REPORT RELATING TO CUSTOMS USER FEES.

(a) STUDY.—The Comptroller General shall conduct a study on the extent to which the amount of each customs user fee imposed under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is commensurate with the level of services provided by the Customs Service relating to the fee so imposed.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report in classified form containing—

(1) the results of the study conducted under subsection (a); and

(2) recommendations for the appropriate amount of the customs user fees if such results indicate that the fees are not commensurate with the level of services provided by the Customs Service.

SEC. 337. FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES.

(a) IN GENERAL.—Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended as follows:

(1) In subparagraph (A)—

(A) in the matter preceding clause (i), by striking "the processing of merchandise that is informally entered or released" and inserting "the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is less than $2,000 (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930), except such items entered for transportation and exportation or immediate exportation"; and

(B) by striking clause (ii), and inserting the following:

"(ii) Subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility, $.66 per individual airway bill or bill of lading.".

(2) By redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following:

"(B)(i) Beginning in fiscal year 2004, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to an amount that is not less than $.35 and not more than $1.00 per individual airway bill or bill of lading. The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefor and shall allow for public comment on the proposed adjustment.

"(ii) Notwithstanding section 451 of the Tariff Act of 1930, the payment required by subparagraph (A)(ii) shall be the only payment required for reimbursement of the Customs Service in connection with the processing of an individual airway bill or bill of lading in accordance with such subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that the Customs Service may require such facilities to cover expenses of the Customs Service for adequate office space, equipment, furnishings, supplies, and security.

"(iii)(I) The payment required by subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid on a quarterly basis by the carrier using the facility to the Customs Service in accordance with regulations prescribed by the Secretary of the Treasury.

"(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall, in accordance with section 524 of the Tariff Act of 1930, be deposited in the Customs User Fee Account and shall be used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

"(III) Notwithstanding section 524 of the Tariff Act of 1930, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2002.

SEC. 338. NATIONAL CUSTOMS AUTOMATION PROGRAM.

Section 411(b) of the Tariff Act of 1930 (19 U.S.C. 1411(b)) is amended by striking the second sentence and inserting the following: "The Secretary may, by regulation, require the electronic submission of information described in subsection (a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart.".

SEC. 339. AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING.

There are authorized to be appropriated to the Department of Treasury such sums as may be necessary to provide an increase in the annual rate of basic pay—

(1) for all journeyman Customs inspectors and Canine Enforcement Officers who have completed at least one year's service and are receiving an annual rate of basic pay for positions at GS–9 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS–9 of the General Schedule under such section 5332, to an annual rate of basic pay payable for positions at GS–11 of the General Schedule under such section 5332; and

(2) for the support staff associated with the personnel described in subparagraph (A), at the appropriate GS level of the General Schedule under such section 5332.

CHAPTER 4—ANTITERRORISM PROVISIONS

SEC. 341. IMMUNITY FOR UNITED STATES OFFICIALS THAT ACT IN GOOD FAITH.

(a) IMMUNITY.—Section 3061 of the Revised Statutes (19 U.S.C. 482) is amended—

(1) by striking "Any of the officers" and inserting "(a) Any of the officers"; and

(2) by adding at the end the following:

"(b) Any officer or employee of the United States conducting a search of a person pursuant to subsection (a) shall not be held liable for any civil damages as a result of such search if the officer or employee performed the search in good faith and used reasonable means while effectuating such search.".

(b) REQUIREMENT TO POST POLICY AND PROCEDURES FOR SEARCHES OF PASSENGERS.—Not later than 30 days after the date of the enactment of this Act, the Commissioner of Customs shall ensure that at each Customs border facility appropriate notice is posted that provides a summary of the policy and procedures of the Customs Service for searching passengers, including a statement of the policy relating to the prohibition on the conduct of profiling of passengers based on gender, race, color, religion, or ethnic background.

SEC. 342. EMERGENCY ADJUSTMENTS TO OFFICES, PORTS OF ENTRY, OR STAFFING OF THE CUSTOMS SERVICE.

Section 318 of the Tariff Act of 1930 (19 U.S.C. 1318) is amended—

(1) by striking "Whenever the President" and inserting "(a) Whenever the President"; and

(2) by adding at the end the following:

"(b)(1) Notwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests, is authorized to take the following actions on a temporary basis:

"(A) Eliminate, consolidate, or relocate any office or port of entry of the Customs Service.

"(B) Modify hours of service, alter services rendered at any location, or reduce the number of employees at any location.

"(C) Take any other action that may be necessary to respond directly to the national emergency or specific threat.

"(2) Notwithstanding any other provision of law, the Commissioner of Customs, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

"(3) The Secretary of the Treasury or the Commissioner of Customs, as the case may be, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 72 hours after taking any action under paragraph (1) or (2).".

SEC. 343. MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND OTHER IMPROVED CUSTOMS REPORTING PROCEDURES.

(a) CARGO INFORMATION.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations providing for the transmission to the Customs Service, through an electronic data interchange system, of information pertaining to cargo destined for importation into the United States or exportation from the United States, prior to such importation or exportation.

(2) INFORMATION REQUIRED.—The information required by the regulations promulgated pursuant to paragraph (1) under the parameters set forth in paragraph (3) shall be such information as the Secretary determines to be reasonably necessary to ensure aviation, maritime, and surface transportation safety and security pursuant to those laws enforced and administered by the Customs Service.

(3) PARAMETERS.—In developing regulations pursuant to paragraph (1), the Secretary shall adhere to the following parameters:

(A) The Secretary shall solicit comments from and consult with a broad range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties.

(B) In general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. Where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true.

(C) The Secretary shall take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed.

(D) Where the regulations impose requirements on carriers of cargo, they shall take into account differences among different modes of transportation, including differences in commercial practices, operational characteristics, and technological capacity to collect and transmit information electronically.

(E) The regulations shall take into account the extent to which the technology necessary for parties to transmit and the Customs Service to receive and analyze data in a timely fashion is available. To the extent that the Secretary determines that the necessary technology will not be widely available to particular modes of transportation or other affected parties until after promulgation of the regulations, the regulations shall provide interim requirements appropriate for the technology that is available at the time of promulgation.

(F) The information collected pursuant to the regulations shall be used exclusively for ensuring aviation, maritime, and surface transportation safety and security, and shall not be used for determining entry or for any other commercial enforcement purposes.

(G) The regulations shall protect the privacy of business proprietary and any other confidential information provided to the Customs Service. However, this parameter does not repeal, amend, or otherwise modify other provisions of law relating to the public disclosure of information transmitted to the Customs Service.

(H) In determining the timing for transmittal of any information, the Secretary shall balance likely impact on flow of commerce with impact on aviation, maritime, and surface transportation safety and security. With respect to requirements that may be imposed on carriers of cargo, the timing for transmittal of information shall take into account differences among different modes of transportation, as described in subparagraph (D).

(I) Where practicable, the regulations shall avoid imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law.

(J) The Secretary shall determine whether it is appropriate to provide transition periods between promulgation of the regulations and the effective date of the regulations and shall prescribe such transition periods in the regulations, as appropriate. The Secretary may determine that different transition periods are appropriate for different classes of affected parties.

(K) With respect to requirements imposed on carriers, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations.

(L) Not later than 15 days prior to promulgation of the regulations, the Secretary shall transmit to the Committees on Finance and Commerce, Science, and Transportation of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives a report setting forth—

(i) the proposed regulations;

(ii) an explanation of how particular requirements in the proposed regulations meet the needs of aviation, maritime, and surface transportation safety and security;

(iii) an explanation of how the Secretary expects the proposed regulations to affect the commercial practices of affected parties; and

(iv) an explanation of how the proposed regulations address particular comments received from interested parties.

(b) DOCUMENTATION OF WATERBORNE CARGO.—Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

"SEC. 431A. DOCUMENTATION OF WATERBORNE CARGO.

"(a) APPLICABILITY.—This section shall apply to all cargo to be exported that is moved by a vessel carrier from a port in the United States.

"(b) DOCUMENTATION REQUIRED.—(1) No shipper of cargo subject to this section (including an ocean transportation intermediary that is a non-vessel-operating common carrier (as defined in section 3(17)(B) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)(B)) may tender or cause to be tendered to a vessel carrier cargo subject to this section for loading on a vessel in a United States port, unless such cargo is properly documented pursuant to this subsection.

"(2) For the purposes of this subsection, cargo shall be considered properly documented if the shipper submits to the vessel carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but under no circumstances later than 24 hours prior to departure of the vessel.

"(3) A complete set of shipping documents shall include—

"(A) for shipments for which a shipper's export declaration is required, a copy of the export declaration or, if the shipper files such declarations electronically in the Automated Export System, the complete bill of lading, and the master or equivalent shipping instructions, including the Internal Transaction Number (ITN); or

"(B) for shipments for which a shipper's export declaration is not required, a shipper's export declaration exemption statement and such other documents or information as the Secretary may by regulation prescribe.

"(4) The Secretary shall by regulation prescribe the time, manner, and form by which shippers shall transmit documents or information required under this subsection to the Customs Service.

"(c) LOADING UNDOCUMENTED CARGO PROHIBITED.—

"(1) No marine terminal operator (as defined in section 3(14) of the Shipping Act of 1984 (46 U.S.C. App. 1702(14))) may load, or cause to be loaded, any cargo subject to this section on a vessel unless instructed by the vessel carrier operating the vessel that such cargo has been properly documented in accordance with this section.

"(2) When cargo is booked by 1 vessel carrier to be transported on the vessel of another vessel carrier, the booking carrier shall notify the operator of the vessel that the cargo has been properly documented in accordance with this section. The operator of the vessel may rely on such notification in releasing the cargo for loading aboard the vessel.

"(d) REPORTING OF UNDOCUMENTED CARGO.—A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal. For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

"(e) ASSESSMENT OF PENALTIES.—Whoever is found to have violated subsection (b) of this section shall be liable to the United States for civil penalties in a monetary amount up to the value of the cargo, or the actual cost of the transportation, whichever is greater.

"(f) SEIZURE OF UNDOCUMENTED CARGO.—

"(1) Any cargo that is not properly documented pursuant to this section and has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.

"(2) The shipper of any such cargo is liable to the marine terminal operator and to the ocean carrier for demurrage and other applicable charges for any undocumented cargo which has been notified to or searched or seized by the Customs Service for the entire period the cargo remains under the order and direction of the Customs Service. Unless the cargo is seized by the Customs Service and forfeited, the marine terminal operator and the ocean carrier shall have a lien on the cargo for the amount of the demurrage and other charges.

"(g) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any party from compliance with any obligation or requirement arising under any other law, regulation, or order with regard to the documentation or carriage of cargo.".

(c) SECRETARY.—For purposes of this section, the term "Secretary" means the Secretary of the Treasury. If, at the time the regulations required by subsection (a)(1) are promulgated, the

Customs Service is no longer located in the Department of the Treasury, then the Secretary of the Treasury shall exercise the authority under subsection (a) jointly with the Secretary of the Department in which the Customs Service is located.

SEC. 343A. SECURE SYSTEMS OF TRANSPORTATION.

(a) JOINT TASK FORCE.—The Secretary of the Treasury shall establish a joint task force to evaluate, prototype, and certify secure systems of transportation. The joint task force shall be comprised of officials from the Department of Transportation and the Customs Service, and any other officials that the Secretary deems appropriate. The task force shall establish a program to evaluate and certify secure systems of international intermodal transport no later than 1 year after the date of enactment of this Act. The task force shall solicit and consider input from a broad range of interested parties.

(b) PROGRAM REQUIREMENTS.—At a minimum the program referred to in subsection (a) shall require certified systems of international intermodal transport to be significantly more secure than existing transportation programs, and the program shall—

(1) establish standards and a process for screening and evaluating cargo prior to import into or export from the United States;

(2) establish standards and a process for a system of securing cargo and monitoring it while in transit;

(3) establish standards and a process for allowing the United States Government to ensure and validate compliance with the program elements; and

(4) include any other elements that the task force deems necessary to ensure the security and integrity of the international intermodal transport movements.

(c) RECOGNITION OF CERTIFIED SYSTEMS.—

(1) SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall recognize certified systems of intermodal transport in the requirements of a national security plan for United States seaports, and in the provisions requiring planning to reopen United States ports for commerce.

(2) COMMISSIONER OF CUSTOMS.—The Commissioner of Customs shall recognize certified systems of intermodal transport in the evaluation of cargo risk for purposes of United States imports and exports.

(d) REPORT.—Within 1 year after the program described in subsection (a) is implemented, the Secretary of the Treasury shall transmit a report to the Committees on Commerce, Science, and Transportation and Finance of the Senate and the Committees on Transportation and Infrastructure and Ways and Means of the House of Representatives that—

(1) evaluates the program and its requirements;

(2) states the Secretary's views as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than under existing procedures;

(3) states the Secretary's views as to the integrity of the procedures, technology, or systems evaluated as part of the program; and

(4) makes a recommendation with respect to whether the program, or any procedure, system, or technology should be incorporated in a nationwide system for certified systems of intermodal transport.

SEC. 344. BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND IN OUTBOUND MAIL.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by inserting after section 582 the following:

“SEC. 583. EXAMINATION OF OUTBOUND MAIL.

“(a) EXAMINATION.—

“(1) IN GENERAL.—For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.

“(2) PROVISIONS OF LAW DESCRIBED.—The provisions of law described in this paragraph are the following:

“(A) Section 5316 of title 31, United States Code (relating to reports on exporting and importing monetary instruments).

“(B) Sections 1461, 1463, 1465, and 1466, and chapter 110 of title 18, United States Code (relating to obscenity and child pornography).

“(C) Section 1003 of the Controlled Substances Import and Export Act (relating to exportation of controlled substances) (21 U.S.C. 953).

“(D) The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

“(E) Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

“(F) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

“(b) SEARCH OF MAIL NOT SEALED AGAINST INSPECTION AND OTHER MAIL.—Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a Customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

“(c) SEARCH OF MAIL SEALED AGAINST INSPECTION WEIGHING IN EXCESS OF 16 OUNCES.—

“(1) IN GENERAL.—Mail weighing in excess of 16 ounces sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), if there is reasonable cause to suspect that such mail contains one or more of the following:

“(A) Monetary instruments, as defined in section 1956 of title 18, United States Code.

“(B) A weapon of mass destruction, as defined in section 2332a(b) of title 18, United States Code.

“(C) A drug or other substance listed in schedule I, II, III, or IV in section 202 of the Controlled Substances Act (21 U.S.C. 812).

“(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18, United States Code.

“(E) Merchandise mailed in violation of section 1715 or 1716 of title 18, United States Code.

“(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18, United States Code.

“(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

“(H) Merchandise mailed in violation of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

“(I) Merchandise mailed in violation of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

“(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

“(K) Merchandise subject to any other law enforced by the Customs Service.

“(2) LIMITATION.—No person acting under the authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

“(A) a search warrant has been issued pursuant to rule 41 of the Federal Rules of Criminal Procedure; or

“(B) the sender or addressee has given written authorization for such reading.

“(d) SEARCH OF MAIL SEALED AGAINST INSPECTION WEIGHING 16 OUNCES OR LESS.—Notwithstanding any other provision of this section, subsection (a)(1) shall not apply to mail weighing 16 ounces or less sealed against inspection under the postal laws and regulations of the United States.”.

(b) CERTIFICATION BY SECRETARY.—Not later than 3 months after the date of enactment of this section, the Secretary of State shall determine whether the application of section 583 of the Tariff Act of 1930 to foreign mail transiting the United States that is imported or exported by the United States Postal Service is being handled in a manner consistent with international law and any international obligation of the United States. Section 583 of such Act shall not apply to such foreign mail unless the Secretary certifies to Congress that the application of such section 583 is consistent with international law and any international obligation of the United States.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of enactment of this Act.

(2) CERTIFICATION WITH RESPECT TO FOREIGN MAIL.—The provisions of section 583 of the Tariff Act of 1930 relating to foreign mail transiting the United States that is imported or exported by the United States Postal Service shall not take effect until the Secretary of State certifies to Congress, pursuant to subsection (b), that the application of such section 583 is consistent with international law and any international obligation of the United States.

SEC. 345. AUTHORIZATION OF APPROPRIATIONS FOR REESTABLISHMENT OF CUSTOMS OPERATIONS IN NEW YORK CITY.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for the reestablishment of operations of the Customs Service in New York, New York, such sums as may be necessary for fiscal year 2003.

(2) OPERATIONS DESCRIBED.—The operations referred to in paragraph (1) include, but are not limited to, the following:

(A) Operations relating to the Port Director of New York City, the New York Customs Management Center (including the Director of Field Operations), and the Special Agent-In-Charge for New York.

(B) Commercial operations, including textile enforcement operations and salaries and expenses of—

(i) trade specialists who determine the origin and value of merchandise;

(ii) analysts who monitor the entry data into the United States of textiles and textile products; and

(iii) Customs officials who work with foreign governments to examine textile makers and verify entry information.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

CHAPTER 5—TEXTILE TRANSSHIPMENT PROVISIONS

SEC. 351. GAO AUDIT OF TEXTILE TRANSSHIPMENT MONITORING BY CUSTOMS SERVICE.

(a) GAO AUDIT.—The Comptroller General of the United States shall conduct an audit of the system established and carried out by the Customs Service to monitor transshipment.

(b) REPORT.—Not later than 9 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate a report that contains the results of the study conducted under subsection (a), including recommendations for improvements to the transshipment monitoring system if applicable.

(c) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this section has occurred when preferential treatment under any provision of law has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of the preceding sentence, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under the provision of law in question.

SEC. 352. AUTHORIZATION OF APPROPRIATIONS FOR TEXTILE TRANSSHIPMENT ENFORCEMENT OPERATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for transshipment (as described in section 351(c)) enforcement operations, outreach, and education of the Customs Service $9,500,000 for fiscal year 2003.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(b) USE OF FUNDS.—Of the amount appropriated pursuant to the authorization of appropriations under subsection (a), the following amounts are authorized to be made available for the following purposes:

(1) IMPORT SPECIALISTS.—$1,463,000 for 21 Customs import specialists to be assigned to selected ports for documentation review to support detentions and exclusions and 1 additional Customs import specialist assigned to the Customs headquarters textile program to administer the program and provide oversight.

(2) INSPECTORS.—$652,080 for 10 Customs inspectors to be assigned to selected ports to examine targeted high-risk shipments.

(3) INVESTIGATORS.—(A) $1,165,380 for 10 investigators to be assigned to selected ports to investigate instances of smuggling, quota and trade agreement circumvention, and use of counterfeit visas to enter inadmissible goods.

(B) $149,603 for 1 investigator to be assigned to the Customs headquarters textile program to coordinate and ensure implementation of textile production verification team results from an investigation perspective.

(4) INTERNATIONAL TRADE SPECIALISTS.—$226,500 for 3 international trade specialists to be assigned to Customs headquarters to be dedicated to illegal textile transshipment policy issues, outreach, education, and other free trade agreement enforcement issues.

(5) PERMANENT IMPORT SPECIALISTS FOR HONG KONG.—$500,000 for 2 permanent import specialist positions and $500,000 for 2 investigators to be assigned to Hong Kong to work with Hong Kong and other government authorities in Southeast Asia to assist such authorities in pursuing proactive enforcement of bilateral trade agreements.

(6) VARIOUS PERMANENT TRADE POSITIONS.—$3,500,000 for the following:

(A) 2 permanent positions to be assigned to the Customs attaché office in Central America to address trade enforcement issues for that region.

(B) 2 permanent positions to be assigned to the Customs attaché office in South Africa to address trade enforcement issues pursuant to the African Growth and Opportunity Act (title I of Public Law 106–200).

(C) 4 permanent positions to be assigned to the Customs attaché office in Mexico to address the threat of illegal textile transshipment through Mexico and other related issues under the North American Free Trade Agreement Act.

(D) 2 permanent positions to be assigned to the Customs attaché office in Seoul, South Korea, to address the trade issues in the geographic region.

(E) 2 permanent positions to be assigned to the proposed Customs attaché office in New Delhi, India, to address the threat of illegal textile transshipment and other trade enforcement issues.

(F) 2 permanent positions to be assigned to the Customs attaché office in Rome, Italy, to address trade enforcement issues in the geographic region, including issues under free trade agreements with Jordan and Israel.

(7) ATTORNEYS.—$179,886 for 2 attorneys for the Office of the Chief Counsel of the Customs Service to pursue cases regarding illegal textile transshipment.

(8) AUDITORS.—$510,000 for 6 Customs auditors to perform internal control reviews and document and record reviews of suspect importers.

(9) ADDITIONAL TRAVEL FUNDS.—$250,000 for deployment of additional textile production verification teams to sub-Saharan Africa.

(10) TRAINING.—(A) $75,000 for training of Customs personnel.

(B) $200,000 for training for foreign counterparts in risk management analytical techniques and for teaching factory inspection techniques, model law development, and enforcement techniques.

(11) OUTREACH.—$60,000 for outreach efforts to United States importers.

SEC. 353. IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT.

Of the amount made available for fiscal year 2003 under section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)), as amended by section 311(b)(1) of this Act, $1,317,000 shall be available until expended for the Customs Service to provide technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106–200), as follows:

(1) TRAVEL FUNDS.—$600,000 for import specialists, special agents, and other qualified Customs personnel to travel to sub-Saharan African countries to provide technical assistance in developing and implementing effective visa and anti-transshipment systems.

(2) IMPORT SPECIALISTS.—$266,000 for 4 import specialists to be assigned to Customs headquarters to be dedicated to providing technical assistance to sub-Saharan African countries for developing and implementing effective visa and anti-transshipment systems.

(3) DATA RECONCILIATION ANALYSTS.—$151,000 for 2 data reconciliation analysts to review apparel shipments.

(4) SPECIAL AGENTS.—$300,000 for 2 special agents to be assigned to Customs headquarters to be available to provide technical assistance to sub-Saharan African countries in the performance of investigations and other enforcement initiatives.

Subtitle B—Office of the United States Trade Representative

SEC. 361. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "not to exceed";

(B) by striking clause (i), and inserting the following:

"(i) $32,300,000 for fiscal year 2003."; and

(C) by striking clause (ii), and inserting the following:

"(ii) $33,108,000 for fiscal year 2004."; and

(2) in subparagraph (B)—

(A) in clause (i), by adding "and" at the end;

(B) by striking clause (ii); and

(C) by redesignating clause (iii) as clause (ii).

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 141(g) of the Trade Act of 1974 (19 U.S.C. 2171(g)) is amended by adding at the end the following:

"(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.".

(c) ADDITIONAL STAFF FOR OFFICE OF ASSISTANT U.S. TRADE REPRESENTATIVE FOR CONGRESSIONAL AFFAIRS.—

(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2003 for the salaries and expenses of two additional legislative specialist employee positions within the Office of the Assistant United States Trade Representative for Congressional Affairs.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

Subtitle C—United States International Trade Commission

SEC. 371. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)) is amended—

(1) by striking clause (i), and inserting the following:

"(i) $54,000,000 for fiscal year 2003."; and

(2) by striking clause (ii), and inserting the following:

"(ii) $57,240,000 for fiscal year 2004.".

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 330(e) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended by adding at the end the following:

"(4) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.".

Subtitle D—Other trade provisions

SEC. 381. INCREASE IN AGGREGATE VALUE OF ARTICLES EXEMPT FROM DUTY ACQUIRED ABROAD BY UNITED STATES RESIDENTS.

(a) IN GENERAL.—Subheading 9804.00.65 of the Harmonized Tariff Schedule of the United States is amended in the article description column by striking "$400" and inserting "$800".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 90 days after the date of the enactment of this Act.

SEC. 382. REGULATORY AUDIT PROCEDURES.

Section 509(b) of the Tariff Act of 1930 (19 U.S.C. 1509(b)) is amended by adding at the end the following:

"(6)(A) If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under section 592, the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or underdeclarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

“(B) Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 520.”.

SEC. 383. PAYMENT OF DUTIES AND FEES.

Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended to read as follows:

“(a) DEPOSIT OF ESTIMATED DUTIES AND FEES.—Unless the entry is subject to a periodic payment or the merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of entry, or at such later time as the Secretary may prescribe by regulation (but not later than 10 working days after entry or release) the amount of duties and fees estimated to be payable on such merchandise. As soon as a periodic payment module of the Automated Commercial Environment is developed, but no later than October 1, 2004, a participating importer of record, or the importer's filer, may deposit estimated duties and fees for entries of merchandise no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever comes first.”.

DIVISION B—BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI—TRADE PROMOTION AUTHORITY

SEC. 2101. SHORT TITLE AND FINDINGS.

(a) SHORT TITLE.—This title may be cited as the “Bipartisan Trade Promotion Authority Act of 2002”.

(b) FINDINGS.—The Congress makes the following findings:

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

(2) The national security of the United States depends on its economic security, which in turn is founded upon a vibrant and growing industrial base. Trade expansion has been the engine of economic growth. Trade agreements maximize opportunities for the critical sectors and building blocks of the economy of the United States, such as information technology, telecommunications and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technology, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.

(3) Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore—

(A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SEC. 2102. TRADE NEGOTIATING OBJECTIVES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 2103 are—

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;

(5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 2113(6)) and an understanding of the relationship between trade and worker rights;

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

(8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and

(9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) TRADE BARRIERS AND DISTORTIONS.—The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—

(A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

(B) to obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to those tariff categories covered in section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(2) TRADE IN SERVICES.—The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and market access or unreasonably restrict the establishment or operations of service suppliers.

(3) FOREIGN INVESTMENT.—Recognizing that United States law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, the principal negotiating objectives of the United States regarding foreign investment are to reduce or eliminate artificial or trade-distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice, by—

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;

(D) seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

(E) seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process;

(F) providing meaningful procedures for resolving investment disputes;

(G) seeking to improve mechanisms used to resolve disputes between an investor and a government through—

(i) mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims;

(ii) procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

(iv) providing for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements; and

(H) ensuring the fullest measure of transparency in the dispute settlement mechanism, to the extent consistent with the need to protect information that is classified or business confidential, by—

(i) ensuring that all requests for dispute settlement are promptly made public;

(ii) ensuring that—

(I) all proceedings, submissions, findings, and decisions are promptly made public; and

(II) all hearings are open to the public; and

(iii) establishing a mechanism for acceptance of amicus curiae submissions from businesses, unions, and nongovernmental organizations.

(4) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding trade-related intellectual property are—

(A) to further promote adequate and effective protection of intellectual property rights, including through—

(i)(I) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(II) ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into *by the United States reflect a standard of protection similar to that found in United States law;*

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;

(iv) ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works; and

(v) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms;

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and

(C) to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.

(5) TRANSPARENCY.—The principal negotiating objective of the United States with respect to transparency is to obtain wider and broader application of the principle of transparency through—

(A) increased and more timely public access to information regarding trade issues and the activities of international trade institutions;

(B) increased openness at the WTO and other international trade fora by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and

(C) increased and more timely public access to all notifications and supporting documentation submitted by parties to the WTO.

(6) ANTI-CORRUPTION.—The principal negotiating objectives of the United States with respect to the use of money or other things of value to influence acts, decisions, or omissions of foreign governments or officials or to secure any improper advantage in a manner affecting trade are—

(A) to obtain high standards and appropriate domestic enforcement mechanisms applicable to persons from all countries participating in the applicable trade agreement that prohibit such attempts to influence acts, decisions, or omissions of foreign governments; and

(B) to ensure that such standards do not place United States persons at a competitive disadvantage in international trade.

(7) IMPROVEMENT OF THE WTO AND MULTILATERAL TRADE AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of the World Trade Organization, the Uruguay Round Agreements, and other multilateral and bilateral trade agreements are—

(A) to achieve full implementation and extend the coverage of the World Trade Organization and such agreements to products, sectors, and conditions of trade not adequately covered; and

(B) to expand country participation in and enhancement of the Information Technology Agreement and other trade agreements.

(8) REGULATORY PRACTICES.—The principal negotiating objectives of the United States regarding the use of government regulation or other practices by foreign governments to provide a competitive advantage to their domestic producers, service providers, or investors and thereby reduce market access for United States goods, services, and investments are—

(A) to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations;

(B) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;

(C) to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and

(D) to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

(9) ELECTRONIC COMMERCE.—The principal negotiating objectives of the United States with respect to electronic commerce are—

(A) to ensure that current obligations, rules, disciplines, and commitments under the World Trade Organization apply to electronic commerce;

(B) to ensure that—

(i) electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and

(ii) the classification of such goods and services ensures the most liberal trade treatment possible;

(C) to ensure that governments refrain from implementing trade-related measures that impede electronic commerce;

(D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and

(E) to extend the moratorium of the World Trade Organization on duties on electronic transmissions.

(10) RECIPROCAL TRADE IN AGRICULTURE.—(A) The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities by—

(i) reducing or eliminating, by a date certain, tariffs or other charges that decrease market opportunities for United States exports—

(I) giving priority to those products that are subject to significantly higher tariffs or subsidy regimes of major producing countries; and

(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the Congress on such products before initiating tariff reduction negotiations;

(ii) reducing tariffs to levels that are the same as or lower than those in the United States;

(iii) reducing or eliminating subsidies that decrease market opportunities for United States exports or unfairly distort agriculture markets to the detriment of the United States;

(iv) allowing the preservation of programs that support family farms and rural communities but do not distort trade;

(v) developing disciplines for domestic support programs, so that production that is in excess of domestic food security needs is sold at world prices;

(vi) eliminating government policies that create price-depressing surpluses;

(vii) eliminating state trading enterprises whenever possible;

(viii) developing, strengthening, and clarifying rules and effective dispute settlement mechanisms to eliminate practices that unfairly decrease United States market access opportunities or distort agricultural markets to the detriment of the United States, particularly with respect to import-sensitive products, including—

(I) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, with emphasis on requiring price transparency in the operation of state trading enterprises and such other mechanisms in order to end cross subsidization, price discrimination, and price undercutting;

(II) unjustified trade restrictions or commercial requirements, such as labeling, that affect new technologies, including biotechnology;

(III) unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements;

(IV) other unjustified technical barriers to trade; and

(V) restrictive rules in the administration of tariff rate quotas;

(ix) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;

(x) ensuring that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries;

(xi) taking into account whether a party to the negotiations has failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

(xii) taking into account whether a product is subject to market distortions by reason of a failure of a major producing country to adhere to the provisions of already existing trade agreements with the United States or by the circumvention by that country of its obligations under those agreements;

(xiii) otherwise ensuring that countries that accede to the World Trade Organization have made meaningful market liberalization commitments in agriculture;

(xiv) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry;

(xv) maintaining bona fide food assistance programs and preserving United States market development and export credit programs; and

(xvi) striving to complete a general multilateral round in the World Trade Organization by January 1, 2005, and seeking the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on United States import-sensitive commodities (including those subject to tariff-rate quotas).

(B)(i) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) During any negotiations on agricultural subsidies, the United States Trade Representative shall seek to establish the common base year for calculating the Aggregated Measurement of Support (as defined in the Agreement on Agriculture) as the end of each country's Uruguay

Round implementation period, as reported in each country's Uruguay Round market access schedule.

(iii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 2103(a) or (b), including any trade agreement entered into under section 2103(a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

(11) LABOR AND THE ENVIRONMENT.—The principal negotiating objectives of the United States with respect to labor and the environment are—

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

(B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6));

(D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(E) to reduce or eliminate government practices or policies that unduly threaten sustainable development;

(F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and

(G) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.

(12) DISPUTE SETTLEMENT AND ENFORCEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—

(A) to seek provisions in trade agreements providing for resolution of disputes between governments under those trade agreements in an effective, timely, transparent, equitable, and reasoned manner, requiring determinations based on facts and the principles of the agreements, with the goal of increasing compliance with the agreements;

(B) to seek to strengthen the capacity of the Trade Policy Review Mechanism of the World Trade Organization to review compliance with commitments;

(C) to seek adherence by panels convened under the Dispute Settlement Understanding and by the Appellate Body to the standard of review applicable under the Uruguay Round Agreement involved in the dispute, including greater deference, where appropriate, to the fact-finding and technical expertise of national investigating authorities;

(D) to seek provisions encouraging the early identification and settlement of disputes through consultation;

(E) to seek provisions to encourage the provision of trade-expanding compensation if a party to a dispute under the agreement does not come into compliance with its obligations under the agreement;

(F) to seek provisions to impose a penalty upon a party to a dispute under the agreement that—

(i) encourages compliance with the obligations of the agreement;

(ii) is appropriate to the parties, nature, subject matter, and scope of the violation; and

(iii) has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and

(G) to seek provisions that treat United States principal negotiating objectives equally with respect to—

(i) the ability to resort to dispute settlement under the applicable agreement;

(ii) the availability of equivalent dispute settlement procedures; and

(iii) the availability of equivalent remedies.

(13) WTO EXTENDED NEGOTIATIONS.—The principal negotiating objectives of the United States regarding trade in civil aircraft are those set forth in section 135(c) of the Uruguay Round Agreements Act (19 U.S.C. 3355(c)) and regarding rules of origin are the conclusion of an agreement described in section 132 of that Act (19 U.S.C. 3552).

(14) TRADE REMEDY LAWS.—The principal negotiating objectives of the United States with respect to trade remedy laws are—

(A) to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

(15) BORDER TAXES.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.

(16) TEXTILE NEGOTIATIONS.—The principal negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

(17) WORST FORMS OF CHILD LABOR.—The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.

(c) PROMOTION OF CERTAIN PRIORITIES.—In order to address and maintain United States competitiveness in the global economy, the President shall—

(1) seek greater cooperation between the WTO and the ILO;

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6)) and to promote compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(3) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to develop and implement standards for the protection of the environment and human health based on sound science, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(4) conduct environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 of November 16, 1999, and its relevant guidelines, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such reviews;

(5) review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public;

(6) take into account other legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests and the law and regulations related thereto;

(7) direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;

(8) in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 2107(b)(2)(E);

(9) with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;

(10) continue to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing environmental exceptions under Article XX of the GATT 1994;

(11) report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than 12 months after the imposition of a penalty or remedy by the United States permitted by a trade agreement to which this title applies, on the effectiveness of the penalty or remedy applied under United States law in enforcing United States rights under the trade agreement; and

(12) seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize

whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

The report under paragraph (11) shall address whether the penalty or remedy was effective in changing the behavior of the targeted party and whether the penalty or remedy had any adverse impact on parties or interests not party to the dispute.

(d) CONSULTATIONS.—

(1) CONSULTATIONS WITH CONGRESSIONAL ADVISERS.—In the course of negotiations conducted under this title, the United States Trade Representative shall consult closely and on a timely basis with, and keep fully apprised of the negotiations, the Congressional Oversight Group convened under section 2107 and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations.

(2) CONSULTATION BEFORE AGREEMENT INITIALED.—In the course of negotiations conducted under this title, the United States Trade Representative shall—

(A) consult closely and on a timely basis (including immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the congressional advisers for trade policy and negotiations appointed under section 161 of the Trade Act of 1974 (19 U.S.C. 2211), the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Congressional Oversight Group convened under section 2107; and

(B) with regard to any negotiations and agreement relating to agricultural trade, also consult closely and on a timely basis (including immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e) ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS.—In determining whether to enter into negotiations with a particular country, the President shall take into account the extent to which that country has implemented, or has accelerated the implementation of, its obligations under the Uruguay Round Agreements.

SEC. 2103. TRADE AGREEMENTS AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President—

(A) may enter into trade agreements with foreign countries before—

(i) June 1, 2005; or

(ii) June 1, 2007, if trade authorities procedures are extended under subsection (c); and

(B) may, subject to paragraphs (2) and (3), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

The President shall notify the Congress of the President's intention to enter into an agreement under this subsection.

(2) LIMITATIONS.—No proclamation may be made under paragraph (1) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any import sensitive agricultural product; or

(C) increases any rate of duty above the rate that applied on the date of the enactment of this Act.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

(A) AGGREGATE REDUCTION.—Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if—

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article; and

(ii) a reduction equal to the amount applicable under clause (i) had taken effect at 1-year intervals after the effective date of such first reduction.

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING.—If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS.—A rate of duty reduction that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction is included within an implementing bill provided for under section 2105 and that bill is enacted into law.

(6) OTHER TARIFF MODIFICATIONS.—Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED.—Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—(A) Whenever the President determines that—

(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects .the United States economy, or

(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect,

and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President may enter into a trade agreement described in subparagraph (B) during the period described in subparagraph (C).

(B) The President may enter into a trade agreement under subparagraph (A) with foreign countries providing for—

(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A); or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(C) The President may enter into a trade agreement under this paragraph before—

(i) June 1, 2005; or

(ii) June 1, 2007, if trade authorities procedures are extended under subsection (c).

(2) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2102(a) and (b) and the President satisfies the conditions set forth in section 2104.

(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES.—(A) The provisions of section 151 of the Trade Act of 1974 (in this title referred to as "trade authorities procedures") apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this title be referred to as an "implementing bill".

(B) The provisions referred to in subparagraph (A) are—

(i) a provision approving a trade agreement entered into under this subsection and approving the statement of administrative action, if any, proposed to implement such trade agreement; and

(ii) if changes in existing laws or new statutory authority are required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.—

(1) IN GENERAL.—Except as provided in section 2105(b)—

(A) the trade authorities procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) before July 1, 2005; and

(B) the trade authorities procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after June 30, 2005, and before July 1, 2007, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 2005.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than March 1, 2005, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) OTHER REPORTS TO CONGRESS.—

(A) REPORT BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than May 1, 2005, a written report that contains—

(i) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title; and

(ii) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(B) REPORT BY ITC.—The President shall promptly inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress as soon as practicable, but not later than May 1, 2005, a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2).

(4) STATUS OF REPORTS.—The reports submitted to the Congress under paragraphs (2) and (3), or any portion of such reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—(A) For purposes of paragraph (1), the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ *disapproves the request of the President for the extension, under section 2103(c)(1)(B)(i) of the Bipartisan Trade Promotion Authority Act of 2002, of the trade authorities procedures under that Act to any implementing bill submitted with respect to any trade agreement entered into under section 2103(b) of that Act after June 30, 2005.", with the blank space being filled with the name of the resolving House of the Congress.*

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be referred, in the House of Representatives, to the Committee on Ways and Means and, in addition, to the Committee on Rules.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after June 30, 2005.

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 2102(b).

SEC. 2104. CONSULTATIONS AND ASSESSMENT.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—The President, with respect to any agreement that is subject to the provisions of section 2103(b), shall—

(1) provide, at least 90 calendar days before initiating negotiations, written notice to the Congress of the President's intention to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement;

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 2107; and

(3) upon the request of a majority of the members of the Congressional Oversight Group under section 2107(c), meet with the Congressional Oversight Group before initiating the negotiations or at any other time concerning the negotiations.

(b) NEGOTIATIONS REGARDING AGRICULTURE.—

(1) IN GENERAL.—Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 2102(b)(10)(A)(i) with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(2) SPECIAL CONSULTATIONS ON IMPORT SENSITIVE PRODUCTS.—(A) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after the enactment of this Act, the United States Trade Representative shall—

(i) identify those agricultural products subject to tariff-rate quotas on the date of enactment of this Act, and agricultural products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

(ii) consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning—

(I) whether any further tariff reductions on the products identified under clause (i) should be appropriate, taking into account the impact of any such tariff reduction on the United States industry producing the product concerned;

(II) whether the products so identified face unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies, and practices on United States producers of the products;

(iii) request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the United States industry producing the product concerned and on the United States economy as a whole; and

(iv) upon complying with clauses (i), (ii), and (iii), notify the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate of those products identified under clause (i) for which the Trade Representative intends to seek tariff liberalization in the negotiations and the reasons for seeking such tariff liberalization.

(B) If, after negotiations described in subparagraph (A) are commenced—

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph (A)(i) for tariff reductions which were not the subject of a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product described in subparagraph (A)(i) is the subject of a request for tariff reductions by a party to the negotiations,

the Trade Representative shall, as soon as practicable, notify the committees referred to in subparagraph (A)(iv) of those products and the reasons for seeking such tariff reductions.

(3) NEGOTIATIONS REGARDING THE FISHING INDUSTRY.—Before initiating, or continuing, negotiations which directly relate to fish or shellfish trade with any country, the President shall consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate, and shall keep the Committees apprised of negotiations on an ongoing and timely basis.

(c) NEGOTIATIONS REGARDING TEXTILES.—Before initiating or continuing negotiations the subject matter of which is directly related to textiles and apparel products with any country, the President shall assess whether United States tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under section 2103(b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement; and

(C) the Congressional Oversight Group convened under section 2107.

(2) Scope.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of this title; and

(C) the implementation of the agreement under section 2105, including the general effect of the agreement on existing laws.

(3) Report regarding United States trade remedy laws.—

(A) Changes in certain trade laws.—The President, at least 180 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(i) the range of proposals advanced in the negotiations with respect to that agreement, that may be in the final agreement, and that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and

(ii) how these proposals relate to the objectives described in section 2102(b)(14).

(B) Certain agreements.—With respect to a trade agreement entered into with Chile or Singapore, the report referred to in subparagraph (A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into that agreement.

(C) Resolutions.—(i) At any time after the transmission of the report under subparagraph (A), if a resolution is introduced with respect to that report in either House of Congress, the procedures set forth in clauses (iii) through (vi) shall apply to that resolution if—

(I) no other resolution with respect to that report has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to those procedures; and

(II) no procedural disapproval resolution under section 2105(b) introduced with respect to a trade agreement entered into pursuant to the negotiations to which the report under subparagraph (A) relates has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be.

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ___ finds that the proposed changes to United States trade remedy laws contained in the report of the President transmitted to the Congress on ___ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to ___, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

(iii) Resolutions in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee.

(iv) Resolutions in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(iv) It is not in order for the House of Representatives to consider any resolution that is not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(v) It is not in order for the Senate to consider any resolution that is not reported by the Committee on Finance.

(vi) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to floor consideration of certain resolutions in the House and Senate) shall apply to resolutions.

(e) Advisory Committee Reports.—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 2103(a) or (b) of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2103(a)(1) or 2105(a)(1)(A) of the President's intention to enter into the agreement.

(f) ITC Assessment.—

(1) In general.—The President, at least 90 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.

(2) ITC assessment.—Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

(3) Review of empirical literature.—In preparing the assessment, the Commission shall review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

SEC. 2105. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) In General.—

(1) Notification and submission.—Any agreement entered into under section 2103(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(C) after entering into the agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 2103(b)(3);

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) Supporting information.—The supporting information required under paragraph (1)(C)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this title; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i);

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce;

(IV) how the implementing bill meets the standards set forth in section 2103(b)(3); and

(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 2102(c) regarding the promotion of certain priorities.

(3) Reciprocal benefits.—In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 2103(b) does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) Disclosure of commitments.—Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

(A) relates to a trade agreement with respect to which the Congress enacts an implementing bill under trade authorities procedures, and

(B) is not disclosed to the Congress before an implementing bill with respect to that agreement is introduced in either House of Congress,

shall not be considered to be part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) Limitations on Trade Authorities Procedures.—

(1) For lack of notice or consultations.—

(A) In general.—The trade authorities procedures shall not apply to any implementing bill *submitted with respect to a trade agreement or trade agreements entered into under section 2103(b) if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.*

(B) PROCEDURAL DISAPPROVAL RESOLUTION.—(i) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002 on negotiations with respect to and, therefore, the trade authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.", with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.

(ii) For purposes of clause (i), the President has "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" on negotiations with respect to a trade agreement or trade agreements if—

(I) the President has failed or refused to consult (as the case may be) in accordance with section 2104 or 2105 with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 2107(b) have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 2107(c) with respect to the negotiations, agreement, or agreements; or

(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this title.

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS.—(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 2104(d)(3)(C)(ii) with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii) through (vi) of such section 2104(d)(3)(C).

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(D) It is not in order for the Senate to consider any procedural disapproval resolution not reported by the Committee on Finance.

(3) FOR FAILURE TO MEET OTHER REQUIREMENTS.—Not later than December 31, 2002, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to the Congress a report setting forth the strategy of the executive branch to address concerns of the Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations, or diminished rights, of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report in a timely manner.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) of this section, section 2103(c), aand section 2104(d)(3)(C) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 2106. TREATMENT OF CERTAIN TRADE AGREEMENTS FOR WHICH NEGOTIATIONS HAVE ALREADY BEGUN.

(a) CERTAIN AGREEMENTS.—Notwithstanding the prenegotiation notification and consultation requirement described in section 2104(a), if an agreement to which section 2103(b) applies—

(1) is entered into under the auspices of the World Trade Organization,

(2) is entered into with Chile,

(3) is entered into with Singapore, or

(4) establishes a Free Trade Area for the Americas,

and results from negotiations that were commenced before the date of the enactment of this Act, subsection (b) shall apply.

(b) TREATMENT OF AGREEMENTS.—In the case of any agreement to which subsection (a) applies—

(1) the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 2104(a) (relating only to 90 days notice prior to initiating negotiations), and any procedural disapproval resolution under section 2105(b)(1)(B) shall not be in order on the basis of a failure or refusal to comply with the provisions of section 2104(a); and

(2) the President shall, as soon as feasible after the enactment of this Act—

(A) notify the Congress of the negotiations described in subsection (a), the specific United States objectives in the negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

(B) before and after submission of the notice, consult regarding the negotiations with the committees referred to in section 2104(a)(2) and the Congressional Oversight Group convened under section 2107.

SEC. 2107. CONGRESSIONAL OVERSIGHT GROUP.

(a) MEMBERS AND FUNCTIONS.—

(1) IN GENERAL.—By not later than 60 days after the date of the enactment of this Act, and not later than 30 days after the convening of each Congress, the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate shall convene the Congressional Oversight Group.

(2) MEMBERSHIP FROM THE HOUSE.—In each Congress, the Congressional Oversight Group shall be comprised of the following Members of the House of Representatives:

(A) The chairman and ranking member of the Committee on Ways and Means, and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the House of Representatives which would have, under the Rules of the House of Representatives, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(3) MEMBERSHIP FROM THE SENATE.—In each Congress, the Congressional Oversight Group shall also be comprised of the following members of the Senate:

(A) The chairman and ranking member of the Committee on Finance and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the Senate which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(4) ACCREDITATION.—Each member of the Congressional Oversight Group described in paragraph (2)(A) and (3)(A) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in negotiations for any trade agreement to which this title applies. Each member of the Congressional Oversight Group described in paragraph (2)(B) and (3)(B) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in the negotiations by reason of which the member is in the Congressional Oversight Group. The Congressional Oversight Group shall consult with and provide advice to the Trade Representative regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance and enforcement of the negotiated commitments under the trade agreement.

(5) CHAIR.—The Congressional Oversight Group shall be chaired by the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate.

(b) GUIDELINES.—

(1) PURPOSE AND REVISION.—The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) shall, within 120 days after the date of the enactment of this Act, develop written guidelines to facilitate the useful and timely exchange of information between the Trade Representative and the Congressional Oversight Group convened under this section; and

(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) CONTENT.—The guidelines developed under paragraph (1) shall provide for, among other things—

(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating

objectives, including the promotion of certain priorities referred to in section 2102(c), and positions and the status of the applicable negotiations, beginning as soon as practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;

(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;

(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;

(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and

(E) the time frame for submitting the report required under section 2102(c)(8).

(c) REQUEST FOR MEETING.—Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.

SEC. 2108. ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS.

(a) IN GENERAL.—At the time the President submits to the Congress the final text of an agreement pursuant to section 2105(a)(1)(C), the President shall also submit a plan for implementing and enforcing the agreement. The implementation and enforcement plan shall include the following:

(1) BORDER PERSONNEL REQUIREMENTS.—A description of additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

(2) AGENCY STAFFING REQUIREMENTS.—A description of additional personnel required by Federal agencies responsible for monitoring and implementing the trade agreement, including personnel required by the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture (including additional personnel required to implement sanitary and phytosanitary measures in order to obtain market access for United States exports), the Department of the Treasury, and such other agencies as may be necessary.

(3) CUSTOMS INFRASTRUCTURE REQUIREMENTS.—A description of the additional equipment and facilities needed by the United States Customs Service.

(4) IMPACT ON STATE AND LOCAL GOVERNMENTS.—A description of the impact the trade agreement will have on State and local governments as a result of increases in trade.

(5) COST ANALYSIS.—An analysis of the costs associated with each of the items listed in paragraphs (1) through (4).

(b) BUDGET SUBMISSION.—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget that the President submits to the Congress after the submission of the plan.

SEC. 2109. COMMITTEE STAFF.

The grant of trade promotion authority under this title is likely to increase the activities of the primary committees of jurisdiction in the area of international trade. In addition, the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader number of Members of Congress in the formulation of United States trade policy and oversight of the international trade agenda for the United States. The primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

SEC. 2110. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Title I of the Trade Act of 1974 (19 U.S.C. 2111 et seq.) is amended as follows:

(1) IMPLEMENTING BILL.—

(A) Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by striking "section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act" and inserting "section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002".

(B) Section 151(c)(1) (19 U.S.C. 2191(c)(1)) is amended by striking "or section 282 of the Uruguay Round Agreements Act" and inserting ", section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002".

(2) ADVICE FROM INTERNATIONAL TRADE COMMISSION.—Section 131 (19 U.S.C. 2151) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking "section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988," and inserting "section 123 of this Act or section 2103(a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002,"; and

(ii) in paragraph (2), by striking "section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988" and inserting "section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002";

(B) in subsection (b), by striking "section 1102(a)(3)(A)" and inserting "section 2103(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002"; and

(C) in subsection (c), by striking "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," and inserting "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,".

(3) HEARINGS AND ADVICE.—Sections 132, 133(a), and 134(a) (19 U.S.C. 2152, 2153(a), and 2154(a)) are each amended by striking "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," each place it appears and inserting "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,".

(4) PREREQUISITES FOR OFFERS.—Section 134(b) (19 U.S.C. 2154(b)) is amended by striking "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" and inserting "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002".

(5) ADVICE FROM PRIVATE AND PUBLIC SECTORS.—Section 135 (19 U.S.C. 2155) is amended—

(A) in subsection (a)(1)(A), by striking "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" and inserting "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002";

(B) in subsection (e)(1)—

(i) by striking "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" each place it appears and inserting "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002"; and

(ii) by striking "section 1103(a)(1)(A) of such Act of 1988" and inserting "section 2105(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002"; and

(C) in subsection (e)(2), by striking "section 1101 of the Omnibus Trade and Competitiveness Act of 1988" and inserting "section 2102 of the Bipartisan Trade Promotion Authority Act of 2002".

(6) TRANSMISSION OF AGREEMENTS TO CONGRESS.—Section 162(a) (19 U.S.C. 2212(a)) is amended by striking "or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988" and inserting "or under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002".

(b) APPLICATION OF CERTAIN PROVISIONS.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 2103 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 2103 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

SEC. 2111. REPORT ON IMPACT OF TRADE PROMOTION AUTHORITY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the International Trade Commission shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the economic impact on the United States of the trade agreements described in subsection (b).

(b) AGREEMENTS.—The trade agreements described in this subsection are the following:

(1) The United States-Israel Free Trade Agreement.

(2) The United States-Canada Free Trade Agreement.

(3) The North American Free Trade Agreement.

(4) The Uruguay Round Agreements.

(5) The Tokyo Round of Multilateral Trade Negotiations.

SEC. 2112. INTERESTS OF SMALL BUSINESS.

The Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small business are considered in all trade negotiations in accordance with the objective described in section 2102(a)(8). It is the sense of the Congress that the small business functions should be reflected in the title of the Assistant United States Trade Representative assigned the responsibility for small business.

SEC. 2113. DEFINITIONS.

In this title:

(1) AGREEMENT ON AGRICULTURE.—The term "Agreement on Agriculture" means the agreement referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

(2) AGREEMENT ON SAFEGUARDS.—The term "Agreement on Safeguards means the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).

(3) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES.—The term "Agreement on Subsidies and Countervailing Measures" means the agreement referred to in section 101(d)(13) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(13)).

(4) ANTIDUMPING AGREEMENT.—The term "Antidumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(7) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(7)).

(5) APPELLATE BODY.—The term "Appellate Body" means the Appellate Body established under Article 17.1 of the Dispute Settlement Understanding.

(6) CORE LABOR STANDARDS.—The term "core labor standards" means—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(7) DISPUTE SETTLEMENT UNDERSTANDING.—The term "Dispute Settlement Understanding" means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act.

(8) GATT 1994.—The term "GATT 1994" has the meaning given that term in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(9) ILO.—The term "ILO" means the International Labor Organization.

(10) IMPORT SENSITIVE AGRICULTURAL PRODUCT.—The term "import sensitive agricultural product" means an agricultural product—

(A) with respect to which, as a result of the Uruguay Round Agreements the rate of duty was the subject of tariff reductions by the United States and, pursuant to such Agreements, was reduced on January 1, 1995, to a rate that was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994; or

(B) which was subject to a tariff-rate quota on the date of the enactment of this Act.

(11) UNITED STATES PERSON.—The term "United States person" means—

(A) a United States citizen;

(B) a partnership, corporation, or other legal entity organized under the laws of the United States; and

(C) a partnership, corporation, or other legal entity that is organized under the laws of a foreign country and is controlled by entities described in subparagraph (B) or United States citizens, or both.

(12) URUGUAY ROUND AGREEMENTS.—The term "Uruguay Round Agreements" has the meaning given that term in section 2(7) of the Uruguay Round Agreements Act (19 U.S.C. 3501(7)).

(13) WORLD TRADE ORGANIZATION; WTO.—The terms "World Trade Organization" and "WTO" mean the organization established pursuant to the WTO Agreement.

(14) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(15) WTO MEMBER.—The term "WTO member" has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

SEC. 3101. SHORT TITLE.

This title may be cited as the "Andean Trade Promotion and Drug Eradication Act".

SEC. 3102. FINDINGS.

Congress makes the following findings:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiary countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

SEC. 3103. ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT.

(a) ELIGIBILITY OF CERTAIN ARTICLES.—Section 204 of the Andean Trade Preference Act (19 U.S.C. 3203) is amended—

(1) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively; and

(2) by amending subsection (b) to read as follows:

"(b) EXCEPTIONS AND SPECIAL RULES.—

"(1) CERTAIN ARTICLES THAT ARE NOT IMPORT-SENSITIVE.—The President may proclaim duty-free treatment under this title for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of this section, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries:

"(A) Footwear not designated at the time of the effective date of this title as eligible for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

"(B) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS.

"(C) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply.

"(D) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

"(2) EXCLUSIONS.—Subject to paragraph (3), duty-free treatment under this title may not be extended to—

"(A) textiles and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

"(B) rum and tafia classified in subheading 2208.40 of the HTS;

"(C) sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

"(D) tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

"(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

"(A) IN GENERAL.—Apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if such articles are described in subparagraph (B).

"(B) COVERED ARTICLES.—The apparel articles referred to in subparagraph (A) are the following:

"(i) APPAREL ARTICLES ASSEMBLED FROM PRODUCTS OF THE UNITED STATES OR ATPDEA BENEFICIARY COUNTRIES OR PRODUCTS NOT AVAILABLE IN COMMERCIAL QUANTITIES.—Apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

"(I) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

"(II) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in 1 or more ATPDEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña.

"(III) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

"(ii) ADDITIONAL FABRICS.—At the request of any interested party, the President is authorized to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) if—

"(I) the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner;

"(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

"(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such action, and the advice obtained under subclause (II);

"(IV) a period of 60 calendar days, beginning with the first day on which the President has

met the requirements of subclause (III), has expired; and

"(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (II).

"(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—(I) Subject to the limitation set forth in subclause (II), apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)).

"(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the 4 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

"(III) For purposes of subclause (II), the term 'applicable percentage' means 2 percent for the 1-year period beginning October 1, 2002, increased in each of the 4 succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2006, the applicable percentage does not exceed 5 percent.

"(iv) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of an ATPDEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

"(v) CERTAIN OTHER APPAREL ARTICLES.—

"(I) GENERAL RULE.—Any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), or (iv), if the article is both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both.

"(II) LIMITATION.—During the 1-year period beginning on October 1, 2003, and during each of the 3 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

"(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under this paragraph during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

"(vi) SPECIAL RULES.—

"(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, 'bow buds', decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products.

"(II) CERTAIN INTERLINING.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

"(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, 'hymo' piece, or 'sleeve header', of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

"(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

"(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this subparagraph because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good.

"(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i) or (iii) shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

"(vii) TEXTILE LUGGAGE.—Textile luggage—

"(I) assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

"(II) assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

"(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (B)(iv), the President shall consult with representatives of the ATPDEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

"(D) PENALTIES FOR TRANSSHIPMENT.—

"(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to apparel articles from an ATPDEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

"(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPDEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

"(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (A) has been claimed for an apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (A).

"(E) BILATERAL EMERGENCY ACTIONS.—

"(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPDEA beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

"(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

"(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

"(II) the term 'transition period' in section 4 of the Annex shall mean the period ending December 31, 2006; and

"(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPDEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4 of the Annex.

"(4) TUNA.—

"(A) GENERAL RULE.—Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, shall enter the United States free of duty and free of any quantitative restrictions.

"(B) DEFINITIONS.—In this paragraph—

"(i) UNITED STATES VESSEL.—A 'United States vessel' is a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code.

"(ii) ATPDEA VESSEL.—An 'ATPDEA vessel' is a vessel—

"(I) which is registered or recorded in an ATPDEA beneficiary country;

"(II) which sails under the flag of an ATPDEA beneficiary country;

"(III) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

"(IV) of which the master and officers are nationals of an ATPDEA beneficiary country; and

"(V) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

"(5) CUSTOMS PROCEDURES.—

"(A) IN GENERAL.—

"(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (1), (3), or (4) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

"(ii) DETERMINATION.—

"(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (1), (3), or (4) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

"(aa) has implemented and follows, or

"(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

"(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is an ATPDEA beneficiary country—

"(aa) from which the article is exported; or

"(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (1), (3), or (4).

"(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (1), (3), or (4) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

"(C) REPORT ON COOPERATION OF ATPDEA COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPDEA beneficiary country—

"(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

"(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning quantities, description, classification, or origin of textile and apparel goods; and

"(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Commissioner of Customs shall submit to the Congress, not later than October 1, 2003, a report on the study conducted under this subparagraph.

"(6) DEFINITIONS.—In this subsection—

"(A) ANNEX.—The term 'the Annex' means Annex 300-B of the NAFTA.

"(B) ATPDEA BENEFICIARY COUNTRY.—The term 'ATPDEA beneficiary country' means any 'beneficiary country', as defined in section 203(a)(1) of this title, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

"(i) Whether the beneficiary country has demonstrated a commitment to—

"(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

"(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

"(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

"(iii) The extent to which the country provides internationally recognized worker rights, including—

"(I) the right of association;

"(II) the right to organize and bargain collectively;

"(III) a prohibition on the use of any form of forced or compulsory labor;

"(IV) a minimum age for the employment of children; and

"(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

"(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

"(v) The extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

"(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

"(vii) The extent to which the country—

"(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

"(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

"(viii) The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

"(C) NAFTA.—The term 'NAFTA' means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

"(D) WTO.—The term 'WTO' has the meaning given that term in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

"(E) ATPDEA.—The term 'ATPDEA' means the Andean Trade Promotion and Drug Eradication Act.

"(F) FTAA.—The term 'FTAA' means the Free Trade Area for the Americas.".

(b) DETERMINATION REGARDING RETENTION OF DESIGNATION.—Section 203(e)(1) of the Andean Trade Preference Act (19 U.S.C. 3202(e)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(1)"; and

(3) by adding at the end the following:

"(B) The President may, after the requirements of paragraph (2) have been met—

"(i) withdraw or suspend the designation of any country as an ATPDEA beneficiary country, or

"(ii) withdraw, suspend, or limit the application of preferential treatment under section 204(b)(1), (3), or (4) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(6)(B).".

(c) CONFORMING AMENDMENTS.—(1) Section 202 of the Andean Trade Preference Act (19 U.S.C. 3201) is amended by inserting "(or other preferential treatment)" after "treatment".

(2) Section 204(a) of the Andean Trade Preference Act (19 U.S.C. 3203(a)) is amended—

(A) in paragraph (1)—

(i) by inserting "(or otherwise provided for)" after "eligibility"; and

(ii) by inserting "(or preferential treatment)" after "duty-free treatment"; and

(B) in paragraph (2), by striking "subsection (a)" and inserting "paragraph (1)".

(d) PETITIONS FOR REVIEW.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall promulgate regulations regarding the review of eligibility of articles and countries under the Andean Trade Preference Act, consistent with section 203(e) of such Act, as amended by this title.

(2) CONTENT OF REGULATIONS.—The regulations shall be similar to the regulations regarding eligibility under the generalized system of preferences under title V of the Trade Act of 1974 with respect to the timetable for reviews and content, and shall include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment under the Andean Trade Preference Act, conducting reviews of such requests, and implementing the results of the reviews.

(e) REPORTING REQUIREMENTS.—Section 203(f) of the Andean Trade Preference Act (19 U.S.C. 3202(f)) is amended to read as follows:

"(f) REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—Not later than April 30, 2003, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to the Congress a report regarding the operation of this title, including—

"(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

"(B) the performance of each beneficiary country or ATPEA beneficiary country, as the case may be, under the criteria set forth in section 204(b)(6)(B).

"(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public

comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(6)(B).".

SEC. 3104. TERMINATION.

(a) IN GENERAL.—Section 208 of the Andean Trade Preference Act (19 U.S.C. 3206) is amended to read as follows:

"SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT.

"No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall remain in effect after December 31, 2006.".

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (3), the entry—

(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade Preference Act (19 U.S.C. 3201 et seq.) would have applied if the entry had been made on December 4, 2001, and

(B) that was made after December 4, 2001, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) ENTRY.—As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

SEC. 3105. REPORT ON FREE TRADE AGREEMENT WITH ISRAEL.

(a) REPORT TO CONGRESS.—The United States Trade Representative shall review the implementation of the United States-Israel Free Trade Agreement and shall submit to the Speaker of the House of Representatives, the President of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate a report on the results of such review.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include the following:

(1) A review of the terms of the United States-Israel Free Trade Agreement, particularly the terms with respect to market access commitments.

(2) A review of subsequent agreements which may have been reached between the parties to the Agreement and of unilateral concessions of additional benefits received by each party from the other.

(3) A review of any current negotiations between the parties to the Agreement with respect to implementation of the Agreement and other pertinent matters.

(4) An assessment of the degree of fulfillment of obligations under the Agreement by the United States and Israel.

(5) An assessment of improvements in structuring future trade agreements that should be considered based on the experience of the United States under the Agreement.

(c) TIMING OF REPORT.—The United States Trade Representative shall submit the report under subsection (a) not later than 6 months after the date of the enactment of this Act.

(d) DEFINITION.—In this section, the terms "United States-Israel Free Trade Agreement" and "Agreement" means the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel entered into on April 22, 1985.

SEC. 3106. MODIFICATION OF DUTY TREATMENT FOR TUNA.

Subheading 1604.14.20 of the Harmonized Tariff Schedule of the United States is amended—

(1) in the article description, by striking "20 percent of the United States pack of canned tuna" and inserting "4.8 percent of apparent United States consumption of tuna in airtight containers"; and

(2) by redesignating such subheading as subheading 1604.14.22.

SEC. 3107. TRADE BENEFITS UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

(a) IN GENERAL.—Section 213(b)(2)(A) of the Carribean Basin Economic Recovery Act (19 U.S.C. 2703(b)(2)(A)) is amended as follows:

(1) Clause (i) is amended—

(A) by striking the matter preceding subclause (I) and inserting the following:

"(i) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—"; and

(B) by adding at the end the following: "Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.".

(2) Clause (ii) is amended to read as follows:

"(ii) OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States). Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.".

(3) Clause (iii)(II) is amended to read as follows:

"(II) The amount referred to in subclause (I) is as follows:

"(aa) 500,000,000 square meter equivalents during the 1-year period beginning on October 1, 2002.

"(bb) 850,000,000 square meter equivalents during the 1-year period beginning on October 1, 2003.

"(cc) 970,000,000 square meter equivalents in each succeeding 1-year period through September 30, 2008.".

(4) Clause (iii)(IV) is amended to read as follows:

"(IV) The amount referred to in subclause (III) is as follows:

"(aa) 4,872,000 dozen during the 1-year period beginning on October 1, 2001.

"(bb) 9,000,000 dozen during the 1-year period beginning on October 1, 2002.

"(cc) 10,000,000 dozen during the 1-year period beginning on October 1, 2003.

"(dd) 12,000,000 dozen in each succeeding 1-year period through September 30, 2008.".

(5) Clause (iv) is amended to read as follows:

"(iv) CERTAIN OTHER APPAREL ARTICLES.—

"(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

"(II) LIMITATION.—During the 1-year period beginning on October 1, 2001, and during each of the 6 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

"(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.".

(6) Clause (vii) is amended by adding at the end the following new subclause:

"(V) THREAD.—An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.".

(7) Section 213(b)(2)(A) of such Act is further amended by adding at the end the following new clause:

"(ix) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES FROM UNITED STATES AND CBTPA BENEFICIARY COUNTRY COMPONENTS.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly

formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause (i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.".

(b) EFFECTIVE DATE OF CERTAIN PROVISIONS.—The amendment made by subsection (a)(3) shall take effect on October 1, 2002.

SEC. 3108. TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT.

(a) IN GENERAL.—Section 112(b) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)) is amended as follows:

(1) Paragraph (1) is amended by amending the matter preceding subparagraph (A) to read as follows:

"(1) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are—".

(2) Paragraph (2) is amended to read as follows:

"(2) OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States).".

(3) Paragraph (3) is amended—

(A) by amending the matter preceding subparagraph (A) to read as follows:

"(3) APPAREL ARTICLES FROM REGIONAL FABRIC OR YARNS.—Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, subject to the following:"; and

(B) by amending subparagraph (B) to read as follows:

"(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES.—

"(i) IN GENERAL.—Subject to subparagraph (A), preferential treatment under this paragraph shall be extended through September 30, 2004, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric or the yarn used to make such articles.

"(ii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY.—For purposes of clause (i), the term 'lesser developed beneficiary sub-Saharan African country' means—

"(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

"(II) Botswana; and

"(III) Namibia.".

(4) Paragraph (4)(B) is amended by striking "18.5" and inserting "21.5".

(5) Section 112(b) of such Act is further amended by adding at the end the following new paragraph:

"(7) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES FROM UNITED STATES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY COMPONENTS.—Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).".

(b) INCREASE IN LIMITATION ON CERTAIN BENEFITS.—The applicable percentage under clause (ii) of section 112(b)(3)(A) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(3)(A)) shall be increased—

(1) by 2.17 percent for the 1-year period beginning on October 1, 2002, and

(2) by equal increments in each succeeding 1-year period provided for in such clause, so that for the 1-year period beginning October 1, 2007, the applicable percentage is increased by 3.5 percent,

except that such increase shall not apply with respect to articles eligible under subparagraph (B) of section 112(b)(3) of that Act.

DIVISION D—EXTENSION OF CERTAIN PREFERENTIAL TRADE TREATMENT

TITLE XLI—EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

SEC. 4101. EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES.

(a) EXTENSION OF DUTY-FREE TREATMENT UNDER SYSTEM.—Section 505 of the Trade Act of 1974 (19 U.S.C. 2465(a)) is amended by striking "September 30, 2001" and inserting "December 31, 2006".

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (2), the entry—

(A) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on September 30, 2001,

(B) that was made after September 30, 2001, and before the date of the enactment of this Act, and

(C) to which duty-free treatment under title V of that Act did not apply,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

(3) DEFINITION.—As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

SEC. 4102. AMENDMENTS TO GENERALIZED SYSTEM OF PREFERENCES.

(a) ELIGIBILITY FOR GENERALIZED SYSTEM OF PREFERENCES.—Section 502(b)(2)(F) of the Trade Act of 1974 (19 U.S.C.,2462(b)(2)(F)) is amended by striking the period at the end and inserting "or such country has not taken steps to support the efforts of the United States to combat terrorism.".

(b) DEFINITION OF INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—Section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)) is amended by amending subparagraph (D) to read as follows:

"(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and".

DIVISION E—MISCELLANEOUS PROVISIONS

TITLE L—MISCELLANEOUS TRADE BENEFITS

Subtitle A—Wool Provisions

SEC. 5101. WOOL PROVISIONS.

(a) SHORT TITLE.—This section may be cited as the "Wool Manufacturer Payment Clarification and Technical Corrections Act".

(b) CLARIFICATION OF TEMPORARY DUTY SUSPENSION.—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by inserting "average" before "diameters".

(c) PAYMENTS TO MANUFACTURERS OF CERTAIN WOOL PRODUCTS.—

(1) PAYMENTS.—Section 505 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303) is amended as follows:

(A) Subsection (a) is amended—

(i) by striking "In each of the calendar years" and inserting "For each of the calendar years"; and

(ii) by striking "for a refund of duties" and all that follows through the end of the subsection and inserting "for a payment equal to an amount determined pursuant to subsection (d)(1).".

(B) Subsection (b) is amended to read as follows:

"(b) WOOL YARN.—

"(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

"(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).".

(C) Subsection (c) is amended to read as follows:

"(c) WOOL FIBER AND WOOL TOP.—

"(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, *5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).*

“(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).”.

(D) Section 505 is further amended by striking subsection (d) and inserting the following new subsections:

“(d) AMOUNT OF ANNUAL PAYMENTS TO MANUFACTURERS.—

“(1) MANUFACTURERS OF MEN'S SUITS, ETC. OF IMPORTED WORSTED WOOL FABRICS.—

“(A) ELIGIBLE TO RECEIVE MORE THAN $5,000.—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying $30,124,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each such calendar year under this section as it was in effect on that date.

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported worsted wool fabrics described in subsection (a).

“(C) OTHERS.—All manufacturers described in subsection (a), other than the manufacturers to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing $1,665,000 by the number of all such other manufacturers.

“(2) MANUFACTURERS OF WORSTED WOOL FABRICS OF IMPORTED WOOL YARN.—

“(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying $2,202,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool yarn described in subsection (b)(1).

“(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying $141,000 by a fraction—

“(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

“(3) MANUFACTURERS OF WOOL YARN OR WOOL FABRIC OF IMPORTED WOOL FIBER OR WOOL TOP.—

“(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying $1,522,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool fiber or wool top described in subsection (c)(1).

“(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying $597,000 by a fraction—

“(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

“(ii) the denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

“(4) LETTERS OF INTENT.—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

“(5) AMOUNT ATTRIBUTABLE TO PURCHASES BY NONIMPORTING MANUFACTURERS.—

“(A) AMOUNT ATTRIBUTABLE.—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant's belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

“(B) ELIGIBLE WOOL PRODUCT.—For purposes of subparagraph (A)—

“(i) the eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

“(ii) the eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule purchased in calendar year 1999.

“(6) AMOUNT ATTRIBUTABLE TO DUTIES PAID.—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

“(7) SCHEDULE OF PAYMENTS; REALLOCATIONS.—

“(A) SCHEDULE.—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first and second installments on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second installment on or before April 15, 2003.

“(B) REALLOCATIONS.—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a pro rata basis by the amount of the payment such manufacturer would have received.

“(8) REFERENCE.—For purposes of paragraphs (1)(A) and (6), the ‘records of the Customs Service as of September 11, 2001’ are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

“(e) AFFIDAVITS BY MANUFACTURERS.—

“(1) AFFIDAVIT REQUIRED.—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

“(2) TIMING.—An affidavit under paragraph (1) shall be valid—

“(A) in the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000 or 2001, or both, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

“(B) in the case of a claim for a payment for calendar year 2002, only if the affidavit is postmarked no later than March 1, 2003.

“(f) OFFSETS.—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

“(g) DEFINITION.—For purposes of this section, the manufacturer is the party that owns—

“(1) imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in

the United States into men's or boys' suits, suit-type jackets, or trousers;

"(2) imported wool yarn, of the kind described in heading 5107.01 or 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

"(3) imported wool fiber or wool top, of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.".

(2) Funding.—There is authorized to be appropriated and is hereby appropriated, out of amounts in the General Fund of the Treasury not otherwise appropriated, $36,251,000 to carry out the amendments made by paragraph (1).

SEC. 5102. DUTY SUSPENSION ON WOOL.

(a) Extension of Temporary Duty Reductions.—

(1) Heading 9902.51.11.— Heading 9902.51.11 of the Harmonized Tariff Schedule of the United States is amended by striking "2003" and inserting "2005".

(2) Heading 9902.51.12.— Heading 9902.51.12 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "2003" and inserting "2005"; and

(B) by striking "6%" and inserting "Free".

(3) Heading 9902.51.13.—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by striking "2003" and inserting "2005".

(4) Heading 9902.51.14.—Heading 9902.51.14 of the Harmonized Tariff Schedule of the United States is amended by striking "2003" and inserting "2005".

(b) Limitation on Quantity of Imports.—

(1) Note 15.—U.S. Note 15 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "from January 1 to December 31 of each year, inclusive"; and

(B) by striking ", or such other" and inserting the following: "in calendar year 2001, 3,500,000 square meter equivalents in calendar year 2002, and 4,500,000 square meter equivalents in calendar year 2003 and each calendar year thereafter, or such greater".

(2) Note 16.—U.S. Note 16 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "from January 1 to December 31 of each year, inclusive"; and

(B) by striking ", or such other" and inserting the following: "in calendar year 2001, 2,500,000 square meter equivalents in calendar year 2002, and 3,500,000 square meter equivalents in calendar year 2003 and each calendar year thereafter, or such greater".

(c) Extension of Duty Refunds and Wool Research Trust Fund.—

(1) In general.—The United States Customs Service shall pay each manufacturer that receives a payment under section 505 of the Trade and Development Act of 2000 (Public Law 106–200) for calendar year 2002, and that provides an affidavit that it remains a manufacturer in the United States as of January 1 of the year of the payment, 2 additional payments, each payment equal to the payment received for calendar year 2002 as follows:

(A) The first payment to be made after January 1, 2004, but on or before April 15, 2004.

(B) The second payment to be made after January 1, 2005, but on or before April 15, 2005.

(2) Conforming amendment.—Section 506(f) of the Trade and Development Act of 2000 (Public Law 106–200) is amended by striking "2004" and inserting "2006".

(3) Authorization.—There is authorized to be appropriated and is hereby appropriated out of amounts in the general fund of the Treasury not otherwise appropriated such sums as are necessary to carry out the provisions of this subsection.

(d) Effective Date.—The amendment made by subsection (a)(2)(B) applies to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

Subtitle B—Other Provisions

SEC. 5201. FUND FOR WTO DISPUTE SETTLEMENTS.

(a) Establishment of Fund.—There is established in the Treasury a fund for the payment of settlements under this section.

(b) Authority of USTR to Pay Settlements.—Amounts in the fund established under subsection (a) shall be available, as provided in appropriations Acts, only for the payment by the United States Trade Representative of the amount of the total or partial settlement of any dispute pursuant to proceedings under the auspices of the World Trade Organization, if—

(1) in the case of a total or partial settlement in an amount of not more than $10,000,000, the Trade Representative certifies to the Secretary of the Treasury that the settlement is in the best interests of the United States; and

(2) in the case of a total or partial settlement in an amount of more than $10,000,000, the Trade Representative certifies to the Congress that the settlement is in the best interests of the United States.

(c) Appropriations.—There are authorized to be appropriated to the fund established under subsection (a)—

(1) $50,000,000; and

(2) amounts equivalent to amounts recovered by the United States pursuant to the settlement of disputes pursuant to proceedings under the auspices of the World Trade Organization.

Amounts appropriated to the fund are authorized to remain available until expended.

(d) Management of Fund.—Sections 9601 and 9602(b) of the Internal Revenue Code of 1986 shall apply to the fund established under subsection (a) to the same extent as such provisions apply to trust funds established under subchapter A of chapter 98 of such Code.

SEC. 5202. CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES.

(a) In General.—Subheading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking "4.9%" and inserting "Free"; and

(2) by striking "12/31/2003" and inserting "12/31/2006".

(b) Effective Date.—

(1) In general.—The amendments made by subsection (a) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

(2) Retroactive application.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (4), the entry of any article—

(A) that was made on or after January 1, 2002, and

(B) to which duty-free treatment would have applied if the amendment made by this section had been in effect on the date of such entry,

shall be liquidated or reliquidated as if such duty-free treatment applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(3) Entry.—As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(4) Requests.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

SEC. 5203. SUGAR TARIFF-RATE QUOTA CIRCUMVENTION.

(a) In General.—Chapter 17 of the Harmonized Tariff Schedule of the United States is amended in the superior text to subheading 1702.90.05 by striking "Containing" and all that follows through "solids:" and inserting the following:

"Containing soluble non-sugar solids (excluding any foreign substances, including but not limited to molasses, that may have been added to or developed in the product) equal to 6 percent or less by weight of the total soluble solids:".

(b) Monitoring for Circumvention.—The Secretary of Agriculture and the Commissioner of Customs shall continuously monitor imports of sugar and sugar-containing products provided for in chapters 17, 18, 19, and 21 of the Harmonized Tariff Schedule of the United States, other than molasses imported for use in animal feed or the production of rum and articles prepared for marketing to the ultimate consumer in the form and package in which imported, for indications that an article is being used to circumvent a tariff-rate quota provided for in those chapters. The Secretary and Commissioner shall specifically examine imports of articles provided for in subheading 1703.10.30 of the Harmonized Tariff Schedule of the United States.

(c) Reports and Recommendations.—The Secretary and the Commissioner shall report their findings to Congress and the President not later than 180 days after the date of enactment of this Act and every 6 months thereafter. The reports shall include data and a description of developments and trends in the composition of trade of articles provided for in the chapters of the Harmonized Tariff Schedule of the United States identified in subsection (b) and any indications of circumvention that may exist. The reports shall also include recommendations for ending such circumvention, including recommendations for legislation.

And the Senate agree to the same.

From the Committee on Ways and Means, for consideration of the House amendment and the Senate amendment, and modifications committed to conference:

William Thomas,
Phillip M. Crane,

From the Committee on Education and the Workforce, for consideration of the Senate amendment, and modifications committed to conference:

John Boehner,
Sam Johnson,

From the Committee on Energy and Commerce, for consideration of sec. 603 of the Senate amendment, and modifications committed to conference:

Billy Tauzin,
Michael Bilirakis,

From the Committee on Government Reform, for consideration of sec. 344 of the House amendment, and sec. 1143 of the Senate amendment, and modifications committed to conference:

Dan Burton,
Bob Barr,

From the Committee on the Judiciary, for consideration of secs. 111, 601, and 701 of the Senate amendment, and modifications committed to conference:

F. James Sensenbrenner,
Howard Coble,

From the Committee on the Rules, for consideration of secs. 2103, 2105, and 2106 of the House amendment and secs. 2103, 2105, and 2106 of the Senate amendment, and modifications committed to conference:

DAVID DREIER,
JOHN LINDER,
Managers on the Part of the House.

MAX BAUCUS,
JOHN BREAUX,
CHUCK GRASSLEY,
ORRIN HATCH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3009), to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

DIVISION A—TRADE ADJUSTMENT ASSISTANCE

SEC. 101—SHORT TITLE

Present law

No provision.

House amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Senate amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE I—TRADE ADJUSTMENT ASSISTANCE PROGRAM

Subtitle A—Trade Adjustment Assistance for Workers

SEC. 111—REAUTHORIZATION OF THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

Present law

Current section 245 authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the TAA and NAFTA-TAA for workers programs for the period October 1, 1998 through September 30, 2001. Current section 285 provides for termination of all Trade Adjustment Assistance programs on September 30, 2001, but provides that workers, and firms eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

House amendment

Senate amendment

Section III of the Senate bill creates a new section 248 of the Trade Act of 1974 which authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the Trade Adjustment Assistance for workers program for the period October 1, 2001, through September 30, 2007. Section 701 of the Senate bill amends current section 285 to provide for termination of all Trade Adjustment Assistance programs on September 30, 2007, but provides that workers, and firms, communities, farmers, and fishermen eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

Conference agreement

Conferees agree to extend the authorization of the Trade Adjustment Assistance programs through September 30, 2007, and to consolidate the NAFTA-TAA program with the regular TAA program.

SEC. 112—FILING OF PETITIONS AND PROVISION OF RAPID RESPONSE ASSISTANCE; EXPEDITED REVIEW OF PETITIONS BY SECRETARY OF LABOR

Present law

Current sections 221 and 250 set forth requirements concerning who may file a petition for certification of eligibility to apply for TAA and NAFTA-TAA assistance, respectively. Under both programs, petitions may be filed by a group of workers or by their certified or recognized union or other duly authorized representative. TAA petitions are filed with the Secretary of Labor. NAFTA-TAA petitions are filed with the Governor of the relevant State and forwarded by him to the Secretary of Labor. Under section 223, the Secretary of Labor must rule on eligibility within 60 days after a TAA petition is filed. Under section 250, the Governor must make a preliminary eligibility determination within 10 days after a NAFTA-TAA petition is filed, and the Secretary of Labor must make a final eligibility determination within the next 30 days. Section 221 also sets forth notice and hearing obligations of the Secretary of Labor upon receipt of a TAA petition. Section 250 provides that, in the event of preliminary certification of eligibility to apply for NAFTA-TAA benefits, the Governor immediately provide the affected workers with certain rapid response services.

House amendment

The House Amendment provided for a shortened period for the Secretary of Labor to consider petitions from 60 days to 40 days and for other rapid response assistance to workers.

Senate amendment

Section 111 of the Senate bill creates a new section 231 of the Trade Act of 1974, which consolidates the TAA and NAFTA-TAA programs by establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certifications of eligibility.

Section 231 expands the list of entities that may file a petition for group certification of eligibility to include employers, one-stop operators or one-stop partners, State employment agencies, and any entity to which notice of a plant closing or mass layoff must be given under section 3 of the Worker Adjustment and Retaining Notification Act. Section 231 also provides that the President, or the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives (by resolution), may direct the Secretary of Labor to initiate a certification process under this chapter to determine the eligibility for Trade Adjustment Assistance of a group of workers.

Section 231 creates a single process for filing and reviewing petitions for Trade Adjustment Assistance for workers, under which all petitions are filed with both the Secretary of Labor and the Governor of the State. Upon filing of the petition, the Governor is required to fulfill the requirements of any agreement entered into with the Department of Labor under section 222, to provide certain rapid response services, and to notify workers on whose behalf a petition has been filed of their potential eligibility for certain existing federal health care, child care, transportation, and other assistance programs. Upon filing the petition, the Secretary of Labor must make his certification determination within 40 days and provide the notice required.

Conference agreement

The Senate recedes to the House with a change providing for simultaneous filing of petitions with the Secretary of Labor and State Governor.

SEC. 113—GROUP ELIGIBILITY REQUIREMENTS

Present law

Current law sections 222 and 250 of Title II of the Trade Act of 1974 set forth group eligibility criteria. Under TAA, the Secretary must certify a group of workers as eligible to apply for Trade Adjustment Assistance if he determines (1) that a significant number or proportion of the workers in such workers' firm have become or are threatened to become totally or partially separated; (2) sales or production of such firm have decreased absolutely; and (3) imports of articles like or directly competitive with articles produced by such workers' firm contributed importantly to the total or partial separation or threat thereof, and to the decline in sales or production. Under NAFTA-TAA, group eligibility may be based on the same criteria set forth in section 222, but section 250 also provides for NAFTA-TAA eligibility where there has been a shift in production by the workers' firm to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm. Section 222 also includes special eligibility provisions with respect to oil and natural gas producers.

House amendment

The House Amendment at Section 113 expanded the Trade Adjustment Assistance programs to secondary workers that are suppliers to firms that were certified and which satisfied certain conditions.

Senate amendment

Section 111 of the Senate Amendment creates a new section 231 under which the eligibility criteria are revised. First, workers are eligible for TAA if the value or volume of imports of articles like or directly competitive with articles produced by that firm have increased and the increase in the value or volume of imports contributed importantly to the workers' separation or threat of separation. Second, eligibility is extended to workers who are separated due to shifts in production to any country, rather than only when the shift in production is to Mexico or Canada. Third, eligibility is extended to adversely affected secondary workers. Eligible secondary workers include workers in supplier firms and, with respect to trade with NAFTA countries, downstream firms. Fourth, a new special eligibility provision is added with respect to taconite pellets.

Conference agreement

The Conferees agree to extend coverage of Trade Adjustment Assistance to new categories of workers: 1) secondary workers that supply directly to another firm component parts for articles that were the basis for a certification of eligibility, 2) downstream workers that were affected by trade with Mexico or Canada, and 3) certain workers that have been laid off because their firm has shifted its production to another country that has a free trade agreement with the United States, that has a unilaterally preferential trading arrangement with the United States, or when there has been or is likely to be an increase in imports of the relevant articles.

SEC. 114—QUALIFYING REQUIREMENTS FOR TRADE READJUSTMENT ALLOWANCES

Present law

Current section 231 establishes qualifying requirements that must be met in order for an individual worker within a certified group to receive Trade Adjustment Assistance. In order to receive trade readjustment allowances, a certified worker must have been separated on or after the eligibility date established in the certification but within 2 years of the date of the certification determination; been employed for at least 26 of the 52 weeks preceding the separation at wages of $30 or more a week; be eligible for and have exhausted unemployment insurance benefits; not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of that Act; and be enrolled in a training program approved by the Secretary of Labor or have received a training waiver.

House amendment

The House Amendment at Section 114 provided for requirements and deadlines for workers to enroll in training.

Senate amendment

Section 111 of the Senate Amendment adds a new section 235 which maintains the individual eligibility requirements in current law, with the exception of revisions to provisions governing bases for granting training waivers.

Conference agreement

The Senate recedes to the House, with a change to adopt a training enrollment deadline of 16 weeks after separation.

SEC. 115—WAIVERS OF TRAINING REQUIREMENTS

Present law

Section 231 sets forth permissible bases for granting a training waiver. Pursuant to section 250(d), training waivers are not available in the NAFTA-TAA program.

House amendment

The House Amendment provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 235 which provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Conference agreement

The House receded to the Senate with a change to delete the Senate provision giving the Secretary discretion to grant waivers for "other" reasons.

SEC. 116—AMENDMENTS TO LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

Present law

Current section 233 provides that each certified worker may receive trade readjustment allowances for a maximum of 52 weeks. Current law also provides that, in most circumstances, a worker is treated as participating in training during any week which is part of a break in training that does not exceed 14 days.

House amendment

Section 116 of the House Amendment would add 26 weeks of trade adjustment allowances for those workers who were in training and required the extension of benefits for the purpose of completing training.

Senate amendment

Section 111 of the Senate Amendment adds a new section 23 7 which increases the maximum time period during which a worker may receive trade adjustment allowances to 78 weeks, extends the permissible duration of a break in training to 30 days, and provides for an additional 26 weeks of income support for workers requiring remedial education. Section 237 also clarifies that the requirement that a worker exhaust unemployment insurance benefits prior to receiving trade adjustment allowances does not apply to any extension of unemployment insurance by a State using its own funds that extends beyond either the 26 week period mandated by Federal law or any additional period provided for under the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Conference agreement

The Senate recedes to the House:

SEC. 117—ANNUAL TOTAL AMOUNT OF PAYMENTS FOR TRAINING

Present law

Current section 236 establishes the terms and conditions under which training is available to eligible workers; permits the Secretary of Labor to approve certain specified types of training programs and to pay the costs of approved training and certain supplemental costs, including subsistence and transportation costs, for eligible workers; and caps total annual funding for training under the TAA for workers program at $80 million. Section 250 separately caps training expenditures under the NAFTA-TAA program at $30 million annually.

House amendment

The House provided $30 million additional funds for the Trade Adjustment Assistance program. Combined with NAFTA Trade Adjustment Assistance, the total training funds available were $140 million.

Senate amendment

Section 111 of the Senate Amendment adds a new section 240 which sets the total funds available for training expenditures under the unified TAA for workers program to $300 million annually.

Conference agreement

Conferees agreed to a combined training cap of $220 million for Trade Adjustment Assistance training.

SEC. 118—PROVISION OF EMPLOYER-BASED TRAINING

Present law

No applicable section.

House amendment

The House Amendment included provisions related to employer based training including on-the-job training and customized training with partial reimbursements provided to the employer.

Senate amendment

Section 111 of the Senate Amendment adds a new section 240 which revises the list of training programs which the Secretary may approve to include customized training. It also adds a new section 237, which clarifies that the prohibition on payment of trade adjustment allowances to a worker receiving on-the-job training does not apply to a worker enrolled in a non-paid customized training program.

Conference agreement

The Senate recedes to the House.

SEC. 119—COORDINATION WITH TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Present law

No provision.

House amendment

The House Amendment provided multiple provisions related to coordinating efforts under the Trade Adjustment Assistance programs to provide information and benefits to workers under the Workforce Investment Act.

Senate amendment

No provision.

Conference agreement

Conferees agreed to drop House language with the exception of a provision related to coordinating the delivery of Trade Adjustment Assistance benefits and information at one-stop delivery systems under the Workforce Investment Act.

SEC. 120—EXPENDITURE PERIOD

Present law

No provision.

House amendment

The House amendment provided that certain funds obligated for any fiscal year to carry out activities may be expended by each State in the succeeding two fiscal years.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 121—JOB SEARCH ALLOWANCES

Present law

Under current section 237, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive reimbursement of 90 percent of the cost of necessary job search expenses up to $800.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 241 which raises the maximum reimbursement for job search expenses to $1,250 per worker.

Conference agreement

The House recedes to the Senate.

SEC. 122—RELOCATION ALLOWANCES

Present law

Under current section 238, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive a relocation allowance consisting of (1) 90 percent of the reasonable and necessary expenses incurred in transporting a worker and his family, if any, and household effects, and (2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 242 which raises the maximum lump sum portion of the relocation allowance to $1,250.

Conference agreement

The House recedes to the Senate.

SEC. 123—REPEAL OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

Present law

Current law authorizes a Trade Adjustment Assistance Program for workers affected by NAFTA trade.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 231 which combines the TAA and NAFTA-TAA programs, establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certification of eligibility.

Conference agreement

The House recedes to the Senate to the extent of repealing the NAFTA Trade Adjustment Assistance program and creating a single, unified TAA program for workers.

SEC. 124—DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 243 which directs the Secretary of Labor, within one year of enactment, to establish a two-year wage insurance pilot program under which a State uses the funds provided to the State for Trade Adjustment allowances to pay to an adversely affected worker certified under section 231, for a period not to exceed two years, a wage subsidy of up to 50 percent of the difference between the wages received by the adversely affected worker from reemployment and the wages received by the adversely affected worker at the time of separation. An adversely affected worker may be eligible to receive a wage subsidy if the worker obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment, is at least 50 years of age, earns not more than $50,000 a year in wages from reemployment, is employed at least 30 hours a week in the reemployment, and does not return to the employment from which the worker was separated. The wage subsidy available to workers in the wage insurance program is 50 percent of the difference between the amount of the wages received by the worker from reemployment and the amount of the wages received by the worker at the time of separation, if the wages the worker receives from reemployment are less than $40,000 a year. The wage subsidy is 25 percent if the wages received by the worker from reemployment are greater than $40,000 a year but not more than $50,000 a year. Total payments made to an adversely affected worker under the wage insurance program may not exceed $5,000 in each year of the 2-year period. A worker participating in the wage insurance program is not eligible to receive any other Trade Adjustment Assistance benefits, unless the Secretary of Labor determines that the worker has shown circumstances that warrant eligibility for training benefits under section 240.

Conference agreement

The Conferees agree to create a new alternative Trade Adjustment Assistance program for older workers.

SEC. 125—DECLARATIONS OF POLICY; SENSE OF CONGRESS

Present law

No provision.

House amendment

The House passed amendment included a declaration of policy and Sense of the Congress related to the responsibility of the Secretary of Labor to provide information to workers related to benefits available to them under the TAA and other federal programs.

Senate amendment

Although certain supportive services are available to dislocated workers under WIA, current law makes no express linkage between these services and Trade Adjustment Assistance and TAA certified workers may not be able to access them. Section 111 of the Senate Amendment adds a new section 243 which provides that States may apply for and the Secretary of Labor may make available to adversely affected workers certified under the Trade Adjustment Assistance program supportive services available under WIA, including transportation, child care, and dependent care, that are necessary to enable a worker to participate in or complete training. Section 243 requires the Comptroller General to conduct a study of all assistance provided by the Federal Government for workers facing job loss and economic distress; to submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the study within one year of enactment of this Act; and to distribute the report to all WIA one-stop partners. Section 243 further provides that each State may conduct a study of its assistance programs for workers facing job loss and economic distress. Each State is eligible for a grant from the Secretary of Labor, not to exceed $50,000, to enable it to conduct the study. In the event that a grant is awarded, the State must, within one year of receiving the grant, provide its report to the Committee on Finance and the Committee on Ways and Means and distribute its report to one-stop partners in the State.

Conference agreement

The Senate recedes to the House.

Subtitle B—Trade Adjustment Assistance for Firms

SEC. 131—REAUTHORIZATION OF TRADE ADJUSTMENT FOR FIRMS PROGRAM

Present law

The Trade Adjustment Assistance for Firms program provides technical assistance to qualifying firms. Current Title II, Chapter 3, section 251 of the Trade Act of 1974 provides that a firm is eligible to receive Trade Adjustment Assistance under this program if (1) a significant number or proportion of its workers have become or are threatened to become totally or partially separated; (2) sales or production, or both, have decreased absolutely; and (3) increases of imports of articles like or directly competitive with articles which are produced by such firms contributed importantly to the total or partial separations or threat thereof.

The authorization for the Trade Adjustment Assistance for Firms program expired on September 30, 2001. The TAA for Firms program is currently subject to annual appropriations and is funded as part of the budget of the Economic Development Administration in the Department of Commerce.

House amendment

The House passed amendment included a 2 year reauthorization for Trade Adjustment Assistance for Firms.

Senate amendment

Section 201 of the Senate Amendment reauthorizes the Trade Adjustment Assistance for Firms program for fiscal years 2002 through 2007; expands the definition of qualifying firms to cover shifts in production; and authorizes appropriations to the Department of Commerce in the amount of $16 million annually for fiscal years 2002 through 2007 to carry out the purposes of the Trade Adjustment Assistance for Firms program.

Conference agreement

The House recedes to the Senate on the issue of providing a $16 million authorization for Trade Adjustment Assistance for Firms and reauthorizing the program through September 30, 2007.

Subtitle C—Trade Adjustment Assistance for Farmers and Ranchers

SEC. 141—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 401 of the Senate Amendment adds new sections 292–298 of the Trade Act of 1974 which create a Trade Adjustment Assistance program for farmers and ranchers in the Department of Agriculture. Under this section, a group of agricultural commodity producers may petition the Secretary of Agriculture for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for farmers if it is determined that the national average price in the most recent marketing year for the commodity produced by the group is less than 80 percent of the national average price in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price.

Conference agreement

The House recedes to the Senate with changes. The Conferees agree to include limitations on eligibility based upon adjusted gross income and counter-cyclical payment limitations set forth in the Food Security Act of 1985.

SEC. 142—CONFORMING AMENDMENTS

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate Amendment makes conforming amendments to the Trade Act of 1974 concerning the TAA for Farmers program.

Conference agreement

Conferees agree to make conforming amendments to the Trade Act of 1974.

SEC. 143—TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 502 of the Senate Amendment adds new sections 299–299(G) which create a Trade

Adjustment Assistance program for fishermen in the Department of Commerce. Under this program, a group of fishermen may petition the Secretary of Commerce for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for fishermen if it is determined that the national average price in the most recent marketing year for the fish produced by the group is less than 80 percent of the national average price in the proceeding five marketing years and that increases in imports of that fish contributed importantly to the decline in price.

Conference agreement

Conferees agree to drop Senate Amendment and authorize a study by the Department of Labor to investigate applying TAA to fisherman.

SUBTITLE D—EFFECTIVE DATE

SEC. 151—EFFECTIVE DATE

Present law

No applicable provision.

House amendment

No provision.

Senate amendment

Section 801 of the Senate Amendment provides that except as otherwise specified, the amendments to the TAA program shall be effective 90 days after enactment of the Trace Act of 2002. The Senate Amendment includes transitional provisions governing the period between expiration of the prior authorizations of TAA for workers and firms and the effective date of the amendments.

Conference agreement

. The House recedes to the Senate.

TITLE II—CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 201(A) AND 202. CREDIT FOR HEALTH INSURANCE COSTS OF INDIVIDUALS RECEIVING A TRADE READJUSTMENT ALLOWANCE OR A BENEFIT FROM THE PENSION BENEFIT GUARANTY CORPORATION; ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

Present Law

Under present law, the tax treatment of health insurance expenses depends on the individual's circumstances. In general, employer contributions to an accident or health plan are excludable from an employee's gross income (sec. 106).

Self-employed individuals are entitled to deduct a portion of the amount paid for health insurance expenses for the individual and his or her spouse and dependents. The percentage of deductible expenses is 70 percent in 2002 and 100 percent in 2003 and thereafter.

Individuals other than self-employed individuals who purchase their own health insurance and itemize deductions may deduct their expenses to the extent that their total medical expenses exceed 7.5 percent of adjusted gross income.

Present law does not provide a tax credit for the purchase of health insurance.

The health care continuation rules (commonly referred to as "COBRA" rules, after the Consolidated Omnibus Budget Reconciliation Act of 1985 in which they were enacted) require that employer-sponsored group health plans of employers with 20 or more employees must offer certain covered employees and their dependents ("qualified beneficiaries") the option of purchasing continued health coverage in the event of loss of coverage resulting from certain qualifying events. These qualifying events include: termination or reduction in hours of employment, death, divorce or legal separation, enrollment in Medicare, the bankruptcy of the employer, or the end of a child's dependency under a parent's health plan. In general, the maximum period of COBRA coverage is 18 months. An employer is permitted to charge qualified beneficiaries 102 percent of the applicable premium for COBRA coverage.

Under present law, individuals without access to COBRA are able to purchase individual policies on a guaranteed issue basis without exclusion of coverage for pre-existing conditions if they had 18 months of creditable coverage under an employer sponsored group health plan, governmental plan, or a church plan. Those with access to COBRA are required to exhaust their 18 months of COBRA prior to obtaining a policy on a guaranteed issue basis without exclusion of coverage for pre-existing conditions.

House amendment

The House bill provides a refundable tax credit for up to 60 percent of the expenses of an eligible individual for qualified health insurance coverage of the eligible individual and his or her spouse or dependents. Eligible individuals are certain TAA eligible workers and PBGC pension beneficiaries. In the case of TAA eligible workers, no more than 12 months of coverage would be eligible for the credit. The amount of the credit would be phased out for taxpayers with modified adjusted gross income between $20,000 and $40,000 for single taxpayers ($40,000 and $80,000 for married taxpayers filing a joint return). The credit would be available on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage and certain individual market options.

Senate amendment

The Senate amendment provides a refundable credit for 70 percent of qualified health insurance expenses. The credit is available with respect to certain TAA eligible workers. The credit is payable on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage, certain State-based options, and individual health insurance if certain requirements are satisfied.

Conference agreement

Refundable health insurance credit: in general

In the case of taxpayers who are eligible individuals, the conference agreement provides a refundable tax credit for 65 percent of the taxpayer's expenses for qualified health insurance of the taxpayer and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is available only with respect to amounts paid by the taxpayer.

Qualifying family members are the taxpayer's spouse and any dependent of the taxpayer with respect to whom the taxpayer is entitled to claim a dependency exemption.[1] Any individual who has other specified coverage is not a qualifying family member.

Persons eligible for the credit

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if, as of the first day of the month, the taxpayer (1) is an eligible individual, (2) is covered by qualified health insurance, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements. An eligible month must begin more than 90 days after the date of enactment.

An eligible individual is (1) an eligible TAA recipient, (2) an eligible alternative TAA recipient, and (3) an eligible PBGC pension recipient.

An individual is an eligible TAA recipient during any month if the individual (1) is receiving for any day of such month a trade adjustment allowance[2] or who would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a certification issued under subchapter A or D of chapter 2 of title II of the Trade Act of 1974. An individual is treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is an eligible alternative TAA recipient during any month if the individual (1) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and (2) is receiving a benefit for such month under section 246(a)(2) of such Act. An individual is treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is a PBGC pension recipient for any month if he or she (1) is age 55 or over as of the first day of the month, and (2) is receiving a benefit any portion of which is paid by the Pension Benefit Guaranty Corporation (PBGC).

. An otherwise eligible taxpayer is not eligible for the credit for a month if, as of the first day of the month the individual has other specified coverage. Specified coverage would be (1) coverage under any insurance which constitutes medical care (expect for insurance substantially all of the coverage of which is for excepted benefits)[3] if at least 50 percent of the cost of the coverage is paid by an employer[4] (or former employer) of the individual or his or her spouse or (2) coverage under certain governmental health programs.[5] A rule aggregating plans of the same employer applies in determining whether the employer pays at least 50 percent of the cost of coverage. A person is not an eligible individual if he or she may be claimed as a dependent on another person's tax return. A special rule applies with respect to alternative TAA recipients.

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[1] Present law allows the custodial parent to release the right to claim the dependency exemption for a child to the noncustodial parent. In addition, if certain requirements are met, the parents may decide by agreement that the noncustodial parent is entitled to the dependency exemption with respect to a child. In such cases, the provision would treat the child as the dependent of the custodial parent for purposes of the credit.

[2] Part I of subchapter B, or subchapter D, of chapter 2 of title II of the Trade Act of 1974.

[3] Excepted benefits are: (1) coverage only for accident or disability income or any combination thereof, (2) coverage issued as a supplement to liability insurance; (3) liability insurance, including general liability insurance and automobile liability insurance; (4) worker's compensation or similar insurance; (5) automobile medical payment insurance; (6) credit-only insurance; (7) coverage for on-site medical clinics; (8) other insurance coverage similar to the coverages in (1)-(7) specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits; (9) limited scope dental or vision benefits; (10) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof. and (11) other benefits similar to those in (9) and (10) as specified in regulations. (12) coverage only for a specified disease or illness; (13) hospital indemnity or other fixed indemnity insurance; and (14) Medicare supplemental insurance.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation coverage; (2) State based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by the State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; and (9) coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies.[6]

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)–(8) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain requirements. Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must the same as (or substantially similar to) benefits provided to similarly situated individuals who are not a qualified individuals. A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[7] of three months or longer, does not have other specified coverage, and who is not imprisoned. A qualifying individual also includes qualified family members of such an eligible individual.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is of excepted benefits.

Other rules

Amounts taken into account in determining the credit could not be taken into account in determining the amount allowable under the itemized deduction for medical expenses or the deduction for health insurance expenses of self-employed individuals. Amounts distributed from a medical savings account would not be eligible for the credit. The amount of the credit is reduced by any credit received on an advance basis. Married taxpayers filing separate returns are eligible for the credit; however, if both spouses are eligible individuals and the spouses file a separate return, then the spouse of the taxpayer is not a qualifying family member.

The Secretary of the Treasury is authorized to prescribe such regulations and other guidance as may be necessary or appropriate to carry out the provision.

Advance payment of refundable health insurance credit; reporting requirements

The conference agreement provides for payment of the credit on an advance basis (i.e., prior to the filing of the taxpayer's return) pursuant to a program to be established by the Secretary of the Treasury no later than August 1, 2003. Such program is to provide for making payments on behalf of certified individuals to providers of qualified health insurance. In order to receive the credit on an advance basis, a qualified health insurance costs credit eligibility certificate would have to be in effect for the taxpayer. A qualified health insurance costs credit eligibility certificate is a written statement that an individual is an eligible individual for purposes of the credit, provides such information as the Secretary of the Treasury may require, and is provided by the Secretary of Labor or the PBGC (as appropriate) or such other person or entity designated by the Secretary.

The conference report permits the disclosure of return information of certified individuals to providers of health insurance information to the extent necessary to carry out the advance payment mechanism.

The conference report provides that any person who receives payments during a calendar year for qualified health insurance and claims a reimbursement for an advance credit amount is to file an information return with respect to each individual from whom such payments were received or for whom such a reimbursement is claimed. The return is to be in such form as the Secretary may prescribe and is to contain the name, address, and taxpayer identification number of the individual and any other individual on the same health insurance policy, the aggregate of the advance credit amounts provided, the number of months for which advance credit amounts are provided, and such other information as the Secretary may prescribe. The conference report requires that similar information be provided to the individual no later than January 31 of the year following the year for which the information return is made.

Effective Date

The provision is generally effective with respect to taxable years beginning after December 31, 2001. The provision relating to the advance payment mechanism to be developed by the Secretary would be effective on the date of enactment.

TITLE III—CUSTOMS REAUTHORIZATION

Subtitle A—United States Customs Service

CHAPTER 1—DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

SEC. 301—SHORT TITLE

Present law

No applicable section

House amendment

H.R. 3009 as amended and passed by the House provides that the Act may be cited as, the "Customs Border Security Act of 2002."

Senate amendment

The Senate amendment is identical.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment

SEC. 311—AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION

Present law

The statutory basis for authorization of appropriations for Customs is section 301 (b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)). That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99–509], first outlined separate amounts for non-commercial and commercial operations for the salaries and expenses portion of the Customs authorization. Under 19 U.S.C. 2075, Congress has adopted a two-year authorization process to provide Customs with guidance as it plans its budget, as well as guidance from the Committee for the appropriation process.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101 382]) provided $118,238,000 for salaries and expenses and $143,047,000 for air and marine interdiction program for FY 1991, and $1,247,884,000 for salaries and expenses and $150,199,000 for air and marine interdiction program in FY 1992.

House amendment

This provision authorizes $1,365,456,000 for FY 2003 and $1,399,592,400 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,642,602,000 for FY 2003 and $1,683,667,050 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $170,829,000 for FY 2003 and $175,099,725 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

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[4] An amount would be considered paid by the employer if it is excludable from income. Thus, for example, amounts paid for health coverage on a salary reduction basis under an employer plan are considered paid by the employer.

[5] Specifically, an individual would not be eligible for the credit if, as of the first day of the month, the individual is (1) entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or enrolled in Medicaid or SCHIP, (2) enrolled in a health benefits plan under the Federal Employees Health Benefit Plan, or (3) entitled to receive benefits under chapter 55 of title 10 of the United States Code (relating to military personnel). An individual is not considered to be enrolled in Medicaid solely by reason of receiving immunizations.

[6] For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[7] Creditable coverage is determined under the Health Care Portability and Accountability Act (Code sec. 9801 (c)).

Senate amendment

This provision authorizes $886,513,000 for FY 2003 and $909,471,000 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,603,482,000 for FY 2003 and $1,645,009,000 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $181,860,000 for FY 2003 and $186,570,000 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Conference agreement

The Senate recedes to House.

SEC. 312—ANTITERRORIST AND ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require that $90,244,000 of the FY 2003 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of terrorist and narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and inspection systems. The provision would require that $9,000,000 of the FY 2004 appropriations be used for maintenance of equipment described above. This section would also provide the Commissioner of Customs with flexibility in using these funds and would allow for the acquisition of new updated technology not anticipated when this bill was drafted. Nothing in the language of the bill is intended to prevent the Commissioner of Customs from dedicating resources to specific ports not identified in the bill.

The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 313—COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require Customs to measure specifically the effectiveness of the resources dedicated in sections 312 as part of its annual performance plan.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

Subtitle B—Child Cyber-Smuggling Center of the Customs Service

SEC. 321—AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION

Present law

Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account.

House amendment

H.R. 3009 as amended and passed by the House would authorize $10 million for Customs to carry out its program to combat online child sex predators. Of that amount, $375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

CHAPTER 2—MISCELLANEOUS PROVISIONS

SEC. 331—ADDITIONAL CUSTOMS SERVICE OFFICERS FOR U.S.-CANADA BORDER

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House earmarks $25 million and 285 new staff hires for Customs to use at the U.S.-Canada border.

Senate amendment

The Senate amendment is the same as the House Amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 332—STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 333—STUDY AND REPORT RELATING TO ACCOUNTING AND AUDITING PROCEDURES OF THE CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require Customs to conduct a study to ensure that appropriate training is being provided to personnel who are responsible for financial auditing of importers. Customs would specifically report on how its audit personnel protect the privacy and trade secrets of importers.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 334—ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would mandate the imposition of a cost accounting system in order for Customs to effectively explain its expenditures. Such a system would provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 335—STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare an report to determine whether Customs has improved its timeliness in providing prospective rulings.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 336—STUDY AND REPORT RELATING TO CUSTOMS USER FEES

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare a confidential report to determine whether current user fees are appropriately set at a level commensurate with the service provided for the fee. The Comptroller General is authorized to recommend the appropriate level for customs user fees.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 337—FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES

Present law

Current law provides for direct reimbursement by courier facilities of expenses incurred by Customs conducting inspections at those facilities.

House amendment

H.R. 3009 as amended and passed by the House would establish a per item fee of sixty-six cents to cover Customs expenses. This amount could be lowered to more than thirty-five cents or raised to no more than $1.00 by the Secretary of the Treasury after a rulemaking process to reevaluate the expenses incurred by Customs in providing inspectional services.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 338—NATIONAL CUSTOMS AUTOMATION PROGRAM

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would empower the Secretary to require the electronic submission of any information required to be submitted to the Customs Service.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 339—AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate Amendment authorizes the appropriation to the Department of Treasury such sums as may be necessary to increase the annual pay of journeyman Customs inspectors and Canine Enforcement Officers who have completed at least one year of service and are being paid at a GS–9 level, from GS–9 to GS–11. The Senate provision also authorizes an increase in pay of support staff.

Conference agreement

The House recedes to the Senate.

CHAPTER 4—ANTITERRORISM PROVISIONS

SEC. 341—IMMUNITY FOR CUSTOMS OFFICERS THAT ACT IN GOOD FAITH

Present law

Currently, Customs officers are entitled to qualified immunity in civil suits brought by persons, who were searched upon arrival in the United States. Qualified immunity protects officers from liability if they can establish that their actions did not violate any clearly established constitutional or statutory rights.

House amendment

H.R. 3009 as amended and passed by the House would protect Customs officers by providing them immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in good faith.

Senate amendment

No provision.

Conference agreement

Senate recedes to the House, but conferees qualify the provision by adding that the means used to effectuate such searches must be reasonable. To be covered by this immunity provision, inspectors must follow Customs Service inspection rules including the rule against profiling against race, religions, or ethnic background.

SEC. 342—EMERGENCY ADJUSTMENTS TO OFFICES, PORTS OF ENTRY, OR STAFFING OF THE CUSTOMS SERVICE

Present law

Present law places numerous restrictions on and, in some instances, precludes the Secretary of the Treasury or Customs from making any adjustments to ports and staff. 19 U.S.C. 1318 requires a Presidential proclamation of an emergency and authorization to the Secretary of the Treasury only to extend the time for performance of legally required acts during an emergency. No other emergency powers statute for Customs exists.

House amendment.

H.R. 3009 as amended and passed by the House would permit the Secretary of the Treasury, if the President declares a national emergency or if necessary to address specific threats to human life or national interests, to eliminate, consolidate, or relocate Customs ports and offices and to alter staffing levels, services rendered and hours of operations at those locations. In addition, the amendment would permit the Commissioner of Customs, when necessary to address threats to human life or national interests, to close temporarily any Customs office or port or take any other lesser action necessary to respond to the specific threat. The Secretary or the Commissioner would be required to notify Congress of any action taken under this proposal within 72 hours.

Senate amendment

The Senate amendment is the same as the House Amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 343 & 343A—MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND PASSENGERS; SECURE SYSTEMS OF TRANSPORTATION.

Present law

Currently, commercial carriers bringing passengers or cargo into or out of the country have no obligation to provide Customs with such information in advance.

House amendment

H.R. 3009 as amended and passed by the House would require every air, land, or water-based commercial carrier to file an electronic manifest describing all passengers with Customs before entering or leaving the country. There is a similar requirement for cargo entering the country. Specific information required in the advanced manifest system would be developed by Treasury in regulations.

Senate amendment

The Senate Amendment is similar to the House Amendment. However, with respect to cargo, the Senate Amendment applies to outbound as well as in-bound shipments.

Conference agreement

The conferees agree to direct the Secretary of the Treasury to promulgate regulations pertaining to the electronic transmission to the Customs Service of information relevant to aviation, maritime, and surface transportation safety and security prior to a cargo carrier's arrival in or departure from the United States. The agreement sets forth parameters for the Secretary to follow in developing these regulations. For example, the parameters require that the regulations be flexible with respect to the commercial and operational aspects of different modes of transportation. They also require that, in general, the Customs Service seek information from parties most likely to have direct knowledge of the information at issue. The conferees also agree to amendment of the Tariff Act of 1930 to establish requirements concerning proper documentation of ocean-bound cargo prior to a vessel's departure. Finally, the conferees agree to direct the Secretary of the Treasury to establish a task force to evaluate, prototype and certify secure systems of transportation.

SEC. 344—BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND IN OUTBOUND MAIL.

Present law

Although Customs currently searches all inbound mail, and although it searches outbound mail sent via private carriers, outbound mail carried by the Postal Service is not subject to search.

House amendment

H.R. 3009 as amended and passed by the House would enable Customs officers to search outbound U.S. mail for unreported monetary instruments, weapons of mass destruction, firearms, and other contraband used by terrorists. However, reading of mail would not be authorized absent Customs officers obtaining a search warrant or consent.

Senate amendment

The Senate Amendment is the same as the House Amendment with respect to mail weighing in excess of 16 ounces. However, under the Senate Amendment, the Customs Service would be required to obtain a warrant in order to search mail weighing 16 ounces or less. The Senate Amendment also requires the Secretary of State to determine whether it is consistent with international law and U.S. treaty obligations for the Customs Service to search mail transiting the United States between two foreign countries. The Customs Service would be authorized to search such mail only after the Secretary of State determined that such measures are consistent with international law and U.S. treaty obligations.

Conference agreement

The House recedes to the Senate.

SEC. 345—AUTHORIZATION OF APPROPRIATIONS FOR REESTABLISHMENT OF CUSTOMS OPERATIONS IN NEW YORK CITY

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House authorizes funds to reestablish those operations.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

CHAPTER 5—TEXTILE TRANSSHIPMENT PROVISIONS

SEC. 351—GAO AUDIT OF TEXTILE TRANSSHIPMENT MONITORING BY CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would direct the Comptroller General to conduct an audit of the systems at the Customs Service to monitor and enforce textile transshipment. The Comptroller General would report on recommendations for improvements.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 352—AUTHORIZATION OF APPROPRIATIONS FOR TEXTILE TRANSSHIPMENT ENFORCEMENT OPERATIONS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would authorize $9,500,000 for FY 2002 to the Customs Service for the purpose of enhancing its textile transshipment enforcement operations. This amount would be in addition to Customs Service's base authorization and the authorization to reestablish the destroyed textile monitoring and enforcement operations at the World Trade Center.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The Senate recedes to the House, but the text is clarified to provide that personnel will also conduct education and outreach in addition to enforcement.

SEC. 353—IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would earmark approximately $1.3 million within Customs' budget for selected activities related to providing technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106-200).

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

Subtitle B—Office of the United States Trade Representative

SEC. 361—AUTHORIZATION OF APPROPRIATIONS

Present law

The statutory authority for budget authorization for the Office of the United States Trade Representative is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)). The most recent authorization of appropriations for USTR was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 2171, Congress has adopted a two-year authorization process to provide USTR with guidance as it plans its budget as well as guidance from the Committee for the appropriation process.

House amendment

H.R. 3009 as amended and passed by the House authorizes $32,300,000 for FY 2003 and $31,108,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees. In light of the substantial increase in trade negotiation work to be conducted by USTR and the associated need for consultations with Congress, this provision would authorize the addition of two individuals to assist the office of Congressional Affairs.

Senate amendment

The Senate amendment authorizes $30,000,000 for FY 2003 and $31,000,000 for FY 2004.

Conference agreement

The Senate recedes to the House.

Subtitle C—United States International Trade Commission

SEC. 371—AUTHORIZATION OF APPROPRIATIONS

Present law

The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

House amendment

H.R. 3009 as amended and passed by the House authorizes $54,000,000 for FY 2003 and $57,240,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Senate amendment

The Senate amendment authorizes $51,400,000 for FY 2003 and $53,400,000 for FY 2004.

Conference agreement

The Senate recedes to the House.

Subtitle D—Other Trade Provisions

SEC. 381. INCREASE IN AGGREGATE VALUE OF ARTICLES EXEMPT FROM DUTY ACQUIRED ABROAD BY UNITED STATES RESIDENTS

Present law

The Harmonized Tariff Schedule at subheading 9804.00.65 currently provides a $400 duty exemption for travelers returning from abroad.

House amendment

H.R. 3009 as amended and passed by the House would increased the current $400 duty exemption to $800.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 382—REGULATORY AUDIT PROCEDURES

Present law

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides the authority for Customs to audit persons making entry of merchandise into the U.S. In the course of such audit, Customs auditors may identify discrepancies, including underpayments of duties. However, if there also are overpayments, there is no requirement that such overpayments be offset against the underpayments if the underlying entry has been liquidated.

House amendment

H.R. 3009 as amended and passed by the House would require that when conducting an audit, Customs must recognize and offset overpayments and overdeclarations of duties, quantities and values against underpayments and underdeclarations. As an example, if during an audit Customs finds that an importer has underpaid duties associated with one entry of merchandise by $100 but has also overpaid duties from another entry of merchandise by $25, then any assessment by Customs must be the difference of $75.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 383—PAYMENT OF DUTIES AND FEES

Present law

Current law at 19 U.S.C. 1505 provides for the collection of duties by the Secretary through regulatory process.

House amendment

H.R. 3009 as amended and passed by the House would require duties to be paid within 10 working days without extension. The bill also provides for the Customs Service to create a monthly billing system upon the building of the Automated Commercial Environment.

Senate amendment

No provision.

Conference agreement

Senate recedes to the House.

DIVISION B—BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI—TRADE PROMOTION AUTHORITY

SEC. 2101—SHORT TITLE AND FINDINGS

Present law

No provision.

House amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2001." Section 2101 of the House amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that the recent pattern of decisions by dispute settlement panels and the Appellate Body of the World Trade Organization to impose obligations and restrictions on the use of antidumping and countervailing measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping

Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

Senate amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2002." Section 2101 of the Senate amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. It goes on to note a troubling pattern of cases before WTO dispute settlement panels and the WTO Appellate Body that do precisely that.

Conference agreement

The Senate recedes to the House with modifications. With respect to the findings, the Conferees believe that, as stated in section 2101(b) of the Conference agreement, support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore, the recent pattern of decisions by dispute settlement panels and the WTO Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing and safeguard measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SEC. 2102—TRADE NEGOTIATING OBJECTIVES

Present/expired law

Section 1101(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) set forth overall negotiating objectives for concluding trade agreements. These objectives were to obtain more open, equitable, and reciprocal market access, the reduction or elimination of barriers and other trade-distorting policies and practices, and a more effective system of international trading disciplines and procedures. Section 1102(b) set forth the following principal trade negotiating objectives: dispute settlement, transparency, developing countries, current account surpluses, trade and monetary coordination, agriculture, unfair trade practices, trade in services, intellectual property, foreign direct investment, safeguards, specific barriers, worker rights, access to high technology, and border taxes.

House amendment

Section 2102 of the House amendment to H.R. 3009 would establish the following overall negotiating objectives: obtaining more open, equitable, and reciprocal market access; obtaining the reduction or elimination of barriers and other trade-distorting policies and practices; further strengthening the system of international trading disciplines and procedures, including dispute settlement; fostering economic growth and full employment in the U.S. and the global economy; ensuring that trade and environmental policies are mutually supportive and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources; promoting respect for worker rights and the rights of children consistent with International Labor Organization core labor standards, as defined in the bill; and seeking provisions in trade agreements under which parties strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement to trade.

In addition, section 2102 would establish the principal trade negotiating objectives for concluding trade agreements, as follows:

Trade barriers and distortions: expanding competitive market opportunities for U.S. exports and obtaining fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for U.S. exports and distort U.S. trade; and obtaining reciprocal tariff and nontariff barrier elimination agreements, with particular attention to products covered in section 111(b) of the Uruguay Round Agreements Act.

Services: to reduce or eliminate barriers to international trade in services, including regulatory and other barriers, that deny national treatment or unreasonably restrict the establishment or operations of services suppliers.

Foreign investment: to reduce or eliminate artificial or trade-distorting barriers to trade-related foreign investment and, recognizing that U.S. law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, to secure for investors important rights comparable to those that would be available under U.S. legal principles and practice, by:

reducing or eliminating exceptions to the principle of national treatment;

freeing the transfer of funds relating to investments;

reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;

seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

providing meaningful procedures for resolving investment disputes including between an investor and a government;

seeking to improve mechanisms used to resolve disputes between an investor and a government through mechanisms to eliminate frivolous claims and procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

providing an appellate or similar review mechanism to correct manifestly erroneous interpretations of law; and

ensuring the fullest measure of transparency in investment disputes by ensuring that all requests for dispute settlement and all proceedings, submissions, findings, and decisions are promptly made public;

all hearings are open to the public; and

establishing a mechanism for acceptance of amicus curiae submissions.

Intellectual property: including: promoting adequate and effective protection of intellectual property rights through ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including strong enforcement;

providing stronger protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property; and

ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that right holders have the legal and technological means to control the use of their works through the internet and other global communication media.

Transparency: to increase public access to information regarding trade issues as well as the activities of international trade institutions; to increase openness in international trade fora, including the WTO, by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and to increase timely public access to notifications made by WTO member states and the supporting documents.

Anti-corruption: to obtain high standards and appropriate enforcement mechanisms applicable to persons from all countries participating in a trade agreement that prohibit attempts to influence acts, decisions, or omissions of foreign government; and to ensure that such standards do not place U.S. persons at a competitive disadvantage in international trade.

Improvement of the WTO and multilateral trade agreements: to achieve full implementation and extend the coverage of the WTO and such agreements to products, sectors, and conditions of trade not adequately covered; and to expand country participation in and enhancement of the Information Technology Agreement (ITA) and other trade agreements.

Regulatory practices: to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations; to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence; to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

Electronic commerce: to ensure that current obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce; to ensure that electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and the classification of such goods and services ensures the most liberal trade treatment possible; to ensure that governments refrain from implementing trade-related measures that impede electronic commerce; where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and to extend the moratorium of the WTO on duties on electronic transmissions.

Agriculture: to ensure that the U.S. trade negotiators duly recognize the importance of agricultural issues; to obtain competitive market opportunities for U.S. exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in U.S. markets and to achieve fairer and more open conditions of trade; to reduce or eliminate trade distorting subsidies; to impose disciplines on the operations of state-trading enterprises or similar administrative mechanisms; to eliminate unjustified restrictions on products derived from biotechnology; to eliminate sanitary or phytosanitary restrictions that contravene the Uruguay Round Agreement as they are not based on scientific principles and to improve import relief mechanisms to accommodate the unique aspects of perishable and cyclical agriculture.

Labor and the environment: to ensure that a party does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party; to recognize that a party to a trade agreement is effectively enforcing its laws if a course of inaction or inaction reflects a reasonable exercise of discretion or results from a bona fide decision regarding allocation of resources and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection; to strengthen the capacity of U.S. trading partners to promote respect for core labor standards and to protect the environment through the promotion of sustainable development; to reduce or eliminate government practices or policies that unduly threaten sustainable development; to seek market access for U.S. environmental technologies, goods, and services; and to ensure that labor, environmental, health, or safety policies and practices of parties to trade agreements do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Dispute settlement and enforcement: to seek provisions in trade agreements providing for resolution of disputes between governments in an effective, timely, transparent, equitable, and reasoned manner requiring determinations based on facts and the principles of the agreement, with the goal of increasing compliance; seek to strengthen the capacity of the WTO Trade Policy Review Mechanism to review compliance; seek provisions encouraging the early identification and settlement of disputes through consultations; seek provisions encouraging trade-expanding compensation; seek provisions to impose a penalty that encourages compliance, is appropriate to the parties, nature, subject matter, and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and seek provisions that treat U.S. principal negotiating objectives equally with respect to ability to resort to dispute settlement and availability of equivalent procedures and remedies.

Extended WTO negotiations: concerning extended WTO negotiations on financial services, civil aircraft, and rules of origin.

Senate amendment

The Senate Amendment is substantially similar to the House Amendment, with the exception of several key provisions:

Small Business: The Senate Amendment contains an overall negotiating objective "to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses."

Trade in Motor Vehicles and Parts: The Senate Amendment contains a principal negotiating objective on expanding competitive opportunities for exports of U.S. motor vehicles and parts.

Foreign Investment: The Senate Amendment states as an objective of the United States in the context of investor-state dispute settlement "ensuring that foreign investors in the United States are not accorded greater rights than United States investors in the United States." The Senate Amendment's objective with respect to investor-state dispute settlement also differs from the House Amendment in the following respects:

It sets as an objective "seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process."

It sets deterrence of the filing of frivolous claims as an objective, in addition to the prompt elimination of frivolous claims.

The Senate Amendment seeks to establish "procedures to enhance opportunities for public input into the formulation of government positions."

The Senate Amendment seeks to establish a single appellate body to review decisions by arbitration panels in investor-state dispute settlement cases. Also, unlike the House Amendment, the Senate Amendment does not prescribe a standard of review for an eventual appellate body.

Intellectual Property: The Senate Amendment contains an objective to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.

Trade in Agriculture: The Senate Amendment's negotiating objective on export subsidies differs from the House Amendment, stating that an objective of the United States is "seeking to eliminate all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving U.S. agriculture development and export credit programs that allow the U.S. to compete with other foreign export promotion efforts." The Senate Amendment also provides that it is a negotiating objective of the United States to "strive to complete a general multilateral round in the WTO by January 1, 2005, and seek the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on US import-sensitive commodities (including those subject to tariff-rate quotas)."

Human Rights and Democracy : The Senate Amendment contains a negotiating objective "to obtain provisions in trade agreements that require parties to those agreements to strive to protect internationally recognized civil, political, and human rights."

Dispute Settlement: The Senate Amendment contains a negotiating objective absent in the House Amendment "to seek improved adherence by panels convened under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes and by the WTO Appellate Body to the standard of review applicable under the WTO Agreement involved in the dispute, including greater deference, where appropriate, to the fact finding and technical expertise of national investigating authorities."

Border Taxes: The Senate Amendment contains an objective absent from the House Amendment on border taxes. The objective seeks "to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes." The objective is addressed to a decision by the WTO Dispute Settlement Body holding the foreign sales corporation provisions of the Internal Revenue Code to be inconsistent with WTO rules.

Textiles: The Senate Amendment contains an extensive objective on opening foreign markets to U.S. textile exports. There is no similar provision in the House Amendment.

Worst Forms of Child Labor: The Senate Amendment contains a negotiating objective to prevent distortions in the conduct of international trade caused by the use of the worst forms of child labor and to redress unfair and illegitimate competition based upon the use of the worst forms of child labor.

Conference agreement

The Senate recedes to the House with several modifications. With respect to the overall negotiating objectives, the Conferees agree to the overall negotiating objective regarding small business in section 2101-(a)(8) of the Senate amendment. Second, the Conferees agree to an overall negotiating objective to promote universal compliance with ILO Declaration 182 concerning the worst forms of child labor.

With respect to the principal negotiating objectives, the Conferees agree to expand the negotiating objective on intellectual property to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the WTO at Doha (section 2102(b)(4)(c) of the Senate amendment).

With respect to the principal negotiating objectives regarding foreign investment, the Conferees believe that it is a priority for negotiators to seek agreements protecting the rights of U.S. investors abroad and ensuring the existence of a neutral investor-state dispute settlement mechanism. At the same time, these protections must be balanced so that they do not come at the expense of making Federal, State and local laws and regulations more vulnerable to successful challenges by foreign investors than by similarly situated U.S. investors.

No Greater Rights: The House recedes to the Senate with a technical modification to clarify that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States. That is, the reciprocal obligations regarding investment protections that the United States undertakes in pursuing its goals should not result in foreign investors being entitled to compensation for government actions where a similarly situated U.S. investor would not be entitled to any form of relief, while ensuring that U.S. investors abroad can challenge host government measures which violate the terms of the investment agreement. Thus, this language expresses Congress' direction that the substantive investment protections (e.g., expropriation, fair and equitable treatment, and full protection and security) should be consistent with United States legal principles and practice and not provide greater rights to foreign investors in the United States.

This language applies to substantive protections only and is not applicable to procedural issues, such as access to investor-state dispute settlement. The Conferees recognize that the procedures for resolving disputes between a foreign investor and a government may differ from the procedures for resolving disputes between a domestic investor and a government and may be available at different times during the dispute. Thus, the "no greater rights" direction does not, for instance, apply to such issues as the dismissal of frivolous claims, the exhaustion of remedies, access to appellate procedures, or other similar issues.

The Conferees also agree that negotiators should seek to provide for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements.

With respect to the principal negotiating objective on agriculture, the Conferees agree to section 2102(b)(10)(A)(iii) and (xv) of the House amendment, in lieu of section 2102(b)(10)(A)(iii) of the Senate amendment. The Conferees also accept section 2102(b)(10)(A)(xvi) of the Senate amendment on the timing and sequence of WTO agriculture negotiations relative to other negotiations.

The Conferees agree to section 2102(b)(13)(C) of the Senate amendment, relating to dispute settlement in dumping, subsidy, and safeguard cases, as modified, to seek adherence by WTO panels to the applicable standard of review.

The Conferees recognize the importance of preserving the ability of the United States to enforce rigorously its trade remedy laws, including the antidumping, countervailing duty and safeguard laws. Because this issue is significant to many Members of Congress in both the House and Senate, the Conferees have made this priority a principal negotiating objective. Negotiators must also avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, as well as domestic and international safeguard provisions. In addition, section 2102(b)(14)(B) directs the President to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

The Conferees agree to section 2012(b)(14) of the Senate amendment stating that the United States should seek a revision of WTO rules on the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes. The Conferees agree that such a revision of WTO rules is one among other options for the United States, including domestic legislation, to redress such a disadvantage.

The Conferees agree to include as a principal negotiating objective to obtain competitive market opportunities for U.S. exports of textiles substantially equivalent to those for foreign textiles in the United States.

The Conferees agree to a principal negotiating objective concerning the worst forms of child labor, to seek commitments by trade agreement parties to vigorously enforce their own laws prohibiting the worst forms of child labor.

SEC. 2102(C)—PROMOTION OF CERTAIN PRIORITIES

Present/expired law

No provision.

House amendment

Section 2102(c) of the House amendment to H.R. 3009 sets forth certain priorities for the President to address. These provisions include seeking greater cooperation between WTO and the ILO; seeking to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to promote respect for core labor standards, seeking to seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to develop and implement standards for environment and human health based on sound science; conducting environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 and its relevant guidelines; reviewing the impact of future trade agreements on U.S. employment, modeled after Executive Order 13141; taking into account, in negotiating trade agreements, protection of legitimate health or safety, essential security, and consumer interests; requiring the Secretary of Labor to consult with foreign parties to trade negotiations as to their labor laws and providing technical assistance where needed; reporting to Congress on the extent to which parties to an agreement have in effect laws governing exploitative child labor; preserving the ability of the United States to enforce rigorously its trade laws, including antidumping and countervailing duty laws, and avoiding agreements which lessen their effectiveness; ensuring that U.S. exports are not subject to the abusive use of trade laws, including antidumping and countervailing duty laws, by other countries; continuing to promote consideration of Multilateral Environmental Agreements (MEAs) and consulting with parties to such agreements regarding the consistency of any MEA that includes trade measures with existing environmental exceptions under Article XX of the GATT.

In addition, USTR, twelve months after the imposition of a penalty or remedy by the United States permitted by an agreement to which this Act applies, is to report to the Committee on the effectiveness of remedies applied under U.S. law to enforce U.S. rights under trade agreements. USTR shall address whether the remedy was effective in changing the behavior of the targeted party and whether the remedy had any adverse impact on parties or interests not party to the dispute.

Finally, section 2102(c) would direct the President to seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

Senate amendment

With several notable exceptions, the priorities set forth in section 2102(c) of the Senate Amendment are identical to the priorities set forth in the House Amendment. The exceptions are:

With respect to the study that the President must perform on the impact of future trade agreements on employment, the Senate Amendment requires the President to examine particular criteria, as follows: the impact on job security, the level of compensation of new jobs and existing jobs, the displacement of employment, and the regional distribution of employment, utilizing experience from previous trade agreements and alternative models of employment analysis. The Senate Amendment also requires that the report be made available to the public.

The Senate Amendment requires that, in connection with new trade agreement negotiations, the President shall "submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating."

The Senate Amendment adds to the House Amendment priority on preserving the ability of the United States to enforce vigorously its trade laws, by including U.S. "safeguards" law in the list of laws at issue. This is the U.S. law authorizing the President to provide relief to parties seriously injured or threatened with serious injury due to surges of imports. The priority in the Senate Amendment also directs the President to remedy certain market distorting measures that underlie unfair trade practices.

Cconference agreement

The Senate recedes to the House amendment with several modifications. With respect to the worst forms of child labor, the Conferees agree to expand section 2102(c)(2) of the House amendment to include the worst forms of child labor within requirement to seek to establish consultative mechanisms to strengthen the capacity of U.S. trading partners to promote respect for core labor standards.

The Conferees agree to modify section 2105(c)(5) of the House amendment to require the President to report on impact of future trade agreements on US employment, including on labor markets, modeled after E.O. 13141 to the extent appropriate in establishing procedures and criteria, and to make the report public.

With respect to the labor rights report in section 2102(c)(8) of both bills, the Conferees agree to the Senate provision. Furthermore, the Conferees agree to section 2107(b)(2)(E) of the Senate amendment to require that guidelines for the Congressional Oversight Group include the time frame for submitting this report.

SEC. 2102(D)—CONSULTATIONS, ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS

Present/expired law

No provision.

House amendment

Section 2102(d) of the House amendment to H.R. 3009 requires that USTR consult closely and on a timely basis with the Congressional Oversight Group appointed under section 2107. In addition, USTR would be required to consult closely (including immediately before the initialing of an agreement) with the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974, as well as the House Committee on Ways and Means, the Senate Committee on Finance, and the Congressional Oversight Group. With regard to negotiations concerning agriculture trade, USTR would also be required to consult with the House and Senate Committees on Agriculture.

In determining whether to enter into negotiations with a particular country, section 2102(e) would require the President to take into account whether that country has implemented its obligations under the Uruguay Round Agreements.

Senate amendment

Section 2102(d) of the Senate amendment is identical to the House provision in the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2103—TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent ad valorem, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

Staging authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

Negotiation of bilateral agreements. Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

The foreign country must request the negotiation of the bilateral agreement;

The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and

The President must provide written notice of the negotiations to the Committee on Ways and Means and the Committee on Finance of the Senate and consult with these committees.

The negotiations could proceed unless either Committee disapproved the negotiations within 60 days prior to the 90 calendar days advance notice required of entry into an agreement (described below).

Negotiation of multilateral non-tariff agreements. With respect to multilateral agreements, section 1102(b) of the 1988 Act provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

Provisions qualifying for fast track procedures. Section 1103(b)(1)(A) of the 1988 Act provided that fast track apply to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

Time period. The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to April 15, 1994, to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

House amendment

Section 2103 of the House amendment provides:

Proclamation authority. Section 2103(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent ad valorem, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent ad valorem could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress.

In addition, section 2103(a) would not allow the use of tariff proclamation authority on import sensitive agriculture.

Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

Agreements on tariff and non-tariff barriers. Section 2103(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

Conditions. Section 2103(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2102(a) and (b) and the President satisfies the consultation requirements set forth in section 2104.

Bills qualifying for trade authorities procedures. Section 2103(b)(3)(A) would provide that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

Provisions approving the trade agreement and statement of administrative action; and

Provisions necessary or appropriate to implement the trade agreement.

Time period. Sections 2103(a)(1)(A) and 2103(b)(1)(C) would extend trade promotion authority to agreements entered into before June 1, 2005. An extension until June 1, 2007, would be permitted unless Congress passed a disapproval resolution, as described under section 2103(c).

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences, as follows:

The Senate Amendment limits the President's proclamation authority with respect to "import sensitive agricultural products," a term defined in section 2113(5) of the Senate Amendment. This limitation differs from the limitation in the House Amendment, inasmuch as it includes certain products subject to tariff rate quotas.

The Senate Amendment contains a provision making a trade agreement implementing bill ineligible for "fast track" procedures if the bill modifies, amends, or requires modification or amendment to certain trade remedy laws. A bill that does modify, amend or require modification or amendment to those laws is subject to a point of order in the Senate, which may be waived by a majority vote.

The Senate Amendment requires the U.S. International Trade Commission to submit a report to Congress on negotiations during the initial period for which the President is granted trade promotion authority. This report would be made in connection with a request by the President to have such authority extended.

Conference agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to the new definition of import sensitive agriculture in section 2103(a)(2)(B), 2104(b)(2)(A)(i), and 2113(5) of the Senate amendment to encompass products subject to tariff rate quotas, as well as products subject to the lowest tariff reduction in the Uruguay Round.

The Conferees agree to section 2103(c)(3)(B) of the Senate amendment, which requires the ITC to submit a report to Congress by May 1, 2005 (if the President seeks extension of TPA until June 2, 2007) analyzing the economic impact on the United States of all trade agreements implemented between enactment and the extension request.

SEC. 2104—CONSULTATIONS AND ASSESSMENT

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agreement. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

House amendment

Section 2104 of the House amendment to H.R. 3009 would establish a number of requirements that the President consult with Congress. Specifically, section 2104(a)(1) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Section 2104(a)(c) also provides that the President shall meet with the Congressional Oversight Group established under section 2107 upon a request of a majority of its members. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

Section 2104(b)(1) would establish a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

Section 2104(b)(2) provides special consultations on import sensitive agriculture products. Specifically, before initiating negotiations on agriculture and as soon as practicable with respect to the Free Trade Area of the Americas and WTO negotiations, USTR is to identify import sensitive agriculture products and consult with the Committees on Ways & Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry in the Senate concerning whether any further tariff reduction should be appropriate, and whether the identified products face unjustified sanitary or phytosanitary barriers. USTR is also to request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the U.S. industry producing the product and on the U.S. economy as a whole. USTR is to then notify the Committees of those products for which it intends to seek tariff liberalization as well as the reasons. If USTR commences negotiations and then identifies additional import sensitive agriculture products, or a party to the negotiations requests tariff reductions on such a product, then USTR shall notify the Committees as soon as practicable of those products and the reasons for seeking tariff reductions.

Section 2104(c) would establish a special consultation requirement for textiles. Specifically, before initiating negotiations concerning tariff reductions in textiles and apparel, the President is to assess whether U.S. tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

In addition, section 2104(d) would require the President. before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in the House amendment to H.R. 3009 and all matters relating to implementation under section 2105, including the general effect of the agreement on U.S. laws.

Section 2104(e) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 2105(a)(1)(A).

Finally, section 2104(f) would require the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. That report would be due 90 days from the date after the President enters into the agreement.

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

Consultations on export subsidies and distorting policies. Section 2104(b)(2)(A)(ii)(III) requires consultations on whether nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers.

Consultations relating to fishing trade. Section 2104(b)(3) requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Special reporting requirements on U.S. trade remedy laws. Section 2104(d) provides that the President, at least 90 calendar days before the President enters into a trade agreement, shall notify the House Ways and Means Committee and the Senate Finance Committee in writing any amendments to U.S. antidumping and countervailing duty laws (title VII of the Tariff Act of 1930) or U.S. safeguard provisions (chapter 1 of title II of the Trade Act of 1974) that the President proposes to include in the implementing legislation. On the date that the President transmits the notification, the President must also transmit to the Committees a report explaining his reasons for believing that amendments to these trade remedy laws are necessary to implement the trade agreement and his reasons for believing that such amendments are consistent with the negotiating objective on this issue. Not later than 60 calendar days after the date on which the President transmits notification to the relevant committees, the Chairman and ranking members of the House Ways and Means Committee and the Senate Finance Committees shall issue reports stating whether the proposed amendments described in the President's notification are consistent with the negotiating objectives on trade laws.

Conference agreement

The Senate recedes to the House with several modifications. The Conferees agree to section 2104(b)(2)(A)(11)(III) of the Senate amendment, which requires consultations on whether other nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers. In addition, the Conferees agree to section 2104(b)(3) of the Senate amendment, which requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Finally, the Conferees agree to include the notification and report on changes to trade remedy laws in sections 2104(d)(3)(A) and (B) in the Senate amendment with modifications. Given the priority that Conferees attach to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the Conference agreement puts in place a process requiring special scrutiny of any impact that trade agreements may have on these laws. The process requires the President, at least 180 calendar days before the day on which he enters into a trade agreement, to report to the Committees on Ways and Means and the Committee on Finance the range of proposals advanced in trade negotiations and may be in the final agreement that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and how these proposals relate to the objectives described in section 2102(b)(14).

The Conference agreement also provides a mechanism for any Member in the House or Senate to introduce at any time after the President's report is issued a nonbinding resolution which states "that the ______ finds that the proposed changes to U.S. trade remedy laws contained in the report of the President transmitted to the Congress on ______ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to ______, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled in with either the "House of Representatives" or the "Senate", as the case may be, the second blank space filled in with the appropriate date of the report, and the third blank space being filled in with the name of the country or countries involved.

The resolution is referred to the Ways and Means and Rules Committees in the House and the Finance Committee in the Senate, and is privileged on the floor if it is reported by the Committees. The Conference agreement allows only one resolution (either a nonbinding resolution or a disapproval resolution) per agreement to be eligible for the trade promotion authority procedures contained in sections 152 (d) and (e) of the Trade Act of 1974. The one resolution quota is satisfied for the House only after the Ways and Means Committee reports a resolution, and for the Senate only after the Finance Committee reports a resolution.

The Conference agreement states that, with respect to agreements entered into with Chile and Singapore, the report referenced in section 2104(d)(3)(A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into a trade agreement with either country.

SEC. 2105—IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President was required to submit formally the draft agreement, implementing legislation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill—whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, "unofficial" or "informal" mark-up sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

House amendment

Under Section 2105 of the House amendment to H.R. 3009, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 2105(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

Section 2105(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress, which is defined as failing or refusing to consult in accordance with section 2104 or 2105, failing to develop or meet guidelines under section 2107(b), failure to meet with the Congressional Oversight Group, or the agreement fails to make progress in achieving the purposes, policies, priorities, and objectives of the Act. In a change from the expired law, such a resolution may be introduced by any Member of the House or Senate. Only one such privileged resolution would be permitted to be considered per trade agreement per Congress.

Most of the remaining provisions are identical to the expired law. Specifically, section 2105(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so, but with the new requirement that the submission be made on a date on which both Houses are in session. The procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House Committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days would be provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction, the bill could be developed by the Committees of jurisdiction together with the Administration during the informal Committee mark-up process.

Finally, as with the expired provision, section 2105(c) specifies that sections 2105(b) and 3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Senate amendment

The Senate Amendment is substantially similar to the House Bill, with the following exception:

Reporting requirements. Section 2105(a)(1)(A)(ii) requires the President to transmit to the House Ways and Means Committee and the Senate Finance Committee the notification and report described in section 2104(d)(3)(A) regarding changes to U.S. trade remedy laws.

Disclosure Requirements. Section 2105(a)(4) of the Senate bill specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body.

Senate Procedures. Section 2105(b)(1)(C)(i)(II) provides that any Member of the Senate may introduce a procedural disapproval resolution, and that that resolution will be referred to the Senate Finance Committee. Section 2105(b)(1)(C)(iv) provides that the Senate may not consider a disapproval resolution that has not been reported by the Senate Finance Committee.

Conference agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to section 2105(a)(4) of the Senate amendment, which specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body, the Conferees also agree to sections 2105(b)(1)(C)(i)(II) and (b)(1)(C)(iv) of the Senate amendment, which applies the same procedures for consideration of bills in the Senate as for the House.

Finally, the Conferees agree to section 2105(b)(2) of the Senate amendment with modifications, which requires the Secretary of Commerce, in consultation with the Secretaries of State and Treasury, the Attorney General, and the United States Trade Representative, to transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report prior to December 31, 2002.

SEC. 2106—TREATMENT OF CERTAIN TRADE AGREEMENTS

Present/expired law

No provision.

House amendment

Section 2106 of the House amendment to H.R. 3009 exempts agreements resulting from ongoing negotiations with Chile or Singapore, an agreement establishing a Free Trade Area of the Americas, and agreements concluded under the auspices of the WTO from prenegotiation consultation requirements of section 2104(a) only. However, upon enactment of H.R. 3009, the Administration is required to consult as to those elements set forth in section 2104(a) as soon as feasible.

Senate amendment

Section 2106 of the Senate amendment is substantially similar to the House bill.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2107—CONGRESSIONAL OVERSIGHT GROUP

Present/expired law

No provision.

House amendment

Section 2107 of the House amendment to H.R. 3009 would require the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Finance to chair and convene, sixty days after the effective date of this Act, the Congressional Oversight Group. The Group would be comprised of the following Members of the House: the Chairman and Ranking Member of the Committee on Ways and Means and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the House, jurisdiction over provisions of law affected by a trade negotiation. The Group would be comprised of the following Members of the Senate: the Chairman and Ranking Member of the Committee on Finance and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade negotiation.

Members are to be accredited as official advisors to the U.S. delegation in the negotiations. USTR is to develop guidelines to facilitate the useful and timely exchange of information between USTR and the Group, including regular briefings, access to pertinent documents, and the closest possible coordination at all critical periods during the negotiations, including at negotiation sites.

Finally, section 2107(c) provides that upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Group before initiating negotiations or at any other time concerning the negotiations.

Senate amendment

Section 2107 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2108—ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS

Present/expired law

No provision.

House amendment

Section 2108 of the House amendment to H.R. 3009 would require the President to submit to the Congress a plan for implementing and enforcing any trade agreement resulting from this Act. The report is to be submitted simultaneously with the text of the agreement and is to include a review of the Executive Branch personnel needed to enforce the agreement as well as an assessment of any U.S. Customs Service infrastructure improvements required. The range of personnel to be addressed in the report is very comprehensive, including U.S. Customs and Department of Agriculture border inspectors, and monitoring and implementing personnel at USTR, the Departments of Agriculture, Commerce, and the Treasury, and any other agencies as may be required.

Senate amendment

Section 2108 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2109—COMMITTEE STAFF

Present/expired law

No provision.

House amendment

Section 2109 of the House amendment to H.R. 3009 states that the grant of trade promotion authority is likely to increase the activities of the primary committees of jurisdiction and the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader Members of Congress in the formulation of U.S. trade policy and oversight of the U.S. trade agenda. The provision specifies that the primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

Senate amendment

Section 2109 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2111—REPORT ON THE IMPACT OF TRADE PROMOTION AUTHORITY

Present/expired law

No provision.

House amendment

No provision.

Senate amendment

Section 2111 requires the International Trade Commission, within one year following enactment of this Act, to issue a report regarding the economic impact of the following trade agreements: (1) The U.S.-Israel Free Trade Agreement; (2) the U.S.-Canada Free Trade Agreement; (3) the North American Free Trade Agreement (NAFTA); (4) The Uruguay Round Agreements, which established the World Trade Organization; and (5) The Tokyo Round of Multilateral Trade Negotiations.

Conference agreement

The House recedes to the Senate amendment.

SEC. 2112—SMALL BUSINESS

Present/expired law

No provision.

House amendment

No provision.

Senate amendment

WTO small business advocate. Section 2112(a) provides that the U.S. Trade Representative shall pursue identification of a small business advocate at the World Trade Organization Secretariat to examine the impact of WTO agreements on the interests of small businesses, address the concerns of small businesses, and recommend ways to address those interests in trade negotiations involving the WTO.

Assistant USTR responsible for small businesses. Section 2112(b) provides that the Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small businesses are considered in trade negotiations.

Conference agreement

The Senate recedes to the House amendment with a modification. The Conferees agree to section 2112(b) of the Senate amendment, which provides that the Assistant USTR for Industry and Telecommunications will be responsible for ensuring that the interests of small business are considered in trade negotiations.

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

SEC. 3101—SHORT TITLE

Present law

No provision.

House amendment

Section 3101 of H.R. 3009, as amended, provides that the Act may be cited as the "Andean Trade Promotion and Drug Eradication Act."

Senate amendment

Section 3101 provides that the Act may be cited as the "Andean Trade Preference Expansion Act."

Conference agreement

The Senate recedes.

SEC. 3102—FINDINGS

Present law

No provision.

House amendment

Section 1302 contains findings of Congress that:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counter narcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provide sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005 as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiaries countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

Senate amendment

Section 3101 is identical.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 3103—ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT

Articles (Except Apparel) Eligible for Preferential Treatment

Present law

The Andean Trade Preference Act (ATPA), enacted on December 4, 1991 as title II of Public Law 102-182, authorizes preferential trade benefits for the Andean nations of Bolivia, Colombia, Ecuador, and Peru, similar to those benefits granted to beneficiaries under the Caribbean Basin Initiative program. The ATPA authorizes the President to proclaim duty-free treatment for all eligible articles from Bolivia, Colombia, Ecuador, Peru. This authority applies only to normal column 1 rates of duty in the Harmonized Tariff Schedule of the United States (HTS); any additional duties imposed under U.S. unfair trade practice laws, such as the antidumping or countervailing duty laws, are not affected by this authority.

The ATPA contains a list of products that are ineligible for duty-free treatment. More specifically, ATPA duty-free treatment does not apply to textile and apparel articles that are subject to textile agreements; petroleum and petroleum products; footwear not eligible for duty-free treatment under the Generalized System of Preferences; certain watches and watch parts; certain leather products; and sugar, syrups and molasses subject to over-quota rates of duty.

House amendment

Section 3103 (a) amends the Andean Trade Preference Act to authorize the President to proclaim duty-free treatment for any of the following articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries:

(1) Footwear not designated at the time of the effective date of this Act as eligible for the purposes of the Generalized System of

Preferences under title V of the Trade Act of 1974;

(2) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(3) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(4) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that—(i) are the product of any beneficiary country; and (ii) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under title V of the Trade Act of 1974.

Under H.R. 3009, textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below. Imports of tuna, prepared or preserved in any manner, in airtight containers would receive immediate duty-free treatment.

Senate amendment

Section 3102 of the bill replaces the list of excluded products under section 204(b) of the current ATPA with a new provision that extends duty preferences to most of those products. The new preferences take the form of exceptions to the general rule that the excluded products are not eligible for duty-free treatment.

The enhanced preferences are made available to "ATPEA beneficiary countries." Paragraph (5) of section 204(b) of the ATPA as amended by the present bill defines ATPEA beneficiary countries as those countries previously designated by the President as "beneficiary countries" (i.e., Bolivia, Colombia, Ecuador, and Peru) which subsequently are designated by the President as "ATPEA beneficiary countries," based on the President's consideration of additional eligibility criteria.

In the event that the President did not designate a current "beneficiary country" as an "ATPEA beneficiary country," that country would remain eligible for ATPA benefits under the law as expired on December 4, 2001, but would not be eligible for the enhanced benefits provided under the present bill.

Footwear not eligible for duty-free treatment under GSP receives the same tariff treatment as like products from Mexico, except that duties on articles in particular tariff subheadings are to be reduced by 1/15 per year.

The Senate Amendment provides special treatment for rum and tafia, allowing them to receive the same tariff treatment as like products from Mexico. The bill also allows certain handbags, luggage, flat goods, work gloves, and leather wearing apparel to receive the same tariff treatment as like products from Mexico.

Under the bill, the President is authorized to proclaim duty-free treatment for tuna that is harvested by United States or ATPEA vessels, subject to a quantitative yearly cap of 20 percent of the domestic United States tuna pack in the preceding year.

Conference agreement

Senate recedes on the authority of President to proclaim duty-free treatment for particular articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries.

Textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below.

House recedes on the treatment of tuna with an amendment to: 1) retain U.S. or Andean flagged vessel rule of origin requirement in Senate amendment; 2) authorize the President to grant duty-free treatment for Andean exports of tuna packed in flexible (e.g., foil), airtight containers weighing with their contents not more than 6.8 kg each; and 3) update calculation of current MFN tariff-rate quota to be an amount based on 4.8 percent of apparent domestic consumption of tuna in airtight containers rather than domestic production.

Eligible Apparel Articles

Present law

Under the ATPA, apparel articles are on the list of products excluded from eligibility for duty-free treatment.

House amendment

Under Section 3103, the President may proclaim duty-free and quota-free treatment for apparel articles sewn or otherwise assembled in one or more beneficiary countries exclusively from any one or any combination of the following:

(1) Fabrics or fabric components formed, or components knit-to-shape, in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States).

(2) Fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more beneficiary countries) are in chief weight of llama, or alpaca.

(3) Fabrics or yarn not produced in the United States or in the region, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA (short supply provisions). Any interested party may request the President to consider such treatment for additional fabrics and yarns on the basis that they cannot be supplied by the domestic industry in commercial quantities in a timely manner, and the President must make a determination within 60 calendar days of receiving the request from the interested party.

(4) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics or fabric components formed or components knit-to-shape, in one or more beneficiary countries, from yarns formed in the United States or in one or more beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape in the United States described in paragraph 1. Imports of apparel made from regional fabric and regional yarn would be capped at 3% of U.S. imports growing to 6% of U.S. imports in 2006, measured in square meter equivalents.

Senate amendment

Paragraph (2) of section 204(b) of the ATPA as amended by section 3102 of the present bill extends duty-free treatment to certain textile and apparel articles from ATPEA beneficiary countries. The provision divides articles eligible for this treatment into several different categories and limits duty-free treatment to a period defined as the transition period." The transition period is defined in paragraph (5) of section 204(b) of the ATPA as amended to be the period from enactment of the present bill through the earlier of February 28, 2006 or establishment of a FTAA.

In general, the different categories of textile and apparel articles eligible for duty free treatment are defined according to the origin of the yarn and fabric from which the articles are made. Under the first category, apparel sewn or otherwise assembled in one or more ATPEA beneficiary countries is eligible for duty-free treatment if it is made exclusively from one or a combination of several sub-categories of components, as follows:

(1) United States fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in the United States;

(2) A combination of both United States and ATPEA beneficiary country components knit-to-shape from yarns wholly formed in the United States;

(3) ATPEA beneficiary country fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in one or more ATPEA beneficiary countries, if the constituent fibers are primarily llama or alpaca hair; and

(4) Fabrics or yarns, regardless of origin, if such fabrics or yarns have been deemed, under the North American Free Trade Agreement, not to be widely available in commercial quantities in the United States. A separate provision of section 204(b) of the ATPA as amended by the present bill sets forth a process for interested parties to petition the President for inclusion of additional yarns and fabrics in the "short supply" list. This process includes obtaining advice from the United States International Trade Commission and industry advisory groups, and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

A second category of apparel articles eligible for duty-free treatment is apparel articles knit-to-shape (except socks) in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. To qualify under this category, the entire article must be knit-to-shape—as opposed to being assembled from components that are themselves knit-to-shape.

A third category of apparel articles eligible for duty-free treatment is apparel articles wholly assembled in one or more ATPEA beneficiary countries from fabric or fabric components knit, or components knit-to-shape in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. The quantity of apparel eligible for this benefit is subject to an annual cap. The cap is set at 70 million square meter equivalents for the one-year period beginning March 1, 2002. The cap will increase by 16 percent, compounded annually, in each succeeding one-year period, through February 28, 2006.

Thus, the cap applied to this category in each year following enactment will be as follows:

70 million square meter equivalents (SME) in the year beginning March 1, 2002;

81.2 million SME in the year beginning March 1, 2003;

94.19 million SME in the year beginning March 1, 2004; and

109.26 million SME in the year beginning March 1, 2005.

A separate provision makes clear that goods otherwise qualifying under the latter category will not be disqualified if they happen to contain United States fabric made from United States yarn.

A fourth category of apparel eligible for duty-free treatment under the Senate bill is brassieres that are cut or sewn, or otherwise assembled, in one or more ATPEA beneficiary countries, or in such countries and the United States. This separate category requires that, in the aggregate, brassieres manufactured by a given producer claiming duty-free treatment for such products contain certain quantities of United States fabric.

A fifth category of textile and apparel eligible for duty-free treatment is handloomed, handmade, and folklore articles.

A final category of textile and apparel goods eligible for duty-free treatment is textile luggage assembled in an ATPEA beneficiary country from fabric and yarns formed in the United States.

In addition to the foregoing categories, the bill sets forth special rules for determining whether particular textile and apparel articles qualify for duty-free treatment.

Conference agreement

In general the conferees agreed to follow the House amendment on apparel provisions with the exception that the House receded to the Senate on the treatment of textile luggage. With respect to category 2 in the House bill relating to fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more beneficiary countries, if such fabrics are in chief weight of llama, or alpaca, conferees agreed to include vicuna and calculate product eligibility based on chief value instead of chief weight. Also, conferees agreed to cap imports of apparel made from regional fabric and regional yarn (category 4 in the House bill) at 2% of U.S. imports growing to 5% of U.S. imports in 2006, measured in square meter equivalents.

It is the intention of the conferees that in cases where fabrics or yarns determined by the President to be in short supply impart the essential character to an article, the remaining textile components may be constructed of fabrics or yarns regardless of origin, as in Annex 401 of the NAFTA. In cases where the fabrics or yarns determined by the President to be in short supply do not impart the essential character of the article, the article shall not be ineligible for preferential treatment under this Act because the article contains the short supply fabric or yarn.

Special Origin Rule for Nylon Filament Yarn

House amendment

No provision.

Senate amendment

Articles otherwise eligible for duty-free treatment and quota free treatment under the bill are not ineligible because they contain certain nylon filament yarn (other than elastomeric yarn) from a country that had an FTA with the U.S. in force prior to January 1, 1995.

Conference agreement

House recedes.

Dyeing, Finishing and Printing Requirement

House amendment

New requirement that apparel made of U.S. knit or woven fabric assembled in CBTPA country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States. Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States.

Senate Provision

No provision.

Conference agreement

Senate recedes.

Penalties for Transshipment

Present Law

The Tariff Act of 1930, as amended, provides for civil monetary penalties for unlawful transshipment. These include penalties under 19 U.S.C. 1592 for up to a maximum of the domestic value of the imported merchandise or eight times the loss of revenue, as well as denial of entry, redelivery or liquidated damages for failure to redeliver the merchandise determined to be inaccurately represented. In addition, an importer may be liable for criminal penalties, including imprisonment for up to five years, under section 1001 of title 18 of the United States Code for making false statements on import documentation.

Under the North American Free Trade Agreement (NAFTA), Parties to the Agreement must observe Customs procedures and documentation requirements, which are established in Chapter 5 of NAFTA. Requirements regarding Certificates of Origin for imports receiving preferential tariffs are detailed in Article 502.1 of NAFTA.

House amendment

Section 3103 requires that importers comply with requirements similar in all material respects to the requirements regarding Certificates of Origin contained in Article 502.1 of the North American Free Trade Agreement (NAFTA) for a similar importation from Mexico.

In addition, if an exporter is determined under the laws of the United States to have engaged in illegal transshipment of apparel products from an Andean country, then the President shall deny all benefits under the bill to such exporter, and to any successors of such exporter, for a period of two years.

In cases where the President has requested a beneficiary country to take action to prevent transshipment and the country has failed to do so, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from that country by three times the quantity of articles transshipped, to the extent that such action is consistent with World Trade Organization (WTO) rules.

Senate amendment

In amending section 204(b) of the ATPA, section 3102 of the present bill provides special penalties for transshipment of textile and apparel articles from an ATPEA beneficiary country. Transshipment is defined as claiming duty-free treatment for textile and apparel imports on the basis of materially false information. An exporter found to have engaged in such transshipment (or a successor of such exporter) shall be denied all benefits under the ATPA for a period of two years.

The bill further provides penalties for an ATPEA beneficiary country that fails to cooperate with the United States in efforts to prevent transshipment. Where textile and apparel articles from such country are subject to quotas on importation into the United States consistent with WTO rules, the President must reduce the quantity of such articles that may be imported into the United States by three times the quantity of transshipped articles, to the extent consistent with WTO rules.

Conference agreement

Conference agreement follows House and Senate bill.

Import Relief Actions

Present law

The import relief procedures and authorities under sections 201–204 of the Trade Act of 1974 apply to imports from ATPA beneficiary countries, as they do to imports from other countries. If ATPA imports cause serious injury, or threat of such injury, to the domestic industry producing a like or directly competitive article, section 204(d) of the ATPA authorizes the President to suspend ATPA duty-free treatment and proclaim a rate of duty or other relief measures.

Under NAFTA, the United States may invoke a special safeguard provision at any time during the tariff phase-out period if a NAFTA-origin textile or apparel good is being imported in such increased quantities and under such conditions as to cause "serious damage, or actual threat thereof," to a domestic industry producing a like or directly competitive good. The President is authorized to either suspend further duty reductions or increase the rate of duty to the NTR rate for up to three years.

House amendment

Under Section 3103 normal safeguard authorities under ATPA would apply to imports of all products except textiles and apparel. A NAFTA equivalent safeguard authorities would apply to imports of apparel products from ATPA countries, except that, United States, if it applied a safeguard action, would not be obligated to provide equivalent trade liberalizing compensation to the exporting country.

Senate amendment

The bill establishes similar textile and apparel safeguard provisions based on the NAFTA textile and apparel safeguard provision.

Conference agreement

Conference Agreement follows House and Senate bill.

Designation Criteria

Present law

In determining whether to designate any country as an ATPA beneficiary country, the President must take into account seven mandatory and 12 discretionary criteria, which are listed in section 203 of the ATPA.

Under Section 203 of the ATPA, the President shall not designate any country a ATPA beneficiary country if:

(1) the country is a Communist country;

(2) the country has nationalized, expropriated, imposed taxes or other exactions or otherwise seized ownership or control of U.S. property (including intellectual property), unless he determines that prompt, adequate, and effective compensation has been or is being made, or good faith negotiations to provide such compensation are in progress, or the country is otherwise taking steps to discharge its international obligations, or a dispute over compensation has been submitted to arbitration;

(3) the country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens;

(4) the country affords "reverse" preferences to developed countries and whether such treatment has or is likely to have a significant adverse effect on U.S. commerce;

(5) a government-owned entity in the country engages in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent or the country fails to work toward the provision of adequate and effective intellectual property rights;

(6) the country is not a signatory to an agreement regarding the extradition of U.S. citizens,

(7) if the country has not or is not taking steps to afford internationally recognized worker rights to workers in the country;

In determining whether to designate a country as eligible for ATPA benefits, the President shall take into account (discretionary criteria):

(1) an expression by the country of its desire to be designated;

(2) the economic conditions in the country, its living standards, and any other appropriate economic factors;

(3) the extent to which the country has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources;

(4) the degree to which the country follows accepted rules of international trade under the World Trade Organization;

(5) the degree to which the country uses export subsidies or imposes export performance or local content requirements which distort international trade;

(6) the degree to which the trade policies of the country are contributing to the revitalization of the region;

(7) the degree to which the country is undertaking self-help measures to protect its own economic development;

(8) whether or not the country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized workers rights;

(9) the extent to which the country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive intellectual property rights;

(10) the extent to which the country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria of the Foreign Assistance Act of 1961 for eligibility for U.S. assistance; and

(12) the extent to which the country is prepared to cooperate with the United States in the administration of the Act.

Under the ATPA the President is prohibited from designating a country a beneficiary country if any of criteria (1)-(7) apply to that country, subject to waiver if the President determines that country designation will be in the U.S. national economic or security interest. The waiver does not apply to criteria (4) and (6). Under the ATPA criteria on (7) is included as both mandatory and discretionary.

The President may withdraw or suspend beneficiary country status or duty-free treatment on any article if he determines the country should be barred from designation as a result of changed circumstances. The President must submit a triennial report to the Congress on the operation of the program. The report shall include any evidence that the crop eradication and crop substitution efforts of the beneficiary country are directly related to the effects of the legislation

House amendment

The House amendment provides that the President, in designating a country as eligible for the enhanced ATPDEA benefits, shall take into account the existing eligibility criteria established under ATPA described above, as well as other appropriate criteria, including: whether a country has demonstrated a commitment to undertake its WTO obligations and participate in negotiations toward the completion of the FTAA or comparable trade agreement; the extent to which the country provides intellectual property protection consistent with or greater than that afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights; the extent to which the country provides internationally recognized worker fights; whether the country has implemented its commitments to eliminate the worst forms of child labor; the extent to which a country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and the extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement equivalent to those included in the WTO Agreement on Government Procurement and otherwise contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

Senate amendment

Section 3102(5) contains identical provisions.

Conference agreement

Conference Agreement follows the House and Senate amendments. In evaluating a potential beneficiary's compliance with its WTO obligations, the conferees expect the President to take into account the extent to which the country follows the rules on customs valuation set forth in the WTO Customs Valuation Agreement. With respect to intellectual property protection, it is the Conferees intent that the President will also take into account the extent to which potential beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protections provided to the United States in bilateral intellectual property agreements.

Since April 1995, Colombia has applied a variable import duty system, known as the "price band" system, on fourteen basic agriculture products such as wheat, corn, and soybean oil. An additional 147 commodities, considered substitutes or related products, are subject to the price band system which establishes ceiling, floor, and reference prices on imports. The Conferees's view is that the price band system is non-transparent and easily manipulated as a protectionist device. In early 2000, the United States reached agreement with Colombia in the WTO that Colombia would delink wet pet food, the only finished product in this system, from the price band system. In implementing the eligibility criteria relating to market access and implementation of WTO commitments, it is the Conferees intent that USTR insist that Colombia implement its WTO commitment to remove pet food from the price band tariff system and to apply the 20% common external tariff to imported pet food.

With respect to whether beneficiary countries are following established WTO rules, the Conferees believe it is important for Andean goveniments to provide transparent and non-discriminatory regulatory procedures. Unfortunately, the Conferees know of instances where regulatory policies in Andean countries are opaque, unpredictable, and arbitrarily applied. As such, it is the Conferees's view that Andean countries that seek trade benefits should adopt, implement, and apply transparent and non-discriminatory regulatory procedures. The development of such procedures would help create regulatory stability in the Andean region and thus provide mere certainty to U.S. companies that would like to invest in these countries.

Determination Regarding Retention of Designation

Present law

Under Section 203(e) of the ATPA, the President may withdraw or suspend a country's beneficiary country designation, or withdraw, suspend, or limit the application of duty-free treatment to particular articles of a beneficiary country, due to changed circumstances.

House amendment

Section 3102(b) amends section 203(e) of the ATPA to provide that President may withdraw or suspend ATPA designation, or withdraw, suspend or limit benefits if a country's performance under eligibility criteria are no longer satisfactory.

Senate amendment

Identical.

Conference agreement

Conference agreement follows the House amendment and Senate amendment.

Reporting Requirements

Present law

Provides tor: 1) an annual report by the International Trade Commission on the economic impact of the bill and; 2) an annual report by the Secretary of Labor on the impact of the bill with respect to U.S. labor. Also under present law, USTR is required to report triannually on operation of the program.

House amendment

Retains current law on reports.

Senate amendment

Senate bill requires same ITC and Labor reports as well as an annual report by the Customs Service on compliance and anti-circumvention on the part of beneficiary countries in the area of textile and apparel trade. It also requires USTR to report biannually on operation of the program.

Conference agreement

House recedes.

Petitions for Review

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 3102(e) of the bill directs the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA. Such regulations are to be similar to regulations governing the Generalized System of Preferences petition process.

Conference agreement

House recedes.

SECTION 3104—TERMINATION OF DUTY-FREE TREATMENT

Present law

Duty-free treatment under the ATPA expires on December 4, 2001.

House amendment

Duty-free treatment terminates under the Act on December 31, 2006.

Senate amendment

Section 3103 of the bill amends section 208(b) of the ATPA to provide for a termination date of February 28, 2006. Basic ATPA benefits apply retroactively to December 4, 2001.

Conference agreement

House recedes on retroactivity for basic ATPA benefits; Senate recedes on termination.

SECTION 3106—TRADE BENEFITS UNDER THE CARIBBEAN BASIN TRADE PARTNERSHIP ACT (CBTPA) AND THE AFRICA GROWTH AND OPPORTUNITY ACT (AGOA)

Knit-to-shape Apparel

Present law

Draft regulations issued by Customs to implement P.L. 106–200 stipulate that knit to-shape garments, because technically they do not go through the fabric stage, are not eligible for trade benefits under the act.

House amendment

Sec. 3106 and 3107 of the House bill amends AGOA and CBTPA to clarify that preferential treatment is provided to knit-to-shape apparel articles assembled in beneficiary countries.

Senate amendment

No provision.

Conference agreement

Senate recedes.

Present law

Draft regulations issued by Customs to implement P.L. 106–200 deny preferential access to garments that are cut both in the United States and beneficiary countries, on the rationale that the legislation does not specifically list this variation in processing (the so called "hybrid cutting problem").

House amendment

Sec. 3107 of H.R. 3009 adds new rules in CBTPA and AGOA to provide preferential treatment for apparel articles that are cut both in the United States and beneficiary countries.

Senate amendment

No provision.

Conference agreement

Senate recedes

CBI Knit Cap

Present law

P.L. 106–200 extended duty-free benefits to knit apparel made in CBI countries from regional fabric made with U.S. yarn and to knit-to-shape apparel (except socks), up to a cap of 250,000,000 square meter equivalents (SMEs), with a growth rate of 16% per year for first 3 years.

House amendment

Sec. 3106 of H.R. 2009 would raise this cap to the following amounts: 250,000,000 SMEs for the 1-year period beginning October 1, 2001; 500,000,000 SMEs for the 1-year period beginning on October 1, 2002; 850,000,000 SMEs for the 1-year period beginning on October 1, 2003; 970,000,000 SMEs in each succeeding 1-year period through September 30, 2009.

Senate amendment

No provision.

Conference agreement

Senate recedes.

CBI T-shirt cap

Present law

P.L. 106–200 extends benefits for an additional category of CBI regional knit apparel products (*T-shirts*) up to a cap of 4.2 million dozen, growing 16% per year for the first 3 years.

House amendment

Section 3106 of H.R. 3006 would raise this cap to the following amounts: 4,200,000 dozen during the 1-year period beginning October 1, 2001; 9,000,000 dozen for the 1-year period beginning on October 1, 2002; 10,000,000 dozen for the 1-year period beginning on October 1, 2003; 12,000,000 dozen in each succeeding 1-year period through September 30, 2009.

Senate amendment

No provision.

Conference agreement

Senate recedes.

Present law

Section 112(b)(3) of the AGOA provides preferential treatment for apparel made in beneficiary sub-Saharan African countries from "regional" fabric (i.e., fabric formed in one or more beneficiary countries) from yarn originating either in the United States or one or more such countries. Section 112(b)(3)(B) establishes a special rule for lesser developed beneficiary sub-Saharan African countries, which provides preferential treatment, through September 30, 2004, for apparel wholly assembled in one or more such countries regardless of the origin of the fabric used to make the articles. Section 112(b)(3)(A) establishes a quantitative limit or "cap" on the amount of apparel that may be imported under section 112(b)(3) or section 112(b)(3)(B). This "cap" is 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States for the year that began October 1, 2000, and increases in equal increments to 3.5 percent for the year beginning October 1, 2007.

House amendment

Section 3107 would clarify that apparel wholly assembled in one or more beneficiary sub-Saharan African countries from components knit-to-shape in one or more such countries from U.S. or regional yarn is eligible for preferential treatment under section 112(b)(3) of AGOA. Similarly, Section 5 would clarify that apparel knit-to-shape and wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries is eligible for preferential treatment, regardless of the origin of the yarn used to make such articles. The House amendment also would increase the "cap" by changing the applicable percentages from 1.5 percent to 3 percent in the year that began October 1, 2000, and from 3.5 percent to 7 percent in the year beginning October 1, 2007.

Senate amendment

No provision.

Conference agreement

Conference agreement follows House Amendment accept the increase in the cap is limited to apparel products made with regional or U.S. fabric and yarn. No increases in amounts of apparel made of third-country fabric over current law.

Present law

AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. However, due to a drafting problem, the wrong diameter was included, making it impossible to use the provision.

House amendment

Section 3107 corrects the yarn diameter in the AGOA legislation so that sweaters knit to shape from merino wool of a specific diameter are eligible.

Senate amendment

No provision.

Conference agreement

Senate recedes.

AFRICA: NAMIBIA AND BOTSWANA

Present law

The GDBs of Botswana and Namibia exceed the LLDC limit of $1500 and therefore these countries are not eligible to use third country fabric for the transition period under the AGOA regional fabric country cap.

House amendment

Section 5 allows Namibia and Botswana to use third country fabric for the transition period under the AGOA regional fabric country cap.

Senate amendment

No provision.

Conference agreement

Senate recedes.

TITLE XLI—EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

SEC. 4101— EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

Expired law

Section 505 of the Trade Act of 1974, as amended, provides that no duty-free treatment under Title V (the Generalized System of Preferences) shall remain in effect after September 30, 2001.

House bill

The House amendment to H.R. 3009 would amend section 505 of the Trade Act of 1974 to authorize an extension through December 31, 2002. It would also provide retroactive relief in that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry of any article to which duty-free treatment under Title V of the Trade Act of 1974 would have applied if the entry had been made on September 30. 2001, and was made after September 30, 2001, and before the enactment of this Act, shall be liquidated or reliquidated as free of duty and the Secretary of Treasury shall refund any duty paid, upon proper request filed with the appropriate Customs officer, within 180 days after the date of enactment.

Senate amendment

The Senate amendment authorizes an extension of GSP through December 31, 2006. The extension is retroactive to September 30, 2001, permitting importers to liquidate or reliquidate entries made since that date and to seek a return of duties paid on goods that would have entered the United States free of duty, but for expiration of GSP.

The Senate amendment also amends the definition of "internationally recognized worker rights" set forth in the GSP statute (section 507(4) of the Trade Act of 1974). Specifically, it adds to that definition "a prohibition on discrimination with respect to employment and occupation" and a "prohibition of the worst forms of child labor." These two prohibitions come from the International Labor Organization's 1998 Declaration on Fundamental Principles and Rights at Work, which defines certain worker rights as "fundamental."

The GSP statute identifies certain criteria that the President must take into account in determining whether to designate a country as eligible for GSP benefits. Conversely, a country's lapse in compliance with one or more of these criteria may be grounds for withdrawal, suspension, or limitation of benefits. Whether a country is taking steps to afford its workers internationally recognized worker rights is one of those criteria. The Senate Amendment seeks to make the concept of "internationally recognized worker rights" as defined for GSP consistent with the concept as defined by the ILO.

Finally, the Senate Amendment establishes a new eligibility criterion for GSP: "A country is ineligible for GSP if it has not taken steps to support the efforts of the United States to combat terrorism."

Conference agreement

The Conference agreement authorizes an extension of GSP through December 31, 2006. Conferees approved the Senate provision to include a prohibition on the worst forms of child labor in the definition of internationally recognized worker rights in Section 507(a) of the Trade Act of 1974. Conferees declined to include the Senate provision on discrimination with respect to employment in the definition of "international recognized worker rights under Sec. 507 (a) of the Trade Act of 1974. Agreement follows the House and the Senate bill with respect to providing retroactive relief.

DIVISION E—MISCELLANEOUS PROVISIONS

TITLE L—MISCELLANEOUS TRADE BENEFITS

Subtitle A—Wool Provisions

SEC. 5101—WOOL MANUFACTURER PAYMENT CLARIFICATION AND TECHNICAL CORRECTIONS ACT

Present law

Title V of the Trade and Development Act of 2000 (Pub. L. No. 106-200) included certain tariff relief for the domestic tailored clothing and textile industries. The relief was largely aimed at reducing the harmful affects of a "tariff inversion"—i.e., a tariff structure that levies higher duties on the raw material (such as wool fabric) than on the finished goods (such as mens' suits). A component of the relief to the U.S. tailored clothing and textile industry was a refund of duties paid in calendar year 1999, spread out over calendar years 2000, 2001 and 2002. Pub. L. No. 106-2000, §505.

House amendment

No provision.

Senate amendment

The Senate bill amends section 505 of the Trade and Development Act of 2000 to simplify the process for refunding to eligible parties duties paid in 1999. Specifically, it creates three special refund pools for each of the affected wool articles (fabric, yarn, and fiber and top). Refunds for importing manufacturers will be distributed in three installments—the first and second on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment and Clarification and Technical Corrections Act, and the third on or before April 15, 2003. Refunds for nonimporting manufacturers will be distributed in two installments—the first on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second on or before April 15, 2003.

The provision also streamlines the paperwork process, in light of the destruction of previously filed claims and supporting information in the September 11, 2001 attacks on the World Trade Center in New York, New York. Finally, the provision identifies all persons eligible for the refunds.

Conference agreement

The House recedes to the Senate.

SEC. 5102—DUTY SUSPENSION ON WOOL

Present law

Sections 501(a) and (b) of the Trade and Development Act of 2000 provide temporary duty reductions for certain worsted wool fabrics through 2003.

Section 501(d) limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.11 from January 1 to December 31 of each year, inclusive, to 2,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act. Further, the section limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.12 from January 1 to December 31 of each year, inclusive, to 1,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act.

House amendment

No provision.

Senate bill

The Senate bill extends the temporary duty reductions on fabrics of worsted wool from 2003 to 2005. The provision increases the limitation on the quantity of imports of worsted wool fabrics entered under heading 9902.51.11 to 3,500,000 square meter equivalents in calendar year 2002, and 4,500,000 square meter equivalents in calendar year 2003. Imports of worsted wool fabrics entered under heading 9902.51.12 are increased to 2,500,000 square meter equivalents in calendar year 2002, and 3,500,000 square meter equivalents in calendar year 2003.

The bill extends the payments made to manufacturers under section 505 of the Trade and Development Act of 2000 and requires an affidavit that the manufacturer will remain a manufacturer in the United States as of January 1 of the year of payment. The two additional payments will occur as follows: the first to be made after January 1, 2004, but on or before April 15, 2004, and the second after January 1, 2005, but on or before April 15, 2005.

Finally, the bill extends the "Wool Research Trust Fund" for two years through 2006.

Conference agreement

The House recedes to the Senate.

Subtitle B—Other Provisions

SEC. 5201—FUND FOR WTO DISPUTE SETTLEMENT

Present law

No applicable section.

House amendment

The provision authorizes a settlement fund within the United States Trade Representative's Office in the amount of $50 million for the use in settling disputes that occur related to the World Trade Organization. The Trade Representative must certify to the Secretary of the Treasury that the settlement is in the best interest of the United States in cases of not more than $10 million. For cases above $10 million, the Trade Representative must make the same certification to the United States Congress.

Senate bill

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 5202—CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES

Present law

Under present law, certain steam or other vapor generating boilers used in nuclear facilities imported into the United States prior to December 31, 2003 are charged a duty rate of 4.9 percent ad valorem. This rate took effect pursuant to section 1268 of Public Law Number 106-476 ("Tariff Suspension and Trade Act of 2000"). Previously, the rate had been 5.2 percent ad valorem.

House amendment

No provision.

Senate amendment

Section 203 of the Senate amendment chances the duty rate on certain steam or other vapor generating boilers used in nuclear facilities to zero for such goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, and on or before December 31, 2006. The provision was intended to lower the cost of inputs into the operation of nuclear facilities and thereby lower the cost of energy to consumers.

Committee agreement

The House recedes to the Senate.

SEC. 5203—SUGAR TARIFF RATE QUOTA CIRCUMVENTION

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate bill establishes a sugar anti-circumvention program which requires the Secretary of Agriculture to identify imports of articles that are circumventing tariff rate quotas on sugars, syrups, or sugar-containing products imposed under chapters 17, 18, 19, and 21 of the Harmonized Tariff Schedule. The Secretary shall then report to the President articles found to be circumventing such tariff-rate quotas. Upon receiving the Secretary's report, the President shall, by proclamation, include any identified article in the appropriate tariff-rate quota provision of the Harmonized Tariff Schedule.

Conference agreement

Conferees agreed to a provision directing the Secretary of Agriculture and the Commissioner of Customs shall monitor for sugar circumvention and shall report and make recommendations to Congress and the President.

This provision amends the Harmonized Tariff Schedule of the United States ("HTSUS") to make clear in the statute an important element of the ruling of the Court of Appeals for the Federal Circuit in Heartland By-Products, Inc. v. United States, 264 F. 3rd 1126 (Fed. Cir. 2001), i.e., that molasses is one of the foreign substances that must be excluded when calculating the percentage of soluble non-sugar solids under subheading 1702.90.40.

The provision requires the Secretary of Agriculture and the Commissioner of Customs to establish a monitoring program to identify existing or likely circumvention of the tariff-rate quotas in Chapters 17, 18, 19 and 21 of the HTSUS. The Secretary and the Commissioner shall report the results of their monitoring to Congress and the President every six months, together with data and a description of developments and trends in the composition of trade provided for in such chapters. This report will be made public. The report will discuss any indications that imports of articles not subject to the tariff-rate quotas are being used for commercial extraction of sugar in the United States. Imports of so-called "high-test molasses" currently classified under subheading 1703.10.30 will be examined particularly closely for such indications.

Finally, the Secretary and the Commissioner will include in the report their recommendations for ending circumvention, including their recommendations for legislation. The Managers emphasize that rapid action to stop circumvention is the best way to prevent a problem from developing and that quick administrative or legislative action is preferable to protracted procedures and litigation, as occurred in the Heartland case.

DIVISION A—TRADE ADJUSTMENT ASSISTANCE

SEC. 101—SHORT TITLE

Present law

No provision.

House amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Senate amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE I—TRADE ADJUSTMENT ASSISTANCE PROGRAM

Subtitle A—Trade Adjustment Assistance for Workers

SEC. 111—REAUTHORIZATION OF THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

Present law

Current section 245 authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the TAA and NAFTA-TAA for workers programs for the period October 1, 1998 through September 30, 2001. Current section 285 provides for termination of all Trade Adjustment Assistance programs on September 30, 2001, but provides that workers, and firms eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

House amendment

The House Amendment reauthorized the Trade Adjustment Assistance programs through September 30, 2004.

Senate amendment

Section 111 of the Senate bill creates a new section 248 of the Trade Act of 1974 which authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the Trade Adjustment Assistance for workers program for the period October 1, 2001, through September 30, 2007. Section 701 of the Senate bill amends current section 285 to provide for termination of all Trade Adjustment Assistance programs on September 30, 2007, but provides that workers, and firms, communities, farmers, and fishermen eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

Conference agreement

Conferees agree to extend the authorization of the Trade Adjustment Assistance programs through September 30, 2007, and to consolidate the NAFTA-TAA program with the regular TAA program.

SEC. 112—FILING OF PETITIONS AND PROVISION OF RAPID RESPONSE ASSISTANCE; EXPEDITED REVIEW OF PETITIONS BY SECRETARY OF LABOR

Present law

Current sections 221 and 250 set forth requirements concerning who may file a petition for certification of eligibility to apply for TAA and NAFTA-TAA assistance, respectively. Under both programs, petitions may be filed by a group of workers or by their certified or recognized union or other duly authorized representative. TAA petitions are filed with the Secretary of Labor. NAFTA-TAA petitions are filed with the Governor of the relevant State and forwarded by him to the Secretary of Labor. Under section 223, the Secretary of Labor must rule on eligibility within 60 days after a TAA petition is filed. Under section 250, the Governor must make a preliminary eligibility determination within 10 days after a NAFTA-TAA petition is filed, and the Secretary of Labor must make a final eligibility determination within the next 30 days. Section 221 also sets forth notice and hearing obligations of the Secretary of Labor upon receipt of a TAA petition. Section 250 provides that, in the event of preliminary certification of eligibility to apply for NAFTA-TAA benefits, the Governor immediately provide the affected workers with certain rapid response services.

House amendment

The House Amendment provided for a shortened period for the Secretary of Labor to consider petitions from 60 days to 40 days and for other rapid response assistance to workers.

Senate amendment

Section 111 of the Senate bill creates a new section 231 of the Trade Act of 1974, which consolidates the TAA and NAFTA-TAA programs by establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certifications of eligibility.

Section 231 expands the list of entities that may file a petition for group certification of eligibility to include employers, one-stop operators or one-stop partners, State employment agencies, and any entity to which notice of a plant closing or mass layoff must be given under section 3 of the Worker Adjustment and Retraining Notification Act. Section 231 also provides that the President, or the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives (by resolution), may direct the Secretary of Labor to initiate a certification process under this chapter to determine the eligibility for Trade Adjustment Assistance of a group of workers.

Section 231 creates a single process for filing and reviewing petitions for Trade Adjustment Assistance for workers, under which all petitions are filed with both the Secretary of Labor and the Governor of the State. Upon filing of the petition, the Governor is required to fulfill the requirements of any agreement entered into with the Department of Labor under section 222, to provide certain rapid response services, and to notify workers on whose behalf a petition has been filed of their potential eligibility for certain existing federal health care, child care, transportation, and other assistance programs. Upon filing the petition, the Secretary of Labor must make his certification determination within 40 days and provide the notice required.

Conference agreement

The Senate recedes to the House with a change providing for simultaneous filing of petitions with the Secretary of Labor and State Governor.

SEC. 113—GROUP ELIGIBILITY REQUIREMENTS

Present law

Current law sections 222 and 250 of Title 11 of the Trade Act of 1974 set forth group eligibility criteria. Under TAA, the Secretary must certify a group of workers as eligible to apply for Trade Adjustment Assistance if he determines (1) that a significant number or proportion of the workers in such workers' firm have become or are threatened to become totally or partially separated; (2) sales or production of such firm have decreased absolutely; and (3) imports of articles like or directly competitive with articles produced by such workers' firm contributed importantly to the total or partial separation or threat thereof, and to the decline in sales or production. Under NAFTA-TAA, group eligibility may be based on the same criteria set forth in section 222, but section 250 also provides for NAFTA-TAA eligibility where there has been a shift in production by the workers' firm to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm. Section 222 also includes special eligibility provisions with respect to oil and natural gas producers.

House amendment

The House Amendment at Section 113 expanded the Trade Adjustment Assistance programs to secondary workers that are suppliers to firms that were certified and which satisfied certain conditions.

Senate amendment

Section 111 of the Senate Amendment creates a new section 231 under which the eligibility criteria are revised. First, workers are eligible for TAA if the value or volume of imports of articles like or directly competitive with articles produced by that firm have increased and the increase in the value or volume of imports contributed importantly to the workers' separation or threat of separation. Second, eligibility is extended to workers who are separated due to shifts in production to any country, rather than only when the shift in production is to Mexico or Canada. Third, eligibility is extended to adversely affected secondary workers. Eligible secondary workers include workers in supplier firms and, with respect to trade with NAFTA countries, downstream firms. Fourth, a new special eligibility provision is added with respect to taconite pellets.

Conference agreement

The Conferees agree to extend coverage of Trade Adjustment Assistance to new categories of workers: 1) secondary workers that supply directly to another firm component parts for articles that were the basis for a certification of eligibility, 2) downstream workers that were affected by trade with Mexico or Canada, and 3) certain workers that have been laid off because their firm has shifted its production to another country that has a free trade agreement with the United States, that has a unilaterally preferential trading arrangement with the United States, or when there has been or is likely to be an increase in imports of the relevant articles.

SEC. 114—QUALIFYING REQUIREMENTS FOR TRADE READJUSTMENT ALLOWANCES

Present law

Current section 231 establishes qualifying requirements that must be met in order for an individual worker within a certified group to receive Trade Adjustment Assistance. In order to receive trade readjustment allowances, a certified worker must have been separated on or after the eligibility date established in the certification but within 2 years of the date of the certification determination; been employed for at least 26 of the 52 weeks preceding the separation at wages of $30 or more a week; be eligible for and have exhausted unemployment insurance benefits; not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of that Act; and be enrolled in a training program approved by the Secretary of Labor or have received a training waiver.

House amendment

The House Amendment at Section 114 provided for requirements and deadlines for workers to enroll in training.

Senate amendment

Section 111 of the Senate Amendment adds a new section 235 which maintains the individual eligibility requirements in current law, with the exception of revisions to provisions governing bases for granting training waivers.

Conference agreement

The Senate recedes to the House, with a change to adopt a training enrollment deadline of 16 weeks after separation.

SEC. 115—WAIVERS OF TRAINING REQUIREMENTS

Present law

Section 231 sets forth permissible bases for granting a training waiver. Pursuant to section 250(d), training waivers are not available in the NAFTA-TAA program.

House amendment

The House Amendment provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Senate amendment

Section 111 of the Senate Amendment adds a new section 235 which provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Conference agreement

The House receded to the Senate with a change to delete the Senate provision giving the Secretary discretion to grant waivers for "other" reasons.

SEC. 116—AMENDMENTS TO LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

Present law

Current section 233 provides that each certified worker may receive trade readjustment allowances for a maximum of 52 weeks. Current law also provides that, in most circumstances, a worker is treated as participating in training during any week which is part of a break in training that does not exceed 14 days.

House amendment

Section 116 of the House Amendment would add 26 weeks of trade adjustment allowances for those workers who were in training and required the extension of benefits for the purpose of completing training.

Senate amendment

Section 111 of the Senate Amendment adds a new section 237 which increases the maximum time period during which a worker may receive trade adjustment allowances to 78 weeks, extends the permissible duration of a break in training to 30 days, and provides for an additional 26 weeks of income support for workers requiring remedial education. Section 237 also clarifies that the requirement that a worker exhaust unemployment insurance benefits prior to receiving trade adjustment allowances does not apply to any extension of unemployment insurance by a State using its own funds that extends beyond either the 26 week period mandated by Federal law or any additional period provided for under the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Conference agreement

The Senate recedes to the House.

SEC. 117—ANNUAL TOTAL AMOUNT OF PAYMENTS FOR TRAINING

Present law

Current section 236 establishes the terms and conditions under which training is available to eligible workers; permits the Secretary of Labor to approve certain specified types of training programs and to pay the costs of approved training and certain supplemental costs, including subsistence and transportation costs, for eligible workers; and caps total annual funding for training under the TAA for workers program at $80 million. Section 250 separately caps training expenditures under the NAFTA-TAA program at $30 million annually.

House amendment

The House provided $30 million additional funds for the Trade Adjustment Assistance program. Combined with NAFTA Trade Adjustment Assistance, the total training funds available were $140 million.

Senate amendment

Section 111 of the Senate Amendment adds a new section 240 which sets the total funds available for training expenditures under the unified TAA for workers program to $300 million annually.

Conference agreement

Conferees agreed to a combined training cap of $220 million for Trade Adjustment Assistance training.

SEC. 118—PROVISION OF EMPLOYER-BASED TRAINING

Present law

No applicable section.

House amendment

The House Amendment included provisions related to employer based training including on-the-job training and customized training with partial reimbursements provided to the employer.

Senate amendment

Section 111 of the Senate Amendment adds a new section 240 which revises the list of training programs which the Secretary may approve to include customized training. It also adds a new section 237, which clarifies that the prohibition on payment of trade adjustment allowances to a worker receiving on-the-job training does not apply to a worker receiving on-the-job training does not apply to worker enrolled in a non-paid customized training program.

Conference agreement

The Senate recedes to the House.

SEC. 119—COORDINATION WITH TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Present law

No provision.

House amendment

The House Amendment provided multiple provisions related to coordinating efforts under the Trade Adjustment Assistance programs to provide information and benefits to workers under the Workforce Investment Act.

Senate amendment

No provision.

Conference agreement

Conferees agreed to drop House language with the exception of a provision related to coordinating the delivery of Trade Adjustment Assistance benefits and information at one-stop delivery systems under the Workforce Investment Act.

SEC. 120—EXPENDITURE PERIOD

Present law

No provision.

House amendment

The House amendment provided that certain funds obligated for any fiscal year to carry out activities may be expended by each State in the succeeding two fiscal years.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 121—JOB SEARCH ALLOWANCES

Present law

Under current section 237, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive reimbursement of 90 percent of the cost of necessary job search expenses up to $800.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 241 which raises the maximum reimbursement for job search expenses to $1250 per worker.

Conference agreement

The House recedes to the Senate.

SEC. 122—RELOCATION ALLOWANCES

Present law

Under current section 238, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive a relocation allowance consisting of (1) 90 percent of the reasonable and necessary expenses incurred in transporting a worker and his family, if any, and household effects, and (2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 242 which raises the maximum lump sum portion of the relocation allowance to $1,250.

Conference agreement

The House recedes to the Senate.

SEC. 123—REPEAL OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

Present law

Current law authorizes a Trade Adjustment Assistance Program for workers affected by NAFTA trade.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 231 which combines the TAA and NAFTA-TAA programs, establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certification of eligibility.

Conference agreement

The House recedes to the Senate to the extent of repealing the NAFTA Trade Adjustment Assistance program and creating a single, unified TAA program for workers.

SEC. 124—DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 111 of the Senate Amendment adds a new section 243 which directs the Secretary of Labor, within one year of enactment, to establish a two-year wage insurance pilot program under which a State uses the funds provided to the State for Trade Adjustment allowances to pay to an adversely affected worker certified under section 231, for a period not to exceed two years, a wage subsidy of up to 50 percent of the difference between the wages received by the adversely affected worker from reemployment and the wages received by the adversely affected worker at the time of separation. An adversely affected worker may be eligible to receive a wage subsidy if the worker obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment, is at least 50 years of age, earns not more than $50,000 a year in wages from reemployment, is employed at least 30 hours a week in the reemployment, and does not return to the employment from which the worker was separated. The wage subsidy available to workers in the wage insurance program is 50 percent of the difference between the amount of the wages received by the worker from reemployment and the amount of the wages received by the worker at the time of separation, if the wages the worker receives from reemployment are less than $40,000 a year. The wage subsidy is 25 percent if the wages received by the worker from reemployment are greater than $40,000 a year but not more than $50,000 a year. Total payments made to an adversely affected worker under the wage insurance program may not exceed $5,000 in each year of the 2-year period. A worker participating in the wage insurance program is not eligible to receive any other Trade Adjustment Assistance benefits, unless the Secretary of Labor determines that the worker has shown circumstances that warrant eligibility for training benefits under section 240.

Conference agreement

The Conferees agree to create a new alternative Trade Adjustment Assistance program for older workers.

SEC. 125—DECLARATIONS OF POLICY; SENSE OF CONGRESS

Present law

No provision.

House amendment

The House passed amendment included a declaration of policy and Sense of the Congress related to the responsibility of the Secretary of Labor to provide information to workers related to benefits available to them under the TAA and other federal programs.

Senate amendment

Although certain supportive services are available to dislocated workers under WIA, current law makes no express linkage between these services and Trade Adjustment Assistance and TAA certified workers may not be able to access them. Section 111 of the Senate Amendment adds a new section 243 which provides that States may apply for and the Secretary of Labor may make available to adversely affected workers certified under the Trade Adjustment Assistance program supportive services available under WIA, including transportation, child care, and dependent care, that are necessary to enable a worker to participate in or complete training. Section 243 requires the Comptroller General to conduct a study of all assistance provided by the Federal Government for workers facing job loss and economic distress; to submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the study within one year of enactment of this Act; and to distribute the report to all WIA one-stop partners. Section 243 further provides that each State may conduct a study of its assistance programs for workers facing job loss and economic distress. Each State is eligible for a grant from the Secretary of Labor, not to exceed $50,000, to enable it to conduct the study. In the event that a grant is awarded, the State must, within one year of receiving the grant, provide its report to the Committee on Finance and the Committee on Ways and Means and distribute its report to one-stop partners in the State.

Conference agreement

The Senate recedes to the House.

SUBTITLE B—Trade Adjustment Assistance for Firms

SEC. 131—REAUTHORIZATION OF TRADE ADJUSTMENT FOR FIRMS PROGRAM

Present law

The Trade Adjustment Assistance for Firms program provides technical assistance to qualifying firms. Current Title 11, Chapter 3, section 251 of the Trade Act of 1974 provides that a firm is eligible to receive Trade Adjustment Assistance under this program if (1) a significant number or proportion of its workers have become or are threatened to become totally or partially separated; (2) sales or production, or both, have decreased absolutely; and (3) increases of imports of articles like or directly competitive with articles which are produced by such firms contributed importantly to the total or partial separations or threat thereof.

The authorization for the Trade Adjustment Assistance for Finns program expired on September 30, 2001. The TAA for Firms program is currently subject to annual appropnations and is funded as part of the budget of the Economic Development Administration in the Department of Commerce.

House amendment

The House passed amendment included a 2 year reauthorization for Trade Adjustment Assistance for Firms.

Senate amendment

Section 201 of the Senate Amendment reauthorizes the Trade Adjustment Assistance for Firms program for fiscal years 2002 through 2007; expands the definition of qualifying firms to cover shifts in production; and authorizes appropriations to the Department of Commerce in the amount of $16 million annually for fiscal years 2002 through 2007 to carry out the purposes of the Trade Adjustment Assistance for Firms program.

Conference agreement

The House recedes to the Senate on the issue of providing a $16 million authorization for Trade Adjustment Assistance for Firms and reauthorizing the program through September 30, 2007.

SUBTITLE C—Trade Adjustment Assistance for Farmers and Ranchers

SEC. 141—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 401 of the Senate Amendment adds new sections 292–298 of the Trade Act of 1974 which create a Trade Adjustment Assistance program for farmers and ranchers in the Department of Agriculture. Under this section, a group of agricultural commodity producers may petition the Secretary of Agriculture for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for farmers if it is determined that the national average price in the most recent marketing year for the commodity produced by the group is less than 80 percent of the national average price in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price.

Conference agreement

The House recedes to the Senate with changes. The Conferees agree to include limitations on eligibility based upon adjusted gross income and counter-cyclical payment limitations set forth in the Food Security Act of 1985.

SEC. 142—CONFORMING AMENDMENTS

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate Amendment makes conforming amendments to the Trade Act of 1974 concerning the TAA for Farmers program.

Conference agreement

Conferees agree to make conforming amendments to the Trade Act of 1974.

SEC. 143—TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 502 of the Senate Amendment adds new sections 299–299(G) which create a Trade Adjustment Assistance program for fishermen in the Department of Commerce. Under this program, a group of fishermen may petition the Secretary of Commerce for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for fisherman if it is determined that the national average price in the most recent marketing year for the fish produced by the group is less than 80 percent of the national average price in the proceeding five marketing years and that increases in imports of that fish contributed importantly to the decline in price.

Conference agreement

Conferees agree to drop Senate Amendment and authorize a study by the Department of Labor to investigate applying TAA to fisherman.

Subtitle D—Effective Date

SEC. 151—EFFECTIVE DATE

Present law

No applicable provision.

House amendment

No provision.

Senate amendment

Section 801 of the Senate Amendment provides that except as otherwise specified, the amendments to the TAA program shall be effective 90 days after enactment of the Trace Act of 2002. The Senate Amendment includes transitional provisions governing the period between expiration of the prior authorizations of TAA for workers and firms and the effective date of the amendments.

Conference agreement

The House recedes to the Senate.

TITLE II: CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 201 (A) AND 202.—CREDIT FOR HEALTH INSURANCE COSTS OF INDIVIDUALS RECEIVING A TRADE READJUSTMENT ALLOWANCE OR A BENETFIT FROM THE PENSION BENEFIT GUARANTY CORPORATION; ADVANCE PAYMENT OF CREDIT FOR HEALTH INSRUANCE COSTS OF ELIGIBLE INDIVIUDALS

Present Law

Under present law, the tax treatment of health insurance expenses depends on the individual's circumstances. In general, employer contributions to an accident or health plan are excludable from an employee's gross income (sec. 106).

Self-employed individuals are entitled to deduct a portion of the amount paid for health insurance expenses for the individual and his or her spouse and dependents. The percentage of deductible expenses is 70 percent in 2002 and 100 percent in 2003 and thereafter.

Individuals other than self-employed individuals who purchase their own health insurance and itemize deductions may deduct their expenses to the extent that their total medical expenses exceed 7.5 percent of adjusted gross income.

Present law does not provide a tax credit for the purchase of health insurance.

The health care continuation rules (commonly referred to as "COBRA" rules, after the Consolidated Omnibus Budget Reconciliation Act of 1985 in which they were enacted) require that employer-sponsored group health plans of employers with 20 or more employees must offer certain covered employees and their dependents ("qualified beneficiaries") the option of purchasing continued health coverage in the event of loss of covera-e resulting ftom certain qualifying events. These qualifying events include: termination or reduction in hours of employment, death, divorce or legal separation, enrollment in Medicare, the bankruptcy of the employer, or the end of a child's dependency under a parent's health plan. In general, the maximum period of COBRA coverage is 18 months. An employer is permitted to charge qualified beneficiaries 102 percent of the applicable premium for COBRA coverage.

Under present law, individuals without access to COBRA are able to purchase individual policies on a guaranteed issue basis without exclusion of coverage for pre-existing conditions if they had 18 months of creditable coverage under an employer sponsored group health plan, governmental plan, or a church plan. Those with access to COBRA are required to exhaust their 18 months of COBRA prior to obtaining a policy on a guaranteed issue basis without exclusion of coverage for pre-existing conditions.

House amendment

The House bill provides a refundable tax credit for up to 60 percent of the expenses of an eligible individual for qualified health insurance coverage of the eligible individual and his or her spouse or dependents. Eligible individuals are certain TAA eligible workers and PBGC pension beneficiaries. In the case of TAA eligible workers, no more than 12 months of coverage would be eligible for the credit. The amount of the credit would be phased out for taxpayers with modified adjusted gross income between $20,000 and $40,000 for single taxpayers ($40,000 and $80,000 for married taxpayers filing a joint return). The credit would be available on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage and certain individual market options.

Senate amendment

The Senate amendment provides a refundable credit for 70 percent of qualified health insurance expenses. The credit is available with respect to certain TAA eligible workers. The credit is payable on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage, certain State-based options, and individual health insurance if certain requirements are satisfied.

Conference Agreement

Refundable health insurance credit: in general

In the case of taxpayers who are eligible individuals, the conference agreement provides a refundable tax credit for 65 percent of the taxpayer's expenses for qualified health insurance of the taxpayer and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is available only with respect to amounts paid by the taxpayer.

Qualifying family members are the taxpayer's spouse and any dependent of the taxpayer with respect to whom the taxpayer is entitled to claim a dependency exemption.[1] Any individual who has other specified coverage is not a qualifying family member.

Persons eligible for the credit

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if, as of the first day of the month, the taxpayer (1) is an eligible individual, (2) is covered by qualified health insurance, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements. An eligible month must begin more than 90 days after the date of enactment.

An eligible individual is (1) an eligible TAA recipient, (2) an eligible alternative TAA recipient, and (3) an eligible PBGC pension recipient.

An individual is an eligible TAA recipient during any month if the individual (1) is receiving for any day of such month a trade adjustment allowance[2] or who would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a certification issued under subchapter A or D of chapter 2 of title 11 of the Trade Act of 1974. An individual is treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is an eligible alternative TAA recipient during any month if the individual (1) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and (2) is receiving a benefit for such month under section 246(a)(2) of such Act. An individual is treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is a PBGC pension recipient for any month if he or she (1) is age 55 or over as of the first day of the month, and (2) is receiving a benefit any portion of which is paid by the Pension Benefit Guaranty Corporation ("PBGC).

An otherwise eligible taxpayer is not eligible for the credit for a month if, as of the first day of the month the individual has other specified coverage. Specified coverage would be (1) coverage under any insurance which constitutes medical care (expect for insurance substantially all of the coverage of which is for excepted benefits)[3] if at least 50 percent of the cost of the coverage is paid by an employee[4] (or former employer) of the individual or his or her spouse or (2) coverage under certain governmental health programs.[5] A rule aggregating plans of the same employer applies in determining whether the employer pays at least 50 percent of the cost of coverage. A person is not an eligible individual if he or she may be claimed as a dependent on another person's tax return. A special rule applies with respect to alternative TAA recipients.

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[1] Present law allows the custodial parent to release the night to claim the dependency exemption for a child to the noncustodial parent. In addition, if certain requirements are met, the parents may, decide by agreement that the noncustodial parent is entitled to the dependency exemption with respect to a child. In such cases, the provision would treat the child as the dependent of the custodial parent for purposes of the credit.

[2] Part I of subchapter B, or subchapter D, of chapter 2 of title 11 of the Trade Act of 1974.

[3] Excepted benefits are: (1) coverage only for accident or disability income or any combination thereof, (2) coverage issued as a supplement to liability insurance; (3) liability insurance, including general liability insurance and automobile liability insurance; (4) worker's compensation or similar insurance; (5) automobile medical payment insurance; (6) credit-only insurance; (7) coverage for on-site medical clinics; (8) other insurance coverage similar to the coverages in (1)-(7) specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits; (9) limited scope dental or vision benefits; (10) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof, and (11) other benefits similar to those in (9) and (10) as specified in regulations; (12) coverage only for a specified disease or illness; (13) hospital indemnity or other fixed indemnity insurance; and (14) Medicare supplemental insurance.

[4] An amount would be considered paid by the employer if it is excludable from income. Thus, for example, amounts paid for health coverage on a salary reduction basis under an employer plan are considered paid by the employer.

[5] Specifically, an individual would not be eligible for the credit if, as of the first day of the month, the individual is (1) entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or enrolled in Medicaid or SCHIP, (2) enrolled in a health benefits plan under the Federal Employees Health Benefit Plan, or (3) entitled to receive benefits under chapter 55 of title 10 of the United States Code (relating to military personnel). An individual is not considered to be enrolled in Medicaid solely by reason of receiving immunizations.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation coverage (2) State based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by the State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; and (9) coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies.[6]

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)–(8) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain requirements. Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals. A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[7] of three months or longer, does not have other specified coverage, and who is not imprisoned. A "qualifying, individual" also includes qualified family members of such an eligible individual.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is of excepted benefits.

Other rules

Amounts taken into account in determining the credit could not be taken into account in determining the amount allowable under the itemized deduction for medical expenses or the deduction for health insurance expenses of self-employed individuals. Amounts distributed from a medical savings account would not be eligible for the credit. The amount of the credit is reduced by any credit received on an advance basis. Married taxpayers filing separate returns are eligible for the credit; however, if both spouses are eligible individuals and the spouses file a separate return, then the spouse of the taxpayer is not a qualifying family member.

The Secretary of the Treasury is authorized to prescribe such regulations and other guidance as may be necessary or appropriate to carry out the provision.

Advance payment of refundable health insurance credit; reporting requirements

The conference agreement provides for payment of the credit on an advance basis (i.e., prior to the filing of the taxpayer's return) pursuant to a program to be established by the Secretary of the Treasury no later than August 1, 2003. Such program is to provide for making payments on behalf of certified individuals to providers of qualified health insurance. In order to receive the credit on an advance basis, a qualified health insurance costs credit eligibility certificate would have to be in effect for the taxpayer. A qualified health insurance costs credit eligibility certificate is a written statement that an individual is an eligible individual for purposes of the credit, provides such information as the Secretary of the Treasury may require, and is provided by the Secretary of Labor or the PBGC (as appropriate) or such other person or entity designated by the Secretary.

The conference report permits the disclosure of return information of certified individuals to providers of health insurance information to the extent necessary to carry out the advance payment mechanism.

The conference report provides that any person who receives payments during a calendar year for qualified health insurance and claims a reimbursement for an advance credit amount is to file an information return with respect to each individual from whom such payments were received or for whom such a reimbursement is claimed. The return is to be in such form as the Secretary may prescribe and is to contain the name, address, and taxpayer identification number of the individual and any other individual on the same health insurance policy, the aggregate of the advance credit amounts provided, the number of months for which advance credit amounts are provided, and such other information as the Secretary may prescribe. The conference report requires that similar information be provided to the individual no later than January 31 of the year following the year for which the information return is made.

Effective Date

The provision is generally effective with respect to taxable years beginning after December 31, 2001. The provision relating to the advance payment mechanism to be developed by the Secretary would be effective on the date of enactment.

TITLE III.—CUSTOMS REAUTHORIZATION

Subtitle A—United States Customs Service

CHAPTER 1—DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

SEC. 301—SHORT TITLE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House provides that the Act may be cited as the "Customs Border Security Act of 2002."

Senate amendment

The Senate amendment is identical.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment

SEC. 311—AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION

Present law

The statutory basis for authorization of appropriations for Customs is section 301 (b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)). That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99–509], first outlined separate amounts for non-commercial and commercial operations for the salaries and expenses portion of the Customs authorization. Under 19 U.S.C. 2075, Congress has adopted a two-year authorization process to provide Customs with guidance as it plans its budget, as well as guidance from the Committee for the appropriation process.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101 382]) provided $118,238,000 for salaries and expenses and $143,047,000 for air and marine interdiction program for FY 1991, and $1,247,884,000 for salaries and expenses and $150,199,000 for air and marine interdiction program in FY 1992.

House amendment

This provision authorizes $1,365,456,000 for FY 2003 and $1,399,592,400 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,642,602,000 for FY 2003 and $1,683,667,050 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $170,829,000 for FY 2003 and $175,099,725 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Senate amendment

This provision authorizes $886,513,000 for FY 2003 and $909,471,000 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,603,482,000 for FY 2003 and $1,645,009,000 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $181,860,000 for FY 2003 and $186,570,000 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

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[6] For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[7] Creditable coverage is determined under the Health Care Portability and Accountability Act (Code sec. 9801 (c)).

Conference agreement

The Senate recedes to House.

SEC. 312—ANTITERRORIST AND ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require that $90,244,000 of the FY 2003 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of terrorist and narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and inspection systems. The provision would require that $9,000,000 of the FY 2004 appropriations be used for maintenance of equipment described above. This section would also provide the Commissioner of Customs with flexibility in using these funds and would allow for the acquisition of new updated technology not anticipated when this bill was drafted. Nothing in the language of the bill is intended to prevent the Commissioner of Customs from dedicating resources to specific ports not identified in the bill.

The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 313—COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require Customs to measure specifically the effectiveness of the resources dedicated in sections 312 as part of its annual performance plan.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

Subtitle B—Child Cyber-Smuggling Center of the Customs Service

SEC. 321—AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION

Present law

Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account.

House amendment

H.R. 3009 as amended and passed by the House would authorize $10 million for Customs to carry out its program to combat online child sex predators. Of that amount, $375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

Senate amendment

The Senate amendment is the same as the House anendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

CHAPTER 2—MISCELLANEOUS PROVISIONS

SEC. 331—ADDITIONAL CUSTOMS SERVICE OFFICERS FOR U.S.-CANADA BORDER

Present law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House earmarks $25 million and 285 new staff hires for Customs to use at the U.S.-Canada border.

Senate amendment

The Senate amendment is the same as the House Amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 332—STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 333—STUDY AND REPORT RELATING TO ACCOUNTING AND AUDITING PROCEDURES OF THE CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require Customs to conduct a study to ensure that appropriate training is being provided to personnel who are responsible for financial auditing of importers. Customs would specifically report on how its audit personnel protect the privacy and trade secrets of importers.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 334—ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would mandate the imposition of a cost accounting system in order for Customs to effectively explain its expenditures. Such a system would provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 335—STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare a report to determine whether Customs has improved its timeliness in providing prospective rulings.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 336—STUDY AND REPORT RELATING TO CUSTOMS USER FEES

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare a confidential report to determine whether current user fees are appropriately set at a level commensurate with the service provided for the fee. The Comptroller General is authorized to recommend the appropriate level for customs user fees.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 337—FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES

Present law

Current law provides for direct reimbursement by courier facilities of expenses incurred by Customs conducting inspections at those facilities.

House amendment

H.R. 3009 as amended and passed by the House would establish a per item fee of sixty-six cents to cover Customs expenses. This amount could be lowered to no more than thirty-five cents or raised to no more than $1.00 by the Secretary of the Treasury after a rulemaking process to reevaluate the expenses incurred by Customs in providing inspectional services.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 338—NATIONAL CUSTOMS AUTOMATION PROGRAM

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would empower the Secretary to require the electronic submission of any information required to be submitted to the Customs Service.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 339—AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate Amendment authorizes the appropriation to the Department of Treasury such sums as may be necessary to increase the annual pay of journeyman Customs inspectors and Canine Enforcement Officers who have completed at least one year of service and are being paid at a GS-9 level, from GS-9 to GS-11. The Senate provision also authorizes an increase in pay of support staff.

Conference agreement

The House recedes to the Senate.

CHAPTER 4—ANTITERRORISM PROVISIONS

SEC. 341—IMMUNITY FOR CUSTOMS OFFICERS THAT ACT IN GOOD FAITH

Present law

Currently, Customs officers are entitled to qualified immunity in civil suits brought by persons, who were searched upon arrival in the United States. Qualified immunity protects officers from liability if they can establish that their actions did not violate any clearly established constitutional or statutory rights.

House amendment

H.R. 3009 as amended and passed by the House would protect Customs officers by providing them immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in good faith.

Senate amendment

No provision.

Conference agreement

Senate recedes to the House, but conferees qualify the provision by adding that the means used to effectuate such searches must be reasonable. To be covered by this immunity provision, inspectors must follow Customs Service inspection rules including the rule against profiling against race, religions, or ethnic background.

SEC. 342—EMERGENCY ADJUSTMENTS TO OFFICES, PORTS OF ENTRY, OR STAFFING OF THE CUSTOMS SERVICE

Present law

Present law places numerous restrictions on and, in some instances, precludes the Secretary of the Treasury or Customs from making any adjustments to ports and staff. 19 U.S.C. 1318 requires a Presidential proclamation of an emergency and authorization to the Secretary of the Treasury only to extend the time for performance of legally required acts during an emergency. No other emergency powers statute for Customs exists.

House amendment

H.R. 3009 as amended and passed by the House would permit the Secretary of the Treasury, if the President declares a national emergency or if necessary to address specific threats to human life or national interests, to eliminate, consolidate, or relocate Customs ports and offices and to alter staffing levels, services rendered and hours of operations at those locations. In addition, the amendment would permit the Commissioner of Customs, when necessary to address threats to human life or national interests, to close temporarily any Customs office or port or take any other lesser action necessary to respond to the specific threat. The Secretary or the Commissioner would be required to notify Congress of any action taken under this proposal within 72 hours.

Senate amendment

The Senate amendment is the same as the House Amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SECS. 343 & 343A—MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND PASSENGERS; SECURE SYSTEMS OF TRANSPORTATION

Present law

Currently, commercial carriers bringing passengers or cargo into or out of the country have no obligation to provide Customs with such information in advance.

House amendment

H.R. 3009 as amended and passed by the House would require every air, land, or water-based commercial carrier to file an electronic manifest describing all passengers with Customs before entering or leaving the country. There is a similar requirement for cargo entering the country. Specific information required in the advanced manifest system would be developed by Treasury in regulations.

Senate amendment

The Senate Amendment is similar to the House Amendment. However, with respect to cargo, the Senate Amendment applies to outbound as well as in-bound shipments.

Conference agreement

The conferees agree to direct the Secretary of the Treasury to promulgate regulations pertaining to the electronic transmission to the Customs Service of information relevant to aviation, maritime, and surface transportation safety and security prior to a cargo carrier's arrival in or departure from the United States. The agreement sets forth parameters for the Secretary to follow in developing these regulations. For example, the parameters require that the regulations be flexible with respect to the commercial and operational aspects of different modes of transportation. They also require that, in general, the Customs Service seek information from parties most likely to have direct knowledge of the information at issue. The conferees also agree to amendment of the Tariff Act of 1930 to establish requirements concerning proper documentation of ocean-bound cargo prior to a vessel's departure. Finally, the conferees agree to direct the Secretary of the Treasury to establish a task force to evaluate, prototype and certify secure systems of transportation.

SEC. 344—BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND IN OUTBOUND MAIL

Present law

Although Customs currently searches all inbound mail, and although it searches outbound mail sent via private carriers, outbound mail carried by the Postal Service is not subject to search.

House amendment

H.R. 3009 as amended and passed by the House would enable Customs officers to search outbound U.S. mail for unreported monetary instruments, weapons of mass destruction, firearms, and other contraband used by terrorists. However, reading of mail would not be authorized absent Customs officers obtaining a search warrant or consent.

Senate amendment

The Senate Amendment is the same as the House Amendment with respect to mail weighing in excess of 16 ounces. However, under the Senate Amendment, the Customs Service would be required to obtain a warrant in order to search mail weighing 16 ounces or less. The Senate Amendment also requires the Secretary of State to determine whether it is consistent with international law and U.S. treaty obligations for the Customs Service to search mail transiting the United States between two foreign countries. The Customs Service would be authorized to search such mail only after the Secretary of State determined that such measures are consistent with international law and U.S. treaty obligations.

Conference agreement

The House recedes to the Senate.

SEC. 345—AUTHORIZATION OF APPROPRIATIONS FOR REESTABLISHMENT OF CUSTOMS OPERATIONS IN NEW YORK CITY

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House authorizes funds to reestablish those operations.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

CHAPTER 5—TEXTILE TRANSSHIPMENT PROVISIONS

SEC. 351—GAO AUDIT OF TEXTILE TRANSSHIPMENT MONITORING BY CUSTOMS SERVICE

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would direct the Comptroller General to conduct an audit of the systems at the Customs Service to monitor and enforce textile transshipment. The Comptroller General would report on recommendations for improvements.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 352—AUTHORIZATION OF APPROPRIATIONS FOR TEXTILE TRANSSHIPMENT ENFORCEMENT OPERATIONS

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would authorize $9,500,000 for FY 2002 to the Customs Service for the purpose of enhancing its textile transshipment enforcement operations. This amount would be in addition to Customs Service's base authorization and the authorization to reestablish the destroyed textile monitoring and enforcement operations at the World Trade Center.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The Senate recedes to the House, but the text is clarified to provide that personnel will also conduct education and outreach in addition to enforcement.

SEC. 353—IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT

Present law

No applicable section.

House amendment

H.R. 3009 as amended and passed by the House would earmark approximately $1.3 million within Customs' budget for selected activities related to providing technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106–200).

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

Subtitle B—Office of the United States Trade Representative

SEC. 361—AUTHORIZATION OF APPROPRIATIONS

Present law

The statutory authority for budget authorization for the Office of the United States Trade Representative is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171 (a)(1)). The most recent authorization of appropriations for USTR was under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]. Under 19 U.S.C. 2171, Congress has adopted a two-year authorization process to provide USTR with guidance as it plans its budget as well as guidance from the Committee for the appropriation process.

House amendment

H.R. 3009 as amended and passed by the House authorizes $32,300,000 for FY 2003 and $31,108,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees. In light of the substantial increase in trade negotiation work to be conducted by USTR and the associated need for consultations with Congress, this provision would authorize the addition of two individuals to assist the office of Congressional Affairs.

Senate amendment

The Senate amendment authorizes $30,000,000 for FY 2003 and $31,000,000 for FY 2004.

Conference agreement

The Senate recedes to the House.

Subtitle C—United States International Trade Commission

SEC. 371.—AUTHORIZATION OF APPROPRIATIONS

Present law

The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]. Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

House amendment

H.R. 3009 as amended and passed by the House authorizes $54,000,000 for FY 2003 and $57,240,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Senate amendment

The Senate amendment authorizes $51,400,000 for FY 2003 and $53,400,000 for FY 2004.

Conference agreement

The Senate recedes to the House.

Subtitle D—Other Trade Provisions

SEC. 381.—INCREASE IN AGGREGATE VALUE OF ARTICLES EXEMPT FROM DUTY ACQUIRED ABROAD BY UNITED STATES RESIDENTS

Present law

The Harmonized Tariff Schedule at subheading 9804.00.65 currently provides a $400 duty exemption for travelers returning from abroad.

House amendment

H.R. 3009 as amended and passed by the House would increased the current $400 duty exemption to $800.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 382.—REGULATORY AUDIT PROCEDURES

Present law

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides the authority for Customs to audit persons making entry of merchandise into the U.S. In the course of such audit, Customs auditors may identify discrepancies, including underpayments of duties. However, if there also are overpayments, there is no requirement that such overpayments be offset against the underpayments if the underlying entry has been liquidated.

House amendment

H.R. 3009 as amended and passed by the House would require that when conducting an audit, Customs must recognize and offset overpayments and overdeclarations of duties, quantities and values against underpayments and underdeclarations. As an example, if during an audit Customs finds that an importer has underpaid duties associated with one entry of merchandise by $100 but has also overpaid duties from another entry of merchandise by $25, then any assessment by Customs must be the difference of $75.

Senate amendment

The Senate amendment is the same as the House amendment.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 383.—PAYMENT OF DUTIES AND FEES

Present law

Current law at 19 U.S.C. 1505 provides for the collection of duties by the Secretary through regulatory process.

House amendment

H.R. 3009 as amended and passed by the House would require duties to be paid within 10 working days without extension. The bill also provides for the Customs Service to create a monthly billing system upon the building of the Automated Commercial Environment.

Senate amendment

No provision.

Conference agreement

Senate recedes to the House.

DIVISION B—BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI—TRADE PROMOTION AUTHORITY

SEC. 2101.—SHORT TITLE AND FINDINGS

Present law

No provision.

House amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2001." Section 2101 of the House amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that the recent pattern of decisions by dispute settlement panels and the Appellate Body of the World Trade Organization to impose obligations and restrictions on the use of antidumping and countervailing measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

Senate amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2002." Section 2101 of the Senate amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. It goes on to note a troubling pattern of cases before WTO dispute settlement panels and the WTO Appellate Body that do precisely that.

Conference agreement

The Senate recedes to the House with modifications. With respect to the findings, the Conferees believe that, as stated in section 2101(b) of the Conference agreement, support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore, the recent pattern of decisions by dispute settlement panels and the WTO Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing and safeguard measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SEC. 2102—TRADE NEGOTIATING OBJECTIVES

Present/expired law

Section 1101(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) set forth overall negotiating objectives for concluding trade agreements. These objectives were to obtain more open, equitable, and reciprocal market access, the reduction or elimination of barriers and other trade-distorting policies and practices, and a more effective system of international trading disciplines and procedures. Section 1102(b) set forth the following principal trade negotiating objectives: dispute settlement, transparency, developing countries, current account surpluses, trade and monetary coordination, agriculture, unfair trade practices, trade in services, intellectual property, foreign direct investment, safeguards, specific barriers, worker rights, access to high technology, and border taxes.

House amendment

Section 2102 of the House amendment to H.R. 3009 would establish the following overall negotiating objectives: obtaining more open, equitable, and reciprocal market access; obtaining the reduction or elimination of barriers and other trade-distorting policies and practices; further strengthening the system of international trading disciplines and procedures, including dispute settlement; fostering economic growth and full employment in the U.S. and the global economy; ensuring that trade and environmental policies are mutually supportive and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources; promoting respect for worker rights and the rights of children consistent with International Labor Organization core labor standards, as defined in the bill; and seeking provisions in trade agreements under which parties strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement to trade.

In addition, section 2102 would establish the principal trade negotiating objectives for concluding trade agreements, as follows:

Trade barriers and distortions: expanding competitive market opportunities for U.S. exports and obtaining fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for U.S. exports and distort U.S. trade; and obtaining reciprocal tariff and nontariff barrier elimination agreements, with particular attention to products covered in section 111(b) of the Uruguay Round Agreements Act.

Services: to reduce or eliminate barriers to international trade in services, including regulatory and other barriers, that deny national treatment or unreasonably restrict the establishment or operations of services suppliers.

Foreign investment: to reduce or eliminate artificial or trade-distorting barriers to trade-related foreign investment and, recognizing that U.S. law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, to secure for investors important rights comparable to those that would be available under U.S. legal principles and practice, by:

reducing or eliminating exceptions to the principle of national treatment; freeing the transfer of funds relating to investments; reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;

seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

providing meaningful procedures for resolving investment disputes including between an investor and a government;

seeking to improve mechanisms used to resolve disputes between an investor and a government through mechanisms to eliminate frivolous claims and procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

providing an appellate or similar review mechanism to correct manifestly erroneous interpretations of law; and

ensuring the fullest measure of transparency in investment disputes by ensuring that all requests for dispute settlement and all proceedings, submissions, findings, and decisions are promptly made public; all hearings are open to the public; and establishing a mechanism for acceptance of amicus curiae submissions.

Intellectual property: including: promoting adequate and effective protection of intellectual property rights through ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including strong enforcement; providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property; and ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that right holders have the legal and technological means to control the use of their works through the internet and other global communication media.

Transparency: to increase public access to information regarding trade issues as well as the activities of international trade institutions; to increase openness in international trade fora, including the WTO, by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and to increase timely public access to notifications made by WTO member states and the supporting documents.

Anti-corruption: to obtain high standards and appropriate enforcement mechanisms applicable to persons from all countries participating in a trade agreement that prohibit attempts to influence acts, decisions, or omissions of foreign government; and to ensure that such standards do not place U.S. persons at a competitive disadvantage in international trade.

Improvement of the WTO and multilateral trade agreements: to achieve full implementation and extend the coverage of the WTO and such agreements to products, sectors, and conditions of trade not adequately covered; and to expand country participation in and enhancement of the Information Technology Agreement (ITA) and other trade agreements.

Regulatory practices: to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations; to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence; to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

Electronic commerce: to ensure that current obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce; to ensure that electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and the classification of such goods and services ensures the most liberal trade treatment possible; to ensure that governments refrain from implementing trade-related measures that impede electronic commerce; where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment, and to extend the moratorium of the WTO on duties on electronic transmissions.

Agriculture: to ensure that the U.S. trade negotiators duly recognize the importance of agricultural issues; to obtain competitive market opportunities for U.S. exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in U.S. markets and to achieve fairer and more open conditions of trade; to reduce or eliminate trade distorting subsidies; to impose disciplines on the operations of state-trading enterprises or similar administrative mechanisms; to eliminate unjustified restrictions on products derived from biotechnology; to eliminate sanitary or phytosanitary restrictions that contravene the Uruguay Round Agreement as they are not based on scientific principles and to improve import relief mechanisms to accommodate the unique aspects of perishable and cyclical agriculture.

Labor and the environment: to ensure that a party does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party; to recognize that a party to a trade agreement is effectively enforcing its laws if a course of inaction or inaction reflects a reasonable exercise of discretion or results from a bona fide decision regarding allocation of resources and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection; to strengthen the capacity of U.S. trading partners to promote respect for core labor standards and to protect the environment through the promotion of sustainable development; to reduce or eliminate government practices or policies that unduly threaten sustainable development; to seek market access for U.S. environmental technologies, goods, and services; and to ensure that labor, environmental, health, or safety policies and practices of parties to trade agreements do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Dispute settlement and enforcement: to seek provisions in trade agreements providing for resolution of disputes between governments in an effective, timely, transparent, equitable, and reasoned manner requiring determinations based on facts and the principles of the agreement, with the goal of increasing compliance; seek to strengthen the capacity of the WTO Trade Policy Review Mechanism to review compliance; seek provisions encouraging the early identification and settlement of disputes through consultations; seek provisions encouraging trade-expanding compensation; seek provisions to impose a penalty that encourages compliance, is appropriate to the parties, nature, subject matter, and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and seek provisions that treat U.S. principal negotiating objectives equally with respect to ability to resort to dispute settlement and availability of equivalent procedures and remedies.

Extended WTO negotiations: concerning extended WTO negotiations on financial services, civil aircraft, and rules of origin.

Senate amendment

The Senate Amendment is substantially similar to the House Amendment, with the exception of several key provisions:

Small Business: The Senate Amendment contains an overall negotiating objective "to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses."

Trade in Motor Vehicles and Parts: The Senate Amendment contains a principal negotiating objective on expanding competitive opportunities for exports of U.S. motor vehicles and parts.

Foreign Investment: The Senate Amendment states as an objective of the United States in the context of investor-state dispute settlement "ensuring that foreign investors in the United States are not accorded greater rights than United States investors in the United States." The Senate Amendment's objective with respect to investor-state dispute settlement also differs from the House Amendment in the following respects:

It sets as an objective" seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process."

It sets deterrence of the filing of frivolous claims as an objective, "in addition to the prompt elimination of frivolous claims."

The Senate Amendment seeks to establish "procedures to enhance opportunities for public input into the formulation of government positions."

The Senate Amendment seeks to establish a single appellate body to review decisions by arbitration panels in investor-state dispute settlement cases. Also, unlike the House Amendment, the Senate Amendment does not prescribe a standard of review for an eventual appellate body.

Intellectual Property: The Senate Amendment contains an objective to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001."

Trade in Agriculture: The Senate Amendment's negotiating objective on export subsidies differs from the House Amendment, stating that an objective of the United States is "seeking to eliminate all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving U.S. agriculture development and export credit programs that allow the U.S. to compete with other foreign export promotion efforts." The Senate Amendment also provides that it is a negotiating objective of the United States to "strive to complete a general multilateral round in the WTO by January 1, 2005, and seek the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on U.S. import-sensitive commodities (including those subject to tariff-rate quotas)."

Human Rights and Democracy: The Senate Amendment contains a negotiating objective "to obtain provisions in trade agreements that require parties to those agreements to strive to protect internationally recognized civil, political, and human rights."

Dispute Settlement: The Senate Amendment contains a negotiating objective absent in the House Amendment "to seek improved adherence by panels convened under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes and by the WTO Appellate Body to the standard of review applicable under the WTO Agreement involved in the dispute, including greater deference, where appropriate, to the fact finding and technical expertise of national investigating authorities."

Border Taxes: The Senate Amendment contains an objective absent from the House Amendment on border taxes. The objective seeks "to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes." The objective is addressed to a decision by the WTO Dispute Settlement Body holding the foreign sales corporation provisions of the Internal Revenue Code to be inconsistent with WTO rules.

Textiles: The Senate Amendment contains an extensive objective on opening foreign markets to U.S. textile exports. There is no similar provision in the House Amendment.

Worst Forms of Child Labor: The Senate Amendment contains a negotiating objective to prevent distortions in the conduct of international trade caused by the use of the worst forms of child labor and to redress unfair and illegitimate competition based upon the use of the worst forms of child labor.

Conference agreement

The Senate recedes to the House with several modifications. With respect to the overall negotiating objectives, the Conferees agree to the overall negotiating objective regarding small business in section 2102(a)(8) of the Senate amendment. Second, the Conferees agree to an overall negotiating objective to promote universal compliance with ILO Declaration 182 concerning the worst forms of child labor.

With respect to the principal negotiating objectives, the Conferees agree to expand the negotiating objective on intellectual property to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the WTO at Doha (section 2102(b)(4)(c) of the Senate amendment).

With respect to the principal negotiating objectives regarding foreign investment, the Conferees believe that it is a priority for negotiators to seek agreements protecting the rights of U.S. investors abroad and ensuring the existence of a neutral investor-state dispute settlement mechanism. At the same time, these protections must be balanced so that they do not come at the expense of making Federal, State and local laws and regulations more vulnerable to successful challenges by foreign investors than by similarly situated U.S. investors.

No Greater Rights: The House recedes to the Senate with a technical modification to clarify that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States. That is, the reciprocal obligations regarding investment protections that the United States undertakes in pursuing its goals should not result in foreign investors being entitled to compensation for government actions where a similarly situated U.S. investor would not be entitled to any form of relief, while ensuring that U.S. investors abroad can challenge host government measures which violate the terms of the investment agreement. Thus, this language expresses Congress' direction that the substantive investment protections (e.g., expropriation, fair and equitable treatment, and full protection and security) should be consistent with United States legal principles and practice and not provide greater rights to foreign investors in the United States.

This language applies to substantive protections only and is not applicable to procedural issues, such as access to investor-state dispute settlement. The Conferees recognize that the procedures for resolving disputes between a foreign investor and a government may differ from the procedures for resolving disputes between a domestic investor and a government and may be available at different times during the dispute. Thus, the "no greater rights" direction does not, for instance, apply to such issues as the dismissal of frivolous claims, the exhaustion of remedies, access to appellate procedures, or other similar issues.

The Conferees also agree that negotiators should seek to provide for an appellate body, or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements.

With respect to the principal negotiating objective on agriculture, the Conferees agree to section 2102(b)(10)(A)(iii) and (xv) of the House amendment, in lieu of section 2102(b)(10)(A)(iii) of the Senate amendment. The Conferees also accept section 2102(b)(10)(A)(xvi) of the Senate amendment on the timing and sequence of WTO agriculture negotiations relative to other negotiations.

The Conferees agree to section 2102(b)(13)(C) of the Senate amendment, relating to dispute settlement in dumping, subsidy, and safeguard cases, as modified, to seek adherence by WTO panels to the applicable standard of review.

The Conferees recognize the importance of preserving the ability of the United States to enforce rigorously its trade remedy laws, including the antidumping, countervailing duty and safeguard laws. Because this issue is significant to many Members of Congress in both the House and Senate, the Conferees have made this priority a principal negotiating objective. Negotiators must also avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, as well as domestic and international safeguard provisions. In addition, section 2102(b)(14)(B) directs the President to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

The Conferees agree to section 2012(b)(14) of the Senate amendment stating that the United States should seek a revision of WTO rules on the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes. The Conferees agree that such a revision of WTO rules is one among other options for the United States, including domestic legislation, to redress such a disadvantage.

The Conferees agree to include as a principal negotiating objective to obtain competitive market opportunities for U.S. exports of textiles substantially equivalent to those for foreign textiles in the United States.

The Conferees agree to a principal negotiating objective concerning the worst forms of child labor, to seek commitments by trade agreement parties to vigorously enforce their own laws prohibiting the worst forms of child labor.

SEC. 2102(C)—PROMOTION OF CERTAIN PRIORITIES

Present/expired law

No provision.

House amendment

Section 2102(c) of the House amendment to H.R. 3009 sets forth certain priorities for the President to address. These provisions include seeking greater cooperation between WTO and the ILO; seeking to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to promote respect for core labor standards; seeking to seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to develop and implement standards for environment and human health based on sound science; conducting environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 and its relevant guidelines; reviewing the impact of future trade agreements on U.S. employment, modeled after Executive Order 13141; taking into account, in negotiating trade agreements, protection of legitimate health or safety, essential security, and consumer interests; requiring the Secretary of Labor to consult with foreign parties to trade negotiations as to their labor laws and providing technical assistance where needed; reporting to Congress on the extent to which parties to an agreement have in effect laws governing exploitative child labor; preserving the ability of the United States to enforce rigorously its trade laws, including antidumping and countervailing duty laws, and avoiding agreements which lessen their effectiveness; ensuring that U.S. exports are not subject to the abusive use of trade laws, including antidumping and countervailing duty laws, by other counties; continuing to promote consideration of Multilateral Environmental Agreements (MEAS) and consulting with parties to such agreements regarding the consistency of any MEA that includes trade measures with existing environmental exceptions under Article XX of the GATT.

In addition, USTR, twelve months after the imposition of a penalty or remedy by the United States permitted by an agreement to which this Act applies, is to report to the Committee on the effectiveness of remedies applied under U.S. law to enforce U.S. rights under trade agreements. USTR shall address whether the remedy was effective in changing the behavior of the targeted party and whether the remedy had any adverse impact on parties or interests not party to the dispute.

Finally, section 2102(c) would direct the President to seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

Senate amendment

With several notable exceptions, the priorities set forth in section 2102(c) of the Senate Amendment are identical to the priorities set forth in the House Amendment. The exceptions are:

With respect to the study that the President must perform on the impact of future trade agreements on employment, the Senate Amendment requires the President to examine particular criteria, as follows: the impact on job security, the level of compensation of new jobs and existing jobs, the displacement of employment, and the regional distribution of employment, utilizing experience from previous trade agreements and alternative models of employment analysis. The Senate Amendment also requires that the report be made available to the public.

The Senate Amendment requires that, in connection with new trade agreement negotiations, the President shall "submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating."

The Senate Amendment adds to the House Amendment priority on preserving the ability of the United States to enforce vigorously its trade laws, by including U.S. "safeguards" law in the list of laws at issue. This is the U.S. law authorizing the President to provide relief to parties seriously injured or threatened with serious injury due to surges of imports. The priority in the Senate Amendment also directs the President to remedy certain market distorting measures that underlie unfair trade practices.

Conference agreement

The Senate recedes to the House amendment with several modifications. With respect to the worst forms of child labor, the Conferees agree to expand section 2102(c)(2) of the House amendment to include the worst forms of child labor within requirement to seek to establish consultative mechanisms to strengthen the capacity of U.S. trading partners to promote respect for core labor standards.

The Conferees agree to modify section 2105(c)(5) of the House amendment to require the President to report on impact of future trade agreements on US employment, including on labor markets, modeled after E.O. 13141 to the extent appropriate in establishing procedures and criteria, and to make the report public.

With respect to the labor rights report in section 2102(c)(8) of both bills, the Conferees agree to the Senate provision. Furthermore, the Conferees agree to section 2107(b)(2)(E) of the Senate amendment to require that guidelines for the Congressional Oversight Group include the time frame for submitting this report.

SEC. 2102(D)—CONSULTATIONS, ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS

Present/expired law

No provision.

House amendment

Section 2102(d) of the House amendment to H.R. 3009 requires that USTR consult closely, and on a timely basis with the Congressional Oversight Group appointed under section 2107. In addition, USTR would be required to consult closely (including immediately before the initialing of an agreement) with the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974, as well as the House Committee on Ways and Means, the Senate Committee on Finance, and the Congressional Oversight Group. With regard to negotiations concerning agriculture trade, USTR would also be required to consult with the House and Senate Committees on Agriculture.

In determining whether to enter into negotiations with a particular country, section 2102(e) would require the President to take into account whether that country has implemented its obligations under the Uruguay Round Agreements.

Senate amendment

Section 2102(d) of the Senate amendment is identical to the House provision in the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2103—TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent ad valorem, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

Staging, authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

Negotiation of bilateral agreements. Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

The foreign country must request the negotiation of the bilateral agreement;

The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and

The President must provide written notice of the negotiations to the Committee on Ways and Means and the Committee on Finance of the Senate and consult with these committees.

The negotiations could proceed unless either Committee disapproved the negotiations within 60 days prior to the 90 calendar days advance notice required of entry into an agreement (described below).

Negotiation of multilateral non-tariff agreements. With respect to multilateral agreements, section 1102(b) of the 1988 Act provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

Provisions qualifying for fast track procedures. Section 1103(b)(1)(A) of the 1988 Act provided that fast track apply to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

Time period. The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to April 15, 1994, to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

House amendment

Section 2103 of the House amendment provides:

Proclamation authority. Section 2103(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent ad valorem, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent ad valorem could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress.

In addition, section 2103(a) would not allow the use of tariff proclamation authority on import sensitive agriculture.

Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

Agreements on tariff and non-tariff barriers. Section 2103(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

Conditions. Section 2103(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2102(a) and (b) and the President satisfies the consultation requirements set forth in section 2104.

Bills qualifying for trade authorities procedures. Section 2103(b)(3)(A) would provide that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

Provisions approving the trade agreement and statement of administrative action; and

Provisions necessary or appropriate to implement the trade agreement.

Time period. Sections 2103(a)(1)(A) and 2103(b)(1)(C) would extend trade promotion authority to agreements entered into before June 1, 2005. An extension until June 1, 2007, would be permitted unless Congress passed a disapproval resolution, as described under section 2103(c).

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences, as follows:

The Senate Amendment limits the President's proclamation authority with respect to "import sensitive agricultural products," a term defined in section 2113(5) of the Senate Amendment. This limitation differs from the limitation in the House Amendment, inasmuch as it includes certain products subject to tariff rate quotas.

The Senate Amendment contains a provision making a trade agreement implementing bill ineligible for "fast track" procedures if the bill modifies, amends, or requires modification or amendment to certain trade remedy laws. A bill that does modify, amend or require modification or amendment to those laws is subject to a point of order in the Senate, which may be waived by a majority vote.

The Senate Amendment requires the U.S. International Trade Commission to submit a report to Congress on negotiations during the initial period for which the President is granted trade promotion authority. This report would be made in connection with a request by the President to have such authority extended.

Conference agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to the new definition of import sensitive agriculture in section 2103(a)(2)(B), 2104(b)(2)(A)(i), and 2113(5) of the Senate amendment to encompass products subject to tariff rate quotas, as well as products subject to the lowest tariff reduction in the Uruguay Round.

The Conferees agree to section 2103(c)(3)(B) of the Senate amendment, which requires the ITC to submit a report to Congress by May 1, 2005 (if the President seeks extension of TPA until June 2, 2007) analyzing the economic impact on the United States of all trade agreements implemented between enactment and the extension request.

SEC. 2104—CONSULTATIONS AND ASSESSMENT

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agreement. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

House amendment

Section 2104 of the House amendment to H.R. 3009 would establish a number of requirements that the President consult with Congress. Specifically, section 2104(a)(1) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Section 2104(a)(c) also provides that President shall meet with the Congressional Oversight Group established under section 2107 upon a request of a majority of its members. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

Section 2104(b)(1) would establish a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

Section 2104(b)(2) provides special consultations on import sensitive agriculture products. Specifically, before initiating negotiations on agriculture and as soon as practicable with respect to the Free Trade Area of the Americas and WTO negotiations, USTR is to identify import sensitive agriculture products and consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry in the Senate concerning whether any further tariff reduction should be appropriate, and whether the identified products face unjustified sanitary or phytosanitary barriers. USTR is also to request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the U.S. industry producing the product and on the U.S. economy as a whole. USTR is to then notify the Committees of those products for which it intends to seek tariff liberalization as well as the reasons. If USTR commences negotiations and then identifies additional import sensitive agriculture products, or a party to the negotiations requests tariff reductions on such a product, then USTR shall notify the Committees as soon as practicable of those products and the reasons for seeking tariff reductions.

Section 2104(c) would establish a special consultation requirement for textiles. Specifically, before initiating negotiations concerning tariff reductions in textiles and apparel, the President is to assess whether U.S. tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

In addition, section 2104(d) would require the President, before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in the House amendment to H.R. 3009 and all matters relating, to implementation under section 2105, including the general effect of the agreement on U.S. laws.

Section 2104(e) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 2105(a)(1)(A).

Finally, section 2104(f) would require the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. That report would be due 90 days from the date after the President enters into the agreement.

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

Consultations on export subsidies and distorting policies. Section 2104(b)(2)(A)(ii)(III) requires consultations on whether nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers.

Consultations relating to fishing trade. Section 2104(b)(3) requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Special reporting requirements on U.S. trade remedy laws. Section 2104(d) provides that the President, at least 90 calendar days before the President enters into a trade agreement, shall notify the House Ways and Means Committee and the Senate Finance Committee in writing any amendments to U.S. antidumping and countervailing duty laws (title VII of the Tariff Act of 1930) or U.S. safeguard provisions (chapter 1 of title II of the Trade Act of 1974) that the President proposes to include in the implementing legislation. On the date that the President transmits the notification, the President must also transmit to the Committees a report explaining his reasons for believing that amendments to these trade remedy laws are necessary to implement the trade agreement and his reasons for believing that such amendments are consistent with the negotiating objective on this issue. Not later than 60 calendar days after the date on which the President transmits notification to the relevant committees, the Chairman and ranking members of the House Ways and Means Committee and the Senate Finance Committees shall issue reports stating whether the proposed amendments described in the President's notification are consistent with the negotiating objectives on trade laws.

Conference agreement

The Senate recedes to the House with several modifications. The Conferees agree to section 2104(b)(2)(A)(ii)(III) of the Senate amendment, which requires consultations on whether other nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers. In addition, the Conferees agree to section 2104(b)(3) of the Senate amendment, which requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Finally, the Conferees agree to include the notification and report on changes to trade remedy laws in sections 2104(d)(3)(A) and (B) in the Senate amendment with modifications. Given the priority that Conferees attach to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the Conference agreement puts in place a process requiring special scrutiny of any impact that trade agreements may have on these laws. The process requires the President, at least 180 calendar days before the day on which he enters into a trade agreement, to report to the Committees on Ways and Means and the Committee on Finance the range of proposals advanced in trade negotiations and may be in the final agreement that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and how these proposals relate to the objectives described in section 2102(b)(14).

The Conference agreement also provides a mechanism for any Member in the House or Senate to introduce at any time after the President's report is issued a nonbinding resolution which states "that the ______ finds that the proposed changes to U.S. trade remedy laws contained in the report of the President transmitted to the Congress on ______ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to ______, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled in with either the "House of Representatives" or the "Senate", as the case may be, the second blank space filled in with the appropriate date of the report, and the third blank space being filled in with the name of the country or countries involved.

The resolution is referred to the Ways and Means and Rules Committees in the House and the Finance Committee in the Senate, and is privileged on the floor if it is reported by the Committees. The Conference agreement allows only one resolution (either a nonbinding resolution or a disapproval resolution) per agreement to be eligible for the trade promotion authority procedures contained in sections 152 (d) and (e) of the Trade Act of 1974. The one resolution quota is satisfied for the House only after the Ways and Means Committee reports a resolution, and for the Senate only after the Finance Committee reports a resolution.

The Conference agreement states that, with respect to agreements entered into with Chile and Singapore, the report referenced in section 2104(d)(3)(A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into a trade agreement with either country.

SEC. 2105—IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President was required to submit formally the draft agreement, implementing legislation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill—whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, "unofficial" or "informal" mark-up sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

House amendment

Under Section 2105 of the House amendment to H.R. 3009, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 2105(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

Section 2105(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress, which is defined as failing or refusing to consult in accordance with section 2104 or 2105, failing to develop or meet guidelines under section 2107(b), failure to meet with the Congressional Oversight Group, or the agreement fails to make progress in achieving the purposes, policies, priorities, and objectives of the Act. In a change from the expired law, such a resolution may be introduced by any Member of the House or Senate. Only one such privileged resolution would be permitted to be considered per trade agreement per Congress.

Most of the remaining provisions are identical to the expired law. Specifically, section 2105(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so, but with the new requirement that the submission be made on a date on which both Houses are in session, the procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House Committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days would be provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction, the bill could be developed by the Committees of jurisdiction together with the Administration during the informal Committee mark-up process.

Finally, as with the expired provision, section 2105(c) specifies that sections 2105(b) and 3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Senate amendment

The Senate Amendment is substantially similar to the House Bill, with the following exception:

Reporting requirements. Section 2105(a)(1)(A)(ii) requires the President to transmit to the House Ways and Means Committee and the Senate Finance Committee the notification and report described in section 2104(d)(3)(A) regarding changes to U.S. trade remedy laws.

Disclosure Requirements. Section 2105(a)(4) of the Senate bill specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body.

Senate Procedures. Section 2105(b)(1)(C)(i)(II) provides that any Member of the Senate may introduce a procedural disapproval resolution, and that that resolution will be referred to the Senate Finance Committee. Section 2105(b)(1)(C)(iv) provides that the Senate may not consider a disapproval resolution that has not been reported by the Senate Finance Committee.

Conference agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to section 2105(a)(4) of the Senate amendment, which specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body. The Conferees also agree to sections 2105(b)(1)(C)(i)(II) and (b)(1)(C)(iv) of the Senate amendment, which applies the same procedures for consideration of bills in the Senate as for the House.

Finally, the Conferees agree to section 2105(b)(2) of the Senate amendment with modifications, which requires the Secretary of Commerce, in consultation with the Secretaries of State and Treasury, the Attorney General, and the United States Trade Representative, to transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report prior to December 31, 2002.

SEC. 2106—TREATMENT OF CERTAIN TRADE AGREEMENTS

Present/expired law

No provision.

House amendment

Section 2106 of the House amendment to H.R. 3009 exempts agreements resulting from ongoing negotiations with Chile or Singapore, an agreement establishing a Free Trade Area of the Americas, and agreements concluded under the auspices of the WTO from prenegotiation consultation requirements of section 2104(a) only. However, upon enactment of H.R. 3009, the Administration is required to consult as to those elements set forth in section 2104(a) as soon as feasible.

Senate Amendment

Section 2106 of the Senate amendment is substantially similar to the House bill.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2107—CONGRESSIONAL OVERSIGHT GROUP

Present/expired law

No provision.

House amendment

Section 2107 of the House amendment to H.R. 3009 would require the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Finance to chair and convene, sixty days after the effective date of this Act, the Congressional Oversight Group. The Group would be comprised of the following Members of the House: the Chairman and Ranking Member of the Committee on Ways and Means and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the House, jurisdiction over provisions of law affected by a trade negotiation. The Group would be comprised of the following Members of the Senate: the Chairman and Ranking Member of the Committee on Finance and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade negotiation.

Members are to be accredited as official advisors to the U.S. delegation in the negotiations. USTR is to develop guidelines to facilitate the useful and timely exchange of information between USTR and the Group, including regular briefings, access to pertinent documents, and the closest possible coordination at all critical periods during the negotiations, including at negotiation sites.

Finally, section 2107(c) provides that upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Group before initiating negotiations or any other time concerning the negotiations.

Senate amendment

Section 2107 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2108—ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS

Present/expired law

No provision.

House amendment

Section 2108 of the House amendment to H.R. 3009 would require the President to submit to the Congress a plan for implementing and enforcing any trade agreement resulting from this Act. The report is to be submitted simultaneously with the text of the agreement and is to include a review of the Executive Branch personnel needed to enforce the agreement as well as an assessment of any U.S. Customs Service infrastructure improvements required. The range of personnel to be addressed in the report is very comprehensive, including U.S. Customs and Department of Agriculture border inspectors, and monitoring and implementing personnel at USTF, the Departments of Agriculture, Commerce, and the Treasury, and any other agencies as may be required.

Senate amendment

Section 2108 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2109—COMMITTEE STAFF

Present/expired law

No provision.

House amendment

Section 2109 of the House amendment to H.R. 3009 states that the grant of trade promotion authority is likely to increase the activities of the primary committees of jurisdiction and the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader Members of Congress in the formulation of U.S. trade policy and oversight of the U.S. trade agenda. The provision specifies that the primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

Senate amendment

Section 2109 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference agreement

The Conference agreement follows the House amendment and the Senate amendment.

SEC. 2111—REPORT ON THE IMPACT OF TRADE PROMOTION AUTHORITY

Present/expired law

No provision.

House Amendment

No provision.

Senate Amendment

Section 2111 requires the International Trade Commission, within one year following enactment of this Act, to issue a report regarding the economic impact of the following trade agreements: (1) The U.S.-Israel Free Trade Agreement; (2) the U.S.-Canada Free Trade Agreement; (3) the North American Free Trade Agreement (NAFTA); (4) The Uruguay Round Agreements, which established the World Trade Organization; and (5) The Tokyo Round of Multilateral Trade Negotiations.

Conference agreement

The House recedes to the Senate amendment.

SEC. 2112—SMALL BUSINESS

Present/expired law

No provision.

House amendment

No provision.

Senate amendment

WTO small business advocate. Section 2112(a) provides that the U.S. Trade Representative shall pursue identification of a small business advocate at the World Trade Organization Secretariat to examine the impact of WTO agreements on the interests of small businesses, address the concerns of small businesses, and recommend ways to address those interests in trade negotiations involving the WTO.

Assistant USTR responsible for small businesses. Section 2112(b) provides that the Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small businesses are considered in trade negotiations.

Conference agreement

The Senate recedes to the House amendment with a modification. The Conferees agree to section 2112(b) of the Senate amendment, which provides that the Assistant USTR for Industry and Telecommunications will be responsible for ensuring that the interests of small business are considered in trade negotiations.

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

SEC. 3101—SHORT TITLE

Present law

No provision.

House amendment

Section 3101 of H.R. 3009, as amended, provides that the Act may be cited as the "Andean Trade Promotion and Drug Eradication Act."

Senate amendment

Section 3101 provides that the Act may be cited as the "Andean Trade Preference Expansion Act."

Conference agreement

The Senate recedes.

SEC. 3102—FINDINGS

Present law

No provision.

House amendment

Section 1302 contains findings of Congress that:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counter narcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provide sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005 as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiaries countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

Senate amendment

Section 3101 is identical.

Conference agreement

The conference agreement follows the House amendment and the Senate amendment.

SEC. 3103—ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT

Articles (Except Apparel) Eligible for Preferential Treatment

Present law

The Andean Trade Preference Act (ATPA), enacted on December 4, 1991 as title II of Public Law 102–182, authorizes preferential trade benefits for the Andean nations of Bolivia, Colombia, Ecuador, and Peru, similar to those benefits granted to beneficiaries under the Caribbean Basin Initiative program. The ATPA authorizes the President to proclaim duty-free treatment for all eligible articles from Bolivia, Colombia, Ecuador, Peru. This authority applies only to normal column I rates of duty in the Harmonized Tariff Schedule of the United States (HTS); any additional duties imposed under U.S. unfair trade practice laws, such as the antidumping or countervailing duty laws, are not affected by this authority.

The ATPA contains a list of products that are ineligible for duty-free treatment. More specifically, ATPA duty-free treatment does not apply to textile and apparel articles that are subject to textile agreements; petroleum and petroleum products; footwear not eligible for duty-free treatment under the Generalized System of Preferences; certain watches and watch parts; certain leather products; and sugar, syrups and molasses subject to over-quota rates of duty.

House amendment

Section 3103 (a) amends the Andean Trade Preference Act to authorize the President to proclaim duty-free treatment for any of the following articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries:

(1) Footwear not designated at the time of the effective date of this Act as eligible for the purposes of the Generalized System of Preferences under title V of the Trade Act of 1974;

(2) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(3) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(4) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that—(i) are the product of any beneficiary country; and (ii) were not designated on August 5, 1983, as eligible articles for purposes of the

Generalized System of Preferences under title V of the Trade Act of 1974.

Under H.R. 3009, textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below. Imports of tuna, prepared or preserved in any manner, in airtight containers would receive immediate duty-free treatment.

Senate amendment

Section 3102 of the bill replaces the list of excluded products under section 204(b) of the current ATPA with a new provision that extends duty preferences to most of those products. The new preferences take the form of exceptions to the general rule that the excluded products are not eligible for duty-free treatment.

The enhanced preferences are made available to "ATPEA beneficiary countries." Paragraph (5) of section 204(b) of the ATPA as amended by the present bill defines ATPEA beneficiary countries as those countries previously designated by the President as "beneficiary countries" (i.e., Bolivia, Colombia, Ecuador, and Peru) which subsequently are designated by the President as "ATPEA beneficiary countries," based on the President's consideration of additional eligibility criteria.

In the event that the President did not designate a current "beneficiary country" as an "ATPEA beneficiary country," that country would remain eligible for ATPA benefits under the law as expired on December 4, 2001, but would not be eligible for the enhanced benefits provided under the present bill.

Footwear not eligible for duty-free treatment under GSP receives the same tariff treatment as like products from Mexico, except that duties on articles in particular tariff subheadings are to be reduced by 1/15 per year.

The Senate Amendment provides special treatment for rum and tafia, allowing them to receive the same tariff treatment as like products from Mexico. The bill also allows certain handbags, luggage, flat goods, work gloves, and leather wearing apparel to receive the same tariff treatment as like products from Mexico.

Under the bill, the President is authorized to proclaim duty-free treatment for tuna that is harvested by United States or ATPEA vessels, subject to a quantitative yearly cap of 20 percent of the domestic United States tuna pack in the preceding year.

Conference agreement

Senate recedes on the authority of President to proclaim duty-free treatment for particular articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries.

Textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below.

House recedes on the treatment of tuna with an amendment to: 1) retain U.S. or Andean flagged vessel rule of origin requirement in Senate amendment; 2) authorize the President to grant duty-free treatment for Andean exports of tuna packed in flexible (e.g., foil), airtight containers weighing with their contents not more than 6.8 kg each; and 3) update calculation of current MFN tariff-rate quota to be an amount based on 4.8 percent of apparent domestic consumption of tuna in airtight containers rather than domestic production.

Eligible Apparel Articles

Present law

Under the ATPA, apparel articles are on the list of products excluded from eligibility for duty-free treatment.

House amendment

Under Section 3103, the President may proclaim duty-free and quota-free treatment for apparel articles sewn or otherwise assembled in one or more beneficiary countries exclusively from any one or any combination of the following:

(1) Fabrics or fabric components formed, or components knit-to-shape, in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States).

(2) Fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more beneficiary countries) are in chief weight of llama, or alpaca.

(3) Fabrics or yarn not produced in the United States or in the region, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA (short supply provisions). Any interested party may request the President to consider such treatment for additional fabrics and yarns on the basis that they cannot be supplied by the domestic industry in commercial quantities in a timely manner, and the President must make a determination within 60 calendar days of receiving the request from the interested party.

(4) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics or fabric components formed or components knit-to-shape, in one or more beneficiary countries, from yarns formed in the United States or in one or more beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape in the United States described in paragraph 1. Imports of apparel made from regional fabric and regional yarn would be capped at 3% of U.S. imports growing to 6% of U.S. imports in 2006, measured in square meter equivalents.

Senate amendment

Paragraph (2) of section 204(b) of the ATPA as amended by section 3102 of the present bill extends duty-free treatment to certain textile and apparel articles from ATPEA beneficiary countries. The provision divides articles eligible for this treatment into several different categories and limits duty-free treatment to a period defined as the "transition period." The transition period is defined in paragraph (5) of section 204(b) of the ATPA as amended to be the period from enactment of the present bill through the earlier of February 28, 2006 or establishment of a FTAA.

In general, the different categories of textile and apparel articles eligible for duty-free treatment are defined according to the origin of the yarn and fabric from which the articles are made. Under the first category, apparel sewn or otherwise assembled in one or more ATPEA beneficiary countries is eligible for duty-free treatment if it is made exclusively from one or a combination of several sub-categories of components, as follows:

(1) United States fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in the United States;

(2) A combination of both United States and ATPEA beneficiary country components knit-to-shape from yarns wholly formed in the United States;

(3) ATPEA beneficiary country fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in one or more ATPEA beneficiary countries, if the constituent fibers are primarily llama or alpaca hair; and

(4) Fabrics or yarns, regardless of origin, if such fabrics or yarns have been deemed, under the North American Free Trade Agreement, not to be widely available in commercial quantities in the United States. A separate provision of section 204(b) of the ATPA as amended by the present bill sets forth a process for interested parties to petition the President for inclusion of additional yarns and fabrics in the "short supply" list. This process includes obtaining advice from the United States International Trade Commission and industry advisory groups, and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

A second category of apparel articles eligible for duty-free treatment is apparel articles knit-to-shape (except socks) in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. To qualify under this category, the entire article must be knit-to-shape—as opposed to being assembled from components that are themselves knit-to-shape.

A third category of apparel articles eligible for duty-free treatment is apparel articles wholly assembled in one or more ATPEA beneficiary countries from fabric or fabric components knit, or components knit-to-shape in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. The quantity of apparel eligible for this benefit is subject to an annual cap. The cap is set at 70 million square meter equivalents for the one-year period beginning March 1, 2002. The cap will increase by 16 percent, compounded annually, in each succeeding one-year period, through February 28, 2006.

Thus, the cap applied to this category in each year following enactment will be as follows:

70 million square meter equivalents (SME) in the year beginning March 1, 2002;

81.2 million SME in the year beginning March 1, 2003;

94.19 million SME in the year beginning March 1, 2004; and

109.26 million SME in the year beginning March 1, 2005.

A separate provision makes clear that goods otherwise qualifying under the latter category will not be disqualified if they happen to contain United States fabric made from United States yarn.

A fourth category of apparel eligible for duty-free treatment under the Senate bill is brassieres that are cut or sewn, or otherwise assembled, in one or more ATPEA beneficiary countries, or in such countries and the United States. This separate category requires that, in the aggregate, brassieres manufactured by a given producer claiming duty-free treatment for such products contain certain quantities of United States fabric.

A fifth category of textile and apparel eligible for duty-free treatment is handloomed, handmade, and folklore articles.

A final category of textile and apparel goods eligible for duty-free treatment is textile luggage assembled in an ATPEA beneficiary country from fabric and yarns formed in the United States.

In addition to the foregoing categories, the bill sets forth special rules for determining whether particular textile and apparel articles qualify for duty-free treatment.

Conference agreement

In general the conferees agreed to follow the House amendment on apparel provisions with the exception that the House receded to the Senate on the treatment of textile luggage. With respect to category 2 in the House bill relating to fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more beneficiary countries, if such fabrics are in chief weight of llama, or alpaca, conferees agreed to include vicuna and calculate product eligibility based on chief value instead of chief weight. Also, conferees agreed to cap imports of apparel made from regional fabric and regional yarn (category 4 in the House bill) at 2% of U.S. imports growing to 5% of U.S. imports in 2006, measured in square meter equivalents.

It is the intention of the conferees that in cases where fabrics or yarns determined by the President to be in short supply impart the essential character to an article, the remaining textile components may be constructed of fabrics or yarns regardless of origin, as in Annex 401 of the NAFTA. In cases where the fabrics or yarns determined by the President to be in short supply do not impart the essential character of the article, the article shall not be ineligible for preferential treatment under this Act because the article contains the short supply fabric or yarn.

Special Origin Rule for Nylon Filament Yarn

House amendment

No provision.

Senate amendment

Articles otherwise eligible for duty-free treatment and quota free treatment under the bill are not ineligible because they contain certain nylon filament yarn (other than elastomeric yarn) from a country that had an FTA with the U.S. in force prior to January 1, 1995.

Conference agreement

House recedes.

Dyeing, Finishing and Printing Requirement

House amendment

New requirement that apparel made of U.S. knit or woven fabric assembled in CBTPA country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States. Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States.

Senate provision

No provision.

Conference agreement

Senate recedes.

Penalties for Transshipment

Present law

The Tariff Act of 1930, as amended, provides for civil monetary penalties for unlawful transshipment. These include penalties under 19 U.S.C. 1592 for up to a maximum of the domestic value of the imported merchandise or eight times the loss of revenue, as well as denial of entry, redelivery or liquidated damages for failure to redeliver the merchandise determined to be inaccurately represented. In addition, an importer may be liable for criminal penalties, including imprisonment for up to five years, under section 1001 of title 18 of the United States Code for making false statements on import documentation.

Under the North American Free Trade Agreement (NAFTA), Parties to the Agreement must observe Customs procedures and documentation requirements, which are established in Chapter 5 of NAFTA. Requirements regarding Certificates of Origin for imports receiving preferential tariffs are detailed in Article 502.1 of NAFTA.

House amendment

Section 3103 requires that importers comply with requirements similar in all material respects to the requirements regarding Certificates of Origin contained in Article 502.1 of the North American Free Trade Agreement (NAFTA) for a similar importation from Mexico.

In addition, if an exporter is determined under the laws of the United States to have engaged in illegal transshipment of apparel products from an Andean country, then the President shall deny all benefits under the bill to such exporter, and to any successors of such exporter, for a period of two years.

In cases where the President has requested a beneficiary country to take action to prevent transshipment and the country has failed to do so, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from that country by three times the quantity of articles transshipped, to the extent that such action is consistent with World Trade Organization (WTO) rules.

Senate amendment

In amending, section 204(b) of the ATPA, section 3102 of the present bill provides special penalties for transshipment of textile and apparel articles from an ATPEA beneficiary country. Transshipment is defined as claiming duty-free treatment for textile and apparel imports on the basis of materially false information. An exporter found to have engaged in such transshipment (or a successor of such exporter) shall be denied all benefits under the ATPA for a period of two years.

The bill further provides penalties for an ATPEA beneficiary country that fails to cooperate with the United States in efforts to prevent transshipment. Where textile and apparel articles from such country are subject to quotas on importation into the United States consistent with WTO rules, the President must reduce the quantity of such articles that may be imported into the United States by three times the quantity of transshipped articles, to the extent consistent with WTO rules.

Conference agreement

Conference agreement follows House and Senate bill.

Import Relief Actions

Present law

The import relief procedures and authorities under sections 201–204 of the Trade Act of 1974 apply to imports from ATPA beneficiary countries, as they do to imports from other countries. If ATPA imports cause serious injury, or threat of such injury, to the domestic industry producing a like or directly competitive article, section 204(d) of the ATPA authorizes the President to suspend ATPA duty-free treatment and proclaim a rate of duty or other relief measures.

Under NAFTA, the United States may invoke a special safeguard provision at any time during the tariff phase-out period if a NAFTA-origin textile or apparel good is being imported in such increased quantities and under such conditions as to cause "serious damage, or actual threat thereof," to a domestic industry producing a like or directly competitive good. The President is authorized to either suspend further duty reductions or increase the rate of duty to the NTR rate for up to three years.

House amendment

Under Section 3103 normal safeguard authorities under ATPA would apply to imports of all products except textiles and apparel. A NAFTA equivalent safeguard authorities would apply to imports of apparel products from ATPA countries, except that, United States, if it applied a safeguard action, would not be obligated to provide equivalent trade liberalizing compensation to the exporting country.

Senate amendment

The bill establishes similar textile and apparel safeguard provisions based on the NAFTA textile and apparel safeguard provision.

Conference agreement

Conference Agreement follows House and Senate bill.

Designation Criteria

Present law

In determining whether to designate any country as an ATPA beneficiary country, the President must take into account seven mandatory and 12 discretionary criteria, which are listed in section 203 of the ATPA.

Under Section 203 of the ATPA, the President shall not designate any country a ATPA beneficiary country if:

(1) The country is a Communist country;

(2) The country has nationalized, expropriated, imposed taxes or other exactions or otherwise seized ownership or control of U.S. property (including intellectual property), unless he determines that prompt, adequate, and effective compensation has been or is being made, or good faith negotiations to provide such compensation are in progress, or the country is otherwise taking steps to discharge its international obligations, or a dispute over compensation has been submitted to arbitration;

(3) The country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens;

(4) The country affords "reverse" preferences to developed countries and whether such treatment has or is likely to have a significant adverse effect on U.S. commerce;

(5) A government-owned entity in the country engages in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent or the country fails to work toward the provision of adequate and effective intellectual property rights;

(6) The country is not a signatory to an agreement regarding the extradition of U.S. citizens;

(7) If the country has not or is not taking steps to afford internationally recognized worker rights to workers in the country;

In determining whether to designate a country as eligible for ATPA benefits, the President shall take into account (discretionary criteria):

(1) An expression by the country of its desire to be designated;

(2) The economic conditions in the country, its living standards, and any other appropriate economic factors;

(3) The extent to which the country has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources;

(4) The degree to which the country follows accepted rules of international trade under the World Trade Organization;

(5) The degree to which the country uses export subsidies or imposes export performance or local content requirements which distort international trade;

(6) The degree to which the trade policies of the country are contributing to the revitalization of the region;

(7) The degree to which the country is undertaking self-help measures to protect its own economic development;

(8) Whether or not the country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized workers rights;

(9) The extent to which the country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive intellectual property rights;

(10) The extent to which the country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent;

(11) Whether such country has met the narcotics cooperation certification criteria of the Foreign Assistance Act of 1961 for eligibility for U.S. assistance; and

(12) The extent to which the country is prepared to cooperate with the United States in the administration of the Act.

Under the ATPA the President is prohibited from designating a country a beneficiary country if any of criteria (1)-(7) apply to that country, subject to waiver if the President determines that country designation will be in the U.S. national economic or security interest. The waiver does not apply to criteria (4) and (6). Under the ATPA criteria on (7) is included as both mandatory and discretionary.

The President may withdraw or suspend beneficiary country status or duty-free treatment on any article if he determines the country should be barred from designation as a result of changed circumstances. The President must submit a triennial report to the Congress on the operation of the program. The report shall include any evidence that the crop eradication and crop substitution efforts of the beneficiary country are directly related to the effects of the legislation.

House amendment

The House amendment provides that the President, in designating a country as eligible for the enhanced ATPDEA benefits, shall take into account the existing eligibility criteria established under ATPA described above, as well as other appropriate criteria, including: whether a country has demonstrated a commitment to undertake its WTO obligations and participate in negotiations toward the completion of the FTAA or comparable trade agreement; the extent to which the country provides intellectual property protection consistent with or greater than that afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights; the extent to which the country provides internationally recognized worker rights; whether the country has implemented its commitments to eliminate the worst forms of child labor; the extent to which a country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and the extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement equivalent to those included in the WTO Agreement on Government Procurement and otherwise contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

Senate amendment

Section 3102(5) contains identical provisions.

Conference agreement

Conference Agreement follows the House and Senate amendments. In evaluating a potential beneficiary's compliance with its WTO obligations, the conferees expect the President to take into account the extent to which the country follows the rules on customs valuation set forth in the WTO Customs Valuation Agreement. With respect to intellectual property protection, it is the Conferees intent that the President will also take into account the extent to which potential beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protections provided to the United States in bilateral intellectual property agreements.

Since April 1995, Colombia has applied a variable import duty system, known as the "price band" system, on fourteen basic agriculture products such as wheat, corn, and soybean oil. An additional 147 commodities, considered substitutes or related products, are subject to the price band system which establishes ceiling, floor, and reference prices on imports. The Conferees's view is that the price band system is non-transparent and easily manipulated as a protectionist device. In early 2000, the United States reached agreement with Colombia in the WTO that Colombia would delink wet pet food, the only finished product in this system, from the price band system. In implementing the eligibility criteria relating to market access and implementation of WTO commitments, it is the Conferees intent that USTR insist that Colombia implement its WTO commitment to remove pet food from the price band tariff system and to apply the 20% common external tariff to imported pet food.

With respect to whether beneficiary countries are following established WTO rules, the Conferees believe it is important for Andean governments to provide transparent and non-discriminatory regulatory procedures. Unfortunately, the Conferees know of instances where regulatory policies in Andean countries are opaque, unpredictable, and arbitrarily applied. As such, it is the Conferees's view that Andean countries that seek trade benefits should adopt, implement, and apply transparent and non-discriminatory regulatory procedures. The development of such procedures would help create regulatory stability in the Andean region and thus provide mere certainty to U.S. companies that would like to invest in these countries.

Determination regarding retention of designation

Present law

Under Section 203(e) of the ATPA, the President may withdraw or suspend a country's beneficiary country designation, or withdraw, suspend, or limit the application of duty-free treatment to particular articles of a beneficiary country, due to changed circumstances.

House amendment

Section 3102(b) amends section 203(e) of the ATPA to provide that President may withdraw or suspend ATPA designation, or withdraw, suspend or limit benefits is a country's performance under eligibility criteria are no longer satisfactory.

Senate amendment

Identical.

Conference agreement

Conference agreement follows the House amendment and Senate amendment.

Reporting Requirements

Present law

Provides for: (1) an annual report by the International Trade Commission on the economic impact of the bill, and; (2) an annual report by the Secretary of Labor on the impact of the bill with respect to U.S. labor. Also under present law, USTR is required to report triannually on operation of the program.

House amendment

Retains current law on reports.

Senate amendment

Senate bill requires same ITC and Labor reports as well as an annual report by the Customs Service on compliance and anti-circumvention on the part of beneficiary countries in the area of textile and apparel trade. It also requires USTR to report biannually on operation of the program.

Conference agreement

House recedes.

Petitions for Review

Present law

No provision.

House amendment

No provision.

Senate amendment

Section 3102(e) of the bill directs the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA. Such regulations are to be similar to regulations governing the Generalized System of Preferences petition process.

Conference agreement

House recedes.

SEC. 3104—TERMINATION OF DUTY-FREE TREATMENT

Present law

Duty-free treatment under the ATPA expires on December 4, 2001.

House amendment

Duty-free treatment terminates under the Act on December 31, 2006.

Senate amendment

Section 3103 of the bill amends section 208(b) of the ATPA to provide for a termination date of February 28, 2006. Basic ATPA benefits apply retroactively to December 4, 2001.

Conference agreement

House recedes on retroactivity for basic ATPA benefits; Senate recedes on termination.

SEC. 3106—TRADE BENEFITS UNDER THE CARIBBEAN BASIN TRADE PARTNERSHIP ACT (CBTPA) AND THE AFRICA GROWTH AND OPPORTUNITY ACT (AGOA)

Knit-to-shape Apparel

Present law

Draft regulations issued by Customs to implement P.L. 106-200 stipulate that knit to-shape garments, because technically they do not go through the fabric stage, are not eligible for trade benefits under the act.

House amendment

Sec. 3106 and 3107 of the House bill amends AGOA and CBTPA to clarify that preferential treatment is provided to knit-to-shape apparel articles assembled in beneficiary countries.

Senate amendment

No provision.

Conference agreement

Senate recedes.

Present law

Draft regulations issued by Customs to implement P.L. 106-200 deny preferential access to garments that are cut both in the United States and beneficiary countries, on the rationale that the legislation does not specifically list this variation in processing (the so-called "hybrid cutting problem").

House amendment

Sec. 3107 of H.R. 3009 adds new rules in CBTPA and AGOA to provide preferential treatment for apparel articles that are cut both in the United States and beneficiary countries.

Senate amendment

No provision.

Conference agreement

Senate recedes.

CBI Knit Cap

Present law

P.L. 106-200 extended duty-free benefits to knit apparel made in CBI] countries from regional fabric made with U.S. yarn and to knit-to-shape apparel (except socks), up to a cap of 250,000,000 square meter equivalents (SMEs), with a growth rate of 16% per year for first 3 years.

House amendment

Sec. 3106 of H.R. 2009 would raise this cap to the following amounts: 250,000,000 SMEs for the 1-year period beginning October 1, 2001; 500,000,000 SMEs for the 1-year period beginning on October 1, 2002; 850,000,000 SMEs for the 1-year period beginning, on October 1, 2003; 970,000,000 SMEs in each succeeding 1-year period through September 30, 2009.

Senate amendment

No provision.

Conference agreement

Senate recedes.

CBI T-shirt cap

Present law

P.L. 106-200 extends benefits for an additional category of CBI regional knit apparel products (T-shirts) up to a cap of 4.2 million dozen, growing 16% per year for the first 3 years.

House amendment

Section 3106 of H.R 3006 would raise this cap to the following amounts: 4,200,000 dozen during the 1-year period beginning October 1, 2001; 9,000,000 dozen for the 1-year period beginning on October 1, 2002; 10,000,00 dozen for the 1-year period beginning on October 1, 2003; 12,000,000 dozen in each succeeding 1-year period through September 30, 2009.

Senate amendment

No provision.

Conference agreement

Senate recedes.

Present law

Section 112(b)(3) of the AGOA provides preferential treatment for apparel made in beneficiary sub-Saharan African countries from "regional" fabric (i.e., fabric formed in one or more beneficiary countries) from yarn originating either in the United States or one or more such countries. Section 112(b)(3)(B) establishes a special rule for lesser developed beneficiary sub-Saharan African countries, which provides preferential treatment, through September 30, 2004, for apparel wholly assembled in one or more such countries regardless of the origin of the fabric used to make the articles. Section 112(b)(3)(A) establishes a quantitative limit or "cap" on the amount of apparel that may be imported under section 112(b)(3) or section 112(b)(3)(B). This "cap" is 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States for the year that began October 1, 2000, and increases in equal increments to 3.5 percent for the year beginning October 1, 2007.

House amendment

Section 3107 would clarify that apparel wholly assembled in one or more beneficiary, sub-Saharan African countries from components knit-to-shape in one or more such countries from U.S. or regional yarn is eligible for preferential treatment under section 112(b)(3) of AGOA. Similarly, Section 5 would clarify that apparel knit-to-shape and wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries is eligible for preferential treatment, regardless of the origin of the yarn used to make such articles. The House amendment also would increase the "cap" by changing the applicable percentages from 1.5 percent to 3 percent in the year that began October 1, 2000, and from 3.5 percent to 7 percent in the year beginning October 1, 2007.

Senate amendment

No provision.

Conference agreement

Conference agreement follows House Amendment accept the increase in the cap is limited to apparel products made with regional or U.S. fabric and yarn. No increases in amounts of apparel made of third-country fabric over current law.

Present Law

AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. However, due to a drafting problem, the wrong diameter was included, making it impossible to use the provision.

House amendment

Section 3107 corrects the yarn diameter in the AGOA legislation so that sweaters knit to shape from merino wool of a specific diameter are eligible.

Senate amendment

No provision.

Conference agreement

Senate recedes.

Africa: Namibia and Botswana

Present law

The GDBs of Botswana and Namibia exceed the LLDC limit of $1500 and therefore these countries are not eligible to use third country fabric for the transition period under the AGOA regional fabric country cap.

House amendment

Section 5 allows Namibia and Botswana to use third country fabric for the transition period under the AGOA regional fabric country cap.

Senate amendment

No provision.

Conference agreement

Senate recedes.

TITLE XLI—EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

SEC. 4101—EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

Expired law

Section 505 of the Trade Act of 1974, as amended, provides that no duty-free treatment under Title V (the Generalized System of Preferences) shall remain in effect after September 30, 2001.

House bill

The House amendment to H.R. 3009 would amend section 505 of the Trade Act of 1974 to authorize an extension through December 31, 2002. It would also provide retroactive relief in that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry of any article to which duty-free treatment under Title V of the Trade Act of 1974 would have applied if the entry had been made on September 30, 2001, and was made after September 30, 2001, and before the enactment of this Act, shall be liquidated or reliquidated as free of duty and the Secretary of Treasury shall refund any duty paid, upon proper request filed with the appropriate Customs officer, within 180 days after the date of enactment.

Senate amendment

The Senate amendment authorizes an extension of GSP through December 31, 2006. The extension is retroactive to September 30, 2001, permitting importers to liquidate or reliquidate entries made since that date and to seek a return of duties paid on goods that would have entered the United States free of duty, but for expiration of GSP.

The Senate Amendment also amends the definition of "internationally recognized worker rights" set forth in the GSP statute (section 507(4) of the Trade Act of 1974). Specifically, it adds to that definition "a prohibition on discrimination with respect to employment and occupation" and a "prohibition of the worst forms of child labor." These two prohibitions come from the International Labor Organization's 1998 Declaration on Fundamental Principles and Rights at Work, which defines certain worker rights as "fundamental."

The GSP statute identifies certain criteria that the President must take into account in determining whether to designate a country as eligible for GSP benefits. Conversely, a country's lapse in compliance with one or more of these criteria may be grounds for withdrawal, suspension, or limitation of benefits. Whether a country is taking steps to afford its workers internationally recognized worker rights is one of those criteria. The Senate Amendment seeks to make the concept of "internationally recognized worker rights" as defined for GSP consistent with the concept as defined by the ILO.

Finally, the Senate Amendment establishes a new eligibility criterion for GSP: "A country is ineligible for GSP if it has not taken steps to support the efforts of the United States to combat terrorism."

Conference agreement

The Conference agreement authorizes an extension of GSP through December 3 1, 2006. Conferees approved the Senate provision to include a prohibition on the worst forms of child labor in the definition of internationally recognized worker rights in Section

507(a) of the Trade Act of 1974. Conferees declined to include the Senate provision on discrimination with respect to employment in the definition of "international recognized worker rights under Sec. 507 (a) of the Trade Act of 1974. Agreement follows the House and the Senate bill with respect to providing retroactive relief.

DIVISION E—MISCELLANEOUS PROVISIONS

TITLE L—MISCELLANEOUS TRADE BENEFITS

Subtitle A—Wool Provisions

SEC. 5101—WOOL MANUFACTURER PAYMENT CLARIFICATION AND TECHNICAL CORRECTIONS ACT

Present law

Title V of the Trade and Development Act of 2000 (Pub. L. No. 106-200) included certain tariff relief for the domestic tailored clothing and textile industries. The relief was largely aimed at reducing the harmful affects of a "tariff inversion"—i.e., a tariff structure that levies higher duties on the raw material (such as wool fabric) than on the finished goods (such as mens' suits). A component of the relief to the U.S. tailored clothing and textile industry was a refund of duties paid in calendar year 1999, spread out over calendar years 2000, 2001 and 2002. Pub. L. No. 106-2000, §505.

House amendment

No provision.

Senate amendment

The Senate bill amends section 505 of the Trade and Development Act of 2000 to simplify the process for refunding to eligible parties duties paid in 1999. Specifically, it creates three special refund pools for each of the affected wool articles (fabric, yarn, and fiber and top). Refunds for importing manufacturers will be distributed in three installments—the first and second on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment and Clarification and Technical Corrections Act, and the third on or before April 15, 2003. Refunds for nonimporting manufacturers will be distributed in two installments—the first on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second on or before April 15, 2003.

The provision also streamlines the paperwork process, in light of the destruction of previously filed claims and supporting information in the September 11, 2001 attacks on the World Trade Center in New York, New York. Finally, the provision identifies all persons eligible for the refunds.

Conference agreement

The House recedes to the Senate.

SEC. 5102—DUTY SUSPENSION ON WOOL

Present law

Sections 501(a) and (b) of the Trade and Development Act of 2000 provide temporary duty reductions for certain worsted wool fabrics through 2003.

Section 501(d) limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.11 from January 1 to December 31 of each year, inclusive, to 2,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act. Further, the section limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.12 from January 1 to December 31 of each year, inclusive, to 1,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act.

House amendment

No provision.

Senate bill

The Senate bill extends the temporary duty reductions on fabrics of worsted wool from 2003 to 2005. The provision increases the limitation on the quantity of imports of worsted wool fabrics entered under heading 9902.51.11 to 3,500,000 square meter equivalents in calendar year 2002, and 4,500,000 square meter equivalents in calendar year 2003. Imports of worsted wool fabrics entered under heading 9902.51.12 are increased to 2,500,000 square meter equivalents in calendar year 2002, and 3,500,000 square meter equivalents in calendar year 2003.

The bill extends the payments made to manufacturers under section 505 of the Trade and Development Act of 2000 and requires an affidavit that the manufacturer will remain a manufacturer in the United States as of January 1 of the year of payment. The two additional payments will occur as follows: the first to be made after January 1, 2004, but on or before April 15, 2004, and the second after January 1, 2005, but on or before April 15, 2005.

Finally, the bill extends the "Wool Research Trust Fund" for two years through 2006.

Conference agreement

The House recedes to the Senate.

SUBTITLE B—OTHER PROVISIONS

SEC. 5201—FUND FOR WTO DISPUTE SETTLEMENT

Present law

No applicable section.

House amendment

The provision authorizes a settlement fund within the United States Trade Representative's Office in the amount of $50 million for the use in settling disputes that occur related to the World Trade Organization. The Trade Representative must certify to the Secretary of the Treasury that the settlement is in the best interest of the United States in cases of not more than $10 million. For cases above $10 million, the Trade Representative must make the same certification to the United States Congress.

Senate bill

No provision.

Conference agreement

The Senate recedes to the House.

SEC. 5202—CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES

Present law

Under present law, certain steam or other vapor generating boilers used in nuclear facilities imported into the United States prior to December 31, 2003 are charged a duty rate of 4.9 percent ad valorem. This rate took effect pursuant to section 1268 of Public Law Number 106-476 ("Tariff Suspension and Trade Act of 2000"). Previously, the rate had been 5.2 percent ad valorem.

House amendment

No provision.

Senate amendment

Section 203 of the Senate amendment changes the duty rate on certain steam or other vapor generating boilers used in nuclear facilities to zero for such goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, and on or before December 31, 2006. The provision was intended to lower the cost of inputs into the operation of nuclear facilities and thereby lower the cost of energy to consumers.

Committee agreement

The House recedes to the Senate.

SEC. 5203—SUGAR TARIFF RATE QUOTA CIRCUMVENTION

Present law

No applicable section.

House amendment

No provision.

Senate amendment

The Senate bill establishes a sugar anticircumvention program which requires the Secretary of Agriculture to identify imports of articles that are circumventing tariff-rate quotas on sugars, syrups, or sugar-containing products imposed under chapters 17, 18, 19, and 21 of the Harmonized Tariff Schedule. The Secretary shall then report to the President articles found to be circumventing such tariff-rate quotas. Upon receiving the Secretary's report, the President shall, by proclamation, include any identified article in the appropriate tariff-rate quota provision of the Harmonized Tariff Schedule.

Conference agreement

Conferees agreed to a provision directing the Secretary of Agriculture and the Commissioner of Customs shall monitor for sugar circumvention and shall report and make recommendations to Congress and the President.

This provision amends the Harmonized Tariff Schedule of the United States ("HTSUS") to make clear in the statute an important element of the ruling of the Court of Appeals for the Federal Circuit in Heartland By-Products, Inc. v. United States, 264 F. 3rd 1126 (Fed. Cir. 2001), i.e., that molasses is one of the foreign substances that must be excluded when calculating the percentage of soluble non-sugar solids under subheading 1702.90.40.

The provision requires the Secretary of Agriculture and the Commissioner of Customs to establish a monitoring program to identify existing or likely circumvention of the tariff-rate quotas in Chapters 17, 18, 19 and 21 of the HTSUS. The Secretary and the Commissioner shall report the results of their monitoring to Congress and the President every six months, together with data and a description of developments and trends in the composition of trade provided for in such chapters. This report will be made public. The report will discuss any indications that imports of articles not subject to the tariff-rate quotas are being used for commercial extraction of sugar in the United States. Imports of so-called "high-test molasses" currently classified under subheading 1703.10.30 will be examined particularly closely for such indications.

Finally, the Secretary and the Commissioner will include in the report their recommendations for ending circumvention, including their recommendations for legislation. The Managers emphasize that rapid action to stop circumvention is the best way to prevent a problem from developing and that quick administrative or legislative action is preferable to protracted procedures and litigation, as occurred in the Heartland case.

From the Committee on Ways and Means, for consideration of the House amendment and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHILLIP M. CRANE,

From the Committee on Education and the Workforce, for consideration of sec. 603 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,

From the Committee on Energy and Commerce, for consideration of sec. 603 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
MICHAEL BILIRAKIS,

From the Committee on Government Reform, for consideration of sec. 344 of the House amendment, and sec. 1143 of the Senate amendment, and modifications committed to conference:

DAN BURTON,
BOB BARR,

From the Committee on the Judiciary, for consideration of secs. 111, 601, and 701 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HOWARD COBLE,

From the Committee on Rules, for consideration of secs. 2103, 2105, and 2106 of the House amendment and secs. 2103, 2105, and 2106 of the Senate amendment, and modifications committed to conference:

DAVID DREIER,
JOHN LINDER,
Manager on the Part of the House.

MAX BAUCUS,
JOHN BREAUX,
CHUCK GRASSLEY,
ORRIN HATCH,
Managers on the Part of the Senate.

WAIVING REQUIREMENT OF CLAUSE 6(A) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 507 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 507

Resolved, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of Friday, July 26, 2002, providing for consideration or disposition of any of the following measures:

(1) A conference report to accompany the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under the Act, and for other purposes.

(2) A conference report to accompany the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

(3) A conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my colleague, the gentleman from Texas (Mr. FROST), the ranking member of the Committee on Rules, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 507 waives clause 6(a) of rule XIII requiring a two-thirds vote to consider a rule on the same day it is reported from the Committee on Rules.

The rule applies the waiver to a special rule reported on the legislative day of Friday, July 26, 2002, providing for consideration or disposition of the conference report to accompany the following bill: H.R. 3009, the Trade Act of 2002.

The rule will allow this body to consider the conference agreement on the important topic of trade promotion authority. The rule moves the process forward so this body can work its will on a long overdue piece of legislation.

Mr. Speaker, there are only a few months remaining in the 107th Congress. In the past 2 years, we have had many accomplishments, but success in the area of expanding trade and opening markets is yet to be realized. But the power to change that is within our reach. I ask my colleagues to join me in taking the first step in the final leg of our efforts to bring to fruition this critical piece of legislation.

I strongly urge my colleagues to support this rule so that we will be able to bring up this important issue.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Democrats strongly support free and fair trade that grows the economy and benefits American workers. At the same time, we insist on fulfilling our responsibility to ensure a level playing field for American businesses, farmers, and workers; and we insist on ensuring that Americans who lose their jobs because of trade are given the assistance and opportunity they need to adapt to the new economy.

Unfortunately, this trade promotion authority conference agreement fails to accomplish these goals, and therefore, risks future trade agreements negotiated under it. That much we know about the conference report, Mr. Speaker.

But since the conference report has not been filed, and since the Committee on Rules has not reported out the rule for consideration of the conference report, we have no way of knowing what is in this conference report that we are now clearing the parliamentary way for.

That is a major problem for this House of Representatives because Republican leaders now want to pass this martial law, thereby waiving the House rule that gives every Member 1 day to review legislation before it comes to the floor. If that occurs, then the overwhelming majority of the Members of this House will have absolutely no way of knowing what is in this conference report.

Now, we would like to be able to trust what the Republican leadership says is in the bill, but they have been caught red-handed on too many occasions when they tried to sneak controversial provisions into big pieces of legislation like this.

As I understand it, they have even put such controversial provisions in this agreement that committee chairmen are objecting to it in the strongest possible terms, this after the Republican leadership snuck into the homeland security bill provisions that were objectionable to many Members of this body, but who did not know they were there until the bill was on the floor.

So the Republican leadership has lost the credibility to come to the House floor and say, trust us. For that reason, I urge my colleagues to defeat this martial law rule. That is the only way Members will be able to figure out what is really in this conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, both Republicans and Democrats have told me that the Committee on Ways and Means conference report has been on its Web site since this afternoon.

Two, as is always customary in the Committee on Rules, there will be notice to, first, the Committee on Rules itself, which will have an ample time to see the legislation, and then we will hold a hearing and move forward on the decision of granting a rule on the legislation.

To my knowledge, in the time I have been here, that provides not only the Web site access to the entire membership, but also close scrutiny by both the Committee on Rules staff and the entire majority and minority staffs that choose to look at it and have comments, both in the Committee on Rules and then, finally, as we had that debate on the floor.

Certainly there is no secret that we have been in a long journey looking to have an opportunity to have trade legislation passed here in the House. We now have a conference report that has brought a consensus not only of a Republican majority here in the House, but Republican and Democrats who supports free trade in this body and in the other body.

So we will have plenty of opportunity for our colleagues, both the majority and the minority, to review the legislation. Some have already done so as they have gone to the Committee on Ways and Means Web site. Others will have the opportunity through the process this evening.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would make a couple of observations. First of all, the gentleman has just stated that, well, the conference report is on the Web site. I would ask, is that the conference report that is going to be signed by the conferees? And if so, why has it not been signed earlier in the evening?

Apparently someone on the gentleman's side had some reservations about what was posted on the Web site and was not sure that that was going to be the final product.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding to me, Mr. Speaker.

Let me say that, in fact, all of the conferees have signed that report, and the gentleman is correct that it has yet to be filed; but at 4 o'clock this afternoon a hard copy was delivered to the minority members of the Committee on Rules; and as has been said by the gentleman from New York (Mr. REYNOLDS), it has been made available on the Web site.

That is the report that will in fact be filed. This is the report that was agreed to by both the Members of the House and Senate in the conference.

Mr. FROST. Mr. Speaker, reclaiming my time, I would point out that the gentleman from Florida is a member of the conference committee and has not signed the conference report.

Mr. HASTINGS of Florida. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from Florida.

Mr. HASTINGS of Florida. Mr. Speaker, I would say to the chairman that my office was called earlier and I said that I would be happy to consider signing it, and they told me they would get back to me. In fact, I still have not signed it. My staff said if we saw it, we would sign it. So, Mr. Speaker, I have not signed the conference report, and I am a member of the conference committee on trade promotion authority.

Mr. DREIER. If the gentleman would further yield, when I said everyone has signed, I know that my friend was raising the concern about majority Members signing the issue. That was what I meant, all of the majority Members of the House who were conferees have in fact signed.

Mr. FROST. Reclaiming my time, everyone on that side of the aisle. When the gentleman says everyone, he means everyone on that side of the aisle.

Mr. DREIER. If the gentleman will yield, what I will say is that when the gentleman said there was a particular concern about a signature and was looking to this side of the aisle, I inferred from the way he said it that he was concerned about a signature from this side of the aisle.

The fact of the matter is the majority Members have signed the conference report. Does that answer the question that the gentleman posed? I thank my friend for yielding to me.

Mr. FROST. Mr. Speaker, reclaiming my time, it is curious that this document has been somewhere in cyberspace since 4 o'clock and yet has not been made available to the House, apparently because someone was thinking about making a change in that document. Otherwise, it would have been made available to the House.

I would point out that one of the earlier speakers said, well, the Committee on Rules members will have plenty of time to review this document. Actually, we will have 15 minutes. We have been given 15 minutes from the time we get the document until the Committee on Rules will be meeting.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is important that we review again that we are not going to do anything other than the possibility of having a late decision of debate, but on this day, since 4 p.m., the minority staff of the Committee on Rules has been given a hard copy of the conference report. We also know that it has been on the Web site. We also know that some Members have started this and reviewed it early, and very thoroughly; other Members may not have had an opportunity to open their Web site to garner the information.

We are moving here methodically. The methodical aspect is first of all having the debate on the same-day rule, which the Committee on Rules granted this morning. We now bring that to the body as a whole for their consideration. We will then schedule a Committee on Rules meeting, of which there will be a hearing to consider a conference report that has been made available since this afternoon to the entire body and has a majority of signatures, as the chairman of the Committee on Rules has indicated, from what he is aware of, and that the minority of the Committee on Rules has had documentation, hard copy, written, before them since 4 p.m. today.

So as we move forward, my hope is that the Congress, this body, can make a decision of whether we will continue on a same-day rule to take up the trade promotion authority and have the opportunity to move forward with consideration of what has been a long journey, a process that has had the House deliberate, the other body deliberate, a conference report negotiated off and on throughout weeks, and now an opportunity for the House to consider an up-or-down on that conference report that has been put together not by just the majority of the House or the other body, but by a consensus of those who support free trade.

The votes, as they have been in the past in this instance, have been of those who support free trade, both Republican and Democrat, and those who are opposed to free trade.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Chairman DREIER), from the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding time to me.

I would like to take a few minutes to describe how we got to where we are.

□ 2330

We passed the North American Free Trade Agreement 9 years ago and so we are rapidly approaching the tenth anniversary of the passage of the North American Free Trade Agreement. And, clearly, the implementation of NAFTA has been one of the greatest things that has happened in the relationship for this hemisphere. We have been able to take tremendous strides in enhancing the economic relationship among Canada, the United States, and Mexico with the North American Free Trade Agreement. We have seen free trade between the United States and Mexico more than double in the period of time that we have put NAFTA into place. And I think one of the most important products has been the successful implementation of full democratization in Mexico. We all know that they had 71 years of one-party rule and bringing about the economic liberalization that came under the leadership of President Miguel de la Madrid and Carlos Salinas went a long way towards encouraging democratization. We saw political liberalization follow economic liberalization. And we know that while there are still very serious problems, we have migration problems, we have water problems, other issues that exist between the United States and Mexico, clearly the election of President Fox is something that was heralded in that country and here in the United States and throughout the hemisphere and, for that matter, throughout the world.

The reason I point to that is it is very clear that expanding trade is one of the most important vehicles toward expanding democratization. And that is really what this is all about.

We are here right now having spent nearly a decade because we saw the authority, what was known as Fast Track, what we now describe as Trade Promotion Authority, expire shortly after implementation of the North American Free Trade Agreement. And during that period of time, I am very proud of the fact that through the Clinton presidency, I worked closely with President Clinton, with his U.S. Trade

Representative Mickey Cantor and then Charlene Barshefski to try to grant President Clinton the authority to proceed with NAFTA-like agreements so that we could establish what our goal is here, and that is a free trade area of the Americas. And we know that there are very serious problems that exist in South America, in Venezuela, in Argentina and other countries. And virtually everyone agrees that if we were to have the chance to expand this NAFTA concept to a free trade area of the Americas, we would be able to more effectively address the political problems and economic problems that exist in those countries and, similarly, in other parts of the world, we have those challenges and, of course, the national security question for us.

We have just successfully passed a bill establishing a Department of Homeland Security, and that is very important in dealing with our security here. But we know that economic liberalization and democratization are very important to encourage in other parts of the world where, in fact, terrorist threats have begun.

And so I think that the vote that we are going to cast granting this same-day rule will allow us to bring up and consider the bill that grants President Bush trade promotion authority.

Now, Mr. Speaker, I underscored the fact I, as a Republican, I am a very proud Republican and no one has ever questioned my Republican credentials. Some did when I worked so hard to try to grant President Clinton trade promotion authority, but I believed was the right thing to do. And that is why I like to think that Democrats who join and understand of the very important benefits to economic liberalization and the expansion of freedom and democracy will join with us in bringing us support in a bipartisan way, which trade has traditionally been. But we are right now at 11:34 in the evening still working at this, trying to address some concerns that are out there because we, as conferees, went through a laborious process trying to address concerns and, of course, we have a Democratic United States Senate and we had to work closely with the senators to come to an agreement. And I believe that the agreement that has been struck is deserving of wide bipartisan support, and so we have taken this step to establish same-day consideration.

We are on what we certainly hope is the last day of this type in the Congress before we go into our summer break, and I hope that Members will join in providing support for this same-day consideration of the rule and support for this very important trade promotion authority bill that we hope to be considering in the not too distant future.

Mr. FROST. Mr. Speaker, I yield 9 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for yielding me time, albeit reluctantly. I am sure everybody wants to go home. And this is probably not the greatest time to rise to speak on the floor of the House because everybody does want to go home.

I should say at the outset that I have not been a supporter of fast track legislation, either giving that authority to a Democratic president or giving it to a Republican president, so for me this is not a partisan issue. But I presume that that part of this will be debated during the debate on the bill itself. I am not here to address the merit or lack of merits of fast track authority.

What I am here to address is the martial law rule that we are being called upon to vote upon this evening, because I object vigorously to martial law. And quite often when we are in the last days of a session and the majority is trying to get martial law, I go out of my way to come to the floor to speak on this concept of martial law.

Mr. Speaker, I practiced law for 22 years and there was nothing that I hated more in the practice of law than to start the trial of a case on a Monday or a Tuesday and have that case wind through the course of the week and get to Friday midday or Friday midafternoon and have that case still going on. Because what I realized was that whether it was somebody's property that was involved or whether it was somebody's liberty that was involved, everybody was tired, and the court and the judge and the lawyers wanted to start taking short-cuts. And when the case went to the jury, the jury was going to want to go home. And despite the importance of the matter before that court, you simply could not get justice late on a Friday afternoon.

So here we are at 11:30 on a Friday night, and my colleagues come out on the floor and say we want to declare martial law which is to say we want you to give us the authority to consider a bill tonight that nobody has had a chance to read.

Now they say they have posted it on a web site sometime this afternoon, but I am sure people who have been following this debate and session on C-SPAN have realized that this Congress has been in session right here on the floor of the House all afternoon debating a very, very important bill. And I would grant you, I would bet you that there is not a person in this body that has looked at this bill that we are getting ready to consider under martial law, same-day consideration. The whole rationale of the rule that says you will not consider a bill the same day that it is filed is to allow democracy to work, to allow the deliberative process to work, to allow the very thing that I objected to when I was practicing law, a compromise of justice, a compromise of democracy, to keep that from taking place.

That is why we have the rules of the House. And despite that fact, here we are, my colleagues. They took an hour and a half recess before they even brought this to the floor because they did not know what was in the bill themselves.

I know I am getting on everybody's nerves, but this is about democracy and this is about the ability to read and understand what we are being called upon to vote. Just like when I was practicing law for 22 years, it was about somebody's property or somebody's liberty, this is about our democracy. That is what this is about. So heaven forbid that they give me 2 more minutes to tell you what this is about.

This is about the quality of our democracy, and whether my colleagues can go home tomorrow or today, actually, we are going home tomorrow regardless of what happens here; maybe it is just later tomorrow, and so it would not make a whole heck of a lot of difference.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding, and I appreciate many of the points he has raised. I have prided myself to being strongly committed in minority rights, having served 14 years on the minority.

Mr. WATT of North Carolina. This is not about minority rights. This is about democracy and the rights of every Member of this House.

Mr. DREIER. Absolutely. Do not get me wrong. I am also concerned about majority rights, too, especially when I am a member of the majority, too. But I am also sensitive to the minority rights. But, again, at 4:00 this afternoon the gentleman's office received by e-mail a copy of this conference report which we are prepared to file now. The gentleman from California (Mr. THOMAS) is here, who is chairman of the conference, and he is prepared to file this report, and I hope that we will be able to move ahead with its consideration. It has been 10 hours.

Mr. WATT of North Carolina. Reclaiming my time, I presume what that means is that what the gentleman is saying is what we are about to vote on. I appreciate him clarifying it. I had thought the gentleman just said that this thing was just put up on a web site at 3:00 this afternoon. Now I am being told that he is getting ready to file it so we can read about it while we are debating it on the floor of the House.

This is about the quality of our democracy and whether we have the time to read a bill that we were getting right now. There is important stuff we are doing here. Certainly no less, no less important than the things that were being deliberated in the courtroom. And all I am asking is for my colleagues to realize that and to take the time and to give us the time to read what it is we are being asked to vote on.

And with that, I do not know how I can be more basic than that, but I am sure it will not make any difference to my colleagues.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. THOMAS), the chairman of the Committee on Ways and Means.

Mr. THOMAS. Mr. Speaker, I am pleased to announce that this is an additional step in a commitment this Congress made some time ago to try to move to a paperless Congress. More than 8 hours ago Members received in each of their offices an electronic copy of the document that was just delivered. If Members were concerned about the content of this particular report, they could have been reading it for 8 hours.

□ 2345

And in fact that is one of the things that this Congress can do in the 21st century, and that is instead of dealing with massive amounts of paper, 6 pounds delivered to each office, which is not read anyway, we have provided an electronic forum in which it is easily disseminated among staff and Members and that it is a far better way to deal with these issues. In addition to that, it allows Members for more than 8 hours to consult the bill in which we are now bringing up the rule to allow us to consider. That is the way this Congress should be operating in the 21st century.

If someone believes they should be lugging around 6 pounds of paper when it has been in their office for 8 hours, I would urge Members to acquaint themselves with the computer operators and with the staff if the folks are not computer literate, because for more than 8 hours this identical bill has been in their offices.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. MATSUI), a member of the Committee on Ways and Means.

Mr. MATSUI. Mr. Speaker, I thank the gentleman from Texas (Mr. FROST) for yielding me this time.

I would like to clarify some misunderstanding because I heard at the time as I was sitting in my office that the documents were delivered at three o'clock or it was posted on the Web site at four o'clock and that would have undoubtedly then would have given about 7 hours and 45 minutes for us to review the documents in the middle of the Homeland Security Department legislation as it was moving through there.

The reality of it is, and I think the gentleman from California (Mr. THOMAS) would have to verify this or at least his staff would have to verify this, or perhaps the gentleman from New York would, we were not notified that the documents, all 360 pages, would be posted on the Web site until 6:53 or almost seven o'clock in the evening. And as all of my colleagues know, we were in the final stages of debate on the Homeland Security Department at that time; so we have actually only had a little over 4 hours and 45 minutes to review this document, and I have to tell my colleagues that one of the things that troubles me about this is that this is a significant major piece of legislation, and I think that Members on both sides of the aisle, particularly Members on my Republican side of the aisle, because we are going to be discussing textile rules, we are going to be discussing issues like trade adjustment assistance, which could cost considerable sums of money.

We are going to be discussing health care issues that were going to go to displaced workers, and it would seem like both parties would want an opportunity to review and vet this legislation before we adopt it, presumably this evening at 2 or 3 in the morning. And I will tell my colleagues why this is important is because the other body this week will be taking this legislation up and they will have a chance to review it, and all the flaws of this bill will come out, and some of my colleagues might be embarrassed if they, in fact, vote for this legislation, sight unseen, and it will be sight unseen.

For example, let me just throw out the trade adjustment assistance that many people made a big thing about. The fact of the matter is that if a company closes and leaves the United States and goes, let us say, to China, which many companies are doing at this time, those employees that are displaced from that factory will not be eligible for trade adjustment assistance or the health care benefits. Most of my colleagues on my side of the aisle who have been told this are absolutely astonished because they were told when a plant closes, the employees are going to be able to receive assistance, and that is just not necessarily true in most cases.

And the gentleman from California (Mr. THOMAS), if all of us recall, just two weeks ago, introduced legislation to provide $90 billion at a time when we are all facing a great deal of trouble on Wall Street, $90 billion worth of tax cuts to U.S. companies that would go offshore, and so essentially this bill would encourage companies to go to China offshore, and the tax bill that the gentleman from California (Mr. THOMAS) has offered would do the same thing.

I find it kind of incomprehensible that Members who may not quite understand the implication of this, it could hurt their hometown companies, would end up voting for this and then next week maybe find out that this bill does not say what many of the Members suggested it might say. So I think this martial law proposal at this time in this evening for this kind of bill is pretty outrageous, and it should not be really offered tonight.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I am proud to be a member of the Committee on Rules. We are usually the last here. This week we have been the last here and the first here. We can continue and use the entire full hour on this same-day resolution and have all our colleagues debate the same day. And then we will have a consensus on whether the House approves of the same-day rule or they do not, and then we will move into the opportunity to have the Committee on Rules meet because they were noticed last evening.

At eight this morning, we put out this same-day rule which led the indication that we would be considering the trade bill which many in the House knew was being negotiated actively by the entire Conference Committee. So we will continue and do the full hour here. We will then have a Committee on Rules meeting and we will do a full hour on the rule and then we will take it to debate, if that is what the body chooses to do.

I am prepared to yield back the balance of my time if the ranking member yields his time back and we can move forward, or we will continue to take the hour. So I will ask the ranking member if he has further speakers or whether he wants to yield his time, in which I will follow.

Mr. FROST. Mr. Speaker, is the gentleman prepared to yield back his time so that the House may proceed to a roll call vote on this particular matter?

Mr. REYNOLDS. Yes.

Mr. FROST. Mr. Speaker, I yield back the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. REYNOLDS. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 217, nays 207, not voting 9, as follows:

[Roll No. 368]

YEAS—217

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wolf
Young (AK)
Young (FL)

NAYS—207

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Goode
Gordon
Graham
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hefley
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Wilson (SC)
Woolsey
Wu
Wynn

NOT VOTING—9

Blunt
Combest
Lipinski
Meehan
Nussle
Riley
Roukema
Smith (MI)
Stump

□ 0014

Messrs. JOHN, WEINER, HILL, and SMITH of Washington changed their vote from "yea" to "nay."

Mr. YOUNG of Alaska changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 0015

LEGISLATIVE PROGRAM

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, let me say, of course, we are all concerned about just exactly how we will proceed, and let me give Members the best information I have. We have just finished the same day rule. The trade promotion bill has been filed so we will now ask the Committee on Rules as soon as it is possible within their protocols and courtesies that they extend to one another to meet and prepare a rule for consideration of the trade promotion bill.

In the meantime on the floor of the House in just a few minutes, we are going to ask the Committee on Financial Services to bring their resolution to go to conference on the terrorism reinsurance bill. We will take care of that business and any other business we will be able to work together on.

We have been working very hard trying to clear some unanimous consent opportunities for several of our Members. We continue to clear as many of those as we can. Insofar as we have completed the intervening work prior to our ability to reconvene the House for the purposes of the rule on trade, we will just have to recess subject to the call of the Chair until we can proceed.

Also, I should advise Members we have an opportunity to address the bankruptcy reform conference report, and we are checking on that. So it is still possible we might try to consider that before we conclude our business. Members should be advised that as we work through the various problems and delays we have, all these things are possible and all these things are problematic. So we have what is known in Texas as a running gun fight, and I will try to report to Members how it is going as we move along. That is the best information I have at this time.

Ms. PELOSI. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Leader, I listened to the reading of the martial law legislation, and it said that we could consider the bankruptcy bill, the trade bill, and also the electoral reform bill. Is it the gentleman's understanding that the electoral reform bill could go to the Committee on Rules for a rule and come to the floor, and I would say this evening, but it is now this morning?

Mr. ARMEY. Mr. Speaker, I am advised by the chairman of the committee that they have, in fact, just reported out a rule on the trade promotion. Maybe we can move more quickly on that on the floor than I had anticipated.

We do not expect a conference report on election reform; but we do have a conference report in hand on bankruptcy reform. We are looking at all of the options with scheduling that. As near as I can tell, that plus going to conference on the anti-terrorism reinsurance bill is the work before us.

If I might ask the Members of this body, we have several Members on both sides of the aisle who have an opportunity to put on behalf of themselves and their constituents, their district interests, some matters before the body by unanimous consent. It is simply a matter of us being willing, all of us, to look at those Member requests. We do as much as we can to take care of Members on both sides of the aisle as possible. Some of these are timely matters. We have one with respect to Indiana which simply would be of no consequence or interest to the gentlewoman's district if we put it off until after.

When approached or asked about these, give what consideration Members can to colleagues. This is not a matter that the leadership has any particular interest in other than helping as many Members as possible. If we can get some of those cleared, we will help other Members.

Ms. PELOSI. Mr. Speaker, if the gentleman would continue to yield, it is my understanding that the bankruptcy conference report, trade promotion, and terrorism risk insurance are the three bills that may come to the floor tonight?

Mr. ARMEY. Mr. Speaker, the gentlewoman's understanding is correct.

Ms. PELOSI. And there is nothing beyond that except the unanimous consent requests?

Mr. ARMEY. Right.

Mr. DEFAZIO. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Oregon.

Mr. DEFAZIO. Mr. Speaker, I would be happy to accommodate the request. Earlier this evening there were a number scheduled, including one of mine which is unanimously supported by the entire Oregon delegation, House and Senate, Republicans and Democrats, to name a new courthouse which has just been authorized and appropriated.

Unfortunately, I was told that the gentleman from Texas (Mr. DELAY) was upset about the debate over the aviation explosive screening, and he personally said my bill will not be allowed. And if mine will not be allowed, since it was previously scheduled, then I will object to all unanimous consent requests.

Mr. ARMEY. Mr. Speaker, for the record, we have not received a request from the minority leader relative to the gentleman's bill. We can obviously not respond to a request that has not been made. Again, let me just say we all have disappointments in our life.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3009, TRADE ACT OF 2002.

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 107–625) on the resolution (H. Res. 509) waiving points of order against the conference report to accompany the bill (H.R. 3009) an Act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON H.R. 3210, TERRORISM RISK PROTECTION ACT

Mr. OXLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Ohio (Mr. OXLEY)?

Mr. DEFAZIO. Reserving the right to object, Mr. Speaker, I ask the gentleman to repeat the unanimous consent request.

The SPEAKER pro tempore. Does the gentleman from Oregon yield on his reservation?

Mr. DEFAZIO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio? The Chair hears none and, without objection, appoints the following conferees:

From the Committee on Financial Services, for consideration of the House bill and the Senate amendment thereto, and modifications committed to conference: Messrs. OXLEY, BAKER, NEY, Mrs. KELLY, Messrs. SHAYS, FOSSELLA, FERGUSON, LAFALCE, KANJORSKI, BENTSEN, MALONEY of Connecticut, and Ms. HOOLEY of Oregon.

From the Committee on the Judiciary, for consideration of section 15 of the House bill and sections 10 and 11 of the Senate amendment thereto, and modifications committed to conference: Messrs. SENSENBRENNER, COBLE and CONYERS.

There was no objection.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3009, TRADE ACT OF 2002.

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 509 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 509

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3009) an Act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 509 is a standard and fair rule providing for the consideration of the conference report to accompany H.R. 3009, the Trade Act of 2002. The rule waives all points of order against the conference report and against its consideration. Additionally, the rule provides that the conference report shall be considered as read.

Mr. Speaker, there was a time when this country could boast that we were the world leader for shaping the rules on international trade, globalization and open markets. Sadly, this is no longer the case.

☐ 0030

What we have before us today is a historic opportunity to remedy this obvious shortcoming. I would like to personally commend all those on both sides of the aisle, and in both Chambers, who have worked in a bipartisan manner to make this possible.

Trade is a fundamental element of the U.S. economy, stimulating growth, creating jobs, and expanding consumer choices. Nearly one in every 10 American jobs is directly linked to the export of U.S. goods and services, and these jobs are estimated to pay 13 to 18 percent more than the U.S. national average. From family farms to high-tech startups to established businesses and manufacturers, increasing free and fair trade will keep our economy going and create jobs in our economy.

Consider a study conducted by the University of Michigan. The average American family of four could see an annual income gain of nearly $2,500 from a global reduction in tariffs and trade barriers. That money would be a welcome addition to the family budget.

Trade is also a cornerstone of American relations with other countries. Free-flowing trade helps alleviate poverty, building stronger and more prosperous neighbors. With trade as a conduit, walls can break down and democratic ideals can be shared more openly between countries. Whether bolstering our economy at home or spreading the values of democracy worldwide, free trade is an important tool in fostering new opportunities for the United States. Trade promotion authority is vital to making these opportunities possible.

Mr. Speaker, in the spirit of bipartisanship that has helped bring us to this point, I would like to quote President John Kennedy who, in 1960, noted, "World trade is more than ever essential to world peace. We must therefore resist the temptation to accept remedies that deny American producers and consumers access to world markets and destroy the prosperity of our friends in the non-Communist world."

At a time when America strives to enhance and strengthen our friendships around the world, it is imperative that we recognize the correlation between peace and free trade.

Mr. Speaker, this agreement has been a long time in coming. Even though every President from Richard Nixon to Bill Clinton has enjoyed the right of trade promotion authority, that authority has been lacking since its expiration in 1994. The underlying legislation will restore that negotiating authority and open the doors of prosperity for this country. Let us not make America, its workers or its products wait any longer.

I strongly urge my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

PARLIAMENTARY INQUIRY

Mr. CALLAHAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman will state it.

Mr. CALLAHAN. Is it permissible during a debate on the rule for Members to revise and extend their remarks?

The SPEAKER pro tempore. It is, by unanimous consent.

Mr. CALLAHAN. At this time of morning I think it would be very wise. Since both sides have heard all of the debate, some of the Members consider the fact at this late hour that a revision and extension of remarks would serve the same purpose.

Mr. HASTINGS of Florida. Mr. Speaker, I thank the gentleman from New York for yielding me the time, and I yield myself such time as I may consume.

My good friend from Alabama makes a great suggestion, but an even greater suggestion would be for us not to be in the dead of night undertaking this extraordinary work.

Mr. Speaker, I rise in opposition to this rule and in strong opposition to the underlying conference report. It is the conference report on what is called TPA. Yes, TPA. By my way of thinking, that ought to stand for Thoughtless Political Action, because that is precisely what this House is prepared to do. I hope the American worker is braced for the sucker punch they are about to receive. I said exactly 1 month ago that it is no wonder that the American people have such disdain for politicians. Well, this conference report bears that out in spades. Like the bill last month, this conference report is another perfect example of backroom deals gone bad in the dead of the night, legislating under the cloak of darkness, and accountability at its most pernicious.

On December 6 of last year, with the number of unemployed Americans totaling more than 8.25 million, the majority made a series of back-door deals to secure trade promotion authority for an administration which in my judgment has yet to prove to Americans that it really cares about their jobs. All of this was done under the pretense of furthering U.S. business interests abroad. At least the majority can rightfully argue that TPA does further U.S. interests abroad. Too bad this expansion is done at the expense of the American worker as well as the environment.

Mr. Speaker, I hope that my colleagues fully understand that since the current administration took office, an average of 157,000 Americans are losing their jobs every month. Tonight, the majority is again poised to eliminate tens of thousands of more jobs under the pretense of United States trade promotion. Knowingly eliminating any job at a time our economy has proven that it is incapable of re-creating that job is not an option that Congress should entertain. We really ought to be ashamed of ourselves for even considering this kind of measure.

You see, Mr. Speaker, this body knows that trade agreements cost American jobs. In fact, 420 of us agreed to this conclusion when the House overwhelmingly extended trade adjustment authority in June 2001. Yet the TAA provisions in the conference report are a reckless disregard of the obvious. Aside from the inept direct financial assistance available to displaced workers, the conference report has reduced the Senate-passed TAA proposal on health care to a tax credit that covers a meager 65 percent of the cost of a worker's premium. Realize, the Federal Government pays 72 percent of Members' health care premiums, and it is preposterous for us to expect the unemployed to pay any more than we do on health care.

But all of this does not even matter if the Treasury Department does not establish the guidelines for a complex TAA program, or if States do not release the TAA funds once they have been administered. It is funny how language ensuring the distribution of TAA funds is mysteriously missing from this report that was on the Internet at 4, or at 7:15, take your pick. The majority maintains that it is obvious that States will release the funds. I say if it is so obvious, put it in writing.

Realize, providing open-ended authority to the President without requiring that environmental, labor and agricultural standards be included in any trade agreement is nothing short of hammering another nail in the coffin of hundreds of American industries nationwide.

I support free trade. I have in the past and I will again in the future. However, any free trade agreement must also be a fair trade agreement. Through the eyes of a farmer, it is outrageous to expect the American agricultural industry to compete with South American, Central American or Asian agricultural industries who are not required to pay their workers a living wage and are not held to the same environmental standards as farmers are here in the United States.

Don't believe me? Look at what NAFTA did. I voted for that measure, and it is the worst vote I have cast in this body. Just look at what it did to my home State of Florida, specifically the agriculture industry. From citrus to sugar and from rice to tomatoes, Florida's agricultural industry has lost thousands of jobs as a direct result of NAFTA. The tomato industry went basket belly up after dumping. While Mexican farmers have profited, and I hold no grudge against them, companies have closed; and Florida farmers no longer have jobs or farms.

Mr. Speaker, we can continue to stay here in the middle of the night and play politics with Americans' lives under the pretense of U.S. trade promotion, or we can get serious about securing the future of American jobs and industries. This report does not re-create the 364,000 jobs which were lost in the month of June, and it certainly does not re-create the 1.7 million jobs we have lost since September 11. This report does not ensure the future of United States agriculture, and it definitely does not ensure the future of the U.S. steel and textile industries.

It is one thing to talk politics, and it is another thing to talk policy, but when the politics begin to interfere with the policy and that policy interferes with American lives and livelihoods, then we have a problem. Tonight, Mr. Speaker, we have a problem.

This report lays the foundation for hundreds of thousands of U.S. jobs to be shipped off to foreign countries with no guarantee that displaced American workers will be compensated. The environmental and labor provisions that do exist in the report are as disingenuous as the pretenses with which the majority brings this legislation to the floor this morning. This so-called Trade Promotion Act does indeed grant some significant benefits to some workers. Regrettably, not the workers who pay our salaries with their hard-earned tax dollars. There is nothing in this bill that promotes the interest of the American worker. Nothing.

This bill does so little for the American worker, under the guise of doing so much, that I recommend changing the name TPA to the Trade Pretense Act. I urge a "no" vote on the rule and a "no" vote on the conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER).

Mr. LINDER. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today in strong support of both the rule and the underlying legislation, the conference report on the Trade Act of 2002.

First and foremost, as a member of the conference committee on the 2002 Trade Act, I wish to express my gratitude to the gentleman from California (Mr. THOMAS), the chairman of the Committee on Ways and Means, for his leadership and diligence in bringing this important legislation to the floor today. I commend the chairman for his devotion to promoting the principles of free trade and ensuring the U.S.'s prominence in the international marketplace.

Mr. Speaker, in one of his first requests to the 107th Congress, President Bush requested the authority to negotiate trade agreements with credibility in the international arena. The President understands what so many macroeconomists have proclaimed, trade is beneficial to all nations and all peoples. Through trade agreements with other nations, new horizons are opened for U.S. exports, helping to create high-quality new jobs for Americans while American consumers gain access to lower-cost goods. The President knows that free trade benefits the U.S. economy. Given our recent economic uncertainty, it is important that we finally grant his request for the authority to negotiate trade agreements in order to help strengthen our economy.

Finally, without this legislation, the House of Representatives has no voice in the negotiation of trade agreements. The House is elevated by the trade promotion authority provisions included in the 2002 Trade Act, which require the President to consult with both the House and the Senate throughout trade negotiations. Once an agreement has been reached, the House and Senate each have the opportunity to approve or disapprove the agreement. Mr. Speaker, this conference report gives the House of Representatives a voice in trade negotiations, a voice which would otherwise be silent.

I urge my colleagues to vote in support of the rule and the conference report to ensure that we may participate in future trade negotiations.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Michigan (Mr. LEVIN), who has extensive knowledge on the subject that we are talking about.

□ 0045

Mr. LEVIN. Mr. Speaker, with all due respect, I am amazed that it would be suggested here that we only rise and decide to extend our remarks and not talk about the substance. We are talking about a 300-page bill, is it? We are talking about a bill that is going to set the stage for trade negotiations for the next half decade, and we are doing it at a quarter to 1:00? It is suggested also that we not speak on the substance?

I am speaking now because I want us to get off on the right foot. This is not a debate over expansion of trade. I favor it. It is not a debate over globalization. It is here to stay. The issue is whether we are going to wrestle with the new issues inevitably rising in this new era of trade, or we are going to look the other way.

Issues like core labor standards, this bill pretends to address them. It does not. It says it follows the Jordan standard. It does not. It pretends to address the issues of investment. It does not. Like the bill that came through here, it is a facade. It says it addresses, it was just said, the role of Congress. It does not. It is a facade. If anything, it makes it worse. In this new era of trade, it leaves us as simply a body to be consulted, and not a partner.

Look, inevitably there are new issues. If ever there were a requirement for bipartisanship in trade, it was in this new era. So it called for a bipartisan effort. A partisan approach to trade is built on sand, and the majority here started on the wrong foot. They started with a partisan approach. They are going to end up on this floor with essentially a partisan vote.

Shame on this approach. You make Trade Promotion Authority one without value. Time will show that what you are doing here is going through the motions, instead of erecting a strong foundation for trade policy in the 21st century. Turn down this rule and turn down the bill.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased to yield 2 minutes to my friend, the gentleman from California (Mr. MATSUI).

Mr. MATSUI. Mr. Speaker, I thank the gentleman from Florida for yielding me time.

Mr. Speaker, let me just say this: What are we really talking about here? Let us talk about the legislation for a moment. It is a quarter to 1 right now. We just got a 360-page bill about 5 hours ago. We dealt with the homeland security legislation, so no one really has had a chance to read it.

I have to say that many people are saying though the trade adjustment assistance provision, in which we are supposed to help displaced workers, many of the colleagues on my side of the aisle, and I imagine on your side of the aisle, have basically said this will help those workers who lost their jobs because factories are closing.

But the reality is that is not so. The Senate had a provision in there that if a company would move offshore, let us say to China, and 500 employees in your home community were laid off, then trade adjustment assistance and health care benefits would click in.

Unfortunately, in the conference, the gentleman from California (Mr. THOMAS) insisted that that provision be removed. Now, about 75 percent of plant closings are because of companies moving offshore. It is not because of import competition. So, a great number of employees that many of our constituents right now think will be covered, will not be covered.

I think it is going to be rather tragic when the Senate talks about this next week, and our colleagues go back home, after voting for this bill, and find out they made a grave mistake.

Lastly, let me just say, when this bill comes back in terms of a multinational 144-country agreement 3 years from now, we are going to have changes that Members would never have thought about. You are going to have changes in U.S. antitrust laws; you are going to have changes in food safety laws; you are going to have changes in accountant standards.

So essentially it means, let us say we have another Enron 2 years from now, 3 years from now. The WTO will tell us exactly what kind of accounting standards we are going to have. We could not do it on our own. We are giving up our authority under article I, section 8 of the U.S. Constitution. We have the authority to make all trade laws.

Essentially we are delegating this authority to the President of the United States. We should have some limitations on that authority if in fact we want good trade legislation.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, may I please inquire as to the amount of time remaining on each side?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Florida (Mr. HASTINGS) has 18 minutes remaining and the gentleman from New York (Mr. REYNOLDS) has 24½ minutes remaining.

Mr. HASTINGS of Florida. May I inquire if the gentleman from New York is inclined, that he have a few speakers, so that we can even out the time?

Mr. REYNOLDS. Mr. Speaker, I would say to the gentleman from Florida, I have some speakers left, but I was under the impression the gentleman had many, so I was looking to continue moving through the flow. We will not use the entire time.

Mr. HASTINGS of Florida. We will take one more, and then, most respectfully, I will ask the gentleman to utilize some of his time.

Mr. Speaker, I am privileged to yield 3 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), my good friend who serves with me on the Committee on Rules.

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise at 1 a.m. this morning in opposition to this rule, born out of martial law, and in strong opposition to this conference report.

This is simply a bad deal for American workers. This is a very complex conference report that deserves serious consideration by this House, which, sadly, it will not get.

It is not an emergency. It does not require that the House override its most basic procedures and principles of fairness. The conference report can just as easily be taken up in September, which would allow the Members of this House to have a genuine understanding of the changes made during conference negotiations.

If Members are going to be asked to turn the clock back nearly 30 years on the role and jurisdiction of Congress in our trade laws, if Members are going to be asked to give up our constitutional responsibility to regulate foreign and domestic commerce, then the least we should provide to the Members of this House is the time to read both the bold and the fine print of this conference report and to have the opportunity to talk to the companies and the workers in our districts most likely affected.

Some of these industries, Mr. Speaker, are in my district, textile industries in Fall River. Like recent trade agreements, the conference report continues to view the American textile industry and its workers as expendable.

It also deprives secondary workers who lose work or who lose their jobs because of trade agreements from receiving the same trade adjustment assistance benefits they were granted under NAFTA.

Let us be clear on this point. It means secondary workers who lose their jobs because a plant moved to Mexico may qualify for TAA benefits, but secondary workers who lose their jobs because a plant moves to China or Chile will not qualify for such benefits. That makes no sense.

Under this conference report, if a trade agreement makes the food our families eat dangerous to their health, too bad. If a trade agreement undermines our environmental protections, too bad. If a trade agreement weakens our ability to enforce our antitrust laws, corporate accountability procedures and advertising standards, still too bad. Too bad, because Congress will not be able to do a thing about it.

This conference report is an outrage. This rule and this martial law process is an insult. It is an insult to the Members of this House, both Democratic Members and Republican Members, and it is an insult to the American people. I urge my colleagues to vote no on the rule and no on the conference report.

Mr. REYNOLDS. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. DIAZ-BALART).

Mr. DIAZ-BALART. Mr. Speaker, I rise today in strong support of the rule, which will allow for consideration of the Trade Act of 2002 conference report. It has been a long and arduous process that has brought us here this evening. The House originally passed the Andean Trade Promotion and Drug Eradication Act on November 16, 2001 and then followed with the passage of the Trade Promotion Authority on December 6. It is now more than 8 months since the passage of the first bill, and I believe that we have a product today that is of extreme importance really in the national security of the United States.

We have a unique opportunity to strengthen democracies under great pressure in this hemisphere. Nations in this hemisphere are facing numerous challenges that threaten their fledgling democracies, including narco trafficking and terrorism.

One of the surest ways to support democracies under extreme pressure in our hemisphere is by facilitating the emergence of a Common Market of the Americas, the free trade area of the Americas. Free trade among free peoples is good policy and good for the people of the Western hemisphere. To achieve a Free Trade Area of the Americas, Mr. Speaker, it is crucial that we approve this conference report and finally give the President the authority he needs to get this process going and to make it a reality.

I rise in strong support of the rule and the underlying bill due also to another provision that has been very needed for a long time.

This bill includes the extension of the Andean Trade Preference Act. Due to the ATPA, the U.S. and the Andean nations have enjoyed an $18 billion beneficial trade relationship for the last decade. The extension of the ATPA is not merely a matter of economic or trade policy, but it is a decision with consequences for U.S. foreign and national security policy in this hemisphere.

Bolivia, Colombia, Peru and Ecuador are nations that we must continue to help. They have indicated over the past decade that they wish to be strong members of a free and democratic hemisphere, a hemisphere that will one day be free of terrorism and free of tyranny. Continuing ATPA will help the Andean nations fight poverty, terrorism and drug protection, as well as protect democracy and promote human rights. ATPA promotes job creation in a region with where the alternative for many workers is easily a life devoted to drug promotion.

Promoting development in this region is crucial to a U.S. foreign policy that seeks to support countries fighting against terrorism and fighting against the drug trade.

I urge my colleagues to consider the benefits of extending ATPA, not only to our South American neighbors, but also because of the effect on the American consumers, who will enjoy a wide variety of product choice with fewer artificial constraints and restrictions.

Extending and improving ATPA is a decisive step toward improved relations with this hemisphere. This legislation will foster the expression of a mutually supported and beneficial relation between the U.S. and the democracies of the Western hemisphere.

I want to thank the gentleman from California (Chairman THOMAS) and those who have worked so hard to finally bring to a reality before us tonight. I urge my colleagues to pass the rule and the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased to yield 2½ minutes to the distinguished gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I want to appeal to the Members on this floor and beyond, because I looked through these 304 pages, thank you for giving me that courtesy, and looked very, very carefully for the sections on child labor. And I want you all to know that it has been taken out at the conference level.

We know what goes on in other countries. So do not talk about the free market. This is child slavery. Everybody in this room knows about it. Everybody reads about it, day in and day out.

Why was that taken out of this bill? That is only one section of the 304 pages. Why was it taken out? It was taken out because what we are going to do this evening, this morning, or tomorrow afternoon, whenever we end this debate, what we are going to be doing is allowing the same corporate cowboys that we have been talking about for the last 3 weeks on this floor and out there to make the decisions on trade.

This is not free trade. This is at the expense of little children, and you know it and everybody else knows it. Whether you are talking about farm, whether you are talking about textile, whether you are talking about steel, everyone knows it. This was the battle, this was the major battle between Jefferson and Hamilton, when they decided to extract from the Federalist Papers, 50 of which were written by Alexander Hamilton, to discern that we need a diverse economy, not one based on one single item. And what have we reaped? We have lost 1,300,000 manufacturing jobs, and this is where we are headed. I was not sent here to surrender my rights and responsibilities under the Constitution.

□ 0100

I did not come here to surrender Article I, Section 8. Maybe that is why some of us were sent here, but I was not. I hold that Constitution, I carry it with me everywhere I go. I know what my responsibilities are as a Congressman, and I intend to follow through.

I want to be more than a rubber stamp for the President of the United States, be he or she Democrat or Republican, on trade agreements. That is not why we were sent here. They defied every agreement since 1994, and you know it and everybody knows it. I ask my colleagues to vote against the rule.

Mr. REYNOLDS. Mr. Speaker, I yield 3½ minutes to the gentleman from Florida (Mr. YOUNG), the chairman of the Committee on Appropriations.

Mr. YOUNG of Florida. Mr. Speaker, since I have been here I have voted to give the President trade negotiating authority on every trade bill that has come to the House floor. I want the President to have that authority, and of all of the presidents that I voted to give that authority to, President Bush is on the top of my list, because I have tremendous confidence in his ability to conduct the proper negotiations for the United States. Let us face it. We do need some real negotiations with the other industrial leaders of the world.

But I have a bit of a dilemma here tonight. I am looking at the Rules of the House, and this one particular rule is titled, "Appropriations on legislative bills." It says, "A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations." And when I began to read through this bill, once it was available to us, I found, in an amendment to section 174 of the Workforce Investment Act, an appropriation. It is not an authorization for appropriations, but an actual appropriation of $60 million for worker assistance programs. This particularly caught my attention because when the House passed the supplemental, which was one of the most difficult conferences that I have ever taken part in, we included $300 million for this worker assistance program. But I had to take it out of the supplemental conference agreement because we were spending too much money.

The problem that I am having tonight is, why is it too much money if the proper committee provides it, but it is not too much money when an authorizing committee, which does not have the jurisdiction, provides it?

Money spent is money spent, whether it is mandated by an authorization bill or whether it is appropriated by the Committee on Appropriations. That is what got my attention. As I read this bill, I came up with 4 additional sections of the bill where it provides an appropriation. So while this has become an appropriations bill, the Committee on Appropriations has not had much of a chance to even take a look at it.

So I am in a dilemma, because I want to vote for the President to have this negotiating authority, but I also want to preserve the integrity of the Rules of the House. I also want to preserve the integrity of the appropriations process, which is starting to break down because the budget process died on the vine.

We are trying to appropriate with a budget where the House has a budget resolution that is $9 billion less than the Senate. Now, anybody that can add and subtract knows we cannot reconcile appropriations bills when one body has one number, and another body has another number. But that is where we are today, and the appropriations process is dragging because of that.

So I have a real problem here. I want to do something to make sure the President has the authority, but I need to protect the integrity of the process. When this bill comes time to vote, I will decide how I am going to vote. But I think it is important that we all know that if there is a rule of the House, we ought to abide by it. The Committee on Appropriations should appropriate; the Committee on Ways and Means should deal with its jurisdictions and authorities; other authorizing committees should deal with their authorities and jurisdictions, and we should each stick to what has worked so well for so long.

Mr. HASTINGS of Florida. Mr. Speaker, I am privileged to yield 2½ minutes to the gentlewoman from Ohio (Ms. KAPTUR), who has very few peers in this body that have as clear an understanding of trade.

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from Washington for yielding and say that I rise in opposition to the rule on the conference report.

The American people know something is wrong in Washington when every single trade bill passed by this Congress and signed by the President results in more lost jobs, more penny-wage jobs, more lost markets as imports deluge in here from every single country in the world and we cash out good jobs with good benefits in textiles, in electronics, in agriculture, in automotive, in machine tools, in steel; even baseball and U.S. flags.

TPA expands NAFTA to the entire hemisphere. Before NAFTA, we had a trade balance, I say to the gentleman from California (Mr. DREIER), with Mexico. Every year the trade balance has gone down, gone south, losing over hundreds of thousands of jobs into Mexico and cashing out our automotive and machine tool industry and even agriculture now down there. And when people start getting paid $3 a day, then guess what happened? They moved the jobs to China.

So we have had a sucking sound to Mexico which is now shifting over to China, and I defy any American to go into a store today and buy something that is not made in China, and the American people can verify this through their own experience.

Now, I say to the gentleman from California (Mr. DREIER), he did not really talk about the pain and suffering. Talk to the workers at Brachs Candy in South Chicago. They are about to go through that shutdown, a 100 year-old company. It is one in a long line of millions of U.S. jobs.

I used to feel sorry for you that you really did not understand, but I feel much sorrier for the workers and the farmers of this continent and the world, because you are creating a great divergence between wealth and poverty. You are drawing a new Mason Dixon Line. It is different than what we experienced inside the United States. The wealthy, the shareholders, those on Wall Street and the futures markets, they love this system. But the workers of our country and the farmers of the world, they are being hurt. What do you think is fueling immigration into this country from the south?

Mr. Speaker, I would urge my colleagues to vote "no" on the rule and "no" on the report. Do not vote for a world with these kinds of extremes in wealth and poverty that are cashing out our middle class and creating global environmental cesspools and corporate slums and global plantations with penny-wage jobs. Vote for the kinds of trade agreements that build a middle class here at home and abroad and true world peace.

And what a shame for us, what a shame for us that this is being brought up at 1 o'clock in the morning, just like GATT was about 8 years ago, because they want to do it in the quiet of the night when most people are sleeping. It is too important for that. Have some self-respect for us. Let us debate as we should one of the most important bills that will come before this Congress.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair would remind Members to address their remarks to the Chair and not to each other directly.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. Mr. Speaker, we have waited far too long to have the ability to sell American products overseas. It is just critical, critical to America's economy and jobs that we get back into the game, that we start to sell American products, because we have been on the sidelines since 1994. The rest of the world is running circles around us. It is Lewis and Clark days out there and every Nation is out there staking out markets for their country except America.

The potential is just huge for our Nation. Ninety-six percent of the world's population lives outside of the country. As of last year, half of the adults in the world, half of the adults, have yet to make their first telephone call, their first telephone call. That means that if European countries land those contracts, they will create European lands. If Asia lands those contracts, they will create Asian jobs. But if America has the opportunity to get out there and compete, we will create American jobs.

These international trade jobs, they pay more than our domestic jobs here at home. They are less likely to be laid off. In Texas, in our region, in manufacturing alone, since NAFTA, we have created enough new manufacturing jobs to fill every seat in the Astrodome twice over. Two out of every three new jobs we are creating in our State comes from international trade, and we have $1 billion of environmental projects along our border with Mexico: clean air, clean water, waste water and sewer that we would never have without trade.

Trade is good for our jobs, good for our economy, good for labor rights.

There is a principle here. The principle is if Americans build a better mousetrap, we should be free to sell it anywhere in the world without discrimination. And if someone else builds a better mousetrap, we ought to be able to be free to buy it for our families and for our businesses. We should not retreat from fair trade competition; we should embrace it, because competition is what America is about. It is the key to our high-wage and our high-tech future.

Mr. Speaker, the bottom line is, we do not have a salesman. America needs a sales force and a sales leader out there. We are providing the President with that. We should support this rule.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 2 minutes to the gentleman from New York (Mr. RANGEL), my good friend, who simply has, throughout time, stood eyeball to eyeball and toe to toe with all who would argue on the subject of trade.

Mr. RANGEL. Mr. Speaker, it is 1:10 in the morning, and I think that all Members of this House recognize that in order for our country to enjoy economic growth, that we have to engage in international trade. We also recognize that the power of commerce and trade remains in this House, but it does not make a lot of sense to believe that 535 lawmakers will be negotiating trade agreements.

So therefore, the power should be given to the executive branch to actually negotiate these agreements, but it does not mean that the House of Representatives should give up its authority to protect the American people and American workers as we yield to the executive branch. Why? Because it is the executive branch that yields a part of our power to world trade organizations, to international organizations.

All we are saying on our side is that there should be some standard for the leader of the Free World, the United States of America, to be able to say that as we engage in trade, with all of our power and prestige, that there is minimum standards that we expect other nations to follow with their workers, with their right to organize, with their ability to dream, like Americans dream, that their life can be improved.

Do we say that it should reach our standards? No. What we are saying is that there should be standards involved. There should be standards involved in protecting what is not ours, not the United States' and not other countries', but what God has given the world, and that is our environment to live in. Something else that we say we should have, and that is the laws of the United States Congress should not be changed by foreign nations. We should preserve that right.

So all we are saying is that all of us want trade. We recognize that it is necessary for us, better for developing nations; not Cuba, because of the sovereign State of Florida and the Republic of Florida as they dictate our foreign policy and trade policy, but I suggest this is a bad rule and a bad time to be debating such an important subject.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, may I inquire as to the time remaining?

The SPEAKER pro tempore. The gentleman from Florida (Mr. HASTINGS) has 8½ minutes remaining; the gentleman from New York (Mr. REYNOLDS) has 16 minutes remaining.

Mr. HASTINGS of Florida. Mr. Speaker, I am prepared to reserve the balance of our time and ask most respectfully that the gentleman from New York even out some of the time.

Mr. REYNOLDS. Mr. Speaker, the chairman of the Committee on Rules has requested such time as he may consume, and if the gentleman from Florida is prepared to close, I will urge that upon my chair, as he would speak to close.

Mr. HASTINGS of Florida. Mr. Speaker, is the gentleman saying he does not have any more speakers other than the chairperson, or whomever will close?

Mr. REYNOLDS. That is correct.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentleman from Vermont (Mr. SANDERS), a very good friend of mine.

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, fast track essentially extends our current trade policies. And why in God's name would we want to do that when our current trade policy is an absolute disaster that has cost this country millions of decent-paying jobs and has resulted in the pushing down of wages from one end of America to the other?

□ 0115

The facts are clear. They are not disputable. When we have a failed policy, why do we want to extend it?

I hear some people talking about how fast track and trade policies have created new jobs. What world are they living in? The reality is today, nobody disputes it, we have a $346 billion trade deficit, recordbreaking. No one disputes that between 1994 and 2000, the United States lost more than 3 million decent-paying manufacturing jobs due to our trade policies. In 2001, manufacturing lost 1.3 million jobs. Over the past 4 years, this is incredible, our Nation has lost 10 percent, 10 percent of our manufacturing base.

Then people come up here and they say, let us continue; let us extend this absurd and failed policy. When will they catch on, when there are no more manufacturing jobs in America? When all of our kids are flipping hamburgers?

Everybody knows the truth, and the gentlewoman from Ohio (Ms. KAPTUR) said it. We all know it. When we go to a department store and buy a product, where is that product manufactured? We all know it. It is not manufactured in Vermont; it is not manufactured in California. It is manufactured in China.

Why is it manufactured in China? We know the answer to that. In China, desperate people, desperate people are working for 20 cents an hour, and the corporate titans in this country have sold out our people and have taken their plants to China, where people go to jail if they try to form a union; where women are brought in from the countryside to work 15, 16 hours a day making sneakers for pennies an hour.

We all know that big money has contributed huge amounts to both political parties in order to move these trade issues, but let us stand up for ordinary Americans and for the middle class. Let us not become a poor, low-wage Nation. Let us reverse our trade policies. Let us demand that corporate America reinvest in Vermont, in America, and not just in China. Let us have a fair trade policy, rather than this disastrous so-called free trade.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, if this rule passes, we will have great debate by sponsors of the legislation. As I have said many times, managing this rule in what is now hopefully the final legs of an opportunity to pass this conference report that is not a partisan matter on trade, it is a bipartisan matter in both Houses as we look to the debate, and then to move forward with the will of the House.

In my home State, international trade is a primary generator of business and growth. In the Buffalo area, the highest manufacturing and employment sectors are also among the State's top merchandise export industries, including electronics, fabricated metals, industrial machinery, transportation equipment, and food and food products.

Consequently, as exports increase, employment in these sectors will increase. In the Rochester area, companies like IBM and Kodak play a significant impact on the local economy. In employment they will benefit directly from increased exports and international sales that will result from new trade agreements and open markets that are negotiated under the trade promotion authority.

For example, about one in every five Kodak jobs in the United States depends on exports. New trade agreements are needed to break down foreign barriers and keep American-made goods competitive overseas, as well as open up foreign markets on domestic companies.

This body and the other body will have the final say on those trade agreements. There are 28 bilateral agreements by Mexico and countries throughout the world. There are 27 by the European Union. Mr. Speaker, this country only has two. The trade promotion authority gives us an opportunity to move forward and an opportunity to see more jobs.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2 minutes to my good friend, the gentleman from Ohio (Mr. BROWN), who has been the leader in this regard.

Mr. BROWN of Ohio. Mr. Speaker, I thank my friend, the gentleman from Florida, for yielding time to me.

Yesterday, under enormous pressure from defrauded investors, the Republican leadership finally, reluctantly agreed to bring a strong accounting bill to the floor. But tonight, the Republican-dominated House is poised to turn around and give corporate America its most desired prize of all, trade promotion authority, or fast track. The fast track conference agreement is a great deal for huge corporations, but it is a bad deal for American workers.

Republican leadership has given these corporations everything it wants in this Congress: insurance companies write legislation to privatize Medicare; energy companies write our energy policy; chemical companies write our environmental policy; Wall Street writes Social Security privatization legislation.

Fast track, the granddaddy of them all, would prevent thousands of displaced workers from obtaining training, trade adjustment assistance, and health care coverage. It fails to make labor and environmental standards required negotiating objectives for future trade agreements.

But it is worse than that. This TPA, this fast track, shifts power from democratic governments to corporations. It allows corporations to challenge laws, environmental laws, food safety laws, worker protection laws that were passed in this Congress, that were passed in the 50 State legislatures, regulations that protect workers and protect the environment.

This legislation threatens food safety, it threatens clean air laws, it threatens safe drinking water laws, it threatens worker safety laws. Vote "no" on trade adjustment.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am privileged to yield 2 minutes to my good friend, the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Just a small bit of history, Mr. Speaker. I came to this Congress under the Presidency of William Jefferson Clinton, when many times we tried to craft a trade bill that respected and understood the role that this Congress has in oversight, respecting the laws of this Nation, understanding the needs of workers and the environment, and protecting children.

But it is interesting that under William Jefferson Clinton, this Republican House could never get a trade bill to be passed. Now, all of a sudden, there is this great energy to move a bill forward that does not take into consideration the very thoughtful Levin amendment that considered the environment, considered child labor, prohibition, and considered health benefits for laid-off employees.

This particular legislation that has come in the dead of night, when no one has been able to read it, is a trade bill for the trash heap, the trash heap of a Constitution that has been shredded in this trade bill.

Why do I say that? Because this trade bill allows racial profiling to go on by members or employees of the United States Government. I respect the U.S. Customs Agency; but for the life of me, I cannot understand why we have refused to acknowledge that we in this country deserve constitutional rights.

What they have done is they have decided to say that African American women, who are nine times more often stopped by U.S. Customs agents then white women, have no constitutional rights. It says to them that they can take a plane load of individuals from Italy, and take all the African Americans off of the plane and search them and find no contraband, and under the trade bill the customs agents would do this with impunity.

I believe we can have a trade bill. It can also be a bipartisan trade bill, a responsible trade bill; but I will not lose my constitutional rights on a trade bill that deserves to be put on the trash heap of disappointments.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am privileged to yield 1 minute to the gentleman from California (Mr. FARR), who serves on the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies of the Committee on Appropriations from the number one agricultural State in America, California.

Mr. FARR of California. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise tonight to respond to the request, rather flippantly, that we go back to the offices and read on the Internet what this bill is. I read it, not in my office, because we were voting; but there are 304 pages right here on the floor for 435 Members to read.

I want to wake up America at 1:25 in the morning to tell them they had better understand what is going on here tonight. This is not one little simple trade bill; this is five trade bills. This is a fast track bill, an Andean trade preference bill, a customs reauthorization bill, a trade assistance package, and a dozen provisions including giving the U.S. Trade Representative a slush fund to pay WTO fines without congressional approval.

This bill gutted the Eshoo trade preference adjustments. Reading this bill, it is a travesty to California agriculture. We sell out California flower growers. We sell out California asparagus growers. Yet they were able to protect the Puerto Rico rum producers. We sell out textiles, shoes, and jewelry; and we ignore the child labor problems that are in Ecuador in the banana industry, as pointed out by the New York Times.

This is a bad bill. Vote against the rule.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield the remainder of our time to my good friend, the gentleman from Washington (Mr. MCDERMOTT), who serves on the Committee on Ways and Means and certainly has a clear understanding of the measure.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Washington (Mr. MCDERMOTT) is recognized for 30 seconds.

Mr. MCDERMOTT. Mr. Speaker, it is a great pleasure to sit on the Committee on Ways and Means with the smartest chairman we have in the entire history of the Committee on Ways and Means. He sat out here and lectured us about the fact that we had not picked up off the Web this 340-page bill that was sent to us at 6:53, right in the middle of the discussion of the homeland security bill.

What we were supposed to do was get an e-mail from Diane Kirkland. You all know who she is; she is very familiar to all of you. This e-mail says, go and get a link and get this bill. And the chairman stands over there with that haughty look and says, you were not smart enough to know where to look for the thing that I hid. Vote "no."

Mr. REYNOLDS. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

Mr. DREIER. Mr. Speaker, it is true that it is 1:30; but we have been debating this bill since 1994, because 1994 is when this authority expired, and we have been working long and hard to promote free trade.

As I have listened to the horror stories that have come from the other side of the aisle, I would have to remind them once again, we have seen 134 trade agreements established in the world since that expiration, and the United States is a party to only three of them. We have not had the authority that will allow us to respond to many of the problems that exist out there.

The world has access to the U.S. consumer market. What trade promotion authority will do is it will allow us to pry open markets where 90 percent of the world's consumers are. That is about creating jobs right here in the United States. That is what trade promotion authority is about. Vote "yes" for the rule and vote "yes" for the conference report.

Mr. REYNOLDS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Florida. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 220, nays 200, not voting 14, as follows:

[Roll No. 369]

YEAS—220

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gilman
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Northup
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (NM)
Wolf
Young (AK)

NAYS—200

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldacci
Baldwin
Barcia
Barrett
Becerra
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clay
Clayton
Clement
Clyburn
Coble
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Goode
Gordon
Graham
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skeen
Slaughter
Snyder
Solis
Spratt
Strickland
Stupak
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Wilson (SC)
Woolsey
Wu
Wynn
Young (FL)

NOT VOTING—14

Baird
Blunt
Combest
Gillmor
Hefley
Hinojosa
Lewis (CA)
Lipinski
Meehan
Ney
Roukema
Stark
Stump
Whitfield

☐ 0151

Mr. HILL and Mr. WYNN changed their vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF CONFEREE AND APPOINTMENT OF CONFEREE ON H.R. 3210, TERRORISM RISK PROTECTION ACT

The SPEAKER pro tempore (Mr. SIMPSON). Without objection and pursuant to clause 11, rule I, the Chair removes the gentleman from North Carolina (Mr. COBLE) as a conferee on H.R. 3210, Terrorism Risk Protection Act, and appoints the gentleman from Virginia (Mr. GOODLATTE) to fill the vacancy.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferees.

CONFERENCE REPORT ON H.R. 3009, TRADE ACT OF 2002

Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 509, I call up the conference report on the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to House Resolution 509, the conference report is considered as having been read.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) and the gentleman from New York (Mr. RANGEL) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

First of all, I want to thank all the Members of the House and especially those 18 members on this conference committee of six different committees on House side and the five Senators from the Finance Committee for allowing all of us to be placed in a time period which is extremely unusual to resolve a conference committee. It was done in a manner and an attitude that produced a product that I think the institution, the House of Representatives and the Senate, should be pleased, notwithstanding the fact the President has not had the power to negotiate since 1994 when finally the Senate acted and the House was able to go to conference with the Senate. We have relatively quickly resolved the differences between the two Houses.

Notwithstanding the fact that we have fallen behind in terms of bilateral and multilateral trade relationships around the world because the Presidents have not had this power, the House and the Senate in this particular historic agreement have understood in a far more sophisticated way completely the consequences of trade.

Clearly when we engage in trade, it means change. The positive change is, of course, better-paying jobs, and it provides cheaper goods to consumers. The downside of course is that that change means some jobs are traded for other jobs. And what has not been fully recognized is that we get the benefits of the upside, but a full understanding of trade means we need the protections on the downside because if you can take care of those who, through no fault of their own, have lost their job through trade, you create an atmosphere and a desire to engage in even more trade.

And that is what this conference report reflects. An understanding the President needs the negotiating power but that also included is a structure to make sure that through no fault of those who lose their job, they are taken care of, not just in terms of employment or retraining, but in terms of providing, for example, health insurance, to the extent that it is entirely possible that under these provisions, someone, who was not able to get health insurance when they were employed during the retraining program, would get health insurance. That is how enlightened this particular measure is.

I am extremely pleased to say that four of the five Senators, two of the three Democratic Senators, have agreed with this conference report, and I would like to say that the chairman of the Finance Committee, Senator MAX BAUCUS of Montana, deserves an enormous amount of credit in terms of his willingness to sit very long hours discussing issues that sometimes are very difficult to resolve but nevertheless having the will and the fortitude to come out the other side to produce this document.

And then just let me say that we would not be here tonight if it were not for three very brave, I was going to say colleagues. I will say friends of mine on the other side of the aisle, ironically someone represents a district that is directly next to mine. We share a portion of the San Joaquin Valley, the gentleman from California (Mr. DOOLEY); the gentleman from Tennessee (Mr. TANNER); and the gentleman from Louisiana (Mr. JEFFERSON).

If they did not have the courage and the conviction to sit down and say it has been too long, let us try to work out a document, because as has been the case most frequently, this House led. It led in a bipartisan way. And we are here tonight largely because of their courage and conviction. And I want to thank them very much.

Mr. Speaker, I reserve the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

I did not know how many other Democrats the distinguished chairman was going to laud here, but I see they all fled the floor.

Mr. Speaker, on this historic occasion at two o'clock in the morning, the chairman would like for everyone to believe that we are embarking on a trade agreement that is going to cause the free world to thank us for the great work that we have done. Of course when one would ask how many people in this august body has had the opportunity to read the 304 pages of this bill we are referred to the Web site and e-mail to find out what is here.

□ 0200

So I guess basically what the chairman is saying is, do not vote for the bill because we can assume that the Members do not know exactly what is in these 304 pages. What he is suggesting is that Members trust him.

So maybe we can staple him to whatever newsletter we are going to send out to tell people what we have done for the free world and how this is going to help the workers. But I doubt very seriously whether we can wave the flag and be so proud of the fact that, when we are talking about international trade, he had to find two Democrats that made it possible, when Democrats in the House are almost half of the House.

What we should be doing when we deal with foreign policy and when we deal with trade is to be able to say when that American flag goes up that it was a bipartisan effort that we made; and that deals were not made in the middle of night or Members not selected one or two, but it means that we come together to find out what is in the best interest of the United States of America and not what is in the best interest of the majority.

In the final analysis, the work that we do in this House is not the work of Democrats, it is not the work of Republicans, it is the work of the people in the House of Representatives that have a responsibility to deal with the commerce provisions of the United States Constitution.

Now, there are some people that may not care what happens in the World Trade Organization. They may say let the executive branch negotiate and we give up these powers. But when the final day is written and it is over and the history is written, it is going to be what did the United States of America do to set standards for the rest of the working people in this world.

A lot of people have suffered and died for the right of unions to be able to come and to give us a decent wage, vacation, and all those things. We do not expect that in developing countries, that they would assume our standards. What we do hope is that they would be able to assume our dreams, our aspirations, and be able to do that. On this side of the aisle, we say that should be incorporated in each and every agreement that we have, no matter how undeveloped a country is.

But, listen, the best time to talk about our best work is when everyone is sleeping. The best time to talk about what we did is when no one knows what we have done. The best time to bring up a historic bill is 1 a.m. in the morning and debate it until 3 a.m. in the morning.

So I guess we are going to find out what happens in this bill at some time, at some place, but this is no way for this Congress to be conducting its business.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade.

Mr. CRANE. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong support of H.R. 3009.

Mr. Speaker, this bipartisan conference agreement is the culmination of a process that began in the Subcommittee on Trade over a year ago when I introduced H.R. 2149, the Trade Promotion Authority act. Since that time, Republicans and Democrats have trudged miles together in search of this delicate consensus.

Mr. Speaker, trade is fundamental to our relations with other nations. As the President strives to neutralize international threats to our security, Trade Promotion Authority is an essential tool for him to build coalitions around the world that safeguards our freedoms.

This bill is about arming the President with authority that achieves trade agreements written in the best interest of U.S. farmers, companies, and workers. This legislation will ensure that the world knows that Americans speak with one voice on issues vital to our economic security. At the same time, it ensures that the President will negotiate according to clearly defined goals and objectives written by Congress.

TPA simply offers the opportunity for us to negotiate from a position of strength. In no way does TPA constitute the final approval of any trade agreement. Congress and the American people retain full authority to approve or disapprove any trade agreement at the time the President presents it to Congress.

I am also pleased that included in this legislation is my bill, the Andean Trade Promotion and Drug Eradication Act, which renews our commitment to help the Andean countries in the war on drugs. Notably, the Andean provisions include expanded benefits for Andean apparel made of U.S. and regional fabrics, yarn, and for tuna in pouches.

In closing, Mr. Speaker, Americans have never been reluctant to go head to head with our trading partners. We should not dash the best chance we have of creating a better future of dynamic economic growth and success for our workers, businesses, and farmers in the international markets. Restoring this authority will help the U.S. resume its rightful role as the world leader when it comes to trade.

Mr. Speaker, this is an historic moment for the House. Accordingly, I urge an "aye" vote on H.R. 3009.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. GRAHAM).

Mr. GRAHAM. Mr. Speaker, I thank the gentleman for yielding me this time.

We are not the only people in America working at 2 a.m. in morning. In the textile plants, what few are left in the South and other places in the country, there are people working the third shift. And here is what I want to tell them if they have a chance to listen. I am voting on a piece of legislation that affects your jobs, and I have no idea exactly how it works. But I know this: On page 271, 272, page 281, 243, and 244, the amount of duty-free apparel that can come into this country to compete with your job has doubled and tripled, and it is some of the dyeing and finishing protections that we fought so hard for, which I think have been tremendously undermined.

My colleagues are asking me to vote on a bill to give the President the ability to unilaterally negotiate trade agreements, and dozens of pages affect textile policy. And when you double the amount that can come in from foreign countries, where the wage rates are almost nothing, no environmental laws, you are going to put some of my people out of business. And you are making me vote in the middle of the night on something I do not know about, and I resent the hell out of it, and I am going to vote no.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Speaker, I want to first off commend the conferees that put together this conference report, in particular the gentleman from California (Mr. THOMAS), who joined with the majority leader in the Senate, Mr. DASCHLE, and Senator MAX BAUCUS, a member of the Senate Committee on Finance, and really put together what I think is a significant step forward on the Trade Promotion Authority that is complemented with the Trade Adjustment Act.

These individuals, Democrats and Republicans, came together because they understand that the future and the welfare of the American people is going to be best advanced if we move forward with a trade agenda that embodies a policy of economic engagement, and that by building stronger trade relationships we are going to provide greater economic opportunities for the businesses and the workers that they employ.

But these Democrats and Republicans also understood that we also have to be providing assistance to those workers who are dislocated because of increased competition in trade. They built upon some of the good work of Democrats in the House in the Trade Adjustment Act. They ensured that this final package that we are going to be voting on today, for the first time, includes health benefits for workers who are dislocated because of trade. Sixty-five percent tax credit for their health insurance. This is a new benefit that never has been provided before.

This trade adjustment package also ensures for the first time ever that older workers will have wage insurance that they have not had before. And this Trade Adjustment Act package we are voting on today ensures we have a significant expansion of coverage for secondary workers. That is going to ensure that tens of thousands of workers that were not eligible for trade assistance benefits in the past will be covered today.

This is a comprehensive package that embraces the best of policies in terms of how we can advance our economic opportunities and also expand the values of the United States. Through this increased trade with these countries, we ensure that we can expand democracy and capitalism and human rights, while at the same time providing the legitimate safety net for the workers in this country.

Mr. RANGEL. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. McDERMOTT), a senior member of the Committee on Ways and Means.

Mr. McDERMOTT. Mr. Speaker, this has been an amazing night. First, the President gets the Homeland Security bill he wants, and now he has the fast track bill he wants.

As I was listening and watching the first, and now reading the second a little bit, I thought of a quote. "Beware the leader who bangs the drums of war in order to whip the citizenry into a patriotic fervor, for patriotism is indeed a double-edged sword. It both emboldens the blood, just as it narrows the mind. And when the drums of war have reached a fever pitch and the blood boils with hate and the mind has closed, the leader will have no need in seizing the rights of the citizenry. Rather, the citizenry, infused with fear and blinded by patriotism, will offer up all of their rights unto the leader and gladly so. How do I know? For this is what I have done. And I am Caesar."

□ 0210

Now, does that sound familiar to what is going on here tonight? This is an historic bill. When Members return in September, they will give back their voting cards and get a rubber stamp, and they can stamp approve, approve, approve, anything the President wants. The President is going to bring a trade bill here, and Members are going to get a chance to stamp approve; or not approve.

Why do I worry about that? Let me tell Members. Let us look at his record. It is not as though he is an amateur who just wandered on the scene. This man signed a law for $180 billion worth of farm subsidies, which fly in the face of our international commitment to reduce trade-distorting subsidies. Those subsidies drive down the price of agricultural goods, and seriously impair the efforts of developing countries to cultivate their own means of food production.

The President has imposed WTO noncompliant steel tariffs, which have exacerbated our problems with Europe. Despite NAFTA and WTO, the President has slapped the Canadian softwood lumber with 30 percent tariffs. The President has withdrawn the United States from the ABM treaty.

This is the man that Members are giving the right to go out and negotiate for them, and all they have is their stamp "approved," or not. That is what Members are going to get. That is the participation of Members. Members are yielding up their rights fully to this man. If Members feel comfortable with that, they can jump up and vote "aye."

This President walked away from the Kyoto treaty. I have several pages of what he has done in the international arena. This is the man who sat on the stage with the President of Brazil and after he made some comments, the Brazilian President said, "We consider him an amateur."

Mr. Speaker, we are giving an amateur the right of the American people to decide what happens to child labor, what happens to our economy. Vote "no."

Mr. THOMAS. Mr. Speaker, I yield myself such time as I consume.

Mr. Speaker, I find it rather ironic that back in December this House examined the trade promotion authority that was sent over to the Senate that created this conference. In that measure was the strongest structure for oversight and control by the Congress in any trade promotion program. The House and the Senate by simply moving a resolution can deny the President the ability to enter into any agreement.

Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. KOLBE), a Member who has been a stalwart in trade for many years.

Mr. KOLBE. Mr. Speaker, I rise in support of this by conference agreement on trade promotion authority. We have traveled a long and difficult road to arrive at this moment.

For 8 years, American leadership and national interests have been sitting on the sidelines. During this time, American companies and workers have stood by while we have watched our competitors from other countries gain advantages through trade agreements from other countries at our expense because the President of our country did not have the authority to negotiate agreements of our own.

At last we are bringing a positive trade agenda for the American economy for our consumers, workers, families, farmers. I want to suggest three reasons why trade promotion authority needs to be promoted and supported.

First, it is an economic growth incentive. During the decade of the 1990s, trade has accounted for more than a quarter of domestic economic growth. Today more than ever, we need the engine of economic growth if we are going to continue.

Second, trade promotion authority is critical to job creation. In manufacturing, one of every five jobs comes from trade. In the services sector, U.S. exported $295 billion in exports, $180 billion more than was imported.

This bill will create job opportunities for American workers in all kinds of industries, while at the same time it helps those who might lose their jobs with trade adjustment assistance.

Third, trade promotion authority will improve our standard of living. President Bush's remark that free trade has increased the standard of living for a family of 4 by as much as $2,000 through the combined effect of higher wages and lower consumer prices.

All of those reasons show how trade promotion is in our national economic interest. But it is also in our foreign policy interests. It is a key tool for encouraging economic growth abroad. The reason we pursue a strong global economy as a key planking of our foreign policy is because successful economic growth abroad helps us achieve our humanitarian and national security policy objectives.

Mr. Speaker, this bill deserves our consideration and support. I urge Members to vote "aye."

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. Mr. Speaker, I believe in trade. I believe trade is important for our country. I believe trade is important for the world. I believe that former Secretary of State Cordell Hull had it just about right when he said that when goods and products cross borders, armies do not. I believe that.

But tonight's debate is not about whether we believe in trade or are against trade. Tonight's debate is about what the rules of trade are going to be. The trade negotiations of the 21st century will be less about the reduction of tariffs and quotas and more about the establishment of important standards and what those standards are going to be like, not only in this country but globally. Standards such as worker rights, environmental protection, child labor protections, food safety and the sanctity of our own domestic laws. And the question will be whether or not the harmonization of those standards will move upwards, or whether it will result in a race to the bottom.

I believe Presidents need trade promotion authority, but it is more than just words in a document. A large part of it is based on trust and confidence in the delegation of this extraordinary power from the Congress to the executive branch.

With all due respect, I wish I had more confidence that the trade policy decisions coming out of this White House was based more on principle rather than politics, because the track record thus far does not inspire that type of confidence. We merely have to look at the steel tariff decision or the textiles deals that are being cut, or the lumber decision; but especially the complete 180 degree reversal on the farm bill that the President initially opposed but ultimately signed at the end of the day.

A farm bill that I still believe holds the single greatest potential of bringing down the next round of trade talks that we are about to enter into.

Mr. Speaker, I was one of the few sounding the alarm about how bad this bill was to our Nation's trade policy. The administration cut my legs and the legs of some of my colleagues out from under us in what they did. Now they ask for our vote of confidence in giving them this authority. I wish I could, but I cannot; and, therefore, I will vote "no" this evening.

Mr. THOMAS. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. SMITH).

□ 0220

Mr. SMITH of Washington. Mr. Speaker, there are two stats that have always stuck out for me in trade that I first heard from President Bill Clinton. The first is that 96 percent of the people live someplace other than the United States of America, which means that if we wish to grow and expand our markets, we are going to need access to those markets. You cannot do that without fast track trade negotiating authority. Without the ability to negotiate, to reduce tariff barriers to other countries that we have, you cannot move forward. Right now the U.S. is in the unfortunate position of facing much higher tariffs than we have here at home. We need to negotiate to change those.

The second stat is that the U.S., despite being only 4 percent of the world's population, is still responsible for over 20 percent of the world's consumption. So if you are in the developing world that we have heard much about tonight, if you have any hope of growing economically, you need access to our markets as well.

Despite those two facts, we have heard a lot about how, Yes, we support trade, but this isn't the way to do it because of all the challenges we face. But what I think we have to think about is under those terms, what would a trade agreement look like that the opponents support? What can we possibly do in a trade agreement to raise the labor standards throughout the developing world, throughout the world that does not have our standards, to our level? The answer, of course, is that we cannot. We are not going to get there. Fully 70 percent of the world is dramatically below us in labor standards.

Does that mean that we do not trade with them? Does that mean that we simply say we are going to erect a protectionist barrier? Certainly that is a trade agreement that I guess we would all like. You would like to be able to have access to other countries' markets without them having access to yours; but that is not realistic, and it is not good for global stability. I submit that we can move forward, that the world that has been described tonight by those who say that these trade agreements have destroyed us simply is not the one any of us lives in. We can compete. We have competed and succeeded. Under Bill Clinton's leadership, amongst others, we enjoyed the fastest economic expansion ever, and that was across the board. That was not just the wealthiest 10 percent. That was everybody. We can compete and win. We cannot shut out the rest of the world.

I urge a "yes" vote.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. SPRATT), the ranking member on the Committee on the Budget.

Mr. SPRATT. Mr. Speaker, this conference report does far more than just give the President fast track authority. Packed into these 400 pages is something called the Andean Trade Promotion Act, and if you come from textile country, this is no trivial matter. These provisions open up duty-free access for Andean textile imports that is four times current trade.

Also packed into this conference report are major amendments to the Caribbean Basin Trade Partnership Act. These almost triple the amount of apparel that can come in duty-free from the 26 countries in the Caribbean and Central America. As if that were not enough, this conference report goes on to expand the African Growth and Opportunity Act, doubling the amount of apparel that can come in duty-free, unencumbered from 35 countries in sub-Saharan Africa.

Over the last several years, believe me, I come from textile country, hundreds of plants have closed and textile apparel workers by the thousands have lost their jobs. By opening our markets in this report to a flood tide of new imports from the Andes, from Africa and from the Caribbean, from 70 countries in all, this bill can only add to an industry that is already hemorrhaging from a trade deficit that is running right now at $62 billion.

Let me cut through all the technical detail and give you one example of how gratuitously generous this bill is. Right now Caribbean countries can ship duty-free to this country knit apparel made of regional fabric to the extent of 336 million square meters. This bill would expand that 336 million square meter limit, or cap, to 500 million square meters by October 1, and to 970 million square meters by October 1, 2004. That is unprecedented and totally unnecessary.

It is true that it closes the so-called "printing and dyeing" loophole, but this bill opens up a bigger gap and does no net good on the whole. These concessions are unprecedented, they are unnecessary, they are an unmitigated disaster, and if they indicate the kind of trade agreements that will be brought back for a fast track vote, they are reason enough to vote this conference report down.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

I tell the gentleman that I would like to have every T-shirt that everyone sees sold in the mall and every store come from the USA. The fact of the matter is they do not anymore. We can lament the fact that they do not, but the fact is they do not. And the choice is do you want them to come from Sri Lanka, do you want them to come from Pakistan, do you want them to come from areas that find Australian cotton far more available, or do you want to help our friends in the Caribbean when the choice is between someone tens of thousands of miles away or someone 100 or 200 miles away that will be purchasing U.S. cotton and U.S. yarn from the very areas the gentleman comes from and encourage a win at home, a win in the hemisphere?

Because if we are debating whether we are going to have U.S. T-shirts or foreign T-shirts, that debate is over. Are we going to help our friends close to home that buy our product or are we going to make sure that we continue to lose opportunities because we refuse to understand reality?

Mr. Speaker, it is my pleasure to yield 1 minute to the gentlewoman from Washington (Ms. DUNN).

Ms. DUNN. Mr. Speaker, it is a pleasure to stand and speak on behalf of this bill. It has been a long time in coming. I want to congratulate Chairman THOMAS for successfully negotiating this agreement. America has been falling behind in expanding trade since the expiration of TPA back in 1994. We produce the highest quality services, the most bountiful crops, and the most advanced technologies in the world. Yet the high tariffs we face overseas destroy our competitive edge. While our foreign competitors weave a web of preferential trade opportunities for themselves, American companies, farmers, and workers continue to face higher tariffs and other barriers that hinder access to American products and American services.

In Washington State where one out of three jobs is related to trade, we know that expanding trade opportunities works for America. Today we renew our commitment to engage in trade by passing a TPA bill that will expand access to markets and reduce other trade barriers. TPA will enhance our competitiveness, create jobs, and help bolster our economic recovery.

It is time for Congress to pass TPA.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

I just want to make it clear, Mr. Speaker, that I support the trade provisions in this bill. But I also support the protection of workers in the United States, especially those that have been displaced. And I am more than certain that if Republicans and Democrats would have gotten together and members of the Committee on Ways and Means and explained what we were trying to do in trade and at the same time protect our workers here, that we would not have a partisan bill, but we would have a bipartisan bill.

Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise tonight to ask you to vote "no." Vote "no" tonight. Maybe next year, maybe the year after that, but right now we do not need to pass this bill.

We call ourselves being here because we want to have trade promotion authority, we say we are here because we want to have fast track, and I keep asking myself, why did that take 300 pages? Why could we not give the President the authority he wants with 10 pages? What is all this other about? I have been trying to figure it out since 7 o'clock tonight. Well, I do not know all the answers, but I know enough to know this. It is the final nail in the coffin of the textile industry in America. This will do it. We will not have to fight about it anymore. We are going to lose the jobs if this passes.

Many of us right here are going to lose wool plants in our district, you know who you are, just because somewhere in this 300 pages there is another three lines or two.

The President has authority right now. He can make trade agreements anytime, anyplace he wants to. We do get to say yes or no, reject or agree, and we actually get to amend. That is what we are trying to take away here, is it not? We want to take away our ability to amend.

Well, ladies and gentlemen, we just ought not to give up our responsibility. Five previous Presidents have had this authority. What has happened to us? Well, we import more and we export less and the trade deficit rises. We talk in this bill about displaced workers. I never could figure out what a displaced worker was. But I am pretty sure they are some of the folks in my district who are losing their jobs.

I wish I had longer, but just vote "no" tonight.

The past five presidents had this authority and what happened? We imported more and exported less. The trade deficit keeps climbing. What does free trade mean to you? Does it mean we open our borders to receive foreign imports or does it mean foreign countries open their borders so we can export? Whatever it means to you, the fact remains we are importing $2 hammers and exporting jobs and closing our industries.

We talk about displacing workers—what does that mean? It means thousands of people losing their jobs in the textile industry, the timber industry, in agribusiness, and the steel industry, without American labor laws—antidumping.

We have generous benefits for "displaced workers" and health benefits—even for workers whose factories move overseas to countries that have preferential trade agreements with the U.S. That is tantamount to saying we know our trade agreements will lead to more factories closing and more displaced workers. Why would you ever need this if this bill is about exporting? The Senate said we want a vote if you are going to trade away our antidumping laws or weaken trade remedy laws. Why would anyone object to this unless you are going to trade away American trade laws and turn trade over to the WTO, where China has as many votes as we do?

But do not worry Congress, we are not giving our responsibility over to someone else. We can always pass a resolution that we do not agree with a trade deal that is unfair to the U.S. Then what? So what? We can write letters to the trade ambassador saying don't go to Doha and agree to nonreciprocal trade agreements and the ambassador can do what he pleases, as he did at Doha.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Texas (Mr. BENTSEN).

□ 0230

Mr. BENTSEN. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I think that the bill before us today is actually a pretty good bill. I voted for the fast track bill that President Clinton sent up, and I think this bill is better than the bill that President Clinton sent up. I also think that this bill contains some items that this House has not seen until tonight.

There has been a lot of discussion about the displaced worker provisions, the trade adjustment assistance. I have worked on that with others in this body, and I think, quite frankly, we have been arguing over whether the glass is half full or half empty.

But I think, quite frankly, in this bill, if you look at the facts, the glass is at least three-quarters full from where we started in this House. It may not be as much as what was in the other body, but it has, for the first time, refundable health insurance for displaced workers. That is not in current law. It expands coverage for secondary workers and shifts in production where we have trade agreements. That is not in current law. It has wage insurance for older workers. That is not in current law. It now matches the training benefits with the monetary benefits. That is not in current law. And it extends them and it increases the appropriations dramatically. That is not in current law.

I think this is good public policy. And while we have disagreements within this House and I have disagreements within my own party, which are, I think, legitimate disagreements, what we should not disagree upon is the fact for the first time in 40 years since this program, the TAA program, was created by John Kennedy, this is a landmark revision of this program.

I think we ought to take advantage of it, and I think we ought to pass it, because I think it is good for the country and it is good for workers, and I hope that our colleagues will pass this tonight.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to my friend, the gentleman from New York (Mr. LAFALCE), the senior member of the New York delegation, and, at the same time, on behalf of the delegation, thank him for the great service he has provided to his country and to this Congress.

Mr. LAFALCE. Mr. Speaker, fast track authority, Trade Promotion Authority, is a fraud. It is a hoax. The President has plenary authority to negotiate anything he wants to. What we are purporting to do is forfeit Congressional authority. That is what it is about. We do not grant authority, we purport to forfeit Congressional authority to offer amendments. There is a difficulty. We cannot do it legislatively, because we have that power constitutionally. So this legislation, if it passes unanimously, is constitutionally unenforceable.

Now, I do not think there is a constitutional scholar who would differ with that. But if they did, legislatively it is a hoax, because in every single so-called fast track bill, there has been a provision. There is in this bill, on page 217, lines 15 through 19. Basically what it says, we will give up our authority to amend, unless we change our mind and wish to amend, at which time we come forth with a rule and we offer any amendments we want. It is a hoax, a fraud.

What we really are doing here is purporting to change for the purposes of trade a representative democracy into a parliamentary democracy, where the President is really prime minister, and presidents love that, and the Congress is a parliament, and we are stupid enough to go along with it.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and Workforce.

Prior to that, I would just like to say for folks who have not been able to read this, I sure hear a lot of citations on pages 200, 300, 350, 361. I just do not get it.

Mr. BOEHNER. Mr. Speaker, let me congratulate our colleague from California, the chairman of the Committee on Ways and Means (Mr. THOMAS), for what really was a very successful negotiation with the Senate over putting this Trade Promotion Authority bill together.

We all know that much of the growth in our economy over the last 10–20 years has come from our ability to trade more with others around the world. As we reduce trade barriers around the world, it will continue to enure to the benefit of our children and theirs in this global economy we find ourselves in.

The most significant part of this package, though, is the fact that, for the first time, we make a significant effort to help those who may lose their jobs as a result of their company ceasing operations here.

I think the help that is in this bill is in fact substantial. We expand the National Emergency Grants to help those workers, whether it is with health care, child care, transportation, training. This bill authorizes some $510 million to help dislocated workers through these grants.

It is a good bill. It deserves our support.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Oregon (Mr. WU).

Mr. WU. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, we have a broad-ranging trade bill before us which purports to deal with antiterrorism, with intellectual property, with transparency, anticorruption, foreign investment, labor and the environment. A prior speaker asked, what would it take to get your support on a trade bill? I will tell you right now, to add one more item to this list; human rights, enforceable human rights.

I know that I might be one lonely voice in the wilderness on this right now, but I think that ultimately we will prevail. And I will tell you, even being alone on this issue, it is a heck of a lot better place to be than those who are in prison or suffering under tyrannical regimes in other places, when we can do something about it, when we can use our trade leverage.

Now, let me underscore, we are dealing with subjects as diverse as intellectual property and foreign investment, labor and the environment. But being a slow reader, Mr. Speaker, I only got to page 174, and I want to point out that it is with respect to labor and the environment that there is a terrific loophole built into this bill, and I want to point this out with specificity so that no one can say they did not know about it.

Page 174: Parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutory, regulatory and compliance matters, and to make decisions regarding the allocation of resources and enforcement with respect to other labor and environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion or results from a bona fide decision regarding the allocation of resources, and, here is the key part, no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection.

To deem this a loophole is to call the hole in the side of the Titanic a small leak. I urge rejection of this bill.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a member of the Committee on Ways and Means.

Mr. ENGLISH. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, this is landmark legislation that provides solid benefits to workers and communities facing the challenges of globalization. At a time of record trade deficits, this legislation gives the President the authority to conduct negotiations to strengthen U.S. trade policy in a dramatic way, while at the same time opening new markets to American products.

It establishes a new national compact on trade which will guarantee workers who have been laid off better access to health care benefits, and it provides income stabilization for older workers by giving them the difference between the salary they can earn from a lower-paying job as opposed to their earlier job that they lost because of a trade-related displacement.

This legislation incorporates broader trade adjustment assistance for those who need it in the wake of a trade-related layoff; broader by providing secondary worker benefits for upstream workers, as well as for downstream workers, affected by trade shifts to Canada and Mexico. It broadens TAA by providing benefits to workers if a firm shifts production to any country with a free trade agreement with the U.S. or any country eligible under a variety of agreements.

This legislation also gives the administration the power to challenge egregious labor practices in foreign countries, such as child labor, and it promotes greater coordination between the WTO and the ILO.

□ 0240

In short, we will be creating opportunities to link trade, labor rights, and environmental policy to a degree never before achieved.

There are some who will say that this bill will not accomplish enough, Mr. Speaker, and as a group, I marvel even now at their pessimism about the competitiveness of the American worker and the American economy. But how many of them have been moving the goal post as we have been crafting this legislation, and how many of them have associated themselves with the less aggressive trade policy of the last administration?

Vote this trade bill through. It is the beginning of a new day and a stronger trade policy for America.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy in permitting me to speak on this measure this evening.

The distinguished chairman of the Committee on Ways and Means professes surprise that Members who disagree with him can read the bill. I find it interesting. I remember the same gentleman told us here with a flourish that this proposal had been posted at 3 p.m. this afternoon. It has been pointed out by several people that the Members were not notified until 6:53. But if the gentleman would use the Web, turn to the bottom of the page of 304, he will find that it was not posted until 5:20 p.m.

If he cannot tell time, it makes one wonder what else has been left out in the consideration of this proposal.

I believe in free trade. I came to this Congress immediately involving myself in trade issues, because it was one of the few areas where we could work together in a bipartisan basis. Mr. Speaker, that has been shattered over the last couple of years, and it is a sad, sad note.

Let me give just one example of a concern that I heard from my constituents back home when they knew that I supported trade promotion authority. They talked about the imbalance under Chapter XI provisions that provided a superior position for foreign investors, and they said, that is wrong to go to an international tribunal and avoid the requirements of U.S. law.

Well, what has happened in the conference committee is they fixed it, they fixed it all right, but they fixed it so that not only can foreign investors avoid the responsibilities of U.S. law, but now American interests can obey our regulatory provisions and be able to avail themselves to a tribunal rather than be involved under the same requirements that we have now. That is not what my people wanted.

I strongly urge a rejection of this ill-advised piece of legislation and the willingness to draw bright, partisan lines and give up issues of textiles, steel, and agriculture. It is not the way to do the business of the House.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Tennessee (Mr. TANNER), a member of the Committee on Ways and Means.

Mr. TANNER. Mr. Speaker, I would like to start by thanking the conferees. This trade is a hard issue for all of us, but the conferees worked long and hard. We have a Republican House and a Democratic Senate. This is a conference report. I think that is bipartisan.

We are talking about economics, basically, and it is a fact that in this country, we can grow more food than we can eat and make more stuff than we can buy and sell to each other. Given that fact, it is an economic fact that unless we can get rid of this surplus production through trade, somebody is going to lose their job. That is not a political argument; that is an economic fact of capitalism.

Now, how do we get this surplus production out of here? We do it by economic engagement with the rest of the world through the institutional process of granting to any administration, not this one, but any administration the ability to negotiate to the bottom line with those who would negotiate with us so that we can get rid of this surplus production and keep jobs in this country.

This bill is stronger in every respect than current law. The TAA provisions are really unprecedented, and many others have spoken to that one.

But finally, I would like to convey this thought to my colleagues. Economic engagement is truly a matter of national security. If history teaches us anything, it teaches us that economic partners sooner or later become military allies, and I want to see us having American jets flown by the Brazilian Air Force or having American ships sailed by other countries; not French, not others, not Japanese or whatever.

Mr. THOMAS. Mr. Speaker, the gentleman is making excellent points, he just does not make them as fast as most people; therefore, I yield him an additional minute.

Mr. TANNER. Mr. Speaker, I thank the chairman. It is a curse of where I am from, I guess. But I do want to continue this line.

The economic engagements that I believe this country must engage in is truly a matter of national security. As I said, history teaches us that economic partners become military allies, and we have seen over the course of the last few years over 190 trade agreements and we are not a part of them, and we will not be a part of them because we do not have the institutional ability to engage to the bottom line those who would trade with us and those who would negotiate with us on these trading arrangements.

So for that reason, and because I think the bill is far better than any law that we have ever passed before in TPA, and better than TAA in every respect than current law, it deserves our consideration and our vote.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. BONIOR), the former whip.

Mr. BONIOR. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, since 1994, 3 million jobs in our country have evaporated as a result of bad trade laws. In my home State of Michigan, we have lost 150,000 workers to these trade laws. They have lost their paychecks, good jobs, jobs that one can sustain a family with; gone to Asia, to Mexico.

Not only have we lost these jobs, we have crippled whole communities. If one drives through parts of Detroit or Flint or Saginaw, and one can see the devastation that these trade laws have caused. There is no tax base left to pay for fire and police and education and health care. They have been absolutely devastated. We are losing our manufacturing sector. Does anybody deny that? Look at what has happened to steel, textiles, autos. It is a tragedy. And what is even as much a tragedy for this institution is the surrender of the congressional prerogatives given to this body by the Constitution of the United States.

Mr. Speaker, this night will be recorded as one of the largest surrenders of constitutional authority in the history of our government, giving it to the presidency. And it is not just goods and services we are talking about; we are talking about labor law, environmental law, copyright law, investment, safety law. That is all under the rubric of trade today. One vote is all we are going to get, up or down, that is it, and we know how that works. Historic evening, Mr. Speaker. Vote "no" on this.

☐ 0250

Mr. THOMAS. Mr. Speaker, I think we have a very clear recent historical example of what happens when Congress is not wise enough to make sure that they delegate the authority that Congress retains and the responsibility to allow the President to negotiate. We have not had the Presidential ability to negotiate for more than 8 years. We have had no agreements.

Members can covet the power and not use it, or we can sensibly delegate it, with the clear ability to bring it back if necessary, and enter into bilateral, multilateral, and world trade arrangements which clearly benefit all Americans.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. HOUGHTON), a member of the Committee on Ways and Means.

Mr. HOUGHTON. Mr. Speaker, I am not at my best at 10 minutes of 3 in the morning, but I will do what I can in order to put this thing in clear perspective, as far as I am concerned.

This piece of legislation loses no jobs. As a matter of fact, it does not even gain jobs. But we all know that 96 percent of the world's population live outside of the United States. They are our market in the future. We can take a look in terms of the impact of export jobs, and it ranges between 15 and 20 percent extra pay for those people who produce those products.

This is very straight forward. We want more business. In order to get more business, we have to negotiate. In order to negotiate, we have to have the government behind us. This allows the government to get behind us.

Mr. RANGEL. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. LEVIN), a senior member of the Committee on Ways and Means and one who has fought for trade throughout his career.

Mr. LEVIN. Mr. Speaker, the basic partisanship which has marked this legislation from the beginning in this House even blinds the majority as to what has happened these last years.

No trade agreements? Jordan, CBI, Africa, the China PNTR? They were all developed on a bipartisan basis. It is the only way to shape trade policy that is viable.

They started on a partisan foot; and they think because they have a few Democratic hands that that makes it a bipartisan product. It does not. 161 Democrats voted for a fast track bill in this House. They did not reach out for 1 minute to try to meld the two bills into one. As a result, they come here tonight with a partisan product more than a bipartisan product, and trade policy built on partisanship is built on sand and will sink.

True, there is some TAA here; but a half-baked TAA is no substitute for good trade policy, and half-baked it is. If workers are laid off because a company moves to, say, Ecuador, they are covered; to China or Japan or some other place, they are not covered. That is half-baked, at best.

Thirdly, I want to say a word about oversight. There is more facade in this discussion than in any other respect, perhaps. Trade today is not about tariffs; trade today is not about nontariff barriers. It is about health and safety, it is about antitrust, it is about environment, it is about core labor standards; and no one is talking about introducing American standards as the requirement, just so people do not use child labor, and they emasculated the child labor provisions, emasculated. That is what we are talking about. That is what trade is in the 21st century.

They built up this facade that Congress is going to be involved. It is consultation at the whim of the administration. They say there is a sense of Congress, that that can be expressed. It undoes the only protection we now have that something can come through the Committee on Ways and Means or the Committee on Finance. We need, in this Congress, to be a partner, not a second-class citizen. If we remain that way, the citizens of the United States are going to be undermined by the executive of this country.

Vote "no" on this bill.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, gee, I thought when we were talking about trade agreements, it was a structure in which, over time, the trade between those two countries was mutually beneficial and that what we want to do is have a broad-based relationship between people who see benefits going both ways.

The Caribbean Basin Initiative, an outreach to our friends in the Caribbean? I would not exactly say that is a reasonable, equal relationship. Free Trade Agreement with Jordan? A clear reward for the kind of friend we have in a very difficult area of the world, probably far more motivated for geopolitical reasons than really for trade. Southern Africa? We have neglected that area for years and years, and what we are doing is reaching out, not enough, way too late.

And what we hear are criticisms because we are talking about not 1 percent of someone's amount of trade; we are talking tenths of 1 percent. That is not a long-term mutually beneficial relationship in which the gentleman from Tennessee and the gentleman from New York talked about how we mutually better each other.

Those are important humanitarian outreaches under the structure of trade. But if that is what we get without trade promotion authority, we had better have trade promotion authority.

Mr. Speaker, it is my pleasure to yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN), a member of the Committee on Ways and Means.

Mr. PORTMAN. Mr. Speaker, I thank the chairman for yielding time to me. I want to commend him for coming to a resolution on a very difficult and complex issue, and that is the trade promotion authority and trade adjustment assistance.

This has been a long road, Mr. Speaker. Not since 1994 has this country had the ability to navigate world commerce and to be able to open up barriers to U.S. trade. It is time for America to get back in the game.

Without this authority, countries are not going to deal with us, and others have disputed that tonight, but the proof is in the pudding. There are now 120 trade agreements out there; the United States is party to three. Since 1990, the European Union has negotiated 20 new trade agreements. These are our competitors. These are people who are competing for jobs with our workers. They are currently in negotiations for 15 additional trade agreements.

It is time to get back in the game. It has been long past time. By doing so, we not only open up foreign trade for our goods and our services, we also are able to export our free market economy, which has brought us unprecedented prosperity and has the ability and potential to do that for the rest of the globe, to truly lift all boats.

I am amazed to hear my colleagues on the other side of the aisle, who are free traders, but tonight say that although they supported President Clinton's trade promotion authority, they cannot support this one. They cannot support trade promotion authority, even though, as compared to the Clinton trade promotion authority, we now have more consultation with Congress.

In fact, it is unprecedented consultation with Congress. It has real teeth. It has a real congressional oversight group. It has never had that before. It has much stronger labor and environment provisions, including on child labor, stronger provisions than in the Clinton trade promotion authority. The ability to effectively enforce other countries to enforce their own standards is new. We have not had that before. Members may not think that is perfect, but that is a lot more than we have had before.

Stronger protection of U.S. trade remedies, including the ability for Members of Congress to help protect our antidumping laws, our countervailing duty laws, our trade remedies here at home by being able to offer a motion on the floor of this House. Any Member would be able to do that. That is more than we ever had in terms of protecting our own trade remedies.

Finally, of course, a dramatic expansion of trade adjustment assistance. I appreciate the fact that there are some on the other side of the aisle who tonight are going to vote for this trade promotion authority primarily because there are unprecedented benefits to workers who have been displaced by trade, both in terms of health care and other benefits.

I want to commend the chairman, because he has gotten the United States, through this new agreement, back in the game. We need to get back in the game for our workers; we need to get back in the game for our jobs here at home.

Vote "yes" on this good bill.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BECERRA), a member of the Committee on Ways and Means.

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Mr. BECERRA. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, some call it trade promotion authority. Some call it fast track. I call it a missed opportunity. To be honest, and we should all be honest, we had a chance to meaningfully promote the elimination of abusive child labor practices by our trading partners. We had a chance to protect our domestic laws on the environment and on consumer protection. We had a chance to advance progressive trading practices by eliminating barriers and tariffs to productive trade among our international friends.

But, instead, Mr. Speaker, this conference report favors foreign investors over U.S. citizens and businesses in this country. It extracts the teeth from the enforcement provisions meant to prevent unscrupulous foreign businesses willing to violate their country's laws and our laws, and this conference report sidesteps our responsibility to the displaced workers and impacted communities that we know will result from this legislation.

Mr. Speaker, instead of doing something meaningful, we have punted. Instead of doing something right, we have walked through the back door to trade. Instead of doing what America believes we should, we dared not to lead. At a time when we find abuse by predators of children in this country to be offensive, we could have told the world we will lead and make sure that nowhere in the world will children be abused, whether by a predator or by any unscrupulous employer.

At a time when we could have told our workers, if you are displaced, we will provide you with some benefits, including health care, what we do in this bill is we actually tell a worker we will offer you health care, but it will cost you more when you are unemployed as a result of this trade than it would have cost you when you were working. That is not leading.

Mr. Speaker, we could come up with a good bill to lead. Let us dare to lead. Vote against this conference report.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from New York (Mr. RANGEL) has 2 minutes remaining. The gentleman from California (Mr. THOMAS) has 30 seconds remaining and the right to close.

Mr. RANGEL. Mr. Speaker, I yield the remainder of my time to the gentleman from California (Mr. MATSUI), a member of the Committee on Ways and Means, to close on behalf of the minority.

Mr. MATSUI. Mr. Speaker, I thank the distinguished gentleman from the State of New York (Mr. RANGEL), the ranking member of the Democratic Committee on Ways and Means.

First of all, what I would like to do if I may is respond to some of my colleagues on both sides of the aisle but basically on the Democratic side of the aisle that says that we have trade adjustment assistance, and that alone, or among other things, is enough to get us to support this legislation.

If, in fact, the bill that came out of the Senate was part of the conference report, I would say, well, okay, if you want trade adjustment assistance, that is fine. But the bill that came out of the conference report is not the bill that left the Senate. Because essentially what we see here is a bill that is really kind of a mirage. For example, if a U.S. factory closes and goes overseas to China and 5,000 U.S. workers are out of a job in your congressional district, those workers are not covered under this bill of trade adjustment assistance. They will not get trade adjustment assistance and they will not get health care benefits.

It is very rare when this provision will be used, and that is why it is in the bill because the goal was not to use trade adjustment assistance. So it is really a mirage. So if Members think they can go home and tell their colleagues and their constituents that they will get trade adjustment assistance, they are flat out wrong. It will rarely be used.

Let me make one other observation, if I may. This next round will not be about trading goods. It will not be about reducing tariffs and quotas. We have done that. That is pretty much over. You can trade goods back and forth all over the world if you want today. What this will be about this next round is about moving investments, and we all know that. And that means basically every U.S. regulation, whether it is accounting standards, whether it is defining whether a lawyer can practice law, these are going to be all on the table in this next round.

Members mention antitrust laws, that will be on the table. This legislation is not needed for the President at this time. He can negotiate without giving this major delegation of authority by the United States Congress to the President of the United States. I urge a no vote.

Mr. THOMAS. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I appreciate the tone of the debate. I am concerned about the content. For the first time, not primary but secondary workers are covered. Five times in this legislation references to the most abusive forms of child labor are listed. Some of the statements simply are not factually true.

What is true is we have fallen behind in creating arrangements that help us in world trade. It is time to pass legislation to get us back in the game.

With that, I would ask my colleagues to vote yes and I want to thank all of my colleagues on the other side of the aisle for their courage and cooperation.

Mr. BEREUTER. Mr. Speaker, this Member rises today to express his very strong support for the conference report for Trade Promotion Authority (TPA) (H.R. 3009). This Member would like to thank the distinguished gentleman from California, the Chairman of the House Ways and Means Committee (Mr. THOMAS) for introducing the original TPA legislation and for his efforts to move this legislation through the legislative process. Additional appreciation is expressed to the distinguished gentleman from California, the Chairman of the House Rules Committee (Mr. DREIER) for his efforts in expediting the consideration of this legislation; to the Chairman of the Senate Finance Committee, the senior senator from Montana (Mr. BAUCUS); and to all the supportive conferees who worked to bring this conference report to the House and Senate.

Under the conference report of H.R. 3009, Congress would agree to vote "yes" or "no" on any trade agreement in its entirety, without amendments. This Member in the past has always supported TPA, or "Fast-Track Authority" as it was previously called, because it is an absolutely critical authority to delegate to the President, acting through the United States Trade Representative, to conclude trade agreements with foreign nations for approval by the Congress. Certainly, TPA is necessary to give our trading partners confidence that the negotiated agreements will not be changed by Congress. Without the enactment of TPA, the United States will continue to fall further behind in expanding its export base and that will cost America thousands of potential jobs. Granting TPA to the President is absolutely essential for America to reach towards its export potential.

Mr. Speaker, giving examples of expanded trade liberalization agreements from my own state, I can say with confidence and anticipation that approval of TPA certainly will enhance Nebraska's agricultural exports. According to estimates from the U.S. Department of Agriculture, Nebraska ranked fourth among all states with agricultural exports of $3.1 billion in 2000. These exports represented about 35% of the state's total farm income of $8.9 billion in 2000. In addition to increasing farm prices and income, agricultural exports support about 44,800 jobs both on and off the farm. The top three agricultural exports in 2000 were live animals and red meats ($1 billion), feed grains and products ($769 million) and soybeans and products ($454 million). However, Nebraska agricultural exports still encounter high tariff and a whole range of significant nontariff barriers worldwide. Similar opportunities for growth in exports also exist in Nebraska's service and manufacturing sector.

At the November 2001 World Trade Organization (WTO) ministerial in Doha, Qatar, trade ministers representing over 140 countries agreed to the Doha Declaration, which launched a comprehensive multilateral trade negotiation that covered a variety of areas including agriculture. The trade objectives in the Doha Declaration called for a reduction of foreign agriculture export subsidies, as well as improvements in agriculture market access. In order to help meet these trade negotiation objectives, TPA would give the President, through the United States Trade Representative, the authority to conclude trade agreements which are in the best interest of American farmers and ranchers.

This legislation is very important for Nebraska because our state's economy is very export-dependent. According to the U.S. Department of Commerce International Trade Administration, Nebraska has export sales of $1,835 for every state resident. Moreover, 1,367 companies, including 998 small- and medium-sized businesses with under 500 employees, exported from Nebraska in 1998. Therefore, TPA is critical to help remove existing trade barriers to exports of Nebraska and American goods and services.

To further illustrate the urgency for TPA, it must be noted that the U.S. is only party to "free trade agreements" with Mexico and Canada through NAFTA and with Israel and Jordan. However, Europe currently has entered over 30 free trade agreements and it is currently negotiating 15 more such agreements. In addition, there are currently over 150 negotiated preferential trade agreements in the world today. Without TPA, many American exporters will continue to lose important sales to countries which have implemented preferential trade agreements. For example, many American exporters are currently losing significant export sales to Chile because Canadian exporters face lower tariffs there under a Canada-Chile trade agreement.

This Member would like to focus on the following five subjects as they relate to the conference report of H.R. 3009: financial services; labor and the environment; congressional consultation; the constitutionality of TPA; and the foreign policy and national security implications of TPA.

First, as the Chairman of the House Financial Services Subcommittee on International Monetary Policy and Trade, this Member has focused on the importance of financial services trade, which includes banking, insurance, and securities. This Subcommittee was told in a June 2001 hearing that U.S. trade in financial services equaled $20.5 billion in 2000. This is a 26.7% increase from the U.S.'s 1999 financial services trade data. Unlike the current overall U.S. trade deficit, U.S. financial services trade had a positive balance of $8.8 billion in 2000.

The numbers for U.S. financial services trade have the potential to significantly increase if TPA is enacted into law. The U.S. is the preeminent world leader in financial services. TPA would further empower the United States Trade Representative to negotiate with foreign nations to open these insurance, banking, and securities markets and to expand access to these diverse financial service products.

Certainly, TPA would particularly benefit U.S. financial services trade as it relates to the Free Trade Area of the Americas since many of the involved countries are emerging markets where there will be an increasing demand for sophisticated financial services. Furthermore, TPA would also benefit financial services trade as it is part of the larger framework of the World Trade Organization (WTO) General Agreement on Trade in Services (GATS). In 2000, GATS members began a new round of service negotiations.

Second, the conference report of H.R. 3009 includes important labor and environmental provisions. For example, among other provisions, TPA adds a principal U.S. negotiating objective to ensure that a party to a trade agreement does not fail to effectively enforce its own labor or environmental laws. This type of provision was also included in the U.S.-Jordan Free Trade Agreement which was signed into law on September 28, 2001 (Public Law No. 107–43).

Third, it is important to note that this legislation has strong congressional consultation provisions for the time before, during, and after the negotiations of trade agreements. For example, the President is required, before initiating negotiations, to provide written notice and to consult with the relevant House and Senate committees of jurisdiction and a Congressional Oversight Group at least 90 calendar days prior to entering into trade negotiations. This Congressional Oversight Group, the Members of which would be accredited as official advisers to the United States Trade Representative, would provide advice regarding formulation of specific objectives, negotiating strategies and positions, and development of the trade agreement. In addition, TPA would not apply to an agreement if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to consult Congress.

Fourth, enactment of TPA is required to secure a constitutionally sound basis for American trade policy in the globalized economic environment focusing our country today. Under Article II of the U.S. Constitution, the President is given the authority to negotiate treaties and international agreements. However, under Article I of the U.S. Constitution, Congress is given the power to regulate foreign commerce. In this TPA legislation, any trade agreement still has to be approved by Congress by a straight-forward "yes" or "no" vote, without any amendments, by both the House and the Senate before it can be signed into law. As a result, TPA does not impinge upon the exclusive power of Congress to regulate foreign commerce. Furthermore, the U.S. Constitution does not ban the adoption of a Senate or House rule which prohibits amendments from being offered to a bill during Floor consideration. In fact, the House considers bills almost every legislative week which cannot be amended on the Suspension Calendar.

Fifth, extending TPA to the President has critical national security implications. Indeed, the terrorist attacks of September 11th highlighted the extent to which American security is placed at risk when the U.S. fails to remain engaged. in areas around the world. Many countries of Central America, South America, Asia, and Africa have fragile democratic institutions and market economies. They remain in peril of falling into the hands of unfriendly regimes unless the U.S. helps to develop the kind of economic stability underpinning democratic societies that enhanced trading opportunities can provide.

Mr. Speaker, this Member is very pleased that the final conference report for H.R. 3009 does not include the amendment which was offered in the other body by the junior senator from Minnesota (Mr. DAYTON) and the senior senator from Idaho (Mr. CRAIG) and included in the version of TPA which was passed by the other body. The Dayton-Craig provision, while undoubtedly well intended, would have opened trade agreement bills negotiated by the President under the TPA to amendment—thereby making it very unlikely that other nations would complete trade negotiations with the U.S. Trade Representatives, knowing that such agreements could be further amended by Congress. That problematic circumstance is why Congress had to develop the Fast-Track arrangement in the first place—what we now call TPA or Trade Promotion Authority.

This Member would have been compelled to vote against passage of the conference report for H.R. 3009 if the Dayton-Craig amendment had been included in the final report. The Dayton-Craig amendment certainly would have made TPA unacceptable to the other countries with whom we were attempting to negotiate free trade agreements.

Mr. Speaker, for the above stated reasons and many others, this Member strongly supports TPA because it is absolutely critically important to the health and the future growth of the U.S. economy. Therefore, this Member very strongly urges his colleagues to support the conference report for H.R. 2009. This is probably the most important vote of the 107th Congress.

Ms. SCHAKOWSKY. Mr. Speaker, I rise in profound regret, disappointment and anger as we consider the conference report before us tonight. The House leadership is attempting to ram through this bill, in the dead of night, without giving the American public the ability to look at it and express their views before we vote. It is clear why.

The United States should be using its unprecedented economic power and global leadership position to fight for trade policies that respect labor and human rights, expand economic opportunities for workers, and improve the environment, both at home and abroad. We should use our power not just to promote corporate profits but to promote higher standards of living for working families. We should help stop the global race to the bottom in which some multinational companies move operations from country to country as they search for the one that lets them pay the lowest wages, commit the worst labor abuses, use child labor, and damage the environment without penalty. We should use the power of our markets to push for democratic reforms, equal rights for women, and stronger human rights. And, we should ensure that property rights and profits do not come first, ahead of the ability of governments to protect the very lives of their people.

We had an opportunity in this bill to accomplish those objectives. Tragically, the House Republican leadership rejected that opportunity.

This bill abrogates Congressional authority and Congressional responsibility to review trade agreements to ensure that workers' rights and environmental protection are included. If we pass this bill, Congress would have the opportunity to consider only one privileged resolution on each WTO negotiation, agreements that may last five to seven years. Even if serious information arose regarding food safety, environmental regulation or health standards, Congress would get one and only one opportunity to exercise its Constitutional prerogative to review and ratify trade agreements.

This bill fails to provide Trade Adjustment Assistance to all workers who lose their jobs. Instead, it makes arbitrary and extraordinarily unfair distinctions. Workers who lose their jobs because of foreign imports are deemed worthy of assistance. Workers who lose their jobs because their employer shut down a factory and moved it to China are not.

The bill holds out the theoretical possibility that workers who lose their jobs because of trade policies will get help in maintaining health insurance coverage for their families, then dashes any hope for meaningful assistance. Laid-off workers would have to pay 35 percent of premium costs for coverage, an enormous financial burden. There are no market protections, so insurance companies could change whatever premium they want for whatever coverage they decide to provide.

The bill rejects Senate language endorsing the Doha Declaration on TRIPS and Public Health, meaning that the monopoly patent rights of pharmaceutical companies will be protected while the right of developing countries to deal with the AIDS pandemic through compulsory licensing and generics will not.

Finally, this bill eliminates Senate language to require that, in order to receive special trade benefits under the Generalized System of Preferences (GSP), countries end child labor and discrimination against women and other groups.

Mr. Speaker, if we in this body care about the rights of women and workers; the needs of children and the sick; the environment and human rights; we must reject this conference report. We owe it to the people of our country and the people of the world.

Ms. JACKSON-LEE of Texas. Mr. Speaker, global commerce is a force for progress. However, current trade rules are too often used to undermine environmental protections and democratic rights in the name of "free trade." Fast Track is the expansion of presidential authority in international trade. However, the fast track trade promotion authority conference report does not provide meaningful healthcare coverage for numerous workers who lose their jobs because of trade. Fast track legislation consistently overlooks the rights of workers in developing countries.

The Chairman of the Committee on Ways and Means and the Chairman of the Senate Finance Committee have prepared a conference report that is big on fluff but short of substance. An example of this is that U.S. businesses will have broad new protections for operating in foreign markets. However, the conference report guts healthcare coverage for workers when businesses shift jobs overseas. What this means is that if a Houston company employing 500 workers lose their jobs due to increased imports from Asia, these workers are eligible for healthcare coverage; however, if the same company shuts down their operations in Houston and relocates its operations to Asia, there's no coverage under this bill. Is this fair?

The conference report would allow foreign investors to have greater rights than are currently afforded them under U.S. law, The language in the conference report could lead to vague, overly broad international standards undermining the Supreme Court's decisions on the environment, antitrust, tort law, worker health and safety, and other issues.

The conference report provides laid-off workers a tax credit for insurance coverage. However, this tax credit is poor. It forces workers to pay more for health insurance at the time they lose their job. On average, employers pays 85% of health insurance premiums, however the conference report would only provide a tax credit that would cover 65% of the premium. Is this fair?

In addition, the conference report fails in major ways. It does not guarantee coverage for workers and omits essential market reforms necessary to make sure that the limited health care options are available. Moreover, the conference report fails to provide a minimum standard of benefits for workers. What this means is that the conference report does not include premium protection. A displaced worker who has diabetes or a heart condition can be charged by an insurer five to ten times the normal rate. Is this fair?

This is a time when the public has clearly voiced that global trade matters move more into the eye of public scrutiny, and this conference report makes the fast track trade bill look like NAFTA on steroids. Since NAFTA's passage in 1995, the trade deficit between the United States and Mexico has ballooned to $29 billion annually. An estimated 700,000 American jobs have been lost to nations that don't have to play by the same labor and environmental rules that American workers do.

Furthermore, the GAO found that African Americans made up 15% of the workers displaced by the trade under the general Trade Authority Assistance (TAA) program in 1999, though African American workers account for less than 12% of the overall workforce.

The conference report also marginalizes and diminishes Congress' role on issues such as antitrust, environmental regulation, food safety, accounting standards and telecommunications. The conference report adds a completely new restriction that was not in either the House or the Senate bill.

This restriction allows only one privileged resolution per negotiation. This means that only one privileged resolution could be raised for WTO negotiations that may last 5–7 years. The conference report creates a historic shift in Congress' Constitutional prerogative to regulate not just foreign commerce, but more importantly domestic commerce (areas like antitrust, food safety, accounting standards).

The conference report language insulates customs officials from liability for racial profiling. The report notes that Customs officers have a legal shield unavailable to any other law enforcement officer in the country. This would have the direct effect of weakening protections against racial profiling and other illegal and unconstitutional searches by the Customs Service that have been highlighted in recent GAO studies. Specifically, the GAO found that passengers of particular races and genders were more likely than others to be subjected to intrusive strip and x-ray searches after frisks or patdowns, even though the results of such searches found that they were less likely to be in possession of contraband.

The most extreme examples of racial profiling by the Customs Service were directed against African-American women, who were nine times more likely than white women to be the victim of an intrusive search, even though they were only half as likely as white women to be found carrying contraband. In light of the conduct of the Customs Service, such a broad grant of immunity, absent legislative scrutiny and oversight, invites continuing civil liberty violations.

I am very strongly opposed to the Fast Track provisions contained in the conference report for H.R. 3009. As we search for increased national security, we must be mindful of the fact that our civil liberties are a precious resource and ensure that freedom is not a casualty of vigilance. The conference report language tramples on the ability of individuals to address the overzealous activities of the Customs Service and undermines the expectation of privacy.

Moreover, this legislation takes a step backwards on workers' rights and environmental protection. The conference report would essentially rule out the enforcement of workers' rights and environmental protection in future fast-tracked trade agreements, reversing the bipartisan progress that was made on the U.S.-Jordan Free Trade Agreement. The workers' rights negotiating objectives, taken as a whole, are weak and counter-productive. The report will make it impossible to negotiate anything like the U.S.-Jordan FTA on workers' rights.

Therefore, I urge my colleagues to strongly oppose passage of the conference report for H.R. 3009.

Ms. HARMAN. Mr. Speaker, some days are harder than others. The last 24 hours was excruciating. The votes on establishing a Department of Homeland Security were difficult, but its urgency is underscored by the continuing threat from terrorism.

Trade Promotion Authority (TPA) is another hard issue. I represent a trade-dependent district and am well aware that LAX and the Port of Los Angeles are huge trade multipliers. The Port of Los Angeles and neighboring Port of Long Beach moved $175 billion worth of cargo last year and accounted for 500,000 trade-related jobs in the region. The Los Angeles Customs District is the Nation's second largest, based on value of two-way trade. In 2001, this totaled $212.5 billion, compared with $214.1 billion of the first place New York.

In the South Bay, trade clearly generates high skill, high wage jobs. But not everyone benefits, and so the conversation about trade should properly address those who are hurt. The challenge is to retrain affected workers not freeze them and their outdated skills in an uncompetitive workplace. The policy answer is to provide what has traditionally been called trade adjustment assistance (TAA)—training, wage assistance, and healthcare—to those who are hurt.

I voted against TPA last December because the Administration refused to include TAA in the legislation. The conference report we vote on tonight does not make the same mistake. The TAA package is three times as big as any ever proposed, and includes most of the improvements proposed by the Eshoo-Bentsen bill (H.R. 3670) which I cosponsored and strongly support.

This TPA enables displaced workers to purchase group healthcare with an advanceable and refundable tax credit and expands coverage to include workers whose jobs as suppliers to other manufacturers are affected by trade. It provides wage insurance for older workers who lose their jobs to trade and fills part of the gap between their old and new earnings, and it doubles the funding for job training to $220 million per year.

For the first time, this legislation requires labor and environmental issues be given the same consideration as other negotiating objectives. It provides the U.S. with remedies against countries that degrade their labor and environmental laws and requires increased consultations with Congress through a Congressional advisory board.

Trade plus trade adjustment assistance is good for American workers. Trade plus greater respect for labor and environment is good for the world's workers.

This agreement is not perfect, but it is better than prior trade negotiating authority and includes the most comprehensive TAA package ever. I will support it.

Mr. CONYERS. Mr. Speaker, this legislation represents one of the finest examples of how the tragedy of September 11th is being used to abuse process and rationalize offenses against the Constitution. Sections 341 and 344 of this bill needlessly expands the scope of Federal authority and threatens the protection of civil rights by granting broad search immunity to customs agents and allowing warrantless searches of outgoing international U.S. mail. Although I strongly believe that the Federal Government should aggressively investigate and prevent future terrorist attacks, increased security should not come at the cost of our constitutional rights.

Section 341 of the bill provides immunity to a Customs officer conducting a search of a person or property provided he or she was acting in "good faith." Presumably an officer could engage in blatantly discriminatory conduct, but if he in "good faith" believed that he was justified in doing so, he could not be held liable.

This provision would, in effect, expand immunity so that a person would not be entitled to relief from an unconstitutional search unless the officer acted in "bad faith"—a nearly impossible standard to meet. Even though this provision would dramatically change immunity law, it was attached to a Customs Authorization Bill and never considered by the Judiciary Committee.

Current law already provides qualified immunity to Customs agents. Qualified immunity is based on an assessment of what a reasonable officer should have done in any given situation. Under current law if a law enforcement officer conducts an unconstitutional search based upon a reasonable but mistaken conclusion that reasonable suspicion exists, the officer is entitled to immunity from suit. This standard provides Customs agents protection against unreasonable lawsuits but also protects individuals from unconstitutional searches.

When an official seeks qualified immunity, a court is obligated to make a ruling on that issue early in the proceedings so that, if immunity is warranted, the costs of trial are avoided. The Customs Service has not offered a reasonable justification as to why the qualified immunity standard should be changed. Moreover, Customs has offered no examples of cases where the existing qualified immunity doctrine has failed to protect an agent acting within the scope of their authority.

Section 341 would accord Customs officers a legal shield unavailable to any other law enforcement officer in the country. This provision would have the direct effect of weakening protections against racial profiling and other illegal and unconstitutional searches by the Customs Service that have been highlighted in recent GAO studies. Out of all the possible Federal law enforcement agencies, the Customs Service should not be provided with additional immunity.

The racial profiling problems of the Customs Service are not imaginary and have been subject to documentation and litigation. The GAO found that passengers of particular races and genders were more likely than others to be subjected to intrusive strip and x-ray searches after frisks or patdowns, even though the results of such searches found that they were less likely to be in possession of contraband.

The GAO concluded that the Customs Service's pattern of selecting passengers for intrusive searches (their profile) was inconsistent with rates of finding contraband and recommended the implementation of policies that target passengers more consistently with their search-hit rate and other more accurate indicators of criminal conduct.

The most extreme examples of racial profiling by the Customs Service were directed against African-American women, who were nine times more likely than white women to be the victim of an intrusive search (including strip search and body cavity searches), even though they were only half as likely as white women to be found carrying contraband.

Many major civil rights organizations opposed this provision in the House bill including: the Leadership Conference on Civil Rights, the National Association for the Advancement of Colored People, the National Council of La Raza, the Mexican American Legal Defense Fund, the Counsel on American Islamic Relations and the American Arab Anti-Discrimination Committee. The civil rights community believes that passage of this provision would be a major set-back in the fight to end racial profiling.

This legislation compounds the erosion of civil rights protections by weakening the legal standard for the searching of U.S. mail. Under current law, the Customs Service is empowered to search, without a warrant, inbound mail handled by the United States Postal Service and packages and letters handled by private carriers such as Federal Express and the United Parcel Service.

The Customs Service's interest in confiscating illegal weapons' shipments, drugs or other contraband inbound or outbound is adequately protected by its ability to secure a search warrant when it has probable cause. Short of an emergency, postal officials can always hold a package while they wait for a court to issue a warrant. There is simply no legitimate justification for this expansion of search authority, unless of course you exclude the need to circumvent the Constitution.

Recently the U.S. Postal Service wrote a letter to the Chairman of the Financial Services Committee on the issue of searching outbound mail without a warrant: The Postal Service has taken the position that, "There is no evidence that eroding these long established privacy protections will bring any significant law enforcement improvements over what is achieved using existing, statutorily approved law enforcement techniques." In short, experts from the Postal Service have determined that this provision is unnecessary.

As we search for increased national security, we must be mindful of the fact that our civil liberties are a precious resource and ensure that freedom is not a casualty of vigilance. Given that Congress has recently expanded the police powers of government officials, now is not the time to cut back on the mechanisms in existing law that are designed to ensure police powers are not abused.

Without arguable justification, these provisions trample the ability of individuals to address the overzealous activities of the Customs Service and undermine the expectation of privacy in the U.S. mail. I urge you to join me in opposing this legislation.

THE SUBJECTIVE-INTENT QUALIFIED IMMUNITY PROPOSAL FOR CUSTOMS OFFICIALS

PROBLEMS WITH THE HOUSE PROPOSAL

This issue involves the Constitution—not slip-and-fall cases, or security fraud cases. This proposal would affect cases involving alleged violations of individuals' constitutional rights, and we should be very careful before we tamper with the rules.

The doctrine of qualified immunity has been established and refined by the Supreme Court over four decades. Congress has never enacted a statute that would change the standard for officials' qualified immunity in constitutional tort cases. This would be the first time.

Current law protects against frivolous lawsuits. The Supreme Court has instructed lower courts to resolve qualified immunity issues at the earliest opportunity. Even if government officials fail to win qualified immunity at the dismissal or summary judgment stage, they still have the option of appealing those judgments to a higher court immediately.

This proposal would hurt real people. It would increase the likelihood of meritorious claims being thrown out. Parties would end up fighting at length over whether an official did or did not subjectively believe his conduct to be lawful—even if existing law clearly established that it wasn't. Resolving such complicated disputes would expend valuable judicial resources and often lead to inaccurate results. And officials who violated clearly established constitutional rights might not be held accountable.

Why treat customs officials better than the F.B.I. or local cops? Customs officials serve a very important role. However, there is simply no reason to treat them differently from other government officials—such as border patrol agents, state and local police officers who work near the border, or prison guards. All of these officials are entitled to the same, strong shield to liability. There is no need to change the rules for customs officials.

CURRENT LAW

Under current law, every government official—federal, state, and local—is protected by the doctrine of qualified immunity. This is a very broad shield from liability. In the words of the Supreme Court, it protects "all but the plainly incompetent or those who knowingly violate the law." *Malley* v. *Briggs*, 475 U.S. 335, 341 (1986). Officials are shielded from liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson* v. *Creighton*, 483 U.S. 635, 638 (1987).

When an official seeks qualified immunity, a court is obligated to make a ruling on that issue early in the proceedings so that, if immunity is warranted, the costs of trial are avoided. *Saucier* v. *Katz*, 533 U.S. 194, 200 (2001). The Supreme Court has repeatedly "stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter* v. *Bryant*, 502 U.S. 224, 227 (1991).

Before 1982, the test for qualified immunity had both an objective and a subjective component. First, an official had to prove that he did not violate "clearly established" law. Second, he had to show that he acted in "subjective good faith": i.e., that he believed that he was not violating the plaintiff's constitutional rights and was not acting with a "malicious intention."

In 1982, the Supreme Court eliminated the subjective component. It emphasized that consideration of an official's subjective motivations often involved "broad-ranging discovery and the deposing of numerous persons, including an official's professional colleagues. Inquiries of this kind can be peculiarly disruptive of effective government." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 817 (1982). In other words, the subjective test made this issue less—not more—likely to be resolved in summary judgment proceedings. *Id.* at 816. *See also Anderson*, 483 U.S. at 641 ("Anderson's subjective beliefs about the search are irrelevant.").

HOW THE CUSTOMS SERVICE HAS FARED IN THREE RECENT CASES

1. *Saffell v. Crews*, 183 F.3d 655 (7th Cir. 1999)

Facts: Airline passenger was subjected to a strip search following her return from a trip to Jamaica. Customs inspector conducted a pat-down search, then a partial strip search. No drugs found.

Outcome: Inspector is entitled to qualify immunity: "Crews, an experienced Customs inspector, was neither incompetent, nor did the district court find that she intentionally violated the law."

2. *Bradley v. United States*, 164 F.Supp.2d 437 (D.N.J. 2001)

Facts: Passenger who was subjected to a strip search claimed racial discrimination and invasion of her privacy.

Outcome: Even assuming that customs agents violated the passenger's rights, they were entitled to qualified immunity: "Qualified immunity is afforded to federal employees to protect them from reasonable mistakes or poor judgment calls."

3. *Brent v. Ashley*, 247 F.3d 1294 (11th Cir. 2001)

Facts: Only African American passengers on plane from Italy were detained, isolated, strip searched, and then x-rayed. No contraband was found.

Outcome: Inspectors' decision to conduct strip search and x-ray examination based merely on "general profile of arrival from a source country" and "nervousness" violated the Fourth Amendment. Because these grounds had been "explicitly rejected" by both the Supreme Court and Eleventh Circuit, the inspectors were not entitled to qualified immunity. However, the subordinates who assisted in the searches were entitled to qualified immunity.

NAACP OVERWHELMING PASSES RESOLUTION OPPOSING FAST TRACK

EMERGENCY RESOLUTION NO. 1

Whereas, the fast track promotion authority bills now entering a conference between the House and the Senate, give the administration the authority to negotiate new trade agreements that cannot be amended or fully debated by Congress, but only voted up or down; and

Whereas, previous grants of fast track authority have resulted in flawed trade deals including the North American Free Trade Agreement [NAFTA] and the World Trade Organization [WTO] and the current administration seeks to expand and replicate these trade deals; and

Whereas, the Economic Policy Institute estimates that these trade agreements—which have resulted in ballooning new trade deficits—have cost more than three million American jobs and job opportunities since 1994, with NAFTA alone accounting for the destruction of three quarters of a million of these jobs; and

Whereas, the Department of Labor has certified for trade adjustment assistance more than 400,000 workers who lost their jobs due to NAFTA, and the GAO found that African Americans made up 15% of workers displaced by the trade under the general TAA program in 1999, though accounting for less than 12% of the overall workforce; and

Whereas, free trade contributes to the rise in income inequality and downward pressure on wages and employers use the threat of moving overseas to take advantage of new trade rules in order to thwart union organizing drives and exact concessions at the bargaining table; and

Whereas, trade deals that cost jobs, lower wages and increase employer threats hurt the African American community, where median wages are lower, overall unemployment is significantly higher and the benefits of union membership are greater than among white workers; and

Whereas, workers in developing countries have also suffered under the free trade rules—Mexican workers saw their real wages drop and poverty increase under NAFTA, while the proliferation of export processing zones in Asia and Latin America has exposed young woman workers to health hazards and rights violations—and free trade agreements increase the power of multi-national companies to pit workers against workers in a race to the bottom in wages and working conditions; and

Whereas, agreements on trade and investment in services such as the General Agreement on Trade in Services [GATS] encourage the privatization and deregulation of services, including public services like transportation and utilities, thus threatening an important source of good jobs for African American workers; and

Whereas, investment rules such as Chapter Eleven of NAFTA give private foreign companies the right to demand taxpayer compensation for public interest regulations which diminish the value of their investments, thus giving foreign investors more rights than domestic investors and small-business owners and threatening important environmental and public health regulations such as California's ban on the toxic fuel additive MTBE; and

Whereas, pharmaceutical companies have used the intellectual property rules in trade agreements to threaten developing countries with retaliation if they violate patent rules in order to provide affordable access to essential life-saving medicines, even medicines needed to treat people with HIV/AIDS; and

Whereas, the last twenty years of increased trade and investment liberalization have coincided with slower global growth, an increase in global income inequity and higher public debt burdens, especially in the poorest countries of Sub-Saharan Africa; and

Whereas, most trade deals continue to be negotiated in secret and trade disputes are resolved in secret, thus denying the public an opportunity to participate in important public policy decisions which affect their families, communities and livelihoods; and

Whereas, ongoing trade negotiations at the WTO and towards a Free Trade Area of the Americas [FTAA], which would expand NAFTA to the rest of the Hemisphere, have failed to make progress towards the creation of fairer trade rules which would protect public health and safety and public services, safeguard the environment, contain enforceable commitments to the International Labor Organization's core labor standards (freedom of association, the right to organize and bargain collectively and prohibitions on child labor, forced labor and discrimination) and stimulate broad-based economic development at home and abroad;

Whereas, the current fast track bills also fail to make real progress on these fundamental issues, thus guaranteeing that future trade deals will harm workers, degrade the environment and undermine progress towards sustainable, equitable and democratic development around the world.

Therefore, be it resolved, that the NAACP oppose the fast track bills now being discussed in Congress and urge members of Congress to vote against the fast track bill that comes out of the current conference; and

Be it further resolved, that the NAACP urge the Bush Administration to consult closely with Congress and the public, especially with communities of color, before negotiating any new trade agreements and to release draft negotiating texts and open up dispute settlement panels; and

Be it further resolved, that the NAACP support the inclusion of enforceable protections for the environment, workers' rights, public services and public interest regulations in all new trade agreements; and

Be it finally resolved, that the NAACP urge the Bush Administration to ensure that trade agreements do not include a commitment by the United States to privatize significant public services, including services related to national security, social security, public health and safety, transportation, utilities and education.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, July xx, 2002.

DEAR SENATOR: On behalf of the Leadership Conference on Civil Rights, the nation's largest and most diverse civil and human rights coalition, I write to express our strong opposition to section 141 of the House version of the Customs Border Security Act of 2001 (H.R. 3129), and to urge that this provision not be included in the final version of the bill that comes out of Conference. This provision would unjustifiably weaken protections against racial profiling and undermine President Bush's call to end this pernicious practice.

Section 141 would provide Customs officers with legal immunity from civil lawsuits stemming from searches of individuals entering the country, based on the officer's assertion that the search was conducted in "good faith." We are unaware of any precedent for this sweeping protection. Customs officers would be afforded a legal shield unavailable to any other federal law enforcement officer.

Under current law, the "qualified immunity" doctrine protects officers from liability for actions "that did not violate any clearly established constitutional or statutory rights." The additional protection now sought by the Customs Service apparently would cover searches that do violate clearly established constitutional or statutory rights but which were undertaken in good faith.

This additional protection is unjustified for several reasons. First, individuals victimized by official actions that violate "clearly established constitutional or statutory rights" deserve legal redress. Second, a good faith exception puts a premium on ignorance of the law; officers should not gain immunity because they did not understand what constitutes a "clearly established constitutional or statutory rights." Finally, there is no reason for the Customs Service to have this additional protection that other law enforcement agents do not. If Congress is going to debate whether all agents should receive this unjustified protection, that debate should not occur on this bill.

In considering whether the Customs Service deserves this unprecedented protection, Congress should recall that in a March 2000 report, the General Accounting Office found that black female U.S. citizens were nine times more likely than white female U.S. citizens to be subjected to x-ray searches by the Customs Service. This disparity persisted despite the fact that black women were less than half as likely to be found carrying contraband as white females. We understand that the Customs Service has taken steps to address this problem, but this is no time to reverse the agency's progress.

Instead of weakening protections against racial profiling on an ad hoc, agency-by-agency basis, Congress should enact legislation to ban racial profiling. A bipartisan bill to implement that goal, the End Racial Profiling Act of 2001 (H.R. 2074), has been endorsed by the Leadership Conference and currently has 93 cosponsors.

Thank you for your consideration of our views. Please feel free to contact Julie Fernandes of the Leadership Conference staff at (202) 263-2856 regarding this issue.

Sincerely,

WADE HENDERSON,
Executive Director.

AMERICAN CIVIL LIBERTIES, UNION,
Washington, DC, July 18, 2002.

DEAR SENATOR: The ACLU urges Members of the Conference Committee to reject several troubling provisions included in the House and Senate versions of H.R. 3009, the Andrean Trade Preference Act. Sections 341 and 344 of the House bill and Section 1143 of the Senate bill should be removed in Conference. These provisions would weaken protections against racial profiling and other illegal searches and undermine the right to privacy in personal correspondence.

UNWARRANTED IMMUNITY FOR CUSTOMS OFFICIALS

Section 341 of the House bill provides immunity to a Customs officer conducting a search of a person or property provided he or she was acting in "good faith." The Senate Bill does not contain a similar provision. Even though this provision would dramatically change immunity law, the provision was attached to a Customs Authorization Bill (H.R. 3129) and never considered by the judiciary committee. Many major civil rights organizations opposed this provision in the House bill including: the Leadership Conference on Civil Rights, the National Association for the Advancement of Colored People, the National Council of La Raza, the Mexican American Legal Defense Fund, the Counsel on American Islamic Relations and the American Arab Anti-Discrimination Committee. The civil rights community believes that passage of this provision would be a major set-back in the fight to end racial profiling.

Current law already provides qualified immunity to customs agents. Qualified immunity is based on an assessment of what a reasonable officer should have done in any given situation. Under current law if a law enforcement officer conducts an unconstitutional search based upon a reasonable but mistaken conclusion that reasonable suspicion exists, the officer is entitled to immunity from suit. See United States versus Lanier, 520 U.S. 259 (1997). This standard provides customs agents protection against unreasonable law suits but also protects individuals from unconstitutional searches. The customs service has not offered a reasonable justification as to why the qualified immunity standard should be changed.

Section 341 would provide a customs officer with "good faith" immunity. The term "good faith" is not defined in the bill. Presumably an officer could engage in blatantly discriminatory conduct, but if he in "good faith" believed that he was justified in doing so, he could not be held liable. This bill would expand immunity so that a person would not be entitled to relief from an unconstitutional search unless the officer acted in "bad faith"—a nearly impossible standard to meet. No law enforcement official is entitled to this broad grant of immunity. Given that Congress has recently expanded the police powers of government officials, it should not at the same time cut back on the mechanisms in existing law that are designed to ensure police powers are not abused.

Out of all the federal law enforcement agencies, the Customs Service should not be provided with additional immunity. The Customs Service has a documented record on racial profiling. A March 2000 General Accounting Office report found that while African American men and women were nearly 9 times more likely to be searched as white American men and women, they were no more likely to be found carrying contraband. After the GAO Report was released, then Commissioner Raymond Kelly implemented a series of changes to customs search policy designed to address the problem. In June of 2001, the total number of customs searches had decreased, but people of color, especially African-Americans, constituted the majority of the targets of the searches.

Furthermore, customs agents have the authority to conduct extraordinarily intrusive searches. Based only on a finding of reasonable suspicion, a customs agent can subject a traveler to a full body cavity search and an x-ray search. In the recent case Brent versus Odesta Ashly, et al. 247 F.3d 1294 (11th Cir. Ct. App. 2001), customs agents in Florida subjected an African-American woman to a painful strip search and then an x-ray search even though there was virtually no evidence of drugs or other contraband.

Recommendation: We strongly urge the Conference Committee to exclude Section 341 of the House Bill from the final Trade bill.

PRIVACY OF OUTGOING INTERNATIONAL MAIL

Section 344 of the House bill, "Border search authority for certain contraband in outgoing mail," would allow the U.S. Customs Service to open outbound international mail without a warrant if they have reasonable cause to suspect the mail contains certain contraband. Under current law, the Customs Service is empowered to search, without a warrant, inbound mail handled by the United States Postal Service and packages and letters handled by private carriers such as Federal Express and the United Parcel Service.

Section 344 would allow Customs officials to open sealed, outbound international mail without a warrant, without probable cause, and without any judicial review at all. People in the United States have an expectation of privacy in the mail they send to friends, family, or business associates abroad. The Customs Service's interest in confiscating illegal weapons' shipments, drugs or other contraband is adequately protected by its ability to secure a search warrant when it has probable cause. Short of an emergency, postal officials can always hold a package while they wait for a court to issue a warrant.

Last fall, the U.S. Postal Service wrote a letter to the Chairman of the Financial Services Committee on the issue of searching outbound mail without a warrant: "There is no evidence that eroding these long established privacy protections will bring any significant law enforcement improvements over what is achieved using existing, statutorily approved law enforcement techniques." (Letter to Chairman Oxley from the USPS, dated October 10, 2001.)

Section 1143 of the Senate bill is similar to Section 344. However, Customs officials would only have authority to search outbound international mail over 16 ounces without a warrant. Section 1143 improves on the House provision because it protects the privacy of letter-weight mail. But, the Senate provision also fails to provide any checks and balances on Customs officials' unilateral authority to open personal mail over 16 ounces. Customs officials' power to open personal correspondence without a warrant would be open to abuse because there would be no way to track warrantless searches and no independent third party review of their decisions. At a minimum, Section 1143 should establish oversight mechanisms to ensure Customs officials do not abuse their authority.

Recommendation: We strongly urge the Conference Committee to exclude Section 344 of the House bill and Section 1143 of the Senate bill from the final Trade legislation.

We urge you to reject sections 341 and 344 of the House bill and Section 1143 in the Senate bill because they would weaken protections against racial profiling and other illegal searches and undermine the right to privacy in personal correspondence. For more information contact Rachel King at 675–2314 or Katie Corrigan at 675–2322.

Sincerely,

LAURA MURPHY,
Director, Washington National Office.
RACHEL KING,
Legislative Counsel.
KATIE CORRIGAN,
Legislative Counsel.

COUNCIL ON
AMERICAN-ISLAMIC RELATIONS,
Washington, DC, July 24, 2002.

Re: H.R. 3129—Do not include customs immunity into the trade bill

DEAR REPRESENTATIVE: We are writing to urge you to NOT include section 141 of H.R. 3129, "The Customs Border Security Act of 2001" in the current trade bill. Section 141 of H.R. 3129 would weaken protections against racial profiling and other illegal searches.

We are writing to you on behalf of the Council on American-Islamic Relations, as organization that works to protect the rights of American Muslims. Since Sept. 11 many American Muslims have been subjected to acts of racial discrimination and harassment. We are concerned that this bill will lead to more discrimination because it will immunize customs officers who engage in that type of behavior.

Customs agents currently enjoy protections from unwarranted claims of abuse through qualified immunity from prosecution based on objective criteria. Section 141 of H.R. 3129 would grant 'good faith' immunity, without defining what 'good faith' means. An officer could engage in blatantly discriminatory or unconstitutional conduct, but if he in "good faith" believes that the was justified in doing so, he could not be held liable. Such broad and open immunity would make it nearly impossible for a person who has suffered an unconstitutional search and/or seizure to seek redress. No law enforcement agency currently has such a broad grant of immunity.

Customs agents routinely conduct highly intrusive searches, and have a poor record on racial profiling. For example, a March 2000 General Accounting Office report found that while African American ere nearly 9 times as likely to be searched as white Americans, they were no more likely to be found carrying contraband. This combination of power and immunity will undoubtedly lead to civil rights abuses.

We urge you to NOT include text from H.R. 3129 in the current trade bill.

Sincerely,

JASON C. ERB,
Director, Governmental Relations.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 25, 2002.

Hon. MAX BAUCUS,
Chairman, Senate Committee on Finance, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BAUCUS: I urge you and the other Senate Conferees to reject Sections 341 and 344 of the House bill and Section 1143 of H.R. 3009, the Andean Trade Preference Act. These troubling provisions would weaken protections against racial profiling and other illegal searches and undermine the right to privacy in personal correspondence. Democratic members of both the Judiciary and Ways and Means Committees have consistently opposed these provisions when raised in Customs authorization legislation and the demerits of these proposals should not escape full scrutiny before passage.

Section 341 of the House bill provides immunity to a Customs officer conducting a search of a person or property provided he or she was acting in "good faith." The Senate Bill does not contain a similar provision. Even though this provision would dramatically change immunity law, the provision was attached to a Customs Authorization bill (H.R. 3129) and never considered by the judiciary committee.

Through a series of meetings, we sought some justification for this proposed change in liability law. The Customs Service, however, failed to demonstrate that existing qualified immunity doctrine provided inadequate protection for Customs agents acting within the scope of their official authority. In fact, the existing doctrine of qualified immunity more than adequately shields public officials performing discretionary functions from civil damages if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. I know of no case where a Customs agent, acting within the scope of his authority, has ever been issued a judgment and most cases are dismissed prior to trial. The Supreme Court has also repeatedly held that the reasonableness of an officer's behavior, not the subjective "good faith" standard used in this legislation is the proper test for liability.

Section 11 would accord Customs officers a legal shield unavailable to any other law enforcement officer in the country. This provision would have the direct effect of weakening protections against racial profiling and other illegal and unconstitutional searches by the Customs Service that have been highlighted in recent GAO studies. Specifically, the GAO found that passengers of particular races and genders were more likely than others to be subjected to intrusive strip and x-ray searches after frisks or patdowns, even though the results of such searches found that they were less likely to be in possession of contraband. The most extreme examples of racial profiling by the Customs Service were directed against African-American women, who were nine times more likely than white women to be the victim of an intrusive search, even though they were only half as likely as white women to be found carrying contraband. In light of the conduct of the Customs Service, such a broad grant of immunity, absent legislative scrutiny and oversight, invites continuing civil liberty violations.

Similarly, the Customs Service failed to demonstrate evidence of a need to change the legal standard for searching U.S. mail. Under current law, the Customs Service is empowered to search, without a warrant, inbound mail handled by the United States Postal Service and packages and letters handled by private carriers such as Federal Express and the United Parcel Service. The Customs Service's interest in confiscating illegal weapons' shipments, drugs or other contraband inbound or outbound is adequately protected by its ability to secure a search warrant when it has probable cause. Short of an emergency, postal officials can always hold a package while they wait for a court to issue a warrant.

Recently, the U.S. Postal Service wrote a letter to the Chairman of the Financial Services Committee on the issue of searching outbound mail without a warrant: "There is no evidence that eroding these long established privacy protections will bring any significant law enforcement improvements over what is achieved using existing, statutorily approved law enforcement techniques." (Letter to Chairman Oxley from the USPS, dated October 10, 2001.)

Times of crisis are the true test of a democracy. As we search for increased national security, we must be mindful of the fact that our civil liberties are a precious resource and ensure that freedom is not a casualty of vigilance. Without arguable justification, Sections 341, 344 and 1143 trammel the ability of individuals to address the overzealous activities of the Customs Service and undermine the expectation of privacy in the U.S. mail. I, therefore, urge you to strike these provisions from the trade bill.

Very truly yours,

JOHN CONYERS, JR.,
Ranking Member, Committee on the Judiciary.

Mrs. TAUSCHER. Mr. Speaker, I rise to support the Trade Promotion Authority conference report. I am for free and open trade, and I want this President and all presidents to have Fast Track authority. Today, I think we need to remove some misconceptions about Trade Promotion authority. This is not a trade agreement. Rather, it would give our government the authority to negotiate trade agreements.

Congress would still get to vote up or down on every trade agreement that's made, and I would stand by my commitments to American workers and to protecting our labor standards and environmental laws during each and every one of those votes.

I believe trade is critical to America's economic growth and prosperity. The great strength of the American economy is really in the spirit of its people. It's American innovation, entrepreneurship, and competitiveness that drives our industry, agriculture, and local businesses. The good news is every American stands to benefit from free trade.

Mr. Speaker, I am happy to see the conference report contains a solid trade compromise with robust trade adjustment assistance for displaced American workers. In fact, this is the most progressive trade authority ever considered by Congress. It expands the current worker assistance program threefold, and for the first time provides health care assistance for the unemployed.

As we move forward in a global economy, this legislation provides the right balance between reaping the rewards of free trade and protecting displaced American workers. Free trade is in the long-term interest of the United States and our economy, and in the creation of jobs that benefit American workers. I look forward to voting for this comprehensive trade legislation.

Mr. FALEOMAVAEGA. Mr. Speaker, I rise in opposition to H.R. 3009—the Fast Track Conference Report. I also rise in opposition to the amendment to authorize the President to grant duty-free treatment for Andean exports of "tuna packed in flexible (e.g., foil), airtight containers weighing with their contents not more than 6.8 kg each."

For months, I have provided the House and Senate with documentation that clearly shows that the Andean countries have the production capacity to destroy U.S. tuna operations in American Samoa, Puerto Rico, and California. I have also clearly demonstrated that the economy of American Samoa is more than 80 percent dependent, either directly or indirectly, on the U.S. tuna fishing and processing industries, and any give away to the Andean countries will adversely impact cannery operations in American Samoa.

Simply put, duty-free treatment for pouch products poses the same threat as duty-free treatment for canned products. Although the pouch tuna business is currently estimated to be about 6 percent of the total tuna business, conservative estimates suggest that the pouch business will grow three, five, and ten years at 75, 50, and 25 percent respectively. This equates to 8 percent share by 2005, 12.2 percent by 2007, and about 15.4 percent of total U.S. tuna trade by 2012.

Reuters wire service recently reported that StarKist intends to move away from the standard 6-ounce cans and boost distribution of tuna in a pouch. In other words, pouch product will displace canned product and canneries in American Samoa and Puerto Rico will be unable to compete with low labor costs in the Andean region. This will force a shut down of cannery operations in American Samoa and Puerto Rico. This will also lead to the demise of the U.S. tuna fishing fleet which will be forced to transship its product to the Andean countries at a cost disadvantage that will be impossible to overcome. In short, canned tuna will become a foreign controlled commodity instead of the branded product American consumers have trusted with confidence for over 95 years.

Given these eventualities, I cannot support a position that includes unlimited duty-free treatment for pouch products. I stand firm on capacity limitations which equate to no more than 18.1 million kilograms of tuna in airtight containers. I also stand firm on rules of origin. The U.S. tuna boat owners, Chicken of the Sea, and Bumble Bee also support my position and I am grateful for their support.

I also wish to note that I am disappointed that the House receded with an amendment to grant duty-free treatment for tuna packed in 6.8 kg pouches. Mr. Speaker, there is no such thing as a 6.8 kg pouch and it is almost inexcusable that the House would be misinformed on such a critical issue. To set the record straight, there are only two pouch sizes. There is a 7 oz. retail pouch and a 43 oz., or 1.22 kg, institutional food service pouch.

The food service pouch is packed in American Samoa by Chicken of the Sea. The 7 oz. pouch is controlled by StarKist. StarKist has said it will never pack its 7 oz. pouch in American Samoa. Why? Because StarKist is a company that is always in search of low-cost labor. Labor rates in the Andean region are 69 cents an hour and less. In American Samoa, tuna cannery workers are paid $3.60 per hour. Given these wage differences, it is unconscionable for the U.S. Congress to give StarKist one more edge in the marketplace and one more reason to leave American Samoa.

This legislation is flawed. It is based on the idea that drugs lords will be enticed to pack tuna for 69 cents an hour. It is baseless thinking and I cannot and will not support the inclusion of tuna in the ATPA. The Philippines, Thailand and Indonesia have also expressed their concerns and provided Congress with statements regarding the economic impact the ATPA would have on their region. The Government of the Philippines has blatantly stated that the inclusion of tuna would impede its efforts to eradicate poverty and combat terrorism.

Chicken of the Sea, Bumble Bee, the U.S. tuna boat owners, Puerto Rico, and American Samoa offered up a fair and reasonable compromise to resolve the controversy surrounding the inclusion of tuna in the ATPA. Our compromise was the Breaux amendment which passed the Senate Finance Committee. The Breaux amendment limits the amount of tuna that can enter the U.S. duty-free and also requires a source of origin provision that would require tuna to be caught by U.S. or Andean flag ships.

Capacity limitations are key to ensuring the continued viability of the U.S. tuna and fishing operations in American Samoa, Puerto Rico and California. Rules of origin are necessary to protect our U.S. tuna fishing fleet which is based in the Western Pacific Tropic. There are no fishing licenses left in the Eastern Pacific Tropic and the U.S. tuna boat owners are almost entirely dependent on cannery production in American Samoa. Any fluctuation in production affects the livelihood of the U.S. tuna boat owners.

There are about 30 U.S. flag purse seiners operating in the Western Pacific Tropic. This fleet supplies about 200,000 tons of tuna per year to the canneries in American Samoa. The loss of American Samoa as a base would mean the end of the U.S. tuna fishing fleet. The Breaux amendment, however, limits the loss to 50.4 million pounds, or 2.1 million cases. The Breaux amendment also offsets this loss by providing opportunity for the U.S. tuna boats owners to sell their fish to the Andean canneries. Our compromise also encourages Andean countries to develop their own fishing fleets as a means to maximize economic benefits.

Mr. Speaker, the Spanish fishing fleet, which is subsidized by the government of Spain, is alive and well and fishing for lightmeat tuna in the Eastern Pacific Tropic. Japan and Taiwan are well at work transshipping albacore tuna to Andean canneries. It is a well-documented fact that StarKist is purchasing albacore from Japan and Taiwan and transshipping it directly to Ecuador for packing.

I am concerned about these developments because I do not believe the ATPA should provide backdoor benefits for non-Andean countries. Neither Spain nor Japan nor Taiwan should be allowed to send their fish into the U.S. market duty-free. In my opinion, this would violate the intent of the ATPA and would unfairly disadvantage the ASEAN countries. In fairness to the U.S. tuna boat owners, in fairness of the ASEAN countries, in fairness to American Samoa, Ecuador, Colombia, Bolivia and Peru, I believe source of origin must be included in the ATPA. Limits must also be placed on the amount of tuna that can enter the U.S. duty-free.

I stand firm on capacity limits and rules of origin. In short, it is the people of American Samoa who will suffer economic loss as a result of the inclusion of any amount of tuna in the ATPA. To offset this loss, I believe Congress should make a sincere commitment to provide for an IRS Section 936 substitute which specifically addresses the needs of American Samoa. I also believe Congress should be prepared to assist American Samoa if it suffers massive unemployment and insurmountable financial problems.

Ms. DELAURO. Mr. Speaker, I rise in strong opposition to this legislation. We are not divided here today on the benefits of free trade. We are divided on how to best achieve it—to compete on a level playing field in the global economy. Fast Track turns it back on hard working families. It will not stem the tide of lost jobs and lower labor standards seen since the passage of NAFTA.

Fast Track is not the answer. It makes protection of environmental and labor rights nonmandatory. It guts provisions that ensure that countries do not use child labor to gain advantage over the United States. We should be working to increase the safety of workers, not expose them to new dangers and new insecurities.

This agreement eliminates common sense trade assistance reform that would have covered worker dislocation caused by factories moving offshore. So, if you lose your job due to increased imports you are eligible for coverage. But if you lose your job because your factory shut down and moved offshore to Asia, you are not. Mr. Speaker, that isn't right.

Increasingly, American families are struggling everyday to make ends meet. Congress has the opportunity and the responsibility to ensure that American values define the international market and that our citizens build solid futures. Show that Congress cares about and understands America's hopes and fears for the future and vote "no" on Fast Track.

Mr. MORAN of Virginia. Mr. Speaker, I rise in strong support of Trade Promotion Authority.

This legislation reflects a solid product that extends to President Bush the trade negotiating authority that Congress has extended to the past five presidents. It also enables the president and the Trade Representative to begin negotiations on a new WTO trade round that can lead to further trade liberalization on American products and services overseas.

World trade lifts people out of poverty and stimulates economic development in developing countries, which results in more stable and law-abiding government.

There's no denying that our economy is changing and with that change comes new industries and economic opportunities. The hallmark of the United States' economic vitality is the ability of our country to innovate and develop new products and services.

TPA will help enable our trade negotiators to open new doors to international trade that are essential if we as a country want to remain a leader in world trade.

If we do not approve TPA today, we are forfeiting a critical mechanism to influence negotiations on new trade agreements.

I believe that approval of trade promotion authority legislation is essential to the health of our economy. It benefits American consumer and workers alike.

By providing trade promotion authority to the President, the Congress is signaling its support for the Administration to negotiate trade agreements that benefit Americans and that require Congressional consultation.

More importantly, we are sending an important message about U.S. leadership in the global economy. Without TPA, our trade representative cannot demonstrate Congressional support for a new round of WTO negotiations.

This bill also provides some much needed assistance for workers who have been displaced by Trade. Under this bill, for the first time displaced workers will be eligible for a 65 percent advanceable, refundable tax credit that can be used to pay for COBRA.

This bill recognizes how difficult it can be for older workers to change careers and provides wage insurance to bridge the gap between old and new earnings (up to $10,000 over 2 years).

But that's not all—there's a TAA program for farmers and ranchers, and an expanded training budget (retraining for displaced workers), and extends the availability of benefits for up to 2 and a half years.

As I have always said, I may be pro Trade, but I am also pro helping displaced workers, and this bill delivers on that promise.

We must act with one voice in supporting this legislation and the responsibility of Congressional oversight in trade.

We now live in a global economy that has been brought together through advances in technology, transportation and communications. International trade is not only a reality, but it is a necessity if we plan to thrive in the 21st century.

In this climate marked by a global economic downturn and a war on terrorism that crosses international borders, this legislation is an opportunity to signal U.S. leadership in the world.

Trade opens economic opportunities that minimizes the conditions that give rise to extremist groups, dictatorships and violations of human rights.

America's role in the world is defined largely by trade and economic ties with other countries. Our security is dependent upon prosperity.

We could spend countless hours modifying this bill, but the question comes down to whether this Congress supports a vision whereby America continues to be a global leader.

If we reject this balanced proposal, we send entirely the wrong signal to other countries that America does not support an ongoing policy of trade expansion that has been the hallmark of our country's prosperity and a model for people and democracies the world over.

I urge my colleagues to vote for this proposal and stand on the side of economic opportunity and openness. It is the right time and right thing to do.

Mr. BLUMENAUER. Mr. Speaker, I support free trade. The removal of trade barriers by both the United States and our trading partners will ultimately strengthen the economies of all nations.

I have long believed that the best process for achieving the elimination of trade barriers is for us to grant the President a properly-structured authority to submit trade agreements, negotiated pursuant to that structure, for an up-or-down vote by the Congress. With the proper provisions for environmental and labor protections, trade agreements can facilitate both our economic and our environmental goals.

Sadly, the leadership of this House has refused to give us such legislation or even an open process to consider the bill before us. Once again the Republican majority has resorted to a "martial law" rule, preventing members from having even one day to look at the bill on which we're voting. This is the latest in a series of affronts to bipartisanship, collegiality and the legislative process. Until early this evening it was not even possible for Members to obtain a copy of the conference report on which we are voting.

Relying as we must on third-party descriptions of the conference committee's agreement, I conclude that my concerns about labor, the environment and meaningful trade adjustment assistance have not been met in this report, just as they were not in the trade promotion bill that was rammed through this House by a single-vote margin in December. The conferees have not dealt with the flaws in the mechanisms established for investment protection under the North American Free Trade Agreement—mechanisms the New York Times yesterday called "secret trade courts" in its editorial urging the conferees to correct this. The conference language does not ensure the continued enforceability of environmental agreements the United States has entered into with other nations. The conference bill fails to extend the core labor standards of the International Labor Organization to trade agreements entered into with our neighbors in the Americas. The bill shortchanges dislocated American workers with inadequate trade adjustment assistance.

As I have argued before, in this body and to the Administration, we could have achieved broad, bipartisan support for trade promotion authority if the Republican leadership had dealt fairly and openly with these issues as part of their legislation. Instead, the leadership has continued a pattern of unduly partisan, non-participatory legislating on trade. For me, this is perhaps the most disappointing feature of the bill before us.

Finally, it is most ironic that this partisan approach to TPA has forced the Administration to make a hash of this nation's trade priorities. In the name of advancing free trade, the Administration has made egregious projectionist concessions on steel, textiles and agricultural products in order to secure votes for passage. I can only hope this atmosphere changes and we return to building a majority for an honest, bipartisan trade policy for our nation's future.

Ms. KILPATRICK. Mr. Speaker, I rise in opposition to the conference report to H.R. 3009, the Fast Track Trade legislation that comes before us today. I do support trade agreements that will benefit all parties involved; however, the conference report that we consider today does not do this. It is a far departure of where I think we should be going in the direction of fair and equitable trade agreements. Everything that was positive was eliminated in conference and the result is a piece of legislation that will take us down a precarious, dangerous path for our nation.

Specifically, my concerns lie with the workers that will be negatively affected by this open and free granting of negotiating authority for the President. While we look at Fast Track as a way to create new opportunities and jobs for many Americans and other workers overseas, it is completely irresponsible and heartless for Congress not to provide safeguards for those U.S. workers that will be negatively impacted. This is unacceptable and shows where our priorities really are. Saying "yes" to the conference report to the Fast Track legislation before us today is an anti-worker vote with too many implications that we cannot afford.

Workers are the backbone of any company, but Fast Track would erode the rightful safeguards they are owed. Trade Adjustment Assistance (TAA) and health care protections are significantly weakened in the conference report. The tax credits included would not assist displaced workers, by forcing them to pay more for their health insurance. Moreover, there is no guarantee that workers who had health coverage for a only a couple of months, or had no health coverage at all, prior to losing their jobs would even be afforded assistance. And for those workers that belonged to companies who shifted their factories overseas, this bill basically says to them, "tough luck for you." What kind of assistance are we providing them? This is not assistance, it's corporate maximization, and it's the workers that pay the price.

Proponents of the trade agreement state that the conference report does indeed contain strong labor protections for U.S. workers; and that the provisions in the report are modeled after the Jordan Free Trade Agreement. That's simply not correct. The conference report falls short of the standards set in the Jordan FTA by excluding key commitments that deal with the incorporation of core labor standards in domestic law and the commitment to work towards the implementation and improvement of these laws. To state that the conference report affords strong labor protections is disingenuous.

In addition to the unacceptable worker protections in the conference report, there are a long string of other dangerous provisions that would take us backwards in our dealings. First, the environment plays second fiddle, if not worse, to promoting trade. Instead of being a leader in this area and protecting and advancing our standards, the U.S. would promote poor environmental policy in the name of signing a "good agreement."

Congressional oversight in ensuring that trade agreements are sound policy is also completely diluted. The conference agreement adds two new restrictions on Congress' ability to withdraw fast track and denies Congress our right to ensure that the trade laws of our nation are not forsaken in trade agreements. On the other hand, foreign investors would be afforded even more rights than they have under current law. While Congress' rights are restricted, the rights of foreign investors are increased. This is a sell-out of the worst kind.

This conference report gives the President and his Administration a blank check to sign away worker protections, environmental protections, Congressional oversight, and so much more. It's a check that we shouldn't let pass—it's a check that we should stamp with a big "void." For these reasons, I oppose passage of the conference report to H.R. 3009. We can and should do much better.

Mr. UDALL of New Mexico. Mr. Speaker, tonight we have before us the Conference Report on Trade Promotion Authority—or Fast Track.

I was hopeful that the Conferees would give us a bill that had real and meaningful protections for America's working men and women. I was hopeful that the Conferees would give us a bill that had real and meaningful safeguards for our environment. I was hopeful that the Conferees would give us a bill that had real and meaningful protections of Congressional prerogative to change U.S. trade laws. I was hopeful that the Conferees would give us a bill that had real and meaningful expansion of the Trade Adjustment Assistance program. I was hopeful that the Conferees would give us a bill that had real and meaningful instructions regarding international accounting rules. I was hopeful that the Conferees would give us a bill that had real and meaningful protections for U.S. taxpayers against unfair suits against domestic public-interest laws.

However, and not surprisingly, H.R. 3009 has none of these important components. Therefore, I will vote "no", and I urge my colleagues to do the same.

While I was hopeful that H.R. 3009 would have real and meaningful protections for working families, it amazingly takes a great step backwards on workers' rights. As written, this bill effectively rules out any enforcement of workers' rights in future trade agreements. How can American workers compete with foreign companies who pay their workers slave wages? How can American workers compete with foreign companies who crush union representation? How can American workers compete with foreign companies that employ children? Put simply, they cannot.

While I was hopeful that H.R. 3009 would have real and meaningful safeguards for the environment, this bill actually reduces the role of this Congress to enforce environmental standards. We should be encouraging our international competitors to protect the environment. We should be providing assistance to other nations to achieve real environmental protections. However, this bill fails to ensure parity between the environment and commercial considerations in future trade agreements.

While I was hopeful that H.R. 3009 would have real and meaningful protections of Congressional prerogative to change U.S. trade laws, this bill is a major step backwards. Why was the Dayton-Craig language from the Senate bill stripped from the Conference Report? This bill actually diminishes the already minimal oversight Congress has over U.S. trade laws. This bill actually prevents Congress from withdrawing from a trade agreement, even if the trade agreement is found to undermine our trade laws.

I was hopeful that the Conferees would give us a bill that had real and meaningful expansion of the Trade Adjustment Assistance program. Amazingly, this Conference reduces the Senate-passed TAA proposal to cover only 65 percent tax credit to cover health care costs. During these times of economic uncertainty, this is another slap in the face to laid-off workers. Worst of all, this 65 percent figure is below what most employers offer, so these struggling workers will actually pay more for their health coverage at a time when they've lost their jobs.

While I was hopeful that H.R. 3009 would have real and meaningful instructions regarding international accounting rules, this bill does not address the issue. At a time when we are passing long-overdue changes to our domestic accounting industry, this bill does nothing to prevent many of the shortcomings on the international front. We've just taken some great steps to improve what we do here in the U.S., but this bill could limit congressional changes to accounting regulations that are deemed "more trade restrictive than necessary."

I was hopeful that the Conferees would give us a bill that had real and meaningful protections for U.S. taxpayers against unfair suits against domestic public-interest laws. As a former State Attorney General, I am particularly sensitive to the unintended consequences of federal laws. As 35 current State Attorneys General wrote to Chairman THOMAS and Chairman BAUCUS, they had grave concerns that the investment provisions . . . [and] to the independence of our judicial system." As we already have seen in California, foreign companies have used the NAFTA investor rules to sue U.S. taxpayers for $1.7 billion over a California clean-water law and a Mississippi jury award in a fraud case. We should not allow our own state laws to be used against us in the name of free trade.

While I cannot support this bill, I have taken many pro-trade votes in this Congress. I will continue to support trade agreements that protect the environment. I will continue to support trade agreements that provide important safeguards to protect the rights of American working families as well as the rights of our trading partners' workers. I will continue to support trade agreements that protect our ability to exercise our Constitutional duty to provide oversight of the executive branch. As I've stated previously, this legislation does none of these things.

I urge my colleagues to vote "no" on the Fast Track Conference Report.

Mr. OXLEY. Mr. Speaker, I rise today to support the Trade Promotion Authority Conference Report. I would like to thank the distinguished Chairman of the Ways and Means Committee, Mr. THOMAS, for crafting this balanced and fair legislation. Trade Promotion Authority is absolutely critical to reenergize our economy, create jobs and stimulate growth. TPA will grant the President, in consultation with Congress, the ability to negotiate in good faith with our trading partners. Without TPA the United States will once again be excluded when the other nations of the world begin negotiations for a free trade agreement. Our competitors in Europe are already party to over one hundred free trade agreements, while the U.S., the world's largest and most powerful economy, is party to only 3 such agreements.

I would like to address my colleagues on the importance of TPA as it relates to trade in services. The U.S. is the world's largest exporter of services, and service is the fastest growing sector of the U.S. economy, accounting for 80 percent of both GDP and private employment. In 2000, the cross-border services trade surplus was $76.5 billion, offsetting 17 percent of the $452 billion trade deficit that year. These exports supported 4.4 million U.S. jobs in 2000 and added 20.6 million new U.S. jobs to the economy between 1989 and 1999. Services encompass all economic activity other than agriculture, manufacturing and mining.

Financial services are a key component in the trade in services equation. Financial services firms contributed more than $750 billion to U.S. Gross Domestic Product in 1999, nearly 8 percent of total GDP. More than six million employees support the products and services these firms offer. Expanded trade in financial services will enable U.S. service providers to gain access to more markets in critical global financial centers and developing countries.

With greater trade in financial services, global economies will be required to develop more sophisticated and more transparent financial systems. This is turn will result in a stronger and more innovative global economic marketplace. With economic hardships in Argentina, Japan and China, expanded trade in financial services will act as an incentive for these countries and others to reform their financing practices and develop more stable economic systems.

I strongly encourage my colleagues to vote to approve TPA. This legislation will give the President critical authority to seek to open additional markets for U.S. financial service providers, improve the regulation of international financial markets, and provide international customers access to a greater number of financial products. All of these actions will lead to a more sophisticated, better run global financial marketplace and a faster economic recovery. Our workers are counting on us, our employers are counting on us, and the world is counting on us. We must approve TPA today.

Mr. EVANS. Mr. Speaker, I cannot support this fast track conference report as submitted. This agreement clearly does not reflect the needs and concerns of my constituents. In the last two years, I have witnessed two major steel mills close in my district and several factories shift production lines overseas. This legislation gives the President unabridged authority to enter into more trade agreements that send good paying jobs overseas, while weakening existing trade laws.

As I have said before, I do not share President Bush's vision for unfettered free trade that hurts the workers of the 17th district of Illinois. The President has continually threatened to veto any agreement that contains language preventing him from weakening anti-dumping statutes. This agreement fulfills the President's desire to freely trade away anti-dumping protections.

The President has indicated one of his first steps after passage of fast track will be to expand NAFTA to include all of Central and South America. This expansion benefits a few importers at the expense of thousands of workers and farmers in my district. Never has there been a worse time in the economy to give the President so much authority to trade away jobs. We should not give the President this far reaching authority, especially during an economic crisis.

This agreement also does not include strong transitional assistance to workers whose company moves overseas or shuts down due to unfair trade. Mr. Speaker, I have assisted thousands of my constituents with the poorly funded TAA program and cannot afford to watch more families turned away from needed assistance. This plan also expects families to cover high health insurance costs with a tax credit. To expect families during an unforeseen lay off to benefit from a tax credit which they would not see until the next year is ineffective and insulting.

Mr. Speaker, I support free trade when it benefits American workers. But, I do not believe we should grant the President fast track to negotiate trade agreements in this form. I urge my colleagues to vote down this conference agreement, which makes no improvement on previous attempts to implement fast track.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. RANGEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 215, nays 212, not voting 7, as follows:

[Roll No. 370]

YEAS—215

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Barton
Bass
Bentsen
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Carson (OK)
Castle
Chabot
Chambliss
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (CA)
Davis (FL)
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Harman
Hart
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Horn
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
Leach
Lewis (CA)
Lewis (KY)
Linder
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCrery
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Radanovich
Ramstad
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Snyder
Souder
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wolf
Young (FL)

NAYS—212

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Bartlett
Becerra
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capito
Capps
Capuano
Cardin
Carson (IN)
Clay
Clayton
Clement
Clyburn
Coble
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (IL)
Davis, Jo Ann
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Duncan
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Goode
Gordon
Graham
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hayes
Hilliard
Hinchey
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larson (CT)
LaTourette
Lee
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Murtha
Nadler
Napolitano
Neal
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Quinn
Rahall
Rangel
Regula
Reyes
Rivers
Rodriguez
Roemer
Rohrabacher
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Simmons
Slaughter
Smith (NJ)
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Taylor (MS)
Taylor (NC)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Walsh
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Wilson (SC)
Woolsey
Wu
Wynn
Young (AK)

NOT VOTING—7

Blunt
Combest
Hansen
Lipinski
Meehan
Roukema
Stump

□ 0330

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. THOMAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the subject of the conference report just passed.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE AND ADJOURNMENT OF THE HOUSE

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to section 2 of House Resolution 461, the Chair lays before the House the following Senate concurrent resolution:

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, August 1, 2002, Friday, August 2, 2002, or Saturday, August 3, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Tuesday, September 3, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until

Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, July 26, 2002, on a motion offered by its Majority Leader or his designee pursuant to this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, September 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

RECALL DESIGNEE

The SPEAKER pro tempore laid before the House the following communication from the Speaker of the House of Representatives:

WASHINGTON, DC,
July 27, 2002.

Pursuant to section 2 of Senate Concurrent Resolution 132, I hereby designate Representative RICHARD K. ARMEY of Texas to act jointly with the Majority Leader of the Senate or his designee, in the event of my death or inability, to notify the Members of the House and the Senate, respectively, of any reassembly under that concurrent resolution. In the event of the death or inability of my designee, the alternate Members of the House listed in the letter bearing this date that I have placed with the Clerk are designated, in turn, for the same purpose.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

ELECTION OF MEMBER TO COMMITTEE ON AGRICULTURE

Mr. ARMEY. Mr. Speaker, I offer a resolution (H. Res. 510) and I ask unanimous consent for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 510

Resolved, That the following Member be and is hereby elected to the following standing committee of the House of Representatives:

Agriculture: Mr. GEKAS of Pennsylvania.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY SEPTEMBER 4, 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday, September 4, 2002.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

AUTHORIZING SPEAKER, MAJORITY LEADER, AND MINORITY LEADER TO ACCEPT RESIGNATIONS AND TO MAKE APPOINTMENTS AUTHORIZED BY LAW OR THE HOUSE NOT WITHSTANDING ADJOURNMENT

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that notwithstanding any adjournment of the House until Wednesday, September 4, 2002, the Speaker, majority leader, and minority leader be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION TO ENTERTAIN MOTIONS TO SUSPEND THE RULES ON WEDNESDAY, SEPTEMBER 4, 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to entertain motions to suspend the rules on Wednesday, September 4, 2002, subject to consultation with the minority leader by Thursday, August 29, 2002.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

MANY THANKS TO STAFF

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, I would like to thank the following people for 5 days of incredibly hard work and long nights, the Parliamentarian's Office, the cloak room staff, the clerks, the door keepers, the Capitol Police, the legislative counsels, the pages, and all of those marvelous people I am looking at now who love to stay with us here at night, night after night after night.

APPOINTMENT OF HON. FRANK R. WOLF TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH SEPTEMBER 4, 2002

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 27, 2002.

I hereby appoint the Honorable FRANK R. WOLF or, if not available to perform this duty, the Honorable WAYNE T. GILCHREST to act as Speaker pro tempore to sign enrolled bills and joint resolutions through September 4, 2002.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is approved.

There was no objection.

COMMUNICATION FROM HON. ROBERT A. BORSKI, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable ROBERT A. BORSKI, Member of Congress:

WASHINGTON, DC.
July 26, 2002.

Hon. J. DENNIS HASTERT,
Speaker of the House, Washington, DC.

DEAR MR. SPEAKER: I am writing to inform you that today I resigned from the U.S. Congressional delegation to the NATO Parliamentary Assembly. My resignation is in accordance with my decision to not seek reelection to the House of Representatives in the 108th Congress.

Thank you for your attention to this matter.

Sincerely,

ROBERT A. BORSKI,
Member of Congress.

APPOINTMENT OF MEMBER TO UNITED STATES GROUP OF THE NORTH ATLANTIC ASSEMBLY

The SPEAKER pro tempore. Without objection, and pursuant to 22 U.S.C. 1928a and clause 10 of rule I, the Chair announces the Speaker's appointment of the following Member of the House to the United States Group of the North Atlantic Assembly to fill the existing vacancy thereon:

Mr. TANNER of Tennessee.

There was no objection.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 4546, BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

The SPEAKER pro tempore. Without objection, the Chair appoints the following additional conferees on H.R. 4546:

As additional conferees from the Committee on Small Business, for consideration of sections 243, 824, and 829 of the Senate amendment and modifications committed to conference: Mr. MANZULLO, Mrs. KELLY and Ms. VELÁZQUEZ.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferees.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. ROUKEMA (at the request of Mr. ARMEY) for today after 5 p.m. on account of illness.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Ms. PELOSI, and to include extraneous material, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,690.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on July 26, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 2175. To protect infants who are born alive, otherwise known as the "Born-Alive Infants Protection Act of 2001."

H.R. 4775. Making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.

ADJOURNMENT

Mr. ARMEY. Mr. Speaker, pursuant to Senate Concurrent Resolution 132, 107th Congress, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore. Pursuant to Senate Concurrent Resolution 132, 107th Congress, the House stands adjourned until 2 p.m., Wednesday, September 4, 2002.

Thereupon (at 3 o'clock and 40 minutes a.m.), Saturday, July 27, 2002, legislative day of Friday, July 26, 2002, pursuant to Senate Concurrent Resolution 132, the House adjourned until Wednesday, September 4, 2002, at 2 p.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports concerning the foreign currencies and U.S. dollars utilized for official foreign travel during the second quarter of 2002, by Committees of the House of Representatives, as well as reports of foreign currencies and U.S. dollars utilized for speaker-authorized official travel during the first quarter of 2002, and the fourth quarter of 2001 pursuant to Public Law 95–384, are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON SMALL BUSINESS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 31, 2002

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Matthew Szymanski	6/25	7/1	China		932.00		4,992.00		1,762.00		7,686.00
Ian Deason	6/25	7/1	China		932.00		4,992.00		1,762.00		7,686.00
Committee total					1,864.00		9,984.00		3,524.00		15,372.00

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DONALD A. MANZULLO, Chairman, July 15, 2002.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON AGRICULTURE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 31, 2002

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Mike Thompson	5/24	5/26	England		738.00		4,530.61				5,268.61
	5/26	5/28	Belgium		564.00						564.00
Danelle Farmer	6/16	6/22	Switzerland		1,578.00		5,034.00				6,612/00
John Goldberg	6/16	6/22	Switzerland		1,578.00		5,034.00				6,612.00
Elizabeth Parker	6/16	6/22	Switzerland		1,578.00		5,034.00				6,612.00
Brent Gattis	6/16	6/22	Switzerland		1,578.00		5,034.00				6,612.00
Hon. Eva Clayton	6/9	6/13	Italy		1,480.00		5,050.97				6,530.97
Committee total					9,094.00		29,717,581				38,811.58

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

LARRY COMBEST, Chairman, July 15, 2002.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON RESOURCES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 31, 2002

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Donna Christensen (VI)	4/6	4/8	Grenada		338.00		284.00				622.00
Committee total					338.00		284.00				622.00

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JAMES V. HANSEN, Chairman, July 17, 2002.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON SCIENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 31, 2002

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]

FOR HOUSE COMMITTEES

Please Note: If there were no expenditures during the calendar quarter noted above, please check the box at right to so indicate and return. ☒

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[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

SHERWOOD L. BOEHLERT, Chairman, July 11, 2002.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO LONDON, ENGLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN FEB. 21–26, 2002

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Doug Bereuter	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Mike Bilirakis	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Henry Brown	2/21	2/26	United Kingdom		1,927.35						1,927.35
							[4]290.20				290.20
Hon. Paul Gillmor	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Porter Goss	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Mark Green	2/21	2/26	United Kingdom		1,927.35						1,927.35
							[4]331.70				331.70
Hon. Joel Hefley	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Steve Horn	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Nick Lampson	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Scott McInnis	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Dennis Moore	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Thomas E. Petri	2/21	2/26	United Kingdom		1,720.00						1,720.00
							[4]3,920.20				3,920.20
Hon. John Tanner	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Hon. Tom Udall	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Mike Ennis	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Debra Gebhardt	2/21	2/26	United Kingdom		1,927.35						1,927.35
							[4]3,920.20				3,920.20
Charles W. Johnson	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Kay King	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Carol Lawrence	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Kelly McDonald	2/21	2/26	United Kingdom		1,927.35						1,927.35
							[4]3,920.20				3,920.20
Merrell Moorhead	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Susan Olson	2/21	2/26	United Kingdom		1,720.00		(3)				1,720.00
Committee total					38,669.40		12,382.50				51,051.90

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[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

[3] Military air transportation.

[4] Military air transportation plus amount indicated.

THOMAS E. PETRI, Chairman, May 3, 2002.

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO LONDON, ENGLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN FEB. 21–26, 2002

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Doug Bereuter	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Mike Bilrakis	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Henry Brown	2/21	2/26	United Kindgom		1,927.35						1,927.35
							[4]290.20				290.20
Hon. Paul Gillmor	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Porter Goss	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Mark Green	2/21	2/26	United Kindgom		1,927.35						1,927.35
							[4]331.70				331.70
Hon. Joel Hefley	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Steve Horn	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Nick Lampson	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Scott McInnis	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Dennis Moore	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Thomas E. Petri	2/21	2/26	United Kindgom		1,720.00						1,720.00
							[4]3,920.20				3,920.20
Hon. John Tanner	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Hon. Tom Udall	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Mike Ennis	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Debra Gebhardt	2/21	2/26	United Kindgom		1,927.35						1,927.35
							[4]3,920.20				3,920.20
Charles W. Johnson	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Kay King	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Carol Lawrence	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Kelly McDonald	2/21	2/26	United Kindgom		1,927.35						1,927.35
							[4]3,920.20				3,920.20
Merrell Moorhead	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Susan Olson	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Prisco Patrick	2/21	2/26	United Kindgom		1,720.00		(3)				1,720.00
Committee total					40,389.40		12,382.50				52,771.90

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[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

[3] Military air transportation.

[4] Military air transportation plus amount indicated.

THOMAS E. PETRI, Chairman, May 31, 2002.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO MEXICO, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 16–18, 2001

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Richard A. Gephardt	11/16	11/18	Mexico		646.00						646.00
Steve Elmendorf	11/16	11/18	Mexico		646.00						646.00
Moses Mercado	11/16	11/18	Mexico		646.00						646.00
Committee total					1,938.00						1,938.00

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RICHARD A. GEPHARDT, Minority Leader, June 1, 2002.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

8276. A letter from the General Counsel, Department of the Treasury, transmitting a draft bill entitled, "To amend section 313 of the Rural Electrification Act of 1936, and for other purposes"; to the Committee on Agriculture.

8277. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule—Mediterranean Fruit Fly; Removal of Quarantined Area [Docket No. 01–093–2] received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8278. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule—Change in Disease Status of Austria Because of BSE [Docket No. 02–004–2] received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8279. A letter from the Administrator, Farm Service Agency, Department of Agriculture, transmitting the Department's final rule—Lamb Meat Adjustment Assistance Program (RIN: 0560–AG17) received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8280. A letter from the Executive Vice President, Department of Agriculture, transmitting the Department's final rule—Dairy Recourse Loan Program for Commercial Dairy Processors (RIN: 0560–AF41) received July 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8281. A letter from the Executive Vice President, Department of Agriculture, transmitting the Department's final rule—Livestock Indemnity Program (RIN: 0560–AG33) received July 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8282. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule—Change in Disease Status of Greece With Regard to Foot-and-Mouth Disease [Docket No. 01–059–2] received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8283. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule—Change in Disease Status of Poland Because of BSE [Docket No. 02–068–1] received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8284. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule—Change in Disease Status of Finland Because of BSE [Docket No. 01–131–2] received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8285. A letter from the Secretary of the Navy, Department of Defense, transmitting notification of the decision to order up to 100,000 additional workstations under the Navy Marine Corps Intranet (NMCI) contract; to the Committee on Armed Services.

8286. A letter from the Assistant Secretary, Department of Defense, transmitting notification of each military skill to be designated as critical for purposes of payment of the special retention bonus; to the Committee on Armed Services.

8287. A letter from the Assistant Secretary of Defense, Department of Defense, transmitting notification of each military skill to be designated as critical for purposes of payment of the special retention bonus; to the Committee on Armed Services.

8288. A letter from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting the Department's final rule—Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations-Requirement that Brokers or Dealers in Securities Report Suspicious Transactions (RIN: 1506–AA21) received July 2, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8289. A letter from the Deputy Director, Department of the Treasury, transmitting the Department's final rule—Financial Crimes Enforcement Network; Rescission of Exemption from Bank Secrecy Act Regulations for Sale of Variable Annuities (RIN: 1506–AA30) received July 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8290. A letter from the Director, FDIC Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting the Corporation's final rule—Agency Reorganization; Nomenclature Changes—received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8291. A letter from the General Counsel, Federal Emergency Management Agency, transmitting the Agency's final rule—Suspension of Community Eligibility [Docket No. FEMA–7787] received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8292. A letter from the General Counsel, Federal Emergency Management Agency, transmitting the Agency's final rule—Suspension of Community Eligibility [Docket No. FEMA–7785] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8293. A letter from the Deputy Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Investment Company Mergers [Release No. IC–25666; File No. S7–21–01] (RIN: 3235–AH81) received July 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8294. A letter from the Director, Office of Safety Standards, Deaprtment of Labor, transmitting the Department's final rule—Occupational Safety and Health Standards for Shipyard Employment—received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8295. A letter from the Under Secretary, Food, Nutrition, and Consumer Services, Department of Agriculture, transmitting the Department's final rule—Child and Adult Care Food Program Implementing Legislative Reforms to Strengthen Program Integrity (RIN: 0584–AC94) received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8296. A letter from the Acting Assistant General Counsel for Regulations, Department of Education, transmitting the Department's final rule—Disability and Rehabilitation Research Projects (DRRP) Program—received July 18, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8297. A letter from the Assistant Secretary of Labor for Mine Safety and Health, Department of Labor, transmitting the Department's final rule—Hazard Communication (HazCom) (RIN: 1219–AA47) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8298. A letter from the Secretary, Department of Labor, transmitting the Department's proposed legislation to implement the Federal Employees' Compensation Act Amendments of 2002; to the Committee on Education and the Workforce.

8299. A letter from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting the Corporation's final rule—Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits—received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8300. A letter from the Assistant General Counsel for Regulatory Law, Deaprtment of Energy, transmitting the Department's final rule—Processing Requests for Indemnification or Other Extraordinary Contractual Relief Inder Pub. L. 85–804—received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8301. A letter from the Attorney-Advisor, Department of Transportation, transmitting the Department's final rule—Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects [Docket No. NHTSA 2001–8677;

Notice 4] (RIN: 2127–AI27) received July 26, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8302. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards [AZ092–002; FRL–7141–3] received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8303. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Protection of Stratospheric Ozone; Listing of Substitutes in the Foam Sector [FRL–7247–5] (RIN: 2060–AG12) received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8304. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Zinc Fertilizers Made from Recycled Hazardous Secondary Materials [FRL–7248–3] (RIN: 2050–AE69) received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8305. A letter from the Associate Managing Director, Federal Communication Commission, transmitting the Commission's final rule—Assessment and Collection of Regulatory Fees for Fiscal Year 2002 [MD Docket No. 02–64] received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8306. A letter from the Assistant Bureau Chief for Management, Federal Communications Commission, transmitting the Commission's final rule—The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band [IB Docket No. 01–96] received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8307. A letter from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting the Commission's final rule—Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems [ET Docket 98–153] received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8308. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Air Force's Proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services (Transmittal No. 02–55), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

8309. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 198–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8310. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 193–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8311. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 199–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8312. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles to Pakistan [Transmittal No. DTC 196–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8313. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles to Pakistan [Transmittal No. DTC 200–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8314. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 194–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8315. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 197–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8316. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 176–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8317. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 165–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8318. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 38–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8319. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 154–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8320. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services. sold commercially under a contract to India [Transmittal No. DTC 152–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8321. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 07–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8322. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Thailand and France [Transmittal No. DTC 142–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8323. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2002–20: Provision of $25.5 Million to Support a Train and Equip Program in Georgia; pursuant to 22 U.S.C. 2318(b)(2); to the Committee on International Relations.

8324. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to India [Transmittal No. DTC 96–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8325. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to South Korea [Transmittal No. DTC 189–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8326. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Pakistan [Transmittal No. DTC 191–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8327. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to the United Kingdom [Transmittal No. DTC 151–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8328. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Japan [Transmittal No. DTC 186–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8329. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to India [Transmittal No. DTC 166–02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8330. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to the United Kingdom [Transmittal No. DTC 138–02], pursuant to 22 U.S.C. 2776(c)and 22 U.S.C. 2776(d); to the Committee on International Relations.

8331. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to the Netherlands [Transmittal No. DTC 141–02], pursuant to 22 U.S.C. 2776(c)and 22 U.S.C. 2776(d); to the Committee on International Relations.

8332. A letter from the Congressmen, Congress of the United States, transmitting the

2001 report on the Open World Program; to the Committee on International Relations.

8333. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting an annual report required by section 655 of the Foreign Assistance Act of 1961; to the Committee on International Relations.

8334. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2002–19: Determination on Eligibility of East Timor to Receive Defense Articles and Services Under the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

8335. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2002–17: Military Drawdown for Georgia; to the Committee on International Relations.

8336. A letter from the Chair, Equal Employment Opportunity Commission, transmitting the Final Fiscal Year 2002 Annual Performance Plan and Fiscal Year 2003 Annual Performance Plan; to the Committee on Government Reform.

8337. A letter from the Assistant Attorney General, Department of Justice, transmitting the Department's draft legislation entitled, "To Clarify the Authority of the Executive Director of the Board to Bring Suit on Behalf on the Thrift Savings Fund in the District Courts of the United States"; to the Committee on Government Reform.

8338. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule—Prevailing Rate Systems; Definition of Santa Clara, CA, Nonappropriated Fund Wage Area (RIN: 3206–AJ61) received July 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

8339. A letter from the Director, Office of Personnel Management, transmitting the Department's final rule—Suspension of CHAMPVA or TRICARE or TRICARE-for-Life Eligibles' Enrollment in the Federal Employees Health Benefits (FEHB) Program (RIN: 3206–AJ36) received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

8340. A letter from the Chairman, Federal Election Commission, transmitting the Commission's final rule—Explanation and Justification for Revised Form 5 and Schedule E of Form 3X, Regarding Reporting of Independent Expenditures—received July 26, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on House Administration.

8341. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—National Coastal Wetlands Conservation Grant Program (RIN: 1018–AF51) received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8342. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Spring Commercial Red Snapper Component [I.D. 062702B] received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8343. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska [Docket No. 011218304–01; I.D. 070802A] received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8344. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Highly Migratory Species; Bluefin Tuna Recreational Fishery [I.D. 053102B] received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8345. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments and Closures [Docket No. 011231309–2090–03; I.D. 062702C] received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8346. A letter from the Assistant Administrator for Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery [Docket No. 000622191–2104–02; I.D. 041700D] (RIN: 0648–AO35) received July 18, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8347. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska [Docket No. 011218304–1304–01; I.D. 071102A] received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8348. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Pacific Halibut Fisheries; Washington Sport Fisheries [Docket No. 020131023–2056–02; I.D. 070302B] received July 26, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8349. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to the Fishery Amendment Plans of the Gulf of Mexico [Docket No. 010410086–2165–02; I.D. 020801A] (RIN: 0648–AN83) received July 26, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8350. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest [Docket No. 010313064–1064–01; I.D. 070102E] received July 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8351. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administrator's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska [Docket No. 011218304–1304–01; I.D. 071202G] received July 26, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8352. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest [Docket No. 010313064–1064–01; I.D. 070102E] received July 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8353. A letter from the Federal Register Certifying Officer, Department of the Treasury, transmitting the Department's final rule—Indorsement and Payment of Checks Drawn on the United States Treasury (RIN: 1510–AA45) received May 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

8354. A letter from the General Counsel, Department of Commerce, transmitting a draft bill entitled, "Hague Agreement Implementation Act"; to the Committee on the Judiciary.

8355. A letter from the Director, Regulations and Forms Services Division, Department of Justice, transmitting the Department's final rule—Powers of the Attorney General to Authorize State or Local Law Enforcement Officers to Exercise Federal Immigration Enforcement Authority During a Mass Influx of Aliens [INS No. 1924–98; AG Order No. 2601–2002] (RIN: 1115–AF20) received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

8356. A letter from the Congressional Medal of Honor Society of the United States of America, transmitting the annual financial report of the Society for calendar year 2001, pursuant to 36 U.S.C. 1101(19) and 1103; to the Committee on the Judiciary.

8357. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule—Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels Coast Guard [USCG–2000–6858] (RIN: 2115–AF73) received July 18, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8358. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule—Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan [USCG–1998–4623] (RIN: 2115–AF38) received July 18, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8359. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Modification of Class E Airspace; Zanesville, OH [Airspace Docket No. 01–AGL–21] received April 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8360. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Revocation of Class E Airspace, Umiat, AK [Airspace Docket No. 01–AAL–1] received April 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8361. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airports [Docket No. FAA-2000-7587 Amdt No. 21-81, 36-24 and 91-275] (RIN: 2120-AH03) received July 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8362. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—National Beach Guidance and Required Performance Criteria for Grants—received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8363. A letter from the Chairman, Commission on the Future of the United States Aerospace Industry, transmitting the Commission's third interim report entitled, "Commission on the Future of the United States Aerospace Industry"; to the Committee on Science.

8364. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule—NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements with Commercial Firms and Implementation of Section 319 of Public Law 106-391, Buy American Encouragement (RIN: 2700-AC44) received July 9, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

8365. A letter from the Assistant Administrator for External Affairs, National Aeronautics and Space Administration, transmitting the Administration's final rule—Delegation of Authority (RIN: 2700-AC54) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

8366. A letter from the Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—National Oceanic and Atmospheric Administration (NOAA) Science Advisory Board—received July 2, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

8367. A letter from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting the Department's final rule—Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error (RIN: 2900—AK74) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

8368. A letter from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting the Department's final rule—Ankylosis and limitation of motion of digits of the hands (RIN: 2900-AI44) received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

8369. A letter from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting the Department's final rule—Adjudication; Fiduciary Activities—Nomenclature Changes (RIN: 2900-AL10) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

8370. A letter from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting the Department's final rule—VA Acquisition Regulation: Construction and Architect-Engineer Contracts (RIN: 2900-AJ56) received July 25, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

8371. A letter from the Chief, Regulations Branch, Department of the Treasury, transmitting the Department's final rule—Access to Customs Security Areas At Airports (RIN: 1515-AD04) received July 24, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8372. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Relief From Joint and Several Liability (RIN: 1545-AW64) received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8373. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Rulings and determination letters (Rev. Proc. 2002-52) received July 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8374. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2002-48) received July 17, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8375. A letter from the Administrator, Environmental Protection Agency, transmitting a legislative proposal to implement three important international environmental agreements that represent critical steps forward to protecting environmental and human health in the United States and around the globe; jointly to the Committees on Agriculture and Energy and Commerce.

8376. A letter from the Deputy Secretary, Department of Defense, transmitting a report on Outreach to Gulf War Veterans Calendar Year 2001; jointly to the Committees on Armed Services and Veterans' Affairs.

8377. A letter from the Executive Director, Office of Compliance, transmitting the annual report on the use of the Office of Compliance by covered employees; jointly to the Committees on House Administration and Education and the Workforce.

8378. A letter from the Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting a draft bill entitled, "Fort Sumter and Fort Moultrie National Historical Park Act of 2002"; jointly to the Committees on Resources and Transportation and Infrastructure.

8379. A letter from the Secretary, Department of Transportation, transmitting a bill entitled the "Federal Railroad Safety Improvement Act"; jointly to the Committees on Transportation and Infrastructure, Energy and Commerce, and the Judiciary.

8380. A letter from the Executive Director, U.S.—China Security Review Commission, transmitting the Commission's first annual report entitled, "The National Security Implications of the Economic Relationship between the United States and China"; jointly to the Committees on Ways and Means, International Relations, and Armed Services.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HANSEN: Committee on Resources. H.R. 4883. A bill to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes; with an amendment (Rept. 107-621). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Transportation and Infrastructure. H.R. 5012. A bill to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes (Rept. 107-622). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONILLA: Committee on Appropriations. H.R. 5263. A bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003, and for other purposes (Rept. 107-623). Referred to the Committee of the Whole House on the State of the Union.

Mr. THOMAS: Committee of Conference. Conference report on H.R. 3009. A bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes (Rept. 107-624). Ordered to be printed.

Mr. REYNOLDS: Committee on Rules. House Resolution 509. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3009) an Act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes (Rept 107-625). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mrs. JO ANN DAVIS of Virginia:

H.R. 5240. A bill to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Northern Neck National Heritage Area in Virginia, and for other purposes; to the Committee on Resources.

By Mr. LANGEVIN (for himself, Mr. Greenwood, Mr. Brady of Pennsylvania, Mr. Pascrell, Mrs. Morella, Mr. McHugh, Mr. Frost, Mr. Kildee, Mr. Waxman, Mr. Cummings, Mr. Owens, Mr. Stark, Mr. Engel, Mr. McNulty, Mr. Baldacci, Mr. Baird, Ms. Woolsey, Mr. McDermott, Mr. Serrano, Mr. Hall of Ohio, Mr. Markey, Ms. McCollum, Mr. Foley, Mr. Menendez, Ms. Brown of Florida, Mr. Lampson, Mr. Matsui, Mr. Oberstar, Mr. George Miller of California, Mr. Davis of Illinois, Mrs. Christensen, Mrs. Napolitano, Mr. Ackerman, Mr. Ford, Mr. Fattah, Mr. Lantos, Mr. Farr of California, Mrs. Jones of Ohio, Ms. Eddie Bernice Johnson of Texas, and Mr. Green of Texas):

H.R. 5241. A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes; to the Committee on Energy and Commerce.

By Mr. HOUGHTON (for himself and Mr. Boehner):

H.R. 5242. A bill to amend the Internal Revenue Code of 1986 to encourage the granting of employee stock options; to the Committee on Ways and Means.

By Mr. CARSON of Oklahoma (for himself, Mr. Matheson, Mr. Moran of Kansas, and Mr. Baird):

H.R. 5243. A bill to promote rural safety and improve rural law enforcement; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DINGELL:

H.R. 5244. A bill to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ISSA:

H.R. 5245. A bill to study the feasibility and desirability of the formation of regional transmission organizations within the Western Electric Coordinating Council, and for other purposes; to the Committee on Energy and Commerce.

By Mr. LATHAM:

H.R. 5246. A bill to amend title XVIII of the Social Security Act to reform payments to rural and other health care providers under the Medicare Program, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LATHAM (for himself, Mr. Ganske, Mr. Nussle, and Mr. Thune):

H.R. 5247. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers required to report information on the price and quantity of livestock purchased by the packer; to the Committee on Agriculture.

By Mr. HAYWORTH (for himself, Mr. Stump, and Mr. Shadegg):

H.R. 5248. A bill to provide legal exemptions for certain activities of the National Park Service, United States Forest Service, United States Fish and Wildlife Service, or the Bureau of Land Management undertaken in federally declared disaster areas; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LANTOS (for himself, Mr. Brown of Ohio, Mr. Smith of New Jersey, Mr. Hilliard, Ms. Watson, Ms. Lee, Mr. Pallone, Mr. Stupak, Mrs. Napolitano, Mr. Berman, Mr. Ackerman, Mr. Payne, Mr. Meeks of New York, Mr. Hoeffel, Mr. Sherman, Ms. Woolsey, Ms. Berkley, Ms. McKinney, and Ms. Ros-Lehtinen):

H.R. 5249. A bill to promote safe and ethical clinical trials of drugs and other test articles on people overseas; to the Committee on International Relations.

By Mr. SMITH of New Jersey (for himself and Mr. Evans):

H.R. 5250. A bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care; to the Committee on Veterans' Affairs.

By Mr. MANZULLO:

H.R. 5251. A bill to provide equitable pay to air traffic managers, supervisors, and specialists of the Federal Aviation Administration at regional and headquarters locations, and for other purposes; to the Committee on Government Reform.

By Mr. WAXMAN (for himself, Mr. Matsui, and Mr. Rangel):

H.R. 5252. A bill to protect the Social Security trust funds by ensuring that the Government repays its debts to the trust funds; to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SANDLIN (for himself, Mr. Shows, Ms. Eddie Bernice Johnson of Texas, Mr. Reyes, Mr. Israel, Mr. Doggett, Mr. Ross, Mr. Pascrell, Ms. Sánchez, Ms. Berkley, Mr. Gonzalez, Mr. Holt, Mr. Meeks of New York, and Ms. Solis):

H.R. 5253. A bill to modify the antitrust exemption applicable to the business of medical malpractice insurance, to address current issues for health care providers, to reform medical malpractice litigation by making available alternative dispute resolution methods, requiring plaintiffs to submit affidavits of merit before proceeding, and enabling judgments to be satisfied through periodic payments, to reform the medical malpractice insurance market, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, Ways and Means, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HASTINGS of Florida:

H.R. 5254. A bill to require the Secretary of Education to provide assistance to the immediate family of a teacher or other school employee killed in an act of violence while performing school duties; to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KIRK (for himself, Ms. Ros-Lehtinen, Mr. Shays, Mr. Walsh, Mr. Crowley, Mr. Gilman, Mr. Smith of New Jersey, Mr. Issa, Mr. Dingell, Mr. Petri, and Mr. Davis of Illinois):

H.R. 5255. A bill to endorse expansion of the Peace Corps to 14,000 volunteers by 2007, to authorize appropriations for the Peace Corps for fiscal years 2003 through 2007, and for other purposes; to the Committee on International Relations.

By Mr. FILNER:

H.R. 5256. A bill to redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the "Cesar E. Chavez Post Office"; to the Committee on Government Reform.

By Mr. FLETCHER (for himself and Mr. Capuano):

H.R. 5257. A bill to provide private school parity with public schools in obtaining criminal background checks of employees, volunteers, and applicants, and for other purposes; to the Committee on Education and the Workforce.

By Mrs. KELLY (for herself and Ms. Velázquez):

H.R. 5258. A bill to amend the Investment Company Act of 1940 to provide incentives for small business investment; to the Committee on Financial Services.

By Mr. RYAN of Wisconsin (for himself, Mr. Flake, Mr. Sessions, Mr. Royce, Mr. Akin, Mr. Tancredo, Mr. Shadegg, and Mr. Toomey):

H.R. 5259. A bill to reform Federal budget procedures to restrain congressional spending, foster greater oversight of the budget, account for accurate Government agency costs, and for other purposes; referred to the Committee on the Budget, for a period ending not later than August 31, 2002, and in addition to the Committee on Ways and Means, the committee on Rules and the Committee on Government Reform, for a period to be determined subsequently by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HASTINGS of Florida:

H.R. 5260. A bill to amend the Small Business Act to include drought in the definition of disaster for purposes of the disaster loan program administered by the Small Business Administration; to the Committee on Small Business.

By Mr. KIRK (for himself, Mr. Upton, and Mr. Kind):

H.R. 5261. A bill to prohibit the issuance of new source permits under the Clean Air Act for certain sources that would result in the deposition of mercury into the Great Lakes System, and for other purposes; to the Committee on Energy and Commerce.

By Ms. JACKSON-LEE of Texas (for herself, Mrs. Jones of Ohio, Ms. Eddie Bernice Johnson of Texas, Mr. Kucinich, Mr. Pascrell, Mr. Brady of Pennsylvania, Mr. Kildee, Mr. Menendez, Ms. Millender-McDonald, Ms. DeLauro, Ms. Brown of Florida, Ms. Schakowsky, Ms. Woolsey, Mr. Lampson, Ms. Berkley, Ms. Lee, Mr. Reyes, Mr. Watts of Oklahoma, Mrs. Clayton, Mrs. Morella, Ms. Ros-Lehtinen, Mr. Rohrabacher, Mr. Brady of Texas, Mr. Becerra, Mr. Pallone, Mr. Davis of Illinois, Mr. Green of Texas, Mrs. Maloney of New York, Mr. Meeks of New York, Mr. Lewis of Georgia, Mr. Rush, Mr. Filner, Mr. Rodriguez, Ms. Solis, Mr. Gonzalez, Mr. Honda, Mr. Pastor, Mr. Wynn, Mr. Cummings, Mr. Rangel, and Mr. Holt):

H.R. 5262. A bill to create a separate DNA database for violent predators against children, and for other purposes; to the Committee on the Judiciary.

By Mr. DOGGETT (for himself, Mr. Waxman, Mr. Hansen, Mr. Becerra, Mr. Cardin, Mr. Coyne, Mr. Levin, Mr. Lewis of Georgia, Mr. Matsui, Mr. McDermott, Mr. McNulty, Mr. Stark, Mr. Abercrombie, Mr. Ackerman, Mr. Allen, Mr. Andrews, Ms. Baldwin, Mr. Bentsen, Mr. Berman, Mr. Blumenauer, Mr. Brown of Ohio, Mrs. Capps, Mr. Capuano, Mr. Carson of Oklahoma, Mr. Crowley, Mr. Davis of Illinois, Mr. DeFazio, Ms. DeGette, Mr. Delahunt, Ms. Eshoo, Mr. Evans, Mr. Farr of California, Mr. Filner, Mr. Gutierrez, Mr. Hinojosa, Mr. Hoeffel, Mr. Holt, Mr. Honda, Ms. Jackson-Lee of Texas, Mr. Jackson of Illinois, Ms. Kaptur, Mr. Kennedy of Rhode Island, Mr. Kildee, Mr. Kind, Mr. Kucinich, Mr. LaFalce, Mr. Lampson, Mr. Langevin, Mr. Lantos, Ms. Lee, Ms. Lofgren, Mr. Lynch, Mrs. McCarthy of New York, Ms. McCarthy of Missouri, Mr. McGovern, Mrs. Maloney of New York, Mr. Matheson, Mr. Meehan, Mr. Meeks of New York, Mr. George Miller of California, Mrs. Mink of Hawaii, Mr.

NADLER, Mrs. NAPOLITANO, Mr. OBERSTAR, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Ms. PELOSI, Mr. RODRIGUEZ, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. SÁNCHEZ, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. TIERNEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WATSON, Mr. WEINER, Ms. WOOLSEY, Mr. WU, and Ms. MILLENDER-McDONALD):

H.R. 5264. A bill to amend the Internal Revenue Code of 1986 to deter the smuggling of tobacco products into the United States, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. JACKSON-LEE of Texas (for herself, Mr. LEWIS of Georgia, Mr. WYNN, Mr. BISHOP, Mr. RUSH, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. FILNER, Mr. STARK, Mr. DAVIS of Illinois, Mrs. CLAYTON, Mr. PAYNE, Mr. SERRANO, Ms. LEE, Mr. BECERRA, Mr. RODRIGUEZ, Ms. SOLIS, Mr. GONZALEZ, Mr. PALLONE, Mr. HONDA, Mr. PASTOR, Ms. WATSON, Mr. CUMMINGS, and Mr. RANGEL):

H.R. 5265. A bill to establish the Cultural Competence Commission; to the Committee on Energy and Commerce.

By Mr. BARTON of Texas (for himself and Mr. TAUZIN) (both by request):

H.R. 5266. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ACKERMAN:

H.R. 5267. A bill to modify the waiver authority of the President regarding foreign assistance restrictions with respect to Pakistan; to the Committee on International Relations.

By Mr. ANDREWS (for himself, Mr. GILMAN, Mr. BLUMENAUER, Mr. BARTLETT of Maryland, Mr. SMITH of New Jersey, and Mr. TANCREDO):

H.R. 5268. A bill to strengthen enforcement of provisions of the Animal Welfare Act relating to animal fighting, and for other purposes; to the Committee on Agriculture.

By Ms. BALDWIN (for herself and Mr. OBEY):

H.R. 5269. A bill to guarantee for all Americans quality, affordable, and comprehensive health insurance coverage; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. BIGGERT (for herself, Mr. EHLERS, Mrs. TAUSCHER, Ms. WOOLSEY, Mr. GRUCCI, Mr. HOLT, Mr. HONDA, Mr. WAMP, Mr. JOHNSON of Illinois, Mr. ANDREWS, Mr. CALVERT, Mr. HOUGHTON, Mr. HASTINGS of Washington, Mr. RUSH, Mr. CAPUANO, and Mr. BOSWELL):

H.R. 5270. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, and 2006 for the Department of Energy Office of Science, to ensure that the United States is the world leader in key scientific fields by restoring a healthy balance of science funding, to ensure maximum utilization of the national user facilities, and to secure the Nation's supply of scientists for the 21st century, and for other purposes; to the Committee on Science.

By Mr. BONIOR:

H.R. 5271. A bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War; to the Committee on Armed Services.

By Mr. BROWN of Ohio (for himself and Mr. WAXMAN):

H.R. 5272. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; to the Committee on Energy and Commerce.

By Mr. CARSON of Oklahoma (for himself and Mr. POMEROY):

H.R. 5273. A bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. CLAYTON (for herself, Ms. McKINNEY, Mr. FROST, Mrs. THURMAN, Ms. KAPTUR, Mr. WATT of North Carolina, Mr. LEVIN, Mr. CUMMINGS, Mr. INSLEE, Ms. BROWN of Florida, Mr. DAVIS of Illinois, Mr. HOLDEN, Mr. ANDREWS, Ms. LEE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HILLIARD, Mr. WYNN, Mr. MARKEY, Mr. CLYBURN, Mrs. MEEK of Florida, Mrs. CHRISTENSEN, Mr. SCOTT, Mr. FORD, Mr. BISHOP, Mr. TOWNS, and Ms. WOOLSEY):

H.R. 5274. A bill to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Northeastern North Carolina Heritage Area in North Carolina, and for other purposes; to the Committee on Resources.

By Mr. COSTELLO:

H.R. 5275. A bill to provide for the external regulation of nuclear safety and occupational safety and health at nonmilitary energy laboratories owned or operated by the Department of Energy; to the Committee on Science, and in addition to the Committees on Energy and Commerce, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DINGELL (for himself, Mr. BROWN of Ohio, Mr. WAXMAN, and Mr. STARK):

H.R. 5276. A bill to amend title XIX of the Social Security Act to improve the qualified Medicare beneficiary (QMB) and special low-income Medicare beneficiary (SLMB) programs within the Medicaid Program; to the Committee on Energy and Commerce.

By Mr. ENGLISH (for himself, Mr. POMEROY, and Mr. CAMP):

H.R. 5277. A bill to clarify the tax status of the Young Men's Christian Association retirement fund; to the Committee on Ways and Means.

By Mr. ENGLISH (for himself and Mr. NEAL of Massachusetts):

H.R. 5278. A bill to amend the Internal Revenue Code of 1986 to encourage investment in high productivity property, and for other purposes; to the Committee on Ways and Means.

By Ms. ESHOO (for herself, Mr. SIMMONS, Mrs. MALONEY of New York, Ms. SÁNCHEZ, Mr. RANGEL, Mr. BORSKI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. McDERMOTT, Ms. WOOLSEY, Ms. McCOLLUM, Ms. BROWN of Florida, Ms. DeLAURO, Mr. FILNER, Mr. PASCRELL, Ms. PELOSI, Mr. PAYNE, Mr. HALL of Ohio, Mr. MORAN of Virginia, Ms. McCARTHY of Missouri, Mr. KLECZKA, Mr. McGOVERN, Mr. HINCHEY, Mr. BOUCHER, Mr. DELAHUNT, Mr. HOLT, Mr. OLVER, Mr. SERRANO, Mr. MOORE, Mr. CAPUANO, Mr. GONZALEZ, Mr. BLAGOJEVICH, Mr. FORD, Ms. LOFGREN, Ms. SOLIS, Mr. ROTHMAN, Mr. WEXLER, Mr. GUTIERREZ, Mrs. MEEK of Florida, Ms. RIVERS, Mr. EVANS, Mrs. CAPPS, Mr. BONIOR, Mr. CLAY, Mr. KUCINICH, Mr. BERMAN, Mr. BROWN of Ohio, Mr. FARR of California, Mr. CONYERS, Ms. BALDWIN, Mrs. McCARTHY of New York, Mr. GEORGE MILLER of California, Mr. ENGEL, Mr. WEINER, Ms. WATERS, Mrs. LOWEY, Ms. CARSON of Indiana, Mr. DAVIS of Illinois, Mr. REYES, Mr. PALLONE, Mrs. DAVIS of California, Mr. FRANK, Mr. NEAL of Massachusetts, Mr. WAXMAN, Mr. SHERMAN, Mrs. MINK of Hawaii, Mr. MALONEY of Connecticut, Mr. SHAYS, Ms. LEE, Mr. LUTHER, Ms. SLAUGHTER, Mr. FALEOMAVAEGA, Ms. MILLENDER-McDONALD, Mrs. NAPOLITANO, Mr. HONDA, Mr. LANTOS, Ms. NORTON, Mr. McNULTY, Mr. TIERNEY, Ms. VELÁZQUEZ, Mrs. JONES of Ohio, Ms. ROYBAL-ALLARD, Mr. HOEFFEL, Ms. SCHAKOWSKY, Mr. MEEKS of New York, Mr. CLEMENT, Mr. RUSH, Mr. CARDIN, Ms. BERKLEY, Mr. SANDERS, Mr. COYNE, Mr. WYNN, Mr. TOWNS, Mr. STARK, Mr. KENNEDY of Rhode Island, Mr. LEWIS of Georgia, Mr. UNDERWOOD, Mr. ANDREWS, Mr. LAMPSON, Mr. MEEHAN, Mr. LARSON of Connecticut, Mr. MENENDEZ, Mr. MARKEY, Mr. CLYBURN, Mr. WATT of North Carolina, Mr. JACKSON of Illinois, Mr. LIPINSKI, Mr. ABERCROMBIE, Mr. HASTINGS of Florida, Mr. NADLER, Mr. ISRAEL, Mr. CROWLEY, Mr. SAWYER, Mr. ACKERMAN, Ms. JACKSON-LEE of Texas, Mr. THOMPSON of Mississippi, Mrs. TAUSCHER, Mr. CUMMINGS, Mr. FATTAH, Mrs. CHRISTENSEN, Mr. JEFFERSON, Mr. LYNCH, and Mr. ACEVEDO-VILA):

H.R. 5279. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal lands, to designate certain Federal lands as Ancient Forests, Roadless Areas, Watershed Protection Areas, and Special Areas where logging and other intrusive activities are prohibited, and for other purposes; to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FATTAH (for himself, Mr. HOEFFEL, and Mr. BRADY of Pennsylvania):

H.R. 5280. A bill to designate the facility of the United States Postal Service located at

2001 East Willard Street in Philadelphia, Pennsylvania, as the "Robert A. Borski Post Office Building"; to the Committee on Government Reform.

By Mr. FLAKE (for himself, Mr. SHADEGG, Mr. JONES of North Carolina, Mr. CANNON, and Mr. HAYWORTH):

H.R. 5281. A bill to provide temporary legal exemptions for certain land management activities of the Federal land management agencies undertaken in federally declared disaster areas; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GREENWOOD (for himself and Mr. TOWNS):

H.R. 5282. A bill to amend the Public Health Service Act to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program, and for other purposes; to the Committee on Energy and Commerce.

By Mr. HAYWORTH:

H.R. 5283. A bill to direct the Secretary of Agriculture to exchange certain land in the State of Arizona; to the Committee on Resources.

By Ms. HOOLEY of Oregon:

H.R. 5284. A bill to direct the President to assess the advisability of requiring each State to use the Death Master File of the Social Security Administration in issuing drivers' licenses to individuals; to the Committee on Ways and Means.

By Mr. INSLEE (for himself, Mr. NETHERCUTT, Mr. BOUCHER, Mr. MANZULLO, Mr. MORAN of Virginia, Mrs. MINK of Hawaii, Mr. LARSEN of Washington, Mr. KUCINICH, Mr. KLECZKA, Mr. LEACH, Ms. LOFGREN, Ms. BROWN of Florida, Mr. DICKS, and Mr. SMITH of Washington):

H.R. 5285. A bill to amend title 17, United States Code, with respect to royalty fees for webcasting, and for other purposes; to the Committee on the Judiciary.

By Mrs. JOHNSON of Connecticut (for herself, Mr. SHAYS, Mr. SIMMONS, and Mr. DAN MILLER of Florida):

H.R. 5286. A bill to amend title 38, United States Code, to require Department of Veterans Affairs pharmacies to dispense medications to veterans enrolled in the health care system of that Department for prescriptions written by private practitioners, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. JONES of North Carolina:

H.R. 5287. A bill to amend title 10, United States Code, to provide for forgiveness of certain overpayments of retired pay paid to deceased retired members of the Armed Forces following death; to the Committee on Armed Services.

By Mr. LAFALCE (for himself, Mr. QUINN, Mr. HOUGHTON, Mr. STUPAK, Mr. OBERSTAR, Mr. LARSEN of Washington, and Mr. MCDERMOTT):

H.R. 5288. A bill to reaffirm the historic treatment of part-time commuter students from Canada and Mexico as temporary visitors for purposes of entry into the United States; to the Committee on the Judiciary.

By Mr. LEVIN (for himself, Mr. BLAGOJEVICH, Mr. BONIOR, Mr. DAVIS of Illinois, Mr. DOGGETT, Mr. ENGEL, Mr. GILMAN, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HOEFFEL, Mr. HORN, Ms. KAPTUR, Mr. KILDEE, Ms. KILPATRICK, Mr. KNOLLENBERG, Mr. KUCINICH, Mr. LANGEVIN, Mr. LANTOS, Mr. LIPINSKI, Mr. MCNULTY, Mrs. MEEK of Florida, Mr. MENENDEZ, Mr. PALLONE, Mr. QUINN, Mr. SCHAFFER, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. WEINER, and Mr. WELDON of Pennsylvania):

H.R. 5289. A bill to authorize the Ukrainian Congress Committee of America to establish a memorial on Federal land in the District of Columbia to honor the victims of the Ukrainian famine-genocide of 1932-1933; to the Committee on Resources.

By Mr. MALONEY of Connecticut:

H.R. 5290. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for State and local real and personal property taxes paid by individuals; to the Committee on Ways and Means.

By Mrs. MALONEY of New York (for herself, Mr. GILMAN, Mr. KANJORSKI, Mr. FROST, Mr. GUTIERREZ, Ms. HOOLEY of Oregon, Mr. SANDLIN, Mr. GONZALEZ, Ms. LEE, Mr. ISRAEL, Mr. SHOWS, Mr. CROWLEY, Mr. JACKSON of Illinois, Mr. PAYNE, Mr. SAWYER, Mr. ALLEN, Ms. BERKLEY, and Ms. JACKSON-LEE of Texas):

H.R. 5291. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission (Kiddie Mac) to certify such facilities for such insurance, and for other purposes; to the Committee on Financial Services.

By Mrs. MALONEY of New York (for herself, Mr. HORN, and Mr. TURNER):

H.R. 5292. A bill to improve Federal agency oversight of contracts and assistance and to strengthen accountability of the governmentwide debarment and suspension system; to the Committee on Government Reform.

By Mrs. MALONEY of New York (for herself, Mrs. MORELLA, Mr. CROWLEY, Mr. DINGELL, Mr. SMITH of Washington, Ms. ROYBAL-ALLARD, Mr. BERMAN, Mr. SANDERS, Ms. LEE, Mr. TOWNS, Mr. UDALL of Colorado, Mrs. LOWEY, and Mr. RANGEL):

H.R. 5293. A bill to amend the Foreign Assistance Act of 1961 to provide for permanent guidelines for United States voluntary contributions to the United Nations Population Fund (UNFPA); to the Committee on International Relations.

By Mrs. MALONEY of New York (for herself, Mr. WEINER, Ms. LEE, Mr. HONDA, Mr. SERRANO, Mr. CROWLEY, Mrs. MINK of Hawaii, Mr. RANGEL, Mr. TOWNS, Mr. FRANK, Mr. OWENS, Mr. ISRAEL, Mr. NADLER, and Mr. FROST):

H.R. 5294. A bill to accord honorary citizenship to the alien victims of the September 11, 2001, terrorist attacks against the United States and to provide for the granting of citizenship to the alien spouses and children of certain victims of such attacks; to the Committee on the Judiciary.

By Mr. DAN MILLER of Florida (for himself, Mr. YOUNG of Florida, and Mr. DAVIS of Florida):

H.R. 5295. A bill to direct the Secretary of the Interior to convey to the State of Florida certain lands under the administrative jurisdiction of the United States Fish and Wildlife Service, for use as a State Park; to the Committee on Resources.

By Mrs. MINK of Hawaii:

H.R. 5296. A bill to revive the system of parole for Federal prisoners; to the Committee on the Judiciary.

By Mrs. MINK of Hawaii:

H.R. 5297. A bill to provide for health care premium assistance; and to amend the Food Stamp Act of 1977 to exclude unemployment compensation for purposes of determining eligibility and benefits under such Act; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. MORELLA:

H.R. 5298. A bill to provide for reform relating to Federal employee career development and benefits, and for other purposes; to the Committee on Government Reform.

By Mrs. MORELLA (for herself and Mr. BRADY of Pennsylvania):

H.R. 5299. A bill to provide for compassionate payments with regard to individuals who contracted human immunodeficiency virus due to the provision of a contaminated blood transfusion, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PALLONE (for himself and Mrs. ROUKEMA):

H.R. 5300. A bill to help protect the public against the threat of chemical attacks; to the Committee on Energy and Commerce.

By Mr. PETRI (for himself and Mr. DREIER):

H.R. 5301. A bill to strengthen secondary and post-secondary education programs emphasizing the nature, history, and philosophy of free institutions, the nature of Western civilization, and the nature of the threats to freedom from totalitarianism; to the Committee on Education and the Workforce.

By Mr. RADANOVICH:

H.R. 5302. A bill to facilitate a Forest Service land exchange that will eliminate a private in-holding in the Sierra National Forest in the State of California and provide for the permanent enjoyment by the Boy Scouts of America of a parcel of National Forest System land currently used under a special use permit, and for other purposes; to the Committee on Resources.

By Mr. ROHRABACHER:

H.R. 5303. A bill to authorize the Administrator of the National Aeronautics and Space Administration to establish an awards program in honor of Charles "Pete" Conrad, astronaut and space scientist, for recognizing the discoveries made by amateur astronomers of asteroids with near-Earth orbit trajectories; to the Committee on Science.

By Ms. SANCHEZ (for herself, Mr. PAUL, Mr. SHIMKUS, Mr. MCINTYRE, Ms. CARSON of Indiana, Mr. SANDERS, and Mr. HOEFFEL):

H.R. 5304. A bill to amend the Internal Revenue Code of 1986 to allow the deduction for health insurance costs of self-employed individuals to be allowed in computing self-employment taxes; to the Committee on Ways and Means.

By Mr. SANDERS:

H.R. 5305. A bill to authorize the disinterment from the Lorraine American Cemetery in St. Avold, France, of the remains of Private First Class Alfred J. Laitres, of Island Pond, Vermont, who died in combat in France on December 25, 1944, and to authorize the transfer of his remains to the custody of his next of kin; to the Committee on Veterans' Affairs.

By Mr. SANDERS:

H.R. 5306. A bill to provide assistance for the development of indoor disease prevention and health promotion centers in urban and rural areas throughout the United States; to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SAXTON (for himself and Mr. COBLE):

H.R. 5307. A bill to provide for the use of COPS funds for State and local intelligence officers, and for other purposes; to the Committee on the Judiciary.

By Mr. SCHAFFER (for himself, Mr. UDALL of Colorado, Mr. TANCREDO, Mr. HEFLEY, Ms. DEGETTE, and Mr. MCINNIS):

H.R. 5308. A bill to designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office"; to the Committee on Government Reform.

By Mr. SHADEGG (for himself, Mr. HANSEN, Mr. MCINNIS, Mr. FLAKE, Mr. SCHAFFER, Mr. GIBBONS, Mr. HERGER, Mrs. CUBIN, Mr. KINGSTON, Mr. HOEKSTRA, Mr. DOOLITTLE, Mr. HEFLEY, Mr. TANCREDO, Mr. DEMINT, Mr. BRYANT, Mr. PETERSON of Pennsylvania, Mr. HAYWORTH, and Mr. CANNON):

H.R. 5309. A bill to authorize the Regional Foresters to exempt tree-thinning projects, which are necessary to prevent the occurrence of wildfire likely to cause extreme harm to the forest ecosystem, from laws that give rise to legal causes of action that delay or prevent such projects; to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THUNE (for himself, Mr. MORAN of Kansas, Mr. OSBORNE, Mr. REHBERG, Mr. BEREUTER, Mr. POMEROY, Mr. LUCAS of Oklahoma, Mr. UDALL of New Mexico, Mr. TERRY, Mr. PETERSON of Minnesota, Mr. GIBBONS, Mrs. CUBIN, and Mr. MCINNIS):

H.R. 5310. A bill to provide emergency livestock assistance and emergency crop loss assistance to agricultural producers; to the Committee on Agriculture.

By Mr. THUNE (for himself, Mrs. EMERSON, Mr. KINGSTON, Mr. GUTKNECHT, Mrs. NORTHUP, Mr. MANZULLO, Mr. CALVERT, Mr. GOODE, Mr. BEREUTER, Mr. HOEKSTRA, and Mr. GOODLATTE):

H.R. 5311. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; to the Committee on Energy and Commerce.

By Mr. TIERNEY (for himself, Mr. SAWYER, Mr. SHIMKUS, Ms. BALDWIN, Mr. HORN, Mr. GONZALEZ, Mr. KENNEDY of Rhode Island, Mr. PHELPS, Mr. DAVIS of Illinois, Mr. UDALL of New Mexico, Mr. VISCLOSKY, Mr. SERRANO, Mr. BROWN of Ohio, Mr. HILLIARD, Mr. STARK, Mr. HINOJOSA, Mr. PAYNE, Mr. ANDREWS, and Mr. GEORGE MILLER of California):

H.R. 5312. A bill to support business incubation in academic settings, and for other purposes; to the Committee on Education and the Workforce.

By Ms. WATERS:

H.R. 5313. A bill to provide incentives for States to have in effect laws mandating the reporting of child abuse by certain individuals, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WYNN (for himself, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, Mr. CUMMINGS, Mr. SCOTT, Mr. DAVIS of Illinois, and Mrs. CLAYTON):

H.R. 5314. A bill to provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes; to the Committee on Small Business.

By Mr. DEFAZIO (for himself, Mr. KUCINICH, Mr. CROWLEY, Mr. UDALL of Colorado, Mr. HINCHEY, Mr. GEORGE MILLER of California, Mr. JACKSON of Illinois, Mr. FILNER, Ms. HOOLEY of Oregon, Mr. UDALL of New Mexico, Mr. FARR of California, Ms. SLAUGHTER, Ms. MCKINNEY, Ms. WATERS, Ms. WOOLSEY, and Mr. SHIMKUS):

H.J. Res. 109. A joint resolution calling for Congress to consider and vote on a resolution for the use of force by the United States Armed Forces against Iraq before such force is deployed; to the Committee on International Relations.

By Mr. DAVIS of Illinois:

H. Con. Res. 452. Concurrent resolution supporting the efforts and activities of individuals, organizations, and other entities to honor the lives of enslaved Africans in the United States and to make reparations to their descendants for slavery and its lingering effects; to the Committee on Government Reform.

By Mr. HYDE (for himself and Mr. ROYCE):

H. Con. Res. 453. Concurrent resolution expressing the sense of Congress relating to the increasingly dire food security situation in Zimbabwe and the failure of the Mugabe regime to take appropriate measures to mitigate the impact of its failed policies on the nutritional well-being of the people of Zimbabwe and of other countries in the Southern Africa region; to the Committee on International Relations.

By Mr. KOLBE (for himself and Mr. HOYER):

H. Con. Res. 454. Concurrent resolution expressing the sense of Congress regarding housing affordability and urging fair and expeditious review by international trade tribunals to ensure a competitive North American market for softwood lumber; to the Committee on Ways and Means.

By Mr. LEACH (for himself, Mr. KIND, Ms. MCCOLLUM, Mr. RAMSTAD, Mr. OBERSTAR, Mr. SABO, Mr. NUSSLE, Mr. LUTHER, Mr. EVANS, Mr. BOSWELL, Mr. MANZULLO, Mr. GUTKNECHT, and Mr. LATHAM):

H. Con. Res. 455. Concurrent resolution to express support for the celebration in 2004 of the 150th anniversary of the Grand Excursion of 1854; to the Committee on Government Reform.

By Ms. MCCOLLUM (for herself, Mr. RAMSTAD, Mr. LUTHER, Mr. OBERSTAR, and Mr. SABO):

H. Con. Res. 456. Concurrent resolution recognizing the occasion of the Sixth World Symposium on Choral Music, to be held August 3–10, 2002, in Minneapolis and Saint Paul, Minnesota; to the Committee on International Relations.

By Mr. SCHAFFER:

H. Con. Res. 457. Concurrent resolution honoring Rick Lee Schwartz and Milt Stollak, who died in a plane crash on July 18, 2002, while fighting the Big Elk fires near Estes Park, Colorado; to the Committee on Government Reform.

By Mr. SMITH of Texas (for himself, Mr. CAPUANO, Mr. LEACH, and Mrs. LOWEY):

H. Con. Res. 458. Concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity; to the Committee on Government Reform.

By Mr. REYNOLDS:

H. Res. 509. A resolution waiving points of order against the conference report to accompany the bill (H.R. 3009) an Act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; considered and agreed to.

By Mr. ARMEY:

H. Res. 510. A resolution designating majority membership on certain standing committees of the House; considered and agreed to.

By Mr. LOBIONDO:

H. Res. 511. A resolution expressing the sense of the House of Representatives that funding should be made available from the Highway Trust Fund to encourage States to require law enforcement officers to impound motor vehicles of those charged with driving while intoxicated and to issue responsibility warnings to those who take custody of suspects of driving while intoxicated; to the Committee on Transportation and Infrastructure.

By Mr. PALLONE (for himself and Mr. BROWN of Ohio):

H. Res. 512. A resolution honoring the Indian American Friendship Council; to the Committee on International Relations.

By Mr. WALSH (for himself, Mr. GILMAN, Mr. GALLEGLY, Mr. NEAL of Massachusetts, Mr. QUINN, Mr. SMITH of New Jersey, Mr. ENGEL, Mr. KING, Mr. KENNEDY of Rhode Island, Mr. CROWLEY, Mr. ACKERMAN, Ms. DUNN, Mr. MCHUGH, Mr. HYDE, and Mr. DELAHUNT):

H. Res. 513. A resolution recognizing the historical significance and timeliness of the United States-Ireland Business Summit; to the Committee on International Relations.

By Mr. WELDON of Florida (for himself, Mr. STUPAK, Mr. TAYLOR of Mississippi, Mr. PENCE, Mr. PITTS, Mr. GUTKNECHT, Mr. KERNS, and Mr. JONES of North Carolina):

H. Res. 514. A resolution expressing serious concern regarding the publication of instructions on how to create a synthetic human polio virus, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Science, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WYNN (for himself, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, Mr. TOWNS, Mr. CUMMINGS, Mr. SCOTT, Mrs. CLAYTON, Mr. DAVIS of Illinois, Ms. NORTON, and Mr. PAYNE):

H. Res. 515. A resolution expressing the sense of the House of Representatives that small business concerns should continue to play an active role in assisting the United States military, Federal intelligence and law enforcement agencies, and State and local police forces by designing and developing innovative products to combat terrorism, and that Federal, State, and local governments should aggressively seek out and purchase innovative technologies and services from small business concerns to improve homeland defense and aid in the fight against terrorism; to the Committee on Small Business.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

352. The SPEAKER presented a memorial of the House of Representatives of the State of Illinois, relative to House Resolution No. 703 memorializing the United States Congress to sustain the President's affirmative decision on Yucca Mountain's suitability as a permanent federal repository for high-level radioactive materials; to the Committee on Energy and Commerce.

353. Also, a memorial of the House of Representatives of the State of Illinois, relative to House Resolution No. 841 memorializing the United States Congress to enact legislation requiring providers of cellular telephone service to make priority access to cellular telephone service available to emergency service providers in order to assure its availability during public emergencies; to the Committee on Energy and Commerce.

354. Also, a memorial of the House of Representatives of the State of Illinois, relative to House Resolution No. 659 memorializing the United States Congress to support the admission of the Baltic States of Estonia, Latvia, and Lithuania to the North Atlantic Treaty Organization; to the Committee on International Relations.

355. Also, a memorial of the House of Representatives of the State of Illinois, relative to House Resolution No. 866 memorializing the United States Congress to express appreciation to the President of the United States, George W. Bush, for his condemnation of the vicious terrorist acts committed against the nation of Israel; to the Committee on International Relations.

356. Also, a memorial of the Legislature of the State of Colorado, relative to Senate Joint Resolution No. 02-001 memorializing the United States Congress to demand that the USS Pueblo be returned to the United States Navy; to the Committee on International Relations.

357. Also, a memorial of the House of Representatives of the State of Illinois, relative to House Resolution No. 965 memorializing the United States Congress to enact legislation granting posthumous citizenship to noncitizen servicemen killed in action while serving our nation in the armed forces of the United States; to the Committee on the Judiciary.

358. Also, a memorial of the Senate of the State of Oklahoma, relative to Senate Resolution No. 59 petitioning the President and the United States Congress to adopt a National Intercity Passenger Rail Policy that would include dedicated funding for the High-Speed Rail Corridor System; to the Committee on Transportation and Infrastructure.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII, Mr. WYNN introduced a bill (H.R. 5315) for the relief of Web's Construction Company, Incorporated; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 68: Mrs. MORELLA, Mr. PASTOR, Mr. SHOWS, Mrs. MALONEY of New York, Mr. HOSTETTLER, Mrs. JO ANN DAVIS of Virginia, Mr. WELLER, and Mr. PITTS.

H.R. 239: Mr. HOEFFEL.

H.R. 285: Mr. DAVIS of Illinois.

H.R. 294: Mr. CHABOT.

H.R. 348: Mr. RANGEL, Mrs. MORELLA, Mr. CROWLEY, Mr. REYES, Mr. FRANK, Mr. MENENDEZ, Ms. SÁNCHEZ, and Mr. MCDERMOTT.

H.R. 360: Mr. MENENDEZ and Mrs. THURMAN.

H.R. 488: Ms. WATERS.

H.R. 536: Mr. NEAL of Massachusetts.

H.R. 599: Ms. MCCOLLUM.

H.R. 600: Mr. LARSON of Connecticut.

H.R. 638: Mr. GEPHARDT.

H.R. 690: Ms. KILPATRICK.

H.R. 831: Mr. STRICKLAND.

H.R. 848: Mr. FARR of California.

H.R. 854: Mr. SHAW, Mr. BOYD, and Mr. WEXLER.

H.R. 902: Mr. HOEFFEL and Ms. KAPTUR.

H.R. 951: Mr. NUSSLE, Mr. BILIRAKIS, Mr. FOSSELLA, and Mr. REHBERG.

H.R. 978: Mr. PETERSON of Minnesota.

H.R. 1089: Mr. BECERRA.

H.R. 1109: Mr. OSBORNE.

H.R. 1143: Mr. DEUTSCH.

H.R. 1155: Ms. HARMAN.

H.R. 1182: Mr. BARTLETT of Maryland.

H.R. 1198: Mr. ADERHOLT.

H.R. 1201: Mr. PAYNE.

H.R. 1485: Mr. NEAL of Massachusetts.

H.R. 1490: Mr. SPRATT.

H.R. 1517: Mrs. DAVIS of California.

H.R. 1581: Mr. GOODLATTE.

H.R. 1624: Ms. ROYBAL-ALLARD.

H.R. 1672: Ms. KILPATRICK, Mr. WATT of North Carolina, Mr. NADLER, Mr. PALLONE, Mr. CLYBURN, and Mr. BISHOP.

H.R. 1723: Mr. CLAY.

H.R. 1808: Mr. HONDA and Mr. PETERSON of Minnesota.

H.R. 1841: Mr. LUTHER, Ms. SOLIS, Mr. HONDA, Mr. SHIMKUS, Mr. SABO, and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 2041: Mr. PAUL.

H.R. 2063: Mr. SABO and Mr. BARRETT.

H.R. 2098: Mr. SCHROCK.

H.R. 2125: Mr. KANJORSKI and Mr. PICKERING.

H.R. 2142: Mr. BONIOR and Ms. VELÁZQUEZ.

H.R. 2145: Ms. KILPATRICK and Mr. CLYBURN.

H.R. 2160: Mr. BEREUTER.

H.R. 2198: Ms. SÁNCHEZ.

H.R. 2219: Mr. FRANK.

H.R. 2284: Mr. WOLF and Mr. CAPUANO.

H.R. 2350: Mr. NORWOOD, Mr. DOYLE, Mr. DAVIS of Illinois, and Mr. OSBORNE.

H.R. 2357: Mr. PHELPS and Mr. BARTON of Texas.

H.R. 2380: Mrs. MINK of Hawaii.

H.R. 2527: Mr. GREEN of Wisconsin, Mr. HOUGHTON, and Ms. SCHAKOWSKY.

H.R. 2573: Mr. BOEHLERT, Mr. LANTOS, and Mr. JACKSON of Illinois.

H.R. 2649: Mr. BUYER, Mr. HAYES, Mr. DUNCAN, Mr. PETERSON of Minnesota, and Mr. BASS.

H.R. 2674: Mr. BLUMENAUER.

H.R. 2735: Mr. LUCAS of Oklahoma.

H.R. 2740: Mr. SCHROCK.

H.R. 2874: Ms. DEGETTE.

H.R. 2966: Mr. HONDA and Mr. KENNEDY of Rhode Island.

H.R. 3132: Ms. JACKSON-LEE of Texas, Mrs. CAPPS, Mr. GEORGE MILLER of California, and Mr. REYES.

H.R. 3234: Mr. SNYDER and Mr. HINCHEY.

H.R. 3236: Ms. MCCARTHY of Missouri, Mr. ABERCROMBIE, and Mr. SANDERS.

H.R. 3273: Mr. GREEN of Wisconsin.

H.R. 3320: Mr. GOODLATTE.

H.R. 3324: Mr. WOLF, Mr. DOYLE, and Mr. KINGSTON.

H.R. 3351: Mrs. BONO and Mr. ISTOOK.

H.R. 3368: Mr. SANDERS and Ms. SOLIS.

H.R. 3431: Mr. BOOZMAN, Mr. NETHERCUTT, Mr. LINDER, Mr. CAMP, Mr. WATT of North Carolina, Ms. MILLENDER-MCDONALD, Ms. LOFGREN, Mr. ETHERIDGE, and Mr. BISHOP.

H.R. 3450: Mr. SHAW.

H.R. 3464: Mr. LANGEVIN.

H.R. 3533: Mr. GOODLATTE.

H.R. 3612: Ms. MCCOLLUM, Mr. GEPHARDT, Mr. SANDERS, and Mr. FROST.

H.R. 3630: Mr. FOLEY, Mr. WEXLER, Mr. DAN MILLER of Florida, Mr. DAVIS of Florida, Mr. GOSS, and Mr. CRENSHAW.

H.R. 3659: Mr. PALLONE, Mr. TOWNS, and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 3673: Mr. CHAMBLISS.

H.R. 3781: Mr. RANGEL and Mr. LINDER.

H.R. 3794: Ms. SOLIS.

H.R. 3804: Mr. RANGEL, Ms. SCHAKOWSKY, and Ms. ROYBAL-ALLARD.

H.R. 3807: Mr. CUMMINGS.

H.R. 3831: Mr. LEWIS of Kentucky.

H.R. 3834: Mr. GOODLATTE.

H.R. 3836: Mr. LANTOS.

H.R. 3884: Mr. WU.

H.R. 3897: Mr. LATHAM.

H.R. 3956: Ms. MCKINNEY.

H.R. 3974: Mr. WATT of North Carolina, Mr. KILDEE, Mr. HAYES, and Mr. NADLER.

H.R. 3992: Ms. BROWN of Florida, Mr. NEAL of Massachusetts, and Mr. DIAZ-BALART.

H.R. 4011: Mr. SMITH of Washington.

H.R. 4017: Mr. JEFF MILLER of Florida.

H.R. 4018: Mr. LAMPSON.

H.R. 4043: Mr. KENNEDY of Minnesota.

H.R. 4061: Mr. KILDEE and Mr. CLEMENT.

H.R. 4066: Mr. FERGUSON.

H.R. 4075: Mr. CARDIN and Mr. BACA.

H.R. 4086: Mr. STUPAK.

H.R. 4089: Ms. MCKINNEY.

H.R. 4091: Ms. MCKINNEY.

H.R. 4102: Ms. BERKLEY.

H.R. 4113: Mr. ALLEN, Mr. BLUMENAUER, Mr. ROTHMAN, Ms. WATERS, and Mr. PAYNE.

H.R. 4205: Mr. BALDACCI.

H.R. 4555: Mr. KERNS, Mr. BEREUTER, Mr. SCHAFFER, Mr. KINGSTON, and Mr. BACHUS.

H.R. 4561: Mr. BLUMENAUER, Mr. CANNON, and Ms. BERKLEY.

H.R. 4582: Ms. MCCOLLUM.

H.R. 4600: Mr. COLLINS, Mr. KNOLLENBERG, and Mr. LEACH.

H.R. 4606: Mr. WAXMAN and Ms. SCHAKOWSKY.

H.R. 4607: Mr. PASCRELL and Mr. MCDERMOTT.

H.R. 4621: Mr. TIERNEY.

H.R. 4641: Ms. MCCARTHY of Missouri and Mr. LARSON of Connecticut.

H.R. 4646: Mr. LUCAS of Kentucky and Mr. MEEHAN.

H.R. 4653: Ms. KAPTUR.

H.R. 4672: Mr. PASCRELL.

H.R. 4676: Mr. FILNER, Mr. FRANK, and Mr. KILDEE.

H.R. 4683: Mr. HONDA.

H.R. 4691: Mr. VITTER, Mr. PENCE, Mr. HAYES, Mr. FLAKE, Mr. JONES of North Carolina, and Mr. LINDER.

H.R. 4696: Mr. COMBEST, Mr. MCKEON, Mr. POMBO, Mr. LUCAS of Oklahoma, Mr. THORNBERRY, Mr. KINGSTON, Mr. CALVERT, Mr. DOOLITTLE, Ms. GRANGER, Mr. SAM JOHNSON of Texas, and Mr. NETHERCUTT.

H.R. 4701: Mr. UDALL of Colorado, Mr. BOSWELL, Mr. HILLEARY, Mr. SABO, Mr. TANNER, Mr. PAYNE, Mr. GRUCCI, Mr. WALSH, Mr. TOM DAVIS of Virginia, Mrs. KELLY, Mr. PETERSON of Pennsylvania, Mr. UPTON, Mr. ROEMER, Mr. RANGEL, Mr. CLAY, Mr. WOLF, and Mr. HOUGHTON.

H.R. 4704: Mr. PRICE of North Carolina.

H.R. 4706: Ms. CARSON of Indiana.

H.R. 4729: Mr. RANGEL and Mr. CLEMENT.

H.R. 4738: Mr. GOODLATTE.

H.R. 4777: Mr. LEVIN.

H.R. 4780: Ms. NORTON, Mr. LANGEVIN, Mr. WAXMAN, Mr. SANDERS, Mr. ACKERMAN, and Mr. ETHERIDGE.

H.R. 4793: Mr. RANGEL, Mr. LARSON of Connecticut, and Mrs. MORELLA.

H.R. 4799: Ms. SCHAKOWSKY.

H.R. 4803: Mr. PLATTS, Mr. LYNCH, Mr. WEXLER, and Mr. SANDERS.

H.R. 4804: Mr. OTTER, Mr. TIAHRT, Mr. GARY G. MILLER of California, Mr. PITTS, Mr. RILEY, and Mr. BALLENGER.

H.R. 4831: Mr. SCOTT, Mr. MCNULTY, and Mr. MCGOVERN.

H.R. 4834: Mrs. MINK of Hawaii.

H.R. 4843: Mr. SMITH of New Jersey and Ms. CARSON of Indiana.

H.R. 4887: Mr. WU.

H.R. 4937: Ms. EDDIE BERNICE JOHNSON of Texas and Mr. CROWLEY.

H.R. 4947: Mr. MORAN of Virginia and Mrs. TAUSCHER.

H.R. 4950: Mr. HOEKSTRA, Mr. EHLERS, Mr. SCHAFFER, Mrs. JO ANN DAVIS of Virginia, Mr. ARMEY, and Mr. BARTLETT of Maryland.

H.R. 4957: Ms. BERKLEY, Mr. COSTELLO, Mr. DOOLEY of California, Ms. ROYBAL-ALLARD, and Mr. STARK.

H.R. 4963: Mrs. MEEK of Florida and Mr. BACA.

H.R. 4964: Mr. MORAN of Virginia and Ms. CARSON of Indiana.

H.R. 5013: Mr. PETERSON of Pennsylvania, Mr. SULLIVAN, and Mr. DOOLITTLE.

H.R. 5023: Mr. UNDERWOOD, Mr. FARR of California, Mr. MCKINNEY, Mr. CROWLEY, Mr. ISRAEL, and Mr. KUCINICH.

H.R. 5035: Mr. WAMP, Mr. PRICE of North Carolina, and Mr. CLEMENT.

H.R. 5040: Mr. SHAYS and Mr. MCNULTY.

H.R. 5057: Mr. WOLF.

H.R. 5060: Mr. BONIOR, Mr. BACA, Mr. CLAY, Mr. EVERETT, and Mr. VISCLOSKY.

H.R. 5064: Mrs. JO ANN DAVIS of Virginia and Mr. SESSIONS.

H.R. 5068: Ms. LEE and Ms. MILLENDER-MCDONALD.

H.R. 5085: Mr. ARMEY, Mr. SWEENEY, Mr. ISRAEL, Mr. JOHNSON of Illinois, Mr. BERMAN and Mr. FROST.

H.R. 5098: Mr. PALLONE.

H.R. 5105: Mr. SANDERS.

H.R. 5116: Mr. BAIRD, Mr. DICKS, Ms. DUNN, Mr. INSLEE, Mr. LARSEN of Washington, Mr. MCDERMOTT, Mr. NETHERCUTT, Mr. SMITH of Washington, and Mr. WALDEN of Oregon.

H.R. 5124: Mr. LYNCH, Mr. SABO, Mr. FROST, Mr. BROWN of Ohio, Mr. TURNER, Mrs. JONES of Ohio, Mr. STARK, Mr. KILDEE, Mrs. CHRISTENSEN, and Mr. BAIRD.

H.R. 5130: Mr. GRUCCI, Mr. WEXLER, Mr. VISCLOSKY, and Ms. RIVERS.

H.R. 5146: Mr. FERGUSON.

H.R. 5147: Mr. ROYCE and Mr. FLETCHER.

H.R. 5157: Mr. SWEENEY and Mr. WATT of North Carolina.

H.R. 5158: Mr. RODRIGUEZ.

H.R. 5185: Mr. REHBERG.

H.R. 5187: Mr. BECERRA, Ms. SÁNCHEZ, Mr. HOLT, Ms. MCCOLLUM, and Mr. CROWLEY.

H.R. 5191: Mr. FILNER.

H.R. 5193: Mr. UPTON.

H.R. 5196: Mr. FORBES, Mr. KERNS, and Mr. OTTER.

H.R. 5202: Mr. KLECZKA.

H.R. 5207: Mr. GUTKNECHT, Mr. KENNEDY of Minnesota, Ms. MCCOLLUM, Mr. SABÓ, Mr. LUTHER, Mr. PETERSON of Pennsylvania, and Mr. OBERSTAR.

H.R. 5214: Mr. THUNE, Mr. POMBO, Mr. HANSEN, and Mr. NETHERCUTT.

H.R. 5227: Mr. REHBERG, Mr. MCINNIS, and Mr. BEREUTER.

H.R. 5233: Mr. HOEFFEL.

H.J. Res. 86: Mr. TAYLOR of Mississippi.

H.J. Res. 91: Mr. SESSIONS.

H.J. Res. 105: Mr. GEPHARDT.

H. Con. Res. 20: Ms. ROS-LEHTINEN, Mr. PHELPS, Mr. WEXLER, and Mr. COSTELLO.

H. Con. Res. 46: Ms. WOOLSEY, Mr. LINDER, and Mr. GUTIERREZ.

H. Con. Res. 99: Mr. UNDERWOOD, Mr. FALEOMAVAEGA, and Ms. EDDIE BERNICE JOHNSON of Texas.

H. Con. Res. 297: Mr. UNDERWOOD, Ms. MCKINNEY, Mr. SCHIFF, Mr. CROWLEY, Mr. WEXLER, Mr. SOUDER, and Mr. HALL of Ohio.

H. Con. Res. 345: Ms. WATERS and Mr. SCHIFF.

H. Con. Res. 401: Mr. SHERMAN.

H. Con. Res. 403: Mr. MATSUI.

H. Con. Res. 406: Mr. CHABOT.

H. Con. Res. 432: Mr. ANDREWS, Mr. BURTON of Indiana, Mr. ROHRABACHER, Ms. WATSON, Mr. CRAMER, Mr. JEFFERSON, Mr. KIND, Mr. BISHOP, Mrs. TAUSCHER, Mr. JONES of North Carolina, Mr. GUTKNECHT, Mr. BOEHLERT, Mr. GREENWOOD, Mrs. MEEK of Florida, Mr. HASTINGS of Florida, Mr. FOLEY, and Mr. BLUMENAUER.

H. Con. Res. 437: Mr. CLEMENT.

H. Con. Res. 438: Mr. HILLIARD and Mr. WATT of North Carolina.

H. Con. Res. 445: Mr. ISTOOK, Mr. SOUDER, and Mrs. JO ANN DAVIS of Virginia.

H. Res. 117: Ms. SLAUGHTER.

H. Res. 226: Mr. BACA.

H. Res. 398: Mr. COLLINS, Mr. HAYWORTH, Mr. FRELINGHUYSEN, Mr. BONILLA, Mr. LEWIS of California, Mr. TAUZIN, Mr. SHIMKUS, Mr. MARKEY, Ms. HART, Mr. NORWOOD, Mr. SANDERS, Mr. FORD, Mr. SMITH of New Jersey, and Mr. UPTON.

H. Res. 429: Mrs. MORELLA, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BENTSEN, Mrs. MALONEY of New York, Mr. COMBEST, Mrs. BONO, Mr. TOM DAVIS of Virginia, and Mr. BOOZMAN.

H. Res. 467: Mr. ROHRABACHER and Ms. BERKLEY.

PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk's desk and referred as follows:

65. The SPEAKER presented a petition of the Legislature of Westchester County, New York, relative to Resolution No. 81-2002 petitioning the United States Congress to reject the President's proposal to amend the formula distribution for all CDBG entitlement agencies and to continue the important investment it leverages in local communities; to the Committee on Financial Services.

66. Also, a petition of the Village of Downers Grove, relative to Resolution No. 2002-53 petitioning the United States Congress to immediately pass H.R. 1097 establishing FDA authority over tobacco products; to the Committee on Energy and Commerce.

67. Also, a petition of the Board of Regents, Baylor University, relative to a Resolution petitioning the United States Congress that the Board herby expresses our deepest and most heartfelt sympathy to all families affected by this national tragedy and extend our prayers that faith in God will sustain each individual touched by this immeasurable loss; to the Committee on International Relations.

68. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 337 petitioning the United States Congress to call for the widespread condemnation of terrorism; to the Committee on International Relations.

69. Also, a petition of the Committee of the Township of Hopewell, Mercer County, relative to Resolution No. 02-198 petitioning the President and the United States Congress to direct the Federal Aviation Administration to include the reduction of aircraft noise as a major goal in the redesign of aircraft traffic patterns over New Jersey; to the Committee on Transportation and Infrastructure.

70. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 336 petitioning the United States Congress to enact the Next Step in Reforming Welfare Act; to the Committee on Ways and Means.

71. Also, a petition of the Town Board of Ulster, relative to a Resolution petitioning the United States Congress to support and adopt HR 3724 IH to provide a valuable incentive to volunteer firefighters and volunteer ambulance corps members; to the Committee on Ways and Means.

72. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 342 petitioning the United States Congress to enact the Child Development and Family Employment Act of 2002; jointly to the Committees on Ways and Means and Education and the Workforce.

73. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 341 petitioning the United States Congress to enact the Leave No Child Behind Act of 2001; jointly to the Committees on Ways and Means, Energy and Commerce, Education and the Workforce, House Administration, the Judiciary, and Financial Services.

DISCHARGE PETITIONS

Under clause 2 of rule XV, the following discharge petition was filed:

Petition 9. July 23, 2002, by Ms. CARSON on House Resolution 479, was signed by the following Members: Julia Carson, Hilda L. Solis, Ciro D. Rodriguez, Rush D. Holt, Martin Frost, Barbara Lee, Dennis J. Kucinich, Jane Harman, Jim McDermott, Martin T. Meehan, Sanford D. Bishop, Jr., Grace F. Napolitano, Mark Udall, Robert E. Andrews, Gary L. Ackerman, Tom Sawyer, Carolyn B. Maloney, Steven R. Rothman, Shelley Berkley, Ruben Hinojosa, Dale E. Kildee, Brian Baird, James R. Langevin, Gregory W. Meeks, Bob Clement, Lois Capps, Michael M. Honda, John B. Larson, Joe Baca, Diane E. Watson, John J. LaFalce, James P. McGovern, John W. Olver, Lucille Roybal-Allard, Steny H. Hoyer, Michael R. McNulty, Xavier Becerra, David R. Obey, Nancy Pelosi, Bill Pascrell, Jr., Jerrold Nadler, Albert Russell Wynn, Frank Pallone, Jr., James P. Moran, Wm. Lacy Clay, Eddie Bernice Johnson, Robert Menendez, Nick J. Rahall II, Jerry F. Costello, Bob Etheridge, Robert A. Brady, Betty McCollum, Carolyn McCarthy, Louise McIntosh Slaughter, John Elias Baldacci, Ronnie Shows, Danny K. Davis, Lynn N. Rivers, Lynn C. Woolsey, Tom Lantos, Rosa L. DeLauro, Frank Mascara, Maurice D. Hinchey, Stephen F. Lynch, Nick Lampson, Tammy Baldwin, Juanita Millender-McDonald, Major R. Owens, Susan A. Davis, Zoe Lofgren, Janice D. Schakowsky, Thomas H. Allen, Eva M. Clayton, John F. Tierney, Ted Strickland, James H. Maloney, Vic Snyder, Bernard Sanders, Lane Evans, Sheila Jackson-Lee, Silvestre Reyes, Chet Edwards, Mike Thompson, Jim Davis, Benjamin L. Cardin, Leonard L. Boswell, Dennis Moore, Gary A. Condit, Solomon P. Ortiz, Robert R. Matsui, David E. Price, Rick Larsen, John Conyers, Jr., Earl Pomeroy, Patsy T. Mink, Adam B. Schiff, Donald M. Payne, Charles A. Gonzalez, Henry A. Waxman, Stephanie Tubbs Jones, Elijah E. Cummings, Joseph M. Hoeffel, Sander M. Levin, Steve Israel, Nita M. Lowey, Sherrod Brown, Carrie P. Meek, Brad Carson, Darlene Hooley, John Lewis, Charles B. Rangel, Corrin Brown, Bart Gordon, Barney Frank, Marcy Kaptur, Tom Udall, Baron P. Hill, James E. Clyburn, Maxine Waters, Michael F. Doyle, Edward J. Markey, Karen McCarthy, Luis V. Gutierrez, Nydia M. Velázquez, Thomas M. Barrett, Karen L. Thurman, Bennie G. Thompson, Anthony D. Weiner, Carolyn C. Kilpatrick, Michael E. Capuano, Peter A. DeFazio, Lloyd Doggett, Diana DeGette, Sam Farr, Patrick J. Kennedy, Ed Pastor, Max Sandlin, Marion Berry, Gene Green, Ellen O. Tauscher, Tony P. Hall, William J. Jefferson, Robert A. Borski, Bob Filner, Harold E. Ford, Jr., William O. Lipinski, Fortney Pete Stark, Jay Inslee, Bill Luther, Chaka Fattah, Robert Wexler, Edolphus Towns, David D. Phelps, John D. Dingell, Neil Abercrombie, Howard L. Berman, William D. Delahunt, Joseph Crowley, Alcee L. Hastings, William J. Coyne, and David E. Bonior.

Petition 10. July 23, 2002, by Mr. PHELPS on House Resolution 480, was signed by the following Members: David D. Phelps, Michael R. McNulty, Xavier Becerra, Nancy Pelosi, Bill Pascrell, Jr., James P. McGovern, Jerrold Nadler, Albert Russell Wynn, Frank Pallone, Jr., James P. Moran, Julia Carson, Jim McDermott, Wm. Lacy Clay, John W. Olver, Eddie Bernice Johnson, Robert Menendez, Nick J. Rahall II, Jerry F. Costello, Bob Etheridge, Robert A. Brady, Betty McCollum, Carolyn McCarthy, Dale E. Kildee, Louise McIntosh Slaughter, John Elias Baldacci, Ronnie Shows, Danny K. Davis, Sanford D. Bishop, Lynn N. Rivers, Lynn C. Woolsey, Ciro D. Rodriguez, James R. Langevin, Michael R. Honda, Tom Lantos, Rosa L. DeLauro, Frank Mascara, Maurice D. Hinchey, Lois Capps, Stephen F. Lynch, Nick Lampson, Tammy Baldwin, Juanita Millender-McDonald, Major R. Owens, Susan A. Davis, Gregory W. Meeks, Zoe Lofgren, Janice D. Schakowsky, Joe Baca, Tom Allen, Eva M. Clayton, John F. Tierney, Ted Strickland, Lucille Roybal-Allard, James H. Maloney, Bob Clement, Diane E. Watson, Vic Snyder, Bernard Sanders, Lane Evans, Sheila Jackson-Lee, Silvestre Reyes, Chet Edwards, Brian Baird, Tom Sawyer, Ruben Hinojosa, Robert E. Andrews, Hilda L. Solis, Mike Thompson, Jim Davis, Benjamin L. Cardin, Leonard L. Boswell, Dennis Moore, Gary A. Condit, Solomon P. Ortiz, Robert T. Matsui, David E. Price, Rick Larsen, Grace F. Napolitano, John Conyers, Jr,, Earl Pomeroy, Carolyn B. Maloney, Patsy T. Mink, Adam B. Schiff, Donald M. Payne, John B. Larson, Charles A. Gonzalez, Rush D. Holt, Henry A. Waxman, Steven R. Rothman, Stephanie Tubbs Jones, Elijah E. Cummings, Joseph M. Hoeffel, Sander M. Levin, Steve Israel, Nita M. Lowey, Sherrod Brown, Carrie P. Meek, Brad Carson, Darlene Hooley, John Lewis, Charles B. Rangel, Corrine Brown, Barney Frank, Bart Gordon, Marcy Kaptur, Tom Udall, Shelley Berkley, James E. Clyburn, Mark Udall, Maxine Waters, Michael F. Doyle, Edward J. Markey, Karen McCarthy, Luis V. Gutierrez, Nydia M. Velázquez, Thomas M. Barrett, Karen L. Thurman, Bennie G. Thompson, Martin T. Meehan, Anthony D. Weiner, Carolyn C. Kilpatrick, Michael E. Capuano, Peter A. DeFazio, Lloyd Doggett, Diana DeGette, Sam Farr, Patrick J. Kennedy, Ed Pastor, Max Sandlin, Marion Berry, Gene Green, Ellen O. Tauscher, Tony P. Hall, William J. Jefferson, Robert A. Borski, Bob Filner, Harold E. Ford, Jr., William O. Lipinski, Fortney Pete Stark, Jay Inslee, Bill Luther, Chaka Fattah, Robert Wexler, Edolphus Towns, Barbara Lee, John D. Dingell, Neil Abercrombie, Howard L. Berman, William D. Delahunt, Joseph Crowley, Alcee L. Hastings, William J. Coyne, and David E. Bonior.

DISCHARGE PETITIONS—ADDITIONS OR DELETIONS

The following Members added their names to the following discharge petitions:

Petition 8, by Mr. MALONEY on House Resolution 456: David E. Bonior.

The following Member's name was withdrawn from the following discharge petition:

Petition 7 by Mrs. THURMAN on House Resolution 425: Jay Inslee.

SENATE—*Monday, July 29, 2002*

The Senate met at 4 p.m. and was called to order by the Honorable MARK DAYTON, a Senator from the State of Minnesota.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, righteous, holy Judge of us all, every word we speak and action we take is heard and seen by You. Remind us that You bless those who humble themselves and put their trust in You completely. There is no limit to what You will do for a nation and its leaders if You are glorified as Sovereign.

May the knowledge of Your blessings to our Nation bring us to a deeper commitment to You. We want our motto: "In God we trust" to be more than a familiar phrase. You have told us,

Where there is no vision, the people perish.—Proverbs 29:18.

And we remember Thomas Jefferson's warning: "God who gave us life, gave us liberty. Can the liberties of a Nation be secure when we have removed a conviction that these liberties are gifts of God?" With these words ringing in our souls, grant the Senators and all of us who work with them the courage to reaffirm You as Lord to whom we are responsible for the moral, spiritual, and cultural life of America.

Thank You for the miraculous recovery of the nine miners at Quecreek, Pennsylvania. Thank You for being on time and in time for all our needs. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK DAYTON led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 29, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK DAYTON, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. DAYTON thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

SCHEDULE

Mr. REID. Mr. President, the Chair will announce, very shortly, that the Senate will be in a period of morning business that will extend until 5:30 p.m. today. The time will be divided between the two leaders or their designees.

At 5:30, we are going to have three votes: Julia Smith Gibbons to be United States Circuit Judge for the Sixth Circuit, Joy Flowers Conti to be United States District Judge for the Western District of Pennsylvania, and John E. Jones III to be United States District Judge for the Middle District of Pennsylvania.

Mr. President, we have a busy week before the August break. The House, as the Presiding Officer knows, is out of session. We hope to complete consideration of the prescription drug bill, DOD appropriations, which by order we must take up by Wednesday, the fast track conference report, and we have a lot of executive nominations. And, of course, we also hope to begin consideration of the homeland defense legislation. We have a lot to do with a little bit of time to do it.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 5:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time to be equally divided and controlled by the two leaders.

The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, we are in morning business, so I yield myself such time as I may consume.

The ACTING PRESIDENT pro tempore. The Senator, under the order, has up to 10 minutes.

PRESCRIPTION DRUG COVERAGE

Mr. GRASSLEY. Mr. President, for the third time in as many weeks, Senator GRAHAM and some of his Democrat colleagues have announced a mostly partisan Medicare prescription drug plan.

When it comes to prescription drug plans, it seems like Senator GRAHAM and his friends have tried everything.

They tried sunsets. They tried fixed copayments. They even tried limiting coverage for many brand name drugs seniors rely on. They tried spending $800 billion. They tried spending $600 billion. Each time they tried, they failed.

Today, to the tune of $400 billion, they're trying something else entirely.

Despite their earlier calls for a universal, comprehensive benefit, Senator GRAHAM and his Democrat colleagues are trying to cut out the bulk of seniors altogether by covering only those with low incomes and extremely high drug costs.

This proposal is the same as the first two from Senator GRAHAM, except that it eliminates the prescription drug benefit for the 75 percent of Medicare beneficiaries with average incomes who will have spending less than $4,000 in 2005.

This means that the average senior, who will spend $3,059 on prescription drugs in 2005, according to CBO, gets nothing, no coverage at all.

That's quite a coverage gap. Or, to use a phrase that's become commonplace around here, that's quite a "donut." In fact, that lack of coverage—from $0 to $4,000 for most beneficiaries—is the biggest "donut" of them all.

I find this last fact especially ironic since it was these very same Democrats who last week said they wanted a comprehensive, universal prescription drug benefit in Medicare without any coverage gaps.

Besides having the biggest gap of them all, today's plan from Senator

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● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

GRAHAM will still cost the taxpayers more than $400 billion, even though it provides no basic coverage at all for the average senior.

And the latest try from Senator GRAHAM still requires the government to decide which medicines to make available to the few seniors who qualify for coverage.

It is often said that the third try's a charm. I'm sorry to say that in this case, it isn't. It isn't even close.

Now, you might wonder whether there is another alternative that can get affordable coverage to all seniors, regardless of income.

I am happy to report that there is.

For $30 billion less than the latest plan from Senator GRAHAM, it is possible to have a far better drug benefit that helps all seniors based on the tripartisan approach.

The tripartisan proposal costs only $370 billion, including improvements to Medicare besides a meaningful drug benefit.

The tripartisan proposal lowers prices for all drug purchases due to negotiated discounts, and provides 50% coinsurance after a $250 deductible, up to $3,450 in drug spending.

It also provides catastrophic protection above $3,700 in spending—better protection than in the more expensive Democrat plan before us today. All this is possible while spending billions less.

The tripartisan proposal also strengthens and improves Medicare by adding a voluntary, enhanced fee-for-service option. The new option provides protection against serious illness costs—something missing from Medicare today.

The new option also provides better protection against hospitalization costs and free preventive benefits. And seniors who want to keep the same basic Medicare they have today can do so if they wish. Everyone has access to affordable prescription drug coverage.

The bottom line is, the tripartisan proposal, at an official cost of $370 billion, provides more generous prescription drug coverage for all seniors at a lower cost to taxpayers then the current Democrat plan, which leaves half of seniors with nothing at all at a cost of $400 billion.

I will close by saying again that none of these attempts would have been necessary, had the Finance Committee been given the right to work its bipartisan will on a prescription drug proposal of its own.

If the committee process had been followed, we could have built bipartisan consensus and presented the Senate with a compromise proposal that could get 60 votes.

Instead, Senator GRAHAM, along with some of the Democrat caucus, has come to the floor time and time again this month with partisan proposals that get worse by the minute and that stand no chance of attracting bipartisan support.

In that regard, today's proposal is not different from the others. It's another partisan poison pill.

This pill, however, is more dangerous than those before it. It leaves most of our seniors out in the cold, does nothing to contain increasing drug costs, and carries an all too expensive pricetag. I urge my colleagues to reject it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

UNITED NATIONS POPULATION FUND

Mr. BINGAMAN. Mr. President, on June 25, a little over a month ago, I spoke on the Senate floor about the issue of the United Nations Population Fund. At that time, I called on the President to release the funding for this organization. This is funding we had appropriated in the Congress last December.

I was extremely disappointed to learn that the Bush administration has now decided to eliminate the funding for the U.N. Population Fund. Once again, the administration has chosen to approach an issue unilaterally instead of to cooperate internationally with our allies. Once again, the administration has chosen domestic politics over the health and safety of women around the world.

The administration's decision is contrary to the finding of the administration's own expert panel. The administration did set up a panel and asked them to look into the issue to determine whether or not there was a problem that should prevent them from making this funding available.

That panel determined not only that the UNFPA, the United Nations Population Fund, does not condone or support in any way the violations of human rights or internationally agreed upon standards for family planning, it further found that the Fund is a force for progress, and that is a sentiment with which Secretary Powell himself publicly and wholeheartedly agreed when the panel came out with their announcement.

The United Nations Population Fund works in over 150 countries. They help to give women around the world access to reproductive health care and family planning services, as well as services to ensure safe pregnancy and delivery.

The U.N. Population Fund has been working in China and around the world to encourage nations to expand the availability of voluntary family planning information and services so that people everywhere have the right to decide freely and responsibly the number and the spacing of their children. The Fund is also a leader in the global effort to prevent the spread of HIV/AIDS.

From everything I have been able to read, it is clear that the U.N. Population Fund does not perform or support performing abortions in any way. Anyone who says that Fund does support that activity just has not looked into the issue as this expert panel has.

The U.N. Population Fund is a United Nations organization governed by the governments that make up the United Nations. Many of these governments fundamentally oppose abortion, and they would never let the United Nations Population Fund be involved in supplying abortions. The UNFPA is simply a tool of the member nations that is designed to implement their will, and that will is to help the most desperate women and their families in some of the poorest countries in the world who are suffering every day in very terrible ways.

The $34 million we are discussing that has been denied by the administration to be used as the Congress intended would directly contribute to effective modern contraception for over 1 million couples. This $34 million would prevent over 100,000 unwanted pregnancies. It would prevent a quarter of a million unwanted births. It would help women avoid over 200,000 abortions and prevent thousands of maternal and child deaths in the same effort.

Further, the Fund's policies of constructive engagement in China have been shown to result in much-needed progress and a reduction in some of the worst violations of human rights in that country.

The administration's decision is another affront to the world's women. It follows on the administration's decision to impose the global gag rule on family planning providers, and also it follows upon the administration's unwillingness to champion the international treaty on the rights of women.

I hope that the Senate, when we consider the foreign operations appropriations bill—and I assume we will either this week or shortly, when we return in September—will have broad support for the $50 million that hopefully will be included for the United Nations Population Fund in this upcoming fiscal year.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. BINGAMAN. I am glad to yield to my colleague.

Mr. REID. Senator BYRD has given a number of speeches in recent days on and off the floor about separation of powers; that we, the legislative branch, do something and the power is taken away by the executive branch of the Government. This is a perfect example; would the Senator agree?

Mr. BINGAMAN. Mr. President, I do agree this is a perfect example. This is a case where the Congress made a very clear decision to provide assistance to this United Nations Population Fund. It did give the administration discretion to look into the question of whether there were human rights problems, and the administration looked into it, and its own panel determined there were not. Yet in spite of that, the administration made a decision to withhold the funds. So I agree entirely with the statement of the Senator from Nevada that this is a case where the administration is acting contrary to the clear intent of the Congress.

Mr. REID. I so appreciate the statement of the Senator from New Mexico for a number of reasons, not the least of which is that it seems those who oppose abortion the most are those who fight against us for these moneys; is that not a fair statement?

Mr. BINGAMAN. Mr. President, again, let me respond by saying that is my clear impression as well. The estimates which I have given in my floor statement are that there will be in the range of 200,000 abortions performed as a result of our Government, our administration, withholding this money.

I think those who are opposed to abortion are finding an odd way to pursue that goal by trying to keep these funds from being expended.

Mr. REID. Mr. President, I ask my friend, it is also true, is it not, that the 200,000 abortions are for a year's period of time? Over the years when we have been prevented, as we have on other occasions by Republican administrations, from letting this money go forward, hundreds of thousands of abortions each year are performed that would not have to be performed but for our not having this money; is that right?

Mr. BINGAMAN. Mr. President, in response, I say that is right. Obviously, the work of an organization such as this United Nations Population Fund can only be effective if they can put in place programs they can then sustain over a period of years and actually do some educational efforts in these underdeveloped countries. That is what is so unfortunate about the decision of the administration to withhold funds this year. We will have a chance, once again, to appropriate additional funds for the new fiscal year, but this year has been lost, and unfortunately there are other years, previous years, where our opportunity to help solve these problems has been squandered.

Mr. REID. I also ask my friend: It is true, is it not, that these programs are voluntary in nature, educational in nature, people are learning how to prevent pregnancies? Is that one of the programs that is involved?

Mr. BINGAMAN. In response to my friend's question, that is clearly the main thrust of this funding. It is to provide much-needed information to desperately poor women in these countries so they can make voluntary decisions about what they want to do, how many children they want to have, and what their options are as they move ahead. These are all voluntary programs by definition.

Mr. REID. Would my friend also acknowledge that these programs involve in various places well-baby programs to teach women how to take care of babies, and also prenatal care, which is such an important part, to countries outside the United States where these monies could go? Is that true?

Mr. BINGAMAN. Again, let me respond by saying that is very true. The thrust of these efforts is to reduce the incidents of mothers dying while giving birth, reduce the incidents of child deaths, infant deaths. Clearly, that is the main thrust of what we are trying to accomplish with these funds.

Mr. REID. Finally, I ask my friend, so I understand the numbers, as a result of this political ideology, just for this year alone, there are going to be 500,000 unwanted pregnancies; there will be 250,000 unwanted births, for lack of a better way to describe it, and some 200,000 abortions; is that a fair summary of the numbers?

Mr. BINGAMAN. In response, those are the right numbers. I will go through them once more. The estimate we have is that this $34 million the Congress appropriated last December, it was intended to provide effective, modern contraception for over a million couples to prevent over 500,000 unwanted pregnancies, to prevent a quarter of a million unwanted births and to help women avoid over 200,000 abortions. So that is what we estimate that funding would be able to accomplish. Now, obviously, none of that will be accomplished during this fiscal year.

Mr. REID. I said I had one last question, and this will be the last question: One of the programs involved, by virtue of what they are doing, would also prevent the spread of HIV; is that true?

Mr. BINGAMAN. In response to my friend from Nevada, that is the major thrust of this effort. As good information is given to parents, to mothers, about these issues, good education and information can also be provided about how to prevent the spread of HIV/AIDS, which is an enormous problem, a terrible tragedy afflicting many of the undeveloped countries in the world.

Mr. REID. Which is costing American taxpayers money; is that also true?

Mr. BINGAMAN. That is exactly right. We are spending a very substantial amount in trying to deal with the problem of HIV/AIDS in the world. We are being called upon by many of the world's leaders to spend substantially more, and, frankly, I think the drumbeat for us to spend more and more to prevent the spread of HIV/AIDS will continue to grow.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. I appreciate very much the statement of the Senator from New Mexico. He is right on point with the critical issue facing the world, and it is a relatively small amount of money we are talking about with all the other monies being spent. This is one that will bring back dividends to our country. And even if it did not—which it will—it is the right thing to do.

As I have said, for political ideology, for the people who cry out against abortion, they are the ones who are opposing what we are trying to do to prevent abortions. This is hard for me to comprehend. It is wrong, and I hope people in the administration will weigh in.

I was very disappointed in Secretary of State Powell for making this announcement when in the past he had said what a great program this was we had going, and then, because of others, I guess, who have more power than he, he came out and gave this wishy-washy statement about this program money being cut. I do not think his heart was in it, and I am certain his head was not, but I guess there are certain things one has to do. I hope he will not be doing other things like this that appear on the surface so wrong and something he apparently disagrees with so vehemently.

Mr. President, I ask unanimous consent that during the call of the quorum, which I would suggest, the time be charged equally against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MEDICAL MALPRACTICE

Mr. THOMAS. Mr. President, I will visit for a few minutes about medical malpractice, which we will deal with tomorrow. Part of the bill originally had to do with pharmaceuticals. We have had a hard time focusing on pharmaceuticals. The amendment I will discuss expands health care access and has to do with the additional cost brought about by the difficulty arising with lawsuits and medical liability. We need some reform in this area.

In my State of Wyoming, the Wyoming Medical Society has been very concerned. Insurers have been pulling out of the markets or increasing premiums that are above affordable levels. It is a substantial problem. The crisis is now in Casper, WY. Of course, it is all over the country as well. We are beginning to lose some of the practitioners. That is difficult, particularly in an underserved area.

I rise today to support the McConnell amendment on medical malpractice tort reform. The Senate passed this exact language in 1995. There is little reason we should not pass it again. Physicians alone spent $6.3 billion in malpractice insurance premiums last year. This does not include what other providers such as hospitals have paid. This amendment is a good step in the right direction to reduce or limit the cost of health care to all persons.

The McConnell amendment does a number of things, all of which are very important and necessary. It limits punitive damages to two times the sum of compensatory damages. The amendment only allows punitive damages in cases where the award has been by clear and convincing evidence. It also places limits on attorney's fees, limiting lawyers to collecting a third of the first $150,000 of an award and 25 percent of the award for amounts above $150,000. It requires lawsuits be filed within 2 years of the claimant's discovery of the injury. It encourages States to develop alternative dispute resolution mechanisms to help resolve issues before the court.

It seems to me it is a step in the right direction in doing something about these costs. Some of the premiums that physicians are required to pay to practice are amazing. The result is many retreat from practice are particularly those in Medicare where relatively low fees are being paid.

Median malpractice awards increased by 43 percent in 2002 to $1 million; 52 percent of all jury awards are now over $1 million. These excessive awards only contribute to the overall costs of health care for all Americans. Since awards drive up malpractice premiums and physicians must pass that on to their consumers, health insurance premiums for everyone continue to go up.

Many Americans are not now able to afford health insurance. They are currently 40 million uninsured Americans.

Recent reports show that medical malpractice is responsible for 7 percent or $5 billion of the overall increases in health care costs. Last year, one of the largest physician insurers in the Nation stopped its medical malpractice business. As a direct result, some doctors and hospitals see their premiums rising 20 to 100 percent. Some specialists are paying over $100,000 a year in premiums. Obstetrics is a particular problem. Hospitals in two rural counties in West Virginia have stopped delivering babies; half of 93 obstetricians in Clark County no longer accept new patients. One Nevada obstetrician closed her 10-year practice after her malpractice premiums went from $37,000 to $150,000. All of this, of course, must come from the patients.

It is clear something needs to be done to address this growing crisis. According to the American Medical Association, 12 States are in crisis now; 30 are showing signs of being in crisis; 8 are currently OK.

I hope as we talk about this tomorrow, we can do some things that start us moving in the right direction. The cost of health care is certainly an important issue to all of us. We have to deal with it in pharmaceutical costs. We have sought to deal with it by getting physicians into underserved areas by various means. But one of the ways that is important and has changed is the matter of the cost of medical malpractice tort reform. I hope we can deal with it tomorrow.

I yield the floor.

The ACTING President pro tempore. The Senator from Pennsylvania.

THE MINERS AND SOMERSET COUNTY

Mr. SPECTER. Mr. President, I have sought recognition to speak about the gallant men, nine miners from Somerset County in my State of Pennsylvania, who went through a most extraordinary ordeal—77 hours trapped in a mine. The eyes and ears of the world were on Somerset County, people wondering if it was possible for men in an underground mine shaft, immersed in water reportedly 4 feet to 5 feet high, no food, no communication with the outside world—people wondered whether those men could survive. Almost in a miraculous way, finally, through the extraordinary efforts of Federal, State, and local rescuers, those nine men were rescued at 2:44 a.m. on Sunday, just yesterday. Their ordeal started on Wednesday, July 24, at 9 p.m., and ended on Sunday morning, July 28 at 2:44 a.m.

People are in amazement around the world, at their successful rescues. It is very unusual, very odd to say the least, that a small county in western Pennsylvania, more than 50 miles southeast of Pittsburgh, would be the focus of so much international attention.

Last September 11, as we all know, a flight crashed into Somerset, one of the four hijacked by terrorists on September 11, the flight widely believed to be headed to this building, the Capitol of the United States. No one can be sure—some have speculated it might have been headed to the White House—but the speculation was that the plane which crashed into the Pentagon was headed to the White House.

In any event, Somerset County was the site of an international tragedy less than a year ago. It is more than lightning, but to have lightning, so to speak, strike twice in such a small county in western Pennsylvania is unusual. But this time, instead of tragedy, instead of the loss of lives, these men were rescued.

In an era where there is so much bad news around the world, so much difficulty with terrorism around the world, the problems with the Palestinian terrorists against Israel, the grave difficulties between India and Pakistan over Kashmir, the differences and fighting between the North Koreans and South Koreans and all the problems of Africa—and that litany could be the subject of a lengthy conversation—to find a bright spot, find a success, find a rescue, is certainly more than a breath of fresh air for the entire world but especially, of course, for the miners who were involved: Mr. Randy Fogle, Mr. Harry Blaine Mayhugh, Mr. Thomas Foy, Mr. John Unger, Mr. John Phillippi, Mr. Ronald Hileman, Mr. Dennis Hall, Jr., Mr. Robert Pugh, and Mr. Mark Popernack.

Representing Pennsylvania, as I have for some 22 years now, I have obviously been intimately connected with the issue of the coal miners, with some 30 billion tons of bituminous in western Pennsylvania and 7 billion tons of anthracite in northeastern Pennsylvania and the mining industries being struggling industries, this industry has taken up a great deal of time—not only of mine, but of the entire Pennsylvania delegation, really beyond the Pennsylvania delegation.

I have had occasion to go underground. I must say it is an eerie, desolate feeling to take one of those elevators down about 20 stories and then hunch over, in the miner's gear with a little light on your cap, and lean backwards in a rail car which moves several miles underground because you can't sit up straight, there isn't sufficient room. I have marveled at the courage and the tenacity of the miners who go into those deep mines, day after day after day, risking life and limb.

There was a time not too long ago when a thousand miners a year were killed there. Fortunately, with mine safety, that situation has improved materially, but it is still a very risky line of work.

I got through today to Mr. Ron Hileman who lives in Gray, PA, and talked to him about his experiences. As you might imagine, he is a real hero. When I said to Mr. Hileman that he was a hero, he dissented, but that is the way heroes are. They do not acknowledge being heroes.

We talked about being in that enclosed area with 60 million gallons of water pouring in. A miner of 27 years with a wife and two children, of course, the joy in the Hileman family was overwhelming. Mr. Hileman expressed his own very deep gratitude.

I asked him what had happened. I asked him if the maps might have foretold the problem.

He said no because the maps did the best they could. But when other miners came in adjacent, as Mr. Hileman put it, some of the miners would snatch a little extra coal—go a little extra distance and go beyond the line which they had and into another area. Then, when the miners went down there last week, they ran into an old mine shaft. The old mine shaft had caused the enormous problem with the flooding.

I want to pay tribute to Pennsylvania's Governor, Mark Schweicker, an international figure, a hero in his own right—and for good cause—on the job, persevering, leading Federal, State, and local officials, meeting with the families. I talked to him over the weekend and he was there, on the job, and certainly deserves the commendation, not only of Pennsylvania but the commendation of the Nation, the commendation of the world.

This accident points up the need for greater concern for miners' safety as they are performing very important work, providing energy, providing coal, providing a resource in our effort to try to free ourselves from the dominance of OPEC oil. With progress in clean coal technology, as I have said on this floor on many occasions, the coal industry across America, Pennsylvania, West Virginia to Wyoming and beyond, could provide that alternative source of energy.

When I look over what we have done on the subcommittee for the Department of Labor appropriations going back to September of 1981, there were efforts to reduce the mine surface inspections from twice a year to once a year. Many of us resisted, and that was stopped.

We had a mining hearing August 1991 where there were operators who were tampering with coal mine dust devices. Then there have been efforts made to cut the Mine Safety and Health Administration repeatedly.

This body, the U.S. Senate, and Senator HARKIN, as ranking member in 1995 when I took over the chairmanship, and now Senator HARKIN as chairman, on a bipartisan approach has maintained the safety funding so that where there have been efforts to cut, we have resisted. We maintain the black lung clinics.

I believe that this is a good day for the United States and the U.S. Senate to pay tribute to the coal miners of America for what they are doing for the Nation by providing needed energy for domestic purposes and also for national security.

Especially thanks for the rescue of the nine mine workers; and we pay tribute to those men and their families and to the heroic rescuers led by Governor Schweiker that brought them to safety.

I thank the Chair. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. Seven minutes 43 seconds remaining.

Mr. ENZI. Thank you. I have a more extensive speech, but I will limit my remarks so that the Senator from North Dakota will have his full time.

FOREST MANAGEMENT

Mr. ENZI. Mr. President, I just returned from a normal weekend. On Fridays, my wife and I usually go to Wyoming, and we come back on Sunday night, which actually turns out to be Monday morning by the time we make the trip. This time I was able to concentrate a little bit of time in the area just outside Yellowstone Park, on the east side of Yellowstone Park between Cody and the park. I was there last year.

There was a fire inside Yellowstone Park. I wanted to see how the new fire plan was working. I got a very extensive and excellent tour. It was educational, but it pointed out some problems that need to be taken care of in the West.

Of course, those problems wouldn't be quite as extensive except for the drought we are having. This is the third year of the drought in Wyoming. One of our lakes in the northern part of the State that drains up into Montana is dropping almost 2 feet a week. It is down 125 feet from its normal level. Most lakes in the Nation would be dry if they were down 125 feet. This one still has some water, but it doesn't have boating anymore. That not only affects recreation in the area; it affects the communities in the area because they do not get the revenues they would normally get from tourism and visitors.

Ranchers are having to sell off their herds. They don't have any grazing because of the drought. This is the third year they have had to diminish their herds. Most of them are completely wiped out from that aspect.

We have another little problem. That is the way the Tax Code is arranged. The Tax Code says if you have to do an emergency sale and you have some revenue in the next 2 years you can apply that so you don't have to pay taxes. They have been wiped out with the herds, and they are going to have to pay taxes because there is no revenue to take it against.

There are many peripheral issues that happen with the drought.

We need to concentrate in this body on fire prevention in our forests. This is what some of the forests look like right now—just tremendous blazes. You can see the way the tinder lays up in layers. It forms a chimney, and it goes to the top of really big trees. When it gets to the top of the trees, the fire itself creates a wind. The wind will sway the trees, and the trees throw the crown a half mile away to start another fire. Once a fire starts, it can be very extensive.

We have a new plan that says put it out as soon as you can. That is helping tremendously. We used to let it burn. We tried to do some of what they call natural foresting. When natural foresting was actually natural foresting, there weren't people inhabiting those areas.

In this particular area near Yellowstone, there is a huge pine needle forest because of pine bores. They bore into the trees when they are young. They eat a circle around the tree, and it kills the tree. Then the tree looks rusty. The next year and the year after, all the needles are gone, and it is just a standing dead pine tree.

Of course, the best time for it to burn is when it is all rusty. When the needles are dried out and they burn, they form a chimney effect, going up to the top of the tree. That is how huge parts of the forests are between Yellowstone Park and Cody, WY, right now.

Those trees need to be taken out. If they are not taken out, a Boy Scout camp, 12 lodges, and 68 homes will go up in smoke.

Last year, when there was a fire in the park, they pointed out the pine needle forest and the need to get those trees taken out. I have been working on that since then. We haven't been able to get it done. There are a few very easy court actions that can prohibit that sort of thing from happening. But it is absolutely essential.

Those lodges have post-evacuation plans. As the fire starts, they have to call all their guests in and explain how they are going to be able to get out of this valley to keep from being trapped by the fires, fires such as these where you can see the animals are having a little bit of concern about how they could be trapped by the fire.

That cuts into the tourism. People don't go home and tell about the great experience they had. They go home and tell about the extreme pressure they were under with fires. Consequently, they spread the advertising in a very negative way. We want it to be in a positive way.

There are things that can be done and that should be done. I will be taking some more time to explain what they are and steps that are being taken by the Forest Service at the moment. But more extensive steps need to be taken.

Senator DASCHLE has an amendment on a supplemental spending bill to take care of some of the problems bordering Wyoming in the Black Hills. It very explicitly allows them to go in and cut down those trees, which will reduce the amount of tinder. There are some ways that we can do that.

I introduced a bill, S. 2811, the Emergency Forest Rescue Act of 2002. That gives the Secretaries of Agriculture and Interior the ability to recognize emergency conditions that exist in the forests and allows the land managers to act to protect them from the extreme threat of fire, specifically those suffering from drought and high tree mortality. Those two circumstances have to be present. It also requires the approval of the Council on Environmental Quality.

I have some protections built in and some ability to move forward quickly so we don't burn up huge valleys and extend the fire into Yellowstone Park, which is one of our great natural treasures. In fact, all of our forests should be national treasures. Present conditions do not make them as usable as they could be or as pretty as they could be.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The Senator has 20 minutes under the order.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I believe the Senator from Alaska would like to use the last 5 minutes. I ask unanimous consent that he be recognized for the final 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE TRADE AGREEMENT

Mr. DORGAN. Mr. President, in the coming days I assume there will be a lot of suspender-snapping, back-thumping, chortling, and crowing about the new fast track trade agreement that was announced in the weekend press.

There was a conference in the House and Senate. They came out with a new trade agreement. The moniker is trade promotion authority. It is a fancy way of saying fast-track trade authority for President Bush.

I didn't support fast track trade authority for President Clinton, and I don't support it for President Bush. This is not a victory for our country.

I assume, this week, because the conference report has passed the House, it will come to the Senate. We will have speeches by people wearing dark suits who talk about how wonderful this is for our country, what a wonderful thing it is that we now have fast-track trade authority. So some of our trade negotiators can go overseas somewhere, go into a room, close the door, lock it, keep the public out, and negotiate in secret a new trade agreement, and then come back to the Congress and say: Here it is. Take it or leave it. No amendments. Up or down. No changes.

The people who apparently believe in this do not believe in the first law of holes; that is, when you find yourself in a hole, stop digging. They believe, if you find yourself in a hole, keep digging, look for more shovels.

Let me talk for a moment about where we are with our trade deficits. This chart shows the record trade deficits we have seen over the past decade. When the year 2002 figures are posted, they will be way off the chart up here: about a $480 billion trade deficit in goods. That is money we owe to others, money we owe to people outside this country. They will have a future claim on America's income. This is very serious for our country. Yet we have people walking around here saying: We just need to do more of the same.

One of the more recent trade agreements we did was NAFTA. They promised us hundreds of thousands of new jobs, if we melded the economies of the United States and Mexico, for trade purposes. I have a chart that shows what has happened as a result of NAFTA: 700,000 jobs lost.

Incidentally, prior to NAFTA, we had a very small trade surplus with Mexico. After NAFTA, we turned that small surplus into a huge deficit. We had a modest trade deficit with Canada. It turned into a very large deficit. So we have this very large trade deficit now with Canada and Mexico, and people say: Gosh, that is wonderful; isn't it? No, it is not wonderful. It is moving in the wrong direction.

It is not that I don't believe in the global economy and the ability of nations and businesses to exchange goods and services back and forth. I studied economics, taught economics for a while, and understand the doctrine of comparative advantage: Doing that which you do best, and trading with others who do what they do best. All of that makes sense to me.

But I also think the rules have to be fair, and open markets have to be opened. The rules have to be transparent and fair. And they are not.

If I might just give some examples of these rules and the problems with the rules.

I use, often, the example of automobile trade with Korea. Korea is a good friend of the United States. South Korea has been an ally of ours for some long while. We have a trading relationship with Korea. But let me show you what has happened between the United States and Korea in one area of trade.

Last year, the Koreans shipped 618,000 cars into the United States—Hyundais, Daewoos—Korean cars. So 618,000 Korean cars came here from Korea, and we were able to ship Korea 2,800 cars; in other words, 217 to 1. Is it because our cars are bad cars? No, that is not it. It is because if you try to ship a Ford Mustang to Korea, they will throw up all kinds of trade barriers. They just do not want United States cars shipped to Korea. They want only for Korean cars to access the American marketplace.

Is that fair? No, it is not fair. Does anybody in this country have the backbone and nerve to stand up to another country and say to them: Look, we like you a lot. You are allies of ours. We are good friends. But I will tell you what. In international trade, we have a notion of fairness. Open your markets to us, and we will open our markets to you. But if you close your markets to the United States, ship your cars to Nigeria or perhaps Iran, and see how quickly they sell.

Let's talk about beef exports to Europe. Go to Europe. The Presiding Officer has been in Europe. Pick up a newspaper in Europe—I have been there this year—and you read about European trade restrictions on U.S. beef, allegedly because of hormones. The way they picture it, it is as if we are shipping them beef that came from cows with two heads. That is the way it is portrayed in the European press. They keep United States beef out of Europe.

So our country actually tried to do something about that. We said: Look, you either allow United States beef into Europe or we are going to take action against you. So, finally, a little bit of backbone from our trade representatives, right? Finally, we have some nerve. Finally, we have the good old American spirit and we are going to stand up for our producers. We couldn't get beef into Europe, so we took action.

Our trade representatives filed a case at the WTO against the Europeans for their restrictions on our beef. The WTO actually ruled on it, which itself is a surprise. The WTO said: Europe, you are wrong. You must allow United States beef into Europe. Europe said: It doesn't matter. We are not going to do it. So our trade negotiators said: We are going to take action against the Europeans. Do you know what we are going to do? We are going to retaliate by imposing tariffs on European truffles, goose livers, and Roquefort cheese.

Now, that will strike fear in any country, won't it? They will not allow our beef in Europe, but we are going to make it tough for them. We are going to take action against truffles, goose livers, and Roquefort cheese. Good for us.

When, on Earth, will we have the nerve to say to other countries, we demand—we insist—on fair trade?

Twelve years ago we reached an agreement with Japan on beef. All the trade negotiators celebrated as if they just won the 100-yard dash in the Olympics, as if they were all wearing gold medals because we reached a trade agreement with Japan on beef. But 12 years later, every single pound of American beef going into Japan still bears a 38.5-percent tariff.

Try to send T-bones to Tokyo, a 37.5-percent tariff—every pound of beef. We have a $60 to $70 billion trade deficit with Japan, yet we cannot get beef into Japan without a tariff near 40 percent. It doesn't make any sense to me.

This issue goes on and on. In my part of the country, we face an avalanche of unfairly subsidized Canadian grain coming in from a monopoly called the Canadian Wheat Board. We can't do a thing about it because the last trade agreement that came through here limited our remedies under section 301. We don't do a thing about it, so this grain floods into our country from Canada. It is unfair.

Our Canadian friends, they are good friends of ours, but they are not playing fair with respect to trade and grain. So U.S. wheat producers, family farmers, put together the information to file a complaint. They won the complaint. The U.S. Trade Representative judged that the Canadians, through the Canadian Wheat Board, are engaged in unfair trade.

What is the remedy? Well, apparently, according to our trade ambassador, the remedy is just to say that the Canadians ought to really watch it. No tariffs. No effective actions. No sanctions. Just: You had better watch it. That is not the way to deal with international trade.

When this so-called fast-track authority agreement was reached in conference, the committee of jurisdiction issued a memorandum describing what they did in conference and what a terrific deal it is.

Trade adjustment assistance: They tripled it. That provides assistance with health insurance for displaced workers. So if you lose your job because of these trade agreements, guess what? We are going to exchange for your job some health insurance for you. Boy, that is quite a deal, isn't it?

We are going to expand coverage to secondary workers who are affected by a firm moving overseas. These trade agreements make it easier to move a firm overseas, so if you lose your job, and if you are not a primary worker but a secondary worker, we are going to cover you for the first time. That is going to make you feel really good as you go home and tell your family: I have lost my job. But guess what. I am a secondary worker, and I think I am covered with some health insurance for a while. I think I am going to get a little health insurance here.

There is a pilot program for providing wage insurance for older workers, realizing the difficulty for older workers to change careers. Why would you to have change a career? Because your job just went to Sri Lanka or Bangladesh or Indonesia, where they are going to do for 20 cents an hour what you did for a living wage in this country.

There is a new benefit for farmers and ranchers who have been losing money hand over fist because of price collapses. If they lose money now because of these new trade agreements, there is a little help for them. Somebody takes their market away, we give them just a little bit of help in trade adjustment assistance. Lose your job? Lose your farm? Lose your ranch? Guess what. We will help you out a little.

The issue, according to these folks, is not about fair trade. The fight is about how can we provide assistance to Americans who are going to lose their jobs.

For me, the question is this: What are the elements of fair trade? What is price for admission to the American marketplace? We fought for a century about fair labor standards, about not having children go down in coal mines, and not having children work in factories, about requiring safe workplaces, about a minimum wage, about the right to organize. Then some companies decided: We can skip all of that. We can pole vault over all those things. We can hire someone in Indonesia and pay them 24 cents an hour to make shoes. We don't have to worry about all those things we had to worry about in the United States.

When we in the Senate were debating the current fast track bill in May, the Presiding Officer offered an amendment which I cosponsored, the Dayton-Craig amendment. It said: If in the next negotiation, there is any attempt to weaken the remedies for American producers, countervailing duties, any number of remedies to take action against unfair trade, if that is the case, there is going to be a separate vote in the Congress on that. The amendment passed in the Senate by a wide, bipartisan vote. Sixty one Senators voted for it. But when the bill got to conference, the provision got dropped, just got dropped. Instead, we got the right to do a sense-of-the-Senate vote. Well, thank you very much. You could do that before, and the new provision does nothing to defend our trade laws. It doesn't mean anything. If you just like to be here and put your suit and necktie on to vote for the heck of it, be our guest, come and do it, but this doesn't mean anything. They dropped an effective provision from the Senate version of the trade bill, one that would have helped producers in this country.

They also dropped my amendment that said on investor dispute resolutions in NAFTA, proceedings must be open, they must be transparent. The door must be open. The public must see it. Now it is done in secrecy.

They dropped my amendment. They dropped anything that was good. Then they put a sort of chocolate coating on things that were bad, sent it out here, and said: Hope that tastes good. Well, it doesn't taste good. This doesn't make any sense to us.

It is interesting, there is only one view of trade that you can embrace these days. We have the largest trade deficit in history; last month over $41 billion—last month alone. A lot of major papers won't run a piece on the trade deficit on their op-ed page because there is only one view on their op-ed pages: You are either for global trade or you are against it. If you are against it, you are some sort of xenophobic isolationist stooge who just doesn't get it. Everybody else sees over the horizon. Those who oppose fast track don't.

That is one of the most thoughtless approaches to a trade debate I can imagine. We will have a lengthier discussion on this, this week. I will have much more to say.

Let me say again, I believe expanded trade is helpful to this country provided expanded trade is fair trade. We have been victimized in so many ways by so many trade agreements—recently, NAFTA and the WTO. You name it, I will show you the trade agreement that has expanded our trade deficit, hurt our producers, moved our jobs overseas, and nobody seems to care very much. Do you hear one peep on the floor of the Senate about the largest trade deficit in history? Just one? I don't hear a thing. Yet it hurts this country. It is going to cause this country serious economic problems in the future.

I have so much more to say today, and so little time to say it. I want the Senator from Alaska to have the opportunity to speak for the last 5 minutes. So when this legislation comes to the floor of the Senate, I will speak at greater length later in the week. In the meantime, suffice it to say, some of us don't celebrate as much as others when they talk about the ingredients of this conference report on fast track. This is not advancing our country's interest. It is it not fair to producers and to workers.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. I thank Senator DORGAN for his courtesy.

COMMEMORATING THE 50TH ANNIVERSARY OF THE UNITED STATES EUROPEAN COMMAND HEADQUARTERS

Mr. STEVENS. Mr. President, I, along with General Joe Ralston, the Supreme Allied Commander Europe, commend the past success and continued contributions of those men and women of our Armed Services who comprise the United States European Command.

This Thursday, August 1, the U.S. European Command will celebrate its 50th anniversary. Over the last 50 years the European Command has played a critical part in the successful preservation of peace and stability in and around Europe, and they continue to do so today.

For more than 35 years during the cold war, the primary mission of the European Command Headquarters, established in Frankfurt, Germany in 1952, was to fulfill United States treaty obligations to NATO by providing combat ready forces to counter the Soviet threat and ensure peace in Europe, Africa and portions of the Middle East.

With the collapse of the Soviet empire, the responsibilities of the European Command changed dramatically. Since that time, it has engaged in a wide spectrum of security cooperation activities that have helped ensure stability and promote Democratic and market-oriented governments in countries emerging from Communism and other authoritarian regimes.

Simultaneously, it has conducted numerous operations to end regional wars, reduce ethnic conflict and limit the suffering caused by man-made and natural disasters.

Our European Command continues to make valuable contributions today. To conduct security cooperation activities and respond to regional threats to our national interests, The Command typically has approximately 117,000 service members, or about eight percent of the U.S. active duty military. This is a small investment by any measure for such a vast range of responsibilities across Europe, the Middle East and two-thirds of Africa.

As I speak, the European Command is involved in five on-going combat operations. Its forces are patrolling the skies over the northern no-fly zone to enforce United Nations Security Council Resolutions against Iraq as part of Operation Northern Watch.

In Bosnia and Kosovo, the European Command contributes with our NATO allies in Operations Joint Forge and Joint Guardian respectively, to ensure security, promote stability and allow those fragmented societies to rebuild their civil institutions and restore the rule of law.

In the former Yugoslav Republic of Macedonia, it is providing on-call support to the international community's monitors working there as part of Operation Amber Fox. And, U.S. European Command is making substantial contributions to Operation Enduring Freedom and to the global war on terrorism in general. Most recently, it deployed a small force to the Republic of Georgia to train and equip their forces to more effectively protect their own territorial integrity.

The invaluable contributions of our military men and women working at the Headquarters—today located in Stuttgart, Germany—have continued without interruption.

The legacy of their service, dedication and accomplishments is to be highly commended, and the importance of their continued contributions to future regional peace and to the preservation of our national interests cannot be overstated.

On the 50th anniversary of the establishment of the U.S. European Command, it is fitting that we honor the millions of dedicated American men and women who have served, and continue to serve our Nation overseas.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, has 5:30 p.m. arrived?

The PRESIDING OFFICER. It has.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JULIA SMITH GIBBONS TO BE UNITED STATES CIRCUIT JUDGE—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to vote on Executive Calendar No. 810, which the clerk will report.

The legislative clerk read the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

Mr. LEAHY. Mr. President, with today's vote, the Senate will confirm the 12th judge to our Federal courts of appeals and our 61st judicial nominee since the change in Senate majority last summer. In little more than 1 year, the Senate Judiciary Committee has already voted on 75 of this President's judicial nominees, including 15 nominees to the courts of appeals. This is more circuit and district court nominees than in any of the previous 6½ years of Republican control. In fact, we have given votes to more judicial nominees than in 1996 and 1997 combined, as well as in 1999 and 2000 combined.

Despite the partisan din about blockades and stalls and inaction as well as absurd claims that judicial nominees are being held "hostage"—the fact is that since the change in majority last summer the Senate, and in particular the Judiciary Committee, has been working at a much faster rate than in the 6½ years of Republican control. With respect to courts of appeals nominees, we confirmed the first of President Bush's nominees last July 20 and today we confirm the 12th. That is a confirmation rate of approximately one circuit court nominee confirmed per month. By contrast, in the 76 months in which Republicans were in charge, only 46 courts of appeals judges were confirmed, at a rate closer to one every two months. Thus, despite the additional obstacles and roadblocks that the partisan practices of the new administration have created and the partisan rhetoric of our critics, we are actually achieving almost twice as much as our Republican counterparts did. With a little cooperation from the administration and the nomination of more moderate, mainstream candidates, we would be even further along.

During the 76 months under the Republican control before the Judiciary Committee was allowed to reorganize, vacancies on the Federal courts rose from 63 to 110. Vacancies on the Courts of Appeals more than doubled from 16 to 33. That is the situation created by Republican inaction and that is the situation we inherited. Since the change in majority, confirmations have gone up and vacancies have been going down.

Courts of Appeals vacancies are being decreased rather than continuing to increase, despite the high level of attrition since the shift in Senate majority last summer.

Indeed, in the last year the Judiciary Committee held the first hearing on a Fifth Circuit nominee in 7 years, the first hearing on a Tenth Circuit nominee in 6 years, the first hearing on a Sixth Circuit nominee in almost 5 years, the first hearing on a Fourth Circuit nominee in 3 years, the first hearing on a Ninth Circuit nominee in 2 years. This week we held hearings on a third nominee to the Fifth Circuit in less than a year. This contrasts with the lack of any confirmation hearing on any of President Clinton's nominees to the Fifth Circuit in the last 5½ years of Republican control of the confirmation process, despite three qualified nominees to vacancies there.

The nominee being considered today is the first nominee to the Sixth Circuit to be given a vote by the Senate since 1997.

After that, the Republican majority locked the gates and despite a number of well-qualified nominees sent to the Senate by President Clinton between 1995 and 2001, none were allowed to receive a hearing or a vote for all of 1998, 1999, 2000 and the first 3 months of 2001. Most of the vacancies that exist on the Sixth Circuit arose during the Clinton administration and before the change in majority last summer.

Yet not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership and one of a number of examples of circuits in which the vacancies were preserved rather than filled by the former Republican majority in the Senate.

That is what created the problem that we are now trying to correct. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis, and Professor Kent Markus to those vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Courts of appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year.

Judge White's nomination may have set one or a number of unfortunate records for obstruction established during the years 1996–2001. Her nomination was pending without a hearing before this committee for over 4 years 51 months.

She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination.

This was at a time when the committee averaged hearings on only nine courts of appeals nominees a year and, in 2000, held only five hearings on courts of appeals nominees all year. In contrast, Judge Gibbons was the 11th courts of appeals nominees voted on by the committee during the first 10 months of a Democratic majority.

As of today, the Democratic-led Judiciary Committee has held hearings for 17 of President Bush's courts of appeals nominees in less than 13 months, and we will hold our 18th hearing for a courts of appeals nominee this week.

Kathleen McCree Lewis, a distinguished lawyer from a prestigious Michigan law firm, also did not receive a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001. She is the daughter of Wade McCree, a former Solicitor General of the United States and former Sixth Circuit judge.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000.

While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including: 14 past presidents of the Ohio State Bar Association; more than 80 Ohio law school deans and professors; prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON; the National District Attorneys Association; and virtually every major newspaper in the State.

Professor Markus summarized his experience as a Federal judicial nominee in testimony this May in a hearing before Senator SCHUMER. Here are some of things he said:

> On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . . At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.
>
> With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.
>
> Over and over again they told me two things: No. (1) There will be no more confirmations to the 6th Circuit during the Clinton Administration, and No. (2) This has nothing to do with you; don't take it personally it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . .
>
> The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Republicans were unwilling to move forward, even knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now eight vacancies on the Sixth Circuit and why it is half empty.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations, to no avail.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations.

The former chief judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee chairman years ago to ask that the nominees get hearings and that the vacancies be filled.

The chief judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration—the Sixth Circuit "is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court."

He predicted: "By the time the next President is inaugurated, there will be 6 vacancies on the Courts of appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them." Nonetheless, no Sixth Circuit hearings were held in the last 3 years of the Clinton administration, despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and were pending before the committee for anywhere from 1 year to over 4 years. We have not stopped there but have proceeded to hold a hearing on a second Sixth Circuit nominee, Professor John Rogers of Kentucky, and the Judiciary Committee has acted on that nomination, as well.

Large numbers of vacancies continue to exist on many courts of appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's courts of appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the courts of appeals during the entire 1996 session. As I have noted, from the time the Republicans took over majority control of the Senate in 1995 until the reorganization of the committee last July, circuit vacancies increased from 16 to 33, more than doubling.

Democrats have broken with the Republican majority's history of inaction. I certainly understand the frustration of Senator LEVIN and Senator STABENOW. I know first hand the efforts they have made to solve the problems in their circuit. I know that many of us have suggested ways to the White House to break through and resolve the impasse. As the chairman of the Judiciary Committee, despite my personal doubts and reservations about this nominee due to some of her decisions as a Federal district court judge, I will vote to confirm her, due to her overall record, her testimony before the committee and the strong support of Senator THOMPSON.

I respect the effort and views of Senator THOMPSON and want to send what help we can to the Sixth Circuit. Far from payback for Republican actions in the recent past, this action is being taken in spite of those wrongs and to begin solving the problems that they have created.

Mr. HATCH. Mr. President, I rise in support of the nominations of three excellent Federal court judges, Judge Julia Smith Gibbons, Joy Flowers Conti, and John E. Jones.

Judge Gibbons, nominated to the Sixth Circuit Court of Appeals last fall, is a jurist with a find legal mind, a strong work ethic, and a widely admired judicial temperament. I have reviewed few records of public service and personal accomplishment more outstanding than hers. It seems to me that it was for good reason that in 2000 she received a recognition called Heroine for Women in the Law Award.

But that is just one of her accomplishments. Judge Gibbons graduated magna cum laude and Phi Beta Kappa from Vanderbilt University and then with honors from the University of Virginia School of Law, where she was an editor for the Law Review. She went on to clerk for the late Honorable William E. Miller on the Sixth Circuit Court of Appeals, where we now hope she will soon return after a distinguished career which has included service as deputy counsel for Governor Lamar Alexander and Tennessee State court judge. Since 1983 she has served as U.S. District Court Judge for the Western District of Tennessee, sitting with the Sixth Circuit Court of Appeals several times. Notably she was the first female Federal judge in Tennessee and one of the youngest Federal judges in history.

Judge Gibbons exemplifies the qualities of the nominees the President has sent us—superbly accomplished, fully devoted to public service, and well prepared for the Federal bench. Judge Gibbons enjoys the support of Democrats and Republicans and everyone who knows her work. She is backed by her home State legislators. Senator THOMPSON says she is "an outstanding person and jurist . . . [who will] serve the court with dignity and distinction." Senator FRIST has described her a "trailblazer for women in the legal profession [who] exemplifies in both her professional and personal life the character that makes us a great Nation." Democratic Congressman HAROLD FORD, JR., has noted that Judge Gibbons has "earned a solid reputation of applying the law in a manner consistent with our nation's commitment to equal protection under the law."

Judge Gilbert S. Merritt, whose seat on the Sixth Circuit Judge Gibbons will occupy, calls her a "very able and distinguished Federal judge" and adds that he would be "very happy to be replaced by her on our court."

Members of the Memphis, TN, legal community have added their own high praise. For example, Pat Arnoult, president of the Memphis Bar Association, cites her "keen mind" and "good work ethic." Charles Burson, former chief of staff and legal counsel to former Vice President Gore and Tennessee attorney general, cites with first hand experience her intellect, knowledge, evenhandedness, and exceptional judicial temperament. Judge Gibbons has won the respect and bipartisan support of legislators, attorneys, Federal judges, and Tennessee citizens.

Judiciary Committee unanimously approved Judge Gibbon's nomination on May 2 after a hearing that raised no issues of concern. We have waited too long to act on her nomination on the Senate floor. With a 50 percent vacancy rate in the Sixth Circuit, we cannot afford to delay any longer.

The two Pennsylvania district court nominees currently on the floor also deserve our full support. Joy Flowers Conti, nominated to the Western District of Pennsylvania, possesses years of civil litigation experience and years of meaningful service and leadership in her community. After graduation from Duquesne University School of Law, where she graduated summa cum laude and finished first in her class, Ms. Conti clerked for Justice Louis Manderino of the Supreme Court of Pennsylvania.

For the following two years, Ms. Conti worked with the Pittsburgh firm of Kirkpatrick & Lockhart, where she focused on business bankruptcy, commercial finance, and other corporate law matters. She then joined the faculty of Duquesne School of Law as a professor, teaching classes on civil procedure, corporate finance, corporate readjustments and reorganizations, corporations and creditors' and debtors' rights.

In 1982, Ms. Conti returned to her former firm, Kirkpatrick & Lockhart, and was named a partner in 1983. She again concentrated her practice in business bankruptcy. She remained with the firm until 1996, when she joined her current firm, Buchanan Ingersoll, to handle business bankruptcy cases, health care matters, and nonprofit corporation issues.

While serving as cochair of the Pennsylvania Bar Association's Task Force for the Poor, she has helped with efforts to improve access to legal services for indigent residents. She also initiated a program proving employment for disadvantaged high school students in local legal offices, donating approximately 200 ours to the cause.

John E. Jones, our nominee to the U.S. District Court for the Eastern District of Pennsylvania, is similarly distinguished jurist. Mr. Jones earned his undergraduate and law degrees from Dickinson College. After graduation, he joined the Pottsville law firm of Dolbin & Cori as an associated and worked part time as a clerk for Judge Guy A. Bowe of the Schuylkill County Court of Common Pleas. After 2 years, Mr. Jones became a partner at Dolbin & Cori.

In 1984, Mr. Jones began an 11-year association as a part-time assistant public defender with the Schuylkill County Public Defender's Office. His caseload included defending capital murder and criminal homicide cases. Mr. Jones now works for his own firm, concentrating on bankruptcy, personal injury, family, real estate, and corporate law.

In 1995, Mr. Jones was appointed and confirmed to the office of chairman of the Pennsylvania Liquor Control Board. The Control Board is responsible for the sale and regulation of all alcohol products in Pennsylvania. The Control Board also runs the State's Alcohol Education Program. As chairman, Mr. Jones has utilized his skills and experience as a practicing attorney to change the State's liquor licensing procedures. As head of the State's Alcohol Education Program, he has been a tireless advocate against drunk driving and underage drinking. In November 2000, Mr. Jones received the Government Leadership Award from the National commission Against Drunk Driving in Washington, DC. In May 1999, he was renominated and confirmed for a second 4-year term as Control Board's Chairman.

I am confident that these three Federal court nominees-Julia Smith Gibbons, Joy F. Conti, and John E. Jones—will each make fine additions to the Federal judiciary. They deserve our swift confirmation

Mr. THOMPSON. Mr. President, I am very pleased to be here today as the Senate takes up for consideration the nomination of Judge Julia Smith Gibbons to be a U.S. Circuit Judge for the Sixth Circuit. I am grateful to my colleagues for their unanimous vote on Friday in support of cloture on this nomination to allow it to come to a vote today.

I support this nomination, and I am confident my colleagues will do so as well when they learn of Judge Gibbons's background and qualifications. Judge Gibbons will be a welcome addition to the Sixth Circuit. Before I address Judge Gibbons's qualifications, I want to let my colleagues know of the problems confronting the Sixth Circuit.

Today, 29 of the 179 U.S. Circuit Court judgeships remain unfilled. Eight of those 29 vacancies are in the Sixth Circuit. Let me put that into perspective: 28 percent of all of the vacant circuit judgeships in the country occur in just one of the 13 Circuits.

These 8 vacancies constitute one-half of the 16 judgeships allocated to the Sixth Circuit, which is twice the number of vacancies in any other circuit. Meanwhile, the court's caseload continues to rise.

Not surprisingly, the Sixth Circuit is also the slowest appellate court in the Federal system. According to the Chief Judge of the Sixth Circuit, the average time from filing to decision is 2 years, some 6 months slower than the next slowest circuit.

We must also recognize that the vacancy rate does not only affect the Sixth Circuit and litigants before that court. In order to fill its annual need for over 160 three-judge panels to hear cases, the Sixth Circuit must bring in visiting judges from other circuits or from district courts. Last fiscal year, visiting judge handled almost 20 percent of the Sixth Circuit's workload, and the Court relied on visiting judges twice as often as any other circuit.

While some of these visiting judges are senior judges, many are active circuit and district judges. These judges maintain a full docket themselves, in addition to pitching in to assist the Sixth Circuit. As district judges spend more time handling appellate cases, they must put off acting on their own dockets. The ripple effect caused by the vacancy rate on the Sixth Circuit is therefore much broader than we might suppose. According to a recent witness before the Judiciary Committee, the demands being made on district judges within the Sixth Circuit to fill seats on three-judge panels are so burdensome, that many district judges are now refusing what had been considered a prestigious assignment.

The vacancy rate on the Sixth Circuit is placing a significant burden on the entire Federal judiciary, which would be overburdened even if every vacancy were filled.

Some of the adverse impacts of the vacancy rate on the Sixth Circuit are not so readily discernible or can be quantified. For instance, visiting judges from outside the circuit or from the district courts may not be as familiar with Sixth Circuit law as the judges of the Sixth Circuit themselves. The court's reliance on such a large contingent of visiting judges increases the risk of intra-circuit conflict among different panels of the court, making en banc review by the full Sixth Circuit more frequent. And en banc review places greater burdens on the court by requiring that all active judges, rather than just a portion of them, give the case their attention.

I am not seeking to lay blame. I am just pointing out that we must overcome the differences that have led us to the quagmire in which we find ourselves. And I believe it is fair for me to do so. During President Clinton's administration, I did all I could to get the President's nominees to the district courts in Tennessee confirmed quickly. I also shepherded through the Senate the nomination of the last judge confirmed to the Sixth Circuit, Ronald Gilman.

I hope that the fact that the Senate is moving to take up the nomination of Judge Gibbons bodes well for our willingness to take up other nominations to the Sixth Circuit.

Let me turn now to the specific nomination before us. Despite her relative youth for such a position, Judge Julia Smith Gibbons been a judge for over 20 years. I am confident that the Senate will not consider any more highly qualified nominee this year.

Judge Gibbons was born and raised in Pulaski, TN, which is a small town in south-central Tennessee less than 20 miles from Lawrenceburg, where I grew up. She attended Vanderbilt University in Nashville, from which she received her B.A. magna cum laude in 1972 and where she was elected to membership in Phi Beta Kappa, the national honor society.

Judge Gibbons then left Tennessee to attend law school in our neighbor to the east at the University of Virginia Law School, where she was a member of the editorial board of the law review and was elected to the Order of the Coif, the national legal honor society.

Upon graduating from law school, she returned to Tennessee to clerk for Judge William Miller of the Sixth Circuit, the court to which Judge Gibbons has been nominated. In 1976, Judge Gibbons became an associate with a Memphis law firm.

After 3 years practicing law, Judge Gibbons joined the administration of Governor Lamar Alexander as the Governor's legal advisor in 1979. In 1981, Governor Alexander appointed Judge Gibbons to the Tennessee Circuit Court for the Fifteenth Judicial Circuit, which covers Memphis and Shelby County, and she was elected to a full term in 1982.

In 1983, Judge Gibbons was appointed United States District Judge for the Western District of Tennessee by President Reagan, the first woman to hold such a position in Tennessee. At the time, she was the youngest Federal judge in the Nation. From 1994 to 2000, she served as Chief Judge of the court.

She is very highly regarded by the bar as an exceptional trial judge. While she was being considered for this appointment and since her nomination, I have heard from many lawyers who have practiced before her extolling her virtues as a trial judge.

Her reputation is national and has been recognized by the Chief Justice, who has appointed her to the Judicial Panel on Multidistrict Litigation, the Judicial Resources Committee of the Judicial Conference, and the Judicial Officer Resources Working Group.

Despite her heavy judicial workload, Judge Gibbons has remained active in her church and community, serving as an elder of the Idlewild Presbyterian Church and as a former president of the Memphis Rotary Club.

In sum, I am confident that Judge Gibbons will be an outstanding member of the Sixth Circuit, as she has been an outstanding trial judge.

Before I yield, let me thank Chairman LEAHY and his staff, and Senator HATCH and his staff for their cooperation and assistance in moving this nomination forward. I hope our action today on Judge Gibbons bodes well for getting the remaining Sixth Circuit vacancies filled expeditiously.

I urge my colleagues to join me in voting to support the nomination of Judge Julia Smith Gibbons.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit? The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. NELSON), is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. DeWINE), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Kentucky (Mr. McCONNELL), are necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 194 Ex.]

YEAS—95

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
Mikulski
Miller
Murkowski
Murray
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—5

DeWine
Helms
Hutchinson
McConnell
Nelson (FL)

Mr. FRIST. Mr. President, I rise today to thank my colleagues for the confirmation of Julia Smith Gibbons to the U.S. Court of Appeals for the Sixth Circuit. I am also grateful to President Bush for his nomination of this outstanding judge whose distinguished life is an example of the American dream.

Raised in Pulaski, TN, Judge Gibbons has been a trailblazer for women in the legal profession, and exemplifies in both her professional and personal life the character that makes us a great nation—active in her church and community, a supportive and loving wife to her husband, Bill, for 29 years, and a proud mother of two wonderful children, Carey and Will. A product of small town America and the solid values that her family instilled in her, as valedictorian of her senior class at Giles County High School, Julia was obviously poised to accomplish great things.

With an outstanding record of achievement at Vanderbilt University and the University of Virginia Law School, Judge Gibbons headed home to Tennessee to begin her legal career. She served then-Governor Lamar Alexander as his legal advisor, and in 1981, she became the first female trial judge of a court of record in Tennessee. President Reagan recognized her talent and skill, and just 2 years later, in 1983, she was confirmed by the Senate as a U.S. District Judge in the Western District of Tennessee. At that time, Julia became the first female Federal judge in Tennessee, and was the youngest person on the Federal bench in the country, and the second youngest in the Nation's history ever appointed to a district court judgeship. Despite her tender years, her legal acumen and human touch soon made her one of the brightest stars in our Federal judicial system.

Judge Gibbons is known for being bright, industrious, thorough, evenhanded and someone who truly loves the law. She is everything anyone could want in a judge, and will continue to serve our country with distinction on the Sixth Circuit.

VOTE EXPLANATION

Mr. NELSON of Florida. Mr. President, I support the nomination of Julia Smith Gibbons and would have voted aye to confirm her nomination to the 6th Circuit Court of Appeals.

NOMINATION OF JOY FLOWERS CONTI, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes for debate equally divided prior to the vote on Executive Calendar No. 827, which the clerk will report.

The legislative clerk read the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, with today's votes on these judicial nominations to the Federal district courts in Pennsylvania, the Democratic-led Senate will have confirmed 63 judicial nominees since the change in Senate majority a little more than 1 year ago. I commend Majority Leader DASCHLE for having worked through the problems created by the White House's refusal to proceed in a bipartisan way with nominations to bipartisan boards and commissions and for having worked with Senator MCCAIN to get to this point.

I understand Senator MCCAIN's frustration with the White House and how it is treating nominations but thank him for allowing us to proceed with these judicial nominations at this time. In fact, this majority leader has worked hard to bring these nominations to the floor and his efforts have included having to proceed by way of cloture on three nominees in the last few weeks. He has gone the extra mile and that should be acknowledged.

Similarly, the Judiciary Committee continues to make efforts that were not made by the Republican leadership.

We have held hearings on a record number of nominees and reported a record number of nominees. Seventy-five judicial nominees have been voted on by the Judiciary Committee since the change in majority last summer. This week we will hold a hearing for the 82nd, 83rd, 84th and 85th judicial nominees, including our 18th circuit court nominee. We have proceeded with nominees to fill vacancies even though Republicans held up moderate nominees by President Clinton to those same vacancies. We have confirmed new judges for the Fourth, Fifth, and Sixth Circuit courts of appeals for the first time in three, six and five years, respectively. So much for the partisan critics who scream about a blockage of President Bush's nominees by Democrats in the Senate. The facts are that we have been fairer to President Bush's nominees than the Republicans were to President Clinton's.

Today is another example. The Senate has acted quickly on these nominations to the district courts in Pennsylvania. Joy Flowers Conti participated in a hearing in May, within weeks of her paperwork being complete. I know that Senator SPECTER strongly supports Ms. Conti's nomination, as well as Mr. JONES, and he specifically requested that she be accorded a hearing as soon as possible. Likewise John Jones received a hearing in May, shortly after his paperwork was completed.

With today's votes on two Pennsylvania nominees, the Judiciary Committee will have held hearings for 10 district court nominees from that State, including Judge Davis, Judge Baylson, and Judge Rufe, who were confirmed in April, and Judge Conner, who was just confirmed last Friday. Those confirmations illustrate the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

With today's confirmations, there is no State in the Union that has had more Federal judicial nominees confirmed by this Senate than Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania. Contrast this with the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate, particularly regarding nominees in the western half of the State.

Despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from every part of his home State, there were seven nominees by President Clinton to Pennsylvania vacancies that never got a hearing or a vote.

A good example of the contrast is the nomination of Judge Legrome Davis. He was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998.

The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after 2 more years.

Under Republican leadership, Judge Davis' nomination languished before the committee for 868 days without a hearing. Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania during the Republican control of the Senate.

The lack of Senate action on Judge Davis's initial nominations is in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it. In fact, I give Senator SPECTER full credit for getting President Bush to renominate Judge Davis earlier this year and commended him publicly for all he has done to support this nomination from the outset.

This year we moved expeditiously to consider Judge Davis, and he was confirmed in just 84 days.

The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

In contrast, the hearing we had earlier this year for Ms. Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994, in almost a decade, despite President Clinton's qualified nominees. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton administration.

One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench. Today's confirmation vote on Ms. Conti will be the first on a nominee to the Western District of Pennsylvania in almost 8 years, since Judge McLaughlin and Judge Cindrich were confirmed in October of 1994. Despite this history of poor treatment of President Clinton's nominees, we continue to move forward fairly and expeditiously.

Large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years and never received a vote on their nomination. It is Democrats who have broken with that history of inaction from the Republican era of control, delay, and obstruction.

With today's confirmations of Judge Conti and Judge Jones to the Federal district courts in Pennsylvania, the Senate will have confirmed 51 district court nominees and 63 judges overall since the change in majority last summer. Contrast this with the Republican average, during their past 6½ years on control, of 31 district court judges a year and 38 judges a year overall. I congratulate the nominees and their families on their confirmations today and commend Senator SPECTER and Majority Leader DASCHLE for all they have done to bring us to this day.

Mr. HATCH. Mr. President, I had no intention of bringing up the topic of judicial nominations today, but I feel I must respond to the comments made just now.

Curently there are 92 empty seats in the Federal judiciary, a 10.7 percent vacancy rate—one of the highest in modern times. This means that 10.7 percent of all Federal courtrooms are presided over by an empty chair.

There are currently 22 nominees pending who are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Of those, 13 are courts of appeals nominees.

During President Clinton's second year in office, the Senate confirmed 100 of his judicial nominees. I would expect the Senate Democrats to do the same for President Bush. But they are not doing so.

Only 4 of President Bush's first 11 nominees—nominated on May 9, 2001—have had hearings. In other words, the Judiciary Committee has taken no action whatsoever on nearly two-thirds of the circuit court nominations that have been pending for over 14 months. There is no reason for this other than stall tactics. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

There were 31 vacancies in the Federal courts of appeals on May 9, 2001, and there are 30 today. The Senate Democrats are trying to create an illusion of movement by creating great media attention and controversy concerning a small handful of nominees in order to make it look like progress. But we are hardly making any progress in filling circuit vacancies.

President Bush has responded to the vacancy crisis in the appellate courts by nominating a total of 31 top-notch men and women to these posts—but the Senate is simply stalling them. Over the past year, the Senate has confirmed only nine. There are still 22 circuit court nominees pending in committee. By comparison, at the end of President Clinton's second year in office, we had confirmed 19 circuit judges and had 15 circuit court vacancies.

Mr. President, the comparison does not end there. There were only two Circuit Court nominees left pending in Committee at the end of President Clinton's first year in office. In contrast, there were 23 of President Bush's circuit court nominees pending in committee at the end of last year.

Mr. President, some try to blame the Republicans for the vacancy crisis, but that is bunk. At the end of the 106th Congress when I was chairman, we had 67 vacancies in the Federal judiciary. During the past 9 months, the vacancy rate has been hovering right around 100. Today it is at 92.

The real story here, Mr. President, is that the Senate's Democratic leadership is treating President Bush unfairly when it comes to judicial nominees. Some would justify this unfair treatment of President Bush as tit for tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate leadership is doing is unprecedented.

Historically, a President can count on seeing all of his first 11 circuit court nominees confirmed. Presidents Reagan, Bush and Clinton all enjoyed a 100 percent confirmation rate on their first 11 circuit court nominees. In stark contrast, 8 of President Bush's first 11 nominations are still pending now for over 1 whole year.

History also shows that Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush, and Clinton got 97, 95 and 97, respectively, of their first 100 judicial nominations confirmed. But the Senate has confirmed only 57 of President Bush's first 100 nominees.

In sum, Mr. President, I think that the American people deserve better, President Bush deserves better, and the Judicial Branch of our Government deserves better. I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, it is a proud moment for me to speak on behalf of Joy Flowers Conti. I had the privilege of practicing with her as a lawyer in Pittsburgh. She is an outstanding litigator and outstanding person in the community, and I am very grateful that her nomination is coming to the Senate floor.

The next vote will be on John E. Jones for the Middle District, another outstanding litigator and someone who is going to be a credit to the court. We still have six district court judges in Pennsylvania who have yet to be confirmed in the Senate and two third circuit—Pennsylvania positions that need to be filled. I am hopeful those nominations will also make their way to the floor quickly.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. I yield the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on the confirmation of the nomination.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. DEWINE), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Kentucky (Mr. MCCONNELL), are necessarily absent.

The PRESIDING OFFICER (Ms. CANTWELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—96

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy

Levin
Lieberman
Lincoln
Lott
Lugar
McCain
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—4

DeWine
Helms
Hutchinson
McConnell

The nomination was confirmed.

NOMINATION OF JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on Executive Calendar No. 828, which the clerk will report.

The assistant legislative clerk read as follows:

John E. Jones, III, of Pennsylvania to be United States District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I will yield time on this side, if the distinguished Republican leader wants to yield the time on his side.

Madam President, I withhold that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, John E. Jones III is a very distinguished lawyer. I have known him personally for 15 years. He comes from Pottsville, PA. He had an outstanding practice. He has an exemplary academic record. He served as chairman of a very important agency, the Liquor Control Board of Pennsylvania, which has quasi-judicial functions.

Joy Flowers Conti was just voted on. I thank the chairman, Senator LEAHY, for moving these two judges. I urge him to follow the calendar, which has next in line D. Brooks Smith, who is the present judge of the Western District of Pennsylvania and who has been approved by the committee for the Court of Appeals for the Third Circuit.

We are taking up another judge tomorrow.

I trust that Judge Smith will be up for confirmation.

I yield the remainder of my time.

Mr. LEAHY. Madam President, in my earlier statement, I praised the distinguished senior Senator from Pennsylvania for working hard to get through the judges on the Western District of Pennsylvania.

For year, after year, after year, after year, after year, after year, a Republican hold blocked any consideration of the nominations by President Clinton for those same seats. But thanks to the distinguished senior Senator from Pennsylvania, we have been able to move forward quickly.

This, incidentally, will be the 63rd judge confirmed by the Senate since the change in majority about this time last year.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John E. Jones III, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

Mr. LEAHY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arizona (Mr. HUTCHINSON), the Senator from Ohio (Mr. DEWINE), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 196 Ex.]

YEAS—96

Akaka
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—4

DeWine
Helms
Hutchinson
McConnell

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

McConnell amendment No. 4326 (to amendment No. 4299), to provide for health care liability reform.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Arizona be recognized for up to 30 minutes to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARMS CONTROL

Mr. KYL. Madam President, I thank the distinguished assistant majority leader and would note that Senator SPECTER also wanted to address the Senate, but since he is not here, I will go ahead with my remarks.

Mr. KYL. Madam President, on June 13 the United States officially withdrew from the 1972 Anti-Ballistic Missile, ABM, Treaty, closing a chapter in U.S.-Soviet relations, and beginning another with Russia. The lapsing of the ABM Treaty, combined with the Senate's defeat of the Comprehensive Test Ban Treaty in 1999 and the signing of a new type of nuclear reduction treaty with Russia in May, represent a fundamental shift in the way the United States approaches strategic security. We have moved away from reliance on traditional arms control treaties toward a reliance on our own capabilities—namely missile defenses and a credible nuclear deterrent.

Proponents of the ABM Treaty were convinced that it was the "cornerstone of strategic stability," and that U.S. withdrawal would damage the improving U.S.-Russia relationship, spark a new arms race, and even lead, as one of my colleagues remarked, to "Cold War II." Those predictions were wrong. Yet some still cling to the notion that arms control is the key elements in U.S. national security.

Over the past 6 months, I have addressed the Senate on the strategic justification for U.S. withdrawal from the ABM Treaty, the question of how much a missile defense system will cost, and the President's constitutional authority to exercise the right of withdrawal without legislative consent. And, today, in response to those who continue to believe in the utopian aims of traditional arms control agreements, I rise to address the President's decision to abrogate the ABM Treaty, this time in the broader context of the utility of such measures as a means to protect U.S. security interests.

The past 10 years have completely changes the Cold War strategic environment that gave rise to the ABM Treaty and other traditional arms limitation and arms reduction agreements. First, the United States and Russia have moved beyond enmity toward a more cooperative relationship. Second, the threats we face today are far more numerous and complex than those we faced during the Cold War.

The proliferation of weapons of mass destruction has become one of our most pressing national security challenges. As many as three dozen countries now have or are developing ballistic missiles. Used by once between 1945 and 1980, such weapons have become an increasingly common component in regional conflicts. In fact, thousands of shorter range missiles have been used in at least six conflicts since 1980. And, as a recent National Intelligence Estimate NIE, on foreign ballistic missile developments warned, "The probability that a missile with a weapon of mass destruction will be used against U.S. forces or U.S. interests is higher today than during most of the Cold War, and it will continue to grow as the capabilities of potential adversaries mature."

Iran, for example, continues to place much emphasis on its missile activities. According to the recent NIE, that country's "longstanding commitment to its ballistic missile program . . . is unlikely to diminish." In early May, Tehran conducted a successful test of its 1,300 km-range Shahab-3 missile—capable of reaching Israel, as well as U.S. troops deployed in the Middle East and South Asia—and some press reports indicate that Iran is now set to begin domestic production of the missile. Additionally, on May 7, the Associated Press, citing an administration official, reported that Iran is continuing development of a longer-range missile, the Shahab-4. With an estimated range of 2,000 km, the Shabab-4 will be able to reach well into Europe.

North Korea's missile programs are also of great concern. That country has extended its moratorium of testing its intercontinental-range Taepo Dong missiles until 2003; however, its surprise August 1998 test flight over Japan of the Taepo Dong 1 missile should serve as a clear indication of its intent to develop missiles with intercontinental ranges. Indeed, Pyongyang is continuing its development of the longer-range Taepo Dong 2 missile, capable of reaching parts of the United States with a nuclear weapon-sized payload. According to the NIE:

> The Taepo Dong 2 in a two-stage ballistic missile configuration could deliver a several-hundred kg payload up to 10,000 km—sufficient to strike Alaska, Hawaii, and parts of the continental United States. If the North uses a third stage similar to the one used on the Taepo Dong 1 in 1998 in a ballistic missile configuration, then the Taepo Dong 2 could deliver a several hundred kg payload up to 15,000 km—sufficient to strike all of North America.

In Iraq, Saddam Hussein continues to obstruct the international verification of commitments made to the United Nations, and still fails to comply with arms control agreements he accepted at the end of the gulf war. The recent NIE concluded that, "Despite U.N. resolutions limiting the range of Iraq's missiles to 150 km, Baghdad has been able to maintain the infrastructure and expertise to develop longer range missile systems." And Iraq's ability to surprise us in the past with the scale of its missile, nuclear, chemical, and biological programs should serve as a warning. Secretary of Defense Rumsfeld recently discussed Baghdad's weapons of mass destruction capabilities, stating:

> They have them, and they continue to develop them, and they have weaponized chemical weapons. They've had an active program to develop nuclear weapons. It's also clear that they are actively developing biological weapons. I don't know what other kinds of weapons fall under the rubric of weapons of mass destruction, but if there are more, I suspect they're working on them, as well.

China presents an even more complex case. While not a member of the axis of evil, that country's exceedingly belligerent attitude toward the United States and our longstanding, democratic ally Taiwan requires a clear-eyed approach to our relationship with the communist government in Beijing. China currently has about 20 intercontinental ballistic missiles capable of reaching the United States, and is in the midst of a long-running modernization program to expand the size of its strategic nuclear arsenal and to develop road-mobile and submarine-launched ICBMs. According to the NIE, by 2015, "Chinese ballistic missile forces will increase several-fold." Additionally, by that time, "Most of China's strategic missile force will be mobile." As Secretary Rumsfeld stated on September 6 in reference to China's strategic missile modernization and buildup, "It is a long pattern that reflects a seriousness of purpose about the People's Republic of China with respect to their defense establishment."

President Bush's fresh approach to strategic security with Russia—called the "New Strategic Framework"—takes into account these changed circumstances. The President's framework entails unilateral reductions in offensive nuclear weapons and the development and deployment of defensive systems to deter and protect against missile attacks. President Bush outlined this approach before his election, and upon taking office, immediately began to develop a plan for action.

The central component of that framework is the development of missile defenses, critical to which is U.S. withdrawal from the ABM Treaty which totally prohibits deployment of a national missile defense. Indeed, our withdrawal represents a fundamental shift away from reliance on consensual vulnerability, perpetuated by arms control treaties, and a move toward prudent defensive measures.

The ABM Treaty was a classic example of arms control—promising much more than it was ever able to deliver. The theory was that by ensuring mutual vulnerability to nuclear missile attack, the incentive to build increasing numbers of offensive forces would be removed. History proved that theory wrong. Between the treaty's signing in 1972 and 1987, the Soviet Union's inventory of strategic nuclear warheads grew from around 2,000 to about 10,000; and the U.S. arsenal grew from around 3,700 to 8,000. In fact, strategic nuclear forces expanded not just quantitatively, but also qualitatively. The decade following the ABM Treaty's signing witnessed the introduction into the Soviet arsenal of entire generations of new long-range missiles, not just in contradiction of the intent of the ABM Treaty, but in contravention of the accompanying SALT I accord as well. Clearly, deliberate vulnerability did not promote arms control; rather, it fueled the arms race.

It is important to reiterate the history of the ABM Treaty because those who purport that it was the "cornerstone of strategic stability" seem to misunderstand the original impetus for it. The truth is that the United States gave up the right to field defensive systems because the Nixon administration was faced, in 1971, with a Congress that refused to fund more than two of the original 12 sites that the Administration had proposed in 1969, This, in addition to a rapid Soviet offensive buildup, caused the Nixon administration to acquiesce in the negotiation of the ABM Treaty, to be coupled with the SALT agreement. And I should note that, two years after the ABM Treaty was negotiated, it was amended to limit to one the number of sites allowed because Congress did not even continue to fund the second site.

Thus, making necessity a virtue, political theorists embraced the notion that, in order to deter a nuclear attack, the threatened response had to be the murder of millions of innocent civilians. President Reagan once referred to this philosophy, named Mutual Assured Destruction, as "a sad commentary on the human condition." And, in my view, its acronym "M–A–D" describes it well.

It is debatable whether that theory explains the absence of a nuclear exchange in the second half of the 20th century. Whatever the case, this idea certainly seems mad today, when we have friendly relations with Russia, and are confronted with an entirely different set of threats. It simply does not make sense to remain deliberately vulnerable to the increasing threat of a ballistic missile attack, especially when alternatives, such as missile defenses, now exist.

Surely a sign of the changed times, President Bush returned from Russia in May having signed a new treaty under which both sides intend to reduce strategic warheads to 1,700–2,200. Just three pages long, this treaty merely states what both sides intend to do. There are no interim limits, no sublimits, or verification schemes. More importantly, the treaty simply affirms what the United States had already decided were its strategic requirements—President Bush announced that we were unilaterally going to this level of warheads last November. This is important enough to repeat: this treaty memorialized what President Bush determined were our strategic requirements. Thus, this treaty is a complete break with the arms control orthodoxy of the past, which made each side's limitations or reductions dependent on the other, required difficult verification and enforcement provisions, and artificially pre-determined our strategic levels.

Recognizing that we no longer live in a bipolar world, we must shift our attention to the threat to our security from a number of rogue states that already have, or are seeking to obtain, weapons of mass destruction capabilities. Despite the existence of a plethora of multilateral arms control agreements, the threat to the United States and its allies from chemical, biological, and nuclear weapons has not been limited. The fundamental flaw of such measures lies in the fact that they focus on weapons, rather than on the real problem: the dangerous regimes that possess them. And whether they've signed these treaties or not, the rogue regimes cannot be trusted to comply.

Historians have traced that flawed approach back to the Catholic Church's attempt to ban the crossbow—the terrible new weapon of the 1100s—in 1139. That endeavor proved as ineffective as the arms control efforts that followed in later centuries. Perhaps there is no better example of this futility than the attempts after World War I to outlaw war altogether. The 1928 Kellog-Briand Pact, to which the Senate provided its advice and consent on January 25, 1929 by a vote of 85 to 1, was signed by all of the major countries. It renounced war as "an instrument of national policy." It also paved the way for other arms control treaties and negotiations that left the Western democracies unprepared to fight and unable to deter World War II, a mere decade later.

Indeed, in looking back at the arms control efforts of the 1920s and 1930s, Walter Lippman, the celebrated historian who championed the agreements when they were signed, wrote that, "The disarmament movement was, as the event has shown, tragically successful in disarming the nations that believed in disarmament. The net effect was to dissolve the alliance among the victors of the first World War, and to reduce them to almost disastrous impotence on the eve of the second World War."

Mr. Lippman's assessment offers an important lesson. Arms control works best where it is needed least—among honorable, morally upstanding nations. It does not work where it is needed most—against rogue nations. Countries that act clandestinely and in bad faith will simply ignore the legal requirements of arms control agreements when it suits their interests. Moreover, morally-upstanding nations depending upon these agreements for security and stability have often lacked the will to respond forcefully to violations. Even when evidence is clear, there are almost always overriding diplomatic reasons for overlooking or treading lightly on the violating parties.

The international community's response to Iraq's use of chemical weapons is a prime example. When that country used chemical weapons against Iran in the 1980's in violation of the 1925 Geneva Protocol banning the use of such weapons, the U.N. Security Council passed a resolution calling for both sides in the conflict to exercise restraint. After Saddam Hussein again used chemical weapons—this time against his own Kurdish population—the Security Council again passed a resolution of condemnation that failed even to mention the use of chemical weapons. International resolve was so weak that when the United States proposed a resolution at the U.N. Human Rights Commission in 1989 condemning Iraq's use of those weapons against the Kurds, the initiative was defeated by a vote of 17 to 13.

Unwilling to enforce the existing Geneva Protocol when Iraq had, without dispute, violated its terms, the international community, in an effort to demonstrate its commitment to arms control, agreed upon a new ban on the possession of chemical weapons. Yet possession is inherently harder to verify than already-banned use. This new ban—the Chemical Weapons Convention, CWC—unrealistically aims to control states that are confident that they can violate its terms without detection and without punishment. And while the United States is destroying its chemical deterrent under the requirements of the CWC, chemical weapons programs in other states that have signed the treaty—like Iran—have not been curbed. Still others, like Iraq, North Korea, Libya, and Syria have not even joined the convention.

There is no moral equivalence between Western democracies and rogue regimes like those in place in Iran, Iraq, and North Korea. Yet arms control treaties like the Biological Weapons Convention BWC and the CWC assume that all participants operate with the same objectives in mind. They place under one umbrella—under a unitary set of constraints—states that are certain to comply and those that are certain to cheat. And therein lies their failure to serve any meaningful purpose. As Richard Perle, former Assistant Secretary of Defense, stated in a 1999 speech, "The failure to distinguish guns in the hands of cops and guns in the hands of robbers is not just a practical absurdity, it is a profound moral failure."

Other arms control efforts like the Nuclear Nonproliferation Treaty NPT, while more realistic in terms of their objectives, have also had questionable success. Under the terms of the NPT, the five declared nuclear weapons states—the United States, the United Kingdom, Russia, France, and China—agreed "not in any way to assist" any nonweapons state to acquire nuclear weapons. Other parties to the treaty agree not to develop nuclear weapons and to allow the International Atomic Energy Agency, IAEA to inspect their nuclear facilities.

Just a brief examination of the records of parties to the treaty illustrates that its objectives are not supported equally by all.

The United States intelligence community suspects that Russia and China, despite their NPT obligations, may be providing assistance to the nuclear weapons programs of certain states.

North Korea—despite the optimism of some that the 1994 Agreed Framework would curb that country's nuclear weapons program—continues to evade certain IAEA inspections needed to ensure that country is in full compliance with the NPT and the Framework. And yet, the United States continues to support the Agreed Framework with U.S. taxpayer dollars.

The U.S. intelligence community suspects that Russian nuclear-related assistance to Iran—ostensibly for Tehran's civilian nuclear program may, indeed, be contributing to Iran's nuclear ambitions.

And the full extent of Iraq's covert nuclear programs, after years without inspections, is not fully known. In fact, even when inspectors were in the country, Saddam made use of information provided by Iraqi IAEA inspectors to evade detection.

It is clear that multilateral arms control agreements have not delivered on their promise to make the world a safer place. As such, prudence demands that we take steps to ensure the safety of the American people—this will involve a combination of defense and deterrence.

Though the ABM Treaty was bilateral agreement between the United

States and the Soviet Union, President Bush's decision to withdraw the United States was, in fact, necessitated by our need to deal with other states that are developing ballistic missiles. Deterrence is simply inadequate in dealing with rogue dictators. To depend on nuclear deterrence alone with a dictator like Saddam Hussein, for instance—a man who used chemical weapons against his own people—would be to place American lives in the hands of a madman. As Winston Churchill warned in his 1955 "Balance of Terror" speech, "The deterrent does not cover the case of lunatics or dictators in the mood of Hitler when he found himself in his final dugout."

The alternative—which will be permitted now that we have withdrawn from the ABM Treaty—is to develop and deploy missile defenses. A missile defense system will give us more flexible options in a crisis. First, defenses against missiles will help the United States to avoid nuclear blackmail, intended to freeze us into inaction by the very threat of a missile attack. Imagine the impact on our decision to go to war against Saddam Hussein in 1991 had he been able to threaten the United States or our allies with nuclear missiles. Additionally, missile defense will reduce the incentive for ballistic missile proliferation by de-valuing offensive missiles. Finally, missile defenses, in a worst-case scenario, will save American lives.

The development of missile defenses and the end of the superpower rivalry does not obviate the need for traditional deterrence, however. As the world's remaining superpower, we need to maintain maximum flexibility and the ability to play the ultimate trump card if need be. Deterrence and defenses—with neither, of course, being 100 percent fail-safe—will be mutually reinforcing. The prudence of maintaining a nuclear deterrent was shown during the Gulf War when we hinted that we might draw on that capability if Iraq attacked allied troops with chemical or biological agents. As then-Secretary of Defense Dick Cheney warned during a visit to the Middle East on December 23, 1991: "Were Saddam Hussein foolish enough to use weapons of mass destruction, the U.S. response would be absolutely overwhelming, and it would be devastating." Iraqi Foreign Minister Tariq Aziz acknowledged several years later that Iraq did not attack the forces of the U.S.-led coalition with chemical weapons because such warnings were interpreted as meaning nuclear retaliation.

Of course, with the end of the U.S.-Soviet standoff, we can maintain our deterrent at lower levels—thus President Bush's decision to unilaterally reduce our arsenal. But lower levels require greater attention to the safety and reliability of our remaining arsenal. This will, I believe, require renewed testing of that arsenal at some point.

Thankfully, this body defeated the Comprehensive Test Ban Treaty, CTBT—which would have obligated the United States to give up for all time the option of testing our nuclear weapons—in October 1999. The Bush administration has made it clear that it strongly opposes the treaty. While it has no plans to do so, the administration has retained the option of nuclear testing to assure the safety and reliability of our nuclear arsenal. It is also moving to improve the test readiness posture. As Assistant Secretary of Defense J.D. Crouch stated during a briefing on the Nuclear Posture Review, NPR, the "NPR does state . . . that we need to improve our readiness posture to test from its current two to three year period to something substantially better." I am pleased that the House version of the Defense authorization bill contains a provision that requires the Department of Energy to reduce to one year the time between the Presidential decision to conduct a nuclear test and the test itself, and I hope that the Senate will ultimately choose to include such a provision, as well.

The threats to the United States today are more complex and difficult to predict than those we faced during the cold war. Recognizing their inherent limitations, it is therefore time to move beyond traditional arms control treaties as a means to protect American lives from these threats. President Bush has committed to do just that. He has set the United States on a course that unequivocally places faith not in traditional arms control, but in the time-honored philosophy that led to the West's victory without war over the Soviet Empire: Peace through strength. As a result, we will be able to pursue the development of missile defenses and maintain a credible nuclear deterrent. These demonstrations of strength, coupled, of course, with the maintenance of robust conventional capabilities—not more pieces of paper—are what will keep this nation secure.

President Bush's overall security strategy rightly focuses on the root of the problem—the dangerous regimes that possess the weapons. As Margaret Thatcher once stated, ". . . the fundamental risk to peace is not the existence of weapons of particular types. It is the disposition on the part of some states to impose change on others by resorting to force." The heart of the matter is that our strategy should seek to change the regimes themselves, whether through military, diplomatic, or economic means. The United States has made clear its intention to pursue that objective, and I have no doubt that our efforts will lead to success.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Utah.

FTC REPORT

Mr. HATCH. Mr. President, my staff just attended a non-embargoed briefing conducted by the Federal Trade Commission. It is our understanding that tomorrow the FTC will transmit to the Congress and the American people a copy of its comprehensive study of the pharmaceutical industry with respect to litigation involving the two major components of the pending legislation: first, the report examined the use and abuses of the statutory 30-month stay. Second, the report examines how the 180-day marketing exclusivity rule has been the source of collusive arrangements between pioneer and generic firms.

I will be very interested to study the full report when it released tomorrow morning.

Let me say this tonight. First, I want to commend Chairman Muris and the other FTC Commissioners for undertaking this important study. I would also like to acknowledge the efforts of the FTC staff including, Maryann Kane, Mike Wroblenski and Sarah Browers for their work on this report.

It is my understanding that the key recommendations contained in the report are somewhat at odds with the legislation on the floor.

It is my understanding the first FTC recommendation, consistent with the position that I took at the Health Committee hearing May 8 and my floor statements the past two weeks, will basically say that there should only be one automatic 30-month stay per drug product per ANDA to resolve challenges to patents listed in the FDA Orange Book prior to the filing date of the generic drug application.

Senator GREGG took this position in the HELP Committee and I commend him for his work to strengthen the bill.

Clearly, as I have laid out in some detail in earlier speeches, the Edwards-Collins substitute delves into areas way beyond this recommendation.

I also understand the second FTC recommendation, which touches upon the so-called reverse payment agreements whereby generic firms are paid not to market generic drugs, will suggest that the Congress pass legislation to require brand-name companies and first generic applicants to provide copies of certain agreements to the FTC.

This is exactly what Senator LEAHY's bill, S. 754, the Drug Competition Act, requires. As I discussed in my previous statements, I voted for Senator LEAHY's bill in the Judiciary Committee and worked with him to refine the final language. In my view, S. 754 contains a much more measured—and certainly more comprehensible—approach than does the Edwards-Collins substitute.

Because the staff briefing just occurred and the full report will be issued tomorrow, I am not prepared tonight to give you my full evaluation of the

FTC report. But I can say that the major recommendations of the FTC appear to be somewhat at odds with key provisions of the legislation that is pending on the floor, the Edwards-Collins substitute to S. 812.

I look forward to examining the data collected by the FTC and analyzing the report's two major recommendations and its several subsidiary recommendations.

Frankly, I think that it would be appropriate for the relevant committees, the Judiciary Committee, the Commerce Committee, and HELP Committee, to have the opportunity to examine this comprehensive study before we adopt legislation in this area.

I will be interested to learn if the sponsors of the bill on the floor would be open to a process that will allow a careful evaluation of what the FTC study reveals and will not just act to ram this legislation through in the last week before August recess.

I have lodged my concerns about the way this bill so hastily was adopted by the committee and appeared on the floor, and urged that we take the time necessary to get this legislation right.

The Hatch-Waxman Act is an important consumer bill that has helped save about $8 billion to $10 billion each year since 1984. So we should not be playing around with this bill, especially without the benefit of carefully studying this this soon-to-be-released FTC report.

Once again, I urge my colleagues to do the right thing and give us an adequate opportunity to factor in this FTC study.

It would be advisable to spend the time before the recess to adopt trade promotion authority rather than to continue to struggle with the hastily crafted and not fully vetted Edward-Collins substitute.

In that regard, I pay specific tribute to our colleague, Senator BAUCUS, who represented the Senate so well in the trade conference that occurred Thursday evening and early Friday morning. I was a member of the conference committee. Senator BAUCUS did himself proud, did our body proud, did a very good job, as did Chairman THOMAS. Those two worked very well together to come up with what is landmark legislation to help our economy move forward. It is one of the reasons I think the stock market turned around today. It is not the only reason. I think we would have another reason if we would treat the Hatch-Waxman language with the care and treatment it deserves before we go off half cocked to enact a bill before we examine the FTC study and its recommendations.

I am grateful I serve on the Finance Committee with Senator BAUCUS and Senator GRASSLEY, both of whom did a good job in this last conference on trade promotion authority. I also am very pleased one of my long-term friends in the Congress has been Chairman BILL THOMAS in the House. It is a tough job being chairman of the Ways and Means Committee. It is a very divided committee in many respects; yet it works very well. There is no one in this Congress who does a better job on health care issues than Chairman THOMAS.

All of them deserve credit, as do the ranking members, CHARLIE RANGEL, without whom this agreement probably could not have come to pass, a man for whom I have tremendous respect; and, of course, Senator GRASSLEY in our body who has worked so well with Senator BAUCUS on so many pieces of legislation that mean so much to our economy and our country.

These are important issues. I have given some rather lengthy speeches on the Hatch-Waxman issue and even some lengthy speeches on the trade promotion authority. I was one of those in the Finance Committee who pushed very hard to get the trade promotion bill on the floor and get us to conference. I express my regard for all concerned. I hope we can resolve this matter on the floor this week, but I believe trade promotion authority deserves even greater precedence than what we are trying to do in the underlying bill S. 812. If we act on the underlying bill, it ought to be done in a thoughtful fashion. It should not be done just politically. We ought to pay attention to the experts at FTC and elsewhere who have spent so much time on the issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to speak about three nominees from Pennsylvania who have been confirmed by the Senate. It is a very happy day, indeed. We will have a judge to the western district of Pennsylvania and two judges to the middle district of Pennsylvania, both districts being in dire need of assistance. These three individuals were recommended by a bipartisan nominating commission which Senator SANTORUM and I have established, where there is independent review in each of the districts. These individuals were recommended to Senator SANTORUM and myself and then, in turn, we recommended them to the President. They have passed the examinations of the American Bar Association with flying colors, the FBI check, the Judiciary Committee hearing, and finally have been voted upon by the Senate.

Earlier today, the Senate confirmed Ms. Joy Flowers Conti for the United States District Court for the Western District of Pennsylvania. Ms. Conti brings an outstanding academic record to the bench: Her bachelor of arts degree from Duquesne University in 1970; her law degree also from Duquesne in 1973; summa cum laude, the highest honors; and she was the first woman to serve as editor in chief of the Duquesne Law Journal. She has had an outstanding career in private practice. She has been associated with the distinguished Pittsburgh law firm, Buchanan, Ingersoll, from 1974 until the present time; served as a professor of law at Duquesne from 1976 to 1982; has worked as a judicial officer, hearing examiner for the Commonwealth of Pennsylvania in the Department of State Bureau of Occupational and Professional Affairs.

She received a "well qualified" rating by the American Bar Association's Standing Committee on the Federal Judiciary, has served in the House of Delegates of the American Bar Association, and is currently serving in the Pennsylvania Bar Association's House of Delegates.

She received the Pennsylvania Bar Association's Anne X. Alpern Award, a very distinguished award named for the first woman supreme court justice in the Commonwealth of Pennsylvania—Justice Alpern, whom I knew and practiced before many years ago when I was chief of the appeals division in Philadelphia's Attorney General's office. Mrs. Conti brings the highest credentials to the western district, a court very much in need of additional judicial manpower, or in this case woman power.

Also confirmed earlier today was a distinguished lawyer from Pottsville, PA, John E. Jones. Mr. Jones has an outstanding academic record from Dickinson College, 1977, and the Dickinson School of Law in 1980. He has been engaged in the active practice of law in Pottsville for the past 21 years.

I have personally known Mr. Jones for 15 years. Just earlier today I was talking to the former Governor of Pennsylvania, Tom Ridge, now serving as President Bush's homeland security adviser, and we compared notes on Mr. Jones and agree that he has outstanding credentials.

His background includes being the assistant public defender in Schuylkill County from 1985 until 1985. That is a part-time job. But the defender's office will give him a good background and balance, looking at the defense side of the bar. He served as Pennsylvania's State attorney general for the Drug Abuse Resistance Education Program, and more recently has been chairman of the Pennsylvania Liquor Control Board, having been appointed there in May of 1995.

In Pennsylvania, that is a major board, quasi-judicial, and serving as chairman gives one very extensive administrative responsibilities. In that capacity, he has simplified the procedures there in a context of some 20,000 licensees, so that he has a very extensive background to give diversity to the middle district.

On Friday, the Senate confirmed another distinguished lawyer, Christopher C. Conner, from Harrisburg, PA. Mr. Connor is chair of the litigation department of Mette, Evans and Woodside, one of the largest law firms in Pennsylvania.

He, too, brings excellent academic credentials, being a graduate of Cornell University in 1979 and the Dickinson Law School in 1982, where he was editor of the National Appellate Moot Court Team.

He has been active in bar association affairs, taking on the vice presidency of the Pennsylvania bar, coauthoring a Law Review article on "Partisan Elections, the Albatross of the Pennsylvania Appellate Judiciary."

Interestingly, with the Supreme Court of the United States recently declaring that candidates for judicial office are now free to campaign, that may be a great impetus to take judges out of elective office; something which I believe should have been done years ago in Pennsylvania and something I urged as long ago as 1968 when we were preparing Pennsylvania's constitution, which was adopted in 1969.

Mr. Connor has also served as adjunct professor at the Widner University School of Law on the Harrisburg campus where he taught pretrial procedure. So he brings a very diversified background and an excellent background to the middle district.

I am pleased to note that the majority leader is going to go right down the list on nominees and has stated earlier today that we would consider the nomination of Judge Brooks Smith, who is the chief judge of the Western District of Pennsylvania. The Third Circuit being in dire need of additional judicial manpower.

Chief Judge Edward R. Becker, one of the most distinguished judges in the United States, has commented about the serious state of affairs there, and I am anxious to see District Court Judge Brooks Smith receive his vote tomorrow. I am confident that he will be confirmed.

Judge Smith was reported out of the Judiciary Committee on a vote of 12 to 7, with three Democrats—Senator BIDEN, Senator KOHL, and Senator EDWARDS—voting for Judge Smith.

It is my hope that we will soon establish a protocol to eliminate the partisan differences which have plagued the Federal judicial nominating process for many years.

Now, with a Republican President, President Bush, and a Senate controlled by the Democrats, there have been delays which I believe are excessive. But I have to say at the same time that when President Clinton, a Democrat, was in the White House, and the Senate was controlled by Republicans, similarly the delays were excessive.

It is my view that the Federal judgeships are too important to be embroiled in partisan politics or payback or delay. I have proposed a protocol which would establish a timetable: So many days after a nominee is submitted by the President there ought to be a Judiciary Committee hearing. So many days later there ought to be action by the Judiciary Committee, voted up or down; and, if voted up, so many days later there ought to be floor consideration for confirmation by the entire Senate—with that not being an ironclad schedule. If cause is shown, at the discretion of the chairman of the committee on notification to the ranking member there could be a reasonable delay. Similarly, with the majority leader upon notice to the minority leader, there could be a reasonable delay on the vote before the Senate.

But I believe the American people generally are sick and tired of partisan politics. They want to see the Senate work together and nowhere is that more important than in the selection of Federal judges.

So I am pleased to speak about these three distinguished lawyers who have been confirmed by the Senate and will be sworn in soon. I am also looking forward to the addition of Judge Brooks Smith to the Court of Appeals of the Third Circuit, which is very much in need of his services.

I thank the Chair. In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

Mr. REID. Mr. President, it is my understanding that we are on the generic drug bill. Is that right?

The PRESIDING OFFICER. The Senator is correct.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Senator Dorgan's amendment No. 4299.

Byron L. Dorgan, Kent Conrad, Tim Johnson, James M. Jeffords, Ron Wyden, Paul Wellstone, Max Baucus, Ernest F. Hollings, Hillary Rodham Clinton, Zell Miller, Maria Cantwell, Jack Reed, Max Cleland, Patrick J. Leahy, Richard J. Durbin, Christopher J. Dodd, Harry Reid.

CLOTURE MOTION

Mr. REID. Mr. President, I send another cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 491, S. 812, the Greater Access to Affordable Pharmaceuticals Act of 2001.

Harry Reid, Jon S. Corzine, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Paul S. Sarbanes, Debbie Stabenow, Richard J. Durbin, Tom Daschle, Daniel K. Akaka, Jack Reed, Kent Conrad, Zell Miller, Charles E. Schumer, Ernest F. Hollings, Hillary Rodham Clinton.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO ROY ESTESS

Mr. LOTT. Mr. President, I rise today to congratulate my dear friend Roy Estess on his well deserved retirement, to thank him for his many years of dedicated service to our nation, and to wish him the very best as he pursues other interests and enjoys what I hope will be many fine years of health and happiness with his family.

Roy S. Estess, a native of Tylertown, MS, is retiring as director of NASA's John C. Stennis Space Center in south Mississippi. As director of Stennis Space Center for more than 13 years, Roy has been responsible for accomplishing the center's current NASA missions, rocket propulsion testing and remote sensing applications. Other responsibilities have included managing the Space Shuttle Main Engine test program; planning and accomplishing advanced propulsion test activities for NASA, some Department of Defense projects, and certain industry propulsion development and launch vehicle development programs; conducting research and technology development in earth and environmental sciences; commercializing remote sensing technology in cooperation with industry and government; developing technology for use in propulsion test and launch operations; and managing the overall center. Roy's vision and leadership have directly lead to Stennis Space Center becoming a unique Federal city that is home to more than 30 Federal, State, academic and private organizations.

Roy Estess graduated from Mississippi State University with a degree in aerospace engineering. He also has accomplished various graduate level studies, including completion of the advanced management program at the Harvard Graduate Business School. He is a registered professional engineer in the State of Mississippi and is a member and past chairman of the advisory committee to the College of Engineering at Mississippi State University. Roy is also a member of several professional societies, some of which include Tau Beta Pi; the American Institute of Aeronautics and Astronautics; the Mississippi Academy of Sciences; and the National Space Club.

Roy has held various engineering and management positions during his 42 years of service in the United States government. He began his career as a civilian employee in the United States Air Force at Brookley Field in Alabama, and later at Robbins Air Force Base in Georgia. Roy came to the NASA Stennis Space Center in 1966 as a propulsion test engineer, working on perhaps the greatest technological achievement of all time, the Apollo missions to the moon. Roy worked on testing the second stage of the Saturn V moon vehicle during those exciting times. Working his way up through the ranks, he later served as head of the Applications Engineering Office, deputy of the Earth Resources Laboratory and director of the Regional Applications Program. From 1980 through 1988, Roy served as deputy director of Stennis Space Center and was named director in January, 1989. From 1992 to 1993, he was temporarily assigned to NASA Headquarters in Washington, D.C. as a special assistant to two consecutive NASA Administrators. From February, 2001 to April, 2002, Roy was temporarily assigned as acting director of the Johnson Space Center in Houston, TX.

Roy Estess has been named the recipient of numerous awards and honors, some of which include: the Presidential Distinguished Service, twice, and Meritorious Senior Executive Awards; NASA's Distinguished Exceptional Service, Equal Opportunity and Outstanding Leadership Medals; the National Distinguished Executive Service Award for Public Service; and the Alumni Fellow of Mississippi State University; as well as Citizen of the Year in his home town.

Roy has served Mississippi and the nation in numerous ways outside of his professional career. In 1969, when south Mississippi was hit by the devastating hurricane Camille, Roy served on the Gulf coast disaster recovery team, making extraordinary efforts to help save lives and property in our state. An Eagle Scout himself, Roy has long been an active supporter of the Boy Scouts of America, including serving as Scout Master of Troop 87 of Picayune from 1966 to 1978. Roy has also served as a Deacon at his church, the First Baptist Church in Picayune.

Roy and his wife, Zann, reside in Pearl River County, MS. They have two children, Andy and Mauri, and two grandchildren, Conner and Drew.

I know my colleagues will join me in appreciation of Roy Estess for his extraordinary career of service to the nation and his community and in wishing him and his family the very best in all of their plans for the future. I am proud to call Roy Estess my friend. God bless you, Roy.

21ST CENTURY MEDICARE ACT

Mr. HATCH. Mr. President, our health care system has increased the lifespan and quality of life of our citizens. Our population is aging; people with chronic conditions are living longer. The number of Medicare beneficiaries is increasing and will continue to increase as baby boomers retire.

As I have listened to the debate over the last two weeks, I think we can all agree on one thing, the seniors in this Nation deserve the best possible health care, of which prescription drug coverage is a vital component. All of us want to provide Medicare beneficiaries with prescription drug coverage this year. Unfortunately we do not agree on how this coverage should be provided.

I support the Tripartisan bill for several simple reasons. The Tripartisan bill operates on the fundamental principles of efficiency, quality, and choice. It balances all of the issues and provides a permanent solution—all of which result in cost savings and affordability. Balance is a key point here.

We do not offer a plan that cannot be sustained, resulting in bigger problems down the road. We do not offer a plan that ends abruptly. We do not offer a plan offering everything to everyone, knowing full well that it cannot work, as the Graham-Kennedy bill does. We provide Medicare beneficiaries with four key elements: First; Choice. Giving seniors the right to choose a plan and the right to choose a particular medication is the greatest benefit we can offer Medicare beneficiaries. Under the Graham-Miller-Kennedy bill, seniors can only get a government run prescription drug plan. The Graham-Miller-Kennedy bill forces seniors and their physicians into government run formularies. This is not what we want for our seniors and their doctors; Second; Quality. I do not believe that the Graham-Miller-Kennedy bill has any incentive to improve quality—over and over, we have seen how government run programs have failed our health care system. Our Tripartisan bill makes a concerted effort to improve and modernize Medicare, by offering seniors choice not only in prescription drug coverage but for overall medical coverage as well; Third; Efficiency and Cost containment. The Tripartisan bill fosters competition, based on quality and cost. The Graham-Miller-Kennedy bill does not. The Graham-Miller-Kennedy bill cannot deliver drugs efficiently by making the government the sole regulator of Medicare drug coverage. The Tripartisan bill guarantees that at least two plans will compete in each region, giving seniors the right and choice to pick the plans that best suit their needs; and Fourth; Balance. The Tripartisan bill balances the needs of seniors with benefits. We improve coverage for the sickest, poorest seniors by helping needy seniors meet their health care costs through generous subsidies. We use an assets test to determine who needs assistance. What is so wrong with this? All we are doing is applying asset testing criteria for prescription drug coverage. I do want to make a correction to my statement from 7/22/02, The Family Opportunity Act does not have an assets test as I indicated. Rather it has an income and disability test.

In conclusion, I believe the model of the Tripartisan bill is the only workable, long lasting, and fair plan for our seniors and taxpayers. The Tripartisan bill model is the only way to achieve a long-term solution to provide prescription drug coverage to Medicare beneficiaries and, at the same time, give seniors, their families, and doctors choice. It is not a quick fix to get immediate support for something that is not going to last, like the Graham-Miller-Kennedy bill. I am hopeful that more of my colleagues will recognize this, and help us reach an acceptable agreement.

THE FEDERAL EMPLOYEES HEALTH INSURANCE PREMIUM CONVERSION ACT

Mr. BURNS. Mr. President, today I am pleased to join my colleagues in the Senate in cosponsoring S. 1022, the Federal Employees Health Insurance Premium Conversion Act. This legislation will enable Federal and military retirees to take advantage of premium conversion, which would allow individual retirees to pay their health insurance premiums with pre-tax dollars. In 2000, this tax benefit was extended to current Federal employees under a Presidential directive, and it is a benefit available to many private sector employees, and State and local government employees. It only makes sense to bring equity to the Federal Employees Health Benefits Program.

Furthermore, this legislation will allow uniformed services retiree beneficiaries, their family members and survivors to pay the TRICARE Prime enrollment fees and TRICARE Standard supplemental insurance premiums with pre-tax dollars.

I am happy to join my colleagues by supporting this critical legislation and to show my continued support of these Federal civilian and military retirees for their dedicated service.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 24, 1994 in New York, NY. Two gay men were assaulted by four men who made anti-gay remarks. The assailants, John Gorman and Kevin Shout, both 22, Michael Higgins, 21, and James Shout 27, were charged with assault and aggravated harassment in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

MISCARRIAGE OF JUSTICE IN EGYPT

• Mr. MCCONNELL. Mr. President, the news from Egypt this morning is both disappointing and disheartening. Egyptian democracy activist and academic Saad Eddin Ibrahim was sentenced to 7 years in jail following a retrial for charges, according to the BBC, "of tarnishing the country's image abroad and other offenses."

Many believe that the case against Mr. Ibrahim, who is a dual Egyptian-American citizen, is politically motivated and a not-so-veiled effort to stifle political debate in that country. Unfortunately, today's verdict only underscores that the rule of law and democratic institutions continue to be weak and non-functioning in Egypt.

It is my hope and expectation that Secretary Powell will clearly, publicly and forcefully register the concerns of the United States with Mr. Ibrahim's case to senior Egyptian leaders. I would offer that it is not Mr. Ibrahim but the Egyptian government—and its weak judiciary, irresponsible and anti-Semitic media, and questionable ties with North Korean missile technicians—that consistently tarnishes the country's image abroad.

To put it simply, the United States must expect more from its ally in the Middle East.•

MADE IN THE U.S.A.

• Mr. BUNNING. Mr. President, I proudly rise today to celebrate a truly remarkable milestone in the American automobile industry. Today, Toyota Motor North America will produce its 10 millionth North American-built vehicle. This notable achievement will take place at the Toyota production facility located in Georgetown KY.

I am extremely pleased that the more than 8,000 employees at the Georgetown facility will have the unique and historical opportunity to produce the 10 millionth Toyota to say Made in America. On a personal note, I myself bought a Camry last November, born and bred at the Georgetown facility in the Commonwealth of Kentucky.

Today, Toyota's dedicated team members annually build over 900,000 Avalons, Camrys, Corollas, Sequoias, Siennas, Tacomas, and Tundras in the United States; in fiscal year 2001, Toyota sold nearly 2 million vehicles in North America. This means that nearly all of the cars sold in America are made here as well. Nothing gives me more pride than to see a product stamped with made in the U.S.A. especially when that means made in Kentucky.

Toyota Motor Manufacturing, Kentucky began production in Georgetown in 1988. Today, the Georgetown production facility is Toyota's largest production plant in all of North America due largely to their selfless and committed workforce. With two vehicle production lines and a powertrain engine and axle facility, more than 8,000 team members build around 500,000 vehicles and nearly 400,000 engines each and every year. Kentucky's skilled production team has been the key to the facility's extraordinary success, and I can personally vouch for the quality of Kentucky craftsmanship.

To celebrate their many accomplishments, Toyota is donating 20 Sienna minivans in communities where facilities are located. In Georgetown, minivans will be donated to the Salvation Army and Senior Citizens of Georgetown/Scott County. Also, Toyota Motor Manufacturing North America has announced a $1 million gift to the children of Toyota's manufacturing team members through a college scholarship fund.

I would like to congratulate everyone involved with Toyota for reaching such a prestigious mark in the auto industry. Specifically, I would like to thank the employees in Georgetown for all that they do for Toyota and the local business community. These hard-working men and women deserve praise for their dedication and commitment to excellence. They represent the spirit of capitalism and embody the American working man and woman.•

TRIBUTE TO LINDA JACKSON

• Mr. BURNS. Mr. President, it is my privilege to honor a very special lady for her years of work on behalf of the citizens of this country. Linda Jackson was an employee of the U.S. Government for 39 years. Since she was 18 years old, Linda has been offering a helping hand to Americans. She started her career in civil service with the U.S. Navy. She then moved on to the Air Force, working in Japan during the Vietnam war. After her return stateside, Linda worked for a time for the U.S. Postal Service. For the last 29 years, she has been an employee of the Social Security Administration. I have personal knowledge of Linda's dedication and commitment not only to her profession but more importantly to the citizens she worked for. When Linda retired on June 3, 2002, this Nation lost a very dedicated and caring public servant. Thank you, Linda Jackson, for your service to our country.•

MESSAGE FROM THE HOUSE

At 4:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 132. Concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives.

The message also announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Committee on Financial Services, for consideration of the House bill and the Senate Amendment thereto, and modifications committed to conference: Mr. OXLEY, Mr. BAKER, Mr. NEY, Mrs. KELLY, Mr. SHAYS, Mr. FOSSELLA, Mr. FERGUSON, Mr. LAFALCE, Mr. KANJORSKI, Mr. BENTSEN, Mr. MALONEY of Connecticut, and Ms. HOOLEY of Oregon.

From the Committee on the Judiciary, for consideration of section 15 of the House bill and sections 10 and 11 of the Senate amendment thereto, and modifications committed to conference: Mr. SENSENBRENNER, Mr. GOODLATTE, and Mr. CONYERS.

The message also announced that the Speaker appoints the following members as additional conferees in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4546) to authorize appropriations for fiscal year 2003 for military activities of the Department of Energy, to prescribed personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

As additional conferees from the Committee on Small Business, for consideration of sections 243, 824, and 829 of the Senate amendment and modifications committed to conference: Mr. MANZULLO, Mrs. KELLY, and Ms. VELÁZQUEZ.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–8161. A communication from the Director, Office of Integrated Analysis and Forecasting, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled "Performance Profiles of Major Energy Producers 2000"; to the Committee on Energy and Natural Resources.

EC–8162. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Cost Estimate for Pay-As-You-Go for Report Number 581; to the Committee on the Budget.

EC–8163. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Manufacturing Substitution Drawback: Duty Apportionment" (RIN1512–AD02) received on July 18, 2002; to the Committee on the Judiciary.

EC–8164. A communication from the Acting Assistant Attorney General for Administration, Justice Management Division, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Exemption of Department of Justice Privacy Act System of Records: Controlled Substances Act Nonpublic Records" (JMD–002) received on July 23, 2002; to the Committee on the Judiciary.

EC–8165. A communication from the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Powers of the Attorney General to Authorize State of Local Law Enforcement Officers to Exercise Federal Immigration Enforcement Authority During a Mass Influx of Aliens" (RIN1115–AF20) received on July 24, 2002; to the Committee on the Judiciary.

EC–8166. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled "Increased Allowances for the Educational Assistance Test Program" (RIN2900–AL02) received on July 23, 2002; to the Committee on Veterans' Affairs.

EC–8167. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report regarding Streamlining Seat Certification; to the Committee on Commerce, Science, and Transportation.

EC–8168. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "Part 305—Rule Concerning Disclosure Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")" received on July 18, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8169. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska—Amendment and Corrections to the Emergency Interim Rule Implementing Steller Sea Lion Protection Measures and 2002 Harvest Specifications for the Alaskan Groundfish Fisheries" (RIN0648–AP69) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8170. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska—Final Rule to Implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 54 to the FMP For Groundfish of the Gulf of Alaska and An Amendment to the Pacific Halibut Commercial Fishery Regulations for Waters In and Off Alaska" (RIN0548–AK70) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8171. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Bifenthrin; Pesticide Tolerances for Emergency Exemptions" (FRL7187–8) received on July 24, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8172. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Research and Promotion Branch, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mushroom Promotion, Research and Consumer Information Order: Reallocation of Mushroom Council Membership" (Doc. No. FV–02–706–IFR) received on July 23, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8173. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Raisins Produced from Grapes Grown in California; Final Free and Reserve Percentages for 2001–02 Crop Natural (sun-dried) Seedless and Other Seedless Raisins" (Doc. No. FV02–989–4FIR) received on July 23, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8174. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "1-Methylcyclopropene; Exemption from the Requirement of a Tolerance" (FRL7187–4) received on July 24, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8175. A communication from the Assistant Secretary, Office of Indian Education Programs, Department of Indian Affairs, transmitting, pursuant to law, the report of a rule entitled "Indian School Equalization Program" (RIN1076–AE14) received on July 23, 2002; to the Committee on Indian Affairs.

EC–8176. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Loan Guarantee for Indian Housing; Direct Guarantee Processing" (RIN2577–AB78) received on July 23, 2002; to the Committee on Indian Affairs.

EC–8177. A communication from the Principal Deputy Director, Office of Hearing and Appeals, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Indian Affairs Hearings and Appeals" (RIN1090–AA70) received on July 23, 2002; to the Committee on Indian Affairs.

EC–8178. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Fair Housing and Equal Opportunity, received on July 16, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8179. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report on the operation of the Exchange Stabilization Fund (ESF) for Fiscal Year 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–8180. A communication from the Deputy Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Rescission of Exemption from Bank Secrecy Act Regulations for Sale of Variable Annuities" (RIN1506–AA30) received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8181. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (Doc. No. FEMA–7783) received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8182. A communication from the Deputy Secretary, Division of Investment Management, Office of Regulatory Policy, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Section 270.17a-8 Mergers of Affiliated Companies" (RIN3235–AH81) received on July 23, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8183. A communication from the Director, Federal Emergency Management Agency, transmitting, pursuant to law, a report concerning funding for the State of New York as a result of the record/near record snow has exceeded $5,000,000; to the Committee on Environment and Public Works.

EC–8184. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Planning and Research Program Administration" (RIN2125–AE84) received on July 18, 2002; to the Committee on Environment and Public Works.

EC–8185. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Oregon Medford Carbon Monoxide Nonattainment Area" (FRL7240–9) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8186. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Minnesota Designation Areas for Air Quality Planning Purposes; Minnesota" (FRL7251–5) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8187. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Clean Air Act Finding of Attainment; Portneuf Valley PM–10 Nonattainment Area; Ohio" (FRL7251–3) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8188. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Finding of Failure to Attain; California-San Joaquin Valley Nonattainment Area; PM–10" (FRL7250–5) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8189. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "New York: Incorporation by Reference of State Hazardous Waste Management Program" (FRL7232–3) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8190. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, a report entitled "Letter Responding to American Wood Preservers Institute's (AWPI) Request for Clarification on the Scope and Applicability of the Federal RCRA Regulations at Wood Preserving Facilities" received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8191. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "National Coastal Wetlands Conservation Grant Program" (RIN1018–AF51) received on July 24, 2002; to the Committee on Environment and Public Works.

EC–8192. A communication from the Director, Naval Reactors, transmitting, pursuant to law, a report on radiological waste disposal and environmental monitoring, worker radiation exposure, and occupational safety and health, as well as a report providing and overview of the Program; to the Committee on Armed Services.

EC–8193. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Codification and Modification of Berry Amendment" (DFARS Case 2002–D002) received on July 23, 2002; to the Committee on Armed Services.

EC–8194. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Changes to Profit Policy" (DFARS Case 2000–D018) received on July 23, 2002; to the Committee on Armed Services.

EC–8195. A communication from the Deputy Chief of Naval Operations, Fleet Readiness and Logistics, Department of the Navy, transmitting, pursuant to law, a report to convert to performance by the private sector the Mail and Travel Services functions at Space and Naval Warfare Systems Center San Diego, CA; to the Committee on Armed Services.

EC–8196. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Acquisition of Commercial Items" (DFARS Case 95–D712) received on July 23, 2002; to the Committee on Armed Services.

EC–8197. A communication from the Deputy Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–8198. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Defense (Reserve Affairs), received on July 23, 2002; to the Committee on Armed Services.

EC–8199. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, a report setting forth the proposed amount of staff-years of technical effort (STEs) to be funded by the Department of Defense for each FFRDC for Fiscal Year 2003; to the Committee on Armed Services.

EC–8200. A communication from the Director of Defense Research and Engineering, Department of Defense, transmitting, pursuant to law, the Annual Report of the Strategic Environmental Research and Development Program for Fiscal Year 2001; to the Committee on Armed Services.

EC–8201. A communication from the Assistant to the Secretary of Defense, Nuclear and Chemical and Biological Defense Programs, transmitting, pursuant to law, the Report on the Technology Development Efforts, Concept-of-Operations, and Acquisition Plans to Use Unmanned Aerial Vehicles in Chemical and Biological Defense; to the Committee on Armed Services.

EC–8202. A communication from the Assistant Secretary of Defense, Force Management Policy, transmitting, pursuant to law, the Report of the Ninth Quadrennial Review of Military Compensation; to the Committee on Armed Services.

EC–8203. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on information on executive branch spending and programmatic initiatives for Fiscal Year 2001 through Fiscal Year 2003; to the Committee on Armed Services.

EC–8204. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Assistant Secretary, Tax Policy, received on July 18, 2002; to the Committee on Finance.

EC–8205. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Under Secretary, Designated Assistant Secretary, International Affairs, received on July 18, 2002; to the Committee on Finance.

EC–8206. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary, Enforcement, received on July 18, 2002; to the Committee on Finance.

EC–8207. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Merchandise Processing Fee Eligible to be Claimed as Unused Merchandise Drawback" (RIN1515–AC67) received on July 23, 2002; to the Committee on Finance.

EC–8208. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Taxable Years of Partner and Partnership; Foreign Partners" (RIN1545–AY66) received on July 24, 2002; to the Committee on Finance.

EC–8209. A communication from the Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the Aquatic Resources Trust Fund Annual Report for 2001 and the Oil Spill Liability Trust Fund Annual Report for 2001; to the Committee on Finance.

EC–8210. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Guidance Under Subpart F Relating to Partnerships" (RIN1545–AY45) received on July 23, 2002; to the Committee on Finance.

EC–8211. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "TD 9005: Refund of Mistaken Contributions and Withdrawal Liability Payments" (RIN1545–BA87) received on July 23, 2002; to the Committee on Finance.

EC–8212. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Rev. Rul. 69–259, Modification of" (Rev. Rul. 2002–50) received on July 23, 2002; to the Committee on Finance.

EC–8213. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Notice to Interest Parties" (REG–129608) received on July 23, 2002; to the Committee on Finance.

EC–8214. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Compromise of Tax Liabilities" (RIN1545–AW87) received on July 23, 2002; to the Committee on Finance.

EC–8215. A communication from the Chief, Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Access to Customs Security Areas at Airports" (RIN1515–AD04) received on July 24, 2002; to the Committee on Finance.

EC–8216. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement with Canada; to the Committee on Foreign Relations.

EC-8217. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Greece, Belgium, France, Israel, South Korea, the Netherlands and the United Kingdom; to the Committee on Foreign Relations.

EC-8218. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8219. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8220. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India and Pakistan; to the Committee on Foreign Relations.

EC-8221. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-8222. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8223. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more to The Government of Germany; to the Committee on Foreign Relations.

EC-8224. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8225. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8226. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8227. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8228. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8229. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8230. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8231. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8232. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC-8233. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8234. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8235. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8236. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8237. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8238. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8239. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8240. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8241. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8242. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement with Italy that also involves the export of defense articles and defense services in the amount of $50,000,000 or more to Italy and Greece; to the Committee on Foreign Relations.

EC-8243. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Australia and Poland; to the Committee on Foreign Relations.

EC-8244. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8245. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-8246. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8247. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC-8248. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC-8249. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8250. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license with Japan; to the Committee on Foreign Relations.

EC–8251. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8252. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8253. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8254. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of text and background statements of international agreements other than treaties; to the Committee on Foreign Relations.

EC–8255. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–8256. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–8257. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8258. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense services or defense articles sold commercially under a contract in the amount of $50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC–8259. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more with United Kingdom; to the Committee on Foreign Relations.

EC–8260. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement (MLA) with Japan; to the Committee on Foreign Relations.

EC–8261. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC–8262. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8263. A communication from the Chairman, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, received on July 16, 2002; to the Committee on Governmental Affairs.

EC–8264. A communication from the Secretary, Chief Administrative Officer, Postal Rate Commission, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, received on July 16, 2002; to the Committee on Governmental Affairs.

EC–8265. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Policy Development and Research, received on July 18, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8266. A communication from the Chairman, Federal Accounting Standards Advisory Board, transmitting, pursuant to law, a report entitled "Eliminating the Category National Defense Property, Plant, and Equipment"; to the Committee on Governmental Affairs.

EC–8267. A communication from the Director, Workforce Compensation and Performance Service, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes" (RIN3206–AJ40; RIN3206–AJ41) received on July 23, 2002; to the Committee on Governmental Affairs.

EC–8268. A communication from the District of Columbia Auditor, transmitting, a report entitled "Audit of Advisory Neighborhood Commission 7C for Fiscal Year 1999, 2000, 2001, and 2002 through December 31, 2001 (10/01/98 through 12/31/01)"; to the Committee on Governmental Affairs.

EC–8269. A communication from the District of Columbia Auditor, transmitting, a report entitled "Audit of Advisory Neighborhood Commission 6A for the Period July 1, 1998 through September 30, 2001"; to the Committee on Governmental Affairs.

EC–8270. A communication from the Assistant Secretary, Financial Markets, Department of the Treasury, transmitting, pursuant to law, a report concerning the public debt outstanding would exceed the statutory limit of $5.95 trillion no later than May 16 and, as a result, a "debt issuance suspension period" would begin no later than May 16 and end on June 28, 2002; to the Committee on Governmental Affairs.

EC–8271. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–438, "Lead-Based Paint Abatement and Control Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8272. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–439, "Department of Human Services Mental Retardation and Developmental Disabilities Administration Funding Authorization Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC–8273. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–437, "Abandoned and Vacant Properties Community Development Disposition, and Disapproval of Disposition of Certain Scattered Vacant and Abandoned Properties Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC–8274. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–431, "Business Improvement Districts Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8275. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–432, "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8276. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–436, "Disability Compensation Program Transfer Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8277. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–435, "Square 456 Payment in Lieu of Taxes Extension Temporary Act of 2002"; to the Committee on Governmental Affairs.

EC–8278. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–434, "Contract No. DCFRA 00–C–030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Temporary Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8279. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–428, "Government Reports Electronic Publication Requirement Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8280. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–429, "Free Clinic Assistance Program Extension Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8281. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–430, "Education and Examination Exemption for Respiratory Care Practitioners Amendment Act of 2002"; to the Committee on Governmental Affairs.

EC–8282. A communication from the Acting General Counsel, National Endowment for the Arts, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Chairman, received on July 18, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8283. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "PBGC Benefit Payments" (RIN1212–AA82) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8284. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the Community Services Block Grant Discretionary Activities: Community Economic Development Program (CEDP) Projects Funded During Fiscal Year 1997; to the Committee on Health, Education, Labor, and Pensions.

EC–8285. A communication from the Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of a rule entitled "Federal Sector Equal Employment Opportunity" (RIN3046–AA57) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8286. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits" received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8287. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "State Certification of Mammography Facilities" (RIN0910–AB98) received on July 23, 2002; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1961: A bill to improve financial and environmental sustainability of the water programs of the United States. (Rept. No. 107–228).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HARKIN:

S. 2812. A bill to fully enforce guidance on single sum distributions from cash balance plans, and for other purposes; to the Committee on Finance.

By Mr. SMITH of New Hampshire (for himself, Mr. CRAPO, and Mr. INHOFE):

S. 2813. A bill to improve the financial and environmental sustainability of the water programs of the United States; to the Committee on Environment and Public Works.

By Mr. DORGAN (for himself, Mr. ROBERTS, Mr. CONRAD, Mr. JOHNSON, and Mr. BROWNBACK):

S. 2814. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of New Hampshire (by request):

S. 2815. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRICELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY):

S. 2816. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. HOLLINGS, Mr. BOND, and Ms. MIKULSKI):

S. 2817. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG:

S. 2818. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure that there is competition in the pharmaceutical industry and increased access to affordable drugs; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 486

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 674

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 674, a bill to amend the Internal Revenue Code of 1986 to provide new tax incentives to make health insurance more affordable for small businesses, and for other purposes.

S. 847

At the request of Mr. DAYTON, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 1226

At the request of Mr. CAMPBELL, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1226, a bill to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1523

At the request of Mrs. FEINSTEIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1523, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 1605

At the request of Mr. CONRAD, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1605, a bill to amend title XVIII of the Social Security Act to provide for payment under the Medicare Program for four hemodialysis treatments per week for certain patients, to provide for an increased update in the composite payment rate for dialysis treatments, and for other purposes.

S. 1679

At the request of Mr. CONRAD, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1679, a bill to amend title XVIII of the Social Security Act to accelerate the reduction on the amount of beneficiary copayment liability for medicare outpatient services.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from New Jersey (Mr. TORRICELLI) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 2027

At the request of Mr. DURBIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2027, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2505

At the request of Mr. KENNEDY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2505, a bill to promote the national security of the United States through international educational and cultural exchange programs between the United States and the Islamic world, and for other purposes.

S. 2634

At the request of Mrs. CLINTON, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of

S. 2634, a bill to establish within the National Park Service the 225th Anniversary of the American Revolution Commemorative Program, and for other purposes.

S. 2712

At the request of Mr. HAGEL, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 2762

At the request of Mr. THOMAS, the names of the Senator from Kansas (Mr. ROBERTS), the Senator from North Carolina (Mr. HELMS) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 2762, a bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes.

S. RES. 242

At the request of Mr. THURMOND, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as "National Airborne Day".

AMENDMENT NO. 4326

At the request of Mr. MCCONNELL, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of amendment No. 4326 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH of New Hampshire (for himself, Mr. CRAPO, and Mr. INHOFE):

S. 2813. A bill to improve the financial and environmental sustainability of the water programs of the United States; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, I am pleased to be joining my colleagues on the Environment and Public Works Committee to introduce the Water Quality Investment Act of 2002. When I because Chairman of the Committee in 1999, one of my top priorities was a renewed commitment to our Nation's water systems and the Americans served by them. Senator CRAPO, as Chairman of the Fisheries, Wildlife and Water Subcommittee shared my commitment and made this issue a focus of his subcommittee.

Earlier this year, I joined with Chairmen JEFFORDS and GRAHAM, as well as Senator CRAPO, to introduce S. 1961, the Water Investment Act. This was a strong bipartisan bill that took compromise by all four members to achieve. Unfortunately, the bill that was reported out of Committee was a partisan proposal that added several provisions that will prevent the bill from moving forward. Our majority colleagues insisted on changing the principled funding formula included in S. 1961 for a politically driven one that has no hope of surviving the lengthy legislative process while also compromising the needs of the country's small States. Further, they added Davis Bacon, an onerous labor provision that continues to divide the Senate and only serves to cloud the future of an otherwise strong bill.

While I can no longer support S. 1961, clean water remains one of my top priorities as the Ranking Republican on the EPW Committee. Therefore, I join Senators INHOFE and CRAPO today in introducing a streamlined bill that is free of the controversies that now plague S. 1961.

I am a strong advocate of limited government and when it comes to water infrastructure, I do not believe the primary responsibility of financing local water needs lies with the Federal Government. I am equally adamant, however, that the Federal Government should not place unfunded mandates on our local communities. This bill strikes a responsible balance between meeting Federal obligations and maintaining local responsibility and state flexibility.

So much of our Nation's water infrastructure is aging and in desperate need of replacement. Coupled with the aging problem is the cost burden that local communities face in order to comply with ever increasing State and Federal clean water mandates. This bill addresses these problems and makes structural changes to ensure that we avoid a national crisis now and in the future.

The legislation authorizes $35 billion over the next 5 years in Federal contribution to the total water infrastructure need to help defray the cost of the mandates placed on communities. This is a substantial increase in Federal commitment, but not nearly as high as some would have preferred.

This commitment does not come without additional responsibilities. When the Clean Water Act was amended by Congress in 1987, a debate I remember well, we set up a revolving fund so more Federal money would not be required. The fund would continually revolve providing a continual pool of money for water needs. Unfortunately, appropriations have not kept pace with the Federal share and the funds have not been able to revolve at levels necessary to meet the increasing need. Further, as more Federal mandates have been imposed on local communities, facilities have exhausted their useful life while local officials have found raising water rates unpalatable. Thus, what was not to be Federal responsibility became a Federal necessity. Now we are faced with a near crisis situation.

This bill makes certain that we do not go down that road again. The Federal government will help to defray the costs of Federal mandates, but with the new money comes a new requirement that all utilities do a better job of managing their funds and plan for future costs. The bill requires utilities to assess the condition of their facility and pipes and develop a plan to pay for the long-term repair and replacement of these assets. That plan will include Federal assistance, but it will be limited assistance.

We also make additional structural changes to the law both to address financial concerns and to help achieve improved management of these water systems. One such change to the Clean Water Act is to incorporate a Drinking Water Act provision that allows States, at their discretion, to provide principal forgiveness on loans and to extend the repayment period for loans to disadvantaged communities. This flexibility will provide help to communities struggling with high combined sewer overflow cost to secure additional financial help. This bill also promotes other important cost saving measures that many communities are already experimenting with throughout the country. It will also provide much needed information and planning tools to communities across the country who are experiencing a months-long drought.

Again, I am disappointed I could not maintain my support for S. 1961, the Water Investment Act. However, the bill that passed the Committee took several steps in the wrong direction by including not only a formula but new mandates and regulatory requirements that will prevent the bill from moving forward. Clean water should be a priority for every member of the Senate. We need to come together around a bill that can go forward. S. 1961 is no longer that bill.

I look forward to working with my colleagues to enact the Water Quality Investment Act this year and commemorate the 30th Anniversary of the Clean Water Act with a renewed commitment to the nation's waterways and the people who depend on them.

Mr. CRAPO. Mr. President, I rise with my colleague, Senator BOB SMITH, to introduce the Water Quality Investment Act of 2002. We are introducing this legislation to reinvigorate the debate on investing in our Nation's water and wastewater infrastructure.

When I became Chairman of the Fisheries, Wildlife, and Water Subcommittee, I began the long process of assessing the performance of our water and wastewater infrastructure statutes and exploring needed improvements to address outstanding problems. With the able partnership of Senator SMITH, over the past 3 years, I convened many hearings and meeting with the stakeholders and agency officials to better understand how to address the problems of communities with unmet water and wastewater infrastructure needs.

Earlier this year, Senator SMITH and I joined with Senator BOB GRAHAM and Senator JIM JEFFORDS to introduce S. 1961, the Water Investment Act. As introduced, this measure represented a strong and principled bipartisan measure. The major facets of the bill, heightened investment levels in our infrastructure, increased flexibility to states, and strong accountability by utilities, reflect the commonalities of need and recommendations by stakeholders, experts, and communities. I commend my colleagues for their hard work and the partnership we established in putting together a model bill, which was closely followed by our colleagues in the House of Representatives.

I am proud of the overwhelming support that bill generated. As introduced, S. 1961 represented the collaboration and hard work of many who recognize that the goal of assisting communities should be our guiding principle. Too many communities are waiting for the assistance this bill will provide to see the legislation brought down by difficult, unnecessary proposals.

While by no means perfect, I hoped the committee process would not turn this legislation into a vehicle for individual proposals and controversial concepts. Against my hope, S. 1961 started to unravel as some worked to undermine the compromise and the bipartisan nature of the legislation. As you are well aware, the markup for S. 1961 was contentious and divisive. It was unfortunate that S. 1961, which started out as a bipartisan effort between the four principals, ended up in partisan votes. Despite many warnings, some felt it necessary to bring this legislation down simply to advance narrow agendas.

I have welcomed the opportunity to work again with committed stakeholders and others to craft this carefully-balanced measure. This new bill builds upon the foundations of S. 1961 as introduced and adds important refinements brought forward by the affected communities and stakeholders. It is a proposal that serves the critical needs of our nation's water and wastewater infrastructure in a cost-effective and responsible manner.

I look forward to the Senate's consideration of a sound, balanced, and carefully-deliberated bill to address the water and wastewater needs of the Nation. I believe all of us share that goal and we should all rally around the Water Quality Investment Act as the means to achieve that goal.

By Mr. DORGAN (for himself, Mr. ROBERTS, Mr. CONRAD, Mr. JOHNSON, and Mr. BROWNBACK):

S. 2814. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Mr. President, today, along with Senators ROBERTS, CONRAD, JOHNSON and BROWNBACK, I am introducing legislation to clarify Congressional intent regarding minor oilseed loan rates in the Farm Security and Rural Investment Act, FSRIA, of 2002.

In early June, the United States Department of Agriculture incorrectly interpreted the intent of the new farm bill when the Farm Service Agency arbitrarily announced a wide range of minor oilseed loan rates. For some crops, the loan rate increased substantially, while for others, the rates plunged.

Not once during the farm bill debate was there ever discussion of splitting apart minor oilseed loan rates. In fact, the minor oilseed industry and farmers alike anticipated a county-level increase in loan rates from $9.30 to $9.60/cwt. The announcement by the Farm Service Agency caught virtually everyone in the agriculture community by surprise.

This legislation is intended to correct this misinterpretation of the new farm bill, and to prevent what will certainly be extreme acreage shifts among these crops in the coming years should these rates be allowed to stand. These acreage shifts will destroy segments of the minor oilseed industry that have been painstakingly developed over a number of years.

For instance, already, users of the oil derived from oil sunflowers anticipate supply shortages next year and have indicated they may remove sunflower oil from their product mix. Conversely, incentives caused by the much higher confectionery sunflower loan rate could deluge USDA with massive loan forfeitures of low quality confectionery sunflowers if farmers simply grow for the loan rate rather than a quality crop that has a market.

The legislation amends the new farm bill by simply—and redundantly—listing each minor oilseed's loan rate separately. The legislation also reinstates the crambe and sesame seed loan rates that were eliminated by USDA.

This legislation should not be needed. USDA could easily repeal the current announcement of minor oilseed loan rates in favor of rates consistent with this legislation and the new farm bill, as I and my colleagues have asked in recent letters on this issue.

I request unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2814

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR OTHER OILSEEDS.

(a) DEFINITION OF OTHER OILSEED.—Section 1001(9) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901(9)) is amended by inserting "crambe, sesame seed," after "mustard seed,".

(b) LOAN RATES FOR NONRECOURSE MARKETING ASSISTANCE LOANS.—Section 1202 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7932) is amended—

(1) in subsection (a), by striking paragraph (10) and inserting the following:

"(10) In the case of other oilseeds:

"(A) In the case of oil sunflower seed, confectionery sunflower seed, and other types of sunflower seed, $.0960 per pound, except that the Secretary shall establish a single sunflower loan rate in each county for all seed described in this subparagraph.

"(B) In the case of rapeseed, $.0960 per pound.

"(C) In the case of canola, $.0960 per pound.

"(D) In the case of safflower, $.0960 per pound.

"(E) In the case of flaxseed, $.0960 per pound.

"(F) In the case of mustard seed, $.0960 per pound.

"(G) In the case of crambe, $.0960 per pound.

"(H) In the case of sesame seed, $.0960 per pound.

"(I) In the case of another oilseed designated by the Secretary, $.0960 per pound."; and

(2) in subsection (b), by striking paragraph (10) and inserting the following:

"(10) In the case of other oilseeds:

"(A) In the case of oil sunflower seed, confectionery sunflower seed, and other types of sunflower seed, $.0930 per pound, except that the Secretary shall establish a single sunflower loan rate in each county for all seed described in this subparagraph.

"(B) In the case of rapeseed, $.0930 per pound.

"(C) In the case of canola, $.0930 per pound.

"(D) In the case of safflower, $.0930 per pound.

"(E) In the case of flaxseed, $.0930 per pound.

"(F) In the case of mustard seed, $.0930 per pound.

"(G) In the case of crambe, $.0930 per pound.

"(H) In the case of sesame seed, $.0930 per pound.

"(I) In the case of another oilseed designated by the Secretary, $.0930 per pound.".

(c) REPAYMENT OF LOANS.—Section 1204 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7934) is amended—

(1) in subsection (a), by striking "and extra long staple cotton" and inserting "extra long staple cotton, oil sunflower seed, confectionery sunflower seed, or any other type of sunflower seed";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

"(f) REPAYMENT RATES FOR SUNFLOWER SEEDS.—The Secretary shall permit the producers on a farm to repay a marketing assistance loan under section 1201 for oil sunflower seed, confectionery sunflower seed, or any other type of sunflower seed at a rate that is the lesser of—

"(1) the loan rate established for the commodity under section 1202, plus interest (determined in accordance with section 163 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7283)); or

"(2) the repayment rate established (on the basis of the prevailing market price) for oil sunflower seed.".

By Mr. SMITH of New Hampshire (by request):

S. 2815. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade programs, and for other purposes; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, today, at the request of the President of the United States, I am introducing his proposal to address power plant pollution in the Nation. Introduction of his bill is an important step forward in the long progress of amending the Clean Air to ensure that we are both improving air quality and building upon the most successful environmental program in Federal law, the Acid Rain Program.

One of the first goals that I announced when I became Chairman of the Environment and Public Works Committee in 1999 was to craft a multi-emissions bill for the utility sector. It was a new idea at the time, and we have had to work hard since then to build support for the concept. Recently the Environment and Public Works Committee held a markup during which four separate legislative approaches to a multi-pollutant system were considered, one of those was a complete substitute that I presented to my colleagues.

Today the President offers us a fifth option for our consideration. Each of these legislative drafts contain worthy and groundbreaking ideas as to how we can move forward on the difficult area of reducing air pollution without harming our economy. None is exactly like the others, and there are some clear policy differences among them. I am obviously partial to my own approach, but all five should be discussed. I am confident that the Senate can, if we work together in a bipartisan fashion, find a consensus approach that will be acceptable to a majority of Senators.

I look forward to that process, and I welcome the President to that debate.

I ask unanimous consent to print in the RECORD a summary of the President's legislation that was provided by the Administration, and that the text of the bill also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF CLEAR SKIES ACT OF 2002

The Clear Skies Act of 2002 (Clear Skies Act) amends Title IV of the Clean Air Act to establish new cap-and-trade programs requiring reductions of sulfur dioxide, nitrogen oxides, and mercury emissions from electric generating facilities and amends Title I of the Clean Air Act to provide an alternative regulatory classification for units subject to the cap and trade programs.

Common Provisions: The Clear Skies Act establishes a new Part A, which contains the program elements shared by the sulfur dioxide, nitrogen oxides, and mercury programs. A cap-and-trade program will be implemented for each pollutant. Common definitions, allowance system procedures, monitoring, permitting and compliance requirements, penalties for non-compliance, and auction procedures apply to the new trading programs and are modeled largely after the existing Acid Rain Program.

Under Section 403, the Administrator must establish an allowance system for sulfur dioxide, nitrogen oxide, and mercury that is essentially the same as in the existing Acid Rain Program but that provides for safety valve, i.e., a direct sale of allowances by the Administrator at a fixed price for use in meeting the requirement to hold allowances at least equal to annual emissions.

Under Section 404, the new trading programs must be reflected in Title V permits. This is similar to the permitting provisions of the existing Acid Rain Program.

Under Section 405, affected units must meet essentially the same type of continuous emission monitoring and reporting requirements under the new trading programs as under the Acid Rain Program.

Under Section 406, a graduated, automatic excess emissions penalty replaces the existing single, automatic penalty under the Acid Rain Program.

Under Section 407, fossil-fuel fired boilers, turbines, and integrated gasification combined cycle plants that are not otherwise subject to the new sulfur dioxide, nitrogen oxides, and mercury trading programs may opt into these program if certain requirements are met. Once a unit opts into the new trading programs, it cannot withdraw.

Section 409 requires the Administrator to promulgate regulations for auctions of allowances under the new sulfur dioxide, nitrogen oxides, and mercury trading programs. All auction proceeds will go to the general Treasury.

Section 410 establishes criteria and the process by which the Administrator may recommend to Congress adjustment of the total amounts of allowances available (whether through allocation or auction) starting in 2018 under the new sulfur dioxide, nitrogen oxides, and mercury trading programs.

Sulfur Dioxide Emissions Reductions: The Clear Skies Act establishes Part B, which retains in Sections 411–419, with few changes, the relevant requirements of the existing Acid Rain Program through December 31, 2009 and contains in Sections 421–434 the new, lower annual caps on total sulfur dioxide emissions and new allocation procedures starting January 1, 2010.

Under Section 421, the new sulfur dioxide trading program covers units in the U.S. and its territories. The program includes existing fossil fuel-fired electricity generating boilers and turbines and integrated gasification combined cycle plants with generators having a nameplate capacity of greater than 25 MW with certain exceptions for cogeneration units. The program also includes new fossil fuel-fired electricity generating boilers and turbines and integrated gasification combined cycle plants regardless of size, except for gas-fired units serving one or more generators with total nameplate capacity of 25 MW of less and certain new cogeneration units. In addition, solid waste incineration units and units for treatment, storage, or disposal of hazardous waste are exempted.

Under Section 422, compliance with the requirement to hold allowances covering sulfur dioxide emissions in the new trading program will be determined on a facility-wide basis. The owner or operator must hold allowances for all the affected units at a facility at least equal to the total sulfur dioxide emissions for those units during the year.

Under Section 423, annual sulfur dioxide emissions for affected units are capped at 4.5 million tons starting in 2010 and 3.0 million tons starting in 2018. During the first year of the program, 99 percent of the allowances will be allocated to affected units with an auction for the remaining 1 percent. Each subsequent year, an additional 1 percent of the allowances for twenty years, and then an additional 2.5 percent thereafter, will be auctioned until eventually all the allowances are auctioned.

Under Section 424, allowances are allocated to affected units previously receiving allowances under the Acid Rain Program based on their proportion of the total post-2009 Acid Rain sulfur dioxide allowances currently recorded in their Acid Rain Program allowance accounts. Units that received no allocations under the Acid Rain Program are allocated allowances based on the product of their baseline heat input and a standard emission rate reflective of fuel type. If the Administrator does not promulgate final allocations on a timely basis a default provision takes effect that allocates allowances to Acid Rain Program units based on heat input data collected under that program and auctions other allowances.

Under Section 425, once the Administrator places sulfur dioxide allowances under the new trading program into accounts in the Allowance Tracking System, all year 2010 and later allowances allocated under the Acid Rain Program will be removed from the accounts. All pre-2010 allowances under the Acid Rain Program that have not been used will remain in accounts and may be used to meet the requirement to hold allowances in the new trading program.

Under Section 426, a reserve of 250,000 allowances is established for affected units that combusted bituminous and that, before 2008, install and operate sulfur dioxide control technology and continue to combust such coal. The procedure established for submission of applications by owners and operators and approval of applications and award of allowances by the Administrator is designed to ensure that approval of those projects will result in the largest amount of sulfur dioxide emission reductions achieved per allowance awarded.

Under Sections 431–434, a separate emission limitation and cap-and-trade program are provided for the States in the Western Regional Air Partnership (WRAP). The cap-and-trade program for the WRAP States goes into effect the third year after the year 2018 or later when sulfur dioxide emissions for these units exceed 271,000 tons. This cap-and-trade program is analogous to the new nation-wide sulfur dioxide trading program but establishes a second sulfur dioxide emission limitation only for these WRAP units, which will be subject to both the regional and the nationwide programs.

Nitrogen Oxides Emissions Reductions: The Clear Skies Act establishes Part C, which retains in Sections 431–432 the requirements of the existing Acid Rain Program for nitrogen oxides and in Sections 461–465 the requirements of the existing NO_X State Implementation (SIP) call under Section 110 of the Clean Air Act through December 31, 2007; and contains in Sections 451–454 the new, annual caps on total allowances and new, allocation procedures starting January 1, 2008.

Under Section 451, the new nitrogen oxides trading program covers the same units in the U.S. and its territories as the new sulfur dioxide trading program, but separate cap-and-trade systems are established for Zone 1 (largely the eastern and part of the central portions of the U.S.) and Zone 2 (the remainder of the U.S. and territories).

Under Section 452, compliance with the requirement to hold allowances covering nitrogen oxides emissions will be determined on a facility-wide basis, analogous to the way compliance is determined under the new sulfur dioxide trading programs. Only allowances issued for the zone in which the facility is located can be used for compliance for that facility.

Under Section 453, annual NO_X emissions for affected units in Zone 1 are capped at 1.562 million tons starting in 2008 and 1.162 million tons starting in 2010. Zone 2 annual emissions are capped at 538,000 tons. Each year, the percentages of allowances allocated and auctioned each year are the same as under the new sulfur trading program.

Under Section 454, allowances are allocated to affected units based on the proportionate share of their baseline heat input to total heat input of the units in their respective zone. If the Administrator does not promulgate final allocations on a timely basis, a default provision, like that under the new sulfur dioxide trading program, takes effect.

Sections 461–456 contains provisions that codify the emission reduction requirements of the NO_X SIP Call that covers the eastern U.S. The SIPs are required to be consistent with the NO_X emission budgets established under the NO_X SIP Call. SIPs must be submitted for certain full States and for certain portions of some States as determined proposed by the Administrator in the rulemaking that commenced February 22, 2002.

Mercury Emission Reductions: The Clear Skies Act establishes Part D, which contains the new, annual caps on total mercury allowances and new, allocation procedures starting January 1, 2010.

Under Section 471, the new mercury trading program covers coal-fired units that are covered by the new sulfur dioxide and nitrogen oxides trading programs.

Under Section 472, compliance with the requirement to hold allowances covering mercury emissions will be determined on a facility-wide basis, analogous to the way compliance is determined under the new sulfur dioxide and nitrogen oxides trading programs.

Under Section 473, annual mercury emission are capped at 26 tons starting in 2010 and 15 tons starting in 2018. Each year, the percentages of allowances allocated and auctioned each year are the same as under the new sulfur and nitrogen oxides trading programs.

Under Section 474, allowances are allocated to affected units based on the proportionate share of their baseline heat input to total heat input of all affected units. For purposes of allocating the allowances, each unit's baseline heat input is adjusted to reflect the types of coal combusted by the unit during the baseline period. If the Administrator does not promulgate final allocations on a timely basis, a default provision, like that under the new sulfur dioxide and nitrogen oxides trading programs, takes effect.

Performance Standards for New Sources: To ensure that all new affected units have appropriate controls, Part E establishes, in section 481, performance standards for all new boilers, combustion turbines, and integrated gasification combined cycle plants (IGCCs) covered under the Act.

"New" units are those that commence construction or reconstruction after the date of enactment. The standards also apply to "modified" units that opt to meet the applicable performance standard in lieu of case-specific BACT.

These statutory performance standards include emission limits for four pollutants: nitrogen oxides (NO_X); sulfur dioxide (SO_2); mercury (Hg); and particulate matter (PM). The Hg emission limit applies only to coal. In addition, a PM emission limit is established for existing oil-fired boilers to ensure reductions of nickel from such units. All units subject to a performance standard must monitor emissions using CEMS and use averaging times similar to current NSPS.

Boilers and IGCCs are subject to a SO_2 emission limit of 2.0 lb/MWh; a NO_X emission limit of 1.0 lb/MWh; and a PM emission limit of 0.20 lb/MWh. Coal-fired boilers and IGCCs are subject to a Hg emission limit of 0.015 lb/GWh; however, alternative standards would apply in some circumstances. Coal-fired combustion turbines are subject to the same NO_X, SO_2, PM, and Hg emission limits as boilers and IGCCs. Oil-fired combustion turbines are subject to NO_X emission limits ranging from 0.289 lb/MWh to 1.01 lb/MWh, an SO_2 emission limit of 2.0 lb/MWh, and a PM emission limit of 0.20 lb/MWh. Gas-fired combustion turbines are subject to NO_X emission limits ranging from 0.084 lb/MWh to 0.56 lb/MWh. Existing oil-fired boilers are subject to a PM emission limit of 0.30 lb/MWh.

Research, Environmental Monitoring, and Assessment: Section 482 contains provisions for evaluating and reporting the efficacy of the new sulfur dioxide, nitrogen oxides, and mercury trading programs; and providing information concerning whether the total amounts of allowances under these programs starting in 2018 should be adjusted under Section 410.

Exemption from Major Source Reconstruction Review Requirements and Best Available Retrofit Control Technology Requirements: Section 483 exempts units from the requirements of New Source Review (NSR). The section also exempts these sources from the requirement to install best available retrofit technology (BART). These exemptions are created by excluding affected sources from being "major stationary sources" for purposes of Part C and D of the Clean Air Act.

Affected units constructed after enactment of the Clear Skies Act must meet the performance standards for NO_X, SO_2, PM, and CO specified in Section 481, but a case-by-case review of the appropriate control technology such as BACT or LAER is no longer required. Similarly, modifications at existing affected units must either comply with the performance standards for NO_X, SO_2, PM, and CO established in section 481 or comply with BACT. However, to qualify for this exemption from NSR, an existing sources must either commit within three years to meet the existing NSPS limit for PM of 0.03 lb/MMbtu in the future, or have begun to properly operate any existing control technology to reduce PM emissions or otherwise minimize PM emissions according to best operational practices. To qualify for the exemption, an existing source must also use good combustion practices to minimize emissions of carbon monoxide. Permits issued in the past to comply with the requirements of Parts C and D, however, will remain in effect.

To ensure that national parks and other Class I areas are protected, affected units located within 50 km of such an area will remain subject to the requirements in Part C for the protection of such areas.

States must ensure that the construction of new or modified affected units will not cause or contribute to a violation of the NAAQS or interfere with the programs to assure that the NAAQS are met. States also must provide the public with an opportunity to comment on the impact of the affected unit on the NAAQS, or on any Class I areas within 50 km of the facility.

For affected units, the definition of modification is defined to mean changes that increases the hourly emissions of any air pollutant.

S. 2815

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Clear Skies Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title, table of contents.
Sec. 2. Emission Reduction Programs.

"TITLE IV—EMISSION REDUCTION PROGRAMS

"PART A—GENERAL PROVISIONS

"Sec. 401. (Reserved)
"Sec. 402. Definitions.
"Sec. 403. Allowance system.
"Sec. 404. Permits and compliance plans.
"Sec. 405. Monitoring, reporting, and recordkeeping requirements.
"Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
"Sec. 407. Election of additional units.
"Sec. 408. Clean coal technology regulatory incentives.
"Sec. 409. Auctions.
"Sec. 410. Evaluation of limitations on total sulfur dioxide, nitrogen oxides, and mercury emissions that start in 2018.

"PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

"Subpart 1—Acid Rain Program

"Sec. 411. Definitions.
"Sec. 412. Allowance allocations.
"Sec. 413. Phase I sulfur dioxide requirements.
"Sec. 414. Phase II sulfur dioxide requirements.
"Sec. 415. Allowances for states with emission rates at or below .8 lbs/mmbtu.
"Sec. 416. Election for additional sources.
"Sec. 417. Auctions, Reserve.
"Sec. 418. Industrial sulfur dioxide emissions.
"Sec. 419. Termination.

"Subpart 2—Sulfur Dioxide Allowance Program

"Sec. 421. Definitions.
"Sec. 422. Applicability.
"Sec. 423. Limitations on total emissions.
"Sec. 424. Allocations.
"Sec. 425. Disposition of sulfur dioxide allowances allocated under subpart 1.
"Sec. 426. Incentives for sulfur dioxide emission control technology.

"Subpart 3—Western Regional Air Partnership

"Sec. 431. Definitions.

"Sec. 432. Applicability.
"Sec. 433. Limitations on total emissions.
"Sec. 434. Allocations.

"PART C—NITROGEN OXIDES EMISSIONS REDUCTIONS

"Subpart 1—Acid Rain Program

"Sec. 441. Nitrogen Oxides Emission Reduction Program.
"Sec. 442. Termination.

"Subpart 2—Nitrogen Oxides Allowance Program

"Sec. 451. Definitions.
"Sec. 452. Applicability.
"Sec. 453. Limitations on total emissions.
"Sec. 454. Allocations.

"Subpart 3—Ozone Season NO_X Budget Program

"Sec. 461. Definitions.
"Sec. 462. General Provisions.
"Sec. 463. Applicable Implementation Plan.
"Sec. 464. Termination of Federal Administration of NO_X Trading Program.
"Sec. 465. Carryforward of Pre-2008 Nitrogen Oxides Allowances.

"PART D—MERCURY EMISSION REDUCTIONS

"Sec. 471. Definitions.
"Sec. 472. Applicability.
"Sec. 473. Limitations on total emissions.
"Sec. 474. Allocations.

"PART E—NATIONAL EMISSION STANDARDS; RESEARCH; ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

"Sec. 481. National emission standards for affected units.
"Sec. 482. Research, environmental monitoring, and assessment.
"Sec. 483. Major source preconstruction review and best availability retrofit control technology requirements."
Sec. 3. Other amendments.

Sec. 2. Emission Reduction Programs.

Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651, et seq.) is amended to read as follows:

"TITLE IV—EMISSION REDUCTION PROGRAMS

PART A.—GENERAL PROVISIONS

SEC. 401. (Reserved)

SEC. 402. DEFINITIONS.

As used in this title—

(1) The term "affected EGU" shall have the meaning set forth in section 421, 431, 451, or 471, as appropriate.

(2) The term "affected facility" or "affected source" means a facility or source that includes one or more affected units.

(3) The term "affected unit" means—

(A) Under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, it applicable, under a specified part or subpart or

(B) Under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

(4) The term "allowance" means—

(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

(5)(A) The term "baseline heat input" means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period 1997 through 2001.

(B) Notwithstanding subparagraph (A),

(i) if a unit commenced operation during 2000, then "baseline heat input" means the average annual heat input used by the unit during 2000–2001; and

(ii) if a unit commenced or commences operation during 2001–2004, then "baseline heat input" means the manufacturer's design heat input capacity for the unit multiplied by eighty percent for coal-fired units, fifty for combined cycle combustion turbines, and five percent for simple cycle combustion turbines.

(C) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

(D) By July 1, 2003, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. By January 1, 2004, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

(6) The term "clearing price" means the price at which allowances are sold at an auction conducted by the Administrator or, if allowances are sold at an auction conducted by the Administrator at more than one price, the lowest price at which allowances are sold at the auction.

(7) The term "coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(8) The term "coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(9) The term "coal-fired" with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

(10) The term "cogeneration unit" means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy:

(A) electricity; and

(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

(11) The term "combustion turbine" means any combustion turbine that is not self-propelled. The term includes, but is not limited to, a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine. The term does not include a combined turbine in an integrated gasification combined cycle plant.

(12) The term "commence operation" with regard to a unit means start up the unit's combustion chamber.

(13) The term "compliance plan means either—

(A) a statement that the facility will comply with all applicable requirements under this title, or

(B) under subpart 1 of part B or subpart 1 of part C, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

(14) The term "continuous emission monitoring system" (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

(15) The term "designated representative" means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

(16) The term "duct burner" means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

(17) The term "facility" means all buildings, structures, or installations located on one or more adjacent properties under common control of the same person or persons.

(18) The term "fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(19) The term "fossil fuel-fired" with regard to a unit means combusting fossil fuel, alone or in combination with any amount of other fuel or material.

(20) The term "fuel oil" means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

(21) The term "gas-fired" with regard to a unit means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at least ninety percent, and fuel oil comprising no more than ten percent, of the unit's total heat input in any year.

(22) The term "gasify" means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

(23) The term "generator" means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

(24) The term "heat input" with regard to a specific period of time means the product (in mmBtu/time) of the gross calorific value of the fuel (in mmBtu/lb) and the fuel feed rate into a unit (in lb of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

(25) The term "integrated gasification combined cycle plant" means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

(26) The term "oil-fired" with regard to a unit means, except under section 424 and 434, combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

(27) The term "owner or operator" with regard to a unit or facility means, except for subpart 1 of part B and subpart 1 of part C, any person who owns, leases, operates, controls, or supervises the unit or the facility.

(28) The term "permitting authority" means the Administrator, or the State or local air pollution control agency, with an approved permitting program under title V of the Act.

(29) The term "potential electrical output" with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

(30) The term "source" means, except for sections 410, 481, and 482, all buildings, structures, or installations located on one or more adjacent properties under common control of the same person or persons.

(31) The term "State" means—

(A) one of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Amercian Samoa, or the Commonwealth of the Northern Mariana Islands; or

(B) under subpart 1 of part B and subpart 1 of part C, one of the 48 contiguous States or the District of Columbia; or

(C) under subpart 3 of part B, Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

(32) The term "unit" means—

(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plan; or

(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device.

(33) The term "utility unit" shall have the meaning set forth in section 411.

(34) The term "year" means calendar year.

SEC. 403. ALLOWANCE SYSTEM.

(a) ALLOCATION IN GENERAL.—(1) For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows—

(A) sulfur dioxide allowances in an amount equal to the annual tonnage emission limitation calculated under section 413, 414, 415, or 416 except as otherwise specifically provided elsewhere in subpart 1 of part B, or in an amount calculated under section 424 or 434,

(B) nitrogen oxides allowances in an amount calculated under section 454, and

(C) mercury allowances in an amount calculated under section 474.

(2) Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit, and the determination of any values used in such calculation, under sections 424, 434, 454, and 474 shall not be subject to judicial review.

(3) Allowances shall be allocated by the Administrator without cost to the recipient, and shall be auctioned or sold by the Administrator, in accordance with this title.

(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated, auctioned, or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated or auctioned and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, except as otherwise provided in section 425. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by January 1, 2008, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated, auctioned, or sold by the Administrator under this title is a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or auctioned to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V or section 404 with respect to the unit for which such allowance was originally allocated and recorded.

(e) PROHIBITION.—(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated, auctioned, or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

(2) It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the owner or operator as provided in sections 412(c), 422, 432, 452, and 472.

(3) The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for a specified year. Not later than thirty-six months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

(A) such allowances may be used only to meet the requirements of section 422, 432, 452, and 472, as the case may be, for such facility and for a year specified by the Administrator,

(B) each such sulfur dioxide allowance shall be sold for $4,000, each such nitrogen oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index on the date of enactment of the Clear Skies Act of 2002 and annually thereafter,

(C) the proceeds from any sales of allowances under subparagraph (B) shall be deposited in the United States Treasury.

(D) the allowances directly purchased for use for a specified year shall be taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be auctioned under section 423, 453, or 473 starting for the year after the specified year and continuing for each subsequent year as necessary.

(E) if an owner or operator does not use any such allowance in accordance with paragraph (A),

(i) the owner or operator shall hold the allowance for deduction by the Administrator and

(ii) the Administrator shall deduct the allowance, without refund or other form of recompense, and offer it for sale in the auction from which it was taken under subparagraph

(D) or a subsequent relevant auction as necessary.

(F) if the direct sales of allowances result in the removal of all sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, from auctions under section 423, 453, or 473 for three consecutive years, the Administrator shall conduct a study to determine whether revisions to the relevant allowance trading program are necessary and shall report the results to the Congress.

(4) Allowances may not be used prior to the calendar year for which they are allocated or auctioned. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected facilities of their requirements and liabilities under the Act.

(f) Competitive Bidding for Power Supply.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(g) Applicability of the Antitrust Laws.—

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(h) Public Utility Holding Company Act.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

(i) Interpollutant Trading.—Not later than July 1, 2009, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(j) International Trading.—Not later than 24 months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall furnish to the Congress a study evaluating the feasibility of international trading of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances.

SEC. 404. PERMITS AND COMPLIANCE PLANS.

(a) Permit Program.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472,

(2) exceedances of applicable emissions rates under section 441.

(3) the use of any allowance prior to the year for which it was allocated or auctioned, and

(4) contravention of any other provision of the permit. No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

(b) Compliance Plan.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a "facility" under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

(1) submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

(2) Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

(3) Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits.

(c) Permits.—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

(d) Amendment of Application and Compliance Plan.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

(e) Prohibition.—It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this title to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

(3) In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section, except that any such unit may be subject to the applicable enforcement provisions of section 113.

(f) Certificate of Representation.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

(a) Applicability.—(1)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

(B) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timelines as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(2)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

(i) sulfur doxide, opacity, and volumetric flow for all affected units subject to subpart 2 of part B at the facility,

(ii) nitrogen oxides for all affected units subject to subpart 2 of part C at the facility, and

(iii) mercury for all affected units subject to part D at the facility.

(B)(i) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, for recordkeeping and reporting of information from such systems, and if necessary under section 474, for monitoring, recordkeeping, and reporting of the mercury content of fuel.

(ii) Notwithstanding the requirements of clause (i), the regulations under clause (i) may specify an alternative monitoring system for determining mercury emissions to the extent that the Administrator determines that CEMS for mercury with appropriate vendor guarantees are not commercially available.

(iii) The regulations under clause (i) may include limitation on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title.

(iv) Except as provided in clausse (v), the regulations under clause (i) shall not require a separate CEMS for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

(v) The regulations under clause (i) may require a separate CEMS for each unit where two or more units utilize a single stack and another provision of the Act requires data under subparagraph (A) for an individual unit.

(b) DEADLINES.—(1). Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

(2) By the later of January 1, 2009 or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

(3) By the later of January 1 of the year before the first covered year or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

(4) By the later of January 1, 2007 or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides, and

(5) By the later of January 1, 2009 or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

(c) UNAVAILABILITY OF EMISSIONS DATA.—If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this Act.

(d) With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2001), amended as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing regulations not later than January 1, 2008.

(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT

(a) EXCESS EMISSIONS PENALTY.—(1) The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement shall be liable for the payment of an excess emissions penalty, except where such emission were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement multiplied by $2,000.

(2) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

(A) the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(ii) the Administrator receives the penalty required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, three hundred percent of the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417.

(3) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

(4) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

(A) the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances as the case may be—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(ii) the Administrator receives the penalty required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, three hundred percent of the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473.

(5) Any penalty under paragraph 1, 2, 3, or 4 shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under paragraph 1, the Administrator shall implement this paragraph under 40 CFR 77 (2001), amended as appropriate by the administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. Any such payment shall be deposited in the United States Treasury. Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this Act.

(b) EXCESS EMISSIONS OFFSET.—(1) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(2) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset

the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(3) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) for inflation, based on the Consumer Price Index, on November 15, 1990 and annually thereafter.

(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

(1) to pay the penalty under subsection (a) or

(2) to offset excess emissions as required by subsection (b).

(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

(f) Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of the Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

(g) Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

SEC. 407. ELECTION FOR ADDITIONAL UNITS.

(a) APPLICABILITY.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate such unit as an affected unit under subpart 2 of part B and subpart 2 of part C. If the owner or operator elects to designate a unit that is coal-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D.

(b) APPLICATION.—The owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

(c) APPROVAL.—If an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D, subject to the requirements in subsections (d) through (g).

(d) ESTABLISHMENT OF BASELINE.—(1) After approval of the designation under subsection (c), the owner or operator shall install and operate CEMS on the unit, and shall quality assure the data, in accordance with the requirements of paragraph (a)(2) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each unit.

(2) The baselines for heat input and sulfur dioxide, nitrogen oxides, and mercury emission rates, as the case may be, for the unit shall be the unit's heat input and the emission rates of sulfur dioxide, nitrogen oxides, and mercury for a year starting after approval of the designation under subsection (c). The Administrator shall issue regulations requiring all the unit's baselines to be based on the same year and specifying minimum requirements concerning the percentage of the unit's operating hours for which quality assured CEMS data must be available during such year.

(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under paragraph (c), the unit shall become:

(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under paragraph (f), starting the later of January 1, 2010 or January 1 of the year after the year on which the unit's baselines are based under subsection (d);

(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under paragraph (f), starting the later of January 1, 2008 or January 1 of the year after the year on which the unit's baselines are based under subsection (d); and

(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, starting the later of January 1, 2010 or January 1 of the year after the year on which the unit's baselines are based under subsection (d).

(f) ALLOCATIONS AND AUCTION AMOUNTS.—(1) The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for each year during which a unit is an affected unit under subsection (e). The regulations shall provide for allocations equal to fifty percent of the following amounts, as adjusted under paragraph (2):

(A) the lesser of the unit's baseline heat input under subsection (d) or the unit's heat input for the year before the year for which the Administrator is determining the allocations; multiplied by

(B) the lesser of—

(i) the unit's baseline sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be,

(ii) the unit's sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be, during 2002, as determined by the Administrator based, to the extent available, on information reported to the State where the unit is located; or

(iii) the unit's most stringent State or federal emission limitation for sulfur dioxide, nitrogen oxides, or mercury applicable to the year on which the unit's baseline heat input is based under subsection (d).

(2) the Administrator shall reduce the allocations under paragraph (1) by 1.0 percent in the first year for which the Administrator is allocating allowances to the unit, by an additional 1.0 percent of the allocations under paragraph (1) each year starting in the second year through the twentieth year, and by an additional 2.5 percent of the allocations under paragraph (1) each year starting in the twenty-first year and each year thereafter. The Administrator shall make corresponding increases in the amounts of allowances auctioned under sections 423, 453, and 473.

(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B, subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

(h) The Administrator shall promulgate regulations implementing this section within 24 months of the date of enactment of the Clear Skies Act of 2003.

SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

(a) DEFINITION.—For purposes of this section, "clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. the Federal contribution for qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA REGULATIONS.—Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit (1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NO_X burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this Act.

SEC. 409. AUCTIONS.

(a) Commencing in 2005 and in each year thereafter, the Administrator shall conduct auctions, as required under sections 423, 424, 426, 453, 454, 473, and 474, at which allowances shall be offered for sale in accordance with regulations promulgated by the Administrator no later than twenty-four months after the date of enactment of the Clear Skies Act of 2002. Such regulations may provide allowances to be offered for sale before or during the year for which such allowances may be used to meet the requirement to hold allowances under section 422, 452, and 472. Such regulations shall specify the frequency and timing of auctions and may provide for more than one auction of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances during a year. Each auction shall be open to any person. A person wishing to bid for allowances in the auction shall submit to the Administrator (by a date set, and on a bid schedule provided, by the Administrator) offers to purchase specified numbers of allowances at specified prices. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this title.

(b) DEFAULT AUCTION PROCEDURES.—If the Administrator is required to conduct an auction of allowances under subsection (a) before regulations have been promulgated under that subsection, such auction shall be conducted as follows—

(1) The auction shall be held on the first business day in October of the year in which the auction is required or, in the absence of such a requirement, of the year before the first year for which the allowances may be used to meet the requirements of section 403(e)(2).

(2) The auction shall be open to any person.

(3) In order to bid for allowances included in the auction, a person shall submit, and the Administrator must receive by the date three business days before the auction, one or more offers to purchase a specified amount of such allowances at a specified price on a sealed bid schedule to be provided by the Administrator. The bidder shall state in the bid schedule that the bidder is willing to purchase at the specified price fewer allowances than the specified amount and shall identify the account in the Allowance Tracking System under section 403(c) in which the allowances purchased are to be placed. Each bid must include a certified check or, using a form to be provided by the Administrator, a letter of credit for the specified amount of allowances multiplied by the bid price payable to the U.S. EPA. The bid schedule, and check or letter of credit, shall be sent to the address specified on the bid schedule.

(4) The Administrator shall auction the allowances by:

(A) determining whether each bid meets the requirements of paragraph (3);

(B) listing the bids (including the specified amounts of allowances and the specified bid prices) meeting the requirements of paragraph (3) in order, from highest to lowest bid price;

(C) for each bid price, summing the amounts of allowances specified in the bids listed under subparagraph (B) with the same or a higher bid price;

(D) identifying the bid price with the highest sum of allowances under subparagraph (C) that does not exceed the total amount of allowances available for auction;

(E) setting as the sales price in the auction:

(i) the bid price identified under subparagraph (D) if that bid price has a sum of allowances under subparagraph (C) equal to the total amount of allowances available for auction; or

(ii) the next lowest bid price after the bid price identified under subparagraph (D), if the bid price identified under subparagraph (D) has a sum of allowances under subparagraph (C) less than the total amount of allowances available for auction; and

(F) starting with the first bid listed under subparagraph (B) and ending with the bid listed immediately before the bid with a bid price equal to the sales price, selling the amounts of allowances specified in each bid to the person who submitted the bid.

(i) If the amount of remaining allowances available for auction equals or is less than the amount of allowances specified in the bid with a bid price equal to the sales price, the Administrator shall sell the amount of remaining allowances to the person who submitted that bid.

(ii) If there is more than one bid with a bid price equal to the sales price and the amount of remaining allowances available for auction is less than the total of the amounts of allowances specified in such bids, the Administrator shall sell the amount of the remaining allowances to the persons who submitted those bids on a pro rata basis.

(5) After the auction, the Administrator will publish the names of winning and losing bidders, their bids, and the sales price. The Administrator will provide the successful bidders notice of the allowances that they have purchased within thirty days after payment is collected by the Administrator. After the conclusion of the auction, the Administrator will return payment to unsuccessful bidders and the appropriate portion of payment to successful bidders who offered to purchase a larger amount of allowances than the amount that they are sold or to pay a bid price exceeding the sales price and will add any unsold allowances to the next relevant auction.

(c) The Administrator may by delegation or contract provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(d) The proceeds from any auction conducted under this title shall be deposited in the United States Treasury.

SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SULFUR DIOXIDE, NITROGEN OXIDES, AND MERCURY EMISSIONS THAT START IN 2018.

(a) EVALUATION.—(1) The Administrator, in consultation with the Secretary of Energy, shall study whether the limitations on the total annual amounts of allowances available starting in 2018 for sulfur dioxide under section 423, nitrogen oxides under section 453, and mercury under section 473 should be adjusted.

(2) As part of the study, the Administrator shall address the following factors concerning the pollutants under paragraph (a)(1):

(A) the need for further emission reductions from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and other sources to attain or maintain the national ambient air quality standards;

(B) whether the benefits of the limitations on the total annual amounts of allowances available starting in 2018 justify the costs and whether adjusting any of the limitations would provide additional benefits which justify the costs of such adjustment, taking into account both quantifiable and nonquantifiable factors;

(C) the marginal cost effectiveness of reducing emissions for each pollutant;

(D) the relative marginal cost effectiveness of reducing sulfur dioxide and nitrogen oxide emissions from affected EGUs under subpart 2 of part B and subpart 2 of part C, as compared to the marginal cost effectiveness of controls on other sources of sulfur dioxide, nitrogen oxides and other pollutants that can be controlled to attain or maintain national ambient air quality standards;

(E) the feasibility of attaining the limitations on the total annual amounts of allowances available starting in 2018 given the available control technologies and the ability to install control technologies by 2018, and the feasibility of attaining alternative limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) for each pollutant, including the ability to achieve alternative limitations given the available control technologies, and the feasibility of installing the control technologies needed to meet the alternative limitation by 2018;

(F) the results of the most current research and development regarding technologies and strategies to reduce the emissions of one or more of these pollutants from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D, as applicable and the results of the most current research and development regarding technologies for other sources of the same pollutants;

(G) the projected impact of the limitations on the total annual amounts of allowances available starting in 2018 and the projected impact of adjusting any of the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) on the safety and reliability of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and on fuel diversity within the power generation section;

(H) the most current scientific information relating to emissions, transformation and deposition of these pollutants, including studies evaluating:

(i) the role of emissions of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D in the atmospheric formation of pollutants for which national ambient air quality standards exist;

(ii) the transformation, transport, and fate of these pollutants in the atmosphere, other media, and biota;

(iii) the extent to which effective control programs in other countries would prevent air pollution generated in those countries from contributing to nonattainment, or interfering with the maintenance of any national ambient air quality standards;

(iv) whether the limitations starting in 2010 or 2018 will result in an increase in the level of any other pollutant and the level of any such increase; and

(v) speciated monitoring data for particulate matter and the effect of various elements of fine particulate matter on public health;

(I) the most current scientific information relating to emissions, transformation and deposition of mercury, including studies evaluating:

(i) known and potential human health and environmental effects of mercury;

(ii) whether emissions of mercury from affected EGUs under part D contribute significantly to elevated levels of mercury in fish;

(iii) human population exposure to mercury;

(iv) the relative marginal cost effectiveness of reducing mercury emissions from affected EGUs under part D, as compared to the marginal cost effectiveness of controls on other sources of mercury.

(J) a comparison of the extent to which sources of mercury not located in the United States contributed to adverse affects on terrestrial or aquatic systems as opposed to the contribution from affected EGUs under part D, and the extent to which effective mercury control programs in other countries could minimize such impairment; and

(K) an analysis of the effectiveness and efficiency of the sulfur dioxide allowance program under subpart 2 of part B, the nitrogen oxides allowance program under subpart 2 of part C, and the mercury allowance program under part D.

(3) As part of the study, the Administrator shall take into account the most current information available pursuant to the review of the air quality criteria for particulate matter under section 108.

(b) PEER REVIEW PROCEDURES.—The draft results of the study under subsection (a) and related technical documents shall be subject to an independent and external peer review in accordance with this section. Any documents that are to be considered by the Administrator in the study must be independently peer reviewed no later than July 1, 2008. The peer review required under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.). The Administrator shall:

(1) conduct the peer review in an open manner. Such peer review shall

(A) be conducted through a formal panel that is broadly representative and involves qualified specialists who

(i) are selected primarily on the basis of their technical expertise relevant to the analyses required under this section and to the decision whether or not to adjust the total annual amounts of allowances available starting in 2018 under paragraph (a)(1);

(ii) are independent of the agency;

(iii) disclose to the agency prior technical or policy positions they have taken on the issues under consideration; and

(iv) disclose to the agency their sources of personal and institutional funding from the private or pubic sectors;

(B) contain a balanced presentation of all considerations, including minority reports;

(C) provide adequate protections for confidential business information and trade secrets, including requiring panel members or participants to enter into confidentiality agreements;

(D) afford an opportunity for public comment; and

(E) be complete by no later than January 1, 2009.

(2) respond, in writing, to all significant peer review and public comments;

(3) certify that

(A) each peer review participant has the expertise an independence required under this section; and

(B) the agency has adequately responded to the peer review comments as requires under this section.

(c) RECOMMENDAITON TO CONGRESS.—The Administrator, in consultation with the Secretary of Energy, should submit to Congress no later than July 1, 2009, a recommendation whether to revise the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1). The recommendation shall include the final results of the study under subsections (a) and (b) and shall address the factors described in paragraph (a)(2). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (a)(2) and the peer review process has been completed under subsection (b).

PART B. SULFUR DIOXIDE EMISSION REDUCTIONS

Subpart 1. Acid Rain Program.

SEC. 411. DEFINITIONS.

For purposes of this subpart—

(1) the term "actual 1985 emission rate", for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version, 2 National Utility reference File. For nonutility units, the term "actual 1985 emission rate" means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(2) The term "allowable 1985 emissions rate" means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions

(3) The term "alternative method of compliance" means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

(B) a Phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

(4) The term "baseline" means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ("mmBtu's"), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term "basic Phase II allowance allocations" means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g) (1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 414.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 414.

(6) The term "capacity factor" means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(7) The term "commenced" as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(8) The term "commenced commercial operation" means to have begun to generate electricity for sale.

(9) The term "construction" means fabrication, erection, or installation of an affected unit.

(10) The term "existing unit" means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 which is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

(11) The term "independent power producer" means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(12) The term "new" independent power production facility" means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

(C) is a new unit required to hold allowances under this subpart.

(13) The term "industrial source" means a unit that does not serve a generator that produces electricity, a "non-utility unit" as defined in this section, or a process source.

(14) The term "life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(15) The term "new unit" means a unit that commences commercial operation on or after November 15, 1990.

(16) The term "nonutility unit" means a unit other than a utility unit.

(17) The term "Phase II bonus allowance allocations" means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 412, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 414, and section 415.

(18) The term "qualifying phase I technology" means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(19) The term "repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(2)) The term "reserve" means any bank of allowances established by the Administrator under this subpart.

(21)(A) The term "utility unit" means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operations during 1985, but

(ii) did not during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subpart.

(C) A unit that congenerates steam and electricity is not a "utility unit" for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

SEC. 412. ALLOWANCE ALLOCATION.

(a)(1) Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual missions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not to take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting he restrictions imposed in the preceding sentence, he Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject tot he requirements of section 414. Subject to the provisions of section 417, the Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and(3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

(b) NEW UTILITY UNITS.—(1) After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

(2) Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

(3) New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

(c) PROHIBITIONS.—(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

(2) For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

(3) Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source.

(4) Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

(d) In order to insure electric reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, including for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

(e) Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state (1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

(a) EMISSION LIMITATIONS.—(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 413(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000, and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subpart that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—(1) The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

(d) ELIGIBLE PHASE I EXTENSION UNITS.—(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to.

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 or 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e)(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements:

(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 414 described in subparagraph (A), the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quality of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000 exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impractibility or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10.020
		4	14,510
		5	34,070
	Edgewater	4	5.050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crósse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9.670
		6	12,040
		7	16,180
		8	15,790

(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(1) DEFINITIONS.—As used in this subsection:

(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term "qualified energy conservation measure" means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) QUALIFIED RENEWABLE ENERGY.—The term "qualified renewable energy" means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) ELECTRIC UTILITY.—The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii) (I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

(D) DETERMINATION OF AVOIDED EMISSIONS.—

(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions;

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004, and dividing by 2,000.

(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by (ii) 0.004, and dividing by 2,000.

(G) PROHIBITIONS.—

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) REGULATIONS.—The Administrator shall implement this subsection under 40 CFR part 73 (2001), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if allowances remain in the reserve one year after the date of enactment of the Clear Skies Act of 2002, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term "pro rata basis" refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITED IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu, at the election to the owner or operator of such unit, the unit's baseline may be calculated

(i) as provided under section 411, or

(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section, and section 414 (as Basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.

(a) APPLICABILITY.—(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this Act for fulfilling the obligations specified in section 406.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 415.

(3) In addition to basic Phase II allowances allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky , or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/

mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3) After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990 to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, is shall be unlawful for any existing unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired unites of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs.mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil-and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and Gas-fired Units Equal to or Greater Than 0.60 lbs/mmBtu and Less Than 1.20 lbs/mmBtu.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(f) Oil and Gas-fired Units Less Than 0.60 lbs/mmBtu.—After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowance 1985 emissions, and (b) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 412(a), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units That Commence Operation Between 1986 and December 31, 1995.—(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

Table B

Unit	*Allowances*
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(6)(A) Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a "qualifying small power production facility" or "qualifying cogeneration facility" (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a "new independent power production facility" if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) Oil and Gas-fired Units Less Than 10 Percent Oil Consumed.—(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in High Growth States.—(1) In addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: Provided, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the

40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1), (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 414(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such state fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) EMISSION LIMITATIONS.—(1) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) before January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(2) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 4,000.

(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

(e) LIMITATIONS.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR part 74 (2001), amended as appropriate by the Administrator.

SEC. 417 AUCTIONS, RESERVE.

(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(b) AUCTION SALES.—(1) Subaccount for auctions.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter, until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowance at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000	100,000
1994	50,000	100,000
1995	50,000	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003–2009	125,000	0

(3) PROCEEDS.—(A) Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2002, any allowance withheld under paragraph (a)(2) but not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

(d) TERMINATION OF AUCTION.—The Administrator shall terminate the withholding of allowances and the auction sales under this section on December 31, 2009. Pursuant to regulations under this section, the Administrator may be delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(e) The Administrator shall implement this section under 40 CFR part 73 (2001), amended as appropriate by the Administrator.

SEC. 418. INDUSTRIAL SO_2 EMISSIONS.

(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in section 411(11)), including units subject to section 414(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, "standard of performance" means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

(c) ELECTION.—Regulations promulgated under section 414(b) shall not prohibit a source from electing to become an affected unit under section 417.

SEC. 419. TERMINATION.

Starting January 1, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

Subpart 2. Sulfur Dioxide Allowance Program

SEC. 421 DEFINITIONS.

For purposes of this subpart—

(1) The term "affected EGU" means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences services of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term "affected EGU" does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term "coal-fired" with regard to a unit means, for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during 1997 through 2001 or, for a unit that commenced operation during 2001–2004, a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

(3) The term "Eastern bituminous" means bituminous that is from a mine located in a State east of the Mississippi River.

(4) The term "general account" means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 CFR §73.31(c) (2001), amended as appropriate by the Administrator.

(5) The term "oil-fired" with regard to a unit means, for purposes of section 424, combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1997 through 2001 or, for a unit that commenced operation during 2001–2004, a unit designed to combust oil for more than ten percent of the unit's total heat input and not to combust any coal or coal-derived fuel coal.

(6) The term "unit account" means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR §73.31(a) and (b) (2001), amended as appropriate by the Administrator.

SEC. 422. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424, and shall conduct auctions of sulfur dioxide allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL SO_2 ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	SO_2 allowances allocated	SO_2 allowances auctioned
2010	4,371,666	45,000
2011	4,326,667	90,000
2012	4,281,667	135,000
2013	4,320,000	180,000
2014	4,275,000	225,000
2015	4,230,000	270,000
2016	4,185,000	315,000
2017	4,140,000	360,000
2018	2,730,000	270,000
2019	2,700,000	300,000
2020	2,670,000	330,000
2021	2,640,000	360,000
2022	2,610,000	390,000
2023	2,580,000	420,000
2024	2,550,000	450,000
2025	2,520,000	480,000
2026	2,490,000	510,000
2027	2,460,000	540,000
2028	2,430,000	570,000
2029	2,400,000	600,000
2030	2,325,000	675,000
2031	2,250,000	750,000
2032	2,175,000	825,000
2033	2,100,000	900,000
2034	2,025,000	975,000
2035	1,950,000	1,050,000
2036	1,875,000	1,125,000
2037	1,800,000	1,200,000
2038	1,725,000	1,275,000
2039	1,650,000	1,350,000
2040	1,575,000	1,425,000
2041	1,500,000	1,500,000
2042	1,425,000	1,575,000
2043	1,350,000	1,650,000
2044	1,275,000	1,725,000
2045	1,200,000	1,800,000
2046	1,125,000	1,875,000
2047	1,050,000	1,950,000
2048	975,000	2,025,000
2049	900,000	2,100,000
2050	825,000	2,175,000
2051	750,000	2,250,000
2052	675,000	2,325,000
2053	600,000	2,400,000
2054	525,000	2,475,000
2055	450,000	2,550,000
2056	375,000	2,625,000
2057	300,000	2,700,000
2058	225,000	2,775,000
2059	150,000	2,850,000
2060	75,000	2,925,000
2061	0	3,000,000

SEC. 424. EGU ALLOCATIONS.

(a) By January 1, 2007, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 through 2060. The regulations shall provide that—

(1)(A) Ninety-five percent of the total amount of sulfur dioxide allowances allocated each year to affected EGUs under section 423 shall be allocated based on the sulfur dioxide allowances that were allocated under subpart 1 for 2010 or thereafter and are held in unit accounts and general accounts in the Allowance Tracking System under section 403(c).

(B) The Administrator shall allocate sulfur dioxide allowances to each facility's account and each general account in the Allowance Tracking System under section 403(c) as follows:

(i) The Administrator shall determine the amount of sulfur dioxide allowances allocated under subpart 1 for 2010, and each subsequent year, that are recorded in each unit account and each general account in the Allowance Tracking System as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2002. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2001), amended as appropriate by the Administrator, except that the Administrator shall discount all sulfur dioxide allowances allocated for 2011 or later at a rate of 7% per year.

(ii) The Administrator shall determine for each unit account and each general account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

(iii) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

(2)(A) Three and one-half percent of the total amount of sulfur dioxide allowances allocated each year for affected EGUs under section 423 shall be allocated for units at a facility that are affected EGUs as of December 31, 2004, that commenced operation before January 1, 2001, and that are not allocated any sulfur dioxide allowances under subpart 1.

(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by—

(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii), and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii); and

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall add to the amount of sulfur dioxide allowances allocated under paragraph (3) any unallocated allowances under this paragraph.

(3)(A) One and one-half percent of the total amount of sulfur dioxide allowances allocated each year for affected EGUs under section 423 shall be allocated for units that are affected EGUs as of December 31, 2004, that commence operation on or after January 1, 2001 and before January 1, 2005, and that are not allocated any sulfur dioxide allowances under subpart 1.

(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by—

(i) For such units at the facility that are coal-fired or oil-fired, multiplying 0.19 lb/mmBtu by the total baseline heat imput of such units and converting to tons;

(ii) For all such other units at the facility that are not covered by clause (i), multiplying 0.02 lb/mmBtu by the total baseline heat input of such units and converting to tons;

(iv) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii); and

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraphs (1) and (2) on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

(b) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a) by July 1 that is eighteen months before January 1 of such year, then—

(1) The Administrator shall:

(A) allocate, for such year, to each unit with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of sulfur dioxide allowances determined by multiplying eighty percent of the allocation amount under section 423 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units with coal as their primary or secondary fuel or residual oil as their primary fuel;

(B) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

(C) auction an amount of sulfur dioxide allowances equal to five percent of the allocation amount under section 423 and conduct the auction on the first business day in October following the respective promulgation deadline under subsection (b) and in accordance with section 400.

(2) Notwithstanding any other provision of law to the contrary, the determination of the amount of sulfur dioxide allowances under subparagraph (1)(A) and the recording of sulfur dioxide allowances under subparagraph (1)(B) shall not be subject to judicial review.

(3) Notwithstanding the provisions to the contrary in section 423, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 423 for such year.

SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.

(a) After allocating allowances under section 424(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System under section 403(c) and from the Special Allowances Reserve under section 418 all sulfur dioxide allowances allocated or deposited under subpart 1 for 2010 or later.

(b) The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009.

SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.

(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

(b) APPLICATION.—By July 1, 2004 an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include—

(1) a statement that the owner or operator will install and commence operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

(2) a statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(3) a demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit downstream of such control technology, while the unit is combusting fuel in accordance with paragraph (2).

(4) a request that EPA allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

(5) a statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

(c) APPROVAL OR DISAPPROVAL.—Through adjudicative determinations subject to notice and opportunity for comment, the Administrator shall—

(1) determine whether each application meets the requirements of subsection (b);

(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

(3) for each application listed under paragraph (2), multiply the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the highest total amount of allowances that does not exceed 250,000 allowances; and

(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install, and quality assure data from, a CEMS for sulfur dioxide located upstream of the sulfur dioxide control technology under paragraph (b)(1) at the unit and a CEMS for sulfur dioxide located downstream of such control technology at the unit during the period starting with the commencement of operation of such control technology through 2009. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stock, separate monitoring shall be required for each unit.

(f) ALLOCATIONS.—By July 1, 2010, for the units for which applications are approved under paragraph (c), the Administrator shall allocate sulfur dioxides allowances as follows:

(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio of the last application that EPA approved under subsection (c) by the lesser of:

(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

(3) The Administrator shall allocate to each unit the lesser of the amount determined for that unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, under paragraph (2). The Administrator shall auction any unallocated allowances from the reserve under this section and conduct the auction by the first business day in October 2010 and in accordance with section 409.

Subpart 3. Western Regional Air Partnership.

SEC. 431. DEFINITIONS.

For purposes of this subpart—

(1) The term "adjusted baseline heat input" means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

(A) Notwithstanding paragraph (1), if a unit commences operation during such period and—

(i) on or after January 1 of the fifth year before the first covered year, then "adjusted baseline heat input" shall mean the average annual heat input used by the unit during the fifth and fourth years before the first covered year; and (ii) on or after January 1 of the fourth year before the first covered year, then "adjusted baseline heat input" shall mean the annual heat input used by the unit during the fourth year before the first covered year.

(B) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

(2) The term "affected EGU" means an affected EGU under subpart 2 that is in a State and that:

(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

(B) in any year after 2000, emits 100 tons or more of sulfur dioxide and is used to produce electricity for sale.

(3) The term "coal-fired" with regard to a unit means, for purposes of section 434, a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the eighth through the fourth year before the first covered year.

(4) The term "covered year" means:

(A)(1) the third year after the year 2018 or later when the total annual sulfur dioxide emissions of all affected EGUs in the States first exceed 271,000 tons; or

(2) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the States subject to the requirements of sections 432 through 434; and

(B) each year after the "covered year" under subparagraph (A).

(5) the Term "oil-fired" with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than ten percent of the unit's total heat input, and combusting no coal or coal-derived fuel, an any year during the period from the eight through the fourth year before the first covered year.

SEC. 432. APPLICABILITY.

Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

SEC. 434. EGU ALLOCATIONS.

(a) By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the fourth year before the covered year by—

(1) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(2) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(3) For all such other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; and

(4) Multiplying the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2), and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3).

(b) For each covered year, if the Administrator has not promulgated the regulations determining allocations under paragraph (a) by July 1 that is eighteen months before January 1 of such year, then—

(1) The Administrator shall:

(A) allocate, for such year, to each affected EGU with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of sulfur dioxide allowances determined by multiplying eighty percent of the allocation amount under section 433 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all affected EGUs with coal as their primary or secondary fuel or residual oil as their primary fuel;

(B) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the sum of the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

(C) auction an amount of sulfur dioxide allowances equal to five percent of the allocation amount under section 433 and conduct the auction on the first business day in October following the respective promulgation deadline under subsection (b) and in accordance with section 409.

(2) Notwithstanding any other provision of law to the contrary, the determination of the amount of sulfur dioxide allowances under subparagraph (1)(A) and the recording of sulfur dioxide allowances under subparagraph (1)(B) shall not be subject to judicial review.

(3) Notwithstanding the provisions to the contrary in section 433, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 433 for such year.

PART C—NITROGEN OXIDES EMISSION REDUCTIONS

Subpart 1—Acid Rain Program

SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) EMISSION LIMITATIONS.—

(1) The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: Provided, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_X burner technology. The Administrator shall implement this paragraph under 40 CFR §76.5 (2001). The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu;

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_X burned technology is available: Provided, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 CFR §§76.6 and 76.7 (2001).

(c) ALTERNATIVE EMISSION LIMITATIONS.—The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

(1) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_X burner technology; or

(2) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_X burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_X control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2001), amended as appropriate by the Administrator.

(d) EMISSIONS AVERAGING.—In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 CFR part 76 (2001), amended as appropriate by the Administrator.

SEC. 442. TERMINATION.

Starting January 1, 2008, owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

Subpart 2. Nitrogen Oxides Allowance Program.

SEC. 451. DEFINITIONS.

For purposes of this subpart—

(1) The term "affected EGU" means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term "affected EGU" does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term "Zone 1 State" means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

(3) The term "Zone 2 State" means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

SEC. 452. APPLICABILITY.

(a)(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

(b)(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(b) shall be held in order to meet the requirements of paragraph (1).

SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

(a) For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL NO_x ALLOWANCE ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1

Year	NO_x allowances allocated	NO_x allowances auctioned
2008	1,546,380	15,620
2009	1,530,760	31,240
2010	1,515,140	46,860
2011	1,499,520	62,480
2012	1,483,900	78,100
2013	1,468,280	93,720
2014	1,452,660	109,340
2015	1,437,040	124,960
2016	1,421,420	140,580
2017	1,405,800	156,200
2018	1,034,180	127,820
2019	1,022,560	139,440
2020	1,010,940	151,060
2021	999,320	162,680
2022	987,700	174,300
2023	976,080	185,920
2024	964,460	197,540
2025	952,840	209,160
2026	941,220	220,780
2027	929,600	232,400
2028	900,550	261,450
2029	871,500	290,500
2030	842,450	319,550
2031	813,400	348,600
2032	784,350	377,650
2033	755,300	406,700
2034	726,250	435,750
2035	697,200	464,800
2036	668,150	493,850
2037	639,100	522,900
2038	610,050	551,950
2039	581,000	581,000
2040	551,950	610,050
2041	522,900	639,100
2042	493,850	668,150
2043	464,800	697,200
2044	435,750	726,250
2045	406,700	755,300
2046	377,650	784,350
2047	348,600	813,400
2048	319,550	842,450
2049	290,500	871,500
2050	261,450	300,550
2051	232,400	929,550
2052	203,350	958,650
2053	174,300	987,700
2054	145,250	1,016,750
2055	116,200	1,045,800
2056	87,150	1,074,850
2057	58,100	1,103,900
2058	29,050	1,132,950
2059	0	1,162,000

(b) For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table B.

TABLE B.—TOTAL NO_x ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NO_x allowance allocated	NO_x allowance auctioned
2008	532,620	5,380
2009	527,240	10,760
2010	521,860	16,140
2011	516,480	21,520
2012	511,100	26,900
2013	505,720	32,280
2014	500,340	37,660
2015	494,960	43,040
2016	489,580	48,420
2017	484,200	53,800
2018	478,820	59,180
2019	473,440	64,560
2020	468,060	69,940
2021	462,680	75,320
2022	457,300	80,700
2023	451,920	86,080
2024	446,540	91,460
2025	441,160	96,840
2026	435,780	102,220
2027	430,400	107,600
2028	416,950	121,050
2029	403,500	134,500
2030	390,050	147,950
2031	376,600	161,400
2032	363,150	174,850
2033	349,700	188,300
2034	336,250	201,750
2035	322,800	215,200
2036	309,350	228,650
2037	295,900	242,100
2038	282,450	255,550
2039	269,000	269,000
2040	255,550	282,450
2041	242,100	295,900
2042	228,650	309,350
2043	215,200	322,800
2044	201,750	336,250
2045	188,300	349,700
2046	174,850	363,150
2047	161,400	376,600
2048	147,950	390,050
2049	134,500	403,500
2050	121,050	416,950
2051	107,600	430,400
2052	94,150	443,850
2053	80,700	457,300
2054	67,250	470,750
2055	53,800	484,200
2056	40,350	497,650
2057	26,900	511,100
2058	13,450	524,550
2059	0	538,000

SEC. 454. EGU ALLOCATIONS.

(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—(1) by January 1, 2006, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 1 State that are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(a) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 1 States.

(2)(A) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocation under paragraph (a)(1), but has promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking system for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then—

(i) The Administrator shall:

(I) allocate, for such year, to each unit in the Zone 1 States listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of nitrogen oxides allowances determined by multiplying eighty percent of the allocation amount under section 453(a) by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units in the Zone 1 States;

(II) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of nitrogen oxides allowances for the units at such facility determined under subclause (I); and

(III) auction an amount of nitrogen oxides allowances equal to five percent of the allocation amount under section 453(a) and conduct the auction on the first business day in October following the respective promulgation deadline under subparagraph (A) and in accordance with section 409.

(ii) Notwithstanding any other provision of law to the contrary, the determination of the amount of nitrogen oxides allowances under subclause (i)(I) and the recording of nitrogen oxides allowances under subclause (i)(II) shall not be subject to judicial review.

(iii) Notwithstanding the provisions to the contrary in section 453, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 453(a) for such year.

(B) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (a)(1), and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance

Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for an affected EGU in the Zone 1 States to emit nitrogen oxides during such year in excess of 0.14 lb/mmBtu.

(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.)(1)—By January 1, 2006, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 2 State that are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(b) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 2 States.

(2)(A) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (b)(1), but has promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such years, then—

(i) The Administrator shall:

(I) allocate, for such year, to each unit in the Zone 2 States listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of nitrogen oxides allowances determined by mutiplying eighty percent of the allocation amount under section 453(b) by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units in the Zone 2 States;

(II) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of nitrogen oxides allowances for the units at such facility determined under subclause (I); and

(III) auction an amount of nitrogen oxides allowances equal to five percent of the allocation amount under section 453(b) and conduct the auction on the first business day in October following the respective promulgation deadline under subparagraph (A) and in accordance with section 409.

(ii) Notwithstanding any other provision of law to the contrary, the determination of the amount of nitrogen oxides allowances under subclause (i)(I) and the recording of nitrogen oxides allowances under subclause (i)(II) shall not be subject to judicial review.

(III) Notwithstanding the provisions to the contrary in section 453, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 453(b) for such year.

(B) For each year 2008 through 2058, if the Administrator has not promulgated the regulations determining allocations under paragraph (b)(1), and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for any affected EGU in the Zone 2 States to emit nitrogen oxides during such year in excess of 0.25 lb/mmBtu.

Subpart 3. Ozone Season No_x Budget Program

SEC. 461. DEFINITIONS.

For purposes of this subpart—

(1) The term "ozone season" means:

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

(B) with regard to all other States, the period May 30, 2004 through September 30, 2004 and the period May 1 through September 30 for each year thereafter.

(2) The term "State" means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kennedy, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

(3) The term "fine grid portions of Alabama, Georgia, Michigan, and Missouri" means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR §51.121 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

SEC. 462. GENERAL PROVISIONS.

The provisions of sections 402 through 406 and section 409 shall not apply to this subpart.

SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

(a) Except as provided in subsection (b), the applicable implementation plan for each State shall be consistent with the requirements, including the State's nitrogen oxides budget and compliance supplement pool, in 40 CFR §§51.121 and 51.122 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

(b) Notwithstanding any provision to the contrary in 40 CFR §51.121 (2001), the applicable implementation plan for each State shall require full implementation of the required emission control measures starting no later than the first ozone season.

SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM.

(a) Starting January 1, 2008, the Administrator shall not administer any nitrogen oxides trading program in any State's applicable implementation plan under section 463.

(b) Nothing in subsection (a) shall preclude a State from administering any nitrogen oxides trading program in the State's applicable implementation plan under section 463.

SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES ALLOWANCES.

The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers in a State's applicable implementation plan under section 463.

PART D—MERCURY EMISSIONS REDUCTIONS

SEC. 471. DEFINITIONS.

For purposes of this subpart—

(1) The term "adjusted baseline heat input" with regard to a unit means the unit's baseline heat input multiplied by—

(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years.

(2) The term "affected EGU" means:

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2002, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2001 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it served or serves during 2001 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2002, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that produces electricity for sale equal to less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term "affected EGU" does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

SEC. 472. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances under section 474, and conduct auctions of mercury allowances under section 409, in the amounts in Table A.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	Mercury allowances allocated	Mercury allowances auctioned
2010	823,680	8,320
2011	815,360	16,640
2012	807,040	24,960
2013	798,720	33,280
2014	790,400	41,600
2015	782,080	49,920
2016	773,760	58,240
2017	765,440	66,560
2018	436,800	43,200
2019	432,000	48,000
2020	427,200	52,800
2021	422,400	57,600
2022	417,600	62,400
2023	412,800	67,200
2024	408,000	72,000
2025	403,200	76,800
2026	398,400	81,600
2027	393,600	86,400
2028	388,800	91,200
2029	384,000	96,000
2030	372,000	108,000
2031	360,000	120,000
2032	348,000	132,000
2033	336,000	144,000
2034	324,000	156,000
2035	312,000	168,000
2036	300,000	180,000
2037	288,000	192,000
2038	276,000	204,000
2039	264,000	216,000

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS—Continued

Year	Mercury allowances allocated	Mercury allowances auctioned
2040	252,000	228,000
2041	240,000	240,000
2042	228,000	252,000
2043	216,000	264,000
2044	204,000	276,000
2045	192,000	288,000
2046	180,000	300,000
2047	168,000	312,000
2048	156,000	324,000
2049	144,000	336,000
2050	132,000	348,000
2051	120,000	360,000
2052	108,000	372,000
2053	96,000	384,000
2054	84,000	396,000
2055	72,000	408,000
2056	60,000	420,000
2057	48,000	432,000
2058	36,000	444,000
2059	24,000	456,000
2060	12,000	468,000
2061	0	480,000

SEC. 474. EGU ALLOCATIONS.

(a) By January 1, 2007, the Administrator shall promulgate regulations determining allocations of mercury allowances for each year during 2010 through 2060 for units at a facility that are affected EGUs as of December 31, 2004. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

(b)(1) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a), but has promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by July 1 that is eighteen months before January 1 of such year, then—

(A) The Administrator shall

(i) allocate, for such year, to each unit with coal as its primary or secondary fuel listed in the Administrator's Emissions Scorecard 2000, Appendix B, Table B1 an amount of mercury allowances determined by multiplying eighty percent of the allocation amount under section 473 by the ratio of such unit's heat input in the Emissions Scorecard 2000, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2000, Appendix B, Table B1 for all units with coal as their primary or secondary fuel;

(ii) record in each facility's account in the Allowance Tracking System under section 403(c) for such year the total of the amounts of mercury allowances for the units at such facility determined under clause (i); and

(iii) auction an amount of mercury allowances equal to five percent of the allocation amount under section 473 and conduct the auction on the first business day in October following the respective promulgation deadline under paragraph (1) and in accordance with section 409.

(B) Notwithstanding any other provision of law to the contrary, the determination of the amount of mercury allowances under subparagraph (1)(A) and the recording of mercury allowances under subparagraph (1)(B) shall not be subject to judicial review.

(C) Notwithstanding the provisions to the contrary in section 473, the Administrator shall not allocate or record fifteen percent of the allocation amount under section 473 for such year.

(2) For each year 2010 through 2060, if the Administrator has not promulgated the regulations determining allocations under paragraph (a), and has not promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by July 1 that is eighteen months before January 1 of such year, then it shall be unlawful for any affected EGU to emit mercury during such year in excess of 30 percent of the mercury content (in ounces per mmBtu) of the coal and coal-derived fuel combusted by the unit.

PART E—NATIONAL EMISSION STANDARDS; RESEARCH; ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

SECTION 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS.

(a) DEFINITIONS.—For purposes of this section:

(1) The term "commenced," with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

(2) The term "construction" means fabrication, erection, or installation of an affected unit.

(3) The term "affected unit" means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(4) The term "existing affected unit" means any affected unit that is not a new affected unit.

(5) The term "new affected unit" means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2002, except that for the purpose of any revision of a standard pursuant to subsection (e), "new affected unit" means any affected unit, the construction or reconstruction of which is commenced after the public of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

(6) The term "reconstruction" means the replacement of components of a unit to such an extent that:

(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

(B) it is technologically and economically feasible to meet the applicable standards set forth in this section.

(7) The term "simply cycle combustion turbine" means a stationary combustion turbine that does not extract heat from the combustion turbine exhaust gases.

(b) EMISSION STANDARDS.—

(1) IN GENERAL.—No. later than twelve months after the date of enactment of the Clear Skies Act of 2002, the Administrator shall promulgate regulations prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

(2) MONITORING.—

(A) The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

(B) The Administrator shall, by regulation, require—

(1) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

(i) install and operate CEMS for monitoring output, including electricity and useful thermal energy, on the affected unit and to quality assure the data; and

(ii) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

(2) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

(i) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

(ii) comply with recordkeeping and reporting requirements; and

(iii) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and combustion turbines that are gas-fired or coal fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30-day rolling average, except that in the case of mercury, the compliance period shall be the calendar year. For combustion turbines that are not gas-fired or coal-fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4-hour rolling average.

(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain:

(A) sulfur dioxide in excess of 2.0 lb/MWh;

(B) nitrogen oxides in excess of 1.0 lb/MWh;

(C) particulate matter in excess of 0.20 lb/MWh; or

(D) if the unit is coal-fired, mercury in excess of 0.015 lb/GWh, unless:

(i) mercury emissions from the unit are reduced by 80%

(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit and are operated so as to optimize capture of mercury; or

(iii) a technology is applied to the unit and operated so as to optimize capture of mercury, and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

(2) Notwithstanding subparagraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are

constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

(d) COMBUSTION TURBINES.—(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of:

(A) 0.56 lb/MWh (15 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine;

(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area;

(C) 0.21 lb/MWh (9 ppm at 15 percent oxygen), if the unit is not a simple cycle turbine and neither uses add-on controls nor is located within 50 km of a class I area.

(2) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1)(A) through (D).

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain:

(A) sulfur dioxide in excess of 2.0lb/MWh;

(B) nitrogen oxides in excess of—

(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area;

(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

(C) particulate matter in excess of 0.20 lb/MWh.

(e) PERIODIC REVIEW AND REVISION.—(1) The Administrator shall, at least every 8 years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated. When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

(f) EFFECTIVE DATE.—Standard promulgated pursuant to this section shall become effective upon promulgation.

(g) DELEGATION.—(1) Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard applicable to such unit.

(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 111(e), 113, 114, 116, 120, 303, 304, 307 and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulations, requirement, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this Act.

(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this section shall be subject to standards under section 111 of this Act.

SECTION 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.

(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research and environmental monitoring and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title. The purposes of such a program are to:

(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

(3) produce peer-reviewed scientific and technology information to inform the review of emissions levels under section 410;

(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track changes in human health and the environment attributable to emission reductions under this title; and

(5) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of U.S. electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall:

(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from electricity generation and the transport of these species;

(2) improve understanding of the contribution of mercury emissions from electricity generation to mercury in fish and other biota, including:

(A) the response of and contribution to mercury in the biota owing to atmospheric deposition of mercury from U.S. electricity generation on both local and regional scales;

(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations; and

(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels.

(3) improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including:

(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

(B) personal exposure to fine particulate matter from electricity generation.

(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall:

(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and srubbers for use on all coal types;

(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

(8) improve low cost combustion modifications and controls for dry-bottom boilers.

(d) EMISSIONS LEVELS EVALUATION REPORT.—Not later than January 1, 2008, the Administrator, in consultation with the Secretary of Energy, shall prepare a peer reviewed report to inform review of the emissions levels under section 410. The report shall be based on the best available peer-reviewed scientific and technology information. It shall address cost, feasibility, human health and ecological effects, and net benefits associated with emissions levels under this title.

(e) ENVIRONMENTAL ACCOUNTABILITY.—(1) The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall:

(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

(i) improve the ability to routinely measure mercury in dry deposition processes;

(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

(iv) improve understanding of the effectiveness and cost of mercury emissions controls.

(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section.

(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota.

(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition.

(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

(2) REPORTING REQUIREMENTS.—Not later than twenty-four months after the date of enactment of the Clear Skies Act of 2002, and not later than every four years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title. The report shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to:

(A) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

(B) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality parameters, and indicators of reductions in human exposure;

(C) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

(D) status and trends in visibility;

(E) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and near-coastal waters);

(F) status of mercury and its transformation products in fish;

(G) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

(H) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

(I) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

SEC. 483. EXEMPTION FROM MAJOR SOURCE RECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.

(a) MAJOR SOURCE EXEMPTION.—An affected unit may not be considered a major emitting facility or major stationary source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of part C and part D of title I. This exemption only applies to units that are either subject to the performance standards of section 481 or meet the following requirements within three years after the date of enactment of the Clear Skies Act of 2002:

(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particular matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clear Skies Act of 2002, and

(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide.

(b) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2002 is subject to those provisions under part C of title I pertaining to the review of a new or modified major stationary source's impact on a Class I area.

(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, a program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit:

(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard.

(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved.

(3) for a modified unit, the unit must comply prior to beginning operation with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity.

(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "affected unit" means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) The term "construction" includes the construction of a new affected unit and the modification of any affected unit.

(3) The term "modification" means any physical change in, or change in the method of operation of, an affected unit which increases the hourly emissions of any air pollutant at the unit's maximum capacity.".

SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended by—

(1) removing from section 103 subparagraphs (j)(3)(E) and (j)(3)(F); and

(2) modifying section 107 by amending:

(A) subparagraph (D)(1)(A) by

(i) deleting the "or" at the end of clause (ii);

(ii) replacing the period with ", or" at the end of clause (iii);

(iii) adding clause (iv) to read as follows:

"(iv) notwithstanding clauses (i)—(iii), an area may be designated transitional for the fine particles national primary ambient air quality standard or the 8-hour ozone national primary ambient air quality standard if the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain that standard no later than December 31, 2015, and such modeling demonstration and all necessary local controls have been approved into the state implementation plan no later than December 31, 2004."; and

(iv) adding to the flush language at the end a sentence to read as follows:

". . . However, for purposes of the fine particles national primary ambient air quality standard and the 8-hour ozone national primary ambient air quality standard, the time period for the State to submit the designations shall be extended to no later than November 30, 2003."

(B) clause (d)(1)(B)(i) by adding at the end a sentence to read as follows:

". . . Provided, however, that the Administrator shall not be required to designate areas for the revised fine particles national primary ambient air quality standard and 8-hour ozone fine particles national primary ambient air quality standard prior to 6-months after the States are required to submit recommendations under section 107(d)(1)(A), but in no event shall the period for designating such areas be extended beyond November 30, 2004."

(3) modifying section 110 by:

(A) amending clause (a)(2)(D)(i) to read as follows:

"(D) contain adequate provisions—

(i)(I) except as provided in subclause (II), prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(A) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(B) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(II) The Administrator, in reviewing, under subclause (I), any plan with respect to which emissions from affected units, within the meaning of section 126(d)(1), are substantial—

(A) shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant non-attainment areas in the other State or States; and

(B) may not require submission of plan provisions—

(i) subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to January 1, 2012; or

(ii) mandating an amount of emissions reductions based on the Administrator's determination that emissions reductions are available from such affected units, unless the Administrator determines that emissions from such units may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and that reductions in such emissions will improve air quality in the petitioning State's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, to the maximum extent that a methodology is reasonably available to make such a determination. The Administrator shall develop an appropriate peer reviewed methodology for making such determinations by December 31, 2006. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other source characteristics.

(III) Nothing in subclause (II) shall be interpreted to require revisions to the provisions of 40 CFR 51.121 and 51.122 (2001), as would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002)."

(B) adding a new subsection (q) to read as follows:

"(q) Transitional Areas.—

(1) Maintenance.—

(A) By December 31, 2010, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2015.

(B) No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2015, the Administrator will consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by 2015.

(2) Prevention of significant deterioration. Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this subchapter.

(3) Consequences of failure to attain by 2015. No later than June 30, 2016, EPA shall determine whether each area designated as transitional for the 8-hour ozone standard or for the fine particles standard has attained that standard. If EPA determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within 1 year of the determination and the State shall be required to submit a state implementation plan revision satisfying the provisions of section 172 within 3 years of redesignation as nonattainment.

(4) adding to section 111 a new subparagraph (b)(1)(C) to read as follows:

"(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.".

(5) modifying section 112 by amending:

(A) paragraph (c)(1) to read as follows:

"(c) List of Source Categories.—

(1) In General.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Provided, however, that electric utility steam generating units not subject to Resource Conservation and Recovery Act section 3005 shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units in accordance with the regime set forth in section 112(f)(2) through (4). The section 112(f)(2) determination shall be based on actual emissions by electric utility steam generating units in 2010. Any such regulations shall be promulgated within 8 years of 2010. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate."

(B) subparagraph (n)(1)(A) to read as follows:

"(n) Other Provisions.—

(1) Electric Utility Steam Generating Units.—

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990."

(6) modifying section 126 by:

(A) revising subsection (b) by replacing "section 110(a)(2)(D)(ii) or this section" with "section 110(a)(2)(D)(i)";

(B) revising subsection (c)(1) by replacing "this section and the prohibition of section 110(a)(2)(D)(ii)" with "the prohibition of section 110(a)(2)(D)(i)";

(C) revising subsection (c), flush language at end, by replacing "section 110(a)(2)(D)(ii)" with "section 110(a)(2)(D)(i)" and deleting the last sentence; and

(D) adding subsection (d) to read as follows:

"(d)(1) For purposes of this subsection, the term "affected unit" means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2002 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary—

(A) In determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision.

(B) The Administrator may not determine that affected units emit or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that:

(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

(ii) reductions in such emissions will improve air quality in the petitioning state's nonattainment area(s) at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination. In making this determination, the Administrator will use the best available peer reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subsidision and incorporate other sources characteristics.

(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to January 1, 2009. For any petition submitted prior to January 1, 2007, the Administrator shall make a finding or deny the petition by January 31, 2009.

(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2012."

(b) Title III of the Clean Air Act is amended by modifying section 307(d)(1(G) to read as follows:

"(G) the promulgation or revision of any regulation under title IV,".

(C) Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.) is—

(1) amended by renumbering sections 401 through 403 as sections 701 through 703, respectively; and

(2) renumbered as title VII.

(d) Title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended by modifying section 821(a) to read as follows:

"(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after November 15, 1990 to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2001), amended as appropriate by the Administrator."

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. MCCAIN, Mr. DEWINE, Ms. LANDRIEU, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HATCH, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. TORRICELLI, Mr. DURBIN, Mr. MURKOWSKI, and Mr. KERRY):

S. 2816. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Foreign and Armed Services Tax Fairness Act of 2002, FAST Fairness, that will not only correct inequities in the current tax code our military men and women are subject to, but it will also provide incentives for our dedicated forces to continue their service to America.

On July 9, 2002, the House passed unanimously a bill, H.R. 5063, that provided limited relief to military personnel. The bill would provide a special rule for members of the armed forces in determining the exclusion of gain from the sale of a principal residence and would restore the tax-exempt status of death gratuity payments to members of the armed forces. I support the efforts of the House, but believe we can go farther.

These are the men and women that put their lives on the line for our freedom on a daily basis. We need to ensure that laws that we here in Congress pass do not negatively impact them. We should also develop sound policy that serves as an incentive for our youth to follow in the steps of the men and women that went before them to defend our country.

It is with these principles in mind that I move forward with this military tax package and incorporate additional provisions already introduced by my colleagues. I would now like to describe the provisions that I have chosen to include in this critical piece of legislation:

On July 24, 2002, Senator CARNAHAN introduced S. 2783, which would restore the tax exempt status of all death gratuity payments. This proposal is similar to the provision included in H.R. 5063.

Why is this provision so important? Under current law, death gratuity benefits are excludable from income only to the extent that they were as of September 9, 1986. In 1986, the death gratuity benefit was $3,000. In 1991, the benefit was increased to $6,000, but the tax code was never adjusted to exclude the additional $3,000 from income. Because of this oversight, the U.S. government has been taxing families for the death of a family member who died in combat. This is just wrong.

I support the provisions of H.R. 5063 and S. 2783, therefore I have included them in this piece of legislation.

In 1997, Congress passed legislation revising the taxation of capital gains on the sale of a person's principal residence. The new rule is that up to $250,000, $500,000 per couple, is excluded on that sale of a principal residence if the individual has lived in the house for at least two of the previous five years.

However, when enacted, Congress failed to provide a special rule for military and Foreign Service personnel who are required to move either within the U.S. or abroad. Senators MCCAIN and GRAHAM both have introduced legislation to address this oversight.

I agree that we should adjust the rule for our service men and women. We shouldn't penalize them for choosing to serve our country. My proposal would permit service personnel and members of the Foreign Service to suspend the five-year period while away on assignment, meaning those years would count toward neither the two years nor the five year periods. This is a also similar to provisions on H.R. 5063.

The Department of Defense provides payments to members of the Armed Services to offset diminution in housing values due to military base realignment or closure. For example, if a house near a base was worth $180,000 prior to the base closure and $100,000 after the base closure, DOD may provide the owner with a payment to offset some, but not all of the $80,000 diminution in value. Under current law, those amounts are taxable as compensation.

There will be another round of base closures in the near future. That fate was decided in the FY2002 Defense Authorization bill. We should ensure that those men and women losing value in their homes due to a federal government decision are not adversely affected financially. The proposal would provide that payments for lost value are not includible into income. Recently, Senator CLELAND introduced a package that included this provision. I thank him for his unending pursuit to provide military personnel with the best quality of life available. And, I'm happy to include this provision in my legislation.

Under current law, military personnel in a combat zone are afforded an extended period for filing tax returns. However, this does not apply to contingency operations. This proposal would extend the same benefits to military personnel assigned to contingency operations.

It can't be easy trying to figure out our complicated tax system while you are overseas and protecting our nation's freedom. Those men and women that have been sent to uphold freedom in other countries are confronted with similar circumstances, such as in Operation Just Cause in Panama, 1989, or in Operation Restore Hope in Somalia in 1992 and 1993, or in Operation Uphold Democracy in Haiti, 1994. Contingency operations are just as demanding as combat zone deployment, although not always in the same manner. I would like to thank Senator JOHNSON for introducing S. 2785. It is important that we support all our troops when they are overseas.

Some reservists who travel one weekend per month and two weeks in the summer for reserve duty incur significant travel and lodging expenses. Under current law, these are deductible as itemized deductions but must exceed 2 percent of adjusted gross income. For lower income reservists, this deduction does not provide a benefit, because they do not itemize. For higher income reservists, the 2 percent floor limits the amount of the benefit of the deductions.

In my home state of Montana, we have approximately 3500 reservists, 800 of which travel each month across the State for their training. These 800 reservists pay out of their own pocket the expense for travel, and hotel rooms. In Montana we rank 48th in the Nation for per capita personal income.

I know it can't be easy for Montanans to incur approximately $200 in expenses each and every month. Yet, they continue selflessly to provide their services to our country at their own expense. For those reservists that travel out of State for their training, this expense is higher on average. This proposal would provide an above the line deduction for overnight travel costs and would be available for all reservists and members of the National Guard.

This issue is currently addressed in S. 540, which Senator DEWINE introduced back in March of 2001. I can't tell you just how many people have contacted our office in support of this bill. I support what this bill does and I am glad that we can include some of its provisions in my military tax package.

Recently, Senator HARKIN introduced S. 2789, which would expand the membership for Veteran's organizations. Currently, qualified veterans' organizations under section 501(c)(19) of the tax code are both tax-exempt and contributions to the organization are tax-deductible. In order to qualify under 501(c)(19), the organization must meet several tests, including 75 percent of the members must be current or former active military, and substantially all of the members must be either current or former active military or widows of former active military. The proposal would permit lineal descendants and ancestors to qualify for the "substantially all" test.

It is important that our veterans' organizations continue the good work that they do. But, as the organizations age, they are in danger of losing their tax-exempt status. I support Senator HARKIN's bill, as does the American Legion. I have included it in my tax package.

Finally, I want to ensure that women in the military can continue their dedicated service even once they have entered motherhood knowing that their children are being well taken care of. The military provides extensive childcare benefits to its employees. DOD employees at DOD-owned facilities provide childcare services while other areas contract out their childcare.

When Congress passed the Tax Reform Act of 1986, we included a provision stating that qualified military benefits are excluded from income. It is not absolutely clear whether child care provisions are covered under this provision. The proposal would clarify that any childcare benefit provided to military personnel would be excludable from income. Senator LANDRIEU has introduced S. 2807, a similar measure. I support this measure and am proud to include it in this piece of legislation.

It is my intention to mark-up this legislation soon in hopes that we can move it through the Senate quickly. It is important that we continue to show members of the armed forces our support and solidarity during this time of conflict. The War on Terrorism has brought to light the essential role the armed services play in upholding freedom throughout the world. I would like to see a military tax equity bill signed into law by the President before the end of the year.

Mr. President, I ask consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Foreign and Armed Services Tax Fairness Act of 2002".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.
Sec. 2. Restoration of full exclusion from gross income of death gratuity payment.
Sec. 3. Special rule for members of uniformed services and Foreign Service in determining exclusion of gain from sale of principal residence.
Sec. 4. Qualified military base realignment and closure fringe benefit.
Sec. 5. Extension of tax filing delay provisions to military personnel serving in contingency operations.
Sec. 6. Deduction of certain expenses of members of the reserve component.
Sec. 7. Modification of membership requirement for exemption from tax for veterans' organizations.
Sec. 8. Clarification of the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States.

SEC. 2. RESTORATION OF FULL EXCLUSION FROM GROSS INCOME OF DEATH GRATUITY PAYMENT.

(a) IN GENERAL.—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.".

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 134(b)(3) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring after September 10, 2001.

SEC. 3. SPECIAL RULE FOR MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE IN DETERMINING EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

"(9) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—

"(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsection (a) with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service.

"(B) MAXIMUM PERIOD OF SUSPENSION.—The 5-year period described in subsection (a) shall not be extended more than 5 years by reason of subparagraph (A).

"(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified official extended duty' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

"(ii) UNIFORMED SERVICES.—The term 'uniformed services' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

"(iii) FOREIGN SERVICE OF THE UNITED STATES.—The term 'member of the Foreign Service' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980.

"(iv) EXTENDED DUTY.—The term 'extended duty' means any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

"(D) SPECIAL RULES RELATING TO ELECTION.—

"(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

"(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections made after the date of the enactment of this Act for suspended periods under section 121(d)(9) of the Internal Revenue Code of 1986 (as added by this section) beginning after such date.

SEC. 4. QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE BENEFIT.

(a) IN GENERAL.—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking "or" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", or" and by adding at the end the following new paragraph:

"(8) qualified military base realignment and closure fringe.".

(b) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—For purposes of this section, the term 'qualified military base realignment and closure fringe' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to offset the adverse effects on housing values as a result of a military base realignment or closure.".

(c) Effective Date.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 5. EXTENSION OF TAX FILING DELAY PROVISIONS TO MILITARY PERSONNEL SERVING IN CONTINGENCY OPERATIONS.

(a) In General.—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting "or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law" after "section 112",

(2) by inserting in the first sentence "or at any time during the period of such contingency operation" after "for purposes of such section",

(3) by inserting "or operation" after "such an area", and

(4) by inserting "or operation" after "such area".

(b) Conforming Amendments.—

(1) Section 7508(d) is amended by inserting "or contingency operation" after "area".

(2) The heading for section 7508 is amended by inserting "**or contingency operation**" after "**combat zone**".

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting "or contingency operation" after "combat zone".

(c) Effective Date.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

SEC. 6. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS OF THE RESERVE COMPONENT.

(a) Deduction Allowed.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

"(p) Treatment of Expenses of Members of Reserve Component of Armed Forces of the United States.—For purposes of subsection (a), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business during any period for which such individual is away from home in connection with such service.".

(b) Deduction Allowed Whether or Not Taxpayer Elects To Itemize.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

"(E) Certain expenses of members of reserve components of the armed forces of the united states.—The deductions allowed by section 162 which consist of expenses, in amounts not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States.".

(c) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001.

SEC. 7. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR VETERANS' ORGANIZATIONS.

(a) In General.—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking "or widowers" and inserting ", widowers, or ancestors or lineal descendants".

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 8. CLARIFICATION OF THE TREATMENT OF DEPENDENT CARE ASSISTANCE PROGRAMS SPONSORED BY THE DEPARTMENT OF DEFENSE FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.

(a) In General.—Section 134(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

"(4) Clarification of certain benefits.—For purposes of paragraph (1), such term includes any dependent care assistance program sponsored by the Department of Defense for members of the Armed Forces of the United States.".

(b) Conforming Amendments.—

(1) Section 3121(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(2) Section 3306(b)(13) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(3) Section 3401(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

(d) No Inference.—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2002.

By Mr. KENNEDY (for himself, Mr. Hollings, Mr. Bond, and Ms. Mikulski):

S. 2817. A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased to introduce today the National Science Foundation Doubling Act. This important legislation has been crafted with the extensive cooperation of Senator HOLLINGS, Chairman of the Senate Committee on Commerce, Science, and Transportation, Senator MIKULSKI and Senator BOND, the respective Chair and Ranking Member of the Senate Committee on Appropriations Subcommittee on Veterans Affairs, Housing and Urban Development, and Independent Agencies. I commend each of them for their leadership in federal support for the sciences .

The National Science Foundation, NSF, has two key missions, and it carries both of them out well. It supports basic research and development in math, science, engineering, and technology, and it promotes math and science learning at every level, from K-12 through post-graduate education.

NSF has funded basic research leading to the creation of speech recognition software, MRI machines, and even World Wide Web browsers such as Netscape and Microsoft's Internet Explorer. In education, NSF initiatives of the late 1980s were the forerunners of the standards-based school reform movement embraced throughout the Nation today.

We can and should build on NSF's distinguished record in improving the lives of millions of Americans. The 20th Century was the era of the industrial age, and the 21st Century will be the era of information technology and the life sciences. With the leadership of Senator HARKIN and others, we have doubled the budget of the National Institutes of Health over the last five years. We should do the same for NSF. We should double our support for research and development in theoretical mathematics and the physical sciences, because they support advances in the health sciences and because they are also valuable in their own right.

As former Senator Glenn has pointed out so frequently, we need to do much more to interest young minds in math and science and recruit tomorrow's scientists and engineers. Over the next 10 years, the number of jobs requiring technical skills will grow by 50 percent. Unfortunately, high school student performance on math and science exams is alarmingly low. The number of American students studying the sciences at the post-secondary level is flat. Too many women and minorities continue to shy away from the sciences.

The bill we are introducing today authorizes a doubling of the NSF budget over the next five years. It makes sense to match the growth of NIH. As we enhance research and development in the life sciences, we should also be strengthening research and development in the physical sciences.

This legislation also builds on NSF's Systemic Initiatives by supporting a Secondary School Systemic Initiative to develop models to improve high school student math and science performance and preparation for college-level or technical work.

The bill supports model Math and Science Partnerships between institutions of higher education and local school districts to improve the knowledge and teaching techniques of current math and science teachers.

The bill supports institutions of higher education in increasing the number of students, particularly women and minorities, who study toward and obtain degrees in science, math, engineering, and technology.

Finally, the bill reforms NSF's program on major research and facilities equipment, to help prioritize projects and guard against cost overruns and non-merit reviewed proposals.

Scientific discovery and development continues to set America apart from other Nations and is one of our enduring legacies. The National Science Foundation Doubling Act is a solid piece of legislation building on our Nation's history in the sciences and promoting a better future. It deserves to be considered quickly, and I believe favorably, by the United States Senate.

Mr. HOLLINGS. Mr. President, I join my colleagues, Senator KENNEDY, and Senator MIKULSKI and Senator BOND, in introducing this bill to authorize the National Science Foundation through FY 2007. My friends and I represent three Committees with a strong interest in NSF, and we chose a straightforward title for the name of this bill, the NSF Doubling Act, because our intentions are simple and straightforward. Congress's intent is to double NSF's budget by fiscal year 2007. NSF is the Nation's premier federal science agency that invests in basic research across all disciplines that is on the frontiers of science. In 1945, Vannevar Bush's report for President Roosevelt led to the establishment of the National Science Foundation. Since then, this nation has been on a path of solid investment in the scientific research that underlies our future economic health and well being. It's no mistake that Alan Greenspan and other important economists have noted that more than one-half of our Nation's economic growth since World War I has stemmed from technology driven by science.

By next year, we in Congress will have succeeded in our goal to double the budget of the National Institutes of Health. I applaud that effort. But as scientific disciplines have become fundamentally interdependent, advances in the health sciences necessarily depend on advances in math, computer science, and engineering. NSF is the only Federal agency specifically charged with ensuring a broad and deep base of fundamental knowledge across disciplines. This mission is critical to technological innovation, our economy, and our general health and welfare as a Nation.

I have said that our intentions are simple and straightforward. So let me set out three simple reasons why this doubling is vital to our future:

The first concerns our security. Not only does NSF fund areas, such as cyber security, that are critical to protecting our nation, but NSF is the agency that takes the lead in ensuring that this country has sufficient human capital to ensure our continued world leadership in science and technology. The Hart-Rudman Commission on National Security warned that our failure to invest in science and to reform math and science education was the second biggest threat to our national security, only the threat of a weapon of mass destruction in an American city was a greater danger. NSF invests in math and science education from kindergarten all the way through to the postdoctoral level and beyond. This bill allows the Foundation to increase that investment, while reaffirming our commitment to women, minorities, and people with disabilities. These underrepresented groups, together, make up more than half of our Nation's work force and are only increasing. Letting these groups fall by the wayside would not only threaten our economic competitiveness, but also our national security.

Second pertains to our economy. I have already talked about science and technology driving our economic growth. Let me give just one example of how NSF's investments can spur our economy. NSF is the leading agency in the National Nanotechnology Initiative. Nanotechnology, which is the science of manipulating matter at the atomic and molecular level, will cut across every scientific discipline, including materials and manufacturing, healthcare and medicine, energy and the environment, agriculture, biotechnology, information technology, and national security. Worldwide, the market for nanotechnology is expected to be $1 trillion annually within 10 to 15 years. NSF's cross-disciplinary approach, which includes groundbreaking research into the way society and this new technology will interact, will help this nation take advantage of Nanotechnology sooner, better, and with greater confidence.

The third involves basic research. NSF is responsible for the overall health and well-being of the research enterprise in this country. One way NSF does this is through continued support for the EPSCoR program. EPSCoR supports the development of the science and technology resources of individual States like South Carolina, through partnerships that involve the State's universities, industry, government, and the Federal research and development enterprise. For example, NSF supports an Engineering Research Center focused on advanced fibers and films at Clemson University that, through partnerships and continued investment over the next 10 years, will make Clemson the national leader in advanced fibers and films technologies.

I think these arguments are solid, simple, and straightforward. We can talk about NSF's past outstanding contributions to science. We can talk about the future and the importance of science and technology to our economy. But, where the rubber meets the road, we have to stop talking and invest, with real money, in the science and engineering enterprise that will guaranty the health, economic viability, and security of our future. I, for one, appreciate the hard work that NSF has done over the past 52 years promoting the progress of science, and I urge my Senate colleagues to support me in providing this agency the resources needed to conquer tomorrow.

Mr. BOND. Mr. President, I rise today to express my strong support for the National Science Foundation Doubling Act of 2002. As an original cosponsor, I am pleased to join my colleagues, Senators KENNEDY, HOLLINGS, and MIKULSKI in introducing this important legislation that will strengthen the long-term economic competitiveness and health of our Nation. As an appropriator and as an authorizer of NSF, I have a special interest in NSF and the basic science research it supports. I believe this bill underscores the critical role NSF plays in the economic and intellectual growth and well-being of this Nation.

As many of my colleagues know, Senator MIKULSKI and I have led a bipartisan, bi-cameral effort to double NSF's budget and this reauthorization bill further supports our doubling effort over a five-year period. NSF is funding innovative and cutting-edge research in nanotechnology, plant biotechnology, and information technology. Doubling NSF's funding is not only important for these research programs but also in the area of education. NSF plays a valuable role in supporting math and science education and developing the Nation's supply of scientists and engineers in this country.

Unfortunately, despite our efforts on the appropriations committee, the Federal Government has not provided adequate support to NSF and the physical sciences in general. I believe the lack of adequate support for the physical sciences puts our Nation's capabilities for scientific innnovation at risk and, equally important, at risk of falling behind other industrial nations.

Further, doctors throughout Missouri and the country have told me that despite the tremendous support we have provided for the life sciences, their research in the biomedical field will stagnate without adequate government support of the physical sciences that NSF supports. Many medical technologies such as magnetic resonance imaging, ultrasound, digital mammography and genomic mapping could not have occurred, and cannot improve to the next level of proficiency, without NSF-supported work in biology, physics, chemistry, mathematics, engineering, and computer sciences. Simply put: supporting NSF supports NIH.

The high-tech industry also is concerned about NSF funding because they are struggling to find qualified homegrown engineers and scientists and becoming more reliant on foreign nationals to fill their positions. Many notable researchers in the high-tech industry have told me that the significant shortages of trained American engineers and scientists have limited the growth potential of the electronics and software industries and allowed foreign competitors to catch up to U.S. industry capabilities.

To address the development of tech talent in this country, NSF provides a wide array of support to preK-12, undergraduate, and graduate level schools. One new important tool is the Math and Science partnership program—a new joint program between NSF and the Department of Education. This program encourages partnerships among local school systems, higher education entities, and other organizations to improve student outcomes in math and science for all students.

Another important tool that I support is the tech talent program. This program was initiated at the urging of me and my Senate colleagues—Senators LIEBERMAN, FRIST, MIKULSKI, and DOMENICI. Last year, we introduced S. 1549, the Tech Talent Act to improve undergraduate education in math, science, engineering, and technology. We provided $5 million in the Fiscal Year 2002 VA-HUD and Independent Agencies Appropriations Act to jumpstart this important initiative and another $20 million was added in the fiscal year 2003 bill that passed the Appropriations Committee last week. NSF has already received 177 applications requesting an aggregate sum of almost $60 million.

Lastly, I am very supportive of efforts to improve the accountability of NSF's programs and activities—especially those projects funded through the major research equipment and facilities construction account. The bill includes a number of provisions to ensure that funding decisions on large research facilities are done in a rationale and understandable manner.

Before the bill reaches the floor, I hope to work with my colleagues on addressing other issues related to the National Science Board. As the budget for NSF grows, it is important that the Board has the tools it needs to fulfill its statutory responsibilities. Specifically, we need to provide the chairman of the Board the authority to hire its own staff to support the Board's oversight and policy-making responsibilities and to ensure that it can provide the Congress and the President with independent science policy advice. These tools will also ensure that the Board is not a "rubber stamp" for the Director of NSF.

I urge my colleagues to support this bill. I understand that some of my colleagues have concerns about the bill, but I believe that overall, this is a good bill. I look forward to working with my colleagues in the Senate and the House in moving a strong bipartisan NSF reauthorization bill and in advancing our effort to double NSF's budget.

I thank the Chair.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, July 30, 2002, at 10 a.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on a Legislative Proposal of the Department of Interior/Tribal Trust Fund Reform Task Force; to be followed immediately by a second hearing on S. 2212, A bill to establish a direct line of authority for the Office of Trust Reform Implementations and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determination Act and for other purposes.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, August 1, 2002, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Interior Secretary's Report on the Hoopa Yurok Settlement Act.

The Committee will meet again on Thursday, August 1, 2002, at 2 p.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Friday, August 2, 2002, at 2 p.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on S. 958, A bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 884, 885, 886, 890, 891, 892, 893, 904, 905, 910, 912, 913, 914, 915, 916, 917, 918, 919, and 920; that the nominations be confirmed, the motion to reconsider be laid upon the table, any statements thereon be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Jeffrey D. Wallin, of California, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Wilfred M. McClay, of Tennessee, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Thomas Mallon, of Connecticut, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

DEPARTMENT OF JUSTICE

Lawrence A. Greenfield, of Maryland, to be Director of the Bureau of Justice Statistics.

Anthony Dichio, of Massachusetts, to be United States Marshal for the District of Massachusetts for the term of four years.

Michael Lee Kline, of Washington, to be United States Marshal for the Eastern District of Washington for the term of four years.

James Thomas Roberts, Jr., of Georgia, to be United States Marshal for the Southern District of Georgia for the term of four years.

FARM CREDIT ADMINISTRATION

Fred L. Dailey, of Ohio, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

Grace Trujillo Daniel, of California, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

J. Russell George, of Virginia, to be Inspector General, Corporation for National and Community Service.

DEPARTMENT OF JUSTICE

Marcos D. Jimenez, of Florida, to be United States Attorney for the Southern District of Florida for the term of four years.

Miriam F. Miquelon, of Illinois, to the United States Attorney for the Southern District of Illinois.

James Robert Dougan, of Michigan, to be United States Marshal for the Western District of Michigan for the term of four years.

George Breffni Walsh, of Virginia, to be United States Marshal for the District of Columbia for the term of four years.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Peter J. Hurtgen, of Maryland, to be Federal Mediation and Conciliation Director.

NATIONAL COUNCIL ON DISABILITY

Robert Davila, of New York, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

Michael Pack, of Maryland, to be a Member of the National Council on the Humanities for a term expiring January 26, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PERSIAN GULF WAR POW/MIA ACCOUNTABILITY ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 452, S. 1339.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1339) to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on the Judiciary, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Persian Gulf War POW/MIA Accountability Act of 2001".

SEC. 2. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

(a) ASYLUM PROGRAM.—The Bring Them Home Alive Act of 2000 (Public Law 106-484; 114 Stat. 2195; 8 U.S.C. 1157 note) is amended by inserting after section 3 the following new section:

"SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

"(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

["(b) ELIGIBILITY.—Refugee status shall be granted under subsection (a) to—

["(1) any alien who—

["(A) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

["(B) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

["(2) any parent, spouse, or child of an alien described in paragraph (1).**]**

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an alien described in this subsection is—

"(A) any alien who—

"(i) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

"(ii) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

"(B) any parent, spouse, or child of an alien described in subparagraph (A).

"(2) EXCEPTIONS.—An alien described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).

"(c) DEFINITIONS.—In this section:

"(1) AMERICAN PERSIAN GULF WAR POW/MIA.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'American Persian Gulf War POW/MIA' means an individual—

"(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Persian Gulf War, or any successor conflict, operation, or action; or

"(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Persian Gulf War, or any successor conflict, operation, or action.

"(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual's post of duty without authority.

"(2) MISSING STATUS.—The term 'missing status', with respect to the Persian Gulf War, or any successor conflict, operation, or action, means the status of an individual as a result of the Persian Gulf War, or such conflict, operation, or action, if immediately before that status began the individual—

"(A) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

"(B) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

"(3) PERSIAN GULF WAR.—The term 'Persian Gulf War' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.".

(b) BROADCASTING INFORMATION.—Section 4(a)(2) of that Act is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) Iraq, Kuwait, or any other country of the Greater Middle East Region (as determined by the International Broadcasting Bureau in consultation with the Attorney General and the Secretary of State).".

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment be agreed to; the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, all with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (S. 1339), as amended, was read the third time and passed.

FILING OF COMMITTEE-REPORTED LEGISLATIVE AND EXECUTIVE CALENDAR BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that during the recess or adjournment of the Senate, Senate committees may file committee-reported Legislative and Executive Calendar business on Wednesday, August 28, 2002, during the hours of 10 a.m. to 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JULY 30, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10:30 a.m., Tuesday, July 30; that on Tuesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that the Senate then proceed to a period of morning business until 11:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half controlled by the majority leader or his designee, and the second half controlled by the Republican leader or his designee; that at 11:30 a.m. the Senate resume consideration of S. 812, with the time until 12:30 p.m. equally divided and controlled between Senators KENNEDY and MCCONNELL or their designees; that the Senate stand in recess from 12:30 p.m. to 2:15 p.m. for the regular party conferences; and that the mandatory quorum required under rule XXII be waived with respect to the two cloture motions filed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:37 p.m., adjourned until Tuesday, July 30, 2002, at 10:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 29, 2002:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JEFFREY DE. WALLIN, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

WILFRED M. MCCLAY, OF TENNESSEE, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

THOMAS MALLON, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2004.

FARM CREDIT ADMINISTRATION

FRED L. DAILEY, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

GRACE TRUJILLO DANIEL, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

J. RUSSELL GEORGE, OF VIRGINIA, TO BE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

FEDERAL MEDIATION AND CONCILIATION SERVICE

PETER J. HURTGEN, OF MARYLAND, TO BE FEDERAL MEDIATION AND CONCILIATION DIRECTOR.

NATIONAL COUNCIL ON DISABILITY

ROBERT DAVILA, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EARL A. POWELL III, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 2006.

NAOMI SHIHAB NYE, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006.

MICHAEL PACK, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2004.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

JULIA SMITH GIBBONS, OF TENNESSEE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

JOY FLOWERS CONTI, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

DEPARTMENT OF JUSTICE

LAWRENCE A. GREENFELD, OF MARYLAND, TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS.

ANTHONY DICHIO, OF MASSACHUSETTS, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MASSACHUSETTS FOR THE TERM OF FOUR YEARS.

MICHAEL LEE KLINE, OF WASHINGTON, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS.

JAMES THOMAS ROBERTS, JR., OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

MARCOS D. JIMENEZ, OF FLORIDA, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

MIRIAM F. MIQUELON, OF ILLINOIS, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF ILLINOIS.

JAMES ROBERT DOUGAN, OF MICHIGAN, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF MICHIGAN FOR THE TERM OF FOUR YEARS.

GEORGE BREFFNI WALSH, OF VIRGINIA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.

EXTENSIONS OF REMARKS

FAREWELL TO CONGRESSMAN TONY P. HALL

SPEECH OF

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HOLT. Mr. Speaker, today I am both pleased and saddened to be in a position to present these remarks about TONY HALL. Pleased because I have had the opportunity to serve with TONY for the past four years, and pleased because I know he will do so much to help the hungry and the less fortunate in his new job; yet saddened because his guiding hand and steadfast effort on behalf of those less fortunate will be missed when he leaves Congress.

Because TONY's reputation precedes him, TONY was one Member I was especially looking forward to knowing when I arrived in the House. Three times nominated for the Nobel Peace Prize, Congressman TONY P. HALL has been the leading advocate in Congress for hunger relief programs and improving international human rights conditions. Over the last twenty-four years, there is not a single Member of this great body who has contributed more to those who cannot stand up for themselves. Without TONY here, we will all need to pull together to make sure that those less fortunate are not left behind.

TONY has worked actively to improve human rights conditions around the world, especially in the Philippines, East Timor, Paraguay, South Korea, Romania, and the former Soviet Union. In 2000, he introduced legislation to stop importing "conflict diamonds" that are mined in regions of Sierra Leone under rebel control. In 1999, he was the leader in Congress calling for the United States to pay its back dues to the United Nations.

TONY HALL's record on hunger issues is unparalleled in Congress. TONY was a founding member of the Select Committee on Hunger and served as its chairman from 1989 until it was abolished in 1993. He has been an outspoken advocate for fighting domestic and international hunger and he has initiated legislation enacted into law to fight hunger-related diseases in developing nations. He has visited numerous poverty-stricken and war-torn regions of the world. He was the sponsor of a successful 1990 emergency measure to assist state Women, Infants and Children (WIC) programs and legislation to establish a clearinghouse to promote gleaning to provide poor people with food. TONY has worked to promote microenterprise to reduce joblessness.

When the Hunger Committee was abolished, TONY fasted for three weeks to draw attention to the needs of hungry people in the United States and around the world.

Rep. HALL was nominated for the Nobel Peace Prize in 1998, 1999, and 2001 for his humanitarian and hunger-related work. For his hunger legislation and for his proposal for a Humanitarian Summit in the Horn of Africa, Mr. HALL and the Hunger Committee received the 1992 Silver World Food Day Medal from the Food and Agriculture Organization of the United Nations. Mr. HALL is a recipient of the United States Committee for UNICEF 1995 Children's Legislative Advocate Award, U.S. AID Presidential End Hunger Award, 1992 Oxfam America Partners Award, Bread for the World Distinguished Service Against Hunger Award, and NCAA Silver Anniversary Award.

Despite the number of awards he has won, TONY HALL's impact can be felt not by the number of plaques and awards in his office, but by the number of men, women and children around the world who have seen their lives brightened, and their sense of hope renewed because of his actions.

TONY was recently nominated by the President to serve as our ambassador to the United Nations Food and Agriculture Organization, the world's preeminent hunger fighting organization. While I am disappointed that I will no longer have the pleasure of serving with TONY in the U.S. House of Representatives, I am reassured by the fact that somebody of his talent and heart will be representing our Nation in an effort to fight hunger around the world.

A CELEBRATION OF THE LIFE OF DR. JAMES DAVID FORD

SPEECH OF

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. HORN. Mr. Speaker, Chaplain Jim Ford had a positive influence on every member of the House of Representatives, and I was privileged to know him and grateful to have his friendship for nine years. As Chaplain, Jim had the rare quality of being able to relate to everyone regardless of religious affiliation or background. As a friend, he was there for anyone needing help through life's inevitable ups or downs. As a family man, his loving and accomplished wife and children are a testament. As a human being, he had an exuberant zest for living and caring, for adventure, for knowledge, and for jokes.

When I had surgery for prostate cancer, Jim visited me in the hospital. He was a survivor himself, and his humor and his irrepressible positive attitude filled the room. My wife and I were fortunate to have traveled with Jim and Marcy in the Middle East and in Europe, where we had the benefit of Jim's companionship and his vast store of historical anecdotes. He had an impressive understanding of the world's three great religions centered in Jerusalem. Although Jim was modest about his eloquent daily prayers in the House of Representatives, it is the wish of his many colleagues and friends that they should be published. Chaplain Ford's prayers covering 21 years are a powerful commentary on the spirit of the people's House through times of tranquility and turmoil. They are prayers for all people in all seasons and form a rich legacy for generations to come.

PRELUDE:

Mrs. Judy Snopek, Pianist.

INVOCATION:

The Reverend Daniel P. Coughlin, Chaplain, United States House of Representatives.

Reverend COUGHLIN: Members and staff and friends, today we gather to remember, memorialize and celebrate the life and service of Dr. James David Ford as Chaplain to the House of Representatives for over 21 years. I wish also to acknowledge the Parliamentarian, Charlie Johnson, and Reverend Ron Christian, both very close friends to Dr. Ford, for their efforts to assure this event would happen after the cancellation of the memorial service first planned for September 11. That tragic event affected all of us and only deepened the pain of our loss of Jim Ford when terrorism robbed us even of the freedom to assemble and grieve as well as thank God for this gifted pastor, counselor and friend of so many here in the House which he loved so much and which was honored by his years of faith-filled service. We are indebted also to the Honorable Jeff Trandahl and the Clerk's office for their detailed arrangements for today.

As the first Lutheran pastor to serve in the House as Chaplain, Dr. Ford was rooted in the Word, and so I thought it only fitting to begin with a short reading from Saint Paul:

> If God is for us, who can be against us? He who did not spare his own Son, but handed him over for us all, will he not also give us everything else along with him? Who will bring a charge against God's chosen ones? It is God who acquits us who will condemn. It is Christ Jesus who died, rather was raised, who also is at the right hand of God and indeed intercedes for us all. What will separate us from the love of Christ? Languish or distress or persecution or famine or nakedness or peril or the sword? No, in all these things we conquer overwhelmingly through him who loved us. For I am convinced that neither death nor life, nor angels nor principalities, nor present things nor future things, nor powers, nor height nor depth, nor any creature will be able to separate us from the love of God in Christ Jesus our Lord.

So as we begin, let us call to memory first impressions, wisdom sayings, poignant moments and compassion and joyful laughter which he usually left with us.

Let us pray for Jim Ford.

Lord God, you chose our brother James to serve your people as a minister and so share the joys and burdens of their lives. Look with mercy on him and give him the just reward of his labors. Continue to console his family and all those he loved. Grant him now the fullness of life promised to those who preach your good news, your holy gospel. We ask this through Christ our Lord, Amen. We would like now to hear from a good friend.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

REMARKS:

The Honorable Charles W. Johnson III, Parliamentarian, United States House of Representatives

CHARLIE JOHNSON: Mr. Speaker, I am honored to be here today as Jim's friend representing the staff. As Jim used to say, "Johnson, you never were invited to be a public speaker because you couldn't if you were." He said, "All you can do is this." "This" means whisper and "this" means hit the mute button at the same time.

Last year around this time, my beloved predecessor, Bill Brown, passed away. There was a Quaker gathering for Bill in Lincoln, Virginia. It was a beautiful service. Jim used to commend Quaker prayer hour to the House on occasion, not publicly, but there were long periods of silence and then I felt so inspired to talk about Bill's public service and I said, Bill never lobbied for anything, except for one resolution, and that was on January 15, 1979, the opening of the 96th Congress, when the new Chaplain had just been elected and the new Chaplain was going to be the first full-time Chaplain and he had five children and the word came down, although Bill didn't know and had not met the new Chaplain, that he needed a pay raise. So the Parliamentarian took it upon himself to make sure the floor was clear of all potential objectors and at the appropriate time H. Res. 7 came up, called up by Jim Wright on January 15 and, boom, the Chaplain's salary was tripled. I mentioned that at Bill's Quaker meeting. And some further period of quiet intervened and Chaplain Ford, retired, was in the congregation. He stood up and said, "I was the recipient." It was the spontaneity of it. It was not orchestrated. I don't think he can orchestrate Quaker meetings, at least for that event, but there he was Chaplain in 1979 and befriending people left and right.

He had his own separate chaplaincy right at the rostrum of the House. I will allude to certain little anecdotes as I go along here. But come 1985, 6 years into his chaplaincy, it was his 53rd birthday. Tip O'Neill was proud to sponsor a resolution, we called it House Res. 53, and he handed it to him from the rostrum. The resolution would have amended rule VII to read as follows. Rule VII is now somewhere else as a result of recodification, but don't ask me where. The resolution would have said, "The Chaplain shall attend at the commencement of each day's sitting of the House and shall open the same with prayer, and shall personally attend, without benefit of guest Chaplain, at the adjournment of each day's sitting of the House, including all special orders, and close the same with a benediction."

Here is a photograph of two people a lot younger. Jim Ford, this is H. Res. 53, there is a preamble, a series of "whereas" clauses explaining why it was necessary to require the first full-time Chaplain to stick around full-time. His predecessors, Bernard Braskamp and Ed Latch, were part-time, lovely, wonderful ministers to the House but they weren't full-time. But here was Jim Ford full-time. Tip was lobbying for this. And so this picture was taken. On it, it says, "Charlie, would you buy a used prayer from this man?" Addressed, "Best Wishes, Jim Ford, July 25, 1985."

Jim Ford never wanted his prayers printed as his predecessors' prayers had been in a little document because he felt some of them were used. He would grab a psalm or a hymn, he did hundreds of prayers and so they weren't always original, but they were always meaningful. That was why he never had his prayers printed.

But then that ministry at the rostrum as I talked about it, we started to lobby for support of House Resolution 53 and that lobbying, and I think some Members past and present, Mr. Speaker, got wind of this, so would Members support this resolution, and it was almost unanimous. Everyone felt that a full-time Chaplain should be there to do a personal benediction. You can't rely on guest chaplains for that, with one exception, and I will never forget when I asked Henry Gonzalez whether he would support it, the champion of special orders, he said, "No, that is my definition of cruel and unusual punishment." I won't forget that.

That banter at the rostrum was not just for the fun of it but it was a ministry in and of itself, and there are folks here today, and I am here as a spokesperson for the people at the rostrum and other employees in the Capitol whose lives were enriched every day by Jim's presence. He was a larger-than-life person in a lot of ways. But the great thing about it, he had this self-deprecating humor about this adventurous part of him and he could laugh at himself. By doing that he would make everyone else's life richer. The power to laugh at yourself was embodied in Jim Ford.

For example, he had this proclivity to jump off ski lifts backwards. There was a Parade, one of those Sunday Parade insertions in the Washington Post that Tip O'Neill happened to notice. The next day the Chaplain offered the prayer. No sooner was that prayer over but the Chaplain was walking off, "Hey, Monsignor, come over here." "Monsignor" was Chaplain Ford. He said, "I never knew you were such a wacko." Direct quote from Tip O'Neill. The microphone was on. So from that day on, he was Wacko to some of us.

And then his trans-Atlantic sail. You have all heard about his adventures to sail the Atlantic. He said, "Johnson, are you a sailor?" I said, "No." He said, "Well, let me take you out on the Chesapeake and I'll show you how to sail." So he and Bill Brown and myself went out. It was a windy day. He got on his boat. He put on this engineer's cap. Peter, you remember, who he sailed the Atlantic with. Suddenly this gust of wind comes up, boom, the hat is gone forever and the sail is ripped. It was in our first half-hour. He spent the rest of the day getting his sail sewn up. It could have been very humiliating for him, but he saw the humor in it. It just was the way he could laugh at himself during this adventurous part of his life.

Then in his later years, he flew ultralight airplanes, as some of you know. He would always brag, "I'm the only one in our group who hasn't crashed yet." And one day 2 years ago, Bill Brown and I and our wives would celebrate New Year's Eve at Bill's log cabin. I said, "Jim, why don't you fly over, and I'll just kind of tell people that you're going to do a flyover of Bill's farm on New Year's Day." He said, "All right." So we went out. I said, "Let's go out for a walk." It's New Year's morning, we are out there, I don't hear anything. It's a beautiful 1st of January. Someone said, "Charlie, forget it. He's not coming. The dream is over." Just then this sound of an ultralight. He had to come across Dulles airspace to get to Bill's farm. He had said he didn't want to land because it would disturb the neighbors. Bill had 300 acres. He didn't know how to land. But he showed up. He showed up and he dipped his wings as a token of friendship.

And then there were these civility retreats to which some of you Members, Ray and others, have attended. He would come in on a motorcycle or on horseback, and there was this one video that he showed of himself emerging from the statuary in Statuary Hall, as if he were one of the statues, intoning the history of the House of Representatives. He showed me this video. He knew I was just going to laugh and laugh at it, that he would subject himself to this kind of thing. And I said, "What would Will Rogers have said to you, Jim, in Statuary Hall?" He thought that was very funny.

In a more serious way, he was a listener. He used to say, "Text without context is pretext." He would come up and sit on the floor of the House during 1-minutes and guest chaplains by the hundreds would come and he would be with them. Then he would spend a lot of time with them after they had preached. And then he would come back after listening to some very provocative 1-minutes and he would come back and sit on the rostrum with me day in and day out, and we would just kind of try to pull together the thoughts that these guest chaplains might have had, what their impressions were of the House, and then the theme of the day and the personalities involved in the 1-minutes. He could bring to me a context of the humanity of the House viewed from his own eyes and from the eyes of visiting clergy. It was a tremendous sense of inspiration when he did that for me.

But what I really want to honor today, and I think we all do, is really the way Jim brought a modern chaplaincy to the House. As the first full-time Chaplain, he was available. He may not have always been here for a benediction, but he was here into the evenings, and he would come onto the floor and he would be available to Members. He always said, "You know, Johnson, you'll never get that resolution through on the benediction." I said, "Why?" "Because I have 218 votes." I said, "Well, how do you know that?" And he pulled out a red book and that book had the names of his appointments, past, present and future. There were a lot of Members' names in that book. He said, "I've got names. I've got enough on these various names in this book that they will never support this resolution."

Chaplain, you saw that red book. Every time he held it up, I got the message. But his pastoral, his being a pastor to Members and staff was the modern chaplaincy, full-time, in confidence, a priest-penitent relationship, the full confidentiality of it where he could say things to me that wouldn't reveal a confidence but would give me a better perspective.

His notion of inclusiveness. He loved to have people from other faiths or from no particular faith be part of a dialogue with himself. Not many people know this. I see a couple. He did pretty well on the honorarium circuit. Every one of those honorarium checks as far as I know went to the Luther Place homeless shelter. Thousands of dollars. Thousands of dollars. Very generous. He never mentioned it.

In a very personal way, obviously you can tell we were friends, but he at my behest went to a place called Camp Dudley in Westport, New York, 13 summers to preach. It is the oldest boys camp in the country. He would go up and do a great sermon for young boys on the shores of Lake Champlain in an outdoor chapel. His recurring theme, he would talk about adventure and all this, was the attitude of gratitude. I remember that little saying that he would use, and when he used it with young people it was especially impressive, but the fact that he went 13 years, and one time he came in on a motorcycle cross-country with Peter just to be there. He knew he had to be there. He started in Washington State, came across country, but he was there, bearded and all. Just wonderful.

And so let me just close by remembering his final days, days of obvious distress for him, but there was a tree planting on the Capitol grounds in August of last year.

Speaker Hastert arranged it. It was a hot day. It was about 98 degrees. His whole family was there. It was wonderful.

There was a little reception afterwards. Then I went away for a couple of weeks, and while we were away, we learned that he passed away. I got back, and on my desk was the most beautiful letter of thanks from Jim.

And so on behalf of all the employees, rostrum, police force, the folks whom he counseled during that terrible shooting, I am here as a staffer to honor Jim and the way he brought a true chaplaincy which lives to this day to the House of Representatives.

REMARKS:

The Honorable Martin Olav Sabo, United States House of Representatives

Mr. SABO. Mr. Speaker, Mr. Leader, family and friends of Chaplain Ford, wasn't that beautiful?

The rest of us, I think, should really sit down, because that really captured Jim Ford.

I came here as a freshman in 1979. I immediately read someplace that there was a new Chaplain being appointed. He was from Minneapolis. I didn't recognize the name. I wondered, who knows? It's great. I've never heard of him, I don't know anything about him, but pretty soon I got to meet this wonderful person.

He had some flaws. He was a Swede. I'm Norwegian. He went to college with his Swedish background. I went to college with a Norwegian background. But everything that Charlie said about him, that ski jump really does exist. The park is still there. I discovered he grew up in Northeast Minneapolis. His name, family name, originally was Anderson and sometime along the way it changed to Ford. He always told me if his ancestors would have kept Anderson, he would have been a Member of Congress, not I. He came from Northeast. I always reminded him he came from up on the hill, not down in the valley where the real Democrats were.

But I got to know just this wonderful person. Charlie really captured that zest of life that he had. It was unique. I think that is what caught the attention of all of us. He was clergy but he most certainly wasn't pompous or self-righteous. He related to all of us. I suppose in some ways for me, despite the fact that he was a Swede, we were both still Midwestern Lutherans, and it was rather easy and simple to do. On the other hand, I watched in amazement his relationship with the totality and the diversity of the House. He was there. From the minute he walked in he was probably the most beloved member around the House, and I think that is accurate. I think the membership just had tremendous respect for him as an individual, but also as a clergy and knowing that they could visit and talk to him about whatever might be bothering them in life and they knew that with this exuberant, zesty person, that whatever that relationship was, it was very professional. He was a pro who really enjoyed life. I suppose for most of us when it simply came down to it, he was most fundamentally a friend.

So today, to the family, to everyone, I would simply say we remember Jim Ford as somebody who was the ultimate pro, somebody who had a life of public service, who thoroughly enjoyed life but ultimately, most important, was simply a friend to all of us.

REMARKS:

The Honorable Lois Capps, United States House of Representatives

Mrs. CAPPS. Mr. Speaker, Mr. Leader, Peter, Sarah, family and friends, today as we celebrate the life of Chaplain Jim Ford, we are thankful to God and to his family for sharing him with us, with our beloved House, with a grateful Nation. There are many family connections that have made Chaplain Jim Ford a very special person to the Capps family and these connections go back to 1959.

Reverend Sodergren, Marcy Ford's father, was the pastor of a Lutheran church in Portland, Oregon. One September morning over 40 years ago, Walter and I arrived at his doorstep. The good reverend was exasperated because we were late even though the hour was very early. We were tardy in picking up his son, Marcy's brother Jack. He and Walter were to drive together across the country to Augustana Lutheran Seminary in Rock Island, Illinois. Only when we explained that we had just that very morning, only a few minutes earlier, become engaged did Reverend Sodergren's countenance soften into a congratulatory smile. And when my husband came to Washington with the 105th Congress and met Marcy's husband, the two became fast friends.

Walter loved Jim, as I did and do, as one does a brother or a lifelong friend. And when Sarah called me with the sad news of Jim's death, I confessed that my first thought was that he and Walter are now having a fine time telling Lars and Oley jokes. They are livening the proceedings in heaven just as they did on the House floor. In fact, Jim told several of those corny jokes when he spoke at Walter's memorial service in 1997. And so it goes without saying that following the death of my husband and then my daughter, Chaplain Ford ministered to me and to my family, to Walter's and my staff with utmost compassion, strength and sensitivity. I learned in a very personal way the importance of the Chaplain to the House of Representatives, and thus I was honored to serve on the Speaker's search committee with my colleagues who are here to find a new Chaplain and was reminded time and time again during that process of the incredible skills that Jim Ford brought to his job.

On November 10, 1999, it was my privilege to help manage H.Res. 373 to appoint Reverend James David Ford as Chaplain Emeritus of the House of Representatives. I described him with these words: "He has infused this House with spiritual strength in times of triumph and in times of tragedy. He has spent countless thousands of hours providing pastoral care to Members and staff who desperately need his guidance. He has taught us to respect and to nurture the diversity of our own religious faiths and in doing so has reminded us that one of our Nation's greatest strengths is our religious pluralism."

Looking back, it is somewhat unsettling to realize that I intended to use this quotation on September 11, the original date of that service. Oh, well. I know how we all wished that we had Jim Ford to shepherd us through that horrible day and its aftermath. He would have calmed our fears, he would have made us strong so that we could confront our Nation's challenges, and he would have ensured that our justifiable rage did not turn into hatred and intolerance.

I will also never forget what Jim said at Walter's memorial service. He quoted Martin Luther who said, "Send your good men into the ministry but send your best men into politics." Our Chaplain was both. He was a good man. He was the best of men. He walked the delicate and yet vital line between faith and public life, between religion and politics. He did this with unparalleled skill and devotion.

I have wanted to reach out to Marcy as one widow to another to share with her some of Jim's words of remembrance and prayer which he shared at Walter's memorial service. He wrote them about Walter, and so I am going to give them back with a heart full of sadness and respect and love, and I will insert Jim's name where he put Walter's. I very vividly remember the Chaplain saying these words on that day at the Old Mission in Santa Barbara:

"Ceremonies such as we have today are for the living and the lessons we can learn from our friends. God has already given to James David all of the good gifts of everlasting life. He is in good hands. There is a Bible verse from Psalm 90, verse 12: 'So teach us to number our days that we may gain a heart of wisdom.' Jim did so much with his days, his time here on Earth and in this Congress. He was so at home here in the House, so enthusiastic about doing the work of being a Chaplain. No one knows how many days or years we will be given but we can heed the words of scripture and make the best use of our time. 'So teach us to number our days that we may gain a heart of wisdom.' James David Ford gained a heart of wisdom and we all benefited from his great and wise and loving heart."

And then Jim prayed this prayer, so I will now pray it for him:

"We commend our friend and colleague to you, O gracious God, and we do so in thanksgiving. We are grateful for his presence in our lives and for the light that he gave us as a father, a husband, a grandfather, as a teacher, and as our beloved Chaplain. We saw the light of his spirit and we were drawn to him in such a special way. How blessed we have been and how grateful we are. Amen."

Thank you.

MUSICAL INTERLUDE:

Mrs. Judy Snopek, Pianist

REMARKS:

The Honorable Richard A Gephardt, Democratic Leader United States House of Representatives

Mr. GEPHARDT: On behalf of all the Members, we want to say to the Ford family how sorry we are that Reverend Ford has died and passed from our presence and that you have lost him. We also want to celebrate his life, because we think that is what today is really about. I enjoyed all of the speeches; they were wonderful. I expected good speeches from Members of Congress; I didn't quite expect what we got from the Parliamentarian. When he did it, I realized I had never heard him speak in public, other than "say this, do that." It has been a while since I have been able to get that from him, but we are working on it. But I thought he caught the essence of Reverend Ford as well as it can be done. I would note, Charlie, that that speech is well over 5 minutes; but nobody stood up, and there was no Parliamentarian to call you into order.

We are here today as the family of the House of Representatives. We have not only the present Speaker of the House, but two illustrious former Speakers of the House who are here, and lots of others who have a myriad of connections with this place. I have been here a quarter of a century now. Time flies when you are having fun. And I must tell you, I am more in awe of the institution every day than the first day I got here, and I know every Member here feels the same way. This is a place where the hopes and dreams, expectations, grievances of 260 million-or-so people get channeled on a daily basis, for us to sort all of that out and make decisions on their behalf.

I am often saying that politics is a substitute for violence. I used to get snickers at that and even some laughing; and in recent days, as we see suicide bombers blowing themselves up, people being assassinated around the world, we know better, that that really is what it is. That is the magic ingredient of this place. It takes a lot of human effort to allow this institution to do what it is supposed to do.

Jim Ford was an important part of that mix that allows the House to do its work and to do it as successfully as it is done. First of all, he obviously had this wonderful sense of humor. It was kind of what I always recognized was the sparkle in his eyes when he would come up to you on the floor and tell you some kind of silly joke that he had that he thought was pretty funny. Sometimes it was, usually it wasn't, but what the heck. It was the glistening in his eyes and the way he got tickled himself about what he was saying that made it fun. And humor can lubricate and get you over any tough place that you are in, and he used it as well as I have ever seen it done.

He also understood that we all got elected by half a million or so people, but that we are just people, the same kind of people you would find anywhere in the United States; the same problems, the same difficulties, the same failures, the same high moments that anybody else has; and that we need spiritual help and guidance and counseling and to have a friend as much as anybody else. He provided that friendship, that advice, that council, that help, that human caring that Members often desperately need. He may have had a book, Charlie, and he may have even had names in it; but he did this for 21 years, and I don't know of a time ever that any of the information that he was entrusted with got out anywhere. He was totally in your confidence. He was there to help you, not to do anything else.

Finally, he, in every day of his life, I think exuded what I have come to believe day by day as the most important power in life, and that is simple human love. He really cared about other people and, in truth, loved people, all people. He exuded that and demonstrated that every day.

Probably the most important thing any of us leave behind are our children, and probably there is no greater reflection of who we are and how we live our lives than the way our children live their lives. In the last years, we in the House, a lot of us, got to know Peter Ford because as part of the diplomatic security service, he wound up on some of our trips to foreign countries providing security as we went into sometimes some difficult places. He was there on a number of trips that Speaker Gingrich and I got to take together, and we both got to know him pretty well. And if our children are a guide to how we lived our lives, Jim Ford lived his life as well as it can be done, because Peter Ford, in my view, exemplifies all of the values that Jim Ford was really about.

We were going to do this on September 11. I am glad we got to do it. If we face grave difficulties since September 11, and we do, then it is right for us to remember Jim Ford, because it is going to take the kind of behavior and the kind of values that he represented for us to meet the challenges for America that are represented by September 11. We are sorry. We celebrate his life with you, and we thank God that we were given Jim Ford for such a long time.

REMARKS:

The Honorable J. Dennis Hastert, Speaker, United States House of Representatives

Mr. HASTERT: Well, you learn a lot of things sometimes at these memorials. As a matter of fact, I didn't know that the Parliamentarian and the Chaplain assessed people's 1-minutes every day. Mr. Leader, I think it is probably—what were they saying about the leadership's antics on both sides of the aisle? So I am sure that they had a great deal of enjoyment with that.

You know, Reverend Ford opened the House every day with a prayer. He was a man that you would find in the hallways telling a story, commiserating with Members and staff, more staff than I thought. But anyway, every day you would see him on the House floor at all hours of the day and night when we were there, and you saw him every Thursday morning in the prayer breakfast that the Congress has. He was a participant. That is where I probably got to know him best, because he would tell me stories about being in the Fox Valley and being in Illinois in my district, and he knew the places and some of the people; and he even knew my old uncle who was a Norwegian Lutheran minister in Illinois. But he was always telling those stories too, stories about Norwegians and Swedes, and the Norwegians never won. I am not sure why.

He would also love to talk about Minnesota; and he talked about West Point, a place that he loved and the men and women that served there and the people that he got to know, and the young chaplains that came up underneath him and who he brought along the way and now have churches and ministries of their own.

But I remember his prayers on the House floor. His prayers were like poetry. They were lyrical. They touched the soul. And they made all of us think about what our duties were and responsibilities as citizens and as leaders.

When Jim told me that he was going to retire, I knew that the opening of each session wouldn't be quite the same. Jim Ford was an institution in an institution. He was part of the family, and he was an important part of that family.

We all know about Jim Ford's sense of adventure, of sailing and flying and motorcycling and all of these things that, as a matter of fact, he entranced a lot of Members in his stories about these things; and he actually did them. We know about his love of sailing and motorcycle riding, and we also know that Jim was also a compassionate soul who worked hard to minister to the Capitol Hill family. Really, when it comes down to it, his friendship and his antics and the things that he did and the stories he told endeared himself to Members of this Congress, to people that he worked with every day. He broke down those barriers that sometimes you find in these political places, sometimes the things that stop us from really talking about how we really feel about things and our real appreciation for people.

Through his many years of service, he touched many lives, providing spiritual guidance to Members and staff of all religions and political persuasions. I remember first as a Speaker and in leadership, one thing that happens, you get to go to a lot of funerals; and Jim was always there, and he always had a kind word and a special story. He knew every Member of this Congress. He knew their strengths, and he knew their weaknesses.

Jim Ford was a Lutheran minister, and he had an amazing gift of delivering a positive message that resonated with people of all faiths. He often told me the story over and over again of how Tip O'Neill used to call him Monsignor just because he wore the collar, and he thought that maybe Tip really didn't know. I think maybe Tip really did know.

We will always remember Jim Ford as a charming and an honest man who dedicated himself to God, and he dedicated himself to this Congress and its work with people. He served this body with the utmost distinction. His loving spirit will live in the hearts of all of our lives that he touched.

I think it is fitting and, Peter, I would like to ask you to come up here for a second; and I would like to present to you a flag that was flown over this Capitol in honor of your father and a letter to your mother.

Words of Appreciation From the Family and Benediction

Reverend CHRISTIAN: Mr. Speaker and Mr. Leader, first, on behalf of the family, I too wish to thank you and certainly Charlie, as has been mentioned, for providing this opportunity. I think it is the case that all of you, all of us, needed a time where we could just be together, think here, repeat here. I suspect that each one of you could tell a story or two; and the biggest, hardest task of this whole event probably for you, Charlie, as well as some of the rest of us who had time for conversation, Jeff, to be sure as well, was how many speeches of course to make.

You have heard the stories, and there are many more that could be said. But I am here as a representative, which I surely cannot do and I understand that, but I am here as a representative of the family just to bring a few closing remarks on behalf of them to all of you.

Mr. Leader, you did speak very kindly and strongly about Peter as the son of Jim Ford, and I only wanted to add to that that each one of the members of the family is an equal to Peter. I have had the great opportunity to be a friend of the family for 25 years and indeed have had a chance to share frequently with Jim Ford, even on the House floor, as I have participated with the opening prayers periodically.

So on behalf of the Ford family, let me say that I know they appreciate and offer to all of you their deep and abiding thanks for your love and for your concern which you have shown during these last months in many different ways, each one appropriate and each one received gratefully. But also, they want to thank you, and I know that is certainly true from Mrs. Ford, Marcy, one and all, to thank you for the joy and the happiness and the laughter and the fun that you all and so many others provided Jim through the years, and through Jim and, therefore, to the family.

Speaking of the family, isn't it wonderful to have Hannah here, sitting on the floor who will, one day, undoubtedly in the great oral tradition of our own family lives, bring forth the stories of the man we gather here to remember and to honor and to give thanks.

The family was all here on September 11, and you need to know that. They came from all over the country and all over really from many parts of the world; and of course many, almost all, of course, are not here today for many obvious reasons. But two of the family, direct family members, are Peter and Sarah; and I know you carry with you the thoughts, the spirit in your hearts of your sisters, spouses, grandchildren, and certainly your mother who is visiting one of those children and grandchildren this very day in Brussels.

So they thank you; and on behalf of them, I wish to bring those thanks to you. Peter is here and Peter did receive the honor of the flag and the letter; but maybe, is there anything you would like to add or just say to the group?

Mr. PETER FORD: Yes. I do want to say thank you all for coming. You loved my father, and he loved you all. My father was a giver. He loved a couple of things about this place. He loved religion, of course. You were his flock. He didn't have a church. He always talked to Pastor Steinbrook, because he had a church. He said he was always down there for churches. He felt like he was in a command post here. You were his flock, and also the fact that he loved democracy. When he would go out and speak, I would try to come along with him as often as possible, because he was gone a lot at night. I loved to hear him when he talked about religion, and then afterward he would talk about democracy and talk about the rancor of this place and the debate, and he would talk about loudness. And he thought this was a very honorable profession to be up here.

If you are ever up at West Point, Rear Admiral Carrigan up at West Point, and he is buried 30 feet, 30 yards—the many people he buried in the 1960s during the Vietnam War. So it was sort of interesting to see that. If you see the 2-hour special on West Point, they interviewed him and he talks about MacArthur coming up; and at the beginning, they show my father's face, and they go into the West Point cemetery, and he is buried in plot 34. So if you are ever up there, that is interesting.

He loved you all. Thank you for being very nice to him. This is closure, and we do appreciate it as a family. After September 11, we didn't feel that it was appropriate, so we are glad this happened. I did learn something myself today. My father always told me he didn't want to print his prayers because he wanted to save taxpayer money. But I wish he would have printed them, because right now they are going through the whole house, and my mother saved every prayer. Every day he would bring home the Congressional Record and she would tear it out, and she would put them all in one place. I wish he would have printed them.

I want to say thank you very much. You were his flock. If my father came back right now, my family, we are a totally loving family, and we wouldn't have one question for him. We would just be happy that he was back, but we will see him some day. So thank you from him.

Mrs. SARAH FORD STRIKE: I am Sarah Ford Strike, and I just got married just 4 weeks ago, so I am still getting used to my last name. But I am the youngest of the five kids, and again I want to say thank you very much for putting this together. You have all been so honorable to us and to our family, because after September 11, we thought since there are so many other tragedies in this world, let us not do this, we will honor our dad in our own special way; and you all are very nice to continue this, and we appreciate that.

My mom is in Brussels visiting our sister Marie and her family, so she is not here today. But I want to say that we are his family; but you are also his family, because you made his past 21 years here so happy. He didn't tell us about his counseling and his times of need with people, but he did tell us about the friendships; and that is what made us happy. He would come home, and it was just great.

Being five kids, almost all of us working in the District, we were able to come and visit Dad from time to time, and we would just laugh because you could not get five feet in the hallway without him stopping and talking to somebody. It didn't matter who you were or what you did. He knew everybody by name, and that is what I just hope that I have that gift, because he would just say, just remember something about that person; and it just was so special and such an intimate conversation, and then we would walk five more feet and we would get stopped again. So we cherish that.

We miss his bad jokes and we miss his humor, and we love him very much; but we are very happy because who we are is because of our dad. And we are happy that he is healthy and happy. I know he is up there. I got married, and at our wedding his spirit was with us. If you ever saw him at the White House balls or somewhere, he danced very badly, and he would do this; and I know he was up there doing the same thing, and I know he is doing it now; and I know he is happy as can be. So thank you from our family.

Reverend CHRISTENSEN: Just to bring this then to a close, Mr. Speaker, you did talk about the fact that you remember Jim Ford's prayers. I would like to ask us now to stand, and I am going to read the last prayer that Jim Ford gave at the House of Representatives. These are those words of his final prayer, and then I will conclude with the benediction. Let us pray:

"We are grateful, O merciful God, that you are with us wherever we are and whatever we do. We know that Your spirit gives us forgiveness for the ways of our past, direction for the path ahead, and the comforting assurance that we are never alone. We gain strength from the words of the Psalmist: be still and know that I am God. I am exalted among the nations; I am exalted in the earth, the Lord of hosts is with us, the God of Jacob is our refuge. May Your good word, O God, be with all Your people and give them the peace and confidence that You alone can give. In Your name we pray. Amen."

The Lord bless you and keep you. The Lord make His face shine upon you and be gracious unto you. The Lord give up His countenance upon you and give you peace.

Amen.

A WONDERFUL MAN

(By Stephen Horn)

Thursday, May 9, 2002

Mr. HORN. Mr. Speaker, this afternoon we honored a Celebration of the Life of Dr. James D. Ford, the Chaplain Emeritus of the House of Representatives.

When we traveled to meeting with the delegations of the European Parliament, we found that Jim was a very fine companion. Jim Ford was a great teacher. When we met diplomats and officers, Jim was able to lighten up some of us who were stressed from negotiations and differences among various factions.

Jim was a fine scholar of the Bible. When we were in Israel, Jim was well versed in three of the great religions which are in Jerusalem. Before Chaplain Ford came to the House, he had been for 18 years as the Chaplain of the United States Military Academy at West Point. As a result of his experiences at West Point, he knew about youth and how they grow to be leaders for our country. When a delegation of the House met with General Wesley Clark, the Supreme Commander of the North Atlantic Treaty Organization [NATO]. When the General met the Chaplain there was a warm hug. We saw a four star General, but, Dr. Ford remembered him as the very bright senior who was President of the Bible Society during Clark's senior year at West Point.

Dr. Ford was an effective counselor of members that work hard and often needed to be working with people under stress.

One of Jim's great adventures was when he and three volunteer cadets from West Point navigated a boat with sails, guided by the stars. The waves tossed the small boat in the North Atlantic Ocean. It was a great experience.

Jim was a people-person. When colleagues had medical operations at the Walter Reed Army Medical Center, Jim would come out to see us. He brought us cheer. His humor was delightful.

He will not be forgotten. Our condolences to Marcie, his wife, and Peter his eldest son, and the Ford family.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

SPEECH OF

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 24, 2002

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes:

Mr. DAVIS of Illinois. Mr. Speaker, I join my colleagues today in support of the Treasury and General Government Appropriations Act of 2003, H.R. 5120.

This has been an extraordinary year for our nation, and our civil servants have responded with professionalism to the threats against our borders and assaults against our values. They certainly should be counted among our heroes. It is, therefore, most appropriate that all Federal employees, both civilians and military members, receive the same 4.1% pay raise in FY 2003.

I am also pleased with the Postal Service Appropriations Act of 2003 for it reaffirms some of the basic principles of our universal postal service—6-day mail delivery, rural delivery of mail, and maintenance of post offices in rural areas.

Since 1912, 6-day delivery of mail has been an essential service that the American public has relied upon, particularly working families that depend on the Postal Service for the timely delivery of paychecks. Ending Saturday mail deliveries would not only cause delays in the delivery of mail, but would also cause higher postal costs, due to the additional overtime that would be required to handle the resulting backlog of mail.

Another great efficiency in our country is the ability to send a letter from rural Arkansas to downtown Chicago—and have confidence in knowing it will get there. Whether you live or work in rural or urban America, the satisfaction of knowing that you can communicate provides peace of mind. Many of our communities have limited methods of communication and rely on the post office to provide the glue that binds people together. By maintaining rural post offices, we will continue to bind together our citizenry.

I urge my colleagues to join me in support of this appropriations bill.

FUTURE INFRASTRUCTURE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. YOUNG of Alaska. Mr. Speaker, The House Transportation and Infrastructure Committee, which I chair, is conducting a series of fact finding hearings as we prepare to reauthorize the Nation's highway and mass transit programs next year.

Surface transportation and the immense infrastructure that supports our Nation's transportation system extends to every corner of this country and every Member's district. That is why we are now examining the effectiveness and funding needs of existing programs, as well as the need for any new direction that the infrastructure of our country may need into the future.

I have said many times that I am concerned about the state of the Nation's infrastructure. This concern is shared by many members of my committee.

The hearings underway in the Transportation and Infrastructure Committee are serving to highlight the need for a modern, effective transportation infrastructure. Our economic health depends upon our roadways and transportation infrastructure. To ignore the physical state of these systems is to invite disruption that could have enormous economic consequences to this country.

While we examine our highway programs, we will also review mass transit programs and other programs to address and avoid congestion as well as new technology that might enable us to become more efficient and to improve the transport of people and goods.

During the process of reviewing the infrastructure needs of the Nation and the role of highway and mass transit programs, it is my intention to invite comments on the future benefits and needs for the hydrogen option in our transportation system.

We may be years away from actually employing fleets of, vehicles fueled by hydrogen but we owe it to ourselves to determine how this important new fuel source can be integrated along our transportation infrastructure. Just think of the different dynamic we would face in the Middle East if our transportation system were equipped with hydrogen vehicles and refueling stations based upon hydrogen.

Nearly fifty years ago, during the Presidency of Dwight Eisenhower, the Nation embarked upon the construction of the federal interstate highway system. Today, after thousands of miles of highways have been constructed and billions of dollars expended, we have an interstate highway system that is the envy of the world.

We have a transportation network, five decades in the making, that is the lifeline upon which commerce flows. That system required enormous and sustained federal support as well as cooperation with state and local governments and agencies and the ideas, innovation and hard work of hundreds of thousands of people from the private sector.

Many of the improvements we take for granted today took decades to design, improve and construct. I believe it is time to begin work on an effort that may become just as important as that of President Eisenhower, an effort to use hydrogen as a key component of our transportation base. I believe it is time for us to realize that our future surface transportation system may well be fueled using hydrogen, so we must begin the planning and thinking now.

We are at the question stage of this process. While I am not saying we are ready to set a final course of action to install hydrogen fuel infrastructure, I do believe that hydrogen can become the key part of the nation's future transportation system. As Chairman of the Transportation and Infrastructure Committee, I believe that we should undertake a process, in the reauthorization of our highway programs, to study the feasibility of hydrogen infrastructure in the future.

This process will allow us to question timing and to ask if such a transformation is feasible, is real, is viable, is cost efficient and is in the Nation's best interest. Because our bill will authorize the highway program for at least six years, it is important that we not miss this window of opportunity to ask these questions and possibly, to initiate actions that will expedite any transformation process.

The automobile industry and President Bush have announced an initiative known as Freedom CAR, an industry and government research and development program to develop fuel cell vehicles as well as needed R&D relating to the hydrogen fuel that will power these vehicles.

We already know a great deal about fuel cells and we already know a great deal about the production of hydrogen. But, we clearly do not know enough. The effort of the private industry and the Administration to develop these sources of fuel can be assisted by the review and development of a meaningful infrastructure system to refuel these vehicles.

Industry and government researchers alike have asserted that a focused infrastructure development program likely will garner the confidence needed to produce the vehicles. As we develop the confidence to proceed it also will be necessary to commit to the production of a sufficient number of vehicles for widespread demonstration. Thereafter we would be positioned to move forward towards the manufacture of thousands and then millions of such vehicles.

During each of these stages, a meaningful and effective refueling hydrogen infrastructure will be needed. We should avoid a chicken and egg problem: What comes first the vehicle or the fueling infrastructure? Will the vehicles be produced if the infrastructure is not readily available? Will the infrastructure be made available if the vehicles are not forthcoming?

The infrastructure should be developed in parallel with the vehicles. Consumers are unlikely to buy fuel cell vehicles over traditional vehicles unless the hydrogen fuel is available. We may never see the mass production of fuel cell vehicles, even after they are technically proven, unless the fueling infrastructure is in place.

We are fighting a war on terrorism that is precipitated, in part, by our country's dependence upon foreign supplies of crude oil. The lives of our military personnel are at risk every day. As long as we continue dependence upon foreign sources of oil we will face war and an enormous human and economic toll that is placed upon our society and economy. If we do nothing, our dependency on foreign oil is projected to grow from fifty percent today to more than 60 percent by 2020. That dependency has grown already from 35 percent in the mid-1970's when we first confronted war over oil in the Middle East.

Congress is facing a question that will partially ease the dependence on foreign oil sources as it conferences the energy bill. In the House, we say we should allow exploration and development of a fringe area of the Arctic National Wildlife Refuge in my state. I passionately believe that this is vital right now. The answer to oil dependency is a sensible U.S. domestic oil production in ANWR, as well as looking for other solutions that will ease the problem in years to come.

We need to develop all possible sources of energy to insure that our country has a diversity of energy sources available. Hydrogen, the most abundant element in the universe is a source of energy that should be developed for application in the long term. It can be derived from gasoline, natural gas, methanol, renewables, even water. Someday, like electricity today, hydrogen could become a type of energy used in daily transportation and as a source of fuel for electricity generation to power homes, business and industry.

Now is the time to begin a serious investigation that looks beyond a successful research and development program. We need to consider the need to begin our public and private efforts now to create an infrastructure to serve and fuel a transportation system based in part upon fuel cell vehicles and the need for hydrogen.

I do not know if there will be success or failure of these efforts to perfect the technology but I think it wise to consider those actions we can take. Our design should be to encourage and maintain momentum towards adoption of a new form of transportation based not entirely upon fossil fuels from other lands. We need to begin a process to determine government's proper role in this effort that may be as technically challenging as the Apollo program and as important as the Interstate Highway System.

Regardless of the energy source that propels our vehicles, now or in the future, we must also ensure that it pays its fair share to the Highway Trust Fund, if we are to maintain a user fee based system to invest in our transportation infrastructure.

The reauthorization effort should examine where we are, what needs to be done, what resources will be required, and what partnerships need to be encouraged if we are to add hydrogen as a cornerstone of our transportation sector in a timely manner. The Subcommittee Chairman, Mr. PETRI, and Ranking Member, Mr. BORSKI, can get the perspectives of all relevant sectors on this issue and address them in the reauthorization bill. I expect to be actively involved in this effort as well.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

SPEECH OF

HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. DEGETTE. Mr. Speaker, I rise in support of the conference report to H.R. 3763, the "Public Company Accounting Reform and Investor Protection Act." This agreement accepts almost every Democratic proposal contained in the "Sarbanes" bill and has only been altered by adding increased penalties for corporate crimes. I am pleased that the Republicans in Congress agreed to the much stronger Democratic proposals that will reach to the very roots of the problems in corporate America that caused the collapse of companies like Enron, WorldCom, and Adelphia. Unfortunately, the country will most likely continue to see companies fall due to accounting improprieties and, while I believe this is a strong bill, more must certainly be done. However, the changes in our nation's financial accounting structure contained in this agreement will strengthen the confidence and trust of investors and will increase the transparency and acceptability of financial statements.

The agreement that we are considering today is almost identical to the Democratic proposals contained in the "Sarbanes" legislation that passed the Senate 97–0. The fact that the Republicans accepted the Democrats' position certainly shows that the Republicans in Congress are feeling the heat over corporate accountability. After all, the American public trusts Democrats to fix the problems in corporate America and to increase investor confidence in the markets.

The proposal offered by Republicans to deal with corporate abuse was to increase penalties for corporate crime, coupled with weak, industry-controlled standard-setting bodies. They wanted to deal only with the "bad apples" instead of getting to the heart of the problem. The conference committee agreed to accept their increased penalties for crime. But, the conference committee recognized that corporate abuses will not end until Congress makes changes that attack the root of the problems. So the conferees accepted the Democratic proposals almost in their entirety.

As we have seen from the collapse of Enron and other large corporations, auditors had guiding principles that were extremely weak and easily ignored by accountants and corporate management. Additionally, accounting improprieties were purposely overlooked because the auditors became too cozy with the companies they audited and made huge profits from non-audit consulting services. To address these problems, this agreement creates a new and independent accounting board that has authority to establish auditing standards, investigate accounting firms that conduct audits of publicly-traded companies, and enforce their rules. The agreement also mandates auditor independence and bans most non-audit consulting services.

As we have seen in the past, much-needed accounting reforms were impeded by industry officials who threatened to withhold funding from the Financial Accounting Standards Board (FASB). The new auditing board and the current FASB will be given an independent funding stream to ensure that important financial standards will not be senselessly squashed by greedy industry executives.

The agreement also increases and strengthens corporate governance by requiring senior executives to attest to the accuracy of their company's financial statements, under penalty of law. It also requires corporate executives to repay any compensation or profits received as a result of their accounting trickery.

Unfortunately, this agreement overlooks some issues that must be addressed, including expensing stock options and mandatory auditor rotation. Stock options that are not included on a company's financial statements can misrepresent the true value of a company. I am pleased that some companies have taken it upon themselves to include employee stock options on their financial statements and I am also pleased that the FASB has indicated that it will move quickly on a rule for expensing stock options. Additionally, requiring companies to rotate their auditors is very important to ensure that senior executives and the people auditing their companies do not become too cozy and allow a company to get away with accounting tricks. While these issues are not included in this agreement, I look forward to continuing working on finding ways to deal with them.

This agreement goes to the root of the problem of corporate abuse. It is strong and comprehensive, and will increase investor confidence, transparency, and the strength of the markets.

CENTRAL NEW JERSEY RECOGNIZES AND HONORS GROUND ZERO VOLUNTEER SUZAN VITTI

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HOLT. Mr. Speaker, I rise today to recognize and honor the selflessness, volunteering spirit and patriotism of Americans. One such American is Ground Zero Volunteer Suzan Vitti.

On September 11, 2001; Suzan Vitti, a nursing student and trained emergency service volunteer, saw the attacks on the World Trade Center unfold on television, immediately put on her uniform and reported to the Kendall Park First Aid building in Central New Jersey. Although the shock and enormity of that tragedy might have overwhelmed and incapacitated some who beheld it that day, Suzan was determined to act. Almost the minute Suzan Vitti heard reports that food and emergency supplies were needed she began calling businesses to solicit donations. Within 48 hours of the attacks, she was on her way to Ground Zero in her own small car, so loaded down with baked goods from Entenmann's of Edison that she had to drive below the speed limit with her hazard lights flashing. She had a sign in the back window of her car that said "Going to Ground Zero;" eventually a police officer spotted her and gave her an escort to the site.

From that day until recovery efforts were suspended at Ground Zero at the end of May, Suzan Vitti worked tirelessly and with no thought of her own health or safety to assist the emergency crews at Ground Zero. Food was being delivered to the site for the workers, but it was being dropped off several blocks from the site. The workers refused to leave their posts to feed themselves, so Suzan Vitti brought the food to them. She bandaged their wounds, put drops in their eyes to clear the dust, and distributed aspirin, gloves and goggles. When the winter months arrived, Suzan drove herself around the outskirts of the site in the middle of the night, seeking out the groups of New York City Police Officers hovered over fires they routinely lit in barrels to keep warm at their posts, delivering donuts, bagels, cakes, pies and cookies. Suzan Vitti became such a welcome sight at Ground Zero, that rescue and recovery personnel would announce her presence over the radio—"the Entenmann's Lady just entered the Zone!"—and waive her in with their flashlights. Reliably, two or three days a week from September to May, Suzan Vitti arrived at Ground Zero with donations of food, pastries, and medical supplies and distributed them as needed.

For her efforts, she has received countless honors, including commendations and recognition from several units of the Police and Fire Departments of the City of New York, the Port Authority Police Department, emergency services providers, the Salvation Army and other relief organizations, the Department of Design and Construction, the Army National Guard, the Mayor of South Brunswick and the Governor of New Jersey. One of her most prized possessions is a sweatshirt, upon which she has pinned the more than 150 pieces of collar brass donated to her by grateful rescue and recovery personnel to whom she tended at Ground Zero. As to her volunteering spirit, Suzan has said, simply, "I'm an American. It's my duty."

It is an honor to represent Suzan Vitti in Congress.

Once again, I rise to commend Suzan Vitti for her selfless and tireless efforts on behalf of the rescue and recovery personnel at Ground Zero and for her volunteering and patriotic spirit. I wish her much success in her future endeavors, and I ask my colleagues to join me in recognizing her accomplishments.

IN RECOGNITION OF CHIEF COMMANDER ARTHUR FARR AND THE CITY OF MANITOWOC

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, today before this House I recognize and honor Past Chief Commander Arthur Farr of the United States Power Squadrons, as well as the city of Manitowoc, a Wisconsin community that has fought to preserve the causes of freedom and democracy through its superior ship building enterprise.

When the drums of war sound, and our nation is obliged to heed the calls of the oppressed and threatened, the citizens of the United States dutifully step up—as exemplified by the people of Manitowoc and Past Chief Commander Farr.

Commander Farr served as a naval submarine officer aboard the distinguished USS *Guitarro* throughout World War II. During his service, Commander Farr helped see the *Guitarro* safely through five treacherous war patrols in the Pacific, a tenure that yielded four battle stars and the Navy Unit Commendation. The achievements of Commander Farr and the *Guitarro* are truly deserving of our highest recognition and most earnest thanks.

To equip our forces with the vessels essential for victory during World War II, the citizens of Manitowoc and its neighboring communities rallied to fill posts in the shipyard, often at incredible sacrifice. Farmers milked their cows by day and welded submarines by night. It was the tireless efforts of these citizens that fueled the production of superior vessels, like the *Guitarro*, and ensured naval success and eventual victory for the allies.

The dedication and often unrecognized contributions of Americans like Past Chief Commander Farr and the citizens of Manitowoc are a true testament to the strength and excellence of this great nation.

HONORING TOWN OF GLEN ELLEN AND GLEN ELLEN POST OFFICE ON 130TH ANNIVERSARY

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. WOOLSEY. Mr. Speaker, I rise today to honor the town of Glen Ellen and the Glen Ellen Post Office on the occasion of its 130th anniversary.

Located six miles north of Sonoma and established on July 19, 1872, Glen Ellen and its Post Office enjoy an interesting history. In the beginning, the small settlement was to be named Lebanon by early pioneer John Gibson. A document dated June 4, 1872 indicates he was also first to apply to the postmaster general in Washington, DC, for the creation of a post office. However, for reasons unknown, the application was never answered. Fortunately, another was filed on July 19, 1872 allowing the town to establish the community post office, which was named Glen Ellen after the wife of Colonel Charles Stuart, Ellen Mary Stuart. These early residents had built their home and ranch at the base of the Mayacamas, just east of what is now Hwy. 12.

Over the past 130 years the Glen Ellen Post Office has been guided by the experienced hands of a long list of postmasters. The first being the highly respected steamboat captain from San Francisco, Charles Justi. He served as postmaster for nine years until the reigns were passed to John Gibson, the original petitioner for what was almost the Lebanon Post Office. Gibson served for three years until his partner, Charles Crofoot succeeded him on November 28, 1888. Crofoot, who served for nearly four years, was followed by a long series of esteemed guardians of Glen Ellen's treasured institution. Today, located in the picturesque vineyards of Jack London country, the Glen Ellen post office is presided over by postmaster Kip Fogarty.

Even during the 1880's Glen Ellen was a tourist destination. During its heyday many people came and stayed at the Glen Ellen Hotel. The area, now known as the Valley of the Moon, was already becoming known for vineyards when winemaker Kate Warfield, daughter of Post Master Mary Overton, won national awards for her Glen Ellen wines produced at Ten Oaks Vineyard on Dunbar Road.

Mr. Speaker, I am pleased to congratulate Glen Ellen on this historic birthday and the Post Office for its 130 years of faithful service and commitment to the residents of the Glen Ellen community.

PAYING TRIBUTE TO: BILL MULDOON

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Bill Muldoon of Craig, Colorado for his selfless volunteer efforts to help the less fortunate of this world. For many years, he has dedicated his time and efforts to San Miguel de-Allende (Mexico) and greatly improved the living situation in that region, which is why he is deserving of our praise today.

Bill Muldoon is an outstanding individual actively involved in his community. As a member of the Moffat County Rotary International Association, Bill's prominence is noticeable amongst the many organizations spanning the nation. As the organizer of one of the largest humanitarian efforts in Moffat City Rotary history, Bill was known to spearhead and personally drive 3,000 miles to organize and collect materials for the city of San Miguel, and other Rotarian projects.

Bill supervised the progress and completion of the San Miguel de Allende project. He raised support and funding totaling 6,400 dollars, and captured the hearts and attention of his community by making the journey alone. His adventurous journey towards San Miguel, yielded numerous problems and complications. Bill experienced rockslides, deer, and geese, not to mention treacherous weather at parts, and other barriers and detours. Nevertheless, Bill overcame these obstacles and provided the city hospitals and clinics of San Miguel de Allende with the many needed supplies and modern technology. His thoughtful spirit lifted morale and provided hope to this area.

Mr. Speaker, it is with much admiration I take this moment to honor Bill Muldoon for his charitable deeds. I would like to personally applaud his hard work and determination before this body of Congress and this nation for his efforts will serve to inspire many future generations. Thank you again for your hard work in every humanitarian endeavor.

TRIBUTE TO MR. JAMES B. HUNT, JR.

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to Mr. James B. Hunt a gifted musician and native of Greenville, S.C. Mr. Hunt's first experience with music came at the age of six when his parents taught him to sing. In the 8th grade, unable to buy an instrument, he bought a toy clarinet from Kress "five and dime" Store. Mr. M.C. Lewis, Sterling High School Band Director, and some members of the band heard him playing Sousa marches on his toy instrument. They gave him an alto tuba, a fingering chart, and a "march book". On Tuesdays and Fridays he marched with the band at halftime.

Upon graduating Salutatorian from Sterling High School, Mr. Hunt entered South Carolina State College, now S.C. State University, in 1942 where he won a band scholarship and had the rare honor of being chosen as a freshman to play in the dance band known as the "State College Collegians." At S.C. State College, he studied the trumpet. He earned a B.S. Degree in Mechanical Engineering in 1946, and a Master's Degree in Education in 1958.

Mr. Hunt is often called the "First Band Director" because of his many "first" achievements. He was the first band director at Wilkinson High School in Orangeburg, a position he held for 25 years. He was the first band director at Sharperson Junior High School, Brookdale Middle School and Bellville Junior High. With the merger of Orangeburg High and Wilkinson High Schools in 1971, he organized and became the first director of the Orangeburg-Wilkinson High School Band. He was the first director of an integrated band to march in the Railroad Daze Festival in Branchville, S.C., and in 1972 this band participated in the Shrine Bowl Parade and halftime show in Charlotte, NC.

Mr. Hunt has placed more than 250 students in South Carolina All-State Bands sponsored by the S.C. Band Masters Association. He served as president of the Band Masters Association for three years and was selected "Band Director of the Year" in 1962. His peers recognized him for his significant contributions to music education in South Carolina at the S.C. State College Second Alumni Band Concert in 1976. In 1987 he was inducted into the

S.C. State College Jazz Hall of Fame. Mr. Hunt is most proud of the accomplishments of his former students who include Johnny Williams, member of the Count Basie Band since 1970; Shellie Thomas, a retired music teacher in Los Angeles and currently the leader of the Original Honey Drippers Band; Horace Ott, Broadway composer and arranger and sometimes conductor for the Queen of Soul, Aretha Franklin; three of the famous Javis Brothers and Javis Sister, Priscilla; and 2000 Hall of Fame inductee Dwight McMillan.

Mr. Hunt has been married for more than 50 years to the former Lerlon Hilton. They have two daughters: Mrs. Deborah Hunt Woods, a 1999 Teacher of the Year in Lithonia, Georgia, and Dr. Marilyn Hunt Alim, an education analyst at NASA/Marshall Space Flight Center in Huntsville, Alabama. They have eight grandchildren and four great-grandchildren. Mr. Hunt is a member of Mt. Pisgah Baptist Church where he serves on the Deacon Board and teaches the Merfts Sunday School Class. He is a member of Epsilon Omega Chapter of Omega Psi Phi fraternity.

Mr. Speaker, I ask that you and my colleagues join me in honoring an outstanding South Carolinian whose dedication to his profession and family is unparalleled. I wish him good luck and Godspeed.

TRIBUTE TO RAY M. BOWEN

HON. KEVIN BRADY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BRADY of Texas. Mr. Speaker, I rise today to pay tribute to Dr. Ray M. Bowen, President of Texas A&M University, America's 5th largest university. At the end of this month, Dr. Bowen will be stepping down as the university's 21st President, a position in which he has served with distinction since he took office in June 1994.

Under Dr. Bowen's leadership, Texas A&M has become one of the finest universities in our nation. Academic programs have been enhanced and recognized for excellence. Most recently, Texas A&M was invited to join the prestigious American Association of Universities.

Additionally, during Dr. Bowen's tenure, the George Bush Presidential Library and Museum Center was opened and formally dedicated. Dr. Bowen seized this opportunity to increase the stature of the university throughout the world. And, he has initiated an ambitious program, "Vision 2020," which is designed to propel Texas A&M into the ranks as one of the top-ten best public universities in the nation by the year 2020. Mr. Speaker, Dr. Bowen has also successfully completed a major capital campaign exceeding its $500 million goal by more than $137 million and has already begun a second campaign entitled "One Spirit, One Vision."

Dr. Bowen's extensive educational background began when he received 5 Bachelor of Science and Doctoral degrees from Texas A&M in the field of Engineering. He earned a Master's degree at the California Institute of Technology and served with distinction as a faculty member at Louisiana State University, Rice University, and the University of Kentucky.

Immediately before joining Texas A&M, Dr. Bowen served as interim President and Provost and Vice President for Academic Affairs at Oklahoma State University. Additionally, Dr. Bowen served as a staff member on two occasions at the National Science Foundation, where he most recently served as Deputy Assistant Director for Engineering and Acting Assistant Director for Engineering and earlier as Director of the Division of Mechanical Engineering and Applied Mechanics.

Along with carrying the title as educator, Dr. Bowen served his nation serving in the United States Air Force, where he functioned as a faculty member of the Air Force Institute of Technology.

Mr. Speaker, to express their profound appreciation for the work of Dr. Bowen, the Board of Regents at Texas A&M University has conferred upon him the title of President Emeritus, to be effective on the day after his departure from the role of President.

For my part, having the privilege of representing the Aggies for the past six years in Congress, I fail to find adequate words to express my appreciation and deep respect for this unique gentleman.

Dr. Bowen is quiet and intelligent, wonderfully organized and highly disciplined. He has a commanding presence, yet he is as much at home mingling with students and watching an Aggie baseball game as he is discussing education policy with Texas and America's political leaders and advanced technologies with the nation's brightest scientific minds.

As you would imagine, he has surrounded himself with an outstanding and dedicated staff and faculty which reflect his innate leadership as well as his desire to bring out the best in those around him.

I will not soon forget the tragic Bonfire collapse in November 1999, nor Dr. Bowen's calm, compassionate and reassuring leadership during those terribly difficult days and months. Through it all, in public and private, he remained steadfastly focused on the families of those injured and the Aggie family that leaned upon him so heavily.

It is said the times that future generations elect to recall are not those of ease and prosperity, but of adversity bravely borne. Dr. Bowen and his team bore this unimaginable adversity with dignity and purpose.

I am proud to call him my friend. This university and this nation are better for his service.

Mr. Speaker, on behalf of all the students, faculty, former students, and friends of Texas A&M University, I am proud to recognize Dr. Bowen for his outstanding achievements and contributions bestowed not only upon Texas A&M University, but also this great nation.

RECOGNIZING THE SERVICE OF TONY HALL

HON. EVA M. CLAYTON

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. CLAYTON. Mr. Speaker, I rise today to honor my dear friend and colleague TONY HALL as he prepares to accept the nomination as the ambassador to the Food and Agriculture Agencies of the United Nations. Although I extend my very best wishes to TONY HALL, I rise on this occasion with great sadness at the realization that this Congress will soon be losing one of its finest members. TONY HALL is a man who shows courage in the face of adversity, integrity when there is little to be found, and compassion when the prevailing winds blow with malice.

Throughout his career, TONY HALL has served as the moral conscience of Congress on issues of hunger and poverty. Where there is hardship and injustice TONY HALL is the first to enter the fray and the last to leave. During his career in Congress, TONY HALL has often traveled into the heart of distress. When Ethiopia was in the grips of a massive famine in 1984–1985, TONY was there experiencing firsthand the grim reality that most of us viewed at a distance on our televisions. When reports started trickling out about the growing deprivation in North Korea, TONY was the first to travel there and he later traveled there 5 more times and kept his colleagues here in Congress appraised of the situation. When no one else had the courage to do so, it was TONY who traveled to Iraq, against the advice of many, to assess the suffering of the innocent.

I am certain that you are familiar with the proverb "Ease and honor are seldom bedfellows." This proverb applies to no one more than TONY HALL. It should come as a surprise to no one that TONY HALL has been nominated for the Nobel Peace Prize and I imagine that, as TONY embarks upon his journey as the Ambassador to the United Nations Food and Agriculture Program, we may well hear his name again mentioned in connection with the Nobel Peace Prize.

The departure of TONY HALL from this Congress will leave a void of leadership on the issue of hunger. There are many here who have worked with TONY and supported his efforts in world hunger but there are none who have so relentlessly and singlemindedly reminded this Congress and this country of our obligation to the least among us. As we honor TONY's effort on the eve of his departure, I want to urge my colleagues to step into the space left by TONY's departure and take up the reins of leadership in combating world hunger.

Not only is TONY HALL a man of conviction and compassion, but he is also a man of deep and abiding faith. All of us who know TONY know that his convictions are grounded, first and foremost, in his faith in a God who has charged us to feed the hungry and to shelter the naked. It is this faith that gives TONY such grace in the face of adversity and his firm kindness when he stands alone.

Mr. Speaker, there is a passage from the book of Isaiah that I love and that I think speaks to TONY's steadfast efforts to raise up the struggles of the poor and hungry around the world. I would like to recite it now in honor of TONY's efforts.

And if you give yourself to the hungry
And satisfy the desire of the afflicted,
Then your light will rise in darkness
And your gloom will become like midday.
And the LORD will continually guide you,
And satisfy your desire in scorched places,
And (give strength to your bones;

And you will be like a watered garden,
And like a (spring of water whose waters do not fail.
Those from among you will rebuild the ancient ruins;
You will raise up the age-old foundations;
And you will be called the repairer of the breach,
The restorer of the streets in which to dwell.

Mr. Speaker, TONY HALL has given himself to the hungry and his light has risen in the darkness. In so doing, he has spread this light to his colleagues and he has shed light on the actions that we must take to satisfy the desire of the afflicted.

Because of his efforts, TONY HALL is what the book of Isaiah calls a "repairer of the breach and the restorer of streets in which to dwell," and for this Mr. Speaker, I rise to thank and honor our friend and colleague TONY HALL and to wish him God's blessings as he departs for Rome to continue his work to erase the blight of world hunger.

RECENT VIOLENCE IN NORTHERN IRELAND

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PALLONE. Mr. Speaker, I rise this evening to condemn the recent sectarian violence, that has occurred in Northern Ireland over the past several weeks. It is quite obvious to me that the parties who are organizing these attacks are hoping that they can derail the 1998 Good Friday Peace Accord.

Mr. Speaker, as you may know, for the first time since January, an individual was killed in Belfast due to sectarian violence. This murder was one of several coordinated acts of violence which occurred Monday evening. At different points throughout the night, several young men were shot at in Catholic neighborhoods. All acts were credited to the Ulster Defense Association, also know as the Red Hand Defenders.

Late Monday evening, Gerald Lawler, a Catholic teenager was walking home from a local Belfast pub, when he was suddenly shot to death in a drive-by attack. His crime: he was a 19 year-old Catholic walking home from a predominately Catholic bar, in a predominately Catholic neighborhood. He was killed solely because of his religion. According to news reports he wasn't even active politically.

This attack occurred only days after the Irish Republic Army (IRA) issued an unprecedented public apology for civilian deaths which occurred over the more than 30 year conflict. This surprise gesture was an obvious sign that the IRA and other Catholic groups want to work to ensure the survival of the new government of Northern Ireland. By apologizing the IRA takes a significant step in showing the world that they are ready to obey the guidelines of the '98 accords. Unfortunately, extremist groups on the other side of the conflict do not feel the same way.

The murder of Gerald Lawler Monday night by the UDA confirms that loyalist groups refuse to give equality to Catholics, called for in the Good Friday Accords. These extremist groups feel that by once again escalating the conflict they can destroy the accords and the power-sharing government thus reverting back to sectarian Protestant control.

Yesterday (Wednesday), Prime Minister Blair called for an end of the violence in Northern Ireland and vowed to toughen its enforcement of paramilitary cease-fires. To enforce these cease-fires, Blair plans to deploy hundreds of extra police and soldiers to spearhead a campaign to keep the peace.

While I am encouraged by Prime Minister Blair's comments, I am worried that an increase in British police and military personnel will do little to stem the violence. In the past, when the offenders of cease-fires were groups which are loyal to the crown, the police frequently turned a blind eye to the violence, refusing to arrest and prosecute offenses against Catholics. This only caused the conflict to escalate rather than encourage peace.

I call on Prime Minister Blair and First Minister David Trimble, the Protestant government leader, to take real steps to stop the violence. They need to find all the perpetrators of the violence in the North, especially those which occurred most recently, and take appropriate legal action against them. For the Good Friday accord to be successful all parties in Northern Ireland must stop the sectarian violence.

The conflict in Ireland between Catholic and Protestants is centuries old. However, for the first time a real solution, which is equitable to all sides, has been reached and is in the early stages of working. Now both sides need to come together and stop any and all sectarian violence and allow for true democracy to work.

PAYING TRIBUTE TO KELLER HAYES

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Keller Hayes of Colorado, a remarkable individual who has assisted in building economic prosperity and equality in the Denver business market. It is my honor to applaud an individual who demonstrates determination and perseverance despite the obstacles, and a privilege to pay tribute to such a deserving Coloradan who has donated countless hours towards the betterment of the Denver community.

Keller Hayes was raised on a rural Nebraska ranch, where her grandmother instilled in her ethics and morals that she fervently displays today. Keller overcame hurdle after hurdle throughout her life, and after graduating from college with a minor in women's studies, she embarked on her mission to bring equality to women in the workplace. Keller is a beacon to women everywhere, and she serves on numerous boards and panels working to ensure the rights of working women nationwide. She is an active member of the Colorado Women's Chamber of Commerce, the largest women's chamber in the country. Her assistance in training, mentoring, counseling, and advising women of all ages, has helped build a strong community. Because of Keller's diligence and perseverance, she received the prestigious award of 'Women Business Advocate of the Year'.

Mr. Speaker, it is my sincere honor to pay tribute to Keller Hayes before this body of Congress and this nation. Thank you Keller for providing integrity and dignity to our society, and selflessly donating countless volunteer hours to your community. Congratulations on your award, and good luck in all your future endeavors.

TRIBUTE TO FATHER JOHN GLAROS

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BILIRAKIS. Mr. Speaker, I would like to honor Father John Glaros, a valued member of the community in Florida's ninth district, who passed away June 22, 2002. Father Glaros had a lifelong history of service to his community and country by fulfilling religious and government roles alike.

Father Glaros was born in 1920 in Plant City, Florida, although he was raised and educated in Greece for the first eighteen years of his life. He returned to America to enlist in the U.S. Army where he was trained in special operations and served as a member of the Office of Strategic Services in World War II.

After his honorable discharge, he returned to Plant city where he owned and operated the Dixie Restaurant. In the late 1950's, he became a Plant City commissioner and was subsequently elected Plant City mayor. Dedicated to remain active in his community, Father Glaros sat on the Hillsborough County Commission from 1967 to 1971.

He began his commitment to the Greek Orthodox Church in 1976 when he was ordained as a priest. For twenty-one years he assisted churches in the Winter Haven, Naples, and Port Charlotte communities on an as-needed basis until his retirement. He will be remembered for his devotion and the tireless effort he contributed to these communities.

Father Glaros was preceded in death by his wife, Dorothy Cribbs Glaros. He leaves two sons, Steve and Jim of Jacksonville and Plant City, respectively; one daughter, Linda Konstantinidis of Clearwater, six grandchildren, and two great-grandchildren.

Mr. Speaker, I pay tribute to the life of Father John Glaros and thank him for the contributions he made. I give my condolences to his family. Father Glaros will be sadly missed throughout our community but will be fondly remembered.

PERSONAL EXPLANATION

HON. SHELLEY BERKLEY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. BERKLEY. Mr. Speaker, due to a family medical emergency, I missed Roll Call votes No. 320, No. 321, No. 322, and No. 323. Had

I been present, I would have voted "yea" on No. 320, "yea" on No. 321, "nay" on No. 322, and "nay" on No. 323.

HONORING OFFICERS ROBERT ETTER AND STEPHANIE MARKINS

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, I am profoundly dismayed today to share a piece of dreadful news from my district with this House and with our entire Nation.

On Monday, in an act of terrifying evil, a man deliberately crashed his truck into a police squad car in the Town of Hobart, Wisconsin. The two police officers in the car, Robert Etter and Stephanie Markins, were killed.

Officer Etter, who was known by some in the community as "Officer Bob," served in law enforcement for three decades. He retired a few years ago but soon realized how hard it was to leave behind 30 years of serving and protecting his neighbors—so he returned, bringing his immense experience and skills back to the local law enforcement community. In fact, he was sharing some of that experience with a new officer when their car was hit on July 22. He leaves behind a wife, four daughters, two grandchildren and a community grateful for having had the opportunity to share life with him.

Officer Markins was that new officer learning from Officer Etter. She had served on the force for just a short time. Described by one of her trainers as "very much a go getter" who wanted to "get out and deal with people," Officer Markins" promise as a law enforcement officer was tragically cut short Monday. She was a fiancé, a daughter, a sister, a friend, a neighbor and a protector who was willing to give everything for the security of others. She will be missed.

Mr. Speaker, this heartbreaking and senseless case tragically demonstrates that law enforcement is a dangerous job whether it's done in New York City or Hobart, Wisconsin. And it shows that the people who choose it as their profession are truly extraordinary in their character, their courage, and their dedication to their fellow citizens.

I offer today these few brief remarks to honor the memories of Officers Etter and Markins, to ensure that they are remembered in the annals of our nation's history, to recognize these families' incredible loss, and to remind all of us of the sacrifices made every day by law enforcement officers and their loved ones.

INTRODUCTION OF THE DEFENSE OF FREEDOM EDUCATION ACT

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PETRI. Mr. Speaker, today I have introduced the Defense of Freedom Education Act, legislation which is designed to create new, and strengthen existing, post-secondary education programs which teach the nature, history, and philosophy of free institutions, Western Civilization, and the threats to freedom from totalitarianism and fanaticism.

In order to sustain freedom and civilization, it is imperative that every generation be taught to understand their full significance and value, and the threats with which they are faced. However, in almost all of our institutions of higher education today, the study of American history and Western Civilization has been systematically de-emphasized. For a variety of reasons, these subject areas have fallen into disfavor on college campuses, to the point that it is possible at many leading universities to get a liberal arts degree without having taken one course in history or Western Civilization. This perpetuation of ignorance about the philosophical underpinnings of our nation can only have baleful consequences for the future.

To see that this de-emphasis is already having an effect, one must only examine the stunning ignorance about basic facts of American history among recent college graduates, as detailed in a 2000 study conducted by the American Council of Trustees and Alumni. To cite just one of the many horrifying examples from that report, while 99 percent of the 556 college seniors tested at 55 leading colleges and universities (including Harvard and Princeton) correctly identified Beavis and Butthead as popular cartoon characters, just 23 percent had any idea who James Madison was. The questions used in this study appear in the CONGRESSIONAL RECORD for July 10, 2000 (page H5662–H5663). These multiple-choice questions, which, in truth, a well-educated ninth-grader should be able to breeze through, are increasingly over the heads of college graduates (the average score in the study was 53 percent).

Two years ago, I was very involved in a congressional effort to highlight this appalling situation. This effort led to the unanimous, bicameral passage of a concurrent resolution (S. Con. Res. 129) which stated, in part, that "the historical illiteracy of America's college and university graduates is a serious problem that should be addressed by the Nation's higher education community." The nonbinding resolution urged colleges and universities to review their curriculum and add requirements for American history courses. However, perhaps it is time for Congress to take a more active role in trying to reverse this continuing loss of our collective civic memory.

To that end, the Defense of Freedom Education Act would offer grants to institutions of higher education, specific centers within such an institution, or associated nonprofit foundations. These grants would be used to establish courses at both the undergraduate and graduate levels which teach any or all of the following concepts, which bear both on American history directly and the ideas that serve as America's foundation:

The concepts, personalities and major events surrounding the founding of America. This includes the philosophical background behind the Declaration of Independence, the Constitution, and the free institutions which we take for granted today. Earlier generations were taught these subjects as a matter of course, but we are increasingly moving towards a time where Americans will think of the 4th of July as simply a day when we shoot off fireworks and hold picnics.

Western Civilization and the defining features of human progress which it embodies. These include democracy, universalism, individual rights, market economies, religious freedom, advanced science, and efficient technology. Programs of study funded under this bill can also examine the impact of the West on other civilizations, the Western debt to other civilizations, the comparative study of high civilization, and the process by which Western and other civilizations may be gradually evolving into a world civilization.

Threats to free institutions. Some of these threats emerge from philosophical systems such as Communism, Fascism, Nazism, and totalitarian thinking in all its guises. Others emerge from widespread human predilections subversive of tolerance, individual rights, and civil society, such as racism, caste consciousness, and zealotry. Some are the products of perverse ambition such as autocracy, despotism and militarism. All threaten freedom, provoke war, and induce terrorism. While we who lived through the 20th Century are painfully aware of the depredations caused by ideologies such as Communism, future generations will not have the benefit of such first-hand experience.

Projects supported under this program could include the design and implementation of courses, the development of centers devoted to the ends of this bill, research and publication costs of relevant readers and other course materials, and other clearly related activities. Support will also be given to professional development projects designed to help improve the content and quality of education about the founding and the history of free government at the K–12 level. (After all, a huge part of the problem is the awful quality of American history instruction provided by many school systems. A student really shouldn't have to reach the university level before finding out who James Madison was and why he was important to our country.) While I don't always see the creation of a new government program as the best way to solve pressing societal problems, there are several precedents in the area of higher education. It seems to me that it is a worthy use of government funds to try and arrest the progressive deterioration of America's collective memory which is now occurring. I encourage my colleagues to join in cosponsoring this bill and advancing this effort.

PAYING TRIBUTE TO JAMES SUCKLA

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay respect to the passing of James Suckla, who recently passed away at the age of 82 in Cortez, Colorado. James, known as Jack to his family and friends, will always be remembered as a generous, wise cattleman. His voice was heard at many a rodeo, his auctioneering at many a livestock sale, and his advice was sought by many in his community. Jack's wise management of his ranches and his wisdom and whit on committees earned him a respect that many only dream of and his love and care for his family and friends should be a guide for all to live by.

Jack Suckla was born in Frederick, Colorado on July 25th, 1919, to Anthony and Dorothy Suckla. The youngest of seven children, Jack learned many important lessons in his childhood, which served him well throughout his life. He married Helen Bradfield in Aztec, New Mexico on July 29, 1941 and remained with her for the following sixty years in which they were blessed with children and eight grandchildren. Jack joined the Navy during World War II, and after being wounded, returned to Cortez and followed the rodeo circuit as an announcer for twenty years. Jack awed the crowd during his rodeo career as a saddle bronco rider. He purchased the Cortez sale barn in 1953, and operated it with two of his sons, Larry and Jimmy. Jack went on to serve on numerous committees, including the NCA, SWCLA, BLM advisory board, the Forest Service, Vectra Bank Board of Directors, and the American Legion. His service stands as a testament to his dedication to not only his life long love of ranching but to his community and country

Mr. Speaker, Jack Suckla was a remarkable man whose leadership and goodwill towards people have inspired so many and whose good deeds certainly deserve the recognition of this body of Congress and this nation. Jack's departure leaves a gap in many hearts but his memory will surely live on in the thoughts and lives of those who know him. I join many others in expressing my deepest condolences to the friends and family of Jack Suckla.

INDIA SHOULD ACT LIKE A DEMOCRACY—SELF-DETERMINATION FOR KASHMIR, KHALISTAN AND OTHER NATIONS OF SOUTH ASIA

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BURTON of Indiana. Mr. Speaker, India calls itself "the world's largest democracy" yet it does not act democratic. As you know, a report from the Movement Against State Repression shows that India admitted to holding 52,268 Sikhs as political prisoners. Fort-two Members of Congress from both parties wrote to President Bush to urge him to work for the release of these political prisoners. There are tens of thousands of other political prisoners also, according to Amnesty International, and they must also be released. Recently, the Council of Khalistan wrote to Secretary of State Colin Powell to urge him to work for the release of political prisoners.

India has killed over 250,000 Sikhs since 1984, over 80,000 Kashmiri Muslims since 1988, over 200,000 Christians in Nagaland since 1947, and tens of thousands of other minorities. Mr. Speaker, this is not acceptable, and it shows that using the term "democracy" to describe India may not be the best use of the term.

Recently, former Senator George Mitchell said "the essence of democracy is the right to self determination." I'm not in the habit of quoting Democrats, Mr. Speaker, but Senator Mitchell is right about this. In 1948, India promised the United Nations that it would allow the people of Kashmir to decide their future in a free and fair plebiscite. No such vote has ever been held. Instead, over 600,000 troops have been sent to Kashmir to suppress the legitimate aspirations of the people for freedom. Similarly, in Punjab, Khalistan, which declared its independence from India on October 7, 1987, over half a million troops have terrorized the population to destroy the Sikh Nation's freedom movement, even though the Sikhs were one of the parties to the agreement establishing the independence of India and were supposed to get their own state. Nagaland, which is predominantly Christian, has been trying to secure its freedom and India has reacted with similar terror. All in all, there are 17 freedom movements within India's artificial borders.

Mr. Speaker, it is time for all the people of South Asia to enjoy freedom. Until India allows the people to exercise their legitimate rights, we should stop all U.S. foreign aid to India. We also should formally declare our support for self-determination for Kashmir, Khalistan, Nagaland, and all the people and nations of South Asia. These measures will go a long way towards securing the blessings of freedom to all the people of the subcontinent.

A SPECIAL TRIBUTE TO NORMAN M. WALKER IN RECOGNITION OF HIS 25 YEARS OF SERVICE WITH THE DEFIANCE POLICE DEPARTMENT

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to pay special tribute to an outstanding gentleman from Ohio's Fifth Congressional District. Norm Walker of Defiance, Ohio, will celebrate twenty-five years of dedicated service with the Defiance Police Department on August 15, 2002.

Mr. Speaker, Norm began work with the Defiance Police Department in 1977, and, over the years, has risen through the ranks to his current position serving as Chief of Police. On his way to becoming Chief of Police, he served as a Patrolman, Sergeant, Detective, Lieutenant, and as the Assistant Chief of Police.

Norm has proven his skills as an effective leader and organizational manager. In 1993 he assumed control of the city's law enforcement branch, and since then the Defiance Police Department has become a model after which other local police departments can pattern themselves.

During Norm's tenure as Chief of Police he has led the effort to modernize the departments resources, including the upgrading of all computer and communication equipment. These upgrades also include the installation of Mobile Data Terminals, which are in-car computers that provide real time data to the patrolmen on duty. He has also increased the overall size of the department, and mandated leadership training for all newly promoted officers. Restructuring the department's organizational methodology to a more pro-active approach through the introduction of community oriented policing strategies has been one of Norm's largest accomplishments since taking over as Chief of Police.

Norm has been recognized for his diligent service and unselfish commitment to establishing a modern and pro-active law enforcement agency. Among his numerous awards and recognition, he has received a Certificate of Exemplary Service by the Domestic Violence Task Force for the development and implementation of a countywide response protocol. Norm has also been honored by the Gang Resistance Education and Training (G.R.E.A.T.) Program for his instrumental role in implementing the program within the local school system.

Mr. Speaker, I would ask my colleagues to join me in paying special tribute to Norm Walker. Our local public service agencies and the American people are better served through the diligence and determination of public servants, like Norm, who dedicate their lives to serving the needs of others. I am confident that Norm will continue to serve his community and positively influence others around him. We wish him the very best on this special occasion.

TRIBUTE TO RYAN NOEL

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to a good friend and public servant who is working diligently on behalf of our nation's natural resources. Mr. Ryan Noel was recently named the recipient of the South Carolina Waterfowl Association Public Waterfowl Management Award. This award was given in recognition of excellence in public waterfowl management.

Mr. Noel is leaving his position as manager of the Santee National Wildlife Refuge to take a new job in Denver, and will be sorely missed. Mr. Noel is a consummate team player. His successful leadership of quality staff and local volunteers has resulted in tremendous improvements for waterfowl and wildlife habitat at the Santee National Wildlife Refuge.

Mr. Noel is committed to improving wildlife habitat and sharing this resource with the general public. He and his dedicated staff have successfully increased public use at the Santee National Wildlife Refuge. He has demonstrated that the role of the National Wildlife Refuge System is not only to conserve and enhance wildlife habitat but also to provide quality outdoor recreational opportunities and natural resource education to the general public. Mr. Noel and his staff have added greatly to the quality of life for people within and beyond the Sixth Congressional District of South Carolina.

Mr. Speaker, I ask you and my colleagues to join me and my fellow South Carolinians honoring Mr. Ryan Noel. He is a wonderful example of commitment to career and community alike and is well deserving of public recognition. We wish him Godspeed in his new endeavor.

JOHN'S LAW

HON. FRANK A. LoBIONDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. LOBIONDO. Mr. Speaker, this week marks the second anniversary of the tragic death of one of my constituents. U.S. Navy Ensign John Elliott, who had just received his commission to Naval Flight School in Pensacola, Florida, was struck and killed by a drunk driver on July 22, 2000. The accident instantly killed Elliott and seriously injured his passenger, Kristen Hohenwarter.

Sadly, it was later discovered that Michael Pangle, the driver responsible for Elliott's death, had been arrested for drunken driving earlier that evening. Having called for a ride, he was picked up by a friend and returned to his car. Elliott was on his way home for his mother's birthday party when he crossed paths with Pangle and both were killed.

Two years after that tragic accident, John's parents continue the fight to save other families from the grief they have endured. Lobbying the New Jersey State Legislature, the Elliotts saw to fruition the drafting, passage and ultimate enactment of John's Law. The law ensures that individuals who pick up an arrested driver sign a document accepting custody. Additionally, it gives State Police the authorization to impound the automobile of an arrested driver for up to 12 hours.

Today, I am introducing a resolution expressing the sense of the House that funding should be made available from the Highway Trust Fund to encourage all states to enact legislation to require law enforcement officers to impound motor vehicles of those charged with driving while intoxicated and to issue responsibility warnings to those who take custody of suspects driving while intoxicated. We are making important strides to eliminate the senseless deaths caused by the lethal mix of alcohol and automobiles. Annual deaths from drinking and driving have decreased from approximately 28,000 in 1980 to 16,068 in 2000. In 1982, 57 percent of all traffic fatalities were alcohol-related. In 2000, that percentage fell to 38 percent. However, much work remains to be done. Each death is a preventable one and I am sure this resolution will go a long way in ensuring deaths like Ensign Elliott's are prevented and families are saved from the pain the Elliotts and other families across the nation have endured.

I urge my colleagues in the House to support this resolution.

CELEBRATING THE ANNIVERSARY OF MALCOLM AND CAROLYN REGER

HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PENCE. Mr. Speaker, I rise today to pay tribute to two of my constituents, Malcolm and Carolyn Reger. August 13, 2002 marks their 30th wedding anniversary. Today, it's rare to see this accomplishment, but I submit that there is a reason for their success. You see, Mr. Speaker, 30 years ago, Malcolm and Carolyn, entered into the holy union of marriage with Jesus Christ and God's Word as their foundation. A building is only as good as its foundation. A marriage based on God's Word will withstand the rain, floods, and winds that blow against it. Troubles will come, but a house built upon the rock will stand.

AMENDING THE INTERNAL REVENUE CODE OF 1986 TO ENCOURAGE THE GRANTING OF EMPLOYEE STOCK OPTIONS

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HOUGHTON. Mr. Speaker, I am pleased to join my colleague from Ohio, Mr. HOUGHTON, in introducing our bill, the Workplace Employee Stock Option Act of 2002, that would benefit working men and women who would receive a new type of stock option under new section 423(d) of the Internal Revenue Code. This bill is an updated and improved version of bills I introduced in the 105th and 106th Congresses.

We have been through difficult times in the past year. The financial downturn has resulted from a variety of questionable accounting practices by a number of companies. Unfortunately, stock options of all types have been tarred by a common brush. This proposal is a new approach to options. In spite of current problems, it is good for both employers and employees if workers are also owners of the business.

Congress is considering legislation to impose new laws on corporations and accountants. Volume is reasonably intense in the debate on the advisability of expensing the value of stock options when they are granted. Expensing of options in financial statements may happen—even though there are several unresolved issues. If expensing happens, one hopes that we will leave it to the FASB and SEC to develop the best approach. Having said that, we would propose that the new type of option contained in this bill would be exempt from such valuation as a noncompensatory plan. Why? The option would be priced at market, fully available to nearly all employees, as well as management, on a nondiscriminatory basis, and subject to a relatively modest individual dollar cap. If we require expensing of such a widely held benefit, employers simply will not offer it.

The highlights of the bill include: (1) substantially all full-time U.S. employees would be eligible to participate, (2) the option price would be 100% of the fair market value at time of grant, the maximum annual amount of a grant per employee would be $11,000 (same as indexed 401(k) amount), (4) no tax to the employee at time of grant or exercise, including AMT, (5) at time of sale the employee would receive ordinary income to the extent of the fair market value at time of exercise, with any excess being capital gain, and (6) the employer's deduction would be the fair market value at time of exercise (same amount as employee reports at sale).

The ever-widening compensation gap between the highly paid and the nation's work force is cause for great concern. Once again, let us emphasize: This new 423(d) option is designed for working men and women, whose everyday, solid work enhances the company's overall performance. This is a broad-based stock option program. Employees ought to be able to build their wealth beyond that which they would ordinarily receive from a salary or bonus. This proposal would add another leg on the stool for employee retirement by providing an additional means of accumulating assets. It would encourage the long-term holding of stock by deferring all tax until sale.

We encourage our colleagues to join in cosponsoring this legislation.

THANKS TO GLAXOSMITHKLINE ON ITS COMMITMENT TO THE LYMPHATIC FILARIASIS ELIMINATION PROGRAM

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BALLENGER. Mr. Speaker, Last month, the pharmaceutical company GlaxoSmithKline produced the one-millionth donated tablet of albendazole, a drug that is being used to eliminate a devastating tropical disease called lymphatic filariasis (LF). I would like to congratulate GlaxoSmithKline (GSK) on this outstanding accomplishment, and thank the company for its commitment to the World Health Organization's (WHO) Lymphatic Filariasis Elimination Program.

GlaxoSmithKline has its U.S. headquarters in my state, where it employs close to 6,000 North Carolinians in the search for disease treatments and cures that improve the quality of human life by enabling people to do more, feel better and live longer. In addition to developing leading treatments for such diseases as diabetes, depression, asthma and HIV/AIDS, GSK produces an anti-parasitic drug called albendazole that is used to prevent a tropical disease known as lymphatic filiarias, or LF.

LF is a parasitic disease caused by thread-like worms that live in the human lymphatic system after being transmitted by a mosquito bite. LF is one of the leading causes of permanent and long-term disability in the world. The WHO estimates there are a billion people at risk in about 80 countries, mostly in India, Africa, South Asia, the Western Pacific and Central and South America. Over 120 million people have already been affected by LF, and over 40 million of these are seriously incapacitated and disfigured by the disease. In an infected person, the adult worms damage the lymphatic system, causing fluid to collect and cause swelling in the arms, legs, breasts and genitals. Such infections cause a grotesque hardening and thickening of the skin, known as elephantiasis.

LF has been a scourge of civilization for thousands of years, being first depicted on the pharaonic murals of Egypt and in the ancient medical texts of China, India, Japan and Persia. Elephantiasis was first associated with parasitic filarial worms and their mosquito vectors in the late 19th century by French, English and Australian physicians working with patients from Cuba, Brazil, China and India.

The WHO has determined that LF can be eliminated through an intense prevention program that will break the chain of infection through the use of anti-parasitic drugs. When these efforts succeed, LF will be only the second disease in history, after smallpox, to have been eradicated through human intervention.

In December 1997, GlaxoSmithKline formed a collaboration with the WHO to spearhead efforts to eliminate LF. GSK would donate albendazole, one of three essential anti parasitic drugs, for as long as necessary until the disease was eliminated—best estimates put the scale of this commitment at around five to six billion treatments. Since then, the program has evolved into a major public-private partnership known as the Global Alliance to Eliminate Lymphatic Filariasis.

GSK has become an active and involved partner in eliminating LF along with the WHO, organizations in the private and public sectors, and academia. By the end of the program to eliminate LF, GSK will have donated approximately five to six billion albendazole treatments for people in 80 countries. In addition to providing albendazole, GSK is supporting the Global Alliance for the Elimination of LF through help with coalition building, planning, training and communication initiatives.

GSK's production of the millionth dose of albendazole for the LF Elimination Program is an outstanding milestone achievement on the road to what will become the single largest pharmaceutical donation in history. I am pleased to represent the employees of GlaxoSmithKline, and proud to share the news of their historic accomplishment with this chamber.

PAYING TRIBUTE TO WILLIE TRAVNICEK

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to congratulate an outstanding individual from Colorado whose hard work and dedication have earned him the Colorado Division of Wildlife Officer of the Year Award. Willie Travnicek, 59 years of age, has been kicked by deer and poked by horns, he has trapped dangerous bears and looked death in the eye in an upside down kayak. Throughout his obstacles and exciting situations, Willie prevailed and today we applaud his 32 superb years with the Colorado Division of Wildlife. Willie's efforts and achievements deserve the recognition before this body of Congress and this nation.

Willie, of Salida, Colorado, began his career in 1970 as a technician in Hot Sulphur Springs in Northern Colorado. For numerous years, he helped round up and relocate herds of deer and elk. Never one to shy away from danger, Willie worked closely with Ron Dobson and became one of the first wildlife managers in the state to use a kayak for fishing-law enforcement purposes. During his thirty-year career and many years living in Salida, Willie has built a memorable reputation as a biologist, education specialist, and law enforcement officer.

Mr. Speaker, it is clear that Willie Travnicek is a man of great dedication and commitment to his profession and to the people of Colorado. His efforts have greatly added to the protection of Colorado's wildlife and I am honored to bring forth his accomplishments before this body of Congress today. He is a remarkable man and it is my privilege to extend to him my congratulations on his selection as the Colorado Division of Wildlife Officer of the Year. Willie, congratulations and all the best to you in your future endeavors.

A TRIBUTE TO KIM GRANHOLM

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. OBERSTAR. Mr. Speaker, I rise today to honor a fallen hero. Captain Kim Granholm, a member of the Esko, Minnesota Volunteer Fire Department, was tragically killed in the line of duty while fighting a car fire on Interstate 35 near Duluth on July 1, 2002.

Captain Granholm was only 28 when he died, but his legacy will continue for years to come. For four years, he was a dedicated member of the Esko Volunteer Fire Department where he was loved and respected by his fellow firefighters. In the outpouring of grief for Kim Granholm, more than 1,000 people attended his funeral, including hundreds of firefighters and emergency workers from across the state of Minnesota.

Captain Granholm was a caring man who put his wife Aliina and their children Robyn and Alyssa above all else. Captain Granholm's caring and compassionate spirit guided him throughout his short life and his kindnesses are lasting tributes to all he touched. Kim Granholm died doing what he loved to do, serving his community. He was a father, a husband, a friend and a firefighter. Most of all, he was a hero to all of us.

Most troubling of all is the brutal reality that Kim Granholm was killed when a motorist failed to slow his vehicle at the fire scene. I am encouraged that Esko Fire Chief Jeff Juntunen and his Minnesota fire fighter colleagues are working with the Minnesota State Legislature to enact legislation that will impose severe penalties on drivers who speed through an emergency scene. I commend Chief Juntunen for this important initiative which, when enacted, will serve as a lasting tribute to Captain Kim Granholm.

Since September 11, we have witnessed throughout the land a heightened awareness of the public service and dedication of those first responders who answer the call. All Americans should go further and demonstrate our profound appreciation of these brave men and women by exercising caution at emergency scenes to enable these fire, police and emergency workers to do their job in a less hazardous environment.

TRIBUTE TO MRS. VICTORIA WRIGHT HAMILTON

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to Mrs. Victoria Wright Hamilton, who will celebrate her 100th Birthday on September 12, 2002. Mrs. Hamilton, or "Grandma Vic," as many affectionately know her, is a very remarkable woman in many ways. Born on September 12, 1902, in Alvin, S.C., Mrs. Hamilton has lived as an intricate part of the same community for a century. Although she only attended school up to the third grade, as did many women of color in that era, she is a very intelligent women who's knowledge cannot begin to be measured.

In 1920, Mrs. Hamilton married Henry Hamilton and their union produced nine children: Williemena, Christine, Julius, Rayford, Leroy, Nathaniel, Henry Jr., Rosa Mae, and an infant who died shortly after birth. Mrs. Hamilton also raised her husband's half brother Edward Hamilton, as if he were her own son, always filling their lives with love and affection.

Mrs. Hamilton is a very strong woman—in both mind and body. She has been a faithful member of Bethlehem Baptist Church throughout her life. In addition, she is also a dedicated member of the Christian Aid Society, and has been a member of the Laurel Hill Chapter #257, Order of the Eastern Star, for more than 41 years. As a young woman, Mrs. Hamilton worked long days in the fields of South Carolina picking cotton and plowing with oxen teams and mules. Even today, at the age of 100, she is still able to work in her garden to produce delicious fruits and vegetables. And, she never allows an opportunity to visit or help her friends or family pass her by.

In her spare time, Mrs. Hamilton makes beautiful hand-sewn quilts that can be found in many homes from Jamestown, S.C. to various communities along Interstate 95 from Florida, to Maryland. Having made over 100 of these quilts as gifts to her many family members and friends, "Grandma Vic", who is a Mother, Grandmother, Great-Grandmother, and Great-Great-Grandmother, has spread and continues to spread tremendous love and affection to everyone with whom she comes in contact.

Mr. Speaker, I ask that you and my colleagues join me in honoring an outstanding South Carolinian whose dedication to her family, and love for her fellow man are legendary. I wish her good luck and Godspeed, and a very Happy 100th Birthday.

RECOGNIZING THE LIFE OF THE LATE PRESIDENT JOAQUIN BALAGUER

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, I rise today to recognize the late President of the Dominican Republic, Mr. Joaquin Balaguer.

President Balaguer passed away on July 14th in the national capital of Santo Domingo in the Dominican Republic.

Mr. Balaguer was a long time friend of the United States. He held the presidency of the Dominican Republic from 1966 to 1978 and again from 1986 to 1996.

Mr. Balaguer was born in Navarette in the Dominican Republic. He is the son of a Puerto Rican father of Castilian descent and Dominican mother of Spanish blood.

He wrote books, including volumes of poetry and political science. At the age of 14, he wrote a collection of poems called, "Pagan Psalms."

After graduating from law school in Santo Domingo, he became a member of the foreign service, where he served in Madrid and Paris in the 1930s.

He earned his doctorate of law from the Sorbonne in Paris. He also taught law at the University of Santo Domingo before becoming vice president in 1957 and president in 1960.

Mr. Balaguer served under dictator Rafael Trujillo as cabinet member, diplomat, vice president and President for over three decades beginning in the late 1930s.

After General Trujillo was assassinated in 1961, Mr. Balaguer was thrusted into the leadership of the Dominican Republic. He quickly changed the name of the capital from Ciudad Trujillo back to Santo Domingo, the city's original name.

He fled to exile in New York City after riots and political turmoil erupted in 1962. While living in New York City, he formed his lasting right-wing political party.

He returned to the Dominican Republic only after U.S. President Lyndon B. Johnson sent 20,000 U.S. Marines to the island nation to put down a leftist mutiny within the army in April 1965.

With the support of the U.S., he was elected president in 1966 in one of the Dominican Republic's first freely contested elections.

He established, in just a few years of his election victory, the first solid middle class by implementing massive public work projects and economic reform, even though he was elected at a time when 60% of the nation was unemployed and two-thirds of its population was illiterate and its streets and towns were in ruins.

His first term was viewed as "pseudo" dictatorial in that he led with a firm grip and used the country's military to rule the country at the same time he made weekly visits through the nations small villages, visiting residents and passing out medicine to the sick and toys to children and listening to the desires of all.

Mr. Balaguer was defeated in presidential elections in 1978 after serving three terms. He remained leader of the political party he founded in the 1960's, now called the Social Christian Reform Party, and in 1986 won another bid to power.

He won elections in 1990 and 1994. In 1996, under increasing pressure from the U.S. and international bodies due to suspected election irregularities, he agreed to resign.

Mr. Balaguer remained an important figure in the political party he created until his death. Some herald him as the most influential Dominican.

[From the Washington Post, NewsBank NewsFile Collection, July 15, 2002]

JOAQUIN BALAGUER DIES AT 95, LONGTIME DOMINICAN LEADER

(By Richard Pearson)

Joaquin Balaguer, 95, the authoritative and paternalistic president of the Dominican Republic for more than 20 years between 1961 and 1996, died July 14 in the national capital of Santo Domingo. He had been hospitalized since July 4 for bleeding ulcers. He served briefly as president in the early 1960s, then held the office again from 1966 to 1978 and a third time from 1986 to 1996.

President Balaguer, who has been called one of Latin America's caudillos, hardly projected the image of a strongman. An award-winning poet, he had been a career diplomat and law professor before entering the political arena. He was a little over five feet tall, was lame and nearly deaf, and wore thick glasses before going blind with glaucoma in the 1980s.

His mentor was the notorious military dictator Rafael Trujillo, who ruled the country with an iron hand from 1930 to 1961. The future president held a variety of posts under Trujillo, dealing largely with education, foreign affairs and administration, before being elected vice president on a ticket headed by Trujillo's brother, Hector, in 1956. In 1960, the brother stepped down, and President Balaguer took office.

Real power remained with Rafael Trujillo until his assassination in 1961. After that, President Balaguer began liberalizing the government with such changes as legalizing political activities, promoting health and education improvements and instituting modest land reforms. But without the army backing of Trujillo, President Balaguer was too closely identified with the late dictator's unpopular actions to continue in office.

He was forced into exile in New York. Juan Bosch, a leftist, became president until overthrown by a military coup. In 1965, Bosch's supporters took to the streets to restore him to power. Chaos seemed to erupt in the nation of 8 million people, which shares its Caribbean island with Haiti.

The United States, fearing that a left-leaning Bosch might help turn his nation into another Cuba, dispatched U.S. Marines to the Dominican Republic, supposedly to protect U.S. lives. Those who had begun protesting U.S. involvement in Vietnam added this action to the list of mistakes made by the Johnson administration.

The Marines were replaced by an Organization of American States presence, order was restored and President Balaguer returned to his native land. He and his Social Christian Reform Party won the 1966 presidential race, despite charges of fraud, and went on to win two more consecutive terms.

Newsweek, which characterized President Balaguer as "slight, ascetic and sad-eyed," reported in 1965 that he was "neither an orator, nor a schemer," adding that many Dominicans considered him "an honest, kindly reformer."

President Balaguer lost the 1978 and 1982 presidential races, then was again victorious in 1986. He won reelection in 1996 (defeating Bosch) and in 1994. Two years later, after increasing criticism for vote fraud in the 1994 election, he resigned. He was unsuccessful in a 2000 bid to return to the presidency.

President Balaguer received mixed marks as head of his country. Soon after he took office the first time, critics were stifled, many going into exile while others were imprisoned or disappeared. Vote fraud and corruption seemed constants in the Dominican Republic, regardless of who was president.

He instituted large-scale public works, including the enormous 1992 Christopher Columbus Lighthouse. President Balaguer also brought about modest reforms and made a weekly habit of walking through his nation's small villages, visiting residents and passing out toys to children and medicine to the sick and listening to the desires of all.

Through it all, he managed to largely keep in the good graces of the United States, with the Dominican Republic becoming a huge recipient of U.S. foreign aid.

President Balaguer, whose only interests were collies and antique cars, never married and had no children. He wrote books, including volumes of poetry and political science. He was fluent in English and French as well as Spanish.

But politics became his life. He was head of his political party until his death, continuing to broker political deals and to counsel not only his party colleagues but other high figures, including presidents, as well.

In the 1980s, when foes tried to use his blindness against him during a presidential run, he said, "I will not be asked to thread needles when in office."

Joaquin Balaguer Ricardo was born in the small town of Villa Bisono, the only son of eight children. His father was born in Puerto Rico of Castilian descent. His mother was a Dominican of Spanish blood.

The future president, who won a poetry award as a teenager, graduated with a degree in philosophy and letters from the Normal School in Santiago and was a 1929 graduate of the University of Santo Domingo law school. He was a state attorney in the land court before entering the foreign service in 1932. He served in Madrid and then in Paris, where he received a doctorate in law and political economy from the University of Paris in 1934.

In 1936, he was named undersecretary of state for the presidency. In the 1940s, he served as ambassador to Colombia and Venezuela. He entered the cabinet as secretary of education and culture in 1949 and became secretary of foreign affairs in 1954. He also taught law at the University of Santo Domingo before becoming vice president in 1957 and president in 1960.

He defended the Trujillo years as a time when a strong hand was needed to rule a backward nation not yet ready for democracy.

Yet in his 1988 autobiography, President Balaguer admitted that his first presidency, when he was the figurehead chief of state for the brutal and bloody Trujillo, was "the saddest and most humiliating" time in his political life.

President Balaguer also had at times deplored the "unavoidable excesses" of his own security forces and deplored corruption, though stoutly maintaining that corruption stopped at his door.

IN HONOR OF THE 75TH ANNIVERSARY OF LA-Z-BOY, INC.

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DINGELL. Mr. Speaker, I rise today to recognize and pay tribute to La-Z-Boy, Incorporated, which was founded and remains headquartered in my Congressional District in Monroe, Michigan. La-Z-Boy is celebrating 75 years of bringing comfort, quality and style into homes and offices worldwide through its extensive selection of furniture.

The La-Z-Boy story is the story of the American dream. On March 24, 1927, in Monroe, Michigan, two young entrepreneurs and cousins, Edward M. Knabusch and Edwin J. Shoemaker, left the security of their jobs to take a leap of faith and begin manufacturing a unique and innovative product. A porch chair wrapped in fabric was the prototype for the La-Z-Boy recliner, a moniker that has become a worldwide household term. Using money from Edwin's mortgaged family farm and donations from relatives, the cousins built their first factory by hand, brick by brick. After introducing the revolutionary chair that both rocked and reclined, La-Z-Boy sales skyrocketed. La-Z-Boy evolved from a small business to having a place on the New York Stock Exchange.

La-Z-Boy has grown immensely in its 75 years of operation. The company has added many new products and features over the years, which have enabled it to remain competitive in the furniture industry since its founding. La-Z-Boy has grown from "two guys in a garage" to nearly 19,000 employees worldwide. Today, La-Z-Boy generates annual sales in excess of $2 billion, making it the largest manufacturer of upholstered furniture and the world's leading producer of reclining chairs.

La-Z-Boy is a great success and consistently shares its good fortune with the community of Monroe. Its philanthropy is rooted in small town values that prevailed when Mr. Knabusch and Mr. Shoemaker first launched the company. During World War II, La-Z-News kept the community informed about overseas news, and the company rented out garages to build the most comfortable tank seats and crash pads in the country. La-Z-Boy continues being very much involved in the city of Monroe and is a major asset to Michigan's 16th Congressional District.

Mr. Speaker, I would like you to join me in commending the La-Z-Boy corporation and its employees for their leadership in both their industry and in their community, as we celebrate their 75th anniversary.

PERSONAL EXPLANATION

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. ESHOO. Mr. Speaker, I was absent March 12 through 14 for medical reasons. Had I been here, I would have voted "yes" on rollcall votes 53–54, 56–61, 63–64 and "no" on rollcall votes 55 and 62.

HONORING THE SERVICE OF MASTER GUNNERY SERGEANT MICHAEL THOMAS FLETCHER, UNITED STATES MARINE CORPS

HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. EVANS. Mr. Speaker, on the occasion of his retirement, it is my pleasure to recognize an exceptional United States Marine, Master Gunnery Sergeant Michael Thomas Fletcher. Master Gunnery Sergeant Fletcher has served our Nation with distinction for over three decades in the United States Marine Corps, rising from Private to Master Gunnery Sergeant. He has served in times of both war and peace and has gone from patrolling the jungles of Vietnam to walking the halls of Congress. During the Vietnam War, he was awarded: the Combat Action Ribbon; the Vietnam Service Medal with one star; the Republic of Vietnam Campaign Medal; and the Republic of Vietnam Meritorious Unit Citation of the Gallantry Cross. His personal awards have included two Navy/Marine Corps Achievement Medals, a Navy/Marine Corps Commendation Medal, and he has been recently recommended for the Legion of Merit.

During Master Gunnery Sergeant Fletcher's last six years of service, he has been the Administration Chief in the United States Marine Corps' Office of Legislative Affairs. That office supports Members of Congress and Congressional committees in matters of legislation, protocol, and logistics for Congressional travel. Master Gunnery Sergeant Fletcher brought a wealth of managerial expertise and leadership to this office and contributed significantly to the successful accomplishment of its mission.

During these six years, Master Gunnery Sergeant Fletcher has helped carry the Corp's message to the Congress. He has enabled the Marine Corps' Office of Legislative Affairs to provide consistent and timely responses to the United States Congress, and in doing so, has made a lasting contribution in the containment of today's readiness and shape of tomorrow's Marine Corps. Particularly noteworthy have been his efforts in directing, organizing, and escorting Members of Congress and their staffs around the world. His attention to detail in making these important trips logistically successful is yet another indication of this Marine's talent and professionalism.

Master Gunnery Sergeant Fletcher has made immeasurable contributions to both today's Marine Corps' and to the Corps of the 21st Century. His superior performance of duties highlights the culmination of more than 30 years of honorable and dedicated Marine Corps service. By his exemplary competence, sound judgment, and total dedication to duty, he has served well this body, the United States Marine Corps and our Nation. Please join me in wishing Master Gunnery Sergeant Fletcher, his wife, Barbara, and their sons, Joel and Gary, all the best as he begins this new chapter in life.

TRIBUTE TO THE 13-COUNTY MUTUAL ASSISTANCE ASSOCIATION OF NORTH ALABAMA

HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CRAMER. Mr. Speaker, I rise today to recognize the North Alabama 13-County Emergency Management/Civil Defense Mutual Assistance Association as it celebrates over three decades of dedicated service to the North Alabama community. The association, which dates as far back as 1971, consists of the Emergency Management officials in Colbert, Cullman, DeKalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan and Winston Counties across North Alabama. This organization has tirelessly protected countless lives in Alabama over the last thirty years, and I rise on behalf of my constituents in North Alabama to express my sincere appreciation to these EMAs.

Formally organized in December 1978, the association was established with a purpose of working together among the thirteen counties across North Alabama to help each other protect lives and property in a coordinated, efficient, reliable and effective way during times of emergencies that exceed the capabilities of any single affected local government. The association works closely with the State of Alabama Emergency Management Agency to better facilitate effective response to critical situations.

The EMAs from these thirteen counties had the foresight over three decades ago to recognize a concept that is today strongly advocated by all levels of government, that being, just how critical it is to cooperate across artificial jurisdictional boundaries in order to respond to emergencies. And now, when securing our homeland and preparing for emergency response is of utmost importance, the rest of the country has begun to realize the value of this kind of cross-district cooperation by strongly promoting and requiring mutual aid and regional response capabilities, I want to commend the North Alabama EMAs in the 13-County Mutual Assistance Association who have worked so hard to protect the livelihood of North Alabama citizens.

The 13-County Mutual Assistance Association serves as a standard for EMAs across our nation. In today's uncertain world, our first responders have to be ready to react quickly and effectively to large-scale emergency situations that cross city and county lines. Mr. Speaker, on behalf of the citizens of North Alabama, I am pleased to recognize and thank the 13-County Mutual Assistance Association of North Alabama for leading the nation with their innovative outlook on cooperative emergency response developed over thirty years ago.

PAYING TRIBUTE TO WARREN BYSTEDT

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to recognize an outstanding individual from Grand Junction, Colorado. Over the years, Warren Bystedt has grown to love cross-country running and he continues to run competitively today at the age 72. It is a great pleasure today, to honor Warren Bystedt for his numerous achievements and accomplishments before this body of Congress and this nation.

Earlier in Warren's life when he was an amateur boxer, he trained consistently, but avoided running because he disliked that element of conditioning. Today the Grand Junction resident has a different view, and can be seen pounding the pavement diligently every morning. Warren's passion for running has motivated him to train everyday for fifty or so yearly races. Gus said, "If I didn't start my morning with that, (run) I wouldn't know what to do." Warren provides the same determination and thoroughness to his daily activities and events.

Warren consistently finishes among the top in the sixty or seventy and older of age divisions in races throughout the country. His competitive nature comes from his earlier days as an amateur boxer when he lost only seven of seventy bouts fighting in the flyweight division. A long time educator and administrator in Minnesota, Illinois, and Iowa, he took up running after taking a hard look at his family history noting that his brothers and father all died of heart attacks and not wanting to suffer the same fate, he began running around his neighborhood in Davenport, Iowa, in 1979. Grand Junction, Colorado, has given Warren the optimum climate in which to run on a year-round basis and he is an active member the Mesa Monument Striders.

Mr. Speaker, I rise to acknowledge the work and contributions of Warren Bystedt, a distinguished citizen and role model for his community. His achievements are impressive, and it is my honor to recognize his accomplishments today. Best wishes to Warren, and good luck on all your future races.

HONORING ANDREA FOX

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Andrea Fox of San Rafael, California, a talented professional planner, community volunteer, athlete, and breast cancer activist and an inspiration to many.

Andrea Fox lost her tenacious battle against breast cancer on July 2, at the age of 35, leaving a legacy of extraordinary courage and compassion.

A beautiful young woman with incredible grace and dignity, "Annie" Fox was dedicated to finding a cure for breast cancer. Diagnosed with a particularly aggressive cancer in 1998, the former triathlete, who ate organically and exercised regularly, had none of the traditional risk factors for cancer. Undergoing a lumpectomy, she continued her athletic training and the stage IV cancer seemed to disappear. But, in April 2000, cancer came back and, pursuing every treatment she could find, including non-western, untraditional methods, Annie appeared to have beaten it back again.

Andrea focused her considerable energies on increasing public awareness and getting national attention for the serious epidemic of breast cancer in Marin County, joining the board of Marin Breast Cancer Watch. "Annie was our angel," said Board President Roni Peskin Mentzer.

Whether lobbying in Sacramento for breast cancer research or educating the community about the dangerously high rates of cancer in Marin, Annie made a difference, she made history. Never daunted, she participated in athletic events such as the renowned Dipsea Race and the Human Race, and was organizing new events, like the July 20, 2002 foot race from Mill Valley to the Mountain Theater on Mt. Tamalpais to increase public knowledge and raise much needed funds for research.

In October 2001, only two months after her engagement to longtime partner and soul mate, Chris Stewart, the cancer reappeared and Annie mounted still another heroic campaign. Not one to seek sympathy, she was driven to passionately lead the fight for all women to find a cause to this insidious disease. Despite increasing pain, she continued her work at the Marin Civic Center. "Annie was a special person . . .," Stewart said, "bringing a wonderful happiness to all those who knew her. . . . She was passionate about her work and about preserving the environment."

A woman of uncommon positive spirit, Andrea Fox lost her courageous battle with breast cancer surrounded by friends and family, leaving her devoted fiancé, mother, brother, and a grieving community.

We are all more fortunate to have been graced by the presence of Andrea Fox, her beauty, wisdom and strength. Her love, resolve and remarkable will are the cornerstones of the legacy of courage she has left so that we might continue the fight. While Annie is gone, the spirit of this "angel" of our community will forever be with us.

STATEMENT ON THE ELI HOME CARIÑO WALK-IN CENTER

HON. LORETTA SANCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. SANCHEZ. Mr. Speaker, I rise today to congratulate the Eli Home Cariño Walk-In Center in Anaheim which opened its doors on July 13 to families throughout my district.

Many families in my district do not have a place to go to get support, find information, or just ask questions. The Center will help these families, many of whom are dealing with economic crises and other stress creating situations.

The Eli Home is dedicated to providing free, bilingual services to Spanish-speaking families. The center offers parenting classes, weekly forums, case management, counseling, and child-abuse prevention.

The City of Anaheim has recognized this organization and has welcomed it into the community. I would like to do the same.

I would like to personally thank The Eli Home Cariño Walk-In Center staff for their hard work and dedication to the community and for creating a positive environment for my district.

SCOTT DETROW: REACHING TO AMERICA'S FUTURE

HON. THOMAS M. BARRETT

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BARRETT. Mr. Speaker, I wish to recognize Scott M. Detrow from my district, a talented young man who recently won the 2002 Voice of Democracy Broadcast Scriptwriting Contest. Sponsored by the Veterans of Foreign Wars (VFW), this competition provides an opportunity for high school students to voice their opinion on their responsibility to our country. More than 85,000 secondary school students participated this year, with only 58 winning a national scholarship.

Mr. Detrow's essay on the American response to the September 11 terrorist attacks captured the contest's theme of "Reaching to America's Future." He channeled his feelings and emotions to create an inspirational piece upon which everyone can reflect. I ask my colleagues to join me in recognizing Scott M. Detrow for his special achievement, and I submit to the CONGRESSIONAL RECORD the complete text of Mr. Detrow's piece:

A hush fell over the students as they entered the plaza. Their joking and fidgeting suddenly stopped as their eyes came upon the massive sculpture before them. It was a sunny and cool autumn day in lower Manhattan, perfect for a field trip to the World Trade Center Monument. The high-schoolers found it hard to believe that some fifty years before, two of the tallest buildings in the world had stood there, and that they had been destroyed in a matter of minutes.

"Imagine the terror New Yorkers and Americans must have felt that day," the tour guide began. "No one knew what to expect, who had done it, or why. For the first time since the War of 1812, mainland America had been attacked; for the first time since Pearl Harbor, flung headlong by surprise into war."

"How did the country react?" piped up one of the more outgoing students. "Excellent question," replied the tour guide. "From the ashes of the Trade Center and the Pentagon rose the Phoenix of Patriotism, of courage, of will. Americans rushed to blood centers, waiting for hours to give the gift of life. Hundreds of millions of dollars were raised to help the victims. Millions more prayers were offered, as Americans flocked to their mosques, synagogues and churches. Rescue teams were overwhelmed by the crush of volunteers, and the support of the entire nation was heaved upon their president and leaders, wholeheartedly trusting in the American system of democracy."

"Soon you could not go a block without seeing Old Glory. From the steps of the Capitol—still standing thanks to courageous passengers who fought off suicide hijackers—to the playing fields of professional sports, to schools all across the country came the sweet sound of 'God Bless America.'"

By now many students had their hands up. "But I read that the economy went into a recession, and that soon afterward biological terrorism began arriving by mail. How could this spirit be maintained in such a dark time?"

"That's a paradox that helps make America such a great country," answered the guide. "It seems that throughout our history, our darkest hours were also our finest. In 2001 we refused to let the terrorists win. People continued with their regular lives, but a bit more mindful of what was really important. Friendships were bonded, old rifts erased, and the country truly became one nation under God. The country felt up to any challenge, and took it one day at a time. Every time a new problem arose, Americans simply dealt with it and continued to march forward. Everyone rose to the occasion, from the President to the firefighters, to the average Joe."

The students gazed at the monument, reflecting on the greatness of the generation past. They had never seen their grandparents and great grandparents in this light, and were stunned by the character they showed and the actions they took in the face of adversity. Faced with pure evil, they had stood up to it and won. These were the true heroes, these men and women who stood on the very spot where they were now, working non-stop for months on end sorting through the rubble, hoping against all odds to find survivors.

As a distant clock struck twelve, the sun shone directly upon the monument. The students saw the memorial in its full splendor, a firefighter, a police officer, old man, and young girl, all gazing and pointing off into the distance. The reflecting pool cast a glimmer of hope in the statues' faces: the promise of a new tomorrow.

HUMAN RIGHTS ISSUES

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MORELLA. Mr. Speaker, while our nation recovers from the tragedy of September 11 and turns its focus toward hemispheric defense, we should also realize that crucial human rights issues are in jeopardy in our own backyard. Unbeknownst to many in this country, the situation in Guatemala is worsening by the day. During the Cold War, a 36-year civil war raged in this Central American nation, resulting in an estimated 200,000 civilian deaths. Now, the infamous architect of Guatemala's most intense period of genocide against the Maya indigenous population, ex-director General Efraín Ríos Montt, has staged a political renaissance thanks to a climate of intimidation and violence produced by the military's death squads.

Andrew Blandford, Research Associate at the Washington-based Council on Hemispheric Affairs (COHA), has recently authored a press memorandum entitled "Ríos Montt's Political Resurgence in Guatemala Coincides with Increase in Violence with Impunity." This important analysis, which was released on July 26, will shortly appear in a revised form in the upcoming issue of that organization's estimable biweekly publication, The Washington Report on the Hemisphere. Blandford's research findings spotlight the developing Guatemalan human rights tragedy and examine the role played by that nation's government and military in violently covering up its sanguinary past.

The inauguration of a second cycle of death squad activity in Guatemala was brought to the world's attention in 1998 when Bishop Juan Gerardi was bludgeoned to death in his garage just two days after delivering his report itemizing the army's responsibility for thousands of massacres during the 1980s. This year, human rights activist Guillermo Ovalle de León was shot at least 25 times while eating lunch at a restaurant in Guatemala City, and a June 7 fax signed by Los Guatemaltecos de Verdad labeled 11 prominent Guatemalan human rights activists as doomed enemies of the state because of their cooperation with UN Special Representative Hina Jilani during her May visit. Clearly, Mr. Speaker, Guatemala's militant regime is willing to commit whatever atrocity is necessary to shield its murderous past from the eyes of the international community.

COHA researcher Blandford calls for the renewal of the 12-year U.S. ban on International Military Education and Training (IMET) to Guatemala. This resolution would illustrate the desire of the United States to attain peace and justice, as well as security, in Central America. By denying funds to the Guatemalan military, the U.S. would inherently be guarding civilians from political intimidation and violence. Consequently, the article is of great relevance since the need to constructively engage Guatemala is likely to grow in intensity in the coming months, given the nation's mushrooming trend of death squad killings.

PAYING TRIBUTE TO PARKVIEW HOSPITAL

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McINNIS. Mr. Speaker, I stand before you, this body of Congress, and our nation to recognize Parkview Medical Center of Pueblo, Colorado. For the past eighty years, Parkview Hospital has provided medical care to the community in a kind, friendly, and dedicated manner. It is hard to match the kind of integrity and honesty provided by the staff of Parkview, and I thank the staff for their extraordinary contributions.

Parkview Hospital fist emerged because of the influence of six prominent physicians in 1921 after a disastrous flood in 1921. Parkview was officially established in 1923 and had great success from its inception, which required the facility to expand and renovate every ten years. Today, several additional wings have been added to create what is today a state-of-the-art medical center in Southern Colorado. Parkview offers the citizens of Pueblo and surrounding communities a radiological cancer treatment department, obstetrical floor, surgical section, Psychiatric and Chemical Dependency Unit, Neurological Intensive Care Unit, Computer Axial Tomography Whole Body Scanner, Same-Day Surgery Wing, and Kidsville Pediatric Unit. Moreover, Parkview fulfilled requirements to classify their Emergency Room as a Level II Trauma Center.

Mr. Speaker, I am proud to honor the hard work and determination of the staff of Parkview Medical Center. The compassion illustrated by staff members will be reflected in the hearts of patients for years to come. I would especially like to recognize Chief Executive Officer C.W. Smith and former Chief of Staff Dr. Janice Elaine Kulik for their unrelenting dedication to the medical treatment of patients and coordination of all Parkview activities. Congratulations to Parkview Medical Center on your recent milestone and I wish all the best to the staff.

JIM CIRILLO, MANAGER OF THE RAYBURN BUILDING SPECIAL ORDERS DELI, WINS HOSPITALITY MANAGER OF THE YEAR AWARD

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. NEY. Mr. Speaker, the House has an award winner amongst its workforce. Mr. Jim Cirillo, an employee of one of the House food service contractors Guest Services, Inc. (GSI), won the 2002 Capital Restaurant & Hospitality Award for "Hospitality Manager of the Year." Jim is manager of the Rayburn Building Special Orders Deli and Pazzos Pizza. This annual award given by the Restaurant Association of Metropolitan Washington and the Washington, DC Convention and Tourism Corporation was presented to Jim at the industry's annual Awards Gala on Sunday, June 23, 2002 in Washington D.C.

One of five nominees from facilities in the Washington D.C. Metropolitan area, Jim won top honors for his superior service and extraordinary management skills as the manager of two facilities in the U.S. House of Representatives. Guest Services' President/CEO, Gerry Gabrys commented, "Members of Congress and their guests and staff have gone out of their way to recognize Jim's attitude and superior service on many occasions."

In a survey of customer satisfaction last fall, the Rayburn Special Orders deli was found to have the highest satisfaction rating amongst GSI's eleven business locations within the House. Recently, Jim developed two innovative websites where Members of Congress and their staff can conveniently and effortlessly place their food orders.

On behalf of the House of Representatives, I'd like to recognize Jim for this outstanding and well-deserved award, and for Jim's service to the House and his customers. Thank you Jim and keep up the great work!

RECOGNIZING THE WORTHINGTON, OHIO POOCH PARADE

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. TIBERI. Mr. Speaker, I would like to recognize the Pooch Parade held in Worthington, Ohio. The Pooch Parade is an annual event dedicated to the strengthening and educating of the unique relationship between dogs and the people who love them. In addition, the Parade helps create awareness of the growing number of homeless pets, the groups who work to find homes for them to end pet overpopulation and the valuable work of the hundreds of dog rescue groups and their volunteers.

In 1989 Robert Haas had the idea of organizing a parade of dogs and their people in Worthington, Ohio. He envisioned an event that would draw thousands, provide a fun time for all, and be a great vehicle for increasing public awareness of homeless pets and pet overpopulation.

In 2000, that idea became the Pooch Parade. In April of that year, approximately 800 dogs and 5,000 people participated in the Parade. Rescue groups were there with dogs looking for a "forever home." There were vendors with an assortment of dog-related items. People and dogs had a great time and an annual event was born. In 2001, the Pooch Parade attracted approximately 2,500 dogs and 8,000 people as well as more rescue groups and vendors. The 2002 Pooch Parade was attended by over 3800 dogs, 9000 dog-lovers and 50 rescue groups making the Worthington Pooch Parade the largest official Pooch Parade in the country.

The theme for the 2002 Parade, held in April, was "America's Best Friend." Ohio search and rescue dogs that worked in New York after the 9/11 terrorist attacks were honored.

I congratulate all of those involved with the Pooch Parade for their dedication to the issues of homeless pets, pet overpopulation and rescue dogs, and wish the Parade many more years of success.

HONORING BILL LAIRD FOR HIS COMMITMENT TO YOUTH

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GORDON. Mr. Speaker, I rise to speak today about a distinguished member of my district who is being honored by an organization that has had an immeasurable impact on America. Bill Laird, a retired employee of Willis Corroon, is Junior Achievement's National Middle School Volunteer of the Year.

He has volunteered for nine years and taught 25 JA classes in that time. Mr. Laird always goes above and beyond his classroom duties, using his work and life experiences as a way to educate young people about business, economics and the free-enterprise system.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after school business clubs for students in Springfield, Massachusetts.

Today, through the efforts of more than 100,000 volunteers in classrooms all over America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to nearly two million students in 113 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and business leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. Speaker, I wish to extend my heartfelt congratulations to Bill Laird of Franklin for his outstanding service to Junior Achievement and the students of Tennessee. I am proud to have him as a constituent and congratulate him on his distinguished accomplishment.

HONORING TAKIRA GASTON

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to honor and pay tribute to Takira Gaston of Hartford, Connecticut. On July 4, 2001, Takira was playing at her family's Fourth of July cookout like any 7 years old would be on hot summer afternoon. However, this typical American scene was shattered in an instant by the sound of gunshots. Two drug dealers were exchanging gunfire when one of the bullets struck Takira in the face.

Takira survived and has faced numerous surgeries, with more to come. She has handled the pain and fear with courage that is rare in such a young person. Her brave fight was chronicled by Tina Brown of the Hartford Courant on the one-year anniversary of the shooting. This moving story describe Takira's perseverance and I wish to submit it for the RECORD.

No child should have to go through the ordeal that Takira has gone through. I ask my colleagues to join with me in honoring Takira's courage and continuing to work to rid our cities of the violence that plagues them.

[From the Hartford Courant, July 4, 2002]

THE COURAGE TO HEAL

(By Tina A. Brown)

NEW HAVEN.—After riding the toy cars and playing "Donkey Kong" on the computer, Takira Gaston flashes a bright smile that makes others in the pediatric surgery center forget the protruding scars on her face.

She's having a good day on this sunny Thursday despite being at Yale-New Haven Hospital for her second round of reconstructive surgery. She's thinking about splashing in her family's above-ground pool and jumping on the trampoline in her backyard, a safe place in a new neighborhood where gunfire is seldom heard.

After playing, Takira takes time to think of someone else. Someone like her, who was shot in the face.

Takira tells her adoptive mother, Delphine Gaston-Walters, that she wants to visit New Haven police Officer Robert Fumiatti, who's recovering at Yale-New Haven after being shot last month by a suspected drug dealer. They talk briefly with Fumiatti, whose head is stabilized by a metal halo. He calls Takira "courageous" and reaches out to shake her hand. But her good mood vanishes. She's scared. She refuses to shake his hand and backs out of his hospital room.

"They are not going to touch my face," she says, with anger in her eyes, as she returns to the surgery center. Deep down, she knowns she has no choice, but that doesn't stop her from launching into an hour-long temper tantrum.

Such are the shifting emotions of an 8-year-old girl trying to recover from a stray bullet that tore through her face—and awoke people to the violence in the city—on July 4, 2001. The men responsible for her shooting, Anthony Carter and Maurice Miller, were convicted this spring. But for Takira, the physical and emotional scars continue to heal, in fits and starts.

TAKING A GAMBLE

Unlike a light-skinned person with a bullet wound, Takira faces another obstacle to her healing simply because she happens to be dark-skinned.

She is prone to keloids, an excessive growth of scar tissue common among African Americans. The skin disorder has left thick, shiny scar tissue in the areas where the bullet cut through her cheek and where surgeons cut under her chin to piece her face back together.

She has returned to surgery to have the keloids removed, a gamble that her doctors and Gaston-Walters believe is worth taking. If the surgery is successful, Dr. James C. Alex, director of the division of facial plastic and reconstructive surgery at the Yale School of Medicine, is hopeful that the remaining scars left on Takira's face will gradually blend in with her otherwise perfect skin tone. But there's a 50 to 80 percent chance the keloids will return, just as bad or worse.

Takira has drifted into drug-induced sleep just before 3 p.m., as she is rolled through the double doors, draped in a cornflower blue paper sheet.

The sheet covers her up to the lower half of her chin, which is facing up toward the satellite dish-shaped lights. As the clock on the wall marks 3:11 p.m., Alex sits on Takira's left side and Dr. Bruce Schneider sits at her right.

Alex begins the delicate process of cutting out the scars and sewing Takira's face back together, much like a master quilter. Nurse John Breslin hands him a scalpel to cut around the U-shaped scar under Takira's chin. Schneider swabs the blood where Alex has cut, and applies medicine to limit the bleeding.

The scar, thick and wide, is in the same spot that Alex and Schneider cut open last July, when they pulled up the skin over her lip line, to expose her shattered jawbone, broken teeth and bullet fragments. The area was cleaned and rebuilt and a metal plate has been serving as her temporary jawbone while the bone grows back.

With methodical movements, Schneider, an oral surgeon and formerly chief resident at the Hospital of St. Raphael in New Haven, uses a small metal tool with two prongs to grasp the outer skin tissue. Alex examines the inner tissue and tests the area for nerve activity. Together, for another 25 minutes, they work on both sides of Takira's face, slowly cutting around the inner tissue of the worst scar.

Alex begins sewing together the inner skin using blue sutures, which look like dental floss, though fine as hair. The goal is to sew the tissue together without gripping it too hard, Alex instructs. "We are trying not to create tension on the skin. This will give you a more favorable scar. You will always have a scar."

Another 30 minutes pass. Alex and Schneider pull up the outer skin, and prepare for another "close." Again, they start sewing from opposite sides. A local pain reliever is applied to the scar tissue now sewn together and shaped like a thin cornrow-like braid. Rather than sew in a straight line, they create a ridge-like skin overlay, so that if Takira's new scar expands, it will push down flat rather than bubble up into a keloid, Alex says.

At 5:11 p.m., two hours after they opened it, the first scar under Takira's chin is nearly done. Their work is covered with antibiotics and an oily liquid that makes the bandages stick like glue.

Once the chin is finished, they move on to smaller scars on her neck, where incisions were cut to make way for a breathing tube in her throat. Next, they cut out the scars on her cheek, and repeat the process of sewing up the inner tissue and the outer skin, covering them with antibiotics and lotion.

Surgery is over at 6:58 p.m., three hours and 47 minutes after it began.

NIGHTMARES RETURN

Takira, her mother and the surgeons won't know for several months whether the keloids will return.

But it was a risk they took because Takira didn't want the scars to continue giving ammunition to the meanspirited children who call her scarface. Gaston-Walters, a dutiful parent, wants to protect Takira from those kinds of mental scars.

But for Takira, the pain and fear associated with the surgery make it hard to envision the outcome.

"Come on Missy, be nice," Gaston-Walters tells Takira four days after the surgery, "It's time for the stitches to come out."

Takira is trying to hit Dr. Alex, who wants to remove the stitches from her chin, cheek and neck at a record pace to prevent new scars from forming. But first he has to endure the fight of the tough-spirited little girl. Gaston-Walters grasps Takira's hands to restrain her, and Takira is promised a trip to Chuck E. Cheese's if she behaves. But she continues to cry, scream and fight.

She is given a sedative, and she goes to sleep. She appears at peace, but at home since the surgery, she wakes up at night frightened by her dreams. The nighmares had stopped about eight months after the shooting and the family's move to a quieter neighborhood, but the surgery has brought it all back again.

Takira is lying on her side when she wakes up in the examining room. Alex has finished taking out the stitches on her cheek and chin and is working on her neck when she flinches. She returns to a fighting posture, but avoids a full-blown tantrum when Alex reassures her that the procedure is nearly over.

He applies the oily liquid that smells like evergreen to each scar before placing white strips of tape, which act like sutures, on her face.

Removing keloids through surgery is risky, according to experts who have used a number of techniques to remove the scar tissue, including surgery, radiation and herbal creams.

"The keloids are like cancer that gets bigger and bigger," said Dr. Tom Geraghty, a plastic surgeon from Kansas City who has spent the past 24 years removing keloids from patients in Bolivia and the Dominican Republic.

Some patients develop the scarring from a bug bite, others from burns and other injuries that are untreated. Geraghty has seen a boy with a burn on his chest develop a keloid "thick as armor" and plenty of girls with keloids "the size of a grapefruit" as a result of ear-piercing.

No one can say yet why people with darker complexions are more likely than lighter-skinned people to get keloids. When children like Takira are afflicted with keloids, Geraghty supports the decision to remove the scars through surgery.

"Poor baby. Surgery is always a gamble, but a good gamble if you have no choice," he said. "If it were my daughter, I'd do it."

SPLASHING AROUND

Almost two weeks after the surgery, Takira got her wish to play in the water. The portable pool hasn't been blown up yet, but she, her brother John and twin sister, Takara, take turns playing with the garden hose in a make-believe game of carwash.

There is no talk of the white bandages that still cover the lower half of Takira's face. The scar on her cheek is no longer covered and seems to be healing normally, no sign of a new keloid.

"Dr. Schneider said it was OK for her to get wet," Gaston-Walters said.

After the bandages are off, Gaston-Walters will apply an expensive over-the-counter herbal ointment to each of Takira's wounds, hoping to prevent excessive scarring.

None of that is on Takira's mind as she waits for her turn to rinse off the gold-colored pickup parked in the driveway. The game on this hot summer day, just three days before the anniversary of the shooting, is more about getting wet than washing cars.

"You wet me," Takira yells to Takara, who hands her the hose.

You wet me too," Takara says.

They yell this loud enough for Gaston-Walters to hear. She laughs aloud as Takira and the others stand, dripping wet, outside the front door of the small Cape-style house. "They do this all of the time. They've changed clothes three times today already."

More surgery looms next year to remove the metal plate from Takira's jaw. For now, things are back to normal for Takira and her family.

AS THE ADA ENTERS ADOLESCENCE, ITS PROMISE REMAINS UNFULFILLED BUT WITHIN REACH

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HOYER. Mr. Speaker, today, we commemorate the 12th anniversary of the landmark Americans With Disabilities Act, the most sweeping civil rights legislation since the Civil Rights Act of 1964.

We do so with pride, as we measure our progress. We do so with sadness, as we mourn the recent passing of Justin Dart Jr., the ADA's "father" and an indefatigable soldier of justice. And we do so with deep concern, as the courts continue to issue decisions that limit the ADA's scope and undermine its intent.

Twelve years ago today, the first President Bush signed the ADA into law, hailing it as the "world's first comprehensive declaration of equality for people with disabilities."

As the lead House sponsor of this historic law, I knew it would not topple centuries of prejudice overnight. But I knew that, over time, it could change attitudes and change hearts, and unleash the untapped abilities of our disabled brothers and sisters.

The ADA sent an unmistakable message: It is unacceptable to discriminate against the disabled simply because they have a disability. And it is illegal.

The ADA, which enjoyed overwhelming bipartisan support, prohibits discrimination against the more than 50 million disabled Americans—in employment, in public accommodations, in transportation and in telecommunications. It recognizes that the disabled belong to the American family, and must share in all we have to offer: equality of opportunity, full participation, independent living and economic self-sufficiency.

Its first dozen years have ushered in significant change. Thousands of disabled Americans have joined the workforce, many for the first times in their lives. The ramps, curb cuts, braille signs and captioned television programs that were once novel are now ubiquitous.

However, despite such demonstrable progress, the ADA increasingly has become a legal lightning rod with courts issuing narrow interpretations that limit its scope and undermine its intent.

In its most recent term, for example, the United States Supreme Court issued a series of decisions involving the ADA, ruling against the claimant each time.

In Chevron v. Echazabal, the Court held that an employer can keep a worker from filling a job that could be harmful to the worker's own health, even though the ADA itself only allows employers to deny jobs to those who pose a "direct threat" to other workers.

Whether intended or not, this decision stands for the proposition that disabled Americans really cannot exercise independent judgment on what is best for them. Thus, Eehazabal perpetuates the paternalistic attitudes that the ADA sought to combat.

In another devastating blow, the Court held in Toyota Motor Manufacturing v. Williams that a worker needed to show that her condition not only affected her on the job, but also prevented or restricted her from performing "tasks that are of central importance to most people's daily lives." Because the claimant in Williams had not sufficiently demonstrated how her disability limited her in performed tasks such as brushing her teeth, the Court said, she was not "disabled" under the ADA.

Is this really what Congress intended when it passed the ADA? That a determination of "disability" would require courts to examine whether claimants can brush their teeth? The answer is obviously no.

This decision has put disabled Americans who avail themselves of the law's protection in a Catch-22: They must demonstrate that their impairment is substantial enough so that it constitutes a disability under the ADA, but not so substantial that the claimant cannot do the job without a reasonable accommodation.

In other recent ADA decisions, the Supreme Court has stripped state workers of their right to sue for monetary damages for ADA violations, and held that corrective or mitigating measures such as eyeglasses or medication should be considered in determining whether an individual is "disabled" under the law.

The latter decisions have produced absurd results in lower courts, People with diabetes, heart conditions, mental illness and even cancer have been ruled "too functional"—with corrective or mitigating measures—to be considered "disabled."

Mr. Speaker, this is clearly not what Congress intended when it passed the ADA and President Bush signed it into law. We intended the law to have broad application. In fact, any person who is disadvantaged by an employer due to a real or perceived impairment by others may bring a claim under the ADA. That's because, simply put, the point of the law is not disability; the point is discrimination.

Justin Dart Jr., the gentle giant who worked tirelessly on behalf of the ADA and the disabled throughout the world, would no doubt agree.

Perhaps best known as the father of the ADA, Justin passed away on June 22nd. For nearly five decades, he was one of the world's most courageous, passionate and effective advocates for civil and human rights.

Many called him the Martin Luther King of the disability civil rights movement. But he though of himself in more humble terms—simply as a soldier of justice. I was fortunate to call him a dear friend.

As we commemorate this 12th anniversary of the ADA today and pay tribute to a wonderful man who devoted his life to promoting justice and equality for others, let's recognize that our work is far from finished. The series of Supreme Court decisions on the ADA remind us of that, and command us to begin discussing possible legislative responses.

We have come so far in the last dozen years. And we have poured a strong foundation for our house of equality, where Americans are judged by their ability and not their disability.

Yet, the promise of the ADA remains unfulfilled today but still is within reach. It falls to us now to carry on the fight and to realize Justin Dart's vision of a revolution of empowerment. Let's not rest until the work is done.

CONSTITUTIONAL LIBERTIES AND THE COSTS OF WAR AGAINST TERRORISM ACT

HON. CYNTHIA A. McKINNEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. McKINNEY. Mr. Speaker, the attacks of September 11th, 2001 caused significant changes throughout our society. For our military services, this included increased force protection, greater security, and of course the deployment to and prosecution of the War on Terrorism in Afghanistan and elsewhere. Sadly, one of the first acts of our President was to waive the high deployment overtime pay of our servicemen and women who are serving on the front lines of our new War. The Navy estimates that the first year costs of this pay would equal about 40 cruise missiles. The total cost of this overtime pay may only equal about 300 cruise missiles, yet this Administration said it would cost too much to pay our young men and women what the Congress and the previous Administration had promised them.

In another ironic twist, the War on Terrorism has the potential to bring the U.S. military into American life as never before. A Northern Command has been created to manage the military's activity within the continental United States. Operation Noble Eagle saw combat aircraft patrolling the air above major metropolitan areas, and our airports are only now being relieved of National Guard security forces. Moreover, there is a growing concern that the military will be used domestically, within our borders, with intelligence and law enforcement mandates as some now call for a review of the Posse Comitatus Act prohibitions on military activity within our country.

In the 1960s, the lines between illegal intelligence, law enforcement and military practices became blurred as Americans wanting to make America a better place for all were targeted and attacked for political beliefs and political behavior. Under the cloak of the Cold War, military intelligence was used for domestic purposes to conduct surveillance on civil rights, social equity, antiwar, and other activists. In the case of Dr. Martin Luther King, Jr., Operation Lantern Spike involved military intelligence covertly operating a surveillance operation of the civil rights leader up to the time of his assassination. In a period of two months, recently declassified documents on Operation Lantern Spike indicate that 240 military personnel were assigned in the two months of March and April to conduct surveillance on Dr. King. The documents further reveal that 16,900 man-hours were spent on this assignment. Dr. King had done nothing more than call for black suffrage, an end to black poverty, and an end to the Vietnam War. Dr. King was the lantern of justice for America: spreading light on issues the Administration should have been addressing. On April 4, 1968, Dr. King's valuable point of light was snuffed out. The documents I have submitted for the record outline the illegal activities of the FBI and its ColntelPro program. A 1967 memo from J. Edgar Hoover to 22 FBI field offices outlined the COINTELPRO program well: "The purpose of this new counterintelligence endeavor is to expose, disrupt, misdirect, or otherwise neutralize" black activist leaders and organizations.

As a result of the Church Committee hearings, we later learned that the FBI and other government authorities were conducting black bag operations that included illegally breaking and entering private homes to collect information on individuals. FBI activities included "bad jacketing," or falsely accusing individuals of collaboration with the authorities. It included the use of paid informants to set up on false charges targeted individuals. And it resulted in the murder of some individuals. Geronimo Pratt Ji Jaga spent 27 years in prison for a crime he did not commit. And in COINTELPRO documents subsequently released, we learn that Fred Hampton was murdered in his bed while his pregnant wife slept next to him after a paid informant slipped drugs in his drink.

Needless to say, such operations were well outside the bounds of what normal citizens would believe to be the role of the military, and the Senate investigations conducted by Senator Frank Church found that to be true. Though the United States was fighting the spread of communism in the face of the Cold War, the domestic use of intelligence and military assets against its own civilians was unfortunately reminiscent of the police state built up by the Communists we were fighting.

We must be certain that the War on Terrorism does not threaten our liberties again. Amendments to H.R. 4547, the Costs of War Against Terrorism Act, that would increase the role of drug interdiction task forces to include counter intelligence, and that would increase the military intelligence's ability to conduct electronic and financial investigations, can be the first steps towards a return to the abuses of constitutional rights during the Cold War. Further, this bill includes nearly $2 billion in additional funds for intelligence accounts. When taken into account with the extra-judicial incarceration of thousands of immigration violators, the transfer of prisoners from law enforcement custody to military custody, and the consideration of a "volunteer" terrorism tip program, America must stand up and protect itself from the threat not only of terrorism, but of a police state of its own.

There does exist a need to increase personnel pay accounts, replenish operations and maintenance accounts and replace lost equipment. The military has an appropriate role in protecting the United States from foreign threats, and should remain dedicated to preparing for those threats. Domestic uses of the military have long been prohibited for good reason, and the same should continue to apply to all military functions, especially any and all military intelligence and surveillance. Congress and the Administration must be increasingly vigilant towards the protection of and adherence to our constitutional rights and privileges. For, if we win the war on terrorism, but create a police state in the process, what have we won?

INTRODUCTION OF THE CHILDREN'S DEVELOPMENT COMMISSION ACT

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MALONEY of New York. Mr. Speaker, today I am reintroducing legislation (H.R. 1112, 106th Congress) that is intended to help solve the shortage of available, affordable child care facilities. In my congressional district in New York City, more than half of all women with pre-school children are in the workforce and the need for child care is enormous. This is not a local problem but one that is national in nature.

The "Children's Development Commission Act" or "Kiddie Mac," (H.R. 1112, 106th), will address this problem by authorizing HUD to issue guarantees to lenders who are willing to lend money to build or rehabilitate child care facilities. It also creates the Children's Development Commission which will certify the loans and create federal child care standards. Kiddie Mac will also give "micro-loans" to facilities which need to make the necessary changes to come up to licensing standards, as well as provide them with lower cost fire and liability insurance. Through some of the premiums paid by the lenders, a non-profit foundation will be formed which would focus on research on child care and development, as well as create educational materials to guide potential providers through the certification process.

It is late in the session but I urge my colleagues to consider the proposal and join me in enacting it this year or in a future Congress.

IN HONOR OF TEXAS EQUUSEARCH MOUNTED SEARCH & RECOVERY TEAM AND ITS FOUNDER, TIMOTHY (TIM) A. MILLER

HON. NICK LAMPSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. LAMPSON. Mr. Speaker, I rise today to honor Tim Miller and the Texas EquuSearch Mounted Search and Recovery Team (TES).

Since Tim had horses of his own, and given a rash of missing persons in his area, many people suggested that he should start a horse search and rescue team. Tim shared this idea with some friends and was amazed at all the positive interest and support received.

The first official TES officer meeting was held in August of 2000 and then the work started. Tim, and his faithful and incredibly supportive wife Georgeann Miller, never realized how difficult forming an organization like this could be; or that it would require giving up his business as a general contractor to devote himself full time to the founding and operation of TES. Two years later, I'm proud to say that Tim and his all-volunteer TES team are working harder than ever to help bring home loved ones who are missing.

Since Texas EquuSearch was formed, they have been on nearly one hundred searches in two short years. They have an admirable record of working constructively with our nation's local law enforcement agencies and the Federal Bureau of Investigation. As these words were being written Tim and TES are on still another search near TES's headquarters in Dickinson, Texas.

TES was founded in loving memory of Laura Miller, Tim's daughter. The success rate of TES in finding missing people and returning many of them home alive is truly impressive. It is a living tribute to the spirit of Laura Miller. That spirit is alive and well in every volunteer of TES. The following words are Tim's own:

> I know how important a search and rescue team can be. My daughter, Laura Miller was abducted in September of 1984. I went to the police department to report her missing and file a missing persons report. Five months prior to Laura's disappearance the remains of a young lady named Heidi Villareal Fye, were found on some property at an abandoned oil field on Calder Road in League City, Texas. I told the police officer taking the report of my concerns, and would they please check the area where she had been found, or tell me where it was located so that I might check myself. Of course they said Laura is sixteen, she ran away and will be coming back home. We called and drove to all of Laura's friends to see of anyone had seen her. Three days went by and I found out that Heidi had only lived 4 blocks from our house. So I went back to the police station to tell them my new worries about the close location of our houses and could they go and check the field where Heidi was or please take me to where it was located. Again they said Laura was sixteen and she had run away so we should go home and wait by the phone for her to call.
>
> The days turned into weeks, weeks into months, several trips to the police station and still no Laura. Seventeen months later, kids were riding dirt bikes on Calder Road when they smelled a foul odor. They felt as though it was a dead animal but walked over to the area of the odor to see anyway. The odor was not a dead animal; it was in fact the remains of a female who had been there approximately two months. The police were called out to investigate, and during the investigation stumbled across the remains of yet another female some sixty feet from the other. These remains of the other girl found were those of my daughter, Laura Miller. The remains of the other girl found there have not been identified to this day and still is only known as Jane Doe.
>
> These were by far the most frustrating and lonely seventeen months of my life and there was some feeling of relief when Laura was found, at least now we know. I often think of what would have changed back in 1984 when Laura disappeared, if there had been a Texas EquuSearch. Would Laura have been found alive? Probably not, but she would have been found and there probably would have been some evidence on the scene to help the police in the investigation. Would Jane Doe have been murdered? My thoughts—probably not or at least not at that spot.

Mr. Speaker, the Texas EquuSearch Mounted Search & Recovery Team, was founded in loving memory of Laura Miller by her father Timothy A. Miller to search for our nation's missing and abducted children and adults. It has received help from the citizens of Houston, the State of Texas and the United States to successfully search for and find the lost, abducted, and missing. Our nation's communities and law enforcement agencies, including the Federal Bureau of Investigation, have already recognized the significance and value of the Texas EquuSearch Mounted Search & Recovery. It is now appropriate that the People and the Congress of the United States of America applaud and urge on Texas EquuSearch to continue forward—assuring that "The lost are not alone".

ANIMAL FIGHTING ENFORCEMENT ACT

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. ANDREWS. Mr. Speaker, today I am pleased to introduce the Animal Fighting Enforcement Act. This legislation targets the reprehensible and surprisingly widespread activities of dogfighting and cockfighting, in which animals are bred and trained to fight, often drugged to heighten their aggression, and placed in a pit to fight to the death—all for their amusement and illegal wagering of the animals' handlers and the spectators.

These are indefensible activities, and our state laws reflect public disdain for these forms of animal cruelty. Dogfighting is banned in all 50 states, and it is a felony in 46 states. Cockfighting is banned in 47 states, and it is a felony in 26 states.

Even though there is a something verging on a national consensus that dogfighting and cockfighting should be treated as criminal conduct, the industries continue to thrive. According to The Humane Society of the United States, there are 11 underground dogfighting publications. There are numerous aboveground cockfighting magazines, including The Gamecock, The Feathered Warrior, and Grit & Steel that promote cockfights, rally cockfighters to defend the practice, and advertise and sell fighting birds and the accoutrements of animal fighting.

Earlier this year, the House and Senate passed legislation to close loopholes in Section 26 of the Animal Welfare Act and bar any interstate shipment or exports of dogs or birds for fighting. That was a much-needed and long-overdue action by the House, and I commend the leadership provided on that legislation by Representatives EARL BLUMENAUER, TOM TANCREDO, and COLLIN PETERSON. Senators WAYNE ALLARD and TOM HARKIN led the parallel effort in the other chamber. The legislation was designed to help the states enforce their laws and provide a strong federal statement and statute against dogfighting, and cockfighting. In states where cockfighting is illegal, cockfighters had been using the loophole in federal law as a smokescreen to conceal their animal fighting activities; they claimed that they were merely raising and possessing birds to sell to legal cockfighting states and countries, when in reality they were often engaging in illegal fights in their own states. It makes enforcement of state laws against cockfighting very difficult.

During consideration earlier in this Congress of the Farm bills, the House and Senate passed identical versions of legislation to close the loopholes in the law. Unfortunately, the conferees removed a provision, identical in both bills, to increase jail time for individuals who violate any provision of Section 26 of the Animal Welfare Act. The House and Senate increased the maximum jail time from one year to two years, seeking to make this illegal animal fighting a federal felony.

U.S. Attorneys have told humane organizations and others that they are reluctant to pursue animal fighting cases with such a modest penalty. They will be far more likely to pursue cases if it is a felony offense.

My legislation today seeks to restore what the House and Senate originally passed in terms of penalties. The adoption of this provision will bring federal law in better alignment with state laws. As I mentioned previously, 46 states have either dogfighting or cockfighting felony provisions. It is fitting and appropriate that the federal government treat dogfighting and cockfighting as felony offenses. It is well known that these forms of animal cruelty are often associated with drug traffic, illegal firearms possession, violence to people, and illegal gambling. In short, other criminal conduct goes hand in hand with animal fighting.

My legislation also bans the interstate shipment of deadly knives and gaffs, which are the implements attached to the birds' legs to heighten the bloodletting and expedite the conclusion of fights. These knives and gaffs are sold through cockfighting magazines and through the Internet, and it is time that this traffic in these deadly implements is halted. A number of states have prohibitions on the sale of these implements, but it is time to adopt a national standard.

Finally, this legislation improves and updates other enforcement language in the Animal Welfare Act, provisions that were adopted more than a quarter century ago, on forfeiture and disposition of animals seized by law enforcement once they make arrests of individuals participating in illegal animal fights.

I thank several colleagues for adding their names as original cosponsors, and hope that the committees of jurisdiction give this legislation proper and prompt attention and action. I hope it can be passed before the 107th Congress completes its work.

EGMONT KEY LAND TRANSFER

HON. DAN MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DAN MILLER of Florida. Mr. Speaker, I rise today to introduce legislation to convey Egmont Key, which is currently under the jurisdiction of the U.S. Fish and Wildlife Service to the Florida State Park Service.

Egmont Key is located at the mouth of Tampa Bay within the Congressional Districts of Mr. BILL YOUNG, Mr. JIM DAVIS, and myself, both of which are greatly supportive of my efforts and are also original cosponsors of the bill. Egmont Key's cultural history dates back to 1830's, as a matter of fact the construction of Fort Dade in 1882 was to protect the city of Tampa during the outbreak of the Spanish-American War. Egmont Key even served as a site for the Union navy to operate their Gulf Coast blockade in the Civil War. Area residents, including my family and I, have enjoyed Egmont Key's historical and recreational benefits for years, and the local support for conveying the ownership of this island to the Florida State Park Service is strong.

The bill will convey the title of Egmont Key, a small island, which is approximately 350 acres, to the Florida State Park Service. This bill will not only improve the management of the public facilities, historical remains and wildlife habitat on the island, but also save the federal government money in the long term by removing it from federal responsibility.

Transfer of this property to the State of Florida will prove to be highly beneficial to its visitors. Providing more efficient facilities and an all around atmosphere of family interaction. Egmont Key serves as a habitat for numerous species of birds, and its white sandy beaches are valuable to the lives of many turtles, animals, and plants. The State of Florida's ownership of this picturesque island would improve the quality of life for its inhabitants and the quality of enjoyment for its enthusiasts.

Mr. Speaker, due to the limited amount of time left in the 107th Congress and my pending retirement this year, it is my hope that this bill will move quickly through the legislative process. I strongly believe that Egmont Key is best operated through the ownership of the Florida State Park Service, therefore I am requesting my colleagues join me today in cosponsoring this legislation. Egmont Key is a valuable resource to our area, and ownership by the State of Florida would simply provide the desired access to the community while also maintaining the ecosystem.

REMARKS ON SUSAN HIRSCHMAN

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. ROS-LEHTINEN. Mr. Speaker, I rise today, not to bid farewell, but to extend my heartfelt wishes for a future of success and happiness, to Susan Hirschmann.

Susan has served as the Chief of Staff to our Majority Whip, TOM DELAY, since 1997, managing the personal, district and Whip offices for our good friend from Texas.

Many of us have turned to her throughout the years for her political acumen and superb strategic skills.

Since moving to Washington, D.C. in 1987, she has been in the trenches promoting the Republican agenda—America's agenda.

She is more than a colleague. She is a friend.

While she is leaving the Hill, her passion and commitment to priority issues will keep her nearby.

I will surely miss the dinners we shared, as well as the late-night discussions over Chinese food and fried chicken in the Whip's office.

Godspeed Susan!

EQUITY IN EDUCATION ACT

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KNOLLENBERG. Mr. Speaker, today I urge my colleagues to support H.R. 2041, "The Equity in Education Act of 2001."

The rising cost of higher education is one of the major concerns facing American families today. In recent years the cost of college has gone through the roof. Making college affordable is vital to our children, our country's future, and our ability to remain competitive in a global economy.

I introduced the Equity in Education Act to help families save to send their children to college. It would allow individuals to use investments in securities to pay for higher education expenses without being penalized by the tax code.

The Equity in Education Act would provide families with a viable way to secure a good education for their children. By supporting this bill, Congress has the opportunity to ensure that the cost of receiving a higher education does not go beyond the reach of many Americans.

I encourage my colleagues to cosponsor H.R. 2041.

AN ACCURATE HISTORY OF CYPRUS

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BURTON of Indiana. Mr. Speaker, recently several Members of Congress came to the House floor to attack Turkey and enumerate all the bad things that have happened to Cyprus as a result of the 1974 Turkish intervention on Cyprus. As has happened in the past, only one-sided, inaccurate, and incomplete information was provided, which not only ignored the historical reasons for the division of Cyprus, but also ignored the international laws that legitimized the Turkish intervention. For the sake of historical accuracy, I would like to insert in the RECORD an article authored by the Honorable Osman Ertug, the Representative of the Turkish Republic of Northern Cyprus here in Washington, DC. I commend it to anyone who has a sincere desire to understand why Cyprus stands divided today.

IS IT ALL HISTORY?

The month of July is marked by mourning and protestations in Cyprus on the one side, while by jubilations and celebrations on the other. Even this sharp contrast in public mood shows the depth of the division between the two peoples of this eastern Mediterranean island—the Turkish Cypriots and Greek Cypriots. We believe the 28th Anniversary of the events of 1974 in Cyprus is an appropriate time to reflect on the background of the conflict and the prospects for its peaceful resolution.

Contrary to common belief, the origin of the Cyprus conflict dates back not to 1974, but to December 1963, when the Greek Cypriots, aided and abetted by Greece, launched an all-out attack on the Turkish Cypriot people aimed at annexing the island to Greece (Enosis).

Turkish Cypriots resisted Greek attempts to "hellenize" Cyprus and, with the help of Turkey, which is a Guarantor Power under the Treaty of Guarantee of 1960, succeeded in defending and maintaining their existence in Cyprus as one of the two equal peoples of the island. Yet, this defense came at a heavy cost to the Turkish Cypriots, with thousands of them being killed, wounded or missing; a quarter of the Turkish Cypriot population evicted from their homes and properties in 103 villages; and the entire Turkish Cypriot population condemned to live in enclaves on 3% of the territory of Cyprus deprived of all human rights. The suffering of the Turkish Cypriots prompted a prominent US official, Mr. George W. Ball, former US Undersecretary of State, to write the following in his memoirs entitled "The Past Has Another Pattern":

"Makarios' central interest was to block off Turkish intervention so that he and his Greek Cypriots could go on happily massacring Turkish Cypriots. The Greek Cypriots just want to be left alone to kill the Turkish Cypriots."

The severity of Greek Cypriot attacks was such that The Washington Post of 17 February 1964 reported in a relevant article that "Greek Cypriot fanatics appear (ed) bent on a policy of genocide. . . ."

The years-long campaign of the Greek Cypriots to annex the island to Greece culminated in the coup d'etat of 15 July 1974, which was described as "an invasion of Cyprus by Greece" even by the then Greek Cypriot leader Makarios in his dramatic admission before the UN Security Council on 19 July 1974.

Turkey exercised its right of intervention under these circumstances, in order to prevent the wholesale massacre of the Turkish Cypriots; stop the bloodshed on the island and prevent the colonization of Cyprus by Greece. Turkey's legitimate and justified intervention did not only achieve all these aims, but also led to the downfall of the military junta in Greece. The legitimacy of the Turkish intervention was confirmed by prominent outside sources, including the Standing Committee of the Consultative Assembly of the Council of Europe, which, in its decision dated 29 July 1974, stated the following:

"Turkey exercised its right of intervention in accordance with Article IV of the Guarantee Treaty."

Even the Athens Court of Appeal, in its decision of March 21, 1979, also held that the intervention of Turkey in Cyprus was legal:

". . . The Turkish military intervention in Cyprus which was carried out in accordance with the Zurich and London Agreements was legal. Turkey, as one of the Guarantor powers, had the right to fulfill her obligations. The real culprits . . . are the Greek Officers who engineered and staged a coup and prepared the conditions of this intervention."

Decision No. 2658/79 dated 21 March 1979.

The events of 1974 were followed by a population exchange between the North and the South, formally agreed between the two sides in August and implemented in September 1975, enabling the Turkish Cypriots to regroup and reorganize themselves in the North, and the Greek Cypriots in the South. This created the geographical basis for a permanent settlement of the Cyprus issue on a "bi-zonal" basis—a term that has since become a permanent feature of the UN's Cyprus vocabulary.

Is this all history? Perhaps; but it is a history from which we must learn so as not to repeat it. A forward-looking strategy in Cyprus must necessarily take into account the above background of events, the existing mistrust between the two peoples of the island and the realities of today, that is the two-state situation on the island evolved in the course of time. The possibility of a just, realistic and viable settlement depends on the acknowledgement of these facts, not a rejection of them. The Turkish Cypriots deserve to have their own State and, what is more, they already have it, albeit without international recognition.

The current face-to-face negotiations, started at the initiative of the Turkish Cypriot side, could produce the desired result if the Greek Cypriots were to accept the Turkish Cypriots as their true partners and equals. However, pampered by the European Union and a world that has come to view the question largely from a Greek Cypriot perspective, treating them as the "Government of Cyprus", the Greek Cypriots have little or no reason to settle their scores with their Turkish Cypriot neighbors for a shared future. In view of these realities, it is evident that for the current negotiations to have a real chance of success, third parties need to encourage the Greek Cypriot side to accept that there is no going back to the old days in Cyprus, and that the aim of the talks is the establishment of a NEW PARTNERSHIP on the basis of the sovereign equality of the two parties.

Perhaps we could then reach an outcome in Cyprus that all can celebrate.

IN RECOGNITION OF JOURNALIST JESSICA LEE

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. NORTON. Mr. Speaker, I rise to recognize Jessica Lee for her efforts and success in the field of journalism. Jessica Lee has had a long and illustrious career as a journalist. She was one of the first African American women to cover the White House for a major daily newspaper, and she was one of the first journalists to give a voice in print to those not normally covered in many daily newspapers.

She has traveled all over the world as a White House correspondent for USA Today: from China to Russia, Europe and to South Africa where she covered the election of Nelson Mandela. She has witnessed many major current events and written about them in what has often been called the "first draft" of history.

Jessica joined USA Today in 1985 as a congressional correspondent. She was assigned to the White House in 1986 at the height of the Iran-contra scandal, reporting on President Reagan's final two years and President Bush's full term in office.

Jessica, a fluent Spanish speaker, has worked for Gannett Co., Inc., since 1978, when she was hired at the El Paso Times in Texas. She worked five years as a regional and congressional correspondent with Gannett News Service.

Jessica got her first taste of journalism at high school in Washington, D.C., where she grew up. She began her career with the Daily Journal, an English-language daily published in Caracas, Venezuela. She is a graduate of Western College for Women.

Due to her courage and tenacity as a trailblazer, she will remain a role model for many women now joining the ranks of journalists.

INTRODUCING THE SMALL BUSINESS DROUGHT RELIEF ACT

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to introduce the Small Business Drought Relief Act. This legislation provides small businesses who depend upon water supply as a means of income with the opportunity to qualify and apply for disaster assistance from the Small Business Administration when drought affects their ability to earn income. It serves as a companion bill to a similar bill introduced in the Senate.

Under current law, small businesses whose income depreciates as a result of diminishing water supply are unable to even apply for SBA loans. Often these businesses are family-owned and family-run recreational or commercial fishing firms. The majority of them are dependent upon water resources, whether lakes, streams, or rivers, for the ability to operate their businesses. When water levels drop to unbearable points, aside from the obvious water supply issues, boats are unable to make it into lakes and rivers, commercial fishing ceases to exist, and businesses often lay off workers and close their doors for good.

I became interested in drought relief last summer when Florida found itself in the most prolonged drought it had seen in nearly 20 years. The water level in Lake Okeechobee, our country's 2nd largest fresh water lake, and located in my District, had decreased by nearly 25 percent.

Not only did the water shortage in the lake cause problems for agriculture and water management, but it also destroyed the economic well being of small businesses around the Lake who depend on it for income. Realize this too, the clear majority of these businesses are owned by minorities or families who struggle every day just to get by.

As I began to try and help the towns and businesses surrounding the Lake in locating temporary assistance, even if it was only low interest loans, I found that unless a firm was involved in agriculture, assistance is virtually impossible. When it is possible, the bureaucratic red tape applicants must cut through are so discouraging that they don't even try.

The issue at hand, Mr. Speaker, is that droughts are major natural disasters. The Stafford Act says it is, as well as the U.S. Departments of Agriculture, Commerce, and Defense also say it is. Congress said it as recently as 1998. But for some reason, the Small Business Act does not include drought in its definition of disaster. Frankly, this oversight is a disaster of its own.

Today, Mr. Speaker, I am introducing a bill which will reconcile the oversight made by our body's predecessors and ensure that businesses who suffer from drought will live to see another day. I urge my colleagues to support this bill, and I urge the leadership to bring it swiftly to the floor for a vote.

RECOGNIZING HALIE JACOBS FOR HER BRAVERY AND HEROISM

HON. VAN HILLEARY

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HILLEARY. Mr. Speaker, I pay tribute today to a brave little girl who lives in Normandy, Tennessee, a small town in the congressional district I represent. Halie Jacobs is only seven years-old. Yet, when her mother's life was in danger, Halie braved darkness, angry dogs and a broken foot to walk two miles to get help for her injured mother.

On July 10th, around midnight, Halie and her mother Crystal were on their way home, driving through fog and misting rain down the kind of narrow, twisting country road that is so common in rural Tennessee. Their car hydroplaned into a ditch, leaving Halie's mother severely hurt and Halie with a cracked bone in her foot. Halie stayed by her mother's side until, according to Halie, "I couldn't talk to her."

Not knowing for sure if her mother was living or dead, Halie did something uncommonly brave for a seven year-old. In spite of her own injury, she set out on a pitch-black, lonely road toward home and help for her mother.

Halie found her way home, got help and showed them the way to her mother.

I am happy to report Crystal is regaining her health. She still has a long way to go, but because of her daughter's heroism, Crystal is on her way to recovery.

I know Crystal is proud of her extraordinary daughter. All of us in the Fourth Congressional District are. Bedford County, Halie's home county, awarded her its first "911 Hero Award" for making the right call.

Though I haven't met Halie myself, the Tullahoma News, one of the local newspapers at the award ceremony noted Halie "handled the attention and barrage of questions from television and newspaper reporters with quiet maturity." The article went on to state, "It was the same maturity she exhibited two weeks ago when she walked barefoot more than two miles, in the middle of the night, to get help for her injured mother."

Mr. Speaker, being in a car accident, seeing your mother gravely injured and then watching her pass out would be highly traumatic for anyone, let alone a seven year-old. Yet Halie Jacobs kept her wits and did what she knew she had to do. I commend Halie for her uncommon courage and I wish her mother Crystal well as she recovers from her injuries.

For the record, I include an account of Halie's heroism that appeared in Bedford County's newspaper, the Shelbyville Times Gazette.

A BRAVE LITTLE GIRL: HALIE JACOBS, 7, DEFIES DARK, DOGS TO HELP MOM

(By Ann Bullard)

Imagine riding down a narrow, dark country road in the mist and fog when the car runs off the road and noses down into a ditch. You're the passenger in the front seat; the driver has fallen to your side and is bleeding heavily. You have no flashlight, no cell phone. You talk with the driver, your mama, until she can't talk with you any longer.

And you're only 7 years old.

That was the situation Halie Jacobs faced last Wednesday night, as she and her mother, Crystal, were driving on Rowesville Road to their Normandy home. It was close to midnight, and, like most persons of any age, Halie was afraid. Unlike many, Halie took matters into her hands.

"I stayed with Mama until I couldn't talk to her. [Then] I jumped into the back seat, opened the door and got out," the petite second-grader said, explaining if she'd tried to exit on her side she'd have been in the creek.

Not knowing whether her mother was dead or alive, Halie started home. In spite of a sprained ankle and bare feet, the youngster ran and walked 2.1 miles from the accident to her grandparents' home. She turned the wrong way initially, walking about .3 miles to Highway 41-A, then reversed her path, ran past the car with her mother inside down Normandy Road to Dement Road and the family trailer.

The youngster passed only one house. The light was on but she didn't know the people and was afraid to stop. As she ran down the middle of unlighted, tree-shrouded roads, she was chased by two dogs. "Then I walked so they wouldn't come after me," she said. And, finally, she reached home.

"I was on the phone with her dad when Halie came in covered with blood," her grandmother, Teressia Jacobs, said. "She told me, 'Me and Mama had a wreck at the end of the road. I talked to her until she could talk no more.'"

Only after reaching home, having family's arms around her and knowing they were getting help for her mama did Halie cry. Teressia called 911 and then drove to the scene, taking a reluctant Halie with her to be sure she found the car.

"I didn't want to look in case it was too bad," Halie said, tearing up when she remembered her fear that her mother had been killed.

At a little more than 50 pounds and about 3 feet 9 inches tall, the blond-haired, blue-eyed rising second-grader at Cascade School seems an unlikely candidate to be a hero. The angel pin she now wears expresses her mother's emotions.

When EMS workers arrived, they found Crystal on the passenger side of her 1995 Nissan Sentra in which both air bags had deployed. Neither Crystal nor Halie, who was beside her in the front seat, were wearing seat belts.

"It was rainy and foggy and I think I hydroplaned," Crystal said. According to State Trooper Rhett Campbell, the newest officer serving this district, the car had gone off the road, down alongside Shipman's Creek and came to rest on top of a pile of dirt.

How did Crystal get across the console? "I don't know. I knew Halie was in the car and suppose I tried to protect her. When I regained consciousness, I was on the passenger side."

"God and Granny were with her that night," Teressia said of the child's other grandmother who had died this spring.

Crystal was taken by ambulance to Bedford County Medical Center. It was too foggy for LifeFlight so the ambulance took her on to Vanderbilt University Medical Center in Nashville where she was treated. She was discharged until the facial swelling was reduced, then was admitted to Vanderbilt this morning for reconstruction of both sinus cavities and her cheek.

As for Halie, she is pretty matter-of-fact about it all. She is looking forward to entering Cascade School in the fall, and spends her vacation swimming, watching Rug Rats and Sponge Ball cartoons and playing on the computer.

To adults around her, the 7-year-old is a hero. Cathy Mathis, head of the Bedford County Communications Center and E-911, plans to present Halie with a "911 Hero Award" within the next few days.

RECOGNIZING THE ANNIVERSARY OF THE INDEPENDENCE OF TRINIDAD AND TOBAGO

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, I rise today to recognize the Republic of Trinidad and Tobago on its celebration of the 40th anniversary of its independence.

I will spend a brief moment describing the beginnings of the Republic of Trinidad and Tobago and describe its ties with the U.S.

Trinidad was settled by the Spanish a century after Columbus landed there. The original inhabitants—Arawak and Carib Indians—were largely wiped out by the Spanish colonizers, and the survivors were gradually assimilated. Although it attracted French, free Black, and other non-Spanish settlers, Trinidad remained under Spanish rule until the British captured it in 1797. During the colonial period, Trinidad's economy relied on large sugar and cocoa plantations.

Tobago's development was similar to other plantation islands in the Lesser Antilles and quite different from Trinidad's. The smaller island of the pair, Tobago became known first as Tavaco, then Tabagua, then as Tobago. This was the name given by its tribal people who used a long stemmed pipe in which they smoked a herb called Vcohiba, known today as tobacco.

During the colonial period, French, Dutch, and British forces fought over possession of Tobago, and the island changed hands 22 times—more often than any other West Indian island. Tobago was finally ceded to Great Britain in 1814. Trinidad and Tobago were incorporated into a single colony in 1888.

If Trinidad was a sugar economy in the 19th Century it became an oil economy in the 20th. With the advent of the automobile and the conversion of the British Navy from coal to oil the search for and the production of oil received a strong boost.

Oil was discovered in the Guayguaygare, Point Fortin, and Forest Reserve areas in Trinidad. Over time oil and oil related exports came to dominate the economy and transformed much of populace from a rural to an urban one.

Besides oil, another important event was the establishment of U.S. bases on the island in 1941. This was agreed to in exchange for 50 destroyers which at the time was sorely needed by an overstretched Britain. These bases included a large chunk of the Chaguramas Peninsula as well as an air base at Wallerfield. The G.I.s injected American culture and money into a stagnant economy and shifted the focus of country from Britain to the U.S. More important, U.S. Marines helped construct numerous roads including the important Northern Coast Road which still is functional today.

In the 1950s, the British sponsored the West Indies Federation as a potential post-colonial model, in the belief that most of the Caribbean islands would be unable to survive politically or economically on their own. The Caribbean peoples thought otherwise and the Federation collapsed in the early 1960s.

In Trinidad and Tobago a movement was being born in the 1950s. After receiving his Ph.D. and serving as assistant professor at Howard University, Eric Williams returned to Trinidad and Tobago and formed the People's National Movement (PNM), a political party of which he became the leader. In September of 1956, the PNM won the national elections and he became the chief minister of the country from 1956 to 1959, premier from 1959 to 1962, and prime minister from 1962 to 1981. During his term as prime minister, Williams led Trinidad and Tobago into full independence within the Commonwealth in 1962. Eric Williams is considered the father of Trinidad and Tobago. He died in office on March 29, 1981.

After its 1962 independence, Trinidad joined the United Nations and the Commonwealth. In 1967, it became the first Commonwealth country to join the Organization of American States (OAS).

Trinidad and Tobago and the U.S. enjoy cordial relations. U.S. interests focus on investment and trade, and on enhancing Trinidad's political and social stability and positive regional role through assistance in drug interdiction and legal affairs. A U.S. embassy was established in Port of Spain in 1962, replacing the former consulate general. Today, the Republic of Trinidad and Tobago remains a stable government with close ties and a working relationship to the United States.

Evidence of government stability is represented in the fact that U.S. investment in Trinidad and Tobago exceeds one and one-quarter billion dollars. In addition, Trinidad and Tobago is becoming the leading exporter of liquefied natural gas to the U.S. It also is active in the U.S.-initiated Summit of the Americas process and fully supports the establishment of the Free Trade Area of the Americas.

This has made Trinidad and Tobago one of the most prosperous islands in the Caribbean.

With a population of 1.2 million people and the size of the state of Delaware, Trinidad and Tobago maintains strong relations with its Caribbean neighbors as well. As the most industrialized and second-largest country in the English-speaking Caribbean, Trinidad and Tobago has taken a leading role in the Caribbean Community and Common Market (CARICOM), and strongly supports CARICOM economic integration efforts.

The two countries also share its people and culture. There are large numbers of U.S. citizens and permanent residents of Trinidadian origin living in the United States. These individuals keep strong cultural ties to their country of origin. About 20,000 U.S. citizens visit Trinidad and Tobago on vacation or for business every year, and over 2,700 American citizens are residents. In addition, Trinidad like carnivals are held in numerous cities across the U.S. with a major celebration occurring in Brooklyn every Labor Day.

The Republic of Trinidad and Tobago is moving confidently forward in the 21st Century. As they celebrate their 40th anniversary let us give recognition to a nation that has realized its potential by fostering both economic and social growth.

IN HONOR OF AMBASSADOR F. HAYDEN WILLIAMS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. PELOSI. Mr. Speaker, I rise today to recognize and pay tribute to Ambassador F. Hayden Williams, a great American whose distinguished service and leadership has been instrumental in the creation of a World War II memorial on the National Mall in Washington, D.C.

Ambassador Williams has devoted a lifetime to public service. Through his time in the Navy Reserve during World War II, his work in the Kennedy and Eisenhower administrations, and his tenure as an Ambassador to Micronesia, Ambassador Williams has made important contributions to our government over more than fifty years. He has served with distinction on numerous boards and committees and in advisory capacities on defense and international affairs.

Ambassador Williams' connection to San Francisco and the Bay Area began as an undergraduate at the University of California at Berkeley, where he studied Political Science and History. He has since given much to the Bay Area, as an exemplary citizen, as a Trustee of U.C., Berkeley, and as a Commissioner of the Asian Art Museum of San Francisco.

Ambassador Williams' effort to build a World War II memorial is his most recent contribution to public life. He served as a Commissioner of the American Battle Monuments Commission from 1994 until 2001 and was named Chairman of the National World War II Memorial Committee. He directed the selection of the Memorial's site on the Mall and coordinated all aspects of the Memorial's design. He worked closely with Representative MARCY KAPTUR and others in the United States Congress to garner legislative support for the Memorial.

Ambassador Williams helped shape the purpose of the Memorial. He wanted it to honor and express the Nation's enduring gratitude to all American men and women who served in the United States Armed Forces during WWII, those who gave their lives in battle, those missing in action, and those who survived. He made sure that the Memorial would convey a sense of remembrance and national pride in the fortitude, valor, and sacrifice of our armed forces. He envisioned a Memorial that would acknowledge and honor the nation at large, the vigorous, spirited commitment of the American people to the war effort, and the vital contribution of the home front to America's victory in WWII.

Mr. Speaker, it is with great pleasure that I ask my colleagues to join me in honoring Ambassador F. Hayden Williams. I join with his family and friends in recognizing his service and dedication to ensuring that the country honors those who fought so valiantly in World War II.

RECOGNIZING THE MAGNIFICENT WORK OF DR. PAUL PHILLIPS COOKE

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. NORTON. Mr. Speaker, today, in the CONGRESSIONAL RECORD on behalf of the citizens of the District of Columbia and the Washington, DC Alumni Chapter of Kappa Alpha Psi Fraternity, Inc., I recognize Dr. Paul Phillips Cooke for his efforts and successes in the field of education.

I count it a privilege to acknowledge Dr. Cooke's dedicated service to the District of Columbia and our nation. The citizens of Washington, DC have been privileged to have a leader like him in the vanguard promoting the advancement of our great city. With a congratulatory letter, I recently joined the Kappas at a Tribute to Dr. Paul Phillips Cooke, and noted his commitment to the enhancement of education in the District of Columbia.

Dr. Cooke was born on June 29, 1917, in New York City. His father and mother were born in Washington, DC, as well as his paternal grandfather and great grandmother. He attended public schools of the District of Columbia from 1st grade through high school. Dr. Cooke received his Bachelor's degree (cum laude) in English, from Miner Teachers College, Master's degrees from New York University, and the Catholic University of America, and his Doctorate in Education from Columbia University. He served as Professor of English from 1954 to 1974, at the District of Columbia Teachers College and as its President from 1966 to 1974. He received from the University of the District of Columbia the Doctor of Laws degree honoris causa in 1986.

During his distinguished educational journey, Dr. Cooke also was a teacher of English at Brown Junior High School, and at Phelps Vocational School, on the faculty in English at Miner Teachers College, and a lecturer at Trinity and Gallaudet Colleges, and Howard, American, George Washington, and Georgetown Universities.

A scholar, author of more than 200 publications and papers, lecturer, historian, and international statesman, Dr. Cooke has won the admiration and respect of his colleagues, associates, and friends for his many years of dedicated service. He has been a member of Kappa Alpha Psi Fraternity, Inc., since 1935, and is the recipient of the Laurel Wreath, the Fraternity's highest award.

Dr. Cooke served as Deputy Council Member of the World Veterans Federation, Consultant to the World Peace Through Law Conferences and as Chairman of the International Affairs Commission, American Veterans Committee and is a member of the Washington, D.C. Hall of Fame. His past and current memberships also include the Girard Street Block Association, the Shrine of the Sacred Heart R.C. Church, the Washington Torch Club, the Catholic Interracial Council of the District of Columbia, the Washington City Breakfast Group, the Cosmos Club, and the NAACP. For more than 50 years, "Corporal" Cooke, who served in the US Army Air Corps, has been a member of the American Veterans Committee.

Since 1940, Dr. Cooke has been married to the former Rose M. Clifford. Their four children have earned six college degrees.

The achievements of Dr. Paul Phillips Cooke serve as an inspiration for us all as we work to expand educational opportunities in the nation's capital. It is important that he be praised by the community at large. As the Congresswoman for the District of Columbia, I applaud Dr. Cooke's commitment to step into the breach and provide opportunities, options and hope, and give my best wishes for continued success in his important work.

INTRODUCING THE TEACHER VICTIMS' FAMILY ASSISTANCE ACT OF 2002

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HASTINGS of Florida. Mr. Speaker, a recent study conducted by the National School Safety Center on School Associated Violent Deaths notes that between 1992 and 2001, 33 teachers, school administrators, school employees, or volunteers, have been fatal victims of school violence. This means that during that nine-year period, teacher, school administrator or some other school employee in America was killed while performing the duties of his or her job every fourteen weeks.

A similar study done by the U.S. Department of Justice stated that teachers, school administrators and other school employees accounted for nearly 10 percent of all fatalities from school violence on campuses nationwide. Even more disturbing is that the majority of faculty fatalities occurred when a school employee attempted to stop a fight or some type of disagreement between students or other faculty members. In trying to stop school violence, these school employees became victims of school violence themselves.

On May 26, 2000, my district was struck with horror when a thirteen year old student walked into Lake Worth Middle School and shot and killed his teacher, Mr. Barry Grungow. While this tragic event once again raised the important issues of school safety, gun control, and the minimum age at which a child can be tried as an adult, to the Grungow family, the tragic death of Barry Grungow has meant much more.

In addition to the painful loss of a father and husband, Barry Grungow's death had a long-term effect on the entire Grungow family. Barry's death meant that, within six months, the entire Grungow family would find themselves without health care coverage; Barry's death meant that the Grungow family would incur added and unexpected expenses; and, ultimately, Barry's death means one less income that can be used to support Pam Grungow and her two children in the years to come.

In Spring 2001, the Florida State Legislature passed and the Governor signed the Barry Grungow Act, a measure that provided death benefits to the spouses and children of victims of school violence. Today, I come to the floor of the House of Representatives to say that it is time for Congress to follow Florida's lead and pass a similar measure.

Mr. Speaker, I rise today to introduce the Teacher Victims' Assistance Act of 2002. Similar to Florida's Barry Grungow Act, the Teacher Victims' Assistance Act places teachers, school administrators, school employees and school volunteers in the same high-risk category in which we currently place many of country's most important role models.

My bill provides the spouses and children of educators who are killed as a result of school violence with the following death benefits: a one-time death benefit of $75,000, $1,500 to be used to assist with any funeral expenses, $900 per month in living assistance to the victims' surviving spouse, $225 per month in living assistance to each dependent of the victim until the age of 18, $7,500 per year, for up to five years, for each dependent to be used to pay for college or other forms of higher education before the age of 25, opportunity to enroll in the Medicare health benefits program, and exempts the family members from having to pay any accumulated income tax by the victim as a result of school employment.

Mr. Speaker, never before has Congress made the historic statement that we need to compensate the families of educators who are victims of school violence. Many of us understand that violence in our schools is virtually impossible to eliminate completely. However, it is possible for Congress to ensure every educator in the country that if another school shooting such as those which occurred at Lake Worth High School, the future of educators' families shall never be in jeopardy.

The Teacher Victims' Family Assistance Act of 2002 makes such a commitment, and I urge my colleagues to pass it immediately.

IN HONOR OF JUERGEN G. KEIL

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KENNEDY of Rhode Island. Mr. Speaker, I rise today to honor Mr. Juergen G. Keil. Mr. Keil has recently retired as the Executive Director of the Naval Undersea Warfare Center (NUWC) Division, Newport, Rhode Island after 36 years of dedicated leadership and outstanding service. He was responsible for the overall planning and direction of the scientific and technical activities related to the U.S. Navy's undersea warfare systems. He led the Division in the development of innovative concepts and approaches to address the challenges posed by the post-Cold War undersea warfare and budget environment. Through Mr. Keil's leadership, Division Newport has been transformed into an organization widely regarded as the model of government reinvention, process improvement, and strategic planning.

Mr. Keil, a graduate of Brown University with a degree in Physics, has also served on the staff of Commander, Antisubmarine Warfare (ASW) Forces, U.S. Pacific Fleet and as Head of the Undersea Warfare Analysis Department responsible for the formulation and conduct of a broad-based analysis program that assessed the effectiveness of submarines and surface ships in countering undersea threats as well as submarine warfare effectiveness across the full spectrum of their missions. These were instrumental in support of the Los Angeles Class SSN 688 Improvement, the SEAWOLF (SSN 21) and the New Attack Submarine (NSSN) Programs, as well as the Navy's ASW Weapon and Surface Ship ASW System Programs. Because of his efforts, NUWC Division, Newport's warfare analysis capabilities have been widely praised at all levels within the Department of the Navy and Department of Defense.

Over the years, Mr. Keil has received numerous achievement awards including the Excellence in Management Award an the Navy Meritorious Civilian Service Award in 1979. In 1987, he received the Bronze Medal from the American Defense Preparedness Association for his expertise in naval warfare analysis and his outstanding contributions to ASW. In June 1991, he received a Special Act Award for his technical leadership of Congressional mandated study of the Navy's ASNA Weapons Investment Alternatives, and the Decibel Award from NUWC in recognition of his development of a premier warfare analysis organization and for his nurturing an environment of excellence in all the technical disciplines related to underwater warfare analysis. In 1999, he was the recipient of the Department of Navy Superior Civilian Service Award. He was also selected as the recipient of the Society of Women Engineers' 1999 Rodney D. Chipp Award for fostering a positive working environment for women engineers and scientists, and as the recipient of the 1999 Rhode Island Federal Executive Council's Bud Gifford Leadership Award. Additionally, the National Defense Industrial Association named Mr. Keil the winner of the 1999 VADM Charles B. Martell/David Bushnell Award in recognition of his extraordinary leadership in undersea warfare research, development, test and evaluation (RDT&E) and acquisition reform. Most recently, in 2000, Mr. Keil received the prestigious Meritorious Executive Presidential Rank Award in recognition of his sustained accomplishments, results-oriented leadership, and relentless commitment to public service.

Mr. Speaker, Mr. Keil has been a well respected and hard working public servant, as well as a patriot. I am honored to recognize his long and highly accomplished career and his important work as the Executive Director of the Naval Undersea Warfare Center, Division Newport, Rhode Island. In time-honored naval tradition, I wish. Mr. Juergen G. Keil "Fair Winds and Following Seas" as he enters into retirement.

CELEBRATING 12TH ANNIVERSARY OF AMERICANS WITH DISABILITIES ACT

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, I join my colleagues in celebrating the 12th anniversary of the Americans with Disabilities Act. Signed on July 26,1990, the nation took its first step to incorporate the disabled community back into mainstream America. Armed with 21st century technology and a warmhearted community, these Americans are able to interact smoothly with friends, family and coworkers in factories, office buildings, sports facilities, parks and even on the Internet. This Act has tapped into the full potential of individuals who were often excluded from the rest of the world.

The ADA has opened amazing doors for all people. Buildings, sidewalks and public transportation have become more accessible, allowing for ease in conducting everyday business. The use of screen-readers and voice-recognition software has brought the once unknown world of the Internet to all computer users. No longer will people with impaired vision or dexterity be limited to the available resources. The ADA has given employees with disabilities access to the tools they need to perform their job. Technological advances have been fully integrated into the workplace and I believe society is ready for the work-at-home employee.

As a member of the Bicameral Disabilities Caucus, I am a strong proponent for continued efforts to break down further barriers preventing our disabled community from living healthy, productive lives. With one in five Americans suffering from a debilitating ailment, we have a better understanding for the need to continue supporting both legislation and technology for tomorrow's generation.

Mr. Speaker, the Americans with Disabilities Act had the same impact on disabled Americans in the 1990s as did the Civil Rights Act had on African Americans back in the 1960s. I believe that the will of the people have spoken declaring not to discriminate against any person. With these pieces of legislation side-by-side on the same pedestal, we can observe our constantly changing, and more accepting, country and truly say that we are proud to be Americans.

ON THE PASSING OF NOLAN HANCOCK

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GEORGE MILLER of California. Mr. Speaker, sadly I wish to bring to the attention of my colleagues the passing of Nolan Hancock. Many of us have known Mr. Hancock as the former Legislative Director of the Oil, Chemical, and Atomic Workers International Union. Mr. Hancock died this week of a heart attack in West Valley City, Utah. He is survived by his wife, Barbara, four children, fourteen grandchildren, and five great grandchildren.

Nolan Hancock was an electrician by trade and an OCAW member for 48 years. For twenty-one years he worked in various local and international positions for the union. He retired five years ago after serving as Legislative Director for the union for 18 years.

Nolan Hancock worked with tremendous ability and integrity on behalf of the members of OCAW and all working Americans. Among the greatest privileges of being a Member of Congress is to work with people of the caliber of Mr. Hancock. I am proud to have known and worked with him.

ONE MORE REASON WHY RELIGIOUS IDEOLOGY SHOULD NOT DRIVE PUBLIC POLICY

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. STARK. Mr. Speaker, As critics predicted, Bush's goal to make faith-based institutions the primary deliverers of social services has led to them promoting their religious beliefs with government money. Today, the Washington Post reported that a Louisiana federal judge ruled that the state illegally used federal money to promote religion in its abstinence-only sex education programs.

How many more examples do we need before Bush abandons this failed social policy?

JUDGE ORDERS CHANGES IN ABSTINENCE PROGRAM

(By Ceci Connolly)

A federal judge in Louisiana ruled yesterday that the state illegally used federal money to promote religion in its abstinence-only sex education programs, a decision that could jeopardize President Bush's ambitions for expanding the effort nationwide.

U.S. District Judge G. Thomas Porteous Jr. ordered the state to stop giving money to individuals or organizations that "convey religious messages or otherwise advance, religion" with tax dollars. He said there was ample evidence that many of the groups participating in the Governor's Program on Abstinence were "furthering religious objectives."

Using government money to distribute Bibles, stage prayer rallies outside clinics that provide abortions and perform skits with characters that preach Christianity violate the Constitution's separation of church and state, he ruled.

One group in its monthly report talked about using the Christmas message of Mary as a prime example of the virtue of abstinence.

"December was an excellent month for our program," the Rapides Station Community Ministries said in a report quoted by the court. "We were able to focus on the virgin birth and make it apparent that God's desire [sic] sexual purity as a way of life."

Gov. Mike Foster (R) expressed dismay over the decision and said he would review the state's legal options.

"It's a sad day when such a worthwhile program is attacked by the very people who are supposed to protect the interests of the citizens of Louisiana," he said.

The suit, filed in May by the American Civil Liberties Union, was the first legal challenge to abstinence-only programs created under the 1996 welfare reform legislation. Bush has asked Congress to extend the $50 million-a-year program and increase other federal abstinence grants from $40 million this year to $73 million next year.

Cities, states or organizations that receive the federal grants must use the money to teach abstinence as the only reliable way to prevent pregnancy and sexually transmitted diseases. Supporters say abstinence education helps youngsters build character and develop the skills to "say no to sex." Grant recipients may not discuss contraception, except in the context of failure rates of condoms.

"Today's decision should stand as a wake-up call that this practice is unacceptable," said Catherine Weiss, director of the ACLU Reproductive Freedom Project.

The ruling was also a victory for liberals and public health advocates who argue that abstinence-until-marriage programs are unrealistic and put young people in danger of unwanted pregnancy and sexually transmitted diseases.

Abstinence-only "is not a public health program," said James Wagoner, president of Advocates for Youth, which lobbies for broad-based sex education. "This is either ideology or religious instruction trying to pass itself off as public health."

The most recent, detailed analyses have concluded "the jury is still out" when it comes to teaching abstinence, said health researcher Douglas Kirby.

Wagoner called on policymakers to conduct audits of the abstinence programs similar to the current federal investigation of other types of sex education and HIV prevention programs.

Bill Pierce, spokesman for the Department of Health and Human Services, said the administration "remains deeply committed" to both abstinence-only programs and faith-based initiatives.

Weiss and Wagoner said that the misuse of abstinence money went beyond Louisiana and that they had begun to collect evidence of other instances of proselytizing. Many have close ties to the anti-abortion movement, they said.

Three weeks ago, HHS awarded $27 million in new abstinence grants to numerous organizations with religious affiliations. Weiss acknowledged that it is constitutional to funnel tax money to religious groups as long as the money is used for secular purposes.

During a court hearing last month, Dan Richey, head of the Louisiana program, testified that the state had stopped subsidizing religious activities or overwhelmingly religious groups.

Porteous acknowledged the changes but added, "The Court does, however, feel the need to install legal safeguards to ensure the GPA [Governor's Program on Abstinence] does not fund 'pervasively sectarian' institutions in the future.

TRIBUTE TO NELLIE M. McKAY

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SERRANO. Mr. Speaker, I rise today to pay tribute to a wonderful community activist and dedicated humanitarian. Mrs. Nellie M.

McKay will turn 73 years old on July 27th and her birthday is cause for great celebration.

Nellie was born in 1929 to two hard-working parents, Polly and Alex Brown. She grew up with ten brothers and sisters and learned the importance of sharing and support at a young age. Nellie has applied these values throughout her life as a community activist. New York was fortunate enough to become home to Nellie in 1950, when she immediately became a volunteer with the Baby Tracks program at the old Lincoln Hospital in the South Bronx. She also lent her time and energy to the Prosthesis Clinic at St. Luke's Hospital, easing the spirits of patients there. Nellie was a key player in the immunization program at local public schools, which is a crucial initiative for under resourced schools, especially during those times.

Mr. Speaker, Nellie has always been committed to helping those around her and she has also been committed to educating and fostering awareness in those around her. Having earned a Bachelor of Arts degree from Norwich University, she champions the importance of education. She has facilitated countless workshops on Black History to empower members of the Black community with knowledge of their history and culture as well as to inform members of other ethnic communities. Her main goal was to bring people together through learning.

Many young people and adults throughout the South Bronx consider Nellie a second mother. She has cared for hundreds of children in her home and coordinated numerous events with young people in the community. The fashion shows she organized with Mott Haven HeadStart children created wonderful memories for many. While Nellie may have a special place in her heart for children, she is also very concerned with general community development and giving everyone, children and adults alike, a sense of pride in their neighborhood. She has spearheaded the reparation of abandoned buildings and vacant lots and the repaving of roads and sidewalks. Knowing that she and her neighbors deserved quality public transportation service, she called for and received improvement of the local bus line. Nellie has also helped empower fellow Bronx residents by participating in a number of voter registration drives, encouraging her neighbors to make their voices heard.

Mr. Speaker, at 73 years of age, Nellie continues to work hard and is currently the Chairperson of the Housing Committee of Planning Board 1, Assistant Chairperson of the Patterson Volunteer Committee, a lifetime member of the National Council of Negro Women, and a member of the New York NAACP, as well as many other prestigious organizations.

This exceptional human being is the mother of three, grandmother of six, great-grandmother of seven, and mother-figure of hundreds. I ask my colleagues to join me in honoring Mrs. Nellie McKay on her 73d birthday and to thank her for sharing so much of her heart, time and energy.

HONORING DR. JOHN E. SIRMALIS

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KENNEDY of Rhode Island. Mr. Speaker, I rise today to honor Dr. John E. Sirmalis. Dr. Sirmalis recently retired from the position of Technical Director of the Naval Undersea Warfare Center (NUWC) after 45 years of outstanding service. He earned his Bachelor of Science Degree in Mechanical Engineering in 1956, and a Master of Science Degree in Mechanical Engineering in 1958, both from the Massachusetts Institute of Technology. In 1975, he received a Doctorate Degree in Mechanical Engineering from the University of Rhode Island. He has a widely heralded reputation as a true leader and an exceptional visionary for submarine and undersea warfare systems. He has also been considered the nation's foremost authority on undersea weapons. As the "hands-on" leader of the Naval Undersea Warfare Center, Dr. Sirmalis stressed the importance of leading the Navy into the future through innovation, transformation and visionary concepts. Under his leadership and guidance, an incredible and significant series of accomplishments were produced in many fields, including Sonar Technology, Combat Control Systems, Periscopes, and Launchers.

As a recognized expert in management and technology, Dr. Sirmalis has served as a member of a number of high-level Navy panels and served as the Navy's undersea weapons expert for cooperative international data exchange programs. He played a vital role in the fielding and improving of the Mark 48 and the Mark 48 Advanced Capability (ADCAF torpedoes and other undersea vehicles. Dr. Sirmalis also implemented productivity enhancements, instituted an aggressive energy conservation program, and prioritized overhead functions to selectively reduce the cost of service. As a direct result of his initiatives, the Naval Undersea Warfare Center reduced overhead and costs while improving efficiency.

Throughout his distinguished career Dr. Sirmalis has received numerous awards. In 1997, Dr. Sirmalis received the Navy Distinguished Civilian Service Award, the highest award that can be received by a member of the Federal Government's Senior Executive Service. He has also been the recipient of the Meritorious Executive Presidential Rank Award, both in 1984 and 1994. He received the 1995 VADM Charles B. Martell Award presented for his outstanding record achievement and reputation as the world's foremost authority on undersea weaponry. Most recently he was selected to receive the 2000 Distinguished Civilian Award from the Naval Submarine League.

Mr. Speaker, Dr. Sirmalis has been a long serving and dedicated public servant and a true patriot. I am proud to recognize his long and distinguished career and accomplishments as Technical Director of the Naval Undersea Warfare Center. true naval tradition, I wish Dr. John E. Sirmalis "Fair Winds and Following Seas" as he enters into retirement.

IN RECOGNITION OF JAMAICA'S 40TH YEAR OF INDEPENDENCE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, it is with profound pleasure that I speak today in honor of the 164th year of Emancipation and the 40th anniversary marking Jamaica's independence from Great Britain. On August 6, 1962, Jamaica won its political independence from the colonial rule of Great Britain. This year, Ambassador Seymour Mullings will be leading the Jamaican and Jamaican-American communities in the United States in their yearly tradition of celebrating freedom from colonialism and slavery.

To give a brief history, Jamaica's first inhabitants were the South American Arawak Indians. In 1494, Columbus arrived on the island and claimed the land for Spain. Suffering a similar fate of the nearby Caribbean islands, the Arawak Indians were enslaved or died from diseases carried over by the Spanish settlers during their 160 year reign.

In 1655, the island was captured by the British and immediately started the large-scale importation of Africans for slave labor in the sugar plantations. The inhumane nature of slavery made slave revolts a common phenomenon in Jamaica. Both freed and escaped slaves (Maroons) continually fought their British captors for their right to live free. The most famous of these rebellions happened in 1831 by Reverend Sam Sharpe. Known as the "Christmas Rebellion", this insurgence lasted for four months and is credited for bringing about the end of slavery. Today, Sam Sharpe is recognized as a national hero in Jamaica.

It was not until after the American Colonies declared themselves independent from England in 1776 that the abolition movement began to flourish throughout Jamaica. March 1, 1808 marked the year when slave trade between Africa and Jamaica was abolished by the British Parliament.

In 1834, the Emancipation Act officially ended slavery; however, the slaves did not gain complete freedom until four years later on August 1, 1838. Many ex-slaves settled down as small farmers in the Blue Mountains, far away from the plantations they used to cultivate. Those who stayed on the plantations now received compensation for their labor. Struggles over land culminated in the Morant Bay rebellion, leading to the deaths of two Jamaican national heroes: George William Gordon and Paul Bogle, and forcing Great Britain to proclaim Jamaica as a crown colony in 1865.

Inspired by the political ideas of Marcus Garvey, a national movement for independence began in the late 1930s. Political parties started forming and years later in 1944, Jamaica was proud to hold its first democratic elections. Over a decade later on August 6, 1962, full political independence was granted, allowing Jamaica, a new member to the British Commonwealth,. to draft its own constitution and create a bicameral Parliament with elected representatives and a Prime Minister.

Jamaican-born Marcus Garvey was ultimately recognized as one of America's greatest Black leaders. He challenged the myths of racial inferiority and inspired hundreds of thousands of Black American supporters with hope for a better future. It is my hope that this Congress will support my bill, H. Res. 50, to exonerate this internationally renowned leader in the struggle for human rights. I ask my colleagues to join me today in clearing Marcus Garvey's name in honor of Jamaica's Emancipation from slavery and Independence from colonialism.

With 4,411 square miles of beautiful beaches, mountains and farms, Jamaica overcame centuries of economic and social struggles to become internationally acclaimed in all aspects of human culture, including tourism, music, and sports. Millions of tourists from all around the world vacation in Jamaica and experience for themselves the beauty that the inhabitants of this great nation get to see year round.

Although it is a small island nation of only two million people, Jamaica has had a remarkable impact upon the world of music. With its reggae beat played throughout the world, Jamaica has produced the musical stylings of Harry Belafonte, Jimmy Cliff, Peter Tosh and Bob Marley. The country is involved in all sports competitions, including cricket, soccer, basketball, boxing, and even more remote sports like baseball, hockey, and bobsledding. Great Jamaican athletes such as Heavyweight Champion Lennox Lewis and Patrick Ewing of the New York Knicks have contributed extensively to the American sports culture.

Mr. Speaker, it is an honor to speak in recognition of what has been accomplished by the people of Jamaica as we celebrate its independence. Jamaica has elevated itself from the perils of slavery and oppression to a country of great power and prestige. As we move forward, I am confident that our friendship with Jamaica will continue well into the future.

ALGERIA

HON. JOSEPH R. PITTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PITTS. Mr. Speaker, our nation celebrated our independence, freedom and democracy on the Fourth of July. Another independence day was commemorated one day later on July 5th—that of our friend and ally, Algeria, which celebrated 40 years of independence this year.

President Bush sent his congratulations to President Bouteflicka to mark the occasion, expressing his solidarity with the Algerian people. The President reiterated U.S. support for Algeria's efforts in the war on terror and progress in political and economic reforms for the Algerian people.

Algeria has been an increasingly staunch ally of the U.S. over the years, and has been a particularly helpful friend and ally in our war on terrorism. Algeria was one of the first nations to offer its condolences and assistance in the immediate aftermath of the attacks. In addition, Algeria has cooperated fully with our law enforcement and intelligence agencies as a partner in the global coalition against terrorism. Ambassador Francis X. Taylor, head of the State Department's Counterterrorism Office, praised Algeria's cooperation calling that nation "one of the most tenacious and faithful partners of the United States" which has "cooperated with us in every domain."

As important as Algeria is to us today, it will be increasingly important in the future as we explore liquefied natural gas reserves there to meet our nation's growing energy needs. Algeria has some of the largest natural gas reserves in the world, exporting over four million barrel per day, soon to be five million—the largest exporter in Africa. Algeria could be a prime market for our agricultural products. It is a home to U.S. investment and will be an increasingly important economic partner in the years to come.

Mr. Speaker, I would like to add my congratulations to the people of Algeria on the occasion of their forty years of independence and recognize the important contribution that nation is making in the international war on terror, as well as the progress being made towards real and lasting democracy.

IN HONOR OF JOHN JACOBS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PELOSI. Mr. Speaker, It is with great personal sadness that I rise to pay tribute to my friend John Jacobs, a great friend to San Francisco's business and conservation communities. John worked passionately to keep San Francisco's economy vital and its environment sound. The former head of the San Francisco Planning and Urban Research Association (SPUR) and the San Francisco Chamber of Commerce, he passed away on July 15th at 76 years of age.

A native of Philadelphia, John served as a paratrooper in the 101st Airborne Division during the Battle of the Bulge during World War II. Following the war, he worked for NATO in England and France. He attended New Mexico State University on the GI Bill and received his BS in Business. His college roommate, John Hirten, urged him to come to San Francisco to lead SPUR, which he did for the next twenty years.

John was one of the most influential figures in San Francisco's planning and economic development since the 1960's. Under his leadership, SPUR played a key role in the creation of the Golden Gate National Recreation Area by developing a network of more than 65 conservation and civic-minded organizations. He served as deputy director of SPUR from 1960 to 1968 and as executive director from 1968 to 1981.

He then served as executive director of the San Francisco Chamber of Commerce from 1981 to 1988, when he became president of the organization for a year. He played a leading role in resolving the downtown business community's battles with City Hall and neighborhood groups and helped draft guidelines for the treatment of HIV-positive employees.

John was also an avid sailor and expert yachtsman and named champion in several sailboat racing classes. His love for the San Francisco Bay Area was demonstrated by his service on the boards of the Fine Arts Museum, KQED, Point Reyes Bird Observatory, and the San Francisco State University Foundation.

John's service to San Francisco and the Bay Area was a gift to us all. His insistence that the business and conservation communities communicate with and support each other made San Francisco a model for other cities. He was a hero, always vigilant, always willing and able to do battle. To John's lovely wife Shirley, I extend my deepest sympathy and my gratitude to her for sharing her magnificent husband with us.

IN HONOR OF RICK SANCHEZ

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to honor and acknowledge the many accomplishments of Rick Sanchez, whose voice will now be heard on Spanish-language radio in New York and Miami. In a historic arrangement, Mr. Sanchez will be the first host of two shows, in two media markets and in two languages. The Federation of Cuban Musicians in Exile will honor Rick Sanchez at Las Palmas Restaurant on Sunday, July 28th in West New York, New Jersey.

With over 20 years of experience covering major national and international stories, Mr. Sanchez has made a significant and long-lasting contribution in broadcasting. Most notably, he covered the Contra War in Nicaragua, the uprisings in Haiti, and was one of the first reporters to broadcast live from tile scene of the World Trade Center on September 11, 2001.

An accomplished interviewer, he has received many accolades for his work, including the Florida Broadcaster of the Year Award and a special commendation from the White House. He is also a philanthropist, having led the relief efforts to assist victims of Hurricane Andrew in South Miami Dade County.

Rick Sanchez and his parents were exited from his birthplace, Havana, Cuba, when he was two years old. While attending Moorhead State University on a football scholarship, he was selected from thousands of applicants for a journalism scholarship at the University of Minnesota, awarded by CBS station WCCO-TV in Minneapolis. Following college, he was hired as a reporter at WSVN in South Florida and, at 22, he became the youngest anchor in the market when he became the station's weekend anchor.

Today, I ask my colleagues to join me in honoring Rick Sanchez for his groundbreaking achievements in broadcasting and for paving the way for the Hispanic community.

IN MEMORY OF ARIEL MELCHIOR, SR., CO-FOUNDER OF THE DAILY NEWS OF THE VIRGIN ISLANDS

HON. DONNA M. CHRISTENSEN

OF THE VIRGIN ISLANDS
IN THE HOUSE OF REPRESENTATIVES
Friday, July 26, 2002

Mrs. CHRISTENSEN. Mr. Speaker, I rise today to honor and pay tribute to Ariel Melchior Sr., co-founder of the Daily News of the Virgin Islands, died Tuesday night, July 23, 2002 at the Roy L. Schneider Hospital on St. Thomas in my district, the U.S. Virgin Islands. Members of his family were at his bedside at the time of his death. He was 93. Together with the late J. Antonio Jarvis, Melchior started the newspaper on August 1, 1930 and headed the publication for almost 50 years before it was purchased by Gannett Co. Inc. in 1978.

Melchior, Sr. is survived by two sons, Earl and Ariel, Jr.; six daughters, Marjorie Preston, Valerie Wade, Rita Watley, Norma Gomez, Laurel Melchior, and Juel Love; stepchildren George Dudley, Jr. and Rita Grant. A sister, Zelina Petersen, also survives together with many grand and great-grandchildren.

A giant among his fellow men, even though very few are aware of his intense love for his community or of his courage to stand by his decisions, Ariel Melchior, Sr., was a quiet but forceful champion of human rights. Chief among his contributions to his society is the establishment of the Daily News, a newspaper which has become a substantial force in the territory. Appearing on the newsstand on August 1, 1930, the paper was a joint effort of Mr. Melchior and the late Jose Antonio Jarvis, a teacher. Throughout the years, Melchior served on the paper in several positions, including business manager, a post he held for about 10 years.

When Jarvis sold his interest to his partner, Melchior then assumed full ownership and served as editor. Under his guidance, the paper observed almost half a century, never missing one day's publication. It was also under his leadership that the paper was the recipient of several awards and citations. A partial listing of these tributes include certificates of appreciation from the Junior Chamber of Commerce, St. Thomas (1961), Boy Scouts of America (1961), The National Safe Boating Week Committee (1966), a Public Service award form the United States Department of Labor (1970), and an anniversary award from the Charlotte Amalie High School (1971).

On occasions of various anniversaries of the paper, letters of commendation have been received from prominent National, International, and Local figures and organizations. Some of these are Dwight D. Eisenhower, President of the United States (1959); John D. Merwin (former), Governor, U.S. Virgin Islands (1961); Hubert H. Humphrey, Vice President of the United States (1965); Fred Seaton, U.S. Secretary of Interior (1959); Lord Mayor of Dublin (1954); Erik Eriksen, Danish Information Services (1967); William H. Hastie, Judge United States Court of Appeals for the Third Circuit (1954); Syril E. King, Governor, U.S. Virgin Islands (1975); Women's League, St. Thomas (1966); Ralph M. Paiwdonsky, Governor, U.S. Virgin Islands (1975); The Very Reverend Edward J. Harper, Bishop, Roman Catholic Diocese, St. Thomas, V.I. (1975).

These expressions attest to the successful role the newspaper has played in fulfilling its obligation to protect the democratic process and to provide for good, clean government. To achieve these goals, Mr. Melchior even took his cause to the courts.

A classic example in which he challenged violations of the Constitution was the case of Melchior v. St. Thomas Park Authority, et al., 1966. In that case, Mr. Melchior contested the action of the local Park Authority for prohibiting or restricting the use of any part of Magen's Bay on St. Thomas to the public because the beach was conveyed from Arthur S. Fairchild for the use of the people of the Virgin Islands in perpetuity. The court agreed and granted a permanent injunction against the Park Authority and the Government of the Virgin Islands.

In another instance via the Daily News, Mr. Melchior's charge of irregularity in Government was brought to the public's attention during congressional hearings on the Virgin Islands Elective Bill on June 20, 1968. Remarks made at this hearing by representative John P. Saylor indicated that there was a violation of the Hatch Act by Government employees. The Daily News further charged that the persons involved were duly notified and warned. In the conclusion of his remarks, Mr. Sailor gave credit to the paper for its commitment to preserving good government.

Always a champion in civic matters, in 1939 Mr. Melchior intervened when the name of Alvaro de Lugo, the first native born U.S. Postmaster was omitted from the bronze plaque which was being installed in the U.S. Post Office in Charlotte Amalie, St. Thomas. He brought the omission to the attention of the U.S. Fourth Assistant Postmaster General, Smith W. Purden. As a result, the name of the Postmaster and the Governor, Lawrence Cramer, were included.

Besides the power of the press, it was also through personal involvement as a concerned citizen or through his civic affiliations that Mr. Melchior has continued to contribute his services and expertise to the community. After the sale of the Daily News in 1978 to the Gannett Publishing Company, he concentrated on several other goals. He established the Ariel Melchior, Sr. Foundation, an agency which among other activities rented scholarships to students or other persons with interests in journalism.

In addition, the foundation, along with the St. Thomas Historic Trust, in 1980, erected a bust of the late Antonio Jarvis, an outstanding Virgin Islander. The life-sized bronze statue is based on a six-foot marble pedestal. Areas depicting Mr. Jarvis's specialties are attached on six "books" on which his arm rests. The memorial is housed in the educator's park in St. Thomas.

Another of his personal accomplishments is the publication of "Thoughts Along the Way" (1980). A compilation of selected Daily News Editorials, the book gives an in-depth look into life in the Virgin Islands. A second publication, "Commentaries—from the Archives," is a compilation of several letters of special significance, a photo file and copies of awards and citations to him and the Daily News. Earlier publications are a "Souvenir of the American Virgin Islands" (1953) and "Virgin Islands Magazine" (1936–1963). This periodical was awarded a scroll of honorable mention in 1952 from the Professional League of Virgin Islanders in New York for its "excellent example of modern magazine make-up and journalistic content."

Many of the organizations with which he has been affiliated have, through the years acknowledged his contributions. A member of the Inter-American Press Association (In 1969 he was named vice chairman by the president of the association, James S. Coplen). In recognition of this position, he was commended by prominent figures in the newspaper publishing industry. In 1973, he was among seventeen residents honored by the V.I. Academy of Arts and Letters for the contributions to the cultural heritage of the territory. In addition, Mr. Melchior received a plaque as evidence of his membership in the association. He was also awarded a plaque in 1979 for his outstanding service to the Rotary Club of St. Thomas. In 1979 he was awarded a service award in recognition of outstanding service as a senior member of the Governing Board of the Virgin Islands Port Authority. In that same year he received a certificate of appreciation for his personal interest in making the intensive care unit at the Knud-Hansen Memorial Hospital a reality. Other agencies recognizing his contributions include Virgin Islands National Guard, Boy Scouts of America, Junior Chamber of Commerce, and executive board of the Rotary Club of St. Thomas. A few other outstanding certificates include the Navy League's certification of Life Membership, the United States Congressional Advisory Board's Certificate in Grateful Recognition of his Outstanding Services and the 1982 Trustees Distinguished Achievement Award from the College of the Virgin Islands, now the University of the Virgin Islands. He is currently a member of the board of Overseers of the University and was its keynote speaker at the 1982 graduation ceremonies. The Virgin Islands Legislature has publicly recognized the contributions of Mr. Melchior on two separate occasions. In 1950, the fifteenth Legislative Assembly approved a resolution on the event of his twentieth year as a newspaper publisher, and in 1975 the eleventh Legislature approved a resolution in honor of his 45th year as a publisher.

It was Francis Xavier Cervantes, Regional housing director, who in 1975 best summarized Mr. Melchior's impact on his community with this quote, "The past of the Virgin Islands is wrapped around him like a cloak, and the future will regard him as the elder statesman that he is."

Formerly married to the late Violet Cruz, he was the father of their seven children: Earle, Marjorie Melchior Preston, Valerie Melchior Wade, Ariel Jr., Rita Melchior Watley, Norma and Laurel.

He and his second wife, Gertrude Lockhart Dudley Melchior, are world travelers who have visited many countries in Europe, Asia, Central America, South America, and the Caribbean. An avid sportsman, Mr. Melchior enjoys deep sea fishing and sailing.

Mr. Speaker, the description of Ariel Melchior, Sr.'s accomplishments which I recite here today, is taken from a book entitled "Profiles of Outstanding Virgin Islanders", written by Ruth Moolenaar of St. Thomas.

A TRIBUTE TO LANGSTON HUGHES

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, this year is the 100th anniversary of the birth of Langston Hughes (February 1, 1902). Schools, universities, libraries, and organizations around the country are celebrating his life. I want to take the time to recognize an outstanding individual who has contributed greatly to this country.

Hughes was born in Joplin, Missouri to abolitionist parents and attended high school in Cleveland, Ohio where he first began writing poetry. At his father's encouragement, Hughes attended Columbia University to studying engineering for a "practical" job. However, Hughes left the field in order to pursue his love for words. Hughes received a scholarship to Lincoln University, in Pennsylvania, where he eventually received his B.A. degree in 1929. His first published poem was "The Negro Speaks of Rivers" and became one of his most famous works.

Hailed as a genius, Hughes gave the gift of words to a country in turmoil. His writing began to flourish during the Harlem Renaissance of the 1920's and 30's, a time in which racism, war, the Depression, and other social ills plagued this nation. Hughes traveled throughout Europe, West and Central Africa during the early 1920's and returned to Harlem in 1924.

In the following year he moved from Harlem to Washington, DC. While in our nation's capital, he was heavily influenced by the blues and jazz scene. His work captured the dynamic of black music on paper, inspiring academia to study and recognize the uniqueness of black music as being an authentic American art form.

Some of Hughes' most famous works are Not Without Laughter (1930), The Big Sea (1940), and I Wonder As I Wander (1956), his autobiographies. His poetry includes Tambourines To Glory (1958), The Weary Blues (1926), The Negro Mother and other Dramatic Recitations (1931), The Dream Keeper (1932), Shakespeare In Harlem (1942), and The Best of Simple (1961).

In all, he wrote 16 books of poems, two novels, three collections of short stories, four volumes of editorial and documentary-type fiction, 20 plays, children's poetry, musicals and operas, 3 autobiographies, a dozen radio and television scripts and dozens of magazine articles. He also edited seven anthologies.

He continued throughout his life to write and edit literary works up until his death on May 22, 1967 when he succumbed to cancer. Later, his residence at 20 East 127th Street in Harlem was given landmark status by the New York City Preservation Commission. His block of East 127th Street was renamed "Langston Hughes Place."

We are inspired by the words of Langston Hughes; "We build our temples for tomorrow, as strong as we know how and we stand on the top of the mountain, free within ourselves." Hughes was a notable figure in America's history and his voice will live on throughout future generations.

BURMA

HON. JOSEPH R. PITTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PITTS. Mr. Speaker, I am deeply disturbed by the horrifying reports of increasing repression in Burma. Accounts detail ongoing massacres, torture, burning of villages and churches, and forced labor of villagers by Burma's military regime in the Karen state and throughout the country. Despite the regime's promises of change and liberalization, Burma's military dictatorship has shown more of the same terrible treatment of the people—recently a dozen innocent civilians, including children and babies were massacred.

I have in my office graphic photos showing the April 28, 2002, massacre in Burma's Dooplaya district. The photos show the bodies of victims stacked neatly after their murder. The regime's soldiers shot and killed Naw Daw Bah, a two-year-old girl, and Naw Play and Naw Ble Po, two five-year-old girls. Nine others were shot, but fortunately escaped, including a six-year old boy who played dead until the military left the site. These first-person accounts, plus the photos, provide incontrovertible evidence of the State Peace and Development Council's (SPDC) horrifying human rights abuses and crimes against humanity as they continue their attempt to subjugate the entire country through whatever means they see necessary.

Mr. Speaker, what possible threat do babies and two and five-year-old little girls present to military men with arms?

Numerous reports from eyewitnesses and credible human rights organizations reveal that this latest massacre is but one example of an ongoing campaign of terror by Burma's military regime against its own people. The SPDC has burned down scores of villages and forcibly relocated villagers to areas near military bases to be forced laborers. During attacks on villages, the military also has burned down places of worship and tortured and killed ministers and monks. The military regime drove thousands of Karen and other ethnic villagers into hiding in the jungle—these internally displaced people have tried to flee to Thailand to Join the 120,000 plus living in refugee camps. In Burma's Shan state, hundreds, if not thousands, of women have been raped by Burma's SPDC in its quest to dominate those who struggle for freedom and democracy.

Shockingly, Burma's military regime operates with impunity. Amnesty International, in its most recent report on Burma, says, "No attempt appears to have been made by the SPDC [regime] to hold members of the tatmadaw [military] accountable for violations which they committed, and villagers do not have recourse to any complaint mechanism or other means of redress."

Mr. Speaker, no one should be forced to live like a hunted animal always on the run, in fear for its life. It is time that the international community wake and take action against the horrors occurring in Burma. While the military regime woos diplomats, business guests, and others in downtown Rangoon, Burma's people are fleeing in fear of intensifying and acute repression. Our government and the international community must press the SPDC to immediately cease its campaign of terror against the people of Burma. I urge my colleagues to join in solidarity with the Burmese people by raising their voices for freedom.

IN GOD WE TRUST THREATENED BY PLEDGE SUIT

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. ROTHMAN. Mr. Speaker, as we are all aware, the Ninth Circuit Court of Appeals recently held that the Pledge of Allegiance is unconstitutional because the phrase "under God," combined with daily recitation of the Pledge, violates the establishment clause of the Constitution. Following their victory, the plaintiffs vowed to challenge the motto, "In God We Trust," which appears on American currency. Fair Lawn, New Jersey Mayor and numismatic expert David L. Ganz recently published an article in the Numismatic News that analyzes why "In God We Trust" was chosen as the national motto, and why it should remain on our currency. With the chair's permission, I would like to submit this article, entitled "In God We Trust Threatened by Pledge Suit," for the RECORD. I also urge the members of this body to support the current Pledge of Allegiance and the continued use of "In God We Trust" on our nation's currency.

[From the Numismatic News, July 16, 2002]

'IN GOD WE TRUST' THREATENED BY PLEDGE SUIT—UNDER THE GLASS

(By David L. Ganz)

Front-page news and accompanying legislative denunciations have greeted the decision of the United States Court of Appeals for the 9th Circuit that the nation, "under God," indivisible, in the Pledge of Allegiance is unconstitutional. The successful plaintiffs have separately pledged to initiate an attack on the national motto, "In God we Trust" to remove it from U.S. currency.

Although the motto has been attacked several times in other appellate courts—the Supreme Court has never explicitly ruled on it—there is some question as to what success this might have, and the consequences to coin and paper money design.

Involved is the case of Newdow v. U.S. Congress, 00-16423 (9th Cir. June 26, 2002), which was decided by the appellate court that covers California and much of the American West, comprising 20 percent of the nation's population and about a third of its area and natural resources.

Newdow, an avowed athiest, brought the suit because his young daughter attends a public elementary school in the Elk Grove Unified School District in California. In accordance with state law and a school district rule, teachers begin each school day by leading their students in a recitation of the Pledge of Allegiance.

Young Miss Newdow is not required to say the pledge; that was decided some 60 years ago when the case of West Virginia v. Barnette, a 1943 decision in which the U.S. Supreme Court prohibited compulsory flag salutes. Her father's objection was that she was intimidated by listening to it, at all.

On June 22, 1942, Congress first codified the Pledge in Public Law 642 as "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all." (The codification is found in 36 U.S.C. §1972.)

A dozen years later, on June 14, 1954, Congress amended Section 1972 to add the words "under God" after the word "Nation" (Pub. L. No. 396, Ch. 297 68 Stat. 249 (1954) ("1954 Act")). The Pledge is currently codified as "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all" (4 U.S.C. §4 (1998)).

The following year, 1955, largely at the instigation of Matt Rothert, later president of the American Numismatic Association, Congress amended the U.S. Code to require the national motto to be placed on all coins and currency. (Earlier, Congress took action to place the motto on the two-cent piece (1864), and on some gold coins (1908)).

There is some utility in reviewing what the Pledge of Allegiance is, and for that matter, the history of the national motto, "In God we Trust," where the "we" is not capitalized and all other letters are.

Francis Bellamy, a Baptist minister with socialist leanings, wrote the original version of the Pledge of Allegiance Sept. 8, 1892, for a popular family magazine, *The Youth's Companion, a Reader's Digest*-like periodical of the era.

The original pledge language was "I pledge allegiance to my Flag and to the Republic for which it stands, one nation, indivisible, with liberty and justice for all."

A generation later, in 1923 the pledge was adopted by the first National Flag Conference in Washington, where some participants expressed concerns that use of the words "my flag" might create confusion for immigrants, still thinking of their home countries. So the wording was changed to "the Flag of the United States of America." In 1954, Congress after a campaign by the Knights of Columbus added the words, "under God," to the Pledge. The Pledge was now both a patriotic oath and a public prayer.

Legislation approved July 11, 1955, made the appearance of "In God we Trust" mandatory on all coins and paper currency of the United States. By Act of July 30, 1956, "In God we Trust" became the national motto of the United States.

Several courts have been asked to construe whether or not the motto was unconstitutional and a violation of the First Amendment to the Constitution—freedom of religion arguments being raised.

In a 10th circuit Court of Appeals case arising in Colorado, Gaylor v. US, 74 F.3d 214 (10th Cir. 1996), the Court quoted a number of Supreme Court precedents and concluded that, "The motto's primary effect is not to advance religion; instead, it is a form of 'ceremonial deism' which through historical usage and ubiquity cannot be reasonably understood to convey government approval of religious belief."

As neat a package as that creates for concluding the controversy, that is simply not the history of the motto "In God we Trust" or how it found its way onto American coinage. That story goes back to the bleak days of the Civil War, when the nation's constitutional mettle was being tested on the battlefields that left hundreds of thousands of Americans dead.

From the records of the Treasury Department, it appears that the first suggestion of the recognition of the deity on the coins of the United States was contained in a letter addressed to the Secretary of the Treasury, Hon. S.P. Chase, by the Rev. M.R. Watkinson, Minister of the Gospel, Ridleyville, Pa., under date of Nov. 13, 1861.

"One fact touching our currency has hitherto been seriously overlooked, I mean the recognition of the Almighty God in some form in our coins," Watkinson wrote to Secretary Chase.

"You are probably a Christian. What if our Republic were now shattered beyond reconstruction? Would not the antiquaries of succeeding centuries rightly reason from our past that we were a heathen nation? What I propose is that instead of the goddess of liberty we shall have next inside the 13 stars a ring inscribed with the words 'perpetual union'; within this ring the all-seeing eye, crowned with a halo; beneath this eye the American flag, bearing in its field stars equal to the number of the States united; in the folds of the bars the words 'God, liberty, law.'

"This would make a beautiful coin, to which no possible citizens could object. This would relieve us from the ignominy of heathenism. This would place us openly under the Divine protection we have personally claimed.

"From my heart I have felt our national shame in disowning God as not the least of our present national disasters. To you first I address a subject that must be agitated," he concluded.

A week later, on Nov. 20, 1861, Chase wrote to James Pollock, the director of the Mint, "No nation can be strong except in the strength of God, or safe except in His defense. The trust of our people in God should be declared on our national coins."

He concluded with a mandate: "You will cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and terset words possible this national recognition."

In December 1863, the director of the Mint submitted to the secretary of the Treasury for approval designs for new one-, two- and three-cent pieces, on which it was proposed that one of the following mottoes should appear: "Our country; our God"; "God, our Trust." (Patterns for the two-cent pieces of this are found in Pollack 370–383.)

Dec. 9, 1863, saw this reply from Chase: "I approve your mottoes, only suggesting that on that with the Washington obverse the motto should begin with the word 'Our' so as to read: 'Our God and our country.' And on that with the shield, it should be changed so as to read: 'In God we trust.'"

The Act of April 22, 1864, created the two-cent piece and Secretary Chase exercised his rights to make sure the motto was in the design. By 1866 it had been added to the gold $5, $10 and $20, and the silver dollar, half dollar, quarter and nickel.

As Augustus Saint-Gaudens designed the new gold coinage of 1907 at the instigation of his friend President Theodore Roosevelt, the motto was removed for the reason that "Teddy" thought it blasphemous. Congress responded by legislatively directing its continuation.

Where all this leads in the 21st century remains an unknown—but an interesting hypothesis can be derived. The 9th Circuit's "Pledge of Allegiance" case will be appealed to the U.S. Supreme Court, and likely as not, the "In God we Trust" elimination suit will progress in the U.S. district court.

As Justice William O. Douglas noted in a concurring opinion in the 1962 Supreme Court case Engel v. Vitale, 370 U.S. 421 (1962), "Our Crier has from the beginning announced the convening of the Court and then added 'God save the United States and this Honorable Court.' That utterance is a supplication, a prayer in which we, the judges, are free to join."

Justice Douglas, one of the most liberal in first amendment views, saw little the matter with it. Indeed, he said, "What New York does on the opening of its public schools is what each House of Congress does at the opening of each day's business."

The 9th Circuit, by contrast, says "The Pledge, as currently codified, is an impermissible government endorsement of religion because it sends a message to unbelievers 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'"

An earlier 9th Circuit case in 1970 which dealt with a direct attack on the motto on the coinage was briefly discussed in a footnote of the lengthy opinion. "In Aronow v. United States, 432 F.2d 242 (9th Cir. 1970), this court, without reaching the question of standing, upheld the inscription of the phrase 'In God We Trust' on our coins and currency. But cf. Wooley v. Maryland, 430 U.S. 705, 722 (1977) (Rehnquist, J., dissenting) (stating that the majority's holding leads logically to the conclusion that 'In God We Trust' is an unconstitutional affirmation of belief)."

Nothwithstanding Justice Rehnquist's dissent, a more contemporary analysis of his views are more apparent in later cases since his becoming Chief Justice, and they suggest strongly that he has no issue with the pledge or the national motto on coinage.

Most likely, the next several months will see a hardening of positions and a wending process in which the lawsuit, and appeals, move toward highest court resolution. That could come in 2003 or 2004, in time for it to have impact on the next presidential election.

For now, until a stay is issued, the pledge is out in California and the 9th Circuit; God remains on our coinage, so long as we trust.

HONORING WESTERN NEW YORK GROUND ZERO VOLUNTEERS

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. REYNOLDS. Mr. Speaker, during his State of the Union Address, President George W. Bush said, "none of us would ever wish the evil that was done on September the 11th. Yet after America was attacked, it was as if our entire country looked into a mirror and saw our better selves. We were reminded that we are citizens, with obligations to each other, to our country, and to history. We began to think less of the goods we can accumulate, and more about the good we can do."

In Western New York, as in communities across this great nation, we witnessed first hand our better selves: as Americans from all backgrounds and walks of life came together to show their love of country and of their neighbor. We saw it in countless acts of selflessness and heroism; from those brave patriots aboard United Airlines Flight 93 to our police and firefighters, medical and emergency crews, and countless volunteers—who showed us and the world the true strength of America's heart and America's character.

One such group of volunteers will be honored for their work at Ground Zero during a Liberty Day Awards Ceremony on Thursday, August 1, 2002. These dedicated and courageous men and women left their jobs, their homes, and their families to give of themselves in relief and recovery efforts, and I ask that this Congress join me in saluting their hard work, their commitment, and their patriotism. They are:

Mr. Wesley Rehwaldt, Mr. Woody Seufert, Mr. David Albone, Ms. Karen Russo, Ms. Ann Riegle, Mr. Scott Schmidt, Mr. Jesse Babcock, Mr. Harold Suitor; Mr. Marc Lussier, Ms. Ann Riester, Mr. James Riester, Mr. William Drexler, Mr. Russell Genco, Mr. H.T. Braunscheidel, Mr. Fred Drahms, Ms. Connie Kearns, Mr. Darren Burdick, Ms. Margaret Blake, Mr. Scott Blake, Mr. Chad Shepherd, Ms. Wendi Walker, Ms. Amanda Sparks, Ms. Sherri Reichel, Mr. Michael Owens, Mr. Chris Lane, Mr. Anthony Kostyo, Mr. Thomas FitzRandolph, Mr. Kevin Dilliot, Mr. Charles Huntington, Mr. Mark Gilson, and Mr. Mark Gerstung.

Also, Mr. Mark Maefs, Mr. Ray Catanesi, Mr. Kevin Baker, Mr. Ross Johnson, Jr., Mr. James Carbin, Jr., Mr. Dan Hosie, Mr. Scott Then, Mr. Robert Jasper, Jr., Mr. Robert Jasper, Sr., Mr. Wayne N. Seguin, Mr. Wayne E. Seguin, Mr. Samuel Ricotta, Mr. Richard Bilson, Mr. Richard Silvaroll, Mr. Michael Kiff, Mr. Herbert Meyer, Mr. Chris Hillman, Ms. Victoria Baker, Mr. Ralph Salvagni, Mr. Richard Wayner, Mr. Robert Conn, Mr. James Volkosh and Mr. Barry Kobrin.

TRIBUTE TO GLENN J. WINUK

HON. PETER T. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KING. Mr. Speaker, I rise today to honor the memory of Glenn J. Winuk, a heroic citizen who sacrificed his life on September 11th to save the lives of others. Glenn served the Jericho community for 19 years as an attorney, an EMT, and commissioner of the Jericho Fire District.

Immediately after the World Trade Center Towers were attacked on September 11th, Glenn, a partner in the law firm of Holland & Knight LLP, helped evacuate tenants of his office building at 195 Broadway, about a block away from Ground Zero. He then identified himself as a rescue professional to other rescue workers on the scene, borrowed a mask, gloves, and First Response medic bag to assist others as the South Tower fell minutes later. His remains were recovered, medic bag by his side on Wednesday, March 30th, 2002.

Glenn Winuk was an attorney, but his real passion was firefighting. His passion and bravery were displayed on many occasions, such as rendering aid in 1993 when terrorists bombed the World Trade Center and in 1990 at the Avianca plane crash on Long Island.

On September 11th, Glenn ran to Ground Zero as a volunteer firefighter and EMT worker. He acted quickly and without regard for his own life, only for those in trouble. It was not Glenn's responsibility to put his life on the line for others that terrible day. But he had the training to help and was in the position to do so. Glenn Winuk paid the ultimate price while saving the lives of others, and his memory will serve as a testament to his bravery. Let us honor the life he gave, and the heroic legacy he left behind.

THE CONTRACTOR ACCOUNTABILITY ACT OF 2002

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MALONEY of New York. Mr. Speaker, today I introduce legislation that will fortify the current Federal debarment system. The United States is the largest consumer in the world and invests over $215 billion in goods and services annually.

Yet the Federal government's watchdogs, the Federal suspension and debarment officials, currently lack the information they need to protect our business interests. We have no central way of accounting for the performance of our purchases. Beyond a listing of currently debarred or suspended persons, officials are limited to their individual agency's knowledge of an entity's track record, press reports and personal contacts with other agencies. The American public's knowledge is limited even further. Often times this allows Federal contractors and assistance recipients to repeatedly violate Federal law yet still receive millions of dollars from the Federal government. In a time when corporate accounting scandals are being revealed at an unprecedented pace, isn't it wise to have a full accounting of the Federal government's investments?

A recent report conducted by the Project on Government Oversight (POGO) discovered that 16 of the 43 top Federal contractors (based on total contract dollars received) have a total of 28 criminal convictions. The top 4 contractors have at least 2 criminal convictions since 1990.

The Contractors Accountability Act of 2002 establishes a centralized database on actions taken against Federal contractors and assistance participants, requiring a description of each of these actions. This will provide debarring officials with the information they need to protect the business interests of the United States. It places the burden of proving responsibility and subsequent eligibility for contracts or assistance on the person seeking contracts or assistance should they have been previously convicted of two exact or similar violations that constitutes a charge for debarment. Additionally, it improves/clarifies the role of the Interagency Committee on Debarments and Suspension and provides for retention by the prosecuting Federal agency of fines paid by offender for reimbursement of costs associated with suspension and debarment activities.

LATINO CHILDREN AND HEALTH DISPARITIES

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RANGEL. Mr. Speaker, I rise to call to the attention of my colleagues the growing health problems of Latino children.

The Journal of the American Medical Association reports that Latino children have suffered from "a disproportionate number of health problems that have been poorly studied." Diabetes, obesity, and asthma are disproportionately prevalent in the Latino community. Additionally, about 30% of the Latino population are uninsured and of those that do have health insurance, many have problems gaining proper access to medical attention.

Language barriers often continue to exist despite the executive order issued by President Clinton in August 2000 "mandating that physicians who receive Medicaid and Medicare funds provide interpreter services for patients who do not speak English." Yet citing cost, national medical associations are opposed to implementing these services.

Far too little health research has been conducted within minority populations. This fosters a lack of clarity in the etiology of common diseases among minority communities.

As a result, medical practitioners are hampered in developing culturally sound intervention that promotes the well-being of minority individuals. For example, why do Latino children tend to receive less pain medication than white or African-American children while hospitalized for limb fractures?

Access to health care, quality of care, health insurance coverage, environment, and lifestyle are most likely the contributing factors, but we do not understand the dynamics of why minorities, especially children, are not benefiting from our health care system.

Eliminating health disparities in minority communities has been a major goal since the year 2000. In that year, the Office of Research on Minority Health (ORMH), originally established in 1990, was elevated to the National Center on Minority Health and Health Disparities (NCMHD). This effort was encouraged by Congress to "promote minority health and to lead, coordinate, support, and assess the NIH effort to reduce and ultimately eliminate health disparities" and to "reach out to minority and other health disparity communities."

It is imperative that we begin to envision this country as a place where all populations have equal opportunity to live long, healthy, and productive lives. More research on health disparities in minority populations must be conducted and doctors, health officials, and the American people must recognize that these disparities are a very real problem.

We must take a stand to seriously address the health disparities within Latino children and other minority populations.

[From the New York Times, July 26, 2002]

HEALTH PROBLEMS OF LATINO CHILDREN

One in every six American children is Hispanic, but it's hard to find them in the research on child health. According to the Journal of the American Medical Association, Latino children suffer from a disproportionate number of health problems that have been poorly studied. Diabetes is on the rise, and Latino boys have the highest rates of obesity among young people, but researchers don't know why. They also don't know why Puerto Rican children have rates of asthma higher than those in any other region.

Many of the statistics pose mysteries that go beyond the fact that Hispanic children are less likely to be covered by health insurance than are children in other ethnic groups. For instance, Latino children who are hospitalized with limb fractures receive less pain medication than do white or African-American youths. No one seems to know why, and data is hard to collect because Hispanic children are often included in the categories of white, black or "other" in medical research. Many researchers also ignore these children and their parents by excluding non-English-speakers from their studies.

Much more research is clearly necessary. Meanwhile one obvious place to start narrowing the health gap for Latino children is the language barriers. President Bill Clinton issued an executive order in August 2000 mandating that physicians who receive Medicaid and Medicare funds provide interpreter services for patients who do not speak English. The rules are flexible, but the national medical associations have opposed them as being too costly. Given the disturbing data on the state of Latino children's health, their objections send the wrong message.

CELEBRATING SALVADORAN DAY

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HONDA. Mr. Speaker, I rise today to applaud the California State Legislature for its efforts to recognize a day that celebrates the contributions of the Salvadoran community in the State of California. On August 6, 2002, the State of California will officially celebrate El Dia del Salvadoreño (Salvadoran Day) for the first time. There are more than 275,000 Salvadorans in California, the majority of whom reside in Los Angeles County. Many of these individuals have actively participated in the professional and political arenas, as well as many other fields. It is my hope that the strengths, struggles and triumphs of this culturally-rich community can be remembered and passed on for generations to come.

Salvadoran communities throughout California and El Salvador currently celebrate Salvadoran Day on August 6 as an act of remembrance and celebration. This year's celebration is expected to draw up to thirty thousand people. Historically speaking, the official founding of Villa de San Salvador occurred on August 6, 1525, in the Valle de las Hamacas (Valley of the Hammocks). In this place, the indigenous peoples of Central America fought historic battles against the Spanish conquistadors. The spirit of those indigenous warriors lives on in the Salvadoran people today and is evident in their will to survive and fight to better the lives of their families and communities.

The Salvadoran American National Association (SANA) should be commended as well for its actions on behalf of Salvadoran communities across the country. SANA is a multi-ethnic peace and reconstruction organization founded by Salvadoran-American citizens who have been involved in the community for over 25 years.

Mr. Speaker, I am very proud of the California Legislature and SANA for their contributions to the Salvadoran community. Having served two years as a Peace Corps volunteer in El Salvador, I am especially touched by this issue because of my close ties to the people there and to the Salvadoran community in California. I will forever remember the generosity and friendship of the Salvadoran people, and I am proud to celebrate with them this Dia del Salvadoreño.

JUNIOR ACHIEVEMENT VOLUNTEER OF THE YEAR DAVID SCHRADER

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HOEKSTRA. Mr. Speaker, I rise today in recognition of a distinguished resident of Michigan's Second Congressional District who is being honored by an organization that has had an immeasurable impact on America. David Schrader, of Baker College in Muskegon, is Junior Achievement's National High School Volunteer of the Year.

Mr. Schrader, a resident of Whitehall, Michigan, has volunteered for 2 years and taught 34 JA classes in that time. Each class encompassed an hour of time and focused on the teaching of fundamentals of business and economics to students. Having started his own accounting firm, and through his work as a professor at Baker College, Mr. Schrader was able to share his professional insights and experiences with the students he instructed.

Mr. Schrader brings a unique energy and enthusiasm to the classroom, and he always goes above and beyond in his efforts. He has volunteered to teach students at the elementary, middle and high school levels, and he has volunteered in rural parts of Michigan, so that young people in those areas can share in the important business and economic educational programs supported by JA as well.

Founded in 1919 as a collection of small, after-school business clubs for students in Springfield, Massachusetts, Junior Achievement serves as a testament to the human spirit and American ingenuity. Mr. Schrader is one of the more than 100,000 volunteers who assist JA in spreading the free enterprise message of hope and opportunity to young people across America.

Mr. Speaker, David Schrader represents the proud and longstanding tradition of volunteerism in the State of Michigan. I wish to congratulate him on his accomplishments and for his outstanding service to Junior Achievement and the students of Michigan.

ON THE PROGRESS OF FUEL CELLS AND THE CONTINUING NEED FOR ALTERNATIVE ENERGY SOURCES

HON. MICHAEL R. McNULTY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. McNULTY. Mr. Speaker, on Tuesday of this week, at the Town Hall in Babylon, Long Island, located in New York's Second Congressional District and represented by my colleague, Mr. ISRAEL, without much fanfare, we saw into the future.

A device was switched on, Mr. Speaker, that—by converting natural gas to hydrogen—produces both useable electricity and useable heat. The heat is captured and reused to warm the building, and the electricity is harnessed and channeled to supplement the structure's power supply. And no contaminants or particulates of any kind are, or will be, released into the atmosphere or water supply at any point in the process.

This device is the first of its kind in use in the State of New York to provide the combined supplemental heat and electricity for a building. This device is called the "GenSys5C" and is produced by Plug Power in Latham, New York—which, I am proud to say, is located in my Congressional District. This device, Mr. Speaker, is called a fuel cell.

Last year, I joined a number of my colleagues from both sides of the aisle to introduce H.R. 1275, a bill to provide tax incentives for the development and production of fuel cells and related technologies.

Wisely, this tax credit was included in both the House-passed and Senate passed versions of the energy bill. As our colleagues on the conference committee meet to resolve the differences, I encourage them to support the preservation of this provision in the final report.

Fuel cells, Mr. Speaker, represent the future of energy efficiency, the future of clean and renewable heat and electricity energy sources for our Nation.

There are solutions to our energy crisis that avoid the continued depletion of our natural resources and destruction of the environment, and fuel cell technology is one of them. I am proud to call attention to the milestone reached on Long Island by Plug Power. I call upon my colleagues to continue to support research and development in this field, in order to ensure that success stories will continue to be told. As those present at the Babylon Town Hall already know, the future is now, and it is exemplified in the production of clean, efficient energy using fuel cell technology.

RECOGNITION OF RETIREMENT OF MILDRED PARSONS FROM THE FEDERAL BUREAU OF INVESTIGATION

HON. ALBERT RUSSELL WYNN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. WYNN. Mr. Speaker, I would like to honor Mildred C. Parsons, a constituent in my district who recently retired from the Federal Bureau of Investigation. With the recent controversial security revelations and the new reorganization of the Homeland Security Department, we have not heard much positive news about our Nation's security agencies.

Despite what we often hear or see in the media, there are many dedicated individuals who are working diligently within these agencies. In particular, I would like to commend Ms. Mildred Parsons of Takoma Park, Maryland, affectionately called "Millie" by her coworkers, for her tremendous service. Ms. Parsons, who retired from the FBI in June at the age of 88, was recognized with an article in the Washington Post, which I would like to enter into the official House RECORD. In 62 years, 9 months, and 2 days, Ms. Parsons never once called in sick to work and retired in June with over 6,000 hours in sick leave.

She has been called an "institution within an institution" by her former supervisor at the field office. I would like to again thank Ms. Parsons for her wonderful and diligent service, and wish her a wonderful retirement. Judging from the article on her, she still has a lot of spunk left.

I think all of us can learn a lot from Ms. Parsons' spirit, hard work, and determination. Thank you Ms. Parsons, your hard work is the foundation upon which our Nation was built.

[From the Washington Post, June 29, 2002]

NOT A SINGLE SICK DAY IN 62 YEARS

(By Allan Lengel)

Mildred Parsons, bucking the very laws of nature, worked as an FBI secretary in Washington for 62 years, 9 months and 2 days—never once calling in sick.

Yesterday, clad in a bright-pink dress suit adorned with a white corsage, Parsons, 88, the longest-serving employee in FBI history, retired. Her final day on the job included a visit to the office of the director, Robert S. Mueller III, and a party, during which former and current co-workers showered her with hugs and unbridled adulation.

"No, I'm not going to cry," she told well-wishers. "It is sad, but at the same time, it's nice. Everyone has to retire sometime. It's time for me to leave."

In nearly 63 years on the job, Parsons, known as Millie, had a headache or two and a cold, but no ailment serious enough to make her stay home.

"I may have sneezed or something, or had a little bit of a cold," she said. "If I had a headache, I just went in there. If I was around people, I would forget."

Parsons said she doesn't take vitamins or use secret herbs. "I eat whatever I want," she said. "I eat a lot of TV dinners, whatever sounds good or looks good at the time."

She gets some exercise. There's ballroom dancing and the six-block walk to the bus stop each workday, and back again, from her home in suburban Maryland.

But she credited her good health to the joy of "being around people."

Parsons's sick-free record became a matter of pride—and legend—at the FBI. In the early 1990s, FBI agent Frank Scafidi pulled a prank, altering her pay-check stub to reflect an hour of sick leave. Furious, she got on the phone to FBI headquarters—then learned it was a joke.

Her boss, Van Harp, who heads the FBI Washington field office near Judiciary Square, called her "an institution within an institution." Co-workers described her as witty, with a good sense of humor but also a serious side. She liked to take charge, they said, and she paid great attention to detail.

"She was a stickler for everything. . . . You have to have every comma in place, every 'I' dotted," said Donna Cummings, administrative assistant to Harp. "But she liked to party and have a good time."

After graduating from high school in Frederick in 1930, Parsons worked at the old Woodward & Lothrop department store in the District. In 1939, she took a job as a clerk-typist at FBI headquarters, moving to the Washington field office in 1940.

By the end of her career yesterday, she had worked under six FBI directors and 30 bosses at the field office.

"People ask who my favorite boss was," she said. "That's something I do not discuss. I enjoyed working for the majority of them. Everyone had a little different style, which made it more interesting."

Some notable moments included being summoned to the office of J. Edgar Hoover, who wanted to give her a 10-year anniversary pin for her service.

"He was very, very nice, very formal," recalled Parsons.

She also remembers the time she spoke with Shirley Temple. Her boss in the early 1950s, who was from California, had friends in Hollywood. One day, he asked her to get the actress on the phone.

"I gave her my name. I said, 'I think I've seen all your movies.' . . . I had to tell her that."

Parsons was always discreet about discussing her work. She wouldn't even share FBI information with her husband, who drove her to work every day until his death in 1967.

With leisure at hand, she plans to continue with ballroom dancing and keep up with her favorite television program, "JAG."

Other than that, "I have no plans. . . . I can't help but miss [the FBI]. I mean, I've been here for over 62 years. It will probably take a while to get adjusted."

COMMENDING MS. SUSAN FULLER

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HONDA. Mr. Speaker, I rise today to express gratitude to Santa Clara County's outstanding librarian, Susan A. Fuller, who has announced her retirement after 37 years serving Santa Clara County. Susan has performed her duties with great dedication and leadership. Her work will be missed, but always appreciated.

During Susan's service as County Librarian, the library was ranked first in the nation for its size in Hennen's American Public Library Index for the year 2000. Susan had the responsibility of working with the staff and elected officials of ten jurisdictions to restructure the County Library after tax shifts that caused a 40 percent revenue loss.

One of Susan's most notable accomplishments was her ability to build library use from 2,500,000 materials in circulation in 1985 to nearly 8,450,000 materials in 2001. Her loyalty during a time of great stress in California libraries reflects her enthusiasm and strength. Furthermore, her welcoming personality enabled her to develop trusting relationships with ten district jurisdictions.

During her time with the library, Susan showed her interest in improving library services through renovation and increased electronic services. She was honored with Library Journal's title of National Librarian of the Year 1998. In 1995, she received both the "Outstanding Public Administrator of the Year" and "Outstanding Public Program of the Year" awards from the Santa Clara Valley Chapter of the American Society of Public Administrators. In 1991, Susan also negotiated two highly politicized censorship issues: the rights of minors to access material on video and through the Internet.

Susan has been a true role model for the community, and has excelled in many facets of her job since she earned her Masters in Library Science from the University of California at Berkeley. Susan has, however, made many intangible contributions during her career as well. She has always demonstrated a firm commitment to the principle of protected access to knowledge and information, access she believes should be equally available to all citizens. She has stood firm in the face of censorship, and has fought for freedom of speech when it has been attacked by not only lawmakers but also from others within the library system who would compromise this important cornerstone of American democracy. Her work is commendable, and the ideals that drive her are equally remarkable.

Mr. Speaker, it is my great pleasure to honor Susan Fuller before the House. I extend my congratulations and warmest wishes to Susan for her commendable contributions.

HONORING JAKE SCHEIDEMAN FOR BEING WORLD CITIZEN OF THE YEAR

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor Jake Scheideman for his humanitarian work in Nicaragua and his dedication to both his local community and the world. As a resident of my hometown of St. Helena, California, Jake has inspired the people around him as well as the people of Nicaragua. He has been recognized as one of St. Helena's World Citizens of the Year.

Jake Scheideman has spent the last decade traveling between the United States and Nicaragua on a mission to build a baseball field in the small town of Matagalpa, Nicaragua. He has raised over $50,000 for the project and has brought dozens of American volunteers to Nicaragua to assist with the building of the dugouts and backstops. He has been helped by General Charles Wilhelm, General Carrion of the Nicaraguan Military, Ambassador Oliver Garza as well as many others. The involvement of so many distinguished people attest to Jake's ability to motivate and inspire.

However, where Jake's mark is most visible is in the community where he worked. The residents of Matagalpa, Nicaragua and its surrounding areas have come to call the project the "Field of Dreams." An American Flag flies beside the Nicaraguan Flag and is proudly raised at every game.

Jake Scheideman received a Bachelors Degree in Business Management from Pacific Union College in 1991. After graduation Jake moved to St. Helena where he quickly became involved in the community. He was a Parks and Recreation Commissioner for six years, a member of the Napa Valley Conference and Visitors Bureau Board for four years and was President of the St. Helena Merchant Association. He has been active in the St. Helena Chamber of Commerce, serving as its President in 1999. He also founded important community events and organizations. Jake has been a Volunteer Firefighter and Emergency Medical Technician for the St. Helena Volunteer Fire Department for twelve years.

Mr. Speaker, please join me in recognizing the achievements of Jake Scheideman. At a time when this country is feeling the repercussions of the inhumane acts of September 11th and needs positive inspiration, Jake Scheideman reminds us of the humanity and compassion that is still out there.

UNITED WE STAND

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HYDE. Mr. Speaker, I would like to bring to your attention today an exemplary poem written by a wonderful young American, Kristina McLain. It is a forceful poem that I believe will inspire other young people in our wonderful country. I am grateful that her proud grandmother, Jacqueline McLain, took time to forward this poem to me, and I hope my colleagues will take time to read these moving words.

UNITED WE STAND

An Attack on our country
Up way in the skies
Planes into towers
As we say our goodbyes

Stranded at the top
Are so many lives
So many running
Striving to survive

Through fear and pain
So many lives will be changed
With such a catastrophe like this
So many will be missed

Did they notice
How many lives were torn
Did they notice
That a whole new nation was born

We need to fight back
And know that we can
After this dreadful attack
United we stand

NATIONAL NIGHT OUT: AMERICA'S NIGHT OUT AGAINST CRIME

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. STUPAK. Mr. Speaker, I rise today to express my strong support for a highly successful community-based crime prevention program known as National Night Out. NNO, which will occur on August 6, 2002, is widely known as America's night out against crime where people in thousands of communities take to the streets to support their communities.

Since 1984, the NNO has promoted neighborhood watch programs and established police community partnerships in the fight against crime. It has expanded from a program involving 2.5 million people in 400 communities in 1984 to nearly 33 million people in 10,000 communities in 2002. National Night Out, which receives part of its funding from the Byrne Grant program, is one of the fastest growing, cost effective community anti-crime programs in the nation.

National Night Out was created by the National Association of Town Watch (NATW), a nonprofit, community crime prevention membership organization in Wynnewood, PA. NATW develops relationships between the local community and law enforcement officers in order to build safer and more secure neighborhoods to reduce crime, decrease local violence, and lower the demand for drugs. NATW provides information, program support and technical assistance to its associated members, which include Neighborhood, Crime, Community, Town and Block Watch groups, law enforcement agencies, state and regional crime prevention organizations, businesses, civic groups, and community volunteers.

I greatly support the mission of NATW and National Night Out, and in past Congresses have introduced resolutions in recognition of NNO, and have supported continued funding for the program. The House passed resolutions in support of National Night Out in 2000 and 2001.

This year I have again introduced a resolution expressing support of the House for this important event. H. Res. 437 commends National Night Out and encourages the President and his administration to focus appropriate attention on neighborhood crime prevention and community policing, and to coordinate federal efforts to participate in "National Night Out", including supporting local efforts, neighborhood watches and local officials to provide homeland security.

I am grateful to Chairman SENSENBRENNER and the Judiciary Committee for last week's voice vote passage of this resolution, and I thank Chairman SENSENBRENNER for his great help on this issue.

Recently the Senate passed Senators BIDEN and SPECTER's companion resolution on NNO, S. Res. 284. The Senators have also authored an op-ed that appeared in several newspapers, highlighting NNO, neighborhood watch, volunteerism and community-crime prevention. I commend the op-ed written by Senators BIDEN and SPECTER and request that it be included in the RECORD.

Neighborhood watch and community crime prevention are especially important in the aftermath of September 11th and I encourage my colleagues to participate in NNO on August 6th.

HOW NEIGHBORS CAN HELP THWART TERRORISM

(By Joseph R. Biden and Arlen Specter)

Remember when neighbors knew neighbors? Remember front porches? Remember hot summer nights when families sat on the front stoop and talked over the fence?

On Aug. 6 of this year, more than 33 million people in 9,700 communities from all 50 states will participate in the 19th-annual National Night Out to revitalize the America's neighborhood spirit and remind us of a time when neighbors routinely looked out for one another, and everyone knew the cop on the beat. This year, as our nation recovers from the shock of Sept. 11, we encourage everyone to participate.

This will be a National Night Out Against Crime, and we urge every citizen from coast to coast to turn on outside lights, to took over the fence and open the gates, get to know your neighbors, meet with local police, and participate in block parties and parades.

In concert with the National Association of Town Watch, National Night Out has been at the forefront of community crime prevention and neighborhood watch for nearly two decades, encouraging citizens to become active supporters and caretakers of their communities.

The effort involves citizens in all 50 states who volunteer to make a difference by leading anti-crime efforts in their communities—restoring the sense that we are all members of a community and that our common concerns and shared values are as important as individual rights. When we act together, and look out for one another, our communities become safer and fundamentally better places in which to live and raise our families.

One of the reasons we so strongly support the concept of neighborhood watch is that it literally grew up in our back yard. The seeds of National Night Out were planted in our tri-state area of Pennsylvania, New Jersey, and Delaware nearly two decades ago.

What began in a few mid-Atlantic states has now grown to become a national grassroots event supporting communities organized in local chapters to fight crime year round. It is an amazing event when you consider that currently one out of every nine Americans participates.

We believe in a neighborhood watch concept because it works. Studies show that 95 percent of all police arrests are the direct result of a citizen phone call. They also show that neighborhood watch programs effectively lower crime rates.

Neighborhood Watch programs, like those championed during the National Night Out event, have been a valuable part of crime and drug prevention for decades. Today, crime watch programs also can play an important role in heightening awareness to combat terrorism and uniting neighborhoods to respond and assist one another in the event of emergencies.

At a time when homeland security is on the minds of everyone, we support every effort to bring Americans together by persuading them to volunteer in their communities.

With the nation on a permanent terror alert, neighborhood volunteers can play a crucial role in identifying potential dangers and, if need be, alerting law enforcement and emergency officials. Psychologically, the knowledge that trusted members of our community are providing an extra measure of security should reassure everyone.

We applaud every effort to support Neighborhood Watch because it is about building community, preventing crime, and, now, thwarting terrorism. Working side by side with local law enforcement, neighborhood crime watch groups are an invaluable resource.

The tragic events of last Sept. 11 reminded us of the importance of family and friends, faith, neighbors, and communities. It also reminded us how closely all of America's communities are linked.

Every year, National Night Out serves as a great opportunity for Americans to get to know their neighbors, become involved in their communities, and show their sense of patriotism.

This Aug. 6, National Night Out will bring Americans together again to help make a difference, one doorstep at a time. Let's all be part of it.

COMMEMORATING THE AMERICAN MUSEUM OF ASIAN HOLOCAUST OF WWII (1931–1945)

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HONDA. Mr. Speaker, I rise today to congratulate Eugene Wei on the grand opening of the American Museum of Asian Holocaust, located at 400 Taylor Avenue in Falls Creek, Pennsylvania. The museum came about as a result of Mr. Wei's vision. I commend Mr. Wei for having the foresight to create such an important learning institution.

The mission statement of the museum is "to remember those events of World War Two in Asia, preserve them through photographs, written word and multimedia, and to educate the public now and in the future so that the wounds of the past may be healed through repentance of the perpetrators and forgiveness from the victims and their families."

This museum will have photographic exhibits of the Asian Holocaust of World War Two, which was perpetrated by the invading and occupying forces of Japan in Asian countries including China, Korea, the Philippines, Singapore, Indonesia, and Malaysia, as well as stories of the American defense of Bataan and Corregidor. The museum will tell the story of the plight of the American POWs who were forced to work for Japanese companies as slave laborers in coal mines, shipyards, copper mines and steel mills and their horrible hell ships experiences.

Existing exhibits made by the Alliance for Preserving the Truth of Sino-Japanese War (APTSJW) on the Rape of Nanking, Comfort Women, and Japanese Unit 731 biological and chemical warfare, will be on display at the museum as well. A special display on anthrax attacks in China by Japan during the years 1942–1944 will also be shown.

I commend Eugene Wei for educating the public about the atrocities that took place in the Pacific Theater during World War Two. This is not an easy history to tell, but it must be told so that we do not repeat it in the future. Mr. Speaker, I encourage all those who have the opportunity, to visit this important museum.

MINNESOTA'S 10TH ANNUAL STAND DOWN

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. McCOLLUM. Mr. Speaker, I rise today in support of Minnesota's 10th annual Stand Down, held August 1–4, 2002.

Minnesota Stand Down is an annual event that provides homeless veterans and their families with a break from the daily struggles of unemployment, personal issues, and medical and legal problems. Over the past nine years, 3900 volunteers have gathered on the banks of the Mississippi River to give their time and energy serving thousands of homeless and near homeless veterans and their families. The unified efforts of these volunteers provide a brief, yet welcoming, respite for those veterans who face the struggles of the street and the despairs of poverty.

I am proud to be a cosponsor of a bill recognizing the merits of Stand Downs and increasing the number of Stand Downs in America. H.R. 3271, the Bruce Vento Stand Down Act, will enact a pilot program authorizing the Secretary of Veterans Affairs to conduct and participate in at least one Stand Down in every state. This effort will also increase the number of Stand Downs in America through a partnership between the Department of Veterans Affairs, veterans' service organizations, and community volunteers in coordinating Stand Down events for our nation's homeless veterans.

The Minnesota Stand Down is a fitting and worthy event, recognizing the efforts of the veterans in our community and providing needed relief from the difficulties of day-to-day life. As a state legislator, I was especially proud to represent veterans in Minnesota and champion their patriotism, courage and honor. As a Member of Congress, I will continue supporting Stand Downs across the country and I encourage my colleagues to do the same.

RECOGNIZING NORMAN AND LINDA MANZER FOR BEING WORLD CITIZENS OF THE YEAR

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor Norman and Linda Manzer for being named St. Helena World Citizens of the Year 2002. As residents of St. Helena for over 30 years, they have continued to make positive contortions to my hometown.

Norm and Linda Manzer have dedicated their lives to making their city, their country and the world better through community service. Norm and Linda have made thirteen trips to Russia in the past decade for humanitarian work with Rotary International, which is an organization of business and professional leaders united worldwide who provide humanitarian service, encourage high ethical standards in all vocations and help build goodwill and peace in the world. Norm and Linda have been instrumental in Rotary International's Children of Russia Project. Norm and Linda's tireless work to improve the lives of the Russian people has been invaluable.

Norm has worked as a General Insurance Agent for 29 years. His insurance office has grown along with the St. Helena community to provide for over 1200 families. He has volunteered his time to a number of organizations. He served as President of the Silverado Chapter of the American Red Cross, President of the St. Helena Chamber of Commerce. He is a member of the Napa County Farm Bureau and the co-founder of Friends of Napa Valley. He has lectured at Pacific Union College and St. Helena High School.

Linda has dedicated her life to her family and community. In addition to her community service work, she and Norm raised two wonderfully successful children.

Mr. Speaker, please join me in recognizing the achievements of Norm and Linda Manzer. The town of St. Helena, the entire Napa Valley, and our nation should aspire to achieve the success of these two great Americans.

LORI BERENSON

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MALONEY of New York. Mr. Speaker, for almost seven years, Lori Berenson, an American, has been imprisoned in Peru under exceptionally harsh conditions that have seriously affected her health. From the beginning, many of us have said that Lori's convictions were based on extremely flawed trials in which she was denied due process. Her first conviction by a hooded military tribunal was so tainted that it was thrown out by Peru. Earlier this month, the Inter-American Commission on Human Rights announced that her second trial was also flawed, determining that the Peruvian government violated Ms. Berenson's rights.

Indeed, much of the evidence used against Lori was gathered during her discredited military trial, in many cases from witnesses who had been subjected to torture. Most of the witnesses have since recanted their earlier statements. The only witness against Lori at the second trial received a reduced sentence in return for his initial testimony condemning Lori and, on the eve of Lori's second trial, was given a new trial so that he can get another reduction in sentence. Furthermore, court proceedings clearly show that the judges had decided the verdict long before this trial began. How fair is a trial in which a judge proclaims a defendant guilty while witnesses are still being heard? Even this badly tainted court admitted that Lori was innocent of terrorist acts or of belonging to a terrorist organization. Further, the law under which Lori was convicted has been widely condemned by the international community for its broad scope and outrageously heavy penalties.

The Inter-American Commission has spoken and Peru should listen. Lori has condemned terrorism and has said that she opposed the violence and deaths there have been. Peru embarrasses itself by continuing to keep her in prison based on a flawed trial and an indefensible statute.

She has been in prison for far too long. It is time for Lori to come home.

COMMENDING MR. DENNIS DEMELLOPINE

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HONDA. Mr. Speaker, I rise today to commend Mr. Dennis DeMelloPine, and to wish him and his fiancee, Miss Pattie Christman, the very best on the occasion of their marriage. A native of Santa Clara, California, Mr. DeMelloPine has devoted a tremendous amount of time and energy to community leadership, labor leadership, and charitable causes. His greatest contribution, however, has been his professional career—thirty years of dedicated service to the Bay Area as a firefighter.

Dennis's love for aviation as a young man led him to become a United Airlines mechanic, in which capacity he perfected the skills that would eventually help him become a licensed pilot. But Dennis decided to make aviation an avocation rather than a career, and in 1972, he joined the Santa Clara County Fire Department. Over the course of the next decade Dennis served in several different communities, and became a Fire Captain in 1979. A few years later, he settled in permanently at the University Avenue Station in Los Gatos, where he has served for the last twenty years. His fellow firefighters could not have been happier about that decision: when Dennis is not out on a job he is busy cooking his company some of the best meals to be found in town.

Considering the long hours required of a firefighter, and how strenuous those hours can be, it is amazing how much Dennis has contributed to our community outside of his firefighting duties. For fourteen years, Dennis served as President of the International Association of Fire Fighters Local 1165, bringing improved working conditions and increased benefits to his peers while working to maintain a strong labor-management partnership. He has also helped the Department procure governmental relief from budget problems, and has played a major role in making the County Fire Department more efficient and accessible. He not only understands the needs of the employees in his own community, but also works effectively between community fire departments by using his managerial savvy to facilitate mergers. From every point of view, he has made an invaluable contribution to the fire departments of the Bay Area.

Dennis received a letter of commendation in 1997 for fighting the "Cats" fire in Los Gatos and a Merit Award for outstanding service in 1999, but Dennis has done much more for the community that goes largely unnoticed. He is a coach in the local PONY baseball and softball league, and he is an organizer and active participant in local fundraisers for charity and labor concerns. Much to my delight, Mr. DeMelloPine is also a strong and active supporter of the Democratic Party.

Dennis's commitment to family is every bit as strong as his commitment to the community and to his career. He has close relationships with his brothers, cousins, aunts and uncles, relationships serving as an important balance to the demanding nature and stressfulness of his job. Most importantly, Dennis's mother has been a good friend and a great parent to her son for his whole life, and much of the success Dennis has enjoyed in life can be attributed to this wonderful woman.

Mr. Speaker, I commend Mr. Dennis DeMelloPine and wish him and his lovely fiancee, Miss Pattie Christman, all the best on the occasion of their wedding. They have both brought much happiness and security to our community, and may they now do the same for each other.

TRIBUTE TO THE LIFE SERVICE OF MARION P. CARNELL

HON. LINDSEY O. GRAHAM

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GRAHAM. Mr. Speaker, I rise today to honor Mr. Marion P. Carnell of Ware Shoals, South Carolina. Mr. Carnell has lead an extraordinary life, more than half of which has been dedicated to our state in the capacity of a state legislator. I am proud to represent him in the United States Congress.

Mr. Carnell graduated from Ware Shoals High School in 1945. Among his many accomplishments are an Honorary Doctor of Law Degree from The Citadel in 1993 and an Honorary Ph.D. of Law from Lander University in 1999. Currently Mr. Carnell is a successful retail merchant and President of Piggly Wiggly Stores in the towns of Ninety-Six and Ware Shoals, South Carolina. Mr. Carnell and his wife of 52-years, Sara, are the proud parents of Marion Ray and the late Toni Lynn. They are also the proud grandparents of five grandchildren.

Since being elected to the General Assembly in 1961, Mr. Carnell has diligently worked to improve the health care system in South Carolina, taking extra steps to advocate for the mentally and physically disabled.

On several occasions many organizations have named Mr. Carnell Legislator of the Year. The Greenwood Area Chamber of Commerce inducted Mr. Carnell into the Greenwood County Hall of Fame for his contribution to the economic prosperity and quality of life in Greenwood County. In 1962 he was named the Woodman Outstanding Man of the Year, in 1990 he was awarded the Special Service Award, and in 1995 and 1999 the S.C. Citizens and Merchants Association honored him as an Outstanding Legislator. These are just a few of his many accomplishments that have set him apart and are a testament to his service to South Carolina.

I am exceptionally proud to note that Mr. Carnell has recently received the Order of the Palmetto. Awarded by the Governor of South Carolina, this award is the state's highest civilian honor. Mr. Carnell rightly deserves this great honor for his 40 years of hard work and dedication in ensuring a bright future for our state.

Mr. Speaker, I hope this body will join me today in honoring Mr. Marion P. Carnell for his hard work and dedication to the people of South Carolina.

EXTRADITION TREATY WITH MEXICO

HON. DAN MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DAN MILLER of Florida. Mr. Speaker, I rise today to bring an issue to the floor of great importance to every member of this body and to the entire nation. Throughout my career on Capitol Hill I have worked hard to ensure that criminals who flee our borders are returned to face our justice system. Unfortunately, many criminals are never returned to the United States, particularly those who flee to Mexico. Too many criminals are running south where, in violation of our bilateral extradition treaty, the government refuses to extradite criminals who may face a penalty of life imprisonment or the death penalty. This is an outrage! Why should hardened criminals with no respect for human life be allowed to serve lesser penalties in Mexico or even be set free in direct violation of our treaty? They should not. They should be returned to face our legal system.

This is a problem that has tormented many prosecutors and plagued many states, including my home State of Florida. I recognized the need for extradition reform after Jose Luis Del Torro killed a mother of four in Sarasota, Florida and fled to Mexico. After an enormous amount of negotiation, we were able to bring Del Torro to justice. But instead of a possible death sentence, arrangements were made for Del Torro to spend the rest of his life in a jail cell.

In May of this year, David March, a dedicated 33-year-old Los Angeles County Sheriff's Deputy, was shot to death during a routine traffic stop in Irwindale, California. The prime suspect in the cold-blooded execution style murder of this police officer is a known and repeated violent criminal and is believed to have fled to his native Mexico. If arrested in Mexico, there is no guarantee that Deputy March's killer will ever be brought to justice. Current Mexican policy would prevent extradition for any future prosecution in the United States for the murder of Deputy March—a crime that under California law requires at least a potential life sentence.

For years criminals have fled our southern border to evade our justice system, and we now have a case where a cop killer is believed to have done the same.

Mr. Speaker, Mexico claims that no matter what the crime, a criminal can in fact be rehabilitated and thus does not respect our penalties. Our penalties, however, are the way we, the United States, send a message to those who disdain our laws and way of life. I strongly urge everyone in this room to support extradition reform and ensure that cop killers do not flee to Mexico to escape justice.

HONORING THE BLUE CROSS OF CALIFORNIA STATE SPONSORED PROGRAMS FOR THEIR DEDICATED SERVICE

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor the Blue Cross of California State Sponsored Programs (BCC SSP) for their dedicated service to the citizens of California. The BCC SSP has had a tremendous impact on over one million low-income Californians who would otherwise be without health insurance. BCC SSP is the largest commercial health plan provider involved in California's Medi-Cal Managed Care and Healthy Families Programs, and is the only health plan that serves every county in the state.

One of the primary challenges that the BCC SSP has faced is the vastly different ethnic and regional characteristics of California. To meet the challenge of serving this diverse population, the BCC SSP has created Community Resource Centers in eleven counties. These centers are staffed by local professionals who have a deep understanding and commitment to the community. Using this regional approach ensures that every community gets the most appropriate and helpful health care services it needs.

The BCC SSP has received awards from the California Department of Health Services for quality improvement and clinical quality of care standard assessment studies. In 2001 the American Association of Health Plans recognized five of BCC SSP's innovative member service programs as Best Practices, including: the Asthma Management Program, the Prenatal Program, its AIDS Program, the Fire Safety Program and the statewide Telemedicine Program. The BCC SSP has received numerous awards for its innovation in health care.

Mr. Speaker, it is appropriate at this time that we recognize the Blue Cross of California State Sponsored Programs for the tremendous services that they provide for the people of California. The programs are true assets to the State of California and its communities and I speak on behalf of the people of California when I thank the BCC SSP for its services.

THE LAW ENFORCEMENT PARTNERSHIP TO COMBAT TERRORISM ACT

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SAXTON. Mr. Speaker, I rise today to introduce the Law Enforcement Partnership to Combat Terrorism Act. This legislation seeks to designate 25 percent of available COPS grant funding for the hiring and training of intelligence officers and analysts by state and local police departments, in an effort to further promote our nations anti-terrorism efforts.

Much has changed since September 11, 2001. With a heightened awareness of the devastating effects of terrorism, our nation is undergoing change on every level, in order to ensure that National and Homeland Security are at the forefront of our agenda.

As the Chairman of the House Armed Services Special Oversight Panel on Terrorism, I have played an active role in many of these initiatives. While many important steps have already been taken in fighting the war of terrorism, I believe that more can be done to ensure a concentrated, connected, nation-wide effort.

To this end, I feel that it is imperative to enhance the anti-terrorism efforts of our police departments, as opposed to simply providing funding for the traditional community policing efforts. Designating 25 percent of available COPS funding to increase the number of law enforcement officers involved in activities that are focused on intelligence efforts is an important step in this direction.

The Law Enforcement Partnership to Combat Terrorism Act states that specialized training will be provided for one intelligence officer and one analyst officer per grant recipient. Such training will include enhancing the officers' observation, information gathering, foreign language, and analytic skills necessary to spot terrorist threats in their communities. These officers, in turn, will be able to share their skills with the other members of their police force. In addition, my legislation directs the Attorney General to ensure that all intelligence and analyst officers have top secret security clearances. Such security clearances will allow these State and local law enforcement officers to share information with Federal officials, facilitating a concentrated effort.

By providing the necessary funding, we can further promote coordination among Federal, State, and local law enforcement officers to ensure an interconnected, concentrated effort in our war on terrorism. I am confident that these efforts will be successful in allowing state and local law enforcement officers to play a vital role in the enhancement of our Homeland Security.

CONDEMNING THE HUMAN RIGHTS VIOLATIONS AGAINST WEST PAPUA BY THE INDONESIAN GOVERNMENT

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. UNDERWOOD. Mr. Speaker, I rise today to bring attention to a problem of growing concern in Southeast Asia. I want to inform my colleagues of the human rights violations committed by the Indonesian government against the people of West Papua. For the last forty years, West Papuans have lived under the rule of a government that has virtually declared martial law on people who only want to participate in the determination of their own destiny. Like in East Timor before their independence from Indonesia, the military and local law enforcement officials continue to violate the human and civil rights of West Papuans.

West Papua has been under the rule of foreign governments for almost three hundred years, beginning with colonization by the British in 1793 to the Dutch in the mid twentieth century. In the early 1960s, West Papuans almost realized their dream of self determination with a Dutch-sponsored election for a local government called the West New Guinea Council. Unfortunately, the results of the Dutch plan were rejected by the United Nations. The Indonesian military subsequently invaded West Papua. After nearly a decade of uncertainty, the U.N. in 1969, supervised a vote for the so called "Act of Free Choice" which gave representatives a vote between independence or continued rule under the Indonesian government. This vote did not truly reflect the opinions of the West Papuans because only 195 out of the 1,026 elected representatives actually voted. As reported in New Internationalist Magazine, most of those votes were cast under pressure by military leaders.

Over the years, the people of West Papua formed an independence movement coordinated by the Papuan Council under the leadership of Mr. Theys Hijo Eluay. I am sad to report that Mr. Eluay, a revered figure among his people, was assassinated last November. According to a report published by the Institute for Human Rights Study and Advocacy, Mr. Eluay's death was caused by asphyxiation. While this report only moderately implies that the military and police were responsible, it recognizes that the assassination may be part of a military strategy to quell the independence movement. Other tactics used include arbitrary executions, random detention, torture, kidnap and rape have been frequently used by the military. The Indonesian government has declared that any protest or congregation of dissident groups would be seen as treason and stopped immediately.

A few weeks ago, I had the pleasure of meeting with Mr. Thom Beanal, Acting Chairman of the Presidium of the Papuan Council and Mr. Willy Mandowen, Facilitator for the Dialogue for the Presidium of the Papuan Council. These men and their colleagues, who are proponents of independence and human rights, advocate their cause through peaceful means, yet they continue to face threats of physical harm by the military who oppose the independence movement.

I ask my colleagues to imagine living each day under the threat of violence. Imagine living with the knowledge that at least one member of every family in your town has experienced a loss of a loved one at the hands of the Indonesian militia. Imagine living with the fear that your child may be kidnaped by armed gunmen, only to be found burned and buried in a shallow grave. West Papuans don't have to imagine. They live with this every day.

We acted in the case of East Timor and the results have been spectacular. Since it became a sovereign nation on May 20, 2002, the people have regained the rights and liberties which all people are entitled to. Had Congress not intervened when East Timorians were under heavy rule by the Indonesian government, surely they would not be celebrating the new freedoms that they enjoy today.

Mr. Speaker, our actions in East Timor helped give birth to the world's newest democracy that thrives today. We must continue to note the events in West Papua and take action when it is necessary. For too long, we have remained silent on the issues of human and civil rights around the world. It is time for us to take a stand. I urge my colleagues to join me in condemning the actions of the Indonesian government. A peaceful resolution to West Papuan independence is possible, but it must be with the cooperation of the Indonesian government and military.

HONORING ELI SIEGEL

HON. ELIJAH E. CUMMINGS

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CUMMINGS. Mr. Speaker, I rise today to honor a great Baltimorean poet, educator, and founder of Aesthetic Realism, Eli Siegel.

Mr. Siegel was born in 1902 and grew up in Baltimore, Maryland where his contributions to literature and humanity began. Mr. Siegel founded the philosophy Aesthetic Realism in 1941, based on principles such as: man's deepest desire, his largest desire, is to like the world on an honest or accurate basis, and that the world, art, and self explain each other: each is the aesthetic oneness of opposites.

Mr. Siegel explained that the deepest desire of every person is, "to like the world on an honest basis." He gave thousands of lectures on the arts and sciences.

Mr. Siegel's work continues at the not-for-profit Aesthetic Realism Foundation in New York City, where classes, lectures, workshops, dramatic presentations, and poetry readings are offered. In addition, a teaching method, based on aesthetic realism, has been tested in New York City public schools. The teaching method has been tremendously successful. Understanding and using the teaching method may be used as an effective tool to stop racism and promote tolerance; because it enables people of all races to see others with respect and kindness.

In 1925, Eli Siegel won the esteemed "Nation" Poetry Prize for "Hot Afternoons Have Been in Montana," which brought him to national attention. "Hot Afternoons," Mr. Siegel said, was affected by his thoughts of Druid Hill Park. And so, it is fitting that on August 16, 2002, the city of Baltimore will dedicate the Eli Siegel Memorial at Druid Hill Park on a site near the Madison Avenue entrance, not far from his early home on Newington Avenue. The bronze memorial plaque, designed by students of Aesthetic Realism, includes a sculptured portrait and poetry.

Mayor Martin O'Malley has designated August 16, 2002 as "Eli Siegel Day" in Baltimore. At this time, I would like to insert the Mayor's proclamation and a few of Eli Siegel's poems found in the June 5, 2002 of the Aesthetic Realism Foundation magazine for the record.

Eli Siegel died in 1978, but his poetry and the education of Aesthetic Realism will be studied in every English, literature, and art classroom across the nation for years to come.

I would like to end this tribute by reciting a poem Eli Siegel wrote honoring Dr. Martin Luther King, Jr.:

SOMETHING ELSE SHOULD DIE: A POEM WITH RHYMES

(By Eli Siegel)

In April 1865
Abraham Lincoln died.
In April 1968
Martin Luther King died.
Their purpose was to have us say, some day;
Injustice died.

Eli Siegel wrote poems for more than six decades. These poems expressed his thoughts on people, feelings, everyday life, love, nature, history. I am proud to offer this tribute.

Thank you.

[From Aesthetic Realism Foundation, June 5, 2002]

THE RIGHT OF AESTHETIC REALISM TO BE KNOWN

BALTIMORE REPRESENTS THE WORLD—CONTEMPT CAUSES INSANITY

Dear Unknown Friends: In this issue we reprint the text of a public document that is beautifully important in the history of culture and justice. It is a proclamation by the Mayor of Baltimore, the city in which Eli Siegel spent his early years. Mr. Siegel was born on August 16, 1902, and the proclamation is a formal honoring of him on his centenary: an expression of pride in and gratitude for his work, by this major American city. It describes truly some of Mr. Siegel's greatness and the principles of the philosophy he founded, Aesthetic Realism.

The mayoral proclamation was first read publicly on April 28 in the Wheeler Auditorium of Baltimore's distinguished Enoch Pratt Free Library. It began an event hosted by the Library in partnership with the Aesthetic Realism Foundation, "The Poetry of Eli Siegel: A Centennial Celebration."

I and others have written much about the horrible anger Mr. Siegel met from persons who resented the vastness of his knowledge, the fullness of his honesty, the newness of his thought. The Baltimore Proclamation stands for what is natural and just: if something or someone is great—and Eli Siegel is—we should rejoice.

When a public document is mighty it is because, while impersonal, it embodies the deep feelings of people, their beating hearts, and the careful judgment of their minds. This Proclamation does. It resounds and is warm. With its legal structure, it stands, for example, for my own love of Mr. Siegel, my intellectual opinion of him: it represents people now and for all time.

In honor of Baltimore as representing the world, and to show something of Eli Siegel early in his life, we include here two writings by him from the *Baltimore American*. After his winning the *Nation* Poetry Prize in February 1925, Mr. Siegel was a columnist for the *American*, a major newspaper of the time.

First, we reprint a column about the firemen of Baltimore. The way of seeing people that is in it stands for who Mr. Siegel was, and is central to Aesthetic Realism. Fifty years later, in his Goodbye Profit System lectures of the 1970s, he said with ringing clarity that the most important question for America is "*What does a person deserve by being a person?*" That is the big question today, in 2002: it cries to be asked plainly and answered honestly. It was at the basis of the kind, passionately logical thought of Eli Siegel at age 22 as he wrote about Baltimore's firemen.

In his teaching of Aesthetic Realism, Mr. Siegel showed that there are two aspects to what every person deserves. He was beautiful and uncompromising about people's need for both, and we see both in this article: 1) Every person deserves to live with dignity—deserves sufficient money, just compensation for his labor, respectful working conditions. And 2) a person deserves to be *comprehended*, his thoughts and feelings understood. In Aesthetic Realism, Mr. Siegel provided the means by which every person, in all our dear individuality, can be understood to our very core.

The second writing in the 1925 paper concerns a memorial hall, just opened to the public in Baltimore, honoring soldiers of that city who died during World War I. Under the heading "War Is Remembered," Mr. Siegel writes four poems from the points of view of four different people, each of whom sees the memorial differently. His justice to people is such that their feelings come to us now; the mother of a dead soldier, and an unemployed man of 1925, are immortal and musical. And Mr. Siegel is the philosopher who would explain at last the cause of war: the human desire for *contempt*.

Humanity needs the knowledge and honesty of Eli Siegel. These exist now and forever in Aesthetic Realism.

—*Ellen Reiss, Class Chairman of Aesthetic Realism*

PROCLAMATION BY MAYOR MARTIN O'MALLEY DESIGNATING AUGUST 16, 2002 AS "ELI SIEGEL DAY" IN BALTIMORE

Whereas, the people of Baltimore are proud to join with the Enoch Pratt Free Library, Congressman Elijah E. Cummings, Maryland Historical Society, Coppin State College, Eubie Blake National Jazz Institute, Morgan State University, former Mayor Kurt L. Schmoke, and others in honoring the centenary of the great Baltimorean poet, philosopher, and educator Eli Siegel (1902–1978), who in 1941 founded the philosophy Aesthetic Realism; and

Whereas, Eli Siegel grew up in Baltimore, and his contributions to world thought began with writings completed in this city, some appearing in such Baltimore publications as *Horizons* of Johns Hopkins University, the *Modern Quarterly*, his columns in the *Baltimore American*; and

Whereas, he won the esteemed *Nation* Poetry Prize in 1925 for his "Hot Afternoons Have Been in Montana," which he said was affected by thoughts of Druid Hill Park, and about which William Carlos Williams wrote, "I say definitely that that single poem, out of a thousand others written in the past quarter century, secures our place in the cultural world"; and

Whereas, the honesty, kindness, and greatness of mind Eli Siegel possessed were described in the *Baltimore Sun* by Donald Kirkley: "Baltimore friends close to him at the time [that he won the *Nation* prize] will testify to a certain integrity and steadfastness of purpose which distinguished Mr. Siegel. . . . He refused to exploit a flood of publicity. . . . He wanted to investigate the whole reach of human knowledge . . . to discover in its labyrinth some order or system"; and

Whereas, Eli Siegel showed that (1) the deepest desire of every person is to like the world honestly, (2) humanity's largest danger is *contempt*, *"the addition to self through the lessening of something else,"* (3) *"The world, art, and self explain each other: each is the aesthetic oneness of opposites"*; and his scholarship and historic comprehension are in his books, beginning with *Self and World*, the classes he taught which changed people's lives magnificently, his thousands of lectures on the arts, sciences, and history; and

Whereas, this education he founded, enabling people to see the world and others with the respect and kindness they deserve, including people of different races and nationalities, is continued by Class Chairman Ellen Reiss and the faculty of the not-for-profit Aesthetic Realism Foundation, and is used as a Teaching Method with unprecedented success by educators in public schools—we salute Eli Siegel for his great contributions to knowledge and humanity beginning in the City of Baltimore.

NOW, THEREFORE, I, MARTIN O'MALLEY, MAYOR OF THE CITY OF BALTIMORE, do hereby proclaim August 16, 2002 as "Eli Siegel Day" in Baltimore, and do urge all citizens to join in this celebration.

IN WITNESS WHEREOF, I have hereunto set the Great Seal of the City of Baltimore to be affixed this twenty-eighth day of April, two thousand two.

[SIGNED] MARTIN O'MALLEY, MAYOR

[From the Baltimore American, February 12, 1925]

City Treats Fireman Unfairly, Due More Pay, Asserts Siegel

(By Eli Siegel)

The talented young poet, Eli Siegel, who joined the American staff this week, turned the light of his open-minded genius yesterday on the lives of the Baltimore firemen. He went out and discovered hitherto unrevealed duties which they perform. In the following article he tells what he saw and heard and what he thinks about it all.

The fireman's life is strange and it ought to be known more; the fireman's work has to be known before people can see what's coming to him.

Most people think the life of a fireman is one where he fights fires, has adventures, gets in danger some of the time and the rest of the time hangs around the engine house doing whatever he can to make the time pass well. It isn't so. The fireman may be an adventurer, a man who runs all sorts of risks; but he's also a "housewife" or if you like "houseman." He cooks his meals, he makes the bed, he cleans the engine house, he keeps the engine house in good order and such things; the one thing he does not do which some housewives do (of course not all) is launder his own clothes. Yes, the fireman's life is strange; he's a cook, janitor, handy man at the same time that he risks his life seeing to it that fires die instead of live, and fires are terrible and rude things; they don't mind if men never put them out.

The fireman has his time off, but who wants time off if you can't get out of the place you work in? The fireman's time is measured by periods of eight days, not a week. In these eight days he's supposed to be on duty at least ninety-six hours; in other words, he works ninety-six hours out of one hundred ninety-two. He now works under the double-platoon system: three days of the eight he works ten hours a day; three nights he works fourteen hours; and then for one day he works the whole twenty-four hours, leaving him one day, or twenty-four hours to be free. At any time he's on duty he may be called on to fight some fire, and fighting fires is a risky thing. Insurance companies are pretty slow in giving insurance to firemen. Then he is on the watch, every man of the force in the engine house, from one to two hours a day. So although the fireman's life may be romantic, it's work all right, too, and work isn't romantic at all.

The fireman has a lot of annoyances. While sleeping he may be awakened at any time by the ringing of the gong, for an alarm is heard in more than one engine house at one time. When the gong rings, out of bed he gets and slides down a pole; and if you saw that pole you't think it a dangerous thing to slide down on the middle of the night just after you have awakened. When a fireman sleeps he doesn't know what may happen next; he can't say, as many people do when they go to bed, "Well, nothing to worry about until tomorrow." Morning and night don't mean much to a fireman.

The fireman gets $1500 a year, $125 a month, about $30 a week. A fireman gets married and has a family; these families live on $30 a week. That is, they have to live on it.

The fireman needs to be paid much more; no getting away from that. The city could pay it if it stopped doing fool business and hurtful business in paying big sums to officials who have high sounding titles, but don't do anything much in the way of useful work. The fireman is a man it pays to keep contented; and when a man can support himself and his family without worrying greatly doing it, he can be contended; but $30 a week won't do it, and ought not to do it. Every fireman, when approached by me, seemed to think he was dealt with unjustly by the city. He is willing to do his job well, but he feels he could do it better if he didn't have to worry about making a living.

. . . If a fire keeps on after working hours, of course he works on. He gets a pension more than likely if he's injured, and his wife gets one if he's killed; but a sound uncripled body is worth many, many pensions. Pensions are unsatisfactory things when one gives a leg, or one's eyesight or one's health or life in exchange. And anyone may see, who reads the newspapers, that very often a company of firemen go out to fight a fire and don't come back the way they went out.

There are now about 1500 men in the Fire Department of Baltimore City. These men are doing the city a public service as great as any. They fight fires, but they do many other things. There's much injustice in this world; and there's very much injustice that politicians or men who govern cities, states and nations do. Of this injustice the fireman get their share. Since justice is a good thing (as most people say), the firemen's lives need to be understood better and their services paid for better both in the way of honoring them and giving them more money.

[From the Baltimore American, April 5, 1925]

War Is Remembered (By Eli Siegel)

1. A MOTHER WHO LOST HER SON IN THE WAR SEES THE WAR MEMORIAL HALL

He is in his grave
Which I have never seen
And I am here,
In this great building that looks so well.
His grave must be small, and people
I'm sure never look at it.
Look at that great man make a speech;
He's talking about my son, in this way.
I like the looks of this place,
But I'd rather see Tom's grave.
And, Oh, God, I'd like to see him.

2. A SEVENTEEN-YEAR-OLD GIRL SEES IT

Say, Ed, it sure looks good, doesn't it?
I've seen men working on it days and days, when I used to ride by on the car.
I'll have to tell Lucy about it, you know, that New York girl,
Who thinks she's much, just because she comes from the big town.
We can't get in, can we?
I wish we could.
What will this place be for?
Well, Lucy will hear of this place,
I tell you.
She'll know she doesn't see everything just because she's in New York.
Say, Ed, what's that woman crying about anyway?
Oh, yes. I guess you're right; she must have lost her son in the war.

3. A SONNETEERING POET SEES IT

This, our great house of stone, is for our war's dead,
Our dead; they died away from us; far away
In France, they, fighting, died. There, this very day,
Their bodies lie. Yet, let it not be said,
Ever, that mem'ry of their dying has now fled.
This white, great house is for them, and O, may
It serve their cause well and long. It is they
Who made, own it. And so, let us dread
Our miscue of their dying. Let this, our hall,
This hall so noble with its cool, white stone,
Bring to our minds that wars may, yet may, be.
Let not men by millions in grief and death atone
For our uncaring and unknowing. Let us all
Know war, hate war. This is our dead men's plea.

4. ONE OF THE JOBLESS WARRIORS OF ONCE SEES IT

This place is swell, no getting away from that,
The walls so white and tall and clean.
The place is so big, I'd be scared to sleep in it.
I guess May and I will be moving soon,
Whether we like it or not.
Our three rooms could get in a corner of this,
And the plaster is falling off in places.
But they were pretty comfortable.
I was in one of those French places mentioned on the wall,
And I was glad to get back.
Now I'm not so glad.
I wish I could live in a place I'd like and could pay for.
Those three rooms of ours aren't anything fancy at all,
But they cost too much for me now,
Who isn't working.
It's all right for people to have this hall, to remember the way by,
But I wish they'd remember all about it.

RECOGNITION OF NATIONAL COMMUNITY HEALTH CENTER WEEK

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, August 18th will mark the kick-off of National Community Health Center (CHC) Week—a time to raise awareness about and pay tribute to the vital services that our community health centers provide to our communities.

Community health centers are local, non-profit health care providers that serve our poorest and our medically underserved rural and urban communities. Often they are the sole source of care for these Americans.

Last year, our community health centers served almost 12 million people in over 3,000 communities nationwide. Almost 5 million were uninsured; 650,000 were migrant and seasonal farmworkers; 5.4 million lived in rural areas; and almost 8 million were people of color. California's community health centers provided service to 15 percent of that population—almost 1.8 million people.

In California's First District, over 100,000 people sought the services of our 18 community health centers on over 300,000 separate occasions. These CHCs play an especially vital role in the rural areas of my district, given the financial and geographic constraints of these populations. Approximately 20 percent of the people served by our CHCs are farmworkers and over 80 percent are either uninsured or on Medicaid. Over 65 percent earn less than the federal poverty level each year. Were it not for the critical services our CHCs provide, many Northern Californians would have gone to the emergency room or they would have gone without any care altogether.

In this way, CHCs are a cost-saver for our health care system—by providing a significantly cheaper alternative to emergency room care for basic treatment—and they improve overall community health. They deliver care to those that would otherwise go without and they target that delivery to their service population. This means that patients receive care when they need it, where they need it and in a way that makes them comfortable and that they understand.

To accommodate different schedules, centers offer daytime, weekend and after-hours care. To accommodate language barriers—in some areas of my district Latino patient loads are as high as 62 percent—most centers offer services in both Spanish and English. And, to accommodate those who cannot travel to receive services, many centers operate mobile units. These "clinics-on-wheels" travel to our schools, migrant camps, community centers and homeless centers.

CHCs provide a truly comprehensive range of care, with basic services including adult and pediatric primary care, obstetrical and gynecological care, immunizations, medical case management, nutrition and dietary instruction and mental health counseling. In addition, some clinics are also able to offer dental care, tobacco cessation programs and HIV care. Outreach and education campaigns are an integral component of their service delivery and all community health centers help those who are eligible to enroll in California's Medicaid and CHIP programs.

I thank the community health centers of Del Norte, Humboldt, Mendocino, Lake, Napa, Sonoma and Solano counties for their dedication to the health and welfare of the residents of the First District of California. As we move towards National Community Health Center week, I urge my colleagues to help raise awareness of the important services that their local CHCs provide. Undoubtedly, many more Americans would lack access to care were it not for the commitment of our nation's community health centers to the service of the poor and medically needy.

INTRODUCING LEGISLATION TO REESTABLISH THE U.S. PAROLE COMMISSION

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MINK of Hawaii. Mr. Speaker, Congress voted to abolish the parole system when it passed the Sentencing Reform Act of 1984.

In the rush to close the revolving door for repeat offenders, Congress slammed the door on all non-violent offenders. Today, individuals in prison have little hope. Many serve 5, 10, 20, and even 30-year sentences without the possibility of parole. They have no encouragement to take classes or any other steps to improve themselves.

Congress needs to find a way to help individuals who have paid their debt to society and were given excessive sentences due to mandatory sentencing laws.

I urge my colleagues to consider the case of Terri "Chrissy" Taylor. As a teenager, Chrissy fell prey to the will of a man nearly twice her age. Chrissy became a pawn of this man, and he used her to obtain the chemicals he needed to manufacture methamphetamine. Chrissy never dealt, trafficked, or manufactured drugs. She was convicted of purchasing legal chemicals with the "intention" of using them to manufacture methamphetamine. Under the mandatory minimum sentencing guidelines, the judge had no choice but to give Chrissy a 20-year sentence.

We need to make sure no one is forced to spend years in prison without any hope.

My bill reestablishes the U.S. Parole Commission. The commission will grant parole to reformed prisoners who have earned parole. This is not an open door policy. Rehabilitated prisoners shall be eligible for parole only after serving one third of their term or after serving ten years of a life sentence.

Shortly after sentencing, the commission will give prisoners tentative release dates. The commission can change or revoke the release date based on the prisoners' institutional conduct record. This will be a "hook" to encourage prisoners to rehabilitate themselves. Additionally, judges will have the ability to send criminals to prison without the possibility of parole. This make sure judges have the power to ensure meaningful prison sentences for criminals who commit the most egregious crimes.

I urge my colleagues to cosponsor this bill and give individuals a chance to rehabilitate themselves and rejoin our society. This bill will free the hands of judges who are forced to assign excessive mandatory minimums to individuals whose sentences do not match their crimes.

VETERANS HEALTH CARE FUNDING GUARANTEE ACT OF 2002

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SMITH of New Jersey. Mr. Speaker, on behalf of America's 25 million veterans, I am introducing H.R. 5250, the Veterans Health Care Funding Guarantee Act of 2002, along with my friend and the Ranking Member of the Committee on Veterans' Affairs, Mr. Evans, that would change funding of the Department of Veterans Affairs (VA) health care system from discretionary to mandatory spending.

We are introducing this bill in recognition of the continually frustrating annual struggles to obtain sufficient funding to provide access to quality care for the nation's veterans in VA health care facilities. The current discretionary appropriations process subjects these veterans' health care needs—needs of the heroes who won the Battle of the Bulge, endured as prisoners of war in Bataan and Corregidor and survived human-wave assaults in the frozen Chosin Reservoir—to annual health funding competition with federal highway funding and sewage treatment projects. This reality alone vividly illustrates the inherent weakness in the discretionary appropriations process for VA health care and the need to reform it.

Mr. Speaker, 2 years ago, we passed TRICARE for Life, a new program to guarantee lifelong health care for military retirees and their families. I was proud to support that program for hundreds of thousands of military families, who are now assured of free health care services sponsored entirely by the government. The bill we are introducing today would extend the same kind of guarantee to the remainder of America's veterans, to assure their continued access to the VA health care system.

H.R. 5250 would establish a formula to fund the VA health care account directly from the U.S. Treasury with a method similar to that used by Congress to provide funding for TRICARE for Life. Veterans' disability compensation payments are already funded through mandatory formulas, and our legislation would apply the same priority to meeting the health care needs of our veterans.

The bill we are introducing today would establish a base funding year, calculate the average cost for a veteran using VA health care, and then index the cost for inflation. Multiplying this average cost by the number of veterans who are enrolled each year on July 1st, would determine the funding allotment for the Veterans Health Administration for the next fiscal year.

It should be noted that H.R. 5250 would neither take away the Secretary's power to manage the VA health care system nor to curtail the Secretary's control of enrollments in VA. And unlike TRICARE for Life, it would not extend benefits to family members of veterans.

Mr. Speaker, for at least the past five years, veterans' usage of VA health care services surpassed Administration estimates. Just this past week, we received a revised workload estimate for FY 2003 from VA showing an increase of 500,000 veteran patients; and that's on top of the 700,000 increase in patients estimated in the budget submission made only five months ago. VA now estimates that there will be 4.9 million unique veteran patients in FY 2003, versus the 3.7 million veterans that had been projected one year ago for FY 2002—a 31.5-percent increase overall.

Mr. Speaker, the continuing rise in demand for VA health care services is driven by many factors, including the growth of new and convenient VA community-based outpatient clinics, improved safety and quality of care, as well as available prescription drug benefits. VA has increasingly become a supplier of prescription drugs to veterans, particularly for senior veterans.

Further evidence of the urgent funding needs of VA health care comes from a new report issued this month by VA measuring the amount of time veterans are waiting for medical services. According to VA's report, there are at least 300,000 veterans waiting for medical appointments, half of whom are waiting 6 months or more; and the other half having no appointment at all. This is the first attempt to measure a situation about which we have all heard from our constituents, and we suspect that the scale of the problem is actually greater, since this estimate only counts those veterans already enrolled in the VA health care system.

Mr. Speaker, we have a sacred obligation to ensure that our nation's veterans receive the honors and benefits that they have earned through their service to this nation. In the past decade, more and more veterans have turned to the Department of Veterans Affairs for medical services, particularly World War II and Korean War veterans. We have attempted to meet our obligation to them by passing record VA budgets for two years in a row. As our colleagues may recall, the House-approved budget resolution for fiscal year 2003 contained a substantial $2.6 billion increase in the funding of medical care for our nation's veterans.

However, the demand for services continues to outpace the supply of federal funding of VA health care. In the supplemental appropriations bill we passed, Congress included $417 million for additional health care funding to try to meet the current year's shortfall, and that was based upon the older workload estimates.

Mr. Speaker, it is becoming increasingly clear that Congress needs to look at new methods and sources for veterans' health care funding, and the Committee on Veterans' Affairs has been seeking additional ways to match resources to the growing demand. Working with the Committee on Armed Services, we attached an amendment to the Department of Defense (DOD) authorization bill that would seek to increase health care resources sharing between the DOD and VA health care systems, and we hope it will see final passage this year. Also we have sought to increase third-party collections through the VA Medical Care Collections Fund with more aggressive oversight and legislative improvements.

In addition, earlier this month the Committee examined ways to improve coordination and allocation of resources between Medicare and VA, since about half of the veterans receiving VA health services are also Medicare-eligible. Yet, despite all of these efforts, VA continues to struggle each year to provide all the funds needed for the tasks it faces in caring for millions of frail, elderly veterans.

Mr. Speaker, with the introduction of H.R. 5250 we hope to begin an important debate on the future of veterans' health care and its funding needs. We will shortly request Administration views on the bill, and cost information from the Congressional Budget Office. We intend to meet with colleagues on both the Committees on the Budget and on Appropriations to obtain their views; and it goes without saying that we will be consulting with veterans organizations in the months ahead in order to learn whether this approach or a combination of other changes will solve this vexing problem confronting America's veterans and the health care system serving them.

We urge all our colleagues to examine H.R. 5250 and work with us to find a means to provide dependable, stable and sustained funding for the health care needs of veterans of our armed forces. They deserve no less from a grateful nation.

RECOGNIZING THE SERVICE OF TONY HALL

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. TANNER. Mr. Speaker, I wish to join our colleagues today in recognizing the work of my friend, the Honorable TONY HALL, as he prepares to leaves this House of Representatives to pursue a great endeavor that will call on his practiced leadership skills to help people around the world.

Over the years, Mr. HALL's work in this body has proven that his compassion stretches far beyond the Third District of Ohio. He has shown through his tireless fight against world hunger that he possesses a genuine concern for his fellow man; and I know that quality will continue to guide his work from this point forward.

I am honored to have had this opportunity to work with TONY, who is an exceptional leader, an honorable man and a good friend. All our best wishes go with TONY as he continues his noble work in this new capacity.

HONORING THE 150TH ANNIVERSARY OF THE CITY OF FERNDALE, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today in recognition of the 150th anniversary of the founding of the Victorian Village of Ferndale, Humboldt County, California.

In 1852, brothers Seth and Stephen Shaw and their companion Willard Allen, traveled through the Eel River plain exploring a wilderness of ferns and redwood trees. Desiring to farm the fertile land, they constructed cabins which eventually became the village of Ferndale.

Situated near the Pacific Ocean, surrounded by dairy farms, Ferndale has preserved its architectural heritage, attracting thousands of tourists who cross the historic Fernbridge over the Eel River and step back into another era.

Named one of America's "Dozen Distinctive Destinations," the National Trust for Historic Preservation added Ferndale to its 2002 list of the best-preserved and unique communities in the nation. The Trust cited well-managed growth, a commitment to historic preservation and interesting and attractive architecture as influential in its choice of The Cream City for the designation.

Seeking historically accurate locations, filmmakers have discovered that Ferndale is an ideal place to make motion pictures. The citizens of Ferndale have enthusiastically supported the use of their city as a film site and fill the scenes as "extras."

Ferndale will welcome visitors with an old-fashioned birthday party in celebration of this historic anniversary on August 23rd and 24th, 2002. The art galleries, parks and beautiful houses that grace the city make Ferndale a delightful place to live and to visit.

Mr. Speaker, it is appropriate at this time that we recognize the City of Ferndale, California on the occasion of its 150th anniversary.

MEDICARE BENEFICIARY ASSISTANCE IMPROVEMENT ACT OF 2002

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DINGELL. Mr. Speaker, today my colleagues and I are introducing a bill that will make significant and long-overdue improvements in the programs that provide assistance to low-income Medicare beneficiaries. Medicare provides coverage to all 40 million elderly and disabled beneficiaries, regardless of income, but the cost of uncovered services, premiums, and cost-sharing is a serious burden on those with the lowest incomes.

More than 40 percent of Medicare beneficiaries have incomes below 200 percent of poverty (a little more than $17,000 a year). These low-income beneficiaries are nearly twice as likely as higher-income beneficiaries to report their health status as fair or poor, but are less likely to have private supplemental insurance to cover the cost of uncovered services or Medicare cost-sharing. Poor beneficiaries also bear a disproportionate burden in out-of-pocket health care costs, spending more than a third of their incomes on health care compared to only 10 percent for higher-income beneficiaries.

Medicaid, through what is known as the "Medicare Savings Programs," fills in Medicare's gaps for low-income beneficiaries, providing supplemental coverage to 17 percent of all Medicare beneficiaries. Millions of beneficiaries, however, who are eligible for assistance under the Medicare Savings Programs are not enrolled. For example, only half of the beneficiaries below poverty who are eligible for assistance are actually enrolled. Lack of outreach, complex and burdensome enrollment procedures, and restrictive asset requirements keep millions of seniors from receiving the assistance they desperately need.

The Medicare Beneficiary Improvement Act of 2002 takes a number of steps to address these problems. First, the legislation improves eligibility requirements for these programs. It raises the income level for eligibility for Medicare Part B premium assistance from 120 percent to 135 percent of poverty. This expansion was originally enacted in 1997 but it expires this year; it is simple common sense to make this provision permanent. The bill also ensures that all seniors who meet supplemental security income (SSI) criteria are automatically eligible for assistance. Currently, automatic eligibility is only required in certain states, meaning that beneficiaries in other states may miss out on critical assistance unless they know enough to apply. The bill also eliminates the restrictive asset test that requires seniors to become completely destitute in order to qualify for assistance. Most low-income Medicare beneficiaries have limited assets to begin with—85 percent of beneficiaries with incomes below the poverty level have fewer than $12,000 in assets—but the asset restrictions are so severe, a beneficiary could not keep a fund of more than $1,500 for burial expenses without being disqualified from assistance.

Second, the legislation eliminates barriers to enrollment. The legislation allows Medicare beneficiaries to apply for assistance at local social security offices, encourages states to station eligibility workers at these offices (as well as at other sites frequented by senior citizens and individuals with disabilities), and ensures that beneficiaries can apply for the program using a simplified application form. In addition, this bill will ensure that once an individual is found eligible for assistance, the individual remains continuously eligible and does not need to re-apply annually.

Third, the legislation improves assistance with beneficiary out-of-pocket costs. It provides three months of retroactive eligibility for "qualified Medicare beneficiaries" (QMBs). All other groups of beneficiaries have this protection currently. In addition, it prohibits estate recovery for QMBs for the cost of their cost-sharing or benefits provided through this program. The fear that Medicaid will recoup such costs from a surviving spouse is often a deterrent for many seniors to apply for such assistance.

Finally, the legislation funds a demonstration project to improve information and coordination between federal, state, and local entities to increase enrollment of eligible Medicare beneficiaries. This demonstration would help agencies identify individuals who are potentially eligible for assistance by coordinating various data and sharing it with states for the purposes of locating and enrolling these individuals. In addition, the legislation provides grant money for additional innovative outreach and enrollment projects for the Medicare Savings Programs.

All told, this legislation should go a long way in making sure that the Medicare Savings Programs are working as they should to provide assistance with health care cost-sharing and premiums for vulnerable low-income seniors. As Congress addresses Medicare issues this year, we must ensure that in addition to addressing provider payments, we also address these important beneficiary protection issues as well. I look forward to working with my colleagues to pass this legislation.

H.R. 5250—VETERANS HEALTH CARE FUNDING GUARANTEE ACT OF 2002

HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. EVANS. Mr. Speaker, today, I want to end my support as an original cosponsor of the "Veterans Health Care Funding Guarantee Act of 2002" being introduced by the Chairman of our Committee, CHRIS SMITH. The bill, supported by all of the major veterans' service organizations, would create a mandatory spending stream for veterans' health care and medical construction in the Department of Veterans Affairs.

VA medical care is one of the biggest domestic discretionary accounts in the federal budget. While Congress has historically improved upon inadequate Administration budget requests, VA has still suffered from ebbs and flows in its funding streams that often have little to do with the number of veterans served or the cost of the services they receive. We, in Congress often must work within artificially constrained budget limitations that do not allow the growth in funding VA needs or our veterans deserve.

This has been particularly difficult in recent years in which the growth in veterans seeking care in the system, often for the first time, has been unprecedented and unpredictable. A mandatory funding stream, such as that which the Chairman of our Committee proposes, will bring increased stability and predictability in funding the health care system designed to meet the needs of our nation's veterans.

The Chairman's bill would use medical inflation and growth in the VA's enrollment to ensure that these uncontrollable factors are appropriately addressed. The bill would also require a one-time "bump" of twenty percent in the appropriation to adjust VA's baseline, deemed by our major veterans' service organizations to be significantly under-funded for the last several years.

Our veterans' health care system is struggling to accommodate significant growth in use by veterans. Finding that VA is a source of inexpensive prescription drugs, aging middle-class veterans have recently enrolled in record numbers. About five years ago, lower priority veterans (those who are not service connected or medically indigent) constituted about 2–3 percent of the veterans' patient population; they now constitute about 30 percent of the 6 million veterans enrolled in the system.

Appropriations have simply not kept pace with veterans' increased demand for VA health care. As a result VA has unmanageable waiting times and is neglecting its core population—the veterans with service-connected conditions, with certain exposures or service or the veterans who are considered medically indigent. I recently received data from the Secretary of Veterans Affairs that indicates that there are more than 300,000 veterans either waiting for their first VA appointment or who have waited longer than six months for care. I believe that all veterans deserve access to their health care system, but we cannot pretend that they have this access simply because we allow it. The system must be funded to ensure that it is able to meet the demand veterans produce.

I believe the Chairman's bill will address the problems Congress has chronically been unable to redress. I applaud his innovation and look forward to working with him on this bill.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably delayed on June 26th and was absent for a journal vote. I would like the record to reflect that had I been present, I would have voted "yea" on rollcall vote 261.

I was also unavoidably absent from this chamber on July 12, 2002. I would like the record to reflect that had I been present, I would have voted "yea" on rollcall votes 295, 296, 297, and 298.

Further, I was unavoidably absent from this chamber on Monday, July 22, 2002 and I would like the record to show that had I been present in this chamber, I would have voted "yea" on rollcall votes 324 and 325.

I was also unavoidably delayed on Thursday, July 25, 2002. I would like the record to show that had I been present in this chamber, I would have voted "yea" on rollcall vote 347.

TRIBUTE TO TEXICO, NEW MEXICO ON ITS 100TH ANNIVERSARY

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to pay tribute to Texico, New Mexico, as its citizens celebrate their centennial anniversary this month. Texico is a small community on the New Mexico-Texas border. It is known for its rich history and abounding sense of community, which has, over the years, sustained the town's traditional values, superb educational standards, intellectual strengths and high quality of life in Curry County.

I want to offer my sincere congratulations to Mayor Jerry Cunningham and all the residents of Texico on this happy occasion. On Saturday, July 27th, 2002, Texico, New Mexico, will celebrate its 100th anniversary. A parade beginning in Texico and ending in Farwell, Texas, its twin city, will lead citizens to Farwell Park, where craft shows, food booths, and class reunions will commemorate "Border Town Days." I know how excited everyone is about this special event.

Texico is located in what has been described as the "Golden Spread." This southwestern edge of the Great Plains is filled with the spirit of pioneers, who faced excitement, adventure, hardship, hope, fulfillment, disappointment, sadness and happiness as they moved West. Those that chose to found Texico gave the town the distinction of being the oldest community in Curry County.

In 1902, settlers moved into the area after railroad officials were considering Texico as a possible site for a railroad cutoff to Belen. The federal government and the New Mexico territorial government passed homestead laws in an effort to settle the eastern region of New Mexico. Soon settlers swarmed the area, and on either side of a muddy street, buildings soon formed a line of merchant shops and pioneer stops. Rooms for over-night visitors were quite reasonable—only twenty-five cents per night or $1.40 per week. Harry's Café offered the best steaks, lamb-chops, fresh oysters, and eggs in town, and after dinner the dancing hall offered entertainment.

The bank ranked as the most important institution, but close behind was the Cozy Cottage Hotel. The hotel served as Texico's only two-story building, which was very distinct. A church was later built, along with a one-room schoolhouse, to which students would ride their mules every morning. By 1925, the graduating class had increased to nine students.

Today, Mayor Jerry Cunningham governs a total of about 1,065 citizens. The true charm of Texico is the fact that not much has changed in its 100-year existence. People have come and gone and businesses have opened and closed; but the warmth, friendliness and character have remained intact. Agriculture and its support services have always been the backbone of the community, and the wholesome rural nature has been preserved. The citizens of Texico, and Curry County in general, should be very proud of that status.

Mr. Speaker, in closing, with all the historical grandeur Texico boasts, we have great reason to celebrate today. Accordingly, I extend my warmest congratulations to my friends in Texico on its 100th Anniversary. Texico most certainly has distinguished itself through its historical and social presence, and I call upon my colleagues to join me in applauding 100 years of excellence.

RECOGNIZING DAVID C. DARLING FOR HIS THIRTY-ONE YEARS OF LAW ENFORCEMENT SERVICE

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize David C. Darling as he retires from the St. Helena Police Department. Officer Darling has spent the last thirty-one years of his career serving the people of St. Helena, California.

As a native of St. Helena, I can attest to the strong embodiment of law enforcement, that David provides on a daily basis. His dynamic experience also includes stints as a Campus Police Officer at Napa College and a Police Reserve Officer for the City of Calistoga. As an officer for the St. Helena Police Department, he was recognized as St. Helena's Police Officer of the Year in 1987. David has served as the President of the St. Helena Police Officers Association for more than ten years and also served as the President of the Napa County Peace Officers Association.

In addition to these many accomplishments, Officer David Darling has built a reputation as being reliable and truly dedicated to his work. He often served as acting sergeant and shift supervisor. Officer Darling could be called on for any assignment. He made a name for himself in his relentless and noble campaign against drunk driving. For many years Officer David Darling was the uncontested champion of removing drunk drivers from our streets and securing their convictions. He was dedicated to the cause well before it was taken up as a public campaign.

Mr. Speaker, it is appropriate at this time that we recognize David C. Darling for his tremendous work for the people of the Napa Valley. He is a true asset to our community, and I speak on behalf of the people of St. Helena when I thank Officer David C. Darling for his service.

LEGISLATION TO CREATE A 2,800-ACRE PARK IN JOHNSON COUNTY

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. MOORE. Mr. Speaker, on April 22, 2002, I introduced legislation in celebration of Earth Day that would create a 2,800-acre park in Johnson County on the former site of the Sunflower Army Ammunition Plant. Senator PAT ROBERTS has truly been a leader on this issue by inserting the language from our bills (S. 2107/H.R. 4544) into the National Defense Authorization Act for Fiscal Year 2003. As the House and Senate go to conference to mitigate the differences between our two bills, I would like to strongly encourage the conferees to keep this important language in the final authorization bill.

I have been working on this issue since I was sworn into office in January 1999. Johnson County has experienced rapid growth in recent years making it even more important that we set aside areas for parks and nature preserves now, before they are developed. The transfer would expand the borders of the 850-acre Kill Creek Park in Olathe, which opened last year.

The greatest gift we can give to future generations is acres and acres of local parks and nature trails. I have four grandchildren; I would love nothing more than to be able to take them to play in the parks like the one this authorization language would create. By transferring this land from the federal government to local control, we'll continue to add to our local system of parks and recreation areas.

TRIBUTE TO LT. GEN. P.K. CARLTON UPON HIS RETIREMENT FROM THE UNITED STATES AIR FORCE

HON. CIRO D. RODRIGUEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. RODRIGUEZ. Mr. Speaker, I would like to take a moment to pay tribute to Lieutenant General Paul K. Carlton, Jr., Surgeon General of the Air Force, on the occasion of his retirement.

On December 1, 2002, General Carlton will end 37 years of extraordinary military service. A distinguished graduate of the U.S. Air Force Academy in 1969, General Carlton completed medical school at the University of Colorado and launched a spectacular career as an Air Force surgeon.

I have personally come to know General Carlton since he was commander of Wilford Hall Medical Center in San Antonio, Texas. Then, as now, Wilford Hall Medical Center is a major presence in our community. Under his leadership and support, the 311th Medical Systems Wing at Brooks AFB has become a worldwide leader in research, development and training for bioterrorism surveillance, detection, and response. The Air Force medical professionals in San Antonio have been active leaders in that city's remarkable successes in developing a disaster response plan.

Over the last 2 years as Surgeon General, General Carlton has revolutionized the Air Force Medical Service's readiness mission to fully reflect the Air Force doctrine of shape, respond, and prepare. This has not been an easy undertaking—as with any change, it means upsetting the status quo. General Carlton's leadership and perseverance has prevailed, giving the United States Air Force, and this country, a medical response second to none. The light, lean, mobile medical capability that General Carlton championed has literally brought state-of-the-art medical care to our forward-deployed troops. This approach to responsive medical capability has much to offer our nation as we address homeland security issues.

We are privileged in this country to have patriots like General Carlton who devote their lives to the defense and betterment of this country. On behalf of the state of Texas and this nation, I extend to General Carlton our gratitude and sincerest best wishes.

PERSONAL EXPLANATION

HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DEFAZIO. Mr. Speaker, on rollcall No. 351, passage of H.R. 4946, Improving Access to Long-Term Care—because of a family emergency I was not present to vote.

Had I been present, I would have voted "No."

VELÁZQUEZ-ISSA-WILSON AMENDMENT TO H.R. 5005

SPEECH OF

HON. DARRELL E. ISSA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. ISSA. Mr. Speaker, I rise today to voice my support for the Velázquez-Issa-Wilson amendment. I would like to thank the gentlewomen from New York and New Mexico for joining me in introducing this amendment that is so important to America's small businesses.

Small businesses are the backbone of our nation's economy. They represent over 99% of all companies in the United States and employ over half of the nation's workforce. The Department of Homeland Security should facilitate a competitive purchasing atmosphere where high quality goods provided by small businesses can assist in the critical mission of this new agency.

The Velázquez-Issa-Wilson amendment will require the Department of Homeland Security to adhere to the same minimum procurement goals as other federal agencies. Additionally, the amendment puts accountability into the hands of procurement officials by making goal attainment an element of worker performance evaluations.

It is critical that government support American small businesses, which is why Congress created statutory goals for small business procurement.

Support the Velázquez-Issa-Wilson amendment and let us secure a place for small businesses in Homeland Security's procurement market.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

SPEECH OF

HON. JOHN E. SUNUNU

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. SUNUNU. Mr. Speaker, no one in the corporate world should ever believe that their position puts them above the law or outside the bounds of ethical responsibility. Those who do should be held accountable, those who break the law should go to Jail.

Today, the House will vote for the third time this year to hold corporate America to the highest of standards. Our action today will inform executives that their actions will be scrutinized, with the threat of real penalties for violations of their legal responsibilities to shareholders and the public.

The citizens of my state, and indeed all Americans, have watched the stock market tumble as accounting scandals have shaken investor confidence. Investors have watched as the values of their portfolios have fallen. They want—and deserve—tough action against fraud and malfeasance. In short, they want Wall Street to abide by the common sense principles that guide Main Street, and the public deserves nothing less.

This conference report, which I am proud to support, includes key provisions from our House-passed legislation that will improve disclosure, impose tougher penalties, and better protect investors in such cases of fraud.

By establishing for the first time a requirement for real-time corporate disclosure, the bill will better protect investors. Companies will now have to disclose any information that would materially affect the company's financial health. That is the kind of information that can never be—and should never be—withheld from the public. Accurate and clear financial disclosure will enable better investment decisions to be made based on a company's true financial performance.

Second, by strengthening the penalties for corporate fraud, the bill will act as a better deterrent to those seeking to stretch or, test the boundaries of the law. This conference report provides double the jail time that was included in the Senate bill—up to 20 years—for corporate criminals who defraud the public, destroy documents or obstruct justice.

Finally, the investor restitution provision in this bill will enable investors who lose money in the markets as a result of corporate malfeasance to reclaim the gains of corporate criminals. Under the FAIR provision, a fund will be established to collect civil penalties and other funds from executives who violate the laws and defraud investors.

Mr. Speaker, I want to commend the conferees for working quickly to develop a bill that can win bipartisan support. I am confident that passsage of this conference report will send a clear message to the corporate world that Congress and the American people expect them to play by the rules or face the consequences.

NURSE REINVESTMENT ACT

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mrs. MALONEY of New York. Mr. Speaker, I rise in strong support of the bipartisan Nurse Reinvestment Act. I applaud the hard work of Congresswoman CAPPS and thank her for her dedication to this important public health issue.

Today's nurses are overworked, period. And despite their best efforts, the nursing shortage is impacting patient care.

Included in this bill's many worthy provisions, are measures to provide incentives for young Americans to decide to become nurses. Keeping our nurses in the workforce, while recruiting new staff will be critical to reversing these startling shortages.

Our nation's nurses are stressed and overworked. More and more, the stress and the work conditions have caused many nurses to stop practicing. According to a U.S. Department of Health and Human Services report, 19 percent of New York's registered nurses were not practicing in 2000, up 4 percent since 1996.

Worse yet, three quarters of nurses feel the quality of nursing care at the medical facility at which they work has decreased over the last two years, in large part due to under staffing. In New York, the nurse patient ratio violations have become so frequent that the New York Professional Nurses Union has put the hotline to report these violations on the front of their webpage, right next to instructions on how to take a sick day, or a vacation day. When nurse patient ratio violations are as common as a sick day, health care is clearly hurting.

Again, I applaud the hard work of Mrs. CAPPS and her colleagues. Thank you, Mr. Speaker..

IMPROVING ACCESS TO LONG-TERM CARE ACT OF 2002

SPEECH OF

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 23, 2002

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise in support of the Improving Access to Long-Term Care Act because it is an important first step in encouraging personal responsibility for planning for and financing one's own LTC needs. Nearly 40% of us will need some form of LTC during our lives, but few of us plan for its costs. If we are going to slow the growth of Medicaid spending—currently, the primary payor of LTC expenses—and ease the burden of government on our children's generation, we must focus on developing sound private insurance products so families can provide for their own futures by protecting their assets to support them and giving them choices in LTC services.

This bill will encourage the expansion of the LTC insurance market and strengthen consumer protections in LTC insurance policies. The market in this area is not mature, and these protections are extremely important to its development. Qualified LTC policies will have to meet requirements designed to protect purchasers, particularly seniors. Suitability standards, for example, attempt to assure that policies are suited to the purchaser's resources and needs.

One aspect of this bill caused me concern and it is my hope that we will be able to reevaluate the income guidelines for claiming the deduction and the limits on the deduction amount. For example, when this bill is fully phased in, a person with $20,000 income will get 7.5 cents in subsidy for every premium dollar spent on LTC insurance. That's assuming they meet the asset test under the suitability requirements and that—at $20,000 income—they have sufficient tax liability for a deduction to matter.

Because of the looming tidal wave of baby boomers that will age into the need for LTC services, I have been introducing LTC insurance premium deductibility legislation for over four years. My previous bills have also included a tax credit to offset the costs of caregiving for families that provide LTC assistance for a family member.

HIAA and the AARP have been strong supporters of that legislation. They have educated Members and 205 of you have co-sponsored that bill. While I will continue to fight for passage of a deduction that is not limited to lower income, and for a full credit for caregiver expenses, I support H.R. 4645 tonight because it is a first step toward that goal. In addition, it will put in place the consumer protections we need in the LTC insurance market, and these protections will be available to all purchasers of LTC insurance who access one of the other Tax Code incentives that incorporate the definition of "qualified LTC insurance policy".

This bill will encourage personal responsibility for private financing of LTC expenses and support the development of the LTC insurance market.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

SPEECH OF

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. MARKEY. Mr. Speaker, I rise in support of the conference report on the corporate accountability bill. Make no mistake about it, Mr. Speaker: This conference report is the result of investors' refusal to be fooled by empty speeches, photo-ops and weak proposals that failed to go far enough to fix the crisis of confidence in the marketplace.

Mark Twain used to say, "A cat, once burned, won't get on a hot stove again. But it won't get on a cold stove either."

Despite intense lobbying efforts to weaken the Sarbanes bill passed unanimously by the Senate, investors recognized that only tough new reforms would fix the problems plaguing corporate America. The average investor thinks the financial market is rigged, so trust is hard to come by. Trust is to the economy is what oil is to a machine—without it, it will break down.

This conference report contains tough provisions that were omitted from the timid bill that the House passed earlier this year. The conference report contains:

A strong structural separation, a bona fide Chinese Wall, between stock analysts and investment bankers, so that investors can have confidence in the recommendations they receive.

A strong independent oversight board for the accounting industry. Corporate auditors will no longer be policing themselves, but instead will be subject to an independent accounting oversight board.

Bans on accounting firms offering a menu of non-audit services to their audit clients. The big accounting firms will not have an incentive to look the other way at shady accounting just to preserve their consulting contracts. The accountants, for too long, have been able to be the referees and the players in their game of finance. This leads to conflicts of interest that prevent a level playing field for market participants.

Mr. Speaker, while this conference report is an important step forward, it is shameful that a strong accounting reform bill was fought tooth and nail by the industry and its friends in Congress.

During this struggle for financial reform, markets plunged and millions of investors saw their 401(k)s cut in half to 201(k)s as hard-earned savings evaporated.

Today we have the opportunity to pass an important reform bill. This bill is a key first step to restoring confidence in the markets—which has been badly damaged as weak half-measures proposed since the Enron collapse fell far short of what the market needed. I support this conference report and will continue to monitor the regulatory implementation of the provisions contained in the report.

WE FILLED THE PRESCRIPTION

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. STARK. Mr. Speaker, Dan Rostenkowski, former chairman of the Ways and Means Committee, recently wrote an op-ed in the Washington Post that I commend to my colleagues. It follows.

In 1998, I served as Chairman of the Ways and Means Health Subcommittee. Essentially, I was the pharmacist who filled his prescription for the Medicare Catastrophic Coverage Act.

I share his sentiment that if that law had stayed in effect, we would not be here more than a decade later trying to figure out how to get a prescription drug benefit into Medicare—it would already be there. The law may not have been perfect, but we had a drug benefit and we snatched defeat from the jaws of victory.

WE FILLED THE PRESCRIPTION

I have a prescription drug plan for you. Here's what it does:

It pays 80 percent of drug costs after a $710 deductible has been met, and it costs a relatively modest amount—a $4-a-month premium for 40 percent of beneficiaries and a maximum of $800 a year for the richest 5 percent.

It'll never happen, you say. Well, it already has. Just such a plan was enacted by Congress and signed into law by President Reagan in 1988. Unfortunately, mistakes were made in implementing the plan, and it was repealed a year later. But the concept behind it is worth another look today, as we contemplate huge new federal expenditures for prescription drugs for the elderly.

Of course, if we attempted something similar now, the numbers would be different. Because of inflation, the basic monthly premium would be nearly $8, the maximum premium would be in the $1,600 range and the deductible would rise to nearly $1,100.

It's important to note that the original program was designed to cost the federal government nothing. It was to be self-financed by the elderly population. That was a big issue back then, when people were concerned about big deficits and the need to bring the budget back into balance.

Priorities have changed. Today we see dueling plans that would, over the next decade, cost our government $350 billion to $800 billion. That's not chump change, especially considering that the Medicare program is already unstable and expected to run out of money fairly early in this century unless some big changes are made.

In today's free-spending atmosphere, the promised benefits are also a bit more liberal than those offered by the old program, kicking in after only $100-$250 is spent, depending on the plan. Obviously my successors have learned one lesson: Proposing an insurance program that doesn't promise benefits to most of the people who pay premiums can be a provocative and dangerous act.

Nevertheless, the odds are very long indeed against any of the plans now on Capitol Hill actually becoming law. This is especially true for the GOP plan, which requires private sector providers to bid. Some of us remember what happened when we invited private firms to provide Medicare coverage: Few took the challenge, and many that did failed to stay the course, deterred by government reimbursement that was less generous than what they had anticipated.

The plan we passed 14 years ago providing Medicare drug coverage was repealed by legislation signed in 1989 by the first President Bush. I'm convinced that had we stayed the course until 1992, when the benefits would have been fully phased in, the program would still be operating.

One of the mistakes we made was collecting the premiums immediately while adding the benefits only slowly. This was the fiscally responsive thing to do, of course—ensuring that money would be available to pay the promised benefits. But it was a big political mistake.

To be sure, if the program we enacted had survived, it would have changed over time, much as the tax system changes or the Medicare program has evolved in response to cost pressures. Perhaps it would be a bit less generous. Maybe there would be a formula to push patients toward the drugs that are most cost effective; the government has gotten quite sophisticated at squeezing other Medicare providers so as to maintain benefits while controlling cost increases.

But in any event there would be a program, however imperfect, helping a lot of people who need the aid—something we don't have now. Personally, I'd be surprised to see any Medicare drug benefits paid until the latter half of this decade, if then. And if the fiscal health of Medicare declines further, the entire issue may be put on hold.

More than 300 House members voted for the prescription drug program in 1988. More than 300 voted for repeal the following year, a drastic switch strong enough to induce political whiplash. In the interim, I was reminded once again of how no good deed goes unpunished: Unhappy seniors blockaded my car when I tried to exit a meeting called to discuss the issue. That was temporarily embarrassing for me, but they're the ones who are feeling the long-term pain. I suspect they wonder where the benefits are now that they need them.

After that failure, the issue became politically radioactive and went virtually untouched by Congress for a dozen years.

Will Washington be smart enough to learn from the past so that America's elderly will get the help they need in the future? My fear is that we're witnessing an unrealistic debate that will, at best, yield nothing more than a crop of partisan and empty talking points.

IN TRIBUTE TO TAVIS SMILEY

HON. EVA M. CLAYTON

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. CLAYTON. Mr. Speaker, three years ago, many of the communities in my Eastern North Carolina District were devastated and nearly destroyed by a succession of hurricanes and floods that swept through. Lives were shaken or lost, and the hopes of many nearly dashed. Particularly hard hit was historic Princeville, North Carolina—settled and incorporated by former slaves. When you live in a rural area it is sometimes easy to feel alone. One of the early sources of inspiration and hope to my constituents was the voice of Tavis Smiley—whom Newsweek profiled as one of the "20 people changing how Americans get their news."

In the immediate aftermath of the storms, Tavis Smiley surely demonstrated that he is one of the nation's "captains of the airwaves," calling attention to the plight of the people in Princeville through his national radio audience and in appearances on national television, ranging from The Tavis Smiley Show from NPR, The Tom Joyner Morning Show, BET Tonight, and CNN among others.

Tavis Smiley is one of the few powerful voices in America's mass media today who makes the term "advocacy journalist" something to be proud of. One of the most successful African-Americans in the media today, Mr. Smiley is also the founder of the Tavis Smiley Foundation, a nonprofit organization whose mission is to encourage, empower and enlighten Black youth.

His role in rallying Americans to understand the magnitude of the incredible natural disasters that befell Princeville and other communities in Eastern North Carolina had an enormous impact on our ability to cope and have hope, and his efforts created a groundswell of support from around the country to rebuild and revive. In the hearts and minds of Eastern North Carolinians, he's not just a "captain of the airwaves," he is a Prince of Public Service.

CONGRATULATING EBBY HALLIDAY ACERS

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HALL of Texas. Mr. Speaker, I rise today to honor one of Texas's most respected and most successful businesswomen—Ebby Halliday of Dallas—on the occasion of her 91st birthday. Her countless community activities, successful business venture and endless enthusiasm make her truly a remarkable woman.

Ebby Halliday Realtors, the company that she founded 57 years ago, has grown from its infancy into a nationally known entity. This company that began with one office has now expanded to become one of the world's largest independently-owned residential realty firms. And at the age of 91, Ebby still works 9-hour work days. Ebby Halliday Realtors assisted some 17,500 home buyers last year, and Ebby's remarkable business acumen is evident in the many awards that she has received from her industry and peers.

In 1996 Ebby was introduced into the Texas Business Hall of Fame. She was the recipient of the Distinguished Service Award from the National Association of Realtors and the International Real Estate Federation. Ernst and Young named her the regional Entrepreneur of the Year in 1997, and she was inducted into the Dallas Business Hall of Fame in 1999. In 2000, Ebby received the Lifetime Achievement Award in Real Estate from Texas A&M's Real Estate Center and was named Most Influential Woman in the Business and Professional Category by the Ft. Worth Business Press. Ebby was the first recipient of the Executive Women International's Executive Excellence Award—an award that will carry her name in the future—and she was conferred the Degree of Doctor of Humanities by Dallas Baptist University.

Aside from running a successful business, Ebby has selflessly devoted time and resources to local civic organizations. She has served as chairperson of the Thanksgiving Square Foundation, served on the boards of St. Paul Medical Foundation, the Communities Foundation of Texas, the Dallas Community College District Foundation, and the Better Business Bureau. She has also supported the Alexis de Tocqueville Society for the United Way, the Dallas Symphony Orchestra Guild, the Plano Symphony and the State Fair of Texas. She has been president of the North Dallas Chamber of Commerce and of the Greater Dallas Planning Council and served as a member of the Dallas Park and Recreation Board. In addition, the St. Paul Medical Center Foundation was dedicated to Ebby and her husband, Maurice Acers, in honor of their service.

Ebby's remarkable energy and philanthropy are a testament to her devotion to her career and to her community, and the State of Texas is grateful for her many significant contributions. Mr. Speaker, it is an honor for me to recognize an outstanding citizen for her remarkable lifetime of achievement and philanthropy—my dear friend, Ebby Halliday Acers.

A TRIBUTE TO THE KNIGHTS OF COLUMBUS, ST. CABRINI COUNCIL #3472 ON THEIR 50TH ANNIVERSARY

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to honor the Knights of Columbus, St. Cabrini Council #3472 on the occasion of their 50th Anniversary. On Saturday, June 29, the Knights of Columbus will celebrate this auspicious occasion with an anniversary dinner.

In 1882 Father Michael J. McGivney founded the Knights of Columbus on the four principles of charity, unity, fraternity and patriotism and I am happy to say, that the St. Cabrini Council #3472 has embodied these virtues for 50 years. Formed on November 14, 1951, by 45 charter members, the St. Cabrini Council #3472 has grown steadily and now boasts a membership of over 160 Catholic men. This fraternity has dedicated itself to selfless service not only to the Catholic Church, but to service groups throughout the community in which they live.

As many of the groups' members worship at Catholic parishes throughout Burbank and Sun Valley, many of the Knights of Columbus's efforts are focused on making these parishes more friendly and inviting places in which Catholics from throughout Burbank and the San Fernando Valley can come to worship. By involving themselves in parish events such as festivals, dinners, spiritual groups and carnivals, the organization continues to commit itself to creating a stronger and more vibrant Catholic community.

The Knights of Columbus have also adopted a number of community groups which they have supported throughout the years. Each year, the group is responsible for raising between $6,000 to $8,000 for charitable groups throughout Los Angeles County. Most notably, the Knights have been recognized for their funding of organizations that assist the mentally handicapped and for their efforts on behalf of Rancho San Antonio Boys Town of the West, a residential facility run by the Holy Cross Brothers and open to boys up to 18 years old who find themselves in conflict with the law.

Additionally, the Knights of Columbus have been active in offering scholarship opportunities to students in Catholic grade schools and high schools to assist these students in their pursuit of education. Their efforts have also extended to local Boy Scouts of America Troops in the way of sponsorship and financial contributions.

I ask all Members of the United States House of Representatives to rise today and honor the Knights of Columbus, St. Cabrini Council #3472 on the occasion of their 50th Anniversary and for all that they do for our community.

IN TRIBUTE TO SHIRLEY CAESAR

HON. EVA M. CLAYTON

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. CLAYTON. Mr. Speaker, three years ago, many of the communities in my Eastern North Carolina District were devastated and nearly destroyed by a succession of hurricanes and floods that swept through. Lives were shaken or lost, and the hopes of many nearly dashed. Particularly hard hit was historic Princeville, North Carolina—settled and incorporated by former slaves. When you live in a rural area it is sometimes easy to feel alone. One of the early sources of inspiration and hope to my constituents was a very special lady whose clarion voice and spirituality powerfully invoke the universal language of music—Shirley Caesar.

Shirley Caesar's mesmerizing musical talents have enthralled and uplifted millions of Americans over a career spanning more than thirty years. She is the winner of ten Grammys and numerous other awards for her heartfelt renditions of gospel, soul, and rhythm and blues music. Her music is part and parcel of her role as Pastor of Shirley Caesar Outreach Ministries, and a substantial portion of her concert and recording proceeds support her ministerial activities. Hers is an incredible example of triumph over adversity, exceeding others' expectations, finding her voice and her calling—helping the needy in her own community and anywhere help was needed.

In the immediate aftermath of the hurricanes and floods that almost washed Princeville away, Shirley Caesar came to our community and gladdened the hearts of saddened souls in need of uplift, hope and revival, singing such stirring songs as "You're Next in Line for a Miracle." Her efforts supported the rejuvenation of Princeville and other Eastern North Carolina communities rocked by the rains and ruin. She not only speaks to what is right and good, she sings it. Princeville will always be grateful for her "amazing grace."

HONORING REPRESENTATIVE TONY HALL

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HALL of Texas. Mr. Speaker, I join my colleagues in bidding a fond farewell to our esteemed colleague, the gentleman from Ohio, Representative TONY HALL, whom President Bush has selected to carry out the Nation's work as United States ambassador to the United Nations organizations that coordinate international hunger relief efforts. I can think of no other person more qualified or more deserving of appointment to this position than our friend, TONY HALL.

Throughout his years of service in the House of Representatives, TONY has distinguished himself for his work on behalf of the hungry throughout the world. He has been an eloquent spokesman and a tireless worker in fighting hunger and providing help to the needy, and he will be a most effective advocate for these international outreach efforts as our ambassador.

TONY also has been a tremendous advocate and representative for his constituents in the Third Congressional District of Ohio, who elected him to twelve consecutive terms to the House. His constituents will be proud, as we are, that he will continue to serve his country in this new and expanded role. I join my colleagues in extending to him our best wishes as he continues his service to our Nation and to those in need.

TRIBUTE TO CHILDREN WITH DIABETES AND THE CHILDREN WITH DIABETES FOUNDATION

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to honor Children with Diabetes and the Children with Diabetes Foundation. On July 18, 2002 the foundation will welcome hundreds of families, doctors and experts from around the nation and world to the 3rd Annual "Friend for Life" National Children with Diabetes Conference in Pasadena, California.

Children with Diabetes, an online community for children, families, doctors and researchers, was founded by Mr. Jeff Hitchcock shortly after he learned that his young daughter had contracted Type I diabetes, often known as juvenile diabetes. At the time, Mr. Hitchcock, knowing little about diabetes, was ill prepared to help his daughter cope with its affects and demands. In order to help prevent this feeling of helplessness for himself and for other parents like him, Mr. Hitchcock launched the Children with Diabetes website.

Since 1995 the Children with Diabetes website has become a clearinghouse of information for juvenile diabetes. Children and their parents have access to information from physicians, dietary suggestions, treatment suggestions and a myriad of other services that have proved helpful to those living with the daily affects of diabetes. The site has also become a useful tool for physicians and researchers who now have the ability to share information about new treatments and cutting edge research from across the globe.

While Children with Diabetes continues to act as an informational resource for juvenile diabetes, the Children with Diabetes Foundation acts to assist people financially living with diabetes and supports physicians and researchers around the world who are working towards a cure. Each year, the Children with Diabetes Foundation raises and awards thousands of dollars in scholarships and grants to researchers who are moving closer to a cure each day and to families working hard to live with this disease.

That is why this week's national conference is so important. It will bring together people from around the world who are working, in their own way, to eradicate this disease. The conference will include speeches by Dr. Francine Kaufman, President of the American Diabetes Association, small group workshops, community forums, and appearances by Olympian Gary Hall and Miss America 1999 Nicole Johnson. The conference will culminate in the display of a quilt assembled by children suffering from diabetes.

I ask all Members to rise and join me in congratulating and thanking Children with Diabetes and the Children with Diabetes Foundation for all that they do to fight against the negative affects of diabetes, especially juvenile diabetes, throughout the world. I am sure that through their efforts, we will one day find a cure for this disease.

A DEMOCRATIC PALESTINIAN STATE

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KNOLLENBERG. Mr. Speaker, A democratic government is the foundation of a stable, peaceful society. This is because of democracy's proven ability to effectively promote human rights, equity, and economic growth, while diminishing the probability of conflict between countries.

That is why greater democracy is necessary in order for the Palestinian people to realize definitive rights overseen by an independent judiciary. Democracy will lay the groundwork for security arrangements with Israel, Egypt, and Jordan. Greater democracy in the region will lead to economic development with support from the international community. Only then will we realize a feasible Palestinian state.

I support a two state solution to the Israeli-Palestinian conflict. But a Palestinian state can exist only in a new democracy with leaders who fully embrace peace.

I sincerely hope the Palestinian people strive to create a democracy with leaders who enact the reforms necessary for stability.

IN HONOR OF JIMMY WARFIELD

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KUCINICH. Mr. Speaker, I rise today in recognition and remembrance of Jimmy Warfield. As a trainer with the Cleveland Indians since 1971, Mr. Warfield will be remembered for his unrivaled dedication to the professional baseball community. But most importantly, Mr. Warfield will be remembered as a beloved husband, caring father, wonderful son, cherished brother, and an unforgettable friend.

A native of Hershey, Pennsylvania, Mr. Warfield grew to develop a strong love not just for baseball, but for Penn State football, one of his passions. Though a graduate of Indiana University, he never forgot his childhood team, and constantly followed and defended his heroes, including Penn State coach Joe Paterno.

In 1971, Mr. Warfield joined the Cleveland Indians' professional baseball organization. For six years he worked as an assistant trainer under Head Trainer Paul Spicuzza. Following Mr. Spicuzza's departure six years later, Mr. Warfield took the position as Head Trainer, a position with which he was honored to hold for twenty-six years. Arriving early in the morning, and staying at the field until late at night, Mr. Warfield, called "Bruiser" by former Indians' manager Pat Corrales, and "Daddy Warbucks" by former manager Mike Hargrove, not only used his skill and experience to help ballplayers recover from injury, but he also helped them in their personal lives. He was always there to add a soothing word, or a calming piece of advice.

A tolerant, amiable, and wise man, Mr. Warfield has touched hundreds of lives. Though he will be greatly missed, his life— a life dedicated to friends and family—is cause for recognition and celebration. Mr. Warfield is a man commonly considered to be the most beloved figure in the history of the Indians' organization.

Mr. Speaker and colleagues, please join me in honor and remembrance of a truly outstanding individual, Jimmy Warfield, whose kind, compassionate and thoughtful nature profoundly impacted so many lives, in and out of the Indians' clubhouse. His unforgettable spirit will be a shining legacy which will live on forever.

4-H 100-YEAR ANNIVERSARY

HON. ROB SIMMONS

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SIMMONS. Mr. Speaker, I rise to wish the National 4–H Program a happy 100th birthday. This is a wonderful milestone in the life of this national institution.

The 4–H program began as a series of clubs for boys and girls in rural America. The 4–H taught young people a variety of skills related to farming by using a learning-by-doing strategy. The program has grown tremendously in scope and today encompasses a broad range of subjects, but hands-on learning remains at the center of the 4–H.

Another constant for the 4–H is the organization's continued commitment to the 4–H's in its name—Head, Heart, Hands and Health. For 100 years this organization has provided opportunities for thousands of young people in my district and my state and to millions across the country. The 4–H teaches young people the importance of learning, kindness, a healthy lifestyle and helping one's neighbors. Those are great characteristics to instill in our young people.

In my state of Connecticut, New London County's 4–H camp was founded in 1947 on 24.5 acres, in Franklin, as an education and recreational facility. The camp is open to any and all youth ages 16 to 17, and campers do not have to be members of the 4–H to attend. The camp provides these young people with an experience in group living in the great outdoors. Through a wide variety of activities that focus on self-development, environmental awareness and a concern for safety and health, campers develop a greater understanding of themselves, others and the world around them.

The Middlesex County 4–H camp was established in 1962, on 90 acres in Moodus. This educational/recreational facility offers a mixture of traditional camping and innovative programs for young people. A variety of camp sessions offer programs for children between the ages of 7 and 14 and a Teen Camp is available for youths ages 13 to 16. From traditional sports to horsemanship to archery and creative arts, the camp achieves its mission to strengthen and uplift the youth's social, mental and physical development.

The Windham-Tolland 4–H camp has served families since 1954. Located in Pomfret Center, the camp's 270 acres contains woodlands, cabins, recreational areas and a beautiful lake. Campers enjoy a variety of sports, arts and crafts, woodworking, canoeing and campouts. Like all 4–H camps, the staff at Windham-Tolland focuses on fostering leadership skills, enhancing self-esteem and increasing each camper's individual potential.

In Connecticut, and across our nation, the 4–H continues to exemplify the very best of our youth and of America. I am pleased to wish them a Happy 100th Birthday.

TRIBUTE TO THE JET PROPULSION LABORATORY

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SCHIFF. Mr. Speaker, it is my pleasure to rise today to honor the Jet Propulsion Laboratory, located in California's 27th Congressional District, and pay tribute to for the enormous success of the Voyager Mission. On September 7, 2002, JPL will celebrate the 25th Anniversary of the Voyager Mission—one of America's most successful space exploration endeavors.

In the summer of 1977, the Jet Propulsion Laboratory launched twin spacecrafts, Voyager 1 and Voyager 2 on a mission to conduct close-up studies of Jupiter and Saturn, Saturn's rings and the larger moons of the two planets. In order to accomplish this mission, the spacecraft were built to last five years, but as the mission went on, and with the successful achievement of all of its objectives, the additional studies of the two outermost giant planets, Uranus and Neptune, proved possible. Thus, their two planet mission became four and their five year lifetime expectancy has stretched to 25 years and more.

At the final completion of their mission, Voyager I and 2 will have explored all the giant outer planets of our solar system, 48 of their moons, and the unique systems of rings and magnetic fields those planets possess. Currently, the two Voyagers are headed towards the outer boundary of the solar system at a speed that would move them from New York to Los Angeles in less than four minutes. They are in search of the heliopause—the region where the Sun's influence gives way to interstellar space. The heliopause has never been reached by any spacecraft; the Voyagers may be the first to pass through this region, which is thought to exist somewhere from 5 to 14 billion miles from the Sun.

The accomplishments of the Voyager Mission are a testament to 25 years of excellence by the staff at the Jet Propulsion Laboratory. From the scientists that worked on the mission in 1977 to today's mission specialists, JPL staff has shepherded Voyager to the farthest reaches of our solar system and in the process Voyager has unlocked mysteries that have revolutionized the science of planetary astronomy.

I ask all Members to please join me in congratulating the Jet Propulsion Laboratory on the 25th Anniversary of the Voyager Mission. It stands as a shining example of American ingenuity and our commitment to exploring and understanding the far reaches of our solar system.

IN HONOR OF GEORGE DURINKA

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KUCINICH. Mr. Speaker, I rise today in recognition of George "Bullwinkle" Durinka, for his outstanding service to our country both as a soldier and as a veteran. For the 2002–2003 year, Mr. Durinka has been selected to be the State of Ohio Commander for the Veterans of Foreign Wars.

Mr. Durinka joined the V.F.W. in 1968 following subsequent tours in Vietnam from 1968 to 1970. While overseas, he demonstrated his patriotism by earning, among others, the Vietnam Service Medal, Vietnam Campaign Medal, and the National Defense Medal, for his honorable service as a fuel specialist in the US Air Force.

Currently serving his post as Judge Advocate of the Lake Erie VFW Post 1974, from 1990 to 1994, Mr. Durinka was elected Post Commander and was named an All-State Post Commander. In 1995, he was elected District 7 Commander, serving as the Athlete-of-the-year Chairman, the POW/MIA chairman, and the Color Guard. At the national level, Mr. Durinka has served as a member of the National VFW MIA/POW Committee, the National Veterans Service Resolutions Committee, the National Youth Development and Recognition Committee, and the National Veterans Employment Committee.

Outside of the V.F.W., Mr. Durinka is employed by J.G.D Associates, working as a civil engineering draftsman. Mr. Durinka enjoys training in the Martial Arts. Author of a 1985 Martial Arts book, and since 1979 the Chief Martial Arts instructor for the Western Campus of the Cuyahoga Community College, Mr. Durinka is a 4th Degree blackbelt in Tae-Kwan-Do. A family man, Mr. Durinka has the full support of his wonderful wife Judy, and the love of his two daughters, Kelly and Michelle.

Mr. Speaker, please join me today in tribute to George Durinka for his exemplary record of service, and for his unrivaled dedication to the Veterans of Foreign Wars, May his upcoming opportunity to serve as State Commander prove to be an incredible and memorable part of his career serving the both the V.F.W. and America in general.

HONORING SRI LANKA PRIME MINISTER RANIL WICKREMESINGHE

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PALLONE. Mr. Speaker, I would like to take this opportunity to express my warm regards towards the Honorable Ranil Wickremesinghe, Prime Minister of Sri Lanka. His visit this week to the United States, the first visit by a Sri Lankan leader since a civil war broke out 19 years ago, confirmed that Sri Lanka is a valued friend and partner of the United States and an important ally in the campaign against international terrorism. The United States and Sri Lanka have enjoyed a strong friendship based on common values such as democracy and religious freedom.

For the past 19 years, there has been civil strife between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) that has unfortunately cost an estimated 65,000 lives and displaced an estimated 1,000,000 lives. In a breakthrough brokered by Norway, the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), an agreement on a cease-fire was signed by both parties and went into effect February 23, 2002.

These peace talks are set to begin in August in Thailand and at this time, I would like to commend the Prime Minister of Sri Lanka for his great effort to steer his country towards peace talks and for working on resolving the current conflict at the negotiating table with LTTE leader, Velupillai Prabhakaran. I applaud the Prime Minister's belief that a comprehensive and lasting peace solution is a priority and I support his denunciation of all political violence and acts of terrorism in Sri Lanka.

During talks this week between President Bush and Prime Minister Wickremesinghe, the Prime Minister emphasized that consistent U.S. diplomacy and international assistance will be critical in ensuring peace in Sri Lanka. In addition, the Prime Minister requested expansion of a military training program and improved economic ties between the U.S. and Sri Lanka.

As the founder and co-chair of the Congressional Caucus on Sri Lanka and Sri Lankan Americans, I would like to express my willingness for the U.S. to play a constructive role in supporting the peace process. In addition, I plan to encourage the Bush administration to take the steps necessary to support Sri Lanka during the peace process and to take the steps necessary to strengthen ties between the U.S. and Sri Lanka.

Mr. Speaker, I am encouraged by the leadership and dedication to peace so clearly exemplified by Prime Minister Wickremesinghe. I am pleased that his visit to the U.S. was a success and it is now time for the U.S. to proceed and actively support peace and reparation in Sri Lanka.

NATIONAL NIGHT OUT

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to show my strong support for National Night Out. This year, over 30 million people in 9,700 communities in all 50 states will celebrate National Night Out. Each year, National Night Out is our nation's night to say no to crime and help take back and preserve the safety of our neighborhoods.

In 1984, the Executive Director of The National Association of Town Watch, Matt A. Peskin, introduced National Night Out. Searching for a way to heighten the awareness and strengthen participation in local anti-crime efforts, Mr. Peskin believed that a high profile, high-impact crime prevention event was needed.

In the first year of the event, over 2.5 million Americans in 400 communities across 32 states participated by turning on their porch lights. Today, while the front porch vigil remains a custom, National Night Out now includes block parties, cookouts, parades, festivals, neighborhood walks, safety fairs, rallies and safety meetings. This year's event will prove to be a bigger success than ever and I am pleased to announce that many of the communities of California's 27th Congressional District will be proud participants.

The communities of my district will call on their residents to participate in this national show of solidarity. Whether it is through large gatherings, community walks, small neighborhood vigils or a lighted porch light, the residents of the 27th District have always made a commitment to safe neighborhoods and streets.

Such an evening proves an opportune time to celebrate and thank our local police and fire departments. The men and women of these departments spend each day helping to ensure our safety and it is only with their help that we will be able to ensure the long-term safety of our children and our neighborhoods. On this night in particular, they deserve our respect and our praise for their dedication to serving all of us.

It is with all this in mind, that I ask all Members to join me in their strong support of National Night Out—America's night to support safe neighborhoods and safe communities.

A SPECIAL TRIBUTE IN HONOR OF TEN YEARS OF INCORPORATION FOR THE TOWN OF AWENDAW, SOUTH CAROLINA

HON. HENRY E. BROWN, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BROWN of South Carolina. Mr. Speaker, small towns are God's little wonders and today I would like to recognize the small town of Awendaw in my district. Awendaw is known as the "land of the Seewee Indians." It has a rich history that included a visit from the 1st President of the United States, George Washington while on a southern tour in 1791. During the 16th century, records show four Indian tribes that inhabited the land—the Samp, Santee, Seewee and the Wando. Agriculture was their way of life. In 1670, English colonists came to South Carolina at Port Royal in Beaufort. They traveled down the coast until they sighted what is now called Bull's Bay. They were captivated by the beauty of the unspoiled beaches, tall trees and dense forest. As the colonists approached the shore, Indians were waiting with bows and arrows. But the crew yelled out an Indian calling "Appada" meaning peace and the Indians withdrew their bows and welcomed them to shore. The Indians shared their food and the English colonists gave them goods such as, knives, beads and tobacco. Auendaugh-bough was the name of the settlement when the English colonists arrived but the name was later shortened to Awendaw.

Awendaw is a special place. The arms of nature surrounds it and radiates its beauty. The Cape Romain Wildlife Refuge, the Francis Marion Forest and the Santee Coastal reserve create a natural wall of protection around the area. Hunting and fishing are still a means of getting food just as it was for the Seewee Indians.

The Churches of the Awendaw community are a "testimony of their faith." The Ocean Grove (formerly Pine Grove), Mt. Nebo A.M.E., Ocean Grove United Methodists and First Seewee Missionary Baptist are all historical churches that play a significant role in the lives of the people who live there.

In November 1988, the people of Awendaw began its fight to become a town. For four years, the people gathered once a month at the Old Porcher Elementary School to plan, organize and share information with the people. There were many hurdles set before the people of Awendaw by the Justice Department. In 1989, Hurricane Hugo interrupted the process, but it was resumed in 1990. The Awendaw community made two unsuccessful attempts to incorporate. Finally, after the third try, the Secretary of State granted a certificate of Incorporation on May 15, 1992. On August 18, 1992, the town of Awendaw elected its first mayor the Rev. William H. Alston. The first town council were Mrs. Jewel Cohen, Mrs. Miriam Green, the Rev. Bryant McNeal and Mr. Lewis Porcher (deceased).

This year the town of Awendaw will celebrate ten years of incorporation. The town has grown from 175 to over 1000 in population. Over the last seven years, the town of Awendaw has become famous for its annual Blue Crab Festival. This grand celebration brings thousands of people from neighboring communities to share in the festivities.

Mr. Speaker, I ask that my colleagues would join me in a salute to one of God's little wonders, the Town of Awendaw, South Carolina. "Thank God for small towns and the people who live in them."

PROJECT VARELA

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PALLONE. Mr. Speaker, I rise today to once again draw attention to important developments in Fidel Castro's continued oppression of the Cuban people.

Needless to say, this summer has proved to be a memorable one for Fidel Castro.

It began on Friday, May 10, when over 11,000 citizens of Cuba took a courageous stand and petitioned the Cuban National Assembly to hold a nationwide referendum vote on guarantees of human rights and civil liberties. Named for the 19th-century priest and Cuban independence hero, Padre Felix Varela, the Varela Project was the first-ever peaceful challenge to Castro's four-decade long control of the island. Varela received no funding or support from foreign organizations or foreign governments and is a grassroots effort by the Cuban people to call on their government to provide them with internationally accepted standards of human and civil rights.

In an attempt to negate the effects of Varela, Castro scrambled to respond. Exactly one month to the day that Varela was delivered to the Assembly, Castro and his regime organized mass demonstrations all over Cuba in a sign of so called "support" for Cuba's socialist form of government. Castro began his own petition effort that asks members of the Cuban National Assembly to adopt an amendment to the Cuban constitution that stipulates that Cuba is a "socialist state of workers, independent and sovereign, organized with all and for the good of all, as a unified democratic republic, for the enjoyment of political liberty, social justice, individual and collective well-being and human solidarity." Castro has supposedly "obtained" the signatures of approximately 98% of Cuba's voting population.

However, Castro's poorly veiled attempt to erase the impact of the Varela Project has only backfired. As we near the middle of summer, Castro continues to strong-arm Cuban citizens into signing his petition, and word of the Varela Project continues to spread. Oswaldo Paya, Varela's organizer, continues to collect signatures and continues to garner the world's attention for his efforts.

It is critical that we continue to draw attention to and commend the efforts of Paya, his fellow organizers and all those who have signed Project Varela. Castro cannot continue to hide behind his forced petition and continue to ignore Project Varela. If Castro is so assured of his having the support of the Cuban people, then he must schedule a referendum on Varela's reforms and allow the true voices of the Cuban people to be heard.

THE SYCAMORES

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to honor one of Pasadena's finest community organizations, The Sycamores. On September 29, 2002, The Sycamores will celebrate its 100th anniversary as one of the nation's premier mental health agencies serving California's children and families.

In 1902, Fannie Rowland, wife of John Rowland, the first President of the Tournament of Roses, called a meeting of thirty prominent Pasadena community leaders. She wanted to discuss the "advisability of establishing a home for the care of needy children." From that meeting, the Pasadena Children's Training Society was founded. Initially, the Society's two-story yellow building served as a home for "door-step" babies—infants left on the facility's front steps.

It was from the front steps that this agency grew. By the mid-1960s the Society had outgrown its home and moved to the neighboring community of Altadena. With the new home came a new name—The Sycamores—a moniker selected in honor of the many trees surrounding the new campus. As the physical location and name of the Society changed, so did its focus. What began as a small orphanage, bloomed into a residential treatment center by the 1960s.

Since then, The Sycamores has increased its capacity to help. Its board of directors purchased additional properties, developed a state-certified school, offering family and adoptive services, a neighborhood family resource center and expanded mental health and transitional living programs.

Over the years, The Sycamores, as one of the area's most acclaimed and capable facilities, has cared for some of the most troubled and needy children in California. The extraordinary staff uses innovative and effective methods to help children and families learn to live productive, but more importantly, happy lives. It is their dedication that makes The Sycamores a vibrant and valuable asset to the community.

I ask all Members to join me in congratulating The Sycamores for 100 years of service and thank them for all that they do for the children of our community.

INTRODUCTION OF THE INCREASED CAPITAL ACCESS FOR GROWING BUSINESSES ACT

HON. SUE W. KELLY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. KELLY. Mr. Speaker, today I am introducing the Increased Capital Access for Growing Businesses Act. In 1980 Congress enacted changes to the securities laws to allow for the creation of Business Development Companies (BDCs)—publicly traded companies that would invest in small and medium sized business that needed access to capital. Today there are about 20 active BDCs that are in the business of providing capital and management expertise to grow companies into larger success stories.

There have been many success stories as a result of the BDC legislation. Companies that would never have had access to capital to grow and expand today owe their success to the securities law structure that was enacted more than twenty years ago. However, after twenty years it is important for Congress to modernize and update the BDC provisions.

In order to maintain status as a BDC, in general a company must invest at least 70 percent of its assets in securities issued by something called "eligible portfolio companies." There are different categories in the law of companies that qualify for status as an "eligible portfolio company." However, the principal category on which BDCs rely for eligibility of their portfolio companies are companies that do not have a class of securities on which, "margin" credit can be extended pursuant to rules or the Federal Reserve. According to the legislative history of the 1980 Amendments, it was estimated that the definition of eligible portfolio company would include two-thirds of all publicly held operating companies.

Since 1980 when Congress adopted the definition of eligible portfolio company, the Federal Reserve has changed the requirements for marginability, and, effective January 1, 1999, margin securities include any securities listed on the Nasdaq Stock Market. This change has dramatically decreased the number of eligible portfolio companies.

The proposed legislation would allow BDCs to provide financing to a larger number of companies that are in dire need of capital and which cannot access the public markets or obtain conventional financing, consistent with the policy of the 1980 law. Specifically, it would add to the definition of "eligible portfolio company" any company with a market capitalization of not more than $1 billion. It would not, however, affect the requirement that the securities must be acquired in privately negotiated transactions.

Today more and more companies are finding that credit is simply unavailable. The ability for companies to grow and increase jobs is dependent on their ability to tap the capital markets. While this legislation may not be the answer for every small and medium sized company, it offers an opportunity for many companies that would otherwise find the capital market doors closed.

I urge my colleagues to join me in supporting this important legislation.

A SPECIAL BIRTHDAY TRIBUTE TO MRS. NANCY DINWIDDIE HAWK

HON. HENRY E. BROWN, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BROWN of South Carolina. Mr. Speaker, I rise today in celebration of the 80th birthday of a great American and an even greater South Carolinian, Mrs. Nancy Dinwiddie Hawk. Nancy Hawk was born on July 31, 1922. She is the proud mother of nine children and was the recipient of the "National Mother of the Year Award." Nancy was a stay at home mom who always put family first. It was not until after her children were grown that she decided to pursue her dream to become an attorney. At the age of 55, Nancy Hawk graduated from the University of South Carolina Law School. Nancy is a natural leader, she was chairwoman of the South Carolina Republican Party for a number of years. She continues to be an inspiration to me and all who are fortunate enough to cross paths with her.

Please join me in wishing Mrs. Nancy Dinwiddie Hawk a Happy 80th Birthday.

PERSONAL EXPLANATION

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KNOLLENBERG. Mr. Speaker, on July 24, 2002 and July 25, 2002, I was unavoidably absent due to the death of my sister and missed roll call votes 339–351. For the record, had I been present, I would have voted: No. 339—Nay; No. 340—Yea; No. 341—Yea; No. 342—Nay; No. 343—Yea; No. 344—Yea; No. 345—Nay; No. 346—Yea; No. 347—Nay; No. 348—Yea; No. 349—Yea; No. 350—Yea; No. 351—Yea.

RECOGNIZING THE TRICENTENNIAL OF ALLEN, MARYLAND

HON. WAYNE T. GILCHRIST

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GILCHREST. Mr. Speaker, I rise today to recognize the Village of Allen's 300th birthday. This Maryland community is located in the First Congressional District, which I have the distinct honor of representing. Established in 1702, I recognize this village for its longevity, and through that longevity, for influencing the unique flavor of Maryland's Eastern Shore.

Allen sits in Wicomico County, along Wicomico Creek. Central to its establishment was the Grist Mill, which was originally built and operated by the Brereton family. The mill was fully operational until 1919 when, after 217 years, it finally closed. The mill dam formed Passerdyke Pond, still a local landmark, and it was the spillway, or trap, that gave the settlement its first name. Trap eventually became Upper Trappe, and then it was changed to Allen in 1882, named after a prominent resident at the time that was a storekeeper and served as postmaster.

With the mill and its location on the lower Eastern Shore, Allen developed into a considerable market during the 18th and 19th centuries. A post office helped give it status, along with the several general stores that have operated throughout its history and the introduction of the canning industry. And like most settlements on the Delmarva Peninsula, agriculture drove the local economy, and Allen residents have found fame over the years with strawberries, apple and peach orchards, tomatoes, and especially string beans.

The Asbury Methodist Church is another important Allen institution. Founded in 1829, the present sanctuary was built by local carpenter Caleb Twilley in 1848. In 1999, the church was placed on the National Register of Historic Places. The first African-American church, formed in 1864 as a community of freed slaves led by Roger Dutton and Rufus Fields, settled in the area. The county provided a public school for the African-American community in the 1870s.

Of course, it is people, not buildings, that really form a community, and the people of Allen have been clearly successful in that regard. Without local family heroes—the Breretons, the Allens, the Pollitts, the Messicks, the Huffingtons, the Twilleys, the Polks, the Duttons, the Fields, and the Malones, to name but a few—Allen surely couldn't have survived its 300 years.

The people of Allen not only helped to develop a thriving village, but also shared their talents with greater Maryland. From within Allen's boundaries have grown community and regional leaders, sports heroes, and successful business entrepreneurs; Allen's people have served Maryland for centuries. In fact, Allen's citizens began establishing and building a community before the birth of the United States.

Allen is a true American village. It represents community, tradition, heritage and permanence. Peppered with historic buildings, Allen's pride in its history is evident, a history I honor today. Allen, however, is much more than its history; it is a thriving residential village with strong leadership and an active community. Contributing to the strength of Allen's community spirit are the Lion's Club, the Allen Volunteer Fire Company, the Allen Historical Society and the Asbury and Friendship United Methodist Churches. These organizations preserve history while moving Allen forward into its fourth century.

Allen is certainly one of Maryland's hidden treasures, so please join me in recognizing and celebrating the history of Maryland's charming Village of Allen in this it's 300th year.

CLARENCE SURGEON: A POINT OF LIGHT FOR ALL AMERICANS

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. OWENS. Mr. Speaker, I am proud to salute Clarence M. Surgeon who will be honored on Saturday, July 27th for his past service to his country and the community; and for his continuing activism on behalf of worthwhile causes. Mr. Surgeon is a POINT-OF-LIGHT for all Americans.

Clarence M. Surgeon had a distinguished 39-year career with the New York Police Department. He was appointed to the force in April 1955 as a Police Officer and rose to the rank of Detective 1st Grade. Clarence has received many citations for excellence in the performance of his duties. He is a native of Brooklyn, New York, still residing in the neighborhood of his youth. He is one of five children of Bessie and Lesline Surgeon. His siblings are Lesline Ethel, Aubrey and Winifred. He was married to the late Helen Mayfield. He honorably served in the United States Army during the Korean War and rose to the rank of Sergeant First Class. He was discharged from the Army in 1953 after two years of service. He is an accomplished pilot and enjoys membership in the Negro Airmen International.

In 1979 Clarence earned a Masters Degree in Public Administration from Long Island University, NY. He is a member of the National Honor Society for Public Affairs and Administration (PI Alpha Alpha). As a student in pursuit of his bachelors degree at John Jay College of Criminal justice, Clarence had the opportunity to go abroad to study and patrol with the London Police Department. In high school he was a football player and earned recognition for his athletic ability. Upon entering the criminal justice profession, Clarence continued to exhibit his tenacious ability, now as a criminal investigator. He successfully completed the Criminal Investigator's Course commanded by the Federal Bureau of Investigation. He served as a Commander of the Confidential Investigation Unit and was responsible for the development of documentation designed to prevent internal theft from various state and local revenue collecting agencies; and represented the NYPD as a criminal investigator in many federal, state and city inter-agency investigations. His knowledge as a criminal investigator qualified him to lecture on behalf of the NYPD in various cities such as Atlanta, Boston and Washington, D.C. His civic activities include: serving as a marshal at the March on Washington, August 28,1963; representing the Cerberean Society (Now the New York City Police Guardians) standing alongside Dr. Martin Luther King Jr. at the Lincoln Memorial, as he delivered his now famous "I Have A Dream" speech. In 1983, he founded and served as Director of the Guardian Association and Anti-drug program located in Community School District 16, (Bedford-Stuyvesant). In 1985 Clarence founded and coordinated the National Black Police Association and the Grand Council of Guardians-NYPD Inquiry Panel. The panel was formulated to review procedures used by the city to hire minority candidates to the position of police officer. In his community, he is an activist involved in all aspects of service to improve the quality of life for his neighbors. He is a member of the Black Community Council of Crown Heights; the Steering Committee for the 11th Congressional District; President of the 100 Men for Congressman Major Owens; a member of the Vanguard Independent Democratic Association and the NAACP. For youths of the community, one of his activities included Founder and Commissioner of the Interborough Youth Sports Complex which included approximately 1100 youths in the tri-state area. Other organizational affiliations include: National Black Police Association (NBPA) Northeast Region; Past Chairperson and Past Vice-chairperson; Transit Guardians, NY–Past Secretary, Recording Secretary and Sergeant-at-Arms; Grand Council of Guardians, NY–Historian. Clarence was affiliated with the National Conference of Black Lawyers.

Clarence states: His main purpose is to fight for the rights of Black people, keeping in mind, "now is the time tomorrow is not promised."

We particularly salute Clarence Surgeon for his continuing volunteer activities despite a series of personal hardships. After enduring several serious operations and experiencing the death of his wife, Clarence has returned to the arena to continue working for the less fortunate and the community. For being a great role model for unselfish dedication we are proud to salute Clarence M. Surgeon as a POINT-OF-LIFE for all Americans.

HONORING THE LIFE OF TIMOTHY WHITE

HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. BONO. Mr. Speaker, I rise today in remembrance of Timothy White, a man whose legacy will remain strong both here on Capitol Hill and in the music industry. Tragically, Tim passed away recently at an age and time of life when he was at the height of his abilities and influence.

In his years as Editor in Chief of Billboard Magazine, Tim's innovative work greatly impacted the arena of music media. His passion for music and artists was evident in his writing for Billboard, but it was not enough for Tim to express his boundless passion through written words alone. Tim demonstrated his unparalleled commitment to the music world by championing the rights of musicians on Capitol Hill. I consider myself fortunate to have known Tim; he deeply impressed me with his tireless spirit and concern for the protection of artists' rights.

Tim's commitment to the First Amendment freedom of speech, and intellectual property copyright protection for artists was absolute. He skillfully and passionately advocated on behalf of his fellow artists, even if it was at the expense of his own career opportunities. John Mellencamp said it well when he remarked, "With the passing of Timothy White, rock'n'roll no longer has a conscience." We will remember Tim for his dedication to his cause, and for the integrity of his advocacy.

The recording artist Sting has accurately described Tim as being "known, loved, and admired for his conscience, his courage, and his loyalty," and this sentiment is shared by all that were touched by his work. Timothy White will be missed, but the memory of his strong integrity and passion continue to inspire.

HONORING BILL LAIRD FOR HIS COMMITMENT TO YOUTH

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GORDON. Mr. Speaker, I rise to speak today about a distinguished member of my district who is being honored by an organization that has had an immeasurable impact on America. Bill Laird, a retired employee of Willis Corroon, is Junior Achievement's National Middle School Volunteer of the Year.

He has volunteered for nine years and taught 25 JA classes in that time. Mr. Laird always goes above and beyond his classroom duties, using his work and life experiences as a way to educate young people about business, economics and the free-enterprise system.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after school business clubs for students in Springfield, Massachusetts.

Today, through the efforts of more than 100,000 volunteers in classrooms all over America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to nearly two million students in 113 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and business leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. Speaker, I wish to extend my heartfelt congratulations to Bill Laird of Franklin for his outstanding service to Junior Achievement and the students of Tennessee. I am proud to have him as a constituent and congratulate him on his distinguished accomplishment.

TRIBUTE TO CONGRESSMAN TONY HALL

HON. RUBÉN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. HINOJOSA. Mr. Speaker, I am honored to join my colleagues in paying tribute to my good friend, TONY HALL.

When I heard the news that TONY had been selected to become the U.S. Ambassador to the United Nations Food and Agriculture Organization, I immediately thought that there could be no one more qualified for this job. TONY's passion for improving nutrition and ending hunger and homelessness is legendary. He not only talks tirelessly about the need to solve the problems of hunger, but he also acts on his beliefs. He has led hunger fasts and countless vigils to bring national attention to the needs of the homeless and the hungry. He has traveled repeatedly to developing countries to see first-hand the ravages of hunger and provide his excellent counsel to governments trying to deal with this enormous problem.

I have been proud to work with TONY on issues of child nutrition and today, largely due to his efforts, every child in this country gets at least one nutritional meal through their school. With the expansion of the School breakfast program, thousands of children now receive two meals. I will sorely miss his advice and counsel, but know he is moving on to even greater things. The United Nations will give him a global forum to continue his mission of bringing real help to those in need.

TONY, God speed and good luck.

PROPOSAL FOR THE "CESAR CHAVEZ POST OFFICE" IN SAN DIEGO, CA

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. FILNER. Mr. Speaker, I rise today to introduce legislation (H.R. 5256) to rename the Southeastern Post Office, in San Diego, California, the "Cesar E. Chavez Post Office."

In San Diego, as well as across the Nation, the name Cesar Chavez symbolizes dignity, admiration, and devotion to equality and human rights.

This man dedicated his life to ameliorating human rights in our country. In the 50s and 60s, when minorities were given little to no respect or rights, Cesar Chavez cleared the path for equality.

In the early 50s, after fighting in World War II, Chavez began his involvement in battling racial and economic discrimination against Chicanos. His passion and commitment to this cause led him to serve as the national director of the Community Service Organization. But as his attention and personal interest focused on the poor working conditions of farm workers, he realized that his dream was to start an organization to aid these workers.

Having been a farm worker himself, he was far too familiar with the inhumane working conditions farm workers were forced to endure. And in the early 60s, he founded the National Farm Workers Association. As the National Farm Workers Association started to gain support, he started organizing peaceful demonstrations to bring attention to the farm worker's conditions. His slogan, Si Se Puede!, Yes, We Can!, became known worldwide.

National attention to the farm worker strikes came in 1968 when Senator Robert Kennedy visited Cesar Chavez in California after Chavez lead a 25 day fast. Kennedy was right when he called Cesar "one of the heroic figures of our time."

Cesar continued to organize boycotts and strikes around the world against table grape growers in California. His efforts paid off in the 70s when legislation to help agricultural workers was established.

Cesar Chavez is remembered today for his continual efforts and dedication to justice and equality. As Cesar said, "There are many reasons for why a man does what he does. To be himself he must be able to give it all. If a leader cannot give it all, he cannot expect his people to give anything." The people of San Diego thank Cesar Chavez for Always giving his all.

I urge my colleagues to support H.R. 5256—legislation that recognizes such an honorable man!

RESOLUTION PAYING TRIBUTE TO MR. OTIS LEAVILL COBB

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DAVIS of Illinois. Mr. Speaker, Otis Leavill was a friend of mine and a man that I admired and greatly respected. He was known to his fans for his smooth tenor voice, but Otis' greatest gift was his ability to simply be himself and in spite of fame as an entertainer and producer, he lived in what we fondly call the hood, the Garfield Park Community, and he was instrumental in helping a number of younger artists launch and develop their own careers.

Otis Leavill Cobb, was born in Dewey Rose, GA. He arrived in Chicago as a youngster with his family. He lived on the westside, where his father was a minister and he and his siblings sang in a gospel group. By the late 50's and early sixties, Mr. Leavill Cobb was making his own mark, singing new R&B music under the name Otis Leavill, with a gospel feel. He was one of the people who put Chicago on the map in the soul music industry said W.L. Lilliard a television talk show host/producer and businessman, as well as a close fhend of Mr. Leavill's.

Bob Pruter, the author of the book, "Chicago Soul," said, when I was doing research for my book, I went to him because he knew everybody,

Mr. (Leavill) Cobb wrote dozens of songs, and gained National attention in 1964 for singing, "Let her Love Me," written by Billy Butler and produced by Major Lance, himself a noted recording artist. Two other singles, "I Love You," and "Love Uprising," made National charts.

Mr. Leavill simply loved people and was happy to work behind the scenes, often teaming up with Carl Davis, Gus Redmond, W.L. Lilliard and other "homeboys" to make things happen. He was also an avid fan of gospel music and the church. He was sort of a folk hero and loved by his community. Mr. Cobb was a police officer in Maywood, and owned his own business.

We extend best wishes to his family, wife, Minnie; his daughter, a son, Derrick, a sister, Evelyn Williams; three brothers, Maurice, Kenneth and Billie; and a granddaughter.

Otis Leavill Cobb, a good entertainer, a Great American.

PERSONAL EXPLANATION

HON. MARK R. KENNEDY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KENNEDY of Minnesota. Mr. Speaker, on rollcall No. 349 I was at a meeting in the

Capitol basement and did not hear the bells. Had I been present, I would have voted aye.

TRIBUTE TO JANELLE GARCIA

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. UDALL. Mr. Speaker, I rise today to extend my deep appreciation for the hard work and professionalism of Janelle Garcia, a member of my staff, and to wish her the very best in all of her future endeavors.

Janelle has been my district scheduler since January 2001. She will be leaving my office in August to work with the Colorado State Fair. Still a young woman, Janelle Garcia has already established a formidable career in public service. Before coming to my office, she worked as the Program Administrator in the Governor's Office of Economic Development and International Trade. She has worked for the Colorado Tourism Board, Colorado Ski Country USA and was the scheduler for Colorado's former Governor, Roy Romer.

Scheduling a member of Congress can be an extraordinarily challenging job. In my case, I am aware that my staff "fondly" refers to the phenomenon of "Udall time." While I am not sure it really exists, I have heard "Udall time" is different from normal time by not running at an even rate. In fact, I have heard it described as being characterized by fits and starts so erratic they would baffle even the most accomplished physicist. In any event, Janelle always was able to make any necessary adjustments to keep the ship running smoothly.

I speak for everyone on my staff when I say that I hold a deep respect and admiration for Janelle, as a professional and as a human being. The quiet strength and grace with which she has faced incredibly challenging times is something for which we are all very proud. Even in the depths of her deepest struggles, she never lost her spirit, integrity and professionalism. She has made a deep and lasting impression on each of us. Her caring heart and infectious laugh will be dearly missed.

I would like to personally thank Janelle on behalf of my family and myself. Janelle has worked with extraordinary effectiveness and patience to ensure that the demands of my service don't come at the expense of my family.

I ask my colleagues to join me in honoring Janelle Garcia today. All of my best thoughts are with her and her daughters as they open this next chapter in their lives.

INTRODUCING LEGISLATION TO PROVIDE HEALTH CARE COVERAGE AND FOOD STAMPS TO THE UNEMPLOYED

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MINK of Hawaii. Mr. Speaker, today I introduce legislation to provide health care insurance and food stamp benefits to the unemployed.

There are 8.4 million unemployed Americans. These Americans live week to week by depleting their savings and relying on meager unemployment compensation payments. They live in fear of emergencies that could send themselves, or one of their children, to a hospital. In this desperate situation, how can a family pay for health insurance, which costs an average of $4,358 per year?

To help these people through a difficult period in their life, I am introducing legislation to provide health care and food stamp benefits to the unemployed.

Most people who receive unemployment compensation cannot obtain food stamps. The food stamp program treats unemployment compensation as "income" even though the unemployed are not really earning income. To prevent the wealthy from abusing this benefit, the bill retains the food stamp asset test. The asset test prevents people with large savings, stocks, etc. from receiving food stamps. To receive food stamps an eligible household's liquid assets may not exceed $2,000. This asset test excludes the value of a residence, business assets, household belongings, and certain other resources.

The bill provides a subsidy to cover laid-off workers' COBRA premiums. The COBRA program will allow individuals to continue to use the insurance plans they know and trust. For unemployed workers who do not qualify for COBRA, the bill includes language to provide Medicaid coverage for the uninsured and their spouses and dependents.

I urge my colleagues to cosponsor this legislation and provide a helping hand to unemployed workers.

TRIBUTE TO REPRESENTATIVE TONY HALL

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. UDALL of Colorado. Mr. Speaker, as a junior Member of Congress, I have not known TONY HALL nearly as long as many of our colleagues who have spoken with such eloquence of his accomplishments and his record as a leader in the fight against hunger.

But even in the brief time I have known him, I have been greatly impressed with his deep commitment to trying to make life better for people throughout the world. And I have also greatly appreciated the way he has helped me to do a better job in representing my constituents and to be a better and more effective Member of the House of Representatives.

In particular, I have benefited from his cooperation and assistance with my efforts to expedite the cleanup and closure of Rocky Flats—a former DOE nuclear-weapons site in my District—and to assist the people who work there to make the transition to new careers or secure retirement. Because of his own first-hand experience with a site in his District, Tony understood the challenges and opportunities at Rocky Flats. And because of his generosity and readiness to help, great progress has been made in meeting those challenges and making the most of those opportunities.

So, Mr. Speaker, I want to join our colleagues in praising TONY HALL for his leadership and breadth of vision and in wishing him every success in the important new duties he will be assuming. And I also want to add a personal note of thanks and to say that I deeply respect him and am very glad to have had the chance to benefit from our brief time together here in the House of Representatives.

PROVIDING FOR CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PAUL. Mr. Speaker, I do not oppose this rule because I would like to consider this important issue, but I am very concerned with the process of bringing this legislation before this body.

Mr. Speaker, since we began looking at proposals here in the House of Representatives, more questions have arisen than have been answered. We have put this legislation on a "fast track" to passage, primarily for reasons of public relations, and hence have short-circuited the deliberative process. It has been argued that the reason for haste is the seriousness of the issue, but frankly I have always held that the more serious the issue is, the more deliberative we here ought to be.

Instead of a carefully crafted product of meaningful deliberations, I fear we are once again about to pass a hastily drafted bill in order to appear that we are "doing something." Over the past several months, Congress has passed a number of hastily crafted measures that do little, if anything, to enhance the security of the American people. Instead, these measures grow the size of the Federal Government, erode constitutional liberties, and endanger our economy by increasing the federal deficit and raiding the social security trust fund. The American people would be better served if we gave the question of how to enhance security from international terrorism the serious consideration it deserves rather than blindly expanding the Federal Government. Congress should also consider whether our hyper-interventionist foreign policy really benefits the American people.

Serious and substantive questions about this reorganization have been raised. Many of these questions have yet to be resolved. Just because a bill has been reported from the Select Committee does not mean that a consensus exists. Indeed, even a couple of days before consideration, this bill it was impossible to get access to the legislation in the form introduced in the committee, let alone as amended by the committee.

In the course of just one week, the President's original 52-page proposal swelled to 232 pages, with most members, including myself, unable to review the greatly expanded bill. While I know that some of those additions are positive, such as Mr. ARMEY's amendments to protect the privacy of American citizens, it is impossible to fully explore the implications of this, the largest departmental reorganization in the history of our Federal Government, without sufficient time to review the bill. This is especially the case in light of the fact that a number of the recommendations of the standing committees were not incorporated in the legislation, thus limiting our ability to understand how our constituents will be affected by this legislation.

I have attempted to be a constructive part of this very important process. From my seat on the House International Relations Committee I introduced amendments that would do something concrete to better secure our homeland. Unfortunately, my amendments were not adopted in the form I offered them. Why? Was it because they did not deal substantively with the issues at hand? Was it because they addressed concerns other than those this new department should address? No, amazingly I was told that my amendments were too "substantive." My amendments would have made it impossible for more people similar to those who hijacked those aircraft to get into our country. They would have denied certain visas and identified Saudi Arabia as a key problem in our attempt to deal with terrorism. Those ideas were deemed too controversial, so they are not included in this bill.

I also introduced four amendments to the bill itself, including those that would prohibit a national identification card, that would prohibit the secretary of this new department from moving money to other agencies and departments without congressional oversight, that would deny student visas to nationals of Saudi Arabia, and that would deny student and diversity visas to nationals from terrorist-sponsoring countries. All of these amendments, which would have addressed some of the real issues of our security, were rejected. They were not even allowed onto the floor for a debate. This is yet more evidence of the failure of this process.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. SAXBY CHAMBLISS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes:

Mr. CHAMBLISS. Mr. Chairman, the Federal Law Enforcement Training Center in Glynco, Georgia, provides critical training for a range of federal law enforcement personnel as well as state, local, foreign, and private sector security personnel. I want to associate myself with the remarks of my colleague from Georgia, Mr. KINGSTON, who has so effectively lead the effort to ensure that FLETC has adequate resources and support to continue to do its job so well.

In the war on terrorism, FLETC's role will become even more important. Training at the center has grown significantly since it first opened in 1970 and now serves the training needs of over 70 federal agencies in all three branches of government with 25 thousand graduates annually. The proposal we are discussing today will put nine law enforcement and security functions in the Department of Homeland Security. FLETC trains security personnel in each of these agencies and through its well-established network offers a unique training resource to all levels of federal, state, and local law enforcement. Newer roles for FLETC include training our air marshals and, hopefully, our pilots to provide an additional layer of aviation security.

I strongly support the Kingston amendment. We need to ensure that we have a robust law enforcement and security force that can effectively provide security for our nation. The men and women who conduct this critical training at FLETC are an integral part of our national security. While the bill transfers FLETC to the Department of Justice, this important amendment will ensure that we minimize the impact to its operations as much as possible and allow the important work taking place at FLETC to continue. I hope that my colleagues will join us in doing all we can to enhance the ability of FLETC to quickly and flexibly respond to the new training demands of the war on terrorism.

HONORING THE FOUNTAIN OF PRAISE

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BENTSEN. Mr. Speaker, I rise to congratulate the members of the congregation of the Fountain of Praise, of the South Post Oak Baptist Church in Houston, Texas, for celebrating the dedication of their new church facility on July 28, 2002. The Fountain of Praise family has been a pillar of the community, effectively ministering to its members for more than four decades.

South Post Oak Baptist Church was organized October 4, 1959 as a separate entity of Almeda Baptist Church and was incorporated in 1961. From its humble beginnings, the church has been a viable point of spiritual reference for the community. Under the leadership of Rev. Remus E. Wright, the membership of the church has grown rapidly, from 300 in 1991 to more than 6,500 members in eleven years, making it the fastest growing church in southwest Texas.

In 1998, South Post Oak Baptist Church purchased 19 acres of land in preparation of their next phase of ministry. The new facility will accommodate more than 2,400 parishioners per service and will host a number of programs aimed at developing a strong spiritual foundation for its members and visiting guests.

In 2000, the members [illegible] South Post Oak adopted the name, the Foundation of Praise as a reflection of their commitment to God and their love of worship. The Church's focus has been on building stronger the families; the responsibilities of men; fulfilling the needs of our senior citizens; and uplifting youth. The Foundation of Praise is a catalytic force, which seeks to empower both its members and the surrounding community through numerous ministries, and community service projects, such as, capital improvement projects, food drives, and neighborhood cleanups. In the wake of one of Texas' most devastating natural disasters, the Fountain of Praise family opened its doors to their neighbors who fell victim to Tropical Storm Allison. Without hesitation they allowed the church facilities to become a satellite office of the Federal Emergency Management Agency to ensure that area residents devastated by the event could get the relief they needed. Other times the church has opened its doors for the community's use such as the many town hall meetings my office has conducted. The tremendous strength of Rev. Wright and South Post Oak's leadership over the years is a testimony to the success of their efforts to address the needs of the congregation and surrounding community.

Mr. Speaker, it has been said that a congregation is only as effective as its leader, the Foundation of Praise serves as a symbol of strength in the Greater Houston community, under the leadership of Rev. Remus Wright. Rev. Wright has proven to be one of the most dynamic young preachers in Houston, who will leave a long legacy in the development of Southwest Houston in the name of his congregation and his faith. Since its beginnings four decades ago through the last 10 years of unprecedented growth, the Fountain of Praise should be commended for its dedication to God and commitment to the needs of its congregation and surrounding community.

CELEBRATING THE 12TH YEAR OF THE ADA

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MORELLA. Mr. Speaker, today Americans throughout the country will celebrate the 12th anniversary of the Americans with Disabilities Act (ADA). The landmark 1990 civil rights law for people with disabilities.

The disability community will come together in our Nation's Capital to pay tribute and celebrate the life of Justin Dart Jr., one of the fathers of the ADA. Justin Dart passed away on June 22nd at the age of 71.

As founder and Co-chair of the Bipartisan Disabilities Caucus this celebration of the ADA makes me proud to be an American. It was one of my proudest moments as a Member of the U.S. Congress to be at the White House 12 years ago and see President Bush sign the ADA into law.

President Bush said it best at the signing of ADA, he said:

"This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard. Independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the right mosaic of the American mainstream."

It was a defining moment to hear President Bush proclaim "I now lift my pen to sign the Americans with Disabilities Act and say, let the shameful wall of exclusion finally come tumbling down".

Justin Dart was right by the President's side.

Mr. Speaker, Justin Dart Jr. was an activist who for more than three decades worked to champion the cause of people with disabilities. For his tireless efforts, In 1998 Justin Dart was awarded the Presidential Medal of Freedom.

I believe that it is only fitting that Congress honor this civil rights activist with the Congressional Gold Medal, this is why I have introduced H.R. 5188.

Let Congress, too, celebrate the life and death of Justin Dart; let Congress reaffirm its commitment to the civil rights of all Americans with disabilities, by honoring this true American hero with the Congressional Gold Medal, and I urge my colleagues to cosponsor H.R. 5188.

A WARRIOR IS GONE, BUT STILL LIVES: A TRIBUTE TO JUDGE CARL WALKER, JR.

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am touched and honored to have the opportunity to be on the floor today to celebrate and remember the life of Judge Carl Walker, Jr. of my hometown Houston, Texas. Judge Walker, Jr. passed away last week, leaving behind a loving wife and a host of bereaved relatives and friends. We have all lost enormously with the passing of this great warrior in the struggle for justice. Through his example, he exalted all of us to be unrelenting as we strive for excellence, justice, and fairness.

I knew Judge Walker very well and admired his dedication and perseverance in the face of great odds. It brought me great sadness to hear of his death. I stand before you today to give public acknowledgement and offer a heartfelt commemoration of the achievements of this eloquent, fearless and peerless man.

Carl Walker, Jr. was born in Marlin Falls County, Texas. After graduating from Booker T. Washington High School in Houston, TX, he was drafted into the U.S. Army Air Force in 1943. He received an honorable discharge in 1946, and used his G.I. Bill to enter Texas Southern University where he earned a Bachelor of Science degree and later earned a Master's degree in economics in 1952.

His pinnacle academic achievement came when he earned a law degree from the Thurgood Marshall School of Law, at Texas Southern University.

This degree led him to blaze the trail and knock down doors for those of us who would follow. His law degree allowed him to become an Assistant U.S. Attorney appointed by Attorney General Robert F. Kennedy. Marking yet another first, Judge Walker was the first African-American U.S. Attorney for the Southern District of Texas.

When not busy upholding the law, the Honorable Carl Walker, Jr. was involved in a number of civic and religious organizations in Houston, Texas.

He held positions with the Civic League, Eldorado Social Club, and the South Central YMCA Board of Managers. Mr. Walker served as President of the Harris County Council of Organizations, the Houston Chapter of the U.S.O., the Texas Southern University Alumni and Ex-Students Associations, and the Houston Business and Professional Men's Club. He also served on the board of directors of the American Red Cross.

He had a number of professional affiliations including the United States Supreme Court, the Houston Bar Association, the State Bar of Texas, the Texas Bar Foundation, the United States Tax Court, Federal Bar Association, Fifth Circuit of Appeals, and the Texas Judicial Association.

I was humbled by an invitation to give a special tribute to Carl Walker, Jr. at his passing. I hold our men and women who have used their lives to better our country in the highest regard and take great pride in commemorating the extraordinary life of the Honorable Carl Walker Jr. It is because of Carl Walker's good works that not only the Congressional District but all of Houston and America could have an improved quality of life. He was a tremendous moral force who will be sorely missed as we look to his example in the struggle for justice and integrity in our country today.

A BILL FOR EXTERNAL REGULATION OF NUCLEAR SAFETY AND OCCUPATIONAL SAFETY AND HEALTH AT DOE

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to introduce a bill that provides for the external regulation of nuclear safety and occupational safety and health at the Department of Energy civilian laboratories. This bill, which draws from the work of my friends and colleagues Congressman TIM ROEMER, Congressman KEN CALVERT and former Congressman TOM BLILEY, would push the Department of Energy to take a step that virtually everyone agrees is overdue: get the Department of Energy out of the business of regulating itself in the areas of nuclear and worker safety.

Discussion of external regulation at the labs is an old idea. It received an official boost in 1993 when then Secretary of Energy Hazel O'Leary announced that she would seek to implement external regulation of worker safety. Then, in 1994, legislation was introduced forcing DOE to stop self regulating their nuclear facilities. DOE responded to these legislative initiatives by launching advisory groups to lay out a path to external regulation. In 1996, DOE embraced a ten-year plan to implement external regulation.

For many outside of the Department, this ten-year plan appeared too cautious. However, to those in the Department, it appeared too ambitious. In 1997, then Secretary Pena decided to take a step away from that commitment and run a 2-year pilot program to determine the costs and benefits of external regulation. With the end of that pilot program, Secretary Pena's successor, Secretary Richardson, decided that external regulation would be unworkable.

Curiously, the two participating regulatory agencies involved in the pilot came to a very different conclusion. Both the Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) concluded the pilot to have been successful. I was the ranking member on the Energy Subcommittee of the Science Committee when the pilot was completed and we had an elaborate hearing on this issue. I came away convinced that while there were some questions about implementation, the overwhelming evidence was that external regulation would provide more safety to workers and communities near labs while allowing the labs themselves to focus more on the science and technology.

It is for this reason that laboratory managers also favor external regulation. They believe that external regulation would free up overhead costs involved in self-regulation and allow them to redirect resources towards doing more science. From the labs' perspectives DOE is an inconstant regulator with changes in standards, reporting requirements, and interventions. The NRC and OSHA are both professional regulatory bodies that provide a clearer regulatory regime with significant cost savings to those subject to their regulatory guidance.

Recently, the Energy and Water Appropriations Subcommittee here in the House has taken a leading role in pushing the Department towards external regulation. Yet, the Department continues to resist external regulation. Just yesterday, the Energy Subcommittee of Science held a hearing in which the Director of the Office of Science said they are moving towards another study of external regulation. They are planning an elaborate study involving OSHA and NRC with preliminary results due next year. After nine years of studying this issue, we already know that external regulation is the right answer; yet, DOE insists that another study is needed.

There is a consensus everywhere outside of DOE that the labs should be subject to external regulation. GAO holds that position. The Labs hold that position. The potential regulators hold that position. I believe the workers, the communities near the labs and the taxpayers all deserve to see this happen sooner rather than later. As a Member of the Science Committee—an authorizing Committee of jurisdiction—this bill is intended as another signal to DOE that foot-dragging and endless studies will not satisfy this Congress.

H.R. 3763, THE CORPORATE AND AUDITING ACCOUNTABILITY AND RESPONSIBILITY ACT

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in strong support of the Conference

Report on H.R. 3763. I would like to commend the hard work of the conferees on this critically important legislation. The recent string of accounting scandals has badly damaged the confidence of many Americans in our nation's corporations and markets. This legislation is a strong step toward restoring their confidence and stabilizing our nation's economy.

It seems like every day we hear a new story of executives who misled their investors and their workers and stole millions of dollars. These executives are called irresponsible; they are accused of mismanagement or unorthodox business practices. But these corporate leaders aren't unorthodox; they are criminals, plain and simple. They have stolen more money than any thieves I've ever heard of, and their crimes have real victims.

The victims of these corporate crimes are workers, like the workers at Enron who just wanted an honest job with a fair expectation of job security. For all their hard work, these workers got 10 minutes to clear out their desks. In some cases they were even denied their severance packages if they refused to sign documents giving up the right to sue Enron for defrauding them. Defrauding workers and forcing them to give up their legal rights isn't irresponsibility; it is a crime.

Even workers who never had anything to do with Enron were hurt by the collapse of that company. As Enron declared bankruptcy, public employees in 30 states lost anywhere from $1.5 billion to $10 billion from their pension plans. Stealing money from public employee pension plans is not irresponsibility; it is a crime.

Even those of us who had absolutely nothing to do with the Enrons or Worldcoms of the world are hurt by corporate crime. The unethical behavior of the executives at Worldcom, which was recently forced to admit it had invented $3.8 billion in earnings, has had a devastating effect on that company's stock price. But the stock market as a whole has also suffered from the lack of confidence created by widespread corporate abuse. Less than 3 percent of all publicly traded companies misstate their earnings, but this small group casts doubt on the statements of other, more ethical businesses.

A free-market system cannot function if investors do not trust executives, and therefore the crimes of Worldcom and Enron are crimes not only against their stockholders, but against the very system that allowed these companies to flourish.

Even after the collapse of Enron and the exposure of billions in fake earnings at Worldcom, many in Congress were working to protect their corporate patrons from any real accountability. The initial House-passed version of this legislation, sponsored by Mr. OXLEY, did nothing to protect against corporate abuse and bring back public confidence in corporate governance. In some cases, the bill even would have made it more difficult to enforce auditing regulations. In its most glaring failure, Mr. OXLEY's legislation left the wolf in charge of the henhouse by ensuring that no independent agency had the power to effectively police the internal auditing industry to prevent conflicts of interest and protect investors.

The Senate version of this legislation, however, responded much more effectively than the House leadership to corporate crime. A proposal introduced by Senator PAUL SARBANES for auditing the auditing industry goes much farther than either the sham House bill or the June 20 proposal for revamping the SEC. The Sarbanes bill would create an independent board to oversee accounting practices. It would prohibit accounting firms from destroying documents. Most importantly, the Sarbanes bill would prevent conflicts of interest by preventing auditors from selling other services to the companies they are supposed to be regulating. I wish this House were able to vote up or down on Senator SARBANES' bill.

Fortunately, the House-Senate conference report adopts several key elements of the Senate proposal. The conference agreement, in addition to including the provisions mentioned above, also bars auditors from performing most other services to the same companies they audit, requires corporate officers to reimburse their companies for any bonuses or profits made from stock sales if their misconduct resulted in the firm issuing a revised financial statement. It also generally bars corporations from providing loans to any of its executive officers, just to name a few of the provisions included in the agreement.

While it is not a perfect bill, it is far stronger than the original House bill. The American people want to feel confidence in the market system that has brought so much prosperity. It is our responsibility to fix the system so we can move forward to a time when workers and investors are secure, and corporate crime is a thing of the past. Voting yes on this conference agreement is a step in that direction. I urge my colleague to support this agreement.

TRIBUTE TO GOV. JOHN C. WEST

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to the State of South Carolina's 109th Governor, John Carl West, who I am honored to count among my dear friends and of whom I am proud to be a protégé. Born on August 27, 1922, former Governor West will celebrate his 80th Birthday during the upcoming August recess.

John C. West began his public service as a Member of the South Carolina Highway Commission from 1948—1952. In 1955, he was elected to the South Carolina State Senate from Kershaw County where he served for 11 years. His campaign was based entirely on the need for improved health care for the citizens of South Carolina.

In his first statewide election in 1967, Governor West was elected Lieutenant Governor of South Carolina. He held this position until 1971, when he was elected South Carolina's 109th Governor.

Constitutionally limited to one term, Governor West nevertheless made his mark on our State in ways that still benefit us today. Among his many legacies are the integration of the Governor's Executive staff, and creation of the South Carolina Human Affairs Commission, the State's fair employment, fair housing, and affirmative action agency. Both were firsts for a southern state. He also created the South Carolina Housing Finance Authority, which developed pioneering programs in affordable housing.

After his distinguished service as Governor, he reentered the practice of law, but that was short lived. In 1977 President Jimmy Carter appointed him United States Ambassador to Saudi Arabia. His distinguished service as an Ambassador stretched from 1977–1981.

Mr. Speaker, on August 24, 2002, Governor West's wife Lois and their children have invited other family members and friends to join them in celebration of the Governor's 80th Birthday. My family and I look forward to joining them on that occasion, and I ask you and my colleagues to join me in wishing him good luck, Godspeed, and a very Happy 80th Birthday.

HONORING SKIPPER LEE FRAZIER

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BENTSEN. Mr. Speaker, I rise in honor of Skipper Lee Frazier as he celebrates his 75th birthday and 45 years in gospel radio. In recognition of Mr. Frazier, Windsor Village United Methodist Church will be hosting a "Roast and Toast," on July 29, 2002.

An accomplished businessman, radio personality, and dedicated community advocate, Skipper Lee Frazier has touched the lives of many Houstonians.

Born in Magnolia Springs, Texas, Skipper Lee Frazier has dedicated his life to building a successful career in radio, while embarking on a number of business ventures. Mr. Frazier began his radio career at KYOK, where he served as a part time disc Jockey while hosting record hops and talent shows. After his tenure at KYOK, Mr. Frazier's love for music and radio led him to KCOH, where he first brought Houston the "Mountain of Soul," becoming the trademark personality that effect the lives of many. His career in radio helped propel him into the record industry, where he distinguished himself as a manager and promotor of local talent. He promoted and managed the careers of such artists as The Masters of Soul, Mark Putney, Conrad Johnson, Beau Williams, and Sugar Bear. During that time, Mr. Frazier also managed two groups that brought him and the city of Houston national acclaim, Archie Bell and the Drellis and the TSU Tornadoes. Their big hit was the popular dance tune "Tighten Up," which was written by Mr. Frazier.

Throughout his involvement in the music industry, Skipper Lee earned the opportunity to promote shows for such legendary artists as James Brown, B.B. King, Wes Montgomery, and the O'Jays. With Mr. Frazier's efforts, the Kool Jazz Festival, presented in cities throughout the country, proved a resounding success.

During his earlier years, Mr. Frazier employed a tremendous sense of determination and drive to succeed, often working more than one Job in his quest for success. His remarkable efforts and strong will have paid off, in the Eternal Rest Funeral Home he owns and manages with his son. While the funeral business is incredibly difficult, Mr. Frazier's business brings great comfort and ease to families in their time of need. The fact that many families have returned to Mr. Frazier's business when the need arose testifies to the strong sense of confidence his community has in him and his business.

Mr. Speaker, I am pleased to join Windsor Village Methodist Church, Skipper Lee Frazier's family and friends, and all those he has inspired in honoring him on the occasion of her 75th birthday and commending him on his 45 years in radio. May the coming years bring good health, happiness, and prosperity.

BEST WISHES TO REP. TONY HALL

HON. BRIAN BAIRD

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BAIRD. Mr. Speaker, it is a privilege to honor my colleague, Representative Tony Hall, as he embarks on a new path in a long journey. Ambassador Hall has worked diligently for years to curtail the hunger that plagues the people of our country and the world. Hunger is an evil that strikes at the very core of our needs as human beings. Its causes must be addressed and suffering eradicated.

My wife, Dr. Rachel Nugent, has worked with the United Nations Food and Agricultural Organization. We both believe that Ambassador Hall will be an outstanding ambassador on behalf of the United States. His perspective and experience will complement the UN food and agriculture organization and help them to carry on the difficult work of alleviating hunger and promoting justice.

I wish Ambassador Hall much continued success in his new position and know that he will bring relief and comfort to those in need. It has been an honor to serve with him in this body. His example and selflessness will remain with me throughout my tenure and beyond.

CORPORATE RESPONSIBILITY

SPEECH OF

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. JUANITA MILLENDER-McDONALD. Mr. Speaker, I rise in support of the conference report, in support of H.R. 3763, and most importantly in support of all those investors, employees, and retirees who have fallen victim to the criminal acts of corporate wrongdoers. This report not only agrees with, but also adds to the preventions and penalties that would be put in place by the Senate passed legislation. We in the Congress must take the lead on this issue and protect the everyday citizens who have been duped by corporations and their managers, through manipulation of the equity markets, into believing that their welfare and their life savings are in good hands.

Corporate Responsibility Standards need to be mapped out so that a universal code of conduct is in place to penalize those who have committed these crimes, and prevent others from following in their footsteps.

The quick and accurate disclosure of financial information is needed to close the loopholes that have allowed these manipulations to occur.

The re-authorization of the monies needed to reinforce the job already being done by the SEC is critical to insure that its enforcement and investigation capabilities are top of the line.

This bill sets the tone for all of these initiatives to be accomplished and to put an end to the manipulation of finances, and the greed driven practices of those who can only be described as common criminals.

TRIBUTE TO AN AMERICAN PATRIOT

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise this evening to pay special tribute to one of the finest public servants in the history of Pennsylvania politics.

I was deeply saddened to learn that the Dean of the Pennsylvania Senate and my State's longest serving member, Senator Clarence Bell, passed away today at the age of 88.

Senator Bell, a tireless advocate for his constituency and working families across Pennsylvania will be fondly remembered and sorely missed.

Senator Bell served a total of 48 years in the Pennsylvania legislature. First serving in the Pennsylvania House Representatives in 1954, Clarence Bell was elected to serve as a Senator in 1961. Serving under 11 Governors, Senator Bell served as a member of the Appropriations, Rules, Transportation, State Government Committee, Military and Veterans Affairs Committee and most recently Chairman of the Senate Consumer Protection and Professional Licensure Committee and the chairman of the Joint Legislative Budget and Finance Committee.

Senator Bell led the effort to construct the Commodore Barry Bridge spanning the Delaware river and connecting Pennsylvania and New Jersey. However, the Senator took the most pride in his unyielding desire to remain in touch with each of his constituents—he always referred to them as his "neighbors". The Senator personally signed each piece of mail answering his "neighbors" questions or addressing their concerns, congratulating them on their graduations or additions to their families. Throughout his career he also personally wrote a weekly newsletter. A man of incredible energy and determination, Senator Bell chaired a committee hearing as recent as this past Tuesday.

Before his career as a politician in Harrisburg, Clarence Bell served for five-and-a-half years in active duty in World War II and was also a Major General in the Pennsylvania National Guard. Senator Bell served a total of 38 years in the military.

Born in Upland, Pennsylvania in 1914, Senator Bell attended and graduated from Swarthmore College and Harvard Law School, Senator Bell's constituency in the 9th Senatorial District encompassed portions of Delaware and Chester Counties. Throughout his career Clarence Bell was a visible and accessible legislator that was responsive and approachable to those he served.

A member of numerous professional and service organizations, Senator Bell was regularly recognized by these organizations and countless others that valued his input and leadership during his life as a public citizen.

A dedicated husband, father of two children, grandfather and great-grandparent three times over, I call upon my colleagues to recognize the unselfish commitment to public service that Clarence Bell possessed. I would also like to extend my deepest sympathies to the Bell family, especially his wife Mary James, his friends, staff and the residents of the 9th Senatorial District. We have lost a true champion in Harrisburg, however, Pennsylvania is a better place thanks to the extraordinary life and wisdom of Clarence Bell.

COMMENDING JOHN REYNOLDS ON HIS RETIREMENT FROM THE NATIONAL PARK SERVICE

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. PELOSI. Mr. Speaker, I rise today to express my deep appreciation for the work of Mr. John Reynolds, regional director for the western region of the National Park Service, Region IX.

With John's retirement on August 3, the national parks will lose a dedicated, innovative leader.

John Reynolds has devoted his entire career to our national parks, joining the park service while still a student in 1961 and rising through the ranks to become director of the Pacific West Region in 1997. In this position, he held responsibility for 56 national parks in Hawaii, Idaho, Nevada, Oregon, Washington and the islands of the outer Pacific. These parks include many of our country's greatest natural and cultural treasures—majestic redwood groves, active volcanoes, historic ships and forts, sweeping seashores, and mountains and valleys of stunning beauty.

John's contributions to the national parks, and especially the western region, have been myriad. He has actively promoted new and innovative ideas, and has fostered unique and creative problem-solving in the parks under his jurisdiction. He has done so much to bring the national parks to the people, especially in urban areas.

He has served as a calming and effective presence in dealing with controversies over park stewardship. He has always worked to achieve balance among the many purposes and uses of national parks, while first and foremost remaining dedicated to preserving the parks for future generations.

I wish to give John heartfelt thanks, on behalf of my constituents in San Francisco, for his oversight of the Golden Gate National Recreation Area, his support for the San Francisco Maritime National Historical Park and the historic ships, and his crucial role in establishing the Presidio as a new national park.

In its spectacular location at the Golden Gate, the Presidio is one of America's great natural and historic sites. As general manager of the Presidio from November 1996 to May 1997, John stepped up to the plate at the beginning of its transition from Army base to national park. Subsequently, as regional director, he provided steady support and guidance for the Presidio as it continued to develop in its unique role as the only national park required to become fully self-supporting.

John was born in Yosemite National Park, so perhaps it was inevitable that he should dedicate his life to protecting and promoting national parks. We will miss him greatly, and we wish him and his family all the best for the future.

LORI BERENSON'S UNJUST IMPRISONMENT

HON. MAXINE WATERS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. WATERS. Mr. Speaker, I am outraged and appalled by the continuing incarceration of Lori Berenson on charges of collaborating with terrorists in Peru. Lori Berenson is not a terrorist, nor has she ever collaborated with terrorists. She is an intelligent and caring young woman who is committed to justice.

The Inter-American Commission on Human Rights recently vindicated Lori Berenson. The Inter-American Commission came to the following conclusion:

"The Peruvian State is responsible for the violation of the right to judicial guarantees, of personal integrity, and of the right concerning the principle of legality to the detriment of Berenson, having judged her in the military court, submitting her to inhumane and degrading conditions of detention, starting a new trial conforming to Legal Decree 25475 (antiterrorist law), and permitting the evidence collected during the first [military] process with a value of proof in said [second] trial."

Lori Berenson has been unjustly imprisoned in Peru for nearly seven years under the harshest possible conditions. She has never had a trial that respected her rights or met international standards of fairness and due process. Not only has Lori never wavered in her insistence that she is innocent of the charges against her, she was charged under the antiterrorist laws that the Inter-American Commission has deemed unacceptable.

The Peruvian government is challenging the decision of the Inter-American Commission by filing a lawsuit against the Inter-American Commission at the Inter-American Court of Human Rights. Peru's lawsuit is mean-spirited and frivolous and will only result in the unnecessary further incarceration of Lori Berenson. In similar cases, the Inter-American Court of Human Rights has confirmed the rulings of the Inter-American Commission that Peru's antiterrorist laws violate the American Convention on Human Rights. These court decisions have resulted in the release of the defendants whose rights were violated.

Lori Berenson's health has been damaged by her wrongful imprisonment. The Inter American Commission on Human Rights concluded that the conditions of her incarceration are "degrading and inhumane." Continued incarceration while awaiting a decision of the Inter American Court will cause her needless additional suffering.

Legal and humanitarian considerations require that Lori Berenson be released immediately. I urge the Peruvian government to set her free.

HONORING PASTOR KIRBYJON H. AND SUZETTE TURNER CALDWELL

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BENTSEN. Mr. Speaker, I rise today to honor Pastor and Mrs. Kirbyjon Caldwell for their years of service and dedication to the Windsor Village United Methodist Church in Houston, Texas. In honor of Pastor and Mrs. Caldwell, the Windsor Village Community hosted the "20th Anniversary Celebration: Recognizing Their Spiritual Leadership" on July 19, 2002.

A native Texan, Pastor Caldwell was educated in the Houston public school system, earned a Bachelor of Arts Degree in Economics from Carleton College in 1975, and a Masters Degree in Business Administration from the University of Pennsylvania's Wharton School of Business in 1977. After graduate school, Pastor Caldwell began a promising career in investment banking. But, in an effort to fulfill God's purpose for his life, Pastor Caldwell enrolled into Southern Methodist University, Perkins School of Theology, where he received a Masters Degree in Theology in 1981. While completing his theology degree, Pastor Caldwell was appointed Associate Pastor of St. Mary's United Methodist Church in Houston and in less than a year he was appointed Senior Pastor of Windsor Village United Methodist Church.

Since his first sermon at Windsor Village in 1982, Pastor Caldwell has dedicated himself to addressing the needs of his congregation. The growth and success that Windsor Village has experienced under Pastor Caldwell's leadership reveals a pastor who is truly connected to his community and committed to the church's prosperity. Under his pastorship, the Windsor Village membership has grown from 25 to over 14,000, and the average worship attendance has increased from 12 to 6,450. The Church includes over 120 ministries, which serve the community seven days a week.

The spiritual leadership at Windsor Village serves as a beacon for the Houston community. With such facilities as the Power Center, the Prayer Center and the Family Life Center, the congregation's sense of community activism and outreach provides an ideal model of service to the surrounding community. The Power Center, developed in conjunction with the Windsor Village Church Family and the Pyramid Community Development Corporation, houses numerous services and entities, such as the Imani School, J.P. Morgan Chase Bank, Houston Community College's Business Technology Center, the University of Texas-Hermann Hospital Clinic, W.A.M. Inc, and 27 business suites. Additionally, the church recently broke ground for a 234 acre master-planned community which will consist of a 452 single family home residential community with a 12 acre community park, a YMCA, an independent living facility, the Comprehensive Wellness Center, the Zina Garrison Tennis Center, and two museums.

Pastor Caldwell's contributions extend far beyond his pastoral duties. He is the author of the best seller, The Gospel of Good Success, which serves as a road map to spiritual, emotional, and financial wholeness. Newsweek identified Pastor Caldwell as a member of "The Century Club," and the magazine's 100 people to watch in the 21st century. Throughout his years of service to his ministry and the community, Pastor Caldwell has received numerous accolades, including Community Partners' Father of the Year, Texas Monthly's Twenty Most Influential Texans, the FBI Director's Community Leadership Award, and the Bishop's Award for Outstanding Leadership in Evangelism.

Aside from the monumental work he has done for Windsor Village, Pastor Caldwell, is involved in a number of civic and business ventures that impact the community. He serves on the board of the National Children's Defense Fund, the Greater Houston Partnership, Continental Airlines, Southern Methodist University, and Baylor College of Medicine, to name a few.

Pastor and Mrs. Caldwell have been married for 11 years and are the proud parents of Turner, Nia and Alexander Caldwell. Mrs. Suzette Caldwell graduated from the University of Houston with a Bachelor of Science in Industrial Engineering, where she is currently pursuing a graduate school in social work. Mrs. Caldwell's professional career as an environmental engineer in the public and private sector spans over 17 years.

Suzette Caldwell has made her own significant imprint upon the Windsor Village community. Presently, she serves as a local pastor and the Director of the Supernatural Services. In addition, she serves as the Chairman of the Board of Directors for the Kingdom Builders' Prayer Institute, a non-profit community-based organization that focuses on teaches people how to pray and the effectiveness of prayer. Among others, she serves as a member of the Children's Museum of Houston Advisory Board, a member of the Teach for America Advisory Board, and member of the National Coalition of 100 Black Women. Her dedication to service is exemplified by the numerous recognitions she has received over the years, including, The National Association of 100 Black Women's Makeda Award, The Suburban Sugar Land Women's Community Service Award, The Samaritan Center's Samaritan Spirit Award, Philanthropy In Texas' Hall of

Fame, and the US Army Corps of Engineers' Achievement Award for Special Acts of Service.

Mr. Speaker, throughout Kirbyjon and Suzette Caldwell's service to the Windsor Village United Methodist Community, their wisdom, enthusiasm, and vision, have served their congregation and its surrounding community well. Their dedication to the community and commitment to their neighbors sets them apart as the spark that keeps faith aglow. I want to congratulate the Caldwell's on their twenty years of service to the Windsor Village Methodist Church and thank them for their service to our community, state and nation.

HIV

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mrs. MORELLA. Mr. Speaker, I rise to introduce legislation that will help patients who received HIV infected blood products and transplants. The humanitarian relief fund, modeled on the bipartisan Ricky Ray Hemophilia Relief Act of 1998, honors Steve Grissom, the North Carolina resident infected with HIV while undergoing treatment for leukemia. What happened to Steve Grissom and the thousands of people like him is a national tragedy.

It is my hope that this legislation can help victims of tainted transfusions. Steve's story is not unique. An estimated 12,000 Americans contracted HIV from tainted blood and blood products. Others got the disease through tissue and organ transplants.

In the early 1980s, the U.S. government is believed to have known about the risks of HIV infection, but may have failed to do enough to warn recipients or to institute safe blood practices, according to a report by the Institute of Medicine.

In 1995, legislation was introduced to help hemophiliacs who contracted HIV through such transfusions. The bill passed with overwhelming support, and was fully funded in 2001. However, the bill did not include funding for people like Steve Grissom, who received blood or transplants for other reasons.

This legislation would provide needed relief for Steve and people like him. For it is the right thing to do.

H.R. 5005, HOMELAND SECURITY ACT

HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. DEGETTE. Mr. Chairman, I rise to vehemently oppose the Rogers amendment to H.R. 5005. This is a dangerous amendment that would create a slippery slope, eroding the intent and protection of the Posse Comitatus Act. Mr. ARMEY plans to offer a manager's amendment that includes a sense of Congress re-affirming the intent of the Posse Comitatus Act, yet, it would have no legal impact. Furthermore, if the Rogers amendment is included in the final version of H.R. 5005, the sense of Congress will provide absolutely no protection against the dangers of the Rogers amendment. It is currently illegal for the military to conduct law enforcement, and Congress must not threaten this principle by passing the Rogers amendment.

For 124 years, the Posse Comitatus Act has protected the American public from the power and reach of the military in the enforcement of the law. The authors of the Declaration of Independence railed against the power of King George's army in the affairs of the civil government, and, in America's earliest years, the public rightly feared the strength of a standing army in times of peace. The military is not trained to protect individual rights or the principle of innocent until conviction. Nor should they be. The military is charged with the protection of the nation against armed attack by foreign hostile regimes. We should never allow the military to become entangled in the enforcement of our civil laws.

The Rogers amendment would give the military a permanent position within the Department of Homeland Security to make changes to our government's law enforcement structure. Should the Rogers amendment be included in the final version of the Homeland Security Act, the military would be able to influence civilian use of the Internet, agricultural inspection activities, and customs enforcement, among others. We do not want generals in the Pentagon influencing civilian use of the Internet. We do not want the Pentagon issuing visas and standing on our borders watching who comes and who goes. We do not live in a Communist state and the military should not be enforcing our civil laws.

While Mr. ARMEY will offer an amendment to re-affirm the intent of the Posse Comitatus Act, it will have no legal effect. The Rogers amendment would. Vote no on the Rogers amendment.

CLEANING UP CORPORATE ACCOUNTING PRACTICES

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. SCHAKOWSKY. Mr. Speaker, the House of Representatives yesterday finally passed tough corporate and auditor accountability legislation. After voting unanimously to oppose almost the same bill in April, House Republicans finally joined Democrats in taking the first step to restore investor confidence by cleaning up corporate accounting practices. I want to emphasize that is only a modest first step if we are to restore investor confidence and protect workers and pension holders from corporate greed.

We could have passed strong reforms months ago, but now we are playing catch up. Our work will not be finished until there is pension security, stock options reforms, and government corporate watchdogs who are not tied to Enron and other corporate thieves. I strongly encourage the President to fire Harvey Pitt, to hire regulators who are independent from the industries they regulate, and to aggressively pursue those reforms.

I am pleased that this legislation will stop loans to corporate insiders, extend the statute of limitations for financial fraud from three to five years, force corporate insiders to disclosure within two days, and strengthen whistleblower protections for corporate employees.

However, I am disappointed that we have not acted ourselves or directed the Financial Accounting Standards Board to account for stock options as an expense. Stock options packages have been used to deceive investors and workers as to the true financial condition of a corporation. At a recent Berkshire Hathaway annual meeting, Warren Buffet stated, "If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And, if expenses shouldn't go into the calculation of earnings, where in the world should they go?" We need to create rules that will restore integrity to our markets.

I am also disappointed that we are not doing more to make sure that workers, pension holders, and investors are compensated by corporate wrongdoers and their accomplices. They suffered great losses; and through this legislation, they are not totally compensated for those injuries. Accountants, lawyers, and banks that aid and abet corporate fraud are not held liable at all for damages under current law. In order to restore integrity to our financial markets, all parties will need to be held responsible for their actions. Clearly, our work is far from over.

BANKRUPTCY REFORM (H.R. 333)

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CROWLEY. Mr. Speaker, I rise in support of the Conference Report for the Bankruptcy Abuse Prevention and Consumer Protection Act.

I can give my colleagues one reason to support this legislation—fairness.

This bill will restore fairness to our nation's bankruptcy laws for those Americans who work hard and pay their bills on time.

A few days ago, representatives from a number of credit unions came to my office, including Rob Nemeroff of the Melrose Credit Union in Woodside, Queens in my Congressional District.

He detailed about how the hard working, middle class people of his credit union—and of my District—continually have to pick up the tab for those who file bankruptcy—whether legitimately, as many do, or irresponsibly, as far too many do.

This bill will provide them some fairness—something that my constituents do not often get from this Congress.

H.R. 333 provides fairness to the victims of criminal corporate executives by mandating that these corporate pirates can no longer shield their multi-million dollar homes from defrauded investors seeking to reclaim some of their lost assets.

It provides fairness for those families who suffered losses in the terror attacks of last year by walling off any of the compensation paid to them through the Victims Compensation Fund or other victims' funds from being considered as income for repayment plans.

And this bill provides fairness for women and children in their ability to collect child support and alimony obligations.

And for those who do file for bankruptcy, this bill includes numerous new protections for them and their families.

This bill permits filers to keep their homes and provide health insurance for themselves and their families before taking their assets into account for repayment plans.

This bill states that low income debtors will be exempt from many of the provisions of this bill if their median family income is below the average for their state.

This legislation represents a fair, common sense approach towards tackling the important yet complicated issues surrounding the issue of bankruptcy in a way that will benefit those working Americans who pay their bills while providing for those who cannot.

Finally, I applaud my colleague from New York, Senator CHARLES SCHUMER for his tireless battle to include tough penalties for the people who try to discharge debt from clinic protesting.

This was the right thing to do, and I applaud him for including it in this bill.

Overall, this bill is about fairness and I am pleased to support this Conference Report.

H.R. 5005 MANAGER'S AMENDMENT

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. BOEHLERT. Mr. Chairman, I rise in support of the Manager's Amendment. I want to thank the Majority Leader and his staff, Margaret Peterlin, Steve Rademaker and Hugh Halpern, for working so cooperatively with us on these items.

The Manager's Amendment includes language making clear the Department's responsibilities to work with states, localities and the private sector to help them improve the security of their computer systems. The Amendment also establishes a volunteer corps of computer experts, who, upon request, could help localities recover from cyber attacks.

The Amendment also includes two important provisions we worked out with the Energy and Commerce and Government Reform Committees, and I want to thank Chairman TAUZIN and Chairman DAVIS and their staffs for their work on these issues.

The first provision, based on Chairman Davis's Federal Information Systems Management Act, will help improve the security of federal computer systems.

The second provision will ensure that the government can take advantage of unsolicited ideas from entrepreneurs and inventors who are working on ways to enhance homeland security. After the anthrax attacks, Americans came forward with an avalanche of ideas to counter bioterrorism, and found that the government had no way to avoid simply being buried by the incoming information. That has to change, and the Department of Homeland Security has to be the instrument to change it.

The Department must have a way to receive unsolicited suggestions, evaluate them, and either move with them, refer them to other appropriate federal agencies, or reject them. The language will require the Department to do just that.

This is such a clear need for the Department to do this—advocated by the National Academy of Science, among others—that the Science Committee, the Energy and Commerce Committee and the Government Reform Committee each reported out a version of language to meet this need.

In our Committee, Congresswoman LYNN RIVERS offered helpful language to expand on the ideas in our base bill, and particularly, to promote coordination with the Technical Support Working Group, an inter-agency group that currently tries to shift through unsolicited ideas.

I'm pleased that our three Committees were able to merge our approaches, and that Chairman ARMEY included that agreement in the Manager's Amendment.

I urge support of this Amendment, which clearly improves the bill.

TORT REFORM PROVISIONS IN THE HOMELAND SECURITY BILL

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. DELAURO. Mr. Chairman, I rise in strong support of this motion to strike. The irresponsible liability protections added into this bill are unnecessary and dangerous to the public health and safety.

This provision would give the new Secretary of Homeland Security unprecedented executive authority to exempt from civil liability any product that is deemed "anti-terrorism technology." Even willful misconduct would be excused. That means that people injured by a product put out by a company trying to profit from the war on terrorism would be unable to seek recourse of any kind. None.

In fact, the only period during which injured parties can seek recourse for fraud or willful misconduct is, and I quote, "during the course of the Secretary's consideration." Essentially, once a product is approved, the public is left with no protection or remedy at all.

Not only does this provision severely restrict the ability of claimants to recover for their injuries, it also fails to provide for any alternative form of recourse, leaving people who have been injured through no fault of their own to fend for themselves.

Mr. Chairman, no one here wants frivolous lawsuits. We simply want the tools to hold accountable corporations who have abused the public trust and would unduly profit from the war on terror. This bill is about protecting the public, protecting the health and safety of our citizens. It's not about giving a free ride to corporations who take advantage of the system. Let us not compromise these noble, bipartisan goals with a misguided provision added at the last minute.

I urge my colleagues to support this motion to strike.

OPPOSITION TO THE CONFERENCE REPORT ON THE BANKRUPTCY REFORM BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DINGELL. Mr. Speaker, I rise in opposition to the Conference Report on the Bankruptcy Reform bill (H.R. 333). The goal of the legislation, to ensure that debt that can be repaid is indeed repaid, is meritorious. However, the devil is in the details and many of these details are particularly devilish. This legislation will neither prevent more bankruptcies from occurring nor protect consumers. But it will sanction the continued predatory and abusive lending practices of the credit card industry, which has pressed hard for this legislation.

It is important to note that there is no consumer bankruptcy crisis in America. Despite the rascality perpetrated by the credit card industry, including the solicitation of minors, seniors and pets, personal bankruptcies are not increasing. In fact, even as the average household debt burden has continued to climb over the past few years, bankruptcies have dropped by around fifteen percent.

The only bankruptcy crisis we have in America is from companies like Enron and WorldCom. These corporations engaged in fraudulent accounting practices and then filed for bankruptcy to protect themselves from their creditors. These companies destroyed the lives and life savings of not only their employees, but investors everywhere. This conference report would not do anything to protect investors and employees from corporate wrongdoing such as this.

It is important to note, however, that this legislation will protect the large banks and other financial institutions that engage in predatory lending practices. This is wrong. Studies show that irresponsible and overly aggressive lending practices were behind the high level of bankruptcies in the mid 1990's. However, the industry has not learned its lesson. Even as the industry continues to experience high profits, it refuses to take responsibility for its poor lending practices and increases its marketing and credit extensions. Two years ago, the credit card industry increased its mail solicitations by about fourteen percent. Additionally, total credit extended, which includes unused credit lines and debt incurred by consumers, has approached three trillion dollars for the first time ever.

This outrageous behavior should not be rewarded. Unfortunately, the credit card industry has succeeded in winning enough support for a bill that encourages predatory lending at the expense of our most at risk citizens. Although a few helpful provisions were added to the bill, such as language to ensure that persons who use violence against clinics cannot shield their assets by filing for bankruptcy, on the whole, the bill hurts the poor and middle class. Americans deserve better, especially at a time when the economy has slowed and people's jobs are in jeopardy. As such, I urge all of my colleagues to oppose this wrongheaded piece of legislation.

OPPOSITION TO CONFERENCE AGREEMENT ON BANKRUPTCY REFORM

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. SCHAKOWSKY. Mr. Speaker, I rise in opposition to the conference report on H.R. 333 "The Bankruptcy Abuse Prevention and Consumer Protection Act." This legislation puts the interests of politically powerful credit card companies ahead of the interests of seniors and working families. That is why this conference report is opposed by every major consumer rights organization, over twenty women's right organizations, and the AFL–CIO. This is flawed legislation that could not come at a worse time. I urge my colleagues to reject this conference report.

Last year, a record 1.45 million people filed bankruptcy. Experts attribute this to deteriorating economic conditions and rising consumer debts. Research shows that nine in ten bankruptcies are triggered by the loss of a job, high medical bills or divorce. Yet this legislation would not allow a bankruptcy judge to take into account whether a debtor is blameless for his or her financial problem when deciding whether the person can declare chapter 7 bankruptcy unless the debtor is a victim of terrorism. This will make it very difficult for consumers to escape debt.

This legislation will have especially harsh impact on senior citizens and women. According to research by the Consumer Bankruptcy Project at Harvard University, seniors are the fastest growing group in bankruptcy. About 82,000 Americans over 65 years-of-age filed for bankruptcy in 2001, up 244 percent since 1991. We will put seniors at the mercy of price-gouging card companies.

Women represent the single largest group in bankruptcy, with households headed by women accounting for about 40 percent of all bankruptcies today. This legislation will make it harder for them to escape debt and poverty by creating new types of "nondischargeable" credit card debts. The legislation puts banks in competition with women trying to collect child support from a former spouse after bankruptcy. Debtors will have to pay back more money in credit card debts after clearing bankruptcy, leaving less money for child support and alimony. Proponents of the conference report claim that this legislation gives top priority to women trying to collect child support when distributing assets in chapter 7 cases. However, more than 90 percent of all chapter 7 debtors have no assets to distribute. They have no protection at all.

Amazingly, this conference report expands the most egregious abuse of the bankruptcy system by expanding the scope of the luxury home loophole to all fifty States. In five States, a debtor can hide all their resources in their home. Unless a debtor is guilty of a very narrow range of fraud or felonies, is declaring bankruptcy within 40 months of buying a home or has moved in from another State in the last two years, the loophole remains. This legislation will allow debtors to export the unlimited homestead exemptions for two years. This means that corporate thieves like former Enron CEO Ken Lay can move to my district and escape paying investors and workers. Ken Lay comes from Texas. Texas is one of the five States that does not have a cap on their homestead exemption. At the same time a laid-off worker from a State like Delaware that does not have a homestead exemption will lose a home that has as little equity as $30,000. This is an outrageous double standard.

This legislation is also noticeably silent when it comes to the role of credit card companies in increasing consumer debt and filed bankruptcies over the past decade. Credit card companies sent out five billion solicitations last year. Credit card companies target college students. College students lack independent means and have a high credit risk. Yet this legislation does not curb these practices in any significant way. Language to require responsible lending to college students has been severely weakened.

Also this bill does nothing to curb the practices of predatory lenders, who will be able to collect debts regardless of how they deceived consumers. This bill allows most lenders to provide only a general statement on the credit card bill about the risks of paying at the minimum rate and a toll-free number. Most consumers will not receive information that details the long-term risk of accumulating credit card debt.

This legislation lets wealthy debtors and credit card companies off the hook while it makes it more difficult for working families and laid off workers to make ends meet and avoid debt. Please join me in rejecting this anti-consumer conference report. This conference report is bad for consumers and it should be opposed.

SUPPORT OF MOTION TO GO TO CONFERENCE ON H.R. 3210, TERRORISM RISK PROTECTION ACT

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. CROWLEY. Mr. Speaker, I rise in support of the Motion to Go to Conference.

As a Representative from New York City, I have seen and heard first hand the massive need for such a Federal backstop.

While our Nation has plunged into a recession over the past 2 years—the economic conditions of New York City are even more precarious.

For example, between August 2001 to May 2002 while unemployment rates have risen 13 percent in the U.S. they have increased by 20 percent in New York City.

While there are a number of factors for this decline, one is the lack of new construction and building.

This dearth of investment and new construction is due to a lack of financing by banks that will not provide lending to a project that cannot get commercial property and casualty insurance.

Furthermore, for those few businesses that can obtain limited insurance coverage often do not have adequate coverage and are paying drastically higher prices for such limited coverage.

This again saps vital and badly needed resources out of New York's and all of America's economy.

Providing a Federal backstop is good for workers and good for the economy.

Additionally, while in conference, I also hope that the Conferees will give serious consideration to an issue I brought up with Chairman OXLEY during Committee mark up—that of providing a backstop to personal lines of property and casualty insurance lines as well.

While personal P&C insurance carriers now claim they can handle any claims for unthinkable terrorist attacks that could effect personal property and casualty holders, such as homeowners, we heard this same thing about commercial lines pre-September 11.

No one can predict the future, and we need to be prepared for anything.

Could personal lines provide for a large-scale attack on a neighborhood using nuclear, biological or chemical terrorism?

We don't know, and that is why I brought this issue up at mark-up and am hopeful for some work on this issue in conference.

Additionally, I am hopeful that the Conferees will work to provide a real backstop and strip out an extra legislative riders such as the damaging tort reforms added by the Republicans leadership to the House bill in the dark of night.

These riders threw a red herring into this debate and slowed Congressional action on this issue—not a lack of trying by the Senate, including Senator SCHUMER of New York, a leading proponent of backstop legislation.

America needs a Federal backstop for both commercial and personal lines or property and casualty lines and we need to keep such a bill clean for extraneous amendments that are divisive and bad for our economy.

I wish the Conferees well and yield back the balance of my time.

OPPOSING THE CHINESE GOVERNMENT'S PERSECUTION OF FALUN GONG PRACTITIONERS

SPEECH OF

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. BONIOR. Mr. Speaker, for years, Falun Gong practitioners have been persecuted at the hands of the Chinese government. Tens of thousands of these individuals have been tortured in prisons, labor camps, and mental hospitals for practicing their peaceful form of personal belief. I have been appalled by the stories I have head from Falun Gong members in Michigan of the horrific acts of violence towards Falun Gong practitioners. I believe we must do all we can to stop this persecution.

The United States needs to take a stand against these atrocities, and send the message to the Chinese government that these terrible acts of violence will not be tolerated. We need to urge the Chinese government to release from detention those Falun Gong practitioners who are guilty of nothing less than practicing their faith. We must put an end to these abhorrent human rights abuses.

I am a cosponsor of H. Con. Res. 188, which expresses the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners. This measure passed the House overwhelmingly on July 24, 2002. I regret that I was unable to cast a vote on this resolution, as I was detained in my home state of Michigan when the measure came to the House floor. I would have voted "yes" on this resolution, and I am glad that the House acted in unity to condemn persecution of the Falun Gong.

CIVIL SERVICE AMENDMENT FOR HOMELAND SECURITY LEGISLATION

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. DeLAURO. Mr. Chairman, I rise in strong support of this amendment. As currently written, H.R. 5005 would needlessly undermine civil service protections for one hundred and seventy thousand federal workers in the new department—both union and non-union.

At a time when we need to attract and retain the best and the brightest to this new department, it makes no sense at all to strip its workers of their most basic civil service protections. What happens to the federal workers who transfer to this department and find that the benefits of civil service are suddenly gone?

For instance, are these dedicated, loyal federal workers simply supposed to accept the fact that they can be fired without even so much as an explanation? Are they supposed to simply accept that their pay has been unceremoniously cut by a third? Is that the message we want to be sending to the rank-and-file preparing to protect the nation at this new department?

We have in place rules and regulations that have worked for decades, rules that were put in place to not only protect workers but also to ward off political patronage and corruption. A Homeland Security Department is not the place to reinstate either.

Mr. Chairman, our civil service protections are good enough for the Defense Department. They are good enough for the CIA, the FBI and virtually everyone else in the Federal government. I fail to see how they are not good enough for the one hundred and seventy thousand workers who will be working in the new Homeland Security Department.

Again, I strongly urge my colleagues to support this amendment.

H. RES. 443: TO EXPRESS THE SUPPORT OF THE HOUSE FOR PROGRAMS AND ACTIVITIES TO PREVENT PERPETRATORS OF FRAUD FROM VICTIMIZING SENIOR CITIZENS

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to speak about an epidemic. It's not one that you'll read about in a medical book, and unfortunately, it's probably not one that a lot of people know enough about, in general. But, we need to respond to this problem, just as we would if it were a public health situation—by launching a vigorous public awareness campaign.

Let me give some examples of what I'm talking about:

Two individuals pleaded guilty to charges of mail fraud in connection with a scheme soliciting elderly individuals to invest in silver and gold coins. The victims, who were promised a high rate of return on their investments, were coerced into paying 200 to 300 percent more than the coins were worth.

A group defrauded 200 elderly investors nationwide of an estimated $34 million from the offer and sale of fraudulent promissory notes and other fraudulent securities. The majority of the victims were senior citizens who were convinced to liquidate safe retirement accounts and transfer those funds to risky investments.

An independent insurance agent obtained over $508,000 from twelve senior citizens whom he promised a 10 percent return on their money in an investment opportunity. None of the funds were ever invested.

Elderly victims were falsely told that bond companies were in possession of a $25,000 bond in the name of the victims, which they could receive after they paid the bond companies a fee ranging from $100 to $3,000 for "research" or "paperwork." None of the victims ever received a valuable bond, but elderly victims sent the bond companies approximately $1.6 million.

I wish these anecdotes were isolated incidents, but unfortunately they are just the tip of the iceberg.

In fiscal year 2001 alone, the U.S. Postal Inspection Service responded to 66,000 mail fraud complaints, arrested 1,691 mail fraud offenders, convicted 1,477 of such offenders, and initiated 642 civil or administrative actions, recovering over $1.2 billion in court ordered restitution payments. If these figures weren't distressing enough, the number of complaints is on the rise. The Postal Inspection Service has already responded to 68,000 mail fraud complaints this year to date—pointing to a possible 27 percent increase in complaints by the end of this fiscal year.

According to AARP:

"Older Americans are the targets of a new kind of criminal. This criminal holds you up in your own home, but not with a gun. This criminal's weapon of choice is the telephone.

"There may be more than 10,000 fraudulent telemarketing operations calling hundreds of thousands of American consumers every day. Older Americans are a prime target of these crooks . . .

". . . 56 percent of the names on 'mooch lists' (what fraudulent telemarketers call their lists of most likely victims) were aged 50 or older.

"Many of the older people preyed upon by dishonest telemarketing companies are well-educated, with above-average incomes, and they are socially active in their communities."

Therefore, the sales pitches these companies use are appropriately sophisticated. They include: "phony prizes, illegal sweepstakes, sham investments, crooked charities, and 'recovery rooms' where victims are scammed again by the telemarketers with promises that, for a fee, they will help them recover the money they have lost."

The National Consumers League, the oldest nonprofit consumer organization in the United States, reports that: "It's estimated that there are 14,000 illegal telemarketing operations bilking U.S. citizens of at least $40 billion dollars annually." They believe that "[t]he first step in helping older people who may be targets of fraud is to convince them that the person on the other end of the line could be a crook!"

In order to "to express the support of the House for programs and activities to prevent perpetrators of fraud from victimizing senior citizens," and "to educate and inform the public, senior citizens, their families, and their caregivers about fraud perpetrated through mail, telemarketing, and the Internet," please join Representative JOHN MCHUGH, and me in passing House Resolution 443.

Our colleagues in the Senate have passed a resolution designating the week beginning August 25, 2002 as "National Fraud Against Senior Citizens Week." We will be able to collaborate with them, the U.S. Postal Inspection Service, and numerous advocacy groups in raising public awareness about this epidemic of fraud and deception against senior citizens and hopefully prevent future incidents of fraud.

2002 WORLD BASKETBALL CHAMPIONSHIPS

HON. JULIA CARSON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. CARSON of Indiana. Mr. Speaker, I rise today to bring to the attention of the House that the United States will be playing host to the World Basketball Championship for the first time in the event's 50 year history. For 11 days from August 29 to September 8, 2002, 16 teams from all over the world will compete for the title of World Basketball Champions, and appropriately they will be competing for that title in what is known as the basketball capitol of the world, Indianapolis, Indiana.

Long before basketball was a world game, it was an Indiana game, in fact it was THE Indiana game. There is no place in the world that follows basketball with more passion, devotion, support, and adoration than in Indiana. The term for this basketball craze is fondly called "Hoosier Hysteria." A hysteria that allows Indiana to have over 30 high school gymnasiums with seating capacity over 5,000, including one arena that seats 5,600 people, not too surprising until you find out that the town's population is only 5,000.

Indianapolis is also no stranger to major international sporting events. It is preparing for what is expected to be about 150,000 to 175,000 visiting basketball fans.

Indianapolis not only hosts the three largest single day sporting events in the world in it's three races, but it has also hosted 4 NCAA Men's Final Fours, 14 United States Olympic Team Trials, the 2001 World Police and Fire games, and is slated to host many events in the near future.

Indianapolis hopes that its Hoosier Hysteria will shine through and take on a new international light to warmly welcome the many international visitors. It is in this spirit of support and international goodwill that the entire Indiana Delegation is introducing House Concurrent Resolution 443, a resolution supporting the 2002 World Basketball Championships and welcoming the visiting teams from Algeria, Angola, Argentina, Brazil, Canada, China, Germany, Lebanon, New Zealand, Puerto Rico, Russia, Spain, Turkey, Venezuela, and Yugoslavia.

International sporting events such as the 2002 World Basketball Championship play an important role in continuing to foster positive international relationships between participating teams and fans. This event provides an opportunity for not only residents of Indiana, but for all Americans to unite behind their national team and also welcome the players and fans from all the visiting teams. Therefore, Mr. Speaker, I ask that Congress join me in supporting the 2002 World Basketball Championship for Men welcoming the 16 international teams to the United States by supporting this resolution.

SUPPORT FOR H.R. 3612, THE MEDICAID COMMUNITY ATTENDANT SERVICES AND SUPPORTS ACT (MiCASSA) ON THE 12TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I rise to recognize the 12th anniversary of the Americans with Disabilities Act and to request support for H.R. 3612, the Medicaid Community-Based Attendant Services and Supports Act, also known as MiCASSA. It is fitting that we give special attention to the merits of this important bill as we recognize the twelfth anniversary of the Americans with Disabilities Act. On July 26, 1990 President George Bush signed the Americans with Disabilities Act into law. This landmark civil rights legislation ushered in a new era of promise for a segment of our population whose talents and rights as American citizens have been too long ignored. It established a new social compact that seeks to end the paternalistic patterns of the past that take away our rights if we become disabled. It says that people with disabilities have the right to be active participants integrated into the everyday life of society.

Much like the promise of the 1965 Civil Rights Act, however, the promise cannot become a reality until we roll up our sleeves and do the work necessary to eliminate the barriers, which still hinder its full implementation. While some recent decisions of the Supreme Court have threatened the scope of the ADA, I would like to call our attention to a Supreme Court ruling that reaffirms the fundamental principle that people with disabilities have the right to be active participants integrated into the everyday life of society. In 1999, the Court ruled in the Olmstead case that states violate the Americans with Disabilities Act when they unnecessarily put people with disabilities in institutions. The problem is that our Federal-State Medicaid Program has not been updated and has a built-in bias that results in the unnecessary isolation and segregation of many of our senior citizens and younger adults in institutions.

In the case of Medicaid beneficiaries who need long-term support services, the only option currently guaranteed by Federal law in every State is nursing home care. Too often decisions relating to the provision of long-term services and supports are influenced by what is reimbursable under Federal and State Medicaid policy rather than by what individuals need and deserve. Research has revealed a significant bias in the Medicaid program toward reimbursing services provided in institutions over services provided in home and community settings. Other options have existed for decades but their spread has been fiscally choked off by the fact that 75% of our long term care dollars go to institutional settings, in spite of the fact that studies show that many people do better in home and community settings.

Only 27 States have adopted the benefit option of providing personal care services under the Medicaid program. Although every State has chosen to provide certain services under home- and community-based waivers, these services are unevenly distributed within and across the States, and reach just a small percentage of eligible individuals. In the words of Howard Dean, the Governor of Vermont who also happens to be a physician and who recently testified on Capitol Hill on behalf of the National Governors Association, "We can provide a higher quality of life by avoiding institutional services whenever possible. . . . We will still need quality nursing home care for the foreseeable future, but we can maintain the necessary level of needed nursing home care while growing home and community based services if Congress will give the States the tools."

The MiCASSA bill is precisely the tool both the States and consumers need to obtain more cost effective long-term services in the most appropriate setting for the individual. Instead of creating a new entitlement, MiCASSA makes the existing entitlement more flexible. It amends Title 19 of the Social Security Act and creates an alternative service called Community Attendant Services and Supports. This allows individuals eligible for Nursing Facility Services or Intermediate Care Facility Services for the Mentally Retarded; regardless of age or disability, the choice to use these dollars for "Community Attendant Services and Supports."

These attendant services and supports range from assisting with activities of daily living, such as eating, toileting, grooming, dressing, bathing and transferring, as well as other activities including meal planning and preparation, managing finances, shopping and household chores.

Quality assurance programs, which promote consumer control and satisfaction, are also included in this bill. The provision of services must be based on an assessment of functional need and according to a service plan approved by the consumer. It also allows consumers to choose among various service delivery models including vouchers, direct cash payments, fiscal agents and agency providers.

Some have argued that such a flexible and consumer friendly option would bring people who need these services "out of the woodwork" and make our Medicaid costs skyrocket. This bill has been put together based on what we have learned from pilot programs and best practices throughout the States. Oregon and Kansas have data to show that fear of skyrocketing costs is blown out of proportion. While there may be some increase in the number of people who use this option at first, savings will be made on the less costly community based services and supports, as well as the decrease in the number of people going into institutions. The bill also allows states to limit the total amount spent on long-term care in a year to what the state would have spent on institutional services.

Whether a child is born with a disability, an adult has a traumatic injury or a person becomes disabled through the aging process, we can and must do better in offering our citizens the kind of long term care services they need and deserve. I can think of no better way to honor the memory of our departed disability rights leader, Justin Dart, who died on June 22nd and was known by many as the father of the Americans with Disabilities Act than to support passage of H.R. 3612.

INTRODUCTION OF THE NATIONAL DEFENSE RAIL ACT

HON. JULIA CARSON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Ms. CARSON of Indiana. Mr. Speaker, I rise today to talk about the important issue of passenger rail in America, and the future of Amtrak.

The passenger rail system suffers from gross neglect of our investment.

We have actively engaged in financing, developing, and preserving the infrastructure of all other modes of transportation. Whether bailing out the airline industry, federally funding and fixing the interstate highway system, or subsidizing airport construction.

It is imperative that we build a world class passenger railroad system in the United States. We cannot wait for highways and airports to become so overwhelmed that they can no longer operate, and we cannot continue to hold the millions of Americans who rely on rail service in limbo while we refuse to provide Amtrak with adequate funding.

This is why yesterday I introduced H.R. 5216, the National Defense Rail Act, which will mirror legislation introduced by Senator ERNEST HOLLINGS.

This legislation provides a blueprint for the future of passenger rail in the United States. The bill will help develop high-speed rail corridors, long distance routes, short distance routes, security and life-safety needs, and will provide Amtrak with the tools and funding it needs to operate efficiently.

Mr. Speaker, we consider subsidies to airlines and roads be worthwhile investments in our economy and our quality of life. We must make the same investment to create a world-class passenger rail system in order to see the same kinds of benefits.

I urge my colleagues to join me by cosponsoring this bill, and show your support for a strong national passenger rail system.

CORPORATE ACCOUNTABILITY HEARING

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. GEPHARDT. Mr. Speaker, I submit the attached document, which is the transcript of the corporate accountability hearing conducted by Members of the House of Representatives, for printing in the CONGRESSIONAL RECORD.

OPENING STATEMENT BY HOUSE DEMOCRATIC LEADER HON. RICHARD A. GEPHARDT

Mr. GEPHARDT. Thank you all for being here. If I could, I would like to make an opening statement, and then we will get to our first panel, with appreciation for all of our panelists for their time and effort to be here with us today for this important hearing.

We are honored to have with us today some very talented and special guests, an all-star team of experts on the issue of corporate accountability and responsibility that has become one of the most important issues in our country.

I think many of us are tired of the old left-right political debates because, to my mind, the issue before us is not about politics but about what's right for our country and how to restore people's trust and faith in our economic institutions. This is a discussion about enacting strong safeguards that will protect investors, protect consumers, and move every American forward with an agenda that gives everyone a chance to succeed.

We need to apply our values to governing. Our values tell us that accountability and responsibility must be operating principles in our markets, especially for the corporations that form the bedrock of our capitalistic system.

Sensible rules that enable our companies to function effectively will grow the economic pie for every American taxpayer and every American family. Too many times in the last 7 or 8 years the special interests and extremist voices that would like to get rid of almost all regulations have triumphed in the face of common sense and the sentiment of the majority of the American people. Too often these voices have had a real and, I would submit, destructive impact on our laws and our economic health.

So today we are here to listen and to learn, not simply to what went wrong but, more importantly, to figure out how to make it right.

Democrats in Congress have spent months seeking solutions to this crisis, and we are prepared to go to any part of this country to figure out what happened, why it happened, and the best way to fix the problem.

This week, as you all know, the Senate unanimously passed—and I'll say it again, unanimously passed, and that's a rare occasion—a crucial bill that would attack the current crisis of confidence. The Sarbanes bill would bring about structural changes in our auditing system, making sure that audits are objective and independent, while imposing stiff criminal penalties on bad actors and actresses.

We in the House have been working for months to pass a strong initiative that would also protect people's pensions and restore investors' faith. We have offered a financial services bill, a criminal penalties bill, and an offshore tax havens bill as part of a much more comprehensive business Investors' and Employees' Bill of Rights.

Unfortunately, the leadership in the House in the Republican Party—and, therefore, the leadership—has blocked these proposals. We have faith that these problems can still be fixed. We have the most ingenious entrepreneurs, the brightest minds leading our way to innovation. And we have the hardest working, most resilient, most resourceful people on the face of the Earth. And for that, we are all grateful.

And today we pledge to continue to work together in order to do what's simply right for the people that we all represent.

We thank our guests, and especially my brave colleagues in the Congress who every day speak up for the American people and who helped build this country into the greatest nation that's ever existed.

PANEL 1: PENSIONS, WALL STREET AND CORPORATE FRAUD

Mr. GEPHARDT. I'd like to introduce our first panel.

What can I say about Eliot Spitzer. He was at this a long time before any of us were focusing on these problems of corporate abuse and accountability. At the State level, he helped to launch a national reform effort to close loopholes and to hold people who don't play by the rules accountable.

The same goes for Richard Moore, State Treasurer in North Carolina. Richard Moore has worked hard to protect the pensions of all the people in his State. He's understood the fundamental truth, that without transparency and clear rules of the road, our investors get hurt, employees suffer, and our economy does not reach its potential. We're lucky to have him with us today, and we thank him for coming.

Finally, William White is the CEO of WEDGE Group, an investment firm based in Houston. He's been a private executive elsewhere. He served in the Clinton administration as Deputy Secretary of Energy. He has a broad range of experience that he brings to the table in both the private and public sector, and we look forward to having the perspective of someone with considerable experience in both private and public life.

I am surrounded by many of my colleagues, who I have enormous admiration for. All of them have been deeply involved in all of these issues of trying to increase responsibility and accountability. And I would like to be able to have the time here today to have them all make an opening statement, but I know our guests are on a short time leash, so we're going to go right to our testimony. And then we'll open this up for some questions.

Attorney General Spitzer, would you lead us off? Thank you for being here.

STATEMENT OF ELIOT SPITZER, NEW YORK STATE ATTORNEY GENERAL

Mr. SPITZER. Thank you, Congressman Gephardt, for that kind introduction, and thank you for your leadership in protecting small investors and the integrity of our financial markets.

Investors must often rely on the judgment and good faith of others to assist them as they make their investment decisions. They rely on the research and recommendations of their brokers. They rely on the judgment of the executives running the companies in which they invest. And they rely on independent auditors to ensure that they are receiving an honest accounting of those companies' profits and losses.

During the past few months, many investors have learned that their trust was sorely misplaced.

Research analysts recommended stocks to investors even as they knew those companies were poor investments. Corporate executives cooked the books to enrich themselves at the expense of their shareholders. And accountants who were supposed to provide an independent audit and review of those books and accounts disregarded their duty in search of greater fees from the companies they were auditing.

Our Nation's economy has been the engine that has brought unprecedented wealth to millions of Americans and their families. Our free market system which allows businesses and entrepreneurs to flourish without excessive government regulation and intervention is unrivaled anywhere in the world.

But our great economic engine is fueled by a belief that the market participants play by the rules. As companies compete in our free market, we have required them to operate within certain boundaries delineated by carefully articulated rules, standards of conduct, and disclosures. And if those rules cease to address the realities of an evolving marketplace, or if they're easily exploited, we must put into place new rules that prevent the exploitation of investors.

Throughout our economic history, we have been willing to implement new marketplace rules to address investor concerns. And the lesson that history teaches us is that new rules furthered our economic interests.

In the early 20th century, when trusts were exploiting the marketplace and undermining the ability of the markets to function, Teddy Roosevelt responded with new rules that restricted the ability of trusts to function. As he said then, "We draw the line against misconduct, not against wealth."

And a few decades later, when massive stock market fraud drove investors from the marketplace, we responded with the formation of the Securities and Exchange Commission and the implementation of the Securities Act of 1933 and the Securities and Exchange Act of 1934.

The role of government is properly to define the boundaries and rules of fair play in the marketplace. And especially at moments when the rules appear to be broken, government must step back and evaluate the rules themselves. As important as punishing those who break the rules is ensuring that the rules themselves are properly structured.

With that framework, I want to discuss some of the specific proposals that have been advanced by both parties and to talk about how a national market must respond to the challenges that arise when its rules no longer provide the necessary protections sought by investors.

It has become increasingly apparent that the Democratic congressional proposals recognize the structural flaws that have been allowed to develop in our marketplace and offer meaningful reforms that would protect small investors. The Republicans' response has been to ignore and deny the true scope of the problems and to measure any reforms by their distance from current practice, rather than their proximity to appropriate standards of behavior.

Today, the Republicans in Congress are accepting deviancy in the markets and are willing to define marketplace standards by what has become common practice instead of by what is good practice. Hundreds of investment bankers have said to me: "Market pressures force us to the lowest common denominator. We will feel compelled to sink lower and lower in our behavior unless government defines standards for us." That is the proper role for government and the proper response to market pressures that will otherwise define deviancy down.

The difference between the Democratic and the Republican approaches is perhaps best illustrated by comparing the competing responses to my office's investigation that uncovered Wall Street analysts too often recommend companies to investors based on the investment banking fees that those companies generate instead of the underlying investment value.

Our investigation revealed that Merrill analysts writing stock reports function as sales representatives for the firm's investment bankers, using promises of positive research coverage to bring in new clients and stock offerings. We uncovered evidence demonstrating that a key factor in setting annual compensation for analysts was their success in generating or facilitating the generation of investment banking fees and not the accuracy of their buy/sell recommendations to the public.

While our investigation in New York is still ongoing, it is fair to say that these practices were not unique to Merrill Lynch. In response to concerns about the conflicts of interest driving research analyst recommendations, Congressman LaFalce proposed a substitute to H.R. 3763 which would require analysts to be evaluated and compensated based on the quality of their research and would insulate analysts from the demands of the investment banking business.

In short, the LaFalce bill would ensure that analysts serve their true clients, the investors, not the investment bankers.

The Republican bill, sponsored by Representative Oxley, does not require the investment banks to change their practices but merely directs the kinder and gentler Securities and Exchange Commission to study the issue and report back, and the SEC that has already dawdled and stalled, hesitated and malingered.

The refusal of the Republican majority to address the investing public's concerns about the conflicts infecting the research recommendations that they receive will simply result in the public's hesitation to reenter the market. That will damage our markets, damage the companies that turn to the capital markets for financing, and delay if not deny the economic turnaround that we so desperately need.

Beyond a failure to act, the House Republicans have been actively critical of my office's efforts to crack down on analyst conflicts of interest. Indeed, Congressman Oxley has attacked my office's efforts, charging that I have "burned investors in Merrill," who have seen Merrill Lynch's stock price fall.

Congressmen Oxley and Baker publicly stated in a letter to all attorneys general that if investigations such as mine continued, they would introduce legislation that would prohibit State regulators through law enforcement officials from seeking substantive relief from investment bank analysts who continue to mislead the investing public. Such an amendment circulated in the Senate during consideration of the Sarbanes bill and could still become a matter that could be brought up in the conference committee.

Let me state very clearly that State enforcement of securities laws is absolutely crucial to protecting the investors' rights in the marketplace. Preempting State activities in this area, removing the cops from the beat, would further undermine investor confidence.

I will also note in passing the supreme irony of having the so-called States rights advocates crafting amendments that would restrict the ability of State regulators and law enforcement officials to address wrongdoing in their States.

For years, the Republicans have invoked principles of federalism as they rallied for a smaller, less active Federal Government and advocated for the devolution of power from the Federal Government back to the States. But now that the States have begun to vigorously exercise the powers handed to them, Republicans have undergone a devolution evolution and want their powers back.

The Republican supporters of these anti-State amendments pay lip service to the need for uniform Federal standards governing our securities markets. Congressman LaFalce, in his legislation, has proposed just such a standard, one that will go a long way toward ensuring that the advice that investors receive is advice that is in their best interest.

And so I say to the Republicans in Congress: You have asked for uniform standards. Congressman LaFalce has proposed a uniform standard. You should enact the LaFalce legislation.

Analyst conflicts are only one part of the problem. The collapse of Arthur Andersen and Enron and the massive overstatement of earnings at Global Crossing, WorldCom, and other corporations demonstrate the need for new rules of corporate governance and new standards for the accounting industry.

The Sarbanes bill would require accounting firms to return to their roots as auditors and separate their auditing function, where they stand at arm's length from their clients, and their consulting practices, where the client's interest is paramount.

Finally, the corporate reporting scandals illustrate that too many public companies are placing the interests of the executives who run the companies before the interests of their shareholders and employees. The decades' long shift of power from shareholders to CEOs created an era of the imperial CEO so dominant that neither boards nor shareholders could really control either executive compensation or decision-making.

It is time to restore to boards and institutional shareholders the obligation of serious participation in corporate governance. We need to insist that public companies report results that reflect reality and not clever gamesmanship, and that allow investors to understand their true financial position. And we need to strictly punish corporate executives who falsely certify their companies' financial statements.

These reforms are not only vital to the integrity of our markets, they are necessary if we are going to achieve the economic recovery that we all seek. Taken together, the reforms we are discussing today will signal to a disenchanted and distrusting public that we will no longer tolerate the betrayal of trust. These reforms will tell investors and stockholders that the markets are governed by rules, and those rules are geared to protect their interests.

The immediate goal must be passage of the Sarbanes bill without allowing Republican Members to water it down in the conference committee. But once that is accomplished, there is still much more work to be done, much of it embedded in Congressman Gephardt's Investors' and Employees' Bill of Rights. Congress must address the conflicts created when research analysts are required to service their investment banking colleagues instead of the investing public.

The Securities and Exchange Commission has failed to act on analysts' conflicts of interest. And in his speech last week, President Bush indicated his support for the SEC's weak rulemaking in that area. It is now up to Congress to mandate that analysts who claim to serve the investors' interests actually do so.

We are now at a crossroads. Democrats have recognized how far the standards of behavior have deviated from what used to be accepted norms and have proposed reforms to raise those standards. We must continue to fight for real reforms that will raise the standards governing the conduct of analysts, accountants, and corporate executives. And we must continue to battle attempts to accept fraud and irregularities in the marketplace.

Thank you for the invitation to appear here today.

Mr. GEPHARDT. Thank you, General, very much, for a very cogent and well put together statement. We appreciate it. We'll come back with questions in just a moment.

Richard Moore from North Carolina, we're pleased to see you here, and you can carry forward.

STATEMENT OF RICHARD MOORE, NORTH CAROLINA STATE TREASURER

Mr. MOORE. Thank you, Representative Gephardt. And I would also like to start out by saying hello to Representative Watt and Representative Etheridge from North Carolina. Thank you all very much for this chance to be here.

I come before you today as North Carolina's elected guardian of the State Treasury and the sole trustee and fiduciary of $62 billion in public funds, most of which is represented by the pension funds of 600,000 active and retired public workers in the great State of North Carolina.

Before I get into specific points, two general points to put this situation into context:

In my prepared remarks, I have several quotes, starting with Alexander Hamilton, George Washington's first speech to the Congress, Woodrow Wilson, and Teddy Roosevelt. All of those go back to make the simple point that we as Americans have always understood that a free market is not the best market in the truest sense of the words. We have always sought to make sure that our markets were bridled in the name of fairness. And this is something that has been a bipartisan issue. It's been understood since the founding of this republic.

The second obvious point that I believe needs to be made—and also, I must take just a second here of personal privilege. I'm a big student of history, and we always seem to go in cycles. The last time we had a tremendous loss of confidence in the public markets was the Great Depression. And the Great Depression brought about the passage, as my good friend Eliot Spitzer has already recited, of the Securities acts of 1933 and 1934, and the passage of the Glass-Steagall Act. I'm extremely proud that my grandfather, Frank W. Hancock Jr., as a business-oriented member of the House Banking Committee, played a significant role in drafting and championing many pieces of the necessary reforms.

The second general and obvious point, but a point that I really think that this body needs to make in the next couple of weeks, is to remember that we are addressing regulations that apply only to public companies. And I want to say that again because it's so obvious that it's missed: They apply only to public companies, and no one forces a company to become public. The choice to do so means that its corporate leaders voluntarily give up some of their autonomy and agree to be regulated. The tradeoff, which has been incredibly significant over the last 20 years, is that those companies may have access to capital at an incredibly discounted rate, which has been a wonderful thing for everyone.

But even today, most businesses in America, those located across the Main Streets that you all represent, are not publicly regulated. And when they need additional capital for their businesses, they pay a premium for it. It's an obvious point, and one that I think needs to be stressed more.

The conclusion is that publicly traded companies have been and must be regulated to make sure that the individual investor, who I am here to represent in a large way today, but the individual investor can properly value his or her risk before an ownership decision is made. This, again, is an obvious point that has been overlooked by those who are afraid that additional government regulation will foul the market.

Who is the stock market today? The stock market is representative of 80 million Americans who have decided to take part in these public markets. Either directly or indirectly through mutual funds and other pension plans, they have placed their hard-earned savings in these marketplaces. And that in itself is remarkable.

They have been enticed—and I will use that word again—they have been enticed through tax policy and professional advice to participate and share in the American dream.

Now, it is not your job, nor is it the job of corporate America, to ensure that that dream comes true. However, it is your job to make sure that the marketplace is fair to all so some don't profit and others lose from the exact same investment—from the exact same investment.

Our markets today hold about $12 trillion in assets; $2.2 trillion are held in pension funds like the one that I run. Approximately $8 trillion in the marketplace is controlled by mutual funds. And what a lot of people don't realize is most pension funds are the largest clients of mutual funds. So we have tremendous clout in the marketplace, clout that I don't think that we have learned how to use yet, and we're not equipped at this point to do it.

The reason for that is that institutional ownerships have evolved over the last 30 years. As a result, we as institutions find ourselves collectively the largest single shareholder in virtually every major company in America. The founders of those companies, or the founders' descendants, in many instances are no longer seated around the board tables advocating in their own self-interests for the rights of the shareholders.

It is truly today often a setting like government, the arena that we all work in, where people spend other people's money.

We, as institutional owners, must act like the owners that we have become. However, we cannot do it alone. We need your help. We need Congress and the administration to make sure that we can properly exercise our prerogatives of ownership. We need your help to make sure that we can tell whether the interests of management and shareholders are properly aligned. We need your help in making sure that we as investors can properly price risk. We need your help in making sure that the cop on this particular beat has the resources and tools to do their job.

We need your help now more than ever. The last few months have shown that our system is currently missing effective and necessary checks and balances to ensure that the fine line between proper incentive and destructive greed is not crossed.

While I firmly believe that the vast majority of today's corporate managers are smart and honest, it has been disconcerting to see so many unmasked not as captains of industry but as captains of greed with callous disregard for the welfare of the people whose money grows their companies.

Simply put, where I come from, we know that the fox cannot guard the henhouse. No matter how honest, no matter how well-meaning the fox, at some point the temptation to gouge is going to prevail.

Without proper regulation, history has shown, that hardworking Americans always pick up the tab: the Great Depression; the savings and loan debacle, which I served as a Federal white-collar prosecutor during that and we didn't have anywhere near the resources to do it right 10 years ago; and most recently, what you're dealing with, the power shortage in California.

In carrying out my fiduciary duty to the 600,000 beneficiaries in my funds, last month, with Eliot Spitzer's help, we began to be more aggressive owners. In conjunction with the Treasurer of California, Phillip Angelides, and the Controller of New York, Carl McCall, we announced important investment protection principles. These proposals embodied simple, common-sense market-based solutions to some of the problems that we face.

We as owners are exercising our ownership rights. We're putting new terms on the table. If you want our money, this is what we've got to have from you. We are demanding that broker-dealers and money managers eliminate actual and potential conflicts of interest from the way they pay their analysts and conduct their affairs, or we will no longer do business with them.

We are asking our money managers that we utilize to look closer into the areas of financial transparency and corporate conduct. But we, once again, need your help.

As fiduciaries, we must and will become more assertive in our ownership role. Since we've announced these principles, we have been joined by numerous other States and numerous pension funds. We now have almost $700 billion backing this simple set of principles. And I believe, with your help, we will make a huge difference.

One final thing: In some areas, we need specific prohibitions. And I believe, Representative Gephardt, what was announced yesterday and what's been going on with the Sarbanes bill will go a long way toward answering those problems.

In other areas, where specific prohibitions may be unwise, do make disclosure standards tougher. If you're having a tough time with options and other issues, do just as you've done in cigarette packaging, food labeling: make it, in a prudent and appropriate way, required that certain financial information be prominently displayed in plain language in proxy statements and annual reports.

If you will help the large and the small investor alike learn how to find the information needed to properly price option overhangs and option run rates, we as the market will go a long way in ridding ourselves of truly abusive practices.

I would also urge you to take a closer look at the difference between defined benefits and defined contribution plans. I think we went way overboard on defined contributions.

I run them both in North Carolina. I was stopped by groups yesterday, one retired school teacher in particular, who had $300,000 in her 401(k) that is now worth $120,000. She was in tears, and she was thanking me that the management of the traditional retirement fund that I also ran had not suffered anywhere near those kinds of losses, because we were properly diversified.

I appreciate the opportunity to be here today. And in closing, I must say that I was taken aback by the President's comments a couple of days ago that this was nothing more than a hangover. For many citizens, the people who I have been entrusted to protect, maybe unlike the executives at these companies, they won't be fine by lunchtime. It's going to take years and years of financial rehab for them to be back to normal.

Thank you.

Mr. GEPHARDT. Thank you, Richard, very much. You gave very eloquent testimony, as did Eliot. And I really appreciate you taking the time to be here.

We're now joined by William White from Houston. As I said, he has a distinguished career in the public and private sector. Thank you, Bill, for being here, and we're ready to hear your testimony.

STATEMENT OF WILLIAM WHITE, CEO, WEDGE GROUP

Mr. WHITE. Mr. Chairman, and distinguished Members, I've really looked forward to this because of the perspective that I'll share with you.

I'm blessed to run a number of large businesses. Not only do we own private firms, but we are the first or second largest shareholder in five public companies, where our stakes range from 9 to 60 percent. Some businesses I've built, and we've been pretty successful by any financial measure.

In a prior life, before I started in the private sector, for more than a dozen years, I was a public interest lawyer, specializing in accounting fraud and securities fraud, including getting the largest verdict and judgment in Federal securities law history against an accounting firm.

I've served on the board of a number of public companies, many on the New York Stock Exchange.

And so you can appreciate that I've been thinking about some of these issues a little bit. And I want to tell you, Mr. Chairman, this is a serious issue, this issue of confidence and the reliability of our financial system. It's not something that we can just sweep under the rug, and I'll tell you why. Because of the chronic trade deficits that this country has—it's the way that our economy has operated for a long time—we depend in this economy, for its strength and its growth, on being able to attract international investment to our economy. If that slows down, we're in a very serious situation.

And one reason why we get that foreign investment is because we are a Nation of laws, and we are perceived to have a transparent and fair financial system. Moreover, as the outstanding witnesses have pointed out, we do right now rely very heavily in our pension and retirement system on the individual savings and investments of ordinary Americans.

We, the people of the United States, do own the public companies, when you look at the distribution of stock ownership.

And during the period of the 1990s, there was an amazing transformation as so much household wealth was built up, and the increased worker productivity, and savings and wealth in our families.

If we do not have confidence in this system, it is the most serious problem that I can think of in our domestic economy for a long time.

So let me share with you a thought about our response to this and, if nothing more, a way to look at this. I'll be happy to answer questions on some specifics that I have, but my statement focuses on an approach, if you will, because this could take awhile for us to develop, not just instant legislation. But in the future, we need to be thinking about these things.

Now, we can't exaggerate the abuses. There are a lot of good people who are executives and in management in the American system. More than any other country in the world, people have worked their way to the top. Our ancestors all came here with nothing, and that's true with corporate executives, many of whom have worked their way to the top through hard work.

But this is more than a case of a few bad apples. I think what you've had is a crisis of leadership. What does leadership really mean? In business or in politics or in our families and churches, leadership means giving more than you take. Leadership means giving credit to others and being first to accept responsibility. Leadership for corporations should mean holding yourself as a CEO—and I'm a CEO—to a higher standard than anyone who reports to you. That's what leadership is. It is servant leadership.

And too often we've had a situation in this country where CEOs and corporate leaders take credit for whatever happens good in their company. And then when something bad happens, it's the fault of somebody else or the economy or the press.

Let me give you an example of that. I was with somebody who was an hourly worker on a factory floor, and we were having a discussion about some trade legislation. Now, I will tell you that I'm an advocate for freer trade legislation, and this person, who is a friend of mine, disagreed with me, and I was probing this difference. And this is what he said to me, he said, "Every time my company announces that there are good earnings or higher profits, it's because of management's strategy and plans, and they get multimillion dollar bonuses. But every time our profits and earnings have gone down, it's because of foreign competition, and workers are fired and bonuses are cut on the working people down the line."

So it's a good example of where we've had a failure of corporate leadership. Leadership does not mean giving yourself bonuses and making yourself wealthy when the organization you're leading is performing poorly. And it doesn't mean failing to accept responsibility when things go wrong, and that includes legal responsibility.

Mr. Chairman, as someone who has both sat on corporate boards and led corporations, and also enforced our existing securities laws in courtrooms before juries of Americans, I want to tell you that laws are important. Values are important. Ethics may be even more important than laws and values, but laws are important.

And it's simply not true that they will stifle the free enterprise system.

Look at the difference between this country and Russia, and I'll give you an example. I served in the administration and have had different private business dealings in Russia. Russia in the 1990s had democracy. There was freedom of expression, a lot of freedom of expression. There was free enterprise. But what there was not were laws and fair enforcement and impartial enforcement of those laws regardless of whether somebody is wealthy and powerful. And that's why their economy went down.

So it's every bit as important for this country as any other country. Strict enforcement of laws does not destroy the free enterprise system. Good business ethics and strong laws are the underpinnings of a successful market economy, as we've seen from nations across the world when those very things are lacking.

I'd like to make two final notes, Mr. Chairman.

One is about my own business community of Houston, Texas. For a while there, looking at the television or reading the newspapers, somebody might have thought, "Oh my gosh, what's going on in Houston, Texas? Is there a problem with business ethics in that one community?" And it's a community of which I'm proud. But we found that it's not just a matter of one community. It's not just a matter of one industry. It's something that's occurred systematically throughout a number of companies in our economy.

And I want to tell you, we can't stereotype a community. We can't stereotype an industry. We can't stereotype CEOs. The Democratic Party is a party that has fought stereotypes in all the best days of its existence. But we've got to start with business ethics and values, and reinforce those with strong and predictable laws. This is something that's affected workers and communities throughout this Nation.

And, Mr. Chairman, in the questions, if people have specific questions, I'm prepared to address issues concerning the governance structure of corporations, pension reform, avoiding conflicts of interest. And just on that, there's usually no good reason for an institutionalized conflict of interest, okay?

And fourth, how we rebuild the accounting profession, because it's not just what we do with accountants who are wrong, but how do we rebuild an accounting profession so that we have professionals who can enter this profession with dignity and respect?

On all those issues, the one that may be with us longer than many people suspect may be this issue of pensions and retirement plans. Many people have had unrealistic expectations not simply about what would happen when their 401(k) was invested in something bad, but whether their 401(k)s currently are sufficient. There have been surveys about this. Americans who are busy going about their daily work, and who read financial planning journals or watch the TV programs, may think that their $80,000 401(k) may provide more retirement security than its worth.

There was a survey of individual investors in 401(k) plans concerning what their expectations of returns were. Over 20 percent of them thought they were going to be 50 to 100 percent a year, and another 20 percent thought they were going to be over 20 percent a year.

And corporations, as Warren Buffet, no socialist, has pointed out, have systematically overstated the returns on their pension investments. They're not making conservative assumptions concerning their returns on pension investments. If those assumptions were made more conservative, those pension funds would be underfunded.

These are issues that I hope this Congress can address. Thank you, Mr. Chair.

PANEL II: THE SEC, ACCOUNTING INDUSTRY AND ECONOMY

Mr. GEPHARDT. I'd like to first thank our distinguished former Federal Reserve Chair Paul Volcker for appearing here today. You all know that he is not only a brilliant economist, but he also has loads of realistic experience in all the areas we're focusing on today. And we're glad to have him with us and have his expertise on these issues.

Lynn Turner is a front-line fighter if there ever was one. He learned these issues inside and out from 1998 to 2001, when he served as chief accountant for the Securities and Exchange Commission. He fought with Arthur Levitt to strengthen the SEC's enforcement hand to go after companies that wrongly puffed up their earnings. And through his voice and leadership, he successfully shined a spotlight on these issues in recent months. And we thank him for his service and for being here.

Bevis Longstreth was an SEC commissioner under President Reagan, where he focused on all the issues that we're talking about today. More recently, he served on independent panels focusing on auditing effectiveness. He's been a professor at Columbia Law, written numerous articles, published a book on investment management, and he's a true public servant in every sense of the word.

Nancy Smith has considerable experience from her time at the SEC. As director of the Office of Investor Education and Assistance, she worked closely with Arthur Levitt. She's worked in the House of Representatives, which is always a good idea to us, where she focused, among other things, on the SEC and issues of accounting and corporate conduct and standards. And finally, she has a Web site, RestoreTheTrust.com, where investors are able to e-mail their Senators and ask them to support the Sarbanes bill to reform the auditing industry.

We're very pleased to have this panel. This is a distinguished panel, and I know they are all on a tough schedule, and we deeply appreciate their willingness to come here and be with us.

Paul Volcker, thank you for being here. It's good to see you again. You look great, exactly as you did when I last saw you here some years ago, so you're doing something right.

Mr. VOLCKER. I'm afraid I've gotten older.

Mr. GEPHARDT. I doubt that.

STATEMENT OF THE HON. PAUL VOLCKER, FORMER CHAIRMAN, FEDERAL RESERVE BOARD

Mr. VOLCKER. You will be relieved to know, I hope, that I have no prepared statement that I will belabor you with. I did give a long speech on this problem at Northwestern—ironically, in the Arthur Andersen Hall—about accounting and auditing. And I had a rather dismal story from the standpoint.

It's clear that we face not just an individual problem but something of a systematic problem with this rash of difficulties in auditing, accounting, corporate governance, conflicts of interest in investment banking, which are not exactly a new phenomenon but which have shone brightly in recent months.

My message to you is very simple, that there is a clear need for action. But the priority at the moment is that bill you are getting, from the Senate, the Sarbanes bill, which is directed, I think, at an acute part of the problem in a realistic way. It is the reflection of some considerable hearings and discussion in the Senate and elsewhere. And it deals particularly effectively, I think, with two problems related to the fact that the auditing industry has chronically been unable, I think, to regulate itself despite many efforts over the years.

It would provide a strong oversight body with the kind of discipline and powers that I think are necessary, somewhat analogous to what we've been used to for many years in the securities industry itself. In that sense, it's not a radical change, but it is certainly a change that I think would bring needed discipline to the auditing industry that has been under great pressure and has not handled that pressure, frankly, very effectively.

And secondly, it deals with what I believe and what many other people believe are obvious conflicts of interest in the practice of auditing by removing large elements of the consulting practice from the auditing practice.

And I think the combination of those two remedies will go a long way toward providing a kind of backbone of professionalism intent in the auditing profession that's necessary to bring some of the problems that we've seen so evidently under control.

I would urge you, given that priority, that bill which will be before you in conference that deals with those problems in a rather comprehensive way, that you should go ahead and get that enacted as rapidly as possible without too much extraneous additions, subtractions, or whatever.

I think in part, in that connection, on the question of stock options, which has attracted a lot of attention, I am not a fan of stock options. I think they have been more abused than used in any appropriate way. I think they give very capricious results. They often reward the unjust and don't reward the just in terms of their effect on the market. But this does not seem to me the time and the place for the Congress to command particular treatment. There are bodies that have that under review.

I am the chairman of the board of trustees of the International Accounting Standards Committee, which appoints an international accounting standards board. Its overall effort is to get some commonality, some convergence, in accounting standards around the world. By coincidence, yesterday or the day before, they sent out for public comment their proposal for the expensing of stock options. But whether it's the international board, which is obviously at work, or FASB, our own board, it seems to me that the way that is treated is a technical matter which we ought to leave to the accountants and the board.

And I have to remind you, the last time Congress got interested in this subject, about 8 years ago, they took the opposite position and, in effect, overruled what the accountants wanted to do and prevented the expensing of stock options. So I would suggest that that problem will be dealt with in an appropriate way in a quite different atmosphere today.

I think your priority ought to be to deal with the bill in conference, with the bill that has passed the House, but make sure that what comes out of that does achieve the essential purpose of a really effective oversight board for the profession and deals with that conflict of interest and also deals with some other matters as well. But I think that is the essential part of that bill that should be preserved and enacted as soon as you can manage it.

Mr. GEPHARDT. Thank you very much. We appreciate you taking the time to be here. Lynn?

STATEMENT OF LYNN TURNER, FORMER CHIEF ACCOUNTANT, SECURITIES AND EXCHANGE COMMISSION

Mr. TURNER. Thank you, Congressman, for inviting me here. It's actually great to be back in D.C.

I just flew back in from the West where I had actually gone out fishing in the backwoods, if you will. It was interesting, as I got a call about the hearing last week, and I was literally walking out the door with my fly-fishing rod to get away from what seemed to be an all-consuming issue here.

And we got out on the river the first morning with the guide, and keep in mind that we're in a place where there's no New York Times, no Washington Post, no Wall Street Journal, even the BlackBerry wouldn't work.

The guide asked, "What do you do for a living?" And I said, "Well, I'm an accountant." I admitted it. I figured I was safe. I mean, no papers, not even a daily paper. And he turns around and he looks to me and he says, "You know, you guys aren't doing very well these days. Have you considered a career change, Mr. Turner?" [Laughter.]

And so I spent 3 days on the river with this guide. So it's nice to be back to civilization. [Laughter.]

But I think what that points out, though, is that there a lot of Americans in all necks of the woods out there that are very concerned about what has transpired here and how it has impacted them and their savings and their families, whereas maybe 10 or 20 or 30 years ago, it wasn't as important as it is today, given that there has been a significant change. We now have 85 million Americans in the markets, either in stocks or mutual funds; that's one out of every two voting Americans. That's significant.

And they had a third of their wealth at the height of the markets tied up in the stock market. For the first time ever, it was more than they had in the equity in their homes. So the amount of damage that can be done if we don't get significant reforms is quite incredible.

If you think about Enron itself, the losses were twice what the losses were from the unbelievable tragedy of 9/11, six times the losses Hurricane Andrew when Miami was wiped out, in just one of these tragedies.

So it is as important, as Chairman Volcker said, that we get this thing fixed.

But the facts are in today. And in 2001, we had a record number of restatements, 270 restatements; 1,089 over the past 5 years. These numbers really do prove that there are more than just a few bad apples out there in the orchard, if you will, that President Bush would have led us all to believe in his speech last week.

And the accounting profession's refrain that we've heard for years and years here in this building, that 99.9 percent of the audits are okay, is also no longer credible, when you think about the fact that Rite Aid and WorldCom and Xerox and Enron were all part of that 99.9 percent at one point in time.

And also, the accounting profession would like you to think that, dingdong, the witch is gone now, with Andersen falling by the wayside, despite heroic efforts by Paul Volcker to save that firm, and that they were really the problem. But that isn't true. If you look Rite Aid, it was audited by KPMG, as was Xerox; MicroStrategy and WR Grace by PricewaterhouseCoopers; Deloitte did Adelphi; and Cendant was done by Ernst & Young.

So each of the firms, and certainly this was my experience at the commission, had their problems. And they were significant problems. The auditors have been investing the cash that they generated from a very profitable audit practice into the consulting practices. They've been writing broad principles-based auditing standards that have been so general that an independent panel chaired by the former chairman of Pricewaterhouse, of which a member was former Commissioner Bevis Longstreth here to my right, they issued 200 recommendations to the profession. To date, many have yet to be implemented as noted in a GAO report of just the last month or so.

So the profession itself has not done very well. And in fact, on some of these audits—if you looked at the audit of MicroStrategy, the problems there were detected in a magazine article that was written about their accounting. And the problems on Rite Aid were detected by a desktop review by an SEC staffer. And it's phenomenal that, on WorldCom, an internal auditor can find the problem that the external auditors never found. On a case like Rite Aid, a desktop review hundreds of miles away found a problem that couldn't be found on site. And in the case of MicroStrategy, a business article turned up something that people onsite couldn't find.

And at the same time, as we heard from Attorney General Spitzer, certainly the analysts have been a big problem. They've been rewarded for doing marketing rather than analysis, it seems, which the investment bankers, quite frankly, appreciated, as they saw themselves boosted by the analysts' exaggerated research reports and road shows.

And I'd be remiss if I said—during the last 3 to 4 years, as Chairman Levitt tried to get some of the reforms enacted, that some Members of Congress also opposed and vehemently opposed some of those reforms.

And if it wasn't for some people like Congressman LaFalce and Congressman Markey, whose support was absolutely fantastic and wonderful as we fought those battles—in fact, I don't think Arthur or I could have survived if it hadn't been for the support that we got from those Representatives.

We did get some reforms done, but certainly not as many as should have been done at that point in time, given the problems that were out there and problems that were ignored by other Members of Congress who, quite frankly, could have stepped in, I think, at that point in time and help fix the problem.

As Paul Volcker mentioned, I do think the solution here is in the Sarbanes bill. Congressman LaFalce had a similar bill here in the House that unfortunately the Republicans didn't give the Democrats a chance to bring to a full thumbs-up or thumbs-down vote. And I think Congressman LaFalce's bill, much like Senator Sarbane's, is one that provides a systemic solution for what is truly a systemic problem.

But now with the Sarbanes bill, it is my hope that, through conference, we'll get that bill out without weakening it. So while it may not have the LaFalce name on it, it will have the LaFalce intent and heart behind it.

We need to ensure that we have an adequately funded and independent SEC. The funding, there is no question that the handcuffs that were put on us at the SEC prevented us from doing our jobs. When I walked into the SEC in July of 1998, we had a total of 15 accountants to do all the enforcement cases against 240 enforcement cases at the time. They physically were not able to do it.

And in fact, as we went through those enforcement cases, we knew we had a number of good cases that, quite frankly, we had to drop and couldn't prosecute, because you just didn't have enough hours in the day. And that was directly due to the lack of funding, that we had received and the handcuffs that had been put on us. So we need to get that fixed.

We need to allow them to have enough people to review the filings last year. There was one staff accountant at the SEC for each 1,000 to 1,100 filings that come in. Many of these filings are a foot thick. So, again, physically, you can't work enough hours in a day. Unless you extend the days by an act of Congress to about 48 hours, we're just not going to be able to get the job done with $776 million in funding in the Sarbanes bill, which is sorely needed.

And it's interesting to note that finally this administration and Chairman Pitt are coming around and starting to look like they might support some additional funding, which is great. I only wish they had done that when they submitted their original budget to Congress in February, which actually reduced the number of budgeted positions for the SEC well after Enron and Global Crossing had come to light.

We also need to make sure that we get adequate funding for the Justice Department. It is the Justice Department that has to bring all of these criminal prosecutions. The SEC will not bring one of those. And as the guide on the fishing trip said, he wanted to know, would we see these people, if they're found culpable of a wrongdoing, brought to justice. Well, the only way they'll be brought to justice is if we give Justice the tools and resources to do it. Absent doing that, we might as well turn around and put a 55 mile an hour speed limit sign out there on 1-95 with a sign about 5 feet behind it, saying "No police for the next 100 miles." And you know everybody is going to be in the fast lane.

That's, in essence, what we're doing with the Justice Department and the SEC, unless we give them additional funding.

As in the Sarbanes bill, without a doubt we need to increase and improve upon the independent auditors, banning them from providing the services that really do impact their economy, regardless of size. It doesn't matter if it's a small company or a big company; you need to have integrity in the financial statements.

We need that strong oversight board. Restatements of the magnitude of $3.8 billion on WorldCom and $1.6 billion on Rite Aid, $6 billion on Xerox—as I tell my students in class these days, if you can't get the numbers any closer than the nearest billion bucks, you're not going to pass this class. [Laughter.]

We need to get that fixed. That board needs to have the ability to set the standards by which we measure the performance of the auditors. The auditors I know have been up here saying, "Well, if you don't have auditors doing it, how can you get good standards?" Well, Congressmen, we've had knowledgeable standards written by knowledgeable auditors for the last 60 years, and it hasn't got the job done. What we found is those knowledgeable auditors have been writing standards that protect their interests in case of litigation and have dismally failed to protect the interests of investors and the integrity of numbers.

And as for the analysts, as Attorney General Spitzer said I think very eloquently, we need to go further than President Bush proposed when he suggested sticking with the rules the stock exchanges have already adopted. Those rules absolutely fail to provide analysts with protection from the very retribution of executives and underwriters who might be displeased by a negative research report.

We need to definitely strengthen the corporate governance. It has failed us. We need good, independent corporate boards, just like we need good, independent analysts and good, independent auditors.

And finally, we need good, independent accounting standard-setters with adequate funding and trustees who are representatives of the public, not trade organizations.

It's interesting to note that former Chairman Volcker brought up the issue of stock options. As a former executive, I actually think stock options can be a very good tool, if used properly and governed right within a corporation. There's nothing wrong with that. But I hear people say, "Well, you can't adequately measure them." Having been an executive of a large, international semiconductor company, I would tell you that if an executive can't figure out what he's compensating employees, including with the stock options, if he can't measure them, he shouldn't be an executive there in the first place.

We all participated in the same surveys. We all knew what they were worth. And we all turned around and calculated that number using standard methodologies. It can be done. And people just need to put their heart behind it and get it done. In fact, a survey of approximately 2,000 analysts last year showed that 80 percent of them feel that the accounting standards for stock options are deficient and don't provide them enough information to do their job. We need to fix that so that the analysts can get the job done right and so investors can make informed decisions.

And the market I think has responded to President Bush's call for a crackdown on corporate fraud, but it has rejected his proposals as too little, too late, when it was shown in the market to where it dropped over 400 points in just the first 2 days after his speech before I went on my fishing trip. And since then, I've seen it's dropped more.

Legislation proposed by Senator Sarbanes advances the ball much further than the President's plan or the legislation the House has adopted or the proposals from Chairman Harvey Pitt. Sarbanes' bill is the only one to ensure the independence of auditors, corporate boards, and analysts. It provides effective and timely discipline, and it offers the funding necessary for the SEC and accounting standard-setters to do their job. It's a good start to solving what ails the market.

Congress needs to find the will to pass it without weakening it anymore, and send it on to the President. And if not, I can tell you that I've heard many an angry American investor that says they will vote for reform in November.

Thank you.

Mr. GEPHARDT. Thank you, Lynn, very much.

I failed to ask you if you caught any fish on this trip. [Laughter.]

Did he take you to anyplace where you caught anything?

Mr. TURNER. We did very well.

Mr. GEPHARDT. Good. Well, we'll try to get this bill passed so that you can retain his confidence and he'll take you back. [Laughter.]

Professor Longstreth, we appreciate you being here, and we're ready to hear you.

STATEMENT OF BEVIS LONGSTRETH, FORMER MEMBER, SECURITIES AND EXCHANGE COMMISSION

Mr. LONGSTRETH. It's a pleasure to be here. And it's a pleasure to be in this room. The last time I testified on this subject before the House, it was in the House Commerce Committee, and I was so far away from you, I wasn't sure you were really there. [Laughter.]

So this is a very intimate gathering, and I appreciate the chance to communicate.

S. 2673, the Sarbanes bill, is a critically important piece of legislation that, in my judgment, should be passed by the House and placed on the President's desk without delay. Nothing I can think of would do more to restore the public's trust in our financial markets than the simple adoption by the House of this bill, and make it the House's own bill.

The need for this bill to become law transcends party. To its credit, the Senate confirmed this fact by its vote of 97-0.

While my roots are in the Democratic Party, what I want to say today is intended to be completely bipartisan. I would say precisely the same thing if this were a Republican Caucus. It's designed to appeal to both sides of the aisle and to get the objective I just stated done.

There's much to applaud in the Sarbanes bill. But I'm going to concentrate on the very heart of that bill, the most important parts of it, which should not be compromised and must be adopted. These measures I'm going to talk about relate to the creation and the empowerment of an oversight board to regulate auditors of public companies.

For decades, the auditing profession claimed that despite the obvious conflicts of interest it could effectively regulate itself. It has now become evident to just about everybody in the country, outside a tiny circle of leaders in that profession, that self-regulation has been a failure. It's not a new failure, for it has never worked. But the failure now is of such magnitude in terms of cost to the investing public that it can no longer be ignored.

It's not being ignored by the SEC. In its recent release proposing a public accountability board, it based that proposal on a scathing account. I was shocked and delighted to read the scathing account in that release on the profession's efforts over decades to self-regulate itself.

The Wall Street Journal quoted Chairman Pitt as saying, "The era of self regulation by the accounting profession is over." So the SEC is basically on board with Sarbanes in that statement and in that release.

The OMB, for its part, on July 9, in its statement of administration policy regarding Sarbanes, said, "A two-tiered regulatory framework is necessary to protect investors." That's not what Congressman Oxley seemed to be saying as of 2 days ago.

And the OMB went on to conclude that "a newly established, independent accounting oversight board should set, oversee, and enforce professional audit, quality control, and ethics standards."

Now, we have the Senate, and they've spoken to the same effect and in appropriate detail with care, clarity, and the force of unanimity.

So now it's the House's turn. And with all this agreement afoot as to the need for an effective oversight board, one could reasonably ask, what's the problem? Why are we here? The problem is found in a very fundamental difference of opinion as to what it takes to assure that the oversight board will be effective.

Chairman Pitt and the administration believe the SEC itself could create an effective board by administrative action. Professors Coffey and Seligman and I strongly disagree, and the specifics of that disagreement are in a letter that I am going to attach to this testimony to give you. We gave that letter to Chairman Sarbanes.

The Oxley bill was passed some time ago, before WorldCom created a tailwind behind real reform. And it is woefully deficient in arming the oversight board with powers sufficient to permit it to function effectively.

Now, I think everyone would agree that effectiveness in creating any government agency is essential. It's not useful to spend taxpayers' money on going through motions that don't accomplish anything, ab initio don't have a prospect of accomplishing anything.

Nothing could do more harm to investor confidence than the passage of a bill that has only a patina of reform allowing legislators to claim victory when in fact it fails to provide the tools needed to get the job done. An already skeptical public can be counted on to punish anyone engaging in that kind of sham.

Without going into detail on Oxley, let me mention a few of the most glaring problems. Oxley would allow the profession to control the oversight board; it would allow the profession to control the oversight board. That's the same defect that is in the Pitt proposal in the administrative version. And we pointed that out in our letter.

In reality, the Oxley bill as it is now written would simply dress in new clothes the failed system of self-regulation. Watchdogs selected by those whom they are intended to watch will do nothing to restore investor confidence in the audit function. To the contrary, it will further erode it.

Second, Oxley would not assure funding for the board free of influence or control by the profession. In the past, this profession has not hesitated to withdraw funding from entities itself had created to carry out self-regulation when those entities dared to do something that the profession didn't like.

The third point: Oxley would deny the oversight board the power to prohibit a firm from providing non-audit services to its audit clients. Even the nature and/or amount of such services would impair the auditors' independence.

In his testimony before the Senate this week, Chairman Greenspan said, wisely, I think, humans haven't become any more greedy than in generations past. He said the problem was "that the avenues to express greed had grown so enormously."

And indeed they have. As applied to the audit profession, the immense growth in non-audit services has become a superhighway for the expression of greed. Today over 70 percent of all fees paid by public companies to their auditors are for non-audit services. For the oversight board to have a chance to be effective in taming the profession's infectious greed, to borrow the chairman's newly minted phrase, the board must have the power to prohibit non-audit services.

The fourth point: Oxley fails to grant the oversight board adequate investigative enforcement and disciplinary powers. Without a set of powers at least comparable to what the NASB and the New York Stock Exchange enjoy with respect to broker-dealers, the oversight board is doomed to ineffectiveness.

There are lots of other deficiencies which a careful side-by-side comparison with the Sarbanes bill would quickly reveal.

I think a legislatively empowered oversight board is so important to restoring investor trust, transcendentally important in terms of the other things in that bill. The reason for that is found in the audit function itself.

Since 1934, public companies have been required to have independent public accountants vouch for their numbers. The auditors are the last line of defense against management's inclination to fudge the numbers. Unlike the companies they examine, auditors are simply not supposed to be taking risks. They're not entrepreneurs. And yet with the enormous growth in consulting and other non-audit services rendered to management, they became co-venturers with management to such a degree that their independence as auditors was often compromised.

They put themselves in a severe conflict of interest when they perform non-audit services, on the one hand trying to woo management to be retained to perform highly profitable services that management could easily procure elsewhere, while on the other hand trying to serve the audit committee and the company shareholders by being questioning and skeptical of management in reviewing the numbers.

The cause and effect of allowing this conflict to persist any longer is no secret, even to those untrained in finance. Listen to what R. L. Butler, a retired clergyman in Denver, said, as quoted on the front page of the New York Times yesterday. "The worst thing now is you can't even trust the earnings reports. When you find the auditors in bed with the managers, there's nobody to believe."

Mr. Butler understands this, and so does a rapidly growing number of very angry investors who have lost much of their life savings in stock markets and all of their faith in audited numbers.

And these people vote. They want their trust restored. Congress has a chance to accomplish that, and it can be done through legislation, ensuring a system by which companies present their financial condition and that that system is worthy of trust.

S. 2673 is the vehicle. It's sitting there ready and waiting. My dream is to watch bipartisan leadership in the House get behind the wheel, drive that vehicle over to the White House, and park it on the President's desk.

Mr. RANGEL. Thank you, Mr. Longstreth. That's our dream, too.

Those bells indicate that there is a vote taking place on the floor. In the interests of time, this hearing will continue. Members can vote and return.

But it's my privilege to recognize Ms. Nancy Smith. And thank you once again for taking the time to share your views with us.

STATEMENT OF NANCY SMITH, FORMER DIRECTOR, INVESTOR EDUCATION AND ASSISTANCE, SECURITIES AND EXCHANGE COMMISSION

Ms. SMITH. Thank you very much. It's a pleasure to be back in the House of Representatives and see so many faces that I remember from when I worked here. And thank you for inviting me to be on the panel today.

I am the director of the RestoreTheTrust.com. RestoreTheTrust.com is a nonpartisan campaign dedicated to educating the public about accounting reform and to make sure that real reform is signed into law. The Web site was created to give individual investors a place to go to learn about what is at stake and to voice their support for the only true reform proposal on the table, the Sarbanes bill.

At the Web site, you can send an e-mail in support of the Sarbanes bill and real reform to your Members of Congress, the President, and SEC Chairman Harvey Pitt.

We launched the Web site just weeks ago on July 1. In that short time, individuals have sent 46,000 letters in support of the Sarbanes bill to decision makers.

Individual investors have suffered enormous losses because our lax regulatory system overseeing auditors let them down. We hear from investors who have suffered enormous losses. Some retirees wonder how they are going to make ends meet now that their retirement funds have been slashed by a third or more.

To say people are angry is an understatement. People expect the market to go up and down. As one investor wrote to us, "I can understand losing when things like the economy and certain markets sour. But now I'm losing largely because the information on which I depended turned out to be false. I guess I was naive. I thought the American system of corporate reporting was basically honest."

We all know that restoring trust in our stock market is critical. The health of corporate America, their ability to raise capital and raise jobs, drives the well-being and financial security of every American. When investors don't trust corporate America to tell the truth about their financial health, it means investors don't give corporations the money they need to grow and prosper. And as a result, our economy suffers.

One investor who wrote to us brought this point home. "I will not invest any more of my hard-earned money to line the pockets of thieves."

It's imperative that we make sure the numbers tell the truth and that people believe they are truthful. So how do we do that? Increasing penalties for lying and stealing, and sending corporate executives and their auditors to jail, sounds great. But strong enforcement is only half the answer. You can't pay the mortgage or the grocery bill with the satisfaction of seeing some tycoon sitting behind bars. We must prevent these accounting frauds and the losses they cause from happening again.

It's unbelievable that we let the auditors police themselves. The lax regulatory system we have in place today has got to go. It needs to be replaced by the sensible and effective regulatory system in the Sarbanes bill that provides independent oversight of the accounting industry and prohibits auditors from consulting for the companies they audit.

The litmus test for true reform is twofold: create a full-time independent board free from industry control to oversee auditors and punish wrongdoers; and, two, restrict auditors from providing lucrative consulting services to the firms they audit. Auditors should not be tempted to get cozy with management. They can't get consulting fees and fight hard for audits that protect investors.

The Senate bill is the only bill to restore investors' trust and prevent future scandals. Investors want real reform in the Senate bill, and they want it now. They will know if any backroom deals allow industry lobbyists to water it down.

There's a basic problem with the House bill, the Oxley bill: It doesn't meet the litmus test, and it doesn't fix the problem. There's a reason the accounting industry supports it over the Senate bill; the House bill keeps the accounting industry firmly in control.

We've learned a costly lesson: When the accounting industry polices itself, they get themselves and investors in big trouble.

The auditors cooked the books; don't let them cook the legislation. The House bill is just a warmed-over version of the status quo.

There's no time to waste. The Senate voted 97–0 for a bill that gives us a sensible regulatory system that is designed to work. Let's follow the lead of Democrats and Republicans in the Senate and get the Sarbanes bill to the President for his signature right away.

Thank you very much.

Mr. GEPHARDT. Let me ask one question, and then we'll end.

And, again, I deeply appreciate all of you being here. I wish all of America and all these investors that we worry about here could have heard this panel. I think their confidence, just by hearing you, would have been enormously restored.

It's always reassuring to me, as a citizen of this country, that we have people like each of you, who is willing to give a large part of your career to public service, so that the greatest system that's ever been devised in the history of the world of democracy and capitalism can work properly. So I hope to get your testimony out to as wide an audience as we can.

My question is really a follow-on. I think Paul's answer is what I certainly agree with, that we've got this thing in front of us now. It got a unanimous vote in the Senate; that rarely happens. So we have to seize the moment and try to get this bill through without interrupting it or diluting it or changing it dramatically and watering it way down.

My question is this: Do any of you think that further legislation, assuming we get this done, on the stock option question—Paul talked about it, and I think Lynn talked about. And I understand that the International Accounting Standards Board made a recommendation today or yesterday.

Mr. VOLCKER. More than a recommendation.

Mr. GEPHARDT. Yes, they did it.

There is, I'm told, a Levin-McCain bill now that would ship this off to the new independent board, or the FASB, I'm not sure which, and ask them to reconsider a lot of rules and to come back with recommendations within a year. I'd like to have your thoughts about that.

And I'd like to have your thoughts about the pension issues, profit-sharing issues. Some of those George Miller brought up. Do you think that we should try to get a bill done there? We did do a bill here. It had some deficiencies in it, from my viewpoint. The Senate is going to try to deal with it. What do you think is the heart of anything that needs to be done in that area, if anything?

Those are the two questions.

Mr. VOLCKER. Well, on the pension side of things, let me say that I think there probably is a need for some legislation there, in order to better protect the pensioner himself. But that is a classic case of something has its own complications and should not be added to the current bill.

Mr. GEPHARDT. Right.

Mr. VOLCKER: I think that is something you have to think about a little more, about how to do it. But I think there is good reason to proceed.

I am not so sure about the stock option question. I think we have a designated arrangement for dealing with that question. It's hard to object to a bill that tells FASB to reconsider it. I think they will reconsider it anyway, whether there's a bill or not.

My hesitancy is, I don't want to create a precedent that Congress is going to write the accounting rules. And that's——

Mr. GEPHARDT. That would not be a good idea. [Laughter.]

Take my word for it.

Mr. VOLCKER. That's what you would be doing in this particular case, and I don't want to see that precedent. I feel quite confident that the board that I am involved with—I may agree or disagree with the very specific action they take, but they have that problem well in mind. And they're trying their best to come up—they've expressed their view that it should be expensed. The question is how it should be expensed. And I would leave that question up to them, frankly.

Mr. LONGSTRETH. I have one comment on the stock options. I agree completely with Paul that Congress ought not to legislate either on expense or non-expense. And that gets back to the history of this. They really overruled FASB.

And I think FASB, once burned in that way, even with the present situation, may be reluctant to take it up. I have no expertise on that, but I think there are so many people in this country who argue strenuously, and they're bright people, and some of them are highly motivated people, for not expensing options. And I feel so strongly they should be expensed that I think that—I don't see a problem, Paul, with having the Congress undo the damage it did earlier by simply saying we encourage or even direct, but I think you could—a sense of Congress to invite and encourage FASB to revisit this issue would be, I think, a good idea, because it would give FASB the cover, the sense of direction, that they may need.

I mean, this market can turn around again, and the momentum will be gone. But it won't be gone for those people who have an enormous stake in hiding these numbers.

Mr. VOLCKER. I think it's a little naive to suggest that Congress could suggest that and pass such a law without it carrying the implication that you'll do this. And I don't think it's appropriate.

FASB will be forced to take it up if the international takes it up and passes it. I didn't say they're going to do anything, but they can't sit there. They're either going to have to say yes or no.

Mr. LONGSTRETH. Okay, that's a good point.

Mr. TURNER. Let me jump in between these two distinguished gentlemen and stay down low. [Laughter.]

First of all, back to the Sarbanes bill, quite frankly, this is a very, very simple issue: You're either for reform or you're not. You're either for the Sarbanes bill or you're not.

The Oxley bill, the Pitt program, and the 10-point President's program all have some good things in there, but they fall a mile short. They are not reform.

And I think the House could just vote for the Sarbanes bill. To have to beat this to death in conference and perhaps water it down is not being for reform. If the House leadership wants to demonstrate that it's clearly for reform, it will have the Members vote on the Sarbanes bill straight up and get it to the President's desk before the end of the week, tomorrow.

And I feet passion about that. This is very simple. America wants a simple answer. Let's just get reform. Let's get it down.

So I commend you, Representative Gephardt, for holding this hearing, because I think it's important that the public understands who is for reform and who is against.

With respect to the two pieces of legislation, again, having run a company where we had many employees, many pension programs, I would agree with Paul Volcker, that you should do some additional legislation there to protect the employees in those situations. Again, do it in a separate bill outside of Sarbanes.

As far as the stock option issue, the reason we're in the dilemma we're in, to some degree, is because of congressional interference with the FASB in the past. I mean, we would have had a good standard if it hadn't been for that interference.

So I do agree with Bevis Longstreth that it doesn't do harm, in this case, if you undid the damage that you did in the past. But you should not legislate what the accounting should be. I think to ask the FASB to put it on the agenda, and then let them go through their normal due process, is fine.

I saw earlier drafts of some legislation over in the Senate, though, where some people wanted FASB to conduct a study, but it was almost biased from day one.

I think if you asked the FASB to do something, it should be simple and should not have a bias. It should just be, "Would you consider putting it back on your agenda? And then go do whatever you think is right," and leave it at that, nothing more, nothing less.

I have been on panels with two of the members of the FASB where they have been very adamant. Given the tremendous fight and the difficulty that they went through the first time, both of these members vowed that they would not, absent some outside support, they absolutely would not put it back on their agenda, including if the ISB undertook the project.

And if the ISB undertakes the project and gets something out—as Paul indicated, the exposure draft is out there—and gets something done, I think that the opposition from the American business community may still present an obstacle to the FASB ever putting it back on its agenda, given what happened 8 years ago.

So I would have no problem, if you kept it simple. I think it would actually be good if you asked them to put it back on the agenda and reconsider it, because it may get us to convergence on international standards, and that would be very helpful, as long as people let the process run the way it should turn around and run. And I'd encourage you to do that.

Mr. GEPHARDT. Thank you.

Nancy, do you have a last thought here?

Ms. SMITH. Well, I agree with what the gentlemen have said. I think the bottom line is the American people want to hear the truth. And when we look at these issues, what our guide should be is: Are we telling the truth about these numbers? Are we shading the profitability of a company by what we're doing on stock options? That doesn't serve the investing public. That's what the investing public is upset about right now.

So let's restore the trust. Let's tell people the truth. That's all people want.

Mr. GEPHARDT. Thank you again. This has been a fabulous panel. I have really benefited from hearing you. You have enormous experience and practical advice to give us, and we have benefited from it enormously. And we'll try to get your testimony as widely spread as we can.

Thank you very much.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, July 30, 2002 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JULY 31

9:30 a.m.

Commerce, Science, and Transportation

To hold hearings on the nomination of Rebecca Dye, of North Carolina, to be a Federal Maritime Commissioner.

SR–253

Energy and Natural Resources

Business meeting to consider pending calendar business.

SD–366

Foreign Relations

To hold hearings to examine threats, responses, and regional considerations surrounding Iraq.

SD–419

9:45 a.m.

Commerce, Science, and Transportation

Surface Transportation and Merchant Marine Subcommittee

To hold hearings to examine railroad shipper issues.

SR–253

10 a.m.

Environment and Public Works

Superfund, Toxics, Risk, and Waste Management Subcommittee

To hold oversight hearings to examine the Environmental Protection Agency Inspector General's Report on the Superfund Program.

SD–406

Judiciary

To hold hearings to examine class action litigation issues.

SD–226

Health, Education, Labor, and Pensions

Business meeting to consider S. 2328, to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to ensure a safe pregnancy for all women in the United States, to reduce the rate of maternal morbidity and mortality, to eliminate racial and ethnic disparities in maternal health outcomes, to reduce pre-term, labor, to examine the impact of pregnancy on the short and long term health of women, to expand knowledge about the safety and dosing of drugs to treat pregnant women with chronic conditions and women who become sick during pregnancy, to expand public health prevention, education and outreach, and to develop improved and more accurate data collection related to maternal morbidity and mortality; S. 2394, to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients; S. 2758, entitled "The Child Care and Development Block Grant Amendments Act"; S. 1998, to amend the Higher Education Act of 1965 with respect to the qualifications of foreign schools; S. 2054, to amend the Public Health Service Act to establish a Nationwide Health Tracking Network; S. 2053, to amend the Public Health Service Act to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program; S. 2246, to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools; S. 2549, to ensure that child employees of traveling sales crews are protected under the Fair Labor Standards Act of 1938; proposed legislation regarding the National Science Foundation Doubling Act; and the nominations of Edward J. Fitzmaurice, Jr., of Texas, and Harry R. Hoglander, of Massachusetts, each to be a Member of the National Mediation Board.

SD–430

Governmental Affairs

Oversight of Government Management, Restructuring and the District of Columbia

Subcommittee

To hold hearings to examine consumer safety and weight loss supplements, focusing on the extent of the use of supplements for weight loss purposes, the validity of claims currently being made for and against weight loss supplements, and the structure of the current federal system of oversight and regulation for dietary supplements.

SD–342

1:30 p.m.

Judiciary

To hold hearings on S. 2619, to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

SD–226

2:30 p.m.

Foreign Relations

To continue hearings to examine threats, responses, and regional considerations surrounding Iraq.

SD–419

Energy and Natural Resources

Water and Power Subcommittee

To hold hearings on S. 1577, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act; S. 1882, to amend the Small Reclamation Projects Act of 1956; S. 934, to require the Secretary of the Interior to construct the Rocky Boy's North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system; S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho; S. 2696, to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project; S. 2773, to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling and monitoring program for the high Plains Aquifer and for other purposes; and H.R. 2990, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act.

SD–366

Intelligence

To hold hearings to examine S. 2586, to exclude United States persons from the definition of "foreign power" under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism, and S. 2659, to amend the Foreign Intelligence Surveillance Act of 1978 to modify the standard of proof for issuance of orders regarding non-United States persons from probable cause to reasonable suspicion.

SDG–50

3 p.m.

Armed Services

To hold hearings to examine the status of Operation Enduring Freedom.

SD–106

AUGUST 1

9 a.m.

Armed Services

To resume open and closed (in Room SR 222) hearings to examine the implications of the Strategic Offensive Reductions Treaty (Treaty Doc. 107 8).

SD–106

9:30 a.m.

Foreign Relations

Business meeting to consider pending calendar business.

SD–419

Agriculture, Nutrition, and Forestry

Business meeting to mark up proposed legislation providing for agricultural disaster assistance, and to consider the nomination of Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation, and to be Under Secretary of Agriculture for Rural Development.

SR–328A

10 a.m.

Indian Affairs

To hold oversight hearings to examine the Secretary of the Interior's Report on the Hoopa Yurok Settlement Act.

SR–485

Foreign Relations

To hold hearings to examine national security perspectives regarding Iraq.

SD–419

Finance

To hold hearings on the nomination of Pamela F. Olson, of Virginia, to be an Assistant Secretary of the Treasury.

SD–215

Judiciary

Business meeting to consider pending calendar business.

SD–226

2 p.m.

Indian Affairs

To hold oversight hearings to examine problems facing Native youth.

SR–485

Judiciary

To hold hearings on pending judicial nominations.

SD–226

2:30 p.m.

Banking, Housing, and Urban Affairs

International Trade and Finance Subcommittee

To hold oversight hearings to examine the role of charities and non-governmental organizations in the financing of terrorist activities.

SD–538

Foreign Relations

To continue hearings to examine national security perspectives regarding Iraq.

SD–419

AUGUST 2

2 p.m.

Indian Affairs

To hold hearings on S. 958, to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, 326-K.

SD–106

CANCELLATIONS

JULY 31

9:30 a.m.

Foreign Relations

Business meeting to consider pending calendar business.

SD–419

POSTPONEMENTS

JULY 31

9:30 a.m.

Finance

To hold hearings to examine the Report of the President's Commission to Strengthen Social Security.

SD–215

10 a.m.

Indian Affairs

To hold oversight hearings to examine the application of criteria by the Department of the Interior/Branch of Acknowledgment.

SR–485

SENATE—*Tuesday, July 30, 2002*

The Senate met at 10:30 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Father, You have created us to love and praise You. You desire an intimate, personal relationship with all of us. Praise surges from our hearts for what You are to us and thanksgiving for what You promise for us. We say with the psalmist,

I will praise You, O Lord, with my whole heart. I will tell of Your marvelous works. I will be glad and rejoice in You; I will sing praise to Your name.—(Psalm 9:1,2).

When we are yielded to You, our faltering, fallible, human nature is invaded by Your problem-solving, uplifting presence. We want to glory only in our knowledge of You and Your wisdom. We commit our minds, emotions, wills, and bodies so that we may be used by You. Fill us with Your supernatural power so that we may be equipped to face the ups and downs, the pleasures and pressures of this day. We will remember that whatever the circumstances, praise and thanksgiving will usher us into Your heart where alone we can find the guidance and grace we so urgently need. You have given the day; now show the way. Through our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

> U.S. SENATE,
> PRESIDENT PRO TEMPORE,
> *Washington, DC, July 30, 2002.*
>
> *To the Senate:*
>
> Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.
>
> ROBERT C. BYRD,
> *President pro tempore.*

Mrs. CLINTON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

ORDER OF PROCEDURE

Mr. REID. Madam President, I ask unanimous consent that the time from 10:40 a.m. until 11:10 a.m. be under the control of Senator BYRD; that the next 35 minutes be under the Republicans' control for morning business; that the Senate resume consideration of S. 812 at 11:45 a.m., with the time until 12:45 equally divided between Senators KENNEDY and MCCONNELL or their designees; and that the previously ordered recess begin at 12:45 p.m. instead of 12:30 p.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Madam President, there are two cloture motions that were filed last evening—first on the Dorgan amendment and second on the generic drug bill. Therefore, Senators have until 12:45 p.m. today to file first-degree amendments.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

The Senator from Michigan is recognized.

PRESCRIPTION DRUG COSTS

Ms. STABENOW. Madam President, I want to take a few moments, as we are working in earnest this week to complete the session and focus on where we are as it relates to the critical issue of prescription drug coverage and making sure that our seniors have help in Medicare and also that we are lowering prices for everyone. This has been quite a challenge for us.

We knew when we started, we were facing daunting odds; that the system, as it is situated right now, heavily favors the industry and that as a result of the fact that it heavily favors them, and the rules favor them and allow them to stop competition and to be able to set prices on Americans much higher than in other countries, we knew this was going to be an uphill battle.

We often talk about the fact that there are six drug company lobbyists for every one Member of the Senate and what that means in terms of challenges. But we have an opportunity today, and many of us have been working across the aisle in good faith. In fact, I would say everyone has been working in good faith. There are different philosophies—two very different approaches—that are being developed. But everyone is working in good faith to try to get something done. I think today is the day when we really decide are we going to at least take the first step. If we can't get all the way there, to give comprehensive Medicare coverage for all seniors and disabled, we have to at least begin the process to do that.

We are being called upon by AARP and the other senior groups to at least take the first step. So we are working hard today. I commend my colleagues on both sides of the aisle who have been working with us to be able to do that. We still have two different philosophies—one put forward predominantly by our colleagues on the other side of the aisle and by the House Republicans, which I believe moves us in the direction of privatizing Medicare. It would use private sector insurance, HMOs, as the mechanism for providing prescription drug coverage.

In my home State, we have seen Medicare+Choice, basically a failure in terms of covering people, pulling out. My own mother was in the program and lost her HMO coverage. We have seen over and over again where the private sector market has not worked for our seniors as it relates to Medicare.

I argue that it is the wrong direction to go to try to prop up this system—private sector HMOs. There have been proposals that would prop them up to the tune of Medicare paying 99 percent—covering 99 percent of the risk in order to go through private insurance companies. To me, that seems a little ridiculous.

What we should be doing is what seniors across the country are asking us to do and that is update Medicare. We have had colleagues who have called Medicare a big government program. As I have said before, I believe it is a great American success story—Medicare and Social Security.

So we have an opportunity today to begin to modernize Medicare. I hope we are going to do that. Ultimately, we know that Medicare—the health care system for older Americans—needs to cover prescription drugs for everyone on Medicare. But at a minimum, we need to start with our lower income seniors, who are deciding: Do I eat or get my medicine? Do I pay the utility bills or pay the rent? Maybe I should cut my pills in half. Maybe I should ask for a 1-week supply instead of a month. Maybe I will share them with my spouse because we both need the same blood pressure medicine.

There are so many real stories. I have read many of them on the floor of the Senate—real-life stories of people in Michigan who are struggling to make life-and-death decisions.

We have an opportunity at least to do something for them. We have an opportunity also for those who are the sickest, who have the biggest bills, who are finding themselves trying to decide between having their home, their retirement, being able to have any life whatsoever, or having thousands and thousands of dollars in drug bills. We have the opportunity to, as well, put in place for everybody the ability to know that they will not lose their home or their retirement and savings as a result of the cost of their medicine.

If we could simply start with the neediest and the sickest under Medicare, I believe that would be a wonderful first step for us and something we could do today in a bipartisan way within the integrity of Medicare.

I hope, Madam President, we will take the challenge that the seniors are calling on us to do across the country: To step up and provide leadership, to do more than talk, and begin to get something done for the seniors and others on Medicare.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10:40 a.m. to 11:10 a.m. shall be under the control of the Senator from West Virginia.

Mr. BYRD. I thank the Chair.

CREATION OF A NEW DEPARTMENT OF HOMELAND SECURITY

Mr. BYRD. Madam President, later this week, the Senate is expected to begin debate on the creation of a new Department of Homeland Security. The debate, however, will not be about whether to create a new Department, but rather how to create a new Department.

Since the President unveiled his legislative proposal 6 weeks ago, the Congress seems unwilling—or unable, perhaps—to resist the stampede moving it towards the creation of this new Department. Indeed, the momentum behind the idea seems almost unstoppable.

With the level of endorsement the Congress has given to this idea, one would think that the proposal for a new Homeland Security Department had been engraved in the stone tablets that were handed down to Moses at Mount Sinai. But in reality, the idea was developed by four Presidential staffers—four—in the basement of the White House. For all we know, it could have been drafted on the back of a cocktail napkin.

The administration did not consult with Members of Congress about the President's proposal. We were not asked for our input. The week the President unveiled his proposal to the American people, only a select circle of Washington insiders were even aware of its existence.

I remember the events of that week. The administration was under fire about whether U.S. intelligence agencies had adequate information to prevent the September 11 attacks. FBI whistleblower Coleen Rowley was testifying before the Senate Judiciary Committee—the same day, in fact, that the President addressed the Nation to announce this new Department. The President's poll numbers were dropping as the American public began to question the effectiveness of the administration's plan to protect our homeland.

The Congress was taking the initiative on the homeland security front. Senator LIEBERMAN's proposal to create a new Department of Homeland Security was slowly gaining momentum in the media. White House Press Secretary Ari Fleischer just a few weeks earlier criticized the Lieberman plan by saying that "a [new] cabinet post doesn't solve anything." That was Mr. Fleischer talking: "a new Cabinet post doesn't solve anything."

This was the political environment in which the President unveiled his hasty proposal, and that proposal was widely reported in the media as helping the administration to retake the initiative in protecting the homeland. The President's address to the Nation helped to restore the confidence of the American public in the administration's efforts to protect the homeland, and even provided the President with a boost in his approval ratings.

So the President's proposal was crafted in the bowels of the White House, cloaked in secrecy, and presented by an administration trying to regain political ground. Those are hardly the conditions that should inspire the Congress to rally around a Presidential proposal, but that is exactly what is happening.

The Congress is coming around, rallying around a massive, massive governmental reorganization with little discussion about whether such a reorganization is desirable or even necessary. What is worse, the Congress is so eager to show itself united beside the administration in our Government's efforts to protect the homeland, that it has committed itself to a timetable that would allow for only minimum debate about the President's proposal—a plan of dubious origins—so that we can expedite its passage before the 1-year anniversary of the September 11 attacks. Think of that! Have we all completely taken leave of our senses?

The President is shouting "Pass the bill! Pass the bill! Pass the bill." The administration's Cabinet Secretaries are urging the adoption of the President's proposal without any changes. And the House of Representatives eagerly complied last week by passing legislation that essentially mirrors—mirrors—the President's plan.

If ever there was a need for the Senate to throw a bucket of cold water on an overheated legislative process that is spinning out of control, it is now—now. But what are we doing instead?

In the Senate, the Governmental Affairs Committee marked up its legislation just 5 weeks after receiving the President's legislative proposal. Until last week, Senators were being urged to finish consideration of the bill before the August recess begins this Friday. Think of that. The Senate would have had just 1 week to consider this bill, before it passed and was sent to conference before the August break. Considering that the committee-reported bill was only made available yesterday afternoon, this schedule would have given Senators only 4 days to read and understand what was crafted by the Governmental Affairs Committee. And to finish the bill within a week, Senators would certainly have been discouraged from offering amendments and debate would have been stifled.

That was the process being urged by some for the Congress' "deliberative body"—the greatest deliberative body in the world.

I certainly understand that no Senator wants to be seen as delaying our Government's efforts to protect our homeland. But in trying to avoid being labeled as obstructionists, we must not be willing to ignore even the most pertinent questions about the proposal—such as will a new Homeland Security Department actually make the public safer from terrorists?

Prior to the President's address, there were at least eight different proposals pending before the Congress to reorganize the Government to better protect the homeland. Those proposals ranged from creating a homeland security czar to establishing an independent Homeland Security Office to authorizing in statute certain powers for the White House Office of Homeland Security. All of them have been trumped by visions of political advertisements attacking Members of Congress for not moving fast enough to create a new Homeland Security Department.

If we are going to be totally honest here, we need to put aside visions of campaign ads and do some good old-fashioned thinking.

This proposed merger constitutes the largest—the largest—Government restructuring in our Nation's history—

bringing together pieces of 22 agencies, involving as many as 170,000 or more Federal employees from perhaps over 100 bureaus and branches. A governmental reorganization of this size involves more than just reorganizing the Federal Government on a flow chart. It means physically moving the bureaus and agencies to a new Department, transplanting tens of thousands of people, desks, computers and phones, hooking them together and making them work again. It also means changing the culture, power structures, and internal dynamics of the relevant agencies and bureaus. It means dealing with confusion, bureaucratic conflict, and unclear lines of authority.

As Norman Ornstein recently wrote in The Washington Post: "This would be a Herculean task for even one agency. It is beyond Herculean for twenty-two agencies."

If we take this giant step, our homeland defense system will likely be in a state of chaos for the next few years, and amid this upheaval, we run the risk of creating gaps in our homeland defenses. If our enemies are planning to attack the seams in our defenses, this massive reorganization will likely provide them with some excellent opportunities. That helps to explain, in part, why the much touted reorganization that consolidated the armed forces within the Defense Department took place after World War II, and not immediately after the attack on Pearl Harbor.

Even then, it took a number of years and a number of legislative efforts to get that reorganization into decent, effective working order.

How long will it be before this new Homeland Security Department is in decent, effective working order? What if Osama bin Laden does not wait until we have finished restructuring? What if bin Laden is tempted to strike at the exact moment that these agency officials are dragging their desks up Pennsylvania Avenue to their new office assignments? I would like to see a risk analysis regarding the creation of the DHS. Will Americans be exposed to more risk for an unknown time period as a result of establishing an additional mammoth bureaucracy?

The Brookings Institution emphasized this point in a report issued this month urging the Congress to move cautiously as it considers the creation of a new department. "The danger," the report states, "is that top managers will be preoccupied for months, if not years, with getting the reorganization right—thus giving insufficient attention to their real job: taking concrete action to counter the terrorist threat at home."

The Wall Street Journal agreed in an editorial this month saying that "The middle of a crisis, and only weeks before an election, isn't the optimal time to debate and pass the biggest transformation of Government in fifty years. The Administration has plenty else to focus on before rearranging the bureaucracy."

If the purpose of this reorganization is to increase accountability for our homeland defense agencies, then it doesn't make any sense to provide those agency chiefs with opportunities for new excuses. How easy would it be for the INS Commissioner to blame that agency's next high profile blunder on problems associated with the transition to the new department?

The Congress hasn't even developed a standard to determine which agencies should be moved to the new department—contributing to a growing concern that too many agencies are being shifted around, with too little focus on preventing future attacks. A strong case can be made for consolidating the Immigration and Naturalization Service, the Customs Service, and other border security agencies, but the arguments for moving the Secret Service, for example, are hardly compelling. The litmus test for moving these agencies does not appear to be why, but rather why not.

Another point the Congress needs to remember is that this new department will assume the non-homeland security related functions of the agencies that are transferred to it. But if we are unhappy with the Treasury Department's oversight of the Customs Service's efforts to inspect the cargo entering U.S. ports, we will probably be just as unhappy with the Homeland Security Department's oversight of the Customs Service's efforts to enforce our trade laws. Creating a new Department is unlikely to solve the problem of departments neglecting key functions of their agencies; it only alters which functions are likely to be neglected.

These are basic problems which the Congress appears ready to push aside in order to meet the administration's call for quick action on this legislation. And this is not exactly an administration that has been open with the Congress about its plans for reorganizing the Federal Government.

The administration has not issued a cost estimate of the President's proposed merger and insists that the transition costs will be kept to a minimum. Meanwhile, the Congressional Budget Office estimates that the President's proposed merger will cost $3 billion, with a capital "B," over 5 years. The White House says not to worry, however, because the transition costs will be repaid through long-term savings. That sounds like a neat trick. The administration wants to create a new bureaucracy with a secretary, a deputy secretary, five undersecretaries, 16 assistant secretaries, and as many as 500 senior appointees, without appropriating any additional money to finance the transition. The new managerial level alone will cost scores of millions of dollars.

And there is the rub. Protecting our homeland requires resources and personnel, and they cost money. We have to pay our border patrol agents, our sky marshals, and our national guardsmen. But this administration, in trying to appease its own party base, is refusing to spend the money necessary to make America safer, and instead is pushing for this reorganization of Government. But this massive governmental reorganization is going to be costly. It is going to require the investment of real money, your money. It cannot be done with the kind of creative accounting gimmicks you might expect to find at Halliburton Company and Harken Energy Corporation.

When the White House makes these kinds of ridiculous comments about long-term savings, the Congress and the American people better get ready because the White House has got something up its sleeve.

The Bush administration has already sought a blanket waiver of civil service law to set up a new personnel system for the new Department. The President's proposal would give the new Secretary broad power to overhaul the pay, benefits, and workplace rules for over 200,000 Federal workers. The proposal would also exempt the new Department from procurement laws, such as the Competition in Contracting Act and the Contract Disputes Act. This sounds to me like an attempt to contract out homeland security-related services so that the administration can make the artificial claim that they are shrinking Government and reducing Federal costs.

My larger concerns, however, reside deeper in the administration's recent comments on managing the new Department. These comments, I fear, indicate that the administration has something far more unpalatable up its sleeve.

The President said in a pep rally for Federal workers this month that the administration needs the "freedom to manage" the new Department. To clarify those comments, Homeland Security Director Tom Ridge said that "we need all of the flexibility we can get," and suggested that close congressional oversight could cripple the new Department's ability to respond to terrorism.

That kind of a statement from an administration official ought to make us all very nervous.

To make the point crystal clear, the OMB Director said last week, "Our adversaries are not encumbered by a lot of rules. Al-Qaida doesn't have a three-foot-thick code. This department is going to need to be nimble." Ha-ha. How nimble was the administration when we sought to pass the supplemental appropriations bill, with $3 billion more money for homeland security above the President's budget proposal? How nimble was the agency? How nimble was the administration? They held us up for 5 months.

Rules like holding this new department accountable to the Congress and the American people, Mr. OMB Director? Al-Qaida may not be encumbered by constitutional limitations on its powers, but, unlike the OMB Director, I would scarcely argue that al-Qaida sets an example for this Government to follow.

I find comments like that to be incredibly ignorant. For all of their blustering about how al-Qaida is determined to strike at our freedoms, this administration shows little appreciation for the constitutional doctrines and processes that have preserved those freedoms for more than two centuries.

This administration has made clear its intent to "reassert" executive authority, and, to date, it has aggressively tried to curtail Congress's powers of oversight. The President refused to allow the director of the Office of Homeland Security to testify before the Senate Appropriations Committee and other committees, in his capacity as our chief homeland security official.

The administration has been secretly planning to introduce special operations troops into Iraq without the consent of the Congress. We had better watch that one, too. That's to say nothing of this administration's attempts to block congressional access to information about executive actions.

In reorganizing the Federal Government, the Congress has a responsibility to guard against attempts to also reorganize the checks and balances of the constitutional system. The greatest risk in moving too quickly is that we will grant unprecedented powers to this administration that would weaken our constitutional system of government.

Pay attention, the Congress should be seriously concerned about the transfer authority that is being sought by this Administration. The President's proposal provides that "not to exceed five percent" of any appropriation available to the Secretary of Homeland Security in any fiscal year may be transferred between such appropriations, provided that at least 15 days' notice—that is all that Congress gets—15 days' notice is given to the Appropriations Committees prior to the transfer. No congressional approval is required after these 200 years.

In addition, the President's plan would authorize the Secretary of Homeland Security to allocate or reallocate functions and to "establish, consolidate, alter, or discontinue" organizational units within the Department, even if established by statute, simply by notifying Congress ninety days in advance. Again, no congressional approval is required. Again, no congressional approval is required.

These provisions make clear the administration's attempt to erode Congress' "power of the purse".

I identified these problems in the President's proposal and wrote to Senator LIEBERMAN and Senator STEVENS, ranking member of the Appropriations Committee joined, requesting that these powers not be included in his proposal. What concerns me most is not those problems that I have identified, but rather the assaults on the legislative branch which still remain hidden inside the administration's proposal and are on track to being adopted by the Congress.

I am not the only Senator who believes that this process is moving along too quickly. We are all talking about this in the privacy of our offices, behind the closed doors of elevators and in our hideaways. But we ought to come out onto the Senate floor and discuss it before the American people. We are rushing ahead to pass legislation, which many of us think is bad policy. We are rushing headlong to pass a massive bill that few if any of us fully understand.

The executive branch is flexing its muscles and worrying about its political backside. The legislative branch needs to protect our constitutional system and consider what will truly protect the homeland and the safety of our people. We must flex. our brainpower and analyze this idea carefully.

We cannot be brain dead on these vital issues. The stakes are too important.

Madam President, I know the administration will be out there across the country saying, let's pass this homeland security bill, and the Senate will be criticized, the Senate leader will be criticized, I will be criticized, other Senators will be criticized, for not having taken up this behemoth proposal and passed it before we close business this week.

When the President signs the supplemental, he will have 30 days to decide whether to designate over $5.1 billion as an emergency. That is $5.1 billion. We so designated it. If the President designates one item of that $5.1 billion, he has to designate all items. I have heard that he is not going to sign that; I have heard that he is not going to release that $5.1 billion, by his signature, making it an emergency. The Congress provided that it had to be all or nothing.

That is what the Senate and House did to President Clinton when he was President. I voted for that provision. He had to sign all or nothing. I voted for it. And now we have put that same provision in this bill.

There is $5.1 billion available to the President upon his signing that as an "emergency." What are we talking about? Within the $5.1 billion is nearly $2.5 billion for homeland security. If the President does not make the designation "emergency"—get this—the President and others in the administration will lambast the Senate for not having passed the homeland security bill before it goes out for the recess. But what the Senate did pass is a bill, the supplemental bill, which makes available for homeland security at least $2.5 billion of homeland defense funding. All the President has to do is designate it as an "emergency".

Here is what is involved in the $2.5 billion: Firefighting grants, $150 million; nuclear security improvements, $235 million; $100 million for grants to make police and fire equipment interoperable; port security grants, $125 million; airport security, $480 million; Coast Guard for port security, $373 million; Secret Service, combating electronic crimes, $29 million; law enforcement resources for State and local government—hear this—$150 million; $82 million for the FBI for counterterrorism and information technology enhancement; $54 million for urban reserve and rescue teams; $147 million for cybersecurity improvements to protect our economy; food and water security, $165 million; border security, $78 million; dam and reservoir security, $108 million; the Customs Service, to increase inspections, $39 million.

And homeland security is not the only issue, when the President makes the decision to do the "emergency" designation. If he decides not to make the emergency designation, he will be blocking funding for the following activities: Election reform, $400 million; combating AIDS, tuberculosis, and malaria overseas, $200 million; flood prevention and mitigation in response to recent flooding, $50 million; Department of Defense, over $1 billion for the National Guard and Reserve for chemical demilitarization and for classified projects; for foreign assistance, including embassy security and aid to Israel and disaster assistance to Palestinians, $437 million.

For assistance to New York City—I see that one of the distinguished New York Senators has just been presiding. Let me remind her that in this "emergency" designation package, the assistance to New York City in response to the attacks of September 11, including funds to monitor the long-term health consequences of the World Trade Center attacks on the health of police, fire, and other first responders, and for recovery costs for the Securities and Exchange Commission office that was in the World Trade Center, there is $99 million.

Hello, Governor of New York! Get in touch with the administration. Urge the President to sign his name to the package that should be designated "emergency". It should be designated emergency by the President so that the moneys will be released for New York. Firefighting suppression funding, $50 million; emergency highway repair funding, including funds to repair the I–40 bridge that was recently destroyed in Oklahoma.

Hello, Oklahoma! Get in touch with the White House about this. Ninety-eight million dollars!

Hello Oklahoma, are you listening?

I ask for an additional 30 seconds.

The PRESIDING OFFICER (Ms. LANDRIEU). Without objection, it is so ordered.

Mr. BYRD. Assistance to victims of the Sierra Grande fires, $61 million; veterans medical care—Hi there, veterans, get in touch with the White House. Tell the President to sign his name on that emergency designation package because it includes $275 million for veterans medical.

Madam President, I thank all Senators for listening. I will have more to say, the Lord willing, in due time.

(Applause in the Visitors' Galleries.)

The PRESIDING OFFICER. Expressions of approval are not permitted by the galleries.

Under the previous order, the time from 11:10 to 11:45 shall be under the control of the Republican leader or his designee. The Senator from Iowa.

Mr. GRASSLEY. Madam President, it is my understanding staff arranged for me to have 20 minutes of that 45 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ONE-YEAR ANNIVERSARY OF BIPARTISAN TAX RELIEF

Mr. GRASSLEY. Madam President I rise today to discuss the one year anniversary of the bipartisan tax relief package. On June 7, 2001, President Bush signed the legislation. On Friday, June 7 of this year, the President marked the first anniversary of that event in Des Moines, Iowa. I was pleased to join the President for that anniversary celebration.

One year ago this week, the Treasury Department started sending out rebate checks to every American taxpayer. I ask unanimous consent to have printed in the RECORD an announcement from the Treasury Department dated July 26, 2001.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Office of Public Affairs]

TREASURY TO MAIL OUT 8.1 MILLION CHECKS ON FRIDAY

(July 26, 2001)

Tomorrow the Treasury Department will send out 8.1 million advance payment checks to taxpayers for more than $3.4 billion in tax relief. These checks will be sent to taxpayers whose last two digits of their Social Security numbers are 10–19.

Week Two (July 27) Social Security Numbers 10–19
Number of Checks 8.1 million
Amount of Relief $3.4 billion

Week One (July 20) Social Security Numbers 00–09
Number of Checks 7.9 million
Amount of Relief $3.3 billion

The Treasury Department will announce every week the number of checks that are being mailed out for that week, and the amount of tax relief that is being sent to taxpayers. Checks will be mailed over a ten-week period, according to the last two digits of the taxpayers Social Security number. Notices from the Internal Revenue Service that tells taxpayers the amount of their check and when they should expect it have been mailed. Single taxpayers will get a check up to $300, head of household up to $500 and married couples filing jointly will get up to $600.

Because the Social Security number determines when checks are mailed, taxpayers may receive their checks at different times than their neighbors or other family members. On a joint return, the first number listed will set the mailout time.

If the last two digits of your Social Security number are	You should receive your check the week of
00–09	July 23.
10–19	July 30.
20–29	August 6.
30–39	August 13.
40–49	August 20.
50–59	August 27.
60–69	September 3.
70–79	September 10.
80–89	September 17.
90–99	September 24.

Mr. GRASSLEY. Those checks represented the first broad-based tax relief in nearly a generation. Generally, single taxpayers got a $300 check and married couples got a $600 check.

What I would like to do today is first put the tax cut in historical context. Second, I would like to set the record straight in terms of the progressivity of the tax relief and its budget effects. Finally, I would like to illustrate what the tax relief legislation means in terms of typical families across America.

I am going to use a series of charts as I move through the discussion.

Let's start with historical context. In the last 20 years, there have been several pieces of major tax legislation. When I use the term major, I am referring to net tax hikes or net tax cuts in the neighborhood of $100 billion or more.

In the last generation, frankly, the American taxpayer has come out on the short end of the deal. By and large, the tax-and-spend Washington crowd prevailed. There have been four major tax increase bills. There have been three major tax cut bills, with one of those, the 1997 tax relief package, barely breaking into the major category.

Let's take a look at the tax increase bills first. There were No. 1, "TEFRA" in 1982, No. 2, "DEFRA" in 1984, No. 3, "OBRA" in 1990, and, as then Finance Chairman Pat Moynihan said, No. 4, the "world record tax increase" of President Clinton's 1993 tax package. Senator Moynihan's description was verified by a Joint Committee on Taxation estimate. It showed the 1993 tax increase raised taxes by over $1 trillion.

In the same generation, taxpayers have received net tax cuts three times. The three events occurred in 1981, in 1997, and last year. In 1981, the Reagan tax cuts brought down the top rate of 70 percent to 50 percent. In 1997, modest bipartisan tax relief, had, as its centerpiece, the $500 per child tax credit. Of course, last year, all taxpayers received a tax relief.

When you look over the last generation, the bipartisan tax relief of last year, in effect, helped tip the balance back a little bit toward the American taxpayer. I say a little bit, because, by any reckoning, even when fully in effect, last year's bill still leaves the balance toward higher taxes and more government. More on that in a minute.

For another point of historical context, take a look back at the fundamental tax reform of 1986. You will recall that effort was a grand compromise between liberals, led by Congressman Rostenkowski, and conservatives, led by President Reagan. We came up with a revenue neutral package by broadening the tax base by shutting down tax shelters. The revenue raised was used to create two rates—15 percent and 28 percent. In addition, millions of low income families ceased paying income tax.

During the tax reform debate, today's House Democratic Leader, Congressman GEPHARDT, pursued a tax reform plan with former Senator Bradley. The Bradley-Gephardt plan contained three rates of tax. The three rates were 35 percent, 25 percent, and 15 percent. Former Senator Mitchell, who would become the Democratic Leader and a great champion of the liberal wing of the Democratic Caucus, supported a top rate of 35 percent as well. Indeed, the House, at that time controlled by Democrats, passed a tax reform bill with a top rate of 35 percent.

So, at the watershed event of 1986, the leaders of the Democratic Caucuses, said individual income tax rates should not exceed 35 percent. As everyone knows, 35 percent is the top rate when the bipartisan tax relief package is in full effect in 2006. I guess I find it a bit ironic that today the Democratic Leadership says individual tax rates must be above 35 percent.

It makes you wonder why today's Democratic Leadership, in historical context, is so fixated on higher taxes. Why is Congressman GEPHARDT, the House Democratic Leader, insisting on tax rates at higher levels than his 1986 era plan? Why is Senator DASCHLE, today's leader of the Democratic Caucus, insisting on tax rates at higher levels than his predecessor, Senator Mitchell?

Isn't 35 percent of a person's income enough of a contribution for their share of the burden of the Federal Government?

That is where the Democratic Leaders were during tax reform. That is where the bipartisan tax relief plan leaves us when fully in effect in 2006. Unfortunately, that's not where the Democratic Leaders are today.

The question of why 35 percent isn't enough leads in the second part of my discussion. What I would like to do is set the record straight on the progressivity and budget effects of the bipartisan tax relief plan.

It seems to me that the Democratic leadership has moved its tax reform target away from tax relief for a very simple reason. The reason is to provide resources to grow the Federal Government by increasing spending.

It is part of a larger agenda of moving a society, America the engine of capitalism, to look more like European socialism. It means more Government and less individual responsibility. It means less reward for work and more money from the pockets of working people for the Federal Government. It means opportunity defined less by a dynamic market and more by political criteria.

Now, a lot of inaccurate information has been spread about the bipartisan tax relief package. At the head of this campaign, is the Democratic Leadership. Perhaps unwittingly, perhaps by design, much of the media has worked hand in glove with this partisan campaign.

The misinformation comes forward in three bogus assertions. The first incorrect assertion is that the bipartisan tax relief was a partisan Republican product. The second is that the bipartisan tax relief package is the source of our current budget problems. The third incorrect assertion is that the tax relief favored the wealthy over low and middle income taxpayers.

I would like to turn to the first incorrect assertion. Often we hear the phrase Republican tax cut or partisan tax cut. In fact, the tax cut was bipartisan. Twelve Democratic Senators voted for the conference report. Senator JEFFORDS also voted for the conference report. That is over one-fourth of the Democratic Caucus.

The tax relief legislation was bipartisan by design. In a Senate divided down the middle, the tax relief had to be bipartisan to pass. There was no other way.

Democratic members of the Finance Committee played a key role in crafting the bill. Led by our current Chairman, MAX BAUCUS, they insisted on a bill that reflected their priorities. Senators BREAUX, TORRICELLI, LINCOLN, all contributed to the formation of this bill. Republican moderates like Senator SNOWE also played a key role. Without these Senator's input and support, we would not have the tax relief in place.

Anyone who characterizes the tax relief as partisan is flat out wrong.

I would like to move on the second incorrect assertion. How many times have we heard on this floor or seen written in the media the charge that the bipartisan tax relief caused the current and projected deficits. If I have a dollar for every time I've heard or read this point, I could put the budget in balance.

Cold hard numbers tell a different story. Cold hard numbers from the Congressional Budget Office, the Office of Management and Budget, and private sector sources reveal the truth.

Here is what the numbers say. You can check it out on the CBO website.

According to CBO's January baseline, for the current fiscal year, the tax cut represents barely 14 percent of the total change in the budget since last year. For instance, for the same period, increased appropriations outranked the tax cut by $6 billion. So, spending above baseline, together with lower projected revenues, accounted for 89 percent of the change in the budget picture. Let me repeat that. Bipartisan tax relief was a minimal, 11 percent factor, in the change in the surplus.

Over the long-term, the tax cut accounts for 45 percent of the change in the budget picture. Stated another way, the 10 year surplus declined from $5.6 trillion to $1.6 trillion. Of that $4.0 trillion change, the tax cut represented about $1.7 trillion of the decline. That is less than one-half of the change. Let me repeat that for our friends in the Democratic Leadership and their allies in the media. The tax relief package accounts for less than 45 percent of the decline in the surplus.

The second incorrect assertion, that the tax cut ate the surplus, is incorrect, according to CBO.

I would like to turn to the third incorrect assertion about the bipartisan tax relief package. That assertion is that the tax relief package was a tax cut only for the wealthiest Americans.

How many times have we heard the statistic that 40 percent of the benefits of the tax cut went to the top 1 percent of taxpayers?

Where did the statistic come from? Did it come from the non-partisan Joint committee on Taxation? The answer is no. The statistic cited by the media and the Democratic Leadership came from the liberal think tank known as the Center on Budget Policy and Priorities. How do they get their numbers? Here's an example. Let us talk about how they distribute the benefits of the death tax. The liberal think tank assumes that the person benefitting from death tax relief is the dead person. Imagine that. Only in Washington, D.C. do they assume you can take the benefit of tax relief with you to the grave.

It takes these kinds of distortions in methodology to get the conclusion the liberal think tank wants. That's why our friends in the Democratic Leadership rely on the Center for Budget Policy and Priorities. Unfortunately, some in the media accept these statistics at face value.

Once again, facts can be ugly things for harsh critics of the bipartisan tax relief package. According to the Joint Committee on Taxation, Congress' official non-partisan scorekeeper, the tax code is more progressive with the tax relief package. Let me repeat that fact. Joint Tax, not a liberal or conservative think tank, says the bipartisan tax relief package made the Tax Code more progressive.

I ask unanimous consent to place in the RECORD a distribution analysis, prepared by Joint Tax.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DISTRIBUTIONAL EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1836[1]

Income category[2]	Change in Federal taxes[3]		Federal taxes[3] under present law		Federal taxes[3] under proposal		Effective tax rate[4]	
	Millions	Percent	Billions	Percent	Billions	Percent	Present law (percent)	Proposal (percent)
CALENDAR YEAR 2001								
Less than $10,000	−$75	−1.0	$7	0.4	$7	0.4	8.7	8.6
10,000 to 20,000	−2,989	−11.5	26	1.5	23	1.4	7.5	6.7
20,000 to 30,000	−5,790	−9.4	62	3.5	56	3.3	13.4	12.2
30,000 to 40,000	−5,674	−6.4	89	5.1	83	4.9	16.1	15.1
40,000 to 50,000	−5,490	−5.4	102	5.9	97	5.7	17.4	16.4
50,000 to 75,000	−11,546	−4.5	256	14.6	244	14.4	19.1	18.3
75,000 to 100,000	−8,488	−3.5	244	13.9	235	13.9	21.7	21.0
100,000 to 200,000	−10,488	−2.6	408	23.3	397	23.5	24.2	23.6
200,000 and over	−6,997	−1.3	555	31.7	548	32.4	27.8	27.4
Total, All Taxpayers	−57,536	−3.3	1,748	100.0	1,690	100.0	21.4	20.7
CALENDAR YEAR 2002								
Less than $10,000	−75	−1.0	7	0.4	7	0.4	9.2	9.1
10,000 to 20,000	−3,596	−13.3	27	1.5	23	1.3	7.6	6.6
20,000 to 30,000	−7,124	−11.3	63	3.4	56	3.2	13.5	12.0
30,000 to 40,000	−6,849	−7.6	91	4.9	84	4.8	16.1	14.8
40,000 to 50,000	−6,198	−5.8	106	5.8	100	5.7	17.5	16.5
50,000 to 75,000	−13,251	−5.0	267	14.5	254	14.4	19.0	18.0

DISTRIBUTIONAL EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1836[1]—Continued

Income category[2]	Change in Federal taxes[3]		Federal taxes[3] under present law		Federal taxes[3] under proposal		Effective tax rate[4]	
	Millions	Percent	Billions	Percent	Billions	Percent	Present law (percent)	Proposal (percent)
75,000 to 100,000	−10,227	−4.0	255	13.9	245	13.9	21.7	20.8
100,000 to 200,000	−14,416	−3.3	442	24.1	427	24.3	24.2	23.4
200,000 and over	−16,557	−2.9	578	31.5	562	32.0	27.9	27.1
Total, All Taxpayers	−78,294	−4.3	1,836	100.0	1,758	100.0	21.5	20.6
CALENDAR YEAR 2003								
Less than $10,000	−83	−1.1	8	0.4	8	0.4	9.7	9.6
10,000 to 20,000	−3,516	−12.9	27	1.4	24	1.3	7.6	6.6
20,000 to 30,000	−7,135	−11.0	65	3.3	58	3.1	13.6	12.1
30,000 to 40,000	−6,946	−7.5	93	4.8	86	4.6	16.0	14.8
40,000 to 50,000	−6,155	−5.7	108	5.6	101	5.5	17.4	16.4
50,000 to 75,000	−13,554	−4.9	279	14.4	266	14.3	18.9	18.0
75,000 to 100,000	−10,553	−4.0	265	13.7	255	13.8	21.7	20.8
100,000 to 200,000	−15,487	−3.2	479	24.8	464	25.1	24.2	23.4
200,000 and over	−17,453	−2.9	609	31.5	591	31.9	28.1	27.3
Total, All Taxpayers	−80,882	−4.2	1,933	100.0	1,852	100.0	21.5	20.6
CALENDAR YEAR 2004								
Less than $10,000	−69	−0.9	8	0.4	8	0.4	10.0	9.9
10,000 to 20,000	−3,429	−12.6	27	1.3	24	1.2	7.6	6.6
20,000 to 30,000	−7,121	−10.8	66	3.3	59	3.1	13.6	12.2
30,000 to 40,000	−6,964	−7.3	96	4.7	89	4.6	16.0	14.8
40,000 to 50,000	−6,320	−5.8	110	5.4	103	5.3	17.4	16.4
50,000 to 75,000	−15,049	−5.2	288	14.2	273	14.2	18.7	17.8
75,000 to 100,000	−12,913	−4.6	279	13.8	266	13.8	21.5	20.5
100,000 to 200,000	−22,095	−4.3	512	25.2	490	25.3	24.1	23.0
200,000 and over	−21.671	−3.4	642	31.6	620	32.1	28.2	27.3
Total, All Taxpayers	−95,630	−4.7	2,028	100.0	1,932	100.0	21.6	20.6
CALENDAR YEAR 2005								
Less than $10,000	−76	−1.0	8	0.4	8	0.4	10.1	10.0
10,000 to 20,000	−3,867	−14.0	28	1.3	24	1.2	7.6	6.5
20,000 to 30,000	−7,937	−11.6	68	3.2	60	3.0	13.7	12.1
30,000 to 40,000	−7,720	−7.9	98	4.6	90	4.4	16.0	14.7
40,000 to 50,000	−6,945	−6.2	112	5.3	105	5.2	17.2	16.2
50,000 to 75,000	−16,630	−5.5	303	14.2	286	14.1	18.7	17.6
75,000 to 100,000	−14,709	−5.1	287	13.5	273	13.5	21.4	20.3
100,000 to 200,000	−24,654	−4.5	547	25.7	522	25.8	24.0	22.9
200,000 and over	−21,182	−3.1	678	31.9	657	32.4	28.3	27.4
Total, All Taxpayers	−103,720	−4.9	2,129	100.0	2,025	100.0	21.6	20.6
CALENDAR YEAR 2006								
Less than $10,000	−76	−0.9	8	0.4	8	0.4	10.4	10.3
10,000 to 20,000	−3,789	−13.6	28	1.2	24	1.1	7.6	6.6
20,000 to 30,000	−7,853	−11.4	69	3.1	61	2.9	13.7	12.2
30,000 to 40,000	−7,839	−7.9	99	4.4	91	4.4	16.0	14.7
40,000 to 50,000	−7,570	−6.5	116	5.2	108	5.2	17.2	16.0
50,000 to 75,000	−18,755	−6.0	313	14.0	294	14.0	18.6	17.5
75,000 to 100,000	−17,212	−5.8	297	13.3	280	13.3	21.3	20.0
100,000 to 200,000	−30,208	−5.1	588	26.3	558	26.6	23.9	22.7
200,000 and over	−44,177	−6.1	719	32.1	675	32.1	28.3	26.6
Total, All Taxpayers	−137,476	−6.1	2,238	100.0	2,100	100.0	21.7	20.3

[1] Includes provisions affecting the child credit, individual marginal rates, a 10% bracket, limitation of itemized deductions, the personal exemption phaseout, the standard deduction, 15% bracket and EIC for married couples, deductible IRAs, and the AMT.

[2] The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 2001 levels.

[3] Federal taxes are equal to individual income tax (including the outlay portion of the EIC), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax and estate and gift taxes are not included due to uncertainty concerning the incidence of these taxes. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis. Does not include indirect effects.

[4] The effective tax rate is equal to Federal taxes described in footnote (3) divided by: income described in footnote (2) plus additional income attributable to the proposal.

Source: Joint Committee on Taxation. Detail may not add to total due to rounding.

TAX CODE BECAME MORE PROGRESSIVE—1979–2000

[In percent]

Income category	1979	2000	Change
$0–$10,000	0.6	0.4	−0.2
$10,000–$20,000	2.3	1.5	−0.8
$20,000–$30,000	5.4	3.6	−1.8
$30,000–$40,000	7.8	5.1	−2.7
$40,000–$50,000	10.2	6.4	−3.8
$50,000–$75,000	24.6	16.8	−7.8
$75,000–$100,000	14.8	13.0	−1.8
$100,000–$150,000	12.5	14.4	−1.9
$150,000–$200,000	5.1	6.9	−1.8
$200,000–Over	16.7	32.0	−15.3
Total	100	100	

Source: CBO, October 2001, Table H–1b.

BIPARTISAN TAX RELIEF MADE TAX CODE MORE PROGRESSIVE—2001

[In percent]

Income category	2006 w/o tax cut	2006 w/ tax cut	Change
$0–$10,000	0.4	0.4	0.0
$10,000–$20,000	1.2	1.1	−0.1
$20,000–$30,000	3.1	2.9	−0.2
$30,000–$40,000	4.4	4.4	0.0
$40,000–$50,000	5.2	5.2	0.0
$50,000–$75,000	14.0	14.0	0.0
$75,000–$100,000	13.3	13.3	0.0
$100,000–$200,000	26.3	26.6	0.3
$200,000–Over	32.1	32.1	0.0
Total	100	100	

Source: JCT, May 2001, JCX 52–01.

Mr. GRASSLEY. Madam President, some might ask how does Joint Tax conclude that the bipartisan tax relief made the tax code more progressive.

The answer is that the bipartisan tax relief returns to taxpayers, on a progressive basis, a small portion of the record level of Federal taxes.

Take a look at this chart. It shows that the largest tax cut went to taxpayers in the lower and middle income brackets. For instance, taxpayers with incomes between $10,000 and $20,000, will see their taxes reduced by almost 14 percent when the tax cut is fully in effect. Taxpayers with over $200,000 will see their taxes reduced by barely 6 percent.

The Democratic Leadership and many in the media, will focus, not on the burden taxpayers bear, but on the benefits of the tax cut. In other words, they will try to ignore the progressive nature of our current system and use isolated examples. For instance, they will say that a taxpayer at $50,000 of income gets more of a tax cut than a taxpayer at $10,000 of income. In fact, a taxpayer at $50,000 of income, pays considerably more tax than a taxpayer at $10,000 of income. Comparing two different taxpayers' tax relief benefits without looking at the burden is comparing apples to oranges.

Let us compare apples to apples. That is, the burden born by groups of taxpayers before and after the tax relief bill.

What I showed you before was the change in the tax burden for different categories of taxpayers. This chart allows you to see how progressive the current system is and how the tax relief bill made the tax system even more progressive. Keep in mind that this table includes all taxes. That's income taxes, payroll taxes, excise taxes, and corporate income taxes.

Let us compare the same two groups I talked about before. Taxpayers with incomes between $10,000 and $20,000 bore 1.2 percent of the Federal tax burden before the tax relief bill and 1.1 percent after the tax relief bill. Taxpayers with over $200,000 maintained their burden, 32.1 percent, before and after the tax relief bill.

You can see the bipartisan tax relief bill lightened everyone's Federal tax burden but did it in a progressive way.

What the tax relief bill aimed to do was send back to the American people a portion of the record-high levels of taxation. But the bipartisan tax relief bill sent the money back in a progressive manner.

Let us take a look at where we were early last year. You'll see the Federal Government was taking in record-high levels of individual income taxes. For instance in 2000, Federal taxes were taking 20.5% of GDP and individual income taxes were taking 10.2 percent of GDP.

According to CBO, those upward record-high level trends were going to continue throughout this decade. In fact, even when fully in effect, the bipartisan tax relief bill leaves both Federal and individual income taxes at near record levels.

Chairman Greenspan gave us a green light to provide broad-based tax relief because he foresaw a long-term economic problem. The record level of taxation, if left on track, would have been a drag on economic growth.

As a matter of fact, there is substantial agreement that the tax cut came at just the right time. The rebate checks and other relief arrived just as the recession started to hit home. According to the Department of Commerce, the tax relief boosted personal incomes by the highest amount in almost 10 years.

You can now see that those three widespread incorrect assertions about the bipartisan tax relief package have been countered. One, the tax relief package was bipartisan; not partisan as its critics claim. Two, the tax relief package did not cause either the short-term or long-term budget problems we face. Three, the tax relief package provides broad-based relief in a progressive fashion.

I would like to turn to the final part of my discussion. This is the most important part because it describes what the tax relief package means to typical taxpayers.

We took as a starting point President Bush's efforts to provide income tax relief to all Americans. This legislation includes the four main elements of President Bush's goals of providing tax relief to working families.

These goals are to: No. 1, provide tax relief for working families through reducing marginal rates; No. 2, reduce the marriage penalty; No. 3, expand the child tax credit; and No. 4, eliminate death taxes. Let's look at each one.

First, this legislation reduced marginal rates at all levels and creates the new 10 percent level proposed by the President. We also began to address the hidden marginal rate increases such as PEPS and PEASE that complicate the Code.

The 10 percent bracket means a tax cut for every American taxpayer. It was the source for the rebate checks that every taxpayer received last year. That's $600 for every family and $300 for every single person.

America is a society of opportunity. Over 60 percent of all families will at one time or another be in the top fifth of income in this country. A man will make more at 55, after 30 years of hard work, than he did at 25. A family should not face a crushing marginal rate tax burden when they finally get a good paycheck for a few years as a reward for years of hard work.

For those that have worked hard over the years, there is some marginal tax rate relief. Here, I am referring to small business. Small business generates 80 percent of the new jobs in this country. Small business owners receive 80 percent of the benefits of the marginal rate reductions. When fully phased in, the marginal rate paid by a successful small business will be the same as that paid by General Motors. I don't know how Senators can argue that 35 percent is an appropriate top rate for General Motors, but too low for Joe's Garage.

While I am on the topic of marginal rate relief one political development continues to surprise me. Those on the other side most opposed to the marginal rate relief come from the higher income states, the so-called high-tax or "blue states" that tend to be on each coast and around the Western Great Lakes. Taypayers in those states, in particular, bear the brunt of higher marginal rates.

It continues to surprise me that Senators from those high-tax paying states attempt to obstruct tax relief that is most meaningful to their constituents.

Federal taxes squeeze harder in those states where incomes are higher and the cost of living is higher. To this day, I do not understand the virgourous opposition these members have to relieving the high tax burden their constituents face. Instead, members from these states tend to focus on those who don't pay income tax. Maybe members from the other side of the aisle and who are from these states seem oblivious to this disproportionately heavy tax burden. Or maybe they think Federal taxes should be higher. Maybe it's liberal guilt. I cannot figure it out. One has to wonder what the folks in those states who work hard and pay high taxes would think if they took a look at these charts. One has to wonder what they'd think about higher taxes those on the other side seem to yearn for.

The first part of the package provides progressive income tax relief to every American that pays income tax. Let's move on to the second part.

The second part provides income tax relief for married families—for families where both spouses work and where only one spouse works. In addition, thanks to the advocacy of Senator JEFFORDS, we expanded the Earned Income Credit for married families with children. Further, there was wide bipartisan agreement to simplify the Earned Income Credit which will mean that hundreds of thousands of more children will receive the EIC benefits.

This package contains the first marriage penalty relief in 33 years. Let me repeat that. For the first time in 33 years, we're delivering marriage penalty relief.

Third, the President's desire to expand the child credit to $1000 was met in the bipartisan tax relief package. And in response to the concerns of Senators SNOWE, LINCOLN, BREAUX, and JEFFORDS the child credit was expanded to help millions of children whose working parents do not pay income tax.

Let's take a look at an example. For a single mother with two children at $16,000 of income, this tax relief package means $600 more in her pocket for this year. That's an increase of almost 4 percent in this single mother's budget. I'm sure she can use the money.

The fourth part of the package dealt with the death tax. The death tax is reduced and finally eliminated—as called for by President Bush. We were successful in this effort due to the work of many Senators but I would particularly note the efforts of Senators KYL, PHIL GRAMM, and LINCOLN.

Thus, this legislation contained the four main elements of President Bush's efforts to provide tax relief for working families—marginal rate reduction, relief for married families, the expansion of the child credit and the reduction and ultimate elimination of the death tax.

I would remind my colleagues again that the hallmark of this legislation is that relief for low income families comes first. The marginal rate drop to 10 percent was immediate, the child credit expansion to low income families was immediate, the expansion of EIC was immediate.

The greater progressivity of the tax relief legislation is certainly due in no small part to the work of Senator BAUCUS.

Everyone knows Senator BAUCUS and other Democrats who crafted this package took a lot of heat from the liberal core of the Democratic Caucus. His objective, like mine, was a bipartisan tax relief package. It seems that while many are happy to talk about bipartisanship they can't stand to see bipartisanship practiced.

In addition to President Bush's proposals to provide tax relief to working families, the tax relief package included legislation that had been considered by the Finance Committee previously.

I believe that not all good ideas come from just one end of Pennsylvania Avenue. Thus, we included the Grassley/Baucus pension reform legislation which probably would not have made it in the bill without the longtime support of Senators HATCH and JEFFORDS.

That package means $50 billion in tax benefits for enhanced retirement security. That figure will be compounded many times over in retirement assets. A lot of folks like to play political football with retirement security issues. The bipartisan tax relief package actually moved the ball forward on retirement security.

Let's take a look at an example. Under the tax relief legislation, workers will be able to raise their IRA contributions to $5,000 annually. Workers will also be able to put away up to $15,000 annually in their 401(k) accounts.

In addition, the legislation contained over $30 billion in tax benefits targeted for education. Elements of this package included language to expand the prepaid tuition programs to help families pay for college—long advocated by Senators COLLINS, MCCONNELL, and SESSIONS. In addition, the package provided a college tuition deduction thanks to Senators TORRICELLI, SNOWE, and JEFFORDS, private activity bonds for school construction in response to Senator GRAHAM's concerns, as well as an expansion of the education savings accounts—in honor of Senator Coverdell—thanks to the work of Senator TORRICELLI and Senator LOTT.

Let's take a look at an example. Under this legislation, a young couple can contribute $2,000 per year per child to an education IRA. The account enjoys inside buildup tax-free and is available to pay tuition and other college costs.

None of us should forget the great winners of this legislation—the American taxpayer. We provided the American taxpayer the greatest amount of tax relief in a generation. And they deserve it.

With the bipartisan tax relief legislation in place, all taypaying Americans have a little bit more of their money in their pockets. Struggling families will have more money to make ends meet; parents and students will be able to more easily afford the costs of a college education; a successful business woman will be able to expand her business and hire more people; a father finally getting a good paycheck after years of work will be able to better provide for his aging mother; and, a farmer can pass on the family farm without his children having to sell half the land to pay estate taxes.

As an illustration of the breadth of this relief, I ask unanimous consent to have printed in the RECORD a State-by-State analysis of the per taxpayer benefits, prepared by the Tax Foundation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSH 2001 TAX REDUCTION BY STATE FY 2001–2002

	Total (Dollars in millions)	Per capita	Per household
Alabama	$1,151	$257	$663
Alaska	233	363	939
Arizona	1,689	320	826
Arkansas	603	224	578
California	15,539	451	1,165
Colorado	2,044	463	1,196
Connecticut	2,558	750	1,938
Delaware	309	388	1,003
Florida	6,532	400	1,032
Georgia	2,928	350	903
Hawaii	336	272	703
Idaho	330	247	638
Illinois	5,789	465	1,201
Indiana	2,003	327	845
Iowa	852	291	752
Kansas	899	333	859
Kentucky	1,033	254	656
Louisiana	1,112	249	642
Maine	337	263	678
Maryland	2,354	438	1,130
Massachusetts	3,611	567	1,465
Michigan	3,860	388	1,001
Minnesota	2,045	411	1,063
Mississippi	584	204	527
Missouri	1,785	317	818
Montana	209	228	589
Nebraska	547	318	823
Nevada	913	436	1,127
New Hampshire	615	488	1,261
New Jersey	4,953	585	1,511
New Mexico	420	227	586
New York	9,392	496	1,283
North Carolina	2,534	310	800
North Dakota	159	248	641
Ohio	3,788	333	860
Oklahoma	819	236	611
Oregon	1,123	322	833
Pennsylvania	4,566	372	960
Rhode Island	363	344	890
South Carolina	1,081	267	689
South Dakota	228	299	772
Tennessee	1,820	316	816
Texas	7,719	362	936
Utah	595	260	673
Vermont	197	320	828
Virginia	3,069	426	1,102
Washington	3,169	527	1,362
West Virginia	363	201	518
Wisconsin	1,888	349	902
Wyoming	207	411	1,061
District of Columbia	317	559	1,445
Total	111,571	392	1,013

Notes. Includes provisions that only affect individual income tax liabilities.

Source. Tax Foundation.

Mr. GRASSLEY. Madam President, this chart illustrates the benefits of the income tax rate reductions State by State. As you can see, all taxpaying families in all States benefit. The examples are endless of the great benefits that we realize when we give tax relief to working families.

While I am pleased about the first anniversary, I won't be satisfied until we make these bipartisan measures permanent.

Let's tell every taxpayer they can count on the 10 percent bracket 10 years from now. Let's tell the small business owner that, after 10 years of hard work, they won't face a tax rate of 39.6 percent. Let's tell the single mother with two children that her taxes won't rise by $1,200. Let's tell the newlyweds that 10 years from now they don't have to face a marriage penalty. Let's tell family farmers they won't face the death tax 10 years from now. Let's tell workers saving for retirement that they can put away $5,000 in their IRA 10 years from now. Let's tell a young couple that 10 years from now they will continue to be able to save $2,000 each year per child for college savings.

I would like to sum up. In historical context, the tax relief package provides a modest refund to all taxpayers at a level previously supported by the Democratic leadership. Over time, the Democratic leadership's notion of what the top rate of tax should be has moved up.

Three assertions about the tax relief package, repeated almost daily by its critics, are incorrect. I will correct them once again. The tax relief package is bipartisan. The tax relief package did not cause our current or long-term budget problems. The tax relief package is progressive.

Finally, and most importantly, the tax relief package provides important resources for families, small businesses, retirement security, and education. These resources are valuable and should be available to the American people on a permanent basis.

The PRESIDING OFFICER. The Senator has used his 20 minutes.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

ORDER OF PROCEDURE

Mr. BREAUX. Madam President, a parliamentary inquiry with regard to the time situation: Is it allocated to morning business or where am I?

The PRESIDING OFFICER. Under the previous order, the time until 11:45 is controlled by the Republican leadership.

Mr. BREAUX. Madam President, I ask then if the acting Republican leader will yield me some time.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Mr. GRASSLEY. How much time is the Senator going to use?

Ms. SNOWE. Madam President, I will use 15 minutes, but I am happy to defer to the Senator from Louisiana to precede me if I may and ask unanimous consent, of course, to do so, and then I will take my 15 minutes.

The PRESIDING OFFICER. There are only 12 minutes remaining under the previous order.

Ms. SNOWE. May I ask unanimous consent to extend that by 3 minutes to 15 minutes and 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BREAUX. Parliamentary inquiry: If I understand that, it is extended by 5 minutes, that will be until 10 to noon. Let me have 5 minutes now.

Ms. SNOWE. I am glad to yield 5 minutes.

The PRESIDING OFFICER. The Senator from Louisiana.

MEDICARE

Mr. BREAUX. Madam President, today is a very important day because it is the 37th anniversary of the passing of the Medicare legislation providing universal coverage of health care for all seniors. Everybody got it. No matter what your income was, there was no gap. Those with low income got Medicare, hospital, and doctor coverage. If you were of moderate income, you got it. If you were upper income, you got it. It was a concept 37 years ago that Medicare should be a universal health care plan for all seniors.

Today, we are at some point going to be debating a fundamental change in Medicare by saying that only a portion of seniors are going to get real prescription drug coverage—not all seniors, but we are going to means test it. According to the piece of paper provided by the supporters of that approach, individuals below 200 percent of poverty—which is $13,300 for an individual—are going to have a Cadillac-type of coverage plan. But if you make $13,301, tough luck. You are going to have to pay 95 percent of your drug coverage if you are not below 200 percent of poverty until you reach a figure of about $3,300 worth of out-of-pocket drug expenses, and then the Government will make up 90 percent.

It is really interesting to see whom are we talking about covering. It is also important to think about whom we are not covering under this scaled-down version.

The average number of people in the United States below 200 percent of poverty is 30 percent. That means 70 percent of the American elderly would not qualify by being under 200 percent of poverty. These are working people who have paid taxes when they were working, who are retired, and now, because they don't qualify as being 200 percent under poverty, all of a sudden we are going to leave them out of a Medicare Program that was supposed to provide universal health coverage for all Americans. This is a fundamental break with what Medicare was all about, which was a universal plan for all seniors, not just for seniors making under 200 percent of poverty.

Seventy percent of America's elderly would not qualify for the 200 percent poverty standard. That is not what we signed into law 37 years ago and celebrate today, the advent of a Medicare Program that was universal coverage for all citizens.

I understand why we are attempting to do that. That is because we are trying to spend less money. The tripartisan plan said we could spend $370 billion and reform Medicare by giving seniors new options and also provide a universal prescription drug plan that covered all seniors, not just those under 200 percent of poverty.

If I were a senior who had an income of $13,301, according to their chart, I would be very unhappy with what the Senate is considering now. Seventy percent of America's seniors would not qualify under 200 percent of poverty. We can do better than that. We can do far better than that. We can do more for less, if we do it correctly and we do it in the proper fashion.

We had a plan under the tripartisan plan that was a comprehensive plan. It was a $24-a-month premium for seniors who have to meet a $250 deductible, and then, after that, it was universal coverage for all seniors. They paid 50 percent coinsurance, but everybody participated. Every senior was treated equally, not just spending a substantial amount of money for a selective number of people.

Medicare is not an antipoverty program; Medicaid is. Medicare is universal coverage. It is not just saying to 70 percent of our seniors, you are not going to get any real help. Some will say we are helping those over 200 percent of poverty. You are not helping them very much when you tell them they have to pay 95 percent of the cost of their prescription drugs. Ninety-five percent, what kind of coverage is that? We are going to say: We will help you with 5 percent, but 95 percent is going to have to come out of their pocket after 200 percent of poverty. That doesn't seem to be a very good deal to me.

Then you say: When you get $3,300 worth of out-of-pocket drug costs, the Government will help you again. It is not really the best we can do. We can do far better than that. I think we ought to.

I don't know why we are actually voting. No. 1, everybody should realize the bill did not come out of the Finance Committee, where all of this type of work should have been done, where all the compromises should have been accomplished, instead of trying to go to the floor and having one bill one day without 60 votes, another bill without 60 votes, and yet today another bill that does not have 60 votes.

We are putting people on the spot unnecessarily. I suggest we put this off and begin the real work that is possible and get something that works.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Maine is recognized.

Ms. SNOWE. Madam President, I ask unanimous consent to add 3 additional minutes to my 12.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. SNOWE. I would be glad to yield further to my colleague from Louisiana.

Mr. BREAUX. No, thank you.

THE TRIPARTISAN PRESCRIPTION DRUG PLAN

Ms. SNOWE. Madam President, I rise today to discuss the issue of prescription drugs and how we intend to proceed on the Senate floor. I concur with my colleague from Louisiana, with whom I have had the privilege to work in crafting a tripartisan plan for more than a year, in hopes of avoiding a political showdown and confrontation on this most significant issue facing seniors in this country.

I, too, agree with my colleague from Louisiana, in the hope that we can avoid having another vote on two competing plans that will not get the necessary 60 votes to proceed. I hope we can avoid a collision at the crossroads on this most significant domestic issue facing our Nation's seniors.

We have been negotiating all weekend to try to work out an agreement. Senator GRASSLEY is here in the Chamber, the ranking member of the Finance Committee. He has been working consistently and diligently to try to negotiate an agreement. Now we are faced with a political showdown; we are faced with a decision to either vote for the lowest common denominator or for no prescription drug coverage at all.

I do not believe in letting the perfect become the enemy of the good, but we certainly should not countenance the political becoming the enemy of the practical, the attainable, and the doable. We should not find ourselves in this situation today because we have been working for more than a year and a half in developing a plan to avoid having politics undermine that process.

That is why we reached across the political aisle, Republicans to Democrats and Independents, and vice versa, so that we can begin to sort out our ideas. That is not to say we had all the right ideas, but we did it to begin that process that should have begun in the Finance Committee—to debate, to amend, to work through competing ideas in order to achieve a consensus that would give impetus to the passage of this legislation. We should have had that markup. We have been saying that for weeks. In fact, we anticipated we would have a markup on that critical legislation. But we were denied that opportunity for unknown reasons. So now we are hearing we are going to have a vote regardless—the all-or-nothing proposition that seems to overtake and mire the political process to the point that it really jams the monkey wrenches into this institution.

I hope we will avoid having another vote for the sake of having a vote, drawing lines in the sand so people's positions become more intractable. I hope we can avoid that kind of situation and confrontation. We have been spending more than a week and a half on legislation that is very important to America. Using generics would save the American Government $8 billion. It would also save our Nation's consumers more than $60 billion over 10 years. We have been spending more than 2 weeks on that proposition in the Senate. It has had consideration in the committee of jurisdiction for several days as well.

Compare that to our initiative on prescription drug coverage—no consideration in the Senate Finance Committee, up-or-down votes on the floor of the Senate on a $400 billion program—$400 billion. That is more than the annual spending of the Defense Department. It is more than the newly organized Department of Homeland Security that we will be considering as well.

So now we are being asked to have one vote, as we did last week, on each competing plan on prescription drug coverage—it will presumably cost $400 billion over the next 10 years—with no committee consideration, no up-or-down votes on the Senate floor, no ability to amend—$400 billion. When was the last time we created a domestic program that cost $400 billion, with no consideration in the committee and hardly any consideration on the floor of the Senate? When?

We have spent weeks and weeks in the committees considering the homeland security legislation. We have spent 2 weeks on the floor of the Senate on a bill that will save the Nation's consumers $60 billion over 10 years. And we have heard announced consideration for a domestic program that will cost our Government more than $400 billion. It is really hard to understand why we are in the circumstances that we are in today. That is why I ask that we put off any polarizing votes, so that we can further work to achieve a consensus on the broader plan.

There were criticisms against the tripartisan plan—that it created a donut, it created a gap in coverage between $3,450 and $3,700 under catastrophic.

The legislation being put forward by the Senator from Florida will only provide coverage to seniors at extremely high costs and low incomes, or very low income coverage. More than half of our Nation's seniors will have no coverage at all. Above 200 percent, there will be a cliff because an individual earning $17,721 will get zero coverage until they spend $3,300. A couple with an income of $23,880 will get zero coverage. So until they spend $3,300 in prescription drug coverage costs, they have no coverage whatsoever. Well, I would say that is an enormous gap in coverage.

Our plan is to the contrary. It minimizes that gap in coverage. It is 50/50 coverage above 150 percent, to $3,450; 80 percent will not even reach that benefit limit, and we provide a catastrophic coverage beginning at $3,700. Ninety-nine percent of all seniors will participate in our program, according to the Congressional Budget Office. But under the legislation proposed by the Senator from Florida, more than half of our Medicare beneficiaries will have no coverage at all. They will have no coverage at all. That is creating a huge gap in coverage. It is a huge gap, and I think we can do better.

We have worked with the Senator from Massachusetts on concerns about the delivery mechanism in our legislation. So we have agreed to modify that to provide an absolute, ironclad agreement that there will be a fallback mechanism in the event the insurance risk delivery system fails. So there will be a guarantee, regardless of where you live in America, that you will have a benefit of the standard program that we offer in our legislation.

But we even went further and agreed to increase our program from $370 billion to $400 billion. So we have been flexible. We are willing to work across party lines to avoid the political showdown by having this up-or-down vote at all costs, not trying to search for a common ground, not having an adequate, thorough debate in the committee and on the floor, and a $400 billion program.

I would like to know, when is the last time the Senate has created a $400 billion social program that has had no consideration in the Senate Finance Committee, or any committee of the Senate, and has had virtually no consideration on the floor, no amendments, just an up-our-down vote? If you do not get your 60, tough luck: Is that what the Senate is all about, Madam President? Is that what it is all about? It is winning at all costs?

Who is going to pay for those costs? Our Nation's seniors. Our Nation's seniors are going to pay the cost—that is what this is all about—and they are going to pay a high cost because so many will either have minimal coverage or no coverage at all. This is how many people, when one looks at this chart, will be omitted from coverage in the plan offered by the Senator from Florida: 26 million Medicare beneficiaries.

I know we can do better. We worked for more than a year to create a plan that included Democrats, included our Independent, Senator JEFFORDS from Vermont, so that we could avoid this kind of impasse.

I would hope that we would avoid this unnecessary political showdown today or tomorrow. I hope we can put aside our differences and forge solutions to the problems that our Nation's seniors face when it comes to catastrophic costs for our Nation's seniors who have a chronic illness.

In fact, there was an op-ed piece in the New York Times yesterday which indicated that most people face costs of $1,200 to $1,500. They are the chronically ill. Guess what. Under the plan offered by the Senator from Florida, many of those individuals will not get any coverage until they spend $3,300. They will get no coverage whatsoever.

Won't they be surprised when we pass a so-called prescription drug benefit coverage that says the Nation's seniors are now covered and when they find out, no, not exactly. You will pay an annual fee of $25 and then discover you do not have any coverage because, if you earn $17,721 as an individual, you get zero coverage until you spend $3,300. If you are a couple and earn $23,881 in income, then you have to spend $3,300 in prescription drugs before you get any coverage. That is a huge gap in coverage.

Last week, in the two votes we did have on the two competing plans, there was a common thread. That common thread was continuing to embrace universal coverage in the Medicare Program, which is a principle that most of us—97 percent, 97 votes—supported continuing in the Medicare Program. If we take the approach of low income and catastrophic coverage solely as the kind of benefit we decide to enact in the Senate, we are abandoning the principle of universal coverage in the Medicare Program.

I hope we do not plan to move in that direction. That clearly will be the wrong approach. It will be the wrong approach for Medicare and certainly will be the wrong approach for our Nation's seniors. We can do better, and I hope we will do better. We have the ability to do better.

I urge my colleagues to reconsider and I urge the leadership to avoid any votes so we can continue to work on this issue, if it takes August and come back in September, if we cannot do it this week. But let's avoid the kind of confrontation that will manifest itself in the vote that is recommended on the one plan alone.

I thank the Chair, and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

McConnell amendment No. 4326 (to amendment No. 4299), to provide for health care liability reform.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, I do wish to speak in behalf of the McConnell amendment. I realize time has expired, but I yield myself time under leader time.

Mr. REID. Will the Senator yield?

Mr. LOTT. Recognizing Members may be interested in what the schedule will be in the next hour and maybe even right after lunch, I will be glad to yield to Senator REID for information.

Mr. REID. Madam President, both leaders are in the Chamber. I ask unanimous consent that whatever time the Republican leader uses for his speech, the remaining time until 5 to 1 be equally divided for Senator KENNEDY and Senator McCONNELL to speak on the pending amendment.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Reserving the right to object, I say to my friend from Nevada, I simply did not hear what he was asking.

Mr. REID. I am sorry. Morning business got a little out of hand this morning. There was too much morning business. We are now on the bill. The Republican leader wishes to speak for 5 or 10 minutes under leader time. I ask unanimous consent that the remaining time be divided equally between Senator McCONNELL and Senator KENNEDY to speak on the McConnell amendment.

Mr. McCONNELL. How much time is remaining?

Mr. REID. It will probably be about 50 minutes.

Mr. McCONNELL. Fifty?

Mr. LOTT. Fifty.

Mr. McCONNELL. Equally divided.

Mr. REID. Until 5 to 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Madam President, I thank Senator REID for that clarification so we can get some further time for debate on this important issue and so that Senator McCONNELL can talk more about the specifics.

I believe in this country we have a medical malpractice crisis. There is a huge problem with frivolous lawsuits being filed and large verdicts being rendered. Let me read some of what is happening in my own State where within a few days the legislature is going to have a special session to try to deal with this crisis because doctors are getting out of obstetrics; they are getting out of the business of delivering babies. And they are getting out because the doctors cannot get medical malpractice insurance coverage. As they lose their coverage they are also leaving the State. We now have huge areas of the State where there are few, if any, doctors available to deliver babies.

In Mississippi we are expected to lose an estimated 400 doctors this year because they are retiring, getting out of practice, or moving to other States, including Louisiana. Why Louisiana? Because in Louisiana they have some caps on punitive damages that help limit the size of the verdicts against doctors.

Madam President, last year, in Bolivar County, there were six doctors providing obstetrical care. Today there are three. In neighboring Sunflower County, all four doctors who delivered babies quit private practice. So there is a large area where the citizens of my state cannot get medical care for pregnant mothers and for delivering babies because their doctors cannot get or cannot afford malpractice insurance.

Some expectant mothers now have to drive 100 miles just to get to a doctor, let alone a regional hospital. In the northern half of the State last year, there were nine practicing neurosurgeons; now there are just three on emergency call. And it does not appear that the situation is going to get any better soon. The North Mississippi Medical Center, a hospital that serves 22 counties and 600,000 people, is finding it impossible to recruit new doctors.

But not only is the next generation of doctors being scared away from the State by Mississippi's tort friendly medical malpractice environment, soaring insurance premiums, and word of multi-million dollar jury awards, so are the insurance companies themselves. There used to be 14 companies underwriting liability in my State, now there's one willing to write new policies.

And those companies that are staying in Mississippi are being forced to charge exorbitant rates to cover their liability exposure to frivolous lawsuits and large verdicts. For instance, maternity care used to make up about 30 percent of family practitioner Scott Nelson's practice in his hometown of Cleveland, MS. But Nelson got out of the business October 1 when his annual malpractice premium jumped from $30,000 to $105,000.

Had he had continued his practice, Nelson would have had to pay that even more exorbitant premiums in the future, and in these small communities, the amount of money doctors make is not so great that they can afford to pay over $100,000 in medical malpractice insurance year in and year out.

Madam President, the Clarion Ledger in my home state a couple of days ago quoted a report from the National Law Journal which found that of the 50 firms in America that had the largest verdicts from juries, 9 of them are in my State of Mississippi, with one firm getting 5 verdicts totaling $177.5 million, the largest of which was against Janssen Pharmaceutica for $100 million. Another firm got $171.27 million, $150 million of which was from a single verdict against AC&S Manufacturing.

I ask unanimous consent that the article I am about to refer to from the Clarion-Ledger on July 28, 2002, be printed in the RECORD.

There being no objection, the article was ordered to be printed to the RECORD, as follows:

[From the Clarion-Ledger, July 28, 2002]

TOP 50 LAW FIRM LIST SHOWS 9 IN MISSISSIPPI

(By Sid Salter)

Mississippi takes the rap for being last in so many indices of economic and social progress. The list of "worst firsts" is endless.

But there is one index in which Mississippi shines like a new penny. That news comes via the pages of The National Law Journal. It's called the "Litigation 50."

Seems that nine of the nation's "winningest" 50 law firms in 2001 are in Mississippi—a measure based on The Journal's assessment of the gross amount of money awarded by juries during trials concluded between Jan. 1, 2001, and Dec. 31, 2001.

Quoth The Journal: "A firm's rankings is based on the total amount from all cases tried to a verdict before a jury, but does not include any money obtained through settlements or through bench trials. The ranking also does not take into account any post-trial changes in the judgment."

MEET THE TOP DOGS

Take a look at Mississippi's players in the "Litigation 50":

No. 11, Shannon Law Firm, Hazlehurst, five verdicts totaling $177.5 million, the largest a $100 million verdict against Janssen Pharmaceutica Inc.

No. 12, Blackmon and Blackmon, Canton, six verdicts totaling $171.27 million, the largest a $100 million verdict against Janssen Pharmaceutica Inc.

No. 14, Isaac Byrd and Associates, Jackson, seven verdicts totaling $150 million, the largest a $150 million verdict against AC&S Manufacturing Inc.

No. 15, Porter and Malouf, Greenwood, two verdicts totaling $150 million, the largest a $150 million verdict against AC&S Manufacturing Inc.

No. 24, Grenfell, Sledge and Stevens, Jackson, four verdicts totaling $100 million, the largest a $100 million verdict against Janssen Pharmaceutica Inc.

No. 25, Owens Law Firm, Jackson, four verdicts totaling $100 million, the largest a $100 million verdict against Janssen Pharmaceutica Inc.

No. 26, Upshaw, Williams, Biggers, Beckham and Riddick, Greenwood, 26 verdicts totaling $100 million, the largest a $100 million verdict against Janssen Pharmaceutica Inc.

No. 29, Langston Sweet & Freese, Jackson, 13 verdicts totaling $94.27 million, the largest a $71.27 million verdict against Washington Mutual Finance Group.

No. 37, former Gov. Bill Allain, one verdict totaling $77.5 million against St. Paul Fire Insurance.

BLACKMON'S OTHER JOB

Certainly, this ranking speaks volumes about every law firm represented in the "Litigation 50" ranking and of individual litigators employed by those firms.

But it also once again calls into question whether state Rep. Ed Blackmon—whose law firm was ranked by The Journal as the 12th most successful plaintiffs' law firm in the country in 2001—should be made co-chairman of the Mississippi Legislature's special joint committee studying tort reform.

A legislator who is a pharmacist just spent years in the courts defending a conflict of interest charge simply because his pharmacy accepted Medicaid.

But we're told by the legislative leadership that the state's business and medical community shouldn't worry when one of the nation's top trial lawyers is appointed to oversee proposed tort reforms that could take millions out of his own pockets?

Foxes? Hen houses? Bingo.

Mr. LOTT. The ability to have verdicts reach companies—even when companies are not directly involved in the alleged wrongdoing—through the use of joint and several liability is also causing huge problems in the medical malpractice and other fields. Despite the fact that they often have only tangential relationships to alleged wrongdoers, the plaintiffs' lawyers often include companies in lawsuits simply because they have the deep pockets and the companies all too often end up getting stuck having to pay the lion's share of multi-million dollar verdicts even though they actually did very little wrong.

I often wonder what government officials and responsible citizens in my State think is going to happen over the long term to companies that are faced with this kind of threat from juries in my State? What do they think is going to happen as the verdicts against doctors continue to go up and the insurance premiums to cover medical malpractice insurance costs continue to go up. They are finding out very quickly as many doctors and other medical providers are literally closing up shop and leaving town.

Madam President, this is a very important issue that is affecting health care in America, that is driving up the costs of health care all across America, that is making medical malpractice insurance unaffordable even for doctors, and which is limiting Americans' access to health care. What is the solution?

Senator McCONNELL has the solution in his amendment. It would put reasonable limits on punitive damages. It would provide for proportional liability so one company with marginal involvement is not held responsible for the entire costs of a verdict handed down by a jury.

There are also limits on attorney's fees. That provision when you think about it is really about the patients, the people who are hurt, and not about the attorneys who get 40, 50, 60 percent of a judgment in many cases.

Senator McCONNELL's amendment also has collateral source reform, to stop lawyer's double dipping from both their client's insurance companies and the defendants they drag into court.

The amendment also has alternative dispute resolution. Is that not a better way to go, to find a solution without having to go through the expense of trials, litigation and jackpot verdicts. Would it not be much better to first try to get a quick resolution of the matter outside of the courtroom?

Senator McCONNELL's amendment should be included as part of this debate we are having about health care accessibility and the cost of prescription drugs. I should note that nearly identical language passed the Senate in 1995 by a vote of 53 to 47, but it was later vetoed by President Clinton.

Senator McCONNELL's amendment is an important one. I understand that Democrats will perhaps move to try to table it, but this is a critical issue in America that has to be addressed. The American Medical Association announced last month that because of astronomical malpractice premium increases, 12 States are in a health care crisis mode, with 30 other States on the brink of crisis.

I ask unanimous consent that a compendium of news accounts about the medical malpractice crisis affecting the Nation, which was written by the Republican Policy Committee and titled "Overzealous Trial Lawyers Are Denying Medical Care to Expectant Mothers," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OVERZEALOUS TRIAL LAWYERS ARE DENYING MEDICAL CARE TO EXPECTANT MOTHERS

THE NEED FOR MEDICAL LIABILITY REFORM

Mothers and children are being denied medical care because physicians' liability premiums are soaring and forcing many to move to more doctor-friendly states, curtail their practices, or close up shop entirely:

"The malpractice crisis has been building for years but culminating last December when the country's largest medical malpractice issuers, the St. Paul Companies, dropped tens of thousands of physicians. Other issuers have also cut back on clients or jacked up premiums. A major reason is the increasing number of personal injury lawsuits—and high-priced damage awards. Last week, the American Medical Association announced that because of astronomical malpractice increases, 12 states are in a healthcare crisis mode, with 30 others on the brink of crisis." [Mary Brophy Marcus, "Healthcare's 'Perfect Storm,'" U.S. News & World Report, 7/1/02]

The states identified by the American Medical Association as facing a medical liability crisis are:

Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, West Virginia.

Recent medial accounts demonstrate how this crisis is denying people medical care—particularly expectant mothers. Without medical liability reform, the situation is likely to get worse.

In the border town of Bisbee, Ariz., hospital administrators recently closed the maternity ward because its family practitioners were seeing insurance rate increases of up to 500 percent, to $88,000 a year. The hospital services 4,000 square miles. Now, hundreds of women must travel at least 60 miles to the closest hospitals, in Sierra Vista or Tucson. Since the ward's closure, four women have delivered babies en route." [Michael Freedman, "The Tort Mess," Forbes.com, 5/13/02]

Mississippi

"Mississippi . . . is expected to lose 400 doctors this year . . . Last year Bolivar County in western Mississippi had six doctors providing obstetrical care; today it has three. . . . In neighboring Sunflower County, all four doctors who delivered babies have quit private practice. In the northern half of the state last year there were nine practing neurosurgeons; now there are three on emergency call. There used to be 14 companies underwriting liability in Mississippi; now there's one willing to write new policies." [Editorial, "Lawyers vs. Patients," The Wall Street Journal, 5/01/02]

"The North Mississippi Medical Center, a hospital that serves 22 counties and 600,000 people, is now finding it all but impossible to recruit new doctors. They're scared away by the state's tort-friendly medical malpractice environment, soaring insurance premiums and word of the $5 million award. The hospital . . . may have to cut back on emergency services. There is now no neurosurgeon on call one of every four days. If there's a wreck on the highway that bisects town, or on any of the winding roads in northern Mississippi or Alabama, it will take at least one hour for the victim to be transported to the nearest neurosurgeon in Memphis or Jackson. That hour is crucial; it could cost a life." [Michael Freedman, "The Tort Mess," Forbes.com, 5/13/01]

"Maternity care used to make up about 30 percent of family practictioner Scott Nelson's practice in his hometown of Cleveland, Miss. But Nelson got of that business Oct. 1, when his annual malpractice premium would have jumped from $30,000 to $105,000 had he continued to deliver babies. "The malpractice insurance environment has literally forced me out of doing it," Nelson says." [Rita Rubin, "You Might Feel a Bit of Pinch," USA Today, 12/4/01]

Nevada

"Kimberly Maugaotega of Las Vegas is 13 weeks pregnant and hasn't seen as obstetrician. When she learned she was expecting, the 33-year-old mother of two called the doctor who delivered her second child but was told he wasn't taking any new pregnant patients. Dr. Shelby Wilbourn plans to leave Nevada because of soaring medical-malpractice insurance rates there. Ms. Mavgaotega says she called 28 obstetricians but couldn't find one who would take her." [Rachel Zimmerman and Christopher Oster, "Insurers' Price Wars Contributed to Doctors Facing Soaring Costs," The Wall Street Journal, 6/24/02]

"Half of the 93 OB-GYNs who deliver babies in Las Vegas's Clark County are no longer accepting new obstetrical patients." [Mary Brophy Marcus, "Healthcare's 'Perfect Storm,'" U.S. News & World Report, 7/1/02]

"Twice last month, Las Vegas obstetrician/gynecologist Shelby Wilbourn saw patients who's made an appointment under a false pretense. They said they were having irregular menstrual periods. But when they met Wilbourn face-to-face, they fessed up. The reason they hadn't had a period in a couple of months was because they were pregnant, not because their cycle was out of whack. I had to close the chart and say, 'Ma'am, I can't help you, because I'm not doing OB anymore,' Wilbourn says. 'They just started sobbing in the office.' . . . Last month, Wilbourn announced to tearful patients and office staff that he had accepted an offer in Belfast, a small town on the coast of Maine . . . [T]he decision to close his practice July 31 was not easy. 'I've got a lot of pregnant women I'm not going to be here for,' he says. 'I'm going to be turning them loose halfway through a pregnancy, and I can't find them a doctor.' One of them is Deanna Rood, who is due in October. Wilbourn cared for Rood when she was pregnant with her firstborn, a son who will turn 2 in August. 'I'm in a scary position right no,' Rood says. 'I'm six months pregnant, and I don't have a doctor.'" [Rita Rubin, "Fed-Up Obstetricians Look for a Way Out," USA Today, 6/30/02]

"[Las Vegas OB-GYN Shelby] Wilbourn accepted a new job in Maine last week. He wonders who will deliver the 500 babies born each week in Las Vegas and if there will be any OBs to take emergency calls like the one he recently answered. The patient was 34 weeks pregnant, in premature labor and hemorrhaging, and her baby's heartbeat was frighteningly low. Wilbourn arrived in minutes, and both mother and child made it successfully through childbirth. 'If this were next year,' he contends, 'that baby would have died.'" [Mary Brophy Marcus, "Healthcare's 'Perfect Storm,'" U.S. News & World Report, 7/1/02]

"John Nowins, president of the Clark County (Las Vegas) OB-GYN Society, says that 80 percent of his members are phasing out obstetrics because of the jump in malpractice insurance premiums. . . . Nowins, a Chicago native, says he's considering moving to Indiana. 'At least they have good tort reform,' he says." [Rita Rubin, "Fed-Up Obstetricians Look for a Way Out," USA Today, 6/30/02]

"In March, doctors at Nellis Air Force Base in Las Vegas sent a 34-year-old woman with colon cancer to Joseph Thornton, a highly experienced colon and rectal surgeon in the area. Because of the war in Afghanistan, most of Nellis's specialized surgeons are now deployed, and the remaining military doctors said they couldn't remove the cancer unless they cut out the woman's entire colon, leaving her with a colostomy bag to drag around and empty the rest of her life. They hoped that Thornton's expertise might offer a better outcome. Just one problem. Thornton, at age 56, retired on March 31 because his malpractice insurance company was closing, and he couldn't afford what the other insurers were charging. . . . The woman showed up in Thornton's office just before his retirement, but she needed chemotherapy and radiation first, and the surgery couldn't be performed before Thornton's policy expired. 'It broke my heart,' he said. 'I felt like I was planning my own funeral. . . . My broker got quotes for me and told me I should quit. And he makes a commission on insurance purchases.'" [Marilyn Werber Serafini, "Risky Business," National Journal, 5/18/02]

"In Nevada, 123 physicians have either closed their practices or are planning to do so soon." [Mary Brophy Marcus, "Healthcare's 'Perfect Storm,'" U.S. News & World Report, 7/1/02]

"A study by a University of Nevada medical school professor says 42 percent of obstetricians are making plans to move their practices out of southern Nevada. If that happens, only 78 obstetricians would be left in an area that includes Las Vegas, a city of 1.5 million with 23,000 births last year. The same study notes that 76 percent of the city's obstetricians have been sued, and 40 percent have been sued three or more times." [Michael Freedman, "The Tort Mess," Forbes.com, 5/13/02]

New Jersey

"Last week the Garden State's largest malpractice insurer, the MIIX Group, announced it has essentially decided to fold up shop. The decision is notable because MIIX isn't just another insurance company out to make a profit. It began as an association of doctors that got into the business of insuring themselves and other doctors. The company has lost more than $200 million in the past 15 months, and its decision means that about 9,000 New Jersey doctors, 37 percent of the state total, may soon lose their insurance. . . . In 2001, three malpractice insurers stopped doing business in the state." [Editorial, "Born to Sue," The Wall Street Journal, 5/17/02]

Pennsylvania

"Kelly Biesecker, 35, spent many extra hours on the highway this spring, driving from her home in Villanova, Pa., to Delran, N.J., so she could continue to use her obstetrician. Dr. Richard Krauss says he moved the obstetrics part of his practice from Philadelphia because malpractice rates had skyrocketed in Pennsylvania. Ms. Biesecker, who gave birth to a healthy boy on June 5, says Dr. Krauss was the doctor she trusted to guard her health and the health of her baby: 'You stick with that guy no mater what the distance.' . . . New Jersey hasn't been a panacea, however. His policy there expires July 1, and the carrier refuses to renew it." [Rachel Zimmerman and Christopher Oster, "Insurers' Price Wars Contributed To Doctors Facing Soaring Costs," The Wall Street Journal, 6/24/02]

"Lauren Kline, 6½ months pregnant, changed obstetricians when her long-time Philadelphia doctor moved out of state because of rate increases. Now, her new doctor, Robert Friedman, may have to give up delivering babies at his suburban Philadelphia practice. His insurance expires at the end of the month, and he says he is having difficulty finding a carrier that will sell him a policy at any price." [Rachel Zimmerman and Christopher Oster, "Insurers' Price Wars Contributed To Doctors Facing Soaring Costs," The Wall Street Journal, 6/24/02]

"High insurance rates are also plaguing hospitals, some of which are closing their riskiest services. Grand View Hospital, located in Sellersville, Pa., between Philadelphia and Allentown, is having trouble securing insurance at any price." [Marilyn Werber Serafini, "Risky Business," National Journal, 5/18/02]

"In Philadelphia, the Methodist Hospital Division of Thomas Jefferson University Hospital will cease to deliver babies effective June 30 . . . More than 90 full- and part-time staff positions at Methodist will disappear." [Marilyn Werber Serafini, "Risky Business," National Journal, 5/18/02]

"Dr. John Angstadt, 44, started looking to move out of suburban Philadelphia when his insurance increased from $14,000 in 1994 to $66,000 last November. In December he joined a large practice in Savannah, Ga., where he pays just $16,000 for insurance. Now, instead of worrying about rising costs and lawsuits, he can practice medicine. 'That was missing in Philadelphia,' he says. 'I go up in the morning and the idea of facing another day was onerous.'" [Michael Freedman, "The Tort Mess," Forbes.com, 5/13/02]

Texas

"C. Dale Eubank practices in Texas. . . . 'I have been named in suits, and none of them ever went anywhere,' says Eubank, who has delivered 3,000 babies since 1983. Disgusted with what he calls the 'litigious environment' in Corpus Christi, Eubank this year decided to stop delivering babies." [Rita Rubin, "Fed-Up Obstetricians Look for a Way Out," USA Today, 6/30/02]

"Texas used to have 17 [medical liability insurance] carriers; now it has four." [Editorial, "Lawyers vs. Patients," The Wall Street Journal, 5/1/02]

Washington

"Jen Fleming of Friday Harbor says she keeps hoping she can persuade Robert and Barbara Pringle, a husband-wife OB–GYN team, to care for her during her next pregnancy. In January 1999, Fleming delivered a stillborn daughter. A few months later, she became pregnant with her son, who is now 2. 'Now they'll have to refer me to someone else' when she gets pregnant, Fleming says. "It's a shame, because they're the ones who got us through our second pregnancy.' The Pringles, who practice in Mount Vernon, Wash., stopped taking new OB patients a few weeks ago." [Rita Rubin, "Fed-Up Obstetricians Look for a Way Out," USA Today, 6/30/02]

West Virginia

"The state of West Virginia, no stranger to problems, has a severe one on its hands now: a 'doctors crisis.' That's what many are calling it, and with good reason. West Virginia is losing doctors every day; communities are going without care; no doctors are coming in—it is almost impossible to recruit. The problem is the legal atmosphere: The state has earned the designation 'Tort Hell,' or, if you are a plaintiff's attorney, 'Tort Heaven.' In probably no other state is it as hard to be a doctor, or to remain one. Doctors are becoming desperate; the public, slowly—and in some areas, not so slowly—is waking up. The need for reform is crying. Of course, this need is felt all across the country; but nowhere is it felt more acutely than in West Virginia." [Jay Nordlinger, "Welcome to 'Tort Hell,'" National Review, 8/20/01]

"Jane Kurucz, a general surgeon who specializes in breast diseases . . . is a typical case, but with an unusual twist: On Sunday afternoon, July 29, a rally was a staged in support of her, in a downtown park. The event was organized by a patient, unhappy at losing her doctor, and, more than unhappy, angry. Dr. Kurcuz has been practicing for 13 years. In that time, she has had one lawsuit against her (amazingly low for West Virginia), now pending. On May 1, she received a letter informing her that her insurance would not be renewed. . . . Jane Kurucz had to close up shop on August 1." [Jay Nordlinger, "Welcome to 'Tort Hell,'" National Review, 8/20/01]

"Huntington is now essentially without breast surgery. It may soon be without neurosurgery. The local neurosurgeons pay over $160,000 a year in insurance, if they manage to qualify for it. And as they leave, a chain reaction occurs: The city's residency program collapses; the medical school is in jeopardy. 'The cascade effect is tremendous,' as Dr. Kurucz says." [Jay Nordlinger, "Welcome to 'Tort Hell,'" National Review, 8/20/01]

"Wheeling, W. Va.'s last emergency-room neurosurgeon recently left the state, which means that people with severed hands and other traumatic injuries must be helicoptered out of state for treatment." [Mary Brophy Marcus, "Healthcare's 'Perfect Storm,'" U.S. News & World Report, 7/1/02]

"In Wheeling, one of West Virginia's largest cities, all of the neurosurgeons have left. Corder says it's common for trauma patients who need a neurosurgeon to be airlifted to Pittsburgh. On one such occasion, he said, a patient was flown to Pittsburgh only to be examined and discharged 15 minutes after being seen. The cost for the helicopter ride was $4,000." [Marilyn Werber Serafini, "Risky Business," National Journal, 5/18/02]

"In West Virginia, the sole community hospitals in Putnam and Jackson counties have closed their obstetrics units because obstetricians are facing enormous premium increases and are choosing to leave the area, according to Thomas J. Corder, chairman of the West Virginia Hospital Association and president of Camden-Clark Memorial Hospital in Parkersburg." [Marilyn Werber Serafini, "Risky Business," National Journal, 5/18/02]

"West Virginia was good for Joe Prud'homme. The Texas native never expected to put down roots in Beckley, W. Va., where he got a temporary job after touring the world for a year. In the ensuing 6½ years, though, Prud'homme set up his own orthopedic surgery practice and married a local woman with a large extended family nearby. But last week, Prud'homme and his wife, who are expecting their first baby any day, packed up and left the state. If Prud'homme had continued practicing in Beckley, his annual premium would have doubled Nov. 1, to more than $80,000. In Blacksburg, Va., 80 miles to the southeast, he's paying $18,000. . . . Despite the inconvenience, Fran Pemberton, 50, and her mother-in-law, Betty Pemberton, 70, will make the three-hour round trip to see Prud'homme in Blacksburg. 'I have to miss a shift's work every time we go down there.' says Fram Pemberton, a high school cook. Prud'homme performed carpal-tunnel surgery on her wrists. Her mother-in-law needs knee-replacement surgery. 'We have a lot of general practitioners who are pretty good doctors,' Fran Pemberton says. 'But to have a specialist anymore, you have to go somewhere.'" [Rita Rubin, "You Might Feel a Bit of a Pinch," USA Today, 12/4/01]

"Ronn Grandia, M.D., [Bruce Hoak, M.D.], and Michael Hall, M.D., saw no option but to close after liability insurance priced their three-man surgical practice out of existence. 'We just don't have the resources to pay the premium,' Dr. Hall said. . . . After practicing in Ohio for five years, Ronn Grandia, M.D., returned to West Virginia in 1996. . . . But this month he starts to practice across the state line at Holzer Clinic in Gallipolis, Ohio. He'll be able to live in the same house in West Virginia and even treat some of the same patients. But by practicing in Ohio, he can afford his professional liability insurance. . . . Bruce Hoak, M.D., the third physician at Southern Surgical Associates, is headed to his native Texas and also will pay about half the rate he would have paid in West Virginia. . . . With these three general surgeons leaving Charleston, Thomas Memorial Hospital will be left with just four general surgeons. That's down from eight. Another surgeon left earlier, also citing high insurance rates. 'Nobody has been willing to consider it a crisis until thousands of patients started losing their physicians,' Dr. Hall said. 'We are only the first wave.'" [Tanya Albert, "Soaring Premiums Force Doctors to Close Practice," American Medical News, 9/10/01]

"Dr. R. Todd De Pond misses the howling new infants but not the costly insurance protection required for presiding at their births. 'I've decided not to do obstetrics at all,' Dr. De Pond said of his retreat to the gynecology half of his practice in what West Virginia medical officials warn is a statewide crisis in skyrocketing malpractice insurance rates. Scores of doctors are curtailing services by dropping high-risk obstetrical and neurosurgical procedures rather than pay premium increases of 30 percent and more, the State Medical Association says. At the same time, about 100 doctors, one in 20, have in the last two years retired early or moved from West Virginia, one of the costliest areas in the nation for malpractice coverage. . . . 'It has gotten worse every year,' said Dr. De Pond, who used to handle 15 maternity cases a month." [Francis X. Clines, "Insurance-Squeezed Doctors Fold Their Tents," The New York Times, 6/13/02]

"Bluefield Regional Center, a major hospital in the state's hardscrabble south, lost 12 doctors in the last two years and has been able to replace only 2." [Francis X. Clines, "Insurance-Squeezed Doctors Fold Their Tents," The New York Times, 6/13/02]

AN UNTENABLE SITUATION

How bad has the medical liability environment become? As one article states [Michael Freedman, "The Tort Mess," Forbes.com, 5/13/02]:

"In some parts of the country, doctors say, it is almost better to let a patient die than to attempt heroic surgery, fail and risk a lawsuit."

If the medical liability system is making doctors think twice about saving lives, that system needs to be reformed.

Mr. LOTT. Madam President, if we do not get some control of these outlandish lawsuits and the verdicts that are being handed down both in the field of medical malpractice and in the broader area of tort reform, the never-ending stream of lawsuits that are being filed in this country is going to continue putting good men and women out of the practice of medicine, good companies out of business, and good men and women out of work.

I yield the floor.

The PRESIDING OFFICER (Mr. JOHNSON). Under the previous order, the time until 12:55 will be equally divided and controlled by the Senator from Massachusetts and the Senator from Kentucky or their designees.

The Senator from Massachusetts.

Mr. KENNEDY. So we have how much time, Mr. President?

The PRESIDING OFFICER. Twenty-six minutes.

Mr. KENNEDY. I yield myself 7 minutes.

Mr. President, we have heard some discussion earlier today about the state of the debate on the prescription drug program. To remind all of our colleagues, that legislation would have been tied up in the Finance Committee for over 5 years. It was only because of the leadership of Senator DASCHLE that we were able to ensure that we had some debate on the floor of the Senate on a matter of central importance to families all over this country. With the leadership of Senator GRAHAM, Senator MILLER, and others, we have had a good debate.

We had some votes in the Senate on some very important comprehensive measures. There was the vote, which I was proud to support, on Senator GRAHAM's amendment, which received 52 votes. If we had had 8 votes from that side of the aisle, this legislation would be on its way now to a conference and there would be a real possibility of gaining comprehensive coverage. That program provided a $25 premium, no deductible, and limited copays at $10 for generic drugs, $40 for brand name drugs. It also had a catastrophic program. That was the way to go. But it was defeated. No one supported it.

Now, 10 days later, can we make a difference and provide some relief to the seniors in our country? Senator GRAHAM will have the opportunity, after the disposal of this amendment, to make his case, which I intend to support for reasons I will outline during the course of that debate. But none of us should be under any illusion of where the responsibility lies in terms of our failure to get a comprehensive program. We were able to gather the support of virtually every Member on this side of the aisle for a very comprehensive program with low premiums and no deductibles, and a very reasonable copay that had the support of all of the senior groups.

When I listen to those who were opposed to it talk about their alternative, they clearly did not have the support of a single senior group.

Now let us get back to what is at hand, and that is the medical malpractice amendment introduced by my friend from the State of Kentucky.

On Friday, the sponsor of this amendment, Mr. MCCONNELL—which has also been characterized by the Senator from Tennessee—described it as "pro-victim and pro-consumer." He claimed that since his amendment did not contain a cap on non-economic damages, it would not "adversely affect" an injured patient's ability to recover compensation for injuries caused by a health care provider. In fact, the McConnell amendment is pro-HMO, pro-drug manufacturer, and pro-insurance company, at the expense of patients.

Make no mistake about it. There is a great deal in this amendment which would deprive seriously injured patients of fair compensation. At virtually every stage of the legal process, the amendment systematically rewrites the rules of civil law to tip the balance in favor of defendants. It would arbitrarily shield health care providers and their insurance companies from basic responsibility for the harm they cause.

At a time when the American people are calling for greater corporate accountability, it is unbelievable that our Republican colleagues would bring to the floor an amendment which would do just the opposite. The McConnell amendment would allow the entire health care industry to avoid accountability for the care they provide and that is not acceptable.

While those across the aisle like to talk about doctors, the real beneficiaries will be insurance companies. This amendment would enrich the insurance industry at the expense of the most seriously injured patients; men, women, and children whose entire lives have been devastated by medical neglect and corporate abuse.

This proposal would also shield HMOs that fail to provide needed care, nursing homes that neglect elderly patients, drug companies whose medicine has toxic side effects, and manufacturers of defective medical equipment.

It would drastically limit the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican Party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing? Less accountability will never lead to better health care.

There is no real question about the effect of their amendment. It would, in fact, place major new restrictions on the right of seriously injured patients to recover fair compensation for their injuries. Let's look at what the amendment actually does.

It abolishes joint and several liability for non-economic damages. This means the most seriously injured people may never receive all of the compensation that the court has awarded to them. Under the amendment, health care provides whose misconduct contributed to the patient's injuries will be able to escape responsibility for paying full compensation to that patient. The patient's injuries would not have happened if not for the misconduct of both defendants, so each defendant should be responsible for making sure the victim is fully compensated.

The bias in the McConnell amendment could not be clearer. It would preempt State laws that allow fair treatment for injured patients, but would allow State laws to be enacted which had greater restrictions on patients' rights than the proposed federal law. This one-way preemption shows how result-oriented the amendment really is. It is not about fairness or balance. It is about protecting defendants.

The amendment preempts state statutes of limitation, cutting back the time allowed by many states for a patient to file suit against the health care provider who injured him.

It mandates that providers and insurance companies be permitted to pay a judgment in installments rather than all at once. Allowing health care providers, including HMO's, large drug manufacturers and their insurance companies to pay on the installment plan transfers compensatory dollars that rightfully belong to an injured patient back to the wrongdoer. If the patient does not receive the money for years, he in reality is getting less money than the court concluded that he deserves for his injuries.

The amendment makes it much harder to sue a physician for injuring a baby or its mother during the delivery process if the doctor had not previously treated the mother. It requires a much higher burden of proof, clear and convincing evidence, than is normally provided for in a civil case. There is no reason why a practicing physician should not be held to the normal standard of medical care merely because he had not previously treated the patient. Such a provision is grossly unfair to pregnant women. In essence, their doctors are held to a lower standard of care than all other medical professionals.

The places extremely restrictive limitations on when an injured patient can receive punitive damages, and how much punitive damages the victim can recover. It would cap punitive damages at twice the amount of compensatory damages, no matter how egregious the defendant's conduct and no matter how large its assets. This would destroy the deterrent effect of punitive damages in the very few cases where punitives would still be allowed.

Even more outrageous is the language on page 23 which appears to say that the government would take half of any punitive damages which the injured patient did receive. This amounts to a confiscatory tax on punitive recoveries, which is extremely unfair to the victims. It is the victims who have been harmed by the malevolent conduct. The government should not arbitrarily take half of the jury award.

It imposes unprecedented limits on the amount of the contingent fee which a client and his or her attorney can agree to. This will make it more difficult for injured patients to retain the attorney of their choice in cases that involve complex legal issues. It can have the effect of denying them their day in court. Again the provision is one-sided, because it places no limit on how much the health care provider can spend defending the case.

If we were to enact all of these arbitrary restrictions on the compensation which seriously injured patients can receive, what benefits would result in our health case system? Certainly less accountability for health care providers will never improve the quality of health care. Substandard medical care is a growing problem.

The Agency for Healthcare Research and Quality at HHS found that the number of adverse effects from medical treatment has more than doubled in recent years. These disturbing statistics make clear that we need more accountability in the health care system, not less. In this era of managed care and cost controls, it is ludicrous to suggest that the major problem facing American health care is "defensive medicine." The problem is not "too much health care," it is "too little" quality health care.

In the time remaining, I will cover two or three other points. This chart asks, Do malpractice premiums drive up medical costs? It shows health care and malpractice inflation. Look at health care costs they have gone up 74 percent since 1988; medical malpractice costs, 5.7 percent.

For States without caps on damages, the average cost of medical malpractice insurance is $7,715 for internal medicine; in States with caps on damages, it is $7,887. For general surgery, it is $26,144 for States without and $26,746 for States with caps on damages; for OB/GYN, it is $43,000 for States without caps versus $44,000 for States with caps.

The impact on general health care issues has been considerably less. The fact remains that the number of doctors per 100,000 people in States which do have the caps versus those that do not are virtually identical. The costs of the premiums are exactly the same.

Let's get focused on where the needs are and the beneficiaries and the losers of this amendment. The beneficiaries will be the insurance companies; the losers will be the patients who are going to suffer because of negligence. That is wrong. That proposal should not be accepted.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. How much time do I have?

The PRESIDING OFFICER. Twenty-six minutes.

Mr. McCONNELL. Mr. President, this amendment is related to the crisis of medical malpractice that we have across our country due to the failure to impose accountability and responsibility on big, powerful trial lawyers who are running roughshod over doctors and taking advantage of their clients. That is what this debate is about.

Senator HATCH is here and I yield him 2 minutes. After Senator HATCH, Senator FRIST would like 3 minutes.

Mr. KERRY. Mr. President, just to inquire, are we going to go back and forth? I didn't know the Senator had the right to yield successive periods of time.

The PRESIDING OFFICER. There is no order at this point.

Mr. McCONNELL. Mr. President, Senator FRIST had to go to a meeting. He is only asking for 3 minutes, and Senator HATCH is only taking 2 minutes.

Mr. KERRY. I understand.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened to the impassioned speech of the Senator from Massachusetts. The fact is, there will not be any medical liability insurance companies. One major company has gone out of business because of what amounts to unreasonable litigation all over the country.

It used to be that all you had to do was show that you met the standard of practice in the community and that was enough to alleviate doctors from medical liability. When the doctor of informed consent came into being, then every case from that point went to a jury. The reason is because they could make any claim they wanted, and ingenious lawyers can write the claims so they go to the jury.

We have a crisis in this country. I estimated 15 years ago that at least $300 billion a year was being wasted in unnecessary defensive medicine. If anything, that number has gone up. Mr. President, 50.5 percent of family practitioners in Utah have given up obstetrical services or never practiced obstetrics. Of the remaining 49.5 percent still delivering babies, 32.7 percent plan to stop providing OB/GYN services within the next decade. Most plan to stop within the next 5 years.

The people who are really going to be hurt will be the most vulnerable people in our society, the children.

Frankly, we have to stop letting this medical liability situation go stock wild. It is way out of control. This is an amendment that does make intelligent approaches to trying to resolve the problems.

This is an important issue about which I have spoken on previous occasions. I am pleased to see that on July 25, President Bush announced his desire to address the medical malpractice problem. We welcome his support in this effort.

As many of you will recall, we debated, and passed, the exact provisions that are contained in the McConnell amendment during the Commonsense Product Liability and Legal Reform Act debate back in 1995. Unfortunately, the language was stripped from the bill in conference. I will say many of the same things now that I said back then, because, regrettably, they still apply and need to be said. I am sorely disappointed that in the ensuing seven years we have still not acted to address the fact that medical malpractice costs have spiraled out of control and are forcing many doctors and hospitals out of the profession. The situation has gotten worse, not better. We must act now if we are at all serious about fixing the crisis in healthcare delivery this has caused in many parts of this country.

Make no mistake, we have a healthcare crisis in this country, one that is due in large part to litigation that is out of control. Many may not be aware of just how serious the ramifications of the crisis are.

I will ask unanimous consent to have printed in the RECORD a July 18 Associated Press article, "Soaring Malpractice Insurance Squeezes out Doctors, Clinics," which highlights these problems. The article points to the "national problem that doctors say is obliging many of them to flee certain states or give up certain specialties—or the entire profession—because of skyrocketing insurance premiums linked to soaring jury awards."

The article goes on to note that, as I am sure my colleagues from Nevada are acutely aware and Senators McCONNELL and FRIST already mentioned—the University Medical Center trauma clinic in Las Vegas—the only Level 1 trauma center in Nevada—closed down on July 3 of this year. The 58 doctors who were associated with the trauma center had insisted on much-needed relief from the soaring cost of medical malpractice insurance. Consequently, the day after the center closed, a victim of a serious traffic accident had to be transported to the next nearest emergency room which was an hour away. The trauma center was hurriedly reopened on July 13, but with only 10–15 doctors working on a temporary basis, with limited liability, while the Governor tries to enact legislation limiting awards in medical malpractice cases. We don't know if that trauma center will be forced to close again. Commenting on the trauma center's closure, its Director, Dr. John Fildes, stated that "the standard of care in our community was set back 25 years."

No one knows whether the life of that tragic accident victim in Las Vegas could have been saved had he been treated at the nearby hospital. Would any of us want that to happen to our loved ones—traveling an hour to receive emergency care? I certainly wouldn't, and the Senate should take the necessary steps to ensure that it does not happen to anyone else.

The problem of providing necessary healthcare in the face of rising insurance costs and the threat of excessive litigation cuts across multiple specialties, not just emergency services.

Ensuring the availability of adequate obstetric care continues to be a rising problem. According to the same article, one Arizona hospital, a clinic in Oregon, and two Pennsylvania hospitals recently have closed their obstetrics units. Several counties in upstate New York have no obstetricians covering night shifts. There is an increasing shortage in my home state of Utah as well. Studies by both the Utah Medical Association and the Utah Chapter of the American College of Obstetricians and Gynecologists underscore the problem in my state:

> 50.5 percent of Family Practitioners in Utah have already given up obstetrical services or never practiced obstetrics. Of the remaining 49.5 percent who still deliver babies, 32.7 percent say they plan to stop providing OB services within the next decade. Most plan to stop within the next five years.

According to this Utah Medical Association study:

> Professional liability concerns [was] given as the chief contributing factor in the decision to discontinue obstetrical services. Such concerns include the cost of liability insurance premiums, the hassles and costs involved in defending against obstetrical lawsuits and a general fear of being sued in today's litigious environment.

Mr. President, ensuring the availability of quality prenatal and delivery care for the most vulnerable members of our society is imperative for obvious reasons.

The newly-released Department of Health and Human Services report "Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Cost by Fixing our Medical Liability System" released by HHS Secretary Tommy Thompson includes a detailed review of recent studies on the consequences of out-of-control medical liability crisis that is threatening healthcare in many parts of America. Even volunteer medical services are threatened. According to the report, "[m]any doctors cannot volunteer their services for a patient who cannot pay, and the proportion of the physicians who provide charity care at all has declined, because doctors cannot afford the required liability coverage." It further details the rising costs of insurance premiums:

> Doctors alone had to pay over $6 billion in medical liability premiums last year, and premiums this year in many states have increased by more than 20 percent on average and more than 75 percent for specialties in some states. . .Excessive liability also adds $30 billion to $60 billion annually to Federal government payments for Medicare, Medicaid, the State Children's Health Insurance Program, Veterans' Administration health care, health care for Federal Employees, and other government programs.

The HHS study further details how reasonable medical malpractice reforms in some states have been working to reduce healthcare costs and improve access and quality of care. I urge my colleagues to read this report.

Our entire medical system—which everyone knows is heralded as the best in the world—is based on a total reliance on the abilities of the health care professionals who treat us, professionals who have sacrificed immeasurably to get the requisite training and credentialing. These are professionals who spend long and hard hours in school and at work to make our system the best in the world.

Will there be mistakes? Of course there will be; we are only human. And while we must strive for perfection, that by definition cannot be. My heart goes out to each and every person who has suffered an adverse medical event, whether it was caused by the medical delivery system or not.

I was a trial attorney before I came to Congress. I saw heart-wrenching cases in which mistakes were made. But I also saw heart-wrenching cases in which mistakes were not made and doctors were forced to expend valuable time and resources defending themselves against frivolous lawsuits. I have litigated these cases, both as an attorney for the plaintiff and as an attorney for the defendant.

No one in this body knows better than I—perhaps with the exception of our colleague from Tennessee, Senator FRIST—what the defects are in this system. Mr. President, I wish we could design a system which would protect each and everyone from harm, but that is not possible. Our job is to design the best system we can. But in a country as large and diverse as this one, problems are inevitable. The task before us is to make sure the system minimizes those problems. Thus the question before us is: how to design a system which protects both the patient and the provider? I do not believe that a protracted war between trial attorneys and health care professionals is the way to accomplish that goal.

Why do we need to pass this amendment dealing with medical malpractice liability? Medical liability costs are out of control, as I have already stated. President Bush's Council of Economic Advisers published a paper in April estimating that the U.S. tort system, costing $180 billion, of which medical torts comprise a large part, is the most expensive in the world as a percentage of gross domestic product, equivalent to a three percent tax on wages. Professional liability rates are rising in response to our runaway tort system. And liability costs are having a direct impact on healthcare spending.

It is often the case that doctors feel compelled to run diagnostic tests that are costly and unnecessary, in order to cover themselves—it is defensive medicine. It is wasteful, but unfortunately has become necessary. The only way to stop this is to get some reason into the system.

Senator MCCONNELL's amendment attempts to address many of the problems in this area by instilling a much needed measure of stability into our legal lottery that will benefit both patient and provider.

How? This amendment would take the following, necessary, steps: To start, the amendment sets standards for punitive damages. In order for a claimant to receive such damages, he or she must prove by clear and convincing evidence that either:

The defendant intended to injure the claimant for a reason unrelated to health care;

The defendant understood the claimant was substantially certain to suffer unnecessary injury and yet still deliberately failed to avoid such injury; or

The defendant acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury, which the defendant failed to avoid in a manner which constituted a gross deviation from the normal standard of conduct.

Furthermore, punitive damages would be limited to two times the sum of compensatory damages, which includes both economic and non-economic damages.

With our current system, defendants who are only one percent at fault could be held responsible for 100 percent of the award—which certainly does nothing to encourage doctors to continue to provide care. Under this amendment, there would be proportionate liability for non-economic and punitive damages, so that doctors are only liable for their actual share of damages if culpability is established. However, joint liability would remain for economic damages.

In addition, courts would be allowed to require periodic payments for large awards rather than lump sums, which makes it easier for insurers to judge their appropriate reserves. I would note that under Utah law, periodic payments for awards of over $100,000 are mandatory. This does not reduce the claimant's award. Past and current expenses will continue to be paid at the time of judgment, while future damages can be funded over time with less risk of bankrupting the defendant. Awards in malpractice cases also would be reduced by the amount of compensation received from collateral sources, in order to prevent the practice of "double dipping."

This amendment also limits attorneys' fees, but I think, in a reasonable manner. Attorneys' fees that could be paid out of an award would be limited to 33 percent of the first $150,000 and 25 percent of any amount awarded above that. I have to say, I am concerned about any limitation on attorneys' fees, but there have been some colossal rip-offs in this area and this appears to be a reasonable approach in the McConnell amendment. Lawyers should be compensated, and they should be fairly and reasonably compensated. But studies have shown that a surprisingly low proportion of every dollar spent on liability litigation ever reaches patients. That is a strong indication that our liability system has been turned squarely on its head. Despite all the tremendous litigation costs, the beneficiaries seem to be lawyers, not patients. This important provision ensures that the injured party will receive more of the award, and the attorney less.

The amendment would further require that a medical malpractice complaint must be filed within two years after the claimant discovered, or in the exercise of reasonable care should have discovered the injury and its cause. This is similar to the law in Utah, which provides for a 2-year statute of limitations, with a 4-year maximum.

And with regard to obstetric care, to address the rising number of lawsuits filed against emergency room doctors who deliver babies of women they have not previously treated, this amendment incorporates an amendment offered by Senator THOMPSON back in 1995 which passed overwhelmingly. Under this provision, for obstetric services, if a health care provider had not previously treated the pregnancy, the provider shall not be found to have committed malpractice unless proof of the malpractice meets the standard of clear and convincing evidence.

This amendment also encourages states to develop a state-based alternative dispute resolution mechanism to avoid the necessity of going to court. I have long felt that our fault-based liability system may not be the most equitable or the most efficient. it is expensive, time consuming, and unpredictable.

The McConnell amendment also requires that a portion of all punitive damage awards be set aside to: No. 1, improve State licensing, investigating, and disciplining of medical professionals; and, No. 2, reduce medical malpractice expenses for physicians who volunteer to provide care in medically under served areas.

Finally, the scope of this amendment applies to all Federal and State medical malpractice cases, except in those States that already have stronger medical malpractice reforms.

Mr. President, it is clear that we need to do something to deal with this crisis, and I believe the McConnell amendment is a step in the right direction. What is important is that we take steps to benefit both the patient and the health care provider, not the trial lawyers—otherwise we are in danger of losing access to necessary healthcare. I urge my colleagues to support this amendment.

Mr. McCONNELL. I yield 3 minutes to the Senator from Tennessee.

Mr. FRIST. First, I want to go back to the theme that I introduced last Friday: This is not about insurance companies or injured patients but about patients broadly. The debate boils down to patients broadly; to the American people versus a broken system of runaway, skyrocketing premiums secondary to the trial lawyers.

As I paint the picture, look at the skyrocketing medical premiums which we know are out there. They have an impact that is directly translated to access of health care. This is important to everyone listening to me today because they want access to health care, and affordable access to health care.

What is happening is that the skyrocketing costs, coupled with these runaway jury awards, have an impact on physicians in the following way. As the Senator from Mississippi said a few minutes ago, physicians are leaving parts of the country. They are relocating. They are stopping certain riskier procedures, such as delivering babies. Because of these skyrocketing premiums, obstetricians are having to stop delivering babies and neurosurgeons are beginning to limit their practices. We will hear shortly about trauma centers closing in Nevada and elsewhere. Trauma centers provide highly specialized care, and they are actually closing because of these skyrocketing premiums.

We also talked a little yesterday about defensive medicine. It increases costs the system overall, but these costs also translate down to how much you pay every time you go see a doctor or pay an insurance premium.

Ask your physician about defensive medicine. Eighty percent of physicians practice defensive medicine to the tune of billions of dollars. Patients are hurt in terms of poor access to health care and in terms of greater costs to them.

Let me just close, by asking the following: Who do you believe? Is it the insurance companies? Is it the trial lawyers? I will simply say, go back and ask somebody you trust for your health care. Ask your doctor who is telling the truth about the impact of skyrocketing medical malpractice costs; ask your doctors why physicians are leaving States to practice in other States where there is some sort of control on these runaway costs. Ask your doctor why physicians are retiring early or refusing to see certain patients. Ask your doctor why obstetricians are refusing to take new patients, or adjusting their practice just to practice gynecology and not obstetrics. Ask your doctor why trauma centers are closing today because of these skyrocketing premiums. Ask your doctor whether legal reform in the area of medical malpractice is good for patients.

I do not care about the insurance companies. They can come or go; they can deny business. The people I care about are the patients, who need access to better care. To better understand this debate ask your doctor, somebody you trust. Call them on the phone today, and I guarantee the answer they will give you is that the judicial system today is out of control and must be reformed. That is what the McConnell amendment does.

To summarize, States across the country are experiencing a health care liability crisis. Medical liability insurance premiums are skyrocketing as medical liability claims and damage awards are exploding. This problem is not limited to just a few States or a few areas of the country. It is nationwide, and it is getting worse.

The end result of this national crisis is simple: patients suffer. Patients suffer because in many areas because their access to care is in grave danger due to rising medical liability insurance premiums. Doctors are being forced to leave their practices, to stop performing high risks procedures and to drop vital services. Specialists are leaving certain areas or simply retiring. Women suffer the most. One out of 10 OB/GYNs no longer delivers babies because of the high cost of liability insurance. In addition, emergency departments are losing staff and scaling back certain services. This can literally be a life or death problem.

The problem is so severe that, according to the AMA, there is a crisis in 12 States where patient access to care is now seriously threatened. And there are 30 more States that are near crisis, including my home State of Tennessee.

Patients also suffer because of the large costs of defensive medicine. To avoid situations in which a contingency fee attorney can claim injury occurred because certain tests were not performed, doctors engage in "defensive medicine" by performing testes and prescribing medicines that are not necessary for health reasons. This costs our economy billions.

As a doctor I know this problem is real. I don't need to know all the facts and figures because I have heard from many of my colleagues from across the country who are concerned about their liability insurance. I have heard from many who are seriously considering leaving an area or dropping a service because of the liability problem. They don't want to leave or change their practice, but the are being forced to do so.

My colleagues are demanding action by Congress to address this crisis in order to help their patients and to continue to provide quality health care.

So we are we in this crisis? Why are malpractice premiums skyrocketing? Why is patient access in jeopardy? Why are trauma centers closing? Why are OB/GYNs refusing to deliver babies? Why are maternity wards shutting down?

The answer is simple—medical malpractice suits are out of control. Between 1995 and 2000 the average jury award jumped more than 70 percent to $3.5 million, and more than half of all jury awards today top $1 million. However, payouts aren't the only problem. Simply defending a malpractice claim costs on average over $20,000, whether or not a doctor or hospital is at fault.

Of course, this litigation is having a major impact on medical liability premiums. In 2001, physicians in many States saw rates raised by 30 percent or more and in some areas in some specialities, malpractice insurance is rising by as much as 300 percent per year. In New York and Florida obstetricians, gynecologists and surgeons pay more than $100,000 for $1 million in coverage. Soon, the annual premium which these doctors pay could reach $200,000. In my home State of Tennessee—a State that is not considered in crisis by th AMA—premiums rose 17.3 percent last year and are rising 15–17 percent this year.

It should be no surprise that these premium increases are causing this serious health care access problems across the country.

We know what must be done—intelligent and reasonable tort reform. Such reform will help solve this problem and, most importantly, help patients. Sensible reform will provide for fair and equitable compensation for those negligently injured and stabilize the insurance marketplace which will help maintain patients' access to quality health care.

Experience at the State level clearly shows the dramatic benefit of tort reform. California tort reform, the Medical Injury and Compensation Refom Act, or MICRA, which became law in the mid 1970s, is the most obvious example of what works. California doctors and patients have been spared the medical liability crisis that other States are facing. In fact, California currently has some of the lowest medical malpractice insurance premiums in the country.

This is why I strongly support this amendment offered by Senator MCCONNELL. Though this amendment does not include all the measures that I think are necessary to address this problem, it is a good step in the right direction. We know that sensible tort reform works. It holds down rising health care costs and helps maintain access to quality health care. We must act now to protect patients and their accessibility to quality health care before the problem gets worse.

I encourage my colleagues to vote for this important amendment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 4 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank my colleague for the time.

I listened to the Senator from Tennessee, who is also a physician, speaking a moment ago. All of us have heard the complaints of doctors, of individuals, with respect to premiums. One wishes we were fashioning a remedy to some of the problems within the medical system that fits. This is not a remedy that fits. This is, in fact, an excuse for people who have always tried to liberate malefactors of one kind or another from responsibility to the legal system through the normal court process that is part of our Constitution.

People don't like being sued—of course not—so they try to find a way, statutorily, to limit their liability for things that they do wrong. The fact is, this particular remedy is not going to deal with the problem, No. 1, and, No. 2, it unfairly double victimizes American citizens who are the victims of some kind of incident of malpractice or of medical error from being able to seek the appropriate redress for that and being able to keep the level of accountability in our system which only, today, is provided by that capacity to be able to bring suit.

In fact, in our Patients' Bill of Rights, we directly passed the right to sue nursing homes and HMOs, which Americans want, when they are unfairly treated. This amendment even reaches to undo that right which the Senate granted but which we have not yet, obviously, put into law.

The fact is, this is not a serious approach to the problem that our physician, Senator, fellow Member, has articulated. Yes, there are some high premiums, but the president of the American Tort Reform Association has been quoted as saying:

> We wouldn't tell you that the reason to pass tort reform would be to reduce insurance rates.

So the McConnell amendment will not result in lower premiums, which is what they are screaming about. In fact, California, which enacted medical malpractice tort reform in 1974, has malpractice premiums 19 percent higher than the national average. So why are medical malpractice insurance premiums rising? Let's look to what the Wall Street Journal tells us—not known for its liberal stance on tort reform. In a June article, they stated:

> Even doctors are beginning to acknowledge that the conventional focus on jury awards deflects attention from the insurance industry's behavior.

According to the International Risk Management Institute, the reason premiums are rising is because throughout the 1990s insurance companies cross-subsidized low premiums with profits from investments. This enabled them to lower the premiums to attract more policyholders. Now the economy has slowed and investment profits have dried up, and investing decisions, not tort claims, bear the responsibility for rising premiums.

Moreover, medical malpractice insurance costs, as a proportion of national health insurance care spending, amounts to less than 60 cents per $100 spent.

We should ask any American whether they are prepared to pay 60 cents of the cost of medical care of all the hundred dollars that are spent in order to know that, if something is done wrong to them, they have the right of redress.

Moreover, it is false to state that claims have "exploded" in the last decade. Closed claims, which include claims where no payout has been made, have remained constant, while paid claims have averaged just over $110,000. Meanwhile, this is the most important point——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. I yield an additional minute.

Mr. KERRY. Mr. President, incidents of medical errors are growing. Countless Americans risk serious injury because of mistakes made in hospitals and in other places. Medical errors occur all over the system. In hospitals alone, the Institute of Medicine has reported that between 44,000 and 98,000 Americans are killed by medical errors annually. Using the 44,000 figure, medical errors are the eighth leading cause of death in the United States, more than breast cancer and more than AIDS. So I think to take away from Americans the single available tool they have to try to make the system be accountable, in the absence of any other responsible effort, is wrong.

Using the 98,000 figure, medical errors would be the fifth-leading cause of death in this country.

As the IOM report puts it,

> These stunningly high rates of medical errors—resulting in deaths, permanent disability and unnecessary suffering are unacceptable in a medical system that promises first to do no harm.

Now, clearly, some medical errors are the direct result of physician negligence and many are not. But it is clear that we ought to think long and hard before placing an arbitrary cap on the financial value of human life.

Knowing that the McConnell amendment would have virtually no impact on insurance premiums, let's look at the merits of the legislation: The amendment before us is not simply about preventing excessive malpractice actions.

When the Senate flipped to Democratic control a little more than a year ago, the Senate finally passed a real Patients Bill of Rights. For the first time, the Senate sought to hold HMOs truly accountable for their actions. But this amendment would severely limit suits not only against standard medical malpractice actions, but also actions against HMOs and nursing homes. This amendment is extremely broad in scope and is directly opposite of the Senate's position on the Patients' Bill of Rights.

The amendment's restrictive statute of limitations are similarly misguided. The amendment reduces the amount of time a patient has to file a lawsuit to 2 years from the date the injury was discovered. So if someone contracts HIV through a negligent transfusion but learned of the disease 5 years after the transfusion, he or she would be barred from filing a claim. This statute of limitations would cut off claims for diseases with long incubation periods. Even shareholders, investors and others have 5 years under the just-enacted accounting reform bill.

This amendment would also punish injured patients who have prudently purchased insurance policies to protect themselves and their families. Senator McCONNELL would require a judge to reduce the amount of damage award by all collateral sources, such as life or disability insurance payments. So if you are thoughtful enough to purchase health care—a growing difficulty for too many Americans—you will be less likely to be compensated for someone else's negligence. This just does not make sense.

I know how difficult is for hospitals to find specialized doctors and nurses today. The Nation's shortage of nurses has reached crisis stage, and we do need to keep experienced health care professionals on the job. But this amendment will not help control malpractice premiums.

I am prepared to talk about reasonable ways to do this. In Massachusetts years ago we put in a screening system. There are many ways to approach this, but this is an arbitrary limit, which will be unfair to the average American and will not result in lowering premiums.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Kentucky.

Mr. McCONNELL. Mr. President, the pending amendment should be called a clients' bill of rights because it is designed not to in any way handicap the recovery of the victim, but to rearrange the relationship between the lawyer and the victim so the victim can get more of the money he or she justly deserves and to deal with the problem of runaway punitive damages—which are not for the purpose of rewarding the plaintiff anyway; they are for the purpose of punishing the defendant.

I was in Henderson, KY, which is right on the Ohio River, Friday night. There were four doctors at the meeting I attended. Every single one of them was on the verge of moving over to Indiana—it is very easy for them; they just go across the Ohio River—in order to escape this malpractice crisis which has afflicted, of course, my State of Kentucky. It hasn't afflicted Indiana because they have reasonable caps on recovery and have had for years.

The next day, on Saturday, I was in Morganfield, KY, and there were some people there who have a son who lives in Mississippi. The distinguished Republican leader was talking about the crisis in Mississippi. The son of one of the people in Morganfield is an obstetrician in Mississippi, getting ready to pack his bags and move to a State where they have dealt this issue.

Speaking of a State that has a crisis, there is no State that has a greater crisis than the State of Nevada, and our colleague from Nevada is here to discuss the crisis in Nevada. It is my understanding that there is a special session going on this very week.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Seventeen and one-half minutes.

Mr. McCONNELL. I yield 10 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the senior Senator from Kentucky for yielding time.

There is a serious crisis going on in the State of Nevada. We have heard here today that insurance rates are not going up. Let me tell you that they are dramatically going up in Nevada, and it is because jury awards are out of control.

About one-half of the doctors in southern Nevada have their homes up for sale because they cannot afford increased medical liability premiums. Whether these are OB/GYNs or neurosurgeons or orthopedic surgeons, many of the specialists are taking their practices and moving them to States that have enacted tort reform and/or medical liability reform measures that are similar to the McConnell amendment we are considering here today.

In my State right now, obstetricians are telling pregnant mothers in late stages of pregnancy they will not deliver their babies. We are the fastest growing county—Clark County—in America. Yet these obstetricians are saying they are not taking any new patients. OBs are saying they will not take any new patients because they cannot afford to, and those are the ones who are staying in town. Unfortunately, many of them are leaving.

Let me give you an example. There is a couple who are both OB/GYNs who practice together. In fact, they delivered my wife's and my three children. They have already been in several meetings to move their practice to either northern or southern California where their medical liability insurance rates would be about one-fifth of what they would pay in the State of Nevada.

On July 3, our only level 1 trauma center closed for 10 days. This trauma center services four States. If someone has a serious accident and has severe trauma, this is where they would get the kind of care necessary for saving their life. The reason it is closed was, once again, was because doctors were afraid they would not be able to get the kind of insurance coverage they needed and they would lose everything they worked for their whole life if they were sued. The only reason it was reopened was because they were afforded insurance coverage that included a $50,000 cap on damages. They were told—If you practice here, and there happens to be some kind of a malpractice, we will cap the jury award at $50,000.

Now, there are no such caps in the McConnell amendment we are discussing. However, I believe very strongly in caps on non-economic damages. I wish they were part of this amendment.

As a matter of fact, yesterday Nevada's Governor proposed and laid out a compromise with Republican and Democrat legislators in which there would be a $350,000 cap on jury awards for non-economic damages. You would be able to recover, through economic damages, everything you would have ever earned and expenses you incurred for medical bills. But on non-economic damages there would be a $350,000 cap, except in cases where treatment was received at the trauma center—that would be kept it at a $50,000 cap. They did this because they know that it is the only way they can keep the trauma center open.

In any case, there are several other provisions in the McConnell amendment that are very important. This idea of joint and several liability was mentioned. The Senator from Massachusetts talked about this; that it is important to keep joint liability so the patient would be able to get the whole award.

Now let me tell you what this really means. If you are practicing in a trauma center, and if you are responsible for 1 percent of the medical malpractice that happened in a particular case, you can be held responsible for 100 percent of the jury award.

Is that fair? That isn't fair.

That is also one of the reasons rates continue to go up across the country.

Neurosurgeons are leaving our State. This isn't about trial lawyers versus doctors. This is about availability of doctors. This is about whether we are going to have people such as Senator BILL FRIST—a very talented heart surgeon—continue to go into the practice of medicine and who want to save lives. We have people who are not only leaving our State, but who are just retiring their practices early because of this crisis.

One of the best surgeons in Las Vegas—a gastrointestinal surgeon—was planning on retiring in 1 year. He actually retired this year because had he stayed in the practice an additional year, he would not have only had to pay $200,000 for insurance this year, but he would have faced what is called "tail coverage". Tail coverage is what a doctor pays when they quit practicing or change insurance companies in order to cover any claims which might arise from when they were covered under the previous company or while they were still practicing. He would have had to pay another $400,000 just for tail insurance. He makes about $200,000 a year. So, it would have cost him $600,000 to practice while he would have only earned $200,000 for the year. It was obviously ridiculous to stay in business, so he quit practicing.

Las Vegas and southern Nevada lost one of their best surgeons because of early retirement, leaving even more patients without the services of a highly-trained, highly respected physician. That kind of situation is indicative of how badly broken the system is.

Let me briefly mention just one of the abuses in our civil justice system and how that contributes to the overall problem we are having in runaway jury verdicts. If you are accused of medical malpractice you are brought into the courtroom, at which time the case is laid out. At some point during the case, "expert" witnesses are called to testify. I put "expert" in quotations because many physicians can be brought in as an expert. Unfortunately, there are physicians who are now working in concert with trial lawyers, and it is really their business to become expert witnesses even though they are not experts. Not to impugn their motives, but certainly this happens, and many times the abuse is blatantly outrageous. Yet the jury hears from the supposed "experts," and in main part of that testimony, medical malpractice is found by the jury.

This illustrates what is happening in States and cities all across the United States. It is a system that is prejudiced toward finding malpractice. While the McConnell amendment does not specifically address this issue, it does help bring some accountability and feasibility back to our civil justice system.

I am a veterinarian, and I have worked in the health care profession for some time. Anybody who has worked in health care understands human error. Do you know why? It is because we are humans who practice. And anytime you have human beings practicing a profession, you are going to have errors—sometimes errors that can't be helped. There are some very sad cases, and we want to ensure those people continue to be able to have a remedy. But, outside of providing appropriate compensation, our system of secondary recovery it is out of control. The system needs to be brought back into balance.

The bottom line is when you have human beings, there are errors. However, we must remember that often times those errors are not malpractice. The physician did not intend to hurt his or her patient. But more often than not, it can appear as malpractice to a jury. We need to make sure that we have a system in place that most justly adjudicates each and every case on its merits, and fairly places culpability where it should be placed.

Under the current system, juries are out of control with awards that we are all paying for. Medicare costs and private insurance premiums are higher, and they keep going up every year. There are several factors that contribute to this rise in costs, but none more than the excessive, unfounded awards given out by juries on a seemingly regular basis.

Mr. KENNEDY. Mr. President, will the Senator yield for a question?

Mr. ENSIGN. Mr. President, let me finish my statement, and then I would be happy to yield.

In the State of Nevada last year, the average OB/GYN made about $200,000. Now, taking into consideration that figure, their insurance rates went from about $35,000 a year to about $130,000 a year. We can't pass that cost on anymore. That means basically every OB/GYN in southern Nevada is going to have to either see double the number of patients they are seeing now or just quit practicing altogether.

There is a huge incentive for these doctors to go to California where their rates will not only not go up, but they will actually go down from what they were the previous year.

I keep mentioning California because California enacted the Medical Injury Compensation Recovery Act (MICRA). MICRA has all the reforms that are in Senator McCONNELL's amendment—plus they have the $250,000 cap on noneconomic damages.

MICRA has been challenged in the courts four times. It has been upheld four times. It is not that people in the State of California do not receive injury awards. It isn't that the people in California are disadvantaged in some way so the patients don't get what they need.

There was a situation in 1975 that California recognized as a crisis. Because of court challenges, the bill didn't actually take effect until 1985. But since that time, they have had a stable situation where insurance companies know approximately what is going to happen and know how much their costs are going to be. Consequently, their rates have stabilized.

There are about 12 States right now, according to the American Medical Association, that are in crisis, Nevada being the worst of all.

Because of this crisis, Nevada's Governor had to call a special legislative session. Now, we only meet every 2 years in our legislature. Therefore, he had to call a special session just to deal with this severe crisis that is going on right now.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ENSIGN. Let's enact this amendment to bring about some reasonable reforms to our medical liability system in the United States.

There is a crisis happening right now in my home State of Nevada. Obstetricians are telling pregnant mothers in late stages of their pregnancy that they can't deliver their babies.

On July 3, our only Level One trauma center closed for ten days, leaving victims of car accidents and gun shot wounds without appropriate care. Officials are saying it will probably have to close again.

Neurosurgeons are canceling operations with patients who have spinal cord injuries that adversely affect every second of their daily lives.

In fact, as I talk to you right now, the Nevada Legislature has been forced to meet in a special session with Governor Kenny Guinn to address this crisis.

What is the common thread between these events? It lies in the fact that all of these health care providers are unable to afford the skyrocketing cost of their medical malpractice insurance.

So, if this is a Nevada problem, then why would I bring this issue to the floor of the United States Senate?

Because it is no longer just a Nevada problem; it is now a nationwide problem. President Bush recognized this fact last week when he called our medical liability system "badly broken," and emphasized the immediate need for Federal medical liability reform.

In order to illustrate this urgent need, let me give you some examples of what I am talking about:

In Bisbee, AZ, the only maternity ward has closed. Expectant mothers must now drive more than a half hour to the nearest town to deliver;

In Broward County, FL, 14 of the 16 practicing neurosurgeons are uninsured;

In Mississippi, 324 doctors have stopped delivering babies in the last decade. Today, only 10 percent of family doctors will deliver babies;

In Wheeling, WV, all of the neurosurgeons have stopped practicing. I could go on and on about a number of different States.

We have to examine why this current crisis is happening. What it boils down to is two factors: affordability and availability.

On affordability, let me give you a statistic from the American Medical Association. In 2000, medical liability insurance rates increased by at least 30 percent in 8 States, and by at least 25 percent in more than 12 States. I don't know too many physicians that can afford such rates. These rates are forcing more physicians, hospitals, and other health care providers to limit their practices or leave the profession altogether.

On availability, thousands of doctors nationwide have been left with no liability insurance as major liability insurers are either leaving the market or raising rates to astronomical levels.

Now, why are insurers raising rates and/or leaving the market? Because there is no stability in the marketplace for providing medical liability insurance.

Why is there no stability in the marketplace? Because our healthcare system is being overrun by frivolous lawsuits and outrageous jury awards.

Let me give you some statistics to illustrate these points. This information is according to the Physician Insurers Association of America's Data Sharing Project:

Since 1998, the average claim payment value has risen from approximately $130,000 in 1988 to $330,000 in 2001. Likewise, since 1988, the median claim payment values have risen from approximately $50,000 in 1988 to $175,000 in 2001.

In 1985, less than 1 percent of the claims that were paid were equal or greater than $1 million. Contrast that to 2001 when 7.9 percent of the claims paid were equal or greater than $1 million.

This excessive litigation is leading to higher health care costs for every American and an unstable piece of mind for our health care providers. To fend off litigation, healthcare professionals are forced to practice defensive medicine by ordering unnecessary tests just so that they will not be sued for "under-diagnosing" their patients.

A recent study by the Department of Health and Human Services found defensive medicine is costing the Federal Government an estimated $28 billion to $47 billion in unnecessary healthcare costs.

And who else pays for those unnecessary costs? Every American with health insurance, in the form of higher premiums. Gone are the days when our civil justice system was used to help protect patients. Now we are left with a system that is used to primarily fatten the wallets of personal injury attorneys.

More often than not, medical liability claims are more financially beneficial to the lawyers than they are to the injured and sick patients.

According to the Physician Insurers Association of America's Data Sharing Project, only fifty cents of every dollar paid in medical liability awards go to the patients. Only 50 cents.

Additionally, nearly 70 percent of all medical liability claims result in no payment to the plaintiff.

So what does all this mean? It means that we need to bring some accountability back to the civil justice system by way of medical liability reform.

Not only would this allow physicians to continue to concentrate fully on providing superior care to their patients, it would help tremendously in curbing the skyrocketing costs of healthcare for consumers.

In addition, and probably even more staggering, is the success rate of most medical liability claims. Consider this information:

In 2001, only 1.3 percent of all claims filed ended in a verdict for the plaintiff. In contrast, 61.1 percent were dropped or dismissed for various reasons.

These numbers highlight the significant amount of frivolous lawsuits that are filed, costing healthcare professionals valuable patient time, and ultimately costing every insured American millions in increased health care costs.

Medical liability reform is not something that is new to the Senate. During debate on the 1995 Product Liability Bill, the Senate considered and voted on medical liability reform proposals. In fact, one of those proposals is the exact amendment that we are considering here today.

This amendment takes a sincere and aggressive approach toward helping reign in our out of control civil justice system. It does so in the following ways: sensible limits on punitive damages; elimination of joint liability on most damages, making sure that defendants are only liable for their fair share; modest limits on attorney's fees in medical malpractice cases to maximize patient recovery; collateral source reform to prevent plaintiffs and attorneys from "double dipping" for compensation; alternative dispute resolution to encourage states to develop mechanisms to help resolve disputes before they go to court; and periodic payments for large awards.

Although I am strongly in favor of this proposal, I must mention that the one significant provision it is missing is a cap on non-economic damages. I believe this cap could only strengthen the proposal we are considering today. However, every other reform in this amendment has proven to be effective in bringing accountability back to the civil justice system.

This amendment was passed in 1995 on a vote of 53-47. Therefore, with the number of Senators who supported this proposal before, coupled with the number of senators whose States are facing a medical liability crisis, I think we have an excellent chance to pass this amendment. Just to highlight that point, a recent study conducted by Wirthlin Worldwide found that 78 percent of Americans express concern that skyrocketing medical liability costs resulting from the current system could limit their access to care. Clearly, the American public sees the crisis we care facing and are calling for nationwide reform. Americans are afraid they will not have anyone to deliver their babies or perform life-saving procedures on their loved ones in emergencies, and they should not have to be. If there are senators here today that are still not convinced about the need and overall effectiveness of medical liability reform, let me briefly explain how to put your doubts to rest.

Let's take a look at the wildly successful Medical Injury Compensation Reform Act (MICRA) of 1975 that California has in place. Now, I will concede that the amendment before us is not identical to MICRA, but it does incorporate all but one of the major provisions that MICRA contains.

To further explore the impact of MICRA, just look at the difference between how medical liability premiums have risen in California versus the rest of the United States. According to the National Association of Insurance Commissioners, from 1976 through 1999, California's insurance premiums has risen 167 percent, while the other 49 States' premiums have risen 505 percent.

Obviously, MICRA has brought about real reform in California's professional liability system, while still protecting the rights of injured patients. Studies have shown the following. The number of frivolous lawsuits going to trial has declined dramatically; injured patients receive a larger share of their awards; the number of disciplinary actions against incompetent health care providers has increased.

The bottom line is that California's medical liability system works. Shouldn't these types of outcomes be shared by every state, and ultimately every patient, in America?

Again, the amendment before us contains all but one of the major provisions that MICRA entails, so each senator has something to substantiate their vote. And let us remember one important point we are NOT limiting the amount of economic and non-economic damages that can be recovered by the patient.

All we are doing is bringing some accountability and reasonability back to our civil justice system in the form of common-sense reforms which I know will lead to lower health care costs for every American.

I know it is possible to pass these types of reform measures through the Houses of Congress, because while I was a member of the House of Representatives we passed some type of medical liability reform measure six times. Unfortunately, each time it was stalled in the Senate and real reform was never enacted.

But the next time around I am hopeful that it will be different. And there is no better time than now for the Senate to make a strong statement on behalf of American patients.

Let's make sure there are no more expectant mothers turned away at the door and refused pre-natal care.

Let's make sure trauma patients receive immediate and appropriate medical services.

And, let's make sure that we continue to provide patients everywhere the opportunity to receive affordable, accessible, and quality health care for years to come.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 6 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, let me address what I consider to be the real issue, really the only issue, as far as I am concerned. It is not who the bad guys are and who the good guys are. I have seen excesses on both sides of this issue. It is not a matter of what is best for the trial lawyers or best for the insurance companies or even what is best for the patients. It is a question of whether we have a limited form of government, whether we have a Federal Government with enumerated powers. That is the underlying issue. It is amazing to me that we can have a debate on something such as this without it even being brought up.

What we have is an amendment which will take things that have been under the purview of the State governments for 200 years and federalize them. This is getting to be such a common occurrence that nobody pays much attention to it anymore. I pay attention to it. I think it is a bad trend. I think it goes against the system of government that our Founding Fathers set up and has worked in our favor for 200 years.

Mr. REID. Will the Senator yield for a brief question?

Mr. THOMPSON. Yes.

Mr. REID. Is the Senator aware that the State of Nevada is in a special session to work out malpractice problems, and does the Senator believe that is the way we should go?

Mr. THOMPSON. The answer to that question is yes. I am amazed to hear that we have a problem in a particular State and that the solution is for the citizens of the small town in that State maybe to drive past the courthouse and drive through the capital, past the statehouse, and get on an airplane and fly to Washington, DC, to talk about a Federal solution against their own State.

Tennessee just had a discussion about a State income tax and a State sales tax. One of the points made against a higher State sales tax was that the State of Kentucky and the State of Mississippi and the State of Arkansas, all these other surrounding States, had a lower sales tax and people would go to those States to buy their goods, just as apparently people are going from one State to another to take advantage of a better medical malpractice case.

The answer to that is, that is the way it is supposed to work. That is our system of government. That is the reason we have States, to have competition among States. If we extend the commerce clause to this, after having been told by the Supreme Court in the Lopez case that the commerce clause does not extend to guns in the local school, after having been told in the Morrison case by the Supreme Court that the commerce clause does not extend to a sex-based crime at a local level—if we extend the commerce clause to the delivery of a baby in Lawrenceburg, TN, there is nothing to which we cannot extend the commerce clause. I regret to say, it is some of us who talk about limited government and enumerated powers who are doing this. I do not think it is sound policy.

It does not matter whether or not there are excesses on one side or another. States are supposed to address these matters. I would not come here and say the State of Tennessee is inadequate in this regard unless I was willing to go back to the State of Tennessee and fight for a change in the laws. Senator KENNEDY and I, are we supposed to write the laws for the State of Tennessee with regard to something that has been under their purview for 200 years? I don't think so.

We can disagree on what those laws should be, but we cannot disagree, surely, on the principle that underlies this debate. The proposed amendment goes so far as to require that each State require 50 percent of all punitive damage awards be used for licensing, investigating, disciplining, and certifying health care professionals and the reduction of malpractice costs for the health care professional volunteers.

This requirement would get us into the management of the licensing and regulation of health care professionals in every State in this country. This is just one step away from national standards and national regulation, not just in the health care area but potentially in any other area.

Regardless of whether you think medical malpractice premiums are too high or lawyers are terrible people, or whatever, if we walk away at this time from this principle, when we want to assert this principle, we are not going to have any principles to stand on because we will have ignored them so often for the particular causes we want at the moment that they will be totally eroded. I submit to the Chamber that is too high a price to pay.

I yield back whatever time remains.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I listened carefully to the Senator from Tennessee. I commend him for being very consistent in his concern about federalism and States rights. He has raised that issue not just on the occasion of today's amendment but across the board. He has certainly been consistent. I do find it somewhat amusing to hear it invoked from time to time by those on the other side of the aisle for whom States rights are rarely a concern.

Let me say to my good friend from Tennessee, he raises exactly the point I wanted to address in my remaining time this morning. This is a national crisis, a national crisis in the delivery of medical services. This is a national problem, and it demands a national solution. States all across the country—in the West, the South, the Midwest, and the East—are in crisis. Many more States are experiencing serious problems, including my own State of Kentucky. Because it is a national problem, it demands a national solution. Furthermore, it is necessary and appropriate for the Federal Government to be involved in fixing this problem.

Let me give you my first reason. As the single largest purchaser of health care, the Federal Government has a compelling interest in health care liability reform. In 2002, the Federal Government will spend $223 billion on Medicare, $145 billion more on Medicaid, and $11.3 billion more on Federal employee health benefits. That is a total of $400 billion by the Federal Government on health care.

Furthermore, a 1996 study by Stanford economists projected that commonsense medical malpractice reforms, many of which are included in my amendment, could reduce health care costs by 5 to 9 percent without jeopardizing the quality of care. Using this study, the Department of Health and Human Services projects that reducing the practice of defensive medicine could save the Federal taxpayers between $23 and $42 billion.

Finally, Federal legislation is necessary because of the increasingly interstate character of health care. I just mentioned, a few moments ago, the four physicians I saw Friday night in Henderson, KY, on the verge of moving to Indiana. That is fine for them. It doesn't do much for their patients who are left without care on the Kentucky side. Patients in the Washington, DC, area receive care not only here but in Maryland and Virginia. Many of the Nation's finest health care facilities—the Mayo Clinic and M.D. Anderson—treat patients from across the country.

While a Federal solution is necessary and appropriate, my amendment does not wholly preempt State medical malpractice reforms. The amendment would not preempt those States that have already developed strong medical malpractice laws.

This crisis has been created by the failure of the National Government to act. That has caused a problem. This crisis is due to the failure to impose accountability and responsibility—the same things we have been talking about around here the last few weeks with regard to corporate America—on big, powerful trial lawyers who are running roughshod over doctors and in many instances taking advantage of their own clients.

As a result of our failure to act, there has been an explosion in medical malpractice awards. Let us take a look at this chart which shows the explosion in medical malpractice awards from roughly $500,000 in 1995, up to $1 million in 2000.

Now, I gather my friends on the other side apparently think doctors have become twice as incompetent in the last few years or that medical schools are now turning out graduates who are inept. But I am inclined to believe that the medical professionals at the AMA and other health care organizations don't agree with that. The standard of care of physicians has not radically deteriorated in just the last few years. Rather, from looking at the problem, I believe the AMA and other health groups when they say it is our medical malpractice liability system, not our delivery system, that is badly broken.

The amendment I offer is a modest one. As I have said repeatedly, it doesn't in any way cap compensatory damages to the victim. It simply seeks to cap lawyer's fees so more money will go to the injured victim, and caps punitive damages, which are not designed to compensate the injured party in any event but to punish the defendant—cap that at twice the balance of the compensatory damages. So this doesn't take any funds that are needed to put the injured victim back on his or her feet. It simply addresses the issue of lawyer abuse and of excessive punitive damages, which are not designed to enrich the injured party in any event.

It is a very modest amendment. The AMA supports this amendment. They would have liked it to be much stronger, but I crafted this amendment in a very modest way in order to make it more palatable to more Senators. We have had a vote on this amendment before, back in 1995. At that point, it got 53 votes, including Senators FEINSTEIN, LIEBERMAN, and JEFFORDS, who are still in the Senate.

As I said, this is a pro-victim amendment. There is no cap on noneconomic pain and suffering damages, no cap on compensatory damages. There is simply a reasonable cap on lawyer's fees and a cap on punitive damages at twice the balance of the other damages.

So I think this is clearly a national problem requiring a national solution. I hope the amendment will be approved.

Mr. KENNEDY. Mr. President, I yield 1 minute to the Senator from Tennessee.

Mr. THOMPSON. Mr. President, just a very brief response. I think the logical extension of this amendment would mean if we could pass any large Federal program—as we have—such as Medicare, Social Security, and I guess our defense appropriations bills, and so forth, then we could take any activity, even noncommercial activity in the smallest hamlet of the smallest town in America, anything they would do that might arguably impact on the cost of those programs would be fair game under the spending clause.

If that is the case, that is not a direction in which we need to go. I would contrast what we are doing here with regard to delivery of a baby, let's say, in Lawrenceburg, TN, and the rules the State of Tennessee imposed upon that we would abrogate—I contrast that with a product liability debate we had. I voted for that bill. That is an inherently interstate commerce, commercial activity. I have concluded that there was a legitimate reason to have some national standards with regard to that. I think our Founding Fathers would have approved of that. I think it is a far cry from where we are with regard to this.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 1 minute 50 seconds.

Mr. KENNEDY. Mr. President, as I understand it, we will have a very brief time after the break. I point out that the National Association of Insurance Commissioners study shows that in 2000—the latest year for which data is available—the total insurance industry profits, as a per average premium for medical malpractice insurance, were twice as high as overall casualty and property insurance profits. In fact, malpractice insurance was a very lucrative area for the industry, averaging a 12 percent profit. Over a 10-year period, their premiums went up 1.9 percent, and they are making 12 percent on that.

This is about the insurance industry; it is not about the doctors. We will have more to say about this. This is a lucrative aspect of the insurance industry—everyone knows it—and they just want to cash in on this opportunity at the present time.

Mr. President, I see our leader on his feet at this time in anticipation of a consent agreement, so I withhold further comments.

Mr. REID. Mr. President, I ask unanimous consent that the time from 2:15 p.m. this afternoon until 2:45 p.m. be equally divided between Senators KENNEDY and MCCONNELL or their designees and that at 2:45 p.m. Senator REID of Nevada or his designee be recognized to move to table Senator MCCONNELL's amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The hour of 12:55 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 12:55 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CARNAHAN).

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

AMENDMENT NO. 4326

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. Madam President, it is my understanding that I have 15 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCONNELL. Madam President, I yield 5 minutes to the Senator from Tennessee who, as we all know, is the only physician in the Senate.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. I thank the Chair.

Madam President, I rise in support of the McConnell amendment on medical malpractice to the Greater Access to Affordable Pharmaceuticals Act. It goes to the heart, I believe, of an issue that has reached crisis proportions in the United States.

Much of the argument and debate on Friday and a little bit yesterday and today centered on how best to frame this debate. Our opponents to the McConnell amendment have tried to frame this as a debate focused on corrupt insurance companies and HMOs.

What is absolutely critical for my colleagues and the American people to understand is that this debate is not about insurance companies. This debate is about patients, patients who are suffering today and, even more important, unless we act on this crisis, will be hurt in the future.

It is about patients versus skyrocketing medical liability insurance premiums that, in large part, are driven by the current medical liability system. This amendment strikes right at the heart of that problem.

Why is this debate important? I go back to patients. How do patients suffer because of these skyrocketing insurance premiums? They suffer in two ways: No. 1, lack of access to health care. If in the future you are a patient, you will see a decrease in access when you want to go to a physician, such as an obstetrician or a neurosurgeon or an orthopedic surgeon. They have all seen these skyrocketing premiums, and these doctors are not going to be there. Why? Because they happen to live in Mississippi where their premiums are $50,000 or $100,000 or in Florida where an obstetrician premium might be $150,000 or $200,000. They might decide, A, to pack it up and leave and go to another State or, B, to stop practicing or, C—and this is what we see happening all over the country—to stop delivering babies. If your doctor delivered your first baby and you want him to deliver your second baby, you had better call far in advance. Because of these skyrocketing premiums, many physicians are leaving that specialty.

In addition we saw what happened in Nevada where the trauma surgeons basically said, we cannot stay in business, we cannot keep delivering these services, because malpractice premiums are too high. They were actually forced to close down shop for a period of time. Thank goodness it was just for a few days.

I mention the impact on doctors because this is important. For example, if one is an obstetrician and he pays $200,000 a year for his insurance premiums, as in Florida, and he delivers 100 babies, which is the average for an obstetrician in Florida delivers, that means for every baby the doctor delivers there is a $2,000 tax or premium.

Now, one might say that this is the worry of the doctor. Well, the doctor can leave. He can switch specialities. He can relocate or retire, early retirement, none of which is very satisfactory. But if a doctor is going to stay in practice, ultimately the doctor is going to pass the cost on to the patient. Who else will pay it? It has to be passed on to the patient.

Americans are watching this debate and they hear the ranting and raving against the bad insurance companies. Let's go back to the effect of the problem, which is on that individual patient. Then let's look at the root cause, which is this runaway tort liability system, which this amendment takes the first step at fixing.

Patients are hurting in two ways. First, they suffer from a lack of access to care. Specialist are leaving areas, and doctors are refusing to deliver babies.

The second way patients suffer is the overall cost of defensive medicine. Ask your physician right now: Do you practice defensive medicine? According to a recent Harris poll, 76 percent, or three-fourths, of physicians believe concern for medical liability litigation has hurt their ability to provide quality care in recent years. Eighty percent of physicians say they ordered more tests than they thought were medically necessary because they worried about malpractice liability. It is called defensive medicine. It is something the consumer does not see, the patient does not see, but America pays for it. How much? Fifteen, 20, 30, 40, 50—about $50 billion.

I close by stating my strong support for the McConnell amendment and look forward to continued debate during the course of this afternoon.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield 7 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from Massachusetts for yielding the time.

I readily acknowledge the expertise of Senator FRIST. He is a widely respected heart surgeon. He certainly is a man who understands the practice of medicine, unlike anyone else in the Senate. I do not come as an expert on the practice of medicine. If I have any expertise, it is in trial practice because before I was elected to Congress, I was a trial attorney. I made my living defending doctors and hospitals, and suing doctors and hospitals. I understood medical malpractice then, but as I read this amendment I am troubled.

Let me acknowledge first, yes, there is a national problem with medical malpractice insurance across America. It costs too much in many areas, and we are finding that in many parts of the country doctors cannot afford to continue to practice because of the cost of premiums. But the answer from Senator MCCONNELL on the Republican side is to suggest that the reason the premiums are so high is because of jury verdicts.

They overlook the obvious. Let me point to a source of information not considered liberal in nature, the Wall Street Journal, which on June 24 of this year published an article. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 24, 2002]

DELIVERING MS. KLINE'S BABY

(By Rachel Zimmerman and Christopher Oster)

As medical-malpractice premiums skyrocket in about a dozen states across the country, obstetricians and doctors in other risky specialties, such as neurosurgery, are moving, quitting or retiring. Insurers and many doctors blame the problem on rising jury awards in liability lawsuits.

"The real sickness is people sue at the drop of a hat, judgments are going up and up and up, and the people getting rich out of this are the plaintiffs' attorneys," says David Golden of the National Association of Independent Insurers, a trade group. The American Medical Association says Florida, Nevada, New York, Pennsylvania and eight other states face a "crisis" because "the legal system produces multimillion-dollar jury awards on a regular basis."

But while malpractice litigation has a big effect on premiums, insurers' pricing and accounting practices have played an equally important role. Following a cycle that recurs in many parts of the business, a price war that began in the early 1990s led insurers to sell malpractice coverage to obstetrician-gynecologists at rates that proved inadequate to cover claims.

Some of these carriers had rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was. A decade of short-sighted price slashing led to industry losses of nearly $3 billion last year.

"I don't like to hear insurance-company executives say it's the tort [injury-law] system—it's self inflicted," says Donald J. Zuk, chief executive of Scpie Holdings Inc., a leading malpractice insurer in California.

What's more, the litigation statistics most insurers trumpet are incomplete. The statistics come from Jury Verdict Research, a Horsham, Pa., information service, which reports that since 1994, jury awards for medical-malpractice cases have jumped 175 percent, to a median of $1 million in 2000. During that seven-year period, the median award for negligence in childbirth was $2,050,000—the highest for all types of medical-malpractice cases, Jury Verdict Research says. (In any group of figures, half fall above the median, and half fall below.)

But Jury Verdict Research says its 2,951-case malpractice database has large gaps. It collects award information unsystematically, and it can't say how many cases it misses. It says it can't calculate the percentage change in the median for childbirth-negligence cases. More important, the database excludes trial victories by doctors and hospitals—verdicts that are worth zero dollars. That's a lot to ignore. Doctors and hospitals win about 62 percent of the time, Jury Verdict Research says. A separate database on settlements is less comprehensive.

A spokesman for Jury Verdict Research, Gary Bagin, confirms these and other holes in its statistics. He says the numbers nevertheless accurately reflect trends. The company, which sells its data to all comers, has reported jury information this way since 1961. "If we changed now, people looking back historically couldn't compare apples to apples," Mr. Bagin says.

Some doctors are beginning to acknowledge that the conventional focus on jury awards deflects attention from the insurance industry's behavior. The American College of Obstetricians and Gynecologists for the first time is conceding that carrier's business practice have contributed to the current problem, says Alice Kirkman, a spokeswoman for the professional group. "We are admitting it's a much more complex problem that we have previously talked about," she says.

The upshot is beyond dispute: Pregnant women across the country are scrambling for medical attention. Kimberly Maugaotega of Las Vegas is 13 weeks pregnant and hasn't seen an obstetrician. When she learned she was expecting, the 33-year-old mother of two called the doctor who delivered her second child but was told he wasn't taking any new pregnant patients. Dr. Shelby Wilbourn plans to leave Nevada because of soring medical-malpractice insurance rates there. Ms. Maugaotega says she called 28 obstetricians but couldn't find one who would take her.

Frustrated, she called the office of Nevada Gov. Kenny Guinn. A staff member gave her yet another name. She made an appointment to see that doctor today but says she is skeptical about the quality of care she will receive.

In the Las Vegas area, doctors say some 90 obstetricians have stopped accepting new patients since St. Paul Cos., formerly the country's leading provider of malpractice coverage, quit the business in December. St. Paul had insured more than half of Nevada's 240 obstetricians. Carriers still offering coverage in the state have raised rates by 100 percent to 400 percent, physicians say.

Dr. Wilbourn says his annual malpractice premium was due to jump to $108,000 next month, from $33,000. The 41-year-old solo practitioner says the increase would come straight out of his take-home pay of between $150,000 and $200,000 a year. In response, he is moving to Maine this summer.

Dr. Wilbourn mourns having "to pick up and leave the patients I cared for and the practice I built up over 12 years." But in Maine, he has found a $200,000-a-year position with an insurance premium of only $9,800 for the first year, although the rate rises significantly after that. Premiums in Maine are relatively low because a dominant doctor-owned insurance cooperative there hasn't pushed to maximize rates, the heavily rural population isn't notably litigious and its court system employs an expert panel to screen out some suits, says Insurance Commissioner Alessandro Iuppa.

Until the 1970s, few doctors faced big-dollar suits. Malpractice coverage was a small specialty. As courts expanded liability rules, malpractice suits became more common. Dozens of doctor-owned insurance cooperatives, or "bedpan mutuals," formed in response. Most stuck to their home states.

St. Paul, a mid-sized national carrier named for its base in Minnesota, saw an opportunity. An insurer of Main Street businesses, St. Paul became the leader in the malpractice field. By 1985, it had a 20 percent share of the national market. Overall, the company had revenue of $8.9 billion last year, with about 10 percent of its premium dollars coming from malpractice coverage.

The frequency and size of doctors' malpractice claims rose steadily in the early 1980s, industry officials say. St. Paul and its competitors raised rates sharply during the 1980s.

Expecting malpractice awards to continue rising rapidly, St. Paul increased its reserves. But the company miscalculated, says Kevin Rehnberg, a senior vice president. Claim frequency and size leveled off in the late 1980s, as more than 30 states enacted curbs on malpractice awards, Mr. Rehnberg says. The industry's rate increases turned malpractice insurance into a very lucrative specialty.

A standard industry accounting device used by St. Paul and, on a smaller scale, by its rivals, made the field look even more attractive. Realizing that it had set aside too much money for malpractice claims, St. Paul "released" $1.1 billion in reserves between 1992 and 1997. The money flowed through its income statement and boosted its bottom line.

St. Paul stated clearly in its annual reports that excess reserves had enlarged its net income. But that part of the message didn't get through to some insurers—especially bedpan mutuals—dazzled by St. Paul's bottom line, according to industry officials.

In the 1990s, some bedpan mutuals began competing for business beyond their original territories. New Jersey's Medical Inter-Insurance Exchange, California's Southern California Physicians Insurance Exchange (now known as Scpie Holdings), and Pennsylvania Hospital Insurance Co., or Phico, fanned out across the country. Some publicly traded insurers also jumped into the business.

With St. Paul seeming to offer a model for big, quick profits, "no one wanted to sit still in their own backyard," says Scpie's Mr. Zuk. "The boards of directors said, 'We've got go grow.'" Scpie expanded into Connecticut, Florida and Texas, among other states, starting in 1997.

As they entered new areas, smaller carriers often tried to attract customers by undercutting St. Paul. The price slashing became contagious, and premiums fell in many states. The mutuals "went in and aggravated the situation by saying, 'Look at all the money St. Paul is making,'" says Tom Gose, President of MAG Mutual Insurance Co., which operates mainly in Georgia. "They came in late to the dance and undercut everyone."

The newer competitors soon discovered, however, that "the so-called profitability of the '90s was the result of those years in the mid-80s when the actuaries were predicting the terrible trends," says Donald J. Fager, president of Medical Liability Mutual Insurance Co., a bedpan mutual started in 1975 in New York. Except for two mergers in the past two years, his company mostly has held to its original single-state focus.

The competition intensified, even though some insurers "knew rates were inadequate from 1995 to 2000" to cover malpractice claims says Bob Sanders, an actuary with Milliman USA, a Seattle consultancy serving insurance companies.

In at least one case, aggressive pricing allegedly crossed the line into fraud. Pennsylvania regulators last year filed a civil suit in state court in Harrisburg against certain executives and board members of Phico. The state alleges the defendants misled the company's board on the adequacy of Phico's premium rates and funds set aside to pay claims. On the way to becoming the nation's seventh-largest malpractice insurer, the company had suffered mounting losses on policies for medical offices and nursing homes as far away as Miami.

Pennsylvania regulators took over Phico last August. The company filed for bankruptcy-court protection from its creditors in December. A trial date hasn't been set for the state fraud suit. Phico executives and directors have denied wrongdoing.

In the late 1990s, the size of payouts for malpractice awards increased, carriers say. By 2000, many companies were losing money on malpractice coverage. Industrywide, carriers paid out $1.36 in claims and expenses for every premium dollar they collected, says Mr. Golden, the trade-group official.

The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Some bedpan mutuals went home. Scpie stopped writing coverage in any state over than California. "We lost money, and we retreated," says the company's Mr. Zuk.

New Jersey's Medical Inter-Insurance Exchange, now known as MIIX, had expanded into 24 states by the time it had a loss of $164 million in the fourth quarter of 2001. The company says it is now refusing to renew policies for 7,000 physicians outside of New Jersey. It plans to reformulate as a new company operating only in that state.

St. Paul's malpractice business sank into the red. Last December, newly hired Chief Executive Jay Fishman, a former Citigroup Inc. executive, announced the company would drop the coverage line. St. Paul reported a $980 million loss on the business for 2001.

As carriers retrench, competition has slumped and prices in some states have shot up. Lauren Kline, 6½ months pregnant, changed obstetricians when her long-time Philadelphia doctor moved out of state because of rate increases. Now, her new doctor, Robert Friedman, may have to give up delivering babies at his suburban Philadelphia practice. His insurance expires at the end of the month, and he says he is having difficulty finding a carrier that will sell him a policy at any price.

Last year, Dr. Friedman says he paid $50,000 for coverage. If he gets a policy for next year, it will cost $90,000, he predicts, based on his broker's estimate. "I can't pass a single bit of that off to my patients," because managed-care companies don't allow it, he says.

Dr. Friedman says he is considering dropping the obstetrics part of his practice. Generally, delivering babies is seen as posing greater risks than most gynecological treatment. As a result, insurers offer less-expensive policies to doctors who don't do deliveries.

Mr. Golden of the insurers' association argues that whatever role industry practices may play, the current turmoil stems from lawsuits. The association says that from 1995 through 2000, total industry payouts to cover losses and legal expenses jumped 52 percent, to $6.9 billion. "That says there are more really huge verdicts." Mr. Golden says. Even in the majority of cases in which doctors and hospitals win—the zero-dollar verdicts—there are still legal expenses that insurers have to pick up, he adds.

Industry critics point to different sets for statistics. Bob Hunter, director for insurance at Consumer Federation of America, an advocacy group in Washington, prefers numbers generated by A.M. Best Co. The insurance-rating agency estimates that once all malpractice claims from 1991 through 2000 are resolved—which will take until about 2010—the average payout per claim will have risen 47 percent, to $42,473. That projection includes legal expenses and suits in which doctors or hospitals prevail.

While the statistical debate rages, pregnant women adjust to new limits and inconveniences. Kelly Biesecker, 35, spent many extra hours on the highway this spring, driving from her home in Villanova, Pa., to Delran, N.J., so she could continue to use her obstetrician. Dr. Richard Krauss says he moved the obstetrics part of his practice from Philadelphia because malpractice rates had skyrocketed in Pennsylvania. Ms. Biesecter, who gave birth to a healthy boy on June 5, says Dr. Krauss was the doctor she trusted to guard her health and the health of her baby: "You stick with that guy no matter what the distance."

Dr. Krauss, 53, left Philadelphia last year only after his malpractice premium rose to $54,000, from $38,000, and then was cancelled by a carrier getting out of the business, he says. After getting quotes of about $80,000 on a new policy, he moved. New Jersey hasn't been a panacea, however. His policy there expires July 1, and the carrier refuses to renew it. The doctor says he hopes to go to work for a hospital that will pay for his coverage.

Mr. DURBIN. The article points out the reason the premiums are rising so high is because the insurance companies miscalculated. They went into the business without adequate reserves. They have seen their investments plummet, as everyone else has on Wall Street, and they are trying to make it up with new malpractice insurance premiums at the highest possible levels. So, instead of blaming the juries that find a doctor or hospital at fault, let us also take into account the insurance companies' economic and accounting problems which have led to this crisis today.

Let's look specifically at this amendment. Senator McCONNELL is consistent. When we brought up the bill about corporate corruption, he offered an amendment relating to trial lawyers. He believes that trial lawyers are the root of all evil. That amendment did not pass.

Now we come to a bill involving the cost of prescription drugs. Senator McCONNELL returns with another amendment related to trial lawyers.

It is said that if the only tool you own is a hammer, every problem looks like a nail. It appears that when it comes to the issues in the Senate, for some Senators the answer to every problem is to go after the trial lawyers.

I suggest that when we take a look at the McConnell amendment, there are at least four areas that should be troubling to everyone following this debate. First, Senator McCONNELL limits the period of time when someone can discover an injury or act of malpractice and bring a lawsuit. If they wait too long, they lose their chance to go to court. That is something we ought to think about long and hard.

Secondly, Senator McCONNELL says that once someone has discovered that they have an injury caused by a doctor or a hospital and go to find an attorney, he limits in this amendment the amount of money that an attorney can receive for a contingency fee. A contingency fee is the poor man's ticket to the courthouse. If an injured victim is not a millionaire, the only way that an attorney will take a complicated medical malpractice case is for a percentage of what they ultimately recover. If they recover zero, they are paid zero. But if they recover a substantial amount, they receive a percentage. Senator McCONNELL wants to limit the contingency fee to limit the number of attorneys who will take these cases to court.

The third issue is this: Senator McCONNELL creates a new tax on punitive damages. What he says is, if someone has done something so outrageous or deliberate, with conscious malice and disregard, that a jury would impose punitive damages on that doctor or hospital—and I can give a litany of possibilities—Senator McCONNELL says, sorry, the Government is going to take away half of the punitive damages verdict; albeit, for good reasons. But nevertheless, this is a new tax created by Senator McCONNELL on a jury verdict.

Finally, what the Senator says in this bill is, if one had the foresight to buy medical or life insurance, for example, to cover their health or life, and they are injured or killed because of medical malpractice, any jury verdict will be reduced by the amount of the insurance payment that one happens to receive from the policy they took out on their own life. These people invest in insurance and pay for it over a lifetime. But the amendment would take away part of that amount from a jury award. Those four things are fundamentally unfair.

We have talked in the corporate corruption debate about accountability. We have said corporate officials should be held accountable for their conduct. The same is true of people in the practice of medicine. They should be held accountable, too. If they are guilty of wrongdoing, injuring innocent people, then they should be held accountable.

Unfortunately, the McConnell amendment goes too far and takes away accountability. It is certainly the type of an amendment which insurance companies are happy to see. It reduces their ultimate exposure, but what it does is close and limit the courthouse doors for ordinary people who have become victims.

To give one illustration from my State: A young woman in April of 1989 went into a hospital for treatment for breast cancer. The doctor inserted a 16 centimeter-long catheter in her vein in her upper chest. After her chemotherapy was completed, the catheter was supposed to be removed. In July of the following year, the doctor removed the catheter, but he did not take it all. In December 1991, over 2 years after her initial treatment, she went in for an X-ray and discovered that 9 centimeters of this catheter was lodged in her heart, causing pain, causing her discomfort all of the time.

Ultimately, the doctors decided it was too risky to engage in surgery to remove the fragment, and so they decided to let the catheter piece remain lodged inside her heart. She will live with that foreign object inside her for as long as she lives. The doctor's mistake will be a pain that she feels every moment for the rest of her life.

Under Senator McCONNELL's amendment, there is a serious question as to whether or not she could have ever brought the lawsuit. Did she wait too long? It took more than 2 years to discover this situation. She would have to fight, under the McConnell amendment, to prove that this was a reasonable amount of time, that the pain should not have alerted her sooner.

Secondly, the amendment limits the attorney's fees. If this woman goes to consult an attorney and says, "I am in pain; the doctor did something wrong; I have the X-ray," Senator McCONNELL would say her attorney cannot be paid more than a limited amount on contingency fees to go to the courthouse. Is that reasonable?

Fortunately, those provisions in the McConnell amendment did not apply and this lady went to court. She ultimately was awarded $1.5 million for pain and suffering, and an additional $500,000 for the increased risk of future injury.

Sadly, there are cases such as this that happen every day in America. The vast majority of doctors in our Nation are conscientious, hard-working, wonderful people, but mistakes are made. Sometimes they are tragic, sometimes they show gross negligence, and sometimes they are intentional, such as the removal of the wrong kidney when they leave a cancerous kidney in a person and remove the wrong one. What Senator McCONNELL is saying is that person who has been aggrieved and injured would be limited in their opportunity to recover.

I urge my colleagues to oppose this amendment.

Mr. LIEBERMAN. Mr. President, I rise to address the pending McConnell medical malpractice amendment. I have long agreed with my colleague from Kentucky that our legal system needs reforming, and I have joined him in supporting a bill in many ways similar to this amendment in the past. But I cannot support him today, because I do not believe that this prescription drug debate is either the right time or the right place to address the medical malpractice issue.

The Senate has been debating the critical and urgent issue of how to provide seniors with prescription drug coverage for 2 weeks. As my colleagues know, we are having a very hard time finding common ground on the issue. The last thing we need now is to inject into this debate a highly controversial issue which we all know for a certainty will prevent us from ever fulfilling our goal of giving seniors the prescription drug benefits they need. We should be focused on debating and passing a prescription drug bill, not other issues. For that reason, I will vote to table this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from Kentucky.

Mr. McCONNELL. Madam President, I will address several of the myths that have been stated during the course of this debate. Myth No. 1 is that average medical malpractice premiums in California are higher than they are in States that have not enacted medical malpractice reform.

Obviously, that statement is absurd on its face. The fact is, the opponents of my amendment cited numbers from the Medical Liability Monitor arrived at by some playing of games with the numbers to prove a predetermined result. The editor of that publication, the Medical Liability Monitor, takes issue with the manner in which the other side has fudged the numbers. She states unequivocally that: We do not believe an average premium exists, nor do we attempt to produce such a spurious number. She concludes in her letter to Senator FRIST: I find it particularly offensive, especially when I have spent my entire career pursuing objectivity, honesty, and balance in everything I produce.

She also noted in a recent National Journal article that insurers in California hold the lines fairly well because they have tort reform in place.

Myth No. 2: Medical malpractice premiums are not a burden on health care costs. It has been said on the other side, they account for only .6 percent of all health care costs—so it is said.

First, the studies cited by my Democratic friends do not take into account large segments of the medical malpractice community. Moreover, a 1996 study by two Stanford economists found that commonsense medical malpractice reforms, many of which are included in my amendment, could reduce health care costs by 5 to 9 percent without jeopardizing quality of care. Using this study, the Department of Health and Human Services projected that reducing the practice of defensive medicine would save Federal taxpayers between $23 and $42 billion.

Myth No. 3: It has been stated that companies have to raise premiums because they lost money on bad investments such as Enron. The fact is, the American Academy of Actuaries states insurers typically invest the vast majority of premiums in fixed income investments, not stocks. They also state that insurers do not set rates to recoup investment losses.

It has been suggested that somehow the door to the courthouse will be closed because there is a reasonable cap on attorneys' fees, which of course would guarantee that the victim got more of the money and the lawyer a little bit less—but certainly not enough to make them unwilling to take cases.

My friend from Illinois says contingency fees are the poor man's ticket to the courthouse. Apparently our trial lawyer friends will only punch the ticket if they can get more than a third of their clients' awards. My amendment limits the lawyer's fee to 33 percent of the award up to $150,000 and 25 percent above $150,000. So the suggestion is being made that if the lawyers do not get more than a third of the money involved, they somehow will not represent the injured victim.

One of our colleagues on the other side in a previous life got an award of $27 million, as the Washington Post reported. Under my formula, he would have gotten only $6.75 million, plus costs. I don't think that is much of a disincentive to represent an injured victim.

Mr. KYL. Will the Senator yield for a request?

Mr. McCONNELL. I yield.

Mr. KYL. Directly on this point, I learned in law school sometimes it is hard for people to get a lawyer to take their case if they do not have a very good case. Lawyers charge a higher and higher and higher contingency case. But if the case was a pretty good case, back when I was in law school, contingency fees were pretty low.

As I understand your amendment, limiting the contingency fee to one-third of what is recovered is a pretty high contingency fee. Under the Federal Tort Claims Act, since the late 1940s, the limit has been 25 percent, and there has been no dearth of cases. It is actually higher than we already have under the Federal Tort Claims Act.

Continuing this line of thought, if you have a good case, then the contingency fee tends to be lower. The worse the case is—the less likelihood of succeeding—generally, the higher the contingency fees.

What would you say to the argument that we have to have no limit on the contingency fees or cases will not be taken?

Mr. McCONNELL. I say to my friend from Arizona there is no evidence that there are not lawyers willing to take the cases. What this underlying amendment is about is protecting the victim and giving the victim more of the money and giving the lawyer a little bit less without taking away any incentive.

Statistics indicate the poor victims, on the whole, get about 48 percent of the money; 52 percent goes to the lawyers and the costs and the courts. This is a pro-victim amendment that benefits these injured parties over whom many have expressed so much concern.

Mr. KYL. One final question: Your amendment in no way limits the amount that the individual can recover in economic damages, or pain and suffering damages, at all, but it would put at least an upper limit of one-third on a contingency fee that the lawyers could charge for that plaintiff or victim?

Mr. McCONNELL. My amendment would cap attorneys' fees at 33 percent of the first $150,000 awarded and 25 percent of the award above $150,000.

Mr. KYL. I think the amendment is an excellent amendment in support of victims, and therefore I am very pleased to support it.

Mr. McCONNELL. I thank my friend from Arizona very much.

This is a national problem that affects States all across the country. It has been caused by the failure of the National Government to act. The Federal Government is the single biggest purchaser of medical services. It buys $400 billion in medical services each year. The purchase and delivery of medical services substantially affects interstate commerce. Patients and doctors routinely cross State lines. Parties buy medical services from doctors and hospitals in other jurisdictions. And doctors and hospitals sell medical services to citizens from different States. Indeed, our most famous hospitals, such as the Mayo Clinic, are known for this.

Does anyone deny this is a substantial commercial activity? Thus, there is a commerce clause and a spending clause basis for the Federal Government to act.

Regardless of the problem caused by our civil justice system, some of our colleagues will point the finger at anyone but big personal injury lawyers. No matter what the trial lawyers do, no matter what abuses they may commit, some colleagues absolutely refuse to admit that there are any abuses or excesses in our civil justice system. Some of our colleagues say they are for accountability and responsibility in helping average Americans. They say that is what the debate is all about on corporate governance and prescription drugs. But when it comes down to it, some of our colleagues are for accountability and responsibility and helping average people only when it does not affect the interests of big, wealthy, powerful trial lawyers. In short, they are about accountability for everyone but the personal injury bar.

Our friends who share that view will do anything that will impede big personal injury lawyers being able to run rampant through our legal system. We have seen them over the last few weeks. They will protect big, powerful trial lawyers over American victims of terrorism when it comes to punitive damages. We have seen that those colleagues will shield big, powerful trial lawyers from having to disclose basic information about their fees and costs to their clients. We have seen that some will not restrict big, powerful trial lawyers from ambulance chasing victims by reserving a respectful period of bereavement before soliciting business. And now we have seen those same folks urging the Senate not to help medical professionals by adopting the most modest of pro-victim reforms to our medical malpractice liability system. The AMA would like to go further than this amendment goes.

And now we've seen that my Democrat friends urging the Senate not to help medical professionals by adopting the most modest of pro-victim reforms to our medical malpractice liability system. Again, my amendment is pro-victim because it: doesn't limit pain and suffering one penny; ensure that the victims, not their lawyers, get most of the compensation; allows them to get punitive damages; and improves overall patient care by providing that half of a punitive damages award goes to improving medical standards and practices.

My colleagues: this is a chance to do something to help doctors, to help patients, to help our medical delivery system without capping by one nickel a patient's pain and suffering damages. The question, then, is whether you are going to vote with the trial lawyers or are you going to vote with the doctors and their patients.

If my Democrat friends are serious about doing something to improve the delivery of medical services, they'll break with the trial lawyers for a change and listen to the medical community and adopt my amendment—an amendment that has already passed the Senate once.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Madam President, we have 6½?

The PRESIDING OFFICER. Yes.

Mr. KENNEDY. I yield a minute and a half to the Senator from Delaware.

Mr. CARPER. I thank the Senator for yielding.

Mr. McCONNELL. I ask that Senator ENZI be added as a cosponsor to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. The Senator from Kentucky and I agree on a variety of issues that relate to what we are talking about. Tomorrow, the Senate Judiciary Committee holds hearings on class action reform. I think it is a situation that calls for a national or a Federal solution.

Many of us heard from our constituents around the country that we as a Congress need to do something to address asbestos reform legislation because there are a lot of folks who are being hurt from asbestosis and they are not getting anything out of it. Their damages are not being covered. Meanwhile a lot of people who are not sick, will never be sick, are diluting the money that should be going to people who really have asbestosis or diseases related to asbestos. Those are issues that I think cry out for a national solution.

The one we are talking about here today, medical malpractice, is a problem in a number of States—I will acknowledge that—but it is a problem that can be fixed in a number of States. Delaware is one of those States in which legislation is pending today to address this issue and where it is most appropriately addressed.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield myself the remaining time.

At a time when the American people are calling for greater corporate accountability, it is unbelievable that our Republican colleagues would bring to the floor an amendment which would do just the opposite. The McConnell amendment would allow the entire health care industry to avoid accountability for the care they provide.

The Amendment would deprive seriously injured patients of fair compensation. At virtually every stage of the legal process, the amendment systematically rewrites the rules of civil law to tip the balance in favor of defendants. It would arbitrarily shield health care providers and their insurance companies from basic responsibility for the harm they cause.

While those across the aisle like to talk about doctors, the real beneficiaries will be insurance companies. This amendment would enrich the insurance industry at the expense of the most seriously injured patients; men, women, and children whose entire lives have been devastated by medical neglect and corporate abuse.

This proposal would also shield HMOs that fail to provide needed care, nursing homes that neglect elderly patients, drug companies whose medicine has toxic side effects, and manufacturers of defective medical equipment.

It would drastically limit the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican Party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing? Less accountability will never lead to better health care.

Substandard medical care is a growing problem. The Agency for Healthcare Research and Quality at HHS found that the number of adverse effects from medical treatment has more than doubled in recent years, rising from 302,000 in 1993 to 710,000 in 2000. A Healthcare Research and Quality study also found that adverse effects of medical drugs have increased by more than 44 percent in recent years, rising from 657,000 in 1993 to 992,000 in 2000. A 1999 study, by the Institute of Medicine at the National Academy of Sciences determined that at least 44,000 patients, and perhaps as many as 98,000 patients, die in hospitals each year as a result of medical errors. That is more than die from auto accidents, breast cancer, or AIDS each year. Despite these alarming numbers, less than one-half of 1 percent of the nation's doctors face any serious sanctions from Medical Review Boards each year.

These statistics make clear that we need more accountability in the health care system, not less. In this era of managed care and cost controls, it is ludicrous to suggest that the major problem facing American health care is "defensive medicine." The problem is *not* "too much health care," it is "too little" quality health care.

The restrictions on compensation for seriously injured patients which the McConnell Amendment seeks to impose would not even result in less costly care. The cost of medical malpractice premiums constitutes less than two-thirds of 1 percent 0.66 percent of the nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation. Over the decade from 1988 to 1998, the cost of medical care rose 13 times faster than the cost of malpractice insurance. Did you get that? The cost of medical care rose 13 times faster than the cost of malpractice insurance.

The restrictions in this amendment are not only unfair to patients, they are also an ineffective way to control medical malpractice premiums. There is scant evidence to support the claim that enacting malpractice limits will lower insurance rates. There is substantial evidence to the contrary. Malpractice premiums are no higher on average in the 27 States that do not place limitation on malpractice damages, than in the 23 States that do have such limits.

Do we understand that? The premiums are no higher where you do not have these kinds of limitations than in the States that do. And you know what that means. The doctors are paying the higher premiums. Who do you think is keeping the difference? The insurance companies. The insurance companies. They are the ones that are making out.

The evidence clearly demonstrates that placing arbitrary limitations on the malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn even larger profits.

The malpractice premiums are not affected by the imposition of the limits on recovery, so it stands to reason the availability of physicians does not differ between the States that have limits and the States that do not.

I will use the chart that shows the difference between the States that do have limits and those that do not.

Physicians In Patient Care: States without caps on damages, with 233 per 100,000 residents; the States with caps on damages, 223—virtually identical.

The point here, in summation, is accountability and responsibility in the whole area of the health care industry and the profits that are going to result if this amendment is successful. It will not mean better health care. It will mean, less attention to protecting patients all the way through the health care system.

It will mean larger profits. It will mean larger profits for an industry. It will mean less corporate responsibility. I hope this amendment will not be successful.

Since malpractice premiums are not effected by the imposition of limits on recovery, it stands to reason that the availability of physicians does not differ between states that have limits and states that do not. AMA data shows that there are 233 physicians per 100,000 residents in states that do not have medical malpractice limits and 223 physicians per 100,000 residents in states with limits. Looking at the particularly high cost specialty of obstetrics and gynecology, states without limits on damages have 29 OB/GYNs per 100,000 women while states with limits have 27.4 OB/GYNs per 100,000 women. Clearly there is no correlation.

If this amendment were to pass it, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors will not get the relief they are seeking. Only the insurance companies, which created the recent market instability, will benefit.

Even supporters of the industry acknowledge that enacting tort reform will not produce lower insurance premiums:

Victor Schwartz, the American Tort Reform Association's General Counsel, told Business Insurance,

> . . . many tort reform advocates do not contend that restricting litigation will lower insurance rates, and 'I've never said that in 30 years.'

Debra Ballen, Executive Vice-President of the American Insurance Association even released a statement earlier this year (March 13, 2002) acknowledging,

> [T]he insurance industry never promised that tort reform would achieve specific premium savings . . ..

A National Association of Insurance Commissioners study shows that in 2000, the latest year for which data is available, total insurance industry profits as a percentage of premiums for medical malpractice insurance was nearly twice as high 13.6 percent as overall casualty and property insurance profits 7.9 percent. In fact, malpractice was a very lucrative line of insurance for the industry throughout the 1990s, averaging profits of 12 percent per year. Recent premium increases have been an attempt to maintain high profit margins despite sharply declining investment earnings.

Insurance industry practices are responsible for the sudden dramatic premium increases which have occurred in some states in recent months. The explanation for these premium spikes can be found not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves.

There have been substantial increases in recent months in a number of insurance lines, not just medical malpractice. In 2001, rates for small commercial accounts have gone up 21 percent, rates for mid-size commercial accounts have gone up 32 percent, and rates for large commercial accounts have gone up 36 percent. According to industry sources, auto insurance rates are projected to climb by 23 percent between 2000 and 2003, and homeowners insurance is projected to climb by 21 percent over the same period. These increases are attributable to general economic factors and industry practices, certainly not medical liability tort law.

Insurers make much of their money form investment income. During times when investments offer high profit, companies compete fiercely with one another for market share. They often do so by underpricing their plans and insuring poor risks. When investment income dries up because interest rates fall and the stock market declines, the insurance industry then attempts to increase its premiums and reduce its coverage. This is a familiar cycle which produces a manufactured crisis each time their investments turn downward.

One of the leading insurance industry analysts, Carol Brierly Golin, editor of Medical Liability Monitor, concluded:

> As the economy enjoyed a magic carpet ride in the 1990s, insurers kept rates artificially low because they earned more money investing than by writing policies . . . The insurance companies wouldn't be in this position if they hadn't been so hungry for investment profits . . . (Dec. 19, 2001).

This analysis of why we are seeing a sudden spike in premiums was confirmed by a June 24, 2002 Wall Street Journal article describing what happened to the malpractice insurance industry during the 1990s.

> Some of these carriers rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was. A decade of shortsighted price slashing led to industry losses of nearly $3 billion last year.
>
> I don't like to hear insurance-company executives say it's the tort [injury-law] system—it's self-inflicted, says Donald J. Zuk, chief executive of Scpie Holdings, Inc., a leading malpractice insurer in California . . .
>
> The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Proponents of the McConnell amendment justify the extreme restrictions they would place on the rights of injured patients as necessary to control medical malpractice premiums. The real beneficiaries of the amendment would be the insurance industry, which would pocket the money it saved on claims. The insurance premiums which doctors pay would not significantly change. The real losers, of course, would be the most seriously injured patients, who were denied fair compensation for their life-altering injuries. I strongly urge my colleagues to reject this amendment.

The PRESIDING OFFICER. All time has expired.

The Senator from Nevada.

Mr. REID. Madam President, I move to table the McConnell amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 42, as follows:

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—57

Akaka
Allen
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carnahan
Carper
Cleland
Clinton
Conrad
Corzine
Crapo
Daschle
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Mikulski
Miller
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Shelby
Smith (OR)
Specter
Stabenow
Thompson
Torricelli
Wellstone
Wyden

NAYS—42

Allard
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Cochran
Collins
Craig
DeWine
Domenici
Ensign
Enzi
Fitzgerald
Frist
Gramm
Grassley
Gregg
Hagel
Hatch
Hutchinson
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Murkowski
Nickles
Roberts
Santorum
Sessions
Smith (NH)
Snowe
Stevens
Thomas
Thurmond
Voinovich
Warner

NOT VOTING—1

Helms

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the amendment that is going to be the subject of discussion this afternoon is being copied, and it takes a few minutes always to do that.

I ask unanimous consent that during that period of time, the Senator from California, Mrs. FEINSTEIN, be recognized to speak as in morning business for up to 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, is it my understanding the piece of legislation which increases spending by $400 billion over the next potentially 8 or 10 years is not available for us to read?

Mr. REID. I say to my friend, the amendment which is a step in the direction of helping senior citizens who need prescription drugs is available. It is just being copied. The Senator's floor staff asked for a copy of it, and

Senator GRAHAM did not have an extra copy. It is hot off the press right here.

Mr. GREGG. It is good to know we are going to have a chance to take a look at this piece of legislation.

Do we expect to vote on this piece of legislation that is just hot off the press today that is a $400 billion expansion of the expenditure of the Federal Government over the next 10 years?

Mr. REID. I say to my friend, it is our purpose to allow the Senate to vote on a good prescription drug benefit for senior citizens, something that is long overdue and, as the Senator knows, in 1965 when we passed Medicare, there was not a prescription drug benefit. This will be a downpayment for that. Yes, we would like to vote on it today.

Mr. GREGG. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized for 15 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

(The remarks of Mrs. FEINSTEIN pertaining to the submission of S. Con. Res. 133 are located in today's RECORD under "Statements on Submitted Resolutions.")

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the next amendment to be offered is from the Senator from Nevada, Mr. REID. I have an amendment that we have worked on for a couple of years dealing with prescription drugs and allowing those people who have health insurance plans to have prescription drug benefits for contraceptives. I am not going to be able to do that because this legislation is, of course, winding down one way or the other. Everyone seems to have focused on a prescription drug benefit for Medicare. That does not take away from how important I believe my amendment is.

I am terribly disappointed, and I suggest there are advocacy groups all over America that are disappointed as they hear me say this. Members of my own staff are terribly disappointed because they have worked on this sometimes days at a time. We have been able to get little bits and pieces of it over the years.

Federal employees, for example, have a benefit that other people in the country do not have; that is, in their prescription drug plans, their health care, they can have contraceptives under the benefits of their plan. That should apply to everyone in America. We are not going to be able to do that today, and I am disappointed.

I am happy, though, to designate Senator GRAHAM to offer the amendment on which he has spent such an inordinate amount of time. Senator GRAHAM and I came to the Senate together. He was a very successful and popular Governor. It is said that he is probably the most popularly elected official to ever come from the State of Florida. Whether that is true or not, I do not know. I do know he is a great legislator. The work he has done on this amendment has been exemplary. There is not anyone who understands Medicare and the tax aspects of it better than the Senator from Florida. He has spent not hours, days, or weeks; he has spent months on this legislation. Always available to anyone who has a question, he explains it in detail so it is understandable.

I would only say that the people of Florida are well served by the work he has done, and I hope this amendment that he is going to offer would pass the Senate. It is something that not only the people of Florida need but the people of Nevada, Delaware, and our entire country need. It is not everything that I want, but it is certainly a giant step forward. So I, under the unanimous consent order that is now in effect, designate my spot to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 4345 TO AMENDMENT NO. 4299, AS AMENDED

Mr. GRAHAM. I wish to express my appreciation for the graciousness of our colleague from Nevada for his very kind remarks. I share his sense of the importance of the debate we are about to begin. It is a debate which has been waiting for 37 years.

As history would have it, it was exactly 37 years ago today, July 30, 1965, President Lyndon B. Johnson signed the law that created the Medicare Program. President Johnson did not sign the legislation in Washington, but he went to Independence, MO, the home of an American who had spent much of his political career attempting to secure a health care benefit for older and poorer Americans, President Harry S Truman, and his wife Bess. He wanted them not only to be able to witness the signing of the Medicare legislation, but President Johnson then went the next step and gave to President Truman and his wife the first two Medicare cards.

President Truman had been fighting for decades for help for insurance for America's senior citizens, most of whom had been denied private insurance coverage because of preexisting conditions. In his remarks at the signing of the Medicare legislation, President Johnson declared: No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings they have so carefully put away over a lifetime, so they might enjoy dignity in their later years. No longer will young families see their own incomes, their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents and to their uncles and to their aunts. And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country.

There was one thing left out of the law President Johnson signed on that day 37 years ago. That was prescription drug coverage. Today, because prescription medications are so much more vital to health care in the 21st century and, frankly, because they are so expensive, we have the opportunity and the challenge to finish the job. Today we are poised to give this, the greatest generation, what they deserve. Today we can add a meaningful prescription drug benefit to the Medicare Program so that nearly 40 million older and disabled Americans who rely on Medicare are not choosing between medicines and the necessities of life.

In 1965, the average older American spent on prescriptions $65. That was not $65 a week or $65 a month but $65 for an entire year. What is happening today, July 30, 2002?

Today the average senior American spends $2,149 on prescription drugs each year. The average senior today has to worry about what will happen to his or her health and financial security if, like about 20 percent of Medicare beneficiaries today, his or her prescription drug needs escalate, grow to a level of $3,300 or greater.

The average senior today has to work because the options for prescription drug coverage are few and those that are available are withering.

Medigap coverage is expensive and generally is capped. Medicare+Choice coverage is available only to some, and it is almost totally unavailable in rural areas of America. Employer-funded retiree coverage has been shrinking dramatically over the last decade.

The Senate has been debating a Medicare prescription drug benefit for the past 2 weeks. It has been actively considering such a benefit for the past 6 years. In 2000, I was proud to vote for a comprehensive prescription drug benefit for all Medicare beneficiaries. It lost. In 2001, I introduced another version of a comprehensive, universal bill. It lost. With my friends and colleagues, Senators MILLER and KENNEDY, I introduced an amendment a week ago today in hopes of again providing a comprehensive, affordable prescription drug benefit for all seniors. This proposal gained 52 votes, a majority of the Senate, but we did not have the 60 votes necessary to prevail against the point of order.

What now? One thing we know, time is not our friend. It is certainly not America's seniors' friend. In another year, if we put this off from 2002 to 2003, the average senior will be spending $2,439 on drugs. If we wait 2 years, the average senior will be spending $3,059 on prescription drugs. In another year, the percentage of seniors spending more than $3,300 on drugs will not be the 20 percent today but will exceed 24 percent. By 2005, the number will have grown to about 35 percent of our seniors. In another year, Medigap coverage will be more expensive, fewer seniors will have access to Medicare+Choice, and fewer seniors will be covered by a previous employer's retiree program.

There is no basis for delay. Whatever we do, the time to act is now. I am offering a proposal, and I am joined by Senators GORDON SMITH—and I thank Senator SMITH for the great contribution he has made to the development of this proposal—ZELL MILLER, who has been a stalwart for months in this effort, and Senators LINCOLN, BINGAMAN, KENNEDY, and STABENOW. Together, we are offering this amendment which will make a significant difference in the lives, the health, and the financial security of our grandparents, our parents, our aunts and uncles, our neighbors, the people we love the most, who will be affected the most by this legislation.

The bipartisan Medicare Prescription Drug Costs Protection Act is estimated by the CBO to cost $390 billion over 10 years. It offers all seniors protection against catastrophic drug bills, and it provides special assistance for seniors with the lowest income.

What will this plan do? First, for a low annual fee of $25, this legislation will offer all seniors who decide to voluntarily enroll up to 30 percent discounts and Federal supplements on the drugs they purchase—a very substantial benefit. This will also bring to all seniors the peace of mind in knowing, if I should have that heart attack, if I should be diagnosed with cancer or diabetes or any of the perils of old age, I will have, once I have paid $3,300 out of my pocket, or in conjunction with a stated prescription drug benefit, beyond that, I will have my prescription drugs paid, with only a $10 copayment per prescription. That will give enormous peace of mind to our seniors who are fearful of that catastrophic health event that will drive them into economic poverty.

Moreover, this legislation will offer to those seniors who are the neediest, coverage for all of their costs. It will cover all seniors who are 200 percent, or lower, of poverty in their income. That means for an individual who earns less than $17,720, or a couple with an income of less than $23,880, all of their costs will be covered except for a copayment of $2 for each prescription which is generic, $5 for a brand name prescription.

According to some recent information submitted by the Urban Institute, in the year 2002, a 200 percent of poverty standard would represent 47 percent of the almost 40 million Medicare beneficiaries in the United States.

There is also an important consideration of the effect of this legislation on employers. Today, the largest segment of seniors who get some assistance with their prescription drugs, do so because a previous employer is providing that assistance. More people get assistance through that means than through a Medicare+Choice, HMO, or through a Medigap policy they have purchased. So it is very important that employers have a continuing commitment to participate in the health care costs of their retirees.

I am pleased, therefore, to State that the Congressional Budget Office predicts that no employer will drop existing coverage because of the benefit that is in this legislation. This is a very important assurance for seniors who are receiving assistance today.

I might say that competing plans have been evaluated by the Congressional Budget Office as causing up to one-third of the seniors who are currently receiving employer retiree benefits with their drug costs to lose those benefits.

Is this proposal the perfect Medicare prescription drug benefit? I must admit it is not. I had hoped we could provide a more comprehensive and more affordable drug benefit which would be universally applicable to all seniors. This proposal is a responsible step towards providing what seniors want and need. While providing assistance for all seniors, it targets the seniors who need help the most—the sickest and those with the lowest income.

There are always, here, voices for delay: Why do we need to do this on July 30? Why can't we wait? Why can't we wait until September? Or why can't we wait until next January? Why can't we put off the hard decisions?

If we wait until January of 2003, and if we start this process again in the next Congress, and if we go to the Congressional Budget Office and say, then: Here is the same plan that was introduced on July 30, 2002; please tell us what it is going to cost over the next 10 years—we have been told as of today it will cost $390 billion—the estimate is that same bill in January of 2003 will be given a 10-year cost of $470 billion.

Why? Why in the world would the same plan just 6 months later cost approximately $80 billion more over 10 years? The answer is, the perfect storm of economic circumstances. It is the convergence of, first, the fact that the cost of prescription drugs, including both inflationary cost of the drugs, plus increased utilization has been going up at a rate of approximately 18 percent every year. You just ask the people who buy substantial amounts of prescription drugs what their costs are today in comparison to what their costs were just 12 months ago. And the number of seniors who will be participating is increasing dramatically.

I was born in 1936. The year 1936 was the second lowest birth rate year in the 20th century in the United States. The reason? We were in the middle of a depression. Not very many families were adding to their size in 1936. So last November, when I reached 65, had I not been employed here in the Senate, I would have become a Medicare beneficiary. But you know what? I would not have had to have stood in a very long line to sign up because there are not a lot of people who became 65 in November of last year because there weren't very many people born in November of that year 65 years ago. But if we wait another 10 years, we are going to be on the leading edge of one of the most significant bubbles of population in the history of the United States of America.

Today, we have 40 million Americans eligible for Medicare. Do you know how many Americans we are going to have eligible for Medicare in the year 2013? Fifty-one million. That is what is driving these costs. Every year that we delay, it becomes that much more expensive to initiate the program, to look at a 10-year window of how much this is going to cost. The time for the Senate to act is now.

If we act now, in July, we will have the full month of August to work with our colleagues in the House where a bill has already been passed, a bill that is substantially different than the one we will be considering in this amendment but one which I think is the basis of reasonable compromise.

Just a few hours ago the President signed corporate governance legislation. I know my good friend, Senator SMITH, was at the signing of that legislation. I commend him for his role in the creation and passage of that legislation. Many people thought that it was going to be impossible to reach agreement between a different House bill and a Senate bill. But, in fact, it was only a matter of a few days when serious, conscientious people came to such an understanding. I believe we can do the same thing with our conference with the House on this legislation, but we need to use the month of August as the time to begin to build that consensus towards a common piece of legislation.

There is no benefit in the cry for delay, delay, delay. We need every day that we can have to see that we arrive at a consensus that will lead the Congress to develop legislation which it can pass and the President can sign into law. We need to avoid adding yet another year of inflation and millions of additional seniors coming into the Medicare population, so we can pass this at today's price of $390 billion and not wait until next year when the same program is going to cost $470 billion.

This is the type of good-faith compromise that I hope will bring all parties together. It has the best chance of becoming the law of the land and providing to our grandparents and parents and all of our loved ones who depend upon Medicare this critical additional benefit.

In closing, I would like to remind all of you of something else that President Johnson said 37 years ago today when he signed the Medicare bill into law:

> Many men can make many proposals. Many men can draft many laws. But few have the piercing and humane eye which can see beyond the words to the people [those words] touch. Few can see past the speeches and the political battles to the doctor over there . . . trying to tend to the infirm; to the hospital that is receiving those in anguish, or feel in their heart the painful wrath at the injustice which denies the miracle of healing to the old and to the poor.

This debate is not about specific concepts. It is not about economics. It is not about public administration. This debate is about real people, people, as President Johnson said 37 years ago, who served this Nation with honor and dignity. The lives of almost 40 million of our fellow citizens are going to be impacted by the vote we are going to cast today. They are America.

On our behalf, I ask all our colleagues to support this legislation. On behalf of the cosponsors, I send to the desk the amendment and ask it be immediately considered. The sponsor's names are Senator SMITH of Oregon, Senator MILLER, Senator LINCOLN, Senator BINGAMAN, Senator KENNEDY, and Senator STABENOW.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

> The Senator from Florida (Mr. GRAHAM), for himself, Mr. SMITH of Oregon, Mr. MILLER, Mrs. LINCOLN, Mr. BINGAMAN, Mr. KENNEDY, and Ms. STABENOW, proposes an amendment numbered 4345 to amendment No. 4299 as amended.

Mr. GRAHAM. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD the preliminary Congressional Budget Office estimate of the proposal to establish an outpatient prescription drug benefit in Medicare.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRELIMINARY CBO ESTIMATE OF GRAHAM-SMITH PROPOSAL TO ESTABLISH AN OUTPATIENT PRESCRIPTION DRUG BENEFIT IN MEDICARE

[In billions of dollars]

	2003–2012
As a stand-alone bill:	
Medicare	306.9
Refinancing	−126.8
Low-Income Subsidy	187.6
Other	22.0
Total	386.6
Prescription drug benefit after interaction with Edwards' generic-drug proposal:	
Medicare	302.3
Refinancing	−126.8
Low-Income Subsidy	184.7
Other	22.0
Total	382.1
Budgetary Effect of Combination of Graham-Smith and Edwards	
Direct Spending:	
Edwards' Generic Drugs	−5.9
Graham-Smith Medicare Drug Benefit	382.1
Total	376.2
Revenue, on-budget	1.5
Revenue, off-budget	0.7
Revenue, combined	2.2
Effect on Surplus:	
On-budget	374.7
Combined	374.0

CBO staff have not reviewed the legislative language of the Graham-Smith proposal. This preliminary estimate is subject to revision upon such review.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I rise today to urge my colleagues on both sides of the aisle to support the Graham-Smith amendment. This is our best and perhaps our last opportunity to come together and actually pass a meaningful prescription drug benefit in the Senate this year. I admit that this is a difficult issue. It is a privilege to work on it, though, because I hear of no single issue more on the minds of the American people—particularly our senior citizens—than this issue. It is critical that we give them more than a war of words for yet another year—we must give them some results that work toward wellness rather than just rhetoric.

I know I have colleagues on the left who don't believe we are spending enough. I know I have colleagues on the right who do not like the delivery system that is provided in this bill. But I believe it is critical we clear the 60-vote hurdle because if we don't, the seniors will get nothing for yet another year. That I think is unacceptable.

We are running out of time. Seniors are running out of money to pay for their prescription drugs. They can't afford to wait another year for us to reach a compromise. We simply have to act now on a proposal Senator GRAHAM and I bring to the floor that is affordable for them and affordable for the Government.

I believe this is a focused plan that we all ought to support so we can at least keep this process going to get something to conference, so then we can get something to vote on in September, and so that our seniors can get the medicine they need.

To review this bill: First and foremost, it is voluntary and it is comprehensive. Our bill focuses on providing a comprehensive benefit to our neediest low-income seniors—people who are least able to pay for their prescription drugs. Those who are below 200 percent of the Federal poverty level will never have to choose between food and lifesaving drugs again.

I think that is a remarkable and significant proposal in itself. We voted on different iterations of that before. We are bringing it together again in this amendment.

The latest figures from the Urban Institute say 47 percent of our Nation's seniors live with incomes below 200 percent of poverty, which translates into $17,720 for individuals and $23,880 for couples. We don't have the money for us to do everything in the world, to enact a prescription drug benefit that covers every cost for everybody. But under our plan, low-income seniors receive the most help because they need the most help, and they need it today. But even they have a copay. Some will say it is too small. But it is, I believe, enough to at least get the attention of low-income seniors when you ask them to pay $2 for a generic drug prescription or $5 to get a branded product. I think that promotes good consumerism among our seniors.

Second, our proposal addresses the fear that millions of seniors feel every day—the fear that the loss of their health will result in the loss of their home. Our bill will ensure that no senior, no matter what their income, will ever have to pay more than $3,300 per year in prescription drug costs. I think that is significant. Some will describe it as a doughnut; others will say it is a cliff.

But I will tell you that I believe seniors in this country appreciate that in this bill they will get a discounted price, a discount card, and those in combination may equal up to 30 percent of the cost of a prescription. Moreover, they get an insurance policy that says you don't have to lose your home if you lose your health because, as to your prescription drug costs, the Government will be there to make sure that doesn't happen. The Graham-Smith amendment will ensure that they don't have to spend themselves into poverty, but it does ask them to pay something in addition to the copay. Each American who voluntarily signs up for this bill will pay $25 per year. In terms of discounted prices, a discount card, and an insurance policy against catastrophic illness, $25 is a well priced policy.

Finally, with this, every senior can expect, as I indicated before, somewhere between 20 percent to 35 percent of the cost of each of their drugs to flow to them in a discount. That is because we are using the delivery system—as all Republicans, or nearly all the Republicans, already voted on—in the Hagel-Ensign bill.

The Graham-Smith amendment would allow all employer-sponsored plans, the Medicare supplemental plan, the Medicare+Choice plan, pharmaceutical benefit managers, PBMs, pharmacies, and even States working with private companies to compete to deliver the benefits. This market-based competition, which so many of my Republican colleagues have already supported, will generate lower prices for all of our seniors.

Another provision we took from the Hagel-Ensign bill—a provision that was critical if this was to win my support—which all of my colleagues on this side of the aisle have already supported, was the Hagel-Ensign formulary language.

When I first talked to Senator GRAHAM about this, I told him my reluctance to vote for his bill in the first instance was, in large measure, over the formulary issue because, as set out in the bill previously before us, it essentially took 90 percent of current prescription drugs available to seniors and said they are not available under this plan. So 10 percent of available drugs, in my view, is too restrictive.

While under the Hagel-Ensign language there is a formulary which is a part of this bill, we make no such restriction, but leave to the experts the ability to make a more liberal formulary plan that will serve the health needs of our seniors. We did not want to limit drug choices for seniors. I think this is an important part of this bill that ought to attract the support of many of my colleagues.

Americans across the country are asking for our help. There are Americans who cannot afford to wait one more year because we have been unwilling to compromise on a prescription drug plan. This is our last chance to keep this process moving forward. I need 60 votes, America needs 60 votes on this bill, because seniors deserve more than lip service from the Senate. They deserve a prescription drug benefit from the U.S. Government—and a process and a plan that build on what we already have at a cost we can afford, at a cost that allows seniors to be included, and in a way that seniors themselves can afford this plan as well.

It is critical that we do this now, so that during the August recess we stop the haggling over whether we have a bill in the Senate, but get something to conference so that we can work out with the House and the White House the kind of bill that ultimately will win the support and the hearts and the minds of the American people.

I say to all of my friends in this body—whether you are a Republican or Democrat, whether you like this bill or not—it is the last train leaving the station, in my view. It has enough in it that ought to attract your support because it keeps the train moving instead of derailing it, to the great disadvantage and harm of the senior citizens of this country.

I plead with you for your support. If we can get it up and get past 60 votes, we can make amendments. We can make improvements. Then we will get to the House of Representatives and a conference, and to the kind of product that ultimately can pass muster for the White House, the House, and all of us.

I thank you for the time. I plead with my colleagues: Don't lose this opportunity.

I ask for their votes and yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). Who yields time?

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, 37 years ago today President Lyndon Johnson traveled to Independence, MO, to the home of Harry Truman to sign Medicare into law. In signing the bill, LBJ said:

> No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they may enjoy dignity in their later years. . . .
>
> No longer will young families see their own incomes, and their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents, to their uncles, and their aunts.

Medicare, he stated, would provide light and hope to older Americans "fearing the terrible darkness of despair and poverty."

To a remarkable degree, Medicare has fulfilled that promise.

But today the high cost of prescription drugs, combined with seniors' increasing need for such drugs, is once again destroying the life savings and threatening dignity and security of millions of older Americans.

We have debated many important questions over the last 2 weeks, but the fundamental question facing us is, Are we willing to work together constructively to renew the promise of Medicare? Or will we refuse to help even the most hard-pressed seniors with prescription drugs?

We have considered three very different plans so far. The bill I supported, the Graham-Miller-Kennedy bill, was the only true Medicare prescription drug benefit among the three plans. It would have created a guaranteed Medicare prescription benefit for all seniors. It included reasonable premiums of $25 a month. It included affordable copays of $10 for generic prescriptions and $40 for brand name ones.

Our Senate Republican colleagues offered a very different plan, not a guaranteed Medicare benefit. It would have forced seniors into HMOs to get prescription drug coverage and given HMOs billions of dollars in taxpayer subsidies and seniors' premiums to entice them to offer seniors a prescription drug plan.

There were no guarantees. HMOs and insurance companies would decide who gets prescription drug coverage, what coverage is included, and how much it costs. The plan used accounting gimmicks to hide huge costs to seniors. A coverage gap meant millions of seniors would have no coverage at all over a period beyond a few hundred dollars, even if they continued paying premiums. A new $10 copay for home health visits was also required. But basically and fundamentally their premise was that HMOs could deliver prescription drug benefits and all health care better than Medicare.

Well, HMOs don't even exist for the most part in South Dakota and rural States. In areas where they do exist, HMOs have proven to be a poor fit with health needs of seniors. More and more HMOs are pulling out of Medicare+Choice. Many that are not leaving the program have dramatically cut benefits or increased premiums or both.

Two fundamentally different plans, one fundamental similarity: Neither plan got 60 votes. Our proposal, the Medicare benefit, got 52 votes, a majority of the Senate. Their plan to create pharmaceutical HMOs received 49 votes.

But still, we didn't give up. The Hagel-Ensign bill was offered, and for the first time Medicare would have linked seniors' benefits to their incomes, which was a major concession. The Hagel-Ensign bill did not get 60 votes either.

Now we are considering a fourth proposal, the Graham-Smith amendment. It is not the comprehensive coverage that Democrats all voted for, but it is an important first step. The Graham-Smith proposal offers real protection for every senior for just $25 a year. Let me emphasize, $25 a year. Seniors get up to a 30-percent discount on all prescriptions, coverage against catastrophic expenses over $3,300 a year. Low- and moderate-income seniors would receive extra help. The program would pay for all of their benefits for just a small copay on prescriptions of $2 for generic drugs and $5 for brand name drugs.

CBO predicts that the Graham-Smith proposal would result in few or no employers dropping retirees prescription coverage, versus an estimated one-third of seniors who would have lost benefits under the Republican plan.

I have to say that the two Senators responsible for this plan deserve a great deal of credit for their persistence, for their effort to come up, yet again, with another approach, with a recognition that perhaps there are those unwilling to spend more than about $400 billion in resources on a drug plan. They have come up with a way to address health benefits for all seniors, yet recognizing the limited resources we have to do so. I don't know that you could come up with a better framework than the one they have proposed.

I will say this: I met a woman in Mitchell, SD, a few weeks ago when I was home in Mitchell. Her name is Margaret McBrayer. She is 75 years old. She and her husband raised 11 children. Since 1956, she has had 21 surgeries, 3 aneurisms, and 1 stroke. She takes 11 prescriptions a day. Her average prescription costs are $814 a month, if she takes all brand names. If she uses generic brands, she can still spend $625 a month, two-thirds of her total monthly income.

Medicaid used to pay all but $2 per month per prescription. But this past February, Mrs. McBrayer lost her husband to bone cancer. She also lost her Medicaid coverage. As a widow, rather than half of a couple, her income is now too high for Medicaid—less than $12,000 a year, but too high for help.

So Margaret McBrayer is left to figure out how to pay for her own prescriptions. Her children help, but she is worried that they will end up spending all of their retirement savings on her prescription drugs, too.

Some doctors who know Margaret McBrayer call her "the Miracle Woman" because of all the health difficulties she has overcome, and the courage and dignity with which she has done it.

Fortunately, it doesn't require a miracle for us to help her—and Medicare's 40 million other beneficiaries—with the high cost of prescription drugs.

The reason LBJ traveled to Independence 37 years ago today to sign the Medicare bill was to honor Harry Truman—the man who had begun the fight for medical insurance for seniors 20 years earlier.

In his remarks that day, LBJ said Americans loved Harry Truman not because he gave 'em hell, but because he gave people hope.

We can walk away from this effort and give each other hell—blame each other for failure—or we can accept good-faith compromise and give the American people hope, and continue working to provide an affordable, reliable prescription benefit for all seniors. the choice is in our hands this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I rise to join my colleagues on both sides of the aisle in support of this very important downpayment on a comprehensive Medicare prescription drug benefit.

First, I commend my friend, the senior Senator from Florida, for his tremendous leadership on the comprehensive proposal that received 52 votes, as well as this proposal to move it forward in the right direction. He has been a stalwart. I commend Senator GRAHAM and his staff, who have worked very hard in pulling all this together. Also, I thank Senator SMITH of Oregon for his willingness to step forward in a bipartisan way and work with us to do what can be done.

As has been indicated, we had two competing proposals put forward last week, with very different philosophies—one with a private sector insurance company, HMO model; the other with a model to expand Medicare as we know it today. One, the Medicare expansion effort, received 52 votes. The other, private insurance, received 48 votes. Neither one had the 60 votes that are necessary to make this law and move it forward.

So we went back to the drawing board and, as is true in this great democracy of ours when you are not able to get exactly what you would like to see happen, you listen to people and you find a way to move forward, to take a step forward in the right direction.

That is what this amendment is. This is a downpayment on comprehensive coverage. It is a step in the right direction. It will lower prices for all of our seniors. Every person who is on Medicare will see the prices, the costs, of their prescription drugs going down. That is important.

I also mention that the underlying bill, and the efforts we have been using to add more competition, will lower prices for everyone, whether you are in business, a farmer, a worker, or part of a family struggling with prices. The goal is to bring down prices for everyone.

This amendment addresses specifically those on Medicare. It has been said that the promise was made 37 years ago today that we would provide for older Americans and the disabled universal health coverage; they would know that health insurance, health coverage, was there for them. Unfortunately, because the way we provide health care has changed, that promise has been eroded; so we are trying to fix that, trying to modernize Medicare so it covers the way health insurance is covered today.

This amendment begins that process. It says to those in the category of up to 200 percent of poverty—and in my home State of Michigan, that involves 46 percent of Michigan's beneficiaries who are on Medicare—46 percent of Michiganians on Medicare will find that, without a monthly premium, without a deductible, with a very small copay of $2, or up to $5, they can receive the prescription they need, the medicine they need. No longer will they have to choose between food and medicine and paying the rent or paying the electric bill.

So we have accomplished one goal in this amendment right off the bat, which is making sure that those with the greatest need are not having to choose between the daily necessities of life and getting their critical medicine.

We then said that for everybody else, we want to make sure we start this downpayment with a discount. That discount will fall somewhere between 20 and 30 percent of the cost of a prescription. That is a good discount to begin the process of lowering prices and creating the kinds of prescription drug coverage that people need and deserve.

Then we have said that, for a simple $25 annual fee—I might say, this is not per month, per week, it is just once a year for $25—you can become part of an insurance policy that says once your out-of-pocket costs equal $3,300 for your prescriptions, you will then be able to get your costs covered. There will be, I believe, a small copay involved. But we are talking about the ability for people to—with a minimum of $10—be able to get coverage for any prescription drugs above $3,300 out of pocket a year.

This is a major insurance policy. There are many seniors who are paying $400 or $500, and some are paying more. I have read stories from constituents paying $700 or $800 a month, who are literally selling their homes, losing their retirement, and are not able to get the medications they need for cancer, for heart conditions, for diabetes, for a variety of other serious ailments. For them, we are saying that you are not going to have to go through that. We will put in place a maximum amount that someone has to spend out of pocket, and, beyond that, they are going to have their prescription drugs covered. That is very important for those who are the sickest in the country.

So we have addressed both of those aspects—those who are struggling to meet the daily needs of life, those who are the sickest and have the highest bills and are finding themselves in extremely difficult situations. We are also making sure that everyone is getting their prices lowered through substantial discounts.

We have also guaranteed there are no new State costs, and we have addressed a number of other issues raised by colleagues on both sides of the aisle. I simply say again that this is a critical day to get something done.

You know, there are those who have accused folks on both sides of the aisle of playing politics, of just wanting to have an issue, of not wanting to get things done. Well, if that were the case, the votes were taken last week, the issues have been laid out. If that were all this were about, we would have ended it. But we know that people expect more from us. They are tired of talk, tired of another election coming around, with everybody talking about the high prices of prescription drugs and the need to modernize Medicare and still nothing getting done.

So this is an effort on both sides of the aisle to bring people together and do what we can do, to do the achievable, make the downpayment, to take the first step.

I hope we do not lose this opportunity. I believe this is a very important day—in fact, a historic day—for all of us, and hopefully we are going to see colleagues wanting to come together and showing leadership on both sides of the aisle to make an important step forward to begin to modernize what has been a great American success story called Medicare.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I am going to be very brief because Senator MIKULSKI and others wish to speak as well. I actually did not come with prepared remarks, but I do have a bit to say about my State of Minnesota. I will make one or two points and then thank some of my colleagues for their fine work.

There are 644,000 Minnesotans enrolled in Medicare. By the way, one of the reasons I am glad of what we are doing as part of the Medicare framework is that Medicare was an enormous step forward, not just for senior citizens but for our country. Senior citizens means we are talking about our parents or grandparents.

For my mother and father, who never made a lot of money, Medicare made an enormous difference. Both of them have passed away. Both had Parkinson's disease. My father had advanced Parkinson's disease. Medicare was a huge step forward.

A second factor, if you will, is the median income of senior citizens and the disabled enrolled in Medicare is $15,173 in Minnesota.

There is this stereotype about how you have all of these high-income senior citizens who are playing all the swank golf courses around the country. The fact of the matter is, the income profile of senior citizens is not that high. It certainly is not in my State. It certainly is not for the Medicare enrollees.

The impact of this amendment is 644,000 beneficiaries and 258,000 Minnesotans—that is 40 percent of the population—with incomes below 200 percent of poverty are going to be eligible and will receive all the needed drugs for nominal copayments. I do not have such intellectual distance from this issue that I think this is insignificant. That is important. That is very important.

Mr. President, 386,000 Medicare beneficiaries will be receiving the discount which could go from 20 to 30 percent. That is the estimate. Then finally, 119,000 senior citizens and disabled Medicare beneficiaries will benefit from the catastrophic coverage, and that is the catastrophic stop-loss protection.

Of course, it is an insurance policy that means a lot to people who worry: My God, we are going to go under because of catastrophic expenses.

I have two or three points to make. The first one is—and I hope Senator GRAHAM, Senator SMITH, and Senator LINCOLN, who have done so much work on this legislation, believe me—I would far prefer to have a broader, more inclusive piece of legislation. Senator STABENOW, who is leaving the Chamber, has also done tremendous work. I say to Senator STABENOW, I am sorry I did not mention her name from the go.

I would rather this legislation be much broader in scope of coverage, no question about it. We had a bill before us earlier, the Graham-Miller bill, on which we received 52 votes, but we did not get 60 votes. By the budget rules, we were not able to pass it.

We are trying to get 60 votes to pass legislation that will be a first installment. We have to do more. We have to have coverage of all recipients. It has to be broader coverage, and we know that. We are trying to make sure we get something done that is concrete and makes a positive difference in the lives of people. That is why we are here as legislators. That is what this effort is about. That is why it deserves 60 votes. That is my first point.

My second point is, if I have my way—I guess I get to say it once because I am not going to have my way with this proposal, and this would get not 60 votes, I say to Senator GRAHAM, but far fewer—I would have more cost containment so we could cover more people. I still believe—and I want to do a careful examination of how CBO makes some of its analyses—Health and Human Services ought to say to the pharmaceutical industry that has been making these huge what I call Viagra-like profits over the years: We represent 40 million Medicare recipients; we want a discount; we want the best price; we want what you give in Canada; we want the price you give to veterans.

We can get the prices down and cover a lot more people. Someday we are going to get to this whole question of cost containment because that is where this is heading ultimately.

My last point is, if you take this Graham-Smith initiative—and I thank all colleagues. I have been in some of the meetings. I cannot imagine the zillions of hours they have been in meetings. I have been in plenty of discussions.

If we add this to drug reimportation, albeit a little weakened on the floor of the Senate, and we add access to generic drugs, then we have this amendment and the Stabenow amendment that enables States to do better by way of Medicaid and by way of providing a discount for people who do not have any health insurance coverage at all for prescription drugs—if we put that package together, I would call this a significant first step. It is a first step only, but it is an important one. It makes a difference for people. Then we are going to have to build on it and do better in the future.

Last point—I promised that four points ago—I hope this gets 60 votes. I think it should. I think it is obviously an effort to stay under this $400 billion. That is another issue that drives me nuts. I am so glad I did not vote for these Robin-Hood-in-reverse tax cuts. They have eroded the revenue base and have made it impossible for us to make investments in education and health care. We are stuck now with this arbitrary number to keep it under $400 billion. We have done that.

We have tried to bring people together. We have tried to have a bipartisan initiative. We need 60 votes. I hope colleagues will vote for this so we can move forward. As for the naysaying—I am opposed; I do not like it; I do not want it—enough. Let's pass this and then improve it and then leave with legislation of which we can be proud as an important first step.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I thank the Chair.

Mr. President, today I thought very long and hard making up my mind with respect to the legislation we are presently debating. I tell my colleagues that I am going to support the Graham-Stabenow plan.

The reason I am going to support this benefit is that it provides catastrophic coverage for those who have drug bills over $3,300 a year. For a $25 annual fee, it will provide catastrophic coverage for those who have prescription drug bills over $3,300 a year. This is absolutely essential to those seniors who have illnesses that cause them to pay this tremendous amount of money and who fear they could lose their life savings just to stay alive.

This benefit also provides a comprehensive benefit for seniors with meager incomes. For the middle class, it provides a discount, ranging from 20 to 30 percent, plus a 5-percent subsidy.

This bill has three parts to it: Catastrophic coverage, which I really like; help for those with meager incomes, which I think is a national necessity; and discounts for those in the middle class.

For those who worked very hard on this bill, I salute them. It is a beginning. It is the first step. It is a downpayment on a comprehensive drug coverage. But it cannot be the only step.

Today we are giving the middle-class seniors a discount card, but we cannot discount the middle class.

They are the ones who are going to get squeezed between shrinking savings and rising prescription costs, and they are the ones I will fight to help.

I think about ordinary Americans, those in manufacturing whose jobs are either on a fast track to Mexico or a slow boat to China, where they are afraid their companies, like my steelworkers, are going to go into bankruptcy and they are going to lose their pension, they are going to lose their health care. Then I think about the retail clerks who work in little shops, many of whom are in Baltimore, and in my little rural communities. Many of them work for 25 or 30 years, barely making the minimum wage, and though they had some savings, they are now just over the line in terms of qualifying for the benefit. Yet at the same time, we are going to give them a discount. I could go through example after example.

My preference was expressed last week when we voted for a universal Medicare coverage bill, one that was under Medicare, covered all seniors, no means testing, no deductibles, and modest copays. I supported that plan without reservation. We got 52 votes, a majority of the Senate, but we have a new Senate now, and the majority is not good enough. We now need to have a supermajority, or 60 votes, to waive the Budget Act. We did not get those last eight votes because some of my colleagues thought the benefit was too expensive to provide a universal prescription drug benefit.

Last year, many of those same colleagues who now say we do not have the wallet, were the first in line to pass excessive tax cuts. Those tax cuts went to the top 1 percent. Those who got it did not need it, and it certainly did not help the economy. When we were deliberating those tax bills last year, I knew this year would come. I knew we would come to the point where we would not have enough revenue to pass a prescription drug benefit.

I am really agitated about this because for many years, particularly working with President Bill Clinton, we exercised fiscal discipline. I personally worked for balanced budgets. I worked very hard to create a surplus, the first surpluses since the Johnson administration. Why did I work so hard? I mended old ways and old habits. Well, I worked because I knew it was going to be good for the economy and that also one day we would need it for a prescription drug coverage.

Instead, Congress gave the tax cut to the wealthiest, those who live off of expense accounts, while I worry about the middle class who have to live off a budget.

So we cannot afford it? I am not so sure about it because when we have the will, we often find the wallet. Today is not the day where we are going to be able to find that wallet. I believe with the catastrophic coverage for those with the situation over $3,300, we do take a very important step. I think the sensitivity to those meager incomes is what we in America should be all about.

For the middle class, we get them started, but we need to let them know we have to be able to do more.

The limited coverage bill that I am supporting today is not everything I wanted, but it does give seniors peace of mind that an illness with huge drug bills will not push them into financial ruin. For that $25 annual fee, there will be catastrophic coverage.

For some time, the whole issue of the consequences of health care has been an obsession of mine. I know the costs of long-term care. I know that when I came to this Senate the cost of nursing home care was enormously expensive, but to qualify for Government help under Medicaid families often had to push themselves into family bankruptcy, couples made out better if they divorced, or seniors were forced to spend down their savings to get help for nursing home care. Widows were impoverishing themselves so their husbands could qualify for Medicaid and nursing home care. I said then, as I say now, I believe in family and personal responsibility but not family bankruptcy because of the cruel rules of Government. The cruel rules of Government should not force people into family impoverishment.

When it came to long-term care, I wrote something called the Spousal Anti-Impoverishment Act. I made sure the senior could keep the home or the family farm and some savings to get help when a spouse was in a nursing home. That was a very important step. I hope we can do more.

Today, seniors are worried about going broke for their prescriptions. This limited coverage will help lift that fear and ease the burden of many seniors. For that catastrophic coverage alone, this bill is worth voting for.

In closing, later on this week the Senate will be voting on legislation to defend the homeland. It is called homeland security. But I ask, What does the "homeland" stand for and what are we trying to make secure?

I absolutely salute our military, law enforcement, and intelligence agencies that are working against terrorism, but I have senior citizens living in terror of whether they can afford their prescription drugs.

I believe not only in universal freedom, I believe in universal public education, and universal health care for seniors. If we want Americans to live free from fear, we need to take the fear away of losing their savings and not keeping up with the cost of prescription drugs. Today is a downpayment. We must do more. I intend to vote for this bill today and return to find other alternatives later.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I rise in support of this amendment, which I have been proud to promote over the last couple of weeks. I want to especially thank Senator BOB GRAHAM of Florida and Senator GORDON SMITH for their leadership in drafting this amendment. The hours and the patience that they have put into this is forthcoming in what we have been able to produce.

I also want to express my appreciation to Senator BINGAMAN for his guiding vision and the eloquence with which he first offered this proposal to our colleagues in meetings last week, and to Senator DEBBIE STABENOW. If we could harness the kind of energy, dedication, and commitment that Senator STABENOW has for our seniors in providing them a quality prescription drug benefit, we would certainly be doing our job for the benefit of the seniors in this country.

I also thank Senator FEINSTEIN who has been very instrumental in making sure that we do not adjourn without helping low-income seniors and those with the highest drug costs. This amendment is the product of many long hours of discussions among many of these Senators and so many others who bridge the spectrum of political philosophies in this body, and I believe that it represents the deliberative process envisioned by our forefathers for what the Senate was intended to do.

Through this debate, I have been firm in my conviction that we must help as many seniors as possible this year—not next year, not the year after, but this year. This amendment allows us to help everyone while providing the most help to the neediest and the sickest.

We have had two opportunities to vote on more expansive prescription drug packages, and I was pleased to support an amendment offered by Senators GRAHAM and MILLER that would have done far more for our seniors. Regrettably, that package did not garner the 60 votes needed to overcome a Senate procedural rule. So we stand today with a new opportunity that I believe offers the best hope for Arkansas seniors.

I have said all along we must help the neediest and the sickest of our seniors and provide drugs at a reduced cost for those in between. I am not willing to tell seniors, who spend more than $3,300 a year on drugs, that we cannot help them this year. I am not willing to tell the seniors who struggle to live on less than $1,500 a month for their rent, groceries, utility, and health care costs that we cannot help them this year. So I am proud to support this amendment, which will ensure that seniors who are at or below 200 percent of the Federal poverty level will get prescription drugs through Medicare.

For all seniors who spend more than $3,300 a year on drugs, I want to be able to say to those seniors: Stop worrying. The Government will cover the rest of your prescription drug costs with a minimal copay.

What does this mean for the seniors of Arkansas? It means a great deal. Under this plan, one of every two seniors in Arkansas will have all of their prescription drug costs covered under Medicare with a minimal copayment. There will not be any additional paperwork as part of this program, and there will not be fees to enter the program. If you are on Medicare, you can be automatically enrolled in the prescription drug program. That should be welcome news for the 56 percent of Arkansas seniors whose annual income is below the 200 percent of poverty level.

For those individuals who have annual incomes above $17,720 and those couples whose income is over $23,880, there is also a benefit. In addition to the peace of mind that will come from knowing the Government will cover drug costs that exceed $3,300 a year, these seniors will also benefit from drug discounts negotiated by the Government and a 5-percent subsidy. Drug costs could be reduced by as much as 30 percent.

I wish we could do more for this group of seniors, and I publicly pledge to keep pushing until we have done so. Is it an ideal benefit? No, but it is a start. I have always said in this body that legislation is not a work of art; it is a work in progress. That is what this body was intended to do, to deliberate and work through these issues to come up with a solution.

Last week's votes were like a flashing neon sign declaring it is not possible to get a more generous drug benefit this year. A 5-percent subsidy negotiated drug discount and a catastrophic benefit for middle- and high-income seniors is better than no benefit at all, especially considering the ever increasing costs of prescription drugs, an issue we will have to address. We will have to continue to address the ever increasing costs of prescription drugs in the years to come and the cost of what it is going to mean to us and the seniors of this Nation.

We must also remember and never underestimate, with the out-of-pocket limit for all seniors in this proposal, we will be providing for the initiative to bring down the costs of employer-sponsored plans, as well as any supplemental plans, such as Medigap or others. That is a real savings and a benefit to all of these individuals who need prescription drug coverage.

I thank John and Betty Scroggins of Monticello, AR, who took the time over a series of phone calls with my staff to share their health care struggles. The Scroggins are now retired. They worked all of their lives driving trucks. After they pay their drug bill each month, they have less than $1,000 to cover utilities, groceries, and other living expenses. For John and Betty, under this plan, the Government will pay for all of their prescription drugs with a minimal copay.

I also thank Lila Lee Moore, a volunteer social worker at a health care clinic in Little Rock, who told me about a couple whose Social Security income is $1,100 a month but their drug costs exceed $800 a month.

I also send a very special thank you to 18-year-old Jessica Mann of Jonesboro, AR, who wrote asking me to help her grandparents who struggle just to make ends meet due to the high cost of medical care and prescription drug medicines.

Jessica said: I believe that when people such as my grandparents have worked hard their whole lives, they deserve a better and less worrisome time in their retirement years. They have given so much to make it better for my generation, please help us to make it better for theirs.

Each of these people have helped me form the template against which I have measured these prescription drug proposals. The amendment before the Senate helps meet these needs. We are talking about moving forward on behalf of the seniors of this Nation, not saying, once again, that we are going to put it off for another year or another day, but that we are bound and determined to do what we can to make each and every one of their lives a little bit better.

I urge my colleagues to support this amendment and help the Senate move forward in the efforts on behalf of the seniors of this Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I thank my colleague and friend for his courtesy.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I am here to support my colleague from Florida and to thank him for his leadership, which has been bipartisan in nature. It reflects the bipartisan yearning and desire of the people of this country, and particularly of our State.

Most people understand that Florida has a higher percentage of those over age 65 than the rest of the country. That is true. But wherever you are, age 65 and older, there are seniors who are facing choices in the year 2002 that seniors should not have to face. The choice that many seniors have to face is: Do I buy groceries or do I buy medicine?

It is unimaginable to me that in this land of plenty, in this time of abundance, in this land of beneficence, in this land of great generosity, that we have among us, the generation that we owe so much to, our seniors, the generation that has built the strong economy upon which all now enjoy, the generation that has reestablished and secured the freedoms with which each of us participate in each day and sometimes takes for granted, it is unimaginable to me in the year 2002 that of that great generation there are those who would have to make a choice—because they cannot afford it—between buying groceries to eat and the medicine they need on a daily basis.

Why are we trying to do what we are trying to do? It is because Medicare was set up 37 years ago when health care was centered around acute care in hospitals. If Medicare had not been set up in 1965, but instead, if we were designing a system which would take care of senior citizens by designing a health insurance plan funded by the Federal Government for senior citizens, would we include prescription drugs? The answer is, obviously, yes, because prescription drugs are so much a part of our health care today, so much a part of our quality of life, so much a part of the miracles of modern medicine that give us a greater quality of life. So if that is how we would design it, and yet it was designed 37 years ago, should we not modernize that system? The answer to that is, obviously, yes.

Then it comes to a question of cost. And if the cost is such that we cannot get through this Senate because we have to operate with 60 out of 100 votes in order to pass anything, and we got to 52 votes with Senator GRAHAM's and Senator MILLER's amendment—that was a much more comprehensive plan than trying to find a plan that we can fashion, that we can get 60 votes to get it through this Chamber, this is what we have come up with. Some would say it has two prongs, but it really has three. There is the one that would take care of the most poor; i.e., it would take care of those up to 200 percent of the poverty level. They would have a fully funded Medicare prescription drug benefit. It would also take care of those the most sick. It would take care of the most poor and the most sick, the most sick being those stricken by a catastrophe, who have to spend a lot of money out of pocket. When they get to a certain level, a level in excess of $3,000 out of pocket, the Federal Government is going to take care of that, and, indeed, you are going to be able to buy that protection for $25 a year. That is called catastrophic coverage, and that is a pretty good deal.

There is a third element, or prong, to this amendment. Those who would detract from this amendment would say it doesn't take care of the middle class. It certainly doesn't take care of the middle class as much as the original amendment offered by Senators GRAHAM and MILLER, but of course that costs a lot of money. What does this do for the middle class besides the catastrophic coverage for $25? It has a system in place that will have discounts up to 30 percent of the cost of those drugs, through a system designed to use bulk buying, plus an additional 5-percent reduction by virtue of a Federal subsidy.

So it takes care of the most needy—that is, the poorest—by taking care of those with incomes up to 200 percent of the poverty level. It takes care of the most sick—when we have a catastrophic illness—for $25 a year, for anything out of pocket over something just in excess of $3,000 per year it takes care of that. And for everybody else it clearly reduces the price, up to 30 percent plus another 5-percent subsidy.

That is not everything we want. That is not a total across-the-board prescription drug benefit under Medicare. But it is clearly a step in the right direction so we go about doing what we need to be doing: Modernizing Medicare that was set up 37 years ago.

That is why I rise to add my voice to the support for this amendment and encourage its adoption.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I rise to make a couple of comments—I will not be that long—on the pending business, prescription drugs. It was said before that this is sort of a unique day in the sense that this is the 37th anniversary of the signing of the Medicare Act back in 1965. What we did in 1965 was unique. It was very important. It was very special. What we did in 1965, with Medicare, was to say: We are going to establish a Medicare Program for our Nation's seniors that is going to be comprehensive. It is going to cover all seniors. It is going to be universal, in the sense that all seniors will be eligible for the same benefits under the Medicare Program. So we had a program that said to every senior: We are going to cover you. Regardless of where you live, regardless of your status in life, you are going to be covered for hospital care and other related conditions as well.

We should have, at that time, added prescription drugs. Congress did not. Prescription drugs were not as important in 1965 as a hospital bed was in 1965. So Congress, in its wisdom, at that time said we are going to provide comprehensive coverage for hospitals, and later on it became also coverage for doctors and physicians as well.

The unique feature about that bill is that it covered everybody and it treated everybody equally. I think when you look at the proposal we have before us today that says this program is going to be fundamentally changed—in the sense that it is no longer universal, it is no longer comprehensive, we are going to pick and choose who gets what, and different people who are eligible for Medicare will get different things—I think that is fundamentally breaking faith with the American people who, when they look at Medicare, think of it as being universal and comprehensive. That is the first mistake.

Many people who talked about the tripartisan bill—some of our colleagues on the floor, some in the private sector—said we don't like the tripartisan bill because it has a gap. They called it a doughnut. The gap in the tripartisan bill was between $3,450 worth of drug expenses and $3,700 of prescription drug expenses. If you were poor, you still got your drugs taken care of through that gap, but if you were not under 150 percent of poverty, you did not get coverage in that relatively small gap between $3,150 and $3,700. Why? Because of the extreme cost associated with covering even that small gap.

The point I made is that many people who were critical of the tripartisan bill said: You have a gap, so we can't support it. If we had a gap, this plan has a canyon, because it says to the Nation's seniors: If you are under 200 percent of poverty, we will cover your drugs, but if you make one dollar more, you are in a different category.

I think the figures I have seen indicate it is approximately $17,720 of income as an individual. I think is the number. But if you make one dollar more than 200 percent of poverty, you are in a totally different category, you are in a category that says you have to pay about 95 percent of the drug costs. Ninety-five percent of the drug costs? What kind of help are we giving to someone who makes one dollar above 200 percent of poverty?

One of the charts I saw said 70 percent of seniors are over 200 percent of poverty. Are we going to say to that group of seniors: Somehow you are going to be treated differently than anyone else the Government treats under Medicare because you make one dollar more than 200 percent of poverty? You are going to be required to pay 95 percent, and the Federal Government will pick up 5 percent of your drug costs? Is that fair? That is not what we did in 1965 when we said everybody would have comprehensive, universal coverage and access to a health care plan.

That is not an insignificant number of people you are talking about. I looked at some of the statistics with regard to how many people you are talking about. In my State—and my State is a poor State—it is about 230,000 people making over 200 percent of poverty. What am I going to tell the seniors in Louisiana: If you are poor, you are going to get all this help, but if you make one dollar more, excuse me, you are out of luck?

What are they going to say? They are going to say: I paid taxes all my life, I worked hard all my life, but now, for the first time under Medicare, you are going to treat me differently than anybody else? My State is a poor State, and 230,000 people would fit into that category of being outside of 200 percent of poverty.

Now I have the numbers. In the United States, nationwide—these are the numbers from the Kaiser Family Foundation—there are about 18,450,000 seniors who are eligible for Medicare who are outside the 200 percent of poverty—18 million people plus. We are telling those 18 million-plus seniors they are going to be treated quite differently when they are called upon to pay 95 percent coinsurance on their prescription drugs. Are we telling them that we are giving them something? We are not giving them what we are giving other parts of our society who are seniors. These are working people who have paid taxes and in their retirement think, if you are going to have a National Government program, they should be treated like everybody else.

The 200 percent of poverty is nice to talk about—how many people we are helping. But a substantial portion of the 200 percent under poverty are already covered with prescription drugs under the Medicaid Program. At about 75 percent of poverty, you have coverage under Medicare for prescription drugs already. They already have prescription drugs under the State Medicaid Program. If you are about 75 percent of poverty, in my State, you are covered for prescription drugs—the poorest of the poor.

So we are really saying: Between 75 percent of poverty and 200 percent of poverty, we are really going to give you a great deal of help. But if you are over 200 percent of poverty, you are out of luck.

They say we have a catastrophic plan. I am all for catastrophic coverage. It should be there. But let's be honest about how many people it covers.

If you look at $3,300 of catastrophic coverage where the Government picks up the lion's share of 90 percent—I take it, in their plan—of the cost of drugs after you reach the $3,300 out-of-pocket costs, how many people is that? I am told approximately 10 percent of the seniors are going to have actual out-of-pocket costs of $3,300 and above on an annual basis, not including insurance, not including a union package, not including a former employer's package, and not including any Medigap coverage they have.

If it has to be out of pocket $3,300, you are talking about approximately 10 percent of the remaining number of seniors. What do we have? We are spending almost $400 billion, and we are selectively saying some are going to get it, some are not going to get it, and some are going to get a little bit more.

The tripartisan bill had about $370 billion of Medicare reform, plus prescription drugs—$340 billion on prescription drugs. That was universal and comprehensive and at a $24-a-month premium. It had a $250 deductible and 50 percent coinsurance. Everybody was treated alike. Everybody would know what they were going to get and how they were going to get it.

Some say: We want a Government-run program. We want private insurance companies delivering prescription drugs.

What are we coming to? It is the exact same system that I have as a Member of the Senate and that 9 million other Federal employees have. Do you think we do not have a Government-run health program? Of course it is a Government-run program. It is run by the Office of Personnel Management—a Federal agency that goes out and solicits bids from private companies, such as Blue Cross and Aetna, to provide 9 million Federal workers with comprehensive, universal health coverage which includes doctors, hospitals, and, yes, it includes prescription drugs.

We are talking about saying that these providers who are big, healthy insurance companies ought to assume some risk. Why do we say that? Because if they are doing the providing and they make a bad deal, they should have to pick up the cost of making a bad deal. That is the risk. That is what makes them negotiate with pharmaceutical companies, to get the best possible deal from pharmaceuticals for prescription drugs at the best possible price.

If I am a pharmacy benefit manager—so-called PBM—and I have no risk other than my contract, why am I worried about what type of price I get for prescription drugs if I know the Government is going to eat the cost of anything over what I bid? There is no risk. If there is no risk, there is not going to be any incentive to go out and get the best possible deal on prescription drugs.

But to get back to the program that we have, some of my colleagues say we have to have a Government-run program. The Government-run program we have as Federal employees is exactly the same program we have recommended under the tripartisan approach. The Office of Health and Human Services' Medicare office would contract. They would do the approvals. They would supervise it. They would make sure it was being run properly. They would make sure no one was trying to scam it. And they would make sure that every part of the country had a competitive model to deliver drugs in their area.

Some have said: I am from a rural area. We are not going to have a lot of private companies coming to the most rural part of the country. We said: All right, we understand your concern. We will modify our bill. We will say that if there is a rural part of the country or any part of the country where you do not have private providers competing to bring prescription drugs to individuals at the best possible price—if that doesn't happen in your area—the Federal Government will do it just as under the Graham model. The Federal Government will contract with the PBM. They will have only the management fee at risk when they have that provision for those drugs. And in the most rural areas, you would be guaranteed a Government-run program just like in the Graham model, if you did not have the private system to be available because they just did not want to go to any part of the country.

As to the concerns that have been expressed about wanting a Government-run program, ours is a Government program that utilizes the best of what Government can do combined with the best of what the private sector can do.

Some on their side of the aisle may say we only need a private sector program. Some on my side of the aisle may say we need a Government-run program. The answer truly is somewhere in between. You need the best of what Government can do merged with the best of what the private sector can do in order to get a delivery system that would have Government oversight, Government supervision, and Government guarantees when the private sector does not participate to make sure the beneficiaries get the product. That is what the tripartisan bill attempted to do.

The final point I will make is that this fight is not over. This proposal, our tripartisan proposal, and the previous Graham proposal—none will have had 60 votes. The fact is that we are not going to be able to do anything unless we find a way to get 60 votes to provide prescription drugs. For the past several years, we have been giving seniors excuses. I daresay this time we are going to give them one more excuse.

The Republicans will say: It is the Democrats' fault that we didn't get this done. The Democrats will say: No. It is the Republicans' fault that we didn't get this done. What we will have given seniors once again is a bucket of excuses. They can't take those excuses to a drugstore and buy one prescription.

It is time that we as Members of Congress try to recognize we have to combine the best of ideas from both sides of the aisle and come up with an agreement that can get the job done. We are dedicated, and we will continue to work in that direction.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, before the Senator from Louisiana leaves the floor, let me just say we have people on both sides of the aisle—especially on this side of the aisle—who look to him for guidance. He knows these numbers, having been a member of the Finance Committee as long as he has, and having served in Congress for as long as he has—both in the House and in the Senate. He does commendable work. His work on this legislation is no different.

Mr. President, the Republican leader is going to be here shortly, I am told. How long does the Senator from New Mexico wish to speak?

Mr. BINGAMAN. About 6 minutes.

Mr. REID. When the Republican leader shows up, we certainly will——

Mr. GRASSLEY. Can't we go back and forth?

Mr. REID. I don't know. I guess whoever gets recognized. How much time is the Senator talking about?

Mr. GRASSLEY. About 7 minutes.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Iowa, the ranking member of the Finance Committee, be recognized for 7 minutes; following that, the Senator from New Mexico be recognized for 6 minutes; and following that, the Senator from Texas be recognized forever. (Laughter.)

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I see my colleague from Nevada. I ask unanimous consent that he follow Senator GRAMM.

I ask for the courtesy of both Senator GRASSLEY and Senator BINGAMAN—that when the Republican leader appears, they allow us to move forward with an important unanimous consent agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I rise to oppose the amendment before us. For the third time in as many weeks, a mostly partisan Democrat prescription drug bill is about to fail on this floor. And beyond failing here, today's amendment, from what I've heard of it, fails seniors and taxpayers as well. I still haven't seen the bill language itself. But from what I've heard, it fails seniors because it fails to cover most of them. From what we know of the proposal—and we are only this afternoon getting the details—most middle income seniors will get next to nothing when it comes to prescription drug coverage.

My friends on the other side of the aisle have accomplished quite a feat—they have managed to write a Medicare prescription drug proposal that does less with more money. Their proposal provides generous coverage to beneficiaries below 200 percent of poverty.

There is nothing wrong with that. I agree that scarce resources should be used wisely by Congress to target money where it is needed the most.

However, their proposal provides almost no assistance to Medicare beneficiaries whose incomes exceed $18,952 a year. A senior at 201 percent of poverty will receive no meaningful coverage under the Graham proposal until she has spent 17 percent of her income on drugs. A married couple at 201 percent of poverty will spend 25 percent of their annual income on drugs before both gain catastrophic coverage protection. To make matters worse. Three-quarters of seniors above 200 percent of poverty have other prescription drug coverage. Since these plans cover some drug expenses, and because the Graham plan does not have a basic benefit, these folks will receive no help even if they have total drug expenses over $3,300. A typical senior above 200 percent of poverty will receive approximately $6 of assistance every month toward their prescription drug expenses.

The Congressional Budget Office has given Graham a preliminary cost estimate of $389.5 billion. Keep in mind, though, that CBO did not have legislative language to review at the time they completed their cost estimate. So, depending on what legislative language is included in the Graham proposal—it could cost more than $400 billion.

The tripartisan bill with an official CBO cost estimate of $370 billion provides a solid benefit for all Medicare beneficiaries. Lower-income enrollees are provided with additional protections, which, as I said before, is appropriate.

What the tripartisan bill has that Graham does not is a significant drug benefit for every single Medicare enrollee. Under our 21st Century Medicare Act, enrollees will save on average 50 percent off their drug bills. And, lower-income enrollees will see a 95 percent savings in their drug bills.

The Graham bill fails these people. It fails them badly. Indeed, these failures amount to a massive failure for this body. Under Senator DASCHLE's leadership, Democrats and Democrats alone have tried to write partisan legislation on the Senate floor time and time again this summer.

That has gotten us nowhere. It has led to chaos, to partisanship and, as I said just a minute ago, to failure.

So, where are we now? It looks like we are ready for another mostly partisan vote on a pretty much partisan bill—another vote that will fail to get 60 votes, and will fail to give seniors the help they need.

We could have been somewhere far different from this. The House passed a bill. We could have been in conference with the House at this point. The President wants a bill. We could have been in the Rose Garden. Senator DASCHLE says he wants a bill, but what has taken place here over the last 3 weeks means he really wants something else: an issue.

Had regular order been followed, had the Finance Committee been given the right to work its bipartisan will, we could have had far more than just an issue. We could be far closer to providing real, affordable and universal prescription drug benefits than we are today. The sponsors of the Tripartisan bill, the only bipartisan bill in all of Washington to provide comprehensive, universal coverage on at a cost that is far lower than that in the amendment before us now, were ready and willing to talk to anyone about compromises. We still are.

But we were denied the right to a markup in the Finance Committee. I believe that if it had been given the chance to work its will, the Finance Committee would have reported out a bipartisan proposal, based on the tripartisan 21st century Medicare Act we introduced earlier this month.

I've said it before, everyone in this chamber knows that for anything of this magnitude to pass—and adding a prescription drug benefit to Medicare is the single greatest entitlement expansion in history—it needs to get 60 votes.

And everyone in this chamber knows that the only way to get 60 votes is to have bipartisan support. The proper place to find bipartisan support is in the Finance Committee, not on the Senate floor.

By bypassing the Finance Committee entirely and doing drafting on the floor—literally on the backs of envelopes—the Democrat leadership has led us to where we are today: In shambles.

Mr. President, I urge my colleagues to sweep up the shambles on the Senate floor and start over. We can and should do better.

I ask unanimous consent that a statement by several organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 29, 2002.

THE GRAHAM-SMITH PROPOSAL: CHANGING THE NATURE OF MEDICARE IS NO WAY TO CELEBRATE THE 37TH ANNIVERSARY OF MEDICARE

To: Members of the United States Senate:

On June 14, 2002, our organizations sent a letter to Chairmen Tauzin and Thomas in support of their Medicare legislation. We were very clear when we gave our support that our goal was to ensure a voluntary prescription drug benefit which would be available to all Medicare beneficiaries.

The Graham-Smith low-income/catastrophic amendment provides complete drug benefits for only the very poor. The Washington Post reports that "millions of seniors 'in the middle' would not qualify for any prescription drug benefits at all under the Graham-Smith legislation." In short, the middle class would, in fact, receive no meaningful coverage under the Graham-Smith amendment. This means test violates the fundamental principle of Medicare social insurance that it is a universal program, not an anti-poverty program. It is ironic that on the same day that America's senior celebrate the 37th anniversary of the enactment of Medicare (July 30, 1965), the United States Senate will be considering a proposal that takes us a very significant step away from the general entitlement that Medicare has always been.

The passage of such legislation would change the nature and intent of America's 37-year-old Medicare program. We respectfully ask you to oppose this amendment and enact meaningful prescription drug coverage which would give all Medicare beneficiaries access, coverage and choice.

American Osteopathic Association, Kidney Cancer Association, Cancer Research Institute, Pancreatic Cancer Action Network, Pulmonary Hypertension Association, Center for Patient Advocacy, Endocrinology Associates, National Coalition for Women with Heart Disease.

UNANIMOUS CONSENT AGREEMENT—S. 812

Mr. DASCHLE. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, the Senate at 9:30 a.m. tomorrow resume consideration of S. 812; that there be 90 minutes for debate on the motion to waive the Budget Act with respect to Senator GRAHAM's amendment equally divided between Senator GRAHAM and Senator GRASSLEY; that if the motion to waive fails and the amendment falls, then the underlying Dorgan amendment be agreed to and the Senate vote immediately on cloture on the generic drug bill, S. 812; further that if cloture is invoked, the bill be read a third time and the Senate then vote immediately on final passage of the bill, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I again propound the request.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, as in executive session, I ask unanimous consent that later today when the Senate considers the nomination of D. Brooks Smith to be a U.S. circuit court judge, there be a time limitation for debate of 4 hours equally divided between the chairman and ranking member of the Judiciary Committee; that at the conclusion or yielding back of the time, the Senate return to legislative session; that following the vote on final passage of S. 812, the Senate return to executive session and vote on confirmation of the nomination; that the motion to reconsider be laid on the table; the President be immediately notified of the Senate's action; and the Senate return to legislative session; and that the preceding all occur without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, it is also then my intention to invoke the authority given Senator LOTT and I last week with regard to DOD. It would be my intention to move immediately to the DOD appropriations bill, and we will seek a time agreement on that, perhaps sometime tomorrow morning. Let me thank all of our colleagues for their cooperation and I certainly thank the distinguished Republican leader.

Again, let me outline the schedule, as a result of these unanimous consent agreements, tonight and tomorrow.

We are now in a position to move shortly to the nomination of D. Brooks Smith. There is a 4-hour time agreement that has been allocated to that debate. We will then resume consideration of the Graham amendment tomorrow morning at 9:30. The debate will last an hour and a half. It is equally divided. There will be a vote on the Graham amendment, a vote on the Dorgan amendment, as amended, and a vote on final passage, to be followed by a vote then on the judicial nomination.

I would then move to the DOD appropriations bill, in consultation with the distinguished Republican leader. I should also note that it is my intention to call up the fast-track conference report, and we will, if necessary, file cloture on that motion as well.

Senators should be prepared, if necessary, to be on the floor to accommodate that desire as well.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, for a couple of clarifications, first of all, with regard to the trade promotion authority, from what I believe the majority leader was saying, it would be his intent to call it up tonight and, if there is objection, you would file cloture on the trade promotion authority bill; is that correct?

Mr. DASCHLE. Mr. President, that is correct. I have been informed that there are those who will object, so it is unlikely that we would be able to complete our work on the trade promotion authority conference report tonight. Expecting that, I would intend then to file cloture on the conference report itself.

Mr. LOTT. Mr. President, continuing, I would like to get a clarification because I believe the Senator indicated that after the Dorgan amendment was agreed to, then the Senate would vote immediately on cloture on the underlying generic drug bill, and only if cloture is invoked would you then go to final passage. If cloture is defeated, of course, then that issue would still be pending.

Mr. DASCHLE. The Senator is correct. I anticipate that we would get cloture. If we don't, of course, we will stay on the bill for whatever length of time it takes and be unable to complete our schedule as it has been announced.

Obviously, cloture on the motion to proceed to a conference report is not necessary. This would actually be cloture on the conference report itself with regard to the trade promotion authority.

Mr. LOTT. Mr. President, for those who are following this, I emphasize that nobody has given up any position here or lost any rights. We are trying to set up a process so Senators would know what is going to be the business for the rest of the evening and what would be the sequence of votes tomorrow.

Tonight, we will have the debate on the nomination of D. Brooks Smith for the Sixth Circuit. I thank Senator DASCHLE for going forward with it. Time is required for the debate, and that can occur tonight. The vote will be tomorrow in the stacked sequence along with votes on the Graham-Smith alternative and then on cloture on the underlying bill.

Depending what happens, we would go to the Department of Defense appropriations bill, which we have made a commitment to complete this week. We will try to get a reasonable time agreement on that. We would have the trade bill following, too. This is a large agenda to accomplish. This agreement is to try to put into place when the votes will occur.

Mr. DASCHLE. Mr. President, again, the distinguished Republican leader is correct. Because the motion to proceed to the conference report on trade promotion authority is subject to a vote, I announce that that vote will take place at 6:15 this evening. That will be the last vote of the day.

We will accommodate Senators who have already expected to speak on the pending legislation, and the 6:15 vote will accommodate all Senators who have come to the floor with an expectation of being recognized.

I yield to the assistant Democratic leader.

Mr. REID. Is it the intention of the majority leader, when we complete that vote, that we would go to the judicial nomination at that time, and then the 4 hours will start on or about that time?

Mr. DASCHLE. The Senator is correct. We would start debate at approximately 6:45 on Mr. SMITH. Senators should be here. The debate will be completed tonight. It is a 4-hour debate. So Senators will have ample opportunity to come to the floor and express themselves. It must be done tonight. There will be no time tomorrow.

Mr. President, I ask unanimous consent that, within that 45-minute time block that has now been designated for debate prior to the vote at 6:15, Senator KENNEDY be accorded 10 minutes of that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, we are well past the time when the 39 million older Americans and disabled citizens should be receiving affordable, comprehensive, and reliable prescription drug coverage. More tan 225,000 of these citizens live in New Mexico.

Medicare must be brought into the 21st century and that includes adding a prescription drug benefit. We must pay special attention to the needs of the most vulnerable—low-income seniors and people with disabilities. This is particularly important to New Mexico, where the median income of our senior citizens is just $11,370, or 15 percent below the national average.

Under the current system, an unconscionable number of these people are forced to choose every day between filling a doctor's prescription with limited incomes or paying for some other basic need.

As we consider the drug proposal before us, there are some important principles that I believe we should adopt.

The first principle should be that we ensure that the most vulnerable are protected. That includes the neediest, or poorest, the sickest, or those with the greatest health care needs. With the Federal Government now running significant deficits, we clearly have a limited amount of money and cannot ensure all senior Americans and disabled citizens will get everything they need, but we should be sure the most vulnerable are protected.

The second principle should be that we must use a delivery mechanism that is stable and that seniors can rely on. It must be a system that is accessible and not an untried or untested system. It must be a system that is reliable and stable and not one that potentially leaves seniors without prescription drug coverage or is in transition from year to year, as is often the case with the Medicare+Choice program now.

Before us is the Graham-Smith-Lincoln-Bingaman amendment that meets these principles. It has been a pleasure to work with all three of them on this compromise and others with a similar desire to provide the most help to the neediest and the sickest, including Senators CHAFEE, FEINSTEIN, and NELSON. This compromise offers the best hope for a prescription drug benefit this year and also compares well to the Grassley-Breaux amendment that received 48 votes in the Senate last week.

In comparing these plans to ensure that the principles of protecting the most vulnerable and to ensure that the proposal is stable and reliable, the Graham-Smith amendment is the only one that meets the two basics, but critical, principles I have outlined.

With regard to protecting the most vulnerable, the Graham-Smith amendment ensures that Medicare beneficiaries below 200 percent of poverty receive drug program assistance. This provides the 12.3 million low-income seniors, or over one-third of elderly beneficiaries, with some protections from rapidly increasing drug costs. In New Mexico, this protects over 100,000 low-income seniors, or 47 percent of elderly beneficiaries.

For these financial vulnerable seniors, they will receive a comprehensive benefit under the Graham-Smith amendment that would be questionable under Grassley-Breaux. Briefly, the Graham-Smith amendment provides coverage up to 200 percent of poverty; limits low-income out-of-pocket expenses to just $2 and $5 per prescription compared to up to $3700 for beneficiaries below 200 percent of poverty in the alternative plan; and, provides coverage for low-income elderly that is as comprehensive as state pharmacy assistance programs and without a drop in employer coverage, which again, is in sharp contrast to Grassley-Breaux. That amendment provides more limited coverage than some elderly get through employer coverage or state pharmacy assistance programs.

It makes little sense to spend almost $400 billion and have a consequence that some elderly will receive drug coverage worse than they currently receive, but that would be the consequence of Grassley-Breaux. I appreciate all the hard work Senators GRASSLEY, BREAUX, JEFFORDS, SNOWE, and HATCH have put into their bill and I understand this aspect of their proposal is certainly an unintended consequence, but it is a consequence that CBO estimates will cause one-third of employers to drop retiree health coverage.

Of great significance, the Graham-Smith amendment eliminates the assets test in Grassley-Breaux, which bars low-income beneficiaries from having total assets of more than $4,000 a year. Own a car under that proposal and you will likely be denied financial protections otherwise.

According to the Kaiser Family Foundation, it is estimated that up to 40 percent of low-income elderly would not pass the assets test even if they are willing to undergo it. In New Mexico, coverage of low-income elderly in Graham-Smith is twice that of Grassley-Breaux—102,000 elderly covered to just 50,000.

In comparing the two proposals for those that are the sickest in society and have the most health care needs, Graham-Smith has a catastrophic limit of $3,300 out-of-pocket or 12 percent less than the $3,700 in the competing proposal.

How do the plans fare with respect to providing health and financial security for the elderly and disabled? Again, Graham-Smith is a stronger proposal.

The comparisons are stark. Graham-Smith requires a $25 annual fee compared to $288 per year or more under Grassley-Breaux.

Graham-Smith builds on the current employer and state-based systems and does not supplant employer coverage in stark contrast to the unintended drop of one-third of retirees from employer-sponsored plans in the alternative proposal.

Furthermore, the Grassley-Breaux amendment relies upon a virtually untried and untested system. For the full 37 years of the Medicare program, private insurance companies have had every opportunity to offer the elderly drug-only insurance plans. None have done so. This, my friends, is the definition of "market failure" and the very reason we have a Medicare program.

We have evidence of only one instance in which we have a drug-only, private insurance model and that was attempted by the State of Nevada. It is estimated that their current effort cost taxpayers almost 60 percent more through private insurance than if the State had run the program itself. Yet, this is the model the Grassley plan would require all 39 million Medicare beneficiaries to participate in.

This is clearly a risky proposition. Moreover, the proposal allows insurance companies to bid on an annual basis. Even if we can spend the billions of dollars necessary to induce private insurance companies to participate, we are not buying stability or reliability for the elderly. Bids would come in every year with plans coming and going, just as they do in the Medicare+Choice program.

A prescription drug benefit should provide the elderly some security and not place them in some kind of grand experiment. We should not experiment with the health of our Nation's seniors and disabled.

Furthermore, the Grassley-Breaux model allows insurance companies to charge whatever the market will bear. Beneficiary premium costs could be very high and vary by geographic area and vary by year-to-year.

To deal with the similarity with Medicare+Choice, whereby health plans often pull out and leave seniors without their health plan, the Grassley bill requires the Secretary to provide the plans with whatever inducement or incentives necessary to ensure that people have a choice of at least two plans.

The language reads:

> [T]he Administrator may provide financial incentives (including partial underwriting of risk) for an eligible entity to offer a Medicare Prescription Drug plan in that area. . . .

This could cost billions and billions of dollars without giving the elderly any assurance that the plans will be affordable.

For these reasons, I support the Graham-Miller amendment. It meets the principles of providing protections and security to our Nation's most vulnerable citizens through a system that is both reliable and stable. It is for these reasons that AARP and the National Council on Aging support Graham-Miller as well.

This amendment appears to offer us the final opportunity to pass prescription drug coverage for our Nation's elderly this year. To those that criticize it because it does not do enough for the middle class, I agree and point out this should be seen as a first step and downpayment on more comprehensive coverage for the Nations elderly and disabled.

However, if we do not take this first step, we are giving our Nation's seniors absolutely nothing. For those that voted for the Hagel-Ensign bill, I note that this proposal is very much like Hagel-Ensign in design, with a low-income benefit. Why is protecting the most financially vulnerable among our elderly objectionable?

I think this is a terrific compromise that takes aspects from both the Democratic and Republican proposals.

Mr. President, I believe the amendment Senators GRAHAM and SMITH have offered is a very good-faith effort to provide a genuine benefit to Medicare recipients. I am glad to support it. It is a product of a lot of discussion. Senator LINCOLN deserves substantial credit, as do Senator STABENOW, Senator FEINSTEIN, Senator CHAFEE, and Senator MILLER. A great many Senators have worked on this issue, in addition to Senators GRAHAM and SMITH, and I particularly appreciate their leadership.

Let me say that the need is enormous. I see it in my home State. Many of the most vulnerable in our society do have very difficult choices to make about whether to fill the prescriptions they are given by their doctors or to meet their other needs—pay their rent, pay their utilities, buy food for the family, whatever.

We need to solve that problem, and we need to do so in a way that makes sense for all the people who benefit from the Medicare Program.

There are some important principles that I think we need to keep in mind as we craft a Medicare prescription drug benefit.

The first principle: We need to ensure the most vulnerable are protected.

The second principle: We need to have a benefit for all Medicare beneficiaries, and I believe we are meeting both of those principles with this proposal.

The third obvious principle: We need to have a delivery mechanism that is stable and upon which seniors can rely. It needs to be an accessible system. It should not be something that is untried and untested so that we do not get into the same kind of mess we had with Medicare+Choice in my State, and I think in many States around the country. I believe this amendment meets those principles. I believe it is a great benefit to us.

Let me say briefly what the amendment does. I have a chart, which may be difficult for some to read, but let me go through it very briefly.

The estimated cost of the Graham-Smith compromise is in the range of $390 billion. I think that is a reasonable price for this kind of a very major benefit.

There is a benefit for all seniors. All seniors under the Medicare Program have a negotiated drug discount of something in the range of 30 percent, with a 5-percent Medicare payment and an additional discount added on to whatever discount can be negotiated through this program.

In addition to that, the seniors have catastrophic insurance coverage above $3,300. So if any Medicare beneficiary pays $3,300 out of pocket, after that, with a small copayment of not more than $10, they will have the Government cover the cost of any additional drugs needed that year.

There is a substantial benefit for low-income seniors. We are saying people with incomes of 200 percent of poverty or less are covered for all of their prescription drug needs, with a very small nominal $2 or $5 copayment, depending upon whether they purchase generic drugs or brand name drugs.

This proposal is designed so that no employer will drop coverage for those who are presently covered. That is a very important provision. This amendment is also designed so there are no additional costs added to the States. Many of our States are faced with real financial difficulties because of the economic downturn, and this is not a time to be adding additional cost to the States. We have guaranteed in this proposal that they not be given additional costs.

That is a summary of the amendment as it is drafted.

What does it mean for my State? It means that all the Medicare beneficiaries in my State, everyone over 65, does get this very substantial catastrophic benefit, as well as the discounts.

It also means that 47 percent of the senior Medicare beneficiaries in my State will fall into the category of 200 percent or less of poverty and will have all of their drug costs paid.

Obviously, the choice we have to make is a difficult choice. We can do what is possible. Politics is the art of the possible, and I think all of us who have served in public office know that politics is the art of the possible. Maybe the possible plus 10 percent, but it is not a whole lot more than that. We need to get 60 votes. We need to get a prescription drug benefit that is understandable, that is straightforward, that is an add-on to the Medicare Program, and that is what we have proposed.

We can do what is possible and adopt this amendment or we can take the approach that the perfect is the enemy of the good and that we are basically not going to go home with anything. We will continue to tell the senior citizens of our States that we were not able to come up with anything and give them excuses.

I hope very much the Senate will not take that latter course. I hope the Senate will embrace this amendment and move ahead so that we can, in fact, deliver a prescription drug benefit. The time is well passed for us to do this. I believe it is very important work that we need to get accomplished.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. I thank the Chair for the recognition. Mr. President, I hope people who are following this debate realize that we are having a debate about politics; that this is a debate about the next election; that this is hardly a debate about Medicare.

How extraordinary it is that we are here talking about an entitlement program that represents the largest single commitment of Federal spending in 37 years, one program that will cost in and of itself more than defending the national security of the United States. Yet no bill has ever been reported out of committee.

This was a process from beginning until end—and I hope we are approaching the end—that was designed to fail. It was designed to fail because we did not follow the normal procedure; we did not report a bill out of committee. We violated the budget. So, therefore, by not reporting a bill out of committee and by violating our own budget, it means that each of these proposals that are made have to get 60 votes.

We have already had one proposal that had we followed the regular order, the normal procedure of the Senate, would have already been adopted.

I have to note that basically what is going on is a political debate. One of the issues I find alarming about this debate is that it is obvious that some people believe the way to win the political debate is to spend money. I wish to remind my colleagues of a little history.

In 1999, we had a report of the Bipartisan Commission on the Future of Medicare. Senator BREAUX from Louisiana was the chairman. We had a clear majority of Members who were in favor of the recommendations for reform, but we had to have a supermajority of 11 Members to make a recommendation to the Congress and to the President.

That bill would have funded prescription drugs with the savings that we would have obtained by reforming Medicare. Until the last minute, it looked as if we would get the 11, but President Clinton had his four appointees all vote no.

When that happened, President Clinton held a press conference and released a program and said: If you would give me $168 billion, I can fund prescription drugs for American seniors. That was in 1999.

Then in the year 2000, the Senate debated a proposal, that Senator Robb was the sponsor of, that basically said if you will give us $242 billion, we can provide prescription drugs for America's seniors.

Then last year, Senator BAUCUS said we could fund a program that meets every need that the American people have, all the needs of our seniors, for just $311 billion.

Then when we wrote a budget, the Democrat proposal in the Budget Committee, which was never adopted by the Senate, and we were told—actually $168 billion, $242 billion, $311 billion—that is not enough, we need $500 billion. Then on the bill on which we did not waive the budget point of order last week, we were told that it would require $600 billion.

When we fill up the gaps, when we project out for 10 years, we have been seriously debating on the floor a proposal that would spend a trillion dollars, that has never been reported by any committee, that has never had a systematic consideration by a committee of the Senate, and that was designed from the beginning to fail.

I wish to conclude by making the following points: The proposal by Senator GRAHAM of Florida and Senator SMITH of Oregon that is before us, that we are going to vote on in the morning, is being sold as a catastrophic coverage proposal that is quite similar to a proposal that Senator HAGEL, Senator ENSIGN, and I offered that got over 50 votes.

I would like my colleagues to understand that this proposal is nothing like our proposal. It is better than the original Graham-Miller proposal, it is more affordable, but it is not the proposal that Senator HAGEL, Senator ENSIGN, and I made. Our proposal said that we can set up a simple program where every senior in America will be able to engage, through a private company, in buying pharmaceuticals competitively so that we can bring down the cost of pharmaceuticals between 20 and 40 percent for everybody.

Then we had a stop loss, a maximum out-of-pocket expenditure, that for moderate-income seniors was about $100 a month. They would be spending that $100 a month through these private companies that would be purchasing pharmaceuticals competitively, and they would be spending their own money and therefore would be cost conscious. When they reach that $100 a month and the Federal Government starts picking up the cost, they have already entered into a situation where they are buying pharmaceuticals competitively.

Secondly, we did not have the same stop loss for everybody. One of the reasons the bill before us costs $400 billion over 10 years and provides such little coverage is that Bill Gates has the same stop loss that my mother has. Ross Perot has the same stop loss that the poorest recipient of Medicare in America has. This is not at all like the Hagel-Ensign bill, where the stop loss was dependent on one's income.

I remind my colleagues that was an affordable proposal. It was the only proposal that we have voted on that was within our budget, for the simple reason that it put the money toward helping the people who needed the help the most.

The problem with all of these other proposals is that for every 10 people they help, 8 people do not need it. We are displacing massive amounts of private health insurance in the name of helping people who do not have health insurance. The advantage of the Hagel-Ensign proposal, the reason it was within budget and these other proposals are not, is that it put the focus of attention on helping people who fell into two categories. Either they had relatively low income and substantial drug bills, or they were moderate and upper income with astronomical drug bills. In either case, they got help. But if their drug bills are low relative to their income, they did not get help and, quite frankly, people who have incomes and retirement that run into the hundreds of thousands of dollars and have private health insurance are not the people in need. It is the people who do not have health insurance and who are having a very difficult time with paying for their pharmaceuticals who need help.

I hope this amendment will be rejected. When we do not have enough unity of purpose to pass a bill out of the committee of jurisdiction, in this case the Finance Committee, we should not be engaged in a political exercise on the floor where we are literally committing ourselves to a trillion dollar expenditure over the next 10 years. We are talking about the largest commitment of money that this Nation has undertaken in 37 years, and yet there is no substantial bipartisan agreement. Every proposal is tailored to some political constituency. We are dealing with a process that was designed to fail by not reporting a bill out of committee, by not staying within budget and, therefore, having to get 60 votes. So my own opinion is that the sooner this charade ends, the better off America will be.

Let the record show there has been only one proposal that was within budget. There has been only one proposal that was fully funded by the budget and that was logically consistent, that encouraged efficiency and economy and met the needs of the people who need the help the most, and that was the Hagel-Ensign bill.

I urge my colleagues to reject the amendment that is currently pending before the Senate. We are going to vote tomorrow. It has a budget point of order. It is $100 billion above the budget. When we adopted this year's budget last year, we said we were going to spend up to $300 billion on providing prescription drug assistance. This amendment, by the most generous scoring that can be made, costs $400 billion. I urge my colleagues, do not waive the budget point of order, sustain the budget process, and reject this amendment.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). Under the previous order, the Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I wish to talk about the Graham-Miller amendment for prescription drugs. First, I compliment the people who have been working on it. We think they are at least going in the right direction. They have adopted some of the parts of the bill that Senator HAGEL and I had proposed, but I believe there are some fundamental flaws in the amendment as currently drafted.

I was in a working group yesterday. I tried to point out some of these flaws, and I want to point those out on the floor because I think these are very important issues that we get fixed in any prescription drug bill that we eventually, hopefully, pass out of the Senate and someday get to the desk of the President.

In the Graham-Smith amendment, for the people above 200 percent of poverty, they use the catastrophic bill; they use basically what Senator HAGEL and I had talked about, where seniors pay out of pocket for the first x dollar figure and then above a certain dollar figure the Government would step in and take care of the costs.

The problem is in the category of people below 200 percent of poverty, they basically give them full coverage with very little expected of the senior—only $2 for generic drugs on a copay and $5 for name brand drugs. Those seniors in that income category are not going to be held accountable. That is not enough money out of pocket to affect their behavior, in my opinion. The reason they have to be held accountable for the behavior is because we do not want people abusing the system and taking drugs.

People say, well, these are prescription drugs. Why would anybody just get prescriptions? I happen to be a veterinarian by profession and have worked with people coming in with their pets. Talk to any pediatrician, any family practitioner in human medicine, it does not matter, they will tell you that people come to them, however they are feeling, if they are feeling ill, regardless of whether they need antibiotics, they expect them or they expect some kind of a prescription. With children in this country, we understand when their parents bring their kids to the doctor for an ear infection—almost all of those ear infections are caused by viruses.

Viruses do not respond to antibiotics, yet almost every time when somebody walks out of the doctor's office for their kids' ear infection, that child is put on antibiotics. It is one of the reasons we have so many drug-resistant secondary bacterial infections in ear infections—because we treat with antibiotics. The virus is there, it kills normal-growing bacteria, and you get a secondary bacterial infection, which is a reason that a lot of kids need to have tubes put in their ears, along with all kinds of other problems.

It is the same problem with a lot of seniors. If you are sick, you go to the doctor—you have a virus, whatever it is; you have a complaint, you expect to get better. A lot of times, physicians will prescribe medicine simply as a placebo effect. They know if I do not give this person something, they will go to another doctor. If the person is paying out of pocket, there is some incentive to ask the questions: Do I need these medications? Can I get a better price? Maybe I should buy the generic. The only difference between $2 and $5, generic versus brand name, is not necessarily that great incentive, but if they paid the first dollars out of their pocket, which is what our bill required, based on income—a sliding scale based on income—they would pay the first dollars out of pocket.

For instance, somebody who made around $15,000 to $17,000 a year under our bill would pay, on average, $100 to $120 a month out of pocket. After that, other than a small copay, the Government would pick up the costs. That person with diabetes, taking five or six different drugs, would have gotten the help they need without losing all of their assets. Right now, they get no help, and our bill would have given them the help.

Because we had some complaints about our bill—that if you make $1 more than $17,700 a year, you went from a maximum out-of-pocket expense of $1,500 to $3,500—we are trying to build more of a gradual scale into our bill so there will not be the dramatic dropoffs. We are also trying to put some of the money and give low-income seniors a little more help under our bill. We think we will be able to do this and still be within the $300 billion budget.

What is important about being in the $300 billion budget? The fact is, unless we are within $300 billion, we are violating the budget we set up. That is the reason it needs a 60-vote point of order. If our bill were reported out, if it were done properly, if we would take our bill, report our bill out of committee, and take all of the bills that have been voted on, report them out of committee, our bill is the only one that could become law because it is the only one that only would have needed 51 votes. Our bill got 51 votes.

The bill tomorrow that will be voted on, from what I understand, will only get 54 or 55 votes and therefore will not be able to waive the budget point of order.

If the majority leader would take our bill to the Finance Committee, let that bill be reported out of the Finance Committee, we actually could have this process go forward. Our bill, within the budget, would not need the 60 votes. It does not seem as though any proposal will get the necessary 60 votes. So let's work together, go through the process, through the Finance Committee, and report out a bill like this. We are willing to work with people on the numbers. As long as we can fit within the $300 billion budget number, we will not have to get the 60 votes and we can get a bill reported out of the Senate.

If we want to look at seniors this next year and say, we are really going to be helping you, I believe our proposal should get serious consideration from people. For those seniors who truly need the help, I don't believe we should look at them, especially with the November elections coming up, and say, sorry, politics got in the way again.

The Republicans are blaming Democrats, Democrats are blaming Republicans, and the bottom line is seniors are not getting the help they need. I truly believe we need to give the seniors some prescription drug benefit. However, I also believe we need to do it in a fiscally responsible way for the young people in the United States. If we do not do that, we will regret it in the future. Let's work together on this and pass a real prescription drug benefit that we can afford.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Massachusetts.

Mr. KENNEDY. I understand I have 10 minutes. I yield myself 9 minutes.

I have had the opportunity to spend a good deal of time in the Senate over the past days and had the chance again this afternoon to listen to many colleagues describe what is before the Senate. I have listened to the recent comments of my friend from Texas, saying this is just all about politics, and others saying we cannot consider the proposal of Senator GRAHAM or Senator SMITH because of gaps and loopholes. I have heard a great deal of characterization of what is before the Senate.

What is before the Senate is an opportunity to make a very important downpayment for the seniors of this country, in a partial fulfillment of the promise we made to them in 1965 when we passed Medicare. That was a solemn pledge to the senior citizens of this country that said, play by the rules, pay into the system, and you will have health security when you retire.

That was the commitment. That is what everyone remembers. And I had the opportunity of being there. Our majority leaders, our minority leaders, those in support of that program made that commitment to the American people. They made it to the workers at that time and to the parents and to the grandparents of that time: Health security will be yours.

We all have an opportunity now to travel back to our hometowns and to listen to our seniors. Anyone who does that knows that we are failing that commitment every single day. Why? Because we provided hospitalization and we also provided physician services, but we have not provided prescription drugs. That is something we all understand. No one can say to our senior citizens: We have met our responsibility to you.

If we do not pass a good benefit package here, we are continuing to fail our senior citizens.

That may be described as politics to the Senator from Texas, and it can be described as $400 billion by the Senator from Nevada. Our proposal that provided the comprehensive care, where we got 52 votes and if we would have had 8 votes from our Republican friends, we would be on our way to conference this evening to try to guarantee that kind of protection. But no, we say we cannot do that. Then all afternoon, we had hearings about gaps in this proposal or that proposal. If you go from approximately $800 billion down to $400 billion, you are going to find out that you are not going to have the same benefit package. And if that is what you want on that side to agree to, we will agree to that. But I tell you something else we agree to: We make our commitment when we get this passed, and passed with the help of some courageous Republicans, we are not stopping there; we are coming back and we are going to complete the job. That is our commitment to the seniors tonight and tomorrow, that this is a downpayment. But it is only the beginning, no matter how concerned you are about why we are considering this legislation on the floor of the Senate.

I was here for 4 of the last 5 years when we could never get this bill out of the Finance Committee—buried, buried, buried by Republican leaders on the floor of the Senate and leaders on the Finance Committee. Finally, we have a courageous Democratic leader who puts this before the Senate.

Then we hear: Oh, no, we cannot consider that because that is politics. What was political was denying the ability for the Senate to consider this over the period of the last 4 years. Where have you been? Where have you been?

I can tell you where we are. I can tell you where BOB GRAHAM is, and Senator SMITH is, and that is here tomorrow and they are going to be saying: This is a downpayment. This doesn't do all the job. We all want to have a better benefit package, but we are denied that opportunity. We were denied that by the failure of the votes on that side; make no mistake about it.

Who are the people we are talking about? We are talking about, as has been described earlier in this debate—we are talking about the greatest generation, those who have fought in World War II, who have come back, and are now in their golden years. Those are the people we are talking about. That is what is at issue here. Are we going to meet our responsibility to men and women who fought in World War II, fought in the Korean war, some, perhaps, could even be qualified from the Vietnam war—men and women who brought the country out of the Depression, served, and built the Nation to the great Nation it is; and they need prescription drugs. And we are rattling around down here wondering how we gain political advantage. That is what is motivating those of us on this side, to meet that responsibility, Senator.

We heard the same arguments I heard when we were battling Medicare. I have read the history and we heard the same arguments when they were passing Social Security: We cannot do it. We should not do it. We can't make that kind of commitment. Medicare was the exact same thing: We can't afford it. It is socialized medicine. I haven't heard about socialized medicine out here since 1994 when we were debating a comprehensive health care program. I have not heard socialized medicine, but that is what we were talking about in the Medicare debate. They spared us that, but they still bring it up in opposition. And I don't question that because that side of the aisle was opposed to Medicare, and they were opposed to Social Security. Are we in any doubt they are opposed to this endeavor?

Tomorrow, make no mistake about it, this will be the key vote in terms of prescription drugs. I wish we were back to the time that we were considering the more comprehensive program that made sure we were going to attend to all the needs of our senior citizens, all of those needs. That is what we ought to be doing, but we cannot do it because we have been defeated on that. But we are not giving up. We are coming back again. We are making the commitment, if we are able and successful, to get this downpayment. It will make an important difference to the quality of lives for millions of our senior citizens.

Look what the CBO talks about. The program will reach almost half—49 percent of our neediest senior citizens, and for those above the $3,300—another 15 percent. If you add those together, it is virtually two-thirds of all of our seniors. We wish it were 100 percent, but they wouldn't give us the eight votes. This is two-thirds. It may not have all the benefits, let alone the other advantages in terms of the lower discount rates that will benefit those even in that third. But it is a sincere effort, the best effort that could be done over the period of these last 2 days, to try to continue this battle and continue the struggle.

That is what this is all about. We reject those who say this is not the time, this is not the place. I listened with great interest to those who were defending the program that was advanced earlier last week. That had a drug program for $330 billion, and they are trying to compare that to the one that was introduced by Senator GRAHAM, saying it was more comprehensive, it was more complete, it would provide our seniors with better services? Then why didn't the seniors support it? That is our simple answer. Why didn't the seniors support it? You couldn't get the support because it failed to do that.

We welcome the fact that the senior organizations support the Graham-Smith program. They supported our efforts a week ago when we were trying to get the comprehensive program. Over the period of these last days, they have looked the range of different options being proposed. These groups that represent seniors understand what is at risk and what opportunities lie before us now, and they are supporting our efforts to get this downpayment.

When we get this downpayment, that is what it will be. It will be a downpayment. We will hear voices continuing to harp on the other side that would really like to take even more hundreds of billions of dollars and give it to the wealthiest individuals in this country and reduce their taxes, but this is about making sure that we are going to walk the walk and give to our senior citizens that same kind of prescription drug program that my friend PHIL GRAMM has, right over here, in the well of the Senate. He has a comprehensive program. He pays about a 25-percent copay on his program. Every Member of the Senate has it.

Should we retreat on a commitment to try and do for the people of this country what the Members of the Senate have already done for themselves? I say vote for the Graham proposal. We will make the commitment that this will be a downpayment and we will see the day when our senior citizens will be able to raise their heads high and know they will not have to fear when they hear from their doctors that they need prescription drugs in order to live a healthy and happy life.

I think the time has expired.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRADE ACT OF 2002—CONFERENCE REPORT—MOTION TO PROCEED

Mr. REID. Madam President, I move to proceed to the conference report to accompany H.R. 3009, the Trade Act of 2002, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 33, as follows:

[Rollcall Vote No. 198 Leg.]

YEAS—66

Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Cantwell
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Daschle
DeWine
Domenici
Edwards
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murray
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Smith (NH)
Smith (OR)
Specter
Thomas
Thompson
Voinovich
Warner
Wyden

NAYS—33

Akaka
Boxer
Byrd
Campbell
Carnahan
Clinton
Conrad
Corzine
Dayton
Dodd
Dorgan
Durbin
Ensign
Feingold
Harkin
Hollings
Leahy
Levin
Mikulski
Murkowski
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Snowe
Stabenow
Stevens
Thurmond
Torricelli
Wellstone

NOT VOTING—1

Helms

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3009), to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report will be printed in the House proceedings of the RECORD)

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. DASCHLE. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

> We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the conference report to accompany H.R. 3009, the Andean Trade bill.
>
> Harry Reid, Max Baucus, Dianne Feinstein, Ron Wyden, Robert G. Torricelli, John B. Breaux, Thomas A. Daschle, Thomas R. Carper, Blanche L. Lincoln, Zell Miller, Charles E. Grassley, Larry E. Craig, Phil Gramm, Jon Kyl, Frank H. Murkowski, Trent Lott.

The PRESIDING OFFICER. The majority leader.

EXECUTIVE SESSION

NOMINATION OF D. BROOKS SMITH TO BE UNITED STATES CIRCUIT JUDGE

Mr. DASCHLE. Madam President, I now ask that the Senate proceed to executive session, as provided under the previous order.

The PRESIDING OFFICER. The Senate will proceed to executive session, and the clerk will report the nomination.

The assistant legislative clerk read the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There are now 4 hours for debate, evenly divided between the chairman and ranking member.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, it is with considerable pride that I urge my colleagues to vote to confirm a very distinguished Federal judge, D. Brooks Smith, now Chief Judge of the Western District of Pennsylvania, whose nomination is now before the Senate for the Court of Appeals for the Third Circuit.

Judge Smith comes to this position with an outstanding academic background, having received his bachelor's degree from Franklin and Marshall College in 1973, his law degree from Dickinson Law School, and then engaged in the active practice of law for 8 years before becoming district attorney of Blair County, PA, a populous county whose county seat is Altoona.

He then became a judge of the Court of Common Pleas of Blair County in 1984, serving for 4 years until he became a judge for the United States District Court for the Western District of Pennsylvania where he is now the chief judge, and for now almost 14 years has had very distinguished service there.

I came to know Judge Smith when he appeared before the bipartisan nominating panel which had been established by Senator Heinz and myself, and I found him very well qualified and have known him on a continuing basis rather well over the course of the past 14 years. I have talked to him on many occasions and met with him on many occasions, discussing problems of the courts administratively, and issues that may come before the Judiciary Committee. He has been an outstanding jurist.

Judge Smith enjoys a unique reputation among all of the people who know him. During his confirmation hearings, large groups of people who knew him rallied to his defense and came forward to attest to his erudition, his scholarship, his good character, and his judicial temperament.

Certain issues have been raised which had delayed the confirmation. One involved a fishing club in which he was a member, but that club did not practice what is called invidious discrimination because it was a social club only. While in confirmation hearings for the district court, he had said he would resign from the club if they did not change their membership rules. It was later determined in 1992 in an opinion of precedential value that the club did not engage in invidious discrimination, so there was no reason for him to leave the club.

An issue arose on a case, where he presided for a relatively brief period of time, as to whether there should have been an earlier recusal. The matter was inquired into, investigated at length by former Gov. Dick Thornburgh and former Attorney General of the United States, and in an elaborate statement, he went through the case in detail and found, as I concluded as well, that the judge had made a timely recusal.

Some issues were also raised as to a speech which Judge Smith made on the Violence Against Women Act. He had concluded that there was not Federal jurisdiction for that particular statute.

I, frankly, disagreed with him about his conclusion on that, as lawyers are wont to do, even lawyers who become judges or lawyers who become Senators. In fact, the Supreme Court of the United States ultimately agreed with Judge Smith on the point.

I mention these issues in passing because I think they are not worth any more comment. The issues were considered at great length by the Judiciary Committee, and in a 12-to-7 vote, the Judiciary Committee recommended Judge Smith's confirmation.

As is well known, Judge Smith's nomination came before the Judiciary Committee at a time of considerable controversy involving the timing and the confirmation of nominees submitted by President Bush.

Senator BIDEN, Senator KOHL, and Senator EDWARDS all voted to confirm Judge Smith in an atmosphere where there was, to say the least, at least some element of partisanship.

I only mention those issues. I think they do not bear any more comment than I have given them.

When a man such as D. Brooks Smith undertakes public service in a Federal judgeship, I think it ought to be noted that there is a very considerable personal and financial sacrifice. I thank Judge Smith for serving on the Federal bench, and I thank all the Federal judges for serving on the Federal courts which are the pillars of justice and the pillars of our democratic society.

Judge Smith has undergone a difficult period in this confirmation process which has taken quite a considerable period of time. I compliment him for his steadfastness and for his determination in staying the course and in working through on this confirmation.

There is no doubt of Judge Smith's qualifications—his educational background, temperament, judicial experience, and experience being a district attorney. Judge Smith has a broad range of experience.

The Third Circuit is in desperate need of judges. They are in an emergency situation. I ask unanimous consent that a letter from Chief Judge Edward R. Becker be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1)

Mr. SPECTER. I am confident, based on my personal knowledge of Judge Smith and his outstanding record, that he will be a credit to the Court of Appeals for the Third Circuit.

I thank my distinguished colleague from Utah and my distinguished colleague from Vermont for permitting me to speak at this time.

EXHIBIT 1

U.S. COURT OF APPEALS,
FOR THE THIRD CIRCUIT,
Philadelphia, PA, July 15, 2002.

Hon. ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: Because the exercise of my responsibility to assure that efficient administration of justice for over 21 million Americans within the Third Judicial Circuit is being seriously impaired by the current impasse in the Senate over judicial nominations, I feel constrained to cry out. A total of eleven—yes eleven—judges within the Third Circuit, whose presence is desperately needed, would, I believe, have been confirmed and entered on duty but for the impasse.

Let me begin with the United States Court of Appeals for the Third Circuit. But for the impasse, Judge D. Brooks Smith would now be on my Court, which has three vacancies, two of them of long standing. I have scheduled him to sit in the early Fall, and we need him. We "borrow" judges in 45% of our cases, which is too much. But that situation pales in comparison with that of the District Court for the Western District of Pennsylvania. There are five vacant judgeships on that Court; as of September 30, 2002, these judgeships will have been vacant for a total of 161.7 months. If it were not for the impasse, the following judges would likely have entered on duty: Joy Flowers Conti, who I understand has resigned from her law firm partnership, anticipating a July swearing-in-date (and is now without income); David S. Cercone; Terrence F. McVerry; and Arthur J. Schwab. The Western District is in desperate straits. Motions are piling up, and trials are being delayed.

Other courts within the Third Circuit are similarly disadvantaged. Two nominees to the Middle District of Pennsylvania are awaiting floor votes: John E. Jones, III and Christopher C. Conner, both nominated to fill vacancies that are well over a year old. Two nominees to the Eastern District of Pennsylvania, one of the busiest courts in the nation, are also being held up: Timothy J. Savage and James Knoll Gardner. We also have problems in New Jersey where we have five vacancies. Stanley R. Chesler and William J. Martini are awaiting floor votes. There are also putative nominees for the other three vacancies: Jose Linares, Freda Wolfson, and Robert Kugler, whose progress is obviously being slowed by the impasse. Their presence is needed there to take up the slack caused by my assignment of Senior Judge Alfred Wolin, who had a full docket, to handle the mega-asbestos bankruptcy cases in Delaware, one of the nation's most important judicial assignments.

I have always respected the processes of the United States Senate. I came to the bench from politics, and understand the senatorial prerogatives. I have been tempted to speak out before, yet because of my background, held back. But the current impasse is too much even for me, hence this letter. As a judge of over three decades of experience on the federal bench, I understand the weighing and balancing process, and I believe that it is out of all proportion to the exercise of senatorial prerogative that these eleven nominees (and scores of others) be held up so long. I urge you to press my plea before your colleagues.

Sincerely yours,

EDWARD R. BECKER.

The PRESIDING OFFICER (Mr. DURBIN). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Utah for yielding me some time, and I also thank the Senator from Vermont for allowing Senator SPECTER and I to speak first on this nominee.

I, too, like Senator SPECTER, am very proud tonight to praise the nomination of Brooks Smith to the Third Circuit Court of Appeals and to congratulate the President on an excellent nominee. I certainly urge all of my colleagues on both sides of the aisle to vote for his confirmation. I truly hope they look at his record of 17 years of judicial service and experience on both the Federal and State level.

He is someone of paramount integrity, someone who is obviously academically qualified, having been confirmed already as a Federal judge some 13 years ago. He has impeccable credentials academically and professionally prior to being a judge, and I think his service on both the trial court level and the common pleas court of Blair County, as well as on the Federal bench of the western district, now serving as chief judge of the western district, has been exemplary.

He is someone who has been a model judge, someone who has steered a course, as most people who have described his nomination, right down the center, someone who follows the law and is very steadfast to what the role of a judge is, which is not to go out and make law but simply to serve in the capacity of meting out justice in a fair and equitable way that meets the expectations of the litigants. He has been highly praised by everyone.

He has gotten a letter of support from almost the entire Pennsylvania congressional delegation, Democrats and Republicans alike. He has been rated well qualified by the ABA and highly recommended by the Allegheny County Bar Association, which is their highest rating. Allegheny County is the bar where the Western District of Pennsylvania is located. He has gotten support from every prior U.S. attorney from Jimmy Carter on through President Clinton's appointments to the U.S. attorney position in the western district. They have all come out in support of him.

His colleagues on the statewide bench from the supreme court, superior court, on down, have written letters of support, both Republicans and Democrats alike, for his nomination.

One of the most disturbing aspects of this nomination was what some on the far left-wing groups have done to try to impeach Judge Smith's integrity. Senator SPECTER reviewed the three things that have been brought up in a 17-year career. Probably the most outrageous of all of them is the fact that Judge Smith belonged—I know this might be shocking to some of my colleagues—to a sportsman club that only has male members. I know that none of my colleagues have ever heard of such a thing, but believe it or not most sportsman clubs in America, I would suggest, have limitations on memberships. If anyone is interested in the opposite, where sportsman clubs limit membership only to women, go to www.womensflyfishing.net, and they will find 60 organizations where only women are permitted to be members.

At this particular club, the Spruce Creek Rod and Gun Club, only men are allowed to be members, but women certainly are allowed on the premises and allowed to use the facilities. They simply cannot be members of the club.

This club is a beautiful place. It is right in the heart of Pennsylvania. It has attracted many people from around the country because of its fabulous fly fishing. One such person who is an annual visitor, according to his own article on the subject, to this limited club is former President Jimmy Carter.

Former President Jimmy Carter goes to this club to which Judge Smith used to belong. When President Carter was President, my colleagues may recall the incident when the rabbit attacked his boat. That was somewhat of a famous incident during the Carter Presidency. That happened at the Spruce Creek Rod and Gun Club. This is purely a social organization.

When Judge Smith was before the Judiciary Committee, it was unclear whether he should continue to belong to such an organization. He was confirmed nonetheless. He promised at that time, when it was unclear whether that membership was unethical in some respects, that he would try to reverse the policy, and if he was unsuccessful he would resign. Subsequent to that, in 1992, the judicial code was changed and, as Senator SPECTER said, this kind of club does not fall into the ethical category of invidious. Therefore, as a result, he was not required under the judicial conduct code to resign.

Nevertheless, he tried for several years. Every year at their meetings, he would try to have women allowed to become members, but he failed. Eventually, I think after 9 or 10 years, he decided he would give up that quest and leave. This was some 5 years ago.

I understand there are a lot of women's groups that are complaining about this. To be candid, the complaint should be not that he resigned too late but that he is not still there trying to change it. That, to me, would be legitimate, to say he should have continued to stay there to try to get women as members. Instead, he gave up the fight, as some might suggest, and decided simply not to belong.

I think they have sort of missed the point, and the point is—this is ridiculous is really the point. The point that he belonged to this club has nothing to do with his ability to be a jurist. Probably the worst aspect of this whole thing is it brought up this tenor that somehow Judge Smith was anti-woman. Well, we had the president of the NOW organization in his home county, Blair County, former Democratic county commissioner, come to the Senate, to the LBJ room. She did a press conference talking about how Judge Smith, when he was a common pleas court judge, did more to help her in her role as county commissioner than anybody else she met in county government, and that he had an excellent record in regard to violence on women, and a variety of other things, as he did as a common pleas court judge.

Then later on, we heard from members of the women's bar association of western Pennsylvania going on at length about how Judge Smith was the best judge they had to deal with, who was the most respectful of women in the courtroom, most accepting of women in the courtroom.

This is the most frustrating part for the judge, and I know Senator SPECTER commented how difficult a process this has been for him, to be attacked for things that are so spurious and tangential to this whole process, and trying to then frame them for something that he has worked all his life to prove that he was not. It was really unfair.

Senator SPECTER went through the other two issues that have been highlighted. One is a case where he should have recused himself earlier. The trustee in the case, the former Attorney General and Governor, Richard Thornburgh, who said he would have been the aggrieved party in the case, as it turned out, said, no; that Judge Smith handled the case properly and forthrightly. The judge who eventually was assigned the case commented she would have handled the case in the precise manner Judge Smith handled the case. The Securities and Exchange Commission looked at this and stated Judge Smith did nothing improper.

There is absolutely nothing there when it comes to these "improprieties" of Judge Smith on the bench. This is reaching. This is trying to find a reason to oppose someone who has an impeccable record of service in the judicial community of western Pennsylvania, someone who has been outstanding in everything he has attempted. He is an incredibly well-qualified person for this position. He has done nothing but prove that his nomination for the Third Circuit is warranted.

I am very hopeful that my colleagues again on both sides of the aisle—and I thank Senator SPECTER, Senator EDWARDS, Senator KOHL, and Senator BIDEN for their support of this nominee in committee—will be joined by many others on the other side of the aisle to confirm, as the ABA said, a well-qualified, very solid candidate, for the Third Circuit Court of Appeals.

Mr. LEAHY. Mr. President, I yield myself such time as I may consume.

I ask consent that following me, the Presiding Officer recognize the senior Senator from Utah; at 7:50 this evening, without using time from either side, the senior Senator from New Jersey be recognized for 10 minutes; and then we revert back to whichever member of the Judiciary Committee sought recognition.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the Senate is debating the nomination of D. Brooks Smith to the United States Court of Appeals for the Third Circuit. This, incidentally, is the 13th circuit court nominee to be considered by the Senate since the change in Senate majority and reorganization of the Judiciary Committee fewer than 13 months ago. That is an average of one court of appeals judge a month since the Democratic majority has been in place. That does set a record.

We voted and confirmed three judges yesterday, one a circuit court of appeals judge. There are 10 other judicial nominees on the calendar. All have been approved on the Democratic side of the aisle. We have no objection to going forward with votes on them. I commend the Senator from South Dakota, the majority leader, Senator DASCHLE, who worked very hard to overcome the Republican objections so we can vote on President Bush's nominees to the judiciary.

We set a record on the number of courts of appeals nominees who have been given hearings and votes. We have moved forward, including confirming one yesterday, and we will vote on another circuit court nominee tomorrow. That will be 13 in less than 13 months, plus more than 60 other judicial nominees for whom we have held hearings or on whom we have already voted. This seat on the Third Circuit is another example of the different ways in which the Republican majority and Democratic majority have proceeded.

Today's debate is taking place in broad daylight. Under the Democratic majority, Judge Smith received a hearing less than 4 months after receipt of his ABA peer review. In contrast, Judge Cindrich was previously nominated for the same vacancy on the Third Circuit by President Clinton. He sat there for 10 months. You may wonder what happened at his hearing. He never got a hearing. You may wonder what happened on his vote. He never got a vote. He was never allowed a hearing; he was never allowed a vote. Four months after Judge Smith came up with his ABA papers, we had a hearing.

This is one of the many court of appeals vacancies for which President Clinton nominated qualified and moderate nominees but the Republican majority would not allow a vote—neither a hearing nor a committee vote. Bonnie Campbell, Allen Snyder, and so many others—I am sure they have not been treated as fairly as Judge Smith's nomination.

It is not enough to say some of the Republicans did not want those judicial nominees to be confirmed. I will vote against this nominee. I am the Chairman of the Committee. I could have refused to hold a hearing on Judge Smith. I could have refused to put his nomination on the calendar for a vote in our Committee. I did not. Even though, after the hearing, I made my up my mind to oppose this judge, I allowed the Committee to vote on his nomination and, if he got a majority vote in the Committee, allowed it to come to the Senate floor. That has always been the Democratic practice, and a practice that I follow.

Every Senator, Democrat and Republican, will vote his or her conscience about the merits of Judge Smith's promotion to the appellate bench. I do not question the conscience of any Senator in doing that. While the course charted by the Democratic Senate to improve the process and hold judicial nominees is an honorable, difficult and time-consuming course, it is a road not taken in many instances by the Republicans in the recent past.

Some nominees, such as Judge Smith, are a portrait of contradiction. Those on the other side can extol his accomplishments and his popularity, but they omit his failings. They minimize his troubling record on ethical issues and his decisions as a judicial officer. Some, we heard tonight, may belittle the genuine concerns raised by many and shared by some Members of this Senate. I believe they are legitimate concerns.

As I said, I could have refused to allow him to have a hearing. I could have refused to allow him to have a vote in the Committee. I did not. I do have genuine concerns.

Some on the other side may try to castigate or caricature those who express opinions that are in opposition to the confirmation of a nominee. They may even choose to vilify those who dare to vote against a nominee who may be popular but who may be flawed in so many important respects. All of these contrasting views and accusations might cause an outside observer to wonder what exactly is the truth. The fundamental questions are whether this particular nominee should be confirmed, whether he should be promoted to a higher court, and whether his record of conduct on and off the bench warrants promotion. A lifetime appointment to review the decisions of other judges is not a right.

With the Supreme Court hearing fewer than 100 cases per year, it is the circuit courts that are really the courts of last resort for thousands of cases each year. These cases affect the Constitution, as well as statutes intended by Congress to protect the rights of all Americans; for example, the right to equal protection of the laws, the right to privacy, as well as the best opportunity to have clean air and clean water, not only for ourselves but for our future generations.

These courts are where Federal regulations will be upheld or overturned, where reproductive rights will be retained or lost, and where intrusive Government action will be allowed or curtailed. They are courts where thousands of individuals have their final appeal in matters affecting their financial future, their health, their lives, their liberty. I believe this record does not demonstrate that Judge D. Brooks Smith merits this promotion.

In saying this, I mean no disrespect to the senior Senator from Pennsylvania, Mr. SPECTER, who strongly supported the confirmation of this nominee, nor disrespect to the nominee who is well-liked by many. I genuinely mean no harm to Judge Smith, no matter how we vote tomorrow. He has a lifetime appointment and a lifetime salary as a Federal judge. It is fair to say, however, that this nominee's record is problematic in a number of ways. Among my many concerns is the fact that Judge Smith's action creates an appearance that is too often beholden to special interests. The Federal courts are supposed to be an independent judiciary that is not beholden to anyone—the left, the right, or any economic interests. An independent judiciary is the people's bulwark against the loss of their freedom and rights.

A number of judges and lawyers in Pennsylvania have written to the Senate to support Judge Smith's confirmation. A number of individuals and groups from Pennsylvania and elsewhere in the Third Circuit and throughout the country have written to the Senate, have called and e-mailed our office to express their deep concerns about this nomination.

We have heard from many Americans who are concerned about Judge Smith's record as a judge, including, incidentally, a resolution that was passed by the City Council of the City of Philadelphia. It was sent to us after the vote in the Judiciary Committee. It called for his nomination to be rejected.

I am going to put in the RECORD at the end of my statement this City Council resolution, as well as the opinions of two ethics professors.

I am disappointed that Judge Smith's record on and off the bench has resulted in this kind of controversy. As I reviewed his record as a judge, that record raised significant doubts in my mind as well.

The issue for me is whether Judge Smith's record justifies this promotion from the lifetime Federal judgeship he now holds to the higher lifetime Federal judgeship. In this case, it is to a court that is only one step below the Supreme Court. Appellate judges in the circuit courts write opinions that become law, affecting all of us, whether we live in Pennsylvania, Utah, Vermont, or Illinois. I do not believe Judge Smith's record justifies this promotion.

For one thing, he failed to keep his promise to resign from a discriminatory country club. Incidentally, that was not a promise that is something given in a political statement or to somebody in the press in response to an impromptu question. This was a promise Judge Smith made in a sworn statement before the Senate a few years ago. He belonged to a discriminatory club for more than a decade after he swore, after he took an oath, that he would quit if the rules were not changed to allow women to become members, in 1988.

He stood there, he raised his right hand, he swore to tell the truth, and he told us that he would resign if women were not admitted by 1989. He did resign from this Spruce Creek Rod and Gun Club in 1999, 10 years later.

What do you suppose was the thing that finally made him keep his word? A cynic would say that a vacancy had arisen on the court he wanted to be promoted to, and suddenly he thought: Wait a minute. I know I swore to resign by 1989—I had a lifetime judgeship and why do I have to resign from a club I like—but then suddenly, whoops, I might be promoted to even a higher Federal judgeship, maybe I better dust off that promise. I realize I am 10 years late, but better late than never.

I find that extremely troubling.

We had testimony by his supporters in letters that, well, the Spruce Creek is just a little fishing club, an itty-bitty fishing club of no consequence, kind of like a shack in the woods where a group of male friends might store their gear.

It is not exactly an itty-bitty club. This here is the itty-bitty club.

I have a little farmhouse in Vermont. My house probably would fit in the garage of this itty-bitty club. Look at this stately club. The Republicans may have missed one thing when they previously referred to this itty-bitty clubhouse, this inconsequential clubhouse as "rustic." Maybe they didn't realize that, because it is such a stately and important place, it is on the National Registry of Historic Places.

I bet your home, Mr. Presiding Officer, is not on the National Registry of Historic Places. Mine is not on the National Registry of Historic Places. I will bet the senior Senator from Utah's home is not on the National Registry of Historic Places. But this little no-consequence, little tiny fishing club, the itty-bitty fishing club, is on such a prestigious list.

For nearly a century, this itty-bitty fishing club has been an exclusive recreational sportsmen's club that hosts its members and guests at its beautiful clubhouse. It has dining facilities. This itty-bitty clubhouse has fireplaces. It has bedrooms for overnight guests. It is not just a little bend in the road; it sits on hundreds of acres of prime real estate.

We can joke about it. It is obvious that Judge Smith and his supporters thought we would not actually go and find a picture of the club. I think they probably wish that we would not go back to his sworn testimony in which he promised to resign 10 years before he did. But let us be clear about what this is. The sports club—it does not make a difference whether the sport pursued is fishing or golfing. There are a number of women's fly fishing clubs attesting to the interest of women in that sport, and that is fine.

If men want to go off and go fly fishing themselves, that is fine. If women want to go off and go fly fishing, that is fine. But when they have facilities to conduct business and when businesspeople go there to conduct business and that is how you may be able to get ahead in the business world if you exclude women from it, if you say, women, if you want to be in business, you are not going to be able to join the moguls of the business or legal community here, then it is exclusionary.

Women anglers who might have a fly fishing association could not walk into the Spruce Creek clubhouse. They could not fish in the stream called Spruce Creek that runs through the land owned by the club—unless a man, who is a member, condescended to invite them.

Frankly, it does not make any difference whether you exclude women or you exclude African Americans or you exclude people of particular religious faiths—it is still exclusion. That is why it is particularly troublesome that, when Judge Smith was up here the last time before the Senate seeking a lifetime appointment, he swore in sworn testimony to the Judiciary Committee and to the Senate of the United States that he would resign if he could not promptly get the club to change its exclusionary rules.

Judge Smith did not resign within a year, or 2 years, as he had sworn. In fact, he did not resign within the time that the ethical rules that he was sworn to uphold as a judge required. He did not resign until 10 years later and then only when a new position on a higher court for someone from Western Pennsylvania opened up and he hoped to be appointed to it.

There is no reasonable, logical explanation for why he waited for more than 10 years to follow through except that one: There is now a vacancy on a court that he wanted to go to, the Third Circuit from Western Pennsylvania. Claims that the ethical rules changed to allow his continued membership are groundless.

The reason I stress this is that we have judicial nominations hearings, and the distinguished Senator from Utah, the distinguished Senator from Illinois, we have all sat in these hearings. You ask for certain commitments from judicial nominees because once they are confirmed they have a lifetime position.

When a nominee comes before the Senate and makes a commitment, we must rely on his or her word to honor that the promise will be kept. With Federal judges that is especially true. Once confirmed, they have lifetime appointments. Impeachment is not a realistic way to enforce such commitments and, unlike Republicans in the House and Senate a few years ago, I have never suggested impeachment of Federal judges.

If we allow such a promise, whether it is about club membership or some other issue, to be so flagrantly broken with no consequence, then promises and assurances to the United States Senate will mean very little. I think that is a bad precedent. I think that is a bad message to send to future nominees to the courts and to the executive branch: just tell us what we want to hear and then ignore those commitments without any consequence.

I cannot think of another occasion in which a judicial nominee has promised to take specific actions and then been confirmed, after failing to keep his word. It is true that some judicial nominees have been confirmed after resigning from a discriminatory club, but none have ever been confirmed after telling the Senate that they would resign and then failing for years to do so. The closest analogy I recall is the failed nomination of Judge Kenneth Ryskamp to the 11th Circuit, because Judge Ryskamp was on notice that membership in discriminatory clubs was impermissible, but he continued his membership in a discriminatory club anyway.

As a district court nominee of President Reagan in 1986, Judge Ryskamp admitted that he was then a member of the University Club, which had a rule against allowing women as members, and the Riviera Club, which had no race-specific membership rules, but which in practice had no Jewish or African American members. During his 1986 hearing, Senator Simon asked Ryskamp if he thought he should resign from the University Club, and Ryskamp promised the Senate, "I will resign from any club the Committee feels is inappropriate." In 1986, he was not asked specifically about the Riviera Club, which he later said he did not consider to be a discriminatory club. He subsequently resigned from the University Club, but not the Riviera Club.

During his nomination by the first President Bush to the Eleventh Circuit, Judge Ryskamp's two-decade long membership in the Riviera Club was questioned extensively. For example, Senator KENNEDY noted that the fact that the Senate had not specifically asked Judge Ryskamp to resign from the Riviera Club did not lessen his responsibility to follow the ethical rules anyway and resign. I recall that Judge Ryskamp told me that he resigned shortly before his confirmation hearing in March 1991 because his continued membership created the appearance of impropriety, not because, in his view, the Club discriminated. In April 1992, the motion to report favorably Judge Ryskamp's circuit nomination to the floor was defeated. The subsequent motion to send the nomination to the floor without recommendation also failed.

Unlike Judge Smith, Judge Ryskamp never promised to resign from the club at issue, although several Senators believed Judge Ryskamp should have done so following his first confirmation. I think it only reasonable that Judge Smith's conduct regarding his previous promise to the Senate would lead a reasonable person to doubt the sincerity of his assurances to the Senate this year in other areas, as well.

Breaking a promise to the Senate, or misleading the Senate into believing that certain action would be taken, is an independent yet unusually strong reason for the rejection of a judicial nominee. I do not think Judge Smith should be given a promotion after failing to keep his word to the Senate. If his statements to the Senate in 1988 were not promises, then he most assuredly misled the Senate into believing he was going to resign, and he did not do so within any period that can be considered reasonable. On this basis alone, I feel I must vote against Judge Smith's confirmation to the Third Circuit.

Spruce Creek invidiously discriminates against women. Prior to his nomination to be promoted to the Third Circuit, Judge Smith never informed the Senate that he did not have to keep his promise to the Senate. He acknowledged in both his 1988 and 2001 Senate Questionnaires that the Club violated the ethical rules against judges belonging to clubs that engage in invidious discrimination. In fact, when Judge Smith finally resigned from the Club in December of 1999, he told the Club's president that the Club's men-only membership rules "continue to be at odds with current expectations of Federal judicial conduct." It is only now that questions have been raised about his very late resignation does he belatedly assert for the first time that the Club is "purely social" and so the rules against discriminatory club membership do not apply. The exception he seeks to create would swallow the rule. His statements on this point really give me pause with respect to how Judge Smith would follow the law as an appellate judge or whether he would seek to bend it to his personal purposes. Public officials should not have to be told, repeatedly, not to belong to clubs that discriminate.

We have received a letter from Professor Stephen Gillers, the Vice Dean of the New York University School of Law, observing that the ethical rules against discriminatory club membership do not apply to purely private social clubs that do not allow business or professional meetings. However, both Professor Gillers and Professor Monroe Friedman, a distinguished ethics scholar, have noted that if club members can or do sponsor events or meetings at the club that are business or professionally related then the club cannot be called purely private and the club's discrimination against membership for women is "invidious" within the meaning of the Code of Conduct's prohibitions. This is true even if women are allowed, by the men who belong to the club, to attend some or all business and professional meetings hosted by the club's members.

I understand that, in fact, Spruce Creek has always allowed members to host business and professional meetings at its facilities. We know that members have hosted business meetings and gatherings of their professional colleagues at the Club. The President of the Club, who has been a member for decades, told Senate staff that members can use Club facilities for any meetings or occasions they want, without any oversight, but he refused to discuss the specific ways the Club is used by members for business meetings.

We also know that the Club's constitution and by-laws do not discourage the members from hosting business, professional or political meetings at the Club. Women, regardless of their standing in the community or in their profession, cannot invite their colleagues to Spruce Creek for business meetings because they are explicitly and intentionally excluded from membership.

Additionally, according to Professor Gillers, Judge Smith had an obligation to make sure that the Club maintained a purely social purpose, if he was going to claim that his membership was exempt from the ethical rules. He could not merely assume that it did. There is no "don't ask, don't tell" exception to the ethical rules. Given his previous assurances to the Senate and his own admissions up to and including his resignation in 1999, he can hardly assert that the Club is "purely social" now, as an after-the-fact justification for his conduct. He has made no showing in support of this belated contention.

Professor Gillers' view of this obligation to inquire is consistent with the guidance in the Judicial Conference's Compendium to the Code of Conduct for United States Judges. Judge Smith also did not follow the Compendium's advice regularly to re-evaluate club membership policies and practices. Judge Smith also did not seek an ethics opinion from his fellow Federal judges about whether the rules against discriminatory club membership somehow exempted this Club to which he so badly wanted to belong.

Judge Smith now says that he did not seek an ethics opinion because it was so clear to him that the ethics rules did not apply to this Club after amendments in 1992 that supposedly let him off the hook. This is another implausible and self-serving assertion. As Professor Gillers noted, the 1992 amendments to the Code of Conduct for United States Judges without a doubt strengthened the prohibition against discriminatory club membership by adopting the language of the ABA code referred to in the Senate Questionnaire that Judge Smith promised to follow when he swore to the Senate that he would resign. The only significant difference is that the rule Judge Smith promised to follow in 1988 allowed judges one year to get discriminatory rules changed or resign, while the 1992 rule gave judges up to two years, from learning of discrimination according to the Code's new, tougher rules, to change the club's practices or resign. Yet, Judge Smith did not resign in 1989, 1990, 1991, 1992, 1993, or 1994. He did not resign until a chance for a higher position in the Federal courts became available in 1999.

I recall that more than a decade ago the Senate Judiciary Committee considered this issue at length. There was testimony from women and men from across the country describing the impact of discriminatory private clubs on the women and people of color excluded. From time to time, I suppose, reminders of these lessons are necessary.

In 1990, 2 years after Judge Smith was confirmed and promised the Senate that he would resign from the mens-only Spruce Creek Club, the Senate Judiciary Committee passed a sense of the Committee resolution on the issue of discriminatory clubs. The resolution stated that discrimination at clubs where business is conducted and which intentionally exclude women and minorities is "invidious" and "conflicts with the appearance of impartiality required of persons who may serve in the federal judiciary." The Committee's resolution that was adopted on August 2, 1990, provides a bright-line rule for public officials. It defines the clubs at issue as those where members bring business clients or professional associates to the club for conferences, meetings, meals, or use of the facilities. Spruce Creek meets this definition. It is also obviously a place where contacts valuable for business purposes, employment and professional advancement are formed. The Club, by arbitrarily and intentionally excluding women from membership, practices invidious discrimination as defined by the Senate Judiciary Committee. Public officials should not have to be told repeatedly not to belong to clubs that discriminate.

All judges, no matter how popular, have a solemn obligation to "avoid the appearance of impropriety in all activities," under both the Judicial Conference's Code of Conduct for United States Judges and the ABA's model code. That is because, in the words of those codes, "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

This prohibition applies "to both the professional and personal conduct of a judge." The Judiciary Committee's club resolution similarly sets a high standard of conduct for Federal judges in their personal conduct with regard to club memberships and association. Judge Smith has failed in those obligations. He may very well be a nice person and courteous to women litigants in his courtroom, but that does not excuse him from following the ethical rules that govern his conduct as a lifetime appointee to the Federal courts. Ethical rules apply to all judges equally, regardless of popularity.

Judge Smith had an obligation to resign from the Spruce Creek Rod and Gun Club, both by virtue of his promise to the Senate and because of his responsibilities under the ethical codes, and he failed to do so in a timely fashion. His conduct should not be rewarded with a promotion.

I would also like to set the record straight on one final related point. Supporters of Judge Smith have referenced President Jimmy Carter visiting the Club. According to Carter's memoirs, however, one time in the late 1970s President Carter and the First Lady were invited by the "Spruce Creek Hunting and Fishing Club for a day of fishing on a portion of their leased stream." That day, they met the man who actually owned that parcel of land and thereafter they visited and stayed at his farm, not the Club. The chapter in his book called "Spruce Creek" relates to the creek, not the Club. There is no evidence that President Carter has ever endorsed the Club's intentional, invidious discrimination against women.

Judge Smith failed to recuse himself promptly from conflicts of interest. I am also concerned about Judge Smith's late recusal, or disqualification, in two cases involving his substantial financial investments. According to two distinguished professors of legal ethics, Professor Gillers and Professor Friedman, Judge Smith also violated ethical rules due to his late recusal from the Black cases, a 1997 investment fraud case and a related 1999 criminal case. This is because it is undisputably true that Judge Smith and his wife had substantial investments (valued at between $200,000 and $500,000 together) in the bank or holding company that faced significant financial liability in those cases and because his wife also worked at the bank.

In one of those cases, Judge Smith waited five months to recuse himself. In the other case, he waited about a week to recuse himself after realizing that the bank was involved, but he issued significant orders in the intervening period. In both cases, Judge Smith revealed only his wife's employment at the bank to the lawyers in the cases. He never disclosed their substantial financial investments to the lawyers in either the civil or the criminal case. Judge Smith contends that he was not required to recuse himself but did so only in "an abundance of caution." He also contends, basically, that nobody was harmed by his late recusal.

In the opinions of two ethics experts, however, Judge Smith was required to recuse himself from any case in which the judge or his spouse has any interest that could be substantially affected by the outcome of the case, in accordance with the rules passed by Congress in 28 U.S.C. § 455 (a) and (b) (4), and with cases of the Supreme Court and Third Circuit. These rules against conflicts of interest, which are intended "to avoid even the appearance of partiality," are largely self-enforcing. Parties may not know that a judge has substantial financial investments affected by the case and may not move to disqualify a judge unless the judge fully discloses such information. Judge Smith, again reading ethical rules narrowly, did not do so. Such facts do not give one confidence in his conduct on the bench.

I do think this Senate should take seriously a lifetime appointee's failure to follow ethical rules, in this area and others, such as discriminatory club membership. It is problematic to confirm someone to the Court of Appeals who would read the ethical obligations so narrowly. This is especially so because, under the structure of the Federal courts, it is the circuit court judges who preside over ethics complaints against lower federal judges. I do not think those who read such rules narrowly should be elevated and given that special responsibility.

Judge Smith's remarks as a Federal District Court judge: Another troubling area is Judge Smith's insensitive and activist speeches. A number of these remarks call into question Judge Smith's judgment and fairness. For example, as a sitting federal judge he has given speeches in which he calls "legal spam" cases that affect the rights of ordinary Americans, such as cases involving their financial security, social security appeals, pension plan collection cases, and bankruptcy appeals. Such a characterization is shocking for its insensitivity to the importance of such cases to the individuals seeking a fair hearing of their claims in federal court. It calls into question how seriously Judge Smith has taken his oath as judge to administer justice to all persons equally and to "do equal right to the poor and to the rich."

Judge Smith also spoke out in favor of parties being required to pay each other's costs in responding to discovery requests. That idea—like the idea of requiring the loser in a case to pay the winner's expenses, which he also endorsed has been widely rejected because it would impose significant financial burdens on individuals suing corporations, for example, for personal injuries caused by a defective product. Such a rule could make it impossible for individuals to pursue legitimate grievances for which Congress has provided a federal court forum.

Another concern is Judge Smith's speeches to conservative ideological groups in which he basically gives advisory opinions about the constitutionality of federal statutes. For example, in 1993, as a sitting judge, he gave a far-reaching speech to the Federalist Society in which he advised the audience that the proposed Violence Against Women Act (VAWA) was unconstitutional. He said this landmark legislation could not be justified as within the power of the federal government. He was also very critical of Congress's extensive findings of fact in VAWA, calling them a "promiscuous invocation of the Commerce Clause." This lack of deference and respect to the legislative findings of a co-equal branch of government is troubling.

Judge Smith told the Federalist Society his own principles for deciding such cases: "First, ask whether the subject matter is within the power of the national government by express delegation in the text of the [C]onstitution, or impliedly through a historically honest reading of the necessary and proper clause. If not stop!" Such a subjectively narrow reading of the Constitution could ostensibly result in the overturning of many laws intended to protect the rights of individuals. He assured the Senate at his recent hearing that he would not read the Constitution so narrowly if he were promoted, but in 1988 he also assured the Senate that he would resign from a discriminatory club the following year, a promise he did not keep. I am not sure his assurances on the important issue of the scope of Congressional power should be credited now.

Similarly, Judge Smith gave a speech at the 1997 National Convention of the Federalist Society on "The Federalization of Criminal Law." In it he criticized the invocation of federal jurisdiction via the Commerce Clause in a "routine" car bombing case under 18 U.S.C. § 844, as well as the "rape-shield" amendments to the Federal Rules of Evidence which generally bars evidence of a rape victim's sexual history. Judge Smith took issue with federal intrusion into these areas of the law, stating that using that statute in car bombing cases and rules like the rape-shield rule reflect "elitism: a mind set on the part of Congress and some federal prosecutors that the state court systems can't be trusted to 'get it right' . . . never mind the text of the Constitution." Such statements are unsettling. It seems as though Judge Smith has a deep distrust that Congress does not follow the Constitution, despite the precedent that requires judges to give congressional enactments a presumption of constitutionality.

Judge Smith has also written an article endorsing an idea he calls "benign judicial activism" in which a judge intervenes early in a case to help reach a speedy and just resolution. While this idea has superficial appeal, in practice this approach may not be so benign. In about half of Judge Smith's more than 50 reversals, the Third Circuit reversed his decisions either to grant summary judgment in whole or in part to defendants in civil cases or to dismiss plaintiffs' complaints with prejudice. In a number of such reversals which span his years on the bench the Third Circuit took issue with his early intervention in cases in ways that denied plaintiffs the opportunity to have their cases adjudicated or tried on the merits. Thus, the Court of Appeals to which Judge Smith is now nominated has repeatedly reversed decisions of his which improvidently granted summary judgment or dismissals in favor of civil defendants, often big, corporate defendants. This pattern, combined with his speeches and conduct, raises concern.

Judge Smith's participation in seminars at resorts paid for by special interests is problematic. Another area of concern is that Judge Smith has attended a large number of educational seminars funded by corporations and groups with an interest in interpreting the law a particular way, in a politically or ideologically conservative way favoring corporate interests. As a sitting federal judge, Judge Smith has spent more than 72 days on junkets at luxury resorts on trips valued at more than $37,000 which were funded by corporations and conservative special interest groups. Judge Smith has taken three trips to seminars funded by the Foundation for Research on Economics and the Environment (FREE), which promotes "free market environmentalism," opposes environmental regulations, and gives lectures on topics like "Liberty and the Environment: A Case for Principled Judicial Activism." He has also taken nine trips funded by the Law and Economics Center (LEC), which is affiliated with George Mason Law School and which sponsors seminars with anti-regulatory bent on topics like "Misconceptions about Environmental Pollution and Cancer."

My colleague on the Senate Judiciary Committee, Senator FEINGOLD, has spent a great deal of time trying to address the problem of these junkets. The current ethical rules do not clearly prohibit such judicial education seminars at luxury resorts paid for by special interests, and it is difficult for outsiders to obtain information about who is really footing the bill. According to one report, however, Judge Smith has presided over at least two dozen cases involving corporations that funded LEC and he is one of the most frequent fliers to such seminars. I do think it is difficult to maintain the appearance of impartiality under such circumstances. It is axiomatic that judges must be perceived as fair and impartial, and actually be so, for our system of justice to work. I am troubled by Judge Smith's insensitivity to such matters.

Judge Smith's reversals for dismissing plaintiffs' claims: I am also concerned about the unsettling anti-plaintiff pattern in Judge Smith's judicial decisions. Judge Smith's published and unpublished decisions reveal numerous instances in which he has been more solicitous to corporations than to plaintiffs and pro se litigants. Judge Smith has been reversed by the Third Circuit dozens of times for denying plaintiffs the opportunity to try the merits of their cases. In cases involving personal injuries, toxic torts, employee rights, and civil rights claims by prisoners, Judge Smith has been reversed for improvidently granting defendants' motions for summary judgment, prematurely dismissing plaintiffs' complaints, and inappropriately denying motions for injunctive relief without giving the plaintiffs a hearing.

Overall, Judge Smith has been reversed 51 times, including 18 unpublished reversals, in 14 years. In contrast, Judge Pickering was reversed 28 times in 11 years and Judge Barrington Parker, one of President Bush's nominees who was confirmed last fall, was reversed nine times in 11 years on the district court bench. The Third Circuit's reversals suggest that Judge Smith's political philosophy greatly influences the outcome in cases before him. Of the many problematic reversals and published, as well as unpublished, decisions of Judge Smith on the district court, three are particularly illustrative of his approach to claims of plaintiffs, but there are many others that raise concerns.

In *Metzgar* v. *Playskool*, 30 F.3d 459 (3d Cir. 1994), for example, three Reagan appointees reversed Judge Smith's dismissal by summary judgment to the corporate defendant that had been sued for the death of a 15-month-old child who choked on a wooden block marketed without a warning label. Judge Smith granted summary judgment to the corporation on his theory that choking is an obvious danger and therefore no express warning was necessary. The Third Circuit was "troubled" by Judge Smith's analysis and his reliance on flawed statistics. The appellate court concluded that Judge Smith should have given the jury a chance to consider whether the blocks were so obviously dangerous that no specific warning was needed for parents of toddlers.

In *Wicker* v. *Consolidated Rail Corporation*, 143 F.3d 690 (3d Cir. 1998), Judge Smith was reversed for granting summary judgment to an employer sued under the Federal Employees Liability Act (FELA) for injuries caused by exposure to toxic solvents, degreasers and paints illegally dumped and buried by the employer. Smith granted the corporation's motion for summary judgment on the ground that the workers had signed a release settling prior, unrelated injury claims against the railroad. The Third Circuit reversed and held that FELA was intended to protect workers in these situations and that the releases seized on by Smith were invalid.

In *Brown* v. *Borough of Mahaffey*, 35 F.3d 846 (3d Cir. 1994), Judge Smith improvidently granted summary judgment to a city that refused to allow the plaintiff and his Pentecostal ministry access to tent revival meetings in violation of their rights under the Free Exercise Clause of the First Amendment. The city had intentionally locked a recently-erected gate to impede access to the Christian revival meetings. Judge Smith concluded erroneously that these actions, even if manifesting anti-Christian bias, did not constitute a substantial burden on the exercise of their religion. The Third Circuit reversed, holding that Judge Smith's analysis was "inappropriate for a free exercise claim involving intentional burdening of religious exercise" because "[a]pplying such a burden test to non-neutral government actions would make petty harassment of religious institutions and exercise immunity from the protection of the First Amendment." The Third Circuit completely disagreed with Judge Smith's hostile decision in which he stated that the plaintiff's "invocation of the First Amendment provisions guaranteeing religious liberty in so glaring a piece of spiteful litigation is insulting to the principles protected by that constitutional amendment." I was shocked by Judge Smith's rough and disrespectful treatment of the legitimate claims of people of faith in this case.

This unsettling pattern created by Judge Smith's judicial decisions, his high level of participation in right wing, special interest-funded junkets, his activist and insensitive speeches, his late recusal in cases involving his substantial financial interests, and his very belated resignation from a discriminatory club create a very unfavorable impression. Judge Smith's defense to each of these significant problems seems to be that he actually is a fair judge despite the appearance that he is not. I am not convinced that his record warrants a promotion to a higher court.

Judge Smith's cramped and self-serving approach to the ethical rules that are supposed to govern federal judges is particularly troubling. He seems to think he is above the rules. His actual record of conduct on and off the bench creates a negative impression that is not reflected in Judge Smith's apparent popularity among his friends. I have no doubt that Judge Smith is an intelligent and charismatic person. What his record as a whole, not just as a colleague or friend, calls into question is his sensitivity, his fairness, his impartiality and his judgment. It calls into question how seriously he has taken his promises and assurances to the Senate in the past and recently, as well as how seriously he has taken his oath as judge to administer justice to all persons equally and to do equal right to the poor and to the rich. The record Judge Smith's own record of performance as a federal judge over these past 14 years does not merit his promotion to one of the highest courts in the land. Based on that record, I will vote against confirmation.

My good friend from Utah is waiting patiently. I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, hearing my colleague, one might forget that this is the U.S. Senate rather than some whacky politically correct college campus—Berkeley on the Potomac. The fact is, this judge is one of the most respected judges in all of Pennsylvania. He has virtually everybody in western Pennsylvania on his side. He has served 14 years on the Federal bench and has done a very good job in doing so. He is highly respected and has the highest rating from the American Bar Association—the gold standard, according to our colleagues from the other side. And he did not break his word.

The fact is, the law was different than was explained to him when he appeared before the committee, and it is still different than the distinguished Senator from Vermont has been making out here today.

I often hear my colleagues talk about the Clinton nominees who were left at the end of the 106th Congress, but I rarely hear them mention the 54 nominees who were left at the end of the Democratic-controlled 102nd Congress when George Herbert Walker Bush was President. If we are going to waste our time looking back on nominations past instead of looking ahead, let's not forget the 54 nominees the Democratic-controlled Senate left at the end of the 102nd. That is 13 more than the number of Clinton nominees left at the end of the 106th whom we hear so much about, and about 17 of them didn't have a chance anyway. The rest of them there were for reasons. Some of them, the blue slips weren't returned by Senators. You can't call them up.

I don't really think to talk about past congressional action on nominations in any way furthers the work we have been doing as a committee. However, it is difficult to listen to only a select portion of what has occurred in the past without trying to set the record straight. Those Bush 1 nominees who were never confirmed are just as important as these Clinton nominees who have been complained about, and there were far more of them than there were Clinton nominees left over. It is just a matter of fact. Whoever is President, you have some nominees left over. But there were a lot more left over by Democrats than there were by Republicans.

Let me name some of them: Jay C. Waldman of the Third Circuit, nominated for the Third Circuit; Franklin Van Antwerpen, Third Circuit; Lillian R. BeVier, Fourth Circuit; Terrence W. Boyle, Fourth Circuit, who has been sitting here for 14 months, nominated again 10 years later; Francis Keating II, current Governor of Oklahoma, the Tenth Circuit; Sidney A. Fitzwater, Fifth Circuit; John G. Roberts, again, nominated by the second Bush 10 years later, sat there all those months in the first Bush, and now he is sitting here for 14 months in this administration; John A. Smietanka, Sixth Circuit; Frederico Moreno, Eleventh Circuit; Justin P. Wilson, Sixth Circuit; James R. McGregor, Western District of Pennsylvania; Edmund Kavanagh, Northern District of New York; Thomas Sholtz, Southern District of Florida; Andrew O'Rourke, Southern District of New York.

There are plenty of names and an awful lot more than were left at the end of the Clinton administration, and with very little justification. They have seldom mentioned that the all-time confirmation champion was Ronald Reagan with 382 judges. He had 6 years of a favorable party Senate. His own party controlled the Senate. He got 382 judges through. President Clinton, with the opposition party controlling the Senate, with me as chairman, as a member of the opposition party, got 377 judges through, virtually the same number as the all-time confirmation champion, Ronald Reagan.

Continuing my list of judges: Tony Graham, Northern District of Oklahoma; Carlos Bea, Northern District of California; James Franklin Southern District of Georgia; David Trager, Eastern District of New York; Kenneth Carr, Western District of Texas; James Jackson, Northern District of Ohio; Terral Smith, Western District of Texas;, Paul Schechtman, Southern District of New York; Percy Anderson, Central District of California; recently confirmed; Lawrence Davis, Eastern District of Missouri; Andrew Hane, Southern District of Texas; recently confirmed; Russell Lloyd, Southern District of Texas; John Walter, Central District of California; recently confirmed; Gene Vougts, Western District of Missouri; Manuel Quintana, Southern District of New York; Charles Banks, Eastern District of Arkansas; Robert Hunter, Northern District of Alabama; Maureen Mahoney, Eastern District of Virginia; James Mitchell, District of Nebraska; Ronald Leighton, District of Oklahoma; William Quarles, District of Maryland; James McIntyre, Southern District of California; Leonard Davis, Eastern Northern District of Texas; recently confirmed; Douglas Drushal, Northern District of Ohio; Christopher Hagy, Northern District of Georgia; Lewis Leonatti, Eastern District of Missouri; Raymond Finch, Northern District of Vermont; James McMonagle, Northern District of Ohio; Katherine Armentrout, District of Maryland; Larry Hicks, District of Nevada; Richard Casey, Southern District of New York; Edgar Campbell, Middle District of Georgia; Joanna Seyvert, Eastern District of New York; Robert Kostelka, Western Northern District of Louisiana; Richard Dorr, Western District of Missouri; has had a hearing; James Payne, District of Oklahoma, confirmed this congress; Walter Prince, District of Massachusetts; George O'Toole, Jr., District of Massachusetts; William Dimetroulas, Southern District of Florida; Henry Saad, Eastern District of Michigan—not to mention Kenneth Ryskamp, who, like Charles Pickering, was voted down in committee and never received a full Senate vote.

Let me also say I am going to get into this because I didn't think we would get down to the point where we started talking about a 115-member club that is a social club, not a business club, and virtually everybody knows it. To make that the big brouhaha that this is supposed to be is just almost beyond belief to me. I didn't want to have to talk about that, but I will be happy to.

I rise today to express my strong support for Judge D. Brooks Smith whom the President nominated on September 10 of last year for the Third Circuit Court of Appeals to be confirmed today or tomorrow. It has been over 5 months since his committee hearing. It has been over 60 days since the Judiciary Committee reported Judge Smith's nomination favorably to the Senate. I am disappointed, however, with the treatment Judge Smith is getting from those whose well-funded business it is to oppose President Bush's nominees.

I have warned before of the growing power of the extreme left of mainstream special interest groups upon the judicial confirmation process. Almost all of them are right here in this town. My colleagues know full well that when I was chairman of the Judiciary Committee, I did not welcome conservative groups telling the committee how to vote and what to do. I told them to get lost. I even directed my staff to refuse briefings from them and even meetings with them. But the evidence indicates a very different relationship now to liberal special interest groups that seem to call the shots.

Newspapers from the Wall Street Journal to the Washington Post have commented on these liberal special interest groups and on their control of this process. But it is not a matter of opinion; here is the evidence. I would like to have printed in the RECORD evidence of this unfortunate relationship. First is a fundraising letter from People for the American Way taking credit for the rather shameless defeat of Judge Charles Pickering's nomination; second, a letter from a liberal Hispanic organization telling the committee not to bring up the nomination of Miguel Estrada until August to give them time to prepare a Pickering-like campaign against him. The President nominated Miguel Estrada over 1 full year ago. He would be the first Hispanic to sit on the Nation's second most influential court. But the Democratic leadership refuses to give him a hearing. Now I think we know why.

Lastly, I want to have printed in the RECORD a press release from the National Organization For Women, issued just hours after the Judiciary Committee voted to report favorably the nomination of Judge Brooks Smith to the full Senate. It appears that NOW and other radical liberal groups have demanded that the Democrat leadership come to the floor and fight to defeat Judge Smith.

I ask unanimous consent that the documents I have just referenced be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, April 5, 2002.

In the past couple of weeks, the Wall Street Journal's notoriously right-wing editorial board has twice attacked People For the American Way—and me personally—in particularly venomous language. Being called a "race-card specialist" is not the best way to start the day. (You think I'd be used to it given that the Journal's editorial board has run more than two dozen attacks on me over the years, especially during my tenure at the Leadership Conference on Civil Rights as I chaired the successful coalition battle to keep Robert Bork off the U.S. Supreme Court.)

But there's good news in those unfair and inaccurate poison-pen editorials. As a long-time progressive ally recently reminded me, they don't come after us like that unless they think we're winning.

In this case their fears were well founded. On March 14, the Senate Judiciary Committee voted to reject the nomination of Judge Charles Pickering to a lifetime appointment to the U.S. Circuit Court of Appeals. People For the American Way played a crucial leadership role in the broad progressive coalition effort to defeat this nomination in the face of attacks from the far right, the GOP Senate leadership, and the White House. Even before the vote, the far right had been coming after us with all the rhetorical fury they can muster. I can only imagine what will happen now that it is clear we won't let them complete their ideological takeover of the federal courts without a fight.

Pat Robertson recently told millions of his television viewers that People For the American Way is "bad news for America. They don't tell the truth, and what they're doing is essentially smearing this man." Robertson's son Gordon, the heir apparent to the evangelist's empire, used the same television platform to accuse People For the American Way of "anti-Christian bigotry," telling viewers we opposed Pickering because he is a Christian. Phyllis Schlafly's Eagle Forum has denounced People For the American Way and our allies as an "Unholy Alliance" while calling Democratic members of the Senate Judiciary Committee the "Tyrannical Ten."

Ultra-conservative senators like Trent Lott, Orrin Hatch and Mitch McConnell have gone after us and other Pickering critics. And right-wing pundits on the Internet are even worse, making totally irresponsible and inflammatory remarks.

The increasing frequency and harshness of the attacks directed against People For the American Way reflect more than anything else our leadership role in the progressive movement and the effectiveness of our work. We've been accused of aiding America's enemies for standing up to Attorney General John Ashcroft and his assaults on the Constitution. We've been attacked as anti-Christian bigots for defending separation of church and state. And now we're being attacked for fighting to preserve the federal courts as a refuge for people seeking to have their civil rights and civil liberties protected.

The recent Judiciary Committee vote was the first victory in what will certainly be a long and fierce struggle over the future of the federal judiciary and the rights and freedoms protected by our Constitution.

I hope that you will take this opportunity to become a member of People For the American Way or to continue your support. At this watershed moment in our history, we would be proud and honored to march forward with you as our partner.

Sincerely,

RALPH G. NEAS,
President.

MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND, NATIONAL ASSOCIATION OF LATINO ELECTED & APPOINTED OFFICIALS, NATIONAL COUNCIL OF LA RAZA, NATIONAL PUERTO RICAN COALITION, PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND,
Washington, DC, May 1, 2002.

HON. PATRICK LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As national Latino civil rights organizations, we write on a matter of great importance to U.S. Latinos, and all Americans—the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals. Although historically we have expressed our views on judicial nominees with different levels of frequency, we are united in our view that all federal judicial appointments are important because they are life-long appointments, because they are positions of great symbolism, and because federal judges interpret the U.S. Constitution and federal laws serving as the balance to the legislative and executive branches of the federal government. While the Supreme Court is the highest court, the appellate courts wield considerable power. During its most recent term, the Supreme Court heard only 83 cases, while the circuit courts decided 57,000 cases. As a practical matter, circuit courts set the precedent in most areas of federal law.

We are united at this time around our belief that Mr. Estrada's nomination deserves full, thoughtful, and deliberate consideration. The President proposes to place Mr. Estrada, who has no judicial experience, on arguably the single most important federal appeals court to decide a myriad of statutory and regulatory issues that directly affect the Latino community. Every appointment to a powerful court is important as we recently witnessed in the Supreme Court's 5-4 decision in Hoffman Plastics that stripped undocumented workers of certain labor law protections. This decision, which inevitably will result in increased exploitation of the undocumented, as well as weaker labor standards for all low-wage workers, underscores the importance of nominations such as this one, not just to Hispanics, but all Americans.

This decision comes on the heels of a series of Supreme Court decisions which, in our view, have unnecessarily and incorrectly narrowed civil rights and other protections for Latinos. While we look to see if judicial nominees meet certain basic requirements such as honesty, integrity, character, temperament, and intellect, we also look for qualities that go beyond the minimum requirements. We look to see if a nominee, regardless of race or ethnicity, has a demonstrated commitment to protecting the rights of ordinary U.S. residents and to preserving and expanding the progress that has been made on civil rights, including rights protected through core provisions in the Constitution, such as the Equal Protection Clause and Due Process Clause, as well as through the statutory provisions that protect our legal rights.

We are aware that some are demanding a commitment from you and the Judiciary Committee to announce a date certain for action on Mr. Estrada's nomination. We agree with the proposition that every nominee deserves timely consideration. For this reason, we urged the Senate to act on the nomination of Judge Richard Paez to the Ninth Circuit Court of Appeals, who was forced to wait for four years before being confirmed. We also believe, however, that if a nominee's record is sparse the Judiciary Committee should allow sufficient time for those interested in evaluating his record, including the U.S. Senate, to complete a thorough and comprehensive review of the nominee's record. We therefore respectfully request that you consider scheduling a hearing no earlier than August, prior to the scheduled recess. This leaves sufficient time for action prior to adjournment if his record is strong enough to receive substantial bipartisan support.

In the interim, we pledge to conduct a fair and thoughtful assessment of Mr. Estrada's record, and to communicate our views on his nomination to you, Ranking Member Hatch, and other Committee members in a timely manner.

Sincerely,

ANTONIA HERNANDEZ,
President and General Counsel, Mexican American Legal Defense and Educational Fund.
RAUL YZAGUIRRE,
President, National Council of La Raza.
MANUEL MIRABAL,
President, National Puerto Rican Coalition.
JUAN FIGUEROA,
President and General Counsel, Puerto Rican Legal Defense and Education Fund.
ARTURO VARGAS,
Executive Director, National Association of Latino Elected and Appointed Officials.

[From the National Organization for Women, May 23, 2002]

JUDICIARY COMMITTEE VOTE INSULTS WOMEN; NOW VOWS CAMPAIGN IN FULL SENATE

(By Kim Gandy)

The field of credible Democrats running for President was significantly narrowed today when two rumored candidates insulted every employed woman, every woman in business, and every woman who has been a victim of violence in this country. In casting their votes to promote Judge D. Brooks Smith to the Third Circuit Court of Appeals, only one step below the Supreme Court, rumored candidates Sen. Joseph Biden, D-Del., and Sen. John Edwards, D-N.C., disregarded the extensive evidence of unethical behavior and discriminatory conduct that caused the Washington Post, New York Times and Los Angeles Times to oppose Smith's confirmation.

In an embarrassingly convoluted rationale, Biden expressed disappointment in Smith's strong criticism of the Violence Against Women Act (VAWA), but said it would be a "double standard" to vote against Smith because Supreme Court Chief Justice William Rehnquist held a similar opinion on VAWA. Apparently Biden doesn't recall that his vote for Rehnquist was cast many years before VAWA was even introduced. As for a "double standard," someone should tell Sen. Biden that double nothing is still nothing. Biden's previous leadership on violence against women is just that—previous. He has jettisoned it in favor of friendship—his stated presumption of supporting any nominee sponsored by Sen. Arlen Specter, R-Pa. No doubt the people of Delaware will want to know that they have elected a Republican from Pennsylvania to represent them.

Another Presidential wanna-be, Sen. Edwards, hid out in his office across the hall from the hearing, and didn't even have the courage to cast his "Yes" vote in public. Sen. Herbert Kohl, D-Wis., joined all of the committee Republicans, whose cowardly votes betrayed the women of their states by recommending elevation of a judge whose repeated "ethical lapses" deserve censure, not promotion.

The Senate's reputation as an "Old Boys Club" was reinforced by today's vote, in which both of the women on the Judiciary Committee voted against Smith, but he won anyway because 12 of the 17 men voted in his favor. To promote a judge who will have to decide on cases of discrimination, when that judge has himself cavalierly participated in discrimination and even ruled in favor of discriminatory practices, is the height of irresponsibility by those who are charged with that duty.

NOW commends both of the women who serve on the Judiciary Committee, Senators Dianne Feinstein, D-Calif., and Maria Cantwell, D-Wash., whose votes against confirming Smith spoke volumes, as well as Committee Chair Patrick Leahy, D-Vt., who spoke eloquently about discrimination against women, and Senators Richard Durbin, D-Ill., Russ Feingold, D-Wis., Edward Kennedy, D-Mass., and Charles Schumer, D-N.Y.

NOW intends to seek a filibuster in the Senate against Judge Smith's confirmation, and will urge every Senator to participate who cares about protecting the last 40 years of progress women have made. The Judiciary Committee's vote for D. Brooks Smith made a mockery of judicial standards. Unless the full Senate reverses, it will send a message to women that they can't expect to have civil rights—or ethics—taken seriously by the Senate or the courts.

Mr. HATCH. Referring in the most vitriolic terms to my friends, Senators Biden and Edwards, voting for Judge Smith in committee, NOW begins by saying:

> The field of credible Democrats running for President was significantly narrowed today. . . .

This is simply because these Senators exercised their independent judgment and supported Judge Smith. Honoring the President's prerogative to nominate judges should hardly be a cause to attack my Democrat colleagues or take them out of a potential Presidential candidacy or race.

Rather than speak further about Judge Smith's enemies, I would like to speak about his friends. I think an editorial in the liberal Pittsburgh Post-Gazette put Judge Smith's nomination best when they wrote:

> Outside Washington's world of partisan politics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record in the Federal bench in Western Pennsylvania is being twisted by political opportunists. His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard-working, and respectful to all.

I hope I am not alone in this Senate in finding this home-town report much more reliable and convincing than the hit pieces circulated by the Washington left-wing special interest groups, or for that matter the New York Times, which I read faithfully everyday and respect in many ways—but not in this instance.

But given the bipartisan support Judge Smith enjoys from the people who know him best, and his stellar record, I find it most difficult to accept that the opposition to him has centered on his belonging to an all-male, family oriented fishing club where his father first taught him to fly fish—the same rustic club that Jimmy and Roslyn Carter have visited to escape, relax, and fish.

If this is the kind of thing that members of the body use as an excuse for thwarting the President's judicial nominations, then the American people will have a big laugh at our expense. And rightly so.

In fact, there are hundreds of small, family-oriented fishing clubs like the one Judge Smith belonged to all across this country from Washington to North Carolina. I even pointed out the website called *www.womensflyfishing.net*, which lists the 60 or so women-only fishing clubs across the country.

We are far from those days when prestigious downtown clubs kept women out of their facilities, and in any case that is not the nature of Judge Smith's family-oriented, fly-fishing club. The special interest groups out to get Judge Smith on this count are proving that when the only tool you have is a hammer, everything you see starts looking like a nail.

In fact, there is a rich mosaic of single gender social clubs in this country that are entirely unobjectionable to any reasonable person. You should not be surprised to know, Mr. President, that this country is well-served by over 6,500 women's only clubs of every size.

Are Judge Smith's opponents in this Senate really prepared to say that the members of the important Francesca Club in San Francisco or the powerful Raleigh Women's Club, or the Junior Leagues throughout the South and all over the country, or the Masons, or the Knights of Columbus cannot serve as judges?

Perhaps the reason for this misguided line of attack on Judge Smith lies in the fact that, in his 1988 confirmation hearing before the Judiciary Committee, he stated that he believed the Judicial Code would require him to try to open the club to women, and to resign if he failed. But the fact is that he was wrong in that belief. The Judicial Code does not require resignation from clubs whose principal purpose is social, that do not function as public accommodations serving food to the public, or whose principal purpose is other than business.

Mr. President, the building you saw has a living room, a kitchen, two bathrooms, and six bedrooms on the second floor. It is not a great big building, even though they blew up a picture to make it look like it was. Even if it was, it is used only for social purposes, and then by a membership of 115.

By the way, that club does not have public accommodations. It does not serve food to the public. It does not do business with the public.

No legalistic parsing of words can change this fact, even though any motivated lawyer can certainly confuse the issue, as we have seen in the Judiciary Committee.

It is not surprising, of course, that the Judge Smith's detractors have chosen to disregard the clear constitutional standards articulated by the Supreme Court as well as the letter of the public accommodations law of Pennsylvania. After 1988, when the issue of single gender clubs was at its most heated peak, the Judicial Conference adopted standards pursuant to Supreme Court's decisions. It made clear that there was nothing—absolutely nothing—improper about a judge or nominee belonging to single-gender clubs, which exist in great numbers for both women and men in this country, so long as the association or club exhibits certain attributes of privacy first articulated by the Supreme Court in the 1984 case of Roberts v. Jaycees.

Judge Smith was under no obligation to make efforts to open the club to women—as he promised this committee—or to resign from the club. But he did both, even though he had no obligation to do so.

Opposing Judge Smith because he used to belong to a fisher-men's club is most absurd when contrasted with Judge Smith's record. Judge Smith, who currently serves as Chief Judge for the Western District of Pennsylvania, has earned a reputation for competence, fairness, and judicial temperament during 14 years as a Federal judge.

I used to practice law in that district and tried cases in the Federal District Court of Western Pennsylvania.

Judge Smith was appointed to that job at age 36—he was one of the youngest Federal judges in the country—and he came to it with experience as a state court judge, as a prosecutor, and as a private practitioner.

His nomination is supported by lawyers, judges, and public figures from across the political spectrum. The Pittsburgh Post-Gazette, a respected newspaper with a liberal editorial viewpoint, has endorsed his nomination three times.

The accounts of the people who know Brooks Smith best became real to me a few weeks ago when I listened to tremendously moving stories of women lawyers from Pennsylvania who recounted emotionally powerful events where Judge Smith bent over backwards to help them succeed as pregnant women and mothers in the practice of law.

The truth is that Judge Smith is supported in the strongest possible terms by the women leaders and members of the Women's Bar Association of Western Pennsylvania, the Allegheny County Bar Association, and the Blair Bedford Domestic Abuse Advisory Board, to name a few.

The Women's Bar Association gave Judge Smith their Susan B. Anthony Award "because of his commitment to eradicating gender bias in the court system." That is a remarkable laud. The officers of the Women's Bar have also stated that they "did not receive a single complaint concerning Judge Smith."

To attempt now to taint Judge Smith as being insensitive to women's rights or interests is really beyond the pale of fairmindedness, if not decency.

Judge Smith, who is currently the Chief Judge for the Western District of Pennsylvania, has earned a reputation for competence, fairness, and judicial temperament during his 13½ years as a Federal judge. He was appointed to that job at age 36—he was one of the youngest Federal judges in the country—and he came to it with experience as a State-court judge, as a prosecutor, and as a private practitioner.

I briefly recount Judge Smith's record because it highlights the nature of the prejudice that occurs when a nominee or any person is judged on a single, private and lawful lifestyle choice. It seems to me that the root of all intolerance begins with just that act: to judge a person's entire worth based on a single characteristic, whether it be how a person exercises his or her freedom or religion or his of her freedom of association, which, like religion, has contributed so much to this Nation's unmatched vitality.

I believe the Senate suffered a great shame when it ruined whole careers in the 1950s by asking a single infamous question intruding into the freedom of association. I was ashamed when the Judiciary Committee echoed this question last year by questioning nominees about the Federalist Society, as distinguished an association of lawyers as there could be. Now the special interest groups are asking the Senate to deny the President's nominee a confirmation on the basis of a fly fishing club.

I fear the American people, are going to roll their eyes at the Senate with these type of accusations. But the truth of it is that if we disregard the right of lawful association, it will be no laughing matter.

The Supreme Court first recognized the freedom of association in 1958 as an extension of first amendment free speech in NAACP v. Alabama, and most recently it reaffirmed the right in Boy Scouts of America v. Dale.

It is a right, as Justice Thurmond Marshall wrote, "which our system honors" and that encourages "all-white, all-black, all-brown, all-yellow clubs, as well as all-Catholic, all-Jewish as well as all-agnostic clubs to be established." And, it is a right that applies, Mr. President, as Justice Sandra Day O'Connor noted, to clubs whose purposes would be "undermined if they were unable to confine their membership to those of the same sex, race, religion, or ethnic background."

We should be glad that our personal politics are trumped by this American freedom because it has protected groups as diverse as the Communist Party and the Moose Lodge, and from the NAACP to the Boy Scouts of America. The freedom of association has protected the thousand points of light that have made this country's public life so vibrant. And it helps to distinguish us from those foreign places where people are shunned or even imprisoned for mere memberships in unpopular associations.

While the constitutional right of association at first related to expressive association and protected unpopular groups, like the NAACP, in 1984, the Supreme Court articulated the right of intimate association concerning clubs such as Judge Smith's small fishing club. It did so while enforcing Minnesota's public accommodations law against a large single gender organization organized principally for business purposes. That is not the case here. The Court described the attributes of such intimate associations that the Constitution honors, including "relative smallness." That is the case here. Judge Smith's former club has only 115 members. It has been around for a lot of years and has had both women and men enjoy the benefits.

An intimate association, said Justice Brennan, writing for the Court, must be protected "as a fundamental element of personal liberty," and "must be secured against undue intrusion . . . because of the role of such relationships in safeguarding the individual freedom central to our constitutional scheme." As Justice Brennan explained, such small clubs transmit our culture and "foster diversity." They foster pluralism.

I for one stand by our freedom of association. As Justice Thurmond Marshall pointed out, it is a freedom that has helped make this country great, and a freedom we honor. I hope that all on this Committee do also, and that Judges, or people who might want to be Judges someday, are just as free as anyone else to exercise that right lawfully.

Now, Senators who do not share my reverence for this First Amendment right will be interested to know that the State of Pennsylvania has a law against clubs that discriminate on the basis of gender. Pennsylvania has not sought to regulate the club Judge Smith resigned from—and for a good reason: that club does not violate the law against discrimination.

In fact, Pennsylvania courts have found single-gender clubs to be permissible not on the basis of First Amendment rights, but as a privacy right, citing Griswold v. Connecticut. It would certainly be an entertaining footnote to Griswold jurisprudence if opponents of Judge Smith, who have seen fit to probe Judge Smith's views on Griswold, voted against him for exercising privacy rights emanating from that very case.

The special interest groups that are working to discredit Judge Smith apparently think that President Bush's circuit court nominees deserve to have their records distorted and their reputations dragged through the mud. But I don't think that any judicial nominee deserves such treatment, and that was something I practiced as chairman for 6 of President Clinton's 8 years in office.

I strongly agree with the Washington Post editorial of February 19, 2002, and nobody would suggest the Washington Post is a conservative newspaper, that "opposing a nominee should not mean destroying him." The Post pointed out, "The need on the part of liberal groups and Democratic senators to portray a nominee as a Neanderthal—all the while denying they are doing so—in order to justify voting him down is the latest example of the degradation of the confirmation process."

I continue to hope that my colleagues will be sensitive to the dangers to the judiciary and to the reputation of this body that will certainly result from the repeated practice of degrading honorable and accomplished people who are will to put their talents to work in the public service. I urge my colleagues to examine Judge Smith on his record, and not on superficial and unsubstantiated allegations.

When Judge Smith comes for a vote we will have the opportunity to show that the senate is focused on the merits of President Bush's nominees, and is not out to obstruct them in the name of sensibilities far from the mainstream of the American people. I hope we take it. I hope we vote favorably on a fine judge.

My colleague has made a point in the past that somehow men's clubs are problematic and powerful and that women's clubs are somehow different and poorer. That is not a problem. I have a photo of an all-women's club. This is the Sulgrave Club of Washington. I, for one, believe they have a right to have an all-women's club.

If my colleagues have trouble seeing the club, it is a mansion. It is not just a living room, kitchen, and six bedrooms upstairs. It is the building behind the Jaguar, the Lexis and, of course, the Mercedes. It is not itty-bitty by anybody's stretch of the imagination. And it is probably in a historical landmark situation.

My colleague has also mentioned the ethicists who have written to condemn Judge Smith. Other ethicists have written to support Judge Smith.

One of these Democrat ethicists, by the way, is the one standing on the car. If my colleagues cannot see it because it is a little dark, maybe the camera can come in a little closer. That is one of the ethicists they can get to write almost any opinion they want. This ethicist has argued in favor of introducing false testimony into a trial and argued perjured testimony to a jury.

This is a photograph of another of the regulars who write to denounce President Bush's nominees. I might add, again, he is the one standing on top of the police car. We expect to have a lot of other letters from this particular ethicist.

This is the type of stuff we are putting up with. I think it is time to stop it. I think it is legitimate for people to differ on a judge's qualification from time to time, but there is little or no reason to differ on this one. This is a good man.

I hold a license in that area. I know the top lawyers in that area. I tried against a number of the top lawyers in that area. I have to say I do not know any of them who are not in favor of Judge Smith, and that ought to count more than some of these bits of calumny that have been thrown his way by some who do not like President Bush's nominees.

Mr. KENNEDY. Mr. President, I will vote against the confirmation of Judge D. Brooks Smith to the United States Court of Appeals for the Third Circuit. While Judge Smith is an intelligent jurist, I believe that his serious ethical lapses, and his record of reversals by the Third Circuit in cases concerning civil rights, and the rights of workers, environmental protection and consumer safety suggest that Smith has not met his burden of showing that he should be elevated to the Third Circuit.

Judge Smith's handling of his membership in the Spruce Creek Rod and Gun club, a club whose by-laws explicitly forbid the admission of women, gives me great concern. I am disturbed by Judge Smith's failure to resign from the Spruce Creek Club in a timely manner despite his sworn oral and explicit written promise to this committee at the time of his 1988 confirmation hearing. Smith promised that if he was unsuccessful in trying to change the club's membership policies he would resign, but he failed to do so for another 11 years, until 1999.

Rather than provide a simple explanation, or an apology, for his failure to fulfill this promise, Judge Smith claimed at his hearing that the Judicial Code of Conduct, the ethical rules governing judges, did not actually require resignation from the club. According to Smith, the Spruce Creek Club is purely a social club and is thus exempt from the rules. This strikes me as disingenuous. Judge Smith's 1999 resignation letter to Spruce Creek made clear that he was resigning from the club because its male-only admissions policies "continue to be at odds with current expectations of Federal judicial conduct," suggesting that he knew the club's membership policy was in conflict with the Judicial Code of Conduct.

Contrary to Judge Smith's representations, it also appears that the Spruce Creek Club is not merely a social club, but a place where business is conducted. Three ethicists, including one who wrote at the behest of the Ranking Minority Member of the Judiciary Committee, have written that if the Spruce Creek Club can be used for business purposes, its exclusion of women would violate the Judicial Code of Conduct. The President of Spruce Creek Club has acknowledged that members of this club are allowed to host a variety of meetings on the premises, and the committee has learned that business and political meetings have been held at the club. The Code of Judicial Conduct is clear that exclusion of women, minorities, and others from clubs where business is conducted is prohibited. In addition, in 1990, this committee adopted a resolution stating that membership in organizations that practice invidious discrimination was inappropriate for a judicial nominee. The resolution reflects our belief that because such membership "may be viewed as a tacit endorsement of the discriminatory practices, it conflicts with the appearance of impartiality" that is required of federal judges. We recognized that exclusion of women and racial, ethnic or religious minorities from social clubs that also perform business denies these groups opportunities to make contacts with important members of the community, contacts that are often crucial to professional advancement.

I am also troubled by Judge Smith's approach to cases implicating Federal rights important to victims of discrimination, workers and the disabled, and his disturbing, consistent pattern of favoring business and employers in these cases. Judge Smith has been reversed 51 times by the Third Circuit, often by panels of conservative judges. In many of these cases, Smith takes a narrow view of the laws protecting plaintiffs against abuses by businesses and employers.

For instance, in Wicker v. Conrail, a case brought under the Federal Employer's Liability Act, FELA, Judge Smith was reversed by the Third Circuit for dismissing claims by workers who were exposed to toxic chemicals at their job site. The company knew the job site was contaminated, but the workers did not, yet Smith found that the workers had waived their claims by signing a general release settling prior, unrelated injury claims. The Third Circuit reversed, holding that claims relating to unknown risks cannot be waived under FELA, and emphasized the Supreme Court's directive, ignored by Judge Smith, that FELA be given a "proemployee" construction.

Similarly, in Ackerman v. Warnaco, the Third Circuit reversed Smith for granting summary judgment to the company with regard to ERISA claims brought by former employees who were denied promised severance pay after the company, unbeknownst to the workers, changed its written policy to deny severance pay shortly before laying off the workers. Again, in Unity Real Estate v. Hudson, Smith ruled against workers in a case concerning the Coal Industry Retiree Health Benefit Act. Amazingly, Smith held that coal act, which Congress passed in 1992 to require companies to enforce collective bargaining agreements promising lifetime health benefits for longtime workers, amounted to an unconstitutional taking. One year later, in a similar case, the Third Circuit effectively overruled Smith's holding on this score, noting that every Court of Appeals to have considered a "takings" challenge to the coal act had rejected it.

In addition, Judge Smith has a disturbing pattern of ruling against plaintiffs in civil rights cases. For instance, in United States v. Pennsylvania, Judge Smith ruled that an institution for the mentally disabled, whose violations included serving pest-infested food, improperly confining residents, failing to provide appropriate medical treatment, and overmedicating residents—did not violate the Constitution's due process clause. In another case, Schaefer v. Board of Public Education, Judge Smith was reversed by the Third Circuit, for dismissing the sex discrimination claim of a male teacher who claimed that the school board's family leave policy, which entitled women, but not men, to one year of unpaid leave for childbirth or "childrearing" violated Title VII.

Judge Smith's pattern of ruling in favor of business is particularly troubling when coupled with his frequent attendance at seminars funded by probusiness corporations and groups. Judge Smith spent more than 72 days on junkets at luxury resorts. The trips were valued at more than $37,000 and sponsored by groups that promote "free market environmentalism," and oppose environmental regulations. I am troubled by the appearance of partiality caused by Judge Smith's frequent attendance at such junkets given the pro-business pattern of his rulings.

Judge Smith's narrow view of congressional power to pass legislation under the commerce clause, as expressed in a 1993 speech to the Federalist Society, also gives me great concern. In this speech, Judge Smith criticized the Violence Against Women's Act, which passed both Houses of Congress by overwhelming majorities, as exceeding Congress's power under the commerce clause. Judge Smith advanced a cramped reading of Congress' commerce clause power, stating that "the Framers' primary, if not sole, reason for giving Congress authority over interstate commerce was to permit the national government to eliminate trade barriers." Not only would Judge Smith's reading of the commerce clause render Congress powerless to pass statutes like the Violence Against Women's Act but, under Judge Smith's reasoning, it appears that any Congressional enactment other than those aimed at eliminating trade barriers would be constitutionally suspect, including statutes such as the Fair Labor Standards Act, the Equal Pay Act, the Clean Air Act, and the Clean Water Act.

In sum, I do not believe that Judge Smith has shown he has the integrity and commitment to core constitutional values required to justify his elevation to the Third Circuit. I therefore oppose his nomination.

Mr. HATCH. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER (Mr. SCHUMER). Without objection, it is so ordered.

(The remarks of Mr. HATCH are printed in today's RECORD under "Morning Business.")

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. REID). Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I will say a word about the nomination of D. Brooks Smith to the Third Circuit. For me, my concerns with Judge Smith are not about ethics but about ideology. My questions are about his record. My worries are about what kind of judge he has been at the trial level and what kind of judge he will be at the appellate level.

Time and time again, the President says he is going to nominate conservatives in the mold of Justices Scalia and Thomas. Every indication is that he is following through with that promise.

At least by my standards, that is not OK. I certainly want legal excellence at the highest order. Diversity ought to be at the highest courts. We ought not have a bench of all like men. But I also want moderation and ideological balance. Unfortunately, as they nominate judge after judge, hard right, out of the mainstream, far further to the right than President Clinton's nominees were to the left, it is clear that this administration is committed to imbalance on the courts. Frankly, that is a strategy I cannot get behind.

When it comes to D. Brooks Smith, there are some red flags raised. As a city district court judge, he gave a speech in which he criticized the constitutionality of the Violence Against Women Act, something I am pretty proud of because I was the author, along with Congresswoman LOUISE SLAUGHTER in the House of Representatives. Senator BIDEN did a great job here in the Senate. Now, this was years before the Supreme Court had addressed the Violence Against Women Act and when there was still a possibility it would come before him as a judge. That is some very unjudge-like behavior.

I asked him some simple, written questions about his views on the law. I asked him about his views on the right to privacy. I asked him to reconcile his views on VAWA with his views on other Federal laws such as the Endangered Species Act. The response I got, I regret to say, was inadequate.

Judge Smith told me what the precedence said, not what he personally believes.

That might be OK if you are a nominee to the district court where you do not have as much of a chance to make law. These days when you are nominated to an appellate court, when the Supreme Court takes virtually 75 cases a year, that argument does not fly. So I wrote back to Judge Smith, and again I asked him about his views. I made it clear I wanted to know about his personal views, not what the law was, but what his personal views were because we all know that influences a judge greatly when they make decisions.

This idea that judges are part of an ideological system and read the law in the same way is poppycock.

Why is it judges nominated by Democratic nominees read the law differently than judges nominated by Republican nominees? We know ideology plays a role. There is nothing wrong with that. But we ought to let it into our decisionmaking.

Judge Smith dodged again.

I think I am entitled to know what a nominee thinks. I am not going to go about blindly confirming nominees to lifetime seats on the Federal courts without those answers. I am not going to vote to give the judge a lifetime appointment, tremendous power, the most unaccountable power that our Founding Fathers gave to any single person. I am not going to give that judge the power to invalidate the laws passed in this legislative, duly elected body; laws that protect privacy, laws that protect working people, laws that protect women, the environment. I am not going to give a judge the power to validate those laws unless I know what they think of our power, the Congress's power as a coequal branch of Government, when it comes to these important issues.

I have an obligation on behalf of the 19 million New Yorkers I represent to learn those views. They want to know if the judge is too far left or too far right. They want to know about things that affect their lives: How much money they are going to make; safety in the workplace; how the environment is going to be treated; and if they are a member of a minority group, how the judge regards civil rights. They want to know this. I want to know.

I am not going to make the mistake that this body made with Clarence Thomas, who came before this body. I was not here then. I was in the House. We don't, of course, vote on judges. He said he had no views on Roe v. Wade. I am not making that mistake again. I don't think any Member should. We all know Judge Thomas had strong views on Roe v. Wade, but he came here and said he had none, he had never discussed it.

If D. Brooks Smith had given me legitimate answers to my questions, I might have supported him. But his answers were not answers at all.

Now, I understand we cannot ask judges to precommit themselves on issues that come before them, even though that is what Judge Smith did in his VAWA speech. I don't want to put nominees in that position. When it comes to issues already decided, when it comes to discussing their judicial philosophy, when it comes to Supreme Court cases that will never come before this judge, I don't get why we shouldn't know what that judge thinks.

Every semester, first year law students are asked to critique Supreme Court opinions. But someone up for a Federal judgeship will not tell us what they think about the seminal Supreme Court cases?

On the latest nominee for whom we had a hearing, Judge Owen, I asked her views. She said she doesn't think that way. She was asked to write papers in law school. She was asked to make opinions this way. She did not want to tell us.

There is a trend here. There is a trend. They don't want us to know what they think because they are so far out of the mainstream that they never could get picked if they told us their real views. They would never get supported by this body. They will not be honest about their views regarding Brown v. Board of Education or Korematus v. United States or Miranda v. Arizona or Roe v. Wade?

Judge Smith says what he thinks about the constitutionality of a statute the Supreme Court has yet to rule on, but he will not say what he thinks about Supreme Court opinions that have already been issued? Something is wrong with that. This nominee has it all turned around and it doesn't make sense.

The fact is, we are in the midst of a conservative judicial revolution. The very same people who decried the liberal activists, who took too many things too far—I am very critical of some of those opinions—are now doing the same thing themselves. When the hard right members of the conservative movement in the 1980s realized they could only get so much of their agenda implemented through elected branches because they were too far over for the American people, they turned their focus to the courts. They started a campaign that ran through the Reagan administration, through the first Bush administration, and continues through this administration. President Bush would like to portray himself as a moderate to the American people. Maybe he is. When I talk to him he sounds that way to me, one-on-one.

But if you look at who he nominates, there is hardly a moderate among them, particularly at the appellate court level. The nominees are committed to an ideological agenda which turns the clock back to maybe the 1930s, maybe the 1890s. They hate the Government and its power, by and large. They think the Federal Government has far too much power, which, let me tell you, in our post-September 11 world makes no sense.

So for the better part of the last decade, the commerce clause has been under assault and a whole host of laws protecting women, senior citizens, the disabled, and the environment have been invalidated. Now they turn their attention to the spending clause. To the average person, this sounds like mind-numbing stuff. But unfortunately, it has real impact on real people and it has to stop.

D. Brooks Smith is going to become a judge. We all know he has the vote. Tomorrow morning he will join a long line of judges, confirmed by the Senate, who appear to be intent on curtailing congressional power to protect the people who elect us.

At some point this Senate needs to wake up to the fact that our President and his Department of Justice are playing by different rules when it comes to nominating judges. They are using ideology as litmus tests, and then, when we want to ask about ideology, they say no, that is off the table. They are doing it to the detriment of the courts and the people the courts are supposed to protect.

I yield the floor.

The PRESIDING OFFICER. In my capacity as a Senator from Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SCHUMER). Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from New Jersey, Mr. TORRICELLI.

SENATE ETHICS COMMITTEE INVESTIGATION OF SENATOR ROBERT TORRICELLI

Mr. TORRICELLI. Mr. President, for the last 7 months, the Senate Ethics Committee has reviewed documents and statements relating to allegations made against me by a former political contributor and friend. I am now in receipt of the conclusions of the committee.

I thank the members of the Ethics Committee for their hours of deliberation. I also apologize to each of them for subjecting them to the painful ordeal of sitting in judgment of a colleague.

In closing its preliminary inquiry into this matter, the Ethics Committee has concluded that in several specific instances rules of the Senate were violated. As a consequence, the committee has admonished me. I want my colleagues in the Senate to know that I agree with the committee's conclusions, fully accept their findings, and take full personal responsibility.

It has always been my contention that I believed that at no time did I accept any gifts or violate any Senate rules. The committee has concluded otherwise in several circumstances and directed me to make immediate payment in several instances to assure full compliance with the rules of the Senate. I will comply immediately.

I apologize to the people of New Jersey for having placed the seat of the Senate that they have allowed me to occupy in this position. The day I was elected to the Senate remains among the most cherished of my life.

During recent weeks, I have spent long nights tormented by the question of how I could have allowed such lapses of judgment to compromise all that I have fought to build. It might take a lifetime to answer that question to my own satisfaction.

The question I want every person in New Jersey to have answered today is that all during this ordeal I never stopped fighting for the things in which I believe. I never compromised in the struggle to make the lives of the people I love better.

I am grateful that this matter has come to a close, regretful as they might be, sorrowful as I remain. I thank my colleagues for their time and their attention.

Mr. President, I yield the floor.

GREATER ACCESS TO PHARMACEUTICALS ACT

Mr. HATCH. Mr. President, I rise to speak again on the pending legislation—S. 812—the Greater Access to Pharmaceuticals Act.

First, let me say that I am hopeful the on-going talks among interested Senators and affected parties will succeed in reaching an acceptable compromise on a Medicare Prescription Drug Benefit. That is a promise to seniors we need to honor. I remain committed to achieving that goal.

I think that Senator SNOWE made a good point when she said earlier today that there is no reason to pull the bill down and halt the negotiations over the Medicare drug benefit at his point. Why not encourage these talks to continue over the August recess?

Although we got off to a rocky start when the Majority Leader decided to by-pass the Finance Committee to avoid the Tripartisan bill being reported by the Committee, I remain hopeful that we can come together if we stick to it.

Whether those talks succeed or fail, the Senate will have to dispose of the underlying legislation, S. 812. This is the legislation first introduced by Senators MCCAIN and SCHUMER that was almost completely rewritten by the HELP Committee via the Edwards-Collins substitute amendment.

In many respects, the Committee substitute is an improvement over the McCain-Schumer language. Let me hasten to say, though, there are still major problems with the language.

I have laid out in some detail the shortcomings in the provisions of the bill that purport to fix the problems associated with the statutory 30-month stay. We designed this stay to permit a reasonable period of time to litigate the status of pioneer drug patents, but has been used in several cases by brand name drug manufacturers to forestall improperly generic competition.

As this barely three-weeks old language is scrutinized by experts, many are concluding that it comes up short. For example, there is an interesting and growing correspondence between the architect of the pending legislation, my friend from Massachusetts, Senator KENNEDY, and the organization that represents the Nation's biotechnology companies—BIO, the Biotechnology Industry Organization.

In its letter of July 22, 2002 to Senator KENNEDY, BIO complains about the:

> carte blanche authority of FDA to determine testing methods applicable to full NDAs, [New Drug Applications] loss of the ability to protect our intellectual property because of failure to meet new filing deadlines under food and drug law, and an unwarranted private right of action afforded generic companies to sue members in efforts to "delist" patents or "correct" patent information. Whatever the purposes of these provisions, we fundamentally disagree with their consequences perhaps the result of producing totally new provisions only 36 hours before mark-up.

Actually, I think this completely new language was not available until 24-hours before the markup.

It is also my information that a meeting last Friday between Senator KENNEDY's staff and BIO staff did little to clear up these objections.

I have no doubt that Senator KENNEDY is aware this bill is opposed by the Massachusetts-based biotech firm, Millennium Pharmaceuticals, as well as the Massachusetts Biotechnology Industry Organization.

As I have laid out previously, in addition to the policy question of the extent to which these new provisions upset the balance of Hatch-Waxman, a broad spectrum of legal analysts who range from Susan Estrich to Judge Bork have raised a number of concerns about the pending legislation on a wide variety of issues, including concerns that the bill runs afoul of the Takings Clause as well as violates the GATT Treaty's intellectual property provisions.

Last week, I included in the RECORD a letter from the American Intellectual Property Law Association opposing the patent forfeiture and private right of action provisions of the bill.

This week I want to highlight a letter to Chairman KENNEDY from the Intellectual Property Owners Association expressing severe reservations about the bill.

The IPO represents U.S.-based owners of patents, trademarks, copyrights, and trade secrets. The organization includes some 100 American firms that are among the largest patent filers in the United States. The membership of the Intellectual Property Owners Association submit about 30 percent of all patents filed with the Patent and Trademark Office.

The IPO letter raises concerns about how the Substitute to S. 812 might conflict with the international Agreement on Trade Related Aspects of Intellectual Property Rights—the TRIPS provisions. Specifically, the IPO complains about the file-it-or-lose-it and sue-on-it-or-lose-it provisions of the bill. The letter states, in part:

> We believe these rigid barriers to enforcement of patent rights may conflict with "normal exploitation of patent rights" as that term is used in Article 30 of the TRIPS agreement, or could set a very damaging precedent for interpretation of Article 30 that would be used against the U.S. by its trading partners in other areas of intellectual property enforcement.

The new, untested, Edwards-Collins language has not been embraced by the intellectual property bar nor by the mainstream organizations that represent the interests of America's inventors.

The Administration has already issued a statement in opposition to S. 812.

Before we take any action to adopt the language that has agitated nearly everyone in the IP community, don't you think it would be prudent to factor in what the Patent and Trademark Office has to say about this new language that completely re-wrote the McCain-Schumer bill?

Commissioner James Rogan wrote to me today to give us PTO's initial reactions to re-write of S.812. Here is part of what the Commissioner of Patents and Trademarks says in his letter to me:

> USPTO does recognize that some changes to current law may be necessary to encourage appropriate access to generic substitutes and prevent abuses of the patent laws. But S. 812 clearly is not the answer. In fact, this bill would likely do the opposite of what its title suggests by limiting access to cutting-edge drugs, decreasing innovation, and ultimately harming the quality of treatments available to patients.

In addition to these significant concerns raised by the PTO, I would think that the report that was issued earlier today by the Federal Trade Commission, after a unanimous vote of the Commissioners, would compel my colleagues in the Senate to question the wisdom of adopting the HELP substitute to S. 812. While I am still studying the details of the report, it seems abundantly clear that the major recommendations of the Federal Trade Commission in no way mirror the legislation pending on the floor.

With respect to the 30-month stay, the FTC suggests a policy of one stay per generic drug application for all patents listed in the official FDA Orange Book prior to the date on which the generic drug application is filed.

This is precisely the position I advocated before the HELP Committee back in May.

This is the position that the Ranking Republican Member of the HELP Committee, Senator GREGG, attempted to get adopted by the HELP Committee during the mark-up.

The narrowly-tailored FTC recommendation in this area should be contrasted with the overly-broad Edwards-Collins language that contains the offensive file-it-or-lose-it and sue-on-it-or-lose-it provisions, the new and unprecedented—and unnecessary—private right of action in the Federal Food, Drug, and Cosmetic Act, as well as the rule that allows the 30-month stay only for those patents issued within 30 days of the approval of the pioneer drug.

I know which policy I prefer—and it came from the FTC after its comprehensive year-and-a-half study of these issues, not from any secret backroom drafting sessions of various lawyers and lobbyists.

Let me now focus my comments on another major area addressed by the HELP Committee substitute to S. 812: the problem of collusion between brand name and generic drug manufacturers with respect to the rules in current law that grant 180-days of marketing exclusivity when a generic drug firm successfully challenges or navigates around a pioneer firm's drug patents.

The 180-day marketing exclusivity rule has been highly controversial in recent years.

The reason for this attention is simple. In a few number of documented cases, generic drug manufacturers entered into agreements with brand name manufacturers not to sell generic drugs.

As I will explain, due to the way the existing law—the Drug Price Competition and Patent Term Restoration Act of 1984—is written and has been interpreted by the courts, some of these arrangements had the effect of delaying multi-source generic competition well beyond the contemplated 180-days.

I should first note that the existing statute—the Waxman-Hatch Act—included this 180-day marketing exclusivity as an incentive to encourage patent challenges. If patents were found to be invalid, or if non-infringing ways to produce generic drugs were developed, consumers could benefit from the earlier-than-anticipated introduction of generic drugs into the marketplace.

In enacting these provisions, it was the intent of Congress to award this exclusivity only to a generic drug applicant that was successful in defeating a pioneer firm's patents.

FDA's 1994 regulations implementing the Hatch-Waxman Act required the generic drug challenger to defend successfully the lawsuit that a pioneer firm must initiate within 45-days after being notified that the generic firm was challenging the patent.

It must be emphasized that the reason the generic drug firm is the plaintiff in the suit, rather than the defendant, is that the statute contains a special protection allowing generic firms to conduct what would normally be infringing activities in order to secure FDA regulatory approval. This is the so-called Bolar Amendment, a provision of law that, in my opinion, has not been adequately recognized by the proponents of S. 812.

Essentially, the Bolar language trumps the general rule against patent infringement codified in section 271(a) of the patent code. The Bolar Amendment, codified in section 271(e) of the patent code, allows generic drug firm to infringe patents in order to win FDA approval and gear up production and creates an artificial act of patent infringement at the moment that the generic firm files an abbreviated new drug application with the FDA.

Once the application is filed, the pioneer firm has 45-days to file a lawsuit in order to take advantage of the statutory 30-month stay designed to allow the patent litigation to be completed before generic may be permitted to enter the marketplace.

For over a decade after Hatch-Waxman was enacted in 1984, it was thought that only a generic firm that was successful in the litigation, that is, a firm that had successfully defended the suit brought by the pioneer firm, could qualify for the 180-days of marketing exclusivity.

In 1997, FDA's successful defense requirement was struck down by the D.C. Circuit Court of Appeals in the case of Mova Pharma v. Shalala.

The following year, in 1998, the D.C. Circuit decided the case of Purepac Pharm v. Shalala. This decision upheld FDA's new system of granting the 180-day exclusivity to the first filer of a generic drug application even if the pioneer firm did not sue for patent infringement.

That same year, the Fourth Circuit Court of Appeals issued its opinion in Granutec v. Shalala. This case held that the exclusivity of the first filer could be triggered by a court decision with respect to a second, third, or subsequent filer.

Essentially, these decisions added up to one thing: mischief.

Once the exclusivity was awarded to the first filer of a generic drug application divorced from any requirement for a successful patent challenge, it became apparent to some that the first filer—with a financial inducement from the patent holder—could effectively forestall multi-firm generic competition by simply not going to market. If the 180-day clock never started, multi-source generic competition could be forestalled until the patents expired.

This could last for years.

As a coauthor of the Drug Price Competition and Patent Term Restoration Act, I can tell you that I find these type of reverse payment collusive arrangements appalling.

I must concede, as a drafter of the law, that we came up short in our draftsmanship. We did not wish to encourage situations where payments were made to generic firms not to sell generic drugs and not to allow multi-source generic competition.

To date, there are known to have been relatively few such agreements. The FTC has obtained consent decrees in two cases: with Hoescht and Andrx over the drug, Cardizem, and with Abbott and Geneva over the drug, Hytrin.

The agency suffered a set-back recently in the third case it brought in this area which involved an agreement between Schering-Plough, Upsher-Smith, and American Home Products with respect to the compound K-Dur 20, a widely prescribed potassium chloride supplement. While the FTC settled with American Home products, an Administrative Law Judge recently rejected the agency's argument in the case against Schering and Upsher-Smith. The ALJ's opinion looked at the facts of competition in the potassium chloride market and concluded that FTC had not proven its case given the highly-competitive nature of this particular market.

However the K-Dur case ultimately is decided, I commend FTC Chairman Tim Muris for indicating he will continue the agency's policy of zealously reviewing these type of reverse payments cases to determine whether such agreements run afoul of the antitrust laws.

In my earlier statements, I commended both the enforcement actions of the FTC and the development of the Drug Competition Act, S.754, by Senator LEAHY for creating a climate unfriendly to the execution of any additional collusive deals not to compete between generic and brand name companies.

Today's release of the report: Generic Drug Entry Prior to Patent Expiration: An FTC Study underscores the importance of Senator LEAHY's work in developing the Drug Competition Act. This bill was reported by the Judiciary Committee last year.

I was pleased to work with him to refine the bill before the Committee adopted this measure. I am particularly pleased that he became convinced it was wise to abandon a patent forfeiture feature very similar to the provisions contained in the Edwards-Collins substitute to S. 812 that so many biotech and pharmaceutical firms and intellectual property experts find so objectionable.

I did have a few additional suggestions for improving S. 754, but in the interest of moving the legislation forward in a bipartisan fashion, I supported the bill in Committee.

Frankly, one of my suggestions is very simple and amounts to recognition of the importance of the bill. This simple suggestion would be to codify the bill as part of the Clayton Act, rather than let the language float as a statute-at-large.

Here are the other concerns that I have with S. 754.

The Leahy bill exempts three types of agreements: first, purchase orders for raw material supplies; second, equipment and facility contracts; and third, employment or consulting contracts.

These three categories were also exempted by the FTC in its recently completed study of the pharmaceutical industry. To these three, I would suggest adding two other classes of non-germane agreements: first, packaging and labeling agreements and, second, confidentiality agreements. It seems to me that the thrust of the legislation is to get a quick review of actual executed agreements relating to settlements of patent non-infringement or patent invalidity cases arising out of Hatch-Waxman Paragraph IV certifications.

Garden variety packaging and licensing agreements or mere agreements to talk about possible settlements in a confidential manner are not what we are after with this legislation.

I think we should start with the presumption that the law will be followed. Given this perspective, I favor the total deletion of proposed Section 8, subsection (b) which creates a special rule for contract unenforceability. My understanding is that this is a relative recent addition to the Leahy bill and that only current sections 8(a) and 8(c) were in the original Leahy bill and, in fact, precisely mirror the long-standing Hart-Scott-Rodino enforcement language. In short, what does this new section 8(b) accomplish that is not included in the more general provision of section 8(c) that grants a broad authority for equitable relief?

And what is the real chance that one or both parties will not comply with the statute in the first place? And if one party reports, what could possibly be gained by the other party not reporting the agreement? For that matter, it might be preferable to change the bill to require a joint submission of a certified copy of the agreement because one can hardly imagine some poor FTC staff attorney doing a side-by-side, word-by-word reading of documents to make sure both parties sent the same agreement.

In addition, I think that language should be added to make explicit that nothing in this Act should be construed to discourage or prohibit legitimate settlements between brand name and generic drug companies. The Joint DOJ/FTC guidelines smile upon such settlements so long as they do not run afoul of other laws such as the antitrust statutes. The FTC Administrative Law Judge's decision in the K-Dur 20 case reminds us of this fact, no matter how the case is finally decided.

The essence of S. 754 is to see that every agreement between pioneer and generic firms that raises antitrust questions are promptly reported to the FTC and DOJ for appropriate scrutiny.

I think the emergence of the Leahy bill—and I must give credit as well to the McCain-Schumer bill, coupled with the strict FTC enforcement in this area and the agency's extensive industry-wide survey helps explain why these so-called reverse payment cases appear to be dwindling, and perhaps have completely halted for the time being.

Senator LEAHY should be pleased that the chief recommendation that the FTC is making today with respect to the collusive 180-day marketing exclusivity agreements amounts to an endorsement of S. 754.

The FTC report recommends that Congress:

> Pass legislation to require brand-name companies and first generic applicants to provide copies of certain agreements to the Federal Trade Commission.

This straight-forward recommendation is a far cry from the complex, barely comprehensible, 180-day marketing exclusivity fix that emerged from the HELP Committee.

As a Wall Street Journal article yesterday described the discussion of the Edwards-Collins substitute: "In a remarkable session, it became clear that many lawmakers didn't understand the complex bill."

Why should that be surprising given the fact that this completely new, incredibly- intricate, highly-technical language was made available the day before the mark-up? A review of proceedings of the two-day HELP Committee mark-up is very revealing and I would urge that the press and the public make the effort to review this discussion. I can see why Senators GREGG and FRIST are so frustrated about some changes in language that appear to have been agreed to one moment, only to vanish the next. One can only wonder who, how, where, when, and why such language was drafted—although yesterday's Wall Street Journal article may shed some light on some of the actors behind the scenes.

In many ways, the Edwards-Collins substitute misses the mark, and is too complicated to boot.

Nevertheless, I do think we need to re-examine the statute in this area in light of the potential for these type—or perhaps new types of—anticompetitive agreements to crop up in the future given how the current statutory language and court decisions work together to help create a climate for mischief.

The McCain-Schumer bill addressed the 180-day collusive reverse payments situation by a so-called rolling exclusivity policy. This rolling exclusivity means that if the eligible generic drug filer does not go to market within a specified time period, the 180-day exclusivity rolls to the next filer.

I do not favor rolling exclusivity.

I agree with what Gary Buehler, then Acting Director of FDA's Office of Generic Drugs, told the Judiciary Committee last year:

> We believe that rolling exclusivity would actually be an impediment to generic competition in that the exclusivity would continue to bounce from the first to the second to the third if, somehow or other, the first was disqualified.

I believe a better course of action was advanced by FDA in its 1999 proposed rule which suggested a use it or lose it policy. This simple rule is that if the first eligible generic drug applicant did not promptly go to market, all other approved applicants could commence sales.

Molly Boast, Director of the FTC Bureau of Competition, testified last May that, at the staff level, FTC supported FDA's use it or lose it proposal.

My first reading of the summary of the new FTC Report leads me to conclude that the agency favors a very aggressive use it or lose it policy. In this regard I must point out that the FTC Report contains three minor recommendations that center on the 180-day provision:

First, the agency would run the 180-day clock if a generic firm marketed the pioneer's product under a license, not an ANDA.

Second, FTC would codify current case law and run the 180-day clock from the time of any court decision, not an appellate decision as allowed under the HELP Committee language.

Third, the Commission would trigger the 180-days if a court dismissed a declaratory judgment for lack of case or controversy.

While I am just beginning my review of the FTC report, it appears that the FTC is advocating a very aggressive form of a use-it-or-lose-it policy.

As I have argued on a number of occasions, my view is that rolling exclusivity delays the day when multi-generic competition can commence. It appears to me that the FTC shares this view.

If our goal is to maximize consumer savings after a patent has been defeated, I find it difficult to see how rolling exclusivity achieves this goal. I certainly prefer a use it or lose it approach over the McCain-Schumer brand of rolling exclusivity.

I commend the sponsors of the Edwards-Collins substitute for rejecting the McCain-Schumer rolling exclusivity policy in favor of what Senator EDWARDS calls modified use-it-or-lose-it. Having said that, I am disturbed to learn that during the HELP Committee mark-up Senator EDWARDS and HELP Committee staff stated that, in fact, the exclusivity could roll indefinitely.

I understand the intent is to transfer the exclusivity once and only once, but having reviewed the language of the bill and the discussion at the mark-up, I am not convinced that the exclusivity will roll over only once.

In any event, even if the exclusivity only rolled over once, I question the rationale behind a policy that only delays the day when multi-source generic competition can commence.

It is only after the time when many generics enter the market that consumers receive the full benefits of price competition.

During the first 180-days when only one generic is on the market, the change in price may be marginal. This is so because when there is only one generic competitor during this 180-day time frame, neither the pioneer firm nor the generic firm is under any tremendous pressure to cut the price. The report, Drug Trend: 2001, published by Express Scripts, notes this dynamic:

> The A.P. [average wholesale price] for the first generic is usually about 10 percent below the brand. After the six month exclusivity granted to the first generic manufacturer, the price paid . . . for the generic quickly falls, often by 40 percent or more, as multiple manufacturers of the same generic product compete for market share. Moreover, it appears that the value of the 180-day marketing exclusivity incentive may be worth much more today that it was back in 1984.

I understand that, in 1984, the number-one selling drug in the United

States was Tagamet, with U.S. sales of about $500 million.

Today, it is estimated that Lipitor, the anti-cholesterol medicine, has a domestic market of over $5 billion annually. In nominal dollars, Lipitor sales today are 10-times higher than Tagamet sales were in 1984. In real dollars, I am told that this amounts to about a six-fold increase.

If we are going to open up the 180-day provisions of the 1984 law—and I think we should so long as we do it carefully and thoughtfully—I think we should reexamine other aspects of the 180-day rule such as whether we should retain the 180-days or some other number of days given the substantial six-fold growth in potential value of this incentive.

Why should we be locked into 180-days? The dirty little secret of the 180-day provision is that both the pioneer firms and generic firms like this provision because it delays the full price competition that only occurs when many generic enter the market.

I think that the mutual economic interest of the generic and the pioneer firms is not in perfect alignment with the interests of consumers with respect to the 180-day incentive.

Moreover, even if we could perfect the modified use it or lose it language of the Edwards-Collins substitute and the first qualified generic manufacturer could not, or would not, commence marketing and the exclusivity moved to the next qualified applicant, why should the second manufacturer get the full 180-days? Why not 90 days? Why not 60 days?

Frankly, I am disturbed that, in some circumstances, the Edwards-Collins language appears to grant exclusivity not to the successful generic litigant—but to a firm which was merely first to file papers with the FDA that triggered a legal proceeding.

I understand the rationale for this is that it will supposedly ensure multiple patent challenges. But, when we start rewarding the first to trigger lawsuits in place of actually winning the challenge, it strikes me as out of sync with the traditional American value of rewarding the actual winner.

I am all for assuring that there are sufficient incentives to ensure patent challenges. But, isn't there a limit beyond which we should direct these potentially enormous profits back to consumers?

While I have not seen any formal estimates, one would think that 180-days of marketing exclusivity for a $5 billion seller like Lipitor must mean hundreds of millions of dollars, and perhaps even $1 billion, in lost consumer savings.

Would we rather see 25 percent to 40 percent of that money in the hands of the trial attorneys who brought the case? Or, would we rather see that at least some of those funds earmarked for attorneys' fees be channeled to help citizens lacking access to prescription drugs?

Shouldn't we get more facts concerning the change in value of the 180-day marketing exclusivity today compared to 1984 and make any appropriate adjustment to this incentive? We don't want to set the incentive so low as to discourage challenges to non-blockbuster patents, but we don't want to set the incentives too high either.

As a matter of fact, some have questioned the need for retaining the 180-day marketing exclusivity at all.

For example, Liz Dickinson, FDA's senior, career attorney in this area, has asked:

> I suggest we look at whether 180-day exclusivity is even necessary, and I know that there is this idea that it is an incentive to take the risk. I say the facts speak otherwise. If you have a second, third, fourth, fifth generic in line for the same blockbuster drug . . . undertaking the risk of litigation without the hope of exclusivity, is that exclusivity even necessary?

Ms. Dickinson, a fine lawyer with no political axe to grind, went on to make the following observation with respect to the 180-day rule,

We have got a provision that is supposed to encourage competition by delaying competition. It has got a built in contradiction, and that contradiction . . . is bringing down part of the statute.

Similarly, Gary Buehler, FDA's top official in the Office of Generic Drugs agreed with his colleague's assessment when he testified before the Senate Judiciary Committee last year:

> . . . we often have the second, third, fourth, fifth challengers to the same patent, oftentimes when the challengers actually realize that they are not the first and there is no hope for them to get the 180-day exclusivity. So with that in mind, I would agree with Liz's statement that generic firms will continue to challenge patents. Whether the 180-day exclusivity is a necessary reward for that challenge is unknown, but it does not appear that it is.
>
> I personally favor retaining some incentive to ensure vigorous patent challenges. But in light of this testimony and other factors, I do not believe there is a need to be locked into the current incentive—the 180-day exclusivity benefit.

I find it curious that neither the McCain-Schumer bill, nor the Kennedy mark, nor the Edwards-Collins amendment, proposed any changes in the current 180-day regime in light of the views of the FDA officials, the dramatic increase of the potential value of 180-days of exclusivity, and other factors.

This may have been partly due to the fact that neither the FDA nor FTC nor any representatives from the Administration testified at the HELP Committee hearing on May 8th. In fact, no committee of Congress has ever held a hearing of the language that was marked-up and reported by the HELP Committee.

On any number of occasions, I have heard Senator SCHUMER and others argue that the simple goal of this legislation is to close loopholes in order to return to the original balance in the 1984 law.

But what if conditions have changed and the original policies of the 1984 need to be reassessed?

Or what if there were an area that we didn't get right the first time?

For example, consider how Paragraph IV litigation treats patent invalidity and patent non-infringement challenges. These are lumped together, and both, if proven, can result in identical 180-day marketing exclusivity awards. In truth, invalidity and non-infringement are two very different types of claims.

I want to remind my colleagues of, and challenge them to question the implications of, lumping these two concepts together. We need to re-think this policy. As Al Engelberg, a smart and tough-as-nails attorney who specialized in attacking drug patents on behalf of generic drug firm clients, has said about this difference:

> In cases involving an assertion of non-infringement, an adjudication in favor of one challenger is of no immediate benefit to any other challenger and does not lead to multi-source competition. Each case involving non-infringement is decided on the specific facts related to that challenger's product and provides no direct benefit to any other challenger. In contrast, a judgment of patent invalidity or enforceability creates an estoppel against any subsequent attempt to enforce the patent against any party. The drafters of the 180-day exclusivity provision failed to consider this important distinction.

Once again, as one of the drafters of this law, I accept my share of responsibility for failing to fully appreciate the implications of this distinction.

The 180-day rule acts as only a floor in non-infringement cases. A particular non-infringer's marketing exclusivity can extend beyond the statutory 180-days. This period of marketing exclusivity can last until such time as another non-infringer might enter the picture or until the underlying patents are invalidated or expire.

Conversely, it can be argued that the 180-day floor actually works to the detriment of consumers whenever the 180-days of exclusivity acts to block entry of a second non-infringing generic product during the 180-day period. Why shouldn't a second or third non-infringer be granted immediate access to the market as would occur in any other industry? Consumers could enjoy the savings that accrue from immediate price competition.

I would hope that my colleagues working on the bill, and others interested in this debate carefully consider the distinctions between invalidity and non-infringement challenges. This is an area where we might have gone off-base in 1984.

While I am of the mind to retain a strong financial incentive to encourage vigorous patent challenges by generic drug firms, I am unconvinced at this point that we should retain the old language that grants identical rewards for successful invalidity and non-infringement claims. I welcome debate and discussion on this matter.

Before we change the law, let us have a serious re-examination of whether to retain the 180-day marketing exclusivity in its current form both in terms of the length of the exclusivity period and whether the rewards for successful invalidity and non-infringement challenges should be treated identically.

My purpose in raising these points is to get an indication from the sponsors of this legislation and other interested parties, such as patient advocacy organizations, state Medicaid agencies, and insurers, whether there is interest in discussing the advisability of passing on more of the value associated with the current 180-day marketing exclusivity to consumers if it appears it is fair and appropriate to do so?

If there is interest, I would be willing to help fashion an appropriate amendment. It seems to me that we need to provide enough of an incentive to assure vigorous patent challenges, but we should give away no more exclusivity than is necessary. Every day of marketing exclusivity awarded to a generic firm comes at the expense of consumers. While we want to ensure vigorous patent challenges, we don't want to set the benefit too high at the expense of consumers.

I think we can and should explore this area further.

Frankly, I am not certain that I completely understand how the forfeiture language in Section 5 of the bill works. I do not think I am alone in this confusion. I understand that this language was the source of much confusion during the mark-up in the HELP Committee.

At some point, I would like to engage in a colloquy with the bill managers to ask some questions designed to clarify precisely how this provision works.

Let me say that if the bill reinstates the successful defense requirement and gives awards to the successful challenger so long as the firm goes to market in a timely fashion, I may be supportive of the general concept. I do wonder if the language in the HELP substitute overturns the effect of the *MOVA*, *Purepac*, and *Granutec* cases that I described earlier?

I must say that I think that there are some real advantages to Senator GREGG's simple and straight-forward policy of more closely following FDA's old-fashioned, easy to understand use-it-or-lose-it proposal.

I will continue to study the particulars of the three minor recommendations that the FTC has made in connection to the 180-day issue.

I must also indicate that part of the confusion concerning the effect of this new Edwards-Collins language stems from the discussion of the provision at the mark-up. I understand that when Senator EDWARDS first explained this section of the bill he said that the exclusivity could roll over one time if the first qualified applicant did not use it. I am told that Senator EDWARDS indicated his language would eliminate the possibility that this could just continue to roll over and over and over during which time the exclusivity in the marketplace continues.

However, upon questioning from Senators GREGG, FRIST, and SESSIONS, the Committee staff then explained that if the second generic firm qualified does not use the exclusivity then the process would start all over again. The HELP Committee staff went on to explain, apparently in direct contradiction to Senator EDWARD'S first explanation, that the exclusivity could roll indefinitely if there is no generic ready to go to market.

On the second day of the mark-up, Senator EDWARDS seemed to indicate that the Committee staff had it right and he had it wrong when he at first said that the provisions of Section 5 of the bill eliminated the policy of rolling exclusivity. In fact, I am told that Senator EDWARDS then acknowledged that if there were nobody to compete, then the exclusivity could keep rolling over and over.

I am afraid that the Edwards-Collins brand of modified-use-it-or-lose-it is, at least, very confusing. At worst, it is just another version of rolling exclusivity.

I want to learn what the FTC thinks about the Edwards-Collins language.

What the proponents of this language have failed to do is to explain why any third, fourth, fifth, or subsequent filer should be given 180-day of very valuable marketing exclusivity?

Moreover, why for example should a fifth filer be treated any differently than a sixth filer if neither has won a patent challenge and both are ready to go to market?

This dog just won't hunt.

Recall that some experts at FDA don't even think this incentive is necessary.

As I stated earlier, I am somewhat sympathetic to the concerns of generic drug firms that any exclusivity awarded should be measured from the time of an appellate court decision. But this principle may not hold up if any form of rolling exclusivity is adopted or if we have multiple patents and multiple challengers, some of whom are attacking on invalidity and some of whom are attacking on non-infringement.

Frankly, in light of the FTC report just issued this morning, I feel compelled to reconsider if my sympathies are consistent with my use-it-or-lose-it view even in the case, increasingly rare, I am told, of one patent and one challenger.

I am troubled by the provision of the bill that appears to grant each generic firm that qualifies for the benefit of the 180-day marketing exclusivity incentive a 30-month period to secure FDA approval. This is measured from the time of the filing of the generic drug application.

If the first firm eligible to take advantage of the 180-day benefit drops out for some reason, it seems to me that the best thing for consumers would be to approve all applications that are ready to go without singling out any of these applications for 180-days of exclusivity. If, for example, the second firm eligible under the terms of Section 5 is in a dispute with FDA over a good manufacturing practice inspection and can't go to market, it is consumers who will suffer. In a case where, say, there are 14-months remaining on the 30-month clock allowed under Edwards-Collins, it does not seem fair if the next firm eligible on the list already has satisfied all of the FDA requirements and is ready to go to market.

I would hope that the proponents of the substitute amendment will help us all understand just how Section 5 is intended to work.

It is difficult for me to see why we should adopt a policy whereby the balance of the 30-month period described in Section 5(a)(2)"(D)(i)(III)(dd)" on page 44 of the bill could conceivably be greater than the 180-days of marketing exclusivity. Upon default of the first qualified applicant, why should we wait for a second eligible drug firm to obtain FDA approval when there may be a third, fourth, or fifth applicant in line with FDA approval ready to go?

I hope the sponsors of the legislation are not locked into their so-called modified-use-it-or-lose-it policy. The discussion at the HELP Committee mark-up suggests that the language is, in fact, just another elaborate version of the flawed rolling exclusivity policy. While I can readily see why rolling exclusivity is attractive to generic drugs firms—and their lawyers—who routinely challenge patents, I don't see where this policy is good for the American people.

Whatever happened to the American tradition that rewards success in litigation, not just filing papers with FDA and making a claim in court?

For all of the reasons I have just discussed, I think it would be wise for Congress to take time and reassess the wisdom of retaining the 180-day marketing exclusivity provision in essentially the same form as enacted in 1984.

As I argued last night, the Senate would be well-served if we had a more orderly discussion of the facts and recommendations contained in the new FTC study.

I see that my friend from Massachusetts is trying to spin the FTC study as supporting the changes in patent law contained in the HELP Committee substitute.

But the fact is, and it is a fact that will be better understood over time, that the FTC recommendations are at variance with the major provisions of the bill on the floor.

Let me just spell some of them out for you.

The FTC urges adoption of legislation that would allow one 30-month stay, measured from the time that each generic drug application is submitted while S. 812 limits the stay to those patents issued within 30 days of the approval of the pioneer drug.

The HELP Committee Substitute contains several provisions that require innovator firms to list all, and sue on, their patents related to each particular pioneer drug or forfeit their customary patent rights; the FTC makes no such recommendations regarding patent forfeiture.

The HELP Committee Substitute creates a new private right of action to attack the listing of patents with FDA, while the FTC report makes no such recommendation.

The HELP Committee Substitute embraces a form of 180-day marketing exclusivity that allows the exclusivity to roll from one generic drug manufacturer to another in, I might add, a very complicated fashion that potentially has no clear endpoint. The FTC Report appears to support a very aggressive form of a use-it-or-lose-it policy which, for example, would trigger the 180-day period from the time of a district court decision. The pending legislation allows generic competition to be delayed until after an appellate court rules.

The FTC recommends that certain potentially anti-competitive arrangements between pioneer and generic firms be reported to the FTC in a fashion similar to Senator LEAHY's legislation, S. 754, the Drug Competition Act. The HELP Committee is silent in this respect.

So the differences are significant between the bill on the floor and what the FTC recommends.

No amount of spinning in the press will change these facts. In light of the FTC study and some of the arguments that I have made here today, I wonder if some of those who are backing S. 812 because they were told it is a good bill will now reconsider what the bill does and decide that they are being sold something of a bill of goods?

I would urge my colleagues, as well as consumer organizations and pharmaceutical purchasers such as insurers and self-insured businesses to reflect upon what I have said on this subject today.

This is an area in which I think we would be wise to reject Senator SCHUMER's argument that all we are doing with this legislation is restoring the balance of the old Hatch-Waxman Act.

On a number of occasions, I have commended Senator SCHUMER and Senator MCCAIN for moving their legislation forward. Even if the bill that came out of the HELP Committee does not resemble very closely their bill, and even if I still have major problems with this hastily considered floor vehicle, I commend them again today. I just hope that they, and Senators KENNEDY, FRIST, COLLINS, and EDWARDS will work to improve this legislation.

I think that over the last two weeks that I have made a case for taking the time to get this legislation right.

We all know that S. 812 was plucked from the calendar to be used as a vehicle to debate the Medicare Prescription Drug Benefit, not because it was some finely tuned consensus bill.

As I said last night, let us not rush to adopt legislation in this area before the ink is dry on the FTC report. We need to understand and debate the FTC report and its recommendations. My first reading of the Executive Summary of the FTC Study reveals a fundamental disconnect between the agency's recommendations and the legislation that emanated from the HELP Committee. The floor of the Senate is not the best place for the type of discussion the FTC Report warrants.

We need to allow the Judiciary Committee to play a role in fashioning legislation that is fundamentally an antitrust bill with patent law and civil justice reform implications. Certainly, the FTC smiled upon what the Judiciary Committee was doing in this area. And just as certainly, the PTO did not smile upon how the substitute to S.812 treats longstanding patent rights.

The detailed criticism that I have made to the pending bill in no way minimizes the importance of the matters that are the subject of the pending legislation, because they deserve Congressional attention.

Let me be clear. We should make some changes in the Hatch-Waxman Act. No law so complex cannot be improved.

But let's do it the right way because the American public deserves both the newest medicines and the most affordable medicines.

I do not believe, moreover, that S. 812 even identifies the most important issues we should address in Hatch-Waxman reform.

I hope to return to the floor to discuss some ideas for a more comprehensive approach to reforming the Drug Price Competition and Patent Term Restoration Act. I suspect that many others, including my friend, Henry Waxman, will want to participate in such a discussion.

I am unconvinced that focusing on how best to bring the law back to the old days of 1984 is the right way to go about reforming the Hatch-Waxman Act.

I think we may be well served if we attempt to modify the law in order to help usher in a new era of drug discovery while, at the same time, increasing patient access to the latest medicines.

Let us not adopt this hastily-crafted bill in the last week before August recess. Please do not hold your nose and close your eyes and vote for this bill by telling yourself that we can fix it in conference. We can do better.

We would do better in the long run for the American people if we put S. 812 aside for the time being and devote our attention to passing the Omnibus Trade Promotion Authority, Trade Adjustment Assistance, and Andean Pact legislation before this week runs out. We need to get the economy going again and trade can help us achieve that goal.

Let's face it. S. 812 is not ready for adoption, but the trade legislation is long overdue.

I ask unanimous consent that the letters from the PTO and BIO, discussed earlier in my speech, be made part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BIOTECHNOLOGY INDUSTRY ORGANIZATION,
Washington, DC, July 22, 2002.

HON. EDWARD KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: Thank you for your prompt response to my letter of July 15 objecting to several new provisions of S. 812, the Schumer-McCain legislation. No one was more surprised than members of the biotechnology industry at these last-minute changes, which pose significant problems for our companies. At this stage in the debate, we must strongly object to these provisions and urge that they be deleted from the bill under consideration on the floor of the Senate.

The Biotechnology Industry Organization quite intentionally took no position on the particulars of the original version of the Schumer-McCain bill, leaving debate on the practices described in your letter to others. But the bill has been changed radically, without opportunity for members of our industry to provide legal and policy reaction to the new provisions on bioequivalence, loss of rights to sue for patent infringement, and a right of action for generics to sue our companies to "correct" patent information filed with the Food and Drug Administration.

In BIO's July 15 letter, I pointed out the potentially damaging consequences to our emerging industry that could result from these provisions—*carte blanche* authority of FDA to determine testing methods applicable to full NDAs, loss of the ability to protect our intellectual property because of failure to meet new filing deadlines under food and drug law, and an unwarranted private right of action afforded generic companies to sue members in efforts to "delist" patents or "correct" patent information. Whatever the *purposes* of these provisions, we fundamentally disagree with their *consequences*—perhaps the result of producing totally new provisions only 36 hours before markup.

We also point out that we were assured by committee staff that the bioequivalence provision was intended only to confirm FDA's authority to craft tests for bioequivalence for products not easily absorbed in the bloodstream. We were also assured that this provision (section 7) would be worked out before floor consideration. This has not occurred, despite the fact that BIO provided draft language that accomplishes precisely the stated purposes of the bioequivalence section.

BIO retains its admiration for you and your staff and appreciate very much your past efforts to respond to challenges that confront our industry in Massachusetts and across the nation. We have no doubt that you did not intend that the bill's new provisions pose threats to BIO companies, and look forward to an opportunity to work with you to remove from S. 812 the provisions on bioequivalence, loss of rights to sue for infringement and the private cause of action during its consideration on the Senate floor.

Sincerely yours,

CARL B. FELDBAUM,
President.

UNITED STATES PATENT
AND TRADE OFFICE,
Washington, DC, July 30, 2002.

Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: In a few months, the United States Patent and Trademark Office (USPTO) will celebrate its 200th year in existence. During that time, we have been the only Federal agency charged with administering this Nation's patent laws and determining whether inventions are patentable. USPTO plays a critical role in promoting and protecting intellectual property and the work of our Agency helps to stimulate American innovation and investment.

At your request, USPTO is providing its views on the advisability of the changes in patent laws in S. 812, the Greater Access to Affordable Pharmaceuticals Act. This letter is intended to inform you of our objections to the current language in S. 812.

First, in some cases, S. 812 would forfeit unnecessarily the core right of patent holders—the right to exclude others from practicing the invention for the entire patent term. After years of research and development and significant investment, the patent right is extinguished for the mere failure to satisfy an administrative task or respond in a timely manner. For example, if a patent holder fails to list the patent with the Food and Drug Administration within a certain time period, the patent is invalidated. Furthermore, if a patent owner fails to bring an infringement action within 45 days of receiving notice (also known as 'Paragraph IV') from a drug manufacturer that the patent is invalid or not infringed by the generic drug, then the patent right is forfeited. In this circumstance, the patent owner is barred from ever bringing an infringement case in connection with the generic drug at issue.

Second, we are concerned with the bill's disparate treatment of patents depending on issue date. The Hatch-Waxman Act gives a patent holder an automatic 30-month stay to defend a challenge to the patent by a generic drug company. S. 812 would apply this 30-month stay only to patents that issue within 30 days of the new drug application approval. This limitation is arbitrary and unrealistic. The timing of issuance bears no relation to the importance of innovation. Moreover, the patent applicant often has no control over when a patent issues. Therefore, affording certain benefits to patents that issue only within a certain time frame would be unworkable and unjust.

Finally, USPTO believes it is vital to consider each patent rigorously and uniformly to determine whether the application satisfies the standards of patentability. All patent applications are examined with equal scrutiny and all patents must satisfy the same criteria of utility, novelty, and nonobviousness before they are issued. Each pharmaceutical patent, like all other patents, is entitled to a presumption of validity and should be judged accordingly.

USPTO does recognize that some changes to current law may be necessary to encourage appropriate access to generic substitutes and prevent abuses of the patent laws. But S. 812 clearly is not the answer. In fact, this bill would likely do the opposite of what its title suggests—by limiting access to cutting-edge drugs, decreasing innovation, and ultimately harming the quality of treatments available to patients.

Before considering any future legislative efforts, we should applaud the success of the time-tested Hatch-Waxman Act and respect the delicate industry balance it forged. In all cases, any changes should incorporate the expertise of the Committees on the Judiciary of Congress, in addition to the appropriate Government agencies. Only through a carefully conducted analysis can a result be reached that benefits consumers while promoting the progress of science and innovation.

I hope this information is helpful and I would welcome the opportunity for consultation on future endeavors.

Sincerely,

JAMES E. ROGAN,
Under Secretary and Director.

AMERICA MEMORIALIZES TWO MORE VIETNAM WAR HEROES

Mr. LOTT. Mr. President, I rise today in remembrance of a fellow Mississippian, Fred C. Cutrer Jr. and his navigator Leonard L. Kaster, who died serving their country during the Vietnam War. Captain Fred C. Cutrer Jr. was a pilot on a B57 Canberra Bomber, and during his service for his country, he became instantly known around his base as a loving husband and an immensely proud father of two sons. He would often be found showing pictures of his family to his friends and squadron. Fred was also courteous and friendly, exemplifying the character of a true southern gentleman. Jimmy Speed, a child-hood buddy described his charming character by stating,

> I used to call him good-humor man. He was a very smart man, and people liked him immediately. I always felt that if he had gotten to the ground alive, those people wouldn't have hurt him because he was so likeable and friendly that he would have fit into any crowd.

On August 6, 1964 Cutrer and 1st Lt. Leonard L. Kaster, unknowingly flew the skies for their last time. They were flying over South Vietnam, North East of Tan Son Nhut, and according to Defense Intelligence data, their airplane came under heavy fire from Viet Cong forces, causing them to crash and explode near the Sang Dong Nai River in Long Khan Province. Both men were classified "Killed in Action, Body Not Recovered," and Cutrer was promoted to the rank of Major.

In the spring of 1997, the Department of Defense, with the help of a Vietnamese native, helped bring closure to Cutrer's family by finding Cutrer's dog tag and aircraft identification plate that had been buried one meter beneath the surface of a jungle bog. This discovery led to the declaration of these men's ceremonial burial for June 6, 2002, with full military honors. I am thankful to say that both of these men, nearly forty years following their patriotic death for their country, now lay buried in Arlington National Cemetery.

Both the Cutrer and Kaster families flew from Mississippi to attend the ceremony, and Air Force General Frank Faykes presented flags to the families of both men. Buried alongside Cutrer is his wife, Shirley, who was killed in an automobile accident four years ago. The children were pleased to see their father properly honored as a hero and their mother rightfully buried beside him.

American troops have a slogan stating, "We leave no man behind." I believe this manifests the pride and patriotism of our troops. Cutrer's sister, Lillie Cutrer Gould, promised her younger brother that if anything were to happen to him in Vietnam, then she would bring him back home. Not too many days ago, Mrs. Gould successfully achieved her promise to her brother, and America again exercised its duty and commitment to its soldiers.

I salute John C. Cutrer Jr. and Leonard L. Kaster for serving their country and helping make America a better and safer place to live. I am thankful that I reside in a country where we take pride in our soldiers, and we carry a strong commitment never to forget their courageous acts nor to leave anyone behind. I want to thank God for allowing John and Shirley Cutrer to eternally lay side-by-side in Arlington's National Cemetery, and I want to thank America for again making me proud of our citizens. I know my colleagues will join me in memorializing and commending the lives of John C. Cutrer Jr. and Leonard L. Kaster, two American heroes.

REMEMBERING MR. JOHN M. McGEE

Mr. LOTT. Mr. President, I rise today to pay proper tribute to Mr. John M. McGee, a devoted husband, father, and grandfather as well as a memorable American patriot. John was born in Brookhaven, MS on September 16, 1933, and in February 23, 2002, John passed away as a result of a sudden heart attack. In his high-school years, John was blessed with speed and athleticism that contributed to his becoming an extraordinary football player and an excellent athlete. John's athleticism led him to set the state record in the 100-yard dash. John attended my alma mater, the University of Mississippi, where he played football for the Ole Miss Rebels. John's patriotism towards his country convinced him to interrupt his education at Ole Miss and enlist with the U.S. Navy where he served on the destroyer tender *Shenandoah* and the destroyer *Willard Keith*. During his duty in active service, John took part in the decisive Inchon invasion commanded by General Douglas McArthur.

John went on to earn his bachelor's degree in engineering from the Armed Forces Institute. After an honorable discharge, he pursued his career in engineering until 1966 when he accepted a job with the Department of Defense where he conducted operations in Vietnam, Cambodia, Laos, and Thailand until 1969. During John's service in Vietnam, he discovered and exposed extensive corruption in American military operations. The Governmental Accounting Office confirmed these allegations, and John's discovery revealed the theft of 5.5 million gallons of fuel that had been originally intended for U.S. Military forces but had been penetrated and used by the enemy. John's inquiry helped save the lives of many Americans. His discovery ultimately led to a Senate Sub-Committee chaired by the Honorable Senator William Proxmire of Wisconsin to investigate the scandal. This incident is memorialized in the U.S. CONGRESSIONAL RECORD and in the books Report from Wasteland-America's Military Industrial Complex, by Senator William Proxmire and The Pentagonists, by A. Earnest Fitzgerald.

Our hearts are saddened with the loss of such a precious man, but at the same time we are grateful for his contributions to our country, the state of Mississippi, and his family. I know my colleagues will join me in honoring and appreciating the remarkable life of Mr. John M. McGee.

ELIMINATION OF THE WEP AND GPO

Mr. KERRY. Mr. President, today I have asked Senator FEINSTEIN to add me as a cosponsor to her bill, S. 1523, which would amend the Social Security Act to permanently repeal the Government Pension Offset and the Windfall Elimination Provision. I am pleased to support my colleague Senator KENNEDY and others in their support of this bill.

Massachusetts is one of 15 states in which the Government Pension Offset and the Windfall Elimination Provision hits employees and retirees particularly hard, because it is one of the few remaining states where many state employees, such as teachers, do not pay into the Federal Social security system. Rather, they pay into a state pension fund. For many workers, the formulas in the law that reduce Social Security benefits for these workers can have troubling and unintended consequences.

Listen to the testimonial of one educator from my state. This constituent writes:

> I served 13 years in the military and am a wartime veteran. I did not receive a military pension; however, I did pay into Social Security. I am shocked to learn that I may receive virtually nothing from Social Security. My teaching pension in Massachusetts will be small if I retire at 60 with only 22 years of teaching service. I had previously thought that Social Security would help to make up for the smaller teaching pension. I feel that the Federal government is unfairly penalizing those who have embarked on second careers as teachers. They have created a disincentive that will work against filling projected teaching shortages. I feel especially cheated as I did sacrifice much during my military career. It is obvious that I would be much better off financially had I not served at all. I hope this is not the message that the government wants to send.

The government pension offset has a significant impact on the benefits of many retired public employees just like this one. For example, a disabled former school employee and widow who retired in 1986 receives $403 a month from her school pension. That income results in the elimination of a $216 monthly Social Security survivor's benefit, to which she would otherwise be entitled. As a result, her total income is about 70 percent of the Federal poverty level. Another constituent, a retired widow who worked as a school cook, receives $233 a month from her school pension. Her Social Security widow's benefit is reduced by $155 because of the automatic offset. Her combined total income is about 76 percent of the Federal poverty level.

It is clear that the GPO and WEP, complex though they are, are causing pain and confusion. They also negatively impact teacher recruitment efforts, at a time where we sorely need teachers, yet the potential reduction in Social Security benefits makes it unlikely that people will turn to teaching for a few years at the tail end of their careers. Consider the irony: Individuals who have worked in other careers are less likely to want to become teachers if doing so will mean a loss of Social Security benefits they have earned, and yet our State and Federal policies are aimed at recruiting just those individuals to teaching as a second career. Retired teachers are also reluctant to return to teaching to help fill urgent needs because of the impact of the GPO and WEP. Finally, there is a fear that current teachers are likely to leave the profession to reduce the penalty they will incur upon retirement.

The reforms that led to the GPO and WEP are almost 20 years old, nearly a generation. They were passed before many of us were members of this body. Now that were are witnessing some of the impacts these 20-year old decisions are having on people's lives, we understandably want to help our constituents, and I support that effort. However, while I support the repeal of the GPO and WEP, I know that if we continue to address Social Security issues on a piecemeal basis, even expanding benefits as certain social needs dictate, without fixing the program's underlying imbalances and demographic challenges, we will make real reform more difficult when the time finally comes.

However, for the reasons outlined above, and the effect the provisions are having on my constituents, I believe it is essential that the GPO and WEP be repealed, preferably as part of an overall reform to Social Security, but by themselves if need be. My State, and others affected by the GPO and WEP, cannot afford to provide disincentives to be teachers or other public servants at this critical time.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred May 14, 1995 in Brooklyn, NY. A gay man was attacked by another man who used anti-gay slurs. The assailant, John McHenry, 25, was charged with second-degree assault, criminal possession of a weapon, and harassment in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

TRIBUTE TO THE ARKANSAS MEMBERS OF THE MILITARY ORDER OF THE PURPLE HEART

• Mr. HUTCHINSON. Mr. President, it is my distinct privilege to recognize and pay tribute to the heroes of Arkansas who have been awarded the Purple Heart. This distinguished group of Americans are the recipient of our nation's earliest military decoration and the oldest in the world in present use. The Purple Heart is a combat decoration awarded in the name of the President of the United States to members of the armed forces who are wounded by an instrument of war in the hands of the enemy.

The Purple Heart was originated by General George Washington in 1782 to recognize "instances of unusual gallantry." Referred to then as the Badge of Military Merit, the decoration was awarded only three times during the Revolutionary War. The modern Purple Heart was brought into existence by Army Chief of Staff, General Douglas MacArthur. The medal was designed by Miss Elizabeth Will, in the Office of the Quartermaster General, and was introduced by the War Department on February 22, 1932, the bicentennial of George Washington's birth.

The Military Order of the Purple Heart provides a loud and clear voice on behalf of veterans and the issues that concern them. The crucial work that they do reminds us of just how precious freedom is, and that those who have unselfishly risked everything in freedom's name are worthy of every benefit a grateful nation can afford.

On behalf of the United States Senate, I thank the Arkansas members of the Military Order of the Purple Heart for the sacrifices that they have made in defense of this great nation. •

HAPPY 275TH ANNIVERSARY BOW, NEW HAMPSHIRE

• Mr. SMITH of New Hampshire. Mr. President, I rise today to give my congratulations to the town of Bow, New Hampshire on their 275th anniversary.

Bow, New Hampshire is a quaint and inviting city and home to nearly 7,200 proud residents. The town was chartered in 1727 and began as an agricultural settlement. The waterways that stretch through Bow allowed the town to establish a series of mills that have since served as the heart of an area of town known affectionately as "Bow Mills." Bow has also served as a historically significant stomping ground for many influential figures. Sergeant John Ordway, native to Bow, was part of the Lewis and Clark expedition and Andrew Jackson stopped in Bow on his 1833 New England Tour. Residents of this beautiful town are among the first in the nation to vote in primaries.

This progressive city has been able to maintain a family-oriented and relaxing environment for 275 years in spite of their close proximity to the two largest cities in New Hampshire. It is highly commendable that Bow has preserved a superbly low crime rate and given its residents a safe and secure town in which to live and raise their families. Bow is incomparable in so many ways, particularly the attention Bow gives to the public school system in their community. Bow's public schools are well maintained, well equipped with the latest technology to ensure cutting-edge education and skills training, and most importantly, provide an adequate number of teachers that can endow our children with guidance and direction. The student to teacher ratio is roughly 14 to 1. This is an astounding and praiseworthy circumstance and furnishes Bow's youth with the opportunity for one to one interaction in the classroom and an extended chance to explore each subject in greater depth.

Bow is truly one of the most unique and wonderful cities in New Hampshire and in the United States. It is said that Bow originally was given its name because of its literal positioning at the bow of the Merrimack River. I propose that perhaps Bow was given its name for its representational properties; the visual packaging of this town is beautifully decorated, however, what you discover inside the package is the true gift and reward.

Bow, New Hampshire, congratulations on your 275th anniversary. It is an honor to represent the citizens of Bow in the U.S. Senate.•

IN MEMORY OF RESERVIST ROBERT RANERI

• Mr. SMITH of New Hampshire. Mr. President, I rise today to honor the memory of a fallen soldier in the U.S. Military, Robert Raneri.

Robert Raneri was a captain and commander of the 94th Military Police Company in the Army Reserves and a highly respected and dedicated officer. Raneri's professionalism and dedication to the Army was thought by many to be unrivaled. In July of 2000, Captain Raneri led a unit of 600 soldiers in a mission to Bosnia. In the wake of a very politically and militarily charged conflict, Raneri returned nine months later with every one of the 600 soldiers alive and unscathed as he had promised upon their departure overseas. Those who worked with Robert knew him as a strong presence and as a man not afraid to take chances if it was in the best interest of the men he commanded and of the nation. His peers remember him as calm, deliberate, clear-headed, compassionate, tough, and exacting. These virtues combined created a fine leader, friend, and man in Mr. Robert Raneri.

Robert was to be married to Maj. Amy Huther a week after his June 26th passing, greatly looking forward to being a husband and a father someday. These dreams will cease to be realized for this exceptional man as a result of the unfortunate motorcycle accident that recently took his life.

Robert Raneri was a dedicated Army Reservist who spent his life serving the United States as a commanding officer to the 94th Military Police Company and his memory should be held in the highest respect. Robert's passing is a great loss not only for his family, but for the country and the U.S. Army.•

IN MEMORY OF ALBERT G. CAPPANNELLI

• Mr. SMITH of New Hampshire. Mr. President, I rise today in remembrance of a highly respected and valued member of the Manchester community and an esteemed public relations careerist, Mr. Albert G. Cappannelli.

Al began his work with public media as a radio news reporter after graduating from Boston University with a bachelor's degree in broadcast journalism. His fervor for the technique of media and journalism led Al to the arena of strategy consulting. As director of national media at High Point Communications, he developed tactics for clients throughout New Hampshire including the Department of Education as well as on the national circuit for companies including Anthem Blue Cross-Blue Shield, American Express Financial Services, and Maryland Public Service Commission. Colleagues described Albert as savvy and highly effective in his discipline.

In addition to Al's professional career, he established a well-deserved reputation as a community leader in Manchester. He volunteered his time and effort to a number of causes in the community spanning across interests with regard to both personal and social affairs. Al was an active member at St. Peter's in Auburn where he held a position on the parish council and was a parish facilitator for the Crown Ministries for the Diocese of Manchester. He was a huge advocate in matters surrounding education; volunteering his time with Weston Elementary School, Keene State College, McDonald Youth Leadership program, and as a member of the Greater Manchester Chamber of Commerce Education Committee.

Albert Cappannelli was the victim of an unfortunate and untimely passing as a result of liver cancer that had been diagnosed merely 2 weeks earlier. Albert is survived by his wife Jane of 16 years and his two children, Joshua and Helen.

Al spent his life and career serving public interest and revealed an uncompromising compassion and integrity throughout that endeavor. He was a fine man, respected colleague, and adored by all who knew him. I was proud to call him my friend, and honored to represent such a fine individual in the U.S. Senate.•

A TRIBUTE TO DEAN KAMEN

• Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to an innovator of the ages, an artist of medicine, and technological visionary, Mr. Dean Kamen.

As a prominent figure in the life and community of our State of New Hampshire we honor Mr. Kamen for his efforts and entrepreneurial spirit that have furthered the fields of science and technology in numerous ways with the advent of his inventions. The improvements in several medical procedures and enhancement of the administering of various drug treatments have vastly improved the lives of individuals who suffer from a range of illnesses. Mr. Kamen holds over 150 national and international patents and is renowned throughout the country as one of the greatest inventors of this age. Among his credits include the first wearable infusion pump, the first insulin pump for Diabetics, and the HomeChoice/TM/ dialysis machine.

Recently, Mr. Kamen was in New Hampshire to demonstrate to the Environment and Public Works Committee, his latest technological improvement, the Segway Human Transporter, an environmentally friendly and fuel-efficient mode of transportation for the 21st century. In attending this demonstration I was able to witness firsthand the incredible and impressive talent and vision of Mr. Kamen.

Dean Kamen accomplishments are well-recognized and his many awards include the Kilby Award for extraordinary contributions to society, the Heinz Award in Technology, and the National Medal of Technology given to him in 2000 by President Bill Clinton for inventions that have advanced medical care worldwide. In addition, Mr. Kamen was honored by the Juvenile Diabetes Research Foundation as "2002 Person of the Year" for work related to the research and advancement of diabetes treatment for youths.

Dean Kamen deserves to be recognized for his exceptional efforts at spreading the excitement of science and technology to the world at large. His advances for medical technology have been blanketed in the notion that technology can be of virtue and practical in our society, a proposition that is admirable and worthy of merit. Thank you, Dean, for all your efforts to aid others through the advancement of medicine and technology. It is an honor to represent you in the U.S. Senate.•

THE 75TH ANNIVERSARY OF JENSEN'S RESIDENTIAL COMMUNITIES, INC.

• Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to the Jensen's Residential Communities, Inc., as they celebrate 75 years as an exceptional provider of affordable homes.

Today, I would like to give my congratulations to the Jensen family for their success in establishing and managing communities of premier manufactured homes. I would also like to extend my gratitude on behalf of New Hampshire and its local communities for providing such an excellent combined example of quality and economy.

The Jensen Residential Communities began in 1927 by Mr. Kristian Jensen Sr. as one of the pioneering manufactured home communities in New Hampshire. Since its inception, the housing communities have spread across to seven eastern states, totaling 27 developments. There are currently five Jensen Residential Communities in New Hampshire alone.

I want to congratulate the Jensen family once again for an admirable entrepreneurial endeavor and a first-rate product. Thank you for your continuous pledge to meet the needs of the American family. It is an honor to represent you in the US Senate.•

DAVID BIBBER IS RETIRING AFTER A LIFETIME OF PUBLIC SERVICE

• Mr. SMITH of New Hampshire. Mr. President, I rise today to commend and congratulate David Bibber who is retiring as chief of Dover's Fire and Rescue.

Davis Bibber has been chief of Dover, NH, Fire and Rescue team since 1978 and has recently decided his position as chief is in need of some "new blood." Bibber was the new kid on the block when he began as a fireman at the Fairfax County fire department in 1962 at 18 years of age. David started as a volunteer and was permitted to live at the fire station while he finished school. After a few short years, David was granted a full-time job with the department. David's story is an inspirational example of the American dream; working his way up to the top.

On David's watch some major accomplishments have been achieved at Dover Fire and Rescue. Among them are the implementation of paramedic services, increased responsibility for emergency management services, greater enforcement of building codes, and an expansion in public education programs throughout the community pertaining to fire and safety. While David has been chief, Dover has also developed a central alarm system by combining the dispatch services for the police and fire department to lessen the response time for support.

Chief Bibber gives all the credit for his and the fire department's successes to his staff. He recognizes the hard work and dedication that each member of the team has offered in order to keep the city's rescue services running smoothly. David also recognizes the hard work that all city workers provide, respecting city counselors in particular for their pro bono duties and efforts to make the lives of Dover residents better.

Congratulations to Mr. David Bibber. I thank you, New Hampshire thanks you, and the city of Dover thanks you for serving the interests of the people with care and capability.•

TRIBUTE TO GEN. JOSEPH P. HOAR, U.S. MARINE CORPS, RETIRED

• Mr. LEVIN. Mr. President, I rise today to congratulate General Joe Hoar on the occasion of his retirement as Chairman of the Board of Directors of The Retired Officers Association, TROA.

Born in Boston, MA, General Hoar entered the Marine Corps as a Second Lieutenant in 1958, following his graduation from Tufts University. As an infantry officer, he commanded at all levels from platoon to regiment; he also commanded three Marine Corps Air Ground Task Forces. As a senior military officer, General Hoar became well-known to the members of the Armed Services Committee with his tours of duty as the Deputy Chief of Staff for Plans, Programs and Operations for the Marine Corps during the Gulf War, and, from 1991 to 1994, as the Commander in Chief, U.S. Central Command, the unified command that had the operational responsibilities for the Middle East, South Asia, and the Horn of Africa. He retired from active duty on September 1, 1994 after 37 years of commissioned service in the U.S. Marine Corps.

General Hoar's dedication to service and excellence has not diminished since leaving active duty. He served as a Trustee for the Center for Naval Analyses at Suffolk University in Boston, and as a Fellow of the World Economic Forum in Geneva, Switzerland. General Hoar was elected to TROA's board of directors in 1996. For the last two years, he served as TROA's Chairman of the Board, the position from which he is now retiring.

Through his stewardship, TROA continues to play a vital role as an advocate of legislative initiatives to maintain readiness and improve the quality of life for all members of the uniformed service community—active: reserve, and retired, plus their families and survivors.

General Hoar has been a strong supporter of the Senate's efforts to improve military readiness and quality-of-life through a competitive compensation package for active and reserve forces, improving health care for retired personnel and their families, and enhancing protections for the survivors of deceased service members. Under his leadership, TROA has been an invaluable source of information during the Senate's deliberations on a long list of compensation and benefits issues during this extraordinarily productive period.

General Joe Hoar has been a leader in every sense of the word in the U.S. Marine Corps, in TROA, and in the entire military retiree community. I know my colleagues join me in extending very best wishes to General Hoar for continued success in service to his Nation and the uniformed service members whom he has so capably led and served.•

IN HONOR OF NATIONAL CHEESECAKE DAY

• Mr. DURBIN: Mr. President, today is a very special day for all Americans, but it is especially near and dear to the hearts of many residents of my home State of Illinois, because today has been designated as National Cheesecake Day.

Some may be tempted to dismiss National Cheesecake Day as another meaningless holiday. To those unenlightened few, I extend my sympathies. For you have truly missed out on one of life's sweetest pleasures. You see, in Illinois, especially in the greater Chicago area, National Cheesecake Day can only mean one thing, Eli's Cheesecake.

When long-time restaurateur and Chicagoan Eli Schulman founded Eli's: The Place for Steak Restaurant, one of his marquee offerings was a superb cheesecake. It quickly became one of Chicago's favorite desserts. So popular, in fact, that Eli's began producing it for other restaurants and retail outlets across the country. Eli's Cheesecake Company has now been a Chicago icon in its own right for more than 20 years.

Since its 1980 debut at the first Taste of Chicago, Eli's Cheesecake has grown to become the largest specialty cheesecake company in the country. In both 1993 and 1997, Eli's Cheesecake was selected to participate in the presidential inaugural festivities, they have supplied desserts on Air Force One for Presidents Reagan to Clinton, and Eli's Cheesecake provided the cake for the First Lady's birthday bash in 1997.

How does a humble homemade Chicago dessert go from after-dinner obscurity to gracing the plates of Presidents and First Ladies?

Actually, there are two answers. The first is the taste. If you've ever had a bite of an Eli's cheesecake, you'd know that there is nothing like it anywhere in the world. Eli's has taken great care to continue making each cheesecake by hand—the same way the very first one was made. This ensures each bite will have the rich, creamy Eli's taste so many have come to love.

The second is the spirit of Eli Schulman himself.

In 1910, a young man named Eli Schulman was born on Chicago's West Side. Although Eli's father owned a bakery on Roosevelt Road, times were hard for the Schulmans.

Eli was forced to leave school and embark on a series of jobs to support his family, doing everything from selling newspapers, to peddling seat cushions at ballparks, to managing a shoe store and selling women's dresses.

In 1940, Eli decided to open his own restaurant called the Ogden Huddle. Soon after World War II breaks out, two signs appear in the restaurant's window. The first offers a 25 percent discount to men in uniform. The second simply states "If you are hungry and don't have any money, come in and we'll feed you free." This spirit of generosity was carried throughout Eli Schulman's life.

Following the war, in the 1940s and 50s Eli's business expands and his new restaurants become "hot spots" for both the Rush Street and Lake Shore Drive set. When in town, entertainers such as Barbara Streisand, pianist Bobby Short and comedian Sheky Green often can be found frequenting Eli's.

In 1966, Eli and his wife Esther realized their dream of opening a white-tablecloth establishment, Eli's The Place for Steak, in what was then the luxury hotel The Carriage House. Eli's soon became the spot for celebrities and dignitaries to dine. Everyone from Frank Sinatra and Sammy Davis Jr. to Gayle Sayers of the Chicago Bears and comedian Henny Youngman, all began to make Eli's their place for steak.

In the late 1970s, following up on a suggestion from a customer about his dessert, Eli spent several weeks coming up with a recipe that pleases everyone. Eli's Cheesecake quickly became a marquee offering at Eli's the Place for Steak. In the next few years, this rich and creamy dessert became such a hit that Eli's began producing cheesecakes for other restaurants and retail outlets.

Although Eli Schulman passed away in 1988, a playground in Seneca Park, located across the street from Eli's the Place for Steak, has been dedicated to his memory. And Eli Schulman's spirit lives on in the company he started. His son, Marc Schulman and Marc's wife Maureen, are dedicated to providing their customers with products and services that live up to the name "Chicago's Finest."

Eli's Cheesecake now employs more than 200 associates, the company's growth has been dramatic, and its headquarters, Eli's Cheesecake World, is a 62,000 square-foot state-of-the-art bakery, visitor center, and cafe.

Today, the company makes more than 15,000 cheesecakes every day for sale to restaurants, supermarkets, and airlines. Eli's Cheesecakes are also available to the public via the company's thriving mail-order business and Web site.

In honor of this great day, I have brought a taste of Chicago to the U.S. Senate. Earlier today, I delivered a sample of Eli's Cheesecakes to both the Democratic and Republican Cloakrooms for my colleagues to enjoy.

As we go about the Nation's business today, I hope that each of my colleagues will take a moment to enjoy the treats in the cloakrooms and ponder the words of a respected American writer who once proclaimed that cheesecake was the truest democratic dessert, it is a mix of different ingredients that did not care much for the presence of an upper crust.•

HONORING ROSWELL, NEW MEXICO UPON BEING SELECTED AS A 2002 NATIONAL CIVIC LEAGUE ALL-AMERICA CITY

• Mr. DOMENICI. Mr. President, I rise to join the National Civic League in recognizing the city of Roswell, NM as a recipient of the 2002 All-America City award.

Roswell is one of the most fascinating cities in America. Perhaps Roswell's most notorious claim to fame is the 1947 "Roswell Incident," in which an alleged space craft is said to have crashed nearby. It was in Roswell that Dr. Robert H. Goddard chose to launch the first rockets into space, propelling him into history as the father of space exploration. The New Mexico Military Institute, noted for such distinguished alums as Roger Staubach, Sam Donaldson, and Conrad Hilton, has been training tomorrow's future leaders in the Roswell area since 1891. However, Roswell has much more to offer than stories about extraterrestrials.

The city has been at the forefront of local civic programs aimed at improving community standards. The Nothing Other Than Excellence, NOTE, program emphasizes how music appreciation can benefit reading and math abilities. A low-income dental program, the Community Dental Initiative, has provided a creative way to provide access to affordable dental needs by combining a mobile dental clinic with a permanent clinic helping to reach under-served people. In addition, the city has taken up my initiative to get schools and communities involved in character education. They have developed a citywide program involving schools, parents, churches, and the government to promote Character Counts, a program that stresses the importance of trustworthiness, respect, responsibility, caring, citizenship, and fairness in young people's lives.

It is for their civic work that the National Civic League recognized Roswell as an All-America City. For the past 53 years, the National Civic League annually chooses 10 outstanding communities for their efforts to involve community members in innovative projects to address local challenges. I am pleased that Roswell has tried to create a better community through active public participation in civic activities.

Roswell's success is due to the active involvement of the community and their willingness to make a difference in each other's lives. All of Roswell can bask in the honor of being selected as an All-America City. This could not have been achieved without everyone's support. I commend you all on your well deserved recognition.●

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–8288. A communication from the Acting Director, Office of Regulatory Law, Board of Veterans' Appeals, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled "Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters" (RIN2900–AI98) received on July 26, 2002; to the Committee on Veterans' Affairs.

EC–8289. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (Doc. No. FEMA-7787) received on July 26, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8290. A communication from the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the Corporation's Annual Report for calendar year 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–8291. A communication from the Assistant Secretary of Defense, Force Management Policy, transmitting, pursuant to law, a report concerning the approval of the demonstration project plan for the U.S. Army Communications-Electronics Command (CECOM) Research, Development, and Engineering Community (RDEC); to the Committee on Armed Services.

EC–8292. A communication from the Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Reorganization of Definition of Contribution and Expenditure" received on July 26, 2002; to the Committee on Rules and Administration.

EC–8293. A communication from the Assistant General Counsel for Regulatory Law, Office of Procurement and Assistance Policy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Greening the Government Requirements in Contracting" (AL–2002–05) received on July 26, 2002; to the Committee on Energy and Natural Resources.

EC–8294. A communication from the Assistant General Counsel for Regulatory Law, Office of Procurement and Assistance Policy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Processing Requests for Indemnification or Other Extraordinary Contractual Relief Under Pub. L. 85–804" (AL–2002–04) received on July 26, 2002; to the Committee on Energy and Natural Resources.

EC–8295. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Secondary Direct Food Additives Permitted for Direct Addition to Food for Human Consumption; Materials Used as Fixing Agents in the Immobilization of Enzyme Preparations" (Doc. No. 89F–0452) received on July 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8296. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Digoxin Products for Oral Use; Revocation of Conditions for Marketing" (RIN0910–AC12) received on July 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–8297. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Technical Change to Requirements for the Group Health Insurance Market; Non-Federal Governmental Plan Exempt from HIPAA Title I Requirements" (RIN0938–AK00) received on July 25, 2002; to the Committee on Finance.

EC–8298. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; End-Stage Renal Disease-Removal of Waiver of Conditions for Coverage under a State of Emergency in Houston, Texas Area" (RIN0938–AL39) received on July 25, 2002; to the Committee on Finance.

EC–8299. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds from Sales Involving Investment Advisors" (RIN1545–AW48; TD9010) received on July 26, 2002; to the Committee on Finance.

EC–8300. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Guidance Regarding the Active Trade or Business Requirement of Section 355(b)" (Rev. Rul. 2002–49, 2002–32) received on July 26, 2002; to the Committee on Finance.

EC–8301. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Regulations Governing Practice Before the Internal Revenue Service" (RIN1545–AY05; TD90114) received on July 26, 2002; to the Committee on Finance.

EC–8302. A communication from the Chief, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Addition of New Grape Variety Names for American Wines" (RIN1512–AC29) received on July 26, 2002; to the Committee on Finance.

EC–8303. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, the Commission's June 2002 Report Assessing Medicare Benefits; to the Committee on Finance.

EC–8304. A communication from the Deputy Associate Administrator, Office of Acquisition Policy, General Service Administration, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Regulation; Federal Acquisition Circular 2001–07" (FAC 2001–07) received on July 18, 2002; to the Committee on Governmental Affairs.

EC–8305. A communication from the Director, Federal Emergency Management Agency, transmitting, pursuant to law, the Inspector General's and Director's semiannual reports that address the Agency's audit and audit follow-up activities during the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8306. A communication from the Federal Co-Chairman, Appalachian Regional Commission, transmitting, pursuant to law, the report of the Office of the Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8307. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Closure of the Spring Commercial Red Snapper Fishery in the Gulf of Mexico Exclusive Economic Zone" received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8308. A communication from the Director of the United States Office of Personnel Management, Office of Insurance Programs, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Suspension of CHAMPVA or TRICARE or TRICARE-for-Life Eligibles' Enrollment in the Federal Employees Health Benefits (FEHB) Program" (RIN3206–AJ36) received on July 26, 2002; to the Committee on Governmental Affairs.

EC–8309. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of the Office of the Inspector General for the period October 1 , 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8310. A communication from the Inspector General, General Services Administration, transmitting, pursuant to law, the report of the Office of the Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8311. A communication from the Deputy Associate Administrator, Office of Acquisition Policy, National Aeronautics and Space Administration, General Services Administration, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Regulation; Federal Acquisition Circular 2001–08" (FAC 2001–08) received on July 26, 2002; to the Committee on Governmental Affairs.

EC–8312. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the report of the Office of the Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8313. A communication from the Executive Officer, National Science Board, transmitting, pursuant to law, the Board's report under the Government in the Sunshine Act for calendar year 2001; to the Committee on Governmental Affairs.

EC–8314. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Fiscal Year 2001 Annual Program Performance Report and the Fiscal Year 2003 Annual Performance Plan; to the Committee on Governmental Affairs.

EC–8315. A communication from the Inspector General Liaison, Selective Service System, transmitting the report of the Office of the Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–8316. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–8317. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more to Russia, Ukraine and Norway; to the Committee on Foreign Relations.

EC–8318. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–8319. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8320. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8321. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8322. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Turkey, Australia, Italy, Germany, Norway, and Canada; to the Committee on Foreign Relations.

EC–8323. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8324. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8325. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8326. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Russia and Kazakhstan; to the Committee on Foreign Relations.

EC–8327. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8328. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8329. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8330. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8331. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8332. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8333. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to Pakistan; to the Committee on Foreign Relations.

EC–8334. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8335. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Thailand and France; to the Committee on Foreign Relations.

EC–8336. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC–8337. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles to India; to the Committee on Foreign Relations.

EC–8338. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the Netherlands; to the Committee on Foreign Relations.

EC–8339. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC–8340. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC–8341. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of technical data and defense services to India; to the Committee on Foreign Relations.

EC–8342. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Turkey; to the Committee on Foreign Relations.

EC–8343. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report concerning fees for passport services; to the Committee on Foreign Relations.

EC–8344. A communication from the President of the United States, transmitting, consistent with the War Powers Resolution, a report on the deployment of combat-equipped U.S. Armed Forces to Bosnia and Herzegovina and other states in the region in order to participate in and support the North Atlantic Treaty Organization (NATO)-led Stabilization Force (SFOR); to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on Foreign Relations, with amendments:

S. 1777: A bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN for the Committee on Foreign Relations.

*James Howard Yellin, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Burundi.

Nominee: James H. Yellin.

Post: Ambassador to Burundi.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self, none.

2. Spouse, not applicable.

3. Children and Spouses Names: not applicable.

4. Parents Names:

Herman A. Yellin, (deceased).

Lilian D. Yellin, (deceased).

5. Grandparents Names: (deceased).

6. Brothers and Spouses Names: not applicable.

7. Sisters and Spouses Names: not applicable.

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*Kristie Anne Kenney, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador.

Nominee: Kristie A. Kenney.

Post: Ambassador to Ecuador.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self, none.

2. Spouse, none.

3. Children and Spouses names:

We have no children.

4. Parents names:

Jeremiah J. Kenney, Jr and Elizabeth Kenney—no contributions.

5. Grandparents Names:

Jeremiah J. Kenney—deceased 1972; Selma J. Kenney—deceased 1985.

George Cornish—deceased 1945; Irma Cornish—deceased 1972.

6. Brothers and Spouses Names:

John Kenney and Lisanne Dickson (wife)—No contributions.

7. Sisters and Spouses Names:

I have no sisters.

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*Barbara Calandra Moore, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Nicaragua.

Nominee: Barbara Calandra Moore.

Post: U.S. Ambassador to Nicaragua.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self: none.

2. Spouse: Spencer B. Moore, none.

3. Children and Spouses Names: Nicholas A. Moore, none.

4. Parents Names: Mary G. Calandra, none.

5. Grandparents Names: deceased: Peter & Concetta Calandra, Frank & Ana Galza.

6. Brothers and Spouses Names: N/A.

7. Sisters and Spouses Names: Christine C. Varian, none; Edward S. Varian, none.

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*John William Blaney, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Liberia.

Nominee: John W. Blaney III.

Post: Monrovia, Liberia.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self, John W. Blaney III, None.

2. Spouse, Robin Suppe-Blaney, None.

3. Children and Spouses Names: Marla Blaney, none; Vanessa Blaney, none.

4. Parents Names: John W. Blaney, Jr., (deceased); May E. Blaney, none.

5. Grandparents Names: John W. Blaney, (deceased); Ethel Davis Luke, (deceased).

6. Brothers and Spouses Names: Charlene Gerrish (sister), none; Hal Gerrish, none.

7. Sisters and Spouses names: N/A.

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*Martin George Brennan, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of American to the Republic of Zambia.

Nominee: Martin George Brennan.

Post: Lusaka.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse: Giovanna Lucia Brennan, none.

3. Children and Spouses Names: Sean Robert Brennan, none; Peter Francis Brennan, none; Elsabet Sophia Brennan, none.

Note: none of my children are married.

4. Parents Names: Robert Martin Brennan, (deceased); Carol Ida (Puccini) Brennan, none.

5. Grandparents: Names: George Mansueto Puccini, (deceased); Rose Puccini, (deceased): Note: father's parents deceased for over 35 years.

6. Brothers and Spouses Names: David Donovon Brennan, none; Jody Brennan (spouse), none.

7. Sisters and Spouses Names: Claire R. Brennan Cavero, none; Nevin Cavero (spouse), none; Moira C. Brennan, none (not married).

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*Vicki Huddleston, of Arizona, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of American to the Republic of Mali.

Nominee: Vicki Huddleston.

Post: Mali.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, Vicki Huddleston, none.

2. Spouse: Robert Huddleston, none.

3. Children and Spouses Names: Robert S. Huddleston, none; Alexandra Huddleston, none.

4. Parents Names: Howard S. Latham, none; Duane L. Latham, none.

5. Grandparents Names: Edward & Mary Dickinson (deceased); Marion & Pauline Latham (deceased).

6. Brothers and Spouses Names: Gary & Louise Latham, $100 to Alfredo Guiterrez (D-AZ); Steve Latham, Jeffrey Latham, none.

7. Sisters and Spouses Names: none.

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*Donald C. Johnson, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Nominee: Donald Crandall Johnson.

Post: Cape Verde.

Contributions, Amount, Date, Donee.

1. Self, Donald Crandall Johnson, none.

2. Spouse, Nelda Sabillon Johnson, none.

3. Children and spouses: Robert E. Johnson, none; Stephen C. Johnson, none; Melodie Johnson, none.

4. Parents: Edson Johnson, Jr., $16.27, CY 2000, Democratic Party, and Sidney L. Johnson, none.

5. Grandparents: Deceased.

6. Brothers and spouses: Thomas C. Johnson, $25, CY 1999, Republican Party; Rosalinda Johnson, none; James C. Johnson and Julie Johnson, none; David C. Johnson and Bonfilla Johnson, none; Paul C. Johnson and Angie Johnson, none.

7. Sisters and spouses: Melinda B. Johnson, none; A.H. Najmi, none.

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*Jimmy Kolker, of Missouri, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uganda.

Nominee: Jimmy Kolker.

Post: Ambassador to Uganda.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee.

1. Self, Jimmy Kolker, $650—1998, $500—1999, $500—2000, Rush Holt for Congress.

2. Spouse: Britt-Marie Forslund, none.

3. Children and spouses, Anne K. Kolker, none; Eva K. Kolter, none.

4. Parents: Leon Kolker, $25, 1998, Tom Daschle for Senate; Harriette Coret, none.

5. Grandparents: Deceased.

6. Brothers and spouses: Danny Kolker and Annette Fromm, none.

7. Sisters and spouses: none.

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*Gail Dennise Thomas Mathieu, of New Jersey, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Niger.

Nominee: Gail Dennise Mathieu.

Post: Chief of Mission.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self: none.

2. Spouse: Erick Mathieu, none.

3. Children and spouses names: Yuri Kasim Mathieu, none.

4. Parents names: Herbert D. Thomas (deceased); Mildred Thomas (deceased).

5. Grandparents names: Mary Simmons (deceased); Emma Israel (deceased).

6. Brothers and spouses names: Nairobi Sailcat, none.

7. Sisters and spouses names: none.

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*Larry Leon Palmer, of Georgia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Honduras.

Nominee: Larry L. Palmer.

Post: Ambassador to Honduras.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, donee, date, amount:

1. Self: None.

2. Spouse: Lucille Palmer, none.

3. Children and spouses names: Vincent Palmer, none.

4. Parents names: Rev. Roosevelt (deceased) & Mrs. Gladys Palmer, none.

5. Grandparents names: Augustus & Litha Young, Joseph & Inez Palmer (all deceased).

6. Brothers and spouses names: Rev. Roosevelt V. & Theresa Palmer, none. Charles W. and Iris Palmer (deceased).

7. Sisters and spouses names: Miriam Louise and Louis Golphin, none.

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*J. Anthony Holmes, of California, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

Nominee: Joseph Anthony Holmes.

Post: Ouagadougou, Burkina Faso.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self: J. Anthony Holmes, none.

2. Spouse: Ingalill M. Holmes, none.

3. Children and Spouses Names: Carl-Axel Holmes, none; Eric A. Holmes, none.

4. Parents Names: Joseph A. Holmes, (deceased 1991); Mary Louise Holmes, (deceased 1978).

5. Grandparents Names: Clifford & Susan Holmes, (deceased 1972).

6. Brothers and Spouses Names: Christopher J. Holmes, none; Mark & Elizabeth Holmes, none; Paul & Joan Holmes, none.

7. Sisters and Spouses Names: none.

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*Aurelia E. Brazeal, of Georgia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Democratic Republic of Ethiopia.

Nominee: Aurelia E. Brazeal.

Post: Ambassador to Ethiopia.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee:

1. Self, none.

2. Spouse, N/A.

3. Children and Spouses Names: N/A.

4. Parents Names: Mrs. Ernestine E. Brazeal, none.

5. Grandparents Names: N/A.

6. Brothers and Spouses Names: N/A.

7. Sisters and Spouses Names: Ms. Ernestine W. Brazeal, none.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. JEFFORDS (for himself, Mr. BINGAMAN, Mrs. LINCOLN, and Mrs. MURRAY):

S. 2819. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their unspent allotments under the State children's health insurance program to expand health coverage under that program or for expenditures under the medicaid program, and for other purposes; to the Committee on Finance.

By Mrs. CARNAHAN (for herself and Mr. LEAHY):

S. 2820. A bill to increase the priority dollar amount for unsecured claims, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST (for himself, Mr. BINGAMAN, Mr. DODD, Mr. STEVENS, Mrs. CLINTON, Mr. WARNER, Mrs. MURRAY, Mr. DEWINE, and Mr. LUGAR):

S. 2821. A bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN:

S. 2822. A bill to prevent publicly traded corporations from issuing stock options to top management in a manner that is detrimental to the long-term interests of shareholders; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA (for himself and Mr. CRAIG):

S. 2823. A bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam; to the Committee on Energy and Natural Resources.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2824. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of single sum deferred compensation payments received by survivors of terrorist attack victims; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. WARNER):

S. 2825. A bill to amend the Internal Revenue Code of 1986 to allow a nonrefundable tax credit for contributions to congressional candidates; to the Committee on Finance.

By Mr. SCHUMER (for himself, Mr. CRAIG, Mr. KENNEDY, and Mr. MCCAIN):

S. 2826. A bill to improve the national instant criminal background check system, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KERRY (for himself, Mr. JEFFORDS, Mrs. MURRAY, Mr. LIEBERMAN, Mr. AKAKA, Mr. DURBIN, Mrs. BOXER, Ms. CANTWELL, Mr. TORRICELLI, Mr. LEAHY, Mr. FEINGOLD, and Mr. BINGAMAN):

S. Res. 311. A resolution expressing the Sense of the Senate regarding the policy of the United States at the World Summit on Sustainable Development and related matters; to the Committee on Foreign Relations.

By Mrs. FEINSTEIN (for herself and Mr. LEAHY):

S. Con. Res. 133. A concurrent resolution expressing the sense of Congress that the United States should not use force against Iraq, outside of the existing Rules of Engagement, without specific statutory authorization or a declaration of war under Article I, Section 8, Clause 11 of the Constitution of the United States; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 654

At the request of Mr. TORRICELLI, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 654, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plans.

S. 1291

At the request of Mr. HATCH, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 1291, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien college-bound students who are long term United States residents.

S. 1339

At the request of Mr. CAMPBELL, the name of the Senator from Michigan

(Mr. LEVIN) was added as a cosponsor of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1867

At the request of Mr. LIEBERMAN, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

S. 1967

At the request of Mr. KERRY, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1967, a bill to amend title XVIII of the Social Security Act to improve outpatient vision services under part B of the medicare program.

S. 2013

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2013, a bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

S. 2027

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2027, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 2057

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2057, a bill to amend title XVIII of the Social Security Act to permit expansion of medical residency training programs in geriatric medicine and to provide for reimbursement of care coordination and assessment services provided under the medicare program.

S. 2237

At the request of Mr. ROCKEFELLER, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 2237, a bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes.

S. 2268

At the request of Mr. MILLER, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2480

At the request of Mr. LEAHY, the names of the Senator from New Hampshire (Mr. SMITH) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

S. 2513

At the request of Mr. BIDEN, the names of the Senator from Idaho (Mr. CRAPO), the Senator from Virginia (Mr. WARNER), the Senator from Washington (Mrs. MURRAY) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. 2513, a bill to asses the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

S. 2554

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2554 , a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2562

At the request of Mr. REID, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2562, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 2576

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2576, a bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes.

S. 2606

At the request of Mrs. BOXER, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2606, a bill to require the Secretary of Labor to establish a trade adjustment assistance program for certain service workers, and for other purposes.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2653

At the request of Mr. SANTORUM, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2653, a bill to reduce the amount of paperwork for special education teachers, to make mediation mandatory for all legal disputes related to individualized education programs, and for other purposes.

S. 2663

At the request of Mr. BREAUX, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 2663, a bill to permit the designation of Israeli-Turkish qualifying industrial zones.

S. 2734

At the request of Mr. KERRY, the names of the Senator from New Jersey (Mr. TORRICELLI) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2770

At the request of Mr. DODD, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2770, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas.

S. 2800

At the request of Mr. BAUCUS, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Nebraska (Mr. NELSON) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2800 , a bill to provide emergency disaster assistance to agricultural producers.

S.J. RES. 41

At the request of Mr. SPECTER, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S.J. Res. 41, a joint resolution calling for Congress to consider and vote on a resolution for the use of force by the United States Armed Forces against Iraq before such force is deployed.

S. RES. 309

At the request of Mr. SMITH of Oregon, his name was added as a cosponsor of S. Res. 309, a resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 309, supra.

S. CON. RES. 107

At the request of Mr. CRAIG, the name of the Senator from Washington

(Ms. CANTWELL) was added as a cosponsor of S. Con. Res. 107, a concurrent resolution expressing the sense of Congress that Federal land management agencies should fully support the Western Governors Association "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment", as signed August 2001, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a National prescribed Fire Strategy that minimizes risks of escape.

AMENDMENT NO. 4326

At the request of Mr. MCCONNELL, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 4326 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS (for himself Mr. BINGAMAN, Mrs. LINCOLN, and Mrs. MURRAY):

S. 2819. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their unspent allotments under the State children's health insurance program to expand health coverage under that program or for expenditures under the Medicaid program, and for other purposes; to the Committee on Finance.

Mr. JEFFORDS. Mr. President, today I am pleased to introduce the SCHIP Budget Allocation Bill of 2002. This important legislation addresses the allocation of budgeted but unspent SCHIP funds that are currently out of the reach of States and are scheduled to be returned to the treasury at the end of fiscal year 2002 under BIPA provisions. With our economy in recession, the healthcare needs of the pediatric Medicaid and SCHIP populations have not been in greater jeopardy in recent memory. Our bill will address several important and essential issues. First, it will financially reward those States that are doing an outstanding job with their SCHIP and Medicaid pediatric populations. Second, it will provide financial incentives to those States that have not yet achieved SCHIP eligibility standards. Third, it will provide additional Medicaid revenue, through an enhancement of the Federal Medicaid Assistant Percentage, FMAP, to States experiencing budget shortfalls due to the current recession. And lastly, it will protect children's healthcare services during this period of Medicaid cutbacks on benefits and services.

SCHIP's first year of implementation was 1998. At that time program budgeting was not done based on an actuarial estimate of per capita program costs, but rather excessive funds were committed to insure adequate funding. What has evolved since 1998 is a surplus of budgeted funds whose allocation and fate has been determined by a complex State-by-State budgeting process that allows for cross subsidization between States and has resulted in large sums of unspent funds to accumulate. An unintended consequence of this intricate budgeting process is that it allows States with unspent allocated funds and States with unspent redistributed funds to lose access to these funds at the end of this fiscal year. In total, over forty States will lose access to allocated monies, only to see budgeted funds diverted back to the treasury; money that could be used to shore up the health care needs of children in Medicaid. In reviewing available options, we see the opportunity to merge the original goals of SCHIP, namely to provide for the health care needs of as many children as possible, while addressing the major budget problems currently being experienced by most States. Our bill would accomplish this by allowing unspent SCHIP monies to be used to enhance the FMAP for State Medicaid services for pediatric and pregnant women beneficiaries. Prior to initiating and introducing this bill, we evaluated the SCHIP budget, with CMS and CBO data, and found that the program had adequate residual funds to allow for these monies to be used by States to weather these difficult economic times without financially damaging the actuarially projected needs of SCHIP.

Our proposal has been reviewed in detail and endorsed by the American Academy of Pediatrics. This advocacy group shares our concern that unless decisive action is taken, access to health care for indigent children will suffer in our current economic climate. Today, please join with me and my colleagues, Senators BINGAMAN, LINCOLN, and MURRAY in supporting this bill. We can not and must not allow children's health care to suffer during these difficult economic times.

By Mrs. CARNAHAN (for herself and Mr. LEAHY):

S. 2820. A bill to increase the priority dollar amount for unsecured claims, and for other purposes; to the Committee on the Judiciary.

Mrs. CARNAHAN. Mr. President, on behalf of myself and Senator LEAHY, I am introducing legislation to protect the employees of corporations that declare bankruptcy. This bill will also put a stop to the outrageous practice of giving unearned bonuses to select individuals immediately before declaring bankruptcy. With the failures of Enron, and now WorldCom, Americans have seen how cruel bankruptcy can be for the employees who dedicated themselves to their companies. While some executives received extra pay just before the bankruptcy, workers were left holding the bag. Workers have faced mass layoffs. And in many cases, workers have been denied their rightful severance pay.

I understand that bankruptcy is intended to shield corporations from their creditors while they restructure their business. However, I do not believe that corporations truly need protection from their own workers. It seems to be the other way around. Workers need greater protection from corporations that accept their labor and then refuse to pay.

The legislation I am introducing today will allow employees, and former employees, to recover a greater share of the money that their company owes them. This bill also puts a stop to the indefensible practice of paying some executives large sums of money just before claiming that the company does not have the money to pay its average workers. Let me explain each of these provisions in detail.

First, this bill increases the priority claim amount for employee wages and benefits to $13,500. Under current law, employees are only entitled to receive $4,650 for wages and benefits that they are owed. If their employers owes them more, for severance or other obligations, the employees must fight with all the other unsecured creditors in the restructuring process. In light of the Enron bankruptcy, where employees were owed average severance packages of $35,000, it is clear that the current limit must be increased as a matter of fairness.

Let me be clear. This bill only affects employees who are owed money by their employer. Increasing the priority claim creates no new obligation for a company to pay severance or other compensation. It merely makes it possible for employees to recover more of what is rightfully owed to them. It is appropriate that employees are given a priority in recovering debts. Employees depend on their paychecks to buy food, pay the rent, and provide for their families. And unlike investors or creditors that can diversify their risks, workers cannot diversify their employment.

In the case of the Enron bankruptcy, the parties have agreed that employees are entitled to collect, up front, $13,500 to cover wages, accrued vacation, contributions to benefit plans, and promised severance. This figure reflects a reasonable settlement. It recognizes the expenses that workers face as they seek new employment.

This bill includes a second provision which is designed to restore funds to the bankrupt estate which were unjustly dispersed immediately prior to the bankruptcy. My legislation permits the bankruptcy court to recover excessive employee compensation paid in the 90 days preceding bankruptcy, if it determines that that compensation was out of the ordinary course or unjust enrichment. These funds would be recovered for the benefit of the estate and its creditors.

In the days leading up to its bankruptcy, Enron paid millions of dollars in so-called retention bonuses to executives. However, these executives actually had no obligation to stay with the company through its restructuring; indeed, most of them have since left. It is unacceptable for a company to pay millions to some employees, without any justification, and then weeks later claim that it cannot make basic severance payments to the vast majority of its workers. This amendment will ensure that bankruptcy courts have the authority to prevent such outcomes in the future.

These are common sense reforms that protect employees and creditors faced with a corporate bankruptcy. In the wake of Enron and WorldCom, Americans are learning some very difficult lessons about the failures of large corporations. We ought to heed these lessons and ensure that workers and investors are better protected in the future. I encourage my colleagues to support this legislation. And I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2820

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FAIR TREATMENT OF COMPENSATION IN BANKRUPTCY.

(a) INCREASED PRIORITY CLAIM AMOUNT FOR EMPLOYEE WAGES AND BENEFITS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking "$4,000" and inserting "$13,500"; and

(2) in paragraph (4), by striking "$4,000" and inserting "$13,500".

(b) RECOVERY OF EXCESSIVE COMPENSATION.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

"(h) The court, on motion of a party of interest, may avoid any transfer of compensation made to a present or former employee, officer, or member of the board of directors of the debtor on or within 90 days before the date of the filing of the petition that the court finds, after notice and a hearing, to be—

"(1) out of the ordinary course of business; or

"(2) unjust enrichment.".

By Mr. WYDEN:

S. 2822. A bill to prevent publicly traded corporations from issuing stock options to top management in a manner that is detrimental to the long-term interests of shareholders; to the Committee on Banking, Housing, and Urban Affairs.

Mr. WYDEN. Mr. President, it seems like every morning, Americans wake up to another headline about the collapse of a big United States corporation. The failures have devastated the savings of millions of hardworking Americans, savings they were depending on for their retirement, or to pay for their kids' college education.

When the smoke clears and the fallout settles, the issue of stock options comes to the fore. Report after report details the massive fortunes amassed by the directors and top executives of so many of the companies that are at the center of the storm. So often, these executives were granted huge stock option packages, which they cashed out quickly for multimillion dollar payouts shortly before the company went over the brink.

The landmark legislation that the Senate passed unanimously last week, and which I strongly supported, will curb significant corporate abuses and accounting scandals, but it does not touch the issues surrounding stock options. It is time the Senate acted to do so. Therefore, today I am introducing the Prevention of Stock Option Abuse Act.

There is no question in my mind that some companies have abused stock options, using them as a vehicle for funneling large amounts of wealth to top executives. What's more, options have been granted in ways that fail to serve their intended purpose of aligning the interests of management with the long-term interests of the company. Instead, several of the massive option grants have created perverse incentives, enabling top executives to get fabulously rich by pumping up the company's short-term share price. The tactics they use to do so may jeopardize the company's long-term financial health, but by the time the long term impact is felt, the executives have already cashed out and left the firm.

When an executive develops a big personal stake in options, it can lead to a big conflict of interest. Too often, the company's long-term interests take a back seat to the executive's desire for personal reasons to boost the short-term share price. When the betting is between massaging the numbers to "manage" quarterly profit projections and improving the quality of the business through such things as R&D investments, short-term profits, and the value of executive stock options, can be the odds-on favorite.

But the abuse of stock options in the executive suite should not be taken as an indictment of stock options in general. I remain convinced that stock option plans, as long as they are broad-based plans that extend to rank-and-file employees as well as CEOs, can play a very important role in our economy. They can enable corporations to attract and retain good workers and top talent. And they can improve motivation and productivity, by giving employees a strong personal interest in the long-term success of the corporation.

Therefore, the legislation I am introducing today aims to stop the abuses at the top while not gutting options that are so vital to rank-and-file workers. It focuses on restoring the link between the long-term interests of the company and those of senior management, and giving shareholders knowledge about and control over the stock options of corporate leaders.

Specifically, the bill would direct the Securities and Exchange Commission to issue rules, applicable to all publicly traded companies, in three main areas.

First, to increase shareholder influence and oversight with respect to grants of stock options, the bill calls for rules requiring shareholder approval of stock option plans. This would help prevent the all too common "I'll-scratch-your-back-if-you-scratch-mine" culture of clubby directors and top executives voting each other huge option packages with little or no shareholder input.

Second, the bill contains tough provisions to ensure that stock options will provide incentives for corporate officers and directors to act in the best long-term interests of their corporations, rather than incentives to stimulate short-term run-ups in the stock price. It would do this by establishing substantial vesting periods for options and holding periods for stock shares, so that top executives do not have the ability to quickly cash out and jump ship.

The holding period would be multi-tiered. Directors and officers would be allowed to sell up to one quarter of their shares six months after acquiring them, to permit a degree of diversification or to meet their current financial needs. But for the majority, they would be required to wait at least three years. And they would be required to hold on to some of their stock until at least six months after leaving the company.

Third, and finally, to improve the transparency of stock option grants to directors and officers, the bill calls for rules to provide better and more frequent information to shareholders and investors. Shareholders deserve more information than that contained in the average footnote. Specifically, the bill would require stock option information to be reported quarterly, not just annually, and broken out into a separate, easy-to-find section in each company's public SEC filings.

To date, there have been two paths offered to deal with the issue of stock options. Some think the problem is so severe that options should be pared back across the board and that Congress should dictate new accounting rules for them. Others say that business as usual should be the order of the day, and that no immediate action is necessary.

The bill that I have introduced today seeks to lay out a third path. It offers a way to ensure that broad-based stock options can continue to be a useful tool for deserving workers, shareholders and the economy as a whole, while still curbing abuses by those in the executive suites whose conduct is over the line. I don't claim that the bill is the complete solution in its present form, but I believe it offers a strong framework for a new approach, and I look forward to working with my colleagues and others to refine and improve it as it moves through the legislative process.

The job of cleaning up corporate corruption will not be complete until Congress acts to correct the abuse of stock options. I hope my colleagues will join me in this effort to put tough new rules in place that will retain broad-based stock options for workers and curb their abuse by top management.

By Mr. AKAKA (for himself and Mr. CRAIG):

S. 2823. A bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I am pleased to introduce legislation with the senior Senator from Idaho, Mr. CRAIG, which amends the Organic Act of Guam to clarify Guam's judicial structure by ensuring that it is a unified and co-equal branch of the Government of Guam. The Organic Act establishes the executive and legislative branches of the Government of Guam. This legislation would simply include Guam's judicial branch in the Organic Act.

Similar legislation, H.R. 521, was introduced in the House of Representatives by Representative Robert Underwood of Guam. The Bush Administration has no objection to the enactment of H.R. 521. The Congressional Budget Office also estimated that the legislation would have no impact on the federal budget.

For those of us who have followed and worked on territorial issues for a long time, we do our best to balance the role of Congress when overriding federal interests are involved with the concerns expressed by territorial leaders and the general public. In this case, the establishment of an independent judicial branch on Guam is an overriding federal interest and is broadly supported by the people of Guam. This bill is supported by General Ben Blaz, former Guam Delegate to Congress, Guam Governor Carl Guiterrez, Justice Philip Carbullido, Acting Chief Justice of Guam's Supreme Court, the Guam Bar Association, Guam's legal community, the National Conference of Chief Justices, and the Guam Pacific Daily News.

I believe that today's legislation is necessary to ensure the integrity and independence of Guam's judicial system as co-equal with the executive and legislative branches of the Government of Guam. I look forward to working with my colleagues in the Senate on this important issue.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2823

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL STRUCTURE OF GUAM.

(a) JUDICIAL AUTHORITY; COURTS.—Section 22(a) of the Organic Act of Guam (48 U.S.C. 1424(a)) is amended to read as follows:

"(a)(1) The judicial authority of Guam shall be vested in a court established by Congress designated as the 'District Court of Guam', and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the 'Supreme Court of Guam', a trial court designated as the 'Superior Court of Guam', and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.

"(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court of Guam and other local courts of Guam.

"(3) The courts of record for Guam shall be the District Court of Guam, the Supreme Court of Guam, the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or divisions of local courts that the Supreme Court of Guam shall designate.".

(b) JURISDICTION AND POWERS OF LOCAL COURTS.—Section 22A of the Organic Act of Guam (48 U.S.C. 1424-1) is amended to read as follows:

"SEC. 22A. (a) The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

"(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;

"(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;

"(3) have jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction, including those orders necessary for the supervision of the judicial branch of Guam;

"(4) have supervisory jurisdiction over the Superior Court of Guam and all other courts of the judicial branch of Guam;

"(5) hear and determine appeals by a panel of three of the justices of the Supreme Court of Guam and a concurrence of two such justices shall be necessary to a decision of the Supreme Court of Guam on the merits of an appeal;

"(6) make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam, including procedures for the determination of an appeal en banc; and

"(7) govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.

"(b) The Chief Justice of the Supreme Court of Guam—

"(1) shall preside over the Supreme Court unless disqualified or unable to act;

"(2) shall be the administrative head of, and have general supervisory power over, all departments, divisions, and other instrumentalities of the judicial branch of Guam; and

"(3) may issue such administrative orders on behalf of the Supreme Court of Guam as necessary for the efficient administration of the judicial branch of Guam.

"(c) The Chief Justice of the Supreme Court of Guam, or a justice sitting in place of such Chief Justice, may make any appropriate order with respect to—

"(1) an appeal prior to the hearing and determination of that appeal on the merits; or

"(2) dismissal of an appeal for lack of jurisdiction or failure to take or prosecute the appeal in accordance with applicable laws or rules of procedure.

"(d) Except as granted to the Supreme Court of Guam or otherwise provided by this Act or any other Act of Congress, the Superior Court of Guam and all other local courts established by the laws of Guam shall have such original and appellate jurisdiction over all causes in Guam as the laws of Guam provide, except that such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam under section 22 of this Act.

"(e) The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam shall be governed by the laws of Guam and the rules of such courts.".

(c) TECHNICAL AMENDMENTS.—(1) Section 22C(a) of the Organic Act of Guam (48 U.S.C. 1424-3(a)) is amended by inserting "which is known as the Supreme Court of Guam," after "appellate court authorized by section 22A(a) of this Act,".

(2) Section 22C(d) of the Organic Act of Guam (48 U.S.C. 1424-3(d)) is amended—

(A) by inserting ", which is known as the Supreme Court of Guam," after "appellate court provided for in section 22A(a) of this Act"; and

(B) by striking "taken to the appellate court" and inserting "taken to such appellate court".

SEC. 2. APPEALS TO UNITED STATES SUPREME COURT.

Section 22B of the Organic Act of Guam (48 U.S.C. 1424-2) is amended by striking ": *Provided,* That" and all that follows through the end and inserting a period.

By Mr. DORGAN (for himself and Mr. WARNER):

S. 2825. A bill to amend the Internal Revenue Code of 1986 to allow a nonrefundable tax credit for contributions to congressional candidates; to the Committee on Finance.

Mr. DORGAN. Mr. President, earlier this year we enacted a bold new campaign finance reform bill. After years of debate and delay, the Congress passed and the President signed this far-reaching legislation, known as McCain-Feingold. This new law eliminates the large "soft money" contributions from our campaign finance system and it expanded the role that some individuals can play by raising the individual campaign contribution limits.

But there is one critical area that the McCain-Feingold bill didn't address, one important problem that the new law doesn't solve: how to give low-

and middle-income families an incentive to contribute to the candidate of their choice.

Today, I am introducing a bill with my colleague from Virginia, Senator WARNER, that will do just that. It will empower millions of working Americans to become engaged in our political system, by providing a tax credit to those who donate money to congressional candidates.

As campaigns become more and more expensive, the number of small contributors is actually decreasing. The current campaign finance system is becoming dominated by big dollar contributors. This is not healthy for our campaigns and it is not good for our democracy.

My bill would make middle income Americans more able to donate to candidates. Specifically, my bill would provide a maximum $400 tax credit to married couples earning up to $120,000 for their campaign contributions. For singles with income up to $60,000, the tax credit would apply to contributions up to $200. This credit will provide a dollar for dollar offset for contributions, an incentive that could encourage the vast majority of working families to consider contributions to the candidates of their choice.

This is not a new idea. This type of credit was a part of our tax system for more than a decade in the 1970s and 1980s. It has been a part of many campaign finance reform proposals over the years, proposals that have been introduced and supported by both Democrats and Republicans. And this policy proposal is the focus of a new study by the American Enterprise Institute, AEI, which concluded that this approach would help to elevate small donors from the supporting role that they now play. So, our proposal has been successful in the past, and it has had broad support from both parties over the past thirty years.

Participation in the political process is key to a strong democracy. This bill will help broaden participation and will provide an incentive for more Americans to be included in political campaigns. That is healthy for our form of government.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2825

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES.

"(a) GENERAL RULE.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the total of contributions to candidates for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

"(b) MAXIMUM CREDIT.—The credit allowed by subsection (a) for a taxable year shall not exceed $200 ($400 in the case of a joint return).

"(c) VERIFICATION.—The credit allowed by subsection (a) shall be allowed, with respect to any contribution, only if such contribution is verified in such manner as the Secretary shall prescribe by regulations.

"(d) DEFINITIONS.—For purposes of this section—

"(1) CANDIDATE; CONTRIBUTION.—The terms 'candidate' and 'contribution' have the meanings given such terms in section 301 of the Federal Election Campaign Act of 1971.

"(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any taxpayer whose adjusted gross income for the taxable year does not exceed $60,000 ($120,000 in the case of a joint return).".

(b) CONFORMING AMENDMENTS.—

(1) Section 642 of the Internal Revenue Code of 1986 (relating to special rules for credits and deductions of estates or trusts) is amended by adding at the end the following new subsection:

"(j) CREDIT FOR CERTAIN CONTRIBUTIONS NOT ALLOWED.—An estate or trust shall not be allowed the credit against tax provided by section 25C.".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

"Sec. 25C. Contributions to congressional candidates.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

By Mr. SCHUMER (for himself, Mr. CRAIG, Mr. KENNEDY, and Mr. MCCAIN):

S. 2826. A bill to improve the national instant criminal background check system; and for other purposes; to the Committee on the Judiciary.

Mr. SCHUMER. Mr. President, we are an odd group of Senators, but not when it comes to making sure that guns are kept away from drug addicts, felons, illegal aliens and others.

Today, we're announcing an extremely important new bill that would plug up the gaping holes that are currently in the Justice Department's gun background check system.

This bill is needed to prevent brutal, senseless murders like the one that took place in a Long Island church a few months ago from ever happening again.

For those of you who may not know what happened, on March 8, 2002, Peter J. Troy walked into Britt's Firearms in Mineolan, NY and purchased a .22 caliber semi-automatic rifle. Four days later, he walked into a church in Lynbrook, NY, Our Lady of Peace, and shot and killed the Reverend Lawrence M. Penzes and Eileen Tosner.

Mr. Troy had a history of mental health problems, and had been admitted to Bellevue Hospital Center and Nassau University Medical Center on at least two occasions. In addition, Mr. Troy's mother had a restraining order issued against him in February 1998, which he violated on more than one occasion.

Yet despite his history of mental illness and violent behavior, Mr. Troy was approved to purchase the rifle by a Federal background check. In fact, there was no records on Peter J. Troy in the National Instant Criminal Background Check System, NICS, at all.

That never, ever should have happened. We knew Peter Troy was a violent man. We knew he was mentally ill. He had no business owning a gun, and he proved it, to the shock and horror of everyone in Long Island and to everyone else in this Nation.

Had the Federal system that checks all gun purchasers picked up on the fact that Peter Troy was both mentally ill and was subject to a restraining order, he never would have been sold a rifle and the murders may never had occurred.

All the signs were there and all the signs were ignored. That's why we need to tighten State reporting laws so that the violent and the mentally ill, people who aren't allowed to purchase guns, aren't able to purchase guns. Otherwise, this could happen again and again.

The Federal Gun Control Act bars people who have been committed to a mental institution or convicted of a felony from purchasing a firearm. That's not the problem.

The problem is that this kind of information is not always shared with the NICS system. The INS, for example, doesn't always share info about an illegal alien with the Justice Department or a State doesn't forward info about an involuntary commitment to the FBI.

So when the background check is performed, the information never appears, red flags aren't raised, and the gun purchase goes right through.

In other words, the Federal background check is only as good as the records that are in it.

How poor is our background check system? This year, Americans for Gun Safety released a report showing that over a 30-month period, 10,000 felons obtained a gun simply because faulty records made it impossible to complete a background check on time.

And their report warned that this 10,000 figure is only the tip of the iceberg. It doesn't include the thousands of illegal immigrants, domestic abusers, and the severely mentally ill who are not in the system at all and cannot be stopped by a background check no matter how much time is allowed.

It's catch as catch can, and we're not catching very much.

Under the bill we're introducing, if someone is trying to buy a gun, and if they are either: 1. under indictment; 2. been convicted of a crime punishable by more than a year; 3. is a fugitive from justice; 4. is a known drug addict; 5. if they've been committed to a mental institution; 6. is subject to a court order restraining them from domestic violence; or 7. been convicted of a domestic violence misdemeanor, the State will be legally required to let the FBI know.

It's a lot of information. There's no question about it. But most of this information is kept by the states. And most of it is automated. So for the majority of these categories, it's a matter of getting the information from point A, the State, to point B—the FBI. Unfortunately, most States, including New York, do not have good records on mental health, and that's going to take some more work.

The bill provides $375 million per year for three years, for States to get their records in order and to automate them to ensure that they get to the FBI quickly.

It also requires Federal agencies to share the records they keep with NICS. For example, the INS would be required to share its records on illegal aliens with NICS.

I want to thank my colleagues who are with me today, particularly Senator CRAIG, for recognizing that this is a public safety issue that needs urgent attention and not a "gun control" issue per se. Working together, we can get this done in the Senate with the same speed the House got it done.

Mr. CRAIG. Mr. President, I am pleased to join my colleagues in an unprecedented alliance today, introducing legislation to improve the National Instant Background Check System (NICS). While we have frequently demonstrated our differing views of second amendment issues, we stand together when it comes to enforcing laws against criminal gun violence, and that is the subject of our legislation.

The vast majority of gun owners in our country today understand that the right to keep and bear arms comes with a grave duty to use firearms responsibly and within the law.

The NICS system deals with the tiny but dangerous fraction of Americans who have lost their firearm rights because they are proven lawbreakers, convicted felons—or because they do not have the capacity to understand their responsibilities as firearm users. Our federal laws prohibit these individuals from possessing or acquiring firearms, and the NICS system is made up of the records of these "prohibited persons." This is the list against which prospective gun purchasers are checked when the law requires a background check. State and local agencies still play a big role, conducting checks on almost half the applications based on their own records.

We want the system to be fast, so that it does not unduly burden individuals in the exercise of their second amendment rights. That means the records need to be automated, so we don't have the kind of delays that happen when local law enforcement has to manually check written records.

It is equally critical to all of us that the system be accurate. Accuracy means we need to be able to remove a record if it is no longer relevant—for example, if it's a record of an indictment on charges that were later dropped. It also means we need all relevant records—records pertaining not only to convicted felons, but also those who are adjudicated mentally incompetent and drug abusers, and all other categories prohibited by federal law from possessing firearms.

Accurate, automated records means truly instant checks, fewer delays for law-abiding gun purchases, and better use as a tool to prevent violent criminals from obtaining firearms.

U.S. taxpayers have spend hundreds of millions of dollars in less than a decade, helping to improve all States' criminal history records for law enforcement purposes. It is time to focus our national strategy on getting the job completed, to the benefit of not just the gun-purchasing public but all Americans concerned about the safety of their communities.

Our bill sets out the objectives needed to complete the NICS system, and it provides incentives and strategies for accomplishing those objectives. We have been working in tandem with like-minded members in the other body, and the bill we introduce today reflects the changes made by the House Judiciary Committee in the original proposal. Among other things, this bill specifies the records still needed from federal agencies to fill in the gaps, and requires the removal of records that are no longer relevant. It provides inventive for States to improve their systems through grants and waivers of current matching fund requirements. It calls on DOJ and the mental health community to develop privacy protocols so that mental health records can be properly added to the system.

I am also pleased that the bill incorporates a provision of great importance to law-abiding gun owners, making permanent the prohibition against charging a federal fee for background checks. Congress has supported this prohibition repeatedly, acknowledging that any such check is being done for law enforcement purposes and not as a service or convenience to gun purchasers. It makes good sense to codify that prohibition, once and for all.

In sum, this is an important and timely measure. I appreciate the work that the cosponsors have done to get us to this point, and I urge all our colleagues to support the bill's enactment.

Mr. McCAIN. Mr. President, along with Senators SCHUMER, CRAIG, and KENNEDY, I rise today to introduce the "Our Lady of Peace Act" that has the strong support of major organizations across the political spectrum.

This legislation fixes a huge hole in our system—a hole that delays legitimate firearms purchases and allows criminals and other prohibited buyers to obtain guns. The hole is the faulty records in the National Instant Criminal Background Check System, NICS. Based on a report released by Americans for Gun Safety Foundation in January 2002, Congress has learned that millions of records are missing from the NICS database. Over a 30-month period, 10,000 criminals obtained a firearm despite a background check because the records couldn't be checked properly within the 3 days allowed by federal law. In addition, thousands of other prohibited buyers will never be stopped because very few restraining orders, drug abuse or mental disability records are kept at all. This report makes it clear that if we are to be serious about stopping criminals, wife-beaters and illegal aliens from slipping through a background check, we had better fix this broken system.

Better records mean more accurate background checks—checks which stop prohibited buyers while allowing legitimate buyers to be approved. And better records put the "instant" back into instant check, because delays occur when records have to be searched manually. In fact, the only reason why criminal background checks sometime take several days is because records have to be checked by hand instead of computer.

The figure is astonishing. There are over 30 million missing records.

For felony records, the typical state has automated only 58 percent of its felony conviction records. The FBI estimates that out of 39 million felony arrest records, 16 million of them lack final disposition information. Without final disposition records, background checks must rely on time consuming manual searches of courthouse files to approve or deny firearms purchases.

On the issue of mental health, 33 States keep no mental health disqualifying records and no state supplies mental health disqualifying records to NICS. The General Accounting Office, GAO, estimates that 2.7 million mental illness records should be in the NICS databases, but less than 100,000 records are available, nearly all from VA mental hospitals. States have supplied only 41 mental health records to NICS. Combined with the federal records, the GAO estimates that only 8.6 percent of the records of those disqualified from buying a firearm for mental health reasons are accessible on the NICS database.

In the case of drug abusers, the GAO estimates that only 3 percent of the 14 million records of drug abusers are automated, not including felons and wanted fugitives. States have supplied only 97 of those records to NICS which the GAO estimates as representing less than 0.1 percent of the total records of those with drug records that would deny them a firearm.

On the issue of domestic violence, 20 States lack a database for either domestic violence misdemeanants or temporary restraining orders or both, 42 percent of all NICS denials based on restraining orders come from one State—Kentucky—which does the best job of automating TRO's from the bench. The Department of Justice estimates that nearly 2 million restraining order records are missing from the database.

In the case of illegal aliens/non-immigrant status records, the GAO estimates that over 2 million illegal alien records are absent from the NICS database. Through 2001, NICS had no records of non-immigrants in the United States making it impossible to stop visitors to the U.S. on tourist or student visas from purchasing firearms.

The benefits of better records are simple and important. They lead to accurate and instant background checks. Better records mean we would be able to stop far more prohibited buyers from obtaining a gun than we do now. When a restraining order, drug abuse or mental health record is missing, nothing in the NICS system indicates a reason to delay the sale and search records. NICS simply approves the transaction usually within 3 minutes.

Poor records are why and this legislation will fix the system. This bill requires Federal agencies such as the Immigration and Naturalization Service, INS, and the VA to provide all records of those disqualified from purchasing a firearm to NICS. For INS, it would mean sending millions of records of those here on tourist visas, student visas, and all other non-immigrant visas to NICS. Each State would be allowed to receive a waiver for up to 5 years of the 10 percent matching requirement for the National Criminal History Improvement Grants, NCHIP, when that state automates and makes available to NICS at least 95 percent of records of those disqualified from purchasing a firearm. This bill also requires states to automate and send to NICS all disqualifying records under Federal and State law, including domestic violence misdemeanors, restraining orders, criminal conviction misdemeanors, drug abuse and other relevant records to NICS.

We also provides grants of $250 million per year for 3 years to States to improve background check records, automate systems, enhance states capacities to perform background checks, supply mental health records and domestic violence records to NICS. We also give grants of $125 million per year for 3 years to States to assess their systems for rapidly getting criminal conviction, domestic violence records and other records from the courtroom into the NICS database and for improving those systems so as to eliminate the lag time between conviction and entry into NICS.

Better records mean instant checks: 72 percent of background checks are approved and completed within minutes, but 5 percent take days to complete for one reason only faulty records force law enforcement into time consuming searches to locate final disposition records for felony and domestic violence convictions. It is our hope that this legislation will finally make our records system complete and totally stop prohibited buyers from gaining access to firearms while allowing legitimate buyers to be approved.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 311—EXPRESSING THE SENSE OF THE SENATE REGARDING THE POLICY OF THE UNITED STATES AT THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT AND RELATED MATTERS

Mr. KERRY (for himself, Mr. JEFFORDS, Mrs. MURRAY, Mr. LIEBERMAN, Mr. AKAKA, Mr. DURBIN, Mrs. BOXER, Ms. CANTWELL, Mr. TORRICELLI, Mr. LEAHY, Mr. FEINGOLD, and Mr. BINGAMAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 311

Whereas the Senate recalls the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development of 1992, and Agenda 21—which provided the framework for action for achieving sustainable development;

Whereas the pillars of sustainable development—economic development, social development and environmental protection—are interdependent and mutually reinforcing components, and many countries continue to face overwhelming social, environmental and economic challenges;

Whereas global environmental degradation is both affected by and a significant cause of, social and economic problems such as pervasive poverty, unsustainable production and consumption patterns, poor ecosystem management and land use, and the burden of debt;

Whereas, despite the many successful and continuing efforts of the international community, the environment and the natural resource base that supports life on Earth continue to deteriorate at an alarming rate;

Whereas the Senate recognizes the importance of the World Summit on Sustainable Development as a review of progress achieved in implementing the commitments made at the United Nations Conference on Environment and Development, and as an opportunity for the international community to strengthen international cooperation and implement its commitments to achieve sustainable development;

Whereas the Senate recognizes further that the World Summit on Sustainable Development is intended to be a summit of heads of state;

Whereas the United States delegation was represented by the President at the United Nations Conference on Environment and Development of 1992;

Whereas the Senate recognizes further the importance of the United States of America as a world leader in effectively addressing issues related to the 3 pillars of sustainable development: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) having the President lead the United States delegation would send a strong signal of United States support for the goals of sustainable development;

(2) the United States should at the World Summit on Sustainable Development—

(A) reaffirm its support for the implementation of commitments entered into by the United States and the international community at the United Nations Conference on Environment and Development;

(B) support increased international cooperation to implement the provisions of Agenda 21 and to address the challenges of sustainable development in the twenty-first century, including new specific targets and commitments, in particular with respect to the protection of the oceans and freshwater, combating deforestation, implementation of the United Nations Convention to Combat Desertification, protection of the atmosphere including global climate change, preservation of biological diversity, and reducing the use of persistent bioaccumulative toxic pollutants;

(C) reaffirm the importance of integrating environmental and social considerations into economic decision making, including trade and investment agreements;

(D) support measures to improve compliance with and enforcement of international environmental commitments;

(E) support measures to improve the economic, social, and environmental well-being of develop countries, including the mobilization of domestic and international resources and development assistance beyond current levels;

(F) support the Global Environment Facility, which provides critical financial assistance for environmental improvements in the developing world, at a level which will allow it to adequately fund ongoing and important new priorities;

(G) support good governance within each country and at the international level as essential for sustainable development, including sound environmental, social and economic policies, democratic and transparent institutions responsive to the needs of the people, public access to information, the rule of law, anti-corruption measures, gender equality and an enabling environment for investment;

(H) support efforts to meaningfully improve the institutional structure for implementing the framework created by Agenda 21 and the Rio Declaration on Environment and Development, as well as a more coherent and coordinated approach among international environmental instruments;

(I) remain firmly opposed to commercial whaling and to all efforts to reopen international trade in whale meat or to downlist any whale population in the Convention on International Trade in Endangered Species; and

(J) support measures to increase the use of renewable sources of energy throughout the world—for example, encourage export credit agencies to foster more projects to develop renewable energy resources;

(3) both at the world Summit on Sustainable Development and in other appropriate fora, the United States should re-engage in, provide leadership to, and urgently pursue the negotiation of binding international agreements to address global climate change consistent with—

(A) United States commitments under Article 2 of the United Nations Framework Convention on Climate Change to "achieve . . . stabilization of greenhouse gas concentrations at a level that avoids dangerous anthropogenic interference with the climate system . . . within a timeframe sufficient to allow ecosystems to adapt naturally to climate change . . .";

(B) the findings of the Third Assessment Report of the Intergovernmental Panel on Climate Change, which the Administration should support in its international negotiations; and

(C) the Sense of Congress on Climate Change approved by the Senate as part of the National Energy Policy Act of 2002;

(4) both at the World Summit on Sustainable Development and in other appropriate fora, the United States should support, provide leadership and urgently pursue the negotiation of binding international agreements for the protection of the marine environment, aimed at—

(A) reducing over-capacity of the global fishing fleet to environmentally and economically sustainable levels;

(B) reducing bycatch, and protecting endangered migratory species, such as sea turtles, marine mammals and sea birds;

(C) addressing the international aspects of marine debris;

(D) combating the degradation and destruction of coral reefs; and

(E) reducing land-based pollution such as sewage and other nutrients; and

(5) the President should identify priority international environmental agreements that the United States has signed during and following the United Nations Conference on Environment and Development that the Administration will present to the Senate for ratification.

Mr. KERRY. Mr. President, I rise today to submit a Senate resolution with my good friend and the chairman of the Environment and Public Works Committee, Mr. JEFFORDS of Vermont. We are pleased to be joined by Senators BOXER, LIEBERMAN, AKAKA, MURRAY, DURBIN, CANTWELL, TORRICELLI, FEINGOLD, LEAHY, and BINGAMAN in submitting this resolution.

The World Summit on Sustainable Development, WSSD, will take place August 26–September 4, 2002 in Johannesburg, South Africa. The WSSD will bring together tens of thousands of participants, including governments, environmentalists and business leaders. The WSSD is timed as the tenth anniversary of the groundbreaking United Nations Conference on Environment and Development, UNCED, held in Rio de Janiero in 1992. The overall goal of the WSSD is to assess the progress of countries in implementing the commitments made at Rio and to reinvigorate the global commitment to sustainable development.

Among the core accomplishments of the Rio conference were "Agenda 21," which provides a comprehensive framework for achieving sustainable development, including chapters on protecting the atmosphere and the oceans, and the Rio Declaration which sets forth principles such as the need for a precautionary approach in environmental protection. Also at Rio, several important international conventions were opened for signature: the United Nations Framework Convention on Climate Change, UNFCC, and the Convention on Biological Diversity, CBD, both of which were ultimately signed by the United States, with the UNFCC also ratified by the U.S. Senate.

I cannot emphasize how critical this world summit is. As a planet we need to find a way forward, with countries large and small, rich and poor working together, to agree on steps that protect the environment yet allow our economies to grow sustainable. This resolution that I am offering today urges the administration to make this summit a priority, and to support the goals of sustainable development. This includes supporting specific, concrete targets and timetables for implementing the broad goals of Agenda 21, and a host of other common sense issues that should be addressed at the WSSD. The United States must be a leader in demonstrating its commitments to these goals, and in showing the world that economic growth can occur consistent with improved environmental quality. The resolution also calls on the United States to take a leading role both at the Summit as well as in other appropriate venues in negotiating binding international agreements to address the very real threat of global climate change, as well as agreements to address critical oceans and fisheries issues facing the world today.

This summit is a real opportunity for our Nation. It is my hope that the Bush Administration will recognize it as such and work with the international community to develop a host of measures that will make this planet a better place to live.

Mr. JEFFORDS. Mr. President, I rise today with my colleague and friend Sen. JOHN KERRY and ten other Senators to submit a Sense of the Senate Resolution concerning United States policy at the World Summit on Sustainable Development, WSSD, an international conference to be held in Johannesburg, South Africa from August 24–September 4, 2002. The Kerry-Jeffords Resolution calls on the United States to reaffirm its current environmental and development commitments under and since the 1992 United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, otherwise known as the Earth Summit.

The Kerry-Jeffords Resolution also urges the United States to take its sustainable development commitments further through the full implementation of ratified treaties such as the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification, two treaties of great importance to me. Implementation of these and other treaties should include commitment to real targets and timetables. At a recent joint hearing between the Environment and Public Works and Foreign Relations Committees, we learned that the United States has not maintained the spirit or the letter of its commitment under the Framework Convention. Other provisions in the Resolution call on the United States to be actively engaged in international negotiations that address the protection of oceans and freshwater, combating deforestation, preservation of biological diversity, increasing the use of renewable energy sources, and reducing the use of persistent toxic pollutants.

The Resolution makes it clear that Presidential leadership of the United States delegation at the WSSD would send a strong signal of our Nation's support for the goals of sustainable development. President Bush's participation at Johannesburg would help rebuild alliances weakened by the Administration's diminished involvement in international climate change negotiations. His participation would also strengthen relationships that are becoming increasingly important in a world where any nation can face serious threats to its national security and its environmental and human security. This Summit is an important opportunity to demonstrate that we will not act unilaterally when our actions can permanently and negatively affect the global commons.

SENATE CONCURRENT RESOLUTION 133—EXPRESSING THE SENSE OF CONGRESS THAT THE UNITED STATES SHOULD NOT USE FORCE AGAINST IRAQ, OUTSIDE OF THE EXISTING RULES OF ENGAGEMENT, WITHOUT SPECIFIC STATUTORY AUTHORIZATION OR A DECLARATION OF WAR UNDER ARTICLE I, SECTION 8, CLAUSE 11 OF THE CONSTITUTION OF THE UNITED STATES

Mrs. FEINSTEIN (for herself and Mr. LEAHY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 133

Expressing the sense of Congress that the United States should not use force against Iraq, outside of the existing Rules of Engagement, without specific statutory authorization or a declaration of war under Article I, Section 8, Clause 11 of the Constitution of the United States.

Whereas, in accordance with United Nations Security Council Resolution 687 (1991), Iraq—

(1) agreed to destroy, remove, or render harmless all chemical and biological weapons and stocks of agents and all related subsystems and components and all research, development, support, and manufacturing facilities related thereto;

(2) agreed to destroy, remove, or render harmless all ballistic missiles with a range greater than 150 kilometers, and related major parts and production facilities;

(3) agreed not to acquire or develop any nuclear weapons, nuclear-weapons-usable material, nuclear-related subsystems or components, or nuclear-related research, development, support, or manufacturing facilities; and

(4) agreed to permit immediate on-site inspection of Iraq's biological, chemical, and missile capabilities, and assist the International Atomic Energy Agency in carrying out the destruction, removal, or rendering harmless of all nuclear-related items and in developing a plan for ongoing monitoring and verification of Iraq's compliance;

Whereas the regime of Saddam Hussein consistently refused to comply with United Nations Special Commission weapons inspectors in Iraq between 1991 and 1998 by denying them access to crucial sites and documents;

Whereas on October 31, 1998, Iraq banned the United Nations weapons inspectors despite its agreement and obligation to comply with United Nations Security Council Resolution 687 (1991);

Whereas Congress declared in Public Law 105-235 that "the Government of Iraq is in material and unacceptable breach of its international obligations, and therefore the President is urged to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations";

Whereas, in his State of the Union Address on January 29, 2002, the President of the United States stated that the "Iraqi regime has plotted to develop anthrax, and nerve gas, and nuclear weapons for over a decade";

Whereas it is believed that Iraq continues in its efforts to develop weapons of mass destruction, in violation of United Nations Security Council Resolution 687 (1991) and subsequent resolutions, and that the regime of Saddam Hussein has used weapons of mass destruction against its own people;

Whereas the development of weapons of mass destruction by Iraq is a threat to the United States, and its friends and allies in the Middle East;

Whereas Public Law 107-40 authorizes the President to use United States Armed Forces against "those nations, organizations or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons in order to prevent any future acts on international terrorism against the United States by such nations, organizations, or persons";

Whereas no such evidence has been forthcoming linking Iraq to the September 11, 2001 attacks; and

Whereas Article I, Section 8, Clause 11 of the Constitution of the United States confers upon Congress the sole power to declare war: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That (a) it is the sense of Congress that—

(1) the United States and the United Nations Security Council should insist on a complete program of inspection and monitoring to prevent the development of weapons of mass destruction in Iraq;

(2) Iraq should allow the United Nations weapons inspectors "immediate, unconditional, and unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect" as required by United Nations Security Council Resolution 707 of August 15, 1991, and United Nations Security Council Resolution 1284 of December 17, 1999; and

(3) the United States should not use force against Iraq without specific statutory authorization or a declaration of war under Article I, Section 8, Clause 11 of the Constitution of the United States, except as provided in subsection (b).

(b) Subsection (a)(3) does not apply to any use of force in compliance with the existing Rules of Engagement (ROE) used by coalition forces to exercise the right of self-defense or under the National Security Act of 1947.

Mrs. FEINSTEIN. Mr. President, on behalf of Senator LEAHY and myself, I rise today to submit a concurrent resolution. This resolution is aimed to deal with a great deal of the speculation we read about in the public press as to whether there is an intent of the administration for use of force against Iraq.

We all know that use of force requires a specific statutory authorization or declaration of war under article I, section 8, clause 11 of the Constitution of the United States. I believe the issue is not a question of whether or not Iraq is a rogue state. It is. It is also not a question of whether Saddam Hussein is a brutal dictator. He is.

The question, however, is what is the best policy for the United States and how to address these issues, and if we are to use force, that we do so only after full debate and consideration of all of the options and with a united Government and with the specific statutory authorization of the Congress.

Under the Constitution, only the Congress can declare war, and I offer this resolution because of the growing sense, both within the United States and abroad, that the Bush administration is poised to launch a major military offensive against the Nation of Iraq.

Thus far, the administration has submitted no evidence of any Iraqi connection to 9/11 to this Congress, and the resolution authorizing the use of force against al-Qaida is specifically worded so that hard evidence of such a connection is needed to justify military action.

Conclusive proof that Saddam Hussein is, indeed, harboring weapons of mass destruction, that he is providing shelter for al-Qaida terrorist cells, or that he is in any way linked to the attacks of September 11 would quickly galvanize support for military action. As of now, however, no such evidence has been substantiated.

At this time, moreover, I know of no formal support for a full-scale military action from any other nation. I know of no formal grant to fly over or landing rights which would be granted by any nation in connection with any invasion plan.

As far as I know at this point, the United States would be alone, unilaterally taking action. To take action without support from our allies or the United Nations would clearly identify the United States as an aggressor and may well prompt a series of potentially catastrophic actions.

Both Turkey and Jordan, two of our most loyal and longstanding allies in the region, have been open about their concern about United States unilateral action at this time, making clear their opposition. They have also pinpointed that the present crisis between the Israelis and the Palestinians should be the world's primary focus in the Middle East.

Until the Israeli-Palestinian conflict is stabilized, until more than a semblance of security and stability has returned to Israel and Palestine, a massive invasion against Iraq could expose the Israeli people to possible missile strikes from Baghdad.

We should also remain focused and stay the course in our war on terror. The government of Hamid Karzai in Afghanistan is increasingly unstable. There are serious questions and concerns about security throughout Afghanistan. The warlords are restless and asserting power, and previously dissipated Taliban elements are returning to Afghanistan. The situation remains volatile.

The stabilization of Afghanistan, its successful transition to a democratic government, and its restoration of its war-torn economy should remain a top priority for all of us. I believe it would be a tragic mistake if the United States turns its attention and effort from Afghanistan before the new Afghan Government is stabilized and security in the country is improved.

I, for one, strongly believe that Iraq should promptly agree to the return of the United Nations weapons inspectors it expelled in 1998. If the government of Saddam Hussein has nothing to hide, something it continues to claim, then now is the time to prove it to the entire world.

Iraq's refusal to cooperate is tacit admission of deception and of the pursuit and stockpiling of chemical, biological, and, yes, admission that the rumors of his pressing ahead to develop nuclear warheads are, in fact, true.

Last week, at a meeting in Vienna, United Nations Secretary General Kofi Annan told an Iraqi delegation in no uncertain terms that the Iraqi Government must allow U.N. inspectors back in or there was no point to continue discussions and negotiations.

There was no response from the Iraqi delegation, who simply left Vienna and returned to Baghdad. I understand that Saddam Hussein is a brutal dictator who during a 34-year reign of terror has systematically eliminated all internal opposition, even including members of his own family. He has ruthlessly persecuted Iraq's Kurdish minority. He has used chemical weapons against the Kurds and his own people. He has initiated a decade-long war against Iran, at the cost of nearly 2 million casualties. He has financially supported Palestinian terrorists and he has invaded Kuwait, prompting the United States to launch Operation Desert Storm.

In the history of our Nation, we have never attacked another country, except in response to an attack on our own shores, our people or our national interests. Until and unless the administration is prepared to come forward to offer its rationale, to submit its evidence to the American people, and to allow Congress to vote to authorize the use of force, an attack on Iraq, I believe, is both unwise and ill timed.

Unwise because it would certainly encourage an unprecedented response by Saddam Hussein, most likely targeted against Israel. Unwise because until the administration has thought through the who, the what, and the how of the regime that will take power in Iraq after Saddam Hussein is disposed of, any military action may well have unintended and undesirable consequences.

One cannot overemphasize how important the nature of the next Iraqi regime is to the future of the Middle East. It will require that the United States engage in nation building, something this administration has been reluctant to do. Call it what you will, but in the wake of toppling Saddam Hussein our commitment to Iraq must not be brief or perfunctory. This, I believe, is ill timed because of the unfinished business in Afghanistan, the continuing threat of al-Qaida, and the fact that at least two-thirds of the al-Qaida leadership, including Osama bin Laden, remain at large.

The war against terror has not yet been won. We should stay the course. So before rushing precipitously forward in an attack on Iraq, I urge the Bush administration to work with allies and the United Nations to develop a multilateral approach to compel Iraq to live up to its obligations under Security Council Resolution 687.

Should Iraq be unwilling to live up to its obligations and the President determines that there is just cause for military action against Iraq, I urge him to come before this Congress, to come before the American people, to make his case and let us in turn discharge our constitutional duty to debate and vote on the authorization of the use of force. The many thousands of our sons and daughters who will bear the brunt of such an operation, some of whom will surely pay the highest price, deserve no less.

I ask unanimous consent that the concurrent resolution be printed in the Record.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4327. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table.

SA 4328. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4329. Mr. DURBIN (for himself, Mr. DeWine, Mr. Dorgan, Mr. Levin, and Mr. Johnson) submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4330. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4331. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4332. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4333. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4334. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4335. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4336. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4337. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4338. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4339. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4340. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4341. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4342. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4343. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4344. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4345. Mr. GRAHAM (for himself, Mr. Smith of Oregon, Mr. Miller, Mrs. Lincoln, Mr. Bingaman, Mr. Kennedy, and Ms. Stabenow) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) supra.

SA 4346. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table.

SA 4347. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4348. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4349. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 4345 proposed by Mr. Graham (for himself, Mr. Smith of Oregon, Mr. Miller, Mrs. Lincoln, Mr. Bingaman, Mr. Kennedy, and Ms. Stabenow) to the amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4327. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___ . STATE PRESCRIPTION DRUG DISCOUNT.

(a) Findings.—Congress makes the following findings:

(1) More than 70,000,000 Americans, including more than 18,000,000 Medicare beneficiaries, are uninsured or underinsured for prescription drug coverage.

(2) High prescription drug prices are denying uninsured and underinsured Americans access to medically necessary care, thereby threatening their health and safety. Many of

these Americans require repeated doctor or medical clinic appointments, becoming sicker because they cannot afford to take the drugs prescribed for them. Many are admitted to or treated at hospitals because they cannot afford the drugs prescribed for them that could have prevented the need for hospitalization. Many enter expensive institutional care settings because they cannot afford the prescription drugs that could have supported them outside of an institution. In each of these circumstances, uninsured and underinsured residents too often become medicaid recipients because of their inability to afford prescription drugs.

(3) Pursuant to the Social Security Act, State medicaid programs receive discounts in the form of rebates for outpatient prescription drugs. On average, these rebates provide discounts of more than 40 percent off retail prices.

(4) In 49 States, individual Americans do not have access to medicaid rebates. But in 1 State, since June 1, 2001, over 100,000 Americans have received discounts from those rebates through the "Healthy Maine" program. This program, established as a demonstration project pursuant to a waiver from the Secretary of Health and Human Services has proven to work. Americans need that program replicated in every State, immediately.

(5) The Federal and State governments are the only agents that, as a practical matter, can play an effective role as a market participant on behalf of Americans who are uninsured or underinsured.

(b) STATE PRESCRIPTION DISCOUNT PROGRAM.—

(1) IN GENERAL.—Section 1927(a) of the Social Security Act (42 U.S.C. 1396r–8(a)) is amended by adding at the end the following:

"(7) REQUIREMENTS RELATING TO AGREEMENTS FOR DRUGS PROCURED BY INDIVIDUALS THROUGH STATE PRESCRIPTION DRUG DISCOUNT PROGRAMS.—

"(A) IN GENERAL.—A manufacturer meets the requirements of this paragraph if the manufacturer enters into an agreement with the State to make rebate payments for drugs covered by a State prescription drug discount program in the same amounts as are paid by the manufacturer to the State for such drugs under a rebate agreement described in subsection (b).

"(B) STATE PRESCRIPTION DRUG DISCOUNT PROGRAM DEFINED.—

"(i) IN GENERAL.—In this paragraph, the term 'State prescription drug discount program' means a State program under which, with respect to a rebate period, not less than the amount equal to 95 percent of all the rebates paid to the State under agreements entered into under subparagraph (A) during such period is provided to eligible State residents in the form of discounted prices for the purchase of outpatient prescription drugs.

"(ii) ELIGIBLE STATE RESIDENT.—For purposes of clause (i), the term 'eligible State resident' means an individual who is a State resident and—

"(I) who is eligible for benefits under title XVIII; or

"(II) whose income does not exceed 300 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(iii) ADDITIONAL SUBSIDIES.—Nothing in this subparagraph shall be construed as—

"(I) requiring a State to expend State funds to carry out a State prescription drug discount program; or

"(II) prohibiting a State from electing to contribute State funds to a State prescription drug discount program to provide greater subsidies to eligible State residents for outpatient prescription drugs covered under the program.

"(C) NO OFFSET AGAINST MEDICAL ASSISTANCE.—Amounts received by a State under an agreement entered into under subparagraph (A) in any quarter shall not be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).".

(2) CONFORMING AMENDMENT.—The first sentence of section 1927(a)(1) of the Social Security Act (42 U.S.C. 1396r–8(a)(1)) is amended, by striking "and paragraph (6)" and inserting ", paragraph (6), and paragraph (7)".

(c) ENHANCED REBATES FOR STATE MEDICAID PROGRAMS.—Section 1927(b)(1)(B) of the Social Security Act (42 U.S.C. 1396r–8(b)(1)(B) is amended—

(1) by striking "Amounts" and inserting the following:

"(i) IN GENERAL.—Except as provided in clause (ii) and subsection (a)(7)(C), amounts"; and

(2) by adding at the end the following:

"(ii) ENHANCED REBATE.—In the case of a State that has a State prescription drug discount program described in subsection (a)(7) and that has entered into a rebate agreement described in paragraph (1) or (4) of subsection (a) that provides a greater rebate for a covered outpatient drug than the rebate that would be paid for the covered outpatient drug under subsection (c), then, notwithstanding clause (i), only the amount equal to ½ of the difference between the amount received by the State in any quarter under such a rebate agreement and the amount of the rebate that would be paid under subsection (c) for such covered outpatient drug shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).".

(d) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2004.

SA 4328. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. CLARIFICATION OF INCLUSION OF INPATIENT DRUG PRICES CHARGED TO CERTAIN PUBLIC HOSPITALS IN THE BEST PRICE EXEMPTIONS ESTABLISHED FOR PURPOSES OF THE MEDICAID DRUG REBATE PROGRAM.

Section 1927(c)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(C)(ii)) is amended—

(1) in subclause (II), by striking "and" at the end;

(2) in subclause (III), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(IV) with respect to a covered entity described in section 340B(a)(4)(L) of the Public Health Service Act, shall, in addition to any prices excluded under clause (i)(I), exclude any price charged on or after the date of enactment of this subparagraph, for any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, inpatient hospital services (and for which payment may be made under this title as part of payment for and not as direct reimbursement for the drug).".

SA 4329. Mr. DURBIN (for himself, Mr. DEWINE, Mr. DORGAN, Mr. LEVIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. COMPREHENSIVE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)), as amended by section 113(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–473), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by striking ", to an individual who receives" and all that follows before the semicolon at the end and inserting "to an individual who has received an organ transplant".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.

SEC. ___. PROVISION OF APPROPRIATE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM FOR ORGAN TRANSPLANT RECIPIENTS.

(a) CONTINUED ENTITLEMENT TO IMMUNOSUPPRESSIVE DRUGS.—

(1) KIDNEY TRANSPLANT RECIPIENTS.—Section 226A(b)(2) of the Social Security Act (42 U.S.C. 426–1(b)(2)) is amended by inserting "(except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))" after "shall end".

(2) OTHER TRANSPLANT RECIPIENTS.—The flush matter following paragraph (2)(C)(ii)(II) of section 226(b) of the Social Security Act (42 U.S.C. 426(b)) is amended by striking "of this subsection)" and inserting "of this subsection and except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))".

(3) APPLICATION.—Section 1836 of the Social Security Act (42 U.S.C. 1395o) is amended—

(A) by striking "Every individual who" and inserting "(a) IN GENERAL.—Every individual who"; and

(B) by adding at the end the following new subsection:

"(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS ONLY ELIGIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

"(1) IN GENERAL.—In the case of an individual whose eligibility for benefits under this title has ended except for the coverage of immunosuppressive drugs by reason of section 226(b) or 226A(b)(2), the following rules shall apply:

"(A) The individual shall be deemed to be enrolled under this part for purposes of receiving coverage of such drugs.

"(B) The individual shall be responsible for the full amount of the premium under section 1839 in order to receive such coverage.

"(C) The provision of such drugs shall be subject to the application of—

"(i) the deductible under section 1833(b); and

"(ii) the coinsurance amount applicable for such drugs (as determined under this part).

"(D) If the individual is an inpatient of a hospital or other entity, the individual is entitled to receive coverage of such drugs under this part.

"(2) Establishment of procedures in order to implement coverage.—The Secretary shall establish procedures for—

"(A) identifying beneficiaries that are entitled to coverage of immunosuppressive drugs by reason of section 226(b) or 226A(b)(2); and

"(B) distinguishing such beneficiaries from beneficiaries that are enrolled under this part for the complete package of benefits under this part.".

(4) Technical amendment.—Subsection (c) of section 226A of the Social Security Act (42 U.S.C. 426–1), as added by section 201(a)(3)(D)(ii) of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1497), is redesignated as subsection (d).

(b) Extension of Secondary Payer Requirements for ESRD Beneficiaries.—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended by adding at the end the following new sentence: "With regard to immunosuppressive drugs furnished on or after the date of enactment of this sentence, this subparagraph shall be applied without regard to any time limitation.".

(c) Effective Date.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.

SEC. ____. PLANS REQUIRED TO MAINTAIN COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

(a) Application to Certain Health Insurance Coverage.—

(1) In general.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

"SEC. 2707. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

"A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of this section, and such requirement shall be deemed to be incorporated into this section.".

(2) Conforming amendment.—Section 2721(b)(2)(A) of the Public Health Service Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting "(other than section 2707)" after "requirements of such subparts".

(b) Application to Group Health Plans and Group Health Insurance Coverage Under the Employee Retirement Income Security Act of 1974.—

(1) In general.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 714. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

"A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of this sentence, and such requirement shall be deemed to be incorporated into this section.".

(2) Conforming amendments.—

(A) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking "section 711" and inserting "sections 711 and 714".

(B) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following new item:

"Sec. 714. Coverage of immunosuppressive drugs.".

(c) Application to Group Health Plans Under the Internal Revenue Code of 1986.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

"Sec. 9813. Coverage of immunosuppressive drugs.";

and

(2) by inserting after section 9812 the following:

"SEC. 9813. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

"A group health plan shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan on the day before the date of enactment of this sentence, and such requirement shall be deemed to be incorporated into this section.".

(d) Effective Date.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2003.

SA 4330. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Beginning on page 27, strike line 15 and all that follows through page 28, line 18 and insert the following:

"(E) No claim for patent infringement.—An owner of a patent with respect to".

SA 4331. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Beginning on page 27, strike line 15 and all that follows through page 28, line 16, and insert the following:

"(E) Correction or deletion of patent information.—

"(i) In general.—A person that has filed an application under subsection (b)(2) or (j) for a drug may submit to arbitration a claim to require the holder of the application to amend the application—

"(I) to correct patent information filed under subparagraph (A); or

"(II) to delete the patent information in its entirety for the reason that—

"(aa) the patent does not claim the drug for which the application was approved; or

"(bb) the patent does not claim an approved method of using the drug.

"(ii) American arbitration association.—Arbitration under clause (i) shall be administered by the American Arbitration Association, in accordance with the Commercial Arbitration Rules.

"(iii) Decision.—

"(I) Timing.—Not later than 180 days after the date on which an arbitrator receives a written request for arbitration under this subparagraph, the arbitrator shall render a decision with respect to the claim.

"(II) Limitation.—In rendering a decision under subclause (I), the arbitrator shall not—

"(aa) order the correction of patent information filed under subparagraph (B); or

"(bb) award monetary damages.

"(III) Binding effect.—A decision rendered under subclause (I)—

"(aa) shall be final and binding; and

"(bb) may be entered in any court having jurisdiction over the claim.

SA 4332. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Beginning on page 28, strike line 17 and all that follows through page 39, line 18, and insert the following:

(2) Transition provision.—Each holder of an application for approval of a new drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) that has been approved before the date of enactment of this Act shall amend the application to include the patent information required under the amendment made by paragraph (1) not later than the date that is 30 days after the date of enactment of this Act (unless the Secretary of Health and Human Services extends the date because of extraordinary or unusual circumstances).

(b) Filing With an Application.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(C) with respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed—

"(i) a certification under subparagraph (A)(iv) on a claim-by-claim basis; and

"(ii) a statement under subparagraph (B) regarding the method of use claim."; and

(2) in subsection (j)(2)(A), by inserting after clause (viii) the following:

"With respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed, the application shall contain a certification under clause (vii)(IV) on a claim-by-claim basis and a statement under clause (viii) regarding the method of use claim.".

SEC. 4. LIMITATION OF 30-MONTH STAY TO CERTAIN PATENTS.

(a) Abbreviated New Drug Applications.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) by striking "(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii)," and inserting the following:

"(iii) Subclause (IV) certification with respect to certain patents.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under subsection (c)(2)(A),"; and

(ii) by adding at the end the following: "The 30-month period provided under the second sentence of this clause shall not apply to a certification under paragraph (2)(A)(vii)(IV) made with respect to a patent for which patent information was filed with the Secretary under subsection (c)(2)(B).";

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

"(iv) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

"(I) IN GENERAL.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent not described in clause (iii) for which patent information was published by the Secretary under subsection (c)(2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under paragraph (2)(B) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

"(aa) on the date of a court action declining to grant a preliminary injunction; or

"(bb) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

"(AA) on issuance by a court of a determination that the patent is invalid or is not infringed;

"(BB) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

"(CC) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

"(II) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under subclause (I).

"(III) EXPEDITED NOTIFICATION.—If the notice under paragraph (2)(B) contains an address for the receipt of expedited notification of a civil action under subclause (I), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day."; and

(2) by inserting after subparagraph (B) the following:

"(C) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under this subsection, the applicant provides an owner of a patent notice under paragraph (2)(B) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent against the applicant with respect to the application.".

(b) OTHER APPLICATIONS.—Section 505(c)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) (as amended by section 9(a)(3)(A)(iii)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (C)—

(i) by striking "(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A)," and inserting the following:

"(C) CLAUSE (iv) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under paragraph (2)(A),"; and

(ii) by adding at the end the following: "The 30-month period provided under the second sentence of this subparagraph shall not apply to a certification under subsection (b)(2)(A)(iv) made with respect to a patent for which patent information was filed with the Secretary under paragraph (2)(B)."; and

(B) by inserting after subparagraph (C) the following:

"(D) CLAUSE (iv) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

"(i) IN GENERAL.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent not described in subparagraph (C) for which patent information was published by the Secretary under paragraph (2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under subsection (b)(3) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

"(I) on the date of a court action declining to grant a preliminary injunction; or

"(II) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

"(aa) on issuance by a court of a determination that the patent is invalid or is not infringed;

"(bb) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

"(cc) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

"(ii) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under clause (i).

"(iii) EXPEDITED NOTIFICATION.—If the notice under subsection (b)(3) contains an address for the receipt of expedited notification of a civil action under clause (i), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day."; and

(2) by inserting after paragraph (3) the following:

"(4) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under subsection (b)(2), the applicant provides an owner of a patent notice under subsection (b)(3) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent against the applicant with respect to the application.".

SA 4333. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Beginning on page 31, strike line 12 and all that follows through page 40 and insert the following:

SEC. 4. 30-MONTH STAY.

(a) ABBREVIATED NEW DRUG APPLICATIONS.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended—

(1) in subparagraph (B)(iii)—

(A) by striking "(iii) If the applicant" and inserting the following:

"(iii) SUBCLAUSE (IV) CERTIFICATION.—If the applicant"; and

(B) by adding at the end the following: "The 30-month period provided under this clause shall not apply to a certification under paragraph (2)(A)(vii)(IV) made with respect to a patent for which patent information was filed with the Secretary after the filing of the application under this subsection that contains the certification."; and

(2) by inserting after subparagraph (B) the following:

"(C) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under this subsection, the applicant provides an owner of a patent notice under paragraph (2)(B) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under this subsection.".

(b) OTHER APPLICATIONS.—Section 505(c)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) is amended—

(1) in paragraph (3)(C)—

(A) by striking "(C) If the applicant" and inserting the following:

"(C) CLAUSE (iv) CERTIFICATION.—If the applicant"; and

(B) by adding at the end the following: "The 30-month period provided under this subparagraph shall not apply to a certification under subsection (b)(2)(A)(iv) made with respect to a patent for which patent information was filed with the Secretary after the filing of the application described in subsection (b)(2) that contains the certification."; and

(2) by inserting after paragraph (3) the following:

"(4) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under subsection (b)(2), the applicant provides an owner of a patent notice under subsection (b)(3) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under subsection (b)(2).".

SA 4334. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. NONAPPLICATION OF STATE AUTHORITY TO ENTER INTO DRUG REBATE AGREEMENTS IF THE AGREEMENTS WOULD RESULT IN INCREASED MEDICAID DRUG COSTS.

Notwithstanding any other provision of this Act, section 1927 of the Social Security Act (42 U.S.C. 1396r–8) shall be applied without regard to subsection (l) (as added by this Act) if the Secretary of Health and Human Services determines that the application of that subsection would result in an increase in expenditures under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for covered outpatient drugs (as defined in section 1927(k)(2) of that Act (42 U.S.C. 1396r–8(k)(2)).

SA 4335. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSTON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. NONAPPLICATION OF STATE AUTHORITY TO ENTER INTO DRUG REBATE AGREEMENTS IF THE AGREEMENTS WOULD RESULT IN INCREASED MEDICAID DRUG COSTS.

Notwithstanding any other provision of this Act, section 1927 of the Social Security Act (42 U.S.C. 1396r–8) shall be applied without regard to subsection (l) (as added by this Act) if the Secretary of Health and Human Services determines that the application of that subsection would result in an increase in expenditures under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for covered outpatient drugs (as defined in section 1927(k)(2) of that Act (42 U.S.C. 1396r–8(k)(2)).

SA 4336. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. SCOPE OF APPLICATION OF TEMPORARY INCREASE IN FMAP.

Section (a)(5) of this Act (relating to the scope of application of the temporary increase in the State Federal medical assistance percentage) is amended—

(1) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(2) by adding at the end the following:

"(C) payments that are in excess of the aggregate upper payment limits applicable to the medicaid program, as determined under part 447 of title 42 of the Code of Federal Regulations, (or that would be considered to be in excess of such limits if a transition period described in section 447.272(e) or 447.321(e) of title 42 of the Code of Federal Regulations) did not apply to the payments).".

SA 4337. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

"(C) payments that are in excess of the aggregate upper payment limits applicable to the medicaid program, as determined under part 447 of title 42 of the Code of Federal Regulations, (or that would be considered to be in excess of such limits if a transition period described in section 447.272(e) or 447.321(e) of title 42 of the Code of Federal Regulations) did not apply to the payments).".

SA 4338. Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

"(l) RULE OF CONSTRUCTION.—

"(1) IN GENERAL.—With respect to individuals described in paragraph (2) who are enrolled in a State prescription drug program described in paragraph (3), nothing in this section shall be construed as prohibiting a State from—

"(A) directly entering into rebate agreements (on the State's own initiative or under a section 1115 waiver approved by the Secretary before, on, or after the date of enactment of this subsection) that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by such individuals; or

"(B) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.

"(2) INDIVIDUALS DESCRIBED.—For purposes of paragraph (1), individuals described in this paragraph are individuals—

"(A) whose family income does not exceed 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved; and

"(B) who are not otherwise eligible for medical assistance under this title.

"(3) STATE PRESCRIPTION DRUG PROGRAM DESCRIBED.—For purposes of paragraph (1), a State prescription drug program described in this paragraph is a State program that was in effect as of July 1, 2002, and under which State appropriated funds substantially paid for the cost of outpatient prescription drugs for individuals described in paragraph (1) who were enrolled in the program.".

SA 4339. Mr. NICKLES submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

"(l) RULE OF CONSTRUCTION.—

"(1) IN GENERAL.—With respect to individuals described in paragraph (2) who are enrolled in a State prescription drug program described in paragraph (3), nothing in this section shall be construed as prohibiting a State from—

"(A) directly entering into rebate agreements (on the State's own initiative or under a section 1115 waiver approved by the Secretary before, on, or after the date of enactment of this subsection) that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by such individuals; or

"(B) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.

"(2) INDIVIDUALS DESCRIBED.—For purposes of paragraph (1), individuals described in this paragraph are individuals—

"(A) whose family income does not exceed 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved; and

"(B) who are not otherwise eligible for medical assistance under this title.

"(3) STATE PRESCRIPTION DRUG PROGRAM DESCRIBED.—For purposes of paragraph (1), a State prescription drug program described in this paragraph is a State program that was in effect as of July 1, 2002, and under which State appropriated funds substantially paid for the cost of outpatient prescription drugs for individuals described in paragraph (1) who were enrolled in the program.".

SA 4340. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the end insert the following:

TITLE ___—DRUG COMPETITION ACT OF 2002

SEC. ___01. SHORT TITLE.

This title may be cited as the "Drug Competition Act of 2002".

SEC. ___02. FINDINGS.

Congress finds that—

(1) prescription drug prices are increasing at an alarming rate and are a major worry of many senior citizens and American families;

(2) there is a potential for companies with patent rights regarding brand-name drugs and companies which could manufacture generic versions of such drugs to enter into financial deals that could tend to restrain trade and greatly reduce competition and increase prescription drug expenditures for American citizens; and

(3) enhancing competition among these companies can significantly reduce prescription drug expenditures for Americans.

SEC. ___03. PURPOSES.

The purposes of this title are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies with patent rights regarding branded drugs and companies which could manufacture generic versions of such drugs; and

(2) by providing timely notice, to enhance the effectiveness and efficiency of the enforcement of the antitrust and competition laws of the United States.

SEC. ___04. DEFINITIONS.

In this title:

(1) ANDA.—The term "ANDA" means an Abbreviated New Drug Application, as defined under section 201(aa) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(aa)).

(2) ASSISTANT ATTORNEY GENERAL.—The term "Assistant Attorney General" means the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(3) BRAND NAME DRUG.—The term "brand name drug" means a drug approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)).

(4) BRAND NAME DRUG COMPANY.—The term "brand name drug company" means the party that received Food and Drug Administration approval to market a brand name drug pursuant to an NDA, where that drug is the subject of an ANDA, or a party owning or controlling enforcement of any patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations of the Food and Drug Administration for that drug, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(5) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(6) GENERIC DRUG.—The term "generic drug" is a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(7) GENERIC DRUG APPLICANT.—The term "generic drug applicant" means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(8) NDA.—The term "NDA" means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b) et seq.)

SEC. ___05. NOTIFICATION OF AGREEMENTS.

(a) IN GENERAL.—

(1) REQUIREMENT.—A generic drug applicant that has submitted an ANDA containing a certification under section 505(j)(2)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(vii)(IV)) and a brand name drug company that enter into an agreement described in paragraph (2), prior to the generic drug that is the subject of the application entering the market, shall each file the agreement as required by subsection (b).

(2) DEFINITION.—An agreement described in this paragraph is an agreement regarding—

(A) the manufacture, marketing or sale of the brand name drug that is the subject of the generic drug applicant's ANDA;

(B) the manufacture, marketing or sale of the generic drug that is the subject of the generic drug applicant's ANDA; or

(C) the 180-day period referred to in section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) as it applies to such ANDA or to any other ANDA based on the same brand name drug.

(b) FILING.—

(1) AGREEMENT.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any such agreement, except that the generic drug applicant and the brand-name drug company shall not be required to file an agreement that solely concerns—

(A) purchase orders for raw material supplies;

(B) equipment and facility contracts; or

(C) employment or consulting contracts.

(2) OTHER AGREEMENTS.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any other agreements not described in subsection (a)(2) between the generic drug applicant and the brand name drug company which are contingent upon, provide a contingent condition for, or are otherwise related to an agreement which must be filed under this title.

(3) DESCRIPTION.—In the event that any agreement required to be filed by paragraph (1) or (2) has not been reduced to text, both the generic drug applicant and the brand name drug company shall file written descriptions of the non-textual agreement or agreements that must be filed sufficient to reveal all of the terms of the agreement or agreements.

SEC. ___6. FILING DEADLINES.

Any filing required under section ___05 shall be filed with the Assistant Attorney General and the Commission not later than 10 business days after the date the agreements are executed.

SEC. ___07. DISCLOSURE EXEMPTION.

Any information or documentary material filed with the Assistant Attorney General or the Commission pursuant to this title shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

SEC. ___08. ENFORCEMENT.

(a) CIVIL PENALTY.—Any brand name drug company or generic drug applicant which fails to comply with any provision of this title shall be liable for a civil penalty of not more than $11,000, for each day during which such entity is in violation of this title. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

(b) COMPLIANCE AND EQUITABLE RELIEF.—If any brand name drug company or generic drug applicant fails to comply with any provision of this title, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Assistant Attorney General or the Commission. Equitable relief under this subsection may include an order by the district court which renders unenforceable, by the brand name drug company or generic drug applicant failing to file, any agreement that was not filed as required by this title for the period of time during which the agreement was not filed by the company or applicant as required by this title.

SEC. ___09. RULEMAKING.

The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5 United States Code, consistent with the purposes of this title—

(1) may define the terms used in this title;

(2) may exempt classes of persons or agreements from the requirements of this title; and

(3) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this title.

SEC. ___10. SAVINGS CLAUSE.

Any action taken by the Assistant Attorney General or the Commission, or any failure of the Assistant Attorney General or the Commission to take action, under this title shall not bar any proceeding or any action with respect to any agreement between a brand name drug company and a generic drug applicant at any time under any other provision of law, nor shall any filing under this title constitute or create a presumption of any violation of any antitrust or competition laws.

SEC. ___11. EFFECTIVE DATE.

This title shall—

(1) take effect 30 days after the date of enactment of this title; and

(2) shall apply to agreements described in section ___05 that are entered into 30 days after the date of enactment of this title.

SA 4341. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 812 to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—MEDICARE AMBULANCE PAYMENT REFORM

SEC. ___01. AMBULANCE PAYMENT RATES.

(a) PAYMENT RATES.—

(1) IN GENERAL.—Section 1834(l)(3) of the Social Security Act (42 U.S.C. 1395m(l)(3)) is amended to read as follows:

"(3) PAYMENT RATES.—In the case of any ambulance service furnished under this part in 2003 or any subsequent year, the Secretary shall set the payment rates under the fee schedule for such service at amounts equal to the payment rate under the fee schedule for that service furnished during the previous year, increased by the percentage increase in the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year.".

(2) CONFORMING AMENDMENT.—Section 221(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–487), as enacted into law by section 1(a)(6) of Public Law 106–554, is repealed.

(3) TECHNICAL AMENDMENT.—

(A) IN GENERAL.—Paragraph (8) of section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), as added by section 221(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–487), as enacted into law by section 1(a)(6) of Public Law 106–554, is redesignated as paragraph (9).

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of such section 221(a).

(b) USE OF MEDICAL CONDITIONS FOR CODING AMBULANCE SERVICES.—Section 1834(l)(7) of the Social Security Act (42 U.S.C. 1395m(l)(7)) is amended to read as follows:

"(7) CODING SYSTEM.—

"(A) IN GENERAL.—The Secretary shall, in accordance with section 1173(c)(1)(B), establish a system or systems for the coding of claims for ambulance services for which payment is made under this subsection, including a code set specifying the medical condition of the individual who is transported and the level of service that is appropriate for the transportation of an individual with that medical condition.

"(B) MEDICAL CONDITIONS.—The code set established under subparagraph (A) shall—

"(i) take into account the list of medical conditions developed in the course of the negotiated rulemaking process conducted under paragraph (1); and

"(ii) notwithstanding any other provision of law, be adopted as a standard code set under section 1173(c).".

SEC. 02. PRUDENT LAYPERSON STANDARD FOR EMERGENCY AMBULANCE SERVICES UNDER MEDICARE AND MEDICAID.

(a) AMBULANCE SERVICES FOR MEDICARE FEE-FOR-SERVICE BENEFICIARIES.—Section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) is amended by inserting before the semicolon at the end the following: ", except that such regulations shall not fail to treat ambulance services as medical and other health services solely because the ultimate diagnosis of the individual receiving the ambulance services results in the conclusion that ambulance services were not necessary, as long as the request for ambulance services is made after the sudden onset of a medical condition that would be classified as an emergency medical condition (as defined in section 1852(d)(3)(B)).".

(b) AMBULANCE SERVICES FOR MEDICARE+CHOICE ENROLLEES.—Section 1852(d)(3)(A) of the Social Security Act (42 U.S.C. 1395w–22(d)(3)(A)) is amended by inserting "(including the services described in section 1861(s)(7))" after "outpatient services" in the matter preceding clause (i).

(c) AMBULANCE SERVICES IN MEDICAID MANAGED CARE PLANS.—Section 1932(b)(2)(B) of the Social Security Act (42 U.S.C. 1396u–2(b)(2)(B)) is amended by inserting "(including the services described in section 1861(s)(7) (if covered by the State plan))" after "outpatient services" in the matter preceding clause (i).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services provided on and after the date of enactment of the Act.

SA 4342. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Strike section 7.

SA 4343. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE —IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY

SEC. 01. SHORT TITLE.

This title may be cited as the "Improved Vaccine Affordability and Availability Act".

Subtitle A—State Vaccine Grants

SEC. 11. AVAILABILITY OF INFLUENZA VACCINE.

Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)) is amended by adding at the end the following:

"(3)(A) For the purpose of carrying out activities relating to influenza vaccine under the immunization program under this subsection, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 and 2004. Such authorization shall be in addition to amounts available under paragraphs (1) and (2) for such purpose.

"(B) The authorization of appropriations established in subparagraph (A) shall not be effective for a fiscal year unless the total amount appropriated under paragraphs (1) and (2) for the fiscal year is not less than such total for fiscal year 2000.

"(C) The purposes for which amounts appropriated under subparagraph (A) are available to the Secretary include providing for improved State and local infrastructure for influenza immunizations under this subsection in accordance with the following:

"(i) Increasing influenza immunization rates in populations considered by the Secretary to be at high risk for influenza-related complications and in their contacts.

"(ii) Recommending that health care providers actively target influenza vaccine that is available in September, October, and November to individuals who are at increased risk for influenza-related complications and to their contacts.

"(iii) Providing for the continued availability of influenza immunizations through December of such year, and for additional periods to the extent that influenza vaccine remains available.

"(iv) Encouraging States, as appropriate, to develop contingency plans (including plans for public and professional educational activities) for maximizing influenza immunizations for high-risk populations in the event of a delay or shortage of influenza vaccine.

"(D) The Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, periodic reports describing the activities of the Secretary under this subsection regarding influenza vaccine. The first such report shall be submitted not later than June 6, 2003, the second report shall be submitted not later than June 6, 2004, and subsequent reports shall be submitted biennially thereafter.".

SEC. 12. PROGRAM FOR INCREASING IMMUNIZATION RATES FOR ADULTS AND ADOLESCENTS; COLLECTION OF ADDITIONAL IMMUNIZATION DATA.

(a) ACTIVITIES OF CENTERS FOR DISEASE CONTROL AND PREVENTION.—Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)), as amended by section 11, is further amended by adding at the end the following:

"(4)(A) For the purpose of carrying out activities to increase immunization rates for adults and adolescents through the immunization program under this subsection, and for the purpose of carrying out subsection (k)(2), there are authorized to be appropriated $50,000,000 for fiscal year 2003, and such sums as may be necessary, for each of the fiscal years 2004 through 2006. Such authorization is in addition to amounts available under paragraphs (1), (2), and (3) for such purposes.

"(B) In expending amounts appropriated under subparagraph (A), the Secretary shall give priority to adults and adolescents who are medically underserved and are at risk for vaccine-preventable diseases, including as appropriate populations identified through projects under subsection (k)(2)(E).

"(C) The purposes for which amounts appropriated under subparagraph (A) are available include (with respect to immunizations for adults and adolescents) the payment of the costs of storing vaccines, outreach activities to inform individuals of the availability of the immunizations, and other program expenses necessary for the establishment or operation of immunization programs carried out or supported by States or other public entities pursuant to this subsection.

"(5) The Secretary shall annually submit to Congress a report that—

"(A) evaluates the extent to which the immunization system in the United States has been effective in providing for adequate immunization rates for adults and adolescents, taking into account the applicable year 2010 health objectives established by the Secretary regarding the health status of the people of the United States; and

"(B) describes any issues identified by the Secretary that may affect such rates.

"(6) In carrying out this subsection and paragraphs (1) and (2) of subsection (k), the Secretary shall consider recommendations regarding immunizations that are made in reports issued by the Institute of Medicine.".

(b) RESEARCH, DEMONSTRATIONS, AND EDUCATION.—Section 317(k) of the Public Health Service Act (42 U.S.C. 247b(k)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) The Secretary, directly and through grants under paragraph (1), shall provide for a program of research, demonstration projects, and education in accordance with the following:

"(A) The Secretary shall coordinate with public and private entities (including nonprofit private entities), and develop and disseminate guidelines, toward the goal of ensuring that immunizations are routinely offered to adults and adolescents by public and private health care providers.

"(B) The Secretary shall cooperate with public and private entities to obtain information for the annual evaluations required in subsection (j)(5)(A).

"(C) The Secretary shall (relative to fiscal year 2001) increase the extent to which the Secretary collects data on the incidence, prevalence, and circumstances of diseases and adverse events that are experienced by adults and adolescents and may be associated with immunizations, including collecting data in cooperation with commercial laboratories.

"(D) The Secretary shall ensure that the entities with which the Secretary cooperates for purposes of subparagraphs (A) through (C) include managed care organizations, community-based organizations that provide health services, and other health care providers.

"(E) The Secretary shall provide for projects to identify racial and ethnic minority groups and other health disparity populations for which immunization rates for adults and adolescents are below such rates for the general population, and to determine the factors underlying such disparities.".

SEC. ___13. IMMUNIZATION AWARENESS.

(a) DEVELOPMENT OF INFORMATION CONCERNING MENINGITIS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning bacterial meningitis and the availability and effectiveness of vaccinations for populations targeted by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention).

(2) ENTITIES.—An entity is described in this paragraph if the entity—

(A) is—

(i) a college or university; or

(ii) any other facility with a setting similar to a dormitory that houses age-appropriate populations for whom the Advisory Committee on Immunization Practices recommends such a vaccination; and

(B) is determined appropriate by the Secretary of Health and Human Services.

(b) DEVELOPMENT OF INFORMATION CONCERNING HEPATITIS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning hepatitis A and B and the availability and effectiveness of vaccinations with respect to such diseases.

(2) ENTITIES.—An entity is described in this paragraph if the entity—

(A) is—

(i) a health care clinic that serves individuals diagnosed as being infected with HIV or as having other sexually transmitted diseases;

(ii) an organization or business that counsels individuals about international travel or who arranges for such travel;

(iii) a police, fire or emergency medical services organization that responds to natural or man-made disasters or emergencies;

(iv) a prison or other detention facility;

(v) a college or university; or

(vi) a public health authority or children's health service provider in areas of intermediate or high endemicity for hepatitis A as defined by the Centers for Disease Control and Prevention; and

(B) is determined appropriate by the Secretary of Health and Human Services.

SEC. ___14. SUPPLY OF VACCINES.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall prioritize, acquire, and maintain a supply of such prioritized vaccines sufficient to provide vaccinations throughout a 6-month period.

(b) PROCEEDS.—Any proceeds received by the Secretary of Health and Human Services from the sale of vaccines contained in the supply described in subsection (a), shall be available to the Secretary for the purpose of purchasing additional vaccines for the supply. Such proceeds shall remain available until expended.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out subsection (a) such sums as may be necessary for each of fiscal years 2003 through 2008.

Subtitle B—Vaccine Injury Compensation Program

SEC. ___21. ADMINISTRATIVE REVISION OF VACCINE INJURY TABLE.

Section 2114 of the Public Health Service Act (42 U.S.C. 300aa–14) is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and for at least 60 days opportunity for public comment."; and

(2) in subsection (d), by striking "90 days" and inserting "60 days".

SEC. ___22. EQUITABLE RELIEF.

Section 2111(a)(2)(A) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(2)(A)) is amended by striking "No person" and all that follows through "and—" and inserting the following: "No person may bring or maintain a civil action against a vaccine administrator or manufacturer in a State or Federal court for damages arising from, or equitable relief relating to, a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988 and no such court may award damages or equitable relief for any such vaccine-related injury or death, unless the person proves past or present physical injury and a timely petition has been filed, in accordance with section 2116 for compensation under the Program for such injury or death and—".

SEC. ___23. PARENT OR OTHER THIRD PARTY PETITIONS FOR COMPENSATION.

(a) LIMITATIONS ON DERIVATIVE PETITIONS.—Section 2111(a)(2) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(2)) is amended—

(1) in subparagraph (B), by inserting "or (B)" after "subparagraph (A)";

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

"(B)(i) No parent, legal guardian, or spouse (referred to in this title as a parent or other third party) may bring or maintain a civil action against a vaccine administrator or manufacturer in a Federal or State court for damages or equitable relief relating to a vaccine-related injury or death, including damages for loss of consortium, society, companionship, or services, loss of earnings, medical or other expenses, and emotional distress, and no court may award damages or equitable relief in such an action, unless—

"(I) the person who sustained the underlying vaccine-related injury or death upon which such parent's or other third party's claim is premised has, in accordance with section 2112, been awarded compensation in a final judgment of the United States Court of Federal Claims and such judgment is subject to no further appeal or review;

"(II) such parent or other third party timely filed a derivative petition, in accordance with section 2116; and

"(III)(aa) the United States Court of Federal Claims has issued judgment under section 2112 on the derivative petition, and such parent or other third party elects under section 2121(a) to file a civil action; or

"(bb) such parent or other third party elects to withdraw such derivative petition under section 2121(b) or such petition is considered withdrawn under such section.

"(ii) Any civil action brought in accordance with this subparagraph shall be subject to the standards and procedures set forth in sections 2122 and 2123, regardless of whether the action arises directly from a vaccine-related injury or death associated with the administration of a vaccine. In a case in which the person who sustained the underlying vaccine-related injury or death upon which such parent's or other third party's civil action is premised elects under section 2121(a) to receive the compensation awarded, such parent or other third party may not bring a civil action for damages or equitable relief, and no court may award damages or equitable relief, for any injury or loss of the type set forth in section 2115(a) or that might in any way overlap with or otherwise duplicate compensation of the type available under section 2115(a).".

(b) ELIGIBLE PERSONS.—Section 2111(a)(9) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(9)) is amended by striking the period and inserting "and to a parent or other third party to the extent such parent or other third party seeks damages or equitable relief relating to a vaccine-related injury or death sustained by a person who is qualified to file a petition for compensation under the Program.".

(c) PETITIONERS.—Section 2111(b) of the Public Health Service Act (42 U.S.C. 300aa–11(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "(B)" and inserting "(C)";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

"(B) Except as provided in subparagraph (C), any parent or other third party with respect to a person—

"(i) who has sustained a vaccine-related injury or death;

"(ii) who has filed a petition for compensation under the Program (or whose legal representative has filed such a petition as authorized in subparagraph (A)); and

"(iii) who has, in accordance with section 2112, been awarded compensation in a final judgment of the United States Court of Federal Claims that is subject to no further appeal or review;

may, if such parent or other third party meets the requirements of subsection (d), file a derivative petition under this section."; and

(2) in paragraph (2)—

(A) by inserting "by or on behalf of the person who sustained the vaccine-related injury or death" after "filed"; and

(B) by adding at the end the following: "A parent or other third party may file only 1 derivative petition with respect to each administration of a vaccine.".

(d) DERIVATIVE PETITION CONTENTS.—Section 2111 of the Public Health Service Act (42 U.S.C. 300aa–11) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d) DERIVATIVE PETITIONS.—

"(1) If the parent or other third party with respect to the person who sustained the vaccine-related injury or death seeks compensation under the Program, such parent or other third party shall file a timely derivative petition for compensation under the Program in accordance with this section.

"(2) Such a derivative petition shall contain—

"(A) except for records that are unavailable as described in subsection (c)(3), an affidavit, and supporting documentation, demonstrating that—

"(i) such person was, in accordance with section 2112, previously awarded compensation for the underlying vaccine-related injury or death upon which such parent's or other third party's derivative petition is premised in a final judgment of the United States Court of Federal Claims and such judgment is subject to no further appeal or review;

"(ii) the derivative petition was filed not later than 60 days after the date on which such judgment became final and subject to no further appeal or review;

"(iii) such parent or other third party suffered a loss compensable under section 2115(b) as a result of the vaccine-related injury or death sustained by such person; and

"(iv) such parent or other third party has not previously collected an award or settlement of a civil action for damages for such loss; and

"(B) records establishing such parent's or other third party's relationship to the person who sustained the vaccine-related injury or death.".

(e) DETERMINATION OF ELIGIBILITY FOR COMPENSATION.—Section 2113(a)(1) of the Public Health Service Act (42 U.S.C. 300aa-13(a)(1)) is amended—

(1) in subparagraph (A), by inserting "or, as applicable, section 2111(d)" before the comma; and

(2) in subparagraph (B), by inserting "or, as applicable, that the injury or loss described in the derivative petition is due to factors unrelated to the vaccine-related injury or death" after "the petition".

(f) COMPENSATION.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa-15) is amended—

(1) by redesignating subsections (b) through (j) as subsections (c) through (k), respectively;

(2) by inserting after subsection (a) the following:

"(b) DERIVATIVE PETITIONS.—Compensation awarded under the Program to a parent or other third party who files a derivative petition under section 2111 for a loss sustained as a result of a vaccine-related injury or death sustained by the injured party shall include compensation, if any, for loss of consortium, society, companionship, or services, in an amount not to exceed the lesser of $250,000 or the total amount of compensation awarded to the person who sustained the underlying vaccine-related injury or death.";

(3) in subsection (e)(2), as so redesignated by paragraph (1)—

(A) by striking "(2) and (3)" and inserting "(2), (3), and (4)"; and

(B) by inserting "and subsection (b)," after "(a),";

(4) in subsection (g), as so redesignated by paragraph (1), in paragraph (4)(B), by striking "subsection (j)" and inserting "subsection (k)";

(5) in subsection (j), as so redesignated by paragraph (1)—

(A) in paragraph (1), by striking "subsection (j)" and inserting "subsection (k)"; and

(B) in paragraph (2), by inserting ", or to a parent or other third party with respect to a person who sustained a vaccine-related injury or death," after "death"; and

(6) in subsection (k), as so redesignated by paragraph (1), by striking "subsection (f)(4)(B)" and inserting "subsection (g)(4)(B)".

SEC. 24. JURISDICTION TO DISMISS ACTIONS IMPROPERLY BROUGHT.

Section 2111(a)(3) of the Public Health Service Act (42 U.S.C. 300aa-11(a)(3)) is amended by adding at the end the following: "If any civil action which is barred under subparagraph (A) or (B) of paragraph (2) is filed or maintained in a State court, or any vaccine administrator or manufacturer is made a party to any civil action brought in State court (other than a civil action which may be brought under paragraph (2)) for damages or equitable relief for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, the civil action may be removed by the defendant or defendants to the United States Court of Federal Claims, which shall have jurisdiction over such civil action, and which shall dismiss such action. The notice required by section 1446 of title 28, United States Code, shall be filed with the United States Court of Federal Claims, and that court shall proceed in accordance with sections 1446 through 1451 of title 28, United States Code.".

SEC. 25. APPLICATION.

Section 2111(a)(9) of the Public Health Service Act (42 U.S.C. 300aa-11(a)(9)) is amended by striking "This" and inserting "Except as provided in paragraph (2), this".

SEC. 26. CLARIFICATION OF WHEN INJURY IS CAUSED BY FACTOR UNRELATED TO ADMINISTRATION OF VACCINE.

Section 2113(a)(2)(B) of the Public Health Service Act (42 U.S.C. 300aa-13(a)(2)(B)) is amended—

(1) by inserting "structural lesions, genetic disorders," after "and related anoxia),";

(2) by inserting "(without regard to whether the cause of the infection, toxin, trauma, structural lesion, genetic disorder, or metabolic disturbance is known)" after "metabolic disturbances"; and

(3) by striking "but" and inserting "and".

SEC. 27. INCREASE IN AWARD IN THE CASE OF A VACCINE-RELATED DEATH AND FOR PAIN AND SUFFERING.

Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa-15(a)) is amended—

(1) in paragraph (2), by striking "$250,000" and inserting "$350,000"; and

(2) in paragraph (4), by striking "$250,000" and inserting "$350,000".

SEC. 28. BASIS FOR CALCULATING PROJECTED LOST EARNINGS.

Section 2115(a)(3)(B) of the Public Health Service Act (42 U.S.C. 300aa-15(a)(3)(B)) is amended by striking "loss of earnings" and all that follows and inserting the following: "loss of earnings determined on the basis of the annual estimate of the average (mean) gross weekly earnings of wage and salary workers age 18 and over (excluding the incorporated self-employed) in the private nonfarm sector (which includes all industries other than agricultural production crops and livestock), as calculated annually by the Bureau of Labor Statistics from the quarter sample data of the Current Population Survey, or as calculated by such similar method as the Secretary may prescribe by regulation, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.".

SEC. 29. ALLOWING COMPENSATION FOR FAMILY COUNSELING EXPENSES AND EXPENSES OF ESTABLISHING GUARDIANSHIP.

(a) FAMILY COUNSELING EXPENSES IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa-15(a)) is amended by adding at the end to following:

"(5) Actual unreimbursable expenses that have been or will be incurred for family counseling as is determined to be reasonably necessary and that result from the vaccine-related injury from which the petitioner seeks compensation.".

(b) EXPENSES OF ESTABLISHING GUARDIANSHIPS IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa-15(a)), as amended by subsection (a), is further amended by adding at the end the following:

"(6) Actual unreimbursable expenses that have been, or will be reasonably incurred to establish and maintain a guardianship or conservatorship for an individual who has suffered a vaccine-related injury, including attorney fees and other costs incurred in a proceeding to establish and maintain such guardianship or conservatorship.".

(c) CONFORMING AMENDMENT FOR CASES FROM 1988 AND EARLIER.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa-15) is amended in subsection (c), as so redesignated by section 23(f)—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking "(e)" and inserting "(f))";

(3) by redesignating paragraph (3) as paragraph (5); and

(4) by inserting after paragraph (2), the following:

"(3) family counseling expenses (as provided for in paragraph (5) of subsection (a));

"(4) expenses of establishing guardianships (as provided for in paragraph (6) of subsection (a)); and".

SEC. 30. ALLOWING PAYMENT OF INTERIM COSTS.

Section 2115 of the Public Health Service Act (42 U.S.C. 300aa-15) is amended in subsection (f), as so redesignated by section 23(f), by adding at the end the following:

"(4) A special master or court may make an interim award of costs if—

"(A) the case involves a vaccine administered on or after October 1, 1988;

"(B) the special master or court has determined whether or not the petitioner is entitled to compensation under the Program;

"(C) the award is limited to other costs (within the meaning of paragraph (1)(B)) incurred in the proceeding; and

"(D) the petitioner provides documentation verifying the expenditure of the amount for which compensation is sought.".

SEC. 31. PROCEDURE FOR PAYING ATTORNEYS' FEES.

Section 2115 of the Public Health Service Act (42 U.S.C. 300aa-15), is amended in subsection (f), as so redesignated by section 23(f) and amended by section 30, by adding at the end the following:

"(5) When a special master or court awards attorney fees or costs under paragraph (1) or (4), it may order that such fees or costs be payable solely to the petitioner's attorney if—

"(A) the petitioner expressly consents; or

"(B) the special master or court determines, after affording to the Secretary and to all interested persons the opportunity to submit relevant information, that—

"(i) the petitioner cannot be located or refuses to respond to a request by the special master or court for information, and there is no practical alternative means to ensure that the attorney will be reimbursed for such fees or costs expeditiously; or

"(ii) there are otherwise exceptional circumstances and good cause for paying such fees or costs solely to the petitioner's attorney.".

SEC. ___32. EXTENSION OF STATUTE OF LIMITATIONS.

(a) GENERAL RULE.—Section 2116(a) of the Public Health Service Act (42 U.S.C. 300aa–16(a)) is amended—

(1) in paragraph (2) by striking "36 months" and inserting "6 years"; and

(2) in paragraph (3), by striking "48 months" and inserting "6 years".

(b) CLAIMS BASED ON REVISIONS TO TABLE.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa–16) is amended by striking subsection (b) and inserting the following:

"(b) EFFECT OF REVISED TABLE.—If at any time the Vaccine Injury Table is revised and the effect of such revision is to make an individual eligible for compensation under the program, where, before such revision, such individual was not eligible for compensation under the program, or to significantly increase the likelihood that an individual will be able to obtain compensation under the program, such person may, and shall before filing a civil action for equitable relief or monetary damages, notwithstanding section 2111(b)(2), file a petition for such compensation if—

"(1) the vaccine-related death or injury with respect to which the petition is filed occurred not more than 8 years before the effective date of the revision of the table; and

"(2) either—

"(A) the petition satisfies the conditions described in subsection (a); or

"(B) the date of the occurrence of the first symptom or manifestation of onset of the injury occurred more than 4 years before the petition is filed, and the petition is filed not more than 2 years after the effective date of the revision of the table.".

(c) DERIVATIVE PETITIONS.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa–16) is amended by adding at the end the following:

"(d) DERIVATIVE PETITIONS.—No derivative petition may be filed for compensation under the Program later than 60 days after the date on which the United States Court of Federal Claims has entered final judgment and the time for all further appeal or review has expired on the underlying claim of the person who sustained the vaccine-related injury or death upon which the derivative petition is premised.".

(d) TIMELY RESOLUTIONS OF CLAIMS.—

(1) SPECIAL MASTER DECISION.—Section 2112(d)(3)(A) of the Public Health Service Act (42 U.S.C. 300aa–12(d)(3)(A)) is amended by adding at the end the following: "For purposes of this subparagraph, the petition shall be deemed to be filed on the date on which all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, are served on the Secretary and filed with the clerk of the United States Court of Federal Claims.".

(2) COURT OF FEDERAL CLAIMS DECISION.—Section 2121(b) of the Public Health Service Act (42 U.S.C. 300aa–21(b)) is amended by adding at the end the following: "For purposes of this subsection, the petition shall be deemed to be filed on the date on which all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, are served on the Secretary and filed with the clerk of the United States Court of Federal Claims.".

SEC. ___33. ADVISORY COMMISSION ON CHILDHOOD VACCINES.

(a) SELECTION OF PERSONS INJURED BY VACCINES AS PUBLIC MEMBERS.—Section 2119(a)(1)(B) of the Public Health Service Act (42 U.S.C. 300aa–19(a)(1)(B)) is amended by striking "of whom" and all that follows and inserting the following: "of whom 1 shall be the legal representative of a child who has suffered a vaccine-related injury or death, and at least 1 other shall be either the legal representative of a child who has suffered a vaccine-related injury or death or an individual who has personally suffered a vaccine-related injury.".

(b) MANDATORY MEETING SCHEDULE ELIMINATED.—Section 2119(c) of the Public Health Service Act (42 U.S.C. 300aa–19(c)) is amended by striking "not less often than four times per year and".

SEC. ___34. CLARIFICATION OF STANDARDS OF RESPONSIBILITY.

(a) GENERAL RULE.—Section 2122(a) of the Public Health Service Act (42 U.S.C. 300aa–22(a)) is amended by striking "and (e) State law shall apply to a civil action brought for damages" and inserting "(d), and (f) State law shall apply to a civil action brought for damages or equitable relief"; and

(b) UNAVOIDABLE ADVERSE SIDE EFFECTS.—Section 2122(b)(1) of the Public Health Service Act (42 U.S.C. 300aa–22(b)(1)) is amended by inserting "or equitable relief" after "for damages".

(c) DIRECT WARNINGS.—Section 2122(c) of the Public Health Service Act (42 U.S.C. 300aa–22(c)) is amended by inserting "or equitable relief" after "for damages".

(d) CONSTRUCTION.—Section 2122(d) of the Public Health Service Act (42 U.S.C. 300aa–22(d)) is amended—

(1) by inserting "or equitable relief" after "for damages"; and

(2) by inserting "or relief" after "which damages".

(e) PAST OR PRESENT PHYSICAL INJURY.—Section 2122 of the Public Health Service Act (42 U.S.C. 300aa–22) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d) PAST OR PRESENT PHYSICAL INJURY.—No vaccine manufacturer or vaccine administrator shall be liable in a civil action brought after October 1, 1988, for equitable or monetary relief absent proof of past or present physical injury from the administration of a vaccine, nor shall any vaccine manufacturer or vaccine administrator be liable in any such civil action for claims of medical monitoring, or increased risk of harm.".

SEC. ___35. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking "under its label any vaccine set forth in the Vaccine Injury Table" and inserting "any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine"; and

(2) in the second sentence, by inserting "including any component or ingredient of any such vaccine" before the period.

SEC. ___36. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: "For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.".

SEC. ___37. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

"(7) The term 'vaccine' means any preparation or suspension, including a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.".

SEC. ___38. AMENDMENTS TO VACCINE INJURY COMPENSATION TRUST FUND.

(a) EXPANSION OF COMPENSATED LOSS.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by inserting ", or related loss," after "death".

(b) INCREASE IN LIMIT ON ADMINISTRATIVE EXPENSES.—Subparagraph (B) of section 9510(c)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking "(but not in excess of the base amount of $9,500,000 for any fiscal year)"; and

(2) by striking the period and inserting ", provided that such administrative costs shall not exceed the greater of—

"(i) the base amount of $9,500,000,

"(ii) 125 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 150 percent of the average number of claims pending in the preceding 5 years,

"(iii) 175 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 200 percent of the average number of claims pending in the preceding 5 years,

"(iv) 225 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 250 percent of the average number of claims pending in the preceding 5 years, or

"(v) 275 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 300 percent of the average number of claims pending in the preceding 5 years.".

(c) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by striking "October 18, 2000" and inserting "the date of enactment of the Improved Vaccine Affordability and Availability Act".

SEC. ___39. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

Part C of title XXI of the Public Health Service Act (42 U.S.C. 300a–25 et seq.) is amended by adding at the end the following:

"SEC. 2129. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

"(a) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Secretary shall enter into a contract with the Institute of Medicine of the National Academy of Science under which the Institute shall conduct an ongoing, comprehensive review of new scientific data on childhood vaccines (according to priorities agreed upon from time to time by the Secretary and the Institute of Medicine).

"(b) REPORTS.—Not later than 3 years after the date on which the contract is entered into under subsection (a), the Institute of

Medicine shall submit to the Secretary a report on the findings of studies conducted, including findings as to any adverse events associated with childhood vaccines, including conclusions concerning causation of adverse events by such vaccines, and other appropriate recommendations, based on such findings and conclusions.

"(c) FAILURE TO ENTER INTO CONTRACT.—If the Secretary and the Institute of Medicine are unable to enter into the contract described in subsection (a), the Secretary shall enter into a contract with another qualified nongovernmental scientific organization for the purposes described in subsections (a) and (b).

"(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003, 2004, 2005 and 2006.".

SEC. ___40. PENDING ACTIONS.

The amendments made by this title shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

SEC. ___41. REPORT.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Advisory Commission on Childhood Vaccines shall report to the Secretary of Health and Human Services regarding the status of the Vaccine Injury Compensation Trust Fund, and shall make recommendations to the Secretary regarding the allocation of funds from the Vaccine Injury Compensation Trust Fund.

SA 4344. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE —IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY

SEC. ___01. SHORT TITLE.

This title may be cited as the "Improved Vaccine Affordability and Availability Act".

Subtitle A—State Vaccine Grants

SEC. ___11. AVAILABILITY OF INFLUENZA VACCINE.

Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)) is amended by adding at the end the following:

"(3)(A) For the purpose of carrying out activities relating to influenza vaccine under the immunization program under this subsection, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 and 2004. Such authorization shall be in addition to amounts available under paragraphs (1) and (2) for such purpose.

"(B) The authorization of appropriations established in subparagraph (A) shall not be effective for a fiscal year unless the total amount appropriated under paragraphs (1) and (2) for the fiscal year is not less than such total for fiscal year 2000.

"(C) The purposes for which amounts appropriated under subparagraph (A) are available to the Secretary include providing for improved State and local infrastructure for influenza immunizations under this subsection in accordance with the following:

"(i) Increasing influenza immunization rates in populations considered by the Secretary to be at high risk for influenza-related complications and in their contacts.

"(ii) Recommending that health care providers actively target influenza vaccine that is available in September, October, and November to individuals who are at increased risk for influenza-related complications and to their contacts.

"(iii) Providing for the continued availability of influenza immunizations through December of such year, and for additional periods to the extent that influenza vaccine remains available.

"(iv) Encouraging States, as appropriate, to develop contingency plans (including plans for public and professional educational activities) for maximizing influenza immunizations for high-risk populations in the event of a delay or shortage of influenza vaccine.

"(D) The Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, periodic reports describing the activities of the Secretary under this subsection regarding influenza vaccine. The first such report shall be submitted not later than June 6, 2003, the second report shall be submitted not later than June 6, 2004, and subsequent reports shall be submitted biennially thereafter.".

SEC. ___12. PROGRAM FOR INCREASING IMMUNIZATION RATES FOR ADULTS AND ADOLESCENTS; COLLECTION OF ADDITIONAL IMMUNIZATION DATA.

(a) ACTIVITIES OF CENTERS FOR DISEASE CONTROL AND PREVENTION.—Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)), as amended by section ___11, is further amended by adding at the end the following:

"(4)(A) For the purpose of carrying out activities to increase immunization rates for adults and adolescents through the immunization program under this subsection, and for the purpose of carrying out subsection (k)(2), there are authorized to be appropriated $50,000,000 for fiscal year 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006. Such authorization is in addition to amounts available under paragraphs (1), (2), and (3) for such purposes.

"(B) In expending amounts appropriated under subparagraph (A), the Secretary shall give priority to adults and adolescents who are medically underserved and are at risk for vaccine-preventable diseases, including as appropriate populations identified through projects under subsection (k)(2)(E).

"(C) The purposes for which amounts appropriated under subparagraph (A) are available include (with respect to immunizations for adults and adolescents) the payment of the costs of storing vaccines, outreach activities to inform individuals of the availability of the immunizations, and other program expenses necessary for the establishment or operation of immunization programs carried out or supported by States or other public entities pursuant to this subsection.

"(5) The Secretary shall annually submit to Congress a report that—

"(A) evaluates the extent to which the immunization system in the United States has been effective in providing for adequate immunization rates for adults and adolescents, taking into account the applicable year 2010 health objectives established by the Secretary regarding the health status of the people of the United States; and

"(B) describes any issues identified by the Secretary that may affect such rates.

"(6) In carrying out this subsection and paragraphs (1) and (2) of subsection (k), the Secretary shall consider recommendations regarding immunizations that are made in reports issued by the Institute of Medicine.".

(b) RESEARCH, DEMONSTRATIONS, AND EDUCATION.—Section 317(k) of the Public Health Service Act (42 U.S.C. 247b(k)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) The Secretary, directly and through grants under paragraph (1), shall provide for a program of research, demonstration projects, and education in accordance with the following:

"(A) The Secretary shall coordinate with public and private entities (including nonprofit private entities), and develop and disseminate guidelines, toward the goal of ensuring that immunizations are routinely offered to adults and adolescents by public and private health care providers.

"(B) The Secretary shall cooperate with public and private entities to obtain information for the annual evaluations required in subsection (j)(5)(A).

"(C) The Secretary shall (relative to fiscal year 2001) increase the extent to which the Secretary collects data on the incidence, prevalence, and circumstances of diseases and adverse events that are experienced by adults and adolescents and may be associated with immunizations, including collecting data in cooperation with commercial laboratories.

"(D) The Secretary shall ensure that the entities with which the Secretary cooperates for purposes of subparagraphs (A) through (C) include managed care organizations, community-based organizations that provide health services, and other health care providers.

"(E) The Secretary shall provide for projects to identify racial and ethnic minority groups and other health disparity populations for which immunization rates for adults and adolescents are below such rates for the general population, and to determine the factors underlying such disparities.".

SEC. 13. IMMUNIZATION AWARENESS.

(a) DEVELOPMENT OF INFORMATION CONCERNING MENINGITIS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning bacterial meningitis and the availability and effectiveness of vaccinations for populations targeted by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention).

(2) ENTITIES.—An entity is described in this paragraph if the entity—

(A) is—

(i) a college or university; or

(ii) any other facility with a setting similar to a dormitory that houses age-appropriate populations for whom the Advisory Committee on Immunization Practices recommends such a vaccination; and

(B) is determined appropriate by the Secretary of Health and Human Services.

(b) DEVELOPMENT OF INFORMATION CONCERNING HEPATITIS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning hepatitis A and B and the availability and effectiveness of vaccinations with respect to such diseases.

(2) ENTITIES.—An entity is described in this paragraph if the entity—

(A) is—

(i) a health care clinic that serves individuals diagnosed as being infected with HIV or as having other sexually transmitted diseases;

(ii) an organization or business that counsels individuals about international travel or who arranges for such travel;

(iii) a police, fire or emergency medical services organization that responds to natural or man-made disasters or emergencies;

(iv) a prison or other detention facility;

(v) a college or university; or

(vi) a public health authority or children's health service provider in areas of intermediate or high endemicity for hepatitis A as defined by the Centers for Disease Control and Prevention; and

(B) is determined appropriate by the Secretary of Health and Human Services.

SEC. ___14. SUPPLY OF VACCINES.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall prioritize, acquire, and maintain a supply of such prioritized vaccines sufficient to provide vaccinations throughout a 6-month period.

(b) PROCEEDS.—Any proceeds received by the Secretary of Health and Human Services from the sale of vaccines contained in the supply described in subsection (a), shall be available to the Secretary for the purpose of purchasing additional vaccines for the supply. Such proceeds shall remain available until expended.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out subsection (a) such sums as may be necessary for each of fiscal years 2003 through 2008.

Subtitle B—Vaccine Injury Compensation Program

SEC. ___21. ADMINISTRATIVE REVISION OF VACCINE INJURY TABLE.

Section 2114 of the Public Health Service Act (42 U.S.C. 300aa-14) is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and for at least 60 days opportunity for public comment."; and

(2) in subsection (d), by striking "90 days" and inserting "60 days".

SEC. ___22. EQUITABLE RELIEF.

Section 2111(a)(2)(A) of the Public Health Service Act (42 U.S.C. 300aa-11(a)(2)(A)) is amended by striking "No person" and all that follows through "and—" and inserting the following: "No person may bring or maintain a civil action against a vaccine administrator or manufacturer in a State or Federal court for damages arising from, or equitable relief relating to, a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988 and no such court may award damages or equitable relief for any such vaccine-related injury or death, unless the person proves past or present physical injury and a timely petition has been filed, in accordance with section 2116 for compensation under the Program for such injury or death and—".

SEC. ___23. PARENT OR OTHER THIRD PARTY PETITIONS FOR COMPENSATION.

(a) LIMITATIONS ON DERIVATIVE PETITIONS.—Section 2111(a)(2) of the Public Health Service Act (42 U.S.C. 300aa-11(a)(2)) is amended—

(1) in subparagraph (B), by inserting "or (B)" after "subparagraph (A)";

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

"(B)(i) No parent, legal guardian, or spouse (referred to in this title as a parent or other third party) may bring or maintain a civil action against a vaccine administrator or manufacturer in a Federal or State court for damages or equitable relief relating to a vaccine-related injury or death, including damages for loss of consortium, society, companionship, or services, loss of earnings, medical or other expenses, and emotional distress, and no court may award damages or equitable relief in such an action, unless—

"(I) the person who sustained the underlying vaccine-related injury or death upon which such parent's or other third party's claim is premised has, in accordance with section 2112, been awarded compensation in a final judgment of the United States Court of Federal Claims and such judgment is subject to no further appeal or review;

"(II) such parent or other third party timely filed a derivative petition, in accordance with section 2116; and

"(III)(aa) the United States Court of Federal Claims has issued judgment under section 2112 on the derivative petition, and such parent or other third party elects under section 2121(a) to file a civil action; or

"(bb) such parent or other third party elects to withdraw such derivative petition under section 2121(b) or such petition is considered withdrawn under such section.

"(ii) Any civil action brought in accordance with this subparagraph shall be subject to the standards and procedures set forth in sections 2122 and 2123, regardless of whether the action arises directly from a vaccine-related injury or death associated with the administration of a vaccine. In a case in which the person who sustained the underlying vaccine-related injury or death upon which such parent's or other third party's civil action is premised elects under section 2121(a) to receive the compensation awarded, such parent or other third party may not bring a civil action for damages or equitable relief, and no court may award damages or equitable relief, for any injury or loss of the type set forth in section 2115(a) or that might in any way overlap with or otherwise duplicate compensation of the type available under section 2115(a).".

(b) ELIGIBLE PERSONS.—Section 2111(a)(9) of the Public Health Service Act (42 U.S.C. 300aa-11(a)(9)) is amended by striking the period and inserting "and to a parent or other third party to the extent such parent or other third party seeks damages or equitable relief relating to a vaccine-related injury or death sustained by a person who is qualified to file a petition for compensation under the Program.".

(c) PETITIONERS.—Section 2111(b) of the Public Health Service Act (42 U.S.C. 300aa-11(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "(B)" and inserting "(C)";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

"(B) Except as provided in subparagraph (C), any parent or other third party with respect to a person—

"(i) who has sustained a vaccine-related injury or death;

"(ii) who has filed a petition for compensation under the Program (or whose legal representative has filed such a petition as authorized in subparagraph (A)); and

"(iii) who has, in accordance with section 2112, been awarded compensation in a final judgment of the United States Court of Federal Claims that is subject to no further appeal or review;

may, if such parent or other third party meets the requirements of subsection (d), file a derivative petition under this section."; and

(2) in paragraph (2)—

(A) by inserting "by or on behalf of the person who sustained the vaccine-related injury or death" after "filed"; and

(B) by adding at the end the following: "A parent or other third party may file only 1 derivative petition with respect to each administration of a vaccine.".

(d) DERIVATIVE PETITION CONTENTS.—Section 2111 of the Public Health Service Act (42 U.S.C. 300aa-11) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d) DERIVATIVE PETITIONS.—

"(1) If the parent or other third party with respect to the person who sustained the vaccine-related injury or death seeks compensation under the Program, such parent or other third party shall file a timely derivative petition for compensation under the Program in accordance with this section.

"(2) Such a derivative petition shall contain—

"(A) except for records that are unavailable as described in subsection (c)(3), an affidavit, and supporting documentation, demonstrating that—

"(i) such person was, in accordance with section 2112, previously awarded compensation for the underlying vaccine-related injury or death upon which such parent's or other third party's derivative petition is premised in a final judgment of the United States Court of Federal Claims and such judgment is subject to no further appeal or review;

"(ii) the derivative petition was filed not later than 60 days after the date on which such judgment became final and subject to no further appeal or review;

"(iii) such parent or other third party suffered a loss compensable under section 2115(b) as a result of the vaccine-related injury or death sustained by such person; and

"(iv) such parent or other third party has not previously collected an award or settlement of a civil action for damages for such loss; and

"(B) records establishing such parent's or other third party's relationship to the person who sustained the vaccine-related injury or death.".

(e) DETERMINATION OF ELIGIBILITY FOR COMPENSATION.—Section 2113(a)(1) of the Public Health Service Act (42 U.S.C. 300aa-13(a)(1)) is amended—

(1) in subparagraph (A), by inserting "or, as applicable, section 2111(d)" before the comma; and

(2) in subparagraph (B), by inserting "or, as applicable, that the injury or loss described in the derivative petition is due to factors unrelated to the vaccine-related injury or death" after "the petition".

(f) COMPENSATION.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended—

(1) by redesignating subsections (b) through (j) as subsections (c) through (k), respectively;

(2) by inserting after subsection (a) the following:

"(b) DERIVATIVE PETITIONS.—Compensation awarded under the Program to a parent or other third party who files a derivative petition under section 2111 for a loss sustained as a result of a vaccine-related injury or death sustained by the injured party shall include compensation, if any, for loss of consortium, society, companionship, or services, in an amount not to exceed the lesser of $250,000 or the total amount of compensation awarded to the person who sustained the underlying vaccine-related injury or death.";

(3) in subsection (e)(2), as so redesignated by paragraph (1)—

(A) by striking "(2) and (3)" and inserting "(2), (3), and (4)"; and

(B) by inserting "and subsection (b)," after "(a),";

(4) in subsection (g), as so redesignated by paragraph (1), in paragraph (4)(B), by striking "subsection (j)" and inserting "subsection (k)";

(5) in subsection (j), as so redesignated by paragraph (1)—

(A) in paragraph (1), by striking "subsection (j)" and inserting "subsection (k)"; and

(B) in paragraph (2), by inserting ", or to a parent or other third party with respect to a person who sustained a vaccine-related injury or death," after "death"; and

(6) in subsection (k), as so redesignated by paragraph (1), by striking "subsection (f)(4)(B)" and inserting "subsection (g)(4)(B)".

SEC. ___ 24. JURISDICTION TO DISMISS ACTIONS IMPROPERLY BROUGHT.

Section 2111(a)(3) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(3)) is amended by adding at the end the following: "If any civil action which is barred under subparagraph (A) or (B) of paragraph (2) is filed or maintained in a State court, or any vaccine administrator or manufacturer is made a party to any civil action brought in State court (other than a civil action which may be brought under paragraph (2)) for damages or equitable relief for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, the civil action may be removed by the defendant or defendants to the United States Court of Federal Claims, which shall have jurisdiction over such civil action, and which shall dismiss such action. The notice required by section 1446 of title 28, United States Code, shall be filed with the United States Court of Federal Claims, and that court shall proceed in accordance with sections 1446 through 1451 of title 28, United States Code.".

SEC. ___ 25. APPLICATION.

Section 2111(a)(9) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(9)) is amended by striking "This" and inserting "Except as provided in paragraph (2), this".

SEC. ___ 26. CLARIFICATION OF WHEN INJURY IS CAUSED BY FACTOR UNRELATED TO ADMINISTRATION OF VACCINE.

Section 2113(a)(2)(B) of the Public Health Service Act (42 U.S.C. 300aa–13(a)(2)(B)) is amended—

(1) by inserting "structural lesions, genetic disorders," after "and related anoxia),";

(2) by inserting "(without regard to whether the cause of the infection, toxin, trauma, structural lesion, genetic disorder, or metabolic disturbance is known)" after "metabolic disturbances"; and

(3) by striking "but" and inserting "and".

SEC. ___ 27. INCREASE IN AWARD IN THE CASE OF A VACCINE-RELATED DEATH AND FOR PAIN AND SUFFERING.

Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)) is amended—

(1) in paragraph (2), by striking "$250,000" and inserting "$350,000"; and

(2) in paragraph (4), by striking "$250,000" and inserting "$350,000".

SEC. ___ 28. BASIS FOR CALCULATING PROJECTED LOST EARNINGS.

Section 2115(a)(3)(B) of the Public Health Service Act (42 U.S.C. 300aa–15(a)(3)(B)) is amended by striking "loss of earnings" and all that follows and inserting the following: "loss of earnings determined on the basis of the annual estimate of the average (mean) gross weekly earnings of wage and salary workers age 18 and over (excluding the incorporated self-employed) in the private nonfarm sector (which includes all industries other than agricultural production crops and livestock), as calculated annually by the Bureau of Labor Statistics from the quarter sample data of the Current Population Survey, or as calculated by such similar method as the Secretary may prescribe by regulation, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.".

SEC. ___ 29. ALLOWING COMPENSATION FOR FAMILY COUNSELING EXPENSES AND EXPENSES OF ESTABLISHING GUARDIANSHIP.

(a) FAMILY COUNSELING EXPENSES IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)) is amended by adding at the end to following:

"(5) Actual unreimbursable expenses that have been or will be incurred for family counseling as is determined to be reasonably necessary and that result from the vaccine-related injury from which the petitioner seeks compensation.".

(b) EXPENSES OF ESTABLISHING GUARDIANSHIPS IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)), as amended by subsection (a), is further amended by adding at the end the following:

"(6) Actual unreimbursable expenses that have been, or will be reasonably incurred to establish and maintain a guardianship or conservatorship for an individual who has suffered a vaccine-related injury, including attorney fees and other costs incurred in a proceeding to establish and maintain such guardianship or conservatorship.".

(c) CONFORMING AMENDMENT FOR CASES FROM 1988 AND EARLIER.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended in subsection (c), as so redesignated by section ___ 23(f)—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking "(e)" and inserting "(f))";

(3) by redesignating paragraph (3) as paragraph (5); and

(4) by inserting after paragraph (2), the following:

"(3) family counseling expenses (as provided for in paragraph (5) of subsection (a));

"(4) expenses of establishing guardianships (as provided for in paragraph (6) of subsection (a)); and".

SEC. ___ 30. ALLOWING PAYMENT OF INTERIM COSTS.

Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended in subsection (f), as so redesignated by section ___ 23(f), by adding at the end the following:

"(4) A special master or court may make an interim award of costs if—

"(A) the case involves a vaccine administered on or after October 1, 1988;

"(B) the special master or court has determined whether or not the petitioner is entitled to compensation under the Program;

"(C) the award is limited to other costs (within the meaning of paragraph (1)(B)) incurred in the proceeding; and

"(D) the petitioner provides documentation verifying the expenditure of the amount for which compensation is sought.".

SEC. ___ 31. PROCEDURE FOR PAYING ATTORNEYS' FEES.

Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15), is amended in subsection (f), as so redesignated by section ___ 23(f) and amended by section ___ 30, by adding at the end the following:

"(5) When a special master or court awards attorney fees or costs under paragraph (1) or (4), it may order that such fees or costs be payable solely to the petitioner's attorney if—

"(A) the petitioner expressly consents; or

"(B) the special master or court determines, after affording to the Secretary and to all interested persons the opportunity to submit relevant information, that—

"(i) the petitioner cannot be located or refuses to respond to a request by the special master or court for information, and there is no practical alternative means to ensure that the attorney will be reimbursed for such fees or costs expeditiously; or

"(ii) there are otherwise exceptional circumstances and good cause for paying such fees or costs solely to the petitioner's attorney.".

SEC. ___ 32. EXTENSION OF STATUTE OF LIMITATIONS.

(a) GENERAL RULE.—Section 2116(a) of the Public Health Service Act (42 U.S.C. 300aa–16(a)) is amended—

(1) in paragraph (2) by striking "36 months" and inserting "6 years"; and

(2) in paragraph (3), by striking "48 months" and inserting "6 years".

(b) CLAIMS BASED ON REVISIONS TO TABLE.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa–16) is amended by striking subsection (b) and inserting the following:

"(b) EFFECT OF REVISED TABLE.—If at any time the Vaccine Injury Table is revised and the effect of such revision is to make an individual eligible for compensation under the program, where, before such revision, such individual was not eligible for compensation under the program, or to significantly increase the likelihood that an individual will be able to obtain compensation under the program, such person may, and shall before filing a civil action for equitable relief or monetary damages, notwithstanding section 2111(b)(2), file a petition for such compensation if—

"(1) the vaccine-related death or injury with respect to which the petition is filed occurred not more than 8 years before the effective date of the revision of the table; and

"(2) either—

"(A) the petition satisfies the conditions described in subsection (a); or

"(B) the date of the occurrence of the first symptom or manifestation of onset of the injury occurred more than 4 years before the petition is filed, and the petition is filed not more than 2 years after the effective date of the revision of the table.".

(c) Derivative Petitions.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa-16) is amended by adding at the end the following:

"(d) Derivative Petitions.—No derivative petition may be filed for compensation under the Program later than 60 days after the date on which the United States Court of Federal Claims has entered final judgment and the time for all further appeal or review has expired on the underlying claim of the person who sustained the vaccine-related injury or death upon which the derivative petition is premised.".

(d) Timely Resolutions of Claims.—

(1) Special master decision.—Section 2112(d)(3)(A) of the Public Health Service Act (42 U.S.C. 300aa-12(d)(3)(A)) is amended by adding at the end the following: "For purposes of this subparagraph, the petition shall be deemed to be filed on the date on which all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, are served on the Secretary and filed with the clerk of the United States Court of Federal Claims.".

(2) Court of federal claims decision.—Section 2121(b) of the Public Health Service Act (42 U.S.C. 300aa-21(b)) is amended by adding at the end the following: "For purposes of this subsection, the petition shall be deemed to be filed on the date on which all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, are served on the Secretary and filed with the clerk of the United States Court of Federal Claims.".

SEC. ___33. ADVISORY COMMISSION ON CHILDHOOD VACCINES.

(a) Selection of Persons Injured by Vaccines as Public Members.—Section 2119(a)(1)(B) of the Public Health Service Act (42 U.S.C. 300aa-19(a)(1)(B)) is amended by striking "of whom" and all that follows and inserting the following: "of whom 1 shall be the legal representative of a child who has suffered a vaccine-related injury or death, and at least 1 other shall be either the legal representative of a child who has suffered a vaccine-related injury or death or an individual who has personally suffered a vaccine-related injury.".

(b) Mandatory Meeting Schedule Eliminated.—Section 2119(c) of the Public Health Service Act (42 U.S.C. 300aa-19(c)) is amended by striking "not less often than four times per year and".

SEC. ___34. CLARIFICATION OF STANDARDS OF RESPONSIBILITY.

(a) General Rule.—Section 2122(a) of the Public Health Service Act (42 U.S.C. 300aa-22(a)) is amended by striking "and (e) State law shall apply to a civil action brought for damages" and inserting "(d), and (f) State law shall apply to a civil action brought for damages or equitable relief"; and

(b) Unavoidable Adverse Side Effects.—Section 2122(b)(1) of the Public Health Service Act (42 U.S.C. 300aa-22(b)(1)) is amended by inserting "or equitable relief" after "for damages".

(c) Direct Warnings.—Section 2122(c) of the Public Health Service Act (42 U.S.C. 300aa-22(c)) is amended by inserting "or equitable relief" after "for damages".

(d) Construction.—Section 2122(d) of the Public Health Service Act (42 U.S.C. 300aa-22(d)) is amended—

(1) by inserting "or equitable relief" after "for damages"; and

(2) by inserting "or relief" after "which damages".

(e) Past or Present Physical Injury.—Section 2122 of the Public Health Service Act (42 U.S.C. 300aa-22) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d) Past or Present Physical Injury.—No vaccine manufacturer or vaccine administrator shall be liable in a civil action brought after October 1, 1988, for equitable or monetary relief absent proof of past or present physical injury from the administration of a vaccine, nor shall any vaccine manufacturer or vaccine administrator be liable in any such civil action for claims of medical monitoring, or increased risk of harm.".

SEC. ___35. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa-33(3)) is amended—

(1) in the first sentence, by striking "under its label any vaccine set forth in the Vaccine Injury Table" and inserting "any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine"; and

(2) in the second sentence, by inserting "including any component or ingredient of any such vaccine" before the period.

SEC. ___36. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa-33(5)) is amended by adding at the end the following: "For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.".

SEC. ___37. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa-33) is amended by adding at the end the following:

"(7) The term 'vaccine' means any preparation or suspension, including a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.".

SEC. ___38. AMENDMENTS TO VACCINE INJURY COMPENSATION TRUST FUND.

(a) Expansion of Compensated Loss.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by inserting ", or related loss," after "death".

(b) Increase in Limit on Administrative Expenses.—Subparagraph (B) of section 9510(c)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking "(but not in excess of the base amount of $9,500,000 for any fiscal year)"; and

(2) by striking the period and inserting ", provided that such administrative costs shall not exceed the greater of—

"(i) the base amount of $9,500,000,

"(ii) 125 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 150 percent of the average number of claims pending in the preceding 5 years,

"(iii) 175 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 200 percent of the average number of claims pending in the preceding 5 years,

"(iv) 225 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 250 percent of the average number of claims pending in the preceding 5 years, or

"(v) 275 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 300 percent of the average number of claims pending in the preceding 5 years.".

(c) Conforming Amendment.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by striking "October 18, 2000" and inserting "the date of enactment of the Improved Vaccine Affordability and Availability Act".

SEC. ___39. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

Part C of title XXI of the Public Health Service Act (42 U.S.C. 300a-25 et seq.) is amended by adding at the end the following:

"SEC. 2129. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

"(a) In General.—Not later than 6 months after the date of enactment of this section, the Secretary shall enter into a contract with the Institute of Medicine of the National Academy of Science under which the Institute shall conduct an ongoing, comprehensive review of new scientific data on childhood vaccines (according to priorities agreed upon from time to time by the Secretary and the Institute of Medicine).

"(b) Reports.—Not later than 3 years after the date on which the contract is entered into under subsection (a), the Institute of Medicine shall submit to the Secretary a report on the findings of studies conducted, including findings as to any adverse events associated with childhood vaccines, including conclusions concerning causation of adverse events by such vaccines, and other appropriate recommendations, based on such findings and conclusions.

"(c) Failure To Enter Into Contract.—If the Secretary and the Institute of Medicine are unable to enter into the contract described in subsection (a), the Secretary shall enter into a contract with another qualified nongovernmental scientific organization for the purposes described in subsections (a) and (b).

"(d) Authorization of Appropriations.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003, 2004, 2005 and 2006.".

SEC. ___40. PENDING ACTIONS.

The amendments made by this title shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

SEC. ___41. REPORT.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Advisory Commission on Childhood Vaccines shall report to the Secretary of Health and Human Services regarding the status of the Vaccine Injury Compensation Trust Fund, and shall make recommendations to the Secretary regarding the allocation of funds from the Vaccine Injury Compensation Trust Fund.

SA 4345. Mr. GRAHAM (for himself, Mr. Smith of Oregon, Mr. Miller, Mrs. Lincoln, Mr. Bingaman, Mr. Kennedy, and Ms. Stabenow) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. Dorgan (for himself, Mr. Wellstone, Mr. Jeffords, Ms. Stabenow, Ms. Collins, Mr. Levin, Mr. Johnson, Mr. Miller, Mr. Durbin, Mr. Feingold, and Mr. Harkin)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

At the end, add the following:

TITLE II—MEDICARE OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM

SEC. 201. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This title may be cited as the "Medicare Prescription Drug Cost Protection Act of 2002".

(b) Table of Contents.—The table of contents of this title is as follows:

Sec. 201. Short title; table of contents.
Sec. 202. Medicare outpatient prescription drug benefit program.

"Part D—Outpatient Prescription Drug Benefit Program

"Sec. 1860. Definitions.
"Sec. 1860A. Establishment of outpatient prescription drug benefit program.
"Sec. 1860B. Enrollment under program.
"Sec. 1860C. Enrollment in a plan.
"Sec. 1860D. Providing information to beneficiaries.
"Sec. 1860E. No premium for enrollment.
"Sec. 1860F. Outpatient prescription drug benefits.
"Sec. 1860G. Entities eligible to provide outpatient drug benefit.
"Sec. 1860H. Minimum standards for eligible entities.
"Sec. 1860I. Payments.
"Sec. 1860J. Employer incentive program for employment-based retiree drug coverage.
"Sec. 1860K. Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.
"Sec. 1860L. Medicare Prescription Drug Advisory Committee.".
Sec. 203. Part D benefits under Medicare+Choice plans.
Sec. 204. Additional assistance for low-income beneficiaries.
Sec. 205. Medigap revisions.
Sec. 206. Comprehensive immunosuppressive drug coverage for transplant patients under part B.
Sec. 207. HHS study and report on uniform pharmacy benefit cards.
Sec. 208. GAO study and biennial reports on competition and savings.
Sec. 209. Expansion of membership and duties of Medicare Payment Advisory Commission (MedPAC).

SEC. 202. MEDICARE OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM.

(a) Establishment.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by redesignating part D as part E and by inserting after part C the following new part:

"PART D—OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM

"DEFINITIONS

"Sec. 1860. In this part:

"(1) Covered outpatient drug.—

"(A) In general.—Except as provided in subparagraph (B), the term 'covered outpatient drug' means any of the following products:

"(i) A drug which may be dispensed only upon prescription, and—

"(I) which is approved for safety and effectiveness as a prescription drug under section 505 of the Federal Food, Drug, and Cosmetic Act;

"(II)(aa) which was commercially used or sold in the United States before the date of enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (bb) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

"(III)(aa) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (bb) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling.

"(ii) A biological product which—

"(I) may only be dispensed upon prescription;

"(II) is licensed under section 351 of the Public Health Service Act; and

"(III) is produced at an establishment licensed under such section to produce such product.

"(iii) Insulin approved under appropriate Federal law, including needles and syringes for the administration of such insulin.

"(iv) A prescribed drug or biological product that would meet the requirements of clause (i) or (ii) except that it is available over-the-counter in addition to being available upon prescription.

"(B) Exclusion.—The term 'covered outpatient drug' does not include any product—

"(i) except as provided in subparagraph (A)(iv), which may be distributed to individuals without a prescription;

"(ii) for which payment is available under part A or B or would be available under part B but for the application of a deductible under such part (unless payment for such product is not available because benefits under part A or B have been exhausted), determined, except as provided in subparagraph (C), without regard to whether the beneficiary involved is entitled to benefits under part A or enrolled under part B; or

"(iii) except for agents used to promote smoking cessation and agents used for the treatment of obesity, for which coverage may be excluded or restricted under section 1927(d)(2).

"(C) Clarification regarding immunosuppressive drugs.—In the case of a beneficiary who is not eligible for any coverage under part B of drugs described in section 1861(s)(2)(J) because of the requirements under such section (and would not be so eligible if the individual were enrolled under such part), the term 'covered outpatient drug' shall include such drugs if the drugs would otherwise be described in subparagraph (A).

"(2) Eligible beneficiary.—The term 'eligible beneficiary' means an individual that is entitled to benefits under part A or enrolled under part B.

"(3) Eligible entity.—The term 'eligible entity' means any entity that the Secretary determines to be appropriate to provide eligible beneficiaries with covered outpatient drugs under a plan under this part, including—

"(A) a pharmacy benefit management company;

"(B) a retail pharmacy delivery system;

"(C) a health plan or insurer;

"(D) a State (through mechanisms established under a State plan under title XIX);

"(E) any other entity approved by the Secretary; or

"(F) any combination of the entities described in subparagraphs (A) through (E) if the Secretary determines that such combination—

"(i) increases the scope or efficiency of the provision of benefits under this part; and

"(ii) is not anticompetitive.

"(4) Medicare+Choice organization; Medicare+Choice plan.—The terms 'Medicare+Choice organization' and 'Medicare+Choice plan' have the meanings given such terms in subsections (a)(1) and (b)(1), respectively, of section 1859 (relating to definitions relating to Medicare+Choice organizations).

"(5) Prescription drug account.—The term 'Prescription Drug Account' means the Prescription Drug Account (as established under section 1860K) in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

"ESTABLISHMENT OF OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM

"Sec. 1860A. (a) Provision of Benefit.—

"(1) In general.—Beginning in 2005, the Secretary shall provide for and administer an outpatient prescription drug benefit program under which each eligible beneficiary enrolled under this part shall be provided with coverage of covered outpatient drugs as follows:

"(A) Medicare+Choice plan.—If the eligible beneficiary is eligible to enroll in a Medicare+Choice plan, the beneficiary—

"(i) may enroll in such a plan; and

"(ii) if so enrolled, shall obtain coverage of covered outpatient drugs through such plan.

"(B) Medicare prescription drug plan.—If the eligible beneficiary is not enrolled in a Medicare+Choice plan, the beneficiary shall obtain coverage of covered outpatient drugs through enrollment in a plan offered by an eligible entity with a contract under this part.

"(2) Voluntary nature of program.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program established under this part.

"(3) Scope of benefits.—The program established under this part shall provide for coverage of all therapeutic categories and classes of covered outpatient drugs.

"(b) Financing.—The costs of providing benefits under this part shall be payable from the Prescription Drug Account.

"ENROLLMENT UNDER PROGRAM

"Sec. 1860B. (a) Establishment of Process.—

"(1) In general.—The Secretary shall establish a process through which an eligible beneficiary (including an eligible beneficiary enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization) may make an election at any time to enroll under the program under this part.

“(2) ENROLLMENT AND REENROLLMENT AT ANY TIME.—Under the process established under paragraph (1), an eligible beneficiary, beginning January 1, 2005, may—

“(A) make an election to enroll under the program under this part at any time; and

“(B) terminate such election at any time and reenroll under such program at any time.

“(3) OPEN ENROLLMENT PERIOD PRIOR TO JANUARY 1, 2005, FOR INDIVIDUALS CURRENTLY ELIGIBLE.—The Secretary shall establish an open enrollment period of not less than 5 months to ensure that—

“(A) an individual who meets or will meet the definition of an eligible beneficiary under section 1860(2) as of January 1, 2005, is permitted to enroll under the program under this part prior to such date; and

“(B) coverage under this part for such an individual is effective as of such date.

“(4) REQUIREMENT OF ENROLLMENT.—An eligible beneficiary must be enrolled under this part in order to be eligible to receive coverage of covered outpatient drugs under this title.

“(5) LIMITATION.—Coverage under this part shall not begin prior to January 1, 2005.

“(b) TERMINATION.—

“(1) IN GENERAL.—The causes of termination specified in section 1838 shall apply to this part in a similar manner as such causes apply to part B.

“(2) COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PARTS A AND B.—

“(A) IN GENERAL.—In addition to the causes of termination specified in paragraph (1), the Secretary shall terminate an individual's coverage under this part if the individual is no longer enrolled in either part A or B.

“(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of termination of coverage under part A or (if later) under part B.

“(3) PROCEDURES REGARDING TERMINATION OF A BENEFICIARY UNDER A PLAN.—The Secretary shall establish procedures for determining the status of an eligible beneficiary's enrollment under this part if the beneficiary's enrollment in a plan offered by an eligible entity under this part is terminated by the entity for cause (pursuant to procedures established by the Secretary under section 1860C(a)(1)).

“ENROLLMENT IN A PLAN

“SEC. 1860C. (a) PROCESS.—

“(1) ESTABLISHMENT.—

“(A) ELECTION.—

“(i) IN GENERAL.—The Secretary shall establish a process through which an eligible beneficiary who is enrolled under this part but not enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization—

“(I) shall make an annual election to enroll in any plan offered by an eligible entity that has been awarded a contract under this part and serves the geographic area in which the beneficiary resides; and

“(II) may make an annual election to change the election under this clause.

“(ii) DEFAULT ENROLLMENT.—Such process shall include for the default enrollment in such a plan in the case of an eligible beneficiary who is enrolled under this part but who has failed to make an election of such a plan.

“(B) RULES.—In establishing the process under subparagraph (A), the Secretary shall—

“(i) use rules similar to the rules for enrollment, disenrollment, and termination of enrollment with a Medicare+Choice plan under section 1851, including—

“(I) the establishment of special election periods under subsection (e)(4) of such section; and

“(II) the application of the guaranteed issue and renewal provisions of subsection (g) of such section (other than paragraph (3)(C)(i), relating to default enrollment); and

“(ii) coordinate enrollments, disenrollments, and terminations of enrollment under part C with enrollments, disenrollments, and terminations of enrollment under this part.

“(2) FIRST ENROLLMENT PERIOD FOR PLAN ENROLLMENT FOR INDIVIDUALS CURRENTLY ELIGIBLE.—The process developed under paragraph (1) shall—

“(A) ensure—

“(i) that an individual who meets or will meet the definition of an eligible beneficiary under section 1860(2) as of January 1, 2005, is permitted to enroll with an eligible entity prior to January 1, 2005; and

“(ii) that coverage under this part for such an individual is effective as of such date; and

“(B) be coordinated with the open enrollment described in section 1860B(a)(3).

“(b) MEDICARE+CHOICE ENROLLEES.—

“(1) IN GENERAL.—An eligible beneficiary who is enrolled under this part and enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization shall receive coverage of covered outpatient drugs under this part through such plan.

“(2) RULES.—Enrollment in a Medicare+Choice plan is subject to the rules for enrollment in such a plan under section 1851.

“PROVIDING INFORMATION TO BENEFICIARIES

“SEC. 1860D. (a) ACTIVITIES.—

“(1) IN GENERAL.—The Secretary shall conduct activities that are designed to broadly disseminate information to eligible beneficiaries (and prospective eligible beneficiaries) regarding the coverage provided under this part.

“(2) SPECIAL RULE FOR FIRST ENROLLMENT UNDER THE PROGRAM.—To the extent practicable, the activities described in paragraph (1) shall ensure that individuals who meet or will meet the definition of an eligible beneficiary under section 1860(2) as of January 1, 2005, and other prospective eligible beneficiaries, are provided with such information at least 30 days prior to the open enrollment period described in section 1860B(a)(3).

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—The activities described in subsection (a) shall—

“(A) be similar to the activities performed by the Secretary under section 1851(d);

“(B) be coordinated with the activities performed by the Secretary under such section and under section 1804; and

“(C) provide for the dissemination of information comparing the plans offered by eligible entities under this part that are available to eligible beneficiaries residing in an area.

“(2) COMPARATIVE INFORMATION.—The comparative information described in paragraph (1)(C) shall include a comparison of the following:

“(A) BENEFITS.—The benefits provided under the plan, including the negotiated prices beneficiaries will be charged for covered outpatient drugs, any preferred pharmacy networks used by the eligible entity under the plan, and the formularies and appeals processes under the plan.

“(B) QUALITY AND PERFORMANCE.—To the extent available, the quality and performance of the eligible entity offering the plan.

“(C) BENEFICIARY COST-SHARING.—The cost-sharing required of eligible beneficiaries under the plan.

“(D) CONSUMER SATISFACTION SURVEYS.—To the extent available, the results of consumer satisfaction surveys regarding the plan and the eligible entity offering such plan.

“(E) ADDITIONAL INFORMATION.—Such additional information as the Secretary may prescribe.

“(3) INFORMATION STANDARDS.—The Secretary shall develop standards to ensure that the information provided to eligible beneficiaries under this part is complete, accurate, and uniform.

“(c) USE OF MEDICARE CONSUMER COALITIONS TO PROVIDE INFORMATION.—

“(1) IN GENERAL.—The Secretary may contract with Medicare Consumer Coalitions to conduct the informational activities under—

“(A) this section;

“(B) section 1851(d); and

“(C) section 1804.

“(2) SELECTION OF COALITIONS.—If the Secretary determines the use of Medicare Consumer Coalitions to be appropriate, the Secretary shall—

“(A) develop and disseminate, in such areas as the Secretary determines appropriate, a request for proposals for Medicare Consumer Coalitions to contract with the Secretary in order to conduct any of the informational activities described in paragraph (1); and

“(B) select a proposal of a Medicare Consumer Coalition to conduct the informational activities in each such area, with a preference for broad participation by organizations with experience in providing information to beneficiaries under this title.

“(3) PAYMENT TO MEDICARE CONSUMER COALITIONS.—The Secretary shall make payments to Medicare Consumer Coalitions contracting under this subsection in such amounts and in such manner as the Secretary determines appropriate.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to contract with Medicare Consumer Coalitions under this section.

“(5) MEDICARE CONSUMER COALITION DEFINED.—In this subsection, the term ‘Medicare Consumer Coalition’ means an entity that is a nonprofit organization operated under the direction of a board of directors that is primarily composed of beneficiaries under this title.

“NO PREMIUM FOR ENROLLMENT

“SEC. 1860E. (a) NO PREMIUM FOR ENROLLMENT.—An eligible beneficiary enrolled under the program under this part shall not be responsible for the payment of a premium for such enrollment.

“(b) ANNUAL ENROLLMENT FEE.—

“(1) IN GENERAL.—Subject to paragraph (2), enrollment under the program under this part is conditioned upon payment of an annual enrollment fee of $25.

“(2) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—For any year after 2005, the annual enrollment fee specified in paragraph (1) is equal to the annual enrollment fee determined under such paragraph (or this paragraph) for the previous year increased by the annual percentage increase described in subparagraph (B).

"(B) ANNUAL PERCENTAGE INCREASE SPECIFIED.—The annual percentage increase specified in this subparagraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for covered outpatient drugs in the United States for medicare beneficiaries, as determined by the Secretary for the 12-month period ending in July of the previous year.

"(C) ROUNDING.—If any amount determined under subparagraph (A) is not a multiple of $1, such amount shall be rounded to the nearest multiple of $1.

"(3) COLLECTION.—

"(A) IN GENERAL.—Unless the eligible beneficiary makes an election under subparagraph (B), the annual enrollment fee described in paragraph (1) shall be collected and credited to the Prescription Drug Account in a similar manner as the monthly premium determined under section 1839 is collected and credited to the Federal Supplementary Medical Insurance Trust Fund under section 1840.

"(B) DIRECT PAYMENT.—An eligible beneficiary may elect to pay the annual enrollment fee directly to the Secretary or in any other manner approved by the Secretary. The Secretary shall establish procedures for making such an election.

"OUTPATIENT PRESCRIPTION DRUG BENEFITS

"SEC. 1860F. (a) REQUIREMENT.—A plan offered by an eligible entity under this part shall provide eligible beneficiaries enrolled in such plan with—

"(1) coverage of covered outpatient drugs—

"(A) without the application of any deductible; and

"(B) with the cost-sharing described in subsection (b); and

"(2) access to negotiated prices for such drugs under subsection (c).

"(b) COST-SHARING.—

"(1) COINSURANCE FOR FORMULARY DRUGS BEFORE CATASTROPHIC LIMIT REACHED.—Subject to paragraphs (2), (3), and (4), in the case of a covered outpatient drug that is included in the formulary established by the eligible entity (pursuant to section 1860H(c)) for the plan and that is dispensed to an eligible beneficiary, the beneficiary shall be responsible for coinsurance for the drug in an amount equal to the negotiated price for the drug (as reported to the Secretary pursuant to section 1860H(a)(6)(A)) minus 5 percent of such negotiated price.

"(2) BENEFICIARY RESPONSIBLE FOR NEGOTIATED PRICE FOR NONFORMULARY DRUGS BEFORE CATASTROPHIC LIMIT REACHED.—

"(A) IN GENERAL.—In the case of a covered outpatient drug that is not included in the formulary for the plan (and not treated as a brand name drug on the formulary under paragraph (B)) and that is dispensed to an eligible beneficiary in a year before the beneficiary has reached the catastrophic limit under paragraph (3) for the year, the beneficiary shall be responsible for the negotiated price for the drug (as reported to the Secretary pursuant to section 1860H(a)(6)(A)).

"(B) TREATMENT OF MEDICALLY NECESSARY NONFORMULARY DRUGS.—The eligible entity shall treat a drug not included in the formulary for the plan as a brand name drug on the formulary if such nonformulary drug is determined (pursuant to subparagraph (D) or (E) of section 1860H(a)(4)) to be medically necessary, and the beneficiary shall be responsible for the coinsurance described in paragraph (1).

"(3) COPAYMENT ONCE EXPENSES EQUAL ANNUAL CATASTROPHIC LIMIT.—

"(A) IN GENERAL.—Subject to paragraphs (4) and (5), in the case of a covered outpatient drug (regardless of whether it is included in the formulary or not so included) that is dispensed in a year to an eligible beneficiary after the beneficiary has incurred costs (as described in subparagraph (C)) for such drugs in a year equal to the annual catastrophic limit specified in subparagraph (B), the beneficiary shall be responsible for a copayment for the drug in an amount equal to $10 for each prescription (as defined in subparagraph (D)) of such drug.

"(B) ANNUAL CATASTROPHIC LIMIT.—Subject to paragraph (5), for purposes of this part, the 'annual catastrophic limit' specified in this subparagraph is equal to $3,300.

"(C) APPLICATION.—In applying subparagraph (A)—

"(i) incurred costs shall only include costs incurred for the cost-sharing described in this subsection (including the cost-sharing described in paragraph (2)(A)); but

"(ii) such costs shall be treated as incurred only if they are paid by the individual (or by another individual, such as a family member, on behalf of the individual), under title XIX, or by a State pharmacy assistance program, and the individual (or other individual) is not reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement for such costs.

"(D) PRESCRIPTION DEFINED.—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the term 'prescription' means—

"(I) a 30-day supply for a maintenance drug; and

"(II) a supply necessary for the length of the course that is typical of current practice for a nonmaintenance drug.

"(ii) SPECIAL RULE FOR MAIL ORDER DRUGS.—In the case of drugs obtained by mail order, the term 'prescription' may be for a supply that is longer than the period specified in subclause (I) or (II) of clause (i) (as the case may be) if the Secretary determines that the longer supply will not result in an increase in the expenditures made from the Prescription Drug Account.

"(E) COPAYMENT MAY NOT EXCEED NEGOTIATED PRICE.—If the amount of the copayment for a covered outpatient drug that would otherwise be required under this paragraph (but for this subparagraph) is greater than the negotiated price for the drug (as reported to the Secretary pursuant to section 1860H(a)(6)(A)), then the amount of such copayment shall be reduced to an amount equal to such negotiated price.

"(4) REDUCTION BY ELIGIBLE ENTITY.—An eligible entity offering a plan under this part may reduce the coinsurance amount that an eligible beneficiary enrolled in the plan is subject to under paragraph (1) or the copayment amount that such a beneficiary is subject to under paragraph (3) if the Secretary determines that such reduction—

"(A) is tied to the performance requirements described in section 1860I(b)(1)(C); and

"(B) will not result in an increase in the expenditures made from the Prescription Drug Account.

"(5) INFLATION ADJUSTMENT FOR COPAYMENT AND ANNUAL CATASTROPHIC LIMIT.—

"(A) IN GENERAL.—For any year after 2005—

"(i) the copayment amount described in paragraph (3)(A) is equal to the copayment amount determined under such paragraph (or this paragraph) for the previous year, increased by the annual percentage increase described in section 1860E(b)(2)(B); and

"(ii) the annual catastrophic limit specified in paragraph (3)(B) is equal to the annual catastrophic limit determined under such paragraph (or this paragraph) for the previous year increased by the annual percentage increase described in section 1860E(b)(2)(B).

"(B) ROUNDING.—If any amount determined under clause (i) or (ii) of subparagraph (A) is not a multiple of $1, such amount shall be rounded to the nearest multiple of $1.

"(c) ACCESS TO NEGOTIATED PRICES.—

"(1) ACCESS.—Under a plan offered by an eligible entity with a contract under this part, the eligible entity offering such plan shall provide eligible beneficiaries enrolled in such plan with access to negotiated prices (including applicable discounts) used for payment for covered outpatient drugs, regardless of the fact that only partial benefits or no benefits (because of the application of subsection (b)(2)(A)) may be payable under the coverage with respect to such drugs because of the application of the cost-sharing under subsection (b).

"(2) MEDICAID RELATED PROVISIONS.—Insofar as a State elects to provide medical assistance under title XIX for a drug based on the prices negotiated under a plan under this part, the requirements of section 1927 shall not apply to such drugs. The prices negotiated under a plan under this part with respect to covered outpatient drugs, under a Medicare+Choice plan with respect to such drugs, or under a qualified retiree prescription drug plan (as defined in section 1860J(e)(3)) with respect to such drugs, on behalf of eligible beneficiaries, shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C).

"ENTITIES ELIGIBLE TO PROVIDE OUTPATIENT DRUG BENEFIT

"SEC. 1860G. (a) ESTABLISHMENT OF PANELS OF PLANS AVAILABLE IN AN AREA.—

"(1) IN GENERAL.—The Secretary shall establish procedures under which the Secretary—

"(A) accepts bids submitted by eligible entities for the plans which such entities intend to offer in an area established under subsection (b); and

"(B) awards contracts to such entities to provide such plans to eligible beneficiaries in the area.

"(2) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into contracts under this part.

"(b) AREA FOR CONTRACTS.—

"(1) REGIONAL BASIS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and subject to paragraph (2), the contract entered into between the Secretary and an eligible entity with respect to a plan shall require the eligible entity to provide coverage of covered outpatient drugs under the plan in a region established by the Secretary under paragraph (2).

"(B) PARTIAL REGIONAL BASIS.—

"(i) IN GENERAL.—If determined appropriate by the Secretary, the Secretary may permit the coverage described in subparagraph (A) to be provided in a partial region determined appropriate by the Secretary.

"(ii) REQUIREMENTS.—If the Secretary permits coverage pursuant to clause (i), the Secretary shall ensure that the partial region in which coverage is provided is—

"(I) at least the size of the commercial service area of the eligible entity for that area; and

"(II) not smaller than a State.

"(2) ESTABLISHMENT OF REGIONS.—

"(A) In general.—In establishing regions for contracts under this part, the Secretary shall—

"(i) take into account the number of eligible beneficiaries in an area in order to encourage participation by eligible entities;

"(ii) ensure that there are at least 10 different regions in the United States; and

"(iii) ensure that a region (or partial region under paragraph (1)(B)) would not discriminate based on the health or economic status of potential enrollees.

"(B) No administrative or judicial review.—The establishment of regions and partial regions under this section shall not be subject to administrative or judicial review.

"(c) Submission of Bids.—

"(1) Submission.—

"(A) In general.—Subject to subparagraph (B), each eligible entity desiring to offer a plan under this part in an area shall submit a bid with respect to such plan to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

"(B) Bid that covers multiple areas.—The Secretary shall permit an eligible entity to submit a single bid for multiple areas if the bid is applicable to all such areas.

"(2) Required information.—The bid described in paragraph (1) shall include—

"(A) a proposal for the estimated negotiated prices of covered outpatient drugs and the projected annual increases in such prices, including differentials between formulary and nonformulary prices, if applicable;

"(B) a statement regarding the amount that the entity will charge the Secretary for managing, administering, and delivering the benefits under the contract;

"(C) a statement regarding whether the entity will reduce the applicable coinsurance or copayment amounts pursuant to section 1860F(b)(4)) and if so, the amount of such reduction and how such reduction is tied to the performance requirements described in section 1860I(b)(1)(C);

"(D) a detailed description of the performance requirements for which the payments to the entity will be subject to risk pursuant to section 1860I(b)(1)(C);

"(E) a detailed description of access to pharmacy services provided under the plan;

"(F) with respect to the formulary used by the entity, a detailed description of the procedures and standards the entity will use for—

"(i) adding new drugs to a therapeutic category or class within the formulary; and

"(ii) determining when and how often the formulary should be modified;

"(G) a detailed description of any ownership or shared financial interests with other entities involved in the delivery of the benefit as proposed under the plan;

"(H) a detailed description of the entity's estimated marketing and advertising expenditures related to enrolling eligible beneficiaries under the plan and retaining such enrollment; and

"(I) such other information that the Secretary determines is necessary in order to carry out this part, including information relating to the bidding process under this part.

"(d) Access to Benefits in Certain Areas.—

"(1) Areas not covered by contracts.—The Secretary shall develop procedures for the provision of covered outpatient drugs under this part to each eligible beneficiary enrolled under this part that resides in an area that is not covered by any contract under this part.

"(2) Beneficiaries residing in different locations.—The Secretary shall develop procedures to ensure that each eligible beneficiary enrolled under this part that resides in different areas in a year is provided the benefits under this part throughout the entire year.

"(e) Awarding of Contracts.—

"(1) Number of contracts.—The Secretary shall, consistent with the requirements of this part and the goal of containing costs under this title, award in a competitive manner at least 2 contracts to offer a plan in an area, unless only 1 bidding entity (and the plan offered by the entity) meets the minimum standards specified under this part and by the Secretary.

"(2) Determination.—In determining which of the eligible entities that submitted bids that meet the minimum standards specified under this part and by the Secretary to award a contract, the Secretary shall consider the comparative merits of each bid, as determined on the basis of the past performance of the entity and other relevant factors, with respect to—

"(A) how well the entity (and the plan offered by the entity) meet such minimum standards;

"(B) the amount that the entity will charge the Secretary for managing, administering, and delivering the benefits under the contract;

"(C) the performance requirements for which the payments to the entity will be subject to risk pursuant to section 1860I(b)(1)(C);

"(D) the proposed negotiated prices of covered outpatient drugs and annual increases in such prices;

"(E) the factors described in section 1860D(b)(2);

"(F) prior experience of the entity in managing, administering, and delivering a prescription drug benefit program;

"(G) effectiveness of the entity and plan in containing costs through pricing incentives and utilization management; and

"(H) such other factors as the Secretary deems necessary to evaluate the merits of each bid.

"(3) Exception to conflict of interest rules.—In awarding contracts under this part, the Secretary may waive conflict of interest laws generally applicable to Federal acquisitions (subject to such safeguards as the Secretary may find necessary to impose) in circumstances where the Secretary finds that such waiver—

"(A) is not inconsistent with the—

"(i) purposes of the programs under this title; or

"(ii) best interests of beneficiaries enrolled under this part; and

"(B) permits a sufficient level of competition for such contracts, promotes efficiency of benefits administration, or otherwise serves the objectives of the program under this part.

"(4) No administrative or judicial review.—The determination of the Secretary to award or not award a contract to an eligible entity with respect to a plan under this part shall not be subject to administrative or judicial review.

"(f) Approval of Marketing Material and Application Forms.—The provisions of section 1851(h) shall apply to marketing material and application forms under this part in the same manner as such provisions apply to marketing material and application forms under part C.

"(g) Duration of Contracts.—Each contract awarded under this part shall be for a term of at least 2 years but not more than 5 years, as determined by the Secretary.

"(h) Financial Incentives for Pharmacies To Participate in Certain Programs and Systems.—The Secretary may establish and provide for incentives for pharmacies to participate in the following:

"(1) Cost and drug utilization management programs.—Effective cost and drug utilization management programs, including such programs that promote appropriate use of generic drugs in order to maximize savings to the program under this part.

"(2) Quality assurance measures and systems.—Quality assurance measures and systems to reduce medical errors.

"(3) Programs to control fraud, abuse, and waste.—Programs to control fraud, abuse, and waste.

"MINIMUM STANDARDS FOR ELIGIBLE ENTITIES

"Sec. 1860H. (a) In General.—The Secretary shall not award a contract to an eligible entity under this part unless the Secretary finds that the eligible entity agrees to comply with such terms and conditions as the Secretary shall specify, including the following:

"(1) Quality and financial standards.—The eligible entity meets the quality and financial standards specified by the Secretary.

"(2) Procedures to ensure proper utilization, compliance, and avoidance of adverse drug reactions.—

"(A) In general.—The eligible entity has in place drug utilization review procedures to ensure—

"(i) the appropriate utilization by eligible beneficiaries enrolled in the plan covered by the contract of the benefits to be provided under the plan;

"(ii) the avoidance of adverse drug reactions among such beneficiaries, including problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse and misuse; and

"(iii) the reasonable application of peer-reviewed medical literature pertaining to improvements in pharmaceutical safety and appropriate use of drugs.

"(B) Authority to use certain compendia and literature.—The eligible entity may use the compendia and literature referred to in clauses (i) and (ii), respectively, of section 1927(g)(1)(B) as a source for the utilization review under subparagraph (A).

"(3) Electronic prescription program.—

"(A) In general.—The eligible entity has in place, for years beginning with 2006, an electronic prescription drug program that includes at least the following components, consistent with national standards established under subparagraph (B):

"(i) Electronic transmittal of prescriptions.—Prescriptions are only received electronically, except in emergency cases and other exceptional circumstances recognized by the Secretary.

"(ii) Provision of information to prescribing health care professional.—The program provides, upon transmittal of a prescription by a prescribing health care professional, for transmittal by the pharmacist to the professional of information that includes—

"(I) information (to the extent available and feasible) on the drugs being prescribed for that patient and other information relating to the medical history or condition of the patient that may be relevant to the appropriate prescription for that patient;

“(II) cost-effective alternatives (if any) for the use of the drug prescribed; and

“(III) information on the drugs included in the applicable formulary.

To the extent feasible, such program shall permit the prescribing health care professional to provide (and be provided) related information on an interactive, real-time basis.

“(B) STANDARDS.—

“(i) DEVELOPMENT.—The Secretary shall provide for the development of national standards relating to the electronic prescription drug program described in subparagraph (A). Such standards shall be compatible with standards established under part C of title XI.

“(ii) ADVISORY TASK FORCE.—In developing such standards, the Secretary shall establish a task force that includes representatives of physicians, hospitals, pharmacists, and technology experts and representatives of the Departments of Veterans Affairs and Defense and other appropriate Federal agencies to provide recommendations to the Secretary on such standards, including recommendations relating to the following:

“(I) The range of available computerized prescribing software and hardware and their costs to develop and implement.

“(II) The extent to which such systems reduce medication errors and can be readily implemented by physicians and hospitals.

“(III) Efforts to develop a common software platform for computerized prescribing.

“(IV) The cost of implementing such systems in the range of hospital and physician office settings, including hardware, software, and training costs.

“(V) Implementation issues as they relate to part C of title XI, and current Federal and State prescribing laws and regulations and their impact on implementation of computerized prescribing.

“(iii) DEADLINES.—

“(I) The Secretary shall constitute the task force under clause (ii) by not later than April 1, 2003.

“(II) The task force shall submit recommendations to the Secretary by not later than January 1, 2004.

“(III) The Secretary shall develop and promulgate the national standards referred to in clause (ii) by not later than January 1, 2005.

“(C) WAIVER OF APPLICATION FOR CERTAIN RURAL PROVIDERS.—If the Secretary determines that it is unduly burdensome on providers in rural areas to comply with the requirements under this paragraph, the Secretary may waive such requirements for such providers.

“(4) PATIENT PROTECTIONS.—

“(A) ACCESS.—

“(i) IN GENERAL.—The eligible entity ensures that the covered outpatient drugs are accessible and convenient to eligible beneficiaries enrolled in the plan covered by the contract, including by offering the services 24 hours a day and 7 days a week for emergencies.

“(ii) NEGOTIATED PARTICIPATION AGREEMENTS WITH PHARMACIES.—The eligible entity shall negotiate and enter into a participation agreement with any pharmacy that meets the requirements of subsection (d) to dispense covered prescription drugs to eligible beneficiaries under this part. Such agreements shall include the payment of a reasonable dispensing fee for covered outpatient drugs dispensed to a beneficiary under the agreement.

“(iii) PREFERRED PHARMACY NETWORKS.—If the eligible entity utilizes a preferred pharmacy network, the network complies with the standards under subsection (e).

“(B) ENSURING THAT BENEFICIARIES ARE NOT OVERCHARGED.—The eligible entity has procedures in place to ensure that each pharmacy with a negotiated participation agreement under this part with the entity complies with the requirements under subsection (d)(1)(C) (relating to adherence to negotiated prices).

“(C) CONTINUITY OF CARE.—

“(i) IN GENERAL.—The eligible entity ensures that, in the case of an eligible beneficiary who loses coverage under this part with such entity under circumstances that would permit a special election period (as established by the Secretary under section 1860C(a)(1)), the entity will continue to provide coverage under this part to such beneficiary until the beneficiary enrolls and receives such coverage with another eligible entity under this part or, if eligible, with a Medicare+Choice organization.

“(ii) LIMITED PERIOD.—In no event shall an eligible entity be required to provide the extended coverage required under clause (i) beyond the date which is 30 days after the coverage with such entity would have terminated but for this subparagraph.

“(D) PROCEDURES REGARDING THE DETERMINATION OF DRUGS THAT ARE MEDICALLY NECESSARY.—

“(i) IN GENERAL.—The eligible entity has in place procedures on a case-by-case basis to treat a drug not included in the formulary for the plan as a brand name drug on the formulary under this part if the formulary drug for treatment of the same condition is determined—

“(I) to be not as effective for the enrollee as the nonformulary drug in preventing or slowing the deterioration of, or improving or maintaining, the health of the enrollee; or

“(II) to have a significant adverse effect on the enrollee.

“(ii) REQUIREMENT.—The procedures under clause (i) shall require that determinations under such clause are based on professional medical judgment, the medical condition of the enrollee, and other medical evidence.

“(E) PROCEDURES REGARDING APPEAL RIGHTS WITH RESPECT TO DENIALS OF CARE.—The eligible entity has in place procedures to ensure—

“(i) a timely internal review for resolution of denials of coverage (in whole or in part and including those regarding the coverage of drugs not included on the formulary of the plan as brand name drugs on the formulary) in accordance with the medical exigencies of the case and a timely resolution of complaints, by enrollees in the plan, or by providers, pharmacists, and other individuals acting on behalf of each such enrollee (with the enrollee's consent) in accordance with requirements (as established by the Secretary) that are comparable to such requirements for Medicare+Choice organizations under part C (and are not less favorable to the enrollee than such requirements under such part as in effect on the date of enactment of the Medicare Prescription Drug Cost Protection Act of 2002);

“(ii) that the entity complies in a timely manner with requirements established by the Secretary that (I) provide for an external review by an independent entity selected by the Secretary of denials of coverage described in clause (i) not resolved in the favor of the beneficiary (or other complainant) under the process described in such clause, and (II) are comparable to the external review requirements established for Medicare+Choice organizations under part C (and are not less favorable to the enrollee than such requirements under such part as in effect on the date of enactment of the Medicare Prescription Drug Cost Protection Act of 2002); and

“(iii) that enrollees are provided with information regarding the appeals procedures under this part at the time of enrollment with the entity and upon request thereafter.

“(F) PROCEDURES REGARDING PATIENT CONFIDENTIALITY.—Insofar as an eligible entity maintains individually identifiable medical records or other health information regarding eligible beneficiaries enrolled in the plan that is covered by the contract, the entity has in place procedures to—

“(i) safeguard the privacy of any individually identifiable beneficiary information in a manner consistent with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033);

“(ii) maintain such records and information in a manner that is accurate and timely;

“(iii) ensure timely access by such beneficiaries to such records and information; and

“(iv) otherwise comply with applicable laws relating to patient confidentiality.

“(G) PROCEDURES REGARDING TRANSFER OF MEDICAL RECORDS.—

“(i) IN GENERAL.—The eligible entity has in place procedures for the timely transfer of records and information described in subparagraph (F) (with respect to a beneficiary who loses coverage under this part with the entity and enrolls with another entity (including a Medicare+Choice organization) under this part) to such other entity.

“(ii) PATIENT CONFIDENTIALITY.—The procedures described in clause (i) shall comply with the patient confidentiality procedures described in subparagraph (F).

“(H) PROCEDURES REGARDING MEDICAL ERRORS.—The eligible entity has in place procedures for—

“(i) working with the Secretary to deter medical errors related to the provision of covered outpatient drugs; and

“(ii) ensuring that pharmacies with a contract with the entity have in place procedures to deter medical errors related to the provision of covered outpatient drugs.

“(5) PROCEDURES TO CONTROL FRAUD, ABUSE, AND WASTE.—

“(A) IN GENERAL.—The eligible entity has in place procedures to control fraud, abuse, and waste.

“(B) APPLICABILITY OF FRAUD AND ABUSE PROVISIONS.—The provisions of section 1128 through 1128C (relating to fraud and abuse) apply to eligible entities with contracts under this part.

“(6) REPORTING REQUIREMENTS.—

“(A) IN GENERAL.—The eligible entity provides the Secretary with reports containing information regarding the following:

“(i) The negotiated prices that the eligible entity is paying for covered outpatient drugs.

“(ii) The negotiated prices that eligible beneficiaries enrolled in the plan that is covered by the contract will be charged for covered outpatient drugs.

“(iii) The management costs of providing such benefits.

“(iv) Utilization of such benefits.

“(v) Marketing and advertising expenditures related to enrolling and retaining eligible beneficiaries.

“(B) TIMEFRAME FOR SUBMITTING REPORTS.—

"(i) IN GENERAL.—The eligible entity shall submit a report described in subparagraph (A) to the Secretary within 3 months after the end of each 12-month period in which the eligible entity has a contract under this part. Such report shall contain information concerning the benefits provided during such 12-month period.

"(ii) LAST YEAR OF CONTRACT.—In the case of the last year of a contract under this part, the Secretary may require that a report described in subparagraph (A) be submitted 3 months prior to the end of the contract. Such report shall contain information concerning the benefits provided between the period covered by the most recent report under this subparagraph and the date that a report is submitted under this clause.

"(C) CONFIDENTIALITY OF INFORMATION.—

"(i) IN GENERAL.—Notwithstanding any other provision of law and subject to clause (ii), information disclosed by an eligible entity pursuant to subparagraph (A) (except for information described in clause (ii) of such subparagraph) is confidential and shall only be used by the Secretary for the purposes of, and to the extent necessary, to carry out this part.

"(ii) UTILIZATION DATA.—Subject to patient confidentiality laws, the Secretary shall make information disclosed by an eligible entity pursuant to subparagraph (A)(iv) (regarding utilization data) available for research purposes. The Secretary may charge a reasonable fee for making such information available.

"(7) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—The eligible entity complies with the requirements described in section 1860G(f).

"(8) RECORDS AND AUDITS.—The eligible entity maintains adequate records related to the management, administration, and delivery of the benefits under this part and affords the Secretary access to such records for auditing purposes.

"(b) SPECIAL RULES REGARDING COST-EFFECTIVE PROVISION OF BENEFITS.—

"(1) IN GENERAL.—In providing the benefits under a contract under this part, an eligible entity shall—

"(A) employ mechanisms to provide the benefits economically, such as through the use of—

"(i) alternative methods of distribution;

"(ii) preferred pharmacy networks (pursuant to subsection (e)); and

"(iii) generic drug substitution;

"(B) use mechanisms to encourage eligible beneficiaries to select cost-effective drugs or less costly means of receiving drugs, such as through the use of—

"(i) pharmacy incentive programs;

"(ii) therapeutic interchange programs; and

"(iii) disease management programs;

"(C) encourage pharmacists to—

"(i) inform beneficiaries of the differentials in price between generic and brand name drug equivalents; and

"(ii) provide medication therapy management programs in order to enhance beneficiaries' understanding of the appropriate use of medications and to reduce the risk of potential adverse events associated with medications; and

"(D) develop and implement a formulary in accordance with subsection (c).

"(2) RESTRICTION.—If an eligible entity uses alternative methods of distribution pursuant to paragraph (1)(A)(i), the entity may not require that a beneficiary use such methods in order to obtain covered outpatient drugs.

"(c) REQUIREMENTS FOR FORMULARIES.—

"(1) STANDARDS.—

"(A) IN GENERAL.—The formulary developed and implemented by the eligible entity shall comply with standards established by the Secretary in consultation with the Medicare Prescription Drug Advisory Committee established under section 1860L.

"(B) NO NATIONAL FORMULARY OR REQUIREMENT TO EXCLUDE SPECIFIC DRUGS.—

"(i) SECRETARY MAY NOT ESTABLISH A NATIONAL FORMULARY.—The Secretary may not establish a national formulary.

"(ii) NO REQUIREMENT TO EXCLUDE SPECIFIC DRUGS.—The standards established by the Secretary pursuant to subparagraph (A) may not require that an eligible entity exclude a specific covered outpatient drug from the formulary developed and implemented by the entity.

"(2) REQUIREMENTS FOR STANDARDS.—The standards established under paragraph (1)(A) shall require that the eligible entity—

"(A) use a pharmacy and therapeutic committee (that meets the standards for a pharmacy and therapeutic committee established by the Secretary in consultation with such Medicare Prescription Drug Advisory Committee) to develop and implement the formulary;

"(B) include in the formulary—

"(i) all generic covered outpatient drugs; and

"(ii) covered outpatient drugs within each therapeutic category and class (as defined by the Secretary in consultation with such Medicare Prescription Drug Advisory Committee) of such drugs, although not necessarily for all drugs within such categories and classes;

"(C) develop procedures for the modification of the formulary, including for the addition of new drugs to an existing therapeutic category or class;

"(D) pursuant to section 1860F(b)(2)(B), provide for the treatment of drugs not included in the formulary for the plan as brand name drugs on the formulary when determined under subparagraph (D) or (E) of subsection (a)(4) to be medically necessary;

"(E) disclose to current and prospective beneficiaries and to providers in the service area the nature of the formulary restrictions, including information regarding the drugs included in the formulary and any difference in the cost-sharing for drugs—

"(i) included in the formulary; and

"(ii) not included in the formulary; and

"(F) provide a reasonable amount of notice to beneficiaries enrolled in the plan that is covered by the contract under this part of any change in the formulary.

"(3) CONSTRUCTION.—Nothing in this part shall be construed as precluding an eligible entity from—

"(A) educating prescribing providers, pharmacists, and beneficiaries about the medical and cost benefits of drugs included in the formulary for the plan (including generic drugs); or

"(B) requesting prescribing providers to consider a drug included in the formulary for the plan prior to dispensing of a drug not so included, as long as such a request does not unduly delay the provision of the drug.

"(d) TERMS OF NEGOTIATED PARTICIPATION AGREEMENT WITH PHARMACIES.—

"(1) IN GENERAL.—A negotiated participation agreement between an eligible entity and a pharmacy under this part (pursuant to subsection (a)(4)(A)(ii)) shall include the following terms and conditions:

"(A) APPLICABLE REQUIREMENTS.—The pharmacy shall meet (and throughout the contract period continue to meet) all applicable Federal requirements and State and local licensing requirements.

"(B) ACCESS AND QUALITY STANDARDS.—The pharmacy shall comply with such standards as the Secretary (and the eligible entity) shall establish concerning the quality of, and enrolled beneficiaries' access to, pharmacy services under this part. Such standards shall require the pharmacy—

"(i) not to refuse to dispense covered outpatient drugs to any eligible beneficiary enrolled under this part;

"(ii) to keep patient records (including records on expenses) for all covered outpatient drugs dispensed to such enrolled beneficiaries;

"(iii) to submit information (in a manner specified by the Secretary to be necessary to administer this part) on all purchases of such drugs dispensed to such enrolled beneficiaries; and

"(iv) to comply with periodic audits to assure compliance with the requirements of this part and the accuracy of information submitted.

"(C) ENSURING THAT BENEFICIARIES ARE NOT OVERCHARGED.—

"(i) ADHERENCE TO NEGOTIATED PRICES.—The total charge for each covered outpatient drug dispensed by the pharmacy to a beneficiary enrolled in the plan, without regard to whether the individual is financially responsible for any or all of such charge, shall not exceed the negotiated price for the drug (as reported to the Secretary pursuant to subsection (a)(6)(A)).

"(ii) ADHERENCE TO BENEFICIARY OBLIGATION.—The pharmacy may not charge (or collect from) such beneficiary an amount that exceeds the cost-sharing that the beneficiary is responsible for under this part (as determined under section 1860F(b) using the negotiated price of the drug).

"(D) ADDITIONAL REQUIREMENTS.—The pharmacy shall meet such additional contract requirements as the eligible entity specifies under this section.

"(2) APPLICABILITY OF FRAUD AND ABUSE PROVISIONS.—The provisions of section 1128 through 1128C (relating to fraud and abuse) apply to pharmacies participating in the program under this part.

"(e) PREFERRED PHARMACY NETWORKS.—

"(1) IN GENERAL.—If an eligible entity uses a preferred pharmacy network to deliver benefits under this part, such network shall meet minimum access standards established by the Secretary.

"(2) STANDARDS.—In establishing standards under paragraph (1), the Secretary shall take into account reasonable distances to pharmacy services in both urban and rural areas.

"PAYMENTS

"SEC. 1860I. (a) PROCEDURES FOR PAYMENTS TO ELIGIBLE ENTITIES.—The Secretary shall establish procedures for making payments to each eligible entity with a contract to offer a plan under this part for the management, administration, and delivery of the benefits under the plan.

"(b) REQUIREMENTS FOR PROCEDURES.—

"(1) IN GENERAL.—The procedures established under subsection (a) shall provide for the following:

"(A) MANAGEMENT PAYMENT.—Payment for the management, administration, and delivery of the benefits under the plan.

"(B) REIMBURSEMENT FOR NEGOTIATED COSTS OF DRUGS PROVIDED.—Payments for the negotiated costs of covered outpatient drugs provided to eligible beneficiaries enrolled under this part and in the plan, reduced by any applicable cost-sharing under section 1860F(b).

"(C) RISK REQUIREMENT TO ENSURE PURSUIT OF PERFORMANCE REQUIREMENTS.—An adjustment of a percentage (as determined under paragraph (3)) of the payments made to an entity under subparagraph (A) to ensure that the entity, in managing, administering, and delivering the benefits under the plan, pursues performance requirements established by the Secretary, including the following:

"(i) CONTROL OF MEDICARE AND BENEFICIARY COSTS.—The entity contains costs to the Prescription Drug Account and to eligible beneficiaries enrolled under this part and in the plan, as measured by generic substitution rates, price discounts, and other factors determined appropriate by the Secretary that do not reduce the access of such beneficiaries to medically necessary covered outpatient drugs.

"(ii) QUALITY CLINICAL CARE.—The entity provides such beneficiaries with quality clinical care, as measured by such factors as—

"(I) the level of adverse drug reactions and medical errors among such beneficiaries; and

"(II) providing specific clinical suggestions to improve health and patient and prescriber education as appropriate.

"(iii) QUALITY SERVICE.—The entity provides such beneficiaries with quality services, as measured by such factors as sustained pharmacy network access, timeliness and accuracy of service delivery in claims processing and card production, pharmacy and member service support access, response time in mail delivery service, and timely action with regard to appeals and current beneficiary service surveys.

"(2) SECRETARY TO CONSIDER RISK PROFILE OF ENROLLEES.—The Secretary shall take into account the risk profile of beneficiaries enrolled under this part and in the plan in assessing the degree to which the entity is meeting the performance requirements under paragraph (1)(C).

"(3) PERCENTAGE OF PAYMENT TIED TO RISK.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the percentage (which may be up to 100 percent) of the payments made to an entity under paragraph (1)(A) that will be tied to the performance requirements described in paragraph (1)(C).

"(B) LIMITATION ON RISK TO ENSURE PROGRAM STABILITY.—In order to provide for program stability, the Secretary may not establish a percentage to be adjusted under this subsection at a level that jeopardizes the ability of an eligible entity to administer and deliver the benefits under this part or administer and deliver such benefits in a quality manner.

"(4) PASS-THROUGH OF REBATES, DISCOUNTS, AND PRICE CONCESSIONS OBTAINED BY THE ELIGIBLE ENTITY.—The Secretary shall establish procedures for reducing the amount of payments to an eligible entity under paragraph (1) to take into account any rebates, discounts, or price concessions obtained by the entity from manufacturers of covered outpatient drugs, unless the Secretary determines that such procedures are not in the best interests of the medicare program or eligible beneficiaries.

"(c) PAYMENTS TO MEDICARE+CHOICE ORGANIZATIONS.—For provisions related to payments to Medicare+Choice organizations for the management, administration, and delivery of benefits under this part to eligible beneficiaries enrolled in a Medicare+Choice plan offered by the organization, see section 1853(c)(8).

"(d) SECONDARY PAYER PROVISIONS.—The provisions of section 1862(b) shall apply to the benefits provided under this part.

"EMPLOYER INCENTIVE PROGRAM FOR EMPLOYMENT-BASED RETIREE DRUG COVERAGE

"SEC. 1860J. (a) PROGRAM AUTHORITY.—The Secretary is authorized to develop and implement a program under this section to be known as the 'Employer Incentive Program' that encourages employers and other sponsors of employment-based health care coverage to provide adequate prescription drug benefits to retired individuals by subsidizing, in part, the sponsor's cost of providing coverage under qualifying plans.

"(b) SPONSOR REQUIREMENTS.—In order to be eligible to receive an incentive payment under this section with respect to coverage of an individual under a qualified retiree prescription drug plan (as defined in subsection (e)(3)), a sponsor shall meet the following requirements:

"(1) ASSURANCES.—The sponsor shall—

"(A) annually attest, and provide such assurances as the Secretary may require, that the coverage offered by the sponsor is a qualified retiree prescription drug plan, and will remain such a plan for the duration of the sponsor's participation in the program under this section; and

"(B) guarantee that it will give notice to the Secretary and covered retirees—

"(i) at least 120 days before terminating its plan; and

"(ii) immediately upon determining that the actuarial value of the prescription drug benefit under the plan falls below the actuarial value of the outpatient prescription drug benefit under this part.

"(2) BENEFICIARY INFORMATION.—The sponsor shall report to the Secretary, for each calendar quarter for which it seeks an incentive payment under this section, the names and social security numbers of all retirees (and their spouses and dependents) covered under such plan during such quarter and the dates (if less than the full quarter) during which each such individual was covered.

"(3) AUDITS.—The sponsor and the employment-based retiree health coverage plan seeking incentive payments under this section shall agree to maintain, and to afford the Secretary access to, such records as the Secretary may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage, the accuracy of incentive payments made, and such other matters as may be appropriate.

"(4) OTHER REQUIREMENTS.—The sponsor shall provide such other information, and comply with such other requirements, as the Secretary may find necessary to administer the program under this section.

"(c) INCENTIVE PAYMENTS.—

"(1) IN GENERAL.—A sponsor that meets the requirements of subsection (b) with respect to a quarter in a calendar year shall be entitled to have payment made by the Secretary on a quarterly basis (to the sponsor or, at the sponsor's direction, to the appropriate employment-based health plan) of an incentive payment, in the amount determined in paragraph (2), for each retired individual (or spouse or dependent) who—

"(A) was covered under the sponsor's qualified retiree prescription drug plan during such quarter; and

"(B) was eligible for, but was not enrolled in, the outpatient prescription drug benefit program under this part.

"(2) AMOUNT OF PAYMENT.—

"(A) IN GENERAL.—The amount of the payment for a quarter shall be, for each individual described in paragraph (1), ¾ of the sum of the monthly Government contribution amounts (computed under subparagraph (B)) for each of the 3 months in the quarter.

"(B) COMPUTATION OF MONTHLY GOVERNMENT CONTRIBUTION AMOUNT.—For purposes of subparagraph (A), the monthly Government contribution amount for a month in a year is equal to the amount by which—

"(i) 1/12 of the amount estimated under subparagraph (C) for the year involved; exceeds

"(ii) 1/12 of the annual enrollment fee for the year under section 1860E(b).

"(C) ESTIMATE OF AVERAGE ANNUAL PER CAPITA AGGREGATE EXPENDITURES.—

"(i) IN GENERAL.—The Secretary shall for each year after 2004 estimate for that year an amount equal to average annual per capita aggregate expenditures payable from the Prescription Drug Account for that year.

"(ii) TIMEFRAME FOR ESTIMATION.—The Secretary shall make the estimate described in clause (i) for a year before the beginning of that year.

"(3) PAYMENT DATE.—The payment under this section with respect to a calendar quarter shall be payable as of the end of the next succeeding calendar quarter.

"(d) CIVIL MONEY PENALTIES.—A sponsor, health plan, or other entity that the Secretary determines has, directly or through its agent, provided information in connection with a request for an incentive payment under this section that the entity knew or should have known to be false shall be subject to a civil monetary penalty in an amount up to 3 times the total incentive amounts under subsection (c) that were paid (or would have been payable) on the basis of such information.

"(e) DEFINITIONS.—In this section:

"(1) EMPLOYMENT-BASED RETIREE HEALTH COVERAGE.—The term 'employment-based retiree health coverage' means health insurance or other coverage, whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation, of health care costs for retired individuals (or for such individuals and their spouses and dependents) based on their status as former employees or labor union members.

"(2) EMPLOYER.—The term 'employer' has the meaning given the term in section 3(5) of the Employee Retirement Income Security Act of 1974 (except that such term shall include only employers of 2 or more employees).

"(3) QUALIFIED RETIREE PRESCRIPTION DRUG PLAN.—The term 'qualified retiree prescription drug plan' means health insurance coverage included in employment-based retiree health coverage that—

"(A) provides coverage of the cost of prescription drugs with an actuarial value (as defined by the Secretary) to each retired beneficiary that equals or exceeds the actuarial value of the benefits provided to an individual enrolled in the outpatient prescription drug benefit program under this part; and

"(B) does not deny, limit, or condition the coverage or provision of prescription drug benefits for retired individuals based on age or any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

"(4) SPONSOR.—The term 'sponsor' has the meaning given the term 'plan sponsor' in section 3(16)(B) of the Employer Retirement Income Security Act of 1974.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the program under this section.

"PRESCRIPTION DRUG ACCOUNT IN THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

"SEC. 1860K. (a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1841 an account to be known as the 'Prescription Drug Account' (in this section referred to as the 'Account').

"(2) FUNDS.—The Account shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, the account as provided in this part.

"(3) SEPARATE FROM REST OF TRUST FUND.—Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund.

"(b) PAYMENTS FROM ACCOUNT.—

"(1) IN GENERAL.—The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including payments to eligible entities under section 1860I, payments to Medicare+Choice organizations under section 1853(c)(8), and payments with respect to administrative expenses under this part in accordance with section 201(g).

"(2) TREATMENT IN RELATION TO PART B PREMIUM.—Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1839.

"(c) APPROPRIATIONS TO COVER BENEFITS AND ADMINISTRATIVE COSTS.—There are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the amount by which the benefits and administrative costs of providing the benefits under this part in the year exceed the annual enrollment fees collected under section 1860E(b) for the year.

"MEDICARE PRESCRIPTION DRUG ADVISORY COMMITTEE

"SEC. 1860L. (a) ESTABLISHMENT OF COMMITTEE.—There is established a Medicare Prescription Drug Advisory Committee (in this section referred to as the 'Committee').

"(b) FUNCTIONS OF COMMITTEE.—On and after January 1, 2004, the Committee shall advise the Secretary on policies related to—

"(1) the development of guidelines for the implementation and administration of the outpatient prescription drug benefit program under this part; and

"(2) the development of—

"(A) standards for a pharmacy and therapeutics committee required of eligible entities under section 1860H(c)(2)(A);

"(B) standards required under subparagraphs (D) and (E) of section 1860H(a)(4) for determining if a drug is medically necessary;

"(C) standards for—

"(i) establishing therapeutic categories and classes of covered outpatient drugs;

"(ii) adding new therapeutic categories and classes of covered outpatient drugs to a formulary; and

"(iii) defining maintenance and nonmaintenance drugs and determining the length of the course that is typical of current practice for nonmaintenance drugs for purposes of applying section 1860F(b)(3);

"(D) procedures to evaluate the bids submitted by eligible entities under this part; and

"(E) procedures to ensure that eligible entities with a contract under this part are in compliance with the requirements under this part.

"(c) STRUCTURE AND MEMBERSHIP OF THE COMMITTEE.—

"(1) STRUCTURE.—The Committee shall be composed of 19 members who shall be appointed by the Secretary.

"(2) MEMBERSHIP.—

"(A) IN GENERAL.—The members of the Committee shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, attainments, and understanding of pharmaceutical cost control and quality enhancement, exceptionally qualified to perform the duties of members of the Committee.

"(B) SPECIFIC MEMBERS.—Of the members appointed under paragraph (1)—

"(i) five shall be chosen to represent physicians, 2 of whom shall be geriatricians;

"(ii) two shall be chosen to represent nurse practitioners;

"(iii) four shall be chosen to represent pharmacists;

"(iv) one shall be chosen to represent the Centers for Medicare & Medicaid Services;

"(v) four shall be chosen to represent actuaries, pharmacoeconomists, researchers, and other appropriate experts;

"(vi) one shall be chosen to represent emerging drug technologies;

"(vii) one shall be chosen to represent the Food and Drug Administration; and

"(viii) one shall be chosen to represent individuals enrolled under this part.

"(d) TERMS OF APPOINTMENT.—Each member of the Committee shall serve for a term determined appropriate by the Secretary. The terms of service of the members initially appointed shall begin on March 1, 2003.

"(e) CHAIRPERSON.—The Secretary shall designate a member of the Committee as Chairperson. The term as Chairperson shall be for a 1-year period.

"(f) COMMITTEE PERSONNEL MATTERS.—

"(1) MEMBERS.—

"(A) COMPENSATION.—Each member of the Committee who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee. All members of the Committee who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(B) TRAVEL EXPENSES.—The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.

"(2) STAFF.—The Committee may appoint such personnel as the Committee considers appropriate.

"(g) OPERATION OF THE COMMITTEE.—

"(1) MEETINGS.—The Committee shall meet at the call of the Chairperson (after consultation with the other members of the Committee) not less often than quarterly to consider a specific agenda of issues, as determined by the Chairperson after such consultation.

"(2) QUORUM.—Ten members of the Committee shall constitute a quorum for purposes of conducting business.

"(h) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

"(i) TRANSFER OF PERSONNEL, RESOURCES, AND ASSETS.—For purposes of carrying out its duties, the Secretary and the Committee may provide for the transfer to the Committee of such civil service personnel in the employ of the Department of Health and Human Services (including the Centers for Medicare & Medicaid Services), and such resources and assets of the Department used in carrying out this title, as the Committee requires.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.".

(b) EXCLUSIONS FROM COVERAGE.—

(1) APPLICATION TO PART D.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended in the matter preceding paragraph (1) by striking "part A or part B" and inserting "part A, B, or D".

(2) PRESCRIPTION DRUGS NOT EXCLUDED FROM COVERAGE IF REASONABLE AND NECESSARY.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

(A) in subparagraph (H), by striking "and" at the end;

(B) in subparagraph (I), by striking the semicolon at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(J) in the case of prescription drugs covered under part D, which are not reasonable and necessary to prevent or slow the deterioration of, or improve or maintain, the health of eligible beneficiaries;".

(c) CONFORMING AMENDMENTS TO FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND.—Section 1841 of the Social Security Act (42 U.S.C. 1395t) is amended—

(1) in the last sentence of subsection (a)—

(A) by striking "and" before "such amounts"; and

(B) by inserting before the period the following: ", and such amounts as may be deposited in, or appropriated to, the Prescription Drug Account established by section 1860K";

(2) in subsection (g), by inserting after "by this part," the following: "the payments provided for under part D (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),";

(3) in subsection (h), by inserting after "1840(d)" the following: "and section 1860E(b)(3) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund)"; and

(4) in subsection (i), by inserting after "section 1840(b)(1)" the following: ", section 1860E(b)(3) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),".

(d) CONFORMING REFERENCES TO PREVIOUS PART D.—

(1) IN GENERAL.—Any reference in law (in effect before the date of enactment of this Act) to part D of title XVIII of the Social Security Act is deemed a reference to part E of such title (as in effect after such date).

(2) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a legislative proposal

providing for such technical and conforming amendments in the law as are required by the provisions of this title.

SEC. 203. PART D BENEFITS UNDER MEDICARE+CHOICE PLANS.

(a) Eligibility, Election, and Enrollment.—Section 1851 of the Social Security Act (42 U.S.C. 1395w–21) is amended—

(1) in subsection (a)(1)(A), by striking "parts A and B" and inserting "parts A, B, and D"; and

(2) in subsection (i)(1), by striking "parts A and B" and inserting "parts A, B, and D".

(b) Voluntary Beneficiary Enrollment for Drug Coverage.—Section 1852(a)(1)(A) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(A)) is amended by inserting "(and under part D to individuals also enrolled under that part)" after "parts A and B".

(c) Access to Services.—Section 1852(d)(1) of the Social Security Act (42 U.S.C. 1395w–22(d)(1)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) in the case of covered outpatient drugs (as defined in section 1860(1)) provided to individuals enrolled under part D, the organization complies with the access requirements applicable under part D.".

(d) Payments to Organizations for Part D Benefits.—

(1) In general.—Section 1853(a)(1)(A) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(A)) is amended—

(A) by inserting "determined separately for the benefits under parts A and B and under part D (for individuals enrolled under that part)" after "as calculated under subsection (c)";

(B) by striking "that area, adjusted for such risk factors" and inserting "that area. In the case of payment for the benefits under parts A and B, such payment shall be adjusted for such risk factors as"; and

(C) by inserting before the last sentence the following: "In the case of the payments under subsection (c)(8) for the provision of coverage of covered outpatient drugs to individuals enrolled under part D, such payment shall be adjusted for the risk factors of each enrollee as the Secretary determines to be feasible and appropriate to ensure actuarial equivalence.".

(2) Amount.—Section 1853(c) of the Social Security Act (42 U.S.C. 1395w–23(c)) is amended—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting "for benefits under parts A and B" after "capitation rate"; and

(B) by adding at the end the following new paragraph:

"(8) Capitation rate for part D benefits.—

"(A) In general.—In the case of a Medicare+Choice plan that provides coverage of covered outpatient drugs to an individual enrolled under part D, the capitation rate for such coverage shall be the amount described in subparagraph (B). Such payments shall be made in the same manner and at the same time as the payments to the Medicare+Choice organization offering the plan for benefits under parts A and B are otherwise made, but such payments shall be payable from the Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

"(B) Amount.—The amount described in this paragraph is an amount equal to $\frac{1}{12}$ of the average annual per capita aggregate expenditures payable from the Prescription Drug Account for the year (as estimated under section 1860J(c)(2)(C)).".

(e) Limitation on Enrollee Liability.—Section 1854(e) of the Social Security Act (42 U.S.C. 1395w–24(e)) is amended by adding at the end the following new paragraph:

"(5) Special rule for part D benefits.—With respect to outpatient prescription drug benefits under part D, a Medicare+Choice organization may not require that an enrollee pay any deductible or pay a cost-sharing amount that exceeds the amount of cost-sharing applicable for such benefits for an eligible beneficiary under part D.".

(f) Requirement for Additional Benefits.—Section 1854(f)(1) of the Social Security Act (42 U.S.C. 1395w–24(f)(1)) is amended by adding at the end the following new sentence: "Such determination shall be made separately for the benefits under parts A and B and for prescription drug benefits under part D.".

(g) Effective Date.—The amendments made by this section shall apply to items and services provided under a Medicare+Choice plan on or after January 1, 2005.

SEC. 204. ADDITIONAL ASSISTANCE FOR LOW-INCOME BENEFICIARIES.

(a) Inclusion in Medicare Cost-Sharing.—

(1) In general.—Section 1905(p)(3) of the Social Security Act (42 U.S.C. 1396d(p)(3)) is amended—

(A) in subparagraph (B), by inserting "and, subject to paragraph (7), cost-sharing described in section 1860F(b), subject to payment by the individual of a cost-sharing charge for the dispensing of a covered outpatient drug (as defined in section 1860(1)) that is equal to $2 for a prescription (as defined in section 1860F(b)(3)(D)) of a generic drug and $5 for a prescription (as so defined) of a brand name drug" after "section 1813"; and

(B) by inserting after subparagraph (D) the following new subparagraph:

"(E) The annual enrollment fee under section 1860E(b).".

(2) Indexing.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(A) by redesignating paragraph (6) as paragraph (8); and

(B) by inserting after paragraph (5) the following new paragraph:

"(6)(A) For any year after 2005, the cost-sharing amounts specified in paragraph (3)(B) for covered outpatient drugs (as defined in section 1860(1)) are equal to the cost-sharing amounts for such drugs determined under such paragraph (or this paragraph) for the previous year increased by the annual percentage increase described in section 1860E(b)(2)(B).

"(B) If any amount determined under subparagraph (A) is not a multiple of $1, such amount shall be rounded to the nearest multiple of $1.".

(b) Expansion of Medical Assistance.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) is amended—

(1) in clause (iii)—

(A) by inserting after "section 1905(p)(3)(A)(ii)" the following: ", for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII), and for medicare cost-sharing described in section 1905(p)(3)(E),"; and

(B) by striking "and" at the end;

(2) by redesignating clause (iv) as clause (v); and

(3) by inserting after clause (iii) the following new clause:

"(iv) for making medical assistance available for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII) and for medicare cost-sharing described in section 1905(p)(3)(E) for—

"(I) individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds 120 percent but does not exceed 150 percent of the official poverty line (referred to in section 1905(p)(2)) for a family of the size involved; and

"(II) individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds 150 percent but does not exceed 200 percent of the official poverty line (referred to in section 1905(p)(2)) for a family of the size involved; and".

(c) Nondiscrimination.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsection (a)(2), is amended by inserting after paragraph (6) the following new paragraph:

"(7) With respect to determining the eligibility of individuals described in clause (i), (iii), or (iv) of section 1902(a)(10)(E) for medicare cost-sharing described in paragraph (3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII) and for medicare cost-sharing described in paragraph (3)(E), the State shall—

"(A) use the same methodology in determining income eligibility for all such individuals;

"(B) use the same simplified eligibility form (including, if applicable, permitting application other than in person) for all such individuals;

"(C) provide for initial eligibility determinations and redeterminations and renewals of eligibility using the same verification policies, forms, and frequency for all such individuals; and

"(D) use the same face-to-face interview policy (including, if applicable, not requiring such an interview) for purposes of initial eligibility determinations and redeterminations, and renewals for all such individuals.".

(d) Nonapplicability of Resource Requirements to Medicare Part D Cost-Sharing.—Section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)) is amended by adding at the end the following flush sentence:

"In determining if an individual is a qualified medicare beneficiary under this paragraph, subparagraph (C) shall not be applied for purposes of providing the individual with medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII) or with medicare cost-sharing described in section 1905(p)(3)(E).".

(e) Nonapplicability of Payment Differential Requirements to Medicare Part D Cost-Sharing.—Section 1902(n)(2) of the Social Security Act (42 U.S.C. 1396a(n)(2)) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to the cost-sharing described in section 1860F(b).".

(f) Increased Federal Matching Assistance Percentage for Certain Individuals.—

(1) Use of enhanced FMAP for individuals with incomes that exceed 120 percent, but do not exceed 150 percent, of the poverty line.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)(4)) is amended—

(A) in paragraph (4), by inserting "(A)" after "2105(b)"; and

(B) by inserting before the period at the end the following: ", and (B) with respect to medicare cost-sharing described in subparagraph (B) of section 1905(p)(3) (but only insofar as it relates to benefits provided under part D of title XVIII) and medicare cost-sharing described in subparagraph (E) of that section, but only in the case of individuals who are eligible for such assistance on the basis of clause (iv)(I) of section 1902(a)(10)(E)".

(2) 100 PERCENT FEDERAL MATCHING ASSISTANCE PERCENTAGE FOR INDIVIDUALS WITH INCOMES THAT EXCEED 150 PERCENT, BUT DO NOT EXCEED 200 PERCENT, OF THE POVERTY LINE.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)(4)), as amended by paragraph (1), is amended—

(A) by striking "and" before "(4)"; and

(B) by inserting before the period at the end the following: ", and (5) the Federal medical assistance percentage shall be 100 percent with respect to medicare cost-sharing described in subparagraph (B) of section 1905(p)(3) (but only insofar as it relates to benefits provided under part D of title XVIII) and medicare cost-sharing described in subparagraph (E) of that section, but only in the case of individuals who are eligible for such assistance on the basis of clause (iv)(II) of section 1902(a)(10)(E)".

(g) Treatment of Territories.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended by adding at the end the following new paragraph:

"(3) Notwithstanding the preceding provisions of this subsection, with respect to fiscal year 2005 and any fiscal year thereafter, the amount otherwise determined under this subsection (and subsection (f)) for the fiscal year for a Commonwealth or territory shall be increased by the ratio (as estimated by the Secretary) of—

"(A) the aggregate amount of payments made to the 50 States and the District of Columbia for the fiscal year under title XIX that are attributable to making medical assistance available for individuals described in clauses (i), (iii), and (iv) of section 1902(a)(10)(E) for payment of medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII) and medicare cost-sharing described in section 1905(p)(3)(E); to

"(B) the aggregate amount of total payments made to such States and District for the fiscal year under such title XIX.".

(h) Amendment to Best Price.—Section 1927(c)(1)(C)(i) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(C)(i)) is amended—

(1) by striking "and" at the end of subclause (III);

(2) by striking the period at the end of subclause (IV) and inserting "; and"; and

(3) by adding at the end the following new subclause:

"(V) any prices charged which are negotiated under a plan under part D of title XVIII with respect to covered outpatient drugs, under a Medicare+Choice plan under part C of such title with respect to such drugs, or by a qualified retiree prescription drug plan (as defined in section 1860J(e)(3)) with respect to such drugs, on behalf of eligible beneficiaries (as defined in section 1860(2)).".

(i) Conforming Amendments.—Section 1933 of the Social Security Act (42 U.S.C. 1396u–3) is amended—

(1) in subsection (a), by striking "section 1902(a)(10)(E)(iv)" and inserting "section 1902(a)(10)(E)(v)";

(2) in subsection (c)(2)(A)—

(A) in clause (i), by striking "section 1902(a)(10)(E)(iv)(I)" and inserting "section 1902(a)(10)(E)(v)(I)"; and

(B) in clause (ii), by striking "section 1902(a)(10)(E)(iv)(II)" and inserting "section 1902(a)(10)(E)(v)(II)";

(3) in subsection (d), by striking "section 1902(a)(10)(E)(iv)" and inserting "section 1902(a)(10)(E)(v)"; and

(4) in subsection (e), by striking "section 1902(a)(10)(E)(iv)" and inserting "section 1902(a)(10)(E)(v)".

(j) Effective Date.—The amendments made by this section shall apply to medical assistance provided under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) on and after January 1, 2005.

(k) Rule of Construction.—Nothing in the amendments made by this section shall be construed as precluding a State from using State funds to provide coverage of outpatient prescription drugs that is in addition to the coverage of such drugs required under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), as amended by this section.

(l) Sense of the Senate.—It is the sense of the Senate that during consideration of any conference report for this legislation, conferees should explore ways to provide incentives to States (and in particular to those States that, as of the date of enactment of this Act, offer some form of prescription drug assistance to the elderly and the disabled) to maintain existing State commitments to provide prescription drug assistance to the elderly and disabled or to supplement the drug benefit established by the conference report.

SEC. 205. MEDIGAP REVISIONS.

Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

"(v) Modernized Benefit Packages for Medicare Supplemental Policies.—

"(1) Revision of benefit packages.—

"(A) In general.—Notwithstanding subsection (p), the benefit packages classified as 'H', 'I', and 'J' under the standards established by subsection (p)(2) (including the benefit package classified as 'J' with a high deductible feature, as described in subsection (p)(11)) shall be revised so that—

"(i) the coverage of outpatient prescription drugs available under such benefit packages is replaced with coverage of outpatient prescription drugs that complements but does not duplicate the coverage of outpatient prescription drugs that is otherwise available under this title;

"(ii) the revised benefit packages provide a range of coverage options for outpatient prescription drugs for beneficiaries, but do not provide coverage for more than 90 percent of the cost-sharing amount applicable to an individual under section 1860F(b);

"(iii) uniform language and definitions are used with respect to such revised benefits;

"(iv) uniform format is used in the policy with respect to such revised benefits;

"(v) such revised standards meet any additional requirements imposed by the amendments made by the Medicare Outpatient Prescription Drug Act of 2002; and

"(vi) except as revised under the preceding clauses or as provided under subsection (p)(1)(E), the benefit packages are identical to the benefit packages that were available on the date of enactment of the Medicare Outpatient Prescription Drug Act of 2002.

"(B) Manner of revision.—The benefit packages revised under this section shall be revised in the manner described in subparagraph (E) of subsection (p)(1), except that for purposes of subparagraph (C) of such subsection, the standards established under this subsection shall take effect not later than January 1, 2005.

"(2) Construction of benefits in other medicare supplemental policies.—Nothing in the benefit packages classified as 'A' through 'G' under the standards established by subsection (p)(2) (including the benefit package classified as 'F' with a high deductible feature, as described in subsection (p)(11)) shall be construed as providing coverage for benefits for which payment may be made under part D.

"(3) Guaranteed issuance and renewal of revised policies.—The provisions of subsections (q) and (s), including provisions of subsection (s)(3) (relating to special enrollment periods in cases of termination or disenrollment), shall apply to medicare supplemental policies revised under this subsection in the same manner as such provisions apply to medicare supplemental policies issued under the standards established under subsection (p).

"(4) Opportunity of current policyholders to purchase revised policies.—

"(A) In general.—No medicare supplemental policy of an issuer with a benefit package that is revised under paragraph (1) shall be deemed to meet the standards in subsection (c) unless the issuer—

"(i) provides written notice during the 60-day period immediately preceding the open enrollment period established under section 1860B(a)(3), to each individual who is a policyholder or certificate holder of a medicare supplemental policy issued by that issuer (at the most recent available address of that individual) of the offer described in clause (ii) and of the fact that such individual will no longer be covered under such policy as of January 1, 2005; and

"(ii) offers the policyholder or certificate holder under the terms described in subparagraph (B), during at least the period established under section 1860B(a)(3), a medicare supplemental policy with the benefit package that the Secretary determines is most comparable to the policy in which the individual is enrolled with coverage effective as of the date on which the individual is first entitled to benefits under part D.

"(B) Terms of offer described.—The terms described in this subparagraph are terms which do not—

"(i) deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (A)(ii) that is offered and is available for issuance to new enrollees by such issuer;

"(ii) discriminate in the pricing of such policy because of health status, claims experience, receipt of health care, or medical condition; or

"(iii) impose an exclusion of benefits based on a preexisting condition under such policy.

"(5) Elimination of obsolete policies with no grandfathering.—No person may sell, issue, or renew a medicare supplemental policy with a benefit package that is classified as 'H', 'I', or 'J' (or with a benefit package classified as 'J' with a high deductible feature) that has not been revised under this subsection on or after January 1, 2005.

"(6) Penalties.—Each penalty under this section shall apply with respect to policies revised under this subsection as if such policies were issued under the standards established under subsection (p), including the penalties under subsections (a), (d), (p)(8), (p)(9), (q)(5), (r)(6)(A), (s)(4), and (t)(2)(D).".

SEC. 206. COMPREHENSIVE IMMUNOSUPPRESSIVE DRUG COVERAGE FOR TRANSPLANT PATIENTS UNDER PART B.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)), as amended by section 113(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–473), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by striking ", to an individual who receives" and all that follows before the semicolon at the end and inserting "to an individual who has received an organ transplant".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs furnished on or after the date of enactment of this Act.

SEC. 207. HHS STUDY AND REPORT ON UNIFORM PHARMACY BENEFIT CARDS.

(a) STUDIES.—The Secretary of Health and Human Services shall conduct a study to determine the feasibility and advisability of establishing a uniform format for pharmacy benefit cards provided to beneficiaries by eligible entities under the outpatient prescription drug benefit program under part D of title XVIII of the Social Security Act (as added by section 202).

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under subsection (a) together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.

SEC. 208. GAO STUDY AND BIENNIAL REPORTS ON COMPETITION AND SAVINGS.

(a) ONGOING STUDY.—The Comptroller General of the United States shall conduct an ongoing study and analysis of the outpatient prescription drug benefit program under part D of title XVIII of the Social Security Act (as added by section 202), including an analysis of—

(1) the extent to which the competitive bidding process under such program fosters maximum competition and efficiency; and

(2) the savings to the medicare program resulting from such outpatient prescription drug benefit program, including the reduction in the number or length of hospital visits.

(b) INITIAL REPORT ON COMPETITIVE BIDDING PROCESS.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the results of the portion of the study conducted pursuant to subsection (a)(1).

(c) BIENNIAL REPORTS.—Not later than January 1, 2006, and biennially thereafter, the Comptroller General of the United States shall submit to Congress a report on the results of the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Comptroller General determines appropriate.

SEC. 209. EXPANSION OF MEMBERSHIP AND DUTIES OF MEDICARE PAYMENT ADVISORY COMMISSION (MEDPAC).

(a) EXPANSION OF MEMBERSHIP.—

(1) IN GENERAL.—Section 1805(c) of the Social Security Act (42 U.S.C. 1395b–6(c)) is amended—

(A) in paragraph (1), by striking "17" and inserting "19"; and

(B) in paragraph (2)(B), by inserting "experts in the area of pharmacology and prescription drug benefit programs," after "other health professionals,".

(2) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(A) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1805(c)(3) of the Social Security Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the 2 additional members of the Commission provided for by the amendment under paragraph (1)(A) are as follows:

(i) One member shall be appointed for 1 year.

(ii) One member shall be appointed for 2 years.

(B) COMMENCEMENT OF TERMS.—Such terms shall begin on January 1, 2004.

(b) EXPANSION OF DUTIES.—Section 1805(b)(2) of the Social Security Act (42 U.S.C. 1395b–6(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) PRESCRIPTION MEDICINE BENEFIT PROGRAM.—Specifically, the Commission shall review, with respect to the outpatient prescription drug benefit program under part D, the impact of such program on—

"(i) the pharmaceutical market, including costs and pricing of pharmaceuticals, beneficiary access to such pharmaceuticals, and trends in research and development;

"(ii) franchise, independent, and rural pharmacies; and

"(iii) beneficiary access to outpatient prescription drugs, including an assessment of out-of-pocket spending, generic and brand name drug utilization, and pharmacists' services.".

SA 4346. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", up to $4,000,000 may be available for Configuration Management Information Systems.

SA 4347. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY", up to $5,000,000 may be available for the Field Pack-up Containerized Storage Unit.

SA 4348. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may, using amounts appropriated or otherwise made available by this Act, make a grant to the National D-Day Museum in the amount of $5,000,000.

SA 4349. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 4345 proposed by Mr. GRAHAM (for himself, Mr. SMITH of Oregon, Mr. MILLER, Mrs. LINCOLN, Mr. BINGAMAN, Mr. KENNEDY, and Ms. STABENOW) to the amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

On Page 21, strike lines 6 through 20.
On Page 24, strike lines 14 through 22.
On Page 26, strike lines 18 through 25.
On Page 27, strike lines 1 through 3.
On Page 57, strike lines 1 through 25.
On Page 58, strike lines 1 through 22.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, July 30, 2002, at 2 p.m. to conduct a hearing on the nominations of Mr. Ben S. Bernanke, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System; and Mr. Donald L. Kohn, of Virginia, to be a member of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, July 30, 2002, at 9:30 a.m. on the Financial Turmoil in the Telecommunications Marketplace; Maintaining the Operations of Essential Communications Facilities.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, July 30, 2002, at 9:30 a.m. to conduct a hearing to examine the effectiveness of the current Congestion Mitigation and Air Quality, CMAQ, program, conformity, and the role of new technologies.

The hearing will be held in SD–406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on

Finance be authorized to meet during the session of the Senate on Tuesday, July 30, 2002, at 10 a.m. to hear testimony on the Role of the Extraterritorial Income Exclusion Act in the International Competitiveness of U.S. Companies.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 30, 2002, at 9 a.m. to hold a business meeting.

Agenda

The Committee will consider and vote on the following agenda items:

Treaties

1. Treaty Doc. 96-53; Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the U.N. General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980.

2. Treaty Doc. 103-5; Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Kingston on January 18, 1990.

2. Treaty Doc. 107-2; Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, done at Guayaquil, June 11, 1999, and signed by the United States, subject to ratification, in Guayaquil, Ecuador, on the same date.

Legislation

1. S. 1777, A bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes, with amendments.

Nominations

1. Mr. John Blaney, of Virginia, to be Ambassador to the Republic of Liberia.

2. Ms. Aurelia Brazeal, of Georgia, to be Ambassador to the Federal Democratic Republic of Ethiopia.

3. Mr. Martin Brennan, of California, to be Ambassador to the Republic of Zambia.

4. Mr. J. Anthony Holmes, of California, to be Ambassador to Burkina Faso.

5. Ms. Vicki Huddleston, of Arizona, to be Ambassador to the Republic of Mali.

6. Mr. Donald Johnson, of Texas, to be Ambassador to the Republic of Cape Verde.

7. Ms. Kristie A. Kenney, of Maryland, to be Ambassador to the Republic of Ecuador.

8. Mr. Jimmy Kolker, of Missouri, to be Ambassador to the Republic of Uganda.

9. Ms. Gail Mathieu, of New Jersey, to be Ambassador to the Republic of Niger.

10. Mrs. Barbara C. Moore, of Maryland, to be Ambassador to the Republic of Nicaragua.

11. Mr. Larry L. Palmer, of Georgia, to be Ambassador to the Republic of Honduras.

12. Mr. James Yellin, of Pennsylvania, to be Ambassador to the Republic of Burundi.

Additional items may be announced.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 30, 2002, at 11 a.m. to hold a nomination hearing.

Agenda

Nominees

Ms. Nancy J. Powell, of Iowa, to be Ambassador to the Islamic Republic of Pakistan.

Mr. Richard L. Baltimore, III, of New York, to be Ambassador to the Sultanate of Oman.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, July 30, 2002, at 10:00 a.m. in Room 106 of the Dirksen Senate Office Building to conduct a hearing on a Legislative Proposal of the Department of Interior/Tribal Trust Fund Reform Task Force; to be followed immediately by a second hearing on S. 2212, a bill to establish a direct line of authority for the Office of Trust Reform Implementations and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determinations Act and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CONSUMER AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the subcommittee on Consumer Affairs of the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, July 30, 2002, at 2:30 pm on improving consumer choice in auto repair shops.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, July 30, 2002, at 2:30 p.m., in open session to receive testimony on the report of the General Accounting Office on Nuclear Nonproliferation and efforts to help other countries combat nuclear smuggling.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Tuesday, July 30, 2002, at 2:30 p.m. in SD-366. The purpose of this hearing is to receive testimony on the following bills:

S. 2016, to authorize an exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes;

S. 2565, to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River Valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes;

S. 2587, to establish the Joint Federal and State Navigable Waters Commission for Alaska;

S. 2612, to establish wilderness areas, promote conservation, improve public land, and provide for high quality development in Clark County, Nevada, and for other purposes;

S. 2652, to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes; and

S. Con. Res. 107, expressing the sense of Congress that Federal land management agencies should fully support the Western Governors Association "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment", as signed August 2001, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a National Prescribed Fire Strategy that minimizes risks of escape.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, July 30, 2002, at 9:30 a.m., for a hearing entitled "The Role of the Financial Institutions In Enron's Collapse."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mrs. LINCOLN. Mr. President, I ask unanimous consent that privilege of the floor be granted to Michael Anzick and Elizabeth Pika, two fellows in my office, during debate on this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I ask unanimous consent to grant floor privileges to Dr. Louis Kazal, a health fellow from the office of Senator KENT CONRAD, for the duration of debate on S. 812 and related amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Madam President, I ask unanimous consent that my aides, Christopher Rogers and Matt Hargraves, be granted the privilege of the floor for the duration of the debate on Judge D. Brooks Smith.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I have a few things to do here to close, a very few. Then the Senator from Utah wants to speak for 5 minutes, and the Senator from Florida will speak for 10.

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the two Leaders, pursuant to provisions of S. Res. 98, agreed to July 25, 1997, the appointment of the Senator from Nevada [Mr. REID] to the Global Climate Change Observer Group, vice the Senator from Nebraska [Mr. Kerrey], retired.

The Chair, on behalf of the President pro tempore, pursuant to P.L. 103-227, reappoints Barbara Kairson, of New York, Representative of Labor, to the National Skill Standards Board, effective August 13, 2002.

ORDERS FOR WEDNESDAY, JULY 31, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. Wednesday, July 31; that on Wednesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that the Senate then resume consideration of Calendar No. 491, S. 812, as provided for under the previous order; provided further that after the first vote on the motion to waive the Budget Act with respect to the Graham amendment, there be 2 minutes of debate before each succeeding vote, equally divided and controlled in the usual form; and each succeeding vote following the first in the sequence be 10 minutes in duration; that the mandatory quorum required under rule XXII be waived with respect to the cloture motion and the conference report accompanying H.R. 3009.

I have a parliamentary inquiry, Mr. President. Under this unanimous consent agreement, would the debate time prior to the vote on judicial nomination of Brooks Smith be 2 minutes equally divided?

The PRESIDING OFFICER. Yes. The Senator is correct in assuming that.

Mr. REID. I ask unanimous consent that be modified to give Senator LEAHY 2½ minutes and Senator HATCH 2½ minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent we stand in adjournment under the previous order, following the remarks of the Senator from Utah, for 6 minutes, and the Senator from Florida, for 12 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized.

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, I do have to make a few remarks since my colleague from New York made some very cogent, very important remarks this evening.

I happen to have a lot of respect for my colleague from New York, and he has the guts to really stand up and say that one of the reasons he is voting against some of these judges is the question of ideology. I think he is dead wrong on that, but the fact is, I respect him for at least being upfront and stating what he believes.

He has also said we need to have balance on the courts. I am not so sure that is a bad concept, but I believe whoever is President, we have to have that President's choice of judges. That is one thing we do when we elect a President. Unless you can find some really valid reason for voting against these judges, that I think has to be more than ideology—at least that is my view—then you should vote for those judges, which is a practice I have followed throughout the Clinton administration and throughout the Carter administration, as a matter of fact. I think it is the correct practice.

I still respect my colleague for his beliefs, for his forthright statements.

I want to correct the record on a few things. No. 1, with regard to balance, there is a lack of balance in many circuit courts of appeals today one way or the other. In the Ninth Circuit Court of Appeals, 17 of the 23 judges are Democrats; 14 were appointed by none other than President William Jefferson Clinton.

In the Second Circuit Court of Appeals, the majority of them are Democrats.

These are two very important circuit courts. In the Circuit Court of Appeals for the District of Columbia, it could very easily have been that way.

It comes down to whoever is President. That is one of the things we do when we choose a President: We choose the person who is going to pick the judges for the next 4 years. And I believe, unless you have a legitimate reason—and it has to be a very legitimate reason for opposing those judges—you need to vote for them.

I heard the distinguished Senator from Vermont tonight say Judge Smith rules too much for corporations. Give me a break. He has been on the bench 14 years. He has ruled for everybody during those 14 years. And, by the way, occasionally corporations are right. And if they are right, as judges in this country they ought to rule in their favor if it is a nonjury trial. They ought to be fair in their instructions if it is a jury trial and in the conduct of the trial if it is a jury trial. Brooks Smith has had that type of reputation.

With regard to another comment of my friend from New York, he continues to repeat a myth that arose out of the Clarence Thomas proceedings. I happened to be there during those Clarence Thomas proceedings, and that myth is that he said he never discussed Roe v. Wade. That is not what he said. He was asked directly, and he said: I never debated it with my philosophy classmates. That is a considerably different answer.

And from that, they extrapolated he never discussed it, and he wasn't asked any further questions about it by the same person who asked that question.

The fact of the matter is, some ideologically disagree with Justice Thomas. Many on our side disagree with Justice Thurgood Marshall. I happened to have respected him greatly. I didn't agree with a lot of the things he wrote, but I also respected him.

Clarence Thomas is writing some of the most literate, intelligent decisions on the Supreme Court right now.

Let me say the danger of the position of my friend from New York, in saying ideology counts, is: Whose ideology? Because I have seen some very conservative judges get on the bench and become very liberal judges almost overnight. I have seen some very liberal judges get on the bench and become very conservative judges—maybe not overnight but certainly in time.

I have to ask you, if you start talking ideology, whose ideology? There are differences on the Democratic side on ideology. There are differences on the Republican side on ideology. Are we going to have a single litmus test to bar somebody from serving just because they may be against Roe v. Wade or may be pro-life? Are we going to have a litmus test against somebody serving because they once participated as a corporate lawyer? A terrible thing to do, I guess.

No, we should not do that. If we took that attitude, that Roe v. Wade is paramount and preeminent in all judicial considerations, there would have been very few Clinton judges. As I say, he came very close, virtually was the same as the all-time confirmation champion, Ronald Reagan.

So that is the danger, in my belief and in my philosophy, of the position of the distinguished Senator from New York. I respect the position. I respect his openness. I respect his forthrightness. I respect him personally. He is very intelligent, a good lawyer—some would say a great lawyer. I would say that. I enjoy being with him on the Judiciary Committee. But his doctrine is a dangerous doctrine because—whose ideology?

People have tried to stereotype me the whole time I have been in the Senate. I just got finished writing a book that will be published this fall. It is going to be called "The Square Peg." Guess who the square peg is. The fact is, that book is going to show I don't particularly fit in any category. Neither does the Senator from New York. In some respects, he is a very conservative Senator. In other respects, he is very liberal. I have had the same thing said about me. Does that mean neither of us could serve on any court because we might be conservative on some issues, we might be liberal on other issues, that offend some in this body? No, it should not mean that.

Look, if a person is out of the mainstream, that is another matter. But I have seen the argument come up time after time the judges are outside of the judicial mainstream. That is pure bunk, to be honest with you. They do not get through this process where they are nominated by any President of the United States by being outside of the mainstream. They just do not. Some are conservative and some are liberal. This President has nominated some very liberal judges. He has nominated some very good conservative judges. He has nominated people in between. He has nominated Democrats. He has nominated Republicans.

But it is dangerous to say that anybody's personal ideology ought to determine whether a person serves on the bench if that person is otherwise qualified.

I hope my colleague who is forced to sit there and listen to me at this time as the Presiding Officer will reconsider at least some aspects of his position because he may be chairman of the Judiciary Committee someday. When he is, he is going to find that in the interest of fairness, you have to presume and give the benefit of the doubt to the President's nominee, especially unless you can show that they are outside of the mainstream of American jurisprudence.

I have to tell you that I haven't seen many—in my whole time in 26 years in the Senate and confirming almost every judge that currently sits on the Federal bench—that I would consider coming close to being outside of the mainstream of American jurisprudence. By the time they get through the vetting process at the White House, the vetting process of the FBI, the vetting process of the American Bar Association, and when they wind up with a well-qualified rating from the American Bar Association, you can't say they are outside of the mainstream of American jurisprudence, nor can you say that because they differ with you ideologically you have to vote against them.

I happen to love my colleague. I just hope he will reconsider because I don't want him leading those who are less mentally equipped down the primrose path of partisan politics.

I yield the floor to my dear colleague and friend from Florida, who has really fought that good battle on S. 812, which is something I very much respect.

The PRESIDING OFFICER. The Senator from Florida is recognized after the eloquent and kind remarks of the Senator from Utah.

Mr. GRAHAM. Mr. President, I also appreciate the kind remarks of the Senator from Utah and hope that he will open his CONGRESSIONAL RECORD tomorrow and will read the remarks that I am going to be delivering shortly, as we both share a very strong interest in the same destination, which is to assure that the 40 million Americans who are currently benefitting by Medicare will see in this year a fulfillment of a long held aspiration, which is to expand Medicare benefits to include prescription drugs.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS

Mr. GRAHAM. Mr. President, along with my colleague, Senator GORDON SMITH of Oregon, and a number of other Members of the Senate, earlier today I introduced an amendment which will be debated beginning at 9:30 tomorrow, and voted on at 11 o'clock.

I would like to use this opportunity to briefly summarize some of the elements of that amendment, and then use that as the basis to respond to some comments which have been made questioning the desirability and appropriateness of passage of this amendment.

Our amendment has a simple objective. It is to bring Medicare into the 21st century by providing for it what virtually every private health insurance plan has—coverage of prescription drugs.

When Medicare was established in 1965, prescription drugs were a relatively minor part of a comprehensive health care program. In fact, it is surprising to know that in 1965 the average senior American spent $65 a year on prescription drugs. That number has increased 35 times to over $2,100 as the average amount that senior Americans are spending this year on prescription drugs.

Our objective is to provide a modern Medicare Program by providing a critical missing element from the current program.

In our debate a week ago, there was a great deal of concern about the cost of the plan. I introduced a plan which would have met fully the standards of universal coverage, comprehensive in terms of drugs covered, and affordable to the beneficiary. That plan received 52 votes, which obviously is a majority of the Senate. Unfortunately, we weren't debating under the rules of majority rule. We were debating under the rules that said you had to have 60 votes in order to overcome procedural hurdles. We fell short of those 60 votes.

One of the reasons given for not voting for our plan was that it was just too expensive; it had to be reined in.

So we spent the last week reviewing our proposal to see what we could do in order to make it more acceptable to our brethren so that we can get the 60 votes.

I want to again recognize and thank my colleague, Senator GORDON SMITH, for the great contribution he has made in accomplishing this task.

But one of the things we did was to say we are going to develop a plan which would cost no more than $400 billion over the next 10 years. We received today from the Congressional Budget Office their scoring of our plan where they found the plan actually had a cost of $389 billion over the next 10 years. We thought that would be a goal—holding the cost to under $400 billion that would result in the support of people who had not voted for our bill last year, saying: This is a proposition for which I can vote. Unfortunately, we didn't get that reaction. But we got the reaction that challenged the Congressional Budget Office, and whether it had accurately scored our bill.

That is a little bit like challenging the umpire in a baseball game you think is not calling the ball in the strike zone. We decided, just like the American and National leagues decided, that we were going to have an umpire for our deliberations, including an umpire for our deliberations over a whole variety of spending, tax, health care, and other proposals that are going to cost the Federal Treasury. The Congressional Budget Office is that umpire. They have looked at our plan. They have given it a score of $389 billion.

It is interesting that the same persons who were challenging us and who offered a competing plan have not received a Congressional Budget Office estimate of their cost. We don't know what their plan is going to cost when the common standards of evaluation are applied. The one that will be before us tomorrow has a Congressional Budget Office estimate of $389 billion.

The second thing we did was we looked at the architecture of the bill. We said we would like to have universal coverage, but we don't have enough resources to provide meaningful universal coverage.

So we have two basic choices: One, you can put water in the soup, make it thinner, and spread it out over more people or you can say, no, we are going to identify those Americans who are most adversely affected by the Medicare benefit for prescription drugs. We identify those people as being in two groups. One is those older Americans who have unlikely high prescription drug bills.

I mentioned earlier the average senior American is a little more than $2,100. We set the standard of $3,300 for catastrophic. That is when the cost of prescription drugs becomes beyond what you can expect many senior Americans can pay. Remember, the average income for senior Americans this year is about $14,000 to $15,000.

Second, we said the next group we would like to help is the neediest, those who have the lowest income; and, therefore, the cost of prescription drugs takes a disproportionate amount of their meager income.

We also said, however, there should be some benefits that all of America's seniors can secure. For that group of Americans, we are going to provide the opportunity for a modest $25 a year enrollment fee to get a card, which will entitle them to get the benefits of pharmacy benefit managers, who will negotiate with the pharmaceutical companies to get discounted prices, which will then be made available to the Medicare beneficiaries.

In order to assure that those PBMs will be part of this and that all the seniors will get even beyond what can be negotiated, we are going to provide a 5-percent supplemental reduction of the cost.

For example, if a senior had the standard cost of $100 for a particular prescription, PBMs are estimated to be able to negotiate between a 15 and a 25-percent discount, so assume they can get 20 percent; that would reduce the cost of the drugs to 80 percent. Then the Federal Government would pick up 5 percent of that cost, or $4; so that the senior, instead of paying $100, would be paying $76. That is not an insignificant benefit.

That same senior would also have an insurance policy against catastrophic losses at $3,300. The peace of mind, the reduction of the fear of what the consequences would be if a healthy senior has a heart attack or develops some other serious chronic disease, where suddenly their prescription drug costs are escalating, this will give them that peace of mind.

There was another objection raised to that format that I just outlined, and that is, for the first time in the history of Medicare, we are going to be making a differential; we are going to be recognizing these Americans who have the lowest income among the 40 million seniors and give them some special benefits to help them, because they are the neediest of our seniors, to be able to meet the cost of their prescription drugs. I plead guilty. We are doing that.

We are saying that the poorest of America's seniors, which we define as those who are at or below 200 percent of poverty, will get prescription drugs from the time they enroll in this program, with only a modest copayment of $2 for generic drugs and $5 for brand name drugs.

It is said this is the first time we have ever split the Medicare population and provided such special treatment for a class; in this case, a class defined because of the level of their need. That is not true. In fact, we have a number of examples in Medicare today where we are providing different benefits based on income. Just to mention two of those, we have a program called SLiMBies and QMBies.

SLiMBies are for those Americans who have an income between 100 percent and 120 percent of poverty. For those, there is a payment of the Part B premiums, which today are running approximately $50 a month. The Federal Government picks up the cost of those payments for Americans between 100 and 120 percent of poverty. For those who are at or below 100 percent of poverty, we not only pay for their premiums, we also pay for their deductibles and their coinsurance.

So America, a compassionate society, has had a history of recognizing the special circumstances of the neediest of our elderly. We will extend that policy by the amendment which we will vote on tomorrow.

We will have, as the delivery system for this drug benefit, Medicare as we have known it, Medicare as it has served the interests of senior Americans for 37 years.

There are some who say that is an out-of-date system; it is an antiquated process, that we need to get private insurance to deliver prescription drug benefits.

That was an intriguing idea, so I began to ask: What is our experience with private insurance delivering a prescription drug benefit? In fact, I had the conversation with a number of pharmaceutical company executives who have been a primary advocate of this plan, private insurance delivering prescription drug benefits. I asked: How do you, and how do your employees, get their prescription drugs? They said: Well, we have a contract with an insurance company that provides for the health care coverage of our employees, including myself and they, in turn, contract with a pharmacy benefit manager to administer the drug component of our health care program.

I said: No. Do you have, for the drug component of health care for your employees, a separate program with a separate private insurance policy?

They said: No, we don't have such a program. In fact, I don't think one exists.

You know what. They are right. One does not exist. Nobody is offering a prescription drug-only private insurance policy, which is what some would say should be the method by which we deliver prescription drugs to 40 million older Americans.

I would analogize it to putting those 40 million older Americans on the Wright brothers first flight at Kitty Hawk. Do you want to really experiment with such a significant part of the health care of older Americans when nobody in any other sector, public or private, is using such a plan? I don't think that is a very prudent or conservative idea.

Why are there no insurance companies that are providing a drug-only prescription benefit? The answer is: Because they say it is not an insurable risk. It would be the same answer that you would get if you were to ask: I own a house, and I want to buy fire insurance, but I only want to buy the fire insurance to cover the kitchen, or I have a rear bedroom which is next to an old and creeky tree that might fall over and crush the roof in a wind storm, so I only want to cover that back room.

The insurance company would turn you down. They would say: We are not going to insure a specific room within your house; we will insure your whole house and take the total risk, but we won't let you parcel it out piece by piece.

That is the same answer as to why no private insurance company today is providing a prescription drug-only benefit. They will insure your whole body. They will insure all of the health care that you might require. But they will not break it down into individual fragmented pieces, such as a prescription drug-only insurance policy.

There are some other concerns, such as if you were to go to a private insurance policy, you would run very strong possibilities that there would be big sections of the country that would not be covered because they have populations that are peculiarly expensive. One of those which we are already seeing in the whole body of insurance called Medicare+Choice—an HMO that insures not just prescription drugs but all of your health care needs—is almost nonexistent in rural America.

Why are they not in rural America? It is not because there are not doctors and hospitals and other facilities that can treat people in rural America. It is because the population of seniors in rural America is actuarially expensive and, therefore, an unattractive population to insure and treat.

According to a 1998 report by the Kaiser Family Foundation, rural beneficiaries are 20 percent more likely to be in fair or poor health than their urban cousins. Rural seniors are 20 percent more likely to be under 150 percent of the Federal poverty level than their urban cousins.

A study that was done in June of this year by the National Economic Council said that rural beneficiaries are 50 percent less likely to have drug coverage compared to their urban counterparts, which probably means they are less healthy because they have not had equal access to drugs. They use 10 percent more prescriptions than urban seniors, and nearly 60 percent of rural beneficiaries reported not being able to purchase drugs because of their cost.

We know from our experience with Medicare+Choice that HMOs will not accept the risk of covering this urban population. What leads us to believe they are not similarly going to be left behind with this effort to have prescription drug only insurance policies? I think the answer is, unfortunately, they will be left behind.

This last issue is not really a debate about drug coverage. It is a debate, rather, about Medicare itself. Shall Medicare continue to be a universal program that is administered through the Federal Government or shall it be a program whose administration will be privatized? That is the debate.

We know there are people in this Chamber and particularly the predecessors who were here in the 1960s who thought that Medicare would fail, that it was not a sustainable system. I say quite to the contrary, Medicare has delivered on its promise of substantially increasing the health and welfare of older Americans.

That brings me to my concluding observation which is that today is a fortuitous day to be having this debate because it happens to be the anniversary of Medicare. On July 30, 1965, then-President Lyndon Johnson went to Independence, MO, the home of President Harry Truman, a man who had spent much of his political career advocating for the needs of senior Americans and particularly access to affordable health care. So it was fitting and proper that President Johnson signed the bill at their home and then gave the first two Medicare cards to President Harry Truman and his wife Bess. That is the tradition we have had, a great tradition of service, respectful and compassionate, to America's seniors.

We would honor that tradition if tomorrow we adopt the amendment which will for the first time in its history expand a prescription drug benefit for the beneficiaries of Medicare. It is a step which will not only honor those who 37 years ago championed this program, but it will also honor those who are served by it today, our grandparents, our parents, our family, and friends who look to Medicare as the means of securing their health care. Those are the people for whom we will be voting tomorrow.

I hope my colleagues will grasp this opportunity to see that we bring Medicare into the 21st century.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m., Wednesday, July 31, 2002.

Thereupon, the Senate, at 9:03 p.m., adjourned until Wednesday, July 31, 2002, at 9:30 a.m.

SENATE—*Wednesday, July 31, 2002*

The Senate met at 9:30 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Source of strength for those who seek to serve You, we praise You for that second wind of Your power that comes when we feel pressure or stress. You have promised that, "As your days so shall your strength be." Well, Lord, You know what these days are like before the August recess. The Senators and all who work with them feel the pressure of the work and the little time to accomplish it. In days like these, stress mounts and our reserves are drained. Physical tiredness can invade our effectiveness and relationships can be strained. In this quiet moment, we open ourselves to the infilling of Your strength. We admit our dependence on You, submit to Your guidance, and commit our work to You. Give us that healing assurance that You will provide strength to do what You guide and that there will always be enough time in any one day to do what You have planned for us to do. In Your all-powerful name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

> U.S. SENATE,
> PRESIDENT PRO TEMPORE,
> *Washington, DC, July 31, 2002.*
>
> *To the Senate:*
>
> Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.
>
> ROBERT C. BYRD,
> *President pro tempore.*

Mrs. CLINTON thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

SCHEDULE

Mr. REID. Madam President, this morning the Senate will immediately resume consideration of S. 812, the generic drug bill. Under an order entered yesterday evening, there will be up to 90 minutes of debate on the motion to waive the Budget Act with respect to the Graham and Smith of Oregon prescription drug amendment. A vote on that motion to waive is expected to occur around 11 o'clock this morning.

If the motion to waive is not successful, the Senate will immediately act on the Dorgan amendment, as amended, and then go directly to a cloture vote on the underlying bill. Should cloture be invoked on S. 812, then a vote on final passage will occur immediately. Following disposition of the generic drug bill, the Senate will vote on confirming the nomination of D. Brooks Smith to be U.S. Circuit Judge. Debate on that was completed last night.

The succeeding votes in this series will be 10 minutes, and there will be up to 2 minutes of discussion time available between each vote, except that prior to the Smith vote there will be 2½ minutes on each side.

The Senate is expected to begin consideration of the Defense appropriations bill following the vote on Judge Smith. It is anticipated we will finish the Defense bill tonight.

Therefore, Senators should be prepared to remain on the floor following the first vote today so that the succeeding votes can be expedited. Senators should expect rollcall votes occurring around 11 a.m. and into the evening.

It should be a very busy day. Even if we complete this schedule, which I am confident we will do, we still have a lot of work to do before we take our August break.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

> A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

> Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.
>
> Graham amendment No. 4345 (to amendment No. 4299), to amend title XVIII of the Social Security Act to provide protection for all Medicare beneficiaries against the cost of prescription drugs.

AMENDMENT NO. 4345

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 90 minutes for debate, equally divided, on the motion to waive the Budget Act with respect to the Graham amendment No. 4345.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself 8 minutes.

The history of the American people is one of a never-ending journey toward the goal of a more perfect Union. Americans believe in the ideal of equal opportunity so that individuals can achieve their fullest potential. We also believe that we are members of a great national family which seeks to protect all of its members. We understand that if one of us is hurting, all of us are hurting.

In this quest for a more perfect Union, we have encountered and overcome obstacle after obstacle. At the turn of the last century, we passed antitrust laws to begin the long process of controlling corporate abuse and asserting that the public interest must take precedence over the selfish interests of wealthy corporations.

We passed minimum wage laws to assert that a worker's right to a living wage took precedence over business rights to maximize profits.

We passed the Social Security Act and the Medicare Act to guarantee a secure and dignified retirement to every American who works hard and pays into the system.

Just 2 weeks ago, we passed landmark legislation to curb the modern-day robber barons whose dishonesty and greed have done so much to damage our economy and to defraud so many workers and investors of their hard-earned savings.

Today, Americans face a crisis in health care. The miracle medicines that can save and prolong life more and more are beyond the reach of average Americans. The prescription drugs we need to stay healthy and alive are just too expensive, and their costs go up and up with each passing day.

For the last week, we have been grappling with two more obstacles to a more perfect Union and a better life for all of our people: The exploding costs of prescription drugs and the failure of Medicare to cover those costs. The rapid rise in the cost of drugs burdens families, businesses, and patients, and our economy.

For the last 6 years, prescription drug costs have been escalating at double-digit rates: 10 percent in 1996, 14 percent in 1997, 15 percent in 1998, 16 percent in 1999, 17 percent in 2000 and 2001.

It is unacceptable when older Americans struggle to afford their heart medicines and diabetes medicines. It is reprehensible when hard-working families are impoverished trying to pay for the drugs that keep their children in the classroom and out of the hospital, but it is intolerable when much of their burden has been created by the wealthiest corporations in America, the brand-name drug companies, deploying an army of lawyers, lobbyists, and campaign contributions to exploit and maintain loopholes in the law to block competition and unfairly boost prices.

Today, the Senate is on trial. We will vote on whether to end those abuses, and just as the Senate has voted resoundingly to close accounting loopholes abused by Enron and WorldCom, we must also close the loopholes in our drug patent laws that are exploited by big drug companies and are hurting patients each and every day.

Ending the abuses of the law that have contributed to escalating drug prices will help every family. But the most important step we can take in this Congress towards the goal of a more perfect Union is to act at long last to provide prescription drug coverage under Medicare.

Last week, the Senate failed to fulfill its responsibility to senior citizens and their families. This week, we have the opportunity and the obligation to do better and to provide a downpayment on our commitment to provide a prescription drug benefit in the Medicare Program.

Medicare is a solemn promise between our Government and our citizens. It says: Play by the rules, contribute to the system during your working years, and you will be guaranteed health security in your retirement years. Because of Medicare, the elderly have long had insurance for their hospital bills and doctor bills. But the promise of health security at the core of Medicare is broken every single day because Medicare does not cover the soaring price of prescription drugs. We can no longer ignore the sad fact that too many senior citizens are living in pain because they cannot afford prescription drugs.

Too many elderly citizens must choose between food on the table and the medicine their doctors prescribe. Too many elderly are taking half the drugs their doctors prescribe or none at all because they cannot afford them.

Senior citizens built our country. They fought in our wars. They created our economic growth and prosperity. They worked hard. They supported their families. They played by the rules. And they stood up for America. Now is the time for America to stand up for them.

Last week, a majority of the Senate voted for the Graham-Miller-Kennedy amendment, a comprehensive program to provide prescription drug coverage under Medicare and mend its broken promise. A minority stood against the seniors and with powerful special interests, but under the rules of the Senate that minority was able to block action. Just as the Republican Party opposed the creation of the Medicare Program in 1965, it opposed the enactment of a comprehensive Medicare prescription drug benefit today.

The Senate is once again confronted with a choice: Is our priority prescription drugs for the elderly or more tax breaks for the wealthy? Will we give senior citizens the same loyalty that they gave our country or will we continue to offer an open hand to the powerful special interests and the back of our hand to the elderly and their families?

Over the coming years, Americans will spend $1.8 trillion on prescription drugs. So far, our Republican colleagues have said no to amendments that would cover only a third of those costs. Yet under the Senate health plan, Senators have 75 percent of their prescription drugs covered. How many of us are willing to face our constituents when we go home in August knowing we have secure coverage for 75 percent of our drug coverage but we reject proposals that do even less for our fellow citizens?

The Graham-Smith amendment is a bipartisan compromise. It is not the comprehensive program that I want or that a majority of the Senate wants, but it is an important downpayment on the kind of program senior citizens need and deserve. Under this proposal, every senior citizen will receive assistance and those with the greatest need will receive the most help.

I ask that during the quorum call, the time be charged equally against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. I yield 4 minutes to the Senator from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. GRAHAM. Madam President, I have a somewhat longer statement I will deliver later, but at this point I will indicate clearly to my colleagues what exactly we are going to be doing in approximately an hour and 15 minutes. We will be voting on waiving the point of order that we anticipate will be raised against this amendment based on noncompliance with the budget resolution.

Let's look at a few facts. In 2001, the Senate established, as the amount of money to be expended for a prescription drug benefit for 10 years, from 2001 to 2011, the number of $300 billion. That is the last budget resolution the Senate has enacted. The Senate Budget Committee, in 2002, reexamined what would be required for an adequate prescription drug benefit, and they recommended up to $500 billion, but that resolution has never been adopted.

So 18 months later, we are being constrained by a $300 billion number, which has been found to be inadequate by the Budget Committee. The irony is that both the Republican proposal, the proposal of Senator **GRASSLEY** and others, and the Graham-Smith proposal have a total expenditure of $400 billion minus. There is probably not a 2- or 3-percent difference in the amount of money the Grassley bill and the Graham-Smith bill have found to be necessary in order to provide our seniors an adequate prescription drug benefit.

The issue of whether we are going to need to waive the Budget Act in order to get to the substance of this issue is one upon which both sides have agreed. So why do we not say yes, we have agreed that it is going to take more than $300 billion to have an adequate prescription drug benefit? Let's vote today to waive the Budget Act, and then we can have the full debate with amendments and all of the means by which Members of the Senate can express their specific policy positions on a variety of issues on this complex subject. If we cannot get past the Budget Act, the whole effort to provide 40 million Americans with some better access to a key component of their life and health will be again, for the seventh straight year, denied.

I do not believe that is the record this Senate wants to go on. Let's have a vote to do what we have all agreed—that it will cost more than $300 billion to provide a benefit. Then let's move on to a discussion that justifies the title of this institution as being the world's greatest deliberative body. Let us deliberate. Let us not quibble over the issues of dollars for which there is no quibbling because we both agree as to what it is going to cost to provide this benefit.

This is the last opportunity we are likely to have in 2002 to provide America's seniors this benefit. A vote against waiving the Budget Act is a vote for another year of denial. It is also a vote that when we come back next year, we are not going to be talking about the $400 billion that both sides have now agreed is necessary, we are going to be talking about a substantially higher number because of another year of prescription drug inflation and another year of that baby boom surge of entrants into the Medicare Program.

If we think it is difficult today to vote to provide a prescription drug benefit, be assured it will be only more difficult every year into the future.

I urge my colleagues to look at the reality of what we are doing and at least vote to waive the Budget Act so we can get on to a full debate on this issue.

Mr. KENNEDY. Madam President, I yield 10 minutes to the Senator from Oregon.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. SMITH of Oregon. I thank Senator KENNEDY, the manager of this bill, and my cosponsor of this legislation, Senator GRAHAM, for the time.

I say to the American people, what few may be up this morning watching these proceedings, that this is probably our last best chance to pass prescription drugs in the 107th Congress, and I think it is critical we do so.

I am optimistic we are going to succeed, but if we do not, it will be because of that old maxim that the perfect is the enemy of the good. What Senator GRAHAM and I have is the best we can produce for the greatest number of people, particularly the neediest, but for everyone in terms of discount cards and in terms of a catastrophic coverage. We have the best we can do with the financial constraints faced by this Government.

We have produced a plan that is affordable for seniors and it is affordable for the U.S. Government. It is a plan at a minimum that we ought to pass.

I thought what I would do in my remarks today was to try to give a comparison between our bill and the competing bill. Both of these bills can work. I have, in fact, voted for a version of the Grassley-Breaux bill. However, I am now on this bill because I think this is more in the realm of what is possible and workable.

I will spend some time focusing on the health and financial security aspect, which is what is available to every American under our plan who is under Medicare, and then focus on the sickest and the poorest, the protection for the most vulnerable in our society. Let me start first with the most vulnerable in our society.

Let's compare the low-income benefit. Under Grassley-Breaux, the low-income folks are covered at 150 percent of poverty; under the Graham-Smith bill, people 200 percent of poverty are covered. Under Grassley-Breaux, it includes an assets test which will drop 40 percent of otherwise income-eligible elderly; under Graham-Smith, there is no asset test. Under their proposal, beneficiaries below 200 percent of poverty can pay up to $3,700 due to copays, deductibles, and premiums. Under ours, beneficiaries out of pocket are limited to drug copays of $2 for generic and $5 for brands. That is an enormous difference in terms of what they will have to pay and who will be included.

Under their plan, they provide more limited coverage than some elderly get in current employer programs or State pharmacy assistance programs. Under our plan, coverage for low-income elderly is as comprehensive as State pharmacy assistance programs. CBO estimates that no employer will drop coverage because of what we have.

As to the catastrophic limit, their proposal kicks in at $3,700. Our proposal kicks in at $3,300, a very big difference, a 12-percent difference. That matters a great deal at the low end of the economic scale in our country.

Some may say this does not cover enough people. Let me give a few examples of a few States and how much this plan helps. These are percentages of people in various States falling below 200 percent of poverty: In Vermont, 42 percent of their elderly fall below that; in the State of Mississippi, 46 percent; in the State of Maine, 37 percent; in the State of Ohio, 41 percent; in the State of Nevada, 41 percent; the State of Illinois, 41 percent also; the State of Nebraska, 43 percent; the State of Iowa, 38 percent; in the State of Louisiana, 52 percent; in the State of Indiana, 46 percent; in the State of Alabama, 56 percent; in the State of Pennsylvania, 43 percent; and the State of Rhode Island, 48 percent.

These are dramatic numbers. There is hardly a State in the Union that falls below 40 percent of people who will be covered 100 percent by the Graham-Smith proposal. That is significant. That is an incredible start on a prescription drug program.

Let me turn to the health and financial security aspects and compare both bills. The premiums and fees: Under Grassley-Breaux, the elderly will pay $288 per year or more. The premiums imposed are imposed monthly, despite periods when the beneficiary receives no benefit. Unknown premium amounts that can vary by area dramatically, year by year. Under ours, there is no monthly premium.

Now to the deductible. Under theirs there is a $250 per year deductible. Under Graham-Smith there is no deductible.

Universal coverage: Under Grassley-Breaux, only low-income and those choosing to pay monthly premiums are covered. Under ours, all seniors and covered disabled are covered after a $25 annual fee.

As to employer coverage and crowding out private plans, the CBO estimates a third of current employer benefits will be dropped if Grassley-Breaux goes through. They estimate that under the Graham-Smith proposal all seniors and disabled will be covered, and they estimate no loss of current employer coverage. I think that is terribly significant. Ours overlays the existing program much better than the Grassley-Breaux proposal..

Now as to guarantee of current coverage levels: Under Grassley-Breaux, some low-income elderly would receive more reduced coverage than under the current State pharmacy programs. But under ours, low-income elderly are guaranteed a comprehensive benefit with a nominal cost sharing. CBO estimates under Grassley-Breaux one-third loss of current employer coverage, and coverage could be far worse than the elderly currently receive. CBO estimates under ours, no loss of current employer coverage.

Now, the stability of the delivery system. Grassley-Breaux imposes an untried and untested insurance model on our Nation's elderly and disabled and results in employer crowd-out. I assume this insurance program in the private sector could be developed, but it does not exist right now. So we are betting that it can be developed and that people would like it.

In the State of Oregon, if you ask how they like their private insurance, it is not much; they do not like it much. While they complain about Medicare, they certainly want us to support it.

Then on this issue of a stable delivery system: Senator GRAHAM and I build upon current State and market-based delivery models, and we do not result in an employer crowd-out. What is the overall cost? The Grassley-Breaux approach is scored at somewhere between $375 and $400 billion over 10 years. Ours is scored at $390 billion over 10 years. So they are comparable in that regard.

I conclude my remarks by saying we will hear this morning about the "cliff"—that after 200 percent of poverty the people do not get anything; if you make $24,000 as a couple, you fall off a cliff. I wish we had a more graduated program, I grant that. There are many things about what Senator GRAHAM and I have that I would change if I could, but I can't, and get something passed and into conference. So let's start here.

Let me simply say to those who would describe this as a cliff, that you get nothing if you make more than $24,000 a year, to me it is not nothing to say that for $25 a year you get a discount card that, at a minimum, gives you 5 percent off all your prescriptions, but probably, because you get the benefit of pricing discounts, you get as much as 30 percent off every prescription drug, and, moreover, you add to that the fact that you never have to worry again as a senior in America that when you lose your health, you have to lose your home—you do not have to choose between food and medicine. That is significant. Tell me where in the private sector you can find an insurance policy that, for $25 a year, will do all of that.

Have we done enough? No. Have we done a tremendous amount of good? Absolutely.

I plead with my colleagues to vote to waive this point of order. We should not fail today. We should get this to the floor. People have ideas. We can perhaps make it better. But we can get on with the business that the seniors and citizens of this country are expecting. Let us get beyond the war of words and get to a prescription of wellness for the seniors and provide them a benefit that is workable, tried and true, affordable for them and our Government.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. FRIST. Madam President, I yield myself 10 minutes, to be followed by the Senator from Maine, 10 minutes.

Madam President, I rise in opposition of the Graham drug Medicare proposal. I will make four points regarding my opposition in the few minutes I will speak.

The first point is, the bills we are considering on the Senate floor have not gone through the committee process. That is important for the American people to understand. It makes it incredibly challenging to receive an amendment yesterday such as this and having the opportunity only to read it for the first time. This legislation is very complicated.

In looking at this bill compared to the bill passed by the House of Representatives, the tripartisan proposal or the bi-partisan Hagel-Ensign bill, the major substantive objection I have is that the bill costs more and yet fewer people benefit.

We do have huge gaps of coverage. We have huge gaps in terms of being able to look seniors in the eye and say, yes, we understand your problem is affordable access to prescription drugs, and then walk away because they don't fall into the category. There are cliffs and gaps and chasms, and these vacuums exist for that individual who falls into one of these gaps or chasms because we do not cover everybody in the sense of addressing their problem; that is, health care security for prescription drugs.

Of all the bills we have considered, this is not really a compromise bill. It is a very different bill that costs more and covers fewer and fewer people.

The tripartisan comprehensive plan the Senator from Maine put on the table—and we will hear from her shortly, along with Senators GRASSLEY and BREAUX and JEFFORDS is a much more comprehensive bill that I argue gives more secure comprehensive coverage and helps a broader swathe of people. If you look at individuals with disabilities, it doesn't have these categories of exclusion. Where there are some areas that you do not get as complete coverage, it is gradual, and you do not have these cliffs, these drop-offs. If you make one dollar more, all of a sudden you do not get the coverage.

In terms of how many people are covered, it is hard to factor it out. We have about 38 million Medicare beneficiaries, seniors and individuals with disabilities around this country. Of the 38 million, there are an estimated 18 million who are above 200 percent of poverty. We heard yesterday and last night about this drop-off, this cliff. Once you get to 200 percent of the poverty level for an individual or for a couple, all of a sudden you do not get benefits. There is a huge hole, a huge chasm, a gap that is there, this drop-off. Above 200 percent you get a minimum benefit of 5 percent. That does not give me the security to look in somebody's eye and say we are really helping you. We need to make affordable access to prescription drugs, which is our goal, a reality.

Only about 2 million of those 18 million will ever qualify for the catastrophic benefit. So you have 18 million above the cutoff level of 200 percent of poverty with very minimal benefit. But people say: Yes, for catastrophic coverage they will be helped. At the end of the day, only 2 million out of the 18 million will fall into that catastrophic category, again leaving essentially no benefit for 16 million seniors today.

I think it is important for our seniors to understand. I do not want to leave this body 2 days from now saying we passed prescription drugs, we took care of your problem, you will have affordable access to prescription drugs—which seems to be the implication. It has been said that we cannot leave here on recess without passing a package. This package is a shell, and it does not give seniors affordable access to prescription drugs.

If we pass it, we are not being honest going home saying we passed a real prescription drug package. It costs more, covers fewer people than what we have had on the floor, what we have been discussing. If we go back to the Finance Committee, I think we can come up with a very good bill. Under this bill, at least 15 million to 16 million seniors are left behind. That is, they do not get a substantial benefit; they only get that 5-percent discount. Fifteen million to 16 million people we are leaving behind.

Second, I think from our standpoint it is irresponsible to pass a bill and pretend we are doing something that we are not really doing when we have alternatives. If we did not have alternatives, we could say this is our best shot, and we can build on it in the future. But, really, the two bills that came to the floor each had different approaches. The initial Graham bill was much more Government run. The tripartisan bill involved the public and private sector, but both of those bills had more comprehensive coverage. For the seniors who are listening, for the dollar value, they had more benefits than the bill before us today. Therefore, we should not, by default, end up passing a bill today just to say that we have passed something.

Politically, people might be able to claim a victory saying we passed prescription drugs, but this particular bill never addresses the "affordable" problem, affordable prescription drugs.

The response to that is we are taking a good first step, and we have to do something. If we do something, maybe we can work on it later. If we knew what that "later" was, I would say yes, we should have a one-two punch and come back. I have a great deal of confidence if we pass this, we will not come back and visit this in September or October and put together a truly comprehensive plan. We are not addressing the fundamental problem of seniors not being able to afford lifesaving drugs.

The third point I want to make is this bill fails to recognize that prescription drugs are, and need to be, considered a part of the overall modernization of Medicare. Yes, I admit all the bills we have considered over the last 2 weeks have not fully addressed the fact that prescription drugs need to be a part of the full armamentarium of what a physician has to deal with, what a hospital has to deal with, that doctor-patient relationship and outpatient care.

We are treating prescription drugs sort of on the outside, as if it is an appendage to Medicare, without in any way addressing the fundamental problems of Medicare. In truth, the sustainability, long-term, of whatever we promise—whether it is acute or long-term or preventive care—has to be part of a more comprehensive approach which we addressed. I mention that because the tripartisan bill, of all the bills we mention on the floor, is the only one that is health care security for our seniors, like the surgeon's knife, like acute care, chronic care, or preventive medicine. Remember, the tripartisan bill costs $370 billion, and the more limited bill we are considering on the floor is even more than that because the tripartisan bill at least reached out and said we understand prescription drugs are a part of overall Medicare. This bill does not address that. It has no element of modernization at all.

Thus, I think the bill on the floor, of all the bills we have considered, is the least effective in accomplishing what seniors expect. It does not guarantee seniors comprehensive prescription drug coverage. It locks into place a limited stopgap proposal. Everybody says this is not the answer but this is sort of a stopgap, something to do now. But it locks it in place at a far higher cost than it needs to. The taxpayers are paying for this—the people who are listening to me now. It is, my colleagues, constituents. All over the country, people are paying into this as taxpayers. So we need to give them an effective product as we go forward. The product itself, I think, is insufficient.

As I mentioned, it leaves a gaping hole in coverage. This is my final point. We have talked about doughnuts earlier in the debate. All last week we talked about a doughnut, which is a gap of people who simply do not get the benefits that other people get. This has a much larger gap than, again, any other bills; than the tripartisan proposal or the proposal that passed the House of Representatives, for example, several months ago.

It fails to provide Medicare beneficiaries with either an effective drug prescription benefit or some of the other much needed improvements that are present in the tripartisan bill.

I will close by simply saying that I think at this juncture the most prudent thing to do is to table this bill because of the reasons I have outlined and to recognize we have made huge progress compared to even a year ago. It was 3 years ago that we had the Medicare Commission. It basically proposed a public-private approach. That approach has been built upon by a series of bills. We have made great progress over the last 2 weeks. The Medicare debate is on the floor. People have talked about it. We recognize deficiencies. We recognize some advantages in some of the bills. I think the best thing to do is to go back through regular order that is usually in this body, and that is to go through the Finance Committee.

Let that process, based on what we know and what we talked about today, work so we can have that particular debate, and move forward.

I will be voting against this bill. I will be voting, if there is a point of order, to table the bill. I will support that, and I encourage my colleagues to do so.

I yield 15 minutes to my colleague from Maine.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I thank the Senator for yielding me the time.

I concur with what has just been suggested by the Senator from Tennessee in terms of returning to the regular process so that we can go back and resume the negotiations and discussions that were well underway over the course of the weekend with Senators from across the aisle—Senators KENNEDY, BAUCUS, and WYDEN—even through Monday to reach an agreement that would provide for comprehensive coverage for Medicare beneficiaries.

There is no reason we cannot have that discussion to develop the kind of plan that seniors deserve in the Medicare Program.

As I said yesterday, we should not have this vote. Why entrench and polarize both sides on this issue? Why make it more intractable? Why not go back and begin the process of negotiations that were well underway using the tripartisan plan as a basis? It provides comprehensive coverage. There is no reason we can't begin that process. This doesn't have to be the last vote.

With the Medicare give-back in the fall, we have an opportunity during this interim to begin this process anew so that we can achieve and craft a comprehensive plan that seniors need and deserve.

Looking over this proposal, there are many troubling features. I think that we ought to deal with the facts.

First of all, the proposal before us today, if you had told me more than a year ago—as the tripartisan group with Senator BREAUX, Senator JEFFORDS, Senator GRASSLEY, Senator HATCH, and myself, as members of the Senate Finance Committee invited all members of the Finance Committee to participate in this process—if somebody told me when we embarked on this legislative odyssey that somehow we would be considering in a serious way today a proposal that abandoned the basic precepts that had been the underpinning of the Medicare Program since its creation 37 years ago yesterday when President Johnson signed into law the Medicare Program—we never contemplated or considered during the course of this last year when we developed that tripartisan plan that we would abandon universal coverage. We never contemplated abandoning the ability to pay and resorting to a means-test program that is now before the Senate—a means-test program that places the low-income benefit in the Medicaid Program—not Medicare, in the Medicaid Program.

These are huge departures from the principles that we have embraced here in Congress year after year. In fact, the vote last week, with 97 votes on both sides of the aisle, was for the original plan that we were embracing for universal coverage—the principles that AARP and the major organizations representing seniors in America have always and consistently embraced for the 37 years of Medicare existence. Now the proposal before us abandons all of those principles.

It most certainly doesn't advance or improve the prescription drug debate. In fact, the bill before us today has not had the advantage of scrutiny by the Congressional Budget Office because the language of this amendment specifically has not been reviewed by the Congressional Budget Office in order to prepare a cost estimate on the proposal. I think we should understand that from the outset.

There is no certainty because the language in this legislative initiative has not been reviewed by the Congressional Budget Office. Are we to have confidence in the process and the Congressional Budget Office when the analysts have not even had the text of the amendment? We are creating a new Federal program at a cost presumably of a minimum of $400 billion without knowing the true fiscal impact of this legislative proposal.

Here is my first chart. One of my first major concerns about this initiative before us, which I think all Members of the Senate should readily understand, is that most seniors do not get a basic drug coverage under this plan because it is not a universal benefit. I think that needs to be understood.

The Graham proposal does not offer a basic drug benefit for 70 percent of seniors who have incomes above $17,720 for an individual and $23,880 for a couple. This is according to the AARP data: The number of seniors who have incomes above 200 percent of the Federal poverty level. Seventy percent of seniors above 70 percent would not get basic coverage. They will have to spend $3,300 before they get any basic coverage. That is an important point.

In fact, in the New York Times the other day there was an op-ed piece written by the Urban Institute—that is not a conservative think tank—discussing the fact that most individuals usually have drug expenses between $2,000 and $3,300; and that many people are spending in that middle range, particularly on chronic illnesses such as high cholesterol, high blood pressure, and arthritis. But with a low-income catastrophic approach, that will provide very little help for most Medicare recipients with chronic illnesses. The chronically ill cannot get enough help under this type of an approach.

Under our legislation, 80 percent would even exceed our benefit limit of $3,450, and we had a catastrophic coverage of $3,700.

But the point here is that it now is 70 percent. In all States across the country, seniors are left behind.

I heard this morning about how many seniors will be covered. But let us look at the other side of that equation and who won't be covered.

If you look at these statistics, it is staggering. It is 71 percent in Maryland. In Oregon, 51 percent of seniors will be left behind. In my State of Maine, they will not get a basic drug benefit under this proposal; neither will 50 percent in Virginia, 67 percent in Arizona, 51 percent in Arkansas, 66 percent in Missouri, 72 percent in Washington, 64 percent in Iowa, 70 percent in Colorado, and 52 percent in Montana. These seniors will not get a basic drug benefit under the Graham plan because they earn at least $1 over the strict income limit for the comprehensive coverage offered to low-income seniors.

Only those seniors with incomes below 200 percent of the Federal poverty level obtain real prescription drug coverage under the Graham plan.

Let us look at chart 3. It is not a comprehensive benefit because it guts the most important part of any drug benefit program; that is, basic coverage. There is a huge gap. We were criticized for our gap between $3,450 and $3,700. But this is a canyon in terms of gap in coverage. You have no coverage from basically zero to $3,300 in out-of-pocket drug expenses—zero.

Seniors above 200 percent will have to spend $3,300 before they receive any coverage at all. According to the Congressional Budget Office, two-thirds of seniors will not have prescription drug costs even has high as $3,000 or $2,500. That means that most of the 26 million Medicare beneficiaries with incomes above 200 percent of the Federal poverty level would never spend enough to receive any coverage—no coverage at all. It is not a comprehensive benefit.

What about the 125 percent of seniors who will spend $4,000 annually on prescription drugs? They will not have any coverage for their prescription drug costs until about Thanksgiving Day after 10½ months with no coverage at all—no coverage at all for 10½ months.

I am told that under this plan most seniors will only get a 35-percent discount off their drug costs through the Government-managed plan until they spend $3,300 a year.

Private drug coverage plans get significantly larger discounts, anywhere from 20 to 40 percent, compared to a benefit such as this. I know the author of this amendment, Senator GRAHAM, claims seniors will get up to a 30-percent discount, but I challenge him to show me where it says that in this legislative initiative we are considering in the Senate. It is not in this legislation. And study after study has shown that discount cards, such as the one offered for seniors in this coverage gap, do not offer discounts that high.

What the typical senior actually gets from this plan is about $6 a month in help with drug costs. So the total annual benefit will be $72. What about the senior, as we said earlier, who is spending $2,000 to $3,000? They will get no coverage other than maybe this average of 5 percent off on discounted drugs, which will average about $6 a month.

This does not offer a Medicare drug benefit, in all reality, in the Medicare Program. This program would, in reality, be administered by the State Medicaid Program. This means the States will experience a huge unfunded Federal mandate in the Graham plan because they are required to pick up a large share of the cost of this new program.

An analysis conducted by the Centers for Medicare and Medicaid Services of the costs passed on to the States by this Graham amendment shows that many States across this country will be required to shoulder a sizable new financial burden.

Let's just talk about a few of the States hardest hit. I have a list of them, but I will go through a few: Arizona, Arkansas, California, Colorado, Iowa, Louisiana, Montana, Oregon, South Dakota, Washington, West Virginia.

Do you know what the annual impact will be on States, just in 1 year alone, based on our up-to-date analysis of the impact of this legislation? It is $5 billion in 1 year—$5.189 billion in 1 year—as an unfunded mandate on the States, for a grand total of $70 billion over 10 years. That is $70 billion over 10 years in an unfunded mandate to the States as a result of this low-income benefit now being placed, for the first time, in the Medicaid Program, not Medicare.

States, that as we all know are struggling in a sea of red ink, will be forced to raise taxes to implement the drug benefit for low-income seniors. Ironically, this new unfunded mandate will create a new funding crisis for States that we just tried to correct with the Rockefeller-Collins amendment last week, which was designed to give emergency Medicaid funding to States so they are not forced to cut their existing health care programs. I might add, that was returning to the States $9 billion for a year and a half. We are talking about an unfunded mandate, in 1 year, of $5.1 billion, and $70 billion over 10 years, to the States.

I might also say, this plan penalizes low-income seniors who earn extra income because it could mean they could lose their drug coverage. Only those beneficiaries who earn up to $17,720 for an individual and $23,880 for a couple will get comprehensive coverage, as I mentioned earlier. Any individual beneficiary who earns $17,720, plus $1, or a couple who earns $23,880, plus $1, gets no coverage. They are left to spend 18 percent of their income for prescriptions.

Just 2 years ago—another irony here—we passed legislation, in March of 2000. The Senate voted 100 to 0 to repeal the Social Security earnings limit. Yet here we are today considering a plan that would effectively establish a new earnings limit almost identical to one we repealed. Here is another contradiction in legislative policy.

So now we are going to penalize low-income seniors if they want to earn more money. Now we are creating a penalty——

The PRESIDING OFFICER. The Senator has used 15 minutes.

Ms. SNOWE. We are now creating a penalty on prescription drug coverage.

May I ask unanimous consent for 2 more minutes.

Mr. FRIST. I yield an additional 2 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Thank you, Mr. President.

That is an important point, that we are now creating this type of penalty for low-income seniors, because if they earn $1 more, they lose their prescription drug coverage.

Finally, employer-sponsored plans, labor-union sponsored plans, will be penalized under this legislation. There will be a disincentive for employers and labor unions to continue their coverage. You might ask, why? I will answer that question. Because now, under this legislation before us, they have revamped the standard for how you calculate your out-of-pocket cost for the catastrophic level of $3,300.

These plans will not be counted toward the out-of-pocket costs. So employers will not have an incentive to continue these programs. And certainly employees would not want to because they would not want to lose their coverage. Labor unions will drop their plans. So that is another disincentive.

Now 23 percent of retirees have such coverage. We do not want to create a disincentive for the continuation of those programs. But that is exactly what this Graham proposal will do that is before this Senate today. That is why I am urging my colleagues not to support this initiative. Allow us to go back to where we were on Friday, continuing the discussions we were holding across the aisle with our tripartisan group, with Senator BREAUX, Senator JEFFORDS, Senator GRASSLEY, Senator HATCH, Senator BAUCUS, Senator KENNEDY, Senator WYDEN, and others, so that we can have a comprehensive plan for all Medicare beneficiaries, with universal coverage that the AARP and all of us have embraced for the last 37 years with the existence of the Medicare Program.

This isn't the last vote. This can be the beginning. And I cannot imagine this Senate, in September, considering a Medicare give-back to providers and not considering a prescription drug program for our Nation's seniors. They deserve better. And we can do better.

Mr. President, I ask unanimous consent that the following material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 29, 2002]

FINDING A FORMULA FOR MEDICARE DRUG BENEFITS

(By Marilyn Moon)

Washington.—The political debate over how to add a prescription drug benefit to Medicare has dragged on now for more than four years. Prescription drugs have become an integral part of health care delivery, but unlike insurance for most working families, the Medicare program for older and disabled people provides almost no drug coverage. Politicians from both parties know they have to do something, but the hurdles are big: money and control.

The debate in the Senate is still ongoing. But large differences along party lines remain, and the Republican House plan that was passed on a party line vote in June makes hopes for compromise remote given the desires of consumers for broad coverage and of drug companies for minimal government controls.

The sums needed are enormous; over the next 10 years, Medicare beneficiaries are expected to spend $1.8 trillion for drugs. Thus, while the Senate Republicans' top offer of $370 billion over eight years is a lot of money, it represents only a bit more than one-fifth of drug spending over that period. The Republican plans contain big gaps in coverage and allow restrictions on what drugs will be covered. Democrats offer more coverage, but at a cost of $500 billion or more.

Since all proposed plans would be voluntary, those who spend relatively little on prescriptions need to be wooed into participating with the promise of receiving some benefits. Otherwise, only high users will enroll and any program will become very expensive over time.

All the competing plans offer generous coverage above a certain level of spending for those with catastrophic expenses. The differences arise in how to treat people who spend below the catastrophic level but still spend several thousand dollars annually on drugs. The Senate Democratic proposal requires beneficiaries to pay a portion of the costs, up to $4,000 a year. Beyond that limit, all drug costs are covered. But under the House Republican plan individuals must pay 100 percent of their drug expenses between $2,000 and $5,300.

Increasingly, many people on Medicare are ending up in this middle spending range, particularly those who take one or more drugs every day for a chronic condition. Drugs for such common ailments as hypertension, high cholesterol and arthritis cost $1,200 to $1,500 a year, creating a substantial financial burden for the chronically ill.

A viable compromise is to offer comprehensive coverage for those with low incomes and catastrophic help for all other beneficiaries, an approach that seems to be gaining favor in the Senate. But this plan would still cost about $400 billion, while providing little help for most Medicare recipients with chronic illnesses.

Money accounts for only part of the differences between the two parties. A big disagreement is over how the benefit is structured—and the precedent it sets for Medicare's future. The Democratic approach basically would have Medicare pay for drugs the way it now pays for hospital and physician benefits. Republicans want instead to have the benefit offered by private insurers. Compromise on this ideological question is especially difficult.

The Democratic approach is simpler and relies on Medicare's well-tested structure. But drug manufacturers, fearing that Medicare would impose price controls on drugs, are strongly opposed to enlarging Medicare itself to cover drugs.

Supporters of a private insurance structure argue that only competition among plans can achieve substantial control over rising prescription drug costs. But this theory has not been proved in other contexts. The private managed-care option in Medicare, for example, has raised costs to the federal government. Meanwhile, many Medicare recipients have had to suffer with plans that cut benefits or, worse, are withdrawn altogether because the companies offering them have quit the Medicare program entirely for lack of profits.

A privately administered drug benefit would be particularly problematic. If private insurers carry the risk for drug costs, they will probably structure their plans in ways that put high users of drugs at a disadvantage. For example, they can establish a list of preferred drugs (a formulary) and either not cover certain drugs or charge more for drugs that are not on the list. There are, for example, many anti-cholesterol drugs, but a formulary may not include the drug that works best for a particular patient. Consumers who need many drugs are likely to find it hard to decipher which medications the plans will cover and at what cost.

Ultimately, lawmakers and the rest of us must decide whether we trust government to deliver a new drug benefit effectively. What we do know is that the need for drug coverage is too great to let this issue remain unresolved.

SENIORS LEFT BEHIND BY THE LATEST GRAHAM PLAN

	Percent
Alabama	57
Alaska	68
Arizona	67
Arkansas	51
California	66
Colorado	70
Connecticut	70
Delaware	69
District of Columbia	61
Florida	64
Georgia	69
Hawaii	73
Idaho	61
Illinois	67
Indiana	65
Iowa	64
Kansas	68
Kentucky	50
Louisiana	51
Maine	61
Maryland	71
Massachusetts	64
Michigan	66
Minnesota	66
Mississippi	47
Missouri	66
Montana	62
Nebraska	55
Nevada	64
New Hampshire	65
New Jersey	65
New Mexico	60
New York	57
North Carolina	57
North Dakota	52
Ohio	64
Oklahoma	56
Oregon	66
Pennsylvania	62
Rhode Island	54
South Carolina	58
South Dakota	59
Tennessee	56
Texas	56
Utah	72
Vermont	59
Virginia	62
Washington	72
West Virginia	58
Wisconsin	65
Wyoming	60

State	Current Medicaid drug coverage (% of Poverty)	State share of costs of expanding Medicaid drug coverage (Percent of benefit cost)		Mandated state expenditures to pay for expanding Medicaid drug coverage in 2005		Total cost of new Medicaid mandate to states in 2005
		From current level of drug coverage to 120% of poverty	From 120% to 150% of poverty	New state mandate to cover up to 120% FPL (state portion of costs)	New state mandate to cover 120–150% FPL (state portion of costs)	
All States				$3,464,769,443	$1,725,226,680	$5,189,996,123
Alabama	74	29.4	20.58	71.839,488	27,330,240	99,169,728
Alaska	74	41.73	29.21	3,992,726	1,518,920	5,511,646
Arizona	74	32,75	22.92	46,279,680	17,602,560	63,882,240
Arkansas	74	25.72	18	39,374,234	14,976,000	54,350,234
California	100	50	35	242,560,000	212,240,000	454,800,000
Colorado	74	50	35	47,472,000	18,060,000	65,532,000
District	100	30	21	3,168,000	2,772,000	5,940,000
Georgia	74	40.4	28.28	110,017,280	41,854,400	151,871,680
Hawaii	100	41.23	28.86	7,388,416	6,464,640	13,853,056
Idaho	74	29.04	20.33	11,114,189	4,228,640	15,342,829
Iowa	74	36.5	25.55	40,027,360	15,227,800	55,255,160
Kentucky	74	30.11	21.08	59,169,763	22,513,440	81,683,203
Louisiana	74	28.73	20.1	61,109,859	23,235,600	84,345,459
Mississippi	100	23.38	16.37	17,132,864	14,994,920	32,127,784
Montana	74	27.04	18.93	8,358,605	3,180,240	11,538,845
Nebraska	100	40.42	28.34	11,640,960	10,202,400	21,843,360
New Hampshire	74	50	35	19,872,000	7,560,000	27,432,000
New Mexico	74	25.44	17.81	26,026,138	9,902,360	35,928,498

State	Current Medicaid drug coverage (% of Poverty)	State share of costs of expanding Medicaid drug coverage (Percent of benefit cost)		Mandated state expenditures to pay for expanding Medicaid drug coverage in 2005		Total cost of new Medicaid mandate to states in 2005
		From current level of drug coverage to 120% of poverty	From 120% to 150% of poverty	New state mandate to cover up to 120% FPL (state portion of costs)	New state mandate to cover 120–150% FPL (state portion of costs)	
North Dakota	74	31.64	22.15	11,876,390	4,518,600	16,394,990
Ohio	64	41.17	28.82	200,672,461	62,712,320	263,384,781
Oklahoma	74	29.44	20.61	45,069,107	17,147,520	62,216,627
Oregon	74	39.84	27.89	41,930,803	15,953,080	57,883,883
South Dakota	74	34.71	24.3	9,707,693	3,693,600	13,401,293
Tennessee	74	35.41	24.79	84,961,338	32,326,160	117,287,498
Texas	74	40.01	28.01	315,086,752	119,882,800	434,969,552
Utah	100	28.76	20.13	4,877,696	4,267,560	9,145,256
Virginia	80	49.47	34.63	108,596,544	47,512,360	156,108,904
Washington	74	50	35	93,472,000	35,560,000	129,032,000
West Virginia	74	24.96	17.47	27,188,429	10.342,240	37,530,669

NEW GRAHAM BILL IMPOSES BILLIONS IN UNFUNDED STATE MANDATES THROUGH MASSIVE MANDATORY MEDICAID EXPANSION

Why does the bill increase Medicaid cost for many states?

The bill mandates a major expansion of a form of Medicaid to provide prescription drug coverage. It creates a new category of Medicare-Medicaid "dual eligibles," who qualify for drug coverage if they meet the means test requirement in the bill. States, through their Medicaid programs, are required to determine low-income eligibility and to pay the enrollment fee and most of the drug costs for beneficiaries with incomes below 200% of poverty. Low-income beneficiaries are responsible for paying a $2 copay for generic drugs and $5 for brand name drugs; the new drug benefit picks up all the rest of the costs. This is a comprehensive drug benefit, estimated to cost around $3200 per beneficiary on average in 2005. The Federal government pays for the Medicare portion of the benefit. But most of the cost of this comprehensive benefit must be paid through Medicaid. This is because the Medicare benefit is a limited one: Medicare covers only 5 percent of the cost of drugs up to the catastrophic limit of $3300, then provides catastrophic coverage with a $10 copay. Thus, state Medicaid programs must pay at least two-thirds of the cost of the drug benefit, around $2000 per beneficiary in 2005. This is a conservative estimate of Medicaid benefit cost, and it will increase rapidly over time.

The Federal government pays only part of the cost of the Medicaid benefit, based on the state's Medicaid FMAP rate and enhanced FMAP rate:

Percent of Poverty Rate	Medicaid Category	Required State Contribution
0–74	Truly Dually	Normal Medicaid Match
75–100	QMB's	Normal Medicaid Match
100–120	SLMB's	Normal Medicaid Match
120–150	Drug QMB1	Enhanced (SCHIP) Match
150–200	Drug QMB2	100% Federal Match

While all states have comprehensive Medicaid drug coverage up to 74 percent of poverty, many states do not have coverage up to 150 percent of poverty. States that currently do not provide comprehensive drug coverage up to 150% of poverty through either Medicaid or a state drug assistance program up to 150% are thus required to pay for a significant portion of the cost of comprehensive drug coverage. The cost of the new mandate depends on how many beneficiaries in the state currently do not have comprehensive coverage. The costs also increase rapidly over time, because drug cost are rising rapidly.

How much must your State pay?

The overall cost of this mandate to states in 2005 will exceed $5 billion, and may be much more. Over the 10-year budget window, the cost of the Medicaid mandate to the affected states will exceed $70 billion—about 14 times the 2005 costs. The attached table shows states that definitely will pay hundreds of millions more because of this proposal. Additional states may also face higher costs, if they do not already provide comprehensive drug benefits up to 150 percent of poverty.

NO HELP FOR RETIREES WITH EMPLOYER OR UNION COVERAGE FROM GRAHAM

Retirees with decent coverage from a union or employer do not incur actual drug costs out of their own pockets above $3,300, as they would have to in order to benefit from the Graham amendment. So this benefit provides nothing for them.

The Graham bill supporters note that "no employers drop" coverage as a result of their bill. This is because the benefit is so paltry.

In contrast, the Tripartisan bill provides a real subsidy worth almost $1,600 per retiree to help union and employer plans continue coverage.

And those that decide to "wrap around" the strong basic benefit for all Medicare beneficiaries still provide comprehensive assistance to their workers. This is real help for employer and union coverage.

The Graham benefit does little to stem the trend toward dropping employer coverage. And when employers drop, Graham leaves retirees with nothing until they incur over $3,300 in costs out of their own pockets.

Graham would spend $390 billion yet provide virtually no benefit for anyone with retiree coverage. When retirees find out that they won't benefit from this, how will they react?

Ms. SNOWE. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I thank the Senator from Tennessee.

Mr. President, obviously, as you might expect, I rise in opposition to the latest amendment by Senator GRAHAM—whether it is Graham 2, 3, or 4, I am not sure, but it is another Graham idea on drugs.

First of all, I would like to address an argument that some Senators have been making on behalf of this amendment. They have argued that this is the Senate's very last chance to deal with the drug issue this year. Even though this amendment is terribly flawed, they say that somehow. Senators should be encouraged to vote for it anyway.

Mr. President, I am second to none in my frustration with the Senate's failure on this issue at this point. The Democratic leadership has abandoned any pretense of a fair process. And fair process is what the Senate is all about. Instead of leading, the Democratic leader has been content to cook up his own proposals or have members of his party cook up their own proposals and try to somehow just ram them through the Senate.

For those of us who believe things in this body must be done in a bipartisan way, and through the committee process, and, in the end, get things done, this process in which we have been involved has been extremely frustrating.

The good news is that this vote is not the last vote. Fortunately, the Senate still has time and the ability to act. Speaking for my colleagues in the tripartisan group, we are ready to move on and begin work in the Finance Committee on a truly bipartisan compromise. I wish Senator DASCHLE had the confidence in Senator BAUCUS I have to move a bipartisan bill on Medicare prescription drugs out of committee.

No one should vote for this amendment in the misguided belief that it is their last chance because it is not their last chance.

Now I would like to address the substance of the amendment before us. The sponsors chose to spring the text of this amendment on the Senate yesterday for the first time. Perhaps they thought they could slip in something new that we would not catch. Well, we caught it, and you know we have caught it by the speeches of the Senator from Maine. We actually have had a chance, and we have studied the Graham amendment.

The Graham amendment imposes a massive new burden on States just when State treasuries are in terrible shape. What does it do? Well, it mandates—do you like mandates?—that

State Medicaid Programs provide cost-sharing assistance to an entirely new universe of seniors who have incomes up to 150 percent of the Federal poverty level. If that is not bad enough, it also socks the States with administrative costs of enrolling seniors with incomes up to 200 percent of poverty. Even beyond those costs, this enrollment burden is going to be an administrative nightmare for the respective States because of all the different populations involved.

At a time—and we know this is true in at least 45 of the 50 States—when they are experiencing tremendous budget pressures, massive new burdens of this type are the last thing the States need to have imposed upon them by the Federal Government. In fact, last week we heard of the problems of the State budgets and the problems States are having with their Medicare Program, because we voted for additional fiscal relief just last week. How ironic it would be if now we were going to add yet another burden.

Let me point out another problem with the amendment before us, and that is the low-income benefit, focusing on the beneficiaries that it serves. If you earn $1 too much to qualify for coverage, you get nothing. That is a cliff, we call it. We try to avoid cliffs. If we do policy right, we do avoid cliffs. But this amendment isn't about policy that makes sense, this amendment is about a political statement.

So seniors can find themselves in a situation where, if they earn $17,720, they qualify. If they earn an extra $1, $17,721, they lose drug coverage. So the Graham amendment sets up disincentives for beneficiaries to work at the same time as Congress has been trying to remove the wrong incentives from the law, and here we are considering a new disincentive. Once again, the policy just doesn't make sense.

Everything I have said so far pertains to the benefit for the 30 percent or so of low-income beneficiaries who get solid coverage under the Graham amendment. Unfortunately, there are another 70 percent out there who get very little coverage at all. Those 70 percent, in fact, are the biggest losers of all under this alternative.

Just how bad is this benefit in the amendment before us? A senior above 200 percent of poverty with average drug spending will receive approximately $6 of assistance every month—only $6 towards their prescription drug expenses. For me, $6 a month is hardly a benefit at all. I would be embarrassed to go home to Iowans and tell them I voted for an amendment that provided only $6 a month to average beneficiaries.

Why is there so little benefit? Because for 70 percent of the seniors, there is no coverage from zero to $3,300 in out-of-pocket spending. A week ago, the author of this amendment complained about a proposal I put forward because we had a $250 deductible. Now we are seeing a $3,300 deductible. Benefits paid by private insurance don't even count towards that.

Another problem: Retirees with decent coverage from a union or an employer do not incur actual drug costs out of their own pocket above $3,300, so the Graham benefit provides almost nothing for them.

I have to sound a sobering note: You don't pull the wool over the eyes of Americans—and seniors in particular. They don't appreciate false promises. I fear Senators who vote for the Graham amendment will have a lot to answer for down the road. I won't be one of them. I urge my colleagues not to be one of them either.

We are facing another mostly partisan vote on a mostly partisan bill, another vote that will fail to get 60 votes and will fail to help our seniors. Had regular order been followed, had the Finance Committee been given the right to work its bipartisan will, we could be completing action on this issue. Instead, we are still at a beginning.

The sponsors of the tripartisan bill, the only bipartisan bill in all of Washington, DC, to provide comprehensive, universal coverage, have always been ready and willing to talk to anyone about compromises, and we are still in this mode. We are ready to meet people any place, any time, anywhere to discuss this, including members and leaders of the AARP, who somehow got sucked in today to supporting something that a week ago they said they abhorred.

This situation is going to continue to be the case for us in this group, even after this morning's vote. So this vote is an ongoing, evolving process to get us a successful product. I have promised my constituents I will not give up on this issue. Adding a drug benefit to Medicare is business that simply cannot wait another year to cost $100 billion. Just as the need for prescription drug coverage in Medicare is not going to go away, we in the tripartisan group are not going to go away.

Mrs MURRAY. Mr. President, I rise today to reluctantly support the Graham/Smith amendment. I am casting this vote to move the process forward so we can get closer to providing seniors and the disabled with the prescription drug coverage they need.

I have got to tell you that I am frustrated and disappointed that Congress hasn't made more progress on this critical issue. Our seniors deserve better than the procedural fights we have seen here in the Senate, and they deserve better than the Graham/Smith amendment. Today I am voting for this amendment because it offers best hope of moving the process forward after so many delays.

Part of my frustration goes back to the priorities that were set last year. Strengthening Medicare should have been a top priority in Congress. Instead, the Republican-controlled House and Senate moved forward with a $1.25 trillion tax cut. Now we are fighting to provide a minimal Medicare prescription drug benefit that will not cost more than $400 billion over ten years. While we have come a long away since the President's inadequate $190 billion proposal at the start of the year, we still are not where we need to be.

I do want to applaud the efforts of our leader Senator DASCHLE and Senator GRAHAM. I know that they share my goal of a universal, affordable benefit as part of Medicare. Senator GRAHAM has worked especially hard on behalf of our seniors and the disabled.

While this amendment provides some targeted relief, it falls far short of our original goal. I supported S. 2625, a universal, affordable benefit that treated all seniors the same. Like the Medicare program, it offered every senior access to affordable coverage. I was disappointed that we could not secure the necessary 60 votes on this package. I do want to point out that S. 2625 did receive 52 votes, meaning a majority of my colleagues supported this approach. Unfortunately, due to procedural battles and partisan bickering, 52 votes were not enough.

This amendment does provide immediate assistance to the most needy and vulnerable. Ensuring that seniors below 200 percent of poverty receive access to affordable coverage is critical and will offer coverage to a larger number of seniors and the disabled. In Washington State, this could mean that 290,000 Medicare beneficiaries would be eligible for full coverage with a nominal copayment and no monthly premiums. This is a big improvement. It would ease some of the pressures on our State Medicaid program, which has been trying to fill the Medicare gap for low income beneficiaries.

But, as we all know, income is sometimes not always the best measurement of need. What about those seniors who earn just $1 over the 200 percent of poverty threshold? They could have significantly higher drug costs yet receive no benefit, until they reach a catastrophic level of $3,300.

In Washington State, this could mean 428,000 beneficiaries would not be eligible for the low income assistance. Yet, these seniors paid the same taxes and contributed the same percentage of their income while they were working to support the Medicare program.

I am pleased this amendment will offer catastrophic protection to all seniors regardless of income. Targeted relief to those with expensive drug costs does provide some level of fairness to the program. Ensuring that seniors with more than $3,300 in out of pocket costs receive relief is a positive improvement and will offer some piece of mind.

This amendment is a good starting point, but it cannot be the final product we offer our seniors. I fear that this proposal could get worse in conference. The House-passed bill is nothing but a false promise of benefits. It is based on a private insurance model that has all but failed in most parts of the country. It would require significant out of pocket costs for even the low income and could result in less coverage for many seniors. It has a huge hole in coverage and does not offer a seamless benefit as part of Medicare. It is a sham, and once it sees the light of day, seniors will not be fooled.

I am willing to support this amendment with the understanding that this is only the beginning. This is the foundation for building a real universal benefit as part of Medicare. This cannot be the high water mark. I do not want a final conference report to offer only targeted limited relief based on a private insurance model. We cannot just merge this amendment with the House-passed bill. Instead, we must build on both approaches and make significant improvements. We must insist that the final product result in a seamless benefit that is part of Medicare that offers universal, affordable coverage.

I want to make one other point about our attempts to improve Medicare. As my colleagues know, I am very concerned about Medicare reimbursement rates. These rates vary by region and don't reflect the true costs of providing care in many States. I am concerned that this amendment builds on that flawed, unfair formula.

In Washington State, the annual per beneficiary payment from Medicare is $3,921 while in Louisiana it is as high as $7,336. Seniors in Washington State are suffering from this inequity. They cannot find a doctor to accept new Medicare patients and are forced to seek care in overcrowded emergency rooms. This inequity also puts providers in Washington State at a distinct economic disadvantage. Doctors are leaving my State for other parts of the country that offer higher Medicare reimbursements. In some parts of the country, Medicare payments are so high they subsidize private insurance payments. I can tell you that this is not the case in Washington State.

Unfortunately, the Graham/Smith amendment would result in some States receiving much greater coverage than others. Because the benefits will be targeted to those below 200 percent of poverty, some States will again receive much more Medicare funding than other States. In Washington State, only 40.4 percent of seniors would be eligible. However, in Louisiana 66 percent would eligible for coverage. As we work to improve Medicare we should make the program more fair to all seniors.

I understand that we will not be adding a provider package to this bill. We all recognize the need to address the provider shortfalls. I understand that the Majority Leader is committed to taking up a provider package in September. This must be a priority. It does little good to offer a prescription drug benefit if seniors cannot find a doctor. I urge my colleagues to work to address the inequities in the Medicare reimbursement formula as part of a provider package. We cannot continue to increase payments without a fix, as those at the top continue to receive a large percentage of the increased dollars.

So I am willing to support the Graham/Smith amendment as a starting point for our work on crafting an affordable, universal drug benefit that's part of Medicare. It's clear that we still have a great deal of work to do. And regardless of the outcome of this vote, I'm committed to working on this issue until we have the coverage that seniors and the disabled need.

Mr. HATCH. Mr. President, my, what a difference a week makes! Who would ever think that the Senate would now be considering a piece-meal, minimalist Medicare prescription drug coverage amendment.

Is that what seniors' want? I don't think so and that is why I want to express my vehement opposition to the Graham plan.

Over the past few weeks, we have heard just about everything under the sun regarding prescription drug coverage. Some fact, much fiction.

What we need to do now is to sort out the rumors and false statements and look just at the facts.

The one undeniable fact where we all agree is this: the need for Medicare drug coverage is too great to let it become buried in a political quagmire.

We have all been working hard on this issue and we must not fail our seniors now by passing a piece-meal Medicare prescription drug plan. Apparently, our Democratic Leadership does not agree. Let's look at the facts.

We know that the tripartisan bill will cost $370 billion over 10 years. We hear that the latest Graham bill will cost close to $400 billion over 10 years, but the plan keeps changing so we do not have a true CBO score. We just received the legislative language late yesterday afternoon and CBO has not had a change to carefully review the legislative language.

We know that the tripartisan bill will provide a comprehensive benefit package for all seniors. Every single senior receives comprehensive, guaranteed coverage for his or her prescriptions.

We know that the Graham bill does not provide comprehensive coverage for all seniors. Under the Graham bill seniors only receive coverage for drugs if their incomes are below 200 percent of the Federal Poverty Level or if they reach their catastrophic coverage limit. What happens to middle-income beneficiaries? My friends, these seniors are just out of luck.

We know that the tripartisan bill will work to push drug costs down through private sector competition.

We know that the graham bill is going to have a new, federally-funded, government-run drug program that has no cost-saving mechanisms. In my opinion, a government-run program will lead us down the dangerous path of prescription drug price-setting. Look what has happened to the reimbursement rates of other Medicare providers, like hospitals and physicians.

The tripartisan bill encourages competition based on quality and cost. The tripartisan proposal lowers prices for all drugs without compromising quality and innovation. The Graham plan does not.

The tripartisan plan offers choice—a choice of plans, a choice of medication and a choice of Medicare coverage through our enhanced fee-for-service option. The Graham plan has a one size fits some proposal.

Our tripartisan plan improves the Medicare program by taking a global approach to meet the changing needs of seniors. The tripartisan bill provides protection against high hospitalization costs and offers free preventions benefits. This is what modern health care demands.

On the other hand, the Graham plan only provides minimal drug coverage for a small number of Medicare beneficiaries.

Why should seniors settle for a piece-meal approach? It just doesn't make any sense.

For less than the cost of the Graham catastrophic plan—or, I think, the catastrophic Graham plan—which would benefit less than half of seniors, the tripartisan approach provides comprehensive coverage with quality drug coverage, choice and cost savings for all Medicare beneficiaries.

A piece-meal approach and last minute changes to keep the CBO score down to placate people is the approach my colleagues on the other side have taken in putting this bill together. And it is the wrong approach.

So it is no surprise that is what their plan has offered—a piecemeal, band-aid approach to providing drug coverage.

We need to provide Medicare beneficiaries with adequate prescription drug coverage, this year. We must put aside our differences and self interests.. Partisan arguments only stand in the way of Medicare drug legislation being passed by the Senate.

Let's start the process of improving health care for our seniors by passing quality prescription drug coverage.

Let's not fail them again by allowing the piece-meal Graham plan to pass the Senate. Our Medicare beneficiaries are depending on us to provide them the best Medicare prescription drug coverage possible.

My friends, a vote in favor of the Graham plan does not accomplish this important goal. Our Medicare beneficiaries deserve better.

I urge my colleagues to vote against the Graham amendment.

Mr. HOLLINGS. Mr. President, I rise today to reluctantly oppose the Graham-Smith amendment. First of all, let me commend the distinguished Senior Senator from Florida for the leadership he has shown throughout the years to bring a meaningful prescription drug benefit to Medicare. America's senior citizens have no stronger ally in this body than Senator BOB GRAHAM. He has worked tirelessly to provide real relief to Medicare beneficiaries from their prescription drug costs and I was proud to stand with him, Senator MILLER, and Senator KENNEDY last week to try to move ahead with a real drug benefit. However, I must oppose this amendment because it largely neglects the vast middle-class of senior citizens.

Just yesterday, Secretary Thompson granted South Carolina a Section 1115 waiver to bring our state's SilverxCard program under Medicaid, thereby allowing the program to expand coverage to seniors with incomes of up to 200 percent of the Federal poverty level. Thus, the very same seniors that would receive comprehensive coverage under the Graham-Smith Amendment can already receive coverage, albeit more limited, in South Carolina through Medicaid or SilverxCard. This amendment would not make one additional Medicare beneficiary in South Carolina eligible for prescription drug coverage. I also have found that affluent seniors in South Carolina can either afford supplemental prescription drug coverage on their own or have a plan from a former employer that contains prescription drug coverage.

Which seniors are left furthest behind in South Carolina? It is the middle-class, those individuals who spent their lives working in the textile mills, manning the assembly line, teaching in our schools, and tending to our farmland. They worked hard, paid taxes into Medicare, and deserve to receive the same benefits under Medicare as anyone else. I cannot in good conscience vote for an amendment that tells a senior citizen with an income of $17,720 that, yes, you receive a real prescription drug benefit and another senior citizens with an income of $17,721 that, no, you have to spend $3,300 out of your own pocket before you receive any assistance. We did this once already with Medicare. It failed and this Senator learned that we should not do it again.

I understand the desire of many of my colleagues to pass something, anything to help citizens afford their prescription drugs. I talk to the same people and receive the same heart-wrenching letters from constituents as they do. I know their commitment and desire to enact legislation this year is real and genuine, but I simply cannot support this approach. All of our seniors deserve comprehensive Medicare prescription drug coverage.

I still believe that we can reach agreement before the end of the year on a real, meaningful benefit for all our seniors and stand ready to work with my colleagues to make this possible.

Mr. BUNNING. Mr. President, I rise today to speak briefly about the Graham-Smith amendment.

The Senate has been debating a prescription drug benefit for Medicare for the past two and a half weeks. In fact, Congress has been working on the issue for years now. Now our colleagues in the House have passed a proposal. The Senate needs to do the same.

All along I have supported the efforts of the Tripartisan group and their efforts to write a common sense Medicare prescription drug proposal. I voted for their bill because I think it targets relief in a fiscally responsible manner to those seniors who need it the most.

Unfortunately, I cannot support the Graham-Smith amendment.

While we all agree that seniors need help with their prescription drug costs, this amendment falls short for several reasons.

First of all, this amendment creates an "all or nothing" program for many seniors. Seniors below 200 percent of poverty, which is $17,720 for singles and $23,880 for married couples, will basically have all of their prescription drug costs paid for, with only a $2 or $5 copay for drugs.

However, folks who make over 200 percent of poverty, even if it is only by a small fraction, basically don't get a real benefit until catastrophic coverage kicks in at $3,300. Writing this steep of an income cliff into the law isn't fair. We can do better.

The difference between having an income of $17,720 and $17,721 shouldn't costs seniors $3,300 in prescription drug costs. In Kentucky, there are almost 240,000 seniors who have incomes above this threshold. Under Graham-Smith, they basically get nothing.

Second, this amendment doesn't give us enough bang for our buck. The Congressional Budget Office estimates that this amendment will cost $390 billion, which is a heck of a lot of money. However, even if we pass it, we still aren't offering a real benefit to all seniors, like we did with the Tripartisan amendment.

The Tripartisan proposal would have cost $370 billion, and all seniors could have had catastrophic coverage starting at $3,700, along with substantial help with their prescription drug costs below that. Even the Hagel Amendment, with a price tag of $295 billion, limited out of pocket expenses for folks below 200 percent of poverty at $1,500.

I just don't understand why we would want to pay an additional $20 billion or $95 billion more for a Medicare prescription drug plan that offers fewer benefits. This means that the Graham-Smith proposal shortchanges not only seniors, but the American taxpayer as well.

America's seniors need our help, and the Senate needs to pass a prescription drug bill. But because the Senate Democrat leadership insisted on bypassing the usual committee process and proceeding straight to the Senate floor with the debate, we have been struggling with a legislative free-for-all that, in the end, could lead to nothing passing at all.

When I made my first floor statement on this issue, I warned against this sort of procedural gimmickry and its possible consequences. So far we have voted on three prescription drug proposals, and only two have earned more than 50 votes, let alone the 60 that are needed under the budget rules. If the committee process had been allowed to work its will, I think there is a much better chance that we could pass a serious proposal to provide meaningful relief to seniors.

I can't support Graham-Smith. It's a day late, more than a few dollars too short and fails to provide real help to seniors who need it most. I think there is still a chance, a small one, to pass a real bill. But the door is about to close on our seniors yet again. I hope we don't let them down.

Mr. CORZINE. Mr. President, I rise today in strong support of the Graham-Smith amendment. I believe that this compromise represents an important victory for all our Nation's seniors, and particularly for seniors in my State of New Jersey.

Let me be frank: this is not the proposal I would have preferred and is not the proposal I have talked about with my constituents for the last few years. I have gone around New Jersey and have heard from my constituents about how they struggle to deal with rising drug prices, how they fear being bankrupted in their last years, and how they worry about burdening their families. That is why I strongly support a comprehensive Medicare benefit, and that is why I supported the Graham-Miller-Kennedy-Corzine amendment last week.

But, I am also a pragmatist, and I know that the Graham-Smith amendment is a good and necessary start, upon which we can build. It will provide critical relief to the neediest of seniors, and provides comfort to all seniors that castatrophic drug costs will not ruin them. And I know that if we can get this enacted, next year I will be back here fighting to expand its reach.

The Graham-Smith amendment will ensure that no senior spends more than $3,300 to buy their prescription drugs. It also provides comprehensive coverage to our Nation's neediest seniors, those with incomes up to 200 percent of the federal poverty level. In addition, it provides a thirty to forty percent discount on prescription drugs for all seniors. At a cost of $390 billion over ten years, the Graham-Smith amendment will guarantee all seniors much-needed prescription drug coverage at a reasonable price.

My State of New Jersey and many other States around the Nation have responded to the glaring need for prescription drug coverage for our Nation's seniors by creating state pharmacy benefit programs. In New Jersey, we have the PAAD and Senior Gold programs. The PAAD program currently provides comprehensive drug coverage to seniors up to 220 percent of the Federal poverty line, and the Senior Gold program provides more limited coverage to certain higher income seniors.

I am pleased that the Graham-Smith amendment preserves and reinforces State pharmacy benefit plans like New Jersey's. I worked with Senators GRAHAM and SMITH to ensure that the amendment enables States with prescription drug programs to wrap their programs around the Medicare prescription drug benefit, to create more generous and more extensive benefits for all seniors. This is a crucial provision that will enable New Jersey, Pennsylvania, New York, Minnesota and the other 20 States that have State-funded prescription drug programs to expand and supplement their existing programs.

I also worked with Senators GRAHAM and SMITH to ensure that state pharmacy program spending counts toward a beneficiary's out of pocket limit. This will ensure that New Jersey seniors reach catastrophic coverage as quickly as possible. I want to thank Senators GRAHAM and SMITH for their assistance with these provisions.

Let me outline how the Graham-Smith amendment would benefit New Jersey seniors: 1,189,000 New Jersey senior citizens and disabled Medicare beneficiaries would be eligible for coverage under the Graham-Smith plan; 568,000 Medicare beneficiaries, 48 percent, would be eligible for low-income assistance and will receive all needed drugs in return for nominal copayments; 621,000 senior citizens and disabled Medicare beneficiaries, 52 percent, who are not eligible for special low-income assistance would benefit from discounts of 25–30 percent on each prescription.

I know many of my colleagues have raised concerns that this amendment does not provide comprehensive coverage for all seniors. But the basic fact is that this amendment provides prescription drug insurance for all our nation's seniors and disabled. It provides a thirty to forty percent discount on prescription drugs for all Medicare beneficiaries and would provide full prescription drug coverage to every Medicare beneficiary who spends at least $3,300 per year for their prescription drugs.

The Congressional Budget Office has estimated that by 2005, the year that this amendment would take effect, at least half of all Medicare beneficiaries will have annual prescription drug expenditures that exceed $4,000.

And, don't forget that the eighteen million Medicare beneficiaries with incomes below 200 percent of poverty would receive all the prescription drugs they need, for a small copayment of $2 for generics and $5 for brand name drugs.

At a time in which this Congress has voted to give billions of dollars in tax breaks to the wealthiest people in our country, it is wrong and hypocritical to tell seniors that we simply don't have the funds or the will to pass an amendment that will provide them access to affordable, essential medicines.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the amendment offered by Senators GRAHAM and SMITH to add a prescription drug benefit to the Medicare program for low-income beneficiaries and those with high drug costs.

The amendment offered today is built on consensus and compromise, and is the product of weeks of extensive discussion. I believe in its final form, this amendment strikes a balance between the Senate's proper exercise of fiscal responsibility and the need to expand and update the Medicare program to include some help with the high costs of prescription drugs for today's 40 million Medicare beneficiaries.

I want to thank my good friend, Senator LINCOLN CHAFEE, for his commitment to getting prescription drugs to those in our society who are the sickest and the poorest. I have been working with him since the end of June in developing a cost effective alternative that would get prescription drugs to the lowest income and the sickest in our society immediately.

I believe that the Graham-Smith amendment we are debating today addresses my major concern which is to provide low-income individuals in our society with access to a full, prescription drug benefit at low cost.

I am pleased that others in the Senate agree with me that at a minium we should provide a comprehensive benefit to those individuals in our communities who are making daily decisions about eating or paying rent and buying their necessary, life-saving prescription drugs.

The prescription drug benefit created by this amendment includes three important components.

First, this amendment creates a voluntary, low-income benefit so that seniors would no longer be forced to continue making decisions between food or medicine. Under this plan, beneficiaries would pay no premium, no annual fee, and no deductible. Their only cost would be a nominal copay of $2 for a generic drug and $5 for a brand name drug.

I believe the assurance that over 18 million Medicare beneficiaries, 47 percent of all Medicare beneficiaries, with incomes below $17,720, 200 percent of the Federal poverty level, would have access to needed prescription drugs at a nominal cost is the most important component of this proposal.

For California, this means that 1.8 million senior citizens and disabled Medicare beneficiaries, 49 percent, with incomes below $17,720 for an individual and $23,880 for a couple would have immediate access to all needed drugs.

Second, this amendment would provide all 40 million Medicare beneficiaries with access to catastrophic coverage. For a simple cost of $25 a year for those with incomes above $17,720, every beneficiary would have the assurance that once out-of-pocket spending for prescription drugs exceeds $3,300, a copayment of $10 would provide them with access to full coverage at no additional cost to them.

Beneficiaries with incomes below $17,720 would not be responsible for the $10 copay. Low-income individuals would receive this benefit at no cost.

Third, this amendment provides the 14 million Medicare beneficiaries, 35 percent, making over $17,720 with access to discounts of about 25 percent on each prescription. For an annual fee of $25, these beneficiaries would have access to the federal negotiated rate and would receive a 5 percent government subsidy in addition on each prescription they purchase.

In California, this means an additional 1.9 million senior citizens and disabled Medicare beneficiaries, 51 percent, who are not eligible for low-income assistance would benefit from discounts of 25–30 percent on each prescription.

By providing coverage to low-income individuals and those with high drug bills, this proposal meets the most fundamental needs of our nation's senior citizens and disabled.

Passing this amendment is timely. On a daily basis, my office hears from California's seniors about the financial constraints they face which often prohibits them from buying necessary medication.

I recently heard from Helen Cecil, a senior citizen from Paramount, CA on this issue. She lives on a fixed monthly income of $1,000. Her rent is $421 a month, and she spends $150 a month on her prescriptions to treat high cholesterol, hypertension and arthritis. In total, Helen spends $1,800 annually on medication. She admits to having only one option: She must cut down on food in order to buy her medications.

Under the Graham-Smith amendment, Helen would pay no monthly premium and no deductible. She would only pay $2 per prescription for generic drugs. Assuming she purchases generic drugs, her monthly bill of $150 for three medications to treat her chronic health conditions would drop to approximately $6. Helen saves about $142 monthly. This is money she can use to buy groceries.

For the millions of Medicare beneficiaries that face the same predicament as Helen Cecil, I believe the government has a responsibility to see that they are not forced to choose between buying food and buying medications. Quite frankly, it is hard to think that in the richest nation on earth, we have allowed a situation to evolve where so many of our elderly must make such a choice.

I am hopeful that the Senate won't fail our Nation's sickest, poorest and most frail.

In the hopes of breaking the gridlock of this debate, and with the need to pass legislation that meets both the budgetary restrictions of these uncertain times and the needs of our nation's low-income seniors, I urge my colleagues to support the Graham-Smith amendment.

Mr. LEVIN. Mr. President, I will support the Graham-Smith amendment. However, I would have preferred a prescription drug benefit added to Medicare, like the Medicare Outpatient Prescription Drug Act of 2002, commonly referred to as the Graham-Miller proposal. The Graham-Miller amendment would have provided a comprehensive, voluntary, affordable and reliable prescription drug benefit to Medicare beneficiaries. I voted for the Graham-Miller amendment, which was supported by a majority of the U.S. Senate in a vote last week. Unfortunately, the proposal required 60 votes and subsequently failed.

On balance, I will support the Graham-Smith compromise, even though I have some reservations. The bill has three major points. First, the Graham-Smith amendment provides all Medicare beneficiaries access to a prescription drug card which allows Medicare beneficiaries to pool their purchasing power and receive drug discounts of up to 35 percent. The Federal Government would add an additional 5 percent subsidy to any negotiated price. Second, low-income beneficiaries would receive full drug coverage—paying only a nominal copayment for their drugs. Third, "catastrophic coverage" would be available to Medicare beneficiaries so that someone doesn't have to spend more than $3,300 in out-of-pocket expenses on prescription drugs. After that, a beneficiary would only pay a $10 copayment for each prescription drug.

However, I do have a number of reservations about the Graham-Smith proposal. First, a prescription drug card is no substitute for adding a prescription drug benefit to the Medicare Program. I am a strong advocate of making prescriptions drugs an entitlement for every Medicare beneficiary who wants it. A prescription drug card can be uncertain, relying on a possible negotiated benefit that might not materialize and is no substitute for a guaranteed prescription drug benefit. I am also opposed to a means test for Medicare. Medicare's beneficiaries receive services because they have paid into the system their entire working lives. It is unfair for Medicare beneficiaries to receive different benefits based on their respective incomes. This sends the wrong message to our Nation's 40 million Medicare beneficiaries who rely on its stability and its application to all eligible seniors.

So, with reservation, I will be supporting the Graham-Smith proposal as the Senate's best chance to pass a Medicare prescription drug benefit this year, and I urge my colleagues to do the same.

Mr. REED. Mr. President, I would like to take a few minutes to share with my colleagues my thoughts about the Graham-Smith amendment that the Senate will be voting on shortly. I have to say that the proposal currently before us is a far cry from what I have previously supported and certainly no where near what I had hoped for in terms of a Medicare prescription drug benefit.

Indeed, this is not the benefit we ultimately should enact and, more importantly, this is not the benefit our seniors deserve. At best, the Graham-Smith proposal provides a universal catastrophic benefit to those seniors with the highest prescription drug costs and it will aid those States that do not already have a State-based prescription drug benefit. These concessions, offered in a spirit of compromise and bipartisanship, limit the effect and reach of this bill. Chief among these concessions has been cost. That constraint on resources is driven predominately by the passage of the President's tax plan, which leaves us with resources that are only sufficient to meet the needs of low-income seniors and those who spend over $3,300 out of their own pocket.

Nevertheless, the proposal does start us on the road to a universal, voluntary benefit for our Nation's elderly and disabled population by offering a comprehensive benefit for those living below 200 percent of the Federal poverty level. According to estimates, nearly half of the Medicare beneficiaries in Rhode Island would be eligible for the fully subsidized Federal prescription drug benefit. In addition, the amendment provides catastrophic coverage for drug costs above $3,300. And, contrary to other proposals, these benefits would be provided in the same manner that seniors receive all other health care benefits: through Medicare.

There are however several areas where I feel this amendment falls short.

First, seniors above 200 percent of poverty would receive, for a nominal annual enrollement fee, a discount card that would provide an automatic 5 percent Federal subsidy for all drug costs and additional savings that are expected to be captured through the negotiation of lower drug prices from the manufacturers. However, questions have been raised recently as to the effectiveness of prescription benefit managers, or PBMs, to achieve the best price for their subscribers. I believe that the potential benefits and drawbacks of PBMs on such a large scale have not been thoroughly explored, nor has the question of whether PBMs are a reliable mechanism to achieve lower drug prices been answered. I am also concerned about having a discount card as the sole source of coverage for beneficiaries above a certain income level because I believe it deviates from the basic tenents of the Medicare program and may not provide the kind of assistance seniors and disabled persons with substantial drug costs might need.

Second, there is no requirement that States with existing pharmaceutical assistance programs for low-income seniors, like my home State of Rhode Island, maintain their commitment to this particularly vulnerable population. I believe that the Graham-Smith amendment would have a much greater impact if it acknowledged and rewarded the ongoing efforts in many States and encouraged them to work as partners with the Federal Government to build a far-reaching prescription drug benefit that would offer more robust assistance to many more of our elderly and disabled than the Federal Government can currently achieve on its own.

While I understand that many of our States are facing dire budgetary situations, I believe our commitment to providing struggling States the temporary support they need has been demonstrated through the Rockefeller-Collins-Nelson amendment which passed the Senate by an overwhelming margin last week. I am disappointed that the Graham-Smith amendment does not take the role of the States into more serious consideration. If the proposal is enacted, I hope to work with my colleagues to strengthen the State's role in this program.

The plan that I cosponsored and supported, the Graham-Miller-Kennedy amendment, was the only true Medicare prescription drug proposal to be presented to the Senate. It is the only one that would have created a guaranteed, univeral benefit for all Medicare beneficiaries, regardless of income. In terms of the benefit structure, it required a modest monthly premium and reasonable co-payment for prescriptions. However, this benefit was deemed to be too costly by many of our Republican colleagues given the current Federal budget deficits. I would argue that we might be in a different position if we had not enacted a major tax cut bill last year.

Nevertheless, my colleague, Senator GRAHAM, has tirelessly worked to craft a scaled-back benefit proposal that is modeled after the Ensign-Hagel amendment and would seem to meet the chief concern of my Republican colleagues and should garner their support. I commend Senator GRAHAM and others for their efforts on this critical issue and I intend to support his amendment in the spirit of compromise and moving this debate forward. The Graham-Smith amendment is certainly not the end of the road in terms of the prescription drug issue, it is only the beginning. If Congress is going to have a serious chance of getting a Medicare prescription drug bill to the President's desk this year, we must take action now. I hope my colleagues will follow the lead of our colleagues, Senators GRAHAM and SMITH, and work towards the enactment of a Medicare prescription drug benefit.

Mr. LEVIN. Mr. President, I will support the Graham-Smith amendment. However, I would have preferred a prescription drug benefit added to Medicare, like the Medicare Outpatient Prescription Drug Act of 2002, commonly referred to as the "Graham-Miller proposal." The Graham-Miller amendment would have provided a comprehensive, voluntary, affordable and reliable prescription drug benefit to Medicare beneficiaries. I voted for the Graham-Miller amendment, which was supported by a majority of the United States Senate in a vote last week. Unfortunately, the proposal required sixty votes and subsequently failed.

On balance, I will support the Graham-Smith compromise, even though I have some reservations. The bill has three major points. First, the Graham-Smith amendment provides all Medicare beneficiaries access to a prescription drug card which allows Medicare beneficiaries to pool their purchasing power and receive drug discounts of up to 35 percent. The Federal Government would add an additional 5 percent subsidy to any negotiated price. Second, low-income beneficiaries would receive full drug coverage—paying only a nominal copayment for their drugs. Third, "catastrophic coverage" would be available to Medicare beneficiaries so that someone doesn't have to spend more than $3,300 in out-of-pocket expenses on prescription drugs. After that, a beneficiary would only pay a $10 copayment for each prescription drug.

However, I do have a number of reservations about the Graham-Smith proposal. First, a prescription drug card is no substitute for adding a prescription drug benefit to the Medicare Program. I am a strong advocate of making prescriptions drugs an entitlement for every Medicare beneficiary who wants it. A prescription drug card can be uncertain, relying on a possible negotiated benefit that might not materialize and is no substitute for a guaranteed prescription drug benefit. I am also opposed to a means test for Medicare. Medicare's beneficiaries receive services because they have paid into the system their entire working lives. It is unfair for Medicare beneficiaries to receive different benefits based on their respective incomes. This sends the wrong message to our Nation's 40 million Medicare beneficiaries who rely on its stability and its application to all eligible seniors.

So, with reservation, I will be supporting the Graham-Smith proposal as the Senate's best chance to pass a Medicare prescription drug benefit this year and I urge my colleagues to do the same.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts has 22½ minutes. The Senator from Tennessee has 5 minutes.

Mr. KENNEDY. Mr. President, I yield 18 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, we have a very simple message this morning. America's seniors now, for 37 years and 1 day—since 37 years ago yesterday was the day Lyndon Johnson signed the Medicare legislation into law—have been waiting for prescription drug coverage. It was a minor amount of their expenditures in 1965. On average, it was $65 a year. It is a staggering amount for seniors today—over $2,100 a year, on average.

Today is the day that there are no more excuses for delay. There is no credible reason to vote against the motion to waive the Budget Act so that the Senate can then consider an affordable, bipartisan prescription drug proposal, and all of the modifications, amendments, and other alternatives that others might wish to propose.

There have been a number of objections raised to our proposal—some of them last week—being contradictory to the same provisions or modifications that are in our current bill, and some new issues were raised this morning. Let me briefly comment.

Last week, we heard that the prescription drug bill we had offered was too expensive, at an estimated cost of $594 billion for 10 years. We were told: we cannot support anything that is above $400 billion. So we went to work. We rolled up our sleeves, and we made a number of changes, and we have gotten the cost under $400 billion. In fact, the Congressional Budget Office states that in conjunction with the generic drug bill—on which our Presiding Officer has provided such leadership—the cost of our bill now will be $382 billion. So we have met the desire to have a less costly proposal.

Now we are getting the other argument, that because it is less costly, it is not sufficiently comprehensive. Let me explain what this bill will provide, first, for all senior Americans. In my opinion, the most important thing it will provide is peace of mind. If you are a relatively well American in the early seventies, you have prescription drug costs you can manage. The problem is that you never know whether a day from now you might not suffer from some catastrophic event, such as a heart attack, or be found to have a chronic disease such as diabetes, which will suddenly escalate your prescription drug cost, potentially threatening the economic security of your retirement.

This legislation will provide the peace of mind that will give you the assurance that, once having spent $3,300, you will get full coverage, but for a $10 per prescription copayment. That is a benefit of real value, which is available to all American seniors. The cost is $25 a year as an enrollment fee. There could be no greater bargain in the insurance market than to be able to buy the peace of mind of this catastrophic coverage for $25 a year.

That is not all of the benefits that will be available to all senior Americans. Because we are going to have 40 million Americans with a champion, called a pharmacy benefit manager, negotiating with the pharmaceutical companies to get the best discounted prices, Families U.S.A., the Chain Drugstore Association, and the U.S. Department of Health and Human Services have all stated that, under our legislation, they estimate that these organizations would be able to negotiate discounted prices in the range of 15 to 25 percent. That will be available to all seniors.

In addition to that, we are going to provide that there will be a 5-percent Federal supplement on top of whatever the discounted amount is. So there will be real benefits for all Americans.

But we did have to make some difficult choices when we reduced the size of this program by over $200 billion. One of those decisions was that we would focus our effort on those who had the largest prescription drug bills through a catastrophic program that would be available to all, and we would focus on those who were the neediest Americans and, therefore, had the greatest difficulty paying their prescription drug costs.

This business of life is a business of making choices, and we decided that those were the two groups that should get the most attention under the beginnings of a Medicare effort to provide prescription drug benefits.

I might say that this is very consistent with what President George Bush said as "candidate" George Bush when he emphasized that he thought a prescription drug benefit was a priority for the Nation and that the priority within the priority was providing prescription drug coverage for those who were most in need. That is what we have done.

For those persons who are under 200 percent of poverty—which today is 38 percent of America's 40 million Medicare eligibles—this will provide a very significant benefit; and with no premiums, with no deductibles, they will have access to prescription drugs for a copayment of $2 for generic drugs and $5 for brand name drugs. This will provide for the millions of senior Americans who are the most likely not to have any other source of assistance—they didn't work for an employer who provided retiree prescription drug benefits or they cannot afford a Medigap policy. This is the group of Americans who are at greatest need, and they will get the greatest assistance.

There have been some other arguments raised today about the plan we are proposing. It has been suggested that there will be massive costs to the States as a result of this plan. Let me read you a statement we have just received from the Congressional Budget Office. It states:

> This plan will have almost no effect—

I would like my colleagues on the other side of the aisle to listen to this Congressional Budget Office release.

> This plan will have almost no effect on State spending and will have savings to States when combined with the underlying generic bill. There will also be savings for States that have their own State-funded drug programs. State savings come from the Federal Government paying all of the catastrophic benefits which are now paid by the State, as well as 5 percent of each beneficiary's drug cost, which is not subject to a match.

This is not a new idea. We have a program that has been in place for several years called the QMBs and SLMBs program. Don't ask me what the acronyms fully stand for, other than that they provide Medicare assistance to pay premiums, deductibles, and coinsurance for low-income Americans who are still above the Medicaid level. That has not proven to be an unmanageable program for State-Federal cooperation, and neither will this.

It has also been stated that previous employers will drop the insurance coverage of their retirees if we adopt this legislation. Quite to the contrary. The Congressional Budget Office, again, has stated that with our plan there would be no employer dropping of coverage, whereas with the plan that has been proposed by our colleagues on the Republican side, the same CBO estimates that up to one-third of the employers would drop prescription drug coverage.

The issue today, frankly, is not any of the questions that have been raised in opposition to the thoughtful proposal that is the result of real compromise between Democrats and Republicans, a true bipartisan outreach. On many provisions of this bill, we have adopted language verbatim from legislation that was introduced last week by, for instance, Senators HAGEL and ENSIGN. Senator GORDON SMITH has worked in the highest standards of cooperation and collaboration to give this Senate an opportunity to vote on a solid, significant prescription drug benefit.

What we are going to vote on in a few minutes is a motion to waive the Budget Act. How ironic. We have a Budget Act, which is 18 months old, that says the maximum amount we can spend on prescription drugs is $300 billion over 10 years.

Both the Republican plan and the Democratic plan are above $300 billion, a clear recognition that people who have looked at what will be required to provide a prescription drug benefit have come to the same conclusion: we cannot provide a meaningful, responsible benefit to senior Americans for $300 billion.

We are going to have an opportunity to vote to waive the Budget Act so we can then consider what would be a responsible prescription drug benefit, but unless we get 60 votes to waive the Budget Act, we will never get to the substance of this issue.

I urge my colleagues to focus on the question that is before us: Should we maintain a slavish commitment to an 18-month-old number that both Republicans and Democrats have clearly indicated is inappropriate or should we waive the Budget Act and have an opportunity to have a full, substantive debate on prescription drugs?

There have been some who said this is not the last time; that we can come back maybe in September or October, or some time in 2002, and act upon this. I admire their optimism, but as a pragmatist, I question the practical reality. In addition to the difficulty of passing legislation through the Senate, we know that we have to go to conference with the House, and the House is likely to have significantly different provisions, including different priorities in terms of where to place emphasis in a senior prescription drug plan for Medicare than the Senate will have.

If we waste the month of August, which would be an opportunity for serious consultation between the House and the Senate, in hopes that in September we can arrive at a compromise that can be voted by the Congress and then signed into law by the President, we will have missed our greatest opportunity to achieve this long-sought goal of senior Americans.

The real issue today is, we have a choice of saying, yes, we want to continue, we want to have the opportunity to develop a prescription drug benefit or we want to say no, that we are prepared to accept the status quo—another year in which senior Americans will be denied Medicare assistance in purchasing their prescription drugs, the fastest rising cost element in the typical health care budget of senior Americans.

Mr. President, I urge my colleagues today to vote yes to waive the Budget Act and then vote yes to continue a serious, substantive debate on the issues involved in providing our senior citizens access to a meaningful prescription drug benefit.

I would not like this debate to end in the ashes of a vote that says we are going to put a greater value on the homage to an archaic budget number, which nobody today is advocating as being adequate to meet the needs of senior Americans.

That is the issue: Do we say yes to the opportunity or do we say no to further gridlock and denial of this critical element of a modern health care program?

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes 45 seconds.

Mr. KENNEDY. I yield 2 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. I thank the Chair. Mr. President, this is it today. We have a very real choice to make. I believe it boils down to this: The drug companies of America like the system the way it is today. They want nothing to happen. The seniors of America are counting on us to stand up and do the right thing: Not privatizing Medicare with a private plan that sets up insurance HMOs which, by the way, was written in the House in part by the drug companies knowing that this is the approach that is least likely to lower prices but, rather, protecting, preserving, and modernizing Medicare.

This is a bipartisan effort. I commend colleagues on both sides of the aisle who have stepped up to say we are going to make a downpayment on modernizing Medicare to cover prescription drugs. That is what this is. Everyone gets help. Everyone's prices go down. And for those who need it the most, those who are the sickest, they will, in fact, receive comprehensive coverage. No premium. No deductible. They will get the help they need.

I am proud to stand today with my colleagues, Senator GRAHAM, Senator SMITH, and others on both sides of the aisle who have put this together with

AARP and with the senior groups in America to say the time has come. The time has come for us to place this downpayment on modernizing Medicare and move forward until we completely provide comprehensive Medicare coverage for all seniors and the disabled in this country.

I cannot imagine why we would not want to keep this process going to get the bill in front of us. It can always be fine tuned. We can continue to work together. But today is yes or no on whether we proceed to help the seniors of America and stand with them. Stop talking about it; let's act together and let the seniors know that we are willing to provide the leadership necessary—all of us together—to get this done. I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. FRIST. Mr. President, I yield 2½ minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I urge my colleagues not to waive the Budget Act with respect to the point of order for a lot of different reasons. One, I wish we had a budget. Somebody said we could have passed a budget. Maybe the Budget Committee was going to pass a higher number.

Unfortunately, this is the first time since 1974 that we have not had a budget pass the Senate. Maybe one of the most fiscally irresponsible things we have not done is not pass a budget. We are still under the constraints of last year's budget.

Last year, we overwhelmingly passed a budget and set up $200 billion, $300 billion, and it was passed by the Finance Committee. Really what we should do is direct the Finance Committee to pass a bipartisan bill.

I looked at the last 22 years, and the Finance Committee has dealt with major Medicare and Medicaid reforms, every one of which passed with bipartisan support except one. Only once did we bypass the committee.

Unfortunately, the Democrat leadership said: We are not going to go through the Finance Committee because we think it will report out something we do not like. So they came up with a partisan bill, and we are playing ping-pong.

I looked at the amendment we are considering right now. It is 102 pages. It was still warm off the press, and nobody on this side, with one exception maybe, had seen this amendment before it was offered yesterday.

This is the most important expensive expansion of Medicare in its history, and we find out that most of the expansion is not in Medicare but Medicaid, and the cost to States is in the billions of unfunded mandates to the States because we did not just expand Medicare, we expanded Medicaid, and we are telling the States they are going to have to come up with matches to provide this brand new free benefit. Thirty-one States are going to have to pay for half of this new benefit. There is an increase in S-CHIP match, a 100-percent match for some, but 31 States have a 74-percent match. They have to go up to 120 percent.

All of that is on the States, or at least their matching portion. The estimated cost of unfunded mandates is $70 billion.

We have not had a hearing. We have not had a markup. This may be a classic example of the best way not to mark up legislation that is this important.

Let us step back a little bit. Let us work with the Finance Committee. Let us work in a bipartisan way. We can certainly get that done. We have the month of August and part of September. We can report a positive bipartisan bill that can become law. What is before us, unfortunately, is well short of that goal.

The PRESIDING OFFICER. The Senator has used 2½ minutes.

The Senator from Massachusetts.

Mr. KENNEDY. I understand there are 4½ minutes remaining.

Mr. SCHUMER. There are 4 minutes 11 seconds.

Mr. KENNEDY. I yield 2 minutes to the Senator from North Carolina.

Mr. EDWARDS. Mr. President, I hope the Senate, given this opportunity, will do something about providing a drug benefit for all those Americans who desperately need it. This is obviously a compromise, but great work has gone into this effort and it is important we do something for all those people who need help.

I want to say a word about the underlying bill because while we are providing the prescription drug benefit, we need to make that benefit affordable, No. 1, and, No. 2, we need to do something about the cost of prescription drugs in this country.

The Presiding Officer, Senator SCHUMER, led the way, along with Senator MCCAIN, in doing something about the cost of prescription drugs in this country in getting generic drugs on to the marketplace, providing competition, and bringing down the costs for all Americans. In the HELP Committee, Senator COLLINS and I, working with Senator SCHUMER and Senator MCCAIN, built on that work that had already been done and provided a way to deal with the problem of brand name drug companies abusing the patent process to keep generics out of the marketplace.

What was happening was this: Brand name companies were filing frivolous patents. The result of filing those frivolous patents is the generics were not able to get into the marketplace. The brand names used the litigation process to keep generics out of the marketplace. What this underlying legislation does is to close those loopholes. It provides specifically for a mechanism to eliminate the use of frivolous patents to, in fact, give brand name companies protection when they have a real, new, creative, and innovative product, but at the same time it eliminates the patent and litigation abuses that have been occurring. It eliminates things such as brand name companies getting a patent on putting their pills in a brown bottle. Those are the kinds of abuses that have been occurring. In the past, they have kept generics out of the marketplace.

What the underlying legislation will do is it will save $60 billion for American consumers over the next 10 years. It is critically important that we do this drug benefit, but it is also critically important that we do something about the cost of prescription drugs for all Americans.

The PRESIDING OFFICER. The Senator has used his 2 minutes.

The Senator from Massachusetts.

Mr. KENNEDY. Five years ago, the first prescription drug legislation was introduced in the Senate. We have waited and the seniors have waited 5 years to see whether the Senate of the United States was going to take action. Under the leadership of Senator DASCHLE, we have the opportunity to do that. That is because the Democratic leader said so.

A week ago, the Republicans said no to the comprehensive program that was introduced by Senator GRAHAM and Senator MILLER that would have provided the comprehensive approach about which so many have talked.

I have listened to my friends on the other side of the aisle. They are using a favorite technique. That is to misrepresent and distort what is before the Senate, and then differ with it.

Senator GRAHAM has given the facts on this program. The basic issue before the Senate now, in the next few minutes, is whether we consider prescription drugs a priority for our senior citizens. If we vote with Senator GRAHAM and Senator SMITH, we are saying they are a priority.

This bill is not going to solve all the problems, but it is a downpayment. It is a downpayment on those prescription drugs. Every one of us who is going to support that position is committed to coming back next year and the year after to make sure we have the comprehensive issue. That is what is before the Senate: Do we take the problems of our senior citizens seriously or are we going to get behind some kind of facade and say let us put it off for another day?

Seniors have listened to that every single year since the time we passed Medicare in 1965. Now is the time to do something about it. This is a downpayment on prescription drugs, and I think it is time the Senate take that action, and take it today.

I understand our time is up.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Tennessee controls 2½ minutes.

Mr. FRIST. Mr. President, we are about to vote on an amendment that very clearly costs more and covers fewer people than the tripartisan bill we debated last week.

I yield the remainder of our time to one of the sponsors of that tripartisan, more comprehensive plan that seniors deserve better than the underlying bill on which we are about to vote.

I yield the remainder of our time to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. I thank the Senator from Tennessee for yielding.

Mr. President, now is the time to do something about prescription drugs, but this is not the thing to do with prescription drugs. How do I go back to Louisiana, as in every State, and tell the Medicaid Program in Louisiana that this bill is going to cost my State $85 million, which we do not have, through our State Medicaid Program to have the State pick up part of the costs of this prescription drug program? How am I going to go back to my State of Louisiana and tell the 240,000 people in Louisiana that, yes, Congress passed a prescription drug program but, guess what, you are not part of it. You are going to pay 95 percent of all of your costs of prescription drugs, and the Federal Government is going to pick up 5 percent.

Now is the time to do something about prescription drugs, but this Congress can do much better than this. What we ought to do is combine the best of what Government can do with the best of what the private sector can do, and come up with a program that fits Medicare that is universal, that is comprehensive, that covers all seniors, not just some of the seniors, and gives them all a program of which they can be proud. That is the concept of what Medicare was 37 years ago. We should not now divert from that concept and say one group of seniors is going to have one plan, the other seniors are going to get left by the wayside.

Certainly, I think this Congress can do better than that, and we will have the opportunity to do that, working with our colleagues over the August recess to put together that type of plan.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I will use a minute of my leader time. I know we are scheduled to have a vote.

I simply remind my colleagues that almost every senior organization has endorsed the Graham amendment. Not one senior organization has endorsed the Republican plan. What does that tell us? The drug companies endorse the Republican plan. The insurance companies endorse the Republican plan. We do not find one senior organization endorsing the Republican plan. So what is wrong with this picture? Why is it that we cannot get bipartisan, overwhelming support for something every senior organization endorses?

This is our opportunity to make a downpayment, a first step, and we ought to support it. I applaud the Graham amendment. I hope our colleagues will look at it carefully and support it. This is a critical moment. Senior organizations agree. They endorse it. They want this to pass.

I yield the floor.

Mr. FRIST. Mr. President, has all time expired?

The PRESIDING OFFICER. The time is 29 seconds for the minority.

Mr. FRIST. Mr. President, a point of order will be filed very shortly.

In closing, it is important that people recognize the bill is inadequate. Seniors deserve more. A proposal has been discussed, the tripartisan bill, which is a more comprehensive approach for less money. This bill promises less, gives less, fewer benefits, for more money. I urge the defeat of the underlying bill.

I yield back the remainder of our time.

The PRESIDING OFFICER. All time has expired.

Mr. FRIST. I make a point of order that the Graham amendment No. 4345 violates section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 199 Leg.]

YEAS—49

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Byrd
Cantwell
Carnahan
Carper
Cleland
Clinton
Collins
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Edwards
Feinstein
Graham
Hutchinson
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Mikulski
Miller
Murray
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Smith (OR)
Specter
Stabenow
Torricelli
Wellstone
Wyden

NAYS—50

Allard
Allen
Bennett
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Chafee
Cochran
Craig
Crapo
DeWine
Domenici
Ensign
Enzi
Feingold
Fitzgerald
Frist
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Jeffords
Kyl
Lott
Lugar
McCain
McConnell
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 50. Three-fifths of the Senators duly chosen and sworn not having voted in affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 4299, AS AMENDED

The PRESIDING OFFICER. Under the previous order, there are 2 minutes of debate equally divided before the vote on the Dorgan amendment.

Who yields time?

Mr. REID. Mr. President, I yield the time.

The PRESIDING OFFICER. All time is yielded. The question is on agreeing to the Dorgan amendment, as amended, Without objection, the amendment, as amended, is agreed to.

The amendment (No. 4299), as amended, was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 491, S. 812, the Greater Access to Affordable Pharmaceuticals Act of 2001.

Harry Reid, Jon S. Corzine, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Paul S. Sarbanes, Debbie Stabenow, Richard J. Durbin, Tom Daschle, Daniel K. Akaka, Jack Reed, Kent Conrad, Zell Miller, Charles E. Schumer, Ernest F. Hollings, Hillary Rodham Clinton.

The PRESIDING OFFICER. There are 2 minutes of debate equally divided.

Mr. KENNEDY. Mr. President, this is an important issue, and the Senate is not in order. We have 2 minutes of discussion on this, and important comments will be made by our colleagues who deserve to be heard.

The PRESIDING OFFICER. The Senate will be in order.

Who yields time?

Mr. KENNEDY. Mr. President, I yield 1 minute to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I think many of us regret that we could not succeed on the last amendment. But there are still things we can do, and must do, to make the cost of drugs lower for all citizens. The Schumer-McCain generic drug bill, the underlying bill, does just that.

For people who are paying $100 per prescription, they will pay $30 or $35 or $40. It will reduce the cost of overall drug spending by $60 billion. It will take some of the burden off our hard-pressed States as their Medicaid rates come down.

It will also apply to everybody: the young and the old, the senior citizen who needs these drugs, as well as the family with a child who cannot afford a desperately needed drug to make that child better.

It is supported by a large group, not only senior citizen groups and consumer groups and labor groups but GM and Caterpillar and Kodak and Ford.

Please let us move forward on this amendment. We have a lot to do in the area of making prescription drugs cheaper, and this is a very vital first step.

I urge my colleagues to vote for cloture.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, the underlying bill, which is the generic drug bill, has not really been addressed as we have moved through these debates on the overlying issue of whether we should have a prescription drug program for seniors.

This underlying bill still has many significant issues in it. Probably the most significant issue is the fact that it creates a new cause of action, a whole new set of lawsuits which have never been used before. This cause of action has never been tried before, never been used before, involving patent law and the FDA. It really will be a lawyer's relief act rather than an act which is going to relieve our citizens of the high costs of drugs.

We should have the opportunity to amend this bill. It can be improved. The basic concepts of this bill are good, but the bill can be improved. That is why we should not have cloture at this time. We simply have not had a chance to properly address this underlying bill because it has been sort of sidetracked as we have addressed the prescription issue for seniors. So I would hope we would vote against cloture.

The PRESIDING OFFICER. The Senator's time has expired.

By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "No."

The PRESIDING OFFICER (Mrs. CARNAHAN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 66, nays 33, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—66

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Collins
Conrad
Corzine
Daschle
Dayton
DeWine
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Fitzgerald
Graham
Grassley
Harkin
Hollings
Hutchinson
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
McCain
Mikulski
Miller
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Torricelli
Voinovich
Warner
Wellstone
Wyden

NAYS—33

Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Cochran
Craig
Crapo
Domenici
Ensign
Enzi
Frist
Gramm
Gregg
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McConnell
Murkowski
Nickles
Roberts
Santorum
Stevens
Thomas
Thompson
Thurmond

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 33. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. SCHUMER. Mr. President, before I get to discussion of the underlying bill, I would first like to thank Senator KENNEDY for his long-time leadership in ensuring access to affordable prescription drugs and especially for the strong fight he and Senators GRAHAM and MILLER have led here on the Senate floor for the past two weeks to add a meaningful prescription drug benefit to Medicare.

I would also like to thank Senator KENNEDY for his leadership in the HELP Committee in bringing Hatch-Waxman abuses to light, and for working with our Leader to move Schumer-McCain to the floor.

I also want to thank my colleague Senator MCCAIN, with whom I introduced the GAAP Act—as well our colleagues who introduced the bill in the house, Congressman SHERROD BROWN and Congresswoman JO ANN EMERSON—for all their hard work in drawing attention to this issue and pushing to get this bill passed this year.

When this Hatch-Waxman debate began, the Senate had two choices:

First, we could choose not to act, and let loopholes in the law continue to let drug prices skyrocket; or, second, we could pass this bill, close the loopholes, and bring down drug prices for all consumers.

Today, as the Senate approaches a vote on the Schumer-McCain bill, the Greater Access to Affordable Pharmaceuticals Act, the choice is clear.

Consumers win. PhRMA loses.

Not only was the bill passed out of committee on a strong bipartisan vote; not only have we heard strong messages of support from our colleagues on the floor; but the public, too, has spoken.

Major corporations have spoken. Labor has spoken. Senior groups have spoken. Consumer groups have spoken. Governors have spoken. Insurers have spoken. Pharmacists have spoken. Disease groups have spoken.

And they want to see action. They want to see the loopholes closed, and they want to see competition in the pharmaceutical marketplace.

Last week we also heard from CBO. Its message: This Bill will bring the relief the public wants. A conservative estimate shows the bill will save consumers $60 billion on drug costs over the next 10 years. And it will mean nearly $8 billion to the Federal Government. When we pass a Medicare drug benefit, it will mean even more savings.

Yesterday, we heard from the FTC. The report the Commission issued illustrates the abuses and tells Congress clear as day to plug up the loopholes in Hatch-Waxman. Their recommendations lead to one inexorable conclusion: pass Schumer-McCain.

The study makes clear that lawyers for the pharmaceutical industry have picked the Hatch-Waxman law clean and that the law needs significant and immediate reform.

The one group that doesn't want to see action is the group representing the name brand drug industry, PhRMA.

Why is the support so widespread? It is quite simple, really. As most things do, it comes down to cold, hard, cash. Drug expenditures have been rising at double digit rates—at nearly 18 percent per year—throughout the 90s.

These increases are simply unsustainable. And closing the loopholes in the patent laws is a common sense way to do something about them. They will mean real savings for consumers, businesses, States, and seniors.

We looked at 15 name-brand prescription drugs whose expiring patents will pave the way for billions of dollars in savings if blockbuster drug companies don't block the less expensive generic versions of these drugs from coming to market when they should.

These drugs are used to treat a variety of illnesses, including allergies, high cholesterol, asthma, and depression. You have probably seen commercials for some of them on TV—Claritin, Zocor, Zoloft. You might even remember Cipro from last fall's anthrax scare.

All of the drugs are scheduled to come off patent by 2005, which in English means that their less expensive versions can then go on sale.

The savings consumers will see on these drugs alone will be at least $4.15 billion annually by 2008 when these less expensive generics are fully phased in.

The biggest savings would come on the popular antidepressant Zoloft, which would see consumer savings of over $735 million if users opt to use the low cost generic version.

Other savings would come on the popular allergy medicine Claritin which would see savings of $501 million and on the cholesterol medicine Zocor, which would see savings of $577 million.

For the individual consumer, these projections are a dream come true.

If you look at what three popular pharmacy chains charge for five commonly prescribed drugs—Claritin, Cipro, Zocor, Zoloft, and Singulair—the individual consumer would see individual savings ranging from $42 to $75 a month on these drugs if generic alternatives were available.

Those filling a Singulair prescription at Walgreens, for example, to treat asthma would save about $54 on the generic version, paying only $34 as opposed to the current price of $87.99. Those filling a Cipro prescription at CVS to treat a urinary tract infection would save about $58, paying only $37 for a 20 pill supply as opposed to the current price of $95.59.

Zocor users would save $45, paying an estimated $70 for a 30 pill supply to control high cholesterol instead of the $115.53 they currently pay at Rite Aid.

The good news is that these numbers show that these drugs can one day be within reach of working Americans.

The bad news is that if we in Congress don't act, the chances of the blockbuster drug companies ever letting that happen are about as likely as the Yankees asking me to pitch Game 7.

We have heard time and time again from the big drug companies that patent protection is the key to innovating new drugs. And as I have said time and time again, I could not agree more.

When drug companies innovate new drugs which benefit the patient, they are indeed preventing disease and saving lives. And they should be rewarded for doing so with a period of time to exclusively market the drug.

That is how the system is supposed to work and that's how it did work for a very long time.

But over the almost 20 years since Hatch-Waxman was passed, the drug companies have taken advantage of this system, devising new ways to extend the period of exclusivity they get when they patent a life-saving drug.

Today, I want to debunk some of the myths that the drug companies are perpetuating about the way they are using the patent laws and how the bill Senator McCAIN and I have introduced will impact innovation in the pharmaceutical industry.

PhRMA has been circulating a list of claims that it has been calling a "reality check." If a bank tried to cash that check, it would bounce.

Today, I want to shine a light on some of the PhRMA claims and ensure that the public knows the truth about what is going on in the drug industry.

The reality is that the drug companies are not spending all their time innovating new drugs, they are innovating new patents.

Instead of devising new ways to further medical science, they are focusing on furthering company profits. And that often means keeping the competition at bay.

But before I go on, I want to make clear that the Greater Access to Affordable Pharmaceuticals Act is not about robbing pharmaceutical companies of legitimate patent protection. It's not about theft of innovation, it's not about taking steps to enact laws that are not in the best interest of consumers.

In fact, it is about just the opposite. It is about examining competition in today's marketplace and revisiting a compromise which was struck nearly 18 years ago.

That compromise—the Hatch-Waxman Act—was intended to strike a balance and help save consumers billions of dollars on pharmaceuticals while rewarding brand name companies for their innovations.

But, in recent years, as the profits and stakes have become higher, as I said, the drug industry lawyers have picked the Hatch-Waxman law clean.

Companies are aggressively pursuing extended monopolies through filing weak or invalid patents and engaging in deals which the FTC is increasingly scrutinizing for anticompetitive motives.

We must put an end to these abuses.

The GAAP act does not intend to cut innovators off at the knees and it isn't a freebie for the generic drug industry. It is a pro-consumer bill that restores the balance intended by Hatch-Waxman.

The bill would limit the delay to one 30-month stay, for brand companies who file suit against a generic challenger. And the only patents eligible for this automatic stay would be the brand company's original patents.

For any patents listed after the brand drug is approved, the brand company would instead have to allow a court to decide whether their case merits a stay against generic competition.

It would prevent abuses like those we are discussing here today by reducing incentives to list patents that are not truly innovative, but instead are intended solely to extend monopolies.

The GAAP act reforms the so-called "180-day rule" by closing the loophole that enables a brand name company to pay a generic manufacturer to stay off the market, effectively putting the kibosh on competition.

Closing this loophole would prevent problems like the Hytrin case where Abbott Laboratories allegedly paid Geneva Pharmaceuticals $4.5 million per month to keep their hypertension drug off the market.

Now PhRMA will tell you that the law is not broken.

They will tell you that generics' share of the prescription market has increased from 18 percent in 1984 to 47 percent today.

But what they won't tell you is that generics have been stuck right around 45 percent for at least the past 6 years.

They will also tell you the games are not causing delays. But this chart shows that in 2000, 20 of the 30 drugs that were supposed to come off patent were delayed. In 2001, 23 out of 26 were delayed—88 percent of the drugs supposed to come off patent have been delayed, and most of these delays continue today.

PhRMA will tell you that "patents on new products never delay generic versions of old ones." And if we were talking about patents on new drugs, that would be a true statement. But that is not what we are talking about. We are talking about new patents on old drugs.

The drug companies are coming up with different formulations or dosage forms, or other unapproved uses for old drugs whose patents have either expired or are about to expire in order to keep low-cost generic competitors off the market.

Since a generic has to show that it doesn't infringe on these new patents before it can enter a market, the drug companies buy some extra time and can extend their market exclusivity.

The changes Senator McCAIN and I have proposed protect the brand companies from having their patents infringed on. But they also prevent the brand companies from abusing their patents and keeping generics off the market.

Let's take a look at some of the "innovations" that brand companies are listing in the FDA's Orange Book. It is these kinds of patents which can automatically delay competition.

For Ultram, a pain medication, the brand company has come up with a new dosing schedule—because it's a strong medication, they suggest that you could take one-fourth of a pill at a time and slowly build up to taking a whole pill. This is a dosing method which doctors and pharmacists have used on many drugs, in many instances. Yet, somehow, J&J got a patent on it. And now that patent is preventing generic competition.

On Fosamax, a drug for osteoporosis, the brand company has come up with a "kit" inside which the pills are arranged. This may be a great little kit, but its patent shouldn't be listed in the Orange Book where it can delay generic competition.

On Pulmicort, an asthma medication, the company has a patent on the container the drug is in—and that patent is listed in the Orange Book, where it cause an automatic 30-month stay against a generic.

On Thalomid, a cancer drug, the company has come up with not one—but two—computer programs that pharmacists can use when doling out prescriptions. Computer programs—not new drugs—computer programs.

Cyclessa, similar to Fosamax, has a patent on a kit which reminds you how to take the medicine. Well the generics can make their own kit.

A new piece of plastic shouldn't keep an old pill off the market.

These patents are real. Sure they may be on things that are novel, but they have nothing to do with the drug substance that is helping the patient. They are put in the Orange Book for the sole purpose of extending a company's monopoly.

PhRMA says the automatic 30 month stays never extend a patent. Well, they may not extend the amount of time a company can exclusively sell its particular container, but stacking them one after the other certainly extends the amount of time that the brand can keep its competition away from its customers.

And brand companies are getting better and better at timing the filing of their patent applications so that their new patents are issued just as their original patents are expiring. This practice causes a delay in generic competition, which is nothing less than a de facto extension of the original patent.

The delays caused by these additional patents are real, and they mean real money to consumers.

Take Neurontin, a drug used to prevent partial seizures. The basic patents expired in July of 2000. By listing patents which do not even relate to the originally approved form of the drug, the brand company has already succeeded in preventing generic competition for 21 months—a delay which may have already cost consumers over $800 million.

Further, by listing an additional patent with the FDA, and overlapping the automatic 30-month stays, the brand company has effectively converted the original 30-month stay into a 54-month stay against generic approval, and they didn't even have to prove to a court that the new patent had any merit at all.

Or take, for example, Paxil, a drug with $2.1 billion in sales used to treat depression.

The basic active ingredient in Paxil was discovered back in the late 1970s by a Danish company, Ferrosan. But it wasn't marketed as a drug until Glaxo SmithKline licensed the original patents, did the clinical trials and got it approved by the FDA.

The company deserves a reward for bringing this old chemical to market, and under Hatch-Waxman, that reward was intended to be 5 years of market exclusivity—5 years during which a generic can't even put in an application on the drug.

But that wasn't enough for Glaxo. Before marketing the drug, they made a slight—and some would argue unnecessary—change to the basic compound in order to get a new patent, a patent which would add an additional 8 years to their monopoly their monopoly on a drug they didn't even discover.

Enter Apotex, the first generic challenger, which has gone to court claiming both that they do not infringe this new patent and that the new patent is invalid.

The case has been in court for 3½ years. Even if the companies come to resolution on this first patent, Glaxo has, in the meantime, applied for and been issued nine additional patents on Paxil—patents on yet other slightly different chemical substances, as well as patents on different formulations of the drug. The last of these patents expires in 2019.

These new patents have already invoked multiple 30-month stays against generic competition for Paxil. The automatic stays already granted add up to a delay of over 60 months. To be fair, if Glaxo prevails in court, these stays won't extend the time on their patent. But if Apotex wins the suit, these multiple 30-month stays will still be hanging out there preventing the generic from coming to market. And there's nothing to stop Glaxo from getting even more patents before these delays expire. Each year Glaxo can delay generic competition costs Paxil users up to $500 million.

What has happened with these drugs is that the drug companies saw their original patents about to expire and then created new ones to maintain their control over the market.

These kinds of practices have become the norm in the drug industry. These companies figure out a new way to keep the dollars rolling in, stooping to new lows every day to maintain their exclusivity rights.

I have heard from the big drug companies that they are in the failure business. Well, if it's the failure business that tops the Fortune 500 lists, sign me up.

The big pharmaceutical companies may make their claims, but we in Congress know the reality. Insurers and State Medicaid directors know the reality. Corporations know the reality. Our seniors know the reality.

The reality is that prescription drug prices are skyrocketing at a rate of 17 percent per year, generic penetration into the market has been stagnant for the past eight years, and loopholes in our patent laws are making the reality even worse.

They are crippling consumers and seniors who can't afford to purchase or take the drugs they need.

I agree that patent protection is important to saving lives, but I am sure those who dedicate their lives to finding new cures would also agree that a drug can do no good if it is financially out of the reach of patients who depend on it.

As Congress continues to wrestle with the complexity of crafting and paying for a meaningful Medicare prescription drug benefit, we must not overlook a straightforward solution to the escalating drug prices facing seniors, businesses, insurers and consumers today.

If we can ensure fair competition in the pharmaceutical marketplace—a level playing field for both brand and generic companies—then everyone will win.

I ask my colleagues in the Senate to vote yes today to S. 812: to vote yes for fair marketplace practices, vote yes for robust competition in the pharmaceutical marketplace, vote yes for access to affordable drugs—and vote yes for consumers.

I ask unanimous consent that further material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, PA, July 24, 2002.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.
Hon. CHARLES E. SCHUMER,
U.S. Senate
Washington, DC.

DEAR SENATORS MCCAIN AND SCHUMER: As Attorney General of the Commonwealth of Pennsylvania, my constituents make me aware every day about how the high cost of prescription drugs adversely affects their lives. For that reason, I endorse the Greater Access to Affordable Pharmaceuticals Act of 2001 (S. 812) which you are sponsoring.

Pennsylvania has the second largest number of senior citizens of any state in the country. As you are well aware, Medicare does not provide a prescription benefit for most drugs. Therefore, senior citizens without private insurance, Medicaid or a special government program like Pennsylvania's PACE program, pay for prescription drugs themselves. Even though Pennsylvania's PACE program is a model for other state and federal senior citizen prescription benefit plans, the program does not cover every senior citizen. Thus, there are many Pennsylvania citizens living on fixed incomes who find that their income and standard of living is being eaten away by prescription drugs that can cost more than $100 a month. Senior citizens who are on two or three medications can face monthly prescription costs of $500 to $1000.

One factor in the high cost of prescription drugs is attempts by brand name drug makers to forestall entry by generic competitions. The Hatch-Waxman Act of 1984 was intended to spur generic competition with brand name pharmaceuticals. Unfortunately, brand name drug makers have been using that act in unintended ways to block or delay rather than foster generic entry. In particular, two provisions have been misused. One allows for an automatic 30-month stay of a generic's drug application upon the filing of a patent infringement suit by a brand name manufacturer. The other grants the first generic drug applicant for a drug a 180-day period of exclusivity before other generics can enter the market. These two provisions can be misused to delay generic entry by years. I believe that the Greater Access to Affordable Pharmaceuticals Act of 2001 provides a reasonable remedy for these abuses which balances the interests of consumers and the pharmaceutical industry.

While I believe that pharmaceutical companies should be compensated for their discoveries and innovation with appropriate patent protection, I object to those patents being lengthened by misuse of the current law. Passage of your bill will address those misuses. Thank you for your work and consideration on this matter.

Very truly yours,

D. MICHAEL FISHER,
Attorney General.

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL,
New York, NY, July 24, 2002.

Senator EDWARD KENNEDY,
Washington, DC.
Senator JUDD GREGG,
Washington, DC.

DEAR SENATORS KENNEDY AND GREGG: I write to express my support of the Greater Access to Affordable Pharmaceuticals Act of 2001 ("GAAP"), which amends the Hatch-Waxman Act of 1984 (the "HWA"). I attach a Policy Statement which details the arguments made in this letter.

In the past several years, State Attorneys General have filed five antitrust suits to remedy the harm caused by brand-name and generic manufacturers' manipulation of loopholes in the Hatch-Waxman Act ("HWA"), thereby delaying generic entry. These are:

State of Ohio, et al. v. Bristol-Meyers Squibb, Co., concerning the anti-cancer drug Taxol127 (the "Taxol litigation);

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al., concerning the anti-anxiety drug Buspar127 (the "Buspar litigation");

State of New York, et al. v. Aventis, S.A., et al., concerning the anti-hypertension drug CD127 (the "Cardizem litigation");

State of Florida, et al. v. Abbott Laboratories, Inc., concerning the anti-hypertension drug Hytrin127 (the "Hytrin litigation"); and

Commonwealth of Pennsylvania v. Schering-Plough Corp. et. al, concerning the potassium supplement K-Dur 20 ("the K-Dur 20 litigation").

Through these cases, and other multi-state investigations, this Office has gained substantial experience with the shortcomings of the HWA. GAAP will be an important step in correcting these problems, and in ensuring consumers access to affordable medication.

GAAP specifically alleviates two critical problems caused by the HWA, which the cases brought by the Attorneys General illustrate:

The Thirty Month Stay—Under the HWA, brand-name manufacturers list unexpired patents with the FDA in a compendium known as the "Orange Book." The FDA does not evaluate the merits of the listing, and relies on the manufacturer's representations as to the listing's validity. An Orange Book listing carries a rich reward—an automatic 30-month stay against certain potential generic entrants whome the manufacturer has sued for patent infringement, despite the absence of any court finding that the infringement claim has any validity whatsoever.

Problems caused by this provision are illustrated by the facts of the Buspar litigation. In that case, Bristol-Myers Squibb ("BMS") sought to extend its patent monopoly for its profitable buspirone anti-anxiety medication. As BMS's buspirone patent was about to expire, BMS received a patent for a metabolite that the body naturally produces—which BMS claimed was the result of introducing buspirone into the body. BMS then had the FDA list the patent in the Orange Book eleven hours before the first generic alternative to buspirone was to otain FDA approval. Although BMS explicitly stated to the United States Patent Office that its new patent did not cover buspirone, it Orange Book entry made precisely the opposite claim. As a result, generic makers of buspirone were barred from the market, and consumers paid millions more than they would have paid, had a generic alternative been available.

GAAP helps alleviate this problem in two essential ways. First, a brand-name manufacturer will no longer be able to obtain the 30-month stay for follow-on patents. Had GAAP been in place, BMS's scheme would not have been possible. Second, in certain instances, GAAP allows generic manufacturers to challenge fraudulent Orange Book listings in court.

The 180-day exclusivity period—HWA gives certain generic entrants who are the first to seek FDA approval for their drugs a 180-day exclusivity period during which no other generic alternative to the same brand-name drug may come to market. While this provision was intended to provide an incentive for generic entry, in several instances, brand-name manufacturers have paid their generic counterparts to staff off the market, without generic forfeiting its right to exclusivity. This creates a perpetual bar to entry by other generics. Thus, in both the Hytrin and Cardizem cases, no generic version of the brand-name drug could be sold until litigation and investigations by the Federal Trade Commission led the parties to cancel their agreements.

GAAP would render impossible such permanent barriers to generic entry. Under the pending bill, if generic entry does not take place within sixty days of the generic drug's approval, the next generic manufacturers in line may enter the market. Conduct now being challenged in costly and time-consuming litigation would simply not have taken place had GAAP been in effect.

Case-by-case and after-the-fact investigations and litigation are no substitute for fixing the problems inherent in the HWA. For that reason, I applaud the efforts of Senators Schumer and McCain, and those of other GAAP sponsors, and urge the speedy passage of this important and beneficial bill.

Sincerely,

ELIOT SPITZER.

July 24, 2002.

STATEMENT ON S. 812, THE GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

In a letter issued today, Attorney General Eliot Spitzer has written in support of the Greater Access to Affordable Pharmaceuticals Act of 2001 ("GAAP"), introduced by Senators McCain and Schumer to amend the Hatch-Waxman Act of 1984 (the "HWA"). This statement explains in greater detail the arguments set forth in that letter, and the problems with the HWA that led to its submission.

Protecting consumers' access to quality health care at affordable prices is one way in which the State Attorneys General serve the American public. To that end, State Attorneys General have, in recent years, brought five antitrust actions arising, in whole or in part, out of efforts by brand-name drug manufacturers to manipulate the HWA's procedures to keep cheaper generic drugs off the market, and to maintain monopoly pricing long after the brand-name drug's patent expiration date. These are:

State of Ohio, et al. v. Bristol-Myers Squibb, Co., concerning the anti-cancer drug Taxol® (the "Taxol litigation");

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al., concerning the anti-anxiety drug Buspar® (the "Buspar litigation");

State of New York, et al. v. Aventis, S.A., et al., concerning the anti-hypertension drug Cardizem CD® (the "Cardizem litigation");

State of Florida, et al. v. Abbott Laboratories, Inc., concerning the anti-hypertension drug Hytrin® (the "Hytrin litigation"); and

Commonwealth of Pennsylvania v. Schering-Plough Corp. et al., concerning the potassium supplement K-Dur 20 ("the K-Dur 20 litigation").

As described in more detail below, these cases starkly illustrate the weaknesses of the HWA.

The New York Attorney General has reviewed the terms of GAAP against the backdrop of this experience, and believes that this bill represents a substantial step towards correcting the HWA's flaws, and restoring the appropriate balance that Congress initially intended between protecting innovation and ensuring affordable drug prices. Indeed, much of the misconduct challenged in these cases would not have been possible had GSSP been in force.

By this statement and in his letter, the Attorney General highlights the need for reform. After a brief summary of the present law, the statement describes state enforcement actions in greater detail, and show how

GAAP effectively closes loopholes that allowed for the misconduct addressed by these actions.

By passing GAAP, Congress can protect consumers, lower drug prices, and avoid the need for time-consuming and expensive litigation. For those reasons, the New York Attorney General has strongly urged that Congress enact GAAP into law.

I. Generic Drugs and the Hatch-Waxman Act

Generic drugs are bioequivalents of brand-name drugs in dosage, form, safety strength, route of administration, quality, performance characteristics and intended use. They tend, however, to be priced significantly below their brand-name equivalents. An increase in the use of generic drugs would be an important step in controlling the rising costs of pharmaceuticals, and of health care in general.

In 1984, Congress passed the HWA, which streamlined the regulatory approval process for generic drugs. In particular, the Act permits the manufacturer of a new generic drug to submit an Abbreviated New Drug Application ("ANDA"), which may rely on the safety assessments of the New Drug Application ("NDA") filed by the "pioneerr"—i.e., brand-name—drug's manufacturer. An ANDA entails far less expense than an NDA, and can be approved by the FDA far more expeditiously.

Although it is not necessary for purposes of this statement to deve into all the intricacies of the HWA, two elements—the 30 month stay and the 180-day exclusivity period—play an important role in allowing pharmaceutical companies to delay generic entry and deny consumers the benefits of competition, despite the good intentions of the HWA's drafters. These elements are addressed below.

II. The HWA's Loopholes

A. The 30-Month Stay

The Food and Drug Administration ("FDA") maintains a list of pharmaceutical patents commonly known as the "Orange Book." Upon receiving FDA approval for a brand-name drug, the manufacturer must inform the FDA, in substance, of all patents that would be infringed by the non-licensed sale of a generic equivalent for that drug. The FDA then includes those patents on its Orange Book list. Before marketing a generic drug, an ANDA filer must certify that the listed patents will not prevent sale of the generic version, for any of several reasons, and notify the brand-name manufacturer of its certification. One such certification—the so-called "paragraph IV certification"—attests that the pioneer drug patent "is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted." Once an ANDA applicant—the generic manufacturer—submits a paragraph IV certification, the brand-name manufacturer has 45 days within which to bring a patent infringement action against the applicant. If the brand-name manufacturer initiates such a suit, the FDA's approval of the NADA is automatically delayed for 30-months.

The 30-month period is referred to as a "stay." More accurately, it is an injunction that takes effect immediately on the brand-name manufacturer's filing of its case, regardless of the strength or weakness of its patent infringement claims, and without any judicial oversight whatsoever. The statutorily-created injunction relieves the brand-name manufacturer of the responsibility of satisfying a court that it is entitled to a preliminary injunction against generic entry—a threshold that the brand-name manufacturer would have to meet in the absence of the HWA. The FDA itself lacks the expertise or the resources to evaluate the validity of patents identified for listing in the Orange Book and, in consequence, lists patents solely in reliance on the brand-name manufacturer's listing request.

Given the minimal standard for placement in the Orange Book, and the financial rewards of such a listing—a 30-month roadblock to generic entry—it is no surprise that drug manufacturers go to extraordinary lengths to insure that the FDA list any unexpired patent covering a profitable brand-name drug. Often, as the initial patent for a drug's active ingredient nears expiration, the brand-name manufacturer will seek "secondary patents" on specific aspects of the drug, such as mode of delivery—the validity of which may be dubious, at best—and which the manufacturer claims apply to previously approved uses of the drug. Armed with such new patents, manufacturers have been able to suppress generic alternatives, which would otherwise be available to consumers.

The cases brought by the States illustrate the potential for misuse inherent in the 30-month stay provision:

The Buspar litigation concerns, in part, an effort by Bristol-Myers Squibb ("BMS") to extend its patent monopoly for the profitable buspirone anti-anxiety medication. As BMS's patent for buspirone was about to expire, it received a patent for a metabolite that the body naturally produces—BMS claimed—as the result of introducing buspirone into the body. BMS then had the FDA list the patent in the Orange Book eleven hours before the first generic ANDA was to be approved. Although BMS explicitly stated to the United States Patent Office that its new patent did not cover buspirone, its Orange Book entry made precisely the opposite claim. As a result, generic makers of buspirone were barred from the market, and consumers paid hundreds of millions of dollars more than they would have paid, had a generic alternative been available.

A federal district judge found that BMS's conduct before the FDA was improper and ordered the patent delisted, thereby permitting the sale of generic alternatives. On appeal, the Federal Circuit held that, as a matter of procedure, generic entrants could not sue to obtain delisting from the Orange Book, and vacated the order without evaluating BMS's behavior before the FDA. This past February, yet another federal district judge found BMS's Orange Book filing to be "objectively baseless," and an effort to "justify taking property that belongs to the public."

The Taxol litigation addresses efforts by BMS to preserve its monopoly on Taxol, an important treatment for breast cancer and other tumors that the federal government itself initially developed and then licensed to BMS for five years. In their complaint, the States allege that BMS fraudulently obtained patents for Taxol, listed them in the Orange Book, and then filed litigation for the sole purpose of delaying generic entry into the market via the HWA's stay provision. It took nearly three years before a court rejected BMS's claims, during which cancer patients were deprived of access to less expensive generic alternatives.

In a particularly egregious manipulation of the HWA, BMS entered into an arrangement with generic manufacturer American Bioscience, Inc., by which BMS consented to be subject to a court-ordered temporary restraining order, issued upon ABI filing a lawsuit demanding that BMS list one of ABI's Taxol patents in the Orange Book. Based on the order, BMS had the FDA list ABI's patent in the Orange Book—in an apparent effort to clothe the fraudulent listing with the seeming legitimacy of a court decree. After generic manufacturers and the Federal Trade Commission filed papers challenging the collusively obtained order, the Court ruled that ABI was not entitled to sue BMS to obtain an Orange Book listing, and dismissed the case.

GAAP takes important steps towards resolving the problems addressed by these cases, in two ways. First, GAAP limits drug manufacturers to a single 30-month stay per drug. As initially drafted, GAAP eliminated the 30-month stay altogether. While the original might better encourage pharmaceutical competition, the compromise version passed by the Senate Health, Education, Labor and Pensions Committee represents a substantial improvement over the present legal regime.

In the Buspar case, BMS was able to obtain a 30-month stay for the third patent it claimed barred generic versions of buspirone, after the initial patent had expired and without the need to obtain a court ruling on infringement. GAAP instead requires drug manufacturers that obtain such follow-on patents to protect their intellectual property in the same manner as other patent holders—by going to court, proving that their case has a likelihood of success, and securing an injunction against the alleged infringer. That option provides recourse for genuinely aggrieved patent holders, while prohibiting brand-name manufacturers from gaining an advantage, to the detriment of consumers, solely on the basis of their own assertion of a valid patent and their willingness to file suit.

Second, GAAP would allow generic competitors to seek declaratory relief on the validity of an Orange Book listing at the time an NDA is approved—when, under GAAP, the brand-name manufacturer would still be entitled to a thirty month stay. As the Federal Circuit's Buspar ruling demonstrates, the FDA's decision to list a patent in the Orange Book may not be subject to any judicial review under existing law, and frivolous or fraudulent listings can become impassable roadblocks to generic entry. Although a previous version of the bill would have afforded even greater opportunity for challenging Orange Book listings, this aspect of GAAP would still provide potential entrants with the means to challenge such roadblocks in court, in those cases where the thirty-month stay would still apply.

B. The 180-Day Exclusivity Period

HWA gives the first ANDA filer with a paragraph IV certification a 180-day exclusivity period following a court ruling permitting entry, during which no other manufacturer of a generic version of the same drug could enter. This provision provides an incentive for generic manufacturers to challenge brand-name patents. But as currently structured, the HWA provides a means for brand-name and generic manufacturers acting in collusion to bar new generic competitors for significantly longer periods. In effect, the brand-name manufacturer simply "buys" the first ANDA filer's agreement neither to enter the market nor to transfer its exclusivity rights, thereby creating a perpetual bar against other generic competitors. This can have a profound impact on drug prices, because generic drugs are typically not priced at their full discount until the exclusivity period has expired and additional generic competitors are able to enter the market.

Cases brought by the Attorneys General illustrate this abuse of the HWA:

The Cardizem litigation arises from an agreement between brand-name manufacturer Hoechst Marion Roussel, Inc. ("HMRI") and generic drug manufacturer Andrx Corporation ("Andrx"), under which HMRI paid Andrx nearly $90 million in exchange for Andrx's agreement to keep its cheaper alternative to HMRI's Cardizem CD heart medication off the market. As part of the agreement, Andrx agreed to stay off the market while still prosecuting its ANDA—so as to maintain its right to the 180-day exclusivity period granted the first-filer under the HWA—and pledged not to transfer or sell its exclusivity rights. Thus, the agreement effectively barred any further generic entry. Only after private suits challenged this arrangement and the FTC opened an investigation, did Andrx enter the market, thereby removing the block against additional generic competitors. A federal district court has since held the HMRI/Andrx agreement to constitute a per se violation of the antitrust laws. (That ruling is now on appeal.) In yet another case, the Court of Appeals for the District of Columbia Circuit reinstated a generic manufacturer's claim challenging the HMRI/Andrx agreement.

The Hytrin litigation challenges an arrangement under which Abbot Laboratories ("Abbott") paid generic manufacturer Geneva Pharmaceuticals, Inc. ("Geneva") over $60 million, in exchange for Geneva's agreement not to market a generic version of Abbot's hypertension medication, Hytrin. In that agreement—as in Cardizem—Geneva promised not to give up the 180-day exclusivity period as the first ANDA filer. No other generic manufacturers were able to enter the market, and Geneva and Abbott shared the profits from the resulting exclusion of competition. The district court held this arrangement per se unlawful. (That ruling, too, is on appeal.)

Under GAAP, the first ANDA filer loses its right to exclusivity if it does not come to market within 60 days of the date on which it is declared eligible to do so by the FDA. Further, the 180-day exclusivity period runs from either the date of a final court decision on the patent infringement action, or the date on which a settlement order or consent decree is signed by the court, whichever is earlier. These provisions should severely limit the ability of the brand-name manufacturer and first generic entrant to act collusively to bar other generic alternatives from reaching consumers.

III. Conclusion

In the examples above, antitrust suits seeking full recompense for injured consumers helped cause the wrongdoers to cease their misconduct, and may aid in deterring further abuses. But antitrust enforcement on a case-by-case basis will not solve the problems underlying the lawsuits, which are inherent in the HWA itself. As enacted, the HWA affords unscrupulous manufacturers with both means and incentive to extend brand-name monopolies beyond the patent exclusivity period set by Congress.

Not all such misconduct comes to the attention of law enforcers or private plaintiffs; antitrust litigation is time-consuming, expensive and risky; and pharmaceutical companies are learning from previous legal setbacks, and are adopting ways to exploit the present law that may be less vulnerable to antitrust challenges—yet still deleterious to the goal of harnessing competition to provide affordable health care. Amending the HWA so as to remove available avenues for anticompetitive and anticonsumer actions, rather than relying on individual lawsuits for costly after-the-fact remedies, is a far more effective means to protect consumers.

WHOSE SIDE ARE YOU ON?

IN FAVOR OF THE CURRENT SYSTEM

Pharmaceutical Research and Manufacturers Association (PhRMA)

IN FAVOR OF CLOSING THE LOOPHOLES

General Motors Corporation
Ford Motor Company
Daimler Chrysler
International Union, UAW
AFL–CIO
AFSCME
Verizon
Wal-Mart
Kodak
Motorola
Caterpillar, Inc.
K-Mart
Georgia-Pacific
Albertsons
UPS
Kellogg's
Sysco
Constellation Energy Group
Ahold USA
Woodgrain Millwork
Weyerhaeuser
National Committee to Preserve Social Security & Medicare
AARP
Consumer Federation of America
Families USA
Gray Panthers
National Consumer League
Consumers Union
Public Citizen
U.S. PIRG
Governor Howard Dean (VT)
Governor William Janklow (SD)
Governor Bob Wise (WV)
Governor M.J. "Mike" Foster, Jr. (LA)
Governor Don Siegelman (AL)
Governor Gary Locke (WA)
Governor Bob Holden (MO)
Governor Jeanne Shaheen (NH)
Governor Tony Knowles (AK)
Governor Benjamin Cayetano (HI)
Governor Ronnie Musgrove (MI)
Generic Pharmaceutical Association (GPhA)
American Association of Health Plans
Aetna
Blue Cross Blue Shield Association
Anthem Blue Cross and Blue Shield
Health Insurance Association of America
Kaiser Permanente Health Plan
HIP
Association of Community Health Plans
National Association of Health Underwriters
National Association of Chain Drug Stores
Advance-PCS
Caremark Rx
American Academy of Family Physicians
National Committee to Preserve Social Security and Medicare
Academy of Managed Care Pharmacy
Alliance of Community Health Plans
National Organization for Rare Disorders
National Hemophilia Foundation
Alpha One Foundation
Gay Men's Health Crisis
Center for Medical Consumers
Treatment Action Group
Interstitial Cystitis Association
The Narcolepsy Network
Pacific Business Group on Health
Midwest Business Group on Health
Washington Business Group on Health
Food Marketing Institute

Ms. CANTWELL. Mr. President, I rise today to express my disappointment regarding our current situation on Medicare prescription drug legislation. I am extremely disappointed that we have not been able to pass a prescription drug benefit, and I believe it is absolutely imperative that the Senate continue to work toward this end.

The fact is, when Medicare was designed in 1965, the system relied on inpatient hospitalization and seldom on outpatient services, preventive care, or patient drug therapies. At that time, prescription drugs only accounted for four percent of all personal health care expenditures.

But as we enter the 21st century, the cutting edge of health care has shifted. Every day, as new preventive and therapeutic drugs replace outdated inpatient procedures, Medicare falls further and further behind in providing basic care.

Medicare was written to cover the most basic health care for seniors. When the original bill passed, the legislation's conference report explicitly says that the intent of the program is to provide adequate "medical aid for needy people," and should "make the best of modern medicine more readily available to the aged."

Well, we are not making the best use of modern medicine when millions of seniors cannot afford access to the prescription drugs they need. Prescription drugs that had not even been developed when Medicare was enacted are now an essential aspect of basic health care. We owe it to our seniors to live up to Medicare's original mandate and provide them the best medical care.

Unfortunately, today, beneficiaries' current drug coverage options are often expensive and unreliable. And as a result, nearly seven out of ten Medicare beneficiaries lack decent, dependable coverage for their prescription drug needs, and more than one-third have no coverage at all. Prescription drug expenditures for the average senior in my home State of Washington are over $2,100 every year, over 122,000 of my seniors spend more than $4,000 a year.

On average, one out of every five dollars of every Social Security check to Washington State's seniors is spent on prescription drugs. And seniors with the most serious illnesses spend nearly 40 percent of their Social Security check on prescription drugs. How in the world are seniors on fixed incomes supposed to do this? What happens to them in an emergency?

Last week I visited three senior citizen centers to discuss the current prescription drug debate. This is what my constituents told me: they want prescription drug coverage to be comprehensive, simple to administer, guaranteed, stable, and based on the very best medical technology. And most importantly, they want the benefit run through Medicare, a program they understand and upon which they depend.

I think this is the first point I want to make about HMOs versus Medicare as we continue to debate delivery mechanisms for a new benefit. Seniors do not want their prescription drug benefit run through an HMO or other private insurance company.

According to a June 2002 survey by the Kaiser Family Foundation and the Kennedy School of Government, 67 percent of American people believe we should expand Medicare to pay for part of prescription drugs, but only 26 percent say we should help seniors buy private insurance to pay for prescription drugs costs.

A private delivery model gives insurers complete control over whether to offer a benefit, how much to charge, and whether to cover drugs regardless of whether these drugs are medically necessary. That's too much control over a program that is supposed to guarantee help for seniors.

The very basic issue here is that the private market will not cover such a high-risk population—especially a population at such risk for adverse selection. I don't want to see this benefit be a repeat of the Medicare+Choice program. And if the private insurance model hasn't worked for the full Medicare benefit, it certainly won't work for a single benefit where utilization is expected to be high.

Putting HMOs in charge of prescription drug coverage would be like putting Enron in charge of Social Security.

The second point I want to make is that seniors need a benefit that is comprehensive, one that covers their total prescription drug needs. Thirty percent of Washington seniors—212,000 people—will fall into the benefit hole proposed under the Tripartisan bill. But these same seniors will need to continue to pay their monthly premium, whatever it is, as determined by the private HMOs or insurance companies, during that benefit gap. My constituents will not stand for this.

We need to pay very close attention to the catastrophic coverage in all of these proposals and what it means for seniors. What we're talking about is covering medicines for the very sickest seniors, and we know that the very sickest seniors have the very highest drug costs. In fact, just 14 percent of the elderly population account for nearly half of all prescription drug expenditures.

Seniors account for 12.6 percent of the general population, but a third of all prescription drug expenditures. And while prescriptions are expensive, in some cases, prohibitively so, these are the very same prescription drugs that keep people out of the hospital, out of the nursing home, and living vibrant and happy lives. And while it is difficult to quantify in economic terms, prescription drugs preserve health and eliminate unnecessary hospitalization, which is by far most expensive segment of the health care.

Americans are becoming increasingly reliant on more effective, and more complicated, drug therapies. Total health care spending in the United States will total more than $1.5 trillion this year, an increase of 8.6 percent over last year, according to a March report released by the Centers for Medicare and Medicaid Services.

The other part of this debate concerns the need to get generic medications to the market, and to our Nation's seniors and disabled, more quickly. Generic medicines account for 42 percent of all prescriptions dispensed in America and on average are put on the market at 75 percent of the cost of their name-brand rivals.

But we know that the current prescription drug patent system is broken, and I am extremely concerned that pharmaceutical companies may be acting illegally to extend their patents and prevent less expensive generic drugs from entering the market. To fix it, we need to eliminate patent loopholes that drug companies use to prevent price competition from generic alternative drugs.

We need to strengthen existing statutes, including antitrust laws. We need to stop drug company abuses that prevent generic competition and lower prices, stop illegitimate patent "evergreening," and stop anticompetitive sweetheart deals between brand name and generic companies.

I am pleased that the underlying bill we are considering would get lower-priced generics on the market faster, especially since we know that prescription drug expenditures are the fastest growing segment of the health care market, with spending on outpatient prescription drugs in the U.S. increasing by 17 percent over last year. It is absolutely incredible that outpatient drug expenditures have more than doubled in the last five years.

Drug expenditures in the United States rose from about $5.5 billion in 1970 to a projected $161 billion this year, and CMS predicts that prescription drug expenditures will continue to increase faster than any other category of health care spending throughout the next ten years. Medicare beneficiaries alone will spend $1.5 trillion on prescription drugs over the next ten years.

Those two factors, great dependency on drug therapies and skyrocketing drug prices, put us on a collision course in our efforts to provide affordable health care.

I know that many of my colleagues are concerned that the money isn't there for this benefit, and I, too, have no doubt that a new benefit will be extremely expensive. The Congressional Budget Office estimates that the original Graham amendment will cost $576 billion over 10 years, and it spends about $85 billion a year by the end of the decade.

This new spending is in addition to the fact that the Medicare budget will reach at least $498 billion by 2012, and will begin spending out more than it brings in by 2016. Sustainable financing of the Medicare program is a looming problem that must be addressed.

But while we discuss the potential cost of a new benefit, we also need to discuss national priorities. I believe we can do a prescription drug benefit while living within our budget, and we can do so by having a clear vision for our country's priorities. One of my top priorities is getting a new prescription drug benefit to the Medicare beneficiaries in Washington state. But this may mean making other tough choices.

There is no doubt that if we interject all of these issues into the political debate surrounding the need to provide Medicare coverage of prescription drugs for our elderly and disabled, we have a debate to be rivaled by few others.

But the reality is that the Senate needs to move past the argument of whether or not to include prescription drugs in the Medicare program. We know there is a problem, and it is up to us to find a solution.

Congress is trying to take a reasoned and rational approach to integrating a new prescription drug benefit into the Medicare program.

I strongly believe that we need to include a prescription drug benefit in the Medicare program and I will continue to fight to ensure that all Washingtonians have access to the prescription medications they need.

Finally, I want to briefly address the geographic disparities in Medicare provider payments. I am especially concerned that providers serving a disproportionate number of Medicare and Medicaid patients are facing unsustainable fee reductions.

Every day I hear from my constituents that they are facing increasing difficulty in getting primary care services, and from physicians who can no longer afford to take on new Medicare patients. In fact, 57 percent of Washington state physicians are limiting the number or dropping all Medicare patients from their practices.

We absolutely must ensure that Medicare providers, hospitals, physicians, home health agencies, physical therapists, nursing homes, are paid enough to cover the cost of providing care to Medicare beneficiaries. I certainly hope that the Finance Committee, working with the Leadership on both sides, will pass a reimbursement package before we adjourn the 107th Congress. It will do us little good to provide a new Medicare benefit if there are no physicians willing or available to write prescriptions for Medicare beneficiaries.

Mr. McCAIN. Mr. President, the Greater Access to Affordable Pharmaceuticals Act, GAAP, provides a real opportunity to benefit all consumers of prescription drugs. In the recently concluded study of the abuses of the Hatch-Waxman act, the Federal Trade Commission concluded that there is a need for Congress to act and to act quickly to end the exploitation of loopholes in current law that has delayed the entry of generic drugs into the market. S. 812 would allow consumers earlier access to generic versions of drugs while protecting the intellectual property rights of the brand name drug innovators—a protection that is necessary for their continued investment in research and development of new and improved pharmaceuticals.

S. 812 would accomplish five important objectives. First, the bill would limit the ability of brand name drug companies to delay the marketing of generic competitors. It does this by limiting brand name drug companies to only one automatic 30-month stay. Under current law, brand name drug companies can prevent generic substitutes from coming to market by suing the generics for patent infringement, thus triggering an automatic stay of up to 30 months on the FDA's approval of the generic drug. By bringing successive patent infringement suits, brand name drug companies have obtained sequential stays, and kept generics off the market much longer than 30 months.

Allowing for only one automatic delay is consistent with the FTC's recent recommendations. In its report, the FTC recommended that only one stay be allowed, and noted that: prior to 1998, only 1 out of 9 blockbuster drugs products involved at least three patent lawsuits, whereas after 1998, 5 of the 8 blockbuster products involved at least three lawsuits. . . .

[C]ases involving multiple patents take longer than those involving fewer patents [to resolve] the FTC wrote, and the Commission found that the multiple stacking of automatic stays delayed the approval of generic drug applications from between 4 and 40 months beyond the initial 30-month period.

There is no doubt that these stays have cost consumers enormous sums of money by preventing their access to cheaper generic versions of drugs. Allowing for one 30-month stay, as S. 812 does, strikes a balance between the rights of brand name drug companies seeking to protect their legitimate patents, and the rights of consumers to access generic drugs without unreasonable delay due to "gaming" of the system.

Second, the GAAP Act would modify the provision in current law that allows the first-to-file generic drug manufacturer an exclusive 180-day period to market its drug without competition from other generic manufacturers. The 180-exclusivity period was intended to provide a needed incentive for challenging dubious patents. Like the automatic 30-month stay, however, this 180-day exclusivity has been abused. Brand name and generic drug companies have colluded in deals in which the brand name manufacturer effectively extends its own period of exclusivity by paying the generic drug manufacturer to stay out of the market for the six months during which the generic would otherwise be able to compete. When this occurs, the brand name manufacturer wins, and the generic manufacturer wins, but consumers lose. To prevent this type of abuse, S. 812 modifies current law so that first-to-file generic manufacturers that engage in anti-competitive conduct and do not go to market, lose the privilege of the 6-month exclusivity in the generic market, and, in certain circumstances, that exclusivity "rolls" over to the next generic competitor.

Third, the legislation would require generic drug applicants to the FDA to provide a more detailed "paragraph IV" filing. This means that the patent holder will not only receive a general notice that its patent is being challenged, but the generic drug applicant will be required to provide a more detailed legal basis of its assertions regarding the original patent's validity. This is an important protection for the brand name manufacturers because they will receive more information about the nature of the patent challenge as opposed to a simple notice that a generic application has been filed.

Fourth, S. 812 would clarify that the FDA's existing regulations as they pertain to bioequivalence have the effect of law. Currently, bio-equivalence is demonstrated through blood level studies, and only in some circumstances has the FDA allowed for limited human data to be submitted for products where blood studies are inapplicable. S. 812 would allow the FDA to amend its regulations as necessary and clarify its authority over biological products under the Federal Food, Drug and Cosmetic Act.

The fifth significant change to current law relates to how to clean up abuses of the "Orange Book", the manual in which the FDA lists all patents on pharmaceutical drugs. S. 812 allows generic manufacturers in certain instances to bring a cause of action to "de-list" or "rename" a drug patent. Current law provides no means for "delisting" a patent, although doing so can speed the marketing of generic drugs, particularly in cases involving patents that are patently frivolous and for which the brand name manufacturers clearly would not win a patent infringement suit. While purging the Orange Book of frivolous patents is important, I understand that some Senators are concerned that the new cause of action to "delist" will not speed the availability of generic drugs, but will lead to a snarl of litigation. I hope these concerns can be reviewed in conference.

Over twenty years ago, Hatch-Waxman established the procedures for bringing generic drugs to consumers and set out to strike a balance that would allow drug innovators to protect their innovations, while allowing generic drugs easier access into the market. In large part, Hatch-Waxman succeeded in bringing new lower-cost alternatives to consumers, and encouraging more investment in U.S. pharmaceutical research and development. This has been evident in the years since the enactment of Hatch-Waxman, where research and development has increased from $3 billion to $21 billion. Loopholes in the law, however, have delayed benefits to consumers. It is time to close them.

The Congressional Budget Office, CBO, recently released results of its estimate of S. 812, finding that total drug expenditures in this country over the next ten years, 203 to 2012, will be roughly $4.7 trillion. If the delays resulting from numerous lawsuits and agreements that arise under current law were eliminated, the CBO estimates that S. 812 would result in a savings of up to 7 percent, or $320 billion. For consumers, particularly seniors, the uninsured, and those on Medicare, this is a tremendous savings.

Congress will improve the lives of many Americans by passing the underlying language of S. 812. I urge my colleagues to do this now.

Mr. GRASSLEY. Mr. President, I'd like to say a few words about the Hatch-Waxman provisions that were contained in S. 812 that passed this morning. Ensuring access to affordable prescription drugs is a top priority for me. The challenge is to strike the right balance so consumers have timely access to medicine that's affordable and so that new, groundbreaking pharmaceuticals continue to be developed. I voted for S. 812 because I want Iowans and all Americans to benefit as much as possible from the competition and lower prices that generic drugs bring about in the marketplace. This bill starts to close loopholes in the current Hatch-Waxman law and stop abuses that may have contributed to the delay in market entry to generic drugs and kept drug prices high. I believe that this is a good first step toward recognizing and addressing concerns about abuses in the current system. However, I still have concerns about the drafting of a few of the provisions in this legislation.

For example, I'm concerned abut the new private right of action created by S. 812. The current Hatch-Waxman law does not allow for such a remedy, and this could cause unnecessary and increased litigation. I also share the concerns that Senator Frist expressed regarding the bioequivalency provision. I think that we need to clarify that this provision should in no way adversely impact or lessen public safety. Further, I think that we should clarify that the provision dealing with the 45 day paragraph IV notice does not eliminate all legal avenues with respect to a company being able to protect it's rights with respect to a patent. There might be a few other changes that would be beneficial to the bill. Nevertheless, I'm hopeful that we can improve on this legislation. We need to be able to close the loopholes, but also ensure that we keep the proper balance between promoting timely access to affordable generic drugs and giving brand-name companies reasonable intellectual property protections so they will continue to innovate and find new cures and drugs.

I was disappointed that the Senate was not able to consider an amendment I wanted to offer with Senator Leahy which would have required brand-name and generic companies to file with the Federal Trade Commission and Justice Department any agreements that deal with the 180 day exclusivity provision of the Hatch-Waxman law. The language of our amendment is exactly the language contained in S. 754, as reported out of the Judiciary Committee last November. So everyone knows, this legislation is fully supported by the Federal Trade Commission report that came out just yesterday. In fact, the Federal Trade Commission report said "we believe that notification of such agreements to the Federal Trade Commission and the U.S. Department of Justice is warranted. We support the Drug Competition Act of 2001, S. 754, introduced by Senator Leahy, as reported by the Committee on the Judiciary." I'm putting my colleagues on notice that I will work to get this legislation passed to ensure that lower price drugs get to market as soon as possible.

I want Iowans to benefit from new scientific research and innovative drug products. Patent protections help provide incentives for these developments. With the practice of medicine today being so dependent on prescription drugs and with a new, taxpayer-financed prescription drug benefit on the horizon, I'll continue to work to make sure Congress maintains the right balance between patent protection and access to generic drugs.

Mr. McCAIN. I would like to take the opportunity to talk about the underlying bill, S. 812, which, until now, has been largely treated in this two week debate as little more than a vehicle for a grander, more politically salient, but also more elusive, prescription drug benefit.

If the Senate fails to pass the underlying bill, the Greater Access to Affordable Pharmaceuticals Act, GAAP, will lose a real opportunity to benefit all consumers of prescription drugs. In a recently concluded study of the abuses of the Hatch-Waxman act, the Federal Trade Commission concluded that there is a need for Congress to act and to act quickly to put an end to the anti-competitive abuses that have delayed the entry of generic drugs into the market. S. 812 would allow consumers earlier access to generic versions of drugs while protecting the intellectual property rights of the brand name drug innovators, a protection that's necessary for their continued investment in research and development of new and improved pharmaceuticals.

While the brand name drug manufacturers have decried this bill, which has been portrayed by some as a boon to generic drug makers, I assure you that these portrayals are not accurate. The consumer is the intended beneficiary of this legislation, plain and simple.

S. 812 would accomplish five important objectives. First, the bill would limits the ability of brand name drug companies to delay the marketing of generic competitors. It does this by limiting brand name drug companies to only one automatic 30-month stay on the marketing of generic drugs. Under current law, brand name drug companies can prevent generic substitutes from coming to market by suing the generic for patent infringement and in so doing, stop the FDA, for up to 30 months, from approving the cheaper substitute. By bringing successive patent infringement suits, brand name drug companies have obtained sequential 30-month stays, and kept generics off the market much longer than 30 months.

Allowing for only one automatic delay is consistent with the recommendation the Federal Trade Commission made recently in its comprehensive study of anticompetitive abuses of current law by brand name and generic drug companies. In its report, the FTC recommended that only one stay be allowed, and noted that "prior to 1998, only 1 out of 9 blockbuster drug products involved at least three patent lawsuits, whereas after 1998, 5 of the 8 blockbuster products involved at least three lawsuits." "[C]ases involving multiple patents take longer than those involving fewer patents [to resolve]" the FTC wrote, and the Commission found that the multiple stacking of 30-month stays prevented the FDA from approving generic ANDAs from 4 to 40 months beyond the initial 30-month stay.

There is no doubt that these stays have prevented or delayed generic drugs from entering the marketplace and increased the price of prescription drugs. Allowing for one 30-month stay, as S. 812 does, strikes a balance between the rights of brand name drug companies seeking to protect their legitimate patents, and the rights of consumers to access generic drugs without unreasonable delay due to "gaming" of the system. I understand that there is disagreement regarding which patents should be afforded protection under the automatic stay, however, I believe we can all acknowledge that allowing for one, and only one stay, is the most effective way to prevent frivolous lawsuits that delay consumers' access to less expensive pharmaceuticals.

Second, the GAAP Act would modify the provision in current law that allows the first-to-file generic drug manufacturer an exclusive 180-day period to market its generic drug without competition from other generic manufacturers. The 180-exclusivity period was intended to provide a needed impetus for generic companies to challenge dubious patents. Like the automatic 30-month stay, however, this 180-day exclusivity has been abused. Brand name and generic drug companies have colluded in deals in which the brand name manufacturer effectively extends its own period of exclusivity by paying the generic drug manufacturer to stay out of the market for the six months during which the generic would otherwise be able to compete. When this occurs, the brand name manufacturer wins, and the generic manufacturer wins, but consumers lose. To prevent this type of abuse, S. 812 modifies current law so that first-to-file generic manufacturers that engage in anti-competitive conduct and do not go to market, lose the privilege of 6-month exclusivity in the generic market, and, in certain circumstances, that exclusivity "rolls" over to the next generic competitor.

Third, the legislation would require generic drug applicants to the FDA to provide a more detailed "paragraph IV" filing. This means that the patent holder will not only receive a general notice that its patent is being challenged, but the generic drug applicant will be required to provide a more detailed legal basis for its assertions regarding the original patent's validity. This is an important protection for the brand name manufacturers because they will receive more information about the nature of the patent challenge as opposed to a simple notice that a generic application has been filed.

Fourth, S. 812 would clarify that the FDA's existing regulations as they pertain to bio-equivalence have the affect of law. Currently, bio-equivalence is demonstrated through blood level studies, and only in some circumstances has the FDA allowed for limited human data to be submitted for products where blood studies are inapplicable. S. 812 would allow the FDA to amend their regulations as necessary and clarify their authority over biological products under the Federal Food, Drug and Cosmetic Act.

The fifth significant change to current law relates to how to clean up abuses of the "Orange Book", the manual in which the FDA lists all patents on pharmaceutical drugs. The provision in the current bill, allows generic manufacturers in certain instances to bring a cause of action to "de-list" or "re-name" a drug patent. Current law provides no means for "delisting" a patent, although doing so can speed the marketing of generic drugs, particularly in cases involving patents that are patently frivolous and for which the brand name manufacturers clearly would not win a patent infringement suit.

The cause of action for generic manufacturers to "delist" patents was a provision that was added to S. 812 late in the process, and it is controversial. Opponents argue that doing so will significantly increase and complicate litigation without clearly making generic drugs available to consumers more quickly. How the cause of action in S. 812 will work is yet unclear. I hope that during conference on this legislation, we can consider not only the provision in the Senate bill, but also the proposal mentioned in the FTC's recent report to permit a claim for "delisting" to be brought, not as an original and separate action, but as a counterclaim in the context of a patent infringement lawsuit. Such an approach may be more appropriate in that it could reduce the number of lawsuits, but still allow generic manufacturers a way to "delist" frivolous patents through summary judgments or other motions that can be raised in the context of patent infringement litigation.

Over twenty years ago, Hatch-Waxman establishes the procedures for bringing generic drugs to consumers and set out to strike a balance in the pharmaceutical industry that would allow brand name manufacturers to protect their innovations, while allowing generic brands easier access into the market. In large part, Hatch-Waxman succeeded in bringing new lower-cost alternatives to consumers, and encouraging more investment in U.S. pharmaceutical research and development. This has been evident in the 15 years since the enactment of Hatch-Waxman, where research and development has increased from $3 billion to $21 billion. Loopholes in the law, however, have delayed benefits to consumers. It is time to correct this.

The Congressional Budget Office, CBO, recently released results of its estimate of S. 812 finding that total drug expenditures in this country over the next ten years (2003 to 2012) will be roughly $4.7 trillion. If the delays resulting from numerous lawsuits and agreements were eliminated, the CBO estimates that S. 812 would result in a savings of up to 7 percent or $320 billion. For consumers, particularly seniors, the uninsured, and those on Medicare, this is a tremendous savings.

Congress will improve the lives of many Americans by passing the underlying language of S. 812. I urge my colleagues to do this now.

Mr. LEAHY. Mr. President, I am disappointed that at the very last moment, the acceptance of the Drug Competition Act of 2001 as an amendment to "The Greater Access to Affordable Pharmaceuticals Act," S. 812 was withdrawn. This bill, which enjoys the justified support of the administration's antitrust enforcement agencies, would have brought lower-priced generic drugs to the marketplace. Along with Senator GRASSLEY, I have every confidence that this bill would have garnered the overwhelming support of our colleagues on both sides of the aisle and would have benefitted every American purchasing prescription drugs, and am mystified by the reversal of the agreement to accept it. I thank Senator GRASSLEY and Senator KENNEDY for their support.

Prescription drug prices are rapidly increasing, and are a source of considerable concern to many Americans, especially senior citizens and families. Generic drug prices can be as much as 80 percent lower than the comparable brand name version. S. 812 is a tremendous effort to improve timely introduction of generic pharmaceuticals into the marketplace, and into our medicine cabinets, and our amendment will provide an important tool in making that effort successful.

While the Drug Competition Act is a small bill in terms of length, it is a large one in terms of impact. It will ensure that law enforcement agencies can take quick and decisive action against companies that are driven more by greed than by good sense. It gives the Federal Trade Commission and the Justice Department access to information about secret deals between drug companies that keep generic drugs off the market. This is a practice that hurts American families, particularly senior citizens, by denying them access to low-cost generic drugs, and further inflating medical costs.

This had been a genuine bipartisan effort, and I must thank all my colleagues, including Senator HATCH who has a long-standing interest in these issues and who has praised S. 754 on the floor in recent days. Also, sub-committee Chairman KOHL has worked with me from the start on this effort, and I particularly want to thank our co-sponsor Senator GRASSLEY, who has worked hard to reach consensus on this bill that will help protect consumers. This bill passed unanimously out of the Judiciary Committee last October, but it has been the subject of an anonymous hold on the floor, presumably unrelated to the merits. Partisan politics should not further delay enactment of this sensible, and universally applauded, bill into law.

In fact, just yesterday the FTC released its long-awaited report on the entry of generic drugs into the pharmaceutical marketplace. The FTC had two recommendations to improve the current situation, to close the loopholes in the law that allow drug manufacturers to manipulate the timing of generics' introduction to the market. One of those recommendations was simply to enact S. 754, as the most effective solution to the problem of "sweetheart" deals between brand name and generic drug manufacturers that keep generic drugs off the market, thus depriving consumers of the benefits of quality drugs at lower prices. In short, this bill enjoys the unqualified endorsement of the Republican FTC, which follows on the support by the Clinton Administration's FTC during the initial stages of our formulation of this bill. We can all have every confidence in the common sense approach that S. 754 takes to ensuring that our law enforcement agencies have the information they need to take quick action, if necessary, to protect consumers from drug companies that abuse the law.

The issue of drug companies paying generic companies not to compete was exposed last year by the FTC, and by articles in major newspapers, including an editorial in the July 26, 2000, The New York Times, titled "Driving Up Drug Prices." This editorial concluded that the problem "needs help from Congress to close loopholes in federal law." And while the FTC has sued pharmaceutical companies that have made such secret and anticompetitive deals, as the then Director of the Bureau of Competition Molly Boast testified before the Judiciary Committee in May 2001, the antitrust enforcement agencies are only finding out about such deals by luck, or by accident.

Under current law, the first generic manufacturer that gets permission to sell a generic drug before the patent on the brand-name drug expires, enjoys protection from competition for 180 days, a head start on other generic companies. That was a good idea, but the unfortunate loophole exploited by a few is that secret deals can be made that allow the manufacturer of the generic drug to claim the 180-day grace period, to block other generic drugs from entering the market, while, at the same time, getting paid by the brand-name manufacturer to not sell the generic drug.

The bill would have closed this loophole for those who want to cheat the public, but keeps the system the same for companies engaged in true competition. The deals would be reviewed only by those agencies—the agreements would not be available to the public. I think it is important for Congress not to overreact in this case and throw out the good with the bad. Most generic companies want to take advantage of this 180-day provision and deliver quality generic drugs at much lower costs for consumers. We should not eliminate the incentive for them. Instead, we should let the FTC and Justice look at every deal that could lead to abuse, so that only the deals that are consistent with the intent of that law will be allowed to stand.

This bill would have accomplished precisely that goal. Moreover, it fits neatly into S. 812's provisions requiring a generic drug company that has been granted the exclusive, 180-day period on the market to forfeit that privilege if it makes a deal with a brand name company, or otherwise delays bringing its generic drug into the marketplace. Such a generic company must relinquish that 180-day privilege to the next generic manufacturer that can come to market. Both S. 812 and S. 754 share the goal of ensuring effective and timely access to generic pharmaceuticals that can lower the cost of prescription drugs for seniors, for families, and for all of us.

Mr. KERRY. Mr. President, I am disappointed that the Senate was unable to pass the Graham-Miller-Kennedy amendment last week, as it would have established a comprehensive prescription drug benefit for our Nation's seniors. I strongly supported the Graham-Miller-Kennedy plan, as I believe it offered the best solution to the problem our senior citizens face in finding a way to afford the prescription drugs they need to stay healthy. Given the failure of the Senate to pass the Graham-Miller-Kennedy amendment, which I voted for, I now lend my support to the low-income, catastrophic benefit proposal that has been offered by my colleagues, Senators BOB GRAHAM and GORDON SMITH. While I would rather the Senate take a stand in support of a more comprehensive benefit, the Graham-Smith amendment marks an important first step in making sure that our country delivers on the promise that Medicare made to our Nation's seniors almost 30 years ago.

Medicare was enacted in 1965, under the leadership of President Lyndon Johnson, as a promise to the American people that, in exchange for their years of hard work and service to our country, their health care would be protected in their golden years. But that promise has not been fulfilled. Across our country, millions of seniors have cried out for help in paying for their prescription medication. Too many of our parents and grandparents confess that they are unable to afford the drugs their doctors prescribe for them. Too many of our parents and grandparents have to choose between paying for their rent, getting their groceries or buying the medicine they need to stay healthy.

Prescription drug expenditures are skyrocketing—with the drug prices facing seniors growing at four times the rate of inflation. These costs are forcing our Nation's elders to pile into buses, and travel into Canada and Mexico where they can purchase the medicine they need for 30 percent less of the cost in the United States. These costs are driving Americans across our borders to obtain the prescription medications our very own pharmaceutical companies have developed here at home.

I appreciate the biotechnology revolution being driven publicly, by the National Institutes of Health, and privately, by the pharmaceutical industry. The advancements in modern medicine are truly spectacular, and many of the most inspiring discoveries are being made by biotechnology companies in my own State of Massachusetts. I am proud of the work being done in my state and across the country. With continued investment in research, scientists predict that we may be 5 to 10 years away from major breakthroughs in medical treatment for diseases like Alzheimer's and Parkinson's. But I ask, of what consequence are medical discoveries if they never leave the laboratory or move beyond the shelf of a local pharmacy?

The Graham-Smith amendment will help move those medications from pharmacy shelves into the hands of the seniors whose lives depend on them. Graham-Smith offers all seniors protection against high drug bills, establishing Medicare coverage of all drug costs incurred over $3,300. In addition to catastrophic coverage, the Graham-Smith proposal will provide every senior, regardless of income, up to a 30 percent discount on drugs purchased before they reach the $3,300 stop-loss. For low-income seniors, the Graham-Smith plan provides special assistance, covering all drug costs for those beneficiaries below 200 percent of the Federal poverty level.

The Graham-Smith amendment will provide protection to all seniors against the high cost of prescription drugs. It is not the ideal solution, but it targets the seniors who need help the most. The sickest seniors will be protected from out-of-control costs, which every senior needs as insurance against a serious illness. Seniors with low incomes are guaranteed the drugs they need so they don't have to choose between prescription drugs and other necessities. This amendment provides a solid first step toward the goal of providing a comprehensive, reliable Medicare prescription drug benefit for our seniors.

I urge my colleagues to join me in support of the Graham-Smith amendment. But let us not abandon our goal of establishing a more complete prescription drug benefit. Graham-Smith is a good first step, but we must continue the journey. Unless we establish a comprehensive Medicare drug benefit, the health of an entire generation will continue to be in jeopardy. We must act to deliver on that promise that President Johnson made 25 years ago. Our Nation's seniors deserve no less.

Mrs. BOXER. Mr. President, I am disappointed that after nearly three weeks of debate, the Senate has been unable to pass a prescription drug benefit for seniors. Millions of senior citizens across the country desperately need this help.

In California alone there are nearly 3.8 million Medicare beneficiaries. According to the most recent estimates, 684,000 of those Californians have no prescription drug coverage. Unsurprisingly, low-income California seniors make up the majority of those currently suffering. However, this is an issue that cuts across socioeconomic lines to affect all seniors, throughout my State and throughout the Nation.

It is easy to listen to numbers and forget that there are faces behind those numbers—real people with real health care problems. But that is precisely why this debate is so important. There are seniors in this country who are being gouged by the prices of prescription drugs, who are choosing to skip doses to make their drugs last, and who are holding off as long as possible before they fill their prescriptions because they simply can't afford it. This is a travesty, and one that we must address.

We had a tremendous opportunity to address this situation and to provide seniors with a comprehensive prescription drug benefit under Medicare. I supported a proposal to provide a voluntary, affordable prescription drug benefit for all seniors under Medicare, with special assistance to those with low incomes. This proposal would provide a reliable benefit for the people who spend the most on drugs and who, in many cases, can least afford it: senior citizens. Unfortunately, because of opposition from the other side of the aisle, that effort failed.

Fortunately, all is not lost. While we were unable to make prescription drugs more accessible to seniors, I am pleased that we were able to take steps to make prescription drugs more affordable for everyone.

I supported—and we passed—a provision that will allow drug reimportation from Canada. In Canada, the exact same drugs often cost one-third the price. However, pharmacies in this country are not currently allowed to buy drugs in Canada to sell in the United States, which would pass these savings on to consumers. That should change as long as those drugs meet strict safety standards before entering our country. This provision will allow that to happen.

I supported—and we passed—a provision that will allow states to negotiate lower drug prices for all of their citizens who currently lack prescription drug benefits. States currently negotiate drug prices for their Medicaid recipients, the poorest of our Nation's citizens. This provision will give States an even larger market power to ensure even deeper discounts for all residents who lack prescription drug coverage.

Finally, I supported—and we passed—a proposal to close the loopholes that currently allow brand-name drug companies to keep generic drugs off the market, even after the original patent on the drug has expired. Bringing generics to market ensures greater competition and ultimately reduces prices. This should not be unfairly stalled by brand-name companies that want to maintain their monopoly on the market.

These are all important ways in which we will be able to bring the costs of drugs down for all Americans, young and old, rich and poor. We must provide seniors with a true Medicare prescription drug benefit, so that they are no longer forced to choose between drugs and food or rent. We may not have succeeded today, but I will keep fighting to see it happen in the very near future.

Ms. COLLINS. Mr. President, I rise in strong support of the Greater Access to Affordable Pharmaceuticals Act, which will make prescription drugs more affordable by promoting more competition in the pharmaceutical industry and increasing access to lower priced generic drugs.

I was very pleased to have the opportunity to work with my colleague, the Senator from North Carolina, in offering this compromise in the Health, Education, Labor, and Pensions Committee, where it was approved by a strong bipartisan vote. I also recognize the leadership and hard work of the Senators from New York and Arizona on this critical issue.

Prescription drug spending in the United States has increased by 92 percent over the past 5 years to almost $120 billion. These soaring costs are a particular burden for the millions of uninsured Americans, as well as for those seniors on Medicare who lack prescription drug coverage. Many of these individuals are simply priced out of the market or forced to choose between paying the bills or buying the pills they need to remain healthy.

Skyrocketing prescription drug costs are also putting the squeeze on our Nation's employers who are struggling in the face of double-digit increases in their insurance premiums. They are finding it increasingly difficult to continue to provide health care coverage for their employees.

Soaring costs are also exacerbating the Medicaid funding crisis that all of us are hearing about from our Governors back home who are struggling to bridge shortfalls in the States' budgets.

In 1984, the Hatch-Waxman Act made significant changes in our patent laws that were intended to encourage pharmaceutical companies to make the investments necessary to develop new drug products while simultaneously enabling their competitors to bring lower cost, generic equivalents to the market. We should acknowledge that, to a large extent, the original Hatch-Waxman Act succeeded. The law has speeded access to generic drugs in the market. As a consequence, consumers are saving anywhere between $8 and $10 billion a year by purchasing lower priced generic drugs.

Moreover, there are even greater potential savings on the horizon. Within the next 4 years, the patents on brand name drugs with combined sales of $20 billion are set to expire. If Hatch-Waxman were to work as it was intended, consumers could expect to save between 50 and 60 percent on these drugs as lower-cost generic alternatives becomes available after these patents expire.

But despite the past successes of this law, it has become increasingly evident that the Hatch-Waxman Act has been subject to abuse. While many pharmaceutical companies have acted in good faith, there is mounting evidence that others have attempted to game the system by exploiting legal loopholes in the current law. The result is, too many pharmaceutical companies have maximized their profits at the expense of consumers by filing frivolous lawsuits that have delayed access to lower priced generic drugs.

Just yesterday, the Federal Trade Commission released its long-awaited study that found that brand name drug manufacturers have, indeed, misused the law to delay the entry of lower cost generics into the market. The FTC found that these tactics have led to delays of between 4 and 40 months—over and above the first 30-month stay provided under Hatch-Waxman—for generic competitors of at least eight drugs—eight very popular drugs—since 1992. Moreover, six of these eight delays have occurred since 1998.

The FTC report identifies two specific provisions of the current law—the automatic 30-month stay and the 180-day market exclusivity provision—as being susceptible to challenges and strategies that delay the entry of lower cost generic alternatives into the market. According to the FTC report, these loopholes "continue to have the potential for abuse" and, if left unchanged, "may have [even] more significance [for consumers] in the future." I am pleased to say that these are the very loopholes that our bill would close.

The Congressional Budget Office estimates that our legislation would cut our Nation's drug costs by an astounding $60 billion over the next 10 years. It is no wonder that our proposal is supported by coalitions representing the Governors, employers, insurers, organized labor, seniors groups, and individual consumers who are footing the bill for these expensive drugs and whose costs for many popular drugs could be cut in half if generic alternatives were more readily available.

I would like to pause for a moment to discuss some of the details of the underlying Edwards-Collins bill. Some of my colleagues have argued that certain provisions of the bill are unconstitutional or that the bill will lead to more litigation. But no amendments have been offered to change any of the provisions of the Edwards-Collins bill. Moreover, the bill itself is the product of months of work and represents a broad, bipartisan compromise that incorporates the views and concerns of a wide spectrum of interests.

I worked particularly hard on carefully wording the cause of action created by the bill, and believe that criticisms of it spurring increased litigation are not well-founded. Our bill creates a new civil action that offers a remedy if companies incorrectly or frivolously listed patents in the Orange Book, so that these patents do not delay the ability of a generic drug to come to market. The bottom line is, the cause of action will help to reduce both the cost of prescription drugs and the cost of prescription drug litigation. It does so by allowing generic drug makers, for the first time, to directly challenge a patent that has been frivolously or incorrectly listed.

I understand the concerns of some of my colleagues who are leery of creating new causes of action. But I would reply that, in many cases, litigating through narrowly-targeted suits can be quicker and less expensive than aggregating a number of claims in one, massive proceeding. Moreover, I have worked to target the new provision as carefully as possible. In Committee, I offered a common sense amendment to tailor the new cause of action in a way that will help minimize unintended consequences while, at the same time, ensuring that it still serves its intended purpose of policing frivolous or incorrectly listed patents. My amendment made it clear that the delisting cause of action is for injunctive relief only and cannot result in monetary damages. It also limited the new cause of actions to patents listed in the Orange Book up to 30 days after a New Drug Application's approval. In doing so, my amendment harmonized the 30-month stay provision and the cause of action, as it should be.

The original Hatch-Waxman Act was a carefully constructed compromise that balanced an expedited FDA approval process to speed the entry of lower cost generic drugs into the market with additional patent protections to ensure continuing innovation that brings us these wonderful lifesaving and life-enhancing drugs.

The bipartisan compromise bill before us restores that balance by closing the loopholes that have reduced the original law's intent and its effectiveness in bringing lower cost generic drugs to market more quickly. I am very pleased we are going to pass this legislation. It really will make a difference for millions of Americans who are struggling to afford the high cost of prescription drugs.

Mr. President, I ask unanimous consent that letters from various groups that are supporting this legislation and worked very closely with us in drafting it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSINESS FOR
AFFORDABLE MEDICINE,
Washington, DC July 23, 2002.

Hon. SUSAN COLLINS,
US Senate,
Russell Senate Office Building,
Washington, DC

DEAR SENATOR COLLINS: The Business for Affordable Medicine coalition encourages you to vote for the Hatch-Waxman reform measures in S. 812. By closing loopholes in the Hatch-Waxman Act, Congress will ensure that more affordable prescription drugs reach the market without delays, which will provide prescription drug purchasers with significant cost savings.

The Congressional Budget Office estimates that closing Hatch-Waxman loopholes would reduce the nation's drug costs by $60 billion over the next 10 years. Preventing delays in the availability of generics would also reduce federal spending for prescription drugs by $6 billion while increasing federal revenues by $2.2 billion.

Consumers and institutional purchasers (including employers, and federal and state governments) can no longer afford the anti-competitive practices that are made possible by loopholes in the Hatch-Waxman Act. Please be assured that BAM supports strong intellectual property protections, and we do not believe they are undermined by provisions of S. 812.

BAM corporate members include Ahold USA, Albertsons, Constellation Energy Group, General Motors, Georgia-Pacific, Kellogg Company, Kmart, Kodak, Motorola, Sysco Corporation, United Parcel Service, Wal-Mart, Weyerhaeuser, and Woodgrain Millwork. BAM also includes governors and a number of state labor leaders.

Together, we urge you to support these limited and targeted Hatch-Waxman reform provisions in S. 812 to make timely access to lower-cost generics a reality.

Sincerely,

JODY HUNTER,
Director, Health and Welfare,
Georgia-Pacific Corporation.

COALITION FOR A COMPETITIVE
PHARMACEUTICAL MARKET,
July 17, 2002.

DEAR SENATOR: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others, we are writing to advise you of our strong support for the S. 812, the Greater Access to Affordable Pharmaceuticals Act, as reported out of the Senate HELP Committee on July 11, 2002. We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. This legislation would accomplish this long-overdue need.

Prescription drug costs are increasing at double-digit rates and clearly are unsustainable. Current pharmaceutical cost trends are increasing premiums, raising co-payments, pressuring reductions in benefits, and undermining the ability of businesses to compete. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 in ways clearly unanticipated by Congress and which effectively block generic entry into the marketplace. The repeated use of the 30-month generic drug marketing prohibition provision and other legal barriers have resulted in increasingly unpredictable and unaffordable pharmaceutical cost increases.

Although the legislation as reported out of the Senate HELP Committee does not totally eliminate the 30-month marketing prohibition provision, as would be our preference, it does make important process changes that will lead to a more predictable, rational pharmaceutical marketplace. We recognize that compromises were necessary to garner the support of a bipartisan majority of the Members of the Committee. However, we would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation currently pending before the full Senate will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the Senate to ensure that this important legislation is enacted this year.

COALITION FOR A COMPETITIVE
PHARMACEUTICAL MARKET,
July 30, 2002.

DEAR SENATOR: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, and others, we are writing to urge you to vote for cloture on the bipartisan Greater Access to Affordable Pharmaceuticals Act (S. 812). We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. This legislation would accomplish this key policy objective.

Prescription drug costs continue to skyrocket—adversely impacting consumers by increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 in ways clearly unanticipated by Congress and which effectively block entry of equivalent generic drugs into the marketplace.

Today's report from the Federal Trade Commission (FTC) supports the kind of reforms contained in S. 812. For example, the report supports limiting the availability of the automatic 30-month marketing prohibition to just one per product, per generic drug application. It also recognizes the value of having a mechanism that would allow a generic company to remove or correct the listing of a frivolous patent with the FDA. According to the report, the lack of a mechanism to delist an improperly listed patent "may have real world consequences" given the FTC's knowledge of "instances in which a 30-month stay was generated solely by a patent that raised legitimate listability questions."

The Coalition believes that S. 812 makes important process changes that will lead to a more predictable, rational pharmaceutical marketplace. CCPM members would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation currently pending before the full Senate will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the Senate to ensure that this important legislation is enacted this year.

Mr. BIDEN. Mr. President, today is a day of profound disappointment to me. We have completed a debate on proposals to provide prescription drug coverage to Medicare beneficiaries, the most vulnerable sector of our population, and we have come up empty.

I applaud my colleagues for their earnestness and conscientiousness as this issue was discussed on the Senate floor, but earnestness and conscientiousness do not help the senior citizen who cannot afford to pay for needed medications. I introduced a bill, the Prescription Drug Benefit Act of 2002, that would have provided an excellent benefit for Medicare beneficiaries by adding prescription drug coverage to Medicare Part B with no new premiums or deductibles, and I still believe that should be our goal. But at this point, we don't even have a consensus for a first step toward a Medicare prescription drug plan for seniors.

Last week, I voted for the Graham-Miller plan, a comprehensive approach to this problem that, although not as good as my own bill, was a worthy compromise. It was defeated. Today, I voted for the Graham-Smith plan that would at least offer us a starting point toward a comprehensive prescription drug plan. It was defeated. I and all of my colleagues who are concerned about the welfare of our seniors are regrouping with an eye toward taking another run at this critical problem in the very near future.

The seniors and the disabled still need their life-saving medications. They still have to pay large amounts out-of-pocket for drugs, even though the legislation we passed today should help reduce the overall cost of pharmaceuticals for everyone. The percentage of the population covered by Medicare is rising. Medical advances are leading to important new drugs for various diseases. Our nation's seniors cannot, and should not, be left behind in the race toward longer and healthier lives. We have moved this debate forward, but it is far from over, and we will need to continue to be resourceful and persistent in the future. The life and health of 40 million Americans hang in the balance.

Mr. KOHL. Mr. President, I rise to strongly support final passage of S. 812, the Greater Access to Affordable Pharmaceuticals Act. I cosponsored this important legislation because I believe it will benefit every American by ensuring that more affordable generic drugs get to market on time and lower costs for consumers as promised. The Congressional Budget Office estimates that this bill will save American consumers $60 billion over the next 10 years.

Prescription drug spending represents 9 percent of all health care costs, but drug spending grew 17 percent in 2001—and it's the fastest growing part of health care. Generic drugs can cost one-quarter of the price of their brand-name counterparts. In a time when health care costs are soaring in the double-digits annually, that is no small point.

The pharmaceutical industry enjoys the highest profit margins of any sector in the American economy. Drug companies argue that high retail costs reflect the high cost of investment in research and development. I applaud the drug companies' efforts to find new lifesaving treatments and cures for patients and I do not argue with their right to make a healthy profit from their work.

It is important to note that many of the gains in pharmaceutical research are made possible by the substantial, taxpayer-funded research investments of the National Institutes of Health and other Federal grants. All Americans should have access to the benefits of that research, and they should expect that once a drug company has recouped their costs, made a healthy profit, and the patents surrounding their drug expire, at that point consumers should benefit from generic competition that lowers drug prices.

Unfortunately, in recent years, many drug companies have used loopholes in our patent laws to keep less expensive generic drugs off the market. This raises health care costs for patients, employers and States that are already struggling with rising health costs.

There are three major loopholes that this bill closes. First, it would stop brand-name drug companies from filing endless, frivolous patents to keep a generic competitor off the market. These patents often border on the ridiculous, such as a patent on the color of the pill. But ridiculous as it may seem, each of these patents triggers a 30-month stay whereby the generic drug is kept off the market while the matter goes to court. And drug companies have every incentive to do this, after all, the cost of litigation is virtually nothing compared to the additional profits they can get by keeping their monopoly just a little longer. For example, the makers of the antidepressent Wellbutrin were able to make another $1.3 billion during the 31 months they were in litigation with the generic company. And the makers of Prilosec earned another $1 billion in just 7 months of delayed generic competition.

This bill would also close another loophole by outlawing sweetheart deals where a brand company pays a generic company to stay out of the market. In the case of Cardizem, which treats high blood pressure, the brand-name company paid the generic company $90 million to stay out of the market. Because the generic had won the right to have 180 days of market exclusivity before other generic competitors could enter the market, this sweetheart deal allowed the brand company to earn another $450 million before other generics could compete.

Finally, this bill puts some common sense back into the process by which brand companies list patents with the FDA in what is called the Orange Book. It enforces the law as it was originally intended by ensuring that only patents that claim the drug product or the approved method of use are listed in the Orange Book. It also gives generic companies the ability to challenge patents that may have been listed inappropriately just to keep generics off the market longer.

I believe that this legislation preserves the original intent of the Hatch-Waxman Act to balance the competing interests of the rights of innovative drug companies and the rights of consumers to affordable medicines. It preserves the ability of drug companies to invest in research and development to find lifesaving cures and treatments, but it also makes prescription drugs more affordable for all Americans by getting generic drugs to the market on time. It also makes any Medicare prescription drug benefit we pass more affordable for seniors and taxpayers.

This brings me to the real disappointment I have about the legislation we are about to pass today. I am extremely disappointed that the Senate was unable to also pass a real, comprehensive, affordable drug benefit within the Medicare Program. I am baffled by the unwillingness of many on the other side of the aisle to work together to help our Nation's seniors with skyrocketing drug costs.

When Medicare was first created in 1965, prescription drugs were a very small part of our health care system. But today, prescription drugs are a critical part of that system, keeping people healthier and living longer. Unfortunately, according to the Kaiser Family Foundation, 38 percent of our Nation's elderly have absolutely no prescription drug coverage at all. Many seniors who do have some prescription drug coverage find their plan inadequate and face large out-of-pocket costs. Too many seniors forgo needed medicines or are forced to choose between buying the medicine they need and buying food or paying rent.

Seniors and the disabled on Medicare need a comprehensive, universal, voluntary, affordable drug benefit, and that benefit should be part of the Medicare program that we've relied upon since 1965. While the Senate considered many different plans, I voted for the Graham-Miller approach because it was the only plan that met those important goals. And it was the only plan before the Senate that guaranteed that all Wisconsin senior citizens would have access to the medicines they need.

By contrast, I voted against the so-called "tripartisan" plan because it relied solely on HMOs to provide prescription drugs to seniors. This simply won't work in Wisconsin. In our State, because of inadequate Medicare reimbursement, we've already seen Medicare HMO plans leave every year and offer fewer benefits than in other States. The tripartisan plan had the same Medicare reimbursement problems. There was no guarantee that plans would participate in Wisconsin at all, and those plans that did participate could cover fewer drugs or charge seniors more in Wisconsin than in other States.

In fact, the HMOs themselves have said they are reluctant to offer such plans. And even if they do, there is no guaranteed drug benefit, from year to year, HMOs could change the premiums and copays seniors pay and which drugs will be covered. I do not believe we should hold Wisconsin seniors hostage to the business interests of HMOs. Seniors need a drug benefit that they can rely on every year to be affordable and one that ensures access to the medicines they need. The tripartisan plan did not meet that test.

In addition, under the tripartisan plan, many seniors would still have high drug costs and low-income seniors would not be protected. The HMOs could charge whatever premiums they want; there would be a $250 deductible; seniors would still pay 50 percent of their drug bills; and there is a big gap where there is no coverage at all and the senior pays 100 percent of their drug bills. Seniors would have to pay $3,700 out of their own pockets before they even reach the catastrophic level. And low-income seniors may not qualify for any extra help at all because of a strict asset test that prevents them from being covered if they own a car worth more than $4,500, clothing and furniture worth more than $2,000, or even a burial fund worth $1500. This asset test would automatically eliminate 40 percent of Wisconsin's low-income seniors from being eligible for the extra help they need.

Instead of the false promise of the tripartisan plan, I and 51 other Senators supported the Graham-Miller plan. This program provided a guaranteed benefit through the Medicare Program that would be available to all seniors, at the same price no matter where they live. It was voluntary, so seniors with drug coverage today could keep their plans. It had reasonable premiums and copays, no gaps in coverage, and low-income seniors would get extra help with no restrictive asset test. And it gave seniors choices. Seniors could choose an HMO plan if they wanted to, but the Graham-Miller bill offered them a drug benefit through the traditional Medicare program that seniors have relied on since 1965.

Unfortunately, even though a majority of Senators supported the Graham-Miller bill, it failed to gain the 60 votes that are necessary for any plan to pass under Senate budget rules. At that point, the Senate was faced the possibility of doing nothing and continuing to leave seniors stranded with high drug costs. For me, this was not an option. Seniors have waited too long for Congress to act, and it would be inexcusable for Congress to leave them with nothing.

That's why I supported a bipartisan compromise that represented a solid down payment on a real Medicare prescription drug benefit. First, it would help all low-income seniors below 200 percent of poverty, 45 percent of Wisconsin seniors, by providing comprehensive drug coverage through the Medicare program with nominal copays of $2 per generic prescription and $5 per brand-name prescription. Second, it would provide all seniors above 200 percent of poverty with discounts on prescription drugs of up to 30 percent. The Medicare program would utilize Pharmacy Benefit Managers, or PBMs, to negotiate these discounts the same system that is used today to manage benefits for nearly 200 Americans in the private sector.

Third, the Graham-Smith compromise would protect seniors with very high drug costs of more than $3,300 in out-of-pocket costs, which represents nearly 17 percent of Wisconsin seniors. At that point, seniors would receive full Medicare coverage for their medicines with copays of only $10 per prescription.

Let me be clear that I would much prefer a more comprehensive benefit and have voted for one. The original Graham-Miller plan would have been a comprehensive benefit for all Medicare beneficiaries, and I believe that is the direction we need to go. But the Graham-Smith compromise plan would have taken a real first step toward the universal benefit we need. It would have been a down payment upon which Congress must build so that all seniors have the coverage they need. But again, even this compromise was blocked from passing.

I am extremely disappointed in the outcome of this debate. We missed a tremendous opportunity to pass a comprehensive Medicare drug benefit. And then we were blocked from the opportunity to take even one real step toward that goal. I truly hope that this is not the end of our journey this year. Our senior citizens made our country what it is today, they paid their taxes and they played by the rules. They should not be forced to choose between paying the rent or buying groceries, or buying the life-saving medicines they need to be healthy in their retirement years. It's time to create a reliable, affordable Medicare prescription drug benefit for seniors. I hope the Senate will continue to work toward that goal this year.

Mr. THURMOND. Mr. President, I rise today to speak in favor of affordable prescription drugs. As a life-long health advocate, I recognize that prescription drugs are an important part of improving the health and quality of life for millions of Americans. These drugs allow Americans of every age to live a more productive and more enjoyable life. Our success in this area is due in large measure to our competitive system that allows for many different approaches to meet the many different needs of Americans.

The central features of any prescription drug bill should be increased competition, innovation in the marketplace and increased access to more affordable drugs. However, the current bill does not accomplish these objectives. Instead, it seeks to bypass the excellent consumer protection provided by the FDA, decreases the return on the development of newer and better drugs, and may actually increase the cost of prescription drugs in the long run.

This bill has been hastily assembled and rashly brought to the floor before committee consideration. This bill contains provisions that have not been analyzed for their impact upon our fine health care system. I fear these provisions will threaten the excellent healthcare system we currently enjoy. Indeed, the FTC released, just yesterday, a report entitled "Generic Drug Entry Prior to Patent Expiration" that showed that our system was working and that under the current Hatch-Waxman law innovative new drugs were being brought to market even as a thriving generic market was lowering overall drug costs. While the report does show that some minor changes may be in order, the place to make such important and complex changes is not the floor of the Senate after only a few hours study, it is in the appropriate committee with the requisite expertise.

The bill contains a provision allowing for large scale re-importation of prescription drugs. This presents a serious safety concern of a variety of public health officials and has been rejected in the past. I am concerned that the opinions of many relevant agencies on this matter have been disregarded. Agencies which oppose this provision include the Department of Health and Human Services, the Food and Drug Administration, the Customs Service, and the Center ;for Medicare and Medicaid Services.

Another provision which I strongly oppose which is in the bill relates to Medicaid recipients access to medicine. While it is presented as a price control, it will effectively make drugs unavailable to low-income Medicaid patients by imposing restrictive "prior authorization" requirements on physicians. This policy is opposed by many patient groups and should not be part of this legislation.

Finally, I am deeply concerned that this bill does not contain a Medicare drug benefit plan. This is a very important issue that remains unresolved by this body. Therefore, I do not support cloture on this bill, nor do I support final passage of the measure. It is my hope that we will revisit this issue soon and craft a bill which will improve the availability of affordable prescription drugs and ensure advances continue in this industry.

Mr. HUTCHINSON. Mr. President, nearly 482,000 seniors in Arkansas desperately need a Medicare prescription drug benefit. Per capita, Arkansas has one of the poorest senior populations in the Nation, which means, more often than not, Arkansas seniors must choose between putting food on the table and buying much needed prescription medicines. I voted in favor of the Graham-Smith-Lincoln Medicare prescription drug compromise today, which has the full support of the AARP, because I believe in providing prescription drug assistance to as many people as possible and to those seniors who need it most. I regret, however, that it leaves out nearly 40 percent of Arkansas seniors and lacks measures to strengthen and protect Medicare. Rather, I believe that a universal benefit, accompanied by responsible Medicare reforms, is the most sensible approach to addressing the rising cost of drugs for our seniors and ensuring the long-term stability of the Medicare program. But most importantly, I am concerned about the impact of the Graham-Smith-Lincoln compromise on local pharmacies.

Seniors need a Medicare prescription drug benefit just as much as they need access to their local pharmacies, particularly in rural states like Arkansas. The discount drug card established under the Graham-Smith-Lincoln compromise is a concept I opposed last week when I voted against the Hagel drug card amendment. Requiring pharmacies to accept discounts while doing nothing to reduce the price at which drugs are bought could force local pharmacies to foot the bill of a Medicare prescription drug amendment. This is simply not right.

To help fix these problems, I filed an amendment to the Graham-Smith-Lincoln compromise which would have struck the drug discount card provisions in the bill as well as a provision giving special treatment for mail order pharmacies. If the Graham-Smith-Lincoln compromise garnered the 60 votes necessary for passage, I was prepared to offer my amendment so the Senate could have an open debate and vote on the impact of such legislation on local pharmacists. Since the Graham-Smith-Lincoln compromise was rejected, this debate will have to wait until another day. In the meantime, I will continue to work for a bipartisan solution that provides Medicare prescription drug coverage for all seniors, and particularly low-income seniors, while also preserving access to local pharmacies.

The PRESIDING OFFICER. Under the previous order, there are 2 minutes remaining equally divided.

Who yields time?

The Senator from New York is recognized.

Mr. SCHUMER. Madam President, again, I urge my colleagues to support this legislation. Admittedly, it is incomplete legislation. We have not extended access, but in terms of cost cutting, this legislation is strong.

The Schumer-McCain provisions will reduce the costs of so many drugs by 60, 65 percent for the senior citizen. For the family who has a child who desperately needs a drug, instead of $100 a prescription, it will only be $30, $35, or $40 a prescription. That is a godsend to many people these days.

These drugs are wonder drugs, but their cost is so high that if you are not very wealthy or don't have a good medical plan, you cannot afford them, and that is an awful choice for people.

This bill achieves the goal of reducing costs and reducing it very significantly—a $60 billion reduction over the next decade to our citizenry. I ask for your support of this measure.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania, Mr. SANTORUM, is recognized.

Mr. SANTORUM. Madam President, I encourage a "no" vote on this bill. The Senator from New York says these are wonder drugs. They do not drop out of the air. They come from a tremendous amount of investment from pharmaceutical companies which create new drugs and save people's lives and create a better quality of life for Americans.

We are sacrificing future cures for political payout today, which is cheaper drugs for our folks back home. The long-term consequence of what we are doing today is that more people will die as a result of drugs not being invented because of the reduction in the amount of research and development that will go on because we have now tipped the balance toward generic drug companies, which do no research and investment and create no new drugs.

So understand what you are doing. We are sacrificing, yes, a great vote to say we are going to provide cheaper drugs. But long-term we are providing less cures and a lower quality of life.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no".

The result was announced—yeas 78, nays 21, as follows:

[Rollcall Vote No. 201 Leg.]

YEAS—78

Akaka
Allard
Allen
Baucus
Bayh
Biden
Bingaman
Boxer
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Feingold
Feinstein
Fitzgerald
Graham
Grassley
Harkin
Hollings
Hutchinson
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Torricelli
Warner
Wellstone
Wyden

NAYS—21

Bennett
Bond
Breaux
Brownback
DeWine
Enzi
Frist
Gramm
Gregg
Hagel
Hatch
Hutchison
Kyl
Lott
Lugar
Nickles
Roberts
Santorum
Thompson
Thurmond
Voinovich

NOT VOTING—1

Helms

The bill (S. 812), as amended, was passed.

The bill will be printed in a future edition of the RECORD.

Mr. KENNEDY. Madam President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I am pleased today that the Senate has passed the Schumer-McCain bill. This bill is the Senate's answer to the public's demand for action on lower drug prices. The bill would end—once and for all—the drug industry's abuses and close legal loopholes the industry exploits to block competition and keep drug prices artificially high.

The record is clear that the pharmaceutical industry uses loopholes in the landmark Hatch-Waxman Act to drive up the cost of prescription drugs. Each and every day, pharmaceutical companies exploit those loopholes to maintain their monopoly over their drugs, and to keep more affordable generic drugs off the market. America's consumers pay the price, and today the Senate has said loud and clear—it's time to stop the abuses.

Just yesterday, the Federal Trade Commission recommended legislative changes that are incorporated in Schumer-McCain. And here today, the Senate has approved the Schumer-McCain reforms on a strong bipartisan vote. The Senate has spoken and it has said: Stop these abuses. Stop depriving our seniors and our uninsured of safe and effective drugs that they can afford. Stop driving up the cost of health care for employers and health plans and consumers by delaying lower cost generic drugs.

What is it we have done today? Schumer-McCain amends the Hatch-Waxman Act, which provides for the approval of generic drugs. The Hatch-Waxman Act has been a tremendous success in promoting competition and innovation in the pharmaceutical industry. Indeed, both the brand drug and generic drug industries have flourished under it.

Yet there are clearly weaknesses in the Hatch-Waxman Act. Today, of the top 15 best-selling drugs potentially subject to generic competition, the basic patents on at least five have long expired. Their exclusive rights to market their drugs have passed. Yet there is no generic competition. The system needs repairs.

Prescription drug costs are spiraling out of reach of the elderly and uninsured. They are draining the health care budgets of State governments, employers and labor unions. All because brand-name drug companies have exploited loopholes in the law to pocket windfall profits.

Drug prices have skyrocketed at double digit rates annually since 1996, and experts expect this trend to continue. This drug price inflation has been far in excess of the rate of consumer price inflation. And experts agree that spiraling drug prices have accounted for almost two-thirds of growth in drug spending especially the higher prices of new, aggressively promoted drugs.

Generic drugs are clearly part of the answer. Simply put, a 1 percent increase in generic use can decrease the Nation's yearly bill for drugs by a billion dollars. And ensuring the timely approval of generic drugs could save consumers $60 billion over the next 10 years.

These savings are easy to understand. For patients and health plans alike, the costs of brand-name drugs are four times higher than for their generic equivalents. That difference is even higher for the elderly and uninsured, who must often pay full price for their medicines. On average, a month's supply of a generic drug costs a patient $4 and the health plan $16; the costs for a brand drug are 4 times higher: $16 for the patient, $64 for the plan. For the uninsured, and seniors who lack prescription drug coverage, the full costs are either $20 for the generic or $80 for the brand drug.

The antidepressant Prozac is a clear example. Generic companies challenged and defeated a Prozac patent. Today, you can buy 30 generic Prozac tablets for less than $30—less than a third of what brand-name Prozac will cost you.

But some pharmaceutical companies game the system by listing spurious patents with the FDA—patents on unapproved uses, unapproved compounds, or formulations that they don't even market. Then they get automatic 30 month stays delaying approval of generic drugs.

For example, Neurontin is a drug approved by FDA to treat epilepsy. In 2001, Neurontin sales exceeded $1.1 billion. The basic patent on the drug compound expired in 1994, and the patent on the approved method of use expired in 2000. But the company had listed two additional patents on the drug that the generic companies had to certify were invalid or not infringed. These two patents were on an unapproved compound—just the addition of a water molecule to the basic compound—and on an unapproved use, the treatment of neurogenerative disease, patents that never should have been listed at FDA.

The first 30-month stay needlessly delayed generic competition for half a year. But before that stay was up, Neurontin's manufacturer listed a third formulation patent with FDA. The generic applicant had to certify to that patent as well and another 30 month stay will delay generic approval until December 2002. In total, a generic version of this drug will be delayed 30 months, at a cost to consumers of $1.4 billion.

In effect, Neurontin's manufacturer blocked generic competition by obtaining a patent for simply adding a water molecule to its basic drug. That patent meant months of delay in which that company enjoys huge profits while preventing affordable generic versions from reaching the market. This single water molecule will cost consumers at least $1.4 billion in savings for their prescription drugs. We still do not know when a generic will get to market, but we do know that Schumer-McCain will make it far more likely that a generic Neurontin will be available in 2003.

To address the abusive mis-listing of patents at FDA, the ever-greening of patents, and the stacking of successive 30 months stays, Schumer-McCain includes a series of provisions designed to work together to close the loopholes and foreclose future gaming of the system. Schumer-McCain does several things.

First, Schumer-McCain permits only one 30-month stay per generic drug application, and only on those patents listed with the FDA within 30 days of brand drug approval.

Second, for the patents for which no 30-month stay is available, Schumer-McCain provides an expedited process whereby a patent owner can, within 45 days, seek a preliminary injunction to defend its patent against a particular generic drug applicant. If a patent owner elects not to defend its patent against that generic applicant as part of this process, it cannot later enforce that patent against that applicant or others for the manufacture, distribution, sale, or use of that applicant's generic drug. This provision does not preclude the patent owner from enforcing its patent against anyone else, including a subsequent generic applicant that challenges the patent in its generic application. Schumer-McCain includes related provisions that enhance protections for patents. One requires a generic applicant who challenges a patent to provide better information to the patent owner for it to assess the merits of the generic applicant's patent challenge, while the second clarifies that a preliminary injunction in a drug patent infringement case may be granted notwithstanding the availability of monetary damages.

Third, Schumer-McCain clarifies the information that must be filed with FDA on patents that claim a drug or an approved method of using a drug, so that it will be more difficult for drug manufacturers to list inappropriate patents or incorrect or incomplete information with FDA.

Fourth, Schumer-McCain enforces this requirement to list patent information at FDA by saying that failure to list a patent bars the patent owner from enforcing the patent against a generic applicant or others for the manufacture, distribution, sale, or use of a generic drug. This provision does not bar enforcement of the patent against anyone else, in particular against any brand drug company or others for the manufacture, distribution, sale, or use of a brand drug that infringes the patent. In addition, the provision provides that corrections to patent information may be made after it is published by FDA in the unusual circumstance of an inadvertent mistake or clerical error.

Finally, Schumer-McCain allows generic applicants to sue brand drug companies to delist patents or correct patent information on patents that can trigger 30 month stays. This provision allows for the correction of misinformation in and the removal of incorrectly listed patents from FDA's Orange Book.

A second tactic used by brand drug companies is to collude with a generic drug manufacturer to block other generic versions of the drug from getting to consumers. Under the Hatch-Waxman Act, the first generic drug company to challenge a patent on a brand drug has the exclusive right to market its drug for 6 months before any other generic can compete. In some cases, brand drug companies have paid such a generic drug company not to exercise its 6-month right, thereby blocking other generic versions of the drug.

For example, terazosin hydrochloride is used to treat high blood pressure and enlarged prostate. Consumers used about $540 million of the drug in 1998. A generic was scheduled for market in April 1999, but Abbott Laboratories reached sweetheart deals with two generic companies, Zenith Goldline Pharmaceuticals and Geneva Pharmaceuticals, to keep their generic products off the market. That in turn blocked other generics from getting to market for 16 months. Abbott paid Zenith a lump sum of $3 million plus $6 million per quarter under their agreement, while Geneva received $4.5 million per month. The Federal District Court in Florida held that the agreements were illegal under antitrust laws. The result was that consumers paid hundreds of millions more than they should have because generic competition was delayed.

Schumer-McCain closes this loophole and ensures generic challenges to invalid patents. How does it do this? It provides for six situations in which a generic drug company with the 180 days of exclusivity must forfeit the exclusivity—for example, if the generic is found by the Federal Trade Commission to have colluded with a brand drug company, if it withdraws its application, or otherwise delays in getting to market. When the first generic forfeits the 180 days, the generic applicant that is next ready to be approved and go to market can go to market, and consumers immediately enjoy generic competition and lower costs.

If that generic applicant is the second generic to have challenged a patent, it gets the 180 days of exclusivity and subsequent generic applicants are delayed from getting final FDA approval for 180 days. If the generic applicant ready to go to market is not the second generic to have challenged a patent, but rather is the third or the fourth or the fifth, the 180 days of exclusivity disappears and FDA may approve subsequent generic applicants as soon as they are ready.

Either way, consumers benefit because the first generic that is ready gets to market as soon as it can. In addition, the 180 exclusivity remains as an incentive for the second generic applicant to challenge a patent, an incentive that is vital to maintain especially for those situations when a patent must be shown to be invalid. In this way, Schumer-McCain speeds generic drugs to market while preserving the 180 day incentive—an incentive that has encouraged generic companies to break patents on several high-priced blockbuster drugs and saved consumers billions of dollars.

Schumer McCain also makes some other adjustments to the 180-day exclusivity provision. First, it clarifies that the court decision that can start the 180-day period running is the earlier of the date of a final decision from which no appeal, other than a petition for review by the Supreme Court, has been or can be taken or the date of a settlement order or consent decree that includes a finding that the patent at issue is invalid or not infringed. This provision also clarifies that it is any such decision on the patent that will trigger the 180-day period, not necessarily one in the case to which the generic applicant with the exclusivity was a party. Second, the bill clarifies that the 180-day period is available only to the first applicant to challenge a patent on a brand drug, and that subsequent applicants that challenge different patents on that brand drug do not also receive a 180-day period of exclusivity, unless the first forfeits its exclusivity, as provided for by the bill. Third, the bill clarifies that the 180-day period is only applicable to a generic applicant that challenges a patent if that applicant is sued for patent infringement.

Finally, Schumer-McCain includes a provision that is intended to forestall frivolous challenges by brand companies to the legal legitimacy of FDA's bioequivalence regulations, challenges that have substantially delayed the approval of some generic drugs. The court challenges by brand companies have taken several forms, including challenges to the specifics of the FDA's regulations and the FDA's authority to issue the regulations, and have involved drug products such as asthma inhalers and topicals. The challenges themselves frequently start as administrative challenges in the form of citizen petitions and progress to legal challenges. Each challenge delays approval or marketing of the generic, and each one consumes valuable FDA resources in defending against these fundamentally frivolous lawsuits. These lawsuits are also filed notwithstanding the holdings of different circuit courts of appeal upholding the regulations.

The provision says that FDA's current regulations on bioequivalence shall continue in effect as legitimate exercises of FDA's statutory authority. The provision allows FDA to amend its regulations through rulemaking, but it does not preclude judicial review of those amended regulations, nor judicial review of an application of either the current or amended bioequivalence regulations. Finally, the provision makes it clear we are not changing FDA's authority under the Federal Food, Drug, and Cosmetic Act over biological products.

The Hatch-Waxman Act has been a tremendous success in stimulating both competition and innovation. But there are weaknesses in this law that Schumer-McCain rightly closes. Drug companies are entitled to fair profits on their research and innovation. But when patents expire, those companies must innovate to succeed and help patients, not block competition to their old drugs.

I also want to applaud the inclusion of a number of important amendments which will help lower drug costs and ensure drug coverage for all Americans, including Senator STABENOW's amendment to help States negotiate lower prices and Senator ROCKEFELLER's amendment to provide emergency Medicaid relief to States in fiscal crisis.

Schumer-McCain restores the balance of the original Hatch-Waxman Act, ends the abuses that block competition, and closes the gaps in the Hatch-Waxman Act. The Senate has said: Stop the abuses. Now the House of Representatives must act with us.

I thank my health staff for all their hard work on this legislation—David Dorsey, David Nexon, Paul Kim and Michael Myers on S. 812. David Dorsey made a particularly important contribution to this effort, and deserves high praise for his work. I also want to particularly recognize the hard work and unwavering dedication of Missy Rohrbach with Senator SCHUMER. And the record would be incomplete without noting the very important contributions of Carlos Fierro and Jeanne Bumpus with Senator MCCAIN, Kyle Kinner with Senator EDWARDS, Michael Bopp with Senator COLLINS, Debra Barrett with Senator DODD, Sean Donohue with Senator JEFFORDS, Anne Grady with Senator MURRAY, Steve Irizarry with Senator GREGG, and Dean Rosen with Senator FRIST. And I am so grateful, too, for the excellent contributions of Jane Oates, Stacey Sachs, Brian Hickey, Scott Berkowitz, Amelia Dungan, Kent Mitchell, Jeffrey Teitz, Melody Barnes, Marty Walsh, Jim Manley, Stephanie Cutter and so many others who made this legislation possible.

I ask unanimous consent that letters of support for S. 812 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COALITION FOR A COMPETITIVE
PHARMACEUTICAL MARKET,
Washington, DC, July 10, 2002.

HON. EDWARD M. KENNEDY,
Chairman, Senate Health, Education, Labor and Pensions Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others, we are writing to advise you of our strong support for the Edwards/Collins amendment to S. 812, the Greater Access to Affordable Pharmaceuticals Act. We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. The legislation you will be marking up today clearly would accomplish this long-overdue need.

Prescription drug costs are increasing at double-digit rates, and clearly are unsustainable. Current pharmaceutical cost trends are increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete in the world marketplace. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 clearly in ways unanticipated by Congress, which effectively block generic entry into the marketplace. The repeated use of the 30-month generic drug marketing prohibition provision and other legal barriers have resulted in increasingly unpredictable and unaffordable pharmaceutical cost increases.

Although the compromise amendment being offered today does not totally eliminate the 30-month marketing prohibition provision, as would be our preference, it does make important process changes that will lead to a more predictable, rational pharmaceutical marketplace. We recognize that compromises have been necessary to garner the support of a majority of the Members of the Committee and appreciate your leadership and the hard work of your staff. However, we would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation you are advocating will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the HELP Committee to ensure that this important legislation is enacted this year.

The Coalition for a Competition Pharmaceutical Market is an organization of large national employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others. CCPM is committed to improving consumer access to high quality generic drugs and restoring a vigorous, competitive prescription drug market. CCPM supports legislation eliminate legal barriers to timely access to less costly, equally effective generic drugs.

CCPM PARTICIPATING MEMBERS

American Association of Health Plans, Aetna, Anthem Blue Cross and Blue Shield, Blue Cross and Blue Shield Association, Caterpillar, Inc., Consumer Federation of America, Families USA, Food Marketing Institute, Generic Pharmaceutical Association, General Motors Corporation, Gray Panthers, Health Insurance Association of America, IVAX Pharmaceuticals, National Association of Chain Drug Stores, National Association of Health Underwriters, National Organization for Rare Disorders, Ranbaxy Pharmaceuticals, TEVA USA, The National Committee to Preserve Social Security and Medicare, United Auto Workers, Watson Pharmaceuticals, and WellPoint Health Networks.

GENERAL MOTORS,
Detroit, MI, July 15, 2002.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: As the largest private provider of health care coverage in the nation, I am writing to commend you for your leadership in supporting legislation that removes barriers to generic competition and reduces costs to all consumers. At General Motors, we insure over 1.2 million workers, retirees, and their families, and on their behalf, I want to thank you for supporting and passing out of the Senate Health, Education, Labor and Pensions Committee S. 812, the Greater Access to Affordable Pharmaceuticals Act.

We now spend over $1.3 billion a year on prescription drugs, and without relief, these costs are projected to continue to grow at 15 to 20 percent a year. Such increases are clearly unsustainable, and over time will make it impossible for us to compete in the world market.

We are convinced that your support of S. 812 will rationalize the currently distorted marketplace that has led to increasing and unpredictable pharmaceutical costs. This has resulted in increasing premiums, copayments, and pressures to reduce benefits. We believe that this landmark legislation will close the loopholes in the Hatch-Waxman law that currently block generic entry into the marketplace. Moreover, we believe your leadership in supporting bipartisan amendments in Committee strengthen S. 812 and assure much-needed predictability in the health care delivery system.

As a large employer and payer of health care, we are pleased that the Committee process clarified the so-called "de-listing" provision. This modification makes clear that the necessary ability for generics to challenge brand-name companies who have inappropriately listed patents in the FDA Orange Book does not in any way provide for civil and monetary penalties, and solely focuses the remedy for the abusive listing on the de-listing of the product from the Orange Book.

Once again, I want to thank you for the work that you and your staff have put in to this effort. We believe that your efforts will make a major difference in increasing prescription drug competition and choice, as well as expanding access to more affordable medications for our current and former employees and their families.

Sincerely,

DICK WAGONER, Jr.
President and Chief Executive Officer.

GENERIC PHARMACEUTICAL ASSOCIATION,
Washington, DC, July 10, 2002.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Health, Education, Labor and Pensions Committee, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to express our strong support of the Edwards amendment to S. 812, the Greater Access to Affordable Pharmaceuticals Act. As the manufacturers, suppliers, and distributers of more than 90 percent of the nations' generic medicines, the Generic Pharmaceutical Association (GPhA) is all too familiar with the abusive tactics name brand pharmaceutical companies employ to delay consumers access to affordable, quality generic pharmaceuticals and the dire need for Congress to pass legislation to close the loopholes in the law that the name brand industry has grown so proficient in exploiting. We believe the Edwards amendment effectively accomplishes this goal and has earned the tripartisan support it is now receiving.

The high cost of prescription drugs is one of the nation's most pressing public policy challenges today. Senior citizens, the uninsured, major employers, governors, consumer groups and public and private insurers are all looking to Congress for relief from the unsustainable annual increases in prescription drug costs. Increasing consumer access to generic medicines by increasing competition in the pharmaceutical market place can and must play a central role in any legislative plan to control drug costs. The full benefits increased competition can bring to the health care delivery system, however, cannot be realized until Congress closes the loopholes in the Hatch-Waxman Act that are thwarting competition and inflating the cost of prescription medicines.

Abuse of the 30-month stay provision of the Hatch-Waxman act is one of the most effective and most frequently used methods to delay generic competition. The Generic Pharmaceutical Association believes the most efficient way to ensure this provision is no longer used to delay generic competition is to abolish it completely. However, GPhA recognizes that compromises were necessary to bring support for the legislation to its current point and commends you, the other Members of the Senate HELP Committee, and your staff for your unwavering commitment to knocking down the barriers that are blocking access to generic medicines.

GPhA looks forward to working with you to secure the Committee's approval of the Edwards amendment and would oppose any effort to dilute or weaken it with amendments that would maintain or exacerbate the problems in the existing Hatch-Waxman system. As always, we appreciate your leadership on this issue and stalwart commitment to ensuring all Americans have access to quality, affordable health care.

Sincerely,

KATHLEEN D. JAEGER,
President and CEO.

NATIONAL ORGANIZATION
FOR RARE DISORDERS, INC.,
Danbury, CT, July 17, 2002.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: For the sake of 25 million Americans with rare "orphan" diseases, we want you to know that S. 812, the Greater Access to Affordable Pharmaceuticals Act (GAAP), and the Edwards-Collins Amendment that was passed by the Senate HELP Committee on July 11, 2002, will help millions of uninsured and underinsured Americans to gain access to affordable medications.

GAAP will close the loopholes of the Hatch-Waxman generic drug law that was enacted in 1984. This will ultimately lead to availability of lower cost generic drugs in a timely manner. When pharmaceutical patents expire, competition would be allowed without undue delay, and competition will drive prices down. We believe that S. 812 will make affordable treatments accessible to uninsured and underinsured people, particularly the elderly and younger Medicare beneficiaries who receive Social Security Disability benefits. In the absence of a Medicare prescription drug benefit, S. 812 is an essential first step in the giant leap forward that Americans desperately need for health care.

We hope that Congress will close the loopholes to the Hatch-Waxman Act and deter the frivolous lawsuits that have repeatedly delayed availability of affordable generic drugs. We hope that this will be the first step in your efforts to add a much needed prescription drug benefit to Medicare.

Very truly yours,

ABBEY S. MEYERS,
President.

CONSUMERS UNION,
Washington, DC, July 16, 2002.

DEAR SENATOR: Consumers Union urges your support of the "Greater Access to Affordable Pharmaceuticals Act (GAAP Act) of 2001 (S. 812)." This legislation would streamline and improve the generic drug approval process, saving consumers billions of dollars. We believe that companies trying to bring generic drugs to market face too many unnecessary obstacles and that the removal of these barriers will increase competition and deliver lower-priced drugs to consumers.

We support wider access to affordable medicines for all Americans, especially the uninsured, the underinsured, the elderly, and the disabled. Today, health care costs are spiraling out of control for consumers and employers. Between 1999 and 2000 alone, prescription drug spending increased by 17.3%—the sixth year of double-digit increases. According to a 2002 Brandeis University study, older Americans could save $250 billion over the next ten years through the increased use of generic drugs. The Schumer-McCain bill is a cost-saving measure that will help rein in spiraling prescription drug expenditures—a critical first step toward the implementation of an affordable Medicare prescription drug benefit.

This legislation will improve consumer access to generic drugs by restoring the balance between innovation and competition. We believe that the anticipated cost savings from this measure is a necessary foundation for the Senate to build a comprehensive prescription drug benefit into Medicare.

Sincerely,

JANELL MAYO DUNCAN,
Legislative Counsel.

EXECUTIVE SESSION

NOMINATION OF D. BROOKS SMITH TO BE UNITED STATES CIRCUIT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of D. Brooks Smith, of Pennsylvania, to United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There are now 5 minutes evenly divided on the nomination. Who yields time?

Mr. LEAHY. Madam President, we have at best a modicum of order in the Senate, but I will proceed.

The record before us does not demonstrate that Judge D. Brooks Smith merits a promotion to the Court of Appeals. He is already serving a lifetime position as a Federal judge, but he continued as a member of a discriminatory club more than a decade after he told the Senate he would quit. He did not resign until 1999, and then only after this vacancy on the Third Circuit opened up.

It should make no difference whether this club discriminated against women, or people because of their race or creed; it is discriminatory. He acknowledged that continuing in the club would be inconsistent with ethical rules, but he continued to serve there, even after he told Senator Heflin under oath in 1988 that under these rules he would be required to resign.

I believe he did not keep his word. I think this is, frankly, the kind of lapse that, had it been somebody nominated by the previous President, my friends on the other side of the aisle would have voted against him. I think they should vote against this one, even though he is a member of their own party. We have the areas where he did not recuse himself in a case where he had a clear conflict of interest. He took special-interest-funded trips. I think his record as a whole calls into question his sensitivity, his fairness, his impartiality, and his judgment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, we debated the issue of Judge Smith's qualifications extensively last night. But by way of brief summary: He has an excellent educational background. He practiced law for 8 years. He served as district attorney of a major county in Pennsylvania. He was a State court judge for 4 years, and in 1988 the bipartisan judicial commission, which Senator Heinz and I had organized, found him qualified. He has served in a very distinguished way for the past almost 14 years on the Federal court in Pittsburgh. He is now the chief judge of the Western District Court. His reputation is excellent. I have known him for the past 14 years and can personally attest to his integrity and his qualification.

When an issue is raised about not resigning from a club and the contention has been made that there was false testimony under oath, that simply is not supported by the facts. When Judge Smith came up for confirmation in 1988, he made the statement that he would resign if he could not change the rules of the fishing club, which was viewed at that time as discriminatory because women were not permitted to join.

In 1992, there was a definitive ruling that a club which did not have business purpose—which is the kind of club that this was—did not practice what is called invidious discrimination. Since the club did not practice invidious discrimination, Judge Smith did not have to resign. Certainly it cannot be said that somebody made a false statement under oath in 1988 when he had an intention at that time to do precisely what he said.

When later circumstances arise, where there is a change of circumstance, nobody can say that what he testified to in 1988 was incorrect at that time, because the circumstances had changed.

When the argument is made that he resigned when a vacancy arose on the Third Circuit, there were lots of vacancies on the Third Circuit in the interim, so that if that was a motivating factor, he could have resigned at an earlier time.

Judge Smith has brought to Washington a virtual army of people who have supported him, including many women.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SPECTER. I urge my colleagues to vote for his confirmation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, as much as I like and respect my distinguished colleague from Pennsylvania, I believe Judge Smith did not keep his commitment in testimony before the Senate, did not keep his commitment to Senator Howell Heflin, a commitment that was made under oath. This was the first opening of a Court of Appeals seat from the Western District of Pennsylvania.

When I look at this, I look at the way he misled us in his initial description of the club that he belonged to and then further misled us in his intention. Frankly, I cannot support him. Every Senator can vote how they want. I cannot vote for him.

Mr. KERRY. Mr. President, I regret that I will be opposing Judge Smith's nomination. I regret that this nomination has become a lightning rod for so many.

Let me state at the outset that I disagree very strongly with Judge Smith's rulings on a number of cases. I find serious fault with his stated comments on the Violence Against Women Act. In a 1993 speech, Judge Smith told the Federalist Society that he viewed VAWA as unconstitutional. The text of those remarks read in part "There is no legitimate constitutional source for this new-found 'civil right' to be free from physical violence." I cannot overstate my objections to his callous view of domestic violence.

I understand that Judge Smith has received the American Bar Association's rating of "well qualified." I also understand that Judge Smith has strong support across the political spectrum in western Pennsylvania, his home. We have heard his friends in the Senate point out that he is a respectful, friendly and unbiased judge. These are important qualifications, and I do not doubt them. However, we must look beyond such qualifications when considering a nomination of this importance.

It is critically important that a judge on a Circuit Court of Appeals, the court of last resort for the vast majority of cases, have an ethically spotless record. In 1992, Judge Smith testified under oath that he would leave the Spruce Creek Rod and Gun Club within a couple of years if he could not change the rules of the club preventing women members. He did not do that. It was not until the seat on the Third Circuit Court of Appeals to which he now seeks appointment became vacant that he resigned his membership in the club. To this day he denies any wrongdoing. However, several prominent judicial ethicists have pointed out that he clearly violated the Code of Conduct for U.S. Judges.

There is a model for cases such as Judge Smith's involvement in the Spruce Creek club. Judge Kenneth Ryskamp was denied an appellate court seat in 1991 because of his membership in a country club whose bylaws were uncertain regarding membership diversity. In 1986, he was nominated to be a district court judge, he declared himself to be a member of a club whose bylaws clearly exclude women. He also told the Judiciary Committee that he would resign from that club. He did so almost immediately. Unfortunately, this example stands in stark contrast to the actions of Judge Smith.

Judge Smith also conducted himself poorly in not immediately recusing himself from two cases involving Mid-States Bank which was both his wife's employer and a bank in which he owned significant stock. During his hearing he did agree that he erred in not recusing himself sooner, which I do appreciate. But nevertheless, he exercised judgement that was questionable at best.

The Court of Appeals is the court of last resort for thousands of critical cases each year. Judges who serve there must be in the highest moral standing. Judge Smith's failure to follow-through on a promise to the Senate in a timely matter and his handling of cases involving Mid-States bank are disappointing and call into question that moral standing. Therefore, I reluctantly must oppose his nomination.

Mr. WELLSTONE. Mr. President, I speak today in opposition to the nomination of D. Brooks Smith to the Third Circuit Court of Appeals. I oppose the nominee because I believe serious questions have been raised regarding his ethical integrity and judicial temperament. Mr. Smith misled the Judiciary Committee in 1988 when he promised he would resign from the all-male Spruce Creek Rod and Gun Club. Despite his promise, and after the committee passed a resolution asserting that belonging to exclusive clubs where business is conducted constitutes invidious discrimination, Mr. Smith did not resign. In fact, he did not resign until 1999, when the position on the Third Circuit opened up.

Mr. Smith appears to subscribe to a general judicial philosophy that neglects the rights of women, institutionalized persons, consumers, workers, prisoners and disabled persons. His judgments have been reversed by the Third Circuit Court of Appeals 51 times—a larger number of reversals than any of the Appellate Court Nominees who have come before the Judiciary Committee this Congress. Many of these reversals concerned decisions affecting civil and individual rights and indicate a disturbing lack of sensitivity and failure to follow established rules of law and appellate court decisions when it comes to those rights.

I am particularly concerned about Mr. Smith's reported view that the Violence Against Women Act is unconstitutional. I believe the Act is a lifeline to women in danger around the country and find Mr. Smith's view to be extreme. He is not in my view a suitable judge to serve one level below the Supreme Court.

Ms. CANTWELL. Mr. President, I have carefully considered the record of Judge D. Brooks Smith, who has been nominated to the Third Circuit Court of Appeals, and it is with regret that I will be voting not to elevate Judge Smith. While I believe that he is intellectually qualified and personally respect, the fact remains that when he was confirmed as a judge to the District Court by this committee in 1988, Judge Smith stated under oath that he would follow the ethical rules governing Federal judges and resign from a discriminatory club if he was unable to change the men-only rule. Judge Smith failed to change that rule, but did not resign from the Club until more than a decade later, in December of 1999.

Since it became known that Judge Smith had not withdrawn from the club, he has made an attempt to justify his inaction by claiming the club is purely social and is thus does not engage in pervasive discrimination. While I believe that there is little difference between a club that affirmatively denies membership to women, and a club that denies membership to African Americans or to people of a particular religious affiliation, the issue is not whether or not the club's discriminatory membership policies are or are not "pervasive." The issue is that Judge Smith told this Committee under oath that he would resign from the club and he did not do so.

Federal judges are appointed to lifetime terms and the confirmation process is the only democratic check on individuals conduct, unless he or she is appointed to a higher position. If a promise to the Committee like the one Judge Smith made can be so broken with no consequence, then promises and assurances made by other nominees to this Committee will mean very little.

I am also disturbed by Judge Smith's judicial decisions in the gender discrimination context. In at least two cases, Judge Smith's application of legal and constitutional standards for deciding gender discrimination complaints raises serious concerns about his willingness to reach decisions fairly and in a manner consistent with precedent in the Third Circuit. In Shafer v. Board of Education, Judge Smith dismissed the suit filed by a male teacher challenging his school board's family leave policy which entitled women, and not men, to one year unpaid leave for childbirth or "childrearing." The Third Circuit reversed, finding the policy to be in violation of the father's Title VII rights. In Quirin v. City of Pittsburgh, Judge Smith interpreted the law in a way that made it nearly impossible for the City of Pittsburgh to remedy past discrimination in its hiring of only male firefighters, and he applied the law in a manner inconsistent with established precedent.

Judge Smith also has engaged in other questionable conduct. He has exercised dubious judgment in failing to promptly withdraw from a case that involved a bank in which he had a very significant investment, he has attended more corporate funded trips than any other sitting federal judge, and he has given speeches expressing his views of the constitutionality of statutes that could be challenged in cases before him. The combination of these factors suggests that Judge Smith simply has ethical blind spots that call into question his suitability to serve on the Circuit Court.

I am concerned by Judge Smith's failure to follow precedent and his troubling record of reversals, and by his actions on the bench that fail to meet the very highest standards of the legal profession. In addition, his failure to promptly abide by the promise given to this Committee in 1988 and withdraw from the Spruce Creek Rod and Gun club is simply a failure that cannot be ignored. Therefore, I cannot support his elevation to the Third Circuit.

Mr. HATCH. Mr. President, I stand in support of the confirmation of D. Brooks Smith, who has been nominated to be a judge on the Third Circuit Court of Appeals. Judge Smith is currently the Chief Judge for the Western District of Pennsylvania. He has compiled an impressive record as a judge since 1988, when, at age 36, he became one of the youngest Federal judges in the country. Prior to that, Judge Smith has served as a state court judge, as a prosecutor, and as a private practitioner with a law firm in Altoona, Pennsylvania. He is a 1973 graduate of Franklin and Marshall College and a 1976 graduate of the Dickinson School of Law in Pennsylvania.

Of course, anyone who has been reading the newspapers in the past few months knows that it would be impossible to comment on Judge Smith's credentials without mentioning the attack he has come under from the usual liberal lobbyist interest groups in Washington. As President Reagan would say, there they go again.

An editorial in Pittsburgh Post-Gazette noted,

> Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations, and too eager to travel to conferences paid for by businesses with interests in federal litigation. . . . But outside Washington's world of partisan poliitics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the federal bench in Western Pennsylvania is being twisted by political opportunities. His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hardworking and respectful to all.

Well, it is an election year and we know the left of mainstream groups will not miss an opportunity to flex their muscles.

Those groups who are working to discredit Judge Smith apparently believe that President Bush's circuit court nominees deserve to have their records distorted and their reputations dragged through the mud. I think that no judicial nominee deserves such treatment, and that was something I practiced as Chairman for 6 of President Clinton's 8 years in office. I strongly agree with the Washington Post editorial of February 19, 2002, that "opposing a nominee should not mean destroying him."

Referring to our last confirmation hearing, the Post pointed out.

> The need on the part of liberal groups and Democratic senators to portray [a nominee] as a Neanderthal—all the while denying they are doing so—in order to justify voting him down is the latest example of the degradation of the confirmation process.

I hope that my colleagues in the Senate will be sensitive to the dangers to the judiciary and to the reputation of this body that will certainly result from the repeated practice of degrading honorable and accomplished people who are willing to put their talents to work in the public service. Again, I fully support a thorough and genuine review of a nominee's record and temperament, and in no way do I think we should shy away from our constitutional role of providing advice and consent.

We did that in the case of D. Brooks Smith and have found him to be one of the finist jurists serving today. The President was right to nominate him, we will do well to confirm him.

Mr. DURBIN. Mr. President, I have the utmost respect for Senator ARLEN SPECTER. During the Clinton Presidency, Senator SPECTER angered many in his own party by standing up to conservative special interest groups and supporting well-qualified mainstream judicial nominees, many of whom waited months or years for a confirmation hearing.

That said, Judge D. Brooks Smith of Pennsylvania has a track record that troubles me. His conservatism is not in dispute, on display in a 1993 speech to the ultra-conservative Federalist Society criticizing the Violence Against Women Act. He articulated a vision of constitutional federalism directly at odds with Congress's power to pass that important legislation, and many other important federal initiatives to fight crime, such as the highly successful "Weed and Seed" program. The Supreme Court subsequently invalidated a small portion of the Violence Against Women Act, but Judge Smith's vision well exceeds the Court's own.

Judge Smith has also engaged in conduct that raises serious ethical questions.

First, as you have heard, Judge Smith has a long association with a prestigious private club that has a formal policy barring women from membership. Exclusive clubs are serious business, forging important commercial ties and blocking women from full opportunity in society. Justice Sandra Day O'Connor, who was offered a job as a legal secretary out of Stanford Law School, has endorsed limits on such clubs, noting that the government has a "profoundly important goal of ensuring nondiscriminatory access to commercial opportunities in our society."

We can debate back and forth the merits of whether the Spruce Creek Club is or is not a "purely social" organization, at least one club member told the Judiciary Committee investigator that he has attended several business conferences at the club. For me, though, it is even more significant that Judge Smith told this same Judiciary Committee in 1988 that he would comply with the ABA Code of Judicial Conduct and resign from the club if it did not change its policies. To his credit, he did try to change the policies. But he did not follow through on his commitment and resign for 10 more years.

Second, as a district court judge, Judge Smith sat on two fraud cases in which he and his wife had a conflict of interest. He did recuse himself from these cases, but only after a period of time had passed in which he was well aware of the conflict and continued to issue orders in both cases. His defense, that none of the parties asked him to recuse himself earlier, is weakened by the fact that he never told the parties, before or after, of his $100,000 plus investment in the bank in question.

Finally, I am troubled by Judge Smith's frequent attendance at judicial seminars sponsored by special interest groups and funded by corporations with litigation pending before his court. Most importantly, he remains to this day unwilling to report the value of those seminars on his financial disclosure forms and unwilling to accept responsibility to be attentive to the corporate sponsors of those seminars. Both of these positions are inconsistent with an advisory opinion of the Judicial Conference's Committee on Codes of Conduct.

For these, reasons, I am constrained to oppose Judge Smith's nomination.

Mr. FEINGOLD. Mr. President, I will vote "no" on the nomination of D. Brooks Smith to the U.S. Court of Appeals for the Third Circuit. Let me take a few minutes to explain my decision.

First, let me note that I did not reach this decision lightly. After this vote, we will have considered 64 judicial nominations of President Bush on the floor and I will have voted against only two. And this will be the first Court of Appeals nominee I have voted against on the floor. I voted against one other nominee in Committee, while I have voted in favor of 12 circuit court nominations.

I also want again to commend the chairman of the Judiciary Committee and the majority leader for the way that they have handled judicial nominations. The pressure is intense, and the criticism quite harsh. It is my view that a process that gives a nominee a hearing, and then a vote in the committee, and then a vote on the floor is not an unfair process; it is the way the Senate is supposed to work.

During the previous six years, the Senate, and the Judiciary Committee did not work this way. Literally dozens of nominees never got a hearing, as Judge Smith did, and never got a vote, as Judge Smith did in committee and is about to on the floor. Those nominees were mistreated by the committee. Judge Smith has not been mistreated. I commend Chairman LEAHY for doing what he can to set a new course on the Judiciary Committee, even though most supporters of the President's nominees do not give him credit for that.

I chaired the hearing that the Judiciary Committee held on Judge Smith. He is obviously a very intelligent man, and talented lawyer. He is personable and respectful. My opposition to his nomination is not personal.

I oppose this nomination because I believe that Judge Smith has not demonstrated good judgment on certain ethical issues. Beyond that, I believe that he misled the Judiciary Committee when his conduct was fairly questioned. These are serious issues, not trifles, not excuses. I cannot in good conscience support his elevation to the Court of Appeals.

People who came to our courts for justice don't get to pick their judges. And, at least at the Federal level, they don't get to elect judges. If our system is to work, if the people are to respect the decisions that judges make, they have to have confidence that judges are fair and impartial. Judges, more than any other public figures, have to be beyond reproach. The success of the rule of law as an organizing principle of our society is based on the respect that the public has for judges. A legal system simply cannot function if the public does not believe its judges will be fair and impartial.

That is why I have focused on ethical issues on a number of nominations we have faced so far. I can't as a Senator assure my constituents that every decision made by a judge will be one with which they will agree, or even the correct one legally. But I should be able to assure them, indeed, I must be able to assure them, that those decisions will be reached fairly and impartially, that the judges I approve for the Federal bench are ethical, and beyond that, that they understand the importance of ethical behavior to the job that they have been selected to do.

In 1988, Judge Smith was nominated to the Federal District Court in Pennsylvania. He had a distinguished legal and academic record, and his nomination faced no serious opposition. The one issue that aroused controversy was his membership in a hunting and fishing club called the Spruce Creek Rod and Gun Club that did not then, and does not today, permit women to be members. Judge Smith told Chairman BIDEN in a letter that he would try to convince the club to change its policy and if he was unsuccessful he would resign from the club.

In answers to questions posed by Senator SCHUMER, Judge Smith stated: "In my 1988 letter to the Judiciary Committee, I stated that I would resign from the Spruce Creek Rod & Gun Club if it did not amend its by-laws to admit women as members. I did not specify in my letter when I would resign."

But Judge Smith also testified before this committee, under oath, in 1988. Senator Howell Heflin asked what steps he would take to change the restriction and how long he would wait. Judge Smith testified as follows:

> Well, first of all, Senator, I think the most important step would be to attempt an amendment to the bylaws. Failing that, I believe an additional step would and could be—and I would support, and have indicated to at least one member of the club that I would support and attempt—an application for membership from a woman. Failing that, I believe that I would be required to resign.
>
> I think it would be necessary for me to await an annual meeting which is, as I understand it—and I preface it with "as I understand it" because I have not been an active member in any real sense of the word, but I believe there to be an annual meeting every April—and I believe I would have to await that point in time to at least attempt a bylaws amendment.

Now I suppose that our former colleague Senator Heflin, who was a State supreme court judge earlier in this career, could have nailed him down even tighter than he did. But we don't have to do that in the Judiciary Committee. The committee is not a court of law. We have a right to rely on the clear implications of sworn testimony of nominees who come before us. I believe everyone at that hearing, and everyone reading it fairly today would conclude that Judge Smith promised that he would resign in 1989, if he was unsuccessful in getting the club to change its policies at the next annual meeting.

Judge Smith made that promise in October 1988. He was then confirmed by the Judiciary Committee and by the full Senate. We learned after Judge Smith was nominated to the Third Circuit last year that he didn't resign from the club until 1999, eleven years later. Indeed, he didn't resign until after a vacancy arose on the Third Circuit Club of Appeals in which he was interested. This is what he wrote to the club when he resigned on December 15, 1999:

> After considerable thought, and not without a measure of regret, I hereby submit my resignation from membership in the Spruce Creek Rod and Gun Club, effective immediately. Certain of the Club's exclusive membership provisions, which I do not expect will change, continue to be at odds with certain expectations of federal judicial conduct.

At this point, it certainly appears that Judge Smith recognized that his continued membership in the club was not consistent with the Canons of Judicial Conduct.

After he was nominated to the Third Circuit vacancy last year, Judge Smith filled out of the Judiciary Committee's questionnaire. This is how he responded to a question about membership in organizations that disciminate:

> I previously belonged to the Spruce Creek Rod and Gun Club, a rustic hunting and fishing club which admits only men to membership. I joined the club in 1982 largely for sentimental reasons: it is where my grandfather taught me to fish when I was seven or eight years old. I urged the club, through letters to club officers personal contacts with members, to consider changing its exclusive membership provision. These efforts were unsuccessful. Eventually, in late 1999, I voluntarily resigned my membership.

It is noteworthy that in this answer, Judge Smith makes no mention of the argument that he and his supporters now advance, that he had no obligation to resign from the club because it is a purely social club. Only when questions began to be raised about his continued membership did this argument arise.

Now I know that there is a dispute about whether business is conducted at this club. To be honest, I tend to credit the email and statements of Dr. Silverman, a supporter of Judge Smith, who said that a medical PAC held meetings there, rather than his letter to the committee saying that the events were just picnics, which was written after he learned that what he had said might be damaging to Judge Smith's confirmation. In my mind, if the club permits its members to invite business associates to the club and hold business meetings there, that is a club that should not discriminate against minorities or women. And the president of the club has confirmed that members can hold any meetings they want at the club.

But for me, that's not the crucial point. The crucial point is that this nominee made a commitment to the Judiciary Committee under oath. He broke that commitment. And then he compounded his problem by coming up with an after-the-fact rationalization for why he broke his commitment. Even if he were obviously correct that he need not have resigned his membership, I still believe he was untruthful when he suggested to the committee that the changes to the Code of Conduct in 1992 "afforded me the opportunity to reexamine the entire Code and consider it's application to my membership in Spruce Creek." I don't believe that Judge believed between 1992 and 1999 that his obligation had changed after 1992. If he did, I don't think he would have had, and I am quoting from his written answers to Senator SCHUMER's questions:

> numerous conversations with Club officers about changing the by-laws. In fact, in practically every conversation I had with members of the Club in which we talked of the Club, I recall discussing the by-law issue and advocating change.

Why would he do that if he thought the club was not engaging in invidious discrimination? And why would he say in his resignation letter that the club's membership policies: "continue to be at odds with certain expectations of Federal judicial conduct"?

I have concluded that Judge Smith came up with his argument after questions were raised about his failure to resign. Some in the Senate may be convinced by this argument that they should ignore Judge Smith's failure to follow through on his commitment to the Judiciary Committee and the Senate in 1988. I cannot ignore that failure.

I am afraid that this is not the only instance where Judge Smith has come up with after-the-fact rationalizations of his behavior that don't hold up under scrutiny. At his hearing, I asked Judge Smith about numerous trips he had taken to judicial education seminars paid for by corporate interests. Judge Smith indicated that had studied and been guided by Advisory Opinion No. 67, which instructs judges to inquire into the sources of funding of such seminars before attending them in order to be sure that there was no conflict of interest. I asked him if before he went on the trips he had inquired about the source of funding sponsored by The Foundation for Research on Economics and the Environment, known as FREE, and the Law and Economics Center of George Mason University, known as LEC. Judge Smith answered the question with respect to FREE, saying that he remembered inquiring more than once about FREE's funding by telephone.

So I asked him a follow-up question in writing about whether he made a similar inquiry about the funding for seminars put on by the Law and Economics Center at George Mason University. Judge Smith gave an amazing answer. He said that because the trips were sponsored by a university, he had no obligation to inquire about the source of funding, and he claimed that he reached that conclusion in 1992 and 1993 when he was taking these trips.

Both ethics professors with whom I consulted state in no uncertain terms that Judge Smith is wrong in his interpretation of the ethical obligations of a judge who wishes to go on one of these trips. As Professor Gillers states: "Obviously, there would be room for much mischief if a judge invited to an expense-paid judicial seminar could rely on the non-profit nature of an apparently neutral sponsor to immunize the judge's attendance. Judge Smith is therefore wrong in his assumption."

I believe if Judge Smith really reached this conclusion with respect to LEC at the time of the hearing, he would have told us when he answered my question at the hearing. His written response to the follow-up question indicates that he in fact did not understand the import of Advisory Opinion No. 67, then, or now. I find that very troubling. It undercuts his assurances to me at the hearing that he would refrain from taking additional trips until he was "satisfied that funding does not come from a source that is somehow implicated in a case before him." I don't know how I can rely on that assurance.

In addition, there is the question of Judge Smith's failure to recuse himself in two cases in 1997—SEC v. Black and United States v. Black. These are very complicated cases, so I sought the advice of two legal ethics experts. After reviewing Judge Smith's testimony and written answers to questions and all of the other materials submitted to the Judiciary Committee on this issue from both supporters and opponents of Judge Smith, both Professor Gillers and Professor Freedman conclude that Judge Smith violated the judicial disqualification statute, 28 U.S.C. §455, by not recusing himself earlier in SEC v. Black, and by not recusing himself immediately upon being assigned the criminal matter in United States v. Black. Professor Freedman called his violations "among the most serious I have seen."

I was particularly disturbed by Judge Smith's failure to disclose his financial interest in the bank involved in the case to the parties in the criminal case. He told them about his wife's employment and that he had recused himself in the civil case. But he didn't give the parties full and complete information upon which they could base a decision whether to ask him to recuse himself. This was Judge Smith's obligation, in my view.

In my opinion, these ethical questions individually raise serious concerns about Judge Smith's fitness to serve as a Circuit Court judge. Together, they are very significant. I cannot support a nomination plagued by such an ethical cloud, despite all of the heartfelt support he has received. I will therefore, reluctantly, vote no.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Madam President, on behalf of the majority leader, I ask unanimous consent that following the vote on the matter now pending, Judge Smith, we proceed to H.R. 5010, the Department of Defense appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. I object to proceeding until I see the managers' amendment.

Mr. REID. There is no managers' amendment.

Mr. McCAIN. On DOD appropriations?

Mr. REID. No.

I yield to my friend from Alaska.

Mr. STEVENS. We offered a list of amendments to staff. We informed the staff and we will be happy to show them the amendments when we see the amendments that Senator McCAIN intends to offer.

Mr. REID. I also say that I misspoke. The majority leader does not need unanimous consent on his behalf.

I say to my friend from Arizona, as we have talked on a number of occasions on previous bills, any package of managers' amendments the Senator from Arizona will have a chance to review.

I withdraw the unanimous consent request and announce on behalf of the majority leader that following the vote on Judge Smith, the Senate will move to H.R. 5010, the Department of Defense appropriations bill.

Mr. BYRD. Reserving the right to object, and I will not object, let me say to the distinguished Senator from Arizona, that not only he will see the managers' amendments, but I will insist on the managers' amendments being read on all appropriations bills for the attention of the full Senate.

Mr. McCAIN. Reserving the right to object, I thank the Senator from West Virginia.

We have had many occasions where late at night managers' amendments were agreed to without anyone ever having seen or heard of them. And I would still like to see the managers' amendment before some time late tomorrow night when everyone wants to get out of here and leave and I am the bad guy again. I want to see what is in the managers' amendment package.

It is not an illegitimate request to see the managers' amendment package before they vote on final passage, which then puts us in the uncomfortable position of having to be delayed. I think it is a fair request on the part of the taxpayers of America to see what we are voting.

Mr. REID. I yield to the Senator from Alaska.

Mr. STEVENS. Madam President, I am informed that 20 minutes ago those amendments went to Senator McCAIN's office and we have not seen his amendments. We ask that we see his amendments, too. We cannot put a managers' package together until we see them all.

Mr. REID. Madam President, I ask the Senator from Arizona, do you have any problem with DOD appropriations after this vote?

Mr. McCAIN. I don't.

I would like to say, any amendment that I have will be debated and voted on. I don't have the privilege of proposing a managers' amendment.

Mr. REID. Has the Senator withdrawn his objection?

Mr. BYRD. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. The Senator does not need consent, does he? The consent has already been given some days ago.

Mr. REID. As has been explained to me, the majority leader at this time—and I—can call this up, but would have to be, as I understand it, some later time.

I am asking for a time certain and that is why the Senator from Arizona, as I understand, has no problem bringing it up after this next matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I ask for the yeas and nays on the pending nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, will the Senate advise and consent to the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "Yea".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 202 Ex.]

YEAS—64

Allard
Allen
Bayh
Bennett
Biden
Bond
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Carnahan
Carper
Chafee
Cochran
Collins
Craig
Crapo
DeWine
Domenici
Dorgan
Edwards
Ensign
Enzi
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Kohl
Kyl
Landrieu
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—35

Akaka
Baucus
Bingaman
Boxer
Cantwell
Cleland
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Leahy
Levin
Lieberman
Mikulski
Murray
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Torricelli
Wellstone
Wyden

NOT VOTING—1

Helms

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 5010, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 5010) making appropriations for the Department of Defense for fiscal year ending September 30, 2003, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with an amendment.

[Strike the part shown in bold brackets and insert in lieu thereof the part shown in italic.]

H.R. 5010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for military functions administered by the Department of Defense, and for other purposes, namely:

[TITLE I

[MILITARY PERSONNEL

[MILITARY PERSONNEL, ARMY

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $26,832,217,000.

[MILITARY PERSONNEL, NAVY

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,874,395,000.

[MILITARY PERSONNEL, MARINE CORPS

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $8,504,172,000.

[MILITARY PERSONNEL, AIR FORCE

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,957,757,000.

[RESERVE PERSONNEL, ARMY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $3,373,455,000.

[RESERVE PERSONNEL, NAVY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,897,352,000.

[RESERVE PERSONNEL, MARINE CORPS

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $553,983,000.

[RESERVE PERSONNEL, AIR FORCE

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,236,904,000.

[NATIONAL GUARD PERSONNEL, ARMY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $5,070,188,000.

[NATIONAL GUARD PERSONNEL, AIR FORCE

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $2,124,411,000.

[TITLE II

[OPERATION AND MAINTENANCE

[OPERATION AND MAINTENANCE, ARMY

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $10,818,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $23,942,768,000: *Provided*, That of the funds appropriated in this paragraph, not less than $355,000,000 shall be made available only for conventional ammunition care and maintenance.

[OPERATION AND MAINTENANCE, NAVY

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $4,415,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, $29,121,836,000.

[OPERATION AND MAINTENANCE, MARINE CORPS

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $3,579,359,000.

[OPERATION AND MAINTENANCE, AIR FORCE

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed $7,902,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $27,587,959,000: *Provided*, That notwithstanding any other provision of law, that of the funds available under this heading, $750,000 shall only be available to the Secretary of the Air Force for a grant to Florida Memorial College for the purpose of funding minority aviation training: *Provided further*, That of the amount provided under this heading, not less than $2,000,000 shall be obligated for the deployment of Air Force active and Reserve aircrews that perform combat search and rescue operations to operate and evaluate the United Kingdom's Royal Air Force EH–101 helicopter, to receive training using that helicopter, and to exchange operational techniques and procedures regarding that helicopter.

[OPERATION AND MAINTENANCE, DEFENSE-WIDE

[(INCLUDING TRANSFER OF FUNDS)

[For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $14,850,377,000, of which not to exceed $25,000,000 may be available for the CINC initiative fund account; and of which not to exceed $34,500,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided*, That notwithstanding any other provision of law, of the funds provided in this Act for Civil Military programs under this heading, $750,000 shall be available for a grant for Outdoor Odyssey, Roaring Run, Pennsylvania, to support the Youth Development and Leadership program and Department of Defense STARBASE program: *Provided further*, That none of the funds appropriated or otherwise made available by this Act may be used to plan or implement the consolidation of a budget or appropriations liaison office of the Office of the Secretary of Defense, the office of the Secretary of a military department, or the service headquarters of one of the Armed Forces into a legislative affairs or legislative liaison office: *Provided further*, That $4,675,000, to remain available until expended, is available only for expenses relating to certain classified activities, and may be transferred as necessary by the Secretary to operation and maintenance appropriations or research, development, test and evaluation appropriations, to be merged with and to be available for the same time period as the appropriations to which transferred: *Provided further*, That any ceiling on the investment item unit cost of items that may be purchased with operation and maintenance funds shall not apply to the funds described in the preceding proviso: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

[OPERATION AND MAINTENANCE, ARMY RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,976,710,000.

[OPERATION AND MAINTENANCE, NAVY RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,239,309,000.

[OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $189,532,000.

[OPERATION AND MAINTENANCE, AIR FORCE RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $2,165,604,000.

[OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

[For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $4,231,967,000.

[OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

[For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things, hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $4,113,010,000.

[UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

[For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, $9,614,000, of which not to exceed $2,500 can be used for official representation purposes.

[ENVIRONMENTAL RESTORATION, ARMY

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Army, $395,900,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, NAVY

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Navy, $256,948,000, to remain available until transferred: *Provided*, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, AIR FORCE

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Air Force, $389,773,000, to remain available until transferred: *Provided*, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, DEFENSE-WIDE

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of Defense, $23,498,000, to remain available until transferred: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Army, $212,102,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

[For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2547, and 2551 of title 10, United States Code), $58,400,000, to remain available until September 30, 2004.

[FORMER SOVIET UNION THREAT REDUCTION

[For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, $416,700,000, to remain available until September 30, 2005.

[SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE

[For logistical and security support for international sporting competitions (including pay and non-travel related allowances only for members of the Reserve Components of the Armed Forces of the United States called or ordered to active duty in connection with providing such support), $19,000,000, to remain available until expended.

[TITLE III

[PROCUREMENT

[AIRCRAFT PROCUREMENT, ARMY

[For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,214,369,000, to remain available for obligation until September 30, 2005, of which not less than $225,675,000 shall be available for the Army National Guard and Army Reserve: *Provided*, That of the funds made available under this heading, $45,000,000 shall be available only to support a restructured CH-47F helicopter upgrade program that increases the production rate to 48 helicopters per fiscal year by fiscal year 2005: *Provided further*, That funds in the immediately preceding proviso shall not be made available until the Secretary of the Army has certified to the congressional defense committees that the Army intends to budget for the upgrade of the entire CH-47 fleet that is planned to be part of the Objective Force.

[MISSILE PROCUREMENT, ARMY

[For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,112,772,000, to remain available for obligation until September 30, 2005, of which not less than $168,580,000 shall be available for the Army National Guard and Army Reserve.

[PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

[For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,248,358,000, to remain available for obligation until September 30, 2005, of which not less than $40,849,000 shall be available for the Army National Guard and Army Reserve.

[PROCUREMENT OF AMMUNITION, ARMY

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,207,560,000, to remain available for obligation until September 30, 2005, of which not less than $124,716,000 shall be available for the Army National Guard and Army Reserve.

[OTHER PROCUREMENT, ARMY

[For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of not to exceed 40 passenger motor vehicles for replacement only; and the purchase of 6 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $6,017,380,000, to remain available for obligation until September 30, 2005, of which not less than $1,129,578,000 shall be available for the Army National Guard and Army Reserve.

[AIRCRAFT PROCUREMENT, NAVY

[For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $8,682,655,000, to remain available for obligation until September 30, 2005, of which not less than $19,644,000 shall be available for the Navy Reserve and Marine Corps Reserve.

[WEAPONS PROCUREMENT, NAVY

[For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $2,384,617,000, to remain available for obligation until September 30, 2005.

[PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,167,130,000, to remain available for obligation until September 30, 2005, of which not less than $18,162,000 shall be for the Navy Reserve and Marine Corps Reserve.

[SHIPBUILDING AND CONVERSION, NAVY

[For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

[Carrier Replacement Program (CY), $250,000,000;

[Carrier Replacement Program (AP–CY), $243,703,000;

[Virginia Class Submarine, $1,490,652,000;

[Virginia Class Submarine (AP–CY), $706,309,000;

[SSGN Conversion, $404,305,000;

[SSGN Conversion (AP–CY), $421,000,000;

[CVN Refueling Overhauls (AP–CY), $296,781,000;

[Submarine Refueling Overhauls, $231,292,000;

[Submarine Refueling Overhauls (AP–CY), $88,257,000;

[DDG–51, $2,273,002,000;

[DDG–51 (AP–CY), $74,000,000;

[LPD–17, $596,492,000;

[LPD–17 (AP–CY), $8,000,000;

[LCU (X), $9,756,000;

[Outfitting, $300,608,000;

[LCAC SLEP, $81,638,000;

[Mine Hunter SWATH, $7,000,000; and

[Completion of Prior Year Shipbuilding Programs, $644,899,000;

[In all: $8,127,694,000, to remain available for obligation until September 30, 2007: *Provided*, That additional obligations may be incurred after September 30, 2007, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

[OTHER PROCUREMENT, NAVY

[For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of not to exceed 141 passenger motor vehicles for replacement only, and the purchase of 3 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $240,000 per unit for one unit and not to exceed $125,000 per unit for the remaining two units; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $4,631,299,000, to remain available for obligation until September 30, 2005, of which not less than $19,869,000 shall be for the Naval Reserve.

[PROCUREMENT, MARINE CORPS

[For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of not to exceed 28 passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, $1,369,383,000, to remain available for obligation until September 30, 2005, of which not less than $253,724,000 shall be available for the Marine Corps Reserve.

[AIRCRAFT PROCUREMENT, AIR FORCE

[For construction, procurement, lease, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $12,492,730,000, to remain available for obligation until September 30, 2005, of which not less than $312,700,000 shall be available for the Air National Guard and Air Force Reserve: *Provided*, That of the amount provided under this heading, not less than $207,000,000 shall be used only for the producability improvement program directly related to the F–22 aircraft program: *Provided further*, That amounts provided under this heading shall be used for the advance procurement of 15 C–17 aircraft.

[MISSILE PROCUREMENT, AIR FORCE

[For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $3,185,439,000, to remain available for obligation until September 30, 2005.

[PROCUREMENT OF AMMUNITION, AIR FORCE

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,290,764,000, to remain available for obligation until September 30, 2005, of which not less than $120,200,000 shall be available for the Air National Guard and Air Force Reserve.

[OTHER PROCUREMENT, AIR FORCE

[For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 263 passenger motor vehicles for replacement only, and the purchase of 2 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $232,000 per vehicle; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $10,622,660,000, to remain available for obligation until September 30, 2005, of which not less than $167,600,000 shall be available for the Air National Guard and Air Force Reserve.

[PROCUREMENT, DEFENSE-WIDE

[For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 99 passenger motor vehicles for replacement only; the purchase of 4 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $250,000 per vehicle; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $3,457,405,000, to remain available for obligation until September 30, 2005: *Provided*, That funds provided under this heading for Patriot Advanced Capability-3 (PAC–3) missiles may be used for procurement of critical parts for PAC–3 missiles to support production of such missiles in future fiscal years.

[DEFENSE PRODUCTION ACT PURCHASES

[For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), $73,057,000 to remain available until expended.

[TITLE IV

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $7,447,160,000, to remain available for obligation until September 30, 2004.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $13,562,218,000, to remain available for obligation until September 30, 2004: *Provided*, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $18,639,392,000, to remain available for obligation until September 30, 2004.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

[For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, $17,863,462,000 (reduced by $30,000,000) (increased by $30,000,000), to remain available for obligation until September 30, 2004.

[OPERATIONAL TEST AND EVALUATION, DEFENSE

[For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, $242,054,000, to remain available for obligation until September 30, 2004.

[TITLE V

[REVOLVING AND MANAGEMENT FUNDS

[DEFENSE WORKING CAPITAL FUNDS

[For the Defense Working Capital Funds, $1,832,956,000: *Provided*, That during fiscal year 2003, funds in the Defense Working Capital Funds may be used for the purchase of not to exceed 315 passenger carrying motor vehicles for replacement only for the Defense Security Service, and the purchase of not to exceed 7 vehicles for replacement only for the Defense Logistics Agency.

[NATIONAL DEFENSE SEALIFT FUND

[For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $944,129,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That, notwithstanding any other provision of law, $10,000,000 of the funds available under this heading shall be available in addition to other amounts otherwise available, only to finance the cost of constructing additional sealift capacity.

[TITLE VI

[OTHER DEPARTMENT OF DEFENSE PROGRAMS

[DEFENSE HEALTH PROGRAM

[For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, $14,600,748,000, of which $13,916,791,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2004; of which $283,743,000, to remain available for obligation until September 30, 2005, shall be for Procurement; of which $400,214,000, to remain available for obligation until September 30, 2004, shall be for Research, development, test and evaluation, and of which not less than $10,000,000 shall be available for HIV prevention educational activities undertaken in connection with U.S. military training, exercises, and humanitarian assistance activities conducted primarily in African nations.

[CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, ARMY

[For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, $1,490,199,000, of which $974,238,000 shall be for Operation and maintenance to remain available until September 30, 2004, $213,278,000 shall be for Procurement to remain available until September 30, 2005, and $302,683,000 shall be for Research, development, test and evaluation to remain available until September 30, 2004.

[DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

[(INCLUDING TRANSFER OF FUNDS)

[For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation, $859,907,000: *Provided*, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act.

[OFFICE OF THE INSPECTOR GENERAL

[For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $157,165,000, of which $155,165,000 shall be for Operation and maintenance, of which not to exceed $700,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; and of which $2,000,000 to remain available until September 30, 2005, shall be for Procurement.

[TITLE VII

[RELATED AGENCIES

[CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

[For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System, $212,000,000.

[INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

[(INCLUDING TRANSFER OF FUNDS)

[For necessary expenses of the Intelligence Community Management Account, $162,254,000, of which $24,252,000 for the Advanced Research and Development Committee shall remain available until September 30, 2004: *Provided*, That of the funds appropriated under this heading, $34,100,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, $1,500,000 for Procurement shall remain available until September 30, 2005 and $1,000,000 for Research, development, test and evaluation shall remain available until September 30, 2004: *Provided further*, That the National Drug Intelligence Center shall maintain the personnel and technical resources to provide timely support to law enforcement authorities and the intelligence community by conducting document and computer exploitation of materials collected in Federal, State, and local law enforcement activity associated with counter-drug, counter-terrorism, and national security investigations and operations.

[PAYMENT TO KAHO'OLAWE

[ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION FUND

[For payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund, as authorized by law, $25,000,000, to remain available until expended.

[NATIONAL SECURITY EDUCATION TRUST FUND

[For the purposes of title VIII of Public Law 102–183, $8,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.

[TITLE VIII

[GENERAL PROVISIONS

[SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

[SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service

Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

[SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

[SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

[(TRANSFER OF FUNDS)

[SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,500,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section must be made prior to May 1, 2003.

[(TRANSFER OF FUNDS)

[SEC. 8006. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the "Foreign Currency Fluctuations, Defense" appropriation and the "Operation and Maintenance" appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

[SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

[SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

[Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

[C-130 aircraft; and

[F/A-18E and F engine.

[SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress as of September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99-239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

[SEC. 8010. (a) During fiscal year 2003, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

[(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2004.

[(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

[SEC. 8011. Notwithstanding any other provision of law, none of the funds made available by this Act shall be used by the Department of Defense to exceed, outside the 50 United States, its territories, and the District of Columbia, 125,000 civilian workyears: *Provided*, That workyears shall be applied as defined in the Federal Personnel Manual: *Provided further*, That workyears expended in dependent student hiring programs for disadvantaged youths shall not be included in this workyear limitation.

[SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

[SEC. 8013. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further*, That this subsection applies only to active components of the Army.

[SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.

[(TRANSFER OF FUNDS)

[SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law

101–510; 10 U.S.C. 2301 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

[SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: *Provided further*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

[SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

[SEC. 8018. Notwithstanding any other provision of law, during the current fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for fiscal year 2004 shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

[SEC. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols.

[SEC. 8020. No more than $500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

[SEC. 8021. In addition to the funds provided elsewhere in this Act, $8,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544): *Provided*, That a subcontractor at any tier shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544).

[SEC. 8022. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

[SEC. 8023. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

[SEC. 8024. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

[SEC. 8025. (a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

[(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

[(c) For the purpose of this section, the phrase "qualified nonprofit agency for the blind or other severely handicapped" means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48).

[SEC. 8026. During the current fiscal year, net receipts pursuant to collections from third party payers pursuant to section 1095 of title 10, United States Code, shall be made available to the local facility of the uniformed services responsible for the collections and shall be over and above the facility's direct budget amount.

[SEC. 8027. During the current fiscal year, and from any funds available to the Department of Defense, the Department is authorized to incur obligations of not to exceed $350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: *Provided*, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

[SEC. 8028. Of the funds made available in this Act, not less than $23,003,000 shall be available for the Civil Air Patrol Corporation, of which $21,503,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes $1,500,000 for the Civil Air Patrol counterdrug program: *Provided*, That funds identified for "Civil Air Patrol" under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof.

[SEC. 8029. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

[(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

[(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2003 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

[(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2003, not more than 6,277 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,029 staff years may be funded for the defense studies and analysis FFRDCs.

[(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2004 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

[SEC. 8030. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

[SEC. 8031. For the purposes of this Act, the term "congressional defense committees" means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

[SEC. 8032. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

[SEC. 8033. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

[(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

[(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2002. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

[(c) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

[SEC. 8034. Appropriations contained in this Act that remain available at the end of the current fiscal year as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8035. Amounts deposited during the current fiscal year to the special account established under 40 U.S.C. 485(h)(2) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 485(h)(2)(A) and (B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

[SEC. 8036. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

[SEC. 8037. Notwithstanding any other provision of law, funds available for "Drug Interdiction and Counter-Drug Activities, Defense" may be obligated for the Young Marines program.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8038. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

[SEC. 8039. (a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air Force, without consideration, to Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota relocatable military housing units located at Grand Forks Air Force Base and Minot Air Force Base that are excess to the needs of the Air Force.

[(b) PROCESSING OF REQUESTS.—The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota.

[(c) RESOLUTION OF HOUSING UNIT CONFLICTS.—The Operation Walking Shield program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

[(d) INDIAN TRIBE DEFINED.—In this section, the term "Indian tribe" means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

[SEC. 8040. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than $100,000.

[SEC. 8041. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

[(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2004 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

[SEC. 8042. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2004: *Provided*, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: *Provided further*, That any funds appropriated or transferred to the Central Intelligence Agency for agent operations and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2004.

[SEC. 8043. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

[SEC. 8044. Of the funds appropriated to the Department of Defense under the heading "Operation and Maintenance, Defense-Wide", not less than $10,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

[SEC. 8045. Amounts collected for the use of the facilities of the National Science Center for Communications and Electronics during the current fiscal year and hereafter pursuant to section 1459(g) of the Department of Defense Authorization Act, 1986, and deposited to the special account established under subsection 1459(g)(2) of that Act are appropriated and shall be available until expended for the operation and maintenance of the Center as provided for in subsection 1459(g)(2).

[SEC. 8046. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

[(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

[(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

[SEC. 8047. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

[(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

[(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

[(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

[*Provided*, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

[SEC. 8048. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

[(1) to establish a field operating agency; or

[(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

[(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

[(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

[SEC. 8049. Notwithstanding section 303 of Public Law 96-487 or any other provision of law, the Secretary of the Navy is authorized to lease real and personal property at Naval Air Facility, Adak, Alaska, pursuant to 10 U.S.C. 2667(f), for commercial, industrial or other purposes: *Provided*, That notwithstanding any other provision of law, the Secretary of the Navy may remove hazardous materials from facilities, buildings, and structures at Adak, Alaska, and may demolish or otherwise dispose of such facilities, buildings, and structures.

[(RESCISSIONS)

[SEC. 8050. Of the funds provided in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

["Aircraft Procurement, Army, 2002/2004", $3,000,000;

["Missile Procurement, Army, 2002/2004", $28,350,000;

["Procurement of Weapons and Tracked Combat Vehicles, Army, 2002/2004", $9,500,000;

["Procurement of Ammunition, Army, 2002/2004", $25,500,000;

["Procurement, Marine Corps, 2002/2004", $4,682,000;

["Aircraft Procurement, Air Force, 2002/2004", $23,500,000;

["Missile Procurement, Air Force, 2002/2004", $26,900,000;

["Research, Development, Test and Evaluation, Army, 2002/2003", $2,500,000;

["Research, Development, Test and Evaluation, Navy, 2002/2003", $2,000,000; and

["Research, Development, Test and Evaluation, Air Force, 2002/2003", $67,000,000.

[SEC. 8051. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

[SEC. 8052. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of North Korea unless specifically appropriated for that purpose.

[SEC. 8053. During the current fiscal year, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: *Provided*, That during the performance of such duty, the members of the National Guard shall be under State command and control: *Provided further*, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

[SEC. 8054. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: *Provided*, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

[SEC. 8055. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2002 level: *Provided*, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

[SEC. 8056. (a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

[(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

[(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

[(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

[(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

[(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

[(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

[(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

[(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

[(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.

[SEC. 8057. Notwithstanding any other provision of law, that not more than 35 percent of funds provided in this Act for environmental remediation may be obligated under indefinite delivery/indefinite quantity contracts with a total contract value of $130,000,000 or higher.

[SEC. 8058. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

[(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

[(TRANSFER OF FUNDS)

[SEC. 8059. Appropriations available in this Act under the heading "Operation and Maintenance, Defense-Wide" for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

[SEC. 8060. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That this restriction shall not apply to the purchase of "commercial items", as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

[SEC. 8061. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

[SEC. 8062. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

[SEC. 8063. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act.

[SEC. 8064. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

[SEC. 8065. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: *Provided*, That this limitation shall not apply to transfers of funds expressly provided for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

[SEC. 8066. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

[(b) COVERED ACTIVITIES.—This section applies to—

[(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the United Nations Charter under the authority of a United Nations Security Council resolution; and

[(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

[(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

[(1) A description of the equipment, supplies, or services to be transferred.

[(2) A statement of the value of the equipment, supplies, or services to be transferred.

[(3) In the case of a proposed transfer of equipment or supplies—

[(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

[(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

[SEC. 8067. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

[SEC. 8068. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

[(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

[(2) such bonus is part of restructuring costs associated with a business combination.

[SEC. 8069. (a) None of the funds appropriated or otherwise made available in this Act may be used to transport or provide for the transportation of chemical munitions or agents to the Johnston Atoll for the purpose of storing or demilitarizing such munitions or agents.

[(b) The prohibition in subsection (a) shall not apply to any obsolete World War II chemical munition or agent of the United States found in the World War II Pacific Theater of Operations.

[(c) The President may suspend the application of subsection (a) during a period of war in which the United States is a party.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8070. During the current fiscal year, no more than $30,000,000 of appropriations made in this Act under the heading "Operation and Maintenance, Defense-Wide" may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

[SEC. 8071. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

[(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

[(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

[(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): *Provided*, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: *Provided further*, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

[SEC. 8072. Funds appropriated in title II of this Act and for the Defense Health Program in title VI of this Act for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

[SEC. 8073. During the current fiscal year, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: *Provided*, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.

[SEC. 8074. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

[(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

[SEC. 8075. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

[SEC. 8076. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: *Provided*, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: *Provided further*, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

[SEC. 8077. None of the funds made available in this Act may be used to approve or license the sale of the F–22 advanced tactical fighter to any foreign government.

[SEC. 8078. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

[(b) Subsection (a) applies with respect to—

[(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

[(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

[(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

[SEC. 8079. Funds made available to the Civil Air Patrol in this Act under the heading "Drug Interdiction and Counter-Drug Activities, Defense" may be used for the Civil Air Patrol Corporation's counterdrug program, including its demand reduction program involving youth programs, as well as operational and training drug reconnaissance missions for Federal, State, and local government agencies; and for equipment needed for mission support or performance: *Provided*, That the Department of the Air Force should waive reimbursement from the Federal, State, and local government agencies for the use of these funds.

[SEC. 8080. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

[(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

[(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

[(d) REPORT.—Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

[SEC. 8081. The Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental equipment of the Department of Defense, at no cost to the Department of Defense, to Indian health service facilities and to federally-qualified health centers (within the meaning of section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))).

[SEC. 8082. The total amount appropriated in this Act is hereby reduced by $615,000,000 to reflect savings from favorable foreign currency fluctuations, to be derived as follows:

["Military Personnel, Army", $154,000,000;

["Military Personnel, Navy", $11,000,000;

["Military Personnel, Marine Corps", $21,000,000;

["Military Personnel, Air Force", $49,000,000;

["Operation and Maintenance, Army", $189,000,000;

["Operation and Maintenance, Navy", $40,000,000;

["Operation and Maintenance, Marine Corps", $3,000,000;

["Operation and Maintenance, Air Force", $80,000,000; and

["Operation and Maintenance, Defense-Wide", $68,000,000.

[SEC. 8083. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.

[SEC. 8084. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

[SEC. 8085. Notwithstanding any other provision of law, funds appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide" for any advanced concept technology demonstration project may only be obligated 30 days after a report, including a description of the project and its estimated annual and total cost, has been provided in writing to the congressional defense committees: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

[SEC. 8086. Notwithstanding any other provision of law, for the purpose of establishing all Department of Defense policies governing the provision of care provided by and financed under the military health care system's case management program under 10 U.S.C. 1079(a)(17), the term "custodial care" shall be defined as care designed essentially to assist an individual in meeting the activities of daily living and which does not require the supervision of trained medical, nursing, paramedical or other specially trained individuals: *Provided*, That the case management program shall provide that members and retired members of the military services, and their dependents and survivors, have access to all medically necessary health care through the health care delivery system of the military services regardless of the health care status of the person seeking the health care: *Provided further*, That the case management program shall be the primary obligor for payment of medically necessary services and shall not be considered as secondarily liable to title XIX of the Social Security Act, other welfare programs or charity based care.

[SEC. 8087. During the current fiscal year, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received.

[SEC. 8088. (a) REGISTERING FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—None of the funds appropriated in this Act may be used for a mission critical or mission essential financial management information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. A financial management information technology system shall be considered a mission critical or mission essential information technology system as defined by the Under Secretary of Defense (Comptroller).

[(b) CERTIFICATIONS AS TO COMPLIANCE WITH FINANCIAL MANAGEMENT MODERNIZATION PLAN.—(1) During the current fiscal year, a financial management major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production, or their equivalent, within the Department of Defense until the Under Secretary of Defense (Comptroller) certifies, with respect to that milestone, that the system is being developed and managed in accordance with the Department's Financial Management Modernization Plan. The Under Secretary of Defense (Comptroller) may require additional certifications, as appropriate, with respect to any such system.

[(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1).

[(c) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—(1) During the current fiscal year, a major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production approval, or their equivalent, within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

[(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

[(A) Business process reengineering.

[(B) An analysis of alternatives.

[(C) An economic analysis that includes a calculation of the return on investment.

[(D) Performance measures.

[(E) An information assurance strategy consistent with the Department's Global Information Grid.

[(d) DEFINITIONS.—For purposes of this section:

[(1) The term "Chief Information Officer" means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

[(2) The term "information technology system" has the meaning given the term "information technology" in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

[(3) The term "major automated information system" has the meaning given that term in Department of Defense Directive 5000.1.

[SEC. 8089. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

[SEC. 8090. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a center-fire cartridge and a United States military nomenclature designation of "armor penetrator", "armor piercing (AP)", "armor piercing incendiary (API)", or "armor-piercing incendiary-tracer (API-T)", except to an entity performing demilitarization services for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

[SEC. 8091. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under 10 U.S.C. 2667, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in 32 U.S.C. 508(d), or any other youth, social, or fraternal non-profit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

[SEC. 8092. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

[SEC. 8093. During the current fiscal year, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate military and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.

[SEC. 8094. (a) The Department of Defense is authorized to enter into agreements with the Veterans Administration and federally-funded health agencies providing services to Native Hawaiians for the purpose of establishing a partnership similar to the Alaska Federal Health Care Partnership, in order to maximize Federal resources in the provision of health care services by federally-funded health agencies, applying telemedicine technologies. For the purpose of this partnership, Native Hawaiians shall have the same status as other Native Americans who are eligible for the health care services provided by the Indian Health Service.

[(b) The Department of Defense is authorized to develop a consultation policy, consistent with Executive Order No. 13084 (issued May 14, 1998), with Native Hawaiians for the purpose of assuring maximum Native Hawaiian participation in the direction and administration of governmental services so as to render those services more responsive to the needs of the Native Hawaiian community.

[(c) For purposes of this section, the term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

[SEC. 8095. Of the amounts appropriated in this Act for the Arrow missile defense program under the heading "Research, Development, Test and Evaluation, Defense-Wide", $131,700,000 shall be made available for the purpose of continuing the Arrow System Improvement Program (ASIP), continuing ballistic missile defense interoperability with Israel, and continuing development of an Arrow production capability in the United States.

[SEC. 8096. Funds available to the Department of Defense for the Global Positioning System during the current fiscal year may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8097. Of the amounts appropriated in this Act under the heading, "Operation and Maintenance, Defense-Wide", $68,000,000 shall remain available until expended: *Provided*, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government.

[SEC. 8098. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2003.

[SEC. 8099. In addition to amounts provided in this Act, $2,000,000 is hereby appropriated for "Defense Health Program", to remain available for obligation until expended: *Provided*, That notwithstanding any other provision of law, these funds shall be available only for a grant to the Fisher House Foundation, Inc., only for the construction and furnishing of additional Fisher Houses to meet the needs of military family members when confronted with the illness or hospitalization of an eligible military beneficiary.

[SEC. 8100. The total amount appropriated in Title II of this Act is hereby reduced by $51,000,000, to reflect savings attributable to improvements in the management of advisory and assistance services contracted by the military departments, to be derived as follows:

["Operation and Maintenance, Army", $11,000,000;

["Operation and Maintenance, Navy", $10,000,000; and

["Operation and Maintenance, Air Force", $30,000,000.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8101. Of the amounts appropriated in this Act under the heading "Shipbuilding and Conversion, Navy," $644,899,000 shall be available until September 30, 2003, to fund prior year shipbuilding cost increases: *Provided*, That upon enactment of this Act, the Secretary of Defense shall transfer such funds to the following appropriations in the amount specified: *Provided further*, That the amounts transferred shall be merged with and shall be available for the same purposes as the appropriations to which transferred:

[To:

[Under the heading, "Shipbuilding and Conversion, Navy, 1996/2003":

[LPD–17 Amphibious Transport Dock Ship Program, $232,681,000;

[Under the heading, "Shipbuilding and Conversion, Navy, 1998/2003":

[DDG–51 Destroyer Program, $47,400,000;

[New SSN, $156,682,000;

[Under the heading, "Shipbuilding and Conversion, Navy, 1999/2003":

[LPD–17 Amphibious Transport Dock Ship Program, $10,000,000;

[DDG–51 Destroyer Program, $56,736,000;

[New SSN, $120,000,000;

[Under the heading, "Shipbuilding and Conversion, Navy, 2000/2003":

[DDG–51 Destroyer Program, $21,200,000;

[Under the heading, "Shipbuilding and Conversion, Navy, 2001/2008":

[DDG–51 Destroyer Program, $200,000.

[SEC. 8102. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under 10 U.S.C. 7622 arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: *Provided*, That such payments shall be made from funds available to the Department of the Navy for operation and maintenance.

[SEC. 8103. The total amount appropriated in Title II of this Act is hereby reduced by $97,000,000, to reflect savings attributable to improved supervision in determining appropriate purchases to be made using the Government purchase card, to be derived as follows:

["Operation and Maintenance, Army", $24,000,000;

["Operation and Maintenance, Navy", $29,000,000;

["Operation and Maintenance, Marine Corps", $3,000,000;

["Operation and Maintenance, Air Force", $27,000,000; and

["Operation and Maintenance, Defense-Wide", $14,000,000.

[SEC. 8104. Funds provided for the current fiscal year or hereafter for Operation and Maintenance for the Armed Forces may be used, notwithstanding any other provision of law, for the purchase of ultralightweight camouflage net systems as unit spares.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8105. During the current fiscal year and hereafter, notwithstanding any other provision of law, the Secretary of Defense may transfer not more than $20,000,000 of unobligated balances remaining in a Research, Development, Test and Evaluation, Army appropriation account during the last fiscal year before the account closes under section 1552 of title 31 United States Code, to a current Research, Development, Test and Evaluation, Army appropriation account to be used only for the continuation of the Venture Capital Fund demonstration, as originally approved in Section 8150 of Public Law 107–117, to pursue high payoff technology and innovations in science and technology: *Provided*, That any such transfer shall be made not later than July 31 of each year: *Provided further*, That funds so transferred shall be merged with and shall be available for the same purposes and for the same time period as the appropriation to which transferred: *Provided further*, That the transfer authority provided in this section is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That, no funds for programs, projects, or activities designated as special congressional interest items in DD Form 1414 shall be eligible for transfer under the authority of this section: *Provided further*, That any unobligated balances transferred under this authority may be restored to the original appropriation if required to cover unexpected upward adjustments: *Provided further*, That the Secretary of the Army shall provide an annual report to the House and Senate Appropriations Committees no later than 15 days prior to the annual transfer of funds under authority of this section describing the sources and amounts of funds proposed to be transfered, summarizing the projects funded under this demonstration program (including the name and location of project sponsors) to date, a description of the major program accomplishments to date, and an overall assessment of the benefits of this demonstration program compared to the goals expressed in the legislative history accompanying Section 8150 of Public Law 107–117.

[SEC. 8106. Notwithstanding any other provision of law or regulation, the Secretary of Defense may exercise the provisions of 38 U.S.C. 7403(g) for occupations listed in 38 U.S.C. 7403(a)(2) as well as the following:

[Pharmacists, Audiologists, and Dental Hygienists.

[(A) The requirements of 38 U.S.C. 7403(g)(1)(A) shall apply.

[(B) The limitations of 38 U.S.C. 7403(g)(1)(B) shall not apply.

[SEC. 8107. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2003 until the enactment of the Intelligence Authorization Act for fiscal year 2003.

[SEC. 8108. Section 1111(c) of title 10 is amended in the first sentence by striking "may" after the Secretary of Defense and inserting "shall" after the Secretary of Defense.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8109. During the current fiscal year, amounts in or credited to the Defense Cooperation Account under 10 U.S.C. 2608(b) are hereby appropriated and shall be available for obligation and expenditure consistent with the purposes for which such amounts were contributed and accepted for transfer by the Secretary of Defense to such appropriations or funds of the Department of Defense as the Secretary shall determine, to be merged with and to be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided*, That the Secretary shall provide written notification to the congressional defense committees 30 days prior to such transfer: *Provided further*, That the Secretary of Defense shall report to the Congress quarterly all transfers made pursuant to this authority: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense.

[SEC. 8110. Notwithstanding section 1116(c) of title 10, United States Code, payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund for fiscal year 2003 under section 1116(a) of such title shall be made from funds available in this Act for the pay of military personnel.

[Sec. 8111. None of the funds in this Act may be used to initiate a new start program without prior notification to the Office of Secretary of Defense and the congressional defense committees.

[Sec. 8112. The amount appropriated in title II of this Act is hereby reduced by $470,000,000 to reflect Working Capital Fund cash balance and rate stabilization adjustments, to be derived as follows:

["Operation and Maintenance, Navy", $440,000,000; and

["Operation and Maintenance, Air Force", $30,000,000.

[Sec. 8113. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $475,000,000, to reduce excess funded carryover, to be derived as follows:

["Operation and Maintenance, Army", $48,000,000;

["Operation and Maintenance, Navy", $285,000,000;

["Operation and Maintenance, Marine Corps", $8,000,000; and

["Operation and Maintenance, Air Force", $134,000,000.

[Sec. 8114. Notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this or any other appropriations Acts may be obligated for the purpose of transferring the Medical Free Electron Laser (MFEL) Program from the Department of Defense to any other Government agency.

[Sec. 8115. (a) In addition to the amounts provided elsewhere in this Act, the amount of $4,000,000 is hereby appropriated to the Department of Defense for "Operation and Maintenance, Army National Guard". Such amount shall be made available to the Secretary of the Army only to make a grant in the amount of $4,000,000 to the entity specified in subsection (b) to facilitate access by veterans to opportunities for skilled employment in the construction industry.

[(b) The entity referred to in subsection (a) is the Center for Military Recruitment, Assessment and Veterans Employment, a nonprofit labor-management co-operation committee provided for by section 302(c)(9) of the Labor-Management Relations Act, 1947 (29 U.S.C. 186(c)(9)), for the purposes set forth in section 6(b) of the Labor Management Cooperation Act of 1978 (29 U.S.C. 175a note).

[Sec. 8116. (a) During the current fiscal year, funds available to the Secretary of a military department for Operation and Maintenance may be used for the purposes stated in subsection (b) to support chaplain-led programs to assist members of the Armed Forces and their immediate family members in building and maintaining a strong family structure.

[(b) The purposes referred to in subsection (a) are costs of transportation, food, lodging, supplies, fees, and training materials for members of the Armed Forces and their family members while participating in such programs, including participation at retreats and conferences.

[Sec. 8117. (a) Commission on Adequacy of Armed Forces Training Facilities.—The Secretary of Defense shall establish an advisory committee under section 173 of title 10, United States Code, to assess the availability of adequate training facilities for the Armed Forces in the United States and overseas and the adverse impact of residential and industrial encroachment, requirements of environmental laws, and other factors on military training and the coordination of military training among the United States and its allies.

[(b) Members.—The advisory committee shall be composed of persons who are not active-duty members of the Armed Forces or officers or employees of the Department of Defense.

[(c) Report.—Not later than July 31, 2003, the advisory committee shall submit to the Secretary of Defense and the congressional defense committees a report containing the results of the assessment and such recommendations as the committee considers necessary.

[(d) Funding.—Funds for the activities of the advisory committee shall be provided from amounts appropriated for operation and maintenance for Defense-Wide activities for fiscal year 2003.

[Sec. 8118. (a) Limitation on Additional NMCI Contract Work Stations.—Notwithstanding section 814 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–215) or any other provision of law, the total number of work stations provided under the Navy-Marine Corps Intranet contract (as defined in subsection (i) of such section 814) may not exceed 160,000 work stations until the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense certify to the congressional defense committees that all of the conditions specified in subsection (b) have been satisfied.

[(b) Conditions.—The conditions referred to in subsection (a) are the following:

[(1) There is a full transition of not less than 20,000 work stations to the Navy-Marine Corps Intranet.

[(2) Those work stations undergo operational test and evaluation—

[(A) to evaluate and demonstrate the ability of the infrastructure and services of the Navy-Marine Corps Intranet to support Department of the Navy operational, office, and business functionality and processes; and

[(B) to evaluate the effectiveness and suitability of the Navy-Marine Corps Intranet to support accomplishment of Navy and Marine Corps missions.

[(3) The Director of Operational Test and Evaluation of the Department of Defense completes an assessment of the operational test and evaluation and provides the results of the assessment and recommendations to the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense.

[(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense determine that the results of the test and evaluation are acceptable.

[Sec. 8119. None of the funds in this Act, excluding funds provided for advance procurement of fiscal year 2004 aircraft, may be obligated for acquisition of more than 16 F–22 aircraft until the Under Secretary of Defense for Acquisition, Technology, and Logistics has provided to the congressional defense committees:

[(a) A formal risk assessment which identifies and characterizes the potential cost, technical, schedule or other significant risks resulting from increasing the F–22 procurement quantities prior to the conclusion of Dedicated Initial Operational Test and Evaluation (DIOT&E) of the aircraft: *Provided*, That such risk assessment shall evaluate based on the best available current information (1) the range of potential additional program costs (compared to the program costs assumed in the President's fiscal year 2003 budget) that could result from retrofit modifications to F–22 production aircraft that are placed under contract or delivered to the government prior to the conclusion of DIOT&E and (2) a cost-benefit analysis comparing, in terms of unit cost and total program cost, the cost advantages of increasing aircraft production at this time to the potential cost of retrofitting production aircraft once DIOT&E has been completed;

[(b) Certification that any future retrofit costs to F–22 production aircraft, ordered or delivered prior to the conclusion of DIOT&E, that result from changes required from developmental or operational test and evaluation will not increase the total F–22 program cost as estimated in the President's fiscal year 2003 budget; and

[(c) Certification that increasing the F–22 production quantity for fiscal year 2003 beyond 16 airplanes involves lower risk and lower total program cost than staying at that quantity, or he submits a revised production plan, funding plan and test schedule.

[(INCLUDING TRANSFER OF FUNDS)

[Sec. 8120. Section 305(a) of the Emergency Supplemental Act, 2002 (division B of Public Law 107–117; 115 Stat. 2300), is amended by adding at the end the following new sentences: "From amounts transferred to the Pentagon Reservation Maintenance Revolving Fund pursuant to the preceding sentence, not to exceed $305,000,000 may be transferred to the Defense Emergency Response Fund, but only in amounts necessary to reimburse that fund (and the category of that fund designated as 'Pentagon Repair/Upgrade') for expenses charged to that fund (and that category) between September 11, 2001, and January 10, 2002, for reconstruction costs of the Pentagon Reservation. Funds transferred to the Defense Emergency Response Fund pursuant to this section shall be available only for reconstruction, recovery, force protection, or security enhancements for the Pentagon Reservation.".

[Sec. 8121. (a) Termination of Crusader Artillery System.—Consistent with the budget amendment to the fiscal year 2003 President's Budget submitted to Congress on May 29, 2002, for termination of the Crusader Artillery System, the Department of Defense is authorized to terminate the Crusader program. Such termination shall be carried out in a prudent and deliberate manner in order to provide for the orderly termination of the program.

[(b) Acceleration of Other Indirect Fire Systems.—Of the funds appropriated or otherwise made available in this Act, under the heading "Research, Development, Test, and Evaluation, Army", $305,109,000 shall be available only to accelerate the development, demonstration, and fielding of indirect fire platforms, precision munitions, and related technology.

[(c) Acceleration of Objective Force Artillery and Resupply Systems.—(1) Immediately upon termination of the Crusader Artillery System program, the Department of the Army shall enter into a contract to leverage technologies developed with funds invested in fiscal year 2002 and prior years under the Crusader Artillery System program, the Future Scout and Cavalry System program, the Composite Armored Vehicle program, and other Army development programs in order to develop and field, by 2008, a Non-Line of Sight (NLOS) Objective Force artillery system and Resupply Vehicle variants of the Future Combat System.

[(2) Of the funds appropriated or otherwise made available in this Act under the heading "Research, Development, Test, and Evaluation, Army", $368,500,000 is available only for the Objective Force Indirect Fire Systems for the Army to implement this subsection: *Provided*, That none of the funds in this or any other Act shall be available for research, development, test, or evaluation of any Objective Force or Future Combat System indirect fire system until the Secretary of the Army has submitted a written certification to the congressional defense committees that a contract has been awarded pursuant to subsection (c)(1) containing a program plan and schedule for production and fielding a Future Combat System Non-Line of Sight Objective Force artillery system and Resupply Vehicle variants by 2008.

[SEC. 8122. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

[SEC. 8123. Of the total amount appropriated pursuant to this Act for any component of the Department of Defense that the Director of the Office of Management and Budget has identified (as of the date of the enactment of this Act) under subsection (c) of section 3515 of title 31, United States Code, as being required to have audited financial statements meeting the requirements of subsection (b) of that section, not more than 99 percent may be obligated until the Inspector General of the Department of Defense submits an audit of that component pursuant to section 3521(e) of title 31, United States Code.

[SEC. 8124. None of the funds provided in this Act may be used to relocate the headquarters of the United States Army, South, from Fort Buchanan, Puerto Rico, to a location in the continental United States.

[This Act may be cited as the "Department of Defense Appropriations Act, 2003".] *That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for military functions administered by the Department of Defense, and for other purposes, namely:*

TITLE I

MILITARY PERSONNEL

Military Personnel, Army

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $26,939,792,000.

Military Personnel, Navy

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,975,201,000.

Military Personnel, Marine Corps

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $8,507,187,000.

Military Personnel, Air Force

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $22,036,405,000.

Reserve Personnel, Army

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $3,402,055,000.

Reserve Personnel, Navy

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,918,352,000.

Reserve Personnel, Marine Corps

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $554,383,000.

Reserve Personnel, Air Force

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,237,504,000.

National Guard Personnel, Army

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $5,128,588,000.

National Guard Personnel, Air Force

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $2,126,061,000.

TITLE II

OPERATION AND MAINTENANCE

Operation and Maintenance, Army

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $10,818,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $24,048,107,000: Provided, That of the funds appropriated in this paragraph, not less than $355,000,000 shall be made available only for conventional ammunition care and maintenance.

Operation and Maintenance, Navy

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $4,415,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, $29,410,276,000.

Operation and Maintenance, Marine Corps

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $3,576,142,000.

Operation and Maintenance, Air Force

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed $7,902,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $27,463,678,000.

Operation and Maintenance, Defense-Wide

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $14,527,853,000, of which not to exceed $25,000,000 may be available for the CINC initiative fund account; and of which not to exceed $34,500,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes.

Operation and Maintenance, Army Reserve

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,963,710,000.

Operation and Maintenance, Navy Reserve

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,233,759,000.

Operation and Maintenance, Marine Corps Reserve

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $185,532,000.

Operation and Maintenance, Air Force Reserve

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $2,160,604,000.

Operation and Maintenance, Army National Guard

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $4,266,412,000.

Operation and Maintenance, Air National Guard

For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things, hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $4,113,460,000.

Overseas Contingency Operations Transfer Account

(INCLUDING TRANSFER OF FUNDS)

For expenses directly relating to Overseas Contingency Operations by United States military forces, $50,000,000, to remain available until expended: Provided, That the Secretary of Defense may transfer these funds only to military personnel accounts; operation and maintenance accounts within this title; the Defense Health Program appropriation; procurement accounts; research, development, test and evaluation accounts; and to working capital funds: Provided further, That the funds transferred shall be merged with and shall be available for the same purposes and for the same time period, as the appropriation to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That the transfer authority provided in this paragraph is in addition to any other transfer authority contained elsewhere in this Act.

United States Courts of Appeals for the Armed Forces

For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, $9,614,000, of which not to exceed $2,500 can be used for official representation purposes.

Environmental Restoration, Army

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, $395,900,000, to remain available until transferred: Provided, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

Environmental Restoration, Navy

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Navy, $256,948,000, to remain available until transferred: Provided, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

Environmental Restoration, Air Force

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Air Force, $389,773,000, to remain available until transferred: Provided, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

Environmental Restoration, Defense-Wide

(INCLUDING TRANSFER OF FUNDS)

For the Department of Defense, $23,498,000, to remain available until transferred: Provided, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

Environmental Restoration, Formerly Used Defense Sites

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, $252,102,000, to remain available until transferred: Provided, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

Overseas Humanitarian, Disaster, and Civic Aid

For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2547, and 2551 of title 10, United States Code), $58,400,000, to remain available until September 30, 2004.

Former Soviet Union Threat Reduction

For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation *and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, $416,700,000, to remain available until September 30, 2005: Provided, That of the amounts provided under this heading, $10,000,000 shall be available only to support the dismantling and disposal of nuclear submarines and submarine reactor components in the Russian Far East.*

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE

For logistical and security support for international sporting competitions (including pay and non-travel related allowances only for members of the Reserve Components of the Armed Forces of the United States called or ordered to active duty in connection with providing such support), $19,000,000, to remain available until expended.

TITLE III

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,249,389,000, to remain available for obligation until September 30, 2005.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,585,672,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,242,058,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,258,599,000, to remain available for obligation until September 30, 2005.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of passenger motor vehicles for replacement only; and the purchase of 6 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $5,783,439,000, to remain available for obligation until September 30, 2005.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $8,849,955,000, to remain available for obligation until September 30, 2005.

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $1,856,617,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,169,152,000, to remain available for obligation until September 30, 2005.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

Carrier Replacement Program (AP), $472,703,000;

SSGN, $404,305,000;
SSGN (AP), $421,000,000;
NSSN, $1,512,652,000;
NSSN (AP), $645,209,000;
CVN Refuelings, $24,000,000;
CVN Refuelings (AP), $195,781,000;
Submarine Refuelings, $435,792,000;
DDG–51 Destroyer, $2,321,502,000;
LPD–17, $596,492,000;
LHD–8, $243,000,000;
LCAC Landing Craft Air Cushion, $89,638,000;
Prior year shipbuilding costs, $1,481,955,000;
Service Craft, $6,756,000; and

For outfitting, post delivery, conversions, and first destination transportation, $300,608,000;

In all: $9,151,393,000, to remain available for obligation until September 30, 2007: Provided, That additional obligations may be incurred after September 30, 2007, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: Provided further, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: Provided further, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of passenger motor vehicles for replacement only, and the purchase of 3 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $4,500,710,000, to remain available for obligation until September 30, 2005.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and *accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, $1,357,383,000, to remain available for obligation until September 30, 2005.*

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, lease, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $13,085,555,000, to remain available for obligation until September 30, 2005.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $3,364,639,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, AIR FORCE

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,281,864,000, to remain available for obligation until September 30, 2005.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only, and the purchase of 2 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $10,628,958,000, to remain available for obligation until September 30, 2005.

PROCUREMENT, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only; the purchase of 4 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $2,958,285,000, to remain available for obligation until September 30, 2005.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces, $130,000,000, to remain available for obligation until September 30, 2005: Provided, That the Chiefs of the Reserve and National Guard components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective Reserve or National Guard component.

DEFENSE PRODUCTION ACT PURCHASES

For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), $73,057,000, to remain available until expended, of which, $5,000,000 may be used for a Processable Rigid-Rod Polymeric Material Supplier Initiative under title III of the Defense Production Act of 1950 (50 U.S.C. App 2091 et seq.) to develop affordable production methods and a domestic supplier for military and commercial processable rigid-rod polymeric materials.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $7,410,168,000, to remain available for obligation until September 30, 2004.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $13,275,735,000, to remain available for obligation until September 30, 2004: Provided, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $18,537,679,000, to remain available for obligation until September 30, 2004.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, $16,611,107,000, to remain available for obligation until September 30, 2004.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, $302,554,000, to remain available for obligation until September 30, 2004.

TITLE V

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For the Defense Working Capital Funds, $1,784,956,000: Provided, That during fiscal year 2003, funds in the Defense Working Capital Funds may be used for the purchase of not to exceed 315 passenger carrying motor vehicles for replacement only for the Defense Security Service, and the purchase of not to exceed 7 vehicles for replacement only for the Defense Logistics Agency.

NATIONAL DEFENSE SEALIFT FUND

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $934,129,000, to remain available until expended: Provided, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: Provided further, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: Provided further, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, $14,961,497,000, of which $14,283,041,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2004; of which $284,242,000, to remain available for obligation until September 30, 2005, shall be for Procurement; of which $394,214,000, to remain available for obligation until September 30, 2004, shall be for Research, development, test and evaluation.

CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, ARMY

For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, $1,490,199,000, of which $974,238,000 shall be for Operation and maintenance to remain available until September 30, 2004, $213,278,000 shall be for Procurement to remain available until September 30, 2005, and $302,683,000 shall be for Research, development, test and evaluation to remain available until September 30, 2004: Provided, That of these funds $507,500,000 shall not be available until five days after the Army notifies the Committees on Appropriations of the House and Senate that it is able to meet milestones agreed upon by the Office of the Secretary of Defense and the Office of Management and Budget.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation, $916,107,000: Provided, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act.

OFFICE OF THE INSPECTOR GENERAL

For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $157,165,000, of which $155,165,000 shall be for Operation and maintenance, of which not to exceed $700,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; and of which $2,000,000 to remain available until September 30, 2005, shall be for Procurement.

TITLE VII

RELATED AGENCIES

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System, $212,000,000.

INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Intelligence Community Management Account, $122,754,000 of which $24,252,000 for the Advanced Research and Development Committee shall remain available until September 30, 2004: Provided, That of the funds appropriated under this heading, $34,100,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, $1,500,000 for Procurement shall remain available until September 30, 2005 and $1,000,000 for Research, development, test and evaluation shall remain available until September 30, 2004: Provided further, That the National Drug Intelligence Center shall maintain the personnel and technical resources to provide timely support to law enforcement authorities to conduct document exploitation of materials collected in Federal, State, and local law enforcement activity.

PAYMENT TO KAHO'OLAWE ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION FUND

For payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund, as authorized by law, $80,000,000, to remain available until expended.

NATIONAL SECURITY EDUCATION TRUST FUND

For the purposes of title VIII of Public Law 102–183, $8,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.

TITLE VIII

GENERAL PROVISIONS

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: Provided, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: Provided further, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: Provided further, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: Provided, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

(TRANSFER OF FUNDS)

SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: Provided, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: Provided further, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: Provided further, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: Provided further, That a request for multiple reprogrammings of funds using authority provided in this section must be made prior to May 31, 2003.

(TRANSFER OF FUNDS)

SEC. 8006. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: Provided, That transfers may be made between such funds: Provided further, That transfers may be made between working capital funds and the "Foreign Currency Fluctuations, Defense" appropriation and the "Operation and Maintenance" appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: Provided, That no part of *any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: Provided further, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: Provided further, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: Provided further, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.*

Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

C–130 aircraft;
FMTV; and
F/A–18E and F engine.

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress as of September 30 of each year: Provided, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: Provided further, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

SEC. 8010. (a) During fiscal year 2003, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2004.

(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

SEC. 8011. Notwithstanding any other provision of law, none of the funds made available by this Act shall be used by the Department of Defense to exceed, outside the 50 United States, its territories, and the District of Columbia, 125,000 civilian workyears: Provided, That workyears shall be applied as defined in the Federal Personnel Manual: Provided further, That workyears expended in dependent student hiring programs for disadvantaged youths shall not be included in this workyear limitation.

SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

SEC. 8013. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: Provided, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: Provided further, That this subsection applies only to active components of the Army.

SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: Provided, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.

(TRANSFER OF FUNDS)

SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: Provided, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): Provided further, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: Provided further, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: Provided, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

SEC. 8018. Notwithstanding any other provision of law, during the current fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: Provided, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: Provided further, That the Department of Defense's budget submission for fiscal year 2004 shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: Provided further, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: Provided further, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

SEC. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols.

SEC. 8020. No more than $500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

SEC. 8021. (a) In addition to the funds provided elsewhere in this Act, $8,000,000 is appropriated only for incentive payments authorized *by section 504 of the Indian Finance Act of 1974 (25 U.S.C. 1544) to defense contractors at any tier which make subcontract awards to subcontractors or suppliers owned by entities defined pursuant to 25 U.S.C. 1544 and 4221(9); and*

(b) Section 8022 of the Department of Defense Appropriation Act (Public Law 106–259) is amended by striking out the period and adding ": Provided further, That notwithstanding 41 U.S.C. §430, this section shall be applicable to any acquisition for goods and services, including a contract and subcontracts for procurement of commercial items whenever the prime contract amount is over $500,000 and involves the expenditure of funds appropriated by this or any other Act.".

SEC. 8022. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

SEC. 8023. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

SEC. 8024. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

SEC. 8025. (a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

(c) For the purpose of this section, the phrase "qualified nonprofit agency for the blind or other severely handicapped" means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48).

SEC. 8026. During the current fiscal year, net receipts pursuant to collections from third party payers pursuant to section 1095 of title 10, United States Code, shall be made available to the local facility of the uniformed services responsible for the collections and shall be over and above the facility's direct budget amount.

SEC. 8027. During the current fiscal year, the Department of Defense is authorized to incur obligations of not to exceed $350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: Provided, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

SEC. 8028. Of the funds made available in this Act, not less than $21,188,000 shall be available for the Civil Air Patrol Corporation, of which $19,688,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes $1,500,000 for the Civil Air Patrol counterdrug program: Provided, That funds identified for "Civil Air Patrol" under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof.

SEC. 8029. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: Provided, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2003 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2003, not more than 6,300 staff years of technical effort (staff years) may be funded for defense FFRDCs: Provided, That of the specific amount referred to previously in this subsection, not more than 1,029 staff years may be funded for the defense studies and analysis FFRDCs.

(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2004 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

(f) Notwithstanding any other provision of this Act, the total amount appropriated in this Act for FFRDCs is hereby reduced by $91,600,000.

SEC. 8030. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: Provided, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: Provided further, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

SEC. 8031. For the purposes of this Act, the term "congressional defense committees" means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

SEC. 8032. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: Provided, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: Provided further, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

SEC. 8033. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2003. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

SEC. 8034. Appropriations contained in this Act that remain available at the end of the current fiscal year as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8035. Amounts deposited during the current fiscal year to the special account established under 40 U.S.C. 485(h)(2) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 485(h)(2)(A) and (B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

SEC. 8036. The President shall include with each budget for a fiscal year submitted to the

Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

SEC. 8037. Notwithstanding any other provision of law, funds available for "Drug Interdiction and Counter-Drug Activities, Defense" may be obligated for the Young Marines program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8038. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

SEC. 8039. (a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air Force, without consideration, to Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota relocatable military housing units located at Grand Forks Air Force Base and Minot Air Force Base that are excess to the needs of the Air Force.

(b) PROCESSING OF REQUESTS.—The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota.

(c) RESOLUTION OF HOUSING UNIT CONFLICTS.—The Operation Walking Shield program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

(d) INDIAN TRIBE DEFINED.—In this section, the term "Indian tribe" means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

SEC. 8040. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than $100,000: Provided, That the $100,000 limitation shall not apply to amounts appropriated in this Act under the heading "Operation and Maintenance, Defense-Wide" for expenses related to certain classified activities.

SEC. 8041. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2004 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

SEC. 8042. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2004: Provided, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: Provided further, That any funds appropriated or transferred to the Central Intelligence Agency for agent operations and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2004.

SEC. 8043. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

SEC. 8044. Of the funds appropriated to the Department of Defense under the heading "Operation and Maintenance, Defense-Wide", not less than $10,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

SEC. 8045. Of the funds made available in this Act, not less than $68,900,000 shall be available to maintain an attrition reserve force of 18 B–52 aircraft, of which $3,700,000 shall be available from "Military Personnel, Air Force", $40,000,000 shall be available from "Operation and Maintenance, Air Force", and $25,200,000 shall be available from "Aircraft Procurement, Air Force": Provided, That the Secretary of the Air Force shall maintain a total force of 94 B–52 aircraft, including 18 attrition reserve aircraft, during fiscal year 2003: Provided further, That the Secretary of Defense shall include in the Air Force budget request for fiscal year 2004 amounts sufficient to maintain a B–52 force totaling 94 aircraft.

SEC. 8046. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

SEC. 8047. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

Provided, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

SEC. 8048. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

(1) to establish a field operating agency; or

(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

SEC. 8049. Notwithstanding section 303 of Public Law 96–487 or any other provision of law, the Secretary of the Navy is authorized to lease real and personal property at Naval Air Facility, Adak, Alaska, pursuant to 10 U.S.C. 2667(f), for commercial, industrial or other purposes: Provided, That notwithstanding any other provision of law, the Secretary of the Navy may remove hazardous materials from facilities, buildings, and structures at Adak, Alaska, and may demolish or otherwise dispose of such facilities, buildings, and structures.

(RESCISSIONS)

SEC. 8050. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

"Procurement of Ammunition, Army, 2001/2003", $4,000,000;

"Other Procurement, Army, 2001/2003", $8,000,000;

"Other Procurement, Navy, 2001/2003", $21,200,000;

"Missile Procurement, Army, 2002/2004", $9,300,000;

"Procurement of Ammunition, Army, 2002/2004", $23,000,000;

"Other Procurement, Army, 2002/2004", $26,200,000;

"Aircraft Procurement, Air Force, 2002/2004", $23,500,000;

"Missile Procurement, Air Force, 2002/2004", $18,000,000;

"Research, Development, Test and Evaluation, Air Force, 2002/2003", $32,000,000; and

"Research and Development, Defense-Wide, 2002/2003", $25,500,000.

SEC. 8051. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

SEC. 8052. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of North Korea unless specifically appropriated for that purpose.

SEC. 8053. During the current fiscal year, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: Provided, That during the performance of such duty, the members of the National Guard shall be under State command and control: Provided further, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

SEC. 8054. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: Provided, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

SEC. 8055. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2002 level: Provided, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

SEC. 8056. (a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.

SEC. 8057. Notwithstanding any other provision of law, that not more than 35 percent of funds provided in this Act for environmental remediation may be obligated under indefinite delivery/indefinite quantity contracts with a total contract value of $130,000,000 or higher.

SEC. 8058. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(TRANSFER OF FUNDS)

SEC. 8059. Appropriations available in this Act under the heading "Operation and Maintenance, Defense-Wide" for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

SEC. 8060. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: Provided, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That this restriction shall not apply to the purchase of "commercial items", as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

SEC. 8061. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

SEC. 8062. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

SEC. 8063. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act.

SEC. 8064. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: Provided, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

SEC. 8065. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: Provided, That this limitation shall not apply to transfers of funds expressly provided for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

SEC. 8066. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

(b) COVERED ACTIVITIES.—This section applies to—

(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the United Nations Charter under the authority of a United Nations Security Council resolution; and

(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

(1) A description of the equipment, supplies, or services to be transferred.

(2) A statement of the value of the equipment, supplies, or services to be transferred.

(3) In the case of a proposed transfer of equipment or supplies—

(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

SEC. 8067. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: Provided, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: Provided further, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: Provided further, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: Provided further, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

SEC. 8068. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

(2) such bonus is part of restructuring costs associated with a business combination.

SEC. 8069. (a) None of the funds appropriated or otherwise made available in this Act may be used to transport or provide for the transportation of chemical munitions or agents to the Johnston Atoll for the purpose of storing or demilitarizing such munitions or agents.

(b) The prohibition in subsection (a) shall not apply to any obsolete World War II chemical munition or agent of the United States found in the World War II Pacific Theater of Operations.

(c) The President may suspend the application of subsection (a) during a period of war in which the United States is a party.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8070. During the current fiscal year, no more than $30,000,000 of appropriations made in this Act under the heading "Operation and Maintenance, Defense-Wide" may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

SEC. 8071. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): Provided, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: Provided further, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

SEC. 8072. Funds appropriated in title II of this Act and for the Defense Health Program in title VI of this Act for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects may be obligated at the time the reimbursable order is accepted by the performing activity: Provided, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

SEC. 8073. During the current fiscal year and hereafter, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: Provided, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.

SEC. 8074. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

SEC. 8075. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: Provided, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: Provided further, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

SEC. 8076. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: Provided, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: Provided further, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: Provided further, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8077. None of the funds made available in this Act may be used to approve or license the sale of the F–22 advanced tactical fighter to any foreign government.

SEC. 8078. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

(b) Subsection (a) applies with respect to—

(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

SEC. 8079. Funds made available to the Civil Air Patrol in this Act under the heading "Drug Interdiction and Counter-Drug Activities, Defense" may be used for the Civil Air Patrol Corporation's counterdrug program, including its demand reduction program involving youth programs, as well as operational and training drug reconnaissance missions for Federal, State, and local government agencies; and for equipment needed for mission support or performance: Provided, That the Department of the Air Force should waive reimbursement from the Federal, State, and local government agencies for the use of these funds.

SEC. 8080. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

(d) REPORT.—Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

SEC. 8081. The Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental equipment of the Department of Defense, at no cost to the Department of Defense, to Indian Health Service facilities and to federally-qualified health centers (within the meaning of section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))).

SEC. 8082. The total amount appropriated in this Act is hereby reduced by $338,000,000 to reflect savings from favorable foreign currency fluctuations, to be derived as follows:

"Military Personnel, Army", $80,000,000;

"Military Personnel, Navy", $6,500,000;

"Military Personnel, Marine Corps", $11,000,000;

"Military Personnel, Air Force", $29,000,000;

"Operation and Maintenance, Army", $102,000,000;

"Operation and Maintenance, Navy", $21,500,000;

"Operation and Maintenance, Marine Corps", $2,000,000;

"Operation and Maintenance, Air Force", $46,000,000; and

"Operation and Maintenance, Defense-Wide", $40,000,000.

SEC. 8083. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.

SEC. 8084. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

SEC. 8085. Notwithstanding any other provision of law, funds appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide" for any advanced concept technology demonstration project may only be obligated 30 days after a report, including a description of the project and its estimated annual and total cost, has been provided in writing to the congressional defense committees: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

SEC. 8086. Notwithstanding any other provision of law, for the purpose of establishing all Department of Defense policies governing the provision of care provided by and financed under the military health care system's case management program under 10 U.S.C. 1079(a)(17), the term "custodial care" shall be defined as care designed essentially to assist an individual in meeting the activities of daily living and which does not require the supervision of trained medical, nursing, paramedical or other specially trained individuals: Provided, That the case management program shall provide that members and retired members of the military services, and their dependents and survivors, have access to all medically necessary health care through the health care delivery system of the military services regardless of the health care status of the person seeking the health care: Provided further, That the case management program shall be the primary obligor for payment of medically necessary services and shall not be considered as secondarily liable to title XIX of the Social Security Act, other welfare programs or charity based care.

SEC. 8087. During the current fiscal year, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received.

SEC. 8088. (a) REGISTERING FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—None of the funds appropriated in this Act may be used for a mission critical or mission essential financial management information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. A financial management information technology system shall be considered a mission critical or mission essential information technology system as defined by the Under Secretary of Defense (Comptroller).

(b) CERTIFICATIONS AS TO COMPLIANCE WITH FINANCIAL MANAGEMENT MODERNIZATION PLAN.—

(1) During the current fiscal year, a financial management major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production, or their equivalent, within the Department of Defense until the Under Secretary of Defense (Comptroller) certifies, with respect to that milestone, that the system is being developed and managed in accordance with the Department's Financial Management Modernization Plan. The Under Secretary of Defense (Comptroller) may require additional certifications, as appropriate, with respect to any such system.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1).

(c) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—(1) During the current fiscal year, a major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production approval, or their equivalent, within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

(A) Business process reengineering.

(B) An analysis of alternatives.

(C) An economic analysis that includes a calculation of the return on investment.

(D) Performance measures.

(E) An information assurance strategy consistent with the Department's Global Information Grid.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "Chief Information Officer" means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

(2) The term "information technology system" has the meaning given the term "information technology" in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(3) The term "major automated information system" has the meaning given that term in Department of Defense Directive 5000.1.

SEC. 8089. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: Provided, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: Provided further, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8090. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a center-fire cartridge and a United States military nomenclature designation of "armor penetrator", "armor piercing (AP)", "armor piercing incendiary (API)", or "armor-piercing incendiary-tracer (API–T)", except to an entity performing demilitarization services for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

SEC. 8091. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under 10 U.S.C. 2667, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in 32 U.S.C. 508(d), or any other youth, social, or fraternal non-profit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

SEC. 8092. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: Provided, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: Provided further, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: Provided further, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

SEC. 8093. During the current fiscal year and hereafter, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate military and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.

SEC. 8094. (a) The Department of Defense is authorized to enter into agreements with the Department of Veterans Affairs and federally-funded health agencies providing services to Native Hawaiians for the purpose of establishing a partnership similar to the Alaska Federal Health Care Partnership, in order to maximize Federal resources in the provision of health care services by federally-funded health agencies, applying telemedicine technologies. For the purpose of this partnership, Native Hawaiians shall have the same status as other Native Americans who are eligible for the health care services provided by the Indian Health Service.

(b) The Department of Defense is authorized to develop a consultation policy, consistent with Executive Order No. 13084 (issued May 14, 1998), with Native Hawaiians for the purpose of assuring maximum Native Hawaiian participation in the direction and administration of governmental services so as to render those services more responsive to the needs of the Native Hawaiian community.

(c) For purposes of this section, the term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

SEC. 8095. Of the amounts appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide", $146,000,000 shall be made available for the Arrow missile defense program: Provided, That of this amount, $66,000,000 shall be available for the purpose of continuing the Arrow System Improvement Program (ASIP), $10,000,000 shall be available for continuing the Enhanced Arrow Deployability Program, and $70,000,000 shall be available for the purpose of producing Arrow missile components in the United States and Arrow missile components and missiles in Israel to meet Israel's defense requirements, consistent with each nation's laws, regulations and procedures: Provided further, That funds made available under this provision for production of missiles and missile components may be transferred to appropriations available for the procurement of weapons and equipment, to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred: Provided further, That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

SEC. 8096. Funds available to the Department of Defense for the Global Positioning System during the current fiscal year may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8097. Of the amounts appropriated in this Act under the heading "Operation and Maintenance, Defense-Wide", $68,000,000 shall remain available until expended: Provided, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government.

SEC. 8098. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2003.

SEC. 8099. Of the funds made available under the heading "Operation and Maintenance, Air Force", $8,000,000 shall be available to realign railroad track on Elmendorf Air Force Base and Fort Richardson.

SEC. 8100. Notwithstanding any other provision of this Act, the total amount appropriated in this Act is hereby reduced by $850,000,000, to reflect savings to be achieved from business process reforms, management efficiencies, and procurement of administrative and management support: Provided, That none of the funds provided in this Act may be used for consulting and advisory services for legislative affairs and legislative liaison functions.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8101. Of the amounts appropriated in this Act under the heading "Shipbuilding and Conversion, Navy", $1,481,955,000 shall be available until September 30, 2003, to fund prior year shipbuilding cost increases: Provided, That upon enactment of this Act, the Secretary of the Navy shall transfer such funds to the following appropriations in the amounts specified: Provided further, That the amounts transferred shall be merged with and be available for the same purposes as the appropriations to which transferred:

To:

Under the heading, "Shipbuilding and Conversion, Navy, 1996/03":

LPD–17 Amphibious Transport Dock Ship Program, $300,681,000;

Under the heading, "Shipbuilding and Conversion, Navy, 1998/03":

DDG–51 Destroyer Program, $76,100,000;

New SSN, $190,882,000;

Under the heading, "Shipbuilding and Conversion, Navy, 1999/03":

DDG–51 Destroyer Program, $93,736,000;

LPD–17 Amphibious Transport Dock Ship Program, $82,000,000;

New SSN, $292,000,000;

Under the heading, "Shipbuilding and Conversion, Navy, 2000/03":

DDG–51 Destroyer Program, $72,924,000;

LPD–17 Amphibious Transport Dock Ship Program, $187,000,000;

Under the heading, "Shipbuilding and Conversion, Navy, 2001/03":

DDG–51 Destroyer Program, $81,700,000;

New SSN, $6,932,000; and

Under the heading, "Shipbuilding and Conversion, Navy, 2002/03":

DDG–51 Destroyer Program, $98,000,000.

SEC. 8102. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under 10 U.S.C. 7622 arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: Provided, That such payments shall be made from funds available to the Department of the Navy for operation and maintenance.

(TRANSFER OF FUNDS)

SEC. 8103. Upon enactment of this Act, the Secretary of the Navy shall make the following transfers of funds: Provided, That the amounts transferred shall be available for the same purpose as the appropriations to which transferred, and for the same time period as the appropriation from which transferred: Provided further, That the amounts shall be transferred between the following appropriations in the amount specified:

From:

Under the heading, "Shipbuilding and Conversion, Navy, 1994/2003":

DDG–51 Destroyer program, $7,900,000;

LHD–1 Amphibious Assault Ship program, $6,500,000;

Oceanographic Ship program, $3,416,000;

Craft, outfitting, post delivery, first destination transportation, $1,800,000;

Mine warfare command and control ship, $604,000;

To:

Under the heading, "Shipbuilding and Conversion, Navy, 1999/2003":

LPD–17 Amphibious Transport Dock Ship program, $20,220,000.

SEC. 8104. Notwithstanding section 229(a) of the Social Security Act, no wages shall be deemed to have been paid to any individual pursuant to that section in any calendar year after 2001.

SEC. 8105. Up to $3,000,000 of the funds appropriated under the heading "Operation and Maintenance, Navy" in this Act for the Pacific Missile Range Facility may be made available to contract for the repair, maintenance, and operation of adjacent off-base water, drainage, and flood control systems critical to base operations.

SEC. 8106. Notwithstanding any other provision of law or regulation, the Secretary of Defense may exercise the provisions of 38 U.S.C. 7403(g) for occupations listed in 38 U.S.C. 7403(a)(2) as well as the following:

Pharmacists, Audiologists, and Dental Hygienists.

(A) The requirements of 38 U.S.C. 7403(g)(1)(A) shall apply.

(B) The limitations of 38 U.S.C. 7403(g)(1)(B) shall not apply.

SEC. 8107. Of the total amount appropriated by this Act under the heading "Operation and Maintenance, Defense-Wide", $5,000,000 may be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77).

SEC. 8108. In addition to funds made available elsewhere in this Act $5,000,000 is hereby appropriated and shall remain available until expended to provide assistance, by grant or otherwise (such as, but not limited to, the provision of funds for repairs, maintenance, and/or for the purchase of information technology, text books, teaching resources), to public schools that have unusually high concentrations of special needs military dependents enrolled: Provided, That in selecting school systems to receive such assistance, special consideration shall be given to *school systems in States that are considered overseas assignments, and all schools within these school systems shall be eligible for assistance: Provided further, That up to $2,000,000 shall be available for the Department of Defense to establish a non-profit trust fund to assist in the public-private funding of public school repair and maintenance projects, or provide directly to non-profit organizations who in return will use these monies to provide assistance in the form of repair, maintenance, or renovation to public school systems that have high concentrations of special needs military dependents and are located in States that are considered overseas assignments, and of which 2 percent shall be available to support the administration and execution of the funds: Provided further, That to the extent a federal agency provides this assistance, by contract, grant, or otherwise, it may accept and expend non-federal funds in combination with these federal funds to provide assistance for the authorized purpose, if the non-federal entity requests such assistance and the non-federal funds are provided on a reimbursable basis.*

SEC. 8109. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $400,000,000, to reduce cost growth in information technology development, to be distributed as follows:

"Operation and Maintenance, Defense-Wide", $19,500,000;

"Other Procurement, Army", $53,200,000;

"Other Procurement, Navy", $20,600,000;

"Procurement, Marine Corps", $3,400,000;

"Other Procurement, Air Force", $12,000,000;

"Procurement, Defense-Wide", $3,500,000;

"Research, Development, Test and Evaluation, Army", $17,700,000;

"Research, Development, Test and Evaluation, Navy", $25,600,000;

"Research, Development, Test and Evaluation, Air Force", $27,200,000;

"Research, Development, Test and Evaluation, Defense-Wide", $36,600,000;

"Defense Working Capital Funds", $148,600,000; and

"Defense Health Program", $32,100,000.

SEC. 8110. In addition to the amounts appropriated or otherwise made available in this Act, $4,000,000, to remain available until September 30, 2003, is hereby appropriated to the Department of Defense: Provided, That the Secretary of Defense shall make a grant in the amount of $4,000,000 to the American Red Cross for Armed Forces Emergency Services.

SEC. 8111. None of the funds appropriated in this Act under the heading "Overseas Contingency Operations Transfer Fund" may be transferred or obligated for Department of Defense expenses not directly related to the conduct of overseas contingencies: Provided, That the Secretary of Defense shall submit a report no later than 30 days after the end of each fiscal quarter to the Committees on Appropriations of the Senate and House of Representatives that details any transfer of funds from the "Overseas Contingency Operations Transfer Fund": Provided further, That the report shall explain any transfer for the maintenance of real property, pay of civilian personnel, base operations support, and weapon, vehicle or equipment maintenance.

SEC. 8112. For purposes of section 1553(b) of title 31, United States Code, any subdivision of appropriations made in this Act under the heading "Shipbuilding and Conversion, Navy" shall be considered to be for the same purpose as any subdivision under the heading "Shipbuilding and Conversion, Navy" appropriations in any prior year, and the 1 percent limitation shall apply to the total amount of the appropriation.

SEC. 8113. The budget of the President for fiscal year 2004 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the Overseas Contingency Operations Transfer Fund, the Operation and Maintenance accounts, and the Procurement accounts: Provided, That these budget justification documents shall include a description of the funding requested for each anticipated contingency operation, for each military service, to include active duty and Guard and Reserve components, and for each appropriation account: Provided further, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for ongoing contingency operations, and programmatic data including, but not limited to troop strength for each active duty and Guard and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: Provided further, That these documents shall include budget exhibits OP–5 and OP–32, as defined in the Department of Defense Financial Management Regulation, for the Overseas Contingency Operations Transfer Fund for fiscal years 2002 and 2003.

SEC. 8114. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $59,260,000, to reduce cost growth in travel, to be distributed as follows:

"Operation and Maintenance, Army", $14,000,000;

"Operation and Maintenance, Navy", $9,000,000;

"Operation and Maintenance, Marine Corps", $10,000,000;

"Operation and Maintenance, Air Force", $15,000,000; and

"Operation and Maintenance, Defense-wide", $11,260,000.

SEC. 8115. None of the funds in this Act may be used for research, development, test, evaluation, procurement or deployment of nuclear armed interceptors of a missile defense system.

SEC. 8116. (a) In addition to the amounts appropriated or otherwise made available in this Act, $814,300,000 is hereby appropriated to the Department of Defense for whichever of the following purposes the President determines to be in the national security interests of the United States:

(1) research, development, test and evaluation for ballistic missile defense; and,

(2) activities for combating terrorism.

(b) The total amount appropriated or otherwise made available by this Act is hereby reduced by $814,300,000 to reflect revised economic assumptions: Provided, That the Secretary of Defense shall allocate this reduction proportionately by program, project, and activity: Provided further, That appropriations made available in this Act for the pay and benefits of military personnel are exempt from reductions under this provision.

SEC. 8117. Section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284), is revised by adding the following paragraph (g):

"(g) Notwithstanding any other provision of law, any payments made pursuant to Subsection (c)(3) above may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease is signed.".

TRANSFER OF FUNDS)

SEC. 8118. In addition to the amounts appropriated or otherwise made available by this Act, $300,000,000 is hereby appropriated to the Department of Defense and shall be available only for transfer to the United States Coast Guard.

SEC. 8119. During the current fiscal year, section 2533a(f) of Title 10, United States Code, shall not apply to any fish, shellfish, or seafood product. This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

SEC. 8120. None of the funds appropriated by this Act may be used to convert the 939th Combat Search and Rescue Wing of the Air Force Reserve until 60 days after the Secretary of the Air Force certifies to the Congress the following: (a) that a functionally comparable search and rescue capability is available in the 939th Search and Rescue Wing's area of responsibility; (b) that any new aircraft assigned to the unit will comply with local environmental and noise standards; and (c) that the Air Force has developed a plan for the transition of personnel and manpower billets currently assigned to this unit.

SEC. 8121. NAVY DRY-DOCK AFDL–47 (a) REQUIREMENT FOR SALE.—Notwithstanding any other provision of law, the Secretary of the Navy shall sell the Navy Dry-dock AFDL–47, located in Charleston, South Carolina, to Detyens Shipyards, Inc., the current lessee of the dry-dock from the Navy.

(b) CONSIDERATION.—As consideration for the sale of the dry-dock under subsection (a), the Secretary shall receive an amount equal to the fair market value of the dry-dock at the time of the sale, as determined by the Secretary, taking into account amounts paid by, or due and owing from, the lessee.

SEC. 8122. (a) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY.—If a technology other than the baseline incineration program is selected for the destruction of lethal chemical munitions pursuant to section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1521 note), the program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Bluegrass Army Depot, Kentucky, including management of the pilot-scale facility phase of the alternative technology.

(b) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT PUEBLO DEPOT, COLORADO.—The program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions.

SEC. 8123. From funds made available in this Act for the Office of Economic Adjustment under the heading "Operation and Maintenance, Defense-Wide", $100,000 shall be available for the elimination of asbestos at former Battery 204, Odiorne Point, New Hampshire.

TITLE IX—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

SEC. 901. SHORT TITLE.

This title may be cited as the "Commercial Reusable In-Space Transportation Act of 2002".

SEC. 902. FINDINGS.

Congress makes the following findings:

(1) It is in the national interest to encourage the production of cost-effective, in-space transportation systems, which would be built and operated by the private sector on a commercial basis.

(2) The use of reusable in-space transportation systems will enhance performance levels of in-space operations, enhance efficient and safe disposal of satellites at the end of their useful lives, and increase the capability and reliability of existing ground-to-space launch vehicles.

(3) Commercial reusable in-space transportation systems will enhance the economic well-being and national security of the United States by reducing space operations costs for commercial and national space programs and by adding new space capabilities to space operations.

(4) Commercial reusable in-space transportation systems will provide new cost-effective space capabilities (including orbital transfers from low altitude orbits to high altitude orbits and return, the correction of erroneous satellite orbits, and the recovery, refurbishment, and refueling of satellites) and the provision of upper stage functions to increase ground-to-orbit launch vehicle payloads to geostationary and other high energy orbits.

(5) Commercial reusable in-space transportation systems can enhance and enable the space exploration of the United States by providing lower cost trajectory injection from earth orbit, transit trajectory control, and planet arrival deceleration to support potential National Aeronautics and Space Administration missions to Mars, Pluto, and other planets.

(6) Satellites stranded in erroneous earth orbit due to deficiencies in their launch represent substantial economic loss to the United States and present substantial concerns for the current backlog of national space assets.

(7) Commercial reusable in-space transportation systems can provide new options for alternative planning approaches and risk management to enhance the mission assurance of national space assets.

(8) Commercial reusable in-space transportation systems developed by the private sector can provide in-space transportation services to the National Aeronautics and Space Administration, the Department of Defense, the National Reconnaissance Office, and other agencies without the need for the United States to bear the cost of production of such systems.

(9) The availability of loan guarantees, with the cost of credit risk to the United States paid by the private-sector, is an effective means by which the United States can help qualifying private-sector companies secure otherwise unattainable private financing for the production of commercial reusable in-space transportation systems, while at the same time minimizing Government commitment and involvement in the development of such systems.

SEC. 903. LOAN GUARANTEES FOR PRODUCTION OF COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION.

(a) AUTHORITY TO MAKE LOAN GUARANTEES.—The Secretary may guarantee loans made to eligible United States commercial providers for purposes of producing commercial reusable in-space transportation services or systems.

(b) ELIGIBLE UNITED STATES COMMERCIAL PROVIDERS.—The Secretary shall prescribe requirements for the eligibility of United States commercial providers for loan guarantees under this section. Such requirements shall ensure that eligible providers are financially capable of undertaking a loan guaranteed under this section.

(c) LIMITATION ON LOANS GUARANTEED.—The Secretary may not guarantee a loan for a United States commercial provider under this section unless the Secretary determines that credit would not otherwise be reasonably available at the time of the guarantee for the commercial reusable in-space transportation service or system to be produced utilizing the proceeds of the loan.

(d) CREDIT SUBSIDY.—

(1) COLLECTION REQUIRED.—The Secretary shall collect from each United States commercial provider receiving a loan guarantee under this section an amount equal to the amount, as determined by the Secretary, to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the loan guarantee.

(2) PERIODIC DISBURSEMENTS.—In the case of a loan guarantee in which proceeds of the loan are disbursed over time, the Secretary shall collect the amount required under this subsection on a pro rata basis, as determined by the Secretary, at the time of each disbursement.

(e) OTHER TERMS AND CONDITIONS.—

(1) PROHIBITION ON SUBORDINATION.—A loan guaranteed under this section may not be subordinated to another debt contracted by the United States commercial provider concerned, or to any other claims against such provider.

(2) RESTRICTION ON INCOME.—A loan guaranteed under this section may not—

(A) provide income which is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986; or

(B) provide significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.

(3) TREATMENT OF GUARANTEE.—The guarantee of a loan under this section shall be conclusive evidence of the following:

(A) That the guarantee has been properly obtained.

(B) That the loan qualifies for the guarantee.

(C) That, but for fraud or material misrepresentation by the holder of the loan, the guarantee is valid, legal, and enforceable.

(4) OTHER TERMS AND CONDITIONS.—The Secretary may establish any other terms and conditions for a guarantee of a loan under this section, as the Secretary considers appropriate to protect the financial interests of the United States.

(f) ENFORCEMENT OF RIGHTS.—

(1) IN GENERAL.—The Attorney General may take any action the Attorney General considers appropriate to enforce any right accruing to the United States under a loan guarantee under this section.

(2) FORBEARANCE.—The Attorney General may, with the approval of the parties concerned, forebear from enforcing any right of the United States under a loan guaranteed under this section for the benefit of a United States commercial provider if such forbearance will not result in any cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, to the United States.

(3) UTILIZATION OF PROPERTY.—Notwithstanding any other provision of law and subject to the terms of a loan guaranteed under this section, upon the default of a United States commercial provider under the loan, the Secretary may, at the election of the Secretary—

(A) assume control of the physical asset financed by the loan; and

(B) complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell the physical asset.

(g) CREDIT INSTRUMENTS.—

(1) AUTHORITY TO ISSUE INSTRUMENTS.—Notwithstanding any other provision of law, the Secretary may, subject to such terms and conditions as the Secretary considers appropriate, issue credit instruments to United States commercial providers of in-space transportation services or system, with the aggregate cost (as determined under the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of such instruments not to exceed $1,500,000,000, but only to the extent that new budget authority to cover such costs is provided in subsequent appropriations Acts or authority is otherwise provided in subsequent appropriations Acts.

(2) CREDIT SUBSIDY.—The Secretary shall provide a credit subsidy for any credit instrument issued under this subsection in accordance with the provisions of the Federal Credit Reform Act of 1990.

(3) CONSTRUCTION.—The eligibility of a United States commercial provider of in-space transportation services or systems for a credit instrument under this subsection is in addition to any eligibility of such provider for a loan guarantee under other provisions of this section.

SEC. 904. DEFINITIONS.

In this title:

(1) SECRETARY.—The term "Secretary" means the Secretary of Defense.

(2) COMMERCIAL PROVIDER.—The term "commercial provider" means any person or entity providing commercial reusable in-orbit space transportation services or systems, primary control of which is held by persons other than the Federal Government, a State or local government, or a foreign government.

(3) IN-SPACE TRANSPORTATION SERVICES.—The term "in-space transportation services" means operations and activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another by means of an in-space transportation vehicle.

(4) IN-SPACE TRANSPORTATION SYSTEM.—The term "in-space transportation system" means the space and ground elements, including in-space transportation vehicles and support space systems, and ground administration and control facilities and associated equipment, necessary for the provision of in-space transportation services.

(5) IN-SPACE TRANSPORTATION VEHICLE.—The term "in-space transportation vehicle" means a vehicle designed—

(A) to be based and operated in space;

(B) to transport various payloads or objects from one orbit to another orbit; and

(C) to be reusable and refueled in space.

(6) UNITED STATES COMMERCIAL PROVIDER.—The term "United States commercial provider" means any commercial provider organized under the laws of the United States that is more than 50 percent owned by United States nationals.

This Act may be cited as the "Department of Defense Appropriations Act, 2003".

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, we are now on the Defense appropriations bill. Senator INOUYE worked hard to get to this point, as did Senator STEVENS—not only the ranking member of the subcommittee but the chairman of the full committee.

We would like to move this bill and finish it today. This is a very big bill. It is the largest Defense bill in the history of the country. But it has been worked and worked and worked. I think we are at a point where we should be able to do that.

Senator MCCAIN has indicated he has some amendments. And we are waiting for those, as is Senator INOUYE. If there are other amendments, they should be offered.

We are going to try to wrap this bill up today. There are different ways of doing that. I hope there is cooperation.

Senators INOUYE and STEVENS have agreed to a period of morning business for 12 minutes, and then the bill will be taken up and we will proceed in haste to complete it.

Mr. REID. Madam President, I therefore ask unanimous consent that Senator KERRY and Senator COLLINS each be recognized to speak for up to 6 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Madam President, I thank the distinguished majority leader.

(The remarks of Mr. KERRY are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER (Mr. CLELAND). The Senator from Maine.

(The remarks of Ms. COLLINS are printed in today's RECORD during consideration of S. 812.)

Ms. COLLINS. I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I was looking for an opportunity when the Senator was on the floor to say some things I think are appropriate. I have said this before, but there is no one in the Senate I have more respect and admiration for than the senior Senator from Hawaii.

The reason I wanted to say something today is I have had the opportunity the last many years to serve as ranking member and chairman of the Ethics Committee, which is a difficult job but one that I accept and understand the responsibilities. The situation arose where the Senator from Hawaii was asked by the majority leader to take over the chairmanship of that committee. As has been done on so many different occasions when there was something difficult that had to be done in the Senate, we looked to the Senator from Hawaii to do that. He has never shirked responsibility.

Frankly, there were others who maybe could have or should have done this, but of course we looked to who we thought was the best, someone whose ethical standards are what I think the Senate is all about. I want, on behalf of the Senate, Democrats and Republicans, to express appreciation for stepping into a difficult situation, handling it with grace and handling it in a manner that I think is about as well as anyone could handle things.

Let me complete this by saying we are now taking up the Defense appropriations bill, the largest Defense bill in the history of the country. There is no one who is more capable of handling a bill of this magnitude, dealing with the security and the defense of this country, than a person who is a Congressional Medal of Honor winner for the valor he showed in World War II. The valor he has shown is exemplified by the military awards he has received. He has shown the same valor in the Halls of the U.S. Senate. The people of Hawaii are so, so fortunate to have someone of his caliber, but I say that the people of Nevada are fortunate to have someone such as him serving in the Senate, and that applies to all the other States.

Mr. INOUYE. I am humbled by those very generous remarks. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I was in my office and I heard that the distinguished assistant Democratic leader was speaking about the contribution of our distinguished senior Senator from Hawaii. I wanted to come to the floor to add my voice.

Someday, when the history of this period in the Senate is written, one of those Senators who will tower as one of the giants is the Senator from Hawaii. On so many occasions over the course of his career, the Senate has called upon him to provide leadership in inquiries of all kinds, extraordinary challenges involving the need to work with both sides, somebody whose fairness, whose appreciation of this institution could never be challenged.

I come to the floor to publicly thank him for taking on the extraordinarily difficult role that he had earlier this year when he agreed to my request to serve in the capacity of senior member of the Democratic representation on the Ethics Committee. He didn't want that job. He certainly didn't ask for that job. He knew the difficulty it would pose, and he knew how much time it would consume. But in keeping with his practice, he said yes.

Last night we witnessed the product of his work, along with the others of the committee. I think it is fair to say, without question, he lived up to and exceeded the expectations of all of us in the Senate in conducting the hearings with fairness and dealing with the issue adroitly, and recognizing the important matters and issues that had to be addressed in this inquiry.

I come to the floor simply to add my voice of gratitude to the distinguished Senator from Hawaii. I might also say, as the Senator from Nevada has noted, it is a little ironic, perhaps, that the two men who have given the most in the Senate today to their country at times of war are either sitting in the chair or standing at the manager's desk as we begin the DOD appropriations bill. I know of no two finer men.

I have no greater admiration for any two people in the Senate than I do these two Senators. I thank them for what they have already done for their country and for what they continue to do in the roles they play as truly outstanding U.S. Senators.

I look forward to the debate on Defense appropriations and, as always, we turn to our dear Senator from Hawaii with our admiration and our gratitude and our expressions of hope that we conclude this successfully within the course of the next period of time.

I thank the Senator for accommodating me. I know he wants to get started on his bill, but I needed to come to the floor to express myself, as the Senator from Nevada has as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Very seldom am I at a loss for words, but I must say I am extremely grateful to my leaders for their generous remarks. I am humbled.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, let me ask, briefly, and express my viewpoint concerning DANNY INOUYE and MAX CLELAND. Others have just preceded me in speaking of these two valiant patriots. DANNY INOUYE has always been my hero in the Senate. There was never anyone, in my judgment, greater than DANNY. In our time, or in past times, I think that says about all I need to say about DANNY. He is the ranking Democrat on the Appropriations Committee in the Senate. He has always been a valued supporter of mine when I was majority leader, when I was minority leader, and as chairman of the Senate Appropriations Committee, which I presently am. So he doesn't take second place to anybody in the Senate, as far as I am concerned. As heroes go, he is No. 1.

In recent years, there has come to the Senate the junior Senator from Georgia, MAX CLELAND, who is also my hero. So I have two heroes in the Senate. DANNY is one who has been my hero from the beginning, and MAX CLELAND is my second hero. So I just add that little bit to what has already been appropriately said by Senators REID of Nevada and the majority leader. I don't think I can add anything to that.

Mr. INOUYE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. INOUYE. On behalf of the Presiding Officer and myself, we are humbled by the Senator's generous remarks.

Mr. BYRD. I thank the distinguished Senator from Hawaii.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. REED). Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I know we are going to have opening statements by Senator INOUYE and others. I ask unanimous consent, when we get to amendments, I be allowed to do the first amendment on the DOD appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. What is the request?

The PRESIDING OFFICER. The request is that the Senator be allowed to offer a first-degree amendment at the conclusion of opening statements on the Defense Appropriations Committee bill.

Mr. BYRD. Mr. President, I personally have no objection, but I would like for both managers to be here. I would like for both managers to be here when the request is made.

Mr. WELLSTONE. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Objection to what?

The PRESIDING OFFICER. Objection to the unanimous consent request of the Senator from Minnesota to offer first an amendment upon the completion of the opening statements.

Mr. BYRD. Mr. President, I don't know what the Senator's amendment is. I object, for the moment, just for the moment, until both managers are on the floor.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me take a little bit of time then. I am sorry, I won't proceed if the Senator from Hawaii is ready to make his opening statement. I do not want to take much time. Let me just give my colleagues a sense of what the amendment is. I will try to do that because we come down to the floor and we try to get in order so we can also do some other things.

What the amendment says is that none of the funds made available in this act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001, in a tax haven country.

Basically what I am talking about is the whole question of contracts that go out to companies that have incorporated overseas to avoid U.S. taxes. By the way, knowing this is not in the House bill, I tried to have a very moderate version which is really to not even reach back retroactively but to look at this prospectively.

That is the amendment. My guess is there will be a lot of support for the amendment. Without the unanimous consent agreement, I will wait until after opening statements and then try to seek recognition. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I will at least, even though I do not have assurance of being able to do the first amendment—I will just send the amendment to the desk. Usually what Senators want is for those of us who have amendments to come out here. I am just trying to get going here.

The PRESIDING OFFICER. The number of the amendment is No. 4364, which the clerk has.

Mr. WELLSTONE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, Today I am pleased to report H.R. 5010 to the Senate with the Appropriations Committee's recommendations for funding the Department of Defense for Fiscal Year 2003.

The Bill before the Senate totals $355.4 billion in new appropriations for the Defense Department.

This is the largest spending Bill the Senate has ever considered. It is $35 billion more than was approved for FY 2002 and nearly $700 million more than recommended by the House last month. In light of the threat to this Nation, I believe the increase is well warranted.

I want to point out to my colleagues that while the Bill is the highest in history, the total recommended is still $11.4 billion below the President's request.

A request for $10 billion was originally presented by the President for contingency costs for the global war on terrorism.

This amount is being withheld by the Appropriations Committee to be allocated at a later date.

On July 3, the President submitted a sketch of how he would like these funds appropriated. Unfortunately, no details on the use of the funds were provided. Therefore, the Committee has not allocated the funding to the Subcommittee yet.

I should point out that the measure that passed the House also did not address the $10 billion contingency amount.

Over the next several months we will work with the Administration to identify the specific needs for this funding.

We expect that a supplemental Bill will be forthcoming to allocate the full $10 billion to DoD.

The remaining $1.4 billion decrease reflects transfers made to other defense related activities to cover pressing requirements for military construction and nuclear weapons related programs in the Department of Energy. These are not under the jurisdiction of the Defense Subcommittee.

The priorities for this Bill remain the same as last year. First and foremost, we must ensure that we provide what the men and women in uniform need. To that end, we have fully funded the request for a 4.1% across-the-board pay raise; funded the newly authorized benefits for our military; provided funding to cover the authorized end strength for our Active, Guard, and Reserves; funded the Tricare for Life program for our military retirees; and, fully funded the Defense Health Program.

Second, we have included funding for all the Defense Department's transformation programs.

We recommend full funding for the Army's Interim Armored Vehicle. We have increased funding for unmanned aerial vehicles. We recommend an increase of $278 million in the Army's future combat system.

And we provide an additional $70 million to support the planning and deployment of the New Interim Army Brigade Combat Teams and strongly encourage the Defense Department to deploy all six Brigades.

Third, we recommend funding all the investment priorities of the Defense Department. This includes full funding for the F–22, full funding for the Navy's DDX, increased funding for four more F/A–18 aircraft, full funding for 15 C–17 aircraft, full funding for V–22 aircraft purchases, and increasing funding for Navy shipbuilding.

Fourth, a major initiative in funding for the bill is to improve fiscal discipline in the Department of Defense. This Committee and our colleagues in the House have been concerned for several years with the increased cost growth in Navy ships. This year alone the total unfunded liability for the Navy in this area has increased by $1 billion to $4 billion.

The Committee has carefully reviewed the request and reallocated resources that are not required at this time, in order to increase funding to pay off these existing bills. In total, the Committee recommends $1.4 billion to cover these must pay bills. We have discussed this matter with Navy officials and they concur that this is the best approach to get their financial house in order.

Fifth, the bill recommends adding $585 million to purchase 15 C–17 aircraft. The Air Force recommended a risky scheme, already rejected by the House, to finance the C–17 Program incrementally. This proposal could have required us to cut C–17 production to 12. The recommendation will ensure that we continue to produce 15 C–17's under the approved multi-year contract.

Sixth, the Committee has mirrored the recommendations approved by the Senate regarding ballistic missile defense. The bill provides $6.9 billion for ballistic missile defense programs. In addition, as authorized, the Committee recommends $814 million to be allocated at the discretion of the President for either counterterrorism or missile defense.

In total, the $7.7 billion recommendation is the same as requested by the Administration.

Finally, I want to thank my Co-Chairman, Senator STEVENS and all of his hard work on this bill. The Committee held 12 hearings to review the Defense Department's budget.

The recommendations that we have put forward here reflect what we learned in those hearings, and in our meetings with senior DoD officials and members of the public.

I believe this is a very good bill and urge your support.

Mr. STEVENS. Mr. President, I endorse the statement made by the Distinguished Chairman of our Subcommittee, Senator INOUYE, and fully support the Bill now pending before the Senate. In a time of war and conflict, including unprecedented threats here at home, the Senate engages in no more important task than funding our national defense. The Bill reported by the Committee, under Senator INOUYE's leadership and guidance, fully meets the needs of our men and women who serve in the Armed Forces, today and for the future.

The Bill exceeds the level provided in the House version of the Bill by nearly $700 million.

The Bill is consistent with the President's total request for the defense budget function 050, with the exception of the $10 billion reserve, which I will speak to shortly.

The Chairman has accurately and comprehensively addressed the contents of the Bill, I will take just a few moments to highlight several priorities. While providing unprecedented levels of funding for current training and operations, this Bill serves to decisively move our military towards a future of more mobile, more lethal, and more efficient systems and capabilities. In all four services, and in the Missile Defense Program, this Bill shifts from the sustainment of legacy systems, designed to fight the Cold War, to the technologies of the 21st Century.

For the Army, the increase in this Bill for the future combat system, and the Non-Line-of-Sight Cannon to succeed the Crusader, keeps faith with General Shinseki's vision of the Army's future.

For the Navy, full funding for the DD–X Program, and start up funds for the Littoral Combat Ship, prepare the Navy to maintain our dominance at sea.

For the Air Force, funding for the F–22, the JSF, C–17, and JASSAM all contribute to a refurbishment of the Air Force unmatched since the introduction of the jet fighter in the 1950's.

For the Marine Corps, the Bill fully supports the V–22, and puts the LPD–17 Class Amphibious Assault Ship Program back on track, along with JSF.

Of special importance to me, and my State, is the funding provided in the Bill for missile defense. Intelligence analyses over the past decade consistently demonstrate the increased threat, and our continued vulnerability to long-rang missile attack, potentially with weapons of mass destruction. President Bush, in a new relationship with Russia, has established a framework whereby our Nation will go forward with a limited missile defense capability, without putting at risk our relations with Russia.

Many claimed that deployment of U.S. national missile defense systems would precipitate a new arms race. That speculation has proven to be without basis or merit.

Last week, several Members met with our Supreme Allied Commander in Europe, Gen. Joe Ralston, who spoke positively about the new ties between NATO and Russia.

Greater security for our Nation fosters greater security and stability for our allies and emerging partners.

This Bill accommodates the priorities presented by the President and the Secretary of Defense to the Congress.

The Bill lives within the fiscal limits set by our Committee in the absence of a budget resolution.

The Bill addresses the key priorities raised in the Senate's consideration of the Defense Authorization Bill for Fiscal Year 2003.

I urge all Members to work with the Chairman today to accomplish the expeditious consideration and passage of this Bill.

Consistent with the allocation adopted by the Appropriations Committee, by unanimous vote, I will oppose any amendment that would increase the spending level in this Bill.

We have been working with Members since the Bill was filed to address additional concerns, and will proceed to a number of cleared amendments shortly.

I will close by expressing by appreciation to the Chairman for his partnership, colleagiltiy and courtesy at every state in the preparation of this Bill.

I support the Bill with reservation or qualification, and urge all my Colleagues to join advancing this Bill to Conference today.

Mr. INOUYE. Mr. President, I believe the Senator from Minnesota wishes to be recognized.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

AMENDMENT NO. 4364

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4364.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit the use of funds made available in this Act for payment on any new contract to any corporate expatriate)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

Mr. WELLSTONE. Mr. President and colleagues, I offer a very simple amendment that would bar any funds in this bill from being used to enter contracts with U.S. companies that incorporate overseas to avoid U.S. taxes. Let me repeat that. I rise to offer a very simple amendment that I believe will command a majority vote—I hope more than a majority vote—in the Senate that would bar any funds in this bill from being used to enter contracts with U.S. companies that incorporate overseas to avoid U.S. taxes.

Former U.S. companies that have renounced their citizenship currently hold at least $2 billion worth of contracts with the Federal Government. I do not think companies that are not willing to pay their fair share of taxes should be able to hold these contracts.

U.S. companies that play by the rules of the game, that pay their fair share of taxes, should not be forced to compete with bad actors that can undercut their bids because of a tax loophole.

In the last couple of years, a number of prominent U.S. corporations, using creative paperwork, have transformed themselves into Bermuda corporations, purely to avoid paying their fair share of U.S. taxes.

These new Bermuda companies are essentially or basically shell corporations. They have no staff. They have no offices. They have no business activity in Bermuda. They exist for the sole purpose of shielding income from the Internal Revenue Service.

U.S. tax law contains many provisions designed to expose such creative accounting and to require U.S. companies that are foreign in name only to pay the same taxes as other domestic corporations. But these bad corporate former citizens exploit a specific loophole in current law so that the company is treated as foreign for tax purposes and, therefore, pays no U.S. taxes on its foreign income.

The loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business. It also puts other U.S. companies unwilling or unable to use this loophole at a competitive disadvantage. No American company should be penalized staying put while others renounce U.S. citizenship for a tax break.

The problem with all this is that when these companies do not pay their fair share, the rest of the American taxpayers and businesses are stuck with the bill.

I think I can safely say that very few of the small businesses that I visit in Detroit Lakes, MN, or Mankato or Minneapolis or Duluth can avail themselves of the "Bermuda Triangle." They cannot afford the big-name tax lawyers and accountants to show them how to do their books Enron-style, but they probably would not want to anyway if it meant renouncing their citizenship. So the price they pay for their good citizenship is a higher tax bill.

I believe the Congress will close this tax loophole this year. There is growing support for doing so in the House. And I have introduced legislation to close this loophole, and the Senate Finance Committee has reported a version of this legislation, that I strongly support, that would do so as well.

I say to the distinguished chair of the Appropriations Subcommittee on Defense, it is not appropriate for the Senate to close the tax loophole on this bill. This is not a tax bill, and I understand that. Frankly, I think the tax legislation that is going to pass is going to make it clear that any company that is located in Bermuda forthwith, no matter when they incorporated, they are not going to be able to do it any longer. They are not going to be able to do it. We are going to close that tax loophole.

But what is appropriate for us to say today—and this is my moderate version; this is the Senator WELLSTONE moderate version—what is appropriate for us to say today is, if a U.S. company wants to bid for a contract for U.S. defense work, it should not renounce its U.S. citizenship for a tax break.

I am simply applying this to any corporation that incorporated after December 31, 2001. I am not even reaching back. I am saying, look, everyone has had the time now to understand, first, the unfairness and the outrageousness of this from the point of view of who pays taxes, who pays their fair share of taxes; and, second, everybody has had the time to now understand what 9/11 meant to us, and any company, with that background, that now continues to engage in this egregious practice—after December 31, 2001, and in the future—that is going to basically say, "We are renouncing our U.S. citizenship so we don't have to pay taxes," no longer will be eligible for any procurement. That really is what this amendment says.

We all make sacrifices in a time of war. The only sacrifice this amendment asks of Federal contractors is that they pay their fair share of taxes like everybody else.

I say to my colleagues—and I say to the distinguished chair of the committee—that, look, I want to go after this tax loophole. Believe me, we will eliminate it. We will do it through the tax committee.

In the homeland defense bill on the House side, there is a tougher version that reaches back. But I know in the House Defense appropriations bill there is no such provision such as the provision I am offering today.

So what I am saying to my colleagues—I guess I have a little bit more; maybe it is because I am a Senator; maybe it is because of party control, I don't know—I have a little bit more faith in what we will do here. What I am saying to my colleagues is, I am giving you the moderate version. I am giving you the most reasonable proposition.

We are only saying to Federal contractors: Pay your fair share of taxes as does everybody else, and for now on—December 31, 2001, and forward—any of you companies, if you want to go to Bermuda and play this shell game and renounce your citizenship, then you are not going to get our defense contracts. You are not going to get any of the procurement.

This is really simple. This is really basic. This is really straightforward. I think it would be a great shot across the bow and a really powerful message, a really powerful and positive message, by the Senate to go on record with a strong vote for this amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I hope the Senator agrees that this amendment can be set aside temporarily to accommodate the request of the chairman of the Finance Committee who wishes to study the measure.

I can assure you, sir, this matter will be considered.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say to my colleague from Hawaii, I would be pleased to honor his request. I also know that our colleague, Senator STEVENS, from Alaska has an important engagement at the White House and will not be here for a while anyway and requested that he be here before there be any vote. So we can set this amendment aside.

The only thing I want to say to my colleague from Hawaii is, I am certainly pleased for the Finance Committee people to look at this amendment. We will continue the debate, and we will have a vote. We will have a recorded vote. I worked hard on what could be the most central, simple, compelling message that also is fair—maybe almost too fair, frankly—to some of these companies. This is the proposition. This is the proposal.

So it is fine with me to put it aside, understanding full well that we will continue the debate and have an up-or-down vote.

Mr. INOUYE. With that understanding, I ask unanimous consent that this measure be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 4373 THROUGH 4386, EN BLOC

Mr. INOUYE. Mr. President, I have a list of amendments. These amendments have been cleared by both managers and their staffs. No objections have been voiced. Furthermore, these amendments do not add a single dollar to the bill. These are earmarks.

With that, the first amendment on behalf of Senator ALLEN; variable floor rocket propulsion, earmarking $5 million; next amendment for Senator BREAUX, naval warfare tech center, earmarking $7 million; The next amendment for Senator BENNETT, Army Tooele Depot, earmarking $4.5 million; Next amendment for Senator CLELAND, microelectronics, earmarking $3 million; Next amendment for Senator COLLINS, TRP composites, earmarking $2 million; Next amendment for Senator CONRAD, Internet-based diabetes management, earmarking $5 million; Next amendment for Senator DAYTON, live fire ranges, earmarking $3.7 million; Amendment for Senator DEWINE, Army weapon materials, earmarking $5 million; Next amendment for Senator ENSIGN, PRC-117 radios, earmarking $500,000; Next amendment for Senators Frist and Thompson, expandable light shelters, earmarking $5 million; Next amendment for Senator KYL, extended range warfare, earmarking $10 million; Next amendment for Senator SANTORUM and Senator SPECTER, land forces readiness, earmarking $3 million; Next amendment for Senators SANTORUM and SPECTER, civil reserve space, earmarking $1 million; Next amendment for Senators VOINOVICH and DEWINE, viable combat avionics, earmarking $2 million.

Mr. President, I send the amendments to the desk en bloc and ask that they be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 4373 through 4386) were agreed to en bloc, as follows:

AMENDMENT NO. 4373

(Purpose: To make available from amounts available for the Air Force for research, development, test, and evaluation $5,000,000 for the Variable Flow Ducted Rocket propulsion system (PE063216F)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $5,000,000 may be available for the Variable Flow Ducted Rocket propulsion system (PE063216F).

AMENDMENT NO. 4374

(Purpose: To set aside funding under RDT&E, Navy, for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", $7,000,000 may be used for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center.

AMENDMENT NO. 4375

(Purpose: To set aside from amounts available from H.R. 4775 to settle the taking of property adjacent to the Army Tooele Depot)

At the appropriate place in the bill, add the following:

SEC. . Of the amounts appropriated in H.R. 4775, Chapter 3, under the heading "DEFENSE EMERGENCY RESPONSE", up to $4,500,000 may be made available to settle the disputed takings of property adjacent to the Tooele Army Depot, Utah.

AMENDMENT NO. 4376

(Purpose: To make available from amounts available for Defense-Wide research, development, test, and evaluation, $3,000,000 for execution of the ferrite diminishing manufacturing program by the Defense Micro-Electronics Activity)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $3,000,000 may be available for execution of the ferrite diminishing manufacturing program by the Defense Micro-Electronics Activity.

AMENDMENT NO. 4377

(Purpose: To set aside from amounts available for the Navy for research, development, test, and evaluation, $2,000,000 for Structural Reliability of FRP Composites (PE0602123N))

In title IV under the heading "RESEARCH DEVELOPMENT, TEST, AND EVALUATION, NAVY," insert before the period the following: "Provided further, That of the funds appropriated by this paragraph, up to $2,000,000 may be available for Structural Reliability of FRP Composites.

AMENDMENT NO. 4378

(Purpose: To set aside from amounts available for the Army for research, development, test, and evaluation, $5,000,000 for the Medical Vanguard Project to expand the clinical trial of the Internet-based diabetes managements system under that project)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $5,000,000 may be available for the Medical Vanguard Project to expand the clinical trial of the Internet-based diabetes managements system under that project.

AMENDMENT NO. 4379

(Purpose: To make available from amounts available for the Army for operation and maintenance, $3,700,000 for Live Fire Range Upgrades)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AMOUNT AVAILABLE FOR LIVE FIRE RANGE UPGRADES.—Of the amount appropriated by title II under the heading OPERATION AND MAINTENANCE, ARMY", up to $3,700,000 may be available for Live Fire Range Upgrades.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

AMENDMENT NO. 4380

(Purpose: To set aside funding under RDT&E, Army, for materials joining for Army weapon systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY", up to $5,000,000 may be used for materials joining for Army weapon systems.

AMENDMENT NO. 4381

(Purpose: To make available from amounts available to the Army for other procurement $500,000 for PRC–117F SATCOM backpack radios)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by III under the heading "OTHER PROCUREMENT, ARMY", up to $500,000 may be available for PRC–117F SATCOM backpack radios.

AMENDMENT NO. 4382

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by this division for "OPERATION AND MAINTENANCE, ARMY", up to $5,000,000 may be used for Expandable Light Air Mobility Shelters (ELAMS).

AMENDMENT NO. 4383

(Purpose: To set aside from amounts available for the Navy for research, development, test, and evaluation for Extended Range Anti-Air Warfare)

At the appropriate place in the bill, add the following:

SEC. . Of the amounts appropriated by Title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $10,000,000 may be made available for extended range anti-air warfare.

AMENDMENT NO. 4384

(Purpose: To set aside from amounts available for the Army Reserve for operation and maintenance $3,000,000 for Land Forces Readiness for Information Operations Sustainment)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY RESERVE", up to $3,000,000 may be available for Land Forces Readiness for Information Operations Sustainment.

AMENDMENT NO. 4385

(Purpose: To set aside from amounts available for the Air Force for research, development, test, and evaluation $1,000,000 for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $1,000,000 may be available for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative.

AMENDMENT NO. 4386

(Purpose: To set aside funding under RDT&E, Air Force, for the Viable Combat Avionics Initiative of the Air Force)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE", $2,000,000 may be used for the Viable Combat Avionics Initiative of the Air Force.

Mr. INOUYE. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. REID. Mr. President, the staff of Senator INOUYE and Senator STEVENS are working on amendments that have been submitted to them. We have nothing that is imminent on which the committee can work.

I ask unanimous consent that the Senate stand in recess until 3:30 p.m.

There being no objection, the Senate, at 2:52 p.m., recessed until 3:30 p.m. and reassembled when called to order by the Presiding Officer (Mrs. MURRAY).

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Madam President, I ask unanimous consent that I be permitted to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DODD are printed in today's RECORD under "Morning Business.")

Mr. INOUYE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

AMENDMENT NOS. 4400 THROUGH 4411, EN BLOC

Mr. INOUYE. Madam President, I will be sending to the desk shortly a set of amendments. None of these amendments would add any money to the bill. They are either earmarks or technical amendments. All of these amendments have been cleared by both managers.

I will explain these amendments before I send the amendments to the desk. First, the Bingaman amendment is earmarking $2.5 million for the Maglev upgrade program. An amendment for Senator DORGAN is earmarking $10 million for the Chameleon miniaturized wireless systems; An amendment for Senator MURRAY is earmarking $7 million for short pulse laser development; An amendment for Senator REID is earmarking $4 million for clean-bio consequence management; An amendment for Senator WARNER is earmarking $5 million for study of a roadway at Fort Belvoir; An amendment for Senator DODD is earmarking $5 million for microfuel cell research; An amendment for Senator NICKLES is earmarking $3 million for supercritical water systems explosive demilitarization technology; An amendment for Senator ROBERTS is earmarking $1 million for agroterrorism research; An amendment for myself is for making a technical correction to the emergency supplemental to correct an editorial mistake; An amendment for Senator COLLINS makes a technical correction to the emergency supplemental; An amendment for Senator CARPER is earmarking $8 million for biological warfare training; An amendment for Senator BIDEN is earmarking $5 million for multifuel auxiliary power units.

I send to the desk these amendments and ask unanimous consent they be agreed to, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 4400 through 4411) were agreed to en bloc as follows:

AMENDMENT NO. 4400

(Purpose: To set aside from amounts available for the Air Force for research, development, test, and evaluation for Major T&E Investment (PE0604759F), $2,500,000 for the Maglev upgrade program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, and EVALUATION, AIR FORCE" and available for Major T&E Investment up to $2,500,000 may be available for the Maglev upgrade program.

AMENDMENT NO. 4401

(Purpose: To provide funds for the Chameleon Miniaturized Wireless System)

At the appropriate place in the bill, insert the following:

"Of the funds appropriated under the heading 'RDT&E, Defense Wide', $10,000,000 may be made available for the Chameleon Miniaturized Wireless System."

AMENDMENT NO. 4402

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation, $9,000,000 for continuing design and fabrication of the industrial short pulse laser development-femtosecond laser)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AVAILABILITY OF AMOUNT FOR INDUSTRIAL SHORT PULSE LASER DEVELOPMENT.—Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $7,000,000 may be available for continuing design and fabrication of the industrial short pulse laser development–femtosecond laser.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

AMENDMENT NO. 4403

(Purpose: To make available from amounts available to the Navy for research, development, test, and evaluation $4,000,000 for Marine Corps program wide support (PE0605873M) for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electro-chemically activated solution (ECASOL))

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $4,000,000 may be available for Marine Corps program wide support for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electro-chemically activated solution (ECASOL).

(b) The amount available under subsection (a) for the program element and purpose set forth in that subsection is in addition to any other amounts available under this Act for that program element and purpose.

AMENDMENT NO. 4404

(Purpose: To require a preliminary engineering study and environmental analysis of establishing a connector road between United States Route 1 and Telegraph Road in the vicinity of Fort Belvoir, Virginia, and to earmark $5,000,000 for the Army for operation and maintenance for that preliminary study and analysis)

At the end of title VIII, add the following:

SEC. 8124. (a) PRELIMINARY STUDY AND ANALYSIS REQUIRED.—The Secretary of the Army shall carry out a preliminary engineering study and environmental analysis regarding the establishment of a connector road between United States Route 1 and Telegraph Road in the vicinity of Fort Belvoir, Virginia.

(b) FUNDING.—Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY", up to $5,000,000 may be available for the preliminary study and analysis required by subsection (a).

AMENDMENT NO. 4405

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation $5,000,000 for research on miniature and micro fuel cell systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $5,000,000 may be available for research on miniature and micro fuel cell systems.

AMENDMENT NO. 4406

At the appropriate place in the bill, insert the following:

Of the funds appropriated in the Act under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE" up to $3,000,000 may be made available for the Supercritical Water Systems Explosives Demilitarization Technology.

AMENDMENT NO. 4407

(Purpose: To appropriate, with an offset, $1,000,000 for research, analysis, and assessment of federal, state, and local efforts to counter potential agroterrorist attacks)

At the end of Title IV, Research, Development, Test & Evaluation, Defense Wide, add the following:

SEC. AGROTERRORIST ATTACK RESPONSE.

(a) AVAILABILITY.—(1) Of the amount appropriated under Title IV for RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE, the amount available for basic research, line 8, the Chemical and Biological Defense Program (PE 0601384BP) is hereby increased by $1,000,000, with the amount of such increase to be available for research, analysis, and assessment of federal, state, and local efforts to counter potential agroterrorist attacks.

(2) The amount available under paragraph (1) for research, analysis, and assessment described in that paragraph is in addition to any other amounts available in this Act for such research, analysis, and assessment.

(b) OFFSET.—Of the amount appropriated under Title IV for RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE, the amount available for Agroterror prediction and risk assessment, line 37, Chemical and Biological Defense Program (PE 0603384BO), is hereby reduced by $1,000,000.

AMENDMENT NO. 4408

(Purpose: To make a technical correction to the supplemental appropriation for fiscal year 2002)

On page 223, between lines 20 and 21, insert the following:

Effective upon the enactment of the Act entitled "An Act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes", section 309 of such Act is amended by striking "of" after the word "instead".

AMENDMENT NO. 4409

(Purpose: To provide for the transition of the naval base on Schoodic Peninsula, Maine, to utilization as a research and education center for Acadia National Park)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may modify the grant made to the State of Maine pursuant to section 310 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–____) such that the modified grant is for purposes of supporting community adjustment activities relating to the closure of the Naval Security Group Activity, Winter Harbor, Maine (the naval base on Schoodic Point, within Acadia National Park), and the reuse of such Activity, including reuse as a research and education center the activities of which may be consistent with the purposes of Acadia National Park, as determined by the Secretary of the Interior. The grant may be so modified not later than 60 days after the date of the enactment of this Act.

AMENDMENT NO. 4410

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $8,00,000 for the Integrated Biological Warfare Technology Platform)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $8,000,000 may be available for the Integrated Biological Warfare Technology Platform.

AMENDMENT NO. 4411

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation $5,000,000 for the Rotary, Multi-Fuel, Auxiliary Power Unit)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $5,000,000 may be available for the Rotary, Multi-Fuel, Auxiliary Power Unit.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. WELLSTONE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4364

Mr. WELLSTONE. Madam President, I am not going to call up the amendment yet, unless the managers are ready to do so. If they are, I will. I call up amendment No. 4364.

Madam President, I have spoken on this amendment and I wait for other Senators to come to the floor. It is a very simple amendment. What it would do is bar the funds in this bill from being used to enter into contracts with U.S. companies who incorporate overseas to avoid U.S. taxes. Madam President, I went over this amendment before.

Let me add a couple of points so my colleagues know what my thinking is.

As I said, I wanted to keep it very simple. I want to keep it very basic and very straightforward, and I think very fair.

I think there are two issues here. One of them has to do with tax fairness or tax unfairness. I think it is absolutely maddening when people in our country see U.S. corporations using creative paperwork and then transforming themselves into Bermuda corporations so they do not have to pay their fair share of U.S. taxes.

What I am saying is if these companies, post-December 31, 2001, have engaged in such a practice, and they no longer call themselves U.S. citizens, then they are not beneficiaries of U.S. defense contracts. My thinking about this is as follows: I am thinking to myself, we are all aware of 9/11 and what it meant to our country. I have given companies time to respond in the positive to 9/11 and be the best of good corporate citizens, be the best of good, patriotic corporate citizens. I even allowed some lag time after 9/11. But what I am saying is starting the beginning of this year, if any of these companies have engaged in the same sham practices so they do not have to pay U.S. taxes, they are not going to be the beneficiary of the public contracts. It really is that simple.

We all make sacrifices. God knows, many Americans are making sacrifices today. The only sacrifice this amendment asks of Federal contractors is they pay their fair share of taxes like everybody else, and at the very minimum, given 9/11 and how strongly our country feels, no corporation from the beginning of the year on, engage in this kind of deceitful practice.

This is a narrowly tailored amendment; this is not a tax bill. Not in the spirit of bragging but I will just say it, I know at least the first piece of legislation that eliminated this tax loophole I wrote, and we sent it to the Finance Committee. They did good work. The have done great work. They reported out a bill that basically eliminates this egregious loophole.

But what I am saying is until that loophole is eliminated, and no company is able to engage in this practice, what a great message for the Senate to send.

When the homeland defense bill comes to the floor, I will join forces with other colleagues—I am sure Senator LIEBERMAN and others—and we will do something parallel to what was done, to my understanding, in the House of Representatives. But right now on this appropriations bill, knowing full well the House did not take any action, I am trying to be a legislator here. I thought to myself: I will narrowly tailor it. I will have it speak specifically to this 1-year appropriations bill. It will send a very unmistakable message. And I believe this amendment will command widespread support.

I do not know whether we will have unanimous consent. The distinguished chair of the Defense Appropriations Committee tells me there is some opposition, in which case I am pleased to have the debate. Then we will have a vote after the debate.

Again, this is the second time I have come to the floor. I want to be clear what this amendment is about and what it is not about. I hope there will be very strong support on both sides of the aisle for this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, in order to expedite the consideration of this amendment, a call has been placed for Senators interested in this matter to report to the floor to carry out the debate.

May I ask a question of the sponsor of this measure? By "tax haven country," does the Senator mean countries such as Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibralter, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation, primarily for the purpose of avoiding U.S. taxation?

Mr. WELLSTONE. I say to the chairman, that is correct. I make it clear the Secretary of the Treasury, in addition to listing those countries, if there is another country that he determines is using this site of incorporation primarily to avoid U.S. taxation, that is included.

Mr. INOUYE. The Senator's amendment also provides if the President of the United States should consider that the interests of national security would require it, notwithstanding this designation, they may do business?

Mr. WELLSTONE. That is correct. I thank the chairman.

Mr. INOUYE. How many companies are involved?

Mr. WELLSTONE. I say to the distinguished chair, I do not really know. Since I am talking about from the beginning of this year on, I do not know how many companies are actually going to be affected by this. I do not reach back. I just simply say, post beginning of this year, it is completely inappropriate, given 9/11, given how everybody feels in the country. I don't know how many companies are affected. I want to put every company on notice if they continue in this practice they are not going to get the contracts.

Mr. INOUYE. May I ask another question.

Mr. WELLSTONE. Please.

Mr. INOUYE. Am I correct, in the last fiscal year, approximately $2 billion worth of contracts were awarded to companies incorporated in these countries?

Mr. WELLSTONE. The Senator is correct.

Mr. INOUYE. I thank the Senator.

Mr. WELLSTONE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? At the moment there is not.

Mr. INOUYE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, it is my understanding that the Senate is considering the Wellstone amendment. Is that true?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 4412 TO AMENDMENT NO. 4364

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4412 to amendment No. 4364.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 4412

(Purpose: To prohibit the use of funds made available in this Act for payment on any new contract to any corporate expatriate)

Strike all after the first word:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation is incorporated after December 31, 2002 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

(d) Effective one day after enactment.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, there are colleagues who may very well have some technical suggestions that don't change the import of this amendment one bit. I certainly invite their consultation and their support which would help strengthen the amendment.

My understanding is that there may eventually be a vote to table the amendment. I do not know. If so, I want to make sure one more time that I am crystal clear about what this amendment does and what it doesn't do.

It is a simple amendment. It bars any funds in this bill from being used to enter into contracts with U.S. companies that incorporate overseas to avoid U.S. taxes. It is really simple.

Former U.S. companies that have renounced their citizenship—and Senator INOUYE asked me about this—currently hold at least $2 billion worth of contracts with the Federal Government.

It seems to me the companies that play by the rules and that pay their fair share of taxes should not be forced to compete with the bad actors that undercut the bids through a tax loophole. I am saying, put on notice all U.S. companies post-January 1: If you engage in this egregious practice post-9/11 and you set up some sham business in Bermuda, et al, and therefore you don't pay any U.S. taxes, you don't get any defense contracts.

I do not know. Maybe Senators want to vote against this proposition. But I will tell you that this is pretty simple and it is pretty straightforward.

These companies—and we know all about it—transform themselves into Bermuda companies, which are basically shell corporations. They don't have any staff. They don't have any offices. They don't have any business activity. They exist for the sole purpose of shielding income from the IRS.

What these bad corporate former citizens do is exploit a specific loophole in current law so that the company is treated as a foreign company for tax purposes, and therefore they do not pay any U.S. taxes on the foreign income. This loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business.

It also puts other companies that play by the rules at a complete disadvantage. No American company, colleagues, should be penalized by staying put. For now on—reaching back to the beginning of this year—no American company should be penalized for staying put in our country while others decide they are going to renounce U.S. citizenship for a tax break. It is just simply unacceptable.

I said it before, and I will say it again, there are a heck of a lot of businesses in Minnesota—small businesses and otherwise—that, No. 1, wouldn't do it even if they could; and, No. 2, surely they do not have all of the lawyers and accountants to show them how to do their books Enron-style and get away with not paying their fair share of taxes. So the only price all the good corporate citizens pay—of which there are many—is a higher tax bill.

I think we should close this loophole this year. I think we should close the tax loophole this year. As I said before, I wrote a piece of legislation to do that. I have worked with the Finance Committee. The Finance Committee, through the bipartisan work of Senator BAUCUS and Senator GRASSLEY, has reported out a good piece of legislation. And assuming it passes, this tax loophole will be gone.

But it seems to me, while this piece of legislation is on the floor, for this 1 year, what a powerful and positive message for us to send which is, again, post-December 31, 2001—I don't even reach back—I give companies enough time to respond to 9/11, and say: Wait a minute, this is not the right thing to do or patriotic thing to do. But I will tell you something, post-December 31st of last year, if a U.S. company has set up a sham corporation, so it does not have to pay part of its fair share of taxes, it is not going to be eligible for defense contracts. It is really that simple.

So, again, I don't see colleagues out here to debate this. I understand there is opposition. I say to both of my colleagues, Senator INOUYE and Senator STEVENS, I am certainly not trying to delay the passage of this overall Defense appropriations bill.

I think I have a good amendment on the floor, and I look forward to debate or I would look forward to constructive suggestions from other Senators if they think there is a way to strengthen this amendment.

I am not backing off on the basic proposition here. I am not backing off on the basic proposition. And the basic proposition, again—and I think we are going to do the same thing on the homeland defense bill. It was done in the House. In fact, it was broader, more sweeping on the House side on homeland defense.

This is 1 year. This is Department of Defense appropriations. This is not a tax amendment that I have offered to this piece of legislation. That would not be appropriate. But I do think it is appropriate to put every single U.S. corporation on notice, forthwith, reaching back to the beginning of this year, given the unfairness of this, given the obviousness of the ways in which companies are not paying their fair share of taxes, and, more importantly, given all that has happened to our country post 9/11: You are not going to be able to do this any longer. And if you do, you are not going to then be able to come to the U.S. Department of Defense and get defense contracts.

That is what this amendment says. It is simple. It is straightforward. I am, frankly, at a loss to understand the opposition.

Senator INOUYE asked me an important question. He wanted to go over some of the countries, some of the tax-haven countries that were listed here. And we went through them.

But there is also additional language that says there could be other countries that the Secretary of Treasury determines have been used as a site of a corporation primarily for the purpose of avoiding U.S. taxation. So we really write it the right way.

Then, of course, there is the waiver where the President may waive this with respect to any specific contract if the President certifies to the Appropriations Committees of the House and the Senate that the waiver is required in the interest of national security.

I will tell you something: This is very straightforward. I thank my colleague from Hawaii for asking me these questions. I would love to adopt this on a 100-to-0 vote or to have a debate if colleagues want to come out here and speak against this amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I would like to ask some questions to my friend, the distinguished Senator from Minnesota. Are you aware of some of the Federal contracts that corporate runaways now hold? Let me give an example. Are you aware that Foster Wheeler, who was reincorporated in Bermuda about a year ago, has Federal contracts amounting to $286,253,000?

Mr. WELLSTONE. Mr. President, I would say to the whip that I have here a list of corporate runaways, and I am aware of this one of many egregious examples.

Mr. REID. To run through some of these to kind of get a picture of the substance of the Senator's amendment, is the Senator aware that Tyco Company reincorporated in Bermuda and has Federal contracts of $224 million-plus in Fiscal Year 2001 alone?

Mr. WELLSTONE. I am aware of that.

Mr. REID. Is the Senator aware that PricewaterhouseCoopers Monday, who spun off of PricewaterhouseCoopers of New York and incorporated in Bermuda a couple of months ago, has Fiscal Year 2001 Federal contracts of almost $221 million? Is the Senator aware of that?

Mr. WELLSTONE. I say to my colleague, unfortunately, I have the same list with many egregious examples.

Mr. REID. I would like the Senator to acknowledge if we have the same list; for example, Ingersoll-Rand, which reincorporated 6, 7 months ago in Bermuda, has Fiscal Year 2001 Federal contracts of over $40 million?

Mr. WELLSTONE. I am aware of this. Could I just add, I am aware of this, but more importantly, the American citizens are aware of this, and people don't like it one bit. People feel as if, first of all, it is just outrageous in terms of tax evasion. And, second of all, it is a loophole that should not be about. People say, look, boy, this is the opposite of the right and patriotic thing to do.

Mr. REID. I will not go through the entire list because the Senator and I both have the same list. It was compiled by the Federal Procurement and Data Center off their Web site. The amounts are over $1 billion, just on this short list we have, of companies that go to Bermuda and avoid paying taxes like other companies that are incorporated in the United States and work hard and pay their fair share of taxes. I certainly applaud the Senator's amendment. I hope we can dispose of this quickly. I think the debate has been good and directly to the point. I would really think it would be hard to oppose this amendment.

Mr. WELLSTONE. I say to my colleague and whip that I appreciate his questions. If there is going to be agreement, we are going to pass this amendment on the floor of the Senate. I say great. The summary of this amendment is that it is appropriate for the Senate, Democrats and Republicans, to say today that if a U.S. company wants to bid for a contract for U.S. defense work, then it should not renounce its U.S. citizenship for a tax break. It is that simple. We are just putting everybody on notice: You are no longer going to be able to do that. You will not be able to make a bid for a contract for U.S. defense work if you are going to go out and renounce your citizenship for the purposes of getting a tax break. It couldn't be simpler.

I am going to stay on the floor of the Senate or stand on the floor of the Senate and keep talking about this until we get a vote or until we get acceptance of this amendment.

I ask unanimous consent to print in the RECORD a list of corporate runaways and fiscal year 2001 Federal contracts.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CORPORATE RUNAWAYS AND FY2001 FEDERAL CONTRACTS

Foster Wheeler: Clinton, N.J. engineering, environmental and construction company reincorporated in Bermuda on May 25, 2001.

Total FY2001 Federal Contracts: $286,253,000.

Defense and Homeland Security related: $248,835,000.

accenture: Consulting firm spun off of Arthur Anderson of Chicago and incorporated in Bermuda in July, 2001.

Total FY2001 Federal Contracts: $281,904,000.

Defense and Homeland Security related: $144,834,000.

tyco: Exeter, N.H. electronics, security, healthcare and engineering conglomerate reincorporated in Bermuda in March, 1997.

Total FY2001 Federal Contracts: $224,171,000.

Defense and Homeland Security related: $182,453,000.

PricewaterhouseCoopers Monday: Consulting firm spun off of PricewaterhouseCoopers of New York and incorporated in Bermuda on March 27, 2002.

Total FY2001 Federal Contracts: $220,801,000.

Defense and Homeland Security related: $129,073,000.

Ingersoll-Rand: Woodcliff Lake, N.J. industrial equipment, construction and security company reincorporated in Bermuda on December 31, 2001.

Total FY2001 Federal Contracts: $40,289,000.

Defense and Homeland Security related: $39,328,000.

apw: Waukesha, Wisconsin electronics and technology products reincorporated in Bermuda in July 2000.

Total FY2001 Federal Contracts: $7,077,000

Defense and Homeland Security related: $4,912,000.

Cooper Industries: Houston electrical equipment tool and hardware company reincorporated in Bermuda on May 21, 2002.

Total FY2001 Federal Contracts: $6,357,000.

Defense and Homeland Security related: $5,954,000.

Stanley: New Britain, Connecticut tool maker voted to reincorporate in Bermuda on May 9, 2002. The vote was disputed and the Stanley Board of Directors has authorized a re-vote.

Total FY 2001 Federal Contracts: $5,660,000.

Defense and Homeland Security related: $5,298,000.

Fruit of the Loom: Bowling Green, Kentucky apparel company reincorporated in Bermuda on March 4, 1999.

Total FY 2001 Federal Contracts: $2,389,000.

Defense and Homeland Security related: $2,389,000.

Weatherford: Houston drilling, oil and gas technology and services company reincorporated in Bermuda on June 26, 2002.

Total FY 2001 Federal Contracts: $234,000.

Defense and Homeland Security related: $234,000.

Noble: Sugar Land, Texas drilling contractor reincorporated in the Cayman Islands on May 1, 2002.

Total FY 2001 Federal Contracts: $50,000.

Defense and Homeland Security related: $0.

Total Value—known FY2001 Federal contracts to corporate runaways: $1,075,185,000.

Defense and Homeland Security related: $763,310,000.

Mr. WELLSTONE. I thank the Senator.

Mr. NICKLES. Will my colleague and friend yield for a question?

Mr. WELLSTONE. I am pleased to.

Mr. NICKLES. Mr. President, I haven't seen a list. I am trying to figure out what companies would be impacted by that. Do you have a copy that maybe you might share with other Senators?

Mr. WELLSTONE. Let me say to my colleague that there are two parts to this equation. The first part is the definition of "tax haven countries." There is Barbados, Bermuda, British Virgin Islands, Cayman Islands, British Commonwealth of the Bahamas, Cyprus, Gibraltar, and so on. Then the additional language where, because we want to have flexibility, we also say: or any other country that the Secretary of Treasury—these countries listed in the amendment—are the main tax haven countries.

In addition, the Secretary of the Treasury could determine that there is another country that has been used at the site of incorporation for the purpose of avoiding U.S. taxation. That is No. 1.

The second part of this—to give the operational definition—is that this would be any U.S. company that set up this phony citizenship post—actually, December 31.

Mr. NICKLES. If the Senator will yield, I am asking for a list of companies—not countries—that have done this egregious deed of reincorporating in some other country.

Mr. WELLSTONE. I sent the list over to you. I think you have a list that lists some of the companies that would be affected by this.

Mr. NICKLES. Let me get that in question——

Mr. WELLSTONE. These are the countries that reincorporated.

Mr. NICKLES. Accenture reincorporated in July of 2001. Your deadline is January 1, so it would not apply.

Mr. WELLSTONE. It would apply to only those companies—what I am trying to do——

Mr. NICKLES. I found one. PricewaterhouseCoopers evidently reincorporated in Bermuda on March 27, 2002; is that correct, according to your sheet?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. They do defense contracts of $220 million and total Federal contracts in defense and homeland security-related, $129 million; is that correct?

Mr. WELLSTONE. I am trying to follow the list and where the Senator is.

Mr. NICKLES. I got this from you.

Mr. WELLSTONE. That is right. You mentioned it, but I have to go down and find it in the column.

Mr. NICKLES. I am trying to figure out who we are trying to punish here.

Mr. WELLSTONE. I say to my colleague, if I could, since he asked the question—let me say this and be real clear about it. I wrote probably the first legislation here eliminating this action and that is moving through the Finance Committee and it will come to the floor. I hope in the future all these companies will be covered, period.

Second, if you want to reach back, you can do so and that would be just fine with me. My thinking is that I took a look at—I am thinking of two issues. No. 1, just sort of this loophole and, No. 2, I think of 9/11 and I say, look, given 9/11, you can give companies some flexibility to understand that it doesn't seem very patriotic to continue to do this.

For God's sake, from the beginning of this year on, all companies—anybody that does this in the future is in trouble.

Mr. NICKLES. If the Senator will yield further, I found a guilty party—PricewaterhouseCoopers. I will say I had no idea—I have read in the paper, and I heard about Stanley and Ingersoll-Rand. I didn't find somebody—

Mr. WELLSTONE. You will find a number of them.

Mr. NICKLES.—guilty as under your provision. PricewaterhouseCoopers is a $220 million contractor. That is pretty significant.

Let me ask you a question. PricewaterhouseCoopers does a lot of business, evidently, with the Department of Defense, homeland security, and other Federal contractors. They would be banned from all Federal contracts—or only Federal contracts dealing with Department of Defense?

Mr. WELLSTONE. Department of Defense.

Mr. NICKLES. So now we are down to $129 million worth of contracts. If they do those contracts with U.S. employees, do they pay taxes on their U.S. contracts if they make income—I mean, if they make income, don't they pay corporate income tax on the contracts they have in the United States?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. So they do pay income tax?

Mr. WELLSTONE. That is right. But there is a portion of the tax that they should be paying that they are deliberately evading. That is unacceptable. If that is their practice—and that is what this amendment does—don't expect to be getting these contracts any longer.

Mr. NICKLES. Let me make sure I understand. So this company, which does a lot of work—they do software, management, and a lot of different things—is doing $129 million worth of defense-related contracts, they would be banned from any of those contracts; is that correct?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. Under the Senator's amendment.

Mr. WELLSTONE. That is correct if, but only if, after all we have been through as a country, they basically renounce their citizenship and set up some sham/dummy corporation in Bermuda to avoid taxes—only if they do that.

Mr. NICKLES. Whoa, whoa.

Mr. WELLSTONE. They are welcome to come back home, in which case they are eligible for all of this.

Mr. NICKLES. Correct me if I am wrong, but don't they pay U.S. income taxes on every penny of the contract they have with the Department of Defense?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. They do. So if they incorporate in Bermuda, or Barbados, or someplace else, they might try to not pay U.S. taxes on foreign income, but they are already required, under present law, to pay U.S. taxes on U.S. income; isn't that correct?

Mr. WELLSTONE. I am told—I say to my colleague, I am not a tax expert—they may not actually pay all their taxes on U.S. contracts. But, in addition, what is egregious about this—and I say to my colleague from Oklahoma, if he wants to vote no, he can vote no. This is a pretty simple proposition, which is, if you are going to renounce your U.S. citizenship so you can locate in some other country where you don't do business so you can avoid paying part of the taxes you should be paying so that other businesses and other companies and other Americans have to pay those taxes, you renounce your citizenship and you will not be eligible for these defense contracts. It is that simple.

Mr. NICKLES. There are 200-some-odd-million-dollars' worth of contracts. There is no prohibition right now that I know of that would keep a foreign company from doing the same work that PricewaterhouseCoopers is doing, or some other company, so a French company or a German company could pick up this contract that we are going to foreclose from PricewaterhouseCoopers, or somebody else and, correct me if I am wrong, under the Senator's amendment a German company could do it, and 100 percent of those employees could be in

Germany and do 100 percent of this work and there would be no U.S. income tax—I take that back. I will rephrase this. This is a $129 million PricewaterhouseCoopers contract and they would be barred, so now those contracts would be open. There is nothing to prohibit a Swiss company, a German company, a French company, Israeli company, or any other company worldwide from doing that work, and those jobs might be domiciled someplace else in the U.S.; isn't that correct?

Mr. WELLSTONE. That is correct.

But I say to my colleague, this is about American companies. I am going to be clear about that. This is about an egregious practice. This is about good corporate citizenship. This is about being patriotic and about saying to these companies, in all due respect, you can come back home. You don't need to renounce your citizenship, in which case you are eligible. But if you continue to exploit this egregious tax loophole, then you are not going to be eligible. It is that simple.

Mr. NICKLES. Mr. President, I want to make a couple of comments on the legislation. My colleague mentioned that he is not on the Finance Committee. This is an item that has jurisdiction in the Finance Committee. Of late, I think maybe we don't use the committees anymore. I am kind of shocked that the chairman and ranking member of the Finance Committee are not here saying, wait a minute, we are dealing with this issue. Actually, I believe an amendment has been reported out on this issue, but it is a different amendment.

We are dealing with taxation issues. My colleague from Minnesota already admitted—and it happens to be factual—if you do business in the United States and you are a U.S. company, at 100 percent you pay taxes on that contract, period. And if you are domiciled in Bermuda and you do a U.S. contract, you pay 100-percent corporate taxes. What we are talking about is a differential of taxes of international taxation of foreign source income, not U.S. contracts.

We are using U.S. contracts and threatening thousands of U.S. jobs that, if this amendment is adopted—and I hope it is not—these jobs may be done elsewhere because there is nothing in this amendment that says other companies in other countries need not apply. They are not going to be prohibited.

We may well have a situation, as absurd as it sounds, of: Oh, we are sorry, you do not pay enough in foreign taxes on foreign source income; therefore, we are going to deny you U.S. contracts. And now we are going to export U.S. jobs.

I am not sure that makes sense. Let me be very clear. My colleague from Minnesota agreed with me, U.S. companies, whether domiciled in Bermuda or not, if they do U.S. contracts with the Department of Defense or any U.S. contracts, they pay U.S. corporate income taxes, period. They pay U.S. taxes, period. There would be U.S. taxes paid on every dime of this contract.

We are really dealing with foreign international taxes, a very complicated issue, one that should be dealt with appropriately in the taxation committee, not on the Department of Defense appropriations bill, not where people do not know what we are talking about when we talk about foreign source income.

On occasion, this Senate should rise and say this is not the way to legislate. I understand the beautiful demagoguery that somebody is able to say—and I have read in the papers—look at those companies, they are leaving the country, turning their backs. I do not know I agree with that statement.

I will give an example. I do not know that much about Stanley. It is a Connecticut-based toolmaker. They took a lot of flack. Stanley decided they got enough pressure, and they rescinded their corporate move, or they were contemplating going to Bermuda, and they rescinded it. PR-wise, this is bad news if a company tries to reincorporate in Bermuda or anyplace else—I do not know why my colleague included Cyprus. I never considered Cyprus a tax haven.

Stanley decided not to reincorporate in Bermuda. I do know that if they did incorporate in Bermuda, for every contract they had with the Department of Defense, they would pay 100 percent U.S. corporate income taxes—100 percent. They would pay as much as Nickles Machine Corporation would.

This is an easy issue to demagog, but it is a complicated issue in tax policy. The Finance Committee, of which I happen to be a member, and Senator GRASSLEY and Senator BAUCUS have worked on a bill. It is not perfect, but it is a much better approach than what we have before the Senate today.

To say you cannot get the jobs—I do not know, I am sure PricewaterhouseCoopers has thousands of employees. I am sure they have some employees my State. I am not sure they have employees in every State, but they have a lot of employees, and those are employees in the United States. They pay U.S. taxes.

Should we say they should be denied any Federal contract or any Department of Defense contract? I am not ready to say that. They may well be providing goods and services—$129 million to DOD or $220 million—that are very much needed. As a matter of fact, they are probably doing jobs that Arthur Andersen used to do. So we need more accounting consulting companies.

Should they be totally debarred? That is a pretty serious penalty. Debarment is usually a penalty for pretty egregious conduct such as fraud or criminal liability, not necessarily moving a headquarters.

I know a lot of companies incorporate in the State of Delaware. All across the country companies incorporate in the State of Delaware. There must be some advantage in incorporating in the State of Delaware. I am amazed at the number of corporate headquarters in Delaware. Is that for income tax evasion? I do not know. I do not think so. But should we deny them contracts? I am not sure. I darn sure question the wisdom of saying all Government contracts will be banned.

Maybe there should be a penalty if people reincorporate in Bermuda to avoid foreign taxes. Should that penalty be taxation? Right now this penalty is total debarment from Federal contracts. I question that penalty. I am not sure that is the right penalty. Maybe there should be a better way. Maybe we should reconsider foreign taxation and make sure we are competitive.

I know in some countries they are growing, and growing dramatically because their international taxation picture is much better than ours. Take, for example, Ireland. They have reduced their international taxation, and they happen to be growing. There are other countries that have done quite well because they have a low tax structure. God bless them. I am proud of them.

Should we say that anybody who happens to have a headquarters in those facilities, but also has a branch in the United States, should be denied any business in the United States and automatically export those jobs to other countries? I do not think so. I just question the wisdom of the amendment.

I know the amendment is well intended. I know it is populist. I know it is very comfortable to beat these companies up, and maybe some rightfully so. But I am not sure that total debarment from any Federal contract of those employees who work for those companies and are going to find themselves unemployed because we just said they cannot do Government work, when they pay taxes on that Government work, I am not so sure that is the right penalty.

I have serious reservations about my colleague's amendment. I am not so sure that we should adopt it. I am sure it does not belong on this bill. If we are going to deal with taxation issues, I think it should come out of the Finance Committee and be dealt with on a tax bill, not on a Federal procurement bill.

The amendment reaches pretty far. I hope people will start taking a look at it. I am trying to see who is covered by this. Let me find another company. I do not want to mention just one company.

Ingersoll-Rand, I noticed, incorporated in Bermuda on December 31. That happens to fall on the Senator's date. I read his language.

Mr. WELLSTONE. I say to my colleague, maybe they should be, but they are not. It is after December 31.

Mr. NICKLES. They made it by 1 day.

Mr. WELLSTONE. If the Senator wants to make it tougher, we will make it tougher.

Mr. NICKLES. I am trying to figure out what we are doing. Let's take Ingersoll-Rand. Ingersoll-Rand will not be covered. They would not be debarred. This is very interesting. Ingersoll-Rand makes heavy industrial equipment. I know that because I used to be in the heavy industrial equipment business. Actually, I was a competitor with Ingersoll-Rand at one time.

Ingersoll-Rand does about $40 million worth of contracts. They have a lot of employees in the United States. They have employees in my State of Oklahoma. Ingersoll-Rand has a plant in Tulsa, OK. They would be debarred from doing any work with the Federal Government. No, they would not because they incorporated on December 31. Cooper Industries competes with Ingersoll-Rand. They reincorporated in Bermuda on May 21. They probably did it because Ingersoll-Rand did it. They compete. They are competitors. So one company got in and will not be affected by debarment; they would not lose $40 million worth of contracts.

Cooper Industries, on the other hand, is doing about $6 million worth of contracts. They would be debarred because they reincorporated on May 21. So here we have two competing industries, one of which made it in under the wire, and so they are not denied $40 million worth of contracts, but their competitor—I believe their principal competitor—would be debarred for $6 million.

That is a little troublesome. Both have a lot of employees in the United States. I notice Cooper Industries—I know my colleague from Texas is here—is headquartered in Texas. I know they have thousands of employees in the United States. I know they pay Federal income taxes on every single dime of these contracts.

I guess that is what bothers me. I believe there is a misunderstanding that if somebody reincorporates in Bermuda they will not pay U.S. taxes on U.S. contracts, and that is false. They will pay U.S. taxes on U.S. contracts. To have a penalty that says if they reincorporate in Bermuda because they want to avoid taxation on foreign source income and we are going to debar them from U.S. contracts and maybe cost thousands of jobs domestically, that is very shortsighted and probably not the right solution.

Maybe the right solution would be we would work through the appropriate committees and try to discourage people from relocating in Bermuda. Maybe we can make our tax structure more competitive internationally.

I have been on the Finance Committee for a long time. Those of us who have looked at it for years have said we need to relook at international taxation.

We are not competitive internationally. We encourage jobs to go overseas because of our international posture. If we do not fix it, we are going to continue encouraging people to relocate. The amendment of my colleague from Minnesota is going to exacerbate that problem. He will, in effect, be denying contracts to a lot of U.S. firms that have jobs in the United States that pay taxes on these contracts.

I am afraid the net result is competitors from other countries, with employees in other countries, are going to be competitive and win these contracts, and the net loss is we are not only not going to get U.S. taxes on these contracts, we are going to have employees go overseas.

The amendment may be very well intended politically, and my compliments to my colleague from Minnesota. It is a very popular amendment. It looks good, it is populist, but I think it is bad tax policy. I think tax policy should be done in the Finance Committee, not on the floor of the Senate on a Department of Defense bill.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The deputy majority leader.

Mr. REID. Mr. President, I say to the Senator from Minnesota that this amendment is a good amendment. U.S. corporations have to pay corporate taxes on what they earn here in the United States and on what they earn in other countries. But foreign corporations only have to pay taxes on what they earn in the U.S. So a lot of U.S. companies figured out that if they move their corporate papers overseas but leave their operations and employees and everything else here in the United States, they can get off the hook for most of their taxes.

Tyco did that. It incorporated in Bermuda in 1997 and saved $400 million a year in taxes. Just by going across the water to file reincorporation papers. Stanley Works did the same thing and saved $30 million annually; Cooper Industries, $55 million, Ingersoll Rand, $440 million annually.

These companies get all the benefits of being U.S. corporations, and their stocks are mostly traded on the New York Stock Exchange, but they are escaping U.S. taxes. That means that you and I have to make up the difference. I think the Senator from Minnesota is on the right track.

To show this is not some bizarre, ridiculous amendment, look at what the State of California did. The State of California is usually on the cutting edge of what is going on in this country because they are almost a country unto themselves. Thirty-five million people live in California. The State of California announced last week that corporate expatriates are no longer eligible to hold State government contracts. That is California, where over 10 percent of the people in this country live. It is one State, and that State recognizes what is being done is wrong.

Also, in the House of Representatives, which is evenly divided basically between the Republicans and Democrats, 318 Members voted for an amendment that is substantially similar to Senator WELLSTONE's amendment.

Another thing. This amendment does not absolutely bar these companies from holding government contracts, as my very good friend from Oklahoma said. These companies can change this in a matter of a couple of hours. All they have to do is come back to the U.S., where they came from, and reincorporate again in America. That is the patriotic thing to do. That is the right thing to do. They cannot have it both ways.

Why do they do this?

Mr. NICKLES. Will the Senator yield?

Mr. REID. I will yield in a little bit.

They do it because turning their backs on their country in their country's hour of need makes their profit margins look better. The process they use is complicated. As I said before, the foreign corporations, the expatriates, only owe taxes on their U.S. income. But companies that never left the U.S. owe taxes on both their U.S. income and their foreign income. Although the U.S. government does give them a tax credit in the amount of any foreign tax on the profits, which prevents double taxation. So incorporating outside the United States eases—and I have gone through the list of how it eases—a corporation's tax liability.

Expatriates also often engage in earnings stripping, it is called. Earnings stripping occurs when a foreign corporation legally funnels its U.S. earnings outside the United States without paying taxes in the United States. The two main avenues they do this with are: First, a U.S. subsidiary can borrow a substantial amount of money from the foreign parent corporation and make large interest payments to the foreign parent. The interest is considered a business expense and is then not taxable under the United States Code.

What else can they do? The U.S. subsidiary may make other payments to the foreign corporation for royalties or intellectual property payments or for other purposes. These payments many times seem grossly out of proportion to the service that foreign corporation actually renders.

For instance, the U.S. branch of one expatriate company paid its parent company royalties in an amount of about 4 percent of its total revenue just for the right to use the company's name. That is a little out of line, I would think. The payment got routed through the Swiss branch of the company's Luxembourg holding corporation, which is a wholly-owned subsidiary of the Bermuda parent company. All to ensure that the company takes advantage of every conceivable tax break possible. Under the current Tax Code, that is a business expense and is nontaxable under the United States Code. And because of an existing tax treaty between the United States and Switzerland, the payments are not subject to Swiss taxes either. So they got to move that 4 percent of their total revenues out of the U.S. without incurring any U.S. corporate taxes on it. That's a relatively tame example of how earnings stripping works.

So I say to my friend from Minnesota, these companies that run offshore to tax havens get all the benefits of doing business in the United States, and they do not have to pay like other corporations.

I also say that every time a bill comes up, they say it should be under the jurisdiction of the Finance Committee. We should have a committee of the whole, and we should all become members of the Finance Committee. It seems, they say, everything should be taken through that.

I do not believe that is proper. The jurisdiction of the Finance Committee is fairly well restricted. I say to anyone within the sound of my voice, we have a committee system and we do our very best to follow it, but there are certain things that come up as we do legislation that demand not a lot of committee hearings. This is one of those instances.

The Senator from Minnesota is on the cutting edge of what we should be doing legislatively. It is important we are doing this. And the talk about how it's too bad that we're barring this poor company from holding government contracts. If it is so bad for them, let them come back to the United States and reincorporate, and they will have all the benefits they did before. But they cannot have it both ways. They cannot have all of these—I refer to them as shady deals. I have gone over a couple that I pinpointed, and I think they are significant.

I also say to those who were listening to the prior debate, they are really feeling bad about the consulting branch of PricewaterhouseCoopers. They shouldn't worry. PwC announced today that it was being sold to IBM, which is a U.S. corporation. IBM, the new parent company, is a U.S. corporation. That takes care of the problem, as far as I understand it. I think that solves the big problem there.

So we have, as far as I am concerned, a very valid amendment. I understand my friend from Oklahoma. He is someone for whom I have the deepest respect, and he is always in tune with the business community's needs and wants. And I do not say that in any negative way. He was a businessman before he came to the Senate, and he has not lost that. I understand how he believes they should always be given a fair shot, and I believe they are in this instance. The business community is being given a fair shot. In fact, I think this is a gunshot across their bow that they should come back to this country again. This is what they should do, and I think they should plug these tax loopholes and end these tax havens. If the Finance Committee wants to do more, let them do more.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I will take 10 seconds because I know the Senator from Texas wants to speak, and then I will respond later before the vote. I first want to thank the whip and make a technical point.

Actually, contracts are not——

Mr. REID. Will the Senator yield for a brief question without his losing the floor?

Mr. WELLSTONE. I would be pleased to.

Mr. REID. Would the Senator agree that these monies that they are not paying, avoiding taxes in this country, are going in many instances to line the pockets of its fat cat corporate executives?

Mr. WELLSTONE. I would say to the whip, I am trying to be a moderate today. I do not know whether I want to respond to that question, but it sounds to me as if the question is going in the right direction.

I point out that I do not really think this is a big issue, but technically—I have already thanked about four or five times both Senator BAUCUS and Senator GRASSLEY for moving this bill. I introduced the bill that says we ought to eliminate this egregious tax loophole. Technically, the Finance Committee does not have jurisdiction over contracts. Let me make that clear.

Second, let me also make one other thing clear: That to the people in the coffee shops in Minnesota and the coffee shops in all of our States, American citizens, this whole jurisdictional battle is not really all that important to them. They believe if these companies are going to renounce their citizenship, go abroad, set up these dummy corporations—and by the way, quite often they use those new structures to shift earnings from the U.S. branch to the foreign branch so they do not have to pay their fair share of taxes—and that could include earnings from Government contracts—that they do not pay their fair share of taxes. Frankly, most people in the country say: Come home, declare your American citizenship, then you are eligible. If not, you are not. It is that simple.

I hope this amendment will have a strong vote. I can talk a lot more about it, but I know my colleague from Texas is in the Chamber, and I always look forward to what he has to say.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Texas.

Mr. GRAMM. Mr. President, if you are trying to get cheers in coffee shops, this is an excellent amendment. If you are trying to make law in the greatest capitalistic country in the history of the world, a country that more than any other country on Earth has had companies operating in other countries, come to America and gradually move the bulk of their business to our country over the years in order to benefit from the fact we have better laws and lower tax rates, then this is a very bad amendment.

Let me make it clear. I don't have any sympathy for people who are transferring where their company is domiciled to try to get a tax advantage. But I would make the following points. Whether a company is domiciled in Barbados, Germany, Ireland, or Saudi Arabia, the IRS Code is very clear on one thing. Section 881 of the IRS Code says any income effectively connected with the United States is taxed in the United States of America.

When companies are relocating—and I noticed Ireland is not listed here even though Ireland is a major relocation center for companies all over America because they have very low tax rates on business, and I congratulate them for being smart enough to do that—we double tax dividend income, we double tax the income on corporate America. It is not an enlightened policy, and in my opinion, we should not do it.

This is the point. Under section 881 of the IRS Code, if you earn income in America, you are taxed here. Companies are seeking jurisdictions where they get more favorable overall tax treatment, including tax treatment on their foreign earnings. I don't have sympathy for companies that do this, but the plain truth is they are doing it. The plain truth is by affecting Government procurement, this amendment is GATT illegal and violates GATT.

Also, it is astounding to me that we would want to give one individual, the Secretary of the Treasury, the power to unilaterally disbar any company that is domiciled in a foreign country. Under this amendment, we outline all these countries that we are saying are tax havens, and then we add any other country that the Secretary of the Treasury determines is used as a site of a corporation primarily for the purpose of avoiding U.S. taxation.

As I pointed out, you do not avoid U.S. tax by changing where your company is domiciled because the IRS Code requires income earned in the United States is taxed here.

What companies do, however, is they get a more favorable environment. What we should be doing is looking at our corporate tax structure and trying to become more competitive.

The amendment gives the Secretary of the Treasury unilateral power to disbar any company that is domiciled in a foreign country from selling goods to the Defense Department.

I understand politics. I once was engaged in it. I have now given it up. But I understand it is very good politics to basically attack people who are operating in foreign countries that have low tax rates, that we choose to call tax havens. I long for America to be a tax haven. I long for us to get back to the situation we once had where companies were moving out of Germany, Italy, and Britain to domicile in the United States of America because we had favorable tax treatment. I don't remember us thinking it was a bad deal then. We thought it was a good deal.

I had not heard the business about giving up your citizenship. This thing has nothing to do with citizenship. If Stanley Works changes their domicile, the people who own Stanley Works do not change their citizenship. The people that run Stanley Works do not change their citizenship. I don't know from where that comes from. That has nothing to do with this debate.

Now, we had a debate once where people were giving up their American citizenship to avoid death taxes. Fortunately, we have passed a tax cut that eliminates death taxes and some of us want to make that elimination permanent. You can be guaranteed that will never happen again if our elimination of the death tax becomes permanent.

Now, I conclude by saying I don't have any doubt about the fact that if this is brought to a vote it will pass. We are in an environment where slapping businesses around is good politics. Talking about denying procurement opportunities to companies domiciled in other countries is always popular until you remember that we sell more military equipment to foreign countries than any other country in the world—and more than every other country in the world combined.

Under the IRS Code, you have to pay American income taxes on income earned in America. If you are domiciled somewhere else, you do not have to pay American taxes on income earned in another country.

This amendment is not good public policy. I hope we can find a way of dealing with this. I am very reluctant to see this amendment pass. On the other hand, if this amendment had to be clotured, we would be talking about 2 days before we would have an opportunity to do it. I hope people who are managing the bill can find some way out of this. I don't think anyone really believes this issue belongs on this Defense bill. I think this is something we ought to be discussing at the authorization level. This is an appropriations bill.

Our goal as taxpayers is to procure the best stuff we can for military use at the lowest possible price. I know that is not a popular view, but it is a rational view, whether it is popular or not.

This amendment is GATT illegal. It will be subject to retaliation if it actually becomes law. I don't know that anyone here is serious about it becoming law.

In any case, if you want to pick a debating point for the local high school and you get to pick which side you will be on, you want to pick this topic, and you want to pick Senator WELLSTONE's side.

But in terms of public policy, this is an amendment that is bad public policy. While it is easy to attack companies that are domiciled in other countries, especially countries with low tax rates, the bottom line is, for most of the 220-odd-year history of America, we have been the tax haven. We have had companies move from other countries to America seeking lower taxes and better opportunity.

How much better our time would be spent if we were debating ways to make America more competitive rather than trying to build walls around our country to try to keep capital in. What a far cry this is from the basic American approach, which has been to have an environment that is so favorable to investment and capital creation and wealth that other countries have to try to build walls around themselves to keep their capital in. Now we are talking about building walls around America to keep people from taking capital out.

I understand it is easy for us to say: Look, we think you should not use your money in a way that you view as most efficient. We know more about your money than you do. We did not invest it, we did not save it, we did not risk it, but we are perfectly capable of telling you how to do it.

I think, again, if we are debating this in terms of popular hoorah, we are basically saying that in a free country someone who owns wealth cannot take that wealth out of the country and invest it and still have the right to engage in commerce—which we grant to companies in Germany and Ireland and Czechoslovakia. We are going to take that position because right now slapping around people who are trying to engage in business is popular. It may be popular, but I do not think it is good public policy. We should be debating how we can change our laws so that no company would ever want to move out of the United States. But if they want to move out of the United States, you either believe in freedom or you do not—and I do.

So I wish they did not find it desirable to do it. I wish Stanley Works would keep their headquarters in America. But I have to say I am not an investor in Stanley Works. Now TIAA-CREF, my teacher retirement, may invest in Stanley Works. But so far as I know, I do not own any Stanley Works stock. So who am I to be trying to tell them where they put their money? I may not like how they do it, just like I do not like it when people waste their money. I have never understood why people buy lottery tickets. But I know it sends some people to college and it is a free country. If they want to do it, let them do it.

I never understood why people go out and spend their money buying a lot of different things that I do not value. People might not understand why I want to own a whole bunch of shotguns, more than I will ever pull the trigger on, but it is a free country and you either believe in freedom or you do not.

Now, some freedom is not popular. Here today on the floor of the Senate, the freedom to take your wealth that you created and put at risk and invest it in any one of the following countries—Gibralter, Cyprus, and others. I don't know why we are picking on Cyprus. I thought we were trying to make peace there. I thought we were trying to create jobs for both the Greeks and the Turks. But it is popular to say, today: It is your money, you earned it, you put it at risk, but you can't invest it in Cyprus and have the freedom to engage in international commerce and sell to the U.S. Government.

I know that is popular today, but the question is, Is it right? What if it were our money, if we owned these companies as public companies, and if this were really a socialistic country? I know some dream of it being that, but it is not. Thank God. Thank you, sweet Jesus, it is not. The commanding heights of the world are dominated by capitalism. The Berlin Wall has collapsed. Tears are still shed about it, not just in East Germany, either.

But freedom is tested when it is unpopular, not when it is popular. Standing up and cheering for the team that wins the Super Bowl is an exercise in freedom of speech, but that is not where you measure freedom of speech. You measure it when somebody is saying something you do not agree with, something that is not popular. I would say that I do not own any Stanley Works stock. I did not invest in Stanley Works. Who am I to be telling them they can't have the rights that we give to every other company in the world that is domiciled in Germany or in Taiwan or Korea or the Philippines or Morocco or wherever? They can produce things and sell to the Defense Department, but Stanley Works, domiciled in Cyprus or elsewhere, they are not going to sell to the United States.

Mr. GREGG. Will the Senator yield for a question?

Mr. GRAMM. I am happy to yield.

Mr. GREGG. You made some excellent points. The point that the company that invests overseas, if it is a foreign company, it has the right to do that, but under this rule, if it is an American company, it would not have that right if it were domiciled outside the United States—

Mr. GRAMM. That is exactly right. Had they invested their money in a company domiciled in Germany, which competes with Stanley Works, they could have sold products to the Defense Department. But under this amendment, a company operating in Germany, making drills that might be bought by the Defense Department, having not one American employee, can sell to the Defense Department. Under this amendment, Stanley Works, which may have 40 percent of its employees in this country, many of them in the Northeast, as the Senator is aware, is not allowed to sell in this country if they choose to domicile in Cyprus or Gibraltar.

Mr. GREGG. Will the Senator yield for another question on that point. Aren't we talking about aftertax dollars? I mean basically what we are saying is if an American company generates American revenues, it has to pay taxes on those American revenues. When an international company generates American revenues, it has to pay taxes on those revenues. The United States Treasury has taken in dollars from American-generated income from an American or international company.

Mr. GRAMM. As I said earlier, every penny of American income is taxed under IRS code 881. But the point you are making is, the money they are investing abroad is after tax money, which belongs to them.

Mr. GREGG. Right.

Mr. GRAMM. Which gets back to my point: You either believe in freedom or you do not. If you believe in freedom, you have to believe if it is somebody's money—they have earned it, they pay taxes on it—and if they want to invest it in Cyprus. You may not like it, and you might get big cheers at the local coffee bar by saying we are not going to let people invest in Cyprus and sell to the United States. That is just wildly popular, but the point is it violates our basic precept of the right of people to use their own money for their own purposes, to promote their own goals.

Mr. GREGG. After they pay taxes on them.

Mr. GRAMM. And they pay taxes on that money. And it may not be the goal of the Members of the United States Senate, but the point is this: In a very real sense, when you cut through all the ability to make this a popular issue—when you cut through to the bottom line, it is about freedom; freedom to do something that is very unpopular. It is very unpopular. We all hate it. When there is a company operating in our State and they decide it is to their advantage to move their corporate headquarters to Ireland, we decide we do not want them to do it. We hate them doing it. They do it, not because it changes their taxes on their American-earned income but because it changes their taxes on money they make in Europe and Asia and because they can have a better business climate. We hate that they do it, but it is their money and they have a right to do it. They have a right to do what we think is wrong.

Now to come in through the back door and try to limit their right because they are doing something we do not like, we are saying: You can't do the same thing that a German company that never invested in America and that has no employees in America can do. So it is popular, it gets you applause, but it is fundamentally wrong.

I yield to the Senator.

Mr. NICKLES. Mr. President, I tell my friend and colleague that one Oklahoma-headquartered company relocated in Texas called Phillips Petroleum. I wasn't very happy about that, but they had the right to do that.

Let me make it clear. My friend and colleague from Texas read the statute that says you pay taxes on all American-source income. Isn't that correct?

Mr. GRAMM. That is correct.

Mr. NICKLES. Corporate income tax—not just payroll tax.

Mr. GRAMM. Section 881 of the IRS Code.

Mr. NICKLES. Really, the difference we are talking about is income generated in other countries.

Mr. GRAMM. And the greater flexibility they have in their tax treatment in those countries. But they still have to pay American taxes on American income. In fact, the language of art is "any income effectively connected with the United States."

Mr. NICKLES. Any contract with the Department of Defense—and any company doing that has to pay U.S. corporate income taxes if they generate income off those contracts.

Mr. GRAMM. That is right.

Mr. NICKLES. I appreciate the clarification.

Mr. GRAMM. I conclude by noting that with the adoption of this amendment, it will say to companies that pay half of their employees in America that we are not going to let you sell to the American Government, but to foreign companies that have no employees in America and have never invested a penny in America, we are going to let you sell to the U.S. Government.

Again, it is popular. It will get you a big hurrah anywhere in the country, but it is not good public policy.

Mr. NICKLES. Will the Senator yield for an additional question?

Mr. GRAMM. Yes.

Mr. NICKLES. There is a major automotive company called Chrysler that recently merged—or you could say was acquired by Daimler, a German company. They are headquartered now in Germany and domiciled in Bermuda. I am guessing; I don't know. If my memory serves me correctly, Chrysler used to make tanks, or used to make military equipment. They wouldn't be covered by this because the effective date is beginning January 1. But the theory is, if the effective date was earlier, they would be prohibited from making tanks or providing goods and services that maybe they provided for a long time. In other words, they might be providing an essential component to our national defense, and those thousands of employees who might be employed making products for national defense would find themselves unemployed.

Mr. GRAMM. They would be in Detroit, MI. That is the point.

We basically come down to the question as to whether or not this is good public policy. It is popular policy. It will always get applause. But the question is, Is it good public policy? I would answer no.

Should we be building walls around America? Can you imagine the United States of America trying to penalize people who want to transfer their wealth somewhere else? We are the country where people from all over the world send wealth here. This is a role reversal, if I have ever seen it. These are games that other countries play.

This is GATT-illegal. This has no redeeming virtue, other than it is momentarily popular and it will get you a rousing applause.

I yield the floor.

Mr. GRASSLEY. Mr. President, I want to make a few comments about Senator WELLSTONE's amendment.

Ironically, I agree with Senator WELLSTONE's amendment, but also agree with some of the points made by my distinguished friends from Oklahoma and Texas.

First of all, I want to be clear that I agree with Senator WELLSTONE's purpose. As I have said repeatedly in public, companies should have their hearts in America. If they don't have their hearts in America, they ought to get their rear ends out of America. In my mind, this notion applies especially to Government contracts.

Mr. President, when the Finance Committee marked up legislation to shutdown corporate expatriation, I considered adding this Government contracting ban to the tax legislation. However, out of deference to the Governmental Affairs Committee, the committee with jurisdiction over Government contracts, I withheld. So, let's be clear that this matter is not a Finance Committee matter. Chairman BAUCUS and I moved legislation on this matter out of committee. If Government contracting were within Finance Committee jurisdiction, we would've addressed it.

Now, let me say that my friends from Oklahoma and Texas are correct in one respect. That is, the problem of corporate expatriation springs from our flawed international tax code. It needs to be reformed. I am committed to reform. In the meantime, we need to stop the bleeding of the U.S. tax base and not reward expatriate companies with Government contracts.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Illinois, Mr. DURBIN, be recognized for up to 15 minutes; following that, Senator WELLSTONE be recognized for up to 4 minutes, and, following that, this matter be voted on. And we will do that by voice. We will announce that to the Members.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Mr. President, thank you very much.

I will probably not take the entire 15 minutes.

I do concede the point made by the Senator from Texas that many of us come to this debate with a level of emotion. I am not happy to read in the newspaper that a company such as Stanley Tools has decided, for tax reasons, they are going to forsake their American citizenship and move to Bermuda. I will guarantee you, I will never knowingly buy one of their products again.

I honestly believe the American corporations—proud to be in this country, proud to be part of this country, accepting their obligation to support this country, and paying taxes here—deserve my business before the folks at Stanley who decided it is much more fashionable to wear Bermuda shorts than to wear the red, white, blue.

Let me address three specific elements that came out in debate.

I have read, over the course of my education and my service in Congress, a lot of things relative to rights. I have read a great deal about the rights of individuals and the rights of others.

We all know about the rights of life, liberty, and the pursuit of happiness. We have heard about those, and some trace them back to Plato and Aristotle. They go through all the great Renaissance thinkers, and certainly to the Founding Fathers and Mothers of America, who came to these concepts and fought for them.

But I never read about the inalienable, immutable, nontransferable right of a business, wherever it is located, to bid on contracts at the U.S. Department of Defense. That does not exist. That is a creature of law and policy.

We, in the United States, decide who will bid on Government contracts. We establish standards. We establish qualifications. And we establish disqualifications.

Should Saddam Hussein's agent show up at the Pentagon tomorrow and suggest that the Iraqi National Business Corporation wants to start bidding on American defense contracts, you can imagine, we will laugh him out of town. We decide who will bid on our defense contracts, in the name of our national values and our national defense.

What the Senator from Minnesota brings before us is a very basic challenge: If it is not an inalienable right to bid on contracts at the Department of Defense, are we going to offer that right to bid to a company which has forsaken and denounced its American citizenship in order to avoid paying taxes in the United States?

I will go back to the point made earlier by the Senator from Texas. I do not think there is any right to that. And I do not think he can find it.

The second point I would like to make is this: The argument that these poor companies go to Bermuda, the Virgin Islands, Barbados, and the Isle of Man in order to escape American taxes—our critics say it is really a condemnation as to the high tax rates in America. They argue that we should lower our corporate tax rates so they will not even consider going to a tax haven such as Bermuda.

Trust me, no matter how low we bring our corporate taxes, some small country somewhere in the world will have a lower corporate tax rate. We cannot race to the bottom and expect to sustain the civilization we enjoy and the common defense which is funded under this bill if we do not have a tax base in America.

These same people could argue, logically, that we should encourage companies to move overseas to the lowest possible wage rate where people are being paid 5 and 10 cents an hour because it is such a smart business decision. We do not encourage it. We discourage it. We should continue to.

But to argue that somehow we are at fault as a nation because we ask businesses to pay their fair share of sustaining the strength and quality of life in America, I think is ludicrous.

The third point I will make is this: This is a Defense bill. We talk about the Department of Defense, but we all know that within the pages of these bills, particularly this bill, we will find not just words, but we will find the support for the men and women in uniform in America.

Think about what we ask of the men and women in uniform sustained by this Department of Defense appropriations.

We ask these men and women, out of loyalty to America, to be willing to pay with their lives for the privilege to be an American citizen. And each and every one of us is so proud that young men and women come forth willing to do so, willing to give their careers, their lives, to their country.

But think about what those who oppose this amendment are saying: That corporations with so little loyalty to the United States that they are unwilling to pay taxes to this country should somehow be honored with the right to bid on Department of Defense contracts.

I disagree. I disagree. Let me hope that this amendment is adopted. Let me hope that after it is adopted, the next time a major corporation draws its board of directors together and brings in their shifty accountant, who says, "I just came up with a great idea: We're moving to Bermuda, and we can save taxes, and you all can make more money," somebody will say, "What impact is that going to have on our customer base in America? What impact is that going to have on our business in America? Shouldn't we think twice before we abandon this Nation because we want to save a few bucks on taxes?"

My friends and colleagues in the Senate, I support this amendment by the Senator from Minnesota. I will concede that I come to it with some emotion when I consider these businesses that are moving overseas to avoid paying taxes to our Government. Businesses are moving their operations overseas to avoid hiring men and women in the United States. I do not think we should reward them or applaud them or say it is just an exercise of their freedom. They have the freedom to leave. We should have the freedom in the Senate to tell them that their departure is going to cost them an opportunity to bid on these contracts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, we had a long debate this afternoon. My understanding is that my colleagues are going to accept the amendment. I am appreciative of that. I think it is a very good amendment. I think it is important to have good, strong bipartisan support.

I thank Senator DURBIN and Senator REID, our whip, for their help. And if it is OK with them, I ask unanimous consent they be added as cosponsors to my amendment.

Mr. DURBIN. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I am looking at just a few editorials and op-ed pieces. I will quote from them and do it in 3 minutes so we can get on with this vote:

> The trouble is that hinting, even by silence, that it's O.K. not to pay taxes is a dangerous game, because it can quickly grow into a major revenue loss. Accountants and tax planners have taken the hint; they now believe that it's safe to push the envelope. . . . Furthermore, what does it say to the nation when companies that are proud to stay American are punished, while companies that are willing to fly a flag of convenience are rewarded?

That was from columnist Paul Krugman of the New York Times, May 14:

> Even more galling is the fact that many of the same companies are giving the taxman the brushoff as they shield themselves with their Bermuda ZIP codes think nothing of holding out their hand when Uncle Sam is doling out government contracts.

That is from columnist Arianna Huffington, LA Times, May 15.

I ask unanimous consent material from the New York Times to the Houston Chronicle, to the Springfield Union News editorial, to the Philadelphia Inquirer—there is a ring of editorials and opinions on this question, and I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EDITORIALS AND OPINIONS AGAINST CORPORATE EXPATRIATION

> "Tax policy of this sort is outrageously offensive, if not masochistic. It penalizes businesses that behave ethically and responsibly and rewards those that do not. It increases the federal deficit and decreases the federal resources to keep the country running and rivers clean. It extends privileges to corporations that can afford the legal bills which it won't extend to $20,000-a-year day-care workers. Americans should be outraged, and so should Congress, which should move quickly to pass pending legislation outlawing the dodge."—Peoria Journal Star editorial, May 12.
>
> "The company has thumbed its nose at anyone who questioned its plans. Stanley officials initially tried to bar reporters from the annual meeting, despite high public interest in the Bermuda vote. They also mailed confusing shareholder information about how the vote would be tabulated. Businesses that want to enjoy the benefits and protections provided by this country should pay their fair share of taxes. Guess who will wind up picking up the tab as a result of Stanley's tax avoidance? Other American taxpayers, of course."—Hartford Courant editorial, May 14.
>
> "Even in the best of times, it is outrageous for companies to engage in offshore shenanigans to avoid paying their fair share of taxes. Doing so after the Enron scandal, in dire fiscal times and when the nation is at war is unconscionable."—New York Times editorial, May 13.
>
> "American companies that have no headquarters, no employees or operations in foreign tax havens should not be able to lower their taxes by, in essence, acquiring an island post office box. Basic fairness to American companies that remain incorporated in the United States is at stake."—Houston Chronicle editorial, May 9.
>
> "When a U.S.-based corporation decides to reincorporate, basing its operations in, say, the Cayman Islands when the company has little more than a mailbox there, it can legally avoid millions of dollars in taxes. . . . there will come no better moment than this one to right that wrong. We look forward to the floor vote."—Springfield Union News editorial, May 7.
>
> "Even more galling is the fact that many of the same companies are giving the taxman the brushoff as they shield themselves with their Bermuda ZIP codes think nothing of holding out their hand when Uncle Sam is doling out government contracts."—Columnist Arianna Huffington, Los Angeles Times, May 15.
>
> "The trouble is that hinting, even by silence, that it's O.K. not to pay taxes is a dangerous game, because it can quickly grow into a major revenue loss. Accountants and tax planners have taken the hint; they now believe that it's safe to push the envelope. . . . Furthermore, what does it say to the nation when companies that are proud to stay American are punished, while companies that are willing to fly a flag of convenience are rewarded?"—Columnist Paul Krugman, New York Times, May 14.
>
> "Yet it [Stanley] won't have to pay its fair share for the good life and safe business climate we have created here. It shouldn't be allowed to get away with this. It's time to slam this loophole shut—for Stanley and other companies that have the so-called inversion strategy."—Columnist Jeff Brown, Philadelphia Inquirer, May 12.

Mr. DODD. Will my colleague yield for a second?

Mr. WELLSTONE. I am pleased to yield.

Mr. DODD. I thank our colleague from Minnesota.

A lot of people are talking about Stanley Works. I represent the State where that company was located, with a wonderful history and tradition for many years of the Stanley Works Company, with the contribution of employment in my State.

It is a source of great disappointment to many of us that they have taken this position of setting up a shell operation, in this case in Bermuda, with no people there at all—nothing—to avoid taxes. That is deeply disturbing to people in my State. And we are embarrassed, in a sense, that this has become the poster child, if you will, on this issue.

But the Senator from Minnesota has raised a very important point, one that all of us here, in a time such as this, over the last 10 months, after 9/11 understand taxes may be too high. We need to work at that. We need to improve the situation. But to have people stand up in a company and say that, right now, we are going to have profits trump patriotism, that we are going to worry about our pocketbook before we worry about what is best for America, is something over which all of us ought to be outraged.

So I thank the Senator for raising this issue. We are going to have a vote shortly. I believe it is going to carry overwhelmingly, and it should. The other body has voted similarly on a different bill. Nonetheless, I suspect they may on this as well. We need to send a united message that this kind of behavior we do not like to see in individual citizens, who would trade their citizenship, and we do not want to see it in corporations either.

I thank the Senator for the amendment.

Mr. WELLSTONE. I thank the Senator from Connecticut.

Mr. President, I just want to also, for the record, say I have spoken to Senator GRASSLEY, who said he would be very proud to be a supporter. And I talked with the staff of both Senator GRASSLEY and Senator BAUCUS, and we want to work together on exactly what the reach of this is. We will work hard on that in conference.

The date of 9/11 has been mentioned more than once. The truth is, it also ties into Enron and WorldCom and all the rest. Frankly, people are tired. Thank goodness there are many corporations and businesses that are very good corporate citizens, but people are really tired of this. This is an egregious practice.

Again, this amendment puts everybody on notice, forthwith, actually reaching back to January 1 of this year, if you are going to go to another country and set up a dummy corporation and then shift some of your profits to that corporation and not pay taxes, you are not going to be eligible for any of the defense contracts.

The PRESIDING OFFICER. The Senator's time has expired.

The Republican leader.

Mr. LOTT. Mr. President, I believe in short order the Senate will be prepared to dispose of this amendment. I wish to take a minute at this time to express my appreciation and the appreciation of the entire Senate and I think a grateful country for the outstanding work that is done year in and year out by these two Senators managing this legislation.

Senator INOUYE and Senator STEVENS are two unique personalities, first of all. The service they gave to their country and the military during World War II would be enough by itself to cause us to want to express our appreciation to them. But their service in this institution and their leadership in these Defense bills year after year is really outstanding. They have done a tremendous job. They have helped keep America strong. They have helped make sure we have the facilities and the equipment our men and women need to do the job.

That is why when we made the decision to go to war against terrorism and put our men and women into a situation in Afghanistan to deal with al-Qaida, the terrorists, we had some incredible equipment. The American people got glimpses of some of the tremendous things that have been done.

Once again this year they have done a fantastic job. Unless I am mistaken, this is the largest Defense bill in the history of the country. It was asked for by the President. They have been very careful to be judicious in how they have handled it. But they have brought it to the floor in such a way that Senators on both sides of the aisle agree with their product, and I thought I should take a minute to tell them how much I appreciate it.

Obviously, I am prejudiced. In my neck of the woods we build ships. We are very close to the Navy, but we also have Camp Shelby where Senator INOUYE got his training at the beginning of World War II. They have made sure that we paid attention to what we needed for the future in ships, even though the Navy actually had a declining request in this area.

On a personal basis and one based on knowledge of what would have been in the bill but what is in it, what needed to be done, I express my appreciation to the managers and thank them for what they have done here, in the past for the country, and what I know they will always do in their roles in the Senate.

They and their staffs spent many long hours hammering out the details of what amounts to the largest defense budget in the history of our nation and they are to be commended for their hard work.

I want to particularly thank Senators INOUYE and STEVENS for filling a major hole in the defense budget—the distinct lack of ship production for our Navy. During this time of war against terrorism, we need to maintain our ability to strike at the heart of our enemy far from American shores—namely, their training camps, intelligence centers, chemical/biological weapon production facilities, and conventional arms caches. Ships play a central role in our ability to project power and—before the actions of the Senate Appropriations Sub-committee on Defense—it looked like we, as a nation, were close to losing a key pillar in our fight against global terrorism.

Mr. President, the military budget as presented to this body earlier this year represented the largest increase in military spending that our country has seen in a long time, and yet the Navy's request for shipbuilding represented a decline in spending from the previous year. It certainly was difficult to understand and even more difficult to understand given that our forces are engaged in combat overseas. This spending profile not only threatened the capability of our Navy, but also threatened to severely dismantle our capability to produce ships in the United States. I don't need to spell out the dire implications of losing what little shipbuilding capacity that we have left in America.

Thanks to Senators INOUYE and STEVENS and their staffs' hard work, we have made great strides in righting our ship that was about to sink. I want to applaud the foresight and efforts of committee staff, particularly Charlie Houy, Steve Cortese, Leslie Kalan, Menda Fife and Kraig Siracuse to correct this problem. They put a lot of hard work into this mark-up and I believe they hit a home run for shipbuilding. This SAC–D mark-up has set the vision for the future and will help the Pentagon as they develop the shipbuilding plan for POM '04.

I also want to acknowledge the forward thinking of Pete Aldridge, John Young, and Dov Zakheim for identifying future funds in POM '04 that will be leveraged into the fleet of tomorrow—a fleet that will be fully capable of addressing threats to our nation that we cannot yet envision. An early version of the ship building plan for POM '04 includes laying the keel for a CVN in 2007; ramps up production of Virginia Class submarines from one ship per year in fiscal years 2004 through 2006 to two ships in 2007 through 2009; production of three DDG–51 class ships per year in 2004 and 2005; commencement of DD(X) production in 2005 with continuation of that program well into 2020; steady-state production of LPD–17 class ships through 2009; and a three-year interval between production of LHA(R)/LHD class ships in 2006 and 2009.

Again, I thank Senators INOUYE and STEVENS for putting together a Defense Appropriations bill that makes sense for our Navy, our nation, and our ship building industry. Thank you. I commend you for the great service you have done for our Nation, our military, and our service members.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 4412.

The amendment (No. 4412) was agreed to.

Mr. WELLSTONE. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, the underlying Wellstone amendment was adopted; is that right?

The PRESIDING OFFICER. That is not correct. The Wellstone amendment is now pending. Is there further debate on the amendment?

Mr. STEVENS. I ask unanimous consent that the action on amendment 4412 be vitiated and the amendment withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Without objection, the amendment is agreed to.

The amendment (No. 4364) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE. Mr. President, I have spoken with Senator GRASSLEY and with his staff and the Staff of Senator BAUCUS about the definition of expatriating firms and tax havens in my amendment. It would be my hope that the conferees to the Defense Appropriations bill could conform the definition in my amendment with the definition in S. 2119, the Reversing the Expatriation of Profits Offshore Act.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank my colleagues. I think this is an amendment of which we can be proud, and I am very proud that it passed.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

AMENDMENTS NOS. 4388 AND 4422 THROUGH 4434, EN BLOC

Mr. INOUYE. Mr. President, the managers of this bill, Senator STEVENS and I, wish to submit several amendments for consideration. We ask unanimous consent that these amendments be considered en bloc and adopted en bloc. Before we do that, may I explain the amendments.

They are; an amendment for Senator AKAKA earmarking $6 million for critical infrastructure protection; an amendment for Senator CLINTON earmarking $500,000 for renovation of a hangar at Griffiss Air Force Base; an amendment for Senator INHOFE earmarking $5 million for remote logistic network; an amendment for Senator FEINSTEIN earmarking $5 million for integrated chemical biological warfare detector chips; an amendment for Senator HUTCHISON earmarking $1 million for nanoenergetic material research; an amendment for Senator FRIST and Senator THOMPSON earmarking $2 million for the Communicator force notification system; an amendment for Senator LANDRIEU earmarking $5 million for the D-Day museum; an amendment for Senator NELSON earmarking $6 million for the Center for Advanced Power Systems; an amendment for Senator BUNNING earmarking $1 million for security locks; an amendment for Senator KENNEDY earmarking $10 million for the Non-Self Deployable water craft study; an amendment for Senator CARNAHAN earmarking $850,000 for National Guard medical equipment; an amendment for Senators SMITH, WYDEN, and MURRAY to earmark $8 million for the Navy's Sealion program; an amendment for Senator CRAIG earmarking $3 million for foreign document digitization.

May I advise the Chair that there is not a single dollar added to the appropriation. These are just earmarks. It has been cleared by both sides.

I send the amendments to the desk. I ask that they be considered en bloc and approved en bloc.

The PRESIDING OFFICER. Is there objection? The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, reserving the right to object, in the list that the distinguished Senator just read, was there a Lugar amendment dealing with weapons of mass destruction?

Mr. INOUYE. No.

Mr. LUGAR. Mr. President, I will not object. I simply was hopeful that the amendment might be included at this point.

Mr. INOUYE. It was objected to because it was not authorized.

Mr. LUGAR. Reserving the right to object, I shall not object, a point of parliamentary procedure: When would be the appropriate time for this amendment to be considered or this Senator to offer the amendment or for the managers to offer the amendment?

Mr. STEVENS. Mr. President, it is my understanding the bill is still open to amendment. The Senator still has his right to offer it at any time.

Mr. LUGAR. Very well. So it would be appropriate, if I can gain the floor, to do so following the resolution of the amendments the Senator has offered. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask to amend the request of the Senator from Hawaii and ask unanimous consent that the amendment I shall send to the desk for the Senator from Iowa, Mr. GRASSLEY, be adopted. It deals with the awarding of a Medal of Honor flag to recipients of the Medal of Honor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 4388 and 4422 through 4434) were agreed to en bloc, as follows:

AMENDMENT NO. 4388

(Purpose: To provide for the designation of a Medal of Honor Flag and for presentation of that flag to recipients of the Medal of Honor)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Congress finds that—

(1) the Medal of Honor is the highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Forces of the United States;

(2) the Medal of Honor was established by Congress during the Civil War to recognize soldiers who had distinguished themselves by gallantry in action;

(3) the Medal of Honor was conceived by Senator James Grimes of the State of Iowa in 1861; and

(4) the Medal of Honor is the Nation's highest military honor, awarded for acts of personal bravery or self-sacrifice above and beyond the call of duty.

(b)(1) Chapter 9 of title 36, United States Code, is amended by adding at the end the following new section:

“§903. Designation of Medal of Honor Flag

“(a) DESIGNATION.—The Secretary of Defense shall design and designate a flag as the Medal of Honor Flag. In selecting the design for the flag, the Secretary shall consider designs submitted by the general public.

“(b) PRESENTATION.—The Medal of Honor Flag shall be presented as specified in sections 3755, 6257, and 8755 of title 10 and section 505 of title 14.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“903. Designation of Medal of Honor Flag.”.

(c)(1)(A) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

“§3755. Medal of honor: presentation of Medal of Honor Flag

“The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 3741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 3741 or 3752(a) of this title.”.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“3755. Medal of honor: presentation of Medal of Honor Flag.”.

(2)(A) Chapter 567 of such title is amended by adding at the end the following new section:

“§6257. Medal of honor: presentation of Medal of Honor Flag

“The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 6241 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 6241 or 6250 of this title.”.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“6257. Medal of honor: presentation of Medal of Honor Flag.”.

(3)(A) Chapter 857 of title 10, United States Code, is amended by adding at the end the following new section:

“§8755. Medal of honor: presentation of Medal of Honor Flag

“The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 8741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 8741 or 8752(a) of this title.”.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“8755. Medal of honor: presentation of Medal of Honor Flag.”.

(4)(A) Chapter 13 of title 14, United States Code, is amended by inserting after section 504 the following new section:

“§505. Medal of honor: presentation of Medal of Honor Flag

“The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 491 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 491 or 498 of this title.”.

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 504 the following new item:

“505. Medal of honor: presentation of Medal of Honor Flag.”.

(d) The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36, United States Code, as added by subsection (b), to each person awarded the Medal of Honor before the date of enactment of this Act who is living as of that date. Such presentation shall be made as expeditiously as possible after the date of the designation of the Medal of Honor Flag by the Secretary of Defense under such section.

AMENDMENT NO. 4422

(Purpose: To set aside $6,000,000 of operation and maintenance, Navy, funds for Servicewide Communications for the Critical Infrastructure Protection Program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading “OPERATION AND MAINTENANCE, NAVY”, for Servicewide Communications, $6,000,000 may be used for the Critical Infrastructure Protection Program.

AMENDMENT NO. 4423

(Purpose: To make available from amounts available for the Air Force for operation and maintenance $500,000 for a contribution to the renovation of Hangar Building 101 at former Griffiss Air Force Base, New York, in order to facilitate the reuse of the building for economic development purposes)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading “OPERATION AND MAINTENANCE, AIR FORCE”, up to $500,000 may be available for a contribution to the Griffiss Local Development Corporation (GLDC) for the renovation of Hangar Building 101 at former Griffiss Air Force Base, New York, in order to facilitate the reuse of the building for economic development purposes. Such renovation may include a new roof, building systems, fixtures, and leasehold improvements of the building.

AMENDMENT NO. 4424

(Purpose: To make available from amounts available for Defense-Wide research, development, test, and evaluation $5,000,000 for the Maintainers Remote Logistics Network)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading “RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE”, up to $5,000,000 may be available for the Maintainers Remote Logistics Network.

AMENDMENT NO. 4425

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $5,000,000 for the Integrated Chemical Biological Warfare Agent Detector Chip)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading “RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY”, up to $5,000,000 may be available for the Integrated Chemical Biological Warfare Agent Detector Chip.

AMENDMENT NO. 4426

At the appropriate place in the bill insert the following:

Of the funds provided under the heading "Research and Development, Air Force," up to $1,000,000 may be made available for research on nanoenergetic materials.

AMENDMENT NO. 4427

(Purpose: To make available from amounts available for the Army National Guard for operation and maintenance $2,000,000 for the Communicator emergency notification system)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD", up to $2,000,000 may be available for the Communicator emergency notification system.

AMENDMENT NO. 4428

(Purpose: To authorize a grant of $5,000,000 to the National D-Day Museum)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may, using amounts appropriated or otherwise made available by this Act, make a grant to the National D-Day Museum in the amount of $5,000,000.

AMENDMENT NO. 4429

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $6,000,000 for the Center for Advanced Power Systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $6,000,000 may be available for the Center for Advanced Power Systems.

AMENDMENT NO. 4430

(Purpose: To allow the Department of Defense to obligate funds to secure its sensitive and classified materials to further enhance the national security of the United States)

At the appropriate place in the bill insert the following section:

SEC. . Out of the Operation and Maintenance, Defense-Wide, funds appropriated, $1,000,000 may be available to continue the Department of Defense's internal security-container lock retrofit program for purchasing additional security locks which meet federal specification FF–L–2740A.

AMENDMENT NO. 4431

(Purpose: To make available from the National Defense Sealift Fund $10,000,000 for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title V under the heading "NATIONAL DEFENSE SEALIFT FUND", up to $10,000,000 may be available for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study, which are to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels.

AMENDMENT NO. 4432

(Purpose: To set aside from amounts available for the Air National Guard for operation and maintenance $350,000 for medical equipment)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, AIR NATIONAL GUARD", up to $350,000 may be available for medical equipment.

AMENDMENT NO. 4433

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $18,000,000 for the Sealion Technology Demonstration program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY" and available for Ship Concept Advanced Design up to $18,000,000 may be available for the Sealion Technology Demonstration program for the purchase, test, and evaluation of a Sealion craft with modular capability.

AMENDMENT NO. 4434

(Purpose: To provide for standardized digitizing, conversion, indexing, and formatting of captured foreign documentary materials, and for other purposes)

At the appropriate place in Title VIII, insert the following:

"SEC. . Of the funds made available in this Act under the heading 'Research, Development, Test and Evaluation, Defense-Wide', up to $3,000,000 may be made available to digitize, convert, index, and format captured foreign documentary materials (including legacy materials) into a standard, usable format, to enable the timely analysis and use of mission critical data by analytical and warfighter personnel.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 4435

(Purpose: To authorize the waiver of the prohibition on the use of Cooperative Threat Reduction funds for chemical weapons destruction)

Mr. LUGAR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for himself, Mr. BIDEN, Mr. DOMENICI, Mr. HAGEL, Mr. GRAHAM, Mr. LEVIN, Mr. DODD, and Mr. MCCAIN, proposes an amendment numbered 4435:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 22 U.S.C. 5952 note) is amended—

(1) by inserting "(a) LIMITATION.—" before "No fiscal year"; and

(2) by adding at the end the following new subsection:

"(b) WAIVER.—(1) The limitation in subsection (a) shall not apply to funds appropriated for Cooperative Threat Reduction programs for a fiscal year if the President submits to the Speaker of the House of Representatives and the President pro tempore of the Senate a written certification that the waiver of the limitation in such fiscal year is important to the national security of the United States.

"(2) A certification under paragraph (1) for fiscal year 2003 shall cover funds appropriated for Cooperative Threat Reduction programs for that fiscal year and for fiscal years 2000, 2001, and 2002.

"(3) A certification under paragraph (1) shall include a full and complete justification for the waiver of the limitation in subsection (a) for the fiscal year covered by the certification.".

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, during the Memorial Day recess, it was the privilege of this Senator to travel again with my colleague and partner, Senator Sam Nunn, and with Representative JOHN SPRATT and Representative CHRISTOPHER SHAYS to a number of sites in Russia. One of particular interest to us was the chemical weapons facility at Shchuch'ye, which is approximately 1,200 miles east of Moscow. That particular installation has been a part of the Cooperative Threat Reduction Program insofar as the United States has worked cooperatively with Russia to put extensive fencing and various other security around what amounts to 1.9 million weapon shells—that is, chemical weapon shells—filled with nerve gas, saran, and VX.

I had visited the sites 18 months before, and this was a return to envision precisely these 85-millimeter shells, these small shells that you can put in a small suitcase. Indeed, I have an illustration of this, Mr. President.

Here is the small suitcase, and here is the Senator from Indiana, and a Russian major took the picture.

As we discuss proliferation, this intersection between terrorists and weapons of mass destruction, envision, if you will, that there are 1.9 million more of these 85-millimeter shells. The Russians on the site estimate if one shell was put into a stadium of 100,000 people, everybody would die. It has that degree of efficacy and it has this degree of portability.

This is why the United States takes seriously the penning up of the chemical weapons of Russia. Russia has declared 40,000 metric tons. One-seventh of them are at Shchuch'ye, in this condition. Also at Shchuch'ye is our greatest hope in working with the Russians to destroy the chemical weapons. They are in the process of building a plant that will require U.S. money to complete. The German Bundesbank has appropriated money this year for this plant, and so has Great Britain, Canada, and Norway, in modest amounts, to join us.

The Russian Duma has appropriated substantially more money for this purpose. Why? Because Russia and the United States and many other nations ratified the Chemical Weapons Convention. We did so 5 years ago. The Russians did so a short time thereafter. It is a 10-year treaty. We are almost at halftime and not the first pound of chemical weapons has, in fact, been destroyed because there was not the money, not the technical organization, until at least this present point.

Mr. President, when I came back from Russia, Senator BIDEN, the chairman of the Foreign Relations Committee, and I were asked to come to the White House to visit with the President and the Vice President, Condoleezza Rice, and Andrew Card. Six of us sat there and talked about the new treaty between the United States and Russia, on which we have had testimony at some of our committee hearings. The point made by the President, Secretary Powell, and Secretary Rumsfeld is that we have a turn of the road with Russia. We are not naive with regard to all of the problems with Russia, but the President is asking for ratification of this new treaty that would substantially reduce nuclear warheads in the next 10 years.

I took the opportunity to point out to the President of the United States that it is one thing to ratify a treaty, and to negotiate one to begin with, and it is quite another to see actual results from the treaty. We are working in this country to reduce our chemical weapons, and we hope to do so in the 10 years. We have pledged to do so under the treaty. The Russians have a whole lot more of them. My point is that there has not been a reduction there. In this case, it is not a lack of good will, it is a lack of money, lack of technical support.

In the midst of all of this, the dilemma for President Bush—and he raised this during our face-to-face meeting—is: What can I do about it? With the other Nunn-Lugar programs, the Cooperative Threat Reduction Programs, the President could certify that the conditions imposed by Congress on the Nunn-Lugar Act are being met. In the past 10 years, such certification has come each year. This year, it did not.

Ms. Rice and the Vice President advised the President that the administration has sought authorization to waive the certification requirement so that the money could be spent. In effect, no new programs under cooperative threat reduction have occurred for 10 months of this fiscal year due to lack of certification and lack of waiver. .

Now, in the supplemental appropriations bill we passed the other evening, as this becomes law—at least for the last 2 months of this year—our Government can actively move to destroy weapons of mass destruction with new contracts—nuclear, chemical, and biological—for 2 months. In a conference now on the authorization of the Defense Department, there is a debate as to how long a waiver might last. The President has asked for permanent authority, and the Senate has offered that in its bill. The House has offered, as I understand it, a 3-year time for the President to waive this certification. But when we come to chemical weapons, the President apparently has no ability to waive anything, or to certify anything.

An additional six requirements are posed, and they have not been met, in the judgment at least of those in the administration who were involved in these deliberations. So as a result, nothing is happening with regard to American money or the destruction of these weapons.

Following my meeting with the President, I wrote a letter to Condoleezza Rice, and I stated everything that I have indicated in these remarks today. I appreciate the fact that she has responded and indicated to me that:

The President has repeatedly emphasized the importance of cooperative threat reduction in his strategy to reduce and prevent the proliferation of weapons of mass destruction, delivery means, and the materials and technology to develop them. Because of the program's value to the nation's security, the President has asked the Congress to grant him permanent authority to waive CTR certification requirements if he determines that is in the national interest. We strongly support the waiver provision of the Senate version of the FY2003 Defense Reauthorization bill, and have urged the conferees to adopt it.

Our serious concerns about Russian chemical and biological weapons activities make it difficult for the Secretary of State to certify Russia as eligible for CTR assistance. Waiver authority will enable the Administration both to pursue essential CTR weapons reduction and nonproliferation projects, and to work with Russia to resolve our concerns about its chemical and biological weapons activities.

Parenthetically, I might say that one of the concerns is the four installations, allegedly with biological weapons or preparations for them, in Russia to which none of us have had access.

It is my hope in the coming recess to enter two of these and at least clear away whatever may be the dilemmas of those two situations and maybe in the fullness of time to make the other two.

I have been permitted to go into a number of biological situations, in addition to the full gamut of the chemical ones, largely because there is a sense of cooperative threat reduction.

The Russians themselves appreciate that if there are accidents, theft, or a breakdown of the system, Russians will be killed first and in large numbers. This is a grim and serious business which ought not be a part of parliamentary byplay and that has been the dilemma this year.

Condoleezza Rice continues:

> Similarly, we welcome your proposal of a waiver of the legislative conditions on CTR assistance to construct a nerve agent destruction facility at Shchuch'ye. As you point out, the small, transportable munitions at Shchuch'ye pose a real proliferation risk. The President underscored the importance of assistance to Russian chemical weapons destruction in his December speech at the Citadel and most recently in the G8 Leaders announcement of Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.
>
> We have been working hard with Russia to meet the legislative conditions on the Shchuch'ye project, and have made considerable progress. Nevertheless, it may be difficult to assess with confidence that the information we have from Russia on its chemical weapons stockpile is full and accurate. At a minimum, the information-gathering process will be very time-consuming, but the proliferation threat gives us no time to delay. Indeed, the Administration concluded after its thorough review of nonproliferation assistance to Russia that the destruction project at Shchuch'ye should be accelerated.
>
> Therefore, the Administration has urged the conferees to the FY2003 Defense Authorization bill to provide the President the authority to waive the conditions on CTR chemical weapons destruction assistance, if he determines that to do so is in the national interest.

Given this letter, Mr. President, I have offered the amendment that is at the desk. It achieves that objective of giving the President waiver authority that he does not have with regard to these chemical weapons. In due course, the conference committee and the armed services will come to a decision as to whether the request by the President for permanent waiver authority on all Nunn-Lugar programs is to be granted to the President.

In a commonsense way, I pray that will be the case. I cannot imagine that it is in the national interest for us to deliberately, having authorized money for Nunn-Lugar, having appropriated money for the Nunn-Lugar program, to have it all tied up in terms of new projects for 10 months.

My point to the President has been: Mr. President, that could very well be the fate of a nuclear treaty with regard to warheads. Why do we believe that somehow that might be exempt because, clearly, American money is going to be involved if we are to make progress in seeing those warheads reduced.

The Russians may want to reduce the warheads to 2,200 or 1,700 or whatever figure is in their national interest, but they clearly do not have the means to do so.

Some Americans, perhaps even Members of this body, may say: Well, that is the Russian's problem; they made their bed; let them sleep in it. But it is our problem because those warheads are aimed at us. The nerve gas at Shchuch'ye will not be aimed at us if it is destroyed, and it can be destroyed during this historical window of opportunity.

Therefore, I earnestly ask for support of the Senate in adopting this amendment so it is absolutely clear that the President has the authority to give the waivers so that we may move ahead on something I think is vital not only to our national interest but in the war against terrorism is imperative. My feeling always has been if the Senate had any idea of this general problem, there would be a speedy resolution.

The purpose of my speech tonight is to make sure this Senate does understand and makes a commitment to destroy these weapons as rapidly as possible, given the storage and given the destruction facility.

I add finally that for those who are at all wondering how they destroy the stockpile, this is the weapon in the suitcase. It would be taken down to a vacuum space. Two holes would be drilled in the bottom of the weapon. The material would be drained out and put in a chemical formulation which finally renders that toxic material without consequence. This has to happen 1.9 million times. It will take 6 years if we begin now.

I hope it will begin now. My plea is for immediate action on the amendment which I hope will be favorable.

I ask unanimous consent that a letter addressed to Dr. Rice dated July 12, 2002, and her response to me dated July 30, 2002, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, July 12, 2002.

Dr. CONDOLEEZZA RICE,
Assistant to the President for National Security Affairs,
The White House, Washington, DC.

DEAR DR. RICE: We write out of great concern over the current status of various projects in the Nunn-Lugar Cooperative Threat Reduction (CTR) Program at the Department of Defense. Final disposition has yet to be reached on an Administration request for permanent annual waiver authority relative to legislatively-imposed conditions requiring certification by the Executive branch in order to permit elements of the program to go forward. That will remain dependent on the outcome of a conference between the two houses of Congress on the FY 2003 Defense Authorization bill.

Despite the Administration's difficulties in attempting to secure permanent waiver authority from the Congress in order to proceed with the overall Nunn-Lugar/CTR program, we are encouraged that the Administration has continued to seek the waiver to the certification requirements. The same cannot be said with respect to the Administration's approach to the Nunn-Lugar/CTR chemical weapons elimination project in Russia. Congressional conditions—above and beyond those that apply to CTR in general—continue to stymie and delay construction of a chemical weapons destruction facility at Shchuchye, Russia, that is decidedly in the national security interests of the United States. A swift solution to the current stalemate is only possible with strong Administration leadership.

The project at Shchuchye was reviewed by the Administration as part of its non-proliferation program review last year. In a Fact Sheet released December 27, 2001, the White House stated that: "The Department of Defense will seek to accelerate the Cooperative Threat Reduction project to construct a chemical weapons destruction facility at Shchuchye, to enable its earlier completion at no increased expense. We welcome the contributions that friends and allies have made to this project thus far, and will work for their enhancement." Unfortunately, little progress has been made in this direction.

Several of us recently visited Shchuchye and have come to the conclusion that the U.S. needs to move forward expeditiously if we are to eliminate this critical proliferation threat. The depot houses nearly 2,000,000 modern ground-launched chemical weapons. These artillery shells and SCUD missile warheads are in excellent working condition and many are small and easily transportable and could be deadly in the hands of terrorists, religious sects, or para-military units. We were told by our Russian hosts that the weapons stored at Shchuchye could kill the world's population some twenty times over. The size and lethality of the weapons at Shchuchye are clearly a direct proliferation threat to the American people.

Last year, the House of Representatives attached six conditions to the Shchuchye project. Of the original six conditions, four can be met but two continue to be problematic. The remaining conditions require the Secretary of Defense to certify that the information provided by Russia on the size of its chemical weapons stockpile is full and accurate and that Russia has developed a practical plan for destroying its stockpile of nerve agents. We share the goals associated with these conditions, but these same concerns prompted the Administration to seek a waiver to the larger certification requirements required under the Nunn-Lugar program. Unfortunately, without a similar White House request for a waiver at Shchuchye, it is unlikely that the Pentagon will be able to begin construction of a facility to destroy these weapons in the foreseeable future.

We urge the Administration to weigh in with conferees to the FY 2003 Defense Authorization bill to include a national security waiver of congressionally-imposed conditions on the spending of funds authorized for chemical weapons elimination under the Nunn-Lugar program. As the war on terrorism continues we must ensure that terrorists do not intersect with weapons of mass destruction. Failure to begin destruction of the chemical weapons arsenal at Shchuchye would leave these dangerous, highly portable weapons in an unsafe and insecure location and vulnerable to proliferation. Construction could start tomorrow if Congress were to embrace the proper policy prescription.

The Administration's plans to speed up implementation of this important Nunn-Lugar project cannot coexist with the current Congressional conditions on the program. We urge you to provide vitally needed leadership to permit the Pentagon to begin dismantlement efforts. Without strong White House leadership we fear that progress will again be stymied and U.S. national security interests will suffer.

We look forward to discussing this with you in the near future.

Sincerely,

Richard G. Lugar, U.S. Senator; Joseph R. Biden Jr., U.S. Senator; Chris Shays, U.S. Representative; John Spratt, U.S. Representative; Pete Domenici, U.S. Senator; Jeff Bingaman, U.S. Senator; Ellen Taushcher, U.S. Representative; Bob Graham, U.S. Senator; Chuck Hagel, U.S. Senator; Vic Snyder, U.S. Representative.

THE WHITE HOUSE,
Washington, July 30, 2002.

Hon. RICHARD G. LUGAR,
U.S. Senate, Washington, DC.

DEAR SENATOR LUGAR: Thank you for your letter on the Department of Defense Cooperative Threat Reduction (CTR) program.

The President has repeatedly emphasized the importance of CTR in his strategy to reduce and prevent the proliferation of weapons of mass destruction, delivery means, and the materials and technology to develop them. Because of the program's value to the nation's security, the President has asked the Congress to grant him permanent authority to waive CTR certification requirements if he determines that is in the national interest. We strongly support the waiver provision in the Senate version of the FY2003 Defense Authorization bill, and have urged the conferees to adopt it.

Our serious concerns about Russian chemical and biological weapons activities make it difficult for the Secretary of State to certify Russia as eligible for CTR assistance. Waiver authority will enable the Administration both to pursue essential CTR weapons reduction and nonproliferation projects, and to work with Russia to resolve our concerns about its chemical and biological weapons activities.

Similarly, we welcome your proposal for a waiver of the legislative conditions on CTR assistance to construct a nerve agent destruction facility at Shchuch'ye. As you point out, the small, transportable munitions at Shchuch'ye pose a real proliferation risk. The President underscored the importance of assistance to Russian chemical weapons destruction in his December speech at the Citadel and most recently in the G8 Leaders announcement of the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.

We have been working hard with Russia to meet the legislative conditions on the Shchuch'ye project, and have made considerable progress. Nevertheless, it may be difficult to assess with confidence that the information we have from Russia on its chemical weapons stockpile is full and accurate. At a minimum, the information-gathering process will be very time-consuming, but the proliferation threat gives us no time to delay. Indeed, the Administration concluded after its thorough review of nonproliferation assistance to Russia that the destruction project at Shchuch'ye should be accelerated.

Therefore, the Administration has urged the conferees to the FY2003 Defense Authorization bill to provide the President the authority to waive the conditions on CTR chemical weapons destruction assistance, if he determines that to do so is in the national interest.

Sincerely,

CONDOLEEZZA RICE,
Assistance to the President for National Security Affairs.

U.S. SENATOR CARL LEVIN (D-MI) HOLDS HEARING ON NUCLEAR TREATY WITH RUSSIA, JULY 25, 2002, SENATE ARMED SERVICES COMMITTEE, WASHINGTON, DC

LEVIN: My final question. Secretary Rumsfeld, the Cooperative Threat Reduction Program is coming to a halt because of the inability to make the necessary certifications. The Senate bill that's in conference contains the legislative authority that the administration requested which is permanent authority for the president to grant an annual wavier of the prerequisites in the Freedom Support Act and the Cooperative Threat Reduction Act. The House bill contains authority to grant waivers for three years. I assume that you support the administration positions relative to permanent authority, and so, I won't ask you that. But if you disagree with it, perhaps in your answer to the question I'm going to ask you, you could let me know that, too. But here's the issue. The permanent authority requested by the administration to grant annual waivers of the prerequisites to Implementation of the Cooperative Threats Reduction Program does not include an ability to waive the special prerequisites for the Russian chemical weapons destruction program being carried out under the CTR program. President Bush said that not only did he support this important effort to destroy the Russian chemical weapons destruction program, he actually wanted to accelerate it. But there's no authority to waive those special prerequisites for the chemical destruction, then that program is going to be shut down. Will you be asking for waiver authority for the special prerequisites for the Russian chemical weapons destruction program?

RUMSFELD: The administration either has or will be asking for that waiver authority with respect to the chemical weapon destruction program——

LEVIN: Do you support that request?

RUMSFELD: Indeed, I do.

LEVIN: Thank you. General, you support that, too?

MYERS: Yes sir.

LEVIN: Thank you very much.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to be added as a cosponsor to the amendment of the distinguished Senator.

Mr. LUGAR. I will be delighted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I commend my colleague from Indiana and thank him and our former colleague, Senator Nunn, whom he has mentioned on several occasions during his remarks this evening. These two individuals have made a significant contribution to the improved environment in which the world finds itself today, with all of its problems. Had it not been for the efforts of Senator Nunn and Senator LUGAR over the years, we would not find ourselves in the position we are today to significantly reduce the kinds of threats the Senator from Indiana just highlighted in his remarks.

I am confident this amendment will be overwhelmingly supported. It should be. My cosponsorship is not a gratuitous act, but I want to be identified with the substance of his remarks and, more importantly, the substance of this amendment.

We had some testimony this morning, in fact, before the Senate Committee on Foreign Relations in talking about Iraq. These are very fine hearings that the chairman of the committee, Senator BIDEN, and Senator LUGAR have cosponsored to give us a wonderful opportunity to consider what options we have with regard to Iraq.

I do not want to dwell on that except to point out that Ambassador Butler this morning, when talking about various options and what we ought to consider and specifically talking about the issue of containment and whether we have exhausted the containment approach, questioned himself as to whether we had. But he said one thing we need to do, if anything at all, is to work more closely with Russia because they could play a very important role.

What the Senator from Indiana is doing, not only with this amendment in the short term, is creating at least the possibility of that cooperation which may be essential in the months and years ahead.

It is a staggering statistic. I do not know if my colleagues were listening carefully. Over the next 6 years, I presume working 5 or 6 days a week, 10- or 12-hour days—that is how long it will take to eliminate this incredible risk. The idea that we would be prohibited from doing so because we deny the President waiver authority because of an existing parliamentary situation or treaties that require some prior action I think would be a great missed opportunity.

I commend the Senator from Indiana immensely for his efforts in this regard, and I thank Senator Nunn as well for his previous work here and his continuing work. I wish to associate myself in this effort. This may be one of the most important things we will do in this bill, and I commend the Senator for offering the amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Connecticut for his cosponsorship.

Cosponsoring this amendment are the chairman of the Foreign Relations Committee, Mr. BIDEN; Mr. DOMENICI; Mr. HAGEL; Mr. GRAHAM; Mr. LEVIN, chairman of the Armed Services Committee; Mr. DODD; and I am pleased to add my colleague from Arizona, Mr. MCCAIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Hawaii.

Mr. INOUYE. We are prepared to accept this amendment and take it to conference.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4435.

The amendment (No. 4435) was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 4443

Mr. McCAIN. Mr. President, I have a couple of amendments the managers have accepted, and I have another amendment that would be the subject of debate. I send those two amendments that I think are agreed to, to the desk at this time and ask for their immediate consideration, either separately or en bloc. The first amendment I would request be called up would be amendment No. 4443.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 4443.

The amendment is as follows:

(Purpose: To remove the waiting period in the limitation on use of funds for conversion of the 939th Combat Search and Rescue Wing)

Beginning on page 221, line 24, strike "60 days after".

Mr. McCAIN. Mr. President, the first amendment would remove the reporting period required for the positioning of UH–60s and would allow that the report be submitted at any time. It is largely technical in nature.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4443.

The amendment (No. 4443) was agreed to.

AMENDMENT NO. 4444

Mr. McCAIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 4444.

Mr. McCAIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit the use of funds for leasing of transport/VIP aircraft under any contract not entered into pursuant to full and open competition)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. None of the funds appropriated by this Act may be used for leasing of transport/VIP aircraft under any contract entered into under any procurement procedures other than pursuant to the Competition and Contracting Act.

Mr. McCAIN. Mr. President, this calls for full and open competition in the case of a lease of a transport/VIP aircraft. It would address the complaints of industry with respect to the Boeing 767 tanker lease and Boeing 737 transport/VIP lease and the first five multisensor command and control aircraft, and would replace the JSTARS E-3 AWACS and the RC-135 Rivet Joint aircraft.

Basically, it calls for full and open competition for these aircraft, in the case of four 737 transport aircraft, and, as I understand, prospective Boeing 767 tanker aircraft.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, I misspoke. This amendment does not apply to the 767, only to the 737 aircraft.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Hawaii.

Mr. INOUYE. With that amendment, the managers are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4444.

The amendment (No. 4444) was agreed to.

AMENDMENT NO. 4445

Mr. McCAIN. For the benefit of my colleagues, I have one more amendment that is not agreed to and would require a rollcall vote, which I understand from the majority leader would be scheduled for tomorrow. I have a statement I would like to read concerning the pending bill and then discuss the amendment, or if the managers so choose, I would discuss the amendment first and then describe my views on the overall legislation.

Mr. President, I send amendment No. 4445 to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Arizona [Mr. McCAIN], for himself, and Mr. FEINGOLD, proposes an amendment numbered 4445.

Mr. McCAIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, I object. I do not think we have a copy of that amendment yet.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the reading of the amendment.

The legislative clerk read as follows:

> On page 223, between lines 20 and 21, insert the following:
>
> SEC. 8124. The Secretary of the Air Force shall not enter into any lease for transport/VIP aircraft for any period that includes any part of fiscal year 2003 until there is enacted a law, other than an appropriation Act, that authorizes the appropriation of funds in the amount or amounts necessary to enter into the lease and a law appropriating such funds pursuant to such authorization of appropriations.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I ask the managers of the bill if there are any further amendments that will be included in the managers' package.

Mr. INOUYE. Mr. President, if I may respond.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. There are no amendments left in the managers' package. However, there may be amendments brought up at this moment by others, but we do not have any.

Mr. McCAIN. I understand there may be further amendments brought up for a vote. I was speaking directly concerning the managers' package of amendments which, as we know, sometimes are not voted on individually and included in the package. I am very interested in seeing the managers' package of amendments. I thank the managers so far that they have been very helpful in sharing these amendments with me. I would like to see the final package of managers' amendments before it is agreed to.

This amendment is a pretty straightforward amendment. It requires authorization of appropriations for the leasing of any transport/VIP aircraft. It would ensure that the Senate Armed Services Committee maintained its relevance by requiring Senate Armed Services Committee approval and authorization of any tanker lease.

The amendment basically would instruct the Secretary of the Air Force that he could not enter into a lease for transport/VIP aircraft for any period that includes any part of fiscal year 2003 until he submits a report and there is a law enacted that authorizes the funds necessary to enter into the lease.

This is a very expensive acquisition on the part of the United States Air Force. I believe it should be authorized before this transaction is entered into. It is basically a matter of whether the Senate Armed Services Committee will maintain its relevance over the acquisition of very expensive pieces of equipment. It would be appropriate for the Armed Services Committee to approve of it. That is the way we have traditionally done business around here, particularly on issues of major consequences—although it has fallen into neglect in years past.

I do not think I need to elaborate further on the amendment except I believe it should be authorized before appropriated.

I see the distinguished manager of the bill on the floor. If he would like to respond before I give my statement on the overall Defense appropriations bill, I am happy to yield.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the Congress has passed legislation, and the President has signed it, that authorizes the Secretary of the Air Force to lease, for up to 10 years, these aircraft. It was a decided policy of the Congress based on our advice.

The capital costs of acquiring such equipment now would be such that it would move out of the budget other items that have to be acquired in the moneys needed for homeland defense. So we authorized the Secretary of Defense and the Secretary of the Air Force to enter into agreements not to exceed 10 years for these aircraft. They are readily available for lease. We limit the time they may lease them. But it is a very successful practice in the business world and I think would be a successful practice for the Department of Defense to lease this equipment when necessary and not to have standing around equipment that is not needed.

We believe a leasing policy is the best policy for this type of aircraft. There are a series of competing aircraft available, but it is up to the Secretary of Defense and the Secretary of the Air Force to decide which ones they want.

My advice to my friend from Hawaii, and I think he will join me, is that we oppose this legislation. It would in effect modify the legislation, the law that was passed in the last Congress that authorized the procedure for which we are making available funds in this bill.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I concur with the statement of my distinguished friend, and I associate myself with his remarks.

Mr. STEVENS. If the Senator from Arizona has completed, I am prepared to offer a motion to table this amendment with the understanding that the time for the vote would be established by the leadership sometime tomorrow.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, it is fine with me, whenever he wants to make the motion to table. I do have additional comments on the issue.

The PRESIDING OFFICER. Is there further debate?

Mr. McCAIN. Yes, there is further debate.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I rise again to address the issue of wasteful spending in appropriations measures, in this case, in the bill to fund the Department of Defense for fiscal year 2003. This legislation would provide $355.5 billion to the Department of Defense. Each year, in provisions too numerous to mention in great detail, this bill funds pork barrel projects with questionable relationship to national defense at a time of scarce resources, budget deficits, and underfunded, urgent defense priorities. This year's measure continues this alarming tradition, by adding 581 programs not requested by the President, at a further cost of $5.2 billion.

America remains at war, a war that continues to unite Americans in pursuit of a common goal to defeat international terrorism. All Americans have made sacrifices for this war, and many have been deeply affected by it and at times harmed by difficult, related economic circumstances. Our servicemen and women in particular are truly on the front lines in this war, and are separated from their families, risking their lives, and working extraordinarily long hours under the most difficult conditions to accomplish the ambitious but necessary task their country has set for them. The weapons we have given them, for all their impressive effects, are, in many cases, neither in quantity nor quality, the best that our government can provide.

For instance, stockpiles of the precision-guided munitions that we relied on so heavily to bring air power to bear very effectively on difficult, often moving targets in Afghanistan, with the least collateral damage possible, are dangerously depleted. This is just one area of critical importance to our success in this war that underscores just how carefully we should be allocating scarce resources to our national defense.

Despite the realities of war, and the serious responsibilities the situation imposes on Congress and the President, the Senate Appropriations Committee has not seen fit to change in any degree its blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that clearly impair our national defense by depriving legitimate defense needs of adequate funding.

Mr. President, even in the middle of a war against terrorism, a war of monumental consequences that is expected to last for some time, the Senate Appropriations Committee remains intent on ensuring that part of the Department of Defense's mission is to dispense corporate welfare. It is a shame that at such a critical time, the United States Senate persists in spending money requested and authorized only for our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense and even, in truth, unconcerned about the true needs of our military.

An Investor's Business Daily article published late last year entitled At the Trough: Welfare Checks to Big Business Make No Sense, stated, "[a]mong the least justified outlays [in the federal budget] is corporate welfare. Budget analyst Stephen Slivinski estimates that business subsidies will run $87 billion [in 2001], up a third since 1997. Although President Bush proposed $12 billion in cuts to corporate welfare [in 2001], Congress has proved resistant. Indeed many post-September 11 bailouts have gone to big business. Boeing is one of the biggest beneficiaries. . . . While corporate America gets the profits, taxpayers get the losses. . . . The Constitution authorizes a Congress to promote the general welfare, not enrich Boeing and other corporate behemoths. There is no warrant to take from Peter so Paul can pay higher dividends. In the aftermath of September 11, the American people can ill afford budget profligacy in Washington. If Congress is not willing to cut corporate welfare at a time of national crisis, what is it will to cut?"

Yet, Congress didn't get the message this year. In the FY03 defense appropriations bill we are considering today, the Senate Appropriations Committee added nearly $1.3 billion to Boeing's programs, constituting more than 20 percent of the total plus-ups in the bill. As Defense Week noted unequivocally on July 22, "in this bill, Boeing made out like a bandit."

Mr. President, you will recall that last year, during conference negotiations on the Department of Defense Appropriations Act for fiscal year 2002, the Senate Appropriations Committee inserted into the bill unprecedented language to allow the U.S. Air Force to lease 100 Boeing 767 commercial aircraft and convert them to tankers, and to lease four Boeing 737 commercial aircraft for passenger airlift to be used by congressional and Executive Branch officials. Congress did not authorize these leasing provisions in the fiscal year 2002 National Defense Authorization Act, and in fact, the Senate Armed Services Committee was not advised of this effort by the U.S. Air Force during consideration of that authorization measure.

Again this year—without benefit of authorization committee debate or input—the Senate Appropriations Committee has added funding in the FY03 Department of Defense Appropriations bill for $30.6 million to cover initial leasing costs for the four Boeing 737 VIP transport aircraft noted above. Furthermore, additional language in the bill modifies a provision that had been carefully negotiated by OMB with appropriators last year, and may now permit the Air Force to circumvent standard leasing arrangements and, with respect to the 100 Boeing 767s, may allow the Air Force to extend the termination liability costs over the full term of the lease.

Mr. President, I am concerned that the impact of these provisions has not been adequately scrutinized, and the full cost to taxpayers has not been sufficiently considered. In fact, after review of the Air Force's proposed lease for the four 737s and its comparison of leasing and purchase options for these aircraft, it appears that certain leasing costs are being hidden to make the leasing option appear more cost-effective.

For example, although the Department of Defense self-insures its equipment and would not take out an insurance policy if it purchased these 737s, the Air Force's comparison of the leasing and purchase options assesses at least $17 million in insurance costs to the purchase option, thereby inflating the estimated purchase price significantly. In addition, the proposed leasing arrangement includes provisions requiring the Air Force to pay to insure the four 737 VIP aircraft and, in the event of loss or destruction of an aircraft, requiring the Air Force to pay a lease cancellation charge equal to one-year's worth of lease payments, or $10 million. These provisions add not only the cost of insurance, but also another $10 million to the leasing costs that would not be incurred under a traditional purchase arrangement and have not been disclosed up-front in discussions with OMB or Congress. These examples of hidden costs illustrate the lack of transparency of this transaction and strongly suggest that the Air Force's analysis of the $3.9 million advantage to leasing over purchase is illusory.

But you do not have to take my word for it. Rather, in a July 23 letter to Representative Curt Weldon on this matter, Congressional Budget Office Director Dan Crippen advised that the Air Force's estimated purchase price of the four 737s may be too high and that:

> Small adjustments in the assumed purchase price, residual value, or insurance cost would reduce the projected savings from leasing the aircraft or make the purchase alternative the less expensive option.

In its analysis, CBO notes that the cost of the purchase option is estimated and not based on any negotiation between the Air Force and Boeing. Significantly, CBO states,

> Just as Boeing and the Air Force negotiated a lower lease-price from Boeing's initial offer, CBO believes it might also be possible for the Air Force and Boeing to negotiate a lower purchase price for the aircraft, if the Air Force were a willing buyer. CBO estimates that the Air Force would only need to negotiate a purchase price about $1 million less per plane than Boeing's initial estimate in order for the cost of the purchase option to be equal to the cost of the lease option, in net present value terms. . . . Using Air Force data and a model for calculating commercial lease payments, we estimate that a purchase price of $249 million (rather than the $269 million price used in the Air Force's analysis) would be consistent with the lease terms. . . . We estimate that, if a purchase price for the four aircraft could be negotiated for $249 million or $5 million less per aircraft, then the purchase alternative would save about $15 million compared to the lease. GAO and CBO report that it would cost the government and ultimately the taxpayers between $13.5 to $20 million less to

> purchase the Boeing 737 VIP aircraft than to lease them—but they report it could be more.

In addition, it is not clear that the Air Force has negotiated a fair lease price for these VIP aircraft. Financing experts advise that to evaluate whether leasing is the preferable option, as compared to purchase of aircraft, one month's lease payment should be equal to approximately 1 percent of the total cost of the aircraft. In GAO's current analysis of the proposed Air Force lease, on which I have been briefed, GAO contends that the Air Force's proposed lease with Boeing for four 737 VIP aircraft is $32 million more than the norm that I have just stated. I am concerned that the Air Force appears to be going against the advice of financial experts not only by choosing to lease instead of purchase these aircraft, but also by not getting a good deal on the lease price. American taxpayers should be concerned by this behavior.

I would like to note that OMB Director Mitch Daniels has often indicated his preference to maintain scrutiny of Government leasing practices out of regard for U.S. taxpayers. Just last year, in a letter from the OMB Director to Senator KENT CONRAD, OMB cautioned against eliminating rules intended to reduce leasing abuses. OMB's letter emphasized that the Budget Enforcement Act—BEA—scoring rules:

> . . . were specifically designed to encourage the use of financing mechanisms that minimize taxpayers' costs by eliminating the unfair advantage provided to lease-purchases by the previous scoring rules. Prior to the BEA, agencies only needed budget authority for the first year's lease payment, even though the agreement was a legally enforceable commitment to fully pay for the asset over time.

OMB's letter continued by explaining that this loophole had permitted the General Services Administration to agree to 11 lease-purchase agreements with a total, full-term cost of $1.7 billion, but to budget only the first year of lease payments. OMB's letter stated:

> [t]he scoring hid the fact that these agreements had a higher economic cost than traditional direct purchases and in some cases allowed projects to go forward despite significant cost overruns. . . .

In my view, this leasing proposal for Boeing 737 VIP aircraft also puts the Air Force at risk of being unable to procure higher priority items needed to fight the war on terrorism. On March 1, 2002, the Air Force presented Congress with a list of its top priorities encompassing 38 items totaling $3.8 billion. Within its top 10 programs, the Air Force asked for several essential items that would directly support our current war effort: wartime munitions, aircraft engine replacement parts, night vision goggles, anti-terrorism/force protection efforts, bomber and fighter upgrades and self protection equipment, and combat search and rescue helicopters for downed pilots; yet, the list also includes these four VIP aircraft. In reviewing these Air Force priorities, I don't know what to be more critical about regarding the Air Force Secretary's effort on these VIP aircraft—that he's pushing in this time of war for this deal with Boeing for VIP aircraft or that his 13th priority of the top 38 in this time of war is for VIP aircraft for Executive Branch and congressional officials. Is it lost on the Air Force Secretary that we are at war?

I have asked OMB Director Daniels to continue his strong oversight of Government leasing practices, and I ask the Senate today to closely scrutinize this unprecedented, costly leasing deal for Boeing 737 VIP transport aircraft. But, this Boeing deal is just another example of Congress's political meddling and how outside special interest groups have obstructed the military's ability to channel resources where they are most needed. I will repeat what I've said many, many times before—the military needs less money spent on pork and more spent to redress the serious problems caused by a decade of declining defense budgets.

This bill includes many more examples where congressional appropriators show that they have no sense of priority when it comes to spending the taxpayers' money. The insatiable appetite in Congress for wasteful spending grows more and more as the total amount of pork added to appropriations bills considered in the Senate so far this year—an amount totaling nearly $7 billion.

Mr. President, I look forward to the day when my appearances on the Senate floor for this purpose are no longer necessary. I reiterate—over $5.2 billion in unrequested defense programs in the defense appropriations bill have been added by the Committee. Consider how that $5.2 billion, when added to the savings gained through additional base closings and more cost-effective business practices, could be used so much more effectively. The problems of our armed forces, whether in terms of force structure or modernization, could be more assuredly addressed and our warfighting ability greatly enhanced. The American taxpayers expect more of us, as do our brave service men and women who are, without question, fighting this war on global terrorism on our behalf. But for now, unfortunately, they must witness us, seemingly blind to our responsibilities at this time of war, going about our business as usual.

Mr. President, I may be wrong. I may be wrong in all of the information I just provided to the Senate. There is legitimate room for legitimate debate. I believe OMB and GAO have clearly stated that we could save money by not leasing this aircraft. Certainly we could save money through competition and certainly we could save money to the taxpayers by negotiating a better deal with the Boeing Aircraft Company—which, by the way, although President Bush proposed $12 billion in cuts to corporate welfare, Boeing is one of the biggest beneficiaries. In other words, Boeing as the Defense Weekly noted unequivocally on July 22, in reference to the Defense Appropriations Committee bill that we are considering today, Defense Weekly noted unequivocally on July 22, "In this bill, Boeing made out like a bandit."

I think they did. I think they did.

The managers of the bill and I could debate what is right and what is wrong as far as these numbers are concerned. I think I have compelling numbers on my side that would indicate we could either lease or purchase at a much less cost than the appropriators put in the bill. But the point here is that it should be authorized. It should not be done by the Appropriations Committee without authorization. This is what we come back to time after time after time on the floor of this Senate.

Where is the role of the Senate Armed Services Committee to authorize the purchase of aircraft worth many tens of millions of dollars? They have been bypassed.

I hope the majority of my colleagues would recognize that an issue of this magnitude deserves the hearings and scrutiny that can be conducted by the Senate Armed Services Committee. The job of the Appropriations Committee is to appropriate funds that have been previously authorized. I hope my colleagues will agree with that.

I ask unanimous consent a list of Appropriations Committee earmarks be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FY2003 DEFENSE APPROPRIATIONS

MILITARY PERSONNEL, ARMY	
Undistributed: Adopted legislative proposals	6.4
MILITARY PERSONNEL, NAVY	
Undistributed: Adopted legislative proposals	2.9
MILITARY PERSONNEL, MARINE CORPS	
Undistributed: Adopted legislative proposals	0.6
MILITARY PERSONNEL, AIR FORCE	
Undistributed:	
B–52 force structure	3.7
Adopted legislative proposals	4.2
RESERVE PERSONNEL, ARMY	
Other Training and Support:	
Additional AGR end strength (Transfer from BA1)	11.4
Sustainment of current AGR force	26.1
Undistributed: Adopted legislative proposals	1.0
RESERVE PERSONNEL, NAVY	
Undistributed: Adopted legislative proposals	0.1
NATIONAL GUARD PERSONNEL, ARMY	
Undistributed:	
Emergency Spill Response and Preparedness Program	0.6
Adopted legislative proposals	2.1

NATIONAL GUARD PERSONNEL, AIR FORCE

Other Training and Support: Additional AGR end strength	0.8

OPERATION AND MAINTENANCE, ARMY

Operating Forces:	
USARPAC C4I PACMERS	5.0
USARPAC C4 shortfalls	6.0
Hunter UAV	10.0
Training and Recruiting:	
SROTC-Air Battle Captain	2.0
SCOLA Language training	1.0
Ft. Knox Distance Learning	3.0
Administration and service wide activities:	
LOGTECH	2.0
Biometrics support	10.0
Army conservation and ecosystem management	4.0
Innovative Safety Management	5.0
Rock Island Bridge Repair	2.3
Yukon training infrastructure and access upgrades	2.0
Fort Wainwright Bldg. 600 repairs	4.5
Fort Wainwright Utilidors	10.0
Tanana River Bridge Study	1.5
Undistributed:	
Classified	41.8
Anti-corrosion programs	1.0

OPERATION AND MAINTENANCE, NAVY

Operating Forces:	
Shipyard Apprentice program	10.0
Warfare Tactics PMRF facilities	20.0
Hydrographic Center of Excellence	3.5
Cntr. for Excellence in Disaster Management	5.0
MK–45 Overhaul	15.0
MK–245 Decoys	2.0
Mobilization: Ship Disposal Project	5.0
Training and Recruiting: Naval Sea Cadet Corps	2.0
Administration and Statewide Activities:	
Navy-Wide PVCS Enterprise License	5.0
Navy Armory Inventory and Custody Tracking	0.8
Flash Detection System	0.9
Undistributed:	
Classified	29.4
Anti-Corrosion Program	1.0
Stainless steel sanitary spaces	5.0

OPERATION AND MAINTENANCE, MARINE CORPS

Operating Forces: Polar Fleece shirts	1.0
Undistributed: Anti-corrosion programs	1.0

OPERATION AND MAINTENANCE, AIR FORCE

Operating Forces:	
B–52 Attrition Reserve	40.0
B–1 Bomber Modifications	11.0
11th AF Range upgrades—fiber optics and power infrastructure	8.0
University Partnership for Operational Support	4.0
Mobilization: PACAF strategic airlift	3.0
Training and Recruiting: MBU–20 Oxygen Mask	4.0
Administration and Service-wide Activities:	
Hickam AFB Alternative Fuel Vehicle Program	1.0
Eielson AFB Utilidors	10.0
ALCOM Wide Mobile Radio Network	0.4
Range Residue recycling program	3.0
Undistributed:	
Classified	81.4
Anti-corrosion Programs	1.0
MTAPP	6.0

OPERATION AND MAINTENANCE, DEFENSE-WIDE

Operating Forces: SPECWARCOM: Mission Support Center	2.0
Training and Recruiting: Joint Military Education Venture Forum	0.5
Administration and Service-wide activities:	
Innovative Readiness Training	10.0
DLA-PTAP	5.0
DODEA-UNI Math Teacher Leadership	1.0
Galena IDEA	5.0
OEA CUHSC, Fitzsimmons Army Hospital	10.0
OEA Relocate Barrow Landfill	4.0
OEA Port of Anchorage Intermodal Marine Facility Program	5.0
OSD Clara Barton Center	3.0
OSD Pacific Command Regional Initiative	6.0
OSD Intelligence Fusion Study Continuation	5.0
Undistributed:	
Legacy (Programs for Naval Archaeology)	12.0
Impact Aid	30.0
Impact Aid for Children with Disabilities	5.0
Operation Working Shield	5.0

OPERATION AND MAINTENANCE, ARMY RESERVE

Operating Forces: ECWCS	4.0

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

Administration and service wide activities: Command server activities	4.0

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

Operating Force:	
ECWCS	6.0
Homeland Security Training Camp Ground	3.8
1st Bn, 118th Infantry Brigade Rifle Range	3.0
Distributed battle simulation program support	0.9
Administration and service wide activities: Information operations	6.0
Undistributed:	
Additional Military Technicians	11.3
Distance Learning	50.0
Emergency Spill response	0.5
National Guard Youth Challenge, Camp Minden	1.7
SE Regional Training	2.0

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

Operating Forces: ECWCS	4.0
Administration and service wide activities: Information Operations	5.0
Undistributed: Defense Support Evaluation Group—NW	4.0
Montana Air National Guard: Training Range Planning and Study	1.0

AIRCRAFT PROCUREMENT, ARMY

Utility F/W (MR) Aircraft: 2 UC–35 aircraft	15.2
UH–60 Blackhawk (MYP): 9 Blackhawk helicopters	96.3
Helicopter-New Training: 6 TH–67 helicopters	9.6
AH–64 MODS:	
Apache engine Spares	64.0
Bladefold kits	2.0
UH–60 MODS	
Army NG Pacific CSAR Mods	3.0
DCS-HUMS	6.0
Common Ground Equipment: HELO Maintenance Work Platform System	2.0

MISSILE PROCUREMENT, ARMY

Patriot System Summary: Additional Missiles	25.0
HIMARS Launcher: Additional Launchers	5.0

WEAPONS AND TRACKED COMBAT VEHICLES PROCUREMENT, ARMY

Bradley Base Sustainment: Electronics Obsolescence Reduction	4.5
BFVS Series: Bradley Reactive Armor	35.0

AMMUNITION PROCUREMENT, ARMY

81MM Mortar, All Types: 81MM Mortar, Infared M816	4.0
CTG, Mortar, 120 MM, All Types: White Phosphorus Facility Equipment	13.0
Proj ARTY 155MM HE M107: Additional Funding	1.0
Bunker Defeating Munition (BDM): SMAW-D Bunker Defeating Munition	5.0
Rocket, Hydra 70, All Types: Additional Funding	40.0
Demolition Munitions, All Types: MDI Demolition Initiators	2.0
Ammunition Peculiar Equipment: Additional Funding	3.0
Provision of Industrial Facilities: Munitions Enterprise Technology Insertion	1.3
Conventional Ammo Demilitarization: Additional Funding	10.0
Arms Initiative: Additional Funding	10.0

OTHER PROCUREMENT, ARMY

Tactical Trailers/Dolly Sets: M871A3 22.5 Ton Trailers	3.5
HI MOB Multi-Purp WHLD Vehicles:	
Additional Vehicles for NG	7.5
Additional Vehicles for Reserve	7.5
Up-Armored Vehicles	29.0
Firetrucks & Associated Firefighting Equipment: Tactical Firefighting Equipment	10.0
Armored Security Vehicles: Additional Vehicles	25.0
Combat Identification Program: Quick Fix Program	1.0
Comms-Elec Equip Fielding: Virtual Patch Crisis Communication Coordination	3.2
Base Support Communications: AK Wide Mobile Radio Program	7.7
Information Systems: USARPAC C4 Equipment	6.0
Sentinel Mods: AN/MPQ–64	20.0
Striker Family: Additional Units	3.5
Automated Data Processing Equip:	
NG Distance Learning Courseware	7.5
Rock Island Arsenal Automatic Identification Technology	3.0
Regional Medical Distributive Learning	8.0
Digitization of DoD Technical Manuals	40.0
Tactical Bridge, Float-Ribbon: Common Bridge Transporter	4.0
GRND Standoff Mine Detection System: Handheld Standoff Mine Detection System	5.0
Combat Support Medical:	
Hemorrhage Control Dressings	4.0
Rapid Intravenous Fusion Pumps	2.5
Mission Modules-Engineering: 2 Additional Companies	7.0
Logistic Support Vessel: Vessel Completion	8.1
Training Devices, Nonsystem:	
EST 2000	5.0
Advanced Aviation Institutional Training Simulator	10.0
MOUT Intrumentation at Ft. Campbell	4.0
MOUT Instrumentation at Ft. Richardson	4.3
172nd SIB Army Range Improvement Program	7.5

AIRCRAFT PROCUREMENT, NAVY

MH–60R: AQS–22 Airborne Low Frequency Sonar (ALFS)	5.0
AH–1W Series:	
Tailboom strakes	6.5
Night Targeting System	6.0

SH-60 Series: Integrated Mechanical diagnostics	9.0
Special Project Aircraft: AMOSS	5.0
Common Ground Equipment: Direct Squadron Support Training	5.0
WEAPONS PROCUREMENT, NAVY	
RAM	10.0
Drones and Decoys: ITALD	20.0
CWIS MODS: Block 1B	38.0
PROCUREMENT OF AMMUNITION, NAVY & MARINE CORPS	
.50 Caliber: .50 Caliber SLAP	0.3
SHIPBUILDING AND CONVERSION, NAVY	
Carrier Replacement Program: Advance Procurement	229.0
LCAC SLEP: Additional Craft	22.0
OTHER PROCUREMENT, NAVY	
Items Less than $5 Million: ICAS	8.0
Operating Forces IPE:	
IPDE Enhancement and PDM Interoperability	10.0
PHNSY Equipment	15.0
Weapons Range Support Equipment:	
Mobile Threat Emitter	10.0
PMRF Equipment	9.8
Other Aviation Support Equipment: Joint Tactical Data Integration	15.0
SSN Combat Control Systems: SSN Modernization	13.0
Surface ASW Support Equipment: MK 32 SVTT Remanufacture	5.0
Submarine Training Device Mods: INTERLOCKS Development Tools	4.0
Tactical Vehicles: Additional MTVR	35.0
Other Supply Support Equipment: Serial Number Tracking System	6.0
PROCUREMENT, MARINE CORPS	
COMM Switching & Control System: Joint Enhanced Corps Communication System	25.0
Material Handling Equipment: Tram	5.0
Training Devices: Live Fire Training Range Upgrades	2.0
AIRCRAFT PROCUREMENT, AIR FORCE	
C–17(MYP):	
Fully Fund Purchase of 15 Aircraft	585.9
Maintenance Trainer	11.3
EC–130J: Purchase 1 additional aircraft	87.0
C–40 ANG: Leasing costs	30.6
B–52:	
Attrition reserve	25.2
B–52 electronic countermeasures	10.0
F–15:	
Block Upgrades	15.0
E-kit modifications	20.0
AN/AL–67 (V) 3&4 countermeasure ser	5.0
ALQ–135 Band 1.5	20.0
APG–63 (v)1 Program	7.5
C–130:	
AAN/AYW–1 dual autopilot (ANG)	0.8
Senior Scout; COMINT system	3.0
NP2000 propeller support upgrades	10.0
MISC Production Charges:	
Magnetic bearing cooling turbine technology	5.0
LITENING targeting pod upgrades (ANG)	24.9
MISSILE PROCUREMENT, AIR FORCE	
AGM–65D MAVERICK: Additional Missiles	4.0
Evolved Expendable Launch VEH: Mission Assurance	14.5
PROCUREMENT OF AMMUNITION, AIR FORCE	
Sensor Fuzed Weapon: Additional Funding	20.0
Flares: BOL IR MJU–52/B Expendables for ANG	1.0
OTHER PROCUREMENT, AIR FORCE	
Intelligence Comm Equipment: Eagle Vision	25.0
Theater Air Control System Improvements: AN/TPS—75	12.0
Air Force Physical Security: Containment Air Processing System	4.0
Combat Training Ranges:	
Mobile Remote Emitter Simulators	11.0
AK Air Training Upgrade/ P4BE Pods	5.0
11th AF Unmanned Threat Emitter Modification Program	11.0
11th AF JAWSS-Scoring System Processor	6.7
Base Information Infrastructure: AK Wide radio (LMR) Program	6.7
Items Less than $5 Million:	
Emergency Bailout Parachute System	3.0
Wall Style Troop Seats	3.0
Mechanized Material Handling: Point of Maintenance Initiative—POMX	8.0
Items less than $5 Million:	
Vaccine Facility Project	1.0
Heilbasket Technology	4.5
PROCUREMENT, DEFENSE-WIDE	
SOF Rotary Wing Upgrades: ATIRCM/CMWS	12.0
SOF Intelligence Systems:	
Portable Intelligence Collection and Relay Capability	6.0
LAW Trajectory Mounts (M72)	1.0
Maritime Equipment Mods: MkV Advanced Shock Mitigating Seats	2.0
Individual Protection:	
M40 Masks	3.0
M45 Masks	1.0
M48 Masks	0.5
MEU Masks	2.5
Decontamination:	
M12 Decon System upgrades	6.0
M291 Decontamination Kits	1.0
M100 Sorbent Decontamination Kits	1.0
Joint Biological Defense Program:	
Bio-Detection Kit storage	1.0
JBPDS–BIDS	10.0
Collective Protection:	
Chem-Bio protective shelters	7.0
Filter Surveillance Program	1.5
M49 Fixed Installation Filter	1.0
Contamination Avoidance: M22 Automatic Chemical Agent Alarms	7.0
RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY	
Defense Research Sciences:	
Animal Modeling Genetics Research	1.0
Biofilm Research	1.0
Integrated Desert Terrain Analysis	4.0
Knowledge Management Fusion Center	5.0
Optical Technologies Research	2.0
Prediction of Land-Atmosphere Interactions	2.5
University and Industry Research Centers:	
Armor Materials Design—Laser based material processing	2.5
Composite Materials Center of Excellence	0.8
Dendrimer Nanotechnology Research	3.5
Ferroelectric Materials Nanofabrication	1.5
Institute for Creative Technologies	5.0
Jidoka Project	3.0
University Research Coalition for Manufacturing and Design	4.0
University Program in Mobile Robotics	3.0
Materials Technology:	
Advanced Materials Processing	4.0
Electronics Components Reliability	2.5
FCS Composite Research	3.0
Future Affordable Multi-Utility Materials for FCS	2.0
Low Cost Enabling Technologies	3.0
Sensors and Electronic Survivability:	
Advanced Sensors and Obscurants	2.0
Missile Technology;	
Advanced Composite Chassis	2.0
E-Strike Short Range Air Defense Radar	3.0
Advanced Concepts and Simulation:	
Institute for Creative Technologies—Interactive training tech	5.0
Photonics	5.0
Combat Vehicle and Automotive Technology:	
21st Century Truck	17.0
Advanced Coatings Research	1.5
COMBAT	5.0
Fastening and Joining Research	1.8
Next Generation Smart Truck	4.0
Chemical, Smoke, and Equipment Defeating Technology: Vaporous Hydrogen Peroxide Technology	8.0
Weapons and Munitions Technology:	
Nanotechnology Consortium	2.0
Phyto-Extraction Technology	3.0
Electronics and Electronic Devices:	
Display and Development and Evaluation Laboratory	3.5
Flat Panel Displays	10.0
Low Cost Reusable Alkaline Manganese Zinc	0.6
Portable Hybrid Electric Power Systems	2.0
Countermine Systems:	
Acoustic Landmine Detection	3.0
Polymer Based Landmine Detection	2.0
Environmental Quality Technology:	
Environmental Response and Security Protection (ERASP) Program	5.0
Military Engineering Technology:	
Center for Geo-Sciences	2.0
Stationary Fuel Cell Initiative	10.0
University Partnership for Operational Support	4.0
Warfighter Technology: Chemical/Biological Nanoparticle Materials	3.5
Medical Technology:	
Dermal Phase Meter	1.5
EndoBiologics Vaccination Program	2.0
Gulf War Illness	1.0
International Rehabilitation Network	5.0
Hemorrhage Control Dressings	3.5
Remote Acoustic Hemostasis	4.6
Tissue Replacement and Repair for Battlefield Injuries	2.5
Warfighter Advanced Technologies:	
Biosystems Technology	5.0
Personnel Navigation for Future Warfighter	5.0
Scorpian Future Combat Helmet	8.0
Medical Advanced Technologies:	
Brain, Biology, and Machine Initiative	5.0
Center for Integration of Medicine and Innovative Technology	10.0
Juvenile Diabetes Research	3.0
Laser Fusion Elastin	5.0
Medical Simulation Training Initiative (MSTI)	1.0
National Bioterrorism Civilian Medical Response (CIMERC)	1.0
Rural Telemedicine Demonstration Project	1.3
Texas Training & Technology for Trauma and Terrorism	11.0
Aviation Advanced Technology: UAV Data links-AMUST	3.0
Combat Vehicle and Automotive Advanced Technology:	
Composite Body Parts—CAV Technology Transition	3.0

Hybrid Electric Vehicles	7.5
IMPACT	5.0
Mobile Parts Hospital	8.0
NAC Standardization Exchange for Product Data (N-STEP)	3.0
Pacific Rim Corrosion Project	3.0
Rapid Prototyping	2.0
Tracked Hybrid Electric Vehicle	1.0
Command, Control, Communications, Advanced Technology: Networking Environmental for C3 Mobile Services	4.0
Manpower, Personnel, and Training Advanced Technology: Army Aircrew Coordination Training	2.0
Missile Simulation Technology	11.0
Landmine Warfare and Barrier Advanced Technology:	
Advanced Demining Technology	5.0
Electromagnetic Wave Detection and Imaging Transceiver	2.5
Joint Service Small Arms Program: Objective Crew Served Weapons	5.0
Night Visions Advanced Technology:	
Night Vision Fusion	4.5
Warfighter/Firefighter Position, Location, and Tracking Sensor	3.0
Military Engineering Advanced Technology:	
Canola Oil Fuel Cell	1.5
Proton Exchange Membrane (PEM) Fuel Cell Technology	5.0
Solid Oxide Fuel Development	5.0
Advanced Tactical Computer Science and Sensor Technology:	
IMRSV Program for Simulation Based Operation	3.0
Army Missile Defense System Integration	14.0
Kodiak Launch Infrastructure, Transportation and Security	10.0
SMDC Institute for Chemical Assembly of Nanoscale	3.0
Targeted Defense for Asymmetric Biological Attack (TDABA)	1.0
Army Missile Defense Integration (DEM/VAL):	
Advanced Tactical Operations Center	1.0
Battlefield Ordnance Awareness (BOA)	6.5
Cooperative Micro-Satellite Experiment (CMSE)	5.0
Eagles Eyes	4.0
Enhanced Scamjet Mixing	3.0
Family of Systems Simulator (FOSSIM)	2.0
Low Cost Interceptor (LCI)	8.0
MTHEL	20.0
P-3 Micro-Power Devices for Missile Applications	3.0
Radar Power Technology	4.5
Supercluster Distributed Memory Technology	4.0
Tank and Medium Caliber Ammunition: MRM/TERM TM3	15.0
Environmental Quality Technology Dem/Val:	
Army Environmental Enhancement Program	1.0
Casting Emissions Reductions Program	8.0
Transportable Detonation Chamber	5.0
Waste Minimization and Pollution Prevention	3.0
Logistics and Engineer Equipment—Adv. Dev: Composite Prototype Hull Design for Theater Support Vessel	5.5
All Source Analysis System: Non-traditional" Intelligence Analysis Toolset (NTIAT)	1.0
Family of Heavy Tactical Vehicles: HEMTT 2 Technology Insertion Program	16.0
Future Combat Systems SDD (formerly Armored Systems Modernization): Non-Line of Sight Cannon Development	173.0
Combined Arms Tactical Trainers (CATT) Core: AVCATT—A Upgrade	1.5
Aviation—Eng. Dev.: High Level Ballistic Protection	0.5
Weapons and Munitions—Eng. Dev:	
Commonly Remotely-Operated Weapons System Station (CROWS)	2.0
Mortar Anti-Personnel Anti-Material (MAPAM)	5.0
Command, Control, Communications Systems—Eng. Dev	9.0
Applied Communications and Information Networking (ACIN)	17.0
SLAMRAM	2.0
Combat Identification: Integrated Battlefield Combat Situational Awareness System (IB-CSAS)	4.6
Information Technology Development:	
JCALS	25.0
Electronic Commodity Program	1.0
Threat Simulator Development:	
Multi-Made Top Attack Threat Simulator Program	3.0
RF/SAM Threat Simulator	3.0
Concepts Experimentation Program: Battle Lab Fort Knox	3.0
Army Test Ranges and Facilities:	
Cold Region Test Activity Infrastructure	2.5
Hybrid Electric Vehicle Testing only at Cold Region Test Activity	5.0
Non-Discarding SABOT Technology only at Cold Region Test Activity	2.0
DOD High Energy Laser Test Facility: HELSTF Infrastructure Upgrades	3.0
Technical Information Activities: Knowledge Mànagement Fusion	1.5
Munition Standardization, Effectiveness Safety: Plasma Ordnance Demilitarization System (PODS)	2.0
Combat Vehicle Improvement Program: Abrams M1A1 Fleet Sidecar/ Embedded Diagnostics	3.5
Aircraft Modification/Product Improvement Program:	
Blackhawk Dual Digital Flight Control Computer	4.0
Integrated Mechanical Diagnostics—HUMS, UH60L Demonstration	20.0
Digitization: University XXI Digitalization Support at Fort Hood	2.0
Special Army Program: SASC add	4.0
Security and Intelligence Activities:	
Language Training Software	5.2
Base Protection and Monitoring System	4.0
Contiguous Connection Model (CCM)	4.0
Information Systems Security Program:	
Biometrics	5.6
ISSP	3.5
End Item Industrial Preparedness Activities:	
Bipolar Wafer Cell NiMH	2.0
Continuous Manufac Process for Metal Matrix Composites	0.5
MANTECH for Cylindrical Zinc Air Battery for Land Warrior Sys.	3.0
MERWS—Phase II	5.7
Army Space & Missile Defense Command: Domed Housing	2.0

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

Defense Research Sciences:	
Consortium for Military Personnel Research	2.0
Robotic Mine Countermeasures	3.0
Power Projection Applied Research:	
Interrogator for High Speed Research	2.0
Low-cost Fused Remote Sensors for Target Identification	2.0
Force Protection Applied Research:	
Anti-Corrosion Modeling Software	2.5
Endeavor	4.0
Fusion Processor	4.0
Integrated Fuel Processor—Fuel Cell System	3.0
Laser Welding and Cutting	3.0
Miniature Autonomous Vehicles (MAVs)	1.5
Modular Advanced Composite Hull Form	2.0
Small Watercraft Demonstrator	5.0
Unmanned Sea Surface Vehicles	9.0
Communications, Command and Control, Intelligence, Surveillance: Common Senor Module	3.0
Materials, Electronics and Computer Technology: Innovative Communications Materials—Thick Film	1.0
Common Picture Applied Research:	
Modular Command Center	15.0
Tactical Component Network Applications Integration	35.0
Theater Undersea Warfare	10.0
UESA	15.0
Warfighter Sustainment Applied Research:	
Advanced Fouling & Corrosion Control Coatings	7.0
Advanced Materials and Intelligent Processing	3.0
Biodegradable Polymers for Naval Applications	1.3
Bioenvironmental Hazards Research Program	2.0
Carbon Foam for Navy Applications	0.5
Modernization Through Remanufacturing and Conversion (MTRAC)	4.0
Ceramic and Carbon Based Materials	2.0
Titanium Matrix Composites Program	2.6
Visualization and Technical Information	2.0
RF Systems Applied Research:	
Advanced Semiconductor Research	1.5
High Brightness Electron Source Program	3.0
Maritime Synthetic Range	6.0
Nanoscale Science and Technology Program	3.0
Silicon Carbide High Power Diode Development	2.5
Wide Bandgap Silicon Carbide Semiconductor Research	2.5
Ocean Warfighting Environment Applied Research:	
Hydrography Research	2.5
SEACOOS—Southeast Atlantic Coastal Ocean Observing System	8.0
Undersea Warfare Applied Research:	
Acoustic Temperature Profiler	3.0
Low Acoustic Signature Motor (LAMPREY)	3.5
SAUVIM	2.0
Magnetorestrictive Transduction (TERFENOL-D)	5.4
Power Projection Advanced Technology:	
HYSWAC Lifting Body Development	7.0
LSC(X)	12.0
Precision Strike Navigator	1.0
Variable Engine Nozzle	3.0
Vectored Thrust Ducted Propeller Helicopter Tech. Demo	4.0

Force Protection Advanced Technology:	
HTS AC Synchronous Propulsion Motor and Generator	10.0
Wave Powered Electric Power Generating System for Remote Naval	4.0
Common Picture Advanced Technology: Improved Shipboard Combat Information Center	6.0
Warfighter Sustainment Advanced Technology:	
Energy and Environmental Technology	4.0
Integrated Aircraft Health	2.0
Wire Chaffing Detection Technology	2.0
Marine Corps Advanced Technology Demonstration: Project Albert	7.0
Environmental Quality and Logistics Advanced Technology: National Surface Treatment Center	4.0
Undersea Warfare Advanced Technology: University Oceanographic Laboratory System (UNOLS)	5.0
Advanced Technology Transition: Man-portable Quadruple Resonance Landmine Detection Program	5.0
Aviation Survivability:	
Modular Helmet	3.0
Rotorcraft External Airbag Protection System (REAPS)	4.0
ASW Systems Deployment: LASH ASW	5.0
Surface Torpedo Defense: Anti-Torpedo	2.0
Carrier Systems Development: Advanced Battlestation/Decision Support System	6.0
Shipboard System Component Development:	
MTTC/IPI	8.0
REPTILE—Regional Electric Power Tech Integration and Leveraging	1.0
Surface Vessel Torpedo Tubes-Airbag Technology	5.0
Advanced Submarine System Development:	
Electronic Motor Brush Technology	3.0
Electromagnetic Actuator Development	1.9
Fiber Optic Multi Line Towed Array (FOMLTA)	5.0
High Performance Metal Fiber Brushes	7.5
Rotary Electromagnetic (Torpedo) Launcher System	2.0
Ship Concept Advanced Design: Advanced, Integrated Low-Profile Antenna (HF, VHF, UHF)	4.0
Marine Corps Ground Combat/Support System:	
Innovative Stand-off Door Breeching Munition	2.5
Nanoparticles for the Neutralization of Facility Threats	3.0
Navy Energy Program:	
Proton Exchange Membrane (PET) Fuel Cell Technology	5.0
Thermally Activated Chiller/Heater	2.5
Land Attack Technology: Semi-Automated IMINT Processing (SAIP)	2.0
Nonlethal Weapons Dem/Val:	
Joint Non-Lethal Weapons Technology Innovation	2.0
Urban Ops Environment Research	2.0
E–2C Radar Modernization: E–2C Technical Upgrade for Optimized Radar	8.0
SC–21 Total Ship Engineering:	
Littoral Combat Ship Research and Development	30.0
Power Node Control Centers	2.0
Surface Combatant Combat System Modernization Program:	
Silicon Carbide MMIC Producibility Program	3.0
DDG–51 Optimized Manning Initiative	5.0
Solid-State Spy–1E Multi Mission Radar	3.0
Shipboard Aviation Systems: IASS/ITI	4.0
SSN–21 Developments: SEAFAC Range Upgrade	15.0
Submarine Tactical Warfare System:	
CCS MK2—Submarine Combat System Modernization Program	14.5
Unguided Conventional Air-launched Weapons: Light Defender	6.0
Lightweight Torpedo Development: Align Lightweight and Heavyweight Torpedo Baselines	5.0
Navy Energy Program: Photovoltaic Energy Park	2.5
Battle Group Passive Horizon Extension System: Cooperative Outboard Logistics Update Digital Upgrade	5.0
Ship Self Defense (Engage: Hard Kill): Phalanx SEARAM1	5.0
Ship Self Defense (Engage: Soft Kill):	
NULKA Decoy Improvements	9.2
Radar Tiles for Reduced Surface Ship Signature	1.0
Medical Development:	
Coastal Cancer Center	5.0
Naval Blood Research Laboratory	3.0
Treatment of Radiation Sickness Research	4.0
Distributed Surveillance System: Advanced Deployable System	5.0
Joint Strike Fighter (JSF)—EMD: F136 Interchngable Engine	35.0
Information Technology Development Condition Based Maintenance Enabling Technologies	0.6
Management, Technical & International Support Combating Terrorism, Wargaming & Research	2.0
Marine Corps Program Wide Support Nanoparticles Responses to Chemical and Biological Threats	3.0
Navy Science Assistance Program:	
LASH Airship Test Platform Support	2.0
LASH ISR/Mine Countermeasures	8.0
Marine Corps Communications Systems: Improved High performance Long-Range Radar Transmitter	3.0
Marine Corps Ground Combat/Supporting Arms System: Navy Body Armor Upgrades	1.0
Information Systems Security Program: HG–40A Modernization Program	2.0
Joint C4ISR Battle Center (JBC): Strategic Interoperability Initiave	4.0
Modeling and Simulation Support: Naval Modeling and Simulation	3.0

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

Materials:	
Composite materials training program	0.5
Nanostructured Materials	5.0
Advanced Materials-Deposition for Semiconductor Nano	1.5
Closed cell foam material	1.0
Durable coatings for aircraft systems	4.0
Free electron laser materials processing	3.0
Titanium Matrix	4.4
Metals affordability initiative	7.5
Nanostructured protective coatings	2.0
Strategic partnership for nanotechnology	6.0
Cost-effective composite materials for UAVs	2.5
Human Effectiveness Applied Research: Human effectiveness applied research	9.8
Aerospace Sensors: AFRL information and sensors directorate	2.5
Space Technology:	
Lightweight and novel Structures	1.0
HAARP incoherent scatter radar	3.0
ICASS	2.0
Seismic Nuclear Test Monitoring research	5.0
Substrates for solar cells	2.0
Carbon foam for aircraft and spacecraft	0.5
TechSat 21	5.0
Command, Control, and Communications:	
Information protection and authentication	3.0
Secure Knowledge management	5.0
Advanced Materials for Weapons Systems:	
Low bandwidth medical collaboration	2.0
Powdered programmable process	5.0
Assessing aging of military aircraft	2.0
Ceramic matrix composites for engines	5.0
Flight Vehicle Technology: E–SMART threat agent network	5.0
Aerospace Technology DEV/DEMO: Sensor Craft (UAV)	5.0
Aerospace Propulsion and Power Technology: Advanced Aluminum Aerostructures	4.0
Crew Systems and Personnel Protection: TALON	5.0
Advanced Spacecraft Technology:	
Robust aerospace composite materials/structures	3.5
Thin amorphous solar arrays	10.0
MAUI space Surveillance System (MSSS):	
MSSS Operations and Research	35.0
PANSTARS	15.0
Multi-Disciplinary Advanced Development Space Technology: Aerospace relay mirror system	7.0
Conventional Weapons Technology: LOCAAS	7.0
C31 Advanced Deployment: Fusion SIGNIT enhancements to ELINT	4.0
Pollution Prevention (DEM/VAL): 02 Diesel air quality improvement at Nellis, AFB	1.0
B–2 Advanced Technology Bomber: LO maintenance improvements	10.0
EW Developments: BLAID upgrade to ALR–69	14.7
MILSTAR LDR/MDR Satellite Communications: Painting and coating pollution prevention	1.0
Agile Combat Support: Deployable Oxygen System	2.5
Life Support Systems:	
Crew Seating	2.5
SEE–RESCUE distress streamer	4.0
Distributed Mission Interoperability Toolkit (DMIT)	4.0
Combat Training System: Air Combat training ranges	3.0
Integrated C2 Application: ASSET/eWing	3.0
RDT&E for Aging Aircraft: Landing gear life extension	10.0
Link–16 Support and Sustainment: 611th AOG enhanced tactical data display link	8.0
Major T&E Investment: Mariah II hypersonic wind tunnel	10.0
AF TENCAP: GPS jammer defection and location	3.0

National Air Intelligence Center:	
NAIC space threat assessment	1.0
NAIC threat modeling	2.0
Information Systems Security Program: Lighthouse cyber security program	7.5
Endurance Unmanned Aerial Vehicles: Global Hawk lithium batteries	2.0
Airborne Reconnaissance Systems:	
SYERS	4.0
Ultra-wideband airborne laser communications	3.0
Theater airborne reconnaissance (TARS) P31	13.6
Manned Reconnaissance Systems: Network-centric collaborative (NCCT)	4.0
Industrial Preparedness: Bipolar wafer-cell NiMH battery	2.0
Productivity, Reliability, Availability (PRAMPO): Modeling/Re-engineering for Oklahoma City ALC	4.0

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE

Defense Research Sciences:	
Advanced photonics composites	2.0
University optoelectronics	2.0
Life Science Education and Research	5.0
Molecular electronics	2.0
University Research Initiatives:	
Infotonics	4.0
MEMS Sensor for rolling element bearings	1.5
Nanoscience and nanomaterials	5.0
Corrosion protection of aluminum alloys in aircraft	2.0
Fastening and joining research	1.0
Secure Group communications	2.0
University Bioinformatics	2.0
AHI	4.0
Defense Experimental Program to Stimulate Competitive Research: DEPSCOR	10.0
Chemical and Biological Defense Program:	
Bug to drug countermeasures	5.0
Chemical Warfare protection	1.2
Detection of chem-bio pollutant agents in water	5.0
Nanomulsions of decontamination	5.0
Bioprocessing Facility	7.0
Historically Black Colleges and Universities:	
American Indian Tribal Colleges	3.5
Technical assistance program	3.0
Embedded Software and Pervasive Computing: Software for autonomous robots (AE-02)	2.0
Biological Warfare Defense: Bioscience Center for Infoscience	2.1
Chemical and Biological Defense Program: Chem-bio defense initiatives fund	25.0
Tactical Technology: CEROS	7.0
Materials and Electronics Technology:	
Heat actuated coolers	2.0
Optoelectronics	5.0
Fabrication of 3-D structures	4.0
Strategic Materials	4.0
Friction stir welding	1.0
WMD Defeat Technology: Deep Digger	3.0
Explosive Demilitarization Technology:	
Explosives demilitarization technology project	3.0
Hot gas decontamination HWAD	3.2
Innovative demilitarization technologies	4.0
Metal reduction and processing	1.5
Rotary furnace—HWAD	0.6
Water gel explosive/program delays	0.6
Combating Terrorism Technology Support:	
Asymmetric warfare initiative	3.0
Blast mitigation testing	5.0
Counter-Terrorism ISR system (CT-ISR)	3.0
Electrostatic Decontamination System	9.0
NG multi-media security technology	2.5
Ballistic Missile Defense Technology:	
Massively parallel optical interconnects	2.0
Wide Bandgap Silicon Carbide Semiconductor Research	5.0
Gallium Nitride high power microwave switch	4.0
Bottom anti-reflective coatings (BARC)	5.0
Improved materials for Optical memories—Phase II SBIR	3.3
PMRF upgrades	25.0
ESPRIT	3.5
Range Data monitor	3.5
Thick Film silicon coatings	3.0
SHOTS	5.0
High data rate communications	5.0
Advanced RF technical development	4.0
AEOS MWIR adaptive optics	3.0
Wafer scale (ultra flay) planarization	5.0
High resolution color imaging	5.0
Chemical and Biological Defense Program:	
Bio-adhesion research	3.0
Advanced Chemical detector	6.0
Agroterror prediction and risk assessment	5.0
High intensity pulsed radiation facility for chem-bio defense	2.0
Vaccine Stabilization	3.0
Special Technical Support: Graphic Oriented Electronic Technical Manuals	1.5
Generic Logistics R&D Tech. Demonstrations:	
Fuel Cell Locomotive	1.0
Computer assisted technology transfer (CATT)	4.0
Microelectronics testing technology/obsolescence program	10.0
Ultra-low power battlefield sensors	25.0
Chameleon mini wireless system	5.0
Vehicle fuel cell program	10.0
Agile Part Demonstration (CCDOT)	5.0
New England Manufacturing supply chain	6.0
Advanced Electronic Technologies: Defense Tech Link	1.5
Advanced lithography—thin film research	6.0
Advanced Concept Technology Demonstrations: Guardian portable radiation search tool	5.0
High Performance Computing Modernization Program	
Missile Defense engineering and assessment center	20.0
High Performance visualization initiative	1.5
MHPCC	5.0
Simulation Center HPC upgrades	2.0
Sensor and Guidance Technology: Large Millimeter telescope	3.0
Joint Wargaming Simulation Management Office: Rapid 3-D visualization database	2.0
Joint Robotics Program:	
Deployable/mission-oriented robots	5.0
Tactical unmanned ground vehicle	2.0
Unmanned ground vehicles	2.0
CALS Initiative: CALS	7.0
Ballistic Missile Defense System Segment: Maintain T&E Levels	10.0
Ballistic Missile Defense Terminal Defense: Arrow	80.0
Ballistic Missile Defense Sensors:	
Airborne infrared surveillance (AIRS)	10.0
Ramos solar arrays	10.0
Joint Service Education and Training Systems Development: Academic advanced distributed learning co-lab	1.0
Joint Electromagnetic Technology Program:	
HIPAS observatory	3.0
Delta Mine Training Center	3.0
Joint Robotics Program—EMD:	
Field testing support	10.0
Tactical mobile robot	4.8
General Support to C31: Pacific Disaster Center	7.0
Classified Programs: Information Security Scholarships	10.0
Development Test and Evaluation: Big Crow test support activities	5.0
Partnership for Peace (PFP) Info. Management: Information Systems	1.0
Information Security System Program: Network, Information, and Space Security Center	4.0
Global Command and Control System: Joint Information Technology Center	7.0
Defense Imagery and Mapping Program:	
Feature Level Database Development	4.2
Intelligent spatial technologies for Smart Maps	1.0
BRITE	4.0
PIPES	9.0
Defense Joint Counter Intelligence Program:	
Joint Counterintelligence Assessment Group (JCAG)	15.0
Industrial Preparedness: Laser additive manufacturing	6.0
Special Operations Tactical Systems Development:	
Joint threat warning systems	1.8
Precision Target Locator Designator (PTLD)	4.1
TACNAV light vehicle-mounted land nav system	3.0
Special Operations Intelligence Systems Dev: Embedded IBS receivers	1.0
SOF Operational Enhancements:	
Fusion goggle system	5.0
Nano-technology research	5.0

OPERATIONAL TEST & EVALUATION, DEFENSE

Test 7 Evaluation Technology: Test & Eval. Science & Tech.	4.0
Central Test and Evaluation Investment Development (CTEIP):	
T&E Transfers from DOD—Wide Acquisition Programs	70.0
Joint Directed Energy Combat Operations and Employment (JDECOE)	1.0
Live Fire Testing:	
Live Fire Test and Training Program	4.0
Reality Fire Fighting/Homeland Security Training	1.5

Total FY2003 Defense Appropriations Member Add-Ons = $5.2 billion

Mr. McCAIN. Mr. President, I ask unanimous consent that prior to any vote tomorrow, at a time set by the majority, I be allowed 5 minutes and the managers of the bill be allowed whatever time they request.

The PRESIDING OFFICER. Is there objection?

Mr. REID. The unanimous consent was before final passage?

Mr. McCAIN. Before the vote.

The PRESIDING OFFICER. The Senator from Arizona asked for 5 minutes before the vote on his amendment.

Mr. McCAIN. Could I explain my request to the Senator from Nevada? Could I be recognized, Mr. President?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. I would like to speak for 5 minutes. The Senator from Alaska has indicated he will move to table the amendment. I would like 5 minutes, as the sponsor of the amendment, prior to the vote to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. I yield the floor.

Mr. REID. Has the Senator completed his statement?

Mr. McCAIN. I yield the floor.

Mr. REID. I ask unanimous consent that in addition to the 5 minutes for Senator McCAIN, we have 5 minutes for the managers of the bill to speak in favor of the motion to table. I ask unanimous consent that be the case.

The PRESIDING OFFICER. That was part of the request of the Senator from Arizona.

Mr. REID. Excellent. Perfect.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the position of the Senator from Arizona is understandable from the point of view of not being really cognizant of the aging aspect of our aircraft. We found, for instance, on the tankers, the tankers that were flying nightly in and out of Afghanistan averaged more than 42 years of age. If you had told this Senator in 1944 to fly a plane that was made 42 years earlier, 1902, it would have been laughable. Today, to have our people flying airplanes that were made in Harry Truman's day, is laughable.

Just this past trip that we took to Europe, we flew on a plane that was 28 years old. It was one of these planes for this type of purpose, of carrying personnel, not cargo.

We looked at this problem and we found that should we start an acquisition program for these new aircraft, which was requested by the people from the Department of Defense who pointed out in many of these statistics to us that the capital cost would be so great that it would force out of the budget items that are absolutely essential to our war against terrorism and to the modernization of our military forces in other places.

We still have an absolutely difficult time replacing our ships—replacing them at a rate that is far less than is necessary to maintain the number of ships in the line that we have. But we are stuck in that kind of economics where we can't lease the kind of military vessels we need for the Navy. But in this instance we are dealing with the world of aviation, and we can lease. We can lease planes, and we can also lease engines very competitively. There is a competitive market out there for both. There is a competitive market in the private sector for the planes we are talking about. We are not entering into a market where there is monopolistic practice at all.

But for us to try to do what the OMB and the Congressional Budget Office might have wanted originally would have required a massive new procurement program in order to get the planes, and we would be getting them one or two a year for 20 years. We are going to lease a fleet of these to meet the needs of the Department of Defense and retire these planes which are so old that the cost to merely maintain them far exceeds their value now. Beyond that, their reliability is so low that I have been told in many places the concept of redlining—telling the pilots they cannot fly the plane because the plane won't pass even minimum standards—is so prevalent now in the Air Force that it is, in part, a matter of morale.

I believe we should do everything we can to shift the acquisition of aircraft that we cannot lease into procurement accounts and try to get those planes to meet our military needs. Those that we can lease in a competitive world, we should do so. When we do so, we lease them at an asset that can be returned to the commercial market at the end of the lease.

That is one of the things we have not been able to get real credit for yet in terms of the people who are reviewing this matter for the Senator from Arizona. We will pursue that further.

But in this instance Congress and the White House agreed with us in the last year—and previously—about the concept of leasing, that there are going to be other items that have to be leased.

When we were looking at some of the consequences of the terrible events of 9/11, we found that the NATO AWAX planes were brought to the United States and flown over our major cities for a substantial period of time. There were 19,000 to 20,000 hours put on those planes during a period where otherwise they probably would not be getting anywhere more than 100 hours a month. The engines on those planes have been effectively worn out.

We are going to have to go into that process. I would invite the Armed Services Committee to do some studying of its own. If it has a better way to get us the equipment we need now without breaking the budget, I am sure the Senator from Hawaii and I would be pleased to join.

The money for the leasing of these planes comes from the O&M account of the Department of Defense. It competes with all other things that O&M moneys are paid for. The Department is not going to be reaching out and leasing planes that are not needed. On the other hand, it is going to have to retire the planes that are so old now that their utility is so limited they should not be in the inventory of the U.S. Air Force.

I hope the Senate will support the position. I am prepared to make a motion to table.

I understand that it will be handled under a previous agreement. I shall make the motion to table before the evening is over. But it is my understanding that the amendment is pending. We will just leave it that way, and I will ask unanimous consent that it be put aside for the consideration of other matters that will come before the Senate this evening.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 4447

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4447.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To set aside Defense-wide operation and maintenance funds for review and mitigation of domestic violence involving Department of Defense personnel)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Funds appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE" may be used by the Military Community and Family Policy Office of the Department of Defense for the operation of multidisciplinary, impartial domestic violence fatality review teams of the Department of Defense that operate on a confidential basis.

(b) Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE", $10,000,000 may be used for an advocate of victims of domestic violence at each military installation to provide confidential assistance to victims of domestic violence at the installation.

(c) In each of the years 2003 through 2007, the Secretary of Defense shall submit to Congress an annual report on the implementation of the recommendations included in the reports submitted to the Secretary by the Defense Task Force on Domestic Violence under section 591(e) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 639; 10 U.S.C. 1562 note).

Mr. WELLSTONE. Mr. President, I think all of us were deeply concerned about the four domestic violence homicides that occurred over the past 6 weeks at Fort Bragg in North Carolina. The tragic murder of these young women by their husbands within such a short period of time is devastating. It is devastating to the families of the victims. It is devastating to their friends. It is devastating to the military where soldiers and their families should be safe on base. And they should be safe in their homes.

The Defense Task Force on Domestic Violence, which is made up of 12 military and 12 civilian members, was charged by Congress to investigate domestic violence in the military and to make recommendations for the Secretary on how to reduce the violence. In the introduction in its first report, the task force wrote:

> Domestic violence is an offense against the institutional values of the Military Services of the United States of America. It is an affront to human dignity, degrades the overall readiness of our Armed Forces, and will not be tolerated in the Department of Defense.

I don't think anyone who has followed the recent events in North Carolina would disagree. In fact, the North Carolina incidents, while unusual in that they are clustered within such a short period of time, are not unique. The Naval Criminal Investigative Service reported 54 domestic homicides in the Navy and Marines since 1995. The Army reported 131 homicides since 1995 and the Air Force reported 32.

This is a problem that is by no means limited to the military, but its dimensions in the military are complex and need to be addressed. I know Secretary Rumsfeld and Deputy Secretary Wolfowitz share that view. I applaud the Secretary and the Deputy Secretary for the attention they have given to this issue and for the willingness they have shown to address it.

The amendment which I offer today would help the military reduce domestic violence in the ranks. In particular, it would ensure that funds are used to establish an impartial, multidisciplinary, confidential Domestic Violence Fatality Review Team at the Military Community and Family Policy Office. The team would be charged with investigating every domestic fatality in the military.

The purpose of the investigation would be twofold: First, the team would determine what intervention and services were provided to the victim and to the offender prior to the fatality; second, what interventions and services could have been provided to the victim and offender that could have prevented the fatality.

The team would also aggregate data from domestic violence fatalities to help determine patterns so as to develop systemic responses to domestic violence and prevent some tragedy from ever happening again.

The need for such a review is clear. The Defense Department Task Force found that "fatality reviews have yet to become an important element of DOD's overall response to domestic violence.".

It would recommend the use of the Fatality Review Team in order to "provide a mechanism for ongoing review of domestic violence policies and case practices that may inadvertently contribute to the death of a victim or offender with the primary objective of contributing to systemic improvements in a military community's response to domestic violence."

While the military is conducting the review in the Fort Bragg case—and this is an important first step—I believe and the task force believes that such reviews must become routine—not just at Fort Bragg but all across the country.

The second part of this amendment would help the Department ensure that there are victims advocates at every military installation who provide confidential support and guidance exclusively to victims.

The Defense Task Force expressed concern about the "stark contrast between the availability of victim advocacy services in the military and civilian communities." It later asserts that "Victims should have access to a well defined program for victim advocacy." And this should be in every military installation.

The Defense Department does provide excellent family advocacy programs to victims, but the Defense Task Force and other researchers have found that the Family Advocacy Program, while serving an important function, can in many cases erect barriers to women finding safety for themselves and their children.

Women have to be able to go to somebody where there is complete confidentiality. That is extremely important.

The problem, in many cases, with the current system is that when a victim reports abuse, that abuse must be reported to Command regardless of the victim's wishes. This lack of confidentiality has a profound effect on victims' willingness to come forward and find safety.

According to the task force, victims expressed "fears related to personal safety, loss of career and the belief that commanding officers generally appeared more supportive of the service member than the spouse who is the victim."

That is important data, I say to Senators.

Caliber Associates conducted two studies that also concluded that the No. 1 barrier to reporting domestic violence for victims is the fear of the negative impact on the offender's career.

Other concerns with the current system are that "the commanding officer's lacking knowledge of the complex dynamics of domestic violence led him/her to make decisions that placed the victim in unsafe circumstances with respect to the offender" and that the family advocates often work with both the victim and the offender, leading victims to believe that their safety concerns actually get lost or actually their safety concerns become more serious.

In sum, the task force reports, "When the Military Services do not have advocates exclusively for domestic violence victims, the current system often disempowers victims." It is for these victims that a victim advocate is necessary.

This amendment does not replace the Family Advocacy Program, nor is it meant to be critical of its very good work. Rather, the amendment ensures that victims whose lives are in danger have an alternative place to turn to that is confidential and where their needs can be met without qualification. The victim advocates would aid women through counseling, safety planning, and referral to civilian and military shelter, legal counseling, and medical and other relevant services so they can provide for their own safety and the safety of their families without fear.

Finally, this amendment would require that the Secretary report to the Congress on progress in implementing the regulations of the task force. Domestic violence is something that we in Congress must constantly work to prevent, reduce, and eventually end. Having such reporting will help us work with the military to address domestic violence in one part of our society.

Colleagues, what happened at Fort Bragg should never happen again. This amendment represents a small step toward preventing future tragedies. I urge my colleagues to support it.

I ask unanimous consent to add Senator MIKULSKI as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I say to the distinguished chair of the committee that I have had an opportunity to do a lot of work dealing with domestic violence, mainly because of my wife Sheila's work, and she has been my teacher. This is by no means an issue or problem just in the military. Some people say about every 15 seconds a woman is battered somewhere in our country, quite often in the home.

A home should be a safe place for women and children, but quite often it isn't. We passed the Violence Against Women Act, and we reauthorized it, and things are starting to change. It is not true, any longer, in communities, everybody is saying: Well, that's private business. It's not our business.

We do not turn our gaze away from this any longer. But, unfortunately, it is a huge problem, and also for these children who witness this violence.

I believe the Secretary Rumsfeld and Secretary Wolfowitz have shown great concern, and I appreciate that. This amendment is just an emphasis to put more focus on this and to have the Congress—the House and the Senate—

working with our Defense Department. I believe it is a constructive amendment and a positive amendment.

I understand, although I wait to hear from the distinguished chair, that my colleagues are willing to accept the amendment. If that is the case, that is wonderful.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. The managers wish to commend the Senator from Minnesota for this amendment. And we are prepared to accept it.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I join on this. I have to say that I don't use this word too often, but I was appalled at that story about the violence. We all have tremendous respect for these young people representing our Nation abroad who get in harm's way and really are put under severe stress.

I hope it is not only associated with the concept of the victims of abuse, but we ought to find some way to have greater counseling available to our people when they come home. Those of us who have come home in the past know it is a traumatic experience for anybody, but for those who have been deeply involved in combat, it is really difficult.

We should be very moved by that story. I think this will be the first step in meeting that syndrome that has developed and trying to find some way to prevent it in the future.

So I commend the Senator for his amendment, and I, too, support it.

Mr. WELLSTONE. I thank both my colleagues. I cannot add to the words of the Senator from Alaska. He said it better than I could.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 4447) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia.

AMENDMENT NO. 4448

Mr. BYRD. Mr. President, I have an amendment. I send it to the desk.

Is there an amendment pending?

The PRESIDING OFFICER. That amendment has been set aside.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself and Mr. GRASSLEY, proposes an amendment numbered 4448.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide certain requirements and limitations regarding the use of government purchase charge cards and government travel charge cards by Department of Defense personnel)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

(3) The disciplinary actions under this subsection may include—

(A) the review of the security clearance of the individual involved; and

(B) the modification or revocation of such security clearance in light of the review.

(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).

Mr. BYRD. Mr. President, the General Accounting Office has recently completed another in a long line of studies about financial mismanagement at the Department of Defense. A GAO report shows how Government-issued charge cards were abused for the personal gain of certain civilian employees and members of the Armed Forces.

This issue is not about irresponsible use of personal credit cards so much. This is about using a Government charge card for personal use and leaving the American taxpayers on the hook. In some instances of abuse, the U.S. Government is left with only the interest on personal purchases to pay. In the worst cases of abuse, the Pentagon actually uses the funds that are appropriated for national defense to pay off the questionable charges on these credit cards.

To understand the scale of the problem, it is important to understand how many charge cards are being used. According to the Department of Defense, it maintains 1.7 million charge cards that were responsible in fiscal year 2001 for—now hold on to your hat—$9.7 billion in spending.

Neither the GAO nor I take issue with the well-regulated use of Government-issued charge cards. In the right hands, a charge card cuts through bureaucratic redtape, reduces paperwork, and limits the administrative costs of processing purchase orders. But put a government charge card into the hands of irresponsible individuals, and they can do some real damage.

Take for example the case of a junior enlisted soldier at Fort Drum in New York. He ran up a bill of $10,029 on three travel cards, due mostly to charges made at a casino. Despite this serious abuse of the charge card, in October 2000, the soldier was allowed to be honorably discharged without punishment.

But that horror story is just the tip of the iceberg. One soldier ran up charges of $1,058 in personal charges, including some from the Dream Girls Escort Service. Not to be outdone, another junior enlisted soldier ran up $2,278 in debt, including $110 from the Spearmint Rhino Adult Cabaret. According to the GAO, neither of those soldiers received any disciplinary action. These appear not to be isolated incidents, either. The GAO says that it found about 200 individuals who charged $38,000 in Fiscal Year 2001 alone at questionable establishments offering "adult entertainment."

Those soldiers ought to be ashamed of themselves. They have betrayed the trust of the public by using government money to fund their dalliances. It is a disgrace not only to the uniform that they wear, but also to their superior officers who were apparently asleep at their posts.

In addition to using the cards for personal purposes, some cardholders play games with paying back the money that they owe. One soldier in south Carolina ran up $35,883 in debt, then bounced 86 checks, totaling $269,301, in a phoney attempt to pay off the card. It is small consolation that this soldier is undergoing a court martial for his criminal behavior.

It appears that the astonishing lack of financial oversight in the Department of Defense has created a situation where it is easy to escape any kind of punishment. The GAO found 105 cardholders who held secret or top secret security clearances who had bad debt written off of their travel charge cards. Out of this group, 38 still had active security clearances even after they had experienced serious financial difficulties.

I remind my colleagues of the serious security risks posed by individuals with financial problems. Robert Hanssen, the former FBI agent, and Aldrich Ames, the mole at the CIA, betrayed their country for money. In 1998, a retired Army officer, David Sheldon Boone, was caught and accused of selling secrets to Russia. His excuse? He claimed that financial problems led him to spying.

The amendment that I offer today with Senator GRASSLEY proposes to curb some of the most gross excesses of the charge card programs. First, the amendment limits the number of charge cards that can be made available to service members or civilian employees of the Department of defense to 1.5 million, a 10 percent reduction in the number of cards that are now out there. This cap will eliminate unnecessary cards and reduce the chance that the charge card numbers will be stolen.

The amendment establishes a requirement that the Secretary of Defense evaluate the creditworthiness of an individual before issuing a charge card. It is astounding that this common-sense step has not been taken before. But it has not, and as a result, the GAO found that charge cards are getting in to the hands of individuals with a history of writing bad checks, making late payments on their personal credit cards, and even defaulting on loans. This must stop.

The amendment requires the Secretary of Defense to develop uniform disciplinary guidelines, so that members of each of the military services are held to the same standard of conduct for their use of charge cards. The amendment includes specific language on security clearances, so that security officials will be informed of the financial wrongdoings of individuals who have access to classified information.

Finally, the amendment keeps the pressure on the Department of Defense to continue its financial reforms by reporting to the congressional defense committees not later than June 30, 2003, on the implementation of reforms to the charge card programs.

I have no doubt that Secretary Rumsfeld is serious when he says that he wants to straighten out the financial and accounting messes at the Pentagon. He did not create these problems. They did not occur on his watch. But it is now his watch. Someone has to be held accountable for these scandals. William Wordsworth once said, "No matter how high you are in your department, you are responsible for the actions of the lowliest clerk."

Congress has an important role in making sure that the money that we appropriate for our defense is well-spent. It is the Legislative Branch, after all, that is entrusted with the power of the purse. When money is wasted, we have an obligation to step in and take corrective action. The amendment that I have proposed with the Senator from Iowa Mr. GRASSLEY, takes common-sense steps to crack down on the abuse of government charge cards in the Department of Defense. I urge my colleagues to support the amendment.

I yield the floor.

Mr. GRASSLEY. Mr. President, I rise in support of the Byrd-Grassley Amendment regarding Department of Defense credit cards. Many of my colleagues will be aware of the ongoing oversight investigation that I have been involved with for over 2 years now looking into abuses of government purchase cards and travel cards issued by the Department of Defense. Working with the GAO, Chairman Horn's subcommittee in the House, and others, we have been able to uncover a disturbing number of instances where DoD issued credit cards have been abused. We're not just talking about little abuses either. These cards have been used to purchase everything from cars to Caribbean cruises. They have been used for mortgage payments and for cash in adult entertainment establishments. The horror stories go on and on.

It is unfortunate that we are just now finding out about many of these instances of fraud and abuse, but I am pleased that Secretary Rumsfeld appears to be taking this problem seriously. The Office of Management and Budget has announced a crackdown on credit card abusers and salary offsets and other tools are being used to recover funds from unauthorized charges. However, the question remains, "How were these abuses allowed to occur in the first place?" The answer is ineffective internal controls. Receipts are not always matched with statements and inventory is not checked to make sure that DoD got what it paid for. We also know that the Army doesn't always ask for the credit cards back when individuals leave the service. If you leave the cookie jar unguarded with the lid off, people are going to reach in and help themselves when no one is looking.

Perhaps most alarming is the lack of credit checks. It seems obvious that credit checks should be done on individuals before issuing them a government credit card, but this is not currently the case. Not only is no one double checking to make sure these credit cards are used appropriately, but no one is checking to see if the individuals they are issued to are up to the responsibility. A little diligence up front could prevent millions of dollars in fraudulent purchases that leave the bank or the taxpayer holding the bill.

It is also true that once credit card abuses have been discovered, not enough is done to follow up. I am glad that DoD is finally recovering money that has been misspent, but this shouldn't be the end of the story. Those who abuse the trust that has been placed with them should not get off scott-free. There have been individuals who have been court marshaled for fraudulent transactions, while others with similar misdeeds have been promoted. In fact, many individuals with a record of questionable purchases continue to hold a security clearance. Under existing DoD rules, a person's level of financial responsibility is a key factor in determining whether that person holds a security clearance. Beyond simply requiring repayment, DoD needs to review the positions these people hold and consider disciplinary action. Failure to do so could even put our national security at risk.

The Byrd-Grassley Amendment requires the Department of Defense to take the initial steps necessary to address many of these problems that have been uncovered in our ongoing investigation. I commend Senator BYRD for his initiative and leadership in this area and I am pleased to associate myself with this amendment.

First, the Byrd-Grassley Amendment stems the tide of DoD credit cards, which are apparently being handed out willy-nilly to just about everyone, by limiting the number of government charge card accounts that may be issued in fiscal year 2003 to 1,500,000. The amendment also requires that DoD must evaluate the creditworthiness of an individual before issuing a government charge card and prohibits DoD from issuing a card to anyone found not credit worthy. Finally, the Byrd-Grassley amendment requires DoD to establish guidelines and procedures for disciplinary actions against DoD personnel for improper, fraudulent, or abusive use of government charge cards, including reviewing and possibly modifying or revoking security clearances. The Secretary of Defense would then be required to report to the congressional defense committees on the implementation of these requirements by June 30, 2003.

The requirements in the Byrd-Grassley Amendment are all well founded based on what I and others have been able to uncover regarding DoD credit card abuses. They are all measures that should be put in place by DoD without delay as a starting point toward getting this credit card debacle under control and preventing future abuses. This amendment shouldn't be needed as one would think all of the provisions would be implemented by DoD out of simple common sense. However, I assure you that it is needed, and I urge my colleagues to join Senator BYRD and me in this important initiative.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Hawaii.

Mr. INOUYE. Mr. President, I wish to commend the chairman of the committee on this most appropriate and timely amendment. As a manager of this measure, I am prepared to accept it.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I join the Senator from Hawaii and welcome the opportunity to vote to accept this amendment. I think it is a very modest step. The Senator from West Virginia has been restrained in terms of the abuses that we have heard about. This will start the process of putting us on a straight track.

I support the amendment and urge its adoption.

Mr. BYRD. Madam President, I thank both managers.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4448.

The amendment (No. 4448) was agreed to.

Mr. BYRD. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4454

Mr. STEVENS. Madam President, I send an amendment to the desk on behalf of the distinguished Senator from Oklahoma, Mr. NICKLES, and ask that it be considered.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. NICKLES, proposes an amendment numbered 4454.

Mr. STEVENS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 4454

At the appropriate place in the bill, insert the following:

Of the funds appropriated in the Act under the heading "Operations and Maintenance, Air Force" up to $2,000,000 may be made available for the Aircraft Repair Enhancement Program for the KC-135 at the Oklahoma City Air Logistics Center.

Mr. STEVENS. Madam President, I urge its adoption.

The PRESIDING OFFICER. Is there objection?

Mr. INOUYE. Madam President, I have no objection.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 4454) was agreed to.

Mr. STEVENS. Madam President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I appreciate the two managers withholding. The majority leader has asked me to announce that there will be no more rollcall votes tonight.

AMENDMENTS NOS. 4455 THROUGH 4462, EN BLOC

Mr. INOUYE. Madam President, I have a series of amendments. None of these amendments calls for new appropriations, and all of these amendments are either earmarking or technical in nature. I will submit them en bloc to be considered and passed en bloc.

I will explain the amendments. One is an amendment of Senator MILLER earmarking $1 million for an information data warehouse; an amendment for Senator SNOWE earmarking $1.5 million for the Navy pilot human resources center; an amendment for Senator GRAHAM earmarking $2.17 million for nanophotonic systems fabrication; an amendment for Senators SNOWE and SESSIONS earmarking $5 million for kill vehicles; an amendment for Senators WARNER and INOUYE earmarking $5 million for the common affordable radar processing program; an amendment for Senator BOXER encouraging the Department of Defense to allocate the budgeted amount for the family advocacy program; an amendment for Senators TORRICELLI and CORZINE to earmark $2.5 million for the disposal of material from Reach A at Earle Naval Weapons Station.

I send the amendments to the desk.

Mr. STEVENS. Madam President, I send to the desk an amendment of the Senator from Hawaii to add to that list. The amendment deals with obtaining a plan for refurbishing of the AWACS plane loaned to the United States after 9/11.

The PRESIDING OFFICER. Is there further debate on the amendments?

The amendments (Nos. 4455 through 4462) were agreed to en bloc, as follows:

AMENDMENT NO. 4455

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation, $1,300,000 for Trouble Reports Information Data Warehouse)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $1,000,000 may be available for Trouble Reports Information Data Warehouse.

AMENDMENT NO. 4456

(Purpose: To set aside Navy operation and maintenance funds for the Navy Pilot Human Resources Call Center, Cutler, Maine)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", for civilian manpower and personnel management, up to $1,500,000 may be available for Navy Pilot Human Resources Call Center, Cutler, Maine.

AMENDMENT NO. 4457

(Purpose: To make available from amounts available for Defense-Wide research, development, test, and evaluation $2,170,000 for the Nanophotonic Systems Fabrication Facility)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $2,170,000 may be available for the Nanophotonic Systems Fabrication Facility.

AMENDMENT NO. 4458

(Purpose: To make available for Defense-Wide research, development, test, and evaluation $5,000,000 for small kill vehicle technology development (PE0603175C) for midcourse phase ballistic missile defense)

On page 223, between line 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for small kill vehicle technology development (PE0603175C) for midcourse phase ballistic missile defense.

AMENDMENT NO. 4459

(Purpose: To make available $10,000,000 for the Common Affordable Radar Processing program under Title IV, Research, Development, Test and Evaluation)

On page 144, line 25, after the word "Forces", add the following: ": Provided further, That of the funds provided under this section, up to $5,000,000 may be made available for the Common Affordable Radar Processing program"

AMENDMENT NO. 4460

(Purpose: To provide additional resources to the Family Advocacy Program at the Department of Defense)

At the appropriate place, insert the following:

SEC. . Of the funds provided in this Act under the heading "Operation and Maintenance, Defense-wide," the Department of Defense should spend the amount requested for the Family Advocacy Program, with priority in any increase of funding provided to bases that are experiencing increases in domestic violence.

AMENDMENT NO. 4461

(Purpose: To make available from amounts available for the Navy for operation and maintenance $2,500,000 for the disposal of materials dredged from Reach A at Earle Naval Weapons Station, New Jersey)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", up to $2,500,000 may be available for the disposal of materials from Reach A at Earle Naval Weapons Station, New Jersey, to an appropriate inland site designated by the Secretary of the Navy.

AMENDMENT NO. 4462

At the appropriate place in the bill, insert:

SEC. . Not later than 60 days after enactment of this Act, the Commander in Chief of the United States European Command shall submit a plan to the congressional defense committees that provides for the refurbishment and re-engining of the NATO AWACS aircraft fleet: Provided, That this report reflect the significant contribution made by the NATO AWACS fleet in response to the attacks on the United States on September 11, 2001, and the invocation of Article V of the North Atlantic Treaty: Provided further, That the plan shall describe any necessary memorandum agreement between the United States and NATO for the refurbishment and re-engining of these aircraft.

Mr. INOUYE. Madam President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4463

Mr. INOUYE. Madam President, I have an amendment on behalf of Senator HOLLINGS to require the transfer of administrative jurisdiction over the portion of former Charleston Naval Base, SC, comprising a law enforcement training facility of the Department of Justice.

The managers have looked over the amendment. We ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for Mr. HOLLINGS, proposes an amendment numbered 4463.

The amendment is as follows:

AMENDMENT NO. 4463

(Purpose: To require the transfer of administrative jurisdiction over the portion of former Charleston Naval Base, South Carolina, comprising a law enforcement training facility of the Department of Justice)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Notwithstanding any provision of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or any other provision of law, the Secretary of the Navy may transfer administrative jurisdiction of the portion of the former Charleston Naval Base, South Carolina, comprising a law enforcement training facility of the Department of Justice, together with any improvements thereon, to the head of the department of the Federal Government having jurisdiction of the Border Patrol as of the date of the transfer under this section.

Mr. INOUYE. Madam President, I ask for its adoption.

The PRESIDING OFFICER. Is there further debate?

Mr. STEVENS. We accept the amendment.

Mr. INOUYE. We accept it.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 4463) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4464

Mr. INOUYE. Madam President, I send an amendment to the desk on behalf of Senator HARKIN to earmark $2 million for Uniformed Services University of the Health Services Center.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for Mr. HARKIN, proposes an amendment numbered 4464.

The amendment is as follows:

AMENDMENT NO. 4464

(Purpose: To make available from amounts available for the Defense Health Program for the Uniformed Services University of the Health Sciences Center (USUHS) $2,000,000 for Complementary and Alternative Medicine Research for Military Operations and Healthcare (MIL–CAM))

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM," up to $2,000,000 may be available to the Uniformed Services University of the Health Sciences Center (USUHS) for Complementary and Alternative Medicine Research for Military Operations and Healthcare (MIL–CAM).

Mr. INOUYE. The managers have looked over the measure and we have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 4464) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4465

Mr. STEVENS. Madam President, I send to the desk an amendment of the distinguished Senator from Colorado, Mr. ALLARD, and I ask it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. ALLARD, proposes an amendment numbered 4465.

The amendment is as follows:

AMENDMENT NO. 4465

(Purpose: To set aside up to $30,000,000 for the acquisition of commercial imagery, imagery products, and service from United States commercial sources of satellite-based remote sensing entities)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amounnt appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE", up to $30,000,000 may be appropriated for the competitive acquisition of commercial imagery, imagery products, and services from United States commercial sources of satellite-based remote sensing entities.

Mr. STEVENS. I believe this amendment has been accepted on both sides. I ask it be agreed to.

Mr. INOUYE. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

Mr. STEVENS. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4466

Mr. INOUYE. I send to the desk for immediate consideration an amendment by Senator TIM HUTCHINSON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. INOUYE) for Mr. HUTCHINSON, proposes an amendment numbered 4466.

The amendment is as follows:

AMENDMENT NO. 4466

(Purpose: To set aside 9,000,000 for RDT&E. Defense-wide, for a Department of Defense facility for the production of vaccines for protecting members of the Armed Forces against the effect of use of biological warfare agents)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the total amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE", up to 9,000,000 may be available for the development of an organic vaccine production capability to protect members of the Armed Forced against the effect of use of biological warfare agents.

Mr. INOUYE. This measure has been studied by the managers. We approve it.

The PRESIDING OFFICER. If there is no further debate, the amendment is agreed to.

The amendment (No. 4466) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EPILEPSY RESEARCH

Mr. REID. Mr. President, I understand that the committee report includes a $50 million Peer Reviewed Medical Research Program. The program funds medical research projects with clear scientific merit with direct relevance to military health.

Mr. INOUYE. The Senator from Nevada is correct.

Mr. REID. Since military head injury is identified as the single most significant risk factor for the development of epilepsy, I would be interested in including epilepsy research among the projects specified in the bill. Would the chairman be willing to see that the conference committee includes epilepsy research as a suggested project for the Peer Reviewed Medical Research Program?

Mr. INOUYE. I would be happy to address the Senator from Nevada's concerns relating to epilepsy research in the conference committee.

Mr. REID. I thank Chairman Inouye for his consideration.

DUCHENNE MUSCULAR DYSTROPHY RESEARCH

Mr. WELLSTONE. Mr. President, I am pleased to have the opportunity to discuss with my colleague the importance of research into Duchenne muscular dystrophy, the most common lethal childhood genetic disease worldwide. Progress on slowing the relentless progression of the disease has been nearly nonexistent, largely due to insufficient mechanisms to fund translational research. This research is closely linked to the broader investigation of muscle and nerve damage following toxin exposure, excessive exercise, and other motor neuron disease, all of which have significant implications and relevance for defense programs. For example, spinal cord injury is a major form of combat and training-related injury. Motor neurons and motor neuron disease is a potential target of bioterrorism. Muscle damage during training is a relatively common problem during basic training.

Recognizing this, the House of Representatives has included in the Defense Health Program in the Department of Defense appropriations $4 million dollars in funding for muscular dystrophy research. While I filed and was prepared to offer an amendment to include this funding in our Senate bill, I am willing to forgo this amendment if the chairman can assure me he supports this funding and will seek to ensure its inclusion in the bill's conference report.

Mr. INOUYE. I agree with my colleague that this is an important area of research and that the House of Representatives has acted wisely in this regard. I appreciate his willingness to save us time here today, and I assure him I will do all I can to see that the House amount remains in the final conference bill.

MILITARY PERSONNEL MEDICAL RESEARCH

Mrs. MURRAY. Mr. President, I thank the Chairman of Defense Appropriations Subcommittee for his foresight and leadership with the FY2003 Department of Defense Appropriations bill. I commend the Chairman for including in this bill $50 million in the Military Personnel Defense Health Program for a Peer Reviewed Medical Research Program. Our military personnel face numerous unknown risks each and every day. Providing funding to treat, mitigate or eliminate these risks is the least we can do for those who have agreed to dedicate their lives to defending our nation and freedom.

Mr. INOUYE. I thank the senior Senator from the State of Washington for her kind remarks.

Mrs. MURRAY. The bill specifically directs the Secretary of Defense, in conjunction with the Service Surgeons General, to select medical research projects of clear scientific merit and direct relevance to military health. Included in the list of projects that could be funded through this project is an infectious disease tracking system.

In my home state of Washington, our military community has an urgent need for such a system, facilitating the quick response to potential life-threatening events. Public health has long been focused on the ability to quickly identify epidemic diseases and intervene to protect public safety rapidly and as efficiently as possible. Preparing for and responding to a biologic crisis requires a clear understanding of such dimensions as geography, time frames, population demographics, resources, severity, and outcomes. The problem, at this point, is that the public health arena lacks the type of information infrastructure in place that is needed to guide an immediate response to a bioterrorism event. Do you agree, that an information system to track infectious diseases is a vital and worthy area of research?

Mr. INOUYE. I agree this is one area worthy of investigation.

Mrs. MURRAY. I point out that great strides have been made in the area of infectious disease tracking by Paladin Data Systems Corporation in Seattle, WA. They have the background and experience in healthcare information systems and could provide a real-time data repository to aid in the detection of outbreaks of epidemic diseases as part of an overall effort to avert bioterrorism crises. Again, I thank the Chairman for this foresight and leadership.

Mr. INOUYE. I thank the Senator.

WAR-RELATED ILLNESSES

Mr. LEVIN. Mr. President, we have before the Senate the Fiscal Year 2003 Department of Defense Appropriations Bill (H.R. 5010). This legislation makes a valuable contribution to our Nation's efforts to enhance the quality of life for our soldiers, sailors, airmen and Marines as well as their families, while continuing to transform our military forces to ensure that they are capable of meeting the threats to America's security now and in the future.

Mr. DASCHLE. Mr. President, I agree with my good friend from Michigan about the merits of this legislation. Once again, Chairman INOUYE has produced an excellent bill that will ensure that our Nation's military remains the most capable fighting force in the world. Unfortunately, this Nation has unresolved issues with regard to previous conflicts, such as Operation Desert Storm, and I believe we must continue to pursue a better scientific understanding of war-related ailments.

Mr. INOUYE. Mr. President, the Committee bill seeks to improve pay and benefits for our military personnel and makes considerable improvements in medical care that our men and women in uniform and their families receive. In addition, funding has been included to fund a "Peer Reviewed Medical Research Program" that addresses a wide-array of important medical programs.

Mr. HARKIN. Mr. President, I agree with the Senator from Hawaii about the significant efforts made by the Committee bill to address the well-being of our soldiers, sailors, airmen and Marines. Of particular interest to me is peer reviewed medical research that examines Gulf War Illnesses and their relationship to Chronic Multi-Symptom Illnesses. I believe that this research, which is conducted by the Center for Chronic Pain and Fatigue Research is providing valuable insights into undiagnosed post-deployment illnesses.

Mr. JOHNSON. Mr. President, my friend from Iowa is correct. For the past several years, the Center for Chronic Pain and Fatigue Research has conducted research that is unique in its focus on the internal mechanisms and most effective treatment of Gulf War Illnesses and other undiagnosed post-deployment illnesses. This research has been funded by Congress each year and overseen by the U.S. Army Medical Research and Material Command and its peer review process. Continued funding for this program will enable the continuation of research into a variety of illnesses reported by personnel upon returning from the Gulf War.

Mr. LEVIN. Mr. President, as the Senator from South Dakota has noted, many soldiers returned from the Gulf War with a variety of symptoms that have no discernible cause. Although specific environmental exposures in the Gulf War cannot be ruled out as a cause, many believe that stresses triggering underlying conditions may have contributed to these illnesses. I hope that efforts will be made to ensure that this bill provides adequate funding to ensure the continuation of this important research.

Mr. INOUYE. Mr. President, I understand the concerns that my colleagues have regarding poorly understood illnesses that have affected military personnel in nearly every conflict since the Civil War, and most recently in the Gulf War. As Chairman of the Defense Appropriations Subcommittee, I will work to ensure that adequate funding is provided for the Center for Chronic Pain and Fatigue Research in conference.

Mr. DASCHLE. Mr. President, we appreciate the Chairman's concern and support for this work. We believe it has important implications for future generations of military personnel and we look forward to working with him and the committee as this bill moves forward to do all we can to address this important issue.

THE USS SCRANTON DEPOT MODERNIZATION

Mr. GREGG. I thank the Chair for recognition. I would like to express my appreciation to Mr. INOUYE, The Chair of the Senate Appropriations Subcommittee on Defense, and to Mr. STEVENS, the Ranking Member of the Subcommittee, for the fine work they have accomplished in crafting this important FY2003 Department of Defense Appropriations Bill. It has been my pleasure, as a member of the Appropriations Subcommittee on Defense, to work with them on this bill, as well as on the defense portions of the recently passed FY2002 Emergency Supplemental Bill, H.R. 4775. They certainly do a masterful job of setting priorities and balancing competing needs.

I am also pleased that the Appropriations Committee chose to specifically provide $90 million in the FY2002 Emergency Supplemental bill to accelerate the depot modernization period of the USS *Scranton* at the Norfolk Naval Shipyard from FY2002 to FY2003, as it will result in dramatically improved fleet readiness. In addition, it will free up $90 million in FY2003, which had been programmed for the USS *Scranton* to be used for other U.S. Navy critical submarine requirements. This could include returning back to FY2003 the important USS *Annapolis* depot modernization period at the Portsmouth Naval Shipyard, which the Navy was recently forced to slip from FY2003 to FY2004, because of a Navy funding shortfall.

I would like to direct a question to my friends, the chair and the ranking member of the Defense Appropriations Subcommittee. Is it the Subcommittee's understanding that the appropriation of the additional $90 million to accomplish the USS *Scranton* depot modernization period in FY2002, now gives the U.S. Navy flexibility to allocate the FY2003 USS *Scranton* funds to meet other critical submarine requirements?

Mr. INOUYE. The distinguished Senator from New Hampshire is correct. It is the understanding of the Defense Subcommittee that the FY2003 $90 million that the Navy had requested for the USS *Scranton*, may now be available to the Navy to meet other critical submarine depot modernization requirements.

Mr. STEVENS. I would tell the Senator from New Hampshire that it is also my understanding that the Navy now has the flexibility to reprioritize those FY2003 funds.

Mr. JOHNSON. Mr. President, I would like to engage in a colloquy with the Majority Leader, Senator DASCHLE, and the Chairman of the Defense Appropriations Subcommittee, Senator INOUYE, regarding the B–1 bomber.

The B–1 remains the backbone of our nation's bomber fleet by providing our military with a reliable, long-range bomber capable of delivering a large amount of munitions to targets thousands of miles away. Nowhere was the continued importance of the B–1 more clear than over the skies of Afghanistan during the major battles of Operation Enduring Freedom. Since October, B–1s have dropped more than 38 percent of the bombs in Operation Enduring Freedom while maintaining over a 78 percent mission capable rate. I am particularly proud of the accomplishments of the B–1 because a portion of the fleet is stationed at Ellsworth Air Force Base in my home state. On many occasions, I have had the opportunity to meet with the men and women who fly and maintain these planes, and each time I am struck by their dedication and professionalism.

In order to maintain the integral role the B–1 plays in our national security, the Department of Defense has committed to reinvest the savings from the consolidation of the fleet into the modernization of the remaining aircraft. Currently, the Air Force is in the midst of a multi-year plan to upgrade the B–1 to improve its reliability, survivability, and lethality.

One aspect of this ongoing effort is the Defense System Upgrade—DSUP—program which will replace the existing defensive system on the B–1 with components of the ALQ–214 Integrated Defensive Electronic Countermeasures—IDECM—system, the ALR–56M Radar Warning Receiver, and the ALE–55 Fiber Optic Towed Decoy, FOTD. Completion of this upgrade will greatly enhance the survivability of the B–1 and improve its long-range penetrating bomber capabilities.

During the course of the DSUP program, problems arose with the deployment of the towed decoy system. It should be noted that these problems were not unique to the B–1, but did slow progress on the upgrade program. However, I was pleased to learn recently that DSUP testing of the towed decoy has once again begun. On June 25, a test was conducted at Edwards Air Force Base in which two decoys were successfully deployed and towed from a B–1. This was followed by a July 25 test in which a decoy was deployed and towed while the B–1 flew with varying wing sweep positions. It is my hope these tests demonstrate the DSUP program is back on track.

At the time the House and Senate Appropriations Committees were writing the Fiscal Year 2003 Defense appropriations bills, these DSUP problems had not been addressed. As a result, the bills currently contain reductions in funding for the B–1 program. The House version of the Defense appropriations bill rescinds $67 million in Fiscal Year 2002 funding, and cuts the President's Fiscal Year 2003 request for the B–1 by $82 million. These cuts would terminate the DSUP program completely and would cripple the B–1 modernization program. The Senate version of the Defense appropriations bill would rescind $32 million in Fiscal Year 2002 funds and cut $40 million from the B–1 request for Fiscal Year 2003. I would like to thank the Chairman for including report language that would allow the Air Force to request reprogramming of funds for the B–1 if the DSUP problems are resolved.

In the time since these bills were written, I believe we have seen progress within the DSUP program. It is my hope that we can address this funding issue within conference to restore funds for DSUP or provide additional funds for other aspects of the B–1 modernization programs.

Mr. DASCHLE. Mr. President, I share my colleague from South Dakota's support for the B–1 and believe maintaining the B–1's capabilities is in our national security interests. I am concerned that the cuts proposed, particularly in the House version of the bill, are imprudent and could do lasting damage to our nation's military capabilities. Although I have not yet been able to confer with the Air Force about the newest test flights with the towed decoy, the results would seem to obviate the need to delay or restructure this program. More tests are expected in the weeks to come, and I am hopeful that in conference we will find a way to restore DSUP funding. If that seems imprudent when this matter is taken up in conference, I urge the committee to transfer the proposed DSUP funding into other B–1 modernization programs. For example, the B–1 is next scheduled to have its radar replaced with a version of the system now used on the F–16. It is important to me that we retain the funds within the B–1 upgrade program and reinforce the Administration's pledge that all savings from fleet reduction will be reinvested in B–1 modernization.

Mr. INOUYE. Mr. President, I share Senator JOHNSON's and Senator

DASCHLE's continued interest in maintaining the B–1 as a long-range, penetrating bomber. This plane's recent performance in Afghanistan testifies to its ability to help the nation deal with the types of threats we face in the 21st century. I appreciate their bringing to my attention the recent progress in the DSUP testing program. I will work with my colleagues from South Dakota to address B–1 funding issues when the defense appropriations bill goes to conference.

OPERATING ROOM OF THE FUTURE

Mr. SARBANES. Mr. President, will the distinguished chairman yield for the purpose of a colloquy concerning a program of great importance to ensuring the continued health and safety of our nation's Armed Forces?

Mr. INOUYE. I would be happy to yield to my friend, the Senator from Maryland.

Mr. SARBANES. Mr. President, at present, the military lacks a process in which emerging medical technologies can be adapted and tested in real time emergency situations that replicate high velocity and surgical care settings. With the assistance of the Senator from Hawaii, Congress last year appropriated $2.5 million to begin development of a national test bed to implement the U.S. Army Medical Research and Materiel Command's "Operating Room of the Future" strategy to remedy this situation. This test bed, to be based at the University of Maryland Medical Center, aims to improve the performance of these emerging technologies and expedite their transfer to medical care in the battlefield. This will be done via testing new approaches to video-assisted coordination, synchronized communications, mobile computing options, telesurgery techniques and distance learning. While spearheaded by UMMC, this program is linked via a number of collaborations with both industry and the military.

In its fiscal year 2003 Defense appropriations bill, the House has included $3 million of the $9 million necessary to continue work on the Operating Room of the Future initiative. The Senate bill directs the Secretary of Defense to consider the Operating Room of the Future for funding under the Defense Health Program's $50 million Peer Reviewed Medical Research Program. I am pleased that both bills contain language supportive of the Operating Room of the Future, and I respectfully request that the Chair work with his colleagues on the conference committee to ensure that the continued funding needs of this critical program are being met.

Mr. INOUYE. I certainly recognize the importance of this program and have been pleased to work closely with the Senator from Maryland on it in the past. Indeed, the Senator will recall that we recently visited the University of Maryland Medical Center to receive a briefing from both Army and hospital officials about the progress and importance of this project. You may be certain that I will continue to work on behalf of the Operating Room of the Future as we proceed to conference.

Mr. SARBANES. I thank the chairman for his continued efforts on behalf of our men and women in uniform, and I look forward to continuing to work closely with him on this vital project.

CHEMICAL AGENT WARNING NETWORK

Mr. CLELAND. Mr. President, I commend the committee's work to support very necessary research in the area of chemical and biological detection, response and defense. I also applaud the committee's recognition that there are many existing good ideas as well as ongoing initiatives worthy of consideration by the Department as it develops effective technologies for our Nation's chem.-bio defense. As you may know, one of these excellent efforts is a program that was initiated by the U.S. Marine Corps' Chemical Biological Incident Response Force, CBIRF, and authorized by the Senate in S. 2514. This program focuses on the development of emergency response technologies by first responders, the demonstration of a chemical agent warning network and the coordination of response among military and civilian assets. Will the Committee work to include in the list of programs to be considered under the Chem-bio Defense Initiatives Fund, this initiative to demonstrate a chemical agent warning network and other emergency response technologies for use by first response units?

Mr. INOUYE. The Senator is correct. The committee will work to include this among the program initiatives to be considered within the Chem-bio Defense Initiatives Fund, the Marine Corps' CBIRF program to develop a chemical agent warning network and develop emergency response technologies for first responder units.

Mr. CLELAND. I thank the chairman for his hard work and consideration of this initiative.

Ms. MIKULSKI. Mr. President, I would like to engage my friend from Hawaii, the Chairman of the Defense Appropriations subcommittee, Senator INOUYE in a colloquy on funding for the Advanced Seal Delivery System (ASDS). I am concerned over the decision to cut advanced procurement funds for this critical special operations program. This will delay this critical program. As you know this manned mini-submarine is used for the clandestine delivery of Special Operations Forces. It is a vast improvement over the current SEAL delivery system.

Mr. INOUYE. I thank the Senator from Maryland for her interest in ASDS. As you are aware the first ASDS boat has encountered two technological challenges that must be overcome: screw noise and batteries. These issues require additional research and development. Since the budget was submitted, the Special Operations Command decided to restructure this program and has delayed procurement of the second ASDS boat until these issues have been solved. The Committee therefore reduced advanced procurement funding.

Ms. MIKULSKI. I am aware of the problems facing the ASDS. The Carderock Naval Research Laboratory and scientists at Penn State University are working on the solution for screw noise. We believe a solution is well underway for this problem. A solution for the battery problem has been more elusive. The Navy has decided to develop Lithium-Ion batteries for this purpose, but funded only one Lithium-Ion battery developer and a solution has been slow at best. Is the Chairman aware that the ASDS prime contractor funded a competing effort to develop Lithium-Ion batteries? A leading U.S. manufacturer of Lithium-Ion battery technology is close to meeting the ASDS battery need. The Navy program manager is excited by this alternative. As you know, I requested that funds be added to the FY 03 Defense Appropriation bill in order to allow the Navy to fund an alternative solution to help resolve the battery issue.

Mr. INOUYE. I share your concern over development of a Lithium-Ion battery for ASDS. The Committee provided an additional $8 million for Procurement, Defense Wide at the request of the Senators from Maryland. We expect the Navy to use these funds to ensure competition to develop these Lithium-Ion batteries can take place and subsequently result in a more rapid solution to ASDS battery needs.

Ms. MIKULSKI. I appreciate the Committee's increase in procurement for ASDS batteries. As you are aware the House provided $12 million for procurement of a Lithium-Ion Polymer battery and shifted $22.5 million from advanced procurement to research and development. I hope we will be able to fulfill the Navy's request to move $23.2 million from advanced procurement to research and development in Conference. Nonetheless, I am concerned that restricting the battery procurement to a Lithium-Ion Polymer battery will result in less competition.

Mr. INOUYE. I thank the Senator from Maryland for her steadfast support of this program and appreciate her concern. I will explore the possibility of increasing research and development funding for ASDS and language that facilitates competition for the Lithium-Ion battery in conference, so that we can get this new technology deployed sooner.

Mr. BYRD. I rise to engage the managers of the FY 2003 Defense Appropriations bill, Senators INOUYE and STEVENS, in a colloquy on Navy Basic Research funding.

Mr. INOUYE. I would be glad to discuss this matter with the Chairman of the Appropriations Committee.

Mr. STEVENS. I, too, would be glad to join with my colleagues to review this matter.

Mr. BYRD. Earlier this year, I received information from our Appropriations Committee staff which caused me some concern about the Defense Department's budget request for Navy basic research in fiscal year 2003. The information indicated that over the past five years, funding levels for basic research have stayed at roughly the same level or have grown slightly, in real/constant dollar terms—that is, excluding increases for inflation. Growth in funding for applied research, however, has been significant, averaging about 10% per year. Indeed, the perception and reality of a greater emphasis on applied research is common in both private and public labs. Just as we've found to be the case in the private sector, the federally funded labs have been forced to be better 'marketers' of their products. This has led to a greater emphasis on applied research because, by its very nature, the work being done in applied research is more product-oriented. For fiscal year 2003, the Defense Department proposes to cut funding for the Navy's basic research program—a cut of 1% in real terms.

This shift in emphasis to applied research is understandable. But, if this shift comes at the expense of funding basic research programs, our science and technology programs will suffer in the long run. Basic research is the fuel for the engine of invention. Without a growing understanding of the fundamentals of our physical environment—energy sources, molecular structures, materials, and biological systems, to name just a few—our scientific prowess will weaken and our technological edge will become dull.

Given these concerns, I believe it is prudent that Congress sustain funding for this important program at traditional levels. That is why I am pleased to report that this bill includes, at my behest, a $6 million increase for the Navy Research lab. I want to thank the managers of the bill—the Chairman of the Defense Subcommittee, Senator INOUYE, and the Ranking Member, Senator STEVENS—for agreeing with my recommendation and for their continuing efforts to enhance our military's technology edge.

Mr. STEVENS. I thank the Senator from West Virginia for bringing this matter to the Senate's attention and for his continuing support of America's armed forces.

Mr. INOUYE. I also thank the Senator for his efforts regarding Navy basic research and the Navy Research Lab. This is an important initiative, and one that I am pleased that Senator STEVENS and I could include in the bill that we have brought before the Senate.

AEROSPACE WORKER TRAINING

Ms. CANTWELL. Mr. President, I rise today to thank the chairman for the tremendous job that he and the members of his subcommittee have done to craft this bill. I support their efforts to ensure that our Nation continues to have the best-trained and equipped military force in the world.

As the chairman knows, my State has a long history of achievement in the field of aviation and harbors an enormous pool of talented individuals capable of turning innovative technological discoveries into manufactured reality rapidly and efficiently. We also have one of the most highly skilled pools of aerospace workers in the world.

I believe that the security of our Nation and the future of the aviation industry will rely heavily on the development and implementation of highly advanced composite materials. But for the large-scale deployment of existing and future technologies to develop, it is critical that our Nation have the skilled workforce capable of understanding these next generation materials.

That is why I appreciate the subcommittee's support of a new initiative to train aerospace workers in the use and manufacturing of composite materials.

Edmonds Community College and Central Washington University in Washington State are developing a program aimed at improving the scientific and technical competencies of high school and college graduates in the area of materials used in manufacturing technologies. This program will develop a comprehensive curriculum to meet the growing demand for a workforce trained in materials science and will identify best practices for the industry.

We believe that this will become a model teaching and training program for the ever-changing materials technology field, and will involve future integration with advanced, cutting-edge basic research in composites materials and engineering conducted at the University of Washington. Taken together, this collaboration in Puget Sound educational resources in the material sciences will maintain and strengthen our country's foremost position in aerospace research, development and manufacturing.

This will provide a wealth of opportunities for incumbent aerospace workers to update their skills in newly developed processes, and may serve to pique the interest of students in material sciences and energize future generations to engage in math, science, manufacturing and engineering careers.

So I want to thank the chairman and the subcommittee for their recommendation that the Senate provide $500,000 in this bill to implement the first phase of this program and confirm that it is the committee's intention that the funds provided in the Air Force Materials Science account be used for this program at Edmonds Community College. I further want to ask the chairman if he will work with me to ensure that the funding provided for this program is maintained in conference and expanded in future years to further this effort.

I thank the presiding officer and the chairman, and look forward to his response.

Mr. INOUYE. Mr. President, the Senator is exactly right, it is the intent of the legislation to provide $500,000 for the program in Washington.

I assure the Senator that I will work with my colleagues to support these funds.

Preparing for the use of innovate materials in future aircraft designs is critical to enhancing air superiority. I will work with the Senator to address these needs in this year's legislation and will carefully consider ways to enhance those efforts in years to come.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT AGREEMENT

Mr. REID. I ask unanimous consent that notwithstanding rule XXII, the Senate resume consideration of H.R. 5010, the Department of Defense authorization bill, at 2 p.m., Thursday, August 1; there be 50 minutes remaining for debate divided as follows: 10 minutes each for the two leaders or their designees and the two managers or their designees, and that the only first-degree amendments remaining in order be the McCain amendment, No. 4445 and the Committee-reported substitute; that there be 10 minutes of debate with respect to the McCain amendment with the time equally divided and controlled between the managers and Senator MCCAIN; that at the use or yielding back of that time, without further intervening action, the Senate vote in relation to the amendment; that if the McCain amendment is not tabled, then relevant second-degree amendments would be in order to the McCain amendment with no time limitation on the relevant second-degree amendments; that upon disposition of the McCain amendment the committee-reported substitute as amended be agreed to, the bill then be read a third time, and the Senate vote on passage of the bill; that Section 303 of the Congressional Budget Act be waived; that upon passage the Senate insist on its amendment, request a conference with the House on the disagreeing votes off the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4445

Mr. STEVENS. Madam President, I ask the Chair lay before the Senate the McCain amendment.

The PRESIDING OFFICER. That amendment is pending.

Mr. STEVENS. I move to table the McCain amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, before the two managers leave, I don't know how enough could be said about the way this bill was managed. This is the largest Defense bill in the history of the world and the United States. Yet we started this just a few hours ago; and it is finished and no one can complain about this not having been scrubbed. Staff from all the offices have had the opportunity to come and do what they believe is appropriate.

But the good work on the bill was not only done here on the floor but in subcommittee and the full committee—which has just been topped off by the remarkable good work of these two sensational Senators.

I speak for both sides of the aisle that if a chapter had to be written on how to manage a bill, it should go to Senators INOUYE and STEVENS because that is how a bill should be managed. I have never seen anything like it.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, I thank my leader. But I believe that much credit should go to the staff. We have one of the finest staff members in the whole Senate. I refer to Charlie Houy on the majority side.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President. I repeat that. We are blessed with probably the hardest working staff in the Congress. I am grateful to my great friend and chief assistant, Steve Cortese, for his work.

But I would say this to the Senator from Nevada. For those of us who served in uniform, I think the greatest privilege there is is being able to manage this bill because it affects the people who have followed us, being willing to take up arms to defend our country. I know of no better group to work with and no group that really needs our help more than they do.

I thank the Senator for his kindness.

We would pay you for the job. It is like flying. I used to tell people they are paying me to fly and I would have paid them to let me fly. But I would pay for this job.

It is an amazing, amazing feeling to know we can accomplish some of the things we did tonight.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, we are all very proud of the men and women of the military as they have responded to the attacks of September 11 and as they continue to protect us here at home and around the world.

As we work on the Defense appropriations bill, we have an obligation to the men and women who are defending us to make sure they have the resources and the equipment they need.

Tonight, I rise in strong opposition to the McCain amendment on which this body will be voting tomorrow morning. The Senator from Arizona persists in his efforts to redefine an issue that this entire Congress has already endorsed and that the President has signed into law.

The McCain amendment addresses both the 767 and the 737 lease provisions that were endorsed by an overwhelming bipartisan margin less than 1 year ago.

Frankly, I am puzzled that this issue continues to come up. The Appropriations Committee engaged in this issue following consideration of the Defense authorization bill last year. The issue came to light in part because of the terrorist attack on our country, the global war on terrorism, and the tremendous demand placed upon our air refueling fleet.

This issue was not a sleight of hand to undermine the authorizing committee. We acted out of necessity as our country responded to September 11 and to terrorism. We had a lengthy debate, thanks to the Senator from Arizona, and the Congress agreed to go forward using the lease option as the vehicle to give our men and women in uniform the asset they need.

Not long ago, the Senate considered the Defense authorization legislation. The Senator from Arizona sits on that committee. That was the bill to have this debate. The Senator complains that the appropriations bill is the wrong place to authorize. Yet here we are considering an authorizing amendment offered by the Senator from Arizona on an appropriations bill.

I read his amendment, and I want my colleagues to understand what is really at stake.

The Senator from Arizona wants us to open the doors to the Air Force and the Department of Defense to Airbus. It is quite simple to me. One U.S. company manufactures commercial aircraft of this type. One, and only one, U.S. company can meet the Air Force's needs.

The issue before the Senate is whether U.S. workers or European workers will manufacture U.S. military aircraft. That is the bottom line. That is what the vote will be about tomorrow.

Let me also say that the Senator from Arizona has a broader agenda than the language in this amendment. Listen to his rhetoric. He interchanges the 737 and the 767 lease programs approved by the Congress. The language in his amendment is about the 737 lease, but he references, time and again, the larger issue of the 767 tanker lease.

So let's talk about the 767 tanker lease. Since September 11, one piece of equipment has become more critical than ever, air refueling tankers. These flying gas stations allow us to project our military around the globe. In fact, tankers are the backbone of our air capability.

Just look at the war in Afghanistan. Our B–2 stealth bombers had to get from their base in Missouri to Afghanistan and back. They needed to be refueled in the air nine times. Our bombers, which left the airbase on Diego Garcia, had to be refueled three times to reach their targets 3,000 miles away. So we needed the tankers to get our aircraft over there.

We also relied on our tankers to keep our planes going during the fighting. During the heaviest bombing of the Afghanistan battles, 30 to 35 tankers were in the air nearly around the clock to refuel 100 tactical jets. Even carrier-based warplanes needed the aid of air tankers to strike their targets in Afghanistan.

Here at home, many of our cities were protected by combat air patrols. Those patrols relied on air refueling tankers.

As Air Force Lt. Gen. Plummer put it:

> In the opening campaign of this war, every bomb, bullet and bayonet brought into the theater got there thanks to our aging refueling tanker fleet. . . .

Our reliance on tankers has grown 45 percent from fiscal year 2001. So whether it is projecting our force around the world or supporting our aircraft in the middle of a fight or keeping our homeland safe, the men and women of our military rely on our KC–135 tankers.

But there are serious problems with these tankers. They are old. In fact, they are among the oldest aircraft in the entire service. Because they are so old, they are not reliable, they are often down for repairs, and they cost a fortune to maintain.

Just look at the figures. The average age of these tankers is 41 years. One-third of the fleet is unfit to fly at any given time due to mechanical failure. Each plane requires a full year of maintenance for every 4 years spent on duty. A 41-year-old aircraft runs on parts that are not commercially available. Corrosion is also a significant problem. In fact, KC–135s spend about 400 days in major depot maintenance every 5 years.

So what we have are old planes that cost a fortune to keep flying and that are often down for repairs. That is not what you want in an aircraft that is used to protect your military around the world in the middle of a war.

Some have suggested that we just keep repairing the existing planes, and we could do that. But it does not make sense financially. It takes those planes out of service for a very long time. It would forfeit new planes that are more flexible, more reliable, and more efficient.

Let me share with the Senate something Secretary Rumsfeld said earlier this year:

> We needed to begin moving out some of the older pieces of equipment that are—aircraft and various things that require so much upkeep and maintenance and so much on spare parts, that it is unwise to continue to try to maintain them.

Secretary Rumsfeld also said:

> So you end up trying to take a 1934 Oldsmobile and prop it up for another five, six years, and there's a point beyond which that doesn't make good sense.

We have reached that point.

I show you a picture of an old Oldsmobile. I think it is actually a 1939 Olds, but it proves the same point.

We could keep repairing them, but it does not make sense to keep pumping money into a 41-year-old airframe. It is expensive. If you want to keep one of these old planes going, you probably are going to have to remove the plane's metal skin because these planes, as I said before, have a lot of corrosion.

I share with my colleagues a photograph showing some of the problems with the metal on these aging tankers.

To "re-skin" this airplane costs $26 million. Does it make sense to do that to 100 planes? Mr. President, $26 million is an awful lot of money to fix one problem with one 41-year-old plane.

After you have replaced the skin of the aircraft, it is probably going to need new engines. That is not cheap. To put a new engine in 100, 125 tankers is going to cost $3 billion. That is a lot of money for a 41-year-old airplane.

There are other parts that need to be replaced. It would be one thing if you could fix them all today, but it takes a long time to overhaul these tankers. Right now, we are overhauling four a year. At a certain point, it is just not worth dumping money into these old planes.

K–135s were first delivered to the Air Force in 1957. On average, they are 41-year-olds, and we are paying for it. They have been around longer than most of the people who are flying them. There is no question they must be replaced with new tankers; the only question is when.

I would love for us to be able to buy these new tankers today, but there is not enough money in the Air Force's procurement budget. So many of us in Congress have worked very hard to work out a more flexible approach, an approach that is used with commercial aircraft all the time.

In December, Congress approved, and the President signed, legislation to authorize the Air Force to negotiate with Boeing on a 10-year lease of 100 new 767 aircraft to use as air tankers. Congress has authorized the lease program for both the 767 and the 737 aircraft. My colleagues will recall that the bill to authorize these lease programs for the Air Force was approved by this Senate 96 to 4.

I also want to remind my colleagues what the Secretary of the Air Force, James Roche, wrote to me in a letter. I will quote:

> The KC–135 fleet is the backbone of our Nation's Global Reach. But with an average age of over 41 years, coupled with the increasing expense required to maintain them, it is readily apparent that we must start replacing these critical assets. I strongly endorse beginning to upgrade this critical warfighting capability with new Boeing 767 tanker aircraft.

That is from Air Force Secretary James Roche.

My home State of Washington is home to the 92nd Air Refueling Wing. There are approximately 60 air refueling tankers that are based outside of Spokane, WA. I have been to Fairchild. I have visited personally with the families. I know the difficult missions these crews handle for each one of us every single day. And I know the men and women of the 92nd Air Refueling Wing need these aircraft.

The Senator from Arizona talks about leasing aircraft as if the lives of our men and women in uniform were not at stake. I remind my colleagues that we are talking about equipping young American pilots and the missions they support to go forward with the greatest opportunity to succeed.

Mr. President, I encourage the Senate, tomorrow, to table the McCain amendment.

I thank my colleagues, and I yield the floor.

Mr. SMITH of Oregon. Mr. President, the events of the past 11 months have forced every American to become more vigilant against the threats to our nation's security. I want to commend the chairman, Senator INOUYE, and the ranking member, Senator STEVENS, for bringing to the floor a bill that responds to such threats by better protecting our Nation's citizens as well as our servicemen and women.

Even before the attacks of September 11th of last year, however, our Nation's military began to see that traditional notions of warfare and defense would have to evolve to meet new and ever more dangerous threats. The bombing of the USS Cole in Yemen, for example, made clear to us that our naval forces must be equipped with the most advanced surveillance and response vessels available.

It is for this reason that I have an amendment in support of the Navy's development and demonstration of the SeaLion craft. This vessel, designed for coastal area operations here in the United States and abroad, has already begun to prove itself capable of meeting the challenges faced by our Navy today, and well into the future.

Military operations in coastal areas involve significantly different challenges from deep water operations, such as reduced operational space and environmental clutter. Accordingly, surveillance, weapon systems and naval tactics designed for deep water operations are inadequate for the complex environmental and dimensional aspects of the coastal battle space. In such areas, small boats can effectively protect coastal installations, combat blue water navies, and hinder freedom of navigation for these navies and their supply ships.

The rapidly evolving nature of maritime warfare, the threat of terrorist activities against our naval forces abroad, and the need to protect our own ports here at home: each of these challenges require that the United States make a concerted effort to maintain a solid lead in the development of advanced technologies for coastal operations.

The SeaLion craft is perfectly positioned to support this role. It is a high speed, low-radar-signature vessel whose unique versatility lends itself to a broad spectrum of mission applications, from surveillance to interdiction to engagement. The SeaLion has already received strong endorsement from the Naval Sea Systems Command for its utility in special operations, and is poised for further evaluation as part of the Navy's Littoral Combat Ship platform.

This amendment would allow $8 million of funds appropriated by the bill to be used for the continued development, demonstration and evaluation of the SeaLion vessel. I ask for my colleagues' support.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to a period of morning business with Senators permitted to speak for 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PLAYING CHESS WITH HOMELAND SECURITY

Mr. BYRD. Mr. President, if I may, while the ranking Republican member of the Appropriations Committee is completing an appointment outside the Chamber, I ask unanimous consent to speak out of order for not to exceed 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia is recognized.

Mr. BYRD. I ask unanimous consent that my remarks appear at someplace in the RECORD other than in association with the Defense appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, in response to the terrorist acts of September 11, the Bush administration—like so many other administrations before it—has chosen to demonstrate its tough stand against something. In the case of the Bush administration, it is a tough stand against terrorism and its concern for the safety and well-being of the American people by boldly maneuvering the Federal chess pieces to create a new Department called Homeland Security.

It is an impressive move, Mr. President—this reorganization of the Government. Many say that it is the greatest reorganization during the past half century. I think it could very well be said that it is the greatest reorganization since the Founding Fathers reorganized the Government in 1787.

At that particular time, the 13 colonies—by then 13 States—had been under the operation of the Articles of Confederation. And many of those who served in the Senate in 1789 had been Members of the Congress under the Articles of Confederation and had been Members of the Continental Congress, which first met on September 5, 1774. The Framers of the U.S. Constitution reorganized our Government so that when their work product had been ratified by the States—the required number of nine for ratification—we then became the United States of America. We were no longer under the Articles of Confederation. That constituted a reorganization of our Government.

But I am talking about a reorganization that is being proposed today. I say that it is the most massive reorganization that has occurred since the Framers reorganized the Government through the ratifying conventions and the ratifications by the requisite necessary number of States—reorganized the Government so that it was no longer a government under the Articles of Confederation. Rather, it was the United States Government under the United States Constitution.

As to the current proposal, it is no wimpy reorganization. To check terrorism within our borders, the administration has proposed to establish a massive new Department of Homeland Security. It will be a Department so large that it will affect an estimated 170,000 Federal employees and will constitute the largest Department—the third largest—after the Departments of Defense and Veterans Affairs.

From what I have read, the thousands of workers of this proposed Department will be doing essentially the same job they are already doing, but they will be doing it under a different newly consolidated roof with different lines of authority. Why the administration seems to think that these workers will perform their duties better just because they are transferred to a new agency has both bothered and baffled me until late last week.

Last week, President Bush let it be known that if any version of the Department of Homeland Security passes the Congress which ensures Civil Service protections, collective bargaining rights, and other provisions to safeguard Federal workers' rights and protections, he will veto it.

At first, I thought this was simply another of the usual pokes at Federal workers. There is the unfortunate implication in the President's veto threat that the current Federal workforce is so full of slackers—there are some there, no doubt—but it is so full of slackers and ineptitude that he may need to get rid of them all and hire a new Federal force.

But then as I thought about the President's claims that the Secretary of the Department of Homeland Security will need the ability—get this—to act "without all kinds of bureaucratic rules and obstacles," I began to have other concerns about the Bush administration's intentions.

It may be that this White House crowd, comprised of CEOs, corporate managers, and other wealthy business elites, may be seeking to use the Department of Homeland Security to further their efforts to run the Federal Government more like a corporation, seeking freedom to hire and fire dedicated public servants, many of them experts in their fields, at will.

By the way, the actions of CEOs are not exactly models—and I am not talking about all CEOs, of course. But the actions of CEOs we have been reading about recently are not exactly models on which to run much of anything these days, and I hope that I am not detecting the same cavalier attitude about Federal pensions that we have seen in press accounts detailing the horrific pension ripoffs by some of our large corporations.

No one wants to deny the administration the ability to take reasonable steps to foster flexibility within the proposed new agency, but I question the real motivation behind the administration's objections to worker protections. Let's face it, the players in this administration do not have much of a reputation as champions of basic protections for workers.

President Bush is currently pushing the Congress to subject 425,000 Federal jobs to contractor competition by the end of his term. This administration has made it a goal to take Federal jobs and dole them out like candy to private firms, apparently.

In drafting its proposed reorganization, the administration started with a panel of four—four white collar political players; four white collar political players in the bowels of the White House, in the subterranean caverns of the White House.

Who were the geniuses behind this idea? Mr. Andrew Card, a fine gentleman—I like him, a very able man; former Gov. Tom Ridge, a fine gentleman, a very able official, who has had great experience in running the Governor's office in one of our larger States in the Union, one of the States that was among the first 13, by the way. Then there is the White House counsel, I believe his name is Gonzales. I am not sure I know him very well. And then the fourth in this quartet of master planners is none other than Mr. Mitch Daniels, the Director of the Office of Management and Budget.

So there is the quartet. Not quite the caliber, I would say—although one may wish to debate it—it may be worthy of argumentation—not quite the caliber of the committee of five that wrote the Declaration of Independence: Thomas Jefferson, Benjamin Franklin, John Adams, William Livingston, and Roger Sherman. Roger Sherman is the only one of the five who signed all of the founding documents of this great Nation. Now there was a committee of five.

So while there may be some argument as to how one would stack up against the other, I would put my bets on the committee of five that wrote the Declaration of Independence. I will stay with them. No disrespect intended, of course, to the White House committee of four, but they operated in secret in the bowels of the White House. I understand that when the President unveiled this massive monstrosity, some of the Department heads in the Government had not been in on the deal until the day that it was sprung.

It sprang like Aphrodite from the ocean foam. She sprang from the ocean foam and was carried on a leaf to the Island of Crete. She later appeared before the gods on Mount Olympus and, of course, they were dazzled by her beauty. This Homeland Security plan came into being about like that, or one might compare its sudden emergence with the goddess Minerva who sprang from the forehead of Jove, the forehead of Jupiter. Minerva sprang fully armed and clothed from the forehead of Jove.

That is about the way this thing came into being. That was the genesis of it, down there in the White House. It was conceived in secret and was born in secret, and there we are.

So the administration has given these white-collar political players—there were four of them in the beginning—free rein to move Federal workers around from one agency to the other in the name of homeland defense. That same administration now appears poised to sabotage the pay, the health benefits, and the retirement benefits of the very Federal workers it wants to involve with safeguarding our homeland security.

There is nothing like threatening jobs and health benefits to give a boost, of course, to the morale of the employees of a new and very important

Department. This is just what we need to energize our new Homeland Security Department, is it not? They will like that—jeopardize their benefits and their pay and their jobs. Imagine the concentration level of nail-biting employees concerned about where their next paycheck is coming from. Think about that. And what will happen to their families if the Bush administration prevails in freeing itself from the normal restrictions which safeguard Federal workers' rights?

For those who doubt my concerns, I ask them to examine the Bush administration's attitude toward Federal workers. It has been clearly expressed by recent comments. Administration spokesman Ari Fleischer, for example, has said that Federal workers need to be stripped of their rights and protections because managers in the Department of Homeland Security will need the ability to fire a worker who was drunk on the job and as a result allowed terrorists into the country. Great stuff! Great motivation, for a Federal workforce on whom we will rely for our safety, and those of our families and friends and associates, and people all over the country.

I do not see anyone defending drunken workers. Not me. I would not defend a drunken worker. We do not have to strip all Federal workers of their basic rights and threaten their pay and retirement benefits in order to deal with one worker who has been drinking on the job. I certainly do not defend that kind of behavior.

This comment was a needless and irresponsible cheap shot at hundreds of thousands of dedicated, hard-working Federal employees who are laboring day and night in many instances for far less money than they could be earning in the private sector. I think Mr. Fleischer owes them all an apology. Federal workers are not the problem. They are the unsung heroes who are protecting our homeland.

Pause for a moment and think about that. They are the Border Patrol agents. Federal workers are the Border Patrol agents guarding our 6,000-mile-long borders when we think of both borders with Mexico and Canada. All day, and all night while the rest of us are sleeping, they are guarding those borders, guarding us. Those are Federal workers. They are the Customs Service inspectors who have been working around the clock since September 11 to prevent weapons of mass destruction from being carried in containers through our ports of entry. Those are Federal workers. They are the postal workers who have to think about delivering packages of anthrax. They are the Federal workers who have had to deal with the anthrax threat. What about the Center for Disease Control workers who must confront the hard reality of a possible bioterrorist attack every day?

Federal employees are the rank-and-file workers who do the bulk of the work in securing the homeland, and they will continue to do the bulk of the work in securing this country from sea to shining sea. They are the workers who will do the bulk of the work in securing the homeland but who will receive little of the credit and the glory that go to the administration's political appointees.

The President has asked these Federal employees to be the frontline soldiers in the war on terrorism. They are out there at every hour of the day and the night, somewhere, guarding the ports of this country, guarding the borders of this country, guarding the airports of this country, standing on guard. And the President would reward them by trying to take away their basic labor, civil service rights, and job protections?

I was especially alarmed by OMB Director Mitch Daniels' explanation for stripping Federal workers of their rights. Mr. Mitch Daniels said:

> Our adversaries are not encumbered by a lot of rules. Al-Qaida does not have a three foot thick code. This department is going to need to be nimble.

This is a startling, as well as frightening, remark. Since when did al-Qaida become our role model for labor-management relations? I thought we were out to destroy al-Qaida, not emulate them. Ha, ha, ha, ha, ha. No, they do not have a 3-foot code of rules. Al-Qaida also does not have this code which I hold in my hand, the Constitution of the United States, but we do. We have this code, this Constitution.

Is this administration using the 19th-century industrial robber barons as its role model for labor-management relations? What is going on in the heads of these so-called administration spokesmen? The President had better rein in some of these spokesmen. Destroying the basic rights of Federal workers is not how we should be combating terrorism. The fight against terrorism does not have to be fought by workers stripped of basic labor rights. Denying basic rights and protections to workers always makes recruitment of skilled and experienced employees difficult.

But just as important as the necessity that our Federal workforce be a secure workforce, a workforce composed of employees who know they will be protected from politics, cronyism, and favoritism, it must be a workforce armed with protections that can allow them to speak out about mismanagement without fear of losing jobs.

It is rank-and-file Government workers, who are on the job every day and night, keeping Government operating, protecting you, Mr. President, protecting me, protecting our friends in the fourth estate there in the gallery. These are the Government workers who make the Government function, and they are the Government workers upon whom we now depend to protect us.

I can't help but think of those incredible workers at FEMA who have done such a tremendous job, time and time again, in response to floods in West Virginia and in crisis situations in every other State in the Union. It was a Federal employee of the Customs Service who apprehended a terrorist, Ahmed Ressam, with 134 pounds of explosives in December of 1999 at the border in the State of Washington. Later, the terrorist confirmed that it was his intent to bomb Los Angeles Airport during the 2000 New Year's celebration. These are the players that this administration threatens to strip of their rights and benefits.

The assertion that Federal workers cannot be disciplined under existing Federal guidelines is somewhat of a myth. There are strict performance requirements for Federal workers already in place. There are performance reviews annually and initial hires on probation for 1 year. No new rules are necessary. No new blanket exceptions for basic labor rights are needed by this administration. This administration has not even got legislation in place which clearly identifies the mission of this new Department, and this administration is already trying to blame the Federal workforce for any potential failures that might occur in the future.

Again, I say, slow down. Let's slow down. Let's slow down. Let's slow this proposed legislation down. I am not saying today that I am against a Department of Homeland Security. But what is the rush? What is the rush? Consider carefully a veto threat of any bill setting up a Department of Homeland Security which does not give this White House sweeping new powers, sweeping new powers to abolish workers rights and workers protections.

Imagine that; imagine a veto that would do that. I think the agenda of this White House is becoming very, very clear. And we had better pause, we had better stop, we had better look, and we had better listen. Talk about passing this massive new law, creating a massive, monstrous behemoth by September 11, by an artificial deadline! This legislation would emasculate certain portions of this Constitution which I hold in my hand—emasculate it! Trample it into the dirt!

Mr. President, I have been here 50 years. I am not in the Senate today because I need a Senate salary. I could have retired 2 years ago when my 7th term was completed. I could be drawing a check today, a retirement check. I have been in the Senate and the House 50 years. I don't have to work here to put bread and butter on the table for my wife, to whom I have been wed 65 years and 2 months, the day before yesterday. I don't have to have it. Why am I here? I should be at home with her. I should be living with my grandchildren, my great-grandchildren, enjoying a little leisure at the end of a long, long worklife that began in the mining camps of southern West Virginia a long time ago.

No, I am here to protect this Constitution and this Institution of which you, Senator, from Minnesota, and you, Senator, from Hawaii, and 97 other Senators are a part. That is it. Some give their lives on the battlefield in wars. There are others of us who give our lives in public service. I am one of them.

Let's slow down. We don't know what the unintended consequences will be of the passage of this legislation. Study the House bill. Study the House-passed bill. The House passed a bill after 2 days of debate. I believe there were 132 Members of the House who voted against that bill. Were they against homeland security? No! Those Members of the House who voted against that bill were as much for homeland security as I am, as much as the President of the United States is. They were for homeland security. I am for homeland security. I defy anyone to say that the Senator in the chair, that the Senator who sits just behind me, or any other Senator, is against homeland security.

Many times I have stood before that desk up there and put my hand on the Holy Bible, and I have sworn to support and defend the Constitution of the United States against all enemies, foreign and domestic. That is why I am here. We are in too big a hurry to pass this bill. For what reason? Because there is an election coming on.

And then there were some well intentioned souls, but so gullible, as to suggest that we ought to do this big "thing" before September 11 or by September 11, the anniversary of the most horrendous attack against this country that has ever occurred. Why September 11?

We have a duty to discuss this bill at length. I say to all Senators, Republicans and Democrats, hear me, the people out there across this country are not clamoring for this legislation. The politicians are clamoring for it. The same people who will work under this new Homeland Security Department are already working today for homeland security in the various agencies that will be transferred to this department. They are already on the job. The Appropriations Committees of both Houses have already acted to release funds for homeland security time and time again, last year and this year.

Then, the people of this country are being urged to pressure their representatives to act on this Department. This Department was conceived in the bowels of the White House by four Federal workers—four members of the White House staff!

Take time to study what we are about to do! Read title 8 of the House-passed bill. It scares me! Read title 8.

I think the agenda of this White House is becoming very clear. It is not homeland security that this White House is lusting after. Bin Laden is not the only target at which this administration is pointing its six-gun. Clearly in the bull's eye is also the job security of thousands of Federal employees and the core values of rights for the workers. And there it is. I will have more to say on this subject.

I am talking about the Constitution and about this Institution, Mr. President. Think of it! Think of the blood that has been shed by men and women over these past 216 years to uphold this Constitution, to protect the security of this country.

There is a man in the chair (Mr. CLELAND) who has given everything but his life for his country. I would be ashamed to run against him. I would be ashamed to be a candidate, put myself up against that man—or this man here behind me (Mr. INOUYE).

We had better go slow. We can easily tear down in a few weeks what it has taken centuries to build.

I saw them tearing a building down,
A group of men in a busy town;
With a "Ho, heave, ho" and a lusty yell,
They swung a beam and the sidewall fell.
I said to the foreman, "Are these men skilled
The type you'd hire if you had to build?"
He laughed, and then he said, "No, indeed,
Just common labor is all I need;
I can easily wreck in a day or two,
That which takes builders years to do."
I said to myself as I walked away,
"Which of these roles am I trying to play?
Am I a builder who works with care,
Building my life by the rule and square?
Am I shaping my deeds by a well-laid plan,
Patiently building the best I can?
Or am I a wrecker who walks the town,
Content with the labor of tearing down?"

CRISIS IN HAITI

Mr. DODD. First, I commend my colleague from Hawaii for his fine leadership on the pending matter before the Senate dealing with the Defense appropriations bill.

The matter that I wish to address regards the nation of Haiti, a tragedy that is unfolding a short distance from our own shores, literally only 90 or 100 miles away from the coast of the United States. As yesterday's New York Times article entitled "Eight Years After Invasion, Haiti's Squalor Worsens," written by David Gonzalez, makes abundantly clear, the people of Haiti in that article, as we know, are on the verge of despair.

I ask unanimous consent that the article written by David Gonzalez in the New York Times be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EIGHT YEARS AFTER INVASION, HAITI'S SQUALOR WORSENS

Sonia Jean-Pierre's life is one of apocalyptic misery. With hardly any food or work, her only refuge is a concrete cell. The searing sun is blotted out by cardboard pasted over the windows. On the wall by her bed, she has scrawled, "Jesus Christ is coming soon," like a promise of salvation to greet her every morning.

Ms. Jean-Pierre and hundreds of neighbors live as squatters inside the old Fort Dimanche Prison once the brutally efficient killing chamber of the Duvalier dictatorships. A prison no longer, it has been renamed, hopefully, Village Democratie. The poor cram themselves into the dingy cells and even inside the old sentry towers that look out over the surrounding shanties, where 2,000 more souls live without water, schools or electricity. Some are so desperate they eat pancakelike disks of bouillon-flavored clay. Poverty is the only jailer.

"We are free prisoners," said Ms. Jean-Pierre, who rested one recent afternoon on the cool concrete floor. "We are still living like prisoners."

Nearly eight years after the United States led an invasion of Haiti to oust a military junta and restore President Jean-Bertrand Aristide to power, Village Democratie is just one measure of this country's despairing slide.

Increasingly exasperated with Mr. Aristide's government, which has yet to resolve a two-year-old deadlock with its opposition, the United States and European countries have blocked some $500 million in aid, hoping to encourage greater democracy. Critics say the decision has merely eroded the hopes and deepened the poverty of this country's seven million or so people.

For a nation as poor as Haiti, withholding the money has become both carrot and stick. Haiti still lingers near the bottom of the United Nations' annual survey of living conditions. Life expectancy is less than 53 years. Preventable diseases go untreated. The yearly income of the average family is less than is needed to sustain a single person.

Mr. Aristide calls the withholding of the aid an "embargo." His American supporters, including the Congressional Black Caucus and well-paid lobbyists, say it is immoral to withhold the aid and punish the Haitian people, as government agencies go without budgets, plans or projects to provide water, health care and schools. Some $150 million from the United States, they note, might not only improve roads, water and health but also create jobs.

Still, diplomats and aid officials say, Mr. Aristide's use of the term "embargo" reflects calculated rhetoric more than reality. Trade and travel continue, and relief, including contributions from the United States, flows into Haiti through nongovernmental groups.

Solving Haiti's problems, they argue, will take more than just an infusion of aid. Most important, they say Mr. Aristide has yet to prove that his government has escaped the corruption and destructive self-interest of governments past.

Meanwhile, the political stalemate, which arose over a disputed election, and the international response to it, have stalled what little functioning government democracy might have brought.

"The situation is getting worse for the majority of the people," said the Rev. Jan Hanssens, a Roman Catholic priest who sits on the Justice and Peace Commission of the Bishops' Conference. "There is certainly no hope unless there is a drastic reassessment of Haitian society itself. If things simply go on as now, there is no chance."

Along the streets of Village Democratie, faith in politicians is as elusive as a decent job. Faded posters of Mr. Aristide, wearing the presidential sash and with his arms outstretched, are his only presence.

Laughing young men crouched at the entrance to the former prison and gambled a few wrinkled gourde notes, the country's currency. Inside, past corridors whose crumbled walls reveal a weed-choked courtyard, people walked home after church clutching hymnals titled "Songs of Hope."

Inside tiny rooms with cardboard walls, slim shafts of sunlight cut through the haze of charcoal smoke from braziers where pots of rice boiled. There are no sewers or running water anywhere in the neighborhood, and when the rains come they leave fetid puddles where malaria-carrying mosquitoes breed.

"Artistide said here is the room of the people," said Dorlis Ephesans. "But he has never showed his face here."

Some of the residents had tried to leave Haiti during the 1991 coup that ousted Mr. Aristide. Some made it to Miami, some died and others like Israel Arince, were caught at sea and returned.

The same America that sent him back to Haiti and restored Mr. Aristide to power in 1994, Mr. Arince said, now make life impossible.

"They have blocked the country from getting aid," he said. "We are human beings and we do not like to live like this. Only animals should live here."

In La Saline sum, down a busy road near the prison that is often choked with carts and traffic, pigs waded through streams of human waste and poked their snouts into mountains of garbage in a drainage canal. Young women dropped plastic buckets into a sewer and hauled out a gray water they would use to wash their floors. Potable water is too expensive.

"There is no way to be healthy here," said Elisena Nicolas, who spends a third of her income on water. "But you have to keep the children clean."

As hard as it is to conceive, people come to La Saline to escape rural misery. In the Central Plateau town of Cange, doctors with the Zanmi Lasante clinic and children commonly died from malaria or diarrhea, while tuberculosis and AIDS killed their parents. Even polio, once thought to have been eradicated, has resurfaced recently.

Although the clinic receives no international aid, doctors said they worked with many Haitian government clinics in nearby villages where the frozen aid has left them unable to cope. In recent years, their volunteer clinic's patient load has tripled to 120,000, with patients sometimes walking five hours for free care.

Dr. Paul Farmer, an American who helped found the clinic in the 1980's, said he could not prove that the blocked aid resulted in more suffering, but the deteriorating conditions were evident. International aid, provided on an emergency basis to charitable groups, was no substitute for a working government, he said.

"One of the world's most powerful countries is taking on one of the most impoverished," he said of the United States decision to withhold aid. "I object to that on moral grounds. Anybody who presides over this blockade needs to know the impact here already."

But Haiti's record of official corruption and mismanagement, regardless of who was in power, has given pause to many international aid officials. A recent study by the World Bank concluded that 15 years of aid through 2001 had had no discernible impact in reducing poverty, since projects were carried out haphazardly and government officials aid not sustain improvements.

Today, for instance, a maze of rat-infested pipes is all that is left of a potable water project after funds ran out before the pipes could be connected to the water main.

At the same time, political opponents and diplomats said, the government has money to provide cars for legislators or pay off neighborhood groups that are its foot soldiers and that the opposition charges, have been used to intimidate government opponents.

As a result, diplomats and aid officials said Mr. Aristide must not only resolve this political crisis, he must also show that he will allow economic and administrative reforms to guarantee that any forthcoming aid will be honestly spent.

"We are saying we want to help you," said a European diplomat, who noted that the European Union was ready to provide $350 million. "But you must help us help you. You comply, I'll comply."

Absent any aid or a political pact, people scrape by as they have for years, sharing what little they have or sacrificing themselves for their children. In the neighborhood of Fort Sinclaire, a dilapidated maze of shacks, indigent teenagers with tuberculosis sleep on sheets spread out on hard concrete porches.

A soft carpet of soggy wood chips blankets the entrance to the neighborhood, as men carve wooden bowls to sell to tourists who have yet to return to Haiti. Lionel Agustain, a woodworker, sometimes earns two dollars a day, not enough to prevent him from losing his home a few years ago.

A friend lets him sleep on a rickety cot inside a gym where the weights are improved for gears and other car parts. The walls are tauntingly decorated with wrinkled posters of bodybuilders with bulging chest and bicep Mr. Agustian is thin, and he sometimes eats only a bowl of rice.

"We don't know when they are going to fix things," he said. "We suffer. And when you suffer enough, you die."

Mr. DODD. Madam President, I share with my colleagues briefly the situation in Haiti. This is one of the most desperate countries in the world, a few miles from our shore. There has been pending over the last 2 years a $500 million request through the Inter-American Development Bank. The United States of America, and several of its allies, are holding up the disbursement of these funds to one of the poorest countries in the world. Seven million people in that country are suffering incredibly. It is being held up over a question of whether or not institutions in that nation are as strong as they ought to be, whether or not there is corruption, and whether or not the elections that occurred in 2000 were fair, open, and honest.

I am not going to argue about any of that. There is corruption. The agencies, administration, and structures are very weak. The elections in 2000 had major flaws in them. I am not arguing about that, either. But for the strongest, wealthiest nation in the world, that stands 90 to 100 miles away from one of the poorest nations in the world, and to have us deny Inter-American Development Bank funds, through our power and influence, to reach these desperately poor, dying people, where life expectancy is age 53, where there are problems with malaria, diarrhea, and tremendous hardship—polio has reemerged on this island—I think is terribly wrong.

This article, written by David Gonzalez, points out how desperate the situation is in Haiti. I will not read all of the article but he talks about shanties, he talks about the former prison at Fort Dimanche, a prison in Port-Au-Prince where now 2,000 people live without any water, schooling, or electricity. These are fellow human beings who are in great despair, living under the worst possible of circumstances.

In rural areas as well, local clinics have shut down and one clinic, according to David Gonzalez's article, in the Central Plateau town of Cange, doctors with the Lasante Clinic dealt with 120,000 patients who came to them in recent years. The clinic's patients tripled to 120,000, patients sometimes walking 5 hours for care.

As I mentioned, tuberculosis, malaria, and now even polio, once thought to be eradicated, is emerging. I am hopeful that the IDB, the Inter-American Development Bank, would listen to those who have been supportive of this Bank. I have been supportive, as many of my colleagues have, over the years. For the IDB to hold back on these funds any longer is wrong.

Haiti is sinking deeper and deeper into irreversible poverty. The extent of the heartache now being endured by the Haitian people is simply unspeakable. Their suffering is devastating and it is far reaching. In some places there is no potable water, there are no sewers, there are no basic medicines on hand to treat disease, no medical infrastructure in place to ward off otherwise easily preventable diseases.

Haiti ranks as one of the lowest on the U.N. survey of living conditions. As I mentioned, life expectancy is age 53. Of course, the despair and hopelessness which prey upon the victims of such suffering cannot be quantified.

It is the people of Haiti, in my view, who should be our concern today, not the flaws of their political institutions. I am deeply saddened and incensed in many ways that we are planning electoral negotiations over the clear, tangible plight of a people.

Ironically, it is the United States that has taken the lead in preventing Haiti from receiving assistance from the International Development Bank, the institution that is supposed to be the premier regional development agency. Proponents of withholding crucial IDB funding point to Haiti's weak institutions, to the need for drastic and timely economic and administrative reforms, as a prerequisite for restarting assistance.

It is true, Haiti is an impoverished nation with weak institutions. It is true there is corruption at high levels. I do not deny that. And, yes, there is a serious need for reform in these areas. It is also very true that poor countries breed weak institutions and seek to strengthen themselves and help their people with the assistance of international humanitarian aid, but that is not the real reason that assistance is being withheld. The real reason funds are being withheld is political——namely, as leverage in an ongoing Organization of American States negotiations to resolve issues related to the May 2000 elections of that country.

The Secretary-General of the OAS has endeavored over the last 2 years to resolve the political stalemate in Haiti and the disputed 2000 parliamentary elections. He has put on the negotiating table a balanced and credible proposal for resolving the election dispute and is working to ensure the security and other matters of concern to the Haitian society that are being seriously considered by the Haitian Government. I believe they are.

That said, Haiti has flawed elections. Absolutely. We are talking about a country without a long historial tradition of democracy. While this worsens, and public faith in government is reduced to zero, what remains of the fragile democracy is eroded further. Even in the United States, with our proud history, peaceful transition of power, orderly elections, and representative governments, we have had significant troubles with our own elections. Merely look at what happened in the year 2000 in this country with our elections. No one is perfect.

In one of the most desperately poor nations in the world, it should not be a great surprise that institutions and electoral processes are not what we would like them to be. By not providing basic help, by the United States blocking the assistance reaching the desperately poor people, we are not strengthening the institutions but making it worse and harder for the Nation to get back on its feet.

I have always strongly opposed linkage between ongoing political dialog and the Haitian access to resources of the Inter-American Development Bank. These moneys have been held hostage for too long. The damage to the Haitian economy is devastating. The good-faith efforts of the Government in responding to the OAS initiative should be more than enough justification for beginning the process of loan disbursements from the Inter-American Development Bank. Although the state of despair in Haiti is all the justification that should be needed for an institution whose primary obligation, as the IDB, is to promote economic and social development in this hemisphere, and they are doing anything but that.

Shame on the Inter-American Development Bank for being used in this manner. It does not speak well for an institution that for the most part has a good reputation. Shame on the Government of the United States for pressuring the IDB to do so. Seven million people are desperately in need of help. We have gone on now for years denying this basic assistance. It is time to put a stop to playing politics with Haitian lives, and it is time to respond to the unfolding crisis in Haiti. I urge the administration to withhold, to lift the embargo, on the dollars.

For those who have supported the IDB year in and year out, it has been terribly disappointing to me that they have continued to acquiesce in the demands of the Bush administration to deny the disbursements of these dollars. I hope they will take the action of saying they have waited long enough and they will provide the assistance needed to the Haitian people.

We are about to leave for a month and the situation is growing worse. I ask my colleague to take a look at the David Gonzalez article in the New York Times yesterday. This is a snapshot of what is going on in the country and what desperately poor people are suffering as a result of the lack of support. They would suffer anyway. I am not suggesting this will solve all their problems. It is hard to believe we are holding up the funds—seeing how these people live, how these children are being raised, only a few miles off our shore, when we could make a little bit of a difference. We could also strengthen the very institutions we are complaining so strongly about if we provided that kind of help.

VETERANS HEALTH CARE NETWORK

Mr. KERRY. Madam President, I regret to come to the floor today with a concern that I find absolutely extraordinary—even shocking.

This is a memorandum which represents an extraordinary broken promise to the veterans of our country. I want to share it with my colleagues who I think would share with me a sense of outrage over what is contained in this memorandum.

This is a memorandum from Laura Miller, Under Secretary of Veterans Affairs for Health for Operations and Management, which she circulated on July 18. It orders the directors of the Veterans Health Care Network in the country to end their veterans outreach activities.

Let me read from the memorandum. It says specifically:

> In this environment, marketing the VA services with such activities as health fairs, and veteran open houses to invite new veterans to the facilities, or enrollment displays at VSO meetings are inappropriate. Therefore, I am directing each network director to ensure that no marketing activities to enroll new veterans occur within your networks.

In other words, the promise made to veterans and their families that these services will be available to them—and many of them don't know exactly what all the services are—that is why we put into place the outreach efforts in order to guarantee that people aren't denied those services which they might have forthcoming. Those services are not now going to be provided. They are not going to be reaching out to veterans to make them aware of them. I find that absolutely extraordinary.

There are approximately 70 million people who are potentially eligible for VA benefits and services because they are veterans and family members or survivors of veterans. They stand to lose those benefits because the VA is simply going to hide or retreat from reaching out in the way that all of us here in Congress specifically codified and put into law that they do.

I know the Secretary of Veterans Affairs is a Vietnam veteran and is a distinguished, decorated veteran. I absolutely can't believe that he knows this went out. I can't believe that it went out under his order, particularly when you compare it to his own statement on the VA Web site. There is a statement by the Secretary that says:

> Our goal is to provide excellence in patient care, veterans' benefits and customer satisfaction. We have reformed our department internally and are striving for high-quality, prompt and seamless service to veterans.

With respect to "prompt," in this memo the Deputy Under Secretary says:

> The most recent enrollment shows a 13.5 percent increase in users this year compared to the same time last year, and a 15 percent increase in enrollment while expenditures rose 7.8 percent. Against the outcome of this situation is a waiting list for patients to be seen in many clinics across the country and general waiting times that exceed VHA's standard of 30 days. Moreover, actuarial projections indicate a widening gap in the demand versus resource availability.

"Demand versus resource availability"—those of us from New England sat with the Secretary several months ago and made it clear to the Secretary that there is an increasing crisis in our VA system because of the lack of resources.

The "greatest generation" veterans—those of World War II—are now demanding services of the VA in greater numbers than before. Our military efforts these days are increasing the awareness and the need of many people who served for those services. Yet here we are being told we have demand that is exceeding the resources.

The resources don't have to be exceeded. That is a matter of budgeting priority of this administration. There are many areas where it is obvious that the administration has decided it is more important to put money, rather than for the veterans, and in order to keep the promise to the veterans of the country.

In today's Greenfield Recorder in Massachusetts, a VA spokesperson said the reason the VA has cut these services is "because right now we can't give them the kind of care that they deserve."

That is an extraordinary statement in the face of the current situation with troops in Afghanistan and other parts of the world, with the increasing demand of our military and with potential operations in Iraq that are the subject of hearings before the Senate Foreign Relations Committee today.

Under Secretary Miller's memorandum notes that enrollment has increased by some 15 percent. So the budget ought to reflect that. The budget ought to reflect that we need to keep the promise to our veterans. The fact is, almost every single budgeting effort in the last few years has been inadequate for the VA. The VA has consistently received less funding than necessary facing this growing demand.

In the fiscal year 2002 budget, there was initially an $80 million shortfall for veterans medical care in New England alone. And although this region has confronted the most severe shortages, the situation throughout the country has been similarly bleak.

This year, and in previous years, colleagues in the Senate have fought to try to up that amount of money. Last week, Congress passed a supplemental with some additional $417 million, but the fact is, the increase in this year's spending is not adequate to meet the demand. It is critical that we provide veterans services to nearly 5 million veterans in 2003.

It is almost so obvious that it should go without saying, but I hope this is going to be reversed immediately. I hope the administration is going to keep America's promise to our veterans. And I hope they will plus up that budget sufficiently to meet the demand and to keep faith with the promise made already to the past several generations of veterans and the promise that is today being made to the next generation of veterans.

I yield the floor.

MAJ. GEN. WILLIE B. NANCE, JR., U.S. ARMY

Mr. COCHRAN. Mr. President, very soon one of our Nation's finest soldiers will retire from active duty after more than three decades of dedicated service to our country. Major General Willie B. Nance, Jr., will retire from the United States Army on November 1, 2002, after serving for 34 years. During his distinguished career, General Nance served in a remarkable range of roles, from buck private to two-star general, from foot soldier to the manger of one of the most sophisticated weapon systems our nation has ever built. General Nance, I am proud to say, is a native of Mississippi, and I believe it is appropriate that the Senate take note of his distinguished career as his retirement approaches.

General Nance entered the Army in 1968 as a member of the Mississippi All-Volunteer Company, a group of 200 Mississippi volunteers who enlisted at the same time under an Army volunteer enlistment campaign. Having proven himself early as a soldier, he was recruited directly from Basic Training into Officer Candidate School, from which he graduated as the honor graduate in 1969.

Commissioned into the Infantry as a second lieutenant, General Nance's early assignments included duties as a rifle company platoon leader, reconnaissance platoon leader, and battalion assistant operations officer in Korea. He also served twice as an instructor at the U.S. Army Infantry School at Fort Benning, GA. As a young captain, General Nance was a communications officer, battalion adjutant, and company commander in the 3rd Armored Division in Germany. Between these assignments, he completed Airborne training and was an honor graduate from the demanding Ranger course.

After 13 years of infantry service, General Nance was assigned to the Army Acquisition Corps. In repeated assignments to acquisition leadership positions, he developed expertise in every area of acquisition management. After serving as an Assistant Product Manager for three years, he became the Executive Officer to the Commanding General of the Department of the Army Research and Development Command, Europe. As a lieutenant colonel, he managed the Bradley Fighting Vehicle TOW missile subsystem. As a colonel, he managed both the Army Tactical Missile System and the Brilliant Anti-Tank munition programs. Between command assignments, General Nance taught acquisition strategy as a professor at the Defense System Management College.

In his first assignment as a general, General Nance served for two years as the Deputy Commander of the U.S. Army Space and Strategic Defense Command. In this position, he oversaw with efficiency, innovation, and compassion a significant reorganization and reduction of the technical element of the command.

From 1996 to 1998, General Nance served as the Army's Program Executive Officer for Tactical Missiles. In this position, he was responsible not only for managing many complex missile programs costing several billion dollars annually, but also for creating a strategic vision that would guide all army tactical missile programs through the Army's transformation process.

In 1998, General Nance undertook perhaps his most challenging professional task when he became Program Director and Program Executive Officer for National Missile Defense, and he took that post at a particularly difficult time. He inherited a program that had for years received inadequate funding, and although the missile threat to our nation continued to grow, there were still sharp disagreements among political leaders about how to respond to this threat. Every aspect of the program was under intense scrutiny by the administration, the Congress, and the media. General Nance directed a team of government and contract workers that stretched from Alabama to Alaska, from Massachusetts to the Marshall Islands, and from Colorado to California to Hawaii. Under these difficult conditions, General Nance not only put the National Missile Defense program on sound footing, he guided it to dramatic successes. In October 1999, his team—on its first attempt—achieved the first successful intercept of a reentry vehicle in space by a missile defense kill vehicle. That feat has since been repeated three times. It now seems almost routine. But there is nothing routine about such complex technical accomplishments, nor the extraordinary leadership that made them possible.

In 2001, the Bush administration undertook a strategic review that opened the door to more capable missile defenses, and General Nance helped lead an intensive effort to develop and evaluate new approaches to defending the United States against missile attack. This effort resulted in a fundamental change in the nation's missile defense program. General Nance was selected to turn this new vision into reality when he became the first Program Executive Officer for the Ballistic Missile Defense System. In this role, he implemented the Secretary of Defense's guidance to create a single, integrated Ballistic Missile Defense System out of ten disparate missile defense programs already under way. That effort required a careful balancing of new concepts for missile defense with already ongoing technical work. Under General Nance's leadership in this, his final assignment, the missile defense program continued to make extraordinary progress toward protecting our nation and its armed forces, with the Ground-based Midcourse, Patriot PAC-3, and AEGIS missile defense systems all scoring successes in flight testing.

General Nance's vision of a single integrated missile defense system is becoming a reality today and it will be a lasting legacy of his service to our country. But his legacy goes far beyond even that important contribution. It extends to the soldiers he has touched throughout his career, to the example he has set, to the sacrifices he has made in long, distinguished, and selfless service to our nation.

I am very proud that General Nance is from Mississippi, and that his wife, Jonnie is also a Mississippian. We are very proud of both of them and we wish them much continued success and happiness together in the years ahead.

IRV KUPCINET: 90 YEARS OF A CHICAGO INSTITUTION

Mr. DURBIN. Mr. President, I rise today to honor a Chicago institution and a good friend, Irv Kupcinet, on the occasion of his 90th birthday on July 31, and to pay tribute to his outstanding contributions to the veterans of the Chicago area. While best known for his work in journalism, Kup has also dedicated a major part of his life to serving his community's veterans.

Born in 1912, Irv grew up in Chicago. Early on, he had a job cleaning Pullman Co. railroad cars so that he could earn money to attend college. He went on to receive his journalism degree from the University of North Dakota in 1934. While in college, he was involved as both the director of athletic publicity and as the quarterback of the football team. So, during the week, he wrote about sports and on Saturday, he played them. Initially he was headed toward a future in football. He was even selected for the 1935 College All-Star football team, which led him to begin a short career in professional football with the Philadelphia Eagles.

However, a shoulder injury led him to a new path in life, as he shifted from sports player to sports writer. Kup began as a writer for the Chicago Times in 1935. Chicago readers have been enjoying the writings of "Kup" ever since. After all these years, Irv still writes "Kup's Column" in the Chicago Sun-Times today.

Additionally, Kup broadcast Chicago Bears games on the radio for 24 years with another Chicago icon, Jack Brickhouse. In 1959, he debuted his own local television talk show which ran for 27 years. He has been honored with the coveted Peabody Award and has won a total of 16 local Emmy awards for his show.

Irv has been inducted into two halls of fame—one for journalism and one for Chicago sports. And, he also is recognized in the Hall of Fame at the University of North Dakota and the National Jewish Hall of Fame. In 1986, the Wabash Avenue Bridge in Chicago officially became the Irv Kupcinet Bridge in honor of his 50 years with the Chicago Sun-Times.

One of the things that has always impressed me about Kup is that despite all of his endeavors in sports and in journalism, he always made time to give back to his community, to give back to Chicago. That is what truly puts Irv Kupcinet in a league of his own. He is the founder and the host of the annual Chicago Sun-Times Purple Heart Cruise for veterans, which began in 1945 and continues today.

At the end of World War II, Irv wanted to recognize the soldiers who risked their lives for their fellow Americans. He found a way to do so in conjunction with the Purple Heart veterans organization. The Military Order of the Purple Heart of the U.S.A. is a Congressionally chartered national service organization for veterans that offers educational programs, outreach programs, computer training courses, and a long list of other programs aimed at serving our country's veterans. Illinois, alone, has over 860 Purple Heart veterans. With the Purple Heart and the Chicago Sun-Times, Irv has hosted this annual cruise. He said in his autobiography that his cruise "celebrates the veterans of all our wars, men and women who put their lives on the line so that the rest of us could live in peace and freedom." In a sense, this cruise is a reprise of the USO servicemen club, a one day floating revival held each year sometime between Pearl Harbor and V-J Day. The veterans who attend the cruise leave with no less than 50 gifts when they step off the boat. That is a small gift compared to the sacrifices each veteran made for his or her country. Through Kup's initiative with the Purple Heart Cruise, Chicago is the only city that shows this brand of gratitude to our veterans. Irv has been recognized with the General John Logan Chicago Patriot Award for his service for the Purple Heart cruises.

Kup, on his 90th birthday and every day, serves as a role model to all who read his column, listened to his television and radio broadcasts, followed his sports career, and benefit today from his many good works.

A few weeks ago it was my good fortune to be invited to join Kup and his buddies for their Saturday brunch at a Michigan Avenue hotel. It was a great gathering of old friends, swapping stories, telling jokes and celebrating good times in life.

I extend my sincere congratulations to Kup on his 90th birthday, thank him for the difference he has made in his hometown of Chicago and ask that a great column by Bob Greene, written in his honor, be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE DEADLINE DASH: KUP IS TURNING 90

I suppose stranger things have happened than this—a column in the Sunday Tribune celebrating and praising a columnist for the Sun-Times—but special moments call for special gestures. Kup is about to turn 90.

Irv Kupcinet's 90th birthday is on the last day of this month. Kup's Column is now in its 60th year—he began writing it in 1943. He lost his dear wife Essee last year, and his health has not been so great, but he is as much a part of Chicago as . . .

Well, I was going to say as much a part of Chicago as the John Hancock Center, but Kup's Column was around way before the Hancock was constructed. I was going to say as much a part of Chicago as the Wrigley Building, but Kup was born years before the Wrigley went up. In the end, there is no comparison. You properly say that a person or an object is as much a part of Chicago as Kup, not the other way around.

He has always loved this city so. The son of a bakery truck driver, Kup set for himself a work ethic that is phenomenal. When he attended the University of North Dakota and played quarterback on its football team, he also served as the university's director of athletic publicity, writing press releases during the week and leading the team on Saturdays. The late Gene Siskel and I would often marvel to each other about Kup's work schedule. In essence, during his peak years, Kup worked a nine-day week: He wrote six newspaper columns a week, skipping only Saturdays; he taped his "Kup's Show" television program over two days; and on Sundays during football season he and Jack Brickhouse were the play-by-play men on Chicago Bears radio broadcasts on WGN.

Brick and Kup—there was nothing like them anywhere else in the country. It might not have sounded like a symphony, but it sure sounded like Chicago. Kup in his prime was this physically huge, commanding presence—he played professional football for the Philadelphia Eagles, and later was an on-field NFL head linesman. When he began writing his column in Chicago, he became an instant and larger-than-life star.

He made the decision early to try to be fair both in print and on the air, and chose generosity over smallness. He was the biggest name in this town before anyone now working in any print or broadcast newsroom got started, yet he made a practice of going out of his way to be welcoming to new colleagues. When I was given a column at the Sun-Times at the age of 23, the first note I got was from him. Written in heavy copy pencil over a tearsheet of the story announcing the new column, the message was short: "Bob—Congrats! Kup." Did it matter? More than 30 years later, I still have it.

The pride of his life was Kup's Purple Heart Cruise. Each year he would take military veterans, many of them from hospitals, out on a boat in Lake Michigan for a day of entertainment, food and fun. He started the cruise while World War II was still raging, and it lasted for 50 years. Once I was with him on the cruise—there was Kup on the gangplank, wearing a commodore's cap—and an elderly former soldier said to him, "Kup, I bet you don't remember who I am." Not missing a beat, Kup gave him a hearty Kup backslap—I thought the old soldier was going to go tumbling into the water—and boomed out: "Of course I know you! You're a grand old veteran!"

Kup's interviewing style on "Kup's Show" was one of a kind—I remember him leaning close to Henry Kissinger once and thundering out, in that amazing Kup voice: "Henry, what the hell, pardon my French, is going on in Cambodia?"—and like everything else he did, it was pure Chicago.

I talked with him the other day. Like so many people who reach 90, he finds that most of his friends are gone; he said he spends most of his time at home, and that "I'm weak much of the time." He always worked so hard, he said, because "turnout out a good story was more fun than anything else I could think of." Feeling weak or not, he seems to have made a determination,

> based on the toughness and strength of the old Kup: A great and legendary era in Chicago newspapering is coming to an end, and he is going to be the last man standing.
>
> In newsrooms not just in Chicago, but all over the country—newsrooms where people who once here are now employed—the mention of Kup brings a smile and thoughts of home. It's probably not possible to speak for all of those men and women—all of the editors, writers and photographers with a Chicago connection—but as he turns 90 I'll bet I speak for most of them right now. He has never liked fancy writing, and he has always tried to make his point directly and unambiguously with as few words as possible, so I'll say it that way:
>
> We love you, Kup.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. LEAHY. Mr. President, last Thursday Senate and House conferees reached final agreement on the Conference Report for H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002. I look forward to Senate consideration of this measure in September, following House action on the conference report.

It seems inevitable in a bill nearly five hundred pages in length, even with our most diligent efforts, that the conferees sometimes fail to catch all drafting errors. Shortly after the conference was concluded, it was brought to our attention that the effective date provision of Section 1234 contained an error. Section 1234 is not a new provision of law but a reiteration of current law, which Senator BAUCUS offered as a amendment to the Senate-passed bill. The House and Senate conferees agree to retain the provision during our conference. This section makes clear that a claim that is in bona fide dispute over the existence of liability, or the amount of that liability, cannot be used as a weapon for bringing an involuntary bankruptcy action.

This clarification is consistent with the 1984 legislative history of this portion of Section 303 of the Bankruptcy Code. It also tracks the decisions of all five Courts of Appeals that have ruled on the bona fide dispute bar to the bringing of involuntary bankruptcy actions. Section 1234 restates and strengthens Congressional intent that an involuntary bankruptcy action should not be employed by creditors seeking to gain more leverage than they would have if they litigated contract disputes in the proper judicial forum. A party to a dispute over the amount or liability for a claim should not also be disadvantaged by the stigma and expense of an involuntary bankruptcy proceeding. Our overcrowded bankruptcy courts should not be burdened with such disputes.

In as much as Section 1234 restates existing law, it is given immediate effect upon enactment. As it currently reads, due to a drafting error, it would not apply to cases now pending before the bankruptcy courts. This mistake would have a particularly perverse effect in the five federal circuits that have already ruled that the bona fide dispute standard applies to both liability and the amount thereof.

As soon as the conferees became aware of this mistake, we worked to fashion a correction contained in a concurrent resolution to be adopted simultaneously with the conference report. In order to dispel any confusion regarding Congressional understanding and intent in this matter, I am placing the relevant portion of the agreed upon Concurrent Resolution in the RECORD. It directs the Clerk of the House to correct the enrollment of H.R. 333 by amending it as follows:

"Section 1234(b) of the bill by striking 'shall not apply with respect to cases commenced under Title II of the United States Code before such date' and inserting 'shall apply with respect to cases commenced under Title II of the United States Code before, on, and after such date'."

ADDITIONAL STATEMENTS

HONORING AL SANTORO, SECRETARY-COMMISSIONER OF THE OCEAN COUNTY BOARD OF ELECTIONS

• Mr. TORRICELLI. Mr. President, I rise today to recognize Al Santoro, who has been a great public servant for the people of New Jersey and has served over twenty three years at the Ocean County Board of Elections. Mr. Santoro is retiring after many years of outstanding service from his position as Secretary-Commissioner with the Ocean County Board of Elections at the end of July.

Born and raised in Newark, Al Santoro became involved in civic duty at a young age under the wings of his father, Raymond Santoro, who served as a Councilman in Newark. After completing his education, Mr. Santoro served in the United States Army from 1958 to 1960 in Germany.

During his tenure at the Ocean County Board of Elections, Al Santoro has been an important part in making our democracy work. His efforts helped ensure that the electoral mechanisms in place succeeded and that our elections are fair and just to all. The lifeblood of our democracy is the assurance that our political process works and that its integrity is not in question. Al Santoro has helped to make that a reality for the citizens of Ocean County. Surely, there can be no higher calling in our Republic.

So, I join the people of Ocean County and the entire State of New Jersey in recognizing Al Santoro for his outstanding service to the community.•

A TRIBUTE TO JESSE W. ALLEN

• Mr. REID. Mr. President, I would like to take a minute to recognize a man whose lifelong dedication to civic, military, and religious service has enriched not just my State of Nevada but the Nation as a whole.

Jesse W. Allen grew up in the poverty-stricken era of the Great Depression in Chattanooga, Tennessee. After losing his father at the age of fourteen, Mr. Allen dropped out of grade school in order to support his family. His labor taught him responsibility, integrity, and the value of hard work. Mr. Allen embraced these values and imparted them on others throughout his life.

At age 17, Jesse Allen enlisted in the U.S. Navy. In his forty-one months of service, Jesse proudly served his country; first by dodging German submarines across the Atlantic Ocean aboard the U.S.S. *Texas*, and then by fighting off Japanese fire and suicide bombers as a gun captain in the South Pacific. By the time Mr. Allen was honorably discharged in 1945, he had received 13 Battle Stars, a Silver Star, and a Presidential Unit Citation.

After leaving the service, Jesse returned to Tennessee where he made up for his lack of a formal education by acquiring his GED and enrolling in Tennessee Temple Bible College. For three years, he worked full time at night in a woolen mill so that he could support his family while attending college on the GI Bill. This hard work paid off in 1948 when Mr. Allen was ordained as a minister.

Jesse began spreading Christian principles throughout the United States on street corners, in jails, nursing homes, home meetings, and even in the tuberculosis sanatarium. Eventually, he established many churches and drew such a following that his preaching was carried on radio stations throughout the Southeast.

Jesse lived by the same Christian values that he preached. He went into the bootleggers' back woods, where few dared to go, to bring out the sick and elderly who needed to see a doctor. He worked with families suffering from marriage problems and with troubled teens throughout the Nation. My home State, Nevada benefitted from his passion as Mr. Allen worked with abused, neglected, and abandoned children at the Southern Nevada Children's Home in Boulder City, and later, as he opened his own home to afflicted youths from Clark County. His group home achieved record success rates for Clark County Juvenile Services for five consecutive years, earning him a commission as an Honorary Deputy Constable.

Today, Mr. Allen is the father of four and the grandfather of fourteen. He has lived an exemplary life of patriotism, citizenship, and dedicated service. He overcame the obstacles of his impoverished upbringing to help others, using values that inspire those he touches to do the same. For this reason, I am proud to recognize Mr. Jesse W. Allen. Men like him are rare, but are one of our country's greatest assets.•

IN RECOGNITION OF THOMAS A. PANKOK, FORMER NEW JERSEY ASSEMBLYMAN

• Mr. TORRICELLI. Mr. President, I rise today to recognize Thomas A. Pankok. Mr. Pankok has been a great public servant and an outstanding member of the community over the years.

Mr. Pankok currently resides in Pennsville, New Jersey. He married Alma Land in 1958 with whom he has three children, Thomas Pankok Jr., Kathy and Timothy and seven grandchildren.

Thomas Pankok is a graduate of Salem High School and a veteran of the United States Navy. He served four years during the Korean conflict. In 1956, after his tour of duty, Thomas Pankok began a lengthy career with Bell Telephone Company, serving 30 years with the company.

In 1981, Thomas Pankok was elected to the State Assembly. As a member of the Assembly, Mr. Pankok served two terms and authored many important pieces of legislation. After his first term in the Assembly, he was awarded with the "Freshman Legislator of the Year" award, presented by the State Association of Counties.

In addition, to his work in the State Assembly, Thomas Pankok also served over 15 years as a Salem County Freeholder. The role of state and local government is vital to our democracy. For our federal system of government to succeed, we must have effective and committed leaders at the state and local level. The United States Congress needs and relies on partners like Thomas Pankok in local government and I salute him and thank him for his efforts.

So, I join with Salem County and the entire State of New Jersey in recognizing Thomas A. Pankok, an outstanding public servant, citizen, veteran and father. His efforts upon the behalf of the people of Salem County have been vital to the community and are much appreciated.•

LOCAL LAW ENFORCEMENT ACT OF 2001

• Mr. SMITH of Oregon. Mr. President, I speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 7, 2000 in Los Angeles, CA. A woman ran over a 65-year-old Hispanic man, Jesus Plascensia, twice in a parking lot. Authorities say that the perpetrator made comments about her hatred of Hispanics after the death and referred to the victim as "dead road kill." The assailant was charged with murder and hate crimes in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.•

IN RECOGNITION OF DELAWARE FIGHFIGHTERS SELFLESSLY FIGHTING NATIONAL BLAZES

• Mr. CARPER. Mr. President, I rise today to discuss the status of the National Fire Plan, the 2002 Wildfire season and the Delawareans who risked their lives to save others. Since January 1, over 47,000 wildfires have burned more than 3,200,000 acres around the country. The vast majority of these fires have been small, just a few acres at most; however, several have been massive fires consuming hundreds or thousands of acres. To those living nearest these fires, they have suffered a tremendous loss. But thanks to the outstanding effort and tireless dedication of firefighters from around the country, many of these large wildfires have been suppressed, and the smaller fires have been prevented from growing larger.

While wildfires tend to be a greater problem in the West, concern for the residents, for their health, for their safety, and for their homes extends nationwide. In Delaware, we have not experienced the devastating effects of fires seen in other states, yet men and women from my state have been willing to stand shoulder to shoulder with their brothers and sisters in helping fight these devastating fires.

The Delaware Wildfire Fire Crew, a 20-member advanced firefighting group made up of eight Department of Agriculture Forest Services employees and twelve volunteers has been on the road for two weeks, battling fires in Wyoming, South Dakota, and Virginia. Most recently, the crew helped put out a lightning sparked fire that burned approximately 850 acres of the George Washington National Forest in Virginia.

Their heroism and their selflessness were apparent. I want you to know that my heart was filled with pride when I learned this convoy of Delaware firefighting personnel was en route to offer assistance. These men and women were willing to stop what they were doing at a moment's notice. They were willing to put their own lives on hold, leave their own families, and help those who needed help.

At some point, all of us need to look back and take stock of where we have been and where we are going. Have we lived our lives in the service to others, or merely for ourselves? Have we made clear our commitments and worked with purpose to fulfill them, or simply meandered in search of a cause? At the end of the day, can we say with confidence that we did our best and worked to our fullest potential?

For these firefighters, and the thousands of others fighting this season's wildfires, the answers are clear. They live a life of service. They embody a commitment to excellence that serves as an example and an inspiration to us all. Whether working to protect those of us here in Delaware, or risking their lives to fight the raging wildfires of the West, they proved to us that if a family is in trouble, if a fire threatens a home—Delaware's volunteer firefighters will be there for us—and for America—leading the way.•

TRIBUTE TO ROGER C. CLOUATRE

• Ms. LANDRIEU. Mr. President, I rise to pay a posthumous tribute to one of the most dedicated leaders of my State, the late Roger C. Clouatre. As a corporate executive of Vulcan Chemical Company, as well as a member of the Ascension Parish School Board, he demonstrated dedication, pride in his work, and a commitment to the well being of those he represented and served.

Much has changed in our Nation since September Eleventh. There is a growing, yet genuine enthusiasm for the things that are truly important, our family, our friends and the welfare of our country. Long before these tragic events, however, the man I memorialize here today practiced these ideals. He leaves behind a proud family; a thankful community and a Nation better off, because he was an American citizen for 53 years.

His friends say he "completed 80 years of work in 53 years of life." It is a record of accomplishment that we can all learn from. Yet, even though he battled cancer for the last 12 years of his life, it did not diminish his devotion to his children, his compassion for his friends and his dedication to the work of the Ascension Parish School Board. His planning and execution were always based in reality, but he himself represented an idealist's view of a man serving God, family and friends. He made us all laugh and kept a positive attitude that always seemed to affect our daily outlook on life.

His son Spencer, a graduate of West Point, said eloquently at his father's funeral that although Roger has the potential for national service, he instead invested every moment of his energy on the community he dearly cared about, and the family he loved so much.

Roger and his wife Katherine were the proud parents of four children, Spencer, Stephanie, Styles and Stuart, each a blessing in their own right.

Though many awards and accolades found him in life, his service and dedication to his community were largely responsible for the public support of a $30 million bond issue that is creating new schools and expanding educational facilities throughout the parish.

Again, his son Spencer put it best when he said:

"We were all very lucky to have him at the local level, for his capabilities surely could have affected state and national events. He was a leader—a Chief Executive Officer, a General—someone that we all wanted to follow, a role model we all emulated in some way or another."

His deflection of self at the height of the me-generation and the uncompromsing support of others that he demonstrated throughout his life, even at times of unspeakable pain, should provide all of us with the inspiration to go forward in our work.

Unfortunately, all of my colleagues will not know Roger Clouatre. Looking back, I see how fortunate I happened to be to have had the occasion to seek the wonderful advice of this great American. Though he was seemingly lost in the deep fabric of this mighty Nation, he was in fact, a quiet hero. May Roger's star always reflect a wonderful luminance upon our Nation and provide all of us with a reminder of the thousand ways in which we may all work to make this a greater Nation still.•

JACK F. OWENS, IN MEMORIAM

• Mr. CARPER. Mr. President, I would like to set aside a moment to reflect on the life of Mr. Jack. F. Owens upon his passing. Jack was a good friend and a man who made remarkable contributions toward educational opportunities for thousands of Delawareans. He was a man with a kind heart, diverse interests, great abilities and boundless energy.

Jack was born in Easley, SC. After graduating from Easley High School where he excelled in various sports, Jack went to Furman University where he continued his academic and athletic exploits, lettering in three sports, and graduating in 1952.

After serving his country as a member of the United States Marine Corps, Jack returned to South Carolina and began a career in academia, first in the Pickins County School system and then at Greenville Technical College.

Responding to the call of then Delaware Governor Charles Terry, Jack came to Delaware to help open Delaware's Technical and Community College in Sussex County in March of 1967. He was the school's first administrator and headed the Sussex County campus for twenty-eight years, retiring in 1995. In 1993, Jack received Delaware's highest honor when he was awarded "The Order of the First State."

As Governor, I had the honor of signing into law legislation that named the Sussex Campus in Jack's honor. Today, it is called "The Jack Owens Campus." The energy and commitment found in the students and faculty at DelTech are, in large part, due to Jack's vision.

Even after his retirement, Jack remained committed to public service. He served on numerous boards and commissions including The Arthritis Foundation, the Veterans of Foreign Wars and Ducks Unlimited, and served as a board member of the Beebe Medical Center and as Chairman of the Delmarva Chicken Festival. He received honorary doctorate degrees from Wilmington College and the University of Guadalajara, Mexico, where he helped establish a community college system.

Jack leaves behind his wife Donna, 6 children and 6 grandchildren. He also leaves behind many friends, colleagues and several generations of students who are living more productive, satisfying lives today because Jack made the decision thirty-five years ago to come north to Delaware.

Jack's lifelong dream was that students in Sussex County would have the opportunity to receive undergraduate and advanced degrees in their home county. He lived to see that dream fulfilled.

Jack's legacy will live on in the lives of those he helped shape, in the halls of education facilities he helped build, and in the hearts of those who were lucky enough to call him their friend. I rise today to commemorate Jack's life, to celebrate his life, and to offer his family support. Jack embodied the best of Delaware. He will be sorely missed.•

IN RECOGNITION OF PASTABILITIES RESTAURANT AND THEIR OUTSTANDING COMMITMENT TO COMMUNITY REVITALIZATION

• Mr. CARPER. Mr. President, I rise today to recognize Wilmington's Pastabilities for its outstanding commitment to community service. The National Restaurant Association has recognized the restaurant as a finalist in their Restaurant Neighbor Award. The national distinction rewards restaurants for outstanding philanthropic work.

In his State of the Union address earlier this year, President Bush unveiled the USA Freedom Corps, challenging every American to commit at least 2 years of their life to serving their community and their country. Pastabilities, in Wilmington, Delaware has exceeded the President's call to action. Owner Luigi Vitrone recognizes the importance of neighborhood revitalization and preservation. He and his staff have spent years dedicating energy and resources to improving their community. The results have been outstanding.

Founder of the Little Italy Neighborhood Restaurant Association, LINA, Mr. Vitrone spearheaded the effort to save Wilmington's "Little Italy" from an economic downturn. Having lived and worked in the neighborhood for over a decade, the personal investment ran deep.

Established in 1997, LINA has raised $4.8 million from public, state and private sources to help rejuvenate the neighborhood. The money raised has been used to add new light posts, brick sidewalks, banners, and flowerpots and to make important structural changes that make the neighborhood more handicapped accessible. Luigi Vitrone has successfully restored Delaware's "Little Italy" to the beautiful, unique, authentic community it once was.

Volunteer service is vital to the improvement of our community, and the Pastabilities family has lent their time and energy at every turn. Local businesses such as this one serve as role models for citizen action and make Delaware shine. I am proud to put a spotlight on one of the State's premier businesses.

I commend Pastabilities for their fantastic culinary work and thank Luigi Vitrone for his leadership and commitment to strengthening the community. This most recent honor bestowed upon the restaurant mirrors the pride felt by the neighborhood.•

IN RECOGNITION OF IRON HILL BREWERY AND RESTAURANT FOR OUTSTANDING COMMUNITY INVOLVMENT

• Mr. CARPER. Mr. President, I rise today to recognize Iron Hill Brewery and Restaurant for its outstanding commitment to community service. The National Restaurant Association has recognized the restaurant as a finalist in their Restaurant Neighbor Award. The national distinction rewards restaurants for outstanding philanthropic work.

In his State of the Union address earlier this year, President Bush unveiled the USA Freedom Corps, challenging every American to commit at least two years of their life to serving their community and their country. Iron Hill Brewery and Restaurant in Newark, Delaware has exceeded the President's call to action.

The restaurant takes its name from a historic Delaware landmark where Generals Washington and Lafayette battled with General Cornwallis to ensure American liberty and freedom. Today, Iron Hill carries on this tradition of fighting for freedom. For the past four years, Iron Hill has been a major sponsor of the "Race Against

Family Violence" which takes place each year on Mother's Day weekend. The race benefits Child, Inc., a non-profit organization that helps free children and families from the threat of domestic violence through prevention, education, treatment and advocacy.

To date, the Iron Hill family has raised $16,000 through the "Race Against Family Violence." The operation has also taken an active role in the revitalization of downtown Wilmington, donating food and services and raising money for organizations such as the March of Dimes. Iron Hill has turned the act of giving to the community into a tradition. Twice a year, they provide a complete dinner for Delaware Technical & Community College's culinary class.

Volunteer service is vital to the improvement of our community, and Iron Hill Brewery and Restaurant has lent their time and energy at every turn. Local businesses such as this one serve as role models for citizen action and make Delaware shine. I am proud to put a spotlight on one of the state's premier businesses.

I commend Iron Hill Brewery and Restaurant for their fantastic culinary work and thank them for their leadership and commitment to strengthening the community. The most recent honor bestowed upon the restaurant mirrors the pride felt by the community.•

IN RECOGNITION OF SALLY HAWKINS

• Mr. CARPER. Mr. President, I rise today to pay tribute to Sally Hawkins, owner and president of WILM NewsRadio in Delaware. On her 80th birthday she remains a vibrant and purposeful woman, a dedicated entrepreneur and a celebrated public servant.

Sally started and maintains what is now the only remaining privately-owned and operated all-news radio station in the country. In an era when single-station AM radio operations have all but disappeared, she built a respected news station from the ground up—earning my respect, and the respect of her peers along the way.

As chair of the National Governor's Association and now as the DLC's chair for Best Practices, I've spent some time touring the country and highlighting the nation's very best programs, businesses and innovators. WILM certainly ranks among the best. The inroads made by Sally and the family, her family, at WILM are unparalleled.

WILM News radio strives to reinforce the foundation of community radio. The station's programming transcends race, creed, income and political boundaries. Its commitment to community outreach and support of the arts and non-profits has helped keep organizations vital during the crucial development stages.

In a business environment in which the pressure to cut costs for the sake of profit is common, Sally has never wavered in her commitment to balanced coverage and public service. WILM is heavily committed to providing a neutral forum in which all political aspirants may enjoy equal time to debate issues in front of the public. Sally seeks to enlighten listeners, making them better citizens and more informed voters.

How many of us can say that we are proud of the life that we've lived and the service that we've provided to the community?

In a career that spans decades, Sally has led the National Association of Broadcasters Board, as well as the boards of the Better Business Bureau, the Delaware State Chamber of Commerce and the U.S. Small Business Administration. She has served on the executive committee of the Grand Opera House, the external affairs committee of Christiana Care, and on the boards of Blue Cross/Blue Shield, Goldey-Beacom College, the Delaware Council of Economic Education, the Girl Scout Advisory Council and the Delaware Community Foundation. Last year, she was named The Ledger's 2001 Entrepreneurial Woman of the Year. This remarkable woman, at the helm of one of our state's most important news outlets since 1972, has done much to pave the path for women who want both successful careers and families and for First State organizations who dare to dream big.

Fueled by dedication and determination, Sally Hawkins took control of WILM thirty years ago. Today she still runs the day-to-day operations of the station, writes copy, mentors and travels internationally.

Today, I commend Sally Hawkins for her talent and perseverance, and join all of those whom she has touched, in celebrating her life. Happy birthday, Sally.•

TRIBUTE TO VICE ADMIRAL THOMAS J. KILCLINE, SR.

• Mr. WARNER. Mr. President, I pay tribute to an exceptional leader—Vice Admiral Tom Kilcline, Sr., in recognition of his remarkable career of service to our country. Tom served his country for over 50 years as a distinguished Naval Officer and as President of The Retired Officers Association, TROA. Having battled cancer for over three years, Tom passed away on July 11, surrounded by his family at the Naval Medical Center, Bethesda, MD.

In 1943, at the height of World War II, he enlisted in the Navy from Kokomo, IN and was appointed to the U.S. Naval Academy in 1945. Tom enjoyed a distinguished career as a Naval Aviator; he flew in Korea, became an accomplished Test Pilot, commanded a tactical carrier based squadron during Vietnam, and flew actively, including tactical jets, until his retirement as Commander Naval Air Forces, US Atlantic Fleet in 1983.

Admiral Kilcline was an incredible leader and tireless advocate for our Navy. During my tenure as the Secretary of the Navy, Tom headed the Office of Legislative Affairs and, while there, we worked closely together to push for legislative initiatives to improve readiness and to provide for much of the modern naval force you see today.

Following his retirement, he served as National President of The Retired Officers Association where he continued to work with Congress on behalf of thousands of our retired service personnel for nearly 10 years.

Tom's greatest ally and strength was his devoted wife of 52 years, Dornell Thompson of Pensacola, FL. Dornell, a daughter of a naval aviator, was by his side through all his battles, from championing the cause of our country and our military families, to his fight with cancer.

They have had four children: Rear Admiral Tom, Jr., on duty with the Naval Aviation Warfare Staff at the Pentagon; Lt. Patrick, lost in an F-14 accident; Lt. Kathleen, a Navy doctor killed in an auto accident; Mary, devoted daughter and navy wife of Captain Bob Novak; and seven loving grandchildren.

Admiral Tom Kilcline will be greatly missed by his family, friends and this Nation, but his legacy of devotion to family and service to his country remain with us forever.•

TRIBUTE TO JOHN NOWAK

• Mr. BUNNING. Mr. President, I rise today to recognize Mr. John Nowak of Fairview, KY. Mr. Nowak, who operates a farm outside of Hopkinsville, KY, has recently garnered national praise for his innovative and effective farming techniques.

Hay samples produced by Mr. Nowak earned the Best Pure Alfalfa, Best Alalfa with Grass and Best of Show awards during the American Forage and Grassland Council held in Minneapolis earlier this month. These hay samples underwent a rigorous laboratory analysis for relative feed value, protein fiber and mineral content as a part of the criterion.

As every farmer in Kentucky knows first hand, the high level of humidity combined with irregular rainfall and nighttime dew can create a very taxing and unfriendly farming environment. Oftentimes, these factors result in an unproductive and unprofitable season, but this has not been the case for Mr. Nowak. Mr. Nowak, through hard work and inventive thinking, has been able to successfully overcome these unpredictable and intrusive obstacles. He has truly become a pioneer for commercial hay production in Kentucky and the entire United States.

John Nowak's practices have also been noticed by such noted agriculturists as Dr. Garry Lacefield, a University of Kentucky extension forage specialist at Princeton's Agriculture Research and Education Center. He is one of Nowak's most adamant supporters. Dr. Lacefield plans on working closely with Mr. Nowak in the future to further improve the sellability and commercial marketing of hay.

In a capitalistic society such as the one we have in the United States of America, innovation and ingenuity play such vital and important roles in our economic success. I applaud Mr. Nowak's entrepreneurial spirit and urge him to continue to find better and more improved ways of production.●

CONGRATULATIONS TO MS. MARSHA VAN HOOK

● Mr. BUNNING. Mr. President, I rise today among my colleagues to congratulate Ms. Marsha Van Hook of Somerset, KY. On July 16th, Marsha Van Hook was the proud recipient of the Ted Jaskulski National Public Policy Award. This award is presented annually to an individual who has contributed to public policy efforts on behalf of people with developmental disabilities. Ms. Van Hook was nominated by the 26 members of the Kentucky Developmental Disabilities Council, KDDC, for her advocacy efforts related to disabilities.

In keeping with the goals and values of the KDDC, Marsha Van Hook has tirelessly and selflessly worked to ensure that children and young adults throughout the Commonwealth suffering from developmental disabilities have the right to an education, the opportunity to work and support themselves, and the access to affordable health care and transportation in their respective communities. Specifically, Ms. Van Hook's strong advocacy and involvement at the local and state level has brought a heightened sense of awareness to local communities across Kentucky concerning people with developmental disabilities and the dilemmas they face on a daily basis. She has been the eloquent voice of reason for advocacy and has also been an instrumental force in getting legislation passed regarding transportation needs for the disabled.

This most recent accolade is not the first time Ms. Van Hook has been duly recognized for positive influence on society. Both the Kentucky State Senate and House as well as many disability groups throughout the Commonwealth have presented her with awards.

Currently, Marsha Van Hook is employed by the Appalachian Regional Commission, ARC, where she is actively involved with their "Partners in Advocacy" training program. This program offers training and support to individuals and their families in developing and expanding much needed advocacy skills. She also participates in several commissions and committees at both the state and local level.

I ask that my fellow members of the Senate join me in congratulating Ms. Marsha Van Hook for this prestigious and noteworthy award and thank her for all that she has done and is doing to advance the cause of children and adults suffering from developmental disabilities.●

RECOGNITION OF DR. MIMI SILBERT

● Mrs. BOXER. Mr. President, I would like to take this moment to reflect on the work of a very special woman and friend, Dr. Mimi Silbert, whose extraordinary commitment and compassion have greatly enhanced the quality of life for so many people in California and across the Nation. The Jewish National Fund will present Mimi with its Woman of Valor Award on September 24 in Los Angeles.

Mimi serves as President, Chairman of the Board and CEO of the Delancey Street Foundation, which, since 1971, has helped thousands of substance abusers and get back on their feet. The foundation is known to be the largest of its kind in America.

The Delancey Street Foundation has centers in New York, New Mexico, North Carolina and Los Angeles, but its headquarters in San Francisco are the most well-known. Located on the San Francisco waterfront, the 400,000-square-foot complex is the largest self-help facility in the country. The complex houses 500 residents and contains Delancey's national moving company, catering company, a screening room, the Delancey Street Restaurant and Crossroads Café.

Athough best-known for her work with the Delancey Street Foundation, Mimi also serves as a powerful voice for reform. She recently wrote, designed and implemented a new juvenile justice system for the city of San Francisco, which has served more than 2,000 young people. City agencies and community-based organizations worked together to create a one-stop Community Assessment Center for arrested young people, two afterschool facilities, and other programs. Mimi also used her extensive expertise to work as a prison psychologist and police trainer, as well as teach at the University of California at Berkeley, San Francisco State University, and the Wright Institute.

Mimi truly personifies the Jewish National Fund's Woman of Valor Award. I am proud to be on her long list of admirers and friends. I extend to her my most sincere congratulations on this distinguished honor, and, as always, wish her every success as she continues her exceptional work.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–8345. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, MA" ((RIN2115–AA97)(2002–0167)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8346. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair" ((RIN2115–AA97)(2002–0166)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8347. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; Saginaw River, MI" ((RIN2115–AE47)(2002–0072)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8348. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Docket No. FAA–2000–8460" (RIN2120–AH17) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8349. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: MD Helicopters, INC Model 396D, E, F, and FF Helicopters" ((RIN2120–AA64)(2002–0334)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8350. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class D Airspace; Marietta Dobbins AFB, GA; Doc. No. 02–

ASO-05" ((RIN2120-AA66)(2002-0117)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8351. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Change Using Agency to Restricted Area RE-4305; Lake Superior, MN" ((RIN2120-AA66)(2002-0116)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8352. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: CFE Company Model CFE738-1-1b Turbofan Engines" ((RIN2120-AA64)(2002-0335)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8353. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: CFM International CFM56-2, 2A, 2B, 3, 3B, 3C, 5, 5B, 5C, and 7B Turbofan Engines" ((RIN2120-AA64)(2002-0332)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8354. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing 727 Series Airplanes" ((RIN2120-AA64)(2002-0333)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8355. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (129); Amdt No. 3011" ((RIN2120-AA65)(2002-0042)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8356. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (100); Amdt. 3013" ((RIN2120-AA65)(2002-0044)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8357. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Honeywell, In. Part Number HG1075AB05 and HG1075GB05 Inertial Reference Units" ((RIN2120-AA64)(2002-0337)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8358. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (47); Amdt. No. 3012" ((RIN2120-AA65)(2002-0043)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8359. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: de Havilland, Inc., Models SHC 2 MK 1, DHC 2 Mk. II, and DHC-1 Mk III Airplanes" ((RIN2120-AA64)(2002-0336)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8360. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Bombardier Model DHC 8 100, 200, 300 Series Airplanes" ((RIN2120-AA64)(2002-0331)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8361. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas Model MD 90 30 Airplanes" ((RIN2120-AA64)(2002-0330)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8362. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Jet Route; Doc. No.01-ASW-12" ((RIN2120-AA66)(2002-0115)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8363. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pratt and Whitney PW 4000 Series Turboshaft Engines" ((RIN2120-AA64)(2002-0329)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8364. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes" ((RIN2120-AH03)(2002-0001)) received on July 26, 2002 ; to the Committee on Commerce, Science, and Transportation.

EC-8365. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery" ((RIN0648-AO35)(ID041700D)) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8366. A communication from the Assistant Administrator for External Affairs, Office of External Relations, Centennial of Flight Commission, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Delegation of Authority" (RIN2700-AC54) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8367. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustment and Closures" received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8368. A communication from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Early Warning Data; Final Rule" (RIN2127-AI25) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8369. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast and Western Pacific States; West Coast Salmon Fisheries; Closure and Inseason Adjustments for the Recreational and Commercial Salmon Seasons from Queets River, WA, to Humbug Mountain, OR" (ID081601B) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8370. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Interim Final Rule to Implement Restrictions Under the Northeast Multispecies Fishery Management Plan" (RIN0648-AP78) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8371. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2002 Management Measures" (RIN0648-AP52; ID04902A) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8372. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the 40th Annual Report of the activities of the Federal Maritime Commission for Fiscal Year 2001; to the Committee on Commerce, Science, and Transportation.

EC-8373. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Contractor Performance Information" (RIN2700-AC33) received on July 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC-8374. A communication from the Under Secretary of Commerce for Oceans and Atmosphere, Department of Commerce, transmitting, pursuant to law, the Annual Report Regarding the 2001 Activities of the Northwest Atlantic Fisheries Organization (NAFO); to the Committee on Commerce, Science, and Transportation.

EC-8375. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (Doc. No. FEMA-7785) received on July 26, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-8376. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the report of a nomination for the position of Chief Financial Officer, received on July 26, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-8377. A communication from the Secretary of the Navy, transmitting, pursuant to law, a report concerning the order of up to 100,000 additional workstations under the Navy Maritime Corps Intranet (NMCI) contract; to the Committee on Armed Services.

EC-8378. A communication from the Assistant Secretary of Defense, Force Management

Policy, transmitting, pursuant to law, the annual report on the number of waivers granted to aviators who fail to meet the operational flying duty requirements ("gates") in title 37 USC 301a(b) for Fiscal Year 2001; to the Committee on Armed Services.

EC–8379. A communication from the Acting Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Increases in Fees for Meat, Poultry, and Egg Products Inspection Services" (RIN0583–AC89) received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8380. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination and a nomination confirmed for the position of Secretary of Agriculture, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8381. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Deputy Secretary of Agriculture, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8382. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8383. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination and nomination confirmed for the position of Under Secretary for Farm and Foreign Agricultural Services, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8384. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8385. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Marketing and Regulatory Programs, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8386. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8387. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Rural Development, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8388. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy and nomination for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8389. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Food, Nutrition, and Consumer Services, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8390. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8391. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Research, Education, and Economics, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8392. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8393. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Natural Resources and Environment, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8394. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Member, Board of Directors, Commodity Credit Corporation, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8395. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Under Secretary for Food Safety, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8396. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Assistant Secretary for Administration, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8397. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Assistant Secretary for Congressional Relations, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8398. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, and nomination confirmed for the position of Administrator, Rural Utilities Service, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8399. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy, nomination, the discontinuation of service in acting role, and nomination confirmed for the position of Chief Financial Officer, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8400. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of General Counsel, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8401. A communication from the Acting General Counsel, Department of Agriculture, transmitting, pursuant to law, the report of a vacancy and the designation of acting officer for the position of Inspector General, received on July 26, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2132: A bill to amend title 38, United States Code, to provide for the establishment of medical emergency preparedness centers in the Veterans Health Administration, to provide for the enhancement of the medical research activities of the Department of Veterans Affairs, and for other purposes. (Rept. No. 107–229).

By Mr. KERRY, from the Committee on Small Business and Entrepreneurship, with an amendment in the nature of a substitute and an amendment to the title:

S. 2734: A bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought. (Rept. No. 107–230).

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

H.R. 486: A bill for the relief of Barbara Makuch.

H.R. 487: A bill for the relief of Eugene Makuch.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 3892: A bill to amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 2713: A bill to amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. *BIDEN, from the Committee on Foreign Relations:

Treaty Doc. 105–53 Treaty with Nieu on Delimitation of a Maritime Boundary (Exec. Report. No. 107–5)

Text of Committee-recommended Resolution of advise and consent:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of Nieu on the Delimitation of a Maritime Boundary, signed in Wellington on May 13, 1997 (Treaty Doc. 105-53).

By Mr. LEAHY for the Committee on the Judiciary.

Timothy J. Corrigan, of Florida, to be United States District Judge for the Middle District of Florida.

Jose E. Martinez, of Florida, to be United States District Judge for the Southern District of Florida.

Terrence F. McVerry, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

Arthur J. Schwab, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

J.B. Van Hollen, of Wisconsin, to be United States Attorney for the Western District of Wisconsin for the term of four years.

Charles E. Beach, Sr., of Iowa, to be United States Marshal for the Southern District of Iowa for the term of four years.

Peter A. Lawrence, of New York, to be United States Marshal for the Western District of New York for the term of four years.

Richard Vaughn Mecum, of Georgia, to be United States Marshal for the Northern District of Georgia for the term of four years.

Burton Stallwood, of Rhode Island, to be United States Marshal for the District of Rhode Island for the term of four years.

By Mr. SARBANES for the Committee on Banking, Housing, and Urban Affairs.

Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System for the unexpired term of fourteen years from February 1, 1990.

By Mr. LEVIN for the Committee on Armed Services.

Vinicio E. Madrigal, of Louisiana, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

L.D. Britt, of Virginia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for the remainder of the term expiring May 1, 2005.

Linda J. Stierle, of Maryland, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring May 1, 2007.

William C. De La Pena, of California, to be Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2007.

John Edward Mansfield, of Virginia, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2006.

Army nomination of Lt. Gen. James T. Hill.

Navy nomination of Vice Adm. Edmund P. Giambastiani, Jr.

Air Force nominations beginning Col. Charles J. Dunlap, Jr. and ending Col. Michael N. Madrid, which nominations were received by the Senate and appeared in the Congressional Record on March 21, 2002.

Air Force nomination of Maj. Gen. Robert R. Dierker.

Army nomination of Lt. Gen. Bryan D. Brown.

Army nomination of Maj. Gen. Philip R. Kensinger, Jr.

Marine Corps nomination of Lt. Gen. William L. Nyland.

Army nomination of Lt. Gen. Paul T. Mikolashek.

Army nomination of Maj. Gen. Richard A. Cody.

Army nomination of Maj. Gen. Bantz J. Craddock.

Army nomination of Maj. Gen. William E. Ward.

Army nomination of Brig. Gen. William S. Crupe.

Marine Corps nominations beginning Brig. Gen. James F. Amos and ending Brig. Gen. Frances C. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on September 5, 2001.

Marine Corps nomination of Maj. Gen. Martin R. Berndt.

Navy nomination of Rear Adm. (lh) Steven B. Kantrowitz.

Navy nomination of Rear Adm. (lh) James Manzelmann, Jr.

Navy nomination of Rear Adm. (lh) Dennis M. Dwyer.

Navy nominations beginning Rear Adm. (lh) Richard A. Mayo and ending Rear Adm. (lh) Donald C. Arthur, Jr., which nominations were received by the Senate and appeared in the Congressional Record on February 26, 2002.

Navy nomination of Capt. Gregory R. Bryant.

Navy nomination of Capt. Andrew M. Singer.

Navy nomination of Rear Adm. Michael D. Malone.

Navy nomination of Vice Adm. John B. Nathman.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Army nominations beginning Laura R Brosch and ending Connors A Wolford, which nominations were received by the Senate and appeared in the Congressional Record on December 11, 2001.

Army nominations beginning Ann L Bagley and ending Keith A Wunsch, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2002.

Army nominations beginning Robert C Allen, Jr. and ending Christina M Yuan, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2002.

Air Force nominations beginning John W. Baker and ending David E. Wilshek, which nominations were received by the Senate and appeared in the Congressional Record on February 27, 2002.

Marine Corps nominations beginning Michael J. Bissonnette and ending Daniel J. McClean, which nominations were received by the Senate and appeared in the Congressional Record on April 11, 2002.

Navy nomination of Duane W. Mallicoat.

Navy nomination of Francis Michael Pascual.

Navy nomination beginning Larry D Phegley and ending Jeffrey Robert Vankeuren, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Arthur Kelso Dunn and ending Wayne Tyler Newton, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Mark Thomas Davison and ending Richard Shant Roomian, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Jennith Elaine Hoyt and ending Robert A. Wood, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Edmund Winston Barnhart and ending LM Silvester, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Robert M Craig and ending Melanie Suzanne Winters, which nominations were received by the Senate and appeared in the Congressional Record on April 19, 2002.

Navy nominations beginning David Stewart Carlson and ending Michael Joseph Zulich, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning John Alda, Jr. and ending Kathryn Dickens Yates, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Michael P Argo and ending Mark Steven Spencer, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning Ronald David Abate and ending Glenn L Zitka, which nominations were received by the Senate and appeared in the Congressional Record on April 16, 2002.

Navy nominations beginning David B Auclair and ending Ryan M Wilson, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning Kenneth C Alexander and ending Timothy G Zakriski, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning David F Baucom and ending Jonathan A Yuen, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning Robert D Bechill and ending Philip H Wright, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning Lynn P Abumari and ending Susan Yokoyama, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning David W Anderson and ending Stephen R Steele, which nominations were received by the Senate and appeared in the Congressional Record on June 4, 2002.

Navy nominations beginning Barney R Barendse and ending Kristiane M Wiley, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Michael J Boock and ending Alexander W Whitaker IV, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Stephen T Ahlers and ending Kerry R Thompson, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Daniel C Alder and ending Eric J Zintz, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Alan T Baker and ending Douglas J Waite, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nomination of James T. Conen.

Navy nominations beginning Joseph D. Calderone and ending Richard A. Williams, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Timothy G. Albert and ending Janice M. Stacywashington, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Warren Woodward Rice and ending Mark J. Sakowski, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Barbara S. Black and ending Douglas D. Wright, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Michael R. Bonnette and ending David C. Phillips, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Navy nominations beginning Jose R Almaguer and ending Kenneth M Stinchfield, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2002.

Army nominations beginning Marvin P* Anderson and ending Kenneth O* Wynn, which nominations were received by the Senate and appeared in the Congressional Record on June 7, 2002.

Army nominations beginning John G Angelo and ending Virginia D* Yates, which nominations were received by the Senate and appeared in the Congressional Record on June 7, 2002.

Navy nominations beginning Roxie T. Merritt and ending Jacqueline C. Yost, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Treci D. Dimas and ending David G. Simpson, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Stephen W. Bartlett and ending James M. Tung, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning David R. Arnold and ending Lori F. Turley, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Victor G. Addison, Jr. and ending Zdenka S. Willis, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Robert J. Ford and ending Edwin F. Williamson, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning David A. Belton and ending James A. Thompson, Jr., which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Jeffrey A. Bender and ending David E. Werner, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Alexander P. Butterfield and ending Elizabeth L. Train, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Terry J. Benedict and ending Edward D. White III, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Peter D. Baumann and ending Allison D. Webstergiddings, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Stephen C. Ballister and ending Jerome Zinni, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Vernon E. Bagley and ending Boyd T. Zbinden, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Weston J. Anderson and ending Stephen C. Woll, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Kathleen B. Daniels and ending Teriann Sammis, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning David A. Bondura and ending Wilburn T. Strickland, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Christian D. Becker and ending Scott M. Wolfe, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Julienne E. Almonte and ending Michael F. Webb, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Alfredo L. Almeida and ending Mark A. Wisniewski, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Jon D. Albright and ending Michael W. Zarkowski, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Navy nominations beginning Todd A. Abler and ending Thomas A. Zwolfer, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2002.

Air Force nominations beginning Shelley R. Atkinson and ending Randy K. Young, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nomination of Roger E. Morris.

Navy nomination of Jane E. McNeely.

Navy nominations beginning Genaro T. Beltran, Jr. and ending Theodore T., Posuniak, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Sevak Adamian and ending Clifford Zdanowicz, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Pius A. Aiyelawo and ending George S. Wolowicz, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Salvador Aguilera and ending Donald P. Troast, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Daniel L. Allen and ending Michael J. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Daniel J. Ackerson and ending Johnny Won, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Connie J. Bullock and ending Brendan F. Ward, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Angelica L. C. Almonte and ending Lester M. Whitley, Jr., which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Navy nominations beginning Kathryn A. Allen and ending John A. Zulick, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2002.

Air Force nomination of Fredric A. Marks.

Air Force nominations beginning Meredith L. *Adams and ending Edwin W. *Wright, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Air Force nominations beginning Sara K. *Achinger and ending Charles E. *Wiedie, Jr., which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Air Force nominations beginning Christopher R. *Abramson and ending Annamarie *Zurlinden, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Army nominations beginning William A. Bennett and ending Charles B. Templeton, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Army nominations beginning John W. Bailey and ending Joyce L. Stevens, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Army nomination of Alonzo C. Cutler.

Army nominations beginning Dominic D. Archibald and ending Richard L. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Army nominations beginning Ricky W. Branscum and ending Frederick O. Stepat, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Army nominations beginning Curtis W. Andrews and ending Thomas F. Stephenson, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

Air Force nomination of Kurt R.L. Peters.

Navy nomination of William W. Crow.

Navy nomination of Joel C. Smith.

Navy nomination of Joseph R. Beckham.

Navy nomination of Michael E. Moore.

Navy nominations beginning Charles W. Brown and ending Tanya L. Wallace, which nominations were received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Todd E. Barnhill and ending Dominick A. Vincent, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Colleen M. Baribeau and ending Kim C. Williams, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Vincent A. Augelli and ending Reese K. Zomar, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Angel Bellido and ending Walter J. Winters, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Michael P. Banaszewski and ensign Brian S. Zito, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning Stuart R. Blair and ending Jon E. Withee, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Navy nominations beginning William L. Abbott and ending Ryszard W. Zbikowski, which nominations received by the Senate and appeared in the Congressional Record on July 22, 2002.

Air Force nominations beginning Buenaventura Q. Aldana and ending Andrew W. Tice, which nominations received by the Senate and appeared in the Congressional Record on July 25, 2002.

Army nominations beginning Antonio Cortessanchez and ending Kimberly D. Wilson, which nominations received by the Senate and appeared in the Congressional Record on July 25, 2002.

Army nominations beginning Henry G. Bernreuter and ending Mark D. Scraba, which nominations received by the Senate and appeared in the Congressional Record on July 25, 2002.

Navy nomination of Steven D. Kornatz.

Navy nomination of Mary B. Gerasch.

Navy nomination of Baron D. Jolie.

Navy nomination of Todd A. Masters.

Navy nomination of Perry W. Suter.

Navy nominations beginning William L. Abbott and ending Donald E. Wyatt, which nominations received by the Senate and appeared in the Congressional Record on July 25, 2002.

By Mr. SARBANES for the Committee on Banking, Housing, and Urban Affairs.

*Donald L. Kohn, of Virginia, to be a Member of the Board of Governors of the Federal System for a term of fourteen years from February 1, 2002.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before and duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. TORRICELLI:

S. 2827. A bill to amend the Internal Revenue Code of 1986 to provide for capital gains treatment for certain termination payments received by former insurance salesmen; to the Committee on Finance.

By Mr. NICKLES (for himself and Mr. INHOFE):

S. 2828. A bill to redesignate the facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station"; to the Committee on Governmental Affairs.

By Mr. AKAKA:

S. 2829. A bill to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel, to provide for the protection of certain disclosures of information by Federal employees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. ROBERTS (for himself, Mr. BROWNBACK, Mr. ALLARD, Mr. THOMAS, and Mr. CRAPO):

S. 2830. A bill to provide emergency disaster assistance to agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. CARNAHAN:

S. 2831. A bill to provide assistance to certain airline industry workers who have lost their jobs, and for other purposes; to the Committee on Finance.

By Mr. COCHRAN:

S. 2832. A bill to address claims relating to Horn Island, Mississippi; to the Committee on the Judiciary.

By Mr. COCHRAN:

S. 2833. A bill for the relief of the heirs of Clark M. Beggerly, Sr., of Jackson County, Mississippi; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DEWINE (for himself and Mr. LIEBERMAN):

S. Res. 312. A resolution recognizing the importance of American history and designating July as "American History Month"; to the Committee on the Judiciary.

By Mr. COCHRAN:

S. Res. 313. A resolution to refer S. 2833, entitled "A bill for the relief of the heirs of Clark M. Beggerly, Sr.; of Jackson County, Mississippi" to the chief judge of the United States Court of Federal Claims for a report thereon; to the Committee on the Judiciary.

By Mr. CLELAND:

S. Res. 314. A resolution expressing the sense of the Senate that a commemorative postage stamp should be issued commemorating registered nurses; to the Committee on Governmental Affairs.

ADDITIONAL COSPONSORS

S. 210

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 210, a bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes.

S. 830

At the request of Mr. CHAFEE, the names of the Senator from Nebraska (Mr. NELSON) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 830, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 858

At the request of Mr. HUTCHINSON, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 858, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small business with respect to medical care for their employees.

S. 1298

At the request of Mr. HARKIN, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 1298, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1924

At the request of Mr. SANTORUM, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 1924, a bill to promote charitable giving, and for other purposes.

S. 2079

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2079, a bill to amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

S. 2246

At the request of Mr. DODD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2246, a bill to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools, and for other purposes.

S. 2512

At the request of Mr. HARKIN, the name of the Senator from Maine (Ms.

SNOWE) was added as a cosponsor of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 2513

At the request of Mr. BIDEN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2513, a bill to asses the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

S. 2606

At the request of Mrs. BOXER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2606, a bill to require the Secretary of Labor to establish a trade adjustment assistance program for certain service workers, and for other purposes.

S. 2613

At the request of Mr. LIEBERMAN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2613, a bill to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the cost-sharing requirement relating to the additional appropriations, and for other purposes.

S. 2712

At the request of Mr. HAGEL, the names of the Senator from South Dakota (Mr. DASCHLE), the Senator from Delaware (Mr. BIDEN), and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 2734

At the request of Mr. KERRY, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2742

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 2742, a bill to establish new nonimmigrant classes for border commuter students.

S. 2760

At the request of Mr. ALLARD, his name was added as a cosponsor of S. 2760, a bill to direct the Securities and Exchange Commission to conduct a study and make recommendations regarding the accounting treatment of stock options for purposes of the Federal securities laws.

S. 2800

At the request of Mr. BAUCUS, the names of the Senator from North Carolina (Mr. HELMS), the Senator from Missouri (Mrs. CARNAHAN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

S. 2816

At the request of Mr. BAUCUS, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2816, a bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

S.J. RES. 37

At the request of Mr. WELLSTONE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S.J. Res. 37, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to modification of the medicaid upper payment limit for non-State government owned or operated hospitals published in the Federal Register on January 18, 2002. and submitted to the Senate on March 15, 2002.

S.J. RES. 40

At the request of Mrs. LINCOLN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S.J. Res. 40, a joint resolution designating August as "National Missing Adult Awareness Month".

S. CON. RES. 124

At the request of Mr. CAMPBELL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Con. Res. 124, a concurrent resolution condemning the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment in the United States and other countries, and expressing support for victims of those practices.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. INHOFE):

S. 2828. A bill to redesignate the facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station"; to the Committee on Governmental Affairs.

Mr. NICKLES. Mr. President, I rise today to honor the memory of Robert Wayne Jenkins, a U.S. Postal Service letter carrier who was tragically killed while serving the Tulsa community and to introduce legislation that would redesignate the Southside Station Postal Service facility in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station".

On December 21, 2001, Robert Wayne Jenkins said goodbye to his wife Amber and daughter Caitlyn and left home for work. Arriving with his usual friendly and positive attitude, Robert prepared for his mail route. Before leaving the office to deliver the mail on his route, Robert gave his customary message to a fellow letter carrier: "be safe". That afternoon, Robert was senselessly gunned down while on his route, dying instantly.

Robert Wayne Jenkins was in his ninth year of dedicated service in a job he truly loved. His co-workers respected his dedication and professionalism, and Robert was also greatly admired for his love and devotion to his wife and daughter. The spirit and vitality with which Robert served the U.S. Postal Service and his community will live on in the hearts of those who were privileged to know him.

Rededicating the southside station in Tulsas as the Robert Wayne Jenkins Station is an honor most appropriate for an American who asked for so little but who gave so much to his family, his friends, the United States Postal Service, and the Tulsa community.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2828

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF ROBERT WAYNE JENKINS STATION.

(a) DESIGNATION.—The facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, and known as the "Southside Station", shall be known and designated as the "Robert Wayne Jenkins Station".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Robert Wayne Jenkins Station.

By Mr. AKAKA:

S. 2829. A bill to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel, to provide for the protection of certain disclosures of information by Federal employees, and for other purposes; to the Committee on Governmental Affairs.

Mr. AKAKA. Mr. President. Today I rise to introduce legislation reauthorizing the Office of Special Counsel, OSC, and the Merit Systems Protection Board, MSPB. These two agencies safeguard the merit system principles and protect Federal employees who step forward to disclose government waste, fraud, and abuse.

The Office of Special Counsel protects Federal employees and applicants from reprisal for whistleblowing and other prohibited personnel practices.

OSC serves as a safe and secure channel for Federal workers who wish to disclose violations of law, gross mismanagement or waste of funds, abuse of authority, and a specific danger to the public health and safety. In addition, OSC enforces and provides advisory opinions regarding the Hatch Act, which restricts the political activities of Federal employees. It also protects the rights of Federal employee, military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act of 1994.

The Merit Systems Protection Board monitors the Federal Government's merit-based system of employment by hearing and deciding appeals from Federal employees regarding job removal and other major personnel actions. The Board also decides other types of civil service cases, reviews regulations of the Office of Personnel Management, and conducts studies of the merit systems. Together, OSC and MSPB act as stalwarts of justice for the dedicated men and women who serve the public.

In addition to reauthorizing these two important agencies, my bill would restore congressional intent regarding who is entitled to relief under the Whistleblower Protection Act, WPA. On several occasions, Congress has had to revisit the WPA to close loopholes in the law. Congress has been forced to specify that "any" disclosure truly means "any" disclosure. This is regardless of the setting of the disclosure, the form of the disclosure, or the person to whom the disclosure is made.

Since Congress amended the WPA in 1994, the Federal Circuit Court of Appeals, which has sole jurisdiction over the WPA, has continued to disregard clear statutory language that the Act covers disclosures such as those made to supervisors, to possible wrongdoers, or as part of an employee's job duties.

In order to protect the statute's foundation that 'any' lawful disclosure that an employee or applicant reasonably believes is credible evidence of waste, fraud, abuse, or gross mismanagement is covered by the WPA, language in this bill codifies the repeated and unconditional statements of congressional intent and legislative history. It specifically covers any disclosure of information without restriction to time, place, form, motive, or context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of any violation of any law, rule, or regulation, or other misconduct specified.

The bill also addresses another burden created by the Federal Circuit not found in the Whistleblower Protection Act. In interpreting the meaning of 'reasonable belief,' the Federal Circuit held that the reasonableness of the whistleblower's belief that the government violated the law or engaged in gross mismanagement must first begin with a presumption that public officers performed their duties correctly, fairly, in good faith, and in accordance with the law. However, this presumption can only be overcome by "irrefragable proof" to the contrary. The irrefragable standard is impossible to overcome and has a chilling effect on those who would disclose government wrongdoing. As such, this new provision states that any presumption that a public officer has performed their duties in good faith must be overcome by substantial evidence.

My bill also codifies an "anti-gag" provision that Congress has passed annually since 1988 as part of its appropriations process. The yearly appropriations language bars agencies from implementing or enforcing any nondisclosure policy, form, or agreement that does not contain specified language preserving open government statutes such as the WPA, the Military Whistleblower Protection Act, and the Lloyd Lafollette Act, which prohibits discrimination against government employees who communicate with Congress. Moreover, Congress unanimously has supported the concept that Federal employees should not be subject to restraint nor suffer retaliation for disclosing wrongdoing.

Now more than ever, Federal employees must feel comfortable coming forward with information concerning violations of law or actions that could cause substantial harm to public safety. We must support the brave men and women who come forward to report wrongdoing. We must ensure that such acts of bravery are not rewarded with retaliation.

Protection of Federal whistleblowers is a bipartisan effort. Enactment of the original bill in 1989 and the 1994 amendments enjoyed unanimous bicameral and bipartisan support. More recently, Senators LEVIN and GRASSLEY joined me in introducing S. 995, which makes many of the same amendments to the WPA as this bill. I urge my colleagues to join with me in clarifying the WPA and supporting the reauthorization of two very important agencies.

At this time I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2829

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

(a) MERIT SYSTEMS PROTECTION BOARD.—Section 8(a)(1) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking "1998, 1999, 2000, 2001 and 2002" and inserting "2003, 2004, 2005, 2006, and 2007".

(b) OFFICE OF SPECIAL COUNSEL.—Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking "1993, 1994, 1995, 1996, and 1997," and inserting "2003, 2004, 2005, 2006, and 2007".

(c) EFFECTIVE DATE.—This section shall take effect on October 1, 2002.

SEC. 2. DISCLOSURE OF VIOLATIONS OF LAW; RETURN OF DOCUMENTS.

Section 1213(g) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking the last sentence; and

(2) by striking paragraph (3) and inserting the following:

"(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of—

"(A) the reasons why the disclosure may not be further acted on under this chapter; and

"(B) other offices available for receiving disclosures, should the individual wish to pursue the matter further.".

SEC. 3. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties that the employee or applicant reasonably believes is evidence of"; and

(B) in clause (i), by striking "a violation" and inserting "any violation";

(2) in subparagraph (B)—

(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of"; and

(B) in clause (i), by striking "a violation" and inserting "any violation"; and

(3) by adding at the end the following:

"(C) a disclosure that—

"(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is evidence of—

"(I) any violation of any law, rule, or regulation;

"(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

"(III) a false statement to Congress on an issue of material fact; and

"(ii) is made to—

"(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates;

"(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

"(III) an employee of the executive branch or Congress who has the appropriate security clearance for access to the information disclosed.".

(b) COVERED DISCLOSURES.—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking "This subsection" and inserting the following:

"This subsection"; and

(2) by adding at the end the following:

"In this subsection, the term 'disclosure' means a formal or informal communication or transmission.".

(c) REBUTTABLE PRESUMPTION.—Section 2308(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (b) of this section) the following:

"For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee may be rebutted by substantial evidence.".

(d) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking "and" after the semicolon; and

(B) by redesignating clause (xi) as clause (xii) and inserting after clause (x) the following:

"(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and".

(e) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

"(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.".

(2) JUDICIAL REVIEW OR MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

"(e) The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board's decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.".

SEC. 4. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.

(a) IN GENERAL.—Each agreement in Standard Forms, 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement shall contain the following statement:

"These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling."

Any nondisclosure policy, form, or agreement that does not contain the above statement may not be implemented or enforced to the extent that it conflicts with language in the above statement.

(b) PERSONS OTHER THAN FEDERAL EMPLOYEES.—Notwithstanding subsection (a), a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 312—RECOGNIZING THE IMPORTANCE OF AMERICAN HISTORY AND DESIGNATING JULY AS "AMERICAN HISTORY MONTH"

Mr. DEWINE (for himself and Mr. LEIBERMAN) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 312

Whereas July is an important month in American history because of the signing of the Declaration of Independence and various other events that have added to the rich heritage of our Nation;

Whereas learning American history is vital to attaining citizenship in our democratic republic;

Whereas we must encourage Americans of all ages and ethnicities to learn about the history and heritage of the United States;

Whereas the Senate recognizes the historical achievements and contributions of Americans from all walks of life, races, and ethnic groups;

Whereas an individual who has a strong knowledge of American history is likely to have a deeper appreciation of the need for historic preservation of properties, building, and artifacts;

Whereas many of the educators, parents, and concerned citizens of our Nation have cited a lack of American history knowledge in students of all ages from across the country;

Whereas surveys have shown that the next generation of American leaders and citizens is in danger of losing a fundamental knowledge of American history;

Whereas 1 survey showed that only 23 percent of college seniors could correctly identify James Madison as the "Father of the Constitution", and 26 percent of those same students mistakenly thought that the Articles of Confederation established the division of powers between the States and the Federal Government; and

Whereas Congress affirmed its commitment to the teaching of American history by appropriating $100,000,000 to teaching American history through the Leave No Child Behind Act of 2001 (Public Law 107-110): Now, therefore, be it

Resolved, That the Senate—

(1) designates July as "American History Month";

(2) recognizes that "American History Month" is an important time to recognize, reflect, and affirm the importance of learning and appreciating the history of the United States; and

(3) encourages parents and educators to actively expose children to the importance of American history and historic preservation.

SENATE RESOLUTION 313—TO REFER S. 2833, ENTITLED "A BILL FOR THE RELIEF OF THE HEIRS OF CLARK M. BEGGERLY, SR., OF JACKSON COUNTY, MISSISSIPPI" TO THE CHIEF JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A REPORT THEREON

Mr. COCHRAN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 313

Resolved, That—

(a) S. 2833, entitled "A bill for the relief of the heirs of Clark M. Beggerly, Sr., of Jackson County, Mississippi" now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims; and

(b) the chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions that are sufficient to inform Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to the heirs of Clark M. Beggerly, Sr., of Jackson County, Mississippi.

SENATE RESOLUTION 314—EXPRESSING THE SENSE OF THE SENATE THAT A COMMEMORATIVE POSTAGE STAMP SHOULD BE ISSUED COMMEMORATING REGISTERED NURSES

Mr. CLELAND submitted the following resolution; which was referred to the Committee on Governmental Affairs:

S. RES. 314

Whereas registered nurses comprise the largest health care work force in the United States, numbering more than 2,700,000;

Whereas registered nurses are integral to health care across human lifespan, from the nurse midwives who attend deliveries, to staff nurses who care for us during times of acute injury or illness, to geriatric nurse practitioners who manage end-of-life care;

Whereas nursing is a rewarding profession that offers diverse career paths for men and women;

Whereas registered nurses provide direct patient care and manage teams of medical professionals in hospitals, clinics, community health centers, offices, nursing homes, and the homes of patients;

Whereas there is a growing disparity between the supply of and demand for registered nurses that is leading to an overwhelming shortage that will place great strains on our health care system;

Whereas this burgeoning shortage represents confluence of powerful demographic and social forces, including declining nursing school enrollment and increased exodus from the profession;

Whereas the lack of young people in nursing has resulted in a steady and dramatic increase in the average age of a registered nurse in the United States;

Whereas the average age of a working registered nurse is 43 years, meaning that the nursing workforce is aging at twice the rate of other occupations in the United States;

Whereas the Bureau of Labor Statistics estimates that 331,000 registered nurses, or 15 percent of the current workforce, will retire between 1998 and 2008;

Whereas the health care needs of the Nation are expected to increase greatly as the baby boom generation reaches retirement age;

Whereas a recent survey of hospitals across the Nation concluded that nursing shortages are already causing emergency department overcrowding, emergency department diversions, increase waiting time for surgery, discontinued patient care programs or reduced service hours, delayed discharges, and canceled surgeries;

Whereas 4 agencies under the Department of Health and Human Services recently demonstrated the relationship between registered nurses and patient care in a study that found strong and consistent evidence that increased registered nurse staffing directly relates to decreases in the incidence of urinary tract infections, pneumonia, shock, and upper gastrointestinal bleeding, and decreases in the length of hospital stays;

Whereas the Institute of Medicine and the Centers for Medicare and Medicaid Services have recently released reports detailing the need for increased registered nurse care in nursing facilities;

Whereas the American Nurses Association has identified a need to improve the recognition of the value of nursing and the image of the nursing profession;

Whereas registered nurses did not hesitate to respond to the extraordinarily dangerous situations resulting from the terrorist attacks of September 11, 2001, putting their own lives at risk and acting heroically to help save as many lives as possible in the impact zones; and

Whereas registered nurses have historically cared for patients regardless of the risks of war, violence, or of contracting debilitating illnesses: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the United States Postal Service should issue a postage stamp commemorating registered nurses; and

(2) the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued not later than 1 year after the adoption of this resolution.

SEC. 2. TRANSMITTAL TO CITIZENS' STAMP ADVISORY COMMITTEE.

The Secretary of the Senate shall transmit a copy of this resolution to the chairperson of the Citizens' Stamp Advisory Committee.

Mr. CLELAND. Mr. President, I am very pleased to submit a resolution recognizing the value of nurses and the importance of the nursing profession to the Nation's health care system. My legislation expresses the Sense of the Senate that a Nurses Care for America postage stamp should be issued in appreciation of nurses and everything that they do on behalf of their patients.

Registered nurses, specifically, comprise the largest health care work force in the United States, numbering more than 2,700,000. These registered nurses provide direct patient care and manage teams of medical professionals in hospitals, clinics, community health centers, offices, nursing homes, and the homes of patients. Registered nurses did not hesitate to respond to the extraordinarily dangerous situations resulting from the terrorist attacks of September 11, 2001, putting their own lives at risk and acting heroically to help save as many lives as possible in the impact zones.

In all the years that we have acknowledged how much nurses mean to the delivery of health care and our quality of life, we have not done enough to ensure the viability of nursing as a profession. The 2001 American Nurses Association, ANA, National Survey revealed that 715 hospitals had 126,000 openings for nursing positions and an 11 percent vacancy rate. Nursing schools across the country report that enrollment has significantly decreased and the ANA also projects that 65 percent of present nurses will retire within this decade. These statistics signal a nursing crisis and that, in turn, means a health care crisis for this country. I am very proud of my Senate colleagues for passing crucial legislation, like the Nurse Reinvestment Act and the Veterans Affairs Nurse Recruitment and Retention Act, to help remedy this situation. We must continue to support measures which will promote nursing and enable nurses to provide needed care, which is why my legislation that encourages the creation of a postage stamp honoring this worthwhile and important profession is so important.

Please join with me and the American Nurses Association to support this measure and recognize the vast contributions made by nurses who care for America. Thank you.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4350. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table.

SA 4351. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4352. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4353. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4354. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4355. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4356. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4357. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4358. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4359. Mr. NELSON, of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4360. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4361. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4362. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4363. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4364. Mr. WELLSTONE (for himself, Mr. JOHNSON, Mr. DURBIN, and Mr. REID) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra.

SA 4365. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4366. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4367. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4368. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4369. Mr. DAYTON (for himself and Mr. Cleland) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4370. Mr. TORRICELLI (for himself and Mr. Corzine) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4371. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4372. Mr. LUGAR (for himself, Mr. Biden, Mr. Domenici, Mr. Hagel, Mr. Graham, and Mr. Levin) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4373. Mr. INOUYE (for Mr. Allen) submitted an amendment intended to be proposed by Mr. Inouye to the bill H.R. 5010, supra.

SA 4374. Mr. INOUYE (for Mr. Breaux) proposed an amendment to the bill H.R. 5010, supra.

SA 4375. Mr. INOUYE (for Mr. Bennett) proposed an amendment to the bill H.R. 5010, supra.

SA 4376. Mr. INOUYE (for Mr. Cleland) proposed an amendment to the bill H.R. 5010, supra.

SA 4377. Mr. INOUYE (for Ms. Collins) proposed an amendment to the bill H.R. 5010, supra.

SA 4378. Mr. INOUYE (for Mr. Conrad) proposed an amendment to the bill H.R. 5010, supra.

SA 4379. Mr. INOUYE (for Mr. Dayton) proposed an amendment to the bill H.R. 5010, supra.

SA 4380. Mr. INOUYE (for Mr. DeWine) proposed an amendment to the bill H.R. 5010, supra.

SA 4381. Mr. INOUYE (for Mr. Ensign) proposed an amendment to the bill H.R. 5010, supra.

SA 4382. Mr. INOUYE (for Mr. Frist (for himself and Mr. Thompson)) proposed an amendment to the bill H.R. 5010, supra.

SA 4383. Mr. INOUYE (for Mr. Kyl) proposed an amendment to the bill H.R. 5010, supra.

SA 4384. Mr. INOUYE (for Mr. Santorum (for himself and Mr. Specter)) proposed an amendment to the bill H.R. 5010, supra.

SA 4385. Mr. INOUYE (for Mr. Santorum (for himself and Mr. Specter)) proposed an amendment to the bill H.R. 5010, supra.

SA 4386. Mr. INOUYE (for Mr. Voinovich (for himself and Mr. DeWine)) proposed an amendment to the bill H.R. 5010, supra.

SA 4387. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4388. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra.

SA 4389. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4390. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4391. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4392. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4393. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4394. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4395. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4396. Mr. THOMPSON (for himself and Mr. Frist) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4397. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4398. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4399. Mr. BYRD (for himself and Mr. Grassley) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4400. Mr. INOUYE (for Mr. Bingaman) proposed an amendment to the bill H.R. 5010, supra.

SA 4401. Mr. INOUYE (for Mr. Dorgan) proposed an amendment to the bill H.R. 5010, supra.

SA 4402. Mr. INOUYE (for Mrs. Murray) proposed an amendment to the bill H.R. 5010, supra.

SA 4403. Mr. INOUYE (for Mr. Reid) proposed an amendment to the bill H.R. 5010, supra.

SA 4404. Mr. INOUYE (for Mr. Warner) proposed an amendment to the bill H.R. 5010, supra.

SA 4405. Mr. INOUYE (for Mr. Dodd) proposed an amendment to the bill H.R. 5010, supra.

SA 4406. Mr. INOUYE (for Mr. Nickles) proposed an amendment to the bill H.R. 5010, supra.

SA 4407. Mr. STEVENS (for Mr. Roberts) proposed an amendment to the bill H.R. 5010, supra.

SA 4408. Mr. INOUYE proposed an amendment to the bill H.R. 5010, supra.

SA 4409. Mr. STEVENS (for Ms. Collins) proposed an amendment to the bill H.R. 5010, supra.

SA 4410. Mr. INOUYE (for Mr. Carper (for himself and Mr. Biden)) proposed an amendment to the bill H.R. 5010, supra.

SA 4411. Mr. INOUYE (for Mr. Biden (for himself and Mr. Carper)) proposed an amendment to the bill H.R. 5010, supra.

SA 4412. Mr. REID (for Mr. Wellstone) proposed an amendment to amendment SA 4364 submitted by Mr. WELLSTONE (for himself, Mr. Johnson, Mr. Durbin, and Mr. Reid) to the bill H.R. 5010, supra.

SA 4413. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4414. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4415. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4416. Mr. SMITH, of Oregon (for himself, Mr. Wyden, and Mrs. Murray) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4417. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4418. Mr. SMITH, of Oregon (for himself, Mr. Wyden, and Mrs. Murray) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4419. Mr. CRAIG submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4420. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4421. Mr. HUTCHINSON (for himself, Mrs. Lincoln, and Mr. Roberts) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4422. Mr. INOUYE (for Mr. Akaka) proposed an amendment to the bill H.R. 5010, supra.

SA 4423. Mr. INOUYE (for Mrs. Clinton) proposed an amendment to the bill H.R. 5010, supra.

SA 4424. Mr. STEVENS (for Mr. Inhofe) proposed an amendment to the bill H.R. 5010, supra.

SA 4425. Mr. INOUYE (for Mrs. Feinstein) proposed an amendment to the bill H.R. 5010, supra.

SA 4426. Mr. STEVENS (for Mrs. Hutchison) proposed an amendment to the bill H.R. 5010, supra.

SA 4427. Mr. STEVENS (for Mr. Thompson (for himself and Mr. Frist)) proposed an amendment to the bill H.R. 5010, supra.

SA 4428. Mr. INOUYE (for Ms. Landrieu) proposed an amendment to the bill H.R. 5010, supra.

SA 4429. Mr. INOUYE (for Mr. Nelson, of Florida (for himself and Mr. Graham)) proposed an amendment to the bill H.R. 5010, supra.

SA 4430. Mr. STEVENS (for Mr. Bunning) proposed an amendment to the bill H.R. 5010, supra.

SA 4431. Mr. INOUYE (for Mr. Kennedy) proposed an amendment to the bill H.R. 5010, supra.

SA 4432. Mr. INOUYE (for Mrs. Carnahan) proposed an amendment to the bill H.R. 5010, supra.

SA 4433. Mr. STEVENS (for Mr. Smith, of Oregon (for himself, Mr. Wyden, and Mrs. Murray)) proposed an amendment to the bill H.R. 5010, supra.

SA 4434. Mr. STEVENS (for Mr. Craig) proposed an amendment to the bill H.R. 5010, supra.

SA 4435. Mr. LUGAR (for himself, Mr. Biden, Mr. Domenici, Mr. Hagel, Mr. Graham, Mr. Levin, Mr. Dodd, and Mr. McCain) proposed an amendment to the bill H.R. 5010, supra.

SA 4436. Ms. SNOWE (for herself and Mr. Sessions) submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4437. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4438. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4439. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4440. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4441. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4442. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4443. Mr. McCAIN proposed an amendment to the bill H.R. 5010, supra.

SA 4444. Mr. McCAIN proposed an amendment to the bill H.R. 5010, supra.

SA 4445. Mr. McCAIN (for himself and Mr. FEINGOLD) proposed an amendment to the bill H.R. 5010, supra.

SA 4446. Mr. SCHUMER (for himself and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4447. Mr. WELLSTONE (for himself, Mr. CORZINE, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 5010, supra.

SA 4448. Mr. BYRD (for himself and Mr. GRASSLEY) proposed an amendment to the bill H.R. 5010, supra.

SA 4449. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4450. Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4451. Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4452. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4453. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, supra; which was ordered to lie on the table.

SA 4454. Mr. STEVENS (for Mr. NICKLES) proposed an amendment to the bill H.R. 5010, supra.

SA 4455. Mr. INOUYE (for Mr. MILLER (for himself and Mr. ALLEN)) proposed an amendment to the bill H.R. 5010, supra.

SA 4456. Mr. STEVENS (for Ms. SNOWE) proposed an amendment to the bill H.R. 5010, supra.

SA 4457. Mr. INOUYE (for Mr. NELSON, of Florida (for himself and Mr. GRAHAM)) proposed an amendment to the bill H.R. 5010, supra.

SA 4458. Mr. STEVENS (for Ms. SNOWE (for himself, Mr. SESSIONS, and Ms. COLLINS)) proposed an amendment to the bill H.R. 5010, supra.

SA 4459. Mr. STEVENS (for Mr. WARNER) proposed an amendment to the bill H.R. 5010, supra.

SA 4460. Mr. INOUYE (for Mrs. BOXER) proposed an amendment to the bill H.R. 5010, supra.

SA 4461. Mr. INOUYE (for Mr. TORRICELLI (for himself and Mr. CORZINE)) proposed an amendment to the bill H.R. 5010, supra.

SA 4462. Mr. STEVENS proposed an amendment to the bill H.R. 5010, supra.

SA 4463. Mr. INOUYE (for Mr. HOLLINGS) proposed an amendment to the bill H.R. 5010, supra.

SA 4464. Mr. INOUYE (for Mr. HARKIN) proposed an amendment to the bill H.R. 5010, supra.

SA 4465. Mr. STEVENS (for Mr. ALLARD) proposed an amendment to the bill H.R. 5010, supra.

SA 4466. Mr. INOUYE (for Mr. HUTCHINSON (for himself, Mrs. LINCOLN, Mr. ROBERTS, and Mrs. HUTCHISON)) proposed an amendment to the bill H.R. 5010, supra.

TEXT OF AMENDMENTS

SA 4350. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $6,000,000 may be available for the Center for Advanced Power Systems.

SA 4351. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $2,170,000 may be available for the Nanophotonic Systems Fabrication Facility.

SA 4352. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes, which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title III under the heading "OTHER PROCUREMENT, NAVY", up to $7,000,000 may be available for Composite Surface Ship Louvers.

SA 4353. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $6,000,000 may be available for Marine Mammal Detection and Mitigation (MMDM).

SA 4354. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $7,000,000 may be available for the Naval Environmental Compliance Operations Monitoring System.

SA 4355. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "OPERATIONAL TEST AND EVALUATION, DEFENSE", up to $10,000,000 may be available for the Digital Video Laboratory.

SA 4356. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $15,000,000 may be available for Ballistic Missile Range Safety Technology (BMSRT).

SA 4357. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title III under the heading "PROCUREMENT, MARINE CORPS", up to $20,000,000 may be available for the Lightweight Multi-Band Satellite Terminal (LMST).

SA 4358. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $6,000,000 may be available for Human Systems Technology.

SA 4359. Mr. NELSON of Florida (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $750,000 may be available for Rapid Response Sensor Networking for Multiple Applications.

SA 4360. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE" and available for Major T&E Investment (PE0604759F), $2,500,000 shall be available for the Maglev upgrade program.

SA 4361. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", for Servicewide Communications, $6,000,000 may be used for the Critical Infrastructure Protection Program.

SA 4362. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $2,500,000 may be available for the Army Nutrition program.

SA 4363. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY", $7,000,000 may be used for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center.

SA 4364. Mr. WELLSTONE (for himself, Mr. JOHNSON, Mr. DURBIN, and Mr. REID) submitted an amendment to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

SA 4365. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for the Maintainers Remote Logistics Network.

SA 4366. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for the procurement of services from a small sub-orbital modular vertical takeoff/vertical landing reusable launch vehicle.

SA 4367. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title III under the heading "AIRCRAFT PROCUREMENT, AIR FORCE", up to $6,500,000 may be available for the KC-135 Aircraft Boom Operator Weapons System Trainer (BOWST).

SA 4368. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY", $4,000,000 shall be available for Marine Corps program wide support (PE0605873M) for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electrochemically activated solution (ECASOL).

(b) The amount available under subsection (a) for the program element and purpose set forth in that subsection is in addition to any other amounts available under this Act for that program element and purpose.

SA 4369. Mr. DAYTON (for himself and Mr. CLELAND) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AMOUNT AVAILABLE FOR LIVE FIRE RANGE UPGRADES.—Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY", up to $3,700,000 may be available for Live Fire Range Upgrades.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

SA 4370. Mr. TORRICELLI (for himself and Mr. Corzine) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. (a) Increase in Appropriation for Operation and Maintenance, Navy.—The amount appropriated by title II under the heading "Operation and Maintenance, Navy" is hereby increased by $2,500,000.

(b) Availability of Amount for Disposal of Certain Materials at Earle Naval Weapons Station, New Jersey.—Of the amount appropriated by title II under the heading "Operation and Maintenance, Navy", as increased by subsection (a), $2,500,000 shall be available for the disposal of materials from Reach A at Earle Naval Weapons Station, New Jersey, to an appropriate inland site designated by the Secretary of the Navy.

SA 4371. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. (a) Increase in Amount for Field Pack-Up Unit System.—The amount appropriated by title II under the heading "Operation and Maintenance, Army" is hereby increased by $750,000, with the amount of the increase to be available for the Field Pack-Up Unit System.

(b) Increase in Amount for Configuration Management Information Systems.—The amount appropriated by title II under the heading "Operation and Maintenance, Navy" is hereby increased by $500,000, with the amount of the increase to be available for Configuration Management Information Systems.

(c) Increase in Amount for Army Nutrition Program.—The amount appropriated by title IV under the heading "Research, Development, Test, and Evaluation, Army" is hereby increased by $250,000, with the amount of the increase to be available for the Army Nutrition Program.

(d) Offset.—The amount appropriated by title III under the heading "Procurement, Defense-Wide" is hereby decreased by $1,500,000, with the amount of the decease to be allocated to amounts available for SOF-Riverine Craft.

SA 4372. Mr. LUGAR (for himself, Mr. Biden, Mr. Domenici, Mr. Hagel, Mr. Graham and Mr. Levin) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 22 U.S.C. 5952 note) is amended—

(1) by inserting "(a) Limitation.—" before "No fiscal year"; and

(2) by adding at the end the following new subsection:

"(b) Waiver.—(1) The limitation in subsection (a) shall not apply to funds appropriated for Cooperative Threat Reduction programs for a fiscal year if the President submits to the Speaker of the House of Representatives and the President pro tempore of the Senate a written certification that the waiver of the limitation in such fiscal year is important to the national security of the United States.

"(2) A certification under paragraph (1) for fiscal year 2003 shall cover funds appropriated for Cooperative Threat Reduction programs for that fiscal year and for fiscal years 2000, 2001, and 2002.

"(3) A certification under paragraph (1) shall include a full and complete justification for the waiver of the limitation in subsection (a) for the fiscal year covered by the certification.".

SA 4373. Mr. INOUYE (for Mr. Allen) submitted an amendment intended to be proposed by Mr. Inouye to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Of the amount appropriated by title IV under the heading "Research, Development, Test, and Evaluation, Air Force", up to $5,000,000 may be available for the Variable Flow Ducted Rocket propulsion system (PE063216F).

SA 4374. Mr. INOUYE (for Mr. Breaux) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Of the total amount appropriated by title IV under the heading "Research, Development, Test and Evaluation, Navy", $7,000,000 may be used for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center.

SA 4375. Mr. INOUYE (for Mr. Bennett) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill, add the following:

Sec. . Of the amounts appropriated in H.R. 4775, Chapter 3, under the heading "Defense Emergency Response", up to $4,500,000 may be made available to settle the disputed takings of property adjacent to the Tooele Army Depot, Utah.

SA 4376. Mr. INOUYE (for Mr. Cleland) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Of the amount appropriated by title IV under the heading "Research, Development, Test, and Evaluation, Defense-Wide", up to $3,000,000 may be available for execution of the ferrite diminishing manufacturing program by the Defense Micro-Electronics Activity.

SA 4377. Mr. INOUYE (for Ms. Collins) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

In title IV under the heading "Research, Development, Test, and Evaluation, Navy", insert before, the period the following: ": *Provided further*, That of the funds appropriated by this paragraph, up to $2,000,000 may be available for Structural Reliability of FRP Composites".

SA 4378. Mr. INOUYE (for Mr. Conrad) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Of the amount appropriated by title IV under the heading "Research, Development, Test, and Evaluation, Army", up to $5,000,000 may be available for the Medical Vanguard Project to expand the clinical trial of the Internet-based diabetes managements system under that project.

SA 4379. Mr. INOUYE (for Mr. Dayton) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes, as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. (a) Amount Available for Live Fire Range Upgrades.—Of the amount appropriated by title II under the heading "Operation and Maintenance, Army", up to $3,700,000 may be available for Live Fire Range Upgrades.

(b) Supplement Not Supplant.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

SA 4380. Mr. INOUYE (for Mr. DeWine) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. Of the amount appropriated by title IV under the heading "Research, Development, Test and Evaluation, Army", up to $5,000,000 may be used for materials joining for Army weapon systems.

SA 4381. Mr. INOUYE (for Mr. Ensign) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by III under the heading "OTHER PROCUREMENT, ARMY", up to $500,000 may be available for PRC–117F SATCOM backpack radios.

SA 4382. Mr. INOUYE (for Mr. FRIST (for himself and Mr. THOMPSON)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124.—Of the total amount appropriated by this division for Operation and Maintenance, Army, up to $5,000,000 may be used for Expandable Light Air Mobility Shelters (ELAMS).

SA 4383. Mr. INOUYE (for Mr. KYL) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill, add the following:

SEC. . Of the amounts appropriated by Title IV under the heading "Research, Development, Test, and Evaluation, Navy", up to $10,000,000 may be made available for extended range anti-air warfare.

SA 4384. Mr. INOUYE (for Mr. SANTORUM) (for himself and Mr. SPECTER)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY RESERVE", up to $3,000,000 may be available for Land Forces Readiness for Information Operations Sustainment.

SA 4385. Mr. INOUYE (for Mr. SANTORUM) (for himself and Mr. SPECTER)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $1,000,000 may be available for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative.

SA 4386. Mr. INOUYE (for Mr. VOINOVICH (for himself and Mr. DEWINE)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE", $2,000,000 may be used for the Viable Combat Avionics Initiative of the Air Force.

SA 4387. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, line 9, following the semicolon, insert the following: "of which not less than $118,400,000 shall be available for the Family Advocacy Program, with priority in any increase of funding provided to bases that are experiencing increases in domestic violence;"

SA 4388. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Congress finds that—

(1) the Medal of Honor is the highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Forces of the United States;

(2) the Medal of Honor was established by Congress during the Civil War to recognize soldiers who had distinguished themselves by gallantry in action;

(3) the Medal of Honor was conceived by Senator James Grimes of the State of Iowa in 1861; and

(4) the Medal of Honor is the Nation's highest military honor, awarded for acts of personal bravery or self-sacrifice above and beyond the call of duty.

(b)(1) Chapter 9 of title 36, United States Code, is amended by adding at the end the following new section:

"§ 903. Designation of Medal of Honor Flag

"(a) DESIGNATION.—The Secretary of Defense shall design and designate a flag as the Medal of Honor Flag. In selecting the design for the flag, the Secretary shall consider designs submitted by the general public.

"(b) PRESENTATION.—The Medal of Honor Flag shall be presented as specified in sections 3755, 6257, and 8755 of title 10 and section 505 of title 14.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"903. Designation of Medal of Honor Flag.".

(c)(1)(A) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 3755. Medal of honor: presentation of Medal of Honor Flag

"The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 3741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 3741 or 3752(a) of this title.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3755. Medal of honor: presentation of Medal of Honor Flag.".

(2)(A) Chapter 567 of such title is amended by adding at the end the following new section:

"§ 6257. Medal of honor: presentation of Medal of Honor Flag

"The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 6241 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 6241 or 6250 of this title.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"6257. Medal of honor: presentation of Medal of Honor Flag.".

(3)(A) Chapter 857 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 8755. Medal of honor: presentation of Medal of Honor Flag

"The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 8741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 8741 or 8752(a) of this title.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"8755. Medal of honor: presentation of Medal of Honor Flag.".

(4)(A) Chapter 13 of title 14, United States Code, is amended by inserting after section 504 the following new section:

"§ 505. Medal of honor: presentation of Medal of Honor Flag

"The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 491 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 491 or 498 of this title.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 504 the following new item:

"505. Medal of honor: presentation of Medal of Honor Flag.".

(d) The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36, United States Code, as added by subsection (b), to each person awarded the Medal of Honor before the date of enactment of this Act who is living as of that date. Such presentation shall be made as expeditiously as possible after the date of the designation of the Medal of Honor Flag by the Secretary of Defense under such section.

SA 4389. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $1,000,000 may be available for

Aerospace Technology Development/Demonstration for Three-Dimensional Bias Woven Preforms.

SA 4390. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title III under the heading "OTHER PROCUREMENT, AIR FORCE", up to $1,000,000 may be available for C–E Equipment for the Mobile Emergency Broadband System.

SA 4391. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $1,000,000 may be available for the Joint Robotics Program for key enabling robotics technologies for the support of the Army, Navy, and Air Force robotic unmanned military platforms.

SA 4392. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title III under the heading "PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS", up to $4,000,000 may be available for Artillery Projectiles for M795 ammunition for support of war reserve and training requirements.

SA 4393. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY RESERVE", up to $3,000,000 may be available for Land Forces Readiness for Information Operations Sustainment.

SA 4394. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $2,000,000 may be available for Medical Advanced Technology for the National Tissue Engineering Center (NTEC) for ongoing biomedical research in support of defense-related regenerative therapies.

SA 4395. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE", up to $1,000,000 may be available for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative.

SA 4396. Mr. THOMPSON (for himself and Mr. FRIST) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD", up to $2,000,000 may be available for the Communicator emergency notification system.

SA 4397. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Funds appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE" may be used by the Military Community and Family Policy Office of the Department of Defense for the operation of multidisciplinary, impartial domestic violence fatality review teams of the Department of Defense that operate on a confidential basis.

(b) Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE", $10,000,000 shall be available for an advocate of victims of domestic violence at each military installation to provide confidential assistance to victims of domestic violence at the installation.

(c) Hereafter, for a period of 5 years, the Secretary of Defense shall submit to Congress an annual report on the implementation of the recommendations included in the reports submitted to the Secretary by the Defense Task Force on Domestic Violence under section 591(e) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 639; 10 U.S.C. 1562 note).

SA 4398. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $5,000,000 may be available for the Integrated Chemical Biological Warfare Agent Detector Chip.

SA 4399. Mr. BYRD (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

(3) The disciplinary actions under this subsection may include—

(A) the review of the security clearance of the individual involved; and

(B) the modification or revocation of such security clearance in light of the review.

(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).

SA 4400. Mr. INOUYE (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE" and available for Major T&E Investment up to $2,500,000 may be available for the Maglev upgrade program.

SA 4401. Mr. INOUYE (for Mr. DORGAN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

"Of the funds appropriated under the heading "RDT&E, Defense Wide", $10,000,000 may be made available for the Chameleon Miniaturized Wireless System.

SA 4402. Mr. INOUYE (for Mrs. MURRAY) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AVAILABILITY OF AMOUNT FOR INDUSTRIAL SHORT PULSE LASER DEVELOPMENT.—Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $7,000,000 may be available for continuing design and fabrication of the industrial short pulse laser development–femtosecond laser.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

SA 4403. Mr. INOUYE (for Mr. REID) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY" up to $4,000,000 may be available for Marine Corps program wide support for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electro-chemically activated solution (ECASOL).

(b) The amount available under subsection (a) for the program element and purpose set forth in that subsection is in addition to any other amounts available under this Act for that program element and purpose.

SA 4404. Mr. INOUYE (for Mr. WARNER) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes; as follows:

At the end of title VIII, add the following:

SEC. 8124. (a) PRELIMINARY STUDY AND ANALYSIS REQUIRED.—The Secretary of the Army shall carry out a preliminary engineering study and environmental analysis regarding the establishment of a connector road between United States Route 1 and Telegraph Road in the vicinity of Fort Belvoir, Virginia.

(b) FUNDING.—Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY", up to $5,000,000 may be available for the preliminary study and analysis required by subsection (a).

SA 4405. Mr. INOUYE (for Mr. DODD) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $5,000,000 may be available for research on miniature and micro fuel cell systems.

SA 4406. Mr. INOUYE (for Mr. NICKLES) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in the bill, insert the following:

Of the funds appropriated in the Act under the heading "Research, Development, Test and Evaluation, Defense-Wide" up to $3,000,000 may be made available for the Supercritical Water Systems Explosives Demilitarization Technology.

SA 4407. Mr. STEVENS (for Mr. ROBERTS) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the end of Title IV, Research, Development, Test & Evaluation, Defense-Wide, add the following:

SEC. AGROTERRORIST ATTACK RESPONSE.

(a) AVAILABILITY.—(1) Of the amount appropriated under Title IV for development, test, and evaluation, defense-wide, the amount available for basic research, line 8, the Chemical and Biological Defense Program (PE 0601384BP) is hereby increased by $1,000,000, with the amount of such increase to be available for research, analysis, and assessment of federal, state, and local efforts to counter potential agroterrorist attacks.

(2) The amount available under paragraph (1) for research, analysis, and assessment described in that paragraph is in addition to any other amounts available in this Act for such research, analysis, and assessment.

(b) OFFSET.—Of the amount appropriated under Title IV for research, development, test, and evaluation, Defense-wide, the amount available for Agroterror prediction and risk assessment, line 37, Chemical and Biological Defense Program (PE 0603384BP), is hereby reduced by $1,000,000.

SA 4408. Mr. INOUYE proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

Effective upon the enactment of the Act entitled "An Act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes", section 309 of such Act is amended by striking "of" after the word "instead".

SA 4409. Mr. STEVENS (for Ms. COLLINS) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may modify the grant made to the State of Maine pursuant to section 310 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–____) such that the modified grant is for purposes of supporting community adjustment activities relating to the closure of the Naval Security Group Activity, Winter Harbor, Maine (the naval base on Schoodic Point, within Acadia National Park), and the reuse of such Activity, including reuse as a research and education center the activities of which may be consistent with the purposes of Acadia National Park, as determined by the Secretary of the Interior. The grant be so modified not later than 60 days after the date of the enactment of this Act.

SA 4410. Mr. INOUYE (for Mr. CARPER for himself and Mr. BIDEN)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $8,000,000 may be available for the Integrated Biological Warfare Technology Platform.

SA 4411. Mr. INOUYE (for Mr. BIDEN (for himself and Mr. CARPER)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $5,000,000 may be available for the Rotary, Multi-Fuel, Auxiliary Power Unit.

SA 4412. Mr. REID (for Mr. WELLSTONE) proposed an amendment to amendment SA 4364 submitted by Mr. WELLSTONE (for himself, Mr. JOHNSON, Mr. DURBIN, and Mr. REID) to the bill (H.R. 5010) making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

Strike all after the first word, insert the following:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

(d) EFFECTIVE DATE.—Effective one day after enactment.

SA 4413. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in the bill, insert the following:

"Of the funds appropriated under the heading Air Force, Operations and Maintenance, up to $1 million may be made available for computer server consolidation at the Air Combat Command. These funds are in addition to any funds otherwise provided to that command."

SA 4414. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

Of the funds provided under the heading "Research and Development, Air Force," up to $1,000,000 may be made available for research on nanoenergetic materials.

SA 4415. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AVAILABILITY OF AMOUNT FOR MUSCULAR DYSTROPHY RESEARCH.—Of the amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM", $10,400,000 shall be available for muscular dystrophy research.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

SA 4416. Mr. SMITH of Oregon (for himself, Mr. WYDEN, and Mrs. MURRAY) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY" and available for Ship Concept Advanced Design (PE0603563N), up to $12,000,000 may be available for the Sealion Technology Demonstration program for the purchase, test, and evaluation of a Sealion craft with modular capability.

SA 4417. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. None of the funds appropriated by this Act may be used for leasing of transport/VIP aircraft under any contract entered into under any procurement procedures other than pursuant to the competition and Contracting Act.

SA 4418. Mr. SMITH of Oregon (for himself, Mr. WYDEN, and Mrs. MURRAY) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY" and available for Ship Concept Advanced Design (PE0603563N), up to $8,000,000 may be available for the Sealion Technology Demonstration program for the purchase, test, and evaluation of a Sealion craft with modular capability.

SA 4419. Mr. CRAIG submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in Title VIII, insert the following:

"SEC. . Of the funds made available in this Act under the heading 'Research, Development, Test and Evaluation, Defense-Wide', up to $3,000,000 may be made available to digitize, convert, index, and format captured foreign documentary materials (including legacy materials) into a standard, usable format, to enable the timely analysis and use of mission critical data by analytical and warfighter personnel.

SA 4420. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was orderered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Notwithstanding any provision of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or any other provision of law, the Secretary of the Navy shall transfer administrative jurisdiction of the portion of the former Charleston Naval Base, South Carolina, comprising a law enforcement training facility of the Department of Justice, together with any improvements thereon, to the head of the department of the Federal Government having jurisdiction of the Border Patrol as of the date of the transfer under this section.

SA 4421. Mr. HUTCHINSON (for himself, Mrs. LINCOLN, and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the total amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE", $15,000,000 shall be available for the actions authorized by section 1044(c)(1) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat 1220; 10 U.S.C, 2370a note).

(b) The budget submitted to Congress for fiscal year 2004 under section 1105(a) of title 31, United States Code, shall include an amount for the implementation of a strategy for carrying out actions authorized by section 1044(c)(1) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat 1220; 10 U.S.C. 2370a note).

SA 4422. Mr. INOUYE (for Mr. AKAKA) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", for Servicewide Communications, $6,000,000 may be used for the Critical Infrastructure Protection Program.

SA 4423. Mr. INOUYE (for Mrs. CLINTON) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, AIR FORCE", up to $500,000 may be available for a contribution to the Griffiss Local Development Corporation (GLDC) for the renovation of Hangar Building 101 at former Griffiss Air Force Base, New York, in order to facilitate the reuse of the building for economic development purposes. Such renovation may include a new roof, building systems, fixtures, and leasehold improvements of the building.

SA 4424. Mr. STEVENS (for Mr. INHOFE) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for the Maintainers Remote Logistics Network.

SA 4425. Mr. INOUYE (for Mrs. FEINSTEIN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $5,000,000 may be available for the Integrated Chemical Biological Warfare Agent Detector Chip.

SA 4426. Mr. STEVENS (for Mrs. HUTCHISON) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill insert the following:

Of the funds provided under the heading "Research and Development, Air Force," up to $1,000,000 may be made available for research on nanoenergetic materials.

SA 4427. Mr. STEVENS (for Mr. THOMPSON (for himself and Mr. FRIST)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD", up to $2,000,000 may be available for the Communicator emergency notification system.

SA 4428. Mr. INOUYE (for Ms. LANDRIEU) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may, using amounts appropriated or otherwise made available by this Act, make a grant to the National D-Day Museum in the amount of $5,000,000.

SA 4429. Mr. INOUYE (for Mr. NELSON of Florida (for himself and Mr. GRAHAM)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $6,000,000 may be available for the Center for Advanced Power Systems.

SA 4430. Mr. STEVENS (for Mr. BUNNING) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill insert the following section;

SEC. Out of the Operation and Maintenance, Defense-Wide, funds appropriated, $1,000,000 may be available to continue the Department of Defense's internal security-container lock retrofit program for purchasing additional security locks, which meet federal specification FF-L-2740A.

SA 4431. Mr. INOUYE (for Mr. KENNEDY) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title V under the heading "NATIONAL DEFENSE SEALIFT FUND", up to $10,000,000 may be available for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study, which are to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels.

SA 4432. Mr. INOUYE (for Mrs. CARNAHAN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, AIR NATIONAL GUARD", up to $350,000 may be available for medical equipment.

SA 4433. Mr. STEVENS (for Mr. SMITH of Oregon (for himself, Mr. WYDEN, and Mrs. MURRAY)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY" and available for Ship Concept Advanced Design up to $8,000,000 may be available for the Sealion Technology Demonstration program for the purchase, test, and evaluation of a Sealion craft with modular capability.

SA 4434. Mr. STEVENS (for Mr. CRAIG) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in Title VIII, insert the following:

"SEC. . Of the funds made available in this Act under the heading 'Research, Development, Test and Evaluation, Defense-Wide', up to $3,000,000 may be made available to digitize, convert, index, and format captured foreign documentary materials (including legacy materials) into a standard, usable format, to enable the timely analysis and use of mission critical data by analytical and warfighter personnel.

SA 4435. Mr. LUGAR (for himself, Mr. BIDEN, Mr. DOMENICI, Mr. HAGEL, Mr. GRAHAM, Mr. LEVIN, Mr. DODD, and Mr. MCCAIN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 22 U.S.C. 5952 note) is amended—

(1) by inserting "(a) LIMITATION.—" before "No fiscal year"; and

(2) by adding at the end the following new subsection:

"(b) WAIVER.—(1) The limitation in subsection (a) shall not apply to funds appropriated for Cooperative Threat Reduction programs for a fiscal year if the President submits to the Speaker of the House of Representatives and the President pro tempore of the Senate a written certification that the waiver of the limitation in such fiscal year is important to the national security of the United States.

"(2) A certification under paragraph (1) for fiscal year 2003 shall cover funds appropriated for Cooperative Threat Reduction programs for that fiscal year and for fiscal years 2000, 2001, and 2002.

"(3) A certification under paragraph (1) shall include a full and complete justification for the waiver of the limitation in subsection (a) for the fiscal year covered by the certification.".

SA 4436. Ms. SNOWE (for herself and Mr. SESSIONS) submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-

WIDE", up to $5,000,000 may be available for small kill vehicle technology development (PE0603175C) for midcourse phase ballistic missile defense.

SA 4437. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", for civilian manpower and personnel management, up to $1,500,000 may be available for the Navy Pilot Human Resources Call Center, Cutler, Maine.

SA 4438. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE", up to $30,000,000 may be appropriated for the acquisition of commercial imagery, imagery products, and services from United States commercial sources of satellite-based remote sensing entities.

SA 4439. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) WAIVER OF TIME LIMITATION FOR AWARD OF MEDAL OF HONOR TO HENRY JOHNSON.—Any limitation established by law or policy for the time within which a recommendation for the award of a Medal of Honor must be submitted or the time within which the award must be made shall not apply to the award of the Medal of Honor to Henry Johnson of Albany, New York, for the service described in subsection (b), if the Secretary of the Army determines such action to be warranted in accordance with section 1130 of title 10, United States Code.

(b) COVERED SERVICE.—The service described in this subsection is the service of Henry Johnson as a member of the Army in France during the period of May 13 to 15, 1918.

(c) REVIEW BY SECRETARY OF THE ARMY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Army—

(1) shall complete a review of the records of the service described in subsection (b) of Henry Johnson to determine whether the award of the Medal of Honor to Henry Johnson for such service is warranted; and

(2) if the Secretary determines that the award of the Medal of Honor to Henry Johnson is warranted for such service, shall ensure that—

(A) the appropriate recommendation for the award is prepared and is processed in accordance with section 1130 of title 10, United States Code; and

(B) notice of the Secretary's determination under such section is provided to Congress in accordance with such section.

(d) RELATIONSHIP TO ELIGIBILITY FOR DISTINGUISHED-SERVICE CROSS.—The Secretary of the Army shall complete the actions required under this section with respect to the service described in subsection (b) before an award of the Distinguished-Service Cross of the Army is made to Henry Johnson for the same service.

SA 4440. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table, as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) COMPENSATION FOR MEMBERS OF ARMED FORCES AND OTHER GOVERNMENT PERSONNEL KILLED IN ACTIVITIES IN RESPONSE TO TERRORISM.—The Secretary of Defense shall pay, out of amounts available under subsection (h), compensation to the relatives of each individual described in subsection (b) who submit a claim for such compensation under subsection (d). The amount of such compensation shall be as provided in subsection (c).

(b) COVERED INDIVIDUALS.—An individual described in this subsection is as follows:

(1) A member of the Armed Forces, or an officer, employee, or contract employee of the United States Government, who was killed in or as a result of an offensive or defensive military operation under the Authorization for the Use of Military Force (Public Law 107-42; 115 Stat. 224) during the period beginning on September 11, 2001, and ending on the date of the enactment of this Act.

(2) A member of the Armed Forces, or an officer, employee, or contract employee of the United States Government, who was killed in or as a result of an accident connected with activities under the Authorization for the Use of Military Force during the period referred to in paragraph (1).

(c) AMOUNT OF COMPENSATION.—The amount payable under this section with regard to an individual described in subsection (b) is as follows:

(1) In the case of an individual described by paragraph (1) of that subsection, an amount equal to the amount that would be payable under the September 11th Victim Compensation Fund of 2001 (title IV of Public Law 107-42; 115 Stat. 237; 49 U.S.C. 40101 note) if the individual were an eligible individual under section 405(c)(2) of that Act (115 Stat. 239) by reason of death, including any economic and noneconomic losses.

(2) In the case of an individual described by paragraph (2) of that subsection, $250,000.

(d) CLAIM FOR COMPENSATION.—(1) Relatives seeking compensation under this section shall submit to the Secretary a claim for such compensation containing such information as the Secretary shall require.

(2) Not more than one claim may be submitted under this section with respect to an individual described in subsection (b).

(3) No claim may be submitted under this section after the date that is two years after the date on which regulations are prescribed under subsection (f).

(e) REVIEW AND DETERMINATION OF CLAIMS.—(1) The Secretary shall review each claim submitted under subsection (d) in order to determine the eligibility of the relatives submitting such claim for compensation under this section.

(2) To the maximum extent practicable, the Secretary shall conduct the review required by paragraph (1) in accordance with the provisions of section 405(b) of the September 11th Victim Compensation Fund of 2001 (115 Stat. 238), including the extension to relatives submitting such claims of the rights afforded claimants under paragraph (4) of that section.

(f) REGULATIONS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe regulations to carry out this section.

(2) The Secretary shall prescribe regulations under this subsection in consultation with the Attorney General and the Special Master appointed under section 404(a) of the September 11th Victim Compensation Fund of 2001 (115 Stat. 237).

(g) RELATIVE DEFINED.—In this section, the term "relative", in the case of an individual described in subsection (b), means the spouse, children, dependent parents, and dependent grandparents of the individual.

(h) FUNDING.—Notwithstanding any other provision of this Act, amounts appropriated by title II under the heading "FORMER SOVIET UNION THREAT REDUCTION" shall be available, to the extent necessary, for the payment of compensation under this section.

SA 4441. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) COMPENSATION FOR MEMBERS OF ARMED FORCES AND OTHER GOVERNMENT PERSONNEL KILLED IN ACTIVITIES IN RESPONSE TO TERRORISM.—The Secretary of Defense shall pay, out of amounts available under subsection (h), compensation to the relatives of each individual described in subsection (b) who submit a claim for such compensation under subsection (d). The amount of such compensation shall be as provided in subsection (c).

(b) COVERED INDIVIDUALS.—An individual described in this subsection is as follows:

(1) A member of the Armed Forces, or an officer, employee, or contract employee of the United States Government, who was killed in or as a result of an offensive or defensive military operation under the Authorization for the Use of Military Force (Public Law 107-42; 115 Stat. 224) during the period beginning on September 11, 2001, and ending on the date of the enactment of this Act.

(2) A member of the Armed Forces, or an officer, employee, or contract employee of the United States Government, who was killed in or as a result of an accident connected with activities under the Authorization for the Use of Military Force during the period referred to in paragraph (1).

(c) AMOUNT OF COMPENSATION.—The amount payable under this section with regard to an individual described in subsection (b) is as follows:

(1) In the case of an individual described by paragraph (1) of that subsection, an amount equal to the amount that would be payable

under the September 11th Victim Compensation Fund of 2001 (title IV of Public Law 107–42; 115 Stat. 237; 49 U.S.C. 40101 note) if the individual were an eligible individual under section 405(c)(2) of that Act (115 Stat. 239) by reason of death, including any economic and noneconomic losses.

(2) In the case of an individual described by paragraph (2) of that subsection, $250,000.

(d) Claim for Compensation.—(1) Relatives seeking compensation under this section shall submit to the Secretary a claim for such compensation containing such information as the Secretary shall require.

(2) Not more than one claim may be submitted under this section with respect to an individual described in subsection (b).

(3) No claim may be submitted under this section after the date that is two years after the date on which regulations are prescribed under subsection (f).

(e) Review and Determination of Claims.—(1) The Secretary shall review each claim submitted under subsection (d) in order to determine the eligibility of the relatives submitting such claim for compensation under this section.

(2) To the maximum extent practicable, the Secretary shall conduct the review required by paragraph (1) in accordance with the provisions of section 405(b) of the September 11th Victim Compensation Fund of 2001 (115 Stat. 238), including the extension to relatives submitting such claims of the rights afforded claimants under paragraph (4) of that section.

(f) Regulations.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe regulations to carry out this section.

(2) The Secretary shall prescribe regulations under this subsection in consultation with the Attorney General and the Special Master appointed under section 404(a) of the September 11th Victim Compensation Fund of 2001 (115 Stat. 237).

(g) Relative Defined.—In this section, the term "relative", in the case of an individual described in subsection (b), means the spouse, children, dependent parents, and dependent grandparents of the individual.

(h) Funding.—Notwithstanding any other provision of this Act, amounts appropriated by title VII under the heading "Payment to Kaho'olawe Island Conveyance, Remediation and Environmental Restoration Fund" shall be available, to the extent necessary, for the payment of compensation under this section.

SA 4442. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

Sec. 8124. (a) Findings.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harms' way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Agents of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Michael Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Michael Spann left behind a wife and 3 children who are very proud of the heroic actions of their patriot Father.

(9) Under the September 11th Victim Compensation Fund of 2001, the average award as determined by the Special Master will be $1,850,000.

(10) Members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit.

(11) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) Designation of Johnny Michael Spann Patriot Trusts.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) may be designated as a "Johnny Michael Spann Patriot Trust".

(c) Requirements for the Designation of Johnny Michael Spann Patriot Trusts.—The requirements described in this subsection are as follows:

(1) At least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Michael Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held for investment for) surviving spouses, children, or dependent parents or grandparents of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including personal services contractors or other contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government, whose deaths occur in the line of duty and arise out of terrorists attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001 under the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Michael Spann Patriot Trust may inure to the benefit of any private shareholder or individual based on their position as a shareholder or individual.

(4) No part of the activities of any Johnny Michael Spann Patriot Trust shall be used for carrying on propaganda or otherwise attempting to influence legislation.

(5) No Johnny Michael Spann Patriot Trust may participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

(6) Each Johnny Michael Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be independently audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, shall be open to public inspection, and shall be conducted consistent with the protection of intelligence sources and methods and of sensitive law enforcement information.

(7) Each Johnny Michael Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the formation of such Trust.

(8)(A) Any funds distributed under a Johnny Michael Spann Patriot Trust may be reduced by the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of injuries arising out of terrorists attacks, military operations, or intelligence operations occurring after September 11, 2001.

(B) Collateral source compensation shall include all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to injuries arising out of terrorists attacks, military operations, or intelligence operations occurring after September 11, 2001.

(d) Treatment of Johnny Michael Spann Patriot Trusts.—Any Johnny Michael Spann Patriot Trust shall be treated as described in subparagraph (A) of section 323(e)(4) of the Federal Election Campaign Act of 1971 (as added by section 101(a) of the Bipartisan Campaign Reform Act of 2002, Public Law No. 107–155; 116 Stat. 81) for the purposes of such subparagraph.

(e) Notification of Trust Beneficiaries.—Notwithstanding any other provision of law, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of the Central Intelligence Agency, or their designees, may, with the permission of a spouse or other beneficiary eligible to receive funds from a Johnny Michael Spann Patriot Trust, notify such Trust on how to contact such spouse or other beneficiary, in a manner consistent with the protection of intelligence sources and methods, for the purpose of providing assistance from such Trust.

(f) Regulations.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of the Central Intelligence Agency, shall prescribe regulations to carry out this section.

SA 4443. Mr. McCAIN proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

Beginning on page 221, line 24, strike "60 days after".

SA 4444. Mr. McCAIN proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. None of the funds appropriated by this Act may be used for leasing of transport/VIP aircraft under any contract entered into under any procurement procedures other than pursuant to the Competition and Contracting Act.

SA 4445. Mr. McCAIN (for himself and Mr. FEINGOLD) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of the Air Force shall not enter into any lease for transport/VIP aircraft for any period that includes any part of fiscal year 2003 until there is enacted a law, other than an appropriation Act, that authorizes the appropriation of funds in the amount or amounts necessary to enter into the lease and a law appropriating such funds pursuant to such authorization of appropriations.

SA 4446. Mr. SCHUMER (for himself and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Notwithstanding any other provision of law, the Secretary of Defense shall, to the maximum extent practicable, ensure that the production facilities that would have been utilized for production of the Crusader artillery system are utilized instead for the system selected in lieu of the Crusader artillery system to meet the needs of the Army for indirect fire capabilities.

SA 4447. Mr. WELLSTONE (for himself, Mr. CORZINE, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Funds appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE" may be used by the Military Community and Family Policy Office of the Department of Defense for the operation of multidisciplinary, impartial domestic violence fatality review teams of the Department of Defense that operate on a confidential basis.

(b) Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE", $10,000,000 may be used for an advocate of victims of domestic violence at each military installation to provide confidential assistance to victims of domestic violence at the installation.

(c) In each of the years 2003 through 2007, the Secretary of Defense shall submit to Congress an annual report on the implementation of the recommendations included in the reports submitted to the Secretary by the Defense Task Force on Domestic Violence under section 591(e) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 639; 10 U.S.C. 1562 note).

SA 4448. Mr. BYRD (for himself and Mr. GRASSLEY) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

(3) The disciplinary actions under this subsection may include—

(A) the review of the security clearance of the individual involved; and

(B) the modification or revocation of such security clearance in light of the review.

(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).

SA 4449. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", up to $2,500,000 may be available for the disposal of materials from Reach A at Earle Naval Weapons Station, New Jersey, to an appropriate inland site designated by the Secretary of the Navy.

SA 4450. Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM" and available for research, development, test, and evaluation, up to $4,000,000 may be available for the Acellular Matrix Research Orthopedic Trauma Program.

SA 4451. Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) ADDITIONAL AMOUNT FOR DEFENSE HEALTH PROGRAM.—The amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM" is hereby increased by $4,000,000 with the amount of the increase to be allocated to amounts available for research, development, test, and evaluation.

(b) AVAILABILITY OF AMOUNT FOR ACELLULAR MATRIX RESEARCH ORTHOPEDIC TRAUMA PROGRAM.—Of the amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM" and available for research, development, test, and evaluation, as increased by subsection (a), up to $4,000,000 may be available for the Acellular Matrix Research Orthopedic Trauma Program.

SA 4452. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY", up to $2,000,000 may be available for the CKEM, IMU program.

SA 4453. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY" and available for Medical Advanced Technology, up to $2,000,000 may be available for the medical errors reduction initiative.

SA 4454. Mr. STEVENS (for Mr. NICKLES) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

Of the funds appropriated in the Act under the heading "Operations and Maintenance, Air Force" up to $2,000,000 may be made available for the Aircraft Repair Enhancement Program at the Oklahoma City Air Logistics Center.

SA 4455. Mr. INOUYE (for Mr. MILLER (for himself and Mr. ALLEN)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY", up to $1,000,000 may be available for Trouble Reports Information Data Warehouse.

SA 4456. Mr. STEVENS (for Ms. SNOWE) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", for civilian manpower and personnel management, $1,500,000 may be available for the Navy Pilot Human Resources Call Center, Cutler, Maine.

SA 4457. Mr. INOUYE (for Mr. NELSON of Florida (for himself and Mr. GRAHAM)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE", up to $2,170,000 may be available for the Nanophotonic Systems Fabrication Facility.

SA 4458. Mr. STEVENS (for Ms. SNOWE (for himself, Mr. SESSIONS, and Ms. COLLINS)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for small kill vehicle technology development (PE0603175C) for midcourse phase ballistic missile defense.

SA 4459. Mr. STEVENS (for Mr. WARNER) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 144, line 25, after the word "Forces", add the following: ": *Provided further*, That of the funds provided under this section, up to $5,000,000 may be made available for the Common Affordable Radar Processing program"

SA 4460. Mr. INOUYE (for Mrs. BOXER) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Of the funds provided in this Act under the heading "Operation and Maintenance, Defense-wide," the Department of Defense should spend the amount requested for the Family Advocacy Program, with priority in any increase of funding provided to bases that are experiencing increases in domestic violence.

SA 4461. Mr. INOUYE (for Mr. TORRICELLI (for himself and Mr. CORZINE)) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading "OPERATION AND MAINTENANCE, NAVY", up to $2,500,000 may be available for the disposal of materials from Reach A at Earle Naval Weapons Station, New Jersey, to an appropriate inland site designated by the Secretary of the Navy.

SA 4462. Mr. STEVENS proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

At the appropriate place in the bill, insert:

SEC. . Not later than 60 days after enactment of this Act, the Commander in Chief of the United States European Command shall submit a plan to the congressional defense committees that provides for the refurbishment and re-engining of the NATO AWACS aircraft fleet: *Provided*, That this report reflect the significant contribution made by the NATO AWACS fleet in response to the attacks on the United States on September 11, 2001, and the invocation of Article V of the North Atlantic Treaty: Provided further, That the plan shall describe any necessary memorandum agreement between the United States and NATO for the refurbishment and re-engining of these aircraft.

SA 4463. Mr. INOUYE (for Mr. HOLLINGS) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Notwithstanding any provision of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or any other provision of law, the Secretary of the Navy may transfer administrative jurisdiction of the portion of the former Charleston Naval Base, South Carolina, comprising a law enforcement training facility of the Department of Justice, together with any improvements thereon, to the head of the department of the Federal Government having jurisdiction of the Border Patrol as of the date of the transfer under this section.

SA 4464. Mr. INOUYE (for Mr. HARKIN) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title VI under the heading "DEFENSE HEALTH PROGRAM," up to $2,000,000 may be available to the Uniformed Services University of the Health Sciences Center (USUHS) for Complementary and Alternative Medicine Research for Military Operations and Healthcare (MIL–CAM).

SA 4465. Mr. STEVENS (for Mr. ALLARD) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by the title II under the heading "OPERATION AND MAINTENANCE, DEFENSE-WIDE," up to $30,000,000 may be appropriated for the competitive acquisition of commercial imagery, imagery products, and services from United States commercial sources of satellite-based remote sensing entities.

SA 4466. Mr. INOUYE (for Mr. HUTCHINSON (for himself, Mrs. LINCOLN, Mr. ROBERTS, and Mrs. HUTCHISON) proposed an amendment to the bill H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the total amount appropriated by title IV under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE", up to $5,000,000 may be available for the development of an organic vaccine protection capability to protect members of the Armed Forces against the effect of use of biological warfare agents.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HARKIN. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will meet on Thursday, August 1, 2002 in SR–328A at 9:30 a.m. The purpose of this business meeting will be to discuss the nomination of Mr. Tom Dorr to be Under Secretary of Agriculture for Rural Development at the U.S. Department of Agriculture and to consider disaster assistance legislation.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, August 1, 2002, at 10:00 a.m. in the Room 485 of the Russell Senate Office Building to conduct a business meeting to mark up S. 1344, a bill to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers; S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program; and S. 2711, a bill to reauthorize and improve programs relating to Native Americans, to be followed immediately by an oversight hearing on the Interior Secretary's Report on the Hoopa Yurok Settlement Act.

The Committee will meet again on Thursday, August 1, 2002 at 2:00 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, July 31, 2002, at 3 P.M., in open and possibly closed session to receive testimony on operation enduring freedom.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, July 31, 2002, immediately following the first rollcall vote, to conduct a mark-up on the nominations of Mr. Ben S. Bernanke, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System; and Mr. Donald L. Kohn, of Virginia, to be a member of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 31, 2002, at 9:30 a.m. on the nomination of Rebecca Dye to a Federal Maritime Commissioner and immediately following a Surface Transportation/Merchant Marine Subcommittee hearing on Railroad Shipper Issues.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate Wednesday, July 31, 2002 at 9:30 a.m. to hold a hearing on Iraq.

Agenda—Witnesses

PANEL I: THE THREAT

Mr. Charles Duelfer, Visiting Resident Scholar, Middle East Studies, Center for Strategic and International Studies, Washington, DC.

Dr. Khidir Hamza, Former Iraqi Nuclear Engineer, Director, Council on Middle Eastern Affairs, New York, NY.

Professor Anthony Cordesman, Senior Fellow and Arleigh A. Burke Chair in Strategy, Center for Strategic and International Studies, Washington, DC.

PANEL II: POSSIBLE RESPONSES

The Honorable Robert Gallucci, Dean, school of Foreign Service, Georgetown University, Washington, DC.

Additional witnesses to be announced.

PANEL III: REGIONAL CONSIDERATIONS

Dr. Shirbley Telhami, Professor and Answar Sadat Chair, Department of Government and Politics, University of Maryland, College Park, MD.

Dr. Fouad Ajami, Professor and Director of Middle East Studies, School of Advanced International Studies, Johns Hopkins University, Washington, DC.

Dr. Geoffrey Kemp, Director of Regional Strategic Studies, Nixon Center, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "the Prison rape Reduction Act of 2002," on Wednesday, July 31, 2002 in Dirksen Room 226 at 1:30 p.m.

Witness List

PANEL I

The Honorable Frank R. Wolf, United states Representative (R–VA).

PANEL II

Linda Bruntmyer, Amarillo, Texas.

Mark Earley, President and CEO of Prison Fellowship Ministries, Reston, Virginia.

Robert W. Dumond, Licensed Clinical Mental Health Counselor, Member, Board of Advisors, Stop Prisoner Rape, Inc., Hudson, New Hampshire.

Rabbi David Saperstein, Director, Religious Action Center of Reform Judaism, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Class Action Litigation," on Wednesday, July 31, 2002 in Dirksen Room 226 at 10 a.m.

Witness List

Paul Bland, Staff Attorney, Trial Lawyers for Public Justice, Washington, DC.

Walter E. Dellinger, III, Partner, O'Melveny & Myers, Washington, DC.

Thomas Henderson, Chief Counsel and Senior Deputy, Lawyers' Committee for Civil Rights, Washington, DC.

Lawrence Mirel, Commissioner of District of Columbia, Department of Insurance and Securities Regulation, Washington, DC.

Shaneen Wahl, Port Charlotte, FL.

Hilda Bankston, Jefferson County, MS.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Wednesday, July 31, 2002 at 9:45 a.m. in SD–226.

Tentative Agenda

I. NOMINATIONS

Priscilla Owen to be a U.S. Circuit Court Judge for the Fifth Circuit.

Timothy J. Corrigan to be a U.S. District Court Judge for the Middle District of Florida.

Jose E. Martinez to be a U.S. District Court Judge for the Southern District of Florida.

Terrence F. McVerry to be a U.S. District Court Judge for the Western District of Pennsylvania.

Arthur Schwab to be a U.S. District Court Judge for the Western District of Pennsylvania.

To be a U.S. Attorney: John Byron (J.B.) Van Hollen for the Western District of Wisconsin.

To be a U.S. Marshal: Charles E. Beach for the Southern District of Iowa; Peter Alan Lawrence for the Western District of New York; Richard Vaughn Mecum for the Northern District of Georgia; and Burton Stallwood for the District of Rhode Island.

I. BILLS

S. 2480, Law Enforcement Officers Safety Act of 2002 [Leahy/Hatch/Feinstein/Thurmond/Cantwell/Grassley/Edwards/DeWine/Sessions/McConnell/Brownback].

S. 2127, A bill for the relief of the Pottawatomi Nation in Canada for settlement of certain claims against the United States. [Inouye].

S. 2713, Judicial Improvements Act of 2002 [Leahy/Thompson].

H.R. 3892, Judicial Improvements Act of 2002 [Coble/Berman].

H.R. 809, Antitrust Technical Corrections Act of 2001 [Sensenbrenner/Conyers].

H.R. 486, For the relief of Barbara Makuch. [Reynolds].

H.R. 487, For the relief of Eugene Makuch. [Reynolds].

H.R. 807, For the relief of Rabon Lowry of Pembroke, North Carolina [McIntyre].

H.R. 3375, Embassy Employee Compensation Act [Blunt].

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 31, 2002 at 2:30 p.m. to hold an open hearing on S. 2659—Non-US persons/probable cause and S.2586—Exclude US persons from "foreign power" from Foreign Surveillance Act 1978.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia be authorized to meet on Wednesday, July 31, 2002 at 10 a.m. for a hearing entitled "When Diets Turn Deadly: Consumer Safety and Weight Loss Supplements."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SUPERFUND, TOXICS, RISK AND WASTE MANAGEMENT

Mr. REID. Mr. President: I ask unanimous consent that the Committee on Environment and Public Works, Subcommittee on Superfund, Toxics, Risk and Waste Management be authorized to meet on Wednesday, July 31, 2002, at 10 a.m. to conduct a hearing in connection with the EPA Inspector General's report on the Superfund program

The hearing will be held in SD-406

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER AND POWER

Mr. REID. Mr. President, I ask unanimous consent that the subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Wednesday, July 31, 2002, at 2:30 p.m. in SD-366. The purpose of this hearing is to receive testimony on the following bills:

S. 934, to require the Secretary of the Interior to construct the rocky Boy's/North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water system and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system, and for other purposes;

S. 577, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under the Act, and for other purposes;

S. 1882, to amend the Small Reclamation Projects Act of 1956, and for other purposes;

S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho; and

S. 2696, to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that the following staff members of the Appropriations Committee be granted floor privileges during consideration of H.R. 5010, the DOD appropriations bill: Steven Cortese, Sid Ashworth, Kraig Siracuse, Alycia Farrell, and Nicole Royale.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I also ask unanimous consent that Randy Rotte, a fellow in Senator HUTCHISON's office, be permitted on the floor of the Senate during debate on the Defense appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. On behalf of Senator MIKULSKI, I ask unanimous consent that Major Mark Hamilton, a Defense fellow in her office, be granted floor privileges during the debate of the Defense bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I ask unanimous consent that Marko Medved, a fellow serving in Senator COCHRAN's office, be granted floor privileges during the duration of the consideration of the Defense bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Barbara Morrow, a fellow on my staff, be granted the privilege of the floor for the duration of the fiscal year 2003 Defense appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I ask unanimous consent that MAJ James Clapsaddle, an Air Force fellow in the office of Senator CARNAHAN, be granted the privilege of the floor during the duration of the debate on the Defense appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I ask unanimous consent that Ms. Elizabeth Schmid, a Presidential management intern assigned to the Appropriations Committee, and Ms. Lela Holden, a legislative fellow in my office, be granted the privilege of the floor during consideration of H.R. 5010.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent Senator MCCAIN's legislative fellow, Navy LCDR Paul Gronemeyer, be granted floor privileges during consideration of the Department of Defense Appropriations Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I ask unanimous consent that Eric Wagner, a fellow in my office, be granted floor privileges for the remainder of the Senate's consideration of the Defense appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 5010

Mr. REID. Mr. President, I ask unanimous consent that when the DOD debate takes place tomorrow as per the unanimous consent agreement already in effect, under the leader time, Senators CANTWELL and MURRAY be recognized each for 2 minutes. Under the agreement, the leader has 10 minutes, as I recall, so they would take 4 minutes of that.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. I ask unanimous consent the Senate proceed to executive session to consider the following nominations:

The military promotions reported earlier today by the Armed Services Committee which are Executive Calendar Nos. 975 through 996; Calendar No. 969, Ben Bernanke to be a member of the Federal Board of Governors of the Federal Reserve System; Executive Calendar No. 997, Donald Kohn to be a member of the Board of Directors of the Federal Reserve System; and the nominations placed at the Secretary's desk; that the nominations be confirmed; the motions to reconsider be laid on the table; any statements thereon be printed in the RECORD at the appropriate place as if given; that the President be immediately notified of the Senate's action; that the Senate then return to legislative session, with the preceding all occurring without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

FEDERAL RESERVE SYSTEM

Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System for the unexpired term of fourteen years from February 1, 1990.

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Lt. Gen. James T. Hill, 7734

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be admiral

Vice Adm. Edmund P. Giambastiani, Jr., 8318

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Charles J. Dunlap, Jr., 5759
Col. Michael N. Madrid, 3003

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Robert R. Dierker, 7380

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Bryan D. Brown, 2565

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Philip R. Kensinger, Jr., 0022

MARINE CORPS

The following named officer for appointment as Assistant Commandant of the Marine Corps and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 601 and 5044:

To be general

Lt. Gen. William L. Nyland, 8595

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Paul T. Mikolashek, 2507

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Richard A. Cody, 6483

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Bantz J. Craddock, 7782

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. William E. Ward, 9000

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203601:

To be major general

Brig. Gen. William S. Crupe, 1989

MARINE CORPS

The following named officers for appointment in the United States Marine Corps to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. James F. Amos, 1550
Brig. Gen. John G. Castellaw, 2524
Brig. Gen. Timothy E. Donovan, 4843
Brig. Gen. Robert M. Flanagan, 2865
Brig. Gen. James N. Mattis, 7981
Brig. Gen. Gordon C. Nash, 4684
Brig. Gen. Robert M. Shea, 3652
Brig. Gen. Frances C. Wilson, 7788

The following named officer for appointment in the United States Marine Corp to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Martin R. Berndt, 8515

NAVY

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be real admiral

Rear Adm. (lh) Steven B. Kantrowitz, 3208

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) James Manzelmann, Jr., 4656

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be real admiral

Rear Adm. (lh) Dennis M. Dwyer, 4756

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Richard A. Mayo, 1835
Rear Adm. (lh) Donald C. Arthur, Jr., 7104

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (Lower Half)

Capt. Gregory R. Bryant, 4952

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (Lower Half)

Capt. Andrew M. Singer, 1084

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Michael D. Malone, 2917

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Vice Adm. John B. Nathman, 6751

FEDERAL RESERVE SYSTEM

Donald L. Kohn, of Virginia, to be a Member of the Board of Governors of the Federal Reserve System for a term of fourteen years from February 1, 2002.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

AIR FORCE

PN1459 Air Force nominations (13) beginning JOHN W. BAKER, and ending DAVID E. WILSHEK, which nominations were received by the Senate and appeared in the Congressional Record of February 27, 2002

PN1930 Air Force nominations (24) beginning SHELLEY R. ATKINSON, and ending RANDY K. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1988 Air Force nomination of Fredric A. Marks, which was received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1989 Air Force nominations (38) beginning MEREDITH L. * ADAMS, and ending EDWIN W. * WRIGHT, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1190 Air Force nominations (59) beginning SARA K. * ACHINGER, and ending CHARLES E. * WIEDIE, JR., which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1991 Air Force nominations (1844) beginning CHRISTOPHER R. * ABRAMSON, and ending ANNAMARIE * ZURLINDEN, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN2002 Air Force nomination of Kurt R.L. Peters, which was received by the Senate and appeared in the Congressional Record of July 22, 2002

PN2031 Air Force nominations (3) beginning BUENAVENTURA Q. ALDANA, and ending ANDREW W. TICE, which nominations were received by the Senate and appeared in the Congressional Record of July 25, 2002

ARMY

PN1279 Army nominations (20) beginning LAURA R. BROSCH, and ending CONNORS A WOLFORD, which nominations were received by the Senate and appeared in the Congressional Record of December 11, 2001

PN1365 Army nominations (33) beginning ANN L BAGLEY, and ending KEITH A WUNSCH, which nominations were received by the Senate and appeared in the Congressional Record of January 28, 2002

PN1366 Army nominations (93) beginning ROBERT C ALLEN, JR, and ending CHRISTINA M YUAN, which nominations were received by the Senate and appeared in the Congressional Record of January 28, 2002

PN1863 Army nominations (30) beginning MARVIN P * ANDERSON, and ending KENNETH O * WYNN, which nominations were received by the Senate and appeared in the Congressional Record of June 7, 2002

PN1864 Army nominations (188) beginning JOHN G * ANGELO, and ending VIRGINIA D * YATES, which nominations were received by the Senate and appeared in the Congressional Record of June 7, 2002

PN1992 Army nominations (4) beginning WILLIAM A. BENNETT, and ending CHARLES B. TEMPLETON, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2002

PN1993 Army nominations (9) beginning JOHN W. BAILEY, and ending JOYCE L. STEVENS, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1994 Army nomination of Alonzo C. Cutler, which was received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1995 Army nominations (7) beginning DOMINIC D. ARCHIBALD, and ending RICHARD L. THOMAS, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1996 Army nominations (8) beginning RICKY W. BRANSCUM, and ending FREDERICK O. STEPAT, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN1997 Army nominations (9) beginning CURTIS W. ANDREWS, and ending THOMAS F. STEPHENSON, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

PN2033 Army nominations (2) beginning ANTONIO CORTESSANCHEZ, and ending KIMBERLY D. WILSON, which nominations were received by the Senate and appeared in the Congressional Record of July 25, 2002

PN2034 Army nominations (8) beginning HENRY G. BERNREUTER, and ending MARK D. SCRABA, which nominations were received by the Senate and appeared in the Congressional Record of July 25, 2002

COAST GUARD

PN1986 Coast Guard nominations (2) beginning George H. Teuton, and ending Blake L. Novak, which nominations were received by the Senate and appeared in the Congressional Record of July 18, 2002

MARINE CORPS

PN1636 Marine Corps nominations (3) beginning MICHAEL J. BISSONNETTE, and ending DANIEL J. MCLEAN, which nominations were received by the Senate and appeared in the Congressional Record of April 11, 2002

NAVY

PN1670 Navy nomination of Duane W. Mallicoat, which was received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1671 Navy nomination of Francis Michael Pascual, which was received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1672 Navy nomination (2) beginning LARRY D PHEGLEY, and ending JEFFREY ROBERT VANKEUREN, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1673 Navy nominations (3) beginning ARTHUR KELSO DUNN, and ending WAYNE TYLER NEWTON, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1674 Navy nominations (4) beginning MARK THOMAS DAVISON, and ending RICHARD SHANT ROOMIAN, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1675 Navy nominations (3) beginning JENNITH ELAINE HOYT, and ending ROBERT A. WOOD, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1676 Navy nominations (6) beginning EDMUND WINSTON BARNHART, and ending L M SILVESTER, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1677 Navy nominations (4) beginning ROBERT M CRAIG, and ending MELANIE SUZANNE WINTERS, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002

PN1678 Navy nominations (12) beginning ROBERT KENNETH BAKER, and ending RICHARD H RUSSELL, which nominations were received by the Senate and appeared in the Congressional Record of April 19, 2002

PN1679 Navy nominations (18) beginning DAVID STEWART CARLSON, and ending MICHAEL JOSEPH ZULICH, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002.

PN1680 Navy nominations (43) beginning JOHN ALDA, JR, and ending KATHRYN DICKENS YATES, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002.

PN1681 Navy nominations (22) beginning MICHAEL P ARGO, and ending MARK STEVEN SPENCER, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002.

PN1682 Navy nominations (194) beginning RONALD DAVID ABATE, and ending GLENN L ZITKA, which nominations were received by the Senate and appeared in the Congressional Record of April 16, 2002.

PN1815 Navy nominations (23) beginning DAVID B AUCLAIR, and ending RYAN M WILSON, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1816 Navy nominations (28) beginning KENNETH C ALEXANDER, and ending TIMOTHY G ZAKARISKI, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1817 Navy nominations (33) beginning DAVID F BAUCOM, and ending JONATHAN A YUEN, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1818 Navy nominations (33) beginning ROBERT D BECHILL, and ending PHILIP H WRIGHT, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1819 Navy nominations (36) beginning LYNN P ABUMARI, and ending SUSAN YOKOYAMA, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1820 Navy nominations (39) beginning DAVID W ANDERSON, and ending STEPHEN R STEELE, which nominations were received by the Senate and appeared in the Congressional Record of June 4, 2002.

PN1835 Navy nominations (19) beginning BARNEY R BARENDSE, and ending KRISTIANE M WILEY, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1836 Navy nominations (13) beginning MICHAEL J BOOCK, and ending ALEXANDER W WHITAKER, IV, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1837 Navy nominations (20) beginning STEPHEN T AHLERS, and ending KERRY R THOMPSON, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1838 Navy nominations (2) beginning DANIEL C ALDER, and ending ERIC J ZINTZ, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1839 Navy nominations (12) beginning ALAN T BAKER, and ending DOUGLAS J WAITE, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1841 Navy nomination of James T. Conen which was received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1842 Navy nominations (7) beginning JOSEPH D. CALDERONE, and ending RICHARD A. WILLIAMS, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1843 Navy nominations (7) beginning TIMOTHY G ALBERT, and ending JANICE M STACYWASHINGTON, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1844 Navy nominations (2) beginning WARREN WOODWARD RICE, and ending MARK J SAKOWSKI, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1845 Navy nominations (8) beginning BARBARA S BLACK, and ending DOUGLAS D WRIGHT, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1846 Navy nominations (2) beginning MICHAEL R BONNETTE, and ending DAVID C PHILLIPS, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1847 Navy nominations (38) beginning JOSE R ALMAGUHER, and ending KENNETH M STINCHFIELD, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2002.

PN1903 Navy nominations (3) beginning ROXIE T MERRITT, and ending JACQUELINE C YOST, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1904 Navy nominations (5) beginning TRECI D DIMAS, and ending DAVID G SIMPSON, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1905 Navy nominations (5) beginning STEPHEN W BARTLETT, and ending JAMES M TUNG, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1906 Navy nominations (5) beginning DAVID R ARNOLD, and ending LORI F TURLEY, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1907 Navy nominations (6) beginning VICTOR G ADDISON, JR., and ending ZDENKA S WILLIS, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1908 Navy nominations (7) beginning ROBERT J FORD, and ending EDWIN F WILLIAMSON, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1909 Navy nominations (8) beginning DAVID A BELTON, and ending JAMES A THOMPSON, JR., which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1910 Navy nominations (6) beginning JEFFERY A BENDER, and ending DAVID E WERNER, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1911 Navy nominations (11) beginning ALEXANDER P BUTTERFIELD, and ending ELIZABETH L TRAIN, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1912 Navy nominations (19) beginning TERRY J BENEDICT, and ending EDWARD D WHITE III, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1913 Navy nominations (13) beginning PETER D BAUMANN, and ending ALLISON D WEBSTERGIDDINGS, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1915 Navy nominations (40) beginning STEPHEN C BALLISTER, and ending JEROME ZINNI, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002.

PN1916 Navy nominations (14) beginning VERNON E BAGLEY, and ending BOYD T ZBINDEN, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1917 Navy nominations (13) beginning WESTON J ANDERSON, and ending STEPHEN C WOLL, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1918 Navy nominations (11) beginning KATHLEEN B DANIELS, and ending TERIANN SAMMIS, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1919 Navy nominations (17) beginning DAVID A BONDURA, and ending WILBURN T STRICKLAND, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1920 Navy nominations (18) beginning CHRISTIAN D BECKER, and ending SCOTT M WOLFE, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1921 Navy nominations (39) beginning JULIENNE E ALMONTE, and ending MICHAEL F WEBB, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1922 Navy nominations (57) beginning ALFREDO L ALMEIDA, and ending MARK A WISNIEWSKI, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1923 Navy nominations (13) beginning JON D ALBRIGHT, and ending MICHAEL W ZARKOWSKI, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1924 Navy nominations (521) beginning TODD A ABLER, and ending THOMAS A ZWOLFER, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2002

PN1931 Navy nomination of Roger E Morris, which was received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1932 Navy nomination of Jane E McNeely, which was received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1933 Navy nominations (5) beginning GENARO T BERLTRAN, JR., and ending THEORDORE T POSUNIAK, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1934 Navy nominations (37) beginning SEVAK ADAMIAN, and ending CLIFFORD ZDANOWICZ, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1935 Navy nominations (43) beginning PIUS A AIYELAWO, and ending GEORGE S WOLOWICZ, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1936 Navy nominations (21) beginning SALVADOR AGUILERA, and ending DONALD P TROAST, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1937 Navy nominations (70) beginning DANIEL L ALLEN, and ending MICHAEL J WILSON, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1938 Navy nominations (114) beginning DANIEL J ACKERSON, and ending JOHNNY WON, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002

PN1939 Navy nominations (16) beginning CONNIE J BULLOCK, and ending BRENDAN F WARD, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002.

PN1940 Navy nominations (29) beginning ANGELICA L CALMONTE, and ending LESTER M WHITLEY, JR., which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002.

PN1941 Navy nominations (33) beginning KATHRYN A ALLEN, and ending JOHN A ZULICK, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2002.

PN2003 Navy nomination of William W Crow, which was received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2004 Navy nomination of Joel C Smith, which was received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2005 Navy nomination of Joseph R Beckham, which was received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2006 Navy nomination of Michael E Moore, which was received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2007 Navy nominations (11) beginning CHARLES W BROWN, and ending TANYA L WALLACE, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2008 Navy nominations (16) beginning TODD E BARNHILL, and ending DOMINICK A VINCENT, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2009 Navy nominations (16) beginning COLLEEN M BARIBEAU, and ending KIM C WILLIAMS, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2010 Navy nominations (23) beginning VINCENT A AUGELLI, and ending REESE K ZOMAR, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2011 Navy nominations (23) beginning ANGEL BELLIDO, and ending WALTER J WINTERS, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2012 Navy nominations (38) beginning MICHAEL P BANASZEWSKI, and ending BRIAN S ZITO, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2013 Navy nominations (46) beginning STUART R BLAIR, and ending JON E WITHEE, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN2014 Navy nominations (158) beginning WILLIAM L ABBOTT, and ending RYSZARD W ZBIKOWSKI, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2002.

PN 2037 Navy nomination of Steven D Kornatz, which was received by the Senate and appeared in the Congressional Record of July 25, 2002.

PN 2038 Navy nomination of Mary B Gerasch, which was received by the Senate and appeared in the Congressional Record of July 25, 2002.

PN2039 Navy nomination of Baron D Jolie, which was received by the Senate and appeared in the Congressional Record of July 25, 2002.

PN2040 Navy nomination of Todd A Masters, which was received by the Senate and appeared in the Congressional Record of July 25, 2002.

PN2041 Navy nomination of Perry W Suter, which was received by the Senate and appeared in the Congressional Record of July 25, 2002.

PN 2042 Navy nominations (20) beginning WILLIAM L ABBOTT, and ending DONALD E WYATT, which nominations were received by the Senate and appeared in the Congressional Record of July 25, 2002..

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT 107–14

Mr. REID. Mr. President, still as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following protocol transmitted to the Senate on July 31, 2002, by the President of the United States:

Protocol to Amend Convention for Unification of Certain Rules Relating to International Carriage by Air (Treaty Document No. 107–14).

I further ask that the protocol be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929, done at The Hague September 28, 1955 (The Hague Protocol). The report of the Department of State, including an article-by-article analysis, is enclosed for the information of the Senate in connection with its consideration of The Hague Protocol.

The Warsaw Convention is the first in a series of treaties relating to international carriage by air. The Hague Protocol amended certain of the Warsaw Convention Articles, including several affecting the rights of carriers of international air cargo. A recent court decision held that since the United States had ratified the Warsaw Convention but had not ratified The Hague Protocol, and the Republic of Korea had ratified The Hague Protocol but had not ratified the Warsaw Convention, there were no relevant treaty relations between the United States and Korea. This decision has created uncertainty within the air transportation industry regarding the scope of treaty relations between the United States and the 78 countries that are parties only to the Warsaw Convention and The Hague Protocol. Thus, U.S. carriers may not be able to rely on the provisions in the Protocol with respect to claims arising from the transportation of air cargo between the United States and those 78 countries. In addition to quickly affording U.S. carriers the protections of those provisions, ratification of the Protocol would establish relations with Korea and the five additional countries (El Salvador, Grenada, Lithuania, Monaco, and Swaziland) that are parties only to The Hague Protocol and to no other treaty on this subject.

A new Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "Montreal Convention") is pending on the Senate's Executive calendar (Treaty Doc. 106–45). I urge the Senate to give its advice and consent to that Convention, which will ultimately establish modern, uniform liability rules applicable to international air transport of passengers, cargo, and mail among its parties. But the incremental pace of achieving widespread adoption of the Montreal Convention should not be allowed to delay the benefits that ratification of The Hague Protocol would afford U.S. carriers of cargo to and from the 84 countries with which it would promptly enter into force.

I recommend that the Senate give early and favorable consideration to The Hague Protocol and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 31, 2002.*

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDER FOR STAR PRINT—REPORT NO. 107–224

Mr. REID. Mr. President, I ask unanimous consent that a star print of report No. 107–224 be made to reflect the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF HOMELAND SECURITY—MOTION TO PROCEED

CLOTURE MOTION

Mr. REID. Mr. President, I now move to proceed to Calendar No. 529, H.R. 5005, and with that I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to proceed to H.R. 5005, a bill to establish the Department of Homeland Defense.

Tom Daschle, Harry Reid, Zell Miller, Joseph Lieberman, Tim Johnson, Debbie Stabenow, John Edwards, Jon Corzine, Susan Collins, Robert F. Bennett, Trent Lott, Pete Domenici, Rick Santorum, Fred Thompson, Peter Fitzgerald, Jim Bunning.

Mr. REID. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

ORDERS FOR THURSDAY, AUGUST 1, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. tomorrow, August 1; that on Thursday, following the prayer and the pledge, the Journal of proceedings be approved to date; that the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of the conference report to accompany H.R. 3009, the Andean Trade Act, with the time until 10:30 a.m. equally divided and controlled between the proponents and opponents, with Senator BAUCUS or Senator GRASSLEY controlling the proponents' time and Senator DORGAN or his designee controlling the time in opposition; that at 10:30 a.m., without further intervening action or debate, the Senate proceed to vote on the motion to invoke cloture on the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:27 p.m., adjourned until Thursday, August 1, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 31, 2002:

INTERNATIONAL MONETARY FUND

NANCY P. JACKLIN, OF NEW YORK, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF TWO YEARS, VICE RANDAL QUARLES, RESIGNED.

BROADCASTING BOARD OF GOVERNORS

D. JEFFREY HIRSCHBERG, OF WISCONSIN, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004, VICE MARC B. NATHANSON, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. TIMOTHY M. HAAKE, 0668

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be major

DEBRA A. *ADAMS, 8060
TIMOTHY F. *AHERN, 0157
DONALD R. *AIDE, 6074
HEATHER M. *ALEXANDER, 8548
JAN M. *ALLEN, 2833
CLINTON R. *ANDERSON, 1623
OLUWANISHOLA *ASENUGA, 1189
NAHED I. *BAHLAWAN, 2490
JOEL L. *BARCLAY, 4878
JOSEPH M. *BARTLE II, 1498
VICTOR A. *BAUMGARTEN, 8927
BUCK TONITA R. *BELL, 0821
MELANIE L. *BENE, 9872
JAMES A. *BENJACK, 9262
AARON J. *BILOW, 2716
SUSAN L. *BLACK, 1567
ARCHIE D. *BOCKHORST, 1748
SUSAN B. *BOWES, 5052
CHRISTOPHER S. *BOYD, 1759
MARC G. *BOYER, 5884
GARY C. *BROWN, 1158
LORILEE H. *BUTLER, 8449
ARTURO C. *CASTRO, 1024
J. CARL *CEMBRANO, 7289
BRUCE E. *CHRISTENSEN, 3473
STEVEN P. *CLANCY, 5553
KATHY L. *CORNELIUS, 5713
ANDREW A. *CRUZ, 1033
MARTHA *DANIEL, 4598
EFRAIN A. *DELVALLEORTIZ, 2154
STEVEN C. *DEWEY, 0897
LAUREL A. *DOVE, 5691
ALANE D. DURAND, 7739
JOSEPH R. *ETHERAGE, 6069
JOHN W. *FEARING, 0038
LAURA C. *FIELDS, 8807
GLEN S. *FISHER, 8114
OSCAR *FONSECA, 2386
CRAIG H. *FORCUM, 6362
CAROL J. *FORREST, 8554
NORMAN C. *FOX, 6647
BENJAMIN J. *FRANKLIN, 8611
TIMOTHY S. *GARTEN, 1683
ROBERT SHAN SANCH *GHOLSON, 2480
PHILIP E. *GOFF, 1681
CALVIN *GRAHAM, 9658
JOHN A. *GRIGG, 2965
DANIEL T. *GUSTAFSON, 6692
ANA M. D. *HALL, 8995
BETH B. *HARRISON, 3009
ANTHONY M. *HASSAN, 8685
DANIEL J. *HESER, 8199
CHARLES R. *HOPKINS, 7015
DAVID M. *HUNT, 5830
CHRISTINE M. *HUNTER, 8544
CHRISTOPHER L. *HUNTER, 7515
WILLIAM C. *ISLER III, 3062
BRENT A. *JOHNSON, 7872
DONALD S. *JOHNSTON, 3816
WILLIAM M. *JONES, 8569
JOHN H. *JORGENSEN, 0316
MAHENDRA B. *KABBUR, 5176
MICHELLE R. *KASTLER, 7641
BRYAN K. *KEMPER, 1045
DAWN *KESSLER, 5687
MATTHEW T. *KILLIAN, 0492
JAMES C. *KING JR., 3953
MICHELLE T. *KOE, 0872
SEMIH S. *KUMRU, 3640
JOHN F. *LECKIE, 2191
PAMELA A. *LUCAS, 3903
TINA M. *LUICHINGER, 3950
MARK A. *MARTELLO, 0696
TERRY R. *MATHEWS, 8216
CHARLES E. *MAYS II, 5104
JOSE O. *MAYSONET, 4460
RANDY P. *MCCALIP, 4389
JOHN E. *MCDERMOTT, 9570
MARY JO *MCHUGH, 6673
ANDREW B. *MEADOWS, 9292
THERESA J. *MEDINA, 9821
JOHN F. *MILESKI, 3067
CARL S. *MILLER, 0953
RICHARD D. *MILLER, 2197
PAUL *MOITOSO, 2264
MIRIAM *MONTES, 8974
MARK C. *MULLEN, 7600
COREY J. *MUNRO, 0844
ANN MARIE *MUSTO, 4480
DAVID C. *NEWMAN, 5849
JASON P. *NOLZ, 5713
BRIAN P. *OCONNOR, 0885
YOUNG R. *OH, 5784
PATRICK S. *OMAILLE, 1877
GENE T. *OMOTO, 5047
DARRIN K. *OTT, 3634
ERIC G. *OWEN, 9015
ENRICO S. *PAEZ, 8761
ROSEMARIE B. *PALTING, 4042
WANDA L. *PARHAM, 6013
CHRISTOPHER I. *PATRICK, 7356
KENNETH R. *PATTERSON, 9534
CHRISTINE A. *POEL, 2815

JULIE M. *RAFFERTY, 6788
RAYMOND H. *RESER JR., 8691
GARY D. *RICE, 1375
ROBERT A. *RODGERS, 5209
MICHAEL D. *ROSS, 6944
DAVID N. *SCHAAF, 4591
MICHAEL H. *SCHROEDER, 0589
MONICA U. *SELENT, 8564
EUGENE V. *SHEELY, 8476
GAYL L. *SIEGEL, 0473
RICHARD D. *SMITH, 0453
CHU H. SOH, 7474
MARK A. *STAAL, 0095
MITZI D. *THOMASLAWSON, 9388
TODD M. *TOMLIN, 3164
JUAN I. *UBIERA JR., 8832
BERNARD L. *VANPELT, 7235
TRISHA K. *VORACHEK, 0741
JENNY K. *VOSS, 9195
SHAWN R. *WAGNER, 6087
PAMELA P. *WARDDEMO, 9750
DIANE L. *WARMOTH, 6486
PETER G. *WEBER III, 9050
MARK P. *WESTRICK, 5302
DANA L. *WHELAN, 6834
JULIE M. WHITMAN, 8513
KIRK P. *WINGER, 2485
KEVIN L. *WRIGHT, 3998
DIRK P. *YAMAMOTO, 7575
CHRISTINA D. *ZOTTO, 2249
JULIE F. *ZWIES, 3899

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be major

NICOLA S. *ADAMS, 4882
PRUDENCE R. *ANDERSON, 8904
DEBRA L. *ARABIA, 9273
TERESA L. *BABAKAN, 5219
WENDY J. *BEAL, 1552
IWONA E. *BLACKLEDGE, 3096
VICKI L. *BRADY, 6741
STEPHANIE J. *BUFFETT, 3847
LINDA M. *CASSAVOY, 7023
DEBBIE F. CAVESE, 0765
CRAIG R. CLOSE, 7167
WILLIAM P. *COLEMAN, 2334
DARREL D. *COWLISHAW, 4720
TONIA J. *DAWSON, 9658
KELLY M. *DUFFEK, 4983
GRETCHEN J. *ENGLAND, 0501
CASSANDRA W. *FONSECA, 0939
COLLEEN M. *FROHLING, 2716
BETH ANN LUMPKIN *GAMBILL, 9030
VIRGINIA A. *GARNER, 5661
DENYSE *GEHRIG, 6256
DEBORAH L. *GRAY, 2129
TESFAY K. *GSELASSIE, 2931
SARA W. *HARTWICH, 7849
KATHERINE A. *HEATH, 9355
WILLIAM M. *HIRST, 0523
DIANE M. *HUMERICK, 2851
KAREE M. *JENSEN, 9272
EDWIN L. *JESKE, 4125
VELDA L. *JOHNSON, 5528
VIRGINIA M. *JOHNSON, 4206
DENNIS J. *JORDAN, 6244
MARLENE M. *KERCHENSKI, 5388
ALLEN J. *KIDD, 0352
BRENDA J. *KOIRO, 6315
AARON E. *KONDOR, 5779
PAULA R. *KROSKEY, 7082
THERESE M. *LAPERLE, 5312
JULIA L. *LEDUC, 4247
GWENDOLYN A. *LOCHT, 8880
TERRI S. *LOMENICK, 4331
KELLI T. *LORENZO, 4867
CHRISTINE R. *LOWERY, 4520
MARGARET H. *LYNN, 8557
JACQUELINE L. *MACK, 0525
MARTIN J. *MCGEE, 5948
KERIN D. *MCKELLAR, 4014
DEBRA J. *MCKITRICK, 5587
WILLIAM S. *MCLAURY, 5224
DIANA J. *MCMAINS, 9599
EDWARD S. *METZEL, 3630
BRENT E. *MITCHELL, 2151
KAREN A. *MORAHAN, 0672
ALBERT S. MORENO, 0603
JACQUELINE A. *MUDD, 4553
JAMES J. *NEIMAN, 4983
CAROL F. *NELSON, 1067
ROBYN D. *NELSON, 3019
LISA L. *NESSELROAD, 6909
DEVIN M. *NIX, 6403
KAREN M. *OCONNELL, 9160
ERIN L. *PETERSON, 8520
RITA A. *PHILLIPS, 8441
KEVIN S. *POITINGER, 6516
KATRINA M. *POOLE, 5529
STEVEN L. *POPE, 9154
BLAISE *QUIRAOPASAYAN, 5278
LEE M. *RANSTROM, 3099
IRIS A. *REEDOM, 4529
CYNTHIA J. *ROBISON, 1374
DEREK *ROGERS, 6282
YOLANDA *ROGERS, 8495
MICHAEL H. *ROSS, 7696
FRANCIS *SCHLOSSER, 6919
PATRICIA D. *SEIVERT, 9381
DENISE E. *SEWELL, 1310
ELIZABETH C. *SHAW, 0465
PAIRIN *SKAGGS, 2855
JACK R. *SMITH II, 1232
KEITH R. *SMITH, 7999
LINDA M. *STANLEY, 8347
TOBY R. *STEIN, 2305
JUDY D. *STOLTMANN, 9973
NATALIE A. *SYKES, 4830
CHRISTINE S. *TAYLOR, 1890
KAREN A. *TAYLOR, 4953
LESA R. *TILLEY, 1084
BRIAN G. *TODD, 2288
RANDALL J. *TWENHAFEL, 3664
CHERYL A. *UDENSI, 9460
BRENDA S. *VELAZQUEZ, 5314
SHARON C. *WALKER, 1687
BRENDA I. *WATERS, 3446
KATHRYN W. *WEISS, 5069
MELISSA R. *WELLS, 4125
DEANNA M. *WHITE, 0426
BERNICE J. *WILDER, 2624
DARLENE E. *WILLIAMS, 6643
NNEKA C. WILLIAMS, 4007
TAMBRA L. *YATES, 1267

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

KENNETH S. AZAROW, 5203 MC

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY CHAPLAIN CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be major

OSCAR T *ARAUCO, 8841
SAMUEL A *CABRERA, 3270
JAMES Y *CHOI, 0527
KEITH N *CROOM, 2729
DWIGHT D *CROY, 8985
JIMMY C *DAVIS JR., 9632
ALBERT L *DOWNING, 5967
BARTH G *EDISON, 6554
CHARLES M *FIELDS, 7071
ALONZO A *FORD, 1486
STREMLER W *GODWIN, 7179
TERRENCE E *HAYES, 8175
YVONNE C *HUDSON, 0719
HARRY C *HUEY JR., 2163
JAY S *JOHNS III, 4100
DONALD W *KAMMER, 2083
SCOTT C *KENNEDY, 5085
RANDALL D *KIRBY, 1607
MICHAEL T *KLEIN, 4904
RODIE L *LAMB, 1490
TRENTON E *LEWIS, 6701
STEVEN A *MAGLIO, 2764
CHAD L *MAXEY, 1500
HOMER V *MCCLEARN JR., 8864
ANTONIO J *MCELROY, 0498
RAYMOND W *MILBURN, 7443
JOHN J *MURPHY, 4199
KIM M *NORWOOD, 7047
RONALD L *OWENS, 9709
JOHN S *PECK, 7720
DOUGLAS L *PRENTICE, 5994
JOHN H *RASMUSSEN, 8501
ACEVEDO J *RESTO, 8462
ARMANDO I *REYES JR., 9670
JOSEPH H *RILEY, 7894
CARL W *ROSENBERG, 9662
OLEN Z *SELLERS, 8635
RON F *SERBAN, 9883
TERRY L *SIMMONS, 2715
ROBERT P *SINNETT JR., 5503
KENNETH R *SORENSON, 5742
STEVEN W *THORNTON, 1594
JEFFREY B *WALDEN, 1398
BRADLEY A *WEST, 0676
JOHN C *WHEATLEY, 5722

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

PAUL T. CAMARDELLA, 8062

CONFIRMATIONS

Executive Nominations Confirmed by the Senate July 31, 2002:

FEDERAL RESERVE SYSTEM

DONALD L. KOHN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2002.

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 1990.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

D. BROOKS SMITH, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. JAMES T. HILL

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. EDMUND P. GIAMBASTIANI, JR.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. CHARLES J. DUNLAP, JR.
COL. MICHAEL N. MADRID

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT R. DIERKER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. BRYAN D. BROWN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. PHILIP R. KENSINGER, JR.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS ASSISTANT COMMANDANT OF THE MARINE CORPS AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5044:

To be general

LT. GEN. WILLIAM L. NYLAND

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. PAUL T. MIKOLASHEK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RICHARD A. CODY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. BANTZ J. CRADDOCK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM E. WARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. WILLIAM S. CRUPE

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. JAMES F. AMOS
BRIG. GEN. JOHN G. CASTELLAW
BRIG. GEN. TIMOTHY E. DONOVAN
BRIG. GEN. ROBERT M. FLANAGAN
BRIG. GEN. JAMES N. MATTIS
BRIG. GEN. GORDON C. NASH
BRIG. GEN. ROBERT M. SHEA
BRIG. GEN. FRANCES C. WILSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. MARTIN R. BERNDT

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) STEVEN B. KANTROWITZ

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) JAMES MANZELMANN, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) DENNIS M. DWYER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) RICHARD A. MAYO
REAR ADM. (LH) DONALD C. ARTHUR, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. GREGORY R. BRYANT

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. ANDREW M. SINGER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. MICHAEL D. MALONE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. JOHN B. NATHMAN

AIR FORCE NOMINATIONS BEGINNING JOHN W. BAKER AND ENDING DAVID E. WILSHEK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 27, 2002.

AIR FORCE NOMINATIONS BEGINNING SHELLEY R. ATKINSON AND ENDING RANDY K. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

AIR FORCE NOMINATION OF FREDRIC A. MARKS.

AIR FORCE NOMINATIONS BEGINNING MEREDITH L. *ADAMS AND ENDING EDWIN W. *WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATIONS BEGINNING SARA K. *ACHINGER AND ENDING CHARLES E. *WIEDIE, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATIONS BEGINNING CHRISTOPHER R. *ABRAMSON. AND ENDING ANNAMARIE *ZURLINDEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATION OF KURT R.L. PETERS.

AIR FORCE NOMINATIONS BEGINNING BUENAVENTURA Q. ALDANA AND ENDING

ANDREW W. TICE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

ARMY NOMINATIONS BEGINNING LAURA R BROSCH AND ENDING CONNORS A WOLFORD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 11, 2001.

ARMY NOMINATIONS BEGINNING ANN L BAGLEY AND ENDING KEITH A WUNSCH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 28, 2002.

ARMY NOMINATIONS BEGINNING ROBERT C ALLEN, JR. AND ENDING CHRISTINA M YUAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 28, 2002.

ARMY NOMINATIONS BEGINNING MARVIN P *ANDERSON AND ENDING KENNETH O *WYNN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 2002.

ARMY NOMINATIONS BEGINNING JOHN G ANGELO AND ENDING VIRGINIA D *YATES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 2002.

ARMY NOMINATIONS BEGINNING WILLIAM A. BENNETT AND ENDING CHARLES B. TEMPLETON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING JOHN W. BAILEY AND ENDING JOYCE L. STEVENS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATION OF ALONZO C. CUTLER.

ARMY NOMINATIONS BEGINNING DOMINIC D. ARCHIBALD AND ENDING RICHARD L. THOMAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING RICKY W. BRANSCUM AND ENDING FREDERICK O. STEPAT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING CURTIS W. ANDREWS AND ENDING THOMAS F. STEPHENSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING ANTONIO CORTESSANCHEZ AND ENDING KIMBERLY D. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

ARMY NOMINATIONS BEGINNING HENRY G. BERNREUTER AND ENDING MARK D. SCRABA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

COAST GUARD NOMINATIONS BEGINNING GEORGE H. TEUTON AND ENDING BLAKE L. NOVAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

MARINE CORPS NOMINATIONS BEGINNING MICHAEL J. BISSONNETTE AND ENDING DANIEL J. MCLEAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 11, 2002.

NAVY NOMINATION OF DUANE W. MALLICOAT.

NAVY NOMINATION OF FRANCIS MICHAEL PASCUAL.

NAVY NOMINATIONS BEGINNING LARRY D PHEGLEY AND ENDING JEFFREY ROBERT VANKEUREN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ARTHUR KELSO DUNN AND ENDING WAYNE TYLER NEWTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING MARK THOMAS DAVISON AND ENDING RICHARD SHANT ROOMIAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING JENNITH ELAINE HOYT AND ENDING ROBERT A. WOOD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING EDMUND WINSTON BARNHART AND ENDING L M SILVESTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ROBERT M CRAIG AND ENDING MELANIE SUZANNE WINTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ROBERT KENNETH BAKER AND ENDING RICHARD H RUSSELL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 19, 2002.

NAVY NOMINATIONS BEGINNING DAVID STEWART CARLSON AND ENDING MICHAEL JOSEPH ZULICH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING JOHN ALDA, JR. AND ENDING KATHRYN DICKENS YATES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL P ARGO AND ENDING MARK STEVEN SPENCER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING RONALD DAVID ABATE AND ENDING GLENN L ZITKA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING DAVID B AUCLAIR AND ENDING RYAN M WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING KENNETH C ALEXANDER AND ENDING TIMOTHY G ZAKRISKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING DAVID F BAUCOM AND ENDING JONATHAN A YUEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING ROBERT D BECHILL AND ENDING PHILIP H WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING LYNN P ABUMARI AND ENDING SUSAN YOKOYAMA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING DAVID W ANDERSON AND ENDING STEPHEN R STEELE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING BARNEY R BARENDSE AND ENDING KRISTIANE M WILEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL J BOOCK AND ENDING ALEXANDER W WHITAKER IV, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN T AHLERS AND ENDING KERRY R THOMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING DANIEL C ALDER AND ENDING ERIC J ZINTZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING ALAN T BAKER AND ENDING DOUGLAS J WAITE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002

NAVY NOMINATION OF JAMES T. CONEN.

NAVY NOMINATIONS BEGINNING JOSEPH D. CALDERONE AND ENDING RICHARD A. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING TIMOTHY G. ALBERT AND ENDING JANICE M. STACYWASHINGTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING WARREN WOODWARD RICE AND ENDING MARK J. SAKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING BARBARA S. BLACK AND ENDING DOUGLAS D. WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL R. BONNETTE AND ENDING DAVID C. PHILLIPS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING JOSE R ALMAGUER AND ENDING KENNETH M STINCHFIELD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING ROXIE T. MERRITT AND ENDING JACQUELINE C. YOST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TRECI D. DIMAS AND ENDING DAVID G. SIMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN W. BARTLETT AND ENDING JAMES M. TUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID R. ARNOLD AND ENDING LORI F. TURLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING VICTOR G. ADDISON, JR. AND ENDING ZDENKA S. WILLIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ROBERT J. FORD AND ENDING EDWIN F. WILLIAMSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID A. BELTON AND ENDING JAMES A. THOMPSON, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JEFFREY A. BENDER AND ENDING DAVID E. WERNER, WHICH NOMINATIONS

WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ALEXANDER P BUTTERFIELD AND ENDING ELIZABETH L TRAIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TERRY J BENEDICT AND ENDING EDWARD D WHITE III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING PETER D BAUMANN AND ENDING ALLISON D WEBSTERGIDDINGS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN C BALLISTER AND ENDING JEROME ZINNI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING VERNON E BAGLEY AND ENDING BOYD T ZBINDEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING WESTON J ANDERSON AND ENDING STEPHEN C WOLL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING KATHLEEN B DANIELS AND ENDING TERIANN SAMMIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID A BONDURA AND ENDING WILBURN T STRICKLAND, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING CHRISTIAN D BECKER AND ENDING SCOTT M WOLFE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JULIENNE E ALMONTE AND ENDING MICHAEL F WEBB, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ALFREDO L ALMEIDA AND ENDING MARK A WISNIEWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JON D ALBRIGHT AND ENDING MICHAEL W ZARKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TODD A ABLER AND ENDING THOMAS A ZWOLFER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATION OF ROGER E. MORRIS.

NAVY NOMINATION OF JANE E. MCNEELY.

NAVY NOMINATIONS BEGINNING GENARO T. BELTRAN, JR. AND ENDING THEODORE T. POSUNIAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING SEVAK ADAMIAN AND ENDING CLIFFORD ZDANOWICZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING PIUS A AIYELAWO AND ENDING GEORGE S WOLOWICZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING SALVADOR AGUILERA AND ENDING DONALD P TROAST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING DANIEL L ALLEN AND ENDING MICHAEL J WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING DANIEL J ACKERSON AND ENDING JOHNNY WON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING CONNIE J BULLOCK AND ENDING BRENDAN F WARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING ANGELICA L C ALMONTE AND ENDING LESTER M WHITLEY, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING KATHRYN A ALLEN AND ENDING JOHN A ZULICK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATION OF WILLIAM W. CROW.

NAVY NOMINATION OF JOEL C. SMITH.

NAVY NOMINATION OF JOSEPH R. BECKHAM.

NAVY NOMINATION OF MICHAEL E. MOORE.

NAVY NOMINATIONS BEGINNING CHARLES W BROWN AND ENDING TANYA L WALLACE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING TODD E BARNHILL AND ENDING DOMINICK A VINCENT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING COLLEEN M BARIBEAU AND ENDING KIM C WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING VINCENT A AUGELLI AND ENDING REESE K ZOMAR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING ANGEL BELLIDO AND ENDING WALTER J WINTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL P BANASZEWSKI AND ENDING BRIAN S ZITO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING STUART R BLAIR AND ENDING JON E WITHEE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING WILLIAM L ABBOTT AND ENDING RYSZARD W ZBIKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATION OF STEVEN D. KORNATZ.

NAVY NOMINATION OF MARY B. GERASCH.

NAVY NOMINATION OF BARON D. JOLIE.

NAVY NOMINATION OF TODD A. MASTERS.

NAVY NOMINATION OF PERRY W. SUTER.

NAVY NOMINATIONS BEGINNING WILLIAM L ABBOTT AND ENDING DONALD E WYATT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, August 1, 2002 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

AUGUST 2

10 a.m.

Commerce, Science, and Transportation

To hold hearings on the nomination of Marion C. Blakey, of Mississippi, to be Administrator of the Federal Aviation Administration, Department of Transportation.

SR–253

2 p.m.

Indian Affairs

To hold hearings on S. 958, to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K.

SD–106

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

SENATE—*Thursday, August 1, 2002*

The Senate met at 9:30 a.m. and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, You have promised,

"It shall come to pass that before they call, I will answer; and while they are still speaking, I will hear."—(Isaiah 65:24).

Gently, but persistently, Your Spirit stirs our spirits, creating a hunger and thirst for You. Prayer is not our search for You. You are in search of us! We remember Pascal's words, "I would not be searching for Thee, hast Thou not already found me." You always instigate the conversation we call prayer. The stirring in our souls creating a desire to pray is Your wake-up call. Long before we think of praying, You are thinking of us. Thank You for reminding us,

"For I know the thoughts that I think toward you, . . . thoughts of peace and not of evil, to give you a future and a hope."—(Jeremiah 29:11).

The burdens of leadership are great, but Your faithfulness is always greater. Blessed burden lifter, strengthen the Senators for the challenges of this day. You, Dear God, are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HERB KOHL led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 1, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Nevada.

SCHEDULE

Mr. REID. I thank the Chair.

Mr. President, I do not want to get everyone's hopes up because it is up to the majority leader and the Republican leader, but I think there is a very good chance we can finish business sometime today or tonight and not have to work tomorrow.

The Senate at 10:30 this morning will vote. Prior to that vote at 10:30 a.m., the time will be equally divided and controlled between the proponents and opponents of the trade conference report.

At 2 p.m., by previous order, we will interrupt debate postcloture on the conference report to return to the DOD appropriations bill to wrap up action on that important measure. The only issue remaining then is the McCain amendment regarding the leasing of aircraft. After a brief period of debate, the Senate will then conclude action on that bill. The motion to table the McCain amendment has already been made.

Once those who oppose and support the trade conference report have had their opportunity to air their positions, the leader has indicated he is hopeful we can arrange a time certain for a vote on adoption of the conference report.

Senators are also alerted to the possibility that rollcall votes could occur on confirmation of judges later today. Senator LEAHY is indisposed this morning. He is attending a funeral.

Also, discussions are underway on how we will proceed to the homeland security legislation. While cloture was filed on the motion to proceed to the bill last night, the cloture vote on Friday may not be necessary.

I indicate the majority leader and I have been in contact at some length with the President pro tempore of the Senate, Senator BYRD, regarding that matter. We hope to have that resolved with a unanimous consent request sometime this morning.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TRADE ACT OF 2002—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the conference report accompanying H.R. 3009, which the clerk will report.

The bill clerk read as follows:

> A conference report to accompany the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. shall be equally divided between the Senator from Montana, Mr. BAUCUS, or the Senator from Iowa, Mr. GRASSLEY, and the Senator from North Dakota, Mr. DORGAN, or his designee.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I rise today to urge my colleagues to vote yes on the motion to invoke cloture on the trade bill. Three months ago, the Senate passed its version of the Trade Act of 2002. It was a strong bill, it was a progressive bill, and it passed overwhelmingly with strong bipartisan support.

We now have completed our conference with Representatives of the House. I am pleased to present the Senate with a conference report that retains and builds upon key elements of the Senate bill.

Let me begin by discussing the reestablishment of the President's fast-track trade negotiating authority. This authority will make it easier for the President to negotiate strong trade agreements, but we do not give the President a blank check. Far from it. The bill makes Congress a full partner in trade by laying out negotiating objectives on a number of topics and creating a structure for consultations—I might add, much stronger than previous fast-track bills.

Most of the debate on fast track has focused on three trouble spots in trade negotiations: Labor rights and environmental standards; so-called chapter 11 provisions; and U.S. trade laws.

Let me turn to them. First, labor and environmental standards. Most importantly, this bill adopts the standards set forth in the United States-Jordan Free Trade Agreement; that is, as a floor. No standards in future trade agreements can go below the floor set in the United States-Jordan Free Trade Agreement, which is a pretty high floor, but certainly agreements can be higher.

In that agreement, in the United States-Jordan Free Trade Agreement,

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both parties agreed to strive for labor standards articulated by the ILO and for similar improvement in environmental protection. Both countries also agreed to faithfully enforce their environmental and labor laws and not to waive them to gain a trade advantage.

The conference bill's fast-track provisions fully adopt the Jordan provisions, and the bill makes it clear that Jordan is the model for every free-trade agreement we negotiate; that is, the bottom floor is Jordan. Again, agreements can go higher. That is a big step forward.

In addition, the conference report obtains negotiating objectives seeking to eliminate the worst forms of child labor. Senator HARKIN has been a tireless advocate on this issue, and I am proud the conference report includes this important objective.

Another contentious issue pertains to investor-state dispute settlement, also known as chapter 11, in reference to provisions on this topic in NAFTA, the North American Free Trade Agreement.

The conference report attempts to balance the legitimate needs of U.S. investors with the legitimate needs of Federal, State, and local regulators, and the concerns of environmental and public interest groups.

The bill directs trade negotiators to seek provisions that keep Chapter XI-type standards in line with the standards articulated by U.S. courts on similar matters.

It urges the creation of a mechanism to rapidly dispose of frivolous complaints and to deter their filing in the first place.

And it urges the creation of an appellate body to correct legal errors and ensure consistent interpretation of key provisions by Chapter XI arbitration panels. That is a level playing field.

So neither country has an advantage, and neither investors on the one hand, nor municipalities nor environmental groups on the other hand, have an advantage. It is a totally level playing field.

I am pleased that, on the whole, we were able to retain the Senate objectives on investment.

The second difficult issue within fast track is how we ensure fair trade.

To battle unfair trade practices, the United States and most other developed countries maintain antidumping and countervailing duty laws. Another critical U.S. trade law—Section 201—aims to give industries that are seriously injured by import surges some time to adapt.

Rather than being protectionist these laws are the remedy to protectionism. And importantly, these laws are completely consistent with U.S. obligations under the WTO.

On a political level, these laws also serve as a guarantee to U.S. industries and U.S. workers.

Without those critical reassurances, I suspect that the already sagging public support for free trade would evaporate, and new trade agreements would simply become impossible.

Now, the Senate overwhelmingly supported an amendment by Senators DAYTON and CRAIG. That amendment provided a process for raising a point of order against a bill that changes trade remedy laws.

The House bill did not include this provision—although I expect the House might support such a provision if put to a vote.

That said, in the conference process we needed to come up with an alternative if we were going to move forward. I believe the provisions that have come out of that process are very strong—and give Congress an important role before an agreement is finalized. Let me explain.

First, this legislation raises concerns regarding recent dispute settlement panels under the WTO that have ruled against U.S. trade laws and limited their operation in unreasonable ways. These decisions clearly go beyond the obligations agreed to in the WTO and undermine the credibility of the world trading system. We must correct these erroneous decisions.

That is why our concern regarding WTO dispute settlement is identified at the very outset of the bill—as findings—and why the Administration is directed to develop a strategy to counter or reverse this problem, or lose fast track.

This bill also contains a principal negotiating objective directing negotiators not to undermine U.S. trade laws. This fully expresses Congress's view that maintaining trade laws is among the highest priorities in our trade negotiations.

Finally—and most importantly, I believe—this bill directs the President to send a report to Congress, 6 months before he signs an agreement, that lays out what he plans to do with respect to our trade laws.

This is important. This provision provides that the President—before he reports on any other issue—must lay out any changes that would have to be made to U.S. trade laws. This will give Congress a chance to affect the outcome of the negotiations well before they occur.

In fact, to buttress that point, the bill provides for a resolution process where Congress can specifically find that the proposed changes are "inconsistent" with the negotiating objectives. I suspect that if either House of Congress were to pass such a resolution—by the way, it is privileged. I mean it is nondebatable. It cannot be filibustered. So the relevant committees—House Ways and Means and Senate Finance—report this out, and it starts with a resolution offered by any Member of Congress in the respective bodies. I suspect that resolution—again, privileged, not filibustered, not amendable—would be very much listened to by the President.

If they don't get that message, there are ways that either House of Congress can derail a trade agreement. But I don't think it would come to that. I think the agreement would be renegotiated in that circumstance—and that is the point.

This is a solid fast track bill. If passed, this will be the most progressive fast track bill we have ever had.

Let me turn to the portion of the bill that I believe is the most historic. We now have a unique opportunity to expand and improve a program that is a critical part of moving toward a consensus on trade—that program is Trade Adjustment Assistance.

TAA is a program with a simple, but critical, objective: To assist workers injured by imports to adjust and find new jobs.

TAA was created back in 1962 as part of an effort to implement the results of the so-called Kennedy Round agreement to expand world trade.

President Kennedy and the Congress agreed that there were significant benefits to the country as a whole from expanded trade. They also recognized, however, that some workers and firms would inevitably lose out to increased import competition.

TAA was created as part of a new social compact that obliged the Nation to attend to the legitimate needs of those that lose from trade as part of the price for enjoying the benefits of increased trade.

Unfortunately, we have not always upheld that bargain in pursuing new trade agreements.

This legislation aims to fulfill the bargain struck in 1962.

It makes several important changes in the TAA program to make it more effective:

First, the conference bill expands the number of workers eligible for benefits.

Like the Senate bill, the conference bill covers secondary workers.

The conference bill also expands coverage to workers affected by shifts in production. Workers are automatically covered if their plant moves to a country with which the United States has a free trade agreement, or to a country that is part of a preferential trade arrangement.

For workers whose plant moves to any other country, benefits are available if the Secretary of Labor determines that imports have increased or are likely to increase.

"Or are likely to increase" is very important because obviously if a plant moves to another country, imports are likely to increase. Since companies that move offshore typically ship back to the United States, I can think of no circumstances in which relocating production abroad would not be accompanied by or lead to an increase in imports of the product.

Moreover, I would note here that the workers do not have to prove that the increase in imports will come from the country to which production relocated. This is a standard that is easily satisfied.

In addition, the conference agreement also includes a new program for farmers, ranchers, fishermen, and other agricultural producers.

Taken together, these expansions in eligibility are likely to result in a program that would cover under 200,000 workers per year.

Moreover, TAA benefits are substantially improved.

For the first time in the history, we provide health care coverage for displaced TAA workers.

Who would have thought—when we started this process 2 years ago—that we would be able to achieve such an important and laudable goal?

But that is exactly what we accomplished. Workers eligible for TAA will now receive a 65 percent advanceable, refundable tax credit that can be used to pay for COBRA coverage, that is, coverage related to lost health insurance on account of lost jobs or a number of other group coverage options through the States. This assistance is available to workers for as long as they are participating in the TAA program.

I am pleased with the health care provisions in the conference report, and I hope that we can bring the same willingness to work together and compromise to other important health care issues before us.

The conference report also extends income support from 52 to 78 weeks to allow workers to complete training. And thanks to the efforts of Senator EDWARDS, it adds a further 26 weeks of training and income support for workers who must begin with remedial education such as English as a second language. To pay for this additional training, the annual training budget is doubled from $110 million to $220 million.

For older workers, the conference report offers wage insurance as an alternative to traditional TAA. Workers who qualify and who take lower-paying jobs can receive a wage subsidy of up to 50 percent of the difference between the old and new salary—up to $10,000 over 2 years. The goal is to encourage on-the-job training and faster re-employment of older workers who generally find it difficult to change careers.

The bill included a 2-year wage insurance pilot program. The conference report improves on the Senate bill in two ways—by making the program permanent, and by providing TAA health benefits to workers under the program if the new employer does not provide health insurance.

Finally, in addition to expanding benefits and eligibility, the conference agreement makes a number of improvements that streamline the program. It eliminates bureaucracy. It makes the program fairer, more efficient, and more user friendly. And I believe it will meet the ultimate goal of TAA—getting workers back to work more quickly.

All told, this bill amounts to a major expansion and a historic re-tooling of TAA—a step that is long overdue.

Forty years ago, President Kennedy asked Congress for trade liberalizing legislation. It was a much simpler bill at that time, when trade issues were more narrowly defined, but it was still controversial. For many of the same reasons, that remains controversial today.

President Kennedy emphasized the importance of trade for our economy, for our workers, for American leadership, and the world. He also recognized, even then, that trade also creates dislocation and that a new program, trade adjust assistance, was needed to help workers left behind by trade. Congress seized that opportunity and passed the Trade Expansion Act of 1962.

Today, we, too, can show the world and America what we stand for. Building not only on the vision of President Kennedy but also on the efforts of the Presidents who followed him, we can show the world that America will lead the way in building a new consensus on international trade. We, too, must seize that opportunity.

I urge my colleagues to vote to invoke cloture and to pass the conference report.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, first of all, this debate, if it is like most debates on fast track, will not be a very thoughtful debate. There is a relentless chanting about free trade and the global economy, but no discussion about what is really happening in trade.

I believe in expanded trade. I believe expanded trade helps our economy and helps economies around the world. I am not someone who believes we should put walls around our country and try to keep other goods out of our country. I do believe, however, our country has a right to be a leader in demanding and insisting on fair trade. That has not been the case for several decades. I will talk a bit about that.

In October 2001, our trade Ambassador, Mr. Zoellick—a man I like—speaking to a business group in Chicago, described opponents of trade promotion authority as "xenophobes and isolationists."

That is fairly typical of the prevailing view on trade. There is a perception that this debate has two camps: The camp that is able to see over the horizon, they get it, they understand it, they understand the global economy, and they understand all of the issues; and then there are the others, xenophobic, isolationist stooges who cannot and will not understand.

The Senate is preparing to give the administration the power to negotiate trade agreements in secret, and bring them back to Congress for very limited debate. Congress will have in place a procedure that will prevent the Senate from ever changing even one word of the agreement. In other words, Congress signs itself up to say: Handcuff us. Handcuff us so we cannot change a word in the next trade agreement you bring back. We understand we will not be part of the negotiation, we understand we will not be in the room, we will not even know where they take place, but we agree beforehand that whatever you bring back to us, we will not change a word.

Had I been able to change a word of the United States-Canada Free Trade Agreement, we would not have the problem with grain trade with Canada we have had for a decade. When that trade agreement came back to the Senate, I could not change one word because Congress passed fast track.

Trade promotion authority is a euphemism for what used to be known as fast track. It is Congress handcuffing itself, saying: Whatever you negotiate, wherever you negotiate it, we promise not to offer one amendment to change one word of the trade agreement.

There are people who will sign up for almost anything. I saw in the paper a while back that the Oscar Meyer Weinermobile was advertising for a driver. The Oscar Meyer Weinermobile, which we have seen in clips, needed a driver, and 900 college graduates applied. I thought to myself, people will sign up for almost anything, won't they? Nine hundred college graduates aspire to drive the Weinermobile.

Then I see people signing up for the proposition that the Congress ought to handcuff itself, in advance, before a trade agreement is negotiated in secret in some location we do not yet know, and I see people say: Sign me up, I think that is a good deal.

Let me describe the circumstances in which we find ourselves after a barrelful of this trade strategy. This chart represents red ink, trade deficits. Today is Thursday. Today, the American people and our Government, our country, will incur a $1.4 billion deficit—just in this one day. Today, every day, 7 days a week, our trade deficit is relentless, and it increases at a relentless pace. The deficit for this year will go off the chart, by the way. That is a trade deficit we owe not to ourselves, as we do with the budget deficit, it is a trade deficit we owe to other countries.

We have people who think this strategy works. Would this be malpractice in medicine if a doctor prescribed medicine and it did not work, and he prescribed it again and it did not work, and he said, let's keep prescribing the same medicine that does not work? How about a football team that calls the same plays despite the fact it does not work?

That is exactly what we are doing in international trade. The same people made the same promises then that they are making now: If we can just do more of the same, our country will be better off. Total nonsense.

The last big debate we had was NAFTA—United States, Canada and Mexico. Prior to that debate, we had a very small trade surplus with Mexico. We had a surplus with Mexico and a reasonably modest trade deficit with Canada. We had people promising the Moon: If we just do this, if we sign up for the NAFTA agreement, if you let us negotiate it in secret—if you allow us to do that, we will add 300,000 new jobs in the United States of America. Total nonsense.

Here is what happened after NAFTA: A trade surplus with Mexico turned into a very large deficit; a modest trade deficit with Canada turned into a huge trade deficit with Canada. People said: Well, if you just sign up to this, we will import the skills of low-skill labor from Mexico; that is what we intend to have happen. Do you know what the three largest imports from Mexico are? Electronics, automobiles, and automobile parts—all the product of high-skill labor. So the deficit explodes. Now we have a very large combined deficit with our two trading partners on the south and north of us, and we have people in the Senate who said: Boy, this is really working. What a great deal for our country.

I graduated from a small school, a high school class of nine in my senior class. I know we did not have all the advanced mathematics some other people had, but this surely must be the only venue in America where grown men and women add 2 and 2 and get 5 and compliment each other on their math skills.

In this morning's newspaper, there are reports about anemic economic growth, and worries about a double dip recession. According to economists, the trade deficit has done a lot to reduce our economic growth to just 1.8 percent.

The fact is, this trade deficit matters, and we are getting clobbered by it. It ties an anvil to the neck of this country's economy. And we have people coming to the floor of the Senate saying: let's do more of the same; let's do much more of what is not working. I, for the life of me, cannot understand that.

Postcloture, I am going to give a speech that describes the details of all of this and ask the question: Why are we all so interested in having the next treaty negotiated, or the next trade agreement negotiated, before even one problem is fixed? Let me give you some examples of problems, even if I do not describe them all now.

How about eggs to Europe, high-fructose corn syrup to Mexico, automobiles to China, automobiles to Korea, potato flakes to Korea, unfairly subsidized grain from Canada, beef to Japan, flour to Europe? I can go on, and I will go on at some length about each of those. How about stuffed molasses from Canada? That is an interesting one, stuffed molasses. Brazilian sugar is sent to Canada and then mixed with liquid molasses, put in a container, and shipped into this country in contravention of our trade laws. They take the sugar out of the molasses, send the molasses back to Canada, and everything is as it was before, except we now have Brazilian sugar in our market in contravention of our trade laws and you cannot do a blessed thing about it. When the trade bill left the Senate, it contained a provision that fixed this problem. The bill that came back out of conference essentially dropped this provision. But that is typical of virtually everything in this bill that left the Senate with some decent provisions and came back here washed clean of those provisions.

There is a company in Canada. It is called Methanex. It is a company that makes MTBE, a fuel additive. California has decided it is going to discontinue the use of MTBE in fuel because it ends up in the ground water. The fact is, it poisons people. You have to get it out of the ground water, so you have to stop using it in fuel. So when California decides on behalf of the safety of its citizens to stop using MTBE, a fuel additive that is now showing up in their water supply, guess what. The Canadian manufacturer of that product takes action in the WTO against the United States for violating trade laws. So a State that tries to protect its citizens from a poison going into the water supply is now being sued, under our trade agreement, by a Canadian company.

Guess what. The NAFTA dispute tribunal is secret. They are going to shut the door, lock the door, and in a closed room somewhere—where we will not be told—they make a decision about whether we have the right to protect our citizens.

I offered an amendment on this bill here in the Senate. A wide bipartisan majority of Senators voted for it. It said: Those dispute resolutions must be opened to the public. America needs to see them. Let's have the disinfectant of sunlight on those trade disputes.

That makes sense, doesn't it? Except the trade bill came back from conference with that stripped out.

The bill also came back from conference without the Dayton-Craig amendment, which I cosponsored. The Dayton-Craig amendment said if you are going to negotiate a trade treaty and weaken the laws that protect us against unfair trade, then we deserve to have a separate vote on it. Do you know what they did? They stripped that out and they said: What you can do is you can have a sense-of-the-Senate resolution.

We can have a sense-of-the-Senate resolution right now. That doesn't mean anything. To offer this kind of placebo is an insult. You are either going to stand up for this country's interests or you are not. If you decide you are not going to stand up for this country's interests, just say so. Don't play a game with it.

The Dayton-Craig amendment ought to be in this piece of legislation. The amendment I offered on transparency ought to be in this piece of legislation. Amendments dealing with child protection and child labor issues ought to be in this legislation—and it is not, despite the fact that at its roots it is bad legislation.

We ought not handcuff ourselves. We should not preclude ourselves from offering one amendment to a treaty that has not yet been negotiated at a time and place not yet described; a treaty in which the negotiations are not open to the public. We in the Senate agree we will not offer one amendment; in fact, we will prohibit it. Has anybody read the Constitution lately? That is not what the Constitution says.

People refuse to stand up on the floor of the Senate and say: On behalf of our producers we demand fair trade. On behalf of farmers, steelworkers, textile workers, we are willing to compete. Yes, we want competition, absolutely. Bring them on. We are willing to compete. But we demand fair competition. If it is not fair, we say to those who want to ship their trousers and shirts and shoes and trinkets to us, ship them to Nigeria or Zambia and see how fast they sell. Say to Korea, that sent 630,000 cars into our marketplace and we are allowed only 2,800 cars into Korea: Korea, ship your cars to Zambia. See how many you sell. If you want to keep shipping Hyundais and Daewoos to the American marketplace, then open your market to American automobiles. It is very simple.

I am going to talk more about this during the postcloture period. But my question is very simple: When will the House and Senate stand up for American producers? No, not for an advantage for them, just to demand basic fairness for workers and producers in this country. Just to demand basic fairness. When will we take action?

I said before, maybe if there is a fast track urge around here, maybe if deep in the breasts of people around here they have some urge to do something on fast track, we should pass a piece of legislation that says the only fast track you have, Mr. Ambassador, is to put on fast track the solution to our trade problems. Fix a few problems before you negotiate a new trade agreement, just fix a few problems, then come back here and tell us you have fixed a few, and then we will work with you.

Understand what is going to happen today. We will have a debate that is never at the center of the issue. We will have a vote. We will vote cloture.

Then tomorrow, after the bill is passed, the President will talk about how wonderful it is that he has this trade promotion authority, which is fast track. People in Congress will talk about how wonderful it is because they understand the global economy and how important this is. It is all sheer nonsense, and they know it.

I hope tomorrow morning someone will address this question: Why is it when things are not working, you want to do more of it? Why is it you want to do more of that which does not work? Just describe for one moment why you think something that hurts this country is something that we ought to continue.

Let me finish as I started. My speech, especially the speech I will give later where I will go into a lot of specifics, will be misinterpreted, because it always is, as someone who is a xenophobe isolationist who doesn't believe in free trade. I believe in expanded trade. I believe trade promotes opportunity for our country and for others. But I, by God, insist on fair trade for American workers and producers, and I do not believe that after fighting for 100 years in this country for the right to organize, for people dying in the streets for the right to organize in a labor force, for the right to have a safe workplace, for the right not to employ children, 10- and 12-year-old children in coal mines and in factories, for the right to a decent wage—after fighting for those things for a century, I do not believe we ought to construct an economic system where companies can pole-vault over all of that in just a nanosecond and say, "I renounce my American citizenship, let me become a citizen of Bermuda and put my jobs in Sri Lanka and Bangladesh," and not have to worry about all the things we fought about for a century.

Fair is fair. There is a price for admission to the American marketplace. You cannot have a 12-year-old kid, pay him 12 cents an hour, work 12 him hours a day, and ship the product to Pittsburgh or Fargo or Los Angeles and call that fair trade. It not fair to America's workers and or producers. This fast-track trade authority for a trade agreement that has not yet been negotiated is, in my judgment, an aberration.

It ignores the precepts of the consultation about international trade. In my judgment, because of what has happened in recent years, the evidence is clear that it also hurts our country.

I reserve the remainder of my time.

Mr. SARBANES. Mr. President, I rise to urge my colleagues to join me in opposition to the motion before us, on passage of the conference report on H.R. 3009, the Andean Trade Preference Expansion Act. During the Senate's consideration of this act, the bill's managers stripped H.R. 3009 of the language approved by the House and offered a substitute amendment comprising three measures reported by the Finance Committee. The first, H.R. 3009, is indeed the Andean Trade Preference Expansion Act. But the amendment added as well two other major trade-related bills. The second measure, H.R. 3005, would grant the President fast-track authority for certain proposed trade negotiations, and also, retroactively, for other negotiations already underway. And the third, S. 1209, would reauthorize the Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance programs. H.R. 3009 thereby became a legislative vehicle for linking together three independent measures, all trade-related to be sure but each with its own focus and provisions.

Let me say first that I am troubled by this procedural maneuvering. The three measures, each with far-reaching and very different ramifications, were considered independently of one another in committee. In my view they should have been considered separately on the floor of the Senate; each should have been amended and voted up or down on its own merits. Linked together, each measure became a hostage to the other two, a procedure which in my view ill served the American people.

I am particularly concerned by the linking of trade promotion authority with trade adjustment assistance. TAA addresses specific problems which Congress has defined. In contrast, trade promotion authority is very broad, potentially reaching into areas we cannot even identify. In fact the term is a euphemism. What we have before us is the procedure known more precisely and accurately as "fast-track," a procedure that radically redefines and limits the authority granted to Congress in article II, section 8 of the Constitution "to regulate commerce with foreign nations."

It is easily forgotten that "fast-track" is a relatively new innovation whose long-term consequences are as yet little understood. It dates back only to the Trade Act of 1974, and it lapsed in 1994. It differs fundamentally from the "Proclamation Authority" that Congress granted the President in the Reciprocal Trade Act of 1934, which gave the Executive power to set tariffs within limits and periods of time set by the Congress. Proclamation Authority did not grant to the President authority to negotiate trade agreements requiring changes in U.S. law, let alone limit the discretion of Congress to approve or reject such changes. In contrast, fast track authority does both. It greatly expands the latitude of the Executive to negotiate an agreement, while sharply restricting the latitude of the Congress to consider any implementing legislation that results from the negotiation. Fast track guarantees that the executive branch can write legislation implementing a trade agreement and have that legislation voted on, up or down, 90 days after it is submitted, with only 20 hours of debate and no opportunity for amendment. While vast change in U.S. law may be at stake, under fast-track procedures Congress becomes little more than a rubber stamp.

In no other area of U.S. international negotiation and agreement are arguments for fast track made. All major U.S. tax, arms control, territorial, defense and other treaties are still accomplished through established constitutional procedures, fully respecting the role of the Congress.

Proponents of fast track often argue that in the area of trade, however, the Executive will find it difficult if not impossible to negotiate agreements. This is certainly not the case. Fast-track procedures are relevant only to trade agreements that require Congress to make changes in existing U.S. law in order for the agreements to be implemented. Most trade agreements do not require legislative changes and are thus not subject to fast track consideration. Of the hundreds of agreements entered into between 1974–1994, when fast-track authority was in effect, only five have required fast track procedures: the GATT Tokyo Round of 1979, the United States-Israel Free Trade Agreement of 1985, the Canada-United States Free Trade Agreement of 1988; the North American Free Trade Agreement, NAFTA, of 1993, and the GATT Uruguay Round of 1994. In 1994, after just twenty years, fast track lapsed, and in 1997 the Congress declined to extend it. Yet since 1994 hundreds of trade agreements have been successfully negotiated and implemented.

For example, in 2000 the office of the Trade Representative identified the following agreements, negotiated without fast track, as having "truly historic importance": The Information Technology, IT, Agreement, under which 40 countries eliminated import duties and other charges on IT products representing more than 90 percent of the telecommunications market; the Financial Services Agreement, which has helped U.S. service suppliers expand commercial operations and find new market opportunities around the world; the Basic Telecommunications Agreement, which opened up 95 percent of the world telecommunications market to competition; and the Bilateral agreement on China's WTO accession, which opened the largest economy in the world to American products and services.

I could cite many other examples. During this period the Executive negotiated and then obtained Congressional approval of normalization of our trade relations with China, a new Caribbean Basin initiative bill, and the Africa Growth and Opportunity Act. Without any fast-track authority the previous administration negotiated major bilateral trade agreements with Jordan and Vietnam. The ground-breaking United States-Jordan agreement was submitted to and approved by Congress in January of last year. And although negotiated by the previous administration, the United States-Vietnam agreement was actually submitted to Congress by the current administration. It was approved in June of last year.

Furthermore, in the absence of fast-track authority the current administration has found it possible and prudent to carry forward the negotiations for bilateral free trade agreements with Chile and Singapore which were initiated by its predecessor. The case of Chile is particularly instructive. In 1994 Chile declined an invitation to join NAFTA, citing the Administration's failure to obtain fast track authority. Six years later, however, Chile reconsidered its position and in 2000 entered into negotiations on a United States-Chile bilateral agreement. Negotiations since then have continued more or less on a monthly basis, and in a report dated April 1, 2002 and titled "Chile: Political and Economic Conditions and U.S. Relations", the Congressional Research Service concluded that "Chile's trade policies and practices indicate that it is willing and able to conclude and live up to a broad bilateral FTA with the U.S., suggesting that this could be a comparatively easy trade agreement for the U.S. to conclude."

In 1997, I opposed the previous administration's request. It was my view then, as it is my view now, that the arguments for fast track have been vastly overstated—they simply ignore our continuing success in concluding agreements that open foreign markets to U.S. exporters and benefit U.S. consumers. Chile and Singapore offer a case in point. The absence of fast track has not prevented negotiations with either, yet this legislation would apply the procedure retroactively. It is not clear why this should be necessary.

Additionally, I want to remind my colleagues that in December of last year our colleagues in the House of Representatives approved H.R. 3005 by a single vote, 215–214. Writing in the Washington Post, David Broder called this a "shaky victory on trade." He observed about that "longtime supporters of liberal trade" voted against fast track because "trade agreements now go far beyond tariff reduction and involve tradeoffs on intellectual property rights, environmental standards, basic labor laws and other issues"—issues too important, in Broder's words, "to delegate sweeping authority to any administration to negotiate them away." These are the concerns, he wrote, of "people who are by no means protectionists."

Indeed, these are the concerns of the American people, and it is for this reason that trade agreements affecting vital areas of social and economic policy should not be hurried through Congress using an expedited and restrictive procedure.

Finally, not only do I disapprove of this measure as passed by the Senate, but I am deeply troubled by two very significant changes made to the legislation in conference. Whereas the Senate bill provided that employees whose factories move overseas would automatically qualify for health insurance, job training, and unemployment benefits, under the compromise, only workers whose companies relocate to countries that have a preferential trade agreement with the U.S. would be covered. Other workers would have to undergo a qualifying procedure through which the USTR must determine that the move was linked to trade. Additionally, during the Senate's consideration of the trade bill, Senators DAYTON and CRAIG offered an amendment to the fast-track bill to allow Congress to consider provisions within trade agreements that weaken U.S. trade remedy laws. The amendment had the support of 61 Senators and was adopted by voice vote. Following passage of the trade bill, I joined many of my colleagues in urging the conferees to preserve the Dayton-Craig language. Under the compromise reached, however, this language was removed from the bill and replaced by non-binding language allowing members to simply express their objections to a particular trade provision. And as my colleagues are aware, over the weekend, our colleagues in the House approved the package that emerged from the conference by a margin of 215–212, a margin greater than that of last year's House vote by only two. It seems clear that the compromise before us is not a consensus on trade and I would urge my colleagues to oppose the conference report to H.R. 3009.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume, but I would like to be informed if I have reached the 7-minute mark.

Mr. President, I hope people on the other side of the aisle will take into consideration the statements of the previous President of the United States, President Clinton, on the importance of trade. President Clinton rightly bragged about one-third of the new jobs during his administration being directly related to trade emphasizing the importance of trade. John Deere, Waterloo, IA—one-fifth of the jobs there are related to trade: 3M in Oakville, IA—40 percent of production is related to trade.

We want to remember that trade creates jobs. It creates jobs that pay 15 percent above the national average. According to President Clinton, and according to the economic facts of life, trade is good for American workers—creation of jobs, and creation of good jobs.

I would also like to say that those who have been criticizing President Bush saying he does not have a strong economic team must, in fact, have their heads in the sand.

Compare that criticism to what I just said about the importance of trade as emphasized by President Clinton. Then you will see the strong economic leadership of Ambassador Zoellick and Secretary Evans as they have worked on trade issues generally, and particularly their leadership on trade promotion authority.

Two things about the economic policy of this administration: They have strong leaders in place to talk about the importance of the economy and to carry out policy important to the economy. And particularly they are considering continuing the trend that President Clinton emphasized—the importance of trade to creating jobs, and good jobs.

I think it is bunk that this administration has no strong economic voice, particularly if you look at the strong leadership of Ambassador Zoellick and Secretary Evans on promoting good trade policy, and their very successful work on bringing this legislation to where it is now.

Make no doubt in anybody's mind that I rise in strong support of the conference report accompanying H.R. 3009, the Trade Act of 2002, and urge my colleagues to support cloture and final passage.

This bill is the product of over a year and a half of intense negotiations, discussion, and debate from both Republicans and Democrats in both Houses of Congress—and particularly strong bipartisan support here in the Senate.

Because of these efforts, the Trade Act strikes a solid and balanced compromise among a number of key issues and competing priorities in the tradition of bipartisanship in the Senate. It is a product that should receive broad support here in the Senate today.

The Trade Act of 2002 renews trade promotion authority for the President for the first time in almost a decade.

Through a spirit of compromise, Democrats and Republicans were able to break the deadlock on trade promotion authority that was the environment during the last term of President Clinton, and we were able to reach a balanced compromise on a number of key issues.

At the same time, we were able to provide the President with the flexibility that he needs to negotiate strong international trade agreements while maintaining Congress's constitutional role over U.S. trade policy.

It represents a thoughtful approach to addressing the complex relationships between international trade, workers' rights, and the environment.

And it does so without undermining the fundamental purpose and proven effectiveness of this process now called trade promotion authority.

It is an extremely solid bill. The Trade Act also reauthorizes and improves trade adjustment assistance for America's workers whose jobs may be displaced by trade. I think the trade adjustment provisions in the act are a vast improvement over the legislation that passed the Senate.

Our provisions—which I voted for but wasn't entirely in tune with—would have completely rewritten existing law of trade adjustment assistance.

In doing so, the Senate bill added a number of new, costly definitions, time lines, and ambiguous administrative obligations.

This conference report removes these burdensome and ill-advised changes. Unlike the Senate bill, the conference report simply amends and builds upon existing trade adjustment assistance law.

It adds new provisions which help to actually improve trade adjustment assistance while maintaining a linkage to trade.

In short, the Trade Act improves the Senate-passed trade adjustment bill and represents a balanced approach to ensuring that workers displaced by trade will get the necessary assistance in trading to reenter the workplace.

I also mention the good provisions of the Andean pact because this will help create new employment opportunities in the countries of Bolivia, Ecuador, Colombia, and Peru. It will help us, too, in our efforts there to fight drug trafficking.

I will be the first to admit that this bill is not a perfect piece of legislation. But, all in all, it is fair and balanced. It deserves strong support.

International trade has long been one of our most important foreign policy and economic tools. It was a key component for the last 50 years for enhancing international economic strategy. This bill will make a difference.

Nations around the world are waiting for our call and the usual U.S. leadership of the last 50 years. Trade ministers and cabinets all over the world are looking to the Senate now for the United States to reestablish its leadership that we haven't had for 9 years. I hope we will not let them down.

I urge support for the conference report, vote for cloture and passage of the bill.

I yield the floor.

Mr. BAUCUS. Mr. President, before the Senator from Idaho speaks, I want to thank him for all his hard work on trade remedies. And I thank him, too, for the support and for being a very strong advocate of checking American trade laws. I thank him for all that he has done.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the chairman of the Finance Committee, and also the ranking member.

Mr. President, I rise in support of the trade promotion authority legislation. I will speak briefly about the strong provisions contained within the conference bill that will help the United States preserve the effectiveness of our trade laws.

As many of you know, these laws are going to be critical to the ability of U.S. companies, farmers, and workers to combat trading practices that harm our economic interests. As barriers to trade come down around the world, it becomes critically important to uphold the rules that combat government subsidies and predatory pricing practices.

As many of you know, and many of you participated with Senator DAYTON and I in crafting an amendment aimed at preserving the ability of Congress to have a significant role in shaping our laws, it was not done in an isolationist or xenophobic attitude—not at all. That amendment had overwhelming, bipartisan support, and spoke directly to TPA and the role of the Senate.

I tell you, I was disappointed the conference did not deal with the Craig-Dayton provision, but I do believe the conference bill does contain several strong provisions that require the administration to consult with us every step of the way during trade negotiations.

First, the bill makes trade law preservation a principal negotiating objective.

Secondly, it requires the administration to report to Congress a full 6 months before a trade agreement is initialed regarding any trade law changes that trade agreement would require. In other words, the U.S. Trade Representative must come to the Senate and explain to each of us what will be changed in our laws, and how those changes meet the objectives of trade and also the rights of this Congress. We have gained transparency in the process of negotiation. I think that is critical.

And third, if those changes do not satisfy our requirements of preserving U.S. trade law, well, we can vote on a resolution of disagreement. And I will help write it.

Make no mistake, our trade laws are under attack at the WTO.

First, several countries have put forth proposals that would fire a number of rounds into our trade laws with every intent of sinking them.

Our trade laws are also unraveling, on a monthly basis, before the WTO dispute settlement process where bureaucrats in Geneva sit back and tell our trade law agencies how to make their decisions, completely ignoring the standard of review that was agreed to in the last trade round.

These are some of the issues. So Ambassador Zoellick, Secretary Evans, hear us loud: Do it right or bring it back here and we defeat it.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. CRAIG. Sixty-two Senators said: Do not negotiate away our trade laws, or suffer the consequence.

I yield the floor.

Mr. GRASSLEY. I yield the remainder of the time to Senator NICKLES.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time remains?

The PRESIDING OFFICER. Forty-one seconds.

Mr. NICKLES. Mr. President, I ask unanimous consent to speak for 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I urge my colleagues to vote in favor of the conference report that is before us today and the cloture motion.

Let me just make a couple very quick comments. I do not agree with everything that is in this bill. And I do not agree with the way it was put together. We had three bills together. The Andean trade bill should have been passed a year ago. It expired in December.

You have Colombia, Ecuador, Bolivia, and Peru that have been needing us to pass this bill. Those are all allies of ours, but they were held hostage by it being put in a package. But the only way we can help them is by passing this bill today. It is better late than never. We need to do it. I apologize to those four countries for us taking so long.

We have been collecting duties against our allies when, for years—for over 10 years—we have not done it. So we are long overdue. Senator MCCAIN has brought this to our attention on the floor. They were held hostage because these three bills were put together.

Also, trade adjustment assistance—which the Congress has always passed and the Senate has always passed, but not as part of trade promotion authority, or not as part of fast track—we need to do it, but it should not be in the same package.

I disagree strongly, very strongly, with a couple of elements that are in the trade adjustment assistance package, particularly the expansion of health benefits or the health tax credits. It is 65 percent for people who now are between the ages of 55 and 65. Those now receiving Pension Benefit Guaranty Corporation benefits are now going to get health benefits. It is almost like an incentive to dump your pension liabilities into the PBGC, which is going to have enormous financial problems in the future. Now that is an obligation for taxpayers.

That being said, I think it would be a disastrous thing if this Senate did not pass trade promotion authority. And now all three bills are tied together. So while I do not like the trade adjustment assistance—and if it was separate, I would be voting against it—when taken together, the good of the trade promotion authority far outweighs the entire package. We have to pass it.

I would shudder to think what would happen if we did not pass it. I will even guess what would happen. I remember Chairman Greenspan was asked: What can we do to help the economy? And he said: You need to show fiscal discipline. We have not in many cases. And you need to promote trade. Well, if we did not pass this, there would be a big economic shock wave that would not only resonate in Wall Street but all across the world: The United States defeats trade promotion authority. The United States, the world leader in trade, really defeated trade, defeated trade promotion—taking us out of our active leadership role which we have had since at least the 1970s, which we have had for decades, really since the conclusion of World War II. We would be saying: No, we don't want to be a leader in trade. I think that would be a disastrous result.

So I think the stock market would have a precipitous decline. Our leadership role in free trade would suffer an enormous defeat.

So I urge my colleagues to support the cloture motion on TPA.

The PRESIDING OFFICER. The time of the proponents has expired.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to add 3 minutes to my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, first of all, I appreciate that both sides should have equal time. I enjoyed listening to my colleague from Oklahoma. I might say, however, I do not believe that Chairman Greenspan would suggest we should promote trade deficits. I think he suggests we promote international trade. I am all for that. Sign me up. Count me as one who believes we ought to expand international trade. I think that is healthy. Good for our economy and good for the economies of those with whom we trade, provided the trade is fair and reasonably balanced.

We have a trade deficit with China that is $60 billion to $70 billion, and headed south. We have a trade deficit with Japan that is between $50 billion and $60 billion—slightly more than that, as a matter of fact. We have a trade deficit with Mexico and Canada that is becoming significant. And we have a trade deficit with Europe.

It is interesting how all of the discussion this morning has carefully avoided the fact that the current trade policy they espouse isn't working. The current trade policy, last month, produced a $41.5 billion trade deficit—just last month. That is a deficit that will be a yoke on the shoulders of every American. It is relentless, it is increasing, and everyone who speaks in favor of this trade policy carefully and studiously ignores it. They just do not want to talk about the fact that it isn't working.

Let me, once again, put up a chart that shows what is happening in international trade. Our country is drowning in trade deficits. The next line would be up here off the chart. The merchandise trade deficit is exploding. Everyone in the Senate knows that. It emanates from a trade strategy that is, in my judgment, weak kneed, a trade strategy in which we lack backbone and will.

Our country refuses—refuses—to say to China or Japan or Europe or Canada or Mexico that we demand some reciprocity and fair trade. We just refuse to do it.

We have this huge trade deficit with China. So China wants to buy airplanes, and goes over and buys airplanes from Airbus, which is heavily subsidized by the European governments. Is that fair? It is fair to an American producer of airplanes? It is fair to Boeing? You know it is not fair.

We ought to say to China: Look, you want to sell us all of your trousers and shirts and shoes and trinkets, and all the things you manufacture in our marketplace; good for you. Our marketplace is open to you, by all means. But understand this: When you need something we produce, you ought to be buying from us. That is the way trade ought to work.

Mr. GREGG. Will the Senator yield for a question?

Mr. DORGAN. Of course. I have very limited time. You have used all your time.

Mr. GREGG. Mr. President, I ask unanimous consent the Senator be granted an additional 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. And that 5 minutes be granted also on this side.

Mr. DORGAN. No. We have a vote.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, we have a vote scheduled. I will yield on my time for a very brief question.

Mr. GREGG. Well, the vote is scheduled to start at 10:30. It would be just an additional 5 minutes and 5 minutes.

Mr. REID. What was the request?

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. GREGG. I asked unanimous consent the Senator be granted an additional 5 minutes, and also 5 minutes for this side.

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. I was willing to yield ever so slightly because I have such limited time.

Let me say this: I am going to speak postcloture, and I would be happy to engage in the debate. No one in the Senate really wants to debate trade very much. They want to simply say there are those of us who support fast track, and those of us who get it, who understand it, who see over the horizon, and who have a broader view of the world. And then there are, as Ambassador Zoellick suggests, the xenophobes and isolationists, the stooges who just don't see it. That is the thoughtless debate that occurs every time we talk about trade.

But I will, in the postcloture period, ask a series of questions. I hope perhaps some colleagues will be here.

I will ask, for example, about the issue of washed versus unwashed eggs with Europe, corn syrup with Mexico, and automobiles with China. We will see if there are people on the floor of the Senate who agree with the circumstances of our trade relationships. The problems are relentless, they are pervasive, and they continue.

What we want to do is rush off and negotiate the next trade treaty before we solve any problems in the previous treaties. How can we tell the farmers of North Dakota that it is all right? That it doesn't matter that they have had a problem for 10 years of a monopoly in Canada shipping unfairly subsidized grain south? We want to do another treaty. The folks who produce America's beef, who 12 years after the beef agreement with Japan now have a 38.5-percent tariff on every pound of beef sent to Japan—how can we tell these people that it just doesn't matter?

Yes, we are a leader in trade. Regrettably, we have been a leader without a backbone. We have refused to say to our trading partners, there is an admission price to the American marketplace, and that admission price is fair trade with respect to labor standards and a range of other issues.

Most especially, from my standpoint, I am concerned about the issue of fundamental fairness. I mentioned that I did not support fast-track trade authority for President Clinton, didn't think he should have it. I don't think President Bush should have it.

I also mentioned earlier, the last two experiences we have had with fast track, both NAFTA and GATT, have not turned out well for America. The agreement that went into conference came out of conference in much worse shape than it left the Senate. They essentially got rid of the Dayton-Craig amendment and put a placebo in place. They got rid of the transparency issue I raised.

I want to talk about what they boast about with respect to this conference agreement. It provides assistance with health insurance. What that means is for those Americans who lose their jobs because of the next incompetently negotiated trade agreements, we will help pay their health insurance. That is going to be great news to people who will lose their jobs. It is safe to say not one man or woman in the Senate will lose their job because of this vote. Fast track will not cost any jobs here in the Senate. No Senator's job is threatened by this. It is also safe to say that those Americans who are working for companies that will be subject to unfair trade, because our trade negotiators want to negotiate the next agreement rather than fix the problems they have created in the past, are going to have little consolation with these provisions. If you lose your job, we give you health insurance. Well, maybe it would be better if they didn't lose their job.

We expand coverage for secondary workers. If you are a secondary worker and you lose your job, we help you a bit. There is wage insurance for the older workers who lose their jobs: We will help you a bit. New benefits for farmers and ranchers: If you lose the farm and the ranch because of trade negotiations, we are willing to help you. It might be better just to negotiate trade agreements that are fair to our producers and say to our producers: This represents fair competition. You have to go compete. If you don't win, that is tough luck. But we have made the rules fair for you. You have to compete and win.

That is not what we do here. Our trade negotiators don't do that. In negotiation after negotiation, we discover we don't have much of a backbone.

Will Rogers once said that the United States of America has never lost a war and never won a conference. He surely was talking about our trade negotiators. They usually manage to lose in a week or two; sometimes it takes longer. I can't think of a trade negotiation in recent years that has enhanced this country's economic interests.

How much time do I have?

The PRESIDING OFFICER. The Senator has 2½ minutes.

Mr. DORGAN. We will have a cloture vote this morning, and my expectation is that sufficient votes exist to have cloture. We will then have a postcloture period in which I will speak at greater length about the specifics of unfair trade.

Let me say this: The only bright spot for me for some long while in international trade was Mickey Kantor, trade ambassador some while ago, who in 1 year took action against Canada for engaging in horribly unfair trade against American farmers. I happen to like current trade ambassador Zoellick. I think he is a charming fellow. This is not about personalities, it is about strategy.

The fact is, this Senate is going to make a serious mistake by deciding it will tie its hands and it will agree to tie its hands prior to negotiation of a new trade agreement so that if and when a trade agreement comes here for approval by the Senate, we agree not to change a word.

Think of the difference that would have existed had we been able to change a few words in the United States-Canada trade agreement; think of what it would have meant for tens of thousands of American farmers if we had been able to say: We demand fairness in this agreement. But we couldn't. That trade agreement was negotiated, as all of them are, in secret. The next trade agreement will be negotiated the same way. We will come back 5 years from now, and I will be back on the floor of the Senate, if I am here, showing with another chart that we are drowning in red ink and jobs are leaving and opportunity is lost. We will have people saying: We ought to do the same thing. We ought to repeat the same failures.

It is hard for me to understand how repeating something that doesn't work advances America's interests. This must be the only body in the world that has grown men and women adding 2 and 2 and getting 5 and complimenting each other on their math skills. It defies logic, in my judgment, to believe that this strategy enhances America's economic interests.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the conference report to accompany H.R. 3009, the Andean Trade bill.

Harry Reid, Max Baucus, Dianne Feinstein, Ron Wyden, Robert G. Torricelli, John B. Breaux, Thomas A. Daschle, Thomas R. Carper, Blanche L. Lincoln, Zell Miller, Charles E. Grassley, Larry E. Craig, Phil Gramm, Jon Kyl, Frank H. Murkowski, Trent Lott.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that the debate on the conference report accompanying H.R. 3009, the Andean Trade Promotion and Drug Eradication Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Ms. LANDRIEU). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 64, nays 32, as follows:

[Rollcall Vote No. 203 Leg.]

YEAS—64

Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Breaux
Brownback
Bunning
Cantwell
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Daschle
DeWine
Domenici
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Hutchinson
Hutchison
Inhofe
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Voinovich
Warner
Wyden

NAYS—32

Boxer
Burns
Byrd
Campbell
Carnahan
Clinton
Conrad
Corzine
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Harkin
Hollings
Inouye
Johnson
Kennedy
Levin
Mikulski
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Stabenow
Thurmond
Torricelli
Wellstone

NOT VOTING—4

Akaka
Helms
Jeffords
Leahy

The PRESIDING OFFICER. On this question, the yeas are 64, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Arizona.

Mr. McCAIN. Madam President, could the Chair inform me as to the parliamentary situation as it exists?

The PRESIDING OFFICER. Cloture has been invoked on the conference report. The Senator has a maximum of 1 hour of debate. The amendments must be germane or the debate must be germane to the conference report.

Mr. McCAIN. I understand.

Madam President, I do not intend to take very long. I do want to speak for a relatively brief period of time on the importance of the Andean Trade Preference Act.

I think it is very important we recognize that in our hemisphere today we have a number of very serious situations—the possibility of a breakdown of democracy. Institutions which were regarded as relatively strong and stable a short time ago, in many of the countries throughout our hemisphere, are in danger or in some cases near a crisis situation. That is why I think the Andean Trade Preference Act, although maybe not of major impact, is certainly one that is important and an important signal to send to these countries in the region. That, coupled with our overall approval of trade authority for the President of the United States, I hope will be an encouragement to nations in our hemisphere that are now in varying degrees of duress.

Argentina is in a serious financial crisis. A country that was once the fifth most wealthy nation in the world is now in such a period of financial difficulty that their economy could be close to collapse. Venezuela is a country whose democracy is under severe strain. Hundreds of thousands of Venezuelans took to the streets recently to demonstrate against their elected President, and, as we all know, there was an attempted, briefly successful, coup which was antidemocratic in nature.

In Bolivia, one of the countries that is directly affected by the Andean Trade Preference Act, there is now a candidate for President of that country who is running on one of his commitments to the people of Bolivia, which is that they will resume the growth of coca—a remarkable turnaround, particularly given that Bolivia had an incredibly successful cocaine eradication program.

Peru is in such difficulties that the President, President Toledo, has gotten rid of the reform economists in his Cabinet and his popularity and approval have plummeted to almost historic lows.

As we prepare to vote on this trade package, our country is precariously positioned in the international trade arena. Many of our friends and allies no longer see the United States as a nation that champions global free trade but, rather, as a nation that increasingly fears foreign competition and seeks to erect barriers to trade in order to protect domestic industries and advance narrow political agendas.

A series of shortsighted protectionist actions in recent years has jeopardized our relationships with our most important trading partners. Given our recent double standards on trade, it is not surprising that the United States is quickly losing its credibility and leadership in championing free trade principles around the world.

Our staunchest allies and most important trading partners are now doubting our dedication to the free trade principles we have long championed.

Many of the nations that engage in the free exchange of commerce are also our staunchest allies in the war on terrorism. Over the past eight months, those countries have joined in our worthy cause, some making substantial sacrifices to advance our shared values. During that time, even as our allies have deployed their forces to stand alongside our own in Central Asia, we have pursued protectionist policies on steel and lumber, and passed into law a regressive, trade-distorting farm bill. We are already fighting one war on a global scale. We cannot simultaneously fight a trade war.

The United States simply cannot afford to follow the dangerous path of protectionism. I hope that the passage of trade promotion authority and the Andean Trade Preference Expansion Act, both of which are included in this package, will represent a turning point. Now is our chance to put a stop to our short-sighted protectionism and recognize that such behavior has consequences.

Mr. President, this package of trade bills, including the Andean Trade Promotion and Drug Eradication Act, trade promotion authority, and trade adjustment assistance (TAA), demonstrates what I hope is the beginning of a renewed commitment to negotiating and expediting strong trade agreements. Enactment of this legislation will go a long way toward re-establishing faith and trust in the United States as a trading partner.

The Andean Trade Preferences Act, a measure that would be expanded by this bill, is a trade-related success story that has not only strengthened our economy, but our national security as well. ATPA was designed to reduce the Andean region's drug trade and spur economic development. That Act has proven effective, and benefitted not only Bolivia, Colombia, Ecuador, and Peru, but also the United States. Its extension is long past due.

Originally enacted in 1991, entire export industries have been created through ATPA. The cut flowers industry alone has created more than 80,000 new jobs in Ecuador, and over 150,000 new jobs in Colombia. In Peru, the benefits of the Andean trade act encouraged farmers to cultivate asparagus, making it that country's largest export crop to the United States, creating 50,000 new jobs in the process. No longer are people in these countries confined to producing the raw materials that go into the production of cocaine; They have the ever increasing options afforded them under ATPA.

Unlike other forms of assistance, ATPA costs the U.S. nothing. In fact, American workers and consumers benefit through reduced prices on goods and services.

Despite such success, it has taken Congress well over a year to extend this non-controversial measure. Legislation was introduced in the Senate in March 2001 to extend and expand ATPA, which was set to expire December 2001. Along with this history, a long delay in the appointment of conferees and partisan disagreements, all unrelated to ATPA, prevented final Congressional action on this critical legislation until now. Fast-track authority for the President expired 8 years ago. By empowering the President to negotiate bilateral and multilateral trade agreements, TPA will enable the President to eliminate trade barriers, reduce tariffs, and open foreign markets to American goods and services. American workers, farmers, businessmen, and consumers will benefit from the regional free trade areas such as the Free Trade Area of the Americas, and bilateral trade agreements such as those currently being negotiated with Singapore and Chile.

I repeat, a man is running for President of this country of Bolivia. One of his most popular themes is to reinitiate the cultivation and growth of coca. If that man wins—and I do not question the will of the people of Bolivia, but it is clear that it would be a dramatic setback to our efforts to eradicate the growth of coca in that country.

In Peru, there are civil disturbances and the President of Peru, who is a good and decent man from all I can tell, is suffering enormously in popularity in polls.

Colombia is a nation with its very existence at risk due to civil war, a lot of that fueled by the cocaine trafficking, the growth of which begins in the country of Colombia.

Ecuador, next to Colombia, has felt many very devastating side effects of the war in Colombia and the effects on its own economy.

I mentioned Argentina, Venezuela, Guatemala are having difficulties; Honduras, Nicaragua; and even Mexico is having some difficulties because of the failure, in the view of many of the Mexican people, of President Fox in delivering on many promises he made when he ran for President of Mexico.

I cannot believe all of the troubles in our hemisphere, which in my view are more serious than they have been since the 1980s, on the absence of trade and the absence of renewal of the Andean Trade Preference Act. But in the words of the Presidents of these countries who visited my office, they said one thing: We do not want aid; we want trade. We want trade.

Now, I have heard many of the arguments about how the lumber industry or the steel industry or the textile industry, or any other, is being harmed because some of the imports are lower priced goods. Well, I am not a trained economist, but I know these cut flowers are less expensive. I know it costs less to build a house for the average citizens when the lumber is cheaper. It is easier to clothe people when the apparel is cheaper.

This protectionism which has characterized many of the actions of this body and the other body, and of the President of the United States, is harmful to average American citizens, many of whom do not make large campaign contributions, many of whom do not make huge contributions to the fundraisers. But they will pay more for the price of a house if we continue to protect lumber. They will pay more for an automobile if we continue to protect steel. They will pay more for clothes if we continue to protect the textile industry.

Are there people who are hurt by this free and open trade? Absolutely. That is why I have steadfastly supported insurance, job training, and outright assistance to any dislocated worker if the case can be made that that worker was dislocated or removed from their job because of a direct impact of trade.

I am worried about our hemisphere. There was a front page story in the New York Times a couple weeks ago about the failure of free market economies in our hemisphere and how average citizens of these poor countries have enjoyed the benefits of the increased economic benefits of free trade and a great discontent and unrest that exists in these nations. We should pay attention to the difficulties in our own hemisphere. There is no stronger supporter of the war on terror than this Senator and all of the American people.

We are going to have great difficulties because of one thing we have learned from the 1980s: That if governments are unable to satisfy the people, the people turn to other means to satisfy their legitimate yearnings and desires. We saw that manifested in guerilla movements and armed insurrections in Central America and in Latin America in the 1980s, movements such as the Shining Path, the Sandinistas, and others. And the United States then expended a great deal of American treasure to try to prevent these movements from overthrowing legitimately elected governments.

I rise in strong support today of the Andean Trade Preference Act. I want to make it very clear that along with my support for free trade, I also am strongly supportive of and will continue to commit to any worker and his or her family who are dislocated by free trade. But to argue that we should not have free trade as a result of this is ignoring the larger picture, and that is goods and services ranging from flowers to apparel to many other products are less expensive for average American citizens, thereby allowing American citizens to enjoy many of the things wealthier Americans are able to enjoy.

I want to warn my colleagues. We have a serious situation in our hemisphere. Enactment of trade authority for the President in the Andean Trade Preference Act will not turn that around immediately. But there is no doubt in my mind that we are on a path in our hemisphere that could lead to enormous challenges and difficulties in the months and years ahead. By passing the Andean Trade Preference Act and giving the President trade authority, I think we can at least start on a path to reversing some of the terrible misfortunes that have beset so many innocent people in our own hemisphere.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT AGREEMENT—H.R. 5005

Mr. REID. I ask unanimous consent the cloture vote on the motion to proceed to H.R. 5005 be vitiated, there be a time limitation of 7 hours on the motion to proceed on H.R. 5005, the homeland defense bill, equally divided between Senators LIEBERMAN and THOMPSON for the proponents, and Senator BYRD for the opponents, or their designees; that the time begin on Tuesday, September 3, at 9:30 a.m., and the motion to proceed be the pending business at that time. I further ask unanimous consent that at the conclusion or yielding back of time, the Senate, without any intervening action or debate, vote on the motion to proceed to H.R. 5005.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DORGAN. Madam President, I listened intently to my colleague and friend from Arizona. There is no disagreement on the proposition that I want the benefits of international trade to accrue to American citizens, consumers who go to the store and want to buy the best possible product at the best possible price. There is no question about the doctrine of comparative advantage, in which each country, doing that which it does best and trading with other countries, promotes efficiency. There is no question about that, and that should not be the subject of this debate.

It is not that those of us who oppose fast track do not support free trade. But I want to tell you about the kind of trade I do not support. The most recent agreement that we negotiated in this country was with China. It was a bilateral agreement, prior to their membership in the WTO. Let me just take one small piece of that bilateral agreement with China and ask a question.

Our negotiators negotiated with the Chinese in this bilateral agreement, and they agreed to the following: After a phase-in period, the United States would impose a 2.5-percent tariff on any automobiles manufactured in China shipped to the United States, and China would impose a 25-percent tariff on any United States automobiles shipped to China.

I am wondering, who in this Chamber would think that is a reasonable deal? We say to China: China, you have a $70 billion trade surplus with us. We have a $70 billion trade deficit with you. And by the way, here are some new terms on automobile trade. If you decide to build automobiles and ship them to our country, and we want to ship cars to your country—you have 1.3 billion people—we agree you can charge 10 times the tariff on United States cars going into China. Who thinks that makes sense? Where do these negotiators come from? Do they go to a school somewhere, a school that fails to teach them the basics of how you negotiate and what a fair trade agreement is about?

No one wants to discuss this. One of my colleagues said: I have half a notion to stay here and debate you.

I said: Gosh, I wish you would.

No one is interested in debating the issue of trade. There is the simplistic and thoughtless debate saying we are for free trade, we understand it, we see over the horizon, we understand the economy, and the rest of you are xenophobic stooges, and you don't know what you are talking about. That is the way the debate rages on the floor and in the Washington Post, with the same thoughtless drivel.

I come from a State that has a lot of family farmers. We have to find a foreign home for over half of what we produce. I am the last person in the world who wants to retard the movement of goods around the world. I believe in trade. I believe in expanded trade. But on behalf of our farmers, I demand the trade relationships with other countries be fair. It doesn't matter to me whether it is wheat or corn or soybeans, if we are going to have a trade relationship with someone, and we are going to connect with somebody, I want it to be fair. So let me describe a bit what I mean about fairness.

I mentioned Japanese beef. We ship a lot of Japanese cars into this country and good for us. If consumers want to buy them, that is good. They want access to that product. So I represent a lot of ranchers in North Dakota. They have a lot of beef to sell. Japan needs beef. So we negotiated a beef agreement with the country of Japan.

Madam President, 12 years after the agreement was completed, every pound of hamburger, every pound of T-bone steak that goes into Japan now has a 38.5-percent tariff on it; 12 years after our agreement, we have a 38.5-percent tariff. Should we be shipping more T-bones to Tokyo? You bet your life we should. Why can't we? The tariff is too high. That is after our negotiators reached an agreement with them. Do our ranchers have a complaint? I think so; I believe so because the trade circumstances with respect to beef to Japan are not fair, and everybody knows it.

Let me show a chart that shows the EU's import barrier to U.S. eggs. If you are an egg producer in this country, in the United States, it is standard to wash eggs before shipment. So if you go to the store and buy a carton of eggs and open the carton, that is what it is going to look like. It is something you might want to crack and eat.

The European Union requires that imported eggs be unwashed, supposedly because their farmers are not in the habit of washing eggs. Therefore United States eggs cannot be sold in Europe at the retail level, because we wash our eggs. Is that a fair trade deal? If you were involved in selling eggs, do you think you would like what Europe is doing to us? I don't think so.

I mentioned yesterday the issue of $100 million in United States beef that is banned in the European Union. We have a fairly significant trade deficit with Europe. You read the European press, they make it sound as if all of our cows have two heads—this grotesque creature we are trying to sell that is going to injure their consumers.

So we took the Europeans to the WTO court, the tribunal, and we said it is unfair, the $100 million of United States beef we cannot get into Europe, and the WTO said: Yes, you are right.

So they said: Europe, you are going to have to allow that United States beef in.

Europe said: Go fly a kite. We don't intend to let United States beef into Europe.

So our trade negotiators got real gutsy for once. Our trade negotiators screwed up all of their courage and they said: Look Europe, if you don't play fair with us, we are taking tough action against you.

What did we do? We took action against them, by imposing tariffs on selected products. Do you know what EU products our negotiators chose to retaliate against? Our retaliation is on truffles, goose liver, and Roquefort cheese. That will scare the devil out of a trade adversary, won't it? If you have a trade relationship in which someone is unfair, you better watch out or we might take action against your goose liver or Roquefort cheese. Maybe I come from a small town and don't understand that, but I don't think that is going to strike fear in the heart of a trading partner who is being unfair to America.

Let's talk about the issue of potato flakes to Korea. What if you are a potato grower in the Red River Valley and you want to get potato flakes to Korea from which they make snack food? There is a 70 percent tariff trying to get potato flakes into Korea.

While we are on the subject of Korea, how about automobiles going into Korea? Last year, this country brought 618,000 Korean automobiles into our marketplace to be sold to the American consumer. That is good for Korea. Korea produces a pretty good car, and they ship them into the United States, and United States consumers buy them.

Guess how many United States-manufactured cars got into Korea last year? It wasn't 618,000. It was 2,008. Why? Try to sell a Ford Mustang in Korea. They use all kinds of non-tariff trade barriers. This is trade in which the Koreans sell us 217 cars for every car we can sell in Korea—618,000 sold here, and 2,008 in Korea.

Is that because we don't make good cars? No. Is it because Koreans don't want American cars sold in Korea? Yes. It is that simple.

I mentioned stuffed molasses, which are used to evade U.S. tariffs on sugar. Brazilian sugar is sent to Canada. Then a Canadian company combines the sugar with the molasses. Then it comes into this country, and the sugar is unloaded. They get another load of sugar and bring it down with stuffed molasses in contravention of our trade law. It has been going on for a long period of time. We can't do a thing about it.

Trade problem? Sure, it is. If you are a sugar beet grower, is that a problem? You bet. Is anybody about to fix it? No. Nobody cares. Actually, the Senate version of the trade bill had a provision that aimed to fix this problem. But, like most other things of value in the trade bill, it was dropped out in conference. There is instead a placebo provision that means virtually nothing.

I mentioned a bit ago that China has this huge trade surplus with us, or we have a huge trade deficit with them. I noticed in the newspaper the other day that China is buying Airbuses from Europe. China has a lot of people. They need a lot of airplanes. The Airbus is deeply subsidized by the European governments. It is unfair competition for the Boeing Company, for example.

What is the remedy for a United States airplane manufacturer when the European company that is deeply subsidized by the European governments goes to China and sells them Airbuses, at the same time that China has this huge trade surplus with us?

We had a situation recently because of NAFTA. The administration says we must allow long-haul Mexican trucks into our country. Of course, the fact is that long-haul Mexican trucks are not inspected the way we inspect our trucks. Their drivers are not required to carry logbooks the way our drivers do. There is a lot of concern about safety when they come in and move around our country. They have been limited to a 20-mile distance from the border. Mexico said, apparently, that if we didn't allow long-haul Mexican trucks into our country, they were going to take action against us with respect to high-fructose corn syrup. I have news for the Mexicans. They have already taken action. We can't get high-fructose corn syrup into Mexico with any reasonable tariff because they are acting in contravention of our trade laws and agreements.

The list is endless. I could go on for a long period.

We have a trade agreement with Canada. Clayton Yeutter went to Canada and negotiated a trade agreement with Canada. This agreement essentially sold out the interests of our American farmers. I am sure he received something from Canada—perhaps greater access by the financial service community, or something. In any event, immediately after the trade agreement was negotiated with Canada, our farmers saw an avalanche of Canadian grain being sold in our country at unfairly subsidized prices by a monopoly controlled by what they call the Canadian Wheat Board. We can't do a thing about it. We sent investigators to Canada to get information about the prices at which they were selling the grain. They thumbed their noses at us and said: We don't intend to give you any information about the prices at which we are selling it in the United States.

I rode up to the Canadian border with a farmer named Earl Jensen in a 12-year-old orange truck with a couple hundred bushels of durum wheat on the back, and we were stopped at the border despite the fact that all the way to the border we saw 18-wheel Canadian trucks coming into the country hauling Canadian wheat.

That is the kind of thing that angers the American people about trade.

We have a circumstance where we have this huge trade deficit. It is interesting. We talked about this in the debate. No one really wants to talk about this deficit at all. People just act as if it doesn't exist. People come out here and dance around for a while, talk about the wonders of global trade and how terrific it is, but they want to pretend it doesn't exist. There is this relentless griping about the trade deficit that is increasing year after year and that is hurting our country. We don't owe this money to ourselves as we do the budget deficit, we owe this money to other countries. This is a claim on our assets by other countries.

In May, the trade deficit was $41.5 billion—just last month. And the trade ambassador has said that he is going to put our antidumping laws on the negotiating table. We have antidumping rules. They are not very well enforced. But we have them nonetheless. They are one of the few tools we have to fight unfair trade. And they are now on the negotiating table. There are discussions about their elimination. We are willing to get rid of them in future trade negotiations—in secret, because all these trade negotiations are in secret—willing to consider getting rid of our antidumping rules. We will be defenseless. We have a weakened 301, no section 22, and now we have antidumping rules on the table.

So where is the remedy for unfair trade? Under this trade bill, the only remedy for those who lose their jobs because of these trade agreements is that we are willing to give you some health insurance—not all of a it, but we are willing to pay 65 percent for some health insurance for you. Lose your jobs, and you'll get some trade adjustment assistance. You can go home and say to your spouse: Honey, I have lost my job. They are moving into Indonesia. They can find someone who works for 40 cents an hour. They don't have to have a manufacturing plant that is safe because they are not subject to all those darned OSHA rules. And they can dump the chemicals right in the streets, and they can pollute the air. They don't have to worry with that because there is no enforcement. And they can work 12-year-old kids for 12 hours a day, and nobody is going to say anything. Honey, I have lost my job, and it is going overseas. But, honey, there is good news here because the bill the Senate has been considering is going to get us a little health insurance.

They have even extended it now to farmers and ranchers who lost their farms and ranches. They get a little trade adjustment assistance as well, when they lose their farms.

Incidentally, they are also going to expand the training budget because they know we are going to lose some of these jobs. We are going to give some training to all the people forced out of their jobs. Just don't expect their new jobs to amount to much. Because good jobs are being driven out of this country by all these trade agreements.

It is interesting to me that there is no one in the debate who wants to defend the practices I have just described. All they want to do is chant. You can go to the street corners and hear chanting as well. Normally they have drum rolls and symbols, and they chant. We have the same exercise when we talk about trade—this relentless chant: "Free trade, global economy, free trade, global economy."

Is there anyone in the Senate who wants to say: Yes, let us have expanded trade, but let us demand on behalf of this country that we have tried rules that are fair?

This country got into a bad habit after the Second World War. We did it necessarily, and it was something which I would have supported if I had been here at that point. Just after the Second World War, we had a lot of countries flat on their backs. Trade policy for us was foreign policy. We said with all of these countries: Let us make concessions. Let us help them. We can do almost anything. We are the biggest, the best, the strongest, and we have the most. We can beat anybody in international trade competition with one hand tied behind our backs. So trade policy was then foreign policy. And that is fine.

For a quarter of a century, our trade policy was foreign policy. But then, those who were flat on their back became shrewd, tough international competitors: Japan, Europe, and others. Yet our trade policy did not become trade policy or economic policy, it remained foreign policy.

For the second 25 years after the Second World War, we began to see this problem, a problem of gripping, relentless trade deficits. With Japan, it has been a trade deficit that has continued virtually forever—year after year after year after year—because they want to protect their economy and keep United States goods out, to the extent they can, and they want access to our marketplace with their manufactured goods.

And this country has said: Fine; that's a relationship that's fine with us.

It is not fine with me, and should not be fine with others, whose principal interest ought to be the economic future of this country, whose principal interest ought to be to have trade agreements that are mutually beneficial to both trading partners.

When I started talking, I talked about this Byzantine, twisted, perverted provision with China on automobiles. I did it for a reason.

I recognize that we do not have a lot of automobile trade with China. China has 1.3 billion-plus people. One would expect, as the Chinese economy advances, that the opportunities to sell automobiles in China could be significant. But our negotiators, for reasons I could never understand, said: Oh, by the way, let's make a little deal. Just as one part, one paragraph, in a big, long trade agreement, here is what we will decide on automobiles: China, you have a big trade surplus with us, and we have a big deficit with you, but if we ever have any automobile trade between us, you can go ahead and impose a tariff that is 10 times higher on United States cars than we would impose on Chinese cars.

We ought to find the person who agreed to that, and somehow put him out here on the Senate steps, and get a chair and sit beside him, and ask him to explain to us what school you go to, to learn that kind of nonsense, that kind of perverted sense of fairness.

I could describe paragraphs in every trade agreement in the last 25 years that have the same absurdities, the same unwillingness to stand up for American producers and American jobs, not at the expense of others, but just for the benefit of ours.

Somehow there is an embarrassment in this Chamber about standing up for this country's economic interests. Yes, it is in our economic interest to have a system in which U.S. consumers have access to lower priced goods from around the world. But it is not, and never will be, in our economic interest, if those consumers are out of work, if the jobs that provided the income that used to allow the consumers to take the goods off the shelf through their purchases have now gone to other countries because corporations, that at this point are no longer American citizens but international citizens, have decided they ought to produce where it is very inexpensive to produce and ship their goods to the established marketplace.

That, inevitably, and, in my judgment, more significantly as the years go on, will erode our job base of good jobs. I am talking about manufacturing-sector jobs. No country will long remain a strong economic power, a world economic power, if it decimates its manufacturing base. Manufacturing is critical to our country's economy and to our long-term economic health.

There is a fellow in North Dakota who goes to county fairs and performs for money, and his name is John Smith. He has an act that he takes to county fairs, and they pay him for it. He takes old cars—gets some old wreck—and then he gins up the engine somehow, and then he goes and he jumps four or five other cars in front of the bandstand, wherever the county fair is. He calls himself the Flying Farmer from Makoti. He lives in Makoti, ND, and he farms.

So he has this act where he travels with these old cars and he calls himself the Flying Farmer. He is an interesting guy. He wanted to set the Guinness record in the "Guinness Book of World Records." And he is now in the "Guinness Book of World Records" for driving in reverse for 500 miles, averaging 38 miles an hour.

Now, you might wonder why I thought about the Flying Farmer from Makoti. I was thinking about going in reverse this morning, and I thought what better example of going in reverse than the Flying Farmer from Makoti and the Senate on international trade.

Year after year after year, we go deeper and deeper and deeper in debt. The current account deficit is somewhere around $2 trillion at this point this year. When the year ends, we will be somewhere around $450 to $480 billion in merchandise trade deficit. And we have to pay somebody that, somebody living outside of our country. It injures our economy, it injures future economic activity, and yet no one really wants to talk much about it.

We are going in reverse. We are not making progress. Despite all of the protests by those who think this is a wonderful thing, the evidence is in.

With NAFTA, the last trade agreement with Canada and Mexico, we turned a small surplus with Mexico into a big deficit; we turned a moderate deficit with Canada into a big deficit. NAFTA was a disaster. We were promised that there would be 300,000 new American jobs coming from this trade agreement with Mexico and Canada. The fact is, we have lost somewhere around 700,000 jobs.

We were told by the economists, who thought they knew what would happen with Mexico, that we would simply get the products of low-skilled jobs coming into this country as a result of NAFTA. The three largest imports from Mexico are automobiles, automobile parts, and electronics—all products of high-skilled jobs that used to exist in major centers of manufacturing in our country but now exist in Mexico.

We are not making progress. We are losing ground. That is the reason I oppose giving fast-track trade authority to this President. To suggest that we ought to ignore the Constitution—and, yes, we ignore the Constitution when we do this. The Constitution says that the regulation of trade with other countries is the province of the Congress—the Congress. And a majority of the Senate says: we have not seen your next trade agreement yet. We know you will negotiate it without us. We know it will be negotiated in secret somewhere. But we agree in advance, so whatever you do, whenever you do it, wherever you do it, we will handcuff ourselves so we are unable to offer even one amendment to change one word when it comes back to the Senate.

I think that is one of the goofiest propositions I have ever heard. It just makes no sense at all. Yet a pretty broad majority of the Senate agrees to it.

Well, let me make a final point.

The business community in this country and in this world have become international citizens. Multinational corporations do business all around the world. They do not get up in the morning and say: Look, my principal interest is the economy of the United States of America. That is not their principal interest. Their principal interest is to their shareholders. And their interest to their shareholders is to do, in international economic circumstances, the best they can to improve profits. If that means moving jobs from Pittsburgh to Indonesia, in order to take advantage of lower labor rates, and to avoid OSHA, and to avoid all the other things you have to comply with in this country, then that is what they do.

The problem is, this country, as a leader in international trade, has not described what fair competition is. We have never described, in the new global economy, what is fair competition. The global economy has galloped forward, but the rules have not kept pace.

It begs the question, for all of us, as a leader in world trade: What are the rules? What are the conditions? What is the admission price for the American economy?

I said earlier, if a company decides that it wishes to access the lowest possible labor rate anywhere in the world, and takes its corporate jet, and circles the globe, and looks down to see where they can possibly do that, and discovers a place where they can hire 12-year-olds, and they can work them 12 hours a day, and they can pay them 14 cents an hour, is that fair?

Then they ship the product of that labor to Fargo or to Denver or Fresno and put on it the store shelf, and someone says: Isn't that a wonderful thing? What a wonderful thing; you actually have a lower price for that product. In fact, some studies suggest that is not the case. The difference is made up in profit for the corporation, not lower prices for the consumer. But setting that aside, people say: Isn't that a wonderful thing? That is lower priced than I expected.

Yes, that is good for the consumer, but it is also the case that the would-be consumer may well have lost his job because the production of that item no longer exists here.

I am not suggesting we should have the manufacturing advantage or capability for all products. I believe the doctrine of comparative advantage makes sense. If there is a country that can do it better, more effectively, has the natural resources more available than we do, one would expect they would do that which they do best. We do that which represents a natural advantage for us, and we trade back and forth.

But that is not the circumstance today. The natural economic advantage these days is instead a natural political advantage. A country says, our political advantage is we will allow you to hire kids. We will allow you to pay 20 cents an hour. We will allow you to dump your chemicals into the streams and into the air, and we will allow you to do this in a workplace that is not required to be safe. Those aren't economic advantages that somehow relate to natural advantages. Those are political advantages created by a government that says: We will not allow people to form unions or labor to collectively bargain or rules against children put in factories. Those are political judgments and political circumstances. There is no natural economic advantage there. My point is, we have to come to grips with this galloping globalism. We must do that in fairness to the American worker and to the American businesses. To do less than that means that we consign our economy to unfair competition in a dozen different areas.

Americans depend on us to represent our best economic interests, not some notion of what the economic interest is for a corporation that does business in every country and has no special interest or recognition in our economy or our economic growth or our workers.

I know we have a 30-hour postcloture period. Several of my colleagues will want to speak on this issue. I expect they will have significant votes for it today and those who vote for it will be back on the floor. I will be back on the floor of the Senate again with another chart, and we will talk about whether it is wise for the Senate, when it discovers that doing something isn't working, to continue doing it over and over and over again.

Most people learn by repetition. When you repeat something that has failed, most people understand that they want to do it differently. That is not the case with fast track and with our current trade policy.

I believe in expanded trade. I believe economies are strengthened by expanded trade. I believe our economy and other economies of the world are strengthened by expanded trade. I don't want to put up a wall around our country. I am not an isolationist. But I believe very strongly there needs to be voices raised demanding fair trade rules. Whether it is China, Japan, Europe, Canada, Mexico, Korea, or others with whom we have very large trade deficits, we have a right as Americans, as producers and as workers, to expect our Government will represent our economic interests in demanding fair trade rules.

That has not been the case to date. I hope soon after this vote today, we will begin to see some effort on behalf of our country in demanding the rules of trade keep pace with the galloping pace of global trade. That is the only thing that will be fair to American workers and American companies.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. WELLSTONE. Madam President, if the Senator will yield for a second, I ask unanimous consent that I be allowed to follow the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Madam President, I thank my colleague from North Dakota. If the Senate had been in session listening and heard the persuasive argument made by the distinguished Senator from North Dakota and we had a vote, we would vote his way immediately because he has presented the case.

The only thing is, he has not presented the case in the stark reality that it really is. We are talking to a fixed jury. As an old trial lawyer for some 20 years, where I made enough to afford the luxury of serving here, I know how to talk to a fixed jury. Specifically, the contention in the trial of this case is that we have to give the President negotiating authority that cannot be amended; it is on a take-it-or-leave-it basis; and that the trading nations, some, let's say, 160, 170 trading countries, just will not enter into an agreement unless the President has fast track.

He doesn't want to go through the negotiation period and then find that his particular trade agreement has been amended on the floor of the Congress.

If you refer to the 2001 Trade Policy Agenda and 2000 Annual Report, which is the most recent, issued by the U.S. Trade Representative, turn to page 1 of the list of trade agreements. You will find, in essence, five trade agreements as a result of fast track, and thereafter some 200 agreements without fast track. The contention that you can't get an agreement unless you have fast track is totally absurd.

We have had the Tokyo round, and the United States-Canada Free Trade Agreement. Incidentally, this Senator voted for that because we have relatively the same standard of living. We have the labor protections. We have the environmental protections. When you have a level playing field, I am delighted to vote for trade, and so-called free trade. But now, we have fixed trade.

That is what we are debating. This jury is fixed. We also had the United States-Israel trade agreement, which I also supported; NAFTA, which I opposed; and the Uruguay Round with WTO. Those are the five so-called trade agreements under fast track. But then turn the pages and continue turning, and there are some 200 trade agreements without fast track.

When I first got here, we had SALT I, and it was very complex. We had reservations and amendments on the floor of the Congress. We had a vote on that. We didn't have fast track for SALT I and fast track for SALT II and fast track for the chemical weapons treaty. The contention of the White House is you can't get trade agreements, but the President needs to look at his own book.

Mr. BYRD. Will the Senator yield?

Mr. HOLLINGS. I am delighted to yield.

Mr. BYRD. Is he telling me that trade agreements can be negotiated without this fast-track mechanism?

Mr. HOLLINGS. Yes, sir.

Mr. BYRD. Is that what he is saying?

Mr. HOLLINGS. I tell the distinguished Senator from West Virginia, they literally have almost a dozen and a half pages of all of these agreements, right here in the President's report, that were obtained without fast track.

Mr. BYRD. I thought the President was saying to the country that he has to have this fast-track thing that we will vote on today in order to negotiate trade agreements. Is the Senator from South Carolina telling me he doesn't have to have that?

Mr. HOLLINGS. No, sir, he doesn't. I can tell you now he wants the fast track for the fix.

That is the point I want to make. I can tell you right now. Let's look at the result of the so-called trade agreements. Look at 1992, and you find that the Foreign Trade Barriers of the Office of the U.S. Trade Representative is 267 pages long. Oh, we had WTO, we had GATT, we had NAFTA, and we did away with all the barriers. Why then is this year's Foreign Trade Barriers—458 pages long?

Like the monkey making love to the skunk, I cannot stand any more of this. I can tell you that right now. For Heaven's sake, don't give me any more free trade agreements or fast tracks. This would be the end of the argument, if you didn't have a fixed jury. What is better proof? I am using the President's proof. No. 1, he doesn't need fast track and, with fast track, we are actually going out of business.

Mr. BYRD. Will the Senator yield for a question?

Mr. HOLLINGS. Yes.

Mr. BYRD. What I have been hearing the administration say is that this is trade promotion authority. Does the Senator mean to tell me here in front of the eyes of the Nation, the ears of the people, that the President doesn't need fast-track in order to negotiate trade agreements for the United States? Is that what the Senator is saying?

Mr. HOLLINGS. There is no question, Senator——

Mr. BYRD. That is not what the President has been saying, is it?

Mr. HOLLINGS. No. You bring out the point that this is bipartisan. President Clinton said he had to have fast track for NAFTA.

Mr. BYRD. We didn't give it, did we?

Mr. HOLLINGS. That is right. They said if we pass NAFTA we would get 200,000 jobs, but we lost 700,000 textile jobs. In the State of South Carolina, since NAFTA, we have lost more than 54,000 jobs.

Now, this farm crowd, they get their $70 billion bill, and they come here blinking their eyes and talking about free trade, free trade. They get all the subsidies and protection—the Export-Import Bank, support payments, and everything else of that kind—and they run away with some $80 billion. The poor, hard-working people, such as your mine workers and my textile workers—

Mr. BYRD. Yes.

(Mrs. CARNAHAN assumed the Chair.)

Mr. HOLLINGS. As the distinguished Senator from Texas always says, they are pulling the wagon, paying the taxes, keeping the country strong. We have removed 700,000 textile jobs alone. Akio Morita and I went to a seminar in Chicago almost 20 years ago, and they were lecturing about the Third World countries, the emerging nations trying to become nation states.

Morita, then head of Sony, said: Wait a minute, in order to become a nation state, you have to develop a strong manufacturing capacity.

Then later, he turned and said to this Senator: Senator, the world power that loses its manufacturing strength will cease to be a world power.

I am worried about this country. I tell you, we have over a $412 billion deficit in fiscal year 2002.

Madam President, I ask unanimous consent that page 1 and page 60 of the Mid-Session review on the budget just issued be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY

When this report was published last year, the nation was in the midst of a recession that, predictably, was already having detrimental effects on the government's finances. What no one could predict was that just 20 days later, a lethal attack on America would exacerbate the recession and trigger extraordinary military, homeland defense, and repair expenditures that would at least temporarily make an enormous difference in the fiscal outlook.

By the February 2002 submission of the Budget for fiscal year 2003, the budgetary effects of the recession and the war on terror were well understood. It was also becoming apparent that the flood of revenue that produced record surpluses in the late 1990s was driven both by underlying economic growth, the traditionally decisive factor, and, in ways no yet fully grasped, by the extraordinary boom in the stock market. The markedly greater dependence of revenues on stock market developments was not yet understood by experts either inside or outside the government.

The economic recovery appears to be underway, the one-time costs of recovery are being paid, and the expense of war-fighting abroad and new protective resources at home have been incorporated in budget plans. Taking all these changes into account, the federal government is now projected to spend $165 billion more than it receives in revenues in 2002, up from the $106 billion projected nearly six months ago. Table 1 below comparing February and July estimates shows a return to the pre-recession pattern of surpluses in 2005, and growing surpluses thereafter. Future improvements, however, depend to a significant extent on two key factors: (1) restraint of the recent rapid growth in federal spending; and (2) a resumption of growth in tax payments produced by a stronger economy and a stronger stock market.

MOVING FORWARD AMID THE BACKDROP OF WAR

President Bush placed two purposes above all others in his 2003 Budget: Winning the war on terror and restoring the economy to health. On both fronts, initial progress has been encouraging. Military action in Afghanistan has depleted the ranks and greatly weakened the operational capabilities of the terrorists. On the economic front, the nation's gross domestic product (GDP) grew at an impressive 6.1 percent annual rate in the first quarter of 2002, making the recession both shorter and shallower than most and the early recovery far stronger than assumed in February's budget.

For the future, we can be certain only of the intentions of our adversaries and our own resolve to defeat them. We know neither the length of the conflict nor the budgetary expense of victory. Nor can we be certain the economy will not be weakened by further shocks. To preserve the flexibility to respond to future events while maintaining a fiscal framework that will return the budget to surplus, it is imperative that spending, . . .

TABLE 1.—CHANGES FROM 2003 BUDGET

[In billions of dollars]

	2002	2003	2004	2005	2006	2007	2003–2007
2003 Budget policy surplus	−106	−80	−14	61	86	104	157
Enacted legislation	34	33	17	33	4	2	89
Supplemental and other adjustments to Administration policy	−13	−7	−6	−3	−4	−3	−25
Economic and technical reestimates	−80	−54	−45	−37	−26	−18	−181
Total changes	−59	−29	−34	−8	−26	−20	−117
Mid-Session Review policy surplus	−165	−109	−48	53	60	84	41

TABLE 20. FEDERAL GOVERNMENT FINANCING AND DEBT

[In billions of dollars]

	2001 Actual	Estimate					
		2002	2003	2004	2005	2006	2007
Financing:							
Unified budget surplus (+)/ deficit (−)	127	−165	−109	−48	53	60	84
Financing other than the change in debt held by the public:							
Premiums paid (−) on buybacks of Treasury securities[1]	−11	−4					
Net purchases (−) on non-Federal securities by the National Railroad Retirement Investment Trust	....	−6	−11	−*	*	*	*
Changes in:[2]							
Treasury operating cash balance	8	−6	−5	....	....	−5	....
Checks outstanding, deposit funds, etc.[3]	−13	−12	10	....	....	....	....
Seigniorage on coins	1	1	1	1	1	1	1
Less: Net financing disbursements:							
Direct loan financing accounts:	−19	−15	−15	−15	−15	−15	−15
Guaranteed loan financing accounts	−4	−2	3	3	4	5	5
Total, financing other than the change in debt held by the public	−37	−44	−17	−11	−9	−14	−8
Total amount available to repay debt held by the public	90	−209	−126	−58	44	47	76
Change in debt held by the public	−90	209	126	58	−44	−47	−76
Debt Subject to Statutory Limitation, End of Year:							
Debt issued by Treasury	5,743	6,155	6,535	6,897	7,195	7,506	7,805
Adjustment for Treasury debt not subject to limitation and agency debt subject to limitation[4]	−15	−15	−15	−15	−15	−15	−15
Adjustment for discount and premium[5]	5	5	5	5	5	5	5
Total, debt subject to statutory limitation[6]	5,733	6,145	6,524	6,887	7,184	7,496	7,795
Debt Outstanding, End of Year:							
Gross Federal Debt:[7]							
Debt issued by Treasury	5,743	6,155	6,535	6,897	7,195	7,506	7,805
Debt issued by other agencies	27	27	26	26	24	24	23
Total, gross Federal debt	5,770	6,182	6,561	6,923	7,219	7,530	7,828
Held by:							
Debt securities held by Government accounts	2,450	2,654	2,906	3,210	3,550	3,908	4,282
Debt securities held by the public[8]	3,320	3,529	3,655	3,713	3,669	3,622	3,546

*$500 million or less

[1] Includes only premiums paid on buybacks through April 2002. Estimates are not made for subsequent buybacks.

[2] A decrease in the Treasury operating cash balance (which is an asset) would be a means of financing a deficit and therefore has a positive sign. An increase in checks outstanding or deposit fund balances (which are liabilities) would also be a means of financing a deficit and therefore would also have a positive sign.

[3] Besides checks outstanding and deposit funds, includes accrued interest payable on Treasury debt, miscellaneous liability accounts, allocations of special drawing rights, and, as an offset, cash and monetary assets other than the Treasury operating cash balance, miscellaneous asset accounts, and profit on sale of gold.

[4] Consists primarily of Federal Financing Bank debt.

[5] Consists of unamortized discount (less premium) on public issues of Treasury notes and bonds (other than zero-coupon bonds) and unrealized discount on Government account series securities.

[6] The statutory debt limit is $6,400 billion.

[7] Treasury securities held by the public and zero-coupon bonds held by Government accounts are almost all measured at sales price plus amortized discount or less amortized premium. Agency debt securities are almost all measured at face value. Treasury securities in the Government account series are measured at face value less unrealized discount (if any).

[8] At the end of 2001, the Federal Reserve Banks held $534.1 billion of Federal securities and the rest of the public held $2,785.9 billion. Debt held by the Federal Reserve Banks is not estimated for future years.

Mr. HOLLINGS. Now you begin to see what I started to talk about—the corruption, not of Senators, but of the process. You and I saw the corruption of the process when they brought TV cameras in here. I first got here 35 years ago. If you wanted to know what was going on down on the floor, you had to go down on the floor. So you always had 20, 25 Senators in this cloakroom, 20 Senators over in that cloakroom; and a point was made that you could immediately go out and contest that point. Now I stay back in my office looking at my TV. I know that is wrong, and I should run over to the floor. But when I get here, two other Senators have been waiting for an hour as the next speakers. So there is no debate. The process has been corrupted, as the budget process has been corrupted.

Let me tell you exactly how it happened because I was chairman of the Budget Committee. I went over with Alan Greenspan in January of 1981 to brief President Reagan on the budget. He had pledged to balance the budget. He pledged, of course, tax cuts. He also pledged to balance the budget in 1 year. After the briefing, he said: Oops, this is way worse than I thought. It is going to take 3 years.

That is how we got into the 3-year budgets. And with Gramm-Rudman-Hollings, we got the 5-year budget, and now we have 10-year budgets. Whoopee, let's have a 20-year budget and make all kinds of happy projections and reelect ourselves. That is the corruption that has gone on.

After President Reagan came in, the Greenspan Commission issued their report on Social Security, making it fiscally sound. Section 21 of the Greenspan Commission report said: Put Social Security off budget.

As a former chairman of the Budget Committee and an old-timer, I worked with John Heinz from Pennsylvania, and we finally got it passed. On November 5, 1990, George Herbert Walker Bush—President senior Bush—signed into law, section 13.301 that says you shall not use Social Security in your budget. But we do. The President violates it, the Congress violates it, and, more particularly, the media does.

The distinguished Senator from West Virginia is so terrific on historical reference, and I must think at this moment of President Thomas Jefferson. When he was asked: Between a free government and a free press, which would you choose? He said: I choose the latter. So long as the free press tells the truth to the American people, the Government will remain free.

Why do they say on page 1, which we have just put into the RECORD, the deficit is $165 billion? But on page 60, the deficit, the real debt we will spend in this fiscal year, Madam President, is $412 billion more than we take in. Why? Because Mitch Daniels, our Enron accountant—wants to fool Americans. He is more interested in rolling out hundreds of millions of dollars in tax breaks for Kenny-Boy Lay.

Now, President Reagan, in trying to get both tax cuts and his pledge to balance the budget, got what he called "unified." That was the biggest bunch of nonsense and charade I ever saw because it was all but unified. He just separated out the trust funds, including Social Security, and the civil service retirement and military retirees funds. He factored them out, and the next thing you know, we had unified.

Then, under President Clinton, we went to on-budget, off-budget, on-budget, off-budget. Then to continue the charade, under President Bush, we refer to it as public debt and Government debt, Government debt and public debt. They confuse the public in order to get reelected. They tell everybody Social Security is not spent. That is exactly what the Secretary of the Treasury said this last Sunday. He said that under no circumstance would we spend Social Security.

I almost went through the TV set when I heard him say:

> Social Security moneys are never spent for anything except Social Security. It's a red herring.

CBO has already said we will owe not $1.170 trillion, but $1.333 trillion to Social Security. In fact, on page 44 of the Mid-Session Review you will see Mitch Daniels hides that fact. I ask unanimous consent that page 44 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

TABLE 7.—BUDGET SUMMARY BY CATEGORY

[In billions of dollars]

	2002	2003	2004	2005	2006	2007	2003–2007
Outlays:							
Discretionary							
Defense	332	371	388	408	423	437	2,028
Nondefense	379	399	413	418	424	432	2.086
Subtotal, discretionary	711	771	801	826	847	870	4,114
Emergency response fund	36	17	8	3	2	1	30
Mandatory:							
Social Security	453	473	494	515	538	566	2,587
Medicare	223	232	242	260	282	307	1,324
Medicaid	147	161	173	188	205	223	950
Other mandatory	291	305	302	307	319	323	1,556
Subtotal, mandatory	1,114	1,171	1,212	1,270	1,345	1,419	6,417
Net interest	171	180	196	198	197	194	965
Total Outlays	2,032	2,138	2,217	2,298	2,390	2,483	11,526
Receipts	1,867	2,029	2,169	2,351	2,451	2,567	11,567
Surplus	-165	-109	-48	53	60	84	41
On-budget surplus	-322	-282	-236	-165	-176	-171	-1,031
Off-budget surplus	157	173	189	219	237	255	1,072

Mr. HOLLINGS. Madam President, you will see on page 44 that the Social Security moneys, to the tune of $157 billion, is spent. It shows it in his own document. We need to catch these fellows. That is why I say the budget is corrupt.

Robert Kennedy, who used to sit at this desk, wrote a famous book, "The Enemy Within." I could write a book called "Your Best Friends and My Best Friends." The best friends are the Chamber of Commerce, the Business Roundtable, the National Manufacturers Association, and the National Federation of Independent Business. They are the enemy within for fixed trade. Yes, they want to export—export our jobs. That is what this is all about. Senator BYRD, over half of what we consume in this country is imported. Does the Senator realize that?

We import 56 percent of our optical goods; 80 percent of our watches; and 42 percent of our semiconductors. I thought we were in the age of high tech, high tech, high tech—that motor of growth, high tech, high tech. But we import 42 percent of our semiconductors.

By the way, out in Silicon Valley, they do not have health care, and I say to Senator BYRD, they do not have medical care. They are part-time workers. My friends at Microsoft had to sue to get health care. I would rather have a GE plant where they are making turbines and employee make $24 an hour, than to have high tech, high tech plants, where people make $12 or $14 an hour. Don't give me this high-tech stuff.

This is all catching up with corporate America on the front pages. Corrupt executives are going to be indicted. The Justice Department has charged some executives already, but not Kenny Boy Lay, of Enron. You do not even hear about him.

The Commerce Committee brought the Enron and WorldCom crowds in for hearings. We also heard from David Freeman, of the California Power Authority. I wanted to know how Kenny Boy Lay could not have heard about the fraudulent pricing structure Enron had out there. I saw his wife on TV, who said Mr. Lay did not know anything. Mr. Freeman said he knew everything going on out in California, I can tell you that.

We have enough to bring charges. But that said, I am wondering and worrying about this because the fellow in charge of this, Deputy Attorney General Larry Thompson, used to worked at a law firm that represented Enron. And if you think we cleaned up corporate America the other day with the new accounting bill, we did not, because it did not include expensing stock options. We also need companies to change auditors every 5 years. If they do, then every 5 years you will have the auditors auditing the auditors. When you know that another audit group is going to come in behind you, you do not start any tricky stuff. You are on trial. That is the quickest way to clean up the books.

I wanted to offer an amendment for that, but the leadership on both sides had it tabled. We have not solved that problem, but I will be back.

Back to the task at hand, we import 46 percent of our camera equipment; 93 percent of electrical capacitors; 55 percent of printing and related machinery; and already 36 percent of motor vehicles. That is a third of the vehicles Americans drive. Imported cars keep taking over the market here, they keep taking over the market. Also we import 62 percent of our motorcycles; over 50 percent of our office machines; 70 percent of our television sets; and 50 percent of our crude petroleum.

I ask unanimous consent to print this list in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Commodity	*Import percentage*
Optical Goods	56.5
Ball and Roller Bearing	28.4
Watches	80.8
Household Appliances	31.5
Air Conditioning Equip.	23.0
Semiconductors	51.2
Computers, Peripherals, Parts	56.5
Cameras and Equipment	46.8
Electrical Capacitors	93.5
Metal Forming Machine Tools	46.9
Mechanical Power Transmission Equip.	36.2
Printing and Related Machinery	55.2
Textile Machinery	58.3
Electrical Transformers	51.8
Motor Vehicles	35.6
Motorcycles	62.1
Office Machines	50.7
Televisions	69.2
Crude Petroleum	49.8
Steel Mill Products	21.3
Electric Motors	29.8
Consumer Electronics	95.5
TV and Radio Broadcasting	86.7
Printed Circuits	24.6

Mr. BYRD. Madam President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. BYRD. But don't we need this trade promotion authority? Don't we need this trade promotion authority to wipe out those deficits so we can start moving our goods, other than farm products and along with them, too, don't we need this trade promotion authority, I say to the Senator? "Trade promotion authority," that tells me it promotes trade.

Mr. HOLLINGS. I just read a list of products, showing how the fix is on with respect to trade. What they do is fix us. In other words, House members are elected every two years, so they have to explain their votes every 2 years. In the Senate, we just have to explain our votes every 6 years. So we do not have to explain too much.

On our side, the Finance Committee is either a bunch of oil people or farmers—and that is a fix. When you get that crowd in there, they will accept anything with regards to trade, which they did with this particular conference report.

Here is how they have fixed it in the past. In November of 1993, under fast track, Rep. PETER KING helped President Clinton organize the GOP supporters of NAFTA. When Rep. KING went home and found the Army Corps of Engineers was reneging on a deal to dredge, President Clinton fixed the problem for him.

Lynn Martin, President Bush's Labor secretary, said that "If the president didn't make deals, they'd be saying he doesn't understand Washington."

Article I, section 8 of the U.S. Constitution, which the Senator from West Virginia carries in his breast pocket, says the Congress—not the President, not the Supreme Court—but the Congress shall regulate foreign trade.

Mr. BYRD. Right.

Mr. HOLLINGS. But here is how it is regulated. The President comes over and he gets this so-called fast track, which is fixed trade. So he gets a peanut butter deal, Durham wheat deal, orange juice deal, sugar deal, cucumber deal, beef deal, winter vegetable deal, frozen food deal, wine deal, and Honda auto parts deal.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From USA Today, November 18, 1993]

WHEELING, DEALING, TO ASSURE A VICTORY

(By Steve Komarow)

President Clinton couldn't get Rep. Clay Shaw's vote with a highway overpass, water project or federal courthouse. Shaw's demand was more personal: extradition from Mexico of the man accused of raping a 4-year old girl.

"I am now confident that the Mexican authorities will do everything in their power to see him brought to justice," said Shaw, R-Fla., as he announced his vote for the North American Free Trade Agreement.

The California child, now 5, is the niece of Shaw's secretary and "just a beautiful little girl," he said. Until NAFTA, it appeared unlikely her suspected attacker would be tried. Mexico doesn't send its citizens to the United States for trial, despite the existence of an extradition treaty between the two countries.

But not Mexican Attorney General Jorge Carpizo has personally assured Shaw that they'll pursue Serapio Zuniga Rios and, if he's captured, extradite him.

Shaw's deal stood out among the flurry of bargains the White House struck to secure passage of NAFTA. But at least "it had something to do with Mexico," unlike many, said colleague Jim Bacchus, D-Fla.

More often, they fell in the traditional category of favors a president can bestow within limits of the budget.

The White House offered everything from presidential jogging dates to road projects during its final push.

Opponents screamed foul.

"It's obscene, this horse-trading of votes," said Rep. John Lewis, D-Ga., a "no" vote.

"We knew we couldn't compete. . . . We didn't have any bridges to give away," said former representative Jim Jontz, head of the anti-NAFTA Citizens Trade Campaign.

But the administration said it was just using whatever legitimate influence it had, at a time when it might do some good.

"I think when we end up, there's no cost to the Treasury," said Treasury Secretary Lloyd Bentsen.

A sheaf of last-minute side agreements was added, and promises were made to help the wine, citrus, glass, sugar, peanut and textile industries.

Not only fence-sitters won concessions. The White House also took care of allies.

Rep. Peter King, R-N.Y., who helped Clinton organize GOP supporters of NAFTA, had gone home last weekend to find the Army Corps of Engineers was reneging on a deal to dredge an inlet in his Long Island district.

"I was endorsing him . . . and getting screwed by the administration," he said. "It was a bureaucratic foul-up, but it was putting me in a very awkward spot."

Not for long. King called the White House, explaining his predicament. "And yesterday they faxed us a signed copy of the agreement," he said.

Clinton's signature was all over Capitol Hill.

"I know that peanut growers are concerned about imports of peanut butter and peanut paste as well as quality," the president intoned in a typical letter to lawmakers with goober-growers in their districts.

Better to risk looking like a wheeler-dealer than to risk losing the critical NAFTA vote. And what's so bad about a little give-and-take?

Said Lynn Martin, President Bush's Labor secretary, on Larry King Live: "If the president didn't make deals, they'd be saying he doesn't understand Washington."

Quid pro quo: Who got what to win votes for the North American Free Trade Agreement, President Clinton has made side deals with members of Congress, promising benefits for their districts—mainly protecting the prices farmers and manufacturers get for their products. Some examples:

Peanut Butter the Deal: U.S. peanut growers claim Canada, with 25% of the U.S. market, evades trade barriers by processing peanuts from China and Africa. Clinton will seek limits on peanut butter and paste shipments to the USA if Canada doesn't cut back within 60 days.

Durum Wheat the Deal: U.S. producers of durum wheat, used in spaghetti and macaroni, complain Canadian growers get transportation subsidies. President Clinton promised talks with Canada and, if talks fail, said he'd seek limits on imports from Canada. Either way, the price would go up.

Orange Juice the Deal: Clinton would impose pre-NAFTA tariffs on frozen orange juice concentrate if Mexican shipments rise, pushing prices below a five-year average for five straight days. Also, he'll limit tariff reductions the administration would accept in free-trade talks with other countries.

Sugar the Deal: Mexico agreed to tighten controls on sugar and high fructose corn syrup exports to the USA. If the ceiling is exceeded, Clinton could impose tariffs. Also, Mexico pledged to prevent Mexican candymakers from using corn syrup, which would have freed Mexican sugar production for export.

Cucumbers the Deal: Clinton would impose pre-NAFTA tariffs if Mexican shipments rise, pushing prices down. Also, he'll limit tariff reductions the administration would accept in talks with other countries.

Beef the Deal: New rules will keep Australian and New Zealand beef from coming though Mexico by requiring shippers to show where the animals were raised.

Winter Vegetable the Deal: Clinton pledged to diligently enforce NAFTA provisions that would allow reimposition of tariffs to protect against sudden import surges from Mexico of tomatoes, sweet corn and peppers.

Frozen Food the Deal: Clinton agreed to push for "country of origin" labeling on products like frozen broccoli. Unions complains many plants in that category have moved to Mexico in recent years to take advantage of Mexican vegetable production and cheaper labor.

Wine the Deal: Clinton would open negotiations to eliminate Mexico's tariffs more quickly than the 10-year phaseout NAFTA specifies. Trade Representative Mickey Kantor promised a new arrangement by May 1994.

Textiles, Clothing the Deal: Clinton promised to work toward a 15-year, rather than 10-year, phaseout of American textile quotas in global free-trade talks. Also, the Customs Service will step up enforcement of trade quotas.

Honda Auto Parts the Deal: The administration added a provision that will relieve Honda of paying $17 million in duties on auto parts shipped from Canada to its assembly plant in Ohio since 1989.

Mr. HOLLINGS. The point is the fix is in. Members get all kinds of favors for their votes. I remember my good friend Jake Pickle got help with a cultural center down in Texas. I remember in northern California there were two golf games with President Clinton. Then there were two C-17s given down in Texas where they were making them, and on and on. Members who vote for trade get all the favors. They have already fixed this vote, and that is why you see the empty Chamber. They have made up their minds.

But the country is in trouble with a $412 billion fiscal deficit, and we heard the figure by the distinguished Senator from North Dakota. Last month there was a $41.5 billion trade deficit, so we are right at a $500 billion current account deficit, with the outcome being a weakening of the dollar.

We now have high unemployment. We have a Secretary of the Treasury that says everything is fine. That is nonsense. They want more tax cuts. They cut $1.7 trillion of the revenues and then wonder why at this time last year we were talking about a 10-year $5.6 trillion surplus and now we have a $412 billion deficit.

They try to blame that on the war. I think we ought to look at this particular article about the Office of Management and Budget.

Mr. HOLLINGS. Mitchell Daniels, on September 4, 2001—7 days before September 11—projected for fiscal year 2001 that our government would have the second largest surplus in history.

I have looked at the figures. Overall, 9/11 cost the government, and I say this to the chairman of the Appropriations Committee $31 billion. Of that $4 billion was during fiscal year 2001, and $27 billion in this fiscal year. The war did not cause the supposed surplus to disappear.

We have always paid for our wars, but this President comes along and says we have a war on so we are going to have to run deficits, and incidentally the war is never going to end.

When we go home, Governors are struggling. Mayors are cutting back spending. They are having to layoff firemen and policemen. But in Washington, there is no tomorrow. We have a war on, so let's have some more tax cuts even with a $412 billion deficit.

Wall Street talks about consumer confidence, but there is not confidence in the Government. On Wall Street, they know those long-term interest rates are bound to go up. The Government is going to crowd in with its sharp elbows, borrowing the money to keep it going, crowding out business finance, running up the long-term interest rates. That is what is happening to the stock market. It is not another tax cut, for heaven's sake, that we need. The President ought to come back and go to work and cut out his fund-raising, for goodness' sake.

We have problems in this country. The biggest problem that is unmentioned, except by the Senator from Minnesota, the distinguished Senator from North Dakota, the Senator from West Virginia and others, is we are spending Social Security moneys.

The Enron accounting did not start with Kenny Boy Lay. It started with us 20 years ago. Infectious greed? No, Madam President. Infectious fraud, fraud on the American people.

I am not proud to say that, but the process has been corrupted.

I ask unanimous consent that this article in the Financial Times from 2 days ago be printed in the Record.

There being no objection, the article was ordered printed in the Record, as follows:

[From the Financial Times, July 30, 2002]

INFECTIOUS FRAUD

How can Americans be confident in the stock market and the country when everything seems to be one grand fraud? It seems as if every day another blue-chip corporation is under investigation. And somebody in Washington is cooking the books, when last year the US had a 10-year $5,600bn surplus and this year it has an estimated $412bn deficit.

Enron bookkeeping started in Washington. In 1983, the Greenspan commission restored the soundness of Social Security with a graduated payroll tax, meant to take care of the baby-boomers in this century. The commission's report required surpluses from Social Security to be put in an off-budget trust fund to be used for future generations. Back then Reaganomics, the policy of economic growth by cutting taxes, led to spending Social Security and other trust funds in order to say the deficit was decreasing, while it was in fact increasing.

President George H. W. Bush called Reaganomics "Voodoo". Now President George W. Bush is giving us Voodoo II. This Enron system of accounting hides the truth by juggling two sets of books. It is like paying off one credit card with another.

The Bush administration continues this charade by dividing the budget into public debt and government debt. Both debts combined constitute the total national debt. But Mr. Bush talks only about the public debt (the bonds and notes America issues) while hiding the government debt (the Social Security and other trust funds being raided). What Mr. Bush needs to talk about is the total national debt.

The budget committee tried to stop this charade in 1990 by passing section 13301 of the Budget Act, forbidding the president and the Congress from citing a budget that spends Social Security. But, no matter, the president, the Congress and the media—acting like Enron—violate section 13301 by spending Social Security and other trust funds and fraudulently reporting that they have not been spent.

The financial markets see this fraud. They know the government will need to borrow money, coming into the market with its sharp elbows, crowding out business finance, stultifying the economy and causing long-term interest rates to go up. When Ronald Reagan came into office the interest cost on the national debt was $95bn. By 2001 it was $359bn—sc every day the government borrows nearly $1bn to service the national debt. This is outrageous waste. But the bigger outrage is the president, Congress and the media crying foul at Enron while engaging in the same type of fraud.

To expose this fraud, in 1989 a debt clock was erected near Times Square in New York. It spins like a speedometer reporting the combined public and government debt going up, up and away. In 2000, when the debt started coming down, the clock was turned off. But this month the government's office of management and budget released numbers showing an alarming amount of new red ink.

On page one of the mid-session review, the deficit was for this fiscal year ending September 30 will hit $165bn. Of course, this is the "Enron figure" the government hopes everyone will use, not the real number. On the last page of the report readers can find that this year's true deficit is $412bn, of which only $27bn is due to September 11. The debt clock has been turned on again.

The true story of today's economic downfall began with candidate Bush in 2000. He stated that his first order of business as president would be to cut taxes. In office, Mr. Bush told the nation that not only was there enough money for a tax cut; there would also be money left over to pay down the debt, to protect Social Security and Medicare, and $1,000bn for any special needs. The dam really broke in January 2001 when Alan Greenspan, chairman of the Federal Reserve, in a fit of irrational exuberance, cautioned that surpluses were growing too fast and we were paying down too much debt. With this blessing of tax cuts, Wall Street started selling. And in less than four months, we went from a $2bn surplus in June 2001, when the tax cut was passed, to a $143bn deficit on September 30 last year. Less than $4bn of this was because of September 11.

In the 1990s, when we were paying down the debt with spending cuts and tax increases, America had eight years of the best economic growth in history. Mr. Bush's $1,700bn tax cut has put the country into the ditch.

The president says we should not worry about deficits while there is a war on. There is no end to the war and he calls for more tax cuts. This requires further government invasion into the market, so the market stays on edge.

The US should freeze next year's budget at this year's levels, with the exception of defense and homeland security; cancel the tax cuts; and start, once again, paying down the debt. If Americans want to regain confidence in the stock market and in the country they should know the problem is infectious fraud, not infectious greed.

Mr. HOLLINGS. Here's another headline from July 31, "Automakers Get Even More Mileage From The Third World. Low Cost Plants Abroad Start To Supply Home Markets As Quality Picks Up Steam." And this one from the Los Angeles Times, "High-paid Jobs Latest U.S. Export." That is what we are exporting. That is what the people ought to be reading.

Understand that we are going out of business. Productivity is high, yes, of what we produce, but we are not producing anything. We are giving fast food to each other and going the way of England. At the end of World War II, they said, do not worry, instead of a nation of brawn, we will be a nation of brains. Instead of producing products, we will provide services. We have heard that "service economy wag" in this Chamber. Instead of creating finances, we will handle it and be the financial center. They have the haves and the have-nots, and a bunch of scandal sheets and debating Parliamentarians. We are going the way of England. We are going out of business and nobody wants to talk about it because we have the campaign; we have lunch coming along.

I remind everybody what made this country great. It was in the earliest days—and this has to be included in the Record—under our Founding Fathers. The British said to our little fledgling colony, now that you have won your freedom, what you ought to do is trade back to the mother country what you produce best and the mother country will trade back what it produces best.

We were saved by Alexander Hamilton, who helped write the papers, his report on manufacturers. It is too much, I believe, to put in the Record, but in a line, he told the British, "bug off.'' He said, we are not going to remain your colony, importing the finished goods and just exporting our timber, our coal, our iron, our ore, our farm products. We are going to become a strong economy, a nation state.

The first bill was the seal of the United States of America, and the second bill on July 4, 1789, was a tariff bill, protectionism. These children run around on the floor hollering, ''protectionism, protectionism.'' They do not know how the country was built. They have no idea of history, no sense of accomplishment. We did not pass the income tax until 1913. We built this strong United States of America with protectionism, tariffs.

Fast forward 100 years to Teddy Roosevelt, and Edmund Morris' book ''Theodore Rex.'' We ought look at the turn of the century when old Teddy came in. The United States was already so rich in goods and services that she was more self-sustaining than any industrial power in history.

We are not today by any manner or means. We do not have a strong economy by any manner or means. Tell the Secretary of the Treasury.

Back then, we consumed only a fraction of what we produced. The rest went overseas at prices other exporters found hard to match. As Andrew Carnegie said, the ''Nation that makes the cheapest steel has other nations as its feet.'' More than half of the world's cotton, corn, copper, and oil, flowed from the American cornucopia, and at least one-third of all steel, iron, silver, and gold did, too. The excellence of her manufactured products, guaranteed her dominance of world markets. That was in the early 1900s.

I went to New York recently on Amtrak's Acela. It is a train made in Canada. When I arrived at the station, the dogs that sniffed me were from Czechoslovakia. We are even importing the dogs. We don't have anything Made In America around here, other than a few politicians. I wish newspapers and politicians could be produced overseas. If they were, we could straighten this country out overnight, I can tell you that right now.

Senator WELLSTONE, before you would be able to open up Wellstone Manufacturing, you would have to have for your employees a minimum wage, clean air, clean water, Social Security, Medicare, plant closing notice, parental leave, safe working place, safe machinery—on and on and on. Then the plant next door says: Wait a minute. I can go down to Mexico and pay workers 58 cents an hour and have to do none of that. And they go. Unless you follow, you will go broke.

The job policy in the Senate today is to export and get rid of jobs. I remember when Sam Ervin stood at that desk and we added $5 billion for highway construction in the 1970s to create jobs that were needed.

Now, instead of creating jobs, we come in and have a welfare reform bill. They stand in the well and pride themselves, look, we have extended payments for unemployment; we are offering a little bit more for health care. They do not talk about creating jobs anymore. They present this as a welfare reform bill. I don't want welfare reform. I need to hold on to my job.

What happens to the some 54,000 textile workers in South Carolina? Washington said: Go global. Be like Mao Tse-tung and reeducate them if they lose their jobs. In my state, the mills that made the T-shirts, they get closed down. They had 487 employees. The average age was 47 years.

The Senate said: Let's retrain them for high tech. And tomorrow morning we have 487 expert computer operators. Are you going to hire a 47-year-old expert computer operator and take on their retirement costs and their health costs? Or are you going to hire a 21-year-old?

We brought in BMW to South Carolina, but we still have empty towns back home. A couple years ago, we had 3.2 percent unemployment. Now it's over 6 percent. In some counties, it is over 10 percent unemployment, and we have lost 54,000 textile jobs alone. There you go.

I regret the corruption and the fix. You talk about accounting corruptions, option corruptions; you talk about job corruptions. They could care less about the jobs. I can go right down, article after article, where the recovery will not reach.

We have corrupted the financial and fiscal affairs of the Nation. We have corrupted the economic base all on the premise that we need fast track because trade issues are very complex; whereas, one more time, Senator, I don't believe you were here, but in my hand is the trade policy agenda of the President of the United States, issued by the U.S. Trade Representative. To negotiate five trade agreements the President had fast track authority: Tokyo, NAFTA, U.S.-Canada, U.S.-Israel, the Uruguay, or WTO. But the next dozen pages contain some 200 trade treaties and agreements that have been entered into without fast track. They can do it, but we are in the hands of the Philistines, unless we can get corporate America to pull in its hold.

I do see a minor sign of hope. General Electric said they would start expensing their stock options. This is very different than the way GE's Jack Welch ran the place. I have the record here and his particular article I ask unanimous consent to have printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From Business Week, Dec. 6, 1999]

WELCH'S MARCH TO THE SOUTH

(By Aaron Bernstein)

One of General Electric Co. CEO John F. Welch's favorite phrases is ''squeeze the lemon,'' or wring out costs to maintain the company's stellar profits. In the past year, the lemon-squeezing at GE has been as never before. In a new, superaggressive round of cost-cutting, the company is now demanding deep price cuts from its suppliers. To help them meet the stiff goals, several of GE's business units—including aircraft engines, power systems, and industrial systems—have been prodding suppliers to move to low-cost Mexico, where the industrial giant already employs 30,000 people. GE even puts on ''supplier migration'' conferences to help them make the leap.

GE's hard-nosed new push could spark other companies to emulate its tactics. The supplier crackdown is reminiscent of a similar attempt by former General Motors Corp. parts czar Jose Ignacio Lopez de Arriortua. His efforts largely failed in the face of stiff supplier resistance. But if GE succeeds, other companies could be inclined to try again. GE officials at headquarters in Fairfield, Conn., say the business units are simply carrying out Welch's larger campaign to globalize all aspects of the company. Says Rick Kennedy, a spokesman at GE Aircraft Engines (GEAE): ''We're aggressively asking for double-digit price reductions from our suppliers. We have to do this if we're going to be part of GE. ''GE's efforts to get suppliers to move abroad come just as World Trade Organization ministers start gathering in Seattle on Nov. 30. That timing could help make the GE moves an issue at the talks, where critics will be pointing to just such strategies—and the resulting loss of U.S. jobs to low-wage countries—as the inevitable fruit of unregulated trade. GE's 14 unions hope to make an example in Seattle of the company's supplier policy, arguing that its paving the way for a new wave of job shifts. They plan to send dozens of members to march with a float attacking Welch. PALTRY WAR CHEST. The campaign by GE's unions, which bargain jointly through the Coordinated Bargaining Committee (CBC), is also the opening salvo of bargaining talks over new labor contracts to replace those expiring next June. Because GE's unions are weak—fully half of their 47,000 members at the company belong to the nearly bankrupt International Union of Electronic workers (IUE)—they'll have a hard time mounting a credible strike threat. Instead, the CBC is planning a public campaign to tar Welch's image. They plan to focus on likely job losses at GE suppliers. The unions also suspect that GE may move even more unionized GE jobs to Mexico and other countries once it has viable supplier bases in place. ''GE hasn't moved our jobs to Mexico yet because our skilled jobs are higher up the food chain,'' says Jeff Crosby, president of IUE Local 201 at GE's Lynn (Mass.) jet-engine plant. ''But once they have suppliers there, GE can set up shop, too.'' His members from parts supplier Ametek Inc. picketed the plant on Nov. 19 to protest GE's pressure on Ametek to move to Monterrey, Mexico.

Although it has never openly criticized Welch before, the AFL–CIO is jumping into the fray this time. Federation officials have decided that Welch's widely admired status in Corporate America has lent legitimacy to a model of business success that they insist is built on job and wage cuts. ''Welch is keeping his profit margins high by redistributing value from workers to shareholders, which isn't what U.S. companies should be doing,'' charges Ron Blackwell, the AFL–CIO's director of corporate affairs. Last year, the AFL–CIO proposed a bold plan to spend some $25 million on a massive new-member recruitment drive at GE, but the IUE wasn't willing to take the risk. So the federation is backing the new, less ambitious campaign that focuses on traditional tactics like rallies and protests. STRONG TIDE. GE's U.S.

workforce has been shrinking for more than a decade as Welch has cut costs by shifting production and investment to lower-wage countries. Since 1986, the domestic workforce has plunged by nearly 50%, to 163,000, while foreign employment has nearly doubled, to 130,000 (chart, page 74). Some of this came from businesses GE sold, but also from rapid expansion in Mexico, India, and other Asian countries. Meanwhile, GE's union workforce has shriveled by almost two-thirds since the early 1980s, as work was relocated to cheaper, nonunion plants in the U.S. and abroad.

Welch's supplier squeeze may accelerate the trend. In his annual pep talk to GE's top managers in Boca Raton, Fla., last January, he again stressed the need to globalize production to remain cost-competitive, as he had done in prior years. But this time, he also insisted that GE prod suppliers to follow suit. Several business units moved quickly to do so, with GEAE among the most aggressive. This year, GEAE has held what it calls "supplier migration" conferences in Cincinnati, near the unit's Evendale (Ohio) headquarters, and in Monterey, where an aerospace industrial park is going up.

At the meetings, GEAE officials told dozens of suppliers that it wants to cut costs up to 14%, according to documents about the Monterrey meeting at Paoli (Pa.)-based Ametek, whose aerospace unit makes aircraft instruments. The internet report, a copy of which Business Week obtained, says: "GE set the tone early and succinctly: 'Migrate or be out of business; not a matter of if, just when. This is not a seminar just to provide information. We expect you to move and move quickly.'" Says William Burke, Ametek's vice-president for investor relations: "GE has made clear its desire that its suppliers move to Mexico, and we are evaluating that option. We have a long relationship with GE, and we want to preserve it."

GEAE officials argue that heightened competition leaves them no choice. Jet engines sell for less than they did four years ago, says Kennedy, the unit's spokesman. Almost all GEAE's profits have come from contracts to maintain engines already sold. And that business is getting tougher, with rivals such as United Technologies Corp.'s Pratt & Whitney laying off thousands of workers to slash costs. "This company is going to make its net income targets, and to do it, we will have to take difficult measures," says Kennedy.

Still, even some suppliers don't see the Mexico push as justified. They point out that GEAE's operating profit has soared by 80% since 1994, to $1.7 billion on sales of $10.3 billion. GE, they argue, is leading the cost cuts. "It's hard to give away 5% or 10% to a company making so much money when most of the suppliers are marginally profitable," says Barry Bucher, the CEO and founder of Aerospace International Materials, a $30 million distributor of specialty metals in Cincinnati. Nonetheless, Bucher says he's looking into a joint venture in Mexico in response to the demands from GE, his top customer.

The unions, for their part, worry that GEAE will follow in the footsteps of GE's appliance unit. To remain competitive in that low-skilled, low-margin industry, GE Appliances has slashed its workforce nearly in half at its Appliance Part facility in Louisville, to some 7,500 today. Much of the work has been relocated to a joint venture in Mexico. Union leaders have tried to stave off further job shifts by offering concessions. In early November, the company agreed to a $200 million investment in Louisville in exchange for productivity improvements and lump-sum payments instead of wage hikes for its members. "We hope GE will see this as a solution they can adopt in jet engines and elsewhere," says IUE President Edward L. Fire.

Labor's new campaign may embarrass Welch and even prompt GE to tone down its demands on suppliers. But it won't rebuild the union's clout at the bargaining table the way a serious organizing drive might have done. Until that happens, Welch probably has little to fear from his restive unions.

Mr. HOLLINGS. Just two years ago Mr. Welch met with his suppliers and said to them: you will have to go overseas in order to make it. Unless you move to Mexico and cut your costs, you will not be a supplier of GE. Then he held seminars around the country for all the suppliers saying: Get out of the country, get out of the country, get out of the country.

Now, unless these industrial leaders gain a conscience and quit telling all the suppliers they have to go to Mexico or China; and quit telling their board of directors they have to go to Bermuda to avoid taxes, we are going to be in serious trouble. They need to help us rebuild the industrial strength of the United States of America.

But we are in a fix. The debate in the Senate is controlled. We already have cloture. People are ready to go home and pass over the responsibility.

Senator HELMS could not be here. But he and I wanted to get that printing, dyeing, and finishing provision in the Caribbean trade bill. They didn't want to do it. They had plenty of time to do it, but the Bush administration said: We can fix this and get the vote of the Congressman from Greenville—which they did. And he voted again for fast track. But now that we have the fast track he voted for, what we wanted for printing, dyeing, and finishing is out. It has gone to Andean countries.

When I was Governor of South Carolina, we had a contest for the slogan of an insurance company, Capital Life. We said:

> Capital Life will surely pay, if the small print on the back don't take it away. That was the winning slogan, and that is what we have in Washington.

They have won out. We have lost the blooming stuff. They fixed the jury here, and they are all getting fattened up in order to win the next election. But on how to win the economy and save this country—there is no interest.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, before the Senator from South Carolina leaves, I want him to know that normally I ask unanimous consent to follow and normally I might have gone back to the office and done some other things. But there are a few Senators I like to come out on the floor and listen to. The Senator from South Carolina is one of them.

He is the opposite of sterile and plastic and scripted and rehearsed. He is colorful, but, frankly, and more importantly, he is prophetic and he is right. In my years in the Senate, which is going on 12, there is not another Senator for whom I have greater respect. I mean that as sincerely as I can say it.

Mr. HOLLINGS. I thank the distinguished Senator. He is overgenerous to me. But I am trying to follow you and our hero, Senator Humphrey.

Mr. WELLSTONE. Madam President, building on the comments of the Senator from South Carolina, I really feel sorry for working people right now in our country. I just think they are getting pounded. I believe ordinary citizens are just getting pounded. For example, take Qwest workers in Minnesota. When Arthur Levitt was the Chair of the Securities and Exchange Commission several years ago, he tried to put into effect a rule that would have dealt with this conflict of interest situation. The Senator from South Carolina talked about this a few minutes ago. It would have prohibited the Arthur Andersens of the world from raking it in on these consulting contracts when they do an independent audit. He was stopped by too many Members of the House and Senate. But he did get a rule put into effect that they at least had to disclose their contracts.

With Qwest, as it turns out, in the year 2001 and 2002, by first a 6-to-1 ratio and then in 2002 a 8-to-1 ratio, Arthur Andersen was getting all kinds of money from these consulting contracts. I am not even sure what they did for all this money—6-to-1 to the actual money they got for the independent audit. So you know you don't bite the hand that feeds you. They didn't do an independent audit. And all of a sudden we find out Qwest was short quite a bit of money.

Above and beyond that—I am just going to give this context—above and beyond that, the management of Qwest tells the workers and the investors—a lot of little people are investors—we have had this company audited. Our auditing company wants to be clear with you that we have had this independent audit that we can vouch for, so on and so forth. But it turns out at the same time the actual audit committee did not say that. They actually do not say that they can, with 100-percent assurance, say this is a completely independent audit.

At the same time that this is being said, the CEOs are dumping some of their stock. And at the same time, too much of the workers' pension plan is invested in stock in the company, trying to be loyal workers, and they are locked in, and no one is helping them out. Now you have a lot of people out of work and, in addition, they have seen a lot of their pension plan eroded in value.

That is the story of a lot of people in the country who are not part of lobbying coalitions in Washington, not big investors, not heavy hitters, not well connected. I really feel sorry for working people. Frankly, I think this piece of legislation is yet another example of pounding a lot of regular people—regular people, ordinary citizens. I don't mean it in a pejorative sense, I mean it in a positive way.

One good thing that came out of conference is that there are some additional health care benefits for some of our older steelworkers—some of our retirees, some of our older steelworkers. That is good. But as I look at what happened in this conference committee, this bill is infinitely worse. This trade promotion authority bill is infinitely worse than when it left the Senate.

There was the Dayton-Craig amendment. I am very proud of the Senator from Minnesota, MARK DAYTON, for his work, so that any Senator would have been allowed to raise a point of order to any part of the trade agreement that would weaken U.S. trade remedy laws such as section 201, saying: Look, we are not going to give up our right to protect working people. If you have a trade agreement that basically undercuts our trade remedy laws, we are not just going to forfeit our responsibility to come out here on the floor and challenge that. We have to represent people back in our States.

That passed in the Senate but was taken out of the conference report. I wonder why.

Then my colleague, Senator HARKIN from Iowa, who has such passion about the exploitation of children, working God knows how many hours a day for so little wages—he had language that would have prohibited the use of exploitative child labor among our trading partners. That was taken out of the conference report.

I had an amendment that said our trading partners ought to respect human rights—would respect human rights. That was taken out of the conference report.

I had another amendment that said: Let's do a real jobs impact analysis. Let's really find out what is going on. Sometimes ignorance is not random and people don't want to know what they don't want to know.

Recently the Economic Policy Institute noted:

> NAFTA has contributed to rising income inequality, suppressed real wages for production workers, weakened collective bargaining powers and ability to organize unions and reduced fringe benefits.

We are talking about a net total of 3 million actual and potential jobs lost in the U.S. economy from 1994 to now. But the provision I had in the legislation was also taken out in conference.

This administration is gung ho on commercial property rights. They want to make sure they are fully protected in our trade agreements. This administration is gung ho on all the big financial institutions and all the big multinational corporations. That is where they raise their money. A lot of the key positions in the administration come from this background. A lot of their task forces are disproportionately made up of such people—you name it. They are gung ho when it comes to the commercial property rights of multinationals and big financial institutions. But when it comes to labor, when it comes to environmental, when it comes to human rights, they are nowhere to be found. I think that is wrong. I think it is profoundly wrong. And I think it is tragic that so many Democrats are not out here on the floor fighting for these rights.

I think the vast majority of people in Minnesota and the vast majority of people in the country would say we do not want to put walls up at our border. I get so angry at the charge: You are an isolationist. My father was born in Odessa, fled persecution in Russia, spoke 10 languages fluently. I grew up in a home that made me, by definition, an internationalist. My mother's family was from Ukraine. She was a cafeteria worker. I grew up in a family that emphasized that we live in a world and we ignore that world at our peril, and also emphasized being there for working people.

That is not the question. The question is whether or not we have trade agreements that respect basic human rights, that lead with our values as Americans, and that focus on promoting democracy. If we, as a country, can't promote democracy and human rights, who are we? That really protects little children, and says it is wrong to have a 9-year-old working 19 hours a day for 30 cents hour; that also says there should be environmental standards; there should be fair trade; do not put our workers in the position of when they try to organize or do organization and bargain collectively for better wages for their families, companies say, no, we are leaving, we are going to Mexico. When those workers try to organize, companies say no, we are going to leave and go to South Korea, or Indonesia. Then those companies say to those countries, if you should pass any legislation that would give workers the right to organize, or have environmental standards, or have child labor standards, we will not invest in your country.

Where are the values that promote the good standard of living for families in our country and families in the developing countries as well?

There was a Washington Post piece entitled "Worked Till They Drop: Few Protections for China's New Laborers." The article is heartbreaking. It tells of the death of Li Chunmei. I quote:

> Coworkers said she had been on her feet for nearly 16 hours, running back and forth inside the Bainan Toy Factory, carrying toy parts from machine to machine. When the quitting bell finally rang shortly after midnight, her young face was covered with sweat.
>
> This was the busy season, before Christmas, when orders peaked from Japan and the United States for the factory's stuffed animals. Long hours were mandatory, and at least two months had passed since Li and the other workers had enjoyed even a Sunday off.
>
> "Lying on her bed that night, starting at the bunk above her, the slight 19-year old complained she felt worn out, her roommates recalled. Finally the lights went out. Her roommates had already fallen asleep when Li started coughing up blood. They found her in the bathroom a few hours later, curled up on the floor, moaning softly in the dark, bleeding from her nose and mouth. Someone called an ambulance, but she died before she arrived."
>
> The article goes on to say that what happened to Li "is described by family and friends and co-workers as an example of what China's more daring newspapers call guolaosi. (GO-LAO-SI). The phrase means "overwork death," and usually applies to young workers who suddenly collapse and die after working exceedingly long hours, day after day.

Can't we with our trade policy lead with our values? Can't we promote human rights? Can't we protect children? Can't we promote protection of the environment? Can't we protect the rights of working people to organize and bargain collectively?

I could read from the State Department report in country after country after country—in Colombia, there are so many examples of workers who have been murdered for trying to join a union; same sort of coercive practices that workers in Mexico have experienced for years. Certainly that is the case in China. And the list goes on and on.

I believe that most Americans believe trade policy should be about promotion of human rights. Trade policy should be about respect for human rights. Trade policy should be about promoting a decent fundamentally good standard of living for Americans as well as our brothers and our sisters in other countries as well.

What this piece of legislation says to me, as a Senator from the State of Minnesota, is that I have to forgo my constitutional rights to represent people in my State. When I see a trade agreement that overturns or overrides consumer protection in Minnesota, environmental protection in Minnesota, and workers' rights in Minnesota, I don't have the right to come out here and challenge that? I don't have the right to come out here with an amendment?

I didn't vote to give fast-track authority to President Clinton, and I am certainly not going to vote to give fast-track authority to President Bush. I will say it on the line. I have seen what this administration has done with repetitive stress injury. I have seen the way in which they overturned an important rule to protect people. I have seen what they have done when it comes to practically nothing by way of making safer workplaces for people. I have seen what they have done which amounts to practically nothing when it comes to mine safety issues. I have seen what they have done in trying to go after prevailing wages. I have seen what they have done in terms of one antilabor initiative after another. I have seen what they have done when it comes to a lack of commitment to people being able to organize and bargain collectively and labor law reform.

Frankly, I wouldn't for anything in the world give away my right to represent Minnesota and to represent workers and to represent unions. I am a proud labor Senator. I am a proud Senator who represents working people. You want to know something else. The best thing is there are a lot of people in the business sector who feel the same way.

I think exports are so critically important to our economy and very important to Minnesota. We do really well. I think imports are good because imports mean our companies have to compete. We should have that competition.

The only thing I want to see is some rules that go with this new global economy. I want to see fair trade. I want to see a global economy that does more than just promote the interests of multinational corporations. I want to see a global economy that promotes the environment. I want to see a global economy that promotes human rights. I want to see a global economy that promotes democracy. I want to see a global economy that protects the interests of working families in Minnesota and all across the country.

That is what I speak for. That is what I fight for. That is what I believe in. That is why I believe that this piece of legislation, which will pass overwhelmingly, is so profoundly wrong and so profoundly mistaken.

I feel sorry for working families today. They are getting pounded. I think we should do a better job of representing them.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

Mr. REID. Mr. President, earlier today a number of the minority held a press conference. I have not spoken to Senator DASCHLE, but I know what took place at that press conference. It was all directed toward TOM DASCHLE. I think it was so unfair what they did.

They went to some printer and got a little thing printed up, and they passed this out to the press as a progress report on what has happened in the Senate.

Of course, they selectively picked some things that are not totally completed at this time. But it is interesting how they did this. For example, they talked about judicial nominations. I talked to Senator LEAHY yesterday. I think we have done 73, or something like that, judicial nominations—way ahead of what has ever been done before. We have a batch of them we are going to do today.

They complained about the Defense appropriations conference, that it is incomplete. We just finished the bill yesterday, Mr. President, in record time. Senator STEVENS and Senator INOUYE did this in record time. The largest Defense bill in the history of the world, and we completed it yesterday in record time.

Homeland security, we have worked out an arrangement that we are going to go to that immediately when we return. The minute we get back here there will be a debate on that and we will be on the bill on Wednesday, the second day we are back.

Prescription drugs, they criticize Senator DASCHLE for not doing something on prescription drugs. I will tell you, that takes a lot of nerve, a lot of nerve, because we all know that there was, first, the Graham-Miller, and then we tried to do something less than that to try to develop a consensus here. I mean, we spent almost 3 weeks on that bill.

So I guess the best offense, in their mind, is what you do when you are on the defensive—energy, complaining about that.

The fact is, Mr. President, that in addition to this "progress report" that they made, a "report card" to the majority leader, one of the things we picked up, as they were hurrying out of there—because some, of course, are going to go away to the beach this summer, or at least part of the time—and we found—it just happened to fall out—a list of what they are going to be reading this summer.

I don't know, I guess, in a rush to get out of here, someone from the minority side must have dropped their required reading assignment for this summer. But in the interest of making sure all are aware of these reading assignments, I would like to read a list of books the GOP leadership has assigned to its caucus.

The first isn't a bestseller yet, but it possibly could be. It is called: "Paying U.S. Taxes is for Suckers: A Guide to Offshore Banking in the Cayman Islands and Bermuda."

Another book is: "Grapes of Wrath 2002: How to Let Medicare Wither on the Vine."

Another book that I am fascinated with—I think I will take a look at it—is: "See No Evil, Speak No Evil, Hear No Evil: Economic Leadership for the Enron Era."

A book: "Master of the Senate Republicans: How Drug Company Cash Killed the Prescription Drug Benefit," or one that should be pretty exciting is: "Drilling Our Way to a Cleaner Environment," or "Sea Dick Run . . . From Haliburton Accounting," or "The Art of Timely Self-Promotion by Harvey Pitt (includes a foreward on securing non military burial rights at Arlington Cemetery)."

Another, Mr. President, is: "How to Succeed in Business Without Really Earning: The Inside Story of [the] Harkin Energy [Company]."

And then the final book they put on the list—I am not sure the order is appropriate—is called: "Someone to Watch Over You: The John Ashcroft Story."

In all seriousness, Mr. President, everyone can play these games about what has not been accomplished, what has been accomplished. But we have really worked hard to try to come up with legislation, and we have done a lot. People have to understand how much we have been able to accomplish. The country, the people of Missouri, Georgia, Nevada, all over this country, should be proud of the work we have done.

The rules in the Senate were not developed yesterday. They have been here for more than 200 years. I have to tell you, it is hard. I served in the House of Representatives. The Presiding Officer served in the State legislature in Georgia, was Governor of the State of Georgia. The rules are not the same.

For example, Mr. President, the State of Nevada met on Monday, a special session of the Nevada State Legislature, called by the Governor. Why? Because we have, in the State of Nevada, a medical malpractice problem. And, you know, they handle it in the State of Nevada where it should be handled. And they did. They finished at 4:15 this morning. They now have, for the Governor to sign as soon as he wakes up this morning, the bill. We have a new medical malpractice law in the State of Nevada. But they did it in 3½ days. Here that would take 3½ weeks. But that is the way it is.

The U.S. Senate has these rules, but we have been able to do a lot. I repeat, our country can take pride in what we have done.

Let me talk about a few things: Antiterrorism use of force resolution; immediate $40 billion response to terrorist attacks; defense/homeland security appropriations, significant ones; supplemental Defense appropriations; the United States Patriot Act; airport, border, and port security; terrorism insurance, which we passed out of here—it was tough; we finally got a conference report on that—support for the airline industry; economic stimulus, which included unemployment insurance.

We passed a Patients' Bill of Rights; corporate and auditing accountability, the Sarbanes bill; greater access to affordable prescription drugs. We worked so hard on that, Mr. President. As the Presiding Officer knows, we did not get everything we wanted, but we passed something dealing with generic drugs, dealing with giving the States help that they need so badly with their medical problems. That is all in this bill we passed yesterday. In that bill was prescription drug reimportation to reduce costs. Fiscal relief to States is in there. I have just talked about that. The trade bill, some like that a lot. It is going to pass sometime today.

We have had campaign finance reform; election reform, as I have mentioned, judicial confirmations; clean water and brownfields revitalization.

This brownfields bill is so important. We learned that we could not completely revamp and renovate and change Superfund legislation, but we learned there are things we could do. There are brownfields sites, industrialized sites in our States that are not really in bad shape. Maybe they had a dry cleaning establishment there.

Under the brownfields legislation, we can come in and take care of that. It is happening all over the country. In Nevada alone it is going to create thousands of new jobs, some of them at shopping centers where we had dry cleaning establishments and lenders stayed away. They didn't want the Superfund liability. We took care of that with this legislation.

There was education reform; that certainly was done. We passed the energy bill; that is now in conference. I am a member of the conference, chaired by Mr. TAUZIN of Louisiana. We finished all the secondary items this week. As soon as we get back, the first week, we will see if we can work our way through that. I believe we can.

We passed a huge farm bill that was so difficult but so important, especially for various sectors of our country. Then we passed the Defense authorization. And we will pass, in just a little while, the largest appropriations bill in the history of the world.

We have done a lot. I don't think we need to talk about TOM DASCHLE's report card. He has done a good job. He has been a magnificent leader.

I wish we wouldn't do this. It is not good for the whole body politic. It does not help. TOM DASCHLE is somebody who is respected. Why? Because he is a quick learner. He is totally ethical. He works tireless hours. He tries to be fair to everybody. We don't need this kind of stuff. We don't need these readings lists.

Anybody who comes out here and slaps around TOM DASCHLE, I will slap back. They can have the report cards. They can have all their progress reports they want. I will come back. I am not going to let these scurrilous attacks on a fine man go unanswered. If they don't want to hear about their reading list, then leave TOM DASCHLE alone. If there is something they don't like that is going on, do it right here. This is the place to do it, where we can have a good debate and go on to something else. I hope we can do that.

These were not Democratic accomplishments alone, although I will take credit for what we have done. But we have been able to do them because you don't do anything here alone. We have passed these. We should be proud of this. It is good for the country. We don't need any more of this.

Mrs. CARNAHAN. Mr. President, I ask unanimous consent to speak as in morning business for up to 10 minutes for the purpose of introducing a bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Missouri is recognized.

Mrs. CARNAHAN. I ask unanimous consent that the time used be counted against my hour postcloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mrs. CARNAHAN pertaining to the introduction of S. 2842 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. CARNAHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I see a Senator on the other side who is prepared to speak. Does he wish to speak immediately? What is his situation?

Mr. BROWNBACK. Mr. President, I would like to speak on TPA at sometime during the debate for around 7 to 10 minutes. But the senior Senator from West Virginia was in the Chamber preceding me, so I will recognize his attendance here and his seniority.

Mr. BYRD. I thank the Senator. He would need 7 minutes?

Mr. BROWNBACK. That is approximately the amount of time I would speak.

Mr. BYRD. Mr. President, ordinarily I would suggest that the Senator take his 7 minutes now. My speech is probably going to be 45 minutes or longer, and I understand there is a vote scheduled for 2 o'clock; is that correct?

The PRESIDING OFFICER. At 2 o'clock, we will consider the Department of Defense appropriations bill.

Mr. BYRD. There is not a vote at that point?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Very well. Mr. President, I have the floor, do I not?

The PRESIDING OFFICER. The Senator has the floor.

Mr. BYRD. I have an hour under the cloture motion?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, I yield to the distinguished Senator for 7 minutes.

Mr. BROWNBACK. I will try to do it in around 5 minutes.

Mr. BYRD. I yield for no more than 7 minutes on his time, but I retain my right to the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I thank the Senator for his courtesy. I want to talk about trade promotion authority, and I appreciate very much the Senator's graciousness.

I met yesterday with members of the administration at the U.S. Trade Representative's office in the Department of Commerce and the President of the United States. I stated to the President that I don't think there is another thing we could do in the near term for us to be able to grow this economy that would be more important than to pass trade promotion authority. I think it is that critical a piece of legislation for us to stimulate the economy. At this point in time, this is critical for us to do.

We received economic figures today that showed anemic growth in the last quarter—1.1-percent economic growth. We need to do everything possible to stimulate this economy. Trade promotion authority is the lead piece of legislation that we can do to expand the trade opportunities for this Nation. I strongly believe that.

I have worked in the trade field. In 1990 and 1991, I worked in the U.S. Trade Representative's office when we were beginning the negotiations for the NAFTA treaty—certainly a treaty that is not perfect, but one that has expanded trade opportunity and has grown the economy of the United States. The United States has an international economy. From that, I mean to say we have an economy that is based substantially upon trade. My State has an economy that is based substantially upon trade. My family is dependent substantially upon trade. We are in agriculture. We produce grains, cattle, and these are things in which we have a significant trade market.

Trade promotion authority will allow the President to negotiate trade agreements and trade tariff agreements that will reduce tariffs. I think people need to recognize that a tariff is a tax. So this will be a tax reduction treaty. It will also open up trading opportunities for the United States and for our trading partners. One of the lead ways we can grow it is by doing this. What trade does when you lower tariffs, lower the barriers to trade, is it allows people to compete based upon the theory of comparative advantage and who can do the best and more.

Fortunately for the United States, we have comparative advantages in main economic fields. So we are going to be able to compete more aggressively with more countries because there will be fewer barriers. The United States also has one of the lowest trade barriers. We have fewer barriers to trade in the United States than most nations.

With this trade promotion authority, we are going to be able to negotiate trade-opening agreements with a number of countries around the world. It is going to reduce barriers in other nations more than in the United States for their incoming products. We are going to have more ability to go there, and that will expand because of the comparative advantages of the U.S. economy in producing goods and services—though not all goods and services. There are going to be problem areas that we will need to protect in our economy because of difficulties we have, or subsidies in other countries, or because of things they do trying to block our products. We may have to respond in kind at times.

The administration is aware of that. They are seeking this authority. It is an authority that we need to grant to the administration. I think with it we are going to see substantial trading blocs expand for the benefit of the United States. We have a NAFTA trading bloc of Canada, the United States, and Mexico. I see that expanding. The administration is pushing to expand to Central America and South America, so we have an entire Western Hemisphere; North and South America will be in one open trading type of bloc.

We are also being pursued by other countries to expand trade opportunities with them. These hold substantial opportunities for us to grow. But without trade promotion authority, the agreements will not happen.

For those reasons, I am a strong proponent of trade promotion authority. I believe it is important for us to have. I think this is the right time and place for us to do it. This country needs to let this President have trade promotion authority so we can expand agreements. So I will be voting for TPA. I urge my colleagues to do so as well.

With that, I thank the Senator from West Virginia for allowing me this time. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. REID. Will the Senator yield for a unanimous consent request?

Mr. BYRD. Yes, I yield.

Mr. REID. Mr. President, I have spoken with the distinguished President pro tempore of the Senate, and he has indicated his remarks will probably take 50 minutes or thereabouts.

Mr. BYRD. Yes.

Mr. REID. I, therefore, ask unanimous consent that the defense matter which is now scheduled to begin at 2 o'clock, that time which is encompassed in the unanimous consent agreement, be delayed to begin at 2:20 p.m. today rather than 2 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. So the President pro tempore can use his time postcloture and can come back later.

Mr. BYRD. Mr. President, I thank the distinguished majority whip. As always, he is most gracious, most considerate, and most courteous. He also wants to be helpful.

Mr. REID. I thank the Senator.

Mr. BAUCUS. Will the Senator yield for a unanimous consent?

Mr. BYRD. I yield to the distinguished Senator for a unanimous consent request provided that my speech does not show an interruption and that I retain my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. I ask unanimous consent I be able to speak for 7 minutes concluding the remarks of the distinguished Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, in the dead of night, under cover of darkness, near the bewitching hour of midnight on July 25, 2002, House and Senate conferees reached agreement on a new trade bill. The White House embraces this new trade bill, not because it contains trade adjustment assistance—no, no, no—but because it provides the President with fast-track negotiating authority. The administration likes to refer to it as trade promotion authority—that is an old Vaudeville trick—trade promotion authority.

This is fast-track negotiating authority that the President wants, but he does not call it fast track. He wants to call it "trade promotion authority." That sounds good. That has a sweet ring to my ears—trade promotion. Who would not be for trade promotion? The President knows how to frame these terms in ways one may be lulled to sleep—trade promotion authority—but it provides the President with fast-track negotiating authority, fast track.

As we all know, the real effect of fast track is not to promote trade—no, no, no—not to promote trade but to prevent amendments to trade agreements. That is why we have fast track.

This Constitution, which I hold in my hand, gives to the Congress the power to regulate trade and commerce with foreign nations. This Constitution is my authority, not fast track. This is my authority.

This bill we are talking about here and about to vote on and upon which cloture was invoked earlier today is a fast-track bill. It is not really about creating jobs or helping workers. It is about weakening our trade laws, making it easier for multinational corporations to move offshore where they can pay slave wages and where they do not have to pay health insurance and where they do not have to pay retirement benefits. That is what this bill does. That is why the Chambers of Commerce around the country favor it.

Just in my home State of West Virginia, we have lost thousands—thousands—of jobs, good jobs that supported families and breadwinners who worked hard for their money, very hard, indeed.

When I was first elected to Congress 50 years ago—elected 51 years ago—we had glass factories in West Virginia; we had pottery plants in West Virginia; we had leather goods; we made shoes; we produced steel. We employed many West Virginians in the steel industry. That was 56 years ago when I first got into politics, and then 50 years ago when I first came to Congress. We had those thousands of good jobs in West Virginia.

Those jobs supported families and breadwinners who worked hard for their money, I say. They labored in the coal mines. They labored in the steel mills. They labored in the glass plants. They labored in the chemical manufacturing works. They worked in the leather goods industries in West Virginia. They were employed in the textile and apparel industries in West Virginia. These hard-working families deserve a fair slice of the pie.

These and other American workers elected the various Members of this body to look after their interests in national trade matters. Senator Randolph and I, when we came to this Chamber, did just that; but other States elected their Senators, too, to give them, the American workers, a fair shake when the trade deals were being made. I have to say that Senators cannot fulfill this obligation by handing Presidents fast-track authority.

The President proclaimed victory in obtaining his trade bill, but it is a hollow victory. It is a Pyrrhic victory. Remember Pyrrhus, who fought the Romans, who was the first to bring elephants to Rome and to the Italian peninsula to fight the war? That was in 280 B.C. He won a victory but a very costly one, and that has been called a Pyrrhic victory.

So the President won a Pyrrhic victory for America.

The President threatened to veto the bill unless the conferees dropped the Dayton-Craig amendment. So what did they do? They folded. They dropped it because the President waved his veto pen.

Why should that make one falter or faint or fall? The Constitution gives the President that right. The Constitution says he can veto a bill. But why shake and tremble in one's boots because the President threatens to use his veto pen? Let him veto it. Go to it. Explain to the American people, Mr. President, your veto of this protection that was written into this bill. Explain to them. Yes, go ahead and veto it.

He has a constitutional right to do that. Of course, the House and the Senate under the Constitution have the right to override his veto, but they will not on this bill.

In these 50 years that I have been in the Congress, the House and the Senate, every administration, Democratic and Republican, has sung the same old song. It is the State Department song. Administration after administration, Democratic and Republican, have sung the same old song: Give us free trade agreements.

Well, I voted against about every one that I can think of that came before this Senate, NICPAC—no, not NICPAC, but you name it, I voted against these so-called free trade agreements.

I am for free trade. We are for free trade. Who would not be for free trade? But as some say, there is a great deal of difference between free trade and fair trade. They are two different terms.

So the conferees dropped it. They dropped the Dayton-Craig amendment. They trembled when they heard the President say he would veto it. What happened? They dropped that language. The President struck fear, I suppose, into their weak hearts by saying, "I will veto that bill. If it comes with that language in it, I will veto it."

I say, go to it, Mr. President. You just go ahead and veto it. I dare you to veto it and then go and tell the American people. Let's both go. Let's have a debate on this. Let the American people know.

So they scrapped the only meaningful part of the bill that allowed the Congress to stop the President from weakening our trade law. They scrapped the Dayton-Craig amendment, the only meaningful part of the bill that allowed the Congress to stop the President from weakening our trade laws in the next round of trade negotiations. Dayton-Craig would have allowed the Congress to exercise its constitutional right to amend and strengthen whatever agreement the President brings back to us. Without Dayton-Craig, we are at the mercy of our negotiators in Geneva, the same old place where nearly every week some WTO panel tells the United States that it has no right to enforce its own laws.

The Dayton-Craig amendment was a bipartisan amendment that I cosponsored along with a third of the Senate. Although the amendment was supported by an overwhelming majority of the Senate—62 Members of the Senate from both sides of the aisle now—in conference it was blithely cast aside as a bag of dirty laundry in the face of the veto threat by the President. Like a bag of dirty laundry, whiff, out went the Dayton-Craig amendment.

The President said he was afraid it might offend certain members of the WTO.

Well, Mr. President, I must ask this question—ungrammatically I will put the question: Who is the President working for, the WTO or the United States?

As I have often said, I was sent to the Congress not by the President of the United States. I have worked with 11 Presidents since I have been in Congress. Not one of them sent me to the House or to the Senate. I was not sent by any electoral college either. As I have often said, I was sent by the people, we the people of West Virginia. I listen to them. I was not sent by the President, and I was not sent by the WTO—nor was that Senator, nor that Senator, nor that Senator, nor that Senator. The last time I checked, neither the President nor I was elected by the WTO but by the American people.

Not surprisingly, the very day after the trade conferees' deal was announced, the Director General of the WTO commended President Bush. Imagine that. The very day after the trade conferees' deal was announced, the Director General of the WTO commended President Bush. The WTO Director General congratulated the President of the United States for having obtained a trade bill that wrests from the Congress its right to strengthen and protect American trade laws under article I, section 8, of this U.S. Constitution which I hold in my hand.

Again I ask: For whom is the President working? I will say it ungrammatically: Who is the President working for, the WTO or the people of the United States? Who is he working for, the President, the WTO, or the people of the United States?

Of course, the Director General of the WTO is pleased with the President's trade bill. If I were pleased with it, I would congratulate him, too. The WTO is pleased with it. The President is now free to negotiate trade deals more favorable to other WTO members than to the citizens of West Virginia and the citizens of the United States. That is this trade bill I am talking about.

I have seen how the employment figures in West Virginia have gone down over these years that I have been in Congress, and we have voted one time after another to take the Congress out of the equation, give Presidents free trade agreements. They can negotiate trade agreements without this bill we are going to vote on. They can. They don't need this to negotiate trade agreements. They call it promotion trade authority. What is that—PTA? Forget it. That is not promotion trade authority. That sounds good, count me in, if we promote trade.

But this is fast track, nothing short of it. This is the old hat trick. Don't watch what is going on in this hand; watch what is going on over here. Everything really is happening over here. This is the old hat trick.

So the WTO Director General "congratulated" the President for having obtained a trade bill that wrests from the Congress what Congress is entitled to under that Constitution—the right to debate and particularly the right to amend.

These are the very same countries whose representatives, sitting on WTO dispute settlement panels, have ruled against the United States in nearly each and every U.S. antidumping, countervailing duty, and safeguards case taken to the WTO since the last round of international trade negotiations.

So now, inexplicably, our President wants to enter into a new round of international trade negotiations. Why? To further undermine the ability of the United States to enforce its own laws against unfair trade. Despite congressional advice to the contrary, this administration honored the requests of foreign governments to renegotiate our trade laws, knowing full well that these are the same governments that are gutting these laws in Geneva.

So again I ask, Who does the President work for, the WTO or the people of the United States? Why would our President want to do this? Let's step back a minute and look at this objectively. What exactly is the point of giving the President this authority to negotiate new trade agreements? Whom are we kidding? The goal of foreign governments in these negotiations is not to strengthen U.S. trade laws but to weaken them. And they have said as much. They begged us to put our laws on the negotiating table so they could water them down or kill them.

Does anyone really believe that negotiating new trade agreements at the explicit request of the very nations that are committed to destroying our trade laws would somehow result in a better deal for the United States than if we had simply walked away?

The foreign governments whose representatives sit on these WTO panels are launching a two-pronged attack on the United States. First, they seek to undermine our trade laws by having the President renegotiate them, meaning weaken them, in the new trade round. At the same time, whenever the United States applies an antidumping or countervailing duty order or a remedy under section 201 as we did recently in the steel case, our foreign competitors simply take us to the WTO where they continue to chip, chip, chip away at the laws passed by Congress precisely to stop their illegal actions.

We already know, based on bitter experience, that regardless of what is negotiated in Geneva, future WTO panels will continue to find U.S. law inconsistent with the new international agreement. These WTO panels are not ruling against the United States based on their understanding of international law. They are not seeking to uphold a greater good. These panels are ruling against the United States to eviscerate—eviscerate, disembowel—our trade laws so they can gain unfettered access to our markets—aha, the largest and most lucrative markets on Earth. And inconceivably this administration wants to help them do it.

Even the chairman of the Senate Finance Committee, Senator BAUCUS, agrees that the WTO panel's interim ruling against the Continued Dumping and Subsidy Offset Act, known to some as the Byrd amendment, was yet another example of how WTO panels are trying to undermine our trade remedies by telling us that we cannot enforce our own laws. These WTO panels are not seeking simply to prevent us from enforcing our own laws. No, they are going far beyond that. They are basically making new laws. That is what they are doing. They are basically making new laws by exceeding the scope of legal review that is permitted under the WTO agreements. Standard of review of the relevant WTO agreements is based on language that was painstakingly negotiated by all WTO members during the Uruguay round.

In those negotiations, WTO members agreed that in a dumping case, a panel is not permitted to substitute its own judgment for a member's government so long as, one, there is more than one permissible interpretation of a WTO agreement; and, two, the interpretation by the member government is a permissible one.

The problem is, according to the WTO, there is only one permissible interpretation to these agreements. That permissible interpretation, it turns out, is never the interpretation of the United States. Instead, it is always the interpretation of the WTO panel. Rigged? We are beaten before we go in. We are out of the game before we enter. Instead, it is always the interpretation of the WTO panel.

During the Uruguay round, all WTO members agreed that there could be more than one permissible interpretation of a WTO agreement, but current WTO panelists dismiss that.

So if WTO panels do not respect their own agreements today, why does President Bush think they will abide by the agreements he negotiates tomorrow? Why should they? They know if down the line they refuse to play by the rules, this President will simply suggest another round of trade negotiations and those negotiations in the end will benefit whom. Them. Not us.

The President is again getting started on these lengthy negotiations right away. Why? Who does he work for, the WTO or the American people out there who are watching through those lenses? He thinks he can appease our trading partners. In effect, this administration is trying to "buy off" our foreign competitors. It is more worried about them than it is about America. The administration is like Willy Loman in "Death of a Salesman." He wants everybody to like us—everybody.

I have a new little dog. It is a Tibetan terrier. Its ancestors were born and bred in Tibet. They were to be used in the palace because they were so loving. They loved everybody. My new little dog is called Trouble. My wife named our little dog Trouble.

No dog will ever take the place of Billy, but Billy is gone. Billy has gone on to Billy's heaven, and so has Bonnie, his sister.

Now we have a new dog—a new dog, a little dog. It is a lap dog, a real lap dog. That is why these dogs were bred. And they are loving. They are small. They were born and bred for the palace in Tibet—China. So the little dog loves everybody. I can pick up that little dog, and it will lick me, and it will lick me, and it will wash my face, and it will kiss me. It loves everybody.

Well, that is the way it is here. That is the way it is here. The administration is like Willy Loman in "Death of a Salesman." It wants everybody to love us.

Maybe the President has a special nickname for each of our foreign competitors, as he does for our adversaries in the press corps. How about that? The President has a nickname for adversaries in the press corps—the fourth estate that sits up there in those galleries and watches, watches, and listens every hour and every minute that we are here.

So he has a special nickname for each of our foreign competitors—maybe—as he does for his adversaries in the press corps. But his desire to have the United States be loved by everyone could result in our trading partners' loving us to death. His ongoing attempts to buy friendship abroad are sowing the seeds of destruction here at home.

For example, the Bush administration continues to compulsively exempt foreign imports from the 201 remedy on steel because it is concerned that the remedy is "upsetting" our foreign competitors. Rather than adhering to the letter of the 201 law, in the face of foreign critics, the administration every few weeks bows and scrapes, hems and haws, and, lo and behold, issues a new list of products suddenly exempted from the 201. These exclusions amount to thousands of tons of imported foreign steel. Is it any wonder that, despite the 201 tariffs, there was a 37 percent increase in steel imports in June compared to May of this year?

And here is another question. Is the President's strategy of appeasing our offended trading partners paying off? Apparently not. As of July 12, the President had excluded 247 products from the 201 remedy, which amounted to 740,000 tons of foreign, unfairly-traded steel. However, after reviewing the exclusions that were announced by the administration on July 11, a spokesman for the European Commission said those exclusions were "not enough." The EC said the United States would have to provide more exclusions or the EC would retaliate. So, glory be, what a surprise, on July 19, 2002, the President issued a new list of additional exclusions, including, of course, more exclusions of European steel. If that wasn't enough, the administration went on to announce that it would continue to grant exclusions on a "rolling" basis—which apparently means whenever we are threatened with retaliation—through the end of August. Not surprisingly, the EC suddenly announced it had decided to postpone its decision on whether to retaliate until the end of September. Coincidence? I think not. Listen to what the EC told us. The Danish Foreign Minister, speaking for the EC, candidly stated, "We decided that if we sanctioned the United States now, it might prove more difficult for the U.S. to add additional exclusions." But notice he did not say that the EC would not retaliate at the end of September, even if the President gives the EC all of the exclusions it asks for. Will we be able to buy off the EC by continuing to grant these exclusions? Not based on recent history. Listen to this.

On Monday, the WTO Dispute Settlement Body announced it was adding Brazil to the list of seven other WTO members that have requested a WTO panel in Geneva to contest our steel 201 remedy. If someone were to ask, "Well, why didn't the President just exclude Brazilian products from the 201, as he has so many others?" they might be surprised to learn that, in fact, Brazil was one of the first nations to be granted a 201 exclusion, and it was a whopper. You know about those fish we catch—"And it was a whopper." Obviously, it is not only futile but ridiculous for the United States to keep caving in to the demands of foreign critics. Why are we allowing ourselves to be cuckolded by foreign suitors we know are insincere? We cannot appease them by giving them further exclusions. They will have their cake and eat it, too—won't they?

Professor John Jackson of the University of Michigan is considered to be one of the most knowledgeable experts on GATT and the WTO in the whole wide world. Listen to what Professor Jackson wrote about the origins of the GATT in 1969. He wrote that it was an invention created by men, that was perhaps the least handsome of all the major international institutions of our time. He said the GATT began as only one wheel of a larger machine, the ill-fated International Trade Organization. And, he said, when the ILO fell apart, this wheel—the GATT—became a unicycle on which the burdens of the larger machine were heaped. He said of the GATT:

> This unicycle, for reasons not fully understood, has continued to roll through two decades since it was put together. To be sure, it takes careful balance to keep it rolling and ad hoc repairs and tinkering have brought it to a point where the bailing wire and scrap metal which hold it together form an almost incomprehensible maze.

Professor Jackson made this observation in 1969. Add to this maze another thirty-three years of bailing wire, scrap metal, and ad hoc repairs and what do you get? The World Trade Organization. The WTO. An incomprehensible maze that is still rolling along, but rolling so hard and fast now, it's careening out of control.

And the greatest irony of all of this, Mr. President, is that it all began at the behest of the United States. In the early 30's, at the request of Senator Roosevelt's Secretary of State, Cordell Hull, the United States enacted the Reciprocal Trade Agreements Act of 1934. Between 1934 and 1945, the President negotiated and entered into 32 trade agreements. Most, if not all of the clauses in the GATT, can be traced to one or another of the clauses that were contained in those early trade agreements. So the United States was there at the inception of the GATT, and it continues to nurture what is now the WTO. And, I am sorry to report that we in the United States are still the greatest financial contributor to the WTO, paying approximately 16 percent of its total budget for the luxury of being told our laws are meaningless, and we don't know how to interpret WTO agreements that are rooted in American law.

I submit we are being hoisted on our own petard, and that, rather than protecting us, the Bush administration is simply helping to sharpen the blade.

I yield the floor. I reserve the remainder of my time, if I have anything.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, today we stand on the precipice of passing a monumental expansion of trade adjustment assistance and overdue fast track trade negotiating authority for our country.

Before the debate closes, I wanted to explain how important this legislation is to my home State of Montana. Montana exports nearly a half billion dollars in products a year. We only have 900,000 people in our State. This includes $260 million in agricultural commodities, $100 million in industrial machinery, $24 million in chemical products, and $37 million in wood and paper products.

We export more than $300 million to Canada, $34 million to Mexico and have significant trade with China, Japan, Germany and the United Kingdom. In fact, just last week, Ambassador Moreno from Colombia visited Great Falls, Montana and announced a major wheat and barley purchase, with more trade opportunities to follow.

And that is just the beginning—if we are willing to engage the world. This bill helps us do that by allowing the President to negotiate new agreements to open foreign markets which is so necessary to the United States, and brings down trade barriers which is so important to this country.

I would like to read a letter I received from the Montana Grain Growers, Montana Stockgrowers, Montana Farm Bureau and Montana Chamber of Commerce that addresses this very point. To quote:

> We are aware that trade is not always free or fair, but we believe this legislation is vital in putting the United States on a similar playing field with agreements that are negotiated around the world. While we understand that trade promotion authority will not fully address inequities with existing trade agreements, we feel strongly that this is an important way of establishing long-term agreements that will help return profitability back to the producer level.

I could not agree more. We need to take a seat at the negotiating table and level the playing field for our producers. It is not level today.

This means taking aim at the Canadian wheat board and finally dismantling its market distorting monopoly.

This means reducing foreign agricultural tariffs to levels that are the same as or lower than those in the United States. These are the same tariffs that block Montana beef exports to Korea and Japan.

This means eliminating all export subsidies on agricultural commodities while maintaining bona fide food aid and export credit programs that allow the U.S. to compete with other foreign export promotion efforts.

As you well know, Mr. President, the European Union maintains the lion's share of these agricultural export subsidies. You know this figure. It is 60 times more than the U.S. agricultural export subsidies—not 6, 60 times more than the United States. How can we as Americans ever expect to compete in the world if we are undersold time and time again by foreign-backed competitors? We can't. We need a trade agreement so we can begin to level that playing field and begin to eliminate those trade-distorting subsidies that are 60 times greater in one area than those of the United States.

This means preventing unjustified sanitary or phytosanitary restrictions not based on sound science. For three decades we fought to pry open the Chinese market to Pacific Northwest wheat. Now we are struggling with markets in Chile and Russia that place arbitrary sanitary barriers on U.S. exports of beef, pork and poultry. This must end, to say nothing about the EU restriction on American beef.

They will not take American beef. I remember meeting with Mrs. Margaret Thatcher. She admitted to me that it was a phony excuse. She said that to me personally.

And, most importantly, this means promoting trade while simultaneously maintaining a strong agricultural policy that preserves our family farms and rural communities.

Agriculture is not the only industry dependent on trade, however. We must continue to work to guarantee that small businesses have access to foreign markets.

It is open foreign markets that create new opportunities for a Bozeman, MT company that ships trailers for mining equipment to Latin America; that allow a Missoula company to expand its nutraceutical trade; it is open foreign markets that allow our nurseries to send seeds and seedling trees to developing nations rather than fighting phony sanitary barriers.

The potential for preserving good jobs—and even creating new jobs—doesn't stop there.

But there is a potential downside to trade that is also addressed by this bill. In this package we target assistance for workers who are struggling because of trade assistance for workers who are struggling because of trade by expanding the Trade Adjustment Assistance Program.

Many Montana workers are now back at work and many firms are still in business thanks to TAA. Take for example, Montola Growers which is researching new markets for its safflower oil, Thirteen Mile Lamb and Wool Company which is designing new garments for manufacture by contract knitters, and Pyramid Lumber, which is improving its milling efficiency.

Expanded trade adjustment assistance will help Montana workers by streamlining the process and expanding the net of eligibility. More will be eligible. In addition, a new program will provide up to $10,000 in cash assistance to Montana farmers and ranchers injured by imports. This should be a good incentive to keep Montana farmers and ranchers, their families, and future generations on the land.

Good jobs will be created in Montana if we are willing to give our negotiators the strong hand needed to secure sound trade agreements, open those markets, and knock down those barriers. I hope my colleagues will feel the same about their own constituencies and lend their support to this very important matter.

Mr. President, I ask unanimous consent that the full text of the letter I quoted be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

July 31, 2002.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

RE: Unified Support for TPA Passage

DEAR SENATOR BAUCUS: On behalf of the Montana Farm Bureau Federation. The Montana Stockgrowers Association, the Montana Grain Growers Association and the Montana Chamber of Commerce we would like to reconfirm our support of Trade Promotion Authority (TPA). We ask for your support as well when the bill comes to the floor of the Senate later this week.

As you know, this bill has already overcome many hurdles, including passage in both the House and Senate. Just last week, the House approved the conference report. Passage in the Senate is the last hurdle before it goes to the President for signature.

We are aware that trade is not always free or fair. But we believe this legislation is vital in putting the United States on a similar playing field with agreements that are negotiated around the world. While we understand that trade promotion authority will not fully address inequities with existing trade agreements, we feel strongly that this is an important way of establishing long term agreements that will help return profitability back to the producer level.

It should be noted that Montana sold over half a billion dollars worth of exports last year to 100 foreign markets. Agriculture accounted for half of that value. We must find a way to put more money in the pockets of our farmers and ranchers or they will not be able to stay in business. The vast majority of ag producers recognize that increasing exports increases their bottom line.

Thank you for your continued strong support of Montana agricultural producers.

Sincerely,

JAKE CUMMINS,
Executive Vice President, Montana Farm Bureau Federation.
STEVE PILCHER,
Executive Vice President, Montana Stockgrowers Association.
WEBB BROWN,
President, Montana Chamber of Commerce.
RICHARD OWEN,
Executive Vice President, Montana Grain Growers Association.

Mr. BAUCUS. Mr. President, I yield the floor.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the hour of 2:20 p.m. having arrived, the Senate will now resume consideration of H.R. 5010, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5010) making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

Pending:

McCain amendment No. 4445, to require authorization of appropriations, as well as appropriations, for leasing of transport/VIP aircraft.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona.

AMENDMENT NO. 4445 WITHDRAWN

Mr. MCCAIN. Mr. President, I ask unanimous consent to withdraw my amendment and, along with that unanimous consent agreement, that I be allowed 8 minutes and the Senator from Texas be allowed 5 minutes to speak on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I don't quite understand the request.

Mr. MCCAIN. I am requesting unanimous consent to withdraw the amendment but be allowed to speak for up to 8 minutes on the amendment and the Senator from Texas be allowed 5 minutes to speak on the amendment.

Mr. STEVENS. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment (No. 4445) was withdrawn.)

Mr. MCCAIN. Mr. President, could the Senator from Texas be allowed to be recognized first on this, and I then be recognized for my 8 minutes?

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I thank our dear colleague from Arizona. I thank him for his vigilance on this issue.

We have two issues before us, but they really boil down to the same principle, and I want to talk more about the principle than I do the interest.

The first issue has to do with the leasing of four 737s. I would have to say, this is a transaction I have not looked at very closely. This is something new to this bill. What I want to focus my attention on is the leasing of 100 Boeing 767s, which was contained in last year's appropriations bill, which was not competitively bid.

In looking at the economics of leasing these planes, to the best of my ability—to get data, and to understand it—it looks to me that if we need these planes as tanker replacements, we ought to buy the planes.

My concern is, we are going into leasing because we do not have the front-end costs in the appropriations process with leasing that we do with purchasing. If in fact my concern is legitimate, what it means is, we are having procurement dictated by how we score leasing versus procurement. I think if that in fact is the case, we are making a very big mistake.

I think something needs to be done about looking at these leasing contracts into which we are entering. They represent tens of billions of dollars of commitments of resources into the future. It seems to me that OMB and CBO need to work together to come up with a methodology to look at leasing versus buying. And this is something that ought to be looked at by the Defense authorization bill since the leasing of the 737s and the leasing of the 100 767s—neither of them was authorized by the Defense authorization bill.

I think it is imperative, before we go through this process again, that we have OMB and CBO develop for us a methodology of looking at leasing versus purchases, that we have hearings in the authorizing committee, and that we have authorizing legislation in this area.

I was very concerned, last year, with 100 Boeing 767s because the clear intent at that time, no matter what the economics were, was to basically help Boeing, given that they did not get the major defense contract of our era.

I do not think, given that we have a $168 billion deficit, we ought to be in the business of simply gratuitously giving billions of dollars to companies that do not win contracts. The whole purpose for competing contracts is to choose the contractor that will do it best at the lowest possible price. The idea that losers have to be compensated is about as far away from the market principle as it can be.

So I would certainly urge that something be done to develop a methodology so that the Senate can make rational decisions about leasing versus buying.

I thank Senator MCCAIN for his leadership in this area. This is something we ought to be concerned about. We are talking about tens of billions of dollars. We are making commitments on economics that people have not looked at or understood. I think this is something we need to understand. And I hope to pursue, with Senator MCCAIN, a study by CBO and OMB to set the stage for the setting of a policy in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my friend from Texas, who understands the issues of economics and leasing and the machinations of various budget activities far better than I. I appreciate his support.

I remind my colleagues that the amendment I have withdrawn would have just simply required the authorization of appropriations of $30.6 million—I repeat, $30.6 million—for the four Boeing 737 congressional/executive VIP aircraft. That is all it did.

The language in the amendment is identical to language requiring authorization of appropriations for 100 Boeing 767 tanker aircraft that is included in the fiscal year 2003 Defense authorization bill. Whether that lasts through conference will be very questionable, given the enormous impact of the lobbying by Boeing Aircraft.

Last year, during conference negotiations on the Department of Defense Appropriations Act for fiscal year 2002, the Senate Appropriations Committee inserted into the bill unprecedented language to allow the U.S. Air Force to lease 100 Boeing 767 commercial aircraft and convert them to tankers, and to lease four Boeing 737 commercial aircraft for VIP airlift to be used by congressional and executive branch officials.

My colleagues will recall that Congress did not authorize these leasing provisions in the fiscal year 2002 National Defense Authorization Act, and in fact the Senate Armed Services Committee was not advised of this effort by the U.S. Air Force during consideration of that authorization measure.

Again, this year, without benefit of authorization, committee debate, or input, the Senate Appropriations Committee has added funding in the fiscal year 2003 Department of Defense appropriations bill for $30.6 million to cover initial leasing costs for the four Boeing 737 congressional/executive VIP transport aircraft.

I am concerned that the impact of this 737 leasing provision has not been adequately scrutinized and the full cost to taxpayers has not been sufficiently considered. In fact, after review of the Air Force's proposed lease for the four 737s, and its comparison of leasing and purchase options for these aircraft, it appears that certain leasing costs are being hidden to make the leasing option appear more cost effective.

In addition, recent CBO and GAO analysis of the Air Force's 737 leasing proposal suggests that the lease could cost the Government, and ultimately the U.S. taxpayers, from $13.5 million to $20 million more than to purchase these aircraft. These CBO and GAO reports, it seems to me, lend credence to the view that additional scrutiny of the leasing proposal would be beneficial—and such scrutiny generally occurs during the congressional authorization process.

I repeat, my amendment only said that this insertion in the appropriations bill would have required authorization. It would not have stopped it.

This is the same kind of egregious behavior we often rail against here on the Senate floor when it comes to corporate scandals.

What is at risk in this series of unfolding circumstances is the trust Americans have in our Congress and in Government.

I am aware that the chairman of the Armed Services Committee has just a short time ago received a letter from OMB Director Mitch Daniels stating the administration's support for the lease of these four aircraft.

I know also that our committee has received a reprogramming request for the funds necessary to begin this lease. This reprogramming request, evidently, has addressed any concerns, my friends, the chairman and ranking member, might have had about the Appropriations Committee. Accordingly, Senators LEVINE and WARNER would have opposed my amendment insisting that our committee need not authorize these leases. I understood the reality and withdrew the amendment.

However, I want to make a couple of observations. I guess I don't know for certain why OMB has decided to support this lease—which will cost American taxpayers just about as much to rent four aircraft as it would to own them. I assume it is because the real need for these aircraft is negligible compared to our many other defense priorities, and to find the money to support a luxury in a time of enormous budget deficits it becomes necessary to engage in budgetary shell games and appropriations parlor tricks. But the American people should know and their elected officials should understand that the accounting tricks that we decry in the corporate world and that have so distressed our financial markets should not be any more acceptable in government spending decisions.

Lastly, I say to my friends, the chairman and ranking member of my committee, for whom I have great affection and respect—and I mean that: I remember a time when the members of the Senate Armed Services Committee considered their authorizing responsibilities to be considerably more onerous than simply receiving and acquiescing in the occasional reprogramming request for an unneeded, unaffordable, luxury acquired by resorting to spending gimmickry rather than insisting that the scarce resources available for our armed services—in an age of serious and multiple threats to our freedom—ought to be spent on our security and our security alone and not on the convenience of travelling members of Congress and the executive branch.

I yield the balance of my time.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, we are making good progress in our effort to bring the debate on this bill to a close. I compliment the distinguished Senators, the managers of the bill, the chairman, and the ranking member. At a point when we are able to conclude the debate, I know Senator LEVIN would like to be recognized for a few minutes before that happens, we will go to final passage. There will then be an opportunity to vote on issues relating to the Executive Calendar—at this point I am not sure how many votes relating to the judicial nominations on the calendar, but it is my intention to go to many of the judges who are currently listed on the Executive Calendar.

I would like to propound a unanimous consent request. It has been cleared by the distinguished Republican leader in regard to that matter.

I ask unanimous consent that immediately following the disposition of the Defense appropriations bill, the Senate proceed to executive session to consider Executive Calendar No. 862, Henry Autrey, to be U.S. District Judge; that there be 4 minutes for debate equally divided between the chairman and ranking member of Judiciary Committee; that upon the use or yielding back of that time, the Senate vote immediately on confirmation of the nomination; that the motion to reconsider be laid on the table; the President be immediately notified of the Senate's action; any statements thereon be printed in the RECORD; and the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, to repeat, there will be a vote on final passage, at least one, perhaps more votes on the judicial nominations that we have been able to clear. Then I would also note that we have one other vote at least after all of that, which is the vote on the final passage of the trade promotion authority conference report. There are Senators who had asked to be recognized for remarks prior to the time we have that vote. We will be consulting with them relating to the amount of time they will require.

I urge Senators to be aware that after this block of votes, there will be at least one, maybe other important votes this afternoon.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if one of the managers will yield 4 minutes to me.

Mr. INOUYE. I yield 4 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, last year's Defense Appropriations Act contained a provision which authorized the Secretary of the Air Force to pursue multiyear leases for two types of aircraft, up to four Boeing 737 aircraft and up to 100 Boeing 767 aircraft. That provision exempted these leases from the requirement for congressional authorization in sections 2401 of title X which I thought was an unfortunate action on the part of the Appropriations Committee. That was last year.

After the enactment of that provision by our good friends, the appropriators, the Secretary of the Air Force appeared before the Armed Services Committee and he made a personal commitment to us that he would not proceed with a lease without first coming to both the authorizing committee and the Appropriations Committee for approval of funding required for the lease.

In the case of the proposed Boeing 737 lease, the four planes, the Secretary lived up to that commitment. The Department of Defense submitted a request for reprogramming to both the Armed Services Committee and the Appropriations Committee. The Armed Services Committee met earlier today, about an hour and a half ago, to consider the reprogramming request from the Department of Defense. I emphasize, this reprogramming request is from the Department of Defense. My immediate response, when we received it, was to ask the Department of Defense some questions and to ask the OMB some questions.

The main question I was asking the Department of Defense was whether they considered this a precedent for any other reprogramming requests. The answer was no.

The question I asked the OMB was whether or not the OMB supports this request and if so why. The OMB has sent a letter now to us indicating that they support the Department of Defense reprogramming request, and they set forth their reasons.

I ask unanimous consent the letters from the Department of Defense and the OMB supporting the reprogramming request be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SECRETARY OF THE AIR FORCE,
Washington July 31, 2002.

Hon. CARL LEVIN,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to your questions regarding the Air Force's intent to award a contract to lease four Boeing 737 aircraft under the Multi-Year Aircraft Lease Pilot Program authorized by Section 8159 of the Fiscal Year 2002 Department of Defense Appropriations Act.

Our analysis shows that the least cost alternative is a lease program. Under the terms and conditions of the proposed lease contract negotiated with Boeing, the net present value of the lease is approximately $3.9M less than a purchase over the same period.

With respect to your comment that you do not consider the proposed Boeing 737 lease to be a precedent for any other lease, I agree. Although the Air Force will use a similar methodology to determine the value of a 767 lease (if one can be successfully negotiated), in the end, the Air Force will only bring forward a lease proposal which shows a net present value that is advantageous to the American taxpayer.

Thank you for your prompt attention to this matter.

Sincerely,

JAMES G. ROCHE.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, July 31, 2002.

Hon. Carl Levin,
Chairman, Committee on Armed Services
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: Thank you for your letter of July 30th concerning the proposed lease of Boeing 737 transport aircraft. You asked if the lease proposal is consistent with the criteria for an operating lease under OMB circular A–11 and with the requirements of Section 8159 of the FY 2002 DoD Appropriations Act.

We believe that the lease is consistent with A–11 and Section 8159, despite the fact that it includes an option to purchase the aircraft. In particular, the lease proposal meets two key requirements in A–11: (1) the lease payments constitute no more than 90% of the value of the asset (the aircraft); and (2) the asset is commercial in nature and not designed to meet unique government purposes. Under A–11, purchase options are allowable in operating leases as long as they do not commit the government to purchase and as long as the purchase is at the fair market value of the asset at the time the option is exercised. In this case the prices quoted in the contract are fair market value for this type of aircraft after five years of use. Therefore, as long as the Air Force provides the required funding to purchase the aircraft upfront if and when it decides to exercise the option, it can do so without violating the A-11 requirements for an operating lease. The lease is also consistent with Section 8159 in this regard since the purchase option requires separate authority in order to be exercised.

Finally, all costs for FY 2002, including termination liability costs, are fully covered by the reprogramming request of $37.2 million that was sent to the Congress. In future years, the program will continue to be scored according to guidelines for operating leases under A–11 thus requiring an annual appropriation.

In summary, we support the proposal worked out with the Air Force on the lease of 737s. Any future leases would be expected to comply with these standards. Thank you again for your interest.

Sincerely,

MITCHELL E. DANIELS, Jr.
Director.

Mr. LEVIN. Mr. President, that relates only to the 737 lease which is the matter in the appropriations bill. There is no reference to the 767 lease, which is for the 100 tankers, in the appropriations bill before us. We need to address how that issue should be addressed.

In the authorization bill, which this Senate has passed and which is now in conference, we added a provision which states that before there is any lease, the Department of Defense must obtain authorization for that lease. This legislation will not only require the Department of Defense and the Office of Management and Budget to lay out the ground rules for any such lease but also to obtain the approval of the authorizing committees as well as the appropriators for any lease of Boeing 767 aircraft. That is the way in which I believe we have done the people's work in requiring the justification from the OMB and the Department of Defense for the reprogramming request relative to the four 737s and the way in which we will protect the public interest relative to any request for funding for a lease for the 767s and for the tankers.

Mr. President, I ask unanimous consent that a number of documents I referred to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Unclassified **REPROGRAMMING ACTION – PRIOR APPROVAL** Page 1 of 2

Subject: C-40 Lease	**DoD Serial Number:** FY 02-11 PA
Appropriation Title: Research, Development, Test, and Evaluation, Air Force, 02/03 Aircraft Procurement, Air Force, 02/04 Operation and Maintenance, Air Force, FY 2002	**Includes Transfer?** Yes

Component Serial Number:
FY 02-25 IR

(Amounts in Thousands of Dollars)

Line Item	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This action is submitted for prior approval because it initiates a new start program. This action uses general transfer authority, pursuant to section 8005 of Public Law 107-117, the DoD Appropriations Act, 2002; and section 1001 of Public Law 107-107, the National Defense Authorization Act for FY 2002. This action reprograms funding in support of a higher priority item, based on unforeseen military requirements, than that for which the funds were originally appropriated. This action meets all administrative and legal requirements of the Congress. This action also involves congressional special interest items.

Line Item	b	c	d	e	f	g	h	i
FY 2002 REPROGRAMMING INCREASES:						**+37,200**		
Aircraft Procurement, Air Force, 02/04						**+31,200**		
Budget Activity 4: Other Aircraft								
C-40		-		-		+31,200		31,200

Explanation. As authorized by section 8159 of Public Law 107-117, the DoD Appropriations Act, 2002, this funding will be used to establish the Boeing 737 Lease Pilot Program in FY 2002. Increased travel requirements resulting from events of September 11, 2001, mandatory retirement of aging aircraft, and on-going modernization programs result in a shortfall in airlift capacity in the Special Air Mission (SAM) fleet based at Andrews Air Force Base (AFB), Maryland. To offset this operational deficit, the Air Force plans to enter into a long-term operating lease of up to four Boeing 737 (C-40) aircraft under the Lease Pilot Program. The C-40 is the military variant of the commercial 737-700 Boeing Business Jet.

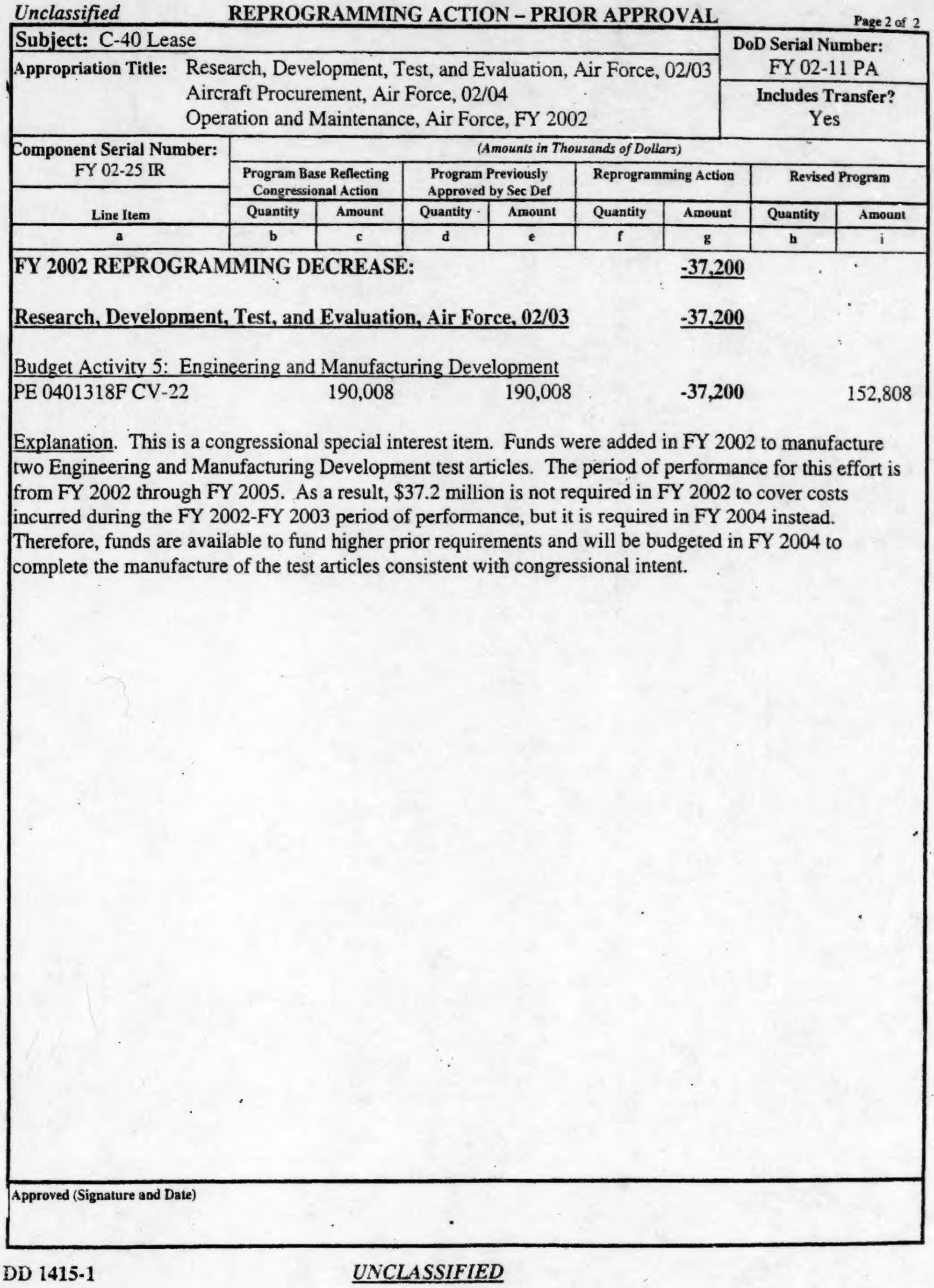
Line Item	b	c	d	e	f	g	h	i
Operation and Maintenance, Air Force, FY 2002						**+6,000**		
Budget Activity 2: Mobilization		3,653,410		3,653,914		+6,000		3,659,914

Explanation. This requirement is for the operations and support costs incurred during FY 2002 to support the Boeing 737 Lease Pilot Program based at Andrews AFB, Maryland.

Approved (Signature and Date)

Dov S. Zakheim JUN 27 2002

DD 1415-1 *UNCLASSIFIED*



Unclassified **REPROGRAMMING ACTION – PRIOR APPROVAL** Page 2 of 2

Subject: C-40 Lease

Appropriation Title: Research, Development, Test, and Evaluation, Air Force, 02/03
Aircraft Procurement, Air Force, 02/04
Operation and Maintenance, Air Force, FY 2002

DoD Serial Number: FY 02-11 PA

Includes Transfer? Yes

Component Serial Number: FY 02-25 IR

(Amounts in Thousands of Dollars)

	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i
FY 2002 REPROGRAMMING DECREASE:						**-37,200**		
Research, Development, Test, and Evaluation, Air Force, 02/03						**-37,200**		
Budget Activity 5: Engineering and Manufacturing Development								
PE 0401318F CV-22		190,008		190,008		**-37,200**		152,808

Explanation. This is a congressional special interest item. Funds were added in FY 2002 to manufacture two Engineering and Manufacturing Development test articles. The period of performance for this effort is from FY 2002 through FY 2005. As a result, $37.2 million is not required in FY 2002 to cover costs incurred during the FY 2002-FY 2003 period of performance, but it is required in FY 2004 instead. Therefore, funds are available to fund higher prior requirements and will be budgeted in FY 2004 to complete the manufacture of the test articles consistent with congressional intent.

Approved (Signature and Date)

DD 1415-1 *UNCLASSIFIED*

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, July 30, 2002.

Hon. JAMES G. ROCHE,
Secretary of the Air Force, The Pentagon, Washington, DC.

DEAR SECRETARY ROCHE: On June 24, 2002, the Senate Armed Services Committee received a letter indicating your intent to award a contract to lease four Boeing 737 aircraft under the Multi-Year Aircraft Lease Pilot Program authorized by Section 8159 of the Fiscal Year 2002 Department of Defense Appropriations Act. The Committee subsequently received a request for reprogramming to enter into such a lease.

As the Committee considers this reprogramming request, I would appreciate your response to the following questions.

First, based on net present value calculations performed by the Air Force, do you believe that it will cost the Air Force more or less to lease the four aircraft than it would cost to purchase the same aircraft?

Second, as you know, Section 8159 authorizes the Secretary of the Air Force to investigate operating leases for both Boeing 737 aircraft and Boeing 767 aircraft. In my view, any proposed lease should be considered on its merits, and for that reason I do not consider the proposed Boeing 737 lease to be a precedent for any other lease, including a potential Boeing 767 lease. Do you agree or disagree?

Because your reprogramming request is currently pending before our Committee, I would appreciate a prompt response to these questions.

Thank you for your assistance in this matter.

Sincerely,

CARL LEVIN,
Chairman.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, July 30, 2002.

Hon. MITCHELL E. DANIELS, Jr.,
Director, Office of Management and Budget, The White House, Washington, DC.

DEAR MR. DANIELS: On June 24, 2002, the Senate Armed Services Committee received a letter from the Secretary of the Air Force informing us of the Secretary's intent to award a contract to lease four Boeing 737 aircraft under the Multi-Year Aircraft Lease Pilot Program authorized by Section 8159 of the Fiscal Year 2002 Department of Defense Appropriations Act. The Committee subsequently received a request for reprogramming "to enter into a long-term operating lease of up to four Boeing 737 (C-40 aircraft)" as authorized by section 8159.

Section 8159 states that "The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A–11, as in effect at the time of the lease." It further states that "No lease entered into under this authority shall provide for . . . the purchase of the aircraft by, or the transfer of ownership to, the Air Force." An Air Force report to the Congress regarding the proposed contract terms and conditions states that "A price option to purchase the aircraft at residual value is included. Exercise of the options is subject to a separate authorization and appropriation."

I would appreciate if you would review the proposed contract terms and conditions and determine: (1) whether the terms and conditions are consistent with the criteria for an operating lease as defined in OMB Circular A–11; (2) whether the terms and conditions are consistent with the requirements of Section 8159; and (3) how the lease should be scored for budget purposes. I would also appreciate your statement as to whether, in view of these terms and conditions, the Office of Management and Budget supports the proposed lease.

Because the Air Force reprogramming request is currently pending before our Committee, I would appreciate a prompt response to these questions.

Thank you for your assistance in this important matter.

Sincerely,

CARL LEVIN,
Chairman.

Mr. LEVIN. Mr. President, if I may have an additional minute, I think a number of important points were raised by the Senator from Texas relative to the leasing issue. I hope that path will be followed, where the Department of Defense and the OMB will set forth some criteria, some guidelines, relative to leasing because there are some real risks when the leasing road is walked in terms of committing future resources.

We hope we have protected the taxpayers in this matter by looking at the reprogramming request very carefully. A majority in the committee has voted and approved formally the way we do reprogramming; nonetheless, it has approved the reprogramming request.

Senator WARNER has worked with me and fully concurs in the decision that we made to get the decision from the committee. Usually, reprogramming is done more informally, but we decided that because there were some differences, we would actually convene the committee and get a more formal response and polling of the committee relative to the Department of Defense's reprogramming request on the four 737s. That is completed now, and the reauthorization issue will now be addressed relative to the 100 tankers.

I thank my friends for the time. I thank Senator MCCAIN for withdrawing his amendment, and I hope we are on the right track.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, the Senator from Texas started his comments about this subject with the phrase "if" we need these planes. That is the point of departure, as far as I am concerned, from those who oppose what we have done to start leasing planes.

The tankers that we are replacing in the lease program, the 767s, have reached over 42 years of age. Senator INOUYE and I have talked to pilots throughout the world who are flying our planes, and we found that, to a great extent, these planes are spending more time in the depot for maintenance than they are spending flying. The cost of maintaining a plane that old is irrelevant to the subject of what we are spending on these new planes. That doesn't figure in on the CBO. If you save money from maintaining a 42-year-old airplane, that doesn't count toward what it costs you to lease a plane to take its place.

Now, we have an unquestioned need for these planes. As I said last night, I cannot imagine that, in the time when I was an Army and Air Corps pilot, anyone would have dared offer me a 1902 plane to fly in World War II. But that is equal to what we are doing now. We are not only offering it, we are forcing our people to fly planes that are, for the most part, older than the pilots who are flying them. It is costing us more to maintain them than the planes are worth. It is because of the failure of the Congress to face up to the problems of replacing our aging systems that we face this tremendous bow-wave of costs in front of us.

We are not able to lease combat equipment. We don't seek to lease combat equipment, but we do seek to lease those types of systems that are available in the competitive market and for which there will be a market at the end of the lease. I envision that we will go away from the point of having to spend dollars and dollars and dollars to maintain old planes to the point where we will turn these planes back after not more than 10 years, and then we will buy the next generation. This generation will go out into the general aviation sector of the world, and we will have a value. That value is not calculated in these systems either because they just assume we will keep leasing them, I guess, and envision us continuing to lease these planes until they, too, are 40 years old.

As a practical matter, we have faced this problem before, not just in this Congress. I remember the fights over the C–17. Even those were purchased, but the Congress, in three out of the four committees of the Congress, refused to proceed with the purchase of the C–17s. We saw the C–140s ready to be retired, and we had to have a replacement. It was our subcommittee that insisted on going ahead with the C–17s.

We see the problem of the cost of maintaining the tankers, of maintaining the C–9s. We call them the DC–9s. Those are being retired now. They average 30 years of age. The 727s, which we call the C–22, average 38 years of age.

Think of that, Mr. President. We have gone through three decades without thinking about how we keep planes so they are functional and costs do not get ever-increasing for maintenance. We look at money in a different way than the Armed Services Committee does; I admit that. We look at money as to how we can possibly get what we need without breaking the budget. We have proceeded to lease with that in mind.

It is not my judgment that we will increase the cost of flying these missions by leasing the planes, as compared to keeping planes that are in the 30-, 38- and 44-year-old age bracket.

Mr. President, I think one comment was made concerning the fact that one company—Boeing—was not awarded one of the contracts for the combat aircraft. That had nothing to do with our decision to try to lease these planes. It is totally immaterial, as far as I am concerned. We weren't even sure whether they would decide to lease the planes. The fact was that we had to find planes, and the planes that were available at that time on the line were the 767s, which could be readily, converted to tankers to replace these aging tankers that must be replaced if we are to continue our war against global terrorism.

Mr. President, it doesn't please this Senator to have this continued battle with the Armed Services Committee over the question of what is the best way to spend our money to keep our people in the military outfitted with the best possible equipment. But, in my judgment, we are proceeding along the right line.

I sort of wonder about the request that GAO do a study on whether or not the Congress was right in passing the law and the President was right in signing the law last year. We are discussing an issue we debated on the Senate floor. We prevailed on the floor, we prevailed in conference, and the President signed the bill. The system is moving forward that was intended to move forward. I seriously question what right anybody has to ask the GAO to study whether Congress made the right decision last year. Congress should be looking at the execution of the laws, not whether the laws represented the best possible solution.

I don't have a problem with them looking at the economics of it; I welcome that, provided they look at the cost of maintaining those old planes. They are not going to tell me that the taxpayers are saving money by keeping planes that are as old as the C–9s, C–22s, and tankers that are flying today.

Lastly, I remind the Senate that those tankers are still flying, almost nightly, in Afghanistan. Every plane that flies in that theater has to be refueled at least twice a night. We recently talked to the commander of our forces in Europe. We were told that when the AWACS NATO loaned us after 9/11 came to the United States, they flew 19,000 hours in less than 6 months. Now, those, too, are the old 707 bodies and they are aging. The engines are aging, and they are going to have to be replaced because of the heavy duty they got during that period they were on loan here.

There are all kinds of problems that have to be solved. We solve them by using money from the operation and maintenance account. We are not authorizing people to buy planes. That is the jurisdiction of the Armed Services Committee. But what happens to the O&M account, as far as I am concerned, is a matter for the Appropriations Committee to determine—they are consulted—but we have to find some way to make the money fit the need. I think we have done it in this bill.

I thank my friend from Hawaii for his courtesy in allowing me to speak ahead of him.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I wish to associate myself with the remarks of my distinguished colleague from Alaska.

DEPOT MODERNIZATION

Mr. GREGG. Mr. President, I would like to express my appreciation to Mr. INOUYE, the Chair of the Senate Appropriations Subcommittee on Defense, and to Mr. STEVENS, the Ranking Member of the Subcommittee, for the fine work they have accomplished in crafting this important Fiscal Year 2003 Department of Defense Appropriations Bill. It has been my pleasure, as a member of the Appropriations Subcommittee on Defense, to work with them on this bill, as well as on the defense portions of the recently passed Fiscal Year 2002 Emergency Supplemental Bill, H.R. 4775. They certainly do a masterful job of setting priorities and balancing competing needs.

I am also pleased that the Appropriations Committee chose to specifically provide $90 million in the Fiscal Year 2002 Emergency Supplemental bill to accelerate the depot modernization period of the USS *Scranton* at the Norfolk Naval Shipyard from Fiscal Year 2003 to Fiscal Year 2002, as it will result in dramatically improved fleet readiness. In addition, it will free up $90 million in Fiscal Year 2003, which had been programmed for the USS *Scranton*, to be used for other U.S. Navy critical submarine requirements. This could include returning back to Fiscal Year 2003 the important USS *Annapolis* depot modernization period at the Portsmouth Naval Shipyard, which the Navy was recently forced to slip from Fiscal Year 2003 to Fiscal Year 2004, because of a Navy funding shortfall.

I direct a question to my two friends, the Chair and the Ranking Member of the Defense Appropriations Subcommittee. Is it the Subcommittee's understanding that the appropriation of the additional $90 million to accomplish the USS *Scranton* depot modernization period in Fiscal Year 2002, now gives the U.S. Navy flexibility to allocate the Fiscal Year 2003 USS *Scranton* funds to meet other critical submarine requirements?

Mr. INOUYE. The distinguished Senator from New Hampshire is correct. It is the understanding of the Defense Subcommittee that the Fiscal Year 2003 $90 million that the navy had requested for the USS *Scranton*, may now be available to the Navy to meet other critical submarine depot modernization requirements.

Mr. STEVENS. I tell the Senator from New Hampshire that it is also my understanding that the Navy now has the flexibility to reprioritize those Fiscal Year 2003 funds.

M13 CARRIER

Mr. SHELBY. Mr. President, as the Senator knows, one of the most versatile and successful programs in the history of the Army is the development and fielding of the M113 Family of Vehicles. The Army has been in the process of up-grading these vehicles so that they can keep pace on the modern battlefield, improve survivability and drastically increase reliability. Not withstanding the need to transform the Army, the fact remains that in 2016, at the time the Army intends to field the Objectives Force, there will be nearly 10,000 M113s remaining operational including 1,900 in the Counter Attack Corps.

Mr. INOUYE. Yes, I am familiar with the success of the M113 Family of Vehicles and the role they play in today's Army.

Mr. SHELBY. Mr. President, as the chairman knows the FY 2003 budget request contained $60.3 million for carrier modifications but only $14.9 million of that total was allocated for M113 "A3" upgrades. I am supportive of transformation and understand the need to reallocate resources for that purpose. In this instance, however, I believe the Army's decision not to upgrade the remaining forward deployed 112 M113A2s of the 2nd Infantry Division in the Republic of Korea and the 352 M113A2s in Europe belonging to the 1st Infantry Divisions, will at a minimum, leave the soldiers in these front line units vulnerable in a potentially unstable and high threat environment.

Because of these concerns, I believe serious consideration should be given to using all the funds provided in this bill for M113 Carrier A3 upgrades and ask that you work with me on this issue during conference.

Mr. STEVENS. Mr. President, Senator SHELBY and I have discussed this matter and I also believe we should take a close look at using the funds recommended by the Committee solely for the conversion of M113A3 carriers and that we address this matter in conference.

Mr. INOUYE. I thank my distinguished colleagues for sharing concerns about this program. I too support Army transformation and, most importantly, the protection of our soldiers. I would be happy to discuss the M113 issue further as we move toward conference.

BRILLIANT ANTI-ARMOR SUBMUNITION COLLOQUY

Mr. SHELBY. Mr. President I rise today with my good friend, Senator MIKULSKI, to discuss the Brilliant Anti—Armor Submunition BAT P^{3}I. I want to express my disappointment with the $152 million cut taken by the committee from the President's budget request for the BAT program. Despite increased emphasis being placed on precision guided munitions, this cut will cripple a promising program that has shown progress in testing and is nearing the end of its development phase.

Ms. MIKULSKI. I join my friend from Alabama in expressing my concern with this cut to the BAT program. The Department of Defense is currently creating a vision of precision munitions capabilities and transformation investments for our Armed forces and I believe BAT could play a significant role. The Army has already spent close to $1.9 billion developing this program and the President's fiscal year 2003 request is needed to complete development, testing and make this system production ready by 2005. That is well within the Army's schedule to support both the Army's Interim and Objective Transformational Forces. With adequate funding, BAT P^{3}I is on track to be fielded 3 years sooner than any competing system.

Mr. SHELBY. I note that BAT P^{3}I is the Army's only precision strike munition that can operate in inclement weather and effectively hit moving and stationary targets, including SCUD launchers capable of carry weapons of mass destruction. It is equally worth noting that recent tests of BAT and its P^{3}I variant have proven to be effective against targets that were employing countermeasures. I applaud the Army's efforts to expand the delivery platform for BAT P^{3}I beyond the ATACMS missile to include examining the applicability of putting the BAT on rockets and unmanned air vehicles, such as Predator and Hunter UAVs. I encourage the Army and its colleague services to continue this kind of innovative thinking to take full advantage of the flexibility that this all weather, precision guided weapons can provide.

Ms. MIKULSKI. I am informed of a positive trend, in that, the cost of the BAT submunition has decreased by approximately 10 percent each time a new order has been procured. I also understand the Army is working on an achievable cost reduction program for BAT P^{3}I. Considering the points Senator Shelby and I have raised, it seems we should give more thought to this matter in conference. I ask both Chairman Inouye and Senator STEVENS if they might be willing to discuss this matter further as we move to conference on this bill.

Mr. SHELBY. I join the distinguished Senator from Maryland in requesting the assistance of Chairman INOUYE and Senator STEVENS.

Mr. INOUYE. I thank the Senators from Maryland and Alabama for their steadfast support for this program. I would be happy to review the committee's action and discuss the BAT program with them.

Mr. STEVENS. I join the chairman in thanking the distinguished Senators from Alabama and Maryland for their remarks. I would certainly be willing to discuss BAT program funding with my colleagues.

CHEMICAL AND BIOLOGICAL DEFENSE INITIATIVES

Ms. COLLINS. Mr. President, I rise today to discuss the very important issue of chemical and biological research. The threat of a chemical and biological attack is no longer an emerging threat: it is very real, and it affects not only our nation, but our allies as well. The risks associated with chemical and biological weapons are growing, and our capacity to assess, counter, and deter these threats needs to be addressed. That is why it is critical to see continued investments made in diagnostic tools for biowarfare-inflicted agents, chemical and biological detection devices, and sensors to ensure the safety of food and water supply.

Mr. STEVENS. I agree with the distinguished Senator from Maine that this research area needs a robust investment to ensure that promising technologies are not only explored, but that the technologies are transitioned to the field and operationally deployed.

Ms. COLLINS. I thank the distinguished Ranking Member for his leadership on Defense issues. And I am very pleased to see that the Defense Appropriations bill places a high priority on addressing the chemical and biological weapons threat that we face and provides additional funding beyond the President's request for a number of high priority research programs.

As the Senator knows, I have been actively supporting vigorous research efforts in this area since my first days in the Senate because the threat from these weapons is serious and it is growing day by day. I am pleased to see that the Committee is recommending to the Senate that a chem-bio defense initiatives fund be established with an initial funding increment of $25 million. The Committee has listed a number of technology initiatives for consideration, but is providing the Secretary of Defense with the discretion to allocate the funds.

It seems logical to ensure that the most promising, maturing technologies are seen through to their completion, particularly if the technology shows a high potential to yield benefits in defending our troops, Nation, and our global interests. Is it the Committee's intent to ensure that such on-going programs that are nearing completion receive a priority for consideration of these funds?

Mr. STEVENS. The Senator from Maine is correct that this fund has been established for the distinct purpose of improving our military's ability to respond to chemical and biological warfare threats. It is the intent of this committee to see that the funds provided are wisely spent. I would say to the Senator from Maine that a program that has been supported by this committee in the past and is nearing completion should be appropriately considered for funding to ensure that the technologies are funded to completion, provided the technologies will enhance our ability to protect or deter a chemical and biological attack. To withhold funding for a promising, multi-year program just as it is achieving documented results would, in my view, be wasteful.

Ms. COLLINS. I thank the Senator for his illuminating words. If the distinguished ranking member would indulge me further, I would like to call to his attention a research initiative regarding food safety and security that is on the Committee's list of projects eligible for funding. This initiative is one that holds great potential to protect our military from a chemical or biological threat. Does the Senator from Alaska share my view that this kind of a program ought to be a priority for the chemical and biological defense initiative fund?

Mr. STEVENS. I believe that threats to the food supply are very serious and they need to be addressed both in terms of protecting our deployed troops and also in terms of homeland security. We need to find a way to ensure that the food supply for our deployed troops is safe, just as we need to protect America's food supply. I definitely support a research initiative in this area.

Ms. COLLINS. Again, I thank the ranking member for his forthrightness, his knowledge and his determination to keep America strong. I also thank him for his continued leadership on defense and defense related issues. I believe that the Appropriations Committee deserves the thanks of the American people for the leadership the committee has shown in defending our nation from the threat of chemical and biological weapons. The chairman and ranking member are dedicated to America's defense and the committee staff have done outstanding work on this bill.

ENTERPRISE ARCHITECTURE

Mrs. FEINSTEIN. Mr. President, as the Senate considers the Fiscal Year 2003 Defense Appropriations Bill, I wanted to discuss briefly the current efforts at the Defense Department to design, install and implement an enterprise architecture to perform financial activities at the Department. This has been a major undertaking, and the ultimate goal is to have at the Department a modern, state-of-the-art, integrated system that will perform business processes and financial activities in numerous fields, including logistics, health care, accounting, finance, and personnel.

The financial management challenges at the Department are no secret to the Senate Defense Appropriations Subcommittee. Last year, Congress provided the Department $100 million to start the financial management reform initiative, and this year, the Department requested more than $96 million to continue the reform program. According to the Department, financial management reform would reduce the approximately 967 stand-alone systems currently generating financial data.

In the current fiscal year, we have seen signs of progress. On April 9, the Department selected International Business Machines to develop the financial management enterprise architecture. IBM, along with several leading information technology firms, and under the direction of the Department's Financial Management Modernization Program Office, will now design a blueprint for future Department investments in business management information technology. This blueprint is expected to be completed as early as March 2003.

While this is good news, the Committee report noted that this initiative has gotten off to a slow start. For example, a significant portion of the $100 million provided last year was to go for systems improvements, and to undertake various pilot projects under these improved systems at the service branch level. However, despite the existence of these funds for these projects and with project teams already selected, they have not moved forward and the funds have not been spent.

With the IBM team engaged in architecture design, the current and next fiscal year would seem an appropriate opportunity to make the systems improvements, and undertake the various pilot projects that have already been funded. These pilots could enable the Department to test and analyze the nuts and bolts of integrated financial management processes. With problems already identified, solution sets, and "best practices" can be tested via the pilots and under the improved systems. This is consistent with one of the observations of the General Accounting Office, which noted, "it is critical to establish interim measures to both track performance against the department's overall transformation goals and facilitate near-term successes..." Also, at a recent conference here on Capitol Hill on Defense financial management modernization, a representative of IBM agreed that it was important to go forward on the pilot programs, stating that they were "vital" to the improvement of the business.

I see the distinguished chair and ranking member of the Defense Subcommittee on the floor, and would like to ask them if they agree with me that the Defense Department should utilize the funds previously provided by Congress to undertake needed systems improvements and pilot projects for financial modernization.

Mr. INOUYE. I thank the Senator from California for her comments, and agree with her assessment. As she pointed out, with the Defense Department now in the process of designing its financial management architecture, it can use this time to move forward on various pilot projects, already funded, in order to modernize and test systems, identify potential challenges and problems, and incorporate solutions in the planning process.

Mr. STEVENS. The Chairman of the Subcommittee, and the Senator from California, also a distinguished member of the Defense Appropriations Subcommittee, are correct. In fact, as they both know, the committee report that accompanies this legislation directs the Secretary of Defense to submit semi-annual status reports to the relevant congressional committees.

Mrs. FEINSTEIN. I thank the Chair and Ranking Member of the Subcommittee for their comments and for their leadership on this very critical reform effort at the Department of Defense.

RAPID RESPONSE SENSOR NETWORKING FOR MULTIPLE APPLICATIONS

Mr. GRAHAM. Mr. Chairman, I rise with my colleague from Florida, Senator NELSON, to engage in a colloquy with Senator INOUYE, the Chairman of the Defense Appropriations Subcommittee.

Senator NELSON and I rise to note the critical importance of the Rapid Response Sensor Networking for Multiple Applications. The project will bring together the new concept of Impromptu Wireless Network Technology and emerging new sensors for use in detection and quantification of high priority biological and chemical materials in several nationally important settings—most significantly, for real time detection and response to biological and chemical materials which threaten public health and safety, environmental integrity or industrial processes. I yield to Senator NELSON for a few words about this important program.

Mr. NELSON. I thank the Senator for yielding. New sensors are being developed at the University of North Florida which use polymer membrane and dye combinations to create analytical sensors based on photo induced charge movements. These sensors can be combined into relatively inexpensive easily produced families of sensors which will be able to respond to a range of targeted analytes appropriate to a particular area of risk or interest. This makes possible and readily usable real time field-based sample preparation and analysis—it will process data and deliver it via wireless communication to create real time models of sensor responses and measurements which are combined in GIS applications and other decision making tools to enable real time highly effective responses. The applications of this approach are highly varied, and include: a wide range of environmental monitoring strategies; early warning applications to protect food, water, and other systems from bioterrorism attacks; and monitoring of industrial processes.

Mr. GRAHAM. Yes, Senator NELSON that is correct. The University of North Florida has requested $750,000 for this important, new project and I request conference report language to identify this program to be eligible for funding from the Chem-Bio Defense Initiatives Fund.

Mr. INOUYE. I appreciate hearing about both Senators support of this program. I will review your request and will work to include language in the conference report.

CENTER FOR SOUTHEASTERN TROPICAL ADVANCED REMOTE SENSING

Mr. GRAHAM. Mr. President, I rise with colleague from Florida, Senator NELSON, to engage in a colloquy with Senator INOUYE, the Chairman of the Defense Appropriations Subcommittee.

Senator NELSON and I note the critical importance of the Center for Southeastern Tropical Advanced Remote Sensing, CSTARS, at the University of Miami, and are thankful for the support of this critical program. The university has initiated the acquisition and construction of this regional satellite collection, processing and analysis facility in partnership with the U.S. Southern Command and other academic institutions. The Center will offer unprecedented capability in the southeastern United States to link with a broad range of low-Earth satellite orbiting systems. When made available to regional as well as to key partners like the Southern Command, these resources will provide a unique and much-needed capacity for environmental observation, climatic prediction and resource analysis, watershed and ecosystem assessment, and natural hazards monitoring critical to effective emergency response. I yield to Senator Nelson for a few words about this important program.

Mr. NELSON. I thank the Senator for yielding. CSTARS is of critical importance to the state of Florida and will make a strong contribution to the Southern Command mission, including drug interdiction, civil defense, and natural disaster mitigation.

The core fiscal year 2003 objectives are to complete Phase II of the station infrastructure and operational capabilities and initiate prototype use by the U.S. Southern Command and the National Imagery and Mapping Agency NIMA. Funds would be used to ensure direct down linking with satellite orbiting systems, such as SPOT2, 4 and 5, ENVISAT, ADEOS-II, LANDSAT and TERRA/AQUA.

The program is authorized is authorized in the Senate fiscal year 2003 Defense Authorization bill and report and is funded at a level of $2.5 million in the House fiscal year 2003 Defense Appropriations bill and report. I request support for a funding level at a minimum of $2.5 million for this critical program in the conference negotiations. Funding reductions below that level will cause delays in the program and delay the benefits to SOUTHCOM and NIMA.

Mr. INOUYE. I appreciate being made aware of both Senators' support of this program and will will do what we can to find funding of a minimum of at least $2.5 million in the conference negotiations.

CMIS

Ms. LANDRIEU. I would like to ask my friend, the Chairman of the Defense Appropriations Subcommittee, Senator DANIEL INOUYE, to engage in a discussion of several defense programs that are of vital importance to my home state of Louisiana and our national security.

Mr. INOUYE. I welcome a conversation with the junior Senator from Louisiana and the Chairwoman of the Emerging Threats and Capabilities Subcommittee to the Senate Armed Services Committee.

Ms. LANDRIEU. I have been impressed by recent efforts undertaken by the Navy to create an Internet capable database that would catalogue and inventory all spare parts necessary for repairs to Navy aircraft. It is a fact of life that the high stresses Navy pilots place on their aircrafts will cause significant wear and tear and require repairs. The Navy, at times, has been plagued by difficulties in locating the whereabouts of necessary parts. To remedy this problem, the Navy began to work on the Configuration Management Information System, or CMIS, to catalogue and inventory Navy aircraft parts and their whereabouts. With CMIS, Navy mechanics around the world, will be able to search through an Internet database to ascertain if the needed parts can be found on site. If not, they will be able to quickly learn where the nearest replacement part is located. With this knowledge, mechanics know where to turn for parts rather than conducting scatter-shot searches throughout the Navy to look for the part.

The CMIS program was funded last year in the Senate Defense Appropriations bill at a level of $4,000,000. This year, the Senate authorized $13,500,000 for CMIS, and the House appropriated $4,000,000 for CMIS. I would hope, Senator Inouye, that you would agree on the need to create a centralized database to quickly identify the location of necessary parts to make repairs to Navy aircraft, and I would hope that you would agree that this program should be supported in Conference.

Mr. INOUYE. I agree with the Senator from Louisiana that we must find efforts to expedite the return of our aircraft to service. We should not face delays in repairs because of logistical problems that could be solved rather easily using modern information technology. I will take an interest in this matter when the House and Senate conference on this bill.

Ms. LANDRIEU. I appreciate your support, Mr. Chairman, for CMIS. I want to discuss another program that will greatly improve the efficiency in which our military can deploy across the globe, and in doing so, save millions of dollars. The Field Pack-Up unit, or FPU, is a containerized storage system that is 100% strategically and tactically mobile that far exceeds the current storage bins we use to transport materiel across the country and around the world. Senator Inouye, as you are well aware, one of the greatest factors in determining how quickly the U.S. military can deploy to a theater in order to respond to a threat is the simple fact that it can take several months to transport the materiel our troops need to succeed. The FPU will reduce that transportation time frame, decrease the logistics footprint, and allow the military to move swiftly and efficiently. In turn, these logistical efficiencies will save millions of dollars each year.

The 3rd Infantry Aviation Brigade at Hunter Army Airfield in Georgia conducted a field test between the FPU and currently used storage bins. The 3rd Infantry Brigade determined that if the entire Brigade deployed to Kuwait, 2 C-5s would be needed using the FPU. Using traditional storage bins, 8 C-5s would be necessary to mobilize to Kuwait. The FPUs would save at least $3,000,000 per deployment, according to the 3rd Infantry Brigade.

I am concerned, however, that the Army has not dedicated funds toward this transformational program that will greatly reduce the logistics footprint and save millions of dollars each year. Last year, the Senate appropriated $5,000,000 for the FPU, but neither the House nor Senate funded the program this year. Senator Inouye, I know you are a champion of transformation, and I hope you would be willing to consider the utility the FPU could provide to our Armed Forces.

Mr. INOUYE. The FPU is a great improvement to our logistics capabilities and the money saving potential is quite promising. You are correct to note that the time in which we respond to threats is largely determined by the rate in which we can mobilize our troops and transport the materiel necessary for them to do their jobs. I do look forward to working with you in the future on this promising program.

Ms. LANDRIEU. Mr. Chairman, I am also concerned about a health and welfare issue for our troops on the battlefield. We must ensure that we are providing them with the most nutritional meals possible to optimize their war fighting capabilities. The fatigue and stresses on the bodies of our war-fighters are unlike anything the average person could imagine. We must provide our troops with nutritious foods that provide necessary energy and are tailored to meet the rigors of combat. We cannot place our troops in unnecessary danger because of equipment failures, nor because the food they are consuming in combat does not provide them with the proper nutrition.

For several years the United States Army has been working on a Food Nutrition Program in conjunction with the Pennington Biomedical Research Center. The focus of this research is to develop meals that can be eaten on the battlefield which provide our troops with the nutrients necessary to fuel their bodies to meet the grueling demands of war-fighting. Senator Inouye, would you agree that this research should continue so we can optimize the performance of our troops?

Mr. INOUYE. While rations have improved significantly since my service in World War II, there is always room for improvement. Well nourished soldiers fight better. It is that simple. I believe that this research is valuable to ensuring the combat capability of our troops.

Ms. LANDRIEU. Mr. President, I know my friend, the senior Senator from Hawaii, shares my concern about the future threats to our military and nation. As chairwoman of the Armed Services Committee's Subcommittee on Emerging Threats, it has become very clear to me that while the current threats seem to come form madmen with explosives, tomorrow's terrorists may very well use cyberwarfare. For this reason, Louisiana and Georgia have been participating in a program known as the Picket Fence Initiative. It has brought together the Department of Defense, the Louisiana State Government, the federal presence within the state, as well as industries with responsibility for critical infrastructure. Together, we have established a collaborative network that monitors the types and methodologies of ongoing cyber attacks against these systems. Through these efforts, the Department of Defense is learning about the nature and variety of attacks on Louisiana's critical information networks, while companies and the Louisiana State government benefit from improved security technology. It is the kind of cooperative enterprise that should be a model for future homeland defense efforts. This program was authorized this year for $4.5 million, and has been appropriated $2 million in the House mark. Although we were unable to find additional funds within our bill to fully fund this program, I hope the Chairman will help me to protect the $2 million in the House mark, and look for any additional funds that may be made available during conference.

Mr. INOUYE. Mr. President, I share Senator Landrieu's concern about cyber-security, and agree that cooperative efforts like Picket Fence are an effective way for us to address the problem. I hope that we may find additional resources for this program at a later date.

Ms. LANDRIEU. I thank the distinguished Chairman and Senior Senator from Hawaii for taking time to participate in this colloquy. His leadership and management of this bill have been excellent. The people of Louisiana, Hawaii, and the United States are grateful for his lifetime of service to our Nation.

ARMED PILOTS

Mr. SMITH of New Hampshire. Mr. President, if I could have the attention of the Republican Leader for just a moment. I say to the leader, I had considered offering my armed pilots amendment on this bill, but after our discussions, and with the assurances that to the extent possible this would be one of the first items of business when we consider the homeland defense bill, I have agreed to withhold.

Mr. LOTT. I thank the senior Senator from New Hampshire. He has led the charge on the issue of arming pilots. I agree that this should be one of the first items that we consider on the homeland defense bill. It is my intention that this would be one of the first amendments offered from our side on the homeland defense bill.

Mr. SMITH of New Hampshire. I thank the leader. I know he is as concerned about safety in our skies as I am, and I appreciate his support. I look forward to passing this important bipartisan initiative when we return from the August recess.

Mrs. FEINSTEIN. Mr. President: It is widely recognized that the Coast Guard is the nation's principal defense against illicit drug shipping and must become a barrier to terrorist attacks in which explosives or weapons of mass destruction may be headed for an American city on a ship or fast boat. I join with the distinguished Chair of the Defense Subcommittee, in commending the Senator from Alaska for his leadership role in establishing the HITRON mission in the United States Coast Guard.

The current fleet of eight MH-68A helicopters is stationed in Jacksonville, Florida and is active in the Caribbean. The fleet was temporarily deployed at the U.S. Coast Guard Station in San Diego for a demonstration. It was a complete success and as a result, Congressman BOB FILNER recently wrote the Commandant urging that he extend the current lease of eight or more MH-68A helicopters until a permanent DeepWater replacement is selected.

Both Congressman FILNER and I agree there is a critical requirement for off shore drug interdiction along the Mexican-Southern California coastline. Further, these helicopters can add anti-terrorist protection for the Port of San Diego. Therefore, based on the assumption the Coast Guard has the legal authority to enter this lease, I urge my colleagues to support extension of 5-year lease for eight MH-68 helicopters.

Mr. CONRAD. Mr. President, I rise to offer the Budget Committee's official scoring of H.R. 5010, the Department of Defense Appropriations Act for Fiscal Year 2003.

H.R. 5010 provides $355.139 billion in discretionary budget authority, all classified as defense spending, which will result in new outlays in 2003 of $239.472 billion. When outlays from prior-year budget authority are taken into account, nonemergency discretionary outlays for the Senate bill total $349.777 billion in 2003.

The Appropriations Committee voted 29-0 on June 27 to adopt a set of nonbinding sub-allocations for its 13 subcommittees totaling $768.1 billion in budget authority and $793.1 billion in outlays, which the committee subsequently increased to $803.891 billion in outlays following the passage of the 2002 emergency supplementary bill. While the committee's subcommittee allocations are consistent with both the amendment supported by 59 Senators last month and with the President's request for total discretionary budget authority for fiscal year 2003, they are not enforceable under either Senate budget rules or the Balanced Budget and Emergency Deficit Control Act. While I applaud the committee for adopting its own set of sub-allocations, I urge the Senate to take up and pass the bipartisan resolution, which would make the committee's sub-allocations enforceable under Senate rules and provide for other important budgetary disciplines.

For the Defense Subcommittee, the full committee allocated $355.139 billion in budget authority and $350,549 billion in total outlays for 2003. The bill reported by the full committee on July 18 is fully consistent with that allocation. In addition, H.R. 5010 does not include any emergency designations or advance appropriations.

I ask for unanimous consent that a table displaying the budget committee scoring of H.R. 5010 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 5010, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

[Spending comparisons—Senate-Reported Bill (in millions of dollars)]

	Defense	Mandatory	Total
Senate-reported bill:			
Budget Authority	355,139	278	355,417
Outlays	349,777	278	350,055
Senate committee allocation:[1]			
Budget Authority	355,139	278	355,417
Outlays	350,549	278	350,827
House-passed bill:			
Budget Authority	354,446	278	354,724
Outlays	349,315	278	349,593
President's request:[2]			
Budget Authority	366,592	278	366,870
Outlays	354,754	278	355,032
SENATE-REPORTED BILL COMPARED TO:			
Senate committee allocation:			
Budget Authority	0	0	0
Outlays	−772	0	−772
House-passed bill:			
Budget Authority	693	0	693
Outlays	462	0	462
President's request:			
Budget Authority	−11,453	0	−11,453
Outlays	−4,977	0	−4,977

[1] The Senate has not adopted a 302(a) allocation for the Appropriations Committee. The committee has set non-enforceable sub-allocations for its 13 subcommittees. This table compares the committee-reported bill with the committee's sub-allocation to the Defense Subcommittee for information purposes only.

[2] The President requested total discretionary budget authority for 2003 of $768.1 billion, including a proposal to change how the budget records the accrual cost of future pension and health retiree benefits earned by current federal employees. Because the Congress has not acted on that proposal, for comparability, the numbers in this table exclude the effects of the President's accrual proposal.

In addition, the President requested $10 billion in unspecified War Reserve funds in his 2003 budget. On July 3, the President transmitted more information to the Congress regarding his request for those funds. Pending its review of the President's July request, the Appropriations Committee has reserved the $10 billion in additional defense funds in its Deficiencies Subcommittee.

Notes: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Prepared by SBC Majority Staff, 7-31-02.

Mr. BURNS. Mr. President, there is no problem which more directly affects the security of our forces in the Middle East and particularly in Afghanistan than our ability to communicate with the local population. To solve this problem we must enhance DoD support on two technologies that are being sorely neglected—digital satellite radios and the solar panels which can permanently power them anywhere.

As a result of two satellites launched in the past three years there is now complete 64 channel digital radio satellite coverage of the entire middle east, Asia, and Africa. In parts of the Middle East such as Afghanistan there is double satellite coverage and therefore 128 clear highest fidelity radio broadcast channels are available. Unfortunately until now our government has made little use of this technology which the private sector has already bought and paid for. This means that a superior method of communicating in the Middle East is not being used to support our troops who are or will be serving there.

What is virtually needed is a DoD program to jump start the dissemination of these satellite radio receivers to the local population surrounding our troops so that our messages of democracy and freedom can be brought to them in a variety of formats. Our troops vitally need the added security that the resulting increased local support for their mission will bring. Our troops also need periodically the ability to communicate directly with these people.

A jump start DoD program of adequate size to buy and disseminate or subsidize the price of receivers would lower their price to the point where the market would complete the job. Failure to start this process now would be tragically shortsighted.

A second private sector technology now being inadequately supported or neglected by our government is the solar panel technology which can permanently power these receivers wherever they are located. Both solar panels and widely available kerosene can be used to power these receivers in a region where both batteries and electricity are both critically scare.

Afghanistan is a communications wasteland. Barely 30 percent of the population can read. Only 3 people in every 1,000 have a TV set; only 6 in every thousand have a radio. Given these statistics it is little wonder that a central government has so little power and regional warlords are so great a threat. The warlords have the megaphone and the security of our troops is severely imperiled as a result.

By contrast in both Iran and Iraq are over 70 TV's and 200 radios for each thousand people—still very low by western standards, but a huge multiple of the mass media now available in Afghanistan. In those countries we face different problems—a hostile state-controlled media and hostile governments which can jam our terrestrial transmissions. These are problems which increased DoD and U.S. government support for satellite radio could also solve.

I do not claim that our current efforts are non-existence. They are just hopelessly inadequate to the task at hand. When we first went into Afghanistan we dropped leaflets and relief packages containing single channel short wave radios many of which broke when they hit the ground. In a country where illiteracy rate is so high, the impact of any written material seems questionable. We sent C-130's to fly over areas where our troops were to broadcast to the single channel radios that survived the air drop. Now we are also spending considerable amounts of DoD and other money to build terrestrial transmitters to broadcast to the few radios that do exist in the country. These are laudable efforts but demonstrably inadequate to confront the task before us. The comparative superiority of satellite radio in remote Afghanistan was demonstrated early this year by the enthusiastic response of our troops there who listened to the Superbowl thanks to 1,000 privately donated satellite receivers.

I earnestly request my chairman and ranking member to address this urgent matter of support for satellite radio both in the conference and in the conference report. I had planned to offer an amendment to begin to achieve the needed results. However, I realize we are not earmarking money as the House did in its bill. I do know that there is substantial support the House and the administration for satellite radio as an essential weapon in the war to combat terrorism and increase the security of our troops abroad. The investment required is small compared to the additional expense required on arms where we do not have adequate local support.

I also know existing programs and special interests will swallow up as much money as they can get. Thus a vital technology and existing capability like satellite radio will very likely suffer from inattention and neglect to the vast impairment of our overall war effort without some specific direction from us. I urge my colleagues in the conference not to let this happen. Please give satellite radio technology the specific and concrete support it needs and deserves.

Ms. LANDRIEU. I would like to express my strong support for Senator BURNS' remarks on the importance of DoD support for satellite radio technology and to get satellite receivers disseminated to the local populations where our troops are located. Their security and support is obviously of paramount concern to each and every one of us. This is one area upon both of our parties are in complete agreement.

I urgently hope that the conferees will work in the DoD bill to enhance and strengthen this superior method of mass communication via satellite radio which offers such promise in so many ways and in so many areas of the third world. Our existing approaches clearly fall critically short of meeting the urgent need to get our message heard. The time for action is now. We will pay a high price for any further delay.

I come to the floor today to join in discussion of a very important issue with the Chairman of the Defense Appropriations Subcommittee, the distinguished Senator from Hawaii, Senator INOUYE.

The Defense Appropriations bill before us will provide $20,470,000 for historically black colleges and universities. This is a relatively small part of the overall defense bill, but an important part, beneficial to both the Defense Department and the universities.

Senators from many states, particularly those from states which are home to a historically black college or university, have always come together to support any initiative which would greatly benefit our young African Americans and thus, our country. Just such an opportunity was presented to us recently by the Air Force Research Laboratories at Wright-Patterson Air Force Base in Ohio.

The program assigns defense research projects to historically black universities, including Southern University in Baton Rouge, Louisiana, and other universities in Texas, Alabama, and Georgia to undertake work identified by the Defense Department. These universities and their students also team with small businesses to accomplish a major portion of the work.

The benefits of this program are many, beginning with greater opportunities for these schools, and extending the range of options students have for their career choices. There may even be the added benefit that these students may choose to join their military peers full time. We know that by 2006, two out of every five federal employees will be eligible for retirement. We will have to find a new pool of talent who wants to work in federal service.

We also know that only 15 percent of African Americans are earning college degrees. For comparison, this percentage is two-thirds higher for white Americans. We also know that African Americans who earn an advanced degree can nearly double their annual average salary. Clearly, steering more African American students into the science and engineering field is one way to accomplish this goal. The U.S. government will also benefit by bringing these students into the field of defense research.

I ask the Chairman, wouldn't you agree that this is the kind of program that should be funded through appropriations for HBCU?

Mr. INOUYE. The Senator from Louisiana is correct. This program certainly seems to be in line with the types of projects funded under HBCU. I would encourage the Department of Defense to support the program the Senator from Louisiana has identified.

Ms. LANDRIEU. I thank the Chairman. I also thank Southern University for the wonderful work they do. This college started in 1880 with just 12 students and 5 faculty. It has grown to become a university with three campuses, offering 152 degree programs and a law school.

This is typical of the huge success stories we find among many of the historically black colleges and universities all over the United States. This program which I encourage today, will allow them to take an even greater step into uncharted territory and be a competitive force in the defense research field.

Ms. CANTWELL. Mr. President, I rise to join my colleagues, the esteemed chair and ranking member of the Defense Appropriations Subcommittee in supporting the withdrawal of the McCain amendment, which would unwisely scuttle an important program that was approved last year on this same bill by the Senate in an overwhelming 94-4 vote.

I further applaud the Senator for the amendment that he successfully included into this bill that would require that the transport lease program will be fair, open and competitive and conform to the Competition and Contracting Act.

However, I think that the Senator from Arizona is off the mark in his attempts to undermine this particular program. The transport plane lease program approved last year is a much-needed priority, and it has been specifically requested by the Department of Defense and the Air Force.

These transport planes are a crucial element of an efficient deployment of our national security strategy and they are in dire need of modernization.

At any given time, world events may require the Nation's leaders to be dispatched simultaneously on diplomatic missions. These missions are essential in peace and war when diplomacy and negotiation become critical to the settlement of conflict, whether in the Middle East, the sub-continent, Bosnia, or the myriad other hot spots in which U.S. leadership is necessary to calming conflict and saving lives.

To get these leaders to the places, we need transport aircraft that are efficient, modern and up to the task.

Both physical and communications security are integral to the mission because principals and their staffs must conduct business en route. In addition, mission protocol dictates the frequent use of civilian airports, which require commercial planes.

The Air Force and the Administration needs these planes, and the Air Force and our esteemed colleagues in the Defense Appropriations Subcommittee have developed a creative and effective solution that will meet this need: an operating lease.

The leasing option would allow the Air Force to amortize the majority of upfront acquisition costs over the life of lease, and at no additional cost, since the leasing money comes from existing operation and maintenance funds. This allows flexibility by allowing the Air Force to purchase the aircraft at any point in the lease, and also accelerates the acquisition while maintaining existing procurement priorities.

We need planes, and particularly given the current geopolitical context, including crises in Iraq, Afghanistan, Pakistan, Iran, and the Middle East, we need them now. The leasing program that was overwhelmingly by this Chamber last year was the right thing to do then and it continues to be the right thing to do.

Mrs. MURRAY. Mr. President, I rise to support the withdrawal of the amendment offered by the Senator from Arizona.

I am opposed to the McCain amendment which would attempt to redefine an issue the entire Congress has already endorsed and the President has signed into law.

I spoke about this amendment last evening and will only make brief remarks today.

I want to begin by associating myself with the remarks of Senator STEVENS and Senator INOUYE. Both of these Senators have committed an enormous amount of time to work on this important issue. I know, all Senators know, that when Senator DAN INOUYE and Senator TED STEVENS speak about tankers, their ultimate interest is the safety of the men and women in uniform who are protecting our country. I am proud to have worked closely with Senator INOUYE and Senator STEVENS to win approval for the leasing provisions in last year's Defense Appropriations measure.

Senator MCCAIN ask the Senate to again require authorization for the lease of aircraft. Senator MCCAIN's language is specific to the proposed 737 lease but his rhetoric and his ultimate objective is to scuttle any potential lease deal regardless of whether it is for a 737 aircraft or 767 aircraft.

As I stated last evening, I am puzzled that this issue continues to come up.

Not long ago, the Senate considered the Defense Authorization legislation. The Senator from Arizona sits on the committee. That was the bill to have this debate. This Senator complains that the Appropriations bill is the wrong place to authorize. Yet, here we are considering an authorizing amendment offered by the Senator from Arizona on an appropriations bill. It makes little sense to me. This is the wrong place to have this debate.

The Senator wants to scuttle the 737 lease recently announced by the Air Force. Importantly, that lease deal has been sent to the Armed Services Committee and the Defense Appropriations Subcommittee in both the House and Senate for review and comment. And, it is my understanding, that all four panels have reviewed and approved of the lease and the Air Force justification for the lease.

Last year, both the Senate and the House supported the language in the Defense Appropriations bill giving the Air Force the authority to move forward with lease discussions. The President signed the bill into law after the provisions were carefully scrutinized by the Office of Management and Budget. And now, with an actual lease deal proposed, the four relevant panels have signed off on an actual deal.

Yet, the Senator from Arizona persists in his attempts to scuttle an Air Force lease. Senator MCCAIN has succeeded in making sure that this issue is thoroughly reviewed. It has been reviewed. The Senator clearly does not like the outcome of the review and he now wants the Senate to start the process over again and give him additional time to delay a legitimate need of our military.

The Senator also talks about competition. Here's what is really at stake. The Senator from Arizona wants to open the doors to the Air Force and the Department of Defense to Airbus. One U.S. company manufactures commercial aircraft of this type. One and only one U.S. company can meet the Air Force needs.

The Senator is not talking about asking the Air Force to choose between Ford and Chevrolet. The Senator from Arizona is asking the Senate to decide whether U.S. workers or European workers will manufacture U.S. military aircraft. That's a simple choice for me. U.S. taxpayers should not be asked to undermine the lone U.S. manufacturer of aircraft. U.S. taxpayers should not be asked to subsidize Airbus.

I want to remind my colleagues again what the Secretary of the Air Force, James Roche, wrote to me in a letter on the tanker issue, quote: "The KC-135 fleet is the backbone of our Nation's Global Reach. But with an average age of over 41 years, coupled with the increasing expense required to maintain them, it is readily apparent that we must start replacing these critical assets. I strong endorse beginning to upgrade this critical warfighting capability with new Boeing 767 tanker aircraft."

Those are the words of the Secretary of the Air Force. The Air Force wants to move forward with the lease option. Congress voted for the lease last year. The President signed the lease option into law. And the relevant committees have just approved the lease terms proposed by the Air Force for 737 aircraft.

I encourage my colleagues to again support this important option to lease aircraft, to get assets into the field that are of great importance to our men and women in uniform.

Mr. WELLSTONE. Mr. President, I rise to address the subject of our Nation's security needs in the context of the Defense appropriations bill presently before the Senate.

I believe we must provide the best possible training, equipment, and preparation for our military forces, so they can effectively carry out whatever peacekeeping, humanitarian, warfighting, or other missions they are given. They deserve the targeted pay raises of 4.1–6.5 percent, the incentive pay for difficult-to-fill assignments, and the reduced out-of-pocket housing costs from the current 11.3 percent to 7.5 percent contained in this bill. The bill would also fully fund active and reserve end strengths, including an additional 724 positions for the Army National Guard, which will hopefully ease the current burden on our overstretched men and women in uniform. For many years running, those in our armed forces have been suffering from a declining quality of life, despite rising military Pentagon budgets. The pressing needs of our dedicated men and women in uniform, and those of their families, must be addressed as they continue to be mobilized in the war against terrorism. This bill goes far in addressing those needs, and I will vote for it today.

I am also supporting the bill because it contains two important amendments that I offered. The first would bar any funds in this bill from being used to enter defense contracts with U.S. companies who incorporate overseas to avoid U.S. taxes.

Former U.S. companies who have renounced their citizenship currently hold at least $2 billion worth of contracts with the Federal Government. I do not believe that companies who aren't willing to pay their fair share of taxes should be able to hold these contracts. U.S. companies, who play by the rules, who pay their fair share of taxes, should not be forced to compete with bad actors who can undercut their bids because of a tax loophole.

In the last couple of years a number of prominent U.S. corporations, using creative paperwork, have transformed themselves into Bermuda corporations purely to avoid paying their share of U.S. taxes. These new Bermuda companies are basically shell corporations: they have no staff, no offices, and no business activity in Bermuda. They exist for the sole purpose of shielding income from the IRS.

U.S. tax law contains many provisions designed to expose such creative accounting and to require U.S. companies that are foreign in name only to pay the same taxes as other domestic corporations. But these bad corporate former-citizens exploit a specific loophole in current law so that the company is treated as foreign for tax purposes, and therefore pays no U.S. taxes on its foreign income.

The loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business. It also puts other U.S. companies unwilling or unable to use this loophole at a competitive disadvantage. No American company should be penalized staying put while others renounce U.S. "citizenship" for a tax break.

Well, the problem with all this is that when these companies don't pay their fair share, the rest of American tax payers and businesses are stuck with the bill. I think I can safely say that very few of the small businesses that I visit in Detroit Lakes, MN, or Mankato, in Minneapolis, or Duluth can avail themselves of the Bermuda Triangle.

They can't afford the big name tax lawyers and accountants to show them how to do their books Enron-style but they probably wouldn't want to anyway if it meant renouncing their citizenship. So the price they pay for their good citizenship is a higher tax bill.

My amendment closes this loophole. We all make sacrifices in a time of war, the only sacrifice this amendment asks of Federal contractors is that they pay their fair share of taxes like everybody else.

The bill also contains a second amendment which would significantly improve the Department's response to domestic violence. I was deeply concerned to hear about the four domestic violence homicides that occurred over the past six weeks at Fort Bragg in North Carolina. But these incidents, while unusual in that they are clustered within such a short time, are not unique. The military reports 207 domestic violence homicides since 1995.

My amendment, which is based on the recommendations of the Department's Defense Task Force on Domestic Violence, would ensure that funds are available to establish an impartial, multi-disciplinary Domestic Violence Fatality Review Team at the Military Community and Family Policy Office. It would also help the Department ensure that there are victim's advocates at every military installation to provide confidential support and guidance exclusively to victims, by providing $10 million for this purpose. Finally, the amendment would require that the Secretary report to Congress on progress in implementing the recommendations of the Task Force.

In the introduction to its first report, the Task Force wrote, "Domestic Violence is an offense against the institutional values of the Military Services of the United States of America. It is an affront to human dignity, degrades the overall readiness of our armed forces, and will not be tolerated in the Department of Defense." I do not think anyone who has followed the recent events in North Carolina would disagree.

I also believe the bill addresses some of the serious flaws in the process by which the Defense Department summarily terminated the Crusader Artillery system. I strongly believe in fair, transparent, and informed government-decision making processes, which did not occur in the case of the Crusader. Three Defense secretaries, three Army secretaries, and three Army chiefs of staff, as well as numerous administration officials, testified in support of the Crusader. Yet within a few weeks of this testimony, the Secretary of Defense abruptly terminated the Crusader. The decision was made without consultation with the Joint Chiefs of Staff, without consultation with the Army, and without consultation with members of Congress. The Defense Authorization bill then required the Army Chief of Staff and Secretary of Defense to conduct a serious study of the best way to provide for the Army's need for indirect fire support. At the same time, it provided the Secretary of Defense, following the study, a full range of options. These include termination to continued funding of Crusader, to funding alternative systems to meet battlefield requirements. That report having been completed, the bill before us expresses concern about the way the termination was proposed, and instructs the Army to move forward with a follow-on contract immediately to leverage the Crusader technology to field a lighter, more mobile cannon in 2008. This is good news for the workers and officials at the United Defense Industries plant in Minnesota, whose advanced skills and expertise will be necessary for the success of this new cannon.

I also have concerns about the bill, especially about its missile defense provisions. The Defense Authorization bill reported out by the Armed Services Committee would have cut total funding for missile defense from $7.6 billion to $6.8 billion. Unfortunately, the Senate adopted an amendment to restore the entire $814 million, with the President given the option of spending funds on either missile defense programs or on counter-terrorism. This bill retains this change. I would have preferred that the cut be restored, and if not, that the President at least be required to use the funds solely for counter-terrorism.

I've long been a critic of Ballistic Missile Defense, BMD, and I still have strong reservations about the feasibility, cost and rationale for such a system. When I addressed missile defense on the Senate floor on September 25, just 2 weeks after terrorists destroyed the World Trade Center, I argued that pressing ahead on BMD would make the U.S. less rather than more secure. Instead, I suggested the Senate give homeland defense the high priority it deserves by transferring funds to it from missile defense programs. But the administration obviously didn't agree and approved only $26 million.

In conclusion, I believe in maintaining a strong national defense. We face a number of credible threats in the world today, including terrorism and the proliferation of weapons of mass destruction. We must make sure we carefully identify the threats we face and tailor our defense spending to meet them. We could do a better job of that than this bill does, and I hope that as we move to conference, the committee will make every effort to transfer funds from relatively low-priority programs to those designed to meet the urgent and immediate anti-terrorism and defense of our forces.

Mr. BURNS. Mr. President, I rise today to speak about an issue that is of great importance to me, the retention of key military personnel in our Armed Forces. It has been brought to my attention that in order for us to retain top notch military personnel, we need to, among other things, improve the quality of family life on our military bases. I believe that we need to do everything in our power to improve the morale and welfare of our military personnel and their families. I also commend the President and the managers of this bill, as I believe this year's Department of Defense appropriations bill goes a long way to this end.

In working toward this, we should do what we can to provide our Armed Forces with access to training in cutting-edge technologies. We can improve the quality of military family life, while at the same time provide military personnel and their families with valuable lifelong employable technological skill sets. This may even have the ancillary benefit of providing families and service personnel technology training applicable in both military and civilian settings and could help provide service personnel and their family members with the technological currency critical to excelling in today's society as Web designers, 3-D animators, programmers, media artists.

The men and women of our Armed Forces, whether they be active duty, Guard or Reserve, stand ready to aid both State and Nation when called upon. They come from all walks of life and all corners of this great country. They sacrifice time with their families, so that when they are called upon, both here and abroad, they honor the call and give their very best to those they serve. I believe that it is our duty to honor their commitment to us by providing them with the tools they need to be their best and the resources they need to compete in today's competitive environment.

Unfortunately due to funding constraints and the numerous worthy programs included in this year's bill, funding was not available for a couple of projects which may have value in this regard. I hope Congress gives consideration to these programs next year.

I want to make sure that during this time, when we are spending so much funding on equipment, ammunition, etc., and rightly so, that we do not lose sight of the importance of quality of life issues. We can have all of the cutting-edge technology and fancy machinery that money can buy, but it means nothing and is useless without our brave men and women behind it.

Mr. INOUYE. Mr. President, in a few moments, Senators will be called upon to cast their votes on the Defense appropriations bill. At this moment, I wish to express my gratitude to the Senator from Alaska for his cooperation in moving this bill through the Senate.

This is a massive spending bill totaling more than $355 billion. With the cooperation of Senator STEVENS and his Republican colleagues, we were able to work through the issues of this bill with comity and a minimum of controversy. The defense of our Nation is too important to be a matter of partisan politics. My friend, Senator STEVENS, knows that and follows that in all of his actions, and so I thank him and his staff for all their hard work: His chief assistant, Mr. Steve Cortese, and Ms. Sid Ashworth, Mr. Kraig Siracuse, Ms. Alycia Farrell, and Ms. Nicole Royal.

Finally, Mr. President, I wish to acknowledge the hard work of my staff. They put in very long hours year round but especially as we seek to act on the annual appropriations bill. I express my deep gratitude to them as well: Mr. Charles Houy, Mr. David Morrison, Ms. Susan Hogan, Ms. Mazie Mattson, Mr. Tom Hawkins, Ms. Lesley Kalen, Ms. Menda Fife, and Ms. Betsy Schmid.

Mr. President, finally I say to all my colleagues, this is a very good bill, and I urge all Senators to vote for it.

I am prepared to yield back the remainder of my time.

Mr. BYRD. Mr. President, will the Senator yield me a minute?

Mr. INOUYE. I am pleased to yield.

Mr. BYRD. I thank the Senator. Mr. President, Scriptures say:

> Seest thou a man diligent in his business? he shall stand before kings. . . .

These two Senators are diligent in their business. They are experienced legislative craftsmen, and they have studied this subject for many years. In defense of our country, they have traveled all over the globe searching for answers to questions, searching for solutions to problems, and coming back to the Senate and applying their experience, their knowledge to the problems at hand. The Senate is in their debt.

I personally thank them for the good work they have done on this bill, the good work they always do. The Nation is in their debt. I thank them both.

Mr. INOUYE. I thank my chairman.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. I yield back my time.

Mr. INOUYE. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time is yielded back. Under the previous order, the committee-reported substitute is agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

Mr. INOUYE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The PRESIDING OFFICER. The question is, Shall the bill, H.R. 5010, as amended, pass? The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea".

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 204 Leg.]

YEAS—95

Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Warner
Wellstone
Wyden

NAYS—3

Feingold
McCain
Voinovich

NOT VOTING—2

Akaka
Helms

The bill (H.R. 5010), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. BOND. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments and requests a conference with the House on the disagreeing votes of the two Houses.

The Presiding Officer appointed Mr. INOUYE, Mr. HOLLINGS, Mr. BYRD, Mr. LEAHY, Mr. HARKIN, Mr. DORGAN, Mr. DURBIN, Mr. REID, Mrs. FEINSTEIN, Mr. KOHL, Mr. STEVENS, Mr. COCHRAN, Mr. SPECTER, Mr. DOMENICI, Mr. BOND, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, and Mrs. HUTCHISON conferees on the part of the Senate.

ORDER OF PROCEDURE

Mr. DASCHLE. I ask unanimous consent the next vote be 10 minutes in duration.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF HENRY E. AUTREY, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the nomination of Henry E. Autrey, of Missouri, to be United States District Judge, which the clerk will report.

The assistant legislative clerk read the nomination of Henry E. Autrey, of Missouri, to be United States District Judge for the Eastern District of Missouri.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, the Senate Judiciary Committee moved expeditiously to consider Judge Henry Autrey despite the poor treatment of President Clinton's nominees in the same circumstances. I mention this because this vacancy is special. It is a vacancy to which Justice Ronnie White should have been confirmed. But in October of 1999, my friends on the other side of the aisle, the Republicans, marched from a closed-door meeting to vote lockstep against Justice Ronnie White, the first African American Justice of the Missouri Supreme Court, after his nomination to the District Court had been kept waiting for 2 years—2 years here in the Senate; actually kept on the Executive Calendar pending for 9 months.

I mention this because, with all the unfair criticism of Majority Leader DASCHLE, who has been moving judges through at a much faster pace than was done prior to him becoming majority leader, I just want to contrast the difference between that action and the one on this nomination, where we are going to confirm Judge Autrey to the Federal bench in Missouri.

It shows, also, Senator CARNAHAN showed far more grace in helping us move this nominee forward.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Missouri.

Mr. BOND. Mr. President, first my appreciation to the President for nominating Judge Autrey. My thanks to Chairman LEAHY and the Senate Judiciary Committee for voting unanimously to confirm him.

We will have discussions about other procedures and other activities in a different forum. In this forum, I express my strongest support and highest confidence that this candidate respects the role of judges in our system of government—the job being to interpret the job rather than to legislate it.

Permit me to tell you that Judge Henry Autrey currently serves as a circuit court judge for the 22nd Judicial Circuit for the State of Missouri, City of St. Louis. Judge Autrey served with distinction as an associate circuit judge beginning in 1986, a position to which he was appointed by then-Governor, John Ashcroft. He was later promoted to the full circuit bench by then-Governor of Missouri, Mel Carnahan.

As a sitting judge for over 15 years, Judge Autrey has displayed an unwavering commitment to honesty and approachability, earning a reputation as a thoughtful and hard-working judge with a judicious temperament.

Prior to his service on the bench, he served as a prosecutor in the City of St. Louis for 9 years, won convictions in several high-profile cases, and led the office in its work in the area of child abuse prosecution.

His entire career has been spent in the courtroom and therefore he exemplifies someone who has both the personal qualities and the experience to fill this spot and perform this duty in an exemplary manner. He is highly regarded by the law enforcement community in St. Louis. Countless attorneys have expressed their support for him. He has the support of the Mound City Bar Association of St. Louis, the Missouri Prosecuting Attorneys, and the Women Lawyers Association of Greater St. Louis.

He is an ideal candidate for the position.

I appreciate the Senate proceeding to this nomination, and I urge my colleagues to give Judge Autrey their favorable consideration. I reserve my time.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I inform my colleagues when we conclude this series of votes, whatever the number may be—and we will clarify that after this vote—that will conclude the rollcalls for this week. So I urge my colleagues to stay on the floor.

This is a 10-minute vote, and whatever additional votes will be 10-minute votes. If we have to wait 15 or 20 minutes, it just prolongs the time until we will have completed our work on this block of votes and then, therefore, the final, official vote of the week.

So I urge my colleagues to stay on the floor and respond to the votes as their names are called.

I thank the Chair.

Mr. HATCH. Mr. President, I rise today in support of the nomination of Henry E. Autrey to the U.S. District Court in the Eastern District of Missouri.

I have enjoyed reviewing Judge Autrey's distinguished legal record, and I am confident that he will make a fine Federal judge.

Judge Autrey is no stranger to the citizens of eastern Missouri. He has strong roots in the city of St. Louis, having graduated from the University of St. Louis School of Law and having served in the city's Office of the Circuit Attorney, where he prosecuted a variety of criminal cases and later acted as the First Assistant Circuit Attorney. He also served on the Rape Trial Task Force and created the first child abuse unit in the Office of the Circuit Attorney. From 1991 to 1997 he served as Adjunct Professor of Law at St. Louis University School of Law.

Judge Autrey's prosecutorial excellence attracted the attention of both Republican Governor John Ashcoft, who appointed him as an Associate Circuit Judge on the Circuit Court of the City of St. Louis in 1986, and Democratic Governor Mel Carnahan, who elevated him to Circuit Court Judge in 1997. Judge Autrey's judicial experience on the State bench will serve him well in the district court.

Judge Autrey is described by associates as a judge who "work[s] very hard to ensure that justice is provided to all" and as a "smart and hard-working jurist." He merited an ABA rating of "Unanimous Qualified," and I fully expect him to serve with distinction on the Federal bench in Missouri.

Mr. LEAHY. Mr. President, the Senate Judiciary Committee moved expeditiously to consider Judge Henry Autrey as it has with so many of President Bush's judicial nominees. We have done so despite the poor treatment of President Clinton's nominees by the Republicans when they were in the majority from 1995 through the first half of 2001.

The vacancy being filled by this nomination is special. This is the vacancy that Justice Ronnie White should have been confirmed to fill. But on October 5, 1999, Republicans marched from their closed-door meeting to vote lockstep against Justice Ronnie White. This, even though he had been favorably reported twice by the Judiciary Committee with the apparent backing of from four and seven of the Republicans who served on the committee.

I remember the treatment of Ronnie White very well, as do people in Missouri, I am sure. I recall the efforts made by Gov. Mel Carnahan on Justice White's behalf and how hard I had to work as the ranking Democrat to get his nomination reported to the floor, not once but twice, and to secure a floor vote after the nomination had been pending 2 years and had been pending on the Senate Executive Calendar for 9 months.

It has now been been almost 5 years since anyone nominated to the Federal district court in Missouri has been confirmed. The vacancy to which Judge Autrey has been nominated has been vacant even longer—since December 1996, when the late Judge Gunn took senior status. President Clinton nominated Missouri Supreme Court Judge

Ronnie White to this vacancy in June 1997. He had to wait nearly a year for a hearing, until May 1998. The committee reported the nomination favorably to the Senate with only three negative votes of the 18 members of the committee. But his nomination sat waiting for a full Senate vote, and, having never received one, was sent back to President Clinton at the end of the 105th Congress after languishing for 6 months on the Senate floor without action.

The President renominated Justice White in January of 1999. He was voted out of the committee a second time in July with at least four of the Republicans on the committee in apparent support of the nomination. After a great deal of effort on the part of Democratic Senators, I thought we had secured for him a fair floor vote. Instead, on October 5, 1999, the Republican-controlled Senate ambushed Justice White's nomination for partisan gain. As is by now a well-known story, Ronnie White was the victim of a sneak attack on that day. He was defeated on an unprecedented party-line Senate vote and was branded "pro-criminal." These issues were aired during the confirmation hearing of John Ashcroft last year. Senator SPECTER, to his credit, offered an apology to Justice White for the way he was treated.

When there is so much unfair criticism of the way Majority Leader DASCHLE and I have been handling nominations since the change in Senate control last July, I mention this to help contrast the treatment of judicial nominees by Democrats and Republicans. As I have said from the outset, the Democratic majority is treating President Bush's nominees more fairly and moving more of them more quickly than the Republican majority acted with respect to President Clinton's nominees. That is undeniable and today, in yet another example of the stark contrast in our approaches and our actions, we will join to confirm Judge Autrey to the Federal bench in Missouri.

I commend, in particular, Senator CARNAHAN for her support of the fair treatment of Judge Autrey, despite the unfair way Justice White had been treated. Her actions underscore for us what we all know about her that she is a person of character and grace, willing to work on a bipartisan basis in the best interests of the State of Missouri.

With today's vote on the nomination of Judge Henry Autrey to the District Court for the Western District of Missouri, the Democratic-led Senate will have confirmed a total of 65 judicial nominees since the change in Senate majority 1 year ago. The Senate has now confirmed more nominees in a little more than 1 year than were confirmed in any year during the past 6½ years of Republican control of the Senate, from 1995 through 2001. For that matter, we have confirmed more judges than were confirmed in 1996 and 1997 combined. Contrast the 65 judges confirmed by the Democratic Senate with the Republican average, during their past 6½ years of control, of confirming only 38 judges a year.

I congratulate the nominee and his family on his confirmation today and commend Senator CARNAHAN and Majority Leader DASCHLE for all they have done to bring us to this day.

The PRESIDING OFFICER. Who yields time? Is all time yielded back?

Mr. BOND. I yield my time.

Mr. LEAHY. I yield any time we have.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Henry E. Autrey, of Missouri, to be United States District Judge for the Eastern District of Missouri?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

[Rollcall Vote No. 205 Ex.]

YEAS—98

Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NOT VOTING—2

Akaka
Helms

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table, and the President will be immediately notified of the Senate's action.

The majority leader.

Mr. DASCHLE. Mr. President, it is now my intention to go to seven additional district court nominees. Senator LEAHY and the Judiciary Committee have done an extraordinary job of reporting these out. They have been on the calendar. And it is certainly Senator LEAHY's prerogative to ask for a rollcall vote on each nominee.

He and I have discussed this matter, and I would ask the Senator from Vermont, the distinguished chair of the Judiciary Committee, about the need to have additional rollcalls for each of these district judges.

I yield the floor for that purpose.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I tell the distinguished majority leader, the only concern I have had about having rollcall votes is, a couple times we have taken a group of these and had voice votes, with seven, eight going through, and the next day my good friends on the other side of the aisle and the White House have had a press release saying we have not had a single judge voted on in weeks in the Senate. I think they only notice it if there is a rollcall vote.

I ask my friend, the majority leader, if we do these 7, am I correct that would mean we will have confirmed 72 judges in less than 13 months?

Mr. DASCHLE. Mr. President, that is the current count, 72 district and circuit court judges over that period of time.

Mr. LEAHY. I believe that sets sort of a record for the last 5 or 6 years, in any event.

Mr. President, I know some of my colleagues have the sprint-for-the-airport look in their eye, trying to get home.

I am willing to sacrifice my time and spend the next month, the month of August, in Vermont, close to my constituents, onerous as that may seem.

I would be perfectly willing to accept voice votes on each of these seven judges, but I would just ask my friends: Please, don't issue a press release tomorrow saying that we only voted on one judge today.

We have already voted on one. I will take voice votes on the others.

Mr. DASCHLE. Mr. President, I thank the distinguished chair of the Judiciary Committee. I appreciate very much his cooperation in this regard.

Let me tell my colleagues who need to remember, even though we are going through these voice votes, there is one more rollcall vote on the conference report on the trade promotion authority legislation.

I ask unanimous consent that the Senate proceed to consider the following nominations and that they be considered individually: Executive Calendar Nos. 863, 864, 865, 866, 867, 887, and 888.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF RICHARD E. DORR TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of Richard E. Dorr, of Missouri, to be United States District Judge for the Western District of Missouri.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Richard E. Dorr, of Missouri, to be United States District Judge for the Western District of Missouri?

The nomination was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF DAVID C. GODBEY TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS

The PRESIDING OFFICER. The clerk will report the next nomination.

The senior assistant bill clerk read the nomination of David C. Godbey, of Texas, to be United States District Judge for the Northern District of Texas.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David C. Godbey, of Texas, to be United States District Judge for the Northern District of Texas?

The nomination was confirmed.

Mr. DASCHLE. Mr. President, we will move to reconsider all of these nominations en bloc and notify the President once they have been voted on. We won't need to go through each one of the motions following the actual voice vote.

NOMINATION OF HENRY E. HUDSON TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of Henry E. Hudson, of Virginia, to be United States District Judge for the Eastern District of Virginia.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Henry E. Hudson, of Virginia, to be United States District Judge for the Eastern District of Virginia?

The nomination was agreed to.

NOMINATION OF TIMOTHY J. SAVAGE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of Timothy J. Savage, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Timothy J. Savage, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania?

The nomination was confirmed.

NOMINATION OF AMY J. ST. EVE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of Amy J. St. Eve, of Illinois, to be United States District Judge for the Northern District of Illinois.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Amy J. St. Eve, of Illinois, to be United States District Judge for the Northern District of Illinois?

The nomination was confirmed.

NOMINATION OF DAVID S. CERCONE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of David S. Cercone, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David S. Cercone, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania?

The nomination was confirmed.

NOMINATION OF MORRISON C. ENGLAND, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read the nomination of Morrison C. England, Jr., of California, to be United States District Judge for the Eastern District of California.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Morrison C. England, Jr., of California, to be United States District Judge for the Eastern District of California?

The nomination was confirmed.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the motions to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF RICHARD EVERETT DORR

Mr. HATCH. Mr. President, I rise in support of the nomination of Richard Everett Dorr to the U.S. District Court for the Western District of Missouri. He is a man who has dedicated large portions of his career to public service, one of the qualities I most admire in a nominee to the bench.

Mr. Dorr attended the University of Illinois at Champaign on a football scholarship. He graduated with a B.S. in Marketing in 1965. In 1968, he graduated with a J.D. from the University of Missouri at Columbia. During the next five years as a Judge Advocate, the nominee regularly appeared as either a prosecutor or defense counsel in criminal cases before Courts-Martial and Administrative Boards. During this period, Mr. Dorr also served as a legal advisor to Administrative Boards and as a Military Judge. He was also appointed to the Human Relations Council, an Air Force program designed to educate service members on appropriate behavior regarding racial diversity.

Upon returning to private life, Mr. Dorr was an associate at the firm of Mann, Walter, Burkart, Weathers & Walter for 5 years. In this position he practiced general civil law, including real estate, business, domestic relations and general litigation cases. In 1978, he started his own firm, Harrison, Tucker and Dorr and continued his general civil practice. In 1996, Mr. Dorr became the Managing Partner of the Springfield office of Blackwell Sanders Peper Martin, a major law firm based out of Kansas City, Missouri. In this new position, he has concentrated on business and commercial litigation.

Mr. Dorr was very active in the establishment of the Southwest Missouri Legal Aid Corporation. He served on its first Board of Directors from 1976 to 1982 and was the Corporation's President from 1978 to 1982. This organization provides legal aid to the poor who normally could not afford for their cases to be heard in a court of law.

Unfortunately, this is Mr. Dorr's second nomination to the federal court. He was nominated by the first President Bush, but he did not receive a hearing.

Throughout his life Mr. Dorr has given back to his community, first in the Air Force, where he championed the cause of human rights, and then by forming an organization that helped those who could not afford access to the courts. Clearly, Mr. Dorr has the character and temperament to be a fair and balanced federal court judge. I urge my colleagues to confirm this most deserving attorney.

Mr. BOND. Mr. President, I have the distinct honor of being on the floor again to support the nomination of another fine candidate to the Federal bench in Missouri. The President has nominated Dick Dorr of Springfield, MO, to serve on the U.S. District Court for the Western District of Missouri. Mr. Dorr embodies well the principles laid out by the President for nominees to the Federal bench. Above all, Mr. Dorr respects the role of a judge in our Federal system—to interpret the law. In addition, Mr. Dorr is a respected trial attorney who will bring years of experience in the court room to this position. He is an excellent candidate and I urge the Members of this body to give him your favorable consideration.

Mr. Dorr will bring to this position a reputation as an outstanding trial attorney with the respected Missouri law firm. His experience extends to both criminal and civil law. Attorneys in Springfield who worked with Mr. Dorr and who have litigated against him share my belief that he has the experience to preside over trials in a fair and efficient manner. Mr. Dorr has also served his country in the U.S. Air Force as a reservist and as a judge advocate general.

Mr. Dorr has given a tremendous amount of this time to ensure that the citizens of Springfield have legal representation available to them despite their financial means. He has worked for the Missouri Bar's Volunteer Lawyer Pogram. He was instrumental in starting the Legal Aid Society of Southwest Missouri and served on its board. He has received the Equal Access to Justice Award from the Springfield Bar for his work, and he was recognized for outstanding service to the community by the Greene County Community Justice Association.

I thank the chairman of the Judiciary Committee for scheduled a hearing for this nominee, and I thank the Members for the unanimous vote in support of this nominee.

I believe the Senate will find this candidate is well qualified for the position, possessing the experience, the intellect and the personal qualities necessary to preside over trials and rule in an informed and impartial manner. He will be a tremendous asset to the bench, and I urge the Members of the body to support the nomination.

NOMINATION OF DAVID GODBEY

Mr. HATCH. Mr. President, I rise to support the nomination of David Godbey to be U.S. District Judge for the Northern District of Texas.

I have had the pleasure of reviewing Mr. Godbey's distinguished legal career, and I have concluded, as did President Bush, that he is a fine jurist who will add a great deal to the Federal bench in Texas.

Mr. Godbey has a terrific record as a civil litigator and as a highly effective state court judge.

Following graduation from Harvard Law School, where he graduated magna cum laude, Judge Godbey clerked for Judge Goldberg of the Fifth Circuit Court of Appeals for a year, then accepted a job with Hughes & Luce, a Dallas firm, in 1983.

For the next 11 years, he handled civil and commercial litigation in Federal trial and appellate courts in Texas and elsewhere. He accepted criminal appointments and represented clients in commercial arbitration cases. He specialized in technology litigation, appeals, public-law litigation, and oil and gas matters.

In 1994 Mr. Godbey was elected to a judgeship on the 160th Judicial District Court in Texas. Judge Godbey has handled over 6,500 cases on the bench, including approximately 230 jury trials, and his reversal rate is well below 1 percent.

It is clear that Judge Godbey is well prepared for the Federal district court bench. I know he will make a great judge in the Northern District of Texas.

NOMINATION OF HENRY HUDSON

Mr. HATCH. Mr. President, I rise today in support of Henry E. Hudson's nomination to the U.S. District Court for the Eastern District of Virginia.

Judge Hudson's many accomplishments as a prosecutor, State court judge, and Federal law enforcement officer convince me that he will excel on the federal bench in Virginia.

Upon graduation from American University in 1974, Mr. Hudson worked as Assistant Commonwealth Attorney in Arlington, VA, prosecuting felony and misdemeanor cases. From 1978–1979 he served as an Assistant U.S. Attorney for the Eastern District of Virginia, where he handed federal criminal case; and from 1980 to 1986 he served as Commonwealth's Attorney for Arlington County.

Mr. Hudson then served as U.S. Attorney for the Eastern District of Virginia, gaining substantial supervisory and prosecutorial experience. He headed an office of 70 Assistant U.S. Attorneys and 25 Special Assistants and prosecuted major civil and criminal cases, including "Operation Ill Wind," a federal investigation resulting in the conviction of 54 individuals and 10 corporations for illegally exchanging confidential defense contract bidding information.

Mr. Hudson served as Director of the U.S. Marshals Service from 1992 to 1993, and since 1998 Mr. Hudson has served as Circuit Court Judge for the Fairfax County Circuit Court.

Judge Hudson received an ABA rating of Substantial Majority Well Qualified and Minority Qualified. My support for Judge Hudson's nomination to the Federal bench is unqualified. He will make an excellent federal judge.

Mr. WARNER. Mr. President, I rise today in support of the nomination of Judge Henry Hudson, who has been nominated to serve as a judge on the U.S. District Court for the Eastern District of Virginia.

Senator ALLEN and I had the honor of recommending Judge Hudson to President Bush for this position, and we have worked closely with Chairman LEAHY, Senator HATCH, and with our leadership to get Judge Hudson's nomination to a confirmation vote.

It is important to note that the Virginia Bar Association "highly recommends" Judge Hudson for this Federal judgeship.

In addition, Judge Hudson's nomination enjoys bipartisan support in Virginia. Congressman JIM MORAN and State Senate Minority Leader Dick Saslaw, both Democrats, have penned letters of support for Judge Hudson.

Judge Hudson enjoys such widespread support based on his extensive experience with the law, and his reputation for having an appropriate judicial temperament. For these reasons, the Senate Judiciary Committee unanimously reported out his nomination.

Judge Hudson's legal career began with his service as a Deputy Sheriff in Arlington County, Virginia, in 1969 and 1970. He then went to law school, graduating from American University in 1974.

Subsequent to his graduation from law school, Mr. Hudson entered legal practice as a prosecutor. First, he served as an Assistant Commonwealth's attorney for 5 years and then as an Assistant U.S. Attorney in the Eastern District of Virginia.

In 1986, Mr. Hudson was confirmed by the Senate and began his service as the United States Attorney for the Eastern District of Virginia, where he served until 1991.

After leaving the U.S. Attorney's office, Judge Hudson once again received Senate confirmation and served as the Director of the United States Marshals Service from 1992 to 1993.

After completing his work at the Marshals Service, Mr. Hudson entered private practice until he was sworn in as a Judge on the Fairfax County, Virginia, Circuit Court. Judge Hudson has served as a Judge on this important court since 1998.

During his time on the Fairfax County Circuit Court bench, Judge Hudson has been known as a fair, objective judge who conducts proceedings with dignity and with the appropriate judicial temperament. I am confident that he will continue his service on the Eastern District of Virginia bench consistent with this reputation.

I urge my colleagues to support Judge Hudson's nomination.

Mr. THURMOND. Mr. President, today, the Senate confirmed Judge Henry Hudson to the United States District Court for the Eastern District of Virginia. I am very pleased to see this fine man take his place on the Federal bench, and I know that he will serve our Nation with distinction.

Judge Hudson is very deserving of this high honor, and I commend President Bush for nominating such a well-qualified and honorable man. Throughout Judge Hudson's distinguished career, he has held several positions of public trust, and he has always performed his duties with the utmost integrity. Judge Hudson has also demonstrated a profound respect for the rule of law, and he will no doubt be an asset to the Eastern District of Virginia.

Judge Hudson has an illustrious legal background. Upon graduation from the American University School of Law, he worked as an Assistant Commonwealth Attorney in Arlington County, Virginia. There, he learned the basics of trial work, and after 5 years, he became an Assistant U.S. Attorney for the Eastern District of Virginia. As a Federal prosecutor, Judge Hudson handled many important and oftentimes complex criminal cases, including drug conspiracies, racketeering, and political corruption cases. After his service as an Assistant U.S. Attorney, Judge Hudson served as the Commonwealth Attorney in Arlington County, Virginia. As Commonwealth Attorney, he was responsible for prosecuting crimes such as homicides and violent sexual assaults.

Judge Hudson's vast knowledge of the law and his skills as a trial attorney did not go unnoticed. In 1986, he was nominated and confirmed as the U.S. Attorney for the Eastern District of Virginia. As the U.S. Attorney, Judge Hudson not only gained additional experience as a Federal prosecutor, but also demonstrated an ability to supervise others. He was responsible for an office staffed by 70 Assistant U.S. Attorneys and 25 Special Assistant U.S. Attorneys. During his tenure, he supervised "Operation Ill Wind," a Federal investigation of unlawful defense contract bidding that resulted in the conviction of 54 people.

Judge Hudson was again honored in 1992 when he was selected as Director of the U.S. Marshals Service, our Nation's oldest law enforcement organization. This appointment serves as a testament to the widespread admiration and respect enjoyed by Judge Hudson.

In 1998, Henry Hudson became Circuit Court Judge for the Fairfax County Circuit Court in the Commonwealth of Virginia. In this role, he has performed admirably, demonstrating an outstanding legal mind and a good judicial temperament. He has served the people of Fairfax County well and will no doubt serve the Eastern District of Virginia with equal competence and integrity.

Judge Henry Hudson will make an outstanding Federal judge. A substantial majority of the American Bar Association Standing Committee on the Federal Judiciary rated Judge Hudson as Well Qualified. Not only does he have considerable legal expertise, but he is a fine man. I am proud to see my friend, Henry Hudson, confirmed as a Federal District Court Judge.

Mr. ALLEN. Mr. President, I rise to express to my Senate colleagues my support for the confirmation of Henry E. Hudson to serve as a judge in the United States District Court for the Eastern District of Virginia. I have known Henry Hudson for about 20 years. He has had a long and distinguished career in public service, beginning as a firefighter and a deputy sheriff. He was elected in 1979 by the citizens of Arlington County, VA to serve as their Commonwealth's Attorney, and was reelected by a large margin four years later.

In 1986, President Reagan selected Henry Hudson to serve as the United States Attorney for the Eastern District of Virginia. He is credited with elevating the stature and visibility of that office with such prosecutions as Operation Illwind, which restored integrity to the field of defense procurement.

In 1992, Judge Hudson was appointed by President Bush to serve as Director of the United States Marshals Service. The Department of Justice recognized his exceptional leadership of that agency and awarded him the John Marshall Award for outstanding legal achievement.

During my term as Governor of Virginia, I appointed Henry Hudson to serve as Chairman of the Criminal Justice Services Board and a member of the Governor's Commission to Abolish Parole and Reform Sentencing. Later, I selected him to be a member of the Virginia Criminal Sentencing Commission. From his superb performance in all those roles, which helped us reduce crime in Virginia as well as better protect victims, I can personally attest to his calm, knowledgeable, and fair leadership as well as his dedication, work ethic and integrity.

Henry Hudson is currently serving as a Circuit Court Judge in Fairfax County, VA, where he has enjoyed a reputation for being a fair, but firm, jurist. His nomination to the Federal court is widely supported by both Democrats and Republicans, as well as bar associations and civic groups.

It is vital at this point in our Nation's history that we have the highest caliber men and women on the Federal bench.

Indeed, our Federal personnel are charged with the responsibility in these difficult times with enforcing our laws while still respecting civil liberties.

Perhaps in no district court is that more important than in the U.S. District Court for the Eastern District of Virginia.

The U.S. District Court for the Eastern District of Virginia, which has been short-handed for some time—handles some of the nation's most important and high-profile cases, including the John Walker Lindh case and the Moussaoui trial.

I am very pleased that the United States Senate will today confirm Judge Henry Hudson for this very important judicial position. He possesses a strong legal acumen, the requisite judicial temperament, and proper judicial philosophy of interpreting the law and Constitution and not rewriting it from the bench. This will enable him to serve with distinction on the federal bench, and this is why the President wisely nominated him.

Thus, I respectfully urge my colleagues to vote for the Confirmation of Henry Hudson as judge for the U.S. District Court for the Eastern District of Virginia.

NOMINATION OF TIMOTHY SAVAGE

Mr. HATCH. Mr. President, I rise today in support of the nomination of Timothy J. Savage to the U.S. District Court in the Eastern District of Pennsylvania.

My review of Mr. Savage's career as a litigator and public servant has convinced me that he will make a fine Federal judge.

Following graduation from Temple University School of Law, Mr. Savage joined the Philadelphia firm of MacCoy, Evans & Lewis as a civil litigator. In 1974 he and a partner started the firm of Savage and Ciccone, where he turned to criminal defense work. Since 1976 Mr. Savage has worked as a sole practitioner in Philadelphia, moving in the last two decades to civil litigation and white collar crime specialties.

Mr. Savage knows his way around the Eastern District, serving as a mediator in the Eastern District of Pennsylvania and as judge pro tem in the Court of Commons Pleas in Philadelphia County.

Since 1977 he has served in a quasi-judicial role on the Pennsylvania Liquor Control Board, making evidentiary rulings, overseeing interrogation of witnesses, and authoring findings of fact and recommendations for Board decisions.

Outside his law practice, Mr. Savage has served as counsel for a local civic association and for the local Boys and Girls Clubs for the last 20 years. He has also provided pro bono services to community groups, his church, senior citizens and served on the Philadelphia

Bar Association's Volunteers for Indigent Persons panel.

I am confident Mr. Savage will serve well on the Federal bench in the Eastern District of Pennsylvania.

NOMINATION OF AMY ST. EVE

Mr. HATCH. Mr. President, I rise in support of the confirmation of Amy J. St. Eve to the U.S. District Court for the Northern District of Illinois.

Ms. St. Eve's academic record is truly outstanding. She received her undergraduate degree in History, with Honors and Academic Distinction in All Subjects, from Cornell University.

She then graduated from Cornell's College of Law, where she was an Articles Editor on the Law Review, a member of the Order of the Coif, and recipient of numerous prizes for finishing her first and second years at the top of her class.

After graduation, she joined the law firm of Davis Polk & Wardwell. For four years, she worked as a litigator representing corporations in civil and criminal matters. In 1994, Ms. St. Eve joined the Office of the Independent Counsel, investigating the events surrounding the Whitewater Development Corporation. She drafted the indictment and second-chaired the trial that led to the conviction of Jim McDougal, Susan McDougal and then-Arkansas Governor Jim Guy Tucker.

In 1996, she joined the U.S. Attorney's Office of the Northern District of Illinois. In this position, her responsibilities included health care fraud, bank fraud, narcotics, trafficking, public corruption and gang violence cases. Additionally, she served as the Criminal Health Care Fraud Coordinator. For her work in this position, she twice received the Award for Integrity from the U.S. Health and Human Services Office of the Inspector General. She was also one of the senior prosecutors in "Operation Safe Road." This operation was charged with ridding the Melrose Park Illinois Secretary of State facility of corruption.

Currently, Ms. St. Eve is a Senior Counsel in the Litigation Department of Abbott Laboratories.

Ms. St. Eve is one of the best and brightest of her generation. She and others like her are prime examples of a new generation of women who are becoming the top legal minds in the legal community. Her nomination is a fine example of the diverse judiciary that President Bush is creating. I urge all of my colleagues to vote for her confirmation.

NOMINATION OF DAVID CERCONE

Mr. HATCH. Mr. President, I am pleased today to rise in support of David S. Cercone, who has been nominated to the U.S. District Court for the Western District of Pennsylvania.

Judge Cercone graduated from Duquesne University School of Law. Judge Cercone then clerked for Hon. Paul R. Zavarella on the Allegheny County Court of Common from 1978 to 1979. Judge Cercone has also been a sole legal practitioner in Pennsylvania. From 1979 to 1981, Judge Cercone served as the Assistant District Attorney for Allegheny County Court of Common Pleas and specialized in the prosecution of narcotics and violent crime cases.

From 1982 to 1985, Judge Cercone served as the Pennsylvania district justice magistrate. In 1986 to the present, Judge Cercone was the youngest person ever elected, at 32, to the Court of Common Pleas for Allegheny County Pennsylvania. In 1993, Judge Cercone was appointed administrative judge for the criminal division by the Supreme Court of Pennsylvania. Judge Cercone implemented an accelerated plea docket to prevent jail overcrowding and to reduce case backlogs. He also established the first "drug court" in western Pennsylvania for the rehabilitation of drug offenders.

In his capacity as Judge of the Court of Common Pleas for Allegheny County, Judge Cercone has ruled on many issues including medical malpractice, auto accidents, criminal homicide, murder, arson, insurance fraud, drugs, vehicular homicide, defamation, intoxication of minors and criminal conspiracy of an escape of six inmates from the Western State Correctional Institute. Judge Cercone has also prepared annual reports for the Allegheny County Court of Common Pleas, Criminal Division from 1994 to 1998.

Judge Cercone has been rated "unanimous qualified" by the American Bar Association. I am confident Judge Cercone will serve on the bench with integrity, intelligence, and fairness.

NOMINATION OF MORRISON ENGLAND

Mr. HATCH. Mr. President, I rise today to support the nomination of Morrison C. England to be U.S. District Judge for the Eastern District of California.

I have enjoyed reviewing Judge England's distinguished legal career, and I have concluded that he will make an excellent Federal judge in California.

Judge Morrison C. England is a native of St. Louis and a graduate of McGeorge School of Law at the University of the Pacific. He has had more than a decade of private practice experience as a litigator and transactional attorney and has served for the past six years as a California state judge in Sacramento presiding over criminal and civil cases. In 1996 Governor Pete Wilson appointed him as Sacramento Municipal Court Judge and elevated him to Superior Court Judge on the Sacramento Superior Court a year later. He currently serves in a General Trial Court, presiding over both civil and criminal cases. Previous to his judicial service, Judge England acted as Referee and Judge Pro Tem in the Sacramento County Juvenile Court from 1991–96. Clearly he has the experience a Federal judge needs.

Judge England also serves this country as a member of the U.S. Army Reserve, JAG Corps, holding the rank of Major. Judge England's nomination has been praised by his colleagues and Sacramento attorneys alike. He has home state support and my support as well. He will make an excellent Federal judge in California.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, this week marks a little more than one year after the reorganization of the Senate Judiciary Committee following the change in majority last year. The Democratic-led Judiciary Committee has had an impressive year of fairly and promptly considering President Bush's nominees. In addition to the dozens of high-ranking Justice Department officials for whom we held hearings and our work in connection with almost 200 Executive Branch nominees the Committee reported, we have had a noteworthy record year with respect to judicial nominees.

With the lifting of a Republican hold on nominations we have been able to move forward this week to confirm 15 more judicial nominees—4 circuit court nominees and 11 district court nominees. The Democratic-led Senate has now confirmed 72 of President Bush's judicial nominees. This interim total of 72 judges far outdistances any Republican total for any of the preceding six years. Moreover, this is more judges than were confirmed under Republican control during all of 1999, 2000 and the first six months of 2001 combined. Thus, in less than 13 months we have done more than the Republicans did in 30 months! And we did so while reforming the process to ensure bipartisan cooperation and greater fairness.

The Senate has now confirmed 13 of President Bush's circuit court nominees—which is almost twice as the average during the prior six and one-half years of Republican control when they averaged seven circuit court confirmations per year. This is more circuit court nominees than were confirmed in two years combined, during all of 1996 and 1997, of the prior years of Republican control.

In this, our first year, we held 23 hearings for 84 of the President's nominees to the Federal Courts of Appeals and District Courts. That is more hearings for more of this President' s district and circuit court nominees than were ever held in any of the six and one-half years that preceded the change in majority last summer. It is more hearings for more circuit and district court nominees than in 20 of the last 22 years.

In particular, we held more hearings for more of President Bush's circuit court nominees, 18, than in any of the six and one-half years in which the Republicans controlled the Committee before the change in majority last summer. For that matter, we held twice as many hearings for courts of appeals nominees than were held in the first year of the Reagan Administration when the Senate was controlled by Republicans and five times more than in the first year of the Clinton Administration when the Senate was controlled by Democrats. That total of 18 hearings for circuit court nominees is also twice what the Republican majority averaged when it was in control of the process. Those are the facts.

Under Democratic leadership, the Judiciary Committee voted on more judicial nominees, 79, than in any of the six and one-half years of Republican control that preceded the change in majority. We voted on twice as many circuit court nominees, 15, than the Republican majority averaged in the years they were in control. In fact, this last year we voted on more nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than the Republicans allowed votes on during 1996 and 1997 combined.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees had been treated. By many measures the Committee has achieved twice as much this last year as Republicans averaged during their years in control, and, by some measures, has done so in less than half the time.

I commend and thank the Majority Leader and Assistant Majority Leader for their patience and determination in achieving movement on judicial nominees on the Senate floor. The Administration's obstructionism stalled Senate floor actions on nominations for more than two months, while the Administration failed to fulfill its responsibility to work with the Senate in the naming of members of bipartisan boards and commissions. But just last Friday we resumed voting on judicial nominations and confirmed 15 judicial nominees in the last week once Senator MCCAIN's hold was lifted.

Four of these nominees were confirmed to the Federal Courts of Appeals, including the first nominee to the Sixth Circuit in almost five years, the first nominee to the Ninth Circuit in two years, and the first nominee to the Third Circuit in almost two and a half years and the third nominee that we have confirmed to the Eighth Circuit.

With these confirmations, we have addressed long-standing vacancies on circuit courts caused by Republican obstruction on President Clinton's nominees. We held the first hearing for a Fifth Circuit nominee in seven years, the first hearings for Sixth Circuit nominees in almost five years, the first hearing for a Tenth Circuit nominee in six years, and the first hearings for Fourth Circuit nominees in three years.

We have also now confirmed 59 of the President's district court nominees, twice as many as the Republican average for the past six and one-half years. Contrast the 59 Federal trial court judges confirmed by the Democratic Senate in just a little more than a year with the Republican average, during their past six and one-half years of control, of confirming only 31 Federal trial court judges a year. The Senate has confirmed more Federal trial court judges than were confirmed in 19 of the past 21 years and almost twice as many as the Republican average from their six and one-half years of control.

With this week's confirmations, the Democratic-led Senate has confirmed the 10th Federal judge for Pennsylvania. In addition, we confirmed our fifth judge to the District Courts in Texas, and our fifth judge to the Federal courts in the Eleventh Circuit. Our treatment of these nominees as well as a number of others, including the nominees confirmed today for the District Courts in Missouri, stands in sharp contrast to the treatment of nominees by the Republican majority.

We have reformed the process for considering judicial nominees. For example, we have ended the practice of anonymous holds that plagued the period of Republican control, when any Republican Senator could hold any nominee from his home state, his own circuit or any part of the country for any reason, or no reason, without any accountability. We have returned to the Democratic tradition of holding regular hearings, every few weeks, rather than going for period of as long as six months without a single hearing.

It would certainly have been easier and less work to retaliate for the unfair treatment of the last President's judicial nominees. We did not. We have been, and will continue to be, more fair than the Republican majority was to President Clinton's judicial nominees. More than 50 of Clinton's nominees never got a vote, many languished for months and years before their nominations were returned without a hearing or other action by the Senate. Others waited years—not just a year, but up to more than four years. Some never were accorded a hearing, some were finally confirmed after years of delay.

Those who now seek to pretend that the Democratic majority in the Senate caused a vacancy crisis in the Federal courts are ignoring the facts. Under Republicans, court vacancies rose from 63 in January 1995 to 110 in July 2001, when the Committee reorganized. During Republican control before the reorganization of the Committee, vacancies on the Courts of Appeals more than doubled, increasing from 16 to 33. That is what we inherited. But in one year of Democratic control, and despite 45 additional vacancies caused largely by the retirements of many past Republican appointees, we have reduced the number of district and circuit court vacancies.

Vacancies continue to exist on the Court of Appeals, in particular, because a Republican Senate majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's circuit nominees in 1999 and 2000, and was not willing to confirm a single circuit judge during the entire 1996 session. Republicans caused the circuit vacancy crisis, and it has taken a tremendous effort to evaluate and have hearings for 18 circuit court nominees in our first year.

In the meantime, Republicans have been unfairly critical that not every nominee has yet had a hearing or been confirmed. Rather than commend our efforts to do twice as much as they, their criticism is that we have yet to conclude consideration of everyone simultaneously. In less than 13 months we have already confirmed 13 of President Bush's nominees to the Courts of Appeals, and one more is awaiting a vote by the full Senate. They confirmed 46 circuit court nominees in 76 months. Without the benefit of presidential consultation of the Senate before nomination—as Republicans did in recent past years, without having had the luxury of taking two, three and sometimes four years before voting on a nominee, we have already achieved a confirmation rate of over 40 percent in our first year. With some cooperation in the fall from the Administration and from the Republican minority, we can improve on that confirmation rate before the end of the year. It already tops the Republican's record in 1997 and far exceeds the Republicans' record in 1999 when their own confirmation rate for circuit court nominees was 28 percent.

It constantly amazes me that our Republican critics run away from their record on judicial nominees, without admitting any error or wrongdoing or regrets of course, and seek to hold us to a much higher standard than they achieved. For example, they seek to compare what we have been able to do in less than 13 months with what other Congresses did over two years. They seek to make comparisons without recognizing that in the current situation we have a Republican President nominating an extreme group of nominees without consulting with Senators, as opposed to other situations in which Presidents and Senate majorities of the same party consulted and worked closely together.

A good example of this double standard is the Republican critics' use of "confirmation rates for Court of Appeals nominees." Remember that in 1996 the Republican majority's confirmation percentage for Court of Appeals nominees was zero—not a single confirmation of a single Court of Appeals judge all year. In 1999, President Clinton sent the Senate 25 nominations to the Courts of Appeals. Of those six were renominations of people on whom the Senate had failed to take action dating back to 1996, 1997 and 1998. Of the 25 nominations to the Courts of Appeals by President Clinton, the Republican majority in the Senate would allow only seven to be confirmed by the end of the year, for a confirmation rate of 28 percent. We have already achieved a confirmation rate of 40 percent in our first year.

No judicial nominees should be rubber-stamped by the Senate, not even a President's first few choices. All nominees for these lifetime positions merit careful review by the Senate. When a President is using ideological criterion to select nominees, it is fair for the Senate to consider it, as well. Federalist Society credentials are not a substitute for fairness, moderation or judicial temperament. When a President is intent on packing the courts and stacking the deck on outcomes, consideration of balance and how ideological and activist nominees will affect a court are valid considerations.

What the President and his advisors acknowledge they are doing is nominating ideologically conservative judicial nominees to stack the 5th, 6th, and D.C. Circuits with judicial activists of their choice. I have tried to work with the White House on judicial nominations. I have gone out of my way to encourage them to work in a bipartisan way with the Senate, like past Presidents, but in all too many instances they have chosen to bypass bipartisanship. I have encouraged them to include the ABA in the process earlier, like past Presidents, but they have refused to do so even though their decision adds to the length of time nominations must be pending before the Senate before they can be considered.

This past January, I again called on the President to stop playing politics with judicial nominations and act in a bipartisan manner. In June, I sent a detailed letter to the President on these issues. My efforts to help the White House improve the judicial nominations process have been rejected. I would like to improve the process and speed up the filling of judicial vacancies with qualified, fair-minded judges.

Advice and consent does not mean giving the President carte blanche to pack the courts. The ingenious system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream, and whose decisions would further divide our nation.

We have worked hard to balance these competing concerns over the past year: how to address the vacancy crisis we inherited while also not being a rubberstamp and abdicating our responsibilities to provide a democratic check on the President's choices for lifetime appointment to the federal courts. These are the only lifetime appointments in our system of government, and they matter a great deal to our future.

We have moved quickly, but responsibly, to fill judicial vacancies with qualified nominees we hope will not be activists. In our first year we confirmed 72 judges and reported 79 judicial nominees. Partisans ignore these facts. The facts are that we are reporting President Bush's nominees at a faster pace than the nominees of prior presidents, including those who worked closely with a Senate majority of the same political party. We have accomplished all this during a period of tremendous tumult and crisis.

The Judiciary Committee noticed the first hearing on judicial nominations within 10 minutes of the reorganization of the Senate, and held that hearing on the day after the Committee was assigned new members. We held unprecedented hearings during the August recess last year and proceeded with a hearing two days after the 9-11 attacks and shortly after the anthrax attack. Today, we held our 23rd hearing for judicial nominees. We are doing our best to address the vacancy crisis we inherited.

The Democratic majority in the Senate has worked hard since the change in majority last summer. We have a record of achievement and of fairness to be proud of at the recess of this session. I thank the members who have worked cooperatively with me to make progress in so many areas over the last year.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. DAYTON). The Senate will return to legislative session.

TRADE ACT OF 2002—CONFERENCE REPORT—Continued

Mr. DASCHLE. Mr. President, I ask unanimous consent that all time on the trade promotion authority conference report be yielded back.

Mr. BYRD. Mr. President, reserving the right to object, will the majority leader repeat his request?

Mr. DASCHLE. I ask unanimous consent that all time for debate on the conference report for the trade promotion authority bill be yielded back.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Parliamentary inquiry: When may Senators speak after the vote?

Mr. DASCHLE. Mr. President, I know a number of our colleagues have indicated an interest in speaking on the issue. We will reserve a block of time immediately following the vote on the trade promotion authority conference report for that purpose.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that I be the first to be able to speak afterwards for a period not to exceed 10 minutes.

Mr. DASCHLE. I ask unanimous consent for that request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the additional unanimous consent request?

Mr. BYRD. Requesting what?

The PRESIDING OFFICER. To yield back time on the debate on the conference report.

Mr. BYRD. Mr. President, I make a point of order.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, the Congressional Budget Office estimates that this legislation would increase the deficit by $7,006,000,000 from fiscal year 2002–2007 and by $12,302,000,000 from fiscal year 2002–2012. This deficit spending results from both increases in mandatory spending and reductions in revenues.

The additional mandatory spending and reductions in revenue contained in this Conference Report are not provided for under the budget resolution approved last year.

Therefore, Mr. President, I make a point of order that the pending conference report violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I move to waive the budget point of order under the relevant provisions of the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 67, nays 31, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—67

Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Breaux
Brownback
Bunning
Campbell
Cantwell
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Daschle
DeWine
Domenici
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm

Grassley
Gregg
Hagel
Harkin
Hatch
Hutchinson
Hutchison
Inhofe
Jeffords
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Voinovich
Warner
Wyden

NAYS—31

Boxer
Burns
Byrd
Carnahan
Clinton
Conrad
Corzine
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Hollings
Inouye
Johnson
Kennedy
Leahy
Levin
Mikulski
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Stabenow
Thurmond
Torricelli
Wellstone

NOT VOTING—2

Akaka
Helms

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order falls.

All time is yielded back. The question is on agreeing to the conference report.

Mr. DORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—64

Allard
Allen
Baucus
Bayh
Bennett
Bingaman
Bond
Breaux
Brownback
Bunning
Cantwell
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Daschle
DeWine
Domenici
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Hutchinson
Hutchison
Inhofe
Jeffords
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Voinovich
Warner
Wyden

NAYS—34

Biden
Boxer
Burns
Byrd
Campbell
Carnahan
Clinton
Conrad
Corzine
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Harkin
Hollings
Inouye
Johnson
Kennedy
Leahy
Levin
Mikulski
Reed
Reid
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Stabenow
Thurmond
Torricelli
Wellstone

NOT VOTING—2

Akaka
Helms

The conference report was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. It is my understanding Senator BAUCUS is recognized as in morning business.

The PRESIDING OFFICER. The Senator is correct. The Senator from Montana is recognized for a period of 10 minutes.

TRADE ACT OF 2002

Mr. BAUCUS. Mr. President, before we conclude today, I would be remiss if I did not thank a number of people.

First, in the House, I want to thank Chairman BILL THOMAS. He and I disagree on some things—that's for sure. But we share a common goal of both expanding trade and helping workers left behind by trade. And we share the goal of getting this to the President's desk as soon as possible so that we can help jump-start this economy. We worked together to craft a strong trade bill—and I thank him for his efforts.

Second—I want to thank Congressmen CAL DOOLEY, JOHN TANNER, and BILL JEFFERSON, who helped craft the House fast track legislation, and also ANNA ESHOO and KEN BENTSEN, who provided so much help on TAA.

In the Senate, I first want to thank Senator DASCHLE, who has helped this trade bill move through every step of the process. I also want to thank two Senators who played a key role during the committee process—Senator BINGAMAN for his efforts on TAA and Senator BOB GRAHAM on ATPA. And I appreciate Senator BREAUX's work both during the Senate negotiations and during the conference.

I also want to give credit to a number of Senators whose efforts made this legislation much better. Senators DAYTON and CRAIG on trade laws; Senator EDWARDS on the textile negotiating objectives and also on TAA; Senator KENNEDY on access to medicines; Senator HARKIN on child labor; Senator INOUYE on some of the tuna provisions in ATPA, and Senators ROCKEFELLER, MURKOWSKI, and WELLSTONE on Benefits for steel retirees.

Finally, I, of course want to thank my partner on the Finance Committee, Senator CHUCK GRASSLEY for being helpful throughout this process.

Of course, to actually complete work on a major bill like this requires the efforts of many others. For more than 18 months, many staff members have made incalculable efforts to prepare this legislation and move it to passage.

John Angell and Mike Evans oversaw the efforts of the Finance Committee staff on this legislation and all other activities of the Committee.

Greg Mastel led the effort on the Democratic staff to prepare this legislation from the first round of hearings to the final Senate vote. He was ably assisted by a tremendously skilled and energetic staff, including Tim Punke, Ted Posner, Angela Marshall, Shara Aranoff, and Andy Harig.

The Finance Committee health and tax staffs also played an important role, especially Liz Fowler, Kate Kirchgraber, Liz Liebschutz, Mitchell Kent, and Mike Mongan.

The Finance Committee also benefited from the able efforts of the leading Republican staff members, Everett Eissenstat and Richard Chriss.

In the House, the staff of the Ways and Means Committee and the New Democrats who supported this bill deserve similar credit.

This legislation also literally would not have been possible without the help of our skilled legislative counsel, Polly Craighill, Stephanie Easley, and Ruth Ernst, and Mark Mathiesen.

Finally, I would say a word of thanks to the many members of the Administration who staffed and supported this legislative effort, including Grant Aldonas, Faryar Shirzad, Peter Davidson, John Veroneau, Heather Wingate, Brenda Becker, Penny Naas, and many others.

I—as well as the Senate and the country—owe you all a debt of gratitude.

I also rise today to thank one additional person who played an enormous role in the passing of this trade bill—Howard Rosen.

I do not believe there is a person in this country who feels more passionately about the TAA legislation than Howard Rosen. He helped write this bill, he worked hard to encourage Members of the Senate and Members of the House to support this bill, and he is a big reason that we now have such a good TAA program.

And I know Howard's efforts will not end here. I know he will keep working to make TAA an even better program. We all owe him a great deal of thanks.

ANTICIRCUMVENTION

Mr. BREAUX. Mr. President, I want to bring to the Senate's attention a section of the conference agreement that is extremely important to the future of the U.S. sugar program and to the workers and companies in the domestic sugar industry. As the gentleman from Montana knows very well, I am talking about Section 5203 of the Trade Act of 2002, regarding sugar tariff-rate quota circumvention. The policy established in Section 5203 on sugar tariff rate quota circumvention is very important to the future of the sugar industry in Louisiana and the United States.

Mr. BAUCUS. I am very familiar with Section 5203 and its importance to the future of the domestic sugar industry, including the sugarbeet growers and processors in Montana. I would like to take this opportunity to commend Senator BREAUX, Senator CRAIG, and Senator THOMAS for the work they have been doing to address the problem of circumvention of the tariff-rate quotas on sugar and sugar-containing products.

Mr. BREAUX. I accept those kind words on behalf of all of the Senators who are working on this issue. Let me explain the problem briefly. The price of sugar on world markets is almost always very low and is often below the cost of producing sugar even in the most efficient sugar industries. This phenomenon is caused by subsidization of sugar exports by the European Union and other governments, and by dumping by companies that must export their sugar at any price to avoid harming their domestic markets.

The U.S. sugar program is intended to keep the price of sugar in the U.S. market at a level that assures a reasonable return to U.S. growers, processors and refiners of cane and beet sugar. A primary component of the program is WTO-legal tariff-rate quotas on imported sugar and sugar-containing products under Chapters 17, 18, 19 and 21 of the Harmonized Tariff Schedule of the United States. These quotas keep world price sugar from disrupting the U.S. sweeteners market and assure countries that are historical suppliers of the U.S. market that they will benefit from U.S. prices.

If the tariff-rate quotas do not keep dumped world price sugar off the U.S. market, the sugar program will be severely damaged. Therefore, it is essential that attempts to circumvent the tariff-rate quotas be identified and stopped promptly.

Mr. BAUCUS. I agree. Circumvention definitely has been a problem for the sugar industry. Do you have some examples of such practices?

Mr. BREAUX. There are many different kinds of circumvention. For example, designing and importing nonquota sugar-containing products that have no commercial use or using processing technologies that make commercial extraction of sugar from historically traded nonquota products an economically viable source of sugar. A specific example of one kind of circumvention is stuffed molasses, in which sugar is added to molasses outside the United States and removed from the molasses after importation in the United States. Another example is a product that is created by interrupting the normal refining process of raw cane sugar after the first removal of sugar, or first "strike," outside the United States, addition of that product to raw cane sugar while it is being refined in the United States. These are not the only methods used for circumvention. Importers will try variations of circumventing products that were imported in the past, and they will try to devise new methods for circumvention.

Section 5203 directs the Secretary of Agriculture and Commissioner of Customs to monitor continuously imports of products provided for under Chapter 17, 18, 19 and 21 of the HTS for indications that products are being used for circumvention. It is my understanding that "continuously" means looking at import statistics for each month. If they see anything suspicious, such as significant increases in imports over historic levels or a change in the ports of entry from the historic pattern, they will look into the transactions to assure themselves there is no circumvention or to determine precisely how the circumvention is being carried out. The Secretary and the Commissioner shall report their findings and make recommendations for action to Congress and the President every six months in a public report.

Mr. BAUCUS. As Chairman of the Senate Finance Committee and Co-Chair of the Conference Committee, I agree that you have accurately described this important section and its intent.

Mr. BREAUX. Thank you, Chairman BAUCUS for clarifying this issue. You clearly understand the importance we attach to this monitoring, reporting, and recommendation program. I also want to emphasize that we expect the Secretary of Agriculture and Commissioner of Customs to move quickly as soon as H.R. 3009 is signed into public law to establish an effective monitoring, reporting and recommendation program under section 5203.

AGOA

Mr. GRASSLEY. I would like to ask the chairman of the Finance Committee to engage in a colloquy for the purposes of clarifying several provisions in this conference report as they relate to the African Growth and Opportunity Act, known as AGOA.

Mr. BAUCUS. I would be pleased to engage in a colloquy on that subject.

Mr. GRASSLEY. Section 3108(a)(3) of the conference report amends section 112(b)(3) of AGOA, which provides for duty-free access for apparel made from regional fabrics, subject to a quantitative cap.

Mr. BAUCUS. That is correct.

Mr. GRASSLEY. As I understand it, section 112(b)(3) of AGOA, as amended by the conference report, would also cover garments made from regional fabrics that also incorporate U.S. formed fabrics made from U.S. yarns, U.S. formed yarns, or U.S. formed fabrics not made from yarns that are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States. An example of this might be a tailored coat made from African wool, that incorporates U.S. fabrics, linings, interlinings, or pocketing material. As you understand it, would such a garment be eligible for benefits under this provision?

Mr. BAUCUS. I believe that such a garment would be eligible for benefits under that provision. A garment entered under the regional fabric provision of AGOA is not ineligible for benefits simply because it happens to incorporate U.S. yarns, fabrics, or components.

Mr. GRASSLEY. A related question concerns the increase in the quantitative cap, provided for in Section 3108(b) of the conference report. As I understand it, the cap increases represent an approximate doubling of the percentages used in setting the caps under current law, except the increase can only be used for garments containing regional or a mixture of regional and U.S. inputs.

Mr. BAUCUS. That is correct. The cap is set as a percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Under current law, the applicable percentage for the 1-year period beginning October 1, 2000 was 1.5 percent. The applicable percentage increases by equal annual increments, so that for the period beginning October 1, 2007, the applicable percentage does not exceed 3.5 percent. Under that formula, the applicable percentage for the 1-year period beginning October 1, 2002 will be approximately 2.072 percent. Under section 3108(b)(1) of the conference report, that percentage will be increased by 2.17 percent. In other words, the new applicable percentage for the year beginning October 1, 2002 will be 4.242 percent. However, with respect to the increase over current law, *i.e.*, the additional 2.17 percent in the year beginning October 1, 2002, garments must be made from regional or a mixture of regional and U.S. inputs.

The conference report further provides that in future years, the applicable percentage will increase by equal increments, such that the applicable percentage for the 1-year period beginning October 1, 2007 will be not greater than 7 percent. For each year, the increase over the applicable percentage under current law pertains only to garments made from regional or a mixture of regional and U.S. inputs.

Mr. GRASSLEY. I appreciate the clarification.

TUNA CERTIFICATION OF ORIGIN IN THE ANDEAN TRADE PREFERENCE ACT

Mrs. BOXER. Mr. President, I have long been involved in dolphin conservation efforts. In the past, tuna boats were one of the leading causes of dolphin mortality. As a result of legislation that I and others worked on, tuna fishing practices have been modified and dolphin deaths have dropped dramatically.

In part, that success has come from clear regulations regarding dolphin-safe fishing practices and requirements that must be met before tuna can receive the "dolphin-safe" label. The United States tracks foreign tuna and determines whether it is dolphin-safe by requiring foreign parties to supply a Certificate of Origin for imported tuna. Specifically, I am referring to the National Oceanic and Atmospheric Administration's Form 370, which is required under the Marine Mammal Protection Act of 1972.

I am concerned that the reference to a Certificate of Origin in Section 3103(b)(5) of H.R. 3009 may inadvertently create some confusion regarding existing tuna certificate requirements. It is my understanding that the Chairman of the Finance Committee did not intend for this section to affect existing requirements that imported tuna be accompanied by a Certificate of Origin (i.e. NOAA Form 370) as required under the Marine Mammal Protection Act.

Mr. BAUCUS. It is my understanding that nothing in the conference report supercedes or repeals the provisions of law to which the Senator from California refers.

Mr. BREAUX. Mr. President, it is also my intent that the Andean Trade Preference Act not pertain to existing requirements that foreign parties provide a Certificate of Origin for tuna imported into the United States. This certificate, or Form 370, is necessary to verify whether imported tuna qualifies for the "dolphin-safe" label. This bill should not affect that process.

Mrs. BOXER. I thank my colleagues.

TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Mr. KERRY. Mr. President, I want to take this opportunity to engage in a colloquy with the Senator from Montana, Senator BAUCUS and the Senator from Louisiana, Senator BREAUX.

I would like to congratulate you both on your work in the Finance Committee and particularly thank you for your dedication to passing a strong Trade Adjustment Assistance bill. This is a strong step forward for U.S. workers indeed; however, I would like to seek your clarification as to whether fishermen are eligible for the program.

Mr. BAUCUS. Thank you, Senator KERRY. I would also like to thank you for all of your efforts in helping both in the Committee and on the floor to draft a strong bill that addresses the needs of America's businesses, farmers, and workers.

It was certainly my intent as Chairman of the Finance Committee and the lead conferee on the part of the Senate to make fishermen eligible for the Trade Adjustment Assistance for Farmers program. It is my understanding that Trade Adjustment Assistance for Farmers covers all commodities (including livestock) in the raw or natural state. The Trade Act of 1978, defines the term "livestock" to cover not only cattle, sheep, goats, swine, poultry (including egg-producing poultry), and equine animals used for food or in the production of food, but also "fish used for food." Also, the Food for Peace program, otherwise known as P.L. 480, includes "fish" under its definition of "agricultural commodity."

Mr. BREAUX. Senator BAUCUS, I was a member of the conference committee as well and it was my understanding that fish would be a qualifying agricultural commodity for the purpose of this act. Is that correct?

Mr. BAUCUS. Yes, my intent is that fish—wild, farm-grown, or shellfish—and inherently fishermen, be considered for the purpose of the Trade Adjustment Assistance Program for farmers. Also, fishermen can apply and should be eligible for the regular TAA for workers provisions.

Further, there is also a study added to the conference report on the topic of fishermen and TAA. It is my hope that this study will address the recent controversy about the application of the TAA for firms to fishermen as well as provide direction on future approaches to ensuring that fishermen are treated equitably under TAA, including whether a separate TAA for Fishermen program should be created.

Mr. KERRY. Thank you for that clarification, Senator BAUCUS. It is important that we make these programs work for all of America's workers, and I look forward to working with you to make that happen. It is my understanding that the Administration is preparing letters specifically outlining TAA eligibility for fishermen, and I look forward to receiving those very soon.

Mr. GRASSLEY. Mr. President, I rise in strong support of the conference report to accompany H.R. 3009, the Trade Act of 2002 and urge my colleagues to support cloture and final passage of the bill.

This bill is the product of over a year and a half of intense negotiations, discussion, and debate among Republican and Democrats in both Houses of Congress. Because of these efforts, the Trade Act strikes a solid and balanced compromise among a number of key issues and competing priorities. It is a product which should receive broad support here in the Senate today.

The Trade Act of 2002 renews Trade Promotion Authority for the President for the first time in almost a decade. Through a spirit of compromise, Democrats and Republicans were able to break the deadlock of TPA and reach a balanced compromise on a number of key issues.

For example, for the first time TPA contains a negotiating objective on labor and the environment. Negotiators are directed to seek provisions in trade agreements requiring countries to enforce their own labor and environmental laws. These negotiating objectives also recognize a country's right to exercise discretion and establish its own labor and environmental standards without being subject to retaliation.

The bipartisan TPA provisions also contain carefully balanced provisions on investment, which preserve the fundamental purpose of the investor-state dispute settlement procedures while ensuring that they are not subject to abuse. The TPA provisions preserve the ability of the United States to enforce our trade remedy laws which help combat unfair trade practices.

Finally, they contain unprecedented consultation procedures which ensure meaningful and timely consultations with Congress every step of the way, without curtailing the President's ability to negotiate good agreements.

In short, the Bipartisan TPA bill provides the President with the flexibility he needs to negotiate strong international trade agreements while maintaining Congress' constitutional role over U.S. trade policy. It represents a thoughtful approach to addressing the complex relationship between international trade, worker rights, and the environment. And it does so without undermining the fundamental purpose and proven effectiveness of Trade Promotion Authority procedures. It is an extremely solid bill which I am proud to support.

I would like to include some material for the RECORD which provides some background on how we got to where we are today.

Today we are on the verge of passing this critical bill and sending it to the President's desk for his signature. I want to recognize Chairman BAUCUS' strong efforts during the recent House-Senate conference on the Trade Act. I think they were key to our success.

I would now like to briefly outline two other provisions in the bill—Trade Adjustment Assistance and the Andean Trade Promotion Act.

First on TAA. The Trade Act reauthorizes and improves Trade Adjustment Assistance for America's workers whose jobs may be displaced by trade. I think the TAA provisions in the Trade Act are a vast improvement over the legislation that passed the Senate. The Senate TAA bill would have entirely rewritten existing law. In doing so, the Senate bill added a number of new, costly definitions, time-lines and ambiguous administrative obligations. The Trade Act removes these burdensome and ill-advised changes.

Unlike the Senate bill, the Conference Report simply amends and builds upon existing law. It adds new provisions which help to actually improve the TAA program while maintaining its linkage to trade. The TAA provisions in the Trade Act consolidate the TAA and NAFTA-TAA programs, thereby establishing a uniform set of requirements. It triggers immediate provisions of rapid response and basic adjustment services and streamlines the petition approval process.

The act also reduces by one-third the time period in which the Secretary must review a petition. At the same time, the TAA provisions drastically scale back the number of workers who can be eligible for TAA, thereby ensuring that only those workers who are truly impacted by trade and in need of retraining are eligible for assistance. The Trade Act includes a 65 percent health insurance tax credit, and presents a firm, clear alternative to expanding Medicaid and over government run health insurance coverage.

In short, the Trade Act improves the Senate passed TAA bill and represents a more balanced approach to ensuring that workers displaced by trade get the assistance and training they need to quickly re-enter the workforce and compete in the international environment.

There is another extremely important provision in the Trade Act that I would like to briefly mention, and that is the Andean Trade Promotion and Drug Eradication Act. This provision will help eradicate drug trafficking in the Andean nations by helping to create new employment opportunities for the citizens of Bolivia, Ecuador, Colombia and Peru. It is a vital piece of legislation for our Andean neighbors and a critical tool in our effort to fight drug trafficking.

The intent of the Andean Trade Preference Act, from the beginning, was to advance our efforts to combat illegal drug production and trafficking. It was then and is now not so much a trade initiative as it is an effort to assist important allies in a critical fight. The nations of Latin America expect us to continue to stand by their side as we fight the scourge of drugs. They have paid a high price to aid us in this effort. It is a battle we cannot afford to lose. So we cannot fail to do our duties as legislators and provide them with the support they need with this important legislation.

Before I conclude, I want us to step back and take a look at the big picture.

I will be the first to admit that this bill is not perfect. There are provisions in this bill which I do not support and there are many items I wish were in the bill that are not. But all in all it is a good, fair, and balanced package. It deserves our strong support, especially in this changing international environment.

International trade has long been one of the most important foreign policy and economic tools in our arsenal. It was a key component of our post-World War II international economic strategy. For over fifty years international trade contributed to stability and economic growth throughout the world. It helped to lift the nations of Europe and Asia out of the ashes of World War II. And it helped America experience unprecedented prosperity here at home. International trade can play a similar role at the beginning of the twenty-first century. But our nation must have the tools to lead. This bill will make a difference. Nations around the world are waiting for our call and our leadership.

Today, the eyes of the world are on the Senate. We cannot let them down. I urge my colleagues to support the conference report, vote for cloture and final passage of the bill.

I ask unanimous consent to print the information I earlier referenced in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Transcript Excerpt From the Mark-up of the Trade Adjustment Assistance Bill S. 1209—December 4, 2001

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Thank you, Mr. Chairman.

Obviously, I will repeat some of the things that I said the other day.

The CHAIRMAN. It does not have to be obvious. You can change.

Senator GRASSLEY. Well, these are things that I think we need to remind ourselves of, particularly the bipartisanship of this committee.

When this mark-up began last week, I stated that I support Trade Adjustment Assistance. I do not support it, though, in the partisan way that this legislation has been advanced.

Now, you took time during your statement to show how there had been cooperation among Republicans and Democrats to deal with some things that ought to be in Trade Adjustment Assistance.

So, my remarks in regard to the partisan way are related to the bill containing provisions from the Democratically-passed stimulus package that makes sweeping and permanent changes to our health care system. Just as my colleagues on the other side failed to work in a bipartisan fashion on economic stimulus, they have followed the same course again on these health provisions for Trade Adjustment Assistance.

These things should be taken up as part of our consideration of health programs and not be mixed with, or at least on the stimulus package, Trade Adjustment Assistance.

I think we have a situation here, as I said a week ago, where we have got two very good bills. I think when we finally get a Trade Adjustment Assistance bill, unless, for instance, it were to have these health care provisions in it, you have got a bill that will pass the Senate almost unanimously.

I think that we would have a situation, if we got trade promotion authority out of here, and one that I think would be very much a bipartisan bill, would pass the Senate overwhelmingly, not unanimously or near-unanimously like Trade Adjustment Assistance might.

But when you are going to bring these bills to the floor of the Senate where there is not an arrangement for both to go, whether they go together or go separately, we have a situation where there are two very popular public policy decisions that could be on the Senate floor that could pass by big margins. But one will not pass without the other. That is not a whole lot different than when Trade Adjustment Assistance first came in to public policy 40 years ago. They kind of came in together.

So I want to say, again, that we must not lose sight of the importance then of renewing the President's trade promotion authority this year. I know that some members of this committee believe that we should act only after the House has acted on this very important piece of legislation.

But it appears to me that this is a criteria that is selectively applied. All you have to do is look at what we are doing this morning, marking up Trade Adjustment Assistance legislation before the House has acted. We also marked up fast track legislation in 1997 before the House acted, and it was strongly bipartisan, that the committee approved, with only one dissenting vote.

So making a committee vote on renewing the President's trade negotiating authority contingent with House action is not in accord with recent action of this committee, including what we are doing here today.

In addition, Mr. Chairman, I believe, and many members of this committee believe, that Trade Adjustment Assistance ought to be considered in tandem with legislation to renew the President's trade negotiating authority.

This is not a new idea. When President Kennedy first designed the Trade Adjustment Assistance program in the 1960s, he specifically stated that adjustment assistance was integrally linked to the Kennedy Administration's overall efforts to reduce barriers to foreign trade.

That linkage was explicitly stated in President Kennedy's message to Congress when he announced that the first Trade Adjustment Assistance program was to be part of the Trade Expansion Act of 1962.

Here is what he said in 1962: "I am also recommending as an essential part of the new trade program that companies, farmers, workers who suffer damage from increased foreign import competition be assisted in their efforts to adjust to that competition."

Ever since President Kennedy created the linkage between trade expansion and Trade Adjustment Assistance, that linkage has been maintained, both by Democrat and Republican administrations.

The linkage between Trade Adjustment Assistance makes sense. It made sense when

President Kennedy designed the Trade Adjustment Assistance program in 1962, so consequently it makes sense today. It ought to be preserved. I will oppose any efforts to sever the historic linkage between trade expansion and Trade Adjustment Assistance.

Finally, Mr. Chairman, I again regret that we cannot get to a vote by a date certain on the President's most important trade policy initiative. As I said last week, we should not call it trade promotion authority for the President because, quite frankly, we are talking about trade promotion authority for America.

That is because America will win if we can realize the promise of opening new markets for our farmers, ranchers, and workers. But America will also lose, our farmers, ranchers, and workers will lose, if our effort to renew the President's trade negotiating authority gets bogged down in partisan bickering.

I urge my colleagues, Democrats and Republicans alike, to work with me on trade promotion authority for America. We can do this. We must do it. We must do it in a bipartisan way, in the great and enduring tradition of this committee.

I also might add that today is the day in which we are going to start applying tariffs and other trade provisions to the Andean Pact nations, because the Andean Pact lapses today. I think that that is an example of our committee being a little late from time to time on very important pieces of trade policy that we should really push.

I think we ought to take into consideration that nations that this committee expressed last week need our help, almost unanimously—in fact, it was probably a unanimous vote—that we move ahead with the Andean Pact.

It is too bad that we have not moved quickly enough so that these nations continue to be helped, as they have been helped under the Andean Pact, and as we would expand the Andean Pact legislation to do even greater good for those nations to help themselves.

Quite frankly, it is only trade and it is not going to be aid that moves the economies of these nations along. It is really a missed opportunity now that, after all these years of having the preferential treatment of imports from the Andean Pact nations because we felt that it was very necessary to help them to help themselves, which is what trade does, that now there is going to be a greater cost, consequently less trade. Obviously, the economies of these countries are going to be hurt.

These are the very same countries that we feel we ought to be helping, because that's where we need to strengthen their economy so that they are not so dependent upon the drugs that they produce that are coming to our country, and a lot of other reasons as well, but that is a very important one for our country.

So, I hope we have a very aggressive trade agenda, we move forward. The most important one is trade promotion authority for the President, regardless of what happens in the House of Representatives, because I do not think that the Senate is irrelevant on this issue of trade promotion authority.

I yield the floor.

The CHAIRMAN. Thank you very much, Senator. I agree with you on the Andean Trade Preferences Act which has passed this committee, and hopefully can be brought up and passed on the floor this year.

The bill is now open for amendment.

Senator Hatch?

Senator HATCH. Mr. Chairman, is it appropriate for me to offer my amendment?

The CHAIRMAN. Absolutely.

Senator HATCH. All right. I will offer on amendment that will add trade promotion authority language to the Chairman's mark. In addition, my amendment would substitute the Chairman's mark's TAA language with the administration's Trade Adjustment Assistance proposal.

Traditionally, the Finance Committee has played a leadership role in forging major bipartisan consensus legislation in the areas of importance to the American public. Mr. Chairman, you and Senator GRASSLEY both rose to that occasion in the tax bill earlier this year. Time and time again, this committee stepped up to the plate in difficult areas.

For example, we took the lead in 1997 in the Balanced Budget bill and even found a way to weave the Children's Health Insurance program into that critical legislation.

I take exception to the view that the prudent course is for this committee to wait and see what the House does on TPA. With all due respect, I simply do not agree with what the Chairman said last week, that it would be a waste of time of this committee and the whole Senate if we were to take up fast track legislation prior to the House action.

Frankly, I am not sure that there is any better use of time of this committee and the Senate than in trying to reach a compromise on trade legislation that can help jump-start our stagnating economy.

America is fighting a war against terrorism, and we are fighting this war in the midst of a deepening economic recession. As the unemployment statistics climb, it would seem wise to aggressively pursue trade policies that help to create new jobs for Americans.

We know that over the last decade, exports have accounted for between one-quarter and one-third of U.S. economic growth. We know that these export-related jobs pay about 13 to 18 percent higher than the average U.S. wage.

Mr. Chairman, I do not know about the farmers in Montana, but in the Utah Agricultural Committee they have told me that, in no uncertain terms, that community wants to see TPA pass, because one in three farm acres go for exports. They want to ship even more of their products overseas.

In my view, it was unfortunate that we let Ambassador Zoellick go to Doha last month without the mandate that TPA would have given the U.S. delegation. Economists estimate that the next WTO trade round could bring an additional $177 billion in benefits to the United States. So, it is in our national interests for U.S. negotiators to be leaders in bilateral and multilateral trade initiatives.

Now, given these facts and circumstances, many of us just do not understand how timely consideration of TPA legislation continues to elude the committee's attention.

My amendment is simple. It has two features. First, my amendment would have the committee adopt the same TPA language that the committee reported to the Senate floor back in 1997. Second, I would amend the amendment I filed last week to replace the Chairman's mark on TAA with the administration's Trade Adjustment Assistance proposal.

Now, with respect to trade promotion authority, I think that my colleagues who served on the committee will recall the provisions of old S. 1269 of the 105th Congress. There was broad bipartisan support for this measure. It was adopted by the Finance Committee on a voice vote.

Now, this amendment consists of carefully constructed language. Twice, it has survived cloture votes on the Senate floor, by a 69 to 31 vote on November 4, 1997, and by a 68 to 31 vote a day later.

Why do we not simply adopt this non-controversial support of 1997 language again today? For example, we have heard all year about the importance of labor and environment provisions.

Here is what the 1997 bill and my amendment says on that score. My amendment says, "It is the policy of the United States to reinforce the trade agreements process by promoting respect for "workers" rights by seeking to establish in the International Labor Organization a mechanism for the systematic examination of, and reporting on, the extent to which ILO members promote and enforce the freedom of association, the right to organize and bargain collectively, a prohibition on the use of forced labor, a prohibition on exploitative child labor, and a prohibition on discrimination in employment." What is wrong with that language?

With respect to the environment, my amendment calls for "expanding the production of goods and trade and goods and services to ensure the optimal use of the world's resources, while seeking to protect and preserve the environment and to enhance the international means for doing so." So, this amendment addresses both labor and the environment, and it is no wonder why it was so broadly supported back in 1997.

Now, I have been around here long enough not to be totally shocked if my amendment is not adopted today. But I do want to leave my colleagues across the aisle with the message that I am prepared to listen to your concerns and work with you in good faith across the aisle to fashion compromise bipartisan TPA legislation that will get the job done.

I think that the bipartisan legislation put forward by Senators Gramm and Murkowski might also serve as a good vehicle to get us off the dime. Instead of sitting around waiting for the House to act, why do we not send the House and the American public a strong message that the Senate intends to pass both trade promotion authority and Trade Adjustment Assistance as soon as possible?

The political reality may be that both of these measures may have to pass, or both may fail. We can accept failure for either of these measures. While I do not believe that it should be necessary to tie these two pieces together in one bill, there are certain advantages of doing so. The suspension of production by Geneva Steel in Utah last month, the largest steel mill west of the Mississippi, has underscored to me the importance of Trade Adjustment Assistance, among other things.

For over 1,400 steelworkers and their families, the future is not clear. Unfortunately, they can benefit from some help. I want to commend Senator Rockefeller for his efforts on behalf of the steel industry at the ITC.

With respect to Trade Adjustment Assistance, I am offering the administration's proposal. We have with us at the table Mr. Chris Spear, Assistant Secretary for Policy at the Department of Labor, to discuss the details of the proposal. But I want to make a few points about this part of my amendment.

The administration's TAA proposal is a focused, balanced, and revenue-neutral approach. It expands eligibility for shifts in production benefits to workers displaced by shifts in production to countries in which the U.S. enters into a new trade agreement, thereby preserving the nexus between trade and assistance.

Recognizing that it makes no sense to maintain two similar, yet separate, TAA programs, the administration's proposal consolidates administration of the TAA program and the NAFTA TAA program. It modifies current requirements for training waivers, specifying five conditions under which training requirements may be waived.

Finally, perhaps the most innovative feature of the administration's proposal is the creation of a trade adjustment account option pilot program to offer the option of a limp sum payment in lieu of traditional TAA benefits.

The bottom line for American workers and their families has to be for Congress to successfully open up new markets for U.S. goods for the new trade agreements that TPA legislation will help spawn, and to help displaced workers through TAA.

The American people want us to work together to help solve our Nation's problems. That is what we did with the counter-terrorism legislation. That is what we will do with the bioterrorism legislation that Senators Frist, Kennedy, Gregg, and many of the others of us are developing. I hope that this committee can meet the challenge we face in fashioning both TAA and TPA legislation, and that is what this amendment attempts.

So, I want to thank you, Mr. Chairman, for making this rather lengthy statement, but I sure hope we can pass this amendment.

The CHAIRMAN. Thank you, Senator. Any comments?

Senator GRASSLEY. Mr. Chairman, I strongly support this amendment to renew the President's trade promotion authority. Senator Moynihan said, when this bill was approved three or four years ago, that it was, in his words, "an extraordinary agreement."

Many of my colleagues who were on the committee four years ago will recall that the 1997 bill was passed by the committee before the House acted, with broad bipartisan support. There was just one dissenting vote, as I recall.

It enjoyed equally strong bipartisan support on the floor. The motion to invoke cloture on the motion to proceed was approved by a vote of 69 to 31. This model of bipartisan trade legislation should serve as our model today.

Because it was passed by such a wide and convincing bipartisan margin just four years ago is not enough to dismiss this bill by saying that times have changed. Trade negotiating authority for the President was as controversial then as it is now. The choices in front of us in 1997 were as tough and as challenging then as they are now. The importance of the United States' leadership in trade policy was as important in 1997 as it is now.

Let us again reaffirm what Senator Moynihan said in 1997. This is an extraordinary agreement and it is worthy of continuation of this committee's historic heritage of bipartisanship in U.S. trade policy. I urge my colleagues to again vote in favor of this legislation by adopting this amendment.

In regard to the amendment that Senator Hatch has of connecting Trade Adjustment Assistance to it, as I stated in my opening comments, this is also in regard to a tradition that was started with trade promotion authority during the Kennedy Administration.

So I would like to say a word on the administration's TAA proposal because I think the administration has been unfairly criticized in the last few days in the press about its proposal and I would set the record straight.

A tremendous amount of effort has gone into developing the administration's proposal. The administration put together a working group consisting of four cabinet-ranked officials, Secretaries Chao, Evans, and O'Neill, as well as Ambassador Zoellick. They developed this proposal.

Countless hours were spent drafting and refining a proposal that makes some very positive changes in our Trade Adjustment Assistance laws. They also did this in a very responsible way, from a budget point of view, that is. Rather than throw money at the program, they came up with a revenue-neutral approach that represents a serious and very reasonable compromise.

So, I commend the administration this morning for their outstanding work that has gone not their Trade Adjustment Assistance proposal. That is part of Senator Hatch's amendment. It is an excellent proposal and I think it deserves the consideration of this committee and the support of this committee.

The CHAIRMAN. Any further discussion?

Senator BREAUX. Mr. Chairman?

The CHAIRMAN. Senator Breaux?

Senator BREAUX. Thank you very much, Mr. Chairman. Once again, I think we have proved that we all can play great defense, but the problem is, how do you get an offense together? You cannot win unless you can score.

I think that we are in a situation now where our Republican colleagues can prevent us from passing the Trade Adjustment Assistance Act, and we can prevent them from passing fast track.

But I really question whether that is what we should be doing. We should be passing things and getting things done instead of just playing defense and blocking each other.

The House, I take it, is going to take up fast track on Thursday and there is a real question of whether they are going to pass it or not. It is very controversial over her. The Chairman has made a decision that, let us wait to see what our colleagues are going to do over in the other body.

If they pass the bill over there—which is questionable, but I think they will probably put it together and get it done—I think the Chairman has indicated that he is willing to move forward on fast track over here and do both together.

Now, here it is, 11:00. We know that we are, I think, not going to get anything done all day long in our committee. That it unfortunate. It would seem that we could get some kind of an agreement to see what the House is going to do, take both of them up, and pass both of them. I mean, that is what I would like to see done.

I am for fast track authority for this President, the last President, and the next President. I think they ought to have it. I think it is absolutely needed. I think the Trade Adjustment Assistance bill is also very important. We have got a situation where people need help, and this is a proper, appropriate federal response.

So, it is unfortunate that the defense is going to win. Defense is going to win this game today. That is pretty clear. But I just suggest that there ought to be a way to bring these concepts together and get both of them done. I think that after Thursday when the House does it, is the appropriate and proper time to do it. I am for fast track. But I think I am certainly going to follow the leadership of the Chair and say, let us wait and see what the House does. That is just a practical way to handle it.

Thank you.

The CHAIRMAN. I might say also to my good friend from Utah that it is my intention to bring up fast track before the committee if, and when, the House passes the bill. Now, the vote is scheduled for Thursday over in the House. I, frankly, question the advisability of pressing for a fast track vote here at this time in this amendment. This bill is going to lose. That might have some adverse effect on the House vote, I do not know. But I would just urge, therefore, the Senators to withdraw the amendment because our goal here is to pass both fast track and Trade Adjustment Assistance.

Now, the Chair will schedule a fast track mark-up next week. Not the end of next week. It is in good faith, next week, so that we could consider this bill. I think it is unlikely that fast track will reach the floor of the Senate this session. Highly unlikely. But, as I have said time and time again, if the House dose pass fast track, I will move it.

Senator BREAUX. Yes, certainly.

Senator BREAUX. I think the Chairman makes a good point. I would say to our Republican colleagues, to Senator Hatch in particular, we know what is going to happen with this vote. I think, if we have a fast track vote in this committee today, with the very fragile coalition we have in the House, this could be a signal to the House members that the Finance Committee killed it. I think that would be terrible for those who wanted to get it passed. We all know what is happening. I think it is a major point that it should be done.

But the House is on a string about whether they have enough votes to pass this. Those who are opposed to it over there, and some of them are Democrats, will use this vote in this committee to help get the bill killed in the House, and therefore prevent it ever coming up in the Senate. You have made your point. Do not push it to a vote because it sends a terrible signal. I think the Chairman is right on target on that point.

Senator KYL. Mr. Chairman?

The CHAIRMAN. Senator Kyl?

Senator KYL. If I could, just in response to that. I do not understand something here. I guess I have not been on the committee long enough. But if we are all for fast track, why is the vote going to lose?

The CHAIRMAN. Because this is a vote for another fast track bill. It is not even on the fast track that is before the House. It is totally different.

Senator KYL. If one ways it is totally different, then nobody in the House should take anything from a vote on this particular provision.

The CHAIRMAN. Well, but we all know that sometimes the way results are written up by the press and around, and different people interpret things different ways, I just think it is inadvisable for us to do this.

Senator KYL. I cannot believe the press would not write this—

The CHAIRMAN. I cannot either, but sometimes it happens.

I might say, too, the House has twice defeated fast track and it was withdrawn a third time. So, that is a very legitimate question of whether the House is going to pass fast track.

Senator HATCH. But would it not be comfortable if we did?

The CHAIRMAN. If I might continue.

Senator HATCH. I am sorry. I apologize.

The CHAIRMAN. I do not think we should waste our time here. That is, if the House does not vote fast track this week, then I think it is inadvisable for us to act this week, and with so few days remaining.

Senator GRASSLEY. Did you say in your previous statement, the one befoe now, that you would have a mark-up next week on fast track?

The CHAIRMAN. If the House passes fast track. Yes. If the House passes fast track, I will have a mark-up next week on fast track.

Senator BINGAMAN. Mr. Chairman?

The CHAIRMAN. Senator Bingaman?

Senator BINGAMAN. I wanted to also just say a word about the other aspect of Senator Hatch's amendment. As I understand it, is to adopt the Trade Adjustment Assistance proposal the administration has made.

Senator HATCH. Right.

Senator BINGAMAN. I think that would be a major mistake and a major disappointment for a lot of workers around the country. The truth is, it is revenue-neutral. That means that we are essentially saying that we will be spending no more on Trade Adjustment Assistance in the future than we have spent in the past.

Benefits will not be improved in any of the respects that we are intending to in the bill that we are currently trying to proceed with the mark-up on. There will be no assistance to communities.

There will be no assistance to secondary workers. There will be no extension of benefits from 52 to 78 weeks for those who are trying to get training to go into other lines of work. I think that would be a major disappointment for a lot of people. So, I hope very much that, on that ground alone, we would turn down the amendment that the Senator from Utah has offered.

Senator GRASSLEY. I do not know exactly what the author of the amendment will do. But I would hope that, with the statement by the Chairman that he will mark up next week if the House passes a bill, conversely, that this will give some encouragement to the House of Representatives to move forward and pass it because we have a commitment then that this is not going to be bottled up in this committee. That does not mean what is going to happen on the floor of the Senate, but at least it will not be bottled up here by the Chairman. That might encourage the House to move forward with it.

I yield.

Senator HATCH. If I could just ask, before I make this momentous decision. I have listened to my colleagues.

The CHAIRMAN. Careful.

Senator HATCH. I am very considerate of my colleagues most of the time, I think. But could I ask Mr. Spear to tell me why Senator Bingaman is not right? I mean, I know why, but I would like to hear it from you.

Mr. SPEAR. Well, Senator, there are some significant differences.

Senator HATCH. You can be a little more diplomatic. You do not have to refer to Senator Bingaman. [Laughter].

Mr. SPEAR. There are some significant differences in the two proposals and I would be remiss if I did not say that the administration is grateful to have had the opportunity to work collaboratively with staff on both sides of the aisle for several months now.

I think since May, when we first started discussing ways to improve the program, we each had different solutions to that. I think both proposals tried to get at the same goal, just in different ways.

I think, in terms of secondary workers, COBRA care, extended income support, these are all significant things that are items that stand out in the Chairman's mark that are not present in the administration's proposal.

The administration worked very hard, based on three GAO reports and a recent IG report in the Department of Labor to improve its program. I do not recall any income recommendations made in those reports that would justify bolstering more money in the program to enhance the performance.

I think what we tried to do is to increase performance, to get results, stress training, which is mandatory under the program, and make certain that people get placed as quickly as possible. I think that is the goal of the program. I think the administration's mark gets to that point.

Senator SNOWE. Mr. Chairman?

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Thank you. Mr. Chairman. I hope that we could sever these issues because I do think it is extremely important to move ahead on the reauthorization of the Trade Adjustment Assistance.

But, more than reauthorization, it is an expansion on the program itself based on the need and tailored to some of the issues that have been developed as a result of so many displaced workers. The demands have been extraordinary on the program, so obviously we need to do far more in providing needs to displaced workers.

It does include health care provisions, although I do not agree with the provisions that are in this legislation, particularly. I did support the original provisions that were included in Senator Bingaman's bill. Hopefully we will get back to that, because I think 75 percent, based on this legislation, is unprecedented.

But, in any event, I do think we need to go forward with this legislation, and based on changes. I know I have worked with the administration as well and they have been commenting on a number of issues, and I have worked with the Chairman and Senator Bingaman, who have been very responsive to some of my issues as well.

I do think that we have to expand the program to include secondary workers, as well as a program for farmers and fishermen, increasing the amount of money available for retraining. In my State of Maine, we have lost thousands and thousands of manufacturing jobs. In just the last few years, there have been more than 7,000 workers in my State that have depended upon the Trade Adjustment Assistance program.

So, it is not only necessary to move forward with this program, but also to move forward in a way that reflects and accommodates the additional issues that need to be addressed through this reauthorization process that provides a far better benefit to displaced workers, reflects the realities of the workplace in making sure they have that kind of support.

In addition, I do think it is critical to provide support to communities. Obviously, when manufacturing plants or any plants are closed down in a community in small towns like in my State, clearly it has a reverberating effect throughout the community.

So, we have to identify those firms that had a direct, and in some cases indirect, relationship with the plant that closed that really does present a hardship in the particular community. I think we also have to provide additional support for retraining, as has been recommended in the legislation before us.

I would hope that we would separate these two issues. I am not sure where I am on the trade promotion authority. That is something that I am certainly going to reflect upon. I do think that we should mark up that legislation and have a date-certain commitment if the House of Representatives does move forward in this legislation this week.

I do think that that is going to be important to address in the final analysis, and I am prepared to work on that legislation this month as well, Mr. Chairman and Ranking Member Senator Grassley, who I know is a strong supporter of the trade promotion authority. Thank you.

Senator HATCH. Mr. Chairman?

The CHAIRMAN. Senator Hatch?

Senator HATCH. Mr. Chairman, I would like a vote on this. But I can see which way the vote is going to go and there is no reason to put anybody through that.

Would the Chairman commit to a good-faith effort to, if the House does not pass this or they do not act on this, to bringing this up after the first of the year?

The CHAIRMAN. Senator, I think we all favor fast track. We all want a fast track that is fair and responsible to American people. I think that a vote today reporting out TAA sends a very strong positive signal for expanding trade, and I hope we pass that bill out today.

With respect to your specific question, in the event the House does not pass fast track this session, then next year I will, at the earliest possible time, look for a time when we can take up in the committee and have a mark-up on fast track. I cannot give a specific date because next year is next year.

Senator HATCH. Sure.

The CHAIRMAN. It is just hard to tell what the timing is next year. But I do think that it is appropriate for us to try to take it up.

Now, on the other hand, if the House vote is very negative, then it might make sense for us to wait a little longer, or maybe speed it up. It is hard to tell.

Senator HATCH. Or we might have to lead on.

The CHAIRMAN. You just have my attention, that I will bring up fast track as early as practical within a reasonable way, because we all want to get fast track passed in a way that makes sense.

Senator HATCH. All right. Well, I have listened to my colleagues. It is apparent that it would be basically defeated for a variety of reasons here today, so I will withdraw the amendment and listen to my colleagues.

The CHAIRMAN. I thank the Senator.

Mr. HUTCHINSON. Mr. President, I rise in support of the Conference Agreement on Trade Promotion Authority. Since 1994, when trade promotion authority lapsed, America has been on the sidelines while other countries have negotiated free trade agreements beneficial to those countries and harmful to us. Our trading partners around the world have sealed deals on approximately 150 preferential trade compacts, many within our own hemisphere. Yet the United States is party to only three.

Encouraging trade has been an undeniable benefit for Arkansas' economy. Arkansas export sales of merchandise for the year 2000 totaled $2.07 billion, up over 13 percent from 1999 and 86 percent higher than the State's 1993 total of $1.11 billion. Arkansas exported globally to 134 foreign destinations in 2000. More than 69 percent of Arkansas's 1,456 companies that export are small- and medium-sized businesses, and 61,700 Arkansas jobs depend on manufactured exports. Wages for those jobs are 13 to 18 percent higher than the national average. For 8 years the United States has missed out on opportunities to increase trade, opportunities we frankly could not afford to miss. Today the Senate will complete our debate on granting the President trade promotion authority.

This critical legislation gives the President the authority to negotiate and bring trade agreements to Congress that will eliminate and reduce trade barriers relating to manufacturing, services, agriculture, intellectual property, investment and e-commerce. Most importantly, this legislation ensures that Congress can fulfill its constitutional role in U.S. trade policy and fight for the interests of U.S. workers as well as industry.

One area of the conference agreement that deserves special recognition is the treatment of trade remedy laws. Our Nation's trade laws are essential to U.S. manufacturers, farmers, and workers. I am strongly committed to preserving U.S. trade laws, as are many of my colleagues. Many of us have written to the President, stating our opposition to trade agreements that would weaken trade remedy laws. The Senate commitment to preservation of the U.S. trade law is unequivocal.

The conference agreement speaks very clearly to this commitment. The legislation before us upgrades, as a "Principal Negotiating Objective," the preservation of the ability of the United States to vigorously enforce its trade remedy laws. This agreement officially codifies our commitment to the preservation of these laws and to avoid weakening measures. It also includes provisions directing the President to address and remedy market distortions that lead to dumping and subsidization.

Additionally, the conference agreement provides for close consultation between the administration and Congress throughout ongoing trade negotiations. It requires the President to report to Congress 180 days, before entering into a trade agreement, describing the trade law proposals that may be included in that agreement and how these proposals fulfill the principal negotiating objectives. After that report has been submitted, Congress may consider a resolution under special rules expressing disapproval of any trade law weakening provisions that may be included in a trade agreement.

As the administration moves forward with trade negotiations, I urge our negotiators to view the measures adopted today as a clear signal that Congress will take seriously any attempts to weaken our domestic trade laws in the context of these negotiations. The laws currently in place, particularly the antidumping and countervailing duty laws, ensure that free trade is also fair. These laws are of critical importance to U.S. manufacturers, farmers, and workers, and they must be preserved. I plan to follow our multilateral trade negotiations very closely with an eye toward assuring the integrity of these laws.

Mrs. MURRAY. Mr. President, I rise to indicate my support for the Andean Trade Preference Act conference report now before the Congress. As my colleagues know, this conference report contains a number of trade provisions, including Trade Promotion Authority.

As I have said throughout my service in the Senate, Washington State is the most trade-dependent State in the country. Trade and our ability to maintain and grow international markets for our goods and services is tremendously important to my State. It is an economic issue, a family-wage jobs issue for my constituents who are accustomed to international competition. With these new trade tools, the President can give Washington State exporters new and expanded opportunities abroad. Expanded trade can play a role in job creation and economic recovery for Washington State.

The conference report, like all legislation, is a compromise. And while I would have liked to see even stronger provisions on trade adjustment assistance and worker and environmental protection, the conference report represents real progress on many issues I have worked on and supported over the years.

More workers will be eligible for trade adjustment assistance. Some workers from secondary industries will be covered for the first time under the conference report. The Senate bill provides a new health benefit to displaced workers.

The Senate bill provided a stronger health benefit for displaced workers. The conference report provides a 65-percent up-front, refundable tax credit for COBRA coverage which is slightly less than the 70-percent up-front credit provided by the Senate bill. This is a significant benefit. Congress will have to monitor closely the degree to which displaced workers are able to access the benefits. If necessary, I will not hesitate to support further modification of this program to allow displaced workers and their families to keep their health insurance. This is an issue of ongoing interest to me.

Fast track or trade promotion authority has been debated extensively now for 8 years. The President will soon have the authority that he and his Democratic predecessor sought. As the administration looks forward to difficult trade talks with Chile, Singapore, and others, I call upon the President and USTR Zoellick to be true to the debate the Congress has had on trade promotion. Many important issues have been raised. And while not all are included in the final conference report, the issues raised by the Congress will play a role in final approval of any trade agreement negotiated with TPA.

I am concerned that this administration will not be inclusive in upcoming trade negotiations. Members of Congress and outside groups have a legitimate role to play in setting national trade priorities and policy and I encourage the administration to be respectful of these roles. I have had several discussions with Ambassador Zoellick and he has demonstrated to me an awareness of important issues to my State. The administration should not misinterpret today's TPA vote. It is not a vote for a trade agreement. Congress will closely scrutinize the work of this administration as it negotiates as well as any agreement submitted for consideration under TPA's expedited procedures. I will be a very interested observer as the President and his trade team move forward.

The tremendous importance of international trade to my State, my entire State is the strongest argument for my vote in support of trade promotion authority.

I look forward to continuing to work with my colleagues, my constituents and the administration on important international trade issues. Today's vote is an important step, a complicated step but ultimately the right step for our country.

Mr. ROCKEFELLER. Mr. President, I rise in opposition to the conference agreement on the Andean Trade Preferences Act of 2002 that will grant the President authority to negotiate trade agreements and send them to Congress for a straight up or down vote on an expedited schedule. This Administration has not demonstrated that it will preserve our existing trade laws when making international agreements. That means American workers are very likely to be injured by new trade deals, and I cannot in good conscience give up my rights to protect them through the traditional legislative process. I will vote no on this conference agreement.

I remind my colleagues that within the first few months of this Administration, U.S. trade negotiators put our trade laws on the table at the urging of foreign interests, as they sought to reach an agreement for the agenda of the upcoming trade round in Doha, Qatar. That happened even though 62 Senators had written the President and told him that we did not want any weakening of our trade laws as part of those negotiations. And it happened even though personal commitments had been made to me, as a Member of the Senate Finance Committee, that such actions would not be taken. The Administration knew very well that a clear, strong bipartisan majority in the Senate believed we should fully protect our trade laws, and they made them a bargaining chip anyway.

Without the assurance that our existing unfair trade laws—including our antidumping, countervailing duty laws, will be protected and aggressively enforced in all instances, I cannot give new authority to the President to negotiate treaties that could leave American workers without needed remedies for unfair trade. West Virginia's hard experience with illegal trade shows why we must maintain the minimal protections provided by our existing trade laws.

As a member of the Senate/House conference committee that hammered out this agreement, I know that Members of good faith worked hard to produce a bill that balances trade promotion and assistance for workers displaced by trade. In my judgment, the beneficial provisions that help displaced workers in this package do not offset the damage that could be done to American workers through the virtually inevitable weakening of our trade laws.

During the Senate debate, I made it clear that I had tremendous concern about the potential for new trade agreements to weaken U.S. trade remedy laws, in particular the antidumping and countervailing duty laws. These essential laws level the playing field on which our firms and workers compete internationally, and they serve the crucial function of offsetting and deterring some harmful unfair trade practices affecting international trade today.

I know the Chairman of the Finance Committee shares my concern that we preserve these laws, but we have a disagreement over the effect that granting fast track to the President will have on our ability to do so. While I believe it would be a serious mistake for any Administration to think that a trade agreement or package of agreements can be successfully presented to Congress for any approval, fast-track or otherwise, if it includes weakening changes to our trade remedy laws, I fear that is exactly what this Administration has demonstrated, through its own actions, that it intends to do.

This trade bill will make it considerably easier for the Administration to change our trade laws in international negotiations because it deletes the Dayton-Craig amendment that I, and 60 of my Senate colleagues, voted in favor of adopting. The Dayton-Craig amendment would have ensured that the Senate could separately consider any changes to the trade laws. The final conference agreement, regrettably, diminishes congressional leverage to protect the trade laws. The conference agreement replaces Dayton-Craig with a process whereby either House can pass a nonbinding resolution expressing opposition to proposed changes to our fair trade laws. The Administration could ignore this resolution with no penalty.

Arguably, the conference report changes might make it even more difficult for Congress to withdraw fast track, because it would allow only one of either the nonbinding resolution or the more meaningful "procedural disapproval resolution", withdrawing fast track, on any trade agreement. Therefore, if a nonbinding resolution had already been reported out of the Senate Finance Committee or the House Ways and Means Committee, both houses would then lose the right to introduce "procedural disapproval resolutions" on the same. The procedural disapproval resolution was a key element of how the original Senate bill sought to protect U.S. trade laws, and losing the right to introduce it will actually limit Congress' ability to withdraw fast track.

As a conferee on this trade bill, I entered conference negotiations understanding that many of the conferees believed we needed to make adjustments to the Dayton-Craig language. Unfortunately, the final agreement did not retain the basic underpinnings of Dayton-Craig—that we include some mechanism to allow Congress to remove any efforts to weaken our trade laws from trade agreements returned under fast track. This is a grave failure of the conference. I believe we will come to deeply regret the conference changes in this regard and that American workers will suffer for it.

For my part, I will continue to strongly oppose any weakening changes to our trade laws, whether in the WTO, as part of any deal brought back under fast track negotiating authority, or in any other form. But the final language of the conference agreement will make it harder for me to protect U.S. trade law in the future, and that is a major reason I will oppose this bill.

I am very proud that the final conference agreement retained much of the Senate's good work on expanding and improving the Trade Adjustment Assistance program. Under this bill, when workers lose their jobs due to imports, they will now, for the first time ever, have some help accessing health care coverage. That is a critical new benefit, and is one of the provisions that was fundamental to moving this legislation in the Senate. Health care coverage for displaced workers is an essential transitional benefit that American workers deserve and that is long overdue.

I believe the health credit provisions in the Senate bill were superior to the provisions of the House bill and to the final provisions of the conference report in many fundamental ways. The Senate's TAA health provisions worked better than the conference report to ensure that workers could access the health credit established by the bill and could afford the health care coverage they need. The Senate bill included necessary insurance market reforms to ensure that the new TAA health credit would be available to the workers who needed it, but the conference report unacceptably dilutes those protections. Unfortunately, in the interest of reaching a quick agreement before the House adjourned, the amount of the Senate's health subsidy was reduced from 70 percent of benefit costs to 65 percent, making it that much more difficult for unemployed workers to be able to afford the coverage. I very much regret that conferees did not retain the senate's worker provisions in whole.

However, I have to note that the final agreement includes one very important addition to the Senate bill by providing health care coverage to early retirees whose companies went bankrupt and who are receiving a check from the Pension Benefit Guarantee Corporation, (PBGC). It's only a small portion of the retirees I had hoped would get some health care coverage from this trade bill, but it will make a real difference in the lives of tens of thousands of retirees. And I am extremely pleased we have set a precedent that just because people are retired, their lives are no less affected by trade.

The House had added a provision that helped PBGC beneficiaries access its health credit, as it attempted to muster the necessary votes to appoint House conferees. The last-minute House provision established a new precedent to extend TAA benefits to retirees, but also included unrealistic income limitations that would have effectively made the credit impossible to access for most early retirees, including retired steelworkers who very much need help with their health care coverage.

I am very pleased that the conference negotiations built on the House provision and improved it substantially. The conference agreement will give these workers, aged 55–65, access to a more affordable health credit. The final PBGC provision has the complete market protections of the final package, and these early retirees whose companies have shut down can access this health coverage for the duration of the TAA program as long as they meet the age criteria, are receiving a PBGC check, and do not have access to other health care coverage. There will be no unrealistically low income limitations on retiree eligibility for this program. I know that at some point, some West Virginia retirees will have to rely on this provision, and I am very glad that the final agreement does not forget them.

My hope had been to extend the health credit to all steel retirees who lose the health benefits they have earned when their companies go bankrupt, and not only to early retirees under age 65. Senators MIKULSKI and WELLSTONE introduced an amendment during the original trade bill debate in the Senate that would have done this. Fifty-seven Senators agreed that protecting steel retirees was the right thing to do, but our amendment fell just short of the procedural requirement of 60 votes, so the Senate bill did not ultimately include this protection. But the final conference agreement at least says we should help a small group of early retirees, and I am very pleased that provision will become law.

The Senate's TAA provisions on secondary workers and shift in production were far superior to the House's, and the final conference erodes some of the Senate's work, to the detriment of American workers who will need the help of TAA. Those concessions are a disappointing retrenchment from the Senate bill, and I am disappointed that we did not prevail so that all workers substantially affected by trade could access TAA benefits.

In conclusion, despite the hard work of my Chairman who worked himself to exhaustion to complete this agreement under terrible time constraints as well as the consistently excellent work of his dedicated staff, this agreement does not retain the full benefits of the senate bill, and American workers lose as a result. Fundamentally, I do not believe the assurances and trust that would need to exist between the Administration and Congress on preserving our trade laws and protecting American interests is sufficient to warrant ceding Congress' constitutional responsibility on trade.

Mr. HATCH. Mr. President, I rise today in support of the conference report to accompany the trade Promotion Authority/Trade Adjustment Assistance legislation. This landmark legislation is a careful compromise that will benefit the American public by creating new jobs and investment opportunities.

I urge all of my colleagues to support this measure.

This legislation is not only good for the citizens of Utah, it is good for all Americans and it is good for our trading partners, especially those in the developing world.

In fact, almost 10 percent of all U.S. jobs—an estimated 12 million workers—now depend on America's ability to export to the rest of the world. Export-related jobs typically pay 13 percent to 18 percent more than the average U.S. wage.

This legislation will help bring new jobs into Salt Lake City and across our state. Last year, Utah's manufacturers produced and exported $2.7 billion worth of manufactured items to more than 150 countries around the world. An estimated 61,400 jobs in Utah are trade-related and one in every six manufacturing jobs in Utah—approximately 20,300 jobs—are tied to exports. Trade is of great benefit to Utah's small and medium sized companies. Some 80 percent of Utah's 1,894 companies that export are small and medium sized businesses.

As the ranking Republican member of the International Trade Subcommittee of the Finance Committee, I make international trade a high priority. International trade plays two important roles: it strengthens the U.S. and world economy; and it is a powerful foreign policy tool. Free trade and respect for freedom go hand in hand.

Mr. President, I believe that this measure is one of the most important pieces of legislation we will face this year. Trade promotion authority is vital to our national economy and security, benefiting American businesses and employees everywhere. Simply stated, it means more jobs, higher wages, and better products.

Passage of this legislation is a significant victory for the American people, especially our entrepreneurs. It was President Bush's leadership that propelled Congress to address this 8-year drought in trade promotion authority. I remember well the meeting that the President convened in the Cabinet Room two weeks ago today to urge the trade bill conferees to get our work done before the August recess. Today's vote must be seen as a great vote of confidence in President Bush's leadership.

I commend conference committee Chairman BILL THOMAS and Vice Chairman MAX BAUCUS for their leadership in expeditiously putting together this bipartisan compromise. Senators BREAUX and ROCKEFELLER played key roles as did Representatives RANGEL, CRANE, DINGELL, BOEHNER, JOHNSON, MILLER, TAUZIN, BILIRAKIS, BURTON, BARR, WAXMAN, SENSENBRENNER, COBIE, CONYERS, DREIER, LINDER, and HASTINGS.

A full conference agreement on three major bills—TPA, TAA, and the Andean Trade Pact completed in three days! That is exactly the way the Congress can and should act on behalf of the American people if we put partisan politics aside and roll up our sleeves and get to work. In particular, Chairman BILL THOMAS performed a legislative tour de force last week. Everyone should know about his leadership and thank him for the way he worked to resolve issues with Senator BAUCUS and the other conferees.

I am particularly pleased that we are adopting this bill in August rather than October or December. This will give the Administration's trade team led by Secretary of Commerce Don Evans, United States Trade Representative Bob Zoellick, Undersecretary of Commerce Grant Aldonis, and Deputy USTR Jon Huntsman—a Utahan I might add—an immediate opportunity to negotiate trade pacts that will bring new jobs home to America and help increases the demand for American goods abroad.

Not only will passage of this legislation expand the Administration's ability to negotiate, and for Congress to review, trade agreements, the trade adjustment assistance provisions will provide re-training and health care benefits to those workers who lose their jobs due to foreign trade. We in Utah, home of Geneva steel—where 1,600 workers and their families are struggling due to the fact that unfair dumping of foreign steel has caused the plant to cease production—know full well that, while most will gain through trade, inevitably some will lose out and need transitional assistance. This bill provides $12 billion of such assistance over 10 years.

This legislation will also reauthorize the Andean Trade Pact that expired last December. From my work on the Judiciary Committee, I can tell you that this is a vital trade pact as we help wean these nations away from economic dependence on the illicit drug trade. I want to associate myself with the remarks of Senator MCCAIN on the importance of passing the expired Andean Trade Pact before some South American economies topple.

This is a good bill. It is legislation that will have both short-term and long-term benefits. A strong vote for this bill will indicate to our trading partners that the United States intends to play the leadership role during the Doha Round of international trade talks.

This bill will boost our economy which is still struggling to regain its footing. As we face a new type of war, the war against terrorism, it is important that we strengthen our relationship with our trading partners throughout the world. From mutual economic interests that come through trade, political alliances can form. This dynamic can only help us hunt down and deny safe harbor for any terrorists. At the least, our neighbors throughout the world will get to know Americans and our values and ideals. This will only increase our stature in the world.

For all of these reasons, I strongly urge my colleagues to pass this bipartisan conference report on trade. Let's get the job done for the American public and pass this bill.

Mr. BAUCUS. Mr. President, I want to take this time to talk in some detail about the Trade Adjustment Assistance provisions in the conference report.

I am proud of the entire conference agreement—but I am particularly proud of the TAA provisions. For the first time since 1974, we are partnering a grant of Presidential authority to negotiate agreements that expand trade with a serious commitment to deal with the downside of trade expansion.

We all know that trade greatly benefits our economy as a whole. But we also know that a Government decision to pursue trade liberalization can have adverse consequences for some. As President Kennedy recognized in 1962, we, as a government, have an obligation "to render assistance to those who suffer as a result of national trade policy."

The trade adjustment assistance program has been around for 40 years. During that time, it has quietly helped thousands of trade-impacted workers to retrain and make a new start. But the program has also been criticized for being too complicated, underfunded, and available to too few workers.

This conference report will go a long way toward solving these problems and making TAA work better for working Americans. Does it have everything in it that I could have wished? To be honest, no. That is the nature of compromise. But overall, I think we have done very well indeed. So let me now run through some of the most important provisions in the conference report.

First, the conference report expands the number of workers eligible for TAA benefits in several ways. Like the Senate bill, the conference report covers secondary workers where the loss of business with the primary firm "contributed importantly" to job losses at the secondary plant. In addition, where a secondary plant supplies 20 percent of more of its sales or production to the primary plant, coverage is presumed. The conference report also provides TAA coverage to downstream workers who are impacted by trade with Mexico or Canada.

The conference report also expands coverage to workers affected by shifts in production. Workers are automatically covered if their plant moves to a country with which the United States has a free trade agreement, or to a country that is part of a preferential trade arrangement such as ATPA, CBI, or AGOA.

For workers whose plant moves to any other country, TAA benefits are available if the Secretary of Labor determines that imports have increased or are likely to increase.

While the Senate bill did not require a showing of increased imports, there are virtually no instances in which relocating production abroad would not be accompanied by, or lead to, an increase in imports of the product. Only workers at a company that produced 100 percent for export, with no domestic sales, would be excluded. And it is particularly important to note that the workers do not have to prove that the increase in imports will come from the country to which production relocated.

In addition, the conference report includes a new TAA program for farmers, ranchers, fishermen, and other agricultural producers. Past attempts to shoehorn farmers into eligibility requirements intended for manufacturing workers have left most with no access to TAA. By focusing eligibility requirements on the relationship between imports and commodity prices, the conference bill creates a program better suited to the unique situation of trade-impacted agricultural producers.

The Senate bill actually included two separate programs—one specifically for independent fishermen and one for farmers, ranchers, and other agricultural producers. The conference report eliminates the separate program with dedicated funds for fishermen. But that does not mean fishermen are excluded from TAA. As agricultural producers, they are still able to participate in the general TAA for farmers program.

Taken together, these expansions in eligibility are likely to result in tens of thousands of additional workers receiving TAA benefits every year. Moreover, the benefits that they receive will be better than ever before in several ways.

Most importantly, the TAA provisions include health care coverage for displaced workers for the first time in the program's history. Workers eligible for TAA will receive a 65 percent advanceable, refundable tax credit that can be used to pay for COBRA coverage, or a variety of state-based group coverage options.

The credit could not be used for the purchase of individual health insurance unless the worker had a private, nongroup policy prior to becoming eligible for TAA. The health care credit is available to workers for as long as they are participating in the TAA program.

The conference report also improves coverage by extending income support from 52 to 78 weeks for workers completing training. It adds a further 26 weeks of training and income supports for workers who must begin with remedial education such as English as a second language. To pay for this additional training, the annual training budget is doubled from $110 million to $220 million.

For older workers, the conference report offers wage insurance as an alternative to traditional TAA. Workers who qualify and who take lower-paying jobs can receive a wage subsidy of up to 50 percent of the difference between the old and new salary—up to $10,000 over two years. The goal is to encourage on-the-job training and faster re-employment of older workers who generally find it difficult to change careers.

The Senate bill included a two-year wage insurance pilot program. The conference report improves on the Senate bill in two ways—by making the program permanent, and by providing TAA health benefits to workers under the program if the new employer does not provide health insurance.

There are other enhancements to benefits as well. Job search and relocation allowances are increased. The authorization level for the TAA for firms program is increased from $10 million to $16 million annually. And the Conference Report improves on the Senate bill by providing TAA health care benefits for up to 2 years to workers receiving pension benefits from the Pension Benefit Guarantee Corporation.

Finally, in addition to expanding benefits and eligibility, the conference report makes a number of improvements that streamline the program. Like the Senate bill, the conference report consolidates the existing TAA and NAFTA-TAA programs. This eliminates bureaucracy and confusion and saves workers the trouble of applying to two separate programs.

The conference report also shortens the time in which the Secretary of Labor must consider petitions, extends permissible breaks in training so workers don't lose income assistance during semester breaks, and provides common-sense training waivers for all workers.

Taken together, these are extraordinary improvements in the Trade Adjustment Assistance program. They will make the program fairer, more efficient, and more user friendly. Over the past year and longer, I have worked hard—with the help of many colleagues on both sides of the aisle—to raise the profile of TAA. All along, my message has been that if we want to rebuild the center on trade, improving Trade Adjustment Assistance is the right thing to do.

I am proud of how far we have come toward that goal. I am proud of this conference report. I urge my colleagues to support the conference report and send this historic legislation to the President this week.

Mr. GRASSLEY. Mr. President, this is a historic day. I am very proud of what we have accomplished. The Trade Act of 2002 will soon be sent to the President's desk for his signature, and America will once again take a leadership role in promoting international trade in the world economy.

Let me briefly highlight the important provisions in this bill. First and most momentous, we restored the President's ability to negotiate strong trade deals, and send them back to Congress for an up or down vote. This authority has been absent for far too long, and I see this as one of the greatest successes of this Congress.

Second, we renewed and expanded preferences for our important allies in the Andean region, which will help to eradicate the drug trade that threatens their stability, and our health and safety.

Next, we reauthorized both the Generalized System of Preferences, which expired last year, and the Customs Service. And last of all, we renewed and expanded the Trade Adjustment Assistance program for workers who become displaced by trade.

Thank you to my colleagues who helped make this happen. I would like to commend my colleague and friend, Senator BAUCUS for his leadership and keeping his word that we would get this done. Thank you also to Senator HATCH who has been an instrumental ally in the Conference Committee as well as on the Finance Committee, and thank you to Senator HATCH's staff members Bruce Artim and Chris Campbell for their hard work. Senator PHIL GRAMM was also a great help in getting us to this point, along with Amy Dunathan from his trade staff. They were key in helping to negotiate a deal when this legislation was first brought to the Senate floor.

Next, I would like to thank my staff, who have been dedicated and focused on passing TPA for the past couple of years. This is a great success, and I am happy to share it with them. I would like to thank the Staff Director of my Finance Committee staff, Kolan Davis, Chief Trade Counsel Everett Eissenstat, and Trade Counsel Richard Chriss. This would not have happened if it were not for their incredible work ethic and knowledge, along with the hard work and support of trade staff members Carrie Clark and Tiffany McCullen Atwell.

My Finance Committee health and pension staff also played an important role in this process. Thank you to Ted Totman, Colin Roskey and Diann Howland for helping us navigate through the complex health and pension issues in the Trade Adjustment Assistance section of the bill.

Senator BAUCUS had a good staff helping him as well. And I would like to thank them for their hard work and long nights that went into making this happen. Senator BAUCUS' staff was led by John Angell and Mike Evans, and his trade staff was led by Greg Mastel, along with Angela Marshall Hofmann, Tim Punke, Ted Posner, Shara Aranoff and Andy Harig.

A sincere thank you also must be given to Polly Craighill from the office of the Senate Legislative Counsel, for her patience and expertise in drafting this legislation.

We can all be proud of this accomplishment, and I look forward to the President signing it into law.

Mr. BACUS. Mr. President, as we discuss the Andean Trade Preferences Act, it is important to note that for an Andean nation to qualify for trade benefits it must fulfill seven mandatory criteria. I want to focus on one of those criteria in particular. I am referring to the requirement that a country act in good faith in recognizing as binding and in enforcing arbitration awards in favor of United States citizens and companies. 19 U.S.C. 3202(c)(3). I focus on this requirement, because it has come to my attention that a number of ATPA countries may have failed to honor arbitration awards in favor of U.S. companies.

To attract foreign investment, ATPA beneficiary countries need to create a hospitable investment climate. Honoring arbitration awards is a fundamental component of this climate.

This matter is sufficiently important that the Finance Committee drew special attention to it in its report on the Andean Trade Preference Expansion Act Report Number 107–126. In that report, the Committee identified several specific cases in which we understand that Andean countries had failed to honor arbitration awards in favor of U.S. companies. Some of these cases have remained unresolved for far too long. I urge those countries seeking to qualify for enhanced benefits to resolve these situations promptly.

I urge my colleagues to join me in emphasizing the importance of ATPA beneficiary countries' honoring arbitration awards in favor of United States citizens and companies. I urge the President and the U.S. Trade Representative to examine this matter very closely in determining whether to give enhanced benefits to the ATPA countries.

I also want to address briefly a provision in the conference report concerning negotiations left over from the Uruguay Round of world trade negotiations. Specifically, section 2102(b)(13) of the conference report concerns certain "WTO extended negotiations." One of these is negotiation on trade in civil aircraft. The conference report incorporates by reference the objectives set forth in section 135(c) of the Uruguay Round Agreements Act 19 U.S.C. 3355(c). When the URAA was enacted, the objective set forth at section 135(c) was elaborated on in the accompanying statement of administrative action. It is my understanding that in incorporating by reference section 135(c) of the URAA, Congress also is re-affirming the corresponding provisions from the statement of administrative action. This understanding is consistent with the explanation in the Finance Committee's report on H.R. 3005 Report Number 107–139.

Mr. BAUCUS. I further want to address an aspect of the Andean Trade Preference Act, which forms part of the Trade Act of 2002. The Andean Trade Preference Act grants duty-free access to certain tuna products from the Andean countries. Let me first say that I support the objective of the Andean Trade Preference Act to encourage the Andean countries in promoting economic development and fighting the drug trade. I am concerned, however, that some tuna imported into the United States under this preference program may not be legally harvested.

A case was recently reported in the news in which the El Dorado, a Colombian-flagged vessel working for the Ecuadorian company Inepaca, one of the largest fish processing facilities in Latin America, was caught fishing illegally in Ecuador's Galapagos Marine Reserve. Industrial fishing in the reserve is prohibited under Ecuadorian law. The Galapagos Marine Reserve is a globally significant area that was recognized earlier this year as a UNESCO World Heritage Site.

In addition, the report stated that the vessel was illegally fishing for tuna using a method known as dolphin encirclement. This technique is permitted under international law only if its carried out in compliance with dolphin protection requirements imposed through the Agreement on the International Dolphin Conservation Program and other associated legal requirements. The El Dorado reportedly was not authorized to fish using this method. As a result, dolphins were trapped in the net, and over 60 dolphins were either killed or injured. It concerns me that some of the tuna that will be coming into the United States duty free under the Andean Trade Preference Act may be caught in the same way—illegally, and without respect for dolphins and other marine life.

I raised this issue during the conference on the trade bill. I am concerned about our environmental and trade policies being mutually supportive. As my colleagues know, the conference report also sets out the overall trade negotiating objectives of the United States. Those objectives include ensuring that trade and environmental policies are mutually supportive, and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources. Moreover, the conference report makes it a principal negotiating objective to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental laws in a manner affecting trade.

I would like to emphasize that, according to reports, the El Dorado incident was not a case where the government simply didn't know about the violation. This was a case of truly ineffective enforcement. As I understand it, the Galapagos National Park authorities actually captured the El Dorado and took videotape of the incident. The Captain of the Port, an official of the Ecuadorian navy, fined the El Dorado's captain four cents. I think we can all agree that a fine of 4 cents does not even amount to a slap on the wrist. We are waiting to see if the Ecuadorian Government will take additional steps to further prosecute this case.

I also believe that the El Dorado incident is not an isolated case. I understand that when the Galapagos National Park authorities found the El Dorado, they were in search of another vessel that had been fishing illegally in the Galapagos Marine Reserve.

The Andean Trade Preference Act requires the U.S. Trade Representative to report to Congress biannually on beneficiary countries' compliance with the eligibility criteria under the act. As chairman of the Finance Committee, I will be asking the U.S. Trade Representative to include in its biannual reports a discussion of the extent to which beneficiary countries are enforcing their environmental laws, including the prohibition on industrial fishing in the Galapagos Marine Reserve, and complying with their international obligations under the Agreement on the International Dolphin Conservation Program.

I also note that under section 2102(c)(4) of the conference report, the President is required to conduct environmental reviews of future trade and investment agreements and to report to the Finance Committee and the House Committee on Ways and Means. It is my expectation that these reviews will take into account the extent to which trade agreement partners are effectively enforcing their environmental laws.

Mr. DASCHLE. Mr. President: for too long, Congress has been deeply divided between those who argued that free trade has no downside, and others who said it is a complete disaster.

As a result, we did not give the President the authority to aggressively pursue new markets for American goods and services, nor did we do enough to help the workers who were being hurt by trade.

Today we stand on the verge of recognizing in law a basic truth: our economy as a whole benefits enormously from expanded global trade. But some workers, due to no fault of their own, are hurt by it.

We could not have reached this point without the leadership shown by Chairman BAUCUS. Simply put, Senator BAUCUS engineered an agreement that few thought was possible. I have no doubt our nation will be stronger because of it.

I want to thank Senator GRASSLEY, the Ranking member, and Senator HATCH on the Republican side for their work in crafting a bipartisan bill.

I want to thank Senator BREAUX, who worked so effectively to help us achieve the initial compromise that got us into the conference . . . and then helping find the compromise that got us out . . . with this agreement.

And, finally, I want to say a special word of thanks to Senator ROCKEFELLER for his work in the conference. He was an incredibly strong and passionate advocate for the health care provisions and the entire worker package. He did the workers of West Virginia, and this country, proud.

I stand in strong support for this trade legislation for three fundamental reasons:

First, in this time of economic uncertainty, it sends a strong message to the American people and to the markets of the world that nothing is going to stop us from seizing the opportunities of the global economy.

Second, it makes sure that while we advance trade, we do not trade away the values on which prosperity is built: that every American should have the opportunity to succeed.

Third, this bill sends a strong message to the nations of the world, friends and enemies alike—that the United States of America will not shrink from our responsibilities as a global economic leader.

These are uncertain economic times. Americans have seen their confidence in corporate governance shaken. The resulting decline in the stock market has hurt pensions and savings. Families are wondering how they're going to afford a child's college tuition, or their own retirement.

This fear plays itself out against the backdrop of an economy struggling to re-emerge from recession, and a government that has seen one of the most dramatic fiscal reversals in history.

The historic accounting reform bill we passed unanimously last week—and that the President signed on Tuesday, will help restore integrity to our capital markets.

This trade bill is another important step in restoring strength to our economy.

No nation is better suited or better prepared to benefit from global trade. We have the best-educated workers and most productive workforce in the world, the most mature economy, the most developed infrastructure. We are in a position to seize the high-skill, high-wage jobs generated by open global markets, so long as we don't turn our backs on them.

Just as we can't turn our backs on trade, we can't turn our backs on the hard-working American families who have had their lives ruined by the impersonal forces of trade.

It can be devastating to a family when a parent loses his or her job because a factory closes down or moves away. That devastation can turn to real fear if losing that job means losing health insurance.

The reality is that the jobs we gain from trade do nothing to compensate the men and women who have lost their jobs because of trade.

That's why, for the first time, this legislation provides a 65 percent tax credit to help trade dislocated people keep their health coverage. This represents a significant step in providing families with a greater sense of security.

This bill also makes a number of additional improvements over our current system:

Under our current TAA program, benefits are available only to those industries that are "directly" affected by trade.

For example, workers at an automobile plant that closes down due to a flood of imported cars will qualify for help. But workers at a parts supplier that's right across the street, and that closes as an inevitable consequence of the auto plant's shut-down, are out of luck.

Now, for the first time, "secondary" workers and farmers will be eligible for training and other kinds of assistance.

This bill also includes "wage insurance," a time-limited stipend that replaces some of a dislocated worker's lost income if he or she takes a lower paying job.

Instead of an unemployment check, these workers would receive a subsidy when they take a lower paying job. This new approach will encourage this group to get back into the workforce and help them try to sustain their standard of living as they approach retirement.

Last year, we passed an important education reform bill. We agreed then that we would "leave no child behind." Now we need to make sure we leave no worker behind.

By strengthening the safety net for those who are hurt by trade, our Trade Adjustment Assistance proposal will help us remedy America's other trade deficit, the deficit of support for the workers here in America who have been hurt by trade.

Finally, passage of this bill will reassert American leadership in the world. We are the freest, wealthiest, and most powerful country in the world. It is in our interest and it is our responsibility to demonstrate global economic leadership, especially in these troubled times.

At a time, when many around the world are doubting our commitment to multilateral action, this legislation says that the United States will be a leader in the effort to establish stronger global trade ties.

Expanding trade is not solely about economic leadership, it also offers national security and foreign policy benefits. When it is done correctly, trade opens more than new markets; it opens the way for democratic reforms. It also increases understanding and interdependence among nations, raises the cost of conflict, and alleviates the global disparities in income and opportunity that terrorists seek to exploit in order to advance their own deadly aims.

For example, the Andean Trade Preferences Act, ATPA, was designed as an effort to reduce barriers to trade between the United States and Bolivia, Colombia, Ecuador and Peru. It was first passed in 1991 as part of a comprehensive effort to defeat narco-trafficking and reduce the flow of cocaine into the United States.

The program has already established a record of success.

According to the International Trade Commission, between 1991 and 1999, tow-way trade between the U.S. and Andean nations nearly doubled, and U.S. exports to the region grew by 65 percent.

The ITC also reports that ATPA has contributed significantly to the diversification of the region's exports, which means that farmers in a region that produces 100 percent of the cocaine consumed in the U.S. now have viable economic alternatives to the production of cocoa.

That's the positive power trade can have, and that is why, as part of this bill, we renew and improve the Andean Trade Preferences Act.

The word "trade" has its roots in an old Middle English word meaning "path," which is connected to the word "tread", to move forward.

This trade package will enable us to move forward in this new global economy in a way that strengthens our national security, and the economic security of American businesses and families on both sides of the trade issue.

I urge my colleagues to support it.

Mrs. BOXER. Mr. President, there is free trade, no trade, and fair trade. I am for fair trade. And I am also for respecting the role of Congress in designing public policy. The Trade Promotion Authority package we are voting on today will not result in fair trade and it cedes too much power to the President.

I do not believe in giving a President carte blanche to write trade legislation. I do not want to grant him the right to negotiate away protection for American workers and the environment.

Imagine if the President could have proposed a corporate accountability bill and the Congress would have had only an up or down vote. Would we have passed legislation as strong as the legislation the President signed? We are about to debate pension reform legislation. Should we ask the President to make a proposal and then vote up or down on that proposal? Clearly not. It is our responsibility to work with the Executive branch of government to design policies that respect our constituents.

The Trade Promotion Authority legislation fails American workers and fails to address the need for smart environmental protections. In short, TPA could result in trade agreements that are free from environmental and are in no way fair. And it would preclude us from amending future trade agreements to make them fair.

Let me be more specific.

This bill will allow a company to sue a developing nation if that country improves its environmental standards and that improvement results in some monetary loss for the foreign investor. That would discourage developing nations from improving their environmental standards out of fear of being sued. That is not fair trade, it is only trade that benefits the powerful.

This bill will push down the wages and protections of our workers by forcing them to compete with workers who go unprotected abroad. It fails to provide U.S. trade negotiators with clear instructions that the U.S. not engage in new trade agreements with countries who are unwilling to provide their workers with the following core labor standards—freedom of association and the right to bargain collectively, the elimination of forced labor, the abolition of child labor, and the elimination of discrimination in employment. Without a commitment to these standards, and this TPA has made no commitment to these standards, we will not have fair trade.

Most disturbing, the conference committee dropped the Senate-passed Dayton-Craig language on protecting U.S. trade laws. As a result, there will be no reliable mechanism to keep our domestic trade laws from being weakened or eliminated in upcoming trade negotiations. This provision passed the Senate by a wide margin and the conference committee's rejection of it is disappointing.

The Trade Adjustment Assistance (TAA) package for workers who lose work because of changing trade patterns is also inadequate. In particular, service workers were left out the TAA. And I was blocked from amending the bill to make truckers who will lost their job as a result of trade eligible for TAA.

We should have done better. This TPA bill cedes too much authority to the President and the trade agreements that will result from it will not be fair to workers and the environment.

Mr. BAUCUS. Mr. President, I rise today to discuss the trade law provisions in the conference report.

But before I begin, I first want to thank the senior Senator from Idaho, who spoke earlier today on this issue. He and I have worked very hard together over the years to defend our fair trade laws. I think every industry that faces unfair foreign trade practices owes a great deal of gratitude to Senator CRAIG for standing up for fair trade.

I want to thank both Senator CRAIG and Senator DAYTON for their tireless efforts during the Senate debate on the trade bill.

Although the Dayton-Craig amendment was modified during the conference process, I can say without hesitation that this fast track bill contains stronger protections for U.S. trade laws than any fast track bill we have ever had. And we have those strong protections in large part because of Senator CRAIG and Senator DAYTON.

Now, there have been a lot of questions about the trade law provisions contained in this legislation, so I want to take a minute to spell them out in some detail.

The conference bill protects U.S. trade laws in two ways. First, it seeks to ensure that U.S. negotiators do not sign agreements that weaken our laws.

Second, it seeks to ensure that our trade remedy laws are not further weakened by WTO dispute panels—and it seeks to remedy some recent decisions that have undermined these laws.

Importantly, the legislation makes protecting our U.S. trade remedy laws a principal negotiating objective. The bill instructs trade negotiators to preserve the ability of the United States to enforce rigorously its trade laws, and it provides that the U.S. should not enter into agreements that weaken those laws.

I will be inserting for the record what is considered to be a weakening of the trade laws. I fully anticipate that the administration will take these concerns seriously.

In addition, the bill also contains a principal negotiating objective instructing trade negotiators to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

This bill also ensures that Congress is a full partner when it comes to the issue of U.S. trade laws. The conference bill requires the President to notify Congress of proposed changes to U.S. trade laws 6 months in advance of completing an agreement.

This will give Congress a chance to comment on proposed changes before an agreement is final—while there is still an opportunity to fix the agreement.

The President's report will trigger a process allowing a resolution on whether the proposed trade law changes are consistent with negotiating objectives.

After the President submits the report, any Member of either House may introduce a resolution stating that the proposed changes to U.S. trade laws are inconsistent with the negotiating objective that requires no weakening changes.

That resolution is referred to the House Ways & Means Committee or the Senate Finance Committee. If the committee reports the resolution, it will receive privileged consideration on the floor.

I fully expect to bring such a resolution, if introduced, to the Finance Committee for consideration. I will not bottle up a meritorious resolution in the Committee.

While committees may only report out only one resolution per agreement—either a resolution regarding U.S. trade laws or a so-called reverse fast track resolution—I would note here that fast track procedures area considered to be rules of the House and Senate.

The Constitution is quite clear that either body may change those rules at any time. And if Congress's concerns regarding trade laws are not heard, I expect Congress would quickly derail an agreement.

Second, this bill seeks to improve dispute settlement in the World Trade Organization. Our trading partners are now engaged in a systematic attempt to weaken our trade laws through harassing WTO litigation. They are seeking to achieve through dispute resolution what they could not achieve in negotiations.

The conference bill seeks to address this problem in several ways. Like the Senate bill, the conference bill includes an overall negotiating objective instructing trade negotiators to strengthen international dispute settlement.

In addition, the conference bill contains a principal negotiating objective instructing negotiators to seek adherence by dispute settlement panels to the relevant standard of review applicable under the WTO, including greater deference to the fact-finding and technical expertise of national investigating authorities.

That means that these panels should not be inappropriately second-guessing the U.S. International Trade Commission or the Department of Commerce.

In addition, the conference bill includes a finding expressing Congress's concerns about these recent bad decisions. In particular, the finding notes Congress's concern that dispute settlement panels appropriately apply the WTO standard of review.

Under the conference bill, the Secretary of Commerce must provide a report by the end of this year setting forth the administration's strategy for addressing these concerns. Fast track procedures will not apply to legislation implementing a WTO agreement if the Secretary does not provide the report in a timely manner.

I plan to submit for the record a list of WTO cases that raise particular concerns.

In closing, let met simply say this: The Senate has made its views on trade laws very clear. Last year, 62 of my colleagues joined me in sending a letter noting that the Senate would not tolerate agreements that weakened our trade laws.

And during the Senate debate, 61 Senators re-emphasized their support for trade laws by passing the Dayton-Craig amendment.

There can now be no doubt about the Senate's resolve on this issue. Agreements that weaken our trade laws—in any way—simply will not pass. And the procedures in this fast track legislation should underscore that point.

Mr. LEVIN. Mr. President, I opposed the Senate fast track bill even though it was an improvement over the House fast track bill. Unfortunately, the conference report we are considering today has gutted many of the improvements made in the Senate. I felt the Senate bill did not go far enough. The fast track conference report we are being asked to vote on today is a significant step backwards from what the Senate passed.

I did not support the Senate version of this bill because it would not allow Congress to amend a trade agreement, even to improve it to make sure it was in the best interests of U.S. workers, industry, or agriculture. It also did not go far enough to encourage the adoption of internationally accepted labor standards or protect the environment. It did not ensure that U.S. products would have fair access to foreign markets in exchange for granting access to our markets. I cannot support a bill that is significantly weaker than the Senate bill.

Granting the President broad "fast track" authority to negotiate trade agreements means Congress must adopt a law to implement any trade agreement on a straight up or down vote, without the ability to offer amendments. I believe in free trade. I supported the Jordan Free Trade Agreement, the Vietnam Free Trade Agreement, and granting China Permanent Normal Trade Relations, PNTR. But I am reluctant to give up the Congressional right to amend trade legislation, sight unseen. When we do that, we are throwing away one of the most effective tools in forcing fairer trade practices.

This fast track bill is significantly flawed because it does not ensure that future trade agreements will protect human rights and labor and environmental standards. Nor does it require that fair trade practices are included in future trade agreements.

I am disappointed that conferees dropped my amendment that would make it a principal negotiating objective of the United States to reduce barriers in other countries to U.S. autos and auto parts, especially in Japan and Korea where American autos and auto parts have been all but shut out for decades. Surely, one of our chief objectives should be increasing our products' access to markets which are closed or partially closed to us.

Other countries have full access to our market for their autos and auto parts. We should insist that foreign markets are equally open to our autos and auto parts. The conference report makes it a principal negotiating objective to expand trade and reduce barriers for trade in services, foreign investment, intellectual property, electronic commerce, agriculture, and other sectors. Yet the biggest portion of our trade deficit is in autos. In 2001, our automotive deficit made up over 31 percent of our total trade deficit with the world. In 2001, our automotive deficit was 59 percent of our total trade deficit with Japan and 53 percent of our total deficit with Korea. I don't believe that the Senate should approve an omnibus trade bill without addressing barriers to our products which are the largest contributors to our trade deficit. Unfortunately, this flawed bill does not meet this criterion.

Unfortunately, America's trade policy over the past 30 years has been a one way street. The U.S. market is one of the most open in the world, yet we have failed to pry foreign markets equally open to American products. Some of the trade agreements the U.S. has entered into have fallen far short of opening foreign markets. To ensure that future trade agreements better promote free and fair trade, Congress must not give up its ability to amend the legislation implementing those agreements.

I have fought hard to strengthen U.S. trade laws to help open foreign markets to American and Michigan products such as automobiles, auto parts, communications equipment, cherries, apples, and wood products. Unfortunately, without the ability of Congress to amend and improve trade agreements we will not always get the best deal for American products, if past history is any guide.

The North American Free Trade Agreement, NAFTA, enacted January 1, 1994, is a good example of a trade agreement negotiated under "fast track" authority. It contained provisions allowing Mexico to protect its auto industry and discriminate against U.S. manufactured automobiles used cars and auto parts for up to 25 years. It allowed Mexico to require auto manufacturers assembling vehicles in Mexico to purchase 36 percent of their parts from Mexican parts manufacturers. It also extended for 25 more years the Mexican law against selling used American cars in Mexico, a highly discriminatory provision against U.S. autos.

When NAFTA was presented to Congress, it was an agreement which discriminated against some of the principal products that are made in Michigan. I surely could not vote for the bill the way it was written, nor could I try to amend the bill because the "fast track" authority the President had at that time prohibited implementing legislation from being amended. Consequently, after NAFTA was enacted, the U.S. went from a trade surplus of $1.7 billion in 1993 to a trade deficit of $25 billion with Mexico in 2000. Over the same period, our trade deficit increased from $11 billion to $44.9 billion with Canada. Since NAFTA was enacted, the automotive trade deficit with Mexico has reached $23 billion.

Moreover, between January 1994, and early May 2002, the Department of Labor certified that over 400,000 workers lost their jobs as a result of increased imports from or plant relocations to Mexico or Canada. These job losses occurred all over the county and in and around Michigan. For example, 27 employees from the Blue Water Fiber Company in Port Huron who produced pulp for paper lost their jobs as a result of NAFTA imports. One hundred and twenty-nice employees of Alcoa Fujikura Limited in Owosso who made electronic radio equipment lost their jobs to Mexico; 1,133 employees of the Copper Range Mine in the UP lost their jobs when operations were moved to Canada. Three hundred employees of Eagle Ottawa Leather in Grand Haven who made leather for automobile interiors saw their jobs moved to Mexico. The list of NAFTA-TAA certified job losses goes on and on. These job losses didn't result from a level "playing field". These job losses resulted from a "playing field" tilted against us.

We've lost too many manufacturing jobs because our trade policies have been so weak over the decades. I've always believed that when countries raise barriers to our products that we ought to treat them no better than they treat us. Fast track authority makes it more difficult for Congress to insist on fair treatment for American products and equal access to foreign markets.

Calling NAFTA a free trade agreement was an oxymoron. NAFTA protected Mexican industries and it gave special treatment to certain U.S. industries. For example, leather products and footwear got the longest U.S. tariff phase out, 15 years, and NAFTA included safeguard provisions against import surges in these sectors. Agricultural commodities and fruits and vegetables, including sugar, cotton, dairy, peanuts, oranges, also got a 15-year U.S. tariff phase out, a quota system, and the reimposition of a higher duty if imports exceed agreed-upon quota levels. It's clear that those who were represented at the negotiating table were able to strike favorable deals to protect certain industries and products. That is not free trade.

NAFTA was not the only trade agreement that included specially tailored provisions for certain products. The trade bill we are being asked to vote on contains special provisions to protect textiles, citrus, and some other specialty agriculture commodities.

I believe that writing labor and environmental standards into trade agreements is an important way to ensure that free trade is fair trade. Regrettably, this legislation does not ensure that international labor and environmental standards will be present in trade agreements. We need trade agreements with enforceable labor and environmental provisions but this bill does not provide for it.

This is particularly unfortunate given that Congress is already on record supporting strong labor and environmental standards in trade agreements. The Senate passed the Jordan Free Trade Agreement on September 21, 2001; it broke new ground in its treatment of labor and environmental standards in trade agreements. For the first time, a trade agreement required that the parties to the agreement reflect the core internationally recognized labor rights in their own domestic labor laws.

The conference report does not require countries to implement the core ILO labor standards. It only requires them to enforce their existing labor laws, however weak they may be. It also specifically states that the U.S. may not retaliate against a trading partner that lowers or weakens its labor or environmental laws.

This language undercuts our ability to negotiate strong labor and environmental standards in future trade agreements because our trading partners know we can't enforce what we negotiate through the use of sanctions and the dispute settlement process.

American workers already compete against workers from countries where wages are significantly lower than in the United States. Our workers shouldn't also have to compete against countries that gain an unfair comparative advantage because they pollute their air and water and won't allow their workers to exercise fundamental rights.

The United States enacted environmental standards that protect our air and water. We have enacted labor standards that allow for collective bargaining and the right to organize, that prohibit the use of child labor, and provide protections for workers in the work place. These are desirable standards that we worked hard to get. We should not force American workers to compete against countries with no such standards or protection for its workers.

The Senate tried to improve this fast track legislation to address some of the concerns I've outlined. I supported many of these efforts. Unfortunately, many of the strengthening provisions added in the Senate were dropped in conference. The Dayton-Craig provision was dropped. This amendment would have allowed the Senate to have a separate vote on any provision of a trade agreement that would change or weaken U.S. trade remedy laws. Instead, the conference report moves rhetoric from another section of the bill regarding Congressional intent not to weaken U.S. trade remedy laws to the principal negotiating section. This is a much weaker provision than allowing the Senate an up-or-down vote on whether to weaken our trade laws or not.

This conference report fails to address these concerns. The weak fast track bill we are voting on today is all the more reason Congress should not give up its role under the Constitution. We should keep all the tools available to fight for free and fair trade, including the Congressional right to amend and improve a trade agreement. To do less than that is not doing justice to our nations workers, manufacturers, farmers or small business.

Mr. BINGAMAN. Mr. President, I rise today to discuss the Trade bill that is being considered on the Senate floor. I will keep my comments short, as I know others wish to speak on the issue.

I want to begin by emphasizing the positive. We have come a long way to where we are today on trade adjustment assistance. The provisions in the conference report are far better than what exists in current law. I want to thank all my colleagues for their support on trade adjustment assistance, and I want to thank the Administration for finding a path to compromise on this very important legislation.

But I also want to take this opportunity to say that this conference report does not go nearly far enough in terms of what needs to be done. In fact, on trade adjustment assistance, I would have to say that the end result in many respects misses the point of what my original bill tried to do.

In short, there were four goals to the original bill:

First, we wanted to combine existing trade adjustment assistance programs and harmonize their various requirements so they would provide more effective and efficient results for individuals and communities; second, we wanted to recognize that trade frequently has regional impacts and create a program to help communities; third, we wanted to encourage greater cooperation between Federal, regional, and local agencies that deal with individuals receiving trade adjustment assistance; and fourth, we wanted to establish accountability, reliability, speed, and consistency in the trade adjustment assistance program.

Each of these goals was created with the view that the system needed to be fair, equitable, accessible, and implemented similarly no matter where you lived in the country. From my perspective, the bill that we have before us does not do this.

Briefly, not all secondary workers, shifts in production, and contract workers are covered under this bill. There are no TAA for community provisions in this bill. The language that allowed the Senate Finance Committee to request the Department of Labor to initiate a certification is not in this bill. The language that compelled the Department of Labor to monitor the implementation of the program across states is not in this bill. The language that required the Department of Labor to submit an annual report to Congress is not in this bill. The language that encouraged greater cooperation between Federal, regional, and local agencies on Trade Adjustment Assistance is not in this bill. And the language that established accountability, reliability, and consistency in the trade adjustment assistance program is not in this bill.

I could go on, but this should give you an idea of the key components related to administration and implementation of trade adjustment assistance that were deleted in conference. I have no idea why this occurred, as it seems to me these provisions would be acceptable to Members on both sides of the aisle. But I want to emphasize here and now that these are not minor problems, as they are in fact the essence of whether trade adjustment assistance works well, or just works.

The fact of the matter is we have created a trade adjustment assistance program that serves more people and that is both appropriate and long-overdue. But the program still does not cover all the people that are negatively affected by trade, and that is, I am afraid, inappropriate and equally long-overdue. Of equal significance, it does not guarantee that the people who are covered by trade adjustment assistance get the efficient, effective, and prompt services they deserve. These assurances are nowhere to be found in the bill. This is unfortunate and unsatisfactory, as it is the fundamental reason that I wrote the trade adjustment assistance legislation in the first place.

Although we have come a long way on trade adjustment assistance, we have a longer way to go, and it is my intention to revisit this issue in the 108th Congress. I introduced this trade adjustment assistance bill, I will introduce another in the next Congress, and I hope my colleagues will support it

On the fast-track bill, let me say that here too we did not go as far as I would have liked on a range of very important issues: labor, the environment, investment, and trade remedy laws. But that said, we have come farther than we ever have before in the past, and we have signaled to the administration and the international trade community that we will not enter into agreements that do not address these issues directly.

As for the lack of "teeth" in the bill, I would have to agree to a certain extent. That said, there are provisions in this bill to ensure that Congress has very significant input in the trade negotiation process. Moreover, Congress has the option to withdraw fast-track authority if the administration does not consistently and honestly consult with Congress on these key trade issues. As far as I am concerned, the oversight provisions are the crux of the matter, as without them, even the strongest language on labor, or the environment, are meaningless. It is incumbent upon Congress now to analyze what occurs in trade negotiations and ensure that what is agreed to increases high-wage jobs and American competitiveness.

In sum, I think there are significant problems with the trade bill, but not enough to warrant a vote in the negative. I think we have taken a strong step forward here in that this bill provides us with the tools to increase the economic security of the United States. I don't believe we help American workers by sitting back and doing nothing on trade. Rather, I think it is important that we take an active role in defining the terms of trade, and this bill allows us to do that.

The debate on the trade bill occurred, we have found a compromise, and now it is time for the Administration and Congress to make trade work for the American people.

Mr. BIDEN. Mr. President, in recent years, I have supported fast track legislation, I voted for NAFTA, for the last round of the GATT and the creation of the WTO. I supported China's accession to the WTO.

I am convinced by the overall fundamental performance of our economy, during a period of expanded trade and the successful completion of trade deals, that expanding international trade generally and expanding markets for American products in particular is good for the United States.

With every step down the road toward a freer, more open international trading system, I believe that the risks are becoming greater and the rewards are less clear.

The risks we face—to our own workers' ability to control their destinies, to the peoples of our new trading partners, to the global environment—are growing as we expand trade deals into regions of the world that lack many of the fundamentals needed for a balanced trade relationship.

The rewards from moving deeper into those less developed economies could be substantial, for us and for them. But I am afraid that without stronger protections, and those benefits may never materialize for the vast majority of the citizens of the poorest developing nations.

At the same time, without strong protections for the men and women whose jobs—in some cases whose towns, in many cases whose whole way of life is at risk without protections for them, they, too, will see little or nothing of the benefits of freer trade.

That is why I am going to vote against the conference report before us today, not because I expect it to be defeated, but because I fully expect it to pass, and I want to make it clear that I, as one Senator, have gone about as far as I can go in my support of freer trade without some stronger assurances that the gains will outweigh the risks, and that those gains will be fairly and efficiently distributed.

I voted for many amendments to the Senate fast-track bill, amendments that would have provided some of the assurances I am seeking. I voted for stronger protections for our State and local environmental laws when they are threatened by foreign firms. I voted for stronger protections for labor and environmental standards in trade deals with developing nations.

Even though those and other amendments were not adopted, I nevertheless supported sending the bill on to a conference with the House.

Today we are voting on a bill that not only lacks those provisions, but has weakened many of the important improvements in the Trade Adjustment Assistance Program that were contained in the Senate version.

As we expand trade among the nations of the world, we are engaged in a real-life experiment in economic theory. I believe that expanding markets and opportunities are indispensable to a better life for the people of our country as well as for the citizens of other nations.

Just as indispensable are political rights, human rights, a healthy environment—things that we cannot just take for granted, things that aren't provided automatically by the invisible hand of the market.

That is particularly true as we undertake to integrate our developed economy—as well as our system of political and human rights, our strong environmental protection standards, our history and institutions of labor rights.

We do ourselves no good, and the citizens of other nations no good, if we fail to maintain those values in balance with the real, tangible benefits of free trade.

Because this new chapter in the history of expanding trade presents so many challenges, public opinion, here and abroad, shows a deep concern about the ultimate costs of global economic integration.

Of course, there are still those who believe trade itself is the cause of most of the world's problems, and on the other side, there are those who blithely assume that expanded trade itself is the highest goal.

I think we should listen to the common sense of the average citizen, both here and abroad. They understand the benefits that can come from free markets, but they hold other values, too.

They want to maintain control over their own fates, and the fates of their families, their towns, their countries. They want to treat the environment responsibly.

They want, to maintain some balance among the values they hold.

So I will vote no today, in the knowledge that we will be granting this administration and the next one the authority to negotiate and bring home important new trade deals, in a new round of WTO talks, and in other key areas.

I hope they use this authority wisely, and that they treat the negotiating objectives we are giving them today as a floor and not a ceiling on the standards they apply in their negotiations.

If they do not, they should not bring us trade deals for our consideration under this fast track authority. Along with the authority we are granting the administration, we are providing ourselves, in Congress with new oversight of the progress of trade talks.

We will use this new authority to keep our negotiators on course. The slim margin in the House, and the vigorous debate on the Senate bill should provide ample guidance about the standards we will apply to any trade deal negotiated under this authority.

We will continue to remind our negotiators of those concerns over the three-year life of this authority. A 2-year renewal will not be automatic not in this new climate of concern about the net benefits of trade nor should it be.

My "no" vote today is not a vote against expanded trade. It is a vote against complacency in the conduct of our trade negotiations.

Today is not the end of the debate on this new grant of fast track authority. It is the beginning.

Mr. KYL. Mr. President, I rise today in reluctant support of this conference report. The underlying bill granting the President authority to negotiate trade agreements is critical. The problem is all of the other extraneous costly provisions in the trade assistance portion of the report. On balance, it has only been marginally improved during conference, and, in fact, one could argue that it has been made worse by the addition of a misguided and fiscally reckless new entitlement program.

When this bill last came before the Senate, I outlined four main concerns, and said that how those issues were addressed in conference would influence my vote on the final version of the bill. First, I said the conference report would have to maintain the 2002–2006 suspension of the 4.9 percent tariff on steam generators for nuclear power facilities. That was accomplished. Second, the conference report would have to remove the so-called Dayton-Craig language. That was accomplished. Third, it would need to either eliminate or substantially amend the language creating a "wage insurance" program for workers age 50 and older who are certified under the Trade Adjustment Assistance Program. That was not accomplished. Fourth, the conference report would have to make significant changes in the health-insurance tax credit for TAA-certified workers. That was not accomplished, and arguably, the provision was made worse.

More specifically, the Senate-passed bill and the conference report will suspend for a period of five years the 4.9 percent tariff on steam generators used by nuclear facilities. These generators are not manufactured in the United States, so there is no domestic industry to protect through the imposition of tariffs. Tariffs should never be imposed on products that are not domestically manufactured, especially those products that are critical for maintaining the U.S. domestic supply of energy.

The existing tariff amounts to a "tax" of approximately $1.5 million per generator. Although ostensibly paid by utilities, the cost would actually be passed on to ratepayers and consumers. In the case of the Palo Verde plant in Arizona, the nation's largest nuclear power facility in terms of production, the additional cost, due to the tariff, would be over $8.2 million for the six generators that it will need to import.

The tariff suspension will save ratepayers money, which is why it has strong bipartisan support. I appreciate the conferees maintaining this provision in the conference report.

I am also pleased that the conferees agreed to remove the so-called "Dayton-Craig" language. This is a provision that would have made it easier to defeat legislation negotiated under trade-promotion authority if it amended U.S. trade remedies, no matter how technical or even beneficial the change might be. It would have resulted in the unraveling of successful trade negotiations. Moreover, the provision was unnecessary since language is already included in the bill to "preserve the ability of the United States to enforce rigorously its trade laws" and "avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade."

The next issue of concern to me involved the many trade-adjustment assistance, TAA, provisions in the bill. One such provision was the new "wage insurance" entitlement, which would provide a subsidy of up to $5,000 for older TAA-certified workers who are subsequently employed at lower-paying jobs. With no data supporting the efficacy of such a proposal, this provision would create significant disincentives for workers to forgo needed training or conduct a more intensive job search, likely resulting in workers choosing lower paying and perhaps lower-skilled jobs with taxpayers liable for the difference. It is indeed unfortunate that conferees were unable to remove this provision. Although the nature of the entitlement is altered somewhat, it remains deeply flawed.

Another provision in this conference report would provide an advanceable, refundable health-insurance tax credit to TAA-certified workers. Although the conferees agreed to lower this tax subsidy from 70 percent to 65 percent, the credit remains at an arbitrarily high percentage of the premiums' cost.

With one small exception, the credit can only be used to subsidize the cost of company-based, COBRA, or pooled health-insurance policies. I believe that it is unfair for American taxpayers, many of whom may not have health insurance themselves, to provide such a generous health-insurance subsidy. Under an extremely small exception, individuals will be able to use the credit for the purchase of an individual health insurance if the policy is bought at least one month before unemployment. This restriction makes the small exception for the purchase of individual health insurance nearly worthless.

Worst of all is the poison pill that was added to the conference report. By expanding the eligibility for the health tax credit to retirees receiving benefits from defunct pension plans taken over by the Pension Benefit Guarantee Corporation, PBGC, the conference report has taken a significant step backwards. Potentially, this provision could end up covering individuals who worked for companies that went out of business 20 years ago. Today, these individuals will be eligible for this new benefit. These individuals, who will often be 55 years or older, will be included in the pool of workers benefitting from new Trade Adjustment Assistance health provisions, making it even more expensive for the relatively younger workers to purchase health insurance. Aside from doubling the costs of these health provisions, which now total over $4.8 billion over 10 years, this legislation could have numerous other unintended consequences on our pension system. It allows companies that over-promised benefits to walk away from their obligation and leave taxpayers with the bill.

As a matter of principle on the one hand, and sound economic policy on the other, I still believe it is imperative that we grant the President trade-promotion authority. As a Senator who is committed to expanding free trade and its accompanying benefits, I am frustrated that this legislation has been loaded up with costly new entitlement programs.

I will vote for this bill because I know how important it is to grant the President Trade Promotion Authority. But because of the numerous bad provisions in the bill, and the bad precedents they set, the decision does not come easy. That shouldn't have been the case.

Ms. SNOWE. Mr. President, I rise today to support this conference report. Although I am disappointed that several provisions were removed in conference, on balance this legislation still represents a major expansion of the Trade Adjustment Assistance that is crucial for those workers who have lost their jobs due to imports or plant relocations to other countries.

I supported this legislation during the Finance Committee's markup, as well as during the Senate vote in May as I have been involved with this legislation for over a year with hearings, markups, negotiations, consideration by the Senate, and now the consideration of the conference report. I worked with Senator BINGAMAN on the Trade Adjustment Assistance, TAA provisions and then with Senators GRASSLEY and BAUCUS. In the same manner, both agreed to a critical expansion of the existing TAA program while also including provisions I advocated to accelerate assistance to dislocated workers and provide them with greater options in the utilization of these benefits. And, when the healthcare provision of TAA threatened to scuttle the bill, Senator BAUCUS and I worked together to fashion a deal that would be acceptable to both Republicans and Democrats.

At no point was my decision to support the Senate package, and the TPA section in particular, a foregone conclusion, as I have opposed trade agreements and fast-track authority in the past. I did so because I never felt they struck the proper balance between free and fair trade, and I've been concerned that both Republican and Democrat administrations approached the enforcement of U.S. trade laws not with vigor, but with at best a benign neglect.

However, when the Finance Committee marked-up this fast-track legislation in December and the Senate passed it in May, I supported it precisely because it did strike the appropriate balance, and because of this administration's commitment to aggressively enforce our trade laws so that American workers aren't undermined by unfair trade practices.

Furthermore, while some oppose linking TPA and TAA as contained in this trade package, my support is contingent on this linkage and I have repeatedly emphasized the importance of joining these proposals that are inextricably joined. TAA would not even exist if not for the fact that trade agreements impact U.S. jobs, so attempting to bifurcate TAA and TPA is like trying to divide the "heads" from the "tails" on a coin—sure, it may be possible, but the end product won't be worth one red cent!

TPA and TAA were enjoined and I supported that approach because we must never forget that in the engagement of trade there is a downside—chiefly, that real lives are affected, people not just statistics. When Americans become unemployed due to increased imports or plant relocations to other countries, it is because of trade agreements negotiated by the government of the United States and passed by Congress. Therefore, we have an obligation to also work toward forging a system that provides these trade-impacted Americans with the new skills needed to gain new employment.

This conference report does contain many provisions on both trade and trade adjustment assistance that I think are critical components that make them better than in the past. An expanded TAA program is going to be created, which I support, that will allow more workers to receive re-training and income support assistance quicker and for a longer period of time. This income support and re-training is vital to ensure that these workers can re-enter the workforce and also provide temporary assistance while they are learning new skills.

There are also provisions I fought for that will help speed up the approval process. Specifically, besides consolidating the current TAA and NAFTA-TAA programs into one, more efficient program, the bill includes my proposal to speed-up assistance to displaced workers by decreasing the TAA petition time for certification from 60 days to 40 days. Reducing this time by 20 days will allow people to get on with their lives that much quicker.

The TAA section also provides a 65 percent tax credit for trade-impacted workers to continue their health coverage for themselves and their family. This tax credit is "advanceable" so that people will receive this assistance immediately rather than paying up front to get a tax refund later.

Moreover, this bill addresses another issue that has created problems in my State this year, the current budget for training assistance. Since last year, Maine has run short of training funds by almost $3 million, forcing them to apply for five different Department of Labor National Emergency Grants and potentially causing a freeze in re-training assistance. By providing $220 million in funding, this shortfall will be fully addressed.

And we didn't stop there. Not only does this funding level address state shortfalls, but it also ensures expanded coverage for secondary workers affected by trade. Specifically, under the compromise developed by Senators GRASSLEY and BAUCUS, secondary workers with a direct relationship to the downsizing or closing of a plant will be covered by TAA, while so-called "downstream workers" covered now under a Statement of Administrative Action, SAA, as part of the NAFTA-TAA program will also be covered through the SAA's codification.

But make no mistake, the conference report does not contain some provisions that would be vital to people and communities adversely impacted by trade. Specifically, a small business pilot program that would allow those workers receiving TAA to start a small business without losing their benefits was dropped. Performance assessments of the TAA program that included the economic condition of the state were dropped, as were all performance requirements.

Not only were these removed but so was TAA for fishermen. Instead, this bill requires a study to determine whether TAA for fishermen is "appropriate and feasible". What is amazing is that TAA for farmers is covered in this bill but that somehow their coverage would be different than for fishermen. That is why we are working right now with the Department of Labor on administrative procedures to ensure that fishermen will be eligible for TAA.

TAA for communities was also dropped in conference. This would have allowed communities that suffered a plant closure due to import competition to apply for grants in order to attract new businesses. As in my home State of Maine, many States have rural towns that are dependent on a single plant for their livelihood and this provision would have given them a chance should that plant close.

In addition, coverage for workers that have watched their plant move overseas, known as shifts in production, has also been limited in the bill. As opposed to granting eligibility to workers whose plant moved to any country overseas, this conference report limits coverage only to those workers whose plant moved to a country that has a Free Trade Agreement, FTA, with the U.S., is a country receiving the reduced duties or duty-free benefits of the ATPA, the Africa Growth and Opportunity Act, AGOA, and the Caribbean Basin Initiative, CBI, or, if there has been an increase in imports from the country to which the plant moved.

This may appear to cover all the bases, except for the possibility that a plant will move overseas and may not actually import back to the U.S., thus there will be no increase in imports. If the U.S. has no FTA with that country or it is not participating in a U.S. duty-reduction program like the ATPA, then those workers are not eligible for TAA. How are these workers affected differently from others who lose their jobs due to imports?

As I said earlier, on balance, the TAA provisions represent a significant expansion and improvement of the former TAA and NAFTA-TAA programs and will provide an invaluable service to those dislocated workers as they seek new jobs. While the government is assisting workers whose jobs have been lost due to imports, this bill also provides the Administration with the ability, through TPA, to negotiate trade agreements that will improve and increase U.S. exports. As I mentioned earlier, my past opposition to fast-track, due to concerns about the balance between free and fair trade and our enforcement of our trade laws, have been addressed in this bill.

The bottom line is that enforcement is an inseparable component of free and fair trade. If you don't believe me, just look at the record. In the past, when free trade and fair trade have been treated as mutually exclusive, import-sensitive industries in Maine and America were decimated by foreign competitors. Why? Because foreign businesses enjoyed the benefits of a lack of reciprocity in trade agreements, foreign industry subsidies, dumping in the U.S. market . . . and non-tariff trade barriers.

For this reason, I was disappointed that the Dayton-Craig language on trade remedy laws was removed in conference. However, the fact that the existing language on maintaining our ability to "enforce rigorously" our trade remedy laws became a Principal Negotiating Objective demonstrates a recognition of the utmost importance with which we hold these laws. In that regard, the Administration should take note that no trade agreement should ever be submitted to this Congress that weakens our trade remedy laws. As a member of the Finance Committee, I will do everything that I can to ensure that no trade agreement never ever weakens or undermines these laws.

The enforcement of our trade remedy laws are vital as the surrender of our rights have had serious consequences in the lives of real people. In Maine alone, we lost nearly 15,400 manufacturing jobs since NAFTA's inception including 2,400 textile jobs, 6,000 leather products jobs, 500 apparel jobs, 3,700 paper and allied products jobs, and 4,800 footwear jobs, excluding rubber footwear, and 5,200 manufacturing jobs so far just this year. We failed those people because we abdicated our responsibility to take a balanced, comprehensive and integrated approach to trade.

That is why I can not and will not support the Andean Trade Preference Act, ATPA. I opposed this during the Finance Committee's markup of the legislation and, although I supported the Senate's trade package legislation, I opposed its inclusion in the trade package.

The ATPA represents a unilateral action by the U.S. to open our markets to the Andean countries in order to bolster their economies in the hopes of reducing drug cultivation. Its effect the last ten years has been questionable with the ITC not able to make a definitive, affirmative determination that it has greatly contributed to the reduction of drug cultivation by providing economic opportunities.

The amount of exports from these countries which fall exclusively under the ATPA has remained relatively constant at 10 percent over the years. The fact that this has changed little indicates that there has been no major change in the production structure of ATPA economies meaning that these countries have not been taking more advantage of what ATPA offered. Therefore, what this legislation seeks to do is change our policies to conform to the Andean countries rather than these countries changing to take advantage of what the U.S. has already offered. U.S. jobs are on the line for an unproven trade benefit program.

That is why I worked in the ATPA to provide the rubber footwear industry with a comparable tariff provision to that which they received in NAFTA. The original ATPA further threatened this industry by giving the four Andean nations a tariff phase-out schedule that was only half as long as the 15-year schedule contained in the NAFTA. I was pleased that the Senate passed the trade package last May with this same 15 year phaseout, because without it we would have set a precedent that would be demanded by other countries as well.

This conference report drops this provision and with it went the hopes of the domestic rubber footwear industry and its 3,400 workers—1,000 of which are in Maine. Not only was my provision lost, but the Senate receded to the House. Under this, all footwear—that was excluded under the expired ATPA legislation, as well as textiles and apparels, leather products, and watches will enter the U.S. duty-free with no phaseout.

Such an immediate tariff reduction to zero will only serve as a sign to other countries, particularly Chile and Latin America nations, that the U.S. rubber footwear industry, once considered import-sensitive, is not only open for business, but for decimation. For this reason, I have been working with the USTR to impress upon them the significance this precedent will have on other trade agreements, particularly with Chile. I am pleased that the USTR provided me with unequivocal assurances that the ATPA provisions regarding rubber footwear in no way establishes a precedent for Chile, and that they will continue their efforts to prevent any adverse impact during trade negotiations on domestic rubber footwear.

And while we cannot bring back these or other jobs that were lost due to the miscues of the past, we can learn from those miscues and apply the lessons to our present and future actions. We can change our approach at the negotiating table. We can enforce existing trade laws.

In the real world, we have to acknowledge that there are many nations that don't care about labor or environmental standards. And that creates a tilted playing field where it's harder for us to compete. In that regard, this legislation goes further than any past fast-track bills on the issues of labor and the environment. The bill before us today not only sets as an overall objective the need to convince our trading partners not to weaken their labor or environmental laws as an inducement to trade, but it also requires the enforcement of existing labor and environmental laws as a principal negotiating objective.

The conference report also recognizes the need to take steps to protect the import sensitive textile and apparel industry. It calls for reducing tariffs on textiles and apparels in other countries to the same or lower levels than in the U.S., reducing or eliminating subsidies to provide for greater market opportunities for U.S. textiles and apparels, and ensuring that WTO member countries immediately fulfill their obligations to provide similar market access for U.S. textiles and apparels as the U.S. does for theirs.

And this legislation includes new negotiating objectives to address the issue of foreign subsidies and market distortions that lead to dumping. As a result, many industries stand to benefit from the adoption of this legislation, including the forest and paper, agriculture, semiconductor, precision manufacturing, and electronic industries of my home state. According to Maine Governor Angus King the fast track approach is, "On balance . . . beneficial to Maine. There might be some short term problems, but in the long run, we have to participate in the world economy."

And Maine has been participating. From 1989 to 1999, total exports by Maine companies increased by 137 percent from $914 million to $2.167 billion, with the largest industry sector for trade being semiconductors—employing about 2,000 in Maine. The computer and electronics trade, which includes semiconductors, accounted for 33 percent of Maine's exports in 1999, followed by paper and allied products at 17 percent.

The Maine industries that benefit from exports have also seen job gains in the state. From 1994 to 1999, the electrical and electronics industry had a job gain of 2.3 percent and the agriculture, forestry and fishing industry saw a 19 percent increase in jobs. In 2000, Maine's exports supported 84,000 jobs.

Mr. President, these measures and commitments represent a significant strengthening of our resolve and our ability to utilize existing remedies to protect American industries and workers. This comes not a moment too soon, as the success of our economy relies more than ever on fair and freer trade U.S. exports accounted for one-quarter of U.S. economic growth over the past decade . . . nearly one in six manufactured products coming off the assembly line goes to a foreign customer . . . and exports support 1 of every 5 manufacturing jobs.

Given these facts, it is an understandable concern that the U.S. has been party to only 3 free trade agreements while there are more than 130 worldwide. Since 1995, the WTO has been notified of 90 such agreements while the U.S. only reached one in the trade arena, the Jordan Free Trade Agreement. In contrast, the European Union, EU, has been particularly aggressive, having entered into 27 free trade agreements since 1990 and they are actively negotiating another 15. Perhaps not surprisingly, the Business Roundtable reports that 33 percent of total world exports are covered by EU free trade agreements compared to 11 percent for U.S. agreements.

Why should these facts raise concerns? Because every agreement made without us is a threat to American jobs. Nowhere is this better exemplified than in Chile which signed a free trade agreement with Canada, Argentina and several other nations in 1997.

Since that time, the U.S. has lost one-quarter of Chile's import market, while nations entering into trade agreements more than captured our lost share. According to the National Association of Manufacturers (NAM), this resulted in the loss of more than $800 million in U.S. exports and 100,000 job opportunities. One specific industry affected was U.S. paper products which accounted for 30 percent of Chile's imports but has since dropped to only 11 percent after the trade agreements were signed.

We need to look to the future of our industries and open doors of opportunity in the global marketplace. In order to do so responsibly, we need to learn every economic lesson possible from the past, and this package provides for not only a study I requested of the economic impact of the past five trade agreements, but also an additional evaluation of any new agreements before TPA is extended.

And we need to make sure that everyone who can benefit from these agreements can get their foot in the door. Small businesses, for example, account for 30 percent of all U.S. goods exported, and in Maine more than 78 percent export, so I am pleased this bill includes my proposals placing small businesses in our principle negotiating objectives.

Finally, the package includes consultation rights for the House and Senate Committees with oversight of the fishing industry. As the past Chair and current Ranking Member of the Commerce Subcommittee on Oceans and Fisheries, I can tell you that the actions of other countries with regard to fishing plays a crucial role in ensuring our industry has a level playing field on which to compete. Last year this country exported $11 billion worth of edible and nonedible fish products, and in Maine the industry—which is our 5th leading exporter—generates 26,000 jobs.

In the eleventh hour race, Mr. President, as was the case with many TAA provisions, some other items that were crucial for small businesses which make up 99 percent of all U.S. businesses were also lost. One was a provision to create a small business Assistant USTR which the Senate-passed bill included. Although the conference report states that the Assistant USTR for Industry and Telecommunications would be responsible for this portfolio, it contains a only sense of Congress that the title reflect that. I am shocked at how seemingly difficult it was for us to create a position for small business at the USTR with a title that reflects that fact.

Similarly, a provision requiring the USTR to identify someone to be a small business advocate in the WTO is also no longer in this bill. Why? Is it that controversial for us to ensure that the interests of small business are represented in the WTO?

This is not a perfect bill but the adoption of this comprehensive package will ensure that trade agreements will be pursued in a fair and balanced manner to the benefit of all Americans while also recognizing the need for expanded assistance for those who lose their jobs due to trade.

Mr. FEINGOLD. Mr. President, I rise to offer some comments on the fast-track conference agreement.

Once again, the supporters of this measure seek to characterize this vote as a vote on the issue of whether or not we should have trade agreements. They argue that to favor the bill is to favor trade, and to oppose the bill is to oppose trade.

Of course, this is nonsense.

As a number of my colleagues have noted, the issue of whether to enact fast-track procedures is not a question of whether one favors or opposes free trade, but rather what role Congress plays in trade agreements.

Under this bill, that role will be little more than that of one of those bobble-head dolls—nodding its head "yes" or shaking its head "no" in response to proposed trade agreements.

And it may actually be worse, because nothing in the measure before us limits this bobble-head role strictly to trade agreements. Under this bill, the President is at liberty to submit just about any policy he wants as part of a fast-track protected trade bill, and Congress would have to swallow that policy if it wanted to endorse the trade agreement to which it was attached.

As I noted during the debate on this bill last May, this has, in fact, occurred. The last fast-track protected trade agreement this body considered, the measure implementing the Uruguay Round of the GATT, included more than $4 billion in tax increases that were beyond the reach of this body to amend or even delete.

Of course, some may argue that the risk that extraneous matters might be slipped into a fast-track protected trade bill is greatly reduced because the two trade committees—the Finance Committee in the Senate and the Ways and Means Committee in the other body—will stand guard against such an event, protecting congressional prerogatives.

Let me first note that the GATT bill, with its $4 billion in tax increases, came to us with the blessing of those two committees.

More recently, the track record of those two committees on this very legislation is not reassuring. The bill before us includes many questionable provisions, but let me cite two in particular that have absolutely no business being in the measure. They both raise serious civil rights and civil liberties concerns.

The first of these two issues relates to immunity for customs officers. Central to any lawsuit against a government official alleged to have committed misconduct is the immunity standard for that official. Under Supreme Court law, every government official—federal, state and local—is protected by the doctrine of qualified immunity. This is a very broad shield from liability. In the words of the Supreme Court, it protects "all but the plainly incompetent or those who knowingly violate the law." And it is the type of immunity that sets the bar plaintiffs must overcome to win law suits.

In the legislation before us, a provision was slipped in that will make it harder to hold an abusive customs officer accountable for bad behavior. The bill changes the immunity standard from one of "objective" immunity, meaning an official had to prove that he or she did not violate clearly established law, to "good faith" immunity, meaning that the official only had to prove that he or she believed that he or she was not violating a person's constitutional rights and was not acting with a malicious intent.

The practical effect of this change is that an abusive officer will merely have to file an affidavit stating that he or she acted in good faith, and the case will be dismissed. This would make it very difficult for a court to hold a customs officer accountable for abusive behavior, behavior such as racial profiling.

Putting aside the question of whether or not this provision belongs in a bill that relates to the procedures under which Congress considers trade bills, the provision is not justified. There is no record of any great abuse of the existing system.

Some might suggest that because customs officers work on the border, they need special protection. But Border Patrol agents and other law enforcement officers like FBI, DEA, and local police are stationed near borders, and they will all continue to work under an objective immunity standard.

Beyond that, this provision has no business in this bill. It has nothing to do with how Congress should consider trade agreements. And it certainly merits the kind of scrutiny that it will not get as part of a conference report that cannot be amended.

A similarly inappropriate but little discussed provision in this bill would allow customs officers to search outgoing mail without the approval of a court. That is right. Under this bill, a customs officer can open mail you send overseas without getting a search warrant.

The provision applies to all mail weighing more than 16 ounces no matter how it is sent, and it also applies to any mail under 16 ounces, that is sent through a private carrier, such as Federal Express or UPS.

This is an enormous change in law. A customs officer would no longer have to go to court to obtain a warrant to search our mail. It takes away much of the protection we all thought we had when we mail a letter to a friend or relative overseas.

Again, setting aside the question of whether the provision has merit, it simply has no business in this bill.

These two provisions are deeply flawed, in and of themselves, but they should also give us pause when we consider what future proposals we might see included in fast-track protected trade bills—measures that cannot be amended. If the congressional committee watchdogs allowed these provisions to be slipped into this bill, what might find its way into future measures?

And I remind my colleagues that there are no requirements in this bill that fast-track protected bills consist only of provisions germane, or even relevant, to the trade agreement to be implemented.

The bill is flawed in a number of other critical ways. As others have noted, the bill moves backwards in the area of worker rights and the environment. It even backslides from the modest progress made in the Jordan Free Trade Agreement.

The bill also guts the Dayton-Craig provisions that sought to ensure our own trade laws would not be undercut as part of a fast-track protected trade bill. That amendment was supported by a strong majority of the Senate, but it was essentially eliminated in conference. In fact, there is little doubt that it was dropped even before this bill went to conference.

Nor does this bill address the so-called Chapter 11, issue where foreign investors can use secret trade tribunals to effectively weaken or eliminate existing state and local laws and regulations that protect our health and safety. Because that problem is not addressed, we can expect future trade agreements to include this anti-democratic provision.

As I noted during the debate we had on this issue last May, fast-track is not necessary for free trade. We have entered into hundreds of agreements without those procedures.

More importantly, fast-track may actually undermine the cause of improved trade.

As I noted then, rather than encouraging trade agreements that produce broad-based benefits, fast-track has instead fostered trade agreements that pick "winners and losers," and in doing so has undermined public support for pursuing free trade agreements.

Fast-track also advances the short-term interests of multinational corporations over those of the average worker and consumer. With opposition to the entire trade bill the only option left, Congress has swallowed provisions that advance corporate interests, even when they come at the expense of our Nation's interests. The so-called Chapter 11 provisions are an excellent example of this. Here again, fast-track procedures actually work to undermine public support for trade agreements.

Let me reiterate that many of us who support free and fair trade find nothing inconsistent with that support and insisting that Congress be a full partner in approving agreements.

Indeed, as the senior Senator from West Virginia, Mr. BYRD, has noted, support for fast-track procedures reveals a lack of confidence in the ability of our negotiators to craft a sound agreement, or a lack of confidence in the ability of Congress to weigh regional and sectoral interests against the national interest, or may simply be a desire by the Executive Branch to avoid the hard work necessary to convince Congress to support the agreements that it negotiates.

I can think of no better insurance policy for a sound trade agreement than the prospect of a thorough Congressional review, complete with the ability to amend that agreement.

This was a bad bill when it left the Senate. It is much worse now, and I urge my colleagues to oppose this legislation.

Mr. ENZI. Mr. President. I rise to share my thoughts on the trade bill we passed this afternoon that gives our President renewed trade negotiating authority

Like many of my colleagues, I hail from a State that is particularly sensitive to foreign imports of agricultural products, for example Wyoming's two largest cash crops are sugar and cattle, and where trade makes a big impact on certain industries.

I believe in fair trade, and I support the efforts of our President as he works to improve our multilateral and bilateral relationships. I have also worked diligently with Members from both sides of the aisle to improve our ability to participate in international trade. You will remember I urged my colleagues last year to vote for the Export Administration Act, a bill which would streamline our export control system so that items that do not need to be controlled may move more easily across borders. I believe that international trade is an effective way to boost the economy, but it must be done responsibly and carefully.

I voted in favor of this bill today for three primary reasons.

First, I strongly support the bill's provisions that recognize the sensitive nature of some industries. I believe the most essential provision related to import sensitive goods is the mandate that requires the President to consult with Industry Advisory Committees and the International Trade Commission on certain negotiations. This bill requires the administration to notify and gather input during trade negotiations from people like ranchers and farmers who produce import-sensitive products.

Second, as an original cosponsor of the Craig-Dayton Amendment, the new language in the bill addressing trade remedy laws is critical. The bill provides that if negotiators don't listen to concerns about proposed changes to trade remedy laws, Congress can pass a formal resolution of disapproval. This puts up a red flag to the negotiators that they are treading on shaky ground and may want to rethink their position. In addition, I am also pleased this bill sets rigorous enforcement of U.S. trade remedy laws as a principal negotiating objective and increases reporting requirements for possible modifications to trade laws.

Third, there is specific language in this bill that addresses a major concern of sugar producers. Wyoming sugar producers have been hurt by a "sugar laundering" operation being conducted through Canada. The process starts when a commodity trader in Canada blends sugar, water and molasses in a ratio that would exempt the mixture from U.S. import duties Canada enjoys under the North American Free Trade Agreement, NAFTA. This mixture is then trucked across the U.S. border to a factory controlled by the same commodity trader where the sugar is separated from the molasses mixture. The sugar is then sold in the U.S. market free of tariffs and the rest of the mixture is returned to Canada to be "stuffed" again. The "sugar loophole" and others like it would be closed by this trade bill. The bill makes the determination that stuffed molasses should be considered imported sugar and therefore subject to tariffs. It also requires the Secretary of Agriculture to monitor other existing or likely circumventions of tariff-rate quotas and report on these to the President.

Beyond these specific reasons, I cast my affirmative vote today because fair trade is essential to the economic growth of all industries. The next step is rule and regulation, and I will carefully watch to ensure that the interests of Wyomingites are protected.

Mr. KERRY. Mr. President, I will support this final conference report to give the President the authority to negotiate nonamendable trade agreements and to reauthorize the Trade Adjustment Assistance Program. I am pleased that this TAA package provides greater benefits to more workers than ever before.

The Nation's economy is fundamentally linked to our Nation's ability to export. Today, one-tenth of all jobs in this country are directly related to our ability to export goods and services. When you consider multiplying effects, that number rises to nearly one-third. Businesses in Massachusetts alone sold more than $19.7 billion worth of goods to more than 200 foreign markets last year. That is more than $3,000 worth of goods sold abroad for every resident. Massachusetts businesses also help break the stereotype of international trade as the arena of large corporations. Almost 75 percent of my State's exporting businesses are small businesses.

Of larger businesses which have overseas subsidiaries, almost three-fourths of profits earned abroad are returned to parent companies in the United States. That means more jobs and higher wages at home. These statistics present a strong case for support of this bill.

I believe strongly that more international trade results in a greater occasion to help developing countries grow and develop the roots of democracy. The chance to improve ties with other countries and use trade as one means of advancing American foreign policy is an opportunity that we should not pass up. And so I will support this conference report.

However, we do ourselves a great disservice to ignore the growing concerns of our own people who view the trade equation as imbalanced: Working families in mill towns across New England or steel towns in the Midwest who fear that we have looked only at the export side of the puzzle, ignoring our fundamental obligations to a clean environment, basic labor standards and to those Americans whose lives change when factories close or businesses cannot compete with cheaper foreign-produced products.

Some important safeguards were in the Senate-passed bill. Indeed, the bill that passed the Senate in May was precedent-setting in many ways. We would have provided trade promotion authority to the President while also firmly stating that our Nation's trade remedy laws should not be eviscerated by trade agreements. Significantly, we provided the strongest safety net ever to workers left jobless by the short-term economic upheaval that comes from increased international trade. We also had a thorough debate on the importance of labor and environmental standards in trade agreements, and on my efforts to prevent investor-State disputes from undermining U.S. public health and safety laws. I have no doubt that the Senate will come back to these issues in the future.

Unfortunately, this conference report represents a mild retreat from the Senate-passed bill. The conference report does not protect American trade remedy laws. The safety net for workers is less comprehensive than it could have, and should have, been. It still does not adequately preserve American sovereignty in directing trade negotiators how to develop settlement panels for investor-State disputes.

As a result, we can only hope that our trade negotiators will not undermine the values that many Americans worry are not being honored in our trade agreements. To be quite honest, though, I have some concerns that the President will not make a full commitment to either the environment or the basic rights of workers in future trade agreements, because he has not done these things at home. And so it must fall to the Senate to put the President on notice that he must address the concerns that Americans have about trade. I, for one, will be watching agreements that grow out of this trade promotion authority very closely.

I must make one more point. With respect to the Trade Adjustment Assistance Program, this bill is not as good as the one the Senate passed 3 months ago. But this bill does expand benefits for workers who lose their jobs due to increased foreign competition in ways that, frankly, would have been inconceivable just a few years ago. That is real progress. If we are to continue to seek the benefits of increased trade, we must also fulfill our commitment to families and communities whose lives are disrupted by the short-term impacts of trade.

I am particularly disappointed that the conference report did not retain the important new program making TAA available to fishermen. This program was included in the TAA bill marked up by the Finance Committee last December and included in the bill that passed the Senate in May. U.S. fish imports now outstrip exports by $7 billion, due in some measure to the fact that no other nation in the world requires sustainable fishing practices. This deficit may soon put some fishermen out of business.

While a separate program for fishermen makes sense, the administration has informed me that fishermen who seek TAA benefits through the Department of Labor will indeed be eligible, although they may have to seek a blending of TAA and Workforce Investment Act benefits. Nonetheless, I have the Department's pledge to work with me on this issue, and I look forward to doing just that.

I have also been informed that the Secretary of Agriculture will do a rulemaking to determine whether fishermen are eligible for the TAA for Farmers program as well. I will make sure that the Secretary is aware of my strong belief that fishermen are no different from farmers, and deserve equivalent consideration in this program. I ask unanimous consent that these letters be made a part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF LABOR, ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING,
Washington, DC, August 1, 2002.

Hon. JOHN F. KERRY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KERRY: I understand that you have a strong interest in providing assistance to workers and fishermen impacted by trade or for other reasons. We at the Department of Labor share your desire to help all dislocated workers get back to work.

Workers, including fishermen, who lose their jobs through no fault of their own can receive a wide range of employment and training services through the Workforce Investment Act formula programs. On July 1, 2002, Massachusetts received an allotment of $55,189,519, of which $12,321,163 is allocated to serve dislocated workers. When these formula funds are insufficient to respond to a mass lay-off, plant closure or natural disaster, the Secretary of Labor has discretion to award National Emergency Grants, which are authorized under section 173 of the Workforce Investment Act. National Emergency Grants provide resources for job training and reemployment assistance, as well as supportive services for child-care, transportation and needs-related payments for income support while a worker is enrolled in training.

Workers who are impacted by trade may qualify for TAA benefits. Although the Department of Labor has not received any petitions for certification of eligibility for TAA assistance from fishermen over the last five fiscal years, they certainly could apply as long as they meet the requirements of the Act. For example, one of the criteria for TAA eligibility is that the impacted firm has to be involved in the production of an article. We consider fresh fish to be an article. Therefore, if imports of that fish or other fish that were directly competitive contributed importantly to the decline in the sales or production of the fishing firm and the loss of jobs of the crew, the group of workers could be certified for TAA. An owner who works on a fishing vessel with as few as two crew members would be eligible to initiate the petition for TAA.

It may also be noted that the Conference Report that is currently before the Senate expands eligibility for TAA to cover certain secondary workers, including suppliers of component parts. In the case of a firm and its fishermen that provided fresh fish to a company that canned the fish and sold the canned fish, and imports of that canned fish led to the workers in the canning company being certified under TAA, the fishermen who supplied the fish could also be certified as secondary workers. This would also require that the loss of business with the canning company constituted at least 20 percent of the fishing firm's sales or contributed importantly to the loss of the fisherman's jobs.

It is important to recognize, however, that there are certain limitations on the assistance provided under TAA. One of the requirements for receiving extended income support under TAA, in addition to being enrolled in training or receiving a waiver from that requirement, is that the worker was eligible for and exhausted regular State unemployment insurance. Generally, fishermen on vessels of under 10 tons, and that are not involved in the commercial fishing of salmon or halibut, are excluded from unemployment insurance coverage. Therefore, even if certified for TAA benefits, many fishermen may not qualify for the income support benefit. Therefore, in some cases, fishermen may be able access to income support to enable them to participate in training through WIA formula funded programs, and to the extent possible, through a National Emergency Grant awarded in response to a state application, where eligibility for unemployment insurance is not necessarily a prerequisite.

I share your concern for all workers who have been laid-off due to trade or other reasons, and I want to assure you that my staff will work with you to help respond to layoffs that may impact fishermen in Massachusetts.

Sincerely,

EMILY STOVER DEROCCO.

THE SECRETARY OF AGRICULTURE,
Washington, DC, August 1, 2002.

Hon. JOHN KERRY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KERRY, As you are aware, the conference agreement on H.R. 3009, the Andean Trade Preference Expansion Act is pending before the Senate. This Act includes provisions important to the Administration on Trade Promotion Authority and Trade Adjustment Assistance (TAA).

We understand you have concerns regarding the eligibility of the fishing industry to participate in the TAA programs for agriculture authorized in the legislation. As well, we understand the difficult situations that have faced the fishing industry in your State over the last few years.

There has been precedent for including certain fishing enterprises in previous USDA disaster programs. As the Department promulgates the necessary regulations to implement the new authorities provided in the Act, we would be willing to carefully examine and discuss with you whether we can include the fishing industry in the appropriate regulations on TAA.

Sincerely,

ANN M. VENEMAN.

Mr. GRAHAM. Mr. President, I rise today to express my full support for the conference report on H.R. 3009, the Andean Trade Preference Expansion Act.

H.R. 3009 is by far the most comprehensive trade legislation to come before Congress in fourteen years. By passing this bill, we accomplished four key goals: granting the President Trade Promotion Authority for the first time in 8 years; dramatically enhancing Trade Adjustment Assistance for displaced workers; renewing and expanding the Andean Trade Preference Act to provide legitimate export opportunities to Bolivia, Colombia, Ecuador and Peru, and; extending for 5 years the Generalized System of Preferences providing tariff cuts for over 100 developing countries.

I support all four of these goals, and I voted enthusiastically in favor of this bill. I am particularly pleased that the enhancement of the Andean Trade Preference Act is the underlying bill for this important legislation. This issue has been of great personal importance to me.

When the Senate was considering its version of Andean legislation in May, we heard time and again about the success of new, legitimate, exports from the region like cut flowers and asparagus.

Since December 4 of last year, when the original ATPA legislation expired, these and many other legitimate exports from the region have been subjected to substantially higher tariffs. These higher tariffs hit the fresh cut flower sector particularly hard as higher tariffs impacted peak sales periods for the Valentine's Day and Mother's Day holidays.

This legislation will return trade benefits to all of those products previously covered by ATPA and, most importantly, this legislation has been made retroactive to December 4, so that any duties that were paid during the lapse of ATPA will be refunded.

I am pleased that the conference report is not simply a renewal of ATPA, but includes enhanced benefits for new products. Times, and our trade policy in the region, have changed since 1991 when the original ATPA legislation passed. Most notably, the passage in 2000 of the Caribbean Basin Trade Partnership Act provided enhanced trade benefits to Caribbean countries, but inadvertently disadvantaged imports from the Andean region.

Nowhere else was this more critical than in apparel assembly where some 100,000 jobs in Colombia alone were at risk of being relocated to CBI countries. Under the enhanced ATPA program in the conference report, the Andean countries will now be competitive suppliers in the region. And this new ATPA benefit will also benefit U.S. producers of textile, yarn and cotton by making these U.S.-produced components more competitive with Asian goods. In fact, the U.S. apparel importers predict that the ATPA provisions in this bill will lead to over $1 billion in new orders. The next time ATPA is debated in this chamber, I look forward to hearing floor statements that show that this projection has come true. I also hope to hear of new successes from increased exports in footwear, watches, tuna, and other new products afforded ATPA benefits under this legislation.

Enhanced trade benefits in the apparel sector should, in my view, be the new norm in the Western Hemisphere. I continue to be concerned about the demise of the Multi-Fiber Agreement in 2005 and the effect the end of this agreement will have on U.S.-Caribbean and Andean apparel assembly partnerships. If we want a competitive apparel industry in the Western Hemisphere post-2005, we must be developing greater efficiency in the region now.

Secretary of Commerce Don Evans has been leading this effort for the Administration, and the Commerce Department has developed a Western Hemisphere action plan to enhance post-2005 competitiveness in the region. I will be writing to Mr. Evans shortly to encourage a similar initiative for the Andean region.

I also want to say a few words about two other key parts of this trade bill—Trade Promotion Authority and Trade Adjustment Assistance. It has been eight long years since Trade Promotion Authority expired. In my view, that is far too long for the United States to be sitting on the sidelines while other countries are aggressively negotiating trade agreements. With Trade Promotion Authority, the Congress and the President will be speaking with a unified voice during negotiations.

TPA will strengthen the United States' negotiating position in ongoing Doha Round of negotiations in the World Trade Organization and will provide much needed momentum for the Free Trade Area of the Americas negotiations. With TPA, USTR will be able to close negotiations on bilateral agreements with Chile and Singapore with the confidence that Congress will consider the agreements as negotiated.

I am pleased that the conference report retained a number of provisions that will help to ensure that import-sensitive agriculture products, such as citrus from my state, will be given an increased level of attention during trade negotiations. I believe these provisions are necessary to help rebuild consensus in support of trade within the agriculture sector. TPA can also help our citrus growers gain market access in Europe and elsewhere around the world, if we achieve our goals in the WTO agriculture negotiations.

Of course, TPA is only the first step toward trade negotiations. Whether or not we are successful in achieving our negotiating objectives will depend on close cooperation between the Congress and the administration. I look forward to working with the Administration on this effort.

The final comment I will make is on Trade Adjustment Assistance. I am pleased that Members of Congress were able to work together in a truly bipartisan fashion to address the health care needs of American workers adversely affected by foreign trade agreements. This trade legislation will nearly triple the existing Trade Adjustment Assistance program by providing new and more comprehensive coverage options. These new benefits will provide critical assistance to the over 2,000 Floridians who presently receive Trade Adjustment Assistance, particularly those from the apparel and electronics sectors where job losses have been most severe.

For the first time, displaced workers will be eligible for a 65 percent advanceable, refundable tax credit that can be used to pay for COBRA or other state continuation plans. Health benefits will also be available to individuals who work for businesses that supply or contract with firms affected by trade. This comprehensive legislation represents a critical step towards our overall goal of lowering the number of uninsured, and I applaud my colleagues who supported it.

I was pleased to vote for the comprehensive trade legislation encompassed by H.R. 3009. Passage of this bill was a major accomplishment of this Congress and proof that the Congress can work together in a spirit of bipartisanship. I am excited about the opportunities I believe this legislation brings to not only our country, but to the rest of the world.

The PRESIDING OFFICER. The Senator from Massachusetts.

PATIENTS BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I regret that we continue to be unable to reach an agreement on the Patients' Bill of Rights that would protect the interests of patients instead of the profits of insurance companies. The sponsors of the Senate Patients' Bill of Rights, Senators MCCAIN, EDWARDS and I, have spent many months talking with the White House. We have repeatedly tried to reach a fair compromise that would address many of the concerns voiced by the opponents of this bill without sacrificing the protection patients need. Unfortunately, we were not able to reach an agreement with them. The Bush administration has simply been unwilling to hold HMOs and insurance companies fully accountable when they make medical decisions. In the end, they were more committed to maintaining special preferences for HMOs and big insurance companies than passing legislation that would protect patients.

This is, at heart, an issue of corporate accountability. HMOs and insurance companies have not been held accountable for their medical decisions; and, as a result patients are being injured every day. Just as Congress took the lead on corporate accountability in the Sarbanes legislation when the White House would not take strong action, I believe Congress will now take the lead and enact a strong Patients' Bill of Rights. The political climate is very different today than it was when the House acted last year. The public is focused. I do not believe the Republican leadership will be able to resist the tide of popular opinion.

Throughout this process, we have been particularly concerned about those patients who sustain the most serious, life-altering injuries. If the law does not allow them to obtain full and fair compensation for their injuries, we will fail those who are most in need of our help. Yet, the administration has steadfastly refused to agree to liability provisions that would treat the most seriously injured patients justly.

Holding HMOs and health insurers fully accountable for their misconduct is essential to improving the quality of health care that millions of Americans receive. Nothing will provide a greater incentive for an HMO to do the right thing than the knowledge that it will be held accountable in court if it does the wrong thing. Placing arbitrary limits on the financial responsibility which HMOs owe to those patients who have been badly harmed by their misconduct would seriously weaken the deterrent effect of the law. Yet, the administration has insisted on a series of provisions which were designed to limit the accountability of HMOs.

The Bush administration wanted to weaken the authority of external review panels to help patients obtain the medical care they need. They demanded a rebuttable presumption against the patients in many cases that would effectively deny them a fair hearing in court. They demanded an arbitrary cap on the compensation which even the most seriously injured patients could receive. They wanted to allow HMOs and insurance companies to block injured patients from going to court at all, forcing them instead into a much more restrictive arbitration process. They insisted on preventing juries from awarding punitive damages even if there was clear and convincing evidence of a pattern of intentional wrongdoing by the HMO. At every stage of the accountability process, the administration was unwilling to treat patients fairly. A right without an effective remedy is no right at all, and the administration was unwilling to provide injured patients with any effective remedy.

Every day, thousands of patients are victimized by HMO abuses. Too many patients with symptoms of a heart attack or stroke are put at risk because they cannot go to the nearest emergency room. Too many women with breast cancer or cervical cancer suffer and even die because their HMO will not authorize needed care by a specialist. Too many children with life-threatening illnesses are told that they must see the unqualified physician in their plan's network because the HMO won't pay for them to see the specialist just down the road. Too many patients with incurable cancer or heart disease or other fatal conditions are denied the opportunity to participate in the clinical trials that could save their lives. Too many patients with arthritis, or cancer, or mental illnesses are denied the drugs that their doctor prescribes, because the medicine they need is not as cheap as the medicine on the HMO's list.

The legislation passed by the Senate would end those abuses, and it would assure that HMOs could be held responsible in court if they failed to provide the care their patients deserved. The Senate bill said that if an HMO crippled or terribly injured a patient, it had a responsibility to provide financial compensation for the victim and the victim's family. It said that if an HMO killed a family breadwinner, it was liable for the support of that patient's family.

The Senate passed a strong, effective patients' bill of rights by an overwhelming bipartisan vote. It was not a Democratic victory or a Republican victory. It was a victory for patients. It was a victory for every family that wants medical decisions made by doctors and nurses, not insurance company bureaucrats. It said that treatment should be determined by a patients' vital signs, not an HMO's bottom line.

Under our legislation, all the abuses that have marked managed care for so long were prohibited. Patients were guaranteed access to a speedy, impartial, independent appeal when HMOs denied care. And the rights the legislation granted were enforceable. When HMO decisions seriously injured patients, HMOs could be held accountable in court, under state law, under the same standards that apply to doctors and hospitals.

The story was different in the House. There, a narrow, partisan majority insisted on retaining special treatment and special privileges for HMOs. That legislation granted HMOs protection available to no other industry in America. Under the guise of granting new rights, it denied effective remedies. It tilted the playing field in favor of HMOs and against patients. The Republican majority in the House said yes to big business and no to American families. Their bill represents the triumph of privilege and power over fairness.

Under the House Republican bill, a family trying to hold an HMO accountable when a patient was killed or injured would find the legal process stacked against them at every turn. The standard in their bill for determining whether the HMO was negligent would allow HMOs to overturn the decision of a patients' family doctor without being held to the same standard of good medical practice that applies to the doctor. Think about that. One standard for a doctor trying to provide good care for patients. Another, lower standard for the HMO which arbitrarily overturns that doctor's decision because it wants to protect its bottom line.

The House Republican bill puts artificial limits on the liability of HMOs when a patient is killed or injured. The Republicans often complain about one-size-fits all legislation, but their bill is an extreme example of it. No matter how seriously a patient is injured, no matter what remedies are available under state law, no matter how negligent or outrageous the actions of that HMO, no matter what a judge and jury decides is an appropriate remedy, there is the same flat dollar limit on the HMOs' liability. And the limit in the Republican bill is far below what the most seriously injured patients receive when they are badly hurt by a doctor's negligence or by the negligence of any other industry. For a child paralyzed for life by an HMO's penny-pinching—an arbitrary limit on compensation. For a child who loses both hands and feet—an arbitrary limit on compensation. For the families of women needlessly killed by improper treatment for breast cancer an arbitrary limit on compensation. For a father or mother hopelessly brain-damaged—an arbitrary limit on compensation.

In addition, the bill essentially provides no punitive damages to deter the most egregious denials of care. Even if the HMO denies medically necessary care over and over and over again, no punitive damages. Even if the HMO engages in fraud or willful misconduct, no punitive damages. Even if the HMO routinely turns down every request for expensive treatment, no punitive damages.

If a patient ever gets to court under the Republican plan, they face a form of double jeopardy—the so-called "rebuttable presumption." If a patient loses an appeal to an external review agency, that patient faces an almost impossible legal hurdle in court. But if an HMO loses an external appeal, the patient does not gain a comparable advantage. In effect, the patient has to win twice. The HMO only has to win only once. This one-way presumption is grossly unfair.

In area after area of Federal legislation, Congress has set minimum standards guaranteeing basic fairness but allowed states to go farther in protecting their citizens. But the House Republican bill sets a ceiling instead of a floor. States are not permitted to have stronger patients' rights laws. The bill would preempt the external review process in more than 40 states, abolishing state laws that provide greater protection for patients.

In a bill that purports to expand patient protections, it is remarkable that the Republican bill actually takes rights away. The Federal RICO antiracketeering statute is a powerful weapon against fraud. Under current law, patients and businesses buying health insurance policies have the right to bring a RICO class action suit against a health insurance company which has engaged in systematic fraud. The House Republican bill would in essence repeal that right, erecting new barriers to class actions against health insurance companies.

Not only does the Republican plan fail to protect patients against HMO abuse, it includes unrelated provisions that could actually harm patients. The bill provides new tax breaks for the healthy and wealthy by expanding and extending so-called "Medical Savings Accounts." These accounts are the pet project of certain insurance companies that have made large donations to the Republican party. They not only benefit the healthy and wealthy purchasing high deductible insurance policies, but a number of independent analyses have concluded that they could result in dramatic premium increases for everyone else. Every day, we seem to find new evidence that the Republicans have never found a tax break for the wealthy that they didn't eagerly embrace.

And finally, the Republican bill eliminates state regulation of so-called "association health plans," a new name for multiemployer welfare arrangements. While well-run plans of this kind can benefit consumers, too often they have failed financially and left patients holding the bag. Fraud has been their frequent companion. Most authorities believe that they need more regulation, not less. And not only does the Republican plan expose millions of families to financial disaster, it would deny more millions important benefits required by state insurance laws—benefits that help women at risk of cervical cancer, children with birth defects, and the disabled. According to estimates by the Congressional Budget Office, hundreds of thousands of people, predominantly those in poorer health, could lose their coverage as a result of this proposal.

I am disappointed that we were unable to reach an agreement with the Administration that would have made it possible to pass a strong, effective patients' bill of rights—one that would have protected patients without providing sweetheart deals for HMOs.

It is unfortunate that this Administration so consistently sides with the wealthy and powerful and against the interests of ordinary people. The positions taken by the White House on these critical health issues do not represent the views of the American people. Just a few days after the President called for severe limitations on a patient's right to seek compensation when he or she is seriously injured by medical malpractice, a strong bi-partisan 57–42 majority of the Senate rejected the President's position and sided with patients.

The Senate version of the patients' bill of rights—supported by virtually every group of patients, doctors, nurses, and advocates for workers and families—passed the Senate with a strong, bipartisan majority of 59–36 . In contrast, the key vote in the House of Representatives gutting the provisions of the bill which would hold HMOs accountable for injuring patients passed by a narrow partisan majority of only six votes—and then only after the Administration used every weapon of arm-twisting and patronage in the book to hold their votes in line.

In the last two weeks, the Senate debated the critical issues of reducing the high cost of prescription drugs and providing a long-overdue prescription drug benefit under Medicare. Over the strenuous objections of the Republican leadership and the Administration, the Senate voted by an overwhelming bipartisan majority of 78–21 to end abuses by wealthy and powerful drug companies that stifled competition and raised prices to patients.

A majority of the Senate also voted to provide comprehensive prescription drug coverage under Medicare—but the objections of the Administration and the Republican leadership proved too strong to reach the 60 votes necessary for passage. The misplaced priorities behind the Republican position were made clear by separate comments of the President and the Republican leader. Senator TRENT LOTT stated that both the comprehensive plan a majority of the Senate supported and even the scaled-back downpayment plan were too expensive for the Republican leadership. But while Republicans rejected prescription drug coverage for the elderly as just too expensive, the President reiterated yesterday his support for extending the trillion dollar plus tax cuts that primarily benefitted the wealthy.

While I am disappointed by the failure to reach agreement on the patients' bill of rights and to achieve 60 votes for Medicare prescription drug coverage, I am not discouraged. The American people want action, and in the end, I believe the Congress will listen to their voice.

We will never give up the struggle for prescription drug coverage under Medicare until we mend the broken promise of Medicare and guarantee senior citizens the prescription drug coverage they deserve. And we will never give up the fight for a strong, effective patients' bill of rights.

Now we will move to a patients' bill of rights conference with the House of Representatives and try once again. We commit today that we will do everything we can to make the conference a success. We will never give up this fight until all patients receive the protection they deserve. We will not rest until medical decisions are made by doctors, nurses, and patients, instead of insurance company bureaucrats.

Finally, I want to once again commend my two friends and colleagues who provided such important leadership here on the floor of the Senate. They were valued advisers, counselors, and helpers in trying to work through, in a constructive and positive way, the differences that existed. They took an enormous amount of time, including great diligence, expertise, and understanding of the issues at stake; They were enormously constructive and helpful in trying to move this in a positive way. We were unsuccessful in that phase of this path towards completing our mission of achieving an effective Patients' Bill of Rights, but we are all committed to achieving it ultimately. I thank them for all the good work they have achieved.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank Senator KENNEDY and Senator EDWARDS for the over-a-year-long effort we have been involved in attempting to reach agreement on S. 1052, the bipartisan Patient Protection Act. It has been over a year since the Senate passed it. It has been just under a year since another version was passed by the House of Representatives. The White House was instrumental in crafting the House-passed version.

So since last year Senator KENNEDY, Senator EDWARDS, and I have worked with the White House in the hopes of reconciling the Senate and the House bills. Much progress has been made as a result of these negotiations. But, regrettably, a resolution eludes us, and I think it is time to appoint conferees.

America has been patiently waiting for Congress to pass a Patients' Bill of Rights. It will grant American families enrolled in health maintenance organizations the protections they deserve. For too long this vital reform has been frustrated by political gridlock, principally by trial lawyers who insist on the ability to sue everyone for everything and by the insurance companies that want to protect their bottom line at the expense of fairness. Caught in the middle are average citizens who are members of HMOs. Americans want and deserve quick enactment of this legislation.

Several years ago I began working with my colleagues on both sides of the aisle to address the problems in HMO's provisions in health care and to craft a bipartisan bill that truly protects the rights of patients in our Nation's health care system.

The Senate passage of the bipartisan Patient Protection Act furthered the effort to restore critical rights to HMO patients and doctors.

I, again, express my appreciation to the Senator from North Carolina, Mr. EDWARDS, for his incredibly fine work. Both the Senate- and the House-passed versions contain important patient protections for the American people. I am confident that with perseverance we can resolve the few differences that remain. If we do not continue to work toward a resolution on this issue, we will be turning our backs on strong patient protections included in both bills.

This is really the shame of our failure so far because included in both bills are external and internal review, direct access to an OB-GYN for women, direct access to pediatricians for children, access to clinical trials for cancer patients, access to emergency room care, access to specialty care, and access to nonformulary prescription drugs. If we do not negotiate, and if we do not reach a successful conclusion, these important commonalities and progress will be lost.

I believe a conference report represents one final opportunity to work out the differences between the House and Senate efforts to enact meaningful HMO reform. I remain committed to working with Members of both bodies, and with the President, to make sure we will enact into law these important protections for which too many Americans have waited far too long.

I look forward to working with my colleagues in conference to bridge the differences between the House and the Senate bills and provide patients with the protection they deserve.

The problem, as I see it, is that we have very small differences, and during the course of our negotiations there will be different versions about how close we came and what our differences were. But I believe they were very narrow differences, and I am very disappointed that they were unable to work out. And I got to spend a lot more time than my colleagues wanted—Senator KENNEDY and Senator EDWARDS and I together—but I believe there was a good-faith effort made.

I believe we are going to lose so many important advances on behalf of patients because of a small difference that really has to do with cases that will be adjudicated in court. And that is a very small number of these cases because with internal and external review, and other safeguards in the bill, there would be a minuscule number of cases that actually would end up in court. And that is the aspect of this agreement on which we were unable to reach agreement with the White House. And I regret it very much.

So as Senator KENNEDY just stated, I believe we will prevail over time, just as we have prevailed on other issues over time, because this is something the American people need and deserve.

There are too many compelling cases out there of people who have been deprived of fundamental care which has inflicted incredible damage, hardship, and sorrow on so many Americans because they have been deprived of simple rights, such as a woman to see an OB-GYN, such as the right of a child to see a pediatrician, such as a doctor making a decision rather than a bureaucrat.

This is what it is all about: Who makes the decisions on patients' care? Should it be someone who is wearing a green eyeshade who can count up how much the costs are or should it be a doctor, a qualified physician, who makes the decision? That is really what this reform is all about.

Unfortunately, it has gotten hung up over court proceedings and who should go to court and whether there should be caps on economic and punitive damages, and other aspects of the minuscule number that would ever be required to do so.

So I hope we can all step back and look at this situation. In the context of how far we have gone, we have gone 99 percent of the way in doing what my colleagues and I set out to do a long time ago; and that was to provide members of health maintenance organizations with fundamental protections which they need and deserve.

So, again, I conclude by thanking Senator KENNEDY and Senator EDWARDS for their hard work and for their dedication to the resolution of this issue. I thank the White House for their efforts as well. In the little interest of straight talk, I think from time to time they were constrained by the other body in the latitude as to the agreements they could make, but I also understand that is how the system works.

But I believe that while we are gone in August, back with our friends and neighbors and fellow citizens, our friends and neighbors are going to come to us and say: Look, we deserve this legislation—the millions and millions of Americans who are members of HMOs—we deserve that we get certain basic protections.

I hope that will reinvigorate us, upon our return, to enact final legislation and resolve the few remaining differences in this bill.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from North Carolina.

Mr. EDWARDS. Madam President, first, I say thank you to my colleagues and my friends, Senator MCCAIN and Senator KENNEDY, who have worked so hard on this legislation. Senator KENNEDY worked long and hard on this before a number of us, including Senator MCCAIN and myself, became actively involved. He has been rowing the boat for a long time. And his work has been critical to the progress that has been made on behalf of patients. And Senator MCCAIN has had such an enormous influence on the work that has been done and the progress that has been made.

Today conferees will be appointed, which is unfortunate. I want to say a word about why this matters and why it matters for people, for patients, and why most of the people in this country don't care at all about the process or the procedures inside the Senate or a conference between the House and the Senate. All they care about, and all they know, is they write those checks every month to the insurance company for their insurance premiums, and they want to get what they are paying for.

They expect, if they are going to pay the insurance company for health care coverage, they ought to get it. If their child needs to see a specialist, that child ought to be able to see that specialist. When they are going to the emergency room, they should not have to call a 1-800 number to get permission to go.

If a woman wants to participate in a clinical trial, she ought to be able to participate in a clinical trial. If the insurance company and the HMO say, we are not paying for this, we will not give you the care toward which you have been writing those checks for every month, they ought to have a simple, inexpensive, fast way of getting that decision overturned. That is what the Patients' Bill of Rights is about. It affects real people's lives.

There is a fellow from North Carolina named Steve Grissom whom I got to know over time. Steve developed all kinds of health problems as a result of a blood transfusion. It got to the place where he needed oxygen basically 24 hours a day in order to continue to function. All of his doctors, including a specialist at Duke University, said he needed it—everybody except an HMO bureaucrat who came along after the fact and said: You don't need this. We are not going to pay for it.

Steve, because of what happened to him, became an enormous advocate for doing something about patients' rights and the Patients' Bill of Rights. He became a powerful, passionate voice for regular people against the HMOs in order to do what needs to be done for families to be able to make their own health care decisions.

Steve lost his life this week, not as a result of what the HMO did, but he is the personification of the problem that exists all over America and what HMOs are doing to patients all over America. Millions and millions of people, children, and families can't make their own health care decisions. Health care decisions are being made by bureaucrats sitting behind a desk somewhere who have no training, no business making those kinds of decisions, and the patients and the families can do nothing about it. They are totally powerless.

HMOs live in a privileged, rarified world that no other business in America lives in. In this era of corporate responsibility, we are trying to say on the floor of the Senate that corporations ought to be held accountable for what they do, for their decisions, they ought to be responsible for what they do; not HMOs, HMOs can do anything they want, and we are powerless to do anything about it.

What the Senate did in the Patients' Bill of Rights, which received strong bipartisan support, was create real rights for patients: Allowing people to make their own health care decisions, to go to the emergency room, to participate in clinical trials, to get bad decisions by HMOs overturned. That is what we did in the Senate. All we said was this: We want HMOs to be treated like everybody else. Why in the world should every person in America be responsible for what they do, every other business in America be responsible for what they do, but we are going to put HMOs up on a pedestal and treat them better and differently than everybody else? They can't be held responsible. They can't be held accountable. They are different. They are better than all the rest of us.

Well, they are not. They are just like everybody else. What could be a better example of the abuses that occur than what we have seen happen over the course of the last several months with the corporate irresponsibility that has had an enormous effect on all American people—investors, Wall Street, the economy?

In this era of trying to do something about corporate responsibility, are we going to maintain this special, privileged, protected status for a group of businesses that have proven—there is no question about it—that they are willing to engage in abuses, all in the name of profit and all at the expense of patients? That is what this is all about.

That is the reason virtually every group in America that cares about this issue supported the Patients' Bill of Rights that passed the Senate. Unfortunately, when the bill went to the House, a much weaker bill passed, a bill that in many cases would have actually taken away rights that States had put into place on behalf of patients. Many would argue it was an insurers' bill of rights, not a Patients' Bill of Rights.

If you put the bills side by side, on every single difference between the Senate bill and the House bill, the Senate bill favored the patients, the House bill favored the HMOs. It is no more complicated than that. As a result of having two bills passed—a strong bill in the Senate and a weak bill in the House—it was necessary for Senator McCAIN, Senator KENNEDY, and me to begin negotiating with the White House because, as I said earlier, the people of this country couldn't care less about the process of what goes on inside Washington. They want to be able to make their own health care decisions. They depend on us to do something about that.

So over the course of many months, Senator McCAIN, Senator KENNEDY, and I had a whole series of meetings, many meetings over long hours, to talk about trying to bridge the differences. I do have to say, on every single one of the discussions, the differences between us and the White House in the negotiations were the same as the differences between the Senate bill and the House bill. Our position favored the patients; their position favored the HMOs.

They did make a good faith effort to talk to us. Senator KENNEDY, Senator McCAIN, and I made a very good faith effort to try to bridge the gap. The differences could not be bridged.

At the end of the day, decisions have to be made. To the extent there is a conflict, you have to decide which side you are on. You can compromise. You can compromise. You can compromise. We made so many proposals in these discussions, new, creative proposals to try to bridge the gap, to try to find a way to bring the differences together. Over the course of time, we did make progress. Senator McCAIN said that. He is right. We did make some progress.

But at the end of the day, a judgment has to be made about whether you are going to decide with patients and families or whether you will decide with the HMOs. It gets to be a fairly simple judgment.

At the end of the day, the White House stood with the HMOs, and we were with the patients, as we have always been. We were willing to compromise. We were willing to make changes. We were willing to do things to get something done. Throughout the whole discussion, we were willing to do that. But our focus was always on the interests of the patients, not on the interests of the HMOs. We knew the HMOs were being very well represented, both in terms of their voice here in Washington and on Capitol Hill, and their influence with the administration.

Unfortunately, this is a pattern. This is not one isolated example. The White House stands with the HMOs, and has throughout this process, and against patients. They have done exactly the same thing in standing with pharmaceutical companies. When we try to do something about the cost of prescription drugs, about bringing a real and meaningful prescription drug benefit to senior citizens, we know where they are; they are with the pharmaceutical companies. They always have been.

The same thing is true when we try to protect our air. Right now they are changing the law, the regulations under the Clean Air Act, to give polluters, energy companies, the ability to pollute our air at the expense of children with asthma and senior citizens who have heart problems. We know where they stand. They don't stand with the people who are going to be hurt. They stand with the energy companies that are doing the polluting.

Over and over and over, they were dragged kicking and screaming into doing something about corporate responsibility, and they finally embraced the Sarbanes bill that passed in the Senate. This is not an isolated incident. This has happened over and over and over. And at the end of the day, it is about corporate responsibility. There is absolutely no question about that.

We will, though, get a bill. We will get a bill for exactly the reason Senator McCAIN said: Because ultimately we will do what the American people are demanding that we do. They have been saying to us for years now: We are not going to continue to stand by and have HMOs run over us. We will not let insurance companies make health care decisions. We want you, our elected leaders, to make decisions that are in our interest, not in the interest of the HMOs.

We all know we can't move out here without bumping into some lobbyist for an HMO. They are everywhere. Who is going to look out for the interests of regular people in this country, for kids and families who need to be able to make their own health care decisions? We are going to; that is who is going to.

That is why, when this process is over, we will have a real Patients' Bill of Rights. We will put decisionmaking authority back in the hands of kids, back in the hands of families. And if HMOs are going to make health care decisions, they ought to be treated just like the people who make health care decisions every day—doctors and hospitals.

We never said we wanted them to be treated any worse. What we did in the Senate was pass a bill that said exactly that. If you make a health care decision—if some HMO bureaucrat makes a health care decision and overrides the decision of a doctor or of a hospital, they are going to be treated exactly as the hospital and the HMOs are treated. They will stand in the shoes of the people who make the decisions. We are going to treat them as everybody else.

Madam President, we are still optimistic. We believe we can do what needs to be done for the American people. This is a critical piece of legislation to families all over America. We will not stop. We will not stop until this legislation and this law that is so desperately needed is signed by the President of the United States.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Madam President, they said they are standing with the American public on what they are demanding. The American public is demanding health care insurance. The Patients' Bill of Rights dramatically increased the cost of health insurance. If we are interested in what the American public is demanding, it is lower health insurance bills. What they would have gotten if this bill had passed and become law in the Senate is higher health care bills, because under this bill we would allow employers to be sued—yes, not HMOs. You always hear HMOs, HMOs. Look, I am happy to have HMOs, but what this bill allows, what they have been arguing for from day one is to allow people who have employer-provided insurance is to let the employer be sued.

To be clear, I haven't talked to one employer in Pennsylvania who, if the Senate bill were passed, which allows employers to be sued simply by providing insurance to their employees—I haven't talked to one who said: I am out of the insurance business; that is not my job; that is not why I provide insurance to employees. I do it as a benefit and to be competitive in the marketplace. But do you know what. I am not going to open up the books and the entire revenues of my company to trial lawyers suing on behalf of my employees because they got a bad health care outfit.

This bill will not only drive up costs, but it will drive employers out of providing health insurance. That is not what the American public is demanding. They are not demanding higher costs and to be uninsured by their employers. That is what this bill would do.

I respect greatly the President for standing firm and saying we are not going to cause massive uninsurance, we are not going to cause massive increases in health insurance, all to the benefit of the trial lawyers of America. That is not what we are about, and it is not what the American public wants, and that is not what we are going to do. I thank the President for not going along with this scheme to end up driving the private markets into the ground and then having those who drove the market into the ground come back to the Senate floor and say: See, look, private employers are not doing their job anymore, so we need a Government-run health care system; let's pass that.

Madam President, that is not why I got up to talk. That is what happens when you listen to other people's speeches.

THE PRESIDENT'S FAITH-BASED INITIATIVE

Mr. SANTORUM. Madam President, we have been trying over the last few hours to get a unanimous consent agreement on the President's faith-based initiative called the CARE Act, passed out of the Senate Finance Committee on a bipartisan basis. We have been working, first, to clear a unanimous consent agreement to get the CARE Act, as passed by the Finance Committee, cleared without amendments being offered by either side, simply a managers' amendment that includes provisions not in the Finance Committee mark because the Finance Committee didn't have jurisdiction over those elements of the bill that Senator LIEBERMAN and I and the President have agreed on as a compromise. We tried to clear that, and there was objection.

So Senator LIEBERMAN and I talked with Senator DASCHLE to see if we could clear a unanimous consent with the limitation on amendments—not relevant amendments but simply tax amendments. We suggested five on either side. That was cleared on our side. That was acceptable to us, to have a limitation on amendments of five on each side. We have just been informed that is not acceptable on the Democrat side. We asked if six was. No. Seven? No.

So my concern is that we will not take the bill clean or with a limitation on amendments. I guess I have to ask—and I will not propound a unanimous consent request, but I believe there are Members on both sides working in good faith to see if we can get this piece of legislation before the Senate and get it enacted into law. It is something I know Members on both sides of the aisle feel very strongly about—to support charitable giving at a time when charitable giving has really taken it on the chin, other than with respect to 9/11. With the stock market down, we have seen charitable giving go down and, in some cases, dramatically. This is needed to help the nonprofit sector to provide for the human service needs out there in America.

So I will withhold a unanimous consent request, even though I think we had some agreement to try to propound one tonight, because there are objections on the Democratic side of the aisle. I just encourage my colleagues on both sides of the aisle to try to work with us to see if we can find a regime in which we can bring this legislation to the floor with some sort of limitation on amendments and debate and have a good discussion and then move forward and pass this legislation. Maybe even if it is acceptable, we can get the House to accept it and move it on to President, and we must go to conference.

I hope we can work in a bipartisan spirit to help. This is targeted to help those who are in need in our society. It is something the President cares about and Senator LIEBERMAN, as do others, including Senator DASCHLE.

Let's have a good-faith effort here to move forward on this legislation and find some sort of unanimous consent agreement to move us forward on this important piece of legislation that is so needed by those who want to be helpful to others in need in our society.

Thank you. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Madam President, I ask unanimous consent that I may be allowed to proceed in morning business for up to 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Will the Senator allow me to enter a unanimous consent request as well?

Mr. BENNETT. I am happy to.

Mr. GRAHAM. Madam President, I ask unanimous consent that I be allowed to speak as in morning business up to 20 minutes immediately after the Senator from Utah.

Mr. REED. Reserving the right to object. I have been waiting patiently for many moments. I only have approximately 5 or 10 minutes to speak, and I have a press deadline. The way it is right now, I will get the floor an hour from now. Is there a way I might be able to go before my colleagues?

Mr. BENNETT. Madam President, I have no problem with the Senator from Rhode Island going ahead. I have been waiting while the other three Senators went through. I don't have to worry about a press deadline in Utah. We have probably already passed it. I am happy to allow the Senator from Rhode Island to go first if the Senator from Florida is agreeable.

Mr. GRAHAM. I am agreeable to the unanimous consent agreement that I follow the Senator from Utah.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. REED. Madam President, let me thank the Senators from Utah and Florida for their graciousness in allowing me to go forward.

REAUTHORIZATION OF TEMPORARY ASSISTANCE TO NEEDY FAMILIES

Mr. REED. Madam President, I rise to discuss the necessity to provide broader flexibility to States in their effort to reward work, lift people out of poverty, and benefit children. As we contemplate the reauthorization of the Temporary Assistance to Needy Families, TANF, program, we have to ask ourselves: On what basis do we want to judge the success of welfare reform?

Will we focus only on the reduction of case loads and increases in work participation, without regard to whether the wage levels raise families out of poverty and children are better off? Or, do we want to build a system that truly breaks the cycle of poverty and supports the long-term economic well-being of welfare recipients and results in a better future for children?

We need to move to the next generation of welfare reform. Our goal should be to reduce poverty, reward work, and ensure the well-being of children.

Much of the debate on welfare policy revolves around the issue of work, but how do we reward work? During the past two decades states have experimented with new approaches to cash welfare assistance for low-income families. These initiatives have included mandatory employment services, earnings supplements, and time limits on welfare receipt.

How do we know which strategies work best? A federally-funded evaluation of welfare-to-work experiments by Manpower Demonstration Research Corporation, MDRC, provides a wealth of information on the effect of these strategies on employment and income, as well as child well-being. This rigorous random-assignment research lays a strong foundation for legislative deliberations about the reauthorization of TANF.

Although most of these initiatives increased the employment rate among welfare recipients, programs that included only mandatory employment services usually left families no better off financially than they would have been without the programs.

The only programs that both increased work and made families financially better off were those that provided earnings supplements to low-wage workers. These programs also increased job retention and produced a range of positive effects for children, including better school performance and fewer behavioral and emotional problems for elementary school-age children. One income-raising program also significantly reduced domestic violence and family breakup.

Earnings supplements are easily provided to working recipients by allowing them to keep more of their benefits. For example, some States have not cut or eliminated a family's assistance on a dollar-for-dollar basis when the family enters employment.

However, under current law, States are restricted in how they can use their TANF block grant funds to help working families, because any month in which Federal funds are used to provide "assistance" to a working family counts against the Federal time limit on assistance.

Some States, including my state of Rhode Island, Illinois, Delaware, Maryland, and Pennsylvania, operate programs using State money to help low-income working families. In Rhode Island, our Family Independence Program, FIP, provides a State earnings supplement as a work support and does not count it as "assistance" if a parent is working at least 30 hours per week.

Using this FIP wage supplement, families have funds to buy basic necessities.

Knowing that their income will not plummet after some artificial time limit is an incentive to find a job. Providing stable income helps parents stay attached to the workforce and rewards work.

For example, a mother with two children, who works 30 hours per week and earns the average starting wage of about $7.80 per hour in Rhode Island, receives a supplemental FIP payment of $132 per month. This brings her total income to about $1,044 per month. Even with this supplement even with her work, that $1,000 per month is still only 83 percent of the Federal poverty level.

With a supplement and with work these women are still not making income relative to the poverty level.

If Rhode Island did not use state dollars for the wage supplement, when a mother reached her 5-year time limit and the FIP payment stopped, she would lose 13 percent of her total income.

Using State funds offers broader flexibility for States to support families that meet work requirements and yet remain eligible for earnings supplements because of low wages. However, with State budgets being severely constrained, the ability to sustain this work support for low-income families is in jeopardy.

Further, as a State equity issue, all States should have the flexibility to use their Federal TANF funds to help low-income working families without restrictions—for the simple reason that it works.

Sadly, the income-enhancing effects of wage supplements and the positive effects on children are undermined by current restrictions on the use of TANF funds and definitions of what counts as "assistance."

Income gains disappear after families reach their time limits. The rigidity of the current system that counts wage subsidies as "assistance" conflicts with the success of supplemental cash payments, which rewards work.

If we want to reward work and help children, we must give States the flexibility and the option to provide continuing assistance to working families using Federal TANF dollars, ensuring that these supplements are not considered "assistance" under this program.

If the Senate were to permit TANF funds to be used in this flexible way, families would continue to be subject to all other Federal and State TANF requirements, including work and universal engagement requirements. But States would have flexibility in deciding whether to exercise the option and for how long to exercise this option. This provision has no cost; it would simply give States more flexibility in using existing Federal TANF funds to support low-income working families.

Earnings supplements have a proven record for boosting work and "making work pay." These programs reward those who do the right thing by getting jobs and it results in better outcomes for children.

I urge my colleagues to work with me during the upcoming debate on the welfare reauthorization bill to ensure the inclusion of this broader flexibility for States.

I again thank the Senator from Utah for his kindness and graciousness. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

INTERNATIONAL CRIMINAL COURT

Mr. BENNETT. Madam President, 1 month ago today on July 1, 2002, the International Criminal Court was formally brought into existence. There has been objection to the International Criminal Court in America and, indeed, there has been a great deal of angst among our friends and allies around the world over the fact that President Bush removed America's signature from the treaty that created the International Criminal Court.

I have read some of the press around this controversy with great interest. I have been particularly struck by the fact that Chris Patton of the European Parliament, who is probably as good a friend as America has anywhere in Europe, has, in the American newspapers, expressed his great concern about our failure to endorse the International Criminal Court and to fully support it.

I cannot speak for the administration. I cannot speak for my colleagues in the Senate, but I can speak for myself, and I think Chris Patton and the others throughout the world who have expressed concern with our actions on this issue have the right to understand why some Americans are opposed to the International Criminal Court. I intend to lay out today the reasons why I, as one Senator, am opposed to the International Criminal Court in an effort to help our friends around the world understand some of the difficulties that many Americans have and to make it clear that my opposition to the International Criminal Court is not a knee-jerk response as some European newspapers may expect.

First, I should make it clear for those who may be listening or who might read the speech afterwards what the International Criminal Court is because I find that many of my constituents have no idea what it is. So very quickly, Madam President, I will lay out what it is we are talking about here.

The International Criminal Court is a permanent international judicial institution that was organized and established by countries around the world for the purpose of redressing the most serious crimes in the international community. And here we are talking about those crimes that historically have lent themselves to war crimes tribunals—genocide, crimes against humanity, and war crimes. Those are the crimes considered to be so horrific that nations and leaders of nations can be held responsible for their commission.

The International Criminal Court is similar in purpose to the World War II tribunals that were convened after the end of that conflict. We know of the Nuremberg trials and the trials related to the Japanese war criminals. The International Criminal Court was created as a permanent tribunal of that kind. It is comparable to two tribunals that are currently in operation: The International Criminal Tribunal for Former Yugoslavia, and the International Criminal Tribunal for Rwanda.

In both cases, those two bodies are moving forward to identify the individuals who committed crimes against humanity, or war crimes, and take action against them in an effort to establish an international norm of behavior and make it possible to hold people accountable for how they behaved in conflicts.

Currently, over 75 countries have ratified or otherwise accepted the statute that created the International Criminal Court. That statute said when 60 countries had ratified, it would become effective. It is effective as of July 1. It is located in The Hague.

So with that background, let me outline why I am opposed to America's ratification and support of the International Criminal Court as it currently stands. I will begin by saying why I am not taking this position.

I am not taking this position because I believe America should not enter into international agreements. I know there are some who say we should not have any international agreements at all. That position is foolish, in my view. We have to enter into international agreements in the world in which we now live. Indeed, one could argue it is to America's benefit to do so.

There has been controversy, for example, about the World Trade Organization, the WTO. I have constituents who complain about America membership in the WTO saying it is terrible that we are under this international agreement. I tell them that the WTO was America's idea and that the WTO makes it possible for Americans to do business around the world. If we did not have this kind of mechanism to sort through the disagreements on trade issues, America would not be able to export, America's economy would be damaged, and Americans would be put out of work. It is a good thing for the United States to be part of the WTO. So my opposition to the International Criminal Court is not because I am automatically opposed to international agreements.

Also, it is not because I want, as some European journalists suggest, American dominance around the world; that America is so haughty and so proud that we cannot honor any kind of international law. I am enough of a student of history to know that any superpower that tries to dominate the world through their own power ultimately falls. The Romans found they could not maintain a worldwide empire. The Ottomans found they could not maintain the far-flung empire that existed all the way from Spain to the borders of India. More recently the British, with the viceroy in India and troops around the world, discovered they could not do it either.

I do not think the International Criminal Court is a bad idea because I want America to take some kind of hyper-power position of dominance around the world. I think America's record throughout history is very good on this issue. We should remember that Americans, when they win wars, do not occupy territory. When we won the Second World War, we not only liberated the Dutch, the French, and the Belgians, we also liberated the Germans. They are freer today than they were under the Nazis. They have more human rights and more individual property rights than they ever had prior to the war.

America leaves behind, as we now are demonstrating in Afghanistan, a legacy of freedom and food, and that legacy will continue. So the suggestion that opposition to the International Criminal Court stems from some kind of empire impulse on the part of Americans is something I reject.

Finally, I do not reject the International Criminal Court because I want Americans to dismiss the importance of international law. After all, the United Nations, which heavily influences the development of international law, was an American idea and is located on American soil and has been supported by American appropriations. Most United Nations functions around the world involve American troops. So I reject many of the journalistic arguments that supposedly explain why I oppose the International Criminal Court. I do not think they are appropriate.

So why do I object to the International Criminal Court? I need to go back a little bit in history, and I hope my colleagues will indulge me as I go into America's history to lay the predicate for the position I am taking. We in America adopted as our first state paper a document we call the Declaration of Independence. It is perhaps the most important state paper we have ever adopted.

In the Declaration of Independence, we lay down certain principles which the Continental Congress believed were beyond debate; that is, self-evident truths. One of these self-evident truths held that individual rights do not come from government. The phrase in the Declaration of Independence is "endowed by their Creator with certain unalienable rights." The purpose of government is set forth in that document. The purpose of government is to secure these rights, deriving its just powers from the consent of the governed.

These are sacred words to Americans, and they come, as I say, from our first state document, and I believe still our most powerful.

The reason they are so sacred is because we are the only nation in the world that is founded on an idea. Every other nation throughout the world is founded on a tribe. People are bound together by a common ethnic history. That may have been our beginning, but it is not the nation we now have.

If I may go back to an example very close to Utah and talk about the Olympics. If one watched the Olympics on television and saw the athletes coming from the various countries around the world, one can almost always identify where the athlete is from by his or her name or the ethnic look that he or she brings to the television. But that cannot be done with Americans. The American Olympians are named Kuan and Lapinski, Louganis and Blair, Jordan and Byrd. They are Black, they are White, they are Asian in ethnic background. They come from all over the world.

In America, we do not have a common tribal base. All that holds us together as a nation is a dedication to the ideas set forth in the Declaration of Independence, the ideas that our rights come from God and that the purpose of government is to secure those rights, not grant them in the first place.

That is demonstrated by the fact that those of us in this Chamber, unlike any other parliamentarians or officeholders around the world, do not take an oath to uphold and defend the country or the people. Our oath is to uphold and defend the Constitution that was drafted to incorporate the core idea of this Nation. We have a sworn oath recorded in Heaven, to use Lincoln's phrase, to uphold and defend the Constitution against all enemies. So we have a unique attitude about rights, about law, and about our responsibilities to a document and an idea that undergirds that document.

Let me speak a little more American history, and any of our European friends who might ultimately read this speech might, I would hope, find this somewhat interesting. I think there is something of a parallel between the adoption of the Constitution and the discussions that are going on around the world right now.

The 13 States that made up the United States of America in the first place were united against a common enemy during the Revolutionary War. But when the war was over, they began to quarrel among themselves. They each printed their own money. There were tariff barriers between States. There were all kinds of arguments about what law would apply from one State to the other, somewhat like the confusion that goes on around the world today.

The decision was made to try to find a way to impose a single rule of law across all 13 of these States. That is what produced the Constitutional Convention. When the Constitution was written and then submitted to the 13 States for ratification, it said, much like the underlying statute of the International Criminal Court, that it would take effect as soon as three-fourths of the States had ratified it. It did not require unanimous ratification but said that as soon as three-fourths of these States have ratified it, it will take hold and it will apply to all. Now, in the practical world of that time, one State could prevent it from taking hold because if that one State, which was so much more powerful than the others, had not ratified it, the whole thing would have fallen apart. That was the State of Virginia. Another State arguably in that same position would be the State of New York. If Virginia and New York had not ratified, the other 11 could have, and we still would not have had a workable document.

This, if I may be so bold, is somewhat similar to the situation that people are raising with respect to the International Criminal Court. They say 75 nations may ratify it but if the United States doesn't, it will not work. And the United States is outside.

Back to our own history for a moment. Virginia was outside. Virginia was not the first State to ratify, Delaware was, followed by Pennsylvania, followed by Georgia, and so on. But Virginia was holding out. One of the reasons Virginia was holding out was that the man who was arguably the second most powerful politician in Virginia—the No. 1 politician in Virginia was, of course, George Washington—and the second most powerful politician in Virginia, Patrick Henry, multiple times Governor of Virginia, was unalterably opposed to the Constitution. He led the fight against ratification in Virginia on this ground: He said there is no bill of rights in this Constitution. The rights that it seeks to protect for us Americans are not specified. I am not sure that he used the term "vague" but he could have because the Constitution, as originally drafted, was very vague about which rights would be preserved.

Now, the leading politician in Virginia seeking ratification, James Madison, and Alexander Hamilton, who did get it ratified in New York, argued with Patrick Henry. Madison and Hamilton said to Patrick Henry: You don't want these rights laid out specifically in this Constitution; you want to leave it vague. If you enumerate them specifically, you will inevitably forget something, and then by not listing that which you forget, you will put that right in peril.

Everybody understands, Madison and Hamilton said, that all of the rights we have are protected by the Constitution as it exists, and to specify them will limit them. You are making a mistake if you demand specificity.

Patrick Henry was having none of that. Patrick Henry stood firm and demanded the defeat of the ratification resolution in the Virginia Legislature. However, he ultimately gave way to the predominant rule of politics in America in the 18th century which is: Anybody who opposes George Washington loses. George Washington, as the president of the constitutional conference, had enough prestige that the Constitution was, indeed, ratified in Virginia but with this political understanding: James Madison said, if you ratify the Constitution, I will run for Congress. I will go into the House of Representatives—which he assumed would be the dominant body of the new government—and I will propose a bill of rights. That promise took enough sting out of Patrick Henry's argument that Patrick Henry lost the fight and Virginia ratified and the Constitution was adopted and we had the new nation.

True to his political promise, Madison went to the House of Representatives, and offered 12 articles of amendment to the Constitution, 11 of which were adopted. The first 10 we now revere as the Bill of Rights. We can now, looking back after two centuries, realize that Patrick Henry was right, that the Bill of Rights is as much a revered part of the idea that holds this country together as anything else that is written in the Declaration of Independence or the rest of the Constitution itself. We hold commemorative ceremonies honoring the adoption of the Bill of Rights.

Now, what does this have to do with the International Criminal Court? At the risk of being overly egotistical, let me try to play Patrick Henry. The International Criminal Court is based on a statute that is vague, so vague that I believe my constitutional rights, those for which Henry, Madison, Hamilton, and Washington and all the rest of them fought, are in peril. When I say that to my European friends, quite frankly, they laugh. Or they say to me, reminiscent of Madison's argument to Hamilton, no, no, no. You misunderstand. The International Criminal Court is not going to threaten your constitutional rights in any way. It is designed to go after the bad guys. It is designed with the same intent as the tribunal for Yugoslavia or the tribunal for Rwanda. It is designed to make sure that we have a permanent tribunal in place.

My reaction to the assurances that my rights will never be attacked is, I think, in concert with Patrick Henry's reaction to the assurances that he was given by Madison and Hamilton. My concerns are reinforced by some of the things I have heard. For example, I have been told there are groups that want to bring suit in the International Criminal Court against President Bush, charging him with a crime against humanity for his failure to send the Kyoto treaty to the Senate for ratification, that his opposition to the Kyoto treaty constitutes such a gross violation of the opportunities around the world that it is a crime against humanity.

I have inquired whether or not such an action could come before the International Criminal Court and have gone through it with legal scholars. The answer is, yes, such an action could come before the Court, but, of course, it would be laughed out by the prosecutor and the President would never have to go to trial. That does not give me a lot of reassurance, that the case could be brought—but of course the President would not be found guilty.

How can we know, 20 years from now, or 30 years from now, that some future President would be found guilty for making a policy decision that he or she decided was in the best interest of the United States but that the International Criminal Court decided was not in the best interest of the rest of the world, and so it would be defined as a crime against humanity? And given the vague nature of the statute of the International Criminal Court, that is a very real possibility.

Let me give another possibility that comes very much to home. There are those around the world who are insisting that the United States pick a numerical target for foreign aid; that is, we pick a number which would be a percentage of GDP. And they are saying in their rhetoric that the United States is not meeting its responsibility to the underdeveloped world until it meets this arbitrary percentage of GDP in adopting foreign aid.

I am a member of the Foreign Operations Subcommittee of the Appropriations Committee, the subcommittee that determines how much foreign aid we appropriate. Under the language of the International Criminal Court, am I liable for my actions as a Member of the Senate? The language is very specific. Being a member of the parliament does not exempt one from the jurisdiction of the International Criminal Court.

Suppose someone decides that the U.S. failure to meet that artificial number constitutes a crime against humanity and that if we do not raise our foreign aid to that number, all of those who are legislators, most specifically those who are appropriators, can be hauled before the International Criminal Court and prosecuted for our failure to adopt that kind of appropriation.

I do not want to run the risk. When I raise it, once again, with those who are in favor of the International Criminal Court, they laugh it off and say that is not why it was designed, that is not what it will look at, no, that kind of prosecution will never be brought.

Then when I raise the question: But could it be brought under the language of the statute as it currently exists? They say, Well, yes, it could be. But you know the prosecutor would never go forward with such a case.

Again, at the risk of being immodest, I want to be Patrick Henry on this issue. I want to say we will not proceed—I will not proceed; again, I will not speak for my colleagues—I will not proceed to vote to ratify a treaty on the International Criminal Court until I am satisfied that the language is so absolute that I will not lose any rights I currently have under the U.S. Constitution.

I say to those who say: no, no, this is only going to deal with people like Milosevic. We are never going to see this sort of frivolous activity, and the United States should understand that you have no need to worry whatsoever about this international tribunal. Indeed, the United States helped create safeguards that are already in the International Criminal Court that say if the United States proceeds to prosecute someone who is accused of a war crime, the International Criminal Court will lose its jurisdiction. In other words, if an American serviceman is accused of a war crime, as happened in Vietnam in the village of Mi Lai, and the United States prosecuted that serviceman, as we did under the Uniform Code of Military Justice, then the ICC has no jurisdiction and backs away. So you, who have a great track record of prosecuting war crimes among your own servicemen, need have no worry whatsoever of this international tribunal.

We have two precedents that are now before us that have just come up in the last few months, and I find them disturbing in the face of all of these reassurances. The first one has been written about rather extensively in the Washington Post and the New York Times. It involves a Washington Post reporter who has been subpoenaed. He happens to live in Paris right now. He has been summoned by the tribunal dealing with Yugoslavia to come in and testify. And he said: I don't want to come in and testify. It would have a chilling effect on reporters covering the war if we thought the things we wrote about the war would be subject to the jurisdiction of a war crimes tribunal afterwards.

The Washington Post has taken the position that the reporter is exactly right. It has been written up in the New York Times also, sympathetically.

The reporter's name is Jonathan C. Randal. He is retired from the Post. As I say, he now lives in Paris. The Yugoslavia tribunal has said: You do not have the right to refuse. We are going to require you to come. And he can be arrested by the police in Paris, handed over to the tribunal by the police in France, and he loses his American constitutional rights because the statute creating that tribunal is vague on the area of his rights.

There is another incident that has just come up. The same tribunal, which we are told is a precedent for the International Criminal Court, has been asked to indict William Jefferson Clinton and his National Security Adviser, Anthony Lake; and the then-Deputy National Security Adviser, Samuel Berger; and Ambassador Richard Holbrooke; and the U.S. Ambassador to Croatia, Peter Galbraith, all of whom are being accused of complicity in war crimes conducted by a Croatian general who was acting within the framework of American foreign policy at the time.

Here is a case where a President and his advisers make a decision in the best interests of the United States. The President and his advisers are now being investigated to see whether or not they should be called before the tribunal.

The specter of an American President called before an international tribunal for actions as straightforward as President Clinton's actions were in this circumstance is a specter I do not want to see repeated before the International Criminal Court. I do not want any future American President to believe that he or she is in danger of being named as an accomplice in some act of some other individual. We do not know whether or not the International Criminal Court could do that under its present statute. It is so vague that it cannot answer that question. In other words, under the present circumstance, it is not just an American citizen such as the reporter from the Washington Post who might be called in, it is not just a member of the Appropriations Committee who might be called in, there is a precedent being established that the President of the United States might be called in to answer in this international forum for actions he or she took in the best interests of the United States as those interests were defined at the time.

So I come back to my reasons for not wanting to ratify the treaty creating the International Criminal Court. I understand that as he signed it, President Clinton himself said this treaty is not ready for ratification. President Bush took our signature off it in order to make it clear to the world that it was not ready for ratification. I applaud that position—both President Clinton's position that it is not ready to be ratified and President Bush's decision to remove all doubt as to America's position on this point.

But I do want to make it clear, as I tried to do at the beginning, that I am not opposed to the idea of creating some kind of tribunal that can deal with these heinous crimes we see around us in this world that is still not rid of the horrific activities that are called war crimes and crimes against humanity. I am not opposed to America being subject to the rule of international law in an area where America's track record of behavior is so good that I am sure America could handle this without any difficulty. My problem is the vagueness. My problem is the possibility that the International Criminal Court will go far beyond what we think of as war crimes and will invent new ones, like the ones I have described here. My problem is that we do not have a clear outline of rights that will be protected in this Court.

Just as Patrick Henry stood and said, do not ratify the Constitution of the United States until there is a clear bill of rights written into it, and held that position to the point that James Madison finally gave in and gave us the Bill of Rights, I think American legislators should stand and say: Do not ratify the International Criminal Court until there is a bill of rights, until we know exactly that the rights we have under the Constitution, that the Declaration of Independence declares as being ours by God-given sanction, are protected, that Americans will not be called before this Court in a way that would put us in jeopardy of those rights. That is my bottom line with respect to the International Criminal Court.

I believe the United States should stay engaged and involved in discussions about it. I don't think we should turn our backs and walk away and say we will never have anything to do with it or be involved in it. I think by virtue of its observer status, which it still has with respect to the International Criminal Court, the United States should continue to talk to the other countries in the world about this.

But the bottom line should be that when the United States finally does decide to ratify the International Criminal Court, it will be in a regime where no American citizen will lose any of the rights that are currently guaranteed to him or her under the American Constitution.

I believe it can be done. I encourage everyone around the world to focus on that and not say we don't need to talk about that, that this is just for the bad guys, but recognize that if you are building an institution that is going to last for 50, or 100, or 200 years, as our Constitution has, you must be as careful in creating it as the Founders were in creating our Constitution in the first place.

We are the freest nation in the world. We would like the rest of the world to have the same benefits as we do. Let us be very careful as we create an international judicial body to make sure that it maintains that high standard of freedom.

I yield the floor.

TRADE ACT OF 2002

Mr. CORZINE. Madam President, I rise today, sadly, to express my sincere disappointment with the passage of the Trade Act conference report.

It is deeply troubling to me. I will go through a number of the reasons I have these feelings and why I think they need to be expressed in an explicit nature.

I come from a business background, as many know. While I was a very sympathetic and active promoter of the passage of NAFTA early in the nineties, I believe in the principle of comparative advantage and understand that it can work to maintain competition in prices for many goods and services broadly throughout our society, and in certain sectors of our economy it certainly can promote job growth.

But on balance, when we look at the nature of a lot of the elements that are a part of this so-called fast-track trade promotion authority given today, I think the costs and the benefits don't align themselves well at all. I feel particularly troubled by the dilution of many of the elements that were in the Senate bill that went to conference that really left us in an even weaker position with respect to where we stand in protecting workers' environmental rights and the ability of America to represents its own interests in negotiations.

There are also some fine-print issues that I am very concerned about—the potential for degradation of our antitrust laws and the ability for American law to be represented on a coequal basis with what we see as potentially being dictated by trade laws as we go forward. I will try to itemize some of those.

Again, I understand there is a strong theoretical case for comparative advantage. But I think when you put it in the specific context with the fine print of the details we are talking about with regard to this trade law, this is a very troubling piece of legislation. And I hope it is one that I am wrong about and that we will not come to regret over a period of time.

Let me start with the reality that anytime something passes, there will be shifts in economic fortunes for sectors of the economy. One of the reasons we fought so hard for trade adjustment authority in the package in the Senate—and that many of us believed we made a little progress thereon—was health care benefits and employment insurance. Some of those stayed. But, in fact, I think we undermined very seriously the conference report benefits that we were applying in health insurance versus the simple elementary move from a 75-percent to a 5-percent tax credit. We undermined the definition of the pool in which workers would be available.

While we have the language that we are aiding those who lose their jobs as a result of trade activities and shifts in production offshore, when you look at the details, it will be very hard for those to be applicable, and in the practical context of people's lives it is really a false presentation.

By the way, there are no standards with regard to the health benefits people will get. There is no premium protection for individuals. The details just do not match the rhetoric with regard to the hope that I think we promised.

There is also talk that coverage is going to be broad. But when you look at the fine print, the fact is that the element of production shifts doesn't include some of the biggest marketplaces—places where production is likely to shift because of the applicability of the law as it stands.

For instance, in fact, Brazil and China and Southeast Asia are generally left uncovered. If a factory moves out of the State of Washington or the State of New Jersey and moves to those countries, they are excluded from some of the definitions of how a shift in production would apply and whether there is a need for trade assistance.

While countries such as Jordan, Israel, and the Caribbean Basin, and the Indian region are included in those definitions, they make up about 5 percent of the American trade, and large blocks of that are in places left out of the shift in coverage for production. I think it is a real problem. It is a real problem with the reality of matching the language.

We talk, particularly in the Senate bill, about substantial resources for workers who lose their jobs. The conference committee report came back $30 million below CBO's estimate and $80 million below what the Senate bill authorized—already a skinny number and one that I think makes the hope of real job retraining something that is a false hope for a lot of folks when you translate it into the reality of how it will work.

Continuing. Labor and environmental standards: We all fought for the Jordanian standard, the agreement that was negotiated on a specific trade agreement. It was to make sure that those standards were met in all future trade agreements.

When the conference agreement came back, we found that it allows for the preservation of status quo elements with regard to basic protections for children under 14. That means in Burma, if they are truly practicing slave labor, they can maintain the status quo in any kind of trade negotiations. It denies the basic rights of workers to operate with collective bargaining in countries where they don't already have it. There is no change for those countries to which we might want to apply those standards. That is really a quite serious backing away from the standards that were included in the Jordanian agreement which I think most people would embrace. And they would have made for a very serious, positive step forward in our trade negotiations. This is a very serious backing away that I think really does undermine the labor standards.

I will not go into details, but there are some provisions that we have backed away from on environmental standards. We have, basically, a status quo standard for anyone who enters into these negotiations. That is a difficult way to approach fair trade, as well as free trade, if you are looking for those kinds of elements in a legitimate movement forward in our trade relationships.

With regard to the role of Congress, there was debate on the floor about Dayton-Craig, which we adopted, which had to do with having a real challenge to trade remedies in these packages. We pulled back, and we now have a sense of the Congress. I do not think anybody believes that is going to seriously impact how this process is going to go forward. It may sound good for press releases and sound bites, that we are really being involved in the process, but I do not think it deals with the facts as we see them. I think it is a serious problem.

There is another element that I also think is truly important with regard to fast track and an element with regard to the role of Congress. The conference agreement adds a completely new restriction that was not in the House bill or the Senate bill, and that would provide that there is only one privileged resolution per negotiation on any given trade treaty—one.

We had no restrictions on those in other situations. We could now see a real weakening of the ability of Congress to have a legitimate role in debate with regard to the elements of trade negotiating.

Finally, on this particular piece, one element that troubles me the most is that in many ways we have changed the language, where we are going to provide greater rights for foreign investors than are available to U.S. investors under U.S. law. And that is because we just changed a word in the language to say: Foreign investors should not be accorded greater substantive rights than U.S. investors. The only thing new is that we put in the word "substantive." And "substantive" leaves it open to trade negotiators to decide what rights are equal or unequal.

By the time we get done applying that, we could very well see substantially different treatment for foreign investors than we would see for U.S. investors. I think it is a definite weakening of what is appropriate as we go through the application of these trade laws and needs to be watched very carefully. I suspect it will lead to an enormous amount of litigation as time goes forward. But a lot of the decisions with regard to that will be taking place behind closed doors and by trade negotiators and trade adjustment bodies. So there are a number of issues that concern me.

There are a couple of other issues I want to cite before I yield the floor because I think they are also important.

It seems to me, in line with what I was talking about before, we have put ourselves into a position where foreign investors might very well have their international disputes resolved by trade negotiators as opposed to courts.

Let me just remind people that when we were debating this on the Senate floor, we used the example of a Canadian company that sued the State of California with regard to the use of MTBE. The elected representatives of the people of California determined that MTBE was not such a good thing for their health and environmental quality of life. We have that same proposition in New Jersey.

But the judgment of one of these international trade bodies could overrule that decision made by the people, in legislation that was properly passed, if the language is used that we talked about, that substantive quality principle that was mentioned. I think this is dangerous as we go forward, and it truly concerns me.

Mostly, I am concerned that the principle of privatization may very well be subject to rulings from trade bodies making a decision about whether something is appropriate or not, whether privatization is a restraint of trade or not. We had a very close vote with regard to the subject in the Senate, but I think, very possibly, you could see many services that are provided by State and local governments, and even Social Security by the Federal Government, being argued that it is a restraint of or a break in our trade agreements, restricting the ability of the foreign company to come in and provide those services on a private basis. This has been certainly challenged in other countries, and I am very fearful that we have set up a regimen that allows those kinds of processes to happen.

Finally, there is an area that also is quite concerning to me, and that deals with some of what I am concerned about with regard to civil liberties. I am pleased that included in the conference report was the Senate provision I authored with regard to the Customs inspection of mail, to make sure you have to get search warrants to look at small letter carrier mail.

But I am very concerned that the conference report includes a potentially egregious violation of civil liberties, in my view, and an expansion which is based on the expansion immunity for Customs officials. Quite simply, there is a blank check for Customs officers to engage in illegal behavior, particularly and including racial profiling.

I think the Presiding Officer knows I have long been an outspoken opponent of racial profiling. I introduced legislation with Senators FEINGOLD and CLINTON and Representative CONYERS in the House, the End Racial Profiling Act, which really does work against the kind of action I think we have seen documented with the Customs Service in previous measures. I think that needs to be addressed.

The President and the Attorney General have recognized that racial profiling is wrong and must be ended. The President acknowledged that in his very first State of the Union speech. I think we are taking a step backwards by providing these immunity provisions on profiling for Customs officials that are included in this legislation.

Current law provides qualified immunity to Customs agents which is based on the assessment of what a reasonable officer should have done in any given situation. This means that the Customs agent is entitled to immunity from suits if they conduct an unconstitutional search based on a reasonable but mistaken conclusion that reasonable suspicion exists. This legislation expands that protection and establishes a new kind of immunity called good faith immunity.

Essentially, a victim of an unconstitutional search would not be entitled to relief unless the officer acted in bad faith, a nearly impossible standard to meet. So I think it is a significant weakening of the protections in our current law, and I find it dangerous.

In March 2000, the GAO had a report that found that African-American women were nearly nine times more likely to be subjected to x rays and customs searches than White women, and they were less than half as likely to be found carrying any kind of contraband: The whole point of why racial profiling is not only morally wrong, it is bad law enforcement, and doesn't lead to better results.

In fact, under the stewardship of Commissioner Ray Kelly of the Customs Service, they implemented significant changes in policies to stop the racial profiling that was occurring. I think we are taking a step backward here. It is just another one of the fine details that one sees in this conference report that make this not even ideal but, I believe, bad legislation.

For a whole host of reasons—the dilution of our trade adjustment authority; the issues with respect to the role of Congress, the role we rightfully should be playing in this process; the role of foreign investors in America and their ability to use trade agreements to supersede U.S. law; some of the civil liberties issues I pointed out and my concern about the use of the new trade laws to undermine public responsibility roles; the challenge to privatization that is a legitimate question that our elected officials should decide, not trade negotiators—I am led to the conclusion that we have the potential for what could be a very seriously flawed piece of legislation.

I voted against it in the Senate, and I am even more strongly opposed to the conference report. I hope I am wrong and the majority in the Senate are correct. But there are grave dangers embedded in this. We will need to monitor very carefully the application of this trade law as we go forward.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Florida.

GRAHAM-SMITH PRESCRIPTION DRUG COMPROMISE

Mr. GRAHAM. Madam President, yesterday, July 31, the Senate voted not to waive the Budget Act to allow consideration of the Graham-Smith prescription drug compromise. This legislation was estimated by the Congressional Budget Office to cost $390 billion over the 10-year period, a cost which turned out to be within a few percentage points of the legislation offered by the Republicans. Although unscored by the Congressional Budget Office, the sponsors of the Republican legislation estimated that their cost was in the range of $370 billion.

However, in spite of the fact that both the Democratic and the Republican plans were above $300 billion, which had been provided in the 2001 Budget Act, almost 18 months out of date, in spite of that fact, we could not get the 60 votes to waive the Budget Act and allow consideration of the substance of the proposal to provide a critical additional health care benefit for America's older citizens.

Had we gotten to the proposal, what would the Graham-Smith compromise have provided? It would have provided full coverage to the 47 percent of America's seniors whose incomes were below 200 percent of poverty, approximately $17,700 for a single person. It would have provided a mechanism for significant discounts, in the range of 15 to 25 percent, as well as a Federal subsidy on top of those discounts for all Americans. For all Americans, it would have also provided insurance against catastrophic costs, costs beyond $3,300 of payments made by the beneficiary.

Think of this: Had we been able to get to the substance of our amendment, Americans could have had the opportunity of purchasing an insurance policy for $25 a year that would have given them the peace of mind they would not be crippled, potentially financially devastated, by the consequences of a major health emergency, such as a heart attack or being determined to have a chronic disease such as diabetes. All seniors who fell into that category would have had all of their prescription drug costs above $3,300 per year paid with only a modest $10-per-prescription copayment.

This compromise would have afforded very real protection and assistance to all Medicare beneficiaries at a cost which both Republicans and Democrats had deemed to be reasonable.

One of the fundamental reasons this failed yesterday and I appear today is because at the last minute—I correct that to say, within the last hour before the vote was taken, the information on this chart was dragged from some source and reproduced on a floor chart used by one of my colleagues and in handouts which were circulated in the Chamber, which purported to show that the effect of adopting our amendment would be to impose massive new costs on the States.

It was stated that the first-year cost would be over $5 billion, and the 10-year cost would be $70 billion.

Madam President, I accept the fact that we have rules in the Senate and that one of those rules requires that to waive the Budget Act, you have to have 60 votes. But what I cannot accept is the method that some of our opponents used to defeat our plan.

There is an old adage: Everyone is entitled to their opinion; no one is entitled to their own facts.

It is impossible to have an honest debate without everyone using the same factual basis as the premise for their arguments and opinions. We can't pass legislation in 1 week to make businesses adopt honest accounting practices and standards and then not apply honest accounting standards to ourselves. Using only partial information that intentionally misleads U.S. Senators—in this case, misleading them to the wrong conclusion—is demeaning to this, the world's greatest deliberative body.

Several of our colleagues used a chart which misled other Senators into believing that the Graham-Smith amendment imposed these massive unfunded mandates. In the words of one of our colleagues: "$70 billion on the States."

This is simply untrue. It is, in my opinion, an intentional misrepresentation of the facts.

The floor chart used yesterday, as well as the paper distributed on the Senate floor, contained no source as to where the data was analyzed, or who among our colleagues would assume responsibility for distributing this information. No one—in violation of the spirit of the Senate rules—would accept personal responsibility for these distortions.

What happened yesterday was Enron accounting come to the Senate Chamber. It makes a point based on an inaccurate representation of the facts. It seems to me that if we are going to require companies to be more accountable, require their chief executives to sign the financial statements before they are released to the public, we should require the same of ourselves in the Senate.

In addition to distributing this distorted information, there were also statements made as to the motivation of the sponsors of this amendment. I will quote a statement made by one of our opponents who stated that:

> The sponsors chose to spring the text of this amendment on the Senate yesterday for the first time. Perhaps they thought they could slip in something new that we would not catch. Well, we caught it, and you know we have caught it by the speeches of the Senator from Maine. We actually have had a chance, and we have studied the Graham amendment. The Graham amendment imposes a massive new burden on States just when State treasuries are in terrible shape.

We have been accused of bad faith in offering this amendment, surreptitiously attempting to commit the States to a massive new unfunded commitment. That is not true. In fact, the Congressional Budget Office is the basis of the analysis that we have done. It was the basis of the support that was sought and gathered for the Graham-Smith amendment. None of its supporters, intentionally or otherwise, would have allowed a provision to be included that increased State costs.

On the other hand, we have an analysis that was developed by an unknown source, distributed by unknown persons to the Senate floor.

The basis of our estimate is the nonpartisan Congressional Budget Office, a set of experts with no political stake in this debate. The Congressional Budget Office estimates that the Graham-Smith amendment would not increase State spending.

Let's look at an analysis upon which the Congressional Budget Office predicated that statement, realities which the Republican analysis totally ignores: States would receive considerable relief from the creation of this new Medicare prescription drug benefit.

Let me explain why. Under current law, States are required to provide drug benefits to those eligible for Supplemental Security Income, SSI—generally, those below 75 percent of poverty—and others fully eligible for Medicaid.

In addition, some States have elected to go up to 100 percent of poverty. Those seniors' drug costs are now paid by the States at their regular Medicaid matching rate. Therefore, States are paying for part of total drug costs for these seniors, and the Federal Government is paying for part.

Under our proposal, the Federal Government would assume 100 percent of the cost above $3,300 incurred by each senior currently covered by the Federal-State match.

In addition, the Federal Government would be solely responsible for 5 percent of the costs incurred by each senior currently covered by the Federal-State match; that is, 95 percent of the costs below the stop loss would continue to be shared between the State and the Federal Government.

However, all the costs above $3,300 would be assumed by the Federal Government. Additionally, the Federal Government will pay for 100 percent of 5 percent of the drug costs.

The 100-percent Federal assumption of costs that are currently shared between the Federal and State governments would result in substantial savings to the States. None of these savings are included in this analysis.

Just yesterday, the administration approved a Medicaid waiver for the States of Maryland and Florida. This waiver will allow those States to extend coverage for prescription drug costs to their citizens between 175 percent and 200 percent of poverty, respectfully, at the regular Medicaid matching rate.

These States, plus others with similar waivers, would receive significant relief from having both a Medicare drug benefit and a higher Federal matching rate—including 100 percent matching rate for costs of those with incomes between 150 and 200 percent of poverty. None of these savings are included in the analysis presented by my Republican colleagues.

The Graham-Smith amendment does not include a "maintenance of effort" provision on current State spending on these programs.

According to the National Council of State Legislators, 31 States already provide pharmacy assistance programs and Medicaid drug waiver programs to seniors above 100 percent of poverty. Three more are authorized to do so, but have not yet implemented their authorization. All of these States would receive significant relief under my proposal. Yet, none of these savings are included in the analysis presented by my Republican colleagues.

According to the Congressional Budget Office, states are currently spending roughly $95 billion on prescription drugs for Medicare beneficiaries through the Medicaid program. A significant portion of this amount would be assumed by the Federal Government under the Graham-Smith compromise amendment, resulting in savings to the States.

The floor chart used by my colleagues showing $70 billion of new expenses was incomplete. I don't know if the $70 billion figure is accurate, but I do know that the State savings achieved by the Federal assumption of costs currently borne by the states is not reflected on that chart.

So what we have is an analysis that only stated what the new cost to the States would be as a result of this program and failed to include the new savings to the States as a result of this program.

Even the most junior budget analyst would not make the mistake of forgetting that States will save dollars as a result of the Graham-Smith amendment from the Federal assumption of many costs.

This is more than an oversight; it is a deliberate omission intended—unfortunately, in some instances it apparently had this effect—to scare off potential supporters of a responsible prescription drug benefit for older Americans.

This analysis is but one of several politically motivated analyses which have come out of the White House that conveniently support their policy positions.

Let me just review a few of those positions. On July 18, 2002, the Office of Management and Budget wrote:

> However, the administration opposes S. 812, [the underlying generic drug bill that the Senate, by an overwhelming majority, passed yesterday] in its current form because it will not provide lower drug prices.

No analysis by the Office of the Actuary supports that claim, and the Congressional Budget Office estimated that the bill will save $60 billion to American prescription drug consumers over the next 10 years.

The Senate, by its overwhelming vote, obviously decided with the Congressional Budget Office and not with the White House Office of Management and Budget.

Second, the White House produced an analysis claiming that the original Graham-Miller-Kennedy bill would "bankrupt" the Medicare trust fund—when this drug benefit, like the drug benefits in the Republican plan, is funded through a distinct fund that has nothing whatsoever to do with Medicare's Part A.

Third, just this month, OMB made its midsession review look substantially more rosy by including only $190 billion for prescription drugs, despite the fact that the Secretary of Health and Human Services, former Gov. Tommy Thompson, stated before Congress in April:

> Congress has seen fit to raise the funding for prescription drugs to $350 billion, and I came here today to indicate to you that the administration wants to work with that latter number.

This administration has not demonstrated in actions or words that it prioritizes State fiscal relief. As such, its concern for States, as expressed on this distorted chart, is a new revelation, only emerging when it is seeking an excuse to oppose an amendment to provide significant prescription drug assistance to America's seniors.

Less than a week ago the Administrator of Medicare, Mr. Tom Scully, stated the administration opposed increasing the Medicaid matching rate even temporarily, an amendment which has been aggressively sought by the States in order to receive some relief from rapidly escalating Medicaid costs. The administration opposed that amendment. The Senate, by an overwhelming vote last week, adopted it.

I might say that during the consideration of the tax bill, I was concerned that the proposal of the White House was to accelerate the repeal of the State's portion of the estate tax at a substantially faster rate than the repeal of the Federal estate tax. In fact, the State's portion of the estate tax will evaporate in approximately 3 to 4 years, while the Federal Government's share of the estate tax continues until the year 2010.

The effect of that early acceleration of the repeal of the State component of the estate tax will have a significant adverse financial effect on the States beginning this fiscal year.

The 47 percent of Medicare beneficiaries with incomes below 200 percent of poverty would have gained comprehensive drug coverage had the Graham-Smith amendment been adopted. Seniors in all States would have been helped. Seniors in all States would have been given the peace of mind that if they suffered a debilitating illness or disease or accident that they would have been helped with their catastrophic drug costs, and the States would have been helped by getting relief through the Federal assumption of costs that they are currently bearing.

I conclude by saying that I hope in future debates on the Medicare prescription drug benefit that we will all rely on the facts, not on incomplete and distorted analysis. Our seniors deserve better than what we have done to date, because what we have done is talk about, talk about, talk about, the need for a prescription drug benefit. We have not yet delivered, delivered, delivered a responsible prescription drug benefit.

It is going to be our challenge over the next few weeks, working with the facts and with honest analysis of those facts, to arrive at a prescription drug plan that will meet the needs of our seniors, will provide us with the basis of integrating a prescription drug benefit into a comprehensive health care program for older Americans, and to find the political will to act this year.

That will be our challenge and that quest will be advanced if we all agree that we are going to differ in our opinions, yes, but that we will all agree that we would use the same set of legitimate facts.

I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. Madam President, I wish to speak on a matter of great importance to this country, keeping the soundness of Social Security—and I say to my colleague from Florida how much I appreciate the great leadership that he has given to the Nation in the last several weeks as he has led the effort to try to honor the senior citizens of this country with a prescription drug benefit that would modernize Medicare to provide for what senior citizens ought to have in the year 2002.

It has been my privilege and pleasure to support him in his efforts. It is beyond me why we could not get the 60 votes. Some of the misinformation that was distributed, as the senior Senator from Florida has explained, is part of the reason. Part of the reason I happen to think has something to do with partisan politics as well, unfortunately, during an election year.

I want him to know my profound appreciation for him as a colleague, as a friend, and as a leader for this Nation in offering a needed change to Medicare for a prescription drug benefit.

SOUNDNESS OF SOCIAL SECURITY

Mr. NELSON of Florida. Mr. President, tonight I want to discuss another subject which is near and dear to our hearts, particularly the two of us coming from Florida, on the attempts to privatize Social Security. In fact, it even comes down to the fact that in the State of Florida, the pension program for Florida retirees was changed within the last 2 years by the legislature of Florida to basically allow a privatized element, other than a defined benefit element for all Florida's 600,000 retirees.

It sounded awfully good while the stock market was doing so well, but now in the last few months, the stock market has not been doing well. Lo and behold, would you believe that out of 600,000 retirees in Florida on the Florida retirement system, the State pension, only 3,000 retirees out of 600,000 have signed up for the privatized retirement plan. That should give us a clue as to why we should not be privatizing Social Security.

I do not want to hold my colleague on the floor, but before he left the floor, I wanted to share that with him as I get into my comments on Social Security.

Mr. GRAHAM. Will the Senator yield?

Mr. NELSON of Florida. With pleasure.

Mr. GRAHAM. The Florida retirement plan, prior to its modification, was in what would be called a defined benefit plan that gave security assurance to Florida's retirees as to what they would have in retirement, what they could count on, what they could sleep comfortably at night knowing was going to be available to them.

Mr. NELSON of Florida. That is exactly right. It was a defined benefit. Every retiree did not have to worry about the vicissitudes of the stock market and part of their retirement suddenly disappearing overnight.

Mr. GRAHAM. Is that not the same basic structure that we have had from the very beginning with Social Security, that it also provides the same level of security and peace of mind to its beneficiaries because it also is a defined-benefit program?

Mr. NELSON of Florida. It certainly is—the same system that has been in place in Florida for years, the system over which the senior Senator from Florida presided as Governor, and therefore the chairman of the State Board of Administration that oversaw the State retirement system, and when I had the pleasure years later, as the elected State treasurer, of being one of the three trustees of the State pension fund.

Mr. GRAHAM. Finally, does not the Senator think there are ample opportunities available for a person who wishes to take the risk and assume the chance that they may be buying into a stock market which is not always going up, they might be buying into a stock market such as in recent months it seems that goes down more than up, that they have plenty of opportunities with their savings, and if they have an individual retirement account or a 401(k) to take some risk, but with the core of their retirement, Social Security and the basic retirement through their employer, that they would be well served to have the confidence and assurance of knowing what they are going to do and not be on the Wall Street roulette wheel as to what their retirement benefits will be?

Mr. NELSON of Florida. The Senator has said it very well, and Social Security is a social safety net. The retirees, the senior citizens of this country, should know that it is a defined benefit that is going to be there when they need it and it is not subject to the roulette wheel, as the Senator has suggested, in the case that the stock market is suddenly in a downward trend. So, too, the State retirement system of the State of Florida was a defined benefit in the past, when the two of us had the opportunity of being part of the governing body of the board of trustees, and it gave confidence because there was a defined benefit.

So there is an exact parallel between what we have seen in the State of Florida and what we want to talk about tonight, which is President Bush wanting to privatize a part of Social Security and transfer a trillion dollars out of the Social Security trust fund over to private individual accounts that the individual would then invest in the stock market. That sounded like a good idea to a lot of people when the stock market was going up, but now that the stock market is going down, it is beyond me that the President is still insisting, as recently as last week, that he have Social Security privatized.

That is what I wanted to talk about tonight, and I am so delighted I came to the Chamber before my colleague from Florida left so that he could engage in this colloquy and dialogue with me. I thank him for that.

Mr. GRAHAM. I thank the Senator.

Mr. NELSON of Florida. Madam President, I will summarize my remarks because Senator GRAHAM and I have pretty well covered it in the discussion we had, that one only has to look back a couple of years. The Nasdaq has fallen by 75 percent, and the broader S&P has dropped more than 40 percent, and given this market downturn, as we say in the South, it is beyond me, I am surprised that the Bush administration is sticking by its proposal to allow workers to divert some of their Social Security into private accounts of the stock market instead of there being a defined benefit that would give the Social Security retiree the security, the knowledge, the confidence that when their retirement years came, they knew they had a certain amount they could rely on, even though most retirees are going to have to supplement that Social Security benefit, but at least they would know that benefit was there and was not going to evaporate if, in fact, the Social Security privatized account was invested in stocks that had suddenly taken a turn going down.

That is the essence of what I wanted to share. I will be speaking frequently on this matter when we resume in September, because this issue has had scant attention—an article here, an article there, about how the Bush White House is so intent that it wants to privatize these accounts. Clearly, if the times had not been of the economic downturn and the suffering that so many people have had in the stock market, perhaps they would have been lulled into a false sense of security. But with the stock market doing what it has done—a reflection, by the way, of the corporate scandals that have come to light and therefore a lessening of the confidence of the investing public of America in those corporations—if that had not come, the governmental decision process might have been seduced into going for this privatized part of Social Security. Clearly, that is not, in my judgment, in the best interest of our senior citizens.

That is what I wanted to share tonight. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

LEGISLATIVE ACTION

Mr. NICKLES. Mr. President, as we wrap up this summer session prior to the August break, I want to make a few comments. Several of my colleagues have discussed different issues.

First, let me state that I am very pleased that this Congress was successful in passing trade promotion authority and the Andean Trade Preferences Act. Both of those are vitally important and long overdue. The Andean Trade Preferences Act should have been passed by the end of last year. Unfortunately, the majority said it had to be packaged with trade promotion authority and with trade adjustment assistance. I have no objection to passing trade adjustment assistance; I think we should. We have always done it. I happen to agree with it.

Unfortunately, the majority—in this case the Democrats—said, in addition to trade adjustment assistance, we want to put in new entitlements and expand trade adjustment assistance not only for individuals who might directly lose their job to imports, they also said indirectly. That is an expansion. They also said we want to include agricultural workers. You might have every agricultural worker in America who says they lost a job, that it was due to imports because we are in an international market and prices go down. Now they want Federal assistance.

Then we also made a mistake because there was a new benefit added that said, in addition to trade adjustment assistance, in other words, being trained to pick up a new job, now the Federal Government is going to pick up 65 percent of the health care cost, an advanceable, refundable tax credit. We don't do that for somebody employed. We don't do that for a lot of people. But we will do it for somebody who says, I was unemployed because of trade. And they will be eligible to receive that for 2 years.

Then in conference, inexplicably, it was suddenly altered to qualify those now receiving benefits under the Pension Benefit Guarantee Corporation, if they are between ages 55 and 65, to receive the tax credit. That little amendment which didn't pass the Senate is going to cost over $2 billion.

So the entitlement portion of the trade adjustment assistance has more than doubled, and I am constantly amazed at the number of people who always say: Wait a minute. Spending is going up, we should not be spending here, but it is fine if we do it in entitlements. They insist we do it in entitlements. That is real money. And a lot of times entitlements are hard to roll back.

I wanted to express my displeasure with the almost frivolous way we have greatly expanded the Trade Adjustment Assistance Program and then held trade promotion authority hostage to get this kind of expansion.

That being said, the good of trade promotion authority and the Andean Trade Preferences Act outweighed the negative of the expansion of the entitlement. So I voted for it. I am pleased we were able to pass it. It is a very significant accomplishment.

Chairman Greenspan said we could do two things to advance the economy in this country, one of which was to show fiscal discipline—we have not done that—two, he said, to expand trade. By passing trade promotion authority, we have made it possible for this country to regain its leadership which we had lost. We lost it during the Clinton administration. Every previous President, going all the way back to Jerry Ford in 1974, had trade promotion authority. Bill Clinton had it in his first 2 years of office. He did not get it extended in 1996.

He was running for office. It expired in 1994. He didn't ask for an extension until after his reelection in 1996. At that time he couldn't get it through the House. The House was controlled by the Democrats. It was controlled by the Democrats when he was in power the first 2 years. He didn't get it extended then, and he couldn't get it extended later. In the Senate we had the votes to extend it. He wasn't able to get it.

Now this President, President Bush, is going to get it. I am glad. I think that will help expand trade and again regain our leadership role as it has been, as it should be, as really the promoter, the leader, the cheerleader, frankly, for international free trade. Ronald Reagan helped expand it in the early 1980s, and that has certainly been a benefit to our economy and the economy of the free world.

A couple of other issues have been brought up. I want to touch on them.

I heard some of my colleagues say we need to pass a Patients' Bill of Rights, and maybe there will be an attempt to appoint conferees to conference on the Patients' Bill of Rights. I will probably be a conferee.

I have been involved in that issue for several years now. I look forward to working with our colleagues on both the House and the Senate sides to pass a good Patients' Bill of Rights package. But I do find it kind of curious that we passed the bill over a year ago. Let me repeat that. We passed Patients' Bill of Rights over a year ago. The House passed it a year ago tomorrow, on August 2 of last year. We are just now appointing conferees. This was the most important item on the agenda for the Democrats who regained control of the Senate last summer—the first major legislative item we passed. However the House passed it a year ago.

We could have appointed conferees a year ago. We are just now getting around to doing that. I find that kind of curious. I still want to pass a bill. I might be able to refresh my memory enough to see if we can't negotiate a positive package. Let me restate that I don't want to pass a package that will greatly increase health care costs for patients. Unfortunately, that is what passed the Senate 13 months ago—a bill that would increase health care costs, estimated by the CBO, by 4 or 5 percent. I think at one time they scored it at 4.7 percent. And this is an increase over and above the increases already coming in on health care inflation and insurance costs, and health care insurance costs are exploding.

The California health care plan, CalPERS, may be one of the largest plans in America. I remember reading the headline that their health care insurance costs are going up 25 percent. Small business insurance costs are going up 15 to 20 percent. Nationally, almost everybody's is going up 12 to 14 percent. This is going to add another 4, 5 percent on top of it.

I don't want to do that. I will work energetically to see that we don't pass a bill that would greatly increase health care costs. Also, I don't want to pass a bill that will increase the number of uninsured. If I remember the Senate bill accurately, the bill also had new causes of action where people could sue not only the big, bad HMO, but employers as well. Some of us wanted to protect employers. We know if you make them liable for health care costs, employers don't have to provide them, and a lot of employers won't provide health care costs. The net result will be more people joining the ranks of the uninsured.

We should do no harm. We should not pass any bill that will increase costs dramatically or increase the number of uninsured. I am afraid that will happen if we pass the Senate bill. I am happy to work with my colleagues on both sides of the aisle. If you are looking at what the major changes are—when I was chairman of the task force—and I was chairman of the conference committee for over a year, which dealt with this issue—we had internal appeals in the bill we passed in the Senate at one time; we had external appeals. So if somebody is denied coverage, they can get an immediate response and get it overturned if it was unfairly denied by a big, bad HMO bureaucrat. That decision can be final. We can make a penalty if somebody doesn't abide by the external appeal. We can make that binding, where it would be ridiculous, or expensive, for somebody not to comply with the appeal so they can get health care when they need it.

Some people don't want to have that be the final solution. They think the real solution should be in court. Oh, yes, they want unlimited damages, or damages that, frankly, are so high it would scare a lot of employers away. I don't want to do that—pass a bill that will increase the number of uninsured, or the cost of health care beyond the reach of countless businesses and individuals across the country.

I am happy to work with our colleagues. I don't know why it has taken us a year to appoint conferees. I find it almost ironic. I look forward to working with my friends on both sides of the aisle to do it.

Mr. President, next I want to touch on the issue of prescription drugs. Some of our colleagues who were proposing an amendment yesterday came to the floor tonight and were implying that colleagues who opposed that proposal were not truthful. I was reading the remarks and thought, wait a minute, is he talking about me? I opposed the proposal. And I think I was right. I remember hearing a colleague saying that you are entitled to your own opinion, but you are not entitled to your own facts. I use that, also. I thought, he is using that against me or my colleagues.

That bothers me. I would do anything before I would mislead my colleagues. If I ever mislead colleagues, I will be more than happy to come and apologize, correct the record, you name it. I want to win badly, but I never want to win so badly that I would distort the truth—ever. I think that was implied. I hope it wasn't. If it was, I believe it is in violation of rule XIX of the Senate. That should not happen.

Certainly, nobody should be misled. The issue at hand was on Medicaid costs. I am happy to talk about the facts of that. I did see a chart that was shown on the floor of the Senate. I saw a chart that showed that a lot of States would pay a lot more money in Medicaid costs. Where did that chart come from? Somebody said it is some anonymous chart, and I guess it didn't have any identification on it. It wasn't handed out to every Senator. It was handed out to a lot. It was available in the Chamber. It came from the administration, from the Department of Health and Human Services, to try to get kind of an estimate on what the impact of the last Graham proposal offered because we are trying to figure it out. Senator GRAHAM read a comment that was made. I thought it was made by me, but it turned out to be made by Senator GRASSLEY. He implied that it was incorrect. I looked at that. I happen to know CHUCK GRASSLEY, and he would never misstate anything intentionally, and I don't think he misstated one word.

I am bothered that somebody would quote somebody in the RECORD—when he is not here to defend himself—and imply that he didn't tell the truth in order to win the debate. That bothers me. I love the Senate and I hate to see this kind of almost accusation.

Let's look at the facts. Senator GRAHAM's amendment was introduced yesterday. We never saw a copy of it until it was introduced. It was held overnight. I think it was brought to the floor at 2, 3 o'clock in the afternoon on Tuesday. We voted on it Wednesday morning. Granted, overnight, the Department of Health and Human Services looked at it and gave us some estimates.

I know in my State it would cost a lot. The Medicaid Director, Mike Fogerty, said Oklahoma would not be able to do it without cutting the program's financing. If there is any cost, the only way you can find the money is other places in the program.

We did find some serious problems with the Graham amendment. It said we are not going to just expand Medicare, we are going to have a low-income benefit, and do it through Medicaid. Medicaid happens to be, factually, a Federal-State program. The Federal Government pays a portion and the State pays a portion. In some States it is 50/50. In some States, it is 70/30. The Graham amendment said we are going to provide a brand new drug benefit with very small copays from the beneficiary—$2 and $5—and we are going to provide this benefit for anybody who makes less than 200 percent of poverty. Well, State Medicaid drug benefits for most States—31 States, maybe 30—I counted them yesterday, and I think I counted 31, but it may be plus or minus. This had to be done very quickly. It may not be 100 percent accurate because it was done quickly. Every State has to provide a prescription drug benefit for Medicaid up to 74 percent of poverty. They do that on the State match.

So, again, for this drug benefit, whatever benefit the State has—in my State, you get three prescriptions per month and the State pays its share—in my case, 30 percent—and the Federal Government pays 70 percent. That is up to 74 percent of poverty. The Graham amendment says let's make that 120 percent of poverty. In other words, we greatly expanded the pool of eligible people because our State, right now, is only 74 percent. So we greatly expanded it to 120, and the State is still liable for its share.

Well, that is a big new unfunded mandate for which the State has to pay. That will cost millions and millions of dollars because there is no limit on the number of drugs. The State will have to make its match, depending on what the State match is. Between 120 and 150 percent, a State still has to pay.

There is an enhanced match. The State would get S-CHIP. S-CHIP usually has a reimbursement rate of 78 percent, I believe, on average. The State would still have to put in 22 percent. So you are expanding the eligible pool of people who are going to receive the benefit, and you are also expanding what the State has to pay. Those are facts. Those are in the Senator's bill.

Between 150 percent and 200 percent of poverty, the Federal Government would pay 100 percent. The Federal Government pays that, so I guess that is not an unfunded mandate. It is just a cost to the Federal Government.

Below 150 percent of poverty, between, frankly, 74 percent and 150 percent of poverty, there is a big new mandate on the Federal Government and on the State government. The State would have to pay its share, and that would cost——

Mr. GRAHAM. Mr. President, will the Senator yield for a series of questions?

(Mr. NELSON of Florida assumed the Chair.)

Mr. NICKLES. I will be happy to yield in just a moment. That is a great big cost. That has to be accounted for somehow. Someone might say: There might be savings because we have catastrophic on the other end. Right now, maybe the State is paying that—that may be—but that may not get there.

Mr. President, 80-some percent of the people do not have drug costs that exceed $2,000. Catastrophic did not kick in until $3,300. No doubt some people would benefit, but maybe the majority of the people would not. It looked to me as though it was a real loser for the States. I think OMB happens to agree. They estimate it would cost my State something like $62 million. I would not be a bit surprised if it cost more than that. Our State cannot afford that. We have a Medicaid Program that is already going bankrupt.

My point being—and I mention this with my friend from Florida here. I have respect for my colleagues, but always I think it is important we not impugn the integrity of Senators.

Mr. GRAHAM. Mr. President, I ask the Senator to yield.

Mr. NICKLES. I will be happy to yield for a question.

Mr. GRAHAM. I think my integrity was impugned when it was suggested yesterday that we had slipped into this amendment, hoping it would go undiscovered, a provision that would end up costing the States some $70 billion over the next 10 years. That is close to a verbatim statement.

That was made on the basis of this sheet which was printed and distributed on the Senate floor without a source and without anyone accepting personal responsibility. This is what I call Enron accounting. You only accounted for the additional cost to the States without any reference to the savings the States would get as a result of the Federal Government picking up substantial costs the States are currently incurring which the Congressional Budget Office has stated to be approximately equal to what the States would have to expend in terms of these new obligations. No reference was made——

Mr. NICKLES. Mr. President——

Mr. GRAHAM. No reference was made on this chart to the fact there were very substantial savings to the States in addition to the costs.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. NICKLES. Mr. President, I regain the floor. I looked at the chart. The chart does not have all States. Maybe some States were not impacted as much. Maybe they highlighted the States that have the most additional cost.

I mentioned my State. I know my State would be out of a lot of money. We offered a drug benefit that goes up to 74 percent of poverty, and we are going to put a new mandate between 74 and 150 percent of poverty. The State has to make that match. I know it is going to cost my State millions. HHS said it cost $68 million. They said the cost for the first year is over $5 billion. Maybe some States are pluses, maybe some are winners. Maybe they did not include all this.

I will say a couple words about the legislative process. I happen to be a believer in the legislative process, and I think my colleague from Florida knows that. We did not abide by the legislative process.

We did find his amendment greatly increases Medicaid costs for a lot of States. Yes, we exposed that. That happens to be factual. This was not just a Medicare expansion. It was a Medicaid expansion, and the States have to match Medicaid.

Did we find it? Yes. Did we find in the original Graham proposal that the proposal limited the prescription drugs to one, up to two, drugs for therapeutic class? We did. I think it probably is one of the reasons that proposal did not pass—because it is such a limitation.

Did we find it? Yes, it was in the language. Did we have a whole lot of time? No, we told people about it. I do not back off that a bit. I think we have a right to point out the weaknesses of arguments. As always, my colleague can point out this was not a complete chart. We did not have time to get a complete chart. I did not. Maybe there is a complete chart around, but the amendment was offered in the afternoon and we were voting on it in the morning.

One of the things that is really wrong is to try to legislate in a manner such as this. I believe in the legislative process. I believe in hearings. I would love to have a hearing on the proposals we voted on this week. I would love to have experts testify on the pluses, the strengths, the weaknesses, the gaps, the minuses on the various proposals. We have had some good proposals. We have had some that are not so good. I heard my colleague from Florida say that CBO by e-mail said this is a net wash for the States. HHS shows me that some States, or these States that are listed, would have a net loss of $5 billion in 1 year. This is a 10-year program.

Mr. GRAHAM. Will the Senator yield for a question?

Mr. NICKLES. The point I am making: It would be nice to go through the process, have a bipartisan markup, have hearings, have experts, and not be relying on e-mails that came from somebody in CBO.

Incidentally, I noticed in CBO's scoring of the proposal, it was scored and was estimated to be $394 billion, but there is an asterisk: Scoring done by estimates, not by the language of the bill. In other words, they did not have the language of the bill on which to do the scoring. This is the most important expensive expansion of an entitlement that we have dealt with in decades. It is the most expensive important expansion of any entitlement, and we are doing it with CBO not even having legislative language to look at.

I find that to be a pretty crummy way to legislate. I am offended by this process. I am offended by being a member of the Finance Committee and not even being able to offer an amendment in the markup of the bill. I am offended by the fact—I looked at the history of the Finance Committee, which is one of the great committees of the Senate. I waited 16 years to get on that committee. It took a long time. It is a great committee. I thought it would be worth the wait because we would be marking up very substantive legislation, such as Social Security, Medicare, Medicaid, welfare reform, and taxes. Yet the committee is bypassed, so we have 20 members of the committee who did not get a chance to offer an amendment.

We have an amendment that was created somewhere and scored overnight not by legislative language. No one gave us a chart and said here is the impact of your State. I would love to see the impact to my State. My State Medicaid director says this is going to be a real problem; we cannot do it.

We exposed that a lot of States would have a problem doing that. There is no reason to apologize for doing that. I just want to make sure that Senate debate never improperly impugns the integrity—I believe my colleague who was quoted was Senator GRASSLEY—I do not ever want anybody's integrity to be impugned on either side of the aisle. That is below the Senate, and there happen to be Senate rules against it. I wanted to make that point.

I will just assume and take for granted no one meant to do that. But we have to be very careful not to do that. We have to be careful that we are factual. Sometimes maybe in the heat of the debate things get going.

I want to move on to one other subject.

Mr. GRAHAM. Mr. President, before the Senator does that, will he yield since we are on this subject?

Mr. NICKLES. I yield just for a question.

Mr. GRAHAM. Does this chart in any of the columns contain the offset savings which the States would have secured as a result of the passage of the underlying Graham-Smith amendment?

Mr. NICKLES. The chart does not show any offsetting. It shows a total cost increase of the new Medicaid mandate. I think the Senator is trying to imply there may be some savings for some areas if a State had a lot of catastrophic and the Federal Government were going to pick up 100 percent of that cost, I guess. That may be correct, but it does not have a column that shows that. Maybe if we would have had a little more time—the answer is no.

I ask my colleague, though, since CBO did some work for the Senator, did they do a State-by-State analysis on what the impact of the State of Oklahoma would be?

Mr. GRAHAM. They did not do a State-by-State analysis. I do not know who did the analysis of the State-by-State costs presented by my Republican colleagues so I cannot have any means of even determining who to go to talk to about where these numbers came from. But the answer to the question, which is relevant, is there are very substantial savings to the States. In fact, according to the Congressional Budget Office, the savings to the States as a result of the passage of this prescription drug amendment would be equal to——

Mr. NICKLES. I have the floor.

Mr. GRAHAM. These additional costs.

Mr. NICKLES. The Senator can answer the question. I have the floor and I will state again, some States lose under the Senator's proposal big time. I am not sure all States do; some States lose big time.

The Senator stated that he did not have a State-by-State analysis, so every fact that is on this chart may well be accurate. The Senator also stated that CBO did not do a State-by-State analysis, and I will say if we are going to be changing Medicaid formulas, or if we are going to be changing Medicaid programs and States have to make a certain percentage match, it is only prudent that we would do an analysis of what the impact would be on a State-by-State basis.

Unfortunately, CBO did not do that. Fortunately, the Department of HHS did. The States that are included on this list are the States that get hit the hardest, and we expose that.

Now, there may be some offsets, but I tell my colleague from Florida, I can almost assure him, since 80 percent of seniors have prescription drug costs that are $2,000 or less, that catastrophic program savings would not come near to offset the increased costs of utilization. And the fact that they have to make matches up to 50 percent, almost to 100 percent, for the program, minus a small deductible for people under 200 percent of poverty, it would not come too close to make it. It would not come close in the State of Nebraska or the State of Oklahoma. I know that. There are not near that many people who would have the savings through the State.

In our State program, the individual who gets three prescriptions per month is not going to come close to $3,000. That program is not that generous in my State so the savings on the catastrophic side would not come close to making the savings or the increased costs that is on the low-income side.

Mr. GRAHAM. Could I ask the Senator another question?

Mr. NICKLES. Yes.

Mr. GRAHAM. What leads the Senator to believe that the only way in which the States would secure savings under the Graham-Smith amendment would have been through the catastrophic savings?

Mr. NICKLES. Well, I will tell my colleague, all we had from CBO on the Senator's amendment was one page that said, one, it never went State by State and, two, it said $394 billion and it said it was not based on legislative language. We had nothing to score off of from what was provided for by CBO or by the Senator, except for the Senator's word that he had an e-mail that said the States net out about even.

I did have work that was done by HHS, and it may not have included every extrapolation, but they did compute the cost of the low-income benefit and how much that would cost the States to make the match, and it is in the billions of dollars, to the tune of $5 billion for some States. Maybe some States would come out better. I am not sure. But that is my point. This is not the way to legislate.

This is legislating as if we are going to legislate on the back of an envelope. It is almost as if Senator DASCHLE said, do not go to committee, do not have a markup, here is $400 billion, $500 billion, $600 billion, or $800 billion and can we not cobble together 60 votes?

That is a crummy way to legislate. We could have passed a prescription drug bill if we had done two things. If we would have passed a budget, this Senate—the House passed a budget. Incidentally, the House passed a budget with a prescription drug amount of $350 billion. The Senate passed a budget a year ago, I might mention when Republicans were in control of the Senate, and it was a $300 billion total Medicare change. It could be prescription drugs or it could be for something else.

That is what we are relying on in the Senate today. Why? That is a year old. Because the Senate Democrats, or the leadership of the Senate, did not pull up a budget. We do not have a budget. We did not pass a budget, first time since 1974, and because we did not, a budget point of order lay against anything that was over $300 billion.

If we had passed a budget, gone to conference with the House and resolved whatever amount that would be—and let's presume the House would prevail—then the committees would have been instructed to pass a bill, if the House prevailed, up to $350 billion. It could be passed if it went through the Finance Committee. Any bill could be reported out that would be up to $350 billion, and it could pass with a majority vote. No budget point of order would lay against it. We could have passed a prescription drug benefit this week. Unfortunately, that did not happen.

So the committee did not mark up any proposal that came out that was over $300 billion. Last year's level had a budget point of order, had to have 60 votes, had to have a supermajority. The real fault of that came because we did not pass a budget earlier.

Again, I love the Finance Committee but I hate the way the Finance Committee has been trampled on. I hate the fact that the Finance Committee is being ignored, the fact they did not mark up the bill, the fact I did not have a chance to offer one amendment, the fact I did not get to have the chance to ask the Medicaid director: How does this impact you? Is this a good proposal? Do you mind if we put on this new requirement, oh, yes, below 150 percent of poverty? Here is this brand new benefit. It is going to cost you a ton of money. How much does it cost? Can you afford it? Could you pay for it? I am afraid the answer would be, no, no, no, no.

We did not have a chance. Instead, we had to try to write the bill on the floor, and in this case we had to take up this amendment and we had less than 24 hours to deal with it.

Again, my purpose in expanding this is not to redebate the amendment. My purpose is to defend my colleague, Senator GRASSLEY, whose integrity I value more than anything. I would not—and I know he would not—misstate a fact to win a debate for anything.

I came to the Senate with Senator GRASSLEY in 1980. That was 22 years ago. We have cast thousands of votes together. I know him very well. I agree with him most of the time—not all the time—but I would defend his integrity every day of the year.

I am going to start making points of order, rule XIX, if people imply or impugn the integrity of another Member. I am going to do it, and those words will be stricken from the RECORD and the Senator will not be allowed to get access to the floor for the rest of the day; and maybe other penalties. We have not done that, but maybe we need to do it. So that is my purpose for coming to the floor.

I want to make a couple of other comments.

Mr. GRAHAM. Will the Senator yield for another question?

Mr. NICKLES. I am not going to yield. I am going to make one other comment on a different subject.

JUDICIAL NOMINATIONS

Mr. NICKLES. Mr. President, earlier today we confirmed a total of eight judges. A lot of people said, boy, didn't we do great? We have done more in the last 12 months than anybody has done in the last 12 months.

I thank Senator DASCHLE, Senator LEAHY, and others because we did confirm a few more circuit court judges, but let me state my disappointment in the fact that we have not done near enough. I want to put out facts. We have now confirmed 13 circuit court judges. President Bush submitted 32. We are in the second year of his Presidency. We are not quite finished, but we have confirmed 40 percent of his circuit court nominees. I looked at the first 2 years of the Clinton administration, and this Senate confirmed 19 of 22. That is 86 percent. I looked at the first 2 years of the first President Bush, the 101st Congress, and we confirmed 22 of 23 circuit court judges. That is 95 percent.

I looked at the first 2 years of President Reagan, 97th Congress, we confirmed 19 of 20 of his circuit court nominees. That is 95 percent.

So for the three previous Presidents we confirmed over 90 percent of their circuit court nominees in their first 2 years.

This Congress—and granted, the first several months, the first 6 or 7 months of this Congress was controlled by Republicans and we did not confirm any judges because the President was just sending his nominees through and they did not have time, and that is not unusual. We usually do not confirm very many in the first 6 months of any administration.

So far this year, we have done 13 out of 32; that is 40 percent. That is less than half the percentage of what we did in three previous Presidencies. Those are just facts. I heard someone said we confirmed 72 judges. Great, 72 is a lot more than we confirmed in the last 2 years of the Clinton administration. Granted, we usually don't confirm very many in the last year of a President's terms, but in the first 2 years we usually do, and we are way behind.

Some of the individuals were nominated 449 days ago—over a year ago. They were nominated last May—a year ago May. Some of these are the most outstanding nominees I have ever seen. John Roberts, nominated for the DC Circuit, has argued 37 cases before the U.S. Supreme Court. Is this individual qualified? He was nominated a year ago in May, and he has yet to have a hearing. He has argued 37 cases before the Supreme Court. How do you get more qualified? Miguel Estrada argued 15 cases before the Supreme Court and was unanimously rated well qualified by the ABA. He emigrated to the United States as a teenager from Honduras and spoke virtually no English. He graduated magna cum laude from Harvard Law School, editor of the Harvard Law Review, law clerk to Justice Kennedy, a former assistant solicitor general and assistant U.S. attorney. He has not received a hearing.

I guess you can say, we have confirmed 72 this year, how is it fair to have 2 individuals such as John Roberts and Miguel Estrada not even have a hearing, having been nominated over a year ago? Senator LEAHY made a commitment we would do Miguel Estrada. I am waiting.

Priscilla Owen: We had a hearing in July of this year but no vote. The Republicans asked that be postponed because we are not sure where the votes are. Texas Supreme Court justice since

1994; unanimously rated well qualified by ABA; Baylor Law School graduate; member, Baylor law review; highest scorer on the Texas bar exam; eminently qualified.

Maybe some people are now putting a litmus test in the committee. We did not used to do that. People used to rail against having a litmus test, and now people are trying to come up with a litmus test. If she is not confirmed, that is a travesty.

Terrence Boyle was nominated in May, a year ago chief judge of the U.S. District Court, District of North Carolina, since 1997; unanimously rated well qualified. He worked as counsel in the House Subcommittee on Housing; was a legislative assistant in the Senate; prior district judge, 1984 to 1987; very well qualified and still no hearing and certainly has not had a vote.

Michael McConnell, nominated to the Tenth Circuit; presidential professor of law, University of Utah; unanimously rated well qualified by ABA; one of the country's leading constitutional law experts; argued 11 cases before the U.S. Supreme Court; prior assistant solicitor general; law clerk for Justice Brennan and cannot even get a hearing.

Deborah Cook, nominated to the Sixth District; justice to the Supreme Court of Ohio since 1994; unanimously rated well qualified by ABA. The Sixth Circuit is almost half vacant, with 7 out of 16 seats empty in the Sixth Circuit; exceptionally well qualified and no hearing.

Jeffrey Sutton, nominated to the Sixth Circuit as well; rated well qualified by ABA and qualified by ABA; graduated first in his class, Ohio University College of Law; law clerk to Supreme Court Justices Powell and Scalia, and argued 9 cases and over 50 merits and amicus briefs before the Supreme Court; and prior State Solicitor of the State of Ohio. He has yet to have a hearing in the Judiciary Committee.

Dennis Shedd, nominated to the Fourth Circuit; a judge in the U.S. District Court of South Carolina since 1991; rated well qualified by ABA; 20 years of private practice and public service prior to becoming a district judge; law degree from the University of South Carolina; master of law degree from Georgetown. He received a hearing on June 27—still not reported out of committee.

I thank my colleagues for the fact we have confirmed 72 judges, but I mentioned 8 nominees who were nominated in May of last year; a couple have had a hearing, and the rest have not had hearings and have not been voted on in committee, and we have not had a chance to have a vote on the floor. A year and a half, how much is enough? This is an outrage. I don't think this should be done, Democrat or Republican.

I plan on being back in the majority, and I tell my friends and colleagues on the other side of the aisle, I plan on treating judicial nominees fairly. Regardless of who is in the White House, we should treat them fairly. If there is a judge really out of the mainstream, let's debate it. But to hold up these individuals who have argued 30, and 15, and 9, and 10 cases before the Supreme Court and we do not even give them a hearing in committee, that is not fair. That is an injustice. That is an abuse of power.

Maybe we are confirming district judges, and that is great, and district judges have sponsors of Senators. These are appellate court judges, circuit court judges, next to the highest court in the land, next to the Supreme Court, and they cannot get a hearing. I don't think that is right. I don't think it is fair. I am not saying there have not been injustices before by Republicans. Enough of this nonsense: You did not treat us right, we are not going to treat you right.

Again, the tradition of the Senate: We do not usually confirm a lot of nominees in a President's last year or so. We certainly do his first year or so, as evidenced by the fact—and I will put this in the RECORD—that 95 and 96 percent of the three previous Presidents' circuit court nominees were confirmed in the first 2 years—almost all of them—and this year we are at 40 percent on circuit court nominees.

That is totally unsatisfactory. That is not fair to those individuals. It is not fair to the judicial system. It is certainly not fair to the Sixth Circuit Court, which is almost half vacant.

I tell my colleagues, we have made some progress, and my compliments. But we have a lot more to do, especially on circuit court nominees and on individuals such as John Roberts and Miguel Estrada. Let's lower the rhetoric and get some people confirmed. Let's treat them like individuals, with dignity. They have been nominated to the highest courts in the land. They have been nominated for lifetime appointments. Let's do our work. The Senate traditionally, over the years, would move judicial nominees expeditiously. And they are getting more difficult.

Now people are saying: We want to review every case that the judge has ever written; we want to review every case on which he made a recommendation. That is ridiculous. It is an excuse for delay. That is not right. It is not for the majority or the minority. I urge my colleagues to be fair to the nominees and get as many confirmed and move the Senate along as we should and restore the Senate through the great traditions that the Senate has long held so we can be worthy of the title of Senator, and not have a reputation of: I am sorry, judge, we are sorry about your political career or, Mr. Attorney, you were nominated by the President of the United States, but we are sorry you have waited a year and a half and you cannot get a hearing before the Senate; they are too busy. That embarrasses me.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTH CARE

Mr. GRAHAM. Mr. President, this is the last day of a long legislative season. We are about to take the month of August to go back to our home States, be with our constituents, and maybe have a little opportunity to get some personal relaxation and rejuvenation, and come back after Labor Day and complete this 107th session of Congress.

It is exactly this time in the legislative calendar where maybe tempers and tolerance are beginning to wear thin and short.

I share with my friend from Oklahoma high feelings for the persons who debated vigorously over the last 2 weeks on an issue whose importance we all understand and feel deeply about, which is the issue of providing a health care program to 40 million senior Americans by adding to that 37-year-old program, at long last, a prescription drug benefit. I think the goal is one we all share. We have somewhat different ideas as to how to get to that goal.

The reason I came to the floor earlier today was out of, yes, a sense of personal attack but also a sense of the need to set a very obvious erroneous record somewhat straighter. My concern was piqued by a statement that was made which implied that I, Senator SMITH, and others, tried to slip something by the Senate. And that "something" was not a small amount, but a very substantial, maybe as much as a $70 billion additional cost on the States according to my Republican colleagues.

I knew that was not accurate because I had received from the Congressional Budget Office, which had scored our legislation, the fact that they had determined that, in fact, there was no additional cost to the States and I had made that representation to my colleagues. I felt my personal credibility was at stake. So I went back to the Congressional Budget Office today to recheck what they had said and they reaffirmed the statement that there was no additional cost to the States.

I showed them this—

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. Let me just finish, get the facts out, and then we will talk about the policy.

So I showed them this chart. They pointed out what was obvious which was that this chart only shows half, in fact less than half of the equation. It shows the additional costs to the States that will come incident to their picking up some of the prescription drug costs. What it does not show is that the States are going to be relieved of a substantial amount of their current costs.

The Senator from Oklahoma mentioned one of these costs. But, in addition to that, there are other costs from which the States will receive relief. For example, there are 31 States that provide State pharmacy assistance for low-income senior citizens, the States which have received Medicaid waivers in order to allow them to cover additional groups of seniors. As the Federal Government has dawdled on the subject of providing prescription drugs for senior Americans, many States have stepped forward and have done so.

So within the Medicaid Program as well as in areas where the States have tried to fill the void that the Federal Government has left behind, there are substantial savings to the States—thus the report of the Congressional Budget Office that there is no increased cost to the States. But there is no column or figures on this chart which reflect the fact that there are these offsetting savings to the States.

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. What got Enron in trouble was it set up a whole constellation of off-budget partnerships in order to hide their expenses.

Mr. NICKLES. Will the Senator yield for a question?

Mr. GRAHAM. And therefore it overstated their profitability.

We have a chart here which does the opposite. We have a chart here which hides the benefits the States are going to get and only highlights those additional costs.

Mr. NICKLES. Will the Senator yield for a question?

Mr. GRAHAM. I am almost there.

Therefore, presenting the impression that the passage of this amendment would result in substantial additional cost to the States—touted to be $70 billion—is a patently untrue statement.

I wanted to set the record straight before we went home so none of our colleagues spend August worrying that they might have been deceived into believing there was going to be a very major additional cost to the States and that might have influenced their vote on this matter.

So my only purpose was to make those corrective comments and express my hope that in the future we would follow the spirit and custom of the Senate, which is when you distribute a document such as this, you put your name on it so someone is held accountable. And I suggest it would also be helpful if we adopted the custom that there be some source given for documents such as this, so those who are interested in pursuing the basis upon which the calculation was made would at least know whose telephone number to call.

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. I would be pleased to yield.

Mr. NICKLES. I am wondering about all these savings. I am looking at my State. You said if the State had a prescription drug program, the Federal Government might be picking up a lot of that State program so therefore it is saving. My State doesn't have that, other than the fact we provide Medicaid prescription drugs up to 74 percent, and that is limited to three prescriptions per month.

So where is the savings for my State? HHS said this is going to cost my State something like $62 million. My director of Medicaid said it is going to cost our State, and we can't afford it.

There, obviously, under your proposal are some States, maybe a lot of States, that would be losers; isn't that correct? It would increase their Medicaid costs dramatically?

Mr. GRAHAM. What CBO has said is that for the States as a collective, that there would be no additional cost as a result of this. I have asked CBO to prepare a State-by-State analysis of what those offsetting savings would be. I do not have those numbers today.

Mr. NICKLES. Isn't it likely that some States would be losers?

Mr. GRAHAM. But I think it is a given that no State is going to have zero savings. So that every one of these State-by-State numbers is overstated.

Mr. NICKLES. I don't know. I will just state to my friend that these are additional new costs. There may be some offsets. I mentioned one possibility. You mentioned: Well, if they have the State drug program, that might be a savings. I didn't have that program.

The only offsets I could see is if the Federal Government is taking over some of the catastrophic, and I don't see that hardly ever happening. So I think these are pretty accurate costs. I will be very interested maybe CBO will have a chance to do it. Maybe if we would legislate correctly and not just have a new proposal on the floor, we would have a chance for CBO to score it, not through e-mails saying that we think it is no new net cost but have them give a State-by-State. Then we could be more thorough in our analysis and in our description. And if someone highlights a couple of columns and leaves out a couple of columns, that can be brought out in the debate.

Unfortunately, we did not have that time afforded to us the way this bill was brought to the floor and the way we were considering serious alternatives.

I appreciate my colleague saying, wait a minute, maybe this is not complete. There should have been a column that shows some offsets. But I am absolutely certain that some States would lose millions upon millions of dollars, maybe in the hundreds of millions of dollars. And some States would be real net losers.

There might be some that have some better reimbursement from the Federal Government. In fact, it may be for some of the States that are wealthier, that have more generous programs, we are going to pick up the cost of their doing the program which was a previous State program. Maybe that is an offset.

But I hope, and I think my colleague would agree—or wouldn't you agree—that we should have a more thorough cost analysis by the relevant agencies, whether it is OMB, Labor-HHS, or CBO, when we discuss programs of this significance and the significant impact it would have on our States?

Mr. GRAHAM. I completely agree. I think we should have an analysis that includes both the debit and the credit side of the accounting ledger so we will be able to make an informed judgment as to what the real economic consequences of our decisions will be.

Mr. NICKLES. I thank my colleague.

Mr. GRAHAM. I think on that note of common agreement I wish to thank my friend from Oklahoma for having allowed me to ask him a few questions earlier. I hope he has a very good August recess, and I look forward to seeing him back here on the day after Labor Day, refreshed and ready to complete this session of the Congress.

Mr. NICKLES. I thank my colleague.

MOTOR VEHICLE FRANCHISE CONTRACT ARBITRATION FAIRNESS ACT

Mr. REID. Mr. President, we leave for the August recess having accomplished a lot. When we return in September however, we really have our work cut out for us. It is not simply the annual appropriations bills and completed conference reports we must take up and pass. One measure of particular interest to the Senator from Nevada is S. 1140, the Motor Vehicle Franchise Contract Arbitration Fairness Act. The Judiciary Committee approved this bill back in October 2001. It enjoys 64 bipartisan cosponsors and both the majority and minority leader have indicated their desire to consider this legislation. I am hopeful that any concerns over its merits can be resolved over the August recess so that we can move it expeditiously upon our return.

CONSTITUTIONAL AMENDMENT TO PROTECT THE PLEDGE OF ALLEGIANCE AND THE NATIONAL MOTTO

Mr. LOTT. Mr. President, on June 27, the Senate voted 99 to 0 to pass S. 2690 to reaffirm the reference to "One Nation under God" in the Pledge of Allegiance and the National Motto "In God We Trust." Today, to be absolutely sure that the Nation's courts abide by the original intent of our Founding Fathers, I am proposing an amendment to the Constitution of the Untied States that would make it clear that the establishment clause in the first amendment was never meant to be construed in a manner that would prevent schools from leading our children in reciting the Pledge of Allegiance simply because it contains the words "under God."

The Senate and the House of Representatives—and the vast majority of the American people—have all expressed their outrage at the decision by the Ninth Circuit Court of Appeals on June 26 that reciting the Pledge of Allegiance in school is unconstitutional because it includes the phrase "under God." People are still understandably stunned and find it not only unbelievable, but indefensible.

The fact that two Federal circuit judges were capable of making such an absurd decision points up, once again, how vitally important these Federal judicial appointments are in guiding not only the Nation's present, but its future as well. Judges are important at every level, but particularly at the appellate court—the circuit court—level.

And this may not be the end of such shocking decisions. There have been reports that similar court challenges will be made to the use of the National Motto "In God We Trust" on our currency and to references to God in our official oaths of office. It is simply incomprehensible that so many Federal judges are so quick to find that the Constitution protects the right of child pornographers to debase society while at the same time requiring the removal of every last vestige of God from the public forum.

It is easy for us all to say the Pledge of Allegiance with gusto and mean it, but we need to look behind this latest decision—and examine how and why it came about. And America's voters need to understand that these Federal judgeships, and who fills them, do make a difference in the kind of society that not only will we live in, but our children's children will live in as well.

TRIBUTE TO CHARLES KOTHE

Mr. NICKLES. Mr. President, on June 19, the people of Oklahoma, and many others around the world lost a great servant and friend with the passing of Charles Kothe. He was 89. Charles Kothe, a long time Tulsa resident and nationally recognized attorney who specialized in labor law, was born October 12, 1912. Kothe received his B.A. degree from the University of Tulsa in 1934 and his J.D. degree, with honors, from the University of Oklahoma in 1938. In his Tulsa based law practice he served as labor relations counsel to companies in various industries throughout the country.

During his six year tenure as Vice President of Industrial Relations at the National Manufacturers Association he authored two books on labor relations and conducted seminars on Title VII of the Civil Rights Act. He was personally commended for this activity by President Lyndon Johnson, and later served as an advisor to Secretaries of Labor Mitchell, Goldberg, and Wirtz. In 1990, he was appointed by the White House to serve as a member of the Federal Service Impasses Panel.

In business, he was an Officer and Director of several corporations, including T.D. Williamson, Inc.; Coburn Optical Co.; and Macnick. Known as a compelling speaker, he appeared as the keynote speaker at conventions and conferences across the Nation. He was named Tulsa Citizen of the Year in 1946, was named as a Distinguished Alumnus of the University of Tulsa, and is listed in the United States Junior Chamber of Commerce Hall of Fame.

He taught labor law at the University of Tulsa and was Dean of the Oklahoma School of Business Accountancy and Law. He also served as Director of Civil Rights and Human Resources in the Graduate School of Business at Oral Roberts University and was the founding Dean of the O.W. Coburn School of Law. For more than 25 years, he taught the Christian Fellowship Class at First Presbyterian Church and later actively served at Boston Avenue Methodist Church. He was very involved with the National Prayer Breakfast here in Washington.

Beyond his credentials and recognitions, Charles Kothe displayed a profound commitment to a cause much greater than himself. This commitment is evident in the life of Janet, his wife of 65 years and in their 4 children and 7 grandchildren. It is evident in the lives of the students that he trained in the rigors of law, many of whom would have not had the opportunity to study but for his encouragement and support. It is evident in his numerous efforts to use the law as a tool for healing in the midst of conflict rather than solely as a means for retribution. You see, Charles Kothe believed that his purpose was rooted in the greatest commitment of Jesus: to love God with all his heart and soul, mind, and strength, and to love his neighbor as himself. This ability to love and share God's love with others was his greatest gift, his greatest accomplishment, and his greatest legacy.

Many of his former students have spoken of his encouraging example, quick wit, unmatched humor, and how his influence is still felt in their lives today. Countless individuals were transformed by their relationship with Charles Kothe. Through these lives and because of Charles Kothe's influence on these lives, God will effect positive change in our world for generations to come. He will be greatly missed.

Let me conclude by stating that Charles Kothe's tenacious energy, tremendous intellect, and inspiring enthusiasm has undoubtedly influenced countless numbers across our great land. This scholar, this patriot, this man of God, this friend committed himself to our Republic as a prudent, optimistic, and faithful son. May his spirit live on.

AMERICAN SERVICEMEMBERS' PROTECTION ACT

Mr. LEAHY. Mr. President, I read with interest the statement that Representative HYDE made on July 23, 2002 about the American Servicemembers' Protection Act (ASPA) during House consideration of the conference report on H.R. 4775, the fiscal year 2002 Supplemental Appropriations bill for Further Recovery From and Response to Terrorist Attacks on the United States.

Although neither Mr. HYDE nor his staff were present during the negotiations on ASPA, he suggests that the House readily accepted section 2015, also known as the "Dodd-Warner amendment", which was unanimously included in the Senate-passed version of ASPA. I do not think it is necessary to engage in an exhaustive discussion of the legislative history of the Dodd-Warner amendment because it is clear on its face. And, the first rule of legislative interpretation is that one looks to the history only if a provision is ambiguous.

To the extent that the legislative history is relevant, I believe that I can comment on this issue, as I was involved with the drafting of the amendment and was an original co-sponsor. Moreover, I was involved in negotiations over section 2015 during the conference on the Supplemental, and my staff was actively engaged in discussion on this issue throughout.

Contrary to Mr. HYDE's suggestion that the House receded on section 2015 because it is ineffectual, the House understood that the effect of the Dodd-Warner amendment is to qualify provisions of ASPA, including sections 2004, 2006, and 2011, in cases involving foreign nationals. It was for that reason that the House conferees repeatedly and vigorously sought to remove all or part of it from the conference report.

Those present at the negotiations know that the House agreed to accept the Dodd-Warner amendment only when the Senate agreed to drop its provision related to the United Nations Population Fund (UNFPA), which House supporters of ASPA strongly opposed.

Mr. HYDE also asserts that section 2015 "simply reiterates that this legislation does not apply to international efforts besides the International Criminal Court to bring to justice foreign nationals accused of genocide, war crimes, or crimes against humanity." As a former prosecutor and Chairman of the Senate Judiciary Committee, I appreciate the creativity of Mr. HYDE'S argument. But he is trying to put a square peg into a round hole, and one would have to rewrite the provision to support his interpretation. The flaws in this interpretation are self-evident, if one simply reads the text of section 2015:

> Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

The language of this section is clear, and it is noteworthy that any iteration of the phrase "besides the International Criminal Court" does not appear anywhere in the text.

In fact, when Senator Dodd and I were drafting this amendment, I specifically added the phrase "and other foreign nationals accused of genocide, war crimes or crimes against humanity" to ensure that this section would apply to the International Criminal Court (ICC). The ICC currently has jurisdiction over these three crimes.

As I mentioned earlier, the importance of this phrase was not lost on the House, and opponents of the Dodd-Warner amendment tried repeatedly to nullify or remove it. It was even reported to me that, at the eleventh hour, House staff members sought, unsuccessfully, to insert the word "other" before the phrase "international efforts to bring to justice . . .", in an attempt to prevent the Dodd-Warner amendment from applying to the ICC and heavily qualifying portions of ASPA.

Another important phrase in section 2015 is: "Nothing in this title shall prohibit . . .", which makes unequivocally clear that no provision in ASPA prevents the U.S. from cooperating with the ICC in cases involving foreign nations.

No one disputes the fact that Congress has serious concerns about Americans coming before the ICC, which is the reason that ASPA was passed. During consideration of ASPA, Senator WARNER made that point clear:

> This amendment would protect U.S. military personnel and other elected and appointed officials of the U.S. government against potential criminal prosecution by an international tribunal court to which the United States is not a party.

However, through the Dodd-Warner amendment, Congress sets a different standard with respect to non-Americans. Congress wanted to be clear that the U.S. can cooperate with international efforts, including those by the ICC, to bring foreign nationals to justice for genocide, war crimes, and crimes against humanity, as Senator DODD pointed out during the Senate debate:

> My amendment merely says that despite whatever else we have said, when it comes to prosecuting these people, we would participate and help, even though we are not a signatory or participant in the International Criminal Court.

This is precisely why the Senate unanimously accepted the Dodd amendment and why the lead sponsor of ASPA, Senator WARNER, joined as co-sponsor of the amendment.

I see that Chairman BYRD is here on the floor and I would ask if he agrees with my recollection of events that transpired during the conference negotiations on the Supplemental and my interpretation of the Dodd-Warner amendment.

Mr. BYRD. I agree with what Senator LEAHY has said about section 2015 of the Supplemental Appropriations bill. The House strongly resisted efforts to incorporate the Dodd-Warner amendment in the bill, and receded only in exchange for the Senate agreeing to drop a provision on UNFPA.

Mr. LEAHY. I thank the Chairman. I want to take this opportunity to say a few words about the importance of section 2015. A primary reason for the creation of the ICC is to remove the uncertainty and protracted negotiations surrounding the establishment of ad hoc tribunals to try those accused of genocide, war crimes, and crimes against humanity. In the future, the ICC may be the only venue for bringing to justice those accused of these heinous crimes.

The Dodd-Warner amendment simply ensures that the United States can assist the ICC, or other international efforts, to try foreign nationals accused of war crimes, genocide, and crimes against humanity. It is not difficult to think of a number of instances when it would be in the interest of the United States to support such efforts. For example:

What if 50 Americans, traveling overseas, are brutally killed by a suicide bomber and the ICC attempts to bring to justice the perpetrators of this horrendous act?

What if a group of terrorists commits war crimes against U.S. military personnel who are posted abroad and the ICC is involved with efforts to bring them to justice?

What if the ICC prosecutes some future Saddam Hussein, Slobodan Milosovic, or Osama bin Laden who is responsible for the deaths of thousands of people?

Would we want the President of the United States to be hamstrung by ASPA in these, or a number of other cases, and prevented from actively supporting efforts by the ICC to bring these types of notorious criminals to justice? Of course not.

Finally, I want to point out that Mr. HYDE also goes to great lengths to provide an interpretation of sections 2004, 2006, and 2011. Although I was not involved with the negotiations on ASPA with the Administration, I must say that the State Department's efforts with the House on this issue were miserable, and I know this is not typical of the way the Department represents U.S. interests abroad.

The explanation that the State Department offers for supporting ASPA is that it did so in exchange for releasing the U.N. dues. This does not withstand the most basic scrutiny.

In the wake of the September 11 attacks, there was overwhelming support in Congress to assist with efforts to prevent and respond to international terrorism. After September 11, without any quid-pro-quo, the Senate voted to confirm Ambassador John Negroponte to the position of U.S. representative to the United Nations. I am confident that the State Department, with a little ingenuity, could have persuaded the Republican majority in the House to meet our obligations to the United Nations—something that is clearly in our national security interests—without having to agree to support ASPA.

In any event, I take issue with Mr. HYDE'S interpretation of sections 2004, 2006, and 2011, even though they are heavily qualified by the Dodd-Warner amendment. Again, one should look to legislative history only if the text of the provision is unclear, and in this case the text of ASPA is clear and does not support his reading. For example, there is nothing in the waiver language concerning the President's executive authority or authority as Commander-in-Chief that limits the waiver to a subset of this authority. Moreover, ASPA clearly states that the waiver applies to "any action or actions . . ." not to "some" actions.

For Mr. HYDE's interpretation to be correct it would be necessary to add language to the provision such as: "if it would be unconstitutional for Congress to restrict the exercise of this authority." Moreover, ASPA states that it applies to "any action" taken by the President as Commander-in-Chief or exercising "the executive power" of the Presidency. If the President has the constitutional authority to take an action, this provision permits him to do so, notwithstanding any other language in the bill. It is not relevant whether Congress could have prohibited such actions.

Further, no matter what was said between those who negotiated ASPA, Mr. HYDE'S interpretation of the provision was not necessarily in the minds of the majority of Members voting on ASPA because it simply was not mentioned during the House or Senate debates. These waiver provisions complement section 2015 which is highly relevant in interpreting them, as Senator WARNER alluded to during the Senate debate. Congress decided that it did not want to tie the President's hands if he determined that it makes sense for the United States to cooperate with any international body, including the ICC, in prosecuting foreign nationals accused of genocide, war crimes, and crimes against humanity.

I want to thank Senators DODD and WARNER for their efforts to ensure that ASPA does not include overly-burdensome restrictions on the President that prevent the U.S. from cooperating with the ICC. I also want to thank Senator DODD's staff for providing valuable advice on this issue.

ARMY CORPS OF ENGINEERS ARTICLE

Mr. DOMENICI. Mr. President, I rise today to include in the RECORD today an inspiring and uplifting occurrence in my home State of New Mexico. Percent news from any Army Corps of Engineers publication, Engineer Update, provides a particular instance in which the Corps went the extra mile to successfully rescue sand hill cranes under uncommon circumstances.

In the middle of repairs on Jemez Dam the cranes were foraging for food and getting trapped in the mud left over from having to drain the reservoir. The depth of the mud and the size and nature of the cranes made the situation extremely hazardous for anyone to get involved.

After bringing in a special boat that could handle the mud they were able to capture the birds and get them to safety where they were cleaned and released. All the while, the Corps put forth the measures to prevent anymore birds from being trapped in the mud.

This was an exceptional effort on the Corps of Engineers' part to handle both the job at hand and the surrounding effects of their labor. I commend them on their concern for the environment in the midst of their already tough labor.

I ask unanimous consent that a copy of the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRAPPED BIRDS RESCUED FROM MUD

(By Joan Mier)

ALBUQUERQUE DISTRICT

When Jemez reservoir was drained Nov. 1 to repair a bulkhead guide on the dam, no one could have foreseen the effect it would have on sand hill cranes, which were about to begin their migration to the Bosque del Apache. Using Jemex, about 30 miles from Albuquerque, N.M., as a stopover point on their journey was common. What was not common was the particular area they chose to land in when they began their migration Nov. 6.

"These birds land between 3 p.m. and 6 p.m. The sheen on the mud left behind after the reservoir drained looked like water to these birds, and some of them chose to land there," said Susan Shampine, Chief of Operations of Division. About 58 birds became mired in the 30-foot deep mud of the drained reservoir.

Rescue efforts posed a couple of big challenges. First, getting to the birds was problematic and risky. Second, the five-foot-tall birds with long and very strong beaks can be dangerous, according to biologist William DeRagon. "The beaks of sand hill cranes have been known to crack the skull of a cow," he said.

District personnel located a hovercraft operator, but the craft could not operate on the reservoir because of the pudding-like consistency of the mud.

"We also contacted the Army National guard because we were thinking maybe we could use one its helicopters, but they said the prop wash from the rotors would do more harm than good," Shampine said.

Meanwhile, as these efforts were underway, the district immediately initiated deterrent activities to prevent any more cranes from landing in the mud. Spotlights, horns and firecrackers were largely successful in preventing more cranes from landing in the area. However, a few more became trapped there, according to Ron Kneebone, project manager.

"We think what happened was that cranes that landed elsewhere at the reservoir would begin foraging for food at dawn and wander over to the mud flats and become stuck," he said. After that, deterrent methods were also initiated at dawn.

Although one bird was captured on Nov. 8 and treated and released at the Bosque a couple of days later, personnel were not having much luck reaching the other cranes. As news of the trapped birds hit the media carloads of concerned citizens began showing up at Jemez interested in saving the cranes.

"Conditions at the reservoir were extremely dangerous," Kneebone said. "We certainly appreciated that people were concerned, but we couldn't risk endangering human life." Therefore, the road leading to the area was closed to the public.

A break came when personnel contacted New Orleans District and learned about an engine that could enable a regular motorboat to operate in mud. The 20-horse-power engine was flown in overnight from Go-Devil Outboard Motors in Baton Rouge, LA.

"We got it on Nov. 14 and began testing it the next day," Kneebone said. "That afternoon, we began recovery efforts using trained volunteers and Corps personnel, and we were successful in capturing nine cranes."

Rescue operation continued through the migration season, and 15 cranes were rescued. Of those, three died and 12 were successfully treated and released.

Most of the rescued cranes were cleaned up and rehabilitated at the Rio Grande Zoo in Albuquerque, N.M. Each bird took 45 minutes just to clean because each feather had to be cleaned separately, according to Melissa Stock, editor of Zooscape Magazine.

"It was a three-person job," Stock said. "One person had to hold its feet, another its legs, and then another cleaned the bird."

"We received a lot of help and cooperation from other agencies and organizations," said Kneebone. He credited the Santa Ana Pueblo, which owns the land at the reservoir, U.S. Air Force, and Hawks Aloft for assisting in efforts to both rescue the cranes and prevent more from landing in the area.

LIVESTOCK DISASTER LEGISLATION

Mr. GRASSLEY. Mr. President, during the conference on the farm bill, the conferees threw out my bipartisan amendment on reasonable payment limits. I was extremely disappointed the provision was dropped. Reasonable, legitimate payment limits were a top priority to Iowa's family farmers. It is important to the farmers of Iowa that we fix this shortcoming of the new farm bill.

American's recognize the importance of the family farmer to our Nation, and the need to provide any adequate safety net for family farmers. In recent years, however, assistance to farmers has come under increasing scrutiny.

Critics of farm payments have argued that the largest corporate farms reap most of the benefits of these payments. The reality is, 60 percent of the payments have gone to only 10 percent of our Nation's farmers.

What's more, the payments that have been designed to benefit small and medium-sized family famers have contributed to their own demise. Unlimited farm payments have placed upward pressure on land prices and have contributed to overproduction and lower commodity prices, driving many families off the farm.

The new farm bill fails to address the use of generic commodity certificates which allow large farming entities to circumvent payment limitations. The supposed "reform" in the farm bill is worthless due to the lack of generic certificate reform. In recent years, we have heard news reports about large corporate farms receiving millions of dollars in payments through the use of generic certificates. Generic certificates do not benefit family farmers but allow the largest farmers to receive unlimited payments.

Legitimate, reasonable payment limits are critical to family farmers in Iowa. I feel strongly the farm bill failed Iowa's farmers when it failed to effectively address the issue of payment limitations. Hopefully, the proposal I am introducing with Senator ENZI AND SENATOR HAGEL will help to restore public respectability for Federal farm assistance by targeting this assistance to those who need it the most, while providing the much needed disaster assistance for livestock producers.

This new proposal allow for a total of $35,000 for direct payments, $65,000 for counter-cyclinal payments, $150,000 for LDP/MLA payments, and $30,000 over the LDP limit for generic certificates.

This new proposal allows for a total of $35,000 for direct payments, $65,000 for counter-cyclical payments, $150,000 for LDP/MLA payments, and $30,000 over the LDP limit for generic certificates.

This new farm bill establishes an $80,000 limitation on direct payments, $130,000 on counter-cyclical payments, $150,000 on LDP/MLA payments, and no limitation on generic certificates.

The grand total for the new farm bill payments is $360,000 with unlimited payments through the use of generic certificates. The cumulative payment limit under the Enzi-Grassley legislation is $250,000 plus $30,000 for generic certificates.

There is no "active participation" requirement in this proposal, as compared to my farm bill payment limit proposal.

This legislation does not eliminate the three entity rule, but it does eliminate the need for multiple entities by allowing farmers who choose not to participate in multiple entities to participate at an equal level as those that choose to receive the same benefits from up to three entities.

This legislation finally establishes tangible transparency regarding the fourth payment that only the largest farming entities utilize. That payment is the generic commodity certificate payment.

While I believe generic certificates should be eliminated, I understand the importance in developing a fourth payment limitation so that my colleagues realize there is another payment. Currently, generic certificates are an endless stream of funding only limited by the maximum extent of commodity production by the entity receiving payments.

This legislation would help offset the cost of the much needed livestock disaster assistance and help small and medium-size producers nationwide who are tired of the Government subsidizing large farm entities which drive land rent expenses to unreasonable margins due to economics of scale.

PRESERVE THE PEDIATRIC RULE ACT OF 2002

Mrs. CLINTON. I am very pleased that today the Senate HELP Committee voted unanimously to report S. 2394, the Preserve the Pediatric Rule Act of 2002, out of Committee, as amended by consensus language to assure that, for already-marketed drug, companies have an opportunity to conduct studies voluntarily before the rule is invoked, which is consistent with current Food and Drug Administration practices.

Mr. DODD. Does the Senator agree that with the exception of the agreed-to amendment to allow a manufacturer to voluntarily study an already-marketed drug before the rule is invoked, the legislation we passed tracks the existing language and policy of the rule, and ensures that FDA and HHS will not weaken or undermine current protections for children on drug safety and labeling?

Mrs. CLINTON. I agree.

Mr. DODD. Also, as the Senator will remember, last year's Best Pharmaceuticals for Children Act BPCA, established a mechanism by which drugs that companies did not voluntarily study would automatically be referred to the National Institute of Health, HIH, to be contracted out for study. Is it not Congress's intention that this tool along with the rule should be used to secure safety and efficacy information for kids as quickly as possible?

Mrs. CLINTON. That is correct.

Mr. DEWINE. We are committed to fighting for dollars for these studies, because the contracting process at NIH only works if there are funds available. If there are no funds available, we must have the rule to ensure that we get needed studies done so that the necessary information can be added to the labels of the medicines children use. Would the Senator agree that the language of the amendment allows other tools to be used, but also makes clear that the rule will be available, enforceable, and unencumbered when needed?

Mrs. CLINTON. I would agree.

Mr. DODD. We will continue to examine the contracting process at the NIH to ensure that it works effectively, in conjunction with the rule, so that there is no delay or bottleneck in conducting the studies and securing this information for children.

Mr. DEWINE. That is correct. Congress made several tools, including the contracting process under the BPCA, available, but Congress never contemplated the exhaustion of all the tools under BPCA before the rule could be invoked. This amendment makes clear that as long as the FDA has first asked a company to voluntarily conduct the study, the FDA will be able to invoke the rule.

TAX RELIEF FOR LIVESTOCK PRODUCERS

Mr. BURNS. Mr. President, I rise today in support of S. 2762, a bill which would provide tax relief to livestock producers who are forced to sell off part of their herds due to drought. I would also like to commend my colleague, Senator THOMAS, for introducing this legislation.

In my home State of Montana, we are currently in our fifth year of drought. Livestock producers are running out of grass for their herds and very few ranchers in Montana have carry over hay. Their choices are limited. If ranchers can find hay, it is expensive and often hundreds of miles away. Their only other option is to sell off part or, in extreme situations, their entire herds.

The effect on Montana's economy can be seen in the numbers. In 2000, we had 2.6 million head of cattle in my State. As of today, after two severe years of drought, we have 2.4 million head of cattle. The drought is equally devastating on sheep numbers. In 2000, we had 370,000 head of sheep. Today we have 335,000 head of sheep in Montana.

When these cattle and sheep leave the State, the effect on the local, rural economies is great. Ranchers aren't buying as much feed, they are buying fewer veterinary supplies, and worse yet, the ranchers may go out of business all together. These are ranches and herds that have been built up over generations and will be extremely difficult to replace. I have heard from many ranchers these animals won't come back to Montana. They are gone forever.

I have been working on getting disaster relief for producers suffering from drought since early last fall. I am currently a co-sponsor of a bill with Senator BAUCUS that would provide emergency funds to farmers and ranchers suffering crop and livestock loss. I believe Senator THOMAS' bill fits in perfectly with my earlier efforts to help our producers. It is a common sense approach to a real problem.

I look forward to working with my colleagues to pass this legislation.

IN MEMORY OF TIMOTHY WHITE

Mr. HATCH. Mr. President, I wanted to take a moment to note the passing of Timothy White, who was the editor-in-chief of Billboard magazine until he died unexpectedly a few weeks ago, leaving a wife and two young sons. He has been honored by many throughout the music industry, particularly for his trumpeting of new, not yet famous artists, working to give them space in a medium generally reserved for the already successful.

We worked with Tim on artists' rights issues, such as work-for-hire, during my tenure as chairman of the Judiciary Committee. His efforts on behalf of all artists will be remembered.

Looking to boost artists whom he felt deserved more attention, he wrote, "At its high end, rock 'n' roll can periodically fill in the hollows of this faithless era—especially when the music espouses values that carry the ring of emotional candor." I share the hope that true artists who offer a lift to their listeners from the weight of the world will be found by those seeking the joy and inspiration music can offer, and note with sadness the passing of a friend of that cause, as I also join my friends in the music industry in extending our condolences and best wishes at this difficult time to Tim's wife and sons. I trust they will find Tim's legacy a source of pride and solace in the coming months and years.

Mr. SMITH of New Hampshire. Mr. President, I rise to say a few words about human cloning as the Senate will soon be recessing for the month of August. Not only has the Senate failed to ban human cloning altogether, we have not had a meaningful debate on this critical issue.

Let me begin my remarks with an insightful and profound line in the movie "Jurassic Park," delivered by a mathematician played by Jeff Goldblum. AS the creator of the park is praising his scientific team for taking science into uncharted waters, Goldblum's character interrupts him. "Your scientists were so preoccupied with whether or not they could, they didn't stop to think if they should." The Senate needs to stop and think if it should.

In my remarks today, I will outline five reasons why the Senate should vote for the Brownback-Landrieu bill which bans all human cloning. Let me start by saying that there has been a lot of talk about "the two different kinds of cloning"—that is, reproductive and therapeutic. But let me be clear: All human cloning is reproductive, in the sense that it creates—reproduces—a new developing human intended to be genetically identical to the cloned subject. The difference is that one is intended to be carried to term and the other is intended to be deliberately killed for its cells.

Therapeutic cloning is when scientists clone an embryo solely to utilize its stem cells either to create large "control groups" or to attempt mass production of genetically matched stem sells for treatment of diseases. Many of my colleagues believe that only reproductive cloning is immoral, but they are in favor of therapeutic cloning. They say that therapeutic cloning is beneficial because it has the potential to help people with diseases. They don't want a cloned embryo to be implanted in a woman's womb and begin to grow, but they support creating the embryo and then plucking its stem cells until it dies.

The first reason my colleagues should vote to ban all human cloning is that the human embryo is a human life with a soul, whether it is cloned or is conceived naturally, and should be destroyed for any reason. There is not one person in the Senate or on the face of the Earth who did not begin their life as a human embryo.

If we allow the creation of embryos solely for their destruction, we will effectively be discriminating against an entire class of human beings by saying to them: I will destroy your life for the sake of someone else's or my own. If we accept the notion that some lives have more value than others, if we allow scientists or doctors or politicians to play God and determine which lives have value and which do not, then we have demolished the very foundation upon which we have built our freedom. Human embryos are not machines to be used for spare parts, all in the name of "medical progress." We cannot view human life as an exploitable natural resource, ripe for the harvest.

Some base their passion for so-called therapeutic cloning upon the false premise that what is created in the lab is not a human embryo. The facts dispute these unsupported claims. Dr. John Gearhart of Johns Hopkins University, one of the discoverers of human embryonic stem cells, told the President's Council on Bioethics on April 25, 2002, that he thinks the product of cloning is and should be called an "embryo." He said: "I know that you are grappling with this question of whether a cloned embryo created in the lab is the same thing as an embryo produced by egg and sperm, and whether we should call it an 'embryo', but anything that you construct at this point in time that has the properties of those structures to me is an embryo, and we should not be changing vocabulary at this point in time."

Even the American Medical Association believes that the clone is fully human. The Senate should also listen to the House of Representatives and the American public. The House passed a strong prohibition on human cloning last summer, and poll after poll shows that the vast majority of American citizens are opposed to all human cloning.

The second reason to ban all human cloning is that there are better and more ethical ways to discover cures for diseases that do not involve the destruction of a human embryo, especially in light of the fact that cloning may not even work!

Almost weekly we read of amazing breakthroughs in the scientific and medical communities using adult stem cells and other noncontroversial tissues and cells to treat human conditions. Adult stem cells are used with success in more than 45 human clinical trials, while embryonic stem cells and stem cells from human clones have not helped a single person. Here are just a few examples of the successes of adult stem cells:

Last July, the Harvard University Gazette reported that mice with Type 1 diabetes were completely cured of their disease using adult stem cells. Additionally, University of Florida scientists reported recently that adult rat liver stem cells can evolve into insulin-producing pancreatic cells, a finding that has implications for the future of diabetes research.

On June 15 of last year, the Globe and Mail reported that Israeli doctors injected a paraplegic with her own white blood cells, and she regained the ability to move her toes and control her bladder.

In December of last year, Tissue Engineering, a medical journal, reported that researchers believe they will be able to use stem cells found in fat to rebuild bone. If this research works, people with osteoporosis and other degenerative bone conditions could benefit significantly.

A researcher at the University of Minnesota has discovered what is being called the ultimate stem cell. The stem cells found in adult bone marrow have passed every test by proving that they can form every single tissue in the body, can be grown in culture indefinitely with no signs of aging, can be isolated from humans, and do not form cancerous masses when injected into adults.

Scientists from Celmed BioSciences reported that adult neural stem cells taken from a patient's own central nervous system have been successfully used to treat Parkinson's disease. Their research suggests this method of using adult stem cells may possibly be useful in treating a variety of other neurological conditions.

Scientists reported success last week in converting skin cells into immune cells. This development has great promise for treating diseases such as diabetes, immune deficiencies, Parkinson's, Alzheimer's and spinal cord injuries. When using cells from the patient's own body, the risk of rejection is overcome.

Researchers found that intravenous injections of cells from human umbilical cord blood improved the neurological and motor function of rats recovering from severe traumatic brain injury. The study appears in the June 6 issue of the journal Cell Transplantation, a special issue that focuses on emerging approaches in neural transplantation and brain repair.

In fact, these ethical approaches to stem cell research are also safer for patients than embryonic stem cell research because embryonic stem cells may cause tumors in patients, and the body may reject embryonic tissues in the same way the immune system rejects transplanted organs. As President Bush has stated: "the benefits of research cloning are highly speculative. Advocates of research cloning argue that stem cells obtained from cloned embryos would be injected into a genetically identical individual without risk of tissue rejection. But there is evidence, based on animal studies, that cells derived from cloned embryos may indeed be rejected." Embryonic stem cells have never been used successfully in a human trial. The haven't even been used to completely cure disease in a rat or a mouse.

With the success of adult stem cells, you do not need to clone human beings. Let's invest in medical research that the entire Senate can support. There is also increasing evidence to indicate that human cloning may not even work! You may disagree with my moral or ethical arguments, and you may not care how successful adult stem cell therapies have been, but I hope you will at least pay attention to this important point. Let me repeat it: There is convincing evidence that human cloning may not even work.

The April 5, 2001, issue of Nature reports that cloning human embryos to harvest their stem cells is being abandoned by many researchers as inefficient, costly, and unnecessary. The article says that "many researchers have come to doubt whether therapeutic cloning will ever be efficient enough to be commercially viable." Noting the short supply of human eggs and the expense and inefficiency of cloning, the article concludes that the prospects for therapeutic cloning have "dimmed" and those who still favor it are taking a "minority view."

Dr. Stuart Newman of NY Medical College noted in his March 5 Senate testimony that genetically matched cells from cloning may well be useless in treating conditions with a genetic basis such as juvenile diabetes—because these cells will have the same genetic defect that caused the problem in the first place.

Due to these factors, as well as advances in genetically tailoring cells without using cloning, many experts do not now expect therapeutic cloning to have a large clinical impact. In fact, this whole approach is said to be "falling from favor" among both British and American researchers.

Last December, Michael West of Advanced Cell Technology predicted that within 6 months, his company would be ready to create 'magic" cells that would save 3,000 lives per day because he would be able to clone a human embryo. However, it was later revealed that West was unable to garner stem cells from his cloned embryos. Scientists quickly pronounced West's cloning experiment a failure. Dr. Donald Kennedy summarized the study this way: "This scientific effort did not succeed by any measure."

Thomas Okarma, the chief executive of Geron Corp., a cell therapy company, has no interest in using cloned embryos to produce customized treatments for disease. According to the L.A. Times, he said the odds favoring success "are vanishing small," and the costs are daunting. He also said that it would take "thousands of [human] eggs on an assembly line" to produce a custom therapy for a single person. "The process is a nonstarter, commercially," he said.

Let's review the headlines of what the experts say about cloning: "Did not succeed", "Falling from favor", "may well be useless", "prospects have dimmed", "vanishing small", "did not succeed", and "nonstarter". If I were a cloning advocate, I wouldn't want this to be made public.

Writer Wesley J. Smith says human cloning is indeed immoral. But that isn't the reason it will eventually be rejected. He says "there is increasing evidence that therapies based on cloned embro cells would be so difficult and expensive to develop and so utterly impractical to bring to the bedside, that the pie-in-the-sky promises which fuel the pro-cloning side of the debate are unlikely to materialize. Not only is human cloning immoral but it may have negative utility—in other words, attempting to develop human cloning technologies for therapeutic use may drain resources and personnel from more useful and practical therapies."

I want to briefly mention another form of hype that ties into the notion of human cloning and its "boundless potential." Let's talk about the much ballyhooed fetal tissue transplantation experiments. It was originally thought of as the "ultimate cure of the future" and that interfering with these experiments was to interfere with saving countless lives. Now, after 13 years of private and publicly funded trials, some of the worse case scenarios have come to pass, while nothing of scientific value has been accomplished.

Today there is a thriving market in the sale of baby body parts, which I brought to light a couple of years ago. Also, the methods and timing of abortions are being changed to garner better tissue for research, and the most comprehensive study on the use of fetal tissue to treat Parkinson's showed no overall health benefit. Research described side effects of the treatment as "absolutely devastating." Patients implanted with fetal tissue chewed constantly, writhed and twisted, and one patient had to be put on a feeding tube because his spasms were too severe. Dr. Paul Greene says it best: "no more fetal transplants." Some panacea.

Gene therapy is another example of hype that not only as yielded no results, but is has also been responsible for the deaths of many people and over 1,000 serious adverse effects. A patient's group advocate noted: "It's hardly gotten anywhere. I have been very disappointed."

The only thing cloning will do is "clone" all the similar hype that has gone before it.

Additionally, trials in animal cloning indicate that 95 to 99 percent of the embryos produced by cloning will die; of those that survive until late in pregnancy, most will be stillborn or die shortly after birth. The rest may survive with unpredictable but devastating health problems. In fact, a review of all the world's cloned animals suggests every one of them is genetically and physically defective.

Four years ago, it took about 270 attempts to clone Dolly, the sheep. Is the Senate willing to go on record to sacrifice 270 human lives in order to successfully produce 1 cloned human being?

The third point I would like to drive home to you is the slippery slope argument. It is interesting to see how this debate has evolved, especially when one considers last year's debate, which was about whether to condone the dissection of embryos that would be destroyed anyway. This year's debate is about whether to destroy embryos that wouldn't have been created otherwise. One of my colleagues, on the subject of killing embryos, had this to say: "Private companies are creating embryos specifically for stem cells, and I think that's a very bad idea." However, he is now sponsoring a bill that would allow what he once opposed: the creation of embryos specifically for stem cell research.

If the debate alone has evolved and is subjective and prone to change and charging down a slippery slope, how much more so the issue of medical experimentation with human beings? Many clonings supporters scoff at the slippery slope argument, but let's look at what is happening with animal experimentation. Already scientists have taken cloned cow embryos past the blastocyst stage, allowed them to develop into fetuses, and reimplanted their tissue back into the donor animal.

If we allow for therapeutic cloning—again, this is cloning where you grow a cloned embryo simply to utilize its cells for medical research—why not allow cloned embryos to further develop until their organs can be harvested for transplantation? If a cloned baby could save or improve the lives of many people, why not sacrifice its organs for the sake of many other people's quality of life? The only distinction, if morality and ethics are not a consideration, is a few months of time to wait for the embryos to develop.

It is no secret that our society wants to live forever. What would stop a person with financial means from cloning little versions of themselves so that when they get old, they could pluck out a younger version of a failing organ from their clone?

If we are willing to use cloned human embryos to save human lives, why shouldn't we consider sacrificing other "less important" people for our own gain? For example, how about taking healthy organs from persons who are in a permanent vegetative state? What about plucking parts from the terminally ill, mentally retarded, or "old" people past the age of 60. I know this may sound far-fetched to my colleagues, but let us ask ourselves what the Senators standing in this Chamber a mere 25 years ago would have thought of a debate such as the one we are having here today on human cloning. They would have thought predictions of deliberation on such matters were far-fetched as well.

Once we start down the slippery slope of creating life for utilitarian purposes, there is no definitive line that separates what we ought and ought not to do. There are no ethical boundaries that will keep scientists in check once we accept the premise that the goal of curing diseases outweighs the ethical or moral value of human life. But once we accept the "anything goes" philosophy, then "everything goes." When we begin to decide who should live and who should not, we effectively remove God from every area of our lives and our Nation. After the events of September 11, it is clear that this Nation needs God more than ever.

This is to say nothing of the eventual creation of a brave new world. Will genes be modified to give people higher IQs or eliminate the tendency to be overweight? What if we inadvertently introduce disastrous abnormalities into the human race? Will we introduce abnormalities that lead to new diseases that afflict our fellow man? Cloning is just not worth it.

The fourth point to consider is that human cloning represents the commodification and commercialization of human life. Some biotech firms hope to patent specific cloned human embryos for sale for many types of experimentation—just as designer strains of cats, mice, and other animals are already patented and sold as "medical models." These firms are amoral and will pursue whichever path provides the greatest potential for financial gain. They will not regulate themselves. This Congress bears the responsibility of regulating these companies. It is our duty to the American public to hold amoral corporations to a higher ethical standard. These biotech firms are forgetting that human life is not a good to be traded in the marketplace nor a means by which they can profit financially.

The fifth and final reason we should not allow any form of human cloning is that it will be impossible to keep women from implanting cloned embryos into their wombs.

A ban on reproductive cloning will not work because cloning would take place within the privacy of a doctor-patient relationship and because the transfer of embryos to begin a pregnancy is a simple procedure. Would the woman be forced to abort the "illegal product"? This has been called the "clone and kill" approach because you would force the woman to kill her unborn child.

Even the Department of Justice agrees that it is nearly impossible to enforce a bill that allows for the creation of human embryos for research. They said: "Enforcing a modified cloning ban would be problematic and pose certain law enforcement challenges that would be lessened with an outright ban on human cloning." And "anything short of an outright ban would present other difficulties to law enforcement."

If you think we will never see an implanted clone, think again. Italian fertility specialist Severino Antinori is now explicitly claiming that three women are pregnant with clones. One of the pregnancies is in its 10th week.

The bottom line is that if we only vote to ban reproductive cloning but allow for therapeutic cloning, at some point we will start hearing stories of women who are pregnant with clones of their dead children, clones of their husband, and clones of themselves. We will have opened up the Pandora's box, and we will bear the responsibility for all that may follow.

Unless humans are seen as created in God's image and endowed by Him with the right to live, there will be no stopping the scientists and doctors from doing whatever they want to do.

We stand here today in an important moment in time. Pro-cloning advocates have promoted the lofty claims of miraculous breakthroughs. They play on the emotions of the ill and those who care about them, which is all of us. But just below the surface there is a dark, frightening premise. They believe that science has the right to play God, to create a lower form of human life to be harvested for medical research. This is ethically and morally wrong. Even science does not back all the hype from the pro-cloning side. There is no proof that sacrificing our ethics and morality to allow human cloning will even help these patients. There are better, ethical solutions.

Today, my colleagues, we must choose. This one decision will protect human life as we know it, or it will open the door to an ethical, medical, and moral wasteland, We can help those suffering with diseases without sacrificing our Nation's core principles. To oppose any form of human cloning is to preserve the sanctity of human life while providing real solutions based on real science. Let us choose what is right. We must ban all human cloning, no matter how it is cloaked. Future generations will judge us based upon what we do today. We must think of the future we want for our children—an ethical world that use sound, moral science to heal, and that respects the dignity of every human life.

Our country stands at a crossroads. I hope the United States will not follow the road taken by God's chosen people many years ago as recorded in the Holy Bible: "In those days Israel had no king; everyone did as he saw fit." (Judges 21:25)

I hope and pray that the Senate will eventually ban all forms of human cloning.

IRAQ

Mr. HAGEL. Mr. President, I ask unanimous consent to have printed in the RECORD a statement on Iraq that I gave before the Foreign Relations Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. HAGEL. I would like to congratulate the Chairman and the Ranking Member for holding these timely hearings on Iraq. I agree with my colleagues that we need a national dialogue on what steps we should take to deal with the threat posed by Saddam Hussein's Iraq. Americans need to be informed about the complexities and consequences of our policies in Iraq.

I look forward to listening to and learning from the distinguished witnesses before us today about the nature and urgency of the threat we face from Iraq, including their evaluations of what the best policy options may be for meeting this threat; the prospects for a democratic transition after Saddam Hussein; and what the implications of our policies in Iraq may be for the stability of the Middle East and our security interests there.

Much of the debate by those advocating regime change through military means have so far focused on the easy questions. Is Saddam Hussein a ruthless tyrant who brutally oppresses his own people, and who possesses weapons of mass destruction that have the potential to threaten us, his neighbors and our allies, including and especially Israel? Yes. Do most Iraqis yearn for democratic change in Iraq? Yes, they do. Can Saddam be rehabilitated? No, he cannot.

In my opinion, complicated and relevant questions remain to be answered before making a case for war, and here is where these hearings will play an important role. What is the nature, and urgency, of the threat that Saddam Hussein poses to the United States and Iraq's neighbors? What do we know about Iraq's programs of weapons of mass destruction? There have been no weapons inspectors in Iraq since December 1998. Is Iraq involved in terrorist planning and activities against the United States and US allies in the Middle East and elsewhere?

What can we expect after Saddam Hussein in Iraq? What do we know about the capabilities of the opposition to Saddam inside Iraq? While we support a unified and democratic opposition to Saddam Hussein, the arbiters of power in a post-Saddam Iraq will likely be those who reside inside, not outside, the country. And these individuals and groups we do not know. Who are they? And where are they? These are the Iraqis we need to understand, engage, and eventually do business with.

What will be the future of Iraqi Kurdistan in a post-Saddam Iraq?

How do we accomplish regime change in Iraq given the complexities and challenges of the current regional environment? The deep Israeli-Palestinian conflict continues; our relations with Syria are proper though strained; we have no relationship with Iran; Egypt, Saudi Arabia, Turkey, and Jordan have warned us about dangerous unintended consequences if we take unilateral military action against Iraq; and Afghanistan remains a piece of very difficult unfinished business, an unpredictable but critical investment for the United States and our allies.

I can think of no historical case where the United States succeeded in an enterprise of such gravity and complexity as regime change in Iraq without the support of a regional and international coalition. We have a lot of work to do on the diplomatic track. Not just for military operations against Iraq, should that day come, but for the day after, when the interests and intrigues of outside powers could undermine the fragility of an Iraqi government in transition, whoever governs in Iraq after Saddam Hussein.

An American military operation in Iraq could require a commitment in Iraq that could last for years and extend well beyond the day of Saddam's departure. The American people need to understand the political, economic, and military magnitude and risks that would be inevitable if we invaded Iraq.

There was no such national dialogue or undertaking before we went into Vietnam. There were many very smart, well intentioned professionals, intellectuals, and strategists who assured us of a US victory in Vietnam at an acceptable cost. Well, eleven years, 58,000 dead, and the most humiliating defeat in our nation's history later we abandoned South Vietnam to the Communists.

Let me conclude by saying that I support regime change and a democratic transition in Iraq. That's easy. The Iraqi people have suffered too long, and our security and interests will never be assured with Saddam Hussein in power. The tough questions are when, how, with whom, and at what cost. I look forward to the testimony of our witnesses over the next two days on these critical questions.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 16, 2000 in San Diego, CA. Seven teenage boys, ages 14 to 17, attacked five elderly Latino migrant workers. The boys chased, beat, and shot at migrants living in a makeshift encampment in an isolated canyon. Ethnic slurs were used during the attack. The boys were charged with hate crimes, assault, robbery, and elder abuse in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

AFGHANISTAN FREEDOM SUPPORT ACT

Mr. HAGEL. Mr. President, the Afghanistan Freedom Support Act is similar to H.R. 3994, sponsored by the Chairman of the House International Relations Committee, Congressman HYDE. The House of Representatives passed this bill on May 21 by a vote of 390–22.

The Afghan Freedom Support Act comments the United States to the democratic and economic development of Afghanistan. In addition to the economic and political assistance found in Title I of the legislation, Title II seeks to enhance the stability and security of Afghanistan and the region by authorizing military assistance to the Afghan government and to certain other countries in the region, including assistance for counter narcotics, crime control and police training.

The United States must stay actively engaged in helping Afghanistan through a very dangerous and difficult transition to stability, security, and, ultimately, democratic government. We are at the beginning of a long process. We cannot be distracted or deterred from this objective. Our credibility, our word, and our security are directly linked to success in Afghanistan. And there cannot be political stability and economic development in Afghanistan without security.

This legislation authorizes $2.5 billion over 4 years for economic and democratic development assistance for Afghanistan. This amount includes Senator LUGAR's proposal for a $500 million enterprise fund to promote job creation and private sector development. In addition, S. 2712 authorizes up to $300 million in drawdown authority for military and other security assistance.

This legislation includes a Sense of the Congress resolution, at the initiative of Senator BIDEN, which urges the President to commit the full weight of the United States to expand the International Security Assistance Force (ISAF) beyond Kabul. The resolution calls for $1 billion to support ISAF expansion for FY 2003 and FY 2004, if the President makes that call.

The main elements of the Afghanistan Freedom Support Act are as follows:

It authorizes continued efforts to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

It also authorizes resources to help the Afghan government fight the production and flow of illicit narcotics;

It assists efforts to achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan;

It supports strengthening the capabilities of the Afghan Government to develop projects and programs that meet the needs of the Afghan people;

It supports the reconstruction of Afghanistan through creating jobs, clearing landmines, and rebuilding the agriculture sector, the health care system, and the educational system of Afghanistan; and

It provides resources to the Ministry for Women's Affairs of Afghanistan to carry out its responsibilities for legal advocacy, education, vocational training, and women's health programs.

This legislation also strongly urges the President to designate within the State Department an ambassadorial-level coordinator to oversee and implement these programs and to advance United States interests in Afghanistan, including coordination with other countries and international organizations with respect to assistance to Afghanistan.

In general, the Afghanistan Freedom Support Act provides a constructive, strategic framework for our Afghan policy, and flexible authority for the President to implement it.

Let me add that this legislation is explicitly and strongly committed to increasing the participation of women in Afghan politics. One of the "principles of assistance" of this bill states that "Assistance should increase the participation of women at the national, regional, and local levels in Afghanistan, wherever feasible, by enhancing the role of women in decision-making processes, as well as by providing support for programs that aim to expand economic and educational opportunities and health programs for women and educational and health programs for girls."

We must not allow the Afghan government of President Karzai to unwind. The United States must make the necessary investment of resources to help stabilize and secure Afghanistan in order to support a democratic transition there. This bill addresses an urgent need. It is critical to America's security interest in Afghanistan and Central Asia. If Afghanistan goes backward, this will be a defeat for our war on terrorism, for the people desiring freedom in Afghanistan and in Central Asia, and for America symbolically in the world. This defeat would undermine the confidence in America's word around the world. Afghanistan is the first battle in our war on terrorism. We must not fail.

TRIBUTE TO MARY JANE SMALL

Mr. BYRD. Mr. President, the work of the Senate would be impossible were it not for the talents and tireless efforts of our staffs. These are the men and women who serve behind the scenes, with few expectations of reward save for the opportunity to make a difference.

I would like to take a moment to acknowledge a member of my staff who has worked for me on behalf of the people of West Virginia for 25 years. Mary Jane Small joined my staff on August 1, 1977. I was Majority Leader at the time.

She came to my office with 6 years of Capitol Hill experience, having worked for Congressman Ed Jones of Tennessee and then-Congresswoman BARBARA MIKULSKI from Mary Jane's own home town of Baltimore, MD.

Over the years, Mary Jane Small has worked in my legislative department, providing a much-valued link between my Washington office and the people of West Virginia. There have been a lot of changes in how Senators correspond with constituents since the time Mary Jane started working for me.

Back in 1977, no one had heard of e-mail. We did not have fax machines. Mary Jane joined my staff before we had computers. She was with me in the days when we produced letters the old-fashioned way—on typewriters—which must seem archaic to the younger generation of Capitol Hill staff.

But despite the lack of telecommunications and high-tech gadgetry, our staffs produced quantity and quality. I am proud to count Mary Jane as one of those staff members who has been with me through so much change. And though times are different, she still shines with the enthusiasm and drive that she had when she first joined my staff.

The work of Senators will be recorded in history. Our names, our speeches, our legislative accomplishments will have been printed in newspaper articles and in the CONGRESSIONAL RECORD. But most of the men and women who have toiled on our staffs will never get any public notice of their devoted service to their fellow citizens. Twenty-five years of Senate service is certainly deserving of recognition.

I thank Mary Jane for her dedication to the people of the State of West Virginia and for the work she has done for our country. And I look forward to the next 25 years with her.

IN MEMORIAM: HILDA MARCIN

Mrs. BOXER. Mr. President, I take this opportunity to share with the Senate the memory of one of my constituents, Hilda Marcin, who lost her life on September 11, 2001. Mrs. Marcin was 79 years old when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Mrs. Marcin was born in Schwedelbach, Germany. When she was 7 years old, her family emigrated to the United States to escape oppression. Like many immigrants, her family left all possessions behind and came only with the clothes on their backs.

Her family settled in Irvington, New Jersey, where she attended local schools. She worked seven days a week in the payroll department of the New Jersey shipyards during World War II.

A friend arranged a blind date with Edward Marcin and they were married on February 13, 1943. They had two daughters, Elizabeth and Carole. The Marcin family enjoyed participating in school functions, class trips, the PTA, and various church activities. Mr. and Mrs. Marcin were also socially and politically active in Irvington. Mrs. Marcin later worked as a special education teacher's aide.

Hilda Marcin embraced life with enthusiasm and made the most of every minute. She adored her family and her granddaughter, Melissa Kemmerer Lata. She was an inspiration to those she touched, including the special needs children in the school where she worked. Her friends admired her positive attitude and her desire and ability to continue working during the later years of her life. Mrs. Marcin treasured freedom and democracy, and her American citizenship.

At the time of her death, Mrs. Marcin was flying to San Francisco to live with her younger daughter, Carole O'Hare. She is survived by her daughter, Elizabeth Kemmerer and son-in-law Raymond Kemmerer; daughter Carole O'Hare and son-in-law Thomas O'Hare; and granddaughter Melissa Lata and Melissa's husband, Edward Lata.

Mr. President, none of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Hilda Marcin, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

FISCAL RESPONSIBILITY

Mr. FEINGOLD. Mr. President, I rise to help bring attention back to the issue of fiscal discipline and protecting Social Security and Medicare for the generation to come.

All parents want the best for their children. Parents will scrimp and save so that they can take care of their kids, buy them new clothes, and help them go to school. We do it because we love our children, and because it's the right thing to do.

On a societal level, we are doing exactly the opposite. Rather than saving for the future needs of the next generation, rather than paying down debt to prepare for their future needs, rather than investing in assets now so that we will be better able to provide for the next generation, the Government instead has decided to spend its resources and more on current consumption. And that's the wrong thing to do.

When we can see our children's faces and hear their dreams, we try to do whatever we can for them. But when we act as a society, when we make government policy, we seem unable to control our appetites for current consumption, we seem unable to do anything for the millions of our children's generation. And that is simply, on a moral level, the wrong thing to do.

For when we in this generation choose to spend on current consumption and to accumulate debt for our children's generation to pay, we do nothing less than rob our children of their own choices. We make our choices to spend on our wants, but we saddle them with debts that they must pay from their tax dollars and the sweat of their brow.

On top of that, the demographic wave of the baby boom generation adds another burden on our children's generation. We know now—there is no doubt about it—that our generation will retire in large numbers beginning in the next decade. By the nature of older age, we know that our generation will require increased spending on income support and health in the decade to come and thereafter. And by the nature of the Social Security system, and by the nature of Medicare and Medicaid, we know that the Government will have greatly increased obligations to fund. Even if we as a society choose to provide the baby boom generation with exactly the same benefits that society provided our father's and mother's generation, even if we do not provide for Medicare coverage of prescription drugs—and I believe that we should provide those benefits—we as a society will need to devote greater resources to these important programs.

We could at least in part prepare for those needs by paying down our Government debt now, so that the Government would have greater freedom to borrow in the decades to come. Some suggest that we could at least in part prepare for those needs by accumulating financial assets now, which the Government could sell in the future as an alternative to raising taxes in the future. These actions would be the functional equivalent of saving by the Government.

In the last year and a half, we have done exactly the opposite. We have chosen to do the functional equivalent of binge consumption. The Government has gone on a spending spree.

In February of last year, the Bush administration's Office of Management and Budget started with a baseline projection that the Government would run a surplus of $282 billion in this year, fiscal year 2002. Earlier this month, in contrast, the OMB projected that we will in reality run a deficit of $165 billion this year, a difference of $447 billion between their initial baseline projections and their latest predictions for one year alone. In less than a year and a half, the deficit picture for this year alone has clouded by nearly half a trillion dollars.

The Bush administration's own numbers tell a similar story for the decade as a whole. Last February, the OMB projected baseline surpluses of $5.6 trillion for the 10 years to come. Looking at the data that the OMB provided the Budget Committees along with the OMB's Mid-Session Review of the

Budget, the Center on Budget and Policy Priorities calculated that $3.9 trillion of that 10-year surplus has evaporated, and that the Administration seeks an additional $1.3 trillion in tax cuts and spending increases over the same period. Thus, by the OMB's own numbers, in the past 17 months, we have dissipated nearly all of the surplus for the decade to come.

Putting the receipts of the Social Security Trust Funds aside, last February, the OMB's baseline projections showed the Government running surpluses throughout the decade. This month, the OMB policy projections show the non-Social Security budget running deficits through 2012, and probably for decades thereafter.

Thus, instead of reducing the Federal debt, we are adding to the debt that our children's generation must pay. Instead of saving for the future, we are consuming future resources for ourselves.

The causes and solutions to these circumstances are simple to see, although clearly, amassing the political will to act on them is far less simple to do. Plainly, last year's tax cut was too large, and the Government is spending too much. To meet our obligations to our children's generation, we should address both failings.

By the OMB's own numbers, fully 38 percent of the reduction in surplus over the coming decade results from last year's tax cut. Two-fifths of our problem results from that tax cut.

Now that the fiscal realities have come home to roost, we should reevaluate future tax cuts. This is not to say that we should require anyone to pay higher taxes than they do now. To contribute mightily to our fiscal responsibility, we do not need to raise people's taxes higher than they pay now. If we simply keep future, additional tax cuts that benefit the highest income brackets from taking place, we would go a long way toward balancing the budget.

According to Citizens for Tax Justice, if we simply froze tax rates for the top 1 percent of the income scale, it would save almost half of the loss to the Treasury from the tax cut in future years, once the tax cut is fully phased in. Citizens for Tax Justice estimates that $477 billion of last year's tax cut will go to the top 1 percent of the income scale. That's an average tax cut of $342,000 each for taxpayers in that category, over the decade to come. And while the well-off have received some of those tax cuts already, as have most taxpayers, fully 80 percent of the tax cuts for the top 1 percent are scheduled to take effect in years after this year—most after 2005. There is still time to correct this unbalanced tax cut, without raising anyone's tax rates higher than today's.

Additional discipline is needed not only on the tax side, but also on the spending side. According to OMB's new numbers, spending for this year, fiscal year 2002, is up 11 percent over last year's levels. And as we have not enacted caps for 2003, we are at great risk of continuing these unsustainably large increases in spending into the future.

Some have pointed to the fight against terrorism as reason enough for such spending levels. But we cannot make the fight against terrorism bear the vast weight of the entire Government's spending.

We should not exempt military spending from its due scrutiny, but I do not propose that we constrain military spending alone. We should constrain both military and domestic spending. We need to put some constraint on spending levels, or they will continue to add to the Federal debt.

The Federal Government's budget is obese. We can exercise some willpower now and cut back our consumption, or the doctors will put us on a far stricter diet later. And surely the credit markets and the economy will be a rigorous doctor. We delude ourselves if we imagine that the need to cut back will not come.

As my colleagues are aware, I have twice come to the floor this year to offer amendments to extend the spending caps in the budget law, on June 5 with Senator GREGG and on June 20 with Senator CONRAD. Although neither effort obtained the necessary 60 votes, the Gregg-Feingold amendment received 49 votes, and the Feingold-Conrad amendment received 59 votes. And between the two amendments, 91 Senators have voted for caps of one duration or another.

To paraphrase George Bernard Shaw, we as a Senate have established that we are for caps. We are just haggling over the price.

I assert to my colleagues that caps at any level are better than no caps at all. We must have some restraint, or the Government will grow beyond any limit.

We need to strengthen our budget process, to get the Government out of the business of using Social Security surpluses to fund other Government spending.

That is a goal with a long and bipartisan history. In his January 1998 State of the Union address, President Clinton called on the Government to "save Social Security first."

That is also what President George W. Bush said in a March 2001 radio address, that we need to, in his words, "keep the promise of Social Security and keep the Government from raiding the Social Security surplus."

We should stop using Social Security surpluses to fund the rest of Government because it is the moral thing to do. For every dollar that we add to the Federal debt is another dollar that our children must pay back in higher taxes or fewer Government benefits.

Our children's generation will not forgive us for our failure of fiscal responsibility. History will not forgive us, if we fail to act.

The task before us is plain. We must restrain future tax cuts, and we must restrain future spending.

The task before us is not too difficult for us to achieve. We saw in the 1990s that when the Government balanced its budget, invested in education, and regulated business sensibly, it combined to lower interest rates, bolster consumer and investor confidence, and help the economy grow. We can do that again.

We are not the first generation who has been asked to live with sacrifice. And the sacrifices that are asked of us are by far not the hardest with which generations have lived.

All parents want the best for their children. Let us act on behalf of our children not just as individuals, but as a generation, as well. Let us return to fiscal discipline. And let us restore to our children's generation the freedom to choose their own future.

IN MEMORIAM: DEORA BODLEY

Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my young constituents, Deora Bodley, who lost her life on September 11, 2001. Ms. Bodley was a 20-year-old college student when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Ms. Bodley grew up in San Diego, CA. As a high school student, she visited local high schools to discuss HIV/AIDS with her peers. She volunteered with the Special Olympics and a local animal shelter. Chris Schuck, her English teacher at La Jolla Country Day School, recalls "Deora was always thinking big and going after big game."

At the time of her death, Ms. Bodley was studying psychology at Santa Clara University. She coordinated volunteers in a literacy program for elementary school students. Kathy Almazol, principal at St. Clare Catholic Elementary, recalls Ms. Bodley had "a phenomenal ability to work with people, including the children she read to, her peer volunteers, the school administrators and teachers. We have 68 kids who had a personal association with Deora."

In the words of her mother, Deborah Borza, "Deora has always been about peace." At the tender age of 11 years, Deora wrote in her journal, "People ask who, what, where, when, why, how. I ask peace." A warm and generous person, Deora was a gifted student and a wonderful friend. Wherever she went, her light shined brightly.

Deora's father, Derrill Bodley, of Stockton, CA, feels her life was about "getting along" and sharing a message of peace. Her 11-year-old sister Murial recalls Deora taught her many things and says, "Most of all she taught me to be kind to other people and animals. I cherish the memories of my sister and plan to work hard in school and in everything I do so she can be proud of me like I was of her."

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center Towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Nicole Carol Miller, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

ELECTIONS IN MACEDONIA AND MONTENEGRO

Mr. McCONNELL. Mr. President, the people of Macedonia and Montenegro will participate in parliamentary elections on September 15 and October 6, respectively. Given recent history in that region, the successful conduct of these polls is in the security interests of both the United States and all of southeastern Europe.

Free and fair elections in Macedonia could serve as the beginnings of a new chapter for that country. It was only last year that ethnic grievances in Macedonia turned violent, resulting in deaths, casualties, and thousands of internally displaced persons and refugees. While on the mend, successful elections could prove to be a critical milestone for both the people of Macedonia and the international community.

A major challenge for the Government of Macedonia and all political parties is to earn the trust and confidence of the electorate before the first ballots are cast. Let me be clear: there is no room for election chicanery and violence.

The Government of Macedonia should be aware that the Foreign Operations Subcommittee, on which I serve as ranking member, increased fiscal year 2003 funding provided to the Assistance for Eastern Europe and Baltic States, SEED, account. The subcommittee has suggested that additional funds be provided to Macedonia—over and above the administration's request, but our continued support will be gauged by the successful conduct of the September polls.

In Montenegro, I am troubled by Parliament's recent amendments to the election and public information laws, and the method by which these changes were made. In the past, Parliament utilized a process of consensus and agreement when deliberating election-related issues, which helped create a democratic and stable framework for contentious polls. Last month, the majority coalition in Parliament disregarded past practices and the technical advice of the international community and muscled through changes to the laws. Such heavy-handedness undoubtedly sours the preelection environment, and raise suspicions and political tensions.

The amendments to the laws are equally troubling, particularly for the ethnic-Albanian community whose reserved seats in Parliament were reduced from five to four. The majority coalition in Parliament empowered themselves to appoint members to national and local election commissions, permitting total and partisan control over the electoral process. Further, changes to the laws prohibit pollwatchers to question or challenge officials on the conduct of the poll on election day, and private media is banned from accepting paid advertising from political parties.

Let me close by strongly encouraging the State Department, along with the OSCE, to take appropriate actions to ensure free and fair elections in Montenegro. I will continue to closely follow developments in that region, as well as the reports and updates issued by the International Republican Institute and the National Democratic Institute.

IN MEMORIAM: NICOLE CAROL MILLER

Mrs. BOXER. Mr. President, I take this opportunity to share with the Senate the memory of one of my young constituents, Nicole Carol Miller, who lost her life on September 11, 2001. Ms. Miller was a lovely 21-year-old college student when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Nicole's memory lives on in the hearts of those she loved. She took great joy in life and exemplified this with her wonderful outlook and tenacious personality. Nicole's radiant smile could light up a room and she energized those around her. She knew how to be an outstanding friend.

Nicole was blessed with two families. Her father and stepmother, David and Catherine Miller of Chico, California and her mother and stepfather, Cathy and Wayne Stefani, Sr., of San Jose, California.

In her father's words, "She had that sweet baby quality. She could make you smile and forget your troubles for a little bit." Friend Heidi Barnes describes Nicole as "very friendly and welcoming. She had a big heart and it was open to everyone."

She lived in San Jose, CA, with her mother and stepfather, Cathy and Wayne Stefani, Sr. She attended local schools and graduated from Pioneer High School in 1998. A talented softball player during all four years of high school, Nicole won a college softball scholarship during her senior year. Even though she had never been a competitive swimmer, she tried out for the Pioneer High swim team as a freshman and made the team.

At the time of her tragic death, she was a dean's list student at West Valley College in Saratoga, working part-time and weighing whether to transfer to California State University at Chico or San Jose State University.

Nicole is survived by her mother, Cathy M. Stefani; stepfather, Wayne Stefani, Sr.; father, David J. Miller; stepmother, Catherine M. Miller; and her siblings, Tiffney M. Miller, David S. Miller, Danielle L. Miller, Wayne Stefani Jr., Joshua R.D. Tenorio, and Anthony D. Tenorio.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Nicole Carol Miller, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

Thank you. I yield the floor.

IN MEMORIAM: ROBERT B. PENNINGER

Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Robert Penninger, who lost his life on September 11, 2001. Mr. Penninger was 63 years old when the plane he was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Robert "Bob" Penninger grew up in Chicago, IL. He earned a Bachelor of Science degree in Electrical Engineering at Purdue University and received a Masters Degree in Business Administration from Northeastern University. After graduating from college, he married his wife Janet and they raised their daughter, Karen, in Massachusetts. At the time of his tragic death, Bob was working as an electrical engineer for the defense contractor BAE Systems in Rancho Bernardo, CA, and was returning home from a business trip on September 11.

Mr. Penninger lived life to the fullest and is greatly missed by all who knew him. His wife, Janet, recalls, "Bob was always willing to help everyone he met. He was a great storyteller and he always had a smile on his face and a cheery hello for all." Mr. Penninger enjoyed motorcycle trips with his wife and friends. He also loved taking his 1999 Electric Green Cobra Mustang convertible to car shows, where he won many trophies.

Kit Young lived next door to Penninger for eight years and remarked, "Bob brought a lot of joy to this neighborhood. He developed a special relationship with my 11-year-old grandson, Sean. He took my grandson to a car show in Los Angeles and they were planning another outing. A lot of people wouldn't care anything about an 11-year-old kid, but Bob did."

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Robert Penninger, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

ITALIAN BREAST CANCER SEMIPOSTAL STAMP

Mrs. FEINSTEIN. Mr. President, just over four years ago, the U.S. Postal Service began issuing semipostal stamps to raise money for breast cancer research. The breast cancer research stamp is the first postal stamp in our Nation's history to raise funds for a special cause. Since its inception in the summer of 1998, the program has raised over $27.2 million for research.

The stamp is just as strong today as it was 4 years ago when Congress passed legislation I introduced based on a creative idea of my constituent, Dr. Ernie Bodai, and the hard efforts of others, including Betsy Mullen of the Women's Information Network Against Breast Cancer and the Susan G. Komen Foundation.

The price of a breast cancer research stamp recently increased to keep pace with the cost of first class mail, ensuring that breast cancer research will continue to reap the benefits of the stamp's success.

It has also focused public awareness on a devastating disease and provided a symbol of hope and strength to breast cancer survivors, their loved ones, and others who care about eradicating breast cancer as a life-threatening disease.

I am pleased to announce today that the concept of a semipostal breast cancer research stamp has now spread across international borders. The country of Italy recently has followed the United States lead and is issuing a semipostal stamp for breast cancer research.

Breast cancer is not just an American problem, but it is also a global problem. Approximately 250,000 new cases of breast cancer are diagnosed annually in the European Union. Each year, in Italy alone, more than 30,000 women are diagnosed with breast cancer and 11,000 die of this disease.

Modeled after the U.S. version, the Italian stamp is priced above the value of a first class letter with proceeds dedicated to the battle against breast cancer. Converted into U.S. dollars, approximately 20 cents for each letter sent with the new semipostal will be used to fight breast cancer. In total, Italy expects to raise approximately $2.5 million for breast cancer research, education, screening and treatment programs throughout the country.

Italy's new semipostal stamp, which will be available through 2003, commemorates the 50th anniversary of the death of Queen Elena di Savoia, whose philanthropic efforts included funding the first cancer center in Italy. Approximately 12.5 million stamps will be produced.

I am pleased that lessons we have learned from the launch of the U.S. breast cancer stamp are being applied in Italy. I would especially like to commend the Susan G. Komen Breast Cancer Foundation for its efforts to make the Italian stamp the success that it is here in the United States. In the words of Nancy Macgregor, the Komen Foundation's International Director: "Breast cancer knows no boundaries, and Italy is no exception."

I wish Italy the same success with its semipostal that we continue to enjoy here in the United States. Working together and building on each other's successes, we increase our strength in the battle against breast cancer.

NOMINATION OF D. BROOKS SMITH

Mr. LEAHY. Mr. President, I ask unanimous consent that following my statement on July 30, 2002, on the nomination of D. Brooks Smith, located on pages S7553–S7558, that three letters be printed in the RECORD. The letters are: resolution from the City Council of Philadelphia; Monroe Freedman, Professor of Legal Ethics, Hofstra University and; Stephen Gillers, Vice Dean and Professor of Law, New York University.

There being no objection, the letters was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, The nomination of Pennsylvania district court Judge D. Brooks Smith to the Third Circuit Court of Appeals in Philadelphia was voted out of the U.S. Senate Judiciary Committee on May 23, 2002 by a 12–7; and

Whereas, Judge Smith's nomination is opposed by a wide range of public interest organizations. Among the organizations that have formally expressed opposition to Smith's appeals court nomination are People For the American Way, Leadership Conference on Civil Rights, NAACP, Alliance for Justice, National Organization for Women, Community Rights Council, National Women's Law Center, NARAL, Earthjustice, ADA Watch Action Fund, National Partnership for Women & Families, Planned Parenthood, Defenders of Wildlife, National Employment Law Association, Committee for Judicial Independence, NOW Legal Defense and Education Fund, Disability Rights and Education Defense Fund, Feminist Majority, Friends of the Earth, Bazelon Center for Mental Health Law, National Disabled Students Union, and the National Council of Jewish Women; and

Whereas, Judge Smith's membership in a discriminatory club, his failure for ten years—in violation of governing ethical standards—to resign from the club despite his commitment to do so during his district court confirmation hearing, and the contradictory explanations he has offered for his actions all raise serious issues about Smith's judgment, willingness to follow rules, and candor; and

Whereas, Ethical questions have been raised regarding a highly publicized bank fraud case involving millions of dollars of public school money. Judge Smith continued to preside over and issue orders in the case, even though the fraud claims implicated a bank at which his wife was an employee and in which he had substantial financial interests. Several years later, he took on a related case, recusing himself only after he was requested to do so by one of the attorneys in the case, revealing only his wife's involvement and not his own financial interest. On March 14, 2002, after reviewing the facts and the arguments by Smith and his defenders, noted legal ethics professor Monroe Freedman wrote to the Senate Judiciary Committee that Smith committed "repeated and egregious violations of judicial ethics" and that Smith had been "disingenuous before this Committee in defending his unethical conduct." Professor Freedman concluded that as a result, Smith is "not fit to serve as a Federal Circuit Judge"; and

Whereas, Since his appointment in 1989, Judge Smith has been reversed by the court of appeals to which he has been nominated 51 times. This is a larger number of reversals than any of the judges approved and rejected by the Senate Judiciary Committee during this Congress for appellate court posts, including Judge Charles Pickering. More important than the number of these reversals, however, is their nature. Many of these reversals concern civil and individual rights, and reflect a disturbing lack of sensitivity towards such rights and a failure to follow clearly established rules of law and appellate court decisions; and

Whereas, A number of Smith's reversals have concerned discrimination or other claims by employees. For example, in Wicker v. Consolidated Rail Corp., 142 F.3d 690 (3rd Cir.), cert. denied, 525 U.S. 1012 (1998), the court of appeals unanimously reversed Smith's decision to dismiss a suit by Conrail employees who claimed that years of on-the-job exposure to toxic chemicals was making them sick. Smith had concluded that their lawsuit was barred because they had signed a waiver as part of a settlement of unrelated injury claims against the railroad. The appellate court ruled that Smith's ruling was contrary to the Supreme Court's interpretation of federal law; and

Whereas, The Third Circuit unanimously reversed Smith's decision in Ackerman v. Warnaco, 55 F.3d 117 (3rd Cir. 1995), in which he upheld a company's unilateral denial of severance benefits to more than 150 employees after they were laid off; and

Whereas, In Colgan v. Fisher Scientific Co., 935 F.2d 1407 (3rd Cir.), cert. denied, 502 U.S. 941 (1991), the appellate court unanimously reversed Smith for granting summary judgment against an age discrimination claim as untimely by ruling that the statute of limitations began to run not when the employee was terminated, but instead when he simply received a negative performance review; and

Whereas, In Schafer v. Board of Public Educ. of the School Dist. of Pittsburgh, Pa., 903 F.2d 243, 250 (3rd Cir. 1990), the Third Circuit unanimously reversed Smith for dismissing a claim that a school district's family leave policy improperly allowed only women, not men, to take unpaid leave for "childbearing" as well as childbirth. Based on such decisions, the National Employment Lawyers Association has opposed Smith's confirmation, explaining that his record displays "an attitude inimical to employee and individual civil rights"; and

Whereas, In other reversals involving individuals or other plaintiffs against government or corporations, the Third Circuit has specifically criticized Smith for abusing his discretion or failing to follow the law. For example, in Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 456–457 (3rd Cir. 1996), the appellate court found that Smith had "abused his discretion" in refusing to allow a prisoner to amend a complaint contending that he had been repeatedly stabbed while handcuffed and in the custody of police officers who looked on while failing to take any action; and

Whereas, In Metzgar v. Playskool, 30 F.3d 459, 462 (3rd Cir. 1994), three Reagan appointees reversed Smith for dismissing a claim involving death by asphyxiation of a 15-month-old child who had choked on a toy, noting that they were "troubled by the district court's summary judgment disposition" of his parents' claims; and

Whereas, In In re Chambers Development Company, 148 F.3d 214, 223–225 (3rd Cir. 1998), concerning a claim against a county utility authority, the Third Circuit took the extraordinary step of issuing a writ of mandamus—an unusual direct command to a judge to rule a certain way—against Judge Smith, who had "ignored both the letter and spirit of our mandate" in a prior ruling in the case. As the court of appeals explained, this was a "drastic remedy" that is utilized only "in response to an act amounting to a judicial usurpation of power"; and

Whereas, Judge Smith has also been criticized for rulings not later reversed on appeal. For example, the Washington Post expressed concern about his decision in United States v. Commonwealth of Pennsylvania, 902 F. Supp. 565 (W.D. Pa. 1995), aff'd, 96 F.3d 1436 (3rd Cir. 1996), in which the federal government had sued the state over allegedly substandard conditions in a facility for persons with mental disabilities. As the Post put it, although "care was, in Judge Smith's words, 'frequently not optimal'—maggots were found in one resident's ear, ants on others' bodies—the judge found these to be 'isolated incidents' " and concluded there was no constitutional violation. In another case, Quirin v. City of Pittsburgh, 801 F. Supp. 1486 (W.D. Pa. 1992), the National Employment Lawyers Association (NELA) found that Smith had improperly applied the "aggressive" standard of "strict scrutiny," which is reserved for claims of racial, ethnic, and religious discrimination, to strike down an affirmative action policy designed to remedy past discrimination against women. As NELA concluded, such rulings "show a disturbing pattern of disregard and hostility for the rights of minorities and protected classes," now therefore,

Be it resolved by the City Council of Philadelphia, That we hereby strongly urge the United States Senate to reject the nomination of Judge D. Brooks Smith to the Third Circuit Court of Appeals.

Further Resolved, That we hereby urge Pennsylvania Senators Specter and Santorum to withdraw their support for the confirmation of Judge D. Brooks Smith to the Third Circuit Court of Appeals.

Be it further resolved, That a copy of this resolution be sent to all members of the United States Senate as evidence of the grave concern by this legislative body.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, NY, May 17, 2002.

Hon. RUSSELL D. FEINGOLD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINGOLD: I am replying to your May 9, 2002 request for my views on three issues surrounding the nomination of Federal District Judge D. Brooks Smith to a seat on the United States Court of Appeals for the Third Circuit. I assume familiarity with your letter and with the facts, many of which have been discussed in testimony and correspondence the Committee has received. I do not know Judge Smith and have no interest one way or the other in whether Judge Smith is confirmed. I take my facts mainly from Judge Smith's testimony or his written submissions and partly from other materials you have sent me and which I cite below. The facts do not seem to be in dispute.

Briefly, my qualifications for giving my opinion on your questions are: I am vice-dean and professor of law at New York University School of Law, where I have taught since 1978. Regulation of Lawyers ("legal ethics") is my primary area of teaching and research and writing. I have taught this course for a quarter century here and as a visitor at other law schools. I have a leading casebook in the area, first published in 1984 and now in its 6th edition. Legal ethics includes the ethical responsibilities of judges and a chapter of my book is devoted to those issues. I have published in the area in law journals and written extensively on the subject for the popular and legal press. I speak widely on legal ethics before bar groups, at judicial conferences, at law firms, and at corporate law departments.

In summary, my conclusions are:

A. If Spruce Creek Red and Gun Club is in fact a purely social club, and not a venue in which business or professional interests are pursued, then Canon 2(C) of the Code of Conduct for United States Judges would not forbid a federal judge to be a member of the club. On this assumption, the answers to the first two questions under Part A of your letter are "yes" (the club is exempt from the prohibition against membership in an organization that invidiously discriminates) and "no" (Judge Smith did not violate the Code by maintaining membership for 11 years). My answer to your third question is that Judge Smith had no obligation to seek an opinion from the Advisory Committee on the propriety of his membership in the club. Judge Smith had the responsibility to make sure that the club was and remained a purely social club and that his membership was therefore allowed.

B. A federal judge who is invited to a privately funded judicial education seminar, with expenses paid, has on obligation to identify the source of funding to ensure that acceptance of the gift is proper. This duty is not eliminated because the sponsor of the seminar is a law school or other educational institution that would not itself require the judge to refuse the invitation. Funding for the seminar may come from a person or entity whose generosity the judge should not accept but whose contribution does not appear on the face of the invitation. Consequently, Judge Smith should have inquired of the sponsor of private judicial seminars he attended to learn the source of funding and establish that there was no impropriety in accepting the invitation under the circumstances.

C. Your third inquiry, concerning the timing of Judge Smith's recusal decisions in SEC v. Black and U.S. v. Black, is quite complicated. In sum, I conclude that Judge Smith should have revealed his and his wife's investment in Mid-State Bank or in Keystone Financial, Inc., its holding company (hereafter, collectively "Mid-State"), not later than October 27, 1997. Having failed to do so, he should have made this disclosure on October 31, when he did recuse himself. Failing to do so then, he should have done so as soon as he knew of Mid-State's financial exposure for Black's frauds so that counsel could, if advised, seek to vacate Judge Smith's rulings based on a violation of the judicial disqualification statute. Whether Judge Smith should have recused himself on October 27 given what he says he knew at the time is a more difficult question, which I address below. However, I conclude that Judge Smith should have recused himself on October 27 based on what he could have known and should have discovered on that day. Judge Smith should have recused himself form United States v. Smith as soon as it was assigned to him.

THE SPRUCE CREEK ROD AND GUN CLUB

Judge Smith promised more than he had to at his 1988 confirmation hearings. The Code of Conduct for United States Judges did not then forbid membership in purely private clubs that had no business or professional purpose. Although the Code was thereafter strengthened, following on amendments to the ABA Model Code of Judicial Conduct in 1992, even as strengthen the Code does not forbid membership in Spruce Creek. This assumes, however, that the club has no business or professional purpose or function. Of course, the opportunity for club members to meet in informal, social situations, to get to know each other in that way, can itself be seen as professionally or commercially advantageous, but that alone does not make the club's discrimination "invidious." Defining the line between clubs that may exclude women (or men, for that matter) and those that may not because they have a business or professional dimension is not always easy. But there is a line and it is rooted in constitutional jurisprudence.

I am assuming that club members sponsor no events or meetings that could be characterized as business-related or profession-related. If my assumptions are wrong, however, if the club is not strictly social, then my conclusion will change. I understand that the Committee has received information that the club did allow its members to host business or professional meetings. If it did, it would not be purely private as I have been using that term, and its discrimination against membership for women would then be "invidious" within the meaning of the Code's prohibition. This would be true even if women were allowed to attend some or all business or professional meetings hosted by the club's male members. Since the propriety of Judge Smith's membership depended on the club maintaining a purely social purpose, he had the responsibility of assuming that it has and retained this status.

Judge Smith suggests that he reexamined his obligations under the Code of Conduct in 1992, when it was revised, and concluded that his 1988 promise obligated him to do more than the Code required him to do. As I wrote, the post 1988 amendments actually strengthened the prohibition against membership in discriminatory clubs, but even as strengthened, Spruce Creek does not, on the assumptions made, qualify as a club that "practices invidious discrimination on the basis of . . . sex" within the meaning of Canon 2(C).

Two other comments on this issue: First, while Judge Smith could have asked the Advisory Committee to give him an opinion on whether the club's discriminatory policy was "invidious," I know of no rule imposing a duty to do so. Second, I realize that Judge Smith made a promise to the Committee in 1988 and then seems to have concluded that he had promised more than the Code required. Whether and to what extent the Committee should be influenced by Judge Smith's failure to keep his promise notwithstanding this later conclusion, or by the Judge's failure to inform the Committee that he did not intend to keep his promise because of this conclusion, is not properly a question for me.

JUDICIAL EDUCATION SEMINARS

As you know, expense-paid seminars for judges has been a challenging issue. The gap between judges' reactions to criticism of these events and the perspectives of the critics does not seem to be shrinking. Many judges are annoyed that anyone would think they would compromise their objectivity because of an invitation (or many invitations) to a privately funded judicial seminar. Critics, on the other hand, argue that only certain groups of litigants have the wherewithal to support these seminars and that it diminishes the appearance of justice when judges attend them at luxury resorts to hear programs designed by those who can afford to sponsor them. Unfortunately, we have little in the way of guidance, mainly Opinion 67 of the Advisory Committee and several judicial opinions, including Judge Winter's opinion in In re Aguinda, 241 F.3d 194 (2d Cir. 2001). Judge Winter wrote: "[A]ccepting something of value from an organization whose existence is arguably dependent upon a party to litigation or counsel to a party might well cause a reasonable observer to life the proverbial eyebrow. . . . Judges should be wary of attending presentations involving litigation that is before them or likely to come before them without at the very least assuring themselves that parties or counsel to the litigation are not funding or controlling the presentation." Judge Winter cites In re School Asbestos Litigation, 977 F.2d 764 (3d Cir. 1992), another leading case from Judge Smith's Circuit. the judge there was disqualified after attending a conference without ascertaining the source of funding for it. The source made the judge's attendance improper.

The authorities agree that before attending an expense-paid judicial seminar, a judge should learn who is picking up the tab for the judge's travel and housing. This indeed is what Opinion 67 says: "It would be improper to participate in such a seminar if the sponsor, or source of funding, is involved in litigation, or likely to be so involved, and the topics covered in the seminar are likely to be in some manner related to the subject matter of litigation. If there is a reasonable question concerning the propriety of participation, the judge should take measures as may be necessary to satisfy himself or herself that there is no impropriety. To the extent that this involves obtaining further information from the sponsors of the seminar, the judge should make clear an intent to make the information public if any question should arise concerning the propriety of the judge's attention."

Obviously, there would be room for much mischief if a judge invited to an expense-paid judicial seminar could rely on the non-profit nature of an apparently neutral sponsor to immunize the judge's attendance. Judge Smith is therefore wrong in his assumption, in reply to your follow-up question 6a, when he wrote that because "George Mason's sponsorship of LEC was apparent from the face of the materials I received regarding the seminars, I conclude that no further inquiry into sources of funding was required." If was required.

SEC V. BLACK

Conflicts in the Black cases arise from the fact that the Smiths owned stock in Mid-State or Keystone. How much is uncertain. I understand that Judge Smith's financial disclosure form In 1997 revealed between $100,000 and $250,000 in stock in Keystone. The form also indicated that his wife had a 401(k) account with Mid-state, where she was an officer. Her account ranged between $100,000 and $250,000, but Judge Smith's financial disclosure form did not say where the money was invested. In answers to recent questions you posed (question 14), Judge Smith wrote: "At the time in question [October 1997], my wife and I held stock in Mid-state and she was employed by the company." So now we do know that Mrs. Smith also held stock in Mid-State, but we don't know how much. As a result, we do know the amount of the Smiths' joint holdings in Mid-State or Keystone in October 1997 and thereafter or what percentage of their wealth it represented.

Anoter basis for a possible conflict in the Black matters was the fact that Mrs. Smith was an officer in Mid-State. However, Judge Smith recently responded to your written quesitonl 7 by stating that his wife "was a corporate loan officer for Mid-state, a position far removed from those parts of the bank that had dealings with John Gardner Black."

In this answer,I will assume that the Smiths had a substantial financial interest in Mid-State or Keystone or both (it was between $100,000 and $500,000) and that that interest represented a signficant portion of their wealth. No submission offered by or on behalf of Judge Smith has asserted otherwise and the record we have supports this conclusion.

a. October 27, 1997

I want now to focus on October 27, 1997 and the weeks immediately preceding:

On October 24, "all investment funds were removed from Mid-State Bank" by the Trustee. Letter of Mark A. Rush, 2/22/02, at 2, Judge Smith knew this because the fact is recited in an order he issued October 27. Letter of Douglas A. Kendall, 2/20/02, at 5.

In the chambers conference with the Trustee and his counsel on October 27, Judge Smith was told "that information, although in its very early developmental phases, was being uncovered which may change Mid-State-Bank's involvement in the case from that of merely a depository of funds." He was advised "of only a developing but not confirmed suspicion by the Trustee that Mid-State Bank's role may be more than a depository." Rust letter at 2, 3.

In September and October, the press in Pennsylvania reported the possibility that defrauded school districts would sue Mid-state. Kendall letters, 5/10/02, at 4 and exhibits. Certainly, the possibility of bank liability, or at least exposure to litigation, would have been apparent to any lawyer. Suits were in fact filed, starting as early as October 31, 1997. Id at 4. The suit was reported in the press the next day. Id.

Papers before Judge-Smith suggested that the bank prepared reports to the school districts showing the market value of their account at $157 million, while reporting to Black that the market value of these accounts was only $86 million. This information was in a footnote that was in an exhibit to an exhibit in the papers before Judge Smith, who apparently did not recognize its significance or did not see it. Reply to your follow-up question 8. However, the discrepancy was reported in the local press on October 31. Id. at 3.

In the October 27 chambers conference, Judge Smith told the Trustee and his counsel "of his wife's employment in an unrelated division of Mid-State Bank." And the Judge "indicated an intention to consider recusing himself based on the potential for a future appearance of a conflict." Rush letter at 3. Judge Smith did not then reveal the Smiths' financial interest in Mid-State or Keystone.

The information Judge Smith knew on October 27 required him to reveal his family's financial interest before ruling on the applications before him. So far as the Trustee and his counsel knew, the only basis for recusal was Mrs. Smith's employment in an "unrelated division" of the bank. That is all they were told. Understandably, they did not see that as a fact that required recusal or further discussion. (More on this below.) But had Judge Smith revealed the Smiths' financial interests in Mid-State on October 27, then the Trustee and his counsel, and counsel for the school districts seeking to unfreeze money held by Black in non-Mid-State banks, would have been able to provide the Judge with information (already in the press) about Mid-State's and Keystone's potential future liability for Black's frauds. Then, the footnote in the exhibit to the exhibit in the papers before Judge Smith could have surfaced and its import explained. Then, too, the public discussion about the possibility of legal action against Mid-State could have surfaced. The Trustee and counsel would then have had reason to be more expansive about their statement in chambers that "Mid-State Bank's involvement in the case [may change] from that of merely a depository of funds."

In fact, had Judge Smith revealed not merely his wife's employment in an "unrelated division" of the bank on October 27, but also his family's substantial financial investment in the bank, it would have been incumbent on counsel to reveal all they knew about the bank's legal exposure and to explore with the Judge whether what they knew, but did not see any need to elaborate, and what Judge Smith knew, but did not reveal, required recusal under Section 455(b)(4), which disqualifies a judge if the judge or the judge's spouse has "any . . . interest that could be substantially affected by the outcome of the proceeding." Based on what parties collectively knew at the time, this exploration should have led to Judge Smith's recusal on October 27, before he ruled on the school districts' effort to unfreeze non-Mid-State accounts in Black's control (totalling about $175 million). Once Judge Smith learned of the probable lawsuits against Mid-State, he would have had to step out of the case. By failing to reveal his family's financial interest, however, Judge Smith effectively prevented the entire inquiry and led to a ruling he was disqualified from making because a bank in which his family had a substantial investment had an interest in the ruling, as discussed further below.

Although I focused above on the particular ruling Judge Smith made on October 27, that ruling is incidental to a more imposing fact. Even if there were no application for a ruling on October 27, Judge Smith should still have recused himself based on information that he could and should have discovered on that date. That information revealed the enormity of Mid-State's potential liability. As stated above, and as reported in the press in October, Mid-State's own documents showed a potential shortfall of $71 million in school district funds that Black had deposited with Mid-State. So I want to stress that it was this exposure, and not alone the ruling Judge Smith was asked to make on October 27, that required recusal by that date if not sooner. In short, Judge Smith should not have been sitting in a matter when, as he could have and should have known, a bank in which he had a substantial investment faced financial liability in tens of millions of dollars. As we now know, Keystone eventually paid $51 million to settle depositor claims.

b. October 31, 1997

On October 31, Judge Smith recused himself citing only his wife's employment. He has explained to the Committee that he did so because he foresaw the possibility that the bank might be a source of evidence in the case. Letter of 2/25/02, at 2. As stated, Judge Smith has acknowledged that his wife was in a "position far removed from those parts of the bank that had any dealing with John Gardner Black." It is hard to understand why Mrs. Smith's position caused Judge Smith to recuse himself, even assuming that Mid-State officials might be deposed or that Mid-State might be the source of documents. At this point Judge Smith believed that the bank was merely a "depository." If that were all it was, it should make no difference that officers or employees, from a part of the bank "unrelated" to the one in which his wife worked, might be deposed or that the bank might be a source of documents. In fact, Judge Smith does not appear to believe that he even had to recuse for this reason. In his answer to your question 13, he wrote that he had no "legal obligation" to recuse when he did, but did so "out of an abundance of caution." (See also the answer to your question 14.) Judge Smith acknowledges in his answer to question 18 that there was a possibility that his wife might herself be a witness. By failing to reveal the Smiths' investments on October 31, Judge Smith denied the litigants information that they could have used to overturn on October 31, Judge Smith denied the litigants information that they could have used to overturn his October 27 ruling refusing to unfreeze half the money (about $77 million) that Black maintained in non-Mid-State accounts.

A ruling by a judge who should have been disqualified may be vacated. This is true even if the judge, when ruling, was unaware of the basis for the disqualification. Liljeberg v. Health Services Acquisition Corp., 486 U.s. 847 (1988) Judge Smith's rulings in SEC v. Black, and in particular his ruling on October 27 refusing to unfreeze all of the non-Mid-State funds in Black's control, could have been challenged based on the Smiths' financial interest. However, because Judge Smith did not reveal the Smiths' financial interest in Mid-State on October 27, or on October 31 when the Judge did recuse himself, or thereafter, parties to the proceedings before him, including the school districts that sought to unfreeze all of their non-Mid-State funds, could not use this interest as a basis for vacating the Judge's rulings. While it is true that a judge may recuse without giving any reason, where there are reasons for recusal that could retroactively affect the legitimacy of orders already entered, the judge must reveal that information so that the parties can determine whether to challenge the judge's orders on this basis. Id. at 867. The fact that a judge might not believe that a particular fact would suffice to warrant recusal, or to warrant an order vacating a ruling, is not a justification for failing to make the disclosure. A judge should not, through silence, be the ultimate arbiter of his or her own disqualification. If a fact could reasonably support disqualification or an effort to overturn a ruling, as is true here, that fact should be revealed so that counsel may argue it or bring it to the attention of another judge or an appellate court. Id.

c. Events after October 31, 1997

Even if Judge Smith continued to believe on October 31 that the bank's role was solely as a prospective witness in its capacity as depository, it shortly thereafter became apparent, when lawsuits were filed, that this was not so, and that in fact the bank would be exposed to financial liability. At that point, at least, Judge Smith should have revealed the Smith's financial investment in Mid-State. While it is true that Judge Smith no longer had jurisdiction over SEC v. Black after October 31, he did not need jurisdiction to make financial information known. So even assuming Judge Smith did not realize the bank's financial exposure as of October 31, which I do assume, and even assuming (which I do not) that he had no duty even to explore the possibility of the bank's financial exposure with counsel on October 27, Judge Smith should nevertheless have revealed his family's financial interest in the bank once its potential civil liability became evident, as it did soon after October 31.

Those appealing Judge Smith's order would have benefited from knowledge of the facts and amounts of the Smiths' Mid-State investment because that investment meant Judge Smith should not have ruled on any issue that could affect Mid-State's financial exposure. The effort to unfreeze the non-Mid-State money is such an issue because the more money available from other sources to compensate school districts with Mid-State accounts, the smaller would be Mid-State's exposure. In other words, if money in non-Mid-State banks could be used to compensate districts whose funds were in Mid-State accounts, Mid-State could be benefited. So could the Smiths as substantial investors.

In Liljeberg, supra, Judge Collins ruled in a case even though at the time, he was a fiduciary of a non-party (Loyola) that stood to gain financially from the ruling. At the time he ruled, he did not know of Loyola's interest in the matter, although he previously knew of it and learned of it again later. The Court agreed that Judge Collins could not have recused himself when he lacked knowledge of the disqualifying fact. A "judge could never be expected to disqualify himself based on some fact that he does not know, even though the fact is one that perhaps he should know or one that people might reasonably suspect that he does know." 486 U.S. at 860. The Court then went on to hold that "[n]o one questions that Judge Collins could have disqualified himself and vacated his judgment when he finally realized that Loyola had an interest in the litigation." Id. at 861. Doing so might "promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." Id. at 865. Judge Collins "silence," once he recalled Loyola's interest, "deprived respondent of the basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal." Id. at 867. So, too, here.

Judge Smith no longer had jurisdiction of the case after October 31, and therefore could not recuse himself or vacate his orders, as the Supreme Court ruled Judge Collins could have done. But once he learned of the bank's exposure, Judge Smith could have taken the lesser step of informing counsel of his family's financial interests in the bank. He should have done this because he should have realized that the following facts, once publicly known, would undermine confidence in the judiciary and create the appearance of impropriety. These facts are:

(1) Judge Smith was told on October 27 that the bank may be more than a mere depository:

(2) papers before Judge Smith on October 27 showed a substantial discrepancy between what the bank was telling depositors and what the bank was telling Black;

(3) the press in Pennsylvania was reporting on the prospect of lawsuits against the bank;

(4) the Smiths had a substantial financial interest in the bank:

(5) three days prior to October 27, as Judge Smith knew, the Trustee had removed all of the school district funds from the bank and placed it in another institution;

(6) on October 27 Judge Smith made a ruling that an objective observer could view as beneficial to Mid-State by keeping frozen monies that might be available to compensate school districts that had accounts in Mid-State;

(7) despite the information available to him on October 27, Judge Smith made no effort to conduct a further inquiry of counsel into the possible financial exposure of Mid-State or reveal his family's investment in Mid-State.

The upshot of this is that even if we assume that as of October 31 Judge Smith thought of Mid-State as merely a depository whose personnel might be witnesses, nonetheless, in retrospect, Judge Smith should have realized from the facts itemized above that his conduct threatened confidence in the impartiality of the courts and that he had to take steps to correct that, Liljeberg, quoting the lower court's opinion, states: "The goal of Section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the Judge is pure in heart and incorruptible. The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality. Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge." Id. at 860 (internal citations omitted). See also In re School Asbestos Litigation, 977 F.2d at 784, quoting some of the same language from Liljeberg. It is hard to fathom Judge Smith's silence after October 31 even if one accepts his explanations for his conduct until that time.

UNITED STATES V. BLACK

This brings me to United States v. Black, the criminal case against Mr. Black, assigned to Judge Smith in 1999, when Mid-State's financial exposure was apparent. Judge Smith kept the case for five months, until a motion to recuse him was made and granted. Again judge Smith cited his wife's employment as the basis for granting the motion. I don't understand why, if an "abundance of caution" caused Judge Smith to recuse himself sua sponte in SEC v. Black because of the prospect of testimony from bank personnel, or because the bank might be a source of documents, he did not recuse in United States v. Black immediately. Be that as it may, for other reasons Judge Smith should never have accepted United States v. Black. First, Third Circuit precedent directly on point prohibited Judge Smith from accepting the case. "We adopt the view that a judge who owns a substantial interest in the victim of a crime must disqualify himself or herself in the subsequent criminal proceeding because the strict overarching standard imposed by §455(a) requires that the appearance of impartiality be maintained." United States v. Nobel, 696 F.2d at 231, 235 (3rd Circuit 1982). This is a holding of the case and cannot be more explicit. The court went on to conclude that on the particular facts disqualification had been waived under §455(e). But the court would not have had to consider waiver unless it had first found that the judge, as an investor in the defrauded institution ("INA"), was disqualified from sitting in judgment of the man accused of defrauding that institution.

The facts here are even stronger than the facts in Nobel. Nobel also held that §455(a) would have required disqualification of the trial judge even though "by the time of the criminal trial a settlement had been effected which called for defendant to repay INA for substantially all of the funds which defendant received as a result of the fraud." Id. at 234. Since INA had recovered its lost money in Nobel, no ruling in that case could have affected the size of the investing judge's loss. Not so here. Mid-State was either the victim of Black's misconduct or civilly liable for facilitating it (or perhaps both). In either event, unlike INA, it stood to lose or have to pay a lot of money (as in the end it did) in part as a result of Black's acts. Obviously, it was in the bank's interest to minimize the amount it would lose or have to pay, and in furtherance of that goal it would want to shift as much blame to Black as possible. It was in the interest of the Smiths as Mid-State investors to achieve the same objectives. It should have been apparent that these objectives might be furthered by rulings in Black's criminal case and by limiting any monetary sanction against Black, as next discussed. Judge Smith's defense (in answer to your question 20) that Nobel is inapposite because Mid-State was not a "victim" in the same way that INA was a victim entirely misses the purpose of the disqualification statute and the reasoning of Nobel.

Judge Smith should have realized that decisions he might make in Mr. Black's criminal case could affect the civil actions then pending against Mid-State. This could happen in at least two ways. First, Judge Smith would be called upon in Black to make evidentiary rulings that could lead to the revelation, or to the concealment, of information that might affect the course of the civil litigation against Mid-State. Second, I understand that in the event of a conviction, Black would have been subject to monetary sanctions. Obviously, the more money Black had to pay as a criminal sanction, the less money he would have available to compensate the school districts allegedly harmed by Mid-State and Black. Consequently, Mid-State would have an interest in Black retaining as much money as possible so that his wealth could be used to offset depositor losses. If somehow Judge Smith did not appreciate that his family's Mid-State investments required recusal, he should have revealed this information to counsel so they, and the defendant, could decide whether to act on it.

In sum, assuming that Judge Smith did not know of Mid-State's financial exposure on October 27, 1997, and did not therefore recognize a need to recuse himself in SEC v. Black, still there was sufficient information before him to warrant both further inquiry and revelation of his family's investments in Mid-State. Inquiry and revelation at this point would have resolved the issue and made disqualification immediately necessary. As stated above, a federal judge does have a duty to be forthcoming with facts that could support a request for recusal. Once Mid-State's financial exposure became apparent, as early as press reports of the first lawsuit on November 1, Judge Smith's continued silence is inexplicable. His order of October 27 was being challenged and his family's financial investment would have provided the challengers with strong arguments to vacate it, perhaps more quickly. Just as Judge Collins in Liljeberg should have immediately revealed his reawakened knowledge of Loyola's interest in a litigation before him, Judge Smith should have revealed his family's financial interest in the bank immediately on learning that the bank had financial exposure in the events underlying SEC v. Black.

For the reasons given above, Judge Smith should never have accepted United States v. Black. Rulings in that case have affected the amounts of money Mid-State would eventually have to pay and therefore the value of the Smiths' investment. Even if they could not, Circuit precedent required his recusal.

I hope I have answered your questions. Please don't hesitate to ask if I can be of further assistance.

Sincerely,

STEPHEN GILLERS,
Vice Dean.

HOFSTRA UNIVERSITY,
SCHOOL OF LAW,
Hempstead, NY, May 21, 2002.

Re nomination of Judge D. Brooks Smith.

HON. RUSSELL D. FEINGOLD,
Committee on the Judiciary, Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR FEINGOLD. This letter is in response to your letter to me of May 9, 2002, requesting my opinion on ethical issues that have arisen in connection with the nomination of United States District Judge D. Brooks Smith to the United States Court of Appeals for the Third Circuit. These issues related to (A) Membership in the Spruce Creek Rod and Gun Club; (B) Attendance at Judicial Education Seminars; and (C) Judicial Disqualification Requirements.

(A) Membership in the Spruce Creek Rod and Gun Club

I had originally concluded that Judge Smith's membership in the Spruce Creek Rod and Gun Club was not a ground for denying him a judgeship on the Court of Appeals. In reaching that conclusion, I was relying in significant part on the opinion expressed in the letter to Senator Orrin G. Hatch of April 23, 2002 by Professor Ronald D. Rotunda, for whom I have considerable respect. Subsequent research has convinced me, however, that Professor Routunda's analysis in this instance is seriously flawed, that his conclusion is clearly wrong, and that Judge Smith's membership in the Club is a serious violation of his ethical responsibilities as a judge.

I was troubled from the outset, of course, that Judge Smith's membership in the Rod and Gun Club violates the plain meaning of Canon 2C of the Code of Conduct for United States Judges. That provision forbids a judge to hold membership in an organization that "practices invidious discrimination on the basis of . . . sex. . . ." Since the bylaws of the Rod and Gun Club arbitrarily restrict membership to men, and since Judge Smith held membership in the Club for eleven years while he was a federal judge, his violation of Canon 2C appears to be obvious.

Nevertheless, two aspects of Professor Rotunda's letter persuaded me that this plain-meaning reading was not the final word. First, I accepted Professor Rotunda's assertion that the Club is a "purely social" organization with no formal business or professional activities. In this regard, Professor Rotunda may well have been misled by Judge Smith himself, who has repeatedly mischaracterized the Club to the Judiciary Committee as a "purely social group" that does not conduct any business or professional activities. In any event, I now understand that the crucial factual premise is false, because professional meetings are in fact held at the Rod and Gun Club.

Of equal importance to my original judgment is the fact that I accepted Professor Rotunda's statement regarding §2.14(b) of the Code of Conduct for United States Judges, Compendium of Selected Opinions (2002). In Professor Rotunda's words, that section holds that: "[T]he Masonic Order, which limits full membership to males does not practice 'invidious' sex discrimination because it does 'not provide business or professional opportunities to members." Frankly, I have difficult with the notion that important business and professional contacts are not made at a club where business and professional men interact and bond with each other and with important political figures and judges. Moreover, I was troubled that this exception for the Masons—as stated Professor Rotunda—would effectively swallow up the rule against discrimination on grounds of sex. Nevertheless, for purposes of forming an opinion about Judge Smith's compliance with the Code of Judicial Conduct, I accepted Professor Rotunda's representation that such a distinction has been made in the Compendium of Opinions.

However, the full summary of the opinion regarding the Masons in §2.14(b) of the Compendium is not based simply on the premise that the organization does not provide business or professional opportunities to members (which is a factual premise that, in any event, is inapplicable to the Rod and Gun Club). Rather, the summary refers only once to the absence of business or professional opportunities, but refers twice to the religious purposes of the Masons. Compare, then, the actual summary set forth in §2.14(b) with Professor Rotunda's rendering of that summary, which is quoted supra: "Masonic Order, represented to be fraternal organization devoted to charitable work with religious focus and not providing business or professional opportunities to members, is not consider to be an organization practicing invidious discrimination although women are not permitted to be full-fledged members. Organization is considered to be dedicated to the preservation of religious and cultural values of legitimate common interest to members. Commentary to Canon 2C." Because of this reiteration in §2.14(b) of the Masons as being "devoted" and "dedicated" to the preservation of religious values through charitable work, the exception for the Masons does not swallow up the proscription of Canon 2C against discrimination on grounds of sex. Instead, the Masons' exception becomes a limited one that respects the First Amendment's guarantee of freedom of religion.

Contrary to Professor Rotunda's abridged version of §2.14(b), therefore, the full text of §2.14(b) does not support the conclusion that the Spruce Creek Rod and Gun Club's discrimination against women is permissible. Accordingly, Judge Smith was clearly in violation of Canon 2C for most of the eleven years that "dragged on" while Judge Smith was on the bench and remained a member.

Finally, with respect to the specific questions that you raised on this issue in your letter to me:

1. Judge Smith is incorrect in asserting that revisions to Canon 2 of the Code of conduct exempt clubs like Spruce Creek from the ban on membership in discriminatory organizations. Indeed, that assertion is fanciful, on a plain-meaning reading of Canon 2C: "A judge should not hold membership in any organization that practices invidious discrimination on the basis of . . . sex . . ." Moreover, the exceptions in the Comment reinforce the conclusion that the Rod and Gun Club falls within this plain language. For example, the Comment exempts an organization that is "dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members [like the Masons], or that is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited." Obviously, neither clause in that exception describes the Spruce Creek Rod and Gun Club.

2. Judge Smith violated ethical standards by remaining a member of the Spruce Creek Rod and Gun Club for eleven years—or, at least, for most of those years—while serving as a federal district judge. The 1998 Code reiterates the language of the 1992 Code in allowing a judge a maximum of two years to make immediate and continuous efforts to change the club's policy before resigning. Since Judge Smith claims to have made such efforts beginning in 1988, he should have resigned at least by 1992, when he knew that four years of efforts had already been unavailing.

3. If Judge Smith somehow believed after 1992 that he could ethically remain a member of the Club (a conclusion that is difficult to credit) he should at least have consulted with the Advisory Committee on Judicial Conduct before continuing his membership. Apart from that, having given his word to the Judiciary Committee that he would resign from the Club if it did not change its discriminatory bylaw, Judge Smith should have informed the Committee of his intention to break his word and his reasons for doing so.

(B) Attendance at Judicial Education Seminars

In answer to your specific question, Judge Smith is not correct in asserting that under existing ethical standards, he was not required to inquire into the identity of corporate financial supporters of an organization like the Law and Economics Center at George Mason University.

As noted in the Comment to Canon 2A, the appearance of impropriety depends on the appearance to a reasonable person who has "knowledge of all the relevant facts that a reasonable inquiry would disclose." Thus, if a reasonable inquiry would reveal the source of the funding, the source of the funding is relevant to determining whether there is an appearance of impropriety and, thereby, whether the judge has committed a violation of the standard. In order to conform his conduct to the rule, therefore, the judge must at least make the same reasonable inquiry that the hypothetical reasonable person would be making into the source of the funds for the seminar.

It is important to address here Professor Rotunda's disparaging comments on the appearance of impropriety as a standard in judges' and lawyers' ethics. Professor Rotunda is correct in saying that some authorities have rejected the appearance of impropriety as a standard. That has come about, however, for reasons that have nothing to do with the merits of the standard. Moreover, the views of those authorities could not overrule either the Due Process Clause of the Constitution or the Code of Conduct for United States Judges.

In fact, the appearance of impropriety is central in judges' and lawyers' ethics, and, specially, in the Code of Conduct for United States Judges. Moreover, a fundamental principle of constitutional due process of law is that "any tribunal permitted by law to try cases and controversial not only must be unbiased but also must avoid even the appearance of bias." That is, "to perform its high function in the best way, justice must satisfy the appearance of justice."

As recently as 1998, the Judicial Conference of the United States reiterated its commitment to avoiding the appearance of impropriety on the part of judges. As stated in the Comment to Canon 2A:

"Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and the appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome of the ordinary citizen and should do so freely and willingly. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code." Then, directly addressing Professor Rotunda's complaint that the appearance of impropriety is "too vague to be a standard," the Comment explains precisely what is meant by the standard of an appearance of impropriety: "Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

Thus, the Code tells us, that an appearance of impropriety is one that would cause a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, to believe that the judge has violated a specific provision of the Code, or has violated the law, or has violated court rules, in such a way that impairs the judge's impartiality.

Consistent with that definition, the appearance of impropriety with regard to the judicial seminars is the appearance that a party is buying special access to the judge, both by financing an expert to express ex parte opinions to the judge, and by making a gift to the judge to induce the judge to pay special attention to the expert's ex parte opinion. Thus, judge Smith's conduct violates Canons 2, 2B, and 6, and appears to violate Canon 3A(4), as explained below.

As a general matter, there is nothing in the Code of Conduct for United States Judges that would forbid a judge from attending a privately-sponsored judicial seminar. Also as a general matter, there is no limitation—nor should there be—on the ways in which judges engage in continuing legal education.

However, a specific rule of critical importance in Canon 3A(4), which forbids a judge to consider "ex parte communications on the merits * * * of a pending or impeding proceedings." This rule goes so far as to forbid a judge to receive the ex parte advice even of a "disinterested expert" on the law applicable to a proceeding before the judge, unless the judge gives nothing to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Also relevant is Canon 6, which provides that a judge may not receive reimbursement of expenses to judicial seminars "if the source of such payment * * * give[s] the appearance of influencing the judge in the judge's judicial duties or otherwise give[s] the appearance of impropriety.".

I understand that Judge Smith has attended seminars in which experts addressed legal issues that appeared to be the same as the issues that were presented in matters that were then before him. In addition, it is entirely possible that one or more of the speakers discussed those issues in informal contacts with the judge at those seminars.

Your letter refers, for example, to Gerber v. Medtronic, Inc. This was a products liability case that Judge Smith was adjudicating when he attended a seminar at Hilton Head. At the seminar, experts discussed "Risk, Injury, and Liability." In the Center's words, this seminar "demonstrates the superiority of a legal system that assigns liability to those best able to avoid injury over a system that seeks only to spread losses by assigning them to the 'deepest pockets.'" Also, one of the lecturers at the seminar published a paper the same year arguing for federal preemption of state tort claims involving pharmaceuticals subject to federal regulation.

Upon returning home, Judge Smith granted summary judgment in favor of Medtronic—the party that had provided financial support to the Law and Economics Center, which had sponsored the seminar. The ground for Judge Smith's decision was federal preemption of the state tort claims.

On those facts, there is an appearance that Judge Smith violated Canon 3A(4) by receiving ex parte communications on issues then before him in the Medtronic case.

Under the language of Canon 3A(4), of course, it is irrelevant whether the seminars were funded by a party appearing before the judge. However, the fact that a party before the judge was providing financial support for a seminar at an expensive resort, the fact that the judge stayed at the resort without cost, and the fact that the expert's ex parte presentation was also financed in part by the party, would all heighten the appearance of impropriety. Specifically, the appearance is that the party is buying special access to the judge, both by making a gift to the judge and by financing an ex parte communication by an expert.

In addition, Judge Smith's attendance at the seminar violated Canon 6 because of the source of the reimbursement of the judge's expenses "give[s] the appearance of influencing the judge in the judge's judicial duties or otherwise give[s] the appearance of impropriety."

(C) Judicial disqualification requirements

Your final question to me is whether there is anything in Judge Smith's answers to your written questions that changes the opinion in my letter to the Committee of March 14, 2002 (which I adopt here by reference).

The answer is no. Judge Smith's written answers like his testimony before the Committee, consist of obfuscation and disingenuousness. In addition, those answers confirm the conclusion stated in my earlier letter that Judge Smith has committed repeated and egregious violations of judicial ethics; that to this day he has failed to inform himself of his obligations under the Federal Judicial Disqualification Statute; and that he has been disingenuous before this Committee in defending his unethical conduct.

For example, in answer to your Question 7a, Judge Smith says: "Starting on October 27th, I began to develop concerns that Mid-State's involvement in SEC v. Black might, in the future, require it to play a more prominent evidentiary role in the litigation. I may have told the Trustee and his lawyer that I would consider recusing myself based on the potential for a future appearance of impropriety..." In those two sentences, Judge Smith displays either an ignorance of the nature of conflict of interest law or a desire to confuse the issue with meaningless verbiage ("the potential for a future appearance of impropriety").

First, all conflicts of interest are concerned with potentials—that is, with the risk of substantive ethical violations that might arise in the future. As explained by the Restatement of the Law Governing Lawyers, "conflict of interest" refers to whether there is a "substantial risk" that a substantive violation of one's ethical obligations will arise in the future. (With regard to a judge, this would refer, e.g., to the risk that the judge's impartiality might come to be impaired in the course of the litigation.) To be "substantial," the risk must be "more than a mere possibility." However, it need not be "immediate, actual, and apparent." On the contrary, as explained in the comment to Restatement §121, a risk can be substantial, within the meaning of the rule, even if it is "potential or contingent," and despite the fact that it is neither "certain or even probable" that it will occur. The ultimate test is that there be a "significant and plausible" risk of adverse effect on one's ethical responsibilities.

When Judge Smith said, therefore, that on October 27th he "began to develop concerns that Mid-State's involvement in SEC v. Black might, in the future, require it to play a more prominent evidentiary role in the litigation," he was acknowledging that he had a conflict of interest that required him immediately to recuse himself. That is, he was acknowledging that there was a "significant and plausible risk"—even if it was not "certain or even probable"—that he would find himself adjudicating a case in which he had a substantial financial interest.

Moreover, Judge Smith reiterates that "Mid-State Bank was not a party to the litigation before me." As a Federal Judge for fourteen years, Judge Smith should be familiar with the leading Supreme Court case of Liljeberg v. Health Services Acquisition Corp. He should know, therefore, that it is immaterial whether the Bank had been a party. In Liljeberg, for example, Loyola University was not a party and, indeed, the judge had forgotten that Loyola had any possible interest in the outcome of the case. Nevertheless, simply because the judge had been a trustee of Loyola, the Supreme Court vacated the judgment under the Federal Disqualification Statute (28 U.S.C. §455).

For all of the reasons in my earlier letter and in this one, therefore, I continue to believe that Judge D. Brooks Smith should not be honored with advancement to a distinguished Federal Circuit Court.

Respectfully submitted,
MONROE H. FREEDMAN,
Lichtenstein Distinguished Professor of Legal Ethics.

TRIBUTE TO ROY S. ESTESS

Mr. COCHRAN. Mr. President, one of my State's finest Federal Government officials, Roy S. Estess, announced last week his retirement from the National Aeronautics and Space Administration.

Mr. Estes had served as Director of the Stennis Space Center in Mississippi since January 20, 1989. He has been responsible for managing the center and overseeing the Center's role as the lead center for rocket propulsion testing and the lead center for implementing commercial remote sensing applications. Prior to becoming Director, he had been the Deputy Director of the Center for nine years. He had played a pivotal role in having the Mississippi Test Facility selected as the test site for the Space Shuttle main engine.

Roy graduated from Mississippi State University with a degree in aerospace engineering, and he also completed the advanced management program at the Harvard Graduate Business School.

Roy has held various engineering and management positions during his 42 years of Government service. Thirty-seven of those years have been spent with NASA. His wide ranging experience with NASA included service as a special assistant in NASA Headquarters in Washington, DC, for two consecutive NASA Administrators. Roy also served temporarily as acting director of the Johnson Space Center in Houston, TX.

Among the numerous awards and honors he has received over the years are: the Presidential Distinguished Service Award—twice—and Meritorious Senior Executive Award; NASA's Distinguished Exceptional Service, Equal Opportunity and Outstanding Leadership Medals; the National Distinguished Executive Service Award for Public Service; and Alumni Fellow of Mississippi State University; as well as Citizen of the Year in his home town of Tylertown, MS.

We will truly miss having the benefit of the thoughtful, intelligent leadership of Roy Estess.

He has been a great friend and a trusted source of good advice and counsel for me throughout my career.

I commend Roy Estess on his truly outstanding career and I wish for him much satisfaction and happiness in the years ahead.

PHARMACEUTICAL RESEARCH AND DEVELOPMENT

Mr. HATCH. Mr. President, I rise to speak on a subject related to the debate that we concluded yesterday—at least for the time-being—and that subject is pharmaceutical research and development.

Yesterday, the Senate was unable to reach consensus on the appropriate structure and scope of the much-needed Medicare prescription drug benefit. This was unfortunate for millions of senior citizens across America, including thousands of Utahns.

It is my hope that after the August recess it will be possible for the Senate to match the success of the House of Representatives and pass a Medicare drug bill. I know that we sponsors of the tripartisan proposal will not give up. Senators BREAUX, JEFFORDS, GRASSLEY, SNOWE, and I will redouble our efforts to build support for our plan.

It was also unfortunate yesterday that the Senate adopted S. 812, the Greater Access to Pharmaceuticals Act.

This is the legislation that was originally introduced by Senators MCCAIN and SCHUMER and virtually re-written in the HELP Committee in the form of an amendment sponsored by Senators EDWARDS and COLLINS.

Let me be clear. I am supportive of reasonable changes to the Drug Price Competition and Patent Term Restoration Act, commonly referred to as Waxman-Hatch, or Hatch-Waxman.

I do not oppose amending the Act. However, I do oppose the way in which it was amended, both in the HELP Committee and here on the floor.

I have spoken at some length about the deficiencies of this bill—that appeared only the day before the mark-up on July 10th, and was rocketed straight to the Senate floor the next week. While it was pending for over 2 weeks, it is accurate to say that the central matter under consideration was the

Medicare drug benefit issues and that there was relatively little focus on the specifics of the underlying bill.

Despite the lopsided vote yesterday, I have explained why I thought, and still think, that it would have been preferable to hold hearings on this potentially important but largely un-vetted bill.

As ranking Republican member of the Senate Judiciary Committee, I have made known my objections to the manner in which the HELP Committee has acted to usurp the jurisdiction of the Judiciary Committee. When all is said and done, S. 812 is fundamentally an antitrust bill colored by civil justice reform and patent law considerations.

We all know that S. 812 became the floor vehicle for the Medicare drug debate for one major reason the Democratic leadership recognized that if the regular order were observed and a mark-up were held in the Finance Committee, it was almost certain that the tripartisan bill would have been reported to the floor.

I would point out to my colleagues that have just secured final passage of the conference report to accompany the omnibus bipartisan trade package. This bipartisan bill—perhaps the most important economic legislation of this Congress and a bill that will have lasting impact for years to come—came out of the Finance Committee.

I think most would agree that the Finance Committee has a long track record of reaching bipartisan consensus on major issues facing our country.

Perhaps if the Democratic leadership had given the Finance Committee the opportunity to do its job, the great success of the trade legislation would have been duplicated with respect to the Medicare drug benefit.

Instead, we come to the August recess without a Senate Medicare drug benefit bill to conference with the House.

We also come to August, almost as punishment for failing on the Medicare drug benefit issue, with the flawed HELP Committee substitute to S. 812 now adopted by the full Senate.

We could have held hearings on the actual language of the substitute.

We could have taken time to study the facts and recommendations of the major Federal Trade Commission report of the very provisions of law that S. 812 amends.

We could have learned why the Patent and Trademark Office opposes the language of the bill.

We could have learned what the Food and Drug Administration and Department of Justice, and the Office of the United States Trade Representative had to say about the bill.

But we did not.

Instead of taking the time for a careful evaluation of a potentially important change in the law, for the sake of short-term political tactics in an election year, we brought this bill to the floor in a poisonous atmosphere designed in part to vilify one segment of the pharmaceutical industry.

While S. 812 completely revised most of the McCain-Schumer language and made several significant steps in the right direction, there are significant problems in several of the new features that so mysteriously found their way into the bill on the day before the mark-up.

Since I have done so in some detail previously, I will not catalog these problems again today.

And even though I still oppose various aspects of key provisions of the bill that passed the Senate in the denouement of the Medicare debate yesterday, I want to congratulate Senators McCAIN, SCHUMER, KENNEDY, EDWARDS, and COLLINS for the substantial vote yesterday.

Nevertheless, I hope that our colleagues in the House will study the Senate legislation, and consult with experts in the Administration, including the FTC, PTO, DOJ, FDA, and USTR, and other affected parties as they decide how best to address the matters taken up by the still barely three weeks' old language of the HELP Committee substitute to S. 812.

Again, let me reiterate that I do not oppose legislation in this area. I concur with the majority of the HELP Committee and the Senate that changes need to be made. They just need to be made in a more measured fashion, taking into account the latest recommendations of the Federal Trade Commission.

I plan to continue to participate in this debate as action moves to the House. I will work with the House, the administration, and others with a stake in the outcome of this legislation.

Frankly, my first impression is that the FTC report provides some critical information and thoughtful recommendations for legislation. I was, of course, pleased that the FTC's first major recommendation—allowing only one 30-month stay for all patents listed with FDA at the time that each particular generic drug application is filed with the agency—was precisely what I have advocated.

The Senate-adopted version of S. 812 goes way beyond this policy. Why?

I am also supportive of the FTC's second, and final, major recommendation, to require that any potentially anticompetitive brand name-generic agreements be submitted for FTC review. This is consistent with the suggestions I made to Chairman LEAHY in connection with his bill, the Drug Competition Act, S. 754.

I am still studying the three minor FTC recommendations that aim to promote price competition and hinder the type of collusive arrangements that on a few but very unfortunate occasions have grown out of the 180-day marketing exclusivity provisions of the law.

Taken together these three recommendations appear to promote a very aggressive version of the use-it-or-lose-it policy I have advocated. Not that I pretend to understand the very complicated exclusivity, forfeiture, and transfer provisions of section 5 of the Edwards-Collins Amendment—and a review of the transcript of the mark-up suggests that I am not alone in my confusion—the HELP Committee adopted quasi-rolling exclusivity policy triggered only by an appellate court decision appears to be significantly at odds with where the FTC and I come out on this issue.

It is very unfortunate that the rushed timing brought about by the tactically convenient decision to mesh S. 812 with the volatile politics of Medicare acted to minimize the value of this over-a-year-in-the-making, but still only 2 days' old, FTC study. As was demonstrated over the past two-and-a-half weeks, the charged atmosphere of election year Medicare debates on the Senate floor is not conducive to fine-tuning of complex and nuanced matters of antitrust and patent law.

As co-author, with my House colleague, HENRY WAXMAN, of the statute that S. 812 seeks to amend—the Drug Price Competition and Patent Term Restoration Act of 1984—I have a long-standing interest in legislation affecting pharmaceutical research and development and the continued growth of the generic drug sector.

A key principle of the 1984 Hatch-Waxman Act is balance between the interests of developing the next generation of new medicines and making available generic copies of existing drugs. For reasons I have spelled out over the last two weeks, I am unable to conclude that this principle of balance has been observed in the bill the Senate adopted yesterday.

No law as complex of the 1984 Act is so perfect that it cannot be improved as it measures up to the tests of time and changing conditions. In my view, there have been several unintended and unanticipated consequences of the 1984 law and other changes in the pharmaceutical sector that bear attention by Congress.

I would like to spend a few minutes today to outline several issues beyond the 30-month stay and the 180-day marketing exclusivity rule that, along with the manner in which the drafters attempt to codify FDA's current bioequivalence standards, have dominated the recent Hatch-Waxman reform debate.

On any number of occasions, I have heard proponents of S. 812 cite as their rationale for this legislation the need to restore the old balance and original intent of the Waxman-Hatch Act.

I am afraid that—not only does the legislation fall short on the balance test but this misdirected attempt to look backward to the intent of 1984 may result in missing important opportunities to facilitate the future of drug discovery and increasing patient access to these new medicines.

If you do not ask the right question, you will get the wrong answer.

I wish to share my perspective on how the science of drug discovery and the pharmaceutical marketplace are changing.

Historians will record the recently-completed mapping of the human genome as a major achievement in the history of science.

Each day, progress is made on new avenues of biomedical research. For example, developments proceed apace in the field of nanotechnology—the precise manipulation of molecules at a sub-molecular level. Similarly, there is great excitement related to proteomics—the study of the structure and function of proteins and the interaction among proteins. We know that genes regulate proteins and, as our understanding of human genes becomes more complete, we will spend more and more time and effort on learning about the relationship between genes and proteins and how proteins carry out these assigned roles.

As has been debated on this floor earlier this year and will undoubtedly be debated again this fall, there is great interest in the promising field of stem cell research. While there are a host of ethical issues that need to be addressed in this area, many leading scientists tell us that stem cell research may one day virtually revolutionize the practice of medicine. The nascent field of embryonic stem cell research may succeed in bringing forth the knowledge that will yield new diagnostics and treatments for a host of currently incurable diseases.

We know that many, including more than 40 Nobel Laureates and virtually all leading science organizations, have concluded that the highly promising, emerging science of regenerative medicine will be advanced by the use of human somatic cell nuclear transfer as a method to develop stem cells.

I mention this to comment on how our almost exponential growth in biomedical knowledge is affecting the pharmaceutical industry.

Looking at all these developments compels me to make the following observation:

When we adopted the 1984 Hatch-Waxman law, we were in an era of small molecule medicine and large patient population blockbuster drugs. Times have changed.

It appears that we are rapidly entering an era of large molecule medicine and small patient population drugs. Some believe that we may be entering an age of literally single patient, person-specific drugs and genetic therapies.

We are already in something of a transition away from old-fashioned chemical-based drug products to futuristic biologicals. This will not occur overnight and there will always be a place for old-style drugs in the therapeutic armamentarium. Experts remind us that this new wave of therapeutic protein molecules are more complex than the type of drugs developed in the past. To cite but one example, the molecular weight of Prozac is 345 daltons, compared with the biologic, EPO, which is 30,400 daltons and about 10 times the size of many common old-line drugs.

Over the next decade and into the future, a great deal of inventive energy will be concentrated on developing biological products.

The list of 66 approved medications using cloned recombinant DNA will almost certainly expand. The future of the pharmaceutical industry may one day be dominated by biological products.

As we enter this new era of drug discovery, certain policy questions should be considered by Congress:

Are our intellectual property laws relating to pharmaceuticals adequate to promote the large molecule, small patient population medicine?

For example, currently under Waxman-Hatch, process patents are not eligible to receive any patent term restoration. Why should this be the case? If targeted patient populations get smaller and smaller and the production process patents become relatively more important than composition of matter patents, should we make process patents eligible for Waxman-Hatch partial patent term restoration?

Is it possible that one day in the future there will be more drugs intended for patient populations under the 200,000 patient limit established by the Orphan Drug Act or even patient-specific biological cocktails and gene or protein therapies? If so, would it be appropriate to re-think and re-design any of our intellectual property laws?

Unfortunately, S. 812 as passed by the Senate appears to give less value to patents and treats them more as targets for litigation than valuable insights to be respected.

Another key question is whether Hatch-Waxman, as a general matter, adequately values pharmaceutical intellectual property relative to other fields of discovery?

The American Inventors Protection Act which passed with a broad bipartisan consensus in 1999 permits all patents to be restored up to 17 years of patent life if there is undue administrative delay at the PTO. The 1984-adopted Hatch-Waxman law caps patent term restoration for drug patents due to FDA delay at 14 years. Moreover, most patent applications are reviewed by PTO in one and one-half to two years, so that the effective patent life for most products is actually 18 to 18.5 years.

When all is said and done, most patents run appreciably longer than patents related to drugs due to the 14-year Waxman-Hatch cap. We must ask why time lost at PTO should be treated differently than time lost at FDA? Why should the proverbial better mousetrap be treated better under the patent code than a life-saving drug?

Similarly, the Hatch-Waxman Act provides for five years of marketing exclusivity for all new chemical entity drugs, independent of patent protection. In contrast, it is my understanding that most European nation's and Japan have adopted a 10-year data exclusivity rule. Why not consider harmonizing and move to the European standard for this important information which, but for Hatch-Waxman, would be considered proprietary information?

I want to commend Senator LIEBERMAN, with whom I am working, for his advocacy of an aggressive set of intellectual property incentives in his bioterrorism legislation, S. 1764, that are designed to stimulate the private sector to direct its inventive energies and financial resources to develop the necessary measures to counter biological, chemical, or nuclear terrorism. I will continue to work with Senator LIEBERMAN as he refines his legislation, which among other provisions, provides for day-for-day-patent term restoration for time lost at FDA.

The Senator from Connecticut understands the value of intellectual property incentives in facilitating biomedical research. We should all look closely at this approach in the area of bioterrorism and consider applying these principles to other important areas of medical research.

Another major issue will be whether the current lack of Waxman-Hatch authorization for the review and approval of generic biologicals is sound public policy?

Although the Senate failed to adopt a Medicare drug benefit this week, I remain hopeful and committed to working toward the day when we will get the job done for America's seniors.

Part of the impetus behind the McCain-Schumer bill and other efforts for Hatch-Waxman reform is to help seniors reduce the sometimes staggering out-of-pocket costs of their prescription drugs.

Given the enormous costs associated with providing only limited pharmaceutical coverage under Medicare, that for catastrophic expenses last year estimated by CBO to cost $368 billion over 10 years it is absolutely essential for policymakers to explore enacting regulatory pathways for biological products to enter the market once patents have expired.

As we learned in the 1980s when Congress first passed, than unceremoniously repealed, a law which included Medicare drug coverage, the cost-estimates of providing this benefit will only go in one direction: ever higher and higher, and upward and upward.

According to CBO's March 2002 estimates, those seniors who will spend greater than $5,000 in annual prescription drug costs amount to 10 percent of all Medicare beneficiaries. Astonishingly, they account for 38 percent of total prescription drug spending by Medicare beneficiaries today.

By 2012, CBO estimates that these numbers will skyrocket. Fully 80 percent of all spending for drugs by Medicare beneficiaries will go to those 38 percent of the total Medicare beneficiaries with greater than $5,000 in annual prescription drug spending. This will represent the lion's share of total projected Medicare beneficiary prescription drug spending of $278 billion just ten years from now.

We know that biological products are likely to be more expensive than old-line drug products. Sooner or later, we must face up to the generic biologics challenge. We literally cannot afford to continue avoiding this issue.

Now that the HELP Committee has finished, for the time being at least, its foray into antitrust policy, patent law, and civil justice reform, perhaps it could find the time to hold hearings on matters that are actually within the committee's jurisdiction, such as the legal, scientific, and policy issues related to the FDA review of generic biologics.

As far as I am concerned, the sooner we change the law, the better. As more and more biologics come onto the market, we will face transitional products issues and carve out requests that will greatly complicate the legislative process. I speak from experience—I lived through the so-called pipeline issues in 1984 and it was not pretty.

Congress simply cannot, and should not, attempt to enact and sustain over time a Medicare drug benefit unless we seriously explore what steps must be taken to end an FDA regulatory system that acts as a secondary patent for biological products. Patient safety must never be jeopardized. The task will not be easy.

In this regard I must cite an article by Lisa Raines, published in The Journal of Biolaw & Business in 2001 entitled, "Bad Medicine: Why the Generic Drug Regulatory Paradigm is Inapplicable to Biotechnology Products." Lisa was a special friend to all of us interested in biotechnology. She had experience both in the public sector—at the old Congressional Office of Technology Assessment—and in the private sector—with the Biotechnology Industry Organization and Genzyme. One of the many tragedies of September 11 was that Lisa was among the passengers on the plane that was crashed into the Pentagon. We all miss her indomitable spirit and friendship.

Let me stipulate, as the article points out, that it will be difficult to manufacture generic equivalents of biologicals. However, I do not think it is an impossible task. As we attack this problem we will need to adopt one of the mottos of the Marine Corps: the difficult we do immediately, the impossible takes a little longer.

I think it would be wise to charge an expert organization such as the United States Pharmacopeia to convene a group of experts, in alliance with the FDA, to begin to identify the technical issues that need to be addressed in order to bring about bioequivalent generic biologicals, including clinical trials if necessary.

Some will argue that generic biologics cannot be manufactured, but unless we try to invent a fast track approval process for biologics, I do not see how we will ever know how to overcome the technical obstacles.

It seems to me that one of the highest priorities of the next Commissioner of Food and Drugs will be to make certain that the leadership of FDA's Center for Biologics is committed, in partnership with the private sector and academic researchers, to identifying the issues and attempting to find solutions to the many issues that need to be resolved in order to make generic biologics.

I want to acknowledge that Senator ROCKEFELLER has introduced a legislative proposal in this area although I have problems with his study and automatic pilot features.

The last overarching issue that I will raise today is how the structure and strength of the research-based segment of the American pharmaceutical industry has changed since 1984.

On the one hand, we have seen substantial growth in the biotechnology industry. There are now some 1,400 U.S. biotech firms, although only 41 of these biotech companies have any revenues from FDA-approved products.

On the other hand, I think that Congress should consider whether there are any appropriate actions we can, or should, take today to make sure that America retains a vibrant research-based large-firm pharmaceutical sector. I have nothing against the several new consolidated multinational drug firms but we must never allow our national leadership in biomedical research to erode. I suggest my colleagues review the transcript of the March Commerce Committee hearing on the McCain-Schumer legislation and examine the thoughts of Senator WYDEN related to the financial health and status of the product pipeline of the large drug firms.

Senator WYDEN, with his long ties to consumer groups like the Gray Panthers, is certainly no patsy of the drug industry. But the Senator from Oregon clearly understands that while we politicians always want to focus on how to help distribute the golden eggs—the new medicines—to our constituents, we also need to pay attention to the health of the goose. It is true that the pharmaceutical industry has had a great run of success since about 1994 when the Clinton health care plan was rejected. But today's dry pipelines presage problems tomorrow.

The fact is that the drug discovery business is a high risk, high reward endeavor and Congress can do real, and perhaps irreversible harm, to some firms if we choose the wrong intellectual property policies. We need to discuss if there are appropriate ways to increase our nation's biomedical research capacity, such as the set of proposals set forth in the Lieberman bill.

We should not be so quick to vilify the research-based pharmaceutical industry as was done repeatedly for the last three weeks. We know what happened. Political and tactical considerations led some to believe there needed to be a villain in this Medicare debate. In a sense, history repeated itself as some took a page right out of the Clinton Administration play book.

Here is how the book, The System, authored by David Broder and Haynes Johnson, two highly respected journalists, described the tactics of the Clinton White House in trying to pass its too grand health care reform plan in 1993 and 1994:

> . . . Clinton's political advisers focused mainly on the message that for "the plain folks it's greed—greedy hospitals, greedy doctors, greedy insurance companies. It was an us-versus-them-issue, which Clinton was extremely good at exploiting."
>
> Clinton's political consultants—Carville, Begala, Grunwald, Greenberg—all thought "there had to be villains" . . . at that point, the insurance companies and the pharmaceutical companies became the enemy.

Unfortunately, that strategy reappeared over the last few weeks and we lost an opportunity to debate in a more reasoned fashion the complex set of issues and delicate balance required in pioneer-generic issues that I have just described. Nor did we do any great justice in delving beyond the surface and into the substance of the issues addressed in S. 812.

I have made it clear that my vision and preference for Waxman-Hatch reform is to help facilitate a constructive dialogue among interested parties. We all could benefit by a fair exchange of viewpoints on a broad range of innovator/generic firm issues, including the matters I have just outlined.

The issues that are addressed in the HELP Committee Substitute to S. 812 are important issues. So are the notice provisions contained in Senator LEAHY's bill, S. 754.

Unfortunately, the politics of Medicare prevented the debate over S. 812 from unfolding in a manner that encouraged a thoughtful discussion of even these narrower set of issues, let alone the initiation of a public dialogue of the broader—and perhaps more significant in the long run—Hatch-Waxman reform issues that I have just described.

I wanted to take this opportunity to set forth these ideas for the future consideration of my colleagues and other interested parties.

I look forward to debating these issues in the future and to working with the House and other interested parties to further perfect the Senate-passed version of S. 812.

THE EFFORTS OF STUDENTS AT MONTELLO MIDDLE SCHOOL AND HIGH SCHOOL

Mr. FEINGOLD. Mr. President, I would like to take a moment to recognize a group of students from Montello, WI, who have reached out to show their support and appreciation for the U.S. Navy sailors on duty in the North Arabian Sea. In support of Operation Enduring Freedom, 168 students from the Montello Middle School and High School have dedicated tremendous time and effort to showing their support for our sailors on board the USS *Seattle* and the USS *Detroit*. Their appreciation for the work our sailors and military personnel are doing overseas should be an inspiration to every American.

This group of students, led by their teacher Catherine Ellenbecker, sent 35 boxes of snacks and cookies to the crew aboard these ships. They also collected 18,892 golf balls for the sailors and were given a donation of 100 golf clubs by B&G Golf in Appleton, WI.

By sending these gifts, the students greatly improved the morale of those on board. As one Navy Captain wrote, "Your gifts and many good wishes have helped to bring home a little closer today." A total of 116 students continue to correspond with the USS *Detroit* and 52 other students have pen pals on the USS *Seattle* through both emails and letters.

I applaud these students for their thoughtfulness, their diligence, and above all for their support of our men and women in uniform. These students recognize that we are safe here at home thanks to the hardworking men and women of the U.S. military. It gives me great pride to know that students from my home state of Wisconsin have done so much to support these sailors. I commend the students from Montello Middle School and High School for their efforts.

ADDITIONAL STATEMENTS

IN MEMORIAM: MARI-RAE SOPPER

• Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Mari-Rae Sopper, who lost her life on September 11, 2001. Ms. Sopper was a 35-year-old lawyer and gymnastics coach when the flight she was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Ms. Sopper was a native of Inverness, Illinois and attended William Fremd High School in Palatine, Illinois. At the age of 15 she set the goal of becoming a champion gymnast. She succeeded, becoming all-American in four events, the school's Athlete of the Year and the State's Outstanding Senior Gymnast of the Year.

Larry Petrillo, her high school gymnastics coach, remembers her as brash and committed. "One thing she taught me is, you never settle for less than you are capable of. We should never accept limits. We should always fight the good fight. She was a staunch supporter of gymnastics and what's right," he recalls.

Upon graduating from Iowa State University with a degree in exercise science, Ms. Sopper earned a master's degree in athletics administration from the University of North Texas and a law degree from the University of Denver. Ms. Sopper was an accomplished dancer and choreographer and continued to coach at gymnastics clubs.

Ms. Sopper practiced law as a Lieutenant in the Navy's JAG Corps, focusing on defense and appellate defense. She had left the Navy JAG Corps and was an associate with the law firm Schmeltzer, Aptaker & Sheperd, P.C. when she found her dream job: to coach the women's gymnastics team at the University of California at Santa Barbara.

It was a one year appointment and Ms. Sopper was looking forward to the challenge. Her mother, Marion Kminek, says Mari-Rae was excited about the opportunity. "I said go for it. Life is too short. It was something she had always wanted to do and she was so happy and excited," recalls Kminek.

At the time of her death, Ms. Sopper was moving to Santa Barbara to begin her appointment. Her close friend, Mike Jacki, recalls "This was to be a new adventure for Mari-Rae, and an opportunity to get back into the sport she loved. We have lost a very special person. She was prepared to make her dream come true, and in an instant it was gone."

Mari-Rae Sopper is remembered for her loyalty, strong values, excellent work ethic and spirit for life. She is survived by her mother, Marion Kminek and stepfather, Frank Kminek, her father Bill Sopper, sister Tammy and many loving friends.

None of us is untouched by the terror of September 11th, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Mari-Rae Sopper, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.•

IN RECOGNITION OF SISTER ROSA ALVAREZ

• Mr. CARPER. Mr. President, I rise today to recognize Sister Rosa Alvarez for her commitment to social service for Delaware's immigrants. She has dedicated her life to opening doors to families that otherwise might have been closed by language and cultural barriers. In doing so, she has become a lifeline for Georgetown's Hispanic community.

In the last decade, Latino immigrants have flooded Georgetown, transforming the ethnic and cultural backdrop of southern Delaware. Sister Rosa has helped the community overcome language barriers so that they can start healthy families and lead productive lives.

Sister Rosa has been present for hundreds of area births. Known as "la abuelita," or "little grandmother," Sister offers help to Georgetown's mothers and children, particularly those mothers who are children themselves. Placing heavy emphasis on prenatal care, she helps young mothers make doctors appointments and provides transportation if necessary, to make sure they get to them. She successfully campaigned for vitamins for the community's pregnant mothers, and actively mentors parents who need assistance.

Sister Rosa works with La Esperanza, a community center for Sussex County's Latino population doing fantastic work in its own right, to provide social services for thousands of immigrants faced with inaccessible healthcare, domestic violence, reduced education and legal complications.

Working alongside Mark Lally and Marjorie Biles in my Georgetown office, Sister Rosa helps the downstate Hispanic community navigate the maze of paperwork often required to get work visas, Medicaid benefits and housing. She helps Spanish-speaking immigrants fill out English language forms and devotes time every week to helping families translate and pay their bills.

At some point, all of us need to look back and take stock of where we have been and where we are going. Have we lived our lives in the service to others, or merely for ourselves? At the end of the day, can we say with confidence that we did our best and worked to our fullest potential?

I had the pleasure of meeting Sister Rosa at La Red, a Hispanic health center in Sussex County, DE, earlier this year. I was struck by her boundless energy and kind heart. She offers people hope. Her dedication intensifies the work of others, and pushes us to take an introspective look at the purpose of our own lives.

Mahatma Ghandi, one of Sister's idols, said in the 1920s, "If we are to reach real peace in this world, we shall have to begin with the children." Today his sentiments are seen in her actions.

At a time when the face of our Nation is in constant flux and the call to service rings louder than ever, it is individuals like Sister Rosa who leave me feeling hopeful about our country's future. It is she who brought many in the community to my office for assistance, she who is empowering community leaders, she who is making a difference with her infectious smile.

I rise today to honor and thank Sister Rosa for her selfless dedication to the betterment of others. She is a remarkable woman and a testament to the community she represents.•

IN CELEBRATION OF EAST SIDE CHARTER SCHOOL

• Mr. CARPER. Mr. President, I rise today to celebrate the East Side Charter School in Wilmington, DE. Five years after opening their doors to some of the State's most economically and educationally disadvantaged children, they have amassed a record of meeting and exceeding expectations. The achievement gap is narrowing in the First State, and the East Side Charter School is leading the way.

Located in the middle of what is called the projects, in properties managed by the Wilmington Housing Authority on the east side of Wilmington, East Side Charter School is home to low-income students in grades K–3 who face unique challenges.

Over 80 percent of the students at East Side Charter School live in poverty. Most of the children live with only one parent, few of whom completed any college education. Many live in neighborhoods with high incidence of violence and crime, and some are without proper nutrition and health care.

But at this school, kids can come early and stay late. They have a longer school year. They wear school uniforms. Parents sign something akin to a contract of mutual responsibility. Teachers and administrators are given freer reign to innovate and initiate. The attendance rate is nearly perfect. Parents are given a better chance to help children fulfill their potential.

At this school the halls are filled with talented faculty, skilled supervisors, and dedicated staff. Principal Will Robinson challenges students and empowers them to meet those challenges.

When the East Side Charter School started 5 years ago, the odds were stacked against its success. The school has flourished though, in spite of the daunting statistics. One of almost 200 public schools in the State of Delaware, from the wealthiest to those struggling the most, East Side Charter School was the only one in the last few years where every student tested met or exceeded our State's standards in math.

As Governor of Delaware, and now as Senator, I have shared with people across America the story of East Side's incredible success. I tell them about the teachers like Barbara Juraco, who daily demonstrate unparalleled commitment and patience, the support staff that's there when needed, the students who again and again exceed expectations, and the parents and family members who understand they have an obligation to be full partners in the education of their children. Together, they serve as an inspiration and an example to communities across the country.

Delaware is a small State, but we are building a growing record of achievement in public school education. Statewide, scores have again increased in all grades and across ethnic lines for reading and math, proving that we are closing the achievement gap.

Much of what we have accomplished in Delaware, and at the East Side Charter School, serves as a model for our Nation.

I rise today to offer my full support as future generations of students and educators at East Side Charter School ready to face the challenges of the 21st century and overcome them.•

IN RECOGNITION OF LTC JOHN BURKE'S RETIREMENT

• Mr. CARPER. Mr. President, I rise today in recognition of LTC John Burke upon his retirement from the U.S. Air Force. John is the longest certified C–5 pilot in the history of the U.S. Air Force, and has served his country with distinction for 32 years.

Since 1995, Lieutenant Colonel Burke has served as Chief Pilot for the 709th Airlift Squadron at Dover Air Force Base. Assigned to overseas mission support, joint service exercises, humanitarian relief, Presidential movement and aircrew training, he has been indispensable to his squadron's success.

In his latest position, Lieutenant Colonel Burke was responsible for evaluating procedures and techniques that ensured the safety and efficacy of the C–5 in its strategic airlift missions, as well as evaluating its pilots.

As you may know, the C–5 is the Air Force's largest cargo aircraft, capable of quickly moving large numbers of men, women and materiel to troubled areas around the world.

The C–5 will ensure our military readiness for generations to come, as will Lieutenant Colonel Burke's legacy of leadership and heroism.

Lieutenant Colonel Burke is a well-rounded, seasoned officer with a record for consistently combining effective leadership and professionalism. He leads by example—motivating people, making key decisions, producing results and maintaining high morale. He has amassed an impressive 7,400 flight hours and frequent accolades.

Throughout his distinguished career, Lieutenant Colonel Burke flew in vital missions and earned numerous decorations. In a career that spans three decades, Lieutenant Colonel Burke has served in significant military campaigns, such as Nickel Grass, Desert Shield and Desert Storm, Operation Enduring Freedom, and Operation Just Cause.

On May 30, 1972, barraged by anti-aircraft fire flying over Southeast Asia, Burke landed in Song Be to deliver much needed fuel and ammunition to allied troops fighting hostile forces, earning the Distinguished Flying Cross. Additionally, he has garnered numerous other medals and commendations, including the Meritorious Service Medal, the Aerial Achievement Medal, the Humanitarian Service Medal, the Air Force Longevity Service Award Ribbon, and Republic of Vietnam Gallantry Cross.

Military service runs in the New York native's blood. Lieutenant Colonel Burke's father was a World War II Army Air Force navigator and bombardier, and his mother was an Army nurse. Joining the U.S. Air Force in 1970, Lieutenant Colonel Burke carried on the family tradition of military allegiance.

LTC John Burke marked his career with consistent, exemplary leadership in service to his Nation, earning a reputation for loyalty, dedication, integrity, and honesty. Upon his retirement he leaves a legacy of commitment to freedom that generations will follow. I commend him for his remarkable service and wish him the best in his future endeavors. He is a patriot in every sense of the word.•

NATIONAL GUARD COUNTER DRUG STATE PLANS PROGRAM

• Mr. GRAHAM. Mr. President, I rise today to commend the National Guard and urge my colleagues to support the National Guard Counter Drug States Plan Program.

The National Guard role is to provide counterdrug and drug demand reduction support as requested by local, State, and Federal law enforcement agencies and community-based organizations with a counterdrug nexus. The

National Guard provides this support in consonance with the Office of National Drug Control Policy and Department of Defense guidance.

The mission of the National Guard Counter Drug Program is to assist and strengthen law enforcement and community-based organizations in reducing the availability of, and demand for, illegal drugs within the State and Nation through professional military support. The principal elements of counter-drug military support include highly skilled personnel, specialized technology, facilities, and diverse types of military training and skills. Operationally, this translates into port security assistance, operating non-intrusive inspection devices, aerial and ground reconnaissance, technical support, general support, community anti-drug coalition support, youth drug awareness programs, and use of training facilities.

The National Guard offers numerous military-unique skills to the counterdrug mission. These include linguist and translator support, investigative case and analyst support, communications support, engineer support, diver support, marijuana eradication support, transportation support, maintenance and logistical support, cargo and mail inspection, training of law enforcement and military personnel, surface reconnaissance, and aerial reconnaissance. In addition, the National Guard provides command, control, communications, computers, and information, C4I, integration; logistics planning; tactical and strategic operational and intelligence planning; the ability to support around-the-clock operations; liaison skills with civilian authority and interagency cooperation; resource integration; force protection training; operational security enforcement; communications security enforcement; and risk management skills.

We must fully fund the National Guard Counter Drug States Plans Program. The National Guard's success in interdicting drugs and other contraband contributes to the security of the Nation as a whole. Using my home State as an example, Florida has valid support requests from law enforcement and community-based organizations that would require approximately 250 personnel. Under the constraints of the estimated fiscal year 2003 budget, the National Guard was able to field 111 personnel, resulting in unfunded requests for 139 personnel and an unfunded requirement of 99 personnel based on an optimal program size of 210 personnel. In fiscal year 2002, the State of Florida fielded 148 personnel, and unfunded personnel requests totaled 102.

I am also a great believer in a balanced counterdrug program, both interdiction and demand reduction. The National Guard does some of the finest demand reduction work in the country. Young people look up to these citizen-soldiers and listen to what they say.

Counterdrug personnel assigned to perform drug demand reduction activities utilize numerous military skills including command, control and communication skills, tactical and strategic planning, liaison skills and training design and implementation skills. These assist communities with work plans, realistic time lines and assigned responsibilities. This support is essential for many community-based organizations in order to mobilize and sustain their efforts.

Additionally, the military value system and discipline instilled in all counterdrug personnel creates a significant demand to serve as role models and mentors supporting a wide array of prevention activities. Community based prevention organizations rely on National Guard personnel to incorporate this unique military orientation into activities such as youth camps, ropes challenge courses, high adventure training, high school drug education, Drug Education for Youth, mentoring, and other prevention and skill training activities.

The National Guard also provides unique facilities and equipment such as armories, training sites, obstacle courses, aircraft and wheeled vehicles in support of community prevention strategies. These facilities and equipment are often the only resources available to conduct youth camps, coalitions meetings or experiential learning initiatives. The leadership skills and military values embedded within our youth hopefully provide a morale foundation for future generations, as well as conveying to many thousands of youth the value of military service.

The National Guard Counter Drug States Plan Program benefits not only the States, but also the Department of Defense. The primary benefit is increased combat readiness, as well as significant Guard experience in Military Operations Other than War, MOOTW, within the continental United States and abroad. Service in the counterdrug program also provides members with joint experience and inter-service cooperation skills for immediate response to national emergencies. The National Guard, in many communities, is the only real connection the public has to our armed services. The visibility of uniformed National Guardsmen provides a deterrence to the smuggling of drugs, arms, explosives, weapons, aliens, and other contraband, as well as direct support for interdiction operations.

I can not say enough good things about what the National Guard does for the State of Florida and the Nation. I am grateful that it appears we have avoided personnel reductions for fiscal year 2003, which we struggled through in fiscal year 2002, but I am concerned that we may have a funding shortfall and personnel reductions in fiscal year 2004. I urge my colleagues to review the great merits of the National Guard Counter Drug State Plans Program, given the National Guard's integral role in both the National Drug Control Strategy and Homeland Defense Strategy. Please help us fully fund and deploy the National Guard for the protection of our United States.•

WELCOMING BOETTGER BABY

• Mr. CRAPO. Mr. President, I rise today to announce the birth of a fine young lady, Emily Copeland Boettger. Emily is the first child of Scott and Sally Boettger, and was born on May 8, 2002. Scott and Sally live in Hailey, Idaho, and are active in natural resources and environmental issues in the state. Scott serves as the Executive Directory of the Wood River Land Trust, and Sally serves as the Director of Development of The Nature Conservancy in Idaho. I have spent time in the Boettger's home and enjoyed their expertise and experience in outdoor activities. I'm happy to report that mother, father, and baby are doing well, although Scott and Sally are probably getting used to fewer hours of sleep.

Emily is the granddaughter of Cherry and William F. Gillespie, III, of Wilmington, DE, and Doug and Gail Boettger of Spring City, PA. I know they join with me in sending best wishes and welcome greetings to young Emily.

It is always a joyous event to bring a new family member into the world. Emily has been much-anticipated and has held a place in the hearts of her parents and family for many months now as they have awaited her arrival. As the father of five myself, I know that Scott and Sally are in for a most remarkable, frustrating, rewarding, and exciting experience of their lives. Emily will make certain of that. Our best wishes go out to the Boettger family on this most auspicious occasion.•

IN MEMORIAM OF BRIAN HONAN, COUNCILLOR, BOSTON CITY COUNCIL

• Mr. KERRY. Mr. President, Tuesday evening the Boston City Council lost one of its most capable and well-liked members, Councillor Brian Honan. I rise today to join with his family, constituents and staff in mourning the loss of this universally loved man. His brief time with us proved that politics can make a difference in people's lives, that the values of a small neighborhood can help guide a city, and that integrity and humility can transcend disagreements and carve out common ground.

You don't have to search far to see what Brian stood for. There are two structures in the Allston neighborhood of Boston that stand as the pillars of his dedication and commitment he brought to public service. The West End Boys and Girls House sits on the opposite side of Ringer Park from Mary and Patrick Honan's home on Gordon Street, and together these two buildings symbolize the values of family and community that guided Brian through the public life he led and loved.

Prior to being elected to the Boston City Council in 1995, Brian served as a Suffolk County Assistant District Attorney for six years under District Attorney Ralph Martin. Brian coordinated the prosecution of 15,000 cases a year in the Roxbury District and through his dedication and tenacity rose to be a supervisor in both the Roxbury and Dorchester District Courts. Motivated by a fierce instinct to bring violent criminals to justice, Brian created fast-track prosecutions for domestic violence and gun-related crimes and helped bring swift justice to those who put our families and communities in danger.

Once sworn-in to the Boston City Council in 1996, Brian served with distinction as Chair of the City Council's Committee on Banking & Community Investment and the Committee on Residency. Through these committees, Councillor Honan co-sponsored an order to provide relief from costly prescription drug costs for Boston's seniors and helped increase housing and commercial opportunities by increasing much-needed capital improvement funds. Brian also fought for the Living Wage Amendment, sponsored legislation to preserve affordable housing for seniors, and co-sponsored the Domestic Partnership legislation.

It is on the streets and in the homes of Allston-Brighton where Brian's most lasting achievements can be seen. After becoming a member of the West End House when it first opened its Allston Street location in 1971, Brian stood with his older brother Kevin as its most passionate advocates and defenders. As a councillor, he helped Allston-Brighton build a shining new library in Allston and a brand new Oak Square YMCA facility in Brighton, which will stand as two enduring symbols of the dedication he brought to elected office. As a leader on such initiatives as the Allston-Brighton Area Planning Action Council and the Allston-Brighton Healthy Boston Coalition, Brian demonstrated his enduring commitment to helping children, seniors and families have an enjoyable and productive life.

From the classrooms of St. Patrick's High School to Boston's courtrooms, Brian demonstrated a quiet strength that makes his premature departure all the more painful. Together with my constituents across Boston, I treasure the time we shared with him. I join with his family and friends in mourning his passing.●

RECOGNITION FOR THE NATIONAL HEALTH CENTER WEEK 2002

● Mr. JOHNSON. Mr. President, I recognize the National Health Center Week that will be celebrated from August 18, to 24, 2002. Health centers provide services to over ten million people living in under-served areas throughout the United States, with about 50 percent of the users being from rural areas such as South Dakota. It gives me great pride to have been selected for the National Association of Community Health Centers' "2002 Community Super Hero" award which was presented to me earlier this year.

Community health centers have a long-standing history of providing quality primary health care services to medically under-served populations. Providing care to one of every 12 rural Americans, health centers provide medical attention to those who would otherwise lack access to health care. For less than one dollar per day, these health centers provide care to both individuals and families. Today, there are 23 community health centers serving 31,0000 individuals across my State and I am working, along with the President and my colleagues in Congress, to greatly increase the number nationwide. I am pleased, as a member of the Senate Appropriations Committee, to have recently voted to increase funding by $190 million for a total of $1.53 billion for the Nation's community health centers next year. This funding level represents a $76 million increase over the President's Fiscal Year 2003 budget request.

A unique aspect of community health centers allows them to individualize their center to met the specific needs of a particular community. By partnering with community organizations, schools and businesses, health centers are able to best meet the health care needs of individuals in each respective community.

Let me also pay special recognition to John Mengenhausen, Chief Executive Officer of Horizon Health Care in Howard, South Dakota and the National Association of Community Health Care Center's Board Chair, Scot Graff, Executive Director of the Community Health Care Association in South Dakota, and all of the staff at the association for the fine work they do on behalf of South Dakota. Furthermore, I want to commend all of the dedicated health care professionals in the health centers throughout South Dakota who work day in and day out devoting their lives to delivering critical health care to those most in need.

Once again, it gives me great pleasure to recognize the National Health care Center Week on behalf of the South Dakota Community Health care Association and the many thousands of South Dakotans who may continue to benefit through this important program.●

CHILDREN, YOUTH AND GUN VIOLENCE

● Mr. LEVIN. Mr. President, "Children, Youth and Gun Violence," a report released last month by the David and Lucille Packard Foundation, questions the effectiveness of programs to train children and young people to stay away from guns, or behave responsibly around guns. The report states parents should instead focus their efforts on keeping guns away from kids, except under supervised circumstances. The problem of kids gaining access to guns is not small. According to statistics compiled by the Packard Foundation, each year in the United States more than 20,000 children under age 20 are killed or injured by firearms of which more than 3,000 are killed.

These figures emphasize the need to do all we can to keep kids from gaining unsupervised access to guns. I cosponsored Senator DURBIN's Child Access Prevention Act because I believe it is a common sense step in this direction. Under this bill, adults who fail to lock up loaded firearms or an unloaded firearm with ammunition could be held liable if a weapon is taken by a child and used to kill or injure him or herself or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. I support this bill and hope the Senate will act on it.

The Packard Foundation study brings to light the importance of common sense gun safety legislation. It also offers nine recommendations to policymakers and parents to prevent easy access to guns. I ask unanimous consent that the nine recommendations included in the Packard Foundation report, entitled "Children, Youth and Gun Violence," be entered into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RECOMMENDATIONS

RECOMMENDATION 1

Congress and federal health agencies should set a goal of reducing youth gun homicide to levels comparable to those of other industrialized nations, engaging in a comprehensive effort to identify the causes of youth gun homicide and reduce its prevalence in American society.

RECOMMENDATION 2

Federal and state public health agencies should make youth gun suicide a central focus of their gun violence prevention and suicide prevention activities, developing and assessing methods for keeping guns away from youth at risk of suicide.

RECOMMENDATION 3

Federal, state, and local public health and law enforcement agencies should make a commitment to collecting better data about gun-related fatalities and injuries by supporting development of a national system for reporting violent deaths and injuries and a system for tracing all guns used in crimes.

RECOMMENDATION 4

Policymakers, mental health professionals, and educators should develop, implement, and evaluate treatment programs that help youth exposed to gun violence cope with trauma.

RECOMMENDATION 5

Federal and state policymakers, in conjunction with public health experts and educators, should initiate creative public awareness and educational efforts—and evaluate existing approaches—to encourage stronger parental monitoring of children's exposure to guns and safe storage of guns in the home.

RECOMMENDATION 6

Federal, state, and local policymakers should develop and evaluate comprehensive, community-based initiatives to reduce youth gun violence—partnering with schools, faith communities, community service programs, parents, and young people.

RECOMMENDATION 7

Police should complement their existing efforts to deter youth gun carrying by developing and evaluating law enforcement approaches that include extensive police-community collaboration.

RECOMMENDATION 8

Congress should extend the jurisdiction of the Consumer Product Safety Commission or the Bureau of Alcohol, Tobacco and Firearms to regulate guns as consumer products, establish regulations requiring product safety features on guns, and evaluate the effectiveness of product safety interventions. State governments should extend similar authority to their consumer product safety agencies.

RECOMMENDATION 9

Congress and state legislatures should institute tighter restrictions on gun sales so that fewer guns illegally end up in the hands of youth. A variety of approaches should be implemented and evaluated—in particular, closer oversight of licensed dealers, regulation of private sales, and mandated licensing of gun owners and registration of guns.•

TRIBUTE TO MAJOR GENERAL JOE G. TAYLOR, JR.

• Mr. INHOFE. Mr. President, today I pay tribute to a great Army officer, and a great soldier. This month, Major General Joe G. Taylor, Jr. will depart the Pentagon to assume new duties as the Commanding General, U.S. Army Security Assistance Command in Alexandria, VA. For over two years, he has served as first the Deputy then the Chief of Army Legislative Liaison where he has proven himself to be a trusted advisor to the Secretary of the Army and the Chief of Staff.

During his tour as the Chief of Army Legislative Liaison, he guided the Army's relationship with Congress, wielding a deft and skillful touch during a period of tremendous change. Throughout this period, Joe Taylor ably assisted the Army's senior leadership in dealings with Members of Congress and their staffs in helping them to understand the needs of the Army as it faces the challenges of a new century. His leadership resulted in cohesive legislative strategies, responsiveness to constituent inquiries, well-prepared Army leaders and a coherent Army message to Congress.

Joe Taylor's career has reflected a deep commitment to our Nation, which has been characterized by dedicated selfless service, love for soldiers and a commitment to excellence. Major General Taylor's performance over twenty-seven years of service has personified those traits of courage, competency and integrity that our Nation has come to except from its Army officers. The Pentagon and the Army Secretariat's loss will be the Army Security Assistance Commands gain, as Major General Taylor continues to serve his country and the Army. On behalf of the United States Senate and the people of this great Nation, I offer our heartfelt appreciation for a job well done over the past two years and best wishes for continued success, to a great soldier and friend of Congress.•

RETIREMENT OF ADMINISTRATOR JANE GARVEY FROM THE FEDERAL AVIATION ADMINISTRATION

• Mr. ROCKEFELLER. Mr. President, a little more than 5 years ago, the Commerce Committee held a hearing to test the mettle of a nominee to head the Federal Aviation Administration. The nominee came to Washington from her long-time home of Massachusetts to serve in the Federal Highway Administration, and her years of experience in various modes of transportation—primarily highways and airports—made her a strong candidate for the FAA position.

At the time, Jane Garvey sat before us as the first nominee to be appointed to a fixed, 5-year term to head the FAA. For years, the position of chief of the FAA had served as a revolving door—with many well-qualified people, but few able or willing to stay. The lack of continuity left its mark on many projects—the headlines, often from Congressional sources or the General Accounting Office, usually read "delayed and over budget." That changed when Jane Garvey took the reins of the FAA on August 4, 1997.

We knew that the FAA faced a daunting task in rebuilding and modernizing our air traffic control system and expanding our nation's airports. Over these last 5 years, we have watched and learned as Administrator Garvey testified countless times before numerous committees about the needs of the agency and her future vision of the FAA.

The FAA Administrator's job is one of the toughest in government. When things go right, no one notices; but when things go wrong, everyone knows—and that is when the finger-pointing starts. Jane Garvey has handled this pressure with tremendous grace and an uncommon resolve to improve on the FAA's core commitment to safety.

Every day, over 35,000 commercial flights travel across our skies—safely and efficiently. During the last several years, safety-related tragedies have been the exception, not the norm. Through Administrator Garvey's leadership and the dedicated staff of the FAA, we have come a long way to revamping the FAA's mission, its organization, and its future.

Today, there are major airport expansion construction projects across the country, as we make room for an expected 1 billion annual passengers by 2013. Thousands of new pieces of equipment have been tried, tested, and installed to increase the reliability and capacity of the air traffic control system.

Jane Garvey has worked tirelessly with all of us—the various segments of the aviation community and the employees of the FAA—to improve the performance of the FAA. In fact, Government Executive magazine's privately run Federal Performance Project Team gave the FAA high scores in its 2002 report card for improving in all five management areas that it grades. Since its last report card 3 years ago, Government Executive noted Administrator Garvey's vast improvement of human resources management at the agency, and her significant progress in technology upgrades and creating tools for accountability.

Administrator Garvey's tenure has been marked by a tremendous improvement in labor relations at the FAA. Her commitment to the 49,000 employees of the FAA is well recognized, and has contributed significantly to the productivity and achievement of the agency as a whole. She has established a better working relationship with the nation's 20,000 air traffic controllers than at any point over the past 20 years. Indeed, the president of the National Air Traffic Controllers Association recently identified her as the "finest administrator in the history of the FAA."

Since Jane Garvey took over at the FAA in 1997, I have had the opportunity to see her in action, and it has been a pleasure to work with her on a number of issues of importance to West Virginia and the nation. Her "can-do" spirit is infectious and has resulted in an agency that strives to improve on past performances and does not blindly accept shortcomings as inevitable. Through her tireless support of many of the important initiatives that we have worked on together, she has proven to be not just a good administrator, but a good friend.

Five years seems like along time in Washington, but perhaps it is too short, for we will miss the strength and character of Jane Garvey. Our country owes her a great debt of gratitude for profound dedication to our aviation system.

Finally, I would like to submit for the record some excerpts from a speech

Administrator Garvey recently delivered before the Aero Club of Washington. Her remarks offer valuable perspective and direction for all of us who work in and care about aviation policy.

Today, you could say that our nation's economic engines run on jet fuel. The economic impact of aviation is so big it's almost beyond measure. Revenues generated by airports like Chicago, O'Hare, Dallas/Fort Worth, and Hartsfield Atlanta run in the billions. U.S. aerospace industries have become America's leading exporter in the manufacturing sector. And as we were reminded so painfully after September 11, tourist travel, which depends on the airlines, accounts for one out of seven jobs in America, and is among the top three employers in 29 states.

In this era of globalization, technologies like cable modems and cell phones make vital connections—still, they're virtual connections. If you really want to reach the rest of the world, you've got to board a plane. Simply put, there is no globalization without aviation. That's why, on any given day, as many as 1.9 million Americans take to the skies on one of 33,000 commercial flights. Internationally, each year, that number is as high as 1.6 billion—more than one-fourth of the people on this planet.

We chart our progress by numbers like these—billions of passengers, billions in revenue, millions of tons of cargo, minutes (at most!) of delay. But, of course, it's not just numbers that count. It's people. It's the men, women and children who board our planes every day—to attend a daughter's wedding; to leave for college for the first time; to attend an important meeting on the other side of the world; or to visit a new grandchild just a short flight from home.

As I said in 1997, our first and most important priority was to make the world's safest skies even safer, in the face of dynamic industry growth, expanding demand, and public concerns. And we had to modernize the nation's air space system in a timely and cost effective way. From my first days in office, these have been my goals. Just as important, they have been yours as well. I believed then—and believe even more strongly today, after the experience of these past five years—that the only way to meet these challenges is to face them together, government and industry, pilots and air traffic controllers, labor and management the FAA and Congress.

Collaboration isn't just a management style; consensus isn't just something to strive for. In aviation, they are essential elements in any real plan for progress. As the pilot Lane Wallace has written: "In one sense we are all alone, whether in an airplane or on the ground, and we have final responsibility for whatever path we take through life or the sky . . . [But] we understand that while we may fly solo, we are also all connected, and we need each other in order to survive."

That's true not only for pilots, but also for controllers, technicians, mechanics, flight attendants—and the FAA Administrator. We've stopped defining ourselves by our competing interests and started applying ourselves to our common goals. Those goals haven't changed: we're focused, as ever, on safety, efficiency, and adding capacity. But the way we pursue our goals has been evolving. We now pursue them as a community. We acknowledge—even embrace—our interdependence. And that, in my view, has made all the difference these past five years.

It's certainly made a difference in the accident rate. Working together, we reduced the accident rate for U.S. airlines by 29 percent over our baseline last year. We did so by agreeing on an unprecedented strategic plan for safety—Safer Skies. We now base our priorities on what the data, not the headlines, say. Through new partnerships like ASAP, the Aviation Safety Action Program, and by sharing data, we can identify early warning signs, intervene in targeted ways, and track the effectiveness of our efforts. I'm proud that we've met every annual target in the accident rate, and I'm confident that by 2007, we'll reach our greater goal: reducing the commercial accident rate by 80 percent.

Over the past five years, we have met many other imperatives of modernization with the same determination. Since 1997, we've completed more than 7,100 projects, installing new facilities, systems, and equipment across the U.S. and integrating them into the National Airspace System. We've done more than 10,000 upgrades of ATC hardware and software. Today, you can visit every one of our centers in America and won't find a single piece of hardware that's been around longer than I've been in this job (it only feels like a long time).

With the FAA's commitment to RNP—which takes advantage of the aircraft's capabilities—we're taking crucial steps in our transition from a ground-based to a satellite-based system, and toward safely handling more aircraft in less airspace.

I think the way we achieved all this is not less remarkable that what we've achieved. You know, it seems sort of obvious that when you're designing new technological tools, you ought to consult the people—controllers, technicians, pilots—who are going to use them. For too long, that just wasn't the case. When new equipment arrived at the loading dock, it was a little too much like Christmas Day—no one knew what was inside the box; the instructions were near impossible to follow; and batteries were not included.

Today, everyone knows what to expect—and how to use it. When we develop new products and programs, we do it not only with the users in mind, but at the drawing board.

With all this new hardware and software, delays due to equipment are down 70 percent from this time last year. A Eurocontrol report shows that the productivity of U.S. controllers is about twice as great as in Europe—and that our air traffic management is about twice as efficient. It's true: you just don't hear about outrages anymore. Instead, you hear about more direct routes, lower fuel consumption, and—let us not forget—better service for the men, women, and children who entrust us with their air travel. Of course, they're less concerned with who's using what technology than with getting to their destination safely, swiftly, and affordably. These new efforts help them to do so.

It is this clear progress in air traffic management that is so critical for aviation's recovery from the one-two punch of the terrorist attacks and last year's recession. After an inevitable decline—in traffic, yields, revenue—we expect to see traffic returning to pre-recession levels next year.

Those one billion annual passengers we've been projecting may not be in the departure lounge just yet, but they're on the way. Demand will continue its historic rise—and we're determined to meet it. Transportation Secretary Norm Mineta talks frequently about closing the gap between demand for air travel and the capacity of our infrastructure. Whether or not we build it, they will come. And as Phil Condit reminded us in recent speech. "Economic growth follows infrastructure."

That's why the government and the aviation community reached agreement last year on the Operational Evolution Plan, which, as you know, is the centerpiece of the FAA's efforts to build and expand infrastructure over the next decade. The OEP includes new runways, new technologies, and new procedures. It's not a wish list; it's a set of marching orders—clearly setting out the responsibilities of the FAA, airlines, and airports. These ideas are meant for action. And we're already seeing what action can achieve.

Look at Detroit. Detroit's new runway opened last December. Overnight, the number of flights per hour that Detroit Metro can handle jumped from 146 to 182 in good weather—a 25 percent increase. We've targeted our efforts toward the worst bottlenecks in the system. The controllers among you have told me that conflict probe, now in use at four en route centers, is the biggest improvement in the en route environment they've seen in their entire careers. It cuts costs even as it cuts emissions.

With results like this, I am more confident than ever that we are going to meet our goal: increasing capacity by up to 30 percent over the next ten years. We are already looking at how we can accelerate initiatives and reach for more capacity.

The critical question—which we are already tackling with industry—is, "What's next?"

All of this progress flows directly from one source: our spirit of community. It is incredible to behold. I have seen it in so many ways on so many occasions during my five years in office. And in all that time, the spirit of community was never stronger than on September 11. Among the countless acts of heroism on that terrible day, history will record the way the aviation community pulled together, in the worst of circumstances, to bring the planes down quickly and safely—and bring the system back up smoothly in the weeks that followed.

We have realized more and more the potential of flight. We have mitigated more of its risks. But in many ways, we've only begun.

Moving forward, our mission must be to build on this foundation—and create a legacy worthy of our children. The next Administrator will face many challenges—some I've just discussed, and surely many new ones. One of the greatest will be the challenge of staying focused on modernization and safety, in the face of new security pressures.

For obvious reasons, security concerns will continue to command the headlines. They demand our attention and deserve our vigilance.

The FAA's mission is just as important as ever. Not only the new administrator, but also all of us, must keep our focus on that. The industry faces an additional challenge in providing a higher and higher level of service to its customers. I do not want to leave office without saying how grateful I am to Presidents Bush and Clinton, and Secretaries Mineta and Slate, for entrusting me with this awesome responsibility. And I am grateful to you for helping me, to the best of my abilities, to fulfill it.

I took office on the cusp of a new century; and depart with those new horizons, and the new possibilities we foresaw, a little closer in reach. It is you who made it so; you who created this moment of opportunity; you who will carry us forward. Every time I visit a control facility or an airport, or talk to a pilot, or see the launch of a new technology, I am impressed anew by your dedication and professionalism. I am uplifted by your commitment to our mission.

I know my successor will count on your insights and energies just as much as I have. Because if one thing is clear to me as I leave office, it is that our roles, like our lives, are interdependent; our goals are interconnected. Modernization, for example, is dependent on the financial health of the industry. Safety depends not only on new technology but also on the century-old concern of labor relations. Efficiency in the air has a lot to do with security provisions on the ground. And so on. None of us is flying solo.•

RETIREMENT OF GENERAL JOHN A. SHAUD

• Mr. ENZI. Mr. President, as a Senator from Wyoming and Chairman of the Senate Air Force Caucus, one aspect of my public service that I truly enjoy is the opportunity to work with remarkable people who are more like family than coworkers and colleagues. On Capitol Hill, we all know each other and we all feel each other's sorrows and share in each other's joys and triumphs.

This is one of those occasions that brings both a touch of joy and sadness as we say congratulations and thank you at the same time that we bid farewell to someone who has devoted his life to the service of his country in the military and on the Hill, where he has made many friends among the staffs of our offices.

We were fortunate that General Shaud served as the Executive Director of the Air Force Association. Before his acceptance of that post, he had amassed quite an impressive military career that began when he was commissioned into the United States Air Force in 1956.

In his 50-year career General Shaud has served in the field and at U.S. Air Force headquarters in Washington. His later Air Force assignments included Chief of Staff for Personnel for the U.S. Air Force, Commander of the Air Training Command at Randolph Air Force Base, and Chief of Staff of Supreme Headquarters Allied Powers Europe. He led and inspired those under his command and excelled while gaining greater responsibilities.

I would be remiss if I did not point out that during his military career, General Shaud was able to complete the requirements for a Master of Science degree, which he received from George Washington University—my alma mater. He also has a doctorate from Ohio State University and has served on the faculty of Air Command and Staff College.

Over the years, General Shaud has amassed more than 5,600 flying hours and piloted several dozen different aircraft. He was awarded the Distinguished Service Medal, the Legion of Merit with Oak Leaf Cluster, the Distinguished Flying Cross and several other awards and citations for his outstanding service and leadership.

For General Shaud, his retirement from the U.S. Air Force was just the end of one career and the beginning of another. General Shaud moved on to take on the responsibilities of the Air Force Aid Society and then later, the Air Force Association, from which he will now be retiring. Through it all, he has continued to impress with his leadership, creativity, personality, and ingenuity. He has been a role model for many and he will no doubt continue to inspire those with whom he comes into contact.

I would also point out that without him, Congressman Cliff Stearns and I would have had a far more difficult time in our work to establish the Air Force Caucus.

Now it is time for General Shaud to move on to another adventure in his life. I do not know what he will be doing, but I know he will be changing direction and heading off to face other challenges in the years to come.

Good luck, General Shaud, and God bless. May you have many years of an enjoyable retirement and the good health to enjoy each day to the fullest.•

IN RECOGNITION OF THE LIFE OF ALTON ARA HOVNANIAN

• Mr. TORRICELLI. Mr. President, a promising young life that began in New Jersey just 14 years ago was tragically cut short these few weeks past in a freak boating accident on my State's otherwise-beautiful northern shore. Alton Hovnanian only 14 was a rising and stellar member of the latest generation of a great and good New Jersey family whose legendary hard work in the real estate industry created an American business enterprise of remarkable size and stature.

Now, sadly, in the cruelest alteration of fate, this same good family suffers the greatest loss of all, the death of a child. And I would put before this Chamber today that this is a shared loss felt within these Senate walls not only because this kind of suffering is too great for any family to bear alone, but that the untimely death of this young man represents the loss of the optimistic spirit and positive energy of a young American mind.

Not preoccupied with self, often characteristic of this age, Alton Hovnanian had an interest in and concern for others, a deep interest and concern for the workings of the U.S. Government, and perhaps surprisingly, for those of us in this room. As a child of only 14, he was largely unknown to us, but Alton Hovnanian was a bright, good citizen of my State and this country who I am sure many of my colleagues would have been delighted and inspired to know. Alton was certainly interested in us and knew many of our names, our expertise, our committees and concerns. Isn't this an honor for us to now know that a 14-year-old New Jersey boy sat before his family room television set in Monmouth County and chose to turn the channel, not to a game show or sitcom, but to C-Span, the History Channel, and CNN in order to learn yet more about us and the work we do. How many young men and young women, boys and girls are there today, tuning in, attentive, and eager to learn more about this Nation's leadership and work? Unknown to us, Alton Hovnanian was watching and I am honored by his attention. If any of us wonder why it is we get up in the morning, remember this: there are 14-year-olds like Alton watching us, and they care. How powerfully inspiring it is for us to remember the reach of the work afforded by our office.

Alton Hovnanian was not a head of state or a captain of industry, though he seemed certainly well on his way, as the achievements in his young life were many. Indeed, Alton set the standard in his age group. With a lifelong love of boating and the water, especially the New Jersey coastline near his home, Alton earned the rights and privileges of a full captain license and the highest scuba diving accreditation. He was the recognized leader in community service outreach efforts at the Rumson Country Day School and was voted the "Most Likely to Succeed" by his peers at that excellent institution at its middle school graduation just weeks ago. Having traveled extensively with his family throughout much of the world, Alton was comfortable in many different nations and maintained an active curiosity about other countries, cultures, traditions and cuisine. He brought home, however, an ironclad insistence that things be right here at home, with concern for the comfort and care of our less fortunate citizens, and in the proper order of things within this Nation.

Alton Hovnanian represented the best of young America. He wanted the best for this Nation and for those around him. He was a loving son, a good citizen, a student of history and government and a responsible leader among his peers. He has honored all of us with his life.

May we always remember him as his father would, "Good sailor, brave captain, dear friend, let your gentle spirit fill our sails."•

THE BIG QUARTERLY

• Mr. BIDEN. Mr. President, each year on the last Sunday in August, a commemorative festival is held in Wilmington, DE. Known as the Big Quarterly, or the August Quarterly, the festival celebrates the heritage of the independent black church movement, and the continuing importance of the movement's cultural, political and social, as well as religious, influence.

For us in Delaware, as for our Nation as a whole, the history is both proud and painful. The first fully independent black church was founded in Wilmington in 1813; originally called the Union Church of Africans, it is now known as the African Union Methodist Protestant, AUMP, Church. It was founded by a former slave, Peter Spencer, and was built on land purchased with the help of Delaware's Quaker community, which notably included the station-master of the Underground Railroad, Thomas Garrett.

Affectionately known as "Father," and formally as Bishop, Peter Spencer believed in the "twin" forces of education and religion to empower and to liberate African-Americans. The movement toward religious freedom was closely linked with the anti-slavery campaign, just as predominantly black churches in more recent times have provided leadership in the civil-rights movement and in the ongoing work toward equality of opportunity.

The Big Quarterly, also initiated in 1813, commemorates the founding of the Mother AUMP Church, and honors Peter Spencer's visionary leadership. The festival combines worship with a cultural celebration and a spirit of reunion, of renewing ties with family, friends and with a history of activism that continues to inspire us all.

The history and spirit represented by the Big Quarterly are important to our identity and character as a community and as a nation. It is an event that both reminds us of what has been overcome, and challenges us to complete the journey.●

TRIBUTE TO HARRY QUADRACCI

● Mr. FEINGOLD. Mr. President, I pay tribute to a Wisconsinite who died tragically this week, but whose life and work will be long remembered.

Harry Quadracci was many things: an entrepreneur, an innovator, a community leader, a committed philanthropist, and a dedicated husband and father. Harry lived an extraordinary and exemplary life. The founder and president of Quad/Graphics, Harry started from scratch, building a printing business which has become a dominant force in the industry and the largest privately held business of its kind in North America. He brought thousands of jobs to Wisconsin and was renowned as an outstanding employer.

As a community leader, Harry leaves a tremendous legacy to the Milwaukee area and to the entire State of Wisconsin. He and his wife Betty Quadracci pledged $10 million toward the beautiful new addition to the Milwaukee Art Museum. They also gave generously to many other causes, including the Milwaukee Repertory Theater and the restoration of St. Josaphat's Basilica in Milwaukee.

Harry Quadracci's passing is a great loss to all those who knew him and all those whose lives were touched by his many good works. I am deeply saddened by his passing, but I know that his leadership and generosity have left a lasting mark on our State. He will be remembered for many years to come.●

TRIBUTE TO BG JAMES D. HITTLE, USMC (RET.)

● Mr. WARNER. Mr. President, I rise today to pay tribute to BG James D. Hittle, USMC (retired) who was buried at Arlington Cemetery on July 24, 2002.

I was privileged to serve with this distinguished military officer and public servant in the Navy Secretariat during the Vietnam war years. His main responsibilities were naval manpower and reserve affairs, but his wisdom was sought not only by me as the Under Secretary of the Navy but also by Secretary of the Navy John Chafee and Secretary of Defense Melvin Laird. He remained my friend and valued adviser throughout his life.

I ask that the tribute to a great American General Don Hittle which was delivered at his funeral by General Paul X. Kelly, USMC (retired), the 28th Commandant of the Marine Corps be printed in the Record.

The tribute follows:

A Tribute to Brigadier General James D. Hittle, USMC (Retired)

Brigadier General James Donald Hittle—devout Christian—great American—Marine officer—gentleman and gentle man—loving husband—caring father—always a friend in need!

Commissioned a Marine Second Lieutenant in 1937, Don Hittle was a "plank owner" when Major General Holland Smith activated the 1st Marine Division for World War II—was D-4 for the 3d Marine Division under Major General Graves Erskine on Guam and at Iwo Jima—and after the war commanded 2d Battalion, 7th Marines, in the Occupation of North China.

After serving his Corps for 23 years, Don Hittle's future life could easily qualify him as a quintessential "Renaissance Man."

He was Director of National Security and Foreign Affairs for the Veterans of Foreign Wars; syndicated columnist for Copley News Service; commentator for Mutual Broadcasting System; Special Counsel for both the Senate and House Armed Service Committees; a founder and Director of the D.C. National Bank; Assistant Secretary of the Navy for Manpower and Reserve Affairs; Senior Vice President for Pan American Airways; consultant to the President of the Overseas Private Investment Corporation; advisor to several Secretaries of the Navy and Commandants of the Marine Corps—and the list goes on and on and on.

Colonel Don Hittle came into my life during the summer of 1956, when Major General Jim Riseley dragged me kicking and screaming from a cushy tour in what was then the Territory of Hawaii to the labyrinthian corridors of Headquarters Marine Corps. As many of those here today will recall, this was the long, hot summer of Ribbon Creek, and Don Hittle was Legislative Assistant to Randolph McCall Pate, our 21st Commandant. I was a young, eager, starry-eyed Captain, very naive in the arcane world at the Seat of Government—but, I was soon to learn. My first lesson was a negative one—that a junior officer should never ask the Legislative Assistant to the Commandant for a description of his duties and responsibilities. With that said, I did notice that every time Colonel Hittle came charging into General Riseley's office he closed the door behind him. While I readily admit to not being a "rocket scientist," I did surmise that there were some "big time" discussions underway. But, as the saying goes: "Nothing succeeds quite like success." I was soon to learn that by working closely with the Congress, where Members and their staffs knew him, respected him, and trusted him, Don Hittle had effectively minimized the repercussions from Ribbon Creek. One senior member from the House of Representatives was heard to say: "Don Hittle is the best damned Legislative Assistant the Marine Corps has ever had."

One could go on for hours, perhaps days, about Don's myriad contributions to his Country and his Corps. As an example, I could tell you how he more than any other saved the Army Navy Club from extinction. Senator John Warner, who is here with us today, could tell you that when he was Secretary of the Navy he never had a more imaginative and dedicated Assistant Secretary. Joe Bartlett, the former House Reading Clerk and a retired Marine Corps General, could tell you how Don Hittle was responsible for the creation of the dynamic Congressional Marine Club. Incidentally, Jim Lawrence, who is also with us today, once said of this organization: "Congress created the Marine Corps—Congress has sustained the Marine Corps—Congress has mandated the mission of the Marine Corps—through this organization we are now bonded to each other forever."

In the end, however, all of his many other contributions to his Country and to his beloved Corps pale by comparison to what he accomplished as a member of the renowned "Chowder Society", that elite group of brilliant Marine officers who, in the aftermath of World War II when the very life of our Corps was threatened, insured that our existence, our roles, and our missions were written into law. Don's critical role in the survival of his Corps was best described by General Merrill Twining when he inscribed his book, No Bended Knee, "To: Don Hittle, Who saved our Corps." There can be no doubt that our Corps we have today, with three active divisions and wings written into law, owes an enormous debt of gratitude to Brigadier General James D. Hittle, USMC (Retired).

Isn't it ironic to remember that fifty-five years ago certain groups, whose objectives were inimical to the survival of our Corps, were attempting to relegate us into insignificance. Today, with a lion's share of the credit for making it possible going to Don Hittle, we have just heard that Jim Jones, our 32d Commandant, is soon to be the Supreme Allied Commander in Europe. Our congratulations go to Jim—his Corps is very proud—Don Hittle is very proud!

Several years after my retirement, Don asked me to join him for lunch at his Army Navy Club. His purpose was to ask if I would give his eulogy. I was honored beyond belief, but did not look forward to the day when it would become a reality.

Before closing, let me share with you a story that Joe Bartlett told me last week.

Jinny and Joe are members of a Bible class at their church. As a gesture of their love and caring for those who are terminally ill, the class prepares an audio tape for their listening. On one side they include the patient's favorite hymns, and, on the other, a medley of their favorite tunes. During Don's last days with us—a time when he was under heavy sedation—Joe swears that Don's body stiffened to attention every time the Marines Hymn was played.

In closing, let me remind you that Don lived by two simple words—words which have given inspiration to our Corps for over 200 years—Semper Fidelis—always faithful.

Don Hittle was always:
Semper Fidelis to his God.
Semper Fidelis to his Country.
Semper Fidelis to his Family.
Semper Fidelis to his Corps.
And, Semper Fidelis to his fellow man.

In Don's memory, then, let us share these meaningful words with each other as we leave this holy place—and let us pray that one day we can live in a world where all of its citizens are Semper Fidelis to each other. Don Hittle would like that.●

RECLAMATION OF LA SIERRA PARK

● Mrs. BOXER. Mr. President, I rise to share with the Senate a very special and important story about a few hometown heroes who changed the face of an entire neighborhood.

La Sierra Park is in the heart of the La Sierra neighborhood in Riverside, CA. Two years ago, gangs came to frequent the park, transforming this small treasure into a place of crime and fear. Playful interaction among children was replaced with drug dealing. Residents were robbed and could not use the park unless they paid gang members an entrance fee. However, when a woman was raped in the park in late 2000, local residents decided to fight back.

Marisol Ruiz and Araceli Moore, cofounders of Friends of Myra Linn, led a growing number of neighbors in the effort to take back the park. They passed out flyers, held Neighborhood Watch meetings and attended City Hall meetings. They did everything they could to gather support.

This project turned into "Operation Safe Park." City workers got volunteers to help transform the park back into the treasure it once was. Volunteers augmented police patrols at the park, increased lighting and trimmed the foliage so criminals had nowhere to hide. Soon, residents were enjoying a soccer game and school dance performance held at the park. It is clear that the park was back in the hands of the community.

The story of "Operation Safe Park" shows what a neighborhood can do when it comes together for community improvement. I applaud Marisol Ruiz, Araceli Moore and all those who worked so hard to make a difference in this neighborhood. In taking back this park, these people made their neighborhood a safer and better place for now and for future generations. Their exemplary dedication and commitment serve as an inspiration to us all.●

TRIBUTE TO BRIAN HONAN

● Mr. KENNEDY. Mr. President, on Tuesday, Boston lost one of its greatest public servants, City Councilor Brian Honan. Brian was raised in a family that held public service in the highest regard. He learned early in life the value of community and the strength of working together on a common goal. In his brief life, Brian touched so many people in countless ways. The true measure of Brian's contribution to Boston and Massachusetts may never be known, but the life he lived and the love he gave will live on in the hearts of his friends, his family and the city of Boston for years to come.

In his years of service to his community, in the District Attorney's Office or as a City Councilor from Allston and Brighton, Brian never forgot his principles and ideals, never forgot those he served and the city he loved so well, and never forgot the need to fight for those who are unable to fight for themselves. There is no greater example of willingness to serve his fellow man than the life and legacy of Brian Honan.

A bright light in the Boston community was lost to us all on Tuesday but the strength and power of that light lives on in Brian's legacy, and is a powerful reminder to us all about what public service is all about. He will be dearly missed.●

APPRECIATION FOR AMBASSSADOR MALEEHA LODHI

● Mr. BIDEN. Mr. President, on behalf of myself and my colleagues I would like to place in the record a bipartisan statement of appreciation for the outgoing Ambassador of Pakistan, Dr. Maleeha Lodhi.

Ambassador Lodhi has served her country with exceptional distinction. Her prior experience as both an academic and a journalist has proved to be a great advantage: she has always articulated her government's positions with the precision of a scholar and the persuasive reach of a news analyst.

Perhaps most significantly, Ambassador Lodhi has served as a cultural bridge. She has played an invaluable role in harmonizing the various goals shared by Pakistan and the United States, goals ranging from advancing the international war on terror to deescalating tensions in South Asia. Moreover, Ambassador Lodhi has- by both her words and her personal example- helped bridge the chasm of misunderstanding between the United States and the Islamic world.

Ambassador Lodhi's mission has been to serve the people and nation of Pakistan, and she has fulfilled that mission superbly. But at this critical juncture, Ambassador Lodhi has also been a great asset in furthering the common interests not only of Pakistan and United States, but of many voices of moderation, tolerance and progressive thinking all across the Muslim world. Her presence here in Washington will be sorely missed, and we wish her all the best on her return home."●

IN RECOGNITION OF CALIFORNIA STATE SENATOR JIM COSTA FOR TWENTY-FOUR YEARS OF PUBLIC SERVICE

● Mrs. BOXER. Mr. President, I rise today to bring to the Senate's attention the exemplary achievements and outstanding service of State Senator Jim Costa of Fresno, California.

Senator Jim Costa will retire this year after twenty-four years of service in the California State Legislature. I am pleased to honor Senator Costa for his outstanding leadership and service and add my voice to the special recognition and the outpouring of admiration from throughout California.

In his many years of public service, Senator Costa has been dedicated to serving the Central Valley. Senator Costa is also well known for his sense of honor, purpose and teamwork that made him so effective in the California State Legislature.

I am honored to congratulate him on his many accomplishments over more than two decades of service. I wish Senator Costa the best in his future endeavors. I know he will continue to make outstanding contributions to the people of California. I ask that excerpts from the Fresno Bee Editorial from July 24, 2002 be printed in the RECORD:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fresno Bee, July 24, 2002]

CALLING IT A CAREER

JIM COSTA'S VALUABLE SERVICE IN THE STATE LEGISLATURE COMING TO AN END.

Democrat Jim Costa will make his political curtain call next month at a testimonial dinner that is expected to draw some of California's most powerful politicians. It will be a fitting send-off recognizing a 24-year legislative career that began with youthful exuberance and is ending with a record of accomplishments that you'd expect from a seasoned veteran.

The dinner on Aug. 25 at the Fresno Convention Center will bring together four of the state's five living governors, along with San Francisco Mayor Willie Brown, the former speaker of the Assembly. Costa has worked with all of them, gaining their respect even when they were at political odds. Dinner proceeds will benefit the Kenneth L. Maddy Institute at California State University, Fresno.

Costa understands better than most politicians the independent nature of Valley's voters. First in the Assembly and then in the state Senate, he balanced the political interests of the region as well as any legislator. He has championed the needs of agriculture and has fought to improve the Valley's business climate. He also battled to improve the plight of the region's many impoverished communities.●

THE RETIREMENT OF RIVERSIDE COUNTY SHERIFF LARRY SMITH

● Mrs. BOXER. Mr. President, I rise to reflect on the distinguished career of

Riverside County Sheriff Larry Smith, who will retire later this year. Sheriff Smith is also the immediate past president of the California State Sheriff's Association. The people of Riverside County, his colleagues and admirers will celebrate his career on August 9.

During Sheriff Smith's extraordinary 36-year record of service to law enforcement, he has held numerous positions and has achieved many important accomplishments. He served as Riverside County's Search and Rescue Coordinator and commanded the Department's SWAT team before working as chief deputy sheriff. Thanks to Sheriff Smith's leadership and vision during his tenure as chief deputy sheriff, the Riverside County Corrections system is one of the largest in the United States.

Sheriff Smith was elected to serve as Riverside County Sheriff in 1994 and was reelected to serve a second term in 1998. During Sheriff Smith's tenure, Riverside County saw a dramatic decrease in crime. Sheriff Smith was instrumental in the creation of the Ben Clark Public Safety Training Center. He collaborated with federal, state and local legislators to establish the facility, which provides valuable training for law enforcement officers, firefighters and paramedics. As I have seen for myself, it is truly a model for public safety training centers throughout the nation.

In addition to his tremendous commitment to his career, Sheriff Smith is an exemplary community leader. He has been active in the American Heart Association, the United Way of the Inland Empire and the Debbie Chisholm Memorial Foundation, an organization dedicated to improving the quality of life for terminally ill children.

I am proud to add my words of commendation to the praise and recognition Sheriff Smith has received throughout his respected career. I extend to him my sincere congratulations for his countless contributions to the force and to the broader community. Riverside County is a safer and better place because of his fine leadership. Although Sheriff Smith will be greatly missed, his work continues to benefit Riverside County. I wish him a wonderful retirement.●

IN MEMORIAM: MARGARET WAHLSTROM

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of Mary Alice Wahlstrom, who lost her life on September 11, 2001. Mrs. Wahlstrom was 78 years old when the flight she was on, American Airlines Flight 11, was hijacked by terrorists. As we all know, that plane crashed into the World Trade Center, killing everyone on board.

Mrs. Wahlstrom and her daughter, Carolyn Beug, were traveling together on that tragic day. They were returning to their homes after having settled Mrs. Beug's twin daughters at the Rhode Island School of Design. This American family lost two dearly beloved women on September 11. "The one thing those terrorists cannot destroy is love. They cannot destroy the love we have in this family, and the love people have for each other," says Margaret Wahlstrom, daughter-in-law of Mrs. Wahlstrom.

Mary Alice Wahlstrom was traveling throughout Europe as a young socialite until she met, and fell in love with, Norman Wahlstrom, Senior. He was a World War II hero and like most Air Force families, they moved many times. They raised five children together, finally settling in Utah, where Mary Alice became a loan officer.

Mrs. Wahlstrom shared a zest for life with those around her. She is remembered as a vibrant, exuberant woman. One neighbor called her, "dynamic, with a wonderful outlook on life." She loved to laugh. Mrs. Wahlstrom exercised daily, played the piano and volunteered as an usher at Temple Square. She enjoyed reading, traveling, debating current events and going to the movies. "She was a ball of fire. She was 78 when she died, but she could have lived another 25 years. I have no doubt about it," says her son Scott Wahlstrom.

During the opening ceremonies of the 2002 Olympic Games, her son, Norman Wahlstrom, Jr., carried the Olympic torch in Ogden, Utah, in honor of his mother. "As with every boy that ever lived, my mother was a shining example of hope and promise. She had a wonderful, perpetual smile and contagious laugh," says Wahlstrom.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to an American who perished on that awful morning. I want to assure the family of Mary Alice Wahlstrom, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.●

IN RECOGNITION OF THE CITY OF VISALIA AND THE COUNTY OF TULARE'S SESQUICENTENNIAL ANNIVERSARY

● Mrs. BOXER. Mr. President, I rise today to commemorate the 150th Anniversary of the City of Visalia and Tulare County, California. The City and the County are celebrating their official anniversaries together on September 7, 2002 at historical Mooney Grove Park.

The City of Visalia and the County of Tulare were both organized in 1852. The State of California was two years old.

Visalia started as a small, creekside settlement and has grown into the dynamic community it is today. Commonly referred to as "Jewel of the Valley" and "Gateway to the Sierra," Visalia is now home to more than 92,000 residents. It is renowned for its great Valley Oaks that grace its neighborhoods, reminders of the natural heritage of which its residents are so proud.

Tulare County, anchored on the east by spectacular Sierra Nevada peaks, Giant Sequoia groves and fertile plains, which make it the number one agricultural county in the world, is also one of the largest counties in the great San Joaquin Valley. It is home to Sequoia and Kings National Park and the Giant Sequoia National Monument. Its residents range from its Native Americans to dozens of nationalities from all corners of the globe, making its communities diverse and proud of their shared heritage.

Both the City of Visalia and County of Tulare have thrived since their early beginnings. I have had the distinct pleasure of visiting both the city and the county over the years. Both are truly valuable assets to the State of California.

I am honored to serve the people of Visalia and Tulare County and wish them all a wonderful sesquicentennial anniversary celebration. I encourage my colleagues to join me in wishing the City of Visalia and Tulare County many more years of prosperity.

I yield the floor.●

IN MEMORIAM: CAROLYN BEUG

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Carolyn Beug, who lost her life on September 11, 2001. Mrs. Beug was 48 years old when the plane she was on, American Airlines Flight 11, was hijacked by terrorists. As we all know, that plane crashed into the World Trade Center, killing everyone on board.

Carolyn Beug and her mother, Mary Alice Wahlstrom, were traveling together on that tragic day. They were returning to their homes after having settled Mrs. Beug's twin daughters at the Rhode Island School of Design. This American family lost two dearly beloved women on September 11th. Their story is one of a commitment to love conquering hate, even in the face of unimaginable sorrow and loss. "The one thing those terrorists cannot destroy is love. They cannot destroy the love we have in this family, and the love people have for each other," says Margaret Wahlstrom, Carolyn Beug's sister-in-law.

Mrs. Beug, the daughter of an Air Force colonel, was a citizen of the world. She grew up in many places, including Pennsylvania, South Korea and Utah. Carolyn Beug was a successful accountant, CFO, and real estate developer. She was a music industry executive, music video producer and director. Mrs. Beug helped establish a center for underprivileged children in Los Angeles and won the 1992 MTV Video of the Year award for directing a video by the rock group Van Halen. She was the wife of John Beug and mother of Lauren, Lindsay and Nicky. In 1998, Mrs. Beug left the music industry to write a book and to devote more time to her family.

When her daughters joined the Santa Monica High School Track Team, Mrs. Beug became actively involved as the team mother. She was affectionately known as "Momma Bunny" and she attended every meet, cheering on the team and purchasing new shoes, uniforms and sweats when needed. At the end of every season, she hosted the team banquet at the Beug family home. "She always called the kids on the team "my little bunnies," recalls her husband, John.

"Such an electric and peripatetic personality leaves an impression wherever she goes, whether that's a corporate boardroom, a movie studio, a children's shelter, a high school stadium, or a home on a quiet tree lined street. The impressions she left, a bright smile, a heartfelt belly laugh, a nugget of wisdom, an odd take on a song, a whispered secret, a motherly embrace are permanent," adds John Beug.

None of us is untouched by the terror of September 11th, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center Towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of 51 Californians who perished on that awful morning. I want to assure the family of Carolyn Beug, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers, and sisters will not be forgotten.●

IN MEMORIAM: CHRISTOPHER CAIRO NEWTON

• Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Christopher Cairo Newton, who lost his life on September 11, 2001. Mr. Newton was 38 years old when the plane he was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Mr. Newton's life was filled with many wonderful and impressive accomplishments. He was a successful businessman and world traveler who loved the performing arts and music, the game of golf, and any home improvement project he could find. He became an Eagle Scout at 14, graduated from Cal Poly San Luis Obispo with high marks and earned his CPA. After completing his MBA at UCLA's Anderson School, he was named President and CEO of Work/Life Benefits.

Close family friend Steven Falk said there was nothing in the world that Christopher cared more about than his children. Christopher, his wife Amy and two children Michael and Sarah had recently moved from Southern California to the Virginia suburbs outside of Washington, DC. He was in the process of relocating company headquarters to Virginia, a move that would put the company closer to key customers and allow Christopher to spend more time with his family. Christopher loved to attend school functions, coach his son's little league team, or just have a quiet dinner at home with his wife and children.

Mr. Newton was also close to his parents and siblings. His father Michael said "He was very bright. An avid golfer, a great skier, a champion Scrabble player. He never gave us a moment's trouble in his life." His brother Stephen says that "Chris taught me to be patient and hopeful and to always play by the rules."

It is clear that Mr. Newton was serious, intense and committed to his responsibilities. Yet he was always able to laugh at himself. A quote from a friend says it best. "He was confident with no airs, loving with no expectations, giving with no greed, funny with no offense."

Christopher is survived by his wife Amy, their two children Michael and Sarah, his parents Michael and Barbara Newton, sister Ann-Elisabeth, brother Stephen, an aunt, cousins, nieces, a nephew and a close circle of friends.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Christopher Cairo Newton and the families of all the victims, that their fathers and mothers, sons and daughters, aunts and uncles, brothers and sisters, will not be forgotten.●

TRIBUTE TO JOHN E. BREWER

• Mr. JOHNSON. Mr. President, I rise today to pay tribute to John E. Brewer of Rapid City, SD, on the occasion of his retirement as president of Rushmore Bank and Trust in Rapid City. The people of the Rapid City area share my pride in John's accomplishments, and I know they join me in congratulating him on his retirement after a distinguished 32 year career in the banking industry.

Throughout his career, John has worked to provide financial opportunities for South Dakotans. For the past 16 years, John has guided Rushmore Bank and Trust in new and innovative directions. John has also helped guide the entire banking profession in South Dakota by serving as a past president of the South Dakota Bankers Association. John came to South Dakota in the same year I was first elected to Congress. During my years in Congress and now as the Chairman of the Senate Banking Subcommittee on Financial Institutions, I have relied on John's vast experience and knowledge of the banking industry to help guide my decisions on important policy matters.

In addition to his professional dedication, John is a true leader in the Rapid City community and has earned the respect and friendship of so many of us fortunate to spend time with him. John has served as the chairman of the Rapid City Area Chamber of Commerce, president of the Children's House Society, and president of the Mount Rushmore History Association. John represents the goodness and diligence that we find in so many South Dakotans, and I wish him well for a long and happy retirement.●

HONORING KASDIN MILLER ON HER ELECTION AS PRESIDENT OF GIRLS NATION

• Mr. SESSIONS. Mr. President, last week I had the honor of swearing in the American Legion Auxiliary Girls Nation president. I am proud to announce that Kasdin Miller of Montgomery, Alabama, was elected president by the other participants in this fine program. Three of the last six presidents of Girls Nation have come from my home State of Alabama. Girls Nation celebrated its 56th year this year, and 96 teenage girls from 48 states participated. These teenagers were selected through their participation in the American Legion Auxiliary's Girls State program. I would also note that Alabama Girls State celebrated its 60th anniversary this year, making its program one of the oldest in the country.

The Girls State and Girls Nation programs of electing senators and creating state legislatures and local governments is an extraordinary learning process. Participants in Girls State and Girls Nation, and their counterparts in Boys State and Boys Nation, gain first-hand experience in how our laws are made. Each summer, some 20,000 enthusiastic young women participate in Girls State sessions across the nation, where they study local, county, and state government processes. These young people are our leaders of tomorrow, and I salute them for their interest in government. Former participants in Girls State include three current members of the U.S. House of Representatives-Barbara Cubin of Wyoming, Connie Morella of Maryland, and Jennifer Dunn of Washington. Perhaps one day we may see Kasdin and other Girls Nation participants on the floor of the Senate and House.

Kasdin, a rising senior at the Montgomery Academy, also had the high honor of being elected Governor of the Alabama YMCA Youth in Government program. I enjoyed meeting her when she came to Washington as Alabama's Youth Governor in June. She has been a leader on her school's debate team and earned a spot in the national tournament this year. She excels in the classroom as well. Kasdin is an intelligent young lady who has a bright future, and she is to be commended for her achievements. Indeed, I congratulate all of the participants in both Girls Nation and Boys Nation for their accomplishments and encourage them to continue to prepare themselves to be America's future leaders.•

APPRECIATION FOR A JOB WELL DONE

• Mr. SESSIONS. Mr. President, I would like to just take a brief moment of the Senate's time to commend the interns who have worked in my office this summer and express my heartfelt gratitude and appreciation for their dedication to public service.

Therefore I would like to commend: David Abroms; Matt Anderson, Peyton Bean, Rebecca Beers, Gabe Bonfield, David Burkholder, Katie Cassady, Robin Cooper, Mary Alise Cosby, Emily Costarides, Mary Katherine Davis, Lyle Dubois, Will Dumas, Beth Fanning, Ben Ford, Jonathan Hooks, Jonathan Macklem, Molly McKenzie, Christy Olinger, Blake Oliver, Matt Peterson, Craig Pittman, Jr., Melanie Rainey, Walker Rutherfurd, Anna Smith, Austill Stuart, Jason Wells.

All of my interns worked very hard and produced great work products, and I just wanted to take a minute of the Senate's time to thank them for their service and their parents for providing them the opportunity to come up here and serve their country.•

TRIBUTE TO ASTRONAUTS WALZ AND BURSCH OF ISS EXPEDITION 4

• Mr. VOINOVICH. Mr. President, I rise today to recognize and pay tribute to Astronauts Colonel Carl E. Walz and Captain Daniel W. Bursch for their significant contributions and record-setting accomplishments as part of the International Space Station's Expedition 4 Crew.

Astronauts Walz, Bursch, and Expedition Commander and Russian cosmonaut Yuri Ivanovich Onufrienko departed from Kennedy Space Flight Center on December 5, 2001, for what became a 6½ month stay aboard the International Space Station. The crew of three spent 196 days in space, with Carl Walz and Dan Bursch establishing a new U.S. space flight endurance record. The previous U.S. record belonged to Astronaut Shannon Lucid, who spent 188 continuous days in space aboard the Russian Mir Space Station. With four previous flights and his Expedition 4 mission, Astronaut Walz also established a new U.S. record for the most days in space, with a total of 231 days, surpassing Dr. Shannon Lucid's record of 223 days.

We look to our Nation's space program to improve life here on Earth and explore the unknown. We also look toward the future, to the time when we will extend life beyond the bounds of Earth. On February 20, 2002, while aboard the International Space Station, the Expedition 4 crew spoke with Ohio's former Senator and NASA pioneer, John Glenn, who was the first American to orbit the Earth 40 years ago.

We have come a long way in the U.S. space program, and our future discoveries are limited only by our imagination and commitment. We must give special recognition to our Astronauts whose personal and professional commitment to live and work in space continues to break barriers and thresholds.

While on the International Space Station, in addition to maintaining, operating and performing research experiments, the Expedition 4 crew installed the S-zero truss segment. The S-zero truss forms the backbone of the Station which will eventually hold the four solar array "wings" of the U.S. segment. The crew tested the new Quest Airlock and performed the first spacewalk from it without the Space Shuttle present. The crew also was the first to use the Space Station Robotic Arm as a "cherry picker," maneuvering space walkers "flying" on the end of the arm during spacewalks.

After an extended, U.S. record-setting stay on the International Space Station, the crew returned to Earth with Shuttle Endeavor, landing at Edwards Air Force Base, California, on June 19, 2002.

Astronaut Carl E. Walz, a Colonel in the U.S. Air Force, was born in Cleveland, OH. He and his wife, the former Pamela J. Glady, have two children. Walz has received numerous Distinguished Service medals, including the Defense Superior Service Medal, three NASA Space Flight Medals, and the NASA Exceptional Service Medal.

Astronaut Daniel W. Bursch, a graduate of the U.S. Naval Academy and a Captain in the U.S. Navy, considers Vestal, NY to be his hometown. He and his wife, the former Roni J. Patterson, have four children. Captain Bursch also has received recognition for distinguished service, including the Defense Superior Service Medal and NASA Space Flight Medals. Bursch has over 3,100 flight hours in more than 35 different aircraft and has logged a noteworthy 227 days in space.

On behalf of my colleagues on both sides of the aisle, I thank astronauts Carl Walz and Dan Bursch for their courage, commitment and contributions in service to the United States of America.•

IN RECOGNITION AND APPRECIATION OF THE EFFORTS OF SOUTH DAKOTA'S COMMUNITY FIRE DEPARTMENTS TO CONTAIN THE GRIZZLY GULCH AND LITTLE ELK CREEK FIRES

• Mr. JOHNSON. Mr. President, I want to recognize the heroic efforts of over 60 South Dakota community fire departments and the State of South Dakota's Wildland Fire Suppression Division in responding to recent forest fires in the Black Hills. Their work was heroic, professional, and saved several Black Hills communities from complete devastation.

On Saturday, June 29, 2002, a forest fire broke out in Grizzly Gulch, south of the town of Lead, SD, and near the town of Deadwood. Steep, rugged hills and unstable terrain crisscross the Black Hills impeding efforts to control the early stages of a forest fire. By Saturday evening, fire had crept within a few hundred yards of the historic city of Deadwood and in some instances flames literally touched the sides of houses. Ninety-degree temperatures, high winds, and low humidity levels fueled the fires run up ridges and engulfed thousands of acres in a matter of hours. If it had not been for the quick reaction and professionalism of the South Dakota Wildland Suppression Office and the men and women who established a fire line between Deadwood, the city could have witnessed a catastrophic fire.

Within a few hours Joe Lowe, the Grizzly Gulch Incident Commander, had marshaled over 250 personnel, including several hand crews, 7 heavy air tankers, and pieces of heavy earthmoving equipment to keep the fire from approaching Deadwood. By the Fourth of July the number of personnel fighting the fire swelled to over 670 with an influx of U.S. Forest Service crews under the authority of Paul Hefner, fire commander for the Grizzly Gulch blaze. As fire crews battled flareups and constructed fire lines to control the fire, high winds kept crews alert for what firefighters refer to as slop-over, flames jumping the line and burning out ahead of the fire line.

South Dakotans responded. Volunteer firefighters from 60 community fire departments from as far away as

Sioux Falls descended on the region. After the fires were contained, Deadwood sponsored a night of festivities to thank the hundreds of firefighters who battled the Grizzly Gulch fire and saved the town of Deadwood. The town's round of applause and appreciation spoke for the entire State's gratitude for the bravery of our community firefighters.

At the fire's peak, over 900 firefighters fought the Grizzly Gulch fire, putting themselves in harm's way to save the towns of Lead and Deadwood. Through their selfless action, the community and State firefighters of South Dakota reaffirmed that during a crisis South Dakotans speak with one voice. I would like to add my voice and say thank you to the men and women who served us so proudly last month.•

TRIBUTE TO VADAM THOMAS R. WILSON, USN

• Mr. WARNER. Mr. President, it is with great pleasure that I rise today to pay tribute to a great sailor, patriot, husband and father, VADM Thomas Ray Wilson. By the time we return from our August recess, this great sailor will have officially retired from active service on August 30, 2002, having faithfully and loyally served his country around the globe for over 33 years. Admiral Wilson ends his active service having served at the pinnacle of military intelligence as the 13th Director of the Defense Intelligence Agency.

Born in Columbus, OH, Admiral Wilson is a 1968 graduate of Ohio State University. He joined the Navy at the height of the Vietnam conflict, and received his commission as an ensign in March 1969, following completion of Navy Officer Candidate School in Newport, RI.

Throughout his extraordinary military career Admiral Wilson distinguished himself as a candid innovator, a patient, creative teacher, and a great leader. His early assignments included watch officer and analytical and command briefing positions in the Taiwan Defense Command in Tapei, Taiwan, and in the Defense Intelligence Agency. Subsequent duties ashore and afloat included assignment on the USS *Kitty Hawk*; as the operational intelligence officer with the Iceland Anti-submarine Warfare Group; duty with Carrier Air Wing Three embarked in USS *Saratoga*; and force intelligence officer for Commander, Patrol Wings Atlantic in Brunswick, ME.

Recognizing his potential to serve the Navy and the Nation in positions of great responsibility, the Navy selected Admiral Wilson to serve as Commander, Task Group 168.3 in Naples, Italy, where, under his leadership, this unit earned the Navy Meritorious Unit Commendation. After this successful tour, Admiral Wilson moved on to Yokuska, Japan, where he served as the Fleet Intelligence Officer and Assistant Chief of Staff for Intelligence, U.S. Seventh Fleet, embarked in U.S.C. *Blue Ridge*.

After returning to the United States, Admiral Wilson served in a variety of senior positions in Washington, DC, and the Norfolk, VA area, including Director of Fleet Intelligence, U.S. Atlantic Fleet, and as Director of Intelligence, J2, U.S. Atlantic Command, where he was deeply involved in the planning and execution of operations to re-establish freedom and democracy in Haiti in 1994.

Admiral Wilson has served in the most senior military intelligence positions in our Government since 1994, including Vice Director for Intelligence, J2 on the Joint Staff in the Pentagon; as the Associate Director of Central Intelligence for Military Support within the Central Intelligence Agency; and, as the Director for Intelligence, J2 on the Joint Staff in the Pentagon. In these positions Admiral Wilson was intimately involved in the planning and execution of virtually all U.S. military operations around the world in the past 8 years. In the process, he has gained the personal respect and confidence of two Presidents, three Secretaries of Defense, four Chairmen of the Joint Chiefs of Staff, and countless Members of Congress. As Admiral Vern Clark, Chief of Naval Operations, who was Director of the Joint Staff when Admiral Wilson was the J2, noted at Admiral Wilson's retirement ceremony recently, "When Tom Wilson spoke, we listened." In conversations I have had with colleagues in the Senate and with numerous Defense officials who interacted with Admiral Wilson, there was uniform consensus—his analysis was thorough, his judgment was clear and his instincts were flawless.

In July 1999, Admiral Wilson moved on to his last and most challenging active duty post as the 13th Director of the Defense Intelligence Agency and, symbolically, the chief of military intelligence for all of our Armed Forces. His 3-year tenure at the Defense Intelligence Agency was marked by the same innovativeness, commitment to excellence and selfless service to Nation that characterized his entire military career. He reshaped the Agency to ensure that it was meeting the 21st century demands of our senior military and civilian leaders and that it was postured to respond to the rapidly evolving challenges our Nation will face in the years ahead.

Admiral Wilson's outstanding leadership qualities were never more apparent than during the Defense Intelligence Agency's most difficult hour—the September 11 attack on the Pentagon. His crisis management abilities were critical in the hours that followed—both in accounting for members of the Agency, and in positioning the Agency to provide critical threat data in the immediate aftermath of the attack. The Defense Intelligence Agency lost seven members in the Pentagon attack, with five others seriously injured. Admiral Wilson's personal contact with each family who lost a loved one, and with the five surviving members in the days and weeks that followed was most appreciated and highlighted the selfless concern for others this remarkable sailor has always demonstrated. His concern for family members and his outreach to the workforce were critical to holding the Agency together as it worked its way through the aftermath of the attack. His leadership was absolutely key to ensuring warfighters and policymakers obtained the best possible support as the Nation began to respond. The success of our forces in the global war against terrorism is a testament to the quality of effort given by the Defense Intelligence Agency under the able leadership of ADM Tom Wilson.

Throughout his career, Admiral Wilson has displayed unmatched dedication to providing the highest quality intelligence support to the warfighter and senior defense officials. His leadership has helped transform the military intelligence community into a joint, interoperable, technologically advanced federation that is postured to support the challenges of today and tomorrow. His personal commitment to the intelligence community, to the Navy, and to our Nation is of the highest, most commendable order.

I wish to extend my gratitude and appreciation to VADM Tom Wilson and his wife of 33 years, Ann, for their friendship, their sacrifice, and for the remarkable service they have provided to our Nation, our Navy, and to the countless young people whose lives they have touched in such a remarkably selfless and positive way. On behalf of a grateful Nation, I want to sincerely thank Tom and Ann Wilson for serving so faithfully and so well. As they end their active service with the Navy, I wish them success and happiness in retirement and future endeavors. As a fellow sailor, I wish them fair winds and following seas—Godspeed.•

TRIBUTE TO DAVE GERZINA

• Mr. CRAIG. Mr. President, I rise to say thank you to a patriot and a technical expert, Dave Gerzina, who is retiring from civilian service to the Navy on August 3, 2002.

Dave was born in Youngstown, OH and was raised in the Miami, FL area from the age of eight. He attended Florida Atlantic University and received a Bachelor of Science in Ocean Engineering. In 1970, Dave began working for the Navy at the David Taylor Model Basin in Bethesda, MD and has worked continuously for the Navy at three different locations over the past 32 years.

Dave's first assignment was working for the Hydro-Mechanics Division in analyzing maneuvering and seakeeping of naval vessels. He worked there for over 5 years when he transferred to the System Development Division in Panama City, FL.

While in Panama City, Dave served extensively in the development and testing of the Landing Craft Air Cushioned vehicle, LCAC. He provided invaluable engineering and technical expertise for the duration of the development program, seeing it to a successful completion during his eight-year stint at the facility.

Dave transferred to the Naval Surface Warfare Center's Acoustic Research Detachment at Bayview, Idaho in January 1984. He has worked for the Acoustics Department in numerous roles during his 18 continuous years of service at this facility.

Dave initially held the title of Technical Operations Manager, and oversaw all testing and operations performed at the ARD. He was later promoted to the Buoyant Vehicle Operations Manager, where he managed the development and testing of many flow-noise features for Los Angeles Class submarine sonar self-noise improvements. In addition, he re-designed and improved the Detachment's test ranges, and conducted operations in support of the very successful Seawolf Class self-noise program.

He was also instrumental in developing the capability to perform full-scale Towed Array testing in Idaho, which saved months and thousands of dollars over at sea testing, culminating in the procurement of a Navy research vessel.

Dave achieved his greatest career success during the 1988–1995 period when he was responsible for overseeing the installation of the Navy's unique, world class Intermediate Scale Measurement System (ISMS) at Lake Pend Oreille. As Project Manager he was responsible for obtaining environmental approval to develop the system, interfacing with the numerous organizations, engineers, scientists and contractors to plan and then install the intricate system and associated facilities, and finally, the testing to characterize and verify the site. Since completion of the installation in 1995, Dave has assumed the role of Test Program Manager and has been responsible for the conduct of numerous successful ISMS tests as well as the responsibility of maintaining the system.

Dave has improved the ISMS Program's capabilities and reputation into the Navy's premier test site for performing structural, target strength and radiated testing of large-scale submarine models. The underwater range portion has been referred to as the most complex underwater structure in the world.

Dave and his wife of 32 years, Robin, have three adult children and two beloved Dalmations. Dave has been an accomplished bass fisherman and elk hunter since his youth, competing in numerous tournaments. He is also an accomplished sailor and plans to take several ocean trips in a Catamaran after retirement. He hopes to apply his carpentry skills to finish and sell his current house, then settle down in Florida for the winters and spring, returning each year to a small cabin in Idaho for the summers and autumns. Finally, Dave is seriously considering obtaining a law degree in his future spare time.

Dave Gerzina has been a significant contributor to our nation's research capabilities, as well as numerous performance improvements to quieting operational and future vessels and submarines. I want to wish Dave and Robin good luck, fair winds and following seas in their next endeavors.●

MAJOR GENERAL JOE G. TAYLOR, JR.

● Mr. INHOFE. Mr. President, today I pay tribute to a great Army officer, and a great soldier. This month, Major General Joe G. Taylor, Jr. will depart the Pentagon to assume new duties as the Commanding General, U.S. Army Security Assistance Command in Alexandria, VA. For over two years, he has served as first the Deputy then the Chief of Army Legislative Liaison where he has proven himself to be a trusted advisor to the Secretary of the Army and the Chief of Staff.

During his tour as the Chief of Army Legislative Liaison, he guided the Army's relationship with Congress, wielding a deft and skillful touch during a period of tremendous change. Throughout this period, Joe Taylor ably assisted the Army's senior leadership in dealings with Members of Congress and their staffs in helping them to understand the needs of the Army as it faces the challenges of a new century. His leadership resulted in cohesive legislative strategies, responsiveness to constituent inquires, well-prepared Army leaders and a coherent Army message to Congress.

Joe Taylor's career has reflected a deep commitment to our Nation, which has been characterized by dedicated selfless service, love for soldiers and a commitment to excellence. Major General Taylor's performance over twenty-seven years of service has personified those traits of courage, competency and integrity that our Nation has come to expect from its Army officers. The Pentagon and the Army Secretariat's loss will be the Army Security Assistance Commands gain, as Major General Taylor continues to serve his country and the Army. On behalf of the United States Senate and the people of this great Nation, I offer our heartfelt appreciation for a job well done over the past two years and best wishes for continued success, to a great soldier and friend of Congress.●

NAMING JULY AS NATIONAL AMERICAN HISTORY MONTH

● Mr. DEWINE. Mr. President, yesterday my friend and colleague from Connecticut, Senator LIEBERMAN, and I introduced a resolution of which every American should be proud. Our country has seen wars, recessions, conflict, prosperity and unification. In order to honor our collective past, this resolution would establish July as American History Month. July, the month of our country's declaration of independence—a time when Americans put aside differences of opinion and signed one of the most important documents in our country's history—is an ideal time for us to reflect on our Nation's history and educate our children about America's past.

Studies have shown that Americans lack a passable knowledge of our history. We, as Americans, should learn from and understand this history. I believe we must encourage Americans of all ages and ethnicities to learn the history and heritage of the United States. Studies have shown that our next generation of leaders may lack the knowledge and understanding of what made our country great. In fact, one survey showed that only 23 percent of college seniors could identify correctly James Madison as the "Father of the Constitution," and 26 percent of those same students mistakenly thought that the Articles of Confederation established the division of power between the states and the Federal Government. To help overcome this lack of knowledge, our resolution would encourage teachers and parents to take educational adventures to historic sites where the students may gain a working and memorable understanding of American history.

I always have been in strong support of teaching American history and preserving our historic sites. Throughout my time in the Senate, I have sponsored legislation, like the Fallen Timbers bill, the National Underground Railroad Freedom Center Act, the National Aviation Heritage Area Act, and a resolution to honor the Buffalo Soldiers. Ohio has been home to seven presidents, which led me to introduce the Presidential Sites Improvement Act. I was also able to secure funds to help restoration of the Grant boyhood home in Georgetown, Ohio. All of these efforts will help provide opportunities for children and adults to learn about our nation's past.

I believe that individuals who have a strong knowledge of American history also possess a deeper appreciation of the need for historic preservation of properties, buildings, and artifacts. There are many great historical sites and museums around Washington and the nation—sites like the Smithsonian Museums, National Archives, Presidential birthplaces, Civil War battlefields, and national monuments. I encourage parents to spend time with their families and take family visits to these great sites.

I am proud to say that Congress also has affirmed its commitment to the teaching of American history by appropriating $100 million to teaching American history in the Leave No Child Behind Act of 2001. Such a financial commitment sends a serious message that Congress believes in the importance of American history. And, with the passage of our resolution, we can only strengthen that message.

In expressing the significance of American history, I defer to the words of Marcus Tullius Cicero, the great Roman orator: "We study history not to be clever in another time, but to be wise always." I encourage my colleagues to support the vital preservation of our history and our historical sites. Our future and wisdom, as Cicero so aptly suggests, depend on our knowledge and grasp on the past.•

NEW HAMPSHIRE'S REMARKABLE WOMEN IN 2002

• Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate twelve outstanding women of New Hampshire, Kathy Eneguess, Jane Difley, Lauri Ostrander Klefos, Hannah Hardway, Laurel Thatcher Ulrich, Maryann Mroczka, Cathy Bedor, Judy Sprague Sabanek, Natalie Woodroofe, Joan Goshgarian, Anne Zachos, and Alyson Pitman Giles.

Every year New Hampshire Magazine conducts a contest to seek out twelve remarkable women in New Hampshire. In recognizing that women's exceptionality comes in many forms, the magazine chooses twelve separate areas of talent from which to award accomplished women of the community. Candidates, and ultimately winners, are chosen through a number of sources including community and business acquaintances, friends and family.

I would like to briefly mention a little about each of the women, the category for which they were recognized and something of their character and achievement. In the category of Leadership, Kathy Eneguess received recognition for her amazing networking abilities and community involvement in the area of leadership. Kathy is lead policy staffer for legislative and regulatory issues at the New Hampshire Business and Industry Association.

Jane Difley was recognized for her service to the Environment and was granted the award in the category of Environment for her continued dedication to protecting the forests of New Hampshire. Jane has a Masters degree in forest management and was the first woman ever to be elected as president of the Society of American Foresters. She currently holds the top position at the Society for the Protection of New Hampshire Forests.

Lauri Ostrander Klefos was recognized for her excellence in the area of government. Lauri has served in a number of state agencies and in 2000 was confirmed by the Governor and executive council as the first appointed director of the Division of Travel and Tourism Development. She currently holds a position as chair of the New England State Travel Directors.

Hannah Hardaway was recognized for her achievements in sports. Hannah was a member of the 2002 U.S. Olympic Ski Team that competed in Salt Lake City. She began her amazing ski career at seven years of age, joined the U.S. Ski Team in 1996, became Junior World Champion in 1997, and looks forward to competing in the Olympics again in 2006 in Italy. In her spare time, Hannah is continuing her education at Cornell University and endorsing major companies like Sprint and Solomon.

Laurel Thatcher Ulrich was recognized for her excellence in the area of education. Laurel's career in education began with a simple guide-book she wrote for a church-sponsored Relief Society. Since then, Laurel has taught at the University of Maryland and, most recently, at Harvard University as a professor and director of American History Studies. Laurel has also maintained a degree of success from her writing including, "Good Wives, Images and Reality in the Lives of Women in Northern New England," her newest, "The Age of Homespun: Objects and Stories in the Making of an American Myth," and "A Midwife's Tale: The Life of Martha Ballad," for which she won the Pulitzer Prize for History in 1991.

Maryann Mroczka was recognized for her extraordinary work in the field of media. Maryann has moved from New Hampshire Public Television to transforming the University of New Hampshire's video department to being sought after by WMUR-TV. Along the way, Maryann has won numerous awards including two Emmy's and three Medals from New York International Film Festivals. Maryann currently maintains her busy schedule in television as well as a new family at home.

Cathy Bedor was recognized for her accomplishments in the area of hospitality. After Cathy, her husband, and three other local families purchased The Mount Washington Hotel and Resort, Cathy's skills in hospitality began to shine as they spent the next two years restoring and preserving the Historic Landmark. The hotel is now open year-round for the first time in its history and Cathy had been there every step of the way. Cathy is truly an expert in her field serving on many boards in the state including the New England Innkeepers Association, the White Mountains Attraction Association, and the New Hampshire Historical Society.

Judy Sabanek was recognized for her accomplishments as President and CEO. Judy and her husband began Keepsake Quilting as a mail order business and they are now co-owners of what has turned into one of the largest quilting catalog businesses in the nation. Recently the couple had to open a retail store in Center Harbor because of the enormous number of people wanting to come and see the fabrics. The company, and its now 100 employees, had just been acquired by an investment firm. This may give Judy and her husband more time to spend with their two-year old Portuguese Water Dog mascot, Cisco.

Natalie Woodroofe was recognized for her work in the field of Entrepreneurship. Natalie has spent her life as an advocate and role model for women and children in the North County and has received a number of awards for her work in this area. Natalie is the visionary and backbone to WREN, the Women's rural Entrepreneurial Network, the largest and fastest growing nonprofit in the State of New Hampshire. Her organization offers a number of workshops that teach women skills from technology training to networking. Natalie describes her work as, "Economic development, personal passions, giving back, connecting with others, making a silk purse from pig's ears, hope and magic."

Joan Goshgarian was recognized for her contributions to the field of art. Joan began as a teacher of art and soon developed an art therapy program for institutionalized adolescents who were developmentally and physically challenged. In 1985, Joan became founder and executive director of the New Hampshire Business Committee for the Arts. Using this medium, Joan has been able to broaden support for the arts and collaborate with different organizations in an effort to do this. Joan is also on many boards around the state including the Granite State Association of Non-Profits and the Commission on Charitable Giving.

Anne Zachos was recognized for her excellence in the area of philanthropy. Anne learned the importance of giving to the community from her parents when she was a child. When Anne was able to become involved she started with volunteer work for her children's schools, church, the Girl Scouts, and the League of Women Voters. Since then, Anne has been involved in more community work than is able to be honored. Anne has had significant involvement with the New Hampshire Charitable Foundation, as a board member for the Manchester Regional Community Foundation and for "Arts Build Communities." Anne has received an honorary doctorate from

Notre Dame College, the Granite State Award for Public Service from the University of New Hampshire, and the Pastoral Counseling Community Service Award.

Alyson Pitman Giles was recognized for her accomplishments in the field of health care. Alyson has quickly and successfully moved herself up through the ranks since her beginnings as an occupational therapist. After only one year as an O.T. at Virginia Hospital, Alyson became director of occupational therapy at a Tennessee health care center. She took a post two years later in New Hampshire and has lived there with her husband and four children ever since. Alyson received her masters degree and now serves as President and CEO of Catholic Medical Center. Alyson also finds time to serve on several boards including the Greater Manchester Chamber of Commerce.

I would like to commend each of these women for their exceptional contributions to the State of New Hampshire and for being role models to young women everywhere. Thank you for all you do. It has been an honor to represent you in the U.S. Senate.•

ROGER GENDRON RETIRING FROM YEARS OF SERVICE

• Mr. SMITH of New Hampshire. Mr. President, I rise today to commend and congratulate Roger Gendron, who is retiring as the Marketing Business Manager at Portsmouth Naval Shipyard.

Roger began his career at Portsmouth Naval Shipyard in 1967, as an Industrial Engineer Technician. In 1970, Roger became a Computer Technician/Computer Systems Analyst, and in 1979, served as a Management Analyst until 1986, when he ascended to his current position as Marketing Business Manager.

As Marketing Business Manager, Roger has forged strong community and business relations through an aggressive, pro-active marketing strategy and outreach programs. He has been an instrumental leader in guiding the Yard through the challenges of downsizing, reduced budgets, and balancing manpower/workload equations. Through his vision for the future, Roger was fundamental in developing the Shipyard's MilCon Projects Priority List, which included the construction of the Dry Dock #2 Complex; a state-of-the-art Los Angeles Class refueling complex.

During Roger's distinguished career, he has exhibited extraordinary knowledge and leadership, helping to steer Portsmouth Naval Shipyard successfully through two Base Realignment and Closure processes. Roger's progressive planning contributed significantly to the establishment of Partnering, Out leasing, Regional Maintenance, SMART Base, and Technology Transfer programs within the Navy and shipyard community.

For several years, I have had the privilege to work with Roger in innovating and improving Portsmouth Naval Shipyard's ability to maintain America's Los Angeles Class nuclear submarines, a vital component in America's national defense. Throughout these challenges, Roger has focused continuously upon achieving the most efficient use of the shipyard's industrial infrastructure and resources.

Roger's expert counsel and vast institutional knowledge has contributed greatly to Portsmouth Naval Shipyard and to the defense of this great nation. Roger has been a dedicated and professional leader in his many years of service with Portsmouth Naval Shipyard. He will be sorely missed by all of us who have had the honor of working with him.

Roger, I wish you fair winds and following seas. It has been an honor to represent you in the U.S. Senate.•

TRIBUTE IN REMEMBRANCE OF LTC FLOYD JAMES THOMPSON

• Mr. THURMOND. Mr. President, I rise today to pay tribute to the late LTC Floyd "Jim" Thompson. He spent 9 excruciating years as a prisoner of war in Vietnam fighting for his life and our Nation. As the longest-held prisoner of war, Colonel Thompson embodies the core values of the American soldier. He survived because of his spirit, courage and determination, and will forever stand as an American hero. Colonel Thompson should be remembered for his service to our great country and the tremendous sacrifices that he made. I ask that an article by Mr. Tom Philpott be printed in the RECORD.

AMERICA'S LONGEST-HELD PRISONER OF WAR REMEMBERED

Army Col. Floyd "Jim" Thompson, the longest-held prisoner of war in American history, died July 16 in Key West, Fla. At age 69, his heart finally gave out, ending one of the most remarkable lives among heroes of the Vietnam War. Thompson's death came 34 years after fellow POWs thought they saw him die in Bao Cao, the nickname of a cruel prison camp in North Vietnam. It was also 25 years after Thompson saw every dream that had kept him alive in Vietnam shattered in the aftermath of our longest war, a conflict vastly different from the war against terror in Afghanistan. "I am a soldier. Period," Thompson would say if asked about the political correctness of the Vietnam War. End of argument, and an icy stare.

Through nine years of torture, starvation, and unimaginable deprivation, Thompson showed us the resiliency of the human spirit. He refused to die, and until death had a willfulness that inspired awe. He survived on dreams of returning home to a loving wife, four adoring children, and a grateful nation. When none of that squared with reality, years of bitterness followed.

The avalanche of challenges at home, Thompson believed, did not diminish his heroics or steadfast resistance before the enemy. Those who saw his strength agree that what he endured, and how, won't be forgotten. By the spring of 1968, Thompson had been held in jungle cages and dank prison cells more than four years, all of it in solitary confinement. The experience turned a 170-pound Special Forces officer into a "skeleton with hair," said one POW, describing Thompson at first sight. His appearance literally frightened other Americans, most of them soldiers captured in the Tet offensive. Warrant Officer Michael O'Connor/glimpsed Thompson through a crack between wall and cell door. He was inches away, leaning against his own cell bars.

"This guy is dead, I thought," O'Connor told me for Glory Denied, my book about the Thompson saga. "As part of some cruel joke, I thought they had stuck a corpse up against the door. Then I realized he was moving." Dick Ziegler, a captured helicopter pilot, heard Thompson say he had been shot down in March 1964. Ziegler did a quick calculation, and began to cry. "Eyes sunk way back in his head, cheekbones sticking out. . . . He scared me to death. I understood then what was waiting for me," Ziegler said. As the days passed, O'Connor heard Thompson scratching every morning against the other side of this cell wall.

"One day I asked him what he was doing. 'Standing up,' he said. Standing up! It took him half an hour. . . . Every day I heard him standing up." Months later, during a routine indoctrination session for POWs, Thompson collapsed into a violent convulsion. That amazing heart was in seizure, probably from starvation, doctors later surmised.

"A couple of us were told to carry him back to his cell," O'Connor recalled. "We didn't see him move." Guards came later and took Thompson away. The other POWs figured he was dying if not already dead.

Before leaving Vietnam in 1973, they learned he survived and his mystique grew, particularly among soldiers. His five years of solitary ended April 1, 1969, when he was tossed into a cell with three other Americans, including Lew Meyer, a Navy civilian firefighter. Meyer and Thompson began an astonishing daily exercise regime, leading to escape, Thompson's fifth attempt, in the fall of 1971. The pair avoided recapture in North Vietnam for two days. For his courage and leadership in this incident, the first observed by other POWs, Thompson would receive the Silver Star.

At home, within a year of losing her husband, Alyce Thompson saw her support structure collapsing. She decided to move her four children into the home of a retired soldier, and pose as his wife. She instructed the Army to withhold Thompson's name from POW lists. For years, the Army complied. By the time Thompson was freed, in March 1973, Navy Lt. Cmdr. Everett Alvarez had returned and been celebrated as the longest-held POW. Thompson became a back-page story except in his hometown newspaper.

At first, he didn't care. He was struggling to fulfill dreams of family and career. He and Alyce tried to save their marriage, with devastating consequences for the children. Thompson himself wasn't well-armed for that task, battling alcoholism, depression, and a deep sense of betrayal that never eased.

After losing his family, Thompson fought to save his career. Again, alcohol interfered, aggravating a nine-year professional gap with officer peers. Thompson never blamed the Army or the war for his troubles. He suffered a massive stroke in 1981, which forced him to retire. Disabled, he moved to Key West and shut himself off from family and friends. His identity as a former POW, as longest-held, made life worthwhile. He had flag poles installed in front of his condominium complex so one could fly the POW-MIA flag. A bronze plaque mounted nearby refers to Thompson, the resident hero. Bolted to the fender of his new black Cadillac are two large U.S. flags, fit for a motorcade. His license plate reads "POW."

Thompson left instructions to be cremated and, without ceremony, that his ashes be spread at sea—unless, at time of death, he had been awarded the Medal of Honor. In that case, with his sacrifices properly recognized, he wanted to be buried at Arlington National Cemetery.

Whether Jim Thompson deserves the nation's highest military honor, others will decide. Surely, for what he gave, he deserved more than he got.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES READ THE FIRST TIME

The following joint resolution was read the first time:

S.J. Res. 43. Joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-8402. A communication from the President of the United States, transmitting, pursuant to law, the periodic report on the national emergency with respect to Libya that was declared in Executive Order 12543 of January 1986; to the Committee on Banking, Housing, and Urban Affairs.

EC-8403. A communication from the President of the United States, transmitting, pursuant to law, the periodic report on the national emergency with respect to Iraq that was declared in Executive Order 12722 of August 2, 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC-8404. A communication from the President of the United States, transmitting, pursuant to law, a report concerning the continuation of the national emergency with respect to Iraq beyond August 9, 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC-8405. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Payments for Cattle and Other Property Because of Tuberculosis" (Doc. No. 00-105-1) received on July 30, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8406. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Fee Increases for Overtime Services" (Doc. No. 00-087-2) received on July 30, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8407. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Acephate, Amitraz, Carbaryl, Chlorpyritos, Cryolite, et al.; Tolerance Revocations" (FRL7191-4) received on July 31, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8408. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Fludioxonil, Pesticide Tolerance" (FRL7188-7) received on July 31, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-8409. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Appeals Settlement Guidelines: Construction/Real Estate—Retainage Payable" (UIL:0460 .03-10) received on July 30, 2002; to the Committee on Finance.

EC-8410. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Paul Pekar v. Commissioner" received on July 30, 2002; to the Committee on Finance.

EC-8411. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Notice 2002-53, 2002 Section 43 Inflation Adjustment" received on July 29, 2002; to the Committee on Finance.

EC-8412. A communication from the Clerk of the Court, United States Court of Federal Claims, transmitting, the Report of the Review Panel relative to a private relief bill; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-274. A House Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to legislation to repeal the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act of 1964, and to restore Filipino World War II Veterans' to full United States Veterans' status and benefit; to the Committee on Veterans' Affairs.

HOUSE CONCURRENT RESOLUTION 34

Whereas, on July 26, 1941, President Franklin Roosevelt called back to active duty Lieutenant General Douglas MacArthur, who was then serving as military adviser to the Commonwealth government in the Philippines. President Roosevelt appointed General MacArthur to command the newly formed United States Armed Forces in the Far East (USAFFE); and

Whereas, General MacArthur mobilized the entire Philippine Commonwealth Army, consisting of approximately 212,000 soldiers, into the USAFFE and reinforced approximately 10,000 American soldiers, including the 10,000-strong Philippine Scouts (who were the Filipino regulars in the American army) and the 6,000-strong Philippine Constabulary, under the command of American military forces; and

Whereas, with the destruction of the United States fleet at Pearl Harbor and the United States Air Force at Clark Field, and with the withdrawal of United States naval forces to Java, the USAFFE lost its naval and air support in the first few days of the war in the Pacific; and

Whereas, within days, Japanese troops landed in Aparri and Vigan, in Legazpi and Davao, in Lingayen, Atimonan, and Mauban, while their planes bombed military objectives and government centers. Within a few weeks, the American and Filipino forces defending Luzon were in full retreat to the stronghold where General MacArthur proposed to make a last stand—the peninsula of Bataan and the island fortress of Corregidor; and

Whereas, in the ensuing months, Japanese Imperial Forces in the Philippines focused all their military might against the USAFFE in Bataan and Corregidor; and

Whereas, on February 20, 1942, President Manuel Quezon and Vice President Sergio Osmena of the Philippine Commonwealth left Corregidor for the United States to form a government in exile. On March 11, 1942, General MacArthur left Corregidor for Australia to take over the defense of the southern Pacific area. It was upon his arrival in Melbourne that he issued his famous pledge, "I shall return"; and

Whereas, Hong Kong, Singapore, and the East Indies (Indonesia) fell before the fierce Japanese advance in the week following the attack on Pearl Harbor. The soldiers in the Philippines, under the command of Lieutenant General Jonathan Wainright, fought on. Their valiant struggle, the only Allied resistance in East Asia during the winter and spring of 1942, slowed down the enemy and gave Australia more time to strengthen its defenses; and

Whereas, thousands of Japanese infantrymen, supported by artillery barrages and tank fire power, pounded the Filipino-American lines. Overhead, Japan's air corps soared and bombed the foxholes, hospitals, and ammunition dumps of Bataan. From the sea the enemy warships poured lethal shells on the defenders' positions. Bataan was doomed. The defenders, weakened by hunger, disease, and fatigue, fought fiercely and many died as heroes; and

Whereas, Bataan fell on April 9, 1942. Corregidor's Voice of Freedom radio station announced, "Bataan has fallen, but the spirit that made it stand—a beacon to all the liberty-loving peoples of the world—cannot fall". As many as 36,000 Filipino and American soldiers were captured by the victorious Japanese. Forced to set out on the infamous "Death March" to San Fernando, tens of thousands died from hunger, thirst, disease, and exhaustion. Survivors were crammed into boxcars and shipped to imprisonment in Capas; and

Whereas, General Wainwright and the 12,000 Filipino and American soldiers manning the rocky fortress of Corregidor continued to fight, but after the fall of Bataan, the end was in sight for them as well. On May 6, 1942, Major General William Sharp was ordered to be stop future useless sacrifice of human life in the Fortified Islands, and to surrender all troops under his command in the Visayan Islands and Mindanao. Corregidor fell almost five months to the day after the attack on Pearl Harbor. Organized military resistance to the invasion of the Philippines ended that day; and

Whereas, many Filipino officers and men refused to heed the order to surrender. They fled to the hills with their arms and, with the help of the civilian population, waged a relentless guerrillas war against the invaders. The guerrillas, almost without arms at the beginning, hungry, and unclothed, gave battle to the enemy from every nook and corner of the land. For three seemingly interminable years and despite unbelievable hardships, they carried the torch of freedom; and

Whereas, it was against the backdrop of Bataan, Corregidor, and other theaters of battle, where alien soldiers under the United States flag fought bravely and fiercely, that the United States Congress amended the naturalization provisions of the Nationality Act of 1940; and

Whereas, in 1942, Congress reestablished the policy it had set forth during the first World War by providing for the naturalization of aliens honorably serving in the armed forces of the United States during the war. As part of the second War Powers Act, Congress waived the requirement of residence, literacy, and education for alien soldiers. The law allowed any alien who was inducted or who enlisted into the United States Army, Navy, or Air Force during World War II to become a United States citizen; and

Whereas, even while the war was raging, alien soldiers in England, Iceland, and North Africa, who served in American military forces, could be naturalized as United States citizens. This naturalization was made possible because beginning in January 1943, naturalization officers were dispatched to foreign countries where they accepted applications, performed naturalization ceremonies, and swore into American citizenship thousands of alien soldiers; and

Whereas, while the Philippines was under Japanese occupation, approximately 7,000 Filipino soldiers were naturalized outside the Philippines. The great majority of Filipino soldiers in the country, however, were not even aware of these liberal naturalization benefits. The United States withdrew its naturalization officer from the Philippines for nine months and then allowed the law to lapse in 1946, so few Filipino veterans were able to exercise their rights in a timely manner—rights that had been supposedly earned on the battlefield for a lifetime; and

Whereas, although the Immigration Act of 1990 rectified this foreclosure of rights by permitting Filipino veterans of World War II to apply for naturalization and to receive benefits after May 1, 1991, it did not remedy the betrayal of Filipino veterans orchestrated forty-five years earlier by a cost-conscious country through the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act (1946), which declared that the service performed by many Filipino veterans was not "active service" and denied them their veterans benefits after the fact; and

Whereas, while Filipino-American veterans who served honorably in an active-duty status under the command of the USAFFE or within the Philippine Army, the Philippine Scouts, or recognized guerrilla units, between September 1, 1939, and December 31, 1946, braved the same dangers and were entitled to apply for naturalization, only those persons who served in the armed forces of the United States or joined the Philippine Scouts before October 6, 1945, currently are entitled to the full-range of veterans benefits; and

Whereas, it should be the right of every Filipino-American veteran of World War II, who served honorably in an active-duty status under the Philippine Scouts, or recognized guerrilla units, to receive the full-range of veterans benefits, including a nonservice disability burial allowance and pension, treatment for nonservice connected disabilities at Veterans Hospitals in the United States, home loan guarantees, burial in a national or state veterans cemetery and headstones, contract national service life insurance and educational assistance for spouses and surviving spouses; and

Whereas, those who served in the armed forces of the United States or Philippine Scouts that enlisted prior to October 6, 1945, are eligible for full veterans' benefits, but others can only receive partial benefits. Those with limited benefits include veterans of the Philippine Scouts enlisted after October 6, 1945, Commonwealth Army of the Philippines enlisted between July 26, 1941 and June 30, 1946, and recognized guerrillas with service between April 20, 1942 and June 30, 1946. For these groups, monetary benefits are received in pesos in an amount equivalent to only half of the dollar value, regardless of whether the recipient resides in the Philippines or the United States; and

Whereas, Philippine veterans with military service with the Special Philippine Scouts who enlisted between October 6, 1945 and June 30, 1947, under Public Law 190, 79th Congress ("New Scouts") are not entitled to full Department of Veterans Affairs benefits. They are only entitled to service-connected disability benefits. This is payable to a veteran if he is presently suffering from a disability which the Department of Veterans Affairs determined to be the result of a disease or injury incurred in or aggravated during military service. The disability must have been rated by the Department of Veterans Affairs as ten per cent or more disabling to be compensable. (No compensation may be paid for a service-connected disability rated less than ten per cent disabling.) Medical treatment is provided only for their service-connected disabilities; and

Whereas, Philippine veterans with military service in the Commonwealth Army of the Philippines and recognized guerrilla units are entitled to service-connected disability benefits only if they are presently suffering from a disability which the Department of Veterans Affairs determines to be the result of disease or injury incurred in or aggravated during military service. The disability must have been rated by the Department of Veterans Affairs as ten per cent or more to be compensable. No compensation may be paid for a service-connected disability rated less than ten per cent disabling. Benefits are payable in Philippine pesos. Medical treatment is provided only for their service-connected disabilities; and

Whereas, there is no greater duty for a nation of free men and women than the care of former soldiers and their dependents, no greater honor for a former soldier than to be laid to rest next to the soldier's comrades-in-arms, no greater act of respect that a grateful country can show a former soldier than to inter the soldier's remains on hallowed ground, and no greater tribute that future generations of freedom-loving Americans can visit upon a former soldier than to remember those sacrifices may be the soldier on the battlefield; and

Whereas, in the words of President Abraham Lincoln, upon the establishment of the Veterans Administration (now the United States Department of Veterans Affairs), this country has a sacred duty "to care for him who shall have borne the battle, and for his widow and his orphan"; and awarding the full-range of veterans benefits to former soldiers is the very least that a grateful nation can do for those persons who placed themselves in harm's way to protect the United States from its enemies; now, therefore, be it

Resolved by the House of Representatives of the Twenty-first Legislature of the State of Hawaii, Regular Session of 2002, the Senate concurring, that Congress and the President of the United States are requested to support legislation to repeal the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act (1946), and to restore Filipino World War II veterans' to full United States veterans' status and benefits; and be it further

Resolved that Hawaii's congressional delegation is again requested to continue its support for legislation and other action to ensure that Filipino-American veterans who served honorably in an active-duty status under the command of the USAFFE or within the Philippine Army, the Philippine Scouts, or recognized guerrilla units, between September 1, 1939, and December 31, 1946, are granted the full range of veterans benefits that they were promised, that they are entitled to and that is provided to other veterans recognized by the Department of Veterans Affairs; and be it further

Resolved that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Speaker of the United States House of Representatives, the President pro tempore of the United States Senate, the Secretary of Veterans Affairs, the members of Hawaii's congressional delegation, and the Adjutant General.

POM–275. A House Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to the establishment of state-province relations of friendship between the State of Hawaii of the United States of America and the Province of Pangasinan of the Republic of the Philippines; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION 28 S.D.1

Whereas, the State of Hawaii is actively seeking to expand its international ties and has an abiding interest in developing goodwill, friendship, and economic relations between the people of Hawaii and the people of Asian and Pacific countries; and

Whereas, as part of its effort to achieve this goal, Hawaii has established a number of sister-state agreements with provinces in the Pacific region; and

Whereas, because of historical relationship between the United States of America and the Republic of the Philippines, there continues to exist valid reasons to promote international friendship and understanding for the mutual benefit of both countries to achieve lasting peace and prosperity as it serves the common interests of both countries; and

Whereas, there are historical precedents exemplifying the common desire to maintain a close cultural, commercial, and financial bridge between ethnic Filipinos living in Hawaii with their relatives, friends, and business counterparts in the Philippines, such as the previously established sister-city relationship between the City and County of Honolulu and the City of Cebu in the Provinces of Cebu and the City of Laoag in Ilocos Norte; and

Whereas, similar state-province relationships exist between the State of Hawaii and the Provinces of Cebu and Ilocos Sur, whereby cooperation and communication have served to establish exchanges in the areas of business, trade, agriculture and industry, tourism, sports, health care, social welfare, and other fields of human endeavor; and

Whereas, a similar sister state relationship would reinforce and cement this common bridge for understanding and mutual assistance between the ethnic Filipinos of both the State of Hawaii and the Province of Pangasinan; and

Whereas, there is an existing relationship between the Province of Pangasinan and the State of Hawaii because several notable citizens in Hawaii can trace their roots or have immigrated from the Province of Pangasinan, and the town of Urdaneta in Pangasinan now prominently features an "Arch of Aloha" at the gateway to the town; now, therefore, be it

Resolved by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, the Senate concurring, that Governor Benjamin Cayetano, of the State of Hawaii, or his designee, be authorized and is requested to take all necessary actions to establish a sister-state affiliation with the Province of Pangasinan; and be it further

Resolved that the Governor or his designee is requested to keep the Legislature of the State of Hawaii fully informed of the process establishing the relationship, and involved in its formalization to the extent practicable; and be it further

Resolved that the Province of Pangasinan be afforded the privileges and honors that Hawaii extends to its sister-states and provinces; and be it further

Resolved that if by June 30, 2007, the sister-state affiliation with the Province of Pangasinan has not reached a sustainable basis by providing mutual economic benefits through local community support, the sister-state affiliation shall be withdrawn; and be it further

Resolved that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's congressional delegation, the President of the Republic of the Philippines through its Honolulu Consulate General, and the Governor and Provincial Board of the Province of Pangasinan, Philippines.

POM-276. A Senate Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to the establishment of a center for the health, welfare, and education of children, youth, and families for Asia and the Pacific; to the Committee on Foreign Relations.

SENATE CONCURRENT RESOLUTION 69 H.D. 1

Whereas, the Millennium Young People's Congress held in Hawaii in October 1999, demonstrated the value of a collective global vision by and for the children of the world and the need for a forum for international discussion of issues facing all children and youth; and

Whereas, children and youth are the key to world peace, sustainability, and productivity in the next millennium; and

Whereas, the health, welfare, and education of children and families are part of the basic foundation and values shared globally that should be provided for all children and youth; and

Whereas, the populations of countries in Asia and the Pacific Rim are the largest and fastest growing segment of the world's population with young people representing the largest percentage of that population; and

Whereas, Hawaii's location in the middle of the Pacific Rim between Asia and the Americas, along with a diverse culture and many shared languages, provides an excellent and strategic location for meetings and exchanges as demonstrated by the Millennium Young People's Congress, to discuss the health, welfare, and rights of children as a basic foundation for all children and youth, and to research pertinent issues and alternatives concerning children and youth, and to propose viable models for societal application; now, therefore, be it

Resolved by the Senate of the Twenty-first Legislature of the State of Hawaii, Regular session of 2002, the House of Representatives concurring, that the United Nations is respectfully requested to consider the establishment in Hawaii of a Center for the Health, Welfare, and Education of Children, Youth and Families for Asia and the Pacific; and be it further

Resolved that the President of the United States and the United States Congress are urged to support the establishment of the Center; and be it further

Resolved that the House and Senate Committees on Health convene an exploratory task force to develop such a proposal for consideration by the United Nations; and be it further

Resolved that certified copies of this Concurrent Resolution be transmitted to the Secretary General of the United Nations, President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, President of the University of Hawaii, President of the East West Center, President of the United Nations Association in Hawaii, and members of Hawaii's Congressional Delegation.

POM-277. A resolution adopted by the House of the Legislature of the State of Hawaii relative to supporting the acquisition of Kahuku Ranch for the expansion of the Hawaii Volcanoes National Park and of Killae Village for expansion of Pu‘uhonua O Honaunau National Historical Park; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION 15

Whereas, the Volcanoes National Park on the Big Island consists of 217,000 acres and is one of only two national parks in this State; and

Whereas, The Volcanoes National Park attracts about 1,500,000 visitors each year who enjoy the natural beauty of the lava fields, native forests, and ocean cliffs; and

Whereas, a large parcel of land lying to the south and west of the Volcanoes National Park known as Kahuku Ranch consisting of 117,000 acres has come up for sale; and

Whereas, the Kahuku parcel contains outstanding geological, biological, cultural, scenic, and recreational value, and is the sole habitat for at least four threatened and endangered bird species endemic to Hawaii; and

Whereas, the National Park Service since 1945 has recognized that the property contained nationally significant resources and in fact, in its 1975 Master Plan, the National Park Service identified the property as a "potential addition to improve the geological, ecological, and scenic integrity of Hawaii Volcanoes National Park"; and

Whereas, the 181-acre Pu‘uhonua O Honaunau National Historical Park was established in 1961 to save a sacred place of refuge that for centuries offered sanctuary to any who reached its walls; and

Whereas, adjacent to Pu‘uhonua O Honaunau are the remains of Ki‘ilae, an ancient Hawaiian settlement dating back to the late 12th or early 13th centuries, and which remained active until about 1930, making it one of the last traditional Hawaiian villages to be abandoned; and

Whereas, significant portions of this ancient Hawaiian village remain outside of national park boundaries; and

Whereas, including these lands within the boundaries of Pu‘uhonua O Honaunau National Historical Park has been a goal of park management for more than three decades; and

Whereas, the park's 1972 Master Plan identified Ki‘ilae Village as a proposed boundary extension and in 1992, a Boundary Expansion Study completed for the park called for adding the "balance of Ki‘ilae Village"; and

Whereas, within the Ki‘ilae lands the National Park Service is seeking to acquire, more than 800 archeological sites, structures, and features have been identified, including at least twenty-five caves and ten heaiu, more than twenty platforms, twenty-six enclosures, over forty burial features, residential compounds, a holua slide, canoe landing sites, a water well, numerous walls, and a wide range of agricultural features; and

Whereas, in June 2001, Senator Inouye and Senator Akaka introduced a bill to authorize the addition of the Ki‘ilae Village lands to Pu‘uhonua O Honaunau National Historical Park and in October 2001, this bill passed the United States Senate and it is anticipated that the authorization bill will pass the House of Representatives as well; and

Whereas, these acquisitions offer an opportunity rarely imagined because they would give the National Park Service an excellent chance to expand and protect native plants and archaeological sites from destruction; and

Whereas, these opportunities can benefit current and future generations of residents and tourists, because expansion of Volcanoes National Park and Pu‘uhonua O Honaunau National Historical Park will preserve more open space, add to the natural environment, protect affected native species, and preserve cultural and historical sites; and

Whereas, in January 2001, the National Park Service held a series of public meetings to receive comments from the public regarding possible purchase of Kahuku Ranch and Ki‘ilae Village, and the nearly 400 people in attendance at the meetings expressed overwhelming support and endorsement; now therefore, be it

Resolved by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, that this body supports the acquisition by the United States National Park Service of Kahuku Ranch for expansion of the Hawaii Volcanoes National Park and of Ki‘ilae Village for expansion of Pu‘uhonua O Honaunau National Historical Park; and be it further

Resolved that certified copies of this Resolution be transmitted to the Director of the National Park Service, the President of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Hawaii's congressional delegation.

POM–278. A resolution adopted by the House of the Legislature of the State of Hawaii relative to the establishment of a sister-state relationship between the State of Hawaii and the Municipality of Tianjin in the People's Republic of China; to the Committee on Foreign Relations.

HOUSE RESOLUTION 117

Whereas, Tianjin, a city in northeastern China, is one of four municipalities under the direct control of the central government of the People's Republic of China, and in 2001 had a population slightly over 10,000,000; and

Whereas, the city is made up of 13 districts, five counties, 126 villages, 93 towns, and 133 street communities; and

Whereas, the history of Tianjin begins with the opening of the Sui Dynasty's Big Canal (581–617 AD). Beginning in the mid-Tang Dynasty (618–907 AD), Tianjin became the nexus for the transport of foodstuffs and silk between south and north China. During the Ming Dynasty (1404 AD), the city figured prominently as a military center. In 1860, its importance as a business and communications center began to grow; and

Whereas, Tianjin is known as the Bright Diamond of Bohai Gulf and is the gateway to China's capital of Beijing. Tianjin is one of China's biggest business and industrial port cities and, in north China, is the biggest port city. Tianjin now ranks second in importance and size in terms of industry, business, finance, and trade in the north. Its industrial production and trade volume is second only to Shanghai in the south; and

Whereas, the city's traditional industries include mining, metallurgy, machine-building, chemicals, power production, textiles, construction materials, paper-making, foodstuffs, shipbuilding, automobile manufacturing, petroleum exploitation and processing, tractor production, fertilizer and pesticide production, and watch, television, and camera manufacturing; and

Whereas, in 1994, Tianjin's economic goal was to double its gross national product by the year 2003. With its 1997 gross national product reaching RMB 124 billion yuan (about RMB 8.26 yuan to US$ 1), Tianjin is poised to reach that goal. By the end of 1998, 12,065 foreign-owned companies were established in Tianjin that invested a total of RMB 21.017 billion yuan (about US$ 2.5 billion). About RMB 9.291 billion yuan (about US$ 1.1 billion) of that amount was used for development of Tianjin; and

Whereas, in the past, business and other forms of industrial enterprises were primarily state-owned throughout China. However, under on-going nationwide reform, the proportion of businesses that are state-owned is being reduced. In Tianjin, the percentage of state-owned enterprises in 1997 was 35.7 percent versus 16.6 percent for collective ownership, and 47.7 percent for other forms, including private ownership. In the retail sector, the respective proportions were 23.7 percent, 17.3 percent, and 59 percent, respectively; and

Whereas, Tianjin has a broad science and technology base upon which to build, for example, it is home to 161 independent research institutions (117 local and 44 national). Aside from its several universities and colleges, Tianjin has six national-level laboratories and 27 national and ministerial-level technological test centers and has plans to increase its science and technology educational goals; and

Whereas, in 1984, the State Council issued a directive to establish the Tianjin Economic-Technological Development Area (TEDA), situated some 35 miles from Tianjin. Recently, some 3,140 foreign-invested companies have located to TEDA with a total investment of over US$ 11 billion; and

Whereas, at present, TEDA has developed four pillar industries: electronics and communications, automobile manufacturing and mechanization, food and beverages, and biopharmacy, and is promoting four new industries: information software, bioengineering, new energies, and environmental protection; and

Whereas, in 1996, TEDA began offering a technology incubator to help small and medium-sized enterprises with funding, tax breaks, personnel, etc. Within the TEDA high-tech park, Tianjin offers preferential treatment in the form of funding, land fees, taxes, and facilities (such as water, gas, and heating). Residential and other services, shopping, and educational and recreation facilities are either already in place or are being planned; and

Whereas, for the eleven months ending November 2001, total exports from TEDA was US$ 3.53 billion, of which foreign-funded enterprises accounted for US$ 3.49 billion while total foreign investment in TEDA amounted to US$ 2.3 billion; and

Whereas, Hawaii has been, since its early days, the destination of many Chinese immigrants who have helped to develop the State and its economy; and

Whereas, compared to the rest of the country, Hawaii is advantageously situated in the Pacific to better establish and maintain cultural, educational, and economic relationships with countries in the Asia-Pacific region, especially the People's Republic of China; and

Whereas, the new century we have embarked upon has been described by some as the "century of Asia" or the "China's century"; and

Whereas, like Tianjin, Hawaii is also striving to diversify its economy by expanding into environmentally clean high-technology industries including medical services and research; and

Whereas, the State also emphasizes the importance of higher education in order to create a solid foundation and workforce to serve as the basis from which to launch initiatives in high-technology development; and

Whereas, both Hawaii and Tianjin share many common goals and values as both work towards achieving their economic and educational objectives in the new century, and the people of the State of Hawaii desire to form a mutually beneficial relationship between the State of Hawaii and the municipality of Tianjin to share our knowledge and experiences in order to better assist each other in reaching our goals; now, therefore, be it

Resolved by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, that Governor Benjamin Cayetano, of the State of Hawaii, or his designee, be authorized and is requested to take all necessary actions to establish a sister-state affiliation with the municipality of Tianjin of the People's Republic of China; and be it further

Resolved that the Governor or his designee is requested to keep the Legislature of the State of Hawaii fully informed of the process in establishing the relationship, and involved in its formalization to the extent practicable; and be it further

Resolved that the municipality of Tianjin be afforded the privileges and honors that Hawaii extends to its sister-states and provinces; and be it further

Resolved that certified copies of this Resolution be transmitted to President of the United States, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's coangressional delegation, and the President of the People's Republic of China and the Mayor of the municipality of Tianjin through the Los Angeles Consulate General of the People's Republic of China.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2043: A bill to amend title 38, United States Code, to extend by five years the period for the provision by the Secretary of Veterans Affairs of noninstitutional extended care services and required nursing home care, and for other purposes. (Rept. No. 107–231).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1871: A bill to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes. (Rept. No. 107–232).

By Mr. BAUCUS, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

S. 724: A bill to amend title XXI of the Social Security Act to provide for coverage of pregnancy-related assistance for targeted low-income pregnant women. (Rept. No. 107–233).

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2237: A bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes. (Rept. No. 107–234).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1739: A bill to authorize grants to improve security on over-the-road buses. (Rept. No. 107–235).

By Mr. KERRY, from the Committee on Small Business and Entrepreneurship, with amendments:

S. 2335: A bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes. (Rept. No. 107–236).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

H.R. 2546: A bill to amend title 49, United States Code, to prohibit States from requiring a license or fee on account of the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes. (Rept. No. 107–237).

S. 1220: A bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track. (Rept. No. 107–238).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2182: A bill to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes. (Rept. No. 107–239).

S. 2201: A bill to protect the online privacy of individuals who use the Internet. (Rept. No. 107–240).

S. 1750: A bill to make technical corrections to the HAZMAT provisions of the USA PATRIOT Act. (Rept. No. 107–241).

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 2121: A bill to make available funds under the Foreign Assistance Act of 1961 to expand democracy, good governance, and anti-corruption programs in the Russian Federation in order to promote and strengthen democratic government and civil society in that country and to support independent media.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment:

H.R. 4558: A bill to extend the Irish Peace Process Cultural and Training Program.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment and with an amended preamble:

S. RES. 309: A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States.

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment:

S. 2394: A bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients.

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amended preamble:

S. CON. RES. 122: A concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN for the Committee on Foreign Relations.

*Richard L. Baltimore III, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Salutanate of Oman.

Nominee: Richard L. Baltimore III.

Post: Ambassador to Sultanate of Oman.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, Richard L. Baltimore III, None.
2. Spouse, Eszter Baltimore, none.
3. Children and Spouses, Names: Krisztina, Josephine & Natalie none.
4. Parents, Names: Richard L. Baltimore Jr., Lois M. Baltimore (dec'd) none.
5. Grandparents, Names: Richard L. Baltimore Sr., Emily Baltimore (dec'd) none.
6. Brothers and Spouses, Names: N/A none.
7. Sisters and Spouses, Names: Roslyn Baltimore, $100, 2002, Gov. Dav.

*Nancy J. Powell, of Iowa, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Pakistan.

Nominee: Nancy J. Powell.

Post: Islamabad, Pakistan.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.
2. Spouse, N/A.
3. Children and Spouses, Names: N/A.
4. Parents Names: Joseph and J. Maxine Powell None.
5. Grandparents Names: N/A.
6. Brothers and Spouses Names: William Powell none.
7. Sisters and Spouses Names: N/A.

By Mr. BAUCUS for the Committee on Finance.

*Pamela F. Olson, of Virginia, to be an Assistant Secretary of the Treasury.

*Charlotte A. Lane, of West Virginia, to be a Member of the United States International Trade Commission for a term expiring December 16, 2009.

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Edward J. Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board for a term expiring July 1, 2004.

*Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board for a term expiring July 1, 2005.

*Nomination was reported with recommendation that it be confirmed subject the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

By Mr. HARKIN for the committee on Agriculture, Nutrition, and Forestry.

Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

(The nomination was reported without the recommendation that it be confirmed.)

Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

(The nomination was reported without the recommendation that is be confirmed.)

The nominees agreed to respond to requests to appear and testify before any duly constituted committee of the Senate.

The following executive reports of committee were submitted:

By Mr. BIDEN, from the Committee on Foreign Relations: Treaty Doc. 105–32 South Pacific Environment Programme Agreement (Exec. Rept. No. 107–7)

Text of Committee-recommended Resolution of advice and consent: *Resolved* (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Agreement Establishing the South Pacific Regional Environmental Programme, subject to a Declaration.

The Senate advises and consents to the ratification of the Agreement Establishing the South Pacific Regional Environment Programme, done at Apia on June 16, 1993 (Treaty Doc. 105–32), subject to the declaration in Section 2.

Section 2. Declaration.

The advice and consent of the Senate is subject to the declaration that the "no reservations" provision in Article 10 of the Agreement has the effect of inhibiting the Senate in its exercise of its constitutional duty to give advice and consent to ratification of a treaty, and that the Senate's approval of the Agreement should not be construed as a precedent for acquiescence to future treaties containing such provisions.

Treaty Doc. 107–2 Protocol Amending 1949 Convention of Inter-American Tropical Tuna Commission (Exec. Rept. No. 107–6)

Text of Committee-recommended resolution of advice and consent: *Resolved* (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, done at Guayaquil, June 11, 1999, and signed by the United States, subject to ratification, in Guayaquil, Ecuador, on the same date (Treaty Doc. 107–2).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ENZI (for himself, Mr. GRASSLEY, and Mr. HAGEL):

S. 2834. A bill to provide emergency livestock assistance to agricultural producers, with an offset; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2835. A bill to promote the development of health care cooperatives that will help businesses to pool the health care purchasing power of employers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TORRICELLI:

S. 2836. A bill to suspend temporarily the duty on manganese metal; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2837. A bill to amend the Internal Revenue Code of 1986 to allow businesses to qualify as renewal community businesses if such businesses employ residents of certain other renewal communities; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2838. A bill to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CLELAND:

S. 2839. A bill to enhance the protection of privacy of children who use school or library computers employing Internet content management services, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ENSIGN (for himself and Mr. REID):

S. 2840. A bill to designate the facility of the United States Postal Service located at 120 North Main Street in Fallon, Nevada, as the "Rolian D. Melton Post Office Building"; to the Committee on Governmental Affairs.

By Mr. CORZINE (for himself, Mr. CARPER, Mr. ENSIGN, Mr. SCHUMER, and Mr. ALLARD):

S. 2841. A bill to adjust the indexing of multifamily mortgage limits, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. CARNAHAN:

S. 2842. A bill to amend the Older Americans Act of 1965 to authorize appropriations for demonstration projects to provide supportive services to older individuals who reside in naturally occurring retirement communities; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU:

S. 2843. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

By Mr. ROCKEFELLER:

S. 2844. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2845. A bill to extend for one year procedural relief provided under the USA PATRIOT Act for individuals who were or are victims or survivors of victims of a terrorist attack on the United States on September 11, 2001; to the Committee on the Judiciary.

By Mr. EDWARDS (for himself and Mr. SCHUMER):

S. 2846. A bill to establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 2847. A bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes; to the Committee on Environment and Public Works.

By Ms. COLLINS (for herself, Mr. CLELAND, Mr. HUTCHINSON, Mr. KERRY, Ms. SNOWE, and Mr. MILLER):

S. 2848. A bill to amend title XVIII of the Social Security Act to provide for a clarification of the definition of homebound for purposes of determining eligibility for home health services under the medicare program; to the Committee on Finance.

By Ms. COLLINS (for herself and Mrs. MURRAY):

S. 2849. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER:

S. 2850. A bill to create a penalty for automobile insurance fraud, and for other purposes; to the Committee on the Judiciary.

By Mr. TORRICELLI:

S. 2851. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for qualified higher education expenses to $10,000, and for other purposes; to the Committee on Finance.

By Mr. TORRICELLI:

S. 2852. A bill to amend the Internal Revenue Code of 1986 to provide for employee benefits for work site employees of certain corporations operating on a cooperative basis; to the Committee on Finance.

By Mr. JOHNSON (for himself and Mr. DORGAN):

S. 2853. A bill to direct the Secretary of the Interior to establish the Missouri River Monitoring and Research Program, to authorize the establishment of the Missouri River Basin Stakeholder Committee, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BINGAMAN (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2854. A bill to amend title XVIII of the Social Security Act to improve disproportionate share medicare payments to hospitals serving vulnerable populations; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, and Mr. GRAHAM):

S. 2855. A bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program; to the Committee on Finance.

By Mr. TORRICELLI (for himself and Mr. CHAFEE):

S. 2856. A bill to designate Colombia under section 244 of the Immigration and Nationality Act in order to make nationals of Colombia eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. WYDEN):

S. 2857. A bill to amend titles XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2858. A bill to modify the project for navigation, Union River, Maine; to the Committee on Environment and Public Works.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2859. A bill to deauthorize the project for navigation, Northeast harbor, Maine; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER (for himself, Mr. CHAFEE, Mr. KENNEDY, and Mr. HATCH):

S. 2860. A bill to amend title XXI of the Social Security Act to modify the rules for redistribution and extended availability of fiscal year 2000 and subsequent fiscal year allotments under the State children's health insurance program, and for other purposes; to the Committee on Finance.

By Mr. INHOFE:

S. 2861. A bill to empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. HOLLINGS, Ms. CANTWELL, and Mr. BIDEN):

S. 2862. A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN:

S. 2863. A bill to provide for deregulation of consumer broadband services; to the Committee on Commerce, Science, and Transportation.

By Mr. HUTCHINSON:

S. 2864. A bill to modify the full payment amount available to States under the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THURMOND:

S. 2865. A bill to establish Fort Sumter and Fort Moultrie National Historical Park in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GREGG (for himself, Mr. HUTCHINSON, Mr. CRAIG, and Mr. BROWNBACK):

S. 2866. A bill to provide scholarships for District of Columbia elementary and secondary students, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 2867. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOMENICI (for himself, Mr. CAMPBELL, and Mr. ALLARD):

S. 2868. A bill to direct the Secretary of the Army to carry out a research and demonstration program concerning control of salt cedar and other nonnative phreatophytes; to the Committee on Environment and Public Works.

By Mr. KERRY (for himself and Mr. BROWNBACK):

S. 2869. A bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY:

S. 2870. A bill to amend titles 10 and 14, United States Code, to provide for the use of gold in the metal content of the Medal of Honor; to the Committee on Armed Services.

By Mr. TORRICELLI (for himself, Mr. KERRY, Mr. CLELAND, Mr. REED, Mr. CORZINE, Mr. SCHUMER, and Mr. DURBIN):

S. 2871. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as ancient forests, roadless areas, watershed protection areas, special areas, and Federal boundary areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

By Mr. FITZGERALD:

S. 2872. A bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 2873. A bill to improve the provision of health care in all areas of the United States; to the Committee on Finance.

By Mr. DAYTON (for himself, Mr. CORZINE, Mr. INOUYE, and Mr. WELLSTONE):

S. 2874. A bill to provide benefits to domestic partners of Federal employees; to the Committee on Governmental Affairs.

By Mr. WELLSTONE (for himself, Mr. DAYTON, and Ms. MIKULSKI):

S. 2875. A bill to amend the Employee Retirement Income Security Act of 1974 to increase the maximum levels of guaranteed single-employer plan benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MURRAY (for herself and Mr. WELLSTONE):

S. 2876. A bill to amend part A of title IV of the Social Security Act to promote secure and healthy families under the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

By Mr. LIEBERMAN (for himself and Mrs. BOXER):

S. 2877. A bill to amend the Internal Revenue Code of 1986 to ensure that stock options of public companies are granted to rank and file employees as well as officers and directors, and for other purposes; to the Committee on Finance.

By Mr. FEINGOLD:

S. 2878. A bill to amend part A of title IV of the Social Security Act to ensure fair treatment and due process protections under the temporary assistance to needy families program, to facilitate enhanced data collection and reporting requirements under that program, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. BREAUX, and Mr. ROCKEFELLER):

S. 2879. A bill to amend titles XVIII and XIV of the Social Security Act to improve the availability of accurate nursing facility staffing information, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2880. A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HARKIN:

S. 2881. A bill to amend the Internal Revenue Code of 1986 to exclude from income amounts received by an employee from an employer as assistance towards the purchase of a principal residence; to the Committee on Finance.

By Mr. CONRAD (for himself, Mr. JOHNSON, and Mr. ROCKEFELLER):

S. 2882. A bill to amend the Internal Revenue Code of 1986 to modify the tax credit for holders of qualified zone academy bonds; to the Committee on Finance.

By Mr. CRAIG:

S. 2883. A bill to allow States to design a program to increase parental choice in special education, to fully fund the Federal share of part B of the Individuals with Disabilities Education Act, to help States reduce paperwork requirements under part B of such Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAUCUS (for himself, Mr. CRAPO, Mr. JOHNSON, Mr. THOMAS, Mr. CRAIG, Mr. ENZI, Mr. CONRAD, Mr. BINGAMAN, and Mr. ALLARD):

S. 2884. A bill to improve transit service to rural areas, including for elderly and disabled; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORZINE (for himself and Mr. AKAKA):

S. 2885. A bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SMITH of New Hampshire (for himself, Mr. HELMS, and Mr. HUTCHINSON):

S. 2886. A bill to amend the Internal Revenue Code of 1986 to ensure the religious free exercise and free speech rights of churches and other houses of worship to engage in an insubstantial amount of political activities; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2887. A bill to provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 2888. A bill to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county; to the Committee on Environment and Public Works.

By Mr. HUTCHINSON:

S. 2889. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance; to the Committee on Finance.

By Mr. DODD (for himself and Mr. DEWINE):

S. 2890. A bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY (for himself, Mr. HARKIN, and Ms. LANDRIEU):

S. 2891. A bill to create a 4-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans; to the Committee on Small Business and Entrepreneurship.

By Mr. KENNEDY (for himself, Mrs. CLINTON, and Mr. ROCKEFELLER):

S. 2892. A bill to provide economic security for America's workers; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2893. A bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico; to the Committee on Energy and Natural Resources.

By Mr. McCONNELL:

S. 2894. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mrs. HUTCHISON, and Ms. SNOWE):

S. 2895. A bill to enhance the security of the United States by protecting seaports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LOTT:

S.J. Res. 43. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself, Mr. GRAMM, Ms. SNOWE, Mr. BROWNBACK, and Mr. DURBIN):

S. Res. 315. A resolution congratulating Lance Armstrong for winning the 2002 Tour de France; to the Committee on the Judiciary.

By Mrs. LINCOLN (for herself, Mr. COCHRAN, Mr. THOMPSON, and Mr. FRIST):

S. Res. 316. A bill designating the year beginning February 1, 2003, as the "Year of the Blues"; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 317. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

By Mrs. LINCOLN:

S. Res. 318. A resolution designating August 2002, as "National Missing Adult Awareness Month"; considered and agreed to.

By Mr. GRAMM:

S. Res. 319. A resolution recognizing the accomplishments of Professor Milton Friedman; considered and agreed to.

By Mr. BAUCUS (for himself, Mr. BURNS, Mr. MILLER, Mr. LEVIN, Mr. COCHRAN, Mrs. CLINTON, Ms. LANDRIEU, Mr. JOHNSON, Mr. CRAPO, Mr. HELMS, and Mr. STEVENS):

S. Con. Res. 134. A concurrent resolution expressing the sense of Congress to designate the fourth Sunday of each September as "National Good Neighbor Day"; to the Committee on the Judiciary.

By Mr. NICKLES (for himself, Mr. KYL, Mr. ROBERTS, Mr. INHOFE, Mr. BUNNING, Mr. GRAHAM, Mr. BAYH, Mr. HAGEL, and Mrs. CARNAHAN):

S. Con. Res. 135. A concurrent resolution expressing the sense of Congress regarding housing affordability and urging fair and expeditious review by international trade tribunals to ensure a competitive North American market for softwood lumber; to the Committee on Finance.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. Con. Res. 136. A concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the International Association of Fish and Wildlife Agencies; to the Committee on the Judiciary.

By Mr. MILLER:

S. Con. Res. 137. A concurrent resolution expressing the sense of Congress that the Federal Mediation and Conciliation Service should exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in a strike, to lockout, or any conduct that interferes with the playing of scheduled professional baseball games; considered and agreed to.

ADDITIONAL COSPONSORS

S. 788

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 788, a bill to amend the Public Health Service Act to establish a National Organ and Tissue Donor Registry that works in conjunction with State organ and tissue donor registries, to create a public-private partnership to launch an aggressive outreach and education campaign about organ and tissue donation and the Registry, and for other purposes.

S. 847

At the request of Mr. DAYTON, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 917

At the request of Ms. COLLINS, the names of the Senator from Utah (Mr. BENNETT) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1220

At the request of Mr. BREAUX, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1220, a bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track.

S. 1626

At the request of Mr. BINGAMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 1777

At the request of Mrs. CLINTON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1777, a bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1867

At the request of Mr. LIEBERMAN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

S. 1877

At the request of Mr. HARKIN, the names of the Senator from South Carolina (Mr. HOLLINGS), the Senator from Washington (Mrs. MURRAY) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 1877, a bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran.

S. 1991

At the request of Mr. HOLLINGS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1991, to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes.

S. 2055

At the request of Ms. CANTWELL, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2055, a bill to make grants to train sexual assault nurse examiners, law enforcement personnel, and first responders in the handling of sexual assault cases, to establish minimum standards for forensic evidence collection kits, to carry out DNA analyses of samples from crime scenes, and for other purposes.

S. 2067

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2067, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

S. 2079

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was withdrawn as a cosponsor of S. 2079, a bill to amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

At the request of Mr. ROCKEFELLER, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2079, supra.

S. 2189

At the request of Mr. ROCKEFELLER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2189, a bill to amend the Trade Act of 1974 to remedy certain effects of injurious steel imports by protecting benefits of steel industry retirees and encouraging the strengthening of the American steel industry.

S. 2250

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2250, a bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Texas (Mrs. HUTCHISON), the Senator from South Carolina (Mr. THURMOND), the Senator from Kansas (Mr. ROBERTS), the Senator from Louisiana (Mr. BREAUX), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Missouri (Mr. BOND) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2335

At the request of Mr. JOHNSON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2335, a bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes.

S. 2395

At the request of Mr. BIDEN, the name of the Senator from Virginia (Mr. ALLEN) was withdrawn as a cosponsor of S. 2395, a bill to prevent and punish counterfeiting and copyright piracy, and for other purposes.

S. 2425

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2425, a bill to prohibit United States assistance and commercial arms exports to countries and entities supporting international terrorism.

S. 2430

At the request of Mr. BREAUX, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2430, a bill to provide for parity in regulatory treatment of broadband services providers and of broadband access services providers, and for other purposes.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2521

At the request of Mr. KERRY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2521, a bill to amend title II of the Social Security Act to restrict the application of the windfall elimination provision to individuals whose combined monthly income from benefits under such title and other monthly periodic payments exceeds $2,000 and to provide for a graduated implementation of such provision on amounts above such $2,000 amount.

S. 2529

At the request of Mr. BINGAMAN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 2529, a bill to amend title XVIII of the Social Security Act to improve the medicare incentive payment program.

S. 2626

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2643

At the request of Mr. BUNNING, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2643, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs.

S. 2654

At the request of Ms. CANTWELL, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2654, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income loan payments received under the National Health Service Corps Loan Repayment Program established in the Public Health Service Act.

S. 2700

At the request of Mrs. LINCOLN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2700, a bill to amend titles II and XVI of the Social Security Act to limit the amount of attorney assessments for representation of claimants and to extend the attorney fee payment system to claims under title XVI of that Act.

S. 2712

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

At the request of Mr. HAGEL, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2712, supra.

S. 2714

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2714, a bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2002.

S. 2715

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2715, a bill to provide an additional extension of the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.

S. 2748

At the request of Mrs. HUTCHISON, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2748, a bill to authorize the formulation of State and regional emergency telehealth network testbeds and, within the Department of Defense, a telehealth task force.

S. 2749

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 2749, a bill to establish the Highlands Stewardship Area in the States of Connecticut, New Jersey, New York, and Pennsylvania, and for other purposes.

S. 2762

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 2762, a bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes.

At the request of Mr. THOMAS, the names of the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2762, supra.

S. 2770

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2770, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas.

S. 2777

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2777, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the treatment of qualified public educational facility bonds as exempt facility bonds.

S. 2790

At the request of Ms. CANTWELL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2790, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 2794

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 2794, a bill to establish a Department of Homeland Security, and for other purposes.

At the request of Mr. GRAMM, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from Colorado (Mr. CAMPBELL), the Senator from Idaho (Mr. CRAIG), the Senator from Idaho (Mr. CRAPO), the Senator from Ohio (Mr. DEWINE), the Senator from Nevada (Mr. ENSIGN), the Senator from Wyoming (Mr. ENZI), the Senator from Tennessee (Mr. FRIST), the Senator from Iowa (Mr. GRASSLEY), the Senator from New Hampshire (Mr. GREGG), the Senator from Nebraska (Mr. HAGEL), the Senator from Utah (Mr. HATCH), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from North Carolina (Mr. HELMS), the Senator from Montana (Mr. BURNS), the Senator from Virginia (Mr. WARNER), the Senator from South Carolina (Mr. THURMOND), the Senator from Wyoming (Mr. THOMAS), the Senator from Oregon (Mr. SMITH), the Senator from New Hampshire (Mr. SMITH), the Senator from Alabama (Mr. SESSIONS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Kansas (Mr. ROBERTS), the Senator from Oklahoma (Mr. NICKLES), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Arizona (Mr. MCCAIN), the Senator from Mississippi (Mr. LOTT), the Senator from Arizona (Mr. KYL), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 2794, supra.

S. 2798

At the request of Mr. DURBIN, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2798, a bill to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code.

S. 2800

At the request of Mr. BAUCUS, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

S. 2814

At the request of Mr. DORGAN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2814, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds.

S. 2819

At the request of Mr. JEFFORDS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2819, a bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their unspent allotments under the State children's health insurance program to expand health coverage under that program or for expenditures under the medicaid program, and for other purposes.

S. 2820

At the request of Mrs. CARNAHAN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2820, a bill to increase the priority dollar amount for unsecured claims, and for other purposes.

S. 2826

At the request of Mr. SCHUMER, the names of the Senator from Georgia (Mr. CLELAND), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 2826, a bill to improve the national instant criminal background check system, and for other purposes.

S. 2830

At the request of Mr. ROBERTS, the names of the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 2830, a bill to provide emergency disaster assistance to agricultural producers.

S. CON. RES. 122

At the request of Ms. SNOWE, the name of the Senator from Iowa (Mr . HARKIN) was added as a cosponsor of S. Con. Res. 122, a concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

S. CON. RES. 129

At the request of Mr. CRAPO, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. Con. Res. 129, a concurrent resolution expressing the sense of Congress regarding the establishment of the month of November each year as "Chronic Obstructive Pulmonary Disease Awareness Month".

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2835. A bill to promote the development of health care cooperatives that will help businesses to pool the health care purchasing power of employers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation to help businesses form group-purchasing cooperatives to obtain enhanced benefits, to reduce health care rates, and to improve quality for their employees' health care.

High health care costs are burdening businesses and employees across the Nation. These costs are digging into profits and preventing access to affordable health care. Too many patients feel trapped by the system, with decisions about their health dictated by costs rather than by what they need.

This year has been the third year in a row of double-digit increases in health care costs. Companies will likely face average increases of 12 to 15 percent in 2003, on top of the 12.7 percent increase this year.

For some employers in Wisconsin, costs will rise much more sharply. A recent study found health care cost for businesses in southeastern Wisconsin were 55 percent higher than the Midwest average. While nationwide, the average health care premium for a family currently costs about $588 per month, in Wisconsin an average family pays $812 per month.

We must curb these rapidly-increasing health care premiums. I strongly support initiatives to ensure that everyone has access to health care. It is crucial that we support successful local initiatives to reduce health care premiums and to improve the quality of employees; health care.

By using group purchasing to obtain rate discounts, some employers have been able to reduce the cost of health care premiums for their employees. According to the National Business Coalition on Health, there are more than 90 employer-led coalitions across the United States that collectively purchase health care. Through these pools, businesses are able to proactively challenge high costs and inefficient delivery of health care and share information on quality. These coalitions represent over 7,000 employers and approximately 34 million employees nation-wide.

Improving the quality of health care will also lower the cost of care. By investing in the delivery of quality health car, we will be able to lower long term health care costs. Effective care, such as quality preventive services, can reduce overall health care expenditures. Health purchasing coalitions help promote these services and act as an employer forum for networking and education on health care cost containment strategies. They can help foster a dialogue with health care providers, insurers, and local HMOs.

Health care markets are local. Problems with cost, quality, and access to healthcare are felt most intensely in the local markets. Health care coalitions can function best when they are formed and implemented locally.

Local employers of large and small businesses have formed health care coalitions to track health care trends, create a demand for quality and safety, and encourage group purchasing.

In Wisconsin, there have been various successful initiatives that have formed health care purchasing cooperatives to improve quality of care and to reduce cost. For example, the Employer Health Care Alliance Cooperative, an employer-owned and employer-directed not-for-profit cooperative, has developed a network of health care providers in Dane County and 12 surrounding counties on behalf of its 170 member employers. Through this pooling effort, employers are able to obtain affordable, high-quality health care for their 110,000 employees and dependents.

This legislation seeks to build on successful local initiatives, such as The Alliance, that help businesses to join together to increase access to affordable and high-quality health care.

The Promoting Health Care Purchasing Cooperatives Act would authorize grants to a group of businesses so that they could form group-purchasing cooperatives to obtain enhanced benefits, reduce health care rates, and improve quality.

This legislation offers two separate grant programs to help different types of businesses pool their resources and bargaining power. Both programs would aid businesses to form cooperatives. The first program would help large businesses that sponsor their own health plans, while the second program would help small businesses that purchase their health insurance.

My bill would enable larger businesses to form cost-effective cooperatives that could offer quality health care through several ways. First, they could obtain health services through pooled purchasing from physicians, hospitals, home health agencies, and others. By pooling their experience and interests, employers involved in a coalition could better attack the essential issues, such as rising health insurance rates and the lack of comparable health care quality data. They would be able to share information regarding the quality of these services and to partner with these health care providers to meet the needs of their employees.

For smaller businesses that purchase their health insurance, the formation of cooperatives would allow them to buy health insurance at lower prices through pooled purchasing. Also, the communication within these cooperatives would provide employees of small businesses with better information about the health care options that are available to them. Finally, coalitions would serve to promote quality improvements by facilitating partnerships between their group and the health care providers.

By working together, the group could develop better quality insurance plans and negotiate better rates.

Past health purchasing pool initiatives have focused only on cost and have tried to be all things for all people. My legislation creates an incentive to join the pool by giving grants to a group of similar businesses to form group-purchasing cooperatives. The pool are also given flexibility to find innovative ways to lower costs, such as enhancing benefits, for example, more preventive care, and improving quality. Finally, the cooperative structure is a proven model, which creates an incentive for businesses to remain in the pool because they will be invested in the organization.

We must reform health care in America and give employers and employees more options. This legislation, by providing for the formation of cost-effective coalitions that will also improve the quality of care, contributes to this essential reform process. I urge my colleagues to join me in cosponsoring this proposal to improve the quality and ease the costs of health care.

By Ms. LANDRIEU:

S. 2837. A bill to amend the Internal Revenue Code of 1986 to allow businesses to qualify as renewal community businesses if such businesses employ residents of certain other renewal communities; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, I rise to introduce legislation to make a small change to the Renewal Community program that will make a big difference for the people of my State. This legislation will spur job growth and economic development in many impoverished areas that have been designated as renewal communities.

Renewal communities were authorized under the Community Renewal Tax Relief Act of 2000. The Department of Housing and Urban Development has designated 40 urban and rural areas around the country as renewal communities that are eligible to share in an estimated $17 billion in tax incentives to stimulate job growth, promote economic development, and create affordable housing. The purpose of the Act is to help bring needed investment to areas with demonstrated economic distress. The poverty rate in renewal communities is at least 20 percent, and the unemployment rate is one-and-a-half times the national level. The households in the renewal communities have incomes that are 80 percent below the median income of households in their local jurisdictions.

Businesses in renewal communities are eligible to receive wage credits, tax deductions, and capital gains exclusions for hiring workers living in the renewal communities. In order for businesses to qualify for participation in the program they must meet certain criteria. For example, at least fifty percent of the total gross income of a business must come from operations within the renewal community and a substantial part of its tangible property must lie within the renewal community. Furthermore, at least thirty-five percent of its employees must be residents of the renewal community and the employees' services must be performed in the renewal community.

The Renewal Community program is targeted to help small businesses in poor communities. Through the tax benefits provided, the small and family-owned businesses are able to maintain their operations and continue supplying goods and services to their neighborhoods. These businesses are the true essence of the entrepreneurial spirit and are the engines of economic growth and development. The Renewal Community program also encourages the start of new businesses. Louisiana has really benefited from this program. It has been a catalyst in boosting local economics and cutting unemployment.

Louisiana has four renewal communities. Some of them border one another. Under the rules of the program, however, a business cannot take advantage of the tax incentives if they hire someone who lives outside the renewal community, even if that person lives in the renewal community next door. In rural areas, this rule poses a problem for people living in one renewal community who often find jobs with companies in an adjacent renewal community.

A good example of what I am talking about is in the northern part of Louisiana, home of the North Louisiana Renewal Community and the Ouachita Renewal Community. The City of Monroe is located at the heart of the Ouachita Renewal Community. Monroe serves as the hub for Northeast Louisiana. All around Monroe and the Ouachita Renewal Community there are parishes which all fall in the North Louisiana Renewal Community, Morehouse Parish to the north, Richland Parish to the east, Caldwell Parish to the south, and Lincoln Parish to the west. We know that many companies in the Ouachita Renewal Community would qualify for the tax benefits if they could count any employees they hired from the adjacent North Louisiana Renewal Community toward meeting the thirty-five percent requirement. My legislation will allow the employers in one renewal community to hire employees from an adjacent or nearby renewal community areas and still receive the tax benefits granted through the Act.

The goal of the Renewal Community Program is to provide a vehicle for change in poverty stricken areas. It makes sense that we take steps to add flexibility to the program. Employees with a particular skill set may be better suited to work at companies located in an adjacent renewal community. My legislation provides employers and employees with the opportunity to take full advantage of the Renewal Community program.

This legislation is an opportunity for continued assistance to low income people and economically distressed areas of our country. I urge my colleagues to support this bill.

By Mrs. FEINSTEIN:

S. 2838. A bill to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am proud to introduce legislation today to transfer 27 acres of land from the Stanislaus National Forest to the Clovis Unified School District.

This bill allows the school district to continue operating the California Five Mile Regional Learning Center and, more importantly, raise the necessary funds to renovate the facilities.

Since 1989, Clovis Unified School District has leased the Five Mile Regional Learning Center from the Forest Service to offer programs to students living in the Central Valley. And each year, thousands of eager children come to the Center to take classes that emphasize natural resource conservation. During this past academic year, for instance, more than 14,000 students benefitted from classes ranging from forest management to aviary studies to team building.

In addition to classes, students have the option of attending summer basketball camps offered in the Center's gymnasium and participating in individual activities given on the Center's adjacent 93 acres. To date, the district has invested $14 million of local funds to provide these opportunities.

Unfortunately, in the last few years, the Regional Learning Center has fallen into a state of disrepair. The buildings that occupy the 27 acres are over 40 years old, but have never undergone major renovations to modernize and improve them. As a result, the Center has a laundry list of items in need of repair: from cracked asphalt and leaky roofs to unreliable electrical wiring. And while Clovis Unified School District officials have done a fine job of operating the Center and are willing to invest in renovations, the Forest Service can not permit the district to spend local funds to renovate these federally owned buildings.

This bill enables the Forest Service to convey the acreage that the buildings occupy to the school district allowing the district to make the necessary repairs. Clovis Unified has already committed to investing $5 million over 5 years to make the renovations, in addition to the district's $1.2 million of annual contributions spent on routine maintenance and operating costs. These investments will be used to expand and enhance the Center's environmental educational curriculum. I believe that given the budget constraints that schools nationwide are facing that this commitment speaks to the quality of these programs and to the need to keep the Center in operation.

The Forest Service has already acknowledged that this transfer would be in the best interest of both the Forest Service and the general public. At the Forest Service's request, reversionary language was added to this bill to ensure that the Federal government would retain ownership of the land should the school district decide to no longer operate the facilities.

Without this important legislation, in a few years time, the California Five Mile Regional Learning Center will be uninhabitable and another educational resource that benefits our children will close its doors. I believe that this bill is the perfect example of what can happen when local, state, and federal governments work together to get something done. It is this type of partnership that Congress should support in our efforts to diversify and improve educational opportunities for students and encourage multi-use activities on federal land. In this case, I believe everyone wins and I urge my colleagues to join me in supporting this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2838

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "California Five Mile Regional Learning Center Transfer Act".

SEC. 2. LAND CONVEYANCE AND SPECIAL USE AGREEMENT, FIVE MILE REGIONAL LEARNING CENTER, CALIFORNIA.

(a) CONVEYANCE.—The Secretary of Agriculture shall convey to the Clovis Unified School District of California all right, title, and interest of the United States in and to a parcel of National Forest System land consisting of 27.10 acres located within the southwest ¼ of section 2, township 2 north, range 15 east, Mount Diablo base and meridian, California, which has been utilized as the Five Mile Regional Learning Center by the school district since 1989 pursuant to a special use permit (Holder No. 2010–02) to provide natural resource conservation education to California youth. The conveyance shall include all structures, improvements, and personal property shown on original map #700602 and inventory dated February 1, 1989.

(b) SPECIAL USE AGREEMENT.—As soon as practicable after the date of the enactment of this Act, the Secretary shall enter into negotiations with the Clovis Unified School District to enter into a new special use permit for the approximately 100 acres of National Forest System land that, as of the date of the enactment of this Act, is being used by the school district pursuant to the permit described in subsection (a), but is not included in the conveyance under such subsection.

(c) REVERSION.—In the event that the Clovis Unified School District discontinues its operation of the Five Mile Regional Learning Center, title to the real property conveyed under subsection (a) shall revert back to the United States.

(d) COSTS AND MINERAL RIGHTS.—The conveyance under subsection (a) shall be for a nominal cost. Notwithstanding such subsection, the conveyance does not include the transfer of mineral rights.

By Mr. CLELAND:

S. 2839. A bill to enhance the protection of privacy of children who use school or library computers employing Internet content management services, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. CLELAND. Mr. President, in December 2000, New York Times reporter, John Schwartz, wrote "When Congress passed a new bill last week requiring virtually every school and library in the nation to install technology to protect minors from adult materials online, it created a business opportunity for companies that sell Internet filtering systems. . . . Some of the filtering companies' business plans include tracking students' Web wanderings and selling the data to market research firms." While I support the use of filtering technology in schools and libraries that will be visited by our children, this statement alarmed me.

A month later, the Wall Street Journal reported that the Department of Defense was buying information about our school children's Internet habits from a filtering company without the knowledge of their parents or the school officials. The Defense Department contracted directly with the filtering company. As one of our most vulnerable populations, I believe it is Congress's duty to act in a manner to ensure families knowledge of the information that is collected about our children and to restrict the collection of personal information on children. The fact that this arrangement could occur without anyone with direct responsibility for the children having knowledge of it is a serious oversight. We need a solution, and to that end, I am introducing the Children's Electronic Access Safety Enhancement, or CEASE Act.

This legislation is a commonsense approach to dealing with this problem in order to ensure our children are protected. The first section of the bill requires an Internet filtering government contractor to disclose its treatment of collected information to the school or library with which it is contracting. Additionally, if changes to these policies are made, the filtering company must inform the school or library of these changes. If adequate notice is not provided, the entity has the option to cancel the contract. Armed with such information about the company's practices, the school or library officials can make an informed decision of whether it wishes to contract with a particular company.

The Children's Online Privacy Protection Act, COPPA, which passed Congress and was signed into law in 1998, prohibits the collection of personal information about children on commercial websites. In the second section of my legislation, a similar COPPA prohibition would extend to Internet content management services at schools and libraries. If personal information is collected on a child, the provider is required to inform the school or library and the Federal Trade Commission and to indicate how it will treat this information so that it will not be disclosed or distributed. When children go to schools and libraries, these environments are supposed to be safe. Parents and guardians should not have to worry about how their children's personal information may be compromised, especially by a company that markets itself to protect children and in some cases facilitate learning. I believe my legislation will help put to rest such concerns.

Protecting the privacy of children has been widely supported, as it should be. When Congress was debating COPPA in 1998, the bill received broad support. At a Senate Commerce Committee hearing in September 1998, Arthur Sackler, representing the Direct Marketing Association, DMA stated, "Although DMA usually supports self-regulation of electronic commerce, we believe it may be appropriate to consider targeted legislation in this area." Kathyrn Montgomery from the Center for Media Education stated, "Children are not little adults. . . . Because many young children do not fully understand the concept of privacy, they can be quite eager and willing to offer up information about themselves and their families when asked. Children also tend to be particularly trusting of computers, and thus more open to interacting with them."

An April 2002 FTC report on the implementation of COPPA draws the conclusion that Web sites have generally been able to comply with COPPA. That is why I have every hope and expectation that the CEASE Act can also be implemented.

Given the fact that we have evidence of some Internet content management companies already sharing information with outside entities, the CEASE Act is timely. If an Internet content management company believes it is a good business plan to share information, even in aggregate, with outside parties, these companies should not be adverse to disclosing this practice with a potential client. And, I believe that a number of communities may not wish to allow these practices at all because they believe that, as Alex Molnar, a professor at the University of Wisconsin at Milwaukee, stated, "Providing demographic information about students to special interests, even in aggregate form, is a potential violation of the privacy of children and their families." Communities with such beliefs should be able to act upon them in the best interest of their children, and my legislation requires the disclosure that will help make this a reality.

There is no arguing that the Internet is, and will continue to be, an important part of the learning process. Personally, I support wiring the schools and libraries in this Nation as rapidly as possible because I understand the educational and job opportunities the Internet can bring. However, especially for our children, we need to ensure there are safeguards. Providing more information and empowering local officials to make decisions based on this information are good policies. As the Nation's children prepare to return to school—schools that are more wired now than ever before—I urge my colleagues to support the CEASE bill to protect our children.

I ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Electronic Access Safety Enhancement (CEASE) Act".

SEC. 2. DISCLOSURE BY INTERNET CONTENT MANAGEMENT SERVICES OF COLLECTION, USE, AND DISCLOSURE OF INFORMATION UNDER CONTRACTS FOR SCHOOLS AND LIBRARIES.

(a) INITIAL DISCLOSURE OF POLICIES.—

(1) IN GENERAL.—A provider of Internet content management services shall, before entering into a contract or other agreement to provide such services to or for an elementary or secondary school or library, notify the local educational agency or other authority with responsibility for the school, or library, as the case may be, of the policies of the provider regarding the collection, use, and disclosure of information from or about children whose Internet use will be covered by such services.

(2) ELEMENTS OF NOTICE.—Notice on policies regarding the collection, use, disclosure of information under paragraph (1) shall include information on the following:

(A) Whether any information will be collected from or about children whose Internet use will be covered by the services in question.

(B) Whether any information so collected will be stored or otherwise retained by the provider of Internet content management services, and, if so, under what terms and conditions, including a description of how the information will be secured.

(C) Whether any information so collected will be sold, distributed, or otherwise transferred, and, if so, under what terms and conditions.

(3) FORM OF NOTICE.—Any notice under this subsection shall be clear, conspicuous, and designed to be readily understandable by its intended audience.

(b) MODIFICATION OF POLICIES.—

(1) IN GENERAL.—A provider of Internet content management services shall, before implementing any material modification of the policies described in subsection (a)(1) under a contract or other agreement with respect to an elementary or secondary school or library, notify the local educational agency or other authority with responsibility for the school, or library, as the case may be, of the proposed modification of the policies.

(2) TIMELINESS.—Notice under paragraph (1) shall be provided in sufficient time in advance of the modification covered by the notice to permit the local educational agency or other authority concerned, or library concerned, as the case may be, to evaluate the effects of the modification.

(c) REGULATIONS.—The Commission shall prescribe regulations for purposes of the administration of this section. The regulations shall include provisions regarding the elements of notice required under subsection (a)(2) and the timeliness of notice under subsection (b)(2).

(d) ADMINISTRATION.—

(1) IN GENERAL.—This section shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(e) NONCOMPLIANCE.—

(1) IN GENERAL.—The violation of any provision of this section, including the regulations prescribed by the Commission under subsection (c), shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) TERMINATION OF CONTRACT OR AGREEMENT.—

(A) AUTHORITY TO TERMINATE.—Notwithstanding any provision of a contract or agreement to the contrary, if a provider of Internet content management services for a school or library fails to comply with a policy in a notice under subsection (a), or fails to submit notice of a modification of a policy under subsection (b) in a timely manner, the local educational agency or other authority concerned, or library concerned, may terminate the contract or other agreement with the provider to provide Internet content management services to the school or library, as the case may be.

(B) RESOLUTION OF DISPUTES.—Any dispute under subparagraph (A) regarding the failure of a provider of Internet content management services as described in that subparagraph shall be resolved by the Commission.

(C) RELATIONSHIP TO OTHER RELIEF.—The authority under this paragraph with respect to noncompliance of a provider of Internet content management services is in addition to the power of the Commission to treat the noncompliance as a violation under paragraph (1).

(f) NOTICE TO PARENTS.—A school or library shall provide reasonable notice of the policies of an Internet content management service provider used by that school or library to parents of students, or patrons of the library, as the case may be.

SEC. 3. COLLECTION OF PERSONAL INFORMATION ABOUT CERTAIN OLDER CHILDREN BY PROVIDERS OF INTERNET CONTENT MANAGEMENT SERVICES TO SCHOOLS AND LIBRARIES.

(a) PROHIBITION.—A provider of Internet content management services to or for an elementary or secondary school or library may not collect through such services personal information from or about a child who is a student at that school or a user of that library.

(b) RESPONSIBILITIES UPON COLLECTION.—

(1) IN GENERAL.—If a provider of Internet content management services to or for an elementary or secondary school or library collects through such services personal information from or about a child who is a student at that school or a user of that library, the provider shall—

(A) provide prompt notice of such collection—

(i) to either—

(I) the local educational agency or other authority with responsibility for the school and appropriate officials of the State in which the school is located; or

(II) the library; and

(ii) to the Federal Trade Commission; and

(B) take appropriate actions to treat the personal information—

(i) in a manner consistent with the provisions of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.) if the personal information was collected from a child as defined in section 1302(1) of that Act; or

(ii) in a similar manner, under regulations prescribed by the Commission, if the personal information was collected from a child over the age of 12.

(2) ELEMENTS OF NOTICE.—Notice of the collection of personal information by a provider of Internet content management services under paragraph (1)(A) shall include the following:

(A) A description of the personal information so collected.

(B) A description of the actions taken by the provider with respect to such personal information under paragraph (1)(B).

(c) RESPONSE TO NOTICE.—A local educational agency or other authority, or library, receiving notice under subsection (b) with respect to a covered child shall take appropriate actions to notify a parent or guardian of the child of receipt of such notice.

SEC. 4. APPLICATION OF COPPA.

Section 1302 of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501) is amended by adding at the end the following:

"(13) PROVIDER OF INTERNET CONTENT MANAGEMENT SERVICES TREATED AS OPERATOR.—The term 'operator' includes a provider of Internet content management services (as defined in section 5(4) of the Children's Electronic Access Safety Enhancement Act) who collects or maintains personal information from or about the users of those services, or on whose behalf such information is collected or maintained, if those services are provided for commercial purposes involving commerce described in paragraph (2)(A)(i), (ii), or (iii).".

SEC. 5. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(2) CHILD.—Except as provided in section 3(b)(1)(B), the term "child" means an individual who is less than 19 years of age.

(3) PERSONAL INFORMATION.—The term "personal information" has the meaning given that term in section 1301(8) of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501(8)).

(4) PROVIDER OF INTERNET CONTENT MANAGEMENT SERVICES.—The term "provider of Internet content management services" includes a provider of Internet content management software if such software operates, in whole or in part, by or through an Internet connection or otherwise provides information on users of such software to the provider by the Internet or other means.

By Mr. CORZINE (for himself, Mr. CARPER, Mr. ENSIGN, Mr. SCHUMER, and Mr. ALLARD):

S. 2841. A bill to adjust the indexing of multifamily mortgage limits, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, today I am introducing legislation, the FHA Multifamily Housing Loan Limit Improvement Act, to expand the supply of affordable housing by increasing the

Federal Housing Administration's multifamily housing loan limit to account for inflation.

Providing access to decent, safe, affordable housing for individuals and families remains an enormous challenge for our Nation. Throughout the country, rising construction costs have resulted in shortage of affordably priced rental units. In fact, the shortage of affordable housing should be considered nothing short of a crisis. After all, housing is among the most basic of human needs, and it is critically important for all American communities.

The Federal Housing Administration, FHA, was established as part of a national commitment to providing affordable housing, particularly for those most in need. Overall, the FHA, through its various initiatives, has been successful in providing increased access to housing. But as the crisis of affordable housing has grown, so has the need for Congress and the Department of Housing and Urban Development, HUD, to promote increased production of affordable housing.

That is why I am pleased to join with Senators CARPER, ENSIGN and SCHUMER in introducing this legislation to increase the production and availability of affordable housing for American families. The bill would improve upon legislation I introduced last year, "The FHA Multifamily Housing Loan Limit Adjustment Act," which Congress approved last year as part of the VA–HUD Appropriations bill. That legislation increased by twenty-five percent the statutory limits for multifamily project development loans that are insurable by the FHA. The change reflected the increased costs associated with the production of multifamily units since 1992, the last time those limits were revised upwards.

In other words, it had taken Congress ten years to modify the underlying statute to account for rising prices and simply maintain the effectiveness of the program. That is too long. The legislation we are introducing today would ensure that it does not take another decade or longer to assist those who need affordable housing.

This bill is simple, it ensures that the insurable FHA loan limit amounts, as adjusted under "The FHA Multifamily Loan Adjustment Act," would keep pace with economic growth by indexing them each year to the Annual Construction Cost Index, issued annually by the Census Bureau.

This bill also promotes the production of affordable housing in another important way, by promoting the development of affordable housing in high-cost cities like Newark, NJ, New York, Philadelphia and San Francisco. Currently in those communities, the cost of living is so high that the FHA insurance program is rendered largely ineffective.

This bill improves the FHA multifamily program by adjusting its statutory limits to promote increased housing production in high-cost, primarily urban, communities.

There is a very real need for Congress to address the shortage of affordable housing. A report released last year by the Center for Housing Policy, "Housing America's Working Families," documented the severity of this need. The report found that more than fourteen million people faced severe housing needs because of the lack of affordable housing. That number may well be higher now.

This bill will provide the proper incentive for public/private investment in affordable housing in communities throughout America and spur new production of cooperative housing projects, rental housing for the elderly, new construction or substantial rehabilitation of apartments by for- and non-profit entities, condominium developments and refinancing of rental properties.

In short, this bill is good housing policy. That is why the National Association of Home Builders, the National Association of Realtors and the Mortgage Bankers Association endorse the legislation, along with other housing and community advocates.

I hope that my colleagues will support this legislation and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed the RECORD, as follows:

S. 2841

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "FHA Multifamily Housing Loan Limit Improvement Act".

SEC. 2. INDEXING OF MULTIFAMILY MORTGAGE LIMITS.

(a) SECTION 207 LIMITS.—Section 207(c)(3) of the National Housing Act (12 U.S.C. 1713(c)(3)) is amended—

(1) by striking "11,250" and inserting "$17,460";

(2) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce"; and

(3) by inserting after "foregoing dollar amount limitations contained in this paragraph" the following: "(as such limitations may have been previously adjusted pursuant to this paragraph)".

(b) SECTION 213 LIMITS.—Section 213(b)(2) of the National Housing Act (12 U.S.C. 1715e(b)(2)) is amended—

(1) by striking "$38,025", "$42,120", "$50,310", "$62,010", and "$70,200", and inserting "$41,207", "$47,511", "$57,300", "$73,343", and "$81,708", respectively;

(2) by striking "$49,140", "$60,255", "$75,465", and "$85,328", and inserting "$49,710", "$60,446", "$78,197", and "$85,836", respectively;

(3) by inserting after the colon at the end of the first proviso the following: "*Provided further*, That the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce:"; and

(4) by inserting after "foregoing dollar amount limitations contained in this paragraph" the following: "(as such limitations may have been previously adjusted pursuant to this paragraph)".

(c) SECTION 220 LIMITS.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by inserting after "foregoing dollar amount limitations contained in this clause", the first place such phrase appears, the following: "(as such limitations may have been previously adjusted pursuant to this clause)".

(2) by inserting after "Provided," the following: "That the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce: *Provided further*,"; and

(3) by striking "(as determined after the application of the preceding proviso)" and inserting "(as such limitations may have been previously adjusted pursuant to the preceding proviso and as determined after application of any percentage increase authorized in this clause relating to units with 2, 3, 4, or more bedrooms)".

(d) SECTION 221(d)(3) LIMITS.—Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(3)(ii)) is amended—

(1) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce"; and

(2) by inserting after "foregoing dollar amount limitations contained in this clause" the following: "(as such limitations may have been previously adjusted pursuant to this clause)".

(e) SECTION 221(d)(4) LIMITS.—Section 221(d)(4)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(4)(ii)) is amended—

(1) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during

the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce"; and

(2) by inserting after "foregoing dollar amount limitations contained in this clause" the following: "(as such limitations may have been previously adjusted pursuant to this clause)".

(f) SECTION 231 LIMITS.—Section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended—

(1) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce"; and

(2) by inserting after "foregoing dollar amount limitations contained in this paragraph" the following: "(as such limitations may have been previously adjusted pursuant to this paragraph)".

(g) SECTION 234 LIMITS.—Section 234(e)(3) of the National Housing Act (12 U.S.C. 1715y(e)(3)) is amended—

(1) by inserting before "; except that" the second place such phrase appears the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce";

(2) by inserting after "each of the foregoing dollar amounts" the following: "(as such amounts may have been previously adjusted pursuant to this paragraph)"; and

(3) by inserting after "foregoing dollar amount limitations contained in this paragraph" the following: "(as such limitations may have been previously adjusted pursuant to this paragraph and increased pursuant to the preceding clause)".

SEC. 2. HIGH-COST AREAS.

(a) SECTION 207 LIMITS.—Section 207(c)(3) of the National Housing Act (12 U.S.C. 1713(c)(3)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(b) SECTION 213 LIMITS.—Section 213(b)(2) of the National Housing Act (12 U.S.C. 1715e(b)(2)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(c) SECTION 220 LIMITS.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(d) SECTION 221(d)(3) LIMITS.—Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(3)(ii)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(e) SECTION 221(d)(4) LIMITS.—Section 221(d)(4)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(4)(ii)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(f) SECTION 231 LIMITS.—Section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

(g) SECTION 234 LIMITS.—Section 234(e)(3) of the National Housing Act (12 U.S.C. 1715y(e)(3)) is amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

Mr. CARPER. Mr. President, I am very pleased to join today with my distinguished colleagues from New Jersey, Nevada, and New York to introduce legislation to index the Federal Housing Administration's, FHA, multifamily loan limits.

Last year, Senator CORZINE and I introduced similar legislation that raised the FHA multifamily loan limits, which had not been increased since 1992 despite a 23 percent increase in the Annual Construction Cost Index. Senators MIKULSKI and BOND included this increase in last year's VA-HUD appropriations legislation. I am pleased that these limits were increased last year, however, an important piece of the original legislation was left undone. While the FHA loan limits were increased, they were not indexed. Construction costs will continue to rise, and the multifamily loan limits should be indexed, just like the FHA single-family loan limits.

Affordable housing continues to be a problem in this country. Over the July recess, I held a series of housing summits in Delaware to hear from Delawareans about the lack of affordable housing. In each county, I heard that working families in Delaware are having difficulty finding affordable housing. This shortage of affordable housing also comes at a time of limited federal resources. Thus, we have to find the best use of each dollar at our disposal, as well as the most effective use of existing Federal programs to stimulate new housing production and substantial rehabilitation. This bill modifies a current federal program, FHA multifamily insurance, to make that program more effective.

In the next Congress, I hope to be able to address the affordable housing problem in a more comprehensive manner. In the meantime, I believe Congress can take some incremental steps to address the shortage of affordable housing.

I ask my colleagues to join Senators CORZINE, ENSIGN, and SCHUMER and me to increase these multifamily loan limits so that more working families will have access to affordable housing.

Mr. ENSIGN. Mr. President, I rise today, along with my good friend, the Senator from New Jersey, to introduce a bill that will help solve the affordable housing crisis that is facing this Nation.

There is a dramatic shortage of rental housing that is affordable to low and moderate income working families. FHA multifamily insurance programs are designed to stimulate the construction, rehabilitation and preservation of properties by insuring lenders against loss in financing first mortgages. The programs assist both the private and the public sectors towards the goal of providing affordable housing to those that otherwise may not be able to afford it.

Last year, in a remarkable step, Congress granted a 25 percent increase in the FHA multifamily loan limits. The new loan limits are one great remedy to the affordable housing crisis facing our nation, but this alone does not do enough.

Unfortunately, without additional legislation, the loan limits will again be outpaced by inflation and today's growing construction costs.

The legislation that we are introducing solves this problem by indexing the multifamily loan limits to the annual construction costs index of the Bureau of the Census. This will allow loan limits to increase automatically, as costs increase. Without such a fix, the FHA multifamily loan program will again be limited in its ability to stimulate the development of affordable housing.

This legislation will help halt the growing shortage of affordable rental housing faced by millions of Americans and give builders and lenders the confidence that they will be able to use the programs in their communities every year, even as construction and land costs rise over time.

Additionally, this legislation raises the loan limits in high-cost areas. This will allow several major urban markets to take advantage of the new FHA multifamily insurance programs, and to provide much needed new affordable housing to low and moderate income families.

I believe this legislation is an important step in our ongoing battle to ensure that each American has access to affordable housing. I would like to once again thank the Senator from New Jersey, Mr. CORZINE, for his hard work on this bill, and for recognizing the significant effect this legislation will have for many low and moderate income families by dramatically increasing their access to affordable housing.

By Mrs. CARNAHAN:

S. 2842. A bill to amend the Older Americans Act of 1965 to authorize appropriations for demonstration projects to provide supportive services to older individuals who reside in naturally occurring retirement communities; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CARNAHAN. Mr. President, we are all familiar with our changing demographics. Those once a part of the baby boom are now well on their way to creating a senior boom. By the year 2020, one in six Americans will be age 65 or over. By 2040, the number of seniors aged 85 and older will more than triple from about 4 million to 14 million. This boom will create a dramatic increase in the demand for services for seniors especially long-term care.

Long-term care is more than just health care. It includes any services that seniors need to maintain their quality of life, such as transportation, nutrition, or other supports that help seniors live independently.

Long-term care can mean help with buying groceries, paying bills each month, getting dressed in the morning, getting a ride to the doctor's office, or taking medicine at the appropriate time. We need to make sure our society is ready to provide these kinds of services for seniors, and we need to make sure that we give seniors options. We need to be creative in what we offer.

Last year I learned about an innovative option for providing long-term care services for seniors. The concept is based on naturally occurring retirement communities, NORCs. A naturally occurring retirement community develops in a community or neighborhood where residents remain for years and age as neighbors. A NORC may be a large apartment building or a street of single family homes. According to AARP, about 27 percent of seniors currently live in NORCs. NORCs represent a new model for giving seniors the support services they need. We can bring services directly to seniors, and we can help enhance their quality of life and allow them to age in place.

This is important because most seniors prefer living in their own homes. To address the need for long-term care services, I secured $1.2 million last year to establish a NORC project in downtown St. Louis. To get this project underway, first there will be assessment of residents' needs. The funds will then be used to meet these individual needs. Residents will receive such services as individual case management, family education, wellness services, and other needed supports.

The St. Louis program is only the first step. This unique model could be used to deliver support services to seniors in communities across the country. That is why I am pleased to introduce the Senior Self-Sufficiency Act. This legislation would lay the foundation for a new way of helping seniors stay in their own homes and in their own communities. The Senior Self-Sufficiency Act would create ten demonstration projects in naturally occurring retirement communities across the country. Each would last 4 years. The grant would be used to provide comprehensive support services to seniors.

The services offered would be created to meet the individual needs of the residents and to help them maintain their independence. Funds would also be used to make housing improvements that would allow seniors to live in their own neighborhoods longer. For example, they could install safety bars in bathrooms or replace stairs with wheelchair ramps. Two of the ten projects would be located in rural areas where access to services is often harder or more distant. We will learn from the research how best to expand the program to all areas of the country.

If given the choice, most people would prefer to grow older in their own homes, surrounded by friends and family. This is exactly what this legislation will allow seniors to do. By making support services available to seniors in their own homes, we can extend the time they live independently, and we can improve their quality of life. We can provide services at lower cost, and we can start preparing now for the future needs of our population.

I am pleased to announce that the Senior Self-Sufficiency Act has the support of the Missouri Department of Health and the Jewish Federation of St. Louis.

We need to begin now to plan for the future senior boom. The Senior Self-Sufficiency Act is a step in the right direction, making it possible for seniors to remain in their home longer and to retain their independence. That is a goal worth pursuing.

I ask unanimous consent that their letters of support and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MISSOURI DEPARTMENT OF HEALTH
AND SENIOR SERVICES,
Jefferson City, MO, July 31, 2002.

Hon. JEAN CARNAHAN,
U.S. Senate, Hart Senate Office Bldg, Washington, DC.

DEAR SENATOR CARNAHAN: The Missouri Department of Health and Senior Services is charged with the mission of enhancing the quality of life for all Missourians by protecting and promoting the community's health and well-being of citizens of all ages. In following that mission, we are pleased to offer our support of your proposed legislation known as the Senior Self-Sufficiency Act.

This legislation, which would authorize demonstration projects in naturally occurring retirement communities, would help show the effectiveness of providing comprehensive supportive services to older individuals who reside in their homes to enhance their quality of life and reduce the need for institutionalization. Missouri has long supported the concept of "options in care" to include comprehensive home and community based services and supports. This legislation would help focus and define the concept and value of communities, to include the significance of retaining seniors within their natural occurring communities. The comprehensive nature of the services to be offered under this concept, such as health services, nutrition services, transportation, home and personal care, socialization, continuing adult education, information and referral, and any other services to enhance quality of life will greatly increase a person's ability to remain in their home and community.

I can assure you the Department of Health and Senior Services is eager to assist with the implementation of this concept. Your proposed legislation is paramount in supporting our mission to protect and promote our community's health, and well-being of citizens of all ages. Please feel free to contact Jerry Simon, Interim Department Deputy Director, at (573) 751-8535, if we can offer any additional information or support to this important concept.

Respectfully,

RONALD W. CATES,
Interim Director.

JEWISH FEDERATION OF ST. LOUIS,
St. Louis, MO, July 29, 2002.

Hon. JEAN CARNAHAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CARNAHAN: I am writing regarding the legislation you will be introducing to amend the Older Americans act of 1965 authorizing appropriations for demonstration projects to provide services to older individuals residing in NORCs. As you are aware, the St. Louis community has a large senior citizen population compared with other communities of similar size. It is essential that we find ways to help our older adults remain health, productive, and independent for as long as possible in order to enhance their quality of life.

Your bill, the Senior Self-Sufficiency Act, authorizing ten demonstration projects to provide comprehensive supportive services to residents of naturally occurring retirement communities will ensure that best practices are developed and/or replicated nationwide. It is an innovative and exciting opportunity to study aging-in-place populations and postpone or avoid institutionalization for these populations.

I strongly support this legislation and appreciate your tireless efforts on behalf of older adults.

Sincerely,

BARRY ROSENBERG,
Executive Vice President.

S. 2842

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Self-Sufficiency Act".

SEC. 2. AMENDMENTS.

Part A of title IV of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq) is amended by adding at the end the following:

"SEC. 422. DEMONSTRATION PROJECTS IN NATURALLY OCCURRING RETIREMENT COMMUNITIES.

"(a) PROGRAM AUTHORIZED.—The Assistant Secretary shall award grants to eligible entities to carry out 10 demonstration projects to provide comprehensive supportive services to older individuals who reside in noninstitutional residences in naturally occurring retirement communities to enhance the quality of life of such individuals and reduce the need to institutionalize such individuals. Those residences for which assistance is provided under section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q) in naturally occurring retirement communities shall not receive services through a demonstration project under this section if such services would otherwise be provided as part of the assistance received by such residences under such section 202.

"(b) ELIGIBLE ENTITY.—An entity is eligible to receive a grant under this section if such entity is a nonprofit public or private agency, organization, or institution that proposes to provide services only in geographical areas considered to be low- or middle-income areas.

"(c) PRIORITY.—

"(1) IN GENERAL.—In awarding grants under this section, the Assistant Secretary shall give priority to eligible entities that provided comprehensive supportive services in fiscal year 2002 to older individuals who resided in noninstitutional residences in naturally occurring retirement communities.

"(2) RURAL AREAS.—Two of the 10 grants awarded under this section shall be awarded to eligible entities that propose to provide services to residents in rural areas.

"(d) GRANT PERIOD.—Each grant awarded under this section shall be awarded for a period of 4 years, with not more than $1,000,000 being awarded annually.

"(e) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Assistant Secretary in such form and containing such information as the Assistant Secretary may require, including a plan for continuing services provided under the grant after the grant expires.

"(f) LIMITATIONS.—

"(1) COST-SHARING.—An eligible entity receiving a grant under this section may require cost-sharing from individuals receiving services only in a manner consistent with the requirements of title III.

"(2) CONSTRUCTION.—An entity may not use funds received under a grant under this section to construct or permanently improve (other than remodeling to make facilities accessible to older individuals) any building or other facility.

"(g) DEFINITIONS.—In this section:

"(1) NATURALLY OCCURRING RETIREMENT COMMUNITY.—The term 'naturally occurring retirement community' means a geographical area in which not less than 40 percent of the noninstitutional residences are occupied for not less than 10 years by heads of households who are older individuals, but does not include residences for which assistance is provided under section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q). The definition provided for in the previous sentence may be modified by the Secretary as such definition relates to grants for rural areas.

"(2) SUPPORTIVE SERVICES.—The term 'supportive services' means services offered to residents that may include—

"(A) case management;

"(B) health services and education;

"(C) nutrition services, nutrition education, meals, and meal delivery;

"(D) transportation services;

"(E) home and personal care services;

"(F) continuing adult education;

"(G) information and referral services; and

"(H) any other services and resources appropriate to enhance the quality of life of residents and reduce the need to institutionalize such individuals.

"(h) MATCHING REQUIREMENT.—The Assistant Secretary may not make a grant to an eligible entity under this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program for which the grant was awarded, the entity will make available in cash or in-kind (directly or through donations from public or private entities) non-Federal contributions equaling 5 percent of Federal funds provided under the grant for the second year that such grant is provided, 10 percent of Federal funds provided under the grant for the third year that such grant is provided, and 15 percent of Federal funds provided under the grant for the fourth year that such grant is provided.

"(i) REPORT.—Not later than the beginning of the fourth year of distributing grants under this section, the Assistant Secretary shall evaluate services provided with funds under this section and submit a report to Congress summarizing the results of such evaluation and recommending what services should be taken in the future.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, not more than $10,000,000 for each of fiscal years 2003 through 2006.".

By Ms. LANDRIEU:

S. 2843. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

Ms. LANDRIEU. Mr. President, it is my pleasure to come to the floor today and introduce a bill that I believe will make it easier for parents to learn about dangerous products that may harm their children, and remove these products from their homes.

Every year, more than 1.7 million children under the age of 5 are harmed by defective or hazardous products. As my colleagues know, each year the Consumer Products Safety Commission recalls hundreds of products which have been found to pose a danger to consumers. Unfortunately, many times parents do not get the word about these recalls, because companies often do not have a way of getting in touch with their customers. This is particularly significant when you are talking about children's products. The manufacturers of these products rarely have records of who their customers are; often all they can do is publicize the recall as best they can. It is for this reason, that I am introducing the Product Safety Notification and Recall Effectiveness Act of 2002.

This legislation would require the Consumer Products Safety Commission to establish a rule to require manufacturers to establish and maintain a system for notifying consumers of the recall of certain products that may cause harm to children. The database could be assembled through the use of shortened product registration cards, Internet registration, or other alternate means of encouraging consumers to provide vital contact information.

As an example for my colleagues, I just want to touch on one method that this bill would encourage companies to use. We've all seen the registration cards that come with many products. It is these cards that provide companies with much of the information on their customers, and could be used to help spread the word about a recall. Unfortunately, many consumers just throw these cards away without even sending them in. In fact, by some estimates 90 percent of these cards are thrown away. Why? Well, one reason is because the cards ask for personal and marketing information that many people do not want to give out. So they throw the card away.

But if you shorten the card, to just ask for the basic information, name, address, and phone number, people are much more likely to return them. This is particularly true if the card specifies the information will not be used for marketing purposes. These cards are an idea that Ann Brown, former chairman of the CPSC and now Chairman of the non-profit group SAFE, a Safer America for Everyone Foundation, has been advocating for years. And studies done with companies like Mattel and BrandStamp have shown that these methods really do increase the number of consumers who respond.

So, I come to the floor today to say that this is something we need to do, and we need to do it as quickly as possible. This is a very important bill for our citizens. I am hopeful that we can get a hearing on this legislation very soon.

Before I close, I just want to commend Ann Brown and the folks at SAFE for all of their hard work on product recall. I introduced this legislation in the Senate today, but Ann is the one who has been pushing this issue for years, since she served on the CPSC. I am proud to work with her on this and want to thank her for her monumental efforts to bring this to the forefront. I also want to acknowledge my colleagues, Congressman JIM MORAN and Congressman JAMES MCGOVERN, who introduced this bill in the House of Representatives. And, of course, I look forward to working with the CPSC on this bill. I know they had some problems with this bill initially, and I am hopeful we have addressed most of these concerns.

I want to encourage my colleagues to support this much-needed legislation. By passing this bill, we can give parents the information they need to protect their children. When a child is hurt or killed by a defective product that has already been recalled, there simply is no excuse. This legislation would go a long way towards ensuring that this kind of tragedy never happens again.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2843

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product Safety Notification and Recall Effectiveness Act of 2002".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Consumer Product Safety Commission conducts approximately 300 recalls of hazardous, dangerous, and defective consumer products each year.

(2) In developing comprehensive corrective action plans with recalling companies, the Consumer Product Safety Commission staff greatly relies upon the media and retailers to alert consumers to the dangers of unsafe consumer products, because the manufacturers do not generally possess contact information regarding the purchasing consumers. Based upon information received from companies maintaining customer registration lists, such contact information is known for generally less than 7 percent of the total consumer products produced and distributed.

(3) The Consumer Product Safety Commission staff has found that most consumers do not return purchaser identification cards because of requests for marketing and personal information on the cards, and the likelihood of receiving unsolicited marketing materials.

(4) The Consumer Product Safety Commission staff has conducted research demonstrating that direct consumer contact is one of the most effective ways of motivating consumer response to a consumer product recall.

(5) Companies that maintain consumer product purchase data, such as product registration cards, warranty cards, and rebate cards, are able to effectively notify consumers of a consumer product recall.

(6) The Consumer Product Safety Commission staff has found that a consumer product safety owner card, without marketing questions or requests for personal information, that accompanied products such as small household appliances and juvenile products would increase consumer participation and information necessary for direct notification in consumer product recalls.

(7) The National Highway Traffic Safety Administration has, since March 1993, required similar simplified, marketing-free product registration cards on child safety seats used in motor vehicles.

(b) PURPOSE.—The purpose of this Act is to reduce the number of deaths and injuries from defective and hazardous consumer products through improved recall effectiveness, by—

(1) requiring the Consumer Product Safety Commission to promulgate a rule to require manufacturers of juvenile products, small household appliances, and certain other consumer products, to include a simplified product safety owner card with those consumer products at the time of original purchase by consumers, or develop effective electronic registration of the first purchasers of such products, to develop a customer database for the purpose of notifying consumers about recalls of those products; and

(2) encouraging manufacturers, private labelers, retailers, and others to use creativity and innovation to create and maintain effective methods of notifying consumers in the event of a consumer product recall.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) TERMS DEFINED IN CONSUMER PRODUCT SAFETY ACT.—The definitions set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this Act.

(2) COVERED CONSUMER PRODUCT.—The term "covered consumer product" means—

(A) a juvenile product;

(B) a small household appliance; and

(C) such other consumer product as the Commission considers appropriate for achieving the purpose of this Act.

(3) JUVENILE PRODUCT.—The term "juvenile product"—

(A) means a consumer product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(B) includes—

(i) full-size cribs and nonfull-size cribs;

(ii) toddler beds;

(iii) high chairs, booster chairs, and hook-on chairs;

(iv) bath seats;

(v) gates and other enclosures for confining a child;

(vi) playpens;

(vii) stationary activity centers;

(viii) strollers;

(ix) walkers;

(x) swings;

(xi) child carriers; and

(xii) bassinets and cradles.

(4) PRODUCT SAFETY OWNER CARD.—The term "product safety owner card" means a standardized product identification card supplied with a consumer product by the manufacturer of the product, at the time of original purchase by the first purchaser of such product for purposes other than resale, that only requests that the consumer of such product provide to the manufacturer a minimal level of personal information needed to enable the manufacturer to contact the consumer in the event of a recall of the product.

(5) SMALL HOUSEHOLD APPLIANCE.—The term "small household appliance" means a consumer product that is a toaster, toaster oven, blender, food processor, coffee maker, or other similar small appliance as provided for in the rule promulgated by the Consumer Product Safety Commission.

SEC. 4. RULE REQUIRING SYSTEM TO PROVIDE NOTICE OF RECALLS OF CERTAIN CONSUMER PRODUCTS.

(a) IN GENERAL.—The Commission shall promulgate a rule under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)) that requires that the manufacturer of a covered consumer product shall establish and maintain a system for providing notification of recalls of such product to consumers of such product.

(b) REQUIREMENT TO CREATE DATABASE.—

(1) IN GENERAL.—The rule shall require that the system include use of product safety owner cards, Internet registration, or an alternative method, to create a database of information regarding consumers of covered consumer products, for the sole purpose of notifying such consumers of recalls of such products.

(2) USE OF TECHNOLOGY.—Alternative methods specified in the rule may include use of on-line product registration and consumer notification, consumer information data bases, electronic tagging and bar codes, embedded computer chips in consumer products, or other electronic and design strategies to notify consumers about product recalls, that the Commission determines will increase the effectiveness of recalls of covered consumer products.

(c) USE OF COMMISSION STAFF PROPOSAL.—In promulgating the rule, the Commission shall consider the staff draft for an Advanced Notice of Proposed Rulemaking entitled "Purchaser Owner Card Program", dated June 19, 2001.

(d) EXCLUSION OF LOW-PRICE ITEMS.—The Commission shall have the authority to exclude certain low-cost items from the rule for good cause.

(e) DEADLINES.—

(1) IN GENERAL.—The Commission—

(A) shall issue a proposed rule under this section by not later than 90 days after the date of enactment of this Act; and

(B) shall promulgate a final rule under this section by not later than 270 days after the date of enactment of this Act.

(2) EXTENSION.—The Commission may extend the deadline described in paragraph (1) if the Commission provides timely notice to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

By Mr. ROCKEFELLER:

S. 2844. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, perhaps the most effective way to improve the education of America's children is to ensure that they begin their education in an uncrowded classroom led by a qualified teacher. This body recognized that fact when we overwhelmingly passed the "No Child Left Behind Act" last year, mandating the hiring of qualified teachers by every school in every district.

Unfortunately, without our help, America's poor and rural schools may not be able to attract the qualified teachers this legislation mandates and our children deserve. Isolated and impoverished, competing against higher paying and well-funded school districts for scarce classroom talent, they are already facing a desperate shortage of qualified teachers. As pressure to hire increases, that shortage will become a crisis, and children already at a disadvantage in relation to their more affluent and less isolated peers will be the ones who suffer most.

Today, I propose a bill that will help bring dedicated and qualified teaching professionals to West Virginia's and America's poor and rural schools, and help give their students the opportunity to learn and flourish that every child deserves. The Incentives To Educate American Children Act, or "I Teach" Act, will provide teachers a refundable tax credit every year they practice their profession in the public schools where they are needed most. And it will give every public school teacher, whichever school they choose, a refundable tax credit for earning certification by the National Board for Professional Teaching Standards. Together, these two tax credits will give economically depressed areas a better ability to recruit and retain skilled teachers.

One-fourth of America's children attend public schools in rural areas, and of the 250 poorest counties in the United States, 244 are rural. West Virginia has rural schools scattered through 36 of its 55 counties, and these schools face real challenges in recruiting and retaining teachers, as well as dealing with other issues related to their rural location.

Attracting teachers to these schools is difficult in large part due to the vast gap between what rural districts are able to offer and the salaries paid by more affluent school districts, as wide as $20,000 a year, according to one study. Poor urban schools must overcome similar difficulties. It is often a challenge for these schools to attract and keep qualified teachers. Yet, according to the 2001 No Child Left Behind Act, every school must have qualified teachers by the end of the 2005–2006 school year.

My "I Teach" Act will reward teachers willing to work in rural or high poverty schools with an annual $1,000 refundable tax credit. If the teacher obtains certification by the National Board for Professional Teaching Standards, they will receive an additional annual $1,000 refundable tax credit.

Every teacher willing to work in underserved schools will earn a tax credit. Every teacher who gets certified will earn a tax credit. Teachers who work in rural or poor schools and get certified will earn both. Schools who desperately need help attracting teachers will get a boost. And children educated in poor and rural schools will benefit most.

In my State of West Virginia, as in over 30 other States, there is already a State fiscal incentive for teachers who earn National Board certification. My legislation builds upon the West Virginia program; together, they add up to a powerful tax incentive for teachers to remain in the classroom and to use their skills where they are most needed.

I have spent a great deal of time in West Virginia classrooms this year, and it has become obvious to me that our education agenda suffers greatly from inadequate funding on a number of fronts. In response, I have introduced a series of bills attacking different aspects of the problem.

A qualified teacher is a great start, but children also deserve a safe, modern classroom. And so, in addition to the "I Teach" Act, I have introduced a measure to encourage investment in school construction and renovations.

I am promoting legislation to develop Math and Science Partnerships at the National Science Foundation, to place needed emphasis on these core subjects.

And to ensure that every student, including those in rural areas, has access to modern technology and the wealth of educational resources on the web, I remain vigilant in protecting the E-Rate, which provides $2.25 billion in annual discounts to connect our schools and libraries to the Internet.

Education is among our top national priorities, essential for every family with a child and vital for our economic and national security. I supported the bold goals and higher standards of the 2001 No Child Left Behind Act, but they won't be met unless our schools have the teachers and resources they need. I am committed to working closely with my Senate colleagues this fall to secure as much funding as possible for our children's education.

No amount of construction or technology can replace a qualified and motivated teacher, however, and making it easier for underserved schools to attract the teachers they need remains one of my most important objectives. I hope each of my colleagues will join me in supporting this important legislation which takes a great stride toward better education for every child in the United States.

By Mr. FEINGOLD:

S. 2847. A bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, I rise today to introduce the Crane Conservation Act of 2002. I propose this legislation in the hope that Congress will do its part to protect the existence of these birds, whose cultural significance and popular appeal can be seen worldwide. This legislation is important to the people of Wisconsin, as our State provides habitat and refuge to several crane species. But this legislation, which authorizes the United States Fish and Wildlife Service to distribute funds and grants to crane conservation efforts both domestically and in developing countries, promises to have a larger environmental and cultural impact that will go far beyond the boundaries of my home State.

In October of 1994, Congress passed and the President signed the Rhinoceros and Tiger Conservation Act. The passage of this act provided support for multinational Rhino and Tiger conservation through the creation of the Rhinoceros and Tiger Conservation Fund, or RTCF. Administered by the United States Fish and Wildlife Service, the RTCF distributes up to $10 million in grants every year to conservation groups to support projects in developing countries. Since its establishment in 1994, the RTCF has been expanded by Congress to cover other species, such as elephants and great apes.

Today, with the legislation I am introducing, I am asking Congress to add cranes to this list. Cranes are the most endangered family of birds in the world, with ten of the world's fifteen species at risk of extinction. Specifically, this legislation would authorize up to $3 million of funds per year to be distributed in the form of conservation project grants to protect cranes and their habitat. The financial resources authorized by this bill can be made available to qualifying conservation groups operating in Asia, Africa, and North America. The program is authorized from Fiscal Year 2003 through Fiscal Year 2007.

In keeping with my belief that we should maintain fiscal integrity, this bill proposes that the $15 million in authorized spending over five years for the Crane Conservation Act established in this legislation should be offset by rescinding $18 million in unspent funds from funds carried over the Department of Energy's Clean Coal Technology Program in the Fiscal Year 2002 Energy and Water Appropriations Bill. The Secretary of the Interior would be required to transfer any funds it does not expend under the Crane Conservation Act back to the Treasury at the end of Fiscal Year 2007. I do not intend my bill to make any particular judgments about the Clean Coal program or its effectiveness, but I do think, in general, that programs should expend resources that we appropriate in a timely fashion.

I am offering this legislation due to the serious and significant decline that can be expected in crane populations worldwide without conservation efforts. The decline of the North American whooping crane, the rarest crane on earth, perfectly illustrates the dangers faced by these birds. In 1941, only 21 whooping cranes existed in the entire world. This stands in contrast to the almost 400 birds in existence today. The North American whooping crane's resurgence is attributed to the birds' tenacity for survival and to the efforts of conservationists in the United States and Canada. Today, the only wild flock of North American whooping cranes breeds in northwest Canada, and spends its winters in coastal Texas. Two new flocks of cranes are currently being reintroduced to the wild, one of which is a migratory flock on the Wisconsin to Florida flyway.

This flock of five birds illustrates that any effort by Congress to regulate crane conservation needs to cross both national and international lines. As this flock of birds makes its journey from Wisconsin to Florida, the birds rely on the ecosystems of a multitude of states in this country. In its journey from the Necedah National Wildlife Refuge in Wisconsin to the Chassahowitzka National Wildlife Refuge in Florida in the fall and eventual return to my home state in the spring, this flock also faces threats from pollution of traditional watering grounds, collision with utility lines, human disturbance, disease, predation, loss of genetic diversity within the population, and vulnerability to catastrophes, both natural and man-made. Despite the conservation efforts taken since 1941, this symbol of conservation is still very much in danger of extinction.

While over the course of the last half-century, North American whooping cranes have begun to make a slow recovery, many species of crane in Africa and Asia have declined, including the sarus crane of Asia and the wattled crane of Africa.

The sarus crane is a symbol of marital fidelity in many Asian cultures, especially Laos, Thailand and Indonesia. Additionally, in northern India, western Nepal, and Vietnam, these birds are a symbol of fertility, lending them as important religious significance. Standing at four feet tall, these birds can be found in the wetlands of northern India and south Asia. These birds require large, open, well watered plains or marshes to breed and survive.

Due to agricultural expansion, industrial development, river basin development, pollution, warfare, and heavy use of pesticides, which is found to be highly prevalent in India and southeast Asia, the sarus crane population has been in decline. Furthermore, in many areas, a high human population concentration compounds these factors. On the Mekong River, which runs through Cambodia, Vietnam, Laos, Thailand, and China, human population growth and planned development projects threaten the sarus crane. Reports from India, Cambodia, and Thailand have also cited incidences of the trading of adult birds and chicks, as well as hunting and egg stealing in the drop-in population of the sarus crane.

Only three subspecies of the sarus crane exist today. One resides in northern India and Nepal, one resides in southeast Asia, and one resides in northern Australia. Their population is about 8,000 in the main Indian population, with recent numbers showing a rapid decline. In Southeast Asia, only 1,000 birds remain.

The situation of the sarus crane in Asia is mirrored by the situation of the wattled crane in Africa. In Africa, the wattled crane is found in the southern and eastern regions, with an isolated population in the mountains of Ethiopia. Current population estimates range between 6,000 to 8,000 and are declining rapidly, due to loss and degradation of wetland habitats, as well as intensified agriculture, dam construction, and industrialization. In other parts of the range, the creation of dams has changed the dynamics of the flood plains, thus further endangering these cranes and their habitats. Human disturbance at or near breeding sites also continues to be a major threat. Lack of oversight and education over the actions of humans, industry, and agriculture is leading to reduced preservation for the lands on which cranes live, thereby threatening the ability of cranes to survive in these regions.

If we do not act now, not only will cranes face extinction, but the ecosystems that depend on their contributions will suffer. With the decline of the crane population, the wetlands and marshes they inhabit can potentially be thrown off balance. I urge my colleagues to join me in supporting legislation that can provide funding to the local farming, education and enforcement projects that can have the greatest positive effect on the preservation of both cranes and fragile habitats. This small investment can secure the future of these exemplary birds and the beautiful areas in which they live. Therefore, I ask my colleagues to support the Crane Conservation Act of 2002.

By Ms. COLLINS (for herself, Mr. CLELAND, Mr. HUTCHINSON, Mr. KERRY, Ms. SNOWE, and Mr. MILLER):

S. 2848. A bill to amend title XVIII of the Social Security Act to provide for a clarification of the definition of homebound for purposes of determining eligibility for home health services under the medicare program; to the Committee on Finance.

Ms. COLLINS. Mr. President, I am pleased to join with Senators CLELAND, HUTCHINSON, KERRY, SNOWE and MILLER in introducing the David Jayne Medicare Homebound Modernization Act of 2002 to modernize Medicare's outdated "homebound" requirement that has impeded access to needed home health services for many of our nation's elderly and disabled Medicare beneficiaries.

Health care in American has gone full circle. People are spending less time in institutions, and recovery and care for patients with chronic diseases and conditions has increasingly been taking place in the home. The highly skilled and often technically complex care that our home health agencies provide have enabled millions of our most vulnerable older and disabled individuals to avoid hospitals and nursing homes and stay just where they belong, in the comfort and security of their own homes.

Under current law, a Medicare patient must be considered "homebound" if he or she is to be eligible for home health services. While an individual is not actually required to be bedridden to qualify for benefits, his or her conditions must be such that "there exists a normal inability to leave home." The statute does allow for absences from the home of "infrequent" or "relatively short duration." Unfortunately, however, it does not define precisely what this means. It leaves it to the fiscal intermediaries to interpret just how many absences qualify as "frequent" and just how short those absences must be. Interpretations of this definition have therefore varied widely.

As a consequence, there have been far too many instances where an overzealous or arbitrary interpretation of the definition has turned elderly or disabled Medicare beneficiaries, who are dependent upon Medicare home health services and medical equipment for survival, into virtual prisoners in their own home. We have heard disturbing accounts of individuals on Medicare who have had their home health benefits terminated for leaving their homes to visit a hospitalized spouse or to attend a family gathering, including, in one case, to attend the funeral of their own child.

Under current law, a Medicare patient must be considered "homebound" if he or she is to be eligible for home health services. While an individual is not actually required to be bedridden to quality for benefits, his or her condition must be such that "there exists a normal inability to leave home."

The statute does allow for absences from the home that are "infrequent and of short duration." It also gives specific permission for the individual to leave home to attend medical appointments, adult day care or religious services. Otherwise, it leaves it to the fiscal intermediaries to interpret just how many absences qualify as "frequent" and just how short those absences must be. Interpretations of this definition have therefore varied widely.

As a consequence, there have been far too many instances where an overzealous or arbitrary interpretation of the definition has turned elderly or disabled Medicare recipients, who are dependent upon Medicare home health services and medical equipment for survival, into virtual prisoners in their own homes.

The current homebound requirement is particularly hard on younger, disabled Medicare patients. For example, I recently met with David Jayne, a 40-year old man with Lou Gehrig's disease, who is confined to a wheelchair and cannot swallow, speak or even breathe on his own. Mr. Jayne needs several skilled nursing visits per week to enable him to remain independent and out of an inpatient facility. Despite his disability, Mr. Jayne meets frequently with youth and church groups. Speaking through a computerized voice synthesizer, he gives inspirational talks about how the human spirit can endure and even overcome great hardship.

The Atlanta Journal Constitution ran a feature article on Mr. Jayne and his activities, including a report about how he had, with the help of family and friends, attended a football game to root for the University of Georgia Bulldogs. A few days later, at the direction of the fiscal intermediary, his home health agency, which had been sending a health care worker to his home for two hours, four mornings a week, notified him that he could no longer be considered homebound, and that his benefits were being cut off. While his benefits were subsequently reinstated due to the media attention given the case, this experience motivated him to launch a crusade to modernize the homebound definition and led him to found the National Coalition to Amend the Medicare Homebound Restriction.

The current homebound requirement is particularly hard on younger, disabled individuals who are on Medicare. The fact is that the current requirement reflects an outmoded view of life for persons who live with serious disabilities. The homebound criteria may have made sense thirty years ago, when an elderly or disabled person might expect to live in the confines of their home, perhaps cared for by an extended family. The current definition, however, fails to reflect the technological and medical advances that have been made in supporting individuals with significant disabilities and mobility challenges. It also fails to reflect advances in treatment for seriously ill individuals, like Mr. Jayne, which allow them brief periods of relative wellness.

It also fails to recognize that an individual's mental acuity and physical stamina can only be maintained by use, and that the use of the body and mind is encouraged by social interactions outside the four walls of a home.

The David Jayne Medicare Homebound Modernization Act of 2002 will amend the homebound definition to base eligibility for the home health benefit on the patient's functional limitations and clinical condition, rather than on an arbitrary limitation on absences from the home. It will provide a specific, limited exception to the homebound rule for individuals who:

One, have been certified by a physician has having a permanent and severe condition that will not improve;

Two, who need assistance from another person with 3 or more of the 5 activities of daily living and require technological and/or personal assistance with the act of leaving home;

Three, who have received Medicare home health services during the previous 12 month period; and

Four, who are only able to leave home because the services provided through the home health benefit makes it possible for them to do so.

We believe that our legislation is budget neutral because it is specifically limited to individuals who are already eligible for Medicare and whose conditions require the assistance of a skilled nurse, therapist or home health aide to make it functionally possible for them to leave the home. Our legislation does not expand Medicare eligibility—it simply gives people who are already eligible for the benefit their freedom.

This issue was first brought to my attention by former Senator Robert Dole, who has long been a vigorous advocate for people with disabilities. Our proposal is also supported by the Consortium of Citizens with Disabilities, the Visiting Nurse Associations of America, the National Association for Home Care, Advancing Independence: Modernizing Medicare and Medicaid, AIMM, and the National Coalition to Amend the Medicare Homebound Restriction.

Moreover, the David Jayne Medicare Homebound Modernization Act of 2002 is consistent with President Bush's "New Freedom Initiative" which has, as its goal, the removal of barriers that impede opportunities for those with disabilities to integrate more fully into the community. By allowing reasonable absences from the home, our amendment will bring the Medicare home health benefit into the 21st Century, and I look forward to working with my colleagues to getting it done.

By Ms. COLLINS (for herself and Mrs. MURRAY):

S. 2849. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join my colleague from Washington, Senator MURRAY, in introducing the Pancreatic Islet Cell Transplantation Act of 2002 which will help to advance important research that holds the promise of a cure for the more than one million Americans with Type 1 or juvenile diabetes.

As the founder and Co-Chair of the Senate Diabetes Caucus, I have learned a great deal about this serious disease and the difficulties and heartbreak that it causes for so many Americans and their families as they await a cure. Diabetes is a devastating, life-long condition that affects people of every age, race and nationality. It is the leading cause of kidney failure, blindness in adults, and amputations not related to injury. Moreover, diabetes costs the nation more than $105 billion a year, one out of every ten health care dollars, in health-related expenditures.

The burden of diabetes is particularly heavy for children and young adults with juvenile diabetes. Juvenile diabetes is the second most common chronic disease affecting children. Moreover, it is one that they never outgrow.

In individuals with juvenile diabetes, the body's immune system attacks the pancreas and destroys the islet cells that produce insulin. While the discovery of insulin was a landmark breakthrough in the treatment of people with diabetes, it is not a cure, and people with juvenile diabetes face the constant threat of developing devastating, life-threatening complications as well as a drastic reduction in their quality of life.

Thankfully, there is good news for people with diabetes. We have seen some tremendous breakthroughs in diabetes research in recent years, and I am convinced that diabetes is a disease that can be cured, and will be cured in the near future.

We were all encouraged by the development of the "Edmonton Protocol," an experimental treatment developed at the University of Alberta involving the transplantation of insulin-producing pancreatic islet cells, which has been hailed as the most important advance in diabetes research since the discovery of insulin in 1921. Of the approximately 70 patients who have been treated using variation of the Edmonton Protocol over the past two years, all have seen a reversal of their life-disabling hypoglycemia, and nearly 80 percent have maintained normal glucose levels without insulin shots for more than two years.

Moreover, the side effects associated with this treatment—which uses more islet cells and a less-toxic combination of immunosuppressive drugs than previous, less successful protocols—have been mild, and the therapy has been generally well-tolerated by most patients.

Unfortunately, long-term use of toxic immunosuppressive drugs, has side-effects that make the current treatment inappropriate for use in children. Researchers, however, are working hard to find a way to reduce the transplant recipient's dependence on these drugs so that the procedure will be appropriate for children in the future, and the protocol has been hailed around the world as a remarkable breakthrough and proof that islet transplantation can work. It appears to offer the most immediate chance to achieve a cure for juvenile diabetes, and the research is moving forward rapidly.

New sources of islet cells must be found, however, because, as the science advances and continues to demonstrate promise, the number of islet cell transplants that can be performed will be limited by a serious shortage of pancreases available for islet cell transplantation. There currently are only 2,000 pancreases donated annually, and, of these, only about 500 are available each year for islet cell transplants. Moreover, most patients require islet cells from two pancreases for the procedure to work effectively.

The legislation we are introducing today will increase the supply of pancreases available for these trials and research. Our legislation will direct the Centers for Medicare and Medicaid Services to grant credit to organ procurement organizations, OPS, for the purposes of their certification—for pancreases harvested and used for islet cell transplantation and research.

Currently, CMS collects performance data from each OPO based upon the number of organs procured for transplant relative to the population of the OPO's service area. While CMS considers a pancreas to have been procured for transplantation if it is used for a whole organ transplant, the OPO receives no credit towards its certification if the pancreas is procured and used for islet cell transplantation or research. Our legislation will therefore give the OPOs an incentive to step up their efforts to increase the supply of pancreases donated for this purpose.

In addition, the legislation establishes an inter-agency committee on islet cell transplantation comprised of representatives of all of the federal agencies with an active role in supporting this research. The many advisory committees on organ transplantation that currently exist are so broad in scope that the issue of islet cell transplantation—while of great importance to the juvenile diabetes community—does not rise to the level of consideration when included with broader issues associated with organ donation, such as organ allocation policy and financial barriers to transplantation. We believe that a more focused effort in the area of islet cell transplantation is clearly warranted since the research is moving forward at such a rapid pace and with such remarkable results.

And finally, to help us collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy covered by insurance, our legislation directs the Institute of Medicine to conduct a study on the impact of islet cell transplantation on the health-related quality of life for individuals with juvenile diabetes as well as the cost-effectiveness of the treatment.

Islet cell transplantation offers real hope for people with juvenile diabetes. Our legislation, which is strongly supported by the Juvenile Diabetes Research Foundation, addresses some of the specific obstacles to moving this research forward as rapidly as possible, and I urge all of our colleagues to join us in sponsoring it.

By Mr. JOHNSON (for himself and Mr. DORGAN):

S. 2853. A bill to direct the Secretary of the Interior to establish the Missouri River Monitoring and Research Program, to authorize the establishment of the Missouri River Basin Stakeholder Committee, and for other purposes; to the Committee on Environment and Public Works.

Mr. JOHNSON. Mr. President, today, I am pleased to join Senator BYRON DORGAN in introducing legislation that will establish a world-class, science-based long-term monitoring program for the Missouri River. As America's longest river, fed by the headwaters of thousand, year-old glaciers, the Missouri is intertwined into the fabric of the American experience. Fed by dozens of tributaries crisscrossing Montana, North and South Dakota, Nebraska, Missouri, and Kansas, the Missouri River supports hundreds of river species and provides crucial wildlife habitat for migratory birds and other animals. The Missouri River also sustains trophy walleye fishing on South Dakota's main stem reservoirs and is the hub for the cultural and economic development of several communities and Indian Tribes.

The Missouri River faces challenges on several fronts: The manipulation of its water levels by the Corps of Engineers, the continued development of river shoreline, and the invasion of nonnative fish and plants. The Missouri River Enhancement and Monitoring Act of 2002 creates a comprehensive monitoring program to investigate and examine how the multiple uses of the Missouri are impacting water quality and the sustainability of fish and wildlife.

The legislation authorizes the establishment of a federal research program through the Biological Resources Division of the USGS, the Department of the Interior's research engine. The strength of the bill, however, stems from the participation of the states, Indian Tribes, and academic institutions all who have a stake in the health of the River. To that end, the legislation authorizes the establishment of monitoring field stations throughout the Missouri River basin. The bill also includes a competitive funding process to contract with Indian Tribes and basin States for the recovery of threatened species and specific habitat restoration projects. These focused investigations will encourage States and Indian Tribes to study the impact of water flows on fish populations at main stem reservoirs.

Earlier this year, water releases from South Dakota reservoirs damaged the spring fish spawn and the ecology of the Missouri River. This bill authorizes funds for State agencies with jurisdiction over fish and wildlife habitat to initiate projects that will be able to tell us how low water levels at South Dakota reservoirs impact fish populations and recreational opportunities.

I ask unanimous consent that a letter from the South Dakota Department of Game, Fish, and Parks in support of the Missouri River Monitoring Act of 2002 be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF GAME,
FISH AND PARKS,
Pierre, SD, July 23, 2002.

Senator TIM JOHNSON,
Hart Senate Office,
Washington, DC.

DEAR SENATOR JOHNSON: I would like to express my appreciation for all of your efforts on behalf of Missouri River fish and wildlife resources, especially the introduction of the "Missouri River Monitoring Act of 2002." The framework for this legislation. "The Missouri River Environmental Assessment Program (MOREAP), was developed by the Missouri River Natural Resources Committee (MRNRC) during 1996 and 1997 in partnership with the Biological Resources Division of the United States Geological Survey (USGS) and 79 Missouri River scientists and fish and wildlife managers. The MRNRC was established in 1987 by my agency and other main stem state fish and wildlife agencies with statutory responsibilities for management and stewardship of river fish and wildlife resources held in trust for the public. We are accountable to the public for management of those resources.

My staff and I have reviewed the proposed legislation and I want you to know that we support your bill. The Missouri River lacks a basin wide biological monitoring program and environmental assessment is desperately needed. The need for collecting comprehensive, long-term natural resource data to understand the effects of future river management decisions cannot be over-stated. This program will generate a system-wide database on Missouri River water quality, habitat, and biota that will provide the scientific foundation for management decisions.

The Missouri River is 2,341 miles long and drains one-sixth of the United States. It is one of the most important resources in our country. Harnessing the river's flow and constricting its channel has altered and reduced native fish and wildlife habitat. Recovering declining fish and wildlife resources in this extremely large, diverse and complex river environment, while maintaining the important economic benefits the river and reservoir system provides, will require sound and ongoing scientific data.

The time has come to make management changes on the Missouri River and those changes should be based on a thorough understanding of how those changes affect the river's environment. Scientific data will help us understand the complex relationships between river management and fish and wildlife habitat recovery.

I thank you once again for your help. This legislation has the strong support of the South Dakota Department Game Fish and Parks.

Sincerely,

JOHN L. COOPER,
Department Secretary.

Mr. JOHNSON. The time for a monitoring program for the Missouri River has arrived. With the Corps of Engineers poised to revise the Missouri River Master Water Control Manual, a monitoring program will establish a baseline for judging the impact of new water flows. Years of scientific analysis and research from the U.S. Fish and Wildlife Service point toward Corps management of the river as the reason for diminished riparian habitat and a laundry list of threatened fish and bird species. Scientific monitoring must be part of a new Master Manual to examine how the new water flows impact fish and wildlife populations. The Corps has spent nearly 13 years and millions of dollars to find a consensus and implement a new, more balanced Master Manual. The Missouri River Enhancement and Monitoring Act of 2002 establishes a comprehensive database to analyze and examine how fish and wildlife respond to a new management plan. A long-term monitoring program will ensure that future decisions over the Missouri River are based on sound science and not politics.

As we approach the 200 year anniversary of Lewis and Clark's journey up the Missouri River, I call on Congress to pass the Missouri River Enhancement and Monitoring Act of 2002 to ensure the health and vitality of the River for the enjoyment of future generations.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2853

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Missouri River Enhancement and Monitoring Act of 2002".

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term "Center" means the River Studies Center of the Biological Resources Division of the United States Geological Survey, located in Columbia, Missouri.

(2) COMMITTEE.—The term "Committee" means the Missouri River Basin Stakeholder Committee established under section 4(a).

(3) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) PROGRAM.—The term "program" means the Missouri River monitoring and research program established under section 3(a).

(5) RIVER.—The term "River" means the Missouri River.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Biological Resources Division of the United States Geological Survey.

(7) STATE.—The term "State" means—

(A) the State of Iowa;

(B) the State of Kansas;

(C) the State of Missouri;

(D) the State of Montana;

(E) the State of Nebraska;

(F) the State of North Dakota;

(G) the State of South Dakota; and

(H) the State of Wyoming.

(8) STATE AGENCY.—The term "State agency" means an agency of a State that has jurisdiction over fish and wildlife of the River.

SEC. 3. MISSOURI RIVER MONITORING AND RESEARCH PROGRAM.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish the Missouri River monitoring and research Program—

(1)(A) to coordinate the collection of information on the biological and water quality characteristics of the River; and

(B) to evaluate how those characteristics are affected by hydrology;

(2) to coordinate the monitoring and assessment of biota (including threatened or endangered species) and habitat of the River; and

(3) to make recommendations on means to assist in restoring the ecosystem of the River.

(b) CONSULTATION.—In establishing the program under subsection (a), the Secretary shall consult with—

(1) the Biological Resources Division of the United States Geological Survey;

(2) the Director of the United States Fish and Wildlife Service;

(3) the Chief of Engineers;

(4) the Western Area Power Administration;

(5) the Administrator of the Environmental Protection Agency;

(6) the Governors of the States, acting through—

(A) the Missouri River Natural Resources Committee; and

(B) the Missouri River Basin Association; and

(7) the Indian tribes of the Missouri River Basin.

(c) ADMINISTRATION.—The Center shall administer the program.

(d) ACTIVITIES.—In administering the program, the Center shall—

(1) establish a baseline of conditions for the River against which future activities may be measured;

(2) monitor biota (including threatened or endangered species), habitats, and the water quality of the River;

(3) if initial monitoring carried out under paragraph (2) indicates that there is a need for additional research, carry out any additional research appropriate to—

(A) advance the understanding of the ecosystem of the River; and

(B) assist in guiding the operation and management of the River;

(4) use any scientific information obtained from the monitoring and research to assist in the recovery of the threatened species and endangered species of the River; and

(5) establish a scientific database that shall be—

(A) coordinated among the States and Indian tribes of the Missouri River Basin; and

(B) readily available to members of the public.

(e) CONTRACTS WITH INDIAN TRIBES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall enter into contracts in accordance with section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) with Indian tribes that have—

(A) reservations located along the River; and

(B) an interest in monitoring and assessing the condition of the River.

(2) REQUIREMENTS.—A contract entered into under paragraph (1) shall be for activities that—

(A) carry out the purposes of this Act; and

(B) complement any activities relating to the River that are carried out by—

(i) the Center; or

(ii) the States.

(f) MONITORING AND RECOVERY OF THREATENED SPECIES AND ENDANGERED SPECIES.—The Center shall provide financial assistance to the United States Fish and Wildlife Service and State agencies to monitor and recover threatened species and endangered species, including monitoring the response of pallid sturgeon to reservoir operations on the mainstem of the River.

(g) GRANT PROGRAM.—

(1) IN GENERAL.—The Center shall carry out a competitive grant program under which the Center shall provide grants to States, Indian tribes, research institutions, and other eligible entities and individuals to conduct research on the impacts of the operation and maintenance of the mainstem reservoirs on the River on the health of fish and wildlife of the River, including an analysis of any adverse social and economic impacts that result from reoperation measures on the River.

(2) REQUIREMENTS.—On an annual basis, the Center, the Director of the United States Fish and Wildlife Service, the Director of the United States Geological Survey, and the Missouri River Natural Resources Committee, shall—

(A) prioritize research needs for the River;

(B) issue a request for grant proposals; and

(C) award grants to the entities and individuals eligible for assistance under paragraph (1).

(h) ALLOCATION OF FUNDS.—

(1) CENTER.—Of amounts made available to carry out this section, the Secretary shall make the following percentages of funds available to the Center:

(A) 35 percent for fiscal year 2003.

(B) 40 percent for fiscal year 2004.

(C) 50 percent for each of fiscal years 2005 through 2017.

(2) STATES AND INDIAN TRIBES.—Of amounts made available to carry out this section, the Secretary shall use the following percentages of funds to provide assistance to States or Indian tribes of the Missouri River Basin to carry out activities under subsection (d):

(A) 65 percent for fiscal year 2003.

(B) 60 percent for fiscal year 2004.

(C) 50 percent for each of fiscal years 2005 through 2017.

(3) USE OF ALLOCATIONS.—

(A) IN GENERAL.—Of the amount made available to the Center for a fiscal year under paragraph (1)(C), not less than—

(i) 20 percent of the amount shall be made available to provide financial assistance under subsection (f); and

(i) 33 percent of the amount shall be made available to provide grants under subsection (g).

(B) ADMINISTRATIVE AND OTHER EXPENSES.—Any amount remaining after application of subparagraph (A) shall be used to pay the costs of—

(i) administering the program;

(ii) collecting additional information relating to the River, as appropriate;

(iii) analyzing and presenting the information collected under clause (ii); and

(iv) preparing any appropriate reports, including the report required by subsection (i).

(i) REPORT.—Not later than 3 years after the date on which the program is established under subsection (a), and not less often than every 3 years thereafter, the Secretary, in cooperation with the individuals and agencies referred to in subsection (b), shall—

(1) review the program;

(2) establish and revise the purposes of the program, as the Secretary determines to be appropriate; and

(3) submit to the appropriate committees of Congress a report on the environmental health of the River, including—

(A) recommendations on means to assist in the comprehensive restoration of the River; and

(B) an analysis of any adverse social and economic impacts on the River, in accordance with subsection (g)(1).

SEC. 4. MISSOURI RIVER BASIN STAKEHOLDER COMMITTEE.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Governors of the States and the governing bodies of the Indian tribes of the Missouri River Basin shall establish a committee to be known as the "Missouri River Basin Stakeholder Committee" to make recommendations to the Federal agencies with jurisdiction over the River on means of restoring the ecosystem of the River.

(b) MEMBERSHIP.—The Governors of the States and governing bodies of the Indian tribes of the Missouri River Basin shall appoint to the Committee—

(1) representatives of—

(A) the States; and

(B) Indian tribes of the Missouri River Basin;

(2) individuals in the States with an interest in or expertise relating to the River; and

(3) such other individuals as the Governors of the States and governing bodies of the Indian tribes of the Missouri River Basin determine to be appropriate.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary—

(1) to carry out section 3—

(A) $6,500,000 for fiscal year 2003;

(B) $8,500,000 for fiscal year 2004; and

(C) $15,100,000 for each of fiscal years 2005 through 2017; and

(2) to carry out section 4, $150,000 for fiscal year 2003.

Mr. DORGAN. Mr. President, I am pleased to join my colleague from South Dakota Senator TIM JOHNSON today in introducing this Missouri River Enhancement and Monitoring Act of 2002 and thank him for his efforts in working with me on this legislation. This bill will establish a program to conduct research on, and monitor the health of, the Missouri River to help recover threatened and endangered species, such as the pallid sturgeon and piping plover.

This bill will enable those who are active in the Missouri River Basin to collect and analyze baseline data, as river operations change, so that we can monitor changes in the health of the river and in species recovery in future years.

The program would also provide an analysis of the social and economic impacts along the river. And, it would establish a stakeholder group to make recommendations on the recovery of the Missouri River ecosystem.

The bill establishes a cooperative working arrangement between state, regional federal, and tribal entities that are active in the Missouri River Basin. I look forward to working with all of the stakeholders in the Basin to implement this important legislation.

I am especially pleased that this legislation is supported by a broad range of stakeholders, including the North Dakota State Water Commission, the North Dakota Game and Fish Department, the North Dakota Chapter of the Sierra Club, the Three Affiliated Tribes, the Missouri River Natural Resources Committee, The Missouri River Basin Association, the South Dakota Game and Fish Department, American Rivers, and Environmental Defense.

I am confident that this legislation will enjoy bipartisan support, because of its significance in helping to monitor and restore the health of this historic River. Lewis and Clark traveled on this River. This River also contributes to $80 million in recreation, fishing, and tourism benefits in the Basin. I look forward to holding hearings on this bill and hope that we will be able to pass it into law in the near future.

By Mr. BINGAMAN (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2854. A bill to amend title XVIII of the Social Security Act to improve disproportionate share medicare payments to hospitals serving vulnerable populations; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing bipartisan legislation today with Senators ROBERTS and ENZI that addresses some inequities in the current Medicare disproportionate share hospital, or DSH, program. The bill incorporates the recommendations by the Medicare Payment Advisory Commission, or MedPAC, to address the current inequities in the formula that harm rural hospitals and to better target the money to safety net hospitals.

The Medicare DSH program was created with the purpose of assisting hospitals that provide a substantial amount of care to low-income beneficiaries, including seniors and disabled citizens served by Medicare. To protect access to low-income Medicare beneficiaries, DSH funds are provided to hospitals whose viability is threatened by providing care, including unreimbursed care, to low-income patients.

Unfortunately, the current Medicare DSH formula does not adequately reflect or target money appropriately to these safety net institutions and it also inappropriately sets limits and inequities for rural hospitals, which are a life-line to many of our Nation's senior citizens and yet struggle due to such payment inequities in the Medicare system.

This legislation adopts the recommendations of MedPAC to address these inequities. According to MedPAC from its March 2000 "Report to the Congress: Medicare Payment Policy"—

> The Commission believes that special policy changes are needed to ameliorate several problems inherent in the existing disproportionate share payment system. The current low-income share measure does not include care to all the poor; most notably, it omits uncompensated care. Instead, the measure relies on the share of resources devoted to treating Medicaid recipients to represent the low-income patient load for the entire nonelderly poor population.

New Mexico leads the Nation in the percentage of uninsured in its populations, according to the Census Bureau. Consequently, as MedPAC has noted repeatedly, the hospitals in my state lose more money to uncompensated care than similarly situated hospitals in other states. Because the Medicare DSH formula fails to account for uncompensated care directly but instead uses Medicaid as a proxy, the hospitals in New Mexico are not fairly compensated by the Medicare DSH formula.

To address this problem, MedPAC recommends the formula "include the costs of all poor patients in calculating low-income shares used to distribute disproportionate share payments. . . ." The legislation we are introducing today would make that important change on behalf of our Nation's safety net hospitals.

In addition, MedPAC notes that the current Medicare DSH program has 10 different formulas. MedPAC adds, "In particular, current policy favors hospitals located in urban areas; almost half of urban hospitals receive DSH payments, compared with only one-fifth of rural facilities."

Although BIPA improved the equity of DSH payments by raising the minimum low-income share needed to qualify for a payment adjustment for rural hospitals to that of urban hospitals, BIPA capped the DSH add-on payments a rural hospital can receive at just 5.25 percent, except for those rural hospitals already receiving higher payments due to the sole community hospital or rural referral center status. While MedPAC estimated the change made about 840 additional rural hospitals, or 40 percent of all rural facilities, eligible to receive DSH payments, the cap maintains some of the inequities between urban and rural hospitals.

Again, according to MedPAC in its June 2001 "Report to Congress: Medicare in Rural America":

> Rural hospitals were responsible for 12.8 percent of the care provided to Medicaid and uncompensated care patients nationally in 1999. With the DSH payment rules in effect through 2000, only 3.1 percent of payments went to rural facilities; BIPA rules would increase that proportion to 6.9 percent.

To address this problem, MedPAC also recommends using the "same formula to distribute payments to all hospitals covered by prospective payment."

In incorporating the recommendations of MedPAC in this legislation, it is estimated the bill would increase rural DSH payments by 5.4 percent across the country, including an 8.4 percent increase for rural hospitals with less than 50 beds. Our Nation's public hospitals would also benefit greatly, as urban public hospitals and rural government facilities are estimated to receive increases of 3.6 percent and 7.7 percent, respectively, under this legislation.

This legislation I am introducing with Senators ROBERTS and ENZI addresses some long-standing inequities in the Medicare DSH formula. I urge its adoption this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2854

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Safety Net Hospital Improvement Act of 2002".

SEC. 2. COLLECTION OF DATA AND MODIFICATION OF DISPROPORTIONATE SHARE MEDICARE PAYMENTS TO HOSPITALS SERVING VULNERABLE POPULATIONS.

(a) COLLECTION OF DATA.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amended by adding at the end the following new clause:

"(xiv) The Secretary shall collect from each subsection (d) hospital annual data on inpatient and outpatient charges, including all such charges for each of the following categories:

"(I) All patients.

"(II) Patients who are entitled to benefits under part A and are entitled to benefits (excluding any State supplementation) under the supplemental security income program under title XVI.

"(III) Patients who are entitled to (or, if they applied, would be eligible for) medical assistance under title XIX or child health assistance under title XXI.

"(IV) Patients who are beneficiaries of indigent care programs sponsored by State or local governments (including general assistance programs) which are funded solely by local or State funds or by a combination of local, State, or Federal funding.

"(V) The amount of charity care charges and bad debt.".

(b) MODIFICATION.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)), as amended by subsection (a), is amended—

(1) by striking all the matter preceding clause (xiv) and inserting the following:

"(F)(i) The Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which serves a significantly disproportionate number of low-income patients (as defined in clause (iv)).

"(ii) The amount of the payment described in clause (i) for each discharge shall be determined by multiplying—

"(I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A) for that discharge, by

"(II) the disproportionate share adjustment percentage established under clause (iii) for the cost reporting period in which the discharge occurs.

"(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital is equal to (P–T)(C), where—

"(I) 'P' is equal to the hospital's disproportionate patient percentage (as defined in clause (v)) for the period;

"(II) 'T' is equal to the threshold percentage established by the Secretary under clause (iv); and

"(III) 'C' is equal to a conversion factor established by the Secretary in a manner so that, in applying such conversion factor for cost reporting periods beginning in fiscal year 2002—

"(aa) the total of the additional payments that would have been made under this subparagraph for cost reporting periods beginning in fiscal year 2002 if the amendment made by section 2(b) of the Medicare Safety Net Hospital Improvement Act of 2002 had been in effect; are equal to

"(bb) the total of the additional payments that would have been made under this subparagraph for cost reporting periods beginning in fiscal year 2002 if such amendment was not in effect but if the disproportionate share adjustment percentage (as defined in clause (iv) (as in effect during such cost reporting periods)) for all hospitals was equal to the percent determined in accordance with the applicable formulae described in clause (vii) (as so in effect).

The Secretary shall establish the conversion factor under subclause (III) based upon the data described in clause (iv) that is collected by the Secretary.

"(iv) For purposes of this subparagraph, a hospital 'serves a significantly disproportionate number of low-income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (v)) for that period which equals or exceeds a threshold percentage, as established by the Secretary in a manner so that, if the amendment made by section 2(b) of the Medicare Safety Net Hospital Improvement Act of 2002 had been in effect for cost reporting periods beginning in fiscal year 2002 and if the disproportionate share adjustment percentage (as defined in clause (iv) (as in effect during such periods)) for all hospitals was equal to the percent determined in accordance with the applicable formulae described in clause (vii) (as so in effect), 60 percent of subsection (d) hospitals would have been eligible for an additional payment under this subparagraph for such periods. The Secretary shall establish such threshold percentage based upon the data described in clause (iv) that is collected by the Secretary.

"(v) In this subparagraph, the term 'disproportionate patient percentage' means, with respect to a cost reporting period of a hospital (expressed as a percentage)—

"(I) the charges described in subclauses (II) through (V) of clause (vi) for such period; divided by

"(II) the charges described in subclause (I) of such clause for such period."; and

(2) by redesignating clause (xiv) as clause (vi).

(c) CONFORMING AMENDMENTS.—

(1) MEDICARE.—

(A) QUALIFIED LONG-TERM CARE HOSPITAL.—Section 1886(b)(3)(G)(ii)(II) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(G)(ii)(II)) is amended by striking "of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi))" and inserting "under subsection (d)(5)(F)(v) equal to or greater than an appropriate percentage (as determined by the Secretary)".

[(B) PROVIDER-BASED STATUS.—Section 404(b)(2)(B) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–507), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by striking "greater than 11.75 percent or is described in clause (i)(II) of such section" and inserting "greater than an appropriate percent (as determined by the Secretary)".]

(2) MEDICAID.—Section 1923(c) of the Social Security Act (42 U.S.C. 1396r–4(c)) is amended—

(A) in paragraph (1), by striking "section 1886(d)(5)(F)(iv)" and inserting "section 1886(d)(5)(F)(iii)"; and

(B) by striking the second sentence.

(3) PUBLIC HEALTH SERVICE ACT.—Section 340B(a)(4)(L)(ii) of the Public Health Service Act (42 U.S.C. 256b(a)(4)(L)(ii)) is amended to read as follows:

"(ii) for the most recent cost reporting period that ended before the calendar quarter involved—

"(I) in the case of a calendar quarter involved that begins prior to April 1, 2004, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act; and

"(II) in the case of a calendar quarter involved that begins on or after April 1, 2004, had a disproportionate share adjustment percentage (as so determined) that is greater than an appropriate percent, as established by the Secretary in a manner so that, with respect to the 12-month period beginning on such date, the number of hospitals that are described in this subparagraph is the same as, or greater than, the number of hospitals that would have been described in this subparagraph if the Medicare Safety Net Hospital Improvement Act of 2002 had not been enacted; and".

(d) TECHNICAL AMENDMENTS.—Section 1815(e)(1)(B) of the Social Security Act (42 U.S.C. 1395g(e)(1)(B)) is amended—

(1) in the matter preceding clause (i), by inserting "a" before "hospital"; and

(2) in clause (i), by striking "(as established in clause (iv) of such section)" and inserting "(as established in section 1886(d)(5)(F)(iv), as in effect during fiscal year 1987)".

(e) EFFECTIVE DATES.—

(1) COLLECTION.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) MODIFICATION AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (c) shall apply to payments for discharges occurring on or after April 1, 2004.

(3) TECHNICAL AMENDMENTS.—The amendments made by subsection (d) shall take effect as if included in the enactment of section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509; 100 Stat. 1996).

By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, and Mr. GRAHAM):

S. 2855. A bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today I am introducing a bill with Senator ROCKEFELLER that will make significant and long-overdue improvements in the programs that provide assistance to low-income Medicare beneficiaries. This bill is a companion bill to H.R. 5276, which was introduced by Representatives JOHN DINGELL, SHERROD BROWN, HENRY WAXMAN, and PETE STARK last week.

Medicare provides coverage to all 40 million elderly and disabled beneficiaries, regardless of income, but the cost of uncovered services, premiums, and cost-sharing is a serious burden on those with the lowest incomes.

More than 40 percent of Medicare beneficiaries have incomes below 200 percent of poverty, including 47 percent or 102,000 seniors in New Mexico, at income levels below $17,720 for an individual and $23,880 for a couple. These low-income beneficiaries are nearly twice as likely as higher-income beneficiaries to report their health status as fair or poor, but are less likely to have private supplemental insurance to cover the cost of uncovered services or Medicare cost-sharing. Poor beneficiaries also bear a disproportionate burden in out-of-pocket health care costs, spending more than a third of their incomes on health care compared to only 10 percent for higher-income beneficiaries.

Medicaid, through what is known as the "Medicare Savings Programs," fills in Medicare's gaps for low-income beneficiaries, providing supplemental coverage to 17 percent of all Medicare beneficiaries. According to the Center for Medicare Education, which is funded by the Robert Wood Johnson Foundation, the costs for low-income beneficiaries enrolled in the Qualified Medicare Beneficiary, or QMB, program drops out-of-pocket expenditures from 34 percent to 13 percent for low-income beneficiaries. Moreover, Medicare beneficiaries with full Medicaid coverage have out-of-pocket expenses of about 5 percent of their income or $295 a year.

This is a significant and important protection for our Nation's most financially vulnerable seniors and disabled citizens. Unfortunately, millions of beneficiaries, who are eligible for assistance under the Medicare Savings Programs, are not enrolled. Again, the Center for Medicare Education estimates that only half of the beneficiaries below poverty who are eligible for assistance are actually enrolled. Lack of outreach, complex and burdensome enrollment procedures, and restrictive asset requirements keep millions of seniors from receiving the assistance they desperately need.

The "Medicare Beneficiary Improvement Act of 2002" takes a number of steps to address these problems. First, the legislation improves eligibility requirements for these programs. It raises the income level for eligibility for Medicare Part B premium assistance from 120 to 135 percent of poverty. This expansion was originally enacted in 1997 but it expires this year. The Congress needs to take action this year to maintain these important protections for the Nation's elderly and should take the additional action to make this provision permanent.

In addition, the bill also ensures that all seniors who meet supplemental security income, or SSI, criteria are automatically eligible for assistance. Currently, automatic eligibility is only required in certain States, meaning that beneficiaries in other states may miss out on critical assistance unless they know enough to apply.

The bill also eliminates the restrictive assets test that requires seniors to become completely destitute in order to qualify for assistance. Most low-income Medicare beneficiaries have limited assets to begin with but the asset restrictions are so severe, a beneficiary could not keep a fund or more than $1,500 for burial expenses without being disqualified from assistance. Moreover, own a car and you are likely to be denied financial protections under current law.

According to the Kaiser Family Foundation, it is estimated that up to 40 percent of low-income elderly that are otherwise eligible for financial assistance are denied protections due to the assets test. Any senior citizen making less than $13,290 a year who somehow has managed to scrape together $4,000 in a savings account for emergency are not eligible for financial protections from Medicare's cost sharing requirements. This runs counter to the goal of the Medicare program of providing security to the elderly rather than requiring impoverishment of them.

Furthermore, the legislation take steps to eliminate barriers to enrollment under the program. Again, according to the Center for Medicare Education, "While some states have conducted activities to reach and enroll people in the Medicare Savings Programs, there is a need for more outreach activity in states. For example, in 1999, only 18 states reported that they used a short application form for the Medicare Savings Programs, and less than half of the states placed eligibility workers in settings other than welfare offices."

The bill allows Medicare beneficiaries to apply for assistance at local social security offices, encourages states to station eligibility workers at these offices, as well as at other sites frequented by senior citizens and individuals with disabilities, and ensures that beneficiaries can apply for the program using a simplified application form. In addition, this bill will ensure that once an individual is found eligible for assistance, the individual remains continuously eligible and does not need to re-apply annually.

Another important step the legislation takes for low-income Medicare beneficiaries is that it provides 3 months of retroactive for QMBs. All other groups of beneficiaries have this protection currently. In addition, it prohibits estate recovery for QMBs for the cost of their cost-sharing or benefits provided through this program. The fear that Medicaid will recoup such costs from a surviving spouse is often a deterrent for many seniors to apply for such assistance.

And finally, the legislation funds a demonstration project to improve information and coordination between federal state, and local entities to increase enrollment of eligible Medicare beneficiaries. This demonstration would help agencies identify individuals who are potentially eligible for assistance by coordinating various data and sharing it with states for the purposes of locating and enrolling these individuals. In addition, the legislation provides grant money for additional innovative outreach and enrollment projects for the Medicare Savings Programs.

I would like to thank Representative DINGELL for his leadership on this issue and am pleased to be introducing the Senate companion bill to his legislation.

I look forward to working with my colleagues to pass this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2855

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicare Beneficiary Assistance Improvement Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Renaming program to eliminate confusion.
Sec. 3. Expanding protections by increasing SLMB eligibility income level to 135 percent of poverty.
Sec. 4. Eliminating barriers to enrollment.
Sec. 5. Elimination of asset test.
Sec. 6. Improving assistance with out-of-pocket costs.
Sec. 7. Improving program information and coordination with State, local, and other partners.
Sec. 8. Notices to certain new medicare beneficiaries.

SEC. 2. RENAMING PROGRAM TO ELIMINATE CONFUSION.

The programs of benefits for lower income medicare beneficiaries provided under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) shall be known as the "Medicare Savings Programs".

SEC. 3. EXPANDING PROTECTIONS BY INCREASING SLMB ELIGIBILITY INCOME LEVEL TO 135 PERCENT OF POVERTY.

(a) IN GENERAL.—Section 1902(a)(10)(E)(iii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iii)) is amended by striking "120 percent in 1995 and years thereafter" and inserting "120 percent in 1995 through 2002 and 135 percent in 2003 and years thereafter".

(b) CONFORMING REMOVAL OF QI–1 AND QI–2 PROVISIONS.—

(1) Section 1902(a)(10)(E) of such Act (42 U.S.C. 1396a(a)(10)(E)) is further amended—

(A) by adding "and" at the end of clause (ii);

(B) by striking "and" at the end of clause (iii); and

(C) by striking clause (iv).

(2) Section 1933 of such Act (42 U.S.C. 1396u–3) is repealed.

(3) The amendments made by this subsection shall take effect as of January 1, 2003.

(c) Application of CHIP Enhanced Matching Rate for SLMB Assistance.—

(1) In general.—Section 1905(b)(4) of such Act (42 U.S.C. 1396d(b)(4)) is amended by inserting "or section 1902(a)(10)(E)(iii)" after "section 1902(a)(10)(A)(ii)(XVIII)".

(2) Effective date.—The amendment made by paragraph (1) shall apply to medical assistance for medicare cost-sharing for months beginning with January 2003.

SEC. 4. ELIMINATING BARRIERS TO ENROLLMENT.

(a) Automatic Eligibility for SSI Recipients in 209(b) States and SSI Criteria States.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(1) be redesignating paragraph (6) as paragraph (11); and

(2) by adding at the end the following new paragraph:

"(6) In the case of a State which has elected treatment under section 1902(f) for aged, blind, and disabled individuals, individuals with respect to whom supplemental security income payments are being paid under title XVI are deemed for purposes of this title to be qualified medicare beneficiaries.".

(b) Self-Certification of Income.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsection (a), is further amended by inserting after paragraph (6) the following new paragraph:

"(7) In determining whether an individual qualifies as a qualified medicare beneficiary or is eligible for benefits under section 1902(a)(10)(E)(iii), the State shall permit individuals to qualify on the basis of self-certifications of income without the need to provide additional documentation.".

(c) Automatic Reenrollment Without Need To Reapply.—

(1) In general.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a) and (b), is further amended by inserting after paragraph (7) the following new paragraph:

"(8) In the case of an individual who has been determined to qualify as a qualified medicare beneficiary or to be eligible for benefits under section 1902(a)(10)(E)(iii), the individual shall be deemed to continue to be so qualified or eligible without the need for any annual or periodic application unless and until the individual notifies the State that the individual's eligibility conditions have changed so that the individual is no longer so qualified or eligible.".

(2) Conforming amendment.—Section 1902(e)(8) of the Social Security Act (42 U.S.C. 1396a(e)(8)) is amended by striking the second sentence.

(d) Use of Simplified Application Process.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a), (b), and (c), is further amended by inserting after paragraph (8) the following new paragraph:

"(9) A State shall permit individuals to apply to qualify as a qualified medicare beneficiary or for benefits under section 1902(a)(10)(E)(iii) through the use of the simplified application form developed under section 1905(p)(5)(A) and shall permit such an application to be made over the telephone or by mail, without the need for an interview in person by the applicant or a representative of the applicant.".

(e) Role of Social Security Offices.—

(1) Enrollment and provision of information at social security offices.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a), (b), (c), and (d) is further amended by inserting after paragraph (9) the following new paragraph:

"(10) The Commissioner of Social Security shall provide, through local offices of the Social Security Administration—

"(A) for the enrollment under State plans under this title for appropriate medicare cost-sharing benefits for individuals who qualify as a qualified medicare beneficiary or for benefits under section 1902(a)(10)(E)(iii); and

"(B) for providing oral and written notice of the availability of such benefits.".

(2) Clarifying amendment.—Section 1902(a)(5) of such Act (42 U.S.C. 1396a(a)(5)) is amended by inserting "as provided in section 1905(p)(10)" after "except".

(f) Outstationing of State Eligibility Workers at SSA Field Offices.—Section 1902(a)(55) of such Act (42 U.S.C. 1396a(a)(55)) is amended—

(1) in the matter preceding subparagraph (A), by striking "subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)" and inserting "paragraph (10)(A)(i)(IV), (10)(A)(i)(VI), (10)(A)(i)(VII), (10)(A)(ii)(IX), or (10)(E)"; and

(2) in subparagraph (A), by striking "1905(l)(2)(B)" and inserting "1905(l)(2)(B), and in the case of applications of individuals for medical assistance under paragraph (10)(E), at locations that include field offices of the Social Security Administration".

SEC. 5. ELIMINATION OF ASSET TEST.

(a) In General.—Section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)) is amended—

(1) by adding "and" at the end of subparagraph (A);

(2) by striking ", and" at the end of subparagraph (B) and inserting a period; and

(3) by striking subparagraph (C).

(b) Effective Date.—The amendments made by subsection (a) shall apply to eligibility determinations for medicare cost-sharing furnished for periods beginning on or after January 1, 2003.

SEC. 6. IMPROVING ASSISTANCE WITH OUT-OF-POCKET COSTS.

(a) Eliminating Application of Estate Recovery Provisions.—Section 1917(b)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(B)(ii)) is amended by inserting "(but not including medical assistance for medicare cost-sharing or for benefits described in section 1902(a)(10)(E))" before the period at the end.

(b) Providing for 3-Months Retroactive Eligibility.—

(1) In general.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before paragraph (1), by striking "described in subsection (p)(1), if provided after the month" and inserting "described in subsection (p)(1), if provided in or after the third month before the month".

(2) Conforming amendments.—(A) The first sentence of section 1902(e)(8) of such Act (42 U.S.C. 1396a(e)(8)), as amended by section 4(c)(2), is amended by striking "(8)" and the first sentence.

(B) Section 1848(g)(3) of such Act (42 U.S.C. 1395w–4(g)(3)) is amended by adding at the end the following new subparagraph:

"(C) Treatment of retroactive eligibility.—In the case of an individual who is determined to be eligible for medical assistance described in subparagraph (A) retroactively, the Secretary shall provide a process whereby claims previously for services furnished during the period of retroactive eligibility which were not submitted in accordance with such subparagraph are resubmitted and re-processed in accordance with such subparagraph.".

SEC. 7. IMPROVING PROGRAM INFORMATION AND COORDINATION WITH STATE, LOCAL, AND OTHER PARTNERS.

(a) Data Match Demonstration Project.—

(1) In general.—The Secretary of Health and Human Services (acting through the Administrator of the Centers for Medicare & Medicaid Services), the Secretary of the Treasury, and the Commissioner of Social Security shall enter into an arrangement under which a demonstration is conducted, consistent with this subsection, for the exchange between the Centers for Medicare & Medicaid Services, the Internal Revenue Service, and the Social Security Administration of information in order to identity individuals who are medicare beneficiaries and who, based on data from the Internal Revenue Service that (such as their not filing tax returns or other appropriate filters) are likely to be qualified medicare beneficiaries or individuals otherwise eligible for medical assistance under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)).

(2) Limitation on use of information.—Notwithstanding any other provision of law, specific information on income or related matters exchanged under paragraph (1) may be disclosed only as required to carry out subsection (b) and for related Federal and State outreach efforts.

(3) Period.—The project under this subsection shall be for an initial period of 3 years and may be extended for additional periods (not to exceed 3 years each) after such an extension is recommended in a report under subsection (d).

(b) State Demonstration Grants.—

(1) In general.—The Secretary of Health and Human Services shall enter into a demonstration project with States (as defined for purposes of title XIX of the Social Security Act (42 U.S..C 1396 et seq.) to provide funds to States to use information identified under subsection (a), and other appropriate information, in order to do ex parte determinations or other methods for identifying and enrolling individuals who are potentially eligible to be qualified medicare beneficiaries or otherwise eligible for medical assistance described in section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)).

(2) Authorization of appropriations.—There are authorized to be appropriated such sums as may be necessary to the Secretary of Health and Human Services for the purpose of making grants under this subsection.

(c) Additional CMS Funding for Outreach and Enrollment Projects.—There are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services through the Administrator of the Centers for Medicare & Medicaid Services, $100,000,000 which shall be used only for the purpose of providing grants to States to fund projects to improve outreach and increase enrollment in Medicare Savings Programs. Such projects may include cooperative grants and contracts with community groups and other groups (such as the Department of Veterans' Affairs and the Indian Health Service) to assist in the enrollment of eligible individuals.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to Congress periodic reports on the projects conducted under this section. Such reports shall include such recommendations for extension of such projects, and changes in laws based on based projects, as the Secretary deems appropriate.

SEC. 8. NOTICES TO CERTAIN NEW MEDICARE BENEFICIARIES.

(a) SSA NOTICE.—At the time that the Commissioner of Social Security sends a notice to individuals that they have been determined to be eligible for benefits under part A or B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq., 1395j et seq.), the Commissioner shall send a notice and application for benefits under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to those individuals the Commissioner identifies as being likely to be eligible for benefits under clause (i), (ii), or (iii) of section 1902(a)(10)(E) of such Act (42 U.S.C. 1396a(a)(10)(E)). Such notice and application shall be accompanied by information on how to submit such an application and on where to obtain more information (including answers to questions) on the application process.

(b) INCLUDING INFORMATION IN MEDICARE & YOU HANDBOOK.—The Secretary of Health and Human Services shall include in the annual handbook distributed under section 1804(a) of the Social Security Act (42 U.S.C. 1395b–2(a)) information on the availability of Medicare Savings Programs and a toll-free telephone number that medicare beneficiaries may use to obtain additional information about the program.

By Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. WYDEN):

S. 2857. A bill to amend titles XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr President, I am extremely pleased to be joined by my colleagues, Senator COLLINS and Senator WYDEN, in introducing the Advanced Directives and Compassionate Care Act of 2002.

The end of life is a difficult time for individuals and their families. A complex web of emotional, legal, medical, and spiritual demands magnify the pain and turmoil already being experienced. Loss of control can result in depression and confusion, sometimes even hastening death. And, too often, a lifetime's dignity can be stripped away in a person's final months, leaving their survivors an inheritance of sadness and regret.

The Advanced Directives and Compassionate Care Act will help families and individuals avoid this bitter legacy, by helping maintain greater control of their final months. It gives patients greater information and power in determining treatment and hospice options. The legislation addresses legal issues that often arise at the end-of-life, and makes it more certain that advanced directives, such as "living wills" will be followed. It promotes the hospice-based care that most terminally ill patients prefer. Most important, it gives people a better chance to maintain their dignity in their final hours. I urge that the Senate take up this vital and compassionate legislation this year, and that we ensure it's passage before we return home this fall.

According to a 1999 National Hospice and Palliative Care Organization survey, Americans are hesitant to talk with their elderly parents about how they would like to be cared for at the end of life. This same study showed that less than twenty-five percent of Americans have put into writing instructions for how we'd like to be cared for personally at the end of our lives. Many health care providers overlook the equally important issue of providing adequate and appropriate care such as relief of pain, or family support services to those who are at the end of life. In addition, there is great variation among State laws with respect to advanced directives.

Our legislation takes real and tangible steps toward improving the practices and care that affect our citizens when they are facing death or the real possibility of death.

First, and perhaps most important, the Compassionate Care Act gives patients greater power to control their final days, by directly addressing the improvement of advanced directives. In my home state, a 2000 survey showed that three-quarters of West Virginians would prefer to die at home, yet nearly 60 percent of all deaths occur in a hospital. West Virginia has perhaps the most progressive state laws with regard to living wills and power of attorney, yet only one-third of those surveyed have either. These figures are unacceptable—people need to have a greater say in their own destiny.

Currently, state laws on the execution of advance directives vary greatly. Too often, this means a serious problem when the patient's wishes about their medical care are ignored—even when family members attest to their validity—because they moved to another state after creating the directive, but before or at the time that care is needed. Most of the differences that cause one state not to honor an advance directive created in another state are technical in nature—for example, one state requires two witnesses while another only one. This variance should not deny a person the type of care desired. Only a federal portability statute can address this problem.

Under our legislation, an advance directive valid in the state in which it is executed would be honored in any other state in which it may be presented. In addition, the Secretary of Health and Human Services would be required to gather information and consult with experts about the feasibility and desirability of creating a uniform advance directive for all Medicare and Medicaid beneficiaries, and possibly others, in the United States, as well as study such issues as the provision of adequate palliative care. A uniform advance directive would enable people to designate the kind of care they wish to receive at the end of their lives in a way that is easily recognizable and understood by everyone.

In 1990, this body passed bipartisan legislation entitled the Patient Self-Determination Act. That legislation required hospitals, and other health care facilities participating in the Medicare and Medicaid programs to provide every adult receiving medical care with written information regarding the patient's involvement with their own treatment decisions. The Compassionate Care Act builds on this Act, and the thinking behind it, to improve the quality of care and the quality of life for terminally ill patients.

Our bill builds on the Patient Self-Determination Act, improving the type and amount of information available by ensuring that a person entering a hospital, nursing home, or other health care facility is helped by a knowledgeable person to create a new advance directive or discuss an existing one. The patient's own needs, desires, and values must be the basis of decision-making and, whenever possible, the patient's family and/or friends should be part of the conversation. Further, the bill requires that if a person has an advance directive it be placed prominently in the medical record where all doctors and nurses involved in the patient's care can clearly see it. Finally, under the Compassionate Care Act, a 24-hour, toll-free hotline that provides consumers with information on advance directives, end-of-life care decision-making, and hospice care would be established.

Second, our legislation would require the Secretary of Health and Human Services to develop outcome standards and other measures for evaluating the quality of end-of-life care including the appropriateness of care and ease of access to high quality care. There are currently too few measures or standards available to assess the quality of care provided to Medicare, Medicaid and S–CHIP beneficiaries with terminal conditions. There are also significant variations in available medical care for patients at the end-of-life based on geographic area, ethnic group and alternative models of care.

Third, this legislation would authorize demonstration projects to develop new and innovative approaches to improving end-of-life care and pain management for Medicare, Medicaid and S–CHIP beneficiaries. At least one demonstration would focus particularly on pediatric end-of-life care. Priorities include adequate pain management for terminally ill patients—40–80 percent of terminally ill patients say they do not receive adequate treatment for their pain; treatment of pediatric illnesses—28 thousand children die of chronic illness each year, but fewer than 10 percent receive hospice care; and treatment of Medicare beneficiaries in hospice care.

Finally, to help improve communication between federal agencies and experts in the fields of hospice, end-of-life, and palliative care, the legislation establishes a 15 member End-of-Life Care Advisory Board consisting of end-of-life care providers, consumers, professional and resource-based groups, and policy/advocacy organizations. Recently, the Centers for Medicare and Medicaid Services has made a concerted effort to improve its involvement in the area of end-of-life care. The Advisory Board is designed to further assist the Secretary and the Centers for Medicare and Medicaid Services in the evaluation of and decisions relating to adequate end-of-life care. In addition, it would utilize the reports mandated in this bill to create its own evaluation of the field and propose recommendations for legislative and administrative actions to improve end-of-life care in America.

Mr. President, death is a hard subject to talk about. It's hard to think about—and especially hard to plan for. I know this personally, as many of my colleagues may as well, from dealing with the loss of a family member to a prolonged illness. Too often discussion about end-of-life care and adequate pain management focuses around physician assisted suicide. The fact is that this quality end-of-life care—helping the dying and their families who want better, more compassionate care—is what we should be talking about, and what our legislation does.

This legislation has been endorsed by the National Hospice and Palliative Care Association, Partnership for Caring, The American Bar Association, Americans for Better Care of the Dying, and the American Academy of Pediatrics. I ask unanimous consent that several of the letters of support from these organizations and the full text of the legislation be printed in the RECORD at the conclusion of my remarks.

There being no objection, the additional material was ordered to be printed in the RECORD, as follows:

S. 2857

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Advance Planning and Compassionate Care Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Development of standards to assess end-of-life care.
Sec. 3. Study and report by the Secretary of Health and Human Services regarding the establishment and implementation of a national uniform policy on advance directives.
Sec. 4. Improvement of policies related to the use of advance directives.
Sec. 5. National information hotline for end-of-life decisionmaking and hospice care.
Sec. 6. Demonstration project for innovative and new approaches to end-of-life care for medicare, medicaid, and SCHIP beneficiaries.
Sec. 7. Establishment of End-of-Life Care Advisory Board.

SEC. 2. DEVELOPMENT OF STANDARDS TO ASSESS END-OF-LIFE CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Institutes of Health, the Administrator of the Agency for Health Care Policy and Research, and the End-of-Life Care Advisory Board (established under section 7), shall develop outcome standards and measures to—

(1) evaluate the performance of health care programs and projects that provide end-of-life care to individuals, including the quality of the care provided by such programs and projects; and

(2) assess the access to, and utilization of, such programs and projects, including differences in such access and utilization in rural and urban areas and for minority populations.

(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the outcome standards and measures developed under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 3. STUDY AND REPORT BY THE SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING THE ESTABLISHMENT AND IMPLEMENTATION OF A NATIONAL UNIFORM POLICY ON ADVANCE DIRECTIVES.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a thorough study of all matters relating to the establishment and implementation of a national uniform policy on advance directives for individuals receiving items and services under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.).

(2) MATTERS STUDIED.—The matters studied by the Secretary of Health and Human Services under paragraph (1) shall include issues concerning—

(A) family satisfaction that a patient's wishes, as stated in the patient's advance directive, were carried out;

(B) the portability of advance directives, including cases involving the transfer of an individual from 1 health care setting to another;

(C) immunity from civil liability and criminal responsibility for health care providers that follow the instructions in an individual's advance directive that was validly executed in, and consistent with the laws of, the State in which it was executed;

(D) conditions under which an advance directive is operative;

(E) revocation of an advance directive by an individual;

(F) the criteria used by States for determining that an individual has a terminal condition;

(G) surrogate decisionmaking regarding end-of-life care;

(H) the provision of adequate palliative care (as defined in paragraph (3)), including pain management; and

(I) adequate and timely referrals to hospice care programs.

(3) PALLIATIVE CARE.—For purposes of paragraph (2)(H), the term "palliative care" means interdisciplinary care for individuals with a life-threatening illness or injury relating to pain and symptom management and psychological, social, and spiritual needs and that seeks to improve the quality of life for the individual and the individual's family.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) CONSULTATION.—In conducting the study and developing the report under this section, the Secretary of Health and Human Services shall consult with the End-of-Life Care Advisory Board (established under section 7), the Uniform Law Commissioners, and other interested parties.

SEC. 4. IMPROVEMENT OF POLICIES RELATED TO THE USE OF ADVANCE DIRECTIVES.

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting "and if presented by the individual, to include the content of such advance directive in a prominent part of such record" before the semicolon at the end;

(B) in subparagraph (D), by striking "and" after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(D) by inserting after subparagraph (E) the following new subparagraph:

"(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.";

(2) in paragraph (3), by striking "a written" and inserting "an"; and

(3) by adding at the end the following new paragraph:

"(5)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider of services, a Medicare+Choice organization, or a prepaid or eligible organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

"(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

"(ii) For purposes of clause (i), the term "actual knowledge" means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

"(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.".

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking "in the individual's medical record" and inserting "in a prominent part of the individual's current medical record"; and

(ii) by inserting "and if presented by the individual, to include the content of such advance directive in a prominent part of such record" before the semicolon at the end;

(B) in subparagraph (D), by striking "and" after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(D) by inserting after subparagraph (E) the following new subparagraph:

"(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.";

(2) in paragraph (4), by striking "a written" and inserting "an"; and

(3) by adding at the end the following paragraph:

"(6)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider or organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

"(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

"(ii) For purposes of clause (i), the term "actual knowledge" means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

"(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.".

(c) STUDY AND REPORT REGARDING IMPLEMENTATION.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the implementation of the amendments made by subsections (a) and (b).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 5. NATIONAL INFORMATION HOTLINE FOR END-OF-LIFE DECISIONMAKING AND HOSPICE CARE.

The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall operate directly, or by grant, contract, or interagency agreement, out of funds otherwise appropriated to the Secretary, a clearinghouse and a 24-hour toll-free telephone hotline in order to provide consumer information about advance directives (as defined in section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)), as amended by section 4(a)), end-of-life decisionmaking, and available end-of-life and hospice care services. In carrying out the preceding sentence, the Administrator may designate an existing clearinghouse and 24-hour toll-free telephone hotline or, if no such entity is appropriate, may establish a new clearinghouse and a 24-hour toll-free telephone hotline.

SEC. 6. DEMONSTRATION PROJECT FOR INNOVATIVE AND NEW APPROACHES TO END-OF-LIFE CARE FOR MEDICARE, MEDICAID, AND SCHIP BENEFICIARIES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project under which the Secretary contracts with entities operating programs in order to develop new and innovative approaches to providing end-of-life care to medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries.

(2) APPLICATION.—Any entity seeking to participate in the demonstration project shall submit to the Secretary an application in such form and manner as the Secretary may require.

(3) DURATION.—The authority of the Secretary to conduct the demonstration project shall terminate at the end of the 5-year period beginning on the date the Secretary implements the demonstration project.

(b) SELECTION CRITERIA.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), in selecting entities to participate in the demonstration project, the Secretary shall select entities that will allow for programs to be conducted in a variety of States, in an array of care settings, and that reflect—

(A) a balance between urban and rural settings;

(B) cultural diversity; and

(C) various modes of medical care and insurance, such as fee-for-service, preferred provider organizations, health maintenance organizations, hospice care, home care services, long-term care, pediatric care, and integrated delivery systems.

(2) PREFERENCES.—The Secretary shall give preference to entities operating programs that—

(A) will serve medicare beneficiaries, medicaid beneficiaries, or SCHIP beneficiaries who are dying of illnesses that are most prevalent under the medicare program, the medicaid program, or SCHIP, respectively; and

(B) appear capable of sustained service and broad replication at a reasonable cost within commonly available organizational structures.

(3) SELECTION OF PROGRAM THAT PROVIDES PEDIATRIC END-OF-LIFE CARE.—The Secretary shall ensure that at least 1 of the entities selected to participate in the demonstration project operates a program that provides pediatric end-of-life care.

(c) EVALUATION OF PROGRAMS.—

(1) IN GENERAL.—Each program operated by an entity under the demonstration project shall be evaluated at such regular intervals as the Secretary determines are appropriate.

(2) USE OF PRIVATE ENTITIES TO CONDUCT EVALUATIONS.—The Secretary, in consultation with the End-of-Life Care Advisory Board (established under section 7), shall contract with 1 or more private entities to coordinate and conduct the evaluations under paragraph (1). Such a contract may not be awarded to an entity selected to participate in the demonstration project.

(3) REQUIREMENTS FOR EVALUATIONS.—

(A) USE OF OUTCOME MEASURES AND STANDARDS.—In coordinating and conducting an evaluation of a program conducted under the demonstration project, an entity shall use the outcome standards and measures required to be developed under section 2 as soon as those standards and measures are available.

(B) ELEMENTS OF EVALUATION.—In addition to the use of the outcome standards and measures under subparagraph (A), an evaluation of a program conducted under the demonstration project shall include the following:

(i) A comparison of the quality of care provided by, and of the outcomes for medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries enrolled in, the program being evaluated to the quality of care and outcomes for such individuals that would have resulted if care had been provided under existing delivery systems.

(ii) An analysis of how ongoing measures of quality and accountability for improvement and excellence could be incorporated into the program being evaluated.

(iii) A comparison of the costs of the care provided to medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries under the program being evaluated to the costs of such care that would have been incurred under the medicare program, the medicaid program, and SCHIP if such program had not been conducted.

(iv) An analysis of whether the program being evaluated implements practices or procedures that result in improved patient outcomes, resource utilization, or both.

(v) An analysis of—

(I) the population served by the program being evaluated; and

(II) how accurately that population reflects the total number of medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries residing in the area who are in need of services offered by such program.

(vi) An analysis of the eligibility requirements and enrollment procedures for the program being evaluated.

(vii) An analysis of the services provided to beneficiaries enrolled in the program being evaluated and the utilization rates for such services.

(viii) An analysis of the structure for the provision of specific services under the program being evaluated.

(ix) An analysis of the costs of providing specific services under the program being evaluated.

(x) An analysis of any procedures for offering medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries enrolled in the program being evaluated a choice of services and how the program responds to the preferences of such beneficiaries.

(xi) An analysis of the quality of care provided to, and of the outcomes for, medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries, that are enrolled in the program being evaluated.

(xii) An analysis of any ethical, cultural, or legal concerns—

(I) regarding the program being evaluated; and

(II) with the replication of such program in other settings.

(xiii) An analysis of any changes to regulations or of any additional funding that would result in more efficient procedures or improved outcomes under the program being evaluated.

(d) WAIVER AUTHORITY.—The Secretary may waive compliance with any of the requirements of titles XI, XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.; 1396 et seq.; 1397aa et seq.) which, if applied, would prevent the demonstration project carried out under this section from effectively achieving the purpose of such project.

(e) REPORTS TO CONGRESS.—

(1) ANNUAL REPORTS BY SECRETARY.—

(A) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the demonstration project and on the quality of end-of-life care under the medicare program, the medicaid program, and SCHIP, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(B) SUMMARY OF RECENT STUDIES.—A report submitted under subparagraph (A) shall include a summary of any recent studies and advice from experts in the health care field regarding the ethical, cultural, and legal issues that may arise when attempting to improve the health care system to meet the needs of individuals with serious and eventually terminal conditions.

(C) CONTINUATION OR REPLICATION OF DEMONSTRATION PROJECTS.—The first report submitted under subparagraph (A) after the 3-year anniversary of the date the Secretary implements the demonstration project shall include recommendations regarding whether such demonstration project should be continued beyond the period described in subsection (a)(3) and whether broad replication of any of the programs conducted under the demonstration project should be initiated.

(2) REPORT BY END-OF-LIFE CARE ADVISORY BOARD ON DEMONSTRATION PROJECT.—

(A) IN GENERAL.—Not later than 2 years after the conclusion of the demonstration project, the End-of-Life Advisory Board shall submit a report to the Secretary and Congress on such project.

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

(i) an evaluation of the effectiveness of the demonstration project; and

(ii) recommendations for such legislation and administrative actions as the Board considers appropriate.

(f) FUNDING.—There are appropriated such sums as are necessary for conducting the demonstration project and for preparing and submitting the reports required under subsection (e)(1).

(g) DEFINITIONS.—In this section:

(1) DEMONSTRATION PROJECT.—The term "demonstration project" means the demonstration project conducted under this section.

(2) MEDICAID BENEFICIARIES.—The term "medicaid beneficiaries" means individuals who are enrolled in the State medicaid program.

(3) MEDICAID PROGRAM.—The term "medicaid program" means the health care program under title XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) MEDICARE BENEFICIARIES.—The term "medicare beneficiaries" means individuals who are entitled to benefits under part A or enrolled for benefits under part B of the medicare program.

(5) MEDICARE PROGRAM.—The term "medicare program" means the health care program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) SCHIP BENEFICIARY.—The term "SCHIP beneficiary" means an individual who is enrolled in SCHIP.

(7) SCHIP.—The term "SCHIP" means the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(8) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 7. ESTABLISHMENT OF END-OF-LIFE CARE ADVISORY BOARD.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an End-of-Life Care Advisory Board (in this section referred to as the "Board").

(b) STRUCTURE AND MEMBERSHIP.—

(1) IN GENERAL.—The Board shall be composed of 15 members who shall be appointed by the Secretary of Health and Human Services (in this section referred to as the "Secretary").

(2) REQUIRED REPRESENTATION.—The Secretary shall ensure that the following groups, organizations, and associations are represented in the membership of the Board:

(A) An end-of-life consumer advocacy organization.

(B) A senior citizen advocacy organization.

(C) A physician-based hospice or palliative care organization.

(D) A nurse-based hospice or palliative care organization.

(E) A hospice or palliative care provider organization.

(F) A hospice or palliative care representative that serves the veterans population.

(G) A physician-based medical association.

(H) A physician-based pediatric medical association.

(I) A home health-based nurses association.

(J) A hospital-based or health system-based palliative care group.

(K) A children-based or family-based hospice resource group.

(L) A cancer pain management resource group.

(M) A cancer research and policy advocacy group.

(N) An end-of-life care policy advocacy group.

(O) An interdisciplinary end-of-life care academic institution.

(3) ETHNIC DIVERSITY REQUIREMENT.—The Secretary shall ensure that the members of the Board appointed under paragraph (1) represent the ethnic diversity of the United States.

(4) PROHIBITION.—No individual who is a Federal officer or employee may serve as a member of the Board.

(5) TERMS OF APPOINTMENT.—Each member of the Board shall serve for a term determined appropriate by the Secretary.

(6) CHAIRPERSON.—The Secretary shall designate a member of the Board as chairperson.

(c) MEETINGS.—The Board shall meet at the call of the chairperson but not less often than every 3 months.

(d) DUTIES.—

(1) IN GENERAL.—The Board shall advise the Secretary on all matters related to the furnishing of end-of-life care to individuals.

(2) SPECIFIC DUTIES.—The specific duties of the Board are as follows:

(A) CONSULTING.—The Board shall consult with the Secretary regarding—

(i) the development of the outcome standards and measures under section 2;

(ii) conducting the study and submitting the report under section 3; and

(iii) the selection of private entities to conduct evaluations pursuant to section 6(c)(2).

(B) REPORT ON DEMONSTRATION PROJECT.—The Board shall submit the report required under section 6(e)(2).

(e) MEMBERS TO SERVE WITHOUT COMPENSATION.—

(1) IN GENERAL.—All members of the Board shall serve on the Board without compensation for such service.

(2) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(f) STAFF.—

(1) IN GENERAL.—The chairperson of the Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

(2) COMPENSATION.—The chairperson of the Board may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Board who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) Members of board.—Subparagraph (A) shall not be construed to apply to members of the Board.

(g) Detail of Government Employees.—Any Federal Government employee may be detailed to the Board without additional reimbursement (other than the employee' regular compensation), and such detail shall be without interruption or loss of civil service status or privilege.

(h) Procurement of Temporary and Intermittent Services.—The chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(i) Federal Advisory Committee Act.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(j) Termination.—The Board shall terminate 90 days after the date on which the Board submits the report under section 6(e)(2).

(k) Funding.—Funding for the operation of the Board shall be from amounts otherwise appropriated to the Department of Health and Human Services.

National Hospice and Palliative
Care Organization,
Alexandria, VA, July 31, 2002.

Hon. John D. Rockefeller,
U.S. Senate,
Washington, DC.

Dear Senator Rockefeller: The National Hospice and Palliative Care Organization (NHPCO), the nation's largest and oldest organization dedicated to advancing the philosophy and practice of hospice care, appreciates the opportunity to continue to work with you on your proposed draft legislation, "Advance Planning and Compassionate Care Act of 2002".

We applaud your efforts to address an important health care issue and appreciate your willingness to work with the NHPCO to incorporate changes relative to hospice into the legislation. Specifically, the NHPCO supports your efforts to make advance directives portable among the states, to study end of life care needs of the general population and to authorize Medicare demonstration projects on end of life care.

We look forward to working with you on your legislation.

Sincerely,

Galen Miller,
Executive Vice President.

Partnership for Caring Inc.,
Washington, DC, July 24, 2002.

Senator John D. Rockefeller IV,
U.S. Senate,
Washington, DC.

Dear Senator Rockefeller: On behalf of Partnership for Caring: America's Voices for the Dying I am writing to endorse and support the passage of the "Compassionate Care and Advance Planning Act of 2002" Our Board of Directors, staff and membership are grateful for and applaud your continuing leadership and deep commitment to improving care for people nearing the end of their lives.

Partnership for Caring is a national, nonprofit organization representing consumers of end-of-life care and their families. Our mission is to encourage individuals to think about and plan for the type of care they would like to receive at the end of their journey and to discuss those plans with their families, friends and physicians. Partnership makes available to the public Advance Directives specific to each state's law and educational materials on many aspects of end-of-life care and conversation. We also provide assistance via our 24 hour, toll-free help line, as well as advocacy to improve palliative and end-of-life care.

The health care systems and reimbursement mechanisms in America today are the focus of a great deal of scrutiny, especially the Medicare, Medicaid and S–CHIP programs. Unfortunately, the critically important health care components of palliative and end-of-life care too often are overlooked. We thank you and the cosponsors of the legislation for raising the visibility of this essential aspect of care and for proposing immediate improvements in our health systems as well as research and demonstration projects that will inform us about better ways to care for people in the last phase of their lives.

We are particularly pleased about the proposal to create an End-of-Life Care Advisory Board to work with CMS and HHS. This provision alone will help make certain that any federal government proposals to reform Medicare, Medicaid or S–CHIP will have the informed contributions of experts in the fields of palliative and hospice medicine. Such a Board is vitally important if these programs and other health care laws and regulations are to adequately address the needs of people who are dying. The Board's diversity will help assure that the unique concerns of minorities, children and young adults, various religious and ethnic groups are heard. Consumers and providers of end-of-life care will both have a voice.

The inclusion of the S–CHIP program in legislation dealing with end-of-life care deserves special thanks. While no one likes to think about children dying, about 53,000 children die each year. Research on caring for terminally ill pediatric patients is minimal and dying children have been woefully underserved in the areas of pain management and hospice care. Mandating that at least one demonstration project focus on pediatric issues is step in the right direction and will benefit thousands of children whose young lives will end too soon.

Medicare beneficiaries have a compelling reason to seek improvements in end-of-life care: everyone who becomes a Medicare beneficiary will die a Medicare beneficiary. Today 27% of all Medicare expenditures are spent caring for people in the last year of their lives, frequently on costly, unnecessary procedures in hospitals and nursing homes. Although hospice care currently accounts for only 1.3% of all Medicare expenditures that percentage will grow as the baby-boomers age and seek a qualitatively different end-of-life scenario than the ones many of them watched their parents and grandparents endure. The demonstration projects authorized by your legislation will allow us to learn more about our choices and become better educated consumers of care.

As you will know, caring for an elderly parent, a sick spouse, or a dying child, can be emotionally, economically, and physically draining under any circumstance. As a consumer based organization, Partnership for Caring knows first hand how much worse it is for those who have never discussed with their loved ones their wishes for end-of-life care, who do not know what resources are available, or who are unaware of palliative and hospice care and how to access these services. Health care providers, too, are often caught having to make decisions or talk to family members without benefit of knowing their patients' wishes or alternative services in their communities. "The Compassionate Care and Advance Planning Act of 2002" will help educate the pubic and providers as well as encourage conversations and advance planning. Insuring that each of us can receive the kind of care we would want for ourselves and our loved ones as we near death should be a priority concern as these programs look to the future.

Again, our thanks to you and all of the senators who join in supporting this bill. Insuring that each of us can receive the kind of care we want for ourselves and our loved ones as we near death should be a national priority as we look to the future of health care. We at Partnership for Caring will be working with you and our partner organizations to assure passage of the "Compassionate Care Act" and, more importantly, to assure better quality care for all our loved ones and for ourselves.

Sincerely,

Karen Orloff Kaplan,
President and CEO.

American Bar Association
Governmental Affairs Office,
Washington, DC, July 29, 2002.

Hon. John D. Rockefeller IV,
U.S. Senate, Hart Office Building,
Washington, DC.

Dear Senator Rockefeller: On behalf of the American Bar Association, I am writing to commend you and your co-sponsors for introducing the Advance Planning and Compassionate Care Act of 2002. This legislation takes several important steps beyond the 1990 Patient Self-Determination Act (PSDA) which introduced the term "Advance Directive" to the American vernacular. The American Bar Association supported the enactment of the PSDA and has continued to encourage greater access to the tools of advance planning, greater uniformity and portability of advance directives, and greater responsiveness to the needs of patients in health care systems at all stages of life, including end-of-life care.

The Advance Planning and Compassionate Care Act takes several modest but vital steps towards these goals. Under its provisions there will be an opportunity to discuss advance directives with an appropriately trained individual upon admission to a health care facility, which will help transform the existing paper-disclosure requirement into a meaningful vehicle for discussion and understanding. This will do much to combat the misperception that advance planning means merely signing a form. Good advance planning is, in essence, good communication, not mere form-drafting.

The portability and research mandates concerning advance directives are seriously needed to move public policy beyond the current Balkanization of legal formalities that characterizes current advance-directive law. In addition, the mandate to examine the feasibility and desirability of creating a uniform advance directive will generate much-needed fresh thinking on the strategies that may best encourage advance planning. Sadly, twelve years after the PSDA, the majority of adults still avoid the necessary task of planning for end-of-life decision-making.

The National Information Hotline will provide a valuable consumer tool for information about advance directives and end-of-life care options. Finally, the mandates for standards development, evaluation and demonstration projects, as well as coverage provisions, will help fill the inexcusable chasm in current knowledge, regulation, and financing of end-of-life care under Medicare and Medicaid. Historically, end-of-life decision-making and quality of care have been relegated to the shadows of health and long-term care policy. This Act will help the public and policy makers understand the issues and options in the light of day.

The ABA strongly supports this legislation. We commend your leadership in seeking to enhance patient autonomy and end-of-life care, and we stand ready to be a resource in these efforts.

Sincerely,

ROBERT D. EVANS.

Ms. COLLINS. Mr. President, I am pleased to be joining my colleague from West Virginia, Senator ROCKEFELLER, in introducing the Advance Planning and Compassionate Care Act, which is intended to improve the way we care for people at the end of their lives.

Noted health economist, Uwe Reinhardt, once observed that "Americans are the only people on earth who believe that death is negotiable." Advancements in medicine, public health, and technology have enabled more and more of us to live longer and healthier lives. However, when medical treatment can no longer promise a continuation of life, patients and their families should not have to fear that the process of dying will be marked by preventable pain, avoidable distress, or care that is inconsistent with their values or wishes.

The fact is, dying is a universal experience, and it is time to re-examine how we approach death and dying and how we care for people at the end of their lives. Clearly, there is more that we can do to relieve suffering, respect personal choice and dignity, and provide opportunities for people to find meaning and comfort at life's conclusion.

Unfortunately, most Medicare patients and their physicians do not currently discuss death or routinely make advance plans for end-of-life care. As a result, about one-fourth of Medicare funds are now spent on care at the end of life that is geared toward expensive, high-technology interventions and "rescue" care. While most Americans say they would prefer to die at home, studies show that almost 80 percent die in institutions where they may be in pain, and where they are subjected to high-tech treatments that merely prolong suffering.

Moreover, according to a Dartmouth study conducted by Dr. Jack Wennberg, where a patient lives has a direct impact on how that patient dies. The study found that the amount of medical treatment Americans receive in their final months varies tremendously in the different parts of the country, and it concluded that the determination of whether or not an older patient dies in the hospital probably has more to do with the supply of hospital beds than the patient's needs or preference.

The Advance Planning and Compassionate Care Act is intended to help us improve the way our health care system serves patients at the end of their lives. Among other provisions, the bill makes a number of changes to the Patient Self-Determination Act of 1990 to facilitate appropriate discussions and individual autonomy in making difficult discussions about end-of-life care. For instance, the legislation requires that every Medicare beneficiary receiving care in a hospital or nursing facility be given the opportunity to discuss end-of-life care and the preparation of an advanced directive with an appropriately trained professional within the institution. The legislation also requires that if a patient has an advanced directive, it must be displayed in a prominent place in the medical record so that all the doctors and nurses can clearly see it.

In addition, the legislation authorizes the Department of Health and Human Services to study end-of-life issues and also to develop demonstration projects to develop models for end-of-life care for Medicare, Medicaid, and State Child Health Insurance Program, S-CHIP, patients. The Institute of Medicine recently released a report that concluded that we need to improve palliative and end-of-life care for children with terminal illnesses. According to the report, far too often children with fatal or potentially fatal conditions and their families fail to receive competent, compassionate, and consistent care that meets their physical, emotional, and spiritual needs. Our legislation therefore requires that at least one of these demonstrations focus particularly on pediatric end-of-life care.

Finally, the legislation establishes a telephone hotline to provide consumer information and advice concerning advance directives, end-of-life issues, and medical decisionmaking and also establishes an End-of-Life Care Advisory Board to assist the Secretary of Health and Human Services in developing outcome standards and measures to evaluate end-of-life care programs and projects.

The legislation we are introducing today is particularly important in light of the debate on physician-assisted suicide. The desire for assisted suicide is generally driven by concerns about the quality of care for the terminally ill; by the fear of prolonged pain, loss of dignity and emotional strain on family members. Such worries would recede and support for assisted suicide would evaporate if better palliative care and more effective pain management were widely available.

Patients and their families should be able to trust that the care they receive at the end of their lives is not only of high quality, but also that it respects their desires for peace, autonomy, and dignity. The Advanced Planning and Compassionate Care Act that Senator ROCKEFELLER and I are introducing today will give us some of the tools that we need to improve care of the dying in this country, and I urge all of my colleagues to join us as cosponsors.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2858. A bill to modify the project for navigation, Union River, Maine; to the Committee on Environment and Public Works.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2859. A bill to deauthorize the project for navigation, Northeast Harbor, Maine; to the Committee on Environment and Public Works.

Ms. SNOWE. Mr. President, I introduce two bills for harbors in Maine, one to deauthorize the Federal Navigation Project in Northeast Harbor, and the second to redesignate the Upper Basin of the Union River Federal Navigational Channel as an anchorage. The bills, cosponsored by Senator COLLINS, will help strengthen the economic viability of these two popular Maine harbors.

Because of changing harbor usage over the last 45 years, the Town of Mount Desert has requested that Northeast Harbor be withdrawn from the Federal Navigation Project. This removal will allow the town to adapt to the high demand for moorings and will allow residents to obtain moorings in a more timely manner. The Harbor has now reached capacity for both moorings and shoreside facilities and has a waiting list of over sixty people along with commercial operators who have been waiting for years to obtain a mooring for their commercial vessels.

The Harbor was authorized in 1945 and constructed in 1954 as a mixed-use commercial fishing/recreational boating harbor—and it still is today. It was dredged in the early 1950s to provide more space for recreational boating and the U.S. Army Corps of Engineers has informed the town that Northeast Harbor would be very low on its dredging priority list as it has become primarily a recreational harbor. The town says it realizes that, once it is no longer part of the Federal Navigational Project, any further dredging within the harbor would be carried out at town expense.

The language will not only allow for more recreational moorages and commercial activities, it will also be an economic boost to Northeast Harbor, which is surrounded by Acadia National Park, one of the nation's most visited parks—both by land and by water.

My second bill supports the City of Ellsworth's efforts to revitalize the Union River navigation channel, harbor, and shoreline. The modification called for in my legislation will redesignate a portion of the Union River as an anchorage area. This redesignation will allow for a greater number of moorings in the harbor without interfering with navigation and will further improve the City's revitalization efforts for the harbor area.

I have worked with the New England Division of the Corps to draft these bills and the language has been approved by Army Corps Headquarters in Washington. I look forward to working with my colleagues for their passage, either as stand alone bills or as separate provisions in the Corps reauthorization bill, the Water Resources Development Act of 2002, that Congress is currently drafting.

By Mr. ROCKEFELLER (for himself, Mr. CHAFEE, Mr. KENNEDY, and Mr. HATCH):

S. 2860. A bill to amend title XXI of the Social Security Act to modify the rules for redistribution and extended availability of fiscal year 2000 and subsequent fiscal year allotments under the State children's health insurance program, and for other purposes; to the Committee on France.

Mr. ROCKEFELLER. Mr. President, I introduce a bill that will improve and protect health insurance for our nation's children. The Children's Health Improvement and Protection Act of 2002, CHIP Act, brings us back to the basics of health care—the fundamental philosophy that no child should go without needed health care. I'm pleased to be joined by my good friends Senator CHAFEE and Senator KENNEDY to introduce the Children's Health Insurance Improvement and Protection Act of 2002.

Established in 1997 to reduce the number of uninsured children, the Children's Health Insurance Program has been an unqualified success. Last year, 4.6 million children were enrolled in CHIP and the percentage of children without health insurance has declined in recent years. In my state of West Virginia, the CHIP program provides health coverage to over 20,000 children. Health insurance coverage is key to assuring children's access to appropriate and adequate health care, including preventive services. Research demonstrates that uninsured children are more likely to lack a usual source of care, to go without needed care, and to experience worse health outcomes than children with coverage. Uninsured children who are injured are 30 percent less likely than insured children to receive medical treatment and three times more likely not to get a needed prescription.

However, the continued success of the CHIP program is now in serious jeopardy. The Bush Administration projects that 900,000 children will lose their health coverage between fiscal years 2003 and 2006, if Congress does not take appropriate action. This is because even as state enrollment and spending rapidly increases, federal CHIP funding dropped by more than $1 billion this year and will be reduced in each of the next two years. Known as the "CHIP Dip," this reduction has no underlying health policy justification; it was solely the result of the budget compromises we had to make when enacting the balanced budget deal in 1997.

As a result, a number of states will have insufficient federal funding to sustain their enrollment and they will have no choice but to scale back or limit their CHIP programs. As enrollment is cut, the number of uninsured children will increase, and as a consequence, sick children will get sicker. The biggest problem that will result from enrollment cuts in the CHIP program are the future health problems of adults who as children could have received benefits under CHIP. Yet, even as states face this funding shortfall, under federal rules, nearly $3 billion in federal CHIP funding is scheduled to expire and revert back to the Treasury over the next two years. If Congress does not act, in order to maintain our current enrollment levels, West Virginia will run out of CHIP funding in 2005.

We cannot allow this to happen. We need a comprehensive and reasonable approach to shore up CHIP financing in order to avert the devastating enrollment decline and make sure that our children are protected into the future. This legislation will extend the life of the expiring funds and fully restore CHIP funding to the pre- "dip" levels. This legislation will provide West Virginia with $117 million over the 2004–2012 period allowing them to strengthen and protect children's access to health care.

I urge Congress to enact this legislation and ensure the continued success of the CHIP program and sustain the significant progress CHIP has made in reducing the ranks of uninsured children. Mr. President I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2860

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Health Improvement and Protection Act of 2002".

SEC. 2. CHANGES TO RULES FOR REDISTRIBUTION AND EXTENDED AVAILABILITY OF FISCAL YEAR 2000 AND SUBSEQUENT FISCAL YEAR ALLOTMENTS.

Section 2104(g) of the Social Security Act (42 U.S.C. 1397dd(g)) is amended—

(1) in the subsection heading—

(A) by striking "AND" after "1998" and inserting a comma; and

(B) by inserting ", AND 2000 AND SUBSEQUENT FISCAL YEAR" after "1999";

(2) in paragraph (1)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting "or for fiscal year 2000 by the end of fiscal year 2002, or allotments for fiscal year 2001 and subsequent fiscal years by the end of the last fiscal year for which such allotments are available under subsection (e), subject to paragraph (2)(C)" after "2001,"; and

(II) by striking "1998 or 1999" and inserting "1998, 1999, 2000, or subsequent fiscal year";

(ii) in clause (i)—

(I) in subclause (I), by striking "or" at the end;

(II) in subclause (II), by striking the period and inserting a semicolon; and

(III) by adding at the end the following:

"(III) the fiscal year 2000 allotment, the amount by which the State's expenditures under this title in fiscal years 2000, 2001, and 2002 exceed the State's allotment for fiscal year 2000 under subsection (b);

"(IV) the fiscal year 2001 allotment, the amount by which the State's expenditures under this title in fiscal years 2001, 2002, and 2003 exceed the State's allotment for fiscal year 2001 under subsection (b); or

"(V) the allotment for any subsequent fiscal year, the amount by which the State's expenditures under this title in the period such allotment is available under subsection (e) exceeds the State's allotment for that fiscal year under subsection (b)."; and

(iii) in clause (ii), by striking "1998 or 1999 allotment" and inserting "1998, 1999, 2000, or subsequent fiscal year allotment";

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking "with respect to fiscal year 1998 or 1999";

(ii) in clause (ii)—

(I) by inserting "with respect to fiscal year 1998 or 1999," after "subsection (e)"; and

(II) by striking "and" at the end;

(iii) by redesignating clause (iii) as clause (iv); and

(iv) by inserting after clause (ii), the following:

"(iii) notwithstanding subsection (e), with respect to fiscal year 2000 or any subsequent fiscal year, shall remain available for expenditure by the State through the end of the fiscal year in which the State is allotted a redistribution under this paragraph; and";

(3) in paragraph (2)—

(A) in the paragraph heading, by striking "1998 AND 1999" and inserting "1998, 1999, 2000, AND SUBSEQUENT FISCAL YEAR";

(B) in subparagraph (A), by adding at the end the following:

"(iii) FISCAL YEAR 2000 ALLOTMENT.—Of the amounts allotted to a State pursuant to this section for fiscal year 2000 that were not expended by the State by the end of fiscal year 2002, the amount specified in subparagraph (B) for fiscal year 2000 for such State shall remain available for expenditure by the State through the end of fiscal year 2003.

"(iv) FISCAL YEAR 2001 ALLOTMENT.—Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, the amount specified in subparagraph (B) for fiscal year 2001 for such State shall remain available for expenditure by the State through the end of 2004.

"(v) SUBSEQUENT FISCAL YEAR ALLOTMENTS.—Of the amounts allotted to a State pursuant to this section for any fiscal year after 2001, that were not expended by the State by the end of the last fiscal year such amounts are available under subsection (e), the amount specified in subparagraph (B) for that fiscal year for such State shall remain available for expenditure by the State through the end of the fiscal year following the last fiscal year such amounts are available under subsection (e).";

(C) in subparagraph (B), by striking "The" and inserting "Subject to subparagraph (C), the";

(D) by redesignating subparagraph (C) as subparagraph (D); and

(E) by inserting after subparagraph (B), the following:

"(C) FLOOR FOR FISCAL YEARS 2000 AND 2001.—For fiscal years 2000 and 2001, if the total amounts that would otherwise be redistributed under paragraph (1) exceed 60 percent of the total amount available for redistribution under subsection (f) for the fiscal year, the amount remaining available for expenditure by the State under subparagraph (A) for such fiscal years shall be—

"(i) the amount equal to—

"(I) 40 percent of the total amount available for redistribution under subsection (f) from the allotments for the applicable fiscal year; multiplied by

"(II) the ratio of the amount of such State's unexpended allotment for that fiscal year to the total amount available for redistribution under subsection (f) from the allotments for the fiscal year."; and

(4) in paragraph (3), by adding at the end the following: "For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for any fiscal year after 1999, the Secretary shall use the amount reported by the States not later than November 30 of the applicable calendar year on HCFA Form 64 or HCFA Form 21, as approved by the Secretary.".

SEC. 3. ESTABLISHMENT OF CASELOAD STABILIZATION POOL AND ADDITIONAL REDISTRIBUTION OF ALLOTMENTS.

Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following:

"(h) REDISTRIBUTION OF CASELOAD STABILIZATION POOL AMOUNTS.—

"(1) ADDITIONAL REDISTRIBUTION TO STABILIZE CASELOADS.—

"(A) IN GENERAL.—With respect to fiscal year 2003 and any subsequent fiscal year, the Secretary shall redistribute to an eligible State (as defined in subparagraph (B)) the amount available for redistribution to the State (as determined under subparagraph (C)) from the caseload stabilization pool established under paragraph (3).

"(B) DEFINITION OF ELIGIBLE STATE.—For purposes of subparagraph (A), an eligible State is a State whose total expenditures under this title through the end of the previous fiscal year exceed the total allotments made available to the State under subsection (b) or subsection (c) (not including amounts made available under subsection (f)) through the previous fiscal year.

"(C) AMOUNT OF ADDITIONAL REDISTRIBUTION.—For purposes of subparagraph (A), the amount available for redistribution to a State under subparagraph (A) is equal to—

"(i) the ratio of the State's allotment for the previous fiscal year under subsection (b) or subsection (c) to the total allotments made available under such subsections to eligible States as defined under subparagraph (A) for the previous fiscal year; multiplied by

"(ii) the total amounts available in the caseload stabilization pool established under paragraph (3).

"(2) PERIOD OF AVAILABILITY.—Amounts redistributed under this subsection shall remain available for expenditure by the State through the end of the fiscal year in which the State receives any such amounts.

"(3) CASELOAD STABILIZATION POOL.—For purposes of making a redistribution under paragraph (1), the Secretary shall establish a caseload stabilization pool that includes the following amounts:

"(A) Any amount made available to a State under subsection (g) but not expended within the periods required under subparagraphs (g)(1)(B)(ii), (g)(1)(B)(iii), or (g)(2)(A).

"(B) Any amount made available to a State under this subsection but not expended within the period required under paragraph (2).".

SEC. 4. RESTORATION OF SCHIP FUNDING FOR FISCAL YEARS 2003 AND 2004.

(a) IN GENERAL.—Paragraphs (6) and (7) of section 2104(a) of the Social Security Act (42 U.S.C. 1397dd(a)) are amended by striking "$3,150,000,000" each place it appears and inserting "$4,275,000,000".

(b) ADDITIONAL ALLOTMENT TO TERRITORIES.—Section 2104(c)(4)(B) of the Social Security Act (42 U.S.C. 1397dd(c)(4)(B)) is amended by striking "$25,200,000 for each of fiscal years 2002 through 2004" and inserting "$25,200,000 for fiscal year 2002, $34,200,000 for each of fiscal years 2003 and 2004".

Mr. CHAFEE. Mr. President, I am pleased to join Senator ROCKEFELLER in introducing the Children's Health Improvement and Protection Act of 2002.

The Children's Health Improvement and Protection Act of 2002 will finally provide long-term stability to the State Children's Health Insurance Program. While SCHIP has been extremely successful at enrolling and insuring low-income and uninsured children since its inception in 1997, the continued success of this program is in question. In fact, it is estimated that almost a million children will lose their SCHIP coverage over the next three years if a legislative remedy is not signed into law to prevent this from happening.

When SCHIP was created by the Balanced Budget Act of 1997, states were given their annual SCHIP allotment based on the number of uninsured and low-income children in each state. According to the Centers for Medicare and Medicaid Services, these state allotments range from $3.5 million for Vermont to $855 million for California. While the percentage of children without health insurance has declined over the past couple of years due to these allotments, the SCHIP allotments for all states are 26 percent lower for Fiscal Years 2002, 2003, and 2004. Each of these years results in a decline of $1 billion for state SCHIP allotments. This phenomenon is known as the "CHIP-Dip." There was no hidden policy agenda behind this steady decline in funding; it was based on a lack of federal funding for SCHIP at the time this program was enacted.

In addition, BBA gave states only three years to roll-over unexpended funds before these funds are given back to the federal treasury for redistribution to other states that have used up their entire allotments. According to the Department of Health and Human Services, a total of $3.2 billion in federal SCHIP funds is scheduled to expire and revert to Treasury over the next two years.

These funding inadequacies not only create instability in the program, but they pose negative consequences for each state over the long-haul due to the uncertainty of federal commitment to SCHIP. The likely result will be that states will either have to cap enrollment in their SCHIP programs, push children out of their programs, or scale back benefits to make up for these budget shortfalls. The end result will be that children who once had access to health insurance will no longer get the care they need.

Our bill will remedy these funding problems. It will do so by fixing the "CHIP-Dip" and by extending the life of expiring funds to states that need the assistance to take care of funding shortfalls. This legislation is crucial to my state of Rhode Island. Without this legislative remedy, Rhode Island is set to run out of SCHIP funds by FY 2004. At 4.5 percent, Rhode Island currently has the lowest uninsured rate of any state in the nation for children. This bill will enable Rhode Island to continue offering health coverage to this vulnerable population.

I urge my colleagues to join Senator ROCKEFELLER and me in supporting this important legislation. It is a crucial step in ensuring that our nation's children will have long-term access to quality health insurance.

Mr. KENNEDY. Mr. President, I am pleased to introduce the Children's Health Improvement and Protection Act today, along with my good friends Senator ORRIN HATCH, Senator JAY ROCKEFELLER, and Senator LINCOLN CHAFEE. This bill will provide needed funding to keep children enrolled in the Children's Health Insurance Program and to allow the program to grow. Without this legislation, hundreds of thousands of children will lose their CHIP coverage and rejoin the ranks of the uninsured.

Monday is the fifth anniversary of the Children's Health Insurance Program. Senator HATCH and I have worked together on many proposals, but none has had more lasting benefit for millions of American children than our legislation to create CHIP. We first proposed CHIP after we became acutely aware of the health defects facing children and the need to assure that every child got a healthy start in life. Before we passed CHIP, 500,000 children with asthma never saw a doctor. Another 600,000 children with earaches and 600,000 with sore throats never received medical care.

A sick child can't learn. A child who can't hear the teacher can't learn. A child who can't see the doctor when they're sick can't learn. That's why uninsured children are more likely to fall behind or drop out of school altogether.

We also became aware of the ravages of smoking on health, and that the key to addressing this problem was to discourage children from starting to smoke. In my own state of Massachusetts, there had been a very successful campaign to raise money to expand children's health coverage by raising the cigarette tax. This united anti-tobacco activists and child health advocates.

So Senator HATCH and I decided that the winning, fiscally responsible, right health policy approach was to develop a major expansion of children's health insurance and finance it with an increase in the tobacco tax.

And what a success CHIP has been. This legislation has touched every community in America. Last year, over 4.5 million children received health insurance through either Children's Health Insurance Program or through Medicaid expansions under the CHIP program. Last year, 105,000 children in Massachusetts were covered through these programs, and many other states have had similar successes.

Despite the clear evidence that health insurance provides children with a healthier start, funding cuts to the CHIP program of more than $1 billion this year and each of the next two years puts the gains we have made in insuring children at risk. This "CHIP dip" is a result of the budget constraints when CHIP was enacted in 1997 as part of the Balanced Budget Act. This funding cut comes at the same time enrollment in the program is rising and will cause 900,000 children to lose the health insurance they have today through CHIP.

While states are facing a drop in funding that will cause them to drop insured children, almost $3 billion in unspent CHIP funds will be lost if we do nothing. CHIP funds must be spent within three years of allocation. Because of a mismatch between the time unspent funds were reallocated to the states and when the states needed the funds, some states will not be able to use all of their CHIP funds within the allocation period.

It makes no sense to have funds expire and revert to the Treasury when we know states will be facing a funding drop that will cause them to cut children from their programs. One of this nation's most fundamental guarantees should be that every child has the opportunity to succeed in life. But that commitment rings hollow if children are doomed to a lifetime of disability and illness because they lack needed health care in their early years.

That is why we are introducing the Children's Health Insurance Program. This bill will allow states to maintain and expand their CHIP programs. It lets states keep a portion of their unspent funds that would otherwise expire. It also establishes a new caseload stabilization pool with funds that would otherwise expire. The pool will direct unspent funds to states that are expected to use up all their CHIP funds. Finally, the bill provides additional CHIP funding for fiscal years 2003 and 2004 so that CHIP enrollment can be maintained and expanded. This legislation will move us one important step closer to fulfilling the promise that no child in America will be left behind because of inadequate health care coverage.

I urge my colleagues to support this important legislation.

Mr. HATCH. Mr. President, today, Senators ROCKEFELLER, CHAFEE, KENNEDY, and I are introducing legislation to make certain that States have adequate funding for the Children's Health Insurance Program, otherwise known as CHIP.

I cosponsor this legislation to reflect my concern that, unless the Congress addresses this issue, thousands of children may risk losing their health insurance coverage. CHIP has proven to be an enormously popular program, which has provided much needed health insurance to literally millions of low-income children. It helps the poorest of the poor families who are not Medicaid-eligible.

We cannot afford to stand back now and watch those efforts be undermined because of funding problems that Congress should correct. That is the intent, as I understand it, of the Rockefeller-Chafee bill.

As most of my colleagues are aware, when CHIP was established in 1997, Congress committed $20 billion over five years and a total of $40 billion over 10 years for the program. For each fiscal year 1999 through 2001, Congress allocated $4.3 billion; yet for the fiscal years 2002 through 2004, Congress allocated $3 billion per year for CHIP programs. This so-called "CHIP" dip may reduce funding levels in States that are just beginning to ramp up their programs.

I am concerned that while States will have some unspent CHIP moneys available to them, that those funds still might not be enough to address the "CHIP dip" and the expanding CHIP population. We need to deal with this issue and we need to deal with the nearly $3 billion in federal CHIP moneys scheduled to revert back to the Treasury in fiscal year 2002 and 2003.

My cosponsorship of this legislation reflects my commitment to address these issues, although I recognize that there are a number of issues associated with this legislation that will need to be worked out. I accept the assurances of my fellow cosponsors that they will work with me to address those issues as the bill moves forward in the Finance Committee.

Let me also add that I am aware that many of my colleagues have additional policy issues regarding the CHIP program that they feel should be addressed. Know I do. I am particularly concerned by recent legislation, approved by the Finance Committee, which would extend coverage under the CHIP program to pregnant women. Now, I wholeheartedly support providing expectant mothers health care assistance. But, I believe that before we extend coverage under CHIP to any adult, States need to demonstrate that they are covering, to the greatest extend possible, all eligible children.

The CHIP program is one of my proudest accomplishments. I want to continue to maintain the integrity of this program. The only purpose of CHIP was to extend access to health insurance to poor kids. As one of the prime authors of the legislation, I can assure my colleagues that it was not our intent that the program be expanded to address the entire problem of health care for the uninsured a piece at a time. Covering the uninsured is a worthy goal and one which we need to address, but that was not the purpose of CHIP. We were dealing with a special problem: the up to 10 million children who did not have access to health insurance. We ought not lose sight of this. I am confident we can come to an agreement on measures to ensure that needy children receive the health care they deserve and thus I am pleased to join with my colleagues today.

By Mr. INHOFE:

S. 2861. A bill to empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes; to the Committee on Finance.

Mr. INHOFE. Mr. President; I introduce The Transportation Empowerment Act which will allow states to keep a majority of the federal gas tax dollars raised in their state. Similar to legislation introduced by our former colleague Connie Mack, "The Transportation Empowerment Act" restores to states and local communities the ability to make their own transportation decisions without the interference of Washington.

This proposal is very straightforward. It streamlines the federal-aid highway program into four core areas: Interstate, Federal Lands, Safety and Research. The proposed bill provides for continued general fund support for transit grants and authorizes states to enter into multi state compacts for planning and financing regional transportation needs.

The federal tax is kept in place for a four-year transition period, beginning in FY04. After funding the core programs and paying off outstanding bills, the balance is returned to the states in a block grant. At the end of the transition period, in FY07, the federal tax is reduced to two cents per gallon.

I have long believed that the best decisions are those made at the local level. Unfortunately, many of the transportation choices made by cities and states are governed by federal rules and regulations. This bill returns to states the responsibility and resources to make their own transportation decisions.

By Mr. McCAIN (for himself, Mr. HOLLINGS, Ms. CANTWELL, and Mr. BIDEN):

S. 2862. A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, I am pleased to be joined by Senators HOLLINGS, CANTWELL, and BIDEN in introducing the Firefighting Research and Coordination Act. This legislation would provide for the establishment of the scientific basis for new firefighting technology standards; improved coordination between Federal, state, and local fire officials in training and response to a terrorist attack or a national emergency; and authorize the National Fire Academy to offer training to improve the ability of firefighters to respond to events such as the tragedy of September 11, 2001.

The purpose of this legislation is to act upon some of the lessons learned from the tragic terrorist attacks of September 11, 2001, and address other problems faced by the fire services. On September 11, the New York City fire fighters and emergency service personnel acted with great heroism in selflessly rushing to the World Trade Center and saving the lives of many Americans. Tragically, 343 firefighters and EMS technicians paid the ultimate price in the service of their country. While we strive to prevent any future attack in the United States, it is our duty to ensure that we are adequately prepared for any future catastrophic act of terrorism. In addition, we must recognize that many of the preparations we make to improve the response to national emergencies will also prepare our firefighters for their everyday role in protecting our families and homes.

Today's firefighters use a variety of technologies including thermal imaging equipment, devices for locating firefighters and victims, and state-of-the-art protective suits to fight fires, clean up chemical or hazardous waste spills, and contend with potential terrorist devices. The Federal government's Firefighter Investment and Response Enhancement, FIRE, program is authorized for $900 million this year to assist local fire departments in purchasing this high-tech equipment. It is important that the American taxpayers' money is used for effective new equipment that will protect our local communities.

Unfortunately, there are no uniform technical standards for this new equipment for combating fires. Without such standards, local fire companies may purchase equipment that does not satisfy their needs, or even purchase faulty equipment. For example, Montgomery County, MD, spent $40,000 on "Level B" protective suits that they cannot use, because these suits have "booties" that are not compatible with the firefighter's boots. Currently, local fire departments also have problems using each other's fire hoses and air bottles for self-contained breathing apparatuses because of inconsistent equipment standards. It is important that new equipment performs properly and is compatible with older equipment.

This bill seeks to address the need for new equipment standards by establishing a scientific basis for voluntary consensus standards. It would authorize the U.S. Fire Administrator to work with the National Institute of Standards and Technology, the Inter-Agency Board for Equipment Standardization and Inter-Operability, and other interested parties to establish measurement techniques and testing methodologies for new firefighting equipment. These new techniques and methodologies will act as a scientific basis for the development of voluntary consensus standards. This bill would allow the Federal government to cooperate with the private sector in developing the basic uniform performance criteria and technical standards to ensure that effectiveness and compatibility of these new technologies.

Many issues regarding coordination surfaced on September 11. Titan Systems Corporation recently issued an after-action report, on behalf of the fire department of Arlington County, VA, which highlighted problems between the coordination of Washington D.C., and Arlington County fire departments. The report also cited the confusion caused by a large influx of self-dispatched volunteers, and increased risk faced by the "bonafide responders." These conclusions are consistent with an article by the current U.S. Fire Administrator, R. David Paulison, in the June 1993 issue of Fire Chief magazine, where he described being overwhelmed by the number of uncoordinated volunteer efforts that poured into Florida after Hurricane Andrew. Additionally, many fire officials and the General Accounting Office have highlighted the duplicative nature of many Federal programs and the need for better coordination between federal, state, and local officials.

The bill also seeks to address these problems by directing the U.S. Fire Administrator to work with state and local fire service officials to establish nationwide and state mutual aid systems for responding to national emergencies. These mutual aid plans would include collection of accurate asset and resource information to ensure that local fire services could work together to deploy equipment and personnel effectively during an emergency. This legislation would also establish the U.S. Fire Administrator as the primary point of contact within the Federal government for state and local firefighting units, in order to ensure greater Federal coordination and interface with state and local officials in preparing and responding to terrorist attacks, hurricanes, earthquakes, or other national emergencies. In addition, the bill would direct the U.S. Fire Administrator to report on the need for a strategy for deploying volunteers, including the use of a national credentialing system. Currently, there is a system for credentialing volunteers to fight wildfires that has proven effective, and the development of a similar system may prevent some of the confusion that occurred at the World Trade Center and Pentagon on September 11.

Finally, the bill would improve the training of state and local firefighters. The bill would authorize the National Fire Academy to offer courses in building collapse rescue; the use of technology in response to fires caused by terrorist attacks and other national emergencies; leadership and strategic skills including integrated management systems operations; deployment of new technology for fighting forest and wild fires; fighting fires at ports; and other courses related to tactics and strategies for responding to terrorist incidents and other fire services' needs.

This bill would also direct the U.S. Fire Administrator to coordinate the National Fire Academy's training programs with the Attorney General, Secretary of Health and Human Services and other Federal agencies to prevent the duplication in training programs that has been identified by the General Accounting Office.

I am pleased to announce that this legislation is supported by the National Volunteer Fire Council; the Congressional Fire Services Institute; the National Fire Protection Association; the International Association of Fire Chiefs; the International Association of Fire Fighters; the International Association of Arson Investigators; and the International Fire Service Training Association. I look forward to working with my colleagues to ensure passage of this legislation. I am aware that some issues, including funding of this legislation, need to be addressed.

Last year, we were caught unprepared and paid a terrible price as a result. We must ensure that future firefighters are adequately equipped and trained, and are working in coordination to respond to any future national emergencies. Every day firefighters rush into burning buildings to save the lives of their fellow Americans. It is our duty to adequately equip and protect them.

I ask unanimous consent that two letters of support and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AUGUST 1, 2002.

Hon. JOHN MCCAIN,
Senate Commerce Committee,
Washington, DC.

DEAR SENATOR MCCAIN: The tragic events of September 11th certainly underscored the important need for additional training and advanced technologies for our nation's fire and emergency services. They are equal components in our efforts to prepare our nation for future large-scale emergencies that require rapid deployment of local first responders.

In the area of technology, we have witnessed an emergence of new technologies designed to improve our level of readiness to future terrorist events and other large-scale disasters. Some of this technology has the potential to address the immediate needs of our nation's public safety agencies; while other requires additional scrutiny and testing before the fire and emergency services can be assured of its intended performance.

We extend our appreciation for your interest in this matter and for introducing the Firefighter Research and Coordination Act. We support this legislation as a crucial step towards developing and deploying advanced technologies our nation's first responders need in this period of heightened risk and security.

Working as partners, the United States Fire Administration, National Institute of Standards and Technology, the Interagency Board and other interested parties, including the National Fire Protection Association, can develop a scientific basis for the private sector development of standards for new fire fighting technology. Your legislation will not undermine or duplicate the standards-making process that has served the fire service for over a hundred years, but rather strengthen it in areas of new technologies necessitated by the events of September 11th.

We also support the other two sections of your legislation calling for coordination of response to national emergencies and for increased training. Our organizations strongly believe that the United States Fire Administrator should serve as the primary point of contact for state and local firefighting units during national emergencies. We have expressed this message repeatedly, including in the Blue Ribbon Panel report presented to then-FEMA Director James Lee Witt in 1998 and most recently in a white paper, titled "Protecting Our Nation" that we presented to Congress last year. To ensure the success of this legislation, it is imperative that Congress appropriate additional dollars to carry-out this new role of the Administrator.

As the threats to our nation's security intensify, so must the level of training for our nation's first responders. We must expose our firefighters and rescue personnel to advanced levels of training and technologies so they can safely respond to all acts of terrorism and other major disasters. The final section of your legislation will help us attain this goal.

We look forward to working with you in advancing this legislation through Congress. Again, we thank you for your continued support.

Sincerely,

Congressional Fire Services Institute, International Association of Arson Investigators, International Association of Fire Chiefs, International Association of Fire Fighters, International Fire Service Training Association, National Fire Protection Association, National Volunteer Fire Council.

NATIONAL VOLUNTEER FIRE COUNCIL,
WASHINGTON, DC, JULY 29, 2002.

Hon. JOHN MCCAIN,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: The National Volunteer Fire Council (NVFC) is a non-profit membership association representing the more than 800,000 members of America's volunteer fire, EMS, and rescue services. Organized in 1976, the NVFC serves as the voice of America's volunteer fire personnel in over 28,000 departments across the country. On behalf of our membership, I would like to express our full support for the Firefighting Research and Coordination Act.

This legislation would allow the U.S. Fire Administrator to develop measurement techniques and testing methodologies to evaluate the compatibility of new firefighting technology. In addition, it would require new equipment purchased under the FIRE Grant program to meet or exceed these standards.

The bill would also direct the U.S. Fire Administrator to establish a national plan for training and responding to national emergencies and it would designate the Administrator as the contact point for State and local firefighting units in the event of a national emergency. It would also direct the Administrator to work with state and local fire service officials to establish nationwide and state mutual aid systems for dealing with national emergencies that include threat assessment, and means of collecting asset and resource information for deployment.

Finally, the bill authorizes the Superintendent of the National Fire Academy to train fire personnel in building collapse rescue, the use of new technology, tactics and strategies for dealing with terrorist incidents, the use of the national plan for training and responding to emergencies, leadership skills, and new technology tactics for fighting forest fires.

Once again, the NVFC commends your efforts to train and equip America's volunteer firefighters and we thank you for the leadership role you have taken on this issue. We look forward to working with you in the 107th Congress to pass this important piece of legislation. If you have any questions or comments feel free to contact Craig Sharman, NVFC Government Affairs Representative at (202) 887-5700.

Sincerely,

PHILIP C. SITTLEBURG,
Chairman.

S. 2862

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Firefighting Research and Coordination Act".

SEC. 2. NEW FIREFIGHTING TECHNOLOGY.

Section 8 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2207) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) DEVELOPMENT OF NEW TECHNOLOGY.—

"(1) IN GENERAL.—In addition to, or as part of, the program conducted under subsection (a), the Administrator, in consultation with the National Institute of Standards and Technology, the Inter-Agency Board for Equipment Standardization and Inter-Operability, national voluntary consensus standards development organizations, and other interested parties, shall—

"(A) develop new, and utilize existing, measurement techniques and testing methodologies for evaluating new firefighting technologies, including—

"(i) thermal imaging equipment;

"(ii) early warning fire detection devices;

"(iii) personal protection equipment for firefighting;

"(iv) victim detection equipment; and

"(v) devices to locate firefighters and other rescue personnel in buildings;

"(B) evaluate the compatibility of new equipment and technology with existing firefighting technology; and

"(C) support the development of new voluntary consensus standards through national voluntary consensus standards organizations for new firefighting technologies based on techniques and methodologies described in subparagraph (A).

"(2) NEW EQUIPMENT MUST MEET STANDARDS.—The Administrator shall, by regulation, require that equipment purchased through the assistance program established by section 33 meet or exceed applicable voluntary consensus standards.".

SEC. 3. COORDINATION OF RESPONSE TO NATIONAL EMERGENCY.

(a) IN GENERAL.—Section 10 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2209) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b) COORDINATION OF RESPONSE FOR NATIONAL EMERGENCIES.—

"(1) IN GENERAL.—The Administrator shall establish a national plan for training and responding to national emergencies under which the Administrator shall be the primary contact point for State and local firefighting units in the event of a national emergency. The Administrator shall ensure that the national plan is consistent with the master plans developed by the several States and political subdivisions thereof.

"(2) MUTUAL AID SYSTEMS.—The Administrator shall work with State and local fire service officials to establish, as part of the national plan, nationwide and State mutual aid systems for dealing with national emergencies that—

"(A) include threat assessment and equipment deployment strategies;

"(B) include means of collecting asset and resource information to provide accurate and timely data for regional deployment; and

"(C) are consistent with the national plan established under paragraph (1) for Federal response to national emergencies.".

(b) REPORT ON STRATEGIC NEEDS.—Within 90 days after the date of enactment of this Act, the Administrator of the United States Fire Administration shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science on the need for a strategy concerning deployment of volunteers and emergency response personnel (as defined in section 6 of the Firefighters' Safety Study Act (15 U.S.C. 2223e), including a national credentialing system, in the event of a national emergency.

SEC. 4. TRAINING.

(a) IN GENERAL.—Section 8(d)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(d)(1)) is amended—

(1) by striking "and" after the semicolon in subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (N); and

(3) by inserting after subparagraph (E) the following:

"(F) strategies for building collapse rescue;

"(G) the use of technology in response to fires, including terrorist incidents and other national emergencies;

"(H) response, tactics, and strategies for dealing with terrorist-caused national catastrophes;

"(I) use of and familiarity with the national plan developed by the Administrator under section 10(b)(1);

"(J) leadership and strategic skills, including integrated management systems operations and integrated response;

"(K) applying new technology and developing strategies and tactics for fighting forest fires;

"(L) integrating terrorism response agencies into the national terrorism incident response system;

"(M) response tactics and strategies for fighting fires at United States ports, including fires on the water and aboard vessels; and".

(b) COORDINATION WITH OTHER PROGRAMS TO AVOID DUPLICATION.—The Administrator of the United States Fire Administration shall coordinate training provided under section 8(d)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(d)(1)) with the Attorney General, the Secretary of Health and Human Services, and the heads of other Federal agencies to ensure that there is no duplication of that training with existing courses available to fire service personnel.

By Mr. MCCAIN:

S. 2863. A bill to provide for deregulation of consumer broadband services; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I introduce the Consumer Broadband Deregulation Act of 2002. This legislation takes a comprehensive, deregulatory, but measured approach to providing more Americans with more broadband choices. By ensuring that the market, not government, regulates the deployment of broadband services, the legislation will promote investment and innovation in broadband facilities—and consumers will benefit.

The bill would create a new title in the Communications Act of 1934 that would ensure that residential broadband services exist in a minimally regulated environment. The new section of the Act would also make certain that providers of broadband services are treated in a similar fashion without regard to the particular mode of providing service. The bill includes provisions that would take the following actions:

Deregulate the retail provision of residential broadband services; dictate a hands-off approach to the deployment of new facilities by telephone companies while maintaining competitors' access to legacy systems; resist government-mandated open access while providing a safety net to ensure consumers enjoy a competitive broadband services market; ensure that local and state barriers to broadband deployment are removed; facilitate deployment of broadband services to rural and unserved communities by creating an information clearing house in the federal government; maximize wireless technology as a platform for broadband services; ensure access to broadband services by people with disabilities; enhance the enforcement tools available to the FCC; and put the federal government in the role of stimulator, rather than regulatory, of broadband services.

In 1996, Congress passed the first major overhaul of telecommunications policy in 62 years. Supporters of the Telecommunications Act argued that it would create increased competition, provide consumers with a variety of new and innovative services at lower prices, and reduce the need for regulation. My principal objection to the Act was that it fundamentally regulated, not deregulated, the telecommunications industry and would lead inevitably to prolonged litigation. It has been six years since the passage of the Act, but consumers have yet to benefit. Competition denied by excessive regulation is costly to consumers.

The latest legislative debate in the communications industry has focused on the availability of high-speed Internet access services, often called "broadband." Indeed, Federal Communications Commission Chairman, Michael Powell, has called broadband, "the central communications policy objective in America."

There is stark disagreement about the state of affairs of broadband services in the United States. Depending on who is speaking, there is a supply problem, a demand problem, a combination of the two, or no problem at all. All parties agree, however, that Americans and our national economy will benefit greatly from the widespread use of broadband services. Accelerated broadband deployment reportedly could benefit our nation's economy by hundreds of billions of dollars.

With such tremendous opportunity comes no shortage of "solutions." Many want a national industrial policy to drive broadband deployment—they suggest multi-billion dollar central planning efforts aimed to deliver services to consumers regardless of whether those consumers want or need such services. Others have focused on narrow issues affecting only a subset of all providers of broadband services.

This legislation takes a different approach. It takes a comprehensive look at the proper role of the government with respect to these new services. It reduces government interference with market forces that lead to consumer welfare, and looks for ways that government can facilitate, not dictate or control, the development of broadband technologies.

Mr. President, I am a firm believe in free market principles. In 1995, I introduced a series of amendments during the floor debate on the Telecommunications Act that would have made the bill truly deregulatory. As I said at the time, I believe that "[i]n free markets, less government usually means more innovation, more entrepreneurial opportunities, more competition, and more benefits to consumers." Likewise, in 1998, I introduced the Telecommunications Competition Act that would have allowed competition to flourish and brought true deregulation to the telecommunications market. In 1999, I introduced the Internet Regulatory Freedom Act that would have eliminated certain regulation of telephone companies' deployment of broadband facilities. And in 1999 and 2000, I was a leading advocate in the Senate for the Internet Tax Freedom Act ensuring a moratorium on taxation of the Internet.

I stand by the legislation and amendments I previously introduced and believe that they represented the right approach at the right time. In fact, if I had it my way, I would throw out the 1996 Act and start from scratch. I am mindful, however, that broadband has been an issue that has polarized policymakers to the point of legislative paralysis. Now is the time for a measured approach that focuses on achieving what can be done to improve the deployment of services to all consumers. I believe that this legislation is such an approach.

The bill has multiple components designed to address all aspects of broadband deployment and usage, and also provides adequate safety nets in the event that there proves to be a market failure that is harmful to consumers.

Broadband services can be provided over multiple platforms including telephone, cable, wireless, satellite, and perhaps one day soon, power lines, Each of these platforms is regulated differently based on the nature of the service the platform was originally designed to provide. This legislation would move us closer to a harmonization of regulatory ancestry of a particular platform.

First, the bill makes clear that the retail provision of high-speed Internet service remains unregulated. The Internet's tremendous growth is a testament to the exercise of regulatory restraint.

Some have suggested a need for government regulation of consumer broadband service quality. They allege that service deficiencies inhibit the development of these new offerings. But we must remember that these are new services, and new services will have problems. This legislation allows for these services to mature. If upon maturity, the FCC determines that there is a need to protect consumers from service quality shortcomings related to the technical provision of service. Then the states can enforce uniform requirements. This provides a measured approach to service quality—a safety net without a presumption of regulation.

Next, we must clarify that new services offered by varied providers, regardless of mode, will not be subject to the micromanagement of government regulation. Recognizing that upgrading networks requires substantial investment not free of risk, this bill begins this process by relaxing the obligations on telephone companies that invest in facilities that will bring better broadband services to more consumers. Nothing in this legislation, however, will undermine competitors' efforts to provide services using the telephone companies' legacy facilities. This approach strikes a balance between the interests of those who have invested capital on the promise of government-managed competition and those who will invest in the future of broadband facilities on the promise of government restraint and market-driven competition.

The bill also grapples with the government-managed wholesale market for consumer broadband services—the so-called "open access" debate. Mr. President, there is perhaps no more difficult issue addressed in this bill.

The Internet has thrived because it is an open platform. The presence of numerous ISPs in the narrowband market certainly contributed to the vitality of this open network, particularly at the inception of the Internet. Those providers have depended on access to customers guaranteed by FCC rules. As a result, many have suggested the need for government-mandated access to customers served over broadband connections. They raise significant concerns about carriers becoming screeners of content, and anti-competitive threats to web site operators if consumers do not have a choice of ISP or are limited in their ability to access particular web sites.

However tempting it may be to believe that government mandates will produce desired policy outcomes, such intervention too often comes at the price of market inefficiencies, stifled innovation, and increased regulatory costs. Moreover, regulators are often slow to respond to dynamic industry changes.

The bill would rely on market forces to resolve access issues by establishing the general rule that the FCC may not impose open access requirements on any provider—no matter what platform is used to provide the consumer broadband service. Again, the bill takes a measured approach by creating a safety net for consumers. Today a multitude of ISPs rely on access mandated by the FCC to serve their customers. The bill would allow the FCC to continue to enforce these obligations during a transition period, but would mandate the sunset of such requirements unless the FCC determines their continued enforcement is necessary to preserve competition for consumers.

I firmly believe that market forces will guide the development of a wholesale market producing sustainable, not government-managed, competition. The bill is sufficiently flexible to ensure that consumers are protected, whole sending a clear signal to those parties willing to make the significant investment necessary to provide broadband services that the government will not lie in wait only to reward their risk-taking with regulation.

I note again, however, that this issue raises challenging and complex policy questions. We should ensure the continued open nature of the Internet. To the extent that market forces prove incapable of preventing restrictions on consumers' use of the Internet or limitations on devices that consumers wish to attach to their Internet connection, we may need to consider a different approach. I look forward to continue debate on these difficult questions.

The potential for government interference with market forces is not limited to federal regulation. State and local governments are also capable of obstructing the deployment of broadband. The bill would address this threat by precluding any state or local regulation from prohibiting the ability of any entity to provide consumer broadband service. It would also prevent localities from transforming their legitimate interest in managing their rights of way into an imposition of additional, revenue-generating financial burdens on broadband deployment.

Consumer broadband services should be accessible to all people, regardless of where they live, what they do, or how much they earn. We must be realistic, however, about how quickly this can occur. The bill recognizes the important role that government can play as facilitator to accelerate universal deployment by using its resources to allow communities to share information about successful efforts to attract broadband deployment.

Government can facilitate broadband deployment and use in other ways as well. Wireless technologies like Wi-Fi and mesh networks hold tremendous promise for the delivery of consumer broadband services. Given its role in the management of spectrum, the government can impact the use of these technologies. The bill would require the FCC to examine the best role for government in fully exploiting wireless technologies as a broadband platform for the benefit of consumers.

Although government should limit its role to those circumstances where market failure is demonstrated, Chairman Powell has suggested that the Commission must be prepared to better enforce its existing rules by increasing the Commission's ability to impose penalties on parties that act in a manner that is anticompetitive. This bill would given him the tools to do so.

Some claim that there is a demand "problem" with broadband that is caused by the dearth of available broadband content. Here, too, government can play an important role. Certainly content is one of the factors that will drive consumers to subscribe to high-speed Internet services. Given the prominent role that the federal government plays in the lives of most Americans, it can be a source of substantial broadband content. The bill would ensure that the Federal government is fully exploiting its ability to provide this content.

Finally, I recognize that many will look at the bill and ask about broadband services used by businesses. Why treat those services differently? It is a fair question. I have stated previously that most of the advantages of the Telecommunications Act have accrued not to the average consumer who has seen only higher prices for existing services, but to business customers. It is these business customers that many competitors have attempted to serve using the facilities of the incumbent telephone companies. Moreover, whereas the cable platform is the source of robust, facilities-based competition in the consumer market, it has not developed to a similar extent in the market for business customers. Given these factors, and a desire to take a measured approach, I have generally limited the scope of this bill to the consumer broadband services market. This focus does not reflect my lack of support for a similarly deregulatory approach to the business market. Indeed, I strongly encourage Chairman Powell to be aggressive in using the tools at his disposal to remove regulations wherever appropriate in the business broadband services market.

Mr. President, technological progress has too often been constrained by government policies that seek to control it and dictate its course. Such policies have often had the perverse effect of slowing technological advancements. The growth of the Internet demonstrates what happens when governments choose to learn from the mistakes of the past in order to build a better and richer future for our citizens. The choice we have made is to adapt our mechanisms for governance to facilitate and encourage technological change—to facilitate rather than to control—to monitor rather than dominate. This bill continues that course.

I urge my colleagues to join with me in supporting this deregulatory legislation to help advance broadband in the United States.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF COMMUNICATIONS ACT OF 1934; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Consumer Broadband Deregulation Act".

(b) AMENDMENT OF COMMUNICATIONS ACT OF 1934.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of Communications Act of 1934; table of contents.
Sec. 2. Findings.
Sec. 3. Deregulation of consumer broadband services.
Sec. 4. Unbundled access and collocation requirements.
Sec. 5. National clearinghouse for high-speed Internet access.
Sec. 6. Enforcement.
Sec. 7. Spectrum reform study.
Sec. 8. Study on ways to promote broadband through e-government.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) All consumer broadband service markets should be open to competition.

(2) Consumer broadband service can be provided over numerous different platforms.

(3) All providers of consumer broadband services should be able to provide such services and be subject to harmonized regulation when offering such services.

(4) Consumer broadband services can enhance the quality of life for Americans and promote economic development, job creation, and international competitiveness.

(5) Advancements in the nation's Internet infrastructure will enhance the public welfare by helping to speed the delivery of services such as telemedicine, distance learning, remote medical services, and distribution of health information.

(6) Government regulations that affect high-speed Internet access should promote investment and innovation in all technological platforms.

(b) PURPOSE.—It is the purpose of this Act to allow market forces to introduce investment and innovation in consumer broadband services for the benefit of all Americans.

SEC. 3. DEREGULATION OF CONSUMER BROADBAND SERVICES.

(a) IN GENERAL.—The Act is amended—

(1) by redesignating title VII as title VIII;

(2) by redesignating sections 701 through 714 as sections 801 through 814, respectively;

(3) by striking "section 714" in section 309(j)(8)(C)(iii) and inserting "section 814";

(4) by striking "section 705" in section 712(b) and inserting "section 805"; and

(5) by inserting after title VI the following:

"TITLE VII—CONSUMER BROADBAND SERVICES

"SEC. 701. RETAIL CONSUMER BROADBAND SERVICE.

"(a) FREEDOM FROM REGULATION.—Except as provided in subsection (c), neither the Commission, nor any State, shall have authority to regulate the rates, charges, terms, or conditions for the retail offering of consumer broadband service.

"(b) OTHER SERVICES AND FACILITIES.—Nothing in this section precludes the Commission, or a State or local government, from regulating the provision of any service other than consumer broadband service, even if that service is provided over the same facilities as are used to provide consumer broadband service.

"(c) SERVICE QUALITY.—

"(1) COMMISSION DETERMINATION REQUIRED.—The Commission shall initiate a study within 2 years after the date of enactment of the Consumer Broadband Deregulation Act to determine whether State regulation of consumer broadband service quality is appropriate or necessary for the protection of consumers.

"(2) REGULATIONS; STATE ENFORCEMENT.—If the Commission determines that State regulation of consumer broadband service quality is appropriate or necessary for the protection of consumers, the Commission shall promulgate regulations establishing uniform national guidelines regulating consumer broadband service quality that may be enforced by States. Any regulations promulgated under this paragraph may not take effect before the date that is 2 years after the date of enactment of the Consumer Broadband Deregulation Act.

"(3) PREEMPTION OF OTHER STATE SERVICE QUALITY REGULATION.—

"(A) IN GENERAL.—Unless the Commission promulgates regulations under paragraph (2), no State may regulate the quality of consumer broadband services provided to its citizens or residents.

"(B) LIMITATION.—If the commission promulgates regulations under paragraph (2), no State may regulate the quality of consumer broadband services provided to its citizens or residents except as provided in those regulations.

"(4) NO INFERENCE.—Nothing in this section shall affect a State's ability to enforce consumer protection laws and regulations unrelated to the technical provision of consumer broadband service.

"SEC. 702. WHOLESALE CONSUMER BROADBAND SERVICE.

"(a) IN GENERAL.—Except as provided in subsection (b), neither the Commission nor any State or political subdivision thereof shall have authority to require a consumer broadband service provider to afford an Internet service provider access to its facilities or services for the purpose of offering a consumer broadband service.

"(b) EXCEPTION.—To the extent that any entity is required by the Commission to afford an Internet service provider access to its facilities or services for the purpose of providing consumer broadband service on the date of enactment of the Consumer Broadband Deregulation Act, the Commission may require that entity to continue to afford such access.

"(c) REPORT.—The Commission shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 2 years after the date of enactment of the Consumer Broadband Deregulation Act on the state of the wholesale market for consumer broadband services and its effect on retail competition for these services.

"(d) SUNSET PROVISION.—Subsection (b) shall cease to be effective 5 years after the date of enactment of such Act, unless the Commission finds that the continued exercise of its authority under that subsection is necessary to preserve and protect competition in the provision of consumer broadband services.

"SEC. 703. LIMIT ON STATE AND LOCAL AUTHORITY; PUBLIC RIGHTS-OF-WAY CHARGES.

"(a) REMOVAL OF BARRIERS TO ENTRY.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any consumer broadband service.

"(b) COST-BASED COMPENSATION FOR RIGHTS-OF-WAY.—A State or local government may not require compensation from consumer broadband service providers for access to, or use of, public rights-of-way that exceeds the direct and actual costs reasonably allocable to the administration of access to, or use of, public rights-of-way.

"(c) PUBLIC DISCLOSURE.—A State or local government shall disclose to the public, on a timely basis and in an easily understood format, any compensation required from consumer broadband service providers for access to, of use of, public rights-of-way.

"SEC. 704. ACCESS BY PERSONS WITH DISABILITIES.

"(a) MANUFACTURERS.—A manufacturer of equipment used for consumer broadband services shall ensure that equipment is designed, developed, and fabricated to be accessible to and usable by persons with disabilities, unless the manufacturer demonstrates that taking such steps would result in an undue burden.

"(b) CONSUMER BROADBAND SERVICE PROVIDERS.—A provider of consumer broadband services shall ensure that its services are accessible to and usable by persons with disabilities, unless the provider demonstrates that taking such steps would result in an undue burden.

"(c) COMPATIBILITY.—Whenever the requirements of subsections (a) and (b) constitute an undue burden, a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless the manufacturer or provider demonstrates that taking such steps would result in an undue burden.

"(d) REGULATIONS.—Within 18 months after the date of enactment of the Consumer Broadband Deregulation Act, the Commission shall prescribe such regulations as are necessary to implement this section. The regulations shall ensure consistency across multiple service platforms with respect to access by persons with disabilities. The regulations also shall provide that neither broadband services, broadband access services, nor the equipment used for such services may impair or impede the accessibility of information content when accessibility has been incorporated in that content for transmission through broadband services, access services, or equipment.

"(e) DEFINITIONS.—In this section—

"(1) DISABILITY.—The term 'disability' has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)).

"(2) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the requirements of this paragraph would result in an undue burden, the factors to be considered include—

"(A) the nature and cost of the steps required for the manufacturer or provider;

“(B) the impact on the operation of the manufacturer or provider;

“(C) the financial resources of the manufacturer or provider; and

“(D) the type of operations of the manufacturer or provider.”.

“SEC. 705. RELATIONSHIP TO TITLES II, III, AND VI.

“If the application of any provision of title II, III, or VI of this Act is inconsistent with any provision of this title, then to the extent the application of both provisions would conflict with or frustrate the application of the provision of this title—

“(1) the provision of this title shall apply; and

“(2) the inconsistent provision of title II, III, or VI shall not apply.”.

(b) Consumer Broadband Services Defined.—Section 3 (47 U.S.C. 153) is amended by inserting after paragraph (12) the following:

“(12A) Consumer broadband services.—

“(A) In general.—The term ‘consumer broadband services’ means interstate residential high-speed Internet access services.

“(B) High-speed.—The Commission shall establish by rule the criterion, in terms of megabits per second, to be used for the purpose of determining whether residential Internet services are high-speed Internet services. In establishing that criterion, the Commission shall consider whether the speed is sufficient to support existing applications and to encourage the development of new applications. The Commission shall revise the criterion as necessary and shall review any criterion established by it no less frequently than each 18 months.

“(C) Internet access service.—The term ‘Internet access service’ means a service that combines computer processing, information storage, protocol conversion, and routing with telecommunications to enable users to access Internet content and services.”.

SEC. 4. UNBUNDLED ACCESS AND COLLOCATION REQUIREMENTS.

(a) Unbundled Access.—Section 251(c)(3) (47 U.S.C. 251(c)(3)) is amended to read as follows:

“(3) Unbundled access.—

“(A) In general.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

“(B) Exception.—The duty to provide access under subparagraph (A) does not require an incumbent local exchange carrier to provide access to a fiber local loop or fiber feeder subloop to a requesting carrier to enable the requesting carrier to provide a telecommunications service that is an input to a consumer broadband service unless the incumbent local exchange carrier has removed or rendered useless a previously existing cooper loop necessary to provide such services.”.

(b) Collocation.—Section 251(c)(6) (47 U.S.C. 251(c)(6)) is amended to read as follows:

“(6) Collocation.—

“(A) In general.—The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

“(B) Exception.—The duty to provide for collocation under subparagraph (A) does not require an incumbent local exchange carrier to provide for collocation in a remote terminal.”.

SEC. 5. NATIONAL CLEARINGHOUSE FOR HIGH-SPEED INTERNET ACCESS.

(a) In General.—The Secretary of Commerce shall establish a national clearinghouse within the Department of Commerce that allows communities throughout the United States, particularly rural communities, to find data and information relating to the deployment of facilities capable of supporting high-speed Internet services.

(b) Exchange Function.—The Secretary shall solicit and accept data, information, and advice from communities that have succeeded in attracting the deployment of broadband services and infrastructure in order to make that data, information, and advice available to other communities that are seeking to deploy high-speed Internet services.

SEC. 6. ENFORCEMENT.

(a) Cease and Desist Authority.—Section 501 of the Communications Act of 1934 (47 U.S.C. 501) is amended—

(1) by striking “Any person” and inserting “(a) Fines and Imprisonment.—Any person”;

(2) by adding at the end the following new subsection:

“(b) Cease and Desist Orders.— If, after a hearing, the Commission determines that any common carrier or consumer broadband service provider is engaged in an act, matter, or thing prohibited by this Act, or is failing to perform any act, matter, or thing required by this Act, the Commission may order such common carrier or provider to cease or desist from such action or inaction.”.

(b) Forfeiture Penalties.—Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(1) in paragraph (2)(B)—

(A) by striking “exceed $100,000” and inserting “exceed $1,000,000”; and

(B) by striking “of $1,000,000” and inserting “of $10,000,000”;

(2) in paragraph (2)(C), by striking “subparagraph (A) or (B)” and inserting “subparagraph (A), (B), or (C)”;

(3) by redesignating subparagraphs (C) and (D) of paragraph (2) as subparagraphs (D) and (E), respectively;

(4) by inserting after subparagraph (B) of paragraph (2) the following new subparagraph:

“(C) If a common carrier or consumer broadband service provider has violated a cease and desist order or has previously been assessed a forfeiture penalty for a violation of a provision of this Act or of any rule, regulation, or order issued by the Commission, and if the Commission or an administrative law judge determines that such common carrier has willfully violated the same provision, rule, regulation, that this repeated violation has caused harm to competition, and that such common carrier or consumer broadband service provider has been assessed a forfeiture penalty under this subsection for such previous violation, the Commission may assess a forfeiture penalty not to exceed $2,000,000 for each violation or each day of continuing violation; except that the amount of such forfeiture penalty shall not exceed $20,000,000.”; and

(5) in paragraph (6)(B), by striking “1 year” and inserting “2 years”.

SEC. 7. WIRELESS BROADBAND STUDY.

(a) In General.—The Federal Communications Commission shall conduct a study—

(1) on wireless technology to determine the appropriate role of the Federal government in facilitating greater consumer access to consumer broadband services using evolving advanced technology; and

(2) what, if any, action by the Federal government is needed to increase the deployment of new wireless technology to facilitate high-speed Internet access.

(b) Focus.—In conducting the study, the Commission shall focus on consumer broadband services utilizing wireless technology.

(c) Consideration of Wireless Industry Views.—In conducting the study, the Commission shall consider the views of, among other interested parties, representatives of the telecommunications industry (as defined in section 714(k)(3) of the Communications Act of 1934 (47 U.S.C. 614(k)(3)) involved in wireless communications.

(d) Report.—

(1) In general.—The Commission shall transmit a report, containing its findings, conclusions, and recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 18 months after the date of enactment of this Act.

(2) Report to be available to public.—The Commission shall make its report available to the public.

SEC. 8. STUDY ON WAYS TO PROMOTE BROADBAND THROUGH E-GOVERNMENT.

The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 6 months after the date of enactment of this Act on how the Federal government can promote the use of broadband services through e-government, including—

(1) online delivery of government services;

(2) video-streaming of government press events and open public events, such as announcements and administrative proceedings;

(3) e-health and online education initiatives;

(4) access to government documents; and

(5) the ramifications of enhanced government online services on user privacy and the security of the Federal government's electronic infrastructure.

By Mr. THURMOND:

S. 2865. A bill to establish Fort Sumter and Fort Moultrie National Historical Park in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. THURMOND. Mr. President, I introduced a bill establishing the Fort Sumter and Fort Moultrie National Historical Park. These sites are presently managed by the National Park Service as the Fort Sumter National Monument. The bill clarifies the boundaries of the park and will more accurately reflect the resources that are recognized, protected, and interpreted at these sites.

Both of these forts were pivotal sites in the history of South Carolina and the Nation. Fort Moultrie was the centerpiece of the Battle of Sullivan's Island on June 28, 1776, just six days prior to the signing of the Declaration of Independence. The valiant defense of the fort by South Carolina militia units resulted in the first decisive victory over British forces in the Revolutionary War. The fort is named after the commander of those units, Colonel William Moultrie.

Colonel Moultrie's forces constructed the first fort out of Palmetto trees and sand. The Palmettos were used because of the lack of proper building materials. Though initially thought to be inadequate for protection, the Palmettos repelled salvo after salvo from the British naval forces. Such excellent fortifications allowed Colonel Moultrie's militia to return fire with devastating results.

Fort Moultrie also played a part in the events leading up to the Civil War. It was the site of the batteries that bombarded Fort Sumter. After the war, the fort was to remain an integral part of America's coastal defenses until World War II, when it was used to guard the port of Charleston against German U-boats. Indeed, it is the only site in the National Park System that preserves the history of the Nation's coastal defense system from 1776 to 1947. Although its days of conflict are over, the fort stands as a reminder that the cost of freedom is constant vigilance and stalwart resolve, even in the face of overwhelming odds.

Fort Sumter is also an important part of American history. The bombardment of the fort on April 12, 1861 was the opening engagement of the Civil War. The evacuation of the fort by its commanding officer, Major Robert Anderson, left the fort in Confederate hands until the fall of Charleston in February of 1865. Fort Sumter was also an integral part of the Nation's coastal defense system until the end of World War II. Fort Sumter is a fine example of the historical significance of National Park Service work.

The passage of this bill will allow for the more efficient administration of the two forts. The present arrangement does not adequately reflect the boundaries or management authority for the site. For example, Fort Moultrie was acquired by the Secretary of the Interior from the State of South Carolina in 1960, but no boundaries were established for the property, nor were any directives given to the National Park Service for administering the site. This bill will establish the boundaries of the site and provide long-overdue management authority for the National Park Service.

Hopefully, this bill will facilitate more efficient management of the forts and allow many more Americans to learn from these living monuments to America's history. The Department of Interior supports this bill and has urged its enactment. I urge my colleagues to join me in supporting this bill.

I ask unanimous consent that the text of the bill be printed in the Congressional Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fort Sumter and Fort Moultrie National Historical Park Act of 2002".

SEC. 2. FINDINGS.

Congress finds that—

(1) Fort Sumter National Monument was established by the Joint Resolution entitled "Joint Resolution to establish the Fort Sumter National Monument in the State of South Carolina", approved April 28, 1948 (62 Stat. 204, chapter 239; 16 U.S.C. 450ee), to commemorate historic events in the vicinity of Fort Sumter, the site of the first engagement of the Civil War on April 12, 1861;

(2) Fort Moultrie—

(A) was the site of the first defeat of the British in the Revolutionary War on June 28, 1776; and

(B) was acquired by the Federal Government from the State of South Carolina in 1960 under the authority of the Act of August 21, 1935 (49 Stat. 666, chapter 593);

(3) since 1960, Fort Moultrie has been administered by the National Park Service as part of the Fort Sumter National Monument without a clear management mandate or established boundary;

(4) Fort Sumter and Fort Moultrie played important roles in the protection of Charleston Harbor and in the coastal defense system of the United States;

(5) Fort Moultrie is the only site in the National Park System that preserves the history of the United States coastal defense system during the period from 1776 through 1947; and

(6) Sullivan's Island Life Saving Station, located adjacent to the Charleston Light—

(A) was constructed in 1896; and

(B) is listed on the National Register of Historic Places.

SEC. 3. DEFINITIONS.

In this Act:

(1) Charleston light.—The term "Charleston Light" means the Charleston Light and any associated land and improvements to the land that are located between Sullivan's Island Life Saving Station and the mean low water mark.

(2) Map.—The term "map" means the map entitled "Boundary Map, Fort Sumter and Fort Moultrie National Historical Park", numbered 392/80088, and dated November 30, 2000.

(3) Park.—The term "Park" means the Fort Sumter and Fort Moultrie National Historical Park established by section 4(a).

(4) Secretary.—The term "Secretary" means the Secretary of the Interior.

(5) State.—The term "State" means the State of South Carolina.

SEC. 4. FORT SUMTER AND FORT MOULTRIE NATIONAL HISTORICAL PARK.

(a) Establishment.—There is established the Fort Sumter and Fort Moultrie National Historical Park in the State as a unit of the National Park System to preserve, maintain, and interpret the nationally significant historical values and cultural resources associated with Fort Sumter and Fort Moultrie.

(b) Boundary.—

(1) In general.—The boundary of the Park shall be comprised of the land, water, and submerged land depicted on the map.

(2) Availability of map.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) Acquisitions.—

(1) Land.—

(A) In general.—Subject to subparagraph (B), the Secretary may acquire any land or interest in land (including improvements) located within the boundaries of the Park by—

(i) donation;

(ii) purchase with appropriated or donated funds;

(iii) exchange; or

(iv) transfer from another Federal agency.

(B) Limitation.—Any land or interest in land (including improvements) located within the boundaries of the Park that is owned by the State (including political subdivisions of the State) shall be acquired by donation only.

(2) Personal property.—The Secretary may acquire by donation, purchase with appropriated or donated funds, exchange, or transfer from another Federal agency, personal property associated with, and appropriate for, interpretation of the Park.

(d) Administration.—

(1) In general.—The Secretary, acting through the Director of the National Park Service, shall administer the Park in accordance with this Act and the laws generally applicable to units of the National Park System, including—

(A) the Act of August 25, 1916 (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(2) Interpretation of historical events.—The Secretary shall provide for the interpretation of historical events and activities that occurred in the vicinity of Fort Sumter and Fort Moultrie, including—

(A) the Battle of Sullivan's Island on June 28, 1776;

(B)(i) the bombardment of Fort Sumter by Confederate forces on April 12, 1861; and

(ii) any other events of the Civil War that are associated with Fort Sumter and Fort Moultrie;

(C) the development of the coastal defense system of the United States during the period from the Revolutionary War to World War II; and

(D) the lives of—

(i) the free and enslaved workers who built and maintained Fort Sumter and Fort Moultrie;

(ii) the soldiers who defended the forts;

(iii) the prisoners held at the forts; and

(iv) captive Africans bound for slavery who, after first landing in the United States, were brought to quarantine houses in the vicinity of Fort Moultrie in the 18th Century, if the Secretary determines that the quarantine houses and associated historical values are nationally significant.

(e) Cooperative Agreements.—The Secretary may enter into cooperative agreements with public and private entities and individuals to carry out this Act.

SEC. 5. CHARLESTON LIGHT.

(a) In General.—Subject to subsection (b), the Secretary of Transportation shall transfer to the Secretary, for no consideration, administrative jurisdiction over, and management of the Charleston Light for inclusion in the Park.

(b) CONDITION.—Before transferring the Charleston Light under subsection (a) the Secretary of Transportation shall repair, paint, remove hazardous substances from, and improve the condition of the Charleston Light in any other manner that the Secretary may require.

(c) IMPROVEMENTS.—The Secretary shall make improvements to the Charleston Light only to the extent necessary to—

(1) provide utility service; and

(2) maintain the existing structures and historic landscape.

SEC. 6. REPEAL OF EXISTING LAW.

Section 2 of the Joint Resolution entitled "Joint Resolution to establish the Fort Sumter National Monument in the State of South Carolina", approved April 28, 1948 (62 Stat. 204, chapter 239; 16 U.S.C. 450ee-1), is repealed.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. GREGG (for himself, Mr. HUTCHINSON, Mr. CRAIG, and Mr. BROWNBACK):

S. 2866. A bill to provide scholarships for District of Columbia elementary and secondary students, and for other purposes; to the Committee on Governmental Affairs.

Mr. GREGG. Mr. President, like many of my colleagues in the House and the Senate, I applaud the Supreme Court's recent ruling in Zelman v. Simmons-Harris. The Court found that a publically funded private school choice program was Constitutional and does not violate the establishment clause of the Constitution. The Court's decision finally puts to rest the constitutionality arguments which have long been raised by those who oppose providing choice to low-income families.

Within hours of the Court decision, Congressman Armey introduced H.R. 5033, the District of Columbia Student Opportunity Scholarship Act of 2002. I join my House colleague in introducing the companion bill, here in the Senate. Specifically, these bills provide scholarships to some of the District's poorest students to enable them to select the public or private school of their choice from participating schools in the District and the surrounding areas. This program, like the Cleveland program upheld by the Supreme Court, would allow families to choose from a wide variety of providers, including religious schools.

Both bills are nearly identical to the 1997 D.C. Student Scholarship Act. Although that bill had passed both houses of the Congress and more than a thousand D.C. families had expressed interest in the scholarship program, President Clinton vetoed the bill.

Why should we extend the option of private schools to poor families? Because, as is true in many urban areas, thousands of students in the District of Columbia are in need of high quality educational options. Seventy-two percent of D.C. fourth graders tested below basic proficiency in reading and seventy-six percent tested below basic proficiency in mathematics. This means that three quarters of 4th graders do not possess elementary reading skills and can not complete simple arithmetic problem. Unfortunately, these statistics do not improve dramatically as children grow older. Even in the older grades, the majority of students are found to be struggling with math and reading.

Tragically, lagging academic performance isn't the only problem plaguing many of the public schools in D.C., there is also the issue of safe, secure classrooms. In 1999, nearly one in five D.C high school students reported, that at some point in the preceding month, they felt too unsafe to go to school, while nearly one in every seven students admitted to bringing a weapon to school.

Although the creation of charter schools in the District has led to some choice for families lucky enough to get a spot for their child, there are simply not enough charter schools to accommodate the growing clamor of D.C. parents to obtain a better education for their children. Interestingly enough, the lack of space in charter schools is compounded by the City's refusal to free a handful of the 30 surplus public school buildings—buildings, which in some cases, are just sitting there abandoned and unused.

D.C. parents have witnessed superintendents come and go, and have been given the promise of education reform and improvements that never materialized. Yet, all the while their children remain trapped in failing schools. This is unacceptable to them and should be wholly unacceptable to my colleagues. The thousands of families clamoring for better educational opportunities for their children in our nation's capital need an immediate solution.

As Frederick Douglass, quoted by Justice Clarence Thomas in the recent Zelman decision, said, "Education . . . means emancipation. It means light and liberty. It means the uplifting of the soul of the man into the glorious light of truth, the light by which men can only be made free."

Unfortunately, for many families, that freedom remains unobtainable within D.C.'s current educational system. I encourage my colleagues to seriously consider this important bill. We have allowed too many students to languish in failing schools. Let's provide a way for real education, and doing so, help make the freedom Douglass refers to a reality for some of the district's neediest children.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 2867. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, as everyone knows, I pushed the packer ban because I want more competition in the marketplace. While I don't think packers should be in the same business as independent livestock producers, it's not the fact that the packers own the livestock that bothers me as much as the fact that the packers' livestock competes for shackle space and adversely impacts the price independent producers receive.

My support of the packer ban is based in the belief that independent producers should have the opportunity to receive a fair price for their livestock. The last few years have led to widespread consolidation and concentration in the packing industry. Add on the trend toward vertical integration among packers and there is no question why independent producers are losing the opportunity to market their own livestock during profitable cycles in the live meat markets.

The past CEO of IBP in 1994 explained that the reason packers own livestock is that when the price is high the packers use their own livestock for the lines and when the price is low the packers buy livestock. This means that independent producers are most likely being limited from participating in the most profitable ranges of the live market. This is not good for the survival of the independent producer.

My new legislative concept would guarantee that independent producers have a share in the marketplace while assisting the mandatory price reporting system. The proposal would require that 25 percent of a packer's daily kill comes from the spot market. By requiring a 25 percent spot market purchase daily, the mandatory price reporting system which has been criticized due to reporting and accuracy problems would have consistent, reliable numbers being purchased from the spot market, improving the accuracy and transparency of daily prices. In addition, independent livestock producers would be guaranteed a competitive position due to the packers need to fill the daily 25 percent spot/cash market requirement.

This isn't the packer ban. The intent of this piece is to improve price transparency and hopefully the accuracy of the daily mandatory price reporting data. I feel strongly that packers should NOT be able to own or feed livestock, but this approach is not intended to address my concern with packer ownership.

The packs required to comply would be the same packs required to report under the mandatory price reporting system. Those are packs that kill either 125,000 head of cattle, 100,000 head of hogs, or 75,000 lambs annually, over a 5 year average.

Packers are arguing that this will hurt their ability to offer contracts to producers, but the fact of the matter is that the majority of livestock contracts pay out on a calculation incorporating mandatory price reporting data. If the mandatory price reporting data is not accurate, or open to possible manipulation because of low numbers on the spot market, contracts are not beneficial tools for producers to manage their risk. This legislative proposal will hopefully give confidence to independent livestock producers by improving the accuracy and viability of the mandatory price reporting system and secure fair prices for contracts based on that data.

It's just common sense, when there aren't a lot of cattle and pigs being purchased on the cash market, it's easier for the mandatory price reporting data to be inaccurate or manipulated. The majority of livestock production contracts are based on that data, so if that information is wrong the contract producers suffer. That's why the Iowa Pork Producers, Iowa Cattlemen, Iowa Farm Bureau, R-CALF, the Organization for Competitive Markets, and the Center for Rural Affairs have all endorsed this proposal.

Mr. President, this legislation will guarantee independent livestock producers market access and a fair price. It will accomplish these goals by making it more difficult for the mandatory price reporting system to be manipulated because of low numbers being reported by the packs.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS

Chapter 5 of subtitle B of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636 et seq.) is amended by adding at the end the following:

"SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS.

"(a) DEFINITIONS.—In this section:

"(1) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term 'cooperative association of producers' has the meaning given the term in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(2) COVERED PACKER.—

"(A) IN GENERAL.—The term 'covered packer' means a packer that is required under this subtitle to report to the Secretary each reporting day information on the price and quantity of livestock purchased by the packer.

"(B) EXCLUSION.—The term 'covered packer' does not include a packer that owns only 1 livestock processing plant.

"(3) NONAFFILIATED PRODUCER.—The term 'nonaffiliated producer' means a producer of livestock—

"(A) that sells livestock to a packer;

"(B) that has less than 1 percent equity interest in the packer and the packer has less than 1 percent equity interest in the producer;

"(C) that has no officers, directors, employees or owners that are officers, directors, employees or owners of the packer;

"(D) that has no fiduciary responsibility to the packer; and

"(E) in which the packer has no equity interest.

"(4) SPOT MARKET SALE.—The term 'spot market sale' means an agreement for the purchase and sale of livestock by a packer from a producer in which—

"(A) the agreement specifies a firm base price that may be equated with a fixed dollar amount on the day the agreement is entered into;

"(B) the livestock are slaughtered not more than 7 days after the date of the agreement;

"(C) a reasonable competitive bidding opportunity existed on the date the agreement was entered into;

"(5) REASONABLE COMPETITIVE BIDDING OPPORTUNITY.—The term 'reasonable competitive bidding opportunity' means that

"(A) no written or oral agreement precludes the producer from soliciting or receiving bids from other packers; and

"(B) no circumstances, custom or practice exist that establishes the existence of an implied contract, as defined by the Uniform Commercial Code, and precludes the producer from soliciting or receiving bids from other packers.

"(b) GENERAL RULE.—Of the quantity of livestock that is slaughtered by a covered packer during each reporting day in each plant, the covered packer shall slaughter not less than the applicable percentage specified in subsection (c) of the quantity through spot market sales from nonaffiliated producers.

"(c) APPLICABLE PERCENTAGES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the applicable percentage shall be:

"(A) 25 percent for covered packers that are not cooperative associations of producers; and

"(B) 12.5 percent for covered packers that are cooperative associations of producers.

"(2) EXCEPTIONS.—

"(A) In the case of covered packers that reported more than 75 percent captive supply cattle in their 2001 annual report to Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture, the applicable percentage shall be the greater of:

"(i) the difference between the percentage of captive supply so reported and 100; and

"(ii) the following numbers (applicable percentages):

"(a) during each of the calendar years of 2004 and 2005, 5 percent;

"(b) during each of the calendar years of 2006 and 2007, 15 percent; and

"(c) during the calendar year 2008 and each calendar year thereafter, 25 percent.

"(B) In the case of covered packers that are cooperative associations of producers and that reported more than 87.5 percent captive supply cattle in their 2001 annual report to Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture, the applicable percentage shall be the greater of:

"(iii) the difference between the percentage of captive supply so reported and 100; and

"(iv) the following numbers (applicable percentages):

"(a) during each of the calendar years of 2004 and 2005, 5 percent;

"(b) during each of the calendar years of 2006 and 2007, 7.5 percent; and

"(c) during the calendar year 2008 and each calendar year thereafter, 12.5 percent.

"(d) NONPREEMPTION.—Notwithstanding section 259, this section does not preempt any requirement of a State or political subdivision of a State that requires a covered packer to purchase on the spot market a greater percentage of the livestock purchased by the covered packer than is required under this section."

"(e) Nothing in this section shall affect the interpretation of any other provision of this Act, including but not limited to section 202 (7 U.S.C. §192).".

By Mr. DOMENICI (for himself, Mr. CAMPBELL, and Mr. ALLARD):

S. 2868. A bill to direct the Secretary of the Army to carry out a research and demonstration program concerning control of salt cedar and other nonnative phreatophytes; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, I rise today to introduce a piece of legislation that is of paramount importance to the State of New Mexico. Specifically, this bill will address the mounting pressures brought on by the growing demands, on all fronts, of a diminishing water supply.

As you may know the water situation in the west can be described at this time, as difficult at best. Annual snow packs were abnormally low this year causing many areas in the west to be plagued by severe drought conditions.

The seriousness of the water situation in New Mexico becomes more acute every single day. The chance of this drought effecting every New Mexican in some way is substantial. Wells are running dry, farmers are being forced to sell livestock, many of our cities are in various stages of conservation and many, many acres have been charred by catastrophic wildfires.

The drought conditions also have other consequences. For example, the lack of stream flow makes it very difficult for New Mexico to meet its compact delivery obligations to the state of Texas.

The bill that I am introducing today deals more specifically with the issue of in stream water flows. To compound the drought situation, New Mexico is home to a vast amount of Salt Cedar. Salt Cedar is a water-thirsty non-native tree that continually strips massive amounts of water out of New Mexico's two predominant water supplies—the Pecos and the Rio Grande rivers.

Estimates show that one mature salt cedar tree can consume as much as 200 gallons of water per day. In addition to the excessive water consumption, salt cedars increase fire and flood frequency, increase river channelization, decrease water flow and increase water and soil salinity along the river. Studies indicate that eradication of the salt cedars could increase river flows. Increasing river flows could help alleviate mounting pressure to meet compact delivery obligations—especially on the Pecos.

This bill that I am introducing today would authorize the Army Corps of Engineers to establish a research and demonstration program to help with the eradication of this non-native species. In addition to projects along the Pecos and the Rio Grande, the bill allows other states with similar problems, including Texas, Colorado, Utah and Arizona to develop and participate in similar projects as well.

The drought and the mounting legal requirements on both the Pecos and Rio Grande rivers are forcing us toward a severe water crisis. Solving such water problems has become one of my top priorities for the state.

I ask unanimous consent that a copy of the bill and my statement be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2868

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SALT CEDAR CONTROL.

(a) FINDINGS.—Congress finds that—

(1) States are having increasing difficulty meeting their obligations under interstate compacts to deliver water;

(2) it is in the best interest of States to minimize the impact of and eradicate invasive species that extort water in the Rio Grande watershed, the Pecos River, and other bodies of water in the Southwest, such as the salt cedar, a noxious and nonnative plant that can use 200 gallons of water a day; and

(3) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

(b) DEFINITIONS.—In this section:

(1) CONTROL METHOD.—

(A) IN GENERAL.—The term "control method" means a method of controlling salt cedar (Tamarix) or any other nonnative phreatophyte.

(B) INCLUSIONS.—The term "control method" includes the use of herbicides, mechanical means, and biocontrols such as goats and insects.

(2) DEMONSTRATION PROJECT.—The term "demonstration project" means a demonstration project carried out under this section.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

(c) PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this section, the Secretary shall—

(A) complete a program of research, including a review of past and ongoing research, concerning a control method for use in—

(i) the Rio Grande watershed in the State of New Mexico;

(ii) the Pecos River in the State of New Mexico; and

(iii) other bodies of water in the States of Arizona, Colorado, New Mexico, Texas, and Utah that are affected by salt cedar or other nonnative phreatophytes; and

(B) commence a demonstration program of the most effective control methods.

(2) AVAILABLE EXPERTISE.—

(A) IN GENERAL.—In carrying out the programs under paragraph (1), the Secretary shall use the expertise of institutions of higher education and nonprofit organizations—

(i) that are located in the States referred to in paragraph (1)(A)(iii); and

(ii) that have been actively conducting research or carrying out other activities relating to the control of salt cedar.

(B) INCLUSIONS.—Institutions of higher education and nonprofit organizations under subparagraph (A) include—

(i) Colorado State University;

(ii) Diné College in the State of New Mexico;

(iii) Mesa State College in the State of Colorado;

(iv) New Mexico State University;

(v) Northern Arizona University;

(vi) Texas A&M University;

(vii) University of Arizona;

(viii) Utah State University; and

(ix) WERC: A Consortium for Environmental Education and Technology Development.

(d) FEDERAL EXPENSE.—The research and demonstration program under subsection (c) shall be carried out at full Federal expense.

(e) CONSULTATION.—The activities under this section shall be carried out in consultation with—

(1) the Secretary of Agriculture;

(2) the Secretary of the Interior;

(3) the Governors of the States of Arizona, Colorado, New Mexico, Texas, and Utah;

(4) tribal governments; and

(5) the heads of other Federal, State, and local agencies, as appropriate.

(f) RESEARCH.—To the maximum extent practicable, the research shall focus on—

(1) supplementing and integrating information from past and ongoing research concerning control of salt cedar and other nonnative phreatophytes;

(2) gathering experience from past eradication and control projects;

(3) arranging relevant data from available sources into formats so that the information is accessible and can be effectively brought to bear by land managers in the restoration of the Rio Grande watershed;

(4) using control methods to produce water savings; and

(5) identifying long-term management and funding approaches for control of salt cedar and watershed restoration.

(g) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary shall carry out not fewer than 10 demonstration projects, of which not fewer than 2 shall be carried out in each of the States referred to in subsection (c)(1)(A)(iii).

(2) COST.—Each demonstration project shall be carried out at a cost of not more than $7,000,000, including costs of planning, design, and implementation.

(3) RELATIONSHIP TO OTHER CONTROL PROJECTS.—Each demonstration project shall be coordinated with control projects being carried out as of the date of enactment of this Act by other Federal, State, tribal, or local entities.

(4) PERIOD OF PROJECT IMPLEMENTATION.—Each demonstration project shall be carried out—

(A) during a period of not less than 2 but not more than 5 years, depending on the control method selected; and

(B) in a manner designed to determine the time period required for optimum use of the control method.

(5) DESIGN.—

(A) CONTROL METHODS.—Of the demonstration projects—

(i) at least 1 demonstration project shall use primarily 1 or more herbicides;

(ii) at least 1 demonstration project shall use primarily mechanical means;

(iii) at least 1 demonstration project shall use a biocontrol such as goats or insects; and

(iv) each other demonstration project may use any 1 or more control methods.

(B) MEASUREMENT OF COSTS AND BENEFITS.—Each demonstration project shall be designed to measure all costs and benefits associated with each control method used by the demonstration project, including measurement of water savings.

(6) MONITORING AND MAINTENANCE.—After completion, each demonstration project shall be monitored and maintained for a period of not more than 5 years, at a cost of not more than $100,000 per demonstration project per year.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2003; and

(2) such sums as are necessary for each of fiscal years 2004 through 2007.

By Mr. KERRY (for himself and Mr. BROWNBACK):

S. 2869. A bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; to the Committee on Commerce, Science, and Transportation.

Mr. KERRY. Mr. President, I am introducing legislation which I hope will create an equitable solution to the dilemma facing many wireless companies in America. Unfortunately, due to the uncertain legal status of licenses related to that FCC Auction No. 35, several companies have contingent liabilities in the millions or billions of dollars. These contingent liabilities are damaging the companies' ability to acquire additional spectrum to meet the urgent needs of wireless consumers and to roll out new and innovative services to consumers. The affected providers are the successful bidders for wireless spectrum that the Federal Communications Commission auctioned in Auction No. 35. Some of the spectrum had previously been licensed to companies, including NextWave Personal Communications Inc., whose bankruptcy filings and subsequent failure to pay amounts due to the FCC for their licenses led to the cancellation of those licenses.

The status of NextWave's licenses has been the subject of extended litigation in the Bankruptcy Court, the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States. In June 2001, after the FCC had conducted Auction No. 35, the D.C. Circuit held that "the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bankruptcy," effectively nullifying the FCC ability to deliver the licenses to winning bidder. In August 2001, after the issuance of that court's mandate, the FCC restored the NextWave licenses to active status. More recently, the Supreme Court granted the FCC's petition for a writ of certiorari to review the D.C. Circuit's judgment. The Supreme Court will not hear arguments in the case until the fall of 2002 and is unlikely to announce a decision until the spring of 2003. If the Court reverses the D.C. Circuit's decision, there will be further litigation on remand in the D.C. Circuit to resolve issues that the court did not reach in its first decision. The result is that there is not likely to be a final resolution of the status of the NextWave licenses and the FCC therefore will not be in a position to deliver licenses to the winners of Auction No. 35—until three or more years from the time the auction was concluded. Although the FCC recently returned most of the down payment funds previously deposited by successful bidders, it continues to hold without interest substantial sums equal to three percent of the total amount of the winning bids. It apparently intends to hold those sums indefinitely. Despite the lengthy delay in delivering the licenses, moreover, the FCC takes the position that the successful bidders remain obligated, on a mere 10 days' notice, to pay the full amount of their successful bids if and when the FCC at some unknown future date establishes its right to deliver those licenses.

The situation is grossly unfair to those who bid on these licenses in good faith. Companies calibrate their bids on the understanding, implicit in any commercial arrangement, that delivery of the licenses will occur in a reasonable time following the auction. That expectation is especially crucial in the context of spectrum licenses, given the recent volatility we have seen in market prices for spectrum. It is particularly burdensome to such companies for the FCC to hold even a portion of their enormous down payments without paying interest for such extended periods. Even more troubling, the companies' contingent obligation to pay on very short notice the remaining $16 billion they bid for the licenses at issue adversely affects their capacity to serve the needs of their customers. Such large contingent liabilities impede the companies' ability to take interim steps, such as building out its network further or leasing spectrum from others, that may be urgently needed to improve service for its customers. The FCC's failure to respond appropriately to alleviate these serious burdens disserves the public interest.

This bill addresses these problems in two ways. It requires the FCC promptly to refund to the winning bidders the full remaining amount of their deposits and down payments. In addition, it gives each winning bidder an opportunity to elect, within 15 days after enactment, to relinquish its rights and to be relieved of all further obligations under Auction No. 35. Those who choose to retain their rights and obligations under Auction No. 35 will nonetheless be entitled to the return of their deposits and down payments in the interim. If and when the FCC is in a position to deliver the licenses at issue to those who remain obligated, they will be required to pay the full amount of their bid in accordance with the FCC's existing regulations. Those who elect to terminate their rights and obligations under Auction No. 35 will be free to pursue other opportunities to acquire spectrum and serve consumers.

I want to make this next point especially clear, nothing in the bill's provisions would affect the FCC's legal position in the Supreme Court with respect to the validity of its original cancellation of the NextWave licenses. If the FCC prevails in the Supreme Court, it will reestablish its right to allocate the spectrum at issue. It may then grant licenses to Auction No. 35 winning bidders who have declined to relinquish their rights under the bill. It will also be free to conduct a re-auction of any spectrum won by Auction No. 35 bidders who have in the meantime elected to relinquish their auction rights.

By Mr. KERRY:

S. 2870. A bill to amend titles 10 and 14, United States Code, to provide for the use of gold in the metal content of the Medal of Honor; to the Committee on Armed Services.

Mr. KERRY. Mr. President, today I rise to introduce legislation to bring greater honor and prestige to our most valiant veterans. This legislation, the Congressional Medal of Honor Act, will require the use of 90 percent gold in the metal content of the Medal of Honor.

You may be surprised to learn that while foreign dignitaries, famous singers, and other civilians receive an approximately $30,000 medal—the Congressional Gold Medal, our most valued veterans receive a $30 medal. The cost difference lies in that the Medal of Honor consists primarily of brass plated slightly with gold. These American heroes deserve better and it's certainly the least we can do to honor their service.

The cost of the proposal would be minimal. According to the Congressional Budget Office, the total cost of the bill would be $2 million for a five-year period during which the new medals would be designed, produced and stockpiled. Our legislation would allow the approximately less than 1,000 living recipients awarded the Medal, or their next of kin, to receive a replacement Medal.

Amelia Earhart once said that "Courage is the price that life exacts for granting peace." In helping us win our peace, we should truly honor our bravest heroes by giving them the Medals they deserve.

By Mr. FITZGERALD:

S. 2872: A bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Natural Resources.

Mr. FITZGERALD. Mr. President, I introduce a bill to reinstate a license surrendered to the Federal Energy Regulatory Commission that authorized the construction of a hydroelectric power plant in Carlyle, Illinois. In order to facilitate the construction of the hydroelectric power plant, the bill also contains a provision that extends the deadline for beginning construction of the plant.

Carlyle, IL, is a small community of 3,406 people in Southwestern Illinois, fifty miles east of St. Louis. Carlyle is situated on the Kaskaskia River at the southern tip of Carlyle Lake, which was formed in 1967 when the U.S. Army Corps of Engineers completed construction of a dam on the river. Carlyle Lake is 15 miles long and 3½ miles wide—the largest man-made lake in Illinois.

When the Army Corps of Engineers constructed the dam, it failed to build a hydroelectric power plant to capitalize on the energy available from water flowing through the dam. A hydroelectric power facility in Carlyle would produce 4,000 kilowatts of power and provide a renewable energy source for surrounding communities. Furthermore, the environmental impact of adding a hydroelectric facility would be minimal, and such a facility, located at a site near the existing dam, would not produce harmful emissions.

In 1997, Southwestern Electric Cooperative obtained a license from the FERC to begin work on a hydroelectric project in Carlyle. In 2000, Southwestern Electric Cooperative surrendered their license because they were unable to begin the project in the required time period. The City of Carlyle is interested in constructing the hydroelectric power plant and is seeking to obtain Southwestern Electric Cooperative's license.

The bill I am introducing today is required for the construction of the facility. Legislation is necessary to authorize FERC to reinstate Southwestern Electric Cooperative's surrendered license. Because there is not enough time remaining on the license to conduct studies, produce a design for the facility, and begin construction of the project, the bill includes a provision that allows FERC to extend the applicable deadline.

This legislation is an easy and environmentally safe approach to meeting the energy needs of Southwestern Illinois. Please join me in supporting this measure to provide a clean alternative energy source for this part of the Midwest.

I ask unanimous consent that the bill be printed in the RECORD following the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2872

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 11214, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section—

(1) reinstate the license for the construction of the project as of the effective date of the surrender of the license; and

(2) extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods beyond the date that is 4 years after the date of issuance of the license.

By Mr. WELLSTONE (for himself, Mr. DAYTON, and Ms. MIKULSKI):

S. 2875. A bill to amend the Employee Retirement Income Security Act of 1974 to increase the maximum levels of guaranteed single-employer plan benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. WELLSTONE. Mr. President, I introduced an extremely important bill, the Pension Guarantee Improvement Act of 2002. I urge my colleagues to join me in pressing for its swift consideration and passage.

For over a quarter of a century, the federal government has run an insurance system for private "defined benefit" pension plans. The agency that administers this system, the Pension Benefit Guarantee Corporation, PBGC, has worked hard to live up to its statutory obligations to protect benefits in the event that the plan sponsor goes bankrupt and is forced to terminate the plan.

In my home state of Minnesota, I have worked closely with former LTV workers whose plans have been taken over to facilitate a dialogue with the PBGC. I am very grateful to Joe Grant, Steven Kandarian, Michael Rae and all the other PBGC staff who have provided invaluable assistance to my office and my constituents over the past few moths. I have been greatly impressed with their responsiveness, dedication and hard work.

Yet the experiences of the LTV workers in Minnesota—and other manufacturing workers around the country I suspect—have exposed some serious though limited gaps in the guarantees that PBGC is permitted to provide.

These guarantees are predicated on a certain set of assumptions regarding retirement that unfortunately do not hold true for all workers. For example, the vast majority of all workers that retire at age 65 having earned a defined benefit pension are guaranteed their full earned pension, regardless of whether or not the sponsoring company is still in business. In most white-collar jobs this arrangement works well; the nature of the employment permits most employees to continue in their jobs through age 65 and the terms of their private pension plans are generally set up for retirement at that age.

In labor-intensive industries such as steel and other manufacturing sectors, however,workers have never been expected to endure as many years of active employment as their white-collar counterparts. Again, the expectations of workers as they enter these industries are well-known. Employees are generally promised a secure retirement in exchange for their 25–30 years of service and they work for decades under the assumption that that promise will be kept.

What has happened to many of the former LTV employees in Minnesota is their hard-earned benefits have been unexpectedly—and in a few cases, dramatically—reduced as a result of their company being forced into bankruptcy. This is because their plan was taken over by the PBGC which is not allowed to provide as comprehensive a guarantee to these workers as they can offer to their white-collar counterparts.

The shorter working lives of steelworkers and others who labor in our rapidly-shrinking manufacturing sector effectively means that they will often not receive the full measure of their earned benefit if their company happens to go bankrupt before they reach age 65. The reductions in benefits that many of these workers suffer occur regardless of how hard they worked, how productive an employee they were—anything that they have any control over.

These losses are inflicted on these workers because they labored in the manufacturing sector and because they happened to be employed by a company that was forced into bankruptcy. There is no other reason. Given that we insure defined benefit plans, I see no reason why we should have one standard of coverage for white-collar workers and another, lesser guarantee for manufacturing workers. If a worker has fully earned the pension that they were originally promised I see no reason why we should pull the rug out from under them just because their company happens to go under.

Mr. President, we must strengthen the guarantees that the PBGC is required to provide in order to protect this small subset of all workers from unfair and unreasonable cuts in their earned benefits—cuts that all too often come at a tremendously difficult time in their lives when health or geographic location may prevent them from finding alternative employment. In my state of Minnesota, I saw first-hand how LTV workers in their 50s, who had qualified for a full retirement benefit under the terms of their original plan, had to struggle to survive the loss of their health insurance, and some substantial reduction in their earned benefits as a result of PBGC takeover of their plan.

This legislation is designed to provide some relief to those workers who often suffer unexpected benefit reductions as a result of a PBGC takeover. Let me be quite clear that the affected workers represent only a very small fraction of all those covered by PBGC. The CBO has issued a preliminary score for this proposal that puts its cost at $110 million over the next ten years. Colleagues, this very modest proposal would allow PBGC to provide guarantees to these workers that more closely reflect what they earned under the terms of the plan that they had signed onto. It would help bring the level of guarantees provided to manufacturing-sector workers closer to that provided to their white-collar counterparts.

This bill involves three changes to the rules that determine how much of an earned benefit is guaranteed by the PBGC.

First, it would increase the maximum benefit guarantee level for single employer plans by adjusting an indexed formula that would boost the monthly maximum payable for retired workers of all ages by some 13 percent. This would translate into an increase of approximately $150–$200/month for retirees over the age of 50 whose benefits are often reduced by the current maximum payable limitation.

Second, this bill directs the PBGC to cover supplemental benefits such as Social Security "bridge" payments as basic pension benefits. Again, this benefit is often earned by workers in steel and other labor-intensive industries and is specially provided to tide them over until they become eligible for Social Security.

Finally, this proposal would index the $20/year option on the 5-yr phase-in rule for recent benefit increases—which would put it at $95 using the same 4.773 Social Security index multiplier as is used to calculate the maximum payable. The current $20/year figure was part of the original 1975 ERISA statute and was intended to represent normal benefit increase. It has become essentially meaningless because it has never been increased. This would allow workers who received a "normal" benefit increase within the last 5 years to receive the entire raise instead of a percentage of it.

Mr. President, defined benefits plans and the manufacturing sector have both suffered serious declines in recent years. At the very least we owe it to these hard-working men and women to improve their access to meaningful pension guarantees should their company be forced out of business. This bill would make a huge difference to people who need it the most—and do so without in any way threatening the solvency of the PBGC. I urge my colleagues to join me in supporting this modest yet meaningful relief for these workers.

By Mrs. MURRAY (for herself and Mr. WELLSTONE):

S. 2876. A bill to amend part A of title IV of the Social Security Act to promote secure and healthy families under the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

Mrs. MURRAY. Mr. President since the 1996 welfare reform, our nation has experienced one of the longest economic booms in history, but families are still struggling to make ends meet, and children are still living in poverty.

Now, with the recession, working families are facing even more barriers on the path toward self-sufficiency, and states are struggling to maintain their existing programs. In my own state of Washington, we've seen the results of the recession: good jobs are more difficult to find, welfare rolls are up, and state budget cuts have taken a chunk out of childcare and other critical supports for our most disadvantaged families. It is with this in mind that I introduce Senate bill S. 2876, the Secure and Healthy Families Act of 2002.

The Secure and Healthy Families Act will help build on the successes of welfare reform. This bill gives us an important opportunity to reaffirm that we value America's families and that we will protect our children. This bill takes what we know from our own experiences as parents, aunts, uncles, and grandparents and what research has proven to be effective to help us move toward the goal of building healthy families. It does not impose inflexible top-down strategies. Instead, it allows states to support work and engage families on assistance. It will help build secure and healthy families in a number of ways.

First, this legislation will create the Promoting Healthy Families Fund that enables the Secretary of HHS to fund state activities to promote and support secure families. For example, the fund would support state and local efforts to provide family counseling, income enhancement programs for working poor families—like the successful Minnesota Family Investment Program, or teen pregnancy prevention programs that help young people avoid the poverty that often comes with these unplanned pregnancies.

Second, this act will ensure states recognize that secure and healthy families come in all shapes and sizes. The federal government has long led the way in opposing discrimination, and this bill will continue that critical role.

Next, this bill puts in place several provisions to help the parents build a better future for themselves and their children. The bill encourages teen parents to remain in school by not counting the time that they are in school against their five-year lifetime limit. Under this legislation, a teen mother would also be given the chance to get on her feet, get settled in school, and find a safe place for her and her baby to live without losing assistance.

Mr. President, in families where children are chronically ill or disabled, parents are confronted with special challenges. Most cannot find appropriate affordable care, and cannot leave sick and vulnerable children alone. They run from the doctor's office and emergency rooms—trying to keep their jobs while dealing with the sudden and frequent life-threatening health problems that these children face. This bill would offer support for these families by recognizing that full time care of a chronically sick or disabled child is hard work, and by giving parents the opportunity to meet their children's special needs.

The bill also strengthens support for those families who are victims of domestic or sexual violence. We know that as many as 70 percent of welfare recipients are or have been victims of domestic violence. This bills sends a clear message to states that they must protect their vulnerable families in several ways including: having comprehensive standards and procedures to address domestic and sexual violence, training caseworkers so that they are sensitive to the unique needs of victims of domestic violence, and informing survivors of domestic and family violence of the existing protections to ensure their privacy and safety.

Most states are approaching domestic violence prevention and assistance in interesting and innovative ways. The bill will provide funding for a national study of best practices on the ways states are addressing domestic violence. In addition, states will be able to continue to provide services to domestic and family violence survivors without worrying about federal exemption caps. The bill will allow these survivors to receive the services they need when they are making the transition out of dangerous situations to safe and successful lives.

Finally, the bill would support relatives who take in underprivileged children. A growing number of children, 2.16 million in 2000, are being cared for solely by grandparents and other relatives. Although some of these children are involved with the child welfare system, many more of these children are able to remain outside of the system because their relatives are able to care for them.

Last week a young man named Eustaquito Beltran came to my office to talk to me about the importance of supporting foster children. He told me that he had lived in more than one hundred homes since he was a toddler. The results for children like him are heartbreaking. Fewer than half graduate from high school, and many become homeless after they turn 18.

Prior to being abandoned by or taken away from their parents, most of these children live in poverty with families devastated by substance abuse, mental health disorders, poor education, unemployment, violence, lack of parenting skills, and involvement with the criminal justice system. A 1990 study found that the incidence of emotional, behavioral, and developmental problems among children in foster care was three to six times greater than the incidence of these problems among children not in care.

If care by a relative can help children like Eustaquito avoid the foster care system, then we should be grateful for the assistance that relative is offering. Instead, relatives who care for children with support form TANF are often trapped in a Catch-22. If a grandmother takes in her grandchild, but needs support herself and receives TANF assistance, federal time limits and work requirements apply. It doesn't make sense to require this grandmother, who may have worked for years and finally reached retirement, to return to work in order to help her grandchild stay out of the foster care system.

My bill would exempt kinship care families from federal time limits and work requirements to help ensure ongoing support for these children. This will allow relative caregivers to provide the additional supervision and care that children who have been abused and neglected often need.

Mr. President, the strength of our nation lies in how we care for our most vulnerable. Coming together to support victims of domestic violence, children abandoned by their parents, and teen mothers can make it clear that welfare reform is about helping all Americans succeed, not about punishing the needy.

The Senate must focus our crucial federal welfare dollars on programs and practices that create a bridge to self-sufficiency and productivity while keeping families secure and healthy. I am committed to strengthening the safety net our families depend on so that parents have the skills they need to find work and succeed once they are in the workplace. This bill will ensure that children grow up in secure and healthy families. It is a critical step in our work to leave no child behind.

By Mr. LIEBERMAN (for himself and Mrs. BOXER):

S. 2877. A bill to amend the Internal Revenue Code of 1986 to ensure that stock options of public companies are granted to rank and file employees as well as officers and directors, and for other purposes; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, I rise in strong support of stock option reforms, and propose legislation that will make stock options, a powerful tool in the democratization of capitalism, even more effective as an incentive to spur innovation and create wealth.

The waves of corporate abuse that our economy has suffered over the past ten months have been devastating to so many employees, shareholders, and families across America. The investments that people have counted upon to safeguard their retirement, send their children to college, buy a home, start a business-trillions of dollars have gone up in smoke, turned to ash while, for a few executives, those misfortunes turned to cash.

That's maddening, as a result, the most productive economy in the world-in the history of the world-has been scarred. The American corporation, a great institution of democratic capitalism in which the public owns the company, has been stained. Potentially empowering innovations that enable individual investment, like the 401-k account, have been skewered.

Today, I want to talk about another fundamentally decent idea that has been dragged into the quicksand of corporate corruption: stock options. We've discovered over the last ten months that too many companies and executives have been misusing and abusing them. In far too many cases, options have been turned into mere feed in the corporate trough by the greed of corporate executives.

Stock options are a hammer. They can be used well or used poorly. We've seen corporate executives use this hammer to weaken the foundations of their companies, build rickety and top-heavy structures ready to collapse, and build themselves nice, secure shelters from the damage. That's unconscionable.

The bill I propose today will correct this abuse by ensuring that the tool of stock options is put in the hands of more and more employees so it can be used as it was initially intended-to construct wealth, to build fortunes, to strengthen companies, and to incentivize the long-term soundness and stability of a company.

The way to fix this problem is not, as some have suggested, to require stock option expensing at the time an option is granted. That would, in fact, make the problem worse. It would disincentive the dissemination of options in the first place-and in the end, those at the top of the corporate food chain will still take care of themselves. No, the way to fix this problem is to ensure that stock options are more broadly shared by more and more employees of American corporations-that they truly are the democratizing tool that they can be.

Our challenge is to fix the flaws that have been exposed without hurting stock options themselves. In the name of addressing this serious crisis in corporate accountability, let's not make the mistake of pushing through unwise reforms that threaten to further confuse investors and endanger the engines of entrepreneurship that make America's economy, for all its faults and flaws, the envy of history and of the world. It would be a terrible shame if we threw out the stock options baby with the corporate corruption bathwater.

That's the spirit of my legislation: to mend, not end, stock option distribution.

My legislation focuses on three critical reform issues regarding stock options, distribution, shareholder approval, and disposition by senior executives. I believe that my proposed reforms will ensure that stock options serve their highest purpose: that we give shareholders more control to ensure that stock options are issued consistent with their interests, while we do away with the perverse incentive for senior executives to cash in and bail out of their companies.

The bill does not address the elephant in the room-the issue of whether or not companies should be required to account for stock options. That is because I remain firmly convinced that would fail to address the fundamental problems we face-and would, in fact, create new problems with which we will have to grapple.

If the Congress were to require expensing of stock options, we can be sure that the fat cats would still get their milk. Top corporate executives would still take care of themselves. But the middle-income employees, who represent the vast majority of Americans who benefit from stock options, would have no option but to accept no options.

Requiring the expensing of options will not give shareholders a greater say in approving stock option plans or ensuring that they are focused on effective incentives for growth. The reforms I propose today will. And requiring the expensing of options will not address the incentives that executives may have to manipulate earnings immediately prior to selling shares acquired through a stock option plan. The reforms I propose today will.

The reform issues addressed in my bill are ones that are well suited for Congress because they are policy matters, not accounting rules.

I have little doubt that FASB will again take up the stock option accounting issue. When it does, I think it will find, again, that expensing options at the time they are granted is not possible. This is the unsung issue with stock option accounting.

There is no doubt that stock options are a form of compensation, but this happens when they are exercised, not when they are granted. Options that go "underwater", when the stock price drops, never become compensation and the options are worthless. We only know if options are compensation when they are exercised and only then do we know how much compensation has been received.

This is the issue I have raised about expensing, not whether they are compensation, but when they become compensation and when the amount of the compensation can be measured. I said in 1994 and I say it again today, I do not believe at the time an option is granted that we know if or how much it is worth as compensation.

I doubt if the champions of expensing can point to a single case where a company's disclosure of stock option costs at grant, now included in footnotes to the company's P&L statement, proved to be accurate. The Enron footnotes estimated stock option costs that proved to wildly inflated and inaccurate because they did not anticipate the decline in Enron's stock price. In this bear market, I would think that every company's footnote estimates have proven to be wildly inflated and inaccurate.

I doubt if the champions of expensing can cite a single stock broker or analyst who uses the Black-Scholes estimating method to pick stocks.

I do not believe that these champions would be willing to put their own money behind a stock based on the Black-Scholes estimates. Anyone who finds a reliable way to estimate the price of a stock three to ten years in the future is bound to be rich, and will certainly win the Nobel Prize for Economics.

These are issues that FASB will review and it is not an appropriate subject for this or any other legislation. This legislation focuses on reforms that address abuses. Expensing of stock options, whatever its merits as an accounting standard, do not address any of the key reform issues addressed in this legislation. Expensing is quite irrelevant to these reforms; it's a sideshow and a diversion. It's a false surrogate for reform.

I have long championed broad-based stock option plans and I believe they are a great spur to productivity and competitiveness. A study by two Rutgers University professors found that over a three-year post-plan period, companies that grant options to most or all employees show a 17 percent improvement in productivity over what would have been expected had they not set up such a plan. The return on assets of these companies went up 2.3 percent per year over what would have been expected, while their stock performance is either better or about the same than comparable companies, depending on how performance is measured. These were companies that granted options broadly, which unfortunately is still not the norm.

On June 29, 1993, I introduced the "Equity Expansion Act," S. 1175, to provide a tax incentive in favor broad-based stock option plans, options I referred to as "performance" stock options. The incentives were available only for options where "immediately after the grant of the option, employees who are not highly compensated employees hold * * * share options which permit the acquisition of at least 50 percent of all shares which may be acquired * * *:

In my statement about this bill I stated that the bill could "spur the competitiveness and profitability of American companies by expanding the number of employees in all industries who will have the opportunity to receive part of their remuneration in the form of stock options." I argued that that bill was appealing because it "America's best companies learned long ago that the key to success in the world's toughest markets is a dedicated work force that shares the common goals for their company." The bill required shareholders to approve the plans and the employees were required to hold the shares for at least two years. I noted that "much of the criticism of stock options revolves around horror stories about a small number of extravagantly compensated executives."

My 1993 bill provided incentives for broad-based plans. It proposed a special capital gains incentive for the stock option shares. At the time, there was no capital gains preference; it had been repealed in 1986. Since then, of course, the capital gains preference has been restored. At that time, and at all times since then, companies can deduct the "spread" on an option at the time the option is exercised. The "spread" is the difference between the grant price and the market price, the discount.

There is a trend in favor of broad-based stock option plans. The National Center for Employee Ownership estimates that 7–10 million employees now hold stock options. The number of people who hold options has grown dramatically since 1992, when only about one million people held options. Stock options are a way to provide productivity incentives to many middle-class employees.

Despite the trend in favor of broad-based stock option plans, I am not satisfied with the status quo. In companies with broad-based plans, NCOE finds that 34 percent of the options go to senior management, the average grant value for senior executives was more than $500,000 compared to only about $8,000 for hourly employees and $35,000 for technical employees. In non-broad-based plans, of course, the distribution is even more skewed to senior management. The NCOE estimates that "While the growth of broad-based options has been an important economic trend, our data nonetheless indicate that even in plans that do share options widely, executives still get an average of 65 percent to 70 percent of the total options granted."

Similarly, estimates by the National Association Stock Plan Professionals finds in a 2000 survey that 26 percent of the plans only grant options to senior and middle management, and 43 percent to all employees. For high tech companies, the percentage of these top-heavy plans is only 4 percent, and 73 percent of the plans provide options to all of the employees. For non-high tech companies, the percentage of these top-heavy plans is 36 percent, and 29 percent of the plans provide options to all of the employees. So the prevalence of top-heavy plans seems to be concentrated in the non-high tech companies.

If options are justified as incentives for company performance and as a way of giving employees a stake in the company performance, which I believe they are, then this is not fair and not appropriate. This is why we need to go beyond enacting an incentive in favor of broad-based plans. As the NCOE has stated, "Options for ordinary employees can work out to a new car, college tuition, a down payment on a house, a great vacation, and maybe even a more secure retirement. Options for executives can amount to enough money to fund a small nation. The option packages some executives have received would amount to tens of thousands of dollars per employee in their company." This imbalance is not good public policy.

In addition, if it turns out that companies are forced to expense their options at the time of grant, many of us fear that the first options that would be cut are those for middle-income and rank and file employees. We fear that the senior executives and their allies on the Board would take care of themselves, and drop or not enact broad-based plans. The legislation I propose here would help to ensure that this will not happen.

The bill I introduce today takes a direct and forceful approach and provides that this tax deduction is limited to the spread on options that are granted on a broad-basis to the employees of the firm. The intent and thrust of the bill is the same as the one I introduced in 1993, and the definitions are the same. The approach is more direct and forceful.

The bill, called the "Rank and File Stock Option Act", states that the ordinary and necessary business expense deduction attributed to the spread on the exercise of stock options (deducting the "spread" between the strike and exercise price) is limited on a pro rata basis to the extent stock option grants for the taxpayer are not broad-based. So, when the three-year average of the stock option grants is broad-based, as defined in the bill, there is no limitation on the deduction. In terms of a pro-rata reduction, the deduction would be limited by the same percentage to which the percentage of highly compensated employees options exceeded the broad-based standard.

This test goes to the number of options granted, not the exercise price or any other weighting or valuation. No deduction is allowed if the options granted to senior management are different in form and superior to those granted to rank and file employees, which will help ensure that there are no efforts to evade the purpose of this legislation.

The stock option grants are deemed to be broad-based when, immediately after the grant of the options, employees who are not highly compensated employees hold share options that permit the acquisition of at least 50 percent of all shares that may be acquired pursuant to all stock options outstanding (whether or not exercisable) as of such time. The bill does not require that stock option grants be made to literally every employee, but as a practical matter such grants to every employee may be necessary to meet the test. Requiring that all employees receive some options involves complex issues about part-time employees and new employees. The 50 percent test is tough enough to ensure that the options are broad-based.

The definition of a "highly compensated employee" includes all employees who earn $90,000 or more and are among the firm's top 20 percent highest paid employees. This is similar to the current test applied to prevent "discrimination" in 401(k) plans.

In addition, under the legislation no deduction is allowed if more than 5 percent of the total number of options is granted to any one individual. And no deduction is allowed if more than 15 percent of the stock option grants go to the top 10 officers and directors of the firm.

The legislation applies only to public companies. The Treasury Department shall issue regulations to implement this provision. The effective date is for stock grants after December 31 of this year. During the remainder of the year, corporations granting stock options must disclose grants in filings to the SEC within 3 days.

To be clear, the legislation does not prevent a company from adopting a stock option plan that does not meet the terms of this legislation. It simply denies them a tax deduction on the spread when they do so. This should ensure that broad-based stock option plans become the norm and that senior executives do not hoard the options for themselves to the detriment of their companies and shareholders.

There is ample precedent for the limitation on deductions. Deductions are only permitted for "ordinary and necessary" business expenses and Congress has frequently intervened to define what this means. There is no right for corporations, or any other taxpayer, to avoid taxes on any and all expenses that they choose to incur.

There is also ample precedent for limiting the deduction for non-broad based stock option plans. We have similar limitations in the law defining contributions for 401(k) plans, the compensation in closely held corporations is regulated to prevent abuse, and we have limits on excessive compensation paid to executives of non-profit entities.

To make sure that an employer's 401(k) plan does not unfairly favor its higher-paid workers, there are also rules governing highly-compensated employees or HCEs. The term highly-compensated employees may include a person who was a 5 percent owner at any time during the current or prior year or an employee who earned more than $90,000. An employee whose salary ranked in the top 20 percent of payroll for the prior year might also be considered an HCE. Generally, to make sure a 401(k) plan is compliant, each year the plan must pass a non-discrimination test.

These tests generally compare the amounts contributed by and on behalf of highly compensated employees to those contributed by and on behalf of the non-highly compensated employees. As long as the difference between the percentages of these two groups is within the Internal Revenue Code's guidelines, the plan retains its tax-qualified status. If the plan does not pass the tests, the plan must take corrective action or lose its tax-favored status.

With regard to closely held corporations, the deduction for ordinary and necessary expenses is limited to "reasonable" compensation for services performed by the shareholders/employees. A corporation paying excessive compensation to a shareholder-employee is required to reclassify the excess as a dividend (provided there are adequate corporate earnings and profits). This has unfavorable tax consequences, since dividends are not deductible. In addition to an employee's salary, employer-provided benefits should be considered in determining whether an employee's compensation is reasonable. This includes pension and welfare benefits, as well as fringe benefits such as the use of a company car.

Finally, the 1993 Taxpayer's Bill of Rights enacted Section 4958 which imposes an excise tax on transactions that provide excessive economic benefits to top executives of non-profit charitable groups. The Internal Revenue Service finalized regulations implementing this law on January 10, 2001. The regulations define what constitutes excessive compensation and benefits.

The limitation on the deduction proposed in my legislation serves a constructive public policy purpose. The only purpose of the limitation on deduction we find in S. 1940, the lead bill on expensing of stock options, is to coerce companies into expensing their options at grant. If the companies do not expense options at grant, as S. 1940 prefers that they do despite FASB's current rule that this is not necessary, then they lose their tax deduction. If this legislation is effective, and companies are forced to expense their options at grant, the likely result is that fewer options will be granted, especially to rank and file employees, although not for top executives. My legislation is directed at protecting the stock options of rank and file employees.

In addition to ensuring that stock options are broad-based and performance oriented and not just allocated to the top executives, we need to make sure that shareholders are involved in the decision to implement these stock option plans.

The legislation provides that not later than one year after the date of enactment of this Act, the Commission shall finalize rules pursuant to the Securities and Exchange Act of 1934 to ensure that shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange.

This approval would apply to any stock option plan, not just a stock option plan that meets the terms for a broad-based plan.

In securing this approval, prior to submission of such plans to shareholders for approval, the company must give its shareholders detailed information about the stock option plans and grants, including (a) the economic rationale and interest of shareholders in the plan or grant; (b) a detailed description of the anticipated distribution of the plan or grant among directors, officers, and employees and the rationale of such distribution; (c) the total number of options reserved or intended for grants to each director and officer, and to different classes of employees; (d) the maximum potential future earnings per share dilution of investors' shareholdings assuming the exercise of all in-the-money options with no adjustment for the use of the Treasury stock method, as stock price varies; (e) the terms under which stock option grants may be cancelled or reissued; and (f) the number, weighted average exercise prices, and vesting schedule of all options previously approved or outstanding.

The Commission shall ensure that all disclosures required by this Section shall increase the reliability and accuracy of information provided to shareholders and investors.

Such shareholder approval requirement may exempt stock option grants to individual employees under terms and conditions specified by the Commission. Such exemptions shall be available only where the grant is (1) made to an individual who is not a director or officer of the company at the time the grant is approved; (2) necessary, based on business judgment; (3) represents a de minimis potential dilution of future earnings per share of investors' shareholdings; and (4) made on terms disclosed to shareholders of the grant that is made in the next filing with the Securities and Exchange Commission.

Such approval requirement may exempt stock option plans and grants of any registrant that qualifies as a small business issuer under applicable securities laws and regulations or to such additional small issuers as the Commission determines would be unduly burdened by such requirements as compared to the benefit to shareholders. The Commission is authorized to phase in the applicability of this rule both as to the applicability and to its effective date so that it can determine the size of issuer to which this rule will apply and the extent to which the rule should apply to plans that exclude officers and directors.

The bill also focuses on the issue of the incentives stock options give to executives as they manage a company. Questions have been raised about whether the options are partly responsible for the deception and fraud that has occurred at Enron and other companies. The charge is that the options gave these executives an irresistible rationale to deceive shareholders and investors to pump up the stock price and increase the value of the options. Charges have been made that these manipulations were timed to occur immediately before options were exercised and shares were sold.

While there is intuitive appeal to this argument, it is difficult to establish the role of stock options in these acts of deceptions, fraud and manipulation. The concerns are sufficient, however, that we need to turn to the Securities and Exchange Commission to evaluate them and determine what restrictions might be imposed on the sale of stock acquired through stock options. The bill directs the SEC to conduct an analysis and make regulatory and legislative recommendations on the need for new stock holding period requirements for senior executives. The Commission is directed to make recommendations regarding minimum holding periods after exercise of options to purchase stock and maximum percentage of stock purchased through options that may be sold. These recommendations would include transactions involving sales to company, sales on public markets, and derivative sales.

We need the expertise of the Commission on this complicated issue. It would probably not be reasonable to bar executives from selling any shares during their employment with the firm. Executives may need the proceeds of these sales to finance the college education of their children and many other completely legitimate reasons. The Commission is in a better position to evaluate the incentives, the opportunities for fraud, and other key factual and policy questions.

Stock options have been under attack. We need to focus on how to prevent abuse of stock options, not just abandon these incentives. They are a uniquely American idea, they provide a way to increase productivity and broaden the winner's circle. As with any economic incentive, they can be abused and we need to focus on these abuses. By reforming stock options, we can ensure that these incentives will be even more effective.

I believe that the reforms I have proposed will address the abuses we have seen. It is unfortunate that the accounting for stock options has become a surrogate for any and all issues regarding stock options. I continue to believe that accounting for stock options as an expense at the time they are granted is not appropriate or possible. But irrespective of the outcome of this debate, the reforms I have proposed here address the real issues, the real abuses, and the real opportunities to ensure that stock options continue to provide a powerful incentive in favor of economic growth and democratic capitalism.

I ask unanimous consent than the following outline of the legislation and the text of the legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RANK AND FILE STOCK OPTION ACT

Legislation focuses on three critical reform issues regarding stock options—distribution, shareholder approval, and disposition by senior executives.

Requiring expensing of stock options at the time they are granted is likely to discourage the use of stock options, but it will not prevent senior executives from hoarding options—it will probably encourage it. It will not give shareholders a greater say in approving stock option plans and ensuring that they are focused on effective incentives for growth. And expensing will not address the incentives that executives may have to manipulate earnings immediately prior to selling shares acquired through a stock option plan.

A. Broad-based Options. This provision of the bill is based on the structure and elements of a bill introduced by Senator LIEBERMAN on June 29, 1993, the "Equity Expansion Act," S. 1175.

This bill limits the ordinary and necessary business expense deduction attributed to the spread on the exercise of stock options to the extent stock option grants for the taxpayer are not broad-based.

The stock option grants are deemed to be broad-based when, immediately after the grant of the options, employees who are not highly compensated employees hold share options that permit the acquisition of at least 50 percent of all shares that may be acquired pursuant to all stock options outstanding (whether or not exercisable) as of such time. The bill does not require that stock option grants be made to literally every employee, but as a practical matter such grants to every employee may be necessary to meet the test. Requiring that all employees receive some options involves complex issues about part-time employees and new employees. The 50% test is tough enough to ensure that the options are broad-based.

The definition of a highly compensated employee includes all employees who earn $90,000 or more and are among the firm's top 20 percent highest paid employees. This is similar to the current test applied to prevent "discrimination" in 401K plans.

B. Shareholder Approval. The bill provides that not later than one year after the date of enactment of this Act, the Commission shall finalize rules pursuant to the Securities and Exchange Act of 1934 to ensure that shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange.

C. Holding Period For Executives. Finally, the bill requires the Securities and Exchange Commission to conduct an analysis and make regulatory and legislative recommendations on the need for new stock holding period requirements for senior executives to reduce incentives for earnings manipulations.

S. 2877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rank and File Stock Option Act of 2002".

SEC. 2. DENIAL OF DEDUCTION FOR STOCK OPTION PLANS DISCRIMINATING IN FAVOR OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Section 162 of the Internal Revenue Code of 1986 (relating to deduction for trade and business expenses) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) DEDUCTIBILITY OF STOCK OPTIONS NOT WIDELY AVAILABLE TO ALL EMPLOYEES.—

"(1) IN GENERAL.—If—

"(A) an applicable taxpayer grants stock options during any taxable year, and

"(B) the taxpayer fails to meet the overall concentration test of paragraph (2) or the individual concentration tests of paragraph (3) for such taxable year with respect to the granting of such options,

then the deduction allowable to such taxpayer for any taxable year in which any such option is exercised shall be limited as provided in this subsection.

"(2) OVERALL CONCENTRATION TEST.—If the total number of shares which may be acquired pursuant to options granted to applicable highly compensated employees by an applicable taxpayer during a taxable year exceeds 50 percent of the aggregate share amount, then the deduction allowable under this chapter with respect to the exercise of any option granted by the applicable taxpayer during such taxable year to any employee shall be reduced by the product of—

"(A) the amount of such deduction computed without regard to this subsection, and

"(B) a percentage equal to the number of percentage points (including any fraction thereof) by which such total number exceeds 50 percent.

"(3) INDIVIDUAL CONCENTRATION TESTS.—

"(A) OPTIONS GRANTED TO SINGLE EMPLOYEE.—If the total number of shares which may be acquired pursuant to options granted to any applicable highly compensated employee by an applicable taxpayer during a taxable year exceeds 5 percent of the aggregate share amount, then no deduction shall be allowable under this chapter with respect to the exercise of any options granted by the applicable taxpayer to such employee during such taxable year.

"(B) OPTIONS GRANTED TO TOP EMPLOYEES.—

"(i) IN GENERAL.—If the total number of shares which may be acquired pursuant to options granted to employees who are members of the top group by an applicable taxpayer during a taxable year exceeds 15 percent of the aggregate share amount, then no deduction shall be allowable under this chapter with respect to the exercise of any options granted by the applicable taxpayer to such employees during such taxable year.

"(ii) TOP GROUP.—For purposes of this subparagraph, an employee shall be treated as a member of the top group if the employee is a covered employee (within the meaning of section 162(m)(3)).

"(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply to any taxable year if the applicable taxpayer granted an equal number of identical options to each employee without regard to whether the employee was highly compensated or not.

"(4) RULES RELATING TO TESTS.—For purposes of this subsection—

"(A) AGGREGATE SHARE AMOUNT.—

"(i) IN GENERAL.—The aggregate share amount for any taxable year is the total number of shares which may be acquired pursuant to options granted to all employees by an applicable taxpayer during the taxable year.

"(ii) CERTAIN OPTIONS DISREGARDED.—Except as provided in regulations, if the terms of any option granted to an employee other than a highly compensated employee during any taxable year are not substantially the same as, or more favorable than, the terms of any option granted to any highly compensated employee, then such option shall not be taken into account in determining the aggregate share amount.

"(B) OPTIONS GRANTED ON DIFFERENT CLASSES OF STOCK.—Except as provided in regulations, this subsection shall be applied separately with respect to each class of stock for which options are granted.

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) APPLICABLE TAXPAYER.—The term 'applicable taxpayer' means any taxpayer which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934; 15 U.S.C. 78c)—

"(i) the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or

"(ii) which—

"(I) is required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78o(d)), or

"(II) will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et seq.), unless its securities are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) on or before the end of such fiscal year.

"(B) APPLICABLE HIGHLY COMPENSATED EMPLOYEE.—The term 'applicable highly compensated employee' means—

"(i) any highly compensated employee who is described in subparagraph (B) of section 414(q)(1), and

"(ii) any director of the applicable taxpayer.

"(C) INCENTIVE STOCK OPTIONS NOT TAKEN INTO ACCOUNT.—An incentive stock option (as defined in section 422(b)) shall not be taken into account for purposes of applying this section.

"(D) AGGREGATION.—All corporations which are members of an affiliated group of corporations filing a consolidated return shall be treated as 1 taxpayer.

"(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to prevent the avoidance of this subsection through the use of phantom stock, restricted stock, or similar instruments."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 3. SHAREHOLDER APPROVAL.

(a) RULES REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall finalize rules pursuant to the Securities Exchange Act of 1934 to ensure that—

(1) shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange; and

(2) prior to submission of such plans to shareholders for approval, such shareholders are given detailed information about the stock option plans and grants, including—

(A) the economic rationale and interest of shareholders in the plan or grant;

(B) a detailed description of the anticipated distribution of the plan or grant among directors, officers, and employees and the rationale of such distribution;

(C) the total number of options reserved or intended for grants to each director and officer, and to different classes of employees;

(D) the maximum potential future earnings per share dilution of investors' shareholdings, assuming the exercise of all in-the-money options with no adjustment for the use of the Treasury stock method, as stock price varies;

(E) the terms under which stock option grants may be canceled or reissued; and

(F) the number, weighted average exercise prices, and vesting schedule of all options previously approved or outstanding.

(b) RELIABILITY AND ACCURACY.—The Commission shall ensure that all disclosures required by this section shall increase the reliability and accuracy of information provided to shareholders and investors.

(c) EXEMPTION AUTHORITY.—Shareholder approval rules issued in accordance with this section—

(1) may exempt stock option grants to individual employees under terms and conditions specified by the Commission, except that such exemptions shall be available only in cases in which the grant—

(A) is made to an individual who is not a director or officer of the company at the time the grant is approved;

(B) is necessary, based on business judgment;

(C) represents a de minimus potential dilution of future earnings per share of investors' shareholdings; and

(D) is made on terms disclosed to shareholders in the next filing with the Commission; and

(2) may exempt stock option plans and grants of any registrant that qualifies as a small business issuer under applicable securities laws and regulations, or to such additional small issuers as the Commission determines would be unduly burdened by such requirements as compared to the benefit to shareholders, except that such exemption may be phased in, both as to applicability and to its effective date, so that the Commission may determine the size of issuer to which such exemptions will apply and the extent to which the rule should apply to plans that exclude officers and directors.

SEC. 4. HOLDING PERIOD FOR EXECUTIVES.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall conduct an analysis of, and make regulatory and legislative recommendations on, the need for new stock holding period requirements for senior executives, including—

(1) recommendations to set minimum holding periods after the exercise of options to purchase stock and to set a maximum percentage of stock purchased through options that may be sold; and

(2) an analysis of sales to company, sales on public markets, and derivative sales.

By Mr. FEINGOLD:

S. 2878. A bill to amend part A of title IV of the Social Security Act to ensure fair treatment and due process protections under the temporary assistance to needy families program, to facilitate enhanced data collection and reporting requirements under that program, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Fair Treatment and Due Process Protection Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents; references.

TITLE I—ACCESS TO TRANSLATION SERVICES AND LANGUAGE EDUCATION PROGRAMS

Sec. 101. Provision of interpretation and translation services.

Sec. 102. Assisting families with limited English proficiency.

TITLE II—SANCTIONS AND DUE PROCESS PROTECTIONS

Sec. 201. Sanctions and due process protections.

TITLE III—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec. 301. Data collection and reporting requirements.

Sec. 302. Enhancement of understanding of the reasons individuals leave State TANF programs.

Sec. 303. Longitudinal studies of TANF applicants and recipients.

Sec. 304. Protection of individual privacy.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

(c) REFERENCES.—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

TITLE I—ACCESS TO TRANSLATION SERVICES AND LANGUAGE EDUCATION PROGRAMS

SEC. 101. PROVISION OF INTERPRETATION AND TRANSLATION SERVICES.

(a) IN GENERAL.—Section 408(a) (42 U.S.C. 608(a) is amended by adding at the end the following:

"(12) PROVISION OF INTERPRETATION AND TRANSLATION SERVICES.—A State to which a grant is made under section 403(a) for a fiscal year shall, with respect to the State program funded under this part and all programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)), provide appropriate interpretation and translation services to individuals who lack English proficiency if the number or percentage of persons lacking English proficiency meets the standards established under section 272.4(b) of title 7 of the Code of Federal Regulations (as in effect on the date of enactment of this paragraph).".

(b) PENALTY.—Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

"(15) PENALTY FOR FAILURE TO PROVIDE INTERPRETATION AND TRANSLATION SERVICES.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(12) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

"(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.".

SEC. 102. ASSISTING FAMILIES WITH LIMITED ENGLISH PROFICIENCY.

(a) In General.—Section 407(c)(2) is amended by adding at the end the following:

"(E) Individuals with limited English proficiency.—In the case of an adult recipient who lacks English language proficiency, as defined by the State, the State shall—

"(i) advise the adult recipient of available programs or activities in the community to address the recipient's education needs;

"(ii) if the adult recipient elects to participate in such a program or activity, allow the recipient to participate in such a program or activity; and

"(iii) consider an adult recipient who participates in such a program or activity on a satisfactory basis as being engaged in work for purposes of determining monthly participation rates under this section, except that the State—

"(I) may elect to require additional hours of participation or activity if necessary to ensure that the recipient is participating in work-related activities for a sufficient number of hours to count as being engaged in work under this section; and

"(II) shall attempt to ensure that any additional hours of participation or activity do not unreasonably interfere with the education activity of the recipient.".

(b) Penalty.—Section 409(a) (42 U.S.C. 609(a)), as amended by section 101(b), is amended by adding at the end the following:

"(16) Penalty for failure to provide interpretation and translation services.—

"(A) In general.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 407(c)(2)(E) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

"(B) Penalty based on severity of failure.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.".

TITLE II—SANCTIONS AND DUE PROCESS PROTECTIONS

SEC. 201. SANCTIONS AND DUE PROCESS PROTECTIONS.

(a) In General.—Section 408(a) (42 U.S.C. 608(a)), as amended by section 101(a), is amended by adding at the end the following:

"(13) Sanction procedures.—

"(A) Pre-sanction review process.—Prior to the imposition of a sanction against an individual or family receiving assistance under the State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for failure to comply with program requirements, the State shall take the following steps:

"(i) Provide or send notice to the individual or family, and, if the recipient's native language is not English, through a culturally competent translation, of the following information:

"(I) The specific reason for the proposed sanction.

"(II) The amount of the proposed sanction.

"(III) The length of time during which the proposed sanction would be in effect.

"(IV) The steps required to come into compliance or to show good cause for noncompliance.

"(V) That the agency will provide assistance to the individual in determining if good cause for noncompliance exists, or in coming into compliance with program requirements.

"(VI) That the individual may appeal the determination to impose a sanction, and the steps that the individual must take to pursue an appeal.

"(ii)(I) Ensure that, subject to clause (iii)—

"(aa) an individual other than the individual who determined that a sanction be imposed shall review the determination and have the authority to take the actions described in subclause (II); and

"(bb) the individual or family against whom the sanction is to be imposed shall be afforded the opportunity to meet with the individual who, as provided for in item (aa), is reviewing the determination with respect to the sanction.

"(II) An individual to which this subclause applies may—

"(aa) modify the determination to impose a sanction;

"(bb) determine that there was good cause for the individual or family's failure to comply;

"(cc) recommend modifications to the individual's individual responsibility or employment plan; and

"(dd) make such other determinations and take such other actions as may be appropriate under the circumstances.

"(iii) The review required under clause (ii) shall include consideration of the following:

"(I) To the extent applicable, whether barriers to compliance exist, such as a physical or mental impairment, including mental illness, substance abuse, mental retardation, a learning disability, domestic or sexual violence, limited proficiency in English, limited literacy, homelessness, or the need to care for a child with a disability or health condition, that contributed to the noncompliance of the person.

"(II) Whether the individual or family's failure to comply resulted from failure to receive or have access to services previously identified as necessary in an individual responsibility or employment plan.

"(III) Whether changes to the individual responsibility or employment plan should be made in order for the individual to comply with program requirements.

"(IV) Whether the individual or family has good cause for any noncompliance.

"(V) Whether the State's sanction policies have been applied properly.

"(B) Sanction follow-up requirements.—If a State imposes a sanction on a family or individual for failing to comply with program requirements, the State shall—

"(i) provide or send notice to the individual or family, in language calculated to be understood by the individual or family, and, if the individual's or family's native language is not English, through a culturally competent translation, of the reason for the sanction and the steps the individual or family must take to end the sanction;

"(ii) resume the individual's or family's full assistance, services, or benefits provided under this program (provided that the individual or family is otherwise eligible for such assistance, services, or benefits) once the individual who failed to meet program requirements that led to the sanction complies with program requirements for a reasonable period of time, as determined by the State and subject to State discretion to reduce such period;

"(iii) if assistance, services, or benefits have not resumed, as of the period that begins on the date that is 60 days after the date on which the sanction was imposed, and end on the date that is 120 days after such date, provide notice to the individual or family, in language calculated to be understood by the individual or family, of the steps the individual or family must take to end the sanction, and of the availability of assistance to come into compliance or demonstrate good cause for noncompliance with program requirements.".

(b) Penalty.—Section 409(a) (42 U.S.C. 609(a)), as amended by section 102(b), is amended by adding at the end the following:

"(17) Penalty for failure to follow sanction procedures.—

"(A) In general.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(13) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

"(B) Penalty based on severity of failure.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.".

(c) State Plan Requirement To Describe How States Will Notify Applicants and Recipients of Their Rights under the Program and of Potential Benefits and Services Available under the Program.—Section 402(a)(1)(B)(iii) (42 U.S.C. 602(a)(1)(B)(iii)) is amended by inserting ", and will notify applicants and recipients of assistance under the program of the rights of individuals under all laws applicable to program activities and of all potential benefits and services available under the program" before the period.

(d) Requirement To Provide Notice to Applicants and Recipients of Rights and of Potential Program Benefits and Services, and To Train Program Personnel To Respect Such Rights.—

(1) In general.—Section 408(a) (42 U.S.C. 608(a)), as amended by subsection (a), is amended by adding at the end the following:

"(14) Requirement to provide notice to applicants and recipients of rights and of potential program benefits and services, and to train program personnel to respect such rights.—A State to which a grant is made under section 403 shall—

"(A) notify each applicant for, and each recipient of, assistance under the State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)) of the rights of applicants and recipients under all laws applicable to the activities of such program (including the right to claim good cause exceptions to program requirements), and shall provide the notice—

"(i) to a recipient when the recipient first receives assistance, benefits, or services under the program;

"(ii) to all such recipients on a semiannual basis; and

"(iii) orally and in writing, in the native language of the recipient and at not higher than a 6th grade level, and, if the recipient's native language is not English, through a culturally competent translation; and

"(B) train all program personnel on a regular basis regarding how to carry out the program consistent with such rights.".

(2) Penalty.—Section 409(a) (42 U.S.C. 609(a)), as amended by subsection (b), is amended by adding at the end the following:

"(18) Penalty for failure to provide notice to applicants and recipients of rights and of potential program benefits and services, and to train program personnel to respect such rights.—

"(A) In general.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(14) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

"(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.".

TITLE III—DATA COLLECTION AND REPORTING REQUIREMENTS

SEC. 301. DATA COLLECTION AND REPORTING REQUIREMENTS.

Section 411(a)(1) (42 U.S.C. 611(a)(1)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "(except for information relating to activities carried out under section 403(a)(5))" and inserting ", and, in complying with this requirement, shall ensure that such information is reported in a manner that permits analysis of the information by race, ethnicity or national origin, primary language, gender, and educational level, including analysis using a combination of these factors, and that all data, including Federal, State, and local data (whether collected by public or private local agencies or entities that administer or operate the State program funded under this part) is made public and easily accessible";

(B) by striking clause (v) and inserting the following:

"(v) The employment status, occupation (as defined by the most current Federal Standard Occupational Classification system, as of the date of the collection of the data), and earnings of each employed adult in the family.";

(C) in clause (vii), by striking "and educational level" and inserting ", educational level, and primary language";

(D) in clause (viii), by striking "and educational level" and inserting ", educational level, and primary language"; and

(E) in clause (xi), in the matter preceding subclause (I), by inserting ", including, to the extent such information is available, information on the specific type of job, or education or training program" before the semicolon;

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A), the following:

"(B) INFORMATION REGARDING APPLICANTS.—

"(i) IN GENERAL.—Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, disaggregated case record information on the number of individuals who apply for but do not receive assistance under the State program funded under this part, the reason such assistance were not provided, and the overall percentage of applications for assistance that are approved compared to those that are disapproved with respect to such month.

"(ii) REQUIREMENT.—In complying with clause (i), each eligible State shall ensure that the information required under that clause is reported in a manner that permits analysis of such information by race, ethnicity or national origin, primary language, gender, and educational level, including analysis using a combination of these factors.".

SEC. 302. ENHANCEMENT OF UNDERSTANDING OF THE REASONS INDIVIDUALS LEAVE STATE TANF PROGRAMS.

(a) CASE CLOSURE REASONS.—Section 411(a)(1) (42 U.S.C. 611(a)(1)), as amended by section 301, is amended—

(1) by redesignating subparagraph (C) (as redesignated by such section 301) as subparagraph (D); and

(2) by inserting after subparagraph (B) (as added by such section 301) the following:

"(C) DEVELOPMENT OF COMPREHENSIVE LIST OF CASE CLOSURE REASONS.—

"(i) IN GENERAL.—The Secretary shall develop, in consultation with States and individuals or organizations with expertise related to the provision of assistance under the State program funded under this part, a comprehensive list of reasons why individuals leave State programs funded under this part. In developing such list, the Secretary shall consider the full range of reasons for case closures, including the following:

"(I) Lack of access to specific programs or services, such as child care, transportation, or English as a second language classes for individuals with limited English proficiency.

"(II) The medical or health problems of a recipient.

"(III) The family responsibilities of a recipient, such as caring for a family member with a disability.

"(IV) Changes in eligibility status.

"(V) Other administrative reasons.

"(ii) OTHER REQUIREMENTS.—The list required under clause (i) shall be developed with the goal of substantially reducing the number of case closures under the State programs funded under this part for which a reason is not known.

"(iii) PUBLIC COMMENT.—The Secretary shall promulgate for public comment regulations that—

"(I) list the case closure reasons developed under clause (i);

"(II) require States, not later than October 1, 2004, to use such reasons in accordance with subparagraph (A)(xvi); and

"(III) require States to report on efforts to improve State tracking of reasons for case closures, including the identification of additional reasons for case closures not included on the list developed under clause (i).

"(iv) REVIEW AND MODIFICATION.—The Secretary, through consultation and analysis of quarterly State reports submitted under this paragraph, shall review on an annual basis whether the list of case closure reasons developed under clause (i) requires modification and, to the extent the Secretary determines that modification of the list is necessary, shall publish proposed modifications for notice and comment, prior to the modifications taking effect.".

(b) INCLUSION IN QUARTERLY STATE REPORTS.—Section 411 (a)(1)(A) (42 U.S.C. 611(a)(1)(A)) is amended—

(1) in clause (xvi)—

(A) in subclause (IV), by striking "or" at the end;

(B) in subclause (V), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(VI) a reason specified in the list developed under subparagraph (C), including any modifications of such list.";

(2) by redesignating clause (xvii) as clause (xviii); and

(3) by inserting after clause (xvi), the following:

"(xvii) The efforts the State is undertaking, and the progress with respect to such efforts, to improve the tracking of reasons for case closures.".

SEC. 303. LONGITUDINAL STUDIES OF TANF APPLICANTS AND RECIPIENTS.

(a) IN GENERAL.—Section 413 (42 U.S.C. 613) is amended by striking subsection (d) and inserting the following:

"(d) LONGITUDINAL STUDIES OF APPLICANTS AND RECIPIENTS TO DETERMINE THE FACTORS THAT CONTRIBUTE TO POSITIVE EMPLOYMENT AND FAMILY OUTCOMES.—

"(1) IN GENERAL.—The Secretary, directly or through grants, contracts, or interagency agreements, shall conduct longitudinal studies in at least 5, and not more than 10, States (or sub-State areas, except that no such area shall be located in a State in which a Statewide study is being conducted under this paragraph) of a representative sample of families that receive, and applicants for, assistance under a State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)).

"(2) REQUIREMENTS.—The studies conducted under this subsection shall—

"(A) follow families that cease to receive assistance, families that receive assistance throughout the study period, and families diverted from assistance programs; and

"(B) collect information on—

"(i) family and adult demographics (including race, ethnicity or national origin, primary language, gender, barriers to employment, educational status of adults, prior work history, prior history of welfare receipt);

"(ii) family income (including earnings, unemployment compensation, and child support);

"(iii) receipt of assistance, benefits, or services under other needs-based assistance programs (including the food stamp program, the medicaid program under title XIX, earned income tax credits, housing assistance, and the type and amount of any child care);

"(iv) the reasons for leaving or returning to needs-based assistance programs;

"(v) work participation status and activities (including the scope and duration of work activities and the types of industries and occupations for which training is provided);

"(vi) sanction status (including reasons for sanction);

"(vii) time limit for receipt of assistance status (including months remaining with respect to such time limit);

"(viii) recipient views regarding program participation; and

"(ix) measures of income change, poverty, extreme poverty, food security and use of food pantries and soup kitchens, homelessness and the use of shelters, and other measures of family well-being and hardship over a 5-year period.

"(3) COMPARABILITY OF RESULTS.—The Secretary shall, to the extent possible, ensure that the studies conducted under this subsection produce comparable results and information.

"(4) REPORTS.—

"(A) INTERIM REPORTS.—Not later than October 1, 2005, the Secretary shall publish interim findings from at least 12 months of longitudinal data collected under the studies conducted under this subsection.

"(B) SUBSEQUENT REPORTS.—Not later than October 1, 2007, the Secretary shall publish findings from at least 36 months of longitudinal data collected under the studies conducted under this subsection.".

(b) ANNUAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Section 411(b) (42 U.S.C. 611(b)) is amended—

(A) in paragraph (2)—

(i) by inserting "(including types of sanctions or other grant reductions)" after "financial characteristics"; and

(ii) by inserting ", disaggregated by race, ethnicity or national origin, primary language, gender, education level, and, with respect to closed cases, the reason the case was closed" before the semicolon;

(B) in paragraph (3), by striking "and" at the end;

(C) in paragraph (4), by striking the period and inserting "; and"; and

(D) by adding at the end the following:

"(5) the economic well-being of children and families receiving assistance under the State programs funded under this part and of children and families that have ceased to receive such assistance, using longitudinal matched data gathered from federally supported programs, and including State-by-State data that details the distribution of earnings and stability of employment of such families and (to the extent feasible) describes, with respect to such families, the distribution of income from known sources (including employer-reported wages, assistance under the State program funded under this part, and benefits under the food stamp program), the ratio of such families' income to the poverty line, and the extent to which such families receive or received noncash benefits and child care assistance, disaggregated by race, ethnicity or national origin, primary language, gender, education level, whether the case remains open, and, with respect to closed cases, the reason the case was closed.".

(2) CONFORMING AMENDMENTS.—Section 411(a) (42 U.S.C. 611(a)) is amended—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6), the following:

"(7) REPORT ON ECONOMIC WELL-BEING OF CURRENT AND FORMER RECIPIENTS.—The report required by paragraph (1) for a fiscal quarter shall include for that quarter such information as the Secretary may specify in order for the Secretary to include in the annual reports to Congress required under subsection (b) the information described in paragraph (5) of that subsection.".

SEC. 304. PROTECTION OF INDIVIDUAL PRIVACY.

Section 411 of the Social Security Act (42 U.S.C. 611) is amended by adding at the end the following:

"(c) PROTECTION OF INDIVIDUAL PRIVACY.—With respect to any information concerning individuals or families receiving assistance, or applying for assistance, under the State programs funded under this part that is publicly disclosed by the Secretary, the Secretary shall ensure that such disclosure is made in a manner that protects the privacy of such individuals and families.".

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

The amendments made by this Act take effect on October 1, 2002.

By Mr. BINGAMAN:

S. 2880. A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes; to the Committee on Energy and Natural Resources

Mr. BINGAMAN. Mr. President, I introduce legislation to designate Fort Bayard in New Mexico as a national historic landmark. I am excited to offer this bill because I believe that the history of the fort deserves Federal recognition. Fort Bayard is significant not only for the role it played as a military post in fostering early settlement in the region, but for its role as a nationally important tuberculosis sanatorium and hospital. During the 99 years spanning its establishment in 1866 through its closing as a Veterans Administration hospital in 1965, Fort Bayard served as the most prominent evidence of the Federal government's role in Southwestern New Mexico. Fort Bayard has recently been listed on the National Register of Historic Places in recognition of the historical significance of the site.

From 1866 to 1899, Fort Bayard functioned as an Army post while its soldiers, many of them African-American, or Buffalo Soldiers, protected settlers working in nearby mining district. These Buffalo Soldiers were a mainstay of the Army during the late Apache wars and fought heroically in numerous skirmishes. Like many soldiers who served at Fort Bayard, some of the Buffalo Soldiers remained in the area following their discharge. Lines of headstones noting the names of men and their various Buffalo Soldier units remain in the older section of what is now the National Cemetery. In 1992, these soldiers were recognized for their bravery when a Buffalo Soldier Memorial statue was dedicated at the center of the Fort Bayard parade ground. It gradually became apparent that the Army's extensive frontier fort system was no longer necessary. By 1890, it was clear that the era of the western frontier, at least from the Army's perspective, had ended. Fort Bayard was scheduled for closure in 1899.

Even as the last detachment of the 9th U.S. Cavalry prepared to depart the discontinued post, new Federal occupants were arriving at Fort Bayard. On August 28, 1899, the War Department authorized the surgeon-general to establish a general hospital for use as a military sanatorium. This would be the first sanatorium dedicated to the treatment of officers and enlisted men of the Army suffering form pulmonary tuberculosis. At 6,100 ft. and with a dry, sunny climate, the fort lay within what proponents of climatological therapy termed the "zone of immunity." By 1919, the cumulative effect of over 15 years of construction and improvement projects was the creation of a small, nearly self-sufficient community.

In 1920, the War Department closed the sanatorium and the United States Public Health Service assumed control of the facility. A second phase occurred in 1922 when a new agency, the Veterans' Bureau, was created within the Treasury Department and charged with operating hospitals throughout the country whose clientele were veterans requiring medical services. As a result, in the summer of 1922 the United States General Hospital at Fort Bayard was transferred to the Veterans' Bureau and became known as United States Veterans' Hospital No. 55. Its mission of treating those afflicted with tuberculosis, however, remained the same.

By 1965, there was no longer a need for a tuberculosis facility located at a high elevation in a dry climate, and the Veterans' Administration decided to close the hospital in that year. However, in part because of the concerns of the local communities that depended upon the hospital, the State of New Mexico assumed responsibility for the facility and 484 acres of the former military reservation. Since then, the State has used it for geriatric, as well as drug and alcohol rehabilitation and orthopedic programs. Because of the extensive cemetery dating to the fort and sanatorium eras at Fort Bayard, the State of New Mexico transferred 16 acres in 1975 for the creation of the Fort Bayard National Cemetery, administered by the Veterans' Administration.

For these and many other reasons, believe it is clear that Fort Bayard is historically significant and merits recognition as a national historic landmark. Fort Bayard illuminates a rich and complex story that is important to the entire nation.

By Mr. CRAIG:

S. 2883. A bill to allow States to design a program to increase parental choice in special education, to fully fund the Federal share of part B of the Individuals with Disabilities Education Act, to help States reduce paperwork requirements under part B of such Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAIG. Mr. President, I introduce The Choice IDEA Act, which would reform the Individuals with Disabilities Education Act, IDEA. The federal government began dealing with special education in the 1970's, and on the whole what has come to be known as IDEA had proven to be a remarkable success. Before federal legislation, many times a child with a disability received little or no education. And if the child did receive an education, it was often sub-standard. IDEA has undoubtedly been a success, and you will find no stronger champion of educating the disabled than I. However, the success of IDEA should not blind us to the problems it, in its current form, causes.

These problems come up every time I meet with educators and education administrators from my state. When we sit down and discuss what we in the federal government can do for them, the discussion invariably turns to IDEA. These educators and school personnel want two things: full funding of the federal government's share of

IDEA, like we promised back in the 1970's, and a reduction in paperwork. I have also talked to numerous parents about their experiences with IDEA. While many are happy with the current system, there are also many who are dissatisfied and who want more control and more choice over how their children are educated.

Some of the stories I hear are truly incredible and illustrate the serious need for IDEA reform. For example, there is a school district in North Idaho—in a county which has had very high unemployment and below average per-capita income since the early 1990's—which has well above the national average of children in special education. This district is doing a great job educating those children, but the high costs associated with doing so, and the time it takes to complete the reams of paperwork that must be filled out for every child, are severe drains on that district. I've also heard from a school superintendent in Idaho who is going through a particularly sticky due process hearing and who laments that the paperwork required by this hearing is costly, unnecessary, and takes away teachers' time from the classroom. Parents have also contacted me with their stories of how school districts have mistreated them and how they can only find the proper program for their special child at a private school. The Choice IDEA Act would help out these parents, teachers, and school administrators by fully funding IDEA by Fiscal Year 2010, giving parents significantly more control over how their children are educated, and by reducing the onerous burden of paperwork that hampers the special education process.

The centerpiece of the bill is a proposal to allow States to set up a special education system based on parental choice. States that want to reform would draw up a list of disability categories and how much it costs to educate and accommodate a child who has that disability. The States would also draw up a menu outlining the educational services each pubic school in the state offers to children with those disabilities, and how much those services cost. These services must equal the quality of the services they offer today, and the States' programs would be approved by the Department of Education. If the Department of Education approves a State's plan, parents of special education children in that State would get a voucher for each child to choose from schools' menus to meet the needs of their children. Or, if parents did not find satisfactory services from the public schools, they could take their vouchers to any private school that could meet their children's needs.

As you can see, parents would have the ultimate control over how their child is educated. Since parents would have the option of taking their voucher and leaving a school if their child was not being educated properly, the due process requirements under IDEA would not be necessary and the school personnel would have their paperwork burden dramatically reduced. Parents and school personnel could work together to find a proper diagnosis for a student who had a disability and to find the right ways to educate this child, instead of being forced into an adversarial relationship as they are today.

It is important to point out, though, that this bill has no mandate on States that they must design the system outlined above. My bill would strengthen States' rights by allowing states one more option in dealing with special education. If States want to design such a special education system, they should have the freedom to do so. As welfare reform has shown us, States are often more innovative than the Federal government in solving problems. This bill would give them one more tool to deal with the problems that are associated with IDEA.

Another important provision of this bill is that it would set up a grant program (up to $1 million) within the Department of Education to help school districts which have 15 percent or more of their students in special education hire para-professionals to help deal with the paperwork.

The Choice IDEA Act is not intended to be the final say on IDEA reform. I agree with many of the Presidential Commission's suggestions for IDEA reauthorization and hope to see them enacted into law; however, this reauthorization should include a provision giving states the option of pursuing their own reforms within the structure outlined above. When the Senate begins debating IDEA reauthorization, it is my hope that my bill will be considered and the Senate will reform IDEA so that the concept of "no child is left behind" truly includes every child.

By Mr. BAUCUS (for himself, Mr. CRAPO, Mr. JOHNSON, Mr. THOMAS, Mr. CRAIG, Mr. ENZI, Mr. CONRAD, Mr. BINGAMAN, and Mr. ALLARD):

S. 2884. A bill to improve transit service to rural areas, including for elderly and disabled; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BAUCUS. Mr. President I introduce a bill to help rural America. Now I am always trying to help Montana, but this bill will help every state. Today I introduce the MEGA RED TRANS Act. Maximum Economic Growth for America Through Investment in Rural, Elderly and Disabled Transit.

Quite simply, there are transit needs not being met nationwide. This bill addresses those needs.

This is the second bill in a series that I am introducing to highlight my proposals on reauthorization of TEA 21—the Transportation Equity Act for the 21st Century.

Last month I introduced the MEGA TRUST Act—Maximum Growth for America Through the Highway Trust Fund. Today its MEGA RED TRANS.

The Maximum Economic Growth for America Through Investment in Rural, Elderly and Disabled Transit Act or MEGA RED TRANS Act would ensure, that as Federal transit programs are reauthorized, increased funding is provided to meet the needs of the elderly and disabled and of rural and small urban areas.

There is no question that our nation's large metropolitan areas have substantial transit needs that will receive attention as transit reauthorization legislation is developed. But the transit needs of rural and smaller areas, and of our elderly and disabled citizens, also require additional attention and funding.

The bill would provide that additional funding in a way that does not impact other portions of the transit program. For example, while the bill would at least double every State's funding for the elderly and disabled transit program by FY 2004, nothing in the bill would reduce funding for any portion of the transit program or for any State.

To the contrary, the bill would help strengthen the transit program as a whole by providing that the mass Transit Account of the Highway Trust Fund is credited with the interest on its balance. This is a key provision in the MEGA TRUST Act and is also included here in the MEGA RED TRANS Act.

Specifically, the bill would set modest minimum annual apportionments, by State, for the elderly and disabled transit program, the rural transit program, and for urbanized areas with a population of less than 200,000.

It would ensure that each State gets a minimum of $11 million for these three programs.

For my State of Montana that is double what we get for those programs currently. For some other States it is more than four times what they receive.

The bill would also establish a $30 million program for essential bus service, to help connect citizens in rural communities to the rest of the world by facilitating transportation between rural areas and airports and passenger rail stations.

I am very aware of the role that public transit plays in the lives of rural citizens and the elderly and disabled. When most people hear the word "transit" they think of a light rail system. But in rural areas transit translates to buses and vanpools. Take Elaine Miller for example.

Elaine is 73 years old and lives in Missoula, MT. She depends upon the city's Mountain Line public transit system for virtually all of her transportation needs. "It's my car!" she says.

Twelve years ago, Elaine suffered a stroke and decided that it was simply too dangerous to drive anymore. Today she takes transit to the doctor and to shop. She gets her prescriptions and meets family and friends, all using public transit.

As a regular rider, however, Elaine also understands the current limitations of transit in Missoula. "Our bus service here needs to offer more service, particularly on the weekends and the evenings. I'd like to be able to take the bus to church," she says.

The frequency of bus service in Missoula, too, can often be an issue for Elaine. Last week, for example, she was left waiting more than two hours at a local store for the next bus to take her home.

"We seniors know how important the bus is to our quality of life. We really need more bus service. Without the bus, I know that myself and others would just have to stay home," says Elaine.

For Elaine, increased Federal investment in public transit in Montana would mean increased bus service in Missoula. Weekend service and increased frequency on current routes, she believes, are a great need.

I'd like to discuss another example of how rural transit and transit for the elderly and disabled is crucial to Montana. And I am sure we could easily find similar examples in every State.

Let's talk about Kathy Collins of Helena, MT.

Kathy moved to Helena in 1982 from Butte, MT, an area with no accessible transportation. In Helena, she discovered the Dial-A-Ride system, where lift-equipped vehicles could easily transport her in her wheelchair.

"It was terrific. I could get to work on time. And I could even get home on time!" lauds Collins.

While she owns a minivan that she can drive to the middle school where she teaches, she is thankful to have a transportation option in inclement weather.

"Transit gets me to and from work in the winter time. I couldn't do it without them," she says, "And for people who don't work, it's a godsend. They can't afford a taxi."

While the Dial-A-Ride system provides Collins with dependable employment transportation on weekdays, she would like to see operations expanded to evenings and weekends.

"The service is essential. You need to give people access. You need to give people control over their lives. You need to give people the mobility that the rest of the country enjoys. Just because we live in the boondocks doesn't mean we don't need to go anywhere." she says.

I couldn't agree with her more. The MEGA RED TRANS Act will help these people and millions of others around the country. Considering the enormous impact the MEGA RED TRANS Act will have on the country, it is actually a very modest proposal.

The bill would not set funding levels for the transit program as a whole, or for large transit systems.

Moreover, the call for increases in the elderly and disabled, rural, and small urban area programs are not made in a static setting, but in the context of reauthorization.

In reauthorization the overall transit program undoubtedly will grow by more than the modest increases required by the provisions of this bill. So, nothing in the bill would preclude growth in other aspects of the transit program.

In sum, the bill stands for the proposition that, as the transit program is likely to continue to grow, no less than the funding increases proposed in this bill should be provided in order to better meet the needs of rural and small urban area transit systems and the transit needs of the elderly and disabled.

I would like to thank Senators CRAPO, THOMAS, JOHNSON, ENZI, CONRAD, BINGAMAN and CRAIG for joining me on this important piece of legislation.

I'd also like to thank both the members and staff of the American Bus Association, The Community Transportation Association and the Amalgamated Transit Union, for their assistance with this legislation.

I urge my colleagues to cosponsor this bill and to work to include it in the highway and transit reauthorization, next year.

By Mr. CORZINE (for himself and Mr. AKAKA):

S. 2885. A bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, along with my distinguished colleague from Hawaii, Senator AKAKA, I am introducing The Wire Transfer Fairness and Disclosure Act, legislation that will protect consumers who send cash remittances through international money wire transfer companies by providing greater disclosure of the fees, including hidden costs, charged for those services.

Every year, thirty million Americans send their friends and relatives $40 billion in cash remittances through wire transfers. The majority of these transfers are remittances sent to their native countries by immigrants to the United States. For these individuals, many of whom are in low-to-minimum wage jobs, sending this money only increases their own personal financial burdens—but they do so to aid their families and their loved ones.

Unfortunately, these immigrants increasingly find themselves being preyed upon by the practices of some money wire transfer providers who not only charge consumers an upfront charge for the transfer service, but also hit them on the back end with hidden costs. Many of these charges are extracted when the dollars sent by the consumer are converted to the foreign currency value that is supposed to be paid out to the friend of the family member.

This exploitation is especially pervasive in Latin American and Caribbean countries. In fact, as many as 10 million Hispanic immigrants in the U.S. send remittances to their family and friends back home. Cumulatively, these individuals send $23 billion annually to some of our hemisphere's poorest economies. This money is used to pay for such basic needs such as food, medicine, and schooling.

In most Latin American and Caribbean countries, remittances far exceed U.S. development assistance. In the case of Nicaragua, Haiti, Jamaica, Ecuador and El Salvador, cash remittances account for more than 10 percent of national GDP.

These large cash flows have proven to be a powerful incentive for greed in the case of some wire transfer companies. Customers wiring money to Latin America and elsewhere in the world lose billions of dollars annually to undisclosed "currency conversion fees." In fact, many large companies aggressively target immigrant communities, often advertising "low fee" or "no fee" rates for international transfers. But these misleading ads do not always clearly disclose the fees charged when the currency is exchanged.

While large wire service companies typically obtain foreign currencies at bulk rates, they charge a significant currency conversion fee to their U.S. customers. For example, customers wiring money to Mexico are charged an exchange rate that routinely varies from the benchmark by as much as 15 percent. These hidden fees create staggering profits, allowing companies to reap billions of dollars on top of the stated fees they charge for the wire transfer services.

While this practice may not be illegal, it is wrong, and it must be stopped. The Wire Transfer Fairness and Disclosure Act requires financial institutions or money-transmitting businesses that initiate international money transfers to disclose all fees charged in an international wire transfer.

The legislation also requires these companies to provide consumers with important disclosures regarding the exchange rate used in connection with the transaction; the exchange rate prevailing at a major financial center in the foreign country whose currency is involved in the transaction; or the official exchange rate, if any, of the government or central bank of that foreign country.

The bill would additionally require disclosure to the consumer who initiates the transaction of any fees or commissions charged by transfer service providers in connection with any transaction and the exact amount of foreign currency to be received by the recipient in the foreign country, which shall be disclosed to the consumer before the transaction is consummated and printed on the receipt given to customer.

This legislation does more than merely provide better information to consumers—it should also help them financially. Consumers will see increased competition among wire transfer companies because they are better-informed and more knowledgeable. That competition will result in lower fees for the wire transfer services that will free up a greater portion of these cash remittances to go to the friends and families that they were originally intended for.

In short, this is sound public policy that empowers those who do their part to help America's economy move forward.

I hope that my colleagues will support this legislation.

Mr. AKAKA. Mr. President, I cosponsor the Wire Transfer Fairness and Disclosure Act of 2002, introduced by my colleague, Senator CORZINE. I thank Senator CORZINE and Representative LUIS GUTIERREZ for their leadership on this issue. I also want to express my appreciation to the Chairman of the Banking Committee, Senator SARBANES, for conducting a hearing on the issue of remittances.

Immigrants nationwide often send a portion of their hard-earned wages to relatives and their communities abroad. Remittances can be used to improve the standard of living of recipients by increasing access to health care and education.

Unfortunately, people who send remittances are often unaware of the fees and exchange rates used in the transaction that reduce the amount of money received by their family members. In many cases, fees for sending remittances can be ten to twenty percent of the value of the transaction. In addition to the fees, the exchange rate used in the transaction can be significantly lower than the market rate. The exchange rate used in the transaction is typically not disclosed to customers.

Consumers cannot afford to be uneducated regarding financial service options and fees placed on their transactions. This legislation is needed to provide the necessary information to consumers so that they may make informed decisions about sending money. The Wire Transfer Fairness and Disclosure Act would ensure that each customer is fully informed of all of the fees and the exchange rates used in the transaction.

If consumers are provided additional information about the transaction costs involved with sending money, they may be more likely to utilize banks and credit unions which often can provide lower cost remittances. If unbanked immigrants use the remittance services offered by banks and credit unions, they may be more likely to open up an account. Many immigrants are unbanked and lack a relationship with a mainstream financial services provider. The unbanked are more likely to use check-cashing services which charge an average fee of over nine percent. They are also more likely to utilize the services provided by pay-day and predatory lenders. The unbanked miss the opportunities for saving and borrowing at mainstream financial institutions.

This legislation is particularly important to my home State of Hawaii. Hawaii is home to significant numbers of recent immigrants from many nations, including the Philippines. The Philippines is one of the largest destinations for remittances from the United States. The gross value of remittances to the Philippines is $3.7 billion and a large portion of that amount comes from people in Hawaii.

Mr. President, I encourage all of my colleagues to support this much needed legislation and I ask unanimous consent that a copy of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2885

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wire Transfer Fairness and Disclosure Act of 2002".

SEC. 2. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.

(a) In General.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 918 through 921 as sections 919 through 922, respectively; and

(2) by inserting after section 917 the following new section:

"SEC. 918. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.

"(a) Definitions.—In this section, the following definitions shall apply:

"(1) International money transfer.—The term 'international money transfer' means any money transmitting service involving an international transaction which is provided by a financial institution or a money transmitting business.

"(2) Money transmitting service.—The term 'money transmitting service' has the same meaning as in section 5330(d)(2) of title 31, United States Code.

"(3) Money transmitting business.—The term 'money transmitting business' means any business which—

"(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, or other similar instruments; and

"(B) is not a depository institution (as defined in section 5313(g) of title 31, United States Code).

"(b) Exchange Rate and Fees Disclosures Required.—

"(1) In general.—Any financial institution or money transmitting business which initiates an international money transfer on behalf of a consumer (whether or not the consumer maintains an account at such institution or business) shall disclosure, in the manner required under this section—

"(A) the exchange rate used by the financial institution or money transmitting business in connection with such transactions;

"(B) the exchange rate prevailing at a major financial center of the foreign country whose currency is involved in the transaction, as of the close of business on the business day immediately preceding the date of the transaction (or the official exchange rate, if any, of the government or central bank of such foreign country);

"(C) all commissions and fees charged by the financial institution or money transmitting business in connection with such transaction; and

"(D) the exact amount of foreign currency to be received by the recipient in the foreign country, which shall be disclosed to the consumer before the transaction is consummated and printed on the receipt referred to in paragraph (3).

"(2) Prominent disclosure inside and outside the place of business where an international money transfer is initiated.—The information required to be disclosed under subparagraphs (A), (B), and (C) of paragraph (1) shall be prominently displayed on the premises of the financial institution or money transmitting business both at the interior location to which the public is admitted for purposes of initiating an international money transfer, and on the exterior of any such premises.

"(3) Prominent disclosure in all receipts and forms used in the place of business where an international money transfer is initiated.—All information required to be disclosed under paragraph (1) shall be prominently displayed on all forms and receipts used by the financial institution or money transmitting business when initiating an international money transfer in such premises.

"(c) Advertisements in Print, Broadcast, and Electronic Media and Outdoor Advertising.—The information required to be disclosed under subparagraphs (A) and (C) of subsection (b)(1) shall be included—

"(1) in any advertisement, announcement, or solicitation which is mailed by the financial institution or money transmitting business and pertains to international money transfers; or

"(2) in any print, broadcast, or electronic medium or outdoor advertising display not on the premises of the financial institution or money transmitting business and pertaining to international money transfers.

"(d) Disclosures in Languages Other Than English.—The disclosures required under this section shall be in English and in the same language as that principally used by the financial institution or money transmitting business, or any of its agents, to advertise, solicit, or negotiate, either orally or in writing, at that office, if other than English".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 3 months after the date of enactment of this Act.

By Mr. SMITH of New Hampshire (for himself, Mr. HELMS, and Mr. HUTCHINSON):

S. 2886. A bill to amend the Internal Revenue Code of 1986 to ensure the religious free exercise and free speech rights of churches and other houses of worship to engage in an insubstantial amount of political activities; to the Committee on Finance.

Mr. SMITH of New Hampshire. Mr. President, along with my colleagues Senators TIM HUTCHINSON and JESSE HELMS, to introduce the Houses of Worship Political Speech Protection Act.

This bill, introduced by my friend Congressman WALTER B. JONES of North Carolina, H.R. 2357, enjoys broad support on the House side with 128 bipartisan cosponsors.

This bill amends the Internal Revenue Code to permit a church to participate or intervene in a political campaign and maintain its tax-exempt status as long as such participation is not a substantial parts of its activities.

The bill replaces the absolute ban on political intervention with the "no substantial part of the activities" test currently used in the lobbying context. This bill would give clergy the freedom to speak out on moral and political issues of our day and to fully educate their congregation on where the candidates stand on the issues without the threat of losing their tax exempt status.

Senator Lyndon Johnson inserted the ban on political speech in 1954 as a floor amendment in order to hamstring certain anticommunist organizations that were opposing him in the Democratic Party. No hearings took place nor was any congressional record developed in order to explain the reasons for the ban. There is no indication that Senator Johnson intended to target churches.

Before 1954, pastors and members of many churches spoke freely about candidates and political issues. The slavery abolitionist organizations and the civil rights movement are great examples of church inspired political success.

Had the current law been enforced earlier in American history, William Lloyd Garrison could not have spoken out against slavery, nor could Martin Luther King, Jr. have spoken out against segregation.

Currently, the ban on political speech has a dramatic chilling effect on the ability of houses of worship to speak out on moral and political issues, since under Section 501(C)(3), houses of worship may not engage in even a single activity that might be regarded as participating in, or intervening in a campaign on behalf of or in opposition to a candidate for public office.

Thus ultimately restricts the clergy's freedom of speech by threatening to revoke the church's tax-exempt status if they dare to speak out on moral and political questions of our day.

Additionally, the bill seeks to shift the burden of proof from houses of worship to the IRS. Rather than require the house of worship to prove that its activities are not political at all, this bill will force the IRS to prove that its activities are in fact substantially political.

Nothing in this bill "makes" a church speak on political issues; it merely gives them the freedom to do so if they choose to.

Since so many of the issues that are debated in the halls of Congress have a moral or religious aspect to them, those who ask for help from a higher power should not be absent from the political process.

America is a religious nation. Religion affects every aspect of our culture, and yes, even our government. The views of our church-going members and their clergy are vital to a well-rounded debate on the important issues of our day.

This substantial portion of the American people who consider themselves religious and practice that religion should not be shut out of the process.

I hope more of my colleagues will join us and cosponsor this important legislation.

By Mrs. FEINSTEIN:

S. 2887. A bill to provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I introduce the Homeland Security Information Sharing Act, a bill to increase state and local access to security information that could save American lives. The House has already passed similar legislation bill sponsored by Representatives HARMAN and CHAMBLISS, and it is my understanding that the Administration supports this legislation as well.

The bill I introduce today will not solve our intelligence problems—we have a long road ahead of us before we can accomplish that. But this legislation will send a clear signal to our federal agencies that information gathered at the federal level must be shared with states and localities if we are to triumph in the battle against terrorism.

State and local law enforcement are first-line defenders of our homeland security. Too often, though, state and local officials do not receive information necessary for them to protect us. If, for instance, there were a terrorist threat against the Golden Gate Bridge in San Francisco, we would want a cooperative effort between the Federal government and local officials.

This bill would:

Direct the President to establish procedures for federal agencies to share homeland security information with state and local officials, and for all government officials to be able to communicate with each other. Local officials should quickly have access to relevant intelligence necessary to prevent or respond to attacks in their communities.

Direct the President to address concerns about too much dissemination of classified or sensitive information, by setting procedures to protect this material. This could include requiring background checks of local officials who seek access to classified information, or perhaps even non disclosure agreements so that secret information stays secret.

Direct the President to ensure that our current information sharing systems and computers are capable of sharing relevant homeland security information with each other and with state and local systems.

Mr. President, we can improve information sharing without re-inventing the wheel. The legislation applies technology already used to share information with our NATO allies and with Interpol. The information can be shared through existing networks, such as the National Law Enforcement Telecommunications System, the Regional Information Sharing Systems, and the Terrorist Threat Warning System. These systems already reach law enforcement offices throughout America.

Better information sharing will result in better homeland security. As a Congress, we are already working on making intelligence gathering and dissemination work better within the federal government. We must not forget to improve communications with state and local law enforcement as well.

I urge my colleagues to support this legislation, and I hope that we can pass it quickly in September. It is non-controversial, and would help send a clear signal that information gathering and dissemination may be our best defense against terror.

By Mrs. BOXER:

S. 2888. A bill to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that country; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, I introduced a bill that will convey the B.F. Sisk Federal Building in Fresno, California to the County of Fresno, when the new federal courthouse is completed and occupied.

Fresno County is a rapidly growing county in the heart of California's Great Central Valley. The County of Fresno's Superior Court has a serious need for new court space that will grow in the years ahead. The Sisk Building contains courtrooms and related space that will help the people of Fresno County meet those needs. The Sisk's building existing security measures are a perfect fit for Fresno County's justice system.

This legislation is a common sense measure that will allow appropriate utilization of the Sisk Building, while contributing to the ongoing revitalization of downtown Fresno. I am proud that it is yet another opportunity for the federal government to improve the lives of Fresno County's people.

By Mr. HUTCHINSON:

S. 2889. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance; to the Committee on Finance.

Mr. HUTCHINSON. Mr. President, there are 39 million uninsured people in America, and that number is predicted to grow to 50 million by 2010. Surprisingly, 80 percent of the uninsured are members of working families, who work hard everyday but simply cannot afford the rising cost of health care.

According to a recent survey by Hewitt Associates, the average insurance premium will increase more than 20 percent in 2003. This is a sharp increase from earlier forecasts. Such an increase is in addition to the double digit increase in premiums anticipated this year.

I am pleased today to introduce the Securing Access Value and Equality in Health Care Act, or SAVE Act. This bill will provide every American with a pre-payable, fully refundable tax credit toward the purchase of health insurance.

The tax credit will be $1,000 for individuals, $2,000 for married couples, and $500 per dependent, up to $3,000 per family. An additional 50 percent will be added for any additional premiums to assist those with higher costs. By being pre-payable, the credit will be available to individuals at the time of purchase, instead of when they receive their annual tax return.

A study by Professor Mark Pauly at the Wharton School at the University of Pennsylvania showed that a credit like that contained in the SAVE Act would remove 20 million Americans from the ranks of the uninsured.

The SAVE Act will provide direct assistance to millions of Americans, and over 498,000 uninsured Arkansans, in affording health insurance. I urge my colleagues to support this important legislation.

By Mr. DODD (for himself and Mr. DEWINE):

S. 2890. A bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I join with my colleague, Senator MIKE DEWINE, to introduce legislation to protect the most vulnerable members of our society: newborn infants. About 2 months ago, many families across the country celebrated Father's Day. As a first-time dad of a 10-month-old baby girl, I now know the joy of being able to experience that holiday and every other pleasure that comes along with being a father. What I also now share with parents everywhere is a constant sense of worry about whether our kids are doing well, are feeling well, and are safe. Nothing is of greater importance than the health and well-being of our children.

Thanks to incredible advances in medical technology, it is now possible to test newborns for at least 30 genetic and metabolic disorders. Many of these disorders, if undetected, would lead to severe disability or death. However, babies that are properly diagnosed and treated can go on to live healthy lives. In the most direct sense, newborn screening saves lives.

Frighteningly, the disorders that newborn screening tests for can come without warning. For most of these disorders, there is no medical history of the condition in the family, no way to predict the health of a baby based on the health of the parents. Although the disorders that are tested for are quite rare, there is a chance that any one newborn will be affected. In that sense, this is an issue that has a direct impact on the lives of every family.

Fortunately, screening has become common practice in every state. Each year, over four million infants have blood taken from their heel to detect these disorders that could threaten their life and long-term health. As a result, about one in 4,000 babies is diagnosed with one of these disorders. That means that newborn screening could save approximately 1,000 lives each year. That is 1,000 tragedies that can possibly be averted—families left with the joy of a new infant rather than absolute heartbreak.

That is the good news. However, there is so much more to be done. More than 2,000 babies born are estimated to be born every year in the United States with potentially detectable disorders that go undetected because they are not screened. These infants and their families face the prospect of disability or death from a preventable disorder. Let me repeat that—disability or death from a preventable disorder. The survival of a newborn may very well come down to the state in which it is born. Only two states, including my home state of Connecticut thanks to recent legislation, will test for all 30 disorders. The vast majority test for eight or fewer.

I recently chaired a hearing on this issue during which I related a story that illustrates the impact of newborn screening, or the lack of newborn screening, in a very personal sense. Jonathan Sweeney is a three-year-old from Brookfield, CT. At the time of his birth, the state only tested for eight disorders. He was considered a healthy baby, although he was a poor sleeper and needed to be fed quite frequently. One morning in December of 2000, Jonathan's mother, Pamela, found Jonathan with his eyes wide open but completely unresponsive. He was not breathing and appeared to be having a seizure. Jonathan was rushed to the hospital where, fortunately, his life was saved. He was later diagnosed with L-CHAD, a disorder that prevents Jonathan's body from turning fat into energy.

Despite this harrowing tale, Jonathan and his family are extremely fortunate. Jonathan is alive, and his disorder can be treated with a special diet. He has experienced developmental delays that most likely could have been avoided had he been tested and treated for L-CHAD at birth. This raises a question. Why was he not tested? Why do 47 states still not test for L-CHAD?

The primary reason for this unfortunate reality is the lack of consensus on the federal level about what should be screened for, and how a screening program should be developed. Twenty of the thirty disorders can only be detected using a costly piece of equipment called a tandem mass spectrometer. Currently, only nine states have this resource. Many health care professionals are unaware of the possibility of screening for disorders beyond what their state requires. Parents, and I include myself, are even less well-informed. My daughter Grace was born in Virginia, where they screen for nine disorders. I was extremely relieved when all of those tests came out negative. However, at that time I did not know that this screening was not as complete as it could have been. My ignorance had nothing to do with my love for my daughter or my capability as a parent. The fact is that the majority of parents do not realize that this screening occurs at all, nor are they familiar with the disorders that are being screened for. For that reason, one of the most important first steps that we can take to protect our children is to educate parents and health care professionals.

In the Children's Health Act of 2000, I supported the creation of an advisory committee on newborn screening within the Department of Health and Human Services. The purpose of this committee would be to develop national recommendations on screening, hopefully eliminating the disparities between states that currently exist. The Children's Health Act also included a provision to provide funding to states to expand their technological resources for newborn screening. Unfortunately, funds were not appropriated for either of these provisions. We are told that $25 million in appropriations is needed for this crucial initiative and we need to fight for these dollars as we develop the FY03 budget.

The legislation that we are introducing today, the Newborn Screening Saves Lives Act of 2002, seeks to address the shocking lack of information available to health care professionals and parents about newborn screening. Every parent should have the knowledge necessary to protect their child. The tragedy of a newborn's death is only compounded by the frustration of learning that the death was preventable. This bill authorizes $10 million in fiscal year 2003 and such sums as are necessary through fiscal year 2007 to HRSA for grants to provide education and training to health care professionals, state laboratory personnel, families and consumer advocates.

Our legislation will also provide states with the resources to develop programs of follow-up care for those children diagnosed by a disorder detected through newborn screening. While these families are the fortunate ones, in many cases they are still faced with the prospect of extended and complex treatment or major lifestyle changes. We need to remember that care does not stop at diagnosis. For that reason, this bill authorizes $5 million in fiscal year 2003 and such sums as are necessary through FY 2007 to HRSA for grants to develop a coordinated system of follow-up care for newborns and their families after screening and diagnosis.

Finally, the bill directs HRSA to assess existing resources for education, training, and follow-up care in the states, ensure coordination, and minimize duplication; and also directs the Secretary to provide an evaluation report to Congress two and a half years after the grants are first awarded and then after five years to assess impact and effectiveness and make recommendations about future efforts.

I urge my colleagues to support this important initiative and look forward to working together to accomplish its passage.

By Mr. KERRY (for himself, Mr. HARKIN and Ms. LANDRIEU):

S. 2891. A bill to create a 4-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, we have a shortage of childcare in this country, and it is a problem for our families, a problem for our businesses, and a problem for our economy. The Census Bureau estimates that there are approximately 24 million school age children with parents who are in the workforce or pursuing education, and the numbers are growing. There has been a 43 percent increase in dual-earner families and single parent families over the last half a century. As parents leave the home for work and education, the need for quality childcare in America continues to increase.

As Chairman of the Small Business and Entrepreneurship, I think we can foster the establishment and expansion of existing child care businesses through the Small Business Administration. Today with Senators HARKIN and LANDRIEU, I am introducing, the Child Care Lending Pilot Act, a bill to create a four-year pilot that allows small, non-profit child care businesses to access financing through SBA's 504 loans.

Non-profit child care small businesses already have access to financing through the SBA's microloan program, which many of us made possible through legislation in 1997. Microloans help with working capital and the purchase of some equipment, but there is also a need to help finance the purchase of buildings, expand existing facilities to meet child care demand, or improve facilities. It is appropriate to provide financing through the 504 program because it was created to spur economic development and rebuild communities, and child care is critical to businesses and their employees. Financing through 504 could spur the establishment and growth of child care businesses because the program requires the borrower to put down only between 10 and 20 percent of the loan, making the investment more affordable.

As anyone with children knows, quality childcare comes at a very high cost to a family, and it is especially burdensome to low-income families. The Children's Defense Fund estimates that childcare for a 4-year-old in a childcare center averages $4,000 to $6,000 per year in cities and states around the nation. In all but one state, the average annual cost of childcare in urban area childcare centers is more than the average annual cost of public college tuition.

These high costs make access to child care all but non-existent for low-income families. While some states have made efforts to provide grants and loans to assist childcare businesses, more must be done to increase the supply of childcare and improve the quality of programs for low-income families. According to the Child Care Bureau, state and federal funds are so insufficient that only one out of 10 children in low-income working families who are eligible for assistance under federal law receives it.

For parts of the country, when affordable child care is available, it is provided through non-profit child care businesses. I formed a task force in my home State of Massachusetts to study the state of child care, and of the many important findings, we discovered that more than 60 percent of the child care providers are non-profit and that there is a real need to help them finance the purchase of buildings or expand their existing space. Child care in general is not a high earning industry, and the owners don't have spare money lying around. Asking centers to charge less or cut back on employees is not the way to make childcare more affordable for families and does not serve the children well. An adequate staff is needed to make sure children receive proper supervision and support. Furthermore, if centers are asked to lower their operating costs in order to lower costs to families, the safety and quality of the childcare provided would be in jeopardy.

I urge my colleagues to support this legislation so non-profit childcare providers can access funds to start new centers or expand and improve upon existing centers.

Allowing non-profit childcare centers to receive SBA loans will be the first step toward improving the availability of childcare in the United States. Non-profit childcare centers provide the same quality of care as the for-profit centers, and non-profit centers often serve our nation's most needy communities. I hope that my colleagues will recognize the vital role that early education plays in the development of fine minds and productive citizens and realize that in this great nation, childcare should be available to all families in all income brackets.

I ask unanimous consent that the text of the bill and several letters of support be printed in the RECORD. These letters demonstrate that this is a good investment that is good for our country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Care Lending Pilot Act".

SEC. 2. CHILD CARE BUSINESS LOAN PROGRAM.

(a) LOANS AUTHORIZED.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking "The Administration" and inserting the following:

"(a) AUTHORIZATION.—The Administration";

(B) by striking "and such loans" and inserting ". Such loans"; and

(C) by striking ": *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:" and inserting a period; and

(D) by adding at the end the following:

"(b) RESTRICTIONS AND LIMITATIONS.—The authority under subsection (a) shall be subject to the following restrictions and limitations:"; and

(2) in paragraph (1)—

(A) by inserting after "USE OF PROCEEDS.—" the following:

"(A) IN GENERAL.—"; and

(B) by adding at the end the following:

"(B) LOANS TO SMALL, NON-PROFIT CHILD CARE BUSINESSES.—The proceeds of any loan described in subsection (a) may be used by the borrower to assist, in addition to other eligible small business concerns, small, non-profit child care businesses, provided that—

"(i) the loan will be used for a sound business purpose that has been approved by the Administration; and

"(ii) each such business receiving financial assistance meets all of the same eligibility requirements applicable to for-profit businesses under this title, except for status as a for-profit business.".

(b) REPORTS.—

(1) SMALL BUSINESS ADMINISTRATION.—

(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter until September 30, 2006, the Administrator of the Small Business Administration shall submit a report on the implementation of the program under subsection (a) to—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business of the House of Representatives.

(B) CONTENTS.—The report under subparagraph (A) shall contain—

(i) the date on which the program is implemented;

(ii) the date on which the rules are issued pursuant to subsection (c); and

(iii) the number and dollar amount of loans under the program applied for, approved, and disbursed during the previous 6 months.

(2) GENERAL ACCOUNTING OFFICE.—

(A) IN GENERAL.—Not later than March 31, 2006, the Comptroller General of the United States shall submit a report on the child care small business loans authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act, to—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business of the House of Representatives.

(B) CONTENTS.—The report under subparagraph (A) shall contain information gathered during the first 2 years of the loan program, including—

(i) an evaluation of the timeliness of the implementation of the loan program;

(ii) a description of the effectiveness and ease with which Certified Development Companies, lenders, and small businesses have participated in the loan program;

(iii) a description and assessment of how the loan program was marketed;

(iv) the number of child care small businesses, categorized by status as a for-profit or non-profit business and a new business or an expanded business, that—

(I) applied for loans under the program;

(II) were approved for loans under the program; and

(III) received loan disbursements under the program.

(v) of the businesses under clause (iv)(III)—

(I) the number of such businesses in each State;

(II) the total amount loaned to such businesses under the program; and

(III) the average loan amount and term.

(c) RULEMAKING AUTHORITY.—Not later than 120 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue final rules to carry out the loan program authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act.

(d) SUNSET PROVISION.—The amendments made by this section shall remain in effect until September 30, 2006, and shall apply to all loans authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act, that are made during the period beginning on the date of enactment of this Act and ending on September 30, 2006.

OMNIBANK, N.A.,
Houston, TX, July 30, 2002.

Re: Proposed Senate Bill

Hon. JOHN F. KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: Please accept this letter as my full support of the bill, soon to be introduced, proposing a Pilot Program, operating through the Small Business Administration's 504 Loan Program, that would allow Day Care facilities designated as non-profits to be eligible for the program.

I believe the demand for such a product is strong, and is fiscally sound. My reasons are as follows:

1. Day Care Centers must carry a non-profit designation in order to accept children to the center from low-income families.

2. These business benefit low-income neighborhoods and enterprise zones by purchasing property, improving the physical appearance of the community and providing safe facilities for the children. The ability to utilize the SBA–504 program would enable these businesses to decrease lease/payment expense and hence, help more children.

3. These families are in the most need for quality day care facilities in their community, since many use mass transit to get to work.

4. Small businesses have provided most of the job growth in this country in the last ten years. By enabling these Day Care Centers to operate efficiently and provide quality facilities, we will be helping small business gain and maintain employees.

5. Designation as a non-profit business does not equate to an inability to pay loans, or other business expenses.

OMNIBANK, a 50-year-old community bank in Houston, Texas, has experienced a consistent demand for loans to Day Care Centers. Most loan requests from these entities are for the purpose of acquiring or expanding property (real-estate) or acquiring transportation equipment. An example of a specific, recent request follows:

The Executive Director and Owner of Teeter Totter Day Care Center approached OMNIBANK about a loan to purchase the building used to house the Center. The owner an African-American woman, was experienced in this business. Cash flow to service the debt was sufficient and appropriate under prudent lending guidelines. The only deterrent from making a conventional loan was the amount available for down payment. Twenty percent or more is usually required.

Under the SBA–504 Program, a ten percent down payment is allowed and standard procedure for multi-use buildings. Additionally, it offers a fixed rate on the SBA portion of the loan. Most small businesses do not have access to fixed rate mortgages, due to the size of the loan requests, which enhances to attractives of the SBA 504 Program even further.

As we were preparing the request package, we realized that a non-profit did not qualify. The owner would personally guarantee the loan, and even agreed to form a for profit corporation to hold the property, because the underlying tenant was non-profit it would not work. The owner could not change Teeter Totter into a for profit corporation without jeopardizing its subsidies for low-income children.

OMNIBANK and the day care center are located in Houston's fifth ward, most of which is classified as low to moderate income. Its population is primarily low-income African Americans and Hispanics. The project was viewed by the Bank as a good loan from a business perspective, with many additional benefits to the community at large.

Ultimately, after appealing to SBA for a exception, and spending a great deal of time on the project, the loan was not completed. This delayed a good project from improving many aspects of an already underscored community, due to a simple tax classification.

As stated earlier, OMNIBANK receives consistent requests from day care centers, most of which are non-profit. I believe that a Pilot Program as proposed, will prove that these are viable and valuable businesses. I would recommend that all other standard criteria, proven track record, cash flow, management expertise, etc. remain.

I look forward to any questions you may have, or any further examples I can provide.

Sincerely,

JULIE A. CRIPE,
President and Chief Operating Officer.

NEIGHBORHOOD BUSINESS BUILDERS,
Boston, MA, July 10, 2002.

Senator JOHN KERRY,
Chairman, Senate Committee on Small Business and Entrepreneurship, Washington DC.

DEAR CHAIRMAN SENATOR KERRY, I am writing on behalf of Neighborhood Business Builders and the Jewish Vocational Service of Boston in support of legislation to expand availability of SBA 504 loans to non-profit child care centers.

I am currently the Director of Loan Funds at Neighborhood Business Builders, which is an economic development program and US SBA Intermediary Microlender. I have been lending and consulting to small businesses for the past year after fifteen years in the private sector as founder of three different companies in Boston and Los Angeles. I have an MPA from the Kennedy School at Harvard University.

I am on Senator Kerry's Child Care and Small Business Advisory Committee, and am Co-chair of the Sub Committee on Family Child Care.

I support legislative change to the 504 loan program because our committee has uncovered a need for government support of non-profit child care centers. The basic reason for this is that, while we recognize a demand for child care in every part of the country, we do not consider that the market fails to profitably supply child care in every part of the country.

For-profit entities are able to access the capital they need by (1) Demonstrating demand for the service provided and (2) Demonstrating ability to serve market rate debt with acceptable risk. Non-profit centers emerge when (1) Demonstrated demand for the service is evident but (2) The market will not support the true cost of the service provided. These non-profit centers are unable to access traditional forms of capital because they cannot demonstrate an ability to service debt at an acceptable risk.

The SBA 504 loan program would help mitigate the risk to lenders who will then be able to provide the necessary capital for the service that we know is in demand. The tax status of a child care center should be irrelevant, since the 501(C)3 status is only granted when there is evidence of a public good being provided.

Sincerely,

ERIC KORSH,
Director of Loan Funds, Neighborhood Business Builders.

WESTERN MASSACHUSETTS
ENTERPRISE FUND INC.,
Greenfield, MA, July 12, 2002.

Senator JOHN KERRY,
Chairman, Senate Committee on Small Business and Entrepreneurship, Washington, DC.

DEAR SENATOR KERRY: I am writing in strong support of the legislation to expand the use of the SBA 504 program to include the financing of non-profit children centers.

As a member of Senator Kerry's Childcare Advisory Committee and the Executive Director of the Western Massachusetts Enterprise Fund (which makes loans to non-profits), I have seen a clear need for both more flexible and lower cost financing.

The SBA 504 program meets both those needs. By providing up to 40 percent financing, the SBA 504 program can help children centers more easily leverage bank financing. Additionally, the program offers highly competitive interest rates.

Finally, allowing the SBA to make loans to non-profit childcare centers is not new to the agency. The SBA is already making working capital loans to non-profit childcare centers through its Microenterprise Loan Fund Program.

If you have any questions, please do not hesitate to contact me.

Sincerely,

CHRISTOPHER SIKES,
Executive Director.

THE COMMONWEALTH OF
MASSACHUSETTS,
EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES,
Boston, MA, July 11, 2002.

Hon. JOHN KERRY,
Senate Committee on Small Business and Entrepreneurship, Washington, DC.

DEAR CHAIRMAN KERRY:

The Massachusetts Office of Child Care Services (OCCS) fully supports expansion of the SBA 504 loan program to include non-profit child care programs. OCCS is the state's licensing agency responsible for setting and enforcing strong health, safety and education standards for child care programs throughout the Commonwealth. OCCS is also the lead state agency responsible for the administration and purchase of all human services child care subsidies across the state. As a result, this agency is greatly invested in the viability of these child care programs and in increasing the capacity of child care services to benefit more families in the Commonwealth.

Currently there are approximately 17,000 licensed child care facilities in the Commonwealth which can provide services to over 200,000 children. Many of these facilities are non-profit programs[1] that serve low-income families that are receiving child care subsidies to help them become or remain employed, and families that are or were receiving TANF. The availability and accessibility of child care is one of the main reasons that families can continue to successfully transition from welfare to work. There are currently approximately 18,000 children on the waiting list for a child care subsidy. The reauthorization of TANF may further increase the number of families seeking subsidized child care and Massachusetts must be ready to provide quality care. Accordingly, current and future non-profit programs will greatly benefit from the expansion of the SBA 504 loan program, as will the families that they serve.

OCCS is a member of the Advisory Committee on Child Care and Small Business and fully supports the Committee's mission of uniting the small business and child care communities to help providers maximize their income while providing quality child care. Expansion of the SBA 504 loan program will undoubtedly help expand the availability and accessibility of quality child care. Thank you for your support of this important legislation. If I can be of further assistance please do not hesitate to contact me.

Sincerely,

ARDITH WIEWORKA,
Commissioner.

SOUTH EASTERN ECONOMIC
DEVELOPMENT CORPORATION,
Taunton, MA, July 10, 2002.

Re: Non Profit Child Care Center Eligibility Under the SBA 504 Program

Chairman JOHN KERRY,
Senate Committee on Small Business and Entrepreneurship, Russell Building, Washington, DC.

DEAR SENATOR KERRY: As a member of the Advisory Committee on Child Care and Small Business as well as Vice President at South Eastern Economic Development (SEED) Corporation, I am writing in support of the idea of expanding the SBA 504 program to allow for non profit child care centers to be eligible for financing under the program. SEED Corporation is a Certified Development Company certified and accredited to administer the SBA 504 program throughout southeastern Massachusetts. Over the past 2 years, SEED has been the number one SBA 504 lender in the State. SEED is also an approved SBA Microenterprise Intermediary and we have enjoyed and made use of the ability to provide micro loans to non-profit child care businesses since the microenterprise intermediary legislation made the special provision for non profit child care providers to be eligible for SBA micro loan funds. My primary responsibilities at SEED include origination, underwriting and closing SBA 504 loans as well as the oversight and development of SEED's micro loan and business assistance activities.

Over the past five years, SEED has assisted over 10 FOR-PROFIT child care businesses to obtain SBA 504 financing for their start-up or expansion projects. However, we have also had to turn away an equal number of non-profit child care centers that were seeking similar assistance due to the fact that non profit entities are not eligible under the SBA 504 program.

As we have learned from discussions and analysis within the Advisory Committee on Child Care and Small Business, access to long term, fixed market or below-market rate financing is essential to any child care center. The slim margins that characterize this industry limit any child care center's ability to grow. The SBA 504 program offers the type of fixed rate financing that not only assists the business to keep its occupancy costs under control but also serves to stabilize its operations over the long term. The program also provides an incentive to a bank to provide fixed asset financing to a business that might not otherwise be able to afford a conventional commercial mortgage. The non-profit child care centers provide the same quality of care as the for-profit centers. Preventing non-profit child care center from making use of the SBA 504 program when their for profit competitiors are able to do results in discrimination against the children they serve, and, in general, the majority of child care centers operating in our state's neediest areas are non-profit.

For these reasons, I would like to support your efforts to expand the SBA 504 program enabling non-profit child care centers to be eligible for fixed asset financing under the 504 program. Thank you for your efforts.

Sincerely,

HEATHER DANTON,
Vice President.

ACÇION USA,
Boston, MA, June 8, 2002.

Hon. JOHN KERRY,
Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KERRY:

My name is Erika Eurkus, and as a member of your Advisory Committee on Child Care and Small Business, I writing to voice my support of expanding the SBA 504 loan program to include nonprofit child care centers.

I am the greater Boston program director for ACCION USA, a nonprofit "micro" lender whose mission is to make access to credit a permanent resource to low- and moderate-income small business owners in the United States—helping to narrow the income gap and provide economic opportunity to small business owners throughout the country. Many of the struggling entrepreneurs we serve are the owners of small, family-based day care centers.

At ACCION, I regularly come into contact with women and men whose dream is to operate a successful child care center—to provide a service to the community while making a better life from something they love to do. Often, what keeps these hardworking entrepreneurs from fully realizing that dream is a lack of working capital to begin and grow their businesses. Microlenders like ACCION are the only place they can turn for the crucial capital they need for their businesses. Mauro Leija, an ACCION client in San Antonio, Texas, has tried—and failed—to secure capital from commercial banks. "The loan officer at the bank said, 'Be realistic—you'll never get a loan. You have no college diploma, no capital, no history with any bank,'" Mauro remembers. This lack of economic opportunity is too often the reality for countless child care providers—most of whom earn an average of $3 per hour for their services.

With increased access to capital through the expansion of the SBA 504 loan program, small, nonprofit day care centers can continue to provide their valuable services to the community—and build a better life for their own families at the same time. Suzanne Morris of Springfield, Massachusetts, a longtime ACCION USA borrower, already illustrates the potential successes that an expanded SBA 504—and an opportunity for capital—will bring to day care owners across the country. After years of hard work and several small loans from ACCION, Suzanne has moved her day care out of the home and has expanded her staff to include seven members of the community. The business supports her family of four. She also gives back by training other local home-based day care providers in federal nutrition guidelines.

It is my hope that we can all witness more successes like those of Suzanne by opening the door to funding for small day care providers. Please include nonprofit child care centers in the scope of SBA 504.

Sincerely,

ERIKA EURKUS,
Greater Boston Program Director.

GUILD OF ST. AGNES,
CHILD CARE PROGRAMS,
Worcester, MA, July 3, 2002.

Senator JOHN KERRY,
Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Building, Washington, DC.

DEAR SENATOR KERRY, It has come to my attention that your committee is working on legislation that would expand the SBA 504 loan program to non-profit child care centers.

As the Executive Director of the Guild of St. Agnes Child Care Agency and a member of The Advisory Committee on Child Care and Small Business, I wholeheartedly support this legislation. The Guild of St. Agnes is a non-profit child care agency providing child care in Worcester, MA and its surrounding towns. Presently we care for 1200 children aged four weeks to twelve years in child care centers, family care provider's home and public schools. Of our seven centers, we currently own one.

Four of our centers are in old, worn-down buildings, causing us difficulty in recruiting new clients. As we look towards the future, the Guild of St. Agnes has set a goal of replacing these centers with new buildings. In order to accomplish this goal, we need to look for creative funding sources to support our capital campaign. The SBA 504 loan program would allow us to invest 10% of our own funds for capital expenses, borrow 50% from the government and secure a bank loan for 40%. Not only is this loan program attractive to banking institutions, it allows child care agencies like the Guild of St. Agnes to continue to grow during these economically challenging times.

I urge you to support the SBA 504 loan program legislation. The future of non-profit child care agencies such as the Guild of St. Agnes depends on it!

Sincerely,

EDWARD P. MADAUS,
Executive Director.

By Mr. KENNEDY (for himself, Mrs. CLINTON, and Mr. ROCKEFELLER):

S. 2892. A bill to provide economic security for America's workers; to the Committee on Finance.

Mr. KENNEDY. Mr. President, the U.S. is in the midst of another "jobless recovery," similar to the early 1990s, with the unemployment rate showing few signs of falling in the coming months. Over the past three months, the jobless rate has hovered around 6 percent and long-term unemployment levels now exceed those reached in any recent recession. Last month, nearly one in five unemployed workers remained out of work for six months or more. Some 150,000 jobs have been lost since the beginning of this year and 8.4 million people are currently unemployed.

The recent spate of corporate scandals has only made it worse. Sadly, Enron and WorldCom were not isolated events of corporate greed that hurt America's workers. Tens of thousands have lost their jobs because of the disgrace and mistrust company leaders created, or because of company mismanagement. At Lucent, 77,000 workers were laid off. At Kmart, 22,000 workers were laid off. At Xerox, over 13,000 workers were laid off. At Tyco, almost 10,000 workers were laid off. At Global Crossing, over 9,000 workers were laid off. At Polaroid, over 4,000 workers were laid off.

As new corporate scandals lead to additional mass lay-offs and Americans remain unemployed longer, workers are losing their unemployment benefits with no hope for a new job in sight. Too many low-wage and part-time workers remain without unemployment benefits. And benefit levels remain too low to keep families out of poverty in many states. Today, I along with Senators CLINTON and ROCKEFELLER, am introducing the Economic Security Act 2002 to protect those unemployed workers and reinvigorate the economy.

Last year, Senate Democrats responded to the recession with an immediate plan to stimulate the economy and help laid-off workers get back on their feet. In March, House Republicans finally relented and we extended unemployment benefits for millions of workers. It was a significant step forward, but it did not go far enough.

This week, economists confirmed that recovery is slow at best. Economic growth fell from 5.0 percent in the first quarter of 2002 to 1.1 percent in the second quarter. Business investment still has not recovered and continues to decline, while the trade deficit soared to record highs. Job growth, the last area of the economy to recover after a recession, continues to lag. As hundreds of thousands of workers exhaust their extended benefits, it's time to close the gaps in the extended benefit program. The Economic Security Act of 2002 will provide additional extended benefits for millions of workers who remain unemployed.

The bill will also help those workers currently left out of the unemployment insurance system, part-time and low-wage workers. Part-time work is a significant part of our modern economy and women and low-wage workers disproportionately comprise the part-time workforce. Yet, the majority of states do not provide benefits to unemployed workers seeking part-time work. The twenty States that already provide benefits to unemployed part-time workers have not found their inclusion overly costly.

In addition, according to the GAO, low-wage workers are half as likely to receive unemployment benefits than other unemployed workers, even though low-wage workers as twice as likely to be unemployed. In all but 12 States, most unemployed low-wage workers are not eligible for benefits because their most recent earnings are not counted. Failing to count a worker's most recent earnings not only denies unemployed workers benefits, but also cuts down on the duration and amount of benefits that some unemployed workers receive.

These part-time and low-wage workers pay into the unemployment system, but fail to receive benefits. In January, Democratic Senators were joined by ten of our Republican colleagues in a vote to provide temporary benefits to part-time and low-wage workers, as well as increasing benefit levels and extending benefits. The Economic Security Act of 2002 incorporates these important provisions.

Too often, those who receive unemployment find that unemployment checks are not sufficient to meet basic needs. In some states, the maximum weekly benefit amount is less than the poverty level for a one-parent, two-child family. Raising benefit levels helps families stay out of poverty and invests more in the economy. After all, unemployed workers immediately spend unemployment insurance benefits in their communities, providing immediate economic stimulus. This bill would give a boost to workers and the economy by raising temporary extended benefit levels by the greater of 15 percent or $25 a week.

As Americans exhaust their benefits in greater numbers, we must ensure that all workers can put food on their families' tables and keep a roof over their heads when jobs are scarce. And we must ensure that unemployment insurance serves the purpose for which it was created, to serve as a safety net for all workers during tough economic times and stimulate economic growth. The Economic Security Act of 2002 will be a giant leap forward for America's workers.

Mr. ROCKEFELLER. Mr. President, despite some signs of an improving economy, for hard-working Americans, it is, unfortunately, a "jobless recovery." While we see some positive economic indicators, the unemployment rate continues to rise and shows few signs of falling. For working Americans, that is bad news. Too many people are finding themselves without a job, and without a source of income.

The Labor Department reports that over the past few months, the unemployment rate has hovered around 6 percent, with 8.4 million people officially counted as unemployed. My home State of West Virginia reported an unemployment rate of 6.8 percent in June, which is only somewhat higher than the national average, but some of our counties are struggling with unemployment rates in the double digits.

Not only are more people being laid off, they are also remaining unemployed for longer. From January to May 2002, the proportion of unemployed workers who were still looking for work after 27 weeks increased by 41 percent, and unemployment levels now exceed those reached in any recent recession. Workers are suffering unemployment for longer periods, and are losing benefits before they can find new jobs. In January 2002, a total of 373,000 workers exhausted their benefits, a sizeable 11 percent increase from the same time last year.

We faced similar troubles in the early 1990s, when, amidst a recession, Congress enacted an emergency Federal extended benefits program designed to help unemployed workers and their families. Some analysts suggest that without that program, approximately 70 percent of unemployed families would have ended up with incomes below the federal poverty line. When our Nation faces such an economic downturn, action is essential to help hard-working Americans get back on their feet after a devastating layoff. Now, in the midst of another economic downturn, we must also act to provide American families with the assistance they need.

I rise today in support of a bill to be introduced by my colleague, Senator KENNEDY, that would remedy several flaws in the current unemployment benefits program. This is an enormously important piece of legislation, one that should be enacted immediately for the sake of working families who have been put out of jobs through no fault of their own.

The measure would give States administrative funding so they can distribute benefit checks punctually and accurately. It would ensure that all unemployed workers receive a full 13 weeks of benefits. And it would repeal the 20-weeks-of-work prerequisite to receiving benefits that primarily punishes low-wage workers and newer entrants to the job market.

Beginning in 1986, Federal and State governments began withholding taxes from the benefit checks of all aid recipients. However, no accommodations were made to offset these deductions, and recipients saw a significant reduction in benefits. To ameliorate this problem, Senator KENNEDY's legislation would raise benefit levels by 15 percent or $25 a week, whichever is higher.

Finally, a majority of States currently refuse benefits to unemployed workers seeking part-time work. West Virginia does cover part-time workers, but I believe every state should do this as well. Part-time work is an enormously important component of our economy, particularly as it involves large numbers of women and low-wage earners. Senator KENNEDY's bill would require states to base eligibility on a worker's most recent earnings. This seemingly technical provision would greatly expand eligibility to benefits for many workers, in my state, and across the country.

Millions of Americans are still struggling, and they do not have a steady source of income. I urge my colleagues to support this bill to reform America's unemployment insurance program; it is urgently needed and should be passed with great haste. This bill is the right thing to do for working Americans, and it is an essential measure for those still suffering from the effects of our uncertain economy.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2893. A bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I am pleased to be joined by Senator BINGAMAN in introducing legislation that declares the United States holds certain public domain lands in trust for the Pueblos of San Ildefonso and Santa Clara in New Mexico.

In 1988 the Bureau of Land Management (BLM), pursuant to the Federal Lands Policy and Management Act, declared approximately 4,484 acres located in the eastern foothills of the Jemez Mountains in north central New Mexico, including portions of Garcia and Chupadero Canyons, to be "disposal property." The Garcia Canyon surplus lands qualify for disposal partially because the tract is an isolated tract of land almost inaccessible to the general public. It is surrounded on three sides by the reservations of Santa Clara Pueblo and the Pueblo of San Ildefonso, and by U.S. Forest Service land on the remaining side. The only road access consists of unimproved roads through the two Pueblo's reservations. These factors have resulted in minimal or no public usage of the Garcia Canyon surplus lands in recent decades.

I understand that currently there are no resource permits, leases, patents or claims affecting these lands. It is unlikely that any significant minerals exist with the Garcia Canyon transfer lands. The Garcia Canyon transfer lands contain a limited amount of lesser quality forage for livestock and have not been actively grazed for over a decade. However, the Garcia Canyon surplus lands constitute an important part of the ancestral homelands of the Pueblos of Santa Clara and San Ildefonso.

Santa Clara and San Ildefonso are two of the Tewa-speaking federally-recognized Indian Pueblos of New Mexico. Both Pueblos have occupied and controlled the areas where they are presently located since many centuries before the arrival of the first Europeans in the area in late 16th century. Their homelands are defined by geographical landmarks, cultural sites, and other distinct places whose traditional Tewa names and locations have been known and passed down in each Pueblo through the generations. Based upon these boundaries, about 2,000 acres of the Garcia Canyon surplus lands is within the aboriginal domain of the Pueblo of San Ildefonso. The remaining lands, approximately 2,484 acres are in Santa Clara's aboriginal lands.

The Bureau of Land Management currently seeks to dispose of the Garcia Canyon surplus lands and the Pueblos of Santa Clara and San Ildefonso seek to obtain these lands. In addition, the BLM and Interior Department for years have supported the transfer of the land to the two Pueblos, provided the Pueblos agree upon a division of the Garcia Canyon surplus lands. In response, the two Pueblos signed a formal agreement affirming the boundary between their respective parcels on December 20, 2000.

The Pueblos of Santa Clara and San Ildefonso have worked diligently in arriving at this agreement. They have also worked collaboratively in seeking community support and garnering supporting resolutions from Los Alamos, Rio Arriba and Santa Fe Counties, the National Congress of American Indians and supporting letters from the National Audubon Society's New Mexico State Office, the Quivira Coalition and the Santa Fe Group of the Sierra Club.

This unique situation presents a win-win opportunity to support more efficient management of public resources while restoring to tribal control isolated tracts of federal disposal property. Upon transfer, the Pueblos of Santa Clara and San Ildefonso intend to maintain these lands in their natural state and use them for sustainable traditional purposes including cultural resource gathering, hunting and possibly livestock grazing. Where appropriate, both tribes are interested in performing work to restore and improve ecosystem health, particularly to support habitat for culturally significant animal and plant species. Both Pueblos have experienced Natural Resource Management and Environmental Protection programs and are capable of managing these lands for both ecologic health and community benefits.

We want to secure Congressional authorization to transfer control of these lands to the two Pueblos, with legal title being held in trust by the Secretary of Interior for each of the Pueblos for their respective portions of the property. I urge my colleagues to support this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the agreement entitled "Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract", entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term "boundary line" means the boundary line established under section 4(a).

(3) GOVERNORS.—The term "Governors" means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term "Pueblos" means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(7) TRUST LAND.—The term "trust land" means the land held by the United States in trust under section 2(a) or 3(a).

SEC. 2. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., Sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., Sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., Sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., Sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., Sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 3. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., Sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., Sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 4. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 2(b) and 3(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 2(b) and 3(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 5. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Beginning on the date of enactment of this Act—

(1) the land held in trust under section 2(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 3(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the "Pueblo Lands Act") (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

SEC. 6. EFFECT.

Nothing in this Act—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mrs. HUTCHISON, and Ms. SNOWE):

S. 2895. A bill to enhance the security of the United States by protecting seaports, and for other purposes; to the Committee, Science, and Transportation.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Comprehensive Seaport and Container Security Act of 2002 to protect against terrorist attacks on or through our Nation's seaports. I would like to thank Senators Kyl, Hutchison, and Snowe for joining me in sponsoring this bill.

Currently, our seaports are the gaping hole in our Nation's defense against terrorism. Of the over 18 million shipping containers that enter our ports each year, 6 million come from overseas. However, only 1 or 2 percent of these containers are inspected, and inspections almost invariably occur after the containers arrive in the United States.

The problem is that single container could contain 60,000 pounds of explosives, 10 to 15 times the amount in the Ryder truck used to blow up the Murrah Federal Building in Oklahoma city, and a single container ship can carry as many as 8,000 containers at one time. Containers could easily be exploited to detonate a bomb that would destroy a bridge, seaport, or other critical infrastructure, causing mass destruction and killing thousands.

Worse, a suitcase-sized nuclear device or radiological "dirty bomb" could also be installed in a container and shipped to the United States. The odds that the container would never be inspected. And, even if the container was inspected, it would be too late. The weapon would already be in the United States—most likely near a major population center.

There is no doubt in my mind that terrorists are seeking to exploit vulnerabilities at our seaports right now.

For example, a recent article in the Bangkok Post notes that "Al-Qaeda is among international terrorist organisations responsible for an increase in piracy against ships carrying radioactive materials through the Malacca Straits. . . . The terrorist groups' main aims were to obtain substances such as uranium and plutonium oxide for use in so-called dirty bombs."

In addition, any attack on or through a seaport could have devastating economic consequences. Every year U.S. ports handle over 800 million tons of cargo valued at approximately $600 billion.

Excluding trade with Mexico and Canada, America's ports handle 95 percent of U.S. trade. Two of the busiest ports in the world are in my home State of California: Los Angeles/Long Beach and at Oakland.

We cannot inspect every container coming into the United States, but we can do a better job devoting our attention to cargo that could put our national security at risk. The legislation we introduce today will ensure that we devote the limited resources we do have to inspect cargo in the most efficient and effective manner. It will allow us to reduce the size of the haystack to make it easier to find the needle.

Since September 11th, the Federal Government has taken steps to secure our airports and our borders, however, we still have not adopted a blueprint for helping protect America's 361 seaports. While the Senate passed S. 1214, a bill written by Senator Hollings last December, and the House has also passed a port security bill, conference negotiations are still ongoing.

I hope the conferees will adopt the provisions in this bill before they complete their work in conference because I believe that this bill is the only legislation that thoroughly addresses the issue of port security from the point cargo is loaded in a foreign country to its arrival on land in the United States.

We have known for a long time that America's ports needed an extensive security strategy and upgrade. In the fall of 2000, a comprehensive report was issued by the Interagency Commission on Crime and Security in U.S. Seaports. I testified before the commission and I believe its report makes a number of sensible suggestions on how we can improve security and fight crime at seaports.

Before the September 11 terrorist attacks, S. 1214 was drafted to try to implement many of the commission's recommendations. Before the bill passed the Senate in December 2001, the sponsors made some additional changes to help prevent a terrorist attack. However, I believe that there is much more Congress can do to prevent terrorists from launching a terrorist attack through our seaports.

The legislation I am introducing today will complement the Hollings bill and the seaport security legislation passed by the House. Together, I believe the provisions in these three bills will erect a formidable security barrier at our seaports.

I believe that Al Qaeda is planning to attack the United States again soon and that it may well try to do so through a U.S. seaport. Indeed, the Al Qaeda training manual specifically mentions seaports as a point of vulnerability in our security.

In addition, we know that Al Qaeda has succeeded in attacking American interests at and through seaports in the past. Let me mention some examples.

In June, the FBI issued a warning for Americans to be on the lookout for suspicious people wanting training in scuba diving or trying to rent underwater gear. Law enforcement officials fear that Al Qaeda operatives could try to blow up ships at anchor or other waterfront targets.

In May the FBI received reports that Al Qaeda terrorists may be making their way toward Southern California from a Middle Eastern port via merchant ships. Catalina Island—22 miles off the coast of Los Angles, was mentioned as a possible destination for about 40 Al Qaeda terrorists.

In October 2001, Italian authorities found an Egyptian man suspected for having ties to Al Qaeda in a container bound for Canada. He had false identifications, maps of airports, a computer, a satellite phones, cameras, and plenty of cash on hand.

In October 2000, Al Qaeda operatives successfully carried out a deadly bombing attack against the U.S.S. Cole in the port of Yemen.

In 1998, Al Qaeda bombed the American Embassies in Kenya and Tanzania. Evidence suggests that the explosives the terrorists used were shipped to them by sea. And the investigation of the embassy bombings concluded that Bin Laden has close financial tries to various shipping companies.

I believe that this legislation would go far to make the United States less vulnerable to a terrorist attack. The main provisions will: 1. Establish a risk profiling plan for the Customs Service to focus their limited inspection capabilities on high-risk cargo and containers, and 2. Push U.S. security scrutiny beyond our Nation's borders to monitor and inspect cargo and containers before they arrive near America's shores.

These provisions complement and extend a strategy Customs Commissioner Robert C. Bonner is already in the process of implementing. To prevent a weapon of mass destruction from getting to the U.S. in the first place, Customs has entered into formal agreements with a handful of foreign governments to station U.S. inspectors at ports overseas to profile high risk cargo and target suspicious shipments for inspection.

The Comprehensive Seaport and Container Security Act will also: Designate an official at each U.S. port as the primary authority responsible for security. This will enable all parties involved in business at a port to understand who has final say on all security matters.

Require the FBI to collect and make available data relating to crime at and affecting seaports. With more data, law enforcement agencies will be able to better identify patterns and weaknesses at particular ports.

Require ports to provide space to Customs so that the agency is able to use its non-intrusive inspection technology. In many cases, Customs has to keep this technology outside the port and bring it in every day, which prevents some of the best inspection technology, which is not portable, from being used.

Give Customs responsibility of licensing and overseeing regulated intermediaries in the international trade process, these intermediaries handle over 80 percent of all cargo in international trade. Currently, the U.S. Federal Maritime Commission oversees most of these intermediaries, but Customs will have more resources to oversee this regulation.

Require shippers bound for U.S. ports to transmit their cargo manifests with more detailed information at least 24 hours prior to departing from a foreign port.

Impose steep monetary sanctions for failure to comply with information filing requirements, including filing incorrect information, the current penalty is only a maximum of $1000 or $5000, depending on the offense. The Seaport Commission found that about half of the information on ship manifests was inaccurate.

Require all port employees to have biometric smart identification cards.

Restrict private vehicle access to ports.

Prohibit guns and explosives at ports, except when authorized.

Mandate that radiation detection pagers be issued to each inspector.

Requires the Transportation Security Administration to set standards to ensure each port has a secure port perimeter, secure parking facilities, controlled points of access into the port, sufficient lighting, buildings with secure doors and windows and an alarm.

Require all ports to keep sensitive information on the port secure and protected. Such information would include, but not be limited to maps, blueprints, and information on the Internet.

Require the use of high security seals on all containers coming into the U.S.

Require that each container to be transported through U.S. ports receive a universal transaction number that could be used to track container movement from origin to destination. Require shippers to have similar universal numbers.

Require all empty containers destined for U.S. ports to be secured.

Fund pilot programs to develop high-tech seals and sensors, including those that would provide real-time evidence of container tampering to a monitor at a terminal.

I believe that Congress should act quickly on this legislation. This bill could very well prevent the arrival or detonation of a nuclear "suitcase bomb" or radiological "dirty bomb" at a U.S. seaport-an attack that could bring U.S. seaborne commerce to a grinding halt, leaving our economy and national security in shambles.

In closing, I want to thank staff at the Customs Service, Transportation Security Administration, Coast Guard, and various ports for their helpful comments on this legislation. I also want to thank a "working group" of experts I assembled for their suggestions regarding the bill. These experts included former government officials, industry executives, and security consultants.

I also want to thank Senator Hollings and the other members of the Commerce Committee for the work they have done on the port security issue. I have spoken to Senator Hollings about the bill I am introducing today, and my staff is working with his staff and with the staff of other conferees to come up with comprehensive seaport security legislation.

I hope that the legislation ultimately adopted by the conference includes the Comprehensive Seaport and Container Security Act of 2002. I would urge the conferees to work quickly to draft a final bill that we can send to the President's desk before September 11.

Mr President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2895

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Seaport and Container Security Act of 2002".

SEC. 2. DEFINITIONS.

In this Act:

(1) CAPTAIN-OF-THE-PORT.—The term "Captain-of-the-Port" means the United States Coast Guard's Captain-of-the-Port.

(2) COMMON CARRIER.—The term "common carrier" means any person that holds itself out to the general public to provide transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

(3) CONTAINER.—The term "container" means a container which is used or designed for use for the international transportation of merchandise by vessel, vehicle, or aircraft.

(4) MANUFACTURER.—The term "manufacturer" means a person who fabricates or assembles merchandise for sale in commerce.

(5) MERCHANDISE.—The term "merchandise" has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

(6) OCEAN TRANSPORTATION INTERMEDIARY.—The term "ocean transportation intermediary" has the meaning given that term in section 515.2 of title 46, Code of Federal Regulations, on the date of enactment of this Act.

(7) SHIPMENT.—The term "shipment" means cargo traveling in international commerce under a bill of lading.

(8) SHIPPER.—The term "shipper" means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation is provided;

(C) the person to whom delivery of the merchandise is to be made; or

(D) a common carrier that accepts responsibility for payment of all charges applicable under a tariff or service contract.

(9) UNITED STATES SEAPORT.—The term "United States seaport" means a place in the United States on a waterway with shoreside facilities for the intermodal transfer of cargo containers that are used in international trade.

(10) VESSEL.—The term "vessel" has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

TITLE I—LAW ENFORCEMENT AT SEAPORTS

SEC. 101. DESIGNATED SECURITY AUTHORITY.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, after consultation with the Director of the Office of Homeland Security, shall designate a Director of the Port who will be the primary authority responsible for security at each United States seaport to—

(1) coordinate security at such seaport; and

(2) be the point of contact on seaport security issues for civilian and commercial port entities at such seaport.

(b) DELEGATION.—A Director of the Port may delegate the responsibilities described in subsection (a) to the Captain-of-the-Port.

SEC. 102. FBI CRIME DATA COLLECTION.

Not later than 180 days after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall implement a data collection system to compile data related to crimes at or affecting United States seaports. Such data collection system shall be designed to—

(1) identify patterns of criminal activity at particular seaports; and

(2) allow law enforcement authorities, including the designated law enforcement authority for each seaport described in section 101, to retrieve reliable data regarding such crimes.

SEC. 103. CUSTOMS SERVICE FACILITIES.

(a) OPERATIONAL SPACE IN SEAPORTS.—Each entity that owns or operates a United States seaport that receives cargo from a foreign country, whether governmental, quasi-governmental, or private, shall allow the use of permanent suitable office and inspection space within the seaport by United States Customs Service officers at no cost to the Customs Service.

(b) INSPECTION TECHNOLOGY.—The Commissioner of Customs shall maintain permanent inspection facilities that utilize available inspection technology in the space provided at each United States seaport pursuant to subsection (a).

SEC. 104. REGULATION OF OCEAN TRANSPORT INTERMEDIARIES.

(a) TRANSFER OF AUTHORITY.—The responsibility to license, and revoke or suspend a license, as an ocean transportation intermediary of a person who carries on or wishes to carry on the business of providing intermediary services is transferred from the Federal Maritime Commission to the Commissioner of Customs.

(b) RULEMAKING AUTHORITY.—Not later than 1 year after the date of enactment of this Act, the Commissioner of Customs shall issue final regulations to carry out the requirements of subsection (a). Such regulations shall require that ocean transportation intermediaries assist the Commissioner of Customs in collecting data that can be used to prevent terrorist attacks in the United States.

(c) INTERIM RULES.—The Commissioner of Customs shall enforce the regulations in part 515 of title 46, Code of Federal Regulations, as in effect on the date of enactment of this Act, until the final regulations required by subsection (b) are issued, except that any reference to the Federal Maritime Commission in such regulations shall be deemed to be a reference to the Commissioner of Customs.

(d) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions relating to ocean transportation intermediary—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under subsection (a), and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the head of the Federal agency to which such functions are transferred under this Act or other authorized official, a court of competent jurisdiction, or by operation of law.

(e) PROCEEDINGS NOT AFFECTED.—

(1) IN GENERAL.—The provisions of this Act shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the Federal Maritime Commission with respect to functions transferred by this Act, but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall

continue in effect until modified, terminated, superseded, or revoked by the head of the Federal agency to which such functions are transferred by this Act, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) Regulations.—The Commissioner of Customs is authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

TITLE II—PUSHING OUT THE BORDER

SEC. 201. INSPECTION OF MERCHANDISE AT FOREIGN FACILITIES.

Not later than 180 days after the date of enactment of this Act, the Commissioner of Customs, in consultation with the Under Secretary of Transportation for Security, shall submit to Congress a plan to—

(1) station inspectors from the Customs Service, other Federal agencies, or the private sector at the foreign facilities of manufacturers or common carriers to profile and inspect merchandise and the containers or other means by which such merchandise is transported as they are prepared for shipment on a vessel that will arrive at any port or place in the United States;

(2) develop procedures to ensure the security of merchandise inspected as described in paragraph (1) until it reaches the United States; and

(3) permit merchandise inspected as described in paragraph (1) to receive expedited inspection upon arrival in the United States.

SEC. 202. MANIFEST REQUIREMENTS.

Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(1) by striking "Any manifest" and inserting the following:

"(1) In general.—Any manifest"; and

(2) by adding at the end the following new paragraphs:

"(2) Required information.—

"(A) Requirement.—In addition to any other requirement under this section, the pilot, master, operator, or owner (or the authorized agent of such owner or operator) of every vessel required to make entry or obtain clearance under the customs laws of the United States shall, not later than 24 hours prior to departing from any foreign port or place for a port or place in the United States, transmit electronically the cargo manifest information described in subparagraph (B) in such manner and form as the Secretary shall prescribe. The Secretary shall ensure the electronic information is maintained securely, and is available only to individuals with Federal Government security responsibilities.

"(B) Content.—The cargo manifest required by subparagraph (A) shall consist of the following information—

"(i) The port of arrival and departure.

"(ii) The carrier code assigned to the shipper.

"(iii) The flight, voyage, or trip number.

"(iv) The date of scheduled arrival and departure.

"(v) A request for a permit to proceed to the destination, if such permit is required.

"(vi) The numbers and quantities from the carrier's master air waybill, bills of lading, or ocean bills of lading.

"(vii) The first port of lading of the cargo and the city in which the carrier took receipt of the cargo.

"(viii) A description and weight of the cargo (including the Harmonized Tariff Schedule of the United States number under which the cargo is classified) or, for a sealed container, the shipper's declared description and weight of the cargo.

"(ix) The shipper's name and address, or an identification number, from all air waybills and bills of lading.

"(x) The consignee's name and address, or an identification number, from all air waybills and bills of lading.

"(xi) Notice of any discrepancy between actual boarded quantities and air waybill or bills of lading quantities, except that a carrier is not required by this clause to verify boarded quantities of cargo in sealed containers.

"(xii) Transfer or transit information for the cargo while it has been under the control of the carrier.

"(xiii) The location of the warehouse or other facility where the cargo was stored while under the control of the carrier.

"(xiv) The name and address, or identification number of the carrier's customer including the forwarder, nonvessel operating common carrier, and consolidator.

"(xv) The conveyance name, national flag, and tail number, vessel number, or train number.

"(xvi) Country of origin and ultimate destination.

"(xvii) Carrier's reference number including the booking or bill number.

"(xviii) Shipper's commercial invoice number and purchase order number.

"(xix) Information regarding any hazardous material contained in the cargo.

"(xx) License information including the license code, license number, or exemption code.

"(xxi) Container number for containerized shipments.

"(xxii) Certification of any empty containers.

"(xxiii) Any additional information that the Secretary by regulation determines is reasonably necessary to ensure aviation, maritime, and surface transportation safety pursuant to those laws enforced and administered by the Customs Service.".

SEC. 203. PENALTIES FOR INACCURATE MANIFEST.

(a) Falsity or Lack of Manifest.—Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) in subsection (a)(1)—

(A) by striking "$1,000" each place it appears and inserting "$50,000"; and

(B) by striking "$10,000" and inserting "$50,000"; and

(2) by adding at the end the following new subsection:

"(c) Criminal Penalties.—Any person who ships or prepares for shipment any merchandise bound for the United States who intentionally provides inaccurate or false information, whether inside or outside the United States, with respect to such merchandise for the purpose of introducing such merchandise into the United States in violation of the customs laws of the United States, is liable, upon conviction of a violation of this subsection, for a fine of not more than $50,000 or imprisonment for 1 year, or both; except that if the importation of such merchandise into the United States is prohibited, such person is liable for an additional fine of not more than $50,000 or imprisonment for not more than 5 years, or both.".

(b) Penalties for Violations of the Arrival, Reporting, Entry, and Clearance Requirements.—Subsections (b) and (c) of section 436 of Tariff Act of 1930 (19 U.S.C. 1436 (b) and (c)) are amended to read as follows:

"(b) Civil Penalty.—Any master, person in charge of a vessel, vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $25,000 for the first violation, and $50,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) Criminal Penalty.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vessel, vehicle, or aircraft pilot who intentionally commits or causes another to commit any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $50,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $50,000 or imprisonment for not more than 5 years, or both.".

SEC. 204. SHIPMENT PROFILING PLAN.

(a) In General.—The Commissioner of Customs, after consultation with the Director of the Office of Homeland Security and the Under Secretary of Transportation for Security, shall develop a shipment profiling plan to track containers and shipments of merchandise that will be imported into the United States for the purpose of identifying any shipment that is a threat to the security of the United States before such shipment is transported to a United States seaport.

(b) Information Requirements.—The shipment profiling plan described in subsection (a) shall at a minimum—

(1) require common carriers, shippers, and ocean transportation intermediaries to provide appropriate information regarding each shipment of merchandise, including the information required under section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) as amended by this Act, to the Commissioner of Customs; and

(2) require shippers to use a standard international bill of lading for each shipment that includes—

(A) the weight of the cargo;

(B) the value of the cargo;

(C) the vessel name;

(D) the voyage number;

(E) a description of each container;

(F) a description of the nature, type, and contents of the shipment;

(G) the code number from Harmonized Tariff Schedule;

(H) the port of destination;

(I) the final destination of the cargo;

(J) the means of conveyance of the cargo;

(K) the origin of the cargo;

(L) the name of the precarriage deliverer or agent;

(M) the port at which the cargo was loaded;

(N) the name of formatting agent;

(O) the bill of lading number;

(P) the name of the shipper;

(Q) the name of the consignee;

(R) the universal transaction number or carrier code assigned to the shipper by the Commissioner of Customs; and

(S) any additional information that the Commissioner of Customs by regulation determines is reasonably necessary to ensure seaport safety.

(c) Creation of Profile.—The Commissioner of Customs shall combine the information described in subsection (b) with other law enforcement and national security information that the Commissioner believes will assist in locating containers and shipments that could pose a threat to the security of the United States to create a profile of every container and every shipment within the container that will enter the United States.

(d) CARGO SCREENING.—

(1) IN GENERAL.—Customs Service officers shall review the profile of a shipment that a shipper desires to transport into the United States to determine if the shipment or the container in which it is carried should be subjected to additional inspection by the Customs Service. In making that determination, the Customs Service officers shall consider in addition to any other relevant factors—

(A) whether the shipper has regularly shipped cargo to the United States in the past; and

(B) the specificity of the description of the shipment's contents.

(2) NOTIFICATION.—The Commissioner of Customs shall notify the shipper and the person in charge of the vessel on which a shipment is located if the shipment will be subject to additional inspection as described in paragraph (1).

(e) CONSISTENCY WITH THE AUTOMATED COMMERCIAL ENVIRONMENT PROJECT.—The Commissioner of Customs shall ensure that the automated commercial environment project developed pursuant to section 411 of the Tariff Act of 1930 (19 U.S.C. 1411) is compatible with the shipment profile plan described under this section.

TITLE III—SECURITY OF CARGO CONTAINERS AND SEAPORTS

SEC. 301. SEAPORT SECURITY CARDS.

(a) REQUIREMENT FOR CARDS.—Not later than 1 year after the date of enactment of this Act, a covered individual described in subsection (b) shall not be permitted to enter a United States seaport unless the covered individual holds a seaport security card as described in this section.

(b) COVERED INDIVIDUAL.—A "covered individual" means an individual who is regularly employed at a United States seaport or who is employed by a common carrier that transports merchandise to or from a United States seaport.

(c) ISSUANCE.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall issue a seaport security card under this section to a covered individual unless the Under Secretary determines that the individual—

(A) poses a terrorism security risk;

(B) poses a security risk under section 5103a of title 49, United States Code;

(C) has been convicted of a violation of chapter 27 of title 18, United States Code; or

(D) has not provided sufficient information to allow the Under Secretary to make the determinations described in subparagraph (A), (B), or (C).

(2) DETERMINATION OF TERRORISM SECURITY RISK.—The Under Secretary shall determine that a person poses a terrorism security risk under paragraph (1)(A) if the individual—

(A) has been convicted of a felony that the Under Secretary believes could be a terrorism security risk to the United States;

(B) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(C) otherwise poses a terrorism security risk to the United States.

(3) CONSIDERATIONS.—In making a determination under paragraph (2), the Under Secretary shall give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism security risk sufficient to warrant denial of the card.

(d) APPEALS.—The Under Secretary of Transportation for Security shall establish an appeals process under this section for individuals found to be ineligible for a seaport security card that includes notice and an opportunity for a hearing.

(e) DATA ON CARD.—The seaport identification cards required by subsection (a) shall—

(1) be tamper resistant; and

(2) contain—

(A) the number of the individual's commercial driver's license issued under chapter 313 of title 49, United States Code, if any;

(B) the State-issued vehicle registration number of any vehicle that the individual desires to bring into the seaport, if any;

(C) the work permit number issued to the individual, if any;

(D) a unique biometric identifier to identify the license holder; and

(E) a safety rating assigned to the individual by the Under Secretary of Transportation for Security.

SEC. 302. SEAPORT SECURITY REQUIREMENTS.

(a) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, after consultation with the Commissioner of Customs, shall issue final regulations setting forth minimum security requirements including security performance standards at United States seaports. The regulations shall—

(1) limit private vehicle access to United States seaports to vehicles that are registered at the seaport and display a seaport registration pass;

(2) prohibit individuals, other than law enforcement officers, from carrying firearms or explosives inside a United States seaport without written authorization from the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port;

(3) prohibit individuals from physically accessing a United States seaport without a seaport specific access pass;

(4) require that Customs Service officers, and other appropriate law enforcement officers, at United States seaports be provided and utilize personal radiation detection pagers to increase the ability of the Customs Service to accurately detect radioactive materials that could be used to commit terrorist acts in the United States;

(5) require that each United States seaport maintain—

(A) a secure perimeter;

(B) secure parking facilities;

(C) monitored or locked access points;

(D) sufficient lighting; and

(E) secure buildings within the seaport; and

(6) include any additional security requirement that the Under Secretary determines is reasonably necessary to ensure seaport security.

(b) LIMITATION.—Except as provided in subsection (c), any United States seaport that does not meet the minimum security requirements described in subsection (a) is prohibited from—

(1) handling, storing, stowing, loading, discharging, or transporting dangerous cargo; and

(2) transferring passengers to or from a passenger vessel that—

(A) weighs more than 100 gross tons;

(B) carries more than 12 passengers for hire; and

(C) has a planned voyage of more than 24 hours, part of which is on the high seas.

(c) EXCEPTION.—The Under Secretary of Transportation for Security may waive 1 or more of the minimum requirements described in subsection (a) for a United States seaport if the Secretary determines that it is not appropriate for such seaport to implement the requirement.

SEC. 303. SECURING SENSITIVE INFORMATION.

(a) REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port of each United States seaport shall secure and protect all sensitive information, including information that is currently available to the public, related to the seaport.

(b) SENSITIVE INFORMATION.—In this section, the term "sensitive information" means—

(1) maps of the seaport;

(2) blueprints of structures located within the seaport; and

(3) any other information related to the security of the seaport that the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port determines is appropriate to secure and protect.

SEC. 304. CONTAINER SECURITY.

(a) CONTAINER SEALS.—

(1) APPROVAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Security and the Commissioner of Customs shall jointly approve minimum standards for high security container seals that—

(A) meet or exceed the American Society for Testing Materials Level D seals;

(B) permit each seal to have a unique identification number; and

(C) contain an electronic tag that can be read electronically at a seaport.

(2) REQUIREMENT FOR USE.—Within 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security shall deny entry by a vessel into the United States if the containers carried by the vessel are not sealed with a high security container seal approved under paragraph (1).

(b) IDENTIFICATION NUMBER.—

(1) REQUIREMENT.—A shipment that is shipped to or from the United States either directly or via a foreign port shall have a designated universal transaction number.

(2) TRACKING.—The person responsible for the security of a container shall record the universal transaction number assigned to the shipment under subparagraph (1), as well as any seal identification number on the container, at every port of entry and point at which the container is transferred from one conveyance to another conveyance.

(c) PILOT PROGRAM.—

(1) GRANTS.—The Under Secretary of Transportation for Security is authorized to award grants to eligible entities to develop improved seals for cargo containers that are able to—

(A) immediately detect tampering with the seal;

(B) immediately detect tampering with the walls, ceiling, or floor of the container that indicates a person is attempting to improperly access the container; and

(C) transmit information regarding tampering with the seal, walls, ceiling, or floor of the container in real time to the appropriate authorities at a remote location.

(2) APPLICATION.—Each eligible entity desiring a grant under this subsection shall

submit an application to the Under Secretary at such time, in such manner, and accompanied by such information as the Under Secretary may reasonably require.

(3) ELIGIBLE ENTITY.—In this subsection, the term "eligible entity" means any national laboratory, nonprofit private organization, institution of higher education, or other entity that the Under Secretary determines is eligible to receive a grant authorized by paragraph (1).

(d) EMPTY CONTAINERS.—

(1) CERTIFICATION.—The Commissioner of Customs shall issue regulations that set out requirements for certification of empty containers that will be shipped to or from the United States either directly or via a foreign port. Such regulations shall require that an empty container—

(A) be inspected and certified as empty prior to being loaded onto a vessel for transportation to a United States seaport; and

(B) be sealed with a high security container seal approved under subsection (a)(1) to enhance the security of United States seaports.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 315—CONGRATULATING LANCE ARMSTRONG FOR WINNING THE 2002 TOUR DE FRANCE

Mrs. HUTCHISON (for herself, Mr. GRAMM, Ms. SNOWE, Mr. BROWNBACK, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 315

Whereas Lance Armstrong completed the 2,036-mile, 20-day course in 82 hours, 5 minutes, and 12 seconds to win the 2002 Tour de France, 7 minutes and 17 seconds ahead of his nearest competitor;

Whereas Lance Armstrong's win on July 28, 2002, in Paris, marks his fourth successive victory of the Tour de France, a feat surpassing all cycling records previously attained by an American cyclist;

Whereas Lance Armstrong displayed incredible perseverance, determination, and leadership to prevail over the mountainous terrain of the Alps and Pyrenees, vast stretches of countryside, and numerous city streets during the course of the premier cycling event in the world;

Whereas Lance Armstrong is the first cancer survivor to win the Tour de France;

Whereas in 1997, Lance Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer that had spread throughout his abdomen, lungs, and brain, and after treatment has remained cancer-free for the past 5 years;

Whereas Lance Armstrong's bravery and resolution to overcome cancer has made him a role model to cancer patients and their loved ones, and his efforts through the Lance Armstrong Foundation have helped to advance cancer research, diagnosis, and treatment, and after-treatment services;

Whereas Lance Armstrong has been vital to the promotion of cycling as a sport, a healthy fitness activity, and a pollution-free transportation alternative; and

Whereas Lance Armstrong's accomplishments as an athlete, teammate, father, husband, cancer survivor, and advocate have made him an American hero: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Lance Armstrong and his team on his historic victory of the 2002 Tour de France;

(2) commends the unwavering commitment to cancer awareness and survivorship demonstrated by Lance Armstrong; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to Lance Armstrong.

SENATE RESOLUTION 316—A BILL DESIGNATING THE YEAR BEGINNING FEBRUARY 1, 2003, AS THE "YEAR OF THE BLUES"

Mrs. LINCOLN (for herself, Mr. COCHRAN, Mr. THOMPSON, and Mr. FRIST) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 316

Whereas blues music is the most influential form of American roots music, with its impact heard around the world in rock and roll, jazz, rhythm and blues, country, and even classical music;

Whereas the blues is a national historic treasure, which needs to be preserved, studied, and documented for future generations;

Whereas the blues is an important documentation of African-American culture in the twentieth century;

Whereas the various forms of the blues document twentieth-century American history during the Great Depression and in the areas of race relations, pop culture, and the migration of the United States from a rural, agricultural society to an urban, industrialized Nation;

Whereas the blues is the most celebrated form of American roots music, with hundreds of festivals held and millions of new or reissued blues albums released each year in the United States;

Whereas the blues and blues musicians from the United States, whether old or new, male or female, are recognized and revered worldwide as unique and important ambassadors of the United States and its music;

Whereas it is important to educate the young people of the United States to understand that the music that they listen to today has its roots and traditions in the blues;

Whereas there are many living legends of the blues in the United States who need to be recognized and to have their story captured and preserved for future generations; and

Whereas the year 2003 is the centennial anniversary of when W.C. Handy, a classically-trained musician, heard the blues for the first time, in a train station in Mississippi, thus enabling him to compose the first blues music to distribute throughout the United States, which led to him being named "Father of the Blues": Now, therefore, be it

Resolved, That the Senate—

(1) designates the year beginning February 1, 2003, as the "Year of the Blues"; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe the "Year of the Blues" with appropriate ceremonies, activities, and educational programs.

Mrs. LINCOLN. Mr. President, I submitted legislation designating the year beginning February 1, 2003, as the Year of the Blues and requesting that the President issue a proclamation calling on the people of the United States to observe the "Year of the Blues" with appropriate ceremonies, activities, and educational programs. I am joined by Senators COCHRAN, THOMPSON, and FRIST and ask unanimous consent that it be printed in the RECORD.

It has been said that "Blues is more than music; Blues is culture. Blues is America." As a native of Helena, Arkansas, I could not agree more. Growing up in the Delta, I often listened to the blues during the famous "King Biscuit Time" show on my hometown station, KFFA radio. The songs I heard often told stories of both celebration and triumph, as well as sorrow and struggle.

Although its roots are in the tradition of the primitive songs of the old Southern sharecroppers, the blues has left an important cultural legacy in our country and has documented African-American history in the last century. As the blues began to transform in style and content throughout the twentieth century, its evolution paralleled the migration of American life from a rural, agricultural society to an urban industrialized nation. The blues has also left an indelible impression on other forms of music with its influence heard in jazz, rock and roll, rhythm and blues, country, and even classical music. Despite these facts, though, many young people today do not understand the rich heritage of the blues or recognize its impact on our nation and our world.

That is why I am delighted to introduce this resolution and participate in the Year of the Blues project. Coordinated by The Blues Foundation and Experience Music Project, The Year of the Blues is a multi-faceted entertainment, education, and outreach program recently formed to both celebrate and create greater awareness for the blues and its place in the history and evolution of music and culture, both in the United States and around the world. The program is anchored by high profile events, and beginning next year, it will feature a wide array of participants, projects, and components designed to reach a large audience, as well as support blues oriented education and outreach programs, such as Blues in the Schools.

This project also takes on a special meaning for me because I am a "daughter of the Delta," and my hometown of Helena has played a large role in the development of the blues. Today, Helena serves as a temporary blues Mecca each October when the three day King Biscuit Blues Festival takes place. And as I noted earlier, it is also the site of one of the longest running daily music shows, "King Biscuit Time," which continues to air every weekday at 12:15 pm on KFFA radio from the Delta Cultural Center Visitors' Center. As long as I can remember, "King Biscuit Time" has been an integral part of life and culture in the Delta. Debuting in

November 1941, "King Biscuit Time" originally featured famous harmonica player Sonny Boy Williamson, guitarist Robert Junior Lockwood, and the King Biscuit Entertainers. When recently noting the uniqueness of the show, long-time host "Sunshine" Sonny Payne recalled that many of the songs played on "King Biscuit Time" originated during the live broadcasts, and in some cases, words to the songs were known to change day to day. After becoming involved with this project, I recently came across an article "Pass the biscuits, cause it's King Biscuit Time . . . " written by freelance writer Lex Gillespie. I believe this article provides an accurate account of the development of blues in the South, and I ask unanimous consent to submit it for the RECORD.

So as you can see, the blues has been an important part of my life and the life of many others. It's a style of music that is, in its essence, truly American. But as we move into a new century and embrace new forms and styles of music, we must not allow today's youth to forget the legacy of our past. By teaching the blues, promoting the blues, and celebrating the blues, we can ensure that the rich culture and heritage of our forefathers will always live on. I urge my colleagues to support this resolution.

Mr. President, ever since it hit the airwaves one lunchtime fifty-six years ago this November, "King Biscuit Time" has profoundly influenced the development and popularity of the blues. As the oldest and longest-running blues program on the radio, it helped promote the careers of bluesmen who pioneered this musical style and later brought it from street corners and juke joints in the South to an international audience. And today, KFFA and Helena are even "must see" stops for Japanese and European tourists who want to learn about the cultural roots of the blues.

"First things first," recalls Sonny "Sunshine" Payne, the program's host for over eleven thousand broadcasts; King Biscuit Time started when guitarist Robert Junior Lockwood and harmonica player Sonny Boy Williamson were told they would have to get a sponsor to get on the air." That was 1941, when Payne was a teenager cleaning 78 rpm's and running errands at KFFA. "They came to the station one day and I showed them in to station manager Sam Anderson . . . he sent them over to the Interstate Grocery Company and its owner Max Moore who had a flour called "King Biscuit Flour . . ."

Lockwood and Williamson became the show's original King Biscuit Entertainers who advertised flour and corn meal in Helena and the surrounding Delta region; and after a lucky break, Sonny Payne took over as program host when the announcer lost his script while on the air. The program was a smash hit, thanks mostly to the playing and on-air presence of harp player Williamson. He became so popular that the sponsor named its product "Sonny Boy Corn Meal" and he was, and still is, pictured, smiling and with his harmonica, on a burlap sack of his own brand of meal.

Williamson was a musical pioneer in his own right. He was one of the first to make the harmonica the centerpiece in a blues band. His unique phrasings, compared by many to the human voice, influenced countless harp players.

His partner, Robert Junior Lockwood, stepson of the legendary Robert Johnson, also influenced the blues style. A fan of big band jazz, he incorporated jazzier elements into the blues, often playing the guitar with his fingers.

As years passed, the duo expanded into a full band, including piano player "Pine Top" Perkins, Houston Stackhouse and "Peck" Curtis, and musicians who played on the show also advertised local appearances that gave them more work.

With the success of "King Biscuit Time," Helena soon became a center for the blues. It was a key stopping off point for black musicians on the trip north to the barrooms and clubs of Chicago's South and West sides. Already, in the thirties, the town had seen the likes of pianist Memphis Slim and Helena native Roosevelt Sykes, as well as guitarists Howlin' Wolf, Honeyboy Edwards, and Elmore James. And when the program went on the air, it helped shape the early careers of many an aspiring musician. "Little Walter" Jacobs and Jimmy Rogers, who later played with Muddy Waters, came to live and learn in Helena in the mid-1940's. Muddy Waters also brought his band to Helena to play on KFFA and in bars in the area. Teenager Ike Turner first heard the blues on KFFA around that time, and King Biscuit pianist "Pine Top" Perkins gave him lessons in his trademark boogie woogie style.

The program also influenced other stations to put the blues on the radio. Its initial popularity convinced advertisers that the blues had commercial potential. "It was a major breakthrough," explains folklorist Bill Ferris, director of the Center for the Study of Southern Culture at Ole Miss; "King Biscuit Time was a discovery of an audience and a market . . . that hitherto radio had not really understood." Across the Mississippi River from Helena, radio station WROX put the South's first black deejay, Early Wright, on the air spinning blues and gospel records in 1947. Upriver in Memphis, station WDIA the next year became the first southern station with an all-black staff, including a young musician named Riley "B. B." King, who got an early break as a deejay. And, in Nashville in the late forties, station WLAC reached nearly half the country with its late-night blues and R&B shows. All of these programs and stations owe an enormous debt to "King Biscuit Time."

And today, the legacy of the show continues, with blues programs heard on radio stations across the U.S., the recordings of the many "King Biscuit Entertainers," and the yearly King Biscuit festival in Helena celebrating the city's cultural heritage and significant role in developing and promoting the blues.

SENATE RESOLUTION 317—TO AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the collapse of Enron Corporation and associated misconduct to determine what took place and what, if any, legislative, regulatory or other reforms might be appropriate to prevent similar corporate failures and misconduct in the future;

Whereas, the Subcommittee has received a number of requests from law enforcement and regulatory officials and agencies and court-appointed officials for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duty authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the collapse of Enron Corporation and associated misconduct.

SENATE RESOLUTION 318—DESIGNATING AUGUST 2002, AS "NATIONAL MISSING ADULT AWARENESS MONTH"

Mrs. LINCOLN submitted the following resolution; which was considered and agreed to:

S. RES. 318

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing;

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 2002, as "National Missing Adult Awareness Month"; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

SENATE RESOLUTION 319—RECOGNIZING THE ACCOMPLISHMENTS OF PROFESSOR MILTON FRIEDMAN

Mr. GRAMM submitted the following resolution; which was considered and agreed to:

S. RES. 319

Whereas California resident and Nobel Laureate economist Professor Milton Friedman:

Whereas he was born on this day, July 31, in the year 1912, the fourth and youngest child to Austro-Hungarian immigrants in Brooklyn, New York;

Whereas he served as a research staffer to the National Bureau of Economic Research from 1937 to 1981;

Whereas he helped implement wartime tax policy at the United States Treasury from 1941 to 1943, and further contributed to the war effort from 1943 to 1945 at Columbia University by studying weapons design and military tactics;

Whereas he served as a professor of economics at the University of Chicago from 1946 to 1976;

Whereas he was a founding member and president of the Mont Pelerin Society;

Whereas he was awarded the Bank of Sweden Prize in Economic Sciences in memory of Alfred Nobel in 1976;

Whereas since 1977 has served as a Senior Research Fellow at the Hoover Institution on War, Revolution, and Peace at Stanford University;

Whereas in 1988 was awarded the Presidential Medal of Freedom; and

Whereas he has been a champion of an all-volunteer armed forces, an advisor to presidents, and has taught the American people the value of capitalism and freedom through his public broadcasting series,

Be it therefore *Resolved*, That the United States Senate commend and express its deep gratitude to Professor Milton Friedman for his invaluable contribution to public discourse, American democracy, and the cause of human freedom.

SENATE CONCURRENT RESOLUTION 134—EXPRESSING THE SENSE OF CONGRESS TO DESIGNATE THE FOURTH SUNDAY OF EACH SEPTEMBER AS "NATIONAL GOOD NEIGHBOR DAY"

Mr. BAUCUS (for himself, Mr. BURNS, Mr. MILLER, Mr. LEVIN, Mr. COCHRAN, Mrs. CLINTON, Ms. LANDRIEU, Mr. JOHNSON, Mr. CRAPO, Mr. HELMS, and Mr. STEVENS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 134

Whereas while our society has developed highly effective means of speedy communication around the world, it has failed to ensure communication around the world and among individuals who live side by side;

Whereas the endurance of human values and consideration for others is of prime importance if civilization is to survive; and

Whereas being good neighbors to those around us is the first step toward human understanding: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the President should—

(1) issue a proclamation designating the fourth Sunday of each September as "National Good Neighbor Day"; and

(2) call upon the people of the United States and interested groups and organizations to observe such day with appropriate ceremonies and activities.

Mr. BAUCUS. Mr. President, I introduce a resolution to designate the fourth Sunday of each September as National Good Neighbor Day.

Back in the 1970's, a wonderful lady from Montana named Becky Mattson came up with the idea of National Good Neighbor Day. She observed that technology was allowing the world to grow closer together. Television allowed individuals to learn about new cultures and ways of life. Wide use of the telephone was allowing people to communicate from across the globe. However, people were becoming less likely to get to know their next-door neighbor.

She concluded that, as a nation, we should place greater emphasis on the importance of community and being a good neighbor. Becky believed that kids who were taught to be good neighbors would become adults who were good neighbors and that a day dedicated to this cause would be a catalyst to encourage families to be good neighbors.

Becky was successful in her efforts and with the help of the late Senator Mansfield, three presidents—President Carter, President Ford, and President Nixon proclaimed the fourth Sunday of September National Good Neighbor Day.

Now, in the aftermath of the events of September 11, Americans have united in an unprecedented way. Strangers, friends, colleagues, classmates, and family have exhibited the best of the human spirit in the face of enormous tragedy. From the firefighters and rescue workers in New York City and at the Pentagon to the second graders who have held bake sales to raise money for the families of victims, Americans have defined the meaning of a good neighbor.

Now, when illustrating the definition of a good neighbor means more than ever before, both Becky and I believe that National Good Neighbor Day should be made permanent. Having a day designated to being a good neighbor will reinforce the strength of our communities and show our resolve to be united as a nation. I thank the cosponsors to this resolution—Senators BURNS, MILLER, LEVIN, COCHRAN, CLINTON, LANDRIEU, and JOHNSON and I encourage all of my colleagues to support it. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

SENATE CONCURRENT RESOLUTION 135—EXPRESSING THE SENSE OF CONGRESS REGARDING HOUSING AFFORDABILITY AND URGING FAIR AND EXPEDITIOUS REVIEW BY INTERNATIONAL TRADE TRIBUNALS TO ENSURE A COMPETITIVE NORTH AMERICAN MARKET FOR SOFTWOOD LUMBER

Mr. NICKLES (for himself, Mr. KYL, Mr. ROBERTS, Mr. INHOFE, Mr. BUNNING, Mr. GRAHAM, Mr. BAYH, Mr. HAGEL, and Mrs. CARNAHAN) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 135

Whereas the United States and Canada have, since 1989, worked to eliminate tariff and nontariff barriers to trade;

Whereas free trade has greatly benefitted the United States and Canadian economies;

Whereas the U.S. International Trade Commission only found the potential for a Threat of Injury (as opposed to actual injury) to domestic lumber producers but the Department of Commerce imposed a 27 percent duty on U.S. lumber consumers;

Whereas trade restrictions on Canadian lumber exported to the U.S. market have been an exception to the general rule of bilateral free trade;

Whereas the legitimate interests of consumers are often overlooked in trade disputes;

Whereas the availability of the affordable housing is important to American home buyers and the need for the availability of such housing, particularly in metropolitan cities across America, is growing faster than it can be met;

Whereas imposition of special duties on U.S. consumers of softwood lumber, essential for construction of on-site and manufactured homes, jeopardizes housing affordability, and

Whereas the United States has agreed to abide by dispute settlement procedures in the World Trade Organization and the North American Free Trade Agreement, providing for international review of national remedy actions; and,

Whereas the World Trade Organization and North American Free Trade Agreement dispute panels are reviewing findings by the ITC: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), that it is the sense of the Congress that—

(1) The Department of Commerce and U.S. Trade Representative should work to assure that no delays occur in resolving the current disputes before the NAFTA and WTO panels, supporting a fair and expeditious review;

(2) U.S. anti-dumping and countervail law is a rules-based system that should proceed to conclusion in WTO and NAFTA trade panels;

(3) The President should continue discussions with the Government of Canada to promote open trade between the United States and Canada on softwood lumber free of trade restraints that harm consumers;

(4) The President should consult with all stakeholders, including consumers of lumber products in future discussions regarding any terms of trade in softwood lumber between the United States and Canada.

SENATE CONCURRENT RESOLUTION 136—REQUESTING THE PRESIDENT TO ISSUE A PROCLAMATION IN OBSERVANCE OF THE 100TH ANNIVERSARY OF THE FOUNDING OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. BAUCUS (for himself and Mr. BURNS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary.

S. CON. RES. 136

Whereas on September 17, 1902, when Theodore Roosevelt was President, 8 wildlife managers and game wardens from 6 States met in West Yellowstone, Montana, on behalf of the country's beleaguered fish and wildlife populations, and established the National Association of Game and Fish Wardens and Commissioners, which later became the International Association of Fish and Wildlife Agencies (IAFWA);

Whereas 100 years later, IAFWA represents the fish and wildlife agencies of all 50 States and enjoys the membership of several Federal natural resource agencies, the Federal and provincial fish and wildlife agencies of Canada, and the Federal natural resource agency of Mexico;

Whereas IAFWA has been a significant force in the enactment of fish and wildlife conservation treaties and Federal statutes too numerous to enumerate, including the Migratory Bird Treaty Act; the Pittman-Robertson Wildlife Restoration Act; the Dingell-Johnson Sportfish Restoration Act; all farm bills enacted since 1985; the North American Wetlands Conservation Act; the National Wildlife Refuge System Improvement Act of 1997, and the Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000, to mention but a few;

Whereas IAFWA continues to promote the sustainable use of natural resources, to encourage cooperation and coordination of fish and wildlife conservation and management at all levels of government; to encourage professional management of fish and wildlife; to develop coalitions among conservation organizations to promote fish and wildlife interests; and to foster public understanding of the need for conservation; and

Whereas the State fish and wildlife agencies have successfully restored healthy fish and wildlife populations enjoyed by all Americans largely using Federal excise taxes paid by hunters and anglers into the Federal trust funds known as the Pittman-Robertson, Dingell-Johnson, and Wallop-Breaux trust funds, and using State hunting and fishing license fees: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) recognizes the significance of the centennial of the establishment of the entity that became the International Association of Fish and Wildlife Agencies;

(2) acknowledges the outstanding contributions of its members agencies to fish and wildlife conservation; and

(3) requests the President to issue a proclamation observing the 100th anniversary of the founding of the International Association of Fish and Wildlife Agencies.

SENATE CONCURRENT RESOLUTION 137—EXPRESSING THE SENSE OF CONGRESS THAT THE FEDERAL MEDIATION AND CONCILIATION SERVICE SHOULD EXERT ITS BEST EFFORTS TO CAUSE THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AND THE OWNERS OF THE TEAMS OF MAJOR LEAGUE BASEBALL TO ENTER INTO A CONTRACT TO CONTINUE TO PLAY PROFESSIONAL BASEBALL GAMES WITHOUT ENGAGING IN A STRIKE, TO LOCKOUT, OR ANY CONDUCT THAT INTERFERES WITH THE PLAYING OF SCHEDULED PROFESSIONAL BASEBALL GAMES

Mr. MILLER submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 137

Whereas major league baseball is a national institution and is commonly referred to as "the national pastime";

Whereas major league baseball and its players played a critical role in restoring America's spirit following the tragic events of September 11, 2001;

Whereas major league baseball players are role models to millions of young Americans; and

Whereas while the financial issues involved in this current labor negotiation are significant, they pale in comparison to the damage that will be caused by a strike or work stoppage: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in accordance with section 203(b) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—

(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to resolve labor contract disputes relating to entering into a collective bargaining agreement; and

(2) use its best efforts to bring the parties to agree to such contract without engaging in a strike, a lockout, or any other conduct that interferes with the playing of scheduled professional baseball games.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4467. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4468. Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 2487, to provide for global pathogen surveillance and response.

SA 4469. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253, To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes.

SA 4470. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253, supra.

TEXT OF AMENDMENTS

SA 4467. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Homeland Security and Combating Terrorism Act of 2002".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 3 divisions as follows:

(1) Division A—National Homeland Security and Combating Terrorism.

(2) Division B—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) Division C—Federal Workforce Improvement.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

Sec. 100. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security.
Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.

Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Office of International Affairs.
Sec. 114. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 134. Directorate of Emergency Preparedness and Response.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Sec. 154. Designation of National Emergency Preparedness Week.

Subtitle D—Miscellaneous Provisions

Sec. 161. National Bio-Weapons Defense Analysis Center.
Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.
Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
Sec. 165. Whistleblower protection for certain airport employees.
Sec. 166. Bioterrorism preparedness and response division.
Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 168. Rail security enhancements.
Sec. 169. Grants for firefighting personnel.
Sec. 170. Review of transportation security enhancements.
Sec. 171. Interoperability of information systems.

Subtitle E—Transition Provisions

Sec. 181. Definitions.
Sec. 182. Transfer of agencies.
Sec. 183. Transitional authorities.
Sec. 184. Incidental transfers and transfer of related functions.
Sec. 185. Implementation progress reports and legislative recommendations.
Sec. 186. Transfer and allocation.
Sec. 187. Savings provisions.
Sec. 188. Transition plan.
Sec. 189. Use of appropriated funds.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Procurement of temporary and intermittent services.
Sec. 196. Preserving non-homeland security mission performance.
Sec. 197. Future Years Homeland Security Program.
Sec. 198. Protection of voluntarily furnished confidential information.
Sec. 199. Authorization of appropriations.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

Sec. 201. National Office for Combating Terrorism.
Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

Sec. 301. Strategy.
Sec. 302. Management guidance for Strategy implementation.
Sec. 303. National Combating Terrorism Strategy Panel.

TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 401. Law enforcement powers of Inspector General agents.

TITLE V—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 501. Definition.
Sec. 502. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 503. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 504. Increased micro-purchase threshold for certain procurements.
Sec. 505. Application of certain commercial items authorities to certain procurements.
Sec. 506. Use of streamlined procedures.
Sec. 507. Review and report by Comptroller General.

Subtitle B—Other Matters

Sec. 511. Identification of new entrants into the Federal marketplace.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title.
Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement and Border Affairs.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Executive Office for Immigration Review authorities not affected.
Sec. 1119. Other authorities not affected.
Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

Sec. 1201. Short title.
Sec. 1202. Definitions.

Subtitle A—Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 1212. Establishment of interagency task force on unaccompanied alien children.
Sec. 1213. Transition provisions.
Sec. 1214. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when encountering unaccompanied alien children.
Sec. 1222. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 1223. Appropriate conditions for detention of unaccompanied alien children.
Sec. 1224. Repatriated unaccompanied alien children.
Sec. 1225. Establishing the age of an unaccompanied alien child.
Sec. 1226. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1231. Right of unaccompanied alien children to guardians ad litem.
Sec. 1232. Right of unaccompanied alien children to counsel.
Sec. 1233. Effective date; applicability.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

Sec. 1241. Special immigrant juvenile visa.
Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 1243. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

Sec. 1251. Guidelines for children's asylum claims.
Sec. 1252. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

Sec. 1261. Authorization of appropriations.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

Sec. 1301. Establishment.
Sec. 1302. Director of the Agency.
Sec. 1303. Board of Immigration Appeals.
Sec. 1304. Chief Immigration Judge.
Sec. 1305. Chief Administrative Hearing Officer.
Sec. 1306. Removal of Judges.
Sec. 1307. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1311. Transition provisions.

Subtitle C—Effective Date
Sec. 1321. Effective date.
DIVISION C—FEDERAL WORKFORCE IMPROVEMENT
TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS
Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic Human Capital Management.
Sec. 2105. Effective date.
TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT
Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and program performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.
TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE
Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.
TITLE XXIV—ACADEMIC TRAINING
Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensatory time off for travel.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term "agency"—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DIRECTOR.—The term "Director" means the Director of the National Office for Combating Terrorism.

(4) DEPARTMENT.—The term "Department" means the Department of Homeland Security established under title I.

(5) ENTERPRISE ARCHITECTURE.—The term "enterprise architecture"—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(6) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term "Federal terrorism prevention and response agency" means any Federal department or agency charged under the Strategy with responsibilities for carrying out the Strategy.

(7) FUNCTIONS.—The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) HOMELAND.—The term "homeland" means the United States, in a geographic sense.

(9) LOCAL GOVERNMENT.—The term "local government" has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288).

(10) OFFICE.—The term "Office" means the National Office for Combating Terrorism established under title II.

(11) PERSONNEL.—The term "personnel" means officers and employees.

(12) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(13) STRATEGY.—The term "Strategy" means the National Strategy for Combating Terrorism and the Homeland Security Response developed under this division.

(14) UNITED STATES.—The term "United States", when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

"The Department of Homeland Security.".

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop, with the Director, a comprehensive strategy for combating terrorism and the homeland security response in accordance with title III.

(4) To advise the Director on the development of a comprehensive annual budget for programs and activities under the Strategy, and have the responsibility for budget recommendations relating to border and transportation security, critical infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and coordinate an integrated program to evaluate, identify, anticipate, and mitigate threats, vulnerabilities, and risks through threat and vulnerability assessments (including red teaming) and risk analysis, and to disseminate information and intelligence derived from such activities to appropriate entities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities;

(D) consulting State and local governments, and other entities as appropriate, in developing the Strategy under title III; and

(E) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and the governors of the several States regarding integration of the United States military, including the

National Guard, into all aspects of the Strategy and its implementation, including detection, prevention, protection, response, and recovery.

(B) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to executing the Strategy.

(C) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 185; and

(B) each biennial report required under section 192(b).

(c) Visa Issuance by the Secretary.—

(1) Definition.—In this subsection, the term "consular officer" has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(2) In general.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided under paragraph (3), the Secretary—

(A) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(B)(i) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(ii) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in subparagraph (A).

(3) Authority of the Secretary of State.—

(A) In general.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(B) Statutory construction.—Nothing in this subsection shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(i) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(15)(A)).

(ii) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(iii) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(iv) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)(B)(vi)(II)).

(v) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(vi) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(vii) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(viii) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(ix) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(x) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034).

(xi) Section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

(xii) Section 103(f) of the Chemical Weapons Convention Implementation Act of 1998 (112 Stat. 2681–865).

(xiii) Section 801 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2002 and 2001 (113 Stat. 1501A–468).

(xiv) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(xv) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(xvi) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(4) Consular officers and chiefs of missions.—Nothing is this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(5) Assignment of homeland security employees to diplomatic and consular posts.—

(A) In general.—The Secretary is authorized to assign employees of the Department to diplomatic and consular posts abroad to perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(B) Permanent assignment; participation in terrorist lookout committee.—When appropriate, employees of the Department assigned to perform functions described in subparagraph (A) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(C) Training and hiring.—

(i) In general.—The Secretary shall ensure that any employees of the Department assigned to perform functions described under subparagraph (A) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(ii) Foreign language proficiency.—Before assigning employees of the Department to perform the functions described under subparagraph (A), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described under subparagraph (A) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(iii) Use of center.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in clause (i).

(6) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(7) Effective date.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(d) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

"(5) the Secretary of Homeland Security; and

"(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.".

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting "Homeland Security," after "Health and Human Services,"; and

(2) in paragraph (2), by inserting "Homeland Security," after "Health and Human Services,".

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the "Inspector General") shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the "Secretary") with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

"(A) intelligence or counterintelligence matters;

"(B) ongoing criminal investigations or proceedings;

"(C) undercover operations;

"(D) the identity of confidential sources, including protected witnesses;

"(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

"(i) section 3056 of title 18, United States Code;

"(ii) section 202 of title 3, United States Code; or

"(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

"(F) other matters the disclosure of which would constitute a serious threat to national security.

"(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

"(A) prevent the disclosure of any information described under paragraph (1);

"(B) preserve the national security; or

"(C) prevent significant impairment to the national interests of the United States.

"(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

"(A) the President of the Senate;

"(B) the Speaker of the House of Representatives;

"(C) the Committee on Governmental Affairs of the Senate;

"(D) the Committee on Government Reform of the House of Representatives; and

"(E) other appropriate committees or subcommittees of Congress.

"(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

"(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

"(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

"(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

"(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

"(1) the President of the Senate;

"(2) the Speaker of the House of Representatives;

"(3) the Committee on Governmental Affairs of the Senate; and

"(4) the Committee on Government Reform of the House of Representatives.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking "8F" each place it appears and inserting "8G"; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking "or 8H" and inserting ", 8H, or 8I"."

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

"(G) The Department of Homeland Security.".

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

(a) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

"Secretary of Homeland Security.".

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Secretary of Homeland Security.".

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Under Secretary for Management, Department of Homeland Security.".

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretaries of Homeland Security (5).

"Inspector General, Department of Homeland Security.

"Chief Financial Officer, Department of Homeland Security.

"Chief Information Officer, Department of Homeland Security.

"General Counsel, Department of Homeland Security.".

Subtitle B—Establishment of Directorates and Offices

SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Border and Transportation Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Border and Transportation Protection shall be responsible for the following:

(1) Securing the borders, territorial waters, ports, terminals, waterways and air, land (including rail), and sea transportation systems of the United States, including coordinating governmental activities at ports of entry.

(2) Receiving and providing relevant intelligence on threats of terrorism and other homeland threats.

(3) Administering, carrying out, and promoting other established missions of the entities transferred to the Directorate.

(4) Using intelligence from the Directorate of Intelligence and other Federal intelligence organizations under section 132(a)(1)(B) to establish inspection priorities to identify products, including agriculture and livestock, and other goods imported from suspect locations recognized by the intelligence community as having terrorist activities, unusual human health or agriculture disease outbreaks, or harboring terrorists.

(5) Providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities that have established partnerships with the Federal Law Enforcement Training Center.

(6) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—Except as provided under subsection (d), the authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(2) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(3) The Animal and Plant Health Inspection Service of the Department of Agriculture, that portion of which administers laws relating to agricultural quarantine inspections at points of entry.

(4) The Transportation Security Administration of the Department of Transportation.

(5) The Federal Law Enforcement Training Center of the Department of the Treasury.

(d) EXERCISE OF CUSTOMS REVENUE AUTHORITY.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (c), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITION OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term "customs revenue functions" means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for "entry" as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(e) PRESERVING COAST GUARD MISSION PERFORMANCE.—

(1) DEFINITIONS.—In this subsection:

(A) NON-HOMELAND SECURITY MISSIONS.—The term "non-homeland security missions" means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) HOMELAND SECURITY MISSIONS.—The term "homeland security missions" means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) CERTAIN TRANSFERS PROHIBITED.—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(A) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act.

(B) WAIVER.—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) ANNUAL REVIEW.—

(A) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) REPORT.—The report under this paragraph shall be submitted not later than March 1 of each year to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—

(A) IN GENERAL.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(B) SUPPORT TO DIRECTORATE.—The Directorate of Intelligence shall communicate, coordinate, and cooperate with—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community, as defined under section 3 of the National Security Act of 1947 (50 U.S.C. 401a), including the Office of the Director of Central Intelligence, the National Intelligence Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(C) Information on international terrorism.—

(i) Definitions.—In this subparagraph, the terms "foreign intelligence" and "counterintelligence" shall have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(ii) Provision of information to counterterrorist center.—In order to ensure that the Secretary is provided with appropriate analytical products, assessments, and warnings relating to threats of terrorism against the United States and other threats to homeland security, the Director of Central Intelligence (as head of the intelligence community with respect to foreign intelligence and counterintelligence), the Attorney General, and the heads of other agencies of the Federal Government shall ensure that all intelligence and other information relating to international terrorism is provided to the Director of Central Intelligence's Counterterrorist Center.

(iii) Analysis of information.—The Director of Central Intelligence shall ensure the analysis by the Counterterrorist Center of all intelligence and other information provided the Counterterrorist Center under clause (ii).

(iv) Analysis of foreign intelligence.—The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism.

(2) Under secretary.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Responsibilities.—The Directorate of Intelligence shall be responsible for the following:

(1)(A) Receiving and analyzing law enforcement and other information from agencies of the United States Government, State and local government agencies (including law enforcement agencies), and private sector entities, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the Director of Central Intelligence's Counterterrorist Center in order to—

(i) identify and assess the nature and scope of threats to the homeland; and

(ii) detect and identify threats of terrorism against the United States and other threats to homeland security.

(B) Nothing in this paragraph shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—

(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Representing the Department in procedures to establish requirements and priorities in the collection of national intelligence for purposes of the provision to the executive branch under section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) of national intelligence relating to foreign terrorist threats to the homeland.

(4) Consulting with the Attorney General or the designees of the Attorney General, and other officials of the United States Government to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats, such as terrorism, to the homeland.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department and the appropriate officers of the agencies described under subsection (a)(1)(B), a secure communications and information technology infrastructure, and advanced analytical tools, to carry out the mission of the Directorate.

(7) Developing, in conjunction with the Chief Information Officer of the Department and appropriate officers of the agencies described under subsection (a)(1)(B), appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—

(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purpose of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interests of United States persons as defined under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(9) Providing, through the Secretary, to the appropriate law enforcement or intelligence agency, information and analysis relating to threats.

(10) Coordinating, or where appropriate providing, training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department, including training and support under section 908 of the USA PATRIOT Act of 2001 (Public Law 107–56).

(11) Reviewing, analyzing, and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the United States Government and between the United States Government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary in conducting threat and vulnerability assessments and risk analyses in coordination with other appropriate entities, including the Office of Risk Analysis and Assessment in the Directorate of Science and Technology.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) Access to Information.—

(1) In general.—Unless otherwise directed by the President, the Secretary shall have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organizations, and to other areas of responsibility as described in this division, that may be collected, possessed, or prepared, by any other United States Government agency.

(2) Additional information.—As the President may further provide, the Secretary shall receive additional information requested by the Secretary from the agencies described under subsection (a)(1)(B).

(3) Obtaining information.—All information shall be provided to the Secretary consistent with the requirements of subsection (b)(8), unless otherwise determined by the President.

(4) Cooperative arrangements.—The Secretary may enter into cooperative arrangements with agencies described under subsection (a)(1)(B) to share material on a regular or routine basis, including arrangements involving broad categories of material, and regardless of whether the Secretary has entered into any such cooperative arrangement, all agencies described under subsection (a)(1)(B) shall promptly provide information under this subsection.

(d) Authorization To Share Law Enforcement Information.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, or national security official for purposes of information sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(e) Additional Responsibilities.—The Under Secretary for Intelligence shall also be responsible for—

(1) developing analysis concerning the means terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) developing and conducting experiments, tests, and inspections to test weaknesses in homeland defenses;

(3) developing and practicing countersurveillance techniques to prevent attacks;

(4) conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks, the probability of successful attacks, and the feasibility of specific countermeasures; and

(5) working with the Directorate of Critical Infrastructure Protection, other offices and agencies in the Department, other United States Government agencies, State and local governments, local law enforcement and intelligence agencies, and private sector entities, to address vulnerabilities.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intelligence shall be staffed, in part, by analysts as requested by the Secretary and assigned by the agencies described under subsection (a)(1)(B). The analysts shall be assigned by reimbursable detail for periods as determined necessary by the Secretary in conjunction with the head of the assigning agency. No such detail may be undertaken without the consent of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN DEPARTMENT.—The Secretary may assign employees of the Department by reimbursable detail to the Directorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The President, or the designee of the President, shall prescribe regulations to provide that service described under paragraph (1) or (2), or service by employees within the Directorate, shall be considered a positive factor for selection to positions of greater authority within all agencies described under subsection (a)(1)(B).

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments are provided by the Department or others) to identify priorities and support protective measures by the Department, by other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) As part of the Strategy, developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Establishing specialized research and analysis units for the purpose of processing intelligence to identify vulnerabilities and protective measures in—

(A) public health;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;

(F) information and communication systems;

(G) continuity of government services; and

(H) other systems or facilities the destruction or disruption of which could cause substantial harm to health, safety, property, or the environment.

(5) Enhancing the sharing of information regarding cyber security and physical security of the United States, developing appropriate security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various Government agencies in preventing, defending, and recovering from attacks.

(6) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department and assuming the responsibilities carried out by the Critical Infrastructure Assurance Office and the National Infrastructure Protection Center before the effective date of this division.

(7) Coordinating the activities of the Information Sharing and Analysis Centers to share information, between the public and private sectors, on threats, vulnerabilities, individual incidents, and privacy issues regarding homeland security.

(8) Working closely with the Department of State on cyber security issues with respect to international bodies and coordinating with appropriate agencies in helping to establish cyber security policy, standards, and enforcement mechanisms.

(9) Establishing the necessary organizational structure within the Directorate to provide leadership and focus on both cyber security and physical security, and ensuring the maintenance of a nucleus of cyber security and physical security experts within the United States Government.

(10) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Critical Infrastructure Assurance Office of the Department of Commerce.

(2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(3) The National Communications System of the Department of Defense.

(4) The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(6) The Federal Computer Incident Response Center of the General Services Administration.

(7) The Energy Security and Assurance Program of the Department of Energy.

(8) The Federal Protective Service of the General Services Administration.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this division.

(3) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(4) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with intelligence estimates and providing a single staff for Federal assistance for any emergency, including emergencies caused by natural disasters, manmade accidents, human or agricultural health emergencies, or terrorist attacks.

(5) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(6) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(7) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(8) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(9) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(10) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(5).

(11) Consulting with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the Select Agent Registration Program transferred under subsection (c)(6).

(12) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(13) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(14) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(5) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(6) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(d) APPOINTMENT AS UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—An individual may serve as both the Under Secretary for Emergency Preparedness and Response and the Director of the Federal Emergency Management Agency if appointed by the President, by and with the advice and consent of the Senate, to each office.

(2) PAY.—Nothing in paragraph (1) shall be construed to authorize an individual appointed to both positions to receive pay at a rate of pay in excess of the rate of pay payable for the position to which the higher rate of pay applies.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to establish a Directorate of Science and Technology that will support the mission of the Department and the directorates of the Department by—

(1) establishing, funding, managing, and supporting research, development, demonstration, testing, and evaluation activities to meet national homeland security needs and objectives;

(2) setting national research and development goals and priorities pursuant to the mission of the Department, and developing strategies and policies in furtherance of such goals and priorities;

(3) coordinating and collaborating with other Federal departments and agencies, and State, local, academic, and private sector entities, to advance the research and development agenda of the Department;

(4) advising the Secretary on all scientific and technical matters relevant to homeland security; and

(5) facilitating the transfer and deployment of technologies that will serve to enhance homeland security goals.

(b) DEFINITIONS.—In this section:

(1) COUNCIL.—The term "Council" means the Homeland Security Science and Technology Council established under this section.

(2) FUND.—The term "Fund" means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(3) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term "homeland security research and development" means research and development applicable to the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(4) OSTP.—The term "OSTP" means the Office of Science and Technology Policy.

(5) SARPA.—The term "SARPA" means the Security Advanced Research Projects Agency established under this section.

(6) TECHNOLOGY ROADMAP.—The term "technology roadmap" means a plan or framework in which goals, priorities, and milestones for desired future technological capabilities and functions are established, and research and development alternatives or means for achieving those goals, priorities, and milestones are identified and analyzed in order to guide decisions on resource allocation and investments.

(7) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary for Science and Technology.

(c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

(1) ESTABLISHMENT.—There is established a Directorate of Science and Technology within the Department.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology under subsection (a). In addition, the Under Secretary shall undertake the following activities in furtherance of such purposes:

(A) Coordinating with the OSTP, the Office, and other appropriate entities in developing and executing the research and development agenda of the Department.

(B) Developing a technology roadmap that shall be updated biannually for achieving technological goals relevant to homeland security needs.

(C) Instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities.

(D) Assisting the Secretary and the Director of OSTP to ensure that science and technology priorities are clearly reflected and considered in the Strategy developed under title III.

(E) Establishing mechanisms for the sharing and dissemination of key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities.

(F) Establishing, in coordination with the Under Secretary for Critical Infrastructure Protection and the Under Secretary for Emergency Preparedness and Response and relevant programs under their direction, a National Emergency Technology Guard, comprised of teams of volunteers with expertise in relevant areas of science and technology, to assist local communities in responding to and recovering from emergency contingencies requiring specialized scientific and technical capabilities. In carrying out this responsibility, the Under Secretary shall establish and manage a database of National Emergency Technology Guard volunteers, and prescribe procedures for organizing, certifying, mobilizing, and deploying National Emergency Technology Guard teams.

(G) Chairing the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(H) Assisting the Secretary in developing the Strategy for Countermeasure Research described under subsection (k).

(I) Assisting the Secretary and acting on behalf of the Secretary in contracting with, commissioning, or establishing federally funded research and development centers determined useful and appropriate by the Secretary for the purpose of providing the Department with independent analysis and support.

(J) Assisting the Secretary and acting on behalf of the Secretary in entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites.

(K) Carrying out other appropriate activities as directed by the Secretary.

(3) RESEARCH AND DEVELOPMENT-RELATED AUTHORITIES.—The Secretary shall exercise the following authorities relating to the research, development, testing, and evaluation activities of the Directorate of Science and Technology:

(A) With respect to research and development expenditures under this section, the authority (subject to the same limitations and conditions) as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), for a period of 5 years beginning on the date of enactment of this Act. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph. The annual report required under subsection (h) of such section, as applied to the Secretary by this subparagraph, shall—

(i) be submitted to the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives; and

(ii) report on other transactions entered into under subparagraph (B).

(B) Authority to carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), for a period of 5 years beginning on the date of enactment of this Act. In applying the authorities of such section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) of that section. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph.

(C) In hiring personnel to assist in research, development, testing, and evaluation activities within the Directorate of Science and Technology, the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261), with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointment for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extensions under subsection (c)(2) of that section.

(D) With respect to such research, development, testing, and evaluation responsibilities under this section (except as provided in subparagraph (E)) as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under subsection (d)(4) for the Fund, not less than 10 percent of such funds for each fiscal year through 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways, and coastal security mission.

(E) The Secretary may carry out human health biodefense-related biological, biomedical, and infectious disease research and development (including vaccine research and development) in collaboration with the Secretary of Health and Human Services. Research supported by funding appropriated to the National Institutes of Health for bioterrorism research and related facilities development shall be conducted through the National Institutes of Health under joint strategic prioritization agreements between the Secretary and the Secretary of Health and Human Services. The Secretary shall have the authority to establish general research priorities, which shall be embodied in the joint strategic prioritization agreements with the Secretary of Health and Human Services. The specific scientific research agenda to implement agreements under this subparagraph shall be developed by the Secretary of Health and Human Services, who shall consult the Secretary to ensure that the agreements conform with homeland security priorities. All research programs established under those agreements shall be managed and awarded by the Director of the National Institutes of Health consistent with those agreements. The Secretary may transfer funds to the Department of Health and Human Services in connection with those agreements.

(d) Acceleration Fund.—

(1) Establishment.—There is established an Acceleration Fund to support research and development of technologies relevant to homeland security.

(2) Function.—The Fund shall be used to stimulate and support research and development projects selected by SARPA under subsection (f), and to facilitate the rapid transfer of research and technology derived from such projects.

(3) Recipients.—Fund monies may be made available through grants, contracts, cooperative agreements, and other transactions under subsection (c)(3) (A) and (B) to—

(A) public sector entities, including Federal, State, or local entities;

(B) private sector entities, including corporations, partnerships, or individuals; and

(C) other nongovernmental entities, including universities, federally funded research and development centers, and other academic or research institutions.

(4) Authorization of appropriations.—There are authorized to be appropriated $200,000,000 for the Fund for fiscal year 2003, and such sums as are necessary in subsequent fiscal years.

(e) Science and Technology Council.—

(1) Establishment.—There is established the Homeland Security Science and Technology Council within the Directorate of Science and Technology. The Under Secretary shall chair the Council and have the authority to convene meetings. At the discretion of the Under Secretary and the Director of OSTP, the Council may be constituted as a subcommittee of the National Science and Technology Council.

(2) Composition.—The Council shall be composed of the following:

(A) Senior research and development officials representing agencies engaged in research and development relevant to homeland security and combating terrorism needs. Each representative shall be appointed by the head of the representative's respective agency with the advice and consent of the Under Secretary.

(B) The Director of SARPA and other appropriate officials within the Department.

(C) The Director of the OSTP and other senior officials of the Executive Office of the President as designated by the President.

(3) Responsibilities.—The Council shall—

(A) provide the Under Secretary with recommendations on priorities and strategies, including those related to funding and portfolio management, for homeland security research and development;

(B) facilitate effective coordination and communication among agencies, other entities of the Federal Government, and entities in the private sector and academia, with respect to the conduct of research and development related to homeland security;

(C) recommend specific technology areas for which the Fund and other research and development resources shall be used, among other things, to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities;

(D) assist and advise the Under Secretary in developing the technology roadmap referred to under subsection (c)(2)(B); and

(E) perform other appropriate activities as directed by the Under Secretary.

(4) Advisory panel.—The Under Secretary may establish an advisory panel consisting of representatives from industry, academia, and other non-Federal entities to advise and support the Council.

(5) Working groups.—At the discretion of the Under Secretary, the Council may establish working groups in specific homeland security areas consisting of individuals with relevant expertise in each articulated area. Working groups established for bioterrorism and public health-related research shall be fully coordinated with the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(f) Security Advanced Research Projects Agency.—

(1) Establishment.—There is established the Security Advanced Research Projects Agency within the Directorate of Science and Technology.

(2) Responsibilities.—SARPA shall—

(A) undertake and stimulate basic and applied research and development, leverage existing research and development, and accelerate the transition and deployment of technologies that will serve to enhance homeland defense;

(B) identify, fund, develop, and transition high-risk, high-payoff homeland security research and development opportunities that—

(i) may lie outside the purview or capabilities of the existing Federal agencies; and

(ii) emphasize revolutionary rather than evolutionary or incremental advances;

(C) provide selected projects with single or multiyear funding, and require such projects to provide interim progress reports, no less often than annually;

(D) administer the Acceleration Fund to carry out the purposes of this paragraph;

(E) advise the Secretary and Under Secretary on funding priorities under subsection (c)(3)(E); and

(F) perform other appropriate activities as directed by the Under Secretary.

(g) Office of Risk Analysis and Assessment .—

(1) Establishment.—There is established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology.

(2) Functions.—The Office of Risk Analysis and Assessment shall—

(A) assist the Under Secretary in conducting or commissioning studies related to threat assessment and risk analysis, including—

(i) analysis of responses to terrorist incidents;

(ii) scenario-based threat assessment exercises and simulations;

(iii) red teaming to predict and discern the potential methods, means, and targets of terrorists; and

(iv) economic and policy analyses of alternative counterterrorism policies;

(B) coordinate with other entities engaged in threat assessment and risk analysis, including those within the Department, such as the Directorate of Intelligence;

(C) monitor and evaluate novel scientific findings in order to assist the Under Secretary in developing and reassessing the research and development priorities of the Department;

(D) design metrics to evaluate the effectiveness of homeland security programs;

(E) support the Directorate of Emergency Preparedness and Response in designing field tests and exercises; and

(F) perform other appropriate activities as directed by the Under Secretary.

(h) OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION.—

(1) ESTABLISHMENT.—There is established an Office for Technology Evaluation and Transition within the Directorate of Science and Technology.

(2) FUNCTION.—The Office for Technology Evaluation and Transition shall, with respect to technologies relevant to homeland security needs—

(A) serve as the principal, national point-of-contact and clearinghouse for receiving and processing proposals or inquiries regarding such technologies;

(B) identify and evaluate promising new technologies;

(C) undertake testing and evaluation of, and assist in transitioning, such technologies into deployable, fielded systems;

(D) consult with and advise agencies regarding the development, acquisition, and deployment of such technologies;

(E) coordinate with SARPA to accelerate the transition of technologies developed by SARPA and ensure transition paths for such technologies; and

(F) perform other appropriate activities as directed by the Under Secretary.

(3) TECHNICAL SUPPORT WORKING GROUP.—The functions described under this subsection may be carried out through, or in coordination with, or through an entity established by the Secretary and modeled after, the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) that provides an interagency forum to coordinate research and development of technologies for combating terrorism.

(i) OFFICE OF LABORATORY RESEARCH.—

(1) ESTABLISHMENT.—There is established an Office of Laboratory Research within the Directorate of Science and Technology.

(2) RESEARCH AND DEVELOPMENT FUNCTIONS TRANSFERRED.—There shall be transferred to the Department, to be administered by the Under Secretary, the functions, personnel, assets, and liabilities of the following programs and activities:

(A) Within the Department of Energy (but not including programs and activities relating to the strategic nuclear defense posture of the United States) the following:

(i) The chemical and biological national security and supporting programs and activities supporting domestic response of the nonproliferation and verification research and development program.

(ii) The nuclear smuggling programs and activities, and other programs and activities directly related to homeland security, within the proliferation detection program of the nonproliferation and verification research and development program, except that the programs and activities described in this clause may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(iii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(iv) The Environmental Measurements Laboratory.

(B) Within the Department of Defense, the National Bio-Weapons Defense Analysis Center established under section 161.

(3) RESPONSIBILITIES.—The Office of Laboratory Research shall—

(A) supervise the activities of the entities transferred under this subsection;

(B) administer the disbursement and undertake oversight of research and development funds transferred from the Department to other agencies outside of the Department, including funds transferred to the Department of Health and Human Services consistent with subsection (c)(3)(E);

(C) establish and direct new research and development facilities as the Secretary determines appropriate;

(D) include a science advisor to the Under Secretary on research priorities related to biological and chemical weapons, with supporting scientific staff, who shall advise on and support research priorities with respect to—

(i) research on countermeasures for biological weapons, including research on the development of drugs, devices, and biologics; and

(ii) research on biological and chemical threat agents; and

(E) other appropriate activities as directed by the Under Secretary.

(j) OFFICE FOR NATIONAL LABORATORIES.—

(1) ESTABLISHMENT.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(2) JOINT SPONSORSHIP ARRANGEMENTS.—

(A) NATIONAL LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work on behalf of the Department.

(B) DEPARTMENT OF ENERGY SITE.—The Department may be a joint sponsor of Department of Energy sites in the performance of work as if such sites were federally funded research and development centers and the work were performed under a multiple agency sponsorship arrangement with the Department.

(C) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subparagraph (A) or (B).

(D) CONDITIONS.—A joint sponsorship arrangement under this subsection shall—

(i) provide for the direct funding and management by the Department of the work being carried out on behalf of the Department; and

(ii) include procedures for addressing the coordination of resources and tasks to minimize conflicts between work undertaken on behalf of either Department.

(E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—

(i) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(ii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017 of the Federal Acquisition Regulation.

(F) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subparagraph (B).

(3) OTHER ARRANGEMENTS.—The Office for National Laboratories may enter into other arrangements with Department of Energy national laboratories or sites to carry out work to support the missions of the Department under applicable law, except that the Department of Energy may not charge or apply administrative fees for work on behalf of the Department.

(4) TECHNOLOGY TRANSFER.—The Office for National Laboratories may exercise the authorities in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to permit the Director of a Department of Energy national laboratory to enter into cooperative research and development agreements, or to negotiate licensing agreements, pertaining to work supported by the Department at the Department of Energy national laboratory.

(5) ASSISTANCE IN ESTABLISHING DEPARTMENT.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall develop a comprehensive, long-term strategy and plan for engaging non-Federal entities, particularly including private, for-profit entities, in the research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

(2) TIMEFRAME.—The strategy and plan under this subsection, together with recommendations for the enactment of supporting or enabling legislation, shall be submitted to the Congress within 270 days after the date of enactment of this Act.

(3) COORDINATION.—In developing the strategy and plan under this subsection, the Secretary shall consult with—

(A) other agencies with expertise in research, development, and production of countermeasures;

(B) private, for-profit entities and entrepreneurs with appropriate expertise and technology regarding countermeasures;

(C) investors that fund such entities;

(D) nonprofit research universities and institutions;

(E) public health and other interested private sector and government entities; and

(F) governments allied with the United States in the war on terrorism.

(4) Purpose.—The strategy and plan under this subsection shall evaluate proposals to assure that—

(A) research on countermeasures by non-Federal entities leads to the expeditious development and production of countermeasures that may be procured and deployed in the homeland security interests of the United States;

(B) capital is available to fund the expenses associated with such research, development, and production, including Government grants and contracts and appropriate capital formation tax incentives that apply to non-Federal entities with and without tax liability;

(C) the terms for procurement of such countermeasures are defined in advance so that such entities may accurately and reliably assess the potential countermeasures market and the potential rate of return;

(D) appropriate intellectual property, risk protection, and Government approval standards are applicable to such countermeasures;

(E) Government-funded research is conducted and prioritized so that such research complements, and does not unnecessarily duplicate, research by non-Federal entities and that such Government-funded research is made available, transferred, and licensed on commercially reasonable terms to such entities for development; and

(F) universities and research institutions play a vital role as partners in research and development and technology transfer, with appropriate progress benchmarks for such activities, with for-profit entities.

(5) Reporting.—The Secretary shall report periodically to the Congress on the status of non-Federal entity countermeasure research, development, and production, and submit additional recommendations for legislation as needed.

(l) Classification of Research.—

(1) In general.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) Classification and review.—The Under Secretary shall—

(A)(i) decide whether classification is appropriate before the award of a research grant, contract, cooperative agreement, or other transaction by the Department; and

(ii) if the decision under clause (i) is one of classification, control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, cooperative agreements, and other transactions issued by the Department to determine whether classification is still necessary.

(3) Restrictions.—No restrictions shall be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided under applicable provisions of law.

(m) Office of Science and Technology Policy.—The National Science and Technology Policy, Organization, and Priorities Act is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting "homeland security," after "national security,"; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting "the National Office for Combating Terrorism," after "National Security Council,".

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) Establishment.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) Responsibilities.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(c) Homeland Security Liaison Officers.—

(1) Chief homeland security liaison officer.—

(A) Appointment.—The Secretary shall appoint a Chief Homeland Security Liaison Officer to coordinate the activities of the Homeland Security Liaison Officers, designated under paragraph (2).

(B) Annual report.—The Chief Homeland Security Liaison Officer shall prepare an annual report, that contains—

(i) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(ii) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(iii) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(iv) proposals to increase the coordination of Department priorities within each State and between the States.

(2) Homeland security liaison officers.—

(A) Designation.—The Secretary shall designate in each State not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State; and

(ii) provide coordination between the Department and State and local first responders, including—

(I) law enforcement agencies;

(II) fire and rescue agencies;

(III) medical providers;

(IV) emergency service providers; and

(V) relief agencies.

(B) Duties.—Each Homeland Security Liaison Officer designated under subparagraph (A) shall—

(i) ensure coordination between the Department and—

(I) State, local, and community-based law enforcement;

(II) fire and rescue agencies; and

(III) medical and emergency relief organizations;

(ii) identify State and local areas requiring additional information, training, resources, and security;

(iii) provide training, information, and education regarding homeland security for State and local entities;

(iv) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(v) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(vi) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner; and

(vii) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security.

(d) Federal Interagency Committee on First Responders.—

(1) In General.—There is established an Interagency Committee on First Responders, that shall—

(A) ensure coordination among the Federal agencies involved with—

(i) State, local, and community-based law enforcement;

(ii) fire and rescue operations; and

(iii) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) Membership.—The Interagency Committee on First Responders shall be composed of—

(A) the Chief Homeland Security Liaison Officer of the Department;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee on First Responders.

(3) Administration.—The Department shall provide administrative support to the Interagency Committee on First Responders

and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee on First Responders shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee on First Responders shall meet—

(A) at the call of the Chief Homeland Security Liaison Officer of the Department; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Federal Interagency Committee on First Responders (in this section referred to as the "Advisory Council").

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee on First Responders.

(B) REPRESENTATION.—The Interagency Committee on First Responders shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee on First Responders not less frequently than once every 3 months.

SEC. 138. UNITED STATES SECRET SERVICE.

There are transferred to the Department the authorities, functions, personnel, and assets of the United States Secret Service, which shall be maintained as a distinct entity within the Department.

SEC. 139. BORDER COORDINATION WORKING GROUP.

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term "border security functions" means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term "relevant agencies" means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in this section referred to as the "Working Group"), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 140. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Under Secretary for Border and Transportation, Department of Homeland Security.

"Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

"Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

"Under Secretary for Immigration, Department of Homeland Security.

"Under Secretary for Intelligence, Department of Homeland Security.

"Under Secretary for Science and Technology, Department of Homeland Security.".

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the "National Emergency Preparedness Enhancement Act of 2002".

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the "Clearinghouse"). The Clearinghouse shall be headed by a Director.

(b) CONSULTATION.—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to the Strategy.

(c) DUTIES.—

(1) DISSEMINATION OF INFORMATION.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) CENTER.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) PUBLIC AWARENESS CAMPAIGN.—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is "National Emergency Preparedness Week".

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) FEDERAL AGENCY ACTIVITIES.—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) ESTABLISHMENT.—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the "Center").

(b) MISSION.—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) FINDINGS.—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) EXCHANGE OF EMPLOYEES.—

(1) IN GENERAL.—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) CONDITIONS.—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking "(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law," and inserting the following:

"(d) SCREENER PERSONNEL.—

"(1) IN GENERAL.—Notwithstanding any other provision of law (except as provided under paragraph (2)),"; and

(2) by adding at the end the following:

"(2) WHISTLEBLOWER PROTECTION.—

"(A) DEFINITION.—In this paragraph, the term "security screener" means—

"(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

"(ii) an applicant for the position of a security screener under that subsection.

"(B) IN GENERAL.—Notwithstanding paragraph (1)—

"(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

"(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

"(C) COVERED POSITION.—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.".

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) IN GENERAL.—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking "(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier" and inserting the following:

"(a) DISCRIMINATION AGAINST EMPLOYEES.—

"(1) IN GENERAL.—No air carrier, contractor, subcontractor, or employer described under paragraph (2)";

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

"(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

"(A) an air carrier or contractor or subcontractor of an air carrier;

"(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

"(C) an employer of private screening personnel described in section 44919 or 44920 of this title.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking "paragraphs (1) through (4) of subsection (a)" and inserting "subparagraphs (A) through (D) of subsection (a)(1)"; and

(2) in clause (iii), by striking "paragraphs (1) through (4) of subsection (a)" and inserting "subparagraphs (A) through (D) of subsection (a)(1)".

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

"(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

"(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

"(2) MISSION.—The Division shall have the following primary missions:

"(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

"(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

"(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

"(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

"(A) The Bioterrorism Preparedness and Response Program.

"(B) The Strategic National Stockpile.

"(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

"(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

"(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

"(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

"(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.".

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) Disclosures Among Relevant Agencies.—

(1) In general.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) Public health emergency.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) Potential public health emergency.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) In General.—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) $375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) $778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) $55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) Availability of Funds.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) Coordination With Existing Law.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

"(c) Personnel Grants.—

"(1) Exclusion.—Grants awarded under subsection (b) to hire 'employees engaged in fire protection', as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

"(2) Duration.—Grants awarded under paragraph (1) shall be for a 3-year period.

"(3) Maximum amount.—The total amount of grants awarded under paragraph (1) shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

"(4) Federal share.—

"(A) In general.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

"(B) Waiver.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

"(5) Application.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

"(A) an explanation for the need for Federal assistance; and

"(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

"(6) Maintenance of Effort.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources."; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

"(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).".

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) Review of Transportation Vulnerabilities and Federal Transportation Security Efforts.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities;

(2) review all available information on vulnerabilities at aviation, seaport, rail and transit facilities; and

(3) review the steps taken by agencies since September 11, 2001, to improve aviation, seaport, rail, and transit security to determine their effectiveness at protecting passengers and transportation infrastructure from terrorist attack.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress and the Secretary a comprehensive report containing—

(1) the findings and conclusions from the reviews conducted under subsection (a); and

(2) proposed steps to improve any deficiencies found in aviation, seaport, rail, and transit security including, to the extent possible, the cost of implementing the steps.

(c) Response of the Secretary.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(1) the response of the Department to the recommendations of the report; and

(2) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) In General.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) Timetables.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) Implementation.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) Agency Cooperation.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) Content.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) Updated Versions.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) Report.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) Consultation.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) Principal Officer.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) Agency.—The term "agency" includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) Transition period.—The term "transition period" means the 1-year period beginning on the effective date of this division.

SEC. 182. TRANSFER OF AGENCIES.

The transfer of an agency to the Department, as authorized by this title, shall occur when the President so directs, but in no event later than the end of the transition period.

SEC. 183. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until an agency is transferred to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this division shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may reasonably request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any agency (as defined under section 2) may, on a reimbursable basis, provide services and detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) DESIGNATION.—During the transition period, pending the nomination and advice and consent of the Senate to the appointment of an officer required by this division to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent, and who continues as such an officer, to act in such office until the office is filled as provided in this division.

(2) COMPENSATION.—While serving as an acting officer under paragraph (1), the officer shall receive compensation at the higher of the rate provided—

(A) under this division for the office in which that officer acts; or

(B) for the office held at the time of designation.

(3) PERIOD OF SERVICE.—The person serving as an acting officer under paragraph (1) may serve in the office for the periods described under section 3346 of title 5, United States Code, as if the office became vacant on the effective date of this division.

(d) EXCEPTION TO ADVICE AND CONSENT REQUIREMENT.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer—

(1) whose agency is transferred to the Department under this Act;

(2) whose appointment was by and with the advice and consent of the Senate;

(3) who is proposed to serve in a directorate or office of the Department that is similar to the transferred agency in which the officer served; and

(4) whose authority and responsibilities following such transfer would be equivalent to those performed prior to such transfer.

SEC. 184. INCIDENTAL TRANSFERS AND TRANSFER OF RELATED FUNCTIONS.

(a) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director determines necessary to accomplish the purposes of this title.

(b) ADJUDICATORY OR REVIEW FUNCTIONS.—

(1) IN GENERAL.—At the time an agency is transferred to the Department, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency.

(2) EXCEPTION.—The President may not transfer the Executive Office of Immigration Review of the Department of Justice under this subsection.

(c) TRANSFER OF RELATED FUNCTIONS.—The transfer, under this title, of an agency that is a subdivision of a department before such transfer shall include the transfer to the Secretary of any function relating to such agency that, on the date before the transfer, was exercised by the head of the department from which such agency is transferred.

(d) REFERENCES.—A reference in any other Federal law, Executive order, rule, regulation, delegation of authority, or other document pertaining to an agency transferred under this title that refers to the head of the department from which such agency is transferred is deemed to refer to the Secretary.

SEC. 185. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I, II, III, and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I, II, III, and XI.

(2) Separate submission of proposed legislation.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 186. TRANSFER AND ALLOCATION.

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the agencies transferred under this title, shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and to section 1531 of title 31, United States Code. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 187. SAVINGS PROVISIONS.

(a) Continuing Effect of Legal Documents.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this division takes effect, or were final before the effective date of this division and are to become effective on or after the effective date of this division,

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) Proceedings Not Affected.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) Suits Not Affected.—The provisions of this title shall not affect suits commenced before the effective date of this division, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) Nonabatement of Actions.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) Administrative Actions Relating to Promulgation of Regulations.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department with the same effect as if this title had not been enacted.

(f) Employment and Personnel.—

(1) Employee rights.—

(A) Transferred agencies.—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(B) Transferred employees.—An employee transferred to the Department under this Act, who was in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section unless—

(i) the primary job duty of the employee is materially changed after the transfer; and

(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) Transferred functions.—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this Act or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) Other agencies, employees, and functions.—

(i) Exclusion of subdivision.—Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) Exclusion of employee.—Subject to subparagraphs (B) and (C), an employee of the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(E) Prior exclusion.—Subparagraphs (A) through (D) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(2) Terms and conditions of employment.—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(3) Conditions and criteria for appointment.—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(4) Whistleblower protection.—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) No Effect on Intelligence Authorities.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 188. TRANSITION PLAN.

(a) In General.—Not later than September 15, 2002, the President shall submit to Congress a transition plan as set forth in subsection (b).

(b) Contents.—

(1) In general.—The transition plan under subsection (a) shall include a detailed—

(A) plan for the transition to the Department and implementation of titles I, II, and III and division B; and

(B) proposal for the financing of those operations and needs of the Department that do not represent solely the continuation of functions for which appropriations already are available.

(2) Financing proposal.—The financing proposal under paragraph (1)(B) may consist of any combination of specific appropriations transfers, specific reprogrammings, and new specific appropriations as the President considers advisable.

SEC. 189. USE OF APPROPRIATED FUNDS.

(a) Applicability of This Section.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act, the Office, and the National Combating Terrorism Strategy Panel.

(b) Use of Transferred Funds.—Except as may be provided in an appropriations Act in accordance with subsection (d), balances of appropriations and any other funds or assets transferred under this Act—

(1) shall be available only for the purposes for which they were originally available;

(2) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(3) shall not be used to fund any new position established under this Act.

(c) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(d) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsection (c), amounts transferred to, or otherwise made available to, the Department may be used during the transition period for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(e) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(f) GIFTS.—Gifts or donations of services or property of or for the Department, the Office, or the National Combating Terrorism Strategy Panel may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(g) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) ANNUAL EVALUATIONS.—The Comptroller General of the United States shall monitor and evaluate the implementation of titles I, II, III, and XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 185;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) POINT OF ENTRY MANAGEMENT REPORT.—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) COMBATING TERRORISM AND HOMELAND SECURITY.—Not later than 270 days after the date of enactment of this Act, the Secretary and the Director shall—

(1) in consultation with the head of each department or agency affected by titles I, II, III, and XI, develop definitions of the terms "combating terrorism" and "homeland security" for purposes of those titles and shall consider such definitions in determining the mission of the Department and Office; and

(2) submit a report to Congress on such definitions.

(e) RESULTS-BASED MANAGEMENT.—

(1) STRATEGIC PLAN.—

(A) IN GENERAL.—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) PERIOD; REVISIONS.—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) CONTENTS.—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) PERFORMANCE PLAN.—

(A) IN GENERAL.—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) CONTENTS.—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) SCOPE.—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) PERFORMANCE REPORT.—

(A) IN GENERAL.—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) CONTENTS.—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SEC. 195. PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary

(not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 196. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 197. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 198. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term "critical infrastructure" has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term "furnished voluntarily" means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term "benefit" does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 199. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.

(a) ESTABLISHMENT.—There is established within the Executive Office of the President the National Office for Combating Terrorism.

(b) OFFICERS.—

(1) DIRECTOR.—The head of the Office shall be the Director of the National Office for Combating Terrorism, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

"Director of the National Office for Combating Terrorism.".

(3) OTHER OFFICERS.—The President shall assign to the Office such other officers as the President, in consultation with the Director, considers appropriate to discharge the responsibilities of the Office.

(c) RESPONSIBILITIES.—Subject to the direction and control of the President, the responsibilities of the Office shall include the following:

(1) To develop national objectives and policies for combating terrorism.

(2) To direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, which shall be—

(A) conducted by the heads of relevant agencies, the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities; and

(B) used in preparation of the Strategy.

(3) To develop, with the Secretary of Homeland Security, the Strategy under title III.

(4) To coordinate, oversee, and evaluate the implementation and execution of the Strategy by agencies with responsibilities for combating terrorism under the Strategy, particularly those involving military, intelligence, law enforcement, diplomatic, and scientific and technological assets.

(5) To work with agencies, including the Environmental Protection Agency, to ensure that appropriate actions are taken to address vulnerabilities identified by the Directorate of Critical Infrastructure Protection within the Department.

(6)(A) To coordinate, with the advice of the Secretary, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection.

(B) To have the lead responsibility for budget recommendations relating to military, intelligence, law enforcement, and diplomatic assets in support of the Strategy.

(7) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(8) To serve as an advisor to the National Security Council.

(9) To work with the Director of the Federal Bureau of Investigation to ensure that—

(A) the Director of the National Office for Combating Terrorism receives the relevant information from the Federal Bureau of Investigation related to terrorism; and

(B) such information is made available to the appropriate agencies and to State and local law enforcement officials.

(d) Resources.—In consultation with the Director, the President shall assign or allocate to the Office such resources, including funds, personnel, and other resources, as the President considers appropriate and that are available to the President under appropriations Acts for fiscal year 2002 and fiscal year 2003 in the "Office of Administration" appropriations account or the "Office of Homeland Security" appropriations account. Any transfer or reprogramming of funds made under this section shall be subject to the reprogramming procedures in the Treasury and General Government Appropriations Act, 2002 (Public Law 107–67).

(e) Oversight by Congress.—The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or

(2) any personnel of the Office.

SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND ACTIVITIES.

(a) Budget Review.—In consultation with the Director of the Office of Management and Budget, the Secretary, and the heads of other agencies, the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities, the Director shall—

(1) identify programs that contribute to the Strategy; and

(2) in the development of the budget submitted by the President to Congress under section 1105 of title 31, United States Code, review and provide advice to the heads of agencies on the amount and use of funding for programs identified under paragraph (1).

(b) Submittal of Proposed Budgets to the Director.—

(1) In general.—The head of each Federal terrorism prevention and response agency shall submit to the Director each year the proposed budget of that agency for the fiscal year beginning in that year for programs and activities of that agency under the Strategy during that fiscal year.

(2) Date for submission.—The proposed budget of an agency for a fiscal year under paragraph (1) shall be submitted to the Director—

(A) not later than the date on which the agency completes the collection of information for purposes of the submission by the President of a budget to Congress for that fiscal year under section 1105 of title 31, United States Code; and

(B) before that information is submitted to the Director of the Office of Management and Budget for such purposes.

(3) Format.—In consultation with the Director of the Office of Management and Budget, the Director shall specify the format for the submittal of proposed budgets under paragraph (1).

(c) Review of Proposed Budgets.—

(1) In general.—The Director shall review each proposed budget submitted to the Director under subsection (b).

(2) Inadequate funding determination.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is inadequate, in whole or in part, to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency—

(A) a notice in writing of the determination; and

(B) a statement of the proposed funding, and any specific initiatives, that would (as determined by the Director) permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year.

(3) Adequate funding determination.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is adequate to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency a notice in writing of that determination.

(4) Maintenance of records.—The Director shall maintain a record of—

(A) each notice submitted under paragraph (2), including any statement accompanying such notice; and

(B) each notice submitted under paragraph (3).

(d) Agency Response to Review of Proposed Budgets.—

(1) Incorporation of proposed funding.—The head of a Federal terrorism prevention and response agency that receives a notice under subsection (c)(2) with respect to the proposed budget of the agency for a fiscal year shall incorporate the proposed funding, and any initiatives, set forth in the statement accompanying the notice into the information submitted to the Office of Management and Budget in support of the proposed budget for the agency for the fiscal year under section 1105 of title 31, United States Code.

(2) Additional information.—The head of each agency described under paragraph (1) for a fiscal year shall include as an appendix to the information submitted to the Office of Management and Budget under that paragraph for the fiscal year the following:

(A) A summary of any modifications in the proposed budget of such agency for the fiscal year under paragraph (1).

(B) An assessment of the effect of such modifications on the capacity of such agency to perform its responsibilities during the fiscal year other than its responsibilities under the Strategy.

(3) Submission to congress.—

(A) In general.—Subject to subparagraph (B), the head of each agency described under paragraph (1) for a fiscal year shall submit to Congress a copy of the appendix submitted to the Office of Management and Budget for the fiscal year under paragraph (2) at the same time the budget of the President for the fiscal year is submitted to Congress under section 1105 of title 31, United States Code.

(B) Elements within intelligence programs.—In the submission of the copy of the appendix to Congress under subparagraph (A), those elements of the appendix which are within the National Foreign Intelligence Program shall be submitted to—

(i) the Select Committee on Intelligence of the Senate;

(ii) the Permanent Select Committee on Intelligence of the House of Representatives;

(iii) the Committee on Appropriations of the Senate; and

(iv) the Committee on Appropriations of the House of Representatives.

(e) Submittal of Revised Proposed Budgets.—

(1) In general.—At the same time the head of a Federal terrorism prevention and response agency submits its proposed budget for a fiscal year to the Office of Management and Budget for purposes of the submission by the President of a budget to Congress for the fiscal year under section 1105 of title 31, United States Code, the head of the agency shall submit a copy of the proposed budget to the Director.

(2) Review and decertification authority.—The Director of the National Office for Combating Terrorism—

(A) shall review each proposed budget submitted under paragraph (1); and

(B) in the case of a proposed budget for a fiscal year to which subsection (c)(2) applies in the fiscal year, if the Director determines as a result of the review that the proposed budget does not include the proposed funding, and any initiatives, set forth in the notice under that subsection with respect to the proposed budget—

(i) may decertify the proposed budget; and

(ii) with respect to any proposed budget so decertified, shall submit to Congress—

(I) a notice of the decertification;

(II) a copy of the notice submitted to the agency concerned for the fiscal year under subsection (c)(2)(B); and

(III) the budget recommendations made under this section.

(f) National Terrorism Prevention and Response Program Budget.—

(1) In general.—For each fiscal year, following the submittal of proposed budgets to the Director under subsection (b), the Director shall, in consultation with the Secretary and the head of each Federal terrorism prevention and response agency concerned—

(A) develop a consolidated proposed budget for such fiscal year for all programs and activities under the Strategy for such fiscal year; and

(B) subject to paragraph (2), submit the consolidated proposed budget to the President and to Congress.

(2) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the consolidated proposed budget to Congress under paragraph (1)(B), those elements of the budget which are within the National Foreign Intelligence Program shall be submitted to—

(A) the Select Committee on Intelligence of the Senate;

(B) the Permanent Select Committee on Intelligence of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(3) DESIGNATION OF CONSOLIDATED PROPOSED BUDGET.—The consolidated proposed budget for a fiscal year under this subsection shall be known as the National Terrorism Prevention and Response Program Budget for the fiscal year.

(g) REPROGRAMMING AND TRANSFER REQUESTS.—

(1) APPROVAL BY THE DIRECTOR.—The head of a Federal terrorism prevention and response agency may not submit to Congress a request for the reprogramming or transfer of any funds specified in the National Terrorism Prevention and Response Program Budget for programs or activities of the agency under the Strategy for a fiscal year in excess of $5,000,000 without the approval of the Director.

(2) APPROVAL BY THE PRESIDENT.—The President may, upon the request of the head of the agency concerned, permit the submittal to Congress of a request previously disapproved by the Director under paragraph (1) if the President determines that the submittal of the request to Congress will further the purposes of the Strategy.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

SEC. 301. STRATEGY.

(a) DEVELOPMENT.—The Secretary and the Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recovery to counter terrorist threats, including threat, vulnerability, and risk assessment and analysis, and the plans, policies, training, exercises, evaluation, and interagency cooperation that address each such action relating to such threats.

(b) RESPONSIBILITIES.—

(1) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall have responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating State and local efforts with activities of the Federal Government.

(2) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have overall responsibility for development of the Strategy, and particularly for those portions of the Strategy addressing intelligence, military assets, law enforcement, and diplomacy.

(c) CONTENTS.—The contents of the Strategy shall include—

(1) a comprehensive statement of mission, goals, objectives, desired end-state, priorities and responsibilities;

(2) policies and procedures to maximize the collection, translation, analysis, exploitation, and dissemination of information relating to combating terrorism and the homeland security response throughout the Federal Government and with State and local authorities;

(3) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats;

(4) plans for integrating the capabilities and assets of the United States military into all aspects of the Strategy;

(5) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on the homeland;

(6) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks;

(7) a review of measures needed to enhance transportation security with respect to potential terrorist attacks;

(8) plans for identifying, prioritizing, and meeting research and development objectives to support homeland security needs; and

(9) other critical areas.

(d) COOPERATION.—At the request of the Secretary or Director, departments and agencies shall provide necessary information or planning documents relating to the Strategy.

(e) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is established the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy.

(2) MEMBERSHIP.—The members of the Council shall be the heads of the Federal terrorism prevention and response agencies or their designees. The Secretary and Director shall designate such agencies.

(3) CO-CHAIRS AND MEETINGS.—The Secretary and Director shall co-chair the Council, which shall meet at their direction.

(f) SUBMISSION TO CONGRESS.—Not later than December 1, 2003, and each year thereafter in which a President is inaugurated, the Secretary and the Director shall submit the Strategy to Congress.

(g) UPDATING.—Not later than December 1, 2005, and on December 1, of every 2 years thereafter, the Secretary and the Director shall submit to Congress an updated version of the Strategy.

(h) PROGRESS REPORTS.—Not later than December 1, 2004, and on December 1, of each year thereafter, the Secretary and the Director may submit to Congress a report that—

(1) describes the progress on implementation of the Strategy; and

(2) provides recommendations for improvement of the Strategy and the implementation of the Strategy.

SEC. 302. MANAGEMENT GUIDANCE FOR STRATEGY IMPLEMENTATION.

(a) IN GENERAL.—In consultation with the Director and the Secretary, the Director of the Office of Management and Budget shall provide management guidance for agencies to successfully implement and execute the Strategy.

(b) OFFICE OF MANAGEMENT AND BUDGET REPORT.—Not later than 180 days after the date of the submission of the Strategy referred to under section 301, the Director of the Office of Management and Budget shall—

(1) submit to Congress a report describing agency progress under subsection (a); and

(2) provide a copy of the report to the Comptroller General of the United States.

(c) GENERAL ACCOUNTING OFFICE REPORT.—Not later than 90 days after the receipt of the report required under subsection (b), the Comptroller General of the United States shall submit a report to the Governmental Affairs Committee of the Senate, the Government Reform Committee of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives, evaluating—

(1) the management guidance identified under subsection (a); and

(2) Federal agency performance in implementing and executing the Strategy.

SEC. 303. NATIONAL COMBATING TERRORISM STRATEGY PANEL.

(a) ESTABLISHMENT.—The Secretary and the Director shall establish a nonpartisan, independent panel to be known as the National Combating Terrorism Strategy Panel (in this section referred to as the "Panel").

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Panel shall be composed of a chairperson and 8 other individuals appointed by the Secretary and the Director, in consultation with the chairman and ranking member of the Committee on Governmental Affairs of the Senate and the chairman and ranking member of the Committee on Government Reform of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to combatting terrorism and the homeland security of the United States.

(2) TERMS.—

(A) IN GENERAL.—An individual shall be appointed to the Panel for an 18-month term.

(B) TERM PERIODS.—Terms on the Panel shall not be continuous. All terms shall be for the 18-month period which begins 12 months before each date a report is required to be submitted under subsection (l)(2)(A).

(C) MULTIPLE TERMS.—An individual may serve more than 1 term.

(c) DUTIES.—The Panel shall—

(1) conduct and submit to the Secretary the assessment of the Strategy; and

(2) conduct the independent, alternative assessment of homeland security measures required under this section.

(d) ALTERNATIVE ASSESSMENT.—The Panel shall submit to the Secretary an independent assessment of the optimal policies and programs to combat terrorism, including homeland security measures. As part of the assessment, the Panel shall, to the extent practicable, estimate the funding required by fiscal year to achieve these optimal approaches.

(e) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Panel may secure directly from any agency such information as the Panel considers necessary to carry out this section. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Panel.

(2) INTELLIGENCE INFORMATION.—The provision of information under this paragraph related to intelligence shall be provided in accordance with procedures established by the Director of Central Intelligence and in accordance with section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(3)).

(f) COMPENSATION OF MEMBERS.—Each member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel.

(g) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(h) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(4) REDUCTION OF STAFF.—During periods that members are not serving terms on the Panel, the executive director shall reduce the number and hours of employees to the minimum necessary to—

(A) provide effective continuity of the Panel; and

(B) minimize personnel costs of the Panel.

(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) ADMINISTRATIVE PROVISIONS.—

(1) USE OF MAIL AND PRINTING.—The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other agencies.

(2) SUPPORT SERVICES.—The Secretary shall furnish the Panel any administrative and support services requested by the Panel.

(3) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

(k) PAYMENT OF PANEL EXPENSES.—The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

(l) REPORTS.—

(1) PRELIMINARY REPORT.—

(A) REPORT TO SECRETARY.—Not later than July 1, 2004, the Panel shall submit to the Secretary and the Director a preliminary report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORT TO CONGRESS.—Not later than 30 days after the submission of the report under subparagraph (A), the Secretary and the Director shall submit to the committees referred to under subsection (b), and the Committees on Appropriations of the Senate and the House of Representatives, a copy of that report with the comments of the Secretary on the report.

(2) QUADRENNIAL REPORTS.—

(A) REPORTS TO SECRETARY.—Not later than December 1, 2004, and not later than December 1 every 4 years thereafter, the Panel shall submit to the Secretary and the Director a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORTS TO CONGRESS.—Not later than 60 days after each report is submitted under subparagraph (A), the Secretary shall submit to the committees referred to under subsection (b), and the Committees on Appropriations of the Senate and the House of Representatives, a copy of the report with the comments of the Secretary and the Director on the report.

TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

SEC. 401. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

"(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

"(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

"(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

"(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

"(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

"(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

"(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

"(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

"(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

"(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

"(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

"(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

"(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

"(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.".

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term "memoranda of understanding" means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection

shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

TITLE V—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

SEC. 501. DEFINITION.

In this title, the term "executive agency" has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 502. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 503. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 502 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term "simplified acquisition threshold definitions" means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 504. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 502, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 505. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 502 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 506. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 502, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 502.

SEC. 507. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

Subtitle B—Other Matters

SEC. 511. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

This division shall take effect 30 days after the date of enactment of this Act or, if enacted within 30 days before January 1, 2003, on January 1, 2003.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the "Immigration Reform, Accountability, and Security Enhancement Act of 2002".

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term "Enforcement Bureau" means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term "immigration enforcement functions" has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term "immigration laws of the United States" has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term "immigration policy, administration, and inspection functions" has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term "immigration service functions" has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term "Service Bureau" means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting "**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**" after "**TITLE I—GENERAL**"; and

(2) by adding at the end the following:

"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

"(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

"(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

"(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

"(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

"(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

"(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

"(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

"(2) Immigration service and adjudication functions, as defined in section 113(b).

"(3) Immigration enforcement functions, as defined in section 114(b).

"(d) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

"(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

"(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

"(1) This Act.

"(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.".

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

"(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.";

(B) by adding at the end of section 101(a) the following new paragraphs:

"(51) The term 'Secretary' means the Secretary of Homeland Security.

"(52) The term 'Department' means the Department of Homeland Security.";

(C) by striking "Attorney General" and "Department of Justice" each place it appears and inserting "Secretary" and "Department", respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking "The" and inserting "Except as otherwise provided in section 111(e), the; and

(E) by striking "Immigration and Naturalization Service", "Service", and "Service's" each place they appear and inserting "Directorate of Immigration Affairs", "Directorate", and "Directorate's", respectively.

(2) Section 6 of the Act entitled "An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes", approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking "Immigration and Naturalization Service" and inserting "Directorate of Immigration Affairs";

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

"SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

"(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

"(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

"(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

"(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

"(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

"(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

"(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

"(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

"(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

"(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

"(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

"(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

"(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

"(3) DEFINITION.—In this chapter, the term "immigration policy, administration, and inspection functions" means the duties, activities, and powers described in this subsection.

"(c) GENERAL COUNSEL.—

"(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

"(2) FUNCTION.—The General Counsel shall—

"(A) serve as the chief legal officer for the Directorate; and

"(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

"(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

"(1) CHIEF FINANCIAL OFFICER.—

"(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

"(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

"(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

"(e) CHIEF OF POLICY.—

"(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

"(A) establishing national immigration policy and priorities;

"(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

"(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

"(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

"(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

"(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

"(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

"(B) serving as a liaison with other Federal agencies on immigration issues; and

"(C) responding to inquiries from, and providing information to, the media on immigration issues.

"(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.".

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Under Secretary of Immigration Affairs, Department of Justice.".

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

"Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.".

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

"(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).".

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking "Commissioner of Immigration and Naturalization" and "Commissioner" each place they appear and inserting "Under Secretary of Homeland Security for Immigration Affairs" and "Under Secretary", respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the "Commissioner of Social Security" in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking "Commissioner" and inserting "Under Secretary";

(B) in the section heading, by striking "COMMISSIONER" and inserting "UNDER SECRETARY";

(C) in subsection (d), by striking "Commissioner" and inserting "Under Secretary"; and

(D) in subsection (e), by striking "Commissioner" and inserting "Under Secretary".

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking "Director" each place it appears and inserting "Assistant Secretary of State for Consular Affairs".

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking "Passport Office, a Visa Office," and inserting "a Passport Services office, a Visa Services office, an Overseas Citizen Services office,"; and

(B) in the second sentence, by striking "the Passport Office and the Visa Office" and inserting "the Passport Services office and the Visa Services office".

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

"Commissioner of Immigration and Naturalization, Department of Justice.".

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

"SEC. 113. BUREAU OF IMMIGRATION SERVICES.

"(a) ESTABLISHMENT OF BUREAU.—

"(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

"(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

"(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

"(B) shall report directly to the Under Secretary.

"(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

"(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

"(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

"(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

"(B) Adjudications of applications for adjustment of status and change of status.

"(C) Adjudications of naturalization applications.

"(D) Adjudications of asylum and refugee applications.

"(E) Adjudications performed at Service centers.

"(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

"(G) All other adjudications under the immigration laws of the United States.

"(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

"(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

"(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

"(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

"(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

"(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.".

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.".

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

"SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

"(a) ESTABLISHMENT OF BUREAU.—

"(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

"(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

"(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

"(B) shall report directly to the Under Secretary.

"(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

"(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

"(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

"(A) The border patrol function.

"(B) The detention function, except as specified in section 113(b)(2)(F).

"(C) The removal function.

"(D) The intelligence function.

"(E) The investigations function.

"(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

"(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

"(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

"(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

"(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

"(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.".

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.".

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

"(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

"(b) OMBUDSMAN.—

"(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

"(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

"(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

"(1) to assist individuals in resolving problems with the Directorate or any component thereof;

"(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

"(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

"(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

"(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

"(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

"(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

"(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

"(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

"(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

"(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

"(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

"(6) recommendations as may be appropriate to resolve problems encountered by the public;

"(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

"(8) recommendations to resolve problems caused by inadequate funding or staffing; and

"(9) such other information as the Ombudsman may deem advisable.

"(f) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

"(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.".

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

"(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

"(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

"(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

"(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

"(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

"(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

"(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

"CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES";

(2) by striking the item relating to section 103 and inserting the following:

"Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.";

and

(3) by inserting after the item relating to section 106 the following:

"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

"Sec. 111. Establishment of Directorate of Immigration Affairs.
"Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
"Sec. 113. Bureau of Immigration Services.
"Sec. 114. Bureau of Enforcement and Border Affairs.
"Sec. 115. Office of the Ombudsman for Immigration Affairs.
"Sec. 116. Office of Immigration Statistics.".

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the

United States a separate account, which shall be known as the "Directorate of Immigration Affairs Transition Account" (in this section referred to as the "Account").

(2) Use of account.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) Report to Congress on Transition.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) Effective Date.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) Level of Fees.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants" and inserting "services".

(b) Use of Fees.—

(1) In general.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) Prohibition.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) Refugee and Asylum Adjudication Services.—

(1) Authorization of appropriations.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) Availability of funds.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) Separation of Funding.—

(1) In general.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) Fees.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) Fees not transferable.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) Authorization of Appropriations for Backlog Reduction.—

(1) In general.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) Availability of funds.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) Infrastructure improvement account.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) Establishment of On-Line Database.—

(1) In general.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) Privacy considerations.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) Means of access.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) Prohibition on fees.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) Feasibility Study for On-Line Filing and Improved Processing.—

(1) On-line filing.—

(A) In general.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) Study elements.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) Report.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) Technology Advisory Committee.—

(1) Establishment.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) Composition.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) Assignments of Asylum Officers.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) Amendment of the Immigration and Nationality Act.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

"SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

"(a) Development of Alternatives to Detention.—The Under Secretary shall—

"(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

"(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

"(b) Specific Alternatives for Consideration.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

"(1) Parole from detention.

"(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

"(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

"(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

"(c) Regulations.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

"(d) Definition.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.".

(b) Clerical Amendment.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

"Sec. 236B. Alternatives to detention of asylum seekers.".

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the "Unaccompanied Alien Child Protection Act of 2002".

SEC. 1202. DEFINITIONS.

(a) In General.—In this title:

(1) Director.—The term "Director" means the Director of the Office.

(2) Office.—The term "Office" means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) Service.—The term "Service" means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) Unaccompanied alien child.—The term "unaccompanied alien child" means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) Voluntary agency.—The term "voluntary agency" means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) Amendments to the Immigration and Nationality Act.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

"(53) The term 'unaccompanied alien child' means a child who—

"(A) has no lawful immigration status in the United States;

"(B) has not attained the age of 18; and

"(C) with respect to whom—

"(i) there is no parent or legal guardian in the United States; or

"(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

"(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

"(A) have not attained the age of 18; and

"(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.".

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) In General.—

(1) Responsibilities of the office.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) Duties of the director with respect to unaccompanied alien children.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) Duties with respect to foster care.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) Powers.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) No Effect on Service, EOIR, and Department of State Adjudicatory Responsibilities.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) Establishment.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) Composition.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) Chairman.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) Activities of the Task Force.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) Transfer of Functions.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) Transfer and Allocations of Appropriations and Personnel.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) Legal Documents.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) Proceedings.—

(1) Pending.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit,

service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied

alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age, whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

"(J) an immigrant under the age of 18 on the date of application who is present in the United States—

"(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

"(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

"(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;".

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,";

(2) in subparagraph (B), by striking the period and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.".

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its "Guidelines for Children's Asylum Claims", dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the "Guidelines for Children's Asylum Claims" in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the "Guidelines for Children's Asylum Claims" to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

"(A) the number of unaccompanied refugee children, by region;

"(B) the capacity of the Department of State to identify such refugees;

"(C) the capacity of the international community to care for and protect such refugees;

"(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

"(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

"(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.".

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking "and" after "countries,"; and

(2) inserting before the period at the end the following: ", and instruction on the needs of unaccompanied refugee children".

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the "Agency").

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the "Board") shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the "Chief Human Capital Officers Act of 2002".

SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

"Sec.
"1401. Establishment of agency Chief Human Capital Officers.
"1402. Authority and functions of agency Chief Human Capital Officers.

"§1401. Establishment of agency Chief Human Capital Officers

"The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

"(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

"(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

"(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§1402. Authority and functions of agency Chief Human Capital Officers

"(a) The functions of each Chief Human Capital Officer shall include—

"(1) setting the workforce development strategy of the agency;

"(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

"(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

"(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

"(5) identifying best practices and benchmarking studies; and

"(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

"(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

"(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

"(A) are the property of the agency or are available to the agency; and

"(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

"(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Chief Human Capital Officers ..... 1401".

SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

"(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

"(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

"(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

"(ii) integrating those strategies into the budget and strategic plans of those agencies;

"(B) closing skill gaps in mission critical occupations;

"(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

"(D) sustaining a culture that cultivates and develops a high performing workforce;

"(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

"(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.".

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

"(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).”.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking “and” after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

“(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and”.

SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking “and” after the semicolon;

(B) in paragraph (2), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

“(A) public notice has been given; and

“(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.”; and

(2) by inserting after section 3318 the following:

“§ 3319. Alternative ranking and selection procedures

“(a)(1) the Office, in exercising its authority under section 3304; or

“(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

“(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

“(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

“(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

“(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

“(1) the number of employees hired under that system;

“(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

“(3) the way in which managers were trained in the administration of that system.

“(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

“3319. Alternative ranking and selection procedures.”.

SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

“§ 3521. Definitions

“In this subchapter, the term—

“(1) ‘agency’ means an Executive agency as defined under section 105; and

“(2) ‘employee’—

“(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

“(i) is serving under an appointment without time limitation; and

“(ii) has been currently employed for a continuous period of at least 3 years; and

“(B) shall not include—

“(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

“(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

“(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

“(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

“(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

“(vi) any employee who—

“(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

“(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

“(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

“§ 3522. Agency plans; approval

“(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

“(b) The plan of an agency under subsection (a) shall include—

“(1) the specific positions and functions to be reduced or eliminated;

“(2) a description of which categories of employees will be offered incentives;

“(3) the time period during which incentives may be paid;

“(4) the number and amounts of voluntary separation incentive payments to be offered; and

“(5) a description of how the agency will operate without the eliminated positions and functions.

“(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

“§ 3523. Authority to provide voluntary separation incentive payments

“(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

“(b) A voluntary incentive payment—

“(1) shall be offered to agency employees on the basis of—

“(A) 1 or more organizational units;

“(B) 1 or more occupational series or levels;

“(C) 1 or more geographical locations;

“(D) skills, knowledge, or other factors related to a position;

“(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

“(F) any appropriate combination of such factors;

“(2) shall be paid in a lump sum after the employee's separation;

“(3) shall be equal to the lesser of—

“(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

“(B) an amount determined by the agency head, not to exceed $25,000;

“(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

“(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

“(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

“(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

“§ 3524. Effect of subsequent employment with the Government

“(a) The term ‘employment’—

“(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

“(2) in subsection (c) does not include employment under such a contract.

“(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

“(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

“(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

“(B) in the case of an emergency involving a direct threat to life or property, the individual—

“(i) has skills directly related to resolving the emergency; and

“(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

“(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

“(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

“§ 3525. Regulations

“The Office of Personnel Management may prescribe regulations to carry out this subchapter.”.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

“CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT”;

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

“3521. Definitions.
“3522. Agency plans; approval.
“3523. Authority to provide voluntary separation incentive payments.
“3524. Effect of subsequent employment with the Government.
“3525. Regulations.”.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

“(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

“(B) is serving under an appointment that is not time limited;

“(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

“(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

“(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

“(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

“(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

“(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

“(i) 1 or more organizational units;

“(ii) 1 or more occupational series or levels;

“(iii) 1 or more geographical locations;

“(iv) specific periods;

“(v) skills, knowledge, or other factors related to a position; or

“(vi) any appropriate combination of such factors;”.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

“(ii) is serving under an appointment that is not time limited;

“(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

“(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

“(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

“(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

“(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

“(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

“(I) 1 or more organizational units;

“(II) 1 or more occupational series or levels;

“(III) 1 or more geographical locations;

“(IV) specific periods;

“(V) skills, knowledge, or other factors related to a position; or

“(VI) any appropriate combination of such factors;”.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking “and a member of a uniformed service” and inserting “, a member of a uniformed service, and a student who provides voluntary services under section 3111”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking “chapter 81 of this title” and inserting “section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81”.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking “3393a,”;

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting “or” at the end;

(ii) in paragraph (2), by striking “or” at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

“(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.”; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking "or removal from the Senior Executive Service for failure to be recertified under section 3393a";

(4) in chapter 83—

(A) in section 8336(h)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8339(h), in the first sentence, by striking ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive"; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8421(a)(2), by striking ", except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age".

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

"(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.".

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

"§ 4107. Academic degree training

"(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

"(1) contributes significantly to—

"(A) meeting an identified agency training need;

"(B) resolving an identified agency staffing problem; or

"(C) accomplishing goals in the strategic plan of the agency;

"(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

"(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

"(b) In exercising authority under subsection (a), an agency shall—

"(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

"(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

"(B) provide employees effective education and training to improve organizational and individual performance;

"(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

"(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

"(A) a noncareer appointment in the Senior Executive Service; or

"(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

"(4) to the greatest extent practicable, facilitate the use of online degree training.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

"4107. Academic degree training.".

SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

"(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or"; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

"(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and".

SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

"§ 5550b. Compensatory time off for travel

"(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

"(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.".

SA 4468. Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 2487, to provide for global pathogen surveillance and response; as follows:

On page 3, line 1, insert ", including data sharing with appropriate United States departments and agencies," after "countries".

On page 5, strike lines 9 through 14, and insert the following:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

On page 5, line 17, insert ", and other electronic" after "Internet-based".

On page 6, line 5, strike "including" and all that follows through "mechanisms," on line 7, and insert the following: "including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications,".

On page 9, line 15, insert before the period the following: ", provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies".

On page 17, line 12, insert "(and information technology)" after "Equipment".

SA 4469. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253. To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Department of Veterans Affairs Emergency Preparedness Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.
TITLE I—MEDICAL EMERGENCY PREPAREDNESS
Sec. 101. Medical emergency preparedness centers in Veterans Health Administration.
TITLE II—DEPARTMENT OF VETERANS AFFAIRS ADMINISTRATION
Sec. 201. Additional Assistant Secretary of Veterans Affairs and functions for Assistant Secretaries of Veterans Affairs.
Sec. 202. Additional Deputy Assistant Secretaries of Veterans Affairs.
TITLE III—HEALTH CARE MATTERS
Sec. 301. Authority to furnish health care during major disasters and medical emergencies.
TITLE IV—RESEARCH CORPORATIONS
Sec. 401. Modification of certain authorities on research corporations.
Sec. 402. Coverage of research corporation personnel under Federal Tort Claims Act and other tort claims laws.
Sec. 403. Permanent authority for research corporations.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—MEDICAL EMERGENCY PREPAREDNESS

SEC. 101. MEDICAL EMERGENCY PREPAREDNESS CENTERS IN VETERANS HEALTH ADMINISTRATION.

(a) IN GENERAL.—(1) Subchapter II of chapter 73 is amended by inserting after section 7320 the following new section:

"§ 7320A. Medical emergency preparedness centers

"(a) The Secretary shall establish and maintain within the Veterans Health Administration four centers for research and activities on medical emergency preparedness.

"(b) The purposes of each center established under subsection (a) shall be as follows:

"(1) To carry out research on the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices, including the development of methods for the detection, diagnosis, prevention, and treatment of such injuries, diseases, and illnesses.

"(2) To provide to health-care professionals in the Veterans Health Administration education, training, and advice on the treatment of the medical consequences of the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

"(3) Upon the direction of the Secretary, to provide education, training, and advice described in paragraph (2) to health-care professionals outside the Department through the National Disaster Medical System or through interagency agreements entered into by the Secretary for that purpose.

"(4) In the event of a national emergency, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the national emergency.

"(c)(1) Each center established under subsection (a) shall be established at an existing Department medical center, whether at the Department medical center alone or at a Department medical center acting as part of a consortium of Department medical centers for purposes of this section.

"(2) The Secretary shall select the sites for the centers from among competitive proposals that are submitted by Department medical centers seeking to be sites for such centers.

"(3) The Secretary may not select a Department medical center as the site of a center unless the proposal of the Department medical center under paragraph (2) provides for—

"(A) an arrangement with an accredited affiliated medical school and an accredited affiliated school of public health (or a consortium of such schools) under which physicians and other health care personnel of such schools receive education and training through the Department medical center;

"(B) an arrangement with an accredited graduate program of epidemiology under which students of the program receive education and training in epidemiology through the Department medical center; and

"(C) the capability to attract scientists who have made significant contributions to innovative approaches to the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

"(4) In selecting sites for the centers, the Secretary shall—

"(A) utilize a peer review panel (consisting of members with appropriate scientific and clinical expertise) to evaluate proposals submitted under paragraph (2) for scientific and clinical merit; and

"(B) to the maximum extent practicable, ensure the geographic dispersal of the sites throughout the United States.

"(d)(1) Each center established under subsection (a) shall be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

"(2) The Secretary and the heads of the agencies concerned shall take appropriate actions to ensure that the work of each center is carried out—

"(A) in close coordination with the Department of Defense, Department of Health and Human Services, Office of Homeland Security, and other departments, agencies, and elements of the Federal Government charged with coordination of plans for United States homeland security; and

"(B) in accordance with any applicable recommendations of the Working Group on Bioterrorism and Other Public Health Emergencies, or any other joint interagency advisory groups or committees designated to coordinate Federal research on weapons of mass destruction.

"(e)(1) Each center established under subsection (a) shall be staffed by officers and employees of the Department.

"(2) Subject to the approval of the head of the department or agency concerned and the Director of the Office of Personnel Management, an officer or employee of another department or agency of the Federal Government may be detailed to a center if the detail will assist the center in carrying out activities under this section. Any detail under this paragraph shall be on a non-reimbursable basis.

"(f) In addition to any other activities under this section, a center established under subsection (a) may, upon the request of the agency concerned and with the approval of the Secretary, provide assistance to Federal, State, and local agencies (including criminal and civil investigative agencies) engaged in investigations or inquiries intended to protect the public safety or health or otherwise obviate threats of the use of a chemical, biological, radiological, or incendiary or other explosive weapon or device.

"(g) Notwithstanding any other provision of law, each center established under subsection (a) may, with the approval of the Secretary, solicit and accept contributions of funds and other resources, including grants, for purposes of the activities of such center under this section.".

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7320 the following new item:

"7320A. Medical emergency preparedness centers.".

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There is hereby authorized to be appropriated for the Department of Veterans Affairs amounts for the centers established under section 7320A of title 38, United States Code (as added by subsection (a)), $20,000,000 for each of fiscal years 2003 through 2007.

(2) The amount authorized to be appropriated by paragraph (1) is not authorized to be appropriated for the Veterans Health Administration for Medical Care, but is authorized to be appropriated for the Administration separately and solely for purposes of the centers referred to in that paragraph.

(3) Of the amount authorized to be appropriated by paragraph (1) for a fiscal year, $5,000,000 shall be available for such fiscal year for each center referred to in that paragraph.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS ADMINISTRATION

SEC. 201. ADDITIONAL ASSISTANT SECRETARY OF VETERANS AFFAIRS AND FUNCTIONS FOR ASSISTANT SECRETARIES OF VETERANS AFFAIRS.

(a) INCREASE IN MAXIMUM AUTHORIZED NUMBER OF ASSISTANT SECRETARIES OF VETERANS AFFAIRS.—Section 308(a) is amended by striking "six" and inserting "seven".

(b) ADDITIONAL AUTHORIZED FUNCTIONS.—Section 308(b) is amended by adding at the end the following new paragraph:

"(11) Operations, preparedness, security, and law enforcement functions.".

(c) CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking the item relating to Assistant Secretaries, Department of Veterans Affairs and inserting the following new item:

"Assistant Secretaries, Department of Veterans Affairs (7)".

SEC. 202. ADDITIONAL DEPUTY ASSISTANT SECRETARIES OF VETERANS AFFAIRS.

Section 308(d)(1) is amended by striking "18" and inserting "20".

TITLE III—HEALTH CARE MATTERS

SEC. 301. AUTHORITY TO FURNISH HEALTH CARE DURING MAJOR DISASTERS AND MEDICAL EMERGENCIES.

(a) IN GENERAL.—(1) Subchapter VII of chapter 17 is amended by inserting after section 1784 the following new section:

"§ 1785. Care and services during major disasters and medical emergencies

"(a) During and immediately following a disaster or emergency referred to in subsection (b), the Secretary may furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by such disaster or emergency, as the case may be.

"(b) A disaster or emergency referred to in this subsection is any disaster or emergency as follows:

"(1) A major disaster or emergency declared by the President under the Robert B. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"(2) A disaster or emergency in which the National Disaster Medical System is activated.

"(c) The Secretary may furnish care and services under this section to veterans without regard to their enrollment in the system of annual patient enrollment under section 1705 of this title.

"(d) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of—

"(1) veterans with service-connected disabilities; and

"(2) members of the Armed Forces on active duty who are furnished health-care services under section 8111A of this title.

"(e)(1) The cost of any care or services furnished under this section to an officer or employee of a department or agency of the Federal Government other than the Department shall be reimbursed at such rates as may be agreed upon by the Secretary and the head of such department or agency based on the cost of the care or service furnished.

"(2) Amounts received by the Department under this subsection shall be credited to the funds allotted to the Department facility that furnished the care or services concerned.

"(f) Within 60 days of the commencement of a disaster or emergency referred to in subsection (b) in which the Secretary furnishes care and services under this section (or as soon thereafter as is practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the Secretary's allocation of facilities and personnel in order to furnish such care and services.

"(g) The Secretary shall prescribe regulations governing the exercise of the authority of the Secretary under this section.".

(2) The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 1784 the following new item:

"1785. Care and services during major disasters and medical emergencies.".

(b) EXCEPTION FROM REQUIREMENT FOR CHARGES FOR EMERGENCY CARE.—Section 1784 is amended by inserting ", except as provided in section 1785 of this title with respect to a disaster or emergency covered by that section," after "but".

(c) MEMBERS OF THE ARMED FORCES.—Subsection (a) of section 8111A is amended to read as follows:

"(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty.

"(2)(A) During and immediately following a disaster or emergency referred to in subparagraph (B), the Secretary may furnish hospital care and medical services to members of the Armed Forces on active duty responding to or involved in such disaster or emergency, as the case may be.

"(B) A disaster or emergency referred to in this subparagraph is any disaster or emergency follows:

"(i) A major disaster or emergency declared by the President under the Robert B. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"(ii) A disaster or emergency in which the National Disaster Medical System is activated.

"(3) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

"(4) In this section, the terms 'hospital care', 'nursing home care', and 'medical services' have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively.".

TITLE IV—RESEARCH CORPORATIONS

SEC. 401. MODIFICATION OF CERTAIN AUTHORITIES ON RESEARCH CORPORATIONS.

(a) RESTATEMENT AND ENHANCEMENT OF AUTHORITY ON AVAILABILITY OF FUNDS.—Section 7362 is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by striking the second sentence' of subsection (a); and

(3) by inserting after subsection (a) the following new subsection (b):

"(b)(1) Any funds, other than funds appropriated for the Department, that are received by the Secretary for the conduct of research or education and training may be transferred to and administered by a corporation established under this subchapter for the purposes set forth in subsection (a).

"(2) Funds appropriated for the Department are available for the conduct of research or education and training by a corporation, but only pursuant to the terms of a contract or other agreement between the Department and such corporation that is entered into in accordance with applicable law and regulations.

"(3) A contract or agreement executed pursuant to paragraph (2) or section 8153 of this title may facilitate only research or education and training described in subsection (a). Such contract or agreement may not be executed for the provision of a health-care resource unless such health-care resource is related to such research or education and training.".

(b) TREATMENT OF CORPORATIONS AS AFFILIATED INSTITUTIONS FOR SHARING OF HEALTH-CARE RESOURCES.—Section 8153(a)(3) is amended—

(1) by redesignating subparagraphs (C), (D), and (E) as subsections (D), (E), and (F), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph (C):

"(C) If the resource required is research or education and training (as that term is defined in section 7362(c) of this title) and is to be acquired from a corporation established under subchapter IV of chapter 73 of this title, the Secretary may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.";

(3) in subparagraph (D), as so redesignated, by striking "(A) or (B)" and inserting "(A), (B), or (C)"; and

(4) in subparagraph (E), as so redesignated, by striking "(A)" and inserting "(A) or (B)".

SEC. 402. COVERAGE OF RESEARCH CORPORATION PERSONNEL UNDER FEDERAL TORT CLAIMS ACT AND OTHER TORT CLAIMS LAWS.

(a) IN GENERAL.—Subchapter IV of chapter 73 is amended by inserting after section 7364 the following new section:

"§ 7364A. Coverage of employees under certain Federal tort claims laws

"(a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:

"(1) Section 1346(b) of title 28.

"(2) Chapter 171 of title 28.

"(3) Section 7316 of this title.

"(b) An employee described in this subsection is an employee who—

"(1) has an appointment with the Department, whether with or without compensation;

"(2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for research or education and training; and

"(3) performs such duties under the supervision of Department personnel.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7364 the following new item:

"7364A. Coverage of employees under certain Federal tort claims laws.".

SEC. 403. PERMANENT AUTHORITY FOR RESEARCH CORPORATIONS.

(a) REPEAL OF SUNSET.—Section 7368 is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by striking the item relating to section 7368.

SA 4470. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253. To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes; as follows:

Amend the title to read: "A bill to amend title 38, United States Code, to enhance the emergency preparedness of the Department of Veterans Affairs, and for other purposes.".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, August 1, 2002. The purpose of this business meeting will be to consider the nomination of Mr. Tom Dorr to be the Under Secretary of Agriculture for Rural Development at the U.S. Department of Agriculture and to consider disaster assistance legislation at 9:30 am.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on

Armed Services be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 9:00 a.m., in both open and closed sessions to continue to receive testimony on the national security implications of the strategic offensive reductionstreaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 1:30 p.m., in closed session to consider a pending reprogramming.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, August 1, 2002, immediately following a vote on the Senate Floor, at a time to be announced, to consider favorably reporting the following nominations: Ms. Charlotte A. Lane, to be a Member of the United States International Trade Commission, and Pamela F. Olson, to be Assistant Secretary of the Treasury, U.S. Department of Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 10:00 a.m., to hear testimony on the Nomination of Pamela F. Olson to be Assistant Secretary of the Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 2002 at 9:30 a.m. to hold a business meeting.

Agenda

The Committee will consider and vote on the following agenda items:

TREATIES

1. Treaty Doc. 106–10; Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the "Montreal Protocol"), adopted at Montreal on September 15–17, 1997, by the Ninth Meeting of the Parties to the Montreal Protocol.

2. Treaty Doc. 106–32, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the "Montreal Protocol"), adopted at Beijing on December 3, 1999, by the Eleventh Meeting of the Parties to the Montreal Protocol (the "Beijing Amendment").

Legislation

S. 2712, A bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries, with amendments.

2. S. Res. 309, A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States, with an amendment.

3. S. Con. Res. 122, A concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes, with amendments.

4. H.R. 2121; An act to make available funds under the Foreign Assistance Act of 1961 to expand democracy, good governance, and anti-corruption programs in the Russian Federation in order to promote and strengthen democratic government and civil society in that country and to support independent media, with amendments.

5. H.R. 4558, An act to extend the Irish Peace Process Cultural and Training Program.

Nominations

1. Ms. Nancy J. Powell, of Iowa, to be Ambassador to the Islamic Republic of Pakistan.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 2002 at 10 a.m. to hold a hearing on Iraq.

Agenda

Witnesses:

Panel IV: The Day After: Dr. Phebe Marr, Former Senior Fellow, Institute for National Strategic Studies, National Defense University, Washington, DC; Mrs. Rahim Francke, Executive Director, Iraq Foundation, Washington, DC.

Additional witnesses to be announced.

Panel V: Summing Up: National Security Perspectives: Mr. Samuel R. Berger, Chairman, Stonebridge International LLC, Washington, DC.

Additional witnesses to be announced.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSION

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be authorized to meet at 2:50 p.m. today, August 1, 2002 to consider the following attached agenda.

S. 2394. A bill to amend the Federal Food, Drug and Cosmetic Act to require labeling containing information applicable to pediatric patients

S. 2445. The Book Stamp Act

Presidential Nominations

Edward Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board and Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting to mark up S. 1344, a bill to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers; S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program; and S. 2711, a bill to reauthorize and improve programs relating to Native Americans, to be followed immediately by an oversight hearing on the Interior Secretary's report on the Hoopa Yurok Settlement Act.

The committee will meet again on Thursday, August 1, 2002 at 2 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on problems facing native youth.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Interior Secretary's report on the Hoopa Yurok Settlement Act.

I also ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 2 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on "Judicial Nominations" on Thursday, August 1, 2002 in Dirksen room 226 at 2 p.m.

PANEL I

The Honorable Arlen Specter, U.S. Senator (R–PA); The Honorable Phil Gramm, U.S. Senator (R–TX); The Honorable Kay Bailey Hutchison, U.S. Senator (R–TX); The Honorable Rick Santorum, U.S. Senator (R–PA); The Honorable Charles Schumer, U.S. Senator (D–NY); and The Honorable Hilary Rodham Clinton, U.S. Senator (D–NY).

PANEL II

Reena Raggi to be a U.S. Circuit Court Judge for the 2nd Circuit.

PANEL III

Lawrence J. Block to be Judge for the U.S. Court of Federal Claims; James Knoll Gardner to be U.S. District Court Judge for the Eastern District of PA; and Ronald H. Clark to be U.S. District Court Judge for the Eastern District of Texas.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a roundtable entitled "Promoting Small Business Regulatory Compliance and Entrepreneurial Education—The Role of the SBDC Network" on Thursday, August 1, 2002, beginning at 2 p.m. in room 428 A of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Crime and Drugs be authorized to meet to conduct a hearing on "Criminal and Civil Enforcement of Environmental Laws: Do We Have All The Tools We Need?" on Thursday, August 1, 2002, at 2:15 p.m. in SD–226.

WITNESS LIST

PANEL I

The Hon. Thomas L. Sansonetti, Assistant Attorney General for the Environment and Natural Resources Division, Washington, DC.

The Hon. Timothy M. Burgess, United States Attorney for the District of Alaska, Anchorage, AK.

PANEL II

Eric V. Schaeffer, Former Director of the Office of Regulatory Enforcement, U.S. Environmental Protection Agency, Director, Environmental Integrity Project, Rockefeller Family Fund, Washington, DC.

Judson W. Starr, Former Chief, Environmental Crimes Section, U.S. Department of Justice, Partner, Venable LLP, Washington, DC.

Ronald A. Sarachan, Former Chief, Environmental Crimes Section, U.S. Department of Justice, Partner, Ballard Spahr Andrews & Ingersoll, LLP, Philadelphia, PA.

Michael J. Penders, Former Director of Legal Counsel, Office of Criminal Enforcement, Forensics and Training, U.S. Environmental Protection Agency, President and CEO, Environmental Protection International, Washington, DC.

Nicholas A. DiPasquale, Secretary Delaware Department of Natural Resources and Environmental Control, Dover, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. REID. Mr. President, I ask unanimous consent that the subcommittee on international trade and finance of the committee on banking, housing, and urban affairs be authorized to meet during the session of the senate on Thursday, August 1, 2002, at 2:30 p.m. to conduct an oversight hearing on "the role of charities and N.G.O.s in the financing of terrorist activities."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Madam President, I ask unanimous consent that Heather Marshall Byers and Norman A. MacLean be allowed on the Senate floor for today, the first day of August.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. I ask unanimous consent that Joyce Iutcovich, a fellow in my office, be granted floor privileges for the remainder of today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORZINE. Madam President, I ask unanimous consent that Angie Drumm, a fellow in my office, be granted floor privileges for the remainder of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2002

(On Wednesday, July 31, 2002, the Senate passed S. 812, as follows:)

S. 812

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS

SEC. 101. SHORT TITLE.

This title may be cited as the "Greater Access to Affordable Pharmaceuticals Act of 2002".

SEC. 102. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) prescription drug costs are increasing at an alarming rate and are a major worry of American families and senior citizens;

(2) enhancing competition between generic drug manufacturers and brand-name manufacturers can significantly reduce prescription drug costs for American families;

(3) the pharmaceutical market has become increasingly competitive during the last decade because of the increasing availability and accessibility of generic pharmaceuticals, but competition must be further stimulated and strengthened;

(4) the Federal Trade Commission has discovered that there are increasing opportunities for drug companies owning patents on brand-name drugs and generic drug companies to enter into private financial deals in a manner that could restrain trade and greatly reduce competition and increase prescription drug costs for consumers;

(5) generic pharmaceuticals are approved by the Food and Drug Administration on the basis of scientific testing and other information establishing that pharmaceuticals are therapeutically equivalent to brand-name pharmaceuticals, ensuring consumers a safe, efficacious, and cost-effective alternative to brand-name innovator pharmaceuticals;

(6) the Congressional Budget Office estimates that—

(A) the use of generic pharmaceuticals for brand-name pharmaceuticals could save purchasers of pharmaceuticals between $8,000,000,000 and $10,000,000,000 each year; and

(B) generic pharmaceuticals cost between 25 percent and 60 percent less than brand-name pharmaceuticals, resulting in an estimated average savings of $15 to $30 on each prescription;

(7) generic pharmaceuticals are widely accepted by consumers and the medical profession, as the market share held by generic pharmaceuticals compared to brand-name pharmaceuticals has more than doubled during the last decade, from approximately 19 percent to 43 percent, according to the Congressional Budget Office;

(8) expanding access to generic pharmaceuticals can help consumers, especially senior citizens and the uninsured, have access to more affordable prescription drugs;

(9) Congress should ensure that measures are taken to effectuate the amendments made by the Drug Price Competition and Patent Term Restoration Act of 1984 (98 Stat. 1585) (referred to in this section as the "Hatch-Waxman Act") to make generic drugs more accessible, and thus reduce health care costs; and

(10) it would be in the public interest if patents on drugs for which applications are approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) were extended only through the patent extension procedure provided under the Hatch-Waxman Act rather than through the attachment of riders to bills in Congress.

(b) PURPOSES.—The purposes of this title are—

(1) to increase competition, thereby helping all Americans, especially seniors and the uninsured, to have access to more affordable medication; and

(2) to ensure fair marketplace practices and deter pharmaceutical companies (including generic companies) from engaging in anticompetitive action or actions that tend to unfairly restrain trade.

SEC. 103. FILING OF PATENT INFORMATION WITH THE FOOD AND DRUG ADMINISTRATION.

(a) FILING AFTER APPROVAL OF AN APPLICATION.—

(1) IN GENERAL.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (as amended by section 9(a)(2)(B)(ii)) is amended in subsection (c) by striking paragraph (2) and inserting the following:

"(2) PATENT INFORMATION.—

"(A) IN GENERAL.—Not later than the date that is 30 days after the date of an order approving an application under subsection (b) (unless the Secretary extends the date because of extraordinary or unusual circumstances), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) with respect to any patent—

"(i)(I) that claims the drug for which the application was approved; or

"(II) that claims an approved method of using the drug; and

"(ii) with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.

"(B) SUBSEQUENTLY ISSUED PATENTS.—In a case in which a patent described in subparagraph (A) is issued after the date of an order approving an application under subsection (b), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) not later than the date that is 30 days after the date on which the patent is issued (unless the Secretary extends the date because of extraordinary or unusual circumstances).

"(C) PATENT INFORMATION.—The patent information required to be filed under subparagraph (A) or (B) includes—

"(i) the patent number;

"(ii) the expiration date of the patent;

"(iii) with respect to each claim of the patent—

"(I) whether the patent claims the drug or claims a method of using the drug; and

"(II) whether the claim covers—

"(aa) a drug substance;

"(bb) a drug formulation;

"(cc) a drug composition; or

"(dd) a method of use;

"(iv) if the patent claims a method of use, the approved use covered by the claim;

"(v) the identity of the owner of the patent (including the identity of any agent of the patent owner); and

"(vi) a declaration that the applicant, as of the date of the filing, has provided complete and accurate patent information for all patents described in subparagraph (A).

"(D) PUBLICATION.—On filing of patent information required under subparagraph (A) or (B), the Secretary shall—

"(i) immediately publish the information described in clauses (i) through (iv) of subparagraph (C); and

"(ii) make the information described in clauses (v) and (vi) of subparagraph (C) available to the public on request.

"(E) CIVIL ACTION FOR CORRECTION OR DELETION OF PATENT INFORMATION.—

"(i) IN GENERAL.—A person that has filed an application under subsection (b)(2) or (j) for a drug may bring a civil action against the holder of the approved application for the drug seeking an order requiring that the holder of the application amend the application—

"(I) to correct patent information filed under subparagraph (A); or

"(II) to delete the patent information in its entirety for the reason that—

"(aa) the patent does not claim the drug for which the application was approved; or

"(bb) the patent does not claim an approved method of using the drug.

"(ii) LIMITATIONS.—Clause (i) does not authorize—

"(I) a civil action to correct patent information filed under subparagraph (B); or

"(II) an award of damages in a civil action under clause (i).

"(F) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application fails to file information on or before the date required under subparagraph (A) or (B) shall be barred from bringing a civil action for infringement of the patent against a person that—

"(i) has filed an application under subsection (b)(2) or (j); or

"(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j).".

(2) TRANSITION PROVISION.—

(A) FILING OF PATENT INFORMATION.—Each holder of an application for approval of a new drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) that has been approved before the date of enactment of this Act shall amend the application to include the patent information required under the amendment made by paragraph (1) not later than the date that is 30 days after the date of enactment of this Act (unless the Secretary of Health and Human Services extends the date because of extraordinary or unusual circumstances).

(B) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application under subsection (b) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) fails to file information on or before the date required under subparagraph (A) shall be barred from bringing a civil action for infringement of the patent against a person that—

(i) has filed an application under subsection (b)(2) or (j) of that section; or

(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j) of that section.

(b) FILING WITH AN APPLICATION.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(C) with respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed—

"(i) a certification under subparagraph (A)(iv) on a claim-by-claim basis; and

"(ii) a statement under subparagraph (B) regarding the method of use claim."; and

(2) in subsection (j)(2)(A), by inserting after clause (viii) the following:

"With respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed, the application shall contain a certification under clause (vii)(IV) on a claim-by-claim basis and a statement under clause (viii) regarding the method of use claim.".

SEC. 104. LIMITATION OF 30-MONTH STAY TO CERTAIN PATENTS.

(a) ABBREVIATED NEW DRUG APPLICATIONS.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) by striking "(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii)," and inserting the following:

"(iii) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under subsection (c)(2)(A),"; and

(ii) by adding at the end the following: "The 30-month period provided under the second sentence of this clause shall not apply to a certification under paragraph (2)(A)(vii)(IV) made with respect to a patent for which patent information was filed with the Secretary under subsection (c)(2)(B).";

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

"(iv) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

"(I) IN GENERAL.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent not described in clause (iii) for which patent information was published by the Secretary under subsection (c)(2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under paragraph (2)(B) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

"(aa) on the date of a court action declining to grant a preliminary injunction; or

"(bb) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

"(AA) on issuance by a court of a determination that the patent is invalid or is not infringed;

"(BB) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

"(CC) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

"(II) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under subclause (I).

"(III) EXPEDITED NOTIFICATION.—If the notice under paragraph (2)(B) contains an address for the receipt of expedited notification of a civil action under subclause (I), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day."; and

(2) by inserting after subparagraph (B) the following:

"(C) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under this subsection, the applicant provides an owner of a patent notice under paragraph (2)(B) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under this subsection.".

(b) OTHER APPLICATIONS.—Section 505(c)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) (as amended by section 9(a)(3)(A)(iii)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (C)—

(i) by striking "(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A)," and inserting the following:

"(C) CLAUSE (iv) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under paragraph (2)(A),"; and

(ii) by adding at the end the following: "The 30-month period provided under the second sentence of this subparagraph shall not apply to a certification under subsection (b)(2)(A)(iv) made with respect to a patent for which patent information was filed with the Secretary under paragraph (2)(B)."; and

(B) by inserting after subparagraph (C) the following:

"(D) CLAUSE (iv) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

"(i) In general.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent not described in subparagraph (C) for which patent information was published by the Secretary under paragraph (2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under subsection (b)(3) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

"(I) on the date of a court action declining to grant a preliminary injunction; or

"(II) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

"(aa) on issuance by a court of a determination that the patent is invalid or is not infringed;

"(bb) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

"(cc) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

"(ii) Cooperation.—Each of the parties shall reasonably cooperate in expediting a civil action under clause (i).

"(iii) Expedited notification.—If the notice under subsection (b)(3) contains an address for the receipt of expedited notification of a civil action under clause (i), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day."; and

(2) by inserting after paragraph (3) the following:

"(4) Failure to bring infringement action.—If, in connection with an application under subsection (b)(2), the applicant provides an owner of a patent notice under subsection (b)(3) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under subsection (b)(2).".

(c) Effective Date.—

(1) In general.—The amendments made by subsections (a) and (b) shall be effective with respect to any certification under subsection (b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) made after the date of enactment of this Act in an application filed under subsection (b)(2) or (j) of that section.

(2) Transition provision.—In the case of applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) filed before the date of enactment of this Act—

(A) a patent (other than a patent that claims a process for manufacturing a listed drug) for which information was submitted to the Secretary of Health and Human Services under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (as in effect on the day before the date of enactment of this Act) shall be subject to subsections (c)(3)(C) and (j)(5)(B)(iii) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section); and

(B) any other patent (including a patent for which information was submitted to the Secretary under section 505(c)(2) of that Act (as in effect on the day before the date of enactment of this Act)) shall be subject to subsections (c)(3)(D) and (j)(5)(B)(iv) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section).

SEC. 105. EXCLUSIVITY FOR ACCELERATED GENERIC DRUG APPLICANTS.

(a) In General.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) (as amended by section 4(a)) is amended—

(1) in subparagraph (B)(v), by striking subclause (II) and inserting the following:

"(II) the earlier of—

"(aa) the date of a final decision of a court (from which no appeal has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) holding that the patent that is the subject of the certification is invalid or not infringed; or

"(bb) the date of a settlement order or consent decree signed by a Federal judge that enters a final judgment and includes a finding that the patent that is the subject of the certification is invalid or not infringed;"; and

(2) by inserting after subparagraph (C) the following:

"(D) Forfeiture of 180-day period.—

"(i) Definitions.—In this subparagraph:

"(I) Application.—The term 'application' means an application for approval of a drug under this subsection containing a certification under paragraph (2)(A)(vii)(IV) with respect to a patent.

"(II) First application.—The term 'first application' means the first application to be filed for approval of the drug.

"(III) Forfeiture event.—The term 'forfeiture event', with respect to an application under this subsection, means the occurrence of any of the following:

"(aa) Failure to market.—The applicant fails to market the drug by the later of—

"(AA) the date that is 60 days after the date on which the approval of the application for the drug is made effective under clause (iii) or (iv) of subparagraph (B) (unless the Secretary extends the date because of extraordinary or unusual circumstances); or

"(BB) if 1 or more civil actions have been brought against the applicant for infringement of a patent subject to a certification under paragraph (2)(A)(vii)(IV) or 1 or more civil actions have been brought by the applicant for a declaratory judgment that such a patent is invalid or not infringed, the date that is 60 days after the date of a final decision (from which no appeal has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) in the last of those civil actions to be decided (unless the Secretary extends the date because of extraordinary or unusual circumstances).

"(bb) Withdrawal of application.—The applicant withdraws the application.

"(cc) Amendment of certification.—The applicant, voluntarily or as a result of a settlement or defeat in patent litigation, amends the certification from a certification under paragraph (2)(A)(vii)(IV) to a certification under paragraph (2)(A)(vii)(III).

"(dd) Failure to obtain approval.—The applicant fails to obtain tentative approval of an application within 30 months after the date on which the application is filed, unless the failure is caused by—

"(AA) a change in the requirements for approval of the application imposed after the date on which the application is filed; or

"(BB) other extraordinary circumstances warranting an exception, as determined by the Secretary.

"(ee) Failure to challenge patent.—In a case in which, after the date on which the applicant submitted the application, new patent information is submitted under subsection (c)(2) for the listed drug for a patent for which certification is required under paragraph (2)(A), the applicant fails to submit, not later than the date that is 60 days after the date on which the Secretary publishes the new patent information under paragraph (7)(A)(iii) (unless the Secretary extends the date because of extraordinary or unusual circumstances)—

"(AA) a certification described in paragraph (2)(A)(vii)(IV) with respect to the patent to which the new patent information relates; or

"(BB) a statement that any method of use claim of that patent does not claim a use for which the applicant is seeking approval under this subsection in accordance with paragraph (2)(A)(viii).

"(ff) Unlawful conduct.—The Federal Trade Commission determines that the applicant engaged in unlawful conduct with respect to the application in violation of section 1 of the Sherman Act (15 U.S.C. 1).

"(IV) Subsequent application.—The term 'subsequent application' means an application for approval of a drug that is filed subsequent to the filing of a first application for approval of that drug.

"(ii) Forfeiture of 180-day period.—

"(I) In general.—Except as provided in subclause (II), if a forfeiture event occurs with respect to a first application—

"(aa) the 180-day period under subparagraph (B)(v) shall be forfeited by the first applicant; and

"(bb) any subsequent application shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), and clause (v) of subparagraph (B) shall not apply to the subsequent application.

"(II) Forfeiture to first subsequent applicant.—If the subsequent application that is the first to be made effective under subclause (I) was the first among a number of subsequent applications to be filed—

"(aa) that first subsequent application shall be treated as the first application under this subparagraph (including subclause (I)) and as the previous application under subparagraph (B)(v); and

"(bb) any other subsequent applications shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), but clause (v) of subparagraph (B) shall apply to any such subsequent application.

"(iii) Availability.—The 180-day period under subparagraph (B)(v) shall be available to a first applicant submitting an application for a drug with respect to any patent without regard to whether an application has been submitted for the drug under this subsection containing such a certification with respect to a different patent.

"(iv) Applicability.—The 180-day period described in subparagraph (B)(v) shall apply to an application only if a civil action is brought against the applicant for infringement of a patent that is the subject of the certification.".

(b) Applicability.—The amendment made by subsection (a) shall be effective only with respect to an application filed under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) after the date of enactment of this Act for a listed drug for which no certification under section 505(j)(2)(A)(vii)(IV) of that Act was made before the date of enactment of this Act, except that if a forfeiture event described in section 505(j)(5)(D)(i)(III)(ff) of that Act occurs in the case of an applicant, the applicant shall forfeit the 180-day period under section 505(j)(5)(B)(v) of that Act without regard to when the applicant made a certification under section 505(j)(2)(A)(vii)(IV) of that Act.

SEC. 106. FAIR TREATMENT FOR INNOVATORS.

(a) Basis for Application.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(3)(B), by striking the second sentence and inserting "The notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation."; and

(2) in subsection (j)(2)(B)(ii), by striking the second sentence and inserting "The notice shall include a detailed statement of the factual and legal basis of the opinion of the applicant that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation.".

(b) Injunctive Relief.—Section 505(j)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)) (as amended by section 4(a)(1)) is amended—

(1) in clause (iii), by adding at the end the following: "A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause."; and

(2) in clause (iv), by adding at the end the following:

"(IV) Injunctive relief.—A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause.".

SEC. 107. BIOEQUIVALENCE.

(a) In General.—The amendments to part 320 of title 21, Code of Federal Regulations, promulgated by the Commissioner of Food and Drugs on July 17, 1991 (57 Fed. Reg. 17997 (April 28, 1992)), shall continue in effect as an exercise of authorities under sections 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 355, 371).

(b) Effect.—Subsection (a) does not affect the authority of the Commissioner of Food and Drugs to amend part 320 of title 21, Code of Federal Regulations.

(c) Effect of Section.—This section shall not be construed to alter the authority of the Secretary of Health and Human Services to regulate biological products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Any such authority shall be exercised under that Act as in effect on the day before the date of enactment of this Act.

SEC. 108. REPORT.

(a) In General.—Not later than the date that is 5 years after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report describing the extent to which implementation of the amendments made by this title—

(1) has enabled products to come to market in a fair and expeditious manner, consistent with the rights of patent owners under intellectual property law; and

(2) has promoted lower prices of drugs and greater access to drugs through price competition.

(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $5,000,000.

SEC. 109. CONFORMING AND TECHNICAL AMENDMENTS.

(a) Section 505.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (a), by striking "(a) No person" and inserting "(a) In General.—No person";

(2) in subsection (b)—

(A) by striking "(b)(1) Any person" and inserting the following:

"(b) Applications.—

"(1) Requirements.—

"(A) In general.—Any person";

(B) in paragraph (1)—

(i) in the second sentence—

(I) by redesignating subparagraphs (A) through (F) as clauses (i) through (vi), respectively, and adjusting the margins appropriately;

(II) by striking "Such persons" and inserting the following:

"(B) Information to be submitted with application.—A person that submits an application under subparagraph (A)"; and

(III) by striking "application" and inserting "application—";

(ii) by striking the third through fifth sentences; and

(iii) in the sixth sentence—

(I) by striking "The Secretary" and inserting the following:

"(C) Guidance.—The Secretary"; and

(II) by striking "clause (A)" and inserting "subparagraph (B)(i)"; and

(C) in paragraph (2)—

(i) by striking "clause (A) of such paragraph" and inserting "paragraph (1)(B)(i)";

(ii) in subparagraphs (A) and (B), by striking "paragraph (1) or"; and

(iii) in subparagraph (B)—

(I) by striking "paragraph (1)(A)" and inserting "paragraph (1)(B)(i)"; and

(II) by striking "patent" each place it appears and inserting "claim"; and

(3) in subsection (c)—

(A) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking "(A) If the applicant" and inserting the following:

"(A) Clause (i) or (ii) certification.—If the applicant"; and

(II) by striking "may" and inserting "shall";

(ii) in subparagraph (B)—

(I) by striking "(B) If the applicant" and inserting the following:

"(B) Clause (iii) certification.—If the applicant"; and

(II) by striking "may" and inserting "shall";

(iii) by redesignating subparagraph (D) as subparagraph (E); and

(iv) in subparagraph (E) (as redesignated by clause (iii)), by striking "clause (A) of subsection (b)(1)" each place it appears and inserting "subsection (b)(1)(B)(i)"; and

(B) by redesignating paragraph (4) as paragraph (5); and

(4) in subsection (j)—

(A) in paragraph (2)(A)—

(i) in clause (vi), by striking "clauses (B) through ((F)" and inserting "subclauses (ii) through (vi) of subsection (b)(1)";

(ii) in clause (vii), by striking "(b) or"; and

(iii) in clause (viii)—

(I) by striking "(b) or"; and

(II) by striking "patent" each place it appears and inserting "claim"; and

(B) in paragraph (5)—

(i) in subparagraph (B)—

(I) in clause (i)—

(aa) by striking "(i) If the applicant" and inserting the following:

"(i) Subclause (i) or (ii) certification.—If the applicant"; and

(bb) by striking "may" and inserting "shall";

(II) in clause (ii)—

(aa) by striking "(ii) If the applicant" and inserting the following:

"(i) Subclause (iii) certification.—If the applicant"; and

(bb) by striking "may" and inserting "shall";

(III) in clause (iii), by striking "(2)(B)(i)" each place it appears and inserting "(2)(B)"; and

(IV) in clause (v) (as redesignated by section 4(a)(1)(B)), by striking "continuing" and inserting "containing"; and

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively.

(b) Section 505A.—Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended—

(1) in subsections (b)(1)(A)(i) and (c)(1)(A)(i)—

(A) by striking "(c)(3)(D)(ii)" each place it appears and inserting "(c)(3)(E)(ii)"; and

(B) by striking "(j)(5)(D)(ii)" each place it appears and inserting "(j)(5)(F)(ii)";

(2) in subsections (b)(1)(A)(ii) and (c)(1)(A)(ii)—

(A) by striking "(c)(3)(D)" each place it appears and inserting "(c)(3)(E)"; and

(B) by striking "(j)(5)(D)" each place it appears and inserting "(j)(5)(F)";

(3) in subsections (e) and (l)—

(A) by striking "505(c)(3)(D)" each place it appears and inserting "505(c)(3)(E)"; and

(B) by striking "505(j)(5)(D)" each place it appears and inserting "505(j)(5)(F)"; and

(4) in subsection (k), by striking "505(j)(5)(B)(iv)" and inserting "505(j)(5)(B)(v)".

(c) Section 527.—Section 527(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc(a)) is amended in the second sentence by striking "505(c)(2)" and inserting "505(c)(1)(B)".

TITLE II—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 201. IMPORTATION OF PRESCRIPTION DRUGS.

(a) In General.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

"SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

"(a) Definitions.—In this section:

"(1) Importer.—The term 'importer' means a pharmacist or wholesaler.

"(2) Pharmacist.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

"(3) Prescription drug.—The term 'prescription drug' means a drug subject to section 503(b), other than—

"(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

"(C) an infused drug (including a peritoneal dialysis solution);

"(D) an intravenously injected drug; or

"(E) a drug that is inhaled during surgery.

"(4) Qualifying laboratory.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

"(5) Wholesaler.—

"(A) In general.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

"(B) Exclusion.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).

"(b) Regulations.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

"(c) Limitation.—The regulations under subsection (b) shall—

"(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

"(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

"(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

"(d) Information and Records.—

"(1) In general.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

"(A) The name and quantity of the active ingredient of the prescription drug.

"(B) A description of the dosage form of the prescription drug.

"(C) The date on which the prescription drug is shipped.

"(D) The quantity of the prescription drug that is shipped.

"(E) The point of origin and destination of the prescription drug.

"(F) The price paid by the importer for the prescription drug.

"(G) Documentation from the foreign seller specifying—

"(i) the original source of the prescription drug; and

"(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

"(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

"(I) The name, address, telephone number, and professional license number (if any) of the importer.

"(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

"(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

"(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

"(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

"(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

"(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

"(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

"(i) is approved for marketing in the United States; and

"(ii) meets all labeling requirements under this Act.

"(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

"(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

"(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

"(2) Maintenance by the secretary.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

"(e) Testing.—The regulations under subsection (b) shall require—

"(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

"(2) if the tests are conducted by the importer—

"(A) that information needed to—

"(i) authenticate the prescription drug being tested; and

"(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

"(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

"(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

"(f) Registration of Foreign Sellers.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

"(g) Suspension of Importation.—The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section or poses an additional risk to the public health, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

"(h) Approved Labeling.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

"(i) Prohibition of Discrimination.—

"(1) In general.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

"(2) Discrimination.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

"(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

"(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

"(j) Charitable Contributions.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

"(k) Waiver Authority for Importation by Individuals.—

"(1) Declarations.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

"(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

"(B) exercise discretion to permit individuals to make such importations in circumstances in which—

"(i) the importation is clearly for personal use; and

"(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

"(2) WAIVER AUTHORITY.—

"(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

"(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

"(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

"(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

"(B) is accompanied by a copy of a valid prescription;

"(C) is imported from Canada, from a seller registered with the Secretary;

"(D) is a prescription drug approved by the Secretary under chapter V;

"(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

"(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

"(l) STUDIES; REPORTS.—

"(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

"(A) STUDY.—

"(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

"(I) importations of prescription drugs made under the regulations under subsection (b); and

"(II) information and documentation submitted under subsection (d).

"(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

"(I) evaluate the compliance of importers with the regulations under subsection (b);

"(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

"(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

"(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

"(2) BY THE COMPTROLLER GENERAL.—

"(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

"(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

"(m) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

"(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

"(o) CONDITIONS.—This section shall become effective only if the Secretary of Health and Human Services certifies to the Congress that the implementation of this section will—

"(A) pose no additional risk to the public's health and safety, and

"(B) result in a significant reduction in the cost of covered products to the American consumer.".

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking "covered product in violation of section 804" and inserting "prescription drug in violation of section 804"; and

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6)), by striking "covered product pursuant to section 804(a)" and inserting "prescription drug under section 804(b)".

SEC. 202. CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

"(l) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from—

"(1) directly entering into rebate agreements (on the State's own initiative or under a section 1115 waiver approved by the Secretary before, on, or after the date of enactment of this subsection) that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by residents of a State who are not otherwise eligible for medical assistance under this title; or

"(2) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.".

SEC. 203. TEMPORARY STATE FISCAL RELIEF.

(a) TEMPORARY INCREASE OF MEDICAID FMAP.—

(1) PERMITTING MAINTENANCE OF FISCAL YEAR 2001 FMAP FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2002 is less than the FMAP as so determined for fiscal year 2001, the FMAP for the State for fiscal year 2001 shall be substituted for the State's FMAP for the third and fourth calendar quarters of fiscal year 2002, before the application of this subsection.

(2) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for each calendar quarter of fiscal year 2003, before the application of this subsection.

(3) GENERAL 1.35 PERCENTAGE POINTS INCREASE FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002 AND FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraphs (5) and (6), for each State for the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the FMAP (taking into account the application of paragraphs (1) and (2)) shall be increased by 1.35 percentage points.

(4) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Notwithstanding any other provision of law, but subject to paragraph (6), with respect to the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 2.7 percent of such amounts.

(5) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this subsection shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(A) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4); or

(B) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.).

(6) STATE ELIGIBILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), a State is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after January 1, 2002, but prior to the date of enactment of this Act is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) or (B) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(7) DEFINITIONS.—In this subsection:

(A) FMAP.—The term "FMAP" means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(B) STATE.—The term "State" has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(8) REPEAL.—Effective as of October 1, 2003, this subsection is repealed.

(b) ADDITIONAL TEMPORARY STATE FISCAL RELIEF.—

(1) IN GENERAL.—Title XX of the Social Security Act (42 U.S.C. 1397–1397f) is amended by adding at the end the following:

"SEC. 2008. ADDITIONAL TEMPORARY GRANTS FOR STATE FISCAL RELIEF.

"(a) IN GENERAL.—For the purpose of providing State fiscal relief allotments to States under this section, there are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, $3,000,000,000. Such funds shall be available for obligation by the State through June 30, 2004, and for expenditure by the State through September 30, 2004. This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under this section.

"(b) ALLOTMENT.—Funds appropriated under subsection (a) shall be allotted by the Secretary among the States in accordance with the following table:

"State	Allotment (in dollars)
Alabama	$33,918,100
Alaska	$8,488,200
Amer. Samoa	$88,600
Arizona	$47,601,600
Arkansas	$27,941,800
California	$314,653,900
Colorado	$27,906,200
Connecticut	$41,551,200
Delaware	$8,306,000
District of Columbia	$12,374,400
Florida	$128,271,100
Georgia	$69,106,600
Guam	$135,900
Hawaii	$9,914,700
Idaho	$10,293,600
Illinois	$102,577,900
Indiana	$50,659,800
Iowa	$27,799,700
Kansas	$21,414,300
Kentucky	$44,508,400
Louisiana	$50,974,000
Maine	$17,841,100
Maryland	$44,228,800
Massachusetts	$100,770,700
Michigan	$91,196,800
Minnesota	$57,515,400
Mississippi	$35,978,500
Missouri	$62,189,600
Montana	$8,242,000
Nebraska	$16,671,600
Nevada	$10,979,700
New Hampshire	$10,549,400
New Jersey	$87,577,300
New Mexico	$21,807,600
New York	$461,401,900
North Carolina	$79,538,300
North Dakota	$5,716,900
N. Mariana Islands	$50,000
Ohio	$116,367,800
Oklahoma	$30,941,800
Oregon	$34,327,200
Pennsylvania	$159,089,700
Puerto Rico	$3,991,900
Rhode Island	$16,594,100
South Carolina	$38,238,000
South Dakota	$6,293,700
Tennessee	$81,120,000
Texas	$159,779,800
Utah	$12,551,700
Vermont	$8,003,800
Virgin Islands	$128,800
Virginia	$44,288,300
Washington	$66,662,200
West Virginia	$19,884,400
Wisconsin	$47,218,900
Wyoming	$3,776,400
Total	**$3,000,000,000**

"(c) USE OF FUNDS.—Funds appropriated under this section may be used by a State for services directed at the goals set forth in section 2001, subject to the requirements of this title.

"(d) PAYMENT TO STATES.—Not later than 30 days after amounts are appropriated under subsection (a), in addition to any payment made under section 2002 or 2007, the Secretary shall make a lump sum payment to a State of the total amount of the allotment for the State as specified in subsection (b).

"(e) DEFINITION.—For purposes of this section, the term 'State' means the 50 States, the District of Columbia, and the territories contained in the list under subsection (b).".

(2) REPEAL.—Effective as of January 1, 2005, section 2008 of the Social Security Act, as added by paragraph (1), is repealed.

(c) EMERGENCY DESIGNATION.—The entire amount necessary to carry out this section is designated by Congress as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(e)).

APPRECIATION TO THE PRESIDING OFFICER

Mr. REID. Mr. President, I, first of all, would like to express my appreciation to the Presiding Officer. This is a duty that you weren't expecting, and I am sorry things on the floor took so long. It is my understanding that you had other things to do tonight. I really apologize for not having someone in relief.

PATIENTS' BILL OF RIGHTS—CONFEREES

Mr. REID. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may turn to the consideration of Calendar No. 150, H.R. 2563, and the bill be considered under these limitations: Immediately after the bill is reported S. 1052 be passed by the Senate in lieu thereof; that no other amendments be in order, the bill, as amended, be read three times, and there then be 60 minutes of debate with the time equally divided and controlled between Senator KENNEDY and Senator GREGG or their designees, and that upon the use or yielding back of the time, the Senate vote on passage of the bill; that upon passage the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate without any intervening action or debate, with the ratio of conference being 6 to 5.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object—I shall object at this point—let me make a couple of comments.

I believe this is for the purpose of appointing conferees on the so-called Patients' Bill of Rights. We have just received this notification tonight. We haven't consulted with everyone on our side. We have really no objection to appointing conferees. We just have to work it out.

I will mention that the House passed this bill a year ago tomorrow on August 2. So we have been waiting to have conferees appointed for almost a year—364 days. We will be happy to do that. But since we just got this notification, and the majority wanted to do this, we have to consult with various interests and parties. We haven't had time to do that in the rush of business today.

We will cooperate with the majority to get this done early when we return. But, at this point, I will have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I have only to say that it doesn't matter. We have been busy here for the last 2 days, but they got the stuff yesterday. I understand the Senator's position. We wish we could go forward on this. There could be work done on the break. But we will work it out when we come back.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS CONSENT AGREEMENT—H.R. 5093

Mr. REID. Mr. President, I ask unanimous consent that on Wednesday, September 4, at 9 a.m. the Senate begin consideration of Calendar No. 503, H.R. 5093, the Interior appropriations bill; that the text of the Senate bill, S. 2708 be considered as a substitute amendment, and at 12 noon on that day the Senate resume consideration of H.R. 5005, the homeland defense bill, with the same schedule thereafter until the appropriations bill is completed.

Mr. NICKLES. Mr. President, reserving the right to object, let me have a chance to read this.

Mr. REID. We would, in the morning, work on the Interior appropriations bill. And then we would turn at lunchtime to work on the homeland defense bill, which has already been ordered. Senator BYRD and Senator STEVENS have cleared this. Senator DASCHLE and Senator LOTT have had some discussion on this.

Mr. NICKLES. Mr. President, I shall not object.

APPOINTMENT

Mr. REID. Mr. President, I ask unanimous consent that the appointment at the desk appear separately in the RECORD as if made by the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair, pursuant to Executive Order 12131, as amended, signed by the President May 4, 1979, and most recently extended by Executive Order 13225, signed by the President September 28, 2001, appoints the following Members to the President's Export Council:

The Senator from Montana (Mr. BAUCUS);

The Senator from Missouri (Mrs. CARNAHAN);

The Senator from South Dakota (Mr. JOHNSON);

The Senator from Wyoming (Mr. ENZI);

The Senator from Arkansas (Mr. HUTCHINSON).

CALENDAR ITEMS EN BLOC

Mr. REID. Mr. President, I ask unanimous consent that it be in order to consider the following calendar items, en bloc, and that the Senate proceed to their consideration, en bloc:

Calendar No. 438, H.R. 309; Calendar No. 445, S. 1240; Calendar No. 447, S. 1227; Calendar No. 449, H.R. 601; Calendar No. 450, H.R. 2440; Calendar No. 458, H.R. 2234; Calendar No. 468, S. 691; Calendar No. 469, S. 1010; Calendar No. 470, S. 1649; Calendar No. 471, S. 1843; Calendar No. 472, S. 1852, Calendar No. 473, S. 1894; Calendar No. 474, S. 1907; Calendar No. 475, H.R. 223; Calendar No. 476, H.R. 1456; Calendar No. 477, H.R. 1576; Calendar No. 480, S. 1946; Calendar No. 481, H.R. 640; that the committee amendments, where applicable, be agreed to, en bloc; the motions to reconsider be laid upon the table, en bloc; the bills, as amended, where applicable, be read three times, passed, and the motions to reconsider be laid upon the table, en bloc, without any intervening action or debate; and that any statements relating to these items be printed in the RECORD; that the consideration of these items appear separately in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

GUAM FOREIGN INVESTMENT EQUITY ACT

The bill (H.R. 309) to provide for the determination of withholding tax rates under the Guam income tax, was considered, ordered to a third reading, read the third time, and passed.

TIMPANOGOS INTERAGENCY LAND EXCHANGE ACT

The Senate proceeded to consider the bill (S. 1240) to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, UT, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part in boldface brackets and insert the part printed in italic.]

S. 1240

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Timpanogos Interagency Land Exchange Act of 2001".

[SEC. 2. FINDINGS.

[(a) FINDINGS.—Congress finds that—

[(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

[(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

[(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in 1 facility would—

[(A) facilitate interagency coordination;

[(B) serve the public better; and

[(C) improve cost effectiveness.

[(b) PURPOSES.—The purposes of this Act are—

[(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

[(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

[(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) FACILITY.—The term "facility" means the facility constructed under section 7 to house—

[(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

[(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

[(2) FEDERAL LAND.—The term "Federal land" means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

[(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW¼, NE¼, E½, NW¼ and E½, SW¼, as depicted on the map entitled "Long Hollow-Provo Canyon Parcel", dated March 12, 2001;

[(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW¼, as depicted on the map entitled "Provo Sign and Radio Shop", dated March 12, 2001;

[(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE¼, as depicted on the map entitled "Corner Canyon Parcel", dated March 12, 2001;

[(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S½, as depicted on the map entitled "Beaver Administrative Site", dated March 12, 2001;

[(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE¼, SW¼, NE¼, as depicted on the map entitled "Springville Parcel", dated March 12, 2001; and

[(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled "Pleasant Grove Ranger District Parcel", dated March 12, 2001.

[(3) NON-FEDERAL LAND.—The term "non-Federal land" means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW¼, as depicted on the map entitled "The Highland Property", dated March 12, 2001.

[(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

[SEC. 4. AVAILABILITY OF MAPS.

[The maps described in paragraphs (2) and (3) of section 3 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the land depicted in the maps is exchanged under this Act.

[SEC. 5. EXCHANGE OF LAND FOR FACILITY SITE.

[(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

[(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

[(c) VALUATION OF NON-FEDERAL LAND.—

[(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this Act shall be determined by an appraisal that—

[(A) is approved by the Secretary; and

[(B) conforms with the Federal appraisal standards, as defined in the publication entitled the "Uniform Appraisal Standards for Federal Land Acquisitions" published in 1992 by the Interagency Land Acquisition Conference.

[(2) SEPARATE APPRAISALS.—

[(A) IN GENERAL.—Each parcel of Federal land described in section subparagraphs (A) through (F) of section 3(2) shall be appraised separately.

[(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

[(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b))—

[(1) if the value of the non-Federal land is less than the value of the Federal land, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land; or

[(2) if the value of the Federal land is less than the value of the non-Federal land, the Secretary may make a cash equalization payment in excess of 25 percent of the value of the Federal land equal to the difference in value between the Federal land and the value of the non-Federal property.

[(e) ADMINISTRATION OF LAND ACQUIRED BY UNITED STATES.—

[(1) BOUNDARY ADJUSTMENT.—

[(A) IN GENERAL.—On acceptance of title by the Secretary—

[(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

[(ii) the boundaries of the national forest shall be adjusted to include the land.

[(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

[(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

[(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the "Weeks Act"); and

[(B) other laws (including regulations) that apply to National Forest System land.

[SEC. 6. DISPOSITION OF FUNDS.

[(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the "Sisk Act").

[(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

[SEC. 7. CONSTRUCTION AND OPERATION OF FACILITY.

[(a) CONSTRUCTION.—

[(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this Act, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 5.

[(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

[(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

[SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Timpanogos Interagency Land Exchange Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—

(A) facilitate interagency coordination;

(B) serve the public better; and

(C) improve cost effectiveness.

(b) PURPOSES.—The purposes of this Act are—

(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

SEC. 3. DEFINITIONS.

In this Act:

(1) FACILITY.—The term "facility" means the facility constructed under section 7 to house—

(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

(2) FEDERAL LAND.—The term "Federal land" means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW¼, NE¼, E½, NW¼ and E½, SW¼, as depicted on the map entitled "Long Hollow-Provo Canyon Parcel", dated March 12, 2001;

(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW¼, as depicted on the map entitled "Provo Sign and Radio Shop", dated March 12, 2001;

(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE¼, as depicted on the map entitled "Corner Canyon Parcel", dated March 12, 2001;

(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S½, as depicted on the map entitled "Beaver Administrative Site", dated March 12, 2001;

(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE¼, SW¼, NE¼, as depicted on the map entitled "Springville Parcel", dated March 12, 2001; and

(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled "Pleasant Grove Ranger District Parcel", dated March 12, 2001.

(3) NON-FEDERAL LAND.—The term "non-Federal land" means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW¼, as depicted on the map entitled "The Highland Property", dated March 12, 2001.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 4. MAPS AND LEGAL DESCRIPTIONS.

(a) AVAILABILITY OF MAPS.—The maps described in paragraphs (2) and (3) of section 3 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this Act.

(b) TECHNICAL CORRECTIONS TO LEGAL DESCRIPTIONS.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 3.

SEC. 5. EXCHANGE OF LAND FOR FACILITY SITE.

(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

(c) VALUATION OF NON-FEDERAL LAND.—

(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this Act shall be determined by an appraisal that—

(A) is approved by the Secretary; and

(B) conforms with the Federal appraisal standards, as defined in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions".

(2) SEPARATE APPRAISALS.—

(A) IN GENERAL.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 3(2) shall be appraised separately.

(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

(e) ADMINISTRATION OF LAND ACQUISITION BY UNITED STATES.—

(1) BOUNDARY ADJUSTMENT.—

(A) IN GENERAL.—On acceptance of title by the Secretary—

(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

(ii) the boundaries of the national forest shall be adjusted to include the land.

(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the "Weeks Act"); and

(B) other laws (including regulations) that apply to National Forest System land.

SEC. 6. DISPOSITION OF FUNDS.

(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the "Sisk Act").

(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

SEC. 7. CONSTRUCTION AND OPERATION OF FACILITY.

(a) CONSTRUCTION.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this Act, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 5.

(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The Committee amendment in the nature of a substitute was agreed to.

The bill (S. 1240), as amended, was read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

NIAGARA FALLS NATIONAL HERITAGE AREA STUDY ACT

The Senate proceeded to consider the bill (S. 1227) to authorize the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Niagara Falls National Heritage Area in the State of New York, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Niagara Falls National Heritage Area Study Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

[(2) STUDY AREA.—

[(A) IN GENERAL.—The term "study area" means the segment of the Niagara River in Niagara County, New York, that extends from Niagara Falls, New York, to the mouth of the Niagara River at Lake Ontario.

[(B) INCLUSION.—The term "study area" includes land in any municipality that is adjacent to the Niagara River in Niagara County, New York.**]**

(2) STUDY AREA.—The term "study area" means lands in Niagara County, New York, along and in the vicinity of the Niagara River.

SEC. 3. NIAGARA [RIVER] *FALLS* NATIONAL HERITAGE AREA STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study of the suitability and feasibility of establishing a heritage area in the State of New York to be known as the "Niagara Falls National Heritage Area".

(b) ANALYSES AND DOCUMENTATION.—The study shall include analysis and documentation of whether the study area—

(1) contains an assemblage of natural, historical, scenic, and cultural resources that represent distinctive aspects of the heritage of the United States that—

(A) are worthy of recognition, conservation, interpretation, and continued use; and

(B) would best be managed—

(i) through partnerships among public and private entities; and

(ii) by combining diverse and sometimes noncontiguous resources and active communities;

(2) reflects traditions, customs, beliefs, and folklife that are a valuable part of the story of the United States;

(3) provides outstanding opportunities to conserve natural, historical, scenic, or cultural features;

(4) provides outstanding recreational and educational opportunities;

(5) contains resources important to the identified theme of the study area that retain a degree of integrity capable of supporting interpretation;

(6) includes residents, business interests, nonprofit organizations, and State and local governments that—

(A) are involved in planning a national heritage area;

(B) have developed a conceptual financial plan for a national heritage area that outlines the roles for all participants, including the Federal Government; and

(C) have demonstrated support for the concept of a national heritage area;

(7) has a potential management entity to work in partnership with residents, business interests, nonprofit organizations, and State and local governments to develop a national heritage area consistent with continued State and local economic activity; and

(8) has a conceptual boundary map that is supported by the public.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with—

(1) State and local agencies; and

(2) interested organizations within the study area.

(d) REPORT.—Not later than 3 fiscal years after the date on which funds are made available to carry out this Act, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the findings, conclusions, and recommendations of the study under subsection (a).

[(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section **$300,000.]**

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $300,000 to carry out this Act.

The committee amendments were agreed to.

The bill (S. 1227) as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

REDESIGNATION OF CERTAIN LANDS WITHIN CRATERS OF THE MOON NATIONAL MONUMENT

The bill (H.R. 601) to redesignate certain lands within the Craters of the Moon National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

RENAMING WOLF TRAP FARM PARK

The bill (H.R. 2440) to rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts," and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

TUMACACORI NATIONAL HISTORICAL PARK IN THE STATE OF ARIZONA

The bill (H.R. 2234) to revise the boundary of the Tumacacori National Historical Park in the State of Arizona, was considered, ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN LAND IN THE LAKE TAHOE BASIN MANAGEMENT UNIT

The bill (S. 691) to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WASHOE TRIBE LAND CONVEYANCE.

(a) FINDINGS.—Congress finds that—

(1) the ancestral homeland of the Washoe Tribe of Nevada and California (referred to in this Act as the "Tribe") included an area of approximately 5,000 square miles in and around Lake Tahoe, California and Nevada, and Lake Tahoe was the heart of the territory;

(2) in 1997, Federal, State, and local governments, together with many private landholders, recognized the Washoe people as indigenous people of Lake Tahoe Basin through a series of meetings convened by those governments at 2 locations in Lake Tahoe;

(3) the meetings were held to address protection of the extraordinary natural, recreational, and ecological resources in the Lake Tahoe region;

(4) the resulting multiagency agreement includes objectives that support the traditional and customary uses of National Forest System land by the Tribe; and

(5) those objectives include the provision of access by members of the Tribe to the shore of Lake Tahoe in order to reestablish traditional and customary cultural practices.

(b) PURPOSES.—The purposes of this Act are—

(1) to implement the joint local, State, tribal, and Federal objective of returning the Tribe to Lake Tahoe; and

(2) to ensure that members of the Tribe have the opportunity to engage in traditional and customary cultural practices on the shore of Lake Tahoe to meet the needs of spiritual renewal, land stewardship, Washoe horticulture and ethnobotany, subsistence gathering, traditional learning, and reunification of tribal and family bonds.

(c) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights, the easement reserved under subsection (d), and the condition stated in subsection (e), the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.

(d) EASEMENT.—

(1) IN GENERAL.—The conveyance under subsection (c) shall be made subject to reservation to the United States of a nonexclusive easement for public and administrative access over Forest Development Road #15N67 to National Forest System land, to be administered by the Secretary of Agriculture.

(2) ACCESS BY INDIVIDUALS WITH DISABILITIES.—The Secretary of Agriculture shall provide a reciprocal easement to the Tribe permitting vehicular access to the parcel over Forest Development Road #15N67 to—

(A) members of the Tribe for administrative and safety purposes; and

(B) members of the Tribe who, due to age, infirmity, or disability, would have difficulty accessing the conveyed parcel on foot.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—In using the parcel conveyed under subsection (c), the Tribe and members of the Tribe—

(A) shall limit the use of the parcel to traditional and customary uses and stewardship conservation for the benefit of the Tribe;

(B) shall not permit any permanent residential or recreational development on, or commercial use of, the parcel (including commercial development, tourist accommodations, gaming, sale of timber, or mineral extraction); and

(C) shall comply with environmental requirements that are no less protective than environmental requirements that apply under the Regional Plan of the Tahoe Regional Planning Agency.

(2) TERMINATION AND REVERSION.—If the Secretary of the Interior, after notice to the Tribe and an opportunity for a hearing, based on monitoring of use of the parcel by the Tribe, makes a finding that the Tribe has used or permitted the use of the parcel in violation of paragraph (1) and the Tribe fails to take corrective or remedial action directed by the Secretary of the Interior—

(A) title to the parcel in the Secretary of the Interior, in trust for the Tribe, shall terminate; and

(B) title to the parcel shall revert to the Secretary of Agriculture.

EXTENSION OF THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN NORTH CAROLINA

The bill (S. 1010) to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project number 11437, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods.

(b) EFFECTIVE DATE.—Subsection (a) takes effect on the date of the expiration of the extension issued by the Commission before the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).

VANCOUVER NATIONAL HISTORIC RESERVE PRESERVATION ACT OF 2002

The Senate proceeded to consider the bill (S. 1649) to amend the Omnibus Parks and Public Lands Management Act of 1996 to increase the authorization of appropriations for the Vancouver National Historic Reserve and for the preservation of Vancouver Barracks, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1649

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Vancouver National Historic Reserve Preservation Act of **[**2001**]** *2002*".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Vancouver National Historic Reserve (referred to in this section as the "Reserve") in Vancouver, Washington, contains several sites of historical importance, including—

(A) the former trading post of the Hudson Bay Company, established in 1825;

(B) Vancouver Barracks, a major administrative outpost of the United States Army for 150 years;

(C) Officers Row, which is listed on the National Register of Historic Places; and

(D) Pearson Airpark, the oldest continually operating airport in the United States;

(2) in accordance with section 502(b)(3) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 461 note; Public Law 104–333), a partnership comprised of representatives from the National Park Service, the Historic Preservation Office of the State of Washington, the Department of the Army, and the city of Vancouver, Washington, has developed a comprehensive cooperative management plan for the restoration of Vancouver Barracks;

(3) the 16 buildings at Vancouver Barracks referred to as the "West Barracks" were vacated by the Army in October 2000 and, for preservation purposes, require significant repair;

(4) the Army Reserve and the Washington National Guard actively use the portions of Vancouver Barracks referred to as the "East Barracks";

(5) the management plan for the Reserve recommends that the historic buildings at Vancouver Barracks be preserved and primarily used for educational purposes and public activities;

(6) the State of Washington, the city of Vancouver, Washington, and the Vancouver National Historic Reserve Trust have pledged to financially support preservation efforts at the Reserve;

(7) extensive planning efforts under the management plan for the Reserve have been completed, and restoration and reuse efforts are proceeding as planned;

(8) the historic Lewis and Clark expedition passed by the Reserve on the final segment of its historic expedition to the Pacific Ocean;

(9) the bicentennial celebration of the Lewis and Clark expedition is scheduled to take place from 2004 through 2006;

(10) to accommodate the expected increase in visitors to the Reserve during the commemoration of the bicentennial celebration, the historic preservation and reuse efforts at the Reserve should be continued; and

(11) to prevent the further deterioration of Vancouver Barracks, the historic preservation of the West Barracks should be expedited.

(b) PURPOSE.—The purpose of this Act is to increase the authorization of appropriations for the Vancouver National Historic Reserve and for the preservation of Vancouver Barracks at the Reserve.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 502(d) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 461 note; Public Law 104–333) is amended by striking **[**"$5,000,000" and inserting "$25,000,000".**]** *"$5,000,000 for development costs." and inserting "$15,000,000 for development costs associated with capital projects consistent with the cooperative management plan, except that the Federal share of such development costs shall not exceed 50 pecent of the total costs."*.

The committee amendments were agreed to.

The bill (S. 1649) as amended, was read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

EXTENSION OF CERTAIN HYDROELECTRIC LICENSES IN THE STATE OF ALASKA

The bill (S. 471) to extend hydro-electric licenses in the State of Alaska, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1843

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STAY AND REINSTATEMENT OF FERC LICENSE NO. 11393.

(a) Upon the request of the licensee for FERC Project No. 11393, the Federal Energy Regulatory Commission shall issue an order staying the license.

(b) Upon the request of the licensee for FERC Project No. 11393, but not later than 6 years after the date that the Federal Energy Regulatory Commission receives written notice that construction of the Swan-Tyee transmission line is completed, the Federal Energy Regulatory Commission shall issue an order lifting the stay and make the effective date of the license the date on which the stay is lifted.

(c) Upon request of the licensee for FERC Project No. 11393 and notwithstanding the time period specified in section 13 of the Federal Power Act for the commencement of construction, the Commission shall, after reasonable notice and in accordance with the good faith, due diligence, and public interest requirements of that section, extend the time period during which licensee is required to commence the construction of the project for not more than 3 consecutive 2-year time periods.

EXTENSION OF THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN THE STATE OF WYOMING

The bill (S. 1852) to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1852

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION HYDROELECTRIC PROJECT.

(a) In General.—Notwithstanding the time period specified in section 13 of Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission Swift Creek Power Company, Inc. hydroelectric license, project number 1651, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods.

(b) Effective Date.—Subsection (a) takes effect on the date of the expiration of the extension issued by the Commission before the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).

THE MIAMI CIRCLE SITE IN THE STATE OF FLORIDA

The Senate proceeded to consider the bill (S. 1894) to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1894

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) Purpose.—The purpose of this Act is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

SEC. 2. DEFINITIONS.

In this Act:

[(1) Miami circle.—The term "Miami Circle" means the property in Miami-Dade County of the State of Florida consisting of the three parcels described in Exhibit A in the appendix to the summons to show cause and notice of eminent domain proceedings, filed February 18, 1999, in Miami-Dade County v. Brickell Point, Ltd., in the circuit court of the 11th judicial circuit of Florida in and for Miami-Dade County.**]**

(1) Miami circle.—The term "Miami Circle" means the Miami Circle archaeological site in Miami-Dade County, Florida.

(2) Park.—The term "Park" means Biscayne National Park in the State of Florida.

(3) Secretary.—The term "Secretary" means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 3. SPECIAL RESOURCE STUDY.

(a) In General.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) Components.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and

(3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) Report.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

The Committee amendment was agreed to.

The bill (S. 1894), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the Record.)

CONVEYANCE OF CERTAIN LAND TO THE CITY OF HAINES, OREGON

The Senate proceeded to consider the bill (S. 1907) to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1907

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE TO THE CITY OF HAINES, OREGON.

(a) Conveyance.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall convey, without consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the city of Haines, Oregon.

(b) Description of Land.—The parcel of land referred to in subsection (a) is the parcel of Bureau of Land Management land consisting of approximately 40 acres, **[**referred to as "BLM Parcel B 186", according to the map entitled "Northeast Oregon Assembled Land Exchange/Triangle Land Exchange", dated November 5, 1999.**]** *as indicated on the map entitled "S. 1907: Conveyance to the City of Haines, Oregon" and dated May 9, 2002.*

The committee amendment was agreed to.

The bill (S. 1907), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the Record.)

AMENDMENTS TO THE CLEAR CREEK COUNTY, COLORADO, PUBLIC LANDS TRANSFER ACT OF 1993

The bill (H.R. 223) to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act, was considered, ordered to a third reading, read the third time, and passed.

BOOKER T. WASHINGTON NATIONAL MONUMENT ADJUSTMENT ACT OF 2001

The bill (H.R. 1456) to expand the boundary of the Booker T. Washington National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

JAMES PEAK WILDERNESS AND PROTECTION AREA ACT

The bill (H.R. 1576) To designate the James Peak Wilderness and Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

OLD SPANISH TRAIL RECOGNITION ACT OF 2002

The Senate proceeded to consider the bill (S. 1946) to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1946

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Old Spanish Trail Recognition Act of 2002".

SEC. 2. AUTHORIZATION AND ADMINISTRATION.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended—

(1) by redesignating the second paragraph (21) as paragraph (22); and

(2) by adding at the end the following:

"(23) Old spanish national historic trail.—

"(A) In general.—The Old Spanish National Historic Trail, an approximately [3,500] *2,700* mile long trail extending from Santa Fe, New Mexico, to Los Angeles, California, that served as a major trade route between 1829 and 1848, as generally depicted on the [map contained in the report prepared under subsection (b)] *maps numbered 1 through 9, as contained in the report* entitled "Old Spanish Trail National Historic Trail Feasibility Study", dated July 2001, *including the Armijo Route, Northern Route, North Branch, and Mojave Road".*

["(B) Map.—A map generally depicting the trail shall be on file and available for public inspection in the office of the Director of the National Park Service.]

"(B) Map.—A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.".

"(C) Administration.—The trail shall be administered by the Secretary of the [Interior, acting through the Director of the National Park Service] *Interior* (referred to in this paragraph as the 'Secretary').

"(D) Land acquisition.—The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

"(E) Consultation.—The Secretary shall consult with other Federal, State, local, and tribal agencies in the administration of the trail.

"(F) Additional routes.—The Secretary may designate additional routes to the trail if—

"(i) the additional routes were included in the Old Spanish Trail National Historic Trail Feasibility Study, but were not recommended for designation as a national historic trail; and

"(ii) the Secretary determines that the additional routes were used for trade and commerce between 1829 and 1848.".

The committee amendments were agreed to.

The bill (S. 1946), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT ACT

The Senate proceeded to consider the bill (H.R. 640) to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The part of the bill intended to be stricken is shown in boldface brackets and the part of the bill intended to be inserted is shown in italic)

H.R. 640

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Santa Monica Mountains National Recreation Area Boundary Adjustment Act".

SEC. 2. BOUNDARY ADJUSTMENT.

Section 507(c) of the National Parks and Recreation Act of 1978 (92 Stat. 3501; 16 U.S.C. 460kk) establishing Santa Monica Mountains National Recreation Area is amended—

(1) in paragraph (1), by striking "'Boundary Map, Santa Monica Mountains National Recreation Area, California, and Santa Monica Mountains Zone', numbered SMM-NRA 80,000, and dated May 1978" and inserting "'Santa Monica Mountains National Recreation Area and Santa Monica Mountains Zone, California, Boundary Map', [numbered 80,047, and dated February 2001"] *numbered 80,047–C and dated August 2001"*; and

(2) by adding the following sentence after the third sentence of paragraph (2)(A): "Lands within the 'Wildlife Corridor Expansion Zone' identified on the boundary map referred to in paragraph (1) may be acquired only by donation or with donated funds.".

SEC. 3. TECHNICAL CORRECTIONS.

Section 507 of the National Parks and Recreation Act of 1978 (92 Stat. 3501; 16 U.S.C. 460kk) establishing Santa Monica Mountains National Recreation Area is amended—

(1) in subsection (c)(1), by striking "Committee on Natural Resources" and inserting "Committee on Resources";

(2) in subsection (c)(2)(B), by striking "of certain" in the first sentence and inserting "certain"; and

(3) in subsection (n)(5), by striking "laws" in the second sentence and inserting "laws,".

The Committee amendment was agreed to.

The bill (H.R. 640), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, I read through these bills very quickly but a tremendous amount of work has gone into getting to the point where we are, especially by the floor staff, to make sure that the majority and the minority have signed off on this, and all the committees, and the fact that we have been working through this list for weeks. Anyway, it is good work done by everyone.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, these are items that have support. Most of these are items that have been reported through the Energy Committee. They have bipartisan support. These are Democrat and Republican bills.

I appreciate the cooperation of the assistant majority leader in finally passing these items.

Mr. REID. Mr. President, I am going to suggest the absence of a quorum. We are contacting a Senator to clear another item that the administration wants.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I say to my friend, the call was a success, and Mitch Daniels will be very happy.

LONG WALK NATIONAL HISTORIC TRAIL STUDY ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 457, H.R. 1384.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1384) to amend the National Trails System Act to designate the route in Arizona and New Mexico which the Navajo and Mescalero Apache Indian tribes were forced to walk in 1863 and 1864, for study for potential addition to the National Trails System.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1384) was read the third time and passed.

RATIFYING AN AGREEMENT BETWEEN THE ALEUT CORPORATION AND THE UNITED STATES OF AMERICA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 448, S. 1325.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1325) to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that:

(1) Adak Island is an isolated island located 1,200 miles southwest of Anchorage, Alaska, between the Pacific Ocean and the Bering Sea. The Island, with its unique physical and biological features, including a deep water harbor and abundant marine-associated wildlife, was recognized early for both its natural and military values. In 1913, Adak Island was reserved and set aside as a Preserve because of its value to seabirds, marine mammals, and fisheries. Withdrawals of portions of Adak Island for various military purposes date back to 1901 and culminated in the 1959 withdrawal of approximately half of the Island for use by the Department of the Navy for military purposes.

(2) By 1990, military development on Adak Island supported a community of 6,000 residents. Outside of the Adak Naval Complex, there was no independent community on Adak Island.

(3) As a result of the Defense Base Closure and Realignment Act of 1990 (104 Stat. 1808), as amended, the Adak Naval Complex has been closed by the Department of Defense.

(4) The Aleut Corporation is an Alaskan Native Regional Corporation incorporated in the State of Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), as amended (43 U.S.C. 1601, et seq.). The Aleut Corporation represents the indigenous people of the Aleutian Islands who prior to the Russian exploration and settlement of the Aleutian Islands were found throughout the Aleutian Islands which includes Adak Island.

(5) None of Adak Island was available for selection by The Aleut Corporation under section 14(h)(8) of ANCSA (43 U.S.C. 1613(h)(8)) because it was part of a National Wildlife Refuge and because the portion comprising the Adak Naval Complex was withdrawn for use by the United States Navy for military purposes prior to the passage of ANCSA in December 1971.

(6) The Aleut Corporation is attempting to establish a community on Adak and has offered to exchange ANCSA land selections and entitlements for conveyance of certain lands and interests therein on a portion of Adak formerly occupied by the Navy.

(7) Removal of a portion of the Adak Island land from refuge status will be offset by the acquisition of high quality wildlife habitat in other Aleut Corporation selections within the Alaska Maritime National Wildlife Refuge, maintaining a resident human population on Adak to control caribou, and making possible a continued U.S. Fish and Wildlife Service presence in that remote location to protect the natural resources of the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

(8) It is in the public interest to promote reuse of the Adak Island lands by exchanging certain lands for lands selected by The Aleut Corporation elsewhere in the Alaska Maritime National Wildlife Refuge. Experience with environmental problems associated with formerly used defense sites in the State of Alaska suggests that the most effective and efficient way to avoid future environmental problems on Adak is to support and encourage active reuse of Adak.

SEC. 2. RATIFICATION OF AGREEMENT.

The document entitled the "Agreement Concerning the Conveyance of Property at the Adak Naval Complex" (hereinafter "the Agreement"), and dated September 20, 2000, executed by The Aleut Corporation, the Department of the Interior and the Department of the Navy, together with any technical amendments or modifications to the boundaries that may be agreed to by the parties is hereby ratified, confirmed, and approved and the terms, conditions, procedures, covenants, reservations, indemnities and other provisions set forth in the Agreement are declared to be obligations and commitments of the United States and The Aleut Corporation: *Provided*, That modifications to the maps and legal descriptions of lands to be removed from the National Wildlife Refuge System within the military withdrawal on Adak Island set forth in Public Land Order 1949 may be made only upon agreement of all Parties to the Agreement and notification given to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate: *Provided further*, That the acreage conveyed to the United States by The Aleut Corporation under the Agreement, as modified, shall be at least 36,000 acres.

SEC. 3. REMOVAL OF LANDS FROM REFUGE.

Effective on the date of conveyance to the Aleut Corporation of the Adak Exchange Lands as described in the Agreement, all such lands shall be removed from the National Wildlife Refuge System and shall neither be considered as part of the Alaska Maritime National Wildlife Refuge nor be subject to any laws pertaining to lands within the boundaries of the Alaska Maritime National Wildlife Refuge, including the conveyance restrictions imposed by section 22(g) of the ANCSA, 43 U.S.C. 1621(g), for land in the National Wildlife Refuge System. The Secretary shall adjust the boundaries of the Refuge so as to exclude all interests in lands and land rights, surface and subsurface, received by The Aleut Corporation in accordance with this Act and the Agreement.

SEC. 4. ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Lands and interests therein exchanged and conveyed by the United States pursuant to this Act shall be considered and treated as conveyances of lands or interests therein under the Alaska Native Claims Settlement Act, except that receipt of such lands and interests therein shall not constitute a sale or disposition of land or interests received pursuant to such Act. The public easements for access to public lands and waters reserved pursuant to the Agreement are deemed to satisfy the requirements and purposes of Section 17(b) of the Alaska Native Claims Settlement Act.

SEC. 5. REACQUISITION OF LANDS.

The Secretary of the Interior is authorized to acquire by purchase or exchange, on a willing seller basis only, any land conveyed to The Aleut Corporation under the Agreement and this Act. In the event any of the lands are subsequently acquired by the United States, they shall be automatically included in the Refuge System. The laws and regulations applicable to Refuge lands shall then apply to these lands and the Secretary shall then adjust the boundaries accordingly.

SEC. 6. GENERAL.

(a) **[**Notwithstanding any other provision of law,**]** *Notwithstanding the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483-484) and the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687)*, and for the purposes of the transfer of property authorized by this Act, Department of Navy personal property that remains on Adak Island is deemed related to the real property and shall be conveyed by the Department of the Navy to The Aleut Corporation at no additional cost when the related real property is conveyed by the Department of the Interior.

(b) The Secretary of the Interior shall convey to the Aleut Corporation those lands identified in the Agreement as the former landfill sites without charge to the Aleut Corporation's entitlement under the Alaska Native Claims Settlement Act.

(c) Any property, including, but not limited to, appurtenances and improvements, received pursuant to this Act shall, for purposes of section 21(d) of the Alaska Native Claims Settlement Act, as amended, and section 907(d) of the Alaska National Interest Lands Conservation Act, as amended, be treated as not developed until such property is actually occupied, leased (other than leases for nominal consideration to public entities) or sold by The Aleut Corporation, or, in the case of a lease or other transfer by The Aleut Corporation to a wholly owned development subsidiary, actually occupied, leased, or sold by the subsidiary.

(d) Upon conveyance to The Aleut Corporation of the lands described in Appendix A of the Agreement, the lands described in Appendix C of the Agreement will become unavailable for selection under ANCSA.

(e) The maps included as part of Appendix A to the Agreement depict the lands to be conveyed to The Aleut Corporation. The maps shall be left on file at the Region 7 Office of the U.S. Fish and Wildlife Service and the offices of Alaska Maritime National Wildlife Refuge in Homer, Alaska. The written legal descriptions of the lands to be conveyed to The Aleut Corporation are also part of Appendix A. In case of any discrepancies, the maps shall be controlling.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment be agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (S. 1325), as amended, was read the third time and passed.

THE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed, en bloc, to the consideration of the following calendar items: Calendar No. 488, H.R. 3380, and Calendar No. 489, H.R. 2643.

I further ask unanimous consent that the bills be read three times, passed, and the motion to reconsider be laid upon the table en bloc; that the consideration of these items appear separately in the RECORD, and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

RIGHT-OF-WAY PERMITS FOR NATURAL GAS PIPELINES WITHIN THE GREAT SMOKY MOUNTAINS NATIONAL PARK

The bill (H.R. 3380) to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park, was considered, ordered to a third reading, read the third time, and passed.

FORT CLATSOP NATIONAL MEMORIAL EXPANSION ACT OF 2002

The bill (H.R. 2643) to authorize the acquisition of additional lands for inclusion in the Fort Clatsop National Memorial in the State of Oregon, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

AMENDING TITLE X OF THE ENERGY POLICY ACT OF 1992

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 304, H.R. 3343.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3343) to amend title X of the Energy Policy Act of 1992, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3343) was read the third time and passed.

AUTHORIZING THE PRODUCTION OF RECORDS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 317, submitted earlier today by Senators DASCHLE and LOTT.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 317) to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

There being no objection, the Senate proceeded to consider of the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 317) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 317

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the collapse of Enron Corporation and associated misconduct to determine what took place and what, if any, legislative, regulatory or other reforms might be appropriate to prevent similar corporate failures and misconduct in the future;

Whereas, the Subcommittee has received a number of requests from law enforcement and regulatory officials and agencies and court-appointed officials for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the collapse of Enron Corporation and associated misconduct.

ORDER FOR FINANCE COMMITTEE TO REPORT A BILL

Mr. REID. Mr. President, I ask unanimous consent that on Friday, August 2, notwithstanding an adjournment of the Senate, the Finance Committee may report a bill between the hours of 11 a.m. to 1 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR NOMINATIONS

Mr. REID. Mr. President, I ask unanimous consent that all nominations remain in status quo notwithstanding adjournment of the Senate during the month of August.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—S.J. RES. 43

Mr. REID. Mr. President, I am led to believe that the Republican leader introduced S.J. Res. 43, and it is now at the desk. If that is the case, I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 43) proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto.

Mr. REID. Mr. President, I now ask for its second reading, but would object to my own request.

The PRESIDING OFFICER. Objection is heard.

NATIONAL MISSING ADULT AWARENESS MONTH

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consideration of S. Res. 318 submitted earlier today by Senators Lincoln, Kennedy, and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 318) designating August 2002 as "National Missing Adult Awareness Month".

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, and the motion to reconsider be laid on the table, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 318) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 318

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing,

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 2002, as "National Missing Adult Awareness Month"; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

RECOGNIZING MILTON FRIEDMAN

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 319, submitted introduced earlier today by Senator GRAMM of Texas.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 319) recognizing the accomplishments of Professor Milton Friedman.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 319) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 319

Whereas Nobel Laureate economist Professor Milton Friedman was born on July 31, in the year 1912, the fourth and youngest child to Austro-Hungarian immigrants in Brooklyn, New York;

Whereas he served as a research staffer to the National Bureau of Economic Research from 1937 to 1981;

Whereas he helped implement wartime tax policy at the United States Treasury from 1941 to 1943, and further contributed to the war effort from 1943 to 1945 at Columbia University by studying weapons design and military tactics;

Whereas he served as a professor of economics at the University of Chicago from 1946 to 1976;

Whereas he was a founding member and president of the Mont Pelerin Society;

Whereas he was awarded the Prize in Economic Sciences in Memory of Alfred Nobel in 1976;

Whereas since 1977 he has served as a Senior Research Fellow at the Hoover Institution on War, Revolution, and Peace at Stanford University;

Whereas in 1988 he was awarded the Presidential Medal of Freedom; and

Whereas he has been a champion of an all-volunteer armed forces, an advisor to presidents, and has taught the American people the value of capitalism and freedom through his public broadcasting series: Now, therefore, be it

Resolved, That the United States Senate commend and express its deep gratitude to Professor Milton Friedman for his invaluable contribution to public discourse, American democracy, and the cause of human freedom.

TO REVISE, CODIFY, AND ENACT WITHOUT SUBSTANTIVE CHANGE CERTAIN LAWS RELATED TO PUBLIC BUILDINGS, PROPERTY, AND WORKS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 434, H.R. 2068.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2068) to revise, codify, and enact without substantive change certain general and permanent laws related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works".

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I would like to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. REID. In the opinion of the Chair, does the enactment into positive law of a title of the United States Code, without substantive change, affect the subsequent referral of legislation under Senate rule XXV?

The PRESIDING OFFICER. It does not.

Mr. REID. I thank the Chair.

I ask unanimous consent the bill be read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD at the appropriate place as if read, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2068) was read the third time and passed.

EXPRESSING THE SENSE OF CONGRESS THAT MAJOR LEAGUE BASEBALL PLAYERS AND TEAM OWNERS SHOULD ATTEMPT TO ENTER INTO A CONTRACT AND AVOID A STRIKE

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 137, submitted earlier today by Senator MILLER.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 137) expressing the sense of Congress that the Federal Mediation and Conciliation Service should exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in a strike, a lockout, or any conduct that interferes with the playing of scheduled professional baseball games.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution and preamble be agreed to, en bloc, the motions to reconsider be laid upon the table, en bloc, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 137) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. Con. Res. 137

Whereas major league baseball is a national institution and is commonly referred to as "the national pastime";

Whereas major league baseball and its players played a critical role in restoring America's spirit following the tragic events of September 11, 2001;

Whereas major league baseball players are role models to millions of young Americans; and

Whereas while the financial issues involved in this current labor negotiation are significant, they pale in comparison to the damage that will be caused by a strike or work stoppage: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in accordance with section 203(b) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—

(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to resolve labor contract disputes relating to entering into a collective bargaining agreement; and

(2) use its best efforts to bring the parties to agree to such contract without engaging in a strike, a lockout, or any other conduct that interferes with the playing of scheduled professional baseball games.

AUTHORITY FOR SENATE LEADERSHIP TO MAKE APPOINTMENTS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the adjournment of the Senate that will shortly be upon us, the President of the Senate, the President pro tempore of the Senate, and the majority and minority leaders be authorized to make appointments to commissions, boards, committees, conferences, or interparliamentary conferences authorized by the concurrent action of the two Houses or by order of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDING THE PUBLIC HEALTH SERVICE ACT

Mr. REID. Mr. President, I ask unanimous consent that the HELP Commerce Committee be discharged from further consideration of S. 2549, and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2549) to ensure that child employees of traveling sales crews are protected under the Fair Labor Standards Act of 1938.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD at the appropriate place as if given, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2549) was read the third time and passed, as follows:

S. 2549

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. LIMITATION ON CHILD LABOR.

(a) IN GENERAL.—Section 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 212) is amended by adding at the end the following:

"(e) No individual under 18 years of age may be employed in a position requiring the individual to engage in door to door sales or in related support work in a manner that requires the individual to remain away from his or her permanent residence for more than 24 hours.".

(b) RULES AND REGULATIONS.—The Secretary of Labor may issue such rules and regulations as are necessary to carry out the amendment made by this section, consistent with the requirements of chapter 5 of title 5, United States Code.

AMENDING THE PUBLIC HEALTH SERVICE ACT TO REDESIGNATE A FACILITY AS THE "NATIONAL HANSEN'S DISEASE PROGRAMS CENTER"

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of H.R. 2441, and the Senate then proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2441) to amend the Public Health Service Act to redesignate a facility at the National Hansen's Disease Programs Center, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, without intervening action or debate, and that any statements relating thereto be printed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2441) was read the third time and passed.

BENIGN BRAIN TUMOR CANCER REGISTRIES AMENDMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of S. 2558, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2558) to amend the Public Health Service Act to provide for the collection of data on the benign brain-related tumors through the national program of cancer registries.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, all with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2558) was read the third time and passed, as follows:

S. 2558

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Benign Brain Tumor Cancer Registries Amendment Act".

SEC. 2. NATIONAL PROGRAM OF CANCER REGISTRIES; BENIGN BRAIN-RELATED TUMORS AS ADDITIONAL CATEGORY OF DATA COLLECTED.

(a) IN GENERAL.—Section 399B of the Public Health Service Act (42 U.S.C. 280e), as redesignated by section 502(2)(A) of Public Law 106-310 (114 Stat. 1115), is amended in subsection (a)—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively and indenting appropriately;

(2) by striking "(a) IN GENERAL.—The Secretary" and inserting the following:

"(a) IN GENERAL.—

"(1) STATEWIDE CANCER REGISTRIES.—The Secretary";

(3) in the matter preceding subparagraph (A) (as so redesignated), by striking "population-based" and all that follows through "data" and inserting the following: "population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data"; and

(4) by adding at the end the following:

"(2) CANCER; BENIGN BRAIN-RELATED TUMORS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the conditions referred to in this paragraph are the following:

"(i) Each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), including malignant brain-related tumors.

"(ii) Benign brain-related tumors.

"(B) BRAIN-RELATED TUMOR.—For purposes of subparagraph (A):

"(i) The term 'brain-related tumor' means a listed primary tumor (whether malignant or benign) occurring in any of the following sites:

"(I) The brain, meninges, spinal cord, cauda equina, a cranial nerve or nerves, or any other part of the central nervous system.

"(II) The pituitary gland, pineal gland, or craniopharyngeal duct.

"(ii) The term 'listed', with respect to a primary tumor, means a primary tumor that is listed in the International Classification of Diseases for Oncology (commonly referred to as the ICD–O).

"(iii) The term 'International Classification of Diseases for Oncology' means a classification system that includes topography (site) information and histology (cell type information) developed by the World Health Organization, in collaboration with international centers, to promote international comparability in the collection, classification, processing, and presentation of cancer statistics. The ICD–O system is a supplement to the International Statistical Classification of Diseases and Related Health Problems (commonly known as the ICD) and is the standard coding system used by cancer registries worldwide. Such term includes any modification made to such system for purposes of the United States. Such term further includes any published classification system that is internationally recognized as a successor to the classification system referred to in the first sentence of this clause.

"(C) STATEWIDE CANCER REGISTRY.—References in this section to cancer registries shall be considered to be references to registries described in this subsection.".

(b) APPLICABILITY.—The amendments made by subsection (a) apply to grants under section 399B of the Public Health Service Act for fiscal year 2002 and subsequent fiscal years, except that, in the case of a State that received such a grant for fiscal year 2000, the Secretary of Health and Human Services may delay the applicability of such amendments to the State for not more than 12 months if the Secretary determines that compliance with such amendments requires the enactment of a statute by the State or the issuance of State regulations.

GLOBAL PATHOGEN SURVEILLANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 388, S. 2487.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2487) to provide for global pathogen surveillance and response.

There being no objection, the Senate proceeded to consider the bill.

Mr. BIDEN. Mr. President, I am extremely pleased that the Senate today is taking up S. 2487, the "Global Pathogen Surveillance Act of 2002." This bill authorizes $150 million over the next two fiscal years to provide assistance to developing nations to improve global disease surveillance to help prevent and contain both biological weapons attacks and naturally occurring infectious disease outbreaks around the world.

This bill is the result of a joint effort by Senator HELMS and I to act on key lessons learned during an important hearing the Foreign Relations Committee held last September on the threat of bioterrorism and emerging infectious diseases. I am also proud that Senators KENNEDY and FRIST, the Chairman and Ranking Member of the Public Health Subcommittee of the Senate Health, Education, Labor, and Pensions Committee, are original cosponsors of this bill.

Senator HELMS and I recognize all too well that biological weapons are a global threat with no respect for borders. A terrorist group could launch a biological weapons attack in Mexico in the expectation that the epidemic would quickly spread to the United States. A rogue state might experiment with new disease strains in another country, intending later to release them here. A biological weapons threat need not begin in the United States to reach our shores.

For that reason, our response to the biological weapons threat cannot be limited to the United States alone. Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

This country is making enormous advances on the domestic front in bioterrorism defense. Mr. President, $3 billion has been appropriated for this purpose in FY 2002, including $1.1 billion to improve State and local public health infrastructure. Delaware's share will include $6.7 million from the Centers for Disease Control and Prevention to improve the public health infrastructure and $548,000 to improve hospital readiness in my State.

Earlier this year, the President signed into law a comprehensive bioterrorism bill drafted last fall following the anthrax attacks via the U.S. postal system. Those attacks, which killed five individuals and infected more than 20 people, highlighted our domestic vulnerabilities to a biological weapons attack. We need to further strengthen our nation's public health system, improve federal public health laboratories, and fund the necessary research and procurement for vaccines and treatments to respond better to future bioterrorist attacks. As an original cosponsor of the "Kennedy-Frist" bill in the Senate, I know the implementation of this new law will help achieve many of those objectives.

Nevertheless, any effective response to the challenge of biological weapons must also have an international component. Limiting our response to U.S. territory would be shortsighted and doomed to failure. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours. This is the dark side of globalization. International trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another. Moreover, an overseas epidemic could give us our first warning of a new disease strain that was developed by a country or by terrorists for use as a biological weapon, or that could be used by others for that purpose.

How does disease surveillance fit into all of this? A biological weapons attack succeeds partly through the element of surprise. A cluster of flu-like symptoms in a city or region may be dismissed by individual physicians as just the flu when in fact it may be anthrax, plague, or another biological weapon. Armed with the knowledge, however, that a biological weapons attack has in fact occurred, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat infected individuals.

Disease surveillance, a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses, can quickly alert doctors across a region that a suspicious disease outbreak has occurred. Epidemiological specialists can then investigate and combat the outbreak. And if it is a new disease or strain, we can begin to develop treatments that much earlier.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and communications equipment to circulate information. Even in the United States today, many states and localities rely on old-fashioned pencil and paper methods of tracking disease patterns. Thankfully, we are addressing those domestic deficiencies through the new bioterrorism law and substantially increased appropriations.

For example, in Delaware, we are developing the first, comprehensive, state-wide electronic reporting system for infectious diseases. This system will be used as a prototype for other states, and will enable much earlier detection of infectious disease outbreaks, both natural and bioterrorist. My congressional colleagues from Delaware and I have been working for over 2 years to get this project up and running, and we were successful in obtaining $2.6 million in funding for this project over the past 2 years. I and my colleagues have requested $1.4 million for additional funding in FY 2003, and we are extremely optimistic that this funding will be forthcoming.

It is vitally important that we extend these initiatives into the international arena. However, as many developing countries are way behind us in terms of public health resources, laboratories, personnel, and communications, these countries will need help just to get to the starting point we have already reached in this country.

An effective disease surveillance system is beneficial even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring. Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease. According to the World Health Organization, 30 new infectious diseases have emerged over the past 30 years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

According to a report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention. The World Health Organization reports that more than sixty percent of laboratory equipment in developing countries is either outdated or nonfunctioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints on flea infestation and a growing rat population was followed by a cluster of reports on patients exhibiting the symptoms of pneumonic plague. However, authorities were unable to connect the dots until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy $600 million. Had the Indian authorities employed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and surely avoided the panic that led to economically disastrous embargoes on trade and travel. An outbreak of pneumonic plague in India this February was detected more quickly and contained with only a few deaths—and no costly panic.

Developing nations are the weak links in any comprehensive global disease surveillance network. Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It is for these reasons that Senator HELMS and I have worked together to craft the Global Pathogen Surveillance Act of 2002. This bill authorizes $150 million in FY 2003 and FY 2004 to strengthen the disease surveillance capabilities of developing nations. First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques. It offers enhanced in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities.

Second, the bill provides assistance to developing nations to acquire basic laboratory equipment, including items as mundane as microscopes, to facilitate the quick diagnosis of pathogens.

Third, the bill enables developing nations to obtain communications equipment and information technology to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO. Again, we are not talking about fancy high-tech equipment, but basics like fax machines and Internet-equipped computers.

Finally, the bill gives preference to countries that agree to let experts from the United States or international organizations promptly investigate any suspicious disease outbreaks.

If this bill becomes law, the Global Pathogen Surveillance Act of 2002 will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network. This bill offers an inexpensive and common sense solution to a problem of global proportions—the dual threat of biological weapons and naturally occurring infectious diseases. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

In addition Senator HELMS and I have introduced a managers' amendment, which I expect will be adopted. This amendment, drafted in response to specific suggestions by executive branch departments and agencies as well as nongovernmental organizations, addresses two important objectives.

First, it ensures that priority in the provision of assistance to developing countries under the authority of this bill will be given those nations which agree to provide early notification of disease outbreaks. In the past, too many nations have sought to limit the release of information on disease outbreaks out of fear for the likely impact on their trade and tourism. In today's world, where an epidemic could be the first signs of a biological weapons attack, that type of reticence by national governments is simply unacceptable.

The amendment also stipulates that priority in assistance under this bill be assigned to those countries which agree to share with the United States data collected through its pathogen suveillance networks. Our epidemiological experts at the Centers for Disease Control and other U.S. departments and agencies are among the best in the world in analyzing such data. We should strive to create an international framework where multilateral organizations, national governments, and even private groups can examine aggregrate data on disease characteristics and symptom reports to help detect emerging patterns and provide early warning on alarming developments. In short, the more information shared under pathogen surveillance, the better protected the world is against surprise bioterrorist attacks and rapid natural epidemics.

Second, the managers' amendment makes the necessary changes to take into account the need for the quick transmission of data collected through pathogen surveillance networks to appropriately respond to local conditions. In the United States and other advanced industrial nations, disease surveillance may well operate most efficiently through Internet-based communications. In some developing countries, however, the cost of introducing new Internet links and computer equipment may be prohibitive. In those cases, leveraging existing telephone-based networks may prove a more cost-effective method in quickly relaying information such as patient reports. Under certain conditions, mobile phones may even prove a reliable tool. The managers' amendment will provide for such flexibility.

In conclusion, the fundamental premise of the Global Pathogen Surveillance Act of 2002 is that we cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security. Indeed, this bill can serve as a key contribution to strengthening our homeland security. I urge the Senate to pass S. 2487 and the related managers' amendment today.

• Mr. HELMS. Mr. President, the anthrax attacks against the Senate and the news media this past fall demanded that we recognize how vulnerable America is to bioterroism. The murderous and cowardly perpetrators of this terrorism must be brought to justice, but we must also prepare ourselves for other attacks in the future.

I am proud to have worked with Senator BIDEN in co-authoring the Global Pathogen Surveillance Act of 2002, S. 2487, and I am pleased that a bipartisan effort has led to its consideration today.

This bill recognizes that bioterrorism is a transnational threat and that the defense of the U.S. homeland is not an isolated activity. Rather, our homeland defense requires a comprehensive international strategy. A recent National Intelligence Estimate concluded that the prospect of a bioterrorist attack against U.S. civilian and military personnel will continue to grow as states and terrorist groups continue to acquire biological warfare capabilities. This same report warns that emerging and reemerging infectious diseases that originate overseas threaten Americans not only here in the United States, but also our military personnel stationed overseas participating in humanitarian and peacekeeping operations.

On September 5, 2001, the Senate Foreign Relations Committee held a hearing on "The Threat of Bioterrorism and the Spread of Infectious Diseases." The compelling testimony of several expert witnesses, along with the assessments of the intelligence community, prompted Senator BIDEN and I to undertake this important legislation with the goal of combating bioterrorism, and ultimately enhancing U.S. national security. In order to enhance U.S. efforts to combat bioterrorism, it is critical that we address the glaring gap that exists in the capabilities of developing countries to conduct pathogen surveillance and monitoring.

This legislation authorizes the President a total of $150 million dollars over the next 2 years to fund pathogen surveillance and response activities through the Department of State, in consultation with the Department of Health and Human Services and the Department of Defense. Several provisions are designed to address shortfalls in public health education and training, including short-term public health training courses in epidemiology for public health professionals from eligible developing countries. The President is authorized to provide assistance for the purchase and maintenance of public health laboratory and communications equipment. In addition, the heads of appropriate Federal agencies are authorized to make available a greater number of U.S. government public health personnel U.S. missions abroad, international health organizations, and regional health networks.

All of the provisions of S. 2487 are directed towards enabling developing countries to acquire basic disease surveillance and monitoring capabilities to effectively contribute to community, local, regional, and global surveillance networks.

In order to ensure that the United States has all of the requisite tools at its disposal to protect U.S. civilians and military personnel against intentional or naturally occurring disease outbreaks, priority for assistance under S. 2487 will be for countries that provide early notification of disease outbreaks and pathogen surveillance data to appropriate U.S. departments and agencies. There is a critical need for transparency and information sharing of pathogen surveillance data so that the United States can utilize a comprehensive toolkit to combat bioterrorism. It is my expectation that developing countries receiving assistance under this Act will make a steadfast commitment to improving their pathogen surveillance and monitoring efforts.

I am particularly proud of the provisions of S. 2487 that address the glaring need for syndrome surveillance—the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators—to track the emergence of a disease in a population. Provisions on syndrome surveillance address the need to narrow the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health officials. Current disease reporting is paper-based and ineffective in transmitting important information to public health officials in developing countries where one doctor often cares for hundreds of patients. Thus, S. 2487 authorizes the President to provide assistance to eligible developing countries to purchase simple computer technology, including touch-screens and low-speed Internet connections for use by physicians in health clinics.

Let me close with the astute words of Dr. Alan P. Zelicoff, Senior Scientist, Sandia National Laboratory, as stated during his testimony before the Foreign Relations Committee in a March 2002, on the threat posed by chemical and biological weapons. Dr. Zelicoff has spent a considerable amount of his distinguished career developing technology and solutions to assist the medical and public health communities identify natural and deliberate disease outbreaks. According to Dr. Zelicoff,

> When all is said and done, should would-be perpetrators of bioterror know that the effects of their attack would be blunted if not eliminated, they might well re-think their strategy in the first place. A multi-national cadre of clinicians and nurses, exchanging up-to-the-minute information is our single best defense, and we have the resource—now—to so equip them. All that is required is a policy shift emphasizing and strengthening this lynchpin capability.

While we are supportive of the public health benefits of this Act, we should not lose sight of the intent of this legislation—to combat bioterrorism and enhance U.S. national security. I look forward to working with the Bush administration and members of Congress to secure funding for these invaluable activities directed towards global pathogen surveillance and monitoring.●

Mr. REID. Mr. President, I ask unanimous consent that the Biden amendment at the desk be agreed to; that the bill, as amended, be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statement relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4468) was agreed to, as follows:

AMENDMENT NO. 4468

On page 3, line 1, insert ", including data sharing with appropriate United States departments and agencies," after "countries".

On page 5, strike lines 9 through 14, and insert the following:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

On page 5, line 17, insert ", and other electronic" after "Internet-based".

On page 6, line 5, strike "including" and all that follows through "mechanisms," on line 7, and insert the following: "including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications,".

On page 9, line 15, insert before the period the following: ", provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies".

On page 17, line 12, insert "(and information technology)" after "Equipment".

The bill (S. 2487), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

ENCOURAGING THE PEACE PROCESS IN SRI LANKA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 516, S. Res. 300.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 300) encouraging the peace process in Sri Lanka.

There being no objection, the Senate proceeded to consider the resolution, which had been reported by the Committee on Foreign Relations with an amendment and amendments to the preamble, as follows:

[Omit the part enclosed by boldface brackets and insert the part printed in italic.]

Whereas the United States has enjoyed a long and cordial friendship with Sri Lanka;

[Whereas the people of Sri Lanka have long valued political pluralism, religious freedom, democracy, and a respect for human rights;

[Whereas the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam have waged a protracted and costly war for the past 19 years;

Whereas for the past 19 years, the Government of Sri Landa has fought a protracted and costly war against the Liberation Tigers of Tamil Eelam, a group labeled as a foreign terrorist organization by the Department of State;

Whereas an estimated 65,000 people have died in Sri Lanka as a result of these hostilities;

Whereas the war has created an estimated 1,000,000 displaced persons over the course of the conflict;

Whereas 19 years of war have crippled the economy of the north and east of Sri Lanka and resulted in low growth rates and economic instability in the south of Sri Lanka;

Whereas the economic impact of the conflict is felt most severely by the poor in both the north and the south of Sri Lanka;

Whereas efforts to solve the conflict through military means have failed and neither side appears able to impose its will on the other by force of arms;

Whereas the Government of Norway has offered and been accepted by the parties of the conflict to play the role of international facilitator;

Whereas an agreement on a cease-fire between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam was signed by both parties and went into effect February 23, 2002; and

Whereas both the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam **[**have agreed**]** *are now in the process of agreeing* to meet for peace talks in Thailand: Now, therefore, be it

Resolved, That the Senate—

(1) notes with great satisfaction the warm and friendly relations that have existed between the people of the United States and Sri Lanka;

(2) recognizes that the costly military stalemate that has existed between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam **[**can only**]** *should* be resolved at the negotiating table;

(3) believes that a political solution, including appropriate constitutional structures and adequate protection of minority rights and cessation of violence, is the path to a comprehensive and lasting peace in Sri Lanka;

(4) calls on all parties to negotiate in good faith with a view to finding a just and lasting political settlement to Sri Lanka's ethnic conflict while respecting the territorial integrity of Sri Lanka;

(5) denounces all political violence and acts of terrorism in Sri Lanka, and calls upon those who espouse or use such methods to reject these methods and to embrace dialogue, democratic norms, and the peaceful resolution of disputes;

(6) applauds the important role played by Norway in facilitating the peace process between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam;

(7) applauds the cooperation of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in lifting the cumbersome travel restrictions that for the last 19 years have hampered the movement of goods, services, and people in the war-affected areas;

(8) applauds the agreement of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in implementing the Sri Lanka Monitoring Mission;

(9) calls on all parties to recognize that adherence to internationally recognized human rights facilitates the building of trust necessary for an equitable, sustainable peace;

(10) further encourages both parties to develop a comprehensive and effective process for human rights monitoring;

(11) states its willingness in principle to see the United States lend its good offices to play a constructive role in supporting the peace process, if so desired by all parties to the conflict;

(12) calls on members of the international community to use their good offices to support the peace process and, as appropriate, lend assistance to the reconstruction of war-damaged areas of Sri Lanka and to reconciliation among all parties to the conflict; and

(13) calls on members of the international community to ensure that any assistance to

Sri Lanka will be framed in the context of supporting the ongoing peace process and will avoid exacerbating existing ethnic tensions.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment to the resolution be agreed to; that the resolution, as amended, be agreed to; that the amendments to the preamble be agreed to; that the preamble, as amended, be agreed to; that the motions to reconsider be laid upon the table, en bloc, with no further intervening action or debate; and that any statement relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The resolution (S. Res. 300), as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

(The resolution, as amended, with its preamble, as amended, will be printed in a future edition of the RECORD.)

DEPARTMENT OF VETERANS AFFAIRS EMERGENCY PREPAREDNESS RESEARCH, EDUCATION, AND BIO-TERRORISM PREVENTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Veterans Affairs Committee be discharged from further consideration of H.R. 3253 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3253) to amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans Affairs, I urge the Senate to pass this legislation that would help VA—and our entire Nation—prepare for the potential medical consequences of another terrorist attack.

As Congress seeks ways to avert the threats posed by biological, chemical, radiological, and other potential terrorist weapons, we must make certain that we use our existing national resources as efficiently as possible. I thank Ranking Member SPECTER and his staff for their efforts in helping to ensure that VA—the Nation's largest integrated healthcare system—is prepared for the role that it can and must play during emergencies.

The pending measure is an omnibus bill that would improve VA's ability to fulfill its responsibilities to veterans, its staff, and communities during disasters, and would also address VA nonprofit research corporation activities.

"The Department of Veterans Affairs Emergency Preparedness Act," as reported, which I will refer to as the "Committee bill," acknowledges VA's role in offering health care and support to individuals affected by disasters, and would give VA staff the tools that they need to continue serving veterans during emergencies.

The committee bill would establish four medical emergency preparedness research centers within the Department of Veterans Affairs health care system. VA researchers possess expertise in the long-term health consequences of biological, chemical, and radiological exposures, and sustain an unparalleled clinical management research program. The centers authorized by this legislation would make the most of these resources to learn how best to manage—or prevent—the mass casualties that might arise from the use of terrorist weapons.

The committee bill also includes provisions requested by the Administration that would create an office, directed by an Assistant Secretary, to coordinate preparedness strategies within VA and with other Federal, State, and local agencies. I strongly believe that this new office represents an essential step in helping VA improve emergency preparedness while maintaining its primary mission of caring for the Nation's veterans.

Another emergency preparedness provision within the committee bill would create no new responsibilities or missions for VA, but would authorize VA's enormous contribution to public safety and emergency preparedness. In 1982, Congress charged VA to care for active duty military casualties during a conflict or disaster. Since then, VA has taken a much larger share of the Federal responsibility for public health during emergencies, supporting mass care as part of the Federal Response Plan for disasters and serving as a cornerstone of the National Disaster Medical System.

VA has responded to every major domestic disaster of the last two decades with personnel, supplies and medications, facilities, and—when necessary—direct patient care for overwhelmed communities. VA health care providers who care for disaster victims serve not only as part of the Federal response to emergencies, but as part of the communities in which they live. The committee bill would acknowledge VA's emergency response missions by authorizing VA to provide medical treatment for individuals affected by or responding to disasters.

The committee bill also makes changes in law affecting VA's nonprofit research corporations. The first allows employees of nonprofit VA research and education corporations assigned to approved VA research, education, or training projects to be considered VA employees for purposes of the Federal Tort Claims Act. The other provision clarifies that VA Medical Centers may enter into contracts or other forms of agreements with nonprofit research corporations to provide services to facilitate VA-approved research and education projects. These changes would further VA's research and education missions.

In conclusion, I urge my colleagues to support these research and emergency preparedness enhancements for VA. This bipartisan commitment to our Nation's veterans and VA represents a small investment with potentially enormous rewards.

I ask unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMAMRY OF S. 2132: THE DEPARTMENT OF VETERANS AFFAIRS EMERGENCY PREPAREDNESS ACT OF 2002

MEDICAL EMERGENCY PREPAREDNESS CENTERS IN THE VETERANS HEALTH ADMINISTRATION

Authorizes VA to establish four centers for medical emergency preparedness within existing VA medical centers.

Directs centers to carry out research on the medical management of injuries or illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices in coordination with national strategies for homeland security.

Allows centers to provide medical consequence management education and training to VA health care professionals, and to non-VA providers at the Secretary's discretion.

Authorizes VA to provide laboratory, epidemiological, medical, or other assistance to Federal, State, and local health care entities by request during a national emergency.

REORGANIZATION OF VA PREPAREDNESS FUNCTIONS

Increases the number of authorized assistant secretaries from six to seven, and adds "operations, preparedness, security, and law enforcement" to their authorized functions.

Increases the number of authorized deputy assistant secretaries from 18 to 20.

AUTHORIZING VA TO PROVIDE MEDICAL CARE DURING DISASTERS

Authorizes VA to furnish medical care to individuals—regardless of enrollment status—affected by a major disaster or presidentially declared emergency, or following activation of the National Disaster Medical System.

Allows VA to provide care to individuals affected by disasters before any other group except service-connected veterans and active-duty military casualties, and would allow VA to be reimbursed for care provided to employees of other Federal agencies.

VA NONPROFIT RESEARCH CORPORATION ACTIVITIES

Authorizes VA to contract with VA nonprofit research corporations in order to conduct VA-approved research, training, or education.

Allows employees of nonprofit VA research and education corporations assigned to approved VA research, education, or training projects to be considered VA employees for purposes of Federal Tort Claims Act.

Removes the sunset date of December 31, 2003, currently established in 38 USCS §7638, for authority to establish nonprofit VA research and education corporations.

Mr. REID. Mr. President, I understand Senator ROCKEFELLER has a substitute amendment at the desk which is the text of S. 2132 and has been reported by the Veterans Subcommittee. I ask unanimous consent that the substitute amendment be agreed to, the bill, as amended, be read three times, passed, the motion to reconsider be laid on the table; that the title amendment be agreed to; and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4469) was agreed to.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The bill (H.R. 3253), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

The title amendment (No. 4470) was agreed to, as follows:

"A Bill to amend title 38, United States Code, to enhance the emergency preparedness of the Department of Veterans Affairs, and for other purposes.".

EXECUTIVE SESSION

DELIMITATION OF A MARITIME BOUNDARY BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF NIUE—TREATY DOCUMENT NO. 105-53

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 5, treaty with Niue; that the protocol be considered as having advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; and that the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

The treaty will be considered to have passed through its various parliamentary stages up to and including the presentation of the resolution of ratification.

Mr. REID. I ask for a division vote.

The PRESIDING OFFICER. A division has been requested.

Senators in favor of the resolution of ratification will rise and stand until counted.

(After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification, with its reservation, was agreed to, as follows:

Resolved (two-thirds of the Senators present concurring therein),

That the Senate advise and concent to the ratification of the Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary, signed in Wellington on May 13, 1997 (Treaty Doc. 105-53).

Mr. NICKLES. Mr. President, if the Senator will yield, I say to my good friend that it is a unanimous vote in the Senate on this treaty.

Mr. REID. One of the few we have had lately.

I ask unanimous consent that any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, as I indicated earlier, when we read off all the bills that have passed, we have a large number of nominations. These have been cleared, and everyone is grateful. I am sure the people who are being approved are even more so. This is something I wish we could have done earlier, but things did not work out that way.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Executive Calendar Nos. 846, 847, 848, 849, 850, 876, 906, 907, 908, 909, 923, 924, 925, 927, 928, 929, 930, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 957, 964, 965, 966, 967, 968, 970, 971, 972, 973, 974, 999, 1002, 1003. I ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, any statements be printed in the RECORD, and that the Senate now return to legislative session, with the preceding all occurring without any intervening action or debate.

Before the Chair rules, I reply to my friend, the assistant Republican leader, we read off a bunch of names, but these are people who have been waiting, some for a long time. Even though we did not read off all the names, this is very important, and these names refer to people who will play an important part in running our country.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The nominations considered confirmed en bloc are as follows:

DEPARTMENT OF STATE

David A. Gross, of Maryland, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for International Communications and Information Policy in the Bureau of Economic and Business Affairs and U.S. Coordinator for International Communications and Information Policy.

Jack C. Chow, of Pennsylvania, for the rank of Ambassador during his tenure of service as Special Representative of the Secretary of State for HIV/AIDS.

Paula A. DeSutter, of Virginia, to be an Assistant Secretary of State (Verification and Compliance).

Stephen Geoffrey Rademaker, of Delaware, to be an Assistant Secretary of State (Arms Control).

Michael Alan Guhin, of Maryland, a Career Member of the Senior Executive Service, for the Rank of Ambassador during tenure of service as U.S. Fissile Material Negotiator.

Tony P. Hall, of Ohio, for the rank of Ambassador during his tenure of service as United States Representative to the United Nations Agencies for Food and Agriculture.

COMMODITY FUTURES TRADING COMMISSION

Sharon Brown-Hruska, of Virginia, to be a Commissioner of the Commodity Futures Trading Commission for the remainder of the term expiring April 13, 2004.

Walter Lukken, of Indiana, to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 2005.

FARM CREDIT ADMINISTRATION

Douglas L. Flory, of Virginia, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for a term expiring October 13, 2006.

NUCLEAR REGULATORY COMMISSION

Jeffrey S. Merrifield, of New Hampshire, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2007. (Reappointment)

EXECUTIVE OFFICE OF THE PRESIDENT

Kathie L. Olsen, of Oregon, to be an Associate Director of the Office of Science and Technology Policy.

Richard M. Russell, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration.

FEDERAL MARITIME COMMISSION

Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner for a term expiring June 30, 2006.

THE JUDICIARY

James E. Boasberg, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

EXECUTIVE OFFICE OF THE PRESIDENT

Mark W. Everson, of Texas, to be Deputy Director for Management, Office of Management and Budget.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Michael D. Brown, of Colorado, to be Deputy Director of the Federal Emergency Management Agency.

DEPARTMENT OF STATE

Michael Klosson, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cyprus.

Randolph Bell, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Mark Sullivan, of Maryland, to the United States Director of the European Bank for Reconstruction and Development.

ASIAN DEVELOPMENT BANK

Paul William Speltz, of Texas, to be United States Director of the Asian Development Bank, with the rank of Ambassador.

BROADCASTING BOARD OF GOVERNORS

Kenneth Y. Tomlinson, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004.

Kenneth Y. Tomlinson, of Virginia, to be Chairman of the Broadcasting Board of Governors.

Norman J. Pattiz, of California, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004. (Reappointment)

ENVIRONMENTAL PROTECTION AGENCY

John Peter Suarez, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Carolyn W. Merritt, of Illinois, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

John S. Bresland, of New Jersey, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

DEPARTMENT OF STATE

James Howard Yellin, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Burundi.

Kristie Anne Kenney, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador.

Barbara Calandra Moore, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Nicaragua.

John William Blaney, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Liberia.

Larry Leon Palmer, of Georgia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Honduras.

DEPARTMENT OF JUSTICE

J. B. Van Hollen, of Wisconsin, to be United States Attorney for the Western District of Wisconsin for the term of four years.

Charles E. Beach, Sr., of Iowa, to be United States Marshal for the Southern District of Iowa for the term of four years.

Peter A. Lawrence, of New York, to be United States Marshal for the Western District of New York for the term of four years.

Richard Vaughn Mecum, of Georgia, to be United States Marshal for the Northern District of Georgia for the term of four years.

Burton Stallwood, of Rhode Island, to be United States Marshal for the District of Rhode Island for the term of four years.

DEPARTMENT OF DEFENSE

Vinicio E. Madrigal, of Louisiana, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

L. D. Britt, of Virginia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for the remainder of the term expiring May 1, 2005.

Linda J. Stierle, of Maryland, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring May 1, 2007.

William C. De La Pena, of California, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2007.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

John Edward Mansfield, of Virginia, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2006. (Reappointment)

Nancy J. Powell, of Iowa, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Pakistan.

NATIONAL MEDIATION BOARD

Edward J. Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board for a term expiring July 1, 2004.

Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board for a term expiring July 1, 2005.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. NICKLES. Mr. President, first let me thank my friends and colleagues, Senator REID and Senator DASCHLE, for finally moving some of these nominees. Some are long overdue. Some are still yet to be confirmed.

I will make one mention: Kyle McSlarrow, to be Deputy Secretary of Energy. He worked for us in the Senate. He is more than qualified. I happen to know the Secretary of Energy because he used to be a Senator, Spence Abraham, and he has personally requested that he be confirmed. He needs a Deputy Secretary of Energy.

So while I am pleased we were able to confirm a large number of nominees, we have some nominees who are now going to have to wait the entire month of August and well into September to be confirmed. I find that to be unfair. I wanted to express my pleasure with the one we were able to confirm and my displeasure with the fact that there are about 30 people who will still be left on the calendar, including individuals such as Kyle McSlarrow to be Deputy Secretary of Energy, and other outstanding nominees who will still be held in limbo in the confirmation process throughout August and maybe well into September. I find that regrettable. There is no reason in the world not to move more of these nominees. I am appreciative of the many we have confirmed. I have not totaled the number, but it is a significant number. Still, there will be several very well qualified individuals who, for no reason whatever, are not being confirmed to this date.

I wanted to express my displeasure and mention that nominee. I could go through the list. I will not do that at this late time. I want my colleague to know I am not happy we were not able to confirm Mr. McSlarrow, who was reported out by the Energy and Natural Resources Committee unanimously on June 5. He has been waiting almost 2 months. The Secretary of Energy has been waiting to get a deputy. Unfortunately, he still will not have a deputy for the next couple of months, at a time when we will mark up an energy bill. It is probably the most significant piece of energy legislation in decades, and the Secretary does not have his deputy confirmed.

Mr. REID. Mr. President, it would be good if we could approve all of these, but problems occur. As I indicated, on one of these nominees, I personally went to a lot of trouble to find a Senator so we could get that person approved.

This is not a perfect system, but it works pretty well and we do the very best we can. It is not just holds over here; we have holds over there on people we care about.

I worked on the Aging Subcommittee; I am still a member of the Aging Subcommittee. One of the highest people assigned to me was a man by the name of Jonathan Steven Adelstein. I hoped he would be approved to serve on the Federal Communications Commission. We could go tit for tat. But I would tell my friend, the Senator from Oklahoma, for whom, everyone knows, I have the greatest respect about a trip I had a couple of weeks ago to Nevada. I had the wonderful opportunity to have three of my grandchildren spend a weekend with us. My little grandchild just turned 4, Mitchell. I did not realize his parents had told him to be patient because I would want to find out how Tiger Woods was doing in the golf tournament, and he wanted to watch a video. This little boy came into the room and looked at me with sad eyes saying: "It is so hard to be patient."

I say to my friend Senator NICKLES, it is so hard being patient, but being a Member of the Senate, you have to be. Even a 4-year-old said that. It certainly applies to what goes on in the Senate. It is hard to be patient, but I think a lot of people are celebrating tonight because these people have already been approved.

I look forward to coming back in the fall and hoping we can confirm more of these men and women who certainly, with rare exception, are qualified for the appointments they have been given.

Mr. NICKLES. Mr. President, I thank my friend and colleague. I understand that maybe he is not the source of some of the remaining holds. We are confirming a large number of people, well qualified people, at long last. That is good. There still remain some outstanding nominees; I think about 30.

I hope my colleague from Nevada will work with me and Senator DASCHLE and Senator LOTT and see if we can clean the rest of the calendar. Historically, we try to clean the calendar before we break, both in August and October. I hope we will not wait until the end, early October, to clean the calendar this time. I hope we will try to confirm as many of these nominees as early as we can in September, both for the agencies that need the help and the expertise and also for them individually. They should not be held indefinitely.

I will work with my colleague, and I would appreciate his assistance to see if we can get some of them through—there may be holds on both sides—and see if we can eliminate some of those and expedite the confirmation process.

Mr. REID. I look forward to that. One thing we need to do: It does not matter if you have a Republican President or a Democrat President, the problem is the slow process in approving nominees to serve in an administration. It is not right that we have to wait months for a Presidential nomination. Judicial appointments are a good example. They go step after step before we even get to look at them. We have to speed up this process for the good of the country. It is not right that this President is almost halfway through his term and still does not have people working for him. It is not all our fault, and it is not all the minority's fault. Much of it is the fault of the system. We have to do something to make it a system that moves more quickly.

If there were ever something we needed to work on in conjunction with the executive branch of Government, it would be to establish a blue ribbon panel to figure out a way we could speed up this process. It takes a long time for nominees to be sent to the Senate. We are running good people away from government, not because the process is too long, people are beleaguered before they even go through it.

I would be happy to work with my friend doing what we can to clear up the nominations. I look forward to that. I also hope the Senator will work with me, and maybe we can come up with an idea that will make all Presidencies a little more in tune with what is going on, because we have to wait for months and months to get people working in agencies.

Mr. NICKLES. If my colleague would yield, I would be happy to work with the Senator. Some legislation has been considered by the Governmental Affairs Committee on that issue, and maybe we should review that to achieve more fair consideration.

I spoke earlier tonight about judicial nominations. We did confirm, I believe, seven or eight judges today. That is good. But on circuit court nominees, we have confirmed 13 out of 32; that is 40 percent, 8 of which have been languishing for over a year, 445 days, I think, since May of last year. Several of those eight are outstanding nominees. One of them, John Roberts, has argued 37 cases before the Supreme Court. Miguel Estrada has argued 15 cases before the Supreme Court and has yet to have a hearing. Another nominee argued 10 cases before the Supreme Court. Other nominees served on district court levels for years, and were rated very high by the ABA. For fairness, we need to treat these individuals with respect and give them a hearing before the committee.

Mr. President, 40 percent on the circuit court level is not satisfactory. I just mention that; I am not trying to pick a fight. I would just like to see that we let circuit court nominees have consideration. They should not have to languish for over a year after the nomination to have a hearing.

I might mention, two of the eight have had hearings. Six of the eight have not even had a hearing scheduled, and they have waited over a year.

So I mention that. I appreciate my colleague's consideration.

Mr. REID. I think, generally speaking, we have to do better. It is too bad that someone has had to wait a year. But during the time when we were trying to get some judges approved and we were in the minority, we had judges who waited 4 years. I hope that record is not beaten.

I would say we have held more hearings on district and circuit court nominees, 78, than in the past 22 years. I have all the statistics here. We need not go through them.

We need to try to have a better system. I am happy to work on that, and I will be happy to work with my esteemed friend, the senior Senator from Oklahoma, to do whatever we can to work out some of these bumps in the road that exist.

ORDERS FOR TUESDAY, SEPTEMBER 3, 2002

Mr. REID. I ask unanimous consent that when the Senate adjourns tonight under the provisions of S. Con. Res. 132, it stand adjourned until 9:30 a.m., Tuesday, September 3; that on Tuesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then begin consideration of the motion to proceed to H.R. 5005, as under the previous order; that on Tuesday, the Senate stand in recess, until 2:15 p.m., at the conclusion of the rollcall which will begin at 12:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. I announce on behalf of the leader, for the information of the Senate, that on Tuesday when we return Senators can expect a rollcall vote at 12:30 on a judicial nomination, as I indicated in the unanimous consent request that the Chair has approved.

ADJOURNMENT UNTIL 9:30 A.M. TUESDAY, SEPTEMBER 3, 2002

Mr. REID. I now ask unanimous consent that the Senate stand adjourned under the provisions of S. Con. Res. 132.

There being no objection, the Senate, at 9:32 p.m., adjourned until Tuesday, September 3, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate August 1, 2002:

THE JUDICIARY

CHARLES E. ERDMANN, OF COLORADO, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES FOR THE TERM OF FIFTEEN YEARS TO EXPIRE ON THE DATE PRESCRIBED BY LAW, VICE EUGENE R. SULLIVAN, TERM EXPIRED.

DEPARTMENT OF THE TREASURY

WAYNE ABERNATHY, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE SHEILA C. BAIR.

DEPARTMENT OF STATE

JOSEPH HUGGINS, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BOTSWANA.

BROADCASTING BOARD OF GOVERNORS

SETH CROPSEY, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE INTERNATIONAL BROADCASTING BUREAU, BROADCASTING BOARD OF GOVERNORS. (NEW POSITION)

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

WENDY JEAN CHAMBERLIN, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE LORI A. FORMAN.

POSTAL RATE COMMISSION

RUTH Y. GOLDWAY, OF CALIFORNIA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE TERM EXPIRING NOVEMBER 22, 2008. (REAPPOINTMENT)

THE JUDICIARY

MARK E. FULLER, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA, VICE IRA DEMENT, RETIRED.

ROSEMARY M. COLLYER, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE THOMAS PENFIELD JACKSON, RETIRED.

ROBERT B. KUGLER, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE JOSEPH E. IRENAS, RETIRED.

JOSE L. LINARES, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE ALFRED J. LECHNER, JR., RESIGNED.

FREDA L. WOLFSON, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE NICHOLAS H. POLITAN, RETIRED.

RICHARD J. HOLWELL, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE BARRINGTON D. PARKER, JR., ELEVATED.

GREGORY L. FROST, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO, VICE GEORGE C. SMITH, RETIRED.

DEPARTMENT OF JUSTICE

CAROL CHIEN-HUA LAM, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE ALAN D. BERSIN, TERM EXPIRED.

ANTONIO CANDIA AMADOR, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE JERRY J. ENOMOTO, TERM EXPIRED.

THOMAS DYSON HURLBURT, JR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT

OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE DON R. MORELAND, TERM EXPIRED.

CHRISTINA PHARO, OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE JAMES A. TASSONE.

DENNIS ARTHUR WILLIAMSON, OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE JAMES W. LOCKLEY, TERM EXPIRED.

JOSEPH R. GUCCIONE, OF NEW YORK, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE RUSSELL JOHN QUALLIOTINE.

GOVERNMENT PRINTING OFFICE

BRUCE R. JAMES, OF NEVADA, TO BE PUBLIC PRINTER, VICE MICHAEL F. DIMARIO, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. MARK R. ZAMZOW, 0418

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. PETER U. SUTTON, 9325

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. KEVIN P. GREEN, 8505

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS DEPUTY JUDGE ADVOCATE GENERAL OF THE UNITED STATES NAVY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5149:

To be rear admiral

CAPT. JAMES E. MCPHERSON, 8989

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE MEDICAL CORPS IN THE GRADE OF COLONEL IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203, 12204, AND 12207:

To be colonel

RICHARD A. REDD, 9764

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MARY C. CASEY, 0591

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

DAVID P ACEVEDO, 5339
WILLIAM J ADAMS, 0205
CHARLES T AMES, 8921
MICHAEL G AYCOCK, 2596
PETER C BARCLAY, 7307
JOHN S BARRINGTON, 5828
MICHAEL W BARTLETT JR., 1501
PETER J BEIM, 7365
JAMES C BELL, 5600
STEPHEN J BENAVIDES, 6392
BURT A BIEBUYCK, 7598
MICHAEL G BIRMINGHAM, 0849
KENNETH C BLAKELY, 2251
MICHAEL E BOWIE, 3627
MARK A BOYD, 2158
MERIDETH A BUCHER, 0774
GERALD V BURTON JR., 5832
MICHAEL R CHILDERS, 5423
KURT A CHRISTENSEN, 1008
NICHOLAS E CODDINGTON, 0636
JOHN P CODY SR. 3144
GLENN M CONNOR, 2946
JOSEPH A COUCH, 8587
MICHAEL L CURRENT, 7632
GREGORY D DODGE, 0574
MICHAEL J DOMINIQUE, 2199
CHARLES N EASSA, 2643
MARK A EASTMAN, 2914
JEFFREY A FARNSWORTH, 9722
LARRY S FELLOWS, 2481
KEVIN R GAJNER, 5080
MATTHEW P GLUNZ, 3633
THEODORE R HANLEY, 9910
CHARLES E HARRIS III, 3367
PAMELA L HART, 2802
KEITH L HAYNES, 7544
MICHAEL K HAYSLETT, 8173
ERIC P HENDERSON, 7495
BRYAN C HILFERTY, 1610
DONALD M HODGE, 0109
JOHN W HOGAN, 2792
KEVIN L HUGGINS, 2366
IRIS J HURD, 3877
RODERICK E HUTCHINSON, 6761
BARRY A JOHNSON, 9466
THOMAS H JOHNSON, 5987
WALTER J KLEINFELDER, 2309
ROBERT C KNUTSON, 3550
ANTHONY D KROGH, 5150
MICHAEL J LEMANSKI, 2360
JON N LEONARD II, 3498
TODD S LIVICK, 4058
EDWARD D LOEWEN, 5975
LANCE D LOMBARDO, 3436
MICHAEL L LONGARZO, 8663
SCOTT F MALCOM, 5335
JAMES P MARSHALL, 6560
DANIEL R MATCHETTE, 7614
BRIAN C MCNERNEY, 6973
NORMAN W MIMS III, 4930
JONATHAN M MUNDT, 8494
ERIC NEWMAN, 7515
EDWARD T NYE, 6246
TIMOTHY L OCKERMAN, 4424
SCOTT A PARKS, 8410
SEAN P RICE, 2312
RUBEN RIOS, 5536
JOHN R ROBINSON, 4058
SCOTT D ROSS, 2990
JOAN E ROUSSEAU, 3485
GUY V RUDISILL, 4256
KIRK A SANDERS, 4880
JERRY L SCHLABACH, 1304
STEPHEN S SEITZ, 7230
STUART W SMEAD, 1555
NORMAN W SPEARS, 3630
ROBERT A SPUHL, 5642
DAVID H STAPLETON, 6210
JACK STERN, 1498
DANIEL F SULLIVAN, 6796
JOHN M THACKSTON, 2344
TIMOTHY J THURMOND, 4114
PHILIP VANWILTENBURG, 1654
BARRY E VENABLE, 1450
MALCOLM K WALLACE JR., 4802
WILLIAM E WHITNEY III, 2239
DON L WILKERSON, 6623
DANIEL T * WILLIAMS, 4498
MICHAEL L WILLIAMS, 2823
THOMAS J WILLMUTH, 4688
JEFFERSON K WON, 6674
KENSTON K YI, 9814
EDWARD W ZIMMERMAN, 6117

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

JOSEPH M ADAMS, 0024
DAVID R ALEXANDER, 5203
KELLIE M ALLISON, 8834
DAVID A ANDERSEN, 7996
KEVIN A ARBANAS, 5693
VICTOR BADAMI, 1052
WILLIAM R BALKOVETZ, 4792
ROGER S BASNETT, 5674
KIRK C BENSON, 8162
JOHN S BILLIE, 3704
SHANE R BURKHART, 8144
TIMOTHY S BURNS, 9852
TEDSON J CAMPAGNA, 2276
THOMAS E CARTLEDGE JR., 4728
JENNIFER A CARUSO, 6251
THOMAS L CASCIARO, 7167
LUIS CASTRO, 3952
HARLEY W CLARK, 1741
RONALD L CONDON, 6978
GUY T COSENTINO, 5962
DAVID P COURTOGLOUS, 0398
PAUL D COYLE JR., 0046
JUAN A CUADRADO, 8167
JOHN H DAVIS, 2441
WILLIAM J DAVISSON, 2387
DENNIS J DAY, 3838
RANDALL E DONALDSON, 4370
JAMES B DUNCAN, 1981
BRIAN K EBERLE, 5669
RONALD P ELROD, 6048
DAVID A EXTON, 8014
ROBERT H FANCHER JR., 4103
JOHN G FERRARI, 5696
JOHN C FLOWERS, 7255
JEFFERY D FORD, 8932
EDWIN L FREDERICK III, 4109
DARLENE S FREEMAN, 3785
NATHAN P FREIER, 9922
DAVID V FULTON, 0391
CHRISTOPHER M GARITO, 2911
ANTHONY L GARNER, 7731
KENNETH D GELE, 7932
JESSE L GERMAIN, 7313
DAVID C GRIFFEE, 2922
LEONARD E GRZYBOWSKI, 3043
JOHN B HALSTEAD, 7106
SEAN T HANNAH, 3276
WILLIAM H HARMAN, 8203
KEITH B HAUK, 1571
ALEX J HEIDENBERG, 5178
HARRY N HICOCK JR., 0027
CHRISTOPHER M HILL, 6381
STANLEY L HOLMAN, 1064
KEITH V HORTON, 0734
SCOTT T HORTON, 5992
KENNETH D HUBBARD, 5301
MICHAEL S JACOBS, 4293
MICHAEL J JOHNSON, 2351
ROBERT G JOHNSON, 0122
FRANK W JONES III, 4416
MICHAEL KENNELLY III, 6637
RICHARD E KNOWLES, 3729
DONNA K KORYCINSKI, 6230
ANTHONY D LANDRY, 5432
LARRY R LARIMER, 3508
MARK M LEE, 5509
JOE A LITTLE, 1958
ROBERT T LOTT, 0400
STEPHEN J MARIANO, 3261
PETER J MATTES, 8084
ALBERT T MAXWELL, 5634
STEPHEN G MCCARTY, 0083
GREGORY M MCGUIRE, 8180
KAYE MCKINZIE, 0169
JOHN H MCPHAUL JR., 3197
JOHN MILLER JR., 8871
MARK A MOULTON, 6357
CHARLES S MURRAY, 4479
JEFFREY H MUSK, 1158
RICHARD J ODONNELL, 9967
SCOTT E ONEIL, 3761
JONATHAN M PAYNE, 8937
ROBERT J PELLER, 6198
BRENT A PENNY, 3191
CECIL R PETTIT JR., 5097
JAMES C PIGGOTT, 7834
DAVID W POMARNKE, 2042
CRAIG P PRESTENBACH, 2052
NICHOLAS J PRINS, 2658
BRAD L RAMEY, 9261
LAWRENCE J RAVILLE JR., 1895
JAMES D RICHARDSON, 7880
MARK D ROBINSON, 1977
JAMES W ROSENBERRY, 8563
MARIA D RYAN, 9189
ROBERT W SADOWSKI, 8412
PHILIP H SARNECKI, 0972
JEFFREY B SCHAMBURG, 0274
FRANK O SCHNECK, 8465
SCOTT SCHUTZMEISTER, 6333
MICHAEL K SHEAFFER, 9976
RICHARD L SHELTON, 3631
MYRA J SHEPHERD, 6823
LYNN L SNYDER, 2596
JOSEPH M STAWICK, 0253
VANCE F STEWART III, 8161
RODNEY X STURDIVANT, 9432
GRANT H THOMAS, 5717
ERIC J TODHUNTER, 6033
OTILIO TORRES JR., 5831
DOUGLAS M VARGAS, 2345
MARK M VISOSKY, 5953
MARK R VONHEERINGEN, 6148
PHYLLIS E WHITE, 2224
ANTHONY D WILLIAMS, 5002
DEREK J *WILLIAMS, 0182
TASHA L WILLIAMS, 0417
JAMES A WORM, 9153

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

KIM J ANGLESEY, 6183
JOHN D BAKER, 8203
MARK E BALLEW, 9832
BRETT A BARRACLOUGH, 5406
DELOISE J BELIN, 0082
MARK E BERGESON, 3833
GEORGE W BOND, 9158
JEFFREY A BOVAIS, 3298
MICHAEL L BREWER, 1607
TODD D BROWN, 0760
JERHALD A BURGOA, 1808
STEVEN R BUSCH, 2330
DOUGLAS B BUSHEY, 6265
DENNIS A CARD, 7588
KENNETH G CARRICK, 2790
DANIEL P CASE, 6161
LARY E CHINOWSKY, 2246
WAYNE E CLINE, 3825
ANDREW V COCHRAN, 8187
WILLIAM E COLE, 9758
MARK F CONROE, 0113
STEVEN A CONROY, 7103
STEPHEN D COOPER, 9597
MICHAEL J CREED, 2549
LLOYD C CROSMAN, 9579
STEVEN F CUMMINGS, 5642
DEBRA D DANIELS, 5201
GLENN J DANIELSON, 9859
JAMES V DAY, 5515

TERRENCE P DELONG. 4300
DAVID F DIMEO. 4378
GWENDOLYN O DINGLE. 7220
ANDREW C EGER. 1449
MARK R ELLINGTON. 5842
VICTORE J EVARO. 9548
JOSEPH H FELTER III. 0616
MICHAEL P FLANAGAN. 1333
MICHAEL D FLANIGAN. 4427
JAMES C FLOWERS. 8442
ROBIN L FONTES. 9887
SCOTT D FOUSE. 6339
VINCENT L FREEMAN JR., 6982
GERRIE A GAGE. 6158
CARLETON T GEARY JR., 2566
BRUCE R GILLOOLY. 0976
BRIAN R GOLLSNEIDER. 4638
GREGORY B GONZALEZ. 7142
DANA E GOULETTE. 6358
MATTHEW B GRECO. 5635
WILLIAM E GREEN. 7436
DEBORAH L HANAGAN. 7076
KIMBERLY K HANCOCK. 6867
THOMAS H HARRISON. 9837
JON P HEIDT. 8402
JAMES W *HESTER JR., 8526
JOHN C HINDS. 6059
STEPHEN E HITZ. 7386
TIMOTHY D HODGE. 4631
MELVIN S HOGAN. 1902
MICHAEL D HOSKIN. 0664
RICHARD W HOUSEWRIGHT. 2346
JOHN P HOWELL. 7441
JEROME HUDSON. 6247
MICHAEL L HUMMEL. 8238
RONALD JACOBS JR., 1964
DAVID L JOHNSON. 7818
GREGORY M JOHNSON. 8683
THOMAS E JOHNSON. 8438
BRADLEY E JONES. 9410
WALTER JONES. 6033
WADE R JOST. 9577
GREGORY R KILBY. 3320
JOHN C KILGALLON. 5545
GREGORY A KOKOSKIE. 1043
BRENT C KREMER. 9481
WILLIAM B LANGAN. 6553
JOHN M LAZAR. 8222
JOHN R LEAPHART. 8863
STANLEY M LEWIS. 8297
RICHARD B LIEBL. 6186
NATHAN J LUCAS. 6820
KIRBY E LUKE. 9648
ROBERT L MARION. 7348
JOHN J MARKOVICH. 1113
PAUL C MARKS. 4976
PATRICK H MASON. 7313
WILLIAM R MASON. 0081
KEVIN W MASSENGILL. 7009
BRENDAN B MCALOON. 7460
DAROLD V MCCLOUD. 8834
JOHN D MCDONOUGH. 3251
GILBERT S MCMANUS. 1133
TAREK A MEKHAIL. 1474
DAVID C MEYER. 7483
JEROME C MEYER. 0604
PATRICK V MILLER. 7980
TIMOTHY N MILLER. 6385
ROBERT O MODARELLI II. 7046
THOMAS J MOFFATT. 4674
JEFFREY S MORRIS. 1165
TERRY L MOSES. 4904
JAY P MURRAY. 2397
VINCENT P OCONNOR. 5341
FRANCIS S PACELLO. 9114
MICHAEL A PARKER. 4026
THOMAS L PAYNE. 9032
ERIC M PETERSON. 9303
KENNETH W POPE JR., 9183
IRA C QUEEN. 0480
WARREN D QUETS JR., 8457
PATRICK D REARDON. 4187
DAVID W RIGGINS. 2066
NINA P ROBINSON. 7325
KENNETH P RODGERS. 2597
JOSE O RODRIGUEZ. 7701
CAROL A ROETZLER. 2468
JOHN D RUFFING. 2440
ARNOLD L RUMPHREY II. 5757
MICHAEL C RYAN. 9506
STEVEN SABIA. 0102
JOHN R SACKS. 5108
WILLIAM A SANDERS. 3238
DAVID W SCALSKY. 8646
TERRY J SCHAEFER. 3044
JOSEPH H SCHAFER. 4149
LISA R SCHLEDERKIRKPATRICK. 5196
PHILIP SCHOENIG. 8914
DAVID W SEELY. 0692
THOMAS E SHEPERD. 9824
DAVID W SHIN. 2375
BRIAN P SHOOP. 8769
BENNIE L SIMMONS. 0292
CARL J SIMON. 0797
RICHARD W SKOW JR., 9623
PETER M SLOAD. 7400
JAMES H SMITH. 8715
TODD L SMITH. 4571
JEFFREY K SOUDER. 3065
BERNARD R SPARROW. 8961
LOUIS F STEINBUGL. 3537
MICHAEL R SWITZER. 8333
PERRY W TEAGUE. 5797
TODD F TOLSON. 1880
TROY E TRULOCK. 7989
JOHN S TURNER. 5217
DOUGLAS P VANGORDEN. 1111
PHILLIP A VIERSEN. 3411
JOHN R WALLACE. 6280
RICHARD B WHITE. 0935
CHARLES H WILSON III. 6325
THOMAS F *WILSON. 4753
SCOTT E WOMACK. 8326
KELVIN R WOOD. 2756
GREGORY D WRIGHT. 3326
JAMES G YENTZ. 9461
REED F YOUNG. 0366
MICHAEL E ZARBO. 9447
JOHN V ZAVARELLI. 8081
ROBERT J ZOPPA. 8165

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

ANTHONY J ABATI. 9711
WILLIAM A ADAMS. 2888
FRANK T AKINS III. 4251
PEDRO G ALMEIDA. 6651
BRIAN K AMBERGER. 1914
DAVID P ANDERS. 6526
FRANK H ANDERSON III. 4553
DARYL W ANDREWS. 1411
DAVID B ANDREWS. 2986
ANTHONY W ANGELO. 1969
ANTONIO ARAGON. 8058
DAVID A ARMSTRONG. 0982
JEFFREY A ARQUETTE. 2119
HERMAN ASBERRY III. 9873
KEVIN J AUSTIN. 3675
ROBERT A BAER. 3929
RICARDO E BAEZ. 7103
EDWARD V BAKER. 2223
MICHAEL A BALSER. 9424
JOHN F BALTICH. 7772
BERNARD B BANKS. 1064
ROBERT A BARKER. 5547
MARK K BARKLEY. 1053
SUSAN M BARLOW. 4970
DONALD L BARNETT. 6736
GLENN J BARR. 8062
WILLIAM V BARRETT. 7087
DAVID B BATCHELOR. 2223
JOHN L BAUER. 3587
THOMAS C BEANE JR., 7814
ARTHUR B BEASLEY. 4104
DONALD BEATTIE JR., 2040
VERNON L BEATTY JR., 1322
STEPHANIE L BEAVERS. 3917
TIMOTHY D BECKNER. 2431
KIM L BENESH. 8213
ERNEST C BENNER. 1645
GEORGE W BENTER IV. 0270
DAVID J BERCZEK. 2412
ALAN R BERNARD. 6357
MARK A BERTOLINI. 1800
FRANCISCO R BETANCOURT. 4040
JOHN K BEUCKENS. 5454
LINDA K BEUCKENS. 3508
WILLIAM L BIALOZOR. 9981
STEVEN R BIAS. 3279
ELIZABETH A BIERDEN. 5604
KENNETH J BILAND. 7460
MICHAEL C BIRD. 8303
JAMES R BLACKBURN. 7670
PERRY W BLACKBURN JR., 4513
DIRK C BLACKDEER. 0927
BARRY L BLACKMON. 0662
ALAN C BLACKWELL. 3640
MARK A BLAIR. 3667
DARIN C BLANCETT. 9797
GREGG A BLANCHARD. 1265
MARK R BLIESE. 6845
BRADLEY D BLOOM. 8174
MICHAEL BOEDING. 8139
MICHAEL T BOONE. 3892
DANIEL J BOONIE. 4788
NERO BORDERS JR., 2075
JOHN R BOULE II. 5522
DANIEL P BOWEN. 9966
WILLIAM K BOYETT. 3733
LEO E BRADLEY III. 3034
MICHAEL J BRADLEY. 6549
SUZANNE L BRAGG. 4594
WILLIAM B BRENTS. 1896
PATRICK P BREWINGTON. 7660
DARRYL J BRIGGS. 6002
DOUGLAS J BRILES. 6995
BRIAN P BRINDLEY. 9325
GARY M BRITO. 9038
GALE J BRITTAIN. 9125
THOMAS H BRITTAIN. 8080
MICHAEL W BROBECK. 8173
JEFFREY M BRODEUR. 6038
JOHN J BROOKS. 8197
MICHAEL E BROUILLETTE. 2003
MICHAEL A BROWDER. 9627
EVAN L BROWN. 3656
KEVIN E BROWN. 3335
KEVIN P BROWN. 2326
ROBERT S BROWN. 6159
ROSS A BROWN. 6537
BYRON L BROWNING. 3716
EMORY W BROWNLEE JR., 6852
BRENT J BUCHHOLZ. 0969
CHARLES H BUEHRING. 9241
DAVID C BULLARD. 5949
JOHN W BULLION. 3418
JON K BUONERBA. 0945
KATHRYN A BURBA. 8511
FRANCIS B BURNS. 0476
DANIEL G BURWELL. 1560
DAVID A *BUSHEY. 1188
WILLIAM C BUTCHER. 0167
LORETTO M BYANSKI. 0767
SUSAN S CABRAL. 5395
DOUGLAS A CAMPBELL. 2459
ROBERT I CAMPBELL. 1531
KIMBERLY L CARDEN. 2485
CAMERON D CARLSON. 1533
CHRISTOPHER S CARNES. 3462
FORREST L CARPENTER. 3822
JOHN M CARPER. 6603
JOHNEE O CARR. 8838
SCOTT A CARR. 7664
CEDRIC O CARROLL. 7331
MIKE A CARTER. 7439
PERRY N CASKEY. 4831
BYRON T CASTLEMAN. 4592
CHRISTOPHER G CAVOLI. 7949
WALLACE B CELTRICK. 0085
ROBERT P CERJAN. 5198
KIM E CHAMBERLAIN. 1548
ROBERT L CHAMBERLAIN. 9500
ANTHONY K CHAMBERS. 4465
DOUGLAS G CHAMBERS. 3410
TONNEY A CHANDLER. 7776
ANDREW J CHANDO JR., 6183
DANIEL M CHARTIER. 9776
JOHN M CHARVAT JR., 2612
PAMELA R CHARVAT. 4920
WALTER B CHASE III. 0006
LUIS R CHAVEZ. 2742
RANDALL K CHEESEBOROUGH. 4007
MARCUS C CHERRY. 3500
MICHAEL P CHEVLIN. 9834
TODHUNTER J CHILES. 3651
MICHAEL J CHINN. 1458
FREDRICK S CHOI. 9072
JERRY W CHRISTENSEN. 6645
HOWARD R CHRISTIE. 2226
DAVID CINTRON. 0035
BRIAN J CLARK. 5739
BRIAN M CLARK. 3845
LINWOOD B CLARK JR., 6497
PERRY C CLARK. 7281
MICHAEL F CLARKE. 3976
DALE D CLELAND. 6362
ROSS M CLEMONS. 2467
TIMOTHY A CLEVELAND. 7050
CHARLES T CLIMER JR., 4060
ROGER L CLOUTIER JR., 9139
JOSEPH S COALE. 2430
NORMAN K COBB JR., 7146
THOMAS M COBURN. 7404
ALEXANDER S COCHRAN III. 2209
GREGORY G CODAY. 4570
DAVID C COGDALL. 1799
WILLIAM R COLEMAN. 3318
CRAIG A COLLIER. 4119
LYDIA D COMBS. 3976
ERIC R CONRAD. 0764
CAROLINE COOPER. 4391
SYLVESTER *COTTON. 2466
EMMA K COULSON. 5648
TRISTAN P COYLE. 6321
LISA L CRANFORD. 5532
KENNETH J CRAWFORD. 6006
THOMAS E CREVISTON. 8622
TELFORD E CRISCO JR., 6901
KEVIN J CROTEAU. 2051
WILLIAM E CROZIER III. 4276
BRIAN D CUNDIFF. 0514
JOHN R CUNNINGHAM. 8062
ORVILLE S CUPP. 7011
KENT C CURTSINGER. 8611
STEVEN G DAILEY. 4229
JAY T DAINTY. 9524
MICHAEL T DANDRIDGE. 5960
JAMES P DANIEL JR., 0979
ANTHONY J DATTILO JR., 1279
DALE E DAVIDSON. 4630
CHARLES E DAVIS IV. 5741
HERMAN D DAVIS JR., 7927
REGINALD R DAVIS. 3899
REX A DAVIS. 8404
GRANT V DAYLEY. 3279
CAROL R DEBARTO. 1785
THOMAS F DEFILIPPO. 4659
EDMUND J DEGEN. 4828
KEVIN J DEGNAN. 3406
ROBERT W DEJONG. 5597
RICHARD A DEMAREE. 3301
PAMELA J DENCH. 3644
SUZANNE M DENEAL. 5666
CARL L DETTENMAYER. 2848
TIMOTHY P DEVITO. 5225
RUZZA B DI. 8678
BARRY A DIEHL. 3746
BRIAN J DISINGER. 5501
SCOTT E DONALDSON. 5363
SUSAN K DONALDSON. 7189
GEORGE T DONOVAN JR., 7483

TERENCE M DORN, 1791
JOHN M DOUGHERTY, 8369
KENNETH E DOWNER, 3365
BARTEL G DRAKE, 1627
HELMUT F DRAXLER, 0996
THOMAS J DUBOIS, 7546
STEVEN W * DUKE, 0624
DEAN C DUNHAM, 9716
JOE * DURR III, 7302
JOHN C DVORACEK, 9952
DAVID B DYE, 1219
CHESTER F DYMEK III, 5421
JOHN S EADDY, 7027
MARK L EDMONDS, 1303
JAMES D EDWARDS, 0745
STEVEN M ELKINS, 5544
GEOFFREY D ELLERSON, 5616
JEFFREY A ELLIS, 8158
JOHN R ELWOOD, 1882
PAMELA B EMBERTON, 7401
MICHAEL T ENDRES, 8827
PAUL A ENGLISH, 8056
ROBERT W EOFF, 4562
BRITT W ESTES, 4993
KENNETH E EVANS JR., 8549
MICHAEL A EVANS, 9231
KATHLEEN J EZELL, 6692
CHRISTOPHER R FARLEY, 7003
STEPHEN E FARMEN, 8711
SCOTT C FARQUHAR, 1303
KEVIN W FARRELL, 9546
MICHAEL A FARUQUI, 7235
JOHN R FASCHING, 9887
RICHARD S FAULKNER, 7840
GREGORY A FAWCETT, 4762
JOSEPH J FENTY JR., 6692
ALEXANDER C FINDLAY, 3345
WILLIAM B FOGLE, 3965
DONALD J FONTENOT, 9882
TYLER L FORTIER, 2789
JAY D FOSTER, 0450
KEVIN D FOSTER, 1752
KEVIN L FOSTER, 0245
CHRISTOPHER O FOYE, 4776
ROBERT S FRAZIER, 0667
RICHARD L FRENCH, 9350
MALCOLM B FROST, 8125
LAWRENCE W FULLER, 5504
DAVID M FUNK, 8737
KIM G FUSCHAK, 0798
DAVID B GAFFNEY, 8332
ROBERT E GAGNON, 6945
TERESA A GALGANO, 5446
NANETTE GALLANT, 6409
DONALD N GALLI, 5042
PAUL B GARDNER, 9288
MARIO V GARIA JR., 5378
JAMES H GARNER, 8881
JOHN C GARRETT, 4698
KATHLEEN A GAVLE, 8364
MICHAEL J * GAWKINS, 5071
WILLIAM K GAYLER, 2754
STEPHEN J GAYTON JR., 7511
GIAN P GENTILE, 9950
KEVIN E GENTZLER, 6091
RAY D GENTZYEL, 5782
RANDY A GEORGE, 9642
RICHARD K GEORGE, 0948
LESLIE A GERALD, 1868
ALAN G GERSTENSCHLAGER, 4267
MARIA R GERVAIS, 6315
BERTRAND A GES, 9980
MICHAEL L GIBLER, 2824
CHRISTOPHER P GIBSON, 5003
PATRICK F GIBSON, 0395
TODD A GILF, 3187
CARL L GILES, 8392
PATRICK A GILLROY, 8198
MAXINE C GIRARD, 2687
DANIEL C GLAD, 9788
RANDY L GLAESER, 1541
SCOT P GLEASON, 6344
CLARENCE J GOMES JR., 5940
STEPHEN C GOMILLION, 1197
NICHOLAS C GONZALES, 3377
MARK J GORTON, 0595
PAUL F * GRACE, 9093
RONNIE L GRAHAM, 2664
NANCY J GRANDY, 2248
NEWMAN H GRAVES, 2531
THOMAS C GRAVES, 3857
JENNIFER L GRAY, 0682
SIDNEY J GRAY III, 0399
BRIAN A GREEN, 7302
WAYNE A GREEN, 8357
PAUL S GREENHOUSE, 0146
DENNIS G GREENWOOD, 0719
BARBARA A GREGORY, 4682
TIMOTHY E GRIFFITH, 0734
GREGORY J GUNTER, 3463
JERALD D HAJEK, 2126
CARY G HALE, 1208
KATHRYN R HALL, 4030
MARK HALL, 3580
MARK W HAMILTON, 2244
MICHAEL E HAMLET, 7291
DEBRA A HANNEMAN, 9085
MARSHA L HANSEN, 9898
GERALD M HANSLER JR., 2219
JOHAN C HARALDSEN, 3665
MICHAEL A HARGROVE, 5454
FREDERICK D HARPER, 5235
JOSEPH P HARRINGTON, 7304
MICHAEL J HARRIS, 1458
STEVEN C HARRIS, 2951
THOMAS J HARTZEL, 0049
SCOTT M HATHAWAY, 5640
LEO R HAY, 4319
ROBERT D HAYCOCK, 8590
MICHAEL A HAYDAK, 7134
ASHTON L HAYES, 6714
STEVEN P HEIDECKER, 1140
MICHAEL D HENDRICKS, 9886
RANDOLPH A * HENRY, 2063
EDWIN HERNANDEZ, 3482
NICOLAS A HERRERA, 8848
HORST P HERTING, 5545
ERIC J HESSE, 7483
JAMES R HEVEL, 5647
KENNETH E HICKINS, 3251
HOWARD O HICKMAN JR., 1029
KYLE D HICKMAN, 5629
JOSEPH E HICKS, 8910
MARK R HICKS, 8469
THOMAS E HIEBERT, 7597
MICHAEL S HIGGINBOTTOM, 8317
COLLIN K HILL, 1103
MICHAEL D * HILLIARD, 4950
ROBERT L HILTON, 1024
LYNN A HINMAN, 6657
ADAM R * HINSDALE, 0085
ALEX J HOBBS, 2839
BARRY HODGES, 0043
TERRY D HODGES, 8026
PATRICK B HOGAN, 7596
DAVID R HOLBROOK, 3217
JOHN A HOLLIS, 8905
MARK T HOLLOWAY, 4492
JAMES F HOLLY III, 1336
JON J HORNE, 3203
SKYLER P HORNUNG, 7414
MARK C HOROHO, 2857
ACHIM R HORTON, 7647
DOUGLAS M HORTON, 8458
BRADLEY E HOUGHTON, 3616
JAMES A HOWARD, 3838
JOE G HOWARD JR., 9731
SHAWN P HOWLEY, 5380
PHILIP A HOYLE, 0444
WILLIAM P HUBER, 2713
BENJAMIN L HUDSON, 8140
DALE E HUDSON, 4880
WILLIAM B HUGHES, 5042
DANIEL W HULSEBOSCH, 2950
LEONARD P HUMPHREY, 2789
PAUL G HUMPHREYS, 0600
DONALD F HURLEY JR., 7130
RICHARD K HUTCHISON, 1273
CLAYTON HUTMACHER, 6851
MARC B HUTSON, 0056
THOMAS E HUTT III, 0116
JAMES T IACCOCA, 1074
JOHN F IAMPIETRO, 0696
BRIAN J IMIOLA, 7941
MICHAEL J INFANTI, 5221
STEVEN P INGWERSEN, 2422
JAMES P INMAN, 8675
CHRISTOPHER M IONTA, 0812
CHARLES P IPPOLITO, 4578
CHRISTOPHER W IRRIG, 0241
CHRISTOPHER J ISAACSON, 3042
JACQUELINE E JAMES, 2604
CHARLIE R JAMESON JR., 6811
PAUL F JARVIS, 8236
JAMES H JENKINS III, 3465
SEAN M JENKINS, 3739
EDWARD D JENNINGS, 5271
JACK J JENSEN, 6074
MICHAEL J JESSUP, 9993
DONALD E JOHANTGES, 1501
FRED W JOHNSON, 7754
KENNETH L JOHNSON, 1135
KEVIN P JOHNSON, 5187
MICIOTTO O JOHNSON, 3230
NATHANIEL JOHNSON JR., 7585
GARY W JOHNSTON, 9901
HARRY E JONES II, 9412
HARVEY B JONES III, 5773
JON N JONES, 4243
MARK W JONES, 5799
MICHAEL J JONES, 5562
ROGER T JONES, 8434
ERIC M JORDAN, 4546
KELLY C JORDAN, 4693
PHILIP E JUCHEM, 7923
JACK T JUDY, 8146
KEVIN K KACHINSKI, 8040
RICHARD G KAISER, 9228
WILLIAM S KEARNEY, 1754
WILLIAM R KEETON, 0531
MICHAEL T KELL, 1771
JOHN P KELLEY, 0189
PAUL T KELLEY, 6739
WILLIAM J KELLEY III, 2446
JOHN B KELLY II, 3029
THOMAS L KELLY, 2640
FREEMAN E KENNEDY JR., 9201
GLENN A KENNEDY II, 9504
JAMES D KENNEDY, 8961
JEFFREY L KENT, 3840
ALLEN W KIEFER, 2622
MITCHELL L KILGO, 2288
PATRICK J KILROY, 3493
SCOTT D KIMMELL, 5229
RICHARD O KING JR., 8828
WILLIAM E KING IV, 4170
JAMES D KINKADE, 8923
JOHN K KIRBY, 0533
ROBERT C KLEINHAMPLE, 2946
ROBERT L KLIMCZAK, 1915
WILLIAM A KLIMOWICZ, 4347
MARK E KNICK, 8704
ROBERT D KNOCK JR., 9933
DAVIN V KNOLTON, 4228
JOHN D KNOX, 9240
CYNTHIA A KOENIG, 0122
PHILIP C KOENIG, 3599
REINHARD W KOENIG, 0162
STEVEN T KOENIG, 1700
CHRISTOPHER D KOLENDA, 3390
LAWRENCE A KOMINIAK, 0025
JOSEPH T KOSKEY JR., 3320
JAMES E KRAFT, 1031
RICHARD J KRAMER, 4419
FRED T KRAWCHUK JR., 0669
MARY A KRESGE, 4462
RYAN J KUHN, 4974
MICHAEL E KURILLA, 1139
JOHN P LADELFA, 1767
JOHN F LAGANELLI, 5373
JOHN R LAKSO, 7555
STEVE E LAMBERT, 9423
MARK D LANDERS, 5612
STEVEN E LANDIS, 6563
FRANCIS P LANDY, 7432
DREFUS LANE, 9825
THOMAS J LANGOWSKI, 0601
JAMES E LARSEN II, 6933
STEPHEN C LARSEN, 7407
THERESA J LARSEN, 4906
MARK V LATHEM, 3055
JAMES F LAUGHRIDGE, 3316
DONALD P LAUZON, 1431
JOSEPH K LAYTON, 5222
MARTIN C LEDINGTON, 5256
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MICHAEL J LEE, 3210
TERRY M LEE, 0298
MICHAEL J LEVESQUE, 8792
DAVID J LIDDELL, 2733
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RODNEY L LUSHER, 5337
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CHARLES C MACK, 2699
YVONNE B MACNAMARA, 2482
STAFFORD R MAHEU JR., 4921
ANDREW F * MAHONEY, 3981
THOMAS J MAHONEY, 2138
JOSEPH M MAIORANA, 0652
ROBERT A MALLOY, 5461
JOHN E MALONEY, 0331
MICHAEL T MANNING, 0404
FRED V MANZO JR., 1497
CLINTON J MARQUARDT, 8394
JOSE A MARQUEZ, 4783
MICHAEL MARTIN, 8126
STEVEN J MARTIN, 9809
WAYNE L MASON, 4790
JAMES V MATHESON, 3431
PATRICIA A MATLOCK, 7080
JAMES M MCALLISTER JR., 0940
SEAN W MCCAFFREY, 8330
THOMAS D MCCARTHY, 9665
JOHN C MCCLELLAN JR., 4064
MARK A MCCORMICK, 3102
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BRIAN S MCFADDEN, 8095
ROBERT D MCGEE, 8543
SHAWN P MCGINLEY, 1680
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STEPHEN J MCGURK, 1416
JOHN M MCHUGH, 0164
JOHN R MCILHANEY JR., 8587
BRENDAN E MCKIERNAN, 1344
JAMES L MCKNIGHT, 4309
ROBERT F MCLAUGHLIN, 8054
STEVEN J MCLAUGHLIN, 5253
GARY R MCMEEN, 9206
TYRONE J MCPHILLIPS, 9519
JAMES R MCQUILKIN JR., 0454
MARK R * MEADOWS, 6185
JOSEPH C MENDEZ, 4718
ANDREW D MERCHANT, 5723
KENNETH O MERKEL, 3773
HOWARD L MERRITT, 9521
ROGER G MEYER, 2284
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JAMES M MIS, 7728
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CLAY W MITCHELL, 9555
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JUDITH MOLINA, 8341
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EDWARD J MOUNT JR., 1281
JOHN J MULBURY, 9092
MICHAEL R MULLINS, 0481
MATTHEW J MULQUEEN, 2937
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TONY C MUNSON, 9842
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DEBORAH A MYERS, 2001
JOHN K MYERS JR., 6257
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JOHN M NEAL III, 3686
JEFFREY W * NELSON, 5701
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CRAIG M NEWMAN, 2165
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JAMES D NICKOLAS, 1447
NOEL T NICOLLE, 6607
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ERIC P * NIKOLAI, 6733
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DEREK T ORNDORFF, 8378
MICHAEL S OUBRE, 9732
JAMES S OVERBYE, 0572
SANDRA W OWENS, 4375
LEO R PACHER, 5839
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GUST W PAGONIS, 9264
PATRICK V PALLATTO, 1271
PETER PALOMBO, 0812
ALFRED A PANTANO JR., 6276
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ALBERT G PARMENTIER II, 5276
JOHN D PAUGH JR., 7479
JOHN M PAUL SR. 0292
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BROC A PERKUCHIN, 5226
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JAMES A PETERSON, 7852
JEFFREY D PETERSON, 3136
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MAURICE S PICKETT, 4815
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DANIEL A PINNELL, 5728
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RODNEY E PITTS, 3572
GREGORY A PLATT, 3125
ARNOLD PLEASANT, 1781
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MICHAEL L POPOVICH, 0219
SCOTT J PORTUGUE, 2253
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RAYMOND PRIBILSKI, 6682
KEITH D PRICE, 4793
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PHILIP M PUGH JR., 2895
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MICHAEL D RANDALL, 6281
BURL W RANDOLPH JR., 7613
KIMBERLY A RAPACZ, 6832
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VINCENT M REAP, 8754
CHRISTOPHER D REED, 9609
STEVEN N REED, 5174
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JOHN G REILLY, 7591
PAUL K REIST, 9370
THOMAS V REMEDIZ, 1109
JOHN S RENDA, 2541
JEFFREY J RESKO, 3323
WESLEY A RHODEHAMEL, 8146
TERRY L RICE, 5316
MICHAEL R RICHARDSON, 1024
RICHARD S RICHARDSON, 6831
GLENN S RICHIE, 0443
GREGG A * RICHMOND, 2257
STEPHEN J RICHMOND, 0460
JAMES H RIKARD, 3648
MITCHELL RISNER, 7185
PAUL M RIVETTE, 0282
CHARLES E ROBERTS, 6288
JAMES M ROBERTSON, 8336
JEFFERY B ROBINETTE, 8459
HARVEY R ROBINSON, 3963
DAVID A RODDENBERRY, 6175
JOSE F RODRIGUEZ, 3124
DEBRA L ROESLER, 7029
ROBERT R ROGGEMAN, 1948
JOSEPH A ROSE, 6165
RONALD J ROSS, 1152
VINCE D ROSS, 2692
EDWARD C ROTHSTEIN, 4822
BRIDGET M ROURKE, 6465
EDWARD V ROWE, 7240
ROBERT J RUCH, 8317
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WILLIAM I RUSH, 9703
STEPHEN V RUSHING, 4871
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MICHAEL P RYAN, 3800
PAUL J SABIN, 8913
JOSEPH A SALAMONE JR., 5840
PETER R SANDBERG, 5277
DAVID L SANDRIDGE, 7443
LYNN W SANNICOLAS, 4564
JACINTO SANTIAGO JR., 1592
STEVEN K SATTERLEE, 4590
OLIVER S SAUNDERS, 6647
DANIEL P SAUTER III, 9373
JOHN G SAUVADON, 4416
ERIC O SCHACHT, 1648
ERIC B SCHEIDEMANTEL, 9340
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KURT A SCHNEIDER, 9056
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MICHAEL J SCHROEDER, 5302
WILLIAM S SCHUMAKER, 5598
KEVIN G SCHWARTZ, 4646
ALFRED SCOTT JR., 3020
MICHAEL A SCUDDER, 4358
PAUL J SCULLION, 1416
MARK SEAGRAVE, 1550
DANIEL C SELPH, 7987
MARK A SHAFFSTALL, 9130
DARRYL T SHAMBLIN, 0235
MICHAEL A SHARP, 8765
RICHARD L SHELTON, 3709
GEORGE T SHEPARD JR., 5264
RICHARD L SHEPARD, 4700
MICHAEL F SHILLINGER, 3899
FRANK J SHIMANDLE, 7957
WILLIAM S SHOOK, 2669
GEORGE B SHUPLINKOV, 0707
STEPHEN J SICINSKI, 6748
JEROME SIMMONS, 7196
GEORGE SIMON III, 1342
JOSEPH A SIMONELLI JR., 8429
MICHAEL S SIMPSON, 5051
JOHN D SIMS, 5461
DONALD J SINGER, 7844
LAURA L SINGER, 5329
JAMES C SKIDMORE, 2742
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ROBERT E SLAUGHTER, 1281
JOE K SLEDD, 0245
JEFFREY A SMILEY, 8465
HOWARD G SMITH, 7357
KENNETH R SMITH, 7738
ROBIN M SMITH, 9373
ROBIN R SMITH, 6891
STANLEY A SMITH, 3372
THOMAS L SMITH JR., 6705
JEANNE C SMITHHOOPER, 2152
NATHAN D SMYTH, 5293
GARY L SMYTHE, 8714
THOMAS E SNODGRASS, 3373
PAUL E SNYDER, 5555
FRANK G SOKOL, 2554
JOHNNY W SOKOLOSKY, 5161
VICTOR L SOLERO, 1064
KURT L SONNTAG, 9060
WILLIAM E SPADIE, 9645
JAMES R SPANGLER II, 2448
JONATHAN H SPENCER, 9566
LORENZO SPENCER, 9214
GERRY M SPRAGG JR., 4548
DALE F SPURLIN, 0736
MARK R STAMMER, 5031
BRUCE E STANLEY, 2360
MATTHEW M STANTON, 7361
TIMOTHY J STARKE JR., 6111
JOHNNIE J STEELE, 6008
WILLIAM T STEELE, 0990
RICHARD F STEINER, 6456
THOMAS L STILES, 0594
RUSSELL E STINGER, 6036
ROCKO V STOWERS, 2396
DARRELL R STROTHER, 2688
DEBORAH S STUART, 2806
WAYNE L STULTZ, 0195
MICHAEL S STURGEON, 1472
MARK W SUICH, 2894
JOSEPH H SULLIVAN, 0304
JOHNNY M SUMMERS, 6733
WILLIAM E SURETTE III, 1206
JOHN H SUTTON, 8892
GEORGE L SWIFT, 2628
JAMES F SWITZER, 9636
CHRISTIAN D TADDEO, 0342
MARK E TALKINGTON, 2774
JEFFREY L TALLY, 7678
ROBERT M TARADASH, 6740
RANDY S TAYLOR, 4738
VINCENT J TEDESCO III, 3181
PATRICK R TERRELL, 7230
DAVID T THEISEN, 7046
JAMES D THOMAS, 2392
STEVE D THOMAS, 0043
DAVID E THOMPSON II, 7188
KEITRON A TODD, 5620
MICHAEL A TODD, 5268
DAVID W TOHN, 2946
MARK A TOLMACHOFF, 8808
CHRISTOPHER R TONER, 7110
EVELYN M TORRES, 7741
TIMOTHY B TOUCHETTE, 8532
RICHARD C TRIETLEY JR., 3936
GLENWOOD R TURNER JR., 7904
WILLIAM A TURNER, 5349
TOM C ULMER, 7245
JOHN C VALLEDOR, 2095
ALSTYNE T VAN, 1639
MARGARET M VANASSE, 2685
DAVID E VANSLAMBROOK, 2579
STEVEN J VANSTRATEN, 1632
JEFFREY G VANWEY, 9145
STEVEN VASS IV, 1335
JOHN H VICKERS, 2084
DOUGLAS L VICTOR, 3737
ROBERT E VIKANDER, 2521
MARIAN E VLASAK, 4958
PATRICK W VOLLER, 6107
JEFFREY E VUONO, 2867
STEVEN L WADE, 7606
CHRISTOPHER M WAHL, 6503
MARK D WALD, 8817
WILLIAM T WALL, 3484
PRISCILLA C WALLER, 0514
JOANNE E WALSER, 9752
RONALD H WALTERS JR., 6605
THOMAS M WALTON, 3098
TODD A WANG, 6973
GEOFFREY H WARD, 9817
JILL M WARREN, 4853
FREDERICK L WASHINGTON, 0292
PAUL C WASHINGTON, 2738
CYNTHIA K WATKINS, 2388
BRIAN T WATSON SR, 0406
MARK P WEBB, 6818
CHARLES R WEBSTER JR., 1172
DAVE WELLONS JR., 6470
FRANKLIN L WENZEL, 5075
RANDY A WESTFALL, 1818
TEDD A WHEELER, 1850
TODD M WHEELER, 1802
MARK M WHITE, 7728
RANDOLPH C WHITE JR., 6503
RONALD O WHITE, 9803
STEVEN J WHITMARSH, 7756
ANDRE L WILEY, 2554
HARRY F WILKES, 1243
CURTIS WILLIAMS JR., 7564
THEARON M WILLIAMS, 5901
RANDALL H WILLIAMSON, 4203
STEVEN C WILLIAMSON, 9276
DANIEL A WILSON, 7223
GERALD K WILSON, 0639
KEITH A WILSON, 5520
MITCH L WILSON, 8031
TIMMY L WILSON, 0080
ERIC J WINKIE, 7236
JAMES M WOLAK, 9330
WILLIAM M WOLFARTH, 2499
JAMES J WOLFF, 4869
AUBREY L WOOD III, 0775
MARK A WOOD, 0915
JOEY S * WYTE, 4563
LISSA V YOUNG, 6690
MATTHEW W YOUNGKIN, 4640
DOUGLAS K ZIEMER, 2262
MATTHEW H ZIMMERMAN, 1622
JOHN L ZORNICK, 5721
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X1408
X2386
X433
X047
X2435
X2574
X167

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

LEON M. DUDENHEFER, 9561

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

BRADLEY J. SMITH, 1008

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

THERESA M. EVERETTE, 5330

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

ANTHONY D. WEBER, 2369

CONFIRMATIONS

Executive Nominations Confirmed by the Senate August 1, 2002:

DEPARTMENT OF STATE

DAVID A. GROSS, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY IN THE BUREAU OF ECONOMIC AND BUSINESS AFFAIRS AND U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY.

JACK C. CHOW, OF PENNSYLVANIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL REPRESENTATIVE OF THE SECRETARY OF STATE FOR HIV/AIDS.

PAULA A. DESUTTER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF STATE (VERIFICATION AND COMPLIANCE).

STEPHEN GEOFFREY RADEMAKER, OF DELAWARE, TO BE AN ASSISTANT SECRETARY OF STATE (ARMS CONTROL).

MICHAEL ALAN GUHIN, OF MARYLAND, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, FOR THE RANK OF AMBASSADOR DURING TENURE OF SERVICE AS U.S. FISSILE MATERIAL NEGOTIATOR.

TONY P. HALL, OF OHIO, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE UNITED NATIONS AGENCIES FOR FOOD AND AGRICULTURE.

COMMODITY FUTURES TRADING COMMISSION

SHARON BROWN-HRUSKA, OF VIRGINIA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING APRIL 13, 2004.

WALTER LUKKEN, OF INDIANA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR A TERM EXPIRING APRIL 13, 2005.

FARM CREDIT ADMINISTRATION

DOUGLAS L. FLORY, OF VIRGINIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR A TERM EXPIRING OCTOBER 13, 2006.

NUCLEAR REGULATORY COMMISSION

JEFFREY S. MERRIFIELD, OF NEW HAMPSHIRE, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2007.

EXECUTIVE OFFICE OF THE PRESIDENT

KATHIE L. OLSEN, OF OREGON, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

RICHARD M. RUSSELL, OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FREDERICK D. GREGORY, OF MARYLAND, TO BE DEPUTY ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

FEDERAL MARITIME COMMISSION

STEVEN ROBERT BLUST, OF FLORIDA, TO BE A FEDERAL MARITIME COMMISSIONER FOR A TERM EXPIRING JUNE 30, 2006.

EXECUTIVE OFFICE OF THE PRESIDENT

MARK W. EVERSON, OF TEXAS, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET.

FEDERAL EMERGENCY MANAGEMENT AGENCY

MICHAEL D. BROWN, OF COLORADO, TO BE DEPUTY DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

DEPARTMENT OF STATE

MICHAEL KLOSSON, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CYPRUS.

RANDOLPH BELL, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL ENVOY FOR HOLOCAUST ISSUES.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

MARK SULLIVAN, OF MARYLAND, TO BE UNITED STATES DIRECTOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

ASIAN DEVELOPMENT BANK

PAUL WILLIAM SPELTZ, OF TEXAS, TO BE UNITED STATES DIRECTOR OF THE ASIAN DEVELOPMENT BANK, WITH THE RANK OF AMBASSADOR.

BROADCASTING BOARD OF GOVERNORS

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004.

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE CHAIRMAN OF THE BROADCASTING BOARD OF GOVERNORS.

NORMAN J. PATTIZ, OF CALIFORNIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004.

ENVIRONMENTAL PROTECTION AGENCY

JOHN PETER SUAREZ, OF NEW JERSEY, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

CAROLYN W. MERRITT, OF ILLINOIS, TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

CAROLYN W. MERRITT, OF ILLINOIS, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

JOHN S. BRESLAND, OF NEW JERSEY, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

DEPARTMENT OF STATE

JAMES HOWARD YELLIN, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BURUNDI.

KRISTIE ANNE KENNEY, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ECUADOR.

BARBARA CALANDRA MOORE, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NICARAGUA.

LARRY LEON PALMER, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF HONDURAS.

NANCY J. POWELL, OF IOWA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

JOHN WILLIAM BLANEY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LIBERIA.

NATIONAL MEDIATION BOARD

EDWARD J. FITZMAURICE, JR., OF TEXAS, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2004.

HARRY R. HOGLANDER, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2005.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

HENRY E. AUTREY, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI.

RICHARD E. DORR, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI.

DAVID C. GODBEY, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.

HENRY E. HUDSON, OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA.

TIMOTHY J. SAVAGE, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

AMY J. ST. EVE, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

DAVID S. CERCONE, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

MORRISON C. ENGLAND, JR., OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA.

JAMES E. BOASBERG, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS.

DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN, OF WISCONSIN, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WISCONSIN FOR THE TERM OF FOUR YEARS.

CHARLES E. BEACH, SR., OF IOWA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF IOWA FOR THE TERM OF FOUR YEARS.

PETER A. LAWRENCE, OF NEW YORK, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS.

RICHARD VAUGHN MECUM, OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

BURTON STALLWOOD, OF RHODE ISLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF RHODE ISLAND FOR THE TERM OF FOUR YEARS.

DEPARTMENT OF DEFENSE

VINICIO E. MADRIGAL, OF LOUISIANA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2003.

L.D. BRITT, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR THE REMAINDER OF THE TERM EXPIRING MAY 1, 2005.

LINDA J. STIERLE, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING MAY 1, 2007.

WILLIAM C. DE LA PENA, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2007.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

JOHN EDWARD MANSFIELD, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD FOR A TERM EXPIRING OCTOBER 18, 2006.